**SUPREME COURT OF ARIZONA**

PLANNED PARENTHOOD ARIZONA, INC., et al.,

Plaintiffs/Appellants,

v.

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

Defendants/Appellee.

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-2022-0116

Pima County Superior Court
No. C127867

# BRIEF OF AMICUS CURIAE JOEL JOHN FILED WITH WRITTEN CONSENT OF ALL PARTIES

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## IDENTITY AND INTEREST OF AMICUS CURIAE[1]

Amicus Curiae Joel John is a former Republican member of the Arizona House of Representatives who voted in favor of SB 1164. He believes it is important for the Court to understand the legislature voted on the *text* of SB 1164—not any particular legislator's statements. Mr. John did not share the intent attributed to the legislative majority in the amicus briefs referenced later in this brief as he understood that SB 1164 enacted a fifteen-week limit as referenced on the face of that statute.

[1] No counsel to any party authored this brief in whole or part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief.

## INTRODUCTION

Several Amici cite to one legislator's comments made during the passage of SB 1164 as supposedly indicative of the legislature's intent behind SB 1164. However, 47 legislators voted in favor of SB 1164—not just one. And these 47 legislators invariably had different motivations, different perspectives, and even different rationales for why they voted in favor. *See Secura Supreme Ins. Co. v. Estate of Huck*, 986 N.W.2d 810, 830–31 (Wisc. 2023) (Bradley, J., dissenting) ("To ask what the king would want may yield an answer, but to divine what hundreds of legislators would want is impossible. Collective intent is nothing more than a 'fiction' because each legislator has his own 'subjective views.'" (citing Scalia & Garner, *Reading Law*, at 349)).

The only "collective intent" of ***all*** Arizona legislators that voted in favor of SB 1164, to the extent that exists, is evidenced by SB 1164's text alone. And that text makes clear that the legislature intended a fifteen-week limit. Amicus Joel John urges this Court to not rely on isolated comments from legislators or non-legislators as some purported indicators of legislative intent behind SB 1164. Amicus John did not hear those comments during the passage of SB 1164 as they were made in the House Judiciary Committee, of which he was not a member. And even if he had heard those comments, he does not agree that they represent his motivations in

voting for SB 1164. Rather than rely on these isolated comments, Amicus John urges this Court to look only to the text of SB 1164.

## ARGUMENT

Amici Curiae Speaker Toma and President Petersen as well as the Center for Arizona Policy urge this Court to consider Senator Nancy Barto's testimony to the House Judiciary Committee during its consideration of SB 1164. *See* Brief for Amici Curiae Speaker Toma and President Petersen at 9–10; *accord* Brief for Amicus Curiae Center for Arizona Policy at 7. According to Speaker Toma and President Petersen, Senator Barto's comments to this Committee are indicative of the purported legislative intent behind SB 1164, namely that "Arizona must act to protect life" and that Arizona "ha[s] a great opportunity to save many more lives." *Id.* From this, they conclude that the legislature "intended" that the territorial law apply to ban nearly all abortions if *Roe* was overturned. Mr. John respectfully disagrees.

### A. Senator Barto's Comments Are Not Indicative of the *Entire* Legislature's Intent Behind SB 1164.

"[A] brief comment from the floor by a single legislator, albeit one of the Act's sponsors, is not conclusive evidence of what the entire legislative body believes." *Sigmon Coal Co., Inc. v. Apfel*, 226 F.3d 291, 306 (4th Cir. 2000) (refusing to "displace a clear statutory provision which was passed by both houses of Congress and signed into law by the President with an explanation proffered by a

single member of Congress"); *see also Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 118 (1980) ("[O]rdinarily even the contemporaneous remarks of a single legislator who sponsors a bill are not controlling in analyzing legislative history." ); *Brock v. Writers Guild of Am., W., Inc.*, 762 F.2d 1349, 1356 (9th Cir. 1985) ("The remarks of legislators opposed to legislation are entitled to little weight in the construction of statutes.").

As a practical matter, the comments of a single legislator without any expressed agreement from other legislators means just that—they are the comments of a single legislator. For those comments to constitute the legislature's intent, there needs to be an indication that all of the other legislators who voted in favor of the bill agreed with those comments. Legislators' silence does not mean assent. For Mr. John, who did not make any affirmative comments on SB 1164, his silence certainly was not indicative of assent.

The text of SB 1164 is what the legislature (including Mr. John) assented to—not Senator Barto's comments. That text makes clear that there is not a "trigger" provision relating to the territorial law should *Roe* be overturned. That text also makes clear that the legislature permitted abortion by physicians *up to* 15 weeks, and thereafter prohibited abortion, subject to certain exceptions.

### B. <u>This Court Should Decline To Attribute Any Meaning To Senator Barto's Comments Made During A Committee Hearing.</u>

Senator Barto's comments cannot be indicative of legislative intent because there is no evidence that the entire legislature heard them or agreed with them. Senator Barto's comments were given to only a select few legislators, namely those nine representatives[2] on the House Judiciary Committee. Of those nine representatives, only five voted in favor of SB 1164. And again, that is five out of the 47 legislators that voted in favor. It is a legal fiction to assume that *all* 47 legislators heard Senator Barto's testimony, much less that all 47 legislators **agreed** with it.

