SUPREME COURT OF ARIZONA

PLANNED PARENTHOOD ARIZONA, INC., et al.,

Plaintiffs/Appellants,

v.

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; DENNIS McGRANE, Yavapai County Attorney,

Intervenors/Appellees.

Supreme Court
No. CV-23-0005-PR

Court of Appeals
Division Two
No. 2 CA-CV 2022-0116

Pima County
Superior Court
No. C127867

[FILED WITH THE WRITTEN CONSENT OF ALL PARTIES]

BRIEF OF CENTER FOR ARIZONA POLICY AS *AMICUS CURIAE* IN SUPPORT OF INTERVENORS/APPELLEES

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INTEREST OF *AMICUS CURIAE*

Center for Arizona Policy (CAP) is a pro-life, not-for-profit organization that engages in legal and public-policy efforts. CAP advocated for the adoption of certain laws at issue here and seeks to ensure that Arizona law is interpreted properly.

INTRODUCTION[1]

Arizona law has always existed to protect children in the womb, but its most protective law was facially enjoined for one reason—the U.S. Supreme Court's "abuse of judicial authority" in *Roe v. Wade*. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2243 (2022); *Nelson v. Planned Parenthood Ctr. of Tucson, Inc.*, 19 Ariz. App. 142, 152 (1973).[2] But the legislature never lost hope. So as other states repealed laws that were unenforceable under *Roe*,[3] Arizona maintained A.R.S. § 13-3603's protection for children from conception.[4]

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[1] To promote judicial economy, *amicus curiae* incorporates the arguments made in its brief in support of the petition for review and focuses on other arguments here.

[2] *See also Planned Parenthood Ctr. of Tucson, Inc. v. Nelson*, No. 127867 (Ariz. Super. Ct. Mar. 27, 1973) (declaratory judgment and injunction), *available at* https://www.appeals2.az.gov/APL2NewDocs1/COA/950/3731523.PDF.

[3] *Compare Dobbs*, 142 S. Ct. at 2253 (noting that when *Roe* was decided, thirty states "prohibited abortion at all stages except to save the life of the mother"), *with* Paul Blumenthal, *These States Will Ban Abortion Now That Roe Is Overturned*, HUFFPOST (June 14, 2022), https://bit.ly/3I3jWOy ("Eight states have pre-*Roe* abortion bans still on their books . . . .").

[4] Arizona's abortion prohibition was found at A.R.S. § 13-211 before the legislature recodified it at § 13-3603. 1977 Ariz. Sess. Laws ch. 142, § 99 (1st Reg. Sess.).

With *Roe*'s potential demise on the horizon, the legislature explicitly embraced § 13-3603 when passing S.B. 1164, which prohibited most abortions after fifteen weeks. A.R.S. §§ 36-2321 to -2326. And now that *Roe* is behind us, § 13-3603 should again protect unborn children of *all ages* from physicians who might otherwise take their lives via elective abortions. But Respondents and the lower court insist that § 13-3603's plain language should be ignored, that § 13-3603 should be gutted to govern only non-physicians—even though abortions by non-physicians were already forbidden—and that abortions can occur at nearly the same rate as they did under *Roe*.[5] They are wrong.

This brief addresses a few discrete aspects of Respondents' arguments. First, although Respondents seek to cast doubt on the legislature's intent to protect all unborn children by pointing to instances of pro-life bills or ideas never becoming law, each example Respondents provide can be explained on other grounds. In contrast, given Respondents' attacks on § 13-3603, it may be difficult for them to explain why bills to repeal § 13-3603's protection for unborn children have failed for five consecutive years.

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[5] In Arizona, "[a]bout 94% [(13,072)] of abortions" performed on residents in 2021—the year before the fifteen-week law—occurred at "15 or fewer weeks." Ariz. Dep't of Health Servs., *Abortions in Arizona: 2021 Abortion Report* 17 (Dec. 31, 2022), https://bit.ly/3pxPFkf.

Second, while Respondents argue that § 13-3603 is an older, more general law that should be replaced by newer, more specific laws, that argument falls short for several reasons: there is no conflict between the laws calling for one to displace the other; legislative enactments require § 13-3603 to be preserved; § 13-3603 was enjoined when the newer laws were enacted; and a codified rule of statutory construction requires § 13-3603 to be interpreted in the way that provides the greatest protection to unborn children.

