

# Insights

## Take Five: 5 Things You Need to Know About Indiana Government - June 2022

---

June 30, 2022

By: Amy M. Levander and Bianca Mizimakoski

### 1. Special Session

On June 24, in response to the U.S. Supreme Court decision on *Dobbs vs. Jackson Women's Health Organization*, lawmakers released statements confirming that the special session will be used to address abortion restrictions. On June 29, lawmakers announced the special session will convene on July 25. However, no details on the language of proposed legislation regarding abortion have been confirmed. Below are statements issued by the governor and legislative leadership:

Governor Eric Holcomb: "The Supreme Court's decision is clear, and it is now up to the states to address this important issue. We'll do that in short order in Indiana. I've already called the General Assembly back on July 6, and I expect members to take up this matter as well. I have been clear in stating I am pro-life. We have an opportunity to make progress in protecting the sanctity of life, and that's exactly what we will do."

Senate President Pro Tempore Rod Bray: "Indiana has a strong record as a pro-life state, and I am pleased the Supreme Court ruled to return power to the states with regard to this important issue. With the final decision in hand, we can begin to formulate a policy that is right for Indiana that protects unborn children and cares for the health and lives of mothers and their babies. I expect we will be able to work on that in the upcoming special session. We certainly realize this is an extremely contentious and potentially polarizing issue. We will proceed with this conversation in a civil and substantive way so that all sides have the opportunity to be heard as we chart a course for Hoosiers."

Speaker of the House Todd Huston: "I strongly believe we'll couple any action with expanding resources and services to support pregnant mothers, and care for their babies before and after birth."

Senate Minority Leader Greg Taylor: "This ruling will plunge us back into a society where the most personal aspect of a woman's life will be at the mercy of her state legislature. Indiana will enter a bygone era where a woman is forced to carry unexpected and unsafe pregnancies to term—with no regard for her

personal choice, her physician's advice or her circumstances or potential risks. And let's be clear, women will die... The outcome of banning abortion care will have a drastic impact on our entire state. Due to decades of underinvestment in key social infrastructure, Indiana does not have the ability to support a forced-birth society."

House Democratic Leader Phil GiaQuinta: "Put plainly, access to abortion has allowed women and families to plan their futures on their terms. It's given women freedom, economic mobility and safety. Now, all of that is under threat. Today's decision rolls back nearly half a century of reproductive health protections, and House Democrats are prepared to fight whatever regressive legislation House and Senate Republicans put forth. We still believe that medical decisions – and especially serious and difficult ones like abortion – are best made between a woman and her doctor, not by the government."

Under Indiana law, the Legislature may remain in special session for a period of not more than 30 session days or 40 calendar days following the day the special session begins. We will provide further updates as more information becomes available. Please let any member of the Governmental Affairs team know if you have any questions.

## 2. Automatic Tax Rebate

On June 22, Governor Holcomb signed a **proclamation** calling for a special session to discuss plans to return approximately \$1 billion of the state's current \$6 billion budget surplus to Hoosiers. Lawmakers will be called back to the Statehouse starting July 25.

Holcomb's proposal would give an extra \$225 to taxpayers in addition to the \$125 automatic taxpayer under Indiana's "**Use of Excess Reserves**" law. In total, each eligible Hoosier would receive about \$350, married couples filing jointly would receive about \$700.

"This is the fastest, fairest and most efficient way to return taxpayers' hard-earned money during a time of economic strain," Holcomb said. "Indiana's economy is growing and with more than \$1 billion of revenue over current projections, Hoosier taxpayers deserve to have their money responsibly returned. I'm happy to be able to take this first step and look forward to signing this plan into law as soon as possible."

## 3. New Supreme Court Justice

Governor Holcomb appointed Appellate Judge Derek Molter as Indiana's newest Supreme Court Judge, replacing retiring Justice Steven David. Molter was chosen from three finalists selected in April by **Indiana's Judicial Nominating Commission**. A native of Newton County, Molter joined the Indiana Court of Appeals in October of 2021, and previous to that worked in private practice. Molter earned his law degree in 2007 from the Indiana University Maurer School of Law, graduating in the top 3% of his class.

