Clerk of the Superior Court
*** Electronically Filed ***
M. De La Cruz, Deputy
8/15/2025 2:35:05 PM
Filing ID 20402583

Kristine J. Beaudoin (Bar No. 034853)
Isabella Stoutenburg (Bar No. 038642)
PERKINS COIE LLP
2525 E. Camelback Road, Suite 500
Phoenix, Arizona 85016-4227
Telephone: +1.602.351.8000
Facsimile: +1.602.648.7000
KBeaudoin@perkinscoie.com
IStoutenburg@perkinscoie.com
DocketPHX@perkinscoie.com

Attorneys for Plaintiffs

[ADDITIONAL COUNSEL LISTED ON SIGNATURE PAGE]

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Isaacson, et al.,

Plaintiffs,

v.

State of Arizona,

Defendant

and

Warren Petersen, et al.,

Intervenor-Defendants.

No. CV2025-017995

PLAINTIFFS' RESPONSE TO INTERVENOR-DEFENDANTS' MOTION TO DISMISS

(Assigned to the Hon. Greg Como)

INTRODUCTION

Contrary to the arguments advanced in Intervenor-Defendants' ("Intervenors") Motion to Dismiss, Plaintiffs have more than met their burden at this threshold stage by pleading specific facts supporting an entitlement to relief. Plaintiffs' well-pled Complaint establishes a claim for facial invalidation of the Challenged Laws, including because the laws violate the Amendment in all circumstances in which they have actual effect. With respect to Arizona Revised Statute ("Section") 13-3603.02(D)'s private right of action, that provision stands or falls with the rest of Section 13-3603.02, and at any rate is judicially redressable because injunctive relief against the State (including state-court officials) would obviate the injury Plaintiffs face. Finally, Plaintiffs present a ripe controversy because the Challenged Laws place them at risk of future enforcement actions. For these reasons and those described below, Plaintiffs respectfully request that the Court deny Intervenors' Motion.

LEGAL STANDARD

In considering a motion to dismiss, "[c]ourts must . . . assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008). "[A] trial court should not dismiss a claim unless it appears that a plaintiff can prove no set of facts in support of the claims stated in the complaint that would entitle the plaintiff to relief under some cognizable theory of law." *Carpenter v. Mobile County*, 841 So. 2d 1237, 1239 (Ala. 2002).

ARGUMENT

I. PLAINTIFFS PROPERLY SEEK FACIAL RELIEF

Intervenors argue that Plaintiffs lack standing because they have failed to satisfy the *Salerno* standard. *See United States v. Salerno*, 481 U.S. 739 (1987). But *Salerno* is not relevant in cases like this, where strict scrutiny applies. Plaintiffs have, in any event, met that standard

by alleging facts supporting that *in all circumstances where the Challenged Laws are actually relevant* they violate the Amendment.

As an initial matter, Intervenors misapprehend the standard at the motion to dismiss stage. Plaintiffs are not required, as Intervenors suggest, to "prove beyond a reasonable doubt" their entitlement to relief. Intervenor-Defs.' Mot. to Dismiss at 2 ("MTD"); *see also id*. (claiming "Plaintiffs Have Failed to *Prove* Their Facial Challenges" (emphasis added)); *id.* at 3 (claiming Plaintiffs bear the "burden of proving [Challenged Laws'] invalidity"). Rather, "Rule 12(b)(6) dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Am. Suzuki Motor Corp. v. Burns*, 81 So. 3d 320, 323-24 (Ala. 2011) (citation omitted); *Nance By & Through Nance v. Matthews*, 622 So. 2d 297, 299 (Ala. 1993). In suggesting otherwise, Intervenors rely on inapposite caselaw: a partial *dissent*—though they fail to note it as such—in an appeal that was not on a motion to dismiss and says nothing about the burden at that stage, *see* MTD at 2 (citing *Morreno v. Brickner*, 243 Ariz. 543, 553 ¶ 40 (2018) (Gould, J., dissenting in part and concurring in the result)), and a case recognizing, at the final judgment stage, that the "burden of establishing that a statute is unconstitutional is on the person challenging the statute," *id.* (citing *Lisa K. v. Ariz. Dep't of Econ. Sec.* 230 Ariz. 173, 177 (Ct. App. 2012)).

