**In the Circuit Court of Pulaski County, Arkansas**
**Twelfth Division**

Emily Waldorf; Theresa Van; Chelsea Stovall; Allison Howland; and Chad B. Taylor, M.D., on behalf of himself and his patients,

*Plaintiffs,*

v.

No. 60cv-26-1539

State of Arkansas; Sarah Huckabee Sanders, in her official capacity as Governor of the State of Arkansas; Tim Griffin, in his official capacity as Attorney General of Arkansas; Brandon Carter, in his official capacity as Prosecuting Attorney of Washington and Madison Counties; Daniel Shue, in his official capacity as Prosecuting Attorney of Sebastian County; Will Jones, in his official capacity as Prosecuting Attorney of Pulaski County; Edward "Ward" Gardner, M.D., in his official capacity as Chairman of the Arkansas State Medical Board; and Don R. Phillips, M.D., Christopher D. Davis, P.A., Brad A. Thomas, M.D., Elizabeth Anderson, Michael J. Birrer, M.D., Sarah C. Bone, M.D., Mark Camp, Rodney Griffin, M.D., Kenneth B. Jones, M.D., C. Wesley Kluck Jr., M.D., Brian L. McGee, M.D., Timothy C. Pade, M.D., and Joshua E. Roller, M.D., in their official capacities as officers and members of the Arkansas State Medical Board,

*Defendants.*

# Brief in Support of Defendants' Motion to Dismiss

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## Introduction

Arkansans believe in the inherent value of every human life, born and unborn. That is why, from statehood in 1836 to today, Arkansas has strived to protect unborn children. After *Roe v. Wade* impeded States' ability to enforce their laws protecting human life, Arkansans reaffirmed their commitment to protecting life by enshrining in our Constitution that "the policy of Arkansas is to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution." Ark. Const. amend. 68, § 2. Since then, the General Assembly has repeatedly heeded that call, especially after the overruling of *Roe*, recognizing the worth of all human life—no matter the developmental stage—and the importance of protecting pregnant mothers and their unborn children.

In 2025 alone, the General Assembly enacted a host of laws focused on maternal health: the Healthy Moms, Healthy Babies Act;[1] an Act to Create the Maternal Outcomes Management System;[2] an Act to Mandate Coverage for Breastfeeding Lactation Consultant Services;[3] an Act to Amend the Full Practice Authority of a Certified Nurse Midwife to Allow Admitting Privileges;[4] and an Act to Mandate Coverage for Delivery of a Newborn in a Licensed Birthing Center.[5] And when it comes to protecting unborn children, Arkansas has a long history of enacting laws that limit aborting them. Indeed, the laws that Plaintiffs challenge in this lawsuit are two criminal laws that are rooted in the common law and echo statutes dating back to the 1830s.

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[1] Ark. Act 140 of 2025 (implementing a host of coverage and reimbursement incentives for pregnant mothers who are covered by Medicaid).

[2] Ark. Act 868 of 2025 ("establish[ing] a comprehensive statewide system of care addressing maternal health by organizing resources, educating providers and patients, incentivizing best practices, and collecting critical data to drive improvement").

[3] Ark. Act 627 of 2025.

[4] Ark. Act 138 of 2025.

[5] Ark. Act 866 of 2025.

Plaintiffs allege that Arkansas's criminal laws prohibiting abortion violate the Arkansas Constitution in three ways. First, that the laws violate physicians' due process rights because they are unconstitutionally vague under Article 2, § 8. Second, that the laws violate pregnant women's right to abort their children, which they allege emanates from Article 2, § 2's affirmation that Arkansans "have certain inherent and inalienable rights," including "enjoying and defending life and liberty." Third, that the laws discriminate against pregnant women's rights to equal protection under Article 2, §§ 2, 3, and 18. But Arkansas's laws are a constitutional exercise of its authority to preserve and protect life and are consistent with the Constitution's mandate "to protect the life of every unborn child," so Plaintiffs have failed to allege an unconstitutional state action to overcome Defendants' immunity or to survive a Rule 12(b)(6) motion to dismiss. Accordingly, the entire case should be dismissed for sovereign immunity and for failure to state a claim. What's more, this case has additional threshold problems, including that this Court lacks jurisdiction over it because Plaintiffs assert only facial constitutional challenges. This Court should therefore dismiss this case.

## Background

Through a citizen ballot initiative, Arkansans amended the Arkansas Constitution to reaffirm that "protect[ing] the life of every unborn child from conception until birth" is "[t]he policy of Arkansas." Ark. Const. amend. 68, § 2. And the General Assembly has passed a variety of laws to "protect the lives of unborn children." Ark. Code Ann. §§ 5-61-302(a)(8), (b), -402(a)(8), (b). Yet the General Assembly recognized that there are "tragic case[s]" when a pregnancy does not go as planned and drafted provisions to "ensure[] that physicians and medical facilities will continue to administer appropriate emergency medical treatment to save the lives of pregnant women in medical emergencies." Ark. Act 387 of 2025, § 1(a)(2)(A), (4). Accordingly,

to balance the interests of both the pregnant mother and her unborn child (or children), Arkansas's prohibitions on abortion include an exception to save the life of the mother. The laws that Plaintiffs challenge here (the "Challenged Laws") specifically provide that "[a] person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency." Ark. Code Ann. §§ 5-61-304(a), -404(a).

***Defining "abortion."*** Under the Challenged Laws, abortion is defined as acting "with the purpose to terminate the pregnancy" and "with knowledge that the termination … will with reasonable likelihood cause the death of the unborn child." *Id.* §§ 5-61-303(1)(A), -403(1)(A). The definition's "purpose" and "knowledge" requirements means that inadvertent, non-purposeful actions that result in the death of an unborn child and actions that are taken for another purpose (such as treating a pregnant woman's illness) that create risks to the unborn child are excluded from the statutory definition of abortion, as corroborated by other provisions. *See id.* §§ 5-61-304(c)(2), (d); -404(c)(2), (d). The Laws also specify that acts "performed with the purpose to" "[s]ave the life or preserve the health of the unborn child," to "[r]emove a dead unborn child," and to "[r]emove an ectopic pregnancy" are not abortions. *Id.* §§ 5-61-303(1)(B), -403(1)(B).

