SUPREME COURT OF ARIZONA

PLANNED PARENTHOOD OF ARIZONA, INC., et al., Plaintiffs/Appellants, v. KRISTIN K. MAYES, Attorney General of the State of Arizona et al. Defendants/Appellees and ERIC HAZELRIGG, M.D., as guardian ad litem of all Arizona unborn infants, Intervenor/Appellee.	Arizona Supreme Court No. CV-23-0005-PR Court of Appeals Division Two No. 2 CA-CV 22-0116 Pima County Superior Court No. C127867 FILED WITH WRITTEN CONSENT OF ALL PARTIES

AMICUS CURIAE BRIEF OF THE FAMILY & JUVENILE LAW ASSOCIATION, UNIVERSITY OF ARIZONA, JAMES E. ROGERS COLLEGE OF LAW IN SUPPORT OF RESPONDENTS

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STATEMENT OF IDENTITY AND INTEREST

The Family and Juvenile Law Association ("FJLA") is a student organization at the University of Arizona James E. Rogers College of Law.[1] Founded in 2010, FJLA promotes learning opportunities and professional networking for students interested in pursuing careers in family or juvenile law. FJLA student leaders, through guest speakers, workshops, volunteer activities, and other events, assist in familiarizing students in family and juvenile law and provide them with opportunities to interact with practitioners, judges, and other professionals within the community. The goal of FJLA is to cultivate a greater appreciation for, and knowledge of, the broad reach and complexity of modern family and juvenile law. Not only does FJLA encourage and assist the study and practice of law in these topic areas, it also promotes open dialogue on contentious issues.

As future practitioners in the fields of family and juvenile law, students in FJLA are dedicated to advancing the wellbeing of youth and families, including maintaining access to reproductive health care consistent with policies enacted by

[1] Several University of Arizona Law students assisted with brainstorming, researching, and drafting this brief: Payton Bock, Mia Burcham, Parker Deighan, Jade DuBroy, Andrew Estes, Kaz Hobbs Wells, Victoria Howell, Sequoia Kay Hill, Adam Leon, Erica Litle, Teresa Palacios, Emma Potter, Ashley Rogers, Lily Sklar, Grace Sluga, and Sarah Stec.

the Arizona legislature. FJLA seeks to ensure that regulations governing reproductive health care, including regulations regarding minors' access to abortion, do not become even more onerous in Arizona.

For these reasons, FJLA as Amicus Curiae can provide the Court with a perspective distinct from the immediate parties. In the view of Amici, the interests of youth and families are best served by harmonizing the abortion-related policies crafted by the Arizona Legislature and avoiding the chaos that would otherwise ensue.

ARGUMENT

Unless it is harmonized with the provisions of Title 36, A.R.S. § 13-3603 creates confusion and chaos that directly harms some of Arizona's most vulnerable citizens. Because Respondents have fully briefed the statutory conflict and the applicable rules of statutory construction that unequivocally mandate harmonizing the conflicting laws, Amici do not repeat that analysis here. Instead, this amicus brief focuses on the practical impacts of Petitioners' argument that this Court should refuse to adhere to the Arizona precedent that mandates harmonizing.

Petitioners argue, against all conventions of statutory interpretation, express legislative intent, and plain-language reading of the statutes, that Arizonans must simply accept the uncertainty caused by the seemingly contradictory provisions. Hazelrigg Supp. Brief at 19. Petitioners urge this Court to hold off resolving the

uncertainty because the "analysis is better done in an as-applied challenge anyway." *Id.*

This Court should reject that invitation for delay. Arizonans need not–and cannot–wait to know what conduct is permitted under Arizona's abortion statutes. The conflict renders physicians uncertain whether they will face criminal penalties for providing necessary health care, and patients—including minors, victims of incest, and individuals with potentially life-threatening complications—uncertain whether they can lawfully obtain that health care. To say that the chaos from such a decision will result in the deaths and disability of countless Arizonans is neither hypothetical nor hyperbolic. Clarification from this Court is necessary so that health professionals can provide competent care to their patients who desperately need it.

