

1 Daniel C. Barr (Bar No. 010149)
Karin Scherner Aldama (Bar No. 023816)
2 Kristine J. Beaudoin (Bar No. 034853)
Austin C. Yost (Bar No. 034602)
3 **PERKINS COIE LLP**
2901 North Central Avenue, Suite 2000
4 Phoenix, Arizona 85012-2788
Telephone: 602.351.8000
5 Facsimile: 602.648.7000
DBarr@perkinscoie.com
6 KAldama@perkinscoie.com
KBeaudoin@perkinscoie.com
7 AYost@perkinscoie.com
DocketPHX@perkinscoie.com

8
9 Jared Keenan (Bar No. 027068)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF ARIZONA
10 3707 North 7th Street, Suite 235
Phoenix, Arizona 85014
11 Telephone: 602.650.1854
jkeenanacluaz.org

12 *Attorneys for Plaintiffs*

13 **[ADDITIONAL COUNSEL LISTED ON**
14 **SIGNATURE PAGE]**

15 ARIZONA SUPERIOR COURT

16 MARICOPA COUNTY

17 PAUL A. ISAACSON, M.D., and the
18 ARIZONA MEDICAL ASSOCIATION, on
behalf of itself and its members,

19 Plaintiffs,

20 v.

21 STATE OF ARIZONA, a body politic,

22 Defendant.
23
24

No. CV2022-013091

**VERIFIED COMPLAINT FOR
DECLARATORY RELIEF**

(Expedited Relief Requested)

1 Plaintiffs Paul A. Isaacson, M.D., and the Arizona Medical Association allege as follows:

2 INTRODUCTION

3 1. For nearly 50 years, abortion has been legal in Arizona and relied upon by pregnant
4 Arizonans and their families.

5 2. Abortion is also the subject of ongoing debate and legislation by Arizonans'
6 elected representatives: the Arizona Legislature has invested significant time and political capital
7 in passing, repealing, and modifying abortion laws in the decades since 1973. In fact, the
8 Legislature has enacted a comprehensive statutory scheme regulating abortion. Currently,
9 Arizona permits abortion by licensed physicians subject to a number of limitations and
10 restrictions on patients and providers.

11 3. Most recently, the Legislature passed, and Governor Ducey signed, a law
12 permitting physicians to provide abortions through 15 weeks of pregnancy (the "15-Week
13 Law"), which took effect on September 24, 2022. Unlike many other state legislatures that
14 passed "trigger" abortion bans in anticipation of the U.S. Supreme Court's decision in *Dobbs v.*
15 *Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022) ("*Dobbs*"), the Arizona
16 Legislature passed the 15-Week Law.

17 4. Since the *Dobbs* decision was issued on June 24, overturning *Roe v. Wade*, 410
18 U.S. 113 (1973), there has been significant confusion around the status of Arizona's abortion
19 laws, and specifically whether a near total criminal ban on abortion, A.R.S. § 13-3603 (the
20 "Territorial Law"), that was enacted in 1901 but can be traced back to 1864, preempts dozens of
21 existing abortion laws, including the 15-Week Law, and criminalizes otherwise legal, physician-
22 provided abortion care. State officials with enforcement power have either refused to state which
23 abortion laws take precedence or have taken inconsistent positions on the matter.

24

1 5. On July 13, 2022, the Arizona Attorney General filed a Rule 60(b) motion in the
2 Pima County Superior Court seeking to lift an injunction of the Territorial Law that had been in
3 place since 1973. On September 23, 2022, the Pima County Superior Court granted the Attorney
4 General’s motion solely based on the decision in *Dobbs* overruling *Roe v. Wade*. The court
5 declined to reconcile how the Territorial Law is to operate in harmony with Arizona’s more
6 recent and much more robust statutory scheme governing physician-provided abortion care,
7 finding “an attempt to reconcile fifty years of legislative activity procedurally improper in the
8 context of the [Rule 60(b)] motion and record before it.” *Planned Parenthood v. Brnovich*,
9 No. C127867, slip op. at 7 (Ariz. Super. Ct. Sept. 23, 2022). The court went on to state that,
10 “[w]hile there may be legal questions the parties seek to resolve regarding Arizona statutes on
11 abortion, those questions are not for this Court to decide here.” *Id.*¹

12 6. The *Dobbs* decision, along with the Pima County Superior Court’s September 23
13 ruling and the concomitant confusion, have brought abortion services to a halt across the State
14 of Arizona. Due process requires that Plaintiffs, like all Arizonans, have notice of what the law
15 is regarding physician-provided abortion care, including what actions are now criminalized
16 under the Territorial Law. Plaintiffs have no such notice today.

17 7. Arizona courts have a duty to harmonize the Legislature’s enactments as they exist
18 today. The Territorial Law subjects physicians, including Dr. Isaacson and members of the
19 Arizona Medical Association, to harsh criminal penalties of up to five years’ imprisonment for
20 providing healthcare services that have been legal in Arizona for nearly 50 years. A declaratory
21

22 ¹ The issues raised in this petition are also briefed in Planned Parenthood’s Response to
23 the Attorney General’s Rule 60(b) motion. *See Resp. to Defs.’ Rule 60(b) Mot. for Relief from*
24 *J., Planned Parenthood v. Brnovich*, No. C127867 (Ariz. Super. Ct. July 20, 2022). Because the
Pima County Superior Court declined to rule on these issues and indicated they should instead
be raised in a separate proceeding, Dr. Isaacson and members of the Arizona Medical
Association are bringing this action and largely raise the same issues here.

1 judgment is necessary to make clear that Arizona’s Territorial Law against providing abortions,
2 now codified as A.R.S. § 13-3603, must be harmonized with the robust statutory scheme that the
3 Legislature has enacted over the last 50 years to allow licensed physicians to provide abortion
4 care subject to certain restrictions.

5 **PARTIES, JURISDICTION, AND VENUE**

6 8. Plaintiff Dr. Paul A. Isaacson, M.D., is a licensed, board-certified obstetrician-
7 gynecologist. Dr. Isaacson received his medical training at Tufts University School of Medicine
8 and has been providing high-quality and safe abortion care in Arizona for more than 20 years.
9 Dr. Isaacson is the co-owner of, and one of two physicians at, Family Planning Associates
10 Medical Group, an independent abortion clinic located in Phoenix which offers surgical and
11 medication abortion services. Dr. Isaacson also leads one of the only two abortion-training
12 programs available to Arizona’s OB-GYN medical residents. Dr. Isaacson brings this suit on his
13 own behalf.

14 9. The Arizona Medical Association (“ArMA”) is a professional membership
15 organization with nearly 4,000 physician members, including at least 75 member obstetrician-
16 gynecologists. It is the largest organization of physicians in Arizona. Its mission includes
17 advocacy for physicians’ “freedom to deliver care in the best interests of patients” and for the
18 “health of all Arizonans.” Among ArMA’s membership are physicians who care in myriad ways
19 for pregnant patients, including providing prenatal and miscarriage care, and/or who provide
20 abortion care. ArMA sues on behalf of itself and its members.

21 10. Defendant State of Arizona is a body politic.

22 11. This Court has jurisdiction under A.R.S. §§ 12-123, 12-1831, and the Arizona
23 Constitution.

24 12. Venue is proper under A.R.S. § 12-401.

1 **GENERAL ALLEGATIONS**

2 **A. The Territorial Laws**

3 13. The Territorial Law was first enacted prior to statehood and imposes a near total
4 criminal ban on abortion in Arizona. Violation of the Territorial Law is a felony punishable by
5 at least two and up to five years in prison. The Territorial Law contains only a single, narrow
6 exception when abortion is necessary to save the woman’s life. It does not permit abortion in the
7 case of a threat to the patient’s health, or in cases of rape or incest.

8 14. In 1864, when Arizona was still a United States Territory, the 1st Arizona
9 Territorial Legislature enacted the “Howell Code” as a basis for Arizona’s law. The Howell Code
10 included a ban on providing abortions that is substantially similar to the Territorial Law. [Ex. A]²

11 15. On information and belief, the Territorial Law in its current form was formerly
12 codified as A.R.S. § 13-211, and likely codified at a different part of the code prior to that.

13 16. On information and belief, three laws criminalizing abortion were enacted in 1901
14 (together, the “Territorial Laws”) and provided the following:

15 A.R.S. § 13-3603 (formerly § 13-211) – A person who provides, supplies
16 or administers to a pregnant woman, or procures such woman to take any medicine,
17 drugs or substance, or uses or employs any instrument or other means whatever,
18 with intent thereby to procure the miscarriage of such woman, unless it is
19 necessary to save her life, shall be punished by imprisonment in the state prison
20 for not less than two years nor more than five years.

21
22 ² Chapter 10, Section 45 of the Howell Code reads, in relevant part: “[E]very person who
23 shall administer or cause to be administered or taken, any medicinal substances, or shall use or
24 cause to be used any instruments whatever, with the intention to procure the miscarriage of any
woman then being with child, and shall be thereof duly convicted, shall be punished by
imprisonment in the Territorial prison for a term not less than two years nor more than five
years.” [Ex. A at 7]

1 A.R.S. § 13-3605 (formerly § 13-213) – A person who willfully writes,
2 composes or publishes a notice or advertisement of any medicine or means for
3 producing or facilitating a miscarriage or abortion, or for prevention of conception,
4 or who offers his services by a notice, advertisement or otherwise, to assist in the
5 accomplishment of any such purposes, is guilty of a misdemeanor.

6 A.R.S. § 13-3604 (formerly § 13-212) – A woman who solicits from any
7 person any medicine, drug or substance whatever, and takes it, or who submits to
8 an operation, or to the use of any means whatever, with intent thereby to procure
9 a miscarriage, unless it is necessary to preserve her life, shall be punished by
10 imprisonment in the state prison for not less than one nor more than five years.

11 17. The Territorial Laws were operative from their passage until enjoined in 1973.
12 *Nelson v. Planned Parenthood Ctr. of Tucson, Inc.*, 19 Ariz. App. 142, 152 (1973).

