

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

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 :

Argued: July 14, 2026

BEFORE: HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE WOLF

FILED: July 15, 2026

This matter was heard before a single judge of this Court¹ to

¹ As author of the underlying opinion, this matter was assigned to the undersigned.

determine—stated in simple terms—whether an automatic stay² of the enforceability of this Court’s Order of April 20, 2026, should be lifted while the matter is pending review by the Pennsylvania Supreme Court. Also before the Court was the Pennsylvania Attorney General’s unprecedented request that this matter not be decided by a single judge. As already determined on the record at argument, and for the more specific reasons that follow, the Court declined to refer this matter to a three-judge or en banc panel. For the reasons that follow, the Court determines that relief should be granted and the automatic stay should be lifted so that the Court’s Order of April 20, 2026, is now enforceable.

I. Introduction

On April 20, 2026, and en banc panel of this Court granted summary relief to Petitioners, who are reproductive healthcare providers whose services include abortion services (Providers). *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, ___ A.3d ___ (Pa. Cmwlth., No. 26 M.D. 2019, filed Apr. 20, 2026), 2026 WL 1053998 (*Allegheny Reproductive III*). We declared unconstitutional, and enjoined enforcement of, a statute that restricts Medicaid coverage for abortion care—Section 3215(c) and (j) of Pennsylvania’s Abortion Control Act, 18 Pa.C.S. § 3215(c) & (j) (Coverage Exclusion).³ *Allegheny Reproductive III*, Order. We found the Coverage Exclusion violates the Equal Rights Amendment in Article I, Section 28 of the Pennsylvania Constitution⁴ and the equal protection guarantee in Article I, Sections 1 and 26 of the Pennsylvania Constitution.⁵ *Id.*, slip op. at 40.

² This automatic stay is referred to as a “Supersedeas,” which is Latin for “you shall desist.” *Supersedeas*, BLACK’S LAW DICTIONARY (12th ed. 2024).

³ The Coverage Exclusion prohibits Medicaid payments for abortion services in Pennsylvania “unless the mother would otherwise die or the pregnancy results from rape or incest.” *Allegheny Reproductive III*, slip op. at 5; see also 18 Pa.C.S. § 3215(c) & (j).

⁴ PA. CONST. art. I, § 28.

⁵ PA. CONST. art. I, §§ 1, 26.

The Commonwealth of Pennsylvania, as intervenor and represented by the Attorney General, appealed our decision to the Pennsylvania Supreme Court. *See Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.* (Pa., No. 34 MAP 2026).⁶ That appeal created an automatic *supersedeas* (or stay) of our judgment by operation of law. *See* Pa.R.A.P. 1736.⁷ That stay allows the Coverage Exclusion to remain in effect during appeal, preventing Medicaid funding for abortion in Pennsylvania despite our holding that the Coverage Exclusion violates the Pennsylvania Constitution.

Our decision on the merits in this case, briefly summarized, is as follows: Providers filed an original jurisdiction petition for review (Petition) naming the Pennsylvania Department of Human Services (DHS) and other Commonwealth Respondents on January 16, 2019, alleging the Coverage Exclusion is unconstitutional and harms Providers as medical caregivers. *Allegheny Reproductive III*, slip op. at 5-7. Providers, who are healthcare centers and corporations, alleged they must dedicate resources for maternal care for women who would choose to have an abortion but for the Coverage Exclusion, and that the Coverage Exclusion interferes with their medical counsel to patients. *Id.* This Court initially sustained Respondents' preliminary objections, but our Supreme Court reversed and remanded for us to consider Providers' constitutional claims. *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 309 A.3d 808, 947 (Pa. 2024) (*Allegheny Reproductive II*). The High Court specifically found that the Coverage Exclusion is a sex-based classification that is presumptively

⁶ The Supreme Court has not yet noted probable jurisdiction. *See* Pa.R.A.P. 909(c).

⁷ “[T]he taking of an appeal [by the Commonwealth] shall operate as a *supersedeas* in favor of such party, which *supersedeas* shall continue through any proceedings in the United States Supreme Court.” Pa.R.A.P. 1736(a)(1), (b).

unconstitutional. *Id.*

Before this Court on remand, DHS declined to defend the Coverage Exclusion. Providers applied for summary relief and the parties stipulated to facts supporting the application. The Attorney General sought, and this Court granted, leave to intervene to defend the Coverage Exclusion, and the Court twice heard oral argument. Sitting en banc, we granted summary relief to Providers, with one concurring opinion and two dissenting opinions. The Court concluded:

[T]he Coverage Exclusion violates the Equal Rights Amendment in Article I, Section 28 of the Pennsylvania Constitution. Further . . . , Article 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, [so] accordingly the Coverage Exclusion violates the equal protection guarantee in Article I, Section 26 of the Pennsylvania Constitution.