This Court recently rejected a superior court's reliance on an exchange between legislators during a House Judiciary Committee meeting as evidence of legislative intent. *See State v. Greene*, 255 Ariz. 37 (2023). *Greene* involved whether the legislature's amendments to the aggravating circumstances for the death penalty, specifically A.R.S. § 13-751(F)(5), were intended to be retroactive. The superior court held that they were, despite the well-established law that statutes are

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[2] These nine representatives included Representatives Neal Carter (R), Jacqueline Parker (R), Walter Blackman (R), Mark Finchem (R), Quang Nguyen (R), Beverly Pingerelli (R), Christopher Mathis (D), Domingo DeGrazia (D), Melody Hernandez (D), and Jennifer Pawlik (D). *See* Roll Call for: House Judiciary Committee Action: SB 1164, *available at* https://www.billtrack50.com/billdetail/1419371. Mr. John did not attend this House Judiciary Committee meeting.

retroactive only if "expressly declared therein." *Id.* at ¶ 20 (quoting, in part, A.R.S. § 1-244). The superior court based its conclusion on the following exchange between legislators:

> Representative Rodriguez asked, "If there's a discussion about these not being persuasive, why are we not being asked to make this change retroactive, to eliminate these in past cases where they have been used?" In response to the question, Chairperson John Allen stated, "But Mr. Rodriguez, it doesn't preclude them from suing over it. You know, asking for relief, though usually, the courts don't apply it that way." Upon hearing this statement, Representative Rodriguez pointed to Chairperson Allen and nodded in agreement.

*Id.* ¶ 21 (quoting Hearing on S.B. 1314 Before the H. Comm. on the Judiciary, 54th Leg., 1st Reg. Sess. (Ariz. 2019)). This Court held, however, a "limited exchange between two representatives at a committee hearing is not sufficient to establish that the legislature intended to make the amendments retroactive." *Id.* To support this holding, the Court aptly cited and quoted *Barlow v. Jones*, 37 Ariz. 396 (1930): "A legislative enactment cannot be amended or changed either by the insertion or the elimination of words to conform with an intent proven by the testimony of the members of the enacting body."

This Court is not alone in assigning little to no weight to legislators' comments during committee hearings. *E.g.*, *State v. Madison*, 658 A.2d 536, 545 (Vt. 1995) ("[E]ven if individual legislators made comments indicating that they contemplated a second evidentiary hearing, those comments are of little weight in determining legislative intent, unless they also exist in a written report that was available for

review by the full legislature before passing the bill."); *Seward Marine Services, Inc. v. Anderson*, 643 P.2d 493, 497 n.8 (Alaska 1982) ("We initially note that this court has stated that testimony before a committee is of little value in ascertaining legislative intent, at least where the committee fails to prepare and distribute a report incorporating the substance of the testimony.").

### C. Non-Legislator Cathi Herrod's Comments Do Not Indicate Legislative Intent.

Center for Arizona Policy cites to its president's testimony before the House Judiciary Committee as indicative of legislative intent. *See* Brief of Center for Arizona Policy at 8, 10. This Court has reminded that "[w]hen seeking to ascertain the intent of legislators, courts normally give little or no weight to comments made at committee hearings by nonlegislators." *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 269 (1994) (citing Norman J. Singer, Sutherland Statutes and Statutory Construction § 48.10 (5th ed. 1992)). This Court's holding is in good company. *Hayes* cited *Kelly v. Robinson*, 479 U.S. 36, 51 n.13 (1986) (nonlegislators' testimony in congressional hearings accorded no significance), *Savings & Loan League of Connecticut v. Connecticut Hous. Fin. Auth.*, 439 A.2d 978, 980 n.1 (Conn. 1981) (statements at public hearings by nonlegislators are inadmissible and may not be considered for purposes of statutory interpretation), and *Henthorn v. Grand Prairie Sch. Dist.*, 601 P.2d 1243, 1247 n.5 (Or. 1979) (statements before legislative committees by persons not members of the legislature may have little or no significance). "The best policy,"

this Court concluded, "is not to consider nonlegislators' statements to determine the legislature's intent concerning the specific application of a proposed statute, unless the circumstances provide sufficient guarantees that the statements reflect legislators' views." *Hayes*, 178 Ariz. at 270.

## CONCLUSION

To the extent that it exists, the only "universal intent" of the legislature is evidenced from the plain text of a statute. Indeed, that (and that alone) is what the members of the legislature vote on. *Marcellus Shale Coal. v. Dep't of Envtl. Prot.*, 292 A.3d 921, 937 (Pa. 2023) ("[T]he best indication of legislative intent is the plain text of the statute."); *Anderson v. State*, 87 So. 3d 774, 777 (Fla. 2012) ("A court primarily discerns legislative intent by looking to the plain text of the relevant statute."); *Mental Hygiene Legal Serv. v. Sullivan*, 119 N.E.3d 1225, 1229 (N.Y. 2019) ("Of course, the text of a provision is the clearest indicator of legislative intent.").

Here, the "clearest indicator" of the legislature's intent behind SB 1164 is SB 1164's text. That (and that alone) is what Amicus and former Representative John voted on: SB 1164's text. Nothing more. He did not rely on Senator Barto's comments in voting in favor of SB 1164. He similarly did not rely on Ms. Herrod's comments in voting in favor of SB 1164. Attributing either of their comments as indicia of legislative intent would be contrary to Mr. John's intention of voting in

favor of SB 1164 and would amount to sheer speculation as to the motives or intent of other members of the legislature. Rather than rely on such comments, Mr. John urges this Court to look only to the plain text of SB 1164.

RESPECTFULLY SUBMITTED this 4th day of October, 2023.

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