Speaking about his judicial philosophy, Molter said that he interprets the Constitution "consistent with the understanding of that text at the time it was enacted or ratified" – an approach often called "originalism."

"The virtue of that philosophy is that it anchors the court to ensure that it's exercising its judicial role. Under our separation of powers, that's the only role the judges are here to perform; they're not here to perform the legislative role," Molter said. "And so, the virtue of that philosophy is that ... it keeps the court in that lane."

#### 4. Statewide Candidates Selected at Conventions

On June 18, delegates at the Indiana Republican Party and Indiana Democratic Party conventions voted on nominees for statewide offices.

Daniel Elliott, the chair of the Morgan County Republican Party was selected as the nominee for state treasurer over 3 other candidates. Elliott, a social conservative popular among anti-establishment Republicans won by three votes on the third round of voting. He will face the Democratic nominee Jessica McClellan, the two-term Monroe County treasurer in November.

Republican incumbent Tera Klutz will face ZeNai Brooks in the state auditor race. Both candidates have experience as Certified Public Accountants.

Diego Morales won the Republican nomination for Secretary of State over incumbent Holli Sullivan, Knox County Clerk David Shelton, and former Libertarian candidate for Secretary of State Paul Hager. Sullivan was appointed by Governor Holcomb last year after the retirement of Connie Lawson. Morales faces scrutiny over his work history in then-Secretary of State Todd Rokita's office. Morales has announced that he would like to see early voting days cut in half, statewide audits after every election, and require those voting absentee by mail to attach a copy of their voter ID.

Morales will face Democratic nominee Destiny Wells, a U.S. Army Reserves Lieutenant Colonel and former deputy attorney general. No Democrat has won the secretary of state's office since current Indianapolis Mayor Joe Hogsett was reelected for the office in 1990.

#### 5. Resolution of Emergency Powers Dispute

The Indiana Supreme Court **ruled** in favor of Governor Eric Holcomb in his lawsuit against the Indiana General Assembly over HEA 1123 (2021). The legislation would have allowed the Legislature to call an emergency session if a statewide public health emergency has been declared by the governor.

The Indiana Supreme Court unanimously **ruled** that HEA 1123 violates the **Indiana Constitution**. The Court found that allowing the Legislative Council to set an emergency session through simple resolution is in violation of Article 4 Section 9 of the Indiana Constitution "**by authorizing an emergency session to be set through a simple resolution, rather than a properly enacted bill**" as the Indiana Constitution requires. The legislation also violates the Constitution's separation of powers clause in Article 3 Section 1, which vests the authority to call a special session outside of legislative session solely under the authority of the governor.

The five justices unanimously ruled that "Under our Constitution, the General Assembly simply cannot do what the challenged law permits absent a constitutional amendment."

The Supreme Court also rejected Attorney General Todd Rokita's claim that Holcomb does not have the authority to hire outside legal counsel to challenge HEA 1123.

In response to the ruling, House Speaker Todd Huston told the media "I respect the Indiana Supreme Court's opinion on House Enrolled Act 1123, and we'll consider all options moving forward". Senate President Pro Tem Rod Bray also responded, stating "We are still in the process of reviewing the opinion, and while I am disappointed in the outcome of the lawsuit, I respect the Supreme Court's decision. We will work collaboratively to find a way forward that serves the best interests of the State of Indiana".

Governor Holcomb responded to the ruling, saying "From the beginning, this case presented important procedural, statutory and Constitutional questions that only the courts could answer. Today, the Indiana Supreme Court has provided clarity and finality on these important issues. I appreciate the patience and humility Speaker Huston and Senator Bray have shown throughout the entire process, which I always sought to match. With this critical matter resolved, we'll continue focusing on building a prosperous state full of opportunity for all."

*Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.*