Allegheny Reproductive III, slip op. at 40. We enjoined enforcement of the Coverage Exclusion against Providers. *Id.*, Order. The Commonwealth, via the Attorney General, appealed to the Supreme Court, thus imposing a supersedeas and preventing Providers from enforcing our judgment in their favor.

Now before the Court is Providers' Application for Relief from Supersedeas (Application). Providers ask the Court to vacate the stay so our judgment in their favor may go into effect. Respondents concur in the Application. The Commonwealth opposes the Application. After oral argument and careful consideration, the Court will grant the Application.⁸

⁸ Also before the Court at oral argument was the Commonwealth's application for relief seeking to refer the Application to the Court en banc or to a panel of judges (Application to Refer). The Court first heard argument on that issue. After questions from the Court, no party could
(Footnote continued on next page...)

II. Discussion

In the Application, Providers effectively seek a stay of the stay created by the Commonwealth's appeal. *See* Pa.R.A.P. 1732 (describing request to modify supersedeas as being in nature of request for stay pending appeal). To vacate the supersedeas and allow them to enforce our judgment during appeal, Providers must show:

- (1) "a substantive case on the merits[;]"
- (2) vacating the supersedeas will prevent "irreparable injury[;]"
- (3) "other parties will not be harmed[;]" and
- (4) vacating the supersedeas "is not against the public interest."

Dep't of Env't Res. v. Jubelirer, 614 A.2d 199, 203 (Pa. 1989). These showings are "the obverse of what is required under *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, [] 467 A.2d 805 ([Pa.] 1983), where a litigant seeks to stay an order being appealed." *Rickert v. Latimore Twp.*, 960 A.2d 912, 923 (Pa. Cmwlth. 2008). We address each factor in turn.

A. Merits

Providers argue they are likely to succeed on appeal because they prevailed before this Court, and because a majority of the Supreme Court opined

identify a case in which a party had requested that an application, properly assigned to a single judge for disposition, be referred to the en banc Court, or in which that relief was granted. Specifically, single-judge disposition of applications to vacate an automatic supersedeas, including after a decision of the merits by the en banc Court, appears consistent with the Court's practice. *See, e.g., Corman v. Acting Sec'y of Pa. Dep't of Health* (Pa. Cmwlth., No. 294 M.D. 2021, filed Nov. 16, 2021) (single-judge opinion) (Fizzano Cannon, J.). For these reasons, the Court orally denied the Application to Refer from the bench and heard argument on the Application before the undersigned. The Court's Order, below, confirms that ruling.

favorably on both counts of their Petition and applied a presumption of unconstitutionality in their favor. The Commonwealth responds by essentially reiterating its merits case on appeal and noting success below does not assure success on appeal. *See Commonwealth's Br.* at 7-20.

The Court finds Providers have shown a sufficiently substantive merits case to warrant vacatur of the stay. Although the Commonwealth is of course correct that the result on appeal is not certain, our Supreme Court applied a rare presumption against the constitutional validity of the Coverage Exclusion. Further, two members of the High Court majority separately opined that the showing necessary to sustain the Coverage Exclusion would be difficult to make. *See Allegheny Reproductive II*, 309 A.3d at 955 (Wecht, J., concurring) (describing the “unenviable burden” to rebut the presumed unconstitutionality); *id.* at 997-98 (Dougherty, J., concurring and dissenting) (opining that though proceedings on remand were required, Providers’ “position may ultimately prevail”).

B. Section 453 of the Human Services Code

The Commonwealth has raised, for the first time in this litigation and after the merits were fully decided, Section 453 of the Human Services Code.⁹ The

⁹ Act of June 13, 1967, P.L. 31, *as amended*, added by the Act of Dec. 19, 1980, P.L. 1321, 62 P.S. § 453. Section 453 reads:

Since it is the public policy of the Commonwealth to favor childbirth over abortion, no Commonwealth funds and no Federal funds which are appropriated by the Commonwealth shall be expended by any State or local government agency for the performance of abortion: Provided, That nothing in this act shall be construed to deny the use of funds where a physician has certified in writing that the life of the mother would be endangered if the fetus were carried to full term or except for such medical procedures necessary for the victims of rape or incest when such rape or incest has been reported promptly to a law enforcement agency or public health service.