I. Because the Territorial Ban on abortion did not reflect the will of Arizona citizens when it was enacted, and Title 36 better represents the will of all Arizonans, this Court should give full effect to Title 36.

Far from effectuating the will of the people, adopting Petitioners' argument would effectively disenfranchise the very populations most impacted by abortion legislation. Indeed, failing to harmonize the statutes risks replacing the will of twenty-first century Arizonans with the whim of a nineteenth-century Michigander who spent mere months in Arizona.

First, when the provision that became A.R.S. § 13-3603 was adopted in 1864 and again when it was codified in 1901, women, Native Americans, and Arizonans under 21 years of age were barred from voting. Thus, members of the very populations most impacted by abortion legislation had no voice in electing either the territorial legislature that first adopted the statute or the one that voted for its recodification. *Voting Rights Timeline*, Ariz. State Libr., Archives and Pub. Recs., https://azlibrary.gov/branches/state-arizona-research-library/research-center/voting-rights-timeline (last accessed 9/30/2023)*; see also Fighting for a Voice: Native Americans' Right to Vote in Arizona*, Ariz. Hist. Soc'y (Jul. 15, 2020), https://arizonahistoricalsociety.org/2020/07/15/fighting-for-a-voice-native-americans-right-to-vote-in-arizona/ (last visited 9/30/2023); Heidi J. Osselaer, *Winning Their Place: Arizona Women in Politics* (2016).

Further, there is little evidence that A.R.S. § 13-3603 even reflected the will of Arizonans at the time it was adopted. The provisions now codified in that statute first entered Arizona law in 1864 as part of the "Howell Code," which itself has a rather curious and muddled history. *See Cracchiolo Law Library Digital Collections*, https://ualawlib.omeka.net/items/show/844 (last accessed Oct. 1, 2023) (hereinafter "Howell Code"). The Howell Code was named after its primary author, William T. Howell, a Michigan attorney who briefly served as one of Arizona's first judges and resided in the territory for mere months in 1864. John S.

Goff, *William T. Howell and the Howell Code of Arizona*, 11(3) The Am. J. of Legal Hist. 221, 225–33 (1967). During that brief residency, Howell took it upon himself to draft a code to govern the new territory, which he submitted to the members of the first territorial legislature the very day he left the state forever. *Id.* at 226–27. That Code was reportedly written in ninety days and largely drawn from the existing codes of New York and California. *Id.* at 229.

Once the legislature finally convened a few months later, Arizona's governor formally commissioned Howell to compile a system of laws, which, of course, were already conveniently at hand. *Id.* at 228–29. Stating his concerns about the "uncertainty and litigation" that could result from "piecemeal" replacing the New Mexico law that had governed the territory to that point, the governor urged the wisdom of adopting a comprehensive new code in its entirety. *Id.* at 229. The territorial legislature did just that, adopting the Howell Code with changes to "comparatively few" chapters. *Id.*; *see also* Howell Code, Preparation of the Code, p. xii.

Although there is no evidence that the territorial legislature individually considered or debated the abortion provision, historians investigating similar early laws criminalizing abortion have concluded that most such laws were motivated by concerns over the health and safety of the pregnant person rather than any moral objections to abortion. *See* James C. Mohr, *Abortion in America: The Origins and*

Evolution of a National Policy, 1800-1900, 21 (1978). The Howell Code's abortion prohibition itself mimicked a provision of New York's criminal code, which in turn was based on a Connecticut law, the first in the nation to criminalize the giving of "poison or toxins" to induce miscarriage. Ryan Johnson, *A Movement for Change: Horatio Robinson Storer and Physicians' Crusade Against Abortion*, 4 James Madison Undergraduate Rsch. J. 13, 16 (2017); Mohr, *supra*, at 20–21, 25–26.

At the turn of the nineteenth century, arguments against abortion were also based on nativist and gendered concerns about ensuring that middle-class wives continued to procreate, a concern that would, at the very least, no longer be considered legitimate. *See* Reva Siegel, *Reasoning From the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 Stan. L. Rev. 261, 298-99 (1992) ("In nearly all antiabortion tracts, doctors emphasized that abortion was most frequently practiced by married women, particularly of the so-called 'native' middle class.").

