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IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

34 MAP 2026

ALLEGHENY REPRODUCTIVE HEALTH CENTER, *et al.*,
Appellees,

v.

PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES, *et al.*,
Appellees.

Appeal of the Orders of the Commonwealth Court at 26 M.D. 2019 entered on April 20, 2026

Brief of Amicus Curiae Hon. Cheryl L. Allen

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INTEREST OF AMICUS CURIAE[1]

Amicus curiae, Cheryl Allen, is a retired judge who served on the Superior Court for eight years. Prior to her election to the Superior Court, she served for seventeen years as a trial judge for the Court of Common Pleas of Allegheny County, presiding over family and criminal court. Amicus has worked collegially with several members of this Court while they were in prior roles. Before her judicial service, Cheryl Allen served as a staff attorney at Neighborhood Legal Services, the Pennsylvania Human Relations Commission, and the Allegheny County Law Department.

Amicus understands and appreciates the duties and burden of members of Pennsylvania's courts to handle difficult cases involving significant policy issues. The role of an amicus curiae in any case is to offer help to the court in resolving the issues. *See* Pa.R.A.P. 531(c) note (citing U.S. Supreme Ct. R. 37.1) ("[T]he Court shares the view of the United States Supreme Court that '[a]n amicus curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court.'"). While issue resolution is the most common role played by amici, the role should also be that of a friend

[1] No other person or entity paid in whole or in part for the preparation of this brief or authored the brief in whole or in part.

who “loves at all times” and is “born for adversity,” willing to counsel whether it is easy or not. Proverbs 17:17. A true friend of the court must look beyond the immediate issues presented and consider the dignity and reputation of the judicial system.

This case presents important issues of judicial ethics and implicates the reputation of the Court. When resolving a case presents a serious risk to the reputation of the Court as an impartial tribunal—particularly the final authority in the judicial system—an amicus curiae must show the willingness of a friend to raise delicate issues with all possible tact so as to prevent a serious error of judgment. It is the duty of an amicus to risk offense to preserve the reputation of the court it serves. “Faithful are the wounds of a friend; profuse are the kisses of an enemy.” Proverbs 27:6 (ESV).

ARGUMENT

Improper resolution of this case would expose this Court to serious reputational harm and jeopardize two fundamental pillars of judicial integrity: impartiality and authority. The danger is not that the case is too difficult or unpopular to decide, but that it is too easy given the posture of the Commonwealth Court’s decision. The duty of this Court as the ultimate tribunal is to set an example that will lead to respect for its judgments from the citizens of the Commonwealth and the lower courts. In setting this

example, this Court will also demonstrate clearly that its decisions are based on a fully developed factual and legal record in each case, regardless of its issues.

I. The Commonwealth Court Failed to Follow this Court's Order to Conduct Necessary Fact-finding.

When this Court issued its ruling in *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 309 A.3d 808, 947 (Pa. 2024) (*Allegheny Reproductive*), Justice Donohue, writing for the majority, made clear that "[t]his appeal does not resolve the ultimate issues." The Court remanded the case to the Commonwealth Court "for further proceedings consistent with the mandate contained in Part IV of this opinion." *Id.* (overruling *Fischer v. Dep't of Pub. Welfare*, 502 A.2d 114 (Pa. 1985)). Clearly contemplating that the "unenviable burden" that the Department of Human Services would have to assume would require further findings and evidence, *id.* at 955 (Wecht, J., concurring), this Court's mandate directly cited "the government's burden to rebut the presumption with evidence of a compelling state interest" under a post-*Fischer* analysis articulated by the Court. *Id.* at 947.

Given the sea-change in burden shifting and the scope of the burden to be lifted after this Court's decision, the Commonwealth Court should have conducted sufficient and rigorous fact-finding and afforded ample opportunity

for zealous advocacy and defense of state law. But the Commonwealth Court took the opposite approach and allowed the litigants to exploit the evidentiary process to obtain summary relief. The result was a triumph of formalism and expedience, stymying rather than adducing the factual analysis ordered by this Court.

A. The Procedural History and Facts of this Case Show a Rush to a Result, Not Judicious Deliberation of a Developed Record.

