ARIZONA COURT OF APPEALS

DIVISION ONE

PAUL A. ISAACSON, M.D., ON BEHALF OF HIMSELF, HIS STAFF, AND HIS PATIENTS; WILLIAM RICHARDSON, M.D., ON BEHALF OF HIMSELF, HIS STAFF, AND HIS PATIENTS; AND THE ARIZONA MEDICAL ASSOCIATION, ON BEHALF OF ITSELF, ITS MEMBERS, AND ITS MEMBERS' PATIENTS,

Plaintiffs/Appellees,

v.

STATE OF ARIZONA, A BODY POLITIC,

Defendant/Appellee,

WARREN PETERSEN, PRESIDENT OF THE ARIZONA SENATE; AND STEVE MONTENEGRO, SPEAKER OF THE ARIZONA HOUSE OF REPRESENTATIVES,

Intervenor-Defendants/Appellants.

No. 1 CA-CV 26-0240

Maricopa County Superior Court
No. CV2025-017995

PLAINTIFFS-APPELLEES' ANSWERING BRIEF

Barry G. Stratford, Bar No. 029923
Kristine J. Beaudoin, Bar No. 034853
Isabella Stoutenburg, Bar No. 038642
Jasmin Spearnock, Bar No. 041042
ASHURST PERKINS COIE US LLP
2525 E. Camelback Road, Suite 500
Phoenix, Arizona 85016-4227
Telephone: 602.351.8000
Facsimile: 602.648.7000
Barry.Stratford@ashurstperkins.com
Kristine.Beaudoin@ashurstperkins.com
Bella.Stoutenburg@ashurstperkins.com
Jasmin.Spearnock@ashurstperkins.com
DocketPHX@perkinscoie.com

Attorneys for Plaintiffs/Appellees

Gail Deady*
Caroline Sacerdote*
Olivia Roat*
CENTER FOR REPRODUCTIVE RIGHTS
199 Water Street, 22nd Floor
New York, New York 10038
Telephone: 917.637.3600
gdeady@reprorights.org
csacerdote@reprorights.org
oroat@reprorights.org

Catherine Marie Coquillette*
CENTER FOR REPRODUCTIVE RIGHTS
1600 K Street NW, Suite 700
Washington, D.C. 20006
Telephone: 917.637.3651
ccoquillette@reprorights.org

Attorneys for Paul A. Isaacson, M.D. and William Richardson, M.D.

Tara R. DeGeorge, Bar No. 031580
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF ARIZONA
P. O. Box 17148
Phoenix, Arizona 85011
Telephone: 602.650.1854
tdegeorge@acluaz.org

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

Alice Clapman*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street NW
Washington, D.C. 20005
Telephone: 212.549.2633
aclapman@aclu.org

Attorneys for Arizona Medical Association

*Admitted *pro hac vice*

August 28, 2026

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INTRODUCTION

In 2024, Arizonans voted to enshrine a fundamental right to abortion in Article II, Section 8.1 of the Arizona Constitution's Declaration of Rights (the "Amendment"). Under the Amendment's plain text, where laws deny, restrict, or interfere with that fundamental right, the state—here, Intervenor-Appellants—carries the burden of justifying that interference using the test the Amendment expressly prescribes.

Plaintiffs-Appellees challenge three legal schemes that each violate the fundamental right to pre-viability abortion. The challenged laws interfere with the fundamental right to pre-viability abortion on their face, and the factual record demonstrates that they do so in practice as well.

As the Superior Court found, the laws challenged here plainly fail the Amendment's test, imposing numerous harmful and unjustified barriers to care. In appealing that decision, Intervenors do not seriously argue otherwise. Instead, they advance a series of technical arguments that are at odds with the language of the Amendment, designed to evade constitutional review, and defy the will of the voters—and that the Superior Court correctly rejected. Opening Br. of Intervenor-Defendants/Appellants ("OB") at 2; Am. Electronic Index of Record ("IR") #130 at 2-3, 27-28. There is an injury and actual controversy here, and the challenged laws subject Plaintiffs to severe criminal, civil, and licensing penalties for violations.

Where laws interfere with a fundamental right and fail strict scrutiny, facial relief is appropriate.

Because Intervenors cannot carry their burden, Plaintiffs ask this Court to affirm.

STATEMENT OF THE CASE

Plaintiffs seek declaratory and injunctive relief from three legal schemes that each violate the fundamental right to pre-viability abortion explicitly guaranteed by Article II, Section 8.1(A)(1) of the Arizona Constitution.[1] These schemes are (1) the Reason Ban Scheme, which prohibits providing abortion care depending on a patient's reason for seeking that care; (2) the Two-Trip Scheme, which, *inter alia*, requires every patient to make at least two in-person trips to an abortion provider at least 24 hours apart to receive abortion care; and (3) the Telemedicine Ban Scheme, which prohibits the use of telemedicine to provide abortion care (collectively, the "Challenged Laws"). Plaintiffs/Appellees' Appendix to Answering Br. ("Appx") Appx7-17 (PX-1), Appx18-42 (PX-2), Appx43-70 (PX-3).

[1] Plaintiffs seek relief on the grounds that the Challenged Laws violate Article II, Section 8.1(A)(1) of the Arizona Constitution and the prohibition on penalizing those who aid or assist a pregnant person in exercising that right in Article II, Section 8.1(A)(3) of the Arizona Constitution. While the Superior Court did not need to reach the latter issue, the Court of Appeals may independently affirm on those grounds. Ariz. R. Civ. App. P. 13(b)(2); *see also infra* Argument Part III.

The Superior Court held a three-day evidentiary hearing from November 5-7, 2025, during which it heard live testimony from the Plaintiffs, seven expert witnesses, and a rebuttal fact witness. IR#130 at 3; IR#123 ¶¶ 27-61. The Superior Court heard closing arguments on January 12, and, on February 6, 2026, issued a ruling and judgment declaring the Challenged Laws unconstitutional and permanently enjoining the State from enforcing the Challenged Laws as applied to pre-viability abortion care. IR#130 at 1, 28-29. The Superior Court again held that Plaintiffs have standing and the case is ripe. IR#130 at 2-3. After making detailed factual findings based on the live testimony and documentary evidence presented at the hearing, IR#130 ¶¶ 1-84, the Superior Court concluded that each of the Challenged Laws interferes with, denies, and/or restricts the fundamental right to pre-viability abortion and that Intervenors failed to carry their burden of showing that the Challenged Laws advance a compelling interest via the least restrictive means, IR#130 ¶¶ 85-116; IR#131. The Superior Court further held that, as applied to pre-viability abortions, the Challenged Laws are unconstitutional on their face.

STATEMENT OF FACTS

I. THE AMENDMENT

In 2024, Arizonans voted to enshrine "a fundamental right to abortion" in the state constitution. By the terms of the Amendment, "the state shall not enact, adopt or enforce any law, regulation, policy or practice that . . . [d]enies, restricts or

interferes with" the fundamental right to abortion "before fetal viability unless justified by a compelling state interest that is achieved by the least restrictive means." Ariz. Const. art. II, § 8.1(A)(1).

A "'[c]ompelling state interest' means a law, regulation, policy or practice that meets both of the following" criteria. *Id.* at (B)(1). First, it "is enacted or adopted for the limited purpose of improving or maintaining the health of an individual seeking abortion care, consistent with accepted clinical standards of practice and evidence-based medicine." *Id.* at (B)(1)(a). Second, it "[d]oes not infringe on that individual's autonomous decision making." *Id.* at (B)(1)(b).

The Amendment also prohibits the state from "[p]enaliz[ing] any individual or entity for aiding or assisting a pregnant individual in exercising the individual's right to abortion[.]" *Id.* at (A)(3).

II. THE CHALLENGED LAWS AND THEIR IMPACTS

Each of the Challenged Laws imposes penalties on Plaintiffs and their members for violations. The record shows that Arizona providers complied with the Challenged Laws while they were in effect. IR#123 ¶ 199 (citing Tr. 11/05/25 (Richardson) at 171:20-172:2 (Two-Trip Scheme), 177:20-23 (Telemedicine Ban Scheme); Tr. 11/05/25 (Isaacson) at 22:10-23:12 (Two Trip Scheme), 28:20-29:2 (Reason Ban Scheme); Tr. 11/05/25 (Mercer) at 85:18-23 (Two-Trip Scheme), 96:7-9 (Telemedicine Ban Scheme)). The Challenged Laws forced Plaintiffs and their

members to "delay abortion care, turn away patients, perform tests and medical procedures that are not medically necessary, and provide information to patients regardless of its relevance and irrespective of whether they wish to receive the information." IR#130 at 2; *see, e.g.*, IR#123 ¶¶ 109, 113-20, 126.

III. REASON BAN SCHEME

The Reason Ban Scheme expressly prohibits the provision of abortion care based on the patient's reasons for seeking an abortion. IR#130 ¶¶ 1-3; Appx7-17 (PX-1) (Reason Ban Scheme laws).

The Reason Ban Scheme makes it a felony to "[p]erform[] an abortion knowing that the abortion is sought solely because of a genetic abnormality of the child" or "solicit[] or accept[] monies to finance . . . an abortion because of a genetic abnormality of the child." A.R.S. § 13-3603.02(A)(2), (B)(2). In addition, providers must execute an affidavit before every abortion swearing that they have "no knowledge" that the pregnancy is being terminated "because of a genetic abnormality of the child." A.R.S. § 36-2157.

The Reason Ban Scheme further prohibits abortion care unless the provider first tells pregnant patients diagnosed with a nonlethal fetal condition that Arizona law "prohibits abortion . . . because of a genetic abnormality." A.R.S. § 36-2158(A)(2)(d). And it imposes an affirmative obligation on providers to report to the Arizona Department of Health Services ("ADHS") "[w]hether any genetic

abnormality of the unborn child was detected at or before the time of the abortion[.]" A.R.S. § 36-2161(A)(25).

In addition to facing felony liability, those who violate any provision of the Reason Ban Scheme risk suspension or revocation of their medical and/or facility license, public censure, and civil penalties of at least $1,000 and up to $10,000 for each violation found. A.R.S. §§ 32-1401(27), 32-1403(A)(2), (A)(5), 32-1403.01(A), 32-1451(A), (D)-(E), (I), and (K).

Due to the Reason Ban Scheme, some Arizona patients were denied their constitutional right to abortion care outright. IR#130 ¶ 5 (citing Tr. 11/05/25 (Isaacson) at 30:7-9); IR#123 ¶ 109 (citing same).

The Reason Ban Scheme also restricted and/or interfered with this fundamental right. It imposes preconditions to care, *see, e.g.*, IR#130 ¶¶ 1-2, and undermines the provider-patient relationship by chilling the sharing of relevant medical information between patients and providers, IR#130 ¶¶ 7, 13, 14 (citing Tr. 11/05/25 (Isaacson) at 30:14-31:9; Tr. 11/06/25 (Cunningham) at 68:15-70:24; Tr. 11/06/25 (Wenstrom) at 31:13-19; Appx122-24 (PX-45)); IR#123 ¶¶ 110-12 (citing Tr. 11/05/25 (Isaacson) at 28:24-29:10, 30:10-31:9; Tr. 11/06/25 (Cunningham) at 68:15-70:24; Tr. 11/06/25 (Wenstrom) at 31:13-19, 33:6-23; Appx122-24 (PX-45)). These patients could access constitutionally protected care only if they kept their reasons for seeking that care from their provider, which served to stigmatize and

shame them for that decision. IR#130 ¶¶ 7, 15 (citing Tr. 11/05/25 (Isaacson) at 30:24-31:16; Tr. 11/06/25 (Wenstrom) at 24:18-25:10, 32:18-33:3); IR#123 ¶ 111 (citing Tr. 11/05/25 (Isaacson) at 30:24-31:16; Tr. 11/06/25 (Wenstrom) at 31:13-33:3).

