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**VIA EMAIL**

Anni Foster  
General Counsel  
Arizona Governor's Office  
1700 West Washington Street  
Phoenix, AZ 85007

**Re: Effect of S.B. 1164, Chapter 105 of 2022 Arizona Session Laws, on  
Arizona Abortion Statutes**

Dear Anni:

As you know, the Pima County Superior Court ruled that an injunction that was placed on A.R.S. § 13-3603 (the pre-*Roe* abortion statute) will no longer apply prospectively, after our office sought clarity on this important issue. This followed two key moments in our State: the first was in March when the Arizona Legislature passed – and the Governor signed – S.B. 1164, the 15-week abortion ban that also stated that A.R.S. § 13-3603 was not “repeal[ed], by implication or otherwise”;<sup>1</sup> and the second was in late-June when the U.S. Supreme Court overruled *Roe v. Wade* and returned the issue of regulation of abortion to “the people and their elected representatives.” *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2279 (2022).

It is the position of our office that after Friday's ruling from the Superior Court, A.R.S. § 13-3603 is now in effect statewide.

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<sup>1</sup> This action regarding § 13-3603 is part of a long and consistent trend of the Legislature reaffirming the statute's validity. See Pima County Superior Court Ruling at 3 (“In 1977, the Legislature re-enacted A.R.S. §§13-211-213 as §§13-3603-3605. In 2021, the Legislature repealed §13-3604, but left intact §13-3603, which criminalizes abortions except to save the life of a pregnant woman.”). And the Arizona Courts have recognized this 1977 law as “re-enact[ing]” or “enact[ing]” this statutory provision anew. *Summerfield v. Super. Ct.*, 144 Ariz. 467, 476 (1985); *Vo v. Super. Ct.*, 172 Ariz. 195, 201 (App. 1992).

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However, the Governor's office has not taken a clear legal position on the current state of the law in Arizona, and comments from the Governor are being cited by Planned Parenthood in court to undermine the State's defense of A.R.S. § 13-3603 and to seek a stay of the Court's ruling lifting the prior injunction.

It is the duty of every prosecutor to enforce the law as it is written, not how we would like it to be written. Our office sought clarity on the state of abortion laws in Arizona, in large part, due to S.B. 1164 expressly providing that A.R.S. § 13-3603 was not repealed. The Pima County Superior Court agreed. S.B. 1164, which the Governor signed, could not be clearer about the intent of the Arizona Legislature and the Governor when they enacted S.B. 1164. It expressly states that it "does not: 1. Create or recognize a right to abortion .... make lawful an abortion that is currently unlawful [or] 2. Repeal, by implication or otherwise, section 13-3603, Arizona Revised Statutes...." 2022 Ariz. Sess. Laws ch. 105, § 2 (2d Reg. Sess.).

The Governor and Legislature, as the duly "elected representatives" and policymakers for our State, are those who must now set policy on the sensitive issue of abortion. *See Dobbs*, 142 S. Ct. at 2279.

That is why it is imperative that the Governor's Office assist in providing clarity. We strongly invite you to submit an appropriate brief from your Office that clearly outlines the legal position of the Governor's Office, if it no longer stands by the express legislative intent that it signed onto this March when approving S.B. 1164. And we also request that you call a special session of the Arizona Legislature so that legislators may have an opportunity to give additional clarity about our abortion laws based on feedback they may be receiving from their constituents.

Sincerely,

/s/ Brunn (Beau) Roysden

Arizona Attorney General's Office

Cc (via email): Greg Jernigan, General Counsel, Arizona State Senate  
Andrew Pappas, General Counsel, Arizona House of Representatives