

IN THE SUPREME COURT

STATE OF ARIZONA

PLANNED PARENTHOOD
ARIZONA, INC., et al.,

Appellants,

v.

KRISTIN K. MAYES, Attorney General
of the State of Arizona,

Appellees,

And

ERIC HAZELRIGG, M.D., as guardian
ad litem of unborn child of plaintiff Jane
Roe and all other unborn infants
similarly situated, Dennis McGrane,
Yavapai County Attorney,

Intervenors.

Supreme Court No. CV-23-0005-PR

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

Pima County Superior Court No.
C127867

**PIMA COUNTY ATTORNEY’S JOINDER IN PLANNED PARENTHOOD
ARIZONA INC.’S MOTION TO STAY ISSUANCE OF MANDATE**

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**Admitted Pro Hac Vice*

Appellant Pima County Attorney Laura Conover joins in the Motion to Stay Issuance of Mandate filed on May 1, 2024 by Plaintiff-Appellant Planned Parenthood Arizona, Inc. (PPAZ), requesting that this Court stay the issuance of its final mandate until the Arizona Legislature’s May 1, 2024 repeal of A.R.S. [§ 13-3603](#) takes effect. Such a stay is justified here because “the interests of justice outweigh the interest in bringing litigation to an end.” [Lindus v. N. Ins. Co. of New York](#), 103 Ariz. 160, 162 (1968).¹ Like this Court, each county attorney must regularly consider the interests of justice: “A prosecutor should file criminal charges only if . . . the decision to charge is in the interests of justice.”² In a democratic society, justice incorporates accountability to the will of the people. See [Ariz. Const. Art. II § 2](#) (“All political power is inherent in the people, and governments derive their just powers from the consent of the governed.”). The interests of justice demand attention to real-world consequences to ensure alignment with basic

¹ See also [Smith v. Ariz. Citizens Clean Elections Comm’n](#), 212 Ariz. 407, 411 (2006) (a stay is justified by a showing that there are “serious questions” and “the balance of hardships tip[s] sharply in favor of the moving party” (citing [Shoen v. Shoen](#), 167 Ariz. 58, 63 (App. 1991))).

² Sheila Polk, *Charging Guidelines for the Arizona Prosecutor*, available at <https://www.yavapaiaz.gov/files/sharedassets/public/v/1/resident-services/law-and-justice/documents/chargingguidelinesforarizonaprosecutor.pdf> (quoting ABA Standard 3-4.3(a), Minimum Requirements for Filing and Maintaining Criminal Charges).

principles of fairness and due process. Here, the “interests of justice” would be served by staying the issuance of the mandate.

On April 9, 2024, this Court issued its opinion lifting the 50-year-old injunction against A.R.S. [§ 13-3603](#)’s near-total ban on abortion, finding that the Arizona Legislature had not limited its scope through subsequent legislation.³ Now, however, the passage of House Bill 2677 (HB2677) makes clear the legislature’s intention to repeal the territorial ban. Once HB2677 takes effect, medical providers will again be permitted to perform abortions consistent with Title 36 regulations: both through the fifteenth week of gestation *and* to address a medical emergency. If the Court issues its mandate, both acts may or may not be considered illegal for a temporary period before becoming lawful again when the repeal becomes effective. In this interim period, as the Pima County Attorney noted at oral argument, no reasonable physician would risk their liberty (or their medical license) by performing an abortion without clarity that the acts are lawful. In effect, issuing the mandate to

³ In its opinion, the Court considered “the viability of the remaining portions of Title 36 in light of” Appellants’ arguments that simultaneous enforcement of A.R.S. [§ 13-3603](#) and Title 36 “implicates physicians’ due process right to notice of potential criminal and regulatory liability for abortion-related conduct.” *Planned Parenthood Arizona v. Hazelrigg*, 545 P.3d 892 at *8, ¶ 44 (2024). This Court found that the “enforceability of Title 36 provisions must be revisited by the legislature or adjudicated by the courts as controversies arise.” *Planned Parenthood Arizona v. Hazelrigg*, 545 P.3d 892 at *8, ¶ 45 (2024). To the extent other abortion-related Title 36 provisions, beyond A.R.S. [§ 36-2322](#), might have conflicted with A.R.S. [§ 13-3603](#) (on paper or in practice), those potential conflicts will be mooted once yesterday’s repeal of A.R.S. [§ 13-3603](#) becomes effective.

make A.R.S. [§ 13-3603](#) enforceable for a temporary period *after* the legislature has voted to repeal A.R.S. [§ 13-3603](#) would directly contradict legislative intent.

Apart from the concrete harms this would cause to providers and their patients, this Court itself recognized that the constitutionality of A.R.S. [§ 13-3603](#) may still be in question. [*Planned Parenthood Arizona v. Hazelrigg*](#), 545 P.3d 892 at ¶ 3 (2024). A stay here both honors the will of the Arizona Legislature and avoids potential constitutional problems caused by the simultaneous enforceability of both A.R.S. [§ 13-3603](#) and A.R.S. [§ 36-2322](#). Forced to close by a potentially unconstitutional law, providers may not be able to reopen once House Bill 2677 takes effect, depriving pregnant Arizonans of services that the legislature intends them to have available. When the law whipsaws in this way, it also erodes confidence in the core due process values of stability and predictability.

The Court can avoid this instability and unpredictability by issuing its mandate after the repeal of A.R.S. [§ 13-3603](#) goes into effect. Should this Court issue its mandate prior to the repeal taking effect, Arizonans will unnecessarily face unstable legal terrain for a temporary period. Such a result would not serve the “interests of justice.” [*Lindus*](#), 103 Ariz. at 162. There are “serious [constitutional] questions” here and “the balance of hardships tip[s] sharply” in favor of Appellants. [*Smith*](#), 212 Ariz. at 407 (internal citation omitted).

Appellant Pima County Attorney respectfully urges this Court to stay the issuance of its mandate.

RESPECTFULLY SUBMITTED May 2, 2024.

**LAURA CONOVER
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By: /s/Samuel E. Brown

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