This case has an unusually tortured and complex history, but the relevant facts follow this Court's disposition of *Allegheny Reproductive* in 2024. After the case was remanded to the Commonwealth Court, the Department of Human Services filed a Notice to that court on July 16, 2024, stating that it would no longer defend the constitutionality of the challenged provisions of the Abortion Control Act, which "left no adverse party" defending the state law and should have led to dismissal on justiciability grounds. *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 358 A.3d 800, 814 (Pa. Commw. Ct. 2026).

Instead of entertaining a joint statement by the parties seeking a dismissal of the pending matter, the Commonwealth Court allowed the Department to "stipulate[] to essentially all of the facts alleged in the Petition," which was a laundry list of factual and legal assertions favorable to the

abortion providers. *Id.*; *see* Joint Statement of Undisputed Facts, July 19, 2024. This set the stage for the corporate abortion providers to move for summary relief—and for the Commonwealth Court to create precedent based solely on the stipulated facts in the Joint Statement. *See* Pet'r Appl. For Summ. Relief, July 19, 2024.

In January 2025, before the Commonwealth Court ruled on the application, newly elected Attorney General Dave Sunday took office. In February 2025, Sunday sought to intervene to defend the state law, only to find that the Governor's Office of General Counsel, which represented DHS, effectively salted the soil by signing the Joint Statement. The Attorney General's efforts to oppose summary relief and develop the factual record to show a compelling interest fell on deaf ears at the Commonwealth Court.

The Commonwealth Court made an egregious mistake in allowing the case to proceed to summary relief. It completely disregarded this Court's mandate to develop a sufficient factual record and accepted instead the manufactured record of two parties in collusion to contrive a precedential result to an otherwise dead controversy. While the parties might have had an interest in propping up the corpse of a dead controversy without a live litigant, the Commonwealth Court should not have permitted this charade.

The inexplicable indifference of the Commonwealth Court to the need for real evidence extended to its refusal to allow the Attorney General to offer a real defense of the law. Faced with the burden of strict scrutiny—the most demanding judicial test employed by courts—the Attorney General was nevertheless handicapped even in his efforts to introduce evidence, much less make arguments based on that evidence.

The result of these procedural defects is an underdeveloped factual record based on a Joint Statement between two non-adverse parties. The Commonwealth Court did not follow this Court's mandate to develop the record properly, and as a result did not reach its result correctly—nor did it present this Court with a proper basis for final decision.

B. Dissenting Opinions Reveal the Need for Factual Development, Mirroring This Court's Order.

Divisions among members of the Commonwealth Court in the decision below further reveal the errors made by the Majority. The dissenting opinions of Judges McCullough and Wallace demonstrate precisely why the decision was wrong and why the case should not be resolved at this stage.

Judge McCullough "respectfully, but adamantly" dissented because "the Majority's decision is premature and unsupported in fact or law." *Allegheny Reprod.*, 358 A.3d 800, 841 (McCullough, J., dissenting). She

struck first at the procedural errors committed by the Commonwealth Court in reaching its decision: "the Majority got where it wanted without a hearing, without factfinding . . . based entirely on unvetted 'stipulations' [which] abandoned any defense of the constitutionality of the abortion funding restrictions challenged in this litigation." *Id.* at 840; *see id.* at 841 (citation modified) ("I simply cannot recall another case in which this Court has decided issues of such profound public importance in this kind of summary, we-believe-you-if-you-say-so fashion that does anything but give full notice to the bench, bar, and public.").

Other "gaps in the Majority's narrative" affected the Majority's conclusion that the Coverage Exclusion of the Abortion Control Act failed strict scrutiny. Judge McCullough observed that while this Court's earlier decision in *Allegheny Reproductive* held that the provision would be "presumptively unconstitutional," *id*. at 845, this did not obviate the duty of the Commonwealth Court to generate a sufficient evidentiary record to make the final determination through a genuine adversarial process. Judge McCullough argued that by "dispensing" with the necessary fact-finding, the court had not given the Commonwealth the opportunity to rebut and present evidence, while pointing to existing issues of material fact inexplicably ignored by the Majority. *Id.* at 847.

