

**SUPREME COURT OF ARIZONA**

PLANNED PARENTHOOD ARIZONA,  
INC., et al.,

Plaintiffs/Appellants,

v.

KRISTIN K. MAYES, Attorney General of  
the State of Arizona, et al.,

Defendants/Appellees,

and

ERIC HAZELRIGG, M.D., as guardian ad  
litem of all Arizona unborn infants,

Intervenor/Appellee.

Arizona Supreme Court  
No. CV-23-0005-PR

Court of Appeals  
Division Two  
No. 2 CA-CV 22-0116

Pima County  
Superior Court  
No. C127867

**BRIEF OF GOVERNOR KATIE HOBBS AS AMICUS CURIAE IN SUPPORT OF  
PLANNED PARENTHOOD ARIZONA INC., THE PIMA COUNTY ATTORNEY,  
AND THE ATTORNEY GENERAL**

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## STATEMENT OF INTEREST<sup>1</sup>

Katie Hobbs, in her official capacity as the Governor of the State of Arizona, respectfully submits this brief as *amicus curiae* in support of Planned Parenthood Arizona, Inc. (“PPAZ”), the Pima County Attorney, and the Arizona Attorney General. The Arizona Constitution vests the executive power of the State of Arizona in the Governor and directs that the Governor shall “transact all executive business with the officers of the government . . . [and] take care that the laws be faithfully executed.” Ariz. Const. art. V, § 4; *see also* A.R.S. § 41-101. In fulfilling her constitutional and statutory duties, Governor Hobbs seeks to protect the liberty and well-being of all Arizonans, including women in Arizona who experience unplanned pregnancies or pregnancies that place their health, safety, economic stability, or overall well-being at risk.<sup>2</sup>

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<sup>1</sup> This brief is filed pursuant to the Court’s August 22, 2023 Order, and pursuant to Rule 16(b)(1)(B) of the Arizona Rules of Civil Appellate Procedure.

<sup>2</sup> Since taking office, the Governor has issued Executive Orders to protect access to lawful abortion care and to support pregnant women and families with children. *See* Ariz. Exec. Order Nos. 2023-01 and 2023-11. The Governor has also expanded access to over-the-counter contraception. *See* Press Release, Office of Governor Katie Hobbs, Governor Katie Hobbs Announces Expanded Access to Over the Counter Contraception Available to Arizonans (July 6, 2023), <https://azgovernor.gov/office-arizona-governor/news/2023/07/governor-katie-hobbs-announces-expanded-access-over-counter>. And most recently, the Governor launched a program to provide paid parental leave to State employees for the first time in the State’s history. *See* Press Release, Arizona Department of Administration Human Resources Division, Paid Parental Leave Pilot & Family Leave Updates (September 7, 2023), <https://hr.az.gov/family-leave-expansion>.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

For nearly 50 years, *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Central Pennsylvania v. Casey*, 505 U.S. 833 (1992), recognized a federal constitutional right to abortion, ensuring women across America had the freedom to choose for themselves—consistent with reasonable regulations by the State—whether and when to bear a child. That protection ended when the U.S. Supreme Court, in *Dobbs v. Jackson Women’s Health Org.*, — U.S. — , 142 S. Ct. 2228 (2022), overturned *Roe* and *Casey* and ceased to recognize a right to abortion under the U.S. Constitution. Fortunately for Arizonans, however, the Arizona Constitution offers wider and stronger possibilities for the protection of fundamental rights, including reproductive freedom. And Arizona voters—a significant majority of whom support a right to abortion<sup>3</sup>—may get an opportunity in the November 2024 General Election to make state constitutional protection for reproductive choice explicit.

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<sup>3</sup> See David Brady et al., *Abortion*, Joint Polling Project 2 (2023), [https://uh.edu/hobby/jointpollingproject\\_abortion](https://uh.edu/hobby/jointpollingproject_abortion) (finding, in a collaborative study by researchers at Arizona State University, Stanford University, and the University of Houston, that 62% of Arizonans believe abortion should always be legal or should be legal with some minor restrictions).