Commonwealth claims Section 453 has the same effect as the Coverage Exclusion, so it will prevent Providers' success on appeal even if our merits decision in this case is upheld. The Commonwealth acknowledges statements by our Supreme Court, discussed *infra*, that Section 453 was repealed by passage of the 1982 Abortion Control Act (Act), which contains the Coverage Exclusion, a more detailed version of the prohibition in Section 453. However, the Commonwealth insists those statements are dicta because the Act did not expressly repeal Section 453 and it has never been declared unconstitutional by a court.

In response, Providers highlight our Supreme Court's detailed explanations of how and why the Act repealed Section 453. At oral argument, DHS confirmed it views Section 453 as repealed and unenforceable, so it would not restrict Providers' activities independent of the Coverage Exclusion. These positions create an unusual conflict: intervenor the Commonwealth government, as represented by the Attorney General, seeks to interpose Section 453 for the first time here, but DHS—the agency charged with ostensibly enforcing Section 453 and the Respondent in this case, which is about the Coverage Exclusion—believes Section 453 is not good law.

After fully considering the statutory enactments, our Supreme Court's opinions, and the parties' arguments, the Court agrees with Providers and DHS that Section 453 has been repealed. The Supreme Court explained in this case:

The lawsuit [in *Fischer v. Dep't of Pub. Welfare*, 502 A.2d 114, 117 (Pa. 1985), *overruled on other grounds by Allegheny Reproductive II*, 309 A.3d at 808,] originally challenged 62 P.S. § 453 of the Public Welfare Code, Act of December 19, 1980, P.L. 1321[,] No. 239[,], § 1 ("Act 239," [i.e., Section 453]), prohibiting State and local government agencies from expending Commonwealth funds for the performance of an abortion except upon

certification that the mother's life would be endangered, or for victims of rape or incest. 62 P.S. § 453. Act 239 was repealed and the Coverage Exclusion was reenacted in 18 Pa.C.S. § 3215(c) of the Abortion Control Act of 1982, Act of June 11, 1982, P.L. 476, No. 138. For present purposes, there is no meaningful difference in the language of Act 239, the 1982 version of Section 3215(c), and the present version of Section 3215(c), which would call for a different analysis.

Allegheny Reproductive II, 309 A.3d at 3d at 851 n.32. It is hard to imagine how the Supreme Court could more clearly state that the Coverage Exclusion replaced, and thus repealed, Section 453.

For several reasons, the Court cannot accept the Commonwealth's handwaving that we should ignore Footnote 32 as dicta. First, it is our job to apply the High Court's statements about the law, not to characterize or sidestep them. *See, e.g., In re Huff*, 334 A.3d 232, 245 (Pa. 2025) (unanimously stating this Court "quite reasonably" applied Supreme Court dicta as binding until it was recognized *by the Supreme Court* as dicta and repudiated). Second, Footnote 32 is not the only statement. In *Fischer*, the Supreme Court contemporaneously explained exactly how and when "[Section 453] was repealed." 502 A.2d at 117 n.7.¹⁰ Third, although the Act expressly repealed only the Act of September 10, 1974, P.L. 639, not Section

¹⁰ The *Allegheny Reproductive II* Court overruled *Fischer*'s constitutional analysis, but it did not disturb the explanation of Section 453's repeal. The Commonwealth acknowledged this at oral argument in response to the Court's question. *Fischer*'s explanation in full is as follows:

[E]nforcement of the entire [Act] was enjoined [before it could take effect], per order of the United States Court of Appeal from the Third Circuit, from December 8, 1982, up until July 6, 1984. On that latter date the injunction against portions of the Act was lifted, a result of which the repealer provision became effective, and *Act 239, 62 P.S. § 453 was repealed*. Thus, Section 3215(c) remains the only provision challenged in this suit.

502 A.2d at 117 n.7 (emphasis added) (some internal citations omitted).

453, it also repealed “all acts and parts of acts inconsistent with this [A]ct.” Act of June 11, 1982, P.L. 476, § 6. As twice explained by the Supreme Court, the Coverage Exclusion was intended to wholesale replace Section 453, and in that sense, Section 453 is inconsistent with the Coverage Exclusion. Fourth, and again as explained in *Fischer*, the Act repealed Section 453 as a matter of self-executing statutory law. The General Assembly knows how to draft repealer provisions that are expressly contingent on some future event, such as the creation of new regulations, but it included no contingency in the Act’s repealer.¹¹ *Cf. Mitchell’s Bar & Rest., Inc. v. Allegheny Cnty.*, 924 A.2d 730, 736 (Pa. Cmwlth. 2007) (holding repealer ineffective because it was expressly contingent on publication of regulations that were not published). Fifth, for the same reason, legislators’ extra-statutory characterizations of the repealer, which the Commonwealth purports to identify,¹² do not answer the legal question of whether Section 453 was in fact repealed. Sixth, as noted by DHS at argument, our judgment declaring the Coverage Exclusion unconstitutional “shall not be construed to revive” or un-repeal Section 453.