Further, the Reason Ban Scheme overrides patients' autonomous decision-making by forcing providers willing and able to provide abortion care to withhold that care. IR#130 ¶ 5 (citing Tr. 11/05/25 (Isaacson) at 30:7-9); IR#123 ¶ 127 (citing same). And by preventing patients from disclosing material medical information to their healthcare provider, the Scheme hampers informed consent. IR#130 ¶¶ 10-11, 14 (citing Tr. 11/06/25 (Cunningham) at 68:15-69:15, 70:5-24; Tr. 11/06/25 (Wenstrom) at 34:10-21, 35:19-36:9); IR#123 ¶¶ 128, 151 (citing Tr. 11/06/25 (Cunningham) at 68:15-70:24; Tr. 11/06/25 (Wenstrom) at 31:13-19, 35:19-36:23; Tr. 11/05/25 (Isaacson) at 30:14-23). The Reason Ban Scheme also overrides patients' autonomous decision to obtain a fetal autopsy after abortion, which could provide helpful information about fetal diagnoses and implications for future pregnancies, as the provider must know an autopsy is sought before providing the abortion, but revealing the diagnosis would render the provider unable to provide abortion care. IR#123 ¶ 130 (citing Tr. 11/06/25 (Wenstrom) at 24:1-25:25).

The Reason Ban Scheme prevents providers from learning the full scope of their patients' medical history and cuts off information from referring providers

about the overall condition of a patient's pregnancy—information that, if known, may impact how an abortion is performed. IR#130 ¶ 13 (citing Tr. 11/05/25 (Isaacson) at 30:14-23; Tr. 11/06/25 (Cunningham) at 68:15-70:4).

By chilling communication, the Reason Ban Scheme also undermines the physician-patient relationship by interfering with physicians' ability to provide relevant information, offer emotional support and compassion, and better understand the diagnosis and likelihood of recurrence in future pregnancies. IR#130 ¶¶ 14-16 (citing Tr. 11/06/25 (Cunningham) at 68:15-69:15, 70:5-24; Tr. 11/05/25 (Isaacson) at 29:11-20, 31:6-16; Tr. 11/06/25 (Wenstrom) at 24:1-26:10, 32:18-33:3, 36:4-6); IR#123 ¶¶ 151-56 (citing same).

The Reason Ban Scheme is inconsistent with accepted standards of clinical practice and evidence-based medicine. IR#130 ¶ 12 (citing Tr. 11/06/25 (Wenstrom) at 33:24-34:9; Tr. 11/06/25 (Cunningham) at 68:5-70:4; Appx122 (PX-45 at 1)); *see also* Appx100 (PX-42 at 10).

IV. TWO-TRIP SCHEME

The Two-Trip Scheme imposes a series of preconditions that must be met to obtain abortion care, including *mandatory* delays, ultrasounds and testing, and receipt of state-mandated information. IR#130 ¶¶ 17-21; Appx18-42 (PX-2) (Two-Trip Scheme laws).

Failure to comply with the Two-Trip Scheme's mandates risks severe professional and civil penalties, including loss or suspension of a physician's license. A.R.S. §§ 36-2153(J)-(L), 36-2156(B)-(D), 36-2158(C)-(E). An abortion clinic that is not in "substantial compliance" with the Rh typing requirement may be subject to a range of civil penalties, including, among others, a fine of up to $1,000 per violation, reduction or termination of services, and suspension or revocation of the clinic's license. A.R.S. § 36-449.03(J)(1).

First, the Two-Trip Scheme mandates that every patient seeking abortion care undergo an ultrasound at least 24 hours before "any part of an abortion [is] performed." A.R.S. § 36-2156(A)(1); A.A.C. R9-10-1509(A)(4); A.R.S. § 36-2162.01. Because of the Two-Trip Scheme, every patient is forced to wait at least 24 hours after an in-person visit to obtain abortion care. IR#123 ¶ 113 (citing Tr. 11/05/25 (Richardson) at 171:23-172:2; Tr. 11/05/25 (Mercer) at 85:18-23; Tr. 11/05/25 (Isaacson) at 21:22-22:4). This is true even when patients are certain they want to proceed and have already considered their options. IR#130 ¶¶ 34-35 (citing Tr. 11/05/25 (Isaacson) at 27:19-25; Tr. 11/05/25 (Mercer) at 94:25-95:2, 109:4-8; Tr. 11/07/25 (Biggs) at 207:12-19, 208:2-8; Tr. 11/05/25 (Nichols) at 128:12-21; Tr. 11/06/25 (Cunningham) at 72:16-73:2; Tr. 11/07/25 (Collier) at 29:17-30:6; Tr. 11/05/25 (Richardson) at 173:14-25; Tr. 11/06/25 (Nelson) at 238:20-239:18); IR#123 ¶¶ 132, 160 (citing Tr. 11/05/25 (Isaacson) at 27:19-25; Tr. 11/05/25

(Mercer) at 94:25-95:2, 109:4-8; Tr. 11/07/25 (Biggs) at 205:25-206:17, 207:12-19, 208:2-8; Tr. 11/05/25 (Nichols) at 128:12-21; Tr. 11/06/25 (Cunningham) at 72:16-73:2, 73:19-75:9; Tr. 11/07/25 (Collier) at 29:17-30:6).

In practice, these delays are exacerbated by the challenges of attending two in-person appointments at least 24 hours apart and can last a week or more. IR#130 ¶¶ 23-24 (citing Tr. 11/05/25 (Richardson) at 171:8-16, 171:23-172:13, 193:2-14; Tr. 11/05/25 (Mercer) at 85:18-23, 92:6-17; Tr. 11/05/25 (Isaacson) at 21:22-22:4, 27:22-28:2, 59:1-9; Tr. 11/07/25 (Biggs) at 208:9-18); IR#123 ¶¶ 113-15 (citing Tr. 11/05/25 (Richardson) at 171:8-16, 171:23-172:17, 173:11-25, 193:2-21; Tr. 11/05/25 (Mercer) at 85:18-23, 92:6-17; Tr. 11/05/25 (Isaacson) at 21:22-22:4, 27:22-28:8, 59:1-9; Tr. 11/07/25 (Biggs) at 208:9-18; Tr. 11/07/25 (Collier) at 58:16-19). This mandatory delay prevents some patients from receiving medication abortion by pushing them past the gestational limit for that method of care, and leaves others unable to access abortion care altogether because they are unable to return for the second appointment or are pushed beyond the clinic's gestational limit. IR#130 ¶¶ 25, 34-35, 42 (citing Tr. 11/05/25 (Isaacson) at 28:3-8; Tr. 11/05/25 (Richardson) at 172:14-17, 173:11-25, 193:15-21; Tr. 11/06/25 (Nelson) at 238:12-239:18; Tr. 11/07/25 (Collier) at 29:17-30:6); IR#123 ¶¶ 115, 132-33 (citing same).

Second, the Two-Trip Scheme requires the physician performing the abortion or a referring physician to deliver and recite certain state-mandated information to

every patient orally and in person, at least 24 hours before an abortion. A.R.S. § 36-2153(A). Much of this information is medically inaccurate, out of date, and/or misleading. *See* IR#123 ¶¶ 125, 176 (citing Tr. 11/05/25 (Isaacson) at 24:1-10; Tr. 11/06/25 (Nelson) at 201:9-15; Tr. 11/07/25 (Collier) at 59:14-16, 61:21-23; Appx207, 217-18 (PX-145 at 1, 11-12); Tr. 11/05/25 (Mercer) at 83:8-14). Moreover, patients are required to listen to this information even when it is irrelevant to them, they request not to hear it, and/or it causes them significant distress. IR#130 ¶¶ 30-33 (citing Tr. 11/05/25 (Isaacson) at 22:16-23:12, 25:16-26:3; Tr. 11/05/25 (Richardson) at 175:14-176:16, 190:22-191:7; Tr. 11/06/25 (Cunningham) at 78:11-79:10; Tr. 11/06/25 (Wenstrom) at 26:20-127:3, 27:14-17; Appx207-27 (PX-145); Appx228-61 (PX-147)); IR#123 ¶¶ 122-23 (citing Tr. 11/05/25 (Richardson) at 176:5-16, 190:22-191:7; Tr. 11/06/25 (Cunningham) at 78:11-79:10; Tr. 11/05/25 (Isaacson) at 25:16-26:3; Tr. 11/06/25 (Wenstrom) at 26:20-127:3, 27:14-17); *see also* IR#130 ¶¶ 37-40, 111-16 (citing Tr. 11/06/25 (Cunningham) at 78:14-79:10, 79:14-24, 80:8-24, 98:12-18, 98:25-99:12; Appx71 (PX-40 at 1); Tr. 11/05/25 (Mercer) at 91:6-21; Tr. 11/05/25 (Isaacson) at 26:4-12); IR#123 ¶¶ 135-37, 174-76, 181-83 (citing Tr. 11/06/25 (Cunningham) at 66:21-23, 78:9-79:24, 80:8-24, 82:3-9, 98:12-18, 98:25-99:12; Tr. 11/05/25 (Isaacson) at 19:12-17, 25:7-12, 25:16-26:12; Tr. 11/05/25 (Richardson) at 170:1-9, 176:5-19; Tr. 11/05/25 (Mercer) at 88:13-89:13; Tr. 11/06/25 (Nelson) at 222:21-223:3; Tr. 11/07/25 (Collier) at 36:2,

59:14-16, 61:21-23, 67:5-68:15; Tr. 11/07/25 (Biggs) at 205:14-207:11; Tr. 11/06/25 (Wenstrom) at 27:1-28:13; Appx71-72 (PX-40 at 1-2); Appx228-61 (PX-147)); *see also* Appx71-72 (PX-40 at 1-2)). Neither Intervenors nor their witnesses identified any procedures other than abortion—including those that present greater risks to the patient—for which Arizona mandates what must be included in informed consent. IR#123 ¶ 174 (citing Tr. 11/06/25 (Nelson) at 222:21-223:3; Tr. 11/07/25 (Collier) at 67:5-68:15).

Third, the Two-Trip Scheme requires that prior to an abortion, all patients who do not have "written documentation of blood type acceptable to the physician" undergo Rh testing, regardless of medical necessity or the patient's wishes. IR#130 ¶¶ 28-29, 36 (citing Tr. 11/05/25 (Mercer) at 87:18-24, 103:12-104:15; Tr. 11/05/25 (Isaacson) at 64:24-65:15, 65:23-25; Tr. 11/05/25 (Richardson) at 172:3-13; Tr. 11/06/25 (Cunningham) at 79:17-24; Tr. 11/07/25 (Collier) at 61:6-8; Appx71 (PX-40 at 1); Tr. 11/05/25 (Nichols) at 128:22-129:10); IR#123 ¶¶ 119, 134 (citing Tr. 11/05/25 (Isaacson) at 64:24-65:15, 65:23-25; Tr. 11/05/25 (Richardson) at 172:3-13; Tr. 11/05/25 (Mercer) at 87:14-24, 103:12-104:15; Tr. 11/06/25 (Cunningham) at 79:17-24; Tr. 11/07/25 (Collier) at 61:6-8; Appx71 (PX-40 at 1); Tr. 11/05/25 (Nichols) at 128:22-129:10)); A.R.S. § 36-449.03(D)(3), (G)(5); A.A.C. R9-10-1509(A)(3)(b), (B).

