Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-017995 09/22/2025

HONORABLE GREG S. COMO

CLERK OF THE COURT
C. Lacey
Deputy

PAUL A ISAACSON, et al. KRISTINE J BEAUDOIN

v.

STATE OF ARIZONA LUCI D DAVIS

THOMAS J. BASILE
LAUREN KARA BEALL
CAROLINE SACERDOTE
OLIVIA ROAT
HAYLEIGH S CRAWFORD
ANDREW W GOULD
JUSTIN SMITH
REBECCA CHAN
JOHANNA ZACARIAS
LAURA BAKST
ALEXANDER WESTBROOK SAMUELS
ERICA LEAVITT
JUDGE COMO

MINUTE ENTRY

On September 15, 2025, the Court heard oral argument on the Intervenor-Defendants' Motion to Dismiss and took the matter under advisement. The Court now issues its ruling denying the motion.

Introduction

Plaintiffs are two licensed OB-GYN doctors and the Arizona Medical Association. They bring this action seeking a judgment declaring that various statutes involving a woman's access to an abortion violate Arizona's Constitution. Plaintiffs characterize these statutes as: the Reason Ban; the Two-Trip Scheme; and the Telemedicine Ban. Complaint, ¶ 4. Plaintiffs seek to enjoin enforcement of these laws. The State, through the Attorney General, is largely aligned with Plaintiffs' position and agrees that the challenged laws are unconstitutional, at least as applied to pre-viability abortions. The President of the Arizona Senate (Warren Petersen) and the Speaker of the Arizona House of Representatives (Steve Montenegro) have intervened to defend the enforceability of the challenged laws.

On July 7, 2025, the Intervenors filed a Motion to Dismiss for failure to state a claim upon which relief may be granted. Ariz. R. Civ. Proc. 12(b)(6). The Intervenors argue the Complaint should be dismissed because: (1) it is an overly broad, facial challenge to the laws; (2) Plaintiffs' claims are not ripe because there is no real threat of enforcement of the laws; and (3) Plaintiffs lack standing to enjoin the enforcement of A.R.S. § 13-3603.02(D), because it provides a private right of action.

Standard of Review

Intervenors argue that, at the motion to dismiss stage, Plaintiffs must prove the challenged laws are unconstitutional "beyond a reasonable doubt." Intervenors' Reply Br. at 3. In fact, the opposite is true here. Intervenors have the burden of proving that the challenged laws *are* constitutional.

First, the Arizona Supreme Court has held that "beyond a reasonable doubt" is not the standard for making constitutional determinations. *Gallardo v. State,* 236 Ariz. 84, ¶ 9 (2014). Ordinarily, courts presume that the legislature acts constitutionally. *Id.* When a law burdens a fundamental right, however, "any presumption in its favor falls away." *Id.*

The Arizona Constitution provides that "every individual has a fundamental right to abortion". Ariz. Const. Article 2, § 8.1(A). Because the right to abortion is fundamental, any restrictions on that right are presumptively invalid. *Id.* Thus, the burden is *on the government* (here, the Intervenors) to demonstrate that the challenged laws are constitutional. *Id. citing State v. Murphy,* 117 Ariz. 57, 61 (1977).

The stage of the litigation also bears on the standard of review. When deciding a motion to dismiss under Rule 12(b)(6), the court looks only to the pleading itself and assumes the truth of the well-pled facts therein. *Cullen v. Auto-Owners,* 218 Ariz. 417, ¶ 7(2008).

Applying these principles, the question is whether, assuming the facts of the Complaint are true, have Intervenors proven that the challenged laws are constitutional? For the reasons stated below, they have not.

Facial Challenge

Intervenors' motion argues that when a party makes a facial challenge to a law – as Plaintiffs do here – they must show that there are no set of circumstances under which the laws are valid. Intervenors further argue that because the laws may be valid in the context of post-viability abortions, Plaintiffs' facial challenge fails.

At oral argument, Plaintiffs clarified that they are not seeking declaratory or injunctive relief regarding the challenged laws as they may apply to post-viability abortions. With this concession, the issue is whether Intervenors have shown that the challenged laws are constitutional when applied to re-viability abortions. *See* Article 2; § 8.1(A)(1) of the Arizona Constitution.

Intervenors' motion does not argue that the challenged laws are constitutional as applied to pre-viability abortions. While Intervenors may make such arguments at the preliminary injunction trial, they have not done so thus far. Accordingly, Plaintiffs may proceed with their facial challenge to the laws, but only as they apply to pre-viability abortions.

