

**ARIZONA SUPREME COURT**

PLANNED PARENTHOOD ARIZONA, ) No. CV-23-0005-PR  
INC., et al., )  
 ) Court of Appeals Division Two  
 ) No. 2CA-CV-22-0116  
 )  
 ) Plaintiffs/Appellants, )  
 )  
 ) v. )  
 ) Pima County Superior Court  
 ) No. C127867  
 )  
 ) KRISTIN K. MAYES, ATTORNEY )  
 ) GENERAL OF THE STATE OF )  
 ) ARIZONA, et al., )  
 )  
 ) Defendants/Appellees, )  
 )  
 ) and )  
 )  
 ) ERIC HAZELRIGG, M.D., as guardian )  
 ) ad litem of all Arizona unborn infants, )  
 )  
 ) Intervenor/Appellee. )

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**BRIEF OF AMICI CURIAE LEAGUE OF WOMEN VOTERS OF  
ARIZONA AND ARIZONA BUSINESS OWNERS<sup>1</sup>**

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<sup>1</sup> The parties have consented to the filing of this amicus brief.

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Pursuant to Arizona Rule of Civil Appellate Procedure 16(b)(1)(A), the League of Women Voters of Arizona (“LWVAZ”) and certain Arizona Business Owners (“Business Owners”)<sup>2</sup> submit this amicus brief in support of Planned Parenthood of Arizona, Inc.

### **INTEREST OF AMICI CURIAE<sup>3</sup>**

LWVAZ is an affiliate of the League of Women Voters (the “League”), a nonprofit, nonpartisan, grassroots organization that has dedicated itself to democratic government through public service and empowering and informing voters. LWVAZ consists of a statewide organization and five local chapters with approximately 900 members statewide. LWVAZ began as an organization focused on the needs of women and empowering women voters, but has evolved into an organization concerned with educating, advocating for, and empowering all Arizonans. LWVAZ’s long history of promoting democracy lends it a unique perspective as amicus curiae. The League has a strong interest

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<sup>2</sup> A list of Arizona Business Owners amici curiae is included as Appendix 1.

<sup>3</sup> No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or any person other than amici curiae and its counsel made a monetary contribution to the preparation or submission of this brief.

in ensuring women have equal access to fundamental rights such as voting, healthcare, and bodily autonomy. Over the past twenty years, the League has advocated for health care policy solutions, working to provide Americans with objective information about health care systems and proposed reforms.

Amici curiae Business Owners are individuals who own and operate businesses in different industries throughout Arizona, including real estate, retail, health care, and professional services. Abortion restrictions negatively affect Business Owners' workforce, individual businesses, and, in turn, Arizona's economy. Amici Business Owners are uniquely positioned to understand, support, and promote their respective workforce's rights.

## **INTRODUCTION**

The question before the Court is straightforward: did the court of appeals properly apply the well-established principles of statutory construction and construe two abortion statutes to give each as much meaning as possible? Despite the litany of arguments attempting to reframe an issue of statutory interpretation to a policy debate, the answer is: unequivocally, yes.

Enforcement of the near-total abortion ban first enacted in 1864 pre-statehood and now codified in A.R.S. § [13-3603](#) (“Territorial Ban”) in lieu of the more recently enacted 15-week abortion ban codified in A.R.S. § [36-2322](#) (“15-Week Law”) will negatively affect Arizona and its citizens. Abortion rights and economic rights are interrelated. Access to abortion care affects women’s<sup>4</sup> participation in the workforce and, in turn, Arizona’s economy. Critically, enforcement of the Territorial Ban is an anti-democratic proposition that ignores the will and votes of women and business owners.

