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11 **ARIZONA SUPERIOR COURT**

12 **PIMA COUNTY**

13 **PLANNED PARENTHOOD CENTER OF**
14 **TUCSON, INC., et al.,**
15 **Plaintiffs,**

16 v.

17 **MARK BRNOVICH, Attorney General of**
18 **the State of Arizona, et al.,**
19 **Defendants,**

20 And

21 **CLIFFTON E. BLOOM, as guardian ad**
22 **litem of the unborn child of plaintiff Jane**
23 **Roe and all other unborn infants similarly**
24 **situated,**
25 **Intervenor.**

No. C127867

**PIMA COUNTY ATTORNEY'S
JOINDER IN PLAINTIFF PLANNED
PARENTHOOD ARIZONA'S
RESPONSE TO THE ATTORNEY
GENERAL'S MOTION FOR RELIEF
FROM JUDGMENT**

The Honorable Kellie L. Johnson

26 Defendant Pima County Attorney, Laura Conover, hereby joins in Planned
Parenthood of Arizona's Response (Response) to the Arizona Attorney General's
Rule 60(B) Motion for Relief from Judgment (Motion).

Protection of constitutional rights is paramount in the enforcement of our
laws, especially when violation of those laws is punishable as a crime. The Pima
County Attorney identifies two key issues raised by the Motion and Response: the

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1 legal and practical necessity to harmonize conflicting statutes to provide clarity to
2 the Attorney General and County Attorneys to aide in the execution of their
3 prosecutorial duties; and the protection of due process rights for the people of Pima
4 County and throughout Arizona.

5 When two statutes appear to conflict, courts will harmonize their language to
6 give each effect. *Ridgell v. Arizona Dep't of Child Safety*, 253 Ariz. 61, ¶ 15 (App.
7 2011). The Attorney General is correct: Arizona's 15-week limitation on abortions
8 (S.B. 1164) expressly states that it does not repeal A.R.S. § 13-3603, "or any other
9 applicable state law regulating of restricting abortion" (Motion at 3:16-17).
10 However, Planned Parenthood of Arizona cites at least five Arizona laws, and a
11 complex regulatory scheme, that are not in harmony with the total abortion ban in
12 section 13-3603 (Response at 5-7). This lack of clarity affects the Pima County
13 Attorney's ability to serve in her duty as "the public prosecutor of the county," who
14 is mandated by law to "[a]ttend the superior and other courts within the county and
15 conduct, on behalf of the state, all prosecutions for public offenses." A.R.S. § 11-
16 532(A). Concerning the effective execution of her prosecutorial duties,
17 notwithstanding her prosecutorial discretion, the Pima County Attorney seeks
18 harmony between conflicting statutes: section 13-3603 which *prohibits* any
19 abortions; S.B. 1164 which *permits* abortions up to the 15-week limitation, and a
20 handful of other statutes designed to regulate abortions.

21 In Arizona, "[n]o person shall be deprived of life, liberty, or property without
22 due process of law." Ariz. Const. art. II, § 4. Due process demands that Arizona
23 laws must be applied fairly and equally to all people, but particularly to Arizonans
24 accused of a crime. To satisfy due process requirements, "statutes must be
25 sufficiently clear and concrete that they provide person[s] of ordinary intelligence a
26 reasonable opportunity to know what is prohibited and contain explicit standards of

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1 application so as to prevent arbitrary and discriminatory enforcement.” *Martin v.*
2 *Reinstein*, 195 Ariz. 293, 317 (App. 1999).

3 The lifting of the current injunction, without the necessary modification to
4 harmonize with the Legislature’s subsequently enacted and less restrictive statutory
5 scheme, will deny Arizonans of ordinary intelligence a reasonable opportunity to
6 know what is prohibited: a citizen can be jailed for performing an abortion (§ 13-
7 3603), but a citizen is permitted to perform an abortion up to the 15-week limitation
8 (S.B. 1164). Depending on the subjective interpretation of our office, fourteen other
9 county attorney offices, and the Attorney General’s office (all of whom share
10 concurrent jurisdiction over the prosecution of crimes in Arizona), this conflict will
11 likely lead to arbitrary enforcement in violation of Arizonan’s Due Process Rights.

12 Further, the U.S. Supreme Court’s ruling in *Dobbs v. Jackson Women’s*
13 *Health Organization*, 597 U.S. ___, 142 S. Ct. 2228 (2022), returned to the people
14 and their elected representatives the authority to regulate abortion. Arizona’s
15 elected representatives passed S.B. 1164 *this year*. While the new law did not repeal
16 § 13-3603, it also did not include language that would trigger its own immediate
17 repeal – or the immediate repeal of other applicable laws – upon the Supreme Court
18 overturning *Roe v. Wade*. In addition, S.B. 1164 recognized the validity of
19 Arizona’s other applicable abortion laws enacted since *Roe v. Wade*. In granting
20 the relief requested by the Attorney General, this Court would effectively replace
21 its judgment for that of the Arizona Legislature by repealing that which the
22 Legislature has decided not to repeal.

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1 For these reasons, the Pima County Attorney joins the Defendant Planned
2 Parenthood of Arizona in seeking a modified injunction and requests that the
3 Attorney General's Motion for Relief from Judgment be granted in part and denied
4 in part as described in Defendant Planned Parenthood's Proposed Order.

5 RESPECTFULLY SUBMITTED this 22nd of July, 2022.

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7 LAURA CONOVER
PIMA COUNTY ATTORNEY

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10 By 
11 Samuel E. Brown
12 Chief Civil Deputy County Attorney

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CERTIFICATE OF SERVICE

I certify that on July 22, 2022 the original of the foregoing was electronically filed with the Clerk of the Court for Pima County Superior Court via TurboCourt, and electronically delivered to:

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By: /s/ Jonathan Hildebrand