And, indeed, abortions in the nineteenth century posed mortal danger to pregnant persons, who often succumbed to the poison administered to abort the fetus. Laurence H. Tribe, *Abortion: A Clash of Absolutes* 29 (1990). Even abortions performed in hospitals by doctors resulted in a 30% death rate from infection. *Id.* The placement of the provision within the Howell Code supports the

conclusion that it was focused more on criminalizing poisoning and protecting the pregnant person's life; the section begins by prescribing the punishment for poisoning "any person" at a term of ten years to life in prison, before setting the penalty for administering a poison to induce a miscarriage at two to five years. Arizona. Howell Code, Ch. X, § 45.

Along with the abortion provision, the Howell Code included other laws that would startle twenty-first century Arizonans and that reflected the systematic disenfranchisement of women and people of color. For example, the Code made it a misdemeanor punishable by fine, imprisonment, or both, to contract or solemnize a marriage "of white persons with negroes or mulattoes." *Id.*, Ch. XXX, §§ 3, 4. Another section provided that only white male citizens over the age of 21 could be licensed as attorneys and counsellors-at-law. *Id.*, Ch. XXVIII, §§ 1, 4. The Code also prohibited any "black or mulatto, or Indian, Mongolian, or Asiatic" from giving evidence in favor of or against a white person and proceeded to define in detail the quantum of blood required for one to be considered a member of one of the listed categories. *Id.*, Ch. X, § 14. The provision analogous to "statutory rape" set the age of consent at ten years. *Id.*, Ch. X, § 47. In a provision mere sections away from the abortion provision, the Code limited the penalty for killing someone in a duel to five years imprisonment. *Id.*, Ch. X, § 40.

Although A.R.S. § 13-3603 was recodified in 1978, that recodification took place as part of the wholesale adoption of what was intended to be a streamlined, modernized criminal code inspired in part by the Model Penal Code. *See* Rudolph J. Gerber, *Arizona Criminal Code Revision: Twenty Years Later,* 40 Ariz. L. Rev. 143, 143-44 (1998). Ultimately, the goal of modernizing Arizona's code was abandoned and the version that passed grafted inconsistent, outdated territorial law onto the Arizona Criminal Code Commission's recommendations, resulting in a veritable Frankenstein's monster of a code that the Commission's Associate Director later mused might have "deformed" rather than "reformed" Arizona's criminal laws. *Id.* at 144. According to Gerber, "leaders in the Legislature thought the likelihood of passage would improve by grafting existing statutory language onto the Commission's recommendations." *Id.* Indeed, A.R.S. § 13-3603 was but one of several provisions grafted onto the "revised" code that were acknowledged to be unconstitutional. *Id.* Certainly, the results of that recodification reflect the messy political reality of lawmaking, but they can hardly be said to embody anyone's will or vision—even that of the Commission tasked with crafting the new code.

More recently, in November 2020, 3.4 million Arizona citizens voted and elected the Fifty-fifth Legislature—the legislature that deliberated and enacted Senate Bill 1164. Arizona Sec'y of State, *Voter Registration Statistics*,

https://azsos.gov/elections/results-data/voter-registration-statistics (last visited Sept. 30, 2023) (reflecting 79.9% of registered voters casting ballots, exceeding turnout numbers for the past four decades). The 2020 electorate included members of populations excluded in 1864 and 1901. In particular, voter turnout in Arizona among Native Americans surged. *See, e.g.,* *Celebrating the Native American Vote in the 2020 Election*, First Nations Dev. Inst., (last visited Oct. 1, 2023) ("The Navajo Nation, with critical voters in Arizona, New Mexico and Utah, reported turnout rates as high as 90%").