## **ARGUMENT**

The Territorial Ban effectively bans abortion, except when necessary to save a pregnant person’s life, and calls for a mandatory prison sentence of two to five years for a person who violates its terms. In contrast, the 15-Week Law permits physicians to perform abortions

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<sup>4</sup> This brief discusses the effects of abortion bans and restrictions on “women.” Amici curiae acknowledge that not all people who can become pregnant identify as women, including transgender and non-binary individuals. The brief’s use of the term “women” reflects the language in Arizona’s current statutory scheme and most data that reflects an absence of underlying data on gender identity and gender expression. Amici curiae recognize that abortion bans and restrictions on reproductive rights harm all people who can become pregnant.

up to 15 weeks and in medical emergencies. A.R.S. § 36-2322 (B). When harmonized, the statutes “make clear that physicians are permitted to perform abortions as regulated by Title 36 regardless of § 13-3603. Thus, physicians who perform abortions in compliance with Title 36 are not subject to prosecution under § 13-3603.” [\*Planned Parenthood Arizona, Inc. v. Brnovich\*](#), 254 Ariz. 401, 405 ¶ 13 (App. 2022), *review continued* (Aug. 4, 2023). Both statutes can co-exist. Holding otherwise takes away the fundamental right to vote of those who voted for the 15-Week Law, including those who can become pregnant and Arizona Business Owners. And critically, such a result would violate democratic principles. Women in Arizona did not have the right to vote when the Territorial Ban was enacted.

**I. THE TERRITORIAL BAN WILL NEGATIVELY AFFECT ARIZONA BUSINESS OWNERS AND WOMEN.**

Abortion is “both a matter of human rights and a business issue.”<sup>5</sup> Abortion and economic prosperity are interconnected; the “loss of abortion rights means the loss of economic security, independence, and

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<sup>5</sup> Emma Kinery, [\*Arizona Abortion Restrictions Could Curb Business, Investors Warn\*](#), BLOOMBERG (Mar. 8, 2022), <https://www.bloomberg.com/news/articles/2022-03-08/investors-warn-arizona-abortion-restrictions-could-curb-business>.



mobility for millions of women.”<sup>6</sup> Critically, the interests most affected by the Territorial Ban—women’s interests—were not represented when the ban was enacted, nearly 150 years ago. The Territorial Ban became law in 1864, forty-eight years *before* women in Arizona could vote.

**A. Enforcing the Territorial Ban Will Harm the Interests of Arizona Business Owners and Women.**

When passing Arizona’s fiscal year 2023 budget, the same executive administration that signed the 15-Week Law emphasized the importance of Arizona’s “pro-business tax and regulatory environment coupled with the fundamental belief in the basic freedom that people should go about their daily lives as they see fit[.]”<sup>7</sup> The then-administration stated that based on this “pro-business environment,” “many economists predict that Arizona will be among the nation’s leaders in the recovery from the pandemic[.]” *Id.* at 14. Enforcing the

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<sup>6</sup> Asha Banerjee, [Abortion rights are economic rights](#), Working Economics Blog (ECONOMIC POLICY INSTITUTE) (May 18, 2023), <https://www.epi.org/publication/economics-of-abortion-bans/> (last accessed Oct. 4, 2023, 12:10 p.m.).

<sup>7</sup> [State of Arizona Executive Budget Summary Fiscal Year 2023](#), at 3 (Jan. 2022), <https://www.azospb.gov/Documents/2022/FY%202023%20Summary%20Book.pdf>.

Territorial Ban would undermine the support for businesses and fundamental freedoms espoused by Arizona’s executive.

Learning from other states where significant abortion bans have already been enacted, these laws have a notable impact on the decisions business owners make. After Indiana enacted a near-total abortion ban (with exceptions only for certain cases of rape, incest, fatal fetal abnormality, or where the woman faces severe health consequences), in August 2022, Eli Lilly, one of the state’s biggest employers, stated it would “be forced to plan for more employment growth outside our home state.”<sup>8</sup> States without abortion bans in place are actively lobbying to pull businesses away from state with abortion bans.<sup>9</sup>