***Defining "medical emergency."*** The Challenged Laws also define what constitutes a "medical emergency" that allows a physician to perform an abortion (*i.e.*, act to purposefully terminate a pregnancy knowing that termination will likely cause the unborn child to die):

> a condition which, in reasonable medical judgment, complicates the medical condition of a pregnant woman to such an extent that termination of a pregnancy is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

*Id.* §§ 5-61-303(3)(A), -403(3)(A). "A psychological or emotional condition" is not a medical emergency that allows a physician to abort a child, nor are "[c]onditions for which treatment is

available that can, in reasonable medical judgment, be expected to preserve or sustain the life of the pregnant woman without ending the pregnancy." *Id.* §§ 5-61-303(3)(B)(i)-(ii), -403(3)(B)(i)-(ii). A diagnosis based only on a pregnant woman's claim or on "a presumption that the pregnant woman will engage in conduct that could result in her death" or in "substantial and irreversible physical impairment of a major bodily function" is also not a medical emergency. *Id.* §§ 5-61-303(3)(B)(iii), -403(3)(B)(iii).

Plaintiffs—four women who were pregnant, and a doctor—allege that the Challenged Laws are facially unconstitutional under the Arkansas Constitution in three counts. First, they allege that the Challenged Laws "violate physicians' right to due process" because the "medical emergency exception" is unconstitutionally vague under Article 2, § 8 (Due Process Clause). Compl. ¶¶ 218-21. Second, they allege that the Challenged Laws violate pregnant women's rights to life, liberty, and the pursuit of happiness under Article 2, § 2 (Life and Liberty Provision), because accessing abortions is necessary to the exercise of those rights. *Id.* ¶¶ 222–24. Third and finally, they claim the Challenged Laws discriminate against pregnant women and violate equal protection under Article 2, §§ 2, 3, and 18. *Id.* ¶¶ 229–31 (Equal Protection Provisions). As explained below, because every count fails and Plaintiffs' suit has threshold problems, the case should be dismissed for lack of jurisdiction and for failure to state a claim.

## LEGAL STANDARD

When a court lacks subject-matter jurisdiction, a party may raise the jurisdictional issue by motion. Ark. R. Civ. P. 12(b)(1). And when it is determined "that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Ark. R. Civ. P. 12(h)(3).

Causes of action consist of both (1) "a body of substantive law" and (2) "a set of facts which, by virtue of that body of law, entitle the pleader to relief." 2 Ark. Civ. Prac. & Pro. § 14:7

(5th ed.). A Rule 12(b)(6) motion "can be aimed at either component." *Id.* If there are no factual questions, courts determine whether the movant is "entitled to judgment as a matter of law." *Jackson v. Nationstar Mortg. LLC*, 2016 Ark. App. 473, at 5, 505 S.W.3d 713, 717. If the Rule 12(b)(6) motion makes a factual challenge, the court must review the complaint for whether it states facts, related "to [every] element of the cause of action," *Perrodin v. Rooker*, 322 Ark. 117, 120, 908 S.W.2d 85, 87 (1995), "not mere conclusions, in order to entitle the pleader to relief," *Blackburn v. Lonoke Cnty. Bd. of Election Comm'rs*, 2022 Ark. 176, 5, 652 S.W.3d 574, 579 (citing Ark. R. Civ. P. 8(a)(1)). Courts "treat only the facts alleged in the complaint as true," not plaintiffs' "theories, speculation, or statutory interpretation," and "presume[]" statutes are constitutional, "resolv[ing] all doubts in favor of constitutionality." *Id.* at 5–6, 652 S.W.3d at 579.

Since they are "challenging a statute's constitutionality," Plaintiffs have "the burden of proving that it is unconstitutional." *Id.* at 6, 652 S.W.3d at 579. They can do so in an as-applied challenge or a facial challenge, *id.* (citing *Ward v. Hutchinson*, 2018 Ark. 313, at 10, 558 S.W.3d 856, 862), which requires showing "that no set of circumstances exists under which the statute would be valid," *Ward*, 2018 Ark. 313, at 10, 558 S.W.3d at 862.

## Argument

This Court should dismiss the complaint under both Rule 12(b)(1) and Rule 12(b)(6). This case fails at the outset because this Court lacks jurisdiction to hear these facial constitutional challenges under Act 975 of 2025. Even ignoring that threshold problem, Plaintiffs have another—they cannot overcome Defendants' sovereign immunity. Some Defendants are entitled to dismissal on sovereign-immunity grounds because they do not enforce the Challenged Laws, and all Defendants are entitled to dismissal on sovereign-immunity grounds because Plaintiffs fail to establish an unconstitutional state action under any of their theories sufficient to overcome

sovereign immunity. Because Plaintiffs have failed to allege facts showing they are entitled to relief, their claims should be dismissed under Rule 12(b)(6) too. And at the very least, the Court should dismiss Plaintiffs' claims that are based on the rights of others.

## I. This Court Lacks Subject-Matter Jurisdiction to Hear Plaintiffs' Facial Constitutional Challenges.

Because Plaintiffs assert only facial challenges to the Challenged Laws, *see* Compl. ¶ 209 ("facial"); *id.* ¶¶ 215, 217 ("facially"); *id.* ¶¶ 221, 228, 235 ("struck down in their entirety"), the Court lacks subject-matter jurisdiction and must dismiss the complaint. Ark. R. Civ. P. 12(b)(1), (h)(3).

Act 975 of 2025 provides the Arkansas Court of Appeals with "exclusive original jurisdiction over … facial constitutional challenge[s]" raised in a "party's initial or amended pleading." Act 975 of 2025, §§ 2, 5. Plaintiffs' complaint therefore should have been filed in the Arkansas Court of Appeals, not this Court, because it asserts facial constitutional challenges. Indeed, circuit courts are already dismissing complaints for lack of jurisdiction when plaintiffs fail to comply with Act 975. *See* Order, *Norris v. Independence County*, No. 32CV-26-55 (Independence Cnty. Cir. Ct. Feb. 18, 2026).[6] This Court should follow suit and dismiss the complaint for lack of subject-matter jurisdiction under Act 975.

## II. This Lawsuit Should Be Dismissed Because Defendants Are Entitled to Sovereign Immunity.

In any event, the Court should also dismiss the suit because Defendants are entitled to sovereign immunity.

[6] The dismissal was appealed, and the issue of Act 975's constitutionality is now before the Arkansas Supreme Court, which set an expedited briefing schedule. *See* Formal Orders, *Norris v. Independence County*, No. CV-26-116 (Ark. S. Ct. Feb. 27, 2026).

