NEWS RELEASE

Arizona House of Representatives
Representative Barbara Parker (R-10)
1700 West Washington • Phoenix, Arizona • 85007

Friday, August 16, 2024
FOR IMMEDIATE RELEASE

State Representative Barbara Parker Files Amicus Brief Opposing Radical Abortion Access Initiative

STATE CAPITOL, PHOENIX – Arizona State Representative Barbara R. Parker, Vice-Chairman of the House Health and Human Services Committee, has joined Congressman Andy Biggs in filing an amicus brief with the Arizona Supreme Court in strong opposition to the proposed Arizona Abortion Access Act. This radical initiative, slated for the November 2024 ballot, seeks to amend the Arizona Constitution to enshrine unfettered access to abortions, effectively removing the ability of the Legislature to enact reasonable regulations that protect both unborn human children and public health.

The brief argues that the initiative's vague and misleading language conceals its true impact: stripping Arizona courts of their power to apply traditional legal standards to abortion legislation. This would elevate abortion above existing fundamental rights by narrowly defining what constitutes a "compelling state interest." Representative Parker and Congressman Biggs stress that voters were not fully informed of these consequences, and they seek to have the initiative disqualified from the ballot to prevent the erosion of judicial review and the protection of other fundamental rights.

"This dangerous initiative would strip Arizona courts of their crucial role in safeguarding the balance between fundamental rights," Representative Parker stated. **"The people of Arizona deserve to know that this measure would place the so-called 'right to abortion' above all other rights, including religious freedom, and prevent the courts from considering compelling state interests that protect life and health. As a lawmaker and a neonatal ICU-trained nurse, I will always stand against any attempt to silence the voice of the people or to erode the protections that ensure the safety of all Arizonans, born and unborn."**

A copy of their motion and brief is attached.

Barbara R. Parker is a Republican member of the Arizona House of Representatives serving Legislative District 10 in Northeast Mesa and Apache Junction.

###

ARIZONA SUPREME COURT

ARIZONA RIGHT TO LIFE; Plaintiff/Appellant, v. ADRIAN FONTES; Defendant/Appellee, and ARIZONA FOR ABORTION ACCESS; Real Party in Interest/Appellee.	No. CV-24-0180-AP/EL Maricopa Co. Superior Ct. No. CV2024-19610

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

Alexander Kolodin (030826)
Veronica Lucero (030292)
Davillier Law Group, LLC
4105 North 20th Street, Suite 110
Phoenix, AZ 85016
T: (602) 730-2985 F: (602) 801-2539
akolodin@davillierlawgroup.com
vlucero@davillierlawgroup.com
phxadmin@davillierlawgroup.com (file copies)

Attorneys for proposed Amici Hon. Andrew Biggs and Hon. Barbara Parker

Pursuant to Rule 16(b)(1)(C)(iii) of the Arizona Rules of Appellate Procedure and this Court's Order dated August 8, 2024, proposed *amici* Congressman Andy Biggs and Representative Barbara Parker ("*Amici*") hereby move for leave to file the attached proposed brief, *amicus curiae*. Appellant Arizona Right to Life and Appellee/Real Party in Interest Arizona for Abortion Access consent to the filing. The Secretary of State advises that, as a nominal party, he takes no position as to the filing.

I. Interest of *Amici*.

Amici are elected members of the legislative branch concerned about the separation of powers implications of the Arizonans for Abortion Access initiative of which voters were not adequately informed.

Governments "are established to protect and maintain individual rights." Ariz. Const. art. 2, § 2. Our constitutionally mandated separation of powers "is part of [this] overall constitutional scheme to protect individual rights." *State v. Prentiss*, 163 Ariz. 81, 84 (1989). When the people's elected members of the legislative branch propose a law, several safeguards are in place to ensure that their rights are protected. In the state house, bills are required to be read for three separate days before they can be voted on to ensure that those bodies have adequate time to review the legislation and

carefully analyze any implications for the fundamental rights of Arizonans. Ariz. Const. art. 4, pt. 2, § 12. Bills typically travel through both a committee of reference and a rules committee, where the members can further examine these implications with the aid of talented counsel and staff.[1] Then the executive branch has its turn to provide independent scrutiny. Even once a law is signed, courts can and do strike it down if it violates the Arizona Constitution.