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<sup>8</sup> Lora Kelley, [Major Indiana Employers Criticize State’s New Abortion Law](https://www.nytimes.com/2022/08/06/business/indiana-companies-abortion.html?unlocked_article_code=hQ7N52BekLa9Ph2jal3LKRZuq2WYPYMD7g8t7SnfsrYwFhN0it8DVM53XJLSBsswUKpzz28LJnZli8kz36xpEQ2DGMTOKhsXNLPljmvyna4XxXURCKQQkwA-jF7D2SXPZEea334euNRHITGGXof6_K2sNwFBprllB08qPqASXrJp0Blr2oYMMR8d1PF_KI3bSQx0OfbKsQlxy-fC2b76t-QmG2I_R5w25Pz5lJXjF5nvbVW_qdTLWZ0ZHNyR89yPszf8SCfqaAljS5uL0-aSz_Q2szDxeuZMFlobtAbu_3FVj2HQesH_hX-E9bOsgR3hjldMEdtfJMmU4if1JKecI1gWt-4A&smid=url-share), N.Y. TIMES (Aug. 6, 2022), [https://www.nytimes.com/2022/08/06/business/indiana-companies-abortion.html?unlocked\\_article\\_code=hQ7N52BekLa9Ph2jal3LKRZuq2WYPYMD7g8t7SnfsrYwFhN0it8DVM53XJLSBsswUKpzz28LJnZli8kz36xpEQ2DGMTOKhsXNLPljmvyna4XxXURCKQQkwA-jF7D2SXPZEea334euNRHITGGXof6\\_K2sNwFBprllB08qPqASXrJp0Blr2oYMMR8d1PF\\_KI3bSQx0OfbKsQlxy-fC2b76t-QmG2I\\_R5w25Pz5lJXjF5nvbVW\\_qdTLWZ0ZHNyR89yPszf8SCfqaAljS5uL0-aSz\\_Q2szDxeuZMFlobtAbu\\_3FVj2HQesH\\_hX-E9bOsgR3hjldMEdtfJMmU4if1JKecI1gWt-4A&smid=url-share](https://www.nytimes.com/2022/08/06/business/indiana-companies-abortion.html?unlocked_article_code=hQ7N52BekLa9Ph2jal3LKRZuq2WYPYMD7g8t7SnfsrYwFhN0it8DVM53XJLSBsswUKpzz28LJnZli8kz36xpEQ2DGMTOKhsXNLPljmvyna4XxXURCKQQkwA-jF7D2SXPZEea334euNRHITGGXof6_K2sNwFBprllB08qPqASXrJp0Blr2oYMMR8d1PF_KI3bSQx0OfbKsQlxy-fC2b76t-QmG2I_R5w25Pz5lJXjF5nvbVW_qdTLWZ0ZHNyR89yPszf8SCfqaAljS5uL0-aSz_Q2szDxeuZMFlobtAbu_3FVj2HQesH_hX-E9bOsgR3hjldMEdtfJMmU4if1JKecI1gWt-4A&smid=url-share).

<sup>9</sup> Alexander Burns, [States with Abortion Bans Risk Losing their Economic Edge](https://www.nytimes.com/2022/07/11/us/politics/abortion-ban-states-), N.Y. TIMES (July 11, 2022), <https://www.nytimes.com/2022/07/11/us/politics/abortion-ban-states->

The economic losses for states with abortion bans in place or restrictive abortion laws is measurable. The Institute for Women’s Policy Research (“IWPR”) found that restrictive abortion laws cost state and local economies \$105 billion annually<sup>10</sup> due to reduced workforce participation and earnings, coupled with increased time off and turnover among women ages 15 to 44 years old.<sup>11</sup> Although women in

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businesses.html?unlocked\_article\_code=Y9Q-LU1qJ5vEEUDAq1ti8Ozh0vdl1w4P9rk0DsbUT7\_S6Gl4dVCJVjFuQFVnjFq36PW6betRCklykSwOLOy3XsLHKQH9-kwftKmG7jmmdVnh94jA0yqzBiP1j5JruaAp1BXw9wtFbrgUVvxJh80Qc32Bcq3s9Oj1QBzvO22dGz\_wtrkzquI7ZrImkIlCsKr7e\_gtjp3o-ibyy2cw\_cejs8p2PV1q4dRuop6GogUPFn3KbIaDYbd6QhSRPoKJtR9t8CXl9M-acE9aiuPm1hB-w7vCXhvcPFDgfgO9bkRCX55B5E8IsMOBd0kKAAoEWW3Wv0Ef3\_Aps0E0E3PpkNpsbn\_ZNj7BFUKpU9V7JGU&smid=url-share.