Third, Respondents' suggestion that the legislature should have repealed its more recently enacted protections for unborn children if it wished for § 13-3603 to return to full effect is unpersuasive. It ignores the reality that having multiple layers of protection for unborn children is prudent in this highly litigious field.

ARGUMENT

I. Respondents' focus on legislative inaction is incomplete and unavailing.

Faced with actual legislative *enactments* to protect children from conception, Respondents seek to further their effort to eviscerate § 13-3603 by pointing to instances of legislative *inaction*. But this effort falls short. At the outset, there is the issue that "[r]ejection . . . of a proposed bill is an unsure and unreliable guide to statutory construction." *City of Flagstaff v. Mangum*, 164 Ariz. 395, 401 (1990). That is particularly true of the examples Respondents provide, all of which can be explained by a multitude of considerations unrelated to the legislature's position on

protecting unborn children. Moreover, Respondents' survey of legislative inaction is incomplete; efforts to repeal § 13-3603 have failed time after time, further confirming the legislature's intent that § 13-3603 protect children from conception following *Roe*'s demise.

A. Respondents' examples of legislative inaction do nothing to reveal legislative intent regarding the protection of unborn children.

Respondents point to bills that were introduced and failed—and even *ideas* that *could have* become bills—to argue that the legislature wished to leave children in the womb unprotected through fifteen weeks' gestation. But this argument requires unfounded speculation that ignores codified legislative intent, legislative history, and practical considerations. Ultimately, each instance of inaction can be explained by reasons unrelated to the legislature's position on abortion.

First, Respondents point to a failed effort in 2022 to pass "a prohibition on all medication abortion (H.B. 2811)." Att'y General's Suppl. Br. ("AG Suppl.") 17-18; *see also* Pima County Att'y's Suppl. Br. ("Pima Suppl.") 16 (noting that the fifteen-week law was passed the same year that the legislature "considered but failed to pass a ban criminalizing all medication abortion"). But this bill's failure does not mean that the legislature supports chemical abortion. In fact, in voting against the bill, one legislator explained that she is "about as pro-life as they come," but she worried that the bill would "hurt other people" because she believed it would criminalize medications "used to treat Cushing's syndrome" and

to help people in other contexts outside abortion. *Deb. on H.B. 2811 Before the Ariz. H.*, 55th Leg., 2d Reg. Sess., at 07:36:33 (Feb. 24, 2022) (statement of Rep. Udall), https://tinyurl.com/5xwfeehh.

This explanation, which the legislator had no obligation to articulate, provides an important reminder: a bill that some would classify as "pro-life" may fail for reasons other than the legislature's position on protecting unborn children.

Second, Respondents posit that if the legislature truly wished to protect children younger than fifteen weeks' gestation, it would have passed an abortion bill providing for "a *privately enforceable* ban after 6 weeks (S.B. 1339)." AG Suppl. 17-18 (emphasis added); Pima Suppl. 16. But this bill may have failed simply because of unease with the private-enforcement mechanism.[6] Additionally, with the *Dobbs* case pending, pro-life legislators likely concluded that *Roe* would either soon be overturned—resulting in § 13-3603 protecting children from conception—or that a heartbeat law would be difficult to defend if *Roe* survived.

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[6] *See, e.g.*, Reese Oxner & James Barragán, *Abortion Providers and Gun Rights Advocates are "Strange Bedfellows" in Fight to Strike Down Texas's New Abortion Law*, TEXAS TRIBUNE (Nov. 2, 2021), https://tinyurl.com/57pspsf5 (explaining that "gun rights advocates" were "fearful" that the type of private-enforcement mechanism used in a Texas heartbeat law "could later be applied to infringe on gun ownership"); Shawna Mizelle, *Idaho Governor Signs Bill Modeled After Texas' New Abortion Law*, CNN (Mar. 23, 2022), https://tinyurl.com/3pkjvr3y (noting that Idaho Governor Brad Little signed a heartbeat law, but also said that he "fear[ed] the novel [private] enforcement mechanism will in short order be proven both unconstitutional and unwise").