Regarding the Commonwealth Court's role as fact-finder, Judge McCullough observed that, normally, "[t]he record we review in deciding an application for summary relief includes depositions, affidavits, answers to interrogatories, pleadings, and reports by expert witnesses." *Id.* at 848. But here, the entire matter was resolved on "[s]tipulations [that] were entered by non-adversarial parties and are saturated with agreements to conclusions of law, statements of Pennsylvania public policy, and citations to multiple 'expert' testimonial declarations about disputed facts." *Id.*

The duty of the Commonwealth Court was to follow the proper procedures and orders from the Supreme Court in developing a sufficient evidentiary basis for decision of the ultimate issues. "On remand, this Court was responsible for *properly hearing . . . which necessarily required our affording the Commonwealth an opportunity to make its case*, not just file a brief." *Id.* at 857 (emphasis added). The Majority failed to "fulfil[] that responsibility, in no small part because of the magnitude of the issues presented here." *Id.*

Co-dissenter Judge Wallace viewed the Majority opinion as "a classic example of when the judicial branch needs to know the limits of its power—to know to stay in its lane." *Id.* at 858 (Wallace, J., dissenting). In her view,

courts should respect elected officials like the Attorney General in defending state law, and state legislators in crafting law: “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.” *Id.*

Judge Wallace argued that the Commonwealth Court rushed to rule on the constitutionality of state law without giving the law an adequate opportunity to be defended. *Id.* at 860–61. She is right. In this matter, the legislature has clearly expressed a state interest in its laws as a matter of policy. Now that this policy and interest is being challenged, and the Office of General Counsel is no longer defending the law, the Attorney General must be permitted to defend the state law adequately and zealously. *Id.*

By deciding these constitutional issues hastily, the Commonwealth Court has done so without giving adequate voice—and thereby respect—to the political branches. Judge Wallace argued that “the gravity of this constitutional issue imperatively commands the exercise of judicial restraint. . . . Restraint is not just my belief; it is our duty.” *Id.* at 861. In her view, a lack of restraint implicates separation of powers and undermines respect for elected authority. “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." *Id.* at 862.

C. This Court Must Remand and Insist Upon Robust Factual Findings.

Given the burden imposed by this Court in *Allegheny Reproductive,* and the expectation of zealous advocacy on both sides of this case, the Commonwealth Court failed its duty to create a sufficient evidentiary record. Summary relief was not only improper, but it obviated the very duty that this Court required on remand—to allow both sides to generate a factual record, not fabricate a list of stipulations that give away the farm. The Commonwealth Court now presents this Court with a case which is not fit for resolution because of these failures.

Given these serious defects, this Court should remand this matter to the Commonwealth Court to conduct rigorous fact-finding before attempting to resolve this case. This Court has a special interest in ensuring that lower courts follow its orders and the procedural rules, which ensures due process to all litigants. Rushing to a result was a serious mistake leading to a defective analysis of the issues. This Court must not permit lower courts to

flout its mandates and dispense with necessary fact-finding. This case requires particular care to ensure that it will be decided on facts.

II. Resolution at This Stage Risks the Appearance of Prejudice and Bias by Members of This Court.

Given the posture of this case, a decision by this Court risks not only approving the errors of the Commonwealth Court, but it would jeopardize this Court's reputation for impartiality. The campaign statements of members of this Court referring to *Allegheny Reproductive* have created a strong appearance of bias on the issues presented in this case. With no new facts, this Court is poised to decide the same case as before—with the result clearly forecast not by the prior holdings of this case but by subsequent statements about the significance of this ongoing case by members of this Court in their retention campaign.

A. Campaign Statements of Justices Referring to This Case Forecast its Result.

In 2025, Justices Christine Donohue, David Wecht, and Kevin Dougherty stood for retention. In the context of their respective campaigns, the justices made several public statements about their record on abortion with reference to *Allegheny Reproductive*. Despite the fact that this case was expected to reappear on the Supreme Court's docket in the near future,

these justices nevertheless repeatedly referred to their rulings in *Allegheny Reproductive* as emblematic of their support for abortion rights.

