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ARIZONA COURT OF APPEALS
DIVISION ONE

PAUL A. ISAACSON, WILLIAM RICHARDSON, and ARIZONA MEDICAL ASSOCIATION, Plaintiffs/Appellees, v. STATE OF ARIZONA, Defendant/Appellee, WARREN PETERSEN, Arizona State Senate, and STEVE MONTENEGRO, Arizona House of Representatives, Intervenor-Defendants/Appellants.	No. 1 CA-CV 26-0240 Maricopa County Superior Court No. CV2025-017995 **ARIZONA RIGHT TO LIFE, CENTER FOR ARIZONA POLICY, INC, AND CHOICES PREGNANCY CENTERS' MOTION FOR PERMISSIVE INTERVENTION, CONTINUATION OF APPEAL, AND ADOPTION OF BRIEFS**

Introduction

Legislative appellants pursued reversal through merits briefing and responded to the briefs of amici curiae on November 4. Two days later, Arizona Right to Life (AZRTL) learned of the appellants' intended departures. AZRTL, alongside the Center for Arizona Policy, Inc. and Choices Pregnancy Center (collectively, "Permissive Intervenors") seeks leave to intervene while the appeal is pending and asks the Court to approve their adoption in full of appellants' opening and

consolidated reply briefs and to allow them to argue appellants' briefed positions on December 17.

I. Factual and Procedural History

The superior court declared specified abortion statutes and regulations unconstitutional as applied to pre-viability abortions and permanently enjoined enforcement of the provisions listed in its injunction. The legislative appellants defended those Arizona laws, appealed the judgment, and completed merits briefing. AZRTL participated as amicus in support of appellants, and Permissive Intervenors are ready to adopt appellants' briefs in full and present appellants' arguments if appellants cease pursuing this appeal.

A. Permissive Intervenors have advocated for the provisions at issue.

This case turns on whether Arizona may protect pregnant Arizonans' right to a fully informed, safe, and voluntary reproductive choice. AZRTL is an Arizona nonprofit that has long worked to educate the public and advocate on abortion policy. Verified First Amended Complaint ¶¶ 6–7, *Ariz. Right to Life v. Fontes*, No. CV2024-019610 (Ariz. Super. Ct. July 30, 2024), *reproduced in* Separate Appendix to Answering Brief at APP003, No. CV-24-0180-AP/EL (Ariz. Aug. 14, 2024). That includes pretrial support for a legal defense of the informed-consent, ultrasound, and reason-based restrictions statutory safeguards at issue. Ex. B ¶ 3.

The Center for Arizona Policy ("CAP") is an Arizona nonprofit organization, exempt from federal income tax under Internal Revenue Code § 501(c)(3). Ex. C ¶ 2. Since its founding in 1995, CAP has worked to promote pro-life state bills and resolutions through public policy research, education, and legislative advocacy. Ex. C ¶ 3. This includes several of the statutes at issue in this appeal, as CAP worked with legislative sponsors to draft the legislation, conducted policy research, convened stakeholders, provided testimony and analysis to lawmakers, and educated the public about the bills and resolutions. Ex. C ¶ 4.

Choices Pregnancy Centers ("Choices") has served the Greater Phoenix area since 1983, offering confidential consultations to women considering abortion. Ex. D ¶ 2. Its client advocates listen to women's concerns, answer questions about their options, and explain what assistance Choices and other organizations can offer them before and after birth. Ex. D ¶ 2. Choices offers a wide array of pregnancy-related services—but not abortion—at three physical locations and via a mobile medical unit. Ex. D ¶¶ 3–5. It is listed in the Arizona Department of Health Services' guide in the category of "Crisis Pregnancy Centers." Ex. D ¶ 6.

B. The legislative leaders defended the laws through final judgment.

Arizona voters approved Proposition 139 in November 2024, adding Article II, § 8.1 to the Arizona Constitution. Ruling 4, *Isaacson v. State*, No. CV2025-017995 (Ariz. Super. Ct. Feb. 2, 2026) ("Decision"). On May 22, 2025, Drs. Paul Isaacson

and William Richardson and the Arizona Medical Association sued the State and moved for a preliminary injunction. The complaint challenged reason-based abortion restrictions and related duties, in-person ultrasound, testing, disclosure, and waiting requirements, and restrictions on telemedicine and mailing abortion medications. Verified Compl. ¶ 4. The State agreed that the challenged schemes as written failed the amendment's pre-viability test, while disputing parts of plaintiffs' reasoning. State's Response to Plaintiffs' Motion for Preliminary Injunction 3, 5–6 (June 23, 2025).