As to the merits of Intervenors' argument, they assert that Plaintiffs must meet the *Salerno* standard, which generally requires that a plaintiff seeking facial relief "must establish that no set of circumstances exists under which the Act would be valid." 481 U.S. at 745. While the Arizona Supreme Court has adopted a version of *Salerno*, *see Morreno*, 243 Ariz. at 547 (citing *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015)); *Simpson v. Miller*, 241 Ariz. 341, 348 (2017), it has never concluded that *Salerno* applies in the strict scrutiny context. Rather, the U.S. Supreme Court adopted the *Salerno* test, and the Arizona Supreme Court has applied it in

situations involving a lower level of review. *See, e.g.*, *Samiuddin v. Nothwehr*, 243 Ariz. 204, 210 (2017); *Simpson*, 241 Ariz. at 348-49. And the U.S. Supreme Court has since recognized that *Salerno* is not an absolute requirement. *See Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) ("[A] plaintiff cannot succeed on a facial challenge unless he 'establishes that no set of circumstances exists under which the law would be valid,' *or* he shows that the law lacks a 'plainly legitimate sweep.'" (emphasis added) (alterations incorporated) (first quoting *Salerno*, 481 U.S. at 745, then quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008))).

Here, the Amendment itself supplies the applicable standard in requiring strict scrutiny. It demands that the state prove not just that a challenged restriction has a plainly legitimate sweep or *some* valid applications, but that it is the "*least* restrictive means" available to serve a compelling state interest. Ariz. Const. art. II, § 8.1 (emphasis added). It is black-letter law that statutes that further a compelling interest in *some* scenarios but not others fail such a standard because they are "overinclusive." *See, e.g.*, *Hodes & Nauser, MDs, P.A. v. Kobach*, 551 P.3d 37, 49 (Kan. 2024) (collecting cases); *Planned Parenthood of Mont. v. State*, 554 P.3d 153, 168 (Mont. 2024) *cert. denied*, 145 S. Ct. 2627 (2025) (applying strict scrutiny to facially invalidate law with a mix of valid and invalid applications); *State v. Burnett*, 755 N.E.2d 857, 866 (Ohio 2001) (finding statute unconstitutional because it "extends beyond" valid applications).[1]

Moreover, even if this Court were to apply *Salerno*, Plaintiffs plead facts that satisfy that standard. Intervenors argue that Plaintiffs are not entitled to facial relief because the Amendment

[1] Other states have limited how—or even if—they apply *Salerno*'s "no set of circumstances" test. *See, e.g.*, *Utah Pub. Emps. Ass'n v. State*, 131 P.3d 208, 213-15 (Utah 2006); *Robinson v. City of Seattle*, 10 P.3d 452, 458-59 (Wash. Ct. App. 2000); *Jackson v. Benson*, 578 N.W.2d 602, 611 n.4 (Wis. 1998); *Nw. Landowners Ass'n v. State*, 978 N.W.2d 679, 687-88 (N.D. 2022); *State v. Ryce*, 368 P.3d 342, 353-55 (Kan. 2016), *adhered to on reh'g*, 396 P.3d 711 (2017). *Cf. Martin v. State*, 259 So. 3d 733, 740-41 (Fla. 2018).

only protects against interference with post-viability abortions "that, in the good faith judgment of a treating health care professional, [are] necessary to protect the life or physical or mental health of the pregnant individual," Ariz. Const. art. II, § 8.1(A)(2),[2] and thus Plaintiffs must show that "*every* post-viability abortion is, in the good faith judgment of a treating healthcare provider, necessary to protect the life or health of the mother," MTD at 3. Otherwise, they posit, "Plaintiffs cannot demonstrate that every post-viability application of abortion regulations violates Section 8.1 [of the Amendment]." *Id.* at 4. This argument fundamentally misreads Arizona law (as well as the federal law it incorporates).