Third, the Attorney General references an article suggesting that a legislator sought to introduce a bill prohibiting abortion and was thwarted, with then-House Majority Leader (now Speaker) Ben Toma suggesting to the legislator that there were insufficient votes. AG Suppl. 18-19. But the article also explains that this effort was launched on the "long-awaited last night of the 2022 legislative session" while "House members were sleep-deprived from the previous two late-night sessions and had just returned to work . . . following a lockdown" after law enforcement used "tear gas to disperse" protestors. Ray Stern, *2 Republicans Argue over Last-Minute Push for Abortion Ban at Arizona Legislature*, ARIZ. REPUBLIC (July 3, 2022), https://tinyurl.com/mpvv4n4s. Allowing the eleventh-hour bill proposal would have meant that "lawmakers couldn't finish their work that night and would have to come back two extra days." *Id.* Moreover, the article indicates that that the legislator championing the effort "didn't let leadership know about the proposed bill," "didn't follow the rules to introduce it," and did not even have "an actual bill prepared." *Id.*

On top of all that, many legislators undoubtedly believed that § 13-3603 would become fully effective with *Roe* out of the way. Even Speaker Toma asserts that position here. Br. *Amici Curiae* Speaker of the Arizona House of Representatives Ben Toma and President of the Arizona Senate Warren Petersen Supp. Pet. Review 11 ("[T]he Legislature's explicit affirmation that S.B. 1164 did

not repeal A.R.S. § 13-3603 underscores that S.B. 1164 would serve as a partial proxy for A.R.S. § 13-3603 until a reversal of *Roe* could imbue the latter with full effect.").[7]

Thus, it requires significant speculation to conclude that the comment about a lack of the requisite votes related to the legislative desire to protect unborn children. It seems more likely that it was about acting outside of ordinary procedures and surprising exhausted legislators with an effort to extend the legislative session to consider a yet-unwritten bill when some "considered the proposed legislation unnecessary." *See City of Flagstaff*, 164 Ariz. at 401. Indeed, the article indicates that a floor vote was held regarding whether the legislator would be recognized "to make a motion about his proposal" to introduce a last-minute bill. *See* Stern, *supra*. Presumably, he was not recognized.

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[7] Planned Parenthood Arizona argues that Senator Barto, the primary sponsor of S.B. 1164, "did not consider S.B. 1164 to trigger a total abortion ban." Planned Parenthood Arizona Resp. Ten *Amicus Curiae* Brs. Supp. Pet. Review 16-17. In support, it points to Senator Barto's comments about the fifteen-week bill providing an opportunity to save additional lives and how she would protect children from conception if she could. *Id.* But those statements merely reflect the reality that Senator Barto *could not* protect children from conception with *Roe* in place, but that she might be able protect children at fifteen weeks as the U.S. Supreme Court was evaluating Mississippi's fifteen-week law. Indeed, Senator Barto's decision to specify in S.B. 1164 that she was *not* repealing § 13-3603 and her oral references to "our underlying bill that bans abortion" demonstrate her belief that overturning *Roe* would result in § 13-3603 again protecting children from conception. *See* Br. Center for Arizona Policy Supp. Pet. Review 10 (referencing statements of Senator Barto).

Finally, in a surprising move, the Pima County Attorney ("Pima County") argues that if the legislature really wished to save the lives of all children from elective abortions, they would have taken action in the 2023 legislative session after the lower court refused to allow § 13-3603 to be enforced according to its terms. *See* Pima Suppl. 17-18. This assertion ignores political realities. Governor Katie Hobbs, who assumed office in January 2023, campaigned as an abortion supporter, even condemning S.B. 1164's protection for children after fifteen weeks' gestation. *See* Elect Katie Hobbs, *Katie Hobbs Condemns Extreme Abortion Ban* (Mar. 30, 2022), https://tinyurl.com/3pvdpwdk. And she "said she'd veto any legislation that further restricts abortion." Jonathan J. Cooper, *GOP Quiet as Arizona Democrats Condemn Abortion Ruling*, ASSOCIATED PRESS (Sept. 24, 2022), https://tinyurl.com/zyp77nyk. So it would be futile for the legislature to act in 2023 to try to correct the erroneous decision below.

In sum, Respondents' efforts to use legislative inaction to suggest that the legislature wished to allow abortion through fifteen weeks' gestation all fail. Each instance of inaction is explainable consistent with the view that the legislature intended to protect unborn children from the moment life begins.

B. Efforts to repeal § 13-3603 failed—even after *Roe* was overturned and the present dispute commenced—bolstering the view that the legislature desires § 13-3603 to protect children from conception.

