

GOVERNOR KATIE HOBBS

STATE OF ARIZONA

★

EXECUTIVE ORDER

Executive Order 2023-11

Protecting Reproductive Freedom and Healthcare in Arizona

WHEREAS, all Arizonans deserve equitable access to health services that affirm their individual rights and reproductive freedom, respect their privacy, and support their sexual and reproductive health; and

WHEREAS, limitations on access to reproductive healthcare disproportionately impact people of color, people who live in rural and tribal communities, people with low incomes, and people with disabilities; and

WHEREAS, unnecessary restrictions and bans on reproductive healthcare impede personal freedom and are harmful to health, safety, and economic well being; and

WHEREAS, my Administration is committed to protecting access to reproductive healthcare and the right for all people to make decisions about their health and wellbeing, including if and when to start or expand a family; and

WHEREAS, on June 24, 2022, the Supreme Court of the United States issued its opinion in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), overturning *Roe v. Wade*, 410 U.S. 113 (1973) and upending decades of precedent protecting the right to abortion, reproductive freedom, and bodily autonomy; and

WHEREAS, in anticipation of and following the *Dobbs* decision, states, including Arizona, moved to restrict abortion, and access to abortion care has diminished across Arizona as medical providers and patients grappled with uncertainty about the applicable law and whether and under what circumstances criminal charges could be brought; and

WHEREAS, no medical provider anywhere in the State should be discouraged from providing life-saving care to a pregnant patient for fear that such care might, despite its necessity, lead to criminal or civil liability for the provider; and

WHEREAS, in *Planned Parenthood Arizona, Inc. v. Brnovich*, 254 Ariz. 401 (Ct. App. 2022), the Arizona Court of Appeals held that licensed physicians who perform abortions through 15 weeks of gestation and in cases of a medical emergency, as permitted under Title 36 of the Arizona Revised Statutes, cannot be prosecuted under the State's near-total abortion ban dating back to pre-statehood, but that case is pending review before the Arizona Supreme Court; and

WHEREAS, A.R.S. § 13-3604, which criminalized the solicitation of abortion, was repealed through S.B. 1457, 55th Leg., 1st Reg. Sess. (Ariz. 2021), and therefore, the State can no longer prosecute a patient who seeks to have an abortion; and

WHEREAS, the *Dobbs* decision and remaining questions on the application of Arizona’s abortion laws to specific cases could lead county attorneys across the State to make disparate decisions on whether and how to criminally prosecute the same, or similar, conduct relating to abortion care and could have a chilling effect that deters and restricts access to lawful abortion care; and

WHEREAS, the State has an interest in ensuring that abortion laws are applied equally, consistently, and predictably to all people and in all counties in Arizona; and

WHEREAS, pursuant to A.R.S. § 36-2326, the Attorney General is permitted to bring civil court actions to enforce certain abortion restrictions on behalf of the Director of the Arizona Department of Health Services, the Arizona Medical Board, and the Arizona Board of Osteopathic Examiners; and

WHEREAS, centralizing control of prosecution relating to the provision of abortion care in the Attorney General – the State’s chief law enforcement officer – will provide uniformity and ensure equal and consistent application of the law across the State; and

WHEREAS, pursuant to A.R.S. § 41-193(A)(1), the Attorney General is required to prosecute and defend in the Supreme Court all proceedings in which this State or an officer of this State in the officer’s official capacity is a party; and

WHEREAS, pursuant to A.R.S. § 41-193(A)(2), the Governor may direct the Attorney General to prosecute and defend in a State court other than the Supreme Court any proceeding in which the State or an officer of the State is a party or has an interest, including criminal prosecutions; and

WHEREAS, pursuant to A.R.S. § 41-193(A)(5), the Governor may direct the Attorney General to assist the county attorney of any county in the discharge of the county attorney’s duties.

NOW, THEREFORE, I, Katie Hobbs, Governor of the State of Arizona, by virtue of the power vested in me by the Arizona Constitution and the laws of this State, hereby order and direct as follows:

1. ***Centralizing Authority over Abortion-Related Criminal Prosecutions.*** To the extent permissible under Arizona law, the Attorney General shall assume all duties with regard to any criminal prosecution of a medical provider or other entity or individual that is pending or brought in the future by the county attorney of any county in this State for violation of any State law restricting or prohibiting abortion care including, without limitation, A.R.S. § 13-3603 and provisions in Title 36, Chapter 23.
2. ***Restrictions on Investigative Assistance.*** Unless required pursuant to a court order or Arizona or federal law, no State Agency shall provide information, data, or investigative assistance or otherwise use any State resources in furtherance of an investigation or proceeding initiated in or by another state that seeks to impose criminal or civil liability or professional sanction upon a person or entity for conduct related to providing, assisting, seeking, or obtaining reproductive healthcare that would not be punishable under Arizona law.

- a. Notwithstanding this provision, a State Agency may provide information or assistance or otherwise use State resources in connection with such an investigation or proceeding in response to a written request from the subject of the investigation or proceeding.
3. **Restrictions on Extraditions.** To the extent permissible under Arizona and federal law, my Administration shall decline any request from the executive authority of another state for the arrest, surrender, or extradition of any person charged with a criminal violation of a law where the alleged violation relates to the provision of, assistance with, securing of, or receipt of reproductive healthcare, unless the acts forming the basis of the prosecution of the crime charged would also be punishable as a criminal offense under Arizona law.
4. **Advisory Council on Protecting Reproductive Freedom.** The Governor’s Advisory Council on Protecting Reproductive Freedom (the “Council”) is created to make recommendations that expand access to sexual and reproductive health care in Arizona. The Council should consider, but is not limited to, expanding access to family planning and reproductive health resources, analyzing the existing regulatory and enforcement framework to suggest improvements, and addressing disparities to improve the health of Arizona’s communities.
 - a. The Council Chair and members shall be appointed by the Governor and shall serve without compensation at the pleasure of the Governor. Membership shall be representative of the medical, social service, public health, and advocacy communities, and composition should reflect the diversity of Arizona’s communities, including Indigenous, rural, and LGBTQ communities.
5. For the purposes of this Executive Order, the term “State Agency” shall include, without limitation, all executive departments, agencies, offices, and all State boards and commissions and any employee, officer, or other person acting on their behalf, except for: (a) any State agency that is headed by a single elected State official; (b) the Corporation Commission; and (c) any board or commission established by ballot measure during or after the November 1998 general election.
6. This Executive Order shall not confer any legal rights or remedies upon any person and shall not be used as a basis for legal challenges to any action or inaction of a State Agency, officer, employee, or agent thereof.
7. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision or application of this Executive Order which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.
8. This Executive Order shall take effect immediately upon signature, and shall remain in effect until repealed, replaced, or rescinded by future Executive Order. This Executive Order shall be reviewed no later than June 24, 2024 to determine appropriate action for its continuance, modification, or elimination.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona



GOVERNOR

DONE at the Capitol in Phoenix on this twenty-second day of June in the Year Two Thousand Twenty-Three and of the independence of the United States of America the Two Hundred and Forty-Seventh.

ATTEST:

SECRETARY OF STATE