IN THE SUPREME COURT

OF THE STATE OF ARIZONA

ROBIN ROEBUCK,

Plaintiff/Appellant/
Respondent,

v.

MAYO CLINIC, et al,

Defendants/Appellees/
Petitioners.

Arizona Supreme Court No.
CV-23-0262-PR

Court of Appeals Division One
No. 1 CA-CV 22-0508

Maricopa County Superior
Court Case No. CV2021-090429

BRIEF OF *AMICUS CURIAE* OF HEALTH SYSTEM ALLIANCE OF ARIZONA
FILED WITH THE WRITTEN CONSENT OF ALL PARTIES

Dated: December 19, 2023

Brett W. Johnson (#021527)
Tracy A. Olson (#034616)
Claudia E. Stedman (#036387)
Snell & Wilmer L.L.P.
One East Washington Street
Suite 2700
Phoenix, AZ 85004
Telephone: (602) 382-6312
Facsimile: (602) 382-6070
bwjohnson@swlaw.com
tolson@swlaw.com
cstedman@swlaw.com
Attorneys for Amicus Curiae *Health System Alliance of Arizona*

TABLE OF CONTENTS

IDENTITY AND INTEREST OF AMICUS CURIAE 1
ARGUMENT 2
I. This Case Presents Multiple Issues of Statewide Importance. 3
A. A.R.S. § 12-563 Serves Important Public Policy Interests. 4
B. The Court of Appeals Decision Will Undermine Other Qualified Immunity Statutes That Serve Important, Statewide Interests. 7
II. A.R.S § 12-516 Does Not Violate the Anti-Abrogation Clause. 10
III. A.R.S. § 12-516 Is Justified by Important Public Interests. 15
CONCLUSION 17

TABLE OF AUTHORITIES

Page(s)

Cases

Arizonans for Second Chances, Rehab. & Pub. Safety v. Hobbs,
249 Ariz. 396 (2020) 4, 5, 17

Baker v. Univ. Physicians Healthcare,
231 Ariz. 379 (2013) 13

City of Tucson v. Fahringer,
164 Ariz. 599 (1990) 13

Duncan v. Scottsdale Med. Imaging, Ltd.,
205 Ariz. 306 (2003) 14

Fuschek v. State,
218 Ariz. 285 (2008) 4

Globe Sch. Dist. No. 1 v. Bd. of Health of City of Globe,
20 Ariz. 208 (1919) 17

Jacobson v. Massachusetts,
197 U.S. 11 (1905) 7, 15, 16

Little v. All Phx. S. Comm'ty Mental Health Ctr.,
186 Ariz. 97 (App. 1999), *overruled by Avitia v. Crisis Preparation & Recovery Inc.*, 536 P.3d 776 (Ariz. 2023) 15

M. Rae, Inc. v. Wolf,
509 F. Supp. 3d 235 (M.D. Pa. 2020) 16

McGhee v. City of Flagstaff,
No. CV-20-08081-PCT-GMS, 2020 WL 2308479 (D. Ariz. May 8, 2020) 16

Nicaise v. Sundaram,
245 Ariz. 566 (2019) 12

Nunez v. Professional Transit Management of Tucson, Inc.,
229 Ariz. 117 (2012) 13, 14