The testimony at trial established that the most rigorous scientific evidence confirms that mandatory delays are not evidence-based and do not improve decisional certainty. IR#123 ¶¶ 157, 160 (citing Tr. 11/07/25 (Biggs) at 205:24-206:17, 206:20-207:11, 207:16-23; Tr. 11/06/25 (Cunningham) at 72:7-75:9; Tr. 11/05/25 (Nichols) at 128:3-16; Tr. 11/05/25 (Richardson) at 174:1-6; Tr. 11/05/25 (Isaacson) at 27:15-18; Appx83 (PX-41 at 5); Tr. 11/07/25 (Collier) at 49:12-15); *see also* Appx270 (Tr. 11/07/25 (Collier) at 49:12-15); Appx266 (Tr. 11/06/25 (Nelson) at 216:5-21). Accordingly, the American College of Obstetricians and Gynecologists ("ACOG") has "call[ed] for the cease and repeal of" mandatory waiting periods because they "create barriers to abortion access, or interfere with the patient-health care professional relationship and the practice of medicine." Appx83 (PX-41 at 5).

Evidence-based medicine likewise supports tailoring informed consent to each patient, not disseminating one-size-fits-all disclosures that may be misleading or distressing. IR#130 ¶¶ 111-16; IR#123 ¶¶ 174-76, 181-83 (citing Tr. 11/06/25 (Cunningham) at 66:21-23, 78:11-79:10, 80:8-20, 82:3-9; Tr. 11/05/25 (Isaacson) at 19:12-17, 25:7-12, 25:16-26:15; Tr. 11/05/25 (Richardson) at 170:1-9, 176:5-10, 176:17-19; Tr. 11/05/25 (Mercer) at 88:13-89:13; Tr. 11/06/25 (Nelson) at 222:21-223:3; Tr. 11/07/25 (Collier) at 36:2, 59:14-16, 61:21-23, 67:5-68:15; Tr. 11/06/25

(Wenstrom) at 27:1-28:13; Appx71-72 (PX-40 at 1-2); Appx228-61 (PX-147)); *see also* Appx71-72 (PX-40 at 1-2).

Finally, there is no evidence that any clinical standards of practice or evidence-based medicine support a mandatory ultrasound 24 hours before an abortion or mandatory Rh testing for all abortion patients. IR#130 ¶¶ 27-28, 102-10; IR#131; IR#123 ¶¶ 165-66, 169-71 (citing Tr. 11/05/25 (Richardson) at 174:17-23, 175:5-13; Tr. 11/05/25 (Isaacson) at 26:20-27:2, 27:9-14, 32:22-33:10, 49:8-11, 49:20-23, 50:2-5, 51:4-11, 52:2-5; Tr. 11/05/25 (Mercer) at 86:2-87:10, 88:1, 98:14-18; Tr. 11/05/25 (Nichols) at 128:22-129:6, 141:23-145:15, 145:17-24; Tr. 11/06/25 (Nelson) at 191:15-192:7; Appx107 (PX-43 at 3); Appx203 (PX-144 at 1); Appx149, 153, 171 (PX-105 at 14, 18, 36)). Rather, the evidence shows that Rh testing is not medically necessary prior to 12 weeks' gestation and that an ultrasound is not required in all circumstances—and, indeed, where an ultrasound is medically indicated, it can and should be performed right before the abortion, IR#130 ¶¶ 27-28 (citing Tr. 11/05/25 (Richardson) at 171:23-172:13, 174:24-175:13; Tr. 11/05/25 (Isaacson) at 22:10-15, 64:24-65:8; Tr. 11/05/25 (Mercer) at 85:18-23, 87:2-13, 103:12-104:15); *see also* IR#123 ¶¶ 166, 171, 189 (citing Tr. 11/05/25 (Richardson) at 175:5-13; Tr. 11/05/25 (Isaacson) at 32:22-33:10, 49:20-23, 50:2-5; Tr. 11/05/25 (Mercer) at 86:2-87:10, 88:1, 98:14-18; Tr. 11/05/25 (Nichols) at 128:22-129:6,

141:23-145:15; Appx107 (PX-43 at 3); Appx203 (PX-144 at 1); Tr. 11/06/25 (Nelson) at 136:14-137:16, 145:19-146:7, 191:15-192:7, 229:5-14).

V. TELEMEDICINE BAN SCHEME

The Telemedicine Ban Scheme expressly and effectively prohibits the use of telemedicine to provide abortion care. IR#130 ¶¶ 46-47, 76-79; Appx43-70 (PX-3) (Telemedicine Ban Scheme laws).

A physician who knowingly violates the express ban on the use of telemedicine for abortion "commits an act of unprofessional conduct and is subject to license suspension or revocation." A.R.S. § 36-3604(B). A clinic provider who violates the mailing ban may be fined up to $1,000 per violation, per day and per patient affected. A.R.S. § 36-431.01. And a licensed abortion clinic that is not "in substantial compliance with" the requirements to conduct an in person physical exam, ultrasound, or laboratory tests may be fined up to $1,000 per violation per day by ADHS and face sanctions such as termination of services and revocation, denial, or suspension of its facility license. A.R.S. §§ 36-449.03(J)(1), 36-431.01, 36-427.

The Telemedicine Ban Scheme prevents patients from obtaining both information and abortion care in a manner that might be best or preferable for them. IR#130 ¶¶ 40, 48, 78, 94, 115 (citing Tr. 11/06/25 (Cunningham) at 83:6-84:25; Tr. 11/05/25 (Richardson) at 178:2-11, 178:17-19, 179:4-181:10; Tr. 11/05/25 (Mercer) at 89:19-90:8, 91:6-21, 96:5-22; Tr. 11/05/25 (Nichols) at 146:15-147:9, 147:13-

23); IR#123 ¶¶ 80, 85-86, 126, 139 (citing Tr. 11/05/25 (Nichols) at 129:20-23, 146:15-147:9, 147:13-23, 149:12-24, 152:6-153:18, 154:3-155:24; Tr. 11/05/25 (Mercer) at 89:19-90:8, 96:5-22, 97:22-24; Tr. 11/05/25 (Richardson) at 178:2-11; Tr. 11/06/25 (Cunningham) at 83:6-84:4, 84:17-25; Tr. 11/06/25 (Nelson) at 241:18-242:4); Appx109 (PX-43 at 5). Because telemedicine plays a pivotal role in ensuring timely access to abortion care for those who face barriers to traveling to a clinic, the Telemedicine Ban Scheme overrides some patients' autonomous decision to obtain a medication abortion, and other patients' decision to obtain abortion care at all. IR#123 ¶¶ 80, 83, 85-86, 139 (citing Tr. 11/05/25 (Nichols) at 147:13-23, 149:12-24, 152:6-153:18, 154:3-155:24; Tr. 11/05/25 (Mercer) at 96:5-15; Tr. 11/05/25 (Richardson) at 178:2-11; Appx109 (PX-43 at 5)).

Clinical standards of practice and evidence-based medicine do not support a ban on telemedicine for medication abortion. IR#123 ¶ 185 (citing Tr. 11/05/25 (Mercer) at 97:14-21; Tr. 11/06/25 (Cunningham) at 83:6-12, 84:5-8; Tr. 11/05/25 (Nichols) at 150:3-15); Appx79 (PX-41 at 1). Rather, the evidence demonstrates that abortion care via telemedicine is safe and effective based on accepted clinical standards of practice and evidence-based medicine, such as ACOG Practice Bulletins. IR#130 ¶ 82 (citing Appx109 (PX-43 at 5) ("[m]edication abortion can be provided safely and effectively by telemedicine with a high level of patient satisfaction")); IR#123 ¶¶ 86, 186. Providers can screen patients via telemedicine to

determine their eligibility for medication abortion. IR#123 ¶ 187 (citing Tr. 11/05/25 (Richardson) at 179:1-13; Tr. 11/05/25 (Nichols) at 150:25-152:5). The complication rates for medication abortion delivered in person and via telemedicine are comparable—and extremely low. IR#123 ¶ 84 (citing Tr. 11/05/25 (Mercer) at 96:1-4; Appx109 (PX-43 at 5); Tr. 11/05/25 (Nichols) at 150:16-152:5). Telemedicine also facilitates earlier care, which improves patient safety. IR#130 ¶¶ 41-42, 82, 84 (citing Tr. 11/05/25 (Mercer) at 93:7-14, 94:13-22; Tr. 11/06/25 (Cunningham) at 70:25-71:15; Tr. 11/05/25 (Richardson) at 173:14-23, 178:2-11; Tr. 11/06/25 (Nelson) at 238:12-239:18; Tr. 11/05/25 (Nichols) at 152:6-153:18; Appx109 (PX-43 at 5)). The record similarly establishes that providers can and do effectively obtain informed consent via telemedicine, including discussing options with a patient. IR#123 ¶ 192 (citing Tr. 11/05/25 (Nichols) at 148:2-149:3; Tr. 11/05/25 (Richardson) at 181:4-10; Tr. 11/06/25 (Cunningham) at 82:25-83:5, 83:13-18; Tr. 11/05/25 (Mercer) at 97:3-10). Moreover, Arizona law already sets forth a generally applicable framework for regulating the use of telemedicine across medical disciplines to ensure patient health and safety, including for informed consent. *See* IR#123 ¶ 81 (citing Tr. 11/06/25 (Nelson) at 242:10-17, 242:21-243:3).

* * *

In sum, the Challenged Laws deny, restrict, and interfere with access to pre-viability abortion care. In addition to the reasons set forth above, the Challenged

Laws are inconsistent with evidence-based medicine and accepted clinical standards because such blanket requirements prevent providers from individualizing care to specific patients. IR#123 ¶¶ 101, 124, 136, 166, 172, 176. As such, the Challenged Laws undermine, rather than advance, any state interest in health and safety. IR#130 ¶¶ 12-13, 26-30, 49, 82 (citing Tr. 11/06/25 (Wenstrom) at 33:24-34:9; Tr. 11/06/25 (Cunningham) at 68:5-70:4, 83:6-12, 84:5-8, 92:3-93:13; Tr. 11/05/25 (Nichols) at 150:3-15; Appx122 (PX-45 at 1); Tr. 11/05/25 (Richardson) at 171:23-172:13, 174:7-14, 174:24-175:13; Tr. 11/05/25 (Isaacson) at 22:10-15, 30:14-23, 64:24-65:15, 65:23-25; Tr. 11/05/25 (Mercer) at 85:18-23, 87:2-13, 87:18-22, 97:14-21, 103:12-104:15; Appx79 (PX-41 at 1); Appx109 (PX-43 at 5)). Even in the face of voluminous evidence of the harmful effects of the Challenged Laws, neither Intervenors—the President of the Senate and Speaker of the House—nor their experts offered *any* evidence suggesting the Challenged Laws were enacted for the 'limited purpose of improving or maintaining the health of an individual seeking abortion care, consistent with accepted clinical standards of practice and evidence-based medicine.'" Ariz. Const. art. II, § 8.1(B)(1)(a); *see* Appx269 (Tr. 11/07/25 (Collier) at 37:20-25); Appx264-65 (Tr. 11/06/25 (Nelson) at 206:11-207:5); Appx272 (Tr. 11/07/25 (Curley) at 144:16-21).

The Challenged Laws also override patients' autonomous decision-making. IR#130 ¶¶ 9-11, 34-40, 48 (citing Tr. 11/06/25 (Cunningham) at 68:22-69:5, 72:16-

73:2, 79:14-80:24, 83:6-84:25, 98:12-18, 98:25-99:12; Tr. 11/05/25 (Nichols) at 128:22-129:10; Tr. 11/06/25 (Wenstrom) at 24:1-25:25, 40:25-41:5; Tr. 11/05/25 (Mercer) at 91:6-21, 94:25-95:2; Tr. 11/07/25 (Biggs) at 207:12-19, 208:6-8; Tr. 11/05/25 (Richardson) at 173:14-25, 178:2-11, 178:17-19, 179:4-13; Tr. 11/07/25 (Collier) at 61:6-8; Tr. 11/06/25 (Nelson) at 238:20-239:18; Appx71 (PX-40 at 1)).

STATEMENT OF THE ISSUES

1. Did the Superior Court err in holding that the Challenged Laws (1) deny, restrict, and interfere with pre-viability abortion, (2) infringe on Arizonans' autonomous decision-making, (3) do not improve or maintain the health of pregnant Arizonans consistent with accepted clinical standards of practice and evidence-based medicine, and (4) do not use the least restrictive means, and thus are unconstitutional?

