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Case No. C127867
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11 *similarly situated and Proposed Intervenor, and Choices Pregnancy Center, Proposed*
12 *Intervenor*

13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
14 **IN AND FOR THE COUNTY OF PIMA**

15 PLANNED PARENTHOOD ARIZONA, INC.,
16 et al.,

17 Plaintiffs,

18 v.

19 MARK BRNOVICH, Attorney General of the
20 State of Arizona, et al.,

21 Defendants,

22 and

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

Intervenor.

Case No.: C127867

**DR. ERIC HAZELRIGG AND
CHOICES PREGNANCY
CENTER'S PROPOSED REPLY
IN SUPPORT OF ATTORNEY
GENERAL'S MOTION FOR
RELIEF FROM JUDGMENT**

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1 **INTRODUCTION**

2 Proposed Substitute Guardian ad Litem and Proposed Intervenor Dr. Eric Hazelrigg,
3 and Proposed Intervenor Choices Pregnancy Center (“Choices”), join the Attorney
4 General’s motion and related briefing asking this Court to set aside the 1973 judgment
5 (“Second Amended Judgment”) declaring A.R.S. § 13-3603 (formerly A.R.S. § 13-211)
6 unconstitutional and permanently enjoining its enforcement as to the Attorney General and
7 Pima County Attorney. The Second Amended Judgment was based solely on the Supreme
8 Court’s decision in *Roe v. Wade*, 410 U.S. 113 (1973). *See* Def. AG’s Br. at 6 (describing
9 procedural history and explaining that the Court “expressly and solely bas[ed] its reasoning
10 on the court being ‘bound by’ U.S. Supreme Court decisions interpreting the
11 Constitution.”).

12 Continuing to enjoin A.R.S. § 13-3603 “prospectively is no longer equitable”
13 because on June 24, 2022, the U.S. Supreme Court overruled *Roe* and *Casey* in *Dobbs v.*
14 *Jackson Women’s Health Org.*, 142 S. Ct. 2288 (2022). Ariz. R. Civ. P. 60(b)(5). In *Dobbs*,
15 the U.S. Supreme Court affirmed that states have “legitimate interests” in promoting
16 “respect for and preservation of prenatal life at all stages of development[;] . . . the
17 elimination of particularly gruesome or barbaric medical procedures; the preservation of
18 the integrity of the medical profession;” and “the protection of maternal health and safety.”
19 142 S. Ct. at 2284. A.R.S. § 13-3603 furthers those interests.¹

20 Planned Parenthood Arizona, Inc.’s (“Planned Parenthood”) equitable arguments
21 are unavailing because they ignore that abortion has a catastrophic effect on unborn
22 children, harms pregnant mothers’ health, and damages the medical profession.

23
24
25 ¹ As a practicing OB/Gyn with 30 years of experience, Dr. Hazelrigg is uniquely
qualified to address these topics. *See* Dr. Hazelrigg’s Reply in Support of Motion to
Substitute.

1 Thus, to the extent the Court takes equitable factors beyond the overruling of *Roe*
2 into account, the Court should grant the Attorney General’s motion to lift the injunction
3 because it is not equitable under Rule 60(b)(5) to continue enjoining A.R.S. § 13-3603.

4 LEGAL STANDARD

5 Rule 60(b)(5) provides that a “court may relieve a party or its legal representative
6 from a final judgment, order, or proceeding,” where “it is based on an earlier judgment that
7 has been reversed or vacated; or applying it prospectively is no longer equitable.” Ariz. R.
8 Civ. P. 60(b)(5).

9 ARGUMENT

10 Scientific advancements over the last five decades have only confirmed what the
11 Arizona Court of Appeals knew in 1973: elective abortion destroys a human life. *See*
12 *Nelson v. Planned Parenthood Ctr. of Tucson*, 19 Ariz. App. 142, 148 (1973). (“an
13 embryonic or fetal organism is life,” and “once begun, the inevitable result is a human
14 being.”) (cleaned up).

15 Planned Parenthood’s proposed reading of Arizona’s statutes² would allow the
16 “particularly gruesome and barbaric” dilation and evacuation method of abortion (D&E)
17 that dismembers the unborn baby to remove her from the mother’s uterus to continue in

18 ² Planned Parenthood cites no case to support its contention that courts can infer legislative
19 intent from looking at laws that the legislature considered, but ultimately did not pass
20 because they were likely to be enjoined. Pl.’s Resp. Br. at 13. For example, Planned
21 Parenthood cites a proposed law that the Arizona legislature considered, but failed to pass,
22 which is nearly identical to one that a federal court enjoined in Texas in 2021. *See United*
23 *States v. Texas*, 566 F. Supp. 3d 605, 691 (W.D. Tex. 2021) (enjoining Texas’s 6-week
abortion limit enforced by a private right of action). And a court enjoined Idaho’s similar
law. *Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Idaho*, No. 49615-2022
(Idaho Apr. 8, 2022) (order staying enforcement of 6-week abortion limit enforced by
private right of action).