Like the people themselves, members of the Arizona House of Representatives and the U.S. Congress may propose amendments to the constitution. When a member of our state house proposes such a measure, this same robust process is followed with the people standing in for the governor. Those representing members of the public whose rights might be negatively impacted by the measure in question have the opportunity to directly confront those who will decide whether it ends up on the ballot. When a member of Congress proposes a constitutional amendment, the process is even more exacting. U.S. Const. Art. V. The measure must not only pass but also obtain

---

[1] *See, e.g., Rules of the House of Representatives 56th Legislature (2024)*, available at: https://www.azhouse.gov/alispdfs/AdoptedRulesofthe56thLegislature.pdf (last accessed Aug. 14, 2024).

a supermajority in both chambers. *Id*. It must then be ratified by 3/4ths of the several states. *Id*.

It is folly to imagine that any voter solicited for their signature in a parking lot could perform an equally thorough vetting process on the spot no matter how informed or capable. *See* Federalist No. 10.[2] As the trial court explained, because the Framers of the Arizona Constitution nonetheless saw fit not only to give the people the right to bypass this robust process but also to do so in order to enact essentially unreviewable legislation, the constitutional and statutory requirements for statewide initiative measures must be strictly construed, and persons using the initiative process must strictly comply with those constitutional and statutory requirements. Under Advisement Ruling at 4, CV 2024-019610 (Aug. 5, 2024).

As the proponents of the initiative themselves noted in briefing below, "the Legislature's authority is subordinate to direct action by the people."

---

[2] "The effect of the first difference [between a democracy and a republic] is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens.… Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose."

Arizona for Abortion Access Mot. for Summ. J. at 22:1-2 (internal references omitted). Representative Parker thus has an interest in making sure that the people exercise their power of initiative only in a fully informed fashion, as the measure in question will permanently constrain the ability of members of her body to protect the public health and safety. This is of key importance to Representative Parker given her decades of nursing, including as a neonatal ICU-trained nurse, and her current position as Vice-chairman of the Health and Human Services Committee. Particularly, she is concerned voters will find themselves surprised and frustrated that members of the Arizona House of Representatives are no longer able to enact the commonsense regulations on abortion that the public would expect. For example, those who signed the petition without being fully informed might be confused as to why the House can no longer enact a regulation requiring an abortion not be undertaken solely due to the race or gender of the child.[3] Not to mention, voters might

---

[3] For example, at least some petition circulators were telling those considering signing that, under the initiative, abortion would only be permitted up to birth if there was a risk to the life of the mother. *See e.g.*, *Amicus Video One*, https://tinyurl.com/deeu4wcf, 1:15-1:33 (last accessed Aug. 15, 2024). Other circulators seemed confused about the initiative's definition of viability. *See e.g.*, *Amicus Video Two* https://tinyurl.com/4jh5rfex, 2:30-2:33 (last accessed Aug 15, 2024), *Amicus Video Three* https://tinyurl.com/2az9x38f, 0:32-0:35 (last accessed Aug 15, 2024). If the 200-word description was not clear even to

find themselves very surprised when they wake up and find out that the Court can no longer weigh the Arizona Constitution's equal protection clause in the balance when assessing whether to uphold or strike such a regulation. Congressman Biggs, as the former president of the state senate, likewise is interested in ensuring that voters are fully informed as to what they are doing before fiddling with our carefully constructed separation of powers. In addition, as a member of the Committee on the Judiciary, he has a keen interest in preserving the power of judicial review and not unduly constraining the ability of the courts to balance other fundamental rights against those the initiative in question would create.

II. Why This Court's Acceptance of the Brief Would Be Desirable.

Despite the fact that the processes may be different, both legislators at the capitol and members of the public standing in the grocery store parking lot do have one important similarity—they are both asked to pass judgment on whether a constitutional amendment ought to be proposed. Indeed, while the average citizen may be asked to exercise such judgment but seldom, members of the legislative branch are elected to make such decisions

---

volunteers gathering signatures, how much less clear would it be to those solicited for a signature on the way to the store?

regularly. They are the experts on what information is material to such determinations and can naturally provide perspective that can help this Court beyond what the parties' lawyers provide. *See* Ariz. R. Civ. App. P. 16(b)(C)(iii).