While the 2022 Legislature stated that SB 1162 was not intended to repeal A.R.S. § 13-3603, it also directed that the Act did not repeal "any other applicable state law regulating or restricting abortion." 2022 Ariz. Sess. Laws ch. 105, § 2 (2d Reg Sess.). Thus, this Construction provision in the 2022 legislation is a clear indication that the more recent Legislature (elected by a more representative voting population) wanted all of Title 36 to remain effective.

Failing to harmonize A.R.S. § 13-3603 with Title 36 would effectively silence the voices of Arizonans, especially those most impacted by abortion legislation. Worse, that failure allows the mores of the nineteenth century—when women, Native Americans, young adults, and other constituencies had no right to vote, and the laws reflected the resulting marginalization of their interests—to

supplant the values expressed when a record number of Arizona citizens made their views known by exercising their franchise.

II. An interpretation of Arizona's statutory scheme that does not harmonize Title 36 and A.R.S. § 13-3603 will result in chaos and healthcare clinic closures that disparately impact already vulnerable populations.

If this Court declines to resolve the uncertainty by harmonizing A.R.S. § 13-3603 and Title 36, Arizonans will have no clear guidance as to what conduct is prohibited under the current statutes. For the past 50 years, since *Roe v. Wade*, 410 U.S. 113 (1973), Arizonans understood that A.R.S. § 13-3603 was unconstitutional, and therefore, unenforceable, and that physicians could lawfully perform abortions subject to certain restrictions. Those restrictions were codified in Title 36. When the Supreme Court overturned *Roe*, Arizona found itself with a statutory framework that included both pre- and post-*Roe* enactments. Confronted with this apparent conflict, the Court of Appeals used well-established canons of statutory construction to harmonize the statutes. This Court should affirm the appellate court's harmonization of § 13-3603 and Title 36 to ensure that Arizonans know what conduct is prohibited and can act accordingly.

A. Failure to harmonize A.R.S. § 13-3603 and Title 36 will result in uncertainty for medical professionals, leaving them without clear legal standards to guide their conduct and discouraging them from providing patients with vital healthcare.

Before the United States Supreme Court decided *Roe v. Wade* in 1973, Arizona physicians feared losing their medical licenses and facing criminal prosecution for performing abortion services. *See* *Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 311, 497 P.2d 534, 537 (1972) (finding that physicians would only perform requested or necessary abortions if they did not face criminal prosecution); *Du Vall v. Bd. of Med. Exam'rs of Ariz.*, 49 Ariz. 329, 336, 66 P.2d 1026, 1030 (1937) (holding that performing an abortion not only opened doctors to criminal charges, but also affected their medical licensing and professional careers). Because A.R.S. § 13-3603 criminalized all abortions except to save the mother's life, physicians consistently faced scenarios where the law prevented them from protecting and advocating for their patients to the best of their abilities. *See* *Planned Parenthood Ass'n v. Nelson*, 327 F. Supp. 1290, 1291–92 (D. Ariz. 1971) (finding that a physician's fear of criminal prosecution prevented him from performing a medically necessary abortion).

After the United States Supreme Court decided *Roe v. Wade* and A.R.S. § 13-3603 was declared unconstitutional, the Legislature enacted the statutory scheme found in Title 36 to regulate abortion care in Arizona. Consequently, for

fifty years, Arizona statutes have provided healthcare professionals with clear legal parameters. Now that *Roe* has been overturned, conflicts cloud that clarity. *See* *Isaacson v. Brnovich*, 610 F. Supp. 3d 1243, 1254 (D. Ariz. 2022) (acknowledging that post-*Dobbs* the legal status of abortion in Arizona was "murky" but noting that Arizona has an assortment of laws that "recognize and regulate the provision of legal abortion"). Consequently, the legal landscape for physicians and healthcare providers is perhaps even more uncertain and precarious today than it was in the early 1970s.