24 Further, none of Planned Parenthood’s cases describing a court’s duty to harmonize statutes
25 considered a Rule 60(b) motion asking a court to vacate a prior injunction based on
overruled precedent. *See Glazer v. State*, 237 Ariz. 160 (2015) (reviewing post-trial
motions under Ariz. R. Civ. P. 50); *Oaks v. McQuiller*, 191 Ariz. 333 (1998) (reviewing
appeal from summary judgment for defendant/appellee).

1 Arizona. *Dobbs*, 142 S. Ct. at 2284; *see also Whole Woman’s Health v. Paxton*, 10 F.4th
2 430, 435–38 (5th Cir. 2021) *abrogated on other grounds by Dobbs*, (describing dilation
3 and evacuation as dismemberment abortion). Barbaric and gruesome medical procedures
4 like dismemberment abortion undermine the integrity of the medical profession. *Cf.*
5 *Gonzales v. Carhart*, 550 U.S. 124, 158–60 (2007).

6 Additionally, peer-reviewed studies and research show that abortion does not
7 protect maternal health and safety, but instead comes with many risks to women’s physical
8 and psychological health. The data Planned Parenthood cites to claim that the equities
9 weigh against vacating the prior judgment enjoining A.R.S. § 13-3603 does not show that
10 women will experience harm from renewed enforcement and ignores the significant harms
11 women experience because of abortion.

12 It is not equitable to continue enjoining A.R.S. § 13-3603 because it shields unborn
13 children and the medical profession from barbaric medical procedures that destroy human
14 life, and it protects women from the harms of elective abortion – each of which is an
15 important and valid state interest – and no legal basis remains for the injunction.

16 **I. It is not equitable to maintain the injunction because it impedes A.R.S. § 13-**
17 **3603’s respect for and preservation of prenatal life at all stages of development**
18 **and protection of the medical profession.**

19 The unborn child’s heart begins developing in the third week of gestation and starts
20 beating at the end of the fourth week of development.³ “All major systems and organs begin
21 to form” by the end of the fourth week, including the child’s brain and spinal cord, digestive
22 system, circulatory system, eyes, ears, and the limb buds, “which will develop into arms
23 and legs.”⁴

24 ³ Oriana Valenti, et al., *Fetal cardiac function during the first trimester of pregnancy*, 5
25 JOURNAL OF PRENATAL MEDICINE 59, 60 (2011), <https://bit.ly/3JraS5g>.

⁴ JOHNS HOPKINS MEDICINE, <https://bit.ly/3vBHZ0I> (last visited Aug. 3, 2022). (First Trimester Fetal Growth and Development Benchmarks)

1 Between seven and nine weeks’ gestation, the unborn child can move her head,⁵ and
2 takes on human form, with the mouth “developing tooth buds, which will become baby
3 teeth,” and the “eyes, nose, mouth, and ears ... becoming more distinct.”⁶ Her “bones begin
4 to develop and the nose and jaws are rapidly developing,” and the child “is in constant
5 motion.”⁷ By the end of eight weeks’ gestation, the unborn child has all her major organs
6 and systems.⁸

7 Between nine and twelve weeks’ gestation, the child’s fingernails and toenails
8 appear.⁹ “The arms and legs are fully formed.”¹⁰ The child’s voice box begins to form.¹¹
9 She can hiccup, stretch, yawn, and swallow between nine and thirteen weeks’ gestation.¹²

10 Unborn children as young as 12 weeks’ gestation respond to stimuli and may feel
11 pain.¹³ That is particularly troubling given that the D&E abortion procedure is most
12 commonly¹⁴ used during the second trimester (after 12 weeks’ gestation) and dismembers
13 the unborn baby to kill her before removing her tiny body parts from her mother’s uterus.¹⁵

14 Planned Parenthood asks this Court to read Arizona’s laws to authorize elective
15 abortions up to 15 weeks’ gestation, which would include some dismemberment abortions.

17 ⁵ AnneMarie B. Lüchinger, et al., *Fetal Onset of General Movements*, 63 PEDIATRIC
RESEARCH 191, 192-193 (2008) <https://go.nature.com/3PT5GJU>.

18 ⁶ JOHNS HOPKINS MEDICINE, *supra* n. 5. (First Trimester Fetal Growth and Development
Benchmarks).