LEGAL STANDARDS

Appellate courts review questions of law *de novo* but are "bound by the trial court's findings of fact unless they are clearly erroneous." *Scottsdale Princess P'ship v. Maricopa County*, 185 Ariz. 368, 372 (Ct. App. 1995). Deference is given because "the trial judge is in the best position to evaluate the atmosphere of the trial." *State v. Bible*, 175 Ariz. 549, 598 (1993); *accord State v. Alvarez-Soto*, 261 Ariz. 21 ¶ 32 (2025) ("[T]he trial court is in a superior position to resolve disputes . . . , to assess witness credibility and demeanor, and to integrate those findings with any other

evidence presented."). Given that Intervenors have not requested express findings of fact and conclusions of law under Rule 52(a) of the Arizona Rules of Civil Procedure, "this Court must assume that the trial court found every controverted issue of fact necessary to sustain the judgment and, if there is reasonable evidence to support such finding, sustain the judgment." *Fleming v. Becker*, 14 Ariz. App. 347, 350 (Ct. App. 1971); *cf. Whitt v. Meza*, 257 Ariz. 176, 180 ¶ 7 (Ct. App. 2024) (submission of proposed divorce decrees does not trigger requirement for express findings of fact).

ARGUMENT

I. THE SUPERIOR COURT CORRECTLY HELD THAT THE AMENDMENT'S PLAIN TEXT SUBJECTS LAWS THAT INTERFERE WITH THE FUNDAMENTAL RIGHT TO ABORTION PRIOR TO VIABILITY TO STRICT SCRUTINY.

While courts ordinarily presume that the legislature acts constitutionally, "any presumption in [a law's] favor falls away" when it burdens a fundamental right. *Gallardo v. State*, 236 Ariz. 84, 87 ¶ 9 (2014). Under the Amendment, which is situated within the Arizona Constitution's Declaration of Rights, "[e]very individual has a fundamental right to abortion." Ariz. Const. art. II, § 8.1(A). As the Arizona Supreme Court has recognized, the Declaration of Rights is "the main formulation of rights and privileges conferred on Arizonans" and "whenever a right that the Arizona Constitution guarantees is in question," courts must "first consult [the state]

constitution." *Mountain States Tel. & Tel. Co. v. Ariz. Corp. Comm'n*, 160 Ariz. 350, 356 (1989).

The Amendment's plain language mandates that courts review laws that deny, restrict, or interfere with the fundamental right to abortion before viability under "a particularly stringent strict scrutiny standard." IR#130 ¶ 87; *see also supra* Statement of Facts ("SOF") Part I pp. 3-4. The Amendment defines "compelling state interest" in this context. A law or regulation that interferes with, denies, or restricts the fundamental right to abortion prior to viability serves a compelling interest only if it meets two requirements: (1) it "[i]s enacted or adopted for the limited purpose of improving or maintaining the health of an individual seeking abortion care, consistent with accepted clinical standards of practice and evidence-based medicine," and (2) it "[d]oes not infringe on that individual's autonomous decision making." Ariz. Const. art. II, § 8.1(B)(1). In other words, regulations of pre-viability abortion care are permitted under the Amendment only if they both make the abortion safer (according to accepted clinical standards of practice and evidence-based medicine) for the person seeking it, *and* respect patients' ability to make autonomous decisions regarding their healthcare, using the least restrictive means. *See Armstrong v. State*, 989 P.2d 364, 376 (Mont. 1999) (recognizing that "personal autonomy" includes "the right of each individual to make medical judgments affecting her or his bodily integrity and health in partnership with a chosen health

care provider free from the interference of the government"). Failure to meet any aspect of this standard, including the least restrictive means test, is fatal. *See* State's Answering Br. at 43-44.

This rigorous review is required not just when a law *restricts* or *denies* this fundamental right, but also when it *interferes* with it. Given Arizona's rules of statutory interpretation, "interference" must mean something more than denial or restriction. "A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous." *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019). To hold that only an outright denial of abortion care triggers the Amendment would be to render two-thirds of the "denies, restricts *or* interferes" standard mere surplusage.[2]

[2] Ariz. Const. art. II, § 8.1(A) (emphasis added). Other courts have recognized that a law that "impacts how and when a patient can get a pre-viability abortion" triggers strict scrutiny under their own state constitutional protections for pre-viability abortion. *See, e.g.*, *Planned Parenthood of Mont. v. State*, 570 P.3d 51, 79 (Mont. 2025). For example, the Kansas Supreme Court has found that, among other things, laws that "delay access to abortion," "make it more difficult" to provide abortion care, impose "financial burdens" on providers, "force [providers] to see fewer patients, cause [providers'] patients to face higher costs, or result in unjustifiably delayed and obstructed services" interfere with pregnant people's right to abortion. *Hodes & Nauser, MDs, P.A. v. Stanek*, 551 P.3d 62, 74-75 (Kan. 2024); *see also id.* at 74 ("once a plaintiff proves an actual infringement—*regardless of degree* and *even if the infringement is slight*—the government's action is presumed unconstitutional"). Here, for patients who are able to receive care under the Challenged Laws, each of the laws imposes additional hurdles before the patient can obtain that care, and accordingly each of the Challenged Laws denies, restricts, and interferes with the fundamental right.

Moreover, even if Intervenors could show that the Challenged Laws do not interfere with patients' autonomous decision-making and that they improve or maintain the health of Arizonans seeking abortion care (which they cannot), they must also demonstrate that the Challenged Laws achieve those ends using the least restrictive means. They have not—and cannot—do so. Such a demonstration would require showing that the Challenged Laws "'target[]' the 'exact source of the evil [they] seek[] to remedy' without 'eliminat[ing] . . . more than' necessary to achieve that goal." *In re Matter of Wood*, 257 Ariz. 549, 556 ¶ 18 (Ct. App. 2024) (holding that blanket termination of voting rights of all persons under guardianship, without individualized determination of capacity, did not use the least restrictive means of ensuring capacity to vote) (quoting *Frisby v. Schultz*, 487 U.S. 474, 485 (1988)). Mere "hypothesis, speculation or 'deference'" is insufficient to satisfy the burden of showing that a law employs "the least restrictive means practically available." *Kenyon v. Hammer*, 142 Ariz. 69, 87 (1984) (en banc). If "'there are other, reasonable ways to achieve' the State's legitimate goals 'with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference.'" *In re Matter of Wood*, 257 Ariz. at 556 ¶ 18 (quoting *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972)). Thus, Intervenors must demonstrate that available "alternatives for achieving the State's compelling interest are ineffective or impractical." *State v. Hardesty*, 222 Ariz. 363, 368 ¶ 21 (2009) (en banc). They

have not done so, and in failing to do so have waived such an argument. *See Robert Schalkenbach Found. v. Lincoln Found., Inc.*, 208 Ariz. 176, 180 ¶ 17 (Ct. App. 2004), *as amended* (July 9, 2004) ("Generally, we will consider an issue not raised in an appellant's opening brief as abandoned or conceded."). Accordingly, the Challenged Laws cannot survive the least restrictive means test: this alone renders them unconstitutional.

Intervenors' attempts to avoid the plain language of the Amendment and apply a less stringent standard are unavailing. For example, Intervenors argue that the Amendment incorporates the federal undue burden standard that was operative under *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), prior to its overruling under *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), into state law. OB at 24-34. As the Superior Court correctly held, this "contention flatly contradicts the plain language of Arizona's Constitutional Amendment." IR#130 at 4.

Nevertheless, Intervenors ask the Court to ignore the Amendment's plain language and look instead to what they claim is extrinsic evidence that the undue burden test applies. However, this argument misses the mark in several important respects.

First, even if such evidence demonstrated what Intervenors claim (which it does not), courts do not look to extrinsic evidence when the constitutional text is

clear.[3] Rather, in interpreting a constitutional amendment, courts "first examine the plain language of the provision. If the language is clear and unambiguous, we generally must follow the text of the provision as written. No extrinsic matter may be shown to support a construction that would vary its apparent meaning. In short, judicial construction is neither necessary nor proper." *Jett v. City of Tucson*, 180 Ariz. 115, 119 (1994) (en banc) (citations omitted); *see also McElhaney Cattle Co. v. Smith*, 132 Ariz. 286, 290 (1982) (en banc) (same).

Second, it strains common sense to suggest that the Amendment—by adopting a particularly stringent form of strict scrutiny—intended to incorporate the undue burden standard, which was specifically designed to replace strict scrutiny with a more lenient test. The operative test under *Casey* was whether the purpose or effect of a law "is to place a substantial obstacle in the path of a woman seeking an abortion" prior to viability. 505 U.S. at 878. That "substantial obstacle" language appears nowhere in the Amendment; rather, the Amendment more broadly applies to *any* law that "[d]enies, restricts or interferes" with the fundamental right to abortion prior to viability. Ariz. Const. art. II, § 8.1(A)(1). The next step of the analysis fares no better. *Casey* expressly departed from the U.S. Supreme Court's

[3] In relying on *Fields* to suggest otherwise, Intervenors fail to note that that decision contemplates considering extrinsic evidence only "[w]hen terms are unclear or susceptible to more than one reasonable interpretation." *Fields v. Elected Officials' Ret. Plan*, 234 Ariz. 214, 219 ¶ 22 (2014); *see* OB at 23-24.

history of strict scrutiny review, holding that states could restrict a fundamental right—abortion—even without a "compelling" interest if it advanced an interest deemed "legitimate." *See, e.g.*, *Hodes & Nauser, MDs, P.A. v. Schmidt*, 440 P.3d 461, 509 (Kan. 2019) (Biles, J., concurring) ("Interests such as promoting potential life before viability, protecting the dignity of life, and protecting medical ethics, are permissibly advanced under a federal undue burden analysis but not strict scrutiny."). In contrast, the Amendment defines "compelling interest" for purposes of its strict scrutiny analysis. No other state interest, even those that have been deemed compelling in other contexts, can satisfy the Amendment's strictures. Rather, the State has a compelling state interest only when ***both*** requirements are met: (1) that a law be "enacted or adopted for the limited purpose of improving or maintaining the health of an individual seeking abortion care, consistent with accepted clinical standards of practice and evidence-based medicine," and (2) that the law "not infringe on that individual's autonomous decision making." Ariz. Const. art. II, § 8.1(B)(1). The strict scrutiny standard imposed by the Amendment is thus much more stringent than the undue burden imposed under *Casey*, and it is incorrect to say that undue burden applies in Arizona.[4]

[4] Other courts have likewise rejected arguments that similarly worded constitutional amendments should be read coextensively with *Casey*. *See Northland Family Planning Ctr. v. Nessel*, No. 24-000011, 2025 WL 2098474, at *10 (Mich. Ct. Cl. May 13, 2025) (hereinafter "*NFP*") (holding that *Casey*'s undue burden test "has no place in jurisprudence interpreting [Michigan's reproductive freedom

Third, even if it were appropriate to look beyond the Amendment's text (which it is not), none of the extrinsic statements upon which Intervenors rely use the language of undue burden. Instead, these statements in public messaging and the publicity pamphlet for the Amendment reference "protections that patients had under Roe v. Wade." OB at 28-29. But *Roe* reviewed abortion laws under strict scrutiny, not *Casey*'s lesser undue burden standard. *See, e.g.*, *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416 (1983) (striking down state-mandated information and delay requirements under *Roe* standard), *overruled on other grounds by Casey*, 505 U.S. at 870; *Thornburgh v. Am. Coll. of Obstetricians & Gynecologists*, 476 U.S. 747 (1986) (same), *overruled on other grounds by Casey*, 505 U.S. at 870. Intervenors fail to acknowledge, let alone explain, this discrepancy. Intervenors also ignore the other two types of evidence of the electorate's intent that may be considered where there is ambiguity: extrinsic evidence of "the purpose sought to be accomplished by [the amendment's] enactment" and "the evil sought to be remedied." *Fields*, 234 Ariz. at 219 ¶ 22 (quoting *McElhaney Cattle Co.*, 132 Ariz. at 290). Prior to the Amendment, Arizona's laws interfered with, denied, and restricted access to abortion care in the ways detailed *infra*. If anything, the materials

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amendment]"), *cross-appeal pending*, No. 375785 (Mich. Ct. App.); *Preterm-Cleveland v. Yost*, No. 24 CV 2634, 2024 WL 3947516, at *9-11 (Ohio Com. Pl. Aug. 23, 2024) (rejecting argument that the court should "apply the pre-*Dobbs* legal regime" to Ohio's reproductive freedom amendment).

upon which Intervenors rely reflect that the goal of the Amendment was to alleviate such harms and advance health and patients' autonomous decision-making.