This uncertainty takes a toll both on individual doctors, who "want only to do their jobs without risk of arrest and prison time," *see* Rae Alexandra, *"The Nocturnists' Podcast Paints a Stark Picture of Post-Roe America,"* KQED.org available at https://www.kqed.org/arts/13934588/nocturnists-podcast-abortion-post-roe-dobbs-america (last accessed 10/01/2023), and their communities, some of which have experienced an exodus of medical providers, *see* Alison Block, *Brain drain, skills loss, and other unintended consequences of overturning Roe v. Wade*, STAT, Sept. 21, 2023 (available at https://www.statnews.com/2023/09/21/abortion-end-roe-v-wade-dobbs-unintended-consequences/ (last accessed 10/02/2023).

Absent harmonization, the conflict between A.R.S. § 13-3603 and Title 36 leaves Arizona doctors hesitant or unwilling to provide urgently needed care where

the line between what is "necessary to save her life" and what will prevent "serious risk of substantial and irreversible impairment of a major bodily function" is unclear. *Compare* A.R.S. § 13-3603 *with* A.R.S. § 36-2321. Similarly, doctors who scrupulously comply with A.R.S. § 36-2152 (governing parental consent and judicial bypass) in providing abortion services to young teens may worry that the blanket prohibition of A.R.S. § 13-3603 will expose them to prosecution despite the known dangers to a minor's health posed by pregnancy. *See* Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 Obstetrics & Gynecology 215 (Feb. 2012) (concluding that "[l]egal induced abortion is markedly safer than childbirth. The risk of death associated with childbirth is approximately 14 times higher than that with abortion. Similarly, the overall morbidity associated with childbirth exceeds that with abortion").

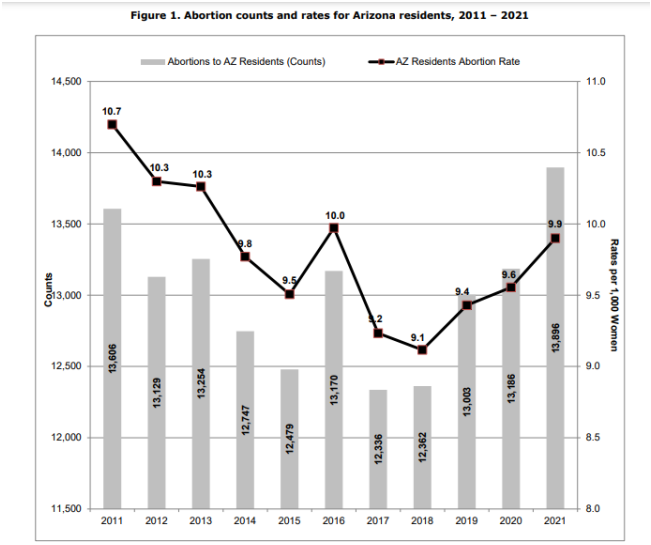
Put bluntly, pregnant people in Arizona will die or become permanently disabled because of this conflict, leaving children without parents and families burdened by the costs and consequences of ongoing care. And evidence suggests that the consequences will fall disproportionately on pregnant Arizonans who are poor, rural, or people of color. (See II(B) *infra.*)

This confusion not only impacts individual physicians and the availability of abortion services but extends to entire clinics and the non-abortion care that they

provide. In 2021, 99.5% of abortions in Arizona occurred in reproductive health clinics. *Abortion in Arizona*, 2021 Abortion Report, Ariz. Dep't of Health Servs. p. 19 (Dec. 31, 2022), https://www.azdhs.gov/documents/preparedness/public-health-statistics/abortions/2021-arizona-abortion-report.pdf (last accessed 9/30/2023) ("*Abortion in Arizona*"). These clinics provide a wide range of other services such as contraceptive care and disease detection. *See* https://www.plannedparenthood.org/get-care/our-services (last accessed 10/2/2023). In states that have adopted total bans on abortion, many clinics have shut down entirely, leaving communities without vital healthcare. M. Kirstein, et al., *100 Days Post-Roe: At Least 66 Clinics Across 15 US States Have Stopped Offering Abortion Care*, Guttmacher Inst. (Oct. 6, 2022), https://www.guttmacher.org/2022/10/100-days-post-roe-least-66-clinics-across-15-us-states-have-stopped-offering-abortion-care (last accessed 10/1/2023). The same thing could happen in Arizona if §13-3603 and Title 36 are not harmonized; many of Arizona's medical clinics would have no choice but to close, leaving our communities without vital medical care.

