Arizona Supreme Court

Civil Election Appeal

CV-24-0180-AP/EL — **ARIZONA RIGHT TO LIFE v FONTES et al**

Appellate Case Information

Case Filed: 7-Aug-2024

Case Closed:

Dept/Composition

Side 1. ARIZONA RIGHT TO LIFE, Plaintiff/Appellant

(Litigant Group) ARIZONA RIGHT TO LIFE

- **Arizona Right to Life**

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Side 2. ADRIAN FONTES, et al., Defendant/Appellee

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(Litigant Group) ARIZONA FOR ABORTION ACCESS

- **Arizona for Abortion Access**

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Side 3. BALLOT INITIATIVE STRATEGY CENTER AND SAVE OUR SCHOOLS ARIZONA, Amicus Curiae

(Litigant Group) BALLOT INITIATIVE STRATEGY CENTER AND SAVE OUR SCHOOLS ARIZONA

- **Ballot Initiative Strategy Center**
- **Save Our Schools Arizona**

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Side 4. HON. ANDREW BIGGS and HON. BARBARA PARKER, Amicus Curiae

(Litigant Group) HON. ANDREW BIGGS and HON. BARBARA PARKER

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- **Barbara Parker**

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Side 5. SARA BENATAR, STEVE GALLARDO, DR. MATT HEINZ, ALMA HERNANDEZ, CONSUELO HERNANDEZ, CHERYL MANGO-PAGET, DEBRA STARK, PRIYA SUNDARESHAN (ELECTED OFFICIALS), Amicus Curiae

(Litigant Group) SARA BENATAR, STEVE GALLARDO, DR. MATT HEINZ, ALMA HERNANDEZ, CONSUELO HERNANDEZ, CHERYL MANGO-PAGET, DEBRA STARK, PRIYA SUNDARESHAN (ELECTED OFFICIALS)

- **Sara Benatar**
- **Steve Gallardo**
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- **Alma Hernandez**
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Arizona Supreme Court

Civil Election Appeal

CV-24-0180-AP/EL ARIZONA RIGHT TO LIFE v FONTES et al

Side 6. AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, SOCIETY FOR MATERNAL-FETAL MEDICINE AND SOCIETY OF FAMILY PLANNING, Amicus Curiae

(Litigant Group) AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, SOCIETY FOR MATERNAL-FETAL MEDICINE AND SOCIETY OF FAMILY PLANNING

- **The American College of Obstetricians and Gynecologists**
- **Society for Maternal-Fetal Medicine**
- **Society of Family Planning**

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CASE STATUS

Aug 20, 2024....Case Closed

Aug 20, 2024....Decision Rendered

Aug 7, 2024.....Pending

PREDECESSOR CASE(S)		Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR	CV2024-019610			Melissa Iyer Julian, Judge on PC		

CASE DECISION

20-Aug-2024 DECISION ORDER

* The Court en banc has considered the briefs and authorities in this expedited election appeal concerning the "Arizona Abortion Access Act" (the "Initiative"), serial number I-05-2024, a ballot initiative to adopt an amendment to the Arizona Constitution

Percurium

Filed: **20-Aug-2024** Mandate:

