

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Allegheny Reproductive Health Center, :  
Allentown Women’s Center, Delaware :  
County Women’s Center, Philadelphia :  
Women’s Center, Planned Parenthood :  
Keystone, Planned Parenthood :  
Southeastern Pennsylvania, and Planned :  
Parenthood of Western Pennsylvania, :  
Petitioners :

v.

: No. 26 M.D. 2019  
: Argued: November 5, 2025

Pennsylvania Department of Human :  
Services, Teresa Miller, in her official :  
capacity as Secretary of the :  
Pennsylvania Department of Human :  
Services, Leesa Allen, in her official :  
capacity as Executive Deputy Secretary :  
for the Pennsylvania Department of :  
Human Service’s Office of Medical :  
Assistance Programs, and Sally Kozak, :  
in her official capacity as Deputy :  
Secretary for the Pennsylvania :  
Department of Human Service’s Office :  
of Medical Assistance Programs, :  
Respondents :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE ANNE E. COVEY, Judge  
HONORABLE MICHAEL H. WOJCIK, Judge  
HONORABLE LORI A. DUMAS, Judge  
HONORABLE STACY WALLACE, Judge  
HONORABLE MATTHEW S. WOLF, Judge

DISSENTING OPINION  
BY JUDGE WALLACE

FILED: April 20, 2026

As we celebrate 250 years of our country's existence and as we contemplate the achievements of the 67 counties forming our great Commonwealth, I have been reflecting on why Pennsylvania is called the Keystone State. The name is derived from being central to the original 13 colonies. A keystone is "the wedge-shaped piece at the crown of an arch that locks the other pieces in place." *Keystone, Merriam-Webster*, <https://www.merriam-webster.com/dictionary/keystone> (last visited 4/17/2026). The keystone applies pressure on the surrounding stones which force them together to lock the arch and allow it to support weight. Without it, the arch would collapse. By way of contrast, we have three co-equal branches of government so not any one branch is the keystone. Equally true, however, is that without any one of the branches, the constitutional republic we enjoy would surely collapse. As early as 6th grade I learned (and hope children are still learning) about the importance of governmental checks and balances and the separation of powers. This case represents a classic example of when the judicial branch needs to know the limits of its power – to know to stay in its lane. We should be driving in the lane of applying the law, not making policy, which is the lane rightly traversed by the legislative branch. Those in the legislative branch, after all, were elected by the people to set policies reflecting the people's voices. Therefore, I approached this case like I would any other summary relief application, keeping in mind that a grant of summary relief disposes of a case before a party even gets its day in court. For reasons that follow, I dissent.<sup>1</sup>

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<sup>1</sup> To that end, my only response to Judge Wojcik's concurring opinion, *Allegheny Reproductive Health Center. v. Pennsylvania Department of Human Services* (Pa. Cmwlth. No. 26 M.D. 2019, **(Footnote continued on next page...)**)

Regarding Count I, the Majority concludes the Commonwealth has failed to rebut the presumed unconstitutionality of the Coverage Exclusion by showing it is the least intrusive means of pursuing compelling state interests. Because I believe genuine issues of material fact prevent us from granting summary relief, at this juncture, I would deny summary relief. Further, as to Count II, given the Majority's holding that the Coverage Exclusion violates the Equal Rights Amendment, I would not reach Providers' challenge based on equal protection under article I, section 26 of the Pennsylvania Constitution.

Under Pennsylvania Rule of Appellate Procedure 1532(b), a party is permitted to file an application for summary relief at any time after a petition for review has been filed in this Court's original jurisdiction. *C.M. v. Pa. State Police*, 315 A.3d 908, 911 (Pa. Cmwlth. 2024). We view the evidence in the light most favorable to the non-moving party and grant summary relief only if there is no genuine issue as to any material fact and the right to relief is clear as a matter of law. *Hosp. & Healthsystem Ass'n of Pa. v. Com.*, 77 A.3d 587, 602 (Pa. 2013). "The moving party has the burden of proving the nonexistence of any genuine issue of fact." *Thompson Coal Co. v. Pike Coal Co.*, 412 A.2d 466, 468-69 (Pa. 1979). "A material fact is one that directly affects the outcome of the case." *Dep't of Env't Prot. v. Delta Chems., Inc.*, 721 A.2d 411, 416 (Pa. Cmwlth. 1998) (en banc). "The facts which directly affect the outcome of the case are gleaned from considering the substantive law underlying the cause of action." *Id.* (citation omitted). All doubts as to the existence of a genuine issue of a material fact are to be resolved against the granting of

