

**IN THE SUPREME COURT**

**STATE OF ARIZONA**

PLANNED PARENTHOOD  
ARIZONA, INC., et al.,

Plaintiffs/Appellants,

v.

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

Defendants/Appellees,

ERIC HAZELRIGG, M.D., as guardian  
ad litem of all Arizona unborn infants,

Intervenor/Appellee.

No. CV-23-0005-PR

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

Pima County Superior Court  
No. C127867

**BRIEF OF AMICUS CURIAE NATIONAL COUNCIL OF JEWISH  
WOMEN OF ARIZONA IN SUPPORT OF PLAINTIFF-APPELLANT  
PLANNED PARENTHOOD ARIZONA, INC.**

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## **Introduction and Interest of Amicus Curiae**

The National Council of Jewish Women (“NCJW”) is a grassroots organization of volunteers and advocates who, inspired by Jewish values, strive for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. Amicus Curiae, the NCJW (Arizona Section) Inc. (“NCJW-AZ”), is one of NCJW’s more than 50 affiliates nationwide. NCJW-AZ is one of several organizations from a broad range of religious traditions and faiths that are dedicated to protecting a woman’s moral authority to terminate a pregnancy in consultation with her faith, values, and conscience. To allow the unfettered enforcement of a near-total abortion ban first enacted before statehood (A.R.S. § 13-3603) (“Territorial Ban”) will negatively affect NCJW-AZ and its members.

In almost every case about abortion, before almost every appellate court in this country, anti-choice advocates speak as if it is beyond question that a belief in God must carry with it an opposition to a woman’s right to choose to have an abortion. Such advocacy obstinately fails to account for the diversity of views across religious traditions regarding when and how life begins, the moral implications of terminating a pregnancy, who is empowered to terminate a pregnancy and what, if any, consequences should flow from such a choice. Such advocacy also fails to recognize the various religious traditions, including Judaism, which teach that

abortion is not only morally permissible but also imperative, under certain circumstances. The Territorial Ban runs counter to these beliefs.

Fortunately, though, this Court need not, indeed could not, choose between which of these beliefs is correct. Rather, this Court can and should resolve this case using familiar tools of statutory construction, “g[i]ve meaning to the entire statutory scheme at issue, and this Court should affirm [the judgment of the Court of Appeals].” Supp. Br. of Plaintiff-Appellant at 19.

But should this Court consider the questions of morality and faith pressed by some in this case (and it should not), the Court should not be misled into believing that opposition to abortion is a moral and religious absolute (it is not).

### **Argument**

#### **I. Both intervenor and his *amici* fail to acknowledge that some religious traditions, like Judaism, have diverse views as to when life begins.**

Both the Intervenor’s brief and various amicus briefs in support of Intervenor depend on the premise that human life begins at conception. For his part, Intervenor asserts that, because of the near-total Territorial Ban, “Arizona has protected unborn human life longer than it has been a state.” Intervenor/Appellees’ Supp. Br. at 1. Amicus Center for Arizona Policy talks about the need to “advance ‘the right to life’” by “protect[ing] unborn children from abortion.” Br. of *Amicus* Center for Arizona Policy in Support of Intervenor/Appellees’ Pet. for Review at 1 (citation omitted). And *Amicus* Charlotte Lozier Institute insists that the Territorial Ban

protects, indeed all abortion bans protect, “pre-born human life” and “that abortion should be prohibited, under most circumstances, and at all stages of development.” Br. of *Amici* the Charlotte Lozier Institute & American Center for Law and Justice in Support of Intervenor/Appellee Eric Hazelrigg, M.D. at 23.

But, as the U.S. Supreme Court previously recognized, “when life begins” is a “difficult question” and that “those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus.” *Roe v. Wade*, 410 U.S. 113, 159 (1973), *overruled by Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

In general, Jewish tradition views the creation of human life as occurring gradually, up through birth, rather than instantaneously and at the moment of conception. *See, e.g.*, Joseph G. Schenker, *The beginning of human life: Status of embryo. Perspectives in Halakha (Jewish Religious Law)*, 25 J. of Assisted Reproduction & Genetics 271, 271–76 (2008), <https://doi.org/10.1007/s10815-008-9221-6> (hereafter “Schenker”).

The Torah, for example, did not consider a fetus to be a person. Among other sources, the clearest authority for this is Exodus, which commands that “[h]e that smiteth a man, so that he die, shall be surely put to death.” Exodus 21:12 (King James Version), *available at* <https://www.biblegateway.com/passage/?search=Exodus%2021:11-13&version=KJV>. In contrast, Exodus goes on to state that if two

people are fighting and one of them pushes a pregnant woman causing a miscarriage, “he shall pay as the judges determine.” Exodus 21:22 (King James Version), available at <https://www.biblegateway.com/passage/?search=Exodus+21%3A22&version=KJV>. When a person is killed, the penalty is death; when a fetus is killed, the penalty is a monetary fine. A fetus is not a person. *Id.*; see also Genesis 2:7 (Complete Jewish Bible) (“Then *Adonai*, God, formed a person from the dust of the ground and breathed into his nostrils the breath of life, so that he became a living being.”), available at <https://www.biblegateway.com/passage/?search=Genesis%202:6-8&version=CJB>; see also 21st Century King James Bible (“And the Lord God formed man of the dust of the ground, and breathed into his nostrils the breath of life; and man became a living soul.”), available at <https://www.biblegateway.com/passage/?search=Genesis%202:6-8&version=KJ21>.