As federal and Arizona courts have stressed in applying *Salerno* and its progeny, "when assessing whether a statute meets this standard, the Court . . . consider[s] only applications of the statute in which it actually authorizes or prohibits conduct." *Patel*, 576 U.S. at 418. Therefore, "[t]he proper focus of the constitutional inquiry is the group for whom the law is a restriction, *not* the group for whom the law is irrelevant." *Id.* (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 894 (1992), for facial relief standard) (emphasis added), *overruled on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022)); *see also Morreno*, 243 Ariz. at 547-48 (applying this logic to reject argument that defendant could not facially challenge bail restriction simply because, in some cases, it applied to individuals who were being lawfully detained pending trial); *State v. Wein*, 244 Ariz. 22, 31 (2018) (rejecting similar argument that categorical prohibition on bail for those charged with sexual assault was not facially unconstitutional merely because it applied, in some cases, to arrestees who would likely commit sexual assault while on pretrial release).

As Plaintiffs plead in their Complaint, Arizona law already prohibits post-viability

[2] Notably, the Amendment protects against *any* denial, restriction, or interference with post-viability abortions that fall within this category, regardless of any compelling interest.

abortion unless "[t]he physician states in writing before the abortion is performed that the abortion is necessary to preserve the life or health of the woman, specifying the medical indications for and the probable health consequences of the abortion." A.R.S. § 36-2301.01; *see* Compl. ¶ 49. Thus, Plaintiffs have established exactly what Intervenors claim they must—that any post-viability abortion performed in Arizona would necessarily fall within the Amendment's protections.

More broadly, consideration of post-viability abortions is altogether immaterial because the Challenged Laws are irrelevant at those gestations. There are no providers of post-viability abortions in Arizona. *See* Compl. ¶ 49. And even if there were, the Two-Trip and Reason Ban Schemes contain medical exceptions that are similar to the exception to Arizona's post-viability ban on abortion, *compare* A.R.S. §§ 13-3603.02(A), 36-2158(A), 36-2153(A), 36-2156(A), *with* A.R.S. § 36-2301.01, and the Telemedicine Ban Scheme has no post-viability application because medication abortion is not available at such gestations, *see* Compl. ¶ 59.[3] Therefore, "[t]he proper focus of the constitutional inquiry is the group for whom the [Challenged Laws are] a restriction": those seeking pre-viability abortions for whom the Challenged Laws "actually authorize[] or prohibit[] conduct." *Patel*, 576 U.S. 418; *see also Morreno*, 243 Ariz. at 549 ("[W]e do not consider the entire universe of possible scenarios, we must instead look to the circumstances actually affected by the challenged statute." (quoting *Ryce*, 368 P.3d at 354)). Plaintiffs extensively plead how the Challenged Laws unconstitutionally deny, restrict, and/or interfere with *every* abortion in that category, *see* Compl. ¶¶ 124-216; *see also* Pls.' Reply to

[3] Even if there were some hypothetical situation where the Challenged Laws could apply to a post-viability abortion (which would necessarily have to be an abortion that falls within the scope of the Amendment given Arizona's post-viability ban), those applications would violate the Amendment for the same reasons that Plaintiffs plead they deny, restrict, and interfere with pre-viability abortions. *See* Compl. ¶¶ 124-177.

Intervenor-Defs.' Resp. to Mot. for Prelim. Inj. at 1-4 ("P.I. Reply"), which Intervenors have not disputed in their Motion to Dismiss.[4]

II. PLAINTIFFS HAVE STANDING TO CHALLENGE SECTION 13-3603.02(D)

Intervenors assert that Plaintiffs lack standing to challenge Section 13-3603.02(D) because only private parties can enforce that provision and the relief Plaintiffs seek against the State of Arizona and its affiliates would not "alleviate their alleged injury." MTD at 9 (quoting *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 406 (2020)). This argument relies on inapplicable case law and an incorrect construction of federal redressability law.