The Arkansas Constitution expressly protects the State from suit, providing that "[t]he State of Arkansas shall never be made a defendant in any of her courts." Ark. Const. art. 5, § 20. And "[t]hat provision bars actions both against the State itself and 'against a state official in his or her official capacity.'" *Land v. BAS, LLC*, 2025 Ark. 107, at 4–5, 713 S.W.3d 1, 6. Even if that sovereign-immunity bar "is not absolute," the judicially recognized exception "is narrow." *Id.* *But see Thurston v. League of Women Voters of Ark.*, 2022 Ark. 32, at 16–24, 639 S.W.3d 319, 327–31 (Womack, J., dissenting) (denying the existence of the exception) ("*LWVAR I*"). The exception applies only when plaintiffs seek "declaratory or injunctive relief and alleg[e] an illegal, unconstitutional, or ultra vires act" and only when they can satisfy Arkansas's "fact-pleading requirements." *Brizendine v. Dep't of Hum. Servs.*, 2025 Ark. 34, at 3, 708 S.W.3d 351, 353. Accordingly, if a named defendant is not responsible for enforcing the allegedly unconstitutional law and thus cannot act illegally under it, it necessarily follows that a plaintiff cannot overcome that defendant's immunity. *See LWVAR I*, 2022 Ark. 32, at 9, 639 S.W.3d at 323 (Wood, J., concurring) (explaining that immunity does not apply to bar injunctive actions against state officials who act illegally because such actions "are not truly against the State, but against rogue State officials whom the courts can enjoin").

Because Plaintiffs name as Defendants state officials who do not enforce the Challenged Laws, Plaintiffs have not shown the "narrow" exception to sovereign immunity applies as to that set of Defendants. *Land*, 2025 Ark. 107, at 4–5, 713 S.W.3d at 6. What's more, Plaintiffs cannot overcome *any* Defendant's sovereign immunity because they have failed to allege "an illegal or unconstitutional act that would overcome sovereign immunity." *Id.* at 5, 713 S.W.3d at 6.

### A. Sovereign immunity bars Plaintiffs' claims against the State.

Despite the Arkansas Constitution's express prohibition on making the State a defendant in her own courts, Plaintiffs have named the State of Arkansas a Defendant. Plaintiffs' claims against the State should therefore be dismissed on sovereign-immunity grounds.

Although there does not appear to be a sovereign-immunity case examining the sovereign-immunity issue when the State itself is the named party, the Constitution's plain text is clear: "The State of Arkansas shall never be made defendant in any of her courts." Ark. Const. art 5, § 20.[7] To be sure, the Supreme Court has recognized a narrow exception to this immunity as noted above; however, like the *Ex parte Young* exception under federal immunity law, that narrow exception has been premised on the fiction that an action "to enjoin a State official from taking unlawful action does not implicate State sovereign immunity" because that official is acting "without the authority of … the state in its sovereign … capacity." *LWVAR I*, 2022 Ark. 32, at 9, 639 S.W.3d at 323 (Wood, J., concurring) (quoting *Ex parte Young*, 209 U.S. 123, 159–60 (1908)) (ellipses in original). *But see Land*, 2025 Ark. 107, at 20, 713 S.W.3d at 14 (Womack, J., dissenting) ("The past reliance on *Ex Parte Young* as some shield for this court's analysis is misplaced."). This fiction collapses "when the State itself is named as the defendant," *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101–02 (1984), or when the State is the real party in interest, such "as when the judgment sought would expend itself on the public treasury or domain, or interfere with public administration," *Va. Off. for Prot. & Adv. v. Stewart*, 563 U.S. 247, 255 (2011) (citation omitted).

[7] The Supreme Court has declined to recognize sovereign immunity in at least one case where one of the named defendants was the State; however, other state officials and entities were also named as defendants, and the Supreme Court did not specifically analyze whether the State itself was a proper defendant in that case. *See State v. Good Day Farm Ark., LLC*, 2025 Ark. 207, at 4 n.2, 725 S.W.3d 1, 4 n.2.

Plaintiffs accordingly erred by naming the State as a Defendant. Because the Arkansas Constitution expressly precludes suits against the State in state courts, Ark. Const. art 5, § 20, and Plaintiffs cannot invoke the judicially recognized sovereign-immunity exception that exists for state officials, this Court should dismiss Plaintiffs' claims against the State.

### B. Plaintiffs cannot overcome sovereign immunity for their claims against Defendants who do not enforce the Challenged Laws.

Although Plaintiffs name the Governor, the Attorney General, and Arkansas Medical Board members as Defendants, Plaintiffs have not shown that those Defendants have a sufficient connection to the enforcement of the Challenged Laws. Plaintiffs have thus failed to overcome their sovereign immunity by alleging that any of them are taking unconstitutional actions related to the Challenged Laws.

As explained, to the extent that Article 5, § 20 of the Arkansas Constitution allows for suits against state officials when they act under color of an unconstitutional law, that exception is similar to *Ex parte Young* and relies on the fiction that officers acting unlawfully are "stripped of [their] official or representative character" and thus lack immunity. *LWVAR I*, 2022 Ark. 32, at 9, 639 S.W.3d at 323 (Wood, J., concurring) (quoting *Ex parte Young*, 209 U.S. at 159–60). That exception can therefore apply only where a plaintiff seeks prospective relief against an officer that has "some connection with the enforcement of the act." *Ex parte Young*, 209 U.S. at 157. "For a sufficient connection to the enforcement of the challenged law, an officer must have '*methods* of enforcement' for the challenged law at its disposal." *Bio Gen LLC v. Sanders*, 142 F.4th 591, 604 (8th Cir. 2025) (citation omitted). Indeed, "[a]n injunction is an empty vessel if the enjoined official never had the power to enforce the law in the first place," *State v. Zurawski*, 690 S.W.3d 644, 659 (Tex. 2024), and sovereign immunity cannot be overcome without an allegation of an "illegal, unconstitutional, or

ultra vires act." *Brizendine*, 2025 Ark. 34, at 3, 708 S.W.3d at 353. Because state defendants cannot act illegally if they do not enforce the challenged law, plaintiffs fail to overcome immunity when they fail to "identify a method of enforcement that the [defendants] ha[ve] the authority to wield." *Bio Gen*, 142 F.4th at 604.

That is exactly the case here. Plaintiffs have failed to identify sufficient enforcement authority that the Governor, Attorney General, or Medical Board members have regarding the Challenged Laws because they are criminal laws, and "only the prosecutor can file a criminal information." *Simpson v. State*, 310 Ark. 493, 497, 837 S.W.2d 475, 477 (1992) (citing Ark. Const. amend. 21, § 1).

***Governor Sanders.*** Plaintiffs allege that Governor Sanders "is the top executive of the State responsible for approving all Arkansas legislation and managing the executive branch of the State government" and "has created and advanced a staunch anti-abortion policy for the State of Arkansas and disclaimed any exceptions." Compl. ¶¶ 122, 123. These conclusory allegations about the Governor's constitutional authority to sign a bill and her general executive authority do not show Governor Sanders has enforcement authority that she can wield to enforce the Challenged Laws or that any injunction against her related to the Challenged Laws would remedy Plaintiffs' alleged injury. *See Digital Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 960 (8th Cir. 2015) (rejecting argument that Governor Sanders's powers "to enforce the Arkansas Constitution and statutes" generally "permit suit under *Ex parte Young*"); *Bio Gen*, 142 F.4th at 605 (explaining that the governor's "general take care responsibility is not a sufficiently specific method of enforcement").