13 **B. *Planned Parenthood Center of Tucson, Inc. v. Nelson***

14 18. In 1971, the Planned Parenthood Center of Tucson, Inc. and several medical
15 providers filed suit in the Pima County Superior Court against the Arizona Attorney General and
16 the Pima County Attorney, arguing that the Territorial Laws violated the U.S. and Arizona
17 Constitutions. [Ex. B] After a bench trial, the Superior Court agreed with the plaintiffs, entered
18 a declaratory judgment that the Territorial Laws violated federal and state law, and permanently
19 enjoined their enforcement. [Ex. C]

20 19. The Court of Appeals, Division Two, disagreed with that conclusion and reversed.
21 *Nelson*, 19 Ariz. App. at 150. However, the U.S. Supreme Court decided *Roe v. Wade* a mere
22 ten days later.

23 20. On January 30, 1973, and after a motion for rehearing that followed *Roe*, the Court
24 of Appeals reversed its original conclusion and held that, based on *Roe*, “the statutes in question

1 are unconstitutional as to all.” *Id.* at 152. The court then entered a modified order and
2 permanently enjoined enforcement of the Territorial Laws as to all persons. [Ex. D]

3 **C. Abortion Laws Enacted Since 1973**

4 21. In the nearly five decades since 1973, the Arizona Legislature enacted a detailed,
5 comprehensive statutory regime that recognizes abortion as a lawful medical procedure and
6 regulates it in Arizona. This modern regime includes, for example:

- 7 • A.R.S. § 36-449.01 *et seq.* (1999) (amended 2021) (requirements for the
8 licensure and operation of abortion facilities, including but not limited to pre-
9 abortion screening procedures, equipment that must be present in the facility,
10 and the procedures to be followed after an abortion is provided);
- 11 • A.R.S. § 36-2155 (2009) (prohibiting anyone other than a “physician” from
12 performing “surgical abortion[s]”);
- 13 • A.R.S. § 36-2160(A) (2021) (stating “[a]n abortion-inducing drug may be
14 provided only by a qualified physician”) (as further defined in the
15 accompanying footnote, the “Physician-Only Laws”³);

16 ³ There are a collection of statutes and administrative rules that prohibit anyone other than
17 a licensed physician from providing abortions and related services (the “Physician-Only Laws”).
18 *See* A.R.S. §§ 32-1606(B)(12) (prohibiting the Arizona State Board of Nursing from “decid[ing]
19 scope of practice relating to abortion”); 32-2531(B) (prohibiting physician assistants from
20 performing surgical abortions); 32-2532(A)(4) (prohibiting physician assistants from performing
21 medication abortions); 36-449.03(C)(3) (requiring a physician to be “available” at a clinic at
22 which medication or surgical abortions are performed); 36-449.03(D)(5), (G)(4), (5), (8)
23 (requiring a physician to estimate the gestational age of the fetus, to be present at, or in the
24 vicinity of, a clinic where medication or surgical abortions are performed, to provide counseling,
and to provide specific follow-up); 36-2152(A), (B), (H)(1), (M) (permitting only physicians to
provide minors with abortion services); 36-2153(A) (requiring physicians to provide
counseling), (E) (prohibiting non-physicians from performing surgical abortions); 36-2155
(same); 36-2156(A) (requiring “the physician who is to perform the abortion,” “the referring
physician,” or “a qualified person working in conjunction with either physician” to facilitate
provision of an ultrasound); 36-2158(A) (requiring physicians to provide information “orally
and in person”); 36-2160(A) (“[a]n abortion-inducing drug may be provided only by a qualified
physician”); 36-2161(A)(16), (20)-(21), (D) (requiring “the physician performing the abortion”

- 1 • A.R.S. § 36-2153 *et seq.* (2009) (amended 2021) (requiring patients to give
2 informed consent, provided certain information is given 24 hours before an
3 abortion) (“24-hour Law”);
- 4 • A.R.S. § 36-2161 (2010) (amended 2021) (requiring a hospital or health care
5 facility where abortions are performed to submit reports to the Department of
6 Health Services that must include, among other things, information about
7 whether the abortion is “elective” or due to health considerations, whether the
8 pregnancy is the result of sexual assault or incest, fetal tissue disposition, and
9 demographic information about the patient).

10 22. Further, the Legislature has repeatedly amended criminal laws on abortion under
11 Title 13 since 1973. In 1997, the Legislature enacted A.R.S. § 13-3603.01, prohibiting “partial
12 birth abortion.” Then, in 2011, it passed A.R.S. § 13-3603.02(A)(1), prohibiting abortions “based
13 on . . . sex or race.” In 2021, it amended A.R.S. § 13-3603.02 to also prohibit abortions “sought
14 solely because of a genetic abnormality of the child,” A.R.S. § 13-3603.02(A)(2) (the “Reason
15 Law”); *Isaacson v. Brnovich*, No. 2:21-cv-01417, 2021 WL 4439443 (D. Ariz. Sept. 28, 2021),
16 *vacated*, 142 S. Ct. 2893 (2022).

17 23. When enacting the race and sex-selective abortion prohibition and the Reason
18 Law, the Legislature provided an exception for medical emergencies that is broader than the
19 exception in the Territorial Law. A.R.S. §§ 13-3603.02(A), 36-2151(9). In the same bill that
20 passed the Reason Law, the Legislature repealed A.R.S. § 13-3604, removing the ability to
21

22 to create certain records); and 36-2162.01(A), (C) (requiring physicians to complete certain
23 records as either the “referring physician” or the “physician who is to perform the abortion”).
24 The Physician-Only Laws also include the following regulations: A.A.C. R9-10-1507(B)(2), (3);
A.A.C. R9-10-1509(A)(2), (B)(1), (5), (C), (D)(3)(a); A.A.C. R9-10-1510(B)(1); and A.A.C.
R9-10-1512(A)(6) and (D)(3)(d).

1 prosecute individuals who seek an abortion. *See* S.B. 1457, 55th Leg., 1st Reg. Sess. (Ariz.
2 2021) § 3.

3 **D. 2022 Legislative Session**

4 24. During the 2022 legislative session, the Legislature considered but did not pass
5 several bills regarding abortion. Specifically, it considered adding a new section, A.R.S. § 13-
6 3604, that would have prohibited medication abortion. H.B. 2811, 55th Leg., 2nd Reg. Sess.
7 (Ariz. 2022). It also considered a privately enforced ban on abortion after approximately six
8 weeks after a patient’s last menstrual period (“LMP”). S.B. 1339, 55th Leg., 2nd Reg. Sess.
9 (Ariz. 2022); H.B. 2483, 55th Leg., 2nd Reg. Sess. (Ariz. 2022).

10 25. Ultimately, the Legislature instead passed the 15-Week Law, S.B. 1164, which
11 provides that “[e]xcept in a medical emergency, a physician may not perform, induce or attempt
12 to perform or induce an abortion” after 15 weeks LMP. S.B. 1164, 55th Leg., 2nd Reg. Sess.
13 (Ariz. 2022).

14 26. After signing the 15-Week Law in March 2022, Governor Ducey announced his
15 belief that it preempted the Territorial Law, stating, “the law of the land today in Arizona is the
16 15-weeks’ law . . . and that will remain [the] law,” regardless of whether the U.S. Supreme Court
17 decides to overrule *Roe v. Wade*.⁴

18 **E. *Dobbs v. Jackson Women’s Health Organization* and Aftermath**

19 27. On June 24, 2022, the U.S. Supreme Court upheld Mississippi’s ban on abortions
20 after 15 weeks LMP. *Dobbs*, 142 S. Ct. at 2242. Immediately following the *Dobbs* decision,
21
22

23 ⁴ Howard Fischer, *Arizona Gov. Ducey: Abortion Illegal After 15 Weeks*, KAWC
24 (Apr. 24, 2022, 6:31 P.M.), <https://www.kawc.org/news/2022-04-24/arizona-gov-ducey-abortion-illegal-after-15-weeks>.

1 Attorney General Brnovich released a statement that “[t]he Arizona Legislature passed an
2 identical law to the one upheld in *Dobbs*, which will take effect in approximately 90 days.”⁵

3 28. Attorney General Brnovich also highlighted his defense of the Reason Law on his
4 Twitter account.⁶

5 29. The Republican Caucus of the Arizona State Senate, however, issued a press
6 release on June 24, 2022, claiming that “effective immediately is A.R.S. 13-3603,” but that the
7 15-Week Law, once it became effective, would operate “in addition to A.R.S. 13-3603.”⁷

8 30. A spokesman for Governor Ducey maintained that “the governor’s intention was
9 clear” when he signed the 15-Week Law that abortions should be banned after 15 weeks.⁸

10 31. Although Attorney General Brnovich did not initially take the position that the
11 Territorial Law would take effect post-*Dobbs*, on June 29, 2022, he posted on Twitter that his
12 office had determined that “A.R.S. 13-3603 is back in effect and will not be repealed in 90 Days
13 by SB1164 [the 15-Week Law].”⁹

14 **F. *Planned Parenthood v. Brnovich***

15 32. Notwithstanding the Attorney General’s representation on June 29, 2022 that the
16 Territorial Law was “back in effect,” on July 13, 2022, Attorney General Brnovich filed a
17 Rule 60(b) motion to lift the *Nelson* injunction with respect to A.R.S. § 13-3603 and to “return[]

18 ⁵ Ariz. Att’y Gen., *Arizona Attorney General Mark Brnovich Applauds Supreme Court*
19 *Decision to Protect Life* (June 24, 2022), [https://www.azag.gov/press-release/arizona-attorney-](https://www.azag.gov/press-release/arizona-attorney-general-mark-brnovich-applauds-supreme-court-decision-protect-life)
20 [general-mark-brnovich-applauds-supreme-court-decision-protect-life](https://www.azag.gov/press-release/arizona-attorney-general-mark-brnovich-applauds-supreme-court-decision-protect-life).

21 ⁶ Mark Brnovich (@GeneralBrnovich), Twitter (June 24, 2022, 10:47 A.M.),
22 <https://twitter.com/GeneralBrnovich/status/1540345852715098113>.

