



KRIS MAYES
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE OF ARIZONA

April 18, 2024

VIA EMAIL

Re: Earliest date on which A.R.S. § 13-3603 becomes enforceable

Dear Health Care Leaders:

Thank you for the critical role your institutions play in providing health care, including reproductive care, to Arizonans. In light of that critical role, I write to provide clarity on the date on which A.R.S. § 13-3603 becomes enforceable.

As you are aware, A.R.S. § 13-3603 is the territorial-era ban on abortion that had previously been enjoined and unenforceable since 1973 in light of *Roe v. Wade*, but was recently reinstated by the Arizona Supreme Court. As explained below, absent further litigation, **the earliest date** on which that statute could become enforceable is **June 8, 2024**.

I. Planned Parenthood decision

On April 9, 2024, the Arizona Supreme Court issued its decision in *Planned Parenthood Arizona v. Hazelrigg*, No. CV-23-0005-PR, 2024 WL 1517392. The Supreme Court held that the territorial-era ban on abortion, A.R.S. § 13-3603, controls over a more recent law in Title 36 that permits abortions up to 15 weeks and at any time in a statutorily defined “medical emergency.”

The Court made clear that it was not ruling on the constitutionality of § 13-3603. The Court also said that § 13-3603 cannot be enforced for 14 calendar days from the issuance of the opinion so that the parties could pursue any constitutional challenges to § 13-3603 and associated stay requests in the trial court.

II. Isaacson enforcement moratorium

Although the Arizona Supreme Court’s decision prohibits enforcement of § 13-3603 for a 14-day stay period, an order entered in a separate case, *Isaacson v. State*, No. CV 2022-013091 (Maricopa Cnty. Super. Ct.), prohibits enforcement of § 13-3603 for a longer period of time.

As background, in *Isaacson v. State*, Dr. Paul Isaacson sued the State of Arizona regarding the interpretation of Arizona’s abortion laws, including § 13-3603 and the newer 15-week law. In October 2022, Dr. Isaacson and the State—represented by my predecessor, Attorney General Mark Brnovich—agreed to a stay that paused the litigation until the *Planned Parenthood* case was decided. As part of that stay, the State stipulated, and the trial court ordered, that the “State will

not enforce in any manner against any person A.R.S. § 13-3603 until 45 days after issuance of the final mandate in the appeal in *Planned Parenthood*.” The parties further stipulated, and the trial court ordered, that the State would never retroactively prosecute “any person under A.R.S. § 13-3603 for conduct during the enforcement moratorium period.” A copy of that court order is attached to this letter as Exhibit A.

In other words, the State cannot enforce § 13-3603 until 45 days after the Arizona Supreme Court issues its mandate in *Planned Parenthood*. Notably, for purposes of criminal prosecutions, the “State” encompasses the Attorney General’s office and County Attorneys. *See, e.g.*, A.R.S. § 11-532(A)(1).

Further, the “State” also encompasses state boards that license Arizona healthcare professionals who assist in performing these procedures and provide related healthcare services. Therefore, while § 13-3603 remains unenforceable for that 45-day period (and possibly beyond), entities such as the Arizona Medical Board, the Arizona Board of Osteopathic Examiners in Medicine and Surgery, the Arizona State Board of Nursing, and the Arizona State Board of Pharmacy—all of which this Office represents and advises—cannot lawfully take any adverse licensing or disciplinary action against providers on the basis that they provide healthcare, prescribe or dispense medication, or engage in any other professional conduct that would appear to violate A.R.S. § 13-3603.

To be clear and to repeat, while a court-imposed prohibition on enforcement of A.R.S. § 13-3603 exists, the State and its agents cannot—now or in the future—lawfully prosecute or otherwise discipline any conduct that occurs during that enforcement-moratorium period on the basis that such conduct would appear to violate § 13-3603.

