IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

RIGHT BY YOU,	)	
	)	
Plaintiff,	)	
	)	Case No. 2516-CV13783
v.	)	
	)	
MISSOURI *ex rel.* ANDREW BAILEY, *et al.*,	)	
	)	
Defendants.	)	

STATE DEFENDANTS' SUGGESTIONS IN SUPPORT OF MOTION TO DISMISS AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

State Defendants submit this brief in support of their motion to dismiss Plaintiff's petition under Missouri Supreme Court Rule 55.27(a)(3) and (a)(6) and in opposition to Plaintiff's motion for a preliminary injunction.

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INTRODUCTION

On November 11, 2023, a middle-aged male entered a Planned Parenthood facility in Independence, Missouri.[1] Ex. 101; Ex. 102. He claimed that his 13-year-old niece was pregnant, that her parents didn't know about it, and that he wanted to know how his niece could obtain an abortion. Ex. 101. The facility manager, who identified herself as "LaShauna," never asked why this man knew that his niece was pregnant while her parents did not. *Id.* Nor did she ask any questions to screen for potential sexual abuse. *Id.* Instead, she immediately detailed how this man could secretly obtain an abortion for his niece. "We don't do [abortions] here . . . in Missouri," she said, "but I can give you a packet of the two locations that do it in Kansas." *Id.* Returning with the packet, she added "I would call because if you go online, they kind of give you the run around. But if you call, and let them know what's going on, they'll do whatever they can to help you." *Id.* "They have people that will come pick them up [and] they have people that will pay for the whole thing . . ." *Id.* The unidentified male then asked how he could get his niece out of school for the abortion, and the facility director responded that they would prepare a "doctor's note" with Planned Parenthood's letterhead "cut off" so the note wouldn't "even say where" the thirteen-year-old was. *Id.* The facility director emphasized that Planned Parenthood provides these services "every day." *Id.* "We set up hotels for them," she added. *Id.* The unidentified male then asked if Planned Parenthood could provide

[1] The address of the facility was 815 North Noland Rd., Suite 6 Independence, MO 64050.

"contraceptives" without parental consent, and the facility director affirmed that Planned Parenthood could "take care of all of that." *Id.* "We never tell their parents anything, she's an adult in our clinic." *Id.* At this, the unidentified male concluded the conversation, leaving with an apparent plan to secure a thirteen-year-old's abortion and provide her contraceptives for the future—all without parental knowledge or consent. *Id.*

Watching the footage, the unidentified male's activity screams of possible sexual abuse. Why does a middle-aged man know that his "niece" is pregnant while her parents do not? And why does this man want to ensure that she can access contraceptives without parental consent? Thankfully, this unidentified male was an undercover reporter, not an "uncle" of a minor seeking an abortion. *See* Ex. 102. But this video illustrates why the challenged statutes, §§ 188.028 and 188.250, RSMo., are common sense and necessary to protect the safety and health of Missouri's minors. This video is also concerning because some abortion providers, by their own admission, engage in this activity "every day." Ex. 101.

Throughout its briefing, Right By You constantly smears parents as "bullies" and strangers as "compassionate" "Good Samaritans" who know what is best for minors seeking abortion without parental consent. *See* SIS MPI at 2–3. As the undercover video illustrates, Right By You's assumption does not reflect reality, an especially important consideration in a facial challenge where Right By You must show that §§ 188.028 and 188.250 are unconstitutional in *all* applications. *See Salamun v. Camden Cnty. Clerk*, 694 S.W.3d 424, 428 n.10 (Mo. banc 2024). Right

By You's faulty assumption is also odious to the Fourteenth Amendment: "[t]he statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition." *See Parham v. J. R.*, 442 U.S. 584, 602–03 (1979) (emphasis in original). Right By You also fails to grapple with the alternative safeguard enshrined in §§ 188.028 and 188.250—a judicial bypass whereby courts can screen for coercion and determine that extraordinary circumstances warrant an abortion without parental knowledge.

The safeguards enshrined in §§ 188.028 and 188.250 are longstanding and have been widely upheld by the U.S. Supreme Court and the Missouri Supreme Court—both during the *Roe* era and after Amendment 3 passed. In *Planned Parenthood Ass'n of Kansas City v. Ashcroft*, 462 U.S. 476 (1983), the U.S. Supreme Court upheld § 188.028 because it furthered the State's interest in "protecting" minors. *Id.* at 490–93. Then, in *Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732 (Mo. banc 2007), the Missouri Supreme Court upheld § 188.250 under *Roe* and *Casey*, noting that "the United States Supreme Court has upheld Missouri's parental consent statute," and "[o]ther parental consent with judicial bypass statutes." *Id.* at 743–44 (citing *Ashcroft*, 462 U.S. at 490–93; *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 899–900 (1992); *Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502, 518–20 (1990)).

Amendment 3 has not changed the constitutionality of §§ 188.028 and 188.250. Before Amendment 3 passed, the Western District held that Amendment 3's "legal

and probable effects" would not include invalidation of the parental-consent laws challenged here. *Fitz-James v. Ashcroft*, 678 S.W.3d 194, 210 (Mo. App. W.D. 2023). Now that Amendment 3 has passed, that prediction has proven true. A Boone County Circuit Court already rejected a constitutional challenge to § 188.250, *see* Order, *State ex rel. Bailey v. Planned Parenthood Great Plains*, 24BA-CV00990 (13th Jud. Cir. Ct. Apr. 28, 2025), and that decision was upheld by the Western District and the Missouri Supreme Court, *see* Order, *State ex rel. Planned Parenthood Great Plains v. Jacobs*, WD88036 (May 14, 2025); Order, *State ex rel. Planned Parenthood Great Plains v. Jacobs*, SC101123 (June 2, 2025). Right By You cannot possibly show they are "likely to prevail on the merits" in their facial constitutional challenge, *see* Peremptory Writ, *State ex rel. Kehoe v. Zhang*, SC101026 (May 27, 2025), so this Court should deny Right By You's motion for a preliminary injunction.

More fundamentally, the Court need not even reach the preliminary injunction, and should instead dismiss the Petition altogether. For starters, it is not even clear that Right By You is an organization with the capacity to sue and be sued in Missouri. Right By You alleges that it is "fiscally sponsored by a 501(c)(3) nonprofit organization incorporated in California," Pet. ¶ 22, but being "fiscally sponsored" by an unnamed foreign nonprofit does not create the capacity to sue in Missouri. And to the extent Right By You is able to prove that it is a corporate entity, State Defendants have contemporaneously moved to stay the case because Right By You has failed to obtain a certificate of authority as required to maintain a suit by § 351.574 or § 355.756.

Right By You also lacks standing to challenge §§ 188.028, 188.250, and 431.061.1(4)(a) for three reasons.[2] First, Right By You purports to be suing on behalf of minors in Missouri, *see* Pet. ¶ 25, but Missouri Supreme Court Rule 52.02(a) and § 507.110 expressly prohibit anyone except a "duly appointed guardian" or "next friend" from suing on behalf of a minor. Right By You is neither. Second, Right By You also lacks standing to sue on behalf of minors in Missouri because Missouri has a "general rule against third-party standing." *Missouri State Med. Ass'n v. State*, 256 S.W.3d 85, 89 (Mo. banc 2008). And a third-party can never have standing to sue when "the actual holders of rights *may* not wish to assert them." *Id.* (emphasis added). No minor or parent has sued over the challenged laws, and there are important reasons why Right By You's interests are not aligned with the interests of Missouri's minors. Third, Right By You's challenges are not ripe. Right By You fails to allege facts that "g[i]ve rise to an immediate, concrete dispute." *Mo. Health Care Ass'n v. Att'y Gen. of Mo.*, 953 S.W.2d 617, 621 (Mo. banc 1997).

Beyond those justiciability issues, Right By You cannot satisfy the heavy burden for its facial attacks on the challenged laws. "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that *no set of circumstances* exists under which the Act

[2] As Plaintiff's Petition makes clear, Plaintiff seeks a preliminary injunction against the enforcement of only §§ 188.028 and 188.250. Pet. at 58. Plaintiff does not seek a preliminary injunction against § 431.061.1(4)(a), even though it seeks a final declaratory judgment as to that provision. Notwithstanding these minor differences, the Court should deny the motion for a preliminary injunction, and dismiss the Petition altogether.

would be valid." *State v. Kerr*, 905 S.W.2d 514, 515 (Mo. banc 1995) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)) (emphasis added, quotations omitted). Right By You cannot pass the "no set of circumstances" test because some of the allegations in its Petition admit that there are some instances in which the challenged laws can be constitutionally applied.

Finally, as noted above, Right By You's claims should be dismissed because its interpretation of Amendment 3 is preempted by the Fourteenth Amendment to the U.S. Constitution. The U.S. Supreme Court has explained that parents' rights to "the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized" in U.S. law. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality). Right By You's interpretation of Amendment 3 would deny parents control over their children's medical care. That interpretation must fail because, for over 200 years, "it has been settled that a state law that conflicts with federal law is 'without effect.'" *Connelly v. Iolab Corp.*, 927 S.W.2d 848, 851 (Mo. banc 1996) (quoting *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981)).

For these reasons and many more addressed here, this Court should deny Right By You's Motion for Preliminary Injunction and dismiss this case.

BACKGROUND

I. Sections 188.028 and 188.250 survived repeated challenges even during the *Roe v. Wade* era because they protect Missouri minors.

Sections 188.028 and 188.250 are the product of decades of bipartisan consensus. Section 188.028 was enacted in 1979 and survived repeated constitutional challenges because it protects Missouri minors. *See, e.g., Ashcroft,* 462 U.S. at 490–93; *T.L.J. v. Webster*, 792 F.2d 734 (8th Cir. 1986) *see also Nixon*, 220 S.W.3d 732 (upholding § 188.250, which incorporates § 188.028 by reference).

As relevant here, section 188.028 provides that, "[e]xcept in the case of a medical emergency, no person shall knowingly perform or induce an abortion" on a person "under the age of eighteen years unless":

(1) The abortion provider secures the consent of "the minor and one parent or guardian. . . ," § 188.028.1(1);

(2) "The minor is emancipated" and has consented, § 188.028.1(2);

(3) "The minor has been granted the right to self-consent to the abortion by court order" and has consented, § 188.028.1(3); or

(4) "The minor has been granted consent to the abortion by court order, and the court has given its informed written consent," § 188.028.1(4).

Subsection 2 of § 188.028 outlines the procedure for securing a court order in the latter two circumstances. The process starts when the "minor or next friend" completes "an application to the juvenile court which shall assist the minor or next friend in preparing the petition." § 188.028.2(1). The resulting petition just contains "the initials of the minor"—not the minor's name. *Id.* And after the minor files the

petition, a court must hold a hearing "as soon as possible within five days of the filing of the petition." § 188.028.2(2). If the minor does not have counsel, "the court shall appoint counsel at least twenty-four hours before the time of the hearing." *Id.* After the hearing, "the court shall for good cause":

> (a) Grant the petition for majority rights for the purpose of consenting to the abortion;
>
> (b) Find the abortion to be in the best interests of the minor and give judicial consent to the abortion, setting forth the grounds for so finding; or
>
> (c) Deny the petition, setting forth the grounds on which the petition is denied.
>
> § 188.028.2(3).

