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17 (Arizona Section), Inc., and Arizona
18 National Organization for Women*

19 **Pro hac vice* application forthcoming

20 COUNSEL CONTINUED ON NEXT
21 PAGE

22 **IN THE UNITED STATES DISTRICT COURT
23 FOR THE DISTRICT OF ARIZONA**

24 Paul A. Isaacson, M.D., on behalf of
25 himself and his patients; Eric M. Reuss,
26 M.D., M.P.H.; on behalf of himself and
27 his patients; National Council of Jewish
28 Women (Arizona Section), Inc.;
Arizona National Organization For
Women; and Arizona Medical
Association, on behalf of itself, its
members and its members' patients,

Plaintiffs,

v.

Mark Brnovich, Attorney General of
Arizona, in his official capacity;
Michael Whiting, County Attorney for

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Apache County, in his official capacity;
2 Brian McIntyre, County Attorney for
3 Cochise County, in his official capacity;
4 William Ring, County Attorney for
5 Coconino County, in his official
6 capacity; Bradley Beauchamp, County
7 Attorney for Gila County, in his official
8 capacity; Scott Bennett, County
9 Attorney for Graham County, in his
10 official capacity; Jeremy Ford, County
11 Attorney for Greenlee County, in his
12 official capacity; Tony Rogers, County
13 Attorney for La Paz County, in his
14 official capacity; Allister Adel, County
15 Attorney for Maricopa County, in her
16 official capacity; Matthew Smith,
17 County Attorney for Mohave County, in
18 his official capacity; Brad Carlyon,
19 County Attorney for Navajo County, in
20 his official capacity; Laura Conover,
21 County Attorney for Pima County, in
22 her official capacity; Kent Volkmer,
23 County Attorney for Pinal County, in
24 his official capacity; George Silva,
25 County Attorney for Santa Cruz
26 County, in his official capacity; Sheila
27 Polk, County Attorney for Yavapai
28 County, in her official capacity; Jon
Smith, County Attorney for Yuma
County, in his official capacity; Arizona
Medical Board; Patricia McSorley,
Executive Director of the Arizona
Medical Board, in her official capacity;
R. Screven Farmer, M.D., Arizona
Medical Board Chair, in his official
capacity; James M. Gillard, M.D.,
Arizona Medical Board Vice Chair, in
his official capacity; Lois Krahn, M.D.,
Arizona Medical Board Secretary, in
her official capacity; Jodi A. Bain,
M.A., J.D.; Bruce Bethancourt, M.D.;
David C. Beyer, M.D.; Laura Dorrell,
M.S.N., R.N., Gary Figge, M.D.;
Pamela E. Jones; and Eileen M.

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Oswald, M.P.H., in their official capacities as members of the Arizona Medical Board; Arizona Department Of Health Services; Cara M. Christ, Director of the Arizona Department of Health Services, in her official capacity,

Defendants.

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16 **Pro hac vice application forthcoming*

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1 Plaintiffs Dr. Paul A. Isaacson, M.D., Dr. Eric M. Reuss, M.D., M.P.H., physicians
2 who provide reproductive health care services, including obstetric, gynecological, and
3 abortion care, in Arizona, the Arizona National Organization for Women (“AZ NOW”),
4 the National Council of Jewish Women (Arizona Section), Inc. (“NCJW AZ”), and the
5 Arizona Medical Association (“ArMA”) (collectively, “Plaintiffs”), by and through their
6 attorneys, bring this Complaint against the above-named Defendants, their employees,
7 agents, and successors in office (“Defendants”) and in support thereof state the following:

8 **I. PRELIMINARY STATEMENT¹**

9 1. This case challenges and seeks to enjoin legislation signed into law by
10 Arizona Governor Doug Ducey on April 27, 2021, and scheduled to take effect on
11 September 29, 2021. S.B. 1457, 55th Leg., 1st Reg. Sess. (Ariz. 2021) (hereinafter “S.B.
12 1457” or the “Act”), attached hereto as Exhibit A. The Act imposes drastic and unlawful
13 measures that ban abortion for an entire group of Arizona patients, and also threatens
14 maternal healthcare by creating new personhood rights for fertilized eggs, embryos, and
15 fetuses. If S.B. 1457 is not enjoined it will wreak havoc on reproductive healthcare across
16 Arizona, with devastating effects for pregnant patients and medical providers throughout
17 the state.

18 2. S.B. 1457 imposes radical changes to Arizona law, including at least two
19 aspects that particularly impact Plaintiffs, their patients, and their members: (1) the
20 “Reason Ban,” Act §§ 2, 10, A.R.S. §§ 13-3603.02, 36-2157, and the Ban’s related
21 reporting requirements, Act § 11, A.R.S. § 36-2158(A)(2)(d); Act § 13, A.R.S. § 36-
22 2161(A)(25) (collectively, the “Reason Ban Reporting Requirements) (collectively, the
23 “Reason Ban Scheme”); and (2) the “Personhood Provision.” Act § 1, A.R.S. § 1-219.²

24 3. First, the Reason Ban Scheme bans abortion whenever the providing
25 physician knows that the abortion is due to “a genetic abnormality.” This ban targets
26 pregnant people who face complex and personal considerations as a result of fetal genetic

27 ¹ All emphasis added unless otherwise noted.

28 ² All references to the Act are to the amended version.

1 screening or diagnostic testing during routine prenatal care, including decisions about what
2 is best for them and their families, and then intrudes upon that private decision-making by
3 wrenching away their right to choose previability abortion. Any reading of this ban violates
4 the Due Process Clause of the Fourteenth Amendment and decades of binding precedent
5 confirming that “a State may not prohibit *any* woman from making the ultimate decision
6 to terminate her pregnancy before viability.” *Planned Parenthood of Se. Pa. v. Casey*, 505
7 U.S. 833, 879 (1992) (emphasis added).

8 4. Moreover, the Reason Ban is unconstitutionally vague. It fails to provide the
9 requisite clarity to give notice about what fetal conditions trigger its prohibition, or under
10 what circumstances a provider could be deemed to “know” that the patient seeks an
11 abortion “solely because of”—or “because of”—the prohibited reason. Because the ban
12 leaves providers to guess at what actions are prohibited, they will have no choice but to err
13 on the side of broadly denying constitutionally-protected care to patients with any
14 indication of a possible fetal anomaly, or risk running afoul of the ban’s severe criminal
15 and licensing penalties.

16 5. Because the Act bans abortion when the provider “knows” about a patient’s
17 prohibited reason, while also construing Arizona law to vest rights in the developing
18 embryo or fetus, it may coerce some patients into curbing their communications with
19 medical providers about a fetal test, risk, or diagnosis, in an attempt to salvage their
20 abortion right. But, even if some patients pay this heavy price—that of losing the right to
21 open communications with their medical providers—it will still not preserve abortion
22 access. This is because it will be impossible for abortion providers in many cases to avoid
23 the inference that some patients are seeking abortions for the prohibited reason—*e.g.*,
24 because it is apparent based on the patient’s circumstances, through disclosure by others,
25 or because it is indicated on a medical chart. The previability ban unconstitutionally stops
26 all those patients from accessing abortion care.

27 6. In any event, any argument that patients could attempt to side-step the ban
28 by concealing their reason from their abortion provider would only trade one constitutional

1 problem for another. Under the doctrine of unconstitutional conditions, the government
2 may not force patients to forsake their First Amendment freedoms in order to access
3 another constitutionally-protected right.

4 7. In addition, the Reason Ban Scheme reaches beyond abortion providers to
5 restrict pregnant patients' relationships with other medical providers, including but not
6 limited to their obstetricians and other maternal health specialists. The Reason Ban Scheme
7 creates liability for *any* Arizona medical provider or counselor who "ha[s] knowledge" of
8 a violation of the ban and does not report it to law enforcement, *and* creates accomplice
9 liability if they even "attempt to aid" any such violation, which seems to include even
10 counseling patients about abortion after testing indicates a fetal genetic condition. As a
11 result, medical providers will be forced to withhold information about abortion from
12 patients with a likelihood of or diagnosed fetal conditions, and will be unable to provide
13 abortion referrals to those patients who decide to terminate their pregnancy, or else risk an
14 inference that they were an "accomplice" to a banned procedure. The resulting harms to
15 critical patient-provider relationships, which are built on trust and open communication,
16 would be devastating.