In contrast with the instances of legislative inaction that Respondents raise, the failure of certain bills that Respondents never mentioned are quite illuminating.

In the summer of 2018, Justice Anthony Kennedy announced that he was retiring from the U.S. Supreme Court, causing some to conclude that *Roe v. Wade* might "be overturned in the not-too-distant future."[8] With *Roe* as the sole basis for the injunction against § 13-3603's enforcement and *Roe*'s longevity in question, some legislators introduced bills to repeal § 13-3603 in 2019, 2020, 2021, and 2022.[9] And each bill failed.[10]

This recurring effort to repeal a facially enjoined law indicates that some legislators who support legal abortion believed that *Roe* was the only thing preventing § 13-3603 from serving its purpose of protecting unborn children. And they were not the only abortion supporters with this view. In fact, that belief was

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[8] *What Does Anthony Kennedy's Retirement Mean for Roe v. Wade*, CBS NEWS (June 27, 2018), https://tinyurl.com/ycbd99nx.

[9] H.B. 2716, 54th Leg., 1st Reg. Sess. (Ariz. 2019); S.B. 1217, 54th Leg., 2d Reg. Sess. (Ariz. 2020); H.B. 2694, 54th Leg., 2d Reg. Sess. (Ariz. 2020); S.B. 1726, 55th Leg., 1st Reg. Sess. (Ariz. 2021); H.B. 2609, 55th Leg., 1st Reg. Sess. (Ariz. 2021); S.B. 1672, 55th Leg., 2d Reg. Sess. (Ariz. 2022); H.B. 2097, 55th Leg., 2d Reg. Sess. (Ariz. 2022).

[10] Bill status is revealed by visiting https://apps.azleg.gov/BillStatus/BillOverview, selecting the proper legislative session, and entering the bill name in the search box without periods or spaces (e.g., HB2716).

shared by both the Attorney General and Planned Parenthood Arizona. *See* Br. Center for Arizona Policy Supp. Pet. Review 10-11 (providing quotations from both parties).

Just as those seeking to repeal § 13-3603 probably thought that it would go into effect if *Roe* were overturned, the legislators who rejected the repeal efforts likely thought the same thing. And that is why the repeal effort failed—because the legislative majority desired to see § 13-3603 become fully enforceable.

What happened—and did not happen—in 2023 clarifies this reality. By then, the legislators had seen *Roe* fall and one court conclude in this litigation that § 13-3603 should be able to resume its function of prohibiting physicians from electively taking the lives of unborn children at any age. If that outcome had surprised or disturbed the legislature, it could have acted. It chose not to, again rejecting bills to repeal § 13-3603. *See* S.B. 1567, 56th Leg., 1st Reg. Sess. (Ariz. 2023); H.B. 2125, 56th Leg., 1st Reg. Sess. (Ariz. 2023). And unlike the pro-life inaction in 2023 that Pima County pointed to, the legislature's decision against repealing § 13-3603 cannot be attributed to Governor Hobbs's veto power. She would undoubtedly be glad to help repeal § 13-3603 as part of her promise "to fight to expand access" to abortion. *See* OFFICE OF THE GOVERNOR, *Governor Katie Hobbs Signs Executive Order Protecting Reproductive Freedom in Arizona* (June 26, 2023), https://tinyurl.com/38mktzxz.

There is only one reasonable explanation for the legislature's refusal to repeal § 13-3603 despite *Roe*'s fall and this litigation: the legislature intends, as it always has, for § 13-3603 to provide protection from conception according to its plain language. Thus, in seeking to effectively repeal § 13-3603 by gutting it, it is Respondents, not Dr. Hazelrigg,[11] who ask this Court to accomplish "by fiat what the Arizona Legislature could have, but did not, enact legislatively." Pima Suppl. 5.

II. The legislature's express instruction to retain § 13-3603 and to interpret Arizona law to protect unborn children should be respected—especially given the unique circumstances here.

The legislature's desire to maintain § 13-3603's protection for children from conception is shown not just by the bills it rejected—i.e., the bills to repeal § 13-3603—but also by its decision to pass S.B. 1164 (the fifteen-week law) with its statement embracing § 13-3603. Indeed, S.B. 1164 specified that it was not repealing *any* protection for unborn children. And to avoid any doubt about § 13-3603—which was still enjoined under *Roe*—the legislature made § 13-3603 the *one* protection it named specifically in its statement of non-repeal. 2022 Ariz. Sess. Laws ch. 105, § 2 (2d Reg. Sess.) ("This act does not . . . [r]epeal, by implication or otherwise, section 13-3603, Arizona Revised Statutes, or any other applicable state law regulating or restricting abortion.").

