

In the
Indiana Supreme Court

Members of the Medical Licensing Board of
Indiana, et al.,

Appellants/Defendants,

v.

Planned Parenthood Great Northwest, Hawai'i,
Alaska, Indiana, Kentucky, Inc., et al.,

Appellees/Plaintiffs.

Supreme Court Case No.
22S-PL-338

Trial Court Case No.
53C06-2208-PL-1756

Order

Appellees' Petition for Rehearing is hereby DENIED.
Done at Indianapolis, Indiana, on 8/21/2023.



FOR THE COURT

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush
Chief Justice of Indiana

Massa, Slaughter, and Molter, JJ., concur.
Rush, C.J., concurs with separate opinion.
Goff, J., dissents with separate opinion.

Rush, C.J., concurring.

Earlier this summer, we found that Article 1, Section 1 of the Indiana Constitution protects a woman’s right to terminate a pregnancy to protect her life or to protect her from a serious health risk. Though we have yet to consider the scope of these constitutional protections, the latter is not tethered to the “serious health risk” exception contained in Senate Bill 1. See Ind. Code § 16-34-2-1(a)(1)(A), (a)(3); *Members of the Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw.*, 211 N.E.3d 957, 976–77 (Ind. 2023). As a result, Section 1 could protect a woman’s right to obtain an abortion under circumstances that extend beyond the current law.

Given that possibility, I am deeply concerned about Senate Bill 1’s impact on Hoosier women’s constitutional right to seek medical care that is necessary to protect their life or to protect them from a serious health risk. And I am likewise concerned about the law’s impact on healthcare providers who must determine whether to provide that care and potentially expose themselves to criminal penalties and professional sanctions.

But Plaintiffs have not properly put these concerns before us. They have asked us to order that the original injunction—which enjoins the State from enforcing Senate Bill 1 **in its entirety**—remain in effect while they return to the trial court with a request for a narrower injunction that is “addressed to the breadth of the abortion right that this Court held to be protected by Article 1, Section 1 of the Indiana Constitution.” A majority of this Court, however, has already concluded that the original injunction was improper. And Plaintiffs acknowledge our appellate courts have never granted the relief they seek. There is simply no sound legal basis for an interim injunction that is even broader than the relief Plaintiffs intend to pursue in the trial court. And for good reason, our system requires Plaintiffs to first seek their proposed, narrower relief in the trial court, which, unlike our Court, can receive and weigh competing evidence, including expert testimony. Thus, I concur in the Court’s decision to deny rehearing.

Goff, J., dissenting from denial of rehearing.

Just over a month ago, this Court found that the Indiana Constitution protects a woman’s right to terminate a pregnancy to save her life or protect her health. Although we have yet to consider the scope of this liberty, it could well extend to situations not covered by the “serious health risk” exception contained in Senate Bill 1. *See* Ind. Code §§ 16-34-2-1(a)(1)(A)(i), (a)(3) (2022).

Senate Bill 1 does not prohibit abortions that are necessary “to prevent death or a serious risk of **substantial and irreversible physical impairment of a major bodily function,**” but this exception “does **not** include **psychological or emotional conditions,**” and a “medical condition may not be determined to exist based on a claim or diagnosis that the woman will engage in **conduct that she intends to result in her death or in physical harm.**” I.C. § 16-18-2-327.9. That means abortion is not permitted in response to (1) conditions that cause serious pain, suffering, or disability without irreversible impairment; (2) severe psychiatric illnesses, which may require medication that can’t be taken during pregnancy; or (3) psychiatric issues that may lead to suicide or self-harm. These are all potentially severe medical problems. And seeking medically necessary treatment for them likely falls within the ambit of the constitutional right to protect one’s life and health.

Unless our colleagues in the General Assembly act to address these deficiencies, the State must be enjoined from enforcing Senate Bill 1 in ways that prevent women from seeking necessary medical aid. No one yet knows the precise contours of the life and health protections guaranteed by the Indiana Constitution. But, for the sake of the lives and health of Hoosier women, our healthcare professionals and our justice system need to know as quickly as possible. Having declared the right of a woman to protect her health, this Court should not now let that right go unprotected.

Accordingly, I would leave a revised statewide injunction in place, restraining enforcement of Senate Bill 1 in circumstances where a physician has determined in good faith that an abortion is medically necessary. This would be for a limited time—perhaps 60 days—so the trial court can hear arguments and evidence and consider whether to enter a

new injunction. Maintaining this restriction for now would provide the added benefit of preserving a stable legal environment for women, healthcare providers, and law enforcement. Alternatively, of course, the General Assembly could modify the statute to take account of the concerns expressed above.