Roebuck v. Mayo Clinic,
536 P.3d 289 (Ariz. App. 2023) 3, 11

Rubino v. De Fretias,
638 F. Supp. 182 (D. Ariz. 1986) 15

In re Rutledge,
956 F.3d (8th Cir. 2020) 16

State Farm Ins. Cos. v. Premier Manufactured Sys., Inc.,
217 Ariz. 222 (2007) 13

State v. Harm,
236 Ariz. 402 (App. 2015) 13

Torres v. JAI Dining Servs. (Phoenix), Inc.,
536 P.3d 790 (2023) 10, 14

Statutes

A.R.S. § 9-500.02 8

A.R.S. § 12-516 .... *passim*

A.R.S. § 12-563 4

A.R.S. § 12-564 .... 8, 9

A.R.S. § 12-571 8

A.R.S. § 12-572 8

A.R.S. § 12-573 8

A.R.S. § 32-1471 8

A.R.S. § 32-1472 8

A.R.S. § 36-420 8

Other Authorities

Ariz. Const. art. II, § 1 17

Ariz. Const. art. III 17

Ariz. Const. art XIV, § 8 12

Ariz. Const. art. XVIII, § 6 .... 10, 12

3 C.F.R. 13909 (Mar. 18, 2020) 6

EO 2020-16 (Mar. 26, 2020) 6

EO 2020-27 (Apr. 9, 2020) 5, 6

EO 2020-42 (June 25, 2020) 5, 6

ADHS AO 2020-13 (Dec. 18, 2020) 6

ARCAP 16(a) 2

ARCAP 16(b)(1)(A) 2

Ariz. Att'y Gen. Op. I21-001 (2021) 17

Cause of Action, Black's Law Dictionary (11th ed. 2019) 12

Right of Action, Black's Law Dictionary (11th ed. 2019) 12

1 Am. Jur. 2d Actions § 34 (2023) 12

IDENTITY AND INTEREST OF AMICUS CURIAE

The Health System Alliance of Arizona ("HSAA") represents the policy interests of large, integrated health systems across Arizona. HSAA's members represent nearly 80% of hospital-related care in Arizona in more than 40 cities and towns. HSAA employs nearly 80,000 employees, including physicians, nurses, and other providers. HSAA's members include emergency care, acute care, and specialty medical group facilities; trauma, urgent care, outpatient, and rehabilitation centers; academic medicine, and pharmacies. Through its network, HSAA expands Arizonans' access to cost-effective, coordinated healthcare.

HSAA has a vested interest in the constitutionality of A.R.S. § 12-516's qualified immunity for providers during a public-health emergency. During the COVID-19 pandemic, HSAA's members shouldered enormous burdens to care for the community. HSAA's members faced surges of critically ill patients, longer working hours, supply chain shortages, stress, grief, and workplace burnout. Due to the unprecedented demand on member emergency rooms, providers with other specialties were thrust into critical care units. Out-of-state practitioners were also transferred into Arizona to assist. Under gubernatorial and Arizona Department of Health ("ADHS")

emergency measures, HSAA members were required to regularly transfer patients from urban to rural areas to relieve overwhelmed emergency rooms. HSAA's members relied on protections in the Governor's Executive Orders—later codified by A.R.S. § 12-516—in making rapid, systemic changes to care for patients with the novel COVID-19 virus.

HSAA also has an interest in this case's impact on other statutory grants of qualified immunity that will be implicated if this Court does not correct the court of appeals' anti-abrogation analysis. If the court of appeals' opinion stands, providers and healthcare facilities will be hesitant to provide live-saving care in emergency, charity, or educational settings for fear of undue exposure.

All parties provided written consent for the filing of this brief. ARCAP 16(b)(1)(A). No party or its counsel authored this brief, in whole or part. ARCAP 16(a).

ARGUMENT

This case concerns the constitutionality of A.R.S. § 12-516, which offers providers qualified immunity during a pandemic, unless the provider's liability arose from willful or grossly negligent conduct.

The court of appeals held that A.R.S. § 12-516 violated Arizona's

anti-abrogation clause. *Roebuck v. Mayo Clinic*, 536 P.3d 289, 294–97 ¶¶ 17–29 (Ariz. App. 2023). The court of appeals reasoned that the Legislature can regulate negligence actions, but it cannot eliminate them. *Id.* at 295 ¶ 19. Thus, the Legislature could raise the burden of proof without offending the anti-abrogation clause, but it cannot eliminate ordinary negligence as a distinct cause of action. *Id.* ¶ 23. Because "A.R.S. § 12-516 bars claims for medical negligence by a subcategory of patients, *i.e.*, those whose medical treatment was COVID-related," the court of appeals determined that the law was unconstitutional. *Id.* at 297 ¶ 29.

This Court should grant the petition for review and vacate the court of appeals' decision. First, this case raises issues of statewide importance. Second, this Court should correct the court of appeals' interpretive error in conflating the broader concept of "rights of action" (*i.e.*, access to the courts) guaranteed by the anti-abrogation clause with narrower concepts of causes, claims, and theories of liability that are not textually supported by the Constitution. Third, the Court should clarify the analytical framework when analyzing constitutional questions during a public-health emergency.

I. <u>This Case Presents Multiple Issues of Statewide Importance</u>.

Granting a petition for review is appropriate when it presents

constitutional issues of statewide importance. *See, e.g.*, *Fuschek v. State*, 218 Ariz. 285, 288 ¶ 6 (2008); *cf. Arizonans for Second Chances, Rehab. & Pub. Safety v. Hobbs*, 249 Ariz. 396, 405 ¶ 21 (2020) (granting special action jurisdiction to a case involving constitutional issues of statewide importance raised by COVID-19 precautions).