The Arizona Supreme Court has not yet issued the mandate in *Planned Parenthood*. Under Arizona Rule of Civil Appellate Procedure 24(b)(3), “the Supreme Court clerk must issue the mandate 15 days after the entry of the disposition, or, if a party files a motion for reconsideration in the Supreme Court, 15 days after a final disposition of the motion.” The *Planned Parenthood* opinion was issued on April 9, 2024. Fifteen days from that date is April 24, 2024. Forty-five days from that date is June 8, 2024. Thus, under the binding court order in *Isaacson*, the earliest date on which A.R.S. § 13-3603 can be enforced in any way is June 8, 2024.

That conclusion is not subject to any reasonable dispute. Indeed, the leaders of the majority party in the Legislature have publicly agreed with this conclusion. *See* Joint Statement from Senate President Warren Petersen and House Speaker Ben Toma on the Arizona Supreme Court abortion ruling, <https://twitter.com/AZSenateGOP/status/1777771918105731586> (Apr. 9, 2024) (“It’s important to note, there is at least a 60-day waiting period before any change in the law occurs.”).

I will be sure to promptly notify you if there are any changes to the date on which § 13-3603 becomes enforceable.

III. Constitutionality and guidance

The *Planned Parenthood* decision left open the question of whether A.R.S. § 13-3603 is constitutional. That issue appears likely to be litigated in the coming weeks.

Meanwhile, I recognize that the archaic and vague language of § 13-3603 creates a nightmare for providers, especially in the context of medical emergencies. If § 13-3603 is allowed to go into effect, my Office will issue guidance in advance of that date. That guidance would seek to assist providers in complying with the law while recognizing the inherent challenges in construing such an archaic and vaguely written statute.

If you have any further questions, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Mayes", with a long horizontal flourish extending to the right.

Kris Mayes
Attorney General

Exhibit A

1 **MARK BRNOVICH**
2 **ARIZONA ATTORNEY GENERAL**
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15 *Attorneys for Defendant State of Arizona*

16 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
17 **IN AND FOR THE COUNTY OF MARICOPA**

18 PAUL A. ISAACSON, M.D., and the
19 ARIZONA MEDICAL ASSOCIATION, on
20 behalf of itself and its members,
21 Plaintiffs,

22 v.

23 STATE OF ARIZONA, a body politic,
24 Defendant.

Case No: CV2022-013091

**ORDER GRANTING STIPULATION
AND JOINT MOTION FOR STAY OF
PROCEEDINGS**

(Assigned to the Hon. Joseph P. Mikitish)

1 The Court has read and considered the Stipulation and Joint Motion for Stay of
2 Proceedings filed by the parties in the above-entitled action. Good cause appearing,

3 IT IS HEREBY ORDERED granting the Stipulation and Joint Motion.

4 IT IS FURTHER ORDERED that absent additional order from this Court, the State will
5 not enforce in any manner against any person A.R.S. § 13-3603 until 45 days after issuance of the
6 final mandate in the appeal in *Planned Parenthood of Arizona, Inc. v. Brnovich*, currently pending
7 in the Arizona Court of Appeals with appeal number 2 CA-CV 2022-0116 (the “Pima County
8 Appeal”), as may be appealed to the Arizona Supreme Court (the “Final Appeal”). The State’s
9 agreement not to enforce A.R.S. § 13-3603 does not include taking actions to defend the legality
10 or applicability of A.R.S. § 13-3603 in the Pima County litigation, including the Pima County
11 Appeal, the Final Appeal, or any other litigation.
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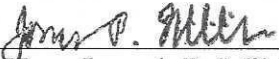
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14 IT IS FURTHER ORDERED that litigation in this case, including any pending motions,
15 will be stayed until the sooner of (1) the final mandate in the Final Appeal or (2) dissolution of
16 the October 7, 2022 stay pending appeal issued by the Court of Appeals in the Pima County
17 Appeal.
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19 IT IS FURTHER ORDERED that for the duration of litigation in this case and after
20 issuance of final judgment, regardless of the outcome, the State will not prosecute any person
21 under A.R.S. § 13-3603 for conduct during the enforcement moratorium period established above.
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23 IT IS FURTHER ORDERED vacating the Oral Argument currently set for November 3,
24 2022, to be reset once the stay is lifted, and upon request by the parties.
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DATED this 25th day of October, 2022.



The Hon. Joseph P. Mikitish
Maricopa County Superior Court