

**MEMO – PLANNED PARENTHOOD V. HAZELRIGG**

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On April 9, 2024, in a 4-2 decision, the Arizona Supreme Court held that a Civil War-era near-total abortion ban can be enforced in the state. In [Planned Parenthood v. Hazelrigg](#), the Court held that the 1864 ban, which was passed before Arizona became a state, had not been repealed by any subsequent legislation. Further, the Court concluded that the legislature’s intent was to retain the ban on the books, despite passage of a distinct, 15-week abortion ban in March 2022 before the issuance of [Dobbs v. Jackson Women’s Health Organization](#) (June 24, 2022), the U.S. Supreme Court decision overturning [Roe v. Wade](#).

The majority’s reasoning centered on language in the construction notes of the 15-week ban which stated that the legislature, in passing the 15-week ban, did not intend to create an affirmative right to abortion or to repeal other laws, including the 1864 ban. Essentially, the Court concluded that the legislature passed the 15-week ban only because of *Roe v. Wade*, which, until [June 24, 2022](#), protected the individual constitutional right to abortion. The majority then determined that the 15-week ban and the full ban could both be enforced simultaneously. In the [majority’s words](#), "physicians are now on notice that all abortions, except those necessary to save a woman's life, are illegal, . . . and that additional criminal and regulatory sanctions may apply to abortions performed after fifteen weeks' gestation."

In contrast, dissenting Vice Chief Justice Timmer and Chief Justice Brutinel instead would have read the two laws to harmonize them, finding abortions unlawful in the state except where permitted by the 15-week ban. Among other issues, the dissenters questioned the majority’s indication that the legislature only passed the 15-week ban because of *Roe*, as *Roe* itself would not have allowed a 15-week abortion ban; it provided an individual constitutional right to abortion up until the point of fetal viability, which scientific evidence suggests roughly sits at [24 weeks](#). The dissenters also indicated that they would not have relied on the 15-week ban’s construction notes to interpret the 15-week ban, as on its face, the ban was not ambiguous in its allowance of physician-performed abortions up to 15 weeks gestation. According to the dissenters, the fact that the 15-week ban did not expressly state it was providing a “right” to abortion is of no consequence. Comparing the same with common speed limits, Justice Timmer explained that individuals know in a 45 mile per hour zone that they do not necessarily have a “right” to drive under that speed limit, but they still, critically, have the knowledge they will not face prosecution if they do so.

The 1864 full abortion ban provides a brief exception in cases where abortion is necessary to save the life of the mother, but the ban does not provide definitions or guiding language that providers can use when making life and death determinations. The Arizona Supreme Court expressly refused to address this issue, explaining that it had not been briefed and was not properly before the Court. Violating the Arizona ban is punishable by a [prison sentence](#) of 2-5 years.

The ban has been stayed for an additional 14 days per the Court's order (through April 23, 2024), as plaintiffs may seek to bring additional constitutional challenges against the ban at the trial court. The trial judge will have discretion whether to issue a subsequent stay pending litigation. A [prior court order](#) also prohibits enforcement for 45 days after the Supreme Court's judgment (through late May 2024). With these two scheduled stays to consider, experts are opining that the law will likely not be enforceable for [at least 60 days](#) from April 9, 2024. Attorney General Kris Mayes [has indicated](#) that women and physicians will not face prosecution while she holds office in the state, but subsequent administrations may take a different approach. The general statute of limitations in Arizona for [class 2-6 felonies](#) is 7 years, which could outlast Attorney General Mayes' tenure.