***Attorney General Griffin.*** Plaintiffs allege that "[t]he Arkansas Attorney General must maintain and defend the interests of the State before the Arkansas Supreme Court," can "assist the Arkansas State Medical Board in investigating and revoking physicians' licenses based on 'unprofessional conduct,'" "has sent cease and desist letters to at least six out-of-state organizations that provide abortion and/or information about abortion," and "is the state's chief … law enforcement officer." Compl. ¶¶ 125, 127. As with Governor Sanders, Plaintiffs have failed to sufficiently allege Attorney General Griffin has authority to enforce the Challenged Laws. *See Digital Recognition*, 803 F.3d at 964 ("[T]he attorney general's role in defending an action brought by a private litigant under the Act does not establish that the attorney general has some connection with *enforcement* of the Act against [the plaintiff]"); *see also Bio Gen*, 142 F.4th at 605–06 (holding that the attorney general's implementation by certification of a law did not equate to enforcement of that law against "noncompliant persons"). Notably, the cease-and-desist letters to which Plaintiffs refer do not reference the laws Plaintiffs challenge, do not threaten criminal prosecution on behalf of the Attorney General, and center around the Attorney General's role as "the state's chief consumer advocate" and his responsibility to seek *civil* penalties from violators under the Deceptive Trade Practices Act.

***Arkansas Medical Board Members.*** Plaintiffs allege that "[t]he State Medical Board is responsible for licensing medical professionals under Arkansas law" and that "[t]he Medical Board and its members are responsible for imposing licensing penalties under Arkansas's abortion bans and imposing licensing penalties for 'unprofessional conduct,' which includes performing abortions." Compl. ¶ 131 (citing Ark Code Ann. §§ 17-95-409, 17-95-303). But the members of the Arkansas Medical Board have no authority to initiate prosecutions under the Challenged Laws.

The authority Plaintiffs cite arises under entirely separate laws, and any connection Board members may have to the Challenged Laws is contingent on the actions of several third parties, including a prosecutor's decision to prosecute and a jury's decision to convict. Plaintiffs have not identified any authority that allows Board members to enforce the Challenged Laws qua the Challenged Laws, and any connection they have to the Challenged Laws via their ability to enforce licensing penalties is too attenuated to overcome their entitlement to sovereign immunity. *Cf. Digital Recognition*, 803 F.3d at 963 (concluding that even if acts violating the challenged statute were "also actionable as public nuisances," the Attorney General still lacked a sufficient connection to the enforcement of the challenged act).

Therefore, the Governor, Attorney General, and Medical Board members should be dismissed from the lawsuit on sovereign-immunity grounds because Plaintiffs have not identified authority that they possess to enforce the Challenged Laws.

### C. Defendants retain their sovereign immunity because Plaintiffs do not allege facts showing an unconstitutional action.

In any event, Plaintiffs cannot overcome the sovereign immunity of any Defendant—including Prosecutor Defendants—because they fail to "state sufficient facts for an exception to sovereign immunity to apply." *Lowe v. McCastlain*, 2026 Ark. 34, at 2. Plaintiffs claim that Defendants "are not entitled to sovereign immunity" because they "have committed *ultra vires*, unconstitutional, or illegal acts under the Arkansas Constitution." Compl. ¶ 8. But an allegation of unconstitutionality is not enough. They must "comply with [Arkansas's] fact-pleading requirements" and establish "an illegal, unconstitutional, or ultra vires act." *Lowe*, 2026 Ark. 34, at 2; *see, e.g.*, *Ark. Dev. Fin. Auth. v. Wiley*, 2020 Ark. 395, at 4–5, 611 S.W.3d 493, 498 ("A plaintiff seeking to surmount sovereign immunity under this exception is not exempt from complying with

our fact-pleading requirements," and "must provide facts to state a claim based on illegal, unconstitutional, or ultra vires state action").

Here, Plaintiffs have not alleged "facts that, if proven, would demonstrate a legal violation," *Rutledge v. Remmel*, 2022 Ark. 86, at 5, 643 S.W.3d 5, 8, so they have failed to overcome Defendants' immunity by stating a viable constitutional claim. *See, e.g.*, *Williams v. McCoy*, 2018 Ark. 17, at 4, 535 S.W.3d 266, 269 (concluding "the exception to the sovereign-immunity doctrine for unconstitutional acts is not applicable" where the complaint did not contain "facts that, if proven, would demonstrate a due process violation"); 2 Ark. Civ. Prac. & Pro. § 14:7 (5th ed.) (explaining that causes of action consist of both (1) "a body of substantive law" and (2) "a set of facts which, by virtue of that body of law, entitle the pleader to relief" and a Rule 12(b)(6) motion "can be aimed at either component"). Because each of Plaintiffs' three constitutional claims fail as a matter of law and they have failed to plead facts on which relief can be granted, *see infra* III-V, Defendants retain their immunity. Therefore, this Court should dismiss this entire suit on sovereign-immunity grounds.

## III. Plaintiffs Have Failed to State a Due Process Claim Based on Vagueness.

This Court should dismiss Plaintiffs' first count alleging the Challenged Laws are unconstitutionally vague under Article 2, § 8 of the Arkansas Constitution. Plaintiffs allege that the "medical emergency exception to Arkansas's abortion bans" is "unconstitutionally vague" and "violate[s] physicians' right to due process" as a facial matter. Compl. ¶ 219; *see id.* ¶ 221 (claiming the laws are "invalid and must be struck down in their entirety"). But as explained, Plaintiffs' decision to bring a facial challenge to a statute's constitutionality means they bear "the burden of proving that it is unconstitutional," *Blackburn*, 2022 Ark. 176, at 6, 652 S.W.3d at 579, and of

showing "that no set of circumstances exists under which the statute would be valid," *Ward*, 2018 Ark. 313, at 10, 558 S.W.3d at 862. That means Plaintiffs must show that what they term the medical emergency exception is vague in every single situation, which their Complaint fails to do. Plaintiffs have not and cannot state facts showing that the Challenged Laws are unconstitutionally vague, and their due process claim fails as a matter of law.