A court must grant the petition unless it has "good cause" not to "after having received the required evidence." *Ashcroft*, 462 U.S. at 493 (interpreting § 188.028). If the court denies a minor's petition, the minor may appeal on an expedited timeline. § 188.028.2(5). The statute provides that "the appeal shall be perfected within five days from the filing of notice to appeal," and "the supreme court of this state shall, by court rule, provide for expedited appellate review." *Id.*

Section 188.250, the other challenged statute, creates a civil cause of action against persons who "intentionally cause, aid, or assist" violations of § 188.028. *See* § 188.250.1. Specifically, "the minor" and other "persons adversely affected" can secure "damages" for injuries—including "emotional injury"—due to the abortion performed without parental consent or judicial bypass. § 188.250.2. The statute also grants a civil cause of action to "the attorney general" and to "a prosecuting or circuit

attorney" to secure injunctive relief against "person[s]" who will violate §§ 188.028 and 188.250.1 in the future. *See* § 188.250.5. However, § 188.250 does not grant any government official a cause of action to seek monetary penalties.

Section 188.250 was first enacted in 2005 and immediately became the subject of a multi-count constitutional challenge. Then-Attorney-General Jay Nixon (D) successfully defended § 188.250 in both Jackson County Circuit Court and the Missouri Supreme Court. *See Nixon*, 220 S.W.3d 732. The Missouri Supreme Court rejected a challenge under *Roe* and *Casey*, highlighting several U.S. Supreme Court cases holding that parental consent laws (including § 188.028) are constitutional when combined with judicial bypass as an alternative. *See Nixon*, 220 S.W.3d at 743–44 (citing *Ashcroft*, 462 U.S. at 490–93; *Casey*, 505 U.S. at 899–900; *Akron Ctr. for Reprod. Health*, 497 U.S. at 518–20).

Here, bipartisan consensus continues in defense of §§ 188.028 and 188.250—two vital safeguards for Missouri minors. The Attorney General's codefendant—Jackson County Prosecutor Melesa Johnson (D)—also opposes a preliminary injunction and moves to dismiss Right By You's challenge. *See* Johnson SIO MPI & MTD (filed June 27, 2025). Though Johnson is publicly pro-abortion she agrees that §§ 188.028 and 188.250 are constitutional. Leading up to the November 2024 election, Johnson was endorsed by Planned Parenthood in light of her pro-abortion stance.[3] But here, Johnson sides with the State in defending §§ 188.028 and 188.250.

[3] *See* 2024 PPGPV Endorsed Candidates in Missouri, at https://www.plannedparenthoodaction.org/planned-parenthood-great-plains-votes/endorsements/missouri-endorsements (last visited June 27, 2025).

Sections 188.028 and 188.250 are neither pro-life nor pro-abortion. They are common sense. As dozens of judges have already recognized, both laws are critical safeguards to protect Missouri minors.

II. Courts at every level of the Missouri Judiciary have already rejected post-Amendment 3 challenges to § 188.250's prohibition on causing minors to obtain abortions without parental consent.

Right By You claims that this case is different because Amendment 3 is a different standard than *Roe*. SIS MPI at 14 n.3, 17–18. Aside from being described in the leadup to the election as an Amendment to "restore Roe-era protections"[4] several courts have already upheld Missouri's parental consent laws under Amendment 3. Last year, the Attorney General brought an enforcement action under § 188.250 against Planned Parenthood Great Plains after Planned Parenthood's employees admitted on video to assisting minors in obtaining abortions on a regular basis. *See* Ex. 101; Ex. 102. After the Attorney General initiated the enforcement action, Amendment 3 passed in November 2024. And five months later, Planned Parenthood moved to dismiss the Attorney General's enforcement action on the grounds that § 188.250 was unconstitutional under Amendment 3. After fulsome briefing and oral argument, the circuit court denied the motion because Amendment 3 did not render § 188.250 unconstitutional. *See* Order, *State ex rel. Bailey v. Planned Parenthood Great Plains*, 24BA-CV00990 (13th Jud. Cir. Ct. Apr. 28, 2025).

[4] Politifact, "Would MO abortion Amendment 3 legalize surgery for trans kids? It's highly unlikely, experts say" https://www.politifact.com/article/2024/oct/25/would-mo-abortion-amendment-legalize-trans-health/

Planned Parenthood sought a writ of prohibition in the Western District Court of Appeals and the Missouri Supreme Court, arguing that Amendment 3 creates a "fundamental right to assist others seeking abortion" and "prohibits the State, as a matter of law, from penalizing" conduct covered by § 188.250. SIS Pet. for Writ of Prohibition at 1–2, *State ex rel. Planned Parenthood Great Plains v. Jacobs*, SC101123 (filed May 29, 2025). Both the Western District and the Missouri Supreme Court denied Planned Parenthood's writ petitions without requesting responsive briefing. *See* Order, *State ex rel. Planned Parenthood Great Plains v. Jacobs*, WD88036 (May 14, 2025); Order, *State ex rel. Planned Parenthood Great Plains v. Jacobs*, SC101123 (June 2, 2025).

Those outcomes should not have been surprising. Even before Amendment 3 was passed, the Western District Court of Appeals held that Amendment 3 was unlikely to give minors the ability to obtain an abortion without parental consent. In *Fitz-James v. Ashcroft*, the Western District considered this question in light of the ballot summary statement for what would later become Amendment 3. 678 S.W.3d 194, 210 (Mo. App. W.D. 2023). Originally, the Secretary of State's summary explained that Amendment 3 would "guarantee[ ] the right of any woman, *including a minor*, to end the life of their unborn child at any time." *Id.* at 200 (emphasis added). The Western District struck that language from the ballot summary because it determined that the "language about minors . . . does not accurately reflect the legal and probable effects of" Amendment 3. *Id.* at 210. In other words, Amendment 3 does not change Missouri's parental consent laws.

III. Right By You's lawsuit and activity within Missouri.

It is against that legal and factual backdrop that Right By You chose to file this case. But what is Right By You? Unclear. Unlike organizations that typically sue over abortion-related laws—e.g., Planned Parenthood—Right By You does not allege that it provides healthcare. The Petition vaguely alleges that Right By You is "fiscally sponsored by a 501(c)(3) nonprofit organization incorporated in California." Pet. ¶ 22. It neither specifies which California nonprofit nor explains what "fiscally sponsored" means. And despite alleging that its "core activity" is to "help young people *in Missouri*," Right By You does not allege that it is a Missouri entity. *Id.* A search of publicly available business records on the Missouri Secretary of State's website shows that Right By You is not a Missouri entity or even a foreign entity registered to operate in the state.[5]

The declaration from Right By You's "Director and Founder" explains more about what Right By You *does* in Missouri, but fails to clarify what Right By You *is*. MPI Ex. A, Sheley Decl. ¶ 2. Right By You's Director explains that she is "based in Illinois" and reiterates that Right By You is "fiscally sponsored by a 501(c)(3) nonprofit organization incorporated in California." *Id.* ¶ 8. Right By You has "two paid staff," including the Director, and "approximately 11 trained part-time volunteers, 7 of whom live in Missouri," who "manage and oversee most of the organization's programming." *Id.* Right By You does not appear to have an address

[5] *Search for a Business Entity*, Mo. Sec. State, https://bsd.sos.mo.gov/BusinessEntity/BESearch.aspx?SearchType=0 (select "Business Name" from dropdown menu, type "Right By You" into search bar, and click the "Search" button) (last visited June 27, 2025).

or registered agent in Missouri, and the docket reflects a residential address in California.

Although Right By You does not appear to have the authority to conduct business in Missouri, the Director's declaration explains that it has "two primary programs" targeted at Missouri residents. First, Right By You runs a "text line" six days a week. Sheley Decl. ¶ 10. The text line is open to "[a]ny Missourian" but "focuses on teens." *Id.* Right By You helps "young people" in Missouri to obtain an abortion "even if they lack parental support." Pet. ¶ 22. Right By You's Missouri-based volunteers "counsel clients throughout Missouri about the abortion care they are eligible for" and "refer clients to abortion providers that can meet their needs in Missouri and in other states." Sheley Decl. ¶ 14. Right By You does not allege that the employees or volunteers who operate the "text line" are medical providers or licensed counselors.

Right By You also operates an "Emergency Contraception program." *Id.* ¶ 19. Through this program, Right By You "partner[s] directly with businesses located in Jefferson City to distribute discreetly packed kits that Right By You prepares with emergency contraception, a pregnancy test, condoms, stickers, and information about teens' pregnancy options and Right By You's Text Line." *Id.* Right By You also works in "Columbia and Hannibal" to "distribute the Emergency Contraception kits to teens and adults in those cities." *Id.* It "also distribute[s] the kits at events throughout the state." *Id.*

Right By You seeks to expand its activities to more than just the text line and emergency-contraception-distribution programs. Pet. ¶ 24. Right By You alleges that its "core activity" includes "1) funding abortions; 2) funding transportation, lodging, childcare, and other costs associated with accessing abortion care; 3) making abortion appointments and arrangements for such transportation and lodging; and 4) directly transporting young people." *Id*; *see also id*. ¶¶ 38, 132, 134. While Right By You's Petition alleges that Right By You "seeks to provide" such "financial and practical support," *id*. ¶ 24, it does not identify a single minor who is currently unable to access an abortion in Missouri because of §§ 188.028 or 188.250.

LEGAL STANDARDS

Standing. "To bring an action in a Missouri court, a party must have standing." *Byrne & Jones Enters., Inc. v. Monroe City R-1 Sch. Dist.*, 493 S.W.3d 847, 851 (Mo. banc 2016). To have standing, a plaintiff must face a "threatened or actual injury" from the defendant sued, and there must be "a substantial controversy . . . between parties with genuinely adverse interests." *Schweich v. Nixon*, 408 S.W.3d 769, 773–74 (Mo. banc 2013). Standing "is a prerequisite to the court's authority to address substantive issues and so must be addressed before all other issues." *Id*. at 774 n.5. Missouri courts have a "general rule against third-party standing." *Missouri State Med. Ass'n v. State*, 256 S.W.3d 85, 89 (Mo. banc 2008). "If there is no standing, 'the court shall dismiss the action.'" *S.C. v. Juv. Officer*, 474 S.W.3d 160, 163 (Mo. banc 2015) (quoting Mo. Sup. Ct. R. 55.27(g)(3)).

Motion to Dismiss for Lack of Capacity to Sue. A case must be dismissed if the "plaintiff does not have legal capacity to sue." Mo. Sup. Ct. R. 55.27(a)(3). "[I]n the absence of a statute," an unincorporated association "cannot sue or be sued in [its] common or associate name" because "such an association, absent a statute, has no legal entity distinct from its membership." *Morris v. Willis*, 338 S.W.2d 777, 779 (Mo. 1960). "When a party so raises" an issue about capacity to sue, "the burden of proof thereon shall be placed upon the opposite party." Mo. Sup. Ct. R. 55.13.