Intervenors' standing arguments are beside the point because there is no basis to excise Section 13-3603.02(D) from the broader Reason Ban Scheme. Section 13-3603.02(D) establishes a cause of action to enforce "violation[s]" of the Reason Ban Scheme's criminal prohibition; as such, it depends on that prohibition and forms part of a single enforcement scheme that is "so intimately connected as to raise the presumption the legislature would not have enacted one without the other." *State ex rel. Napolitano v. Brown*, 194 Ariz. 340, 344 (1999) (citation omitted). Indeed, Intervenors previously conceded, as to other components of the Reason Ban Scheme that "simply implement the substantive provisions," that "[t]heir validity rises and falls with those substantive provisions." Intervenor-Defs.' Resp. to Pls.' Mot. for Prelim. Inj. at 15. Intervenors do not dispute in the instant Motion that Plaintiffs have alleged a redressable injury stemming from the Reason Ban Scheme's substantive provisions; thus,

[4] Even if Intervenors' argument as to facial relief had merit (which it does not), Intervenors are incorrect that it would warrant dismissal of this action. Whether a law unconstitutionally interferes with abortion "in all cases, or only in some cases to which it applies, may affect the breadth of the relief to which plaintiffs are entitled, but not [the court's] jurisdiction to entertain the suit or the constitutional standard [it] appl[ies]." *Isaacson v. Horne*, 716 F.3d 1213, 1230 (9th Cir. 2013); *see also Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328-31 (2006); *Citizens United v. FEC*, 558 U.S. 310, 331 (2010).

Plaintiffs' challenge to Section 13-3603.02(D) is proper because its constitutionality rises and falls with the substantive provisions of the Reason Ban Scheme.

Even if Section 13-3603.02(D) could stand alone without the rest of Section 13-3603.02, Plaintiffs would have standing to challenge it separately. Intervenors (at 9) rely on *Arizonans for Second Chances*, but that case articulated the injury standard in the context of discussing *federal* Article III standing. 249 Ariz. at 406. The Arizona Constitution has "no counterpart to the 'case or controversy' requirement of the federal constitution," and standing "is not a constitutional mandate." *Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 140 (2005) (quoting *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Ariz.*, 148 Ariz. 1, 6 (1985)) (noting that, "when addressing questions of standing," Arizona courts "are confronted only with questions of prudential or judicial restraint" (citation omitted)). Indeed, Arizona courts have discretion to waive standing, including "in cases involving issues of great public importance that are likely to recur." *Sears v. Hull*, 192 Ariz. 65, 71 (1998). This discretion has been exercised in cases "determin[ing] the constitutionality of an Arizona statute," "present[ing] matters of first impression," or raising a "dispute at the highest levels of state government," *id*. (citation omitted) (discussing cases)—considerations that are all present in this litigation.

Even under the more stringent federal standard, redressability "is a relaxed burden, and the remedy need not completely cure the alleged harm." *Arizonans for Second Chances*, 249 Ariz. at 406 (citing *Massachusetts v. EPA*, 549 U.S. 497, 525-26 (2007)). A plaintiff need only show that "a favorable decision will relieve a discrete injury to himself," "not . . . that a favorable decision will relieve his *every* injury." *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982). Unsurprisingly then, plaintiffs have been permitted to challenge this *exact* statute in federal court. *See Isaacson v. Mayes*, 84 F.4th 1089, 1101 (9th Cir. 2023) (holding that plaintiffs have standing to challenge Reason Ban Scheme, including A.R.S. § 13-3603.02(D)); Order, *Isaacson*

v. Brnovich, No. 2:21-cv-01417-DLR (D. Ariz. Sept. 28, 2021), ECF No. 52 (enjoining parts of Reason Ban Scheme, including A.R.S. § 13-3603.02(D)), *vacated sub nom. Brnovich v. Isaacson*, 142 S. Ct. 2893 (2022), and *dismissed* Apr. 15, 2025.