A law may be vague for either of two reasons: (1) "it lacks ascertainable standards of guilt such that persons of average intelligence must necessarily guess at its meaning and differ as to its application" or (2) "it is so broad that it becomes susceptible to discriminatory enforcement." *Jones v. State*, 333 Ark. 208, 211, 969 S.W.2d 618, 620 (1998) (quoting *Dougan v. State*, 322 Ark. 384, 388, 912 S.W.2d 400, 402 (1995)); *cf. United States v. Williams*, 553 U.S. 285, 304 (2008) (explaining a statute must "provide a person of ordinary intelligence fair notice of what is prohibited" and not be "so standardless that it authorizes or encourages seriously discriminatory enforcement"). Yet neither "meticulous specificity [n]or great exactitude" is required of a statute because the General Assembly is allowed "flexibility" in crafting laws. *Booker v. State*, 335 Ark. 316, 326, 984 S.W.2d 16, 21 (1998). When regulating "business activity," "a less stringent analysis is applied and more flexibility is allowed," while an "infringe[ment] upon a fundamental right" leads to "a more stringent vagueness test." *Abraham v. Beck*, 2015 Ark. 80, at 13, 456 S.W.3d 744, 753.[8] In either case, laws are not required to "particularize[]" every "kind[] of conduct" that "fall[s] within [their] reach." *Booker*, 335 Ark. at 326, 984 S.W.2d at 21.

[8] The Arkansas Supreme Court has declined to decide which vagueness standard applies when professional regulations are also present in the criminal code. *See Landmark Novelties, Inc. v. Ark. State Bd. of Pharm.*, 2010 Ark. 40, at 8, 358 S.W.3d 890, 896.

In Arkansas, "[a] person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency." Ark. Code Ann. §§ 5-61-304(a), -404(a). Plaintiffs challenge these laws and, what they term, "the medical emergency exception to Arkansas's abortion bans," as unconstitutionally vague. Compl. ¶ 219. That challenge fails for three independent reasons.

First, instead of explaining why "the medical emergency exception" is vague, Plaintiffs mostly repeat their legal conclusion that the term is vague. *See id.* ¶¶ 207–13. Even construing all allegations in the light most favorable to them, Plaintiffs conclusorily assert only that, "in practice, no one knows what [the term 'medical emergency'] means," *id.* ¶ 1, and allege there is uncertainty regarding whether the medical emergency exception would apply in certain cases, ¶¶ 112–16. But even in those cases, Plaintiffs fail to explain why the alleged difficulty in determining how the Challenged Laws apply in a few cases makes them unconstitutionally vague. After all, "close cases" do not "render[ ] a statute vague." *Williams*, 553 U.S. at 205. To the contrary, "[c]lose cases can be imagined under virtually any statute." *Id.* In any event, Plaintiffs fail to provide enough specificity to even show there is uncertainty about what the Challenged Laws prohibit in those purported examples of close cases.

For example, Plaintiffs allege that one patient "had previable [preterm premature rupture of membranes (PPROM)] and placenta previa" and that Dr. Taylor told her that "it was unclear if he could intervene" due to "disagreement over whether her case qualified as a medical emergency." *Id.* ¶ 113. But Plaintiffs do not explain what that disagreement is. They do not explain why some unknown contingent believes those conditions are a medical emergency that would allow a physician to terminate a pregnancy knowing it would cause the death of the child, while another

unknown contingent believes those conditions would not qualify as such a medical emergency. And they do not explain why (apparently) neither contingent is exercising "reasonable medical judgment." Ark. Code Ann. §§ 5-61-303(3)(A), (4), -403(3)(A), (4). Repeating a legal conclusion without "specifically" alleging facts that lead to that conclusion fails to meet Arkansas's "fact-pleading" requirements. *Worden v. Kirchner*, 2013 Ark. 509, at 7; 431 S.W.3d 243, 248 (citing Ark. R. Civ. P. 8(a)(1)). Plaintiffs' non-specificity is reason enough to dismiss this claim.

Second, even if the generic assertions of uncertainty and one unexplained disagreement about PPROM and placenta previa were sufficient to satisfy the fact-pleading requirement, Plaintiffs' claim still fails. That is because they have "the burden of proving" that the Challenged Laws are "unconstitutional," and "establish[ing] that 'no set of circumstances exists under which the [challenged law] would be valid.'" *Abraham*, 2015 Ark. 80, at 13, 456 S.W.3d at 753 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). And Plaintiffs' identification of a handful of cases where they allege the Challenged Laws' application is vague does not satisfy their burden.

Even worse for Plaintiffs, the complaint demonstrates the Challenged Laws are not facially unconstitutionally vague because it concedes that the Challenged Laws' applications in some circumstances are clear. Plaintiffs correctly acknowledge that the Challenged Laws do not prohibit the termination of ectopic pregnancies, Compl. ¶ 174, *see* Ark. Code Ann. §§ 5-61-303(1)(B)(iii), -403(1)(B)(iii), and admit that there are situations in which Dr. Taylor does "offer abortion[s]" for certain medical conditions, Compl. ¶ 112, presumably in accordance with "reasonable medical judgment," as the Challenged Laws require, Ark. Code Ann. §§ 5-61-303(1)(A), -403(1)(A). Plaintiffs have thus failed to state a valid facial due process claim.

Third, Plaintiffs fail to state a claim because they misunderstand what makes a law unconstitutionally vague. Plaintiffs' vagueness claim hinges on there being "disagreement" in some situations about whether a medical emergency exists. Compl. ¶ 114. But a law is not vague just because "it will sometimes be difficult to determine whether the … fact" exists (*i.e.*, the existence of a medical emergency). *Williams*, 553 U.S. at 306; *see Talbert v. State*, 367 Ark. 262, 272, 239 S.W.3d 504, 513 (2006) (explaining that a law is not "vague only because there could be marginal cases where doubts might arise" (quoting *Booker*, 335 Ark. at 326, 984 S.W.2d at 21–22)). Yet that is all Plaintiffs allege here. And that is all Plaintiffs *can* allege here because, while the "highly fact-specific" nature of complications during pregnancy may increase the difficulty of determining what is a medical emergency in those specific situations, Compl. ¶ 114, the definition of "medical emergency" itself is highly detailed, *see* Ark. Code Ann. §§ 5-61-303(3)(A), -403(3)(A).