Motion to Dismiss for Failure to State a Claim. "A motion to dismiss for failure to state a claim tests the adequacy of a plaintiff's petition." *Avery Contracting, LLC v. Niehaus*, 492 S.W.3d 159, 162 (Mo. banc 2016). "[T]he Court reviews the plaintiff's petition 'to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause of action that might be adopted in th[e] case.'" *Forester v. May*, 671 S.W.3d 383, 386 (Mo. banc 2023) (quoting *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 464 (Mo. banc 2001)).

Preliminary Injunction. The Missouri Supreme Court recently clarified the heightened standard for preliminary injunctions that would "enjoin the implementation of a duly enacted state statute." Peremptory Writ at 1, *State ex rel. Kehoe v. Zhang*, SC101026 (Mo. May 27, 2025). The Court adopted the "more rigorous" standard from the federal Eighth Circuit's decision in *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724 (8th Cir. 2008). *Id.* "When 'a preliminary injunction is sought to enjoin the implementation of a duly enacted state statute,' the court must 'make a threshold finding that a party is likely to prevail on the merits.'"

Id. at *1–2 (quoting *Rounds*, 530 F.3d at 732–33). The Supreme Court therefore held that "the correct standard is: (1) the threat of irreparable harm to the moving party; (2) balancing this harm with any injury an injunction would inflict on other interested parties; (3) the moving party is likely to prevail on the merits; and (4) the effect on the public interest." *Id*. at *2 (citing *Rounds*, 530 F.3d at 729 n.3, 731–33). *Rounds* also holds that courts should show "a higher degree of deference" to "legislation or regulations" because they are "developed through presumptively reasoned democratic processes." *Rounds*, 530 F.3d at 732 (quotations omitted). The plaintiff bears the burden of proof and must "justify the court's exercise of such an extraordinary remedy." *State ex rel. Dir. of Revenue, State of Mo. v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996).

ARGUMENT

I. Right By You's case should be dismissed because Right By You does not have legal capacity to sue.

Right By You bears the burden of proving that it has capacity to maintain this suit, but its Petition fails to allege sufficient facts to prove this. *See* Mo. Sup. Ct. R. 55.13 ("When a party so raises such issue, the burden of proof thereon shall be placed upon the opposite party.") Right By You does not allege that it is a corporation or other official entity under the law of Missouri or some other state. Nor does Right By You appear in a search of business records on the Missouri Secretary of State's website.[6] Instead, the Petition states that "Right By You is fiscally sponsored by a 501(c)(3) nonprofit organization incorporated in California." Pet. ¶ 22. It makes no allegation whatsoever that it is incorporated, or even that it is some sort of other business or unincorporated entity like an LLC. Right By You failed to allege any facts in the Petition that would establish that it is a legal entity with the capacity to bring this suit.

"[A]n unincorporated association ordinarily lacks the legal capacity to sue or be sued in the name of the association." *Exec. Bd. of the Mo. Baptist Convention v. Carnahan*, 170 S.W.3d 437, 445 (Mo. App. W.D. 2005). The Missouri Supreme Court has held that an unincorporated organization like Right By You "cannot sue or be sued in [its] common or associate name" because "such an association, absent a

[6] *Search for a Business Entity*, Mo. Sec. State, https://bsd.sos.mo.gov/BusinessEntity/BESearch.aspx?SearchType=0 (select "Business Name" from dropdown menu, type "Right By You" into search bar, and click "Search" button) (last visited June 27, 2025)

statute, has no legal entity distinct from its membership." *Morris v. Willis*, 338 S.W.2d 777, 779 (Mo. 1960); *see also Ruggles v. Int'l Ass'n of Bridge, Structural & Ornamental Iron Workers*, 52 S.W.2d 860, 862 (Mo. 1932) ("The general rule is well settled that an unincorporated voluntary association cannot, in the absence of statutory authority, sue or be sued."). The reason for the "well settled" rule is that "such an association is 'purely a creature of convention, organized and existing under the common-law right of contract only,' and having no legal entity distinct from that of its members." *Forest City Mfg. Co. v. Int'l Ladies' Garment Workers' Union*, 111 S.W.2d 934, 936–37 (Mo. App. 1938) (quoting *Newton Cnty. Farmers' & Fruit Growers Exch. v. Kansas City S. Ry. Co.*, 326 S.W.2d 803, 804 (Mo. 1930)

Right By You has not "directed to any authority, statutory or case, recognizing a voluntary unincorporated association as a legal entity capable of suing or being sued in its common or associate name in the circumstances of record." *Morris*, 338 S.W.2d at 779. It therefore lacks the legal capacity to maintain this suit and the case must be dismissed under Missouri Supreme Court Rule 55.27(a)(3).[7]

II. Right By You's claims should be dismissed because they are not ripe and because Right By You lacks standing to sue on behalf of Missouri's minors.

Right By You's claims should be dismissed (1) because they are not ripe and (2) because Right By You lacks standing. Each of these reasons is, by itself, a

[7] The State Defendants have contemporaneously moved to stay this case for failure to obtain a certificate of authority as required by § 351.574.1 and § 355.756.1. So if Right By You is able to prove that it has the legal capacity to sue, this case should still be stayed—including any hearing on a preliminary injunction—until Right By You complies with Missouri's foreign registration laws.

sufficient basis on which to dismiss this suit. Before this Court can address the merits of Right By You's claims, it "must determine whether [Right By You] presents a justiciable controversy." *S.C. v. Juv. Officer*, 474 S.W.3d 160, 162 (Mo. banc 2015). For a case to present a justiciable controversy, the plaintiff must have standing, and the case must be ripe. *Id.* at 163. "Standing is a prerequisite to a court's authority to address substantive issues." *Id.* And "[e]ven when a plaintiff is able to show standing, the merits will not be reached unless the case is ripe." *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. banc 2013). "The burden to establish standing lies with" Right By You as "the party seeking relief." *See Wilson v. City of St. Louis*, 662 S.W.3d 749, 753 (Mo. banc 2023).

Right By You lacks standing to challenge §§ 188.028, 188.250, and 431.061(1)(4)(a) because (1) Missouri law prohibits anyone other than a legal guardian or next friend from suing on behalf of a minor, and (2) Missouri courts do not recognize third-party standing for activist organizations to sue on behalf of minors seeking abortions without parental consent. Separately, Right By You's claims are not ripe because they do not identify a single minor that Right By You cannot help because of the challenged laws. Because Right By You failed to allege facts creating a justiciable controversy, "the court shall dismiss the action." *S.C.*, 474 S.W.3d at 163 (quoting Mo. Sup. Ct. R. 55.27(g)(3)).

A. Right By You has no standing because it is not the parent or guardian of the minors it purports to represent.

Right By You repeatedly alleges that it is suing "on behalf of . . . the young people it serves." Pet. ¶ 25; *see also id.* ¶¶ 20, 21. But Right By You has no authority

to sue on behalf of minors, and a statute and the Missouri Supreme Court Rules expressly prohibit it from doing so. Section 507.110 provides, "Suits by infants may only be commenced and prosecuted, either: First, by a duly appointed guardian or conservator of such infant; or, second, by a next friend appointed for him in such suit." An "infant" is "any person who has not attained the age of eighteen years." § 507.115. Missouri Supreme Court Rule 52.02(a) likewise provides that "[c]ivil actions by minors may be commenced and prosecuted only by a duly appointed guardian of such minor or, if there is no such guardian, by a next friend appointed in such civil action."

Right By You does not allege that it is a "duly appointed guardian or conservator," or the "next friend" of the "young people" it purports to sue for. A "guardian or conservator" is a court appointed individual who manages the affairs of a minor in the absence of their parents. *See Guardian*, *Conservator*, Black's Law Dictionary (12th ed. 2024). A "next friend" is appointed by a court in individual cases to litigate the case on the minor's behalf. *See* § 507.120. Right By You is neither. Accordingly, any claims or aspects of claims brought on behalf of minors in violation of § 507.110 and Rule 52.02(a) should be dismissed. *See Sellars By & Through Booth v. Denney*, 945 S.W.2d 63 (Mo. App. S.D. 1997) (dismissing a grandmother's appeal on behalf of her minor grandchild because she was neither the minor's parent, guardian, or next friend).

B. Right By You lacks third-party standing to bring claims on behalf of minors in Missouri.

Right By You also lacks third-party standing to bring claims on behalf of minors in Missouri. In Missouri there is a "general rule against third-party standing."

Mo. State Med. Ass'n v. State, 256 S.W.3d 85, 89 (Mo. banc 2008). The *only* exception to the "rule against third-party standing" is for "physicians . . . to assert the rights of their female patients." *Id*. That exception is strictly "limited to abortion cases." *Id.* But even that exception does not apply if "the actual holders of rights *may* not wish to assert them." *Id.* (emphasis added). In other words, there is no third-party standing when there is even a possibility of misaligned interests. *Id*. Right By You lacks third-party standing for three independent reasons.

First, and most importantly, Right By You does not have third party standing because it is not an abortion provider. As discussed more fully below, the U.S. Supreme Court's decision in *Dobbs* eliminated the exception for abortion providers. But even when it was still good law, the Missouri Supreme Court never extended third-party standing beyond abortion providers. As noted above, *Missouri State Medical Association* stressed that the only exception to the rule against third-party standing is for "physicians . . . to assert the rights of their female patients." 256 S.W.3d at 89. Likewise, *Planned Parenthood of Kansas v. Nixon* limited the exception to "abortion providers." 220 S.W.3d 732, 738 (Mo. banc 2007). The now-defunct federal precedent on which the Missouri Supreme Court relied during those *Roe* era cases always highlighted the special nature of the "doctor-patient" relationship for third-party standing. *Singleton v. Wulff*, 428 U.S. 106, 115 (1976).

Right By You cannot fit into this exception because it is not a physician or an abortion provider. It does not even appear to be a distinct legal entity. *See supra* Part I. It is "fiscally sponsored" by an unknown, foreign nonprofit; founded and directed

by an attorney; and operated through a group of unknown volunteers, "all of whom work remotely." Pet. ¶ 22; Sheley Decl. ¶ 3. And while Right By You alleges that it provides "non-judgmental counseling to young people" through text messages, it alleges no facts about their training or qualifications. Pet. ¶ 22. That is a far cry from the doctor-patient relationship that—before *Dobbs*—made "the physician [ ] uniquely qualified" to exercise third-party standing. *Singleton*, 428 U.S. at 117.

Second, there is no third-party standing where, as here, "the actual holders of rights *may* not wish to assert them." *Mo. State Med. Ass'n*, 256 S.W.3d at 89. (emphasis added). Even a *potential* conflict of interest is sufficient to deny third-party standing. *Id.* The Missouri Supreme Court strictly applies that rule. For instance, in *Missouri State Medical Association*, the Supreme Court found that several groups of doctors lacked third-party standing to challenge a statute regulating the practice of midwifery because the doctors' interests "may not" have aligned with their patients. *Id.* Right By You has not and cannot show that it represents the interest of every minor in Missouri.

