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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

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,

v.

State of Arizona, a body politic,

Defendant,

and

Warren Petersen, President of the Arizona Senate; and Steve Montenegro, Speaker of the Arizona House of Representatives,

Intervenors-Defendants.

No. CV2025-017995

PLAINTIFFS' REPLY TO STATE OF ARIZONA'S RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION

(Assigned to the Hon. Greg Como)

INTRODUCTION

The State concedes that the Challenged Laws "cannot survive constitutional scrutiny under article II, § 8.1" and "that the Court can resolve the present dispute as a matter of law." State's Resp. at 2, 4. Plaintiffs agree. The State has not contested that Plaintiffs have satisfied the remaining factors that warrant granting a preliminary injunction and, as such, the Court should grant Plaintiffs' Motion for a Preliminary Injunction.[1] Plaintiffs submit this short reply brief to address and clarify a few points raised by the State in its Response Brief.

ARGUMENT

I. The Challenged Laws Must Achieve a Compelling State Interest Using the Least Restrictive Means

The State correctly states that the Amendment establishes a fundamental right to abortion and that the standard governing state action infringing this right prior to fetal viability is relevant here.[2] State's Resp. at 2-3. Before viability, "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 "unless justified by a compelling state interest that is achieved by the least restrictive means." Ariz. Const. art. II, § 8.1(A)(1). The Amendment explicitly defines a "[c]ompelling state interest" as "a law, regulation, policy or practice that meets *both* of the following": (1) it "is enacted or adopted for the limited purpose of improving or maintaining the health of an

[1] Should the Court grant Plaintiffs' Motion, Plaintiffs respectfully request that any request for attorneys' fees be addressed separately.

[2] Under the Amendment, restrictions on post-viability care are subject to a different standard. *See* Ariz. Const. art. II, § 8.1(A)(2) (prohibiting state action that "[d]enies, restricts or interferes with an abortion after fetal viability that, in the good faith judgment of a treating health care professional, is necessary to protect the life or physical or mental health of the pregnant individual"). Post-viability care is not implicated in this challenge, and thus the post-viability test is not relevant here. *See* Pls.' Reply to Intervenor-Defendants' Resp. to Pls.' Mot. for Prelim. Inj., at 1-3, filed concurrently herewith; *see also* State's Resp. at 3 n.1 ("Because the challenged laws apply to pre-viability abortions, they must satisfy the compelling interest test.").

individual seeking abortion care, consistent with accepted clinical standards of practice and evidence-based medicine" (the "health prong"); and (2) it "[d]oes not infringe on that individual's autonomous decision making" (the "autonomy prong"). *Id.* § 8.1(B)(1)(a)-(b) (emphasis added).

The language of the health prong makes clear that health is the *only* permissible purpose the legislature can have in passing a law that infringes on the right to abortion before viability; espousing multiple rationales cannot justify the law's constitutionality if the rationales fall outside the "limited purpose" defined by the Amendment. In addition, the word "purpose" must be read in the context in which it appears: the test explicitly requires the law to be "consistent with accepted clinical standards of practice and evidence-based medicine." Ariz. Const. art. II, § 8.1(B)(1)(a); *see Adams v. Comm'n on App. Ct. Appointments*, 227 Ariz. 128, 135 (2011) ("[I]t is a 'fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.'" (quoting *Deal v. United States*, 508 U.S. 129, 132 (1993), *superseded by statute as stated in United States v. Davis*, 588 U.S. 445 (2019))). As the State recognizes, this standard incorporates consideration of the actual impact of a law. *See* State's Resp. at 4 (distinguishing between "purport[ing] to" comply with and "actually satisfy[ing] those requirements" of the Amendment). The date on which a law was passed and whether it "purport[s]" or "attempt[s]," *id.*, to meet the Amendment's standard are not determinative. *See, e.g.*, *Latta v. Otter*, 771 F.3d 456, 469 (9th Cir. 2014) ("Unsupported legislative conclusions as to whether particular policies will have societal effects of the sort at issue in this case—determinations which often, as here, implicate constitutional rights—have not been afforded deference by the Court."); *Hodes & Nauser, MDs, P.A. v. Kobach*, 551 P.3d 37, 51 (Kan. 2024) ("In ascertaining whether an action directly promotes valid state interests . . . findings must be

based on evidence, including medical evidence, presented in judicial proceedings. Mere deference to legislative or administrative findings or stated goals would be insufficient." (cleaned up)). Thus, to the extent the State refers to the "purpose," it must be understood in this context, and cannot be considered to encompass legislative intent alone. To hold otherwise would allow the State, by merely professing its attempt to meet the Amendment's command, to evade that command in practice and insulate its action from constitutional scrutiny. Rather, to survive constitutional review, a law must "achieve[]" a compelling state interest as defined by the Amendment and do so "by the least restrictive means." Ariz. Const. art. II, § 8.1(A)(1). In other words, the question is whether a law "actually satisf[ies]" the Amendment's requirements, and, as the State concedes, the Challenged Laws cannot meet this high bar. *See* State's Resp. at 4.

II. The Challenged Laws Cannot Survive Constitutional Review

As the State recognizes, the threshold question of whether a law "[d]enies, restricts or interferes" with the "fundamental right to abortion" is a question of pure law here. *See* Ariz. Const. art. II, § 8.1; *see also* State's Resp. at 4. Because the Challenged Laws target, if not outright prohibit, abortion on their face, this threshold question must be resolved in Plaintiffs' favor. And because the State concedes that the Challenged Laws do not serve a compelling interest achieved through the least restrictive means, Plaintiffs are necessarily likely to succeed on the merits of their claims in this action.

In contrast to the threshold question of whether a law denies, restricts, or interferes with the fundamental right to abortion, whether a given state action actually furthers a compelling interest and does so using the least restrictive means is an inquiry for which the State bears the burden of proof. *See Ruiz v. Hull*, 191 Ariz. 441, 448 (1998) ("[W]here the regulation in question impinges on core constitutional rights, the standards of strict scrutiny apply and the burden of showing constitutionality is shifted to the proponent of the regulation.").

Here, by its own admission, the State has not carried its heavy burden. State's Resp. at 5-6; *see also id.* at 2 ("[T]he State agrees that [the Challenged Laws] cannot survive constitutional scrutiny under article II, § 8.1."). Specifically, the State admits that the Reason Ban Scheme and the Two-Trip Scheme fail both prongs of the compelling interest definition, *id.* at 5-6, and that the Telemedicine Ban Scheme is, "at a minimum, not 'the least restrictive means'" to achieve a compelling state interest, *id*. at 6 (quoting Ariz. Const. art. II, § 8.1(A)(1)). Because a law must *both* achieve a compelling state interest *and* do so using the least restrictive means to survive constitutional review under the Amendment, and because the State has not carried its heavy burden in demonstrating so with respect to any of the Challenged Laws, Plaintiffs are likely to succeed on the merits of their claims with respect to all of the Challenged Laws.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court issue a preliminary injunction.

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