

Pennsylvania Department of Human Services, 309 A.3d 808 (Pa. 2024).¹ I write separately to emphasize the clear and unbroken line of the foundational legal documents establishing a fundamental right to personal freedom, equality, and tolerance² in this great Commonwealth of ours that compel this result as well.

¹ With respect to the Supreme Court’s remand instructions, Pa.R.A.P. 2591(a) states, in pertinent part: “On remand of the record the court . . . below shall proceed in accordance with the judgment or other order of the appellate court[.]” *See also* Section 706 of the Judicial Code, 42 Pa. C.S. §706 (“An appellate court may affirm [or] vacate . . . any order brought before it for review, and may remand the matter and . . . require the entry of such appropriate order . . . as may be just under the circumstances.”). “[I]t has long been the law in Pennsylvania that following remand, a lower court is permitted to proceed only in accordance with the remand order.” *Commonwealth v. Sepulveda*, 144 A.3d 1270, 1280 n.19 (Pa. 2016).

² As a historian of colonial Pennsylvania has observed:

The concept of toleration, important for the national experience and for many of the other colonies, is of less significance for Pennsylvania. Toleration implies a concession of privileges by a controlling or dominant faction to a minority group, not the unhindered exercise of inherent rights. Pennsylvania was not founded on the principle of toleration, but of tolerance. Tolerance describes liberal attitudes toward other religious, national, or cultural groups, an acceptance of the right not to conform and to hold different beliefs. Although William Penn’s goal was to establish, in almost absolute terms, religious liberty, with the expectation that mutual tolerance would prevail, Penn, Pennsylvanians, and contemporary observers often described conditions in the colony as “toleration,” for it was the only frame of reference available in the context of eighteenth-century political theory.

Scott Douglas Gerber, *Law and the Holy Experiment in Colonial Pennsylvania*, 12 N.Y.U. J. L. & Liberty 618, 620 (2019) (quoting Sally Schwartz, “*A Mixed Multitude*”: *The Struggle for Toleration in Colonial Pennsylvania*, 9 (N.Y.U. Press 1987)).

The status of the “Society of Friends,” or “Friends,” or “Quakers^[3]” as one of the preeminent agents of global peace and social change⁴ during its over 300-

³ As another Pennsylvania historian has noted:

The early friends had been recruited largely from the lower strata of society, from the artisans, shopkeepers, domestic servants, yeoman farmers and husbandmen of Commonwealth and Restoration England. By the practice of the economic virtues of diligence, prudence, and thrift, they had risen in the course of years to the status of substantial and respected upper-middle-class citizens. A little aloof, perhaps, from “the world” and its follies, preserving their character as a “peculiar people” by certain singularities of dress and address, they had attained, both in England and in the colonies, to a secure place in the upper ranks of society. In Philadelphia, whither they had migrated a half century earlier [in the late 1600’s] as craftsmen, shopkeepers, and small farmers, they now constituted a mercantile aristocracy, sharing their social position only with the more fashionable Anglicans.

Frederick B. Tolles, “Quietism Versus Enthusiasm: The Philadelphia Quakers and the Great Awakening,” *The Pennsylvania Magazine of History and Biography*, Vol. 69, No. 1 (Jan. 1945), at 27-28 (footnote omitted). In addition, regarding the practice of faith, “[t]he Quaker characteristically emphasized the inward working of the Holy Spirit, the Christ formed in man’s soul, whereas the Evangelical rested his faith on the objective historic Christ and His vicarious atonement.” *Id.* at 30.

Regarding the Quakers’ current beliefs, the Philadelphia Yearly Meeting has explained:

The essential experience of Friends is that of a direct, unmediated relationship with the Divine. Friends have used many terms or phrases to refer to the inner certainty of our faith: the Light Within, the Inner Light, the Christ Within, the Inward Teacher, the Divine Presence, Spirit, the Great Spirit, the Spirit of Truth, that of God in every person, and the Seed. In his journal, George Fox referred to “that Inward Light, Spirit, and Grace by which all might know their salvation” and to “that Divine Spirit which would lead them all into truth.” Today Friends continue to use these terms and have added others out of a sense of ongoing revelation. For some Friends, “spiritual energy” best describes their personal experience

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of that which enlivens and empowers them in seeking truth for themselves and in community. In contrast with early Friends, not all Friends today consider themselves to be Christians or even theists. Friends come from very diverse religious backgrounds and experiences and apply their different perspectives as they encounter the Light Within. Regardless of the journey that brings individuals to explore the Quaker way, the invitation to enter into an unmediated, inward relationship with the Divine continues to be at the heart of Quaker experience.

PHILADELPHIA YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS (PHILADELPHIA YEARLY MEETING), FAITH AND PRACTICE, 4-5 (2018).

⁴ Indeed, in “award[ing] th[e 1947 Nobel] Peace Prize to the Quakers, represented by their two great relief organizations, the Friends Service Council in London and the American Friends Service Committee in Philadelphia,” the Nobel Committee Chairman summarized the Quakers’ commitment to equality, tolerance, and social change, as follows:

The Quakers took part in creating the first peace organization in 1810 and since then have participated in all active peace movements. I would mention Elizabeth Fry, John Woolman, and other Quakers active in the fight against slavery and in the struggle for social justice. I would mention the liberal idealist John Bright, his forty-year fight against the principles of war and for the principles of peace, his opposition to the Crimean War, and his struggle against [British Prime Minister] Palmerston’s policies. Many other examples could be mentioned to show how their active participation in community work, in politics if you prefer, increased during the nineteenth century.