<sup>10</sup> Lauren Hoffman, Osub Ahmed, et al., [State Abortion Bans Will Harm Women and Families’ Economic Security Across the U.S.](https://www.americanprogress.org/article/state-abortion-bans-will-harm-women-and-families-economic-security-across-the-us/), CENTER FOR AMERICAN PROGRESS (Aug. 25, 2022), <https://www.americanprogress.org/article/state-abortion-bans-will-harm-women-and-families-economic-security-across-the-us/>. This figure was compiled using three years (January 2018 – December 2020) of U.S. Bureau of Labor Statistics data from the monthly Current Population Surveys.

<sup>11</sup> [IWPR Research Shows Negative Impact of Abortion Bans on State Economies](https://iwpr.org/iwpr-research-shows-negative-economic-impact-of-abortion-bans-on-state-economies-2/#:~:text=IWPR's%20research%20estimates%20that%20state,ages%2015%20to%2044%20years.), INSTITUTE FOR WOMEN’S POLICY RESEARCH (Dec. 1, 2021), <https://iwpr.org/iwpr-research-shows-negative-economic-impact-of-abortion-bans-on-state-economies-2/#:~:text=IWPR's%20research%20estimates%20that%20state,ages%2015%20to%2044%20years.>

Arizona had better abortion access in 2020 prior to the overturn of *Roe*, Arizona's abortion restrictions had measurable effects on key economic indicators. The Center for American Progress quantified the economic impact to women caused by abortion restrictions in Arizona to include: (1) a gender wage gap of \$8,452; (2) female poverty rate of 13.8%; (3) female-headed families poverty rate of 33.1%; and (4) child poverty rate of 18.8%.<sup>12</sup>

Abortion restrictions harm Arizona businesses and the state's economic growth. The effects of abortion restrictions on women and their families' economic security are more pronounced in states, like Arizona, where abortion restrictions exist.<sup>13</sup> When women lack access to necessary benefits and support to balance work and family—such as paid family and medical leave and workplace flexibility—and face increased caregiving responsibilities, they are forced to cut back on work hours or leave the workforce entirely. *Id.* A 2023 poll conducted by CNBC and Momentive found that 23% of working women, and 29% of

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<sup>12</sup> Hoffman, et al., *supra* footnote 10, at Figure 3 (States with at least one abortion ban on the books have some of the worst economic outcomes for women and families).

<sup>13</sup> *Id.*

women making more than \$100,000 per year, will not work in a state that bans or limits access to abortion.<sup>14</sup> The data is clear: women do not want to, and sometimes cannot, work in a state that prohibits access to abortion.

Plainly, “[r]eproductive injustice affects who can get work, who can go to work, and who can stay at work.” [\*The Labor and Delivery of Reproductive Justice for Workers: The Post-Dobbs Workforce\*](#), 136 Harv. L. Rev. 1676 (2023). Rich and diverse social science literature has examined both the detrimental effect of abortion restrictions on women’s lives, compared with the individual and societal economic benefits of abortion access.<sup>15</sup> Over 150 economists with expertise in the field of causal inference filed a brief in *Dobbs v. Jackson Women’s Health Organization*, explaining they had isolated and measured the

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<sup>14</sup> See [\*CNBC and Momentive Release Results of “Women at Work” Annual Survey\*](#), CNBC NEWS RELEASES (Mar. 1, 2023), <https://www.cnbc.com/2023/03/01/cnbc-and-momentive-release-results-of-women-at-work-annual-survey.html>; see also Laura Wronski, [\*Momentive Poll: Women at Work 2023\*](#), MOMENTIVE (Mar. 1, 2023), <https://www.momentive.ai/en/blog/cnbc-women-at-work-2023/>.