II. THE SUPERIOR COURT CORRECTLY HELD THAT THE CHALLENGED LAWS ARE UNCONSTITUTIONAL.

Each of the Challenged Laws denies, restricts, and interferes with the fundamental right to abortion under the terms of the Amendment. In order to uphold the laws, Intervenors must therefore satisfy their burden of demonstrating that the Challenged Laws, using the least restrictive means, both: (1) do not infringe on an individual's autonomous decision-making; *and* (2) improve or maintain the health of an individual seeking abortion, consistent with accepted clinical standards of practice and evidence-based medicine. Ariz. Const. art. II, § 8.1(B)(1). No other state interest can meet the Amendment's high bar.

Intervenors have not met this burden, nor could they. Intervenors have not contested the credibility or reliability of any of Plaintiffs' witnesses or the accuracy of the Superior Court's findings based on this evidence, let alone cited a shred of evidence to suggest any of these findings are clear error. The record shows that the Challenged Laws deny, restrict, and interfere with access to abortion care and are inconsistent with evidence-based medicine and accepted clinical standards. They undermine, rather than advance, any interest in health and safety. *See supra* SOF Parts III-V pp. 5-17 (citing Tr. 11/06/25 (Wenstrom) at 33:24-34:9; Tr. 11/06/25 (Cunningham) at 68:5-70:4, 83:6-12, 84:5-8; Tr. 11/05/25 (Richardson) at 172:3-13;

Tr. 11/05/25 (Isaacson) at 64:24-65:8; Tr. 11/05/25 (Mercer) at 97:14-21; Appx79 (PX-41 at 1); Appx109 (PX-43 at 5); Appx122 (PX-45 at 1)).

A. The Reason Ban Scheme is Unconstitutional.

Intervenors do not contend, and therefore have conceded any argument to the contrary, that prohibiting the provision of abortion based on a patient's reason can survive constitutional review under the Amendment. *See Robert Schalkenbach Found.*, 208 Ariz. at 180 ¶ 17 ("Generally, we will consider an issue not raised in an appellant's opening brief as abandoned or conceded."). Instead, Intervenors cherry-pick one subsection of one sub-provision of the Reason Ban Scheme to discuss in isolation, claiming that "[b]ecause § 13-3603.02(B)(1) does not violate the Constitution, the Court should reverse the judgment as to that provision." OB at 51. But fundamental principles of severability demand that the Court analyze the Reason Ban Scheme as a whole, and, as the Superior Court correctly held, the Reason Ban Scheme, including § 13-3603.02(B)(1), is unconstitutional.

The Reason Ban Scheme is an outright ban on pre-viability abortion, and as such, flies in the face of the Amendment's clear protections. It denies, restricts, and interferes with the right to abortion on its face, wholly proscribing abortion based on a patient's reason for seeking that care. IR#130 ¶ 88.

As set forth above, the undisputed record bears this out. Patients in Arizona have been denied abortion care due to the Reason Ban Scheme. *Supra* SOF Part III

pp. 6-7. The Reason Ban Scheme has also undermined the provider-patient relationship. *Id.* It predicates patients' ability to access constitutionally protected care on keeping their reasons for seeking that care from their provider, which stigmatizes and shames patients for those reasons. *Id.*

The Reason Ban Scheme cannot be justified by a compelling state interest, and Intervenors do not argue otherwise. The Superior Court correctly held that the Reason Ban Scheme by its very terms and on the basis of the factual record overrides patients' autonomous decision-making. IR#130 ¶¶ 91-92. Indeed, the factual record demonstrates that the Reason Ban Scheme overrides patients' autonomous decision-making by forcing providers to turn patients away where a provider knows that the patient is seeking abortion care because of a fetal diagnosis. *Supra* SOF Part III p. 7. The Reason Ban Scheme prevents patients from disclosing material medical information to their healthcare provider if they want to receive the healthcare of their choice, which hampers providers' ability to consider key cues and essential information from the patient and provide tailored guidance, which is crucial to ensuring informed decision-making and providing care in accordance with ethical principles. *Id.* at 7-8.

Furthermore, the Reason Ban Scheme does not advance a compelling interest in health consistent with accepted clinical standards of practice and evidence-based medicine, and Intervenors do not offer any argument that it does. The Reason Ban

Scheme is not at all consistent with the accepted standards of clinical practice or evidence-based medicine that protect patient health, *id.* at 8, and in fact directly contradicts those standards: ACOG emphasizes that restricting abortion care based on a patient's reason for seeking that care is not medically appropriate and can endanger the patient's health. Appx122-24 (PX-45); Appx91-104 (PX-42). The Reason Ban Scheme prevents providers from learning the full scope of their patients' medical history and cuts off information from referring providers—information that may significantly impact how an abortion is performed. *Supra* SOF Part III pp. 7-8. The Reason Ban Scheme also prevents physicians from providing relevant information, offering emotional support and compassion, diagnosing fetal conditions, and counseling patients on the likelihood of recurrence in future pregnancies—including by offering a fetal autopsy. *Id*.

Even had Intervenors established that the Reason Ban Scheme served a compelling state interest, they still could not have satisfied strict scrutiny because they did not even attempt to show that the Scheme's outright *prohibition* of certain abortions was the least restrictive means of furthering any such interest.

Instead of contending with the Superior Court's detailed findings and analysis, Intervenors invite this Court to focus solely on one isolated sub-provision, asserting

that the Court should reverse the judgment only as to A.R.S. § 13-3603.02(B)(1).[5] OB at 51. But Arizona courts interpret statutes "as a whole," *Wyatt v. Wehmueller*, 167 Ariz. 281, 284 (1991) (en banc), and the structure of the statute makes plain that subsection (B)(1) is but one subordinate part of the Reason Ban Scheme, *see Nicaise*, 245 Ariz. at 568 ¶ 11 ("We interpret statutory language in view of the entire text, considering the context and related statutes on the same subject."). Subsection (A)—the unconstitutionality of which Intervenors do not dispute—prohibits certain abortions, A.R.S. § 13-3603.02(A)(1), whereas subsection (B)(1) creates additional penalties for "[u]s[ing] force or the threat of force to intentionally injure or intimidate any person for the purpose of coercing" an abortion prohibited under subsection (A) of the Scheme.

Intervenors provide no support for their bare assertion, lodged in a footnote, that "§ 13-3603.02(B) plainly would be severable from any purportedly invalid provision," OB at 50 n.12, and as such, this argument is waived, *see, e.g.*, *MT Builders, L.L.C. v. Fisher Roofing, Inc.*, 219 Ariz. 297, 304 ¶ 19 n.7 (Ct. App. 2008) (deeming "arguments [raised] in a one sentence footnote . . . waived").

Even if the argument were not waived, a statute is severable only where the court "determine[s] that the valid portion of the statute would have been enacted

[5] Although Intervenors repeatedly refer to A.R.S. § 13-3603.02(B), they in fact address one provision of that subsection, A.R.S. § 13-3603.02(B)(1), only.

absent the invalid portion." *State Comp. Fund v. Symington*, 174 Ariz. 188, 195 (1993) (en banc); *see also Selective Life Ins. Co. v. Equitable Life Assur. Soc'y of U.S.*, 101 Ariz. 594, 599 (1967) (en banc) (holding that a law is severable where "the invalid portion was not the inducement of the act"). Here, the invalid portion—the Reason Ban's prohibition on providing certain abortions—was plainly the inducement for subsection (B)(1), which incorporates, refers to, and is derivative of that prohibition. Untethered from the remainder of the Scheme, A.R.S. § 13-3603.02(B)(1) is, at best, superfluous: Arizona law already creates a Class 3 felony where a "person threatens or intimidates by word or conduct to cause physical injury to another person." A.R.S. § 13-1202(A)(1), (C). As such, this portion of the Reason Ban Scheme is inseverable. The Superior Court properly enjoined the Reason Ban Scheme, including A.R.S. § 13-3603.02(B)(1), and this Court should affirm the judgment.

B. The Two-Trip Scheme is Unconstitutional.

Intervenors do not meaningfully contest that the Two-Trip Scheme interferes with, restricts, and denies the fundamental right to abortion, nor could they. By its terms, the Two-Trip Scheme does so by creating a series of preconditions that must be met to obtain care, including mandatory delays, mandatory testing, and receipt of state-mandated information. *Supra* SOF Part IV p. 8.

The factual record further demonstrates that patients' access to abortion has been interfered with, restricted, and denied as a result of the Two-Trip Scheme. *See generally supra* SOF Part IV pp. 8-15. For example, the mandatory delay and requirement that a patient make at least two separate in-person visits to the clinic combine to exacerbate barriers to care, cause unnecessary and harmful delays in accessing time-sensitive care, and can prevent patients from obtaining the abortion care that is best for their circumstances—or even from obtaining an abortion at all. *Supra* SOF Part IV p. 10.

The Two-Trip Scheme also interferes with patients' autonomous decision-making. By its terms, the Two-Trip Scheme imposes one-size-fits-all requirements regardless of—and overriding—an individual patient's decisions about their medical care. Again, the factual record shows that, for example, the mandatory delay interferes with individuals' autonomous decision-making by forcing all patients to wait at least 24 hours from the time of their first appointment (if not longer), even though most patients are certain they want to proceed and have already considered their options. *Supra* SOF Part IV pp. 9-10. Similarly, the Two-Trip Scheme runs roughshod over autonomous decision-making by forcing all patients to undergo ultrasound and Rh testing and to hear state-mandated information as a prerequisite for obtaining abortion care, regardless of medical necessity and even over the patient's objections. *Supra* SOF Part IV pp. 10-12. At its most extreme, the evidence

shows that the Two-Trip Scheme imposes such significant barriers to accessing abortion care that it precludes some patients from doing so and thus overrides their decisions about abortion care altogether. *Supra* SOF Part IV p. 10.

Intervenors do not even attempt to carry their burden to demonstrate that the Two-Trip Scheme advances health consistent with accepted clinical standards of practice and evidence-based medicine. Nor could they: Intervenors did not identify any clinical standards supporting the Two-Trip Scheme's requirements. By contrast, the most rigorous scientific evidence confirms that mandatory delays are not evidence-based and do not improve decisional certainty, and medical authorities like ACOG have "call[ed] for the cease and repeal of" mandatory waiting periods. *Supra* SOF Part IV p. 13. There is no evidence that any clinical standards of practice or evidence-based medicine support a mandatory ultrasound 24 hours before an abortion or mandatory Rh testing for all abortion patients. In fact, the evidence shows the opposite. *See supra* SOF Part IV p. 14. And the best clinical practice is to tailor informed consent to each patient, but the mandatory information forces providers to parrot the state's message, even when it might confuse or distress patients or contravene providers' ethical obligations. *Supra* SOF Part IV pp. 10-13.