Yet it is not this side of their activities – the active political side – which places the Quakers in a unique position. It is through silent assistance from the nameless to the nameless that they have worked to promote the fraternity between nations cited in the will of Alfred Nobel. Their work began in the prisons. We heard about them from our seamen who spent long years in prison during the Napoleonic Wars. We met them once again during the Irish famine of 1846-1847. When English naval units bombarded the Finnish coast during the Crimean War, the Quakers hurried there to heal the wounds of war, and we found them again in France after the ravages of the 1870-1871 war.

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When the First World War broke out, the Quakers were once more to learn what it was to suffer for their faith. They refused to carry arms, and many of them were thrown into prison, where they were often treated worse than criminals. But it is not this that we shall remember longest. We who have closely observed the events of the First World War and of the inter-war period will probably remember most vividly the accounts of the work they did to relieve the distress caused by the war. As early as 1914, the English Quakers started preparation for relief action. They began their work in the Marne district in France and, whenever they could, they went to the very places where the war had raged. They worked in this way all through the war and when it ended were confronted by still greater tasks. For then, as now, hunger and sickness followed in the wake of the war. Who does not recall the years of famine in Russia in 1920-1921 and [Nobel Laureate Fridtjof] Nansen's appeal to mankind for help? Who does not recall the misery among the children in Vienna which lasted for years on end? In the midst of the work everywhere were the Quakers. It was the Friends Service Committee which, at [President] Hoover's request, took on the mighty task of obtaining food for sick and undernourished children in Germany. Their relief corps worked in Poland and Serbia, continued to work in France, and later during the civil war in Spain rendered aid on both sides of the front.

Through their work, the Quakers won the confidence of all, for both governments and people knew that their only purpose was to help. They did not thrust themselves upon people to win them to their faith. They drew no distinction between friend and foe. . . .

The Second World War did not strike the Quakers personally in the same way as did that of 1914. Both in England and in the U.S.A. the conscription laws allowed the Quakers to undertake relief work instead of performing military service; so they were neither cast into prison nor persecuted because of their unwillingness to go to war. In this war there were, moreover, Quakers who did not refuse to take an active part in the war, although they were few compared with those who chose to help the victims of war. When war came, the first task which confronted them was to help the refugees. But the difficulties were great because the frontiers of many countries were soon closed. . . . Nevertheless, they worked where they could, first undertaking welfare work in England and after that, behind the front

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in many countries of Europe and Asia, and even in America. For when America joined the war, the whole Japanese[]American population, numbering 112,000 in all, of whom 80,000 were American citizens, was evacuated from the West Coast. The Quakers went to their assistance, as well as opposed the prevailing anti-Japanese feeling from which these people suffered.

Now, with the war over, the need for help is greater than ever. This is true not only in Europe, but also and to the same degree in large areas of Asia. The problems are becoming more and more overwhelming – the prisoners who were released from concentration camps in 1945, all those who had to be repatriated from forced labor or POW camps in enemy countries, all the displaced persons who have no country to which they can return, all the homeless in their own countries, all the orphans, the hungry, the starving! The problem is not merely one of providing food and clothing, it is one of bringing people back to life and work, of restoring their self-respect and their faith and confidence in the future. Once again, the Quakers are active everywhere. As soon as a country has been reopened they have been on the spot, in Europe and in Asia, among countrymen and friends as well as among former enemies, in France and in Germany, in India and in Japan. . . .

Today the Quakers are engaged in work that will continue for many years to come. But to examine in closer detail the individual relief schemes would not give us any deeper insight into its significance. For it is not in the extent of their work or in its practical form that the Quakers have given most to the people they have met. It is in the spirit in which this work is performed. “We weren’t sent out to make converts,” a young Quaker says: “we’ve come out for a definite purpose, to build up in a spirit of love what has been destroyed in a spirit of hatred. We’re not missionaries. We can’t tell if even one person will be converted to Quakerism. Things like that don’t happen in a hurry. When our work is finished it doesn’t mean that our influence dies with it. We have not come out to show the world how wonderful we are. No, the thing that seems most important is the fact that while the world is waging a war in the name of Christ, we can bind up the wounds of war in the name of Christ. Religion means very little until it is translated into positive action.”

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year history is beyond question. Relevant here, gender equality has been a guiding precept in the Quaker faith from its establishment, which continues to this day.⁵

The Quakers have shown us that it is possible to translate into action what lies deep in the hearts of many: compassion for others and the desire to help them – that rich expression of the sympathy between all men, regardless of nationality or race, which, transformed into deeds, must form the basis for lasting peace. For this reason alone the Quakers deserve to receive the Nobel Peace Prize today.

But they have given us something more: they have shown us the strength to be derived from faith in the victory of the spirit over force.

Gunnar Jahn, Nobel Awards Presentation Speech (Dec. 10, 1947) (transcript available at https://www.nobelprize.org/prizes/peace/1947/ceremony-speech/#not_8) (footnotes omitted) (last visited April 7, 2026).

⁵ The gender equality in the Quaker faith may emanate from the fact that women participated in its initial establishment. *See, e.g.,* Bonnelyn Young Kunze, “Religious Authority and Social Status in Seventeenth Century England: The Friendship of Margaret Fell, George Fox, and William Penn,” *Church History*, Vol. 57, No. 2 (Jun., 1988), pp. 170-86. Moreover, in Pennsylvania, it is clearly evidenced by the ratification of our Equal Rights Amendment (ERA), Pa. Const. art. I, §28, by the citizens of this Commonwealth on May 18, 1971. This ratification occurred long before a national ERA was ever considered or passed by the federal Congress, preceding its ratification by the states, or the Supreme Court’s decision in *Roe v. Wade*, 410 U.S. 113 (1973), recognizing a national, but limited, right to abortion.