23 ⁷ See AZ Senate Republicans (@AZSenateGOP), Twitter (June 24, 2022, 11:39 A.M.),
24 <https://twitter.com/AZSenateGOP/status/1540404293315964930>.

25 ⁸ Joe Dana, *Arizona Has 2 Abortion Laws on the Books. The Governor and Legislators*
26 *Can’t Agree Which One is in Force*, 12News (June 29, 2022, 2:29 P.M.),
27 [https://www.12news.com/article/news/politics/governor-ducey-gop-lawmaker-disagree-](https://www.12news.com/article/news/politics/governor-ducey-gop-lawmaker-disagree-abortion-law/75-4154b84e-9211-43c3-8dd7-5a5973b7dc04)
28 [abortion-law/75-4154b84e-9211-43c3-8dd7-5a5973b7dc04](https://www.12news.com/article/news/politics/governor-ducey-gop-lawmaker-disagree-abortion-law/75-4154b84e-9211-43c3-8dd7-5a5973b7dc04).

29 ⁹ See Mark Brnovich (@GeneralBrnovich), Twitter (June 29, 2022, 6:34 P.M.),
30 <https://twitter.com/GeneralBrnovich/status/1542275229925249024>.

1 [the law] to what it was prior to *Roe*.” See Att’y Gen.’s Mot. for Relief from J. at 10, *Planned*
2 *Parenthood v. Brnovich*, No. C127867 (Ariz. Super. Ct. July 13, 2022). Planned Parenthood
3 Arizona, Inc. (“PPAZ”), the successor in interest to Planned Parenthood Center of Tucson, Inc.,
4 opposed the motion. Defendant Pima County Attorney Laura Conover joined in PPAZ’s
5 Response, arguing that there was a “legal and practical necessity to harmonize conflicting
6 statutes to provide clarity to the Attorney General and County Attorneys to aid[] in the execution
7 of their prosecutorial duties; and the protection of due process rights for the people of Pima
8 County and throughout Arizona.” Pima Cnty. Att’y’s Joinder in Pl. PPAZ’s Resp. to the Att’y
9 Gen.’s Mot. for Relief from J. at 2, *Planned Parenthood v. Brnovich*, No. C127867 (Ariz. Super.
10 Ct. July 22, 2022).

11 33. On September 23, 2022, the Pima County Superior Court granted the Attorney
12 General’s motion, appearing to allow the Territorial Law to take immediate effect. *Planned*
13 *Parenthood v. Brnovich*, No. C127867, slip op. at 7 (Ariz. Super. Ct. Sept. 23, 2022). The court
14 declined to issue a ruling indicating whether the 15-Week Law or the Territorial Law applies to
15 abortion care provided by licensed physicians or otherwise harmonizing the Territorial Law with
16 Arizona’s modern-day, comprehensive scheme of statutes governing abortion care that remain
17 in effect. *Id.* Instead, the court suggested that PPAZ “file a new action to seek relief it believes
18 appropriate.” *Id.* at 6.

19 34. PPAZ filed a motion on September 26, 2022, to stay the Pima County Superior
20 Court’s order pending appeal. Emergency Mot. for Stay of Order Pending Appeal, *Planned*
21 *Parenthood v. Brnovich*, No. C127867 (Ariz. Super. Ct. Sept. 26, 2022). Pima County Attorney
22 Laura Conover again joined Planned Parenthood’s motion, highlighting the importance of
23 “[h]armonious laws [that] provide the people of Arizona meaningful notice of prohibited
24 activities, and serve to protect medical providers against arbitrary and discriminatory

1 enforcement in violation of their due process rights.” Pima Cnty. Att’y’s Resp. and Joinder in
2 Emergency Mot. for Stay of Order Pending Appeal at 5, *Planned Parenthood v. Brnovich*,
3 No. C127867 (Ariz. Super. Ct. Sept. 27, 2022).

4 35. On September 30, 2022, the Pima County Superior Court denied the stay request.
5 Order, *Planned Parenthood v. Brnovich*, No. C127867 (Ariz. Super. Ct. Sept. 30, 2022).

6 **G. Confusion Over the Status of the Laws**

7 36. The 15-Week Law went into effect on September 24, 2022, 90 days after *sine die*
8 and just one day after the issuance of the Pima County Superior Court’s order lifting the *Nelson*
9 injunction.

10 37. On September 23, 2022, after the Pima County Superior Court’s order had been
11 issued, a spokesperson for Governor Ducey “said the 15-week abortion ban the legislature passed
12 this year goes into effect Saturday and will be the law of the land, despite today’s ruling holding
13 up the older law with jail time for providers.”¹⁰ The spokesperson said, “Governor Ducey was
14 proud to sign SB 1164, which goes into effect tomorrow.”¹¹

15 38. On September 27, 2022, Maricopa County Attorney Rachel Mitchell said:
16 “Friday’s Pima County Superior Court decision regarding abortion and the subsequent appeal
17 have not resolved which law, among conflicting statutes, now applies.”¹² Though she stated that
18 she would not prosecute patients or “revictimize survivors of rape, incest, or molestation,” she
19 did not say the same about prosecuting abortion providers.¹³ She instead indicated that further

20 ¹⁰ Mary Kekatos & Libby Cathey, *Arizona Judge Upholds Century-Old Abortion Ban*,
21 ABC News (Sept. 23, 2022, 9:40 P.M.), <https://abcnews.go.com/US/arizona-judge-upholds-century-abortion-ban/story?id=90375448>.

22 ¹¹ *Id.*

23 ¹² Maricopa Cnty. Att’y’s Off., *Statement from Maricopa County Attorney Rachel*
Mitchell on Pima County Ruling Regarding Abortion, Facebook (Sept. 27, 2022),
[https://www.facebook.com/100068815316644/videos/488507969840324/?__so__=watchlist&](https://www.facebook.com/100068815316644/videos/488507969840324/?__so__=watchlist&__rv__=video_home_www_playlist_video_list)
24 [__rv__=video_home_www_playlist_video_list](https://www.facebook.com/100068815316644/videos/488507969840324/?__so__=watchlist&__rv__=video_home_www_playlist_video_list).

¹³ *Id.*

1 guidance from the courts would be “needed before a decision can be made” on any case submittal
2 relating to abortion.¹⁴

3 39. The Attorney General, in contrast, stated in a September 28 letter to Governor
4 Ducey’s office that, “[i]t is the position of our office that after Friday’s ruling from the [Pima
5 County] Superior Court, A.R.S. § 13-3603 is now in effect statewide” and “[i]t is the duty of
6 every prosecutor to enforce the law as it is written, not how we would like it to be written.”¹⁵

7 40. It is unclear from both the face of the laws and the many inconsistent statements
8 from public officials which law governs in Arizona. An actual and justiciable controversy exists
9 over whether Arizona physicians and providers like Dr. Isaacson and ArMA members may
10 perform abortions under Arizona’s complex regulatory scheme that governs abortion care in this
11 state, *supra* ¶¶ 21–23, without risking criminal prosecution for violating the Territorial Law.

12 41. As a result of the confusion over Arizona’s abortion laws, Dr. Isaacson and other
13 providers, including ArMA members, have suspended providing abortion care in Arizona due to
14 fear of criminal prosecution.

15 42. Due process demands that Dr. Isaacson and his staff, ArMA members, as well as
16 pregnant and soon-to-be pregnant Arizonans and their families, receive clarity on the current
17 state of the law in Arizona with respect to the legality of abortion care.

18 **COUNT I**

19 **(Declaratory Judgment - A.R.S. § 13-3603)**

20 43. Plaintiffs incorporate all previous allegations as if set forth here.
21
22

23 ¹⁴ *Id.*

24 ¹⁵ Letter from Mark Brnovich, Ariz. Att’y Gen., to Anni Foster, Gen. Couns., Ariz. Governor’s Off. (Sept. 28, 2022), <https://www.azag.gov/sites/default/files/2022-09/Ltr%20to%20A%20Foster%20re%20SB1164%20FINAL.pdf>.

1 44. As discussed above, in the nearly 50 years since the Territorial Law was enjoined,
2 the Arizona Legislature passed numerous laws that pertain to the same subject matter as that
3 statute.

4 45. The Territorial Law and Arizona’s modern, comprehensive statutory and
5 regulatory scheme for abortion “relate to the same subject matter,” *Fleming v. Dep’t of Pub.*
6 *Safety*, 237 Ariz. 414, 417 ¶ 12 (2015), because the Territorial Law prohibits abortion unless
7 “necessary to save [the woman’s] life,” and Arizona’s other abortion laws, such as the 15-Week
8 Law, the Physician-Only Laws, and the Reason Law, instead allow for abortion in a broader
9 range of circumstances.

10 46. When “statutes relate to the same subject matter, [courts] construe them together
11 as though they constitute one law and attempt to reconcile them to give effect to all provisions
12 involved.” *Fleming*, 237 Ariz. at 417 ¶ 12; *see also Ridgell v. Ariz. Dep’t of Child Safety*, 253
13 Ariz. 61, 64 ¶ 15 (App. 2022), *as amended* (Apr. 5, 2022) (similar); *Peterson v. Flood*, 84 Ariz.
14 256, 259 (1958) (“[S]tatutes dealing with the same subject should be read together and
15 harmonized if at all possible.”). In doing so and when possible, courts should “avoid
16 interpretations that result in contradictory provisions,” *Premier Physicians Grp., PLLC v.*
17 *Navarro*, 240 Ariz. 193, 195 ¶ 9 (2016), and instead “adopt a construction that reconciles one
18 [statute] with the other, giving force and meaning to all statutes involved,” *UNUM Life Ins. Co.*
19 *of Am. v. Craig*, 200 Ariz. 327, 333 ¶ 28 (2001). This analysis has also been deemed appropriate,
20 for example, “when two statutes appear to conflict,” *id.*, “[w]hen statutory language gives rise
21 to differing interpretations,” *Sw. Gas Corp. v. Indus. Comm’n of Ariz.*, 200 Ariz. 292, 297 ¶ 16
22 (App. 2001), and even “whenever possible” in the course of interpreting related statutory
23 provisions, *Metzler v. BCI Coca-Cola Bottling Co. of L.A.*, 235 Ariz. 141, 145 ¶ 13 (2014).