17 8. Second, the Act includes a "Personhood Provision" that alters the entire
18 Arizona Revised Statutes to require its laws be "interpreted and construed" in a manner
19 that gives all fertilized eggs, embryos, and fetuses the same "rights, privileges and
20 immunities available to other persons[.]" Act §§ 1, 8; A.R.S. §§ 1-219(A), 36-2151(16).
21 By its terms, the Personhood Provision alters the meaning of numerous Arizona statutes
22 addressing harm to "persons" or "children"—*e.g.*, A.R.S. § 13-1203 (assault); § 13-3623
23 (child abuse)—in a manner that makes it impossible for Plaintiffs and their patients to
24 identify whether a vast array of actions (including, but not limited to, maternal health care
25 decisions and treatment for patients who are, or could be, pregnant) puts them at risk of
26 criminal prosecution. Because the Personhood Provision fails to provide adequate notice
27 of prohibited conduct and invites arbitrary and discriminatory enforcement against
28 Plaintiffs and their patients, it is unconstitutionally vague.

1 9. For these reasons, and others described below, S.B. 1457 violates the First
2 and Fourteenth Amendments to the United States Constitution. The Court should invalidate
3 and enjoin the Act’s Reason Ban Scheme and Personhood Provision.

4 **II. JURISDICTION AND VENUE**

5 10. This Court has jurisdiction over Plaintiffs’ federal claims under 28 U.S.C. §§
6 1331 and 1343(a)(3).

7 11. Plaintiffs’ action for declaratory and injunctive relief are authorized by 28
8 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and
9 by the general legal and equitable powers of this Court.

10 12. Venue is proper pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because all
11 Defendants, who are sued in their official capacities, carry out their official duties at offices
12 located in this District and the events giving rise to this action occurred in this District.

13 **III. PARTIES**

14 **A. Plaintiffs**

15 13. Plaintiff **Dr. Paul A. Isaacson, M.D.**, is a licensed, board-certified
16 obstetrician-gynecologist. Dr. Isaacson received his medical training at Tufts University
17 School of Medicine and has been providing abortion care in Arizona for more than 20
18 years. Dr. Isaacson is the co-owner of and one of two physicians at Family Planning
19 Associates Medical Group (“FPA”), an independent abortion clinic located in Phoenix. Dr.
20 Isaacson’s clinic is one of the only medical practices in Arizona that regularly provides
21 abortions up to 23 weeks and 6 days after the first day of a woman’s last menstrual period
22 (“LMP”). It is also the foremost practice in Arizona providing care to patients referred by
23 other physicians and who are seeking abortion care because of medical indications,
24 including following a diagnosis of a fetal condition. As a co-owner and physician at his
25 clinic in Phoenix, Dr. Isaacson oversees the medical staff. Dr. Isaacson also leads one of
26 the only two abortion-training programs available to Arizona’s OB-GYN medical
27 residents. Dr. Isaacson brings this suit on his own behalf, on behalf of his staff, and on
28 behalf of his patients seeking abortion.

1 14. Plaintiff **Dr. Eric M. Reuss, M.D., M.P.H.**, is a licensed, board-certified
2 obstetrician-gynecologist. Since 2001, he has operated a private, solo obstetrics and
3 gynecology practice, Scottsdale Obstetrics & Gynecology, P.C., where he provides his
4 patients with the full range of general obstetric and gynecological care, including well-
5 woman care; prenatal care; labor and delivery care; and abortion care. He cares for
6 hundreds of prenatal patients each year, and offers genetic testing and non-directive
7 counseling to those patients, often in consultation with other medical specialists. He
8 provides medication and procedural abortions to his patients, either in his office or at the
9 hospital where he has privileges. He has delivered many babies after patients learn of a
10 possible or diagnosed fetal genetic condition, and he also provides abortion to patients in
11 those circumstances if they decide on that option for their pregnancy. Dr. Reuss brings this
12 suit on his own behalf, on behalf of his staff, and on behalf of his patients.

13 15. **National Council of Jewish Women (Arizona Section), Inc.** (“NCJW
14 AZ”), is a nonprofit 501(c)(3) corporation incorporated and headquartered in Scottsdale,
15 Arizona. NCJW AZ is a Section of the National Council of Jewish Women, a national
16 nonprofit 501(c)(3) corporation incorporated in New York and headquartered in
17 Washington, D.C. NCJW AZ currently has more than 480 members across the state. As
18 part of its mission, NCJW AZ is committed to advancing the goals of reproductive justice
19 so every person can make their own moral and informed decisions about their body. This
20 includes supporting and advocating for health equity and universal access to health
21 coverage, services, and information, including abortion and contraceptive care;
22 comprehensive sex education; and comprehensive family planning information and
23 services.

24 16. **Arizona National Organization of Women** (“AZ NOW”) is a unit of the
25 National Organization for Women, a national 501(c)(4) nonprofit corporation. AZ NOW
26 is made up of four local chapters—East Valley Chapter, Central Phoenix-Inez Casiano
27 Chapter, Tucson Chapter and Sun Cities/West Valley Chapter—as well as all NOW
28 members at large living in Arizona. AZ NOW currently has more than 1,500 members

1 across the state. AZ NOW uses a variety of strategies, including public education and
2 legislative advocacy, to advance women’s rights and address NOW’s core issues important
3 to its members and women in general, including access to safe and legal abortion,
4 affordable and effective birth control and other contraception, and reproductive health for
5 all.

6 17. S.B. 1457’s draconian prohibitions would force AZ NOW and NCJW AZ to
7 divert their scarce time and resources away from many other aspects of their work to focus
8 on educating their members and the public on the impact of S.B. 1457 and trying to help
9 Arizonans adjust to S.B. 1457’s sweeping impact, including but not limited to helping
10 Arizonans try to access abortion care out of state, even though that would be impossible
11 for many people. The Act also opens AZ NOW and NCJW AZ up to criminal liability for
12 their efforts to raise funds for people seeking abortion if it knows that the pregnant person
13 is seeking an abortion due to a “genetic abnormality.” AZ NOW and NCJW are thus
14 directly impacted by the Act’s restrictions.

15 18. The **Arizona Medical Association** (“ArMA”) is a professional membership
16 organization with nearly 4000 physician members, including at least 75 member
17 obstetrician-gynecologists. It is the largest organization of physicians in Arizona. ArMA
18 serves on behalf of its members, who practice throughout the state and in all medical
19 disciplines. Its mission includes advocacy for physicians’ “freedom to deliver care in the
20 best interests of patients” and for the “health of all Arizonians.” Among ArMA’s
21 membership are physicians who care in myriad ways for pregnant patients, who provide
22 genetic testing and counseling for pregnant patients, and/or who provide abortion care.
23 ArMA sues on behalf of itself, its members, and its members’ patients.

24 19. Plaintiffs thus include individual physicians, on behalf of themselves and
25 their patients, a medical association on behalf of itself, its members and their patients, and
26 nonprofit organizations who are committed to ensuring that all Arizona residents have
27 access to full information about medical conditions and medical options. That includes full
28 information about and access to safe previability abortion if that is the care a patient seeks.

1 To advance those goals, Plaintiffs and Plaintiffs' members not only provide services but
2 also engage in protected First Amendment expression. They variously speak with
3 Arizonans, discuss fetal conditions and facts, counsel and refer patients, and engage in
4 public education and organizing that relates to accessing abortion and other maternal health
5 care.

6 **B. Defendants**

7 20. Defendant **Mark Brnovich** is the Attorney General of Arizona. The Act
8 provides him with the authority to bring an action in Superior Court to enjoin violations of
9 the Reason Ban. Act § 2, A.R.S. 13-3603.02(C). He may, within his discretion as chief
10 legal officer of the state, A.R.S. §§ 41-192, institute and conduct prosecutions for any crime
11 occurring within the State of Arizona. The Attorney General exercises supervisory powers
12 over County Attorneys of the state and assists County Attorneys at the direction of the
13 Governor, or when deemed necessary, in the performance of County Attorneys' duties.
14 A.R.S. § 41-193(A)(4)-(5). Defendant Brnovich is named as a defendant in his official
15 capacity, and is a proper defendant in a suit brought under 42 U.S.C. § 1983.