On top of that, the definition turns on an objective "reasonable medical judgment" that a medical emergency exists. Ark. Code Ann. §§ 5-61-303(3)(A), -403(3)(A); *see* Ark. Act 387, § 1(a)(2)(A) ("objective standard"). And when a regulation contains a "reasonable person" analysis, *Landmark Novelties*, 2010 Ark. 40, at 8, 358 S.W.3d at 896, it "limit[s]" the scope and "generally saves a statute from unconstitutional vagueness," *id.* at 11, 358 S.W.3d at 897 (quoting *Advance Pharm., Inc. v. United States*, 391 F.3d 377, 398 (2d Cir. 2004)). Indeed, the "reasonable medical judgment" standard is the standard used "under traditional theories of tort law." *Karlin v. Foust*, 188 F.3d 446, 464 (7th Cir. 1999) (upholding the standard against a vagueness challenge); *see Planned Parenthood of Ind. & Ky., Inc. v. Marion Cnty. Prosecutor*, 7 F.4th 594, 601 (7th Cir. 2021) (reaffirming that using "a reasonable medical judgment standard does not render a statute void for vagueness in the abortion-regulation context"); *Zurawski*, 690 S.W.3d at 662 (stating that the term

"reasonable medical judgment" "does not leave the reader to wonder what [it] means" because it is "commonly understood in the medical profession"). Thus, even if Plaintiffs' vagueness claim were to make it this far in the analysis, the "reasonable medical judgment" limitation would put an end to it.

So too would the fact that the Challenged Laws have multiple scienter requirements. *See, e.g.*, *Landmark Novelties*, 2010 Ark. 40, 11, 358 S.W.3d at 897 ("Such a scienter requirement generally saves a statute from unconstitutional vagueness." (citation modified)); *Holder v. Humanitarian L. Project*, 561 U.S. 1, 21 (2010) ("[T]he knowledge requirement of the statute further reduces any potential for vagueness, as we have held with respect to other statutes containing a similar requirement."). The Challenged Laws prohibit only "*purposely* perform[ing] or attempt[ing] to perform an abortion except to save the life of a pregnant women in a medical emergency." Ark. Code Ann. §§ 5-61-304(a), -404(a) (emphasis added). And the definition of abortion likewise bakes in a requirement that a person act purposefully and with knowledge. *See id.* §§ 5-61-303(1)(A), -403(1)(A) ("with the *purpose* to terminate the pregnancy" and "with the *knowledge*" the action "will with reasonable likelihood cause the death of the unborn child" (emphases added)). Plaintiffs have thus failed to state a valid due process claim that enables them to overcome immunity or to survive a motion to dismiss.

## IV. Plaintiffs Have Failed to State a Claim Under the Life and Liberty Provision.

Plaintiffs have likewise failed to state a valid claim under Article 2, § 2 of the Arkansas Constitution (the Life and Liberty Provision). That provision provides that Arkansans have "certain inherent and inalienable rights; amongst which are those of enjoying and defending life and liberty" and "of pursuing their own happiness," Ark. Const. art. 2, § 2, which Plaintiffs seem

to interpret as bestowing the right to an abortion where necessary for Arkansans to "exercis[e]" their right to "the pursuit of their own happiness," Compl. ¶ 224. But Plaintiffs' interpretation is wrong: the Life and Liberty Provision does not protect a right to abort unborn children.

Constitutional rights are generally "enshrined with the scope they were understood to have when the people adopted them" and are interpreted based on "the natural meaning of the text as it would have been understood at the time of [its adoption]." *Taylor v. Ferguson*, 2025 Ark. 180, at 9, 722 S.W.3d 498, 503 (citations omitted) (alteration in original). Courts also have the duty to "harmonize all provisions of the Constitution and amendments thereto and to construe them with the view of a harmonious whole." *Smith v. Cole*, 187 Ark. 471, 475, 61 S.W.2d 55, 57 (1933); *see Chesshir v. Copeland*, 182 Ark. 425, 428, 32 S.W.2d 301, 302 (1930) ("The general rule is that constitutional provisions and amendments thereto must be harmonized where practical."). If harmonization is not possible, "the amendment must prevail." *Carter v. Cain*, 179 Ark. 79, 85, 14 S.W.2d 250, 253 (1929); *see Chesshir*, 182 Ark. at 428, 32 S.W.2d at 302 ("If there is to some extent an inconsistency or repugnancy between a provision of the Constitution and an amendment thereto so that one or the other must yield, the amendment, being the last expression of the sovereign will of the people, will prevail as an implied repeal to the extent of the conflict."). And "where a general term or expression in one part is inconsistent with more specific or particular provisions in another part, the particular provisions will be given effect as clearer and more definite expressions of the drafters' intent." *Ark. Dep't of Fin. & Admin. v. 2600 Holdings, LLC*, 2022 Ark. 140, 5, 646 S.W.3d 99, 102.

When the 1874 Constitution was ratified with the Life and Liberty Provision, Arkansans did not understand its scope to include the right to abortion, which is why Arkansas, like most of the

nation, has a long history of laws prohibiting and restricting abortion. As the Supreme Court recognized in *Dobbs v. Jackson Women's Health Organization*, "an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973" in the United States. 597 U.S. 215, 301 (2022) (citations omitted); *see, e.g.*, *Zurawski*, 690 S.W.3d at 668 ("The history of abortion regulation in Texas demonstrates the Legislature's unmistakable commitment to protecting the lives of pregnant women experiencing life-threatening complications while also valuing and protecting unborn life."). And Arkansas falls neatly into the nationwide history. Arkansas's first abortion-related law was passed in 1837. *See* Central Arkansas Library System, *Encyclopedia of Arkansas*, "Abortion."[9] That criminal law prohibited "administer[ing] … substance[s]" to or "employ[ing] … instruments" on a "woman pregnant with a quick child … with the intent … to destroy such child, and thereby … cause its death, unless … necessary to preserve the life of the mother." *Rev. Stats. of State of Ark. Adopted at the Oct. Sess. of the Gen. Assemb. 1837*, at 240, § 6 (1838).[10] Then, shortly after the adoption of the 1874 Constitution and the Life and Liberty Provision, the General Assembly expanded protections for the unborn, making it illegal to "produce or attempt to produce [an] abortion" "before the period of quickening … by any … means." Ark. Act 4 of 1875, § 1. This again tracked the nationwide trend "in the 19th century," as "treatise writers and commentators criticized the quickening distinction as 'neither in accordance with the result of medical experience, nor with the principles of the common law.'" *Dobbs*, 597 U.S. at 247 (quoting F. Wharton, Criminal Law § 1220, p. 606 (rev. 4th ed. 1857)).

[9] https://encyclopediaofarkansas.net/entries/abortion-5324 (last accessed Mar. 1, 2026).

[10] A digital copy is available here: https://www.google.com/books/edition/Revised_Statutes_of_the_State_of_Arkansa/ohxEAAAAYAAJ?hl=en&gbpv=0.

Ignoring that neither caselaw nor history can shoehorn the right to an abortion into the Life and Liberty Provision, Plaintiffs nevertheless assert that the provision includes the right to abort, alleging:

> Arkansas's abortion bans deny Arkansans the reproductive autonomy to build their families in the ways and at the times that are right for them and denies pregnant Arkansans the ability to protect their lives, their fertility, and their overall physical, mental, social, and economic health. As such, Arkansas's abortion ban deny Arkansans their fundamental rights under Article 2, Section 2 of the Arkansas Constitution and are facially unconstitutional.