Moreover, our ERA was immediately effective upon its ratification in May of 1971. As the Supreme Court has explained:

The thrust of the [ERA] is to insure equality of rights under the law and to eliminate sex as a basis for distinction. The sex of citizens of this Commonwealth is no longer a permissible factor in the determination of their legal rights and responsibilities. The law will not impose different benefits or burdens upon the members of a society based on the fact that they may be man or woman.

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Following the Crown's grant of a charter for the colony of Pennsylvania,⁶ William Penn composed a number of drafts of the *Frame of*

We have not hesitated to effectuate the [ERA]'s prohibition of sex discrimination by striking down statutes and common law doctrines "predicated upon traditional or stereotypic roles of men and women" *Commonwealth ex rel. Spriggs v. Carson*, [368 A.2d 635, 639 (Pa.) 1977] (plurality opinion) ("Tender years doctrine" offends concept of equality of the sexes embraced in [ERA]); see *Adoption of Walker*, [360 A.2d 603 (Pa.) 1976] (Adoption Act's failure to require parental consent of unwed father as well as unwed mother violates [ERA].); *Butler v. Butler*, [347 A.2d 477 (Pa.) 1975] (Presumption that where husband obtains his wife's property without adequate consideration a trust is created in his wife's favor abolished.); *Commonwealth v. Santiago*, [340 A.2d 440 (Pa.) 1975] (Doctrine of "coverture" requiring presumption that wife who commits crime in presence of husband was coerced by husband discarded.); *Di Florido v. Di Florido*, [331 A.2d 174 (Pa.) 1975] (Presumption that husband is owner of household goods used and possessed by both spouses abolished.); *Commonwealth v. Butler*, [328 A.2d 851 (Pa.) 1974] (Statutory scheme under which women are eligible for parole immediately upon incarceration while men must serve minimum sentence violates [ERA].); *Henderson v. Henderson*, [327 A.2d 60 (Pa.) 1974], (Statute providing for alimony *pendente lite*, counsel fees and expenses in divorce action for wife but not husband violates [ERA]); *Conway v. Dana*, [318 A.2d 324 (Pa.) 1974] (Presumption that father must bear principal burden of support of minor children abolished.); cf. *Hopkins v. Blanco*, [320 A.2d 139 (Pa.) 1974] ([ERA] requires that wife as well as husband be permitted to recover for loss of consortium.) Gender-based rates such as [the insurance company's] rely on and perpetuate stereotypes similar to those condemned in the above cases.

Hartford Accident and Indemnity Co. v. Insurance Commissioner, 482 A.2d 542, 547-48 (Pa. 1984) (citation omitted). In short, since that time, our citizenry has replaced the word "man" and "men" with "woman" and "women." The Pennsylvania Constitution reads much differently when viewed in this manner.

⁶ The charter granted to William Penn significantly differed from the other colonial charters:

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Government that he wished to establish here. Penn's second completed and approved *Frame of Government* "was Pennsylvania's first operating constitution." JEAN R. SODERLUND, ET AL., EDS., WILLIAM PENN AND THE FOUNDING OF PENNSYLVANIA 1680-1684: A DOCUMENTARY HISTORY 265 (U. Penn. Press 1983). Remarkably, "Penn's set of laws was truly innovative in one essential aspect. It was the first constitution that specified a method for its own amendment." HANS FANTEL, WILLIAM PENN: APOSTLE OF DISSENT 156 (Morrow 1974).⁷

All the English proprietary charters except that of Pennsylvania gave the proprietors the powers of the Bishop of Durham -- a grant equivalent to independent sovereignty, limited only by loyalty to the King. In Penn's charter, the King somewhat modified the traditional powers of the proprietor. Penn received no right to grant titles of nobility and he had to submit provincial laws to the King for approval, to acknowledge the right of Parliament to tax the colony, to maintain a provincial agent in London, and to present all Pennsylvania laws to "the freemen" or to "their delegates" for their approval.

But except for these restrictions, the charter granted Penn "absolute power" over his principality. He had the sole authority to make laws, levy taxes, coin money, regulate commerce, appoint provincial officials, administer justice, grant pardons, make war, erect manors, sell land, and perform all other acts pertaining to sovereignty. The charter gave Penn the broadest latitude in planning the details of the political structure and administration of his province.

PHILIP S. KLEIN & ARI HOOGENBOOM, A HISTORY OF PENNSYLVANIA 36-37 (2d ed. 1980).

⁷ In relevant part, the *Frame of Government* states:

XXIV. That no act, law, or ordinance whatsoever, shall, at any time hereafter be made or done by the Proprietary and Governor of this province hereunto belonging, his heirs or assigns, or by the freemen in provincial Council or Assembly to alter, change, or diminish the form or effect of this charter, or any part or clause thereof, contrary

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In particular, Penn initially permitted amendment to the *Frame of Government* to address one significant hurdle that he encountered in the crafting of this Commonwealth's constitution. To wit:

As a Quaker and a pacifist, Penn was particularly concerned with the problem of violence in statecraft. He was realist enough to know that every previously known form of government ultimately rested on force. He knew that when reason, sentiment, and especially religion are invoked by the state, it is often merely to hide the ready sword. Like other political theorists of the time, notably Hobbes, Penn regarded the state as a contract between rulers and ruled. But even if the rule was democratic self-rule, the power of the government lay ultimately in its ability to punish, in extreme cases by the selective killing of disruptive persons. As Hobbes put it, "Covenants without swords are but words." How, then, could governance be reconciled with the Quaker ideal of nonviolence?