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filed April 20, 2026) (Wojcik, J., concurring), is that while my learned colleague's writing is interesting, I am trying mightily to stay focused on the legal considerations before us and that is simply whether Providers have established all facts necessary to prevail without a hearing.

summary judgment. *Shoats v. Comm’r, Pa. Dep’t of Corr.*, 591 A.2d 326, 330 (Pa. Cmwlth. 1991) (citing *Penn Center House, Inc. v. Hoffman*, 553 A.2d 900 (Pa. 1989)).

In its Mandate to this Court, the Pennsylvania Supreme Court held that

when a statute, such as the Coverage Exclusion, is challenged as violative of Section 28, a sex-based distinction is presumptively unconstitutional, and it is the government’s burden **to rebut the presumption with evidence** of a compelling state interest in creating the classification and that no less intrusive methods are available to support the expressed policy.

*Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 309 A.3d 808, 947 (Pa. 2024) (*Allegheny Reproductive II*) (citations omitted and emphasis added). As such, this Court must address whether the Commonwealth can meet its burden to rebut the presumption of unconstitutionality of the Coverage Exclusion “with evidence of a compelling state interest” and that “no less intrusive means are available to support the expressed policy.” *Id.* The Attorney General identifies three state interests he asserts are compelling on behalf of the Commonwealth: protecting fetal human life, preserving the health of the mother, and safeguarding the conscience rights of Pennsylvania citizens. Attorney General’s Br. at 8.

Without providing the Attorney General the opportunity **to present evidence** to this Court regarding these asserted interests, the Majority simply dismisses them, noting: “[W]e are not persuaded that the state interests the Attorney General has identified are compelling within the Equal Rights Amendment analysis.” *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.* (Pa. Cmwlth. No. 26 M.D. 2019, filed April 20, 2026), slip op. at 24 (Majority Op.). Regarding the Commonwealth’s first asserted interest, its interest in protecting fetal human life, without a record or evidence to rely upon, the Majority concludes the Attorney General “has not shown

or argued why, as a matter of law, the state must ensure that every pregnancy is carried to term.” *Id.* On this point, the Majority cites to Justice Wecht’s concurring opinion asserting “the interest ‘can be understood only as an interest that is advanced at the cost of forcing women to bear children against their will. It will be DHS’s unenviable burden on remand to establish that a state interest that is advanced through the coercive use of women’s bodies is constitutionally compelling.”” *Id.* (quoting *Allegheny Reproductive II*, 309 A.3d at 955 (Wecht, J., concurring)). The Majority goes on to state the Attorney General “has not explained why *that interest* is compelling for the state.” *Id.* (emphasis in original). I cannot agree with the Majority’s reframing of the Commonwealth’s interest in this way or its resultant distorted conclusion that the Commonwealth failed to meet its burden. I believe the Attorney General should be afforded the opportunity **to present evidence** of the Commonwealth’s interest in the preservation of fetal life.

Regarding the Commonwealth’s second asserted interest, preserving the health of the mother, the Majority addresses only a woman’s psychological well-being and asserts the Attorney General “has not identified any other context in which we have found a compelling state interest in protecting a competent adult from feeling regret for her free choices.” Majority Op. at 25. However, the Attorney General asserts the Commonwealth’s interest in the mother’s health extends to alleged “harmful psychological, emotional, and physical impacts of abortion.” Attorney General’s Br. at 19. Certainly, the impact of abortion to women’s overall health is material to whether the Commonwealth has a compelling interest. The parties dispute the health impacts of pregnancies versus abortions to women’s

health<sup>2</sup> and, accordingly, the Attorney General should have an opportunity to **present evidence** to support its burden.

Regarding the Commonwealth's third asserted interest, safeguarding the conscience rights of Pennsylvania citizens, the Majority concludes that "[j]ust because the legislature *has in fact* expressed a policy preference for favoring one group's conscience rights over another's, that does not mean it has a *compelling* interest in doing so." Majority Op. at 25. Yet, again, the Majority denies the Attorney General the opportunity to **present evidence** regarding the Commonwealth's asserted interest in safeguarding the conscience rights of Pennsylvania citizens.