Senate President Warren Petersen and House Speaker Steve Montenegro intervened in their official capacities under A.R.S. § 12-1841(D). Notice of Appearance & Intervention 2–4 (June 9, 2025). They defended the challenged laws and moved to dismiss on standing and ripeness grounds. The superior court denied that motion to dismiss on September 23, 2025. Decision 2.

The superior court heard evidence November 5–7, 2025, received post-hearing briefs and proposed findings, and heard closing arguments January 12, 2026. Decision 2–3. The court consolidated the preliminary-injunction hearing with trial on the merits, and the superior court's judgment declares the listed provisions, including all of A.R.S. § 13-3603.02, unconstitutional as applied to pre-viability abortions and abortion-related medical services. The court permanently enjoined the State from enforcing those provisions, except § 13-3603.02(D). Decision 28–29.

C. Legislative appellants briefed the appeal, and the Court set argument.

Petersen and Montenegro filed their notice of appeal on February 17, 2026, as sole appellants. They filed their opening brief on June 18; the State answered on August 19, and plaintiffs answered on August 28; appellants replied on September 24. DE 25, 33, 36, 38. AZRTL filed its amicus brief in support of Appellants on October 15 with all parties' written consent. DE 44. On November 4, the State responded to AZRTL's amicus brief and the legislative appellants responded to the briefs of amici curiae. DE 52–53. The Court set oral argument for December 17, 2026, at 1:30 p.m., Department F, Courtroom 2. DE 47.

D. Possible departures prompt AZRTL's motion.

Last Friday, the Associated Press projected Democratic majorities in both legislative chambers following the November 3 general election. Associated Press, *Democrats Win the Arizona House, Senate and Governor's Office for the First Time Since 1966* (Nov. 6, 2026). AZRTL learned that same day that the legislative appellants intend to withdraw their current defense of state law because of that partisan flip. On information and belief, no successor intends to continue pursuing the appeal. On November 9, the Arizona Right to Life board authorized this motion for permissive intervention under ARCAP 13(j). Ex. B ¶ 2. The boards of CAP and Choices subsequently also authorized this motion for permissive intervention. *See* Exs. C & D.

II. Argument

ARCAP 13(j) permits intervention in a pending appeal under Civil Rule 24 on terms the Court sets. Rule 24(b)(1)(B) in turn requires a timely motion and a claim or defense that shares a question of law or fact with the action. Rule 24(b)(3) requires the Court, in exercising its discretion, to consider undue delay or prejudice to the original parties. Permissive Intervenors' eligibility to intervene and their authority to continue alone present separate questions.

A. Permissive Intervenors' proposed defense presents the questions already briefed.

Exhibit A tenders the defense already briefed. Permissive Intervenors adopt the objections to injury and ripeness on both counts, including the absence of intended conduct proscribed by A.R.S. § 13-3603.02(A)(1). Consistent with the consolidated reply, Permissive Intervenors do not dispute plaintiffs' third-party standing to assert patients' rights under Article II, § 8.1(A)(1). Opening Br. 11–22; Reply Br. 2–12, 29. Permissive Intervenors adopt the legislative appellants' pre-*Dobbs* interference analysis, their application of the amendment's modified strict scrutiny when triggered, and their argument about plaintiffs' burden to obtain facial relief. Permissive Intervenors also adopt the defense of § 13-3603.02(B)(1) and the argument that § 8.1(A)(3) supplies no independent ground to affirm. Opening Br. 22–51; Reply Br. 12–29; Ex. A ¶¶ 2–5.

The requested dispositions follow those same issues. Permissive Intervenors seek reversal and remand for dismissal on the adopted threshold grounds, including a narrower disposition as to § 13-3603.02(A)(1) if only that objection succeeds. Alternatively, they seek the practical equivalent of the requested merits judgment if the legislative appellants depart, and they preserve the independent ground for partial reversal as to § 13-3603.02(B)(1). Ex. A ¶¶ 4, 6. The appellants' filed briefs supply the full arguments, qualifications, and limits that would govern relief Permissive Intervenors may pursue if the Court permits them to intervene.

B. The need to intervene arose after merits briefing.

Intervention would neither delay adjudication of this case nor prejudice existing parties' rights. This motion is being filed just days after Permissive Intervenors learned that Appellants' existing defense of Arizona law would end and shortly after Permissive Intervenors' boards authorized this motion. When AZRTL filed its amicus brief in support of Appellants, none of the Permissive Intervenors knew of any robust election prediction model or even betting platform that gave better than even odds that *either* legislative chamber would flip to Democrat control, let alone that both chambers would. *See, e.g.*, Larry Sabato, University of Virgina, *Handicapping the 2026 State Legislative Map* (Jan. 22, 2026) (Arizona chambers rated tossups); Polymarket, *Which Party Will Win the Arizona State Senate in 2026?* (Oct. 15, 2026) (tossup). Much less could Permissive Intervenors have envisioned

that the incoming legislature would intend to abandon defense of duly enacted state law. Permissive Intervenors thus relied on the legislative appellants' defense through setting of argument, and legislative appellants' November 4 response to amici. DE 1, 25, 38, 45, 47, 53.