Penn realized that this was a basically insoluble problem. The best he could do was to draw up a legal code designed to forestall extreme internal stress. In the narrow sense, this meant finding a way to accommodate dissent within the law. In a broader sense, it meant that Penn had to create a social climate to liberate the moral potential of man so that the freely given word would become a sufficient instrument of contract, rendering the sword needless. Personal enmity, of course, might still occur, but not class or group hatred. He believed his *Frame of Government* was the best available blueprint for such a society.

to the true intent and meaning thereof, without the consent of the Proprietary and Governor, his heirs or assigns, and six parts of seven of the said freemen in provincial Council and Assembly met.

The Frame of Government of the Province of Pennsylvania and, Territories thereunto annexed, in America (February 2, 1683) (accessed at https://avalon.law.yale.edu/17th_century/pa05.asp) (last visited April 17, 2026).

The state projected by Penn was a true “civil” society, in marked contrast to the rigid theocracies established by the Puritans in New England. The Puritans formulated their legal codes on ancient biblical concepts. Their community was conceived as a fixed structure, an unalterable covenant with God in the old Hebrew sense. Because the Quakers were free of that ancient Near Eastern and essentially despotic notion of the divine covenant, it was possible for Penn to establish the first legal framework for a fluid democratic society, open to the development of new social norms. This surely ranks among Penn’s most profound achievements.

FANTEL at 157-58.⁸

Subsequently, following changes in sovereign and Penn’s return to proprietorship,

word came that the English government was planning a unification of the American colonies for defense and might bring them all under the Crown. Penn arranged to leave for England in the fall of 1701 to resist this proposal, but some government would have to be created for Pennsylvania to serve in his absence. The Assembly had

⁸ As has been noted:

The first to recognize the importance of Penn’s political theories was Voltaire, almost a century after the fact. In his *Lettres philosophiques*, he credits Penn with creating “that golden age of which men talk and which probably has never existed anywhere but Pennsylvania.” Clearly this is hyperbole. But Voltaire was writing under stress. Struggling in exile against French absolutism, he saw in Penn’s liberal constitution indeed the token of a golden age. A later historian, Brent Barksdale, confirms Voltaire’s judgment and declares flatly: “The government that William Penn established in 1682 was far more liberal and responsible to the people than any antecedent or contemporary form on earth. In the wilds of Pennsylvania he set up the only government in the known world that did not maintain a military defense against foreign invasion or internal uprising.”

FANTEL at 158.

discussed a new constitution, but had shown no hurry to reach a decision. Now the time for action had come. After a brief debate, the Assembly agreed to a constitution which essentially placed the governing power in its own hand, and asked Penn for approval. He hurriedly agreed, and on October 28, 1701, Pennsylvania's fourth constitution, known as the *Charter of Privileges*, became law.

KLEIN & HOOGENBOOM at 32. *See Charter of Privileges Granted to the Inhabitants of Pennsylvania and Territories (Charter of Privileges)* (October 28, 1701) (accessed at https://avalon.law.yale.edu/18th_century/pa07.asp#1) (last visited April 17, 2026). "This [*Charter of Privileges*] was granted by William Penn, with the approbation of the General Assembly, and remained in force until the [American] Revolution." *Id.* at n.1.

The first section of this *Charter of Privileges* boldly states:

BECAUSE no People can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the Freedom of their Consciences, as to their Religious Profession and Worship: And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine Knowledge, Faith and Worship, who only doth enlighten the Minds, and persuade and convince the Understandings of People, I do hereby grant and declare, ***That no Person or Persons, inhabiting in this Province or Territories, who shall confess and acknowledge One almighty God, the Creator, Upholder and Ruler of the World; and profess him or themselves obliged to live quietly under the Civil Government, shall be in any Case molested or prejudiced, in his or their Person or Estate, because of his or their conscientious Persuasion or Practice, nor be compelled to frequent or maintain any religious Worship, Place or Ministry, contrary to his or their Mind, or to do or suffer any other Act or Thing, contrary to their religious Persuasion.***

Id., §I (emphasis added).

A prolific writer, William Penn had previously explained his meaning, defining “liberty of conscience,” as follows:

. . . First, by liberty of conscience, we mean not only a mere liberty of mind, in believing or disbelieving this or that principle or doctrine. But we also believe such liberty protects a visible way of worship, a way of worship we believe to be required of us by God. If we neglect this wor[ship] for fear or favor of mortal man, we sin and are in danger of divine wrath.

Second, by restraint or persecution, we do not only mean the strict requiring of us to believe this to be true or that to be false, and upon refusal to receive the penalties given in such cases. But by those terms we mean this much: any coercion, force or hindrance which prevents our meeting together to perform those religious exercises which are accord[ing] to our faith and persuasion.

We wish to put the question in this way. Is it not true that persecution against persons exercising their liberty of conscience reduces the honor of God? Does it not also defile the Christian religion, violate the authority of Scripture, and go against the principles of common reason? Finally, does it not destroy the well-being of government itself?