The Commonwealth's asserted interests in protecting fetal life, preserving the health of the mother, and safeguarding the conscience rights of Pennsylvania citizens and whether those interests are compelling raise genuine issues of material fact. While factual stipulations exist in the record from the parties' Joint Statement,<sup>3</sup> those

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<sup>2</sup> In the Joint Statement of Undisputed Facts (Joint Statement), Providers and DHS stipulate that "[p]regnancy can have serious effects on a woman's physical and mental health, some of which can result in permanent disability or even lead to life-threatening conditions." Joint Statement, at 17. The Joint Statement goes on to outline the harms of pregnancy to women. However, while the Joint Statement mentions that there are risks associated with abortions, it does not provide facts regarding those risks.

<sup>3</sup> Notably, "[a] stipulation is a declaration that the fact agreed upon is proven [, and a] valid stipulation must be enforced according to its terms." *Com. v. Mitchell*, 902 A.2d 430, 460 (Pa. 2006) (quotation omitted). While parties have ample leeway regarding their entry into stipulations, that ability is not unlimited. *Com. v. Perrin*, 291 A.3d 337 (Pa. 2023). Parties "cannot stipulate to matters affecting the jurisdiction, business, or convenience of the courts." *Id.* at 345 (citation omitted). Because these areas are "inherently and traditionally the prerogative of the judiciary," they are not subject to stipulation by the parties. *Id.* (citation omitted). Moreover, only **facts** are amenable to stipulation. *Id.* at 344-45. Additionally, "it is well established that matters affecting the public interest cannot be made the subject of stipulations so as to control the court's action with respect thereto." *Id.* at 345 (quoting *State v. Tangalin*, 657 P.2d 1025 (Haw. 1995)). While valid **(Footnote continued on next page...)**

stipulations do not resolve the Commonwealth's asserted interests. Further, the parties dispute the material facts regarding the Commonwealth's asserted interests, such as the impact of abortion to women's health. Issues of this magnitude and public consequence demand careful and restrained application of the law, and we must keep in mind that "[a] ruling of unconstitutionality *frustrates* the intent of the elected representatives of the people." *Caba v. Weaknecht*, 64 A.3d 39, 50 (Pa. Cmwlth. 2013) (citing *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450-51 (2008)). As the Supreme Court discerned regarding important matters of public interest:

Our task is different from that of the litigant, the politician, or the editorialist, and it is inevitably less understood and often less popular. Our sworn task is to apply the law; and in so doing we cannot ignore, rewrite or torture settled language and propositions, and then apply that construct retroactively without affording the parties an opportunity to be heard, in order to reach a perceived favored conclusion, no matter how extreme the circumstance that brings a dispute to our attention.

*In re Interbranch Comm'n on Juv. Just.*, 988 A.2d 1269, 1283 (Pa. 2010). Because by granting summary relief, the Attorney General is denied an opportunity **to present evidence** of the Commonwealth's asserted interests, Providers' right to relief is not clear as a matter of law.

Before we can apply the legal framework set forth by the Supreme Court in *Allegheny Reproductive II* to determine whether the Coverage Exclusion violates the Equal Rights Amendment, we must have a clear view of the relevant facts, including

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stipulations are binding and conclusive on the Court, the Court nonetheless draws its own legal conclusions from those facts. *Mader v. Duquesne Light Co.*, 241 A.3d 600, 615 (Pa. 2020). Accordingly, insofar as DHS and Providers stipulated to legal conclusions in the Joint Statement, the Court is not bound by those asserted stipulations.

facts regarding the Commonwealth's asserted interests. Accordingly, as to the Equal Rights Amendment analysis, I would conclude that genuine issues of material fact prevent this Court from granting summary relief.<sup>4</sup>

Further, because the Majority's conclusion that the Coverage Exclusion violates the Equal Rights Amendment is dispositive, it is undoubtedly unnecessary for the Court to address Providers' challenge based on equal protection under article I, section 26 of the Pennsylvania Constitution. The Majority holds there is a fundamental right to reproductive autonomy, and the Coverage Exclusion violates equal protection. Majority Op. at 37. I believe the gravity of this constitutional issue imperatively commands the exercise of judicial restraint, and I would refrain from needlessly deciding this issue. Restraint is not just my belief; it is our duty.