Decision Disposition
Affirmed

30 PROCEEDING ENTRIES

1.	7-Aug-2024	FILED: Plaintiff/Appellant's ARCAP 10 Statement in Expedited Election Matter and Request for Scheduling Confrence; Certificate of Service (Appellant Arizona Right to Life)
2.	8-Aug-2024	On August 7, 2024, Plaintiff/Appellant Arizona Right to Life, a non-profit corporation, filed "Plaintiff Appellant's ARCAP 10 Statement in Expedited Election Matter and Request for Scheduling Conference." In lieu of a telephonic scheduling conference, Court staff has consulted with counsel for Appellant and Appellee/Real Party in Interest Arizona for Abortion Access, a political committee. Court staff has been informally advised that the ballot printing deadline is August 22, 2024, and that the parties have obtained any transcript they wish to use. IT IS ORDERED any transcript shall be filed no later than 4:00 p.m. on Monday, August 12, 2024. IT IS FURTHER ORDERED the Secretary of State shall file a statement forthwith advising the Court of the last day to decide this matter. Upon consideration of this matter and agreement of the parties, IT IS ORDERED Appellant will file its opening brief (no more than 4,000 words) no later than 4:00 p.m. on Monday, August 12, 2024. IT IS FURTHER ORDERED Appellee/Real Party in Interest will file its answering brief (no more than 4,000 words) no later than 4:00 p.m. on Wednesday, August 14, 2024. IT IS FURTHER ORDERED that any amicus brief (no more than 2,000 words) will be filed no later than 4:00 p.m. on Thursday, August 15, 2024. Any amicus brief not meeting the requirements of ARCAP 16(b)(1)(C) will be summarily stricken by the Court. IT IS FURTHER ORDERED Appellant may file its reply brief (no more than 2,000 words) no later than 4:00 p.m. on Friday, August 16, 2024. If Appellant elects not to file a reply brief, Appellant will file a notice to that effect as soon as possible. Due to the expedited nature of these proceedings, the parties are encouraged to utilize shorter briefs and file their pleadings before their deadlines if possible. IT IS FURTHER ORDERED briefs will be in a legible 14-point font, double-spaced, and will include all arguments the parties wish to present to the Court. They may be filed in memorandum format (no tables of contents or authorities). IT IS FURTHER ORDERED in addition to filing briefs with the Clerk of the Supreme Court (with filing and service through AZTurboCourt), all filings are also to be sent by email to all the parties as required by ARCAP Rule 10(h) and to SACrtDocs@courts.az.gov and Court staff when filed. This matter will be considered without oral argument. Justice Bolick has recused himself from consideration of this matter. (Hon. William G. Montgomery)
3.	9-Aug-2024	FILED: Notice Regarding Printing Deadline; Certificate of Service (Appellee Fontes)
4.	9-Aug-2024	FILED: Reporter's Transcript - 8/2/24 Emergency Motion [Carol Dillon]
5.	8-Aug-2024	FILED: Record