Contrary to Plaintiff's assertion, this case presents *several* issues of statewide importance. First, the court of appeals' decision undermines a statute that serves important public policy interests during a public-health emergency. Second, if the ruling stands, it will call into question several qualified immunity statutes that also implicate vital public-health interests. If the court of appeals' opinion is not reversed, the decision will have long-lasting, adverse impacts on Arizonans and their access to health systems.

A. A.R.S. § 12-563 Serves Important Public Policy Interests.

Arizona was hit hard by the COVID-19 pandemic in 2020.[1] In response to the public-health emergency, Governor Ducey and ADHS issued many Executive Orders and directives aimed at slowing the spread of the COVID-

[1] https://jamanetwork.com/journals/jama-health-forum/fullarticle/2769929.

19 virus and mitigating the societal burdens imposed by the pandemic, including some that required HSAA members to increase bed capacities. *See Arizonans for Second Chances,* 249 Ariz. at 421 ¶¶ 103–04 (Timmer, C.J., concurring in part and dissenting in part).

Even with these precautions in place, Arizona's healthcare system was strained. Because of the novel and unknown nature of COVID-19 "there [were] no defined treatments and . . . there [was] a shortage of hospital beds and equipment for treating such patients." EO 2020-27 (Apr. 9, 2020). As a result, providers were "subjecting themselves to liability" to treat patients, *id.*, which, combined with burnout, led to providers leaving the profession at an alarming rate.[2] In an effort to "maximize participation of medical providers and healthcare facilities in treating COVID-19 patients to ensure that Arizonans have access to treatment when needed" Governor Ducey issued EO 2020-27, reauthorized by EO 2020-42, providing qualified civil immunity to healthcare providers treating COVID-19 patients in good faith. *See* EO 2020-27; EO 2020-42 (June 25, 2020).

[2] https://aspe.hhs.gov/sites/default/files/documents/9cc72124abd9ea25d58a22c7692dccb6/aspe-covid-workforce-report.pdf.

Recognizing the strain that COVID-19 put on health systems, and the attendant liability associated with treating COVID-19 patients, the Legislature validated the Governor's temporary policy decision by passing A.R.S. § 12-516. HSAA's (and all) providers relied on the protections offered by EO 2020-27, EO 2020-42, and A.R.S. § 12-516 when they agreed to care for COVID-19 patients during the pandemic.

Moreover, while the immediate pressures of the COVID-19 pandemic have subsided and the public-health emergency status in Arizona concluded, A.R.S. § 12-516 still serves important statewide interests.

The effects of the global pandemic are still felt throughout Arizona. For example, provider burnout during and following the COVID-19 pandemic makes it difficult for health systems to adequately staff facilities to provide comprehensive patient care.[3] In addition, while health systems and their providers were responding to the crises, they were required to follow evolving governmental directives at both the federal and State levels. *See, e.g.*, 3 C.F.R. 13909 (Mar. 18, 2020); EO 2020-16 (Mar. 26, 2020); ADHS AO

[3] https://www.forbes.com/sites/jackkelly/2022/04/19/new-survey-shows-that-up-to-47-of-us-healthcare-workers-plan-to-leave-their-positions-by-2025/?sh=3a06cf5c395b.

2020-13 (Dec. 18, 2020). Moreover, research suggests that the potential for another widespread disease like the COVID-19 pandemic is increasing.[4] Thus, there is a real likelihood that this statute, and the statewide public interest that motivated it, will reoccur in the future, and A.R.S. § 12-516 will become relevant again. It is important that the Legislature is able to have flexibility to respond to and define the powers available to executive branches during future public-health emergency. *Jacobson v. Massachusetts*, 197 U.S. 11, 27, 35 (1905). The Governor's and Legislature's decisions to extend qualified immunity to providers responding to health emergencies (at the direction of the government) creates appropriate protections for providers administering care in these rare situations.

Accordingly, A.R.S. § 12-516 serves both past, present, and future interests by incentivizing medical professionals to serve on the front-line during a public-health emergency.

B. The Court of Appeals Decision Will Undermine Other Qualified Immunity Statutes That Serve Important, Statewide Interests.