The conflicts are glaring. To begin, § 188.250 creates a civil cause of action for minors against any person that causes, aids, or assists the minor in obtaining an abortion without parental consent. *See* § 188.250.2. Minors obviously benefit from having a cause of action in case they are coerced into having an abortion or misled into choosing an abortion they later regret. But Right By You has a strong interest in eliminating a law that could make them civilly liable to minors and their families.

Next, Right By You cannot represent the interests of Missouri's minors because only their legal guardians, custodians, and next friends (most of the time parents) can do that. *See* § 507.110; Mo. Sup. Ct. R. 52.02(a). Thus, minors have an interest in not eliminating statutes that cut parents writ large out of their life-changing healthcare decisions. The law recognizes a "presumption that the parents act in the best interests of their child," but there is no such presumption for activist organizations like Right By You. *Parham*, 442 U.S. at 604.

Right By You's Petition even acknowledges the importance having parents involved in a child's decision about decision whether to have an abortion. *See* Pet. ¶ 48 ("Abortion providers' ethical obligations also direct them to encourage patients who are minors to consult a trusted adult.").[8] Right By You's allegation that a "small proportion of young people" will not or cannot "confide in a parent" is insufficient to establish that all young people will not or cannot confide in a parent. *Id*. ¶ 86. Thus, this Court should follow the U.S. Supreme Court's lead and reject the "statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children." *Parham*, 442 U.S. at 603 (emphasis in original). Right By You would cut all parents out of the picture, even in instances where that is not in the best interest of their children.

[8] The Petition uses the term "trusted adult," but the source it cites to support the allegations using that term states that physicians have an ethical obligation to "[s]trongly encourage the patient to discuss the pregnancy with her parents (or guardian)." AMA Code of Medical Ethics § 2.2.3, Mandatory Parental Consent to Abortion, https://code-medical-ethics.ama-assn.org/sites/amacoedb/files/2022-08/2.2.3.pdf; *see also* Pet. ¶ 48, n.29.

By seeking to assert third-party standing on behalf of minors without parental consent, Right By You seeks to use Amendment 3 to drive a wedge between parents and children. The U.S. Supreme Court has condemned such efforts. "Pitting the parents and child as adversaries often will be at odds with the presumption that parents act in the best interests of their child." *Id.* at 610. "Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments." *Id.* at 603. The law therefore recognizes a "presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions" and that the "natural bonds of affection lead parents to act in the best interests of their children." *Id.* at 602. Right By You cannot use third-party standing to get around that presumption and undermine parents "right" and "high duty" to "make sound judgments concerning" a child's "need for medical care or treatment." *Id.* at 603.

Third, after the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health*, there is no legal basis for the lone abortion-provider exception to Missouri's rule against third-party standing. *Dobbs* recognized what has been apparent for some time—that there is no principled reason why abortion providers are the only persons who may invoke third-party standing. Along those lines, the Missouri Supreme Court's third-party-standing decisions—*Nixon and Missouri Medical Association*—cited only federal cases recognizing third-party abortion standing during the *Roe* era. Since then, the U.S. Supreme Court expressly overturned *every*

federal case on which *Nixon* and *Medical Association* relied, explaining that the old "abortion cases . . . ignored the [U.S. Supreme Court's] third-party standing doctrine." *Dobbs v. Jackson Women's Health*, 597 U.S. 215, 286–87 & n.61 (2022).

The ordinary practice of the Missouri courts is to follow federal case law when Missouri adopts the federal standard as its own. *See, e.g.*, *Dale v. DaimlerChrysler Corp*, 204 S.W.3d 151, 161 (Mo. App. W.D. 2006); *Jamison v. State, Dept. of Soc. Services, Div. of Family Services*, 218 S.W.3d 399, 405 n.7 (Mo. banc 2007). Here, this means that this Court should follow the federal cases by moving away from third-party standing for abortion providers. Courts across the country have recognized that the "Supreme Court has disavowed the theories of third-party standing that previously allowed doctors to raise patients' claims in abortion cases." *All. for Hippocratic Med. v. FDA*, 2023 WL 2913725, at *4 n.4 (5th Cir. Apr. 12, 2023); *accord, e.g.*, *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 664 S.W.3d 633, 658 (Ky. 2023); *State v. Planned Parenthood of S.W. and Central Fla.*, 342 So.3d 863, 867–68 (Fla. 1st DCA 2002). Thus, even if Right By You was an abortion provider or a physician (it is not), there is no longer a basis in federal or Missouri law for the abortion exception to third-party standing.

C. Right By You's claims are unripe because they have not identified any minors who cannot access an abortion in Missouri because of the challenged laws.

Right By You's claims are unripe and must be dismissed because they have not identified any minors who cannot access an abortion in Missouri because of the challenged laws. To establish a justiciable controversy, a plaintiff must prove that the "controversy is ripe for judicial determination." *Schweich*, 408 S.W.3d at 773. "A

ripe controversy is a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Mo. Health Care Ass'n v. Att'y Gen. of Mo.*, 953 S.W.2d 617, 621 (Mo. banc 1997). The Missouri Supreme Court has recognized that facial challenges like this suit naturally "trigger[ ] justiciability concerns." *Geier v. Missouri Ethics Comm'n*, 474 S.W.3d 560, 569 (Mo. banc 2015). Ripeness is "implicated here because [Right By You] seeks relief on behalf of others not before this Court and in future circumstances not certain to occur." *Id.*

The Petition fails to allege facts showing that a single minor is unable to obtain an abortion because of the challenged laws. Nor does it allege facts showing that there are minors waiting for its financial and logistical support. *Mo. Health Care Ass'n* , 953 S.W.2d at 621. The Petition is full of general allegations about Right By You's text-line and contraception-distribution programs, but not the kind of facts that "g[i]ve rise to an immediate, concrete dispute" with "facts" that are "fully developed" *Id*. As discussed below, Right By You could have brought this case as an as-applied challenge and identified specific circumstances under which the challenged laws were unconstitutional. But by choosing a facial challenge and "seeking declaratory and injunctive relief preventing enforcement of the statutes against any hypothetical" future application, it has failed to allege facts showing a ripe dispute. *Geier*, 474 S.W.3d at 569.

III. Right By You's claims should be dismissed because they cannot satisfy the standard for a facial challenge.

When a plaintiff challenges the constitutionality of a statute, the plaintiff may do so in two ways. One is to attack a provision in its entirety. This is called a "facial"

challenge, and it alleges that a provision is unlawful in all applications. The other way is to attack only specific applications of a provision. This is called an "as-applied challenge." *Black River Motel, LLC v. Patriots Bank*, 669 S.W.3d 116, 123 (Mo. banc 2023) ("An as-applied challenge requires Appellants to show the statute was unconstitutionally applied to their individual circumstances.").

Right By You has brought only facial challenges § 188.028, § 188.250, and § 431.061(1)(4)(a). *See* Pet. ¶¶ 160–65. "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that *no set of circumstances* exists under which the Act would be valid." *State v. Kerr*, 905 S.W.2d 514, 515 (Mo. banc 1995) (quoting *United States. v. Salerno*, 481 U.S. 739, 745 (1987)) (emphasis added, quotations omitted). Right By You cannot carry that heavy burden and its claims should be dismissed.

A. Right By You's own Petition prevents it from bringing a facial challenge because it admits that there are some circumstances under which the challenged laws could be applied constitutionally.

Right By You brings facial challenges to Missouri's parental-consent laws, and "that decision comes at a cost." *Moody v. NetChoice*, LLC, 603 U.S. 707, 723 (2024). Because "'facial challenges threaten to short circuit the democratic process' by preventing duly enacted laws from being implemented in constitutional ways," courts have "made facial challenges hard to win." *Id.* (citation omitted). The Missouri Supreme Court adopted the U.S. Supreme Court's test for dismissing a facial challenge from *U.S. v. Salerno* and has consistently applied it to facial challenges over the last 30 years. *See State v. Kerr*, 905 S.W.2d 514, 515 (Mo. banc 1995) (citing *Salerno*, 481 U.S. 739, 745 (1987)).

A recent example of U.S. Supreme Court application of the facial standard is particularly instructive. Federal law requires gun sellers to conduct background checks when selling "firearms." *Bondi v. VanDerStok*, 145 S. Ct. 857, 863 (2025). Some companies sell weapons "kits" that fall somewhere between unaltered hunks of metal and fully functioning firearms. *Id.* If those kits are not firearms, then sellers need not conduct background checks. The Federal Government enacted a regulation defining those unassembled kits as "firearms." *Id.* at 864. When industry groups challenged the regulation, the Supreme Court rejected the challenge because the facial nature of the challenge made the case easy. *Id.* at 866. "At least some weapon parts kits" were close enough to fully functioning weapons that they satisfied the definition of "firearm," so the plaintiffs lost because they could not prove there was no set of circumstances in which the regulation could be lawfully applied. *Id.* at 869.

So too here. For each challenged law, even Right By You admits there are "at least some" constitutional applications. *Bondi*, 145 S. Ct. at 863. Right By You's Petition acknowledges at least two circumstances in which the challenged laws are constitutional. First, Right By You admits that "abortion providers" have "ethical, professional, and legal obligations . . . to obtain informed consent for medical treatment." Pet. ¶ 47. Although Right By You alleges that some minors are capable of consenting without parental involvement, it goes on to admit that "[a]bortion providers' ethical, professional, and legal obligations prevent them from providing an abortion to *the few young people*—and adults—*who cannot consent to one*." *Id.* ¶ 48 (emphasis added). Right By You therefore acknowledges that there are "at least

some" minors who cannot consent to an abortion. *Bondi*, 145 S. Ct. at 863. That admission means that Right By You cannot "establish that no set of circumstances exists under which the [the challenged laws] would be valid." *See State v. Perry*, 275 S.W.3d 237, 243 (Mo. banc 2009).

Second, Right By You alleges that "most young people . . . confide in a parent about their options regardless of parental involvement requirements," Pet. ¶ 85, and only a "small proportion" "do not." *Id.* ¶ 85. One declaration to Right By You's Motion for Preliminary Injunction reinforces this point, explaining, "Research from national, state, and clinic-based surveys has found that most adolescents (60-70%) seek support from their parents when making abortion decisions and voluntarily involve at least one of their parents." Ex. B, Coleman-Minahan Decl. ¶ 32. So, by Right By You's own account, the challenged laws provide do not impede the majority of Missouri's minors who seek an abortion because they can readily obtain parental consent. *See* § 188.028; § 431.061(1)(4)(a). In such cases, Right By You is not prohibited from providing the financial and logistical assistance it seeks to provide. *See* § 188.250. Thus, there are instances in which the law is constitutional, and this Court should dismiss the facial challenge to it.

Because Right By You's Petition acknowledges that there are some circumstances under which the challenged laws could applied, its facial challenge necessarily fails. "It is not enough" for a facial challenge "to show that, under some conceivable circumstances, 'the statute might operate unconstitutionally.'" *Donaldson v. Mo. State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 66

(Mo. banc 2020) (citation omitted). Since Right By You failed to "establish that no set of circumstances exists under which the [statutes] would be valid," its claims must be dismissed. *Id*. (quotation omitted).

