SUPREME COURT OF ARIZONA

ARIZONA FOR ABORTION ACCESS,	)	Arizona Supreme Court
	)	No. CV-24-0167-AP/EL
Plaintiff/Appellee,	)	
	)	Maricopa County
v.	)	Superior Court
	)	No. CV2024-017968
BEN TOMA, et al.,	)	
	)	
Defendants/Appellants.	)	
	)	**FILED 08/14/2024**

DECISION ORDER

The Court has considered the briefs of the parties and *amicus curiae* and the record in this matter.[1]

Initially, though Defendants/Appellants (Legislative Republican members of the Legislative Council) ("Appellants") filed this matter as an expedited election appeal under ARCAP 10, the Court accepts jurisdiction as a special action because there is no statutory basis to treat this matter as an election appeal, despite that it perhaps falls under ARCAP 10(d)(1). *See* ARCAP 10, Comment 1; *Tobin v. Rea*, 231 Ariz. 189, 193 ¶ 8 (2013) (citing Ariz. R.P. Spec. Act. 1(a), 4(a), 7(b)); *see also Ariz. Legislative Council v. Howe*, 192 Ariz. 378, 382 ¶ 10 (1998).

Therefore,

IT IS ORDERED that the Court accepts special action jurisdiction to decide this matter.

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[1] Justice Clint Bolick has recused himself from this case. Pursuant to article 6, section 3 of the Arizona Constitution, Justice John Pelander (Retired) of the Arizona Supreme Court was designated to sit on this matter until it is finally determined.

Pursuant to A.R.S. § 19-124(C), the Legislative Council must write an "impartial analysis" of each initiative measure that will appear on the general election ballot for inclusion in the publicity pamphlet the Secretary of State sends to registered voters before the election. Under § 19-124(C), the analysis may also "contain background information, including the effect of the measure on existing law."

The proponents of the Arizona Abortion Access Act ("Act"), Initiative I-05-2024 ("Initiative"), Arizona for Abortion Access ("Appellee") challenged the impartiality of the Legislative Council's analysis ("Analysis") in superior court. Specifically, Appellee argues that the Council's use of the phrase "unborn human being" — which is the specific phrase used in existing law, A.R.S. § 36-2322 — violates A.R.S. § 19-124(C)'s impartiality requirement. The superior court agreed.

We conclude that the Analysis provides the information required by A.R.S. § 19-124(C) and "substantially complies" with the statute's impartiality requirement. *See Tobin*, 231 Ariz. at 193 ¶ 11; *Howe*, 192 Ariz. at 384 ¶ 22.

Therefore,

We hold that Appellants have shown that the superior court erred in determining that the Council's Analysis of the Initiative violates A.R.S. § 19-124(C)'s impartiality requirement.

Based on the foregoing,

IT IS ORDERED granting relief on the petition for special action and reversing the superior court's ruling that the Council's use of the phrase "unborn human being" violates A.R.S. § 19-124(C)'s impartiality requirement. The permanent injunction and writ of mandamus granted by the superior court are vacated and the Secretary of State is authorized to prepare the publicity pamphlet.

Chief Justice Ann A. Scott Timmer and Justice James P. Beene dissent. They would affirm the superior court's ruling.

An opinion more fully explaining this decision order will issue in due course.

DATED this 14th day of August 2024.

/s/
JOHN R. LOPEZ IV
Vice Chief Justice

TO:
D. Andrew Gaona
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Andrew Fox
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Kory A. Langhofer
Thomas J. Basile
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