This brief uplifts the stories and voices of Arizona women, who are the Governor’s constituents and to whom she swore an oath to serve.<sup>4</sup> The women whose stories are highlighted have experienced an unplanned or unwanted pregnancy and directly benefited from access to lawful abortion care. Their stories help illustrate how access to abortion is critical for the health, safety, and well-being of Arizonans. And their experiences show how few personal decisions are more private or involve greater implications for bodily autonomy and individual liberty than the decision of whether to carry a pregnancy to term and bear a child. Indeed, a return to a near-total ban on abortion—unmitigated by more recent legislative enactments regulating abortion care by physicians—would raise serious questions under the Arizona Constitution.

In addition to all the reasons detailed in the Supplemental Briefs of PPAZ, the Attorney General, and the Pima County Attorney, the doctrine of constitutional avoidance further supports the Court of Appeals’ decision harmonizing the provisions of Title 36 of the Arizona Revised Statutes, including A.R.S. § 36-2322 (the “15-Week Law”), with A.R.S. § 13-3603 (the “Territorial Ban”). This Court

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<sup>4</sup> As a federal court has recently noted, “. . . although the parties and the Court have often focused mainly on the actions and competing interests of doctors, prosecutors, legislators, and governors, we should not forget the one person with the greatest stake in the outcome of this case—the pregnant patient . . . .” *United States v. Idaho*, 623 F. Supp. 3d 1096 (D. Idaho 2022); *reconsideration denied*, No. 1:22-CV-00329-BLW, 2023 WL 3284977 (D. Idaho May 4, 2023).



should affirm the Court of Appeals and reject Intervenors’ request for what amounts to a judicial repeal of large swaths of Title 36 and a judicially mandated return to a near-total abortion ban. Intervenors’ request not only flies in the face of established canons of statutory construction, but also raises serious constitutional questions because it wreaks havoc on the privacy, liberty, and autonomy of countless Arizonans, preventing them from charting the course of their own lives.

## ARGUMENT

### **I. Abortion access is critical to the health, safety, and wellbeing of Arizonans, and implicates significant liberty interests.**

Every day, women in Arizona who face unplanned pregnancies or pregnancies that place their health, safety, economic stability, or overall well-being at risk arrange for childcare, take time off work and school, and travel to an abortion provider to carry out what is often a difficult life decision. Approximately 13,000 legal abortions take place every year in Arizona.<sup>5</sup> Sixty percent of those who have abortions in the State already have children,<sup>6</sup> and many live in poverty.<sup>7</sup> Yet despite

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<sup>5</sup>Arizona Department of Health Services, *Abortions in Arizona - 2021 Abortion Report 5* (December 31, 2022), <https://www.azdhs.gov/documents/preparedness/public-health-statistics/abortions/2021-arizona-abortion-report.pdf>.

<sup>6</sup>Katherine Davis-Young & Lauren Gilger, *Abortion by the Numbers: How Arizona Compares With the Rest of the Country*, KJZZ (Aug. 30, 2022, 12:28 PM), <https://kjzz.org/content/1806027/abortion-numbers-how-arizona-compares-rest-country>.

<sup>7</sup>See, e.g., Sabrina Tavernise, *Why Women Getting Abortions Now Are More Likely to Be Poor*, N.Y. Times (July 9, 2019),

the many obstacles that often exist between patients and abortion care, as well as the emotional weight of ending a pregnancy, many Arizonans still seek this care because it is critical to their liberty and well-being.

The real-life experiences highlighted below<sup>8</sup> help illustrate how access to lawful abortion care in Arizona—although curtailed following *Dobbs*—has given Arizona women a say in the life-altering decision of whether and when to carry a pregnancy to term and give birth. Simply put, access to abortion saves lives and allows women in Arizona to control their own bodies and chart their own course in life.

**A. Abortion access helps Arizonans avoid being trapped in unsafe and unsupportive relationships.**

- **Michele**

Michele moved to the Phoenix area from California to attend college at Arizona State University (“ASU”). After college, she was in a relationship with a physically and emotionally violent man when their contraception failed and she

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<https://www.nytimes.com/2019/07/09/us/abortion-accessinequality.html> (“Half of all women who got an abortion in 2014 lived in poverty, double the share from 1994 . . .”).