B. The uncertainty that comes from failing to harmonize Title 36 and A.R.S. § 13-3603 will disparately impact already vulnerable populations.

If harmonization of Arizona's abortion regulations is not maintained, the uncertainty that results will hurt some of our most vulnerable citizens, many of whom need abortions. The fact is, in 2021 (our most recent data), thousands of Arizonans received legal abortions; according to the Arizona Department of Health Services, over the past decade, every year, 12,000 to 14,000 women obtain abortions in Arizona. *Abortion in Arizona*, p.5, fig. 1 (reproduced below).



In 2021, 13,998 abortions were performed in Arizona, with 13,896 of these abortions performed on Arizona residents. *Abortion in Arizona,* p. 6. Women between the ages of 15 and 44 received 98% of these abortions. *Id.* at 7. The overall abortion rate was 9.9 abortions per 1,000 women of child-bearing age (15-44 years old), and women 20-24 years old received the most abortion care, encompassing 30.8% of all abortions in Arizona. *Id.*

The race and ethnicity breakdown of abortion patients in Arizona was: 33.43% white, non-Hispanic; 43.75% Hispanic and/or Latinx; and 11.96% Black/African American. *Id.* at p. 8. Black/African American women aged 15 to 44 years old, while only comprising 11.96% of abortions in Arizona, had the highest abortion rate of 20.3 abortions per 1,000 abortions, a ratio of 347 abortions per 1,000 live births to Black/African American women. *Id.*

Residents from all Arizona counties obtained abortions in 2021. *Id.* at 20. La Paz County, the lowest-earning county in Arizona, reported one of the highest abortion rates of 8 abortions obtained per 1,000 women of childbearing age, aged 15 to 44. *Id.* Mohave County reported 0.4, Yavapai County 6.8, and Navajo County 3.6 abortions per 1,000 women. *Id.*

Clearly, there is a demand for abortion care throughout this state. Yet, if this Court declines to harmonize Title 36 and § 13-3603, ambiguity in the law will likely cause most Arizona physicians to refuse to perform abortions. If that happens, people needing abortions will either travel out of state to obtain them, or risk securing them illegally. Either option will disproportionately impact marginalized groups. *See generally*, K.L. Gilbert, et al., *Dobbs, another frontline for health equity*, Brookings Inst. (June 30, 2022), available at https://www.brookings.edu/articles/dobbs-another-frontline-for-health-equity/ (last accessed 9/30/2023).

Lack of local access to abortion care forces many women to travel farther to obtain abortion services in places where abortion is not criminalized. Traveling to other states and countries requires "taking time off work, arranging childcare, and obtaining the funds to pay for travel expenses and accommodations." Nada Hassanein*, People of color, the poor and other marginalized people to bear the brunt if Roe v. Wade is overturned*, USA Today (May 3, 2022, 3:19 pm), https://www.usatoday.com/story/news/health /2022/05/03/people-color-most-impacted-if-roe-v-wade-overturned/9626866002/ (last accessed 9/30/2023).

Forced travel and the resulting expenses "have a disparate effect on persons of lower socio-economic status including those living in poverty." Samantha Artiga*,* et al.*, What are the Implications of the Overturning of Roe v. Wade for Racial Disparities*?, KFF (Jul. 15, 2022), https://www.kff.org/racial-equity-and-health-policy/issue-brief/what-are-the-implications-of-the-overturning-of-roe-v-wade-for-racial-disparities/ (last accessed 9/30/2023). "The median self-pay cost of obtaining an abortion exceeds $500" and traveling out of state raises this cost "due to added costs for transportation, accommodations, and childcare." *Id.* For pregnant minors, the cost and time involved in traveling out of state will often be prohibitive.