In any event, Plaintiffs' injury is redressable here. The judiciary, including its officers, operate as an extension of the State, and an injunction against Defendant State of Arizona would extend to court personnel. *See Roylston v. Pima County*, 106 Ariz. 249, 250 (1970) (recognizing that because "the office of Clerk of the Superior Court is created in Article VI which is concerned with the Judicial Department[,] . . . the office of Clerk of the Superior Court is a part of the judicial branch"). These personnel play a necessary role in facilitating any private suit under Section 13-3603.02(D) because a lawsuit "cannot be filed, maintained, heard, or resolved without state action." *United States v. Texas*, 566 F. Supp. 3d 605, 660 (W.D. Tex. 2021), *cert. granted before judgment*, 142 S. Ct. 14 (2021); *see also id.* at 660-61 ("Any argument that the State, through its judicial system and judges, is not involved in the enforcement of [private right of action] lawsuits is contradicted by the plain language of the statute and by the reality of how state courts operate as an arm of the state to enforce the law . . . ."). Enjoining court personnel from docketing and maintaining lawsuits under Section 13-3603.02(D) would therefore provide complete relief to Plaintiffs.

Intervenors (at 9) rely on *Whole Women's Health v. Jackson*, but that case is inapposite here. In *Jackson*, plaintiffs challenged, in federal court, a state statute enforced exclusively via private litigation, naming individual state officials as defendants. 595 U.S. 30, 36-37 (2021). In denying relief, the Supreme Court primarily addressed limits on Article III courts' equitable authority to enjoin certain state officials under *Ex Parte Young*, 209 U.S. 123, 159-60 (1908). *See Jackson*, 595 U.S. at 39, 44. Those issues are entirely irrelevant here, where Plaintiffs sue the State of Arizona in Arizona state court under the Arizona Constitution. Indeed, the Court in

Jackson expressly declined to address a situation like this and instead "note[d] only that such arguments" were not cognizable in *federal* court against state officials. *Id.* at 45 n.2.

As such, Plaintiffs have standing to challenge Section 13-3603.02(D) and have properly sued Defendant State of Arizona to obtain relief.

III. PLAINTIFFS' CLAIMS ARE RIPE

Intervenors (at 4-8) further argue that Plaintiffs' claims are not ripe because they have not demonstrated a credible threat of enforcement.[5] Like standing, ripeness is a prudential doctrine. *Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, 423 (2022). Where a plaintiff has incurred an injury or "there is an actual controversy between the parties," a case is ripe. *Id.* Plaintiffs have satisfied both criteria, and thus the case is ripe under either one.

Intervenors contend that Plaintiffs do not face any credible threat of prosecution because the Attorney General has indicated that she will not prosecute abortion providers and the Governor issued an Executive Order centralizing criminal enforcement of abortion laws with the Attorney General. Not only have Intervenors failed to cite a single precedent dismissing claims under this theory, but their argument ignores that the statute of limitations for the felonies at issue in the Challenged Laws exceeds the current terms of both the Attorney General and the

[5] Intervenors (at 5 n.3) also "dispute" third party standing in a single sentence in their arguments regarding ripeness, providing no facts or law to support this bare assertion. As such, the argument is waived. *See, e.g.*, *MT Builders, L.L.C. v. Fisher Roofing, Inc.*, 219 Ariz. 297, 304 n.7 (Ct. App. 2008) (deeming "arguments [raised] in a one sentence footnote . . . waived"). In any event, Arizona courts routinely permit abortion providers to represent the interests of their patients, and Intervenors have provided no reason, let alone authority, to depart from this well-settled approach. *See, e.g.*, *Simat Corp. v. Ariz. Health Care Cost Containment System*, 203 Ariz. 454, 455 (2002) (successful challenge by abortion providers on behalf of patients seeking health-preserving abortions); *Planned Parenthood Ariz., Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 273 n.12 (Ct. App. 2011) (noting that federal courts have recognized that physicians appropriately represent the interests of their patients due to "closeness of the physician-patient relationship, the effectiveness of the physician as the patients' advocate, the necessary involvement of physicians in abortions, and the obstacles to a woman asserting her own abortion rights").

Governor. *See* A.R.S. § 13-107 (B)(1); *Planned Parenthood Ariz., Inc. v. Brnovich*, 254 Ariz. 401, 407 (Ct. App. 2022), *vacated on other grounds sub nom. Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137 (2024). Absent a preliminary injunction, Plaintiffs face a credible risk of future prosecution by a subsequent Attorney General for actions taken during the pendency of this litigation.