<sup>8</sup> Each personal story presented in this brief is based on interviews of constituents conducted by the Office of the Governor, and each person verified under penalty of perjury that their story is true and correct. We use only first, middle, or alias names to protect the privacy of these Arizonans.

became pregnant. She was thirty-two years old and working as a server at a restaurant at the time. Although she was personally ready to have children, she did not feel that she would be able to raise the child in a healthy or safe environment given her partner's abusive nature. Therefore, at nine weeks into her pregnancy, she went to a provider and had a medication abortion. After her abortion, her partner became even more physically violent and vandalized her home. Fearing for her safety, she reported him to the police and he went to jail for the domestic violence that he inflicted upon her.

Looking for a fresh start, Michele moved to California to live with a friend and started working for a furniture company as a sales representative. She has since worked her way up to become the company's Chief Operating Officer. For Michele, access to the abortion saved her life. Without it, she would not have been able to leave the abusive relationship, in which she felt she was in serious physical danger, and would have been caught in a cycle of violence and economic instability.

- **Taylor**

Taylor grew up in Nebraska and moved to Arizona to escape the opioid crisis that had devastated her hometown. She wanted to pursue better opportunities for herself. However, in 2008, Taylor became pregnant by a man who was battling a heroin addiction. At the time, she was twenty-five years old and struggling financially, waiting tables at a restaurant in Phoenix and taking community college

classes in fine arts when she could afford it. Her partner had just relapsed, her mom was an alcoholic, and she did not have other family members to lean on for support. Although she was torn about whether to continue the pregnancy, she knew she was not in a financial position to support a child on her own, nor was her partner well enough to help raise and support a child. She identified her pregnancy at just five weeks and accessed her medication abortion at a clinic in Phoenix. After her abortion, she finished her associate's degree at Scottsdale Community College and transferred to the University of Arizona ("UofA"), where she met her future husband. She now lives in Tucson, is happily married, and has two children who are eight and ten years old.

**B. Abortion access enables Arizonans to pursue educational opportunities and further their careers.**

- **Jasmine**

Jasmine moved to northern Arizona from rural Alaska to pursue better economic opportunities for herself and her two children. In Alaska, she lived for twelve years in a town that was one-mile long, and worked for her municipality's parks and recreation department. Realizing that she wanted to advance in her career but that there were limited opportunities to do so in her small town, she moved to Flagstaff in 2016 and started looking for work. During this period of transition, while her children were ages six and eight, she became pregnant. Jasmine was surviving on limited resources and was not in a financial position to provide for a third child.

Because there were no abortion providers in Flagstaff, she traveled to Phoenix to have the abortion ten weeks into her pregnancy.

After having her abortion, Jasmine began working full-time at the Arizona Children's Association. She also enrolled in classes at the Flagstaff Community College, and later enrolled in an online program at ASU. She graduated in May 2023 with a degree in Pre-Law and Justice Studies and hopes to put her education to use working for the City of Flagstaff. She also volunteers her time with the Flagstaff Abortion Alliance and the Women's March of Flagstaff because of how important abortion access was to her.

- **Meaghan**

Meaghan, who grew up in Casa Grande, Arizona, was a college student at the UofA in 2006 when she became pregnant. She was in the process of applying to law school, and was not personally prepared to become a parent. At twenty years old, Meaghan did not have a partner or any financial or social support systems that would have supported her in pregnancy or child-raising. She also struggled with undiagnosed and untreated mental health challenges that would have prevented her from having a healthy pregnancy. She accessed her abortion in Tucson, seven weeks into her pregnancy.

Without access to abortion, Meaghan believes her life would have taken a very different course. Instead, she started law school—also at the UofA—immediately

after college and graduated in 2011. She was ultimately able to seek the mental health treatment she needed, and as a result of her continued treatment, she leads a healthy and fulfilling life with her loving wife. Meaghan now practices civil rights litigation for a non-profit law firm and is an active educator and community leader. She often teaches and presents on disability rights, employment rights, and healthcare issues. She is a frequent advocate on disability rights and mental health issues, and is an active member of her synagogue, where she serves on the board of directors.

