

No. CR-13-0282-AP

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**IN THE SUPREME COURT  
STATE OF ARIZONA**

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STATE OF ARIZONA,  
*Appellee,*

*v.*

AARON BRIAN GUNCHES,  
*Appellant.*

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*MARICOPA COUNTY SUPERIOR COURT  
No. CR2003-038541-001*

**MOTION OF PUBLIC HEALTH PROFESSIONALS  
FOR LEAVE TO FILE BRIEF AS AMICI CURIAE**

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SEAN K. MCELENNEY  
GREGORY B. IANNELLI  
MATTHEW J. STANFORD  
Bryan Cave Leighton Paisner LLP  
2 North Central Ave., Suite 2100  
Phoenix, Arizona 85004-4406  
[skmcelenney@bclplaw.com](mailto:skmcelenney@bclplaw.com)  
[gregory.iannelli@bclplaw.com](mailto:gregory.iannelli@bclplaw.com)  
[matt.stanford@bclplaw.com](mailto:matt.stanford@bclplaw.com)  
Tel. (602) 364-7000  
Attorneys for *Amici Curiae*

January 31, 2025

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Pursuant to Rule 31.15(b)(2) of the Arizona Rules of Criminal Procedure, the individuals identified on the attached Appendix respectfully move for leave to file the accompanying lodged *amicus curiae* brief in support of neither party. The Court should grant this motion under Rule 31.15(b)(2)(B)(i) because Appellant is self-represented, and under Rule 31.15(b)(2)(B)(iii) because *amici* “can provide information, perspective, or argument that can help the appellate court beyond the help that the parties’ lawyers provide.”

The *amici curiae* are public health professionals, scientists, former regulators, and educators. These individuals have spent decades working in their respective fields seeking to protect the public health and to ensure the safety and efficacy of drugs in the United States.

The *amici* are deeply concerned about the significant public health risks the State has created by adopting an execution protocol that ensures the evasion of federal statutes and regulations regarding pharmaceuticals and related supply chains. Specifically, the State’s protocol calls for the drug pentobarbital, which has not been lawfully available as an execution drug for nearly a decade. So the State has resorted to using illicit raw ingredients mixed by an unregulated

compounding pharmacy, in violation of state and federal laws governing drug safety, the practice of pharmacy, and controlled substance distribution. This is all done clandestinely, without regulatory oversight, under the State's current interpretation of the execution secrecy laws.

These efforts overtly sanction a lack of transparency and oversight of the acquisition and transportation of dangerous drugs of abuse used in lethal injection, stymieing the proper enforcement of the federal drug regulation regime that the *amici* have worked to create and implement or have extensively studied. The ensuing compromised federal enforcement necessarily injures the public health by, for example, allowing the continuation and perpetuation of illicit drug supply chains that greatly increase the chances and instances of lethal, dangerous drugs reaching the general public. The *amici* believe profoundly that the State's willful noncompliance with, and secret avoidance of, governing federal drug-enforcement statutes and regulations will exacerbate risks to patients, incarcerated persons, and the broader public.

The *amici* have read the pleadings filed by the parties and believe they can add value to the Court's consideration of the State's motion by helping inform the Court of the legal infirmity and dangers posed by the

State's drug procurement efforts, and to urge the Court not to trigger a cascade of drug safety violations by issuing a death warrant. *Amici* will provide insight into the limits on the Court's discretion to issue a death warrant, summarize the state and federal laws applicable to the State's proposed conduct for which it seeks this Court's authority, and outline the public health dangers that conduct risks.

For these reasons, *amici* respectfully request that the Court grant leave to file the concurrently lodged brief pursuant to Ariz. R. Crim. P. 31.15(b)(2)(B)(i) and (iii). In an abundance of caution, *amici* further request that the Court treat this motion as a motion to exceed the word limit or for leave to file a shortened version of the lodged brief, to the extent this Court deems the word limits in its January 8, 2025, order, applicable only to the parties' response and reply, as being applicable to *amicus* briefs. Because the order does not specify a limit for *amicus* briefs, the *amici* have proceeded in compliance with Rule 31.12(a)(4).

DATED: January 31, 2025

Respectfully submitted,

Bryan Cave Leighton Paisner LLP

*/s/ Gregory B. Iannelli*

SEAN K. MCELENNEY

GREGORY B. IANNELLI

MATTHEW J. STANFORD

Attorneys for *Amici Curiae*

## APPENDIX

Anthony Absalom  
Professor of Anesthesiology  
University Medical Center Groningen  
Groningen University, The Netherlands

Donald Downing  
Clinical Professor Emeritus  
University of Washington School of Pharmacy

Leonard L. Edloe, Th.M., PharmD  
Former President of the American Pharmacists Association Foundation

Robert B. Greifinger, MD  
Consultant and Expert on Correctional Health Care

Margaret Hamburg  
Former Commissioner  
U.S. Food and Drug Administration

Dr. Philip Hansten  
Professor Emeritus  
University of Washington School of Pharmacy

Professor Paul Myles, MPH, MD, DSc, FAAHMS  
International Member of the US Academy of Medicine  
Dir. of Research, Dept. of Anaesthesiology and Perioperative Medicine  
Alfred Hospital and Monash University, Melbourne

James Ruble, PharmD, JD  
Professor (Lecturer) and Executive Associate Dean  
University of Utah College of Pharmacy

Joshua M. Sharfstein, MD  
Former Principal Deputy Commissioner  
U.S. Food and Drug Administration

J. Robert Sneyd  
Emeritus Professor  
Faculty of Health: Medicine, Dentistry and Human Sciences  
University of Plymouth, UK

Rebecca Weintraub, MD  
Associate Professor, Harvard Medical School  
Faculty Dir., The Global Health Delivery Project at Harvard University

Prashant Yadav  
Independent Healthcare Supply Chain Expert