Intervenors are also wrong that Plaintiffs face no threat of civil enforcement. As Plaintiffs plead in the Complaint, they face the risk of severe civil and licensure penalties from the Arizona Department of Health Services (ADHS) and the Arizona Medical Board (AMB) if they violate the Challenged Laws. *See* Compl. ¶¶ 34, 217-219. While Intervenors (at 7) claim that the director of ADHS is appointed and removable by the Governor, that does not eliminate the possibility of civil enforcement actions by ADHS if Plaintiffs violate the Challenged Laws, which remain on the books. To the contrary, ADHS has statutory enforcement obligations through clinic licensure inspections. *See* A.R.S. § 36-424 ("[T]he director shall inspect the premises of the health care institution . . . to ascertain whether the applicant and the health care institution are in substantial compliance[.]"). As to AMB, Intervenors argue that the risk of enforcement is speculative, including because "AMB's publicly available disciplinary orders do not reflect any instances of professional discipline for violations of state abortion laws." MTD at 8. But the lack of enforcement by AMB only illustrates the coercive effect of (and ongoing constitutional burdens created by) the Challenged Laws; out of fear of enforcement, providers are forced to comply with them. Indeed, the possibility of ADHS and AMB enforcement has already been deemed sufficient to establish a credible threat of enforcement. *See Isaacson*, 84 F.4th at 1100.[6]

[6] Intervenors' suggestion (at 8 n.13) that Plaintiffs would need to exhaust administrative remedies to challenge any licensing action by AMB does not alter the credible threat of enforcement Plaintiffs face from AMB. Exhaustion is also inapplicable to the claims here at issue because only the Court, not AMB, has authority to provide the relief Plaintiffs seek. *See,*

Even if there were no credible threat of enforcement, this case would still be ripe because Plaintiffs have demonstrated an actual controversy between the parties. *See Mills*, 253 Ariz. at 424; *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 280 (2019). The Complaint does "not merely allege 'an intent to do certain things in the future all of which are dependent upon future events and contingencies within control of the [Plaintiffs].'" *Mills*, 253 Ariz. at 423 (quoting *Moore v. Bolin*, 70 Ariz. 354, 358 (1950)). To the contrary, Plaintiffs plead that the Challenged Laws are imposing restrictions that are actively denying, restricting, and interfering with Arizonans' fundamental right to abortion and that, but for the Challenged Laws, providers would not, *e.g.*, require patients to make multiple trips to the clinic and undergo biased counseling, or deny patients abortion via telemedicine or based on their reason for seeking abortion care. *See* Compl. ¶¶ 124-177; *Brush & Nib Studio, LC*, 247 Ariz. at 280 (explaining, in discussing ripeness based on "actual controversy between the parties," that challengers to abortion restriction "were not required to wait for criminal prosecution because that statute allegedly chilled their constitutional rights and therefore constituted an actual controversy" (discussing *Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 312-13 (1972)). Whether the Challenged Laws violate the Arizona Constitution "present[s an] existing

---

e.g., *Est. of Bohn v. Waddell*, 174 Ariz. 239, 249 (Ct. App. 1992) ("[W]e do not commit to administrative agencies the power to determine constitutionality of legislation. Only the courts have authority to take action which runs counter to the expressed will of the legislative body." (citation omitted)); *Mills*, 253 Ariz. at 422 ("[T]he exhaustion doctrine does not preclude [this] lawsuit because the court, not the Board, possesses authority to grant [Plaintiffs] the remedies [t]he[y] seek[]: a declaration that the statutes at issue are unconstitutional . . . and an injunction against their enforcement."). Moreover, if Plaintiffs were required to exhaust administrative remedies, they would suffer further irreparable harm given the ongoing infringement of a fundamental right. *See Moulton v. Napolitano*, 205 Ariz. 506, 512-13 (Ct. App. 2003) ("the exhaustion of remedies rule should not be summarily applied" in situations where "irreparable harm will be caused if the rule is followed").

controversy which permits the court to adjudicate any present rights." *Mills*, 253 Ariz. at 424 (quoting *Moore*, 70 Ariz. at 358).[7]

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask that the Court deny Intervenors' Motion to Dismiss.