16 21. Defendants **Michael Whiting, Brian McIntyre, William Ring, Bradley**
17 **Beauchamp, Scott Bennett, Jeremy Ford, Tony Rogers, Allister Adel, Matthew Smith,**
18 **Brad Carlyon, Laura Conover, Kent Volkmer, George Silva, Sheila Polk, Jon Smith**
19 are County Attorneys for Arizona. The Act charges them with the specific authority to
20 prosecute criminal violations of the Reason Ban, Act § 2, A.R.S. § 13-3603.02(C), in
21 addition to their duty to prosecute all other violations of Arizona's Criminal Statutes
22 occurring within their respective counties, A.R.S. § 11-532(A). Each Defendant named
23 herein is sued in his or her official capacity.

24 22. Defendant **Arizona Medical Board** ("AMB") is the state agency responsible
25 for enforcing disciplinary sanctions against physicians who violate the law. The AMB has
26 the primary duty, on its own motion, to initiate investigations, determine whether a
27 physician has engaged in unprofessional conduct, discipline physicians, and establish
28 penalties for such conduct, A.R.S. § 32-1403(A)(2), (5) and (9), including suspension or

1 revocation of a medical license, public censure, and civil fines of at least \$1,000 and up to
2 \$10,000 for each violation found. A.R.S. §§ 32-1403.01(A), 32-1451(D)-(E), (I), and (K).

3 23. Defendant **Patricia E. McSorley**, is the Executive Director of the AMB. The
4 Executive Director of the AMB has the duty to “[i]nitiate an investigation if evidence
5 appears to demonstrate that a physician may be engaged in unprofessional conduct,” A.R.S.
6 § 32-1405(C)(12), which includes “[v]iolating any federal or state laws, rules or
7 regulations applicable to the practice of medicine” and “[c]ommitting a felony,” *id.* § 32-
8 1401(27). She also has a duty to “[p]rovide assistance to the attorney general in preparing
9 and sign and execute disciplinary orders, rehabilitative orders and notices of hearings as
10 directed by the [AMB].” *Id.* § 32-1405(C)(14). Defendant McSorley is sued in her official
11 capacity.

12 24. Defendants **R. Screven Farmer, M.D.; James M. Gillard, M.D.; Lois**
13 **Krahn, M.D.; Jodi A. Bain M.A., J.D.; Bruce Bethancourt, M.D.; David C. Beyer,**
14 **M.D.; Laura Dorrell, M.S.N., R.N.; Gary Figge, M.D.; Pamela E. Jones; and Eileen**
15 **M. Oswald, M.P.H.**, are members of the AMB. Each Defendant named herein is sued in
16 his or her official capacity.

17 25. Defendant **Arizona Department of Health Services** (“ADHS”) is
18 responsible for promulgating and enforcing rules and regulations related to the practice of
19 abortion, including clinic administration, personnel and staffing, records, mandatory
20 reporting, informed consent, and abortion procedures. *See* A.R.S. §§ 36-406(1), 36-449.02,
21 36-2161.

22 26. Defendant **Cara M. Christ** is the Director of the Arizona Department of
23 Health Services. The Director of ADHS is required to establish minimum standards and
24 requirements related to the administration of health care services for the purpose of
25 licensing health care institutions, including abortion clinics. A.R.S. § 36-405(A). By rule,
26 the Director may prescribe standards for determining a health care institution’s substantial
27 compliance with licensing requirements and may classify and subclassify health care
28 institutions, including by setting forth distinctions in rules and standards deemed

1 appropriate among different subclasses of health care institutions. A.R.S. § 36-405(B)(1-
2 2). The Director is ultimately responsible for ADHS’s promulgation and enforcement of
3 regulations relating to the practice of abortion and to abortion clinics. *See, e.g.*, A.R.S.
4 §§ 36-427, 36-431.01, 36-449.03, 36-2163. Defendant Christ is sued in her official
5 capacity.

6 **IV. THE CHALLENGED LAWS**

7 27. The Arizona state legislature passed S.B. 1457 on April 22, 2021. Governor
8 Ducey signed the bill into law on April 27, 2021. The Act is now scheduled to take effect
9 on September 29, 2021.

10 28. The Act includes a number of changes to Arizona’s already-onerous abortion
11 laws. The Act bans abortions for a sweeping group of people and imposes onerous, criminal
12 restrictions on physicians and medical practice within the state. Plaintiffs, at this time,
13 challenge two aspects of the Act: (1) the Reason Ban Scheme, Act §§ 2, 10, 11, 13
14 (amending A.R.S. §§ 13-3603.02; 36-2157; 36-2158; 36-2161); and (2) the Personhood
15 Provision, Act § 1 (creating A.R.S. § 1-219).

16 **A. The Reason Ban Scheme**

17 29. Sections 2 and 10 of S.B. 1457 (collectively, the “Reason Ban”) prohibit
18 abortion whenever a provider “know[s]” that the pregnancy is being terminated due to “a
19 genetic abnormality of the child.”

20 30. Section 2 of S.B. 1457 amends Section 13-3603.02 of the Arizona Revised
21 Statutes to provide that a person who “[p]erforms an abortion knowing that the abortion is
22 sought solely because of a genetic abnormality of the child” is guilty of a class 6 felony.
23 Act § 2, A.R.S. § 13-3603.02(A)(2). Under Arizona law, the penalties for a class 6 felony
24 include imprisonment of at least four months and up to two years. A.R.S. § 13-702(D).

25 31. While the Reason Ban in that one provision prohibits a physician from
26 “knowingly” providing abortion care when it is sought “solely because of” a fetal
27 diagnosis, A.R.S. § 13-3603.02(A)(2), the Ban without explanation changes to prohibit any
28

1 abortion sought “because of” the covered fetal conditions in the numerous other,
2 interlocking provisions.

3 32. The Reason Ban further states that a person who “[s]olicits or accepts monies
4 to finance . . . an abortion because of a genetic abnormality of the child” is guilty of a class
5 3 felony. Act § 2, A.R.S. § 3603.02(B)(2). Under Arizona law, the penalties for a class 3
6 felony include imprisonment of at least two years, and up to 8.75 years. A.R.S. § 13-
7 702(D).

8 33. And the Reason Ban prohibits any abortion from proceeding unless and until
9 a provider executes an affidavit swearing that they are “not aborting the [fetus] . . . because
10 of a genetic abnormality of the [fetus] and ha[ve] no knowledge that the [fetus] to be
11 aborted is being aborted . . . because of a genetic abnormality of the [fetus][.]” Act § 10;
12 A.R.S. § 36-2157(1) and (2). This affidavit requirement applies even if a physician
13 determines an abortion is necessary to preserve the pregnant person’s life or health. *Id.*

14 34. In addition, Section 2 of the Reason Ban provides that “[a] physician,
15 physician’s assistant, nurse, counselor or other medical or mental health professional who
16 knowingly does not report known violations of this section to appropriate law enforcement
17 authorities shall be subject to a civil fine of not more than \$10,000.” *Id.* § 13-3603.02(E).

18 35. The Reason Ban defines “genetic abnormality” as “the presence or presumed
19 presence of an abnormal gene expression in an unborn child, including a chromosomal
20 disorder or morphological malformation occurring as the result of abnormal gene
21 expression.” Act § 2, A.R.S. § 13-3603.02(G).

22 36. The Reason Ban’s definition of “genetic abnormality” excludes “lethal fetal
23 conditions,” *id.*, which is defined elsewhere as “a fetal condition that is diagnosed before
24 birth and that will result, with reasonable certainty, in the death of the unborn child within
25 three months after birth.” Act § 11, A.R.S. § 36-2158(G)(1).

26 37. In furtherance of the Reason Ban, S.B. 1457 also adds extensive new
27 reporting requirements to be enforced by ADHS (the “Reason Ban Reporting
28 Requirements”). The Reason Ban Reporting Requirements include a new line item among

1 Arizona’s already-extensive mandatory reporting requirements for abortion providers,
2 which requires the provider to state for each abortion “[w]hether any genetic abnormality
3 of the unborn child was detected at or before the time of the abortion by genetic testing,
4 such as maternal serum tests, or by ultrasound, such as a nuchal translucency screening, or
5 by other form of testing.” Act § 13, A.R.S. § 36-2161(A)(25). The report must be signed
6 by the physician who performed the abortion and “shall indicate that the person who signs
7 the report is attesting that the information in the report is correct to the best of the person’s
8 knowledge.” *Id.* § 36-2161(D).³

9 38. The Reason Ban Reporting Requirements further command that, as part of
10 the state-mandated informed consent disclosures and procedures, physicians inform
11 pregnant patients that abortions sought solely because of a fetal diagnosis are banned under
12 Arizona law. Act § 11, A.R.S. § 36-2158(A)(2)(d).⁴

13 39. In addition to the penalties detailed above, physicians who violate any aspect
14 of the Reason Ban Scheme also risk losing their medical license. The Arizona Medical
15 Board is authorized to initiate independent investigations, separate from any criminal
16 process, to determine if a physician has engaged in unprofessional conduct, which includes
17 “violating any federal or state laws, rules or regulations applicable to the practice of
18 medicine” and “committing a felony,” A.R.S. §§ 32-1401(27), 32-1403(A)(2), 32-
19 1451(A), and to discipline licensed physicians based on their findings, which can include
20 suspension or revocation of a medical license, public censure, and civil penalties of at least
21 \$1,000 and up to \$10,000 for each violation found, A.R.S. §§ 32-1403(A)(5), 32-
22 1403.01(A), 32-1451(D)-(E), (I), and (K).