19 ⁷ *Id.*

20 ⁸ *Id.*; Lüchinger, *supra* n. 6.

21 ⁹ JOHNS HOPKINS MEDICINE, *supra* n. 5. (First Trimester Fetal Growth and Development
Benchmarks).

22 ¹⁰ *Id.*

23 ¹¹ *Id.*

24 ¹² Lüchinger, *supra* n. 6.

25 ¹³ Stuart WG Derbyshire and John C. Bockmann, *Reconsidering fetal pain*, 46 J. MED.
ETHICS 3, 4-6 (2020), <https://bit.ly/3cSnsOK>.

¹⁴ Phillip G. Stubblefield, et al., *Methods for induced abortion*, 104 OBSTETRICS &
GYNECOLOGY 174, 174-185 (July 2004), <https://bit.ly/3oNU9jj>.

¹⁵ Live Action, *2nd Trimester Abortion | Dilation and Evacuation (D&E) | What Is
Abortion?*, YOUTUBE (June 14, 2022), <https://bit.ly/3zSfHS8>; see also *Whole Woman’s
Health*, 10 F.4th at 435–38, *abrogated on other grounds by Dobbs*, 142 S. Ct. 2288
(describing dismemberment abortion).

1 Pl.'s Resp. Br. at 8–12. That undermines the State's interest in the "elimination of
2 particularly gruesome and barbaric medical procedures" and "preservation of integrity of
3 the medical profession." *Dobbs*, 142 S. Ct. at 2284.

4 A.R.S. § 13-3603 protects unborn children with beating hearts, developing organs
5 and systems, moving arms and legs, and growing eyes, ears, noses, and mouths from being
6 "destroy[ed]" by elective abortion. *See Nelson*, 19 Ariz. App. at 148. Equity therefore
7 requires allowing Arizona to exercise its right to respect and preserve "prenatal life at all
8 stages of development" by enforcing A.R.S. § 13-3603. *Dobbs*, 142 S. Ct. at 2284; Ariz.
9 R. Civ. P. 60(b)(5).

10 **II. It is not equitable to maintain the injunction because it impedes A.R.S. § 13-**
11 **3603's protection of maternal health and safety.**

12 Plaintiffs claim that abortion up to 15 weeks of pregnancy is necessary to protect
13 women in Arizona, but the risk of maternal death because of abortion increases by 38% for
14 each additional week of gestation.¹⁶ A woman is 35 times more likely to die from an
15 abortion at 16-20 weeks' gestation than she is at 8 weeks' gestation.¹⁷ Women who obtain
16 abortions also face other risks, including:

- 17 • incomplete abortions resulting in infection;
- 18 • pelvic inflammatory disease;
- 19 • missed ectopic pregnancy;
- 20 • cardiac arrest;
- 21 • respiratory arrest;
- 22 • renal failure;
- 23 • metabolic disorder;
- 24 • shock;
- 25 • embolism;
- coma;
- placenta previa in later pregnancies;
- preterm birth in later pregnancies;
- organ damage;

16 Linda A. Bartlett, et al., *Risk Factors for Legal Induced Abortion—Related Mortality
in the United States*, 103 OBSTETRICS & GYNECOLOGY 729, 729-737 (April 2004),
<https://bit.ly/3Q19GYU>.

17 *Id.*

- free fluid in the abdomen.¹⁸

Risks specific to surgical abortion include, but are not limited to:

- laceration, tear, or other injury to the cervix;
- puncture, laceration, tear, or other injury to the uterus;
- injury to the bowel or bladder;
- blood clots;
- pelvic infection;
- blood clots;
- heavy bleeding or hemorrhage.¹⁹

Mental health risks to abortion include:

- depression;
- anxiety;
- substance abuse;
- sleeping disorders;
- guilt;
- shame;
- avoidance;
- suicide.²⁰

Because A.R.S. § 13-3603 protects women from the harms of abortion by allowing it only when necessary to save the life of the mother, and the State of Arizona has legitimate interests in protecting and promoting maternal health and safety, it is not equitable for the

¹⁸ P.S. Shah, et al., *Induced termination of pregnancy and low birthweight and preterm birth: a systemic review and meta-analysis*, 116 BJOG 1425, 1432-1438 (Oct. 2009), <https://bit.ly/3zUc79U>; R.H.F. van Oppenraaij, et al., *Predicting adverse obstetric outcome after early pregnancy events and complications: a review*, 15 HUM. REPROD. UPDATE OXFORD UNIV. 410, 413-414 (2009), <https://bit.ly/3JqJNzI>; John M. Thorp Jr., et al., *Long-term physical and psychological health consequences of induced abortion: review of the evidence*, 58 OBSTETRICAL & GYNECOLOGICAL SURVEY 67, 67-79 (Jan. 2003), <https://bit.ly/3PZqUWq>; J.M. Barrett, et al., *Induced abortion: a risk for placenta previa*, 141 AM. J. OF OBSTETRICS AND GYNECOLOGY 769, 769-772 (Dec. 1981), <https://bit.ly/3bt4Jcl>.