Dated: August 15, 2025

PERKINS COIE LLP

By: */s/ Kristine J. Beaudoin*
Kristine J. Beaudoin
Isabella Stoutenburg
2525 E. Camelback Road, Suite 500
Phoenix, Arizona 85016-4227

Attorneys for Plaintiffs

Gail Deady*
Caroline Sacerdote*
Olivia Roat*
CENTER FOR REPRODUCTIVE RIGHTS
199 Water Street, 22nd Floor
New York, New York 10038
Telephone: 917.637.3600
gdeady@reprorights.org
csacerdote@reprorights.org
oroat@reprorights.org

[7] Intervenors' contention (at 8) that Plaintiffs have undercut their assertion of irreparable harm by delaying suit is wholly irrelevant because irreparable harm is not a required showing to survive a motion to dismiss. Indeed, the only case Intervenors cite for this suggestion is a federal, out-of-circuit decision discussing the import of delay in deciding a *preliminary injunction motio*n. *See* MTD at 8 (citing *Del. State Sportsmen's Ass'n, Inc. v. Del. Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 206 (3d Cir. 2024), *cert. denied sub nom. Gray v. Jennings*, 145 S. Ct. 1049 (2025)). In any event, for the reasons repeatedly explained, Plaintiffs timely brought suit. *See* P.I. Reply at 17-18; Pls.' Resp. to Intervenor-Defs.' Second Mot. for Extension of Time at 5.

Laura Bakst*
CENTER FOR REPRODUCTIVE RIGHTS
1600 K Street NW, 7th Floor
Washington, DC 20006
Telephone: 202.628.0286
lbakst@reprorights.org

Attorneys for Paul A. Isaacson, M.D. and William Richardson, M.D.

Jared Keenan
Lauren Beall
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF ARIZONA
P. O. Box 17148
Phoenix, Arizona 85011
Telephone: 602.650.1854
jkeenan@acluaz.org
lbeall@acluaz.org

Rebecca Chan*
Alexa Kolbi-Molinas*
Johanna Zacarias*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004
Telephone: 212.549.2633
rebeccac@aclu.org
akolbi-molinas@aclu.org
jzacarias@aclu.org

Alice Clapman**
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street NW
Washington, D.C. 20005
Telephone: 212.549.2633
aclapman@aclu.org

Attorneys for Arizona Medical Association

*Admitted *pro hac vice*
**Application for admission *pro hac vice* forthcoming

Original of the foregoing efiled with the Maricopa County Superior Court and served on the following parties at AZTurbocourt.gov this 15th day of August, 2025:

Alexander W. Samuels
Hayleigh S. Crawford
Luci D. Davis
Office of the Arizona Attorney General
2005 North Central Avenue
Phoenix, Arizona 85004-1592
Alexander.Samuels@azag.gov
Hayleigh.Crawford@azag.gov
Luci.Davis@azag.gov
ACL@azag.gov

Attorneys for Defendant State of Arizona

Kory Langhofer
Thomas Basile
Statecraft PLLC
649 N. Fourth Avenue
First Floor
Phoenix, Arizona 85003
kory@statecraftlaw.com
tom@statecraftlaw.com

Justin D. Smith
Michael C. Martinich-Sauter
James Otis Law Group, LLC
530 Maryville Centre Drive
Suite 230
St. Louis, Missouri 63141
Justin.Smith@james-otis.com
Michael.Martinich-Sauter@james-otis.com

. . .

. . .

. . .

. . .

. . .

Andrew Gould
Erica Leavitt
Emily Gould
Alexandria Saquella
Holtzman Vogel Baran Torchinsky & Josefiak PLLC
2555 East Camelback Road
Suite 700
Phoenix, Arizona 85016
agould@holtzmanvogel.com
eleavitt@holtzmanvogel.com
egould@holtzmanvogel.com
asaquella@holtzmanvogel.com

Attorneys for Intervenor-Defendants

/s/ D. Freouf