23
24 ³ Arizona’s pre-existing reporting requirements already mandate that providers report to
25 the ADHS “[t]he reason for” each abortion they perform, including whether the abortion is
26 “due to fetal health considerations.” As amended by the Act, that category of reported
reason includes diagnosis with “at least one” of a “lethal anomaly,” a “central nervous
system anomaly,” or “other.” Act § 13, A.R.S. § 36-2161(A)(12)(c)(i)-(iii).

27 ⁴ The Requirements detailed in paragraphs 37 through 38 together make up the “Reason
28 Ban Reporting Requirements.” The Reason Ban and the Reason Ban Reporting
Requirements are collectively referred to herein as the “Reason Ban Scheme.”

1 40. Finally, the Reason Ban works together with Arizona’s existing accomplice
2 liability statute, to render any person “criminally accountable for a violation” of the
3 felonies in the Ban if they “[a]id[], counsel[], agree[] to aid or attempt[] to aid another
4 person in planning or committing” a violation. A.R.S. §§ 13-303, 13-301. And it works in
5 conjunction with the Personhood Provision, discussed below.

6 **B. The Personhood Provision**

7 41. Section 1 of S.B. 1457 (the “Personhood Provision”) amends Title 1 of the
8 Arizona Revised Statutes, entitled “General Rules of Statutory Construction,” to add a new
9 section entitled “Interpretation of laws; unborn child; definition.” This new section reads:
10 “The laws of this State shall be interpreted and construed to acknowledge, on behalf of an
11 unborn child at every stage of development, all rights, privileges and immunities available
12 to other persons, citizens and residents of the state, subject only to the Constitution of the
13 United States and decisional interpretations thereof by the United States Supreme Court.”
14 Act § 1, A.R.S. § 1-219(A).

15 42. The Personhood Provision then expressly incorporates the statutory
16 definition of “unborn child” set forth in Section 36-2151(16) of the Arizona Revised
17 Statutes, which provides that an “unborn child” is “the offspring of human beings from
18 conception until birth.” Act § 8, A.R.S. § 36-2151(16). Conception is statutorily defined as
19 “the fusion of a human spermatozoon with a human ovum,” and is not limited based on
20 whether the resulting fertilized egg is implanted in the uterus and results in a pregnancy.
21 A.R.S. § 36-2151(4).

22 43. S.B. 1457 contains only two exceptions from the Personhood Provision,
23 specifying that it “does not create a cause of action against”: (1) “[a] person who performs
24 in vitro fertilization procedures as authorized under the laws” of Arizona; or (2) “[a] woman
25 for indirectly harming her unborn child by failing to properly care for herself or by failing
26 to follow any particular program of prenatal care.” Act § 1, A.R.S. § 1-219(B). The statute
27 neither specifies nor offers any further clarity as to when or how it *does* create a cause of
28 action in other contexts—*i.e.*, when it is read in conjunction with and used to construe all

1 other provisions of the Arizona Revised Statutes.

2 V. FACTUAL ALLEGATIONS

3 A. Screening for and Diagnosis of Fetal Conditions During Prenatal Care

4 44. The Reason Ban defines “genetic abnormality” to “mean[] the presence or
5 presumed presence of an abnormal gene expression in an unborn child, including a
6 chromosomal disorder or morphological malformation occurring as the result of abnormal
7 gene expression.” Act § 2, A.R.S. § 13-3603.02(G).

8 45. Offering genetic screening and testing to each pregnant patient is standard
9 medical practice. Likewise, ultrasound screening for structural (or “morphological”)
10 indications of fetal conditions is standard pregnancy care.

11 46. The American College of Obstetricians and Gynecologists (ACOG) is the
12 preeminent national professional organization for physicians specializing in obstetrics and
13 gynecology (OB/GYNs). Similarly, the Society of Maternal-Fetal Medicine (“SMFM”) is
14 the leading professional organization for physicians and scientists focused on high risk
15 maternal and/or fetal issues.

16 47. Joint practice bulletins from ACOG and SMFM, which outline guidelines
17 to aid physicians in meeting professional standards and providing quality care, emphasize
18 that “each pregnant patient should be counseled in each pregnancy about options for
19 testing for fetal chromosomal” conditions. ACOG and SMFM, Practice Bulletin No. 226,
20 *Screening for Fetal Chromosomal Abnormalities*, available at
21 [https://www.smfm.org/publications/328-practice-bulletin-226-screening-for-](https://www.smfm.org/publications/328-practice-bulletin-226-screening-for-chromosomal-abnormalities)
22 [chromosomal-abnormalities](https://www.smfm.org/publications/328-practice-bulletin-226-screening-for-chromosomal-abnormalities) (“Screening Bulletin”); *see also* ACOG and SMFM, Practice
23 Bulletin No. 162, *Prenatal Diagnostic Testing for Genetic Disorders*, available at
24 [https://www.smfm.org/publications/223-practice-bulletin-162-prenatal-diagnostic-](https://www.smfm.org/publications/223-practice-bulletin-162-prenatal-diagnostic-testing-for-genetic-disorders)
25 [testing-for-genetic-disorders](https://www.smfm.org/publications/223-practice-bulletin-162-prenatal-diagnostic-testing-for-genetic-disorders) (“Diagnostic Bulletin”).

26 48. Chromosomal screening and/or diagnostic testing then occurs only after
27 complete pre-test counseling and upon “patient choice based on provision of adequate and
28 accurate information, the patient’s clinical context, accessible health care resources, values,

1 interests, and goals. All patients should be offered both screening and diagnostic tests, and
2 all patients have the right to accept or decline testing after counseling.” Screening Bulletin
3 at e1.

4 49. Testing capabilities continue to evolve and today there are a variety of testing
5 options to attempt to detect a wide range of clinically significant fetal genetic conditions.
6 These include screening tests using maternal blood samples and more invasive diagnostic
7 testing that requires the direct collection of placental or fetal cells. Diagnostic tests take
8 time (including for the cultivation of cells) and may only be available later in pregnancy.
9 Screening tests provide preliminary information about likelihood or risk, and do not
10 identify with certainty any condition.

11 50. In addition to screening and testing specific to genetic conditions, the
12 standard ultrasound testing that pregnant patients in prenatal care receive at 18-22 weeks
13 is used to assess fetal development and can identify unusual structural development. These
14 structural issues may or may not be related to a genetic cause or a particular genetic
15 condition.

16 51. All of this prenatal screening and testing aims to provide additional
17 information to physicians and their patients to guide pregnancy management: Testing can
18 identify the presence of disorders for which prenatal treatment may provide benefit; help
19 optimize maternal and neonatal outcomes by ensuring the appropriate location and staff for
20 delivery; and inform the patients’ consideration of future steps, including termination (if
21 that is something the patient is considering) or how best to manage the birth and continued
22 care of a child with needs that may be especially significant.

23 52. As ACOG and SMFM emphasize, both “[p]retest and posttest counseling
24 [are] essential.” Screening Bulletin at e2.

25 53. This counseling about fetal testing is provided by, for example, patients’
26 OB/GYNs, MFMs, and/or genetic counselors and includes detailed information about the
27 conditions at issue, is responsive to patient questions and concerns, and does not direct or
28 attempt to determine patient decision-making. *See* Screening Bulletin at e9 (“Counseling

1 should be performed in a clear, objective, and nondirective fashion, allowing patients
2 sufficient time to understand and make informed decisions regarding testing” and their
3 pregnancy.); *see also* Diagnostic Bulletin. The nondirective approach to counseling is
4 central to and used in many aspects of OB/GYN care and is one in which practitioners in
5 OB/GYN care are well versed.