¹⁹ Cassing Hammond, M.D., *Recent advances in second-trimester abortion: an evidence-based review*, 200 AM. J. OF OBSTETRICS & GYNECOLOGY 347, 347-353 (Apr. 2009), <https://bit.ly/3bvN1F5>;

²⁰ David C. Reardon, et al., *Deaths associated with pregnancy outcome: a record linkage study of low income women*, 95 S. MED. J. 834, 834-841 (Aug. 2002), <https://bit.ly/3oRqcid>; Jesse R. Cogle, et al., *Depression associated with abortion and childbirth: a long-term analysis of the NLSY cohort*, 9 MED. SCI. MONITOR CR150, CR160-163 (Apr. 2003), <https://bit.ly/3BEcg2x>; Anne Nordal Broen, et al., *The course of mental health after miscarriage and induced abortion: a longitudinal, five-year follow-up study*, 3 BMC MED. 1, 6-13 (Dec. 2005), <https://bit.ly/3d3PjLU>; Ekaterine Pestvenidze, et al., *Effects of gestational age and the mode of surgical abortion on postabortion hemorrhage and fever: evidence from population-based reproductive health survey in Georgia*, 17 BMC WOMEN'S HEALTH 1, 2-7 (2017), <https://bit.ly/3cUIbBx>; Hammond, *supra* n. 20.

1 injunction on A.R.S. § 13-3603 to continue. Planned Parenthood cites no supporting data
2 or literature showing that women in Arizona have been or will be harmed by the
3 enforcement of A.R.S. § 13-3603. *See* Pl.’s Resp. Br. at 15–16. Instead, it only cites
4 demographic data on the women who sought abortions in 2020 and reported reasons why
5 women in Arizona chose to have abortions in 2020. *Id.* This does not show that
6 enforcement of A.R.S. § 13-3603 will harm women.

7 In fact, the data Planned Parenthood cites shows that 9,112 out of 13,273 Arizona
8 abortions were elective in 2020 (68.7%)²¹, and 3,560 women declined to specify a reason.²²
9 So, 95.5% of abortions in Arizona in 2020 were either elective or the woman declined to
10 give any reason at all.²³ Only 0.0068% of abortions in 2020 were because of domestic
11 violence or sexual assault.²⁴ And just 0.035% of abortions in 2020 were because of
12 maternal health considerations.²⁵ In short, personal, voluntary choice is the reason for the
13 vast majority of abortions in Arizona. The overwhelmingly optional and elective nature of
14 abortions in Arizona does not justify permitting abortion’s proven harm to unborn children
15 and their mothers’ health shown above. To the contrary, the State has a strong interest in
16 reducing harm to unborn children, women, and the medical profession by enforcing A.R.S.
17 § 13-3603 to eliminate these barbaric and elective procedures.

18 CONCLUSION

19 For the reasons stated above and in the Attorney General’s Rule 60(b)(5) briefing,
20 this Court should grant the Attorney General’s motion to set aside the judgment enjoining
21 A.R.S. § 13-3603. It promotes “respect for and preservation of prenatal life at all stages of
22 development,” “the elimination of particularly gruesome and barbaric medical

23 ²¹ *Abortions in Arizona: 202 Abortion Report*, ARIZ. DEP’T OF HEALTH SERV., 16 (Sept.
24 21, 2021), <https://bit.ly/3d7wkAt>.

25 ²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

1 procedures,” “preservation of the integrity of the medical profession,” and “the protection
2 of maternal health and safety.” *Dobbs*, 142 S. Ct. at 2284. These legitimate interests
3 establish that continuing to block A.R.S. § 13-3603 is not equitable under Rule 60(b)(5)
4 because the Second Amended Judgment was based solely on *Roe*, and the Supreme Court
5 has now overruled *Roe*.

6
7 RESPECTFULLY SUBMITTED this 4th day of August, 2022.

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18 *Jane Roe and all other unborn infants similarly*
19 *situated and Proposed Intervenor, and Choices*
20 *Pregnancy Center, Proposed Intervenor*

1 **CERTIFICATE OF SERVICE**

2 I certify that on August 4, 2022, the original of the foregoing was electronically filed
3 with the Clerk of the Court for Pima County Superior Court via TurboCourt, and
4 electronically delivered to:

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