Permissive Intervenors' diligence upon learning of the legislative appellants' intended departures counsels strongly in favor of permitting intervention and would not cause undue prejudice to Appellees. *See, e.g.*, *John F. Long Homes, Inc. v. Holohan*, 97 Ariz. 31, 32, 34–36 (1964). Evaluation of such prejudice lies within the court's broad exercise of discretion. *See Mitchell v. City of Nogales*, 83 Ariz. 328, 331–33 (1958). But the specific terms under which Permissive Intervenors seek permissive intervention in this appeal only strengthens a conclusion that no prejudice would accrue to any party were this motion granted. Permissive Intervenors would present the arguments already before the Court. The appeal would proceed on the existing claims, issues, record, and briefs. Discovery and trial proceedings would remain closed. Counsel would argue within the allotment for the appellants' side identified in the Rule 18 notice.

Nothing in that prejudice analysis would change even if Appellees chose to oppose this motion for permissive intervention. Electronically served on November 16, 2026, Appellees' motion response ordinarily would be due on December 1, and AZRTL will stipulate to a reply deadline of December 3—two full weeks before

argument. *See* ARCAP 5(a), 6(a)(2); Ariz. R. Civ. P. 6(a). A.R.S. § 1-301(A)(15)–(16).

Even were any delay or increased litigation expense foreseeable (none is), Plaintiffs-Appellees seek fees under the private-attorney-general doctrine and taxable costs under A.R.S. §§ 12-341 and 12-1840. Plaintiffs-Appellees' Answering Br. 57–58. *Ariz. Ctr. for L. in Pub. Int. v. Hassell*, 172 Ariz. 356, 371–72 (App. 1991). Government entities will remain parties, and any fees can be assessed against them.

C. Intervention would preserve the defense without duplicating work.

The Court may consider Permissive Intervenors' interest, their ability to raise the issues, the relation of their position to the merits, existing representation, and their likely contribution to adjudication. *Bechtel v. Rose*, 150 Ariz. 68, 72 (1986). But each of those factors also counsels in favor of granting permissive intervention, as doing so would not introduce *any* delay into the proceedings or imperil vigorous presentation of the arguments Appellants intend to abandon. Permissive Intervenors' interest in continued defense of state law they all vigorously and publicly supported before trial, and which AZRTL strenuously defended as an amicus in support of Appellants, cannot seriously be questioned. Meanwhile, the amicus participation of AZRTL before this Court testifies to its deep familiarity with the record on appeal and issues at stake. DE 44.

ARCAP 13(i) allows adoption of portions of another party's brief in a multiparty appeal. Because such adoption would avoid the need for any additional merits work by any party, Permissive Intervenors ask the Court to expressly approve their adoption of DE 25 and 38 in full as its complete written merits presentation under ARCAP 13(j) and 15(a)(8) before any withdrawal of Appellants from the case takes effect and continuing after any authorized departure. Absent the Court acting on its own motion for good cause under ARCAP 3(a), that approval would leave the record closed, merits briefing complete, and argument set.

Intervention typically would require the original parties to address this motion and might require a response to Exhibit A or a change in the argument arrangements. But not so here, as full adoption of Appellants' briefing and legal arguments would entirely avoid duplicating the merits work the parties have already completed. The appeal would proceed on the certified record. Permissive Intervenors seek to use the existing appellants' allotment as the Court directs, neither more nor less.

On November 11, undersigned counsel emailed counsel for the Plaintiffs/Appellees, the State of Arizona, and Intervenor-Defendants/Appellants Warren Petersen and Steve Montenegro to ask whether their clients opposed the proposed permissive intervention of AZRTL. On November 16, undersigned counsel emailed those same counsel to ask whether their clients opposed the proposed joint permissive intervention of all the Permissive Intervenors. As of filing,

counsel for none of the parties has communicated a substantive position on the motion for intervention.

Conclusion and Prayer

Permissive Intervenors respectfully request that the Court grant permissive intervention; deem Exhibit A filed; approve adoption of DE 25 and 38; and permit them to argue on December 17 within the appellants' scheduled allotment.

November 16, 2026

Respectfully submitted,

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