### **C. Abortion access is critical to preserving the health of Arizonans.**

- **Morgan**

Morgan and her husband became pregnant with twins in November 2019, soon after they got married. They took a pregnancy test on Thanksgiving Day and were elated with the positive result. But at their twelve-week scan, they quickly learned that while one twin was a healthy girl (“Twin A”), the other was a boy who had a critical heart defect and blood pumping into his lungs (“Twin B”). Morgan’s doctor advised her that the safest course of action was a “selective reduction” procedure, where Twin B would be aborted in order to save both Morgan and Twin A’s life. Her doctor advised her that carrying both babies would come with risks that were too high for all three of them: Morgan would be at risk of preterm labor and serious hemorrhaging, Twin B would need multiple heart surgeries and would have

uncertain chances of survival, and Twin A would be at risk of losing her blood supply.

Morgan and her husband were shocked and grief-stricken, but ultimately made the decision to abort Twin B due to the risks involved and in order to protect the life of Morgan and Twin A. They had difficulties finding a physician in Arizona who would perform the abortion, due to the complicated nature of the procedure. The COVID-19 pandemic was in full force then, which also limited her care options. And they were not able to travel far from home for the procedure due to her husband's multiple sclerosis. With the help of her doctor in Phoenix, Morgan was able to find a physician in Los Angeles who could perform the procedure and she and her husband arranged to stay with friends for a week after the procedure while Morgan recovered. She delivered her healthy daughter in July 2020 in Phoenix.

- **Erika**

Erika and her husband learned of their pregnancy in mid-October 2022. They had a 5-year-old daughter at the time, but before their daughter was born, Erika had had a previous complicated pregnancy and had to have a third trimester abortion (she lived in another state at the time). When she became pregnant this time, she and her husband were very concerned about another dangerous pregnancy. They did not want to risk needing an abortion later in her pregnancy, at a point when it would potentially no longer be legal, so they decided to have an abortion as quickly as

possible. At that time however, many clinics in Arizona had stopped providing abortions because the Superior Court just lifted the injunction against the Territorial Ban and the Court of Appeals decision remained pending. Erika ultimately found a clinic in Anaheim, California and drove the eight hours to and from her home in Sedona to access care. She and her husband continue to live in Sedona with their now 6-year-old daughter.

## **II. Failure to harmonize the Territorial Ban with Title 36 and returning to a near-total ban on abortion raises serious questions under the Arizona Constitution.**

As the experiences of the Arizona women detailed above help demonstrate, reproductive decisions are immensely personal, private, and consequential. These choices impact countless other life decisions, including whether to accept certain health risks or undergo certain medical procedures, how to allocate financial resources, where to live, whether to start or continue to pursue educational or career opportunities, and how to structure intimate and family relationships. Even a pregnancy without complications involves significant physiological change and strain on the body. For some, pregnancy and childbirth can mean a cesarean section, longer-term ailments, exacerbation of underlying health conditions, or even death.<sup>9</sup>

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<sup>9</sup> See e.g., Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics & Gynecology* 215, 216 (2012) (“[R]isk of death associated with childbirth [is] approximately 14 times higher” than the risk of abortion.); Marian F. MacDorman et al., *Recent Increases in the U.S. Maternal Mortality Rate: Disentangling Trends*



And these harms fall more heavily on people with low-income and people of color.<sup>10</sup> Thus, “[r]especting a woman as an autonomous being, and granting her full equality, mean[s] giving her substantial choice over this most personal and most consequential of all life decisions.” *Dobbs*, 142 S. Ct. at 2317 (Breyer, J., dissenting).

