

IN THE SUPREME COURT

STATE OF ARIZONA

ARIZONA RIGHT TO LIFE,
Plaintiff/Appellant,

v.

ADRIAN FONTES ET AL.
Defendants/Appellees,

and

ARIZONA FOR ABORTION
ACCESS,
Real Party in
Interest/Appellees.

Supreme Court No. CV-24-0180-
AP/EL

Maricopa County Superior Court
Court No. CV2024-019610

**BRIEF OF AMICI CURIAE AMERICAN COLLEGE OF
OBSTETRICIANS AND GYNECOLOGISTS, SOCIETY FOR
MATERNAL-FETAL MEDICINE AND SOCIETY OF FAMILY
PLANNING**

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INTEREST OF *AMICI CURIAE*

Amici are leading medical societies representing tens of thousands of health care professionals that serve patients in Arizona and across the nation.

The American College of Obstetricians and Gynecologists (“ACOG”) is the nation’s leading group of physicians providing evidence-based obstetric and gynecologic care. With more than 62,000 members, ACOG maintains the highest standards of clinical practice and continuing education of its members; strongly advocates against legislative interference in the practice of evidence-based medicine; promotes patient education; and increases awareness of the changing issues facing patients and their families and communities. ACOG has appeared as *amicus curiae* in courts throughout the country, including this Court. ACOG’s briefs and medical practice guidelines have been cited by numerous authorities, including the U.S. Supreme Court.

Because ensuring access to the full spectrum of essential reproductive health care is critical to ACOG’s mission and the health of our communities, ACOG opposes political and ideological interference in the practice of medicine. ACOG acknowledges that, while the

“government serves a valuable role in the protection of public health and safety and the provision of essential health services,” “[l]aws and regulations that veer from these functions and unduly interfere with patient-physician relationships are not appropriate.”¹ Those principles apply to abortion care: decisions about whether and when to access such care must be left to the clinicians, patients, and families involved.

Founded in 1977, the Society for Maternal-Fetal Medicine (“SMFM”) is the professional society for maternal-fetal medicine subspecialists, who are obstetricians with additional training in high-risk pregnancies. SMFM represents more than 7,000 members who care for high-risk pregnant people and provides education, promotes research, and engages in advocacy to advance optimal and equitable perinatal outcomes for all people who desire and experience pregnancy. SMFM and its members are dedicated to ensuring that all medically appropriate

¹ ACOG, *Legislative Interference with Patient Care, Medical Decisions, and the Patient-Physician Relationship* (May 2013), <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2019/legislative-interference-with-patient-care-medical-decisions-and-the-patient-physician-relationship#:~:text=Government%20serves%20a%20valuable%20role,t his%20proper%20role%20of%20government.>

treatment options are available for individuals experiencing a high-risk pregnancy.

The Society of Family Planning (“SFP”) is a leading source for abortion and contraception science. It represents more than 1,800 clinicians and scholars who advance just and equitable abortion and contraception informed by science. SFP works to build a diverse, equitable, inclusive, and multidisciplinary community of scholars and partners engaged in the science and medicine of abortion and contraception. It seeks to support the production and resourcing of research primed for impact; to ensure through guidance, medical education, and other activities that clinical care is evidence-informed and person-centered; and to develop leaders in abortion care and contraception care to transform the health care system.

ARGUMENT

The Arizona Abortion Access Act’s (the “Initiative’s”) description accurately communicated the Initiative’s general objectives. Plaintiff’s claim that the description fails to comply with A.R.S. Section 19-102(A) lacks merit for the reasons stated by the Superior Court and addressed in Arizona for Abortion Access’ brief. *Amici*, who represent the leading

health care professionals providing care for women, file this brief to explain the harmful nature of Plaintiff’s assertions regarding health care professionals who provide abortion care and to underscore the significant harms caused by abortion bans and other legislative interference in the provision of abortion care.