B. Right By You's facial challenges fail because the post-viability applications of the challenged statutes are constitutional under Amendment 3.

Right By You's facial challenges fail because they are constitutional in at least some circumstances—specifically in circumstances in which the pregnancy at issue is post-viability. The three challenged statutes—§ 188.028, § 188.250, and § 431.061(1)(4)(a))—apply to both post- and pre-viability abortions. Under subsection 4 of Amendment 3, laws applying to post-viability abortions are presumptively constitutional. *See* Mo. Const. art. I, § 36.4 ("[T]he general assembly *may* enact laws that regulate the provision of abortion after Fetal Viability . . ." (emphasis added)). Because the challenged laws are presumptively lawful post-viability, there are "circumstances" "under which" they are undoubtedly "valid." *Donaldson*, 615 S.W.3d at 66. This means that Right By You cannot succeed on a facial challenge. *State v. Williams*, 548 S.W.3d 275, 280 (Mo. banc 2018). The facial challenge should be dismissed.

C. Right By You has not pleaded an as-applied challenge.

Right By You may argue that it is not bringing a facial challenge because of some tack-on language on the last page if its Petition. Pet. at 58. That would be wrong. Throughout the entire petition, Right By You alleges that the challenged laws are unconstitutional *in their entirety*. Right By You alleges that "[t]his is a challenge to two laws that flagrantly violate the constitutional Right to Reproductive Freedom."

Id. ¶ 1. Right By You also states that "Defendants should be prohibited from enforcing the Parental Consent and Notice Requirement and Ban on Abortion Support (the 'Challenged Abortion Restrictions') because they are violating Missourians' Right to Reproductive Freedom each day the restrictions are in effect." *Id.* ¶ 18; *see also* ¶ 20. Right By You's claims for relief also allege that the challenged laws "violate[ ] young people's Right to Reproductive Freedom, and Plaintiff's right to help them exercise that freedom," so they "must be declared unconstitutional, and the Defendants must be enjoined from implementing, enforcing, or applying" the laws. *Id.* ¶¶ 161, 163. Those claims for are for facial relief, not as applied to a discreet set of circumstances.

After making only facial allegations throughout the Petition and "Claims for Relief," Right By You's "Prayer for Relief" asks the Court to preliminarily and permanently "enjoin Defendants and their employees, agents, and successors in office from enforcing the Parental Consent and Notice Requirement, § 188.028, RSMo, and the Ban on Abortion Support, § 188.250, RSMo, on their face *and/or in any circumstances in which their enforcement would be unconstitutional*." *Id.* at 58 (emphasis added). That tacked-on request is insufficient to bring an as-applied challenge for three reasons.

First, a plaintiff cannot change the nature of its claims in the Prayer for Relief. The Western District has recognized the "general rule" that "the prayer for relief is not part of the petition." *City of Kansas City v. New York-Kansas Bldg. Assocs., L.P.*, 96 S.W.3d 846, 853 (Mo. App. W.D. 2002). "This rule is particularly applicable to

equitable proceedings" like this case. *Id*. Because Right By You did not "specifically request" as-applied relief "in the pleadings," the "trial court is limited when awarding relief to a party to the" facial relief that Right By You "requested in the pleading." *Id*.

Second, Right By You's "Prayer for Relief" is still a request for facial relief. One way to determine whether something is a facial or as-applied challenge is to look at the requested remedy. *See Jackson Cnty. v. Stamps*, 708 S.W.3d 911, 918 n.5 (Mo. App. W.D. 2025). "A successful as-applied challenge bars a law's enforcement against a particular plaintiff, whereas a successful facial challenge results in complete invalidation of a law." *Id*. (quoting *Bennett v. St. Louis Cnty.*, 542 S.W.3d 392, 397 (Mo. App. E.D. 2017)). Even in the "Prayer for Relief," Right By You is not asking this Court to enjoin enforcement against Right By You *only*. It is asking the Court to declare the circumstances under which the laws are unconstitutional *for everyone* and to enjoin enforcement *against anyone*. *See* Pet. at 58. That remedy confirms that Right By You's Petition seeks only facial relief.

Third, Right By You's request for the court to identify "any circumstances in which their enforcement would be unconstitutional" is a request for an impermissible advisory opinion. Right By You cannot ask the Court to parse through innumerable hypothetical situations and declare that a law is constitutional under this circumstance but unconstitutional under that circumstance. Right By You was required to identify the "individual" and "specific circumstances" under which the challenged laws are unconstitutional to bring an as-applied challenge. *Salamun*, 694

S.W.3d at 429 n.10. Because the Petition fails to do so, this is not an as-applied challenge. The only alternative is a facial challenge, which fails for the reasons described in above and in Part V.A below.

IV. Right By You's claims should be dismissed because they are preempted by the Fourteenth Amendment to the U.S. Constitution.

Right By You's claims also should be dismissed because they are preempted by the Fourteenth Amendment to the U.S. Constitution. Any "state law"—including Amendment 3—"that conflicts with federal law is 'without effect.'" *Connelly v. Iolab Corp.*, 927 S.W.2d 848, 851 (Mo. banc 1996) (quoting *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). Right By You is asking this Court to declare that Amendment 3 strips parents of their fundamental right to make life-changing medical decisions for their children. That is in direct conflict with the Fourteenth Amendment to the U.S. Constitution, which guarantees "parents and guardians" the right "to direct the upbringing and education of children under their control." *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925). That fundamental right includes the ability to "make sound judgments concerning many decisions, including their need for medical care or treatment." *Parham v. J. R.*, 442 U.S. 584, 603 (1979). Because Right By You's claims seek to interfere with that federally protected liberty interest, they should be dismissed.

The U.S. Constitution provides that "[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Due Process Clause protects not just procedural rights, but also certain liberty interests. *See Cruzan ex rel. Cruzan v. Dir., Mo. Dept. of Health*, 497 U.S. 261, 278

(1990). To be protected under the Due Process Clause, a right must be either "fundamental to our scheme of ordered liberty, or deeply rooted in this Nation's history and tradition." *Timbs v. Indiana*, 586 U.S. 146, 150 (2019); *see also, e.g., Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 237–38 n.19 (2022). Parents' right to "the care, custody, and control of their children" is one of the "oldest of the fundamental liberty interests" protected by the Due Process Clause of the Fourteenth Amendment. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality). This includes parents' "plenary authority" over a child's "medical care," even when the decision is "not agreeable to a child." *Parham*, 442 U.S. 603-04. The U.S. Supreme Court has explained that "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment," so "[p]arents can and must make those judgments." *Id.* at 603.

Against that well-established federal right, Right By You asks this Court (1) to declare that Amendment 3 prohibits parents from deciding whether or not their minor child will have an abortion, and (2) to permanently enjoin all enforcement of Missouri's parental consent laws. Right By You leaves no wiggle room. It alleges that Amendment 3 prohibits "*[a]ny* denial, interference, delay, or restriction of the right to reproductive freedom." Pet. ¶ 154 (emphasis in original). And it alleges that Amendment 3 covers "all people of childbearing age" and "makes no exception for minors." *Id.* ¶ 55 & n.88 (quoting *Coleman v. Ashcroft*, 696 S.W.3d 347, 380 (Mo. banc 2024) (Broniec, J., dissenting)). According to Right By You's Petition, Amendment 3 necessarily eliminates parents' federally protected constitutional rights.

While states may "adopt in [their] own Constitution[s] individual liberties more expansive than those conferred by the Federal Constitution," state-created liberty interests may not expand so far that they "contravene any other federal constitutional" right or interest. *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980); *see also Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 474, 489 (2020). Amendment 3 therefore cannot displace parents' fundamental right to direct their children's medical care, since that right is protected by the U.S. Constitution. *See Kanuszewski v. Mich. Dep't of HHS*, 927 F.3d 396, 418 (6th Cir. 2019); *Mann v. Cnty. of San Diego*, 907 F.3d 1154, 1161 (9th Cir. 2018). Right By You's interpretation of Amendment 3 violates the Due Process Clause of the Fourteenth Amendment, rendering it "without effect." *Connelly*, 927 S.W.2d at 851.

* * *

Right By You does not have the legal capacity to maintain this suit, and its Petition fails to state a claim on which relief can be granted. *See* Mo. Sup. Ct. R. 55.27(a)(3), (a)(6). The Court should dismiss the case entirely.

V. This Court should deny the Motion for Preliminary Injunction because Right By You cannot show that it is likely to prevail on the merits.

Last month, the Missouri Supreme Court issued a peremptory writ making clear that a "more rigorous" standard of review applied to cases like this where "the relief sought is a preliminary injunction to enjoin the implementation of a duly enacted state statute." Peremptory Writ at 1, *Zhang,* SC101026. In order to enjoin the challenged statutes, this Court "must 'make a threshold finding that a party is likely to prevail on the merits.'" *Id.* at 2 (quoting *Planned Parenthood Minn., N.D.,*

S.D. v. Rounds, 530 F.3d 732–33 (8th Cir. 2008)). That means that Right By You must show that it has greater than a fifty percent likelihood of success. *See Rounds*, 530 F.3d at 730, 732 n.4; *see also Sleep No. Corp. v. Young*, 33 F.4th 1012, 1016 (8th Cir. 2022) ("[T]he more-likely-than-not standard is reserved for injunctions against the enforcement of statutes and regulations."'). Right By You has failed to satisfy that high burden, so the preliminary injunction should be denied.

A. Right By You is unlikely to succeed because it cannot show that it is "likely to prevail" on its facial challenge.

As explained above, Right By You's decision to bring a facial challenge warrants dismissal of its claims. It is also fatal to its motion for a preliminary injunction. In order to succeed on facial claims, Right By You needs to establish "that *no set of circumstances* exists under which the Act would be valid." *Kerr*, 905 S.W.2d at 515 (quoting *Salerno*, 481 U.S. at 745) (emphasis added). Right By You cannot show that it is "likely to prevail on the merits," Peremptory Writ at 2, *Zhang,* SC101026, because it alleges in the Petition that there at least some circumstances where the laws are constitutional. *See supra* Part III.A (citing Pet. ¶¶ 47, 48, 85, 86).

If the Court looks beyond the allegations in the Petition—as it should for the purposes of the preliminary injunction—it is even more obvious that Right By You is not likely to prevail. To be clear, the law requires only that a *single* application of a challenged law be constitutional to defeat a facial challenge. *See Kerr*, 905 S.W.2d at 515. Here, there are many other circumstances under which the challenged laws are constitutional. Consider the following: A 16 year-old girl is coerced into sex trafficking, becomes pregnant, and her traffickers force her to have an abortion

against her will. They tell her to lie to the abortion provider about the circumstances of her pregnancy or they will hurt her. Or imagine a high school freshman impregnated by her abusive boyfriend, a senior, who threatens to beat her if she tells her parents or keeps the baby. The challenged laws are manifestly constitutional in those circumstances because they protect minors from coercion and abuse. As noted, the challenged laws do not prohibit minors from having an abortion in those circumstances; they just require parental consent or a judicial bypass. *See* § 188.028. Such situations are not hypothetical. *See supra* Part V.E.2.