The Talmud, a written compilation of centuries of rabbinic debate about law, ethics, and the Bible, confirms as much in its discussion of Exodus 21:22. See Sanhedrin 87b:10, available at <https://www.sefaria.org/Sanhedrin.87b.10?lang=bi>. The Talmud further teaches that the fetus is not a human being, but rather, is “merely water” up to the point of 40 days after conception. Yevamot 69b:10, available at <https://www.sefaria.org/Yevamot.69b?lang=bi>. And even after the fortieth day of gestation is not yet a full human being. See Schenker at 271.

In the end, and as the Supreme Court noted in *Roe*, it is beyond question that faithful consideration of the varied religious traditions practiced and protected in this country and this state reveals a “wide divergence of thinking on this most sensitive and difficult question. There has always been strong support for the view that life does not begin until live birth.” *Roe*, 410 U.S. at 160.

**II. Jewish teachings affirm that abortion is not only morally permissible but also imperative, under certain circumstances.**

Intervenors, their *amici*, and those aligned with them, would have this Court and others believe that a near-total abortion ban is a moral or spiritual imperative. *See, e.g.*, Intervenors/Appellees’ Supp. Br. at 17 (characterizing abortion as the “unjustified killing of unborn human lives”); Br. of *Amici* Arizona Life Coalition et al. in Support of Pet. for Review at 7 (“Abortion is the modern-day offspring of eugenics[,]” and “[t]he abortion industry denies that all human beings have inherent value and dignity bestowed on them by their Creator.”).

Such rhetoric assumes and proceeds upon the premise that people of faith, and especially people whose faith includes the books of Genesis, Exodus, Leviticus, Numbers and Deuteronomy, all agree that abortion must be banned or restricted to the greatest degree possible. *See, e.g.*, Brief for *Amici Curiae* Foundation for Moral Law & Lutherans for Life in Support of Petitioners at 18, 20, *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022) (No. 19-1392) (“The Bible treats the

preborn child as a living human being” and “[c]learly the Bible, especially in its original languages, treats the preborn child the same as a child already born.”).

But such arguments ignore, indeed directly contravene, the beliefs and teachings of Judaism and other faiths, which acknowledge abortion as permitted, and even required, in certain circumstances. Jewish law permits abortions “because of ‘great need’ and because of pain and suffering . . . [a]nd it is irrelevant whether in what way the pain and suffering is expressed, whether it is physical or psychological. Indeed, psychological suffering is in many ways much greater than the suffering of the flesh.” Rabbinical Assembly, *Resolution on Reproductive Freedom in the United States* (May 2012), <https://www.rabbinicalassembly.org/story/resolution-reproductive-freedom-united-states>.

Further, among traditional Jewish teachings, for example, the Mishnah<sup>1</sup> provides that if the life of a woman in labor is endangered in childbirth, measures can and must be taken to preserve her life, even at the expense of the fetus, “because her life comes before the life of [the fetus].” Mishnah Ohalot 7:6, *available at* [https://www.sefaria.org/Mishnah\\_Oholot.7.6?lang=bi](https://www.sefaria.org/Mishnah_Oholot.7.6?lang=bi); *see also* David M. Feldman, *Abortion: The Jewish View*, Committee on Jewish Law and Standards of the Rabbinical Assembly HM 425:2.1983a, 800, 803 (1983),

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<sup>1</sup> The Mishnah is an authoritative collection of exegetical material embodying the oral tradition of Jewish law and forming the first part of the Talmud.

[https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19861990/feldman\\_abortion.pdf](https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19861990/feldman_abortion.pdf) (“therapeutic abortion becomes permissible and, in fact, mandated [if needed to save the life of the mother]”).

Put simply, “[i]n Jewish tradition, the pregnant person’s needs are central to the moral equation.” Sarah Seltzer, *Not All Religious People Oppose Abortion*, N.Y. Times (Nov. 18, 2021), <https://www.nytimes.com/2021/11/18/opinion/abortion-rights-judaism.html>.

Other faiths hold similar beliefs and offer similar teachings. Among Muslims, for example, “many schools of Islamic thought permit abortion, under certain circumstances, at any point up to 120 days from conception, or approximately 19-20 weeks gestation.” Brief of *Amici Curiae* Catholics for Choice et al. in Support of Respondents at 16, *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022) (No. 19-1392). Within the fellowship of the Presbyterian Church, there is “substantial agreement” that “[t]he considered decision of a woman to terminate a pregnancy can be a morally acceptable, though certainly not the only or required, decision.” Presbyterian Church (U.S.A.), *Abortion/Reproductive Choice Issues*, <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/>.

Quite simply, many faithful people of many different faiths share a common belief that Intervenor and their amici would wish away: at least in certain

circumstances, abortion is moral, permissible, and for some at some times, even required.

### **III. Conclusion**

In insisting that opposition to abortion is a moral and religious imperative, Intervenors, their *amici* here, and their allies elsewhere, advance a false narrative that perilously ignores, as well as denigrates, the beliefs and teachings of millions of faithful Americans. *Amicus* the National Council of Jewish Women of Arizona urges this Court not to be swayed by this false, inflammatory narrative.

As explained by Appellant, such rhetoric has no place before this Court, and certainly no place in this case. The task before the Court is one of statutory construction, not resolution of “whether abortion is ‘good’ or ‘bad’ as a matter of policy.” Supp. Br. of Plaintiff-Appellant at 19.

*Amicus* respectfully urges this Court to cabin its efforts to the task and questions before it and to affirm the Court of Appeals.

October 4, 2023

Respectfully submitted,

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