Standing

Intervenors next argue that Plaintiffs' claims should be dismissed because they are not ripe. Specifically, they assert that the claims are not ripe because Plaintiffs have not shown "a real threat of being prosecuted" for violating the challenged laws. Intervenors' Mot. at 4. Intervenors note that there is no credible threat of criminal enforcement of the laws because Governor Hobbs has issued Executive Order 2023-11, which dictates that the Arizona Attorney General will assume full and exclusive authority to prosecute criminal violations of the State's abortion laws. Furthermore,

Attorney General Mayes has publicly announced that she will not prosecute medical personnel for providing abortions.

Intervenors additionally argue there is no credible threat of regulatory or professional disciplinary enforcement of the challenged laws. These enforcement mechanisms include actions that may be taken by the Arizona Department of Health Services (ADHS) or professional disciplinary actions by the Arizona Medical Board.

Intervenors note that the ADHS Director is appointed by Governor Hobbs, who has made it clear that she has no intention of enforcing the State's abortion laws. Thus, any enforcement by ADHS is "entirely implausible." Intervenors' Mot. at p. 7. Intervenors characterize the possibility of disciplinary action by the Arizona Medical Board as "purely speculative". *Id.* at p. 8.

For a pre-enforcement constitutional challenge, "ripeness is analogous to standing," and the issues may be analyzed together. *Town of Gilbert v. Maricopa Cnty.,* 213 Ariz. 241, 244, ¶ 8 (App. 2006). Standing is a tool to ensure that courts exercise only judicial power – that they act like courts rather than legislators. *Arizona Creditors Bar Ass'n v. State,* 257 Ariz. 406, 410, ¶ 11 (App. 2024). Typically, this requires a plaintiff to "allege a distinct and palpable injury." *Id.*

Here, however, Plaintiffs seek declaratory relief under the Uniform Declaratory Judgments Act (UDJA). A.R.S. § 12-1832. The Arizona Supreme Court has held that for standing to exist under the UDJA, there must "be an actual controversy ripe for adjudication" and "parties with a real interest in the questions to be resolved." *Id.* at ¶ 12 *quoting Bd. of Supervisors of Maricopa Cnty. v. Woodall,* 120 Ariz. 379, 380 (1978). Unlike in federal court, an actual injury is not required. *Arizona Creditors Bar Ass'n,* 257 Ariz. at 410 ¶ 12; *see also Mills v. Ariz. Bd. of Tech. Registration,* 253 Ariz. 415, 423, ¶ 23 (2022) ("Unlike the federal constitution, 'the Arizona Constitution does not have a case or controversy requirement'.")

Plaintiffs allege that, "to avoid the severe criminal, professional, and civil penalties under the Reason Ban Scheme, [they] have no choice but to turn away any patient who reveals that they are or may be seeking abortion care wholly or in part for a prohibited reason." Complaint, ¶ 125. They further allege that the Reason Ban cuts off "open and honest communication between patients and their providers about fetal testing and fetal conditions [which] is contrary to accepted clinical standards governing prenatal care . . . ". Complaint, ¶ 130.

Regarding the Two-Trip Scheme, Plaintiffs allege that the Rh testing required by the law is not medically necessary in the early weeks of pregnancy. Complaint, ¶ 143. In other words, the law requires doctors to perform medically unnecessary procedures. Plaintiffs argue that the

various requirements of the Two-Trip Scheme result in forced delays. For some patients, these barriers "will be insurmountable, and those unable to obtain the necessary resources will be prevented from accessing abortion care altogether." Complaint, ¶ 154. Plaintiffs further assert that the challenged laws require them to provide the patients "biased and inaccurate information about abortion." Complaint, ¶ 163.

Plaintiffs allege that the Telemedicine Ban forces patients to make at least one trip to a health center, which may be hundreds of miles from their home. Complaint, ¶ 173. Mandating that patients travel to obtain in-person counseling and medication delays access to care. Complaint, ¶ 174. For some patients, "the delay and travel imposed by the Telemedicine Ban Scheme denies them the abortion method of their choice or precludes them from accessing abortion care altogether." Complaint, ¶ 176.

At the motion to dismiss stage, all these allegations are taken as true. Based on these allegations, and the rest of Plaintiffs' Complaint, there is an actual controversy that is ripe for adjudication. As shown above, Plaintiffs allege that, to comply with the challenged laws, they must provide unnecessary medical procedures, provide biased and inaccurate medical information and are unable to provide abortions to patients that would otherwise receive them. Here, Plaintiffs and Intervenors both have a "real interest" in the questions to be resolved. This is evident by their vigorous engagement in the present litigation.