There is yet another set of circumstances under which Right By You cannot dispute that the laws are facially valid: post-viability abortions. Sections 188.028 and 188.250 apply to post-viability abortions, not just pre-viability abortions. And under subsection 4 of Amendment 3, any law applying to post-viability abortions is presumptively constitutional. *See* Mo. Const. art. I, § 36.4 ("[T]he general assembly *may* enact laws that regulate the provision of abortion after Fetal Viability . . ." (emphasis added)). Because sections 188.028 and 188.250 are presumptively lawful post-viability, there are "circumstances" "under which" §§ 188.028 and 188.250 are undoubtedly "valid." *Donaldson*, 615 S.W.3d at 66. That is sufficient to defeat a facial challenge.

Right By You—not the State—carries the heavy burden of proving that the challenged laws are facially unconstitutional. Facial challenges are "hard to win," and for good reason. *Moody*, 603 U.S. at 723. As the U.S. Supreme Court has explained:

> Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of premature interpretation of statutes on the basis of factually barebones records. Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied. Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution.

Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 450 (2008). Because Right By You has failed to establish that the challenged laws are likely unconstitutional in all circumstances, the Court should deny Right By You's motion for a preliminary injunction.

B. Right By You is not likely to prevail on the merits because it adopts a view of Amendment 3 that conflicts with the U.S. Constitution's guarantee of parental rights.

As discussed above in Part IV, Right By You's claims depend on an interpretation of parental rights that conflicts with the Due Process Clause of the U.S. Constitution. Those arguments also demonstrate that Right By You is not likely to prevail on the merits. But another point further undermines Right By You's request for injunctive relief: the canon of constitutional avoidance.

Because Missouri statutes carry a presumption of constitutionality, Missouri's Supreme Court recognizes the canon of constitutional avoidance. *See Goodman v. Saline Cnty. Comm'n*, 699 S.W.3d 437, 440 n.5 (Mo. banc 2024). Under the constitutional avoidance canon, courts must "avoid[ ] interpreting a statute in a way 'that would call into question its constitutional validity.'" *State ex rel. Parson v. Walker*, 690 S.W.3d 477, 485 (Mo. banc 2024) (quoting *State ex rel. Praxair, Inc. v. Mo. Pub. Serv. Comm'n*, 344 S.W.3d 178, 187 (Mo. banc 2011)).

The constitutional avoidance canon applies whenever an interpretation raises serious questions about a provision's validity, not just when it would actually render the provision unconstitutional. *See Clark v. Martinez*, 543 U.S. 371, 381 (2005) (holding that the constitutional avoidance canon "rest[s] on the reasonable presumption that Congress did not intend" for courts to adopt an interpretation of a statute "which raises serious constitutional *doubts*") (emphasis added). If Amendment 3 makes it unconstitutional for a parent to withhold consent to an abortion on behalf of their minor child, then Amendment 3 raises serious questions under the Fourteenth Amendment to the U.S. Constitution that are best avoided. Right By You's claims are not likely to succeed when mandatory canons of construction require this Court to avoid the interpretation it proposes. Right By You's reading of Amendment 3 would abridge a parent's fundamental right to refuse medical treatment on behalf of their minor child.

C. Right By You cannot show that they are likely to succeed in light of *Fitz-James* and *Zhang*.

A preliminary injunction in this case is impossible in light of binding precedent. As discussed above, the Supreme Court recently held that a plaintiff seeking a preliminary injunction must show that it is "likely to prevail on the merits." Peremptory Writ, *Zhang*, SC101026 (May 27, 2025). And the Western District in *Fitz-James* held that giving minors a right to abortion was not the "legal and probable effect[ ] of" Amendment 3. 678 S.W.3d at 210; *see also supra* Background Part II. Put simply, Right By You cannot be *likely* to prevail on the merits of its claims when the Western District has already held that the "legal and probable" effect of

Amendment 3 did not include giving minors a right to abortion without parental consent. *Id.*

D. Right By You cannot demonstrate a likelihood of success on the merits because §§ 188.028 and 188.250 were repeatedly upheld by during the *Roe* era, and the public understood Amendment 3 to restore *Roe* when Amendment 3 passed.

As noted above, both §§ 188.028 and 188.250 were repeatedly upheld by the U.S. Supreme Court and the Missouri Supreme Court under *Roe v. Wade*, 410 U.S. 113 (1973). *See, e.g.*, *Planned Parenthood Association of Kansas City v. Ashcroft*, 462 U.S. 476, 490–93 (1983) (upholding § 188.028); *Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 743–44 (Mo. banc 2007) (upholding § 188.250). Right By You claims that this precedent is now irrelevant because of Amendment 3. SIS MPI at 14 n.8, 17–18.

But when Amendment 3 passed, *Roe* was the foundation of the public's understanding of the measure. And for over 150 years, the Missouri Supreme Court has instructed lower courts to interpret constitutional provisions according to "their natural and original meaning." *Hamilton v. St. Louis Cnty. Ct.*, 15 Mo. 3, 23–24 (1851). Just four years ago, the Supreme Court again reaffirmed that Missouri courts must "ascribe to the words of a constitutional provision the meaning that the people understood them to have when the provision was adopted." *Doyle v. Tidball*, 625 S.W.3d 459, 463 (Mo. banc 2021).

Before the election, supporters of the measure told voters that the purpose of the amendment was to "restore" *Roe v. Wade*, 410 U.S. 113 (1973). The organization that put the amendment on the ballot—Missourians for Constitutional Freedom

("MCF")—told the public the amendment would "restore the right" that existed under *Roe*. *E.g.*, *Amendment 3 is on the Ballot: Missourians for Constitutional Freedom Statement on Missouri Supreme Court Decision*, Missourians for Constitutional Freedom (Sept. 10, 2024);[9] Missourians for Constitutional Freedom (@Missourians4CF), X (June 24, 2024) (promising to "tak[e] back our freedom" that was lost when "the Supreme Court overturned *Roe v. Wade*").[10] Similarly, League of Women Voters of Missouri—a prominent amendment backer—informed voters that "Amendment 3 would restore the rights that pregnant people had under *Roe v. Wade*." D50; *accord* D51, p. 4 ("A YES on Amendment 3 will . . . restore Reproductive Freedom as it was prior to the repeal of *Roe v. Wade*.").

The media said the same. The St. Louis Post-Dispatch, for example, said "Amendment 3 uses the same standard as *Roe v. Wade*." Marilyn McLeod & Sue Shineman, *Don't Listen to the Lies About Amd 3. Here are the Facts*., St. Louis Post-Dispatch (Oct. 20, 2024).[11] Other outlets did too. *E.g.*, Jackie Schirn, Columbia Daily Tribune (Oct. 6, 2024) ("Amendment 3 would restore the abortion rights Missouri women had before the Supreme Court overturned *Roe v. Wade* in 2022.").[12]

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[9] https://moconstitutionalfreedom.org/amendment-3-is-on-the-ballot-missourians-for-constitutional-freedom-statement-on-missouri-supreme-court-decision

[10] https://x.com/Missourians4CF/status/1805234310846292316

[11] https://www.stltoday.com/opinion/column/opinion-dont-listen-to-the-lies-about-amd-3-here-are-the-facts/article_fe5c6846-8a61-11ef-a09a-3bf58df4aa78.html (archived at https://my.lwv.org/missouri/league-and-aauw-guest-column-shares-facts-amendment-3)

[12] https://www.columbiatribune.com/story/opinion/2024/10/06/letters-immigration-missouri-amendment-3-science/75496571007

Right By You's complete disregard of *Roe*-era cases is wrong because *Roe* clearly influenced "the meaning that the people understood [Amendment 3] to have when the provision was adopted." *Doyle*, 625 S.W.3d at 463. The U.S. Supreme Court expressly rejected any notion that *Roe* created a regime of "abortion on demand." *Casey*, 505 U.S. at 887. And the backers of Amendment 3 informed voters that the amendment would do nothing more than "restore" *Roe*. Right By You is thus wrong to read Amendment 3 as nullifying parental- and judicial-involvement laws that the U.S. Supreme Court and the Missouri Supreme Court expressly upheld under *Roe*. *See Ashcroft*, 462 U.S. at 490–93 (upholding § 188.028); *Nixon*, 220 S.W.3d at 743–44 (upholding § 188.250). At the very least, *Ashcroft* and *Nixon* show that Right By You is not likely to succeed on the merits, warranting denial of a preliminary injunction. *See* Peremptory Writ, *Zhang*, SC101026.

E. Right By You is unlikely to succeed on its claims under subsection 3 of Amendment 3.

This Court should deny preliminary relief on Right By You's incorrect claims that §§ 188.028 and 188.250 violate subsections 3, 5, and 6 of Amendment 3. Right By You is unlikely to succeed on any one of those claims, so this Court should deny preliminary relief. Defendants will first address subsection 3 before turning to subsections 5 and 6 below.

1. Sections 188.028 and 188.250 do not trigger heightened scrutiny under subsection 3.

Sections 188.028 and 188.250 easily pass muster under subsection 3. Although both statutes would satisfy even heightened scrutiny, *see infra*, neither statute triggers heightened scrutiny in the first place. This is for four reasons.

First, Right By You cannot invoke heightened scrutiny under subsection 3 because it lacks third-party standing to challenge the laws on behalf of Missouri's minors. Subsections 2 and 3 gives individual women, not Right By You, a "right to reproductive freedom." *See* Mo. Const. art. I, § 36.2, .3. As explained above, *supra* Part II.B, Right By You cannot establish third-party standing because Missouri has a "general rule against third-party standing." *Missouri State Med. Ass'n*, 256 S.W.3d at 89.

Standing alone, Right By You has no "right to reproductive freedom" that triggers heightened scrutiny. The "right to reproductive freedom" is defined as "a *person's* . . . right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions." Mo. Const. art. I, § 36.2. Right By You is not a "person" who can receive reproductive healthcare. It cannot give birth, use birth control, or have an abortion. Only human beings possess the right to reproductive freedom, not unincorporated associations like Right By You.

Second, neither § 188.028 nor § 188.250 "den[y], interfere[ ] with, delay[ ] or otherwise restrict[ ]" "the right to reproductive freedom." Mo. Const. art. I, § 36.3. Right By You's briefing repeatedly assumes that, without §§ 188.028 nor 188.250, minors would have the right to get an abortion without their parents' consent. But neither statute upsets the longstanding background rule that minors cannot consent to their own medical treatment. *See, e.g.*, §§ 167.621.1, 431.061, RSMo. Viewed

against that background, §§ 188.028 and 188.250 together explicitly *create* a pathway by which minors may receive abortions they would otherwise not be able to obtain because they are minors and cannot consent to their own medical care. The baseline is not that minors can get an abortion without parental consent and §§ 188.028 and 188.250 restrict that right. The baseline is that minors have no right to an abortion without parental consent, and the challenged statutes provide a legal way for a minor to get an abortion without a parent's consent by emancipation or judicial bypass. Section 188.028.2(4) even provides that a judicial bypass shall *immunize* an abortion provider from "an action by the parents or guardian of the minor on the grounds of battery of the minor." So §§ 188.028 and 188.250 certainly do not deny, interfere with, or restrict the right to an abortion. Instead, they create a path for minors to get an abortion that they would not otherwise have.