III. Other Matters.

Amici have read the brief. Financial resources have been provided by Mike Moore.

IV. Conclusion.

The Court should permit the filing of the attached proposed brief.

RESPECTFULLY SUBMITTED this 15th day of August 2024.

Davillier Law Group, LLC

By /s/Alexander Kolodin
Alexander Kolodin
Veronica Lucero

Attorneys for proposed Amici Curiae *Hon. Andrew Biggs and Hon. Barbara Parker*

ARIZONA SUPREME COURT

ARIZONA RIGHT TO LIFE; Plaintiff/Appellant, v. ADRIAN FONTES; Defendant/Appellee, and ARIZONA FOR ABORTION ACCESS; Real Party in Interest/Appellee.	No. CV-24-0180-AP/EL Maricopa Co. Superior Ct. No. CV2024-19610

BRIEF OF *AMICI CURIAE* THE HON. ANDREW BIGGS AND THE HON. BARBARA PARKER IN SUPPORT OF APPELLANT ARIZONA RIGHT TO LIFE

Alexander Kolodin (030826)
Veronica Lucero (030292)
Davillier Law Group, LLC
4105 North 20th Street, Suite 110
Phoenix, AZ 85016
T: (602) 730-2985 F: (602) 801-2539
akolodin@davillierlawgroup.com
vlucero@davillierlawgroup.com
phxadmin@davillierlawgroup.com (file copies)

Attorneys for proposed Amici Hon. Andrew Biggs and Hon. Barbara Parker

Pursuant to Rule 16(b)(1)(C)(iii) of the Arizona Rules of Civil Appellate Procedure ("ARCAP") and this Court's order dated August 8, 2024, Arizona State Representative Barbara Parker and Congressman Andy Biggs respectfully submit this brief as *amici curiae* in support of Appellant Arizona Right to Life ("ARL") in this case challenging the Arizona Abortion Access Act ballot initiative.

Interests of the Amici

Amici are elected members of the state and federal legislative branches who are concerned about the threat to judicial review and separation of powers embedded in the Arizona Abortion Access Act (the "Act"). Representative Parker, who served as a nurse for decades, including as a neonatal ICU-trained nurse, and who currently serves as Vice-chairman of the Health and Human Services Committee, has an interest in ensuring that the people exercise their power of initiative only in a fully informed fashion, as the Act will permanently constrain members of her body from protecting the public health and safety. Congressman Biggs, the former President of the Arizona Senate and a current member of the Committee on the Judiciary, likewise has a keen interest in preserving the power of judicial review and

the power of Arizona courts to balance other fundamental rights against the fundamental right to abortion that the Act will create.[1]

Introduction

The Arizona Abortion Access Act, if placed on the ballot and approved by voters, will amend the Arizona Constitution to establish a fundamental right to abortion. The parties disagree about whether the 200-word description contained in the initiative's petition application complies with A.R.S. § 19-102(A). The trial court held that it does, and the issue presented for review in this Court is whether the description fails to sufficiently describe the Act's "principal provisions such that it communicated objectively misleading information and/or obscured the principal provisions' basic thrust, such that it should be disqualified from the ballot." ARL Op. Br. at 2.

Because the description of the initiative failed to inform signatories that the Act will strip courts of their power to apply traditional strict-scrutiny factors when considering abortion legislation as opposed to other

[1] Pursuant to ARCAP 16(b)(3), the undersigned certifies that Mike Moore has provided financial resources for the preparation of this brief.

fundamental rights—which is a principal provision of the Act—this Court should reverse the lower court's ruling.