Again, Intervenors do not even attempt to argue that the Two-Trip Scheme is the least restrictive means of advancing an interest in patient health, and their own experts conceded that they are overbroad and inhibit abortion access. *See supra* SOF

Part IV p. 10 (citing Tr. 11/06/25 (Nelson) at 238:12-239:18 (mandatory delay pushes some patients past limit for medication abortion); Tr. 11/07/25 (Collier) at 29:17-30:6 (describing imposing a waiting period on a patient certain in their decision and wanting to move forward with treatment as "overrid[ing] their decision")); *see also supra* SOF Part IV pp. 10, 13 (citing Tr. 11/07/25 (Collier) at 49:12-15, 58:16-19 (noting that "the mandatory delay often results in patients waiting much longer than 24 hours" and is "arbitrary"); Appx266 (Tr. 11/06/25 (Nelson) at 216:5-21)); *see also supra* SOF Part IV pp. 11, 13 (citing Tr. 11/07/25 (Collier) at 59:14-16, 61:21-23 (to the extent mandatory information contains inaccurate or misleading information, it runs counter to informed consent); Tr. 11/06/25 (Nelson) at 201:9-15 (admitting that mandatory information contains "speculative" statements)); *see also supra* SOF Part IV p. 12 (citing Tr. 11/06/25 (Nelson) at 222:21-223:3; Tr. 11/07/25 (Collier) at 67:5-68:15 (Intervenors' witnesses did not identify any procedures other than abortion—including those that present greater risks to the patient—for which Arizona mandates what must be included in informed consent)). The Two-Trip Scheme imposes a series of one-size-fits-all requirements on every abortion patient, irrespective of a particular patient's intentions and circumstances. Such blanket requirements, particularly those that are not medically necessary for every patient, cannot be the least restrictive means of advancing patient health. IR#130 ¶¶ 102, 107, 113.

C. The Telemedicine Ban Scheme is Unconstitutional.

Intervenors also fail to meaningfully contest that the Telemedicine Ban Scheme interferes with, restricts, and denies the fundamental right to abortion prior to viability. While Arizona generally encourages the use of telehealth, the Telemedicine Ban Scheme by its plain terms singles out abortion care and prohibits the use of telemedicine in any aspect of that care—including screening for eligibility, obtaining informed consent, and prescribing the medication abortion itself. *Supra* SOF Part V p. 15. As the Superior Court recognized, this scheme "completely proscrib[es] a woman from obtaining an abortion through telemedicine." IR#130 ¶ 94.

The factual record buttresses this showing. It demonstrates that the Telemedicine Ban Scheme prevents patients from obtaining care in a manner that makes it more accessible and, by causing delays, may also prevent a patient from receiving the type of abortion they would prefer—or any abortion at all. *Supra* SOF Part V pp. 15-16.

The Telemedicine Ban Scheme also interferes with patients' autonomous decision-making. By its terms, it deprives abortion patients of the choice to access abortion care via telemedicine, IR#130 at 15, an option some patients find "really valuable" because it helps them keep their decision confidential, *supra* SOF Part V p. 16 (citing Tr. 11/05/25 (Nichols) at 149:12-24). Once again, the factual record

reinforces this conclusion: under the Telemedicine Ban Scheme, patients are unable to elect to receive information or abortion care via the means that might be best or preferable for them. *Id.* at 15. Because telemedicine plays a pivotal role in ensuring access to abortion care for those who face barriers to traveling to a clinic, the Telemedicine Ban Scheme overrides some patients' autonomous decision to obtain a medication abortion or to obtain abortion care at all. *Id.* at 16.

Intervenors fail to carry their burden of showing that the Telemedicine Ban Scheme advances an interest in health consistent with accepted clinical standards of practice and evidence-based medicine. To the contrary, clinical standards of practice and evidence-based medicine do not support a ban on telemedicine for medication abortion. *Supra* SOF Part V p. 16. For example, ACOG has specifically denounced telemedicine bans because they "create barriers to abortion access, or interfere with the patient-health care professional relationship and the practice of medicine." *See id.* (citing Appx79 (PX-41 at 1)). Abortion care via telemedicine is safe and effective, as reflected in accepted clinical standards of practice and evidence-based medicine, such as ACOG Practice Bulletins and NAF Guidelines, *see id.*—which Intervenors themselves rely on in their opening brief, OB at 7-8, 42-44 (citing Appx125-202 (PX-105); Appx105-21 (PX-43)).

The record shows that providers can and do effectively obtain informed consent via telemedicine. *Supra* SOF Part V pp. 16-17. Providers can meet with

patients, take their medical history, inform the patient of their options, confirm patient understanding, and provide next steps via telehealth. *Id.* The complication rates for medication abortion delivered in person and via telemedicine are comparable and extremely low. *Id.* at 17. Providers can screen patients over telemedicine to determine their eligibility for medication abortion. *Id.* at 16-17. Intervenors have not even attempted to argue on appeal that they carried their burden to demonstrate that the Telemedicine Ban Scheme furthers a compelling interest under the Amendment.

Intervenors likewise do not argue that the Telemedicine Ban Scheme uses the least restrictive means of advancing any purported interest. Arizona law sets forth a generally applicable regulatory framework for the use of telemedicine, including for informed consent. *See supra* SOF Part V p. 17. The weight of the evidence shows that this generally applicable scheme for telemedicine is equally appropriate for abortion care and protects patient health and safety while being far less restrictive than the Telemedicine Ban Scheme. *See, e.g.*, Appx105-21 (PX-43).

III. THIS COURT MAY AFFIRM ON THE ADDITIONAL GROUND THAT THE CHALLENGED LAWS PENALIZE PROVIDERS FOR ASSISTING PREGNANT PEOPLE IN EXERCISING THEIR FUNDAMENTAL RIGHT.

Separate and apart from the analysis under Article II, Section 8.1(A)(1) of the Arizona Constitution, the Challenged Laws are unconstitutional under Article II, Section 8.1(A)(3). *See FL Receivables Tr. 2002-A v. Ariz. Mills, L.L.C.*, 230 Ariz.

160, 166 ¶ 24 (Ct. App. 2012) (appellate court may "affirm the trial court if correct for any reason"). Section 8.1(A)(3) prohibits the State from "[p]enaliz[ing] any individual or entity for aiding or assisting a pregnant individual in exercising the individual's right to abortion." Ariz. Const. art. II, § 8.1(A)(3). Unless they seek abortion care outside of the medical system, an individual's right to abortion is inextricably linked to the ability of a healthcare provider to provide that care. By imposing severe criminal, civil, and licensure penalties on abortion providers, the Challenged Laws each directly penalize individuals (like Plaintiffs and their members) who aid or assist pregnant people in exercising their constitutional right to abortion. Accordingly, the Challenged Laws must fall under Article II, Section 8.1(A)(3).

Each of the Challenged Laws imposes penalties for aiding or assisting a patient in obtaining abortion care. *See* A.R.S. § 13-3603.02(A)(2), (B)(2) (felony penalties under the Reason Ban Scheme); A.R.S. §§ 13-3603.02(E), 32-1401(27), 32-1403(A)(2), (A)(5), 32-1403.01(A), 32-1451(A), (D)-(E), (I), and (K) (licensure and civil penalties under the Reason Ban Scheme); A.R.S. §§ 36-2153(J)-(L), 36-2156(B)-(D), 36-2158(C)-(E) (professional and civil penalties—including revocation or suspension of a physician's medical license—under the Two-Trip Scheme); A.R.S. § 36-449.03(J)(1) (penalties for clinics under the Two-Trip Scheme); A.R.S. §§ 36-431.01, 36-3604(B) (civil and licensure penalties for

providers under the Telemedicine Ban Scheme) A.R.S. §§ 36-449.03(J)(1), 36-431.01, 36-427 (penalties for clinics under the Telemedicine Ban Scheme).

Complying with the Challenged Laws, as detailed *supra*, forces physicians to deviate from clinical standards of practice, evidence-based medicine, and their ethical obligations to be able to provide abortion care, or risk these severe penalties. The impact of the Challenged Laws is to interfere with the physician-patient relationship and delay or even deny care altogether. Accordingly, each of the Challenged Laws penalizes abortion providers and/or their entities for "aiding or assisting a pregnant individual in exercising the individual's right to abortion," in violation of the Amendment. Ariz. Const. art. II, § 8.1(A)(3). For this reason, too, the Challenged Laws are unconstitutional.

IV. INTERVENORS' REMAINING ARGUMENTS FAIL

A. The Superior Court Correctly Found that Plaintiffs have Standing and the Case is Ripe.

Contrary to Intervenors' protestations, the Superior Court correctly and repeatedly held that Plaintiffs have standing and their claims are ripe. IR#130 at 3; IR#79 at 3-6. Arizona has no case or controversy requirement. *See Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, 423 ¶ 23 (2022). Instead, courts apply standing and ripeness "as a matter of sound judicial policy." *Town of Gilbert v. Maricopa County*, 213 Ariz. 241, 244 ¶ 8 (Ct. App. 2006); *Bennett v. Napolitano*, 206 Ariz. 520, 524 ¶ 16 (2003) (en banc). Plaintiffs have more than met this threshold by

demonstrating both an injury and an actual controversy. Intervenors attempt to graft novel requirements, such as *imminent* enforcement, onto Arizona's standing doctrine, OB at 13, but provide no basis for doing so.

To establish standing and ripeness, Arizona typically requires that plaintiffs demonstrate "a distinct and palpable injury." *Ariz. Creditors Bar Ass'n v. State*, 257 Ariz. 406, 409-10 ¶ 11 (Ct. App. 2024); *see also Town of Gilbert*, 213 Ariz. at 244 ¶ 8 (noting that courts apply standing and ripeness analogously); *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 280 ¶ 36 (2019) ("[A]s a general matter, if the plaintiff has incurred an injury, the case is ripe."), *abrogated on other grounds by Ctr. for Ariz. Pol'y Inc. v. Ariz. Sec'y of State*, 592 P.3d 75 (Ariz. 2026).

As the Superior Court correctly held, Plaintiffs have certainly done so here. IR#130 at 2 (noting that Plaintiffs Dr. Isaacson and Dr. Richardson testified that the Challenged Laws forced them to "delay abortion care, turn away patients, perform tests and medical procedures that are not medically necessary, and provide information to patients regardless of its relevance and irrespective of whether they wish to receive the information"). For instance, Dr. Isaacson testified that the Reason Ban Scheme has forced him to turn away patients seeking abortion care, and that it "closed the door of communication" that once existed between medical providers, affecting patient health. *Supra* SOF Part III pp. 6-7. Meanwhile, Dr. Mercer testified that the Two-Trip Scheme requires her to perform procedures (ultrasounds and Rh

testing) on patients even when medically unnecessary, preventing her from individualizing care for a patient's specific needs. *Supra* SOF Part IV p. 14. Dr. Isaacson testified that the Two-Trip Scheme forces him to relay information to patients that is upsetting, harmful, does not aid in obtaining informed consent, and makes him appear to be dissuading them from pursuing the very care they seek. *Supra* SOF Part IV pp. 10-12. And Dr. Richardson testified that the Two-Trip Scheme's mandatory delay often results in an even longer delay than 24 hours and has prevented patients from being able to have an abortion at all. *Supra* SOF Part IV p. 10. Finally, Dr. Richardson further testified that the Telemedicine Ban Scheme prevented patients who live in remote areas from accessing abortion care "equally with everyone else." *Supra* SOF Part V pp. 15-16 (citing Tr. 11/05/25 (Richardson) at 178:2-11). The Superior Court correctly held that this testimony "establishe[d] that the Challenged Laws have direct, immediate and adverse impacts on the Plaintiff Doctors and their patients" sufficient to confer standing. IR#130 at 2.