Compl. ¶ 215. But Plaintiffs have no factual allegations to support their interpretation of the Life and Liberty or their legal conclusion. Arkansas's "historical understanding of ordered liberty does not prevent the people's elected representatives from deciding how abortion should be regulated," *Dobbs*, 597 U.S. at 256, and Plaintiffs cannot show otherwise.

History shows that Arkansas has protected the unborn before and after the Life and Liberty Provision was adopted as part of the 1874 Constitution, not that the Life and Liberty Provision has been understood as safeguarding the right to abortion. Indeed, interpreting the Life and Liberty Provision as protecting abortion rights would be inconsistent with how that Provision has historically been understood—as not protecting the right to engage in conduct that "injure[s] others" and is "subject to police regulation." *Replogle v. City of Little Rock*, 166 Ark. 617, 622, 267 S.W. 353, 354 (1924). After all, abortion has long been understood as destroying human life in Arkansas. *See, e.g.*, *Rev. Stats. of State of Ark. Adopted at the Oct. Sess. of the Gen. Assemb. 1837*, at 240, § 6 (1838) (calling abortion "destroy[ing] [a] child"); *McClure v. State*, 214 Ark. 159, 170, 215 S.W.2d 524, 530 (1948) (setting up a criminal abortion law as "the preservation of life rather than its destruction"); *Burris v. State*, 73 Ark. 453, 454, 84 S.W. 723, 723 (1904) (upholding an abortion-law conviction and recounting the prohibited conduct as "destroy[ing] the child"); *State v. Reed*,

45 Ark. 333, 336 (1885) (finding that "it is a[ ] great[ ] absurdity to hold that" an abortion "practiced upon a woman before the fifteenth or sixteenth week after her conception" "is no offense at all").

In any event, Plaintiffs' claim that the Challenged Laws violate the Life and Liberty Provision ignore that the Provision must be interpreted, if possible, harmoniously with Amendment 68. *See Smith*, 187 Ark. at 475, 61 S.W.2d at 57; *Chesshir*, 182 Ark. at 428, 32 S.W.2d at 302. That means the Life and Liberty Provision must be consistent with "protect[ing] the life of every unborn child from conception until birth," Ark. Const. art. 68, § 2, so it necessarily cannot include a right to abortion. And if the Life and Liberty Provision cannot be interpreted consistently with Article 68's safeguarding of unborn children's lives, then Article 68 prevails over that Provision both because it is the later enactment, *see Carter*, 179 Ark. at 85, 14 S.W.2d at 253; *Chesshir*, 182 Ark. at 428, 32 S.W.2d at 302, and because it is "more specific or particular" so it must "be given effect," *2600 Holdings*, 2022 Ark. 140, at 5, 646 S.W.3d at 102.

Because the Life and Liberty Provision does not include a right to abortion, Plaintiffs have failed to state a claim that Defendants are violating a constitutional right to overcome immunity or to survive a motion to dismiss.

## V. Plaintiffs Have Failed to State a Claim under the Equal Protection Provisions of the Arkansas Constitution.

Plaintiffs have likewise failed to state a claim under the equal protection provisions in §§ 2, 3, and 18 of Article 2 of the Arkansas Constitution. Plaintiffs assert that the Challenged Laws "discriminate against pregnant Arkansans in the exercise of their fundamental rights under the Arkansas Constitution," and thus "violate pregnant Arkansans' constitutional rights to equality." Compl. ¶ 231. But that legal conclusion rests on a misunderstanding of the law and, in any event, the Complaint lacks factual allegations to support it.

Article 2, §§ 2, 3, and 18 guarantees "[e]qual protection under the law." *Arnold v. State*, 2011 Ark. 395, at 7, 384 S.W.3d 488, 494. "In deciding whether an equal protection challenge is warranted, there must first be a determination that there is a state action which differentiates among individuals." *Bosworth v. Pledger*, 305 Ark. 598, 604, 810 S.W.2d 918, 920 (1991). "There are two ways to prove the existence of a classification: (1) showing that a distinction exists on the face of the law; or (2) by demonstrating that a facially neutral law has a discriminatory impact and a discriminatory purpose." *Thurston v. League of Women Voters of Ark.*, 2024 Ark. 90, at 8, 687 S.W.3d 805, 812 ("*LWVAR II*"). If a law does classify individuals, courts "must then decide what standard of analysis applies." *Arnold*, 2011 Ark. 395, at 7, 384 S.W.3d at 495 (citation omitted). Statutes that classify "based on a suspect criterion" or "impinge[] on a fundamental right" are subject to "a higher standard of scrutiny," otherwise rational-basis review applies. *Id.* at 8, 384 S.W.3d at 495.

Plaintiffs' attempt to assert an equal protection claim fails at every step. The Challenged Laws prohibit "person[s]," whether male or female, from performing abortions. Ark. Code Ann. §§ 5-61-304(a), -404(a). They are thus "facially neutral" and lack a "discriminatory classification on [their] face," so "the equal-protection analysis should … conclude[]" because Plaintiffs allege no facts showing the laws have a discriminatory purpose. *LWVAR II*, 2024 Ark. 90, at 8–9, 687 S.W.3d at 812–13.[11] And even if the Challenged Laws classified based on whether an individual is a pregnant woman, Plaintiffs do not allege that pregnant women are a suspect class. That is for good reason. They are not. *See United States v. Skrmetti*, 605 U.S. 495, 497 (2025) ("[E]ven though only biological women can become pregnant, not every legislative classification concerning pregnancy

[11] Elsewhere, the Challenged Laws do not authorize the "charging or conviction of a woman with any criminal offense in the death of her own unborn child," Ark. Code Ann. §§ 5-61-304(c)(1), -403(c)(1), but that provides no support for Plaintiffs' allegation that Challenged Laws discriminate against pregnant women in Arkansas, Compl. ¶¶ 230-31.

is a sex-based classification." (citing *Geduldig v. Aiello*, 417 U.S. 484, 496 n.20 (1974))); *Seyb v. Members of Id. Bd. of Med.*, No. 1:24-cv-244-BLW, 2026 WL 369148, at *9 (D. Id. Feb. 9, 2026) ("Pregnant women at risk of death from self-harm are not a suspect class ...."); *Right to Choose v. Byrne*, 450 A.2d 925, 934 (N.J. 1982) (citing *Maher v. Roe*, 432 U.S. 464, 470 (1977)) ("Neither poverty nor pregnancy gives rise to membership in a suspect class.").