Argument

Arizona courts "should disqualify an initiative from the ballot whenever the [2]00-word description either communicates objectively false or misleading information or obscures the principal provisions' basic thrust" based on "the meaning a reasonable person would ascribe to the description." (quotations and citation omitted). *Molera v. Hobbs*, 250 Ariz. 13, 20 ¶ 13 (2020). The description can obscure the provisions' basic thrust "through the language used to describe the principal provisions or by failing to refer to key features of those provisions." *Id.*

Principal provisions "are the most important, ***consequential,*** and primary features of the initiative." *Id.* at 19 ¶ 9 (cleaned up; emphasis added). If the description omits a "principal provision," the court "should disqualify the measure from the ballot without further inquiry." *Id.* ¶ 8. Alternatively, a court may disqualify a provision if it fails to "describe the principal provisions to accurately communicate their general objectives."

A principal provision of the ballot initiative in this case is that the Act will allow any legislation touching on abortion—past or present—to evade

traditional judicial review "[u]nder the three-tiered scrutiny level analysis" in which Arizona courts "apply one of three standards of review ranging from strict to intermediate scrutiny to rational basis review, ***depending on the right impacted***, to assess a statute's constitutionality." *State v. Arevalo*, 249 Ariz. 370, 374 ¶ 15 (2020) (emphasis added). This is a sweeping change to the way Arizona courts analyze and interpret the law when it comes to fundamental rights, which include our most precious and basic individual liberties, and this transformation is plainly one of the "most important, ***consequential***, and primary features of the initiative." *Molera*, 250 Ariz at 19 ¶ 9 (cleaned up; emphasis added).

Traditionally, "[s]trict scrutiny applies to a statute that implicates fundamental rights or a suspect class," and Arizona courts "will uphold a statute under strict scrutiny only if it is necessary to promote a compelling state interest and the statutory restriction is narrowly tailored." *Arevalo,* 249 Ariz. at 374, ¶ 15. And of course, when deciding the issue of what serves "a compelling state interest," courts are empowered to exercise their judicial function to say what the law is. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."). Further, "it is well settled that when

one with standing challenges a duly enacted law on constitutional grounds, the judiciary is the department to resolve the issue even though promulgation and approval of statutes are constitutionally committed to the other two political branches." *Ariz. Indep. Redistricting Comm'n v. Brewer*, 229 Ariz. 347, 355 ¶ 34 (2012) (citing *Forty-Seventh Legislature v. Napolitano*, 213 Ariz. 482, 485 ¶ 8 (2006) ("To determine whether a branch of state government has exceeded the powers granted by the Arizona Constitution requires that we construe the language of the constitution and declare what the constitution requires. Such questions traditionally fall to the courts to resolve.)).

Despite the well-established tradition of courts to interpret and apply the law of fundamental rights and to say what the law is (i.e., to say what exactly constitutes "a compelling government interest"), the Arizona Abortion Access Act removes from Arizona courts the power to resolve "questions [that] traditionally fall to the courts to resolve, " 213 Ariz. 482, 485 ¶ 8, when those questions involve laws that regulate or touch on abortion. This is a major omission of one of the "most important, ***consequential***, and primary features of the initiative." *Molera*, 250 Ariz at 19 ¶ 9 (cleaned up; emphasis added).

The 200-word description at issue in this case provides, in relevant part, as follows:

> The Arizona Abortion Access Act amends the Arizona Constitution to establish a ***fundamental right*** to abortion that the State…may not deny, restrict or interfere with [1] before the point in pregnancy when a health care provider determines that the fetus has a significant likelihood of survival outside the uterus without extraordinary medical measures *unless justified by a* ***compelling governmental interest (defined by the act as a law,*** regulation, policy, or practice enacted ***for the limited purpose*** ***of improving or maintaining the health of an individual seeking abortion care***, consistent with accepted clinical standards of practice and evidence-based medicine, and ***that does not infringe on that individual's autonomous decision-making***) that is achieved by the *least restrictive means*….

Under Advisement Ruling at 3, CV 2024-019610 (Aug. 5, 2024) ("UAR") (emphasis added).