24

1 47. The Territorial Law relates to abortion and the circumstances in which it may
2 legally be performed, as do the many other statutes and regulations the Legislature has passed
3 on the subject since 1973. *Supra* ¶¶ 13–17, 21–23, 25. And the at-least-perceived inconsistency
4 between the Territorial Law and Arizona’s other abortion laws, including the 15-Week Law, has
5 indisputably given rise to “differing interpretations” from Arizona state officials, including the
6 Attorney General himself. *Supra* ¶¶ 27–32, 34, 37–39. Harmonization is accordingly appropriate
7 here.

8 48. Further, courts must “determine and give effect to the legislature’s intent.”
9 *Advanced Prop. Tax Liens, Inc. v. Sherman*, 227 Ariz. 528, 531 ¶ 14 (App. 2011).

10 49. “Statutes that are in *pari materia* should be read together and harmonized if at all
11 possible . . . In so far as the provisions of a special statute are inconsistent with those of a general
12 statute on the same subject, the special statute will control. The general statute remains
13 applicable, however, to all matters not dealt with in the specific statute.” *Desert Waters, Inc. v.*
14 *Superior Ct. In & For Pima Cnty.*, 91 Ariz. 163, 171 (1962) (citations omitted).

15 50. Thus, this Court must attempt to harmonize the Territorial Law with the
16 Legislature’s subsequently enacted scheme of regulation for abortion providers.

17 51. When interpreting and harmonizing statutes, courts “first look to the plain
18 language of the statute as the most reliable indicator of its meaning.” *Advanced Prop. Tax Liens*,
19 227 Ariz. at 531 ¶ 14; *see also Ridgell*, 253 Ariz. at 64 ¶ 15 (similar). “When an ambiguity or
20 contradiction exists, however, [courts] attempt to determine legislative intent by interpreting the
21 statutory scheme as a whole and consider the statute’s context, subject matter, historical
22 background, effects and consequences, and spirit and purpose.” *UNUM Life Ins. Co. of Am.*, 200
23 Ariz. at 330 ¶ 12 (internal quotation marks and citation omitted). “A cardinal principle
24 of statutory interpretation is to give meaning, if possible, to every word and provision so that no

1 word or provision is rendered superfluous.” *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11
2 (2019).

3 52. And, importantly, “when there is conflict between two statutes, the more recent,
4 specific statute governs over the older, more general statute.” *In re*
5 *Guardianship/Conservatorship of Denton*, 190 Ariz. 152, 157 (1997) (citation omitted).

6 **A. Plain Language**

7 53. The plain language of Arizona’s more recent, more specific statutes regulating
8 abortion supports a harmonized reading of those laws together with the Territorial Law. The text
9 of the Physician-Only Laws, for example, is clear: licensed physicians are allowed to provide
10 abortions subject to Arizona’s other regulations; thus, the Territorial Law’s prohibition applies
11 to non-physicians.

12 54. This interpretation properly gives effect to *all* of the Legislature’s enactments. And
13 it stands far apart from the untenable interpretation that the Territorial Law—which is over 100
14 years old—somehow preempts a host of other subsequently enacted laws and criminalizes nearly
15 all abortions in Arizona, even abortions performed by physicians within the longstanding
16 framework established by the Legislature. Such a reading would not only nullify decades of laws
17 passed by the peoples’ elected representatives, but it would also conflict with the presumption
18 that the “more recent, specific statute governs over an older, more general statute,” since each
19 of the more recently enacted statutes provide more specific regulations of abortion than the
20 Territorial Law. *See UNUM Life Ins. Co. of Am.*, 200 Ariz. at 333 ¶ 29 (cleaned up).

21 55. Through this same lens, this Court must also harmonize the Territorial Law with
22 the now-effective 15-Week Law. The Arizona Legislature chose, more recently and specifically,
23 to allow licensed physicians to provide abortions through 15 weeks LMP, thus leaving the
24 Territorial Law’s prohibition in place to apply to non-physicians. Such a reading conforms with

1 Arizona’s canons of statutory construction: the more specific and recent statute controls, while
2 the “general statute remains applicable . . . to all matters not dealt with in the specific statute.”
3 *Desert Waters, Inc.*, 91 Ariz. at 171.

4 56. The 15-Week Law includes a section on “legislative intent” that states: “This
5 Legislature intends through this act and any rules and policies adopted hereunder, to restrict the
6 practice of nontherapeutic or elective abortion to the period up to fifteen weeks of gestation.”
7 S.B. 1164, 55th Leg., 2nd Reg. Sess. (Ariz. 2022) § 3(B). Nothing in this unequivocal statement
8 of legislative intent supports the position that the Legislature intended to impose a near total
9 criminal ban on abortion. Moreover, this harmonized reading of all of Arizona’s abortion laws
10 gives meaning to the 15-Week Law’s statement that it does not “[r]epeal, by implication or
11 otherwise,” the Territorial Law “*or any other* applicable state law regulating or restricting
12 abortion.” *Id.* § 2 (emphasis added). This clause logically must be read to include, for example,
13 Arizona’s Physician-Only Laws. The Legislature’s intent was therefore to preserve the ability to
14 have all of its abortion laws coexist.

15 57. Indeed, harmonizing the Territorial Law with the 15-Week Law and the other
16 legislative enactments discussed above in a manner that permits physicians to provide abortion
17 care would not only be consistent with the legislative intent cited above, it is also the only
18 interpretation that avoids rendering the 15-Week Law and the other more recent abortion statutes
19 and regulations entirely “meaningless, insignificant, or void,” in direct conflict with black-letter
20 principles of statutory construction. *See, e.g., Mejak v. Granville*, 212 Ariz. 555, 557 ¶ 9 (2006)
21 (“We must interpret the statute so that no provision is rendered meaningless, insignificant, or
22 void.”). For example, it cannot be that abortion is banned except to save the life of the woman
23 (under the Territorial Law), and also that “the practice of nontherapeutic or elective abortion” is
24

1 “restrict[ed]” “to the period up to fifteen weeks of gestation” absent a “medical emergency”
2 (under the 15-Week Law). Such an interpretation would render the 15-Week Law meaningless.

3 **B. Context and Structure**

4 58. The context and structure of the Territorial Law and other existing abortion laws,
5 including the now-effective 15-Week Law, also support this harmonized reading.

6 59. The “context of the statute,” *Glazer v. State*, 237 Ariz. 160, 163 ¶ 12 (2015), refers
7 to an interpretation that “give[s] effect to an entire statutory scheme,” *Backus v. State*, 220 Ariz.
8 101, 104 ¶ 10 (2009); *see also Oaks v. McQuiller*, 191 Ariz. 333, 334 ¶ 5 (App. 1998)
9 (interpreting a claim brought under a single workers’ compensation statute within “the context
10 of the entire statutory scheme” of workers’ compensation statutes “of which it is a part,” and
11 which was designed to protect workers, not tortfeasors).

12 60. Courts “interpret statutory language in view of the entire text, considering the
13 context and related statutes on the same subject.” *Nicaise*, 245 Ariz. at 568 ¶ 11 (citing Antonin
14 Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012)). In so
15 doing, courts “presume that the legislature, when it passes a statute, knows the existing laws,”
16 and they must harmonize statutes if possible to avoid rendering any word or provision
17 meaningless. *Ariz. Chapter of the Associated Gen. Contractors of Am. v. City of Phoenix*, 247
18 Ariz. 45, 47 ¶ 9 (2019).

19 61. The context of the Territorial Law is that it exists as only one part of a robust
20 regulatory scheme that Arizona has developed for abortion providers over the last 50 years. In
21 fact, the Legislature enacted some of these more specific laws in the same title and chapter as
22 the Territorial Law, which is further evidence that the provisions must be read harmoniously. To
23 do otherwise would be to render these later, more specific, and more numerous enactments
24 superfluous, notwithstanding the Court’s duty to give meaning and effect to every provision.

1 **C. Historical Background, Purpose, and Effect**

2 62. The historical background, purpose, and effect of Arizona’s abortion laws,
3 including the now-effective 15-Week Law, also support this harmonization.

4 63. Other proposed legislation that was not passed by the Legislature in the most recent
5 session shows that the currently elected lawmakers considered and rejected other, more stringent
6 regulations on abortion. As noted above, *supra* ¶¶ 24–25, the Legislature considered—but failed
7 to pass—a ban criminalizing all medication abortion. H.B. 2811, 55th Leg., 2nd Reg. Sess. (Ariz.
8 2022). It also considered and failed to pass a privately enforced prohibition on abortions after
9 approximately 6 weeks LMP. S.B. 1339, 55th Leg., 2nd Reg. Sess. (Ariz. 2022); H.B. 2483, 55th
10 Leg., 2nd Reg. Sess. (Ariz. 2022).

11 64. And 2022 was no outlier; indeed, during the prior session in 2021, the Legislature
12 considered—but failed to pass—two bills that would have expressly replaced the Territorial Law
13 altogether and made abortion eligible for prosecution under the homicide chapter—proving that
14 the Legislature knew how to pass more restrictive criminal abortion laws, but expressly declined
15 to do so. *See* H.B. 2650, 55th Leg., 1st Reg. Sess. (Ariz. 2021); H.B. 2878, 55th Leg., 1st Reg.
16 Sess. (Ariz. 2021).

17 65. Beyond that, unlike other state legislatures that passed “trigger laws” under which
18 restrictive abortion laws would immediately spring into place upon the U.S. Supreme Court
19 overruling *Roe v. Wade*, Arizona’s Legislature did not do so. *See, e.g.*, La. Rev. Stat. § 40:1061
20 (“The provisions of this Act shall become effective immediately upon, and to the extent
21 permitted, by the occurrence of any of the following circumstances: (1) Any decision of the
22
23
24

1 United States Supreme Court which reverses, in whole or in part, *Roe v. Wade* . . . thereby,
2 restoring to the state of Louisiana the authority to prohibit abortion.”).¹⁶

3 66. This background of the Legislature’s decision to not pass a trigger law or other
4 more restrictive abortion bans, and instead pass the 15-Week Law, demonstrates that the extreme
5 position the Attorney General took in his motion to lift the *Nelson* injunction—that nearly all
6 abortions should be banned in the State—is squarely at odds with the intent of the Legislature.