"If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 113 (1993) (citing *Spector Motor Serv., Inc. v. McLaughlin*, 323 U.S. 101, 105 (1944)). It is a "sound tenet of jurisprudence that courts should avoid constitutional issues when the issue at hand may be decided upon other grounds." *Com. v. Herman*, 161 A.3d 194, 209 (Pa. 2017) (citations omitted). Here, in addressing Providers' equal protection challenge to the Coverage Exclusion, the Majority concludes that "[a]rticle I of the Pennsylvania Constitution guarantees a fundamental right to reproductive autonomy" and "the Coverage Exclusion does not operate neutrally with respect to that right and is not properly justified in doing so, and accordingly the Coverage Exclusion violates the equal

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<sup>4</sup> To be clear, although I would conclude the Commonwealth is entitled to proceed at this stage, that conclusion does not indicate one way or the other whether the Commonwealth would ultimately prevail.

protection guarantee in [a]rticle I, [s]ection 26 of the Pennsylvania Constitution.” Majority Op. at 38. Thus, the Majority not only unnecessarily reaches a constitutional issue, but does so in a manner that recognizes a fundamental right to “reproductive autonomy” without clearly defining what that right entails and without the benefit of a developed record.

As the United States Supreme Court observed in *Whitehouse v. Illinois Central Railroad Company*: “These are perplexing questions. Their difficulty admonishes us to observe the wise limitations on our function and to confine ourselves to deciding only what is necessary to the disposition of the immediate case.” 349 U.S. 366, 372-73 (1955). Accordingly, I disagree with the Majority’s decision to unnecessarily address, simply because it wants to, the issue of whether the Coverage Exclusion violates equal protection given that it already holds the Coverage Exclusion unconstitutional under the Equal Rights Amendment.

Reflecting on the **limits to our power** and that the legislative body holds the power to make policy decisions, it does not escape me that in a post *Dobbs* era, *see Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), our legislative branch has not restricted or ended abortion access in our Commonwealth. Nonetheless, the judicial branch in a power grab is effectuating policy by determining that a state constitutional right to abortion exists. By determining that the right to abortion (or more broadly, “reproductive autonomy,”) is constitutionally, not statutorily derived, the judicial branch is very intentionally stripping the legislative branch of its rightful power, which in effect is robbing the people who elect the legislators of their voices. That being said, historically, at times, when the judicial branch has veered without caution into the other lane, we have triggered

legislative response. At times, our reckless driving has created unintended consequences.

By determining the right to reproductive autonomy is enshrined in the state constitution, we strip the legislative branch from establishing policy which reflects the evolving and ever-changing voice of the Commonwealth's people.<sup>5</sup>

For the above reasons, I dissent.

*Stacy Wallace*  
STACY WALLACE, Judge

Judge McCullough joins in this Dissenting Opinion.

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<sup>5</sup> The Majority challenges my concern of honoring the will of the people's voice which may be "evolving and ever-changing," because the Majority posits that "[c]onstitutional rights are fixed." Majority Op. at 35. While I wholeheartedly agree that constitutional rights are fixed and cannot be changed at the whim of the people, my point is the ink has not even dried on this drafted majority opinion yet. Only upon docketing of this Opinion will this constitutional right come to be recognized. At the time I am writing this, the Abortion Control Act remains unchallenged, except for the portion dealing with taxpayer funded abortions. Certainly, should the legislative branch try to eliminate or further restrict abortion access in Pennsylvania, then a cause of action may properly be brought to challenge whether our state constitution includes a right to reproductive autonomy, but that question should not be reached today. The Majority also maintains that we "must" reach these two constitutional questions. The Majority provides that "we have clear and detailed instructions on remand to address two constitutional questions." *Id.* However, I do not read the Supreme Court's Mandate as dictating that we must reach the second issue. If the Majority can point to where *a majority* of the Supreme Court told us that we must address both constitutional questions, I will withdraw my claim of activism regarding reaching the issue of reproductive autonomy.