Concerning the honor of God, we say that restraint and persecution for matters relating to conscience directly invade the divine right, and rob the Almighty of that which belongs to none but Himself

CONSTITUTIONAL DEBATES ON FREEDOM OF RELIGION: A DOCUMENTARY HISTORY 17 (John J. Patrick & Gerald P. Long, eds. 1999) (quoting WILLIAM PENN, THE GREAT CASE OF LIBERTY OF CONSCIENCE ONCE MORE BRIEFLY DEFENDED AND DEBATED 1 (London, 1670)).

Likewise, the first two articles of our first constitution following the American Revolution provided, “A Declaration of the Rights of the Inhabitants of the Commonwealth or State of Pennsylvania,” and stated:

I. *That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are,* the enjoying and defending life and liberty, acquiring, possessing and protecting property, and *pursuing and obtaining happiness and safety.*

II. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding: And that no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent: *Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul [sic], the right of conscience in the free exercise of religious worship.*

Pa. Const. art. I and II (September 18, 1776) (emphasis added) (accessed at <https://www.paconstitution.org/wp-content/uploads/2017/11/const-1776-pa-archives-vol10.pdf>) (last visited April 17, 2026).

Moreover, sections I and III of article IX of our Constitution of 1790 provided:

That the general, great, and essential principles of liberty and free Government may be recognized and unalterably established, WE DECLARE,

Of the equality and rights of men.

Section I. *That all men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those* of enjoying and defending life and liberty, of acquiring, possessing, and protecting property and reputation, and *of pursuing their own happiness.*

* * *

Of the rights of conscience, &c.

Sect. III. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; *that no human authority can, in any case whatever, controul [sic] or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishments or modes of worship.*

Pa. Const. art. IX, §§1 and 3 (September 2, 1790) (emphasis added) (accessed at <https://www.paconstitution.org/wp-content/uploads/2017/11/const-1970-pa-archives-vol10.pdf>) (last visited April 17, 2026).

Furthermore, sections I and III of article IX of our Constitution of 1838 provided:

That the general, great, and essential principles of Liberty and Free Government may be recognized and unalterably established, WE DECLARE—

Rights of life liberty property &c.

Section I. *All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those* of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and *of pursuing their own happiness.*

* * *

Rights of conscience &c.

Section III. All men have a natural and indefeasible right to worship Almighty God, according to the dictates of their own consciences; no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; ***no human authority can, in any case whatever, control or interfere with the rights of conscience; and no preference shall ever be given, by law, to any religious establishments or modes of worship.***

Pa. Const. art. IX, §§1 and 3 (October 22, 1838) (emphasis added) (accessed at <https://www.paconstitution.org/texts-of-the-constitution/1838-2/>) (last visited April 17, 2026).

In construing the foregoing provisions, the Pennsylvania Supreme Court described the contours of this constitutional protection thusly:

The constitution of this state secures freedom of conscience and equality of religious right. No man, living under the protection of our institutions, can be coerced to profess any form of religious belief, or to practice any peculiar mode of worship, in preference to another. ***In this respect, the Christian, the Jew, the Mohammedan, and the Pagan, are alike entitled to protection. Nay, the Infidel, who madly rejects all belief in a Divine Essence, may safely do so, in reference to civil punishment, so long as he refrains from the wanton and malicious proclamation of his opinions with intent to outrage the moral and religious convictions of a community, the vast majority of whom are Christians.*** But beyond this, conscientious doctrines and practices can claim no immunity from the operation of general laws made for the government and to promote the welfare of the whole people. ***In the language of Chief Justice Gibson, the right of conscience, as understood under our organic law, “is simply a right to worship the Supreme Being according to the dictates of the heart; to adopt any creed or hold any opinion whatever, or to support any religion; and to do, or forbear to do, any act for conscience’ sake, the doing or forbearing of which is not prejudicial to the***

public weal' (*Commonwealth v. Lesher*, 17 S. & R. 160 [(1828)].)

Specht v. Commonwealth, 8 Pa. 312, 322-23 (1848) (emphasis added).

To this end, the amended provisions in sections I and III of article IX of our ratified Constitution of 1874 provided:

DECLARATION OF RIGHTS

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE THAT –

Equality and rights of men.

Section 1.

All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

* * *

Natural right of conscience and freedom of worship.^[9]

⁹ See also *Allegheny Reproductive Health Center*, 309 A.3d at 980 (Wecht, J., concurring):

Where the Establishment and Free Exercise Clauses of the First Amendment [to the United States Constitution] are tied to religion, [a]rticle I, [s]ection 3 expressly extends to the more sweeping realm of “conscience.” One’s freedom of conscience includes concepts of morals and ethics that lay beyond the structures of established religions. Article I, [s]ection 3 therefore exceeds the limitations of the First Amendment, in both breadth and emphasis. Construed broadly, [a]rticle I, [s]ection 3 may support arguments that freedom of conscience prevents the state from interfering in decisions that involve deeply held moral and ethical views, particularly when such decisions will have a profound effect on the individual’s life. To the extent that convictions of conscience and religion inform personal views on reproductive choices, freedom of conscience may protect a woman’s freedom to act in accord with her own moral and ethical views and to make her own decisions. [(Footnote omitted).]

Section 3.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; ***no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.***

Pa. Const. art. I, §§1 and 3 (December 16, 1873) (emphasis added) (accessed at <https://www.paconstitution.org/texts-of-the-constitution/1874-2/>) (last visited April 17, 2026).

Finally, and quite importantly, sections 1 and 3 of article I of our present Constitution provide:

§1. ***Inherent rights of mankind***

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

* * *

§3. Religious freedom

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; ***no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.***

Pa. Const. art. I, §§1 and 3 (emphasis added).