7 67. Indeed, Governor Ducey and Arizona Senate Republicans have stated that the 15-
8 Week Law became the operative law upon its September 24, 2022 effective date—a statement
9 with which Attorney General Brnovich also agreed until reversing course on Twitter several
10 days later.¹⁷

11 68. Because a harmonized interpretation of Arizona’s abortion statutes exists—under
12 which meaning can be given to all the Legislature’s enactments—this Court should give them
13 that effect, rather than permit the Territorial Law to nullify decades of legislative work and
14 dozens of later, more specific enactments. *Cf. State ex rel. Montgomery v. Brain*, 244 Ariz. 525,
15 531 ¶ 21 (App. 2018) (courts should interpret statutes “sensibly to avoid reaching an absurd
16 conclusion”).

17 69. Reviving in full a law dating back more than 120 years by default without popular
18 electoral support, and in a manner that obliterates numerous duly enacted laws and regulations

19 ¹⁶ See also Elizabeth Nash & Isabel Guarnieri, *13 States Have Abortion Trigger Bans—*
20 *Here’s What Happens When Roe Is Overturned*, Guttmacher Inst. (June 6, 2022),
21 <https://www.guttmacher.org/article/2022/06/13-states-have-abortion-trigger-bans-heres-what-happens-when-roe-overturned>.

22 ¹⁷ Ariz. Att’y Gen., *Arizona Attorney General Mark Brnovich Applauds Supreme Court*
23 *Decision to Protect Life* (June 24, 2022), [https://www.azag.gov/press-release/arizona-attorney-](https://www.azag.gov/press-release/arizona-attorney-general-mark-brnovich-applauds-supreme-court-decision-protect-life)
24 [general-mark-brnovich-applauds-supreme-court-decision-protect-life](https://www.azag.gov/press-release/arizona-attorney-general-mark-brnovich-applauds-supreme-court-decision-protect-life) (“The Arizona
Legislature passed an identical law to the one upheld in *Dobbs*, which will take effect in
approximately 90 days.”); Mark Brnovich (@GeneralBrnovich), Twitter (June 29, 2022, 6:34
P.M.), <https://twitter.com/GeneralBrnovich/status/1542275229925249024> (“ARS 13-3603 is
back in effect and will not be repealed in 90 days by SB 1164.”).

1 that were passed more recently and deal more specifically with the subject matter, would actually
2 *prevent* the State from carrying out *all* of its duly enacted laws. Ordered liberty requires this
3 Court to make clear the state of the law going forward.

4 70. Finally, harmonization would obviate difficult constitutional questions that might
5 otherwise arise. *See Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 272–73 (1994). “To satisfy due
6 process requirements, statutes must be sufficiently clear and concrete that they provide persons
7 of ordinary intelligence a reasonable opportunity to know what is prohibited and contain explicit
8 standards of application so as to prevent arbitrary and discriminatory enforcement.” *Martin v.*
9 *Reinstein*, 195 Ariz. 293, 317 ¶ 79 (App. 1999) (cleaned up).

10 71. As set forth above, due to the confusion created by multiple inconsistent abortion
11 laws simultaneously in effect in Arizona, absent harmonization, Plaintiffs will lack sufficient
12 notice of which actions are prohibited, and which are not. And, as shown by the statements of
13 Arizona officials above, Plaintiffs are at risk of arbitrary and discriminatory enforcement of those
14 laws should they resume providing abortion care in Arizona.

15 72. For all these reasons, Plaintiffs’ rights, status, or other legal relations are directly
16 affected by the interpretation of the Territorial Law and all abortion laws enacted thereafter by
17 the Legislature, and they are thus entitled to a “declaration of rights, status or other legal relations
18 thereunder.” *See* A.R.S. § 12-1832; *Ariz. Sch. Bds. Ass’n, Inc. v. State*, 252 Ariz. 219 ¶¶ 16–20
19 (2022).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs respectfully request the following relief against Defendant:

22 A. That the Court issue an order to show cause requiring Defendant State of Arizona
23 to show cause, if any exists, as to why the Court should not issue a declaratory judgment
24

1 forthwith, and to establish an expedited briefing schedule to resolve this dispute that raises pure
2 issues of law;

3 B. For a declaratory judgment declaring that, subject to further action by the
4 Legislature, Arizona’s numerous laws that allow a licensed physician to provide an abortion in
5 accordance with the regulatory scheme enacted by the Legislature continue to apply to licensed
6 physicians, and the Territorial Law, A.R.S. § 13-3603, applies to other “person[s]”;

7 C. For an order awarding Plaintiffs their attorneys’ fees under the private attorney
8 general doctrine or any applicable statute or common law doctrine;

9 D. For an order awarding Plaintiffs their taxable costs under A.R.S. §§ 12-341 and
10 12-1840; and

11 E. For any other relief as may be appropriate.
12
13

14 Dated: October 3, 2022

PERKINS COIE LLP

By: /s/ Karin Scherner Aldama

Daniel C. Barr
Karin Scherner Aldama
Kristine J. Beaudoin
Austin C. Yost
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012-2788

Jared Keenan
**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF ARIZONA**
3707 North 7th Street, Suite 235
Phoenix, Arizona 85014

Attorneys for Plaintiffs

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3
4
5
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Gail Deady*
Cici Coquillette*
**CENTER FOR REPRODUCTIVE
RIGHTS**
199 Water Street, 22nd Floor
New York, New York 10038
Telephone: 917.637.3600
gdeady@reprorights.org
ccoquillette@reprorights.org

Attorneys for Paul A. Isaacson, M.D.

Rebecca Chan*
Lindsey Kaley*
Alexa Kolbi-Molinas*
**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION**
125 Broad Street, 18th Floor
New York, New York 10004
Telephone: 212.549.2633
akolbi-molinas@aclu.org
rebeccac@aclu.org
lkaley@aclu.org

Attorneys for Arizona Medical Association

**Pro hac vice forthcoming*

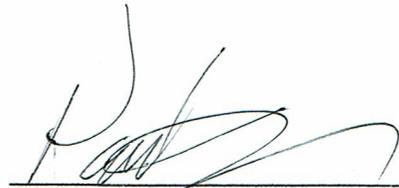
Verification

I, Paul A. Isaacson, M.D., state as follows:

I have read the foregoing Complaint, and I am acquainted with the facts stated therein.
To the best of my knowledge, the facts set forth in the foregoing Complaint are true and accurate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3rd day of October 2022.



Paul A. Isaacson, M.D.

1 **Verification**

2 I, Libby McDannell, state as follows:

3 I am a CEO for the Arizona Medical Association. I am authorized to
4 make this verification for and on behalf of the Arizona Medical Association. I have read the
5 foregoing Complaint, and I am acquainted with the facts stated therein. To the best of my
6 knowledge, the facts set forth in the foregoing Complaint are true and accurate.

7 I declare under penalty of perjury that the foregoing is true and correct.

8
9 Executed this 3rd day of October 2022.

10
11 Libby McDannell
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Exhibit A

THE HOWELL CODE.

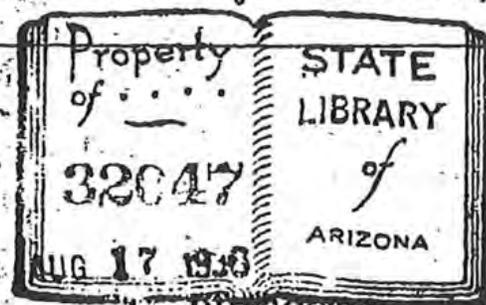
ADOPTED BY THE

First Legislative Assembly

OF THE

TERRITORY OF ARIZONA.

Session begun on the Twenty-sixth day of September,
and ended on the Tenth day of November, 1864, at Prescott.



PRESCOTT:

OFFICE OF THE ARIZONA MINER,

OFFICIAL PAPER OF THE TERRITORY,

1865.

CODE.

[PUBLIC—No. 23.]

AN ACT to confirm the apportionment and amend certain laws of the Territory of Arizona.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the apportionment of members of the legislative assemblies of the Territory of Arizona, elected and convened in the years eighteen hundred and sixty-six, eighteen hundred and sixty-seven, and eighteen hundred and sixty-eight, made by the governor in accordance with the laws of said Territory, be, and is hereby, declared legal and valid under the organic act.

SEC. 2. *And be it further enacted,* That an election for members of the next legislative assembly, and for all township, county, and district officers, and for delegate to the forty-second Congress of the United States, shall be held upon the Tuesday after the first Monday of November, in the year eighteen hundred and seventy, and the governor shall order such election by proclamation to be issued not less than two months previous to said day. In said proclamation he shall declare the number of members of each branch of the legislature to which each county or district of said Territory shall be entitled, and such apportionment shall be based upon the population as shown by the census to be taken in the year eighteen hundred and seventy, under the law of the United States, and if such census is not completed in time, then the apportionment shall be made according to the population as shown by the best information to be obtained. Said election shall be conducted in conformity to the laws of the Territory and of Congress; and the term of office of all township, county, and district officers shall expire upon the thirty-first day of December, eighteen hundred and seventy, and that of all officers elected as herein provided shall begin upon the first day of January, eighteen hundred and seventy-one.

SEC. 3. *And be it further enacted,* That the persons thus elected to the next legislative assembly shall meet at the Capitol on the second Wednesday in January, eighteen hundred and seventy-one.

SEC. 4. *And be it further enacted,* That the governor shall fill by appointment all vacancies in township, county, or district offices in said Territory, until the thirty-first day of December, eighteen hundred and seventy; and until the same time he may remove township, county, and district officers, and fill their places whenever in his judgment the public interest will be promoted thereby.

SEC. 5. *And be it further enacted,* That justices of the peace in said Territory of Arizona shall not have jurisdiction of any matter in controversy where the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed three hundred dollars.

Approved, March 23, 1870.

CERTIFICATE.