The court of appeals' ruling puts many other qualified immunity

[4] *Supra* note 2; https://globalhealth.duke.edu/news/statistics-say-large-pandemics-are-more-likely-we-thought.

statutes in jeopardy, including A.R.S. § 12-571(A) (nonprofit clinics); A.R.S. § 12-572(A) (emergency room and disasters); A.R.S. § 12-573(A) (emergency delivery of baby); A.R.S. § 12-564 (students); A.R.S. § 32-1471 (limited immunity to healthcare providers who gratuitously provide emergency care at the scene of an emergency). *See also* A.R.S. §§ 9-500.02, 36-420(C), and 32-1472 (providing qualified immunity for providers in additional emergency settings).

Plaintiff attempts to distinguish the above statutes on superficial grounds. However, all of these statutes eliminate a simple negligence standard in favor of a gross negligence standard. If this somehow implicates the anti-abrogation clause, it is then possible these statutes will also be deemed invalid. If so, the court of appeals opinion will have a wide-reaching effect on the longstanding policy interests that motivated these statutes.

Sections 12-572(A), 12-573(A), and 32-1471 provide qualified immunity to certain individuals in emergency settings, including during natural disasters, emergency baby delivery, or on-the-scene lifesaving care. Section 12-571 provides qualified immunity to providers who care for patients at low or no cost. *See also* A.R.S. §§ 9-500.02, 36-420(C), 32-1472. In these settings, the Legislature recognized that it is necessary to incentivize

providers to offer life-saving care with limited resources in high pressure circumstances where the standard is not always certain. A finding of unconstitutionality will incentivize providers to decline providing care in these situations because of the increased risk of liability. This would have far-reaching consequences as many Arizonans do not have adequate access to care and are likely to interface with the healthcare system only when they are experiencing a healthcare emergency.[5]

Section 12-564 provides qualified immunity to providers-in-training who are learning or practicing under the supervision of a licensed provider. This law offers necessary flexibility to providers-in-training acting in good faith in learning environments. A finding of unconstitutionality will discourage prospective medical professionals from entering the field or participating in particular training opportunities for fear of undue liability.

The fate of A.R.S. § 12-516 and these related statutes do not only impact those subject to the laws, but all Arizonans. Due to fear of undue liability, abolition of these qualified immunity statutes will make it more difficult for health systems to fill crucial healthcare roles. Because healthcare accounts

---

[5] https://www.census.gov/library/stories/2022/01/who-makes-more-preventable-visits-to-emergency-rooms.html.

for the largest job creator in Arizona, directly employing over 400,000 Arizonans, this decision is likely to have an impact on Arizona's economy.[6] Additionally, a dearth of medical professionals will decrease the quality of care available to Arizonans on an everyday basis, or in a future pandemic.

* * *

Abolition of justified qualified immunity statutes will cause a parade of horribles for Arizona and will have far reaching impact on all citizens. This legal question is definitely one of statewide importance.

II. A.R.S § 12-516 Does Not Violate the Anti-Abrogation Clause.

The Court should accept review because the court of appeals erred in its anti-abrogation clause analysis. Arizona's anti-abrogation clause states: "The right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation . . . ." Ariz. Const. art. XVIII, § 6.

While this Court very recently explained that the "anti-abrogation clause only prohibits abrogation of *rights of action* that existed at statehood or that are based in rights of action existing at statehood," *Torres v. JAI Dining*

---

[6] https://commonsenseinstituteaz.org/the-economic-impact-of-arizonas-health-care-sector/.

Servs. (Phoenix), Inc., 536 P.3d 790, 794 ¶ 13 (2023) (emphasis added), it appears that the court of appeals' opinion incorrectly conflates *rights* of action, on the one hand, with *causes* of action, *claims* of action, and individual theories of liability on the other hand. *Compare Roebuck*, 536 P.3d at 294–95 ¶¶ 18, 20 (acknowledging that the anti-abrogation clause applies to "*right[s]* of action" which protects a litigant's "right of access to the courts"), *with id.* at 295 ¶ 19 (reasoning that "the legislature may regulate negligence and other common law *causes* of action without offending the anti-abrogation clause"), *id.* ¶ 21 (noting that the superior court concluded that the law "did not abrogate Roebuck's *cause* of action"), *id.* ¶ 22 (reasoning that to "determine whether a statute impermissibly abrogates a *claim* of action [it] must perform a two-part analysis" then using the term "*cause*" of action in part one and "right" in part two), *id.* ¶ 24 (concluding that the challenged law "bars all *claims* for ordinary negligence arising out of the provision of COVID-related medical treatment"), *id.* at 296 ¶ 25 (reasoning that the constitution "does not permit the legislature to wholly extinguish a particular *type of claim* available at common law even if alternative causes of action remain available to injured claimants") (emphases added). This interpretive error should be corrected.