Plaintiffs attempt to secure heightened scrutiny by alleging that the Challenged Laws infringe on pregnant women's "exercise of their fundamental rights under the Arkansas Constitution," Compl. ¶ 231, presumably relying on their asserted right to abortion under the Life and Liberty Provision since they assert no other fundamental rights of pregnant women that the Challenged Laws violate. But as explained above, *see supra* IV, there is no right to an abortion under the Life and Liberty Provision. Thus, even if Plaintiffs' equal protection claim can clear the first step, it is subject to rational-basis review at most.

Under that rational-basis standard, courts assess only "whether the government's action is 'rationally related to achieving any legitimate governmental objective under any reasonably conceivable fact situation'—not whether it was a good justification or the one the government actually invoked." *Standridge v. Fort Smith Pub. Schs.*, 2025 Ark. 42, at 9, 708 S.W.3d 773, 779–80 (quoting *Landers v. Stone,* 2016 Ark. 272, at 11, 496 S.W.3d at 378). Courts "presume[s]" the laws are "constitutional and rationally related to achieving their objectives." *Arnold*, 2011 Ark. 395, at 9, 384 S.W.3d at 495. Plaintiffs' complaint fails to overcome that presumption. Plaintiffs merely twice repeat—without any factual explanation—the legal conclusion the Challenged Laws fail rational basis. *See* Compl. ¶¶ 226, 233. That is insufficient to meet the fact-pleading requirements.

In any event, even if Plaintiffs had included factual allegations, their claim that the Challenged Laws lack a rational basis fails as a matter of law. As the U.S. Supreme Court has confirmed, States' "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability." *Dobbs*, 597 U.S. at 301 (citations omitted). And like in *Dobbs*, the legislative findings enacted here show that the Challenged Laws serve these legitimate state interests:

- A desire to "protect the lives of unborn children" based on "[s]cientific evidence" and "advances," "personal testimonies," and changes in law, Ark. Code Ann. §§ 5-61-302(a)(6)(B)–(D), (b), -402(a)(6)(B)–(D);
- A concern that abortions had "ended the lives of [over 60 million] unborn children," in about 50 years, *id.* §§ 5-61-302(a)(11)(A), -402(a)(11)(A);
- A need to address the "tragic case[s] where pregnancy poses a serious danger to a pregnant woman's life," Ark. Act 387 of 2025, § 1(a)(2)(A); and
- A goal to establish a standard for "proper care and treatment" of these "[e]mergency medical situations," *id.* § 1(a)(1).

Because "these legitimate interests provide a rational basis for the [Challenged Laws]," "it follows that [Plaintiffs'] constitutional challenge must fail." *Dobbs*, 597 U.S. at 301. Indeed, the Challenged Laws could survive any level of scrutiny because they are narrowly tailored to Arkansas's legitimate interests.

## VI. Plaintiffs Lack Third-Party Standing to Assert Rights of Others.

In addition to dismissing the claims for all the foregoing reasons, the Court should also dismiss Plaintiffs' claims that rely on third-party standing. Although both the second count (under the Life and Liberty Provision) and third count (under the Equal Protection Provisions) are based on the alleged violation of *pregnant women's* rights, Plaintiffs allege that Dr. Chad Taylor, a man, has third-party standing to represent pregnant women because he is a doctor who wishes to perform more abortions. Compl. ¶¶ 109, 119. That is wrong. And to the extent Plaintiffs other than Dr. Taylor are asserting the first count (Due Process Clause), they lack third-party standing to represent "physicians' right to due process" because they are not physicians. *Id.* ¶ 219.

"Constitutional rights, including due process guarantees, are personal and may not be asserted by a third party." *Kennedy v. Kelly*, 295 Ark. 678, 680, 751 S.W.2d 6, 7 (1988). While the Arkansas Supreme Court has stated that "a narrow exception" exists, that exception applies, at most, only where "the issue would not otherwise be susceptible of judicial review" and "the third party is sufficiently interested in the outcome" so that "the party whose constitutional rights were allegedly deprived would be adequately represented." *Id.* Yet the Arkansas Supreme Court appears to have applied it only once where it concluded children's interests were "adequately protected by the parties to the adoption" and, in that same case, refused to apply the exception to the natural parents who could have joined the case. *Cox v. Stayton*, 273 Ark. 298, 302, 619 S.W.2d 617, 619–20 (1981). In other cases, the Arkansas Supreme Court has repeatedly concluded the "exception does not apply." *Kennedy*, 295 Ark. at 681, 751 S.W.2d at 8; *see Morrison v. Jennings*, 328 Ark. 278, 285, 943 S.W.2d 559, 562 (1997) (same); *Medlock v. Fort Smith Fin. Corp.*, 304 Ark. 652, 654, 803 S.W.2d 930, 931 (1991) (same).

To the extent any such exception exists or should exist under Arkansas law, it does not apply here. Pregnant women are capable of "assert[ing]" their claims on their own and do not need any doctor, much less a male doctor, to represent their interests. *Cox*, 273 Ark. at 302, 619 S.W.2d at 620. Indeed, the fact that four women are Plaintiffs in this lawsuit demonstrates that Dr. Taylor lacks third-party standing to represent their interests or the interests of any women who is pregnant or may become pregnant. *See id.*; *cf. Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (concluding that third-party standing only exists where there is a "hindrance to the possessor's ability to protect [her] own interests"); *Hodak v. City of St. Peters*, 535 F.3d 899, 905 (8th Cir. 2008) ("Other circuits agree that if a third party actually asserts his own rights, no hindrance exists, and third-party standing is improper."). He also cannot show that he is sufficiently interested in the outcome or has the requisite closeness to represent the interest of hypothetical future patients of his. *Cf. Kowalski*, 543 U.S. at 131 ("This *existing* attorney-client relationship is, of course, quite distinct from the *hypothetical* attorney-client relationship posited here."). Accordingly, this Court should dismiss Dr. Taylor's claims on behalf of his current and future female patients.

Relatedly, if Ms. Waldorf, Ms. Van, Ms. Stovall, or Ms. Howland are asserting a due process claim, those claims must be dismissed for lack of third-party standing. They are not doctors and Dr. Taylor's presence in this suit demonstrates that physicians are capable of asserting their own rights, so the "narrow" third-party standing exception does not apply to their due process claims here. *Cox*, 273 Ark. at 302, 619 S.W.2d at 620; *cf. Kowalski*, 543 U.S. at 130; *Hodak*, 535 F.3d at 905. This Court therefore can also dismiss some claims based on lack of third-party standing.

## Conclusion

For these reasons, the Court should grant Defendants' motion to dismiss.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on March 6, 2026, I electronically filed the foregoing document to the eFlex filing system, which notifies the eFlex participants.

*/s/ Autumn Hamit Patterson*
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