In sum, Section 453 “*was* repealed,” has been repealed, and remains

¹¹ The General Assembly could have stated the repealer would be effective only if a court of competent jurisdiction adjudicates Section 453 to be unconstitutional or expressly holds it is inconsistent with the Act. If the legislature had so specified—and to be clear, it did not—the Commonwealth, based on its representations at oral argument, might still not accept the statements by Pennsylvania’s court of last resort in *Fischer* and this case as triggering repeal. The Court need not further speculate on what quantum of briefing or judicial magic words might suffice because, contrary to the arguments of the Attorney General, the repealer in the Act is not conditioned on a judicial determination.

¹² The Commonwealth cites the General Assembly’s published table of changes to the Human Services Code, showing Section 453 as “added,” not repealed, and that legislators recently introduced a bill to repeal Section 453, which would be unnecessary if it had already been repealed. *See* <https://www.palegis.us/statutes/unconsolidated/chron-history?SESSYR=1967&SESSIND=0&STATUTE=&ACTNUM=&SECTION=&SESSYR2=&SESSIND2=&ACTNUM2=> (last visited July 14, 2026); <https://www.palegis.us/legislation/bills/2025/hb2110> (last visited July 14, 2026).

repealed. That statute, raised only now by the Commonwealth, as intervenor, does not diminish Providers' case on the merits for purposes of the Application. Finally, in the alternative, if for some reason Section 453 remains good law, the Court is persuaded by Providers' argument that Section 453 is substantively identical to the Coverage Exclusion, so Section 453 would be enjoined for the same reasons this Court has already determined and Providers would still prevail.

C. Irreparable Injury

Providers argue vacating the supersedeas will prevent irreparable injury to them and their patients. Providers explain the supersedeas, if it remains, will force an unknown number of their patients to carry pregnancies to term during the Commonwealth's appeal—which, according to our holding, actually infringes the right against sex discrimination and the right to reproductive autonomy, both guaranteed in the Pennsylvania Constitution. See *Allegheny Reproductive III*, slip op. at 24-28, 32-37. Providers argue these constitutional violations are per se irreparable harm. They also emphasize time is of the essence: once a person carries a pregnancy to term and gives birth, though they would have sought an abortion absent the Coverage Exclusion, no future coverage or damages can return their promised equality and autonomy. It is forever lost. The Commonwealth responds that the real dispute here is not rights but funding, so Providers could subsidize abortions from their own funds during the appeal and, if they prevail, could seek Medicaid reimbursement retroactively. Providers reply they have standing to seek redress for their own pecuniary harms and also for harm to their patients who are denied constitutional rights.

It is black letter law that, when a party must show irreparable injury to obtain relief in the nature of equity, ongoing violations of statutory law constitute

irreparable injury per se. *Cutler v. Chapman*, 289 A.3d 139, 155 (Pa. Cmwlth. 2023). This doctrine goes back more than a half-century, and our Supreme Court explained it as follows:

[t]he argument that a violation of law can be a benefit to the public is without merit. When the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such unlawful conduct constitutes irreparable injury.

Pa. Pub. Util. Comm'n v. Israel, 52 A.2d 317, 321 (Pa. 1947). This applies no less against the government than against a private party. Where the executive branch's conduct violates a statutory mandate, "irreparable injury will have been established." *SEIU Healthcare Pa. v. Commonwealth*, 104 A.3d 495, 508 (Pa. 2014).

The Court agrees with Providers that the per se harm principle must apply *a fortiori* to ongoing violations of the Pennsylvania Constitution. To paraphrase *Israel*: when the People declare certain rights inviolate, the government's continuing violation of those rights is necessarily injurious to the public and constitutes irreparable injury. If a statute can establish as a legal matter what is harmful and what is against the public interest, a constitution does so at a higher order. Of necessity, constitutions contain general and specific commands in combination, which makes them effective organic documents, unlike statutes.¹³ But the Pennsylvania Constitution specifically prohibits sex discrimination (Article I, Section 28) and requires equality (Article I, Sections 1 and 26) and this Court has held the Coverage Exclusion cannot be enforced without violating those rights. The People have already declared it harmful to violate those rights. Thus, continued

¹³ See Akhil Reed Amar, *American Constitutionalism—Written, Unwritten, and Living*, 126 HARV. L. REV. F. 195, 197-98 (2013).

enforcement of the Coverage Exclusion irreparably injures Providers and their prospective patients as a matter of our most fundamental law.