A right of action and a cause of action are distinct. A "right of action" is the right or ability to bring a case to court whereas a cause of action is a set of facts giving rise to one or more bases for suing. *Compare Right of Action*, Black's Law Dictionary (11th ed. 2019) ("The right to bring a specific case to court."), *with Cause of Action*, Black's Law Dictionary (11th ed. 2019) ("A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person."); *see also* 1 Am. Jur. 2d Actions § 34 (2023) (noting that some "authority holds that a cause of action differs from a right of action in that a right of action is the right to enforce a cause of action while a cause of action is a set of facts giving rise to a right of action").

The fact that "right of action" and "cause of action" carry different meanings is supported by the Constitution's use of both terms. *Compare* Ariz. Const. art. XVIII, § 6 (referencing a "right of action"), *with id.* art XIV, § 8 (referencing when a "cause of action" arises). Because it is a "cardinal principle" that courts "give meaning" to terms "so that no word or provision is rendered superfluous," *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019), courts routinely presume that when the "legislature chooses different words within a [legal] scheme," that "those distinctions are meaningful and

evidence an intent to give a different meaning and consequence to the alternate language." *State v. Harm*, 236 Ariz. 402, 407 ¶ 19 (App. 2015).

Anti-abrogation case law, which generally focuses on a claimant's *access* to the courts ("right of action"), rather than a claimant's ability to bring specific legal theories within a cause of action, also supports the idea that these terms carry different meanings. For example, in *Nunez v. Professional Transit Management of Tucson, Inc.*, the Court rejected an argument that eliminating the "highest degree of care" standard in common carrier negligence case in lieu of a generic reasonable person standard did not violate the anti-abrogation clause. 229 Ariz. 117, 121–23 ¶¶ 18–26 (2012). The Court reasoned that the departure from the common law "highest degree of care" standard did not "deprive[] a litigant of access to the court" because applying a traditional or ordinary negligence standard of care still left open a possible path to redress the litigant's injuries. *Id.* ¶¶ 25–26.[7] Indeed, this is

[7] *See also State Farm Ins. Cos. v. Premier Manufactured Sys., Inc.*, 217 Ariz. 222, 229 ¶¶ 34, 37 (2007) (reasoning that "abolition of joint and several liability in strict liability cases does not deprive an injured clamant of the right to bring the action" because recovery is still possible, even if more difficult); *Baker v. Univ. Physicians Healthcare*, 231 Ariz. 379, 388 ¶¶ 34–37 (2013) (reasoning that expert witness statute did not violate anti-abrogation clause because making it more difficult to win the case "does not bar medical malpractice lawsuits"); *City of Tucson v. Fahringer*, 164 Ariz. 599, 603 (1990) (holding that the statute

because a right of action "hinges on the nature of the injury and the defendant." *Torres*, 536 P.3d at 797 ¶ 25.

Here, because negligence and gross negligence differ only in the standard applied to the care and ultimately seek to protect the same injury and interest against the same defendants, they fall under the same right of action and serve as reasonable alternatives. *See* Pet. Review at 10; *Duncan v. Scottsdale Med. Imaging, Ltd.*, 205 Ariz. 306, 313 ¶ 31 (2003) (explaining that rights of actions are separate, and thus, not reasonable alternatives if they do not protect the same redressable "interest"). Eliminating a certain theory of liability such as a higher or lower standard (as was the case in *Nunez* and A.R.S. § 12-516 respectively), even if it makes recovery more difficult, does not necessarily eliminate a litigant's ability to bring a case based on the same facts to redress his injuries if an alternative is available.