These hurdles are especially onerous for low-income women of color. "Data suggest that women of color would have more difficulty than White women

affording these increased costs and may face other barriers that could prevent them from traveling to obtain an abortion . . . ." Artiga*, supra; see also* J. Bearak et al.*, Disparities and change over time in distance women would need to travel to have an abortion in the USA: a spatial analysis*, 2 Lancet Pub. Health e493 (2017) ("Since individuals in marginalized groups are more likely to be low-income" and uninsured, "travel, and thus access to reproductive services, is often beyond their means."); *see also* Dennis Thompson, *When Abortion Means Traveling, More Women Forgo Procedure: Study*, U.S. News (May 16, 2022, 8:17 am), https://www.usnews.com/news/health-news/articles/2022-05-16/when-abortion-means-traveling-more-women-forgo-procedure-study (last accessed 10/1/2023).

In addition to these financial and travel burdens, women of color face other issues, like lack of access to health care and increased maternal mortality, that uncertainty in the law will exacerbate. *See* Kira Eidson, *Addressing the Black Mortality Crisis in the Wake of Dobbs: A Reproductive Justice Policy Framework*, Geo. J. of Gender and the Law, Vol. XXIV, Issue 3, pp. 936–37 (Symposium 2023) available at https://www.law.georgetown.edu/gender-journal/in-print/volume-xxiv-issue-3-symposium-2023/addressing-the-black-mortality-crisis-in-the-wake-of-dobbs-a-reproductive-justice-policy-framework/ (last accessed 10/1/2023).

Moreover, maternal mortality rates in the United States are on the rise, and data show that those rates are 2.6 times higher among Black people than among non-Hispanic White people. Donna L. Hoyert, Ph.D., *Maternal Mortality Rates in the United States, 2021*, Centers for Disease Control and Prevention, National Center for Health Statistics, available at https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2021/maternal-mortality-rates-2021.htm (last accessed 10/1/2023). The mortality rates among American Indian and Alaska Native people are approximately twice that of White people. Latoya Hill, Samantha Artiga, and Usha Ranji, *Racial Disparities in Maternal and Infant Health: Current Status and Efforts to Address Them*, KFF Health News (Nov. 1, 2022) available at https://www.kff.org/racial-equity-and-health-policy/issue-brief/racial-disparities-in-maternal-and-infant-health-current-status-and-efforts-to-address-them/ (last accessed 10/1/2023).

Further, the mortality rate for teenage births is higher than the mortality rate for adults. *See* Jane E. Dopkins Broecker, *Pregnancy in Adolescence,* Glob. Libr. of Women's Med. (Feb. 2009) (finding greater health and mortality risks for adolescents than adults); Aletha Y. Akers, *Age is More Than a Number: High Infant Mortality Among Births to Teen Mothers*, Ms. Magazine, Jan. 1, 2020, available at https://www.guttmacher.org/article/2020/09/age-more-number-high-infant-mortality-among-births-teen-mothers (last accessed 10/2/2023).

In the end, "[t]hese barriers to access create a vicious cycle of poverty and marginalization, reinforcing existing inequalities." *Human Rights Crisis: Abortion in the United States After Dobbs*, Human Rights Watch (Apr. 18, 2022, 12:01 am), https://www.hrw.org/news/2023/04/18/human-rights-crisis-abortion-united-states-after-dobbs#_ftn154 (last accessed 9/30/2023). A failure to harmonize § 13-3603 and Title 36 will create confusion and ambiguity that compounds those inequities.

CONCLUSION

Pregnancy is not a punishment, and it certainly should not be a death sentence. But refusing to harmonize A.R.S. § 13-3603 with Title 36 creates the unacceptable risk of that result. At the same time, it essentially disenfranchises modern Arizonans by rendering more recent legislation a nullity and overriding it with the terms of a century-and-a-half-old law enacted when members of populations most impacted by abortion regulation had no right to vote. As always, the consequences will fall primarily on those same populations—women and people of color—as well as Arizonans of lesser means, those living in underserved rural communities, and minors. Thus, we ask this Court to honor conventions of statutory interpretation, express legislative intent, and plain-language reading of the statutes at issue and affirm the Court of Appeals.

Respectfully submitted this 4th day of October, 2023.

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