D. Harm to Other Parties and Public Interest

Providers argue vacatur will not harm other parties or the public. They argue the Commonwealth is not harmed because it cannot have an interest in violating constitutional rights, and similarly the public interest is always in favor of the People retaining their inviolate constitutional rights. The Commonwealth disagrees, arguing enforcing our judgment will allow more abortion contrary to the interest of the “majority of Pennsylvanians” who oppose use of public funds for abortion. Commonwealth’s Br. at 27.

The Commonwealth points out that “[t]here is always a public interest in prompt execution’ of the laws.” *Id.* at 25 (quoting *Nken v. Holder*, 556 U.S. 418, 436 (2009)). That is true insofar as the law is constitutional. Our Supreme Court explained the structure of constitutional governance in Pennsylvania:

The primary purposes of a constitution are to establish a government, define or limit its powers and divide those powers among its parts State constitutions . . . typically establish governments of general powers, which possess all powers not denied by the state constitution. Our state constitution functions this way and restrains these general powers by a Declaration of Rights. [] WOODSIDE, [PENNSYLVANIA CONSTITUTIONAL LAW 113 (1985)]; *Commonwealth v. Wormser*, 103 A. 500, 501 ([Pa.] 1918) (the legislature may enact all laws not forbidden by the state constitution)

Gondelman v. Commonwealth, 554 A.2d 896, 903-04 (Pa. 1989) (some internal citations omitted) (quoting *W. Pa. Socialist Workers 1982 Campaign v. Conn. Gen. Life Ins. Co.*, 515 A.2d 1331, 1334 (Pa. 1986)).

Based on the constitutional nature of our system of government, as

explained above, the Court cannot agree there is an absolute, inflexible public interest in always enforcing every statute regardless of the rights infringed. This Court, as a specialized administrative appellate court, routinely reviews challenges to statutes and regulations. Even when considering the gravest of challenges—that a law violates the Constitution—we usually apply strong presumptions of regularity and constitutionality so enforcement of the law may continue unless the government is plainly and palpably shown to have violated the Constitution. *See Commonwealth v. Torsilieri*, 232 A.3d 567, 584 (Pa. 2020). But in the Court’s judgment, this case is the exception that proves the rule. Our Supreme Court long ago jettisoned the presumption of constitutionality for the Coverage Exclusion, replacing it with presumed unconstitutionality. *Allegheny Reproductive II*, 309 A.3d at 947. Which is to say, we must presume the Coverage Exclusion will in fact violate Pennsylvanians’ “inviolate” constitutional rights if the supersedeas remains in place. PA. CONST. art. I, § 25. There can be no legitimate interest—for the Commonwealth or the public—in knowingly violating constitutional rights.

Finally, *Corman v. Acting Secretary of Pennsylvania Department of Health*, 266 A.3d 452 (Pa. 2021), which the Commonwealth cites, supports vacating the supersedeas. There, an en banc panel of this Court granted summary relief to the petitioners and declared void an action of the Pennsylvania Secretary of Health. The Secretary appealed, triggering an automatic supersedeas, which this Court vacated by single-judge order. *Corman v. Acting Sec’y of Pa. Dep’t of Health* (Pa. Cmwlth., No. 294 M.D. 2021, filed Nov. 16, 2021) (single-judge opinion) (Fizzano Cannon, J.). Our Supreme Court reinstated the supersedeas, but it noted this Court’s vacatur order was issued the same day as the Supreme Court’s order granting the appellant’s request for expedited briefing and argument. *Corman v. Acting Sec’y of Pa. Dep’t*

of Health (Pa., No. 83 MAP 2021) (Order filed Nov. 30, 2021). Here, no expedited treatment of the appeal or request therefor is evident, so the Supreme Court's procedural rationale in *Corman* is inapposite.

III. Conclusion

For the foregoing reasons, the Court concludes Providers have demonstrated an entitlement to vacatur of the automatic supersedeas. Accordingly, the Court will grant the Application.

/s/ Matthew S. Wolf
MATTHEW S. WOLF, Judge

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Assistance Programs, and Sally Kozak, :
in her official capacity as Deputy :
Secretary for the Pennsylvania :
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ORDER

AND NOW, this 15th day of July 2026, Petitioners' Application for Relief from Supersedeas (Application), in which Respondents concur, is GRANTED, and the automatic supersedeas imposed under Pa.R.A.P. 1736 is

VACATED. Petitioner's application for relief seeking to refer the Application to the Court en banc or a panel of judges is DENIED.

/s/ Matthew S. Wolf
MATTHEW S. WOLF, Judge

Certified from the Record

JUL 15 2026

And Order Exit