6 54. Pregnant patients may have misconceptions about fetal conditions or little
7 information about them before testing. Pre- and post-test counseling enables patients to
8 base any decisions on available medical facts and case histories. Without that counseling,
9 they may exaggerate the significance or likely consequences of a given condition, or
10 confuse it with other genetic and/or structural manifestations. This counseling ensures that
11 “patients realize there is a broad range of clinical presentations, or phenotypes, for many
12 genetic disorders and that the results of genetic testing cannot predict all outcomes.”
13 Diagnostic Bulletin at 1.

14 55. Depending on the condition, patients may also participate in counseling
15 regarding risk to future pregnancies or testing of potentially affected family members.
16 Counseling also includes information about potential care resources in the community for
17 the patient, for other family members, and for the child.

18 56. If the patient wishes to discuss and/or proceed with an abortion, post-test
19 counseling includes information about that option. Because few OB/GYNs in Arizona who
20 provide prenatal care also provide abortion care (Plaintiff Dr. Reuss being an exception),
21 this post-test counseling would also include where to find abortion care, and, often, a
22 specific referral.

23 57. The prognosis for fetal conditions that are or might be present is extremely
24 varied, both among different conditions and within any one. Medical advances are making
25 some fetal structural issues treatable in the fetal and neonatal periods, but there is a wide
26 range of outcomes even with attempted treatment. Genetic and/or structural conditions may
27 lead to the need for ongoing medical or other support interventions throughout life, and
28 may include serious and multiple physical as well as intellectual consequences. Some are

1 less serious and may have more limited consequences. Some are invariably incompatible
2 with sustained life, but even for those, there may be considerable uncertainty as to how
3 long a child born with the anomaly may live.

4 58. The Reason Ban’s exception for “Lethal Fetal Conditions” is subjective and
5 does not provide a discernible and workable standard in this context.

6 59. A “lethal fetal condition” is defined in the statute as “a fetal condition that is
7 diagnosed before birth and that will result, with reasonable certainty, in the death of the
8 unborn child within three months after birth.” Act § 11, A.R.S. § 36-2158(G)(1). This does
9 not define who decides, how “reasonable certainty” is measured, or whether factors such
10 as possible medical interventions are to be considered. It does not account for the fact that
11 such determinations must be made quickly, and on a patient-by-patient basis, with many
12 factors and unknowns potentially influencing outcome after birth. Even if one condition
13 may typically be lethal within hours or days of birth, for example, that may not be deemed
14 “reasonably certain,” and a number of other serious genetic and morphological conditions
15 with possibly life-threatening or life-shortening manifestations do not have a trajectory that
16 could establish any typical point in time when death is “reasonably certain.”

17 60. After testing that indicates a fetal condition and post-test counseling, many
18 patients continue their pregnancies. Others continue for a time, but have their own maternal
19 health issues, and with worsening health, decide on an abortion. Other patients decide on
20 an abortion during post-test counseling or shortly thereafter.

21 61. Patients who were experiencing a wanted pregnancy, but then decide after
22 fetal testing that they must reverse course, are typically devastated and quite emotional
23 about that turn of events, and often rely on their physicians and other health care providers,
24 including mental health care providers, for support. They commonly volunteer information
25 about the testing and decision-making they have been through to physicians and others
26 involved in their subsequent care.

27 62. For Dr. Reuss’ patients, who he often cares for over many years, he is
28 involved in their pregnancy from inception, and through testing and counseling. He knows

1 whether patients are excited about the pregnancy and preparing for welcoming a new child.
2 If they then decide on abortion following testing and counseling, it will be apparent to him
3 that the possible or diagnosed fetal condition is playing some role.

4 **B. Background on Abortion Procedures**

5 63. There are generally two methods of providing abortion care: medication
6 abortion and procedural abortion.⁵

7 64. Medication abortion is generally available in the first 10 weeks after the first
8 day of the patient's last menstrual period (LMP). It is typically administered using two
9 prescription drugs: mifepristone and misoprostol. Mifepristone is taken 24-48 hours before
10 misoprostol. Physicians in Arizona administer mifepristone to patients in person and either
11 dispense or prescribe the misoprostol to be taken at home or another location of their
12 choosing. For most patients, this two-drug regimen causes the pregnancy to pass in a
13 manner similar to a miscarriage.

14 65. There are two forms of procedural or surgical previability abortions routinely
15 provided in Arizona. Up to approximately 15 weeks LMP, the most common method of
16 procedural abortion is vacuum or suction aspiration, which is a brief outpatient procedure
17 completed in one appointment.

18 66. After approximately 16 weeks LMP, physicians typically use the dilation and
19 evacuation ("D&E") technique for a procedural abortion. Starting around 16 to 18 weeks
20 LMP, a procedural abortion is commonly performed as a two-day procedure, and may
21 extend over three days at later gestational stages.

22 **B. Patients Seek Abortion for Myriad Complex and Personal Reasons,**
23 **Including as a Result of Fetal Testing and/or Diagnosis**

24 67. Approximately one in four American women will have an abortion in her
25 lifetime.⁶

26 ⁵ The only other medically-proven method of abortion is induction. Induction abortion uses
27 medications to induce labor in a hospital, but accounts for only a small percentage of
28 abortions in the United States.

⁶ See Guttmacher Inst., News Release, *Abortion Is a Common Experience for U.S. Women*,

1 68. Roughly 75 percent of the women who have an abortion are poor or low-
2 income, and 86 percent are unmarried.⁷ Approximately 60 percent already have at least one
3 child.⁸ Women who have abortions are more likely to be women of color.⁹ Poor women
4 and women of color are also more likely to experience unintended pregnancies.¹⁰

5 69. There is no typical abortion patient. Some patients decide to receive an
6 abortion because of an indication or diagnosis of a fetal condition. Some people determine,
7 in consultation with their medical providers, families, and/or loved ones, that they lack the
8 resources—financial, medical, educational, or emotional—to care for a child with special
9 needs or to simultaneously care for the children they already have (including existing
10 children with special needs).

11 **C. Abortion Access in Arizona**

12 70. There are only nine abortion clinics in the state and many of those facilities
13 provide abortion only during the early weeks of pregnancy. Pregnant people in Arizona
14 can access abortion care only at those facilities or from a very few other providers, such as
15 Dr. Reuss, whose practices can only provide a limited number of abortions and which are
16 limited to existing patients.

17 71. In 2019 alone, there were about 13,000 total abortions in the state of Arizona,
18 almost all of which were provided by these nine facilities.¹¹

19 _____
20 *Despite Dramatic Declines in Rates* (Oct. 19, 2017), [https://www.guttmacher.org/news-
release/2017/abortion-common-experience-us-women-despite-dramatic-declines-rates](https://www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-despite-dramatic-declines-rates).

21 ⁷ Jenna Jerman, Rachel K. Jones, & Tsuyoshi Onda, *Characteristics of U.S. Abortion*
22 *Patients in 2014 and Changes Since 2008* at 7, 5, Guttmacher Inst. (May 2016),
[https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-
patients-2014.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf).

23 ⁸ *Id.* at 7.

24 ⁹ *Id.* at 11.

25 ¹⁰ See Guttmacher Inst., Fact Sheet, *Unintended Pregnancy in the United States* (January
26 2019), <https://www.guttmacher.org/fact-sheet/unintended-pregnancy-united-states>.

27 ¹¹ See Arizona Department of Health Services, “Abortions in Arizona: 2019 Abortion
28 Report,” at 20-21 (September 21, 2020), available at
[https://www.azdhs.gov/documents/preparedness/public-health-statistics/abortions/2019-
arizona-abortion-report.pdf](https://www.azdhs.gov/documents/preparedness/public-health-statistics/abortions/2019-arizona-abortion-report.pdf).

1 72. Only a handful of physicians in Arizona, including Plaintiffs Isaacson and
2 Reuss, provide abortion care beyond 16 weeks LMP.

3 73. All of the abortions that Plaintiff Isaacson and Plaintiff Reuss provide occur
4 prior to 24 weeks—*i.e.*, up to 23 weeks and six days LMP—at points in pregnancy at which
5 no fetus is viable.

6 74. While some pregnant people with fetal diagnoses in Arizona are able to
7 locate abortion services independently, many others are referred to abortion providers
8 under a variety of circumstances. For example, some health care providers (including but
9 not limited to obstetricians, Maternal Fetal Medicine (“MFM”) specialists, or fetal
10 geneticists) refer patients seeking abortion care to other abortion providers because their
11 practice does not offer abortions. In other instances, abortion providers will refer patients
12 to other facilities because the gestational stage of the pregnancy exceeds the scope of
13 abortion care available at their facility.