Moreover, despite the ample evidence the Challenged Laws are inflicting distinct and palpable injuries on Plaintiffs, their members, and their patients, an actual injury is not required to demonstrate standing under the Uniform Declaratory Judgments Act ("UDJA"). Instead, there need only be "an actual controversy ripe for adjudication" and "parties with a real interest in the questions to be solved." *Ariz. Creditors Bar Ass'n*, 257 Ariz. at 410 ¶ 12. Given the extent to which the Challenged

Laws prevented Plaintiffs from providing care to their patients, needlessly complicated the care they were able to provide, and interfered with, restricted, and denied patients' ability to exercise their fundamental right to abortion, Plaintiffs self-evidently have a real interest in the questions presented by this case. And by virtue of their actions in this case, beginning with exercising their statutory right to intervene, the Intervenors self-evidently disagree. *See Montenegro v. Fontes*, 260 Ariz. 443, ¶ 18 (2025) (finding an actual controversy where the "parties here are adversarial to each other over the issues in the lawsuit and have fully, vigorously, and capably argued the law"). As such, at a minimum, as the Superior Court recognized, "[t]he parties' extensive litigation of the Challenged Laws" underscores the existence of an actual controversy. IR#130 at 3; *Brush & Nib Studio*, 247 Ariz. at 280 ¶ 37 (finding standing where the parties had "analyzed, in detail, the legal claims and arguments" regarding the challenged law).

Intervenors' attempt to impose novel standing requirements is likewise unavailing. As the Superior Court correctly recognized, even the *threat* of prosecution is not required for standing; it is only one basis for it. IR#130 at 2 (citing *Brush & Nib Studio*, 247 Ariz. at 280 ¶¶ 36-39). Contrary to Intervenors' assertions, *certain* prosecution is not the standard, nor is *imminent* enforcement. OB at 13-14.

In any event, the argument that this case is not ripe and/or that Plaintiffs lack standing because they face no credible threat of enforcement, OB at 13, ignores both

law and reality. *See* IR#130 at 2-3; IR#123 at 79-81. The statute of limitations for the felonies at issue in the Challenged Laws exceeds the current terms of the Attorney General and the Governor, which end on January 4, 2027, and indeed exceeds the standard full term of any Attorney General or Governor. *See* Ariz. Const. art. V, § 1(A); A.R.S. § 13-107(B)(1). It is meritless to claim, as Intervenors do, that Plaintiffs enjoy lasting protection against enforcement because of the current Governor's executive order or the current Attorney General's public statements. *See Ariz. All. for Retired Ams. v. Mayes*, No. 22-16490, 2026 WL 2277101, at *12 (9th Cir. Aug. 7, 2026) (holding that a "disavowal" by the Arizona Attorney General "does not close the courthouse doors" where a challenged law "remains on the books"; "no state court has construed [the challenged law] as inapplicable to the [plaintiffs'] conduct"; and "the disavowal does not bind successors in that office"). As the State correctly points out, "no party disputes what these laws mean or that they prohibit conduct Plaintiffs seek to engage in." State's Answering Br. at 23. Indeed, the State agrees that this case is a "justiciable controversy ripe for resolution." *Id.* at 21.

This case is a far cry from *State v. Okun*, *see* OB at 13-14, on which Intervenors rely. In that case, the claims were deemed unripe because federal law conferred immunity from any potential liability. 231 Ariz. 462, 466 ¶ 17 (Ct. App.

2013).[6] Here, Plaintiffs enjoy no such lasting protection shielding them from liability. Should the Challenged Laws go back into effect, Plaintiffs would once again face a credible risk of future prosecution or civil enforcement action for actions taken while the Challenged Laws are in effect. *See* A.R.S. § 13-107(B)(1); *Planned Parenthood Ariz., Inc. v. Brnovich*, 254 Ariz. 401, 407 ¶ 20 (Ct. App. 2022), *vacated on other grounds sub nom. Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137 (2024). Indeed, Intervenor Warren Petersen is currently running for Arizona attorney

[6] The other cases cited by Intervenors are similarly distinguishable. In *Polaris*, plaintiffs did not challenge the validity of the law and the "question they raise[d] has no constitutional underpinnings," in contrast to both *Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308 (1972), and this case. *Polaris Int'l Metals Corp. v. Ariz. Corp. Comm'n*, 133 Ariz. 500, 505-06 (1982). In *Mills*, the Court found that there was an actual controversy regarding the constitutionality of statutes governing "engineering practice"; any lack of controversy applied only to a nondelegation claim about a future, speculative adjudicative proceeding under those statutes. *Mills*, 253 Ariz. at 425-26 ¶ 30 ("Just as the wedding invitation designers in *Brush & Nib* and the non-profit clinic in *Planned Parenthood* were not required to await prosecution before bringing their declaratory judgment complaints, Mills is not required to do so here."). Finally, in *AUDIT USA*, there was no controversy where a county denied a public records request and filed a declaratory judgment action, naming the requesting nonprofit as defendant, to confirm that its denial was proper; the Court held that "no adverse claim exists when the defendant lacks the power to deny the plaintiff's asserted interest in the action," contrary to the situation here. *Santa Cruz County v. AUDIT USA*, 261 Ariz. 76 ¶ 10 (Ct. App. 2025), *rev. denied and ordered depublished in part sub nom. Santa Cruz v. AUDIT USA*, 262 Ariz. 84 (2026) (en banc).

general.[7] If elected, he would presumably seek to enforce the abortion restrictions he has vigorously defended.

Plaintiffs and their members are bound by a web of state laws, regulations, and ethical and professional requirements and, contrary to Intervenors' theory, are not required to violate them to establish standing. *Brush & Nib Studio*, 247 Ariz. at 280 ¶ 37; *see also Marks*, 17 Ariz. App. at 313 ("Violation of a criminal statute as a prerequisite to testing its validity invites disorder and chaos and subverts the very ends of law."); *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 302 (1979) (holding that Plaintiffs "need not first expose [themselves] to actual arrest or prosecution to be entitled to challenge the statute" (citation modified)). This Court has already recognized that such an approach would be "in effect compelling [plaintiffs] to pull the trigger to discover if the gun is loaded" and refused to "indulge in the fomentation of lawlessness." *Marks*, 17 Ariz. App. at 312. The Court should refuse to foment such lawlessness today, and should affirm that this case is ripe and Plaintiffs have standing.

[7] Pursuant to Rule 201 of the Arizona Rules of Evidence, Plaintiffs request that this Court take judicial notice, as this fact is not subject to reasonable dispute and can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. *See* Ariz. Sec'y of State, *State of Arizona Official Canvass 2026 Primary Election – Jul. 21, 2026*, at 12 (Aug. 6, 2026), https://apps.azsos.gov/election/2026/canvass/20260806_Primary_Canvass.pdf.

This principle—that Plaintiffs need not break the law to challenge it—applies with particular force to Intervenors' attempt to dissect the Reason Ban Scheme into its component parts so as to deny Plaintiffs standing. Plaintiffs are not required to violate any part of the law, much less *every* part of the law, to have standing to challenge it. *Marks*, 17 Ariz. App. at 312-13; *Babbitt*, 442 U.S. at 302. Plaintiffs have alleged sufficient standing to challenge the Reason Ban Scheme, as the Superior Court correctly found. IR#130 at 2-3.

More broadly, Intervenors' argument that Plaintiffs lack standing to challenge isolated provisions of the Reason Ban Scheme, OB at 21-22, misses the mark. A law that bans the provision of abortion care based solely on the patient's actual or perceived reason for seeking that care strikes at the very heart of the Amendment. However, even if this slicing and dicing held water, it would not affect Plaintiffs' standing to seek a declaratory judgment against all aspects of the Scheme, including A.R.S. § 13-3603.02(A)(1), because the "parties here are adversarial to each other over the issues in the lawsuit and have fully, vigorously, and capably argued the law," and courts are empowered to "declare rights, status, and other legal relations" under the UDJA. *Montenegro*, 260 Ariz. at ¶ 18 (citing A.R.S. § 12-1831).

In any event, Intervenors' arguments sound more in severability than standing, and they have waived that argument. *Robert Schalkenbach Found.*, 208 Ariz. at 180 ¶ 17 ("Generally, we will consider an issue not raised in an appellant's

opening brief as abandoned or conceded."); *MT Builders*, 219 Ariz. at 304 ¶ 19 n.7 (deeming argument raised in one-sentence footnote without analysis waived).

B. Plaintiffs are Entitled to Facial Relief on Each of the Challenged Laws.

i. The Superior Court Correctly Held That *Salerno* Does Not Apply to Plaintiffs' Claims.

Having utterly failed to carry their burden under the Amendment's plain terms, Intervenors renew the same unavailing argument raised below that the federal *Salerno* standard applies and requires Plaintiffs to "show[] that no set of circumstances exists under which the statute[s] would be valid" to obtain facial relief. OB at 36 (quoting *Fann v. State*, 251 Ariz. 425, 433 ¶ 18 (2021)). The Superior Court correctly considered and rejected this argument. IR#130 at 27-28; IR#79 at 3. Arizona courts have never applied *Salerno* together with strict scrutiny, let alone in a case, like this one, brought to enforce a fundamental right enshrined by voters in the Arizona Constitution's Declaration of Rights. Even were this Court to apply *Salerno*, Plaintiffs would still prevail because the Challenged Laws are invalid in every relevant application.

By its express terms, the Amendment establishes the right to abortion as a "fundamental right" and prohibits the state from enacting, adopting, or enforcing "*any* law" that is not the "least restrictive means" of achieving a "compelling state interest" as defined by the Amendment. Ariz. Const. art. II, § 8.1(A)(1) (emphasis

added); *see supra* Argument Part I.[8] As noted above, under the plain language of this test, abortion restrictions are invalid if they reach more conduct than necessary to achieve a compelling state interest. Moreover, as the Superior Court correctly held, once a plaintiff has shown that a law interferes (or worse) with abortion access, that law is "presumptively invalid" and the burden fully shifts to Intervenors to prove that it is not overinclusive, meaning that it is justified in all relevant applications. IR#130 at 23. As the Superior Court explained, it would therefore be "illogical to presume that a law is invalid, while requiring the challenger (Plaintiffs) to show that there is 'no set of circumstances' under which the law is valid." IR#130 at 27.

Under Intervenors' theory, Plaintiffs would have to prove that the laws are unconstitutional in all circumstances while Intervenors would have to demonstrate that the laws do not burden the right to abortion more than necessary to achieve a compelling interest. This contradictory and circular approach, which would require the parties to share the burden of proof on the same issues, would be unworkable—and again is wholly untethered from the language of the Amendment. Indeed, no

[8] Intervenors assert that that even under the "prior federal abortion standard" (the large fraction test) or the First Amendment overbreadth test, Plaintiffs have failed to meet their burden. OB at 47-49. Both of these standards are entirely irrelevant to this case. The large fraction test is a defunct federal standard that has no place here. Neither the Superior Court nor Plaintiffs have suggested that the overbreadth doctrine applies here. Invocation of these irrelevant standards is merely an attempt to muddy the waters of what is a straightforward strict scrutiny standard.

Arizona court has concluded that *Salerno* applies in the strict scrutiny context. *See, e.g.*, *Simpson v. Miller*, 241 Ariz. 341, 348 ¶ 23 (2017) (explaining *Salerno* applied in context of heightened scrutiny for the law at issue, not strict scrutiny); *Morreno v. Brickner*, 243 Ariz. 543, 547 ¶¶ 12-16 (2018) (applying heightened scrutiny, not strict scrutiny, and *Salerno* standard for facial relief to bail restriction).