To the extent that courts passively used these terms interchangeably in past opinions, this Court should clarify the meaning of "right of action" as different from and broader than the term "cause of action," "claim of

---

eliminating liability for a municipality unconstitutional because it "provides an absolute bar to recovery of damages by a particular category of persons who otherwise could proceed with an action for damages").

action," or an individual theory of liability. *See, e.g.*, *Rubino v. De Fretias*, 638 F. Supp. 182, 183–85 (D. Ariz. 1986) (discussing abrogation of the "common law cause of action for battery"); *Little v. All Phx. S. Comm'ty Mental Health Ctr.*, 186 Ariz. 97 (App. 1999) (discussing cause and right of action interchangeably), *overruled by Avitia v. Crisis Preparation & Recovery Inc.*, 536 P.3d 776 (Ariz. 2023).[8]

III. A.R.S. § 12-516 Is Justified by Important Public Interests.

The Court should also accept review because the court of appeals' constitutional analysis was incomplete. Importantly, although constitutional rights do not disappear during a public-health emergency, "the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulation, as the safety of the general public may demand." *Jacobson,* 197

[8] Even if the Court does not clarify this language, these cases do not compel the Court to affirm the court of appeals opinion. Unlike the battery action in *Rubino* that served different interests than negligence actions, gross and ordinary negligence actions serve to redress the same injuries from the same defendants. *Rubino*, 638 F.Supp. at 183–86 (noting a "fundamental difference" between battery and negligence actions that serve "distinct societal interest[s]"). Not only is *Little* no longer good law, A.R.S. § 12-516 is unlike the statute in *Little*, because that law eliminated *all* negligence actions. *See Little*, 186 Ariz. at 100, 104–05.

U.S. at 29. Thus, under the *Jacobson* standard, a law that implicates a constitutionally secured right (like the right to bring an action under the anti-abrogation clause) during a public-health emergency will be upheld so long as the law has some "real or substantial relation" to the public-health crisis and are not "beyond all question, a plain, palpable invasion of [constitutional] rights." *Id.* at 31; *see also McGhee v. City of Flagstaff*, No. CV-20-08081-PCT-GMS, 2020 WL 2308479, at *5 (D. Ariz. May 8, 2020) ("Assuming . . . EO 2020-33 infringes on a fundamental right, the [] *Jacobson* framework for evaluating state actions in the context of a public health emergency governs the substantive due process analysis.").

In practice, the *Jacobson* standard is very similar to rational basis review, *see M. Rae, Inc. v. Wolf*, 509 F. Supp. 3d 235, 246 (M.D. Pa. 2020), and the court does not have "any judicial power to second-guess the state's policy choices in crafting emergency public health measures." *In re Rutledge*, 956 F.3d at 1018, 1028 (8th Cir. 2020) (citation omitted).

Here, A.R.S. § 12-516 has a substantial relation to a public-health crisis. It is only applicable if the governor has declared "a state of emergency for a public health pandemic" *and* the provider is rendering services "in support of" the same. A.R.S. § 12-516(A). As referenced above, there are compelling

reasons for providing qualified immunity, including incentivizing providers to provide care for novel viruses. Moreover, because there is still a path to recovering for injuries through a gross negligence claim, the law is not "beyond all question" an invasion of a litigant's right to bring a claim.[9]

CONCLUSION

Accordingly, because the court of appeals erred in declaring A.R.S. § 12-516 unconstitutional, and because this error has far-reaching implications of statewide importance, this Court should grant Defendant's petition for review and vacate the court of appeals' opinion.

---

[9] This case differs from the facts in *Arizonans for Second Chances,* because there, the public was trying to force the government to do something not authorized by the constitution *without lawmaking*. 249 Ariz. 396. Here, however, the Legislature has exercised its police power to respond to a public-health crisis. Since statehood, this Court has recognized that the Legislature can exercise its police powers during a public-health emergency in a manner that weighs on constitutional rights, if those laws are justified and temporally limited. *See generally Globe Sch. Dist. No. 1 v. Bd. of Health of City of Globe*, 20 Ariz. 208 (1919). *See also* Ariz. Att'y Gen. Op. I21-001 (2021) ("To strike the proper balance in protecting the public while respecting the rule of law, the democratic process must be utilized during times of crisis, including the current pandemic." (*citing* Ariz. Const. art. II, § 1; *id.* art. III)).

RESPECTFULLY SUBMITTED this 19th day of December, 2023.

SNELL & WILMER L.L.P.

By: */s/ Brett W. Johnson*

Brett W. Johnson (#021527)
Tracy A. Olson (#034616)
Claudia E. Stedman (#036387)
One East Washington Street
Suite 2700
Phoenix, Arizona 85004
Telephone: 602.382.6000
Facsimile: 602.382.6070
Attorneys for Amicus Curiae *Health Systems Alliance of Arizona*