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6.	12-Aug-2024	FILED: Opening Brief of Plaintiff-Appellant; Certificate of Service; Certificate of Compliance; Transcript (Appellant Arizona Right to Life)
7.	14-Aug-2024	Justice Bolick is recused and will not participate in the above captioned matter. Therefore, pursuant to Article 6, Section 3 of the Arizona Constitution, IT IS ORDERED that the Honorable John Pelander, Justice (Retired) of the Arizona Supreme Court, is designated to sit on the case until it is finally determined. (Ann A. Scott Timmer)
8.	14-Aug-2024	FILED: Arizona for Abortion Access's Answering Brief; Certificate of Service; Certificate of Compliance (Appellee Arizona for Abortion)
9.	14-Aug-2024	FILED: Separate Appendix to Answering Brief; Certificate of Service (Appellee Arizona for Abortion)
10.	15-Aug-2024	RECEIPT No.: 2024-00214 ; $280.00, Authorization: 8476368176422664, Applied to: ARIZONA RIGHT TO LIFE - Class A Filing Fee ($280.00) Paid for: ARIZONA RIGHT TO LIFE - By nCourt LLC
11.	15-Aug-2024	FILED: Brief of Amici Curiae Ballot Initiative Strategy Center and Save Our Schools Arizona in Support of Real Party in Interest Filed With Consent; Certificate of Service; Certificate of Compliance (Amici BISC/SOSAZ)
12.	15-Aug-2024	FILED: Consent of all Parties (Amici BISC/SOSAZ)
13.	15-Aug-2024	FILED: American College of Obstetricians and Gynecologists, Society for Maternal-Fetal Medicine, and Society of Family Planning's Motion for Leave to File Amici Curiae Brief; Certificate of Service (Amici ACOG/SMFM/SPF)
14.	15-Aug-2024	FILED: Brief of Amici Curiae American College of Obstetricians and Gynecologists, Society for Maternal-Fetal Medicine and Society of Family Planning; Certificate of Service; Certificate of Compliance (Amici ACOG/SMFM/SPF)
15.	15-Aug-2024	FILED: (Duplicate) American College of Obstetricians and Gynecologists, Society for Maternal-Fetal Medicine, and Society of Family Planning's Motion for Leave to File Amici Curiae Brief (Amici ACOG/SMFM/SPF)
16.	15-Aug-2024	FILED: Motion of the Hon. Andrew Biggs and the Hon. Barbara Parker for Leave to File Brief, Amici Curiae, in Support of Appellant Arizona Right to Life; Certificate of Service (Amici Hon. Andrew Biggs/Hon. Barbara Parker)
17.	15-Aug-2024	FILED: Brief of Amici Curiae the Hon. Andrew Biggs and the Hon. Barbara Parker in Support of Appellant Arizona Right to Life; Certificate of Service; Certificate of Compliance (Amici Hon. Andrew Biggs/Hon. Barbara Parker)
18.	15-Aug-2024	FILED: Consent of all Parties (Amici Hon. Andrew Biggs/Hon. Barbara Parker)
19.	15-Aug-2024	FILED: Consent Brief of Elected Officials as Amici Curiae Supporting Appellee and Affirmance; Certificate of Service; Certificate of Compliance (Amici Benatar, et al.)
20.	15-Aug-2024	FILED: Unopposed Motion for Leave to File Amicus Brief of Arizona Elected Officials in Support of Defendants (Amici Benatar, et al.)
21.	15-Aug-2024	FILED: Notice of Appearance; Certificate of Service (Amici ACOG/SMFM/SPF)
22.	16-Aug-2024	FILED: Letter to [Karin Aldama] (Verification of Pro Hac Vice Status for Skye L. Perryman, Carrie Y. Flaxman, Molly A. Meegan)
23.	16-Aug-2024	FILED: Letter to [Nathan Fidel] (Verification of Pro Hac Vice Status for Jim Davy, Joshua Rosenthal, Jordan Phillips)
24.	16-Aug-2024	Amici Curiae American College of Obstetricians and Gynecologists, Society for Maternal-Fetal Medicine, and Society of Family Planning, having filed a “Motion for Leave to File Amici Curiae Brief” along with the proposed brief of amici curiae on August 15, 2024, IT IS ORDERED the “American College of Obstetricians and Gynecologists, Society for Maternal-Fetal Medicine, and Society of Family Planning's Motion for Leave to File Amici Curiae Brief” is granted. The brief shall be filed as of August 15, 2024. (Tracie K. Lindeman, Clerk)
25.	16-Aug-2024	Amici curiae Hon. Andrew Biggs/Hon. Barbara Parker having filed a “Motion for Leave to File Brief in Support of Appellant Arizona Right to Life” along with the proposed brief on August 15, 2024, IT IS ORDERED the “Motion of the Hon. Andrew Biggs and the Hon. Barbara Parker for Leave to File Brief, Amici Curiae, in Support of Appellant Arizona Right to Life” is granted. The brief shall be filed as of August 15, 2024. (Tracie K. Lindeman, Clerk)