<sup>15</sup> [\*Brief of Amici Curiae Economists in Support of Respondents\*](#), at 1, 3, *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022), No. 19-1393, 2021 WL 4341729.

effects of abortion access on birth rates, marriage, educational attainment, occupations, earnings, and financial stability. *Id.* The *Dobbs* economist amici asserted that abortion access reduced teen motherhood by 34% and teen marriage by 20%. *Id.*

The relationship between abortion access and economic health is not theoretical. Protecting abortion rights creates a stronger economy and greater opportunities for businesses to flourish.

**B. The Territorial Ban Pre-Dates the Right to Vote for Women in Arizona.**

The right to vote is “a fundamental matter in a free and democratic society.” [\*Harper v. Va. State Bd. of Elections\*](#), 383 U.S. 663, 667 (1966) (citation and quotation marks omitted). “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” [\*Wesberry v. Sanders\*](#), 376 U.S. 1, 17 (1964).

Not a single woman voted on the Territorial Ban. Women had no ability to vote for legislators, and had no right to propose a ballot initiative or referendum. The Territorial Ban became law in 1864, forty-eight years *before* women in Arizona could vote. It was not until 1912

that women in Arizona were granted the fundamental right to vote and, by extension, the right to decide on the laws governing their lives and freedom.<sup>16</sup>

Although the Territorial Ban was not voted on by a single woman, approximately 50.1% of Arizona's population are women.<sup>17</sup> Working adults would prefer to live in a state where abortion is legal and accessible by a 2-to-1 margin.<sup>18</sup> A recent survey of Arizona voters demonstrated that most Arizonans are in favor of some level of abortion

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<sup>16</sup> [1912 Arizona Initiative and Referendum Publicity Pamphlet General Election](https://azmemory.azlibrary.gov/nodes/view/102780) at 11, ARIZONA MEMORY PROJECT, Arizona State Library, Archives and Public Records, <https://azmemory.azlibrary.gov/nodes/view/102780>.

<sup>17</sup> Arizona Commerce Authority, U.S. Census Bureau, 2021 Demographics, [State of Arizona, Population by Gender](https://www.azcommerce.com/oeo/population/demographics-census-data/), <https://www.azcommerce.com/oeo/population/demographics-census-data/>.

<sup>18</sup> Todd C. Frankel, Taylor Telford, Danielle Abril, [After state abortion fights, corporate America braces for end of Roe](https://www.washingtonpost.com/business/2022/05/04/companies-abortion-decision/), WASH. POST (May 4, 2022), <https://www.washingtonpost.com/business/2022/05/04/companies-abortion-decision/>; [State Social Policies: Impact on Talent Mobility and Expectations for Businesses Across America](https://www.bsr.org/reports/Morning_Consult_-_State_Social_Policies.pdf), MORNING CONSULT (Mar. 2022), [https://www.bsr.org/reports/Morning\\_Consult\\_-\\_State\\_Social\\_Policies.pdf](https://www.bsr.org/reports/Morning_Consult_-_State_Social_Policies.pdf).

access.<sup>19</sup> The same survey found that to be true out of 68% of women, regardless of political party. *Id.* Nine out of ten voters support the freedom to decide.<sup>20</sup> Of those Arizona voters surveyed, 59% reported they would be more likely to vote for a candidate who opposes the Territorial Ban.<sup>21</sup>

Giving effect to the pre-statehood Territorial Ban and bypassing a woman's fundamental right to vote violates democratic principles. See [\*Harrison v. Laveen\*](#), 67 Ariz. 337, 342 (1948) (“To deny the right to vote, where one is legally entitled to do so, is to do violence to the principles of freedom and equality.”).

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<sup>19</sup> [\*Poll shows majority of Arizonans support some form of legal abortion\*](#), KAWC (Sept. 30, 2022), <https://www.kawc.org/news/2022-09-30/poll-shows-majority-of-arizonans-support-some-form-of-legal-abortion>.