While the U.S. Supreme Court’s majority in *Dobbs* curtailed women’s rights and their status as free and equal citizens under the federal Constitution, the result need not be the same under the Arizona Constitution. *See Turley v. State*, 48 Ariz. 61, 70–71 (1936) (“We have the right . . . to give such construction to our own constitutional provisions as we think logical and proper, notwithstanding their analogy to the [U.S.] Constitution and the federal decisions based on that

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*from Measurement Issues*, 128 *Obstetrics & Gynecology* 447 (2016) (finding a 26.6% increase in maternal mortality rates between 2000 and 2014); *see also* Br. for American College of Obstetricians & Gynecologists, et. al. as Amici Curiae in Supp. of Resp’ts at 19 in *Dobbs v. Jackson Women’s Health Org.*, — U.S. — , 142 S. Ct. 2228 (2022) (discussing and citing studies about pregnancy-related complications, such as gestational diabetes, gestational hypertension and preeclampsia, hemorrhage, cervical laceration, and debilitating postpartum pain).

<sup>10</sup> *See, e.g.*, Liza Fuentes, *Inequity in US Abortion Rights and Access: The End of Roe Is Deepening Existing Divides*, Guttmacher Institute (Jan. 17, 2023) <https://www.guttmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-roe-deepening-existing-divides>; *see also Racial and Ethnic Disparities Continue in Pregnancy-Related Deaths*, Centers for Disease Control (Sept. 5, 2019), <https://www.cdc.gov/media/releases/2019/p0905-racial-ethnic-disparities-pregnancy-deaths.html> (noting that Black women’s pregnancy-related mortality rate is 3.2 times higher than that of white women).

Constitution.”); *see also Johnson Utils., L.L.C. v. Ariz. Corp. Comm’n*, 249 Ariz. 215, 234 ¶ 93 (2020) (Bolick, J., concurring in part and dissenting in part) (“[O]ur constitution provides that ‘governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.’ . . . This is the prism through which all government actions must be assessed.”).<sup>11</sup>

As this Court has observed on multiple occasions, “[t]he Arizona Constitution is even more explicit than its federal counterpart in safeguarding the fundamental liberty of Arizona citizens.” *State v. Mixton*, 250 Ariz. 282, 290 ¶ 30 (2021) (citing *State v. Ault*, 150 Ariz. 459, 463 (1986)). And a number of this Court’s decisions have already concluded or suggested that certain provisions of the Arizona Constitution provide protection for individual liberties that go above and beyond what the U.S. Constitution guarantees. *See, e.g., id.* at 290 ¶¶ 31–32; *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 281–82 ¶¶ 45–46 (2019); *Coleman v. Johnsen*, 235 Ariz. 195, 196–198 ¶¶ 7–15 (2014); *Rasmussen by Mitchell v. Fleming*, 154 Ariz. 207, 215 (1987); *Pool v. Super. Ct.*, 139 Ariz. 98, 108–09 (1984). Because the effects of carrying a pregnancy to term, giving birth, and becoming a parent are

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<sup>11</sup> Both before and after *Dobbs*, a number of other states’ supreme courts have enjoined abortion regulations based on state constitutional protections. *See, e.g., Valley Hosp. Ass’n v. Mat-Su Coal. for Choice*, 948 P.2d 963, (Alaska 1997); *Gainesville Woman Care, LLC v. State*, 210 So.3d 1243, 1254 (Fla. 2017) *Weems v. State*, 529 P.3d 798, 812–13 (Mont. 2023); *Wrigley v. Romanick*, 988 N.W.2d 231, 245 (N.D. 2023).

profoundly life-altering, reinstatement of a near-total abortion ban raises significant questions under the Arizona Constitution.

### **III. The constitutional avoidance canon further supports affirming the Court of Appeals' decision.**

In addition to all the reasons detailed in the Supplemental Briefs of PPAZ, the Attorney General, and the Pima County Attorney, the doctrine of constitutional avoidance further supports affirming the Court of Appeals' decision.

Whenever possible, courts construe statutes to avoid unnecessary resolution of constitutional issues. *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 268, 273 (1994). In other words, a court will “not determine constitutional issues unless a decision is necessary to determine the merits of the action.” *State v. Yslas*, 139 Ariz. 60, 63 (1984) (citing *School Dist. No. 26 v. Strohm*, 106 Ariz. 7, 9 (1970)). For example, a court may adopt a statutory construction making it unnecessary to reach alleged constitutional claims. *See, e.g., State v. Gomez*, 212 Ariz. 55, 61 ¶ 31 (2006).