I. The Initiative Description Is Not Misleading, And Plaintiff’s Challenge Relies on Inaccurate Assertions About Clinicians Who Provide Abortion Care

Sponsors of a ballot initiative must provide “a description of not more than two hundred words of the principal provisions of the proposed measure or constitutional amendment.” A.R.S. § 19-102(A). The description must describe the measure’s “most important” and “consequential” provisions and must “accurately communicate [its] general objectives.” *Molera v. Hobbs*, 250 Ariz. 13, 19 (2020) (internal citation omitted). The Initiative’s description plainly does that. Plaintiff’s contention—that the 200-word description failed to meet this requirement because of the omission of four words—is baseless: Arizonans understand that a health care provider making judgments regarding a pregnancy’s progress is necessarily engaged in “treating” the patient. They also understand that health care providers exercise “good

faith judgment” in providing care. Plaintiff’s arguments not only defy common sense and medical realities, but also stigmatize abortion care and the clinicians who provide it, to the detriment of women, families, and communities in this state.

The 200-word description conveys the principal elements of the Initiative. The description’s use of “health care provider” is plainly understandable in context. As the Superior Court noted, “reasonable people understand that medical diagnoses and treatment plans are typically determined by the medical provider who is actively treating a patient whose health is at issue.” Ruling, p. 6.

While the Superior Court rightfully considered the description’s language in terms of how a reasonable person would understand it, *see Molera*, 250 Ariz. at 20, the Superior Court’s conclusion also comports with the realities of medical practice. There are a variety of physicians and other health care professionals who provide care to pregnant patients and who may evaluate the progress of a particular pregnancy and make medical determinations about patient health. Some health care professionals are clinicians who perform abortions on a routine basis, and others are health care professionals who practice, for example,

emergency medicine, family or internal medicine, or high-risk obstetrics as their principal focus. The description’s references to “health care provider” can plainly be understood to refer to the clinician who is treating the patient, regardless of specialty, and who is exercising “good faith judgment” in providing that care.

Plaintiff claims that, by omitting four words, the description fails to explain “the broad and largely unrestricted ability of any person providing abortions to determine ‘viability’ and health risks.” Opening Brief, p. 5. Further, Plaintiff asserts that “implicit in such a notice, if it had been properly provided, is that the abortion provider generally will have a financial incentive” to make the medical determinations described in the Initiative. *Id.*, p. 5-6. Plaintiff makes these bare assertions, ungrounded in the realities of medical care and ethics, without data and without evidence.

The assumptions undergirding Plaintiff’s stated objection—that an “abortion provider” would make only “illusory” and unreasonable judgments regarding a pregnancy’s progress or patient health because the provider, in Plaintiff’s view, “presumably profits from the abortion,” *id.*, p. 8—is an ideological statement with no factual basis that is meant

to stigmatize those who provide abortion care and those who need it. Bedrock principles of medical ethics require that all clinicians, irrespective of the type of care they provide, base their medical judgments on the “welfare of the patient,” not personal gain. *See, e.g.*, ACOG Code of Professional Ethics at 2 (“[T]he welfare of the patient must form the basis of all medical judgments.”); AMA Code of Medical Ethics 1.1.1 (Physicians have an “ethical responsibility to place patients’ welfare above the physician’s own self-interest or obligations to others.”). Clinicians who provide abortion care, either on a routine basis or in the context of specific needs of patients within a general or specialized OB/GYN, emergency, family medicine, and/or internal medicine practice, are not governed by separate ethical codes or practices, as Plaintiff seeks to have this Court believe.²

Plaintiff’s assertions are also dangerous: they disparage and stigmatize abortion care and the medical professionals who provide it, in

² Indeed, the conditions under which obstetrician-gynecologists practice today are extremely challenging, and clinicians who enter this specialty do so based on a clear commitment to the profession. *See, e.g.*, ACOG, *Maternal Health Awareness Day*, <https://www.acog.org/advocacy/policy-priorities/maternal-mortality-prevention/maternal-health-awareness-day> (accessed Aug. 14, 2024).

ways that have been demonstrated to reduce access to critical health care, and lead to violence and harassment against health care professionals.³

There is no medical dispute that abortion care is an essential component of health care.⁴ Abortion care is common—approximately one in four women of reproductive age will access abortion care in her lifetime.⁵ It is safe: it is safer than many routine health care

³ ACOG, *Increasing Access to Abortion*, Committee Opinion No. 815, at e111 (Dec. 2020), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2020/12/increasing-access-to-abortion.pdf> (“Stigma, harassment, and violence discourage abortion access and provision and harm patients. . . . The stigma of obtaining an abortion and providing abortion may lead to secrecy, marginalization of abortion from routine medical care, delays in care, and increased morbidity from the procedure. . . . Clinicians who provide abortion care also have been directly targeted with death threats, other threats of harm, and stalking, among other violent acts.”).