[11] References to "Dr. Hazelrigg" in this brief refer to Intervenors/Appellees Eric Hazelrigg and Dennis McGrane.

So why did the legislature go out of its way to specify that it was preserving a law that had been fully enjoined for forty-nine years? The obvious answer is that the legislature intended for § 13-3603 to protect unborn children from elective, physician-provided abortions if *Roe* fell. And Respondents fail to offer a compelling alternative explanation.

The view that § 13-3603 should just regulate "non-physicians"—contrary to its plain language—falls flat. Pima Suppl. 10. Indeed, any notion that the legislature invoked an enjoined law to prevent *only* non-physicians from performing abortions is belied by the fact that Arizona law already prohibited such conduct under *Roe*. A.R.S. §§ 36-2155(A), -2160(A).

Of course, Respondents argue that adding this non-physician limitation to § 13-3603 is necessitated by a perceived statutory conflict. And they argue that, "in cases of conflict, 'the more recent, specific statute governs over an older, more general statute.'" Pima Suppl. 10 (quoting *State v. Jones*, 235 Ariz. 501, 503 ¶ 8 (2014)). But Dr. Hazelrigg has already explained that no conflict exists here. Intervenors/Appellees' Suppl. Br. 9 ("Because Title 36 creates no right to abortion and does not limit § 13-3603, it does not conflict with § 13-3603."). Moreover, the idea of replacing § 13-3603 with newer, more specific statutes must be rejected given the unique circumstances here, including the following:

First, the legislature enacted more recent, specific abortion regulations *because* § 13-3603 was wrongly enjoined under *Roe*. In determining legislative intent, courts should not ignore the potential impact of relevant injunctions. For instance, when a law is fully enjoined and the legislature acts to mitigate harm resulting from the injunction, it is not always safe to assume that the post-injunction enactments are intended to modify the fully enjoined law.

Second, in enacting the most recent specific statute—the fifteen-week law—the legislature expressly said that it was not repealing § 13-3603. 2022 Ariz. Sess. Laws ch. 105, § 2 (2d Reg. Sess.). So regardless of what one might assume when the legislature is silent about an enjoined law, this legislature declared that § 13-3603 remains untainted by subsequent enactments. That statement should be honored.

Finally, concluding that § 13-3603 is displaced by subsequent enactments violates the codified rule of statutory construction specifying that Arizona law "*shall* be interpreted and construed to acknowledge, on behalf of an unborn child at *every stage of development*," the rights available to other citizens. A.R.S. § 1-219(A) (emphasis added). Indeed, construing § 13-3603 to only govern non-physicians—contrary to its plain text—means that physicians will likely deprive about 13,000 children of the most basic right—the right to life—*each year* in Arizona. *See supra* note 5. In contrast, interpreting § 13-3603 to mean what it says

will preserve the right to life for many children. So § 1-219 requires § 13-3603 to be interpreted as written, not as Respondents seek to rewrite it.

Ultimately, courts cannot "amend a statute judicially" nor "read implausible meaning into express statutory language." *Kyle v. Daniels*, 198 Ariz. 304, 306 ¶ 7 (2000). Yet that is exactly what Respondents' position demands.

III. Overlap in laws protecting unborn children is a feature, not a flaw, where legal challenges are an ever-present threat.

Respondents argue that if the legislature desired § 13-3603 to be enforced as written, it should have passed a "trigger law" sending Arizona's more recent abortion laws "to the waste bin." AG Suppl. 1-2; *see also* Suppl. Br. of Planned Parenthood Ariz., Inc. 3 (noting that "the Legislature never signaled any intent to repeal" the fifteen-week law if *Roe* were overturned). And Respondents seem to suggest that by *not* repealing those laws, the legislature showed that it did not really wish § 13-3603 to resume full effectiveness. AG Suppl. 16. ("[T]he Legislature passed the *opposite* of a trigger law, stating unequivocally that it was repealing *nothing*."). Respondents are mistaken.