For similar reasons, neither statute delays the exercise of the right to an abortion. Again, §§ 188.028 and 188.250 provide a pathway for a minor to obtain an abortion she otherwise could not obtain because she cannot consent to medical procedures. In the alternative, if this Court believes that §§ 188.028 and 188.250 simply increases the number of minutes it takes to obtain an abortion (it does not, *see supra*), that is not enough to render it unconstitutional. If this Court were to hold that anything that might increase the time between the decision to get the abortion and the actual abortion were unconstitutional, then virtually the entire Missouri traffic code would become unconstitutional. Speed limits would be unconstitutional because they increase the time it takes to get to the abortion clinic. The Court should

reject such an "unreasonable" and "absurd" construction of Amendment 3. *See A.I.A.K. v. T.M.K.*, 695 S.W.3d 118, 129 (Mo. App. W.D. 2024).

Third, even if this Court found that §§ 188.028 and 188.250 sometimes delay *abortion* (they do not, *see supra*), that would not automatically trigger heightened scrutiny. Amendment 3 says nothing about heightened scrutiny when abortion is delayed. It instead says heightened scrutiny applies when "[t]he right of *reproductive freedom*" is "delayed." Amendment 3 defines "reproductive freedom" as "the right to make and carry out decisions about all matters relating to reproductive healthcare," including not just abortion, but also "prenatal care, childbirth . . . and respectful birthing conditions." Mo. Const. art. I, § 36.2. When a law causes minor delay to *one* aspect of the right to reproductive freedom to preserve and protect the ability to "make and carry out decisions about" *another* aspect of that right, no heightened scrutiny applies. To hold otherwise would be to privilege "abortion" above other types of reproductive freedom guaranteed by Amendment 3, including the right to "childbirth."

Science, caselaw, and testimony from post-abortive minors all confirm that many minors are not equipped to make the abortion decision without a trusted adult. Dr. Priscilla Coleman, a developmental psychologist, attests that, "Compared to adult decision-making, adolescent decision-making is less competent and less rational; it is more impulsive and more easily influenced by others, especially in highly emotional situations, such as when faced with an unintended pregnancy." Ex. 103, Coleman Aff. ¶¶ 13, 28–53. She further states that "adolescents experiencing crisis

pregnancies" "need substantial support from trusted adults," such as parents or courts. *Id.* Dr. Coleman also opines that Right By You's "claim that adolescent decision-making abilities are equivalent to those of adults disregards the extensive interdisciplinary literature, as does their viewpoint that parental involvement laws harm the well-being of minors." *Id.* Of course, Coleman's view accords with "[t]he law's" longstanding "presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions." *Parham*, 442 U.S. at 602. Further, several affiants—who underwent abortions without parental consent as minors—uniformly testify that they regret their abortions and that they wish their parents were involved in the abortion decision. Ex. 106, S.J. Aff.; Ex. 107, B.P. Aff.; Ex. 108, S.O. Aff. Every one of these affiants dealt with mental-health challenges due to the abortions they received as minors, and all three have sought therapy as a result of the abortions. S.J. Aff.; B.P. Aff.; S.O. Aff. (Noticeably absent from Right By You's exhibits is an affidavit from *even* one minor who obtained an abortion without parental or judicial involvement.)

The bottom line is this: the right to "reproductive freedom" includes "the right to make and carry out decisions" between "abortion" and "childbirth." To "to be able to choose freely how to proceed with an unplanned pregnancy," minors "need opportunity" to discuss their decision with a trusted adult, such as a parent or (at least) a court. Coleman Aff. ¶ 44. Minors who rely on strangers or abusers, and who do not have input from parents, often do not have sufficient resources to make that decision. *See* S.J. Aff.; B.P. Aff.; S.O. Aff. For those minors, their right to reproductive

freedom is denied. Section 188.028 and 188.250 therefore further reproductive freedom by requiring parental involvement, or by requiring a court to assess the maturity and needs of minors on an individualized basis. Neither statute can possibly trigger heightened scrutiny because both statutes uphold reproductive freedom.

Fourth, § 188.250 is a statute enabling post-abortive minors to guard their reproductive freedom. The statute enables "a minor" to sue for injuries sustained by violations of § 188.028. *See* § 188.250.2. This is an obvious good for post-abortive minors whose right to reproductive freedom is denied. An injured minor can bring a civil action for monetary damages, including "emotional injury" due to an abortion they regret. *See* § 188.250.2. Post-abortive minors suing under § 188.250 were *denied* their right to "childbirth"—a decision they would have made but for the violation of § 188.028. For those minors, § 188.250 vindicates their right to reproductive freedom by creating a cause of action (like 42 U.S.C. § 1983) that allows them to sue the persons who contributed to the denial of their right to "childbirth." Mo. Const. art. I, § 36.2. That upholds reproductive freedom and does not trigger heightened scrutiny.

2. In any event, §§ 188.028 and 188.250 would easily satisfy heightened scrutiny.

Even if this Court holds that §§ 188.028 and 188.250 trigger heightened scrutiny, Right By You is still not "likely" to succeed on the merits. *See* Peremptory Writ, *Zhang*, SC101026. Both statutes would satisfy heightened scrutiny because they uphold Missouri's "compelling interest in protecting minor children," *Mitchell v.*

Dakota Cnty. Soc. Servs., 959 F.3d 887, 897 (8th Cir. 2020), and they are both narrowly tailored.

1. Sections 188.028 and 188.250 guard against forced abortions by abusers and sex traffickers. Right By You's own expert, Kate Coleman-Minahan, acknowledges that "most adolescents (60–70%) seek support from their parents when making abortion decisions and voluntarily involve at least one of their parents." Coleman-Minahan Decl. ¶ 32. So §§ 188.028 and 188.250 are for the *minority* of cases where a young person does not voluntarily involve their parents in the abortion decision. There could be many reasons for this. Yet in a significant chunk of cases, minors do not involve parents because they are the victims of sexual abuse or sex trafficking. *See* Coleman Aff. ¶¶ 16, 70–94; Ex. 104, Skop Aff. ¶¶ 43–45; Ex. 105, Wubbenhorst Aff. ¶¶ 25–39. This problem provides a compelling interest supporting parental consent with the alternative of judicial bypass. *See* § 188.028. If a minor is unable to involve their parents in the abortion decision, a court should at least make an individualized assessment about the minor's circumstances, including a hearing that could detect abuse or sex trafficking. § 188.028.2.

Missouri tragically has one of the worst rates of sex trafficking in the country. Wubbenhorst Aff. ¶ 35. And "[t]he majority of adolescent female sex trafficking victims in the U.S are recruited between the ages of 12 and 14." Coleman Aff. ¶ 70. Further, between "300,000 to 400,000 children are at risk or become victims of sex trafficking in the U.S. each year." *Id.* Sexual abuse is also a shockingly prevalent problem. "[T]he prevalence of child sexual abuse for girls under age 18 in the U.S. is

between 10.7% and 17.4%." *Id.* ¶ 71. And "[s]tudies indicate that as many as 50% to 66% of pregnant adolescents have a history of childhood sexual or physical abuse." *Id.* ¶ 72. "Several studies" also suggest that "the experience of childhood sexual abuse is related to increased risks of undergoing abortion in adolescence and early adulthood." *Id.* ¶ 74.

Forced abortions are sadly common amongst victims of sexual abuse and human trafficking. In "sexually abusive relationships," adolescents are "likely to be the recipients of pressure or coercion to abort" "as perpetrators are motivated to hide the abuse." *Id.* ¶ 75. "Forced abortion among adolescents victimized by sex trafficking has [also] been documented in several peer-reviewed articles." *Id.* ¶ 77. One study of sex trafficking victims found that "more than half of the victims (55.2%) reported at least one abortion, and 29.9% reported multiple abortions"—most of which were forced. *Id.* ¶ 78. One survivor in the study, "whose abuse at the hands of her traffickers was particularly deplorable, reported 17 abortions and indicated that at least some of them were forced." *Id.* Laws like §§ 188.028 and 188.250 guard against forced abortions by abusers and sex traffickers because they ensure that minors will involve their parents, or secure judicial approval, before obtaining an abortion. *See* Coleman Aff. ¶¶ 16, 70–94; Skop Aff. ¶¶ 43–45; Wubbenhorst Aff. ¶¶ 25–39.

Plaintiff tries to assure the Court that there is no need for statutes like §§ 188.028 and 188.250 because abortion providers already screen for "coercion" as part of the "informed consent" process. SIS MPI at 7. But that is often inaccurate.

Ironically, Planned Parenthood—the only abortion provider in Missouri—is currently challenging[13] § 188.027, RSMo, including subsection 4 of the statute which prohibits abortion providers from knowingly performing coerced abortions. And until recently, that provision was preliminarily enjoined by virtue of a facial injunction against § 188.027. *Compare* Order at 16–17, *Comprehensive Health of Planned Parenthood Great Plains, et al. v. State of Missouri, et al.*, Case No. 2416-CV31931 (16th Cir. Ct., Dec. 20, 2024)., *with* Peremptory Writ, *Zhang*, SC101026 (vacating the preliminary injunction).

Further, abortion providers and healthcare providers frequently fail to detect abuse on their own. "For example, Lederer and Wetzel (2014) reported that nearly 88% of sex trafficking survivors reported having had contact with a health care system while being exploited." Coleman Aff. ¶ 79. Lederer and Wetzel also noted that survivors had "significant contact with clinical treatment facilities, most commonly Planned Parenthood." *Id.* "When [Lederer and Wetzel] asked why they went to Planned Parenthood, one survivor said: 'Because they did not ask any questions.'" *Id.* Another trafficking survivor, who was trafficked starting at 17, tragically recounts, "I had two abortions at a private clinic. Nobody—neither the nurses nor the doctors—ever asked me if I really wanted the abortion. Nobody asked me if it was a trick baby. I had three or four more abortions at nonprofit community

[13] *See* Am. Pet. ¶¶ 307–17, *Comprehensive Health of Planned Parenthood Great Plains, et al. v. State of Missouri, et al.*, Case No. 2416-CV31931 (16th Cir. Ct., May 4, 2025).

clinics. All of them were the same as any other doctor visit. The nurse prepared me, and the doctor came in, 'fixed' the problem, and left." *Id.* ¶ 80.

Countless more cases show that those who provide abortions—people that Right By You characterizes as "Good Samaritans," SIS MPI at 2—often fail to detect trafficking and abuse. Take a case out of Ohio as just one example. There, "a 13-year-old girl was impregnated by her 21-year-old soccer coach, John Haller." Coleman Aff. ¶ 84. "To conceal the statutory rape, Mr. Haller arranged for an abortion by impersonating her father during a telephone call with the abortion clinic. Then he pretended to be her brother while at the clinic." *Id.* "The coach resumed having sex with [the minor] after the abortion," and was held accountable only after a teacher discovered his crimes. *Id.* The minor and her parents then sued the abortion clinic for failure to comply with the Ohio sexual abuse reporting statute. *Id.* This is just one of many examples. *See id.* ¶¶ 81–84.