Because the law narrowly defines what constitutes "a compelling interest," it leaves no room for the court to consider any other compelling interest the government may assert when regulating and defending laws that touch on abortion. In other words, because the Act confines "a compelling government interest" to "***the limited purpose*** of improving or maintaining the health of an individual seeking abortion care…and that does not infringe on that individual's autonomous decision-making," this interest would override a compelling interest the government may have in ensuring

that a healthcare provider has the religious freedom not to perform an abortion. It is a material omission to the public that the Act will override any such interest because courts will not be able to weigh the fundamental right of religious freedom over the fundamental right of abortion. This is vastly different from other laws that establish fundamental rights without disturbing the power of Arizona courts to interpret such legislation under a traditional strict-scrutiny analysis.[2]

For example, A.R.S. § 1-601 (with emphasis added) provides that the "liberty of parents to direct the upbringing, education, health care and mental health of their children is ***a fundamental right***," and the government "shall not infringe on these rights without demonstrating that the ***compelling governmental interest*** as applied to the child involved is of the highest order, is narrowly tailored and is ***not otherwise served by a less***

[2] Whether the Act, if placed on the ballot and approved, is ultimately challenged as a violation of article 3 of the Arizona Constitution (distribution or separation of powers) is presently inconsequential, as the court may not consider the constitutionality of the Act prior to its passage. *See League of Ariz. Cities & Towns v. Brewer*, 213 Ariz. 557, 559 ¶ 10 (2006). However, signatories and electors should be apprised of the Act's consequential feature of stripping the courts of their power of judicial review regardless of the Act's potential unconstitutionality.

restrictive means." Notably, there is no restriction on what constitutes a compelling governmental interest. Similarly, A.R.S. § 41-1493.01 provides (with emphasis added) that "[f]ree exercise of religion is ***a fundamental right*** that applies in this state," and the "[g]overnment may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is both…[i]n furtherance of ***a compelling governmental interest***" and "***[t]he least restrictive means*** of furthering that compelling governmental interest." Both of these statutes do what the Act purports to do—establish a fundamental right—but without stripping courts of their power to say what constitutes "a compelling government interest."

As noted by ARL in its Verified First Amended Complaint ("FAC"), "[t]he initiative contains a reference to a compelling government interest that, on its face, would allow future regulations on abortion to pass judicial review." FAC ¶ 33. However, "[i]n contr[ast] to all other Arizona laws or constitutional provisions, here there is no compelling interest available, after all, other than making the abortion safer for the woman." *Id.* ¶ 36. ARL further argued that, while "in some circumstances, a confusing description can be clarified by reading the proposed amendment's text, such is not the case here, where the proposed text is the source of the problem." *Id.* ¶ 32

(citing *Molera v. Reagan*, 428 P.3d 490, 497 (Ariz. 2018) ("Moreover, recourse here to the measure's text to correct any uncertainty is unavailing because that text is the source of the problem.")).

The trial court considered whether the Act's description of the phrase "compelling government interest" is misleading and concluded that a "reasonable person would understand that the drafters included this specific definition of 'compelling state interest' precisely because they intended it to invalidate some existing abortion regulations." UAR at 8. However, the court only addressed whether the phrase is confusing because "because it suggests that some government regulation of abortion will remain in place, when the initiative actually proposes to invalidate government regulation of abortions altogether." *Id.* The trial court did not address the Act's sweeping change to Arizona jurisprudence on fundamental rights, nor did it consider that legislation touching on abortion will be treated differently and more preferentially than all other laws addressing fundamental rights. But these characteristics are among the "most important, ***consequential***, and primary features of the initiative," *Molera*, 250 Ariz at 19 ¶ 9 (cleaned up; emphasis added), and therefore should not have been omitted.

Conclusion

Because the description of Arizona Abortion Access Act (and the Act itself) failed to inform signatories (and fails to inform potential voters) that the Act will strip courts of their power to apply traditional strict-scrutiny factors when considering abortion legislation as opposed to other fundamental rights—which is a principal provision of the Act—this Court should reverse the lower court's ruling.

RESPECTFULLY SUBMITTED this 15th day of August 2024.

Davillier Law Group, LLC

By: /s/Veronica Lucero
Alexander Kolodin
Veronica Lucero

Attorneys for proposed Amici Curiae *Hon. Andrew Biggs and Hon. Barbara Parker*