14 **D. The Impact of S.B. 1457 on Access to Previability Abortion and**
15 **Maternal Healthcare in Arizona**

16 75. S.B. 1457 bans previability abortions for an entire group of Arizona patients,
17 coerces patients and providers into giving up their right to speak freely, and threatens
18 maternal health care by creating personhood rights for fertilized eggs, embryos, and
19 fetuses. These drastic impacts for patients and for Dr. Isaacson, Dr. Reuss, and ArMA’s
20 member physicians (collectively, “Plaintiff Physicians”), as well as other health care
21 providers, are outlined below.

22 **1. Impact of the Reason Ban Scheme**

23 a) Elimination of Access to Constitutionally-Protected
24 Previability Abortions

25 76. If the Reason Ban Scheme goes into effect, it will prohibit medical
26 professionals, including Plaintiff Physicians, from providing previability abortions to
27 patients when a fetal genetic condition is implicated. As a result, patients across Arizona
28 will be prevented from accessing previability abortion in violation of the Due Process

1 Clause of the Fourteenth Amendment of the United States Constitution.

2 77. In many cases, pregnant patients will have discussed with their provider or
3 the provider’s staff that a fetal diagnosis is their reason for seeking an abortion. For those
4 patients, the Act operates as an outright ban on the constitutionally-protected right to
5 previability abortion.

6 78. In other cases, it will be impossible for an abortion provider to avoid an
7 inference that their patient is seeking an abortion “solely because of” or “because of” a
8 fetal diagnosis, regardless of whether the patient discloses their reason. For example, in
9 some cases it will be inferred based on the patients’ medical and pregnancy history, or
10 because the patient was referred by a genetic testing specialist. For those patients, the Act
11 operates as an outright ban on the constitutionally-protected right to previability abortion.

12 79. In some instances, the prohibited reason will become apparent as a result of
13 the Reason Ban Reporting Requirements—*i.e.*, because the patient is compelled by the
14 State’s reporting requirements to identify their reason for seeking an abortion and/or to
15 report the results of genetic testing. For those patients, the Act operates as an outright ban
16 on the constitutionally-protected right to previability abortion.

17 80. In addition, the Reason Ban also fails to give physicians the authority that is
18 constitutionally required to proceed with an abortion, despite the ban’s requirements, under
19 circumstances where the patient’s health or life is in jeopardy. Section 10 contains no health
20 and life exception. And the “medical emergency” exception in Section 2 is unduly
21 restrictive in shielding patients’ health and life by, *inter alia*, applying only if there is a
22 necessity of an “immediate abortion.” For some patients facing their own health risks along
23 with a fetal genetic condition, the Reason Ban will for this additional reason fail to
24 adequately protect their abortion access.

25 81. For all these patients, the Act operates as an outright ban on the
26 constitutionally-protected right to previability abortion.

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b) The Reason Ban Scheme’s Unconstitutional Vagueness Will Force Providers to Withhold Care After Positive Fetal Testing and/or Diagnosis

82. Because the Reason Ban Scheme’s vague language makes it impossible for providers to determine whether the prohibition is triggered in a broad array of cases in which fetal testing and/or diagnosis occurs, providers will be forced to withhold constitutionally-protected abortions from patients in any case with an indication of or increased potential for a fetal “genetic abnormality” as that term is used in the Act, or else risk running afoul of the Ban’s steep criminal and licensing penalties.

83. Given the Act’s lack of clarity in defining the covered “genetic abnormalities,” *see supra* Paragraphs 58-59, the lack of a standard for when providers “know” whether their patients are seeking an abortion “because of” the prohibited reason with certainty, and the severe penalties for violating the Reason Ban, providers will have no choice but to err on the side of denying care to patients with any indication or likelihood of a fetal genetic anomaly, or else risk criminal punishment and loss of medical licensure.

84. These concerns are compounded by the fact that, under Arizona law, the requisite level of culpability in committing a crime can be proved through circumstantial evidence. It is thus unclear what circumstances could be enough to establish after-the-fact that a physician “knew” that an abortion was sought “solely because of” or “because of” a fetal testing or diagnosis. For example, if a patient with a previously-desired pregnancy is referred for an abortion by a fetal genetics specialist, could that be deemed sufficient to infer that the physician “knew” the patient sought an abortion “solely because of” a fetal diagnosis or likelihood thereof? Or if a patient mentions to a counselor that they are concerned because of a fetal testing result or diagnosis for an earlier pregnancy, or confesses that they worry about a fetal condition due to their advanced age, is that a circumstantial fact that could establish that the patient was seeking an abortion “because of” an actual or presumed presence of a genetic condition of the fetus? The Act provides

1 no discernible answer to such questions and thus no notice of what it prohibits and/or
2 requires.

3 85. Because the Reason Ban fails to give providers a reasonable opportunity to
4 know what is prohibited so that they may act accordingly, and because it exposes them to
5 arbitrary and discriminatory enforcement, the Reason Ban is unconstitutionally vague.

6 c) Chilling of Communications Amongst Patients and Medical
7 Care Providers

8 86. Even if, as a result of the Reason Ban, some patients were coerced into
9 curbing their communications with medical providers—*e.g.*, to conceal or even lie about a
10 fetal test, risk, or diagnosis—in an attempt to access abortion despite the Ban, that would
11 not change the fact that this law is an outright ban on abortion for many pregnant people.

12 87. For many such patients, this coerced sacrifice of free speech rights will
13 nonetheless be in vain, since their medical history or surrounding circumstances will make
14 it impossible for their provider not to infer a fetal diagnosis as their reason. For those
15 patients, the Act continues to operate as an outright ban on the constitutionally-protected
16 right to previability abortion.

17 88. But, even if a patient could receive an abortion in spite of the Reason Ban,
18 by withholding certain communications from their medical providers about their medical
19 history or their reasons for seeking an abortion, those patients' loss of their right to speak
20 openly with their physicians or other medical care providers would be a tremendous and
21 unconstitutional loss in and of itself.

22 89. For example, Plaintiff Physicians provide detailed, non-directive counseling
23 both before and after any genetic testing, and/or prior to performing an abortion. Plaintiff
24 Physicians provide counseling designed not to favor any option over another, which means
25 they listen to, support, and provide information to the patient, without themselves
26 indicating a specified course of action. That process is designed to ensure that patients feel
27 comfortable sharing their concerns and issues with their clinician so that clinicians can
28 provide them all of the information they need to make an informed choice among their

1 options, including terminating the pregnancy; carrying the pregnancy to term and
2 parenting; and carrying to term and placing the baby for adoption. In addition, the process
3 is designed to ensure that the patient’s choice is voluntary and not coerced.

4 90. If patients cannot speak openly with their physicians about their pregnancy
5 intentions, genetic testing, or a possible fetal diagnosis as part of this process—lest they
6 otherwise lose their access to a previability abortion—both the process of physician-patient
7 counseling in connection with genetic testing and in connection with abortion care, and the
8 patient-provider relationship generally, would be irreparably harmed.

9 91. By conditioning patients’ constitutionally-protected right to previability
10 abortion upon their corresponding sacrifice of free speech rights, the Reason Ban creates
11 an unconstitutional condition.

12 d) Elimination of Referrals and Abortion Information by
13 Maternal Health Care Providers

14 92. The Reason Ban would also reach far beyond abortion providers to prevent
15 patients with a potential or confirmed fetal diagnosis from receiving information on the
16 option of abortion, where to access an abortion, or a more formal abortion referral from
17 other health care providers upon receiving a diagnosis.

18 93. The Reason Ban punishes *any* Arizona medical provider or counselor who
19 may have knowledge of an abortion for the prohibited reason, unless they report that
20 information to law enforcement authorities. This will cause Plaintiffs and Plaintiffs’
21 members in all areas of medicine to avoid communication with their patients about their
22 pregnancy plans. That is because, were those professionals to discuss patients’ desire or
23 plans for abortion with patients who have any indication of an anomaly, they would be
24 setting themselves up for potential liability under A.R.S. § 13-3603.02(E).