<sup>20</sup> Press Release, [\*New Polling Shows 9 in 10 Voters in Arizona Support the Freedom to Decide\*](#), Reproductive Freedom for All (Feb. 28, 2022), <https://reproductivefreedomforall.org/news/new-polling-shows-9-in-10-voters-in-arizona-support-the-freedom-to-decide/> (discussing [\*Change Research survey results\*](#) of 692 voters in Arizona, available at: <https://reproductivefreedomforall.org/wp-content/uploads/2022/02/Arizona-NARAL-Memo-1.pdf>).

<sup>21</sup> Stephen Clermont, [\*Memorandum to NARAL Pro-Choice America\*](#) RE: Arizona Survey Results, CHANGE RESEARCH (Feb. 28, 2022), <https://reproductivefreedomforall.org/wp-content/uploads/2022/02/Arizona-NARAL-Memo-1.pdf>.



## CONCLUSION

The court of appeals properly gave effect to the Territorial Ban, the 15-Week Law, and other relevant statutory provisions. The question—who decides<sup>22</sup> on abortion, and by extension, women’s fundamental freedom to control their bodies and all other aspects of life that flow from pregnancy—is not before the Court. That issue is properly decided by Arizona’s voters. Holding otherwise would affect Arizona’s economic growth and would contravene fundamental principles of democracy.

RESPECTFULLY SUBMITTED this 4th day of October, 2023.

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<sup>22</sup> Roberta W. Francis, [The Pro-Choice League](https://msmagazine.com/2022/01/21/pro-choice-league-of-women-voters/), MS. MAGAZINE (Jan. 21, 2022), <https://msmagazine.com/2022/01/21/pro-choice-league-of-women-voters/>.

## APPENDIX 1

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**ARIZONA SUPREME COURT**

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INC., et al., )  
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Plaintiffs/Appellants, ) No. 2CA-CV-22-0116  
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 ) No. C127867  
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GENERAL OF THE STATE OF )  
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Defendants/Appellees, )  
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and )  
 )  
ERIC HAZELRIGG, M.D., as guardian )  
ad litem of all Arizona unborn infants, )  
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Intervenor/Appellee. )

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**CERTIFICATE OF COMPLIANCE**

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Business Owners*

## CERTIFICATE OF COMPLIANCE

Pursuant to Arizona Rule of Civil Appellate Procedure 14(a)(5), undersigned counsel certifies that this Amicus Curiae Brief is doubled-spaced, uses proportionately spaced typeface, was prepared in Century Schoolbook 14-point font, and does not exceed 12,000 words.

RESPECTFULLY SUBMITTED this 4th day of October, 2023.

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**ARIZONA SUPREME COURT**

PLANNED PARENTHOOD ARIZONA, ) No. CV-23-0005-PR  
INC., et al., )  
 ) Court of Appeals Division Two  
Plaintiffs/Appellants, ) No. 2CA-CV-22-0116  
 )  
v. ) Pima County Superior Court  
 ) No. C127867  
KRISTIN K. MAYES, ATTORNEY )  
GENERAL OF THE STATE OF )  
ARIZONA, et al., )  
 )  
Defendants/Appellees, )  
and )  
ERIC HAZELRIGG, M.D., as guardian )  
ad litem of all Arizona unborn infants, )  
 )  
Intervenor/Appellee. )

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**CERTIFICATE OF SERVICE**

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I certify that on October 4, 2023, Amici Curiae electronically filed this Amicus Curiae Brief and e-served a copy of the same, via AZ TurboCourt, on the following persons:

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**NOTICE OF CONSENT OF PARTIES**

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## NOTICE OF CONSENT OF ALL PARTIES

Pursuant to Arizona Rule of Civil Appellate Procedure 16(b)(1)(A), undersigned counsel certifies that the parties have consented in writing to the filing of this Amicus Curiae Brief.

RESPECTFULLY SUBMITTED this 4th day of October, 2023.

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