This is also true when multiple statutes are involved. Accordingly, in order to “avoid interpretations that unnecessarily implicate constitutional concerns,” statutes “should be harmonized wherever possible and read in conjunction with each other.” *State v. Brearcliffe*, 254 Ariz. 579, ¶ 22, 525 P.3d 1085, 1091 (2023) (quoting *Scheehle v. Justices of the Sup. Ct. of Ariz.*, 211 Ariz. 282, 288 ¶ 16 (2005) and *State v. Hansen*, 215 Ariz. 287, 289 ¶ 7 (2007)). That is exactly what the Court of Appeals did here, and by doing so, gave effect to both A.R.S. § 13-3603 and the regulations

of physician-provided abortion care in Title 36. *See Planned Parenthood Arizona, Inc. v. Brnovich*, 254 Ariz. 401, ¶ 23, 524 P.3d 262, 268 (App. 2022) (Appendix to Intervenor-Appellee Pet. for Review (“App.”) at 86, *Planned Parenthood Arizona, Inc. v. Mayes*, No. CV-23-0005-PR (Jan. 21, 2023).

Intervenors take issue with the fact that the modification requested by PPAZ and granted by the Court of Appeals “*did not relate* to the constitutionality of § 13-3603 itself, which was the sole ground for relief alleged in the underlying Complaint.” Suppl. Br. of Intervenor-Appellees 20, *Planned Parenthood Arizona, Inc. v. Mayes*, No. CV-23-0005-PR (Sept. 20, 2023).<sup>12</sup> As Intervenors admit, however, “Rule 60(b) imposes no limitation on the relief that the court may grant.” *Id.* And, as the Court of Appeals explained, the Rule 60 inquiry is whether the overall “legal landscape has changed,” which requires a court to consider changes in both statutory and decisional law. *Planned Parenthood Arizona, Inc. v. Brnovich*, 254 Ariz. at ¶ 9, 524 P.3d at 265 (App. at 80–82). Here, Intervenors would have the Court ignore fifty years of statutory enactments in deciding whether relief is warranted. Intervenors’ demand turns reason on its head. Because both the Territorial Ban and

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<sup>12</sup> In addition to federal constitutional claims, the underlying complaint in this matter raised state constitutional challenges to the Territorial Ban under Ariz. Const. art. II, §§ 2, 4, 6, 8, 12, and 33. Compl. for Declaratory Relief at 4–5, *Nelson v. Planned Parenthood Center of Tucson, Inc.*, No. 127867 (App. at 27–28).

the 15-Week Law are unambiguous and can be read in harmony with each other, the Court should avoid addressing the constitutional issues.

Indeed, this Court and the Arizona Court of Appeals have thus far explicitly declined to rule on the existence or extent of abortion rights under the state constitution. *Simat v. Ariz. Health Care Cost Containment Sys.*, 203 Ariz. 454, 463 ¶ 35 (2002) (“We reach no conclusion about whether the Arizona Constitution provides a right of choice, let alone one broader than that found in the federal constitution.”); *Planned Parenthood Ariz., Inc. v. American Ass’n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 270 ¶ 13 (App. 2011) (“But we, like *Simat*, need not, and do not, reach the question of whether there is any right at all to abortion protected by the Arizona Constitution.”). Like in those cases, the constitutional questions need not be reached to resolve the issue before the Court here. Instead, the Court should affirm the Court of Appeals’ decision harmonizing A.R.S. § 13-3603 and Title 36 and resolve this matter based on the straightforward application of well-established canons of statutory construction.

### **CONCLUSION**

The Court should affirm the Court of Appeals’ decision.

RESPECTFULLY SUBMITTED this 4th day of October, 2023.

OFFICE OF GOVERNOR KATIE HOBBS

By /s/ Sambo (Bo) Dul

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