It is difficult to think of categories of laws that are more likely to face legal challenges than laws protecting unborn children.[12] In this highly litigious field, it could be foolish for a legislature seeking to protect unborn children to repeal its

[12] *See, e.g.*, Carolyn McDonnell, *2023 Q3 Life Litigation Report*, AMERICANS UNITED FOR LIFE, https://tinyurl.com/443c5x9c (listing numerous active lawsuits across the nation challenging laws protecting unborn children).

many protections for them and make *one law* the only thing standing between children and abortionists' deadly forceps. For then a challenge to one law could leave *all* unborn children unprotected. So the legislature's decision to leave in place a multitude of abortion restrictions—none of which can be violated without repercussions—was the prudent course.

For instance, if § 13-3603 becomes enforceable as written, a physician who wishes to end a child's life at sixteen weeks' gestation without medical need will know that doing so is forbidden under both § 13-3603 and the fifteen-week law. And if § 13-3603 one day falls in a subsequent legal challenge, a child at sixteen weeks will still be protected by the fifteen-week law—but not if the legislature had repealed the fifteen-week law as Respondents propose. Thus, multiple layers of protection for unborn children are a feature, not a flaw, in this field.

And it is not irrational for the legislature to fear that § 13-3603 may face challenges down the road. In a media interview, the Attorney General expressed her hostility to the law, calling it "insane and unconstitutional." *Attorney General Mayes Calls 1864 Abortion Law 'Unconstitutional'*, 12NEWS, at 0:51 (Jan. 4, 2023), https://tinyurl.com/2ws3ftmb. And Pima County used its supplemental brief to suddenly try to transform this case into a dispute about the constitutionality of § 13-3603. Pima Suppl. 6, 15-16 (arguing that § 13-3603 "would violate due process because it does not provide physicians clarity" regarding when "abortion is

'necessary' life-saving treatment"). While this argument is waived here,[13] it reinforces the reality that the legislature prudently maintained *all* its laws protecting unborn children while also acting to ensure § 13-3603's full applicability in the event that *Roe* fell.

Granted, if all physicians abide by § 13-3603, some laws—like the one prohibiting abortion for discriminatory reasons—may get dusty. *See* AG Suppl. 12-13 (noting that the law protecting unborn children from losing their lives because of their sex, race, or "genetic abnormality" will never be invoked if physicians only perform abortions when necessary to save a mother's life under § 13-3603 (quoting A.R.S. § 13-3603.02(A))). But the legislature can prefer that outcome to facing a legal ruling about *one* law that—even if ultimately overturned on appeal—leaves *all* unborn children without *any* protection.

Ultimately, if this Court allows the legislature's intent to become effective after five decades of judicial obstruction, physicians will have a simple process to follow. First, they must not perform an elective abortion. Second, if they have to perform an abortion to save a mother's life, they must comply with any other applicable abortion laws—just as they did before *Roe* was overturned. Respondents

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[13] Pima County's references to due process in its briefing before the Court of Appeals related to the multiplicity of statutes governing abortion, not an alleged lack of clarity in § 13-3603 itself. In fact, not only did Pima County fail to argue that § 13-3603 presents a due-process issue because of an alleged lack of clarity, but it suggested the opposite. *See* Appellant Pima County Att'y's Reply Br. 17 ("In 1972, at least, ordinary citizens were on notice of prohibited conduct.")

should not be troubled if the result is that physicians no longer need to worry about certain laws—i.e., those laws enacted to apply only to the elective abortions mandated by *Roe* and that remain on the books lest a court force elective abortion on Arizona again.

CONCLUSION

After five decades of waiting for the U.S. Supreme Court to correct its egregious error in *Roe* and allow Arizona to protect the most innocent and vulnerable, the court below decided to gut § 13-3603—making it do only what the legislature had already accomplished under *Roe*'s restraints. This ruling disregarded the plain text of § 13-3603, the legislature's decision to embrace—and not repeal—§ 13-3603, the legislature's need to mitigate harm while § 13-3603 was enjoined, and § 1-219's rule of statutory interpretation requiring laws to be construed to provide protection to unborn children.

The harms of this flawed decision extend beyond the damage to the rule of law and the legislature's ability to govern to the dozens of children who will face death *each day* that § 13-3603 remains unenforceable as written.

This Court should reverse and remove the injunction.

RESPECTFULLY SUBMITTED this 4th day of October, 2023.

By: /s/ *Samuel D. Green*

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