As outlined above, the right of a competent individual to conduct one's affairs according to one's own conscience, in whatever form, is a fundamental right in Pennsylvania that is separate and apart from the rights of freedom of religion or

personal privacy,¹⁰ while containing elements of both. Moreover, “right of conscience,” “liberty of conscience,” and “freedom of conscience” have been terms of art that have existed since this Commonwealth’s inception in 1682. Stated simply, as it relates to the exercise of a woman’s right to choose herein, I am convinced that this inherent right to act according to one’s own conscience, or sincerely held system of beliefs, precludes the Commonwealth from constitutionally coercing a competent woman by statute to prevent her from receiving required medical care to end her pregnancy. Her constitutional “freedom of conscience,” “liberty of conscience,” and “right of conscience” has existed in this Commonwealth since Penn’s *Charter of Privileges* was adopted in 1701.

Such a construction of William Penn’s intent to provide for personal freedom, equality, and tolerance is evidenced by the Quakers’ current policies on sexuality and abortion. Indeed, as explained by the Philadelphia Yearly Meeting:

Friends seek to acknowledge and nurture sexuality as a divine gift that celebrates human love with joy and intimacy. In defining healthy sexuality, Friends are

¹⁰ See, e.g., *In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560, 572-73 (Pa. 2018), wherein our Supreme Court discussed Pennsylvania’s additional distinct and fundamental constitutional right to protect one’s reputation via due process, stating:

[I]n Pennsylvania [the right of citizens to security in their reputations] is a fundamental constitutional entitlement. See Pa. Const. art. I, §1; *R. v. [Department of Public Welfare]*, 636 A.2d 142, 149 (Pa. 1994)]. The right is established in the opening passage of the Pennsylvania Constitution’s Declaration of Rights -- under the title “Inherent rights of mankind” -- and is couched as an “indefeasible” guarantee. Pa. Const. art. I, §1. This foundational assurance of reputational security has remained substantively extant through four iterations of the state charter, dating back to our Constitution of 1790.

See also n.6, *supra*.

guided by our testimonies: that sexual relationships are equal, not exploitative; that sexual behavior be marked by integrity; and that sex is an act of love, not aggression. Sexuality is at once an integral and an intricate part of personality. Understanding our own sexuality is an essential aspect of our journey toward wholeness. Learning to incorporate sexuality into our lives responsibly, joyfully and with integrity is a lifelong process beginning in childhood.

Friends are wary of a fixed moral code to govern sexual activity. The sacramental quality of the sexual relationship depends upon Spirit as well as on the motives of the persons concerned. With guidance from the Inward Teacher, we can examine relationships honestly, with the strength to reconcile often conflicting demands of body, heart, and mind. Precisely because our sexuality is so powerful, seeking the Divine becomes essential. The self-discipline and obedience to Spirit thus called is more personal, and perhaps more difficult, than adherence to an external code.

Friends approve the concept of family planning, including adoption. We are in unity about the value of human life, but not about abortion. We are urged to seek the guidance of the Spirit when dealing with an unexpected pregnancy and to support one another in avoiding situations that continue a need for abortion.

PHILADELPHIA YEARLY MEETING at 41-42.

Acknowledging the divergent views on this point among Quakers, and following an extended period of discernment, the Friends Committee on National Legislation (FCNL)¹¹ ultimately issued the following statement regarding its position on a woman's right to choose, stating:

¹¹ Since 1943, the FCNL has been a lobbying arm for the Quakers in Congress. As the FCNL has stated: "Governed by members of the Religious Society of Friends, FCNL acts in faith to create a world free from war, a society with equity and justice for all, a community where every person's potential may be fulfilled, and an earth restored." FCNL, THE WORLD WE SEEK: STATEMENT OF LEGISLATIVE POLICY P.I. (2024).

Quakers recognize that human life is sacred, and that Spirit can guide us individually and collectively. Based on these beliefs, members of the Religious Society of Friends have come to different conclusions regarding abortion. FCNL supports individual discernment in a spirit of love and truth in making reproductive healthcare decisions, as we do in other areas of conscientious moral choice. Government must ensure that people have the legal right to make these decisions. We oppose the criminalization of people seeking, undergoing, or involved in abortion services. We support equitable access to abortion services. FCNL also supports policies that reduce unwanted pregnancies by ensuring equitable access to contraception, sex education, family planning, fertility and adoption services, and support for all who decide to have children.

FCNL, *THE WORLD WE SEEK: STATEMENT OF LEGISLATIVE POLICY §III.2.7.* (2024).

This Quaker view of tolerance in practice is eloquently described in the testimony of a member of the Yearly Meeting in Britain, as follows:

However one views it, and for whatever reason it is carried out, an abortion is a deliberate taking of a potential life. The arguments around the right to life versus the right to choose do little to help those who believe in personal morality yet whose religion lays down no hard and fast rules about moral issues such as abortion.

As a nurse who was asked to become involved in the procedure of therapeutic abortion I was forced to decide. My final decision, made after much heart-searching, was to say ‘No.’ As a result I had to move to a less conveniently placed hospital, but my decision was accepted and at no time was my livelihood threatened.

The right of medical personnel to choose not to become involved in the procedure of therapeutic abortion is enshrined in law.^[12] In my case I used my right to choose,

¹² See, e.g., Section 3202(d) of our Crimes Code, which states:

(Footnote continued on next page...)

but this left me with a dilemma. Where should I stand on another's right to choose to have an abortion? My choice was respected and my rights maintained. My responsibility had to be to respect another's choice and maintain their right to my compassion and understanding. To do less would make my decision nothing more than a pious declaration which ignored the very real pain suffered by many women who decide to have an abortion.