25 94. In addition, any professionals or other people who provide referrals or other
26 abortion access information to pregnant persons who may suspect or have a fetal diagnosis
27 could be charged with accomplice liability under Arizona law, which provides that “a
28 person is criminally accountable for the conduct of another if: . . . [t]he person is an

1 accomplice of such other person in the commission of an offense[.]” A.R.S. § 13-
2 303(A)(3). “Accomplice” is defined as “a person . . . who with the intent to promote or
3 facilitate the commission of an offense . . . (2) [a]ids, counsels, agrees to aid or attempts to
4 aid another person in planning or committing an offense; or (3) [p]rovides means or
5 opportunity to another person to commit the offense.” A.R.S. § 13-301(2).

6 95. Moreover, the very act of an abortion referral following fetal testing or
7 diagnosis would in and of itself disclose the patient’s fetal testing and positive indication
8 for a diagnosis to the abortion provider. Typically, such referrals involve direct
9 communication between the referring provider and the abortion provider. And it also is
10 standard practice for the referring physician to provide the pregnant patients’ medical
11 records to their abortion provider. Clinic staff are also trained to indicate on a patient’s
12 chart or inform the physician verbally when the patient has been referred by a MFM
13 specialist or fetal geneticist or when they have been told of a diagnosis or potential
14 diagnosis either by the patient or by another health care provider.

15 2. Impact of the Personhood Provision

16 96. The Personhood Provision, at Section 1 of S.B. 1457, alters the meaning of
17 large swaths of the Arizona Revised Statutes in a manner that is unconstitutionally vague.

18 97. The Personhood Provision requires that all “laws of [Arizona] shall be
19 interpreted and construed to acknowledge, on behalf of an unborn child at every stage of
20 development, all rights, privileges and immunities available to other persons, citizens and
21 residents of this state, subject only to the Constitution of the United States and decisional
22 interpretations thereof by the United States Supreme Court.” Act § 1, A.R.S. § 1-219. By
23 these terms, the Personhood Provision expands the legal rights of fetuses, embryos, and
24 fertilized eggs for purposes of all Arizona state laws.

25 98. By its terms, the Personhood Provision’s function is to alter the meaning of
26 all other provisions of the Arizona Revised Statutes. Thus, on the face of the Personhood
27 Provision, each time the terms “person,” “child,” or similar words appear in the Arizona
28 Revised Statutes, those terms appear now to include the same “rights, privileges, and

1 immunities” for fertilized eggs, embryos, or fetuses at any stage of development. But, the
2 Personhood Provision neither specifies nor offers any further clarity as to when or how it
3 creates a cause of action and liability in such contexts—*i.e.*, when it is read in conjunction
4 with other provisions, both criminal and civil, of the Arizona Revised Statutes to which it
5 applies.

6 99. The two narrow exceptions contained in the Personhood Provision,
7 moreover, only confirm that it creates causes of action to punish actions by medical care
8 providers and pregnant people that could harm a fertilized egg, embryo, or fetus at any
9 stage of development. The provision states that it “does not create a cause of action against:
10 (1) a person who performs in vitro fertilization procedures as authorized under the laws of
11 this state; (2) a woman for indirectly harming her unborn child by failing to properly care
12 for herself or by failing to follow any particular program of prenatal care.” Act § 1, A.R.S.
13 § 1-219(B). Conversely, the Act contains no similar carve outs for actions by *other* types
14 of medical care providers or *other* types of actions by pregnant people.

15 100. The Personhood Provision makes it impossible for Arizonans, including
16 pregnant people, people with capacity to become pregnant, and the medical providers who
17 care for them, to identify whether a vast array of actions may now put them at risk of
18 criminal prosecution or other legal penalties.

19 101. The Personhood Provision amends provisions of the Arizona Code in a
20 manner that on its face appears to restrict or prohibit medical care that is otherwise
21 regularly provided to pregnant patients and those with capacity for pregnancy if that care
22 harms, or creates a risk of harm to, a fertilized egg, embryo, or fetus—thereby subjecting
23 health care providers to criminal liability when they provide medically-necessary care to
24 patients who are, or could be, pregnant.

25 102. For example, under Arizona law, it is unlawful to “recklessly endanger[]
26 another person with a substantial risk of imminent death or physical injury.” A.R.S. § 13-
27 1201(A). And a person commits child abuse if they cause physical injury to a child—
28 whether intentionally, knowingly, recklessly, *or* negligently. *Id.* § 13-3623 (emphasis

1 added). A wide variety of medical care can harm or endanger a fertilized egg, embryo, or
2 fetus—*e.g.*, gynecological care, contraceptive care, hormone therapy, cancer screening and
3 treatment, and substance use treatment. Under the Act’s new interpretation of “unborn
4 child,” it is unclear whether clinicians could be criminally prosecuted for endangerment or
5 child abuse when they provide such care, regardless of whether the treatment was necessary
6 to protect the pregnant patient’s health. *See also, e.g.*, A.R.S. § 13-1203 (a “person commits
7 assault by [i]ntentionally, knowingly or recklessly causing any physical injury to another
8 person[.]”).

9 103. Neither the Act nor any other relevant provisions of the Arizona Revised
10 Statutes clarify or offer an objective standard by which to measure whether and when it is
11 necessary for a medical provider to prioritize a fertilized egg, embryo, or fetus over a
12 pregnant patient, for example, given that the fertilized egg, fetus, or embryo must be treated
13 as an equal “person.”

14 104. On its face, the Personhood Provision contemplates prosecuting medical
15 providers under some circumstances. The Provision explicitly states that it “does not create
16 a cause of action against [a] person who performs in vitro fertilization [IVF] procedures as
17 authorized under the laws” of Arizona. Act § 1, A.R.S. § 1-219(B)(1). By explicitly
18 excepting IVF providers from a cause of action under the Personhood Provision, and not
19 other types of medical providers, the Act starkly leaves those other providers vulnerable to
20 liability under its terms.

21 105. The Personhood Provision also creates ambiguity about whether and when a
22 pregnant person can be prosecuted for harm to their fetus or embryo. While the provision
23 excludes “a cause of action against a woman for *indirectly* harming her unborn child by
24 failing to properly care for herself or by failing to follow any particular program of prenatal
25 care,” *id.* § 1-219(B)(2), it conspicuously does not foreclose a cause of action against a
26 pregnant person who *directly* causes harm to their pregnancy, or a person who “indirectly”
27 harms her pregnancy by means other than failure to “properly care for herself” or follow a
28 “program of prenatal care.” Accordingly, the Personhood Provision indicates that many

1 actions a pregnant person can take may newly be subject to criminal prosecution or civil
2 penalties under its reinterpretation of Arizona’s existing statutes.

3 106. For example, under Arizona’s child abuse and neglect statute, “[a] person
4 having custody of a minor under sixteen years of age who knowingly causes or permits the
5 life of such minor to be endangered, its health to be injured or its moral welfare to be
6 imperiled, by neglect, abuse or immoral associations, is guilty of a class 1 misdemeanor.”
7 A.R.S. § 13-3619. And Arizona’s laws related to family offenses include a provision that
8 criminalizes conduct that “causes, encourages or contributes to the . . . delinquency of a
9 child . . . or who for any cause is responsible therefor,” wherein “delinquency” includes
10 “any act that tends to debase or injure the morals, health or welfare of a child.” *Id.* §§ 13-
11 3612(1), 13-3613.

12 107. Under these laws, as amended by the Personhood Provision, pregnant
13 patients are at risk of being prosecuted for an array of actions that were previously not
14 subject to criminal liability. Applying the Personhood Provision to existing Arizona
15 statutory provisions could easily lead to the criminalization of a broad range of behavior,
16 leaving state officials, law enforcement, prosecutors, and courts to determine, *ex post facto*,
17 which behaviors infringe on the new personhood rights by causing harm or risk of harm to
18 a fertilized egg, embryo, or fetus.

19 108. Accordingly, if the Personhood Provision goes into effect, Plaintiff
20 Physicians, their patients, and other Arizonans will be subjected to criminal and other
21 liability without fair notice of what conduct is forbidden and required and will be exposed
22 to arbitrary and discriminatory enforcement, and thus the law is unconstitutionally vague
23 in contravention of the Due Process Clause of the Fourteenth Amendment.

24 C. **Without an Injunction, the Reason Ban and the Personhood Provision**
25 **will Inflict Irreparable Harm on the Plaintiffs**

26 109. Absent an injunction, physicians, including the Plaintiff Physicians in this
27 case, will have no choice but to turn away patients in need of banned care. Their patients
28

1 would suffer the irreparable harm of gross violations of their constitutional rights, assault
2 to their dignity, and the unconscionable imposition of risks to their health and lives.