Unsurprisingly, this has also been the conclusion of every other court to consider a comparable constitutional amendment explicitly protecting the right to abortion and/or reproductive freedom. *See, e.g.*, *NFP*, 2025 WL 2098474, at *33-34 (facially invalidating abortion restrictions, including mandatory delay and counseling requirements, under Michigan's reproductive freedom amendment, Mich. Const. of 1963, art. I, § 28); *Preterm-Cleveland*, 2024 WL 3947516, at *11-12, *14 (preliminarily enjoining mandatory delay, in-person requirement, and biased counseling requirements in full under Ohio's reproductive freedom amendment, Ohio Const. art. I, § 22); *Comprehensive Health of Planned Parenthood Great Plains v. State*, No. 2416-CV31931, 2025 WL 1898975, at *3, *5-6, *8-10 (Mo. Cir. Ct. July 3, 2025) (preliminarily enjoining abortion restrictions in full, including a reason ban, mandatory delay, biased counseling requirements, and telemedicine ban, under Missouri's reproductive freedom amendment, Mo. Const. art. I, § 36, and holding that "if a statute conflicts with a constitutional provision, the statute must be declared invalid"), *aff'd*, 726 S.W.3d 716 (Mo. Ct. App. 2025); *see also* Order

Granting Mot. for J. on the Pleadings, *Reuss v. State*, No. CV2024-034624 (Ariz. Super. Ct. Mar. 5, 2025) (attached as Exhibit A) (permanently enjoining Arizona's 15-week abortion ban and related provisions, A.R.S. §§ 36-2321-2326, in full, under the Amendment as unconstitutional). The same is true in cases considering a court-recognized right to abortion. *Planned Parenthood of Mont. v. State*, 554 P.3d 153, 167-68 ¶¶ 30-32 (Mont. 2024), *cert. denied*, 145 S. Ct. 2627 (2025) (applying strict scrutiny to facially invalidate law with a mix of valid and invalid applications); *Planned Parenthood of the Heartland v. Reynolds*, 915 N.W.2d 206, 245-46 (Iowa 2018) (facially invalidating mandatory delay law, notwithstanding evidence that some patients chose to schedule more than one appointment with their abortion provider), *overruled on other grounds by Planned Parenthood of the Heartland, Inc. v. Reynolds*, 975 N.W.2d 710 (Iowa 2022); *Hodes & Nauser, MDs, PA v. Kobach*, 551 P.3d 37, 49 (Kan. 2024) (collecting non-abortion cases finding laws overinclusive, and therefore not narrowly tailored, and facially invalidating abortion restriction); *cf. State v. Burnett*, 755 N.E.2d 857, 866 (Ohio 2001) (outside abortion context, finding statute unconstitutional because it "extends beyond" valid applications). Indeed, several state high courts have explicitly rejected the application of *Salerno* altogether. *See, e.g.*, *State v. Johnson*, 582 P.3d 380, 392 (Wyo. 2026) ("We see no value in adhering to a standard that has been criticized as a distortion of the analysis the U.S. Supreme Court itself conducts in cases involving

facial challenges; a standard the Supreme Court itself routinely ignores; and a standard that invites an analysis based on hypothetical scenarios rather than the terms of the statute that the facial challenge is meant to focus on." (citation omitted)); *N.H. Democratic Party v. Sec'y of State*, 262 A.3d 366, 377 (N.H. 2021) (rejecting argument that challenged law "cannot be facially unconstitutional because only some, but not all, voters are burdened by its requirement"); *Utah Pub. Emps. Ass'n v. State*, 131 P.3d 208, 214 (Utah 2006) (holding that "*Salerno* is not the correct standard and need not be followed"); *Commonwealth v. Ickes*, 873 A.2d 698, 702 (Pa. 2005) ("The *Salerno* test . . . is based on *dicta* and is not controlling for state courts.").

ii. The Superior Court Correctly Held That, Even Under *Salerno*, Properly Applied, the Challenged Laws Are Unconstitutional.

Even if *Salerno* applied, which it does not, the Superior Court properly recognized that "Intervenors misconstrue the 'no set of circumstances test,'" IR#130 at 28, and therefore Intervenors still could not prevail. As the Superior Court correctly concluded, a "facial challenge does not fail merely because there may be a situation where the challenged law could apply without violating a person's constitutional rights." IR#130 at 28. Rather, under *Salerno*, "[t]he proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." *City of Los Angeles v. Patel*, 576 U.S. 409, 418

(2015); *see also Simpson*, 241 Ariz. at 349 ¶ 31 (applying this principle to facially invalidate bail restriction, notwithstanding that the restriction applied to some individuals who could lawfully be detained pending trial); *State v. Wein*, 244 Ariz. 22, 31 ¶¶ 34-36 (2018) (rejecting argument that categorical bail prohibition for defendants charged with sexual assault was not facially unconstitutional solely because it applied to some arrestees likely to commit sexual assault while on pretrial release, as they would not have been entitled to bail anyway). Thus, "when assessing whether a statute meets this standard, the Court . . . consider[s] only applications of the statute in which it actually authorizes or prohibits conduct." *Patel*, 576 U.S. at 418. Put another way, "[l]egislation is measured for consistency with the Constitution by its impact on those whose conduct it affects." *Id.*

Misconstruing this precedent, Intervenors again raise the unfounded argument—which the Superior Court already explicitly rejected, *see* IR#130 at 27-28—that because the ultrasound mandated under the Two-Trip Scheme may be medically indicated in some circumstances, that fact defeats Plaintiffs' facial challenge. That the Challenged Laws' blanket requirements may, in some cases, overlap with a provider's clinical judgment is legally irrelevant. When applying *Salerno*, a court must consider only those applications that operate as a restriction on protected conduct. *See, e.g.*, *Patel*, 576 U.S. at 418; *accord* Journal Entry of Judgment Following Trial to the Court at 241, *Hodes & Nauser, MDs, P.A. v.*

Kobach, No. 23CV03140 (Kan. Dist. Ct. Aug. 3, 2026), https://reproductiverights.org/wp-content/uploads/2026/08/Kansas-Decision-August-4-2026.pdf ("It is of no import that the State Defendants point to admitted evidence that some women might be agreeable to either the State's mandated message or procedure required by the Subject Laws . . . . Rather, the proper focus for constitutional scrutiny is the group for which the law is a restriction, not the group for whom the law is irrelevant." (citation modified)). Applying that analysis to Plaintiffs' claims, the Superior Court correctly concluded that in all cases where the laws are inconsistent with clinical standards of care and evidence-based medicine—including where they force providers to convey inaccurate, irrelevant, and/or inappropriate information, perform invasive and unnecessary tests, and deny patients the best abortion care for their circumstances or deny them abortion care altogether—the Challenged Laws do so without justification and are unconstitutional.

The same is true with respect to the other Challenged Laws, which likewise impose blanket requirements and/or uniform mandatory delays on abortion care. By proscribing individualized care in all cases, the Challenged Laws directly contradict evidence-based medicine and clinical standards—which demand care be individualized to the patient—in all cases. As the Superior Court correctly held, "[e]ach of these laws apply across the board regardless of whether they 'improve or

maintain the health' of a woman seeking an abortion. Each of these laws infringe on a woman's 'autonomous decision making' by mandating medical procedures and disclosure of information regardless of the patient's needs and wishes." IR#130 at 28. The Superior Court rightly concluded that "the Challenged Laws' universal suppression of medical judgment and choice . . . renders them invalid in all circumstances." *Id.*; *cf. Wein*, 244 Ariz. at 31 ¶ 35 ("[C]ategorical prohibition of bail for everyone charged with sexual assault deprives arrestees of their substantive-due-process right to either an individualized determination of future dangerousness or a valid proxy for it. There is 'no set of circumstances' under which the prohibition would be valid because it lacks either of these features in every application." (citation omitted)); *NFP*, 2025 WL 2098474, at *32 (holding "uniform" mandatory information requirements were "inconsistent with the highly individualized and patient-specific informed-consent process" and mandatory 24-hour delay that "universally" "forces needless delay on patients after they are able to consent to a procedure" was contrary to clinical standards and evidence-based medicine).

Accordingly, the Superior Court correctly held each of the Challenged Laws unconstitutional under Article II, Section 8.1(A)(1) of the Arizona Constitution on their face. This Court should likewise conclude that Plaintiffs are entitled to facial relief on each of the Challenged Laws.

ATTORNEYS' FEES AND COSTS

Pursuant to Rule 21(a) of the Arizona Rules of Civil Appellate Procedure, Plaintiffs request attorneys' fees and costs under the private attorney general doctrine. Under this doctrine, courts may award fees where a party has vindicated a right that "(1) benefits a large number of people, (2) requires private enforcement, and (3) is of societal importance." *Ansley v. Banner Health Network*, 248 Ariz. 143, 153 ¶ 39 (2020) (citing *Arnold v. Ariz. Dep't of Health Servs.*, 160 Ariz. 593, 609 (1989) (en banc)); *see also Ariz. Ctr. for L. in Pub. Int. v. Hassell*, 172 Ariz. 356, 371 (Ct. App. 1991) (awarding fees against intervenor-defendants whose "participation added significantly to the legal effort required to prosecute appellants' claims").

This case unquestionably meets those factors. As in *Ansley*, the declaratory and injunctive relief sought will benefit future Arizonans who seek to exercise their fundamental rights, private enforcement is necessary because this case involves a challenge to state laws, and the enforcement of constitutional rights is of great societal importance. *See* 248 Ariz. at 153 ¶¶ 38-40.

Plaintiffs further request taxable costs pursuant to A.R.S. §§ 12-341 and 12-1840.

CONCLUSION

For these reasons, Plaintiffs ask the Court to affirm the Superior Court's decision and to award Plaintiffs attorneys' fees and taxable costs incurred in connection with this appeal.

August 28, 2026

Respectfully submitted,

ASHURST PERKINS COIE US LLP

By: s/ Barry G. Stratford

Barry G. Stratford, Bar No. 029923
Kristine J. Beaudoin, Bar No. 034853
Isabella Stoutenburg, Bar No. 038642
Jasmin Spearnock, Bar No. 041042
2525 E. Camelback Road, Suite 500
Phoenix, Arizona 85016-4227
Barry.Stratford@ashurstperkins.com
Kristine.Beaudoin@ashurstperkins.com
Bella.Stoutenburg@ashurstperkins.com
Jasmin.Spearnock@ashurstperkins.com
DocketPHX@perkinscoie.com

Attorneys for Plaintiffs/Appellees

EXHIBIT A

Clerk of the Superior Court
*** Electronically Filed ***
S. Motzer, Deputy
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ARIZONA SUPERIOR COURT

MARICOPA COUNTY

Eric M. Reuss, M.D., M.P.H., on behalf of himself, his staff, and his patients; Paul A. Isaacson, M.D., on behalf of himself, his staff, and his patients; and Planned Parenthood Arizona, Inc., on behalf of itself, its physicians, staff, and patients, Plaintiffs, v. State of Arizona, a body politic, Defendant.	No. CV2024-034624 **ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS** (Assigned to the Hon. Frank Moskowitz)

Pending before the Court is Plaintiffs' Motion for Judgment on the Pleadings and the State's Response to same, in which the State "agrees that the Court can resolve this case on the pleadings and should enter the declaratory and injunctive relief that Plaintiffs seek."

IT IS THEREFORE ORDERED as follows:

1. Plaintiffs' Motion for Judgment on the Pleadings is GRANTED.

2. A.R.S. §§ 36-2321–2326 are DECLARED unconstitutional.

3. Defendant, its respective agents, officers, employees, successors, and all persons acting in concert with each or any of them are hereby immediately and permanently and forever ENJOINED AND RESTRAINED from implementing, enforcing, or giving any effect to the provisions of A.R.S. §§ 36-2321–2326.

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Dated this 4th day of March, 2025.

Honorable Frank Moskowitz
Judge of the Superior Court

eSignature Page 1 of 1

Filing ID: 19436610 Case Number: CV2024-034624
Original Filing ID: 19234244

Granted with Modifications

/S/ Frank Moskowitz Date: 3/4/2025
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2024-034624 SIGNATURE DATE: 3/4/2025

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JARED G KEENAN

KARIN ALDAMA

KRISTINE J BEAUDOIN

LUCI D DAVIS