Pauline Condon, 1994

YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS (QUAKERS) IN BRITAIN (BRITISH YEARLY MEETING), QUAKER FAITH AND PRACTICE §22.57 (5th ed. 1994).

Finally, this Quaker view of tolerance is also described in the heartbreaking testimony of another member of the Yearly Meeting in Britain:

I once read in a feminist philosopher's work that only pacifists could logically be opposed to abortion since only they took an absolutist approach that it is always wrong to take life. But what if you are both a pacifist and one who believes that women should have a right to make choices

(d) Right of conscience.--It is the further public policy of the Commonwealth of Pennsylvania to respect and protect the right of conscience of all persons who refuse to obtain, receive, subsidize, accept or provide abortions including those persons who are engaged in the delivery of medical services and medical care whether acting individually, corporately or in association with other persons; and to prohibit all forms of discrimination, disqualification, coercion, disability or imposition of liability or financial burden upon such persons or entities by reason of their refusing to act contrary to their conscience or conscientious convictions in refusing to obtain, receive, subsidize, accept or provide abortions.

18 Pa. C.S. §3202(d). In turn, Section 3203 defines "conscience" as "[a] *sincerely held set of moral convictions* arising from belief in and relation to a deity or *which*, though not so derived, *obtains from a place in the life of its possessor parallel to that filled by a deity among adherents to religious faiths.*" *Id.* at §3203 (emphasis added). As explained above, the General Assembly's legislative authority to enact such a provision cannot be questioned. *City of Erie v. Erie Traction Co.*, 222 Pa. 43 (Pa. 1908); *City of Pittsburg v. Pittsburg, C. & W.R. Co.*, 205 Pa. 13 (Pa. 1903); *Cronise v. Cronise*, 54 Pa. 255 (Pa. 1867).

about their own lives? Since we live in a society that both expects women to take responsibility for children and yet provides little financial or emotional support, how can we insist that a young woman take on the burden of an unwanted child, or even the physical and emotional stress of bearing a child for adoption?

These could have remained theoretical questions. But life is not like that. A member of my family became pregnant and a decision had to be made quickly, within twenty-four hours. A baby was not intended, neither of the young people concerned had financial resources, a child would affect the establishment of at least one, if not two careers. I was the sole financial support of the family, so that I too could not care for a child.

It was clear to me then, it was clear to all of us, that an early abortion was the right answer. That does not mean that abortion itself is right, but that when human beings get into situations where every choice is wrong, then courageous and responsible decisions have to be made, and the consequences lived with.

I am still sure that in the circumstances the right choice was made. It was made by the person who had to live with the consequences, and it was made with family support. In a sense, an unborn child carried for all of us the costs of being a broken family in a broken world. But when I see and hold other peoples' babies, there is in my heart a grief which I cannot share, since it is not my secret, for the grandchild I never had and shall never know.

Anonymous, 1990

BRITISH YEARLY MEETING at §22.55.

As outlined above, when William Penn and the Assembly granted a “right of conscience” in the *Charter of Privileges*, they did so in stark contrast to the other theocentric colonies in America. Where those colonies' legal codes were imbued with specific religious dogma, Pennsylvania's own *Charter of Privileges*

was based on the more general “liberty of conscience.^[13]” As a result, since the ratification of our *Charter of Privileges* in 1701, each and every Pennsylvania Constitution has included an expressly enumerated “right of conscience,” which

¹³ As a former Justice of the Rhode Island Supreme Court recounted long ago:

Coming into power, th[e Puritans] established their own church, and compelled an unwilling people to conform to and support it. The Quakers probed deeper. They rebelled against prelate and presbyter alike. ***They claimed not toleration, but liberty of conscience for all as an inalienable right;*** they demanded the absolute Separation of Church and State, denounced the clergy as priests and hirelings, and . . . refused to acknowledge their authority or to contribute so much as a farthing to their maintenance. Silent meditation, only interrupted by a short prayer or exhortation by one or more of them, who, perchance, were moved by the Spirit, constituted their only form of worship. They substituted simple affirmation for the oath, defending the innovation with apt and telling quotes from scripture. They held meetings for worship, and were generally careful to abstain from all unnecessary secular employment on the first day of the week, but they did not regard it especially as the “Lord’s Day.” They claimed that all days are alike holy in the sight of God. They regarded the use of plural number in addressing one person as a species of flattery, and adopted the simple *thee* and *thou* of the Bible. They addressed all men by the Christian names only, regarding all other modes of address as “flattering titles.” They declared that it is not lawful for Christians to kneel or prostrate themselves to any man, or to bow the body, or to uncover the head to men; that it is not lawful for Christians to use superfluities in apparel, as are of no use save for ornament or vanity; that it is not lawful to use games, sports, plays, nor, among other things, comedies, among Christians, under the notion of recreations, which do not agree with Christian silence, gravity, and sobriety. They considered war an evil, as opposite and contrary to the spirit and doctrine of Christ as light to darkness, and they would not fight.