3 110. The Reason Ban would prohibit Plaintiffs' patients from obtaining
4 previability abortions.

5 111. Every day pregnant people in Arizona continue to need access to safe and
6 compassionate previability abortion care when they decide to terminate their pregnancies,
7 regardless of their reason for doing so.

8 112. Because of the Reason Ban Scheme, vital communications between Plaintiff
9 Physicians (and other medical and mental health professionals) and their pregnant patients
10 will be unconstitutionally chilled in violation of the First Amendment, which will do
11 irreparable harm to the patient-provider relationship.

12 113. The Personhood Provision will also detrimentally affect other medical care
13 beyond abortion care services, including care provided by the Plaintiff Physicians in this
14 case, by calling into question whether care that could have a negative impact on a fetus or
15 embryo will subject providers and patients to criminal and other liability. Similarly, their
16 pregnant patients will be subject to uncertainty about whether their own actions expose
17 them to liability, in violation of their due process rights.

18 114. The Organizational Plaintiffs will also suffer irreparable harm as a result of
19 the Act. Both AZ NOW and NJWC AZ serve the needs and rights of women in Arizona,
20 with a particular focus on ensuring reproductive justice for Arizonans. The Act would
21 directly frustrate the missions of both AZ NOW and NJWC AZ by stymieing their
22 education of and assistance to Arizonans in need of reproductive healthcare—including but
23 not limited to by making it more difficult, and in many cases impossible, for Arizonans to
24 access abortion and other maternal healthcare. Absent an injunction, S.B. 1457 would force
25 AZ NOW and NJWC AZ to divert their scarce time and resources away from other aspects
26 of their crucial work to try to help Arizonans access abortion care out of state and otherwise
27 adjust to S.B. 1457's sweeping impact.

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1 violates Plaintiff Physicians’ patients and other Arizonans’ right to privacy and liberty
2 guaranteed by the Fourteenth Amendment to the United States Constitution.

3 **COUNT III**

4 **(Unconstitutional Vagueness — Reason Ban)**

5 122. Plaintiffs reallege and incorporate by reference the allegations set forth in the
6 above paragraphs.

7 123. The Reason Ban, both independently and in conjunction with the Reason Ban
8 Reporting Requirements, does not give adequate notice about what fetal conditions bring
9 abortion care within the scope of its prohibition, or what constitutes a provider’s knowledge
10 that a patient is seeking an abortion due to the prohibited reason within the meaning of the
11 statute.

12 124. The Reason Ban, both independently and in conjunction with the Reason Ban
13 Reporting Requirements, does not give adequate notice of what it means to “knowingly”
14 provide an abortion “because of” or “solely because of” a prohibited reason.

15 125. The Reason Ban, independently and in conjunction with the Reason Ban
16 Reporting Requirements, invites arbitrary and discriminatory enforcement.

17 126. By failing to give pregnant patients and medical providers fair notice of how
18 to comply with the mandate of the Reason Ban and the Reason Ban Reporting
19 Requirements, and by imposing severe criminal penalties in addition to other legal
20 penalties, S.B. 1457 is unconstitutionally vague and violates Plaintiffs’, Plaintiff
21 Physicians’, their patients’, and other Arizonans’ right to due process as guaranteed by the
22 Due Process Clause of the Fourteenth Amendment to the United States Constitution.

23 **COUNT IV**

24 **(Unconstitutional Condition — Violation of First and Fourteenth Amendments)**

25 127. Plaintiffs reallege and incorporate by reference the allegations set forth in the
26 above paragraphs.

27 128. The Reason Ban, both independently and in conjunction with the Reason Ban
28 Reporting Requirements forces patients to either cede their right to previability abortion in

1 order to exercise their freedom of speech, or else to cede their free speech rights in order
2 to access constitutionally-protected previability abortion.

3 129. By impermissibly forcing Plaintiff Physicians’ patients and other Arizonans
4 to choose between two constitutional rights, and by conditioning the exercise of one
5 constitutional right as an exchange for giving up another, the Act imposes an
6 unconstitutional condition in violation of the Due Process Clause of the Fourteenth
7 Amendment and the First Amendment to the United States Constitution.

8 **COUNT V**

9 **(Unconstitutional Vagueness — Personhood Provision)**

10 130. Plaintiffs reallege and incorporate by reference the allegations set forth in the
11 above paragraphs.

12 131. It is unclear how the Personhood Provision at Section 1 of S.B. 1457
13 effectively amends other provisions of the Arizona Revised Statutes that include the term
14 “person,” “child,” or similar words, or otherwise effectuates “rights, privileges and
15 immunities” for “unborn children.” Implicated terms appear in many provisions of the
16 Arizona Revised Statutes, and they are included in sections of the statutes that set forth the
17 scope of, *inter alia*, criminal acts and civil liability.

18 132. These provisions and others, as altered by the Personhood Provision, make it
19 impossible for pregnant patients and medical providers to know what actions are forbidden
20 or required, and thus do not provide adequate notice of what actions are prohibited or
21 required.

22 133. These provisions and others, as altered by the Personhood Provision, will
23 invite arbitrary and discriminatory enforcement.

24 134. Because Plaintiffs, Plaintiff Physicians’ patients, and all Arizonans,
25 including Arizona enforcement authorities, are unable to determine what is required under
26 the Arizona Revised Statutes, as amended by the Personhood Provision, the Personhood
27 Provision violates Plaintiffs’ rights guaranteed by the Due Process Clause of the Fourteenth
28 Amendment to the United States Constitution.

COUNT VI

(First Amendment — Reason Ban)

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3 135. Plaintiffs reallege and incorporate by reference the allegations set forth in the
4 above paragraphs.

5 136. The Reason Ban burdens Plaintiffs’ and Plaintiff Physicians’ members’
6 speech by creating broad accomplice liability and serious civil penalties for “aid[ing] or
7 “counsel[ing]” patients who could be deemed to receive an abortion for the prohibited
8 reason, or even for “attempt[ing]” to aid in such an endeavor. *See* A.R.S. §§ 13-3603.02,
9 13-303, 13-301. The Ban’s reporting requirements further chill health care providers’
10 speech with patients and/or compel speech with law enforcement by requiring any
11 counsellor or medical or mental health professional to disclose known violations of the
12 Reason Ban to law enforcement or suffer a fine of up to \$10,000. Act § 2, A.R.S. 13-
13 3603.02(E).

14 137. The Reason Ban invades the province of medical professionals’ speech by
15 cutting off information that would otherwise be provided to patients or fellow
16 professionals, limiting counselling, and requiring disclosure by physicians and other health
17 care providers of confidential discussions with patients. Even more broadly, it not only
18 prevents Plaintiffs and Plaintiffs’ members’ important communications with patients,
19 including but not limited to Plaintiff Physicians’ communications with their own patients,
20 and compels disclosure to law enforcement, but it also prevents public education about
21 health care facts and options—including communication with persons to whom Plaintiff
22 Organizations provide education and other assistance.

23 138. The Reason Ban imposes overly broad and content-based burdens on
24 Plaintiffs’ and Plaintiffs’ members’ expression without any adequate justification and
25 cannot survive under the protections of the First Amendment.

PRAYER FOR RELIEF

26
27 WHEREFORE, Plaintiffs pray for relief as follows:
28

1 1. Issue a preliminary injunction, later to be made permanent, prohibiting
2 Defendants and their successors in office from enforcing the Reason Ban Scheme, Act
3 § 2, A.R.S. § 13-3602; Act § 10, A.R.S. § 36-2157; Act § 11, A.R.S. § 36-2158(A)(2)(d);
4 Act § 13, A.R.S. § 36-2161(A)(25), and the Personhood Provision, Act § 1, A.R.S. § 1-
5 219, and associated administrative rules;

6 2. Issue a declaratory judgment that the Reason Ban Scheme and the
7 Personhood Provision violate the rights protected under the First and Fourteenth
8 Amendment of the United States Constitution and 42 U.S.C. § 1983;

9 3. Award Plaintiffs their reasonable costs and attorneys' fees pursuant to 42
10 U.S.C. § 1988; and

11 4. Grant such other or further relief as the Court deems just, proper, and
12 equitable.

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1 Dated: August 17, 2021
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AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF ARIZONA

By: /s/ Victoria Lopez

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*Application for admission *pro hac vice*
forthcoming

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2021, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing. All counsel of record are registrants and are therefore served via this filing and transmittal.

/s/ Victoria Lopez