Justice Donohue stated openly at the Homewood Forum in Pittsburgh that she would "support the precedent set in the landmark abortion rights case *Roe v. Wade*" as part of her continued tenure. *See* Eric Holmberg, *Forums put spotlight on PA Supreme Court candidates*, Pittsburgh's Pub. Source (Oct. 22, 2025), https://perma.cc/4VDR-DYYX. While she did not explicitly refer to her majority opinion in *Allegheny Reproductive* in that setting, subsequent comments unmistakably demonstrate her commitment to advancing abortion rights in the future.

In a Fireside Chat, Justice Donohue spoke about the role of the Pennsylvania Supreme Court in deciding the fundamental rights of the state constitution. She referred to "numerous opportunities" in which she and her colleagues were "called upon to not only interpret the text of our own constitution, but to . . . decide what our constitution means," which she hoped to do "for many years" following retention. *See* Abingdon Rockledge Democrats, *Fireside Chat with Supreme Court Justices*, at 3:00–3:51 (YouTube, Sept. 17, 2025), https://tinyurl.com/bdfr4tdz. She spoke of her desire "to ensure that the efforts that we have made in terms of interpreting and applying the Pennsylvania constitution continue," seeking to ensure that

"protections that have always been there, but have not been recognized, continue to be recognized." *Id.* at 10:02–11:22. She concluded that a retention election of all three justices on the panel would ensure continuity and stability of those "protections." *Id.*

In context, these statements clearly refer to *Allegheny Reproductive* as the "efforts" creating the "protections" found in the Pennsylvania Constitution. Despite the great care taken to avoid uttering the name of the case or the issue of abortion, no consideration was given to the pendency of the same case in the imminent future. These statements clearly forecast a view of an ongoing case implicating her views on abortion—an issue at the center of her retention campaign.

Justice Wecht's statements referred less to his legacy on the Court, but nevertheless directly adverted to his concurrence in *Allegheny Reproductive* as evidence of his support for "a woman's right to reproductive autonomy and a right not to have male politicians telling her what to do with her body and her healthcare." *See* Chris Potter, *Wecht makes his case before Pa. Supreme Court retention vote*, WESA (Oct. 9, 2025), https://perma.cc/WWP2-Q895. By commenting on an ongoing case and stating his views on abortion, Justice Wecht all but announced how he would rule in this case in the future—with or without new facts.

Justice Dougherty alone attempted to draw some distance on the issue of abortion, referring once to joining the dissent in *Allegheny Reproductive*. An article profiling Justice Dougherty's candidacy and record noted that he "slightly parted ways" with his colleagues on a right to abortion, concluding that the issue in *Allegheny Reproductive* was premature.

Nevertheless, all three justices appeared in a joint video advertisement entitled "Team," in which they discussed their record on issues including the right to abortion. *See* Vote Yes for Fair and Indep. Cts., *Team*, (YouTube, Sep. 9, 2025), https://tinyurl.com/2datjy3e. The advertisement features statements by all three justices on issues they supported, including a scene in which Justice Donohue speaks directly to the camera saying, "We protected access to abortion" with a banner at the bottom reading "Vote Yes PA Supreme Court Justices Donohue Dougherty Wecht." *Id.* at 0:10. Bolded in the center of the screen is the statement, "Rights are at Stake in Pennsylvania's Supreme Court Election," and it cites an article by the Pennsylvania Independent, which is entitled, "Abortion and voting rights are at stake in Pennsylvania's Supreme Court Election." *See* Anna Gustafson, *Abortion and voting rights are at stake in Pennsylvania's Supreme Court election*, Penn. Indep. (Sep. 8, 2025), https://perma.cc/Y5LS-SFR5. This article discusses the context of abortion rights in the post-*Roe* environment

and refers to *Allegheny Reproductive* as a case "currently" making its way to the Supreme Court where it is "expected to hear further arguments." *Id*. Clearly, the "Team" was advertising that abortion was at stake in the election, with reference to this case. Another segment of the "Team" ad features Justice Wecht states, "Planned Parenthood PA PAC – Vote Yes," and concludes with the phrase "Protect our freedom. Vote Yes for Justices Donohue, Dougherty, and Wecht." *Team* at 0:23–0:24.