HORATIO ROGERS, MARY DYER OF RHODE ISLAND: THE QUAKER MARTYR THAT WAS HANGED ON BOSTON COMMON JUNE 1, 1660, VOL. I, 24-26 (Norwood Press 1896) (emphasis added) (accessed at https://www.google.com/books/edition/_/ArMDAAAAYAAJ?hl=en&gbpv=1) (last visited April 17, 2026).

extends beyond that of religious practice and bleeds into the remainder of our civil legal code.¹⁴

In fact, it might be more accurately said that the right of a competent individual to conduct one's affairs according to one's own conscience, in whatever form, is a fundamental right in Pennsylvania that is separate and apart from the rights of freedom of religion, equality, or personal privacy, while containing elements of all. As it relates to the exercise of a woman's right to choose, then, this inherent right to act according to one's own conscience, or sincerely held system of beliefs, in the pursuit of happiness¹⁵ prohibits the Commonwealth from constitutionally

¹⁴ See, e.g., *Wikoskie v. Wikoskie*, 513 A.2d 986, 989 (Pa. Super. 1986), wherein the Pennsylvania Superior Court held:

The state's interests in regulating marriage and divorce are clearly paramount. That regulation is inconsistent with the recognition of a unilateral right of a party to remove himself from its purview as a matter of conscience. The state has the power, properly exercised within constitutional limits guaranteeing freedom of religion, to grant divorces. Thus, whether granting [the wife] her divorce is viewed as not infringing upon [the husband's] freedom of religion, as in *Williams v. William*, 543 P.2d 1401 (Oklahoma 1975)], or as interfering with the practice of his religion, as in *Reynolds v. United States*, 98 U.S. 145 (1878)], the result reached here would be the same. To whatever extent the issuance of a divorce decree interferes with the practice of [the husband's] religion, it does not violate an individual's right to freedom of conscience.

See also *Wertz v. Chapman Township*, 709 A.2d 428, 433 n.8 (Pa. Cmwlth. 1998) ("This [C]ourt is not bound by the Superior Court's precedents although, where persuasive, we are free to adopt the Superior Court's reasoning.") (citations omitted).

¹⁵ Although this is an enumerated right that is included in article I, section 1 of our Constitution and in the Declaration of Independence, like the inherent rights of reputation and conscience and our ERA, there is no federal counterpart in the United States Constitution. See, e.g., *Reed v. Department of Transportation*, 872 A.2d 202, 205 (Pa. Cmwlth. 2005) ("[W]hile the Preamble to the Declaration of Independence does mention 'the pursuit of happiness,' nowhere in **(Footnote continued on next page...)**

bending the moral will of a competent woman by statute to prevent her from receiving required medical care to end her pregnancy.¹⁶

It is truly distressing that in Pennsylvania today a Quaker patient is still subjected to provisions of law discouraging her, or even precluding her, from obtaining fully informed and necessary medical treatment that conforms to the tenets of her faith.¹⁷ No, rather, I firmly believe that a patient's unencumbered "freedom of conscience," "liberty of conscience," "right of conscience" or, in this case, "right to choose," has been protected under the Constitution of this Commonwealth since 1701, long before the American Revolution.¹⁸

the [federal] Constitution does the government guarantee a citizen the right to his own idiosyncratic vision of happiness which in this case, is having his driver's license photo taken with his eyes closed.").

¹⁶ See ROGERS at 67-68 ("Each must judge for himself of the credit due to Mary Dyer for her sufferings and death. It is a growing belief that when, in coming ages, the roll shall be made up of those whose lives or deaths contributed to the establishment among men of the immortal principle of liberty of conscience, inscribed in enduring fame upon it will be found the name of Mary Dyer.").

¹⁷ See also *Allegheny Reproductive Health Center*, 309 A.3d at 892 n.86, wherein our Supreme Court noted:

A similar position is raised by a number of faith-based organizations that include the National Council of Jewish Women and Catholics for Choice, who argue that this Court has long held that Pennsylvania's Constitution guarantees a robust right to privacy that surpasses the right recognized by federal law. They detail the varied and nuanced positions held by, and within, the Jewish, Catholic and Islamic faiths regarding when life begins and contend that at least some segments of practitioners of those faiths, and others, believe that abortion is moral and permissible and can be reconciled with their religious beliefs.

¹⁸ I find the Dissenting Opinion's "response," more akin to a gratuitous attack, unpersuasive. See, e.g., *Braun v. Vote.org*, 11 N.W.3d 106, 115 n.9 (Wis. Ct. App.), *appeal denied*, **(Footnote continued on next page...)**

As initially stated above, I fully join in the Majority’s rationale in its disposition of this matter pursuant to our Supreme Court’s remand instructions in *Allegheny Reproductive Health Center* and Pa.R.A.P. 2591(a). I merely provide the foregoing Concurring Opinion in further support of the Majority Opinion granting Petitioners summary relief.

Michael H. Wojcik
MICHAEL H. WOJCIK, Judge

President Judge Cohn Jubelirer joins in this Concurring Opinion.

15 N.W.3d 767 (Wis. 2024) (“In refusing to simply apply the well-established law governing intervention and acknowledge that the [two organizations] share the same interest, the Dissent evokes the well-known Shakespearean maxim of ‘protesting too much.’ See William Shakespeare, *Hamlet* act 3, sc. 2[, ln. 242] (‘The lady doth protest too much, methinks.’). Methinks.”). Instead, I am reminded of the eloquent and important words of the late Justice Musmanno:

The greatest joy that can be experienced by mortal man is to feel himself master of his fate,—this in small as well as in big things. Of all the precious privileges and prerogatives in the crown of happiness which every American citizen has the right to wear, none shines with greater luster and imparts more innate satisfaction and soulful contentment to the wearer than the golden, diamond-studded right to be let alone. Everything else in comparison is dross and sawdust.

Commonwealth v. Murray, 223 A.2d 102, 110 (Pa. 1966) (Musmanno, J., dissenting).