TERRITORY OF ARIZONA,
OFFICE OF THE SECRETARY.

I, RICHARD C. McCORMICK, Secretary of the Territory of Arizona, do hereby certify that the HOWELL CODE, as herein contained, is printed as passed by the first Legislative Assembly of the Territory, according to the enrolled copy upon file in my office.



WITNESS my hand and the Seal of the Territory, given at Prescott, this first day of December, A. D. eighteen hundred and sixty-four.

RICHARD C. McCORMICK,
Secretary of the Territory.

With greetings and best wishes to
S L. Kingan Esq Tucson Arizona. Please accept
this copy of the "Howell Code" which for many
years I have preserved as a treasure as it was
my first companion in practice in Tucson
32 years ago.
I know you will cherish and preserve the
old pioneer copy of the first born laws of
Arizona
Tucson January 1st 1904

Sincerely
R C Hughes

THE ORGANIC ACT.

AN ACT to provide a temporary government for the Territory of ARIZONA, and for other purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA, IN CONGRESS ASSEMBLED: That all that part of the present Territory of New Mexico situate west of a line running due south from the point where the south-west corner of the Territory of Colorado joins the northern boundary of the Territory of New Mexico to the southern boundary line of said Territory of New Mexico, be, and the same is hereby, erected into a temporary government by the name of the Territory of Arizona: Provided, that nothing contained in the provisions of this act shall be construed to prohibit the Congress of the United States from dividing said Territory or changing its boundaries in such manner and at such time as it may deem proper: Provided, further, that said government shall be maintained and continued until such time as the people residing in said Territory shall, with the consent of Congress, form a State government, republican in form, as prescribed in the Constitution of the United States, and apply for and obtain admission into the Union as a State, on an equal footing with the original States.

SEC. 2. And be it further enacted, that the government hereby authorized shall consist of an executive, legislative, and judicial power. The executive power shall be vested in a governor. The legislative power shall consist of a council of nine members, and a house of representatives of eighteen. The judicial power shall be vested in a supreme court, to consist of three judges, and such inferior courts as the Legislative Council may by law prescribe; there shall also be a secretary, a marshal, a district-attorney, and a surveyor-general for said Territory, who, together with the governor and judges of the supreme court, shall be appointed by the President, by and with the advice and consent of the Senate, and the term of office for each, the manner of their appointment, and the powers, duties, and the compensation of the governor, legislative assembly, judges of the supreme court, secretary, marshal, district attorney, and surveyor-general aforesaid, with their clerks, draughtsman, deputies, and sergeant-at-arms, shall be such as are conferred upon the same officers by the act organizing the Territorial government of New Mexico, which subordinate officers shall be appointed in the same manner, and not exceed in number those created by said act; and acts amendatory thereto, together with all legislative enactments of the Territory of New Mexico not inconsistent with the provisions of this act, are hereby extended to and continued in force in the said Territory of Arizona, until repealed or amended by future legislation: Provided, that no salary shall be due or paid the officers created by this act until they have entered upon the duties of their respective offices within the said Territory.

Sec. 3. And be it further enacted, that there shall neither be slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted; and all acts and parts of acts, either of Congress or of the Territory of New Mexico, establishing, regulating, or in any way recognizing the relation of master and slave in said Territory, are hereby repealed.

Approved February 24, 1863.

viction thereof, be punished by imprisonment in the Territorial prison for any term not exceeding three years nor less than one year, and be fined in a sum not exceeding one thousand dollars.

SEC. 42. If any person shall willingly and knowingly carry or deliver any written challenge, or verbally deliver any message intended as, or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid as a second, or aid or give countenance thereto, such person being duly convicted thereof, shall be punished by imprisonment in the Territorial prison for any term not exceeding three years nor less than one year, and be fined in a sum not exceeding one thousand dollars.

SEC. 43. If any person shall post another, or in writing or print shall use any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge, he shall be imprisoned in the county jail for a term not exceeding six months, and fined in any sum not exceeding one thousand dollars.

SEC. 44. If any person shall, without deadly weapons, upon previous concert and agreement, upon any wager, or for money or any other reward, fight one with another, upon conviction thereof, they or either or any of them, and all persons present aiding and abetting, shall be punished by imprisonment in the Territorial prison for a term not exceeding two years. Should death ensue to any person in such fight, the person or persons causing such death shall be punished by imprisonment in the Territorial prison for a term not more than ten nor less than three years.

SEC. 45. Every person who shall wilfully and maliciously administer or cause to be administered to or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than ten years, and which may extend to life. And every person who shall administer or cause to be administered or taken, any medicinal substances, or shall use or cause to be used any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years: Provided, that no physician shall be affected by the last clause of this section, who in the discharge of his professional duties deems it necessary to produce the miscarriage of any woman in order to save her life.

SEC. 46. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, ear, or lip, or disable any limb or member of another, or shall voluntarily and of purpose put out an eye or eyes, every such person shall be guilty of mayhem, and on conviction shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than five years.

SEC. 47. Rape is the carnal knowledge of a female, forcibly and against her will. Every person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape, and shall be punished by imprisonment in the Territorial pri-

Exhibit B

FILED
July 22, 1971
JUL 22 8 31 AM '71

FRANCIS C. GIBSON
CLERK SUPERIOR COURT
BY [Signature]
DEPUTY

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MILLER, PITT & FELDMAN, P.C.
ATTORNEYS AT LAW
108 CATALINA SAVINGS BUILDING
801 NORTH BIRDAVE AVENUE
TUCSON, ARIZONA 85701
(602) 792-5438

Attorneys for Plaintiffs.

BEST COPY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

PLANNED PARENTHOOD CENTER OF
TUCSON, INC., a corporation;
JANE DOE; HERBERT POLLOCK, M.D.;
JOHN McEVERS, M.D.; MAX COSTIN,
M.D.; NATHANIEL BLOOMFIELD,
M.D.; ARNOLD LILLEN, M.D.;
LOUIS BRUNSTING, M.D.; STUART
EDELBERG, M.D.; and DAMON
RAPHAEL, M.D.; ROBERT OLIVER, M.D.;
and DAVID TRISLER, M.D.,
Plaintiffs,

vs.

GARY K. NELSON, Attorney General
of the State of Arizona; and
ROSE SILVER, County Attorney of
Pima County, Arizona,
Defendants.

127867

NO. 127867

COMPLAINT FOR
DECLARATORY RELIEF

Plaintiffs allege:

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1 I.

2 Plaintiff Planned Parenthood Center of Tucson, Inc. is
3 a nonprofit corporation organized pursuant to the laws of the
4 State of Arizona and actively engaged in providing family plan-
5 ning services in the metropolitan area of Tucson, Arizona; Plain-
6 tiffs Herbert Pollock, John McEvers, Max Costin, Nathaniel Bloom-
7 field, Arnold Lilien, Louis Brunsting, Stuart Edelberg, Damon
8 Raphael, Robert Oliver, and David Trisler, hereinafter referred
9 to as "plaintiff physicians", are licensed to practice medicine
10 within the State of Arizona and are practicing the specialty of
11 obstetrics and gynecology within Pima County, Arizona; Plaintiff
12 Jane Doe is a resident of Pima County, Arizona and appears in
13 this action by and through a fictitious name.

14 II.

15 Defendant Gary K. Nelson is the Attorney General of
16 the State of Arizona, and is the chief officer of the state
17 responsible for enforcing the provisions of A.R.S. Sec. 13-211
18 through 13-213; Defendant Rose Silver is the County Attorney
19 of Pima County, Arizona, and is responsible for the enforcement
20 of said criminal statutes within this county.

21 III.

22 The clients of Plaintiff Planned Parenthood include
23 both married and unmarried pregnant women; except for the risk
24 of criminal prosecution under the aforementioned statutes, when
25 medically justified Plaintiff Planned Parenthood would refer
26 some of such clients to licensed physicians so that abortions
27 could be performed on them to terminate pregnancies, even though
28 such procedures were not necessary to save the lives of such

1 pregnant women. Such clients include women who suffer or have
2 suffered during pregnancy from diseases such as rubella or other
3 diseases which present a substantial risk that the fetus will
4 be born with grave birth defects; such women also include women
5 who are affected by or afflicted with diseases such as cerebral
6 palsy or other diseases which would prevent them from adequately
7 caring for the child after its birth. In addition, if not for
8 the risk of criminal prosecution under the aforesaid statutes,
9 where medically justified Plaintiff Planned Parenthood would
10 offer its services by means of notices, advertisements, and
11 otherwise to assist its clients in procuring abortions and pre-
12 venting conception.

13 IV.

14 The patients of all of plaintiff physicians from
15 time to time include both married and unmarried women; except
16 for the risk of criminal prosecution under the abortion statutes
17 where medically indicated the plaintiff physicians would perform
18 or arrange for the performance of abortions on pregnant women,
19 even though such procedures might not be necessary for the pur-
20 pose of saving lives of such women. Such women include, but
21 are not limited to, women who suffer or have suffered during
22 pregnancy from diseases such as rubella and other diseases which
23 present a substantial risk that the fetus will be born with
24 grave birth defects, and women who are afflicted with diseases
25 such as cerebral palsy or other diseases which would prevent
26 them from adequately caring for the child after it is born.

27 V.

28 Plaintiff Jane Doe is an unmarried woman who is

1 pregnant and has been advised by her physician that for sound
2 medical reasons the pregnancy should be terminated by abortion,
3 even though said abortion is not absolutely necessary to save
4 the life of the Plaintiff Jane Doe. Except for the risk of
5 criminal prosecution under the aforesaid criminal statutes,
6 Plaintiff Jane Doe would be able to obtain such an abortion
7 within the State of Arizona and would obtain such an abortion.

8 VI.

9 Plaintiffs allege that the aforesaid statutes, which
10 are commonly known as the "abortion statutes" deprive each, all,
11 and everyone of the plaintiffs of the rights guaranteed to them
12 by the Constitutions of the United States and of the State of
13 Arizona; specifically, plaintiffs claim as follows:

14 (A) The abortion statutes in their present
15 form are beyond the power of the state to enact in that the state
16 has no compelling interest in the absolute prohibition of abor-
17 tion, and the enactment of such statutes thus violates the
18 Fourteenth Amendment to the Constitution of the United States
19 and Art. 2, Sec. 4 of the Constitution of the State of Arizona
20 since it deprives plaintiffs of liberty without due process of
21 law.