Taken as a whole, the campaign statements of these three justices raise serious concerns that the issues raised in this case will not be decided impartially. The statements of Justices Donohue and Wecht, in particular, risk giving observers the unfortunate impression that this case will be decided—indeed may have already been decided—on the basis of personal or political views on the issues presented, not the facts and law of the case.

B. The Pennsylvania Code of Judicial Conduct Urges Recusal Where Judges Cannot Remain Impartial.

The second section of the Preamble to the Pennsylvania Code of Judicial Conduct states:

> An independent, fair, honorable and impartial judiciary is indispensable to our system of justice. The Pennsylvania legal system is founded upon the principle that an independent, fair, impartial, and competent judiciary, composed of persons of integrity, will interpret and apply the law that governs our society.

> The judiciary consequently plays a fundamental role in ensuring the principles of justice and the rule of law.

207 Pa. Code, pt. II ch. 33, subch. A ("Code of Judicial Conduct"). Pennsylvania's courts must decide cases regardless of their unpopularity or difficulty, *see id.* at R. 2.7, R. 2.4(a), and its highest Court must set an example for the judicial system in this respect. Deciding cases irrespective of their popularity enhances the integrity of the judiciary and respect for its judgments.

But the Code of Judicial Conduct distinguishes between difficult subject matter and conflicts threatening the integrity of the judiciary. Where a judge's own conduct "convey[s] . . . the impression that [someone] . . . is in a position to influence the judge," *id.* at R. 2.4(c), or "the judge has recused himself or herself or when disqualification is required," *id.* at R. 2.7, the judge has a duty to refrain from participation in the matter out of concern for the court's reputation and duty to administer justice. Each member of the court has a duty to administer justice fairly and impartially, and where this is not possible, the judge and the court must make adjustments so that neither judicial economy nor judicial integrity suffer harm.

Judicial elections, even for retention, present a particularly difficult context in which judges must campaign yet also demonstrate a commitment

to impartiality. The Fourth Canon of the Judicial Code of Conduct, 207 Pa. Code, pt. II ch. 33, subch. A, requires that a judge or candidate "shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary." Rule 4.1 prohibits judges and candidates from "mak[ing] any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending in any court," *id.* at R. 4.1(10), or "in connection with cases, controversies or issues that are likely to come before the court, mak[ing] pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office." *Id.* at R. 4.1(12).

Comment 1 to Rule 4.1 explains the policy behind this prohibition as a function of the special role and duties of a judge:

> Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the extent reasonably possible, be free and appear to be free from political influence and political pressure.

Id. at R. 4.1. Another reason for the prohibition is that "[p]ublic confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence." *Id.* at R. 4.1, cmt. 3. Judges may express their personal views about the law in

campaigns, but "[w]hen making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views." *Id.* at R. 4.1, cmt. 9. Many expressions of personal views do not represent a commitment or pledge to rule in a certain way in the future, *see id.*, and judges have the right to campaign and make their interests and ideas a part of their platform. *See, e.g.*, *Republican Party of Minn. v. White*, 536 U.S. 765, 788 (2002).

However, when judges voluntarily characterize their rulings as an extension of their views, particularly in the light of pending cases which directly decide those matters, or when judges pledge a certain result—such statements undermine the appearance of impartiality. This appearance is exacerbated where the referenced case is not yet fully resolved and is expected to appear before the court again to decide the same underlying issues. Commenting on significant issues involved in a pending case inevitably fuses the two and indicates that a judge's commitments on an issue have influenced or will influence their decision—a form of bias.

In the pendency of this case, three members of this Court chose to make the issue of abortion part of their campaign statements and made express reference to *Allegheny Reproductive*—in which all three wrote opinions—as a centerpiece of their stance on this issue. This was not mere

commentary on their record; it was an advertisement about how they would vote *on the same issue in the same case*. Given the opinions of Justices Donohue and Wecht in *Allegheny Reproductive* and subsequent campaign statements, any semblance of impartiality on the issue of abortion in this case has been surrendered. The only proper route in such a case is either remand or recusal.