30 PROCEEDING ENTRIES

26.	16-Aug-2024	An "Unopposed Motion for Leave to File Amicus Brief of Arizona Elected Officials in Support of Defendants" (Amici Curiae Benatar, et al.) having been filed along with the proposed brief of amici curiae on August 15, 2024, IT IS ORDERED the "Unopposed Motion for Leave to File Amicus Brief of Arizona Elected Officials in Support of Defendants" is granted. The brief shall be filed as of August 15, 2024. (Tracie K. Lindeman, Clerk)
27.	16-Aug-2024	FILED: Reply Brief of Plaintiffs-Appellant; Certificate of Service; Certificate of Compliance (Appellant Arizona Right to Life)
28.	20-Aug-2024	DECISION ORDER The Court en banc has considered the briefs and authorities in this expedited election appeal concerning the "Arizona Abortion Access Act" (the "Initiative"), serial number I-05-2024, a ballot initiative to adopt an amendment to the Arizona Constitution establishing a fundamental right to abortion in the Arizona Constitution and preventing the State from denying, restricting, or interfering with this right in specific circumstances. The superior court concluded that the 200-word description (the "Description") accurately described the Initiative under A.R.S. § 19-102(A) and denied Plaintiff/Appellant's request to enjoin the Secretary of State from including the Initiative on the 2024 general election ballot. Plaintiff/Appellant appealed. As this Court has noted in a previous case concerning abortion, our resolution of this appeal "does not rest on the justices' morals or public policy views regarding abortion." Planned Parenthood Ariz., Inc. v. Mayes, 257 Ariz. 110, 111 ¶ 1 (2024). Rather, our task is to apply the law governing initiative descriptions fairly and impartially in the context of the people's exercise of the legislative power through the initiative. See League of Ariz. Cities & Towns v. Brewer, 213 Ariz. 557, 559–60 ¶¶ 8–10 (2006). Therefore, upon consideration, The Court unanimously concurs in the superior court's analysis and conclusion. A.R.S. § 19 102(A) requires an initiative petition to "[i]nsert a description of not more than two hundred words of the principal provisions of the proposed measure or constitutional amendment." The superior court was required to disqualify the Initiative from the ballot only if the Description either (1) "omitted a 'principal provision' of the measure" or (2) failed to accurately communicate the principal provisions' general objectives. Molera v. Hobbs, 250 Ariz. 13, 19 ¶¶ 8, 10 (2020) ("Molera II"). Plaintiff/Appellant does not argue that the Description omits a principal provision. Instead, it challenges the Description's accuracy in describing these provisions. We have noted that "[r]easonable people can differ about the best way to describe a principal provision, but a court should not enmesh itself in such quarrels." Id. at 20 ¶ 11. A 200-word description complies with § 19 102(A) if it "would alert a reasonable person to the principal provisions' general objectives." Id. A description is deficient if it "either communicates objectively false or misleading information or obscures the principal provisions' basic thrust." Id. ¶ 13. The principal provisions of the Initiative are (1) the establishment of a fundamental right to abortion under the Arizona Constitution; (2) the scope of that fundamental right, before and after fetal viability; and (3) the preclusion of the State from penalizing a person for assisting another to exercise that right. The Description explains each of these provisions and the tests that would apply to restrictions upon that right. Nothing in the Description "either communicates objectively false or misleading information or obscures the principal provisions' basic thrust," in violation of § 19 102(A). See id. We reject Plaintiff/Appellant's arguments to the contrary. The Description is not required to explain the Initiative's impact on existing abortion laws or regulations. See Molera II, 250 Ariz. at 21 ¶ 20. Moreover, a reasonable person would necessarily understand that existing laws that fail the prescribed tests would be invalid rather than continue in effect. See, e.g., A.R.S. § 36-2322 (eff. Sept. 24, 2024) (existing law prohibiting elective abortions after fifteen weeks). Similarly, a reasonable person would assume that the "health care provider" tasked with determining fetal viability would ordinarily be the pregnant woman's own treating physician, who is, by virtue of such person's profession, guided by ethical codes and presumably acts in good faith to preserve her health. Plaintiff/Appellant also argues that the Initiative itself is misleading. But that is not the issue before us under § 19 102(A). "[T]he proper place to argue about the potential impact of an initiative is in the political arena, in speeches, newspaper articles, advertisements and other forums." Tilson v. Mofford, 153 Ariz. 468, 473 (1987); see also Molera II, 250 Ariz. at 22 ¶ 23. We find that principle dispositive of most of the claims at issue in this case. IT IS ORDERED affirming the superior court's judgment denying injunctive relief. The Secretary of State will proceed under Title 19, Arizona Revised Statutes, to include the Initiative in the general election publicity pamphlet and to place it on the general election ballot. IT IS FURTHER ORDERED granting the request by Defendant/Appellee Arizona for Abortion Access for taxable costs under A.R.S. §§ 12-341 and 12-342. IT IS FURTHER ORDERED directing the Clerk to issue the mandate forthwith. (Hon. Ann A. Scott Timmer)
29.	21-Aug-2024	RECEIPT No.: 2024-00223 ; $140.00, Authorization: 8476419019877091, Applied to: ARIZONA FOR ABORTION ACCESS - Class B Filing Fee ($140.00) Paid for: ARIZONA FOR ABORTION ACCESS - By nCourt LLC
30.	21-Aug-2024	FILED: Statement of Costs; Certificate of Service (Appellee Arizona for Abortion)

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