22 (B) The aforesaid statutes are vague, ambig-
23 uous and uncertain on their face and as applied, and are thus
24 invalid since they deprive the plaintiffs of their liberty with-
25 out due process of law, in violation of the Fourteenth Amendment
26 to the Constitution of the United States and in violation of
27 Art. 2, Sec. 4 of the Constitution of the State of Arizona.

28 ---

1 (C) That the rights of the various plaintiffs
2 to privacy; family planning; to choice of medical treatment;
3 to freedom to follow the dictates of their professional con-
4 science; to speak, recommend, procure, and aid in the procuring
5 of abortions where such are medically proper; to choose whether
6 or not to bear children, are all guaranteed to the plaintiffs
7 by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments
8 to the Constitution of the United States and by Art. 2, Sec.
9 2, 4, 6, 8, and 33 of the Constitution of the State of Arizona,
10 and insofar as said rights are abrogated or diminished by the
11 aforesaid criminal statutes of this state, said statutes are
12 void and unconstitutional.

13 (D) The enactment of said statutes constitutes
14 a prohibition against the free exercise of religion and an
15 establishment of religion, since the prohibition against abor-
16 tions as contained in said statutes constitutes a violation of
17 both liberty of conscience and the sincerely held and deep-seated
18 religious beliefs of the plaintiffs and a great number of other
19 Americans, all of which is contrary to the First and Fourteenth
20 Amendments of the Constitution of the United States and to
21 Art. 2, Sec. 12 of the Constitution of the State of Arizona.

22 WHEREFORE, Plaintiffs pray:

23 1. That the Court enter its judgment declaring and
24 adjudging that A.R.S. Sec. 13-211, 13-212, and 13-213 are void
25 for unconstitutionality under the Constitutions of the United
26 States and of the State of Arizona.

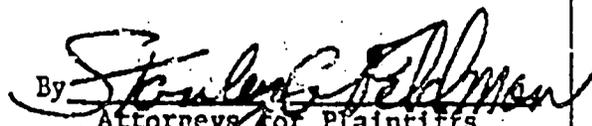
27 2. That the Court enter a permanent injunction
28 against the defendants, restraining said defendants, their agents

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and successors from enforcing or threatening to enforce the
aforesaid statutes.

3. That the Court give such other and further relief
as the Court deems just.

MILLER, PITT & FELDMAN, P.C.

By 
Attorneys for Plaintiffs
221 North Stone
Tucson, Arizona

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

JACK G. MARKS
~~JUDGE, COURT COMMISSIONER~~
of the Superior Court

NO. 127867

DATE April 6, 1972

PLANNED PARENTHOOD, etc.,
PLAINTIFF

Stanley Feldman & James Carruth &
PLAINTIFF'S ATTORNEY
Elaine Pollock
John U. Vinson

John R. Neubauer

GARY K. NELSON, etc.,
DEFENDANTS

John S. O'Dowd
DEFENDANTS' ATTORNEYS

MINUTE ENTRY

1:15 P.M.; In Chambers:

All counsel present at the request of Mr. Feldman.

Robert Evison reporting.

Mr. Feldman moves to amend the memorandum opinion entered April 5, 1972, to include the following statement: "The court holds, therefore, that since the pleadings fail to allege that plaintiffs are being prosecuted for a violation of the statute, or that the defendants didn't prosecute for a violation of the statute, there is no actual case or controversy and no justiciable issue, and therefore, no jurisdiction, and this decision is reached by the pleadings without consideration of the matters adduced in evidence at the trial."

Counsel argue to the court.

The court takes the motion under advisement.

Mr. Feldman moves to amend the complaint by including the following paragraph: "Plaintiffs believe, on information and belief, and, therefore, allege that the State of Arizona does intend to enforce the statutes in any appropriate action where there is proof of violation thereof."

Counsel argue to the court.

Sue Anderson, Deputy Clerk.

FILED

APR 12 4 25 PM 1972

IN THE SUPERIOR COURT OF THE STATES OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

JACK G. MARKS
JUDGE, Superior Court
of the Superior Court

NO. 127F57

DATE April 12, 1972

PLANNED PARENTHOOD CENTER OF TUCSON,
INC., a corporation, et al.,

PLAINTIFF

PLAINTIFF'S ATTORNEY

GARY K. NELSON, et ano,
DEFENDANTS, and

CLIFFTON E. BLOOM, etc.,

INTROVENOR

DEFENDANTS' ATTORNEYS

UNDER ADVISEMENT:

MINUTE ENTRY

The court having taken under advisement on April 9, 1972, the plaintiffs' motions (1) to amend the memorandum opinion filed on April 5, 1972, and (2) to amend the complaint, and having considered the contentions of the parties and being fully advised in the premises, it is

ORDERED that the motion to amend the memorandum opinion be, and the same hereby is, denied; and it is further

ORDERED that the motion to amend the complaint be, and the same hereby is, granted; and it is further

ORDERED that the order entered on April 5, 1972, dismissing the complaint and action be, and the same hereby is, vacated; and it is further

ORDERED that leave is granted to the plaintiffs to reopen their case-in-chief and to set a hearing to afford an opportunity to introduce evidence with respect to the amendment alleging that the state of Arizona does intend to enforce A.R.S. §13-211, 13-212 and 13-213 in any appropriate action where there is proof of violation thereof.

cc: Miller, Pitt & Feldman, Esqs.

Elaine Pollock, Esq.

Murphy, Vinson & Hazlett, Esqs.
Attorney General (John S. O'Dowd, Esq.)
County Attorney (John H. Neubauer, Esq.)
Court Administrator

Sue Anderson, Deputy Clerk

Exhibit C

C
NOTIFIED
ND

FILED

Oct 2
10 15 AM '77

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

FRANCIS C. HINDS
CLERK OF SUPERIOR COURT
BY [Signature]
DEPUTY

PLANNED PARENTHOOD CENTER OF TUCSON,
INC., etc., et al.,

Plaintiffs,

v.

GARY K. NELSON, etc., et ano.,

Defendants,

and

CLIFFTON E. BLOOM, etc.,

Intervenor,

and

D. E. CLARK, M.D., et al.,

Amici Curiae,

and

ARIZONA PUBLIC HEALTH ASSOCIATION,

Amicus Curiae.

NO. 127867

AMENDED

DECLARATORY JUDGMENT

AND

INJUNCTION

The above-entitled action having regularly come on for trial before the court sitting without a jury on November 4, 10, 11, 12 and 15, and December 2, 1971, and March 3, 1972, the plaintiffs Planned Parenthood Center of Tucson, Inc., a corporation Jane Roe, Herbert Pollock, M.D., John McEvers, M.D., Max Costin, M.D., Nathaniel Bloomfield, M.D., Arnold Lilien, M.D., Louis Brunsting, M.D., Stuart Edelberg, M.D., Damon Raphael, M.D., Robert Olive, M.D., and David Trisler, M.D., appearing by Miller, Pitt & Feldman, P.C., Stanley G. Feldman, Esq., and James C. Carruth, Esqs., of counsel, and Elaine S. Pollock, Esq., the defendant Gary K. Nelson, Attorney General of the State of Arizona, appearing by Assistant Attorney General John S. O'Dowd, Esq., the defendant Rose Silver, County Attorney of Pima County, Arizona, appearing by Chief Civil Deputy Pima County Attorney John R. Neubauer, Esq., the intervenor Clifton E. Bloom, as guardian ad litem of the unborn

child of the plaintiff Jane Roe and all other unborn infants similarly situated, appearing by Murphy, Vinson & Hazlett, P.C., John U. Vinson, Esq., of counsel, the amici curiae D. E. Clark, M.D., Neil C. Clements, M.D., John M. Gillette, M.D., William L. Martin, M.D., Wallace W. McWhirter, M.D., and Tucson Right to Life Committee, an unincorporated association, appearing by Merchant, Lohse & Bloom, Esqs., William A. Riordan, Esq., of counsel, and the amicus curiae Arizona Public Health Association, appearing by Paul G. Rees, Jr., Esq., and the issues having been submitted to the court for decision and the court, having considered the contentions of the parties and amici curiae, the evidence and the law and having filed its memorandum opinion simultaneously herewith, being fully advised in the premises, it is

ORDERED, ADJUDGED AND DECREED that the prayer of the plaintiffs Planned Parenthood Center of Tucson, Inc., a corporation Herbert Pollock, M.D., John McEvers, M.D., Max Costin, M.D., Nathaniel Bloomfield, M.D., Arnold Lilien, M.D., Louis Brunsting, M.D., Stuart Edelberg, M.D., Damon Raphael, M.D., Robert Oliver, M.D., and David Trisier, M.D., for a judgment declaring A.R.S. §13-211, §13-212 and §13-213 unconstitutional be, and the same hereby is, granted; and it is further

ORDERED, ADJUDGED AND DECREED that A.R.S. §13-211, §13-212 and §13-213 be, and they hereby are, declared to be unconstitutional, and it is further

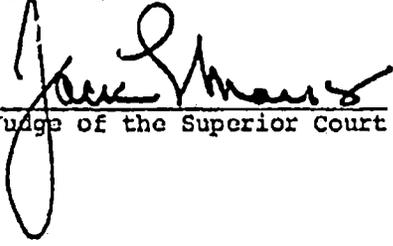
ORDERED, ADJUDGED AND DECREED that the defendants Gary K. Nelson, Attorney General of the State of Arizona, and Rose Silver, County Attorney of Pima County, Arizona, their agents, servants, employees, attorneys and all persons in active concert or participation with them, be, and they hereby are, permanently enjoined from taking any action or threatening to take any action to enforce the provisions of A.R.S. §13-211, §13-212 and §13-213 against the plaintiffs Planned Parenthood Center of Tucson, Inc., a corporation, and its clients and prospective clients, Herbert Pollock, M.D., John McEvers, M.D., Max Costin, M.D., Nathaniel



Bloomfield, M.D., Arnold Lilien, M.D., Louis Brunsting, M.D.,
Stuart Edelberg, M.D., Damon Raphael, M.D., Robert Oliver, M.D.,
and David Trisler, M.D., and their patients and prospective
patients; and it is further

ORDERED, ADJUDGED AND DECREED that the complaint be,
and the same hereby is, dismissed as to the claim for relief of
the plaintiff Jane Roe.