C. Due Process Requires Recusal When an "Objectively Intolerable Probability of Bias" Exists.

Pennsylvania's Judicial Code of Conduct is not the only basis for requiring recusal in a case. While most issues of judicial recusal "do not rise to a constitutional level," *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 876 (2009), the United States Supreme Court has held that due process requires recusal—usually voluntary at the judge's discretion—where an objectively intolerable probability of bias exists. *Id.* at 872. *Caperton* involved a due process disqualification motion of a newly elected justice of the West Virginia Supreme Court, who had been given $3 million from a coal executive while a coal company verdict was pending with a $50 million verdict at stake. The Court held that the circumstances of the justice's election—including his decisive vote for a 3-2 reversal of the verdict—violated the Fourteenth Amendment.

The Court's determination in *Caperton* made clear that constitutionally required recusal does not rest on "[p]ersonal bias or prejudice alone," *id.* at 877, but it exists in the "context of judicial elections" where "extraordinary efforts" by a judge or third party to secure an election could appear to play a "pivotal role" in the outcome of a case. *Id.* at 881–882. While the extraordinary effort in *Caperton* was a campaign contribution by an interested donor, it need not be shown that the pivotal factor actually caused the election to succeed. It is sufficient that the presence of that factor "had a significant and disproportionate influence on the electoral outcome." *Id.* at 885. The Court considered the "temporal relationship between the campaign contributions, the justice's election, and the pendency of the case" and, applying an objective standard, concluded that the donor's contributions were aimed at securing the justice's election and favor in the pending case. *Id.* at 886. The Court noted that the efforts were undertaken by someone with "a vested stake in the outcome" attempting to "choose the judge in [its] own cause." *Id.*

Caperton adds an objective dimension to the already-existing actual bias subjective standard. The Court held that an objective analysis "may also require recusal whether or not actual bias exists or can be proved." *Caperton*, 556 U.S. at 886. An objectively intolerable probability of bias exists where

"significant and disproportionate influence—coupled with a temporal relationship between the election and a pending case" are present. *Id.* In such situations, the Court held, "The failure to consider objective standards requiring recusal is not consistent with the imperatives of due process." *Id.*

Subsequent cases have made clear that *Caperton* is not limited to its facts or cases involving campaign contributions. *See, e.g.*, *Gacho v. Wills*, 986 F.3d 1067, 1075 (7th Cir. 2021). The *Caperton* standard applies in situations where state judicial conduct rules may not require recusal. *Id.* at 1071. While the Supreme Court has clarified that *Caperton* recusal is reserved for extraordinary circumstances, the relevant factors are the magnitude of campaign involvement, the timing of the pending litigation, and the objective appearance of partiality. *Caperton, 556 U.S. at 886.*

In any circumstances where a judge has indicated how he or she would rule in an ongoing case before the court, impartiality is destroyed. A judge cannot say, "This issue is at stake in the upcoming election (so vote for me to rule a certain way when the issue comes up)," which is the unfortunate impression of the "Team" ad that stated, "Rights are at Stake in Pennsylvania's Supreme Court Election," when talking specifically about abortion. *See Team* at 0:10. Ruling on *Allegheny Reproductive* would undermine the appearance of impartiality we expect of our jurists.

The posture of the present case—where this Court has no further information on the factual record to make its judgments than it did in 2024—creates an appearance of an objectively intolerable probability of bias. A decision on the merits by this Court at this time, without recusal due to the campaign activities of several of its members, could call into question not just the Court's decision but its reputation for integrity and impartiality as a tribunal. A better course would be to remand the case for further development of the facts and zealous advocacy on both sides of this issue for a more informed decision on the merits.

CONCLUSION

This Court has compelling reasons to remand this case in its current posture. Requiring the Commonwealth Court to conduct rigorous fact-finding ensures that this Court's orders are followed and that litigants have a fair chance to build their cases. Development of the evidentiary record is necessary for proper resolution of the case and mitigates the likelihood that campaign statements about *Allegheny Reproductive* will be seen as predictive of its outcome. Remanding this case will ensure that this Court's rulings are respected by lower courts and the public.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I certify pursuant to Pa.R.A.P. 531 that this brief does not exceed 7,000 words.

CERTIFICATE OF COMPLIANCE WITH RULE 127

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties via PACFile.

Respectfully submitted,

*/s/*Randall L. Wenger
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