⁴ ACOG, *Abortion Policy* (last updated May 2022), <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2022/abortion-policy> (“All people should have access to the full spectrum of comprehensive, evidence-based health care. Abortion is an essential component of comprehensive, evidence-based health care.”).

⁵ Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 *Am. J. Pub. Health* 1284, 1288 (2022).

interventions and exponentially safer than childbirth.⁶ Access to abortion care is critical to ensuring the health of individuals and their families.

Abortion care is, accordingly, included in medical training, clinical practice, and continuing medical education for obstetrician-gynecologists, including through the Council on Resident Education in Obstetrics and Gynecology's *Core Curriculum in Obstetrics and Gynecology*, which helps define the required curriculum in graduate medical education. Abortion care is also included in the *Bulletin for the Oral Examination for Basic Certification in Obstetrics and Gynecology's* Gynecology Case List for oral board examinations offered and conducted by the American Board of Obstetrics and Gynecology and is among the specialty-defining services that make up standard gynecologic care set forth in the *Guidelines for Women's Health Care, A Resource Manual*.

⁶ Nat'l Acads. of Scis., Eng'g, & Med., *The Safety and Quality of Abortion Care in the United States*, Nat'l Acads. Press, at 77 (2018), <https://doi.org/10.17226/24950>; Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics & Gynecology* 215, 216-17 (2012).

Plaintiff’s attempt to stigmatize the provision of essential health care and to single out and diminish health care professionals who provide it—as if they were a different class of medical professional or prone to conduct that would displace patient well-being for personal gain—lacks any factual basis, is contrary to the legal and ethical obligations required of medical professionals, is harmful to Arizonans, and should be rejected by this Court.

II. Banning Abortion Care, as Plaintiff Seeks, Would Be Detrimental to Arizonans

Taken as a whole, Arizona Right to Life’s challenge is nothing more than an improper and thinly veiled challenge to the substance of the ballot initiative. *Cf. Save Our Vote, Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 153 (2013), *holding modified by* 250 Ariz. 13 (2020) (“If a ballot measure meets the statutory and constitutional requirements to appear on the ballot, its wisdom as a policy matter is for the voters to decide.”).

Since the U.S. Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health*, Arizona’s medical professionals have been forced to navigate a challenging legal landscape that has, at times, compromised the provision of essential medical care. There has been unpredictability and uncertainty regarding the ability to obtain essential reproductive care—

with times when abortion care was essentially unavailable in the state to the current situation, where legal restrictions leave some without the care they need.

Health care access should not be a game of ping-pong. Access to the full spectrum of medical care is critically important for people's health, safety, and well-being. The health and well-being of people and communities are threatened when health care professionals are unable to provide medical care that patients need, free from legislative interference in the practice of medicine. *Amici*, along with more than 75 other health care organizations, oppose legislative interference in the patient-clinician relationship and the provision of essential medical care.⁷ Patients need to be able to access evidence-based care—including abortion care—without arbitrary limitations, and clinicians need to be able to provide that care without interference or threats of criminalization.

⁷ ACOG, *More Than 75 Health Care Organizations Release Joint Statement in Opposition to Legislative Interference* (July 7, 2022), <https://www.acog.org/news/news-releases/2022/07/more-than-75-health-care-organizations-release-joint-statement-in-opposition-to-legislative-interference>.

CONCLUSION

For the foregoing reasons, *Amici* urge the Court to affirm the judgment of the Superior Court.

RESPECTFULLY SUBMITTED this 15th day of August, 2024

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