The parties' briefing does not distinguish between standing for declaratory relief and for injunctive relief. However, the court reaches the same conclusion for Plaintiffs' claims for injunctive relief. Arizona law does not require a plaintiff to be prosecuted to have standing. Nor is a "real threat of prosecution" the test. While the threat of prosecution may be a *basis* for standing, Intervenors cite no Arizona decision which holds it is a *requirement* for standing. *See Brush & Nib Studio LC v. City of Phoenix,* 247 Ariz. 269, 280, ¶¶ 36-39 (2019). In *Brush & Nib,* custom wedding invitation designers challenged a City ordinance which prohibits businesses from refusing to provide goods or services to a person because of their status in a protected group. *Id.* at ¶ 18. The Court held that the plaintiffs had standing to pursue both declaratory *and injunctive* relief even though the City had not cited plaintiffs for violating the ordinance and the plaintiffs had not refused to create invitations for same-sex customers. *Id.* at ¶¶ 22-23. Despite the lack of prosecution -- or even an alleged violation of the ordinance – the Court held that plaintiffs claims were not speculative because the parties had "analyzed, in detail, the legal claims and arguments based on these custom invitations." *Id.* at ¶ 37.

Here, the case for standing is stronger than in *Brush & Nib.* Plaintiffs detail numerous examples of how compliance with the challenged laws are *currently* requiring them to violate their medical judgment, perform unnecessary medical procedures, and provide biased and inaccurate information to their patients. These claims are "riper" for adjudication that the plaintiffs' claims in *Brush & Nib*, where the plaintiffs had not even been asked to prepare a wedding invitation for a same-sex couple.

Even more on point is *Planned Parenthood Center of Tucson, Inc., v. Marks,* 17 Ariz. App. 308 (App. 1972). Although published more than 50 years ago, this decision's standing analysis was cited with approval in *Brush & Nib*, *supra*. In *Planned Parenthood,* the plaintiff sought to have certain statues declared unconstitutional because they criminalized providing an abortion to a woman, or publishing the availability of abortion services, unless it is necessary to save the woman's life. The State argued there was no justiciable controversy because the plaintiffs had not alleged they were being prosecuted for violating the statutes or that the State had threatened them with prosecution. *Id.* at 310. The Court rejected this argument:

> To require statutory violation and exposure to grave legal sanctions; to force parties down the prosecution path, in effect compelling them to pull the trigger to discover if the gun is loaded divests them of the forewarning which the law, through the Uniform Declaratory Judgments Act, has promised. . . . Violation of a criminal statute as a prerequisite to testing its validity invites disorder and chaos and subverts the very ends of law.

Planned Parenthood Center, 17 Ariz. App. at 312-13.

For these reasons, the Court finds that Plaintiffs have standing to pursue their claims for declaratory and injunctive relief.

Standing to Challenge A.R.S. § 13-3603.2(D)

Intervenors separately challenge whether Plaintiffs have standing to challenge A.R.S. § 13-3603.2(D). This subsection of the statute creates a private cause of action against a person who performs an abortion knowing that the abortion is sought based on the race or sex of the child, or because of a genetic abnormality of the child. The parties who may sue the medical providers include the unborn child's father and maternal grandparents.

Intervenors argue that Plaintiffs lack standing to challenge the provision because they have only sued the State of Arizona, and subsection (D) of the statute creates a private cause of

action. Thus, they assert, no state actors have authority to enforce rights under A.R.S. § 13-3603.2(D).

Intervenors' motion does not address Plaintiffs' standing to seek declaratory relief as to the constitutionality of A.R.S. § 13-3603.2(D). The Court's standing analysis above applies equally to A.R.S. § 13-3603.2(D) as it relates to declaratory relief. Thus, the Court finds that Plaintiffs have standing to seek declaratory relief as to the constitutionality of A.R.S. § 13-3603.2(D).

Intervenors rely on *Whole Woman's Health v. Jackson,* 595 U.S. 30 (2021) to illustrate the problems with fashioning injunctive relief when the claims involve a private cause of action. The *Jackson* decision, however, recognizes the constitutional limits of federal courts under the Eleventh Amendment, the sovereign immunity doctrine, and Article III's case or controversy requirement. None of these federal limitations apply to this state court action.

The Court finds that the question of whether injunctive relief can be practically fashioned in this case, assuming A.R.S. § 13-3603.2(D) is found unconstitutional, is a question of what remedy applies, rather than whether the Court has standing. Accordingly, the issue will be resolved at trial.

IT IS ORDERED denying Intervenors' Motion to Dismiss. The Court's review of the challenged laws will be limited to whether they violate Article 2; § 8.1(A)(1) of the Arizona Constitution and, if so, whether injunctive relief is warranted.