DATED this 2nd day of October 1972.


Judge of the Superior Court

Copy of the foregoing mailed
this 2nd day of October 1972, to:

Miller, Pitt & Feldman, P.C.
105 Catalina Savings Building
201 North Stone Avenue
Tucson, Arizona 85701

and

Elaine S. Pollock, Esq.
615 Transamerica Building
177 North Church Avenue
Tucson, Arizona 85701
Attorneys for Plaintiffs

John S. O'Dowd, Esq.
Assistant Attorney General
142 State Office Building
415 West Congress Street
Tucson, Arizona 85701
Attorney for Defendant Gary K. Nelson

John R. Neubauer, Esq.
Chief Civil Deputy Pima County Attorney
Seventh Floor, Administration Building
131 West Congress Street
Tucson, Arizona 85701
Attorney for Defendant Rose Silver

Murphy, Vinson & Hazlett, P.C.
1704 Tucson Federal Savings Tower
32 North Stone Avenue
Tucson, Arizona 85701
Attorneys for Intervenor Clifton E. Bloom

Merchant, Lohse & Bloom, Esqs.
406 North Church Avenue
Tucson, Arizona 85701
Attorneys for Amici Curiae D. E. Clark,
Neil C. Clements, John M. Gillette,
William L. Martin, Wallace W. McWhirter,
and the Tucson Right to Life Committee

Paul G. Rees, Jr., Esq.
612 Transamerica Building
177 North Church Avenue
Tucson, Arizona 85701
Attorney for Amicus Curiae Arizona
Public Health Association

BOOK 1168 PAGE 09

Exhibit D

NOTED

Handwritten initials and marks

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

FILED
2:40 P.M.
MAR 27 2 40 PM 1973

FRANCES C. LINDA
CLERK SUPERIOR COURT
BY *[Signature]*
DEPUTY

PLANNED PARENTHOOD CENTER OF TUCSON, INC., etc., et al.,)
)
Plaintiffs,)
)
v.)
)
GARY K. NELSON, etc., et ano.,)
)
Defendants,)
)
and)
)
CLIFFTON E. BLOOM, etc.,)
)
Intervenor,)
)
and)
)
D. E. CLARK, M.D., et al.,)
)
Amici Curiae,)
)
and)
)
ARIZONA PUBLIC HEALTH ASSOCIATION,)
)
Amicus Curiae.)

NO. 127867
 SECOND AMENDED
 DECLARATORY JUDGMENT
 AND
 INJUNCTION
 Pursuant to Mandate
 of the Court of
 Appeals, Division II

The above-entitled action having regularly come on for trial before the court sitting without a jury on November 4, 10, 11, 12 and 15, and December 2, 1971, and March 3, 1972, the plaintiffs Planned Parenthood Center of Tucson, Inc., a corporation, Jane Roe, Herbert Pollock, M.D., John McEvers, M.D., Max Costin, M.D., Nathaniel Bloomfield, M.D., Arnold Lilien, M.D., Louis Brunsting, M.D., Stuart Edelberg, M.D., Damon Raphael, M.D., Robert Oliver, M.D., and David Trisler, M.D., appearing by Miller, Pitt & Feldman, P.C., Stanley G. Feldman, Esq., and James C. Carruth, Esq., of counsel, and Elaine S. Pollock, Esq., the defendant Gary K. Nelson, Attorney General of the State of Arizona, appearing by Assistant Attorney General John S. O'Dowd, Esq., the defendant Rose Silver, County Attorney of Pima County, Arizona, appearing by Chief Civil Deputy Pima County Attorney John R. Neubauer, Esq., the intervenor Cliffton E. Bloom, as guardian ad litem of the unborn

child of the plaintiff Jane Roe and all other unborn infants similarly situated, appearing by Murphy, Vinson & Hazlett, P.C., John U. Vinson, Esq., of counsel, the amici curiae D. E. Ciark, M.D., Neil C. Clements, M.D., John M. Gillette, M.D., William L. Martin, M.D., Wallace W. McWhirter, M.D., and Tucson Right to Life Committee, an unincorporated association, appearing by Merchant, Lohse & Bloom, Esqs., William A. Riordan, Esq., of counsel, and the amicus curiae Arizona Public Health Association, appearing by Paul G. Rees, Jr., Esq., and the issues having been submitted to the court for decision and the court, having considered the contentions of the parties and amici curiae, the evidence and the law and having filed its memorandum opinion on September 29, 1972, and its declaratory judgment and injunction having been entered in favor of the plaintiffs and against the defendants on September 29, 1972, declaring A.R.S. §13-211, §13-212 and §13-213 unconstitutional and permanently enjoining the defendants, their agents, servants, attorneys, employees and all persons in active concert or participation with them from taking any action or threatening to take any action to enforce the provisions of A.R.S. §13-211, §13-212 and §13-213 against the plaintiffs, and its amended declaratory judgment and injunction having been entered on October 2, 1972, enlarging the injunction to include the clients and prospective clients of the plaintiff Planned Parenthood Center of Tucson, Inc., and the patients and prospective patients of the individual plaintiffs, and the defendants and the intervenor Clifton E. Bloom, as guardian ad litem of the unborn child of the plaintiff Jane Roe and all other unborn infants similarly situated, having filed a Notice of Appeal to the Court of Appeals, Division II, on October 2, 1972, and the plaintiffs having filed a Notice of Cross-Appeal to the said Court of Appeals on October 13, 1972, and the said Court of Appeals having rendered its opinion filed on January 3, 1973, reversing the amended judgment of the Superior Court entered on October 2,

1972, and ordering the Superior Court to enter a judgment in favor of the appellants and against the appellees denying injunctive relief and upholding the constitutionality of A.R.S. §13-211, §13-212 §13-213, and the appellees and cross-appellants having filed a motion for rehearing which was granted by the opinion on rehearing of the said Court of Appeals filed on January 30, 1973, affirming the amended declaratory judgment and injunction entered on October 2, 1972, except that part limiting its effect to the plaintiffs, their clients and prospective clients and patients and prospective patients, respectively, which was ordered to be modified to the extent that A.R.S. §13-211, §13-212 and §13-213 be declared unconstitutional as to all persons, and the appellants having filed a motion for rehearing on February 13, 1973, which was denied by the said Court of Appeals by its order filed on February 20, 1973, and the appellants on February 27, 1973, having filed a Petition for Review in the Supreme Court of Arizona, which was denied by order of the Supreme Court of Arizona filed on March 20, 1973, and the Mandate of the Court of Appeals, Division II, dated March 26, 1973, having been filed in the Office of the Clerk of the Superior Court on March 26, 1973; now, therefore, in compliance with the said Mandate and the opinion on rehearing of the said Court of Appeals filed on January 30, 1973, it is

ORDERED, ADJUDGED, DECLARED AND DECREED that the prayer of the plaintiffs Planned Parenthood Center of Tucson, Inc., a corporation, Herbert Pollock, M.D., John McEvers, M.D., Max Costin, M.D., Nathaniel Bloomfield, M.D., Arnold Lilien, M.D., Louis Brunsting, M.D., Stuart Edelberg, M.D., Damon Raphael, M.D., Robert Oliver, M.D., and David Trisler, M.D., for a judgment declaring A.R.S. §13-211, §13-212 and §13-213 unconstitutional be, and the same hereby is, granted; and it is further

ORDERED, ADJUDGED, DECLARED AND DECREED that A.R.S. §13-211, §13-212 and §13-215 be, and they hereby are, declared to be unconstitutional; and it is further

ORDERED, ADJUDGED, DECLARED AND DECREED that the defendants Gary K. Nelson, Attorney General of the State of Arizona, and Rose Silver, County Attorney of Pima County, Arizona, their successors, agents, servants, employees, attorneys and all persons in active concert or participation with them, be, and they hereby are, permanently enjoined from taking any action or threatening to take any action to enforce the provisions of A.R.S. §13-211, §13-212 and §13-213 against all persons; and it is further

ORDERED, ADJUDGED, DECLARED AND DECREED that the complaint be, and the same hereby is, dismissed as to the claim for relief of the plaintiff Jane Roe.

DATED this 27th day of March 1973.


Judge of the Superior Court

Copy of the foregoing mailed this 27th day of March, 1973, to:

Miller, Pitt & Feldman, P.C.
105 Catalina Savings Building
201 North Stone Avenue
Tucson, Arizona 85701

and

Elaine S. Pollock, Esq.
615 Transamerica Building
177 North Church Avenue
Tucson, Arizona 85701
Attorneys for Plaintiffs

John S. O'Dowd, Esq.
Assistant Attorney General
142 State Office Building
415 West Congress Street
Tucson, Arizona 85701
Attorney for Defendant Gary K. Nelson

John R. Neubauer, Esq.
Chief Civil Deputy Pima County Attorney
Seventh Floor, Administration Building
131 West Congress Street
Tucson, Arizona 85701
Attorney for Defendant Rose Silver

Murphy, Vinson & Hazlett, P.C.
1704 Tucson Federal Savings Tower
32 North Stone Avenue
Tucson, Arizona
Attorneys for Intervenor Clifton E. Bloom

Merchant, Lohse & Bloom, Esqs.
406 North Church Avenue
Tucson, Arizona 85701

Attorneys for Amici Curiae D. E. Clark,
Neil C. Clements, John M. Gillette,
William L. Martin, Wallace W. McWhorter,
and the Tucson Right to Life Committee

Paul G. Rees, Jr., Esq.
612 Transamerica Building
177 North Church Avenue
Tucson, Arizona 85701

Attorney for Amicus Curiae Arizona
Public Health Association