These cases are no surprise in light of many circumstances where abortion facilities show little concern for possible coercion. The previously-discussed video at the Planned Parenthood facility in Independence is one stark example. *See* Ex. 101; 102. Former abortion-facility employees also attest to systematic failure to screen—or actively ignore—potential coercion. For example, R.T. attests that, while she worked at Planned Parenthood, she "was told by Planned Parenthood personnel to change the age of a client's boyfriend because, if his actual age was documented, it would require Planned Parenthood [to function] as a mandatory reporter." Ex. 109, R.T. Aff. ¶ 14. R.T. also reports another instance where an unidentified male claimed

to be a minor's father so that she could obtain an abortion. *Id.* The minor "had such a bad case of herpes that she couldn't even sit at the clinic." *Id.* But nobody "asked whether the man was actually her father," and "nobody questioned whether it was he who gave her herpes." *Id.* R.T. also notes that she never received training on how to "identify and assist sex trafficking victims," even when Planned Parenthood publicly stated that it was providing such training to its employees. *Id.* ¶¶ 15–16.

Clearly, §§ 188.028 and 188.250 are necessary safeguards to screen for coercion by abusers and sex traffickers.

2. The challenged statutes are likely to meet heightened scrutiny because abortion poses significant risks to the mental and physical health of minors, which creates a compelling interest supporting parental or judicial involvement. Throughout its briefing, Right By You makes faulty claims about abortion's safety and assumes that abortion is almost always the best option for minors. *See, e.g.*, SIS MPI at 3–5. The truth is much more complicated. Many post-abortive minors come to regret their decision, *see* S.J. Aff.; B.P. Aff.; S.O. Aff., and many minors who choose to carry their pregnancies to term are "grateful" for their decision to keep the baby, *see* R.T. Aff. ¶ 2. The point is not that pregnancy is always better than abortion. The point is that pregnant minors face an extremely difficult decision. Their decision will have lasting impacts that they are not able to fully comprehend on their own. Coleman Aff. ¶¶ 13, 28–53. Missouri therefore has a compelling interest in ensuring that a parent or a judge is available to help a minor make the abortion decision. *See* §§ 188.028; 188.250.

The abortion decision is not nearly as simple as Right By You claims. Contrary to Right By You's representation, there is no reliable evidence suggesting that "the risk of death associated with childbirth is more than twelve times higher than that associated with abortion." *See* SIS MPI at 4 (citing McNicholas Decl. ¶ 10[14]). As Dr. Wubbenhorst explains in her affidavit, Right By You's lone support for this claim is a literature review that "excluded an extraordinary number of studies," and instead selectively relied on studies basing their conclusions based on gaps in data about the number of abortion complications in the U.S. *See* Wubbenhorst Aff. ¶¶ 53–56. Unlike birth data, "U.S. abortion complication data is well-documented to be incomplete," so it is difficult to measure the safety of abortion relative to birth in the U.S. Skop Aff. ¶ 18. Missouri has tried to remedy this problem by imposing a reporting requirement for all abortion complications. *See* § 188.052, RSMo. But Missouri abortion facilities have refused to cooperate. *See* Am. Pet. ¶¶ 301–06, *Comprehensive Health of Planned Parenthood Great Plains, et al. v. State of Missouri, et al.*, Case No. 2416-CV31931 (16th Cir. Ct., May 4, 2025) (challenging the reporting requirement). In fact, Right By You's lone abortion provider witness, Dr. Colleen McNicholas, contributed to this problem while performing abortions at Planned Parenthood in St. Louis and Columbia. During a prior challenge to Missouri law, McNicholas admitted under oath that she failed to comply with Missouri's reporting law for nearly a decade. *See* Ex. 111 at 267:13–268:5. One of her colleagues, Dr. Daniel Eisenberg, also admitted

[14] State Defendants object to the admissibility of McNicholas's declaration because it is an unsworn statement, which is generally inadmissible in Missouri courts. *See Brown v. Chipotle Servs., LLC*, 645 S.W.3d 518, 524 (Mo. App. W.D. 2022).

under oath that he failed to comply with the reporting requirement because he did not think Missouri would actually enforce the complication-reporting law. *See* Ex. 112 at 281:10–23.

Even with these gaps in reporting, there is good evidence that abortion is not as safe as Plaintiff's claim. Dr. Ingrid Skop notes a 2023 study showing that abortion pills "may lead to as many as one in ten women requiring emergency room care." Skop Aff. ¶ 21. Abortion pills have also been shown to cause life-threatening hemorrhages in some women, leading to "maternal death." *Id.* ¶¶ 23, 26. Surgical abortion also comes with several risks. *Id.* ¶¶ 22, 24–25. That includes "accidental perforation of instruments through the soft, gravid uterus, potentially causing injury to adjacent blood vessels and/or gynecologic, urinary or gastrointestinal organs, which may require emergency abdominal surgical exploration, resulting in hysterectomy, bowel resection, bladder repair, or other repairs." *Id.* ¶ 24.

Aside from potential physical complications, abortion poses significant risks to the mental health of minors. For example, a "25-year longitudinal study in New Zealand found that women who had an abortion between the ages of 15 and 25 were significantly more likely to develop mental health problems post-abortion, including depression, suicidal behaviors, and substance use disorders, than those who had never been pregnant or who had been pregnant but not had an abortion." *Id.* ¶ 20. "High-quality records linkage studies from Finland [also] show that suicide rates are six times higher in the year following abortion compared to childbirth." *Id.* ¶ 19. Dr. Coleman also notes in her affidavit that "after an abortion, adolescents are more

likely to have suicidal thoughts and behaviors compared to adult women." Coleman Aff. ¶ 69. Some studies show that as many as "29% of adolescents who aborted made suicidal gestures," with the risk of suicide increasing around "the 'anniversary period' of the abortion" and "around the date when the pregnancy would have been full-term." *Id.* Aside from suicide, research also "indicates that adolescents who undergo abortion are more likely to engage in non-lethal self-harm than those who carry their pregnancies to term." Wubbenhorst Aff. ¶ 17. One study found that "abortion was associated with a 43% increased risk of hospitalization for self-harm, whereas delivery was associated with a 39% decreased risk." *Id.*

This data shows why minors are not equipped to make the abortion decision on their own. Weighing the merits and the demerits of an abortion decision is extremely difficult even for an adult. Psychology confirms that minors are not equipped to make this decision on their own. *See* Coleman ¶¶ 13, 28–53. Sections 188.028 and 188.250 ensure that minors have a parent to help them make this decision or a court who can assess the minor's individualized circumstance. Both statutes therefore guard the "health of a person seeking care," which is a compelling interest under Amendment 3. *See* Mo. Cost. art. I, § 36.3.

3. Right By You's own witness, Dr. Colleen McNicholas, illustrates why parental or judicial consent is necessary before a minor obtains an abortion. McNicholas is the only physician that Right By You has called to testify about the safety of abortion relative to pregnancy. *See* McNicholas Decl. But McNicholas's

history in Missouri undermines her credibility. Her history also illustrates why parents should be involved in a minor's decision about where to seek an abortion.

Until her sudden resignation in January 2025,[15] McNicholas worked as the Chief Medical Officer of Planned Parenthood Great Rivers, where she performed abortions in the St. Louis metro and Columbia, Missouri. During the years that she worked at Planned Parenthood, McNicholas—and the clinicians that she supervised—repeatedly violated basic health and standards, resulting in harm to their patients.

Consider first the deficiencies discovered by DHSS in a 2019 inspection of a Planned Parenthood facility in St. Louis, where McNicholas worked as an abortion provider and then as Chief Medical Officer in 2019. *See* Ex. 113, 2019 DHSS Statement of Deficiencies (St. Louis Facility). Among other things, the inspection documented multiple abortion complications: One patient endured repeated failed abortion attempts—first a surgical procedure involving a resident and McNicholas, followed by an unsuccessful medication abortion, before a second surgical attempt succeeded. *See* Ex. 115, AHC Decision, *Reproductive Health Services v. Department of Health and Senior Services*, No. 19-0879, at 27–35 (May 29, 2020). A second patient suffered a severe infection due to a twin that abortion providers missed. *Id.* at 35–40. A third patient experienced a failed abortion procedure also. *Id.* at 40–45. These

[15] Sarah Fentem, *Planned Parenthood St. Louis' Chief Medical Officer Colleen McNicholas resigns*, St. Louis Public Radio (Jan. 14, 2025), https://www.stlpr.org/health-science-environment/2025-01-14/planned-parenthood-st-louis-chief-medical-officer-colleen-mcnicholas-resigns; @DocMcnick, X Post (Jan. 13, 2025), https://x.com/DocMcnick/status/1878959069811364053.

incidents were compounded by systemic failures throughout the St. Louis abortion facility, including incomplete medical records and unaddressed laboratory results. *See* 2019 DHSS Statement of Deficiencies (St. Louis).

Perhaps most shocking are the deficiencies identified in a 2018 DHSS inspection of Planned Parenthood's Columbia facility. *See* Ex. 114, 2018 DHSS Statement of Deficiencies (Columbia Facility). At the time, McNicholas was regularly traveling from St. Louis to perform abortions at Planned Parenthood's clinic in Columbia. As of a 2016 article featuring her, she was "one of a dwindling group of doctors performing abortions in the Midwest" was based in Saint Louis but was "crisscrossing the midwest" and traveling to conduct abortions as far away as Wichita, Kansas and Oklahoma City, Oklahoma.[16] The Columbia clinic, one of the ones where she worked, was temporarily shut down, however, because inspectors discovered that abortion providers (possibly including McNicholas) had been using moldy abortion equipment, including this suction machine, on patients for months:

[16] "On the Front Lines of the Abortion Wars" Kayla Webley Adler, available at: https://www.marieclaire.com/culture/a20565/mission-critical-abortion-rights-midwest/, and https://archive.is/9HzeP

At the time of the inspection, Planned Parenthood's own staff identified the "blackish grey substance" as "mold," and they admitted that abortion providers "continued to use" the machine "on patients" for months "after they identified the issue." 2018 DHSS Statement of Deficiencies (Columbia Facility) at 7–8. The staff also admitted that the "suction tubing" still contained a liquid substance that "was most likely bodily fluid" from an abortion a few days earlier. *Id.* at 7; *see also Comprehensive Health of Planned Parenthood Great Plains v. Lyskowski*, 2018 WL 10613876 (W.D. Mo. Oct. 3, 2018) (Wimes, J.) (denying Planned Parenthood's motion for a preliminary

injunction in light of the "moldy and rusty equipment" that was "observed by DHSS during a September 26, 2018 inspection").

Keep in mind that this is what the State knows only based on inspections from DHSS. In a prior case, McNicholas admitted under oath that she failed to comply with Missouri's abortion-complication reporting law for nearly a decade. Ex. 111 at 267:13–268:5. So these incidents could just be the tip of the iceberg.

Parental involvement in the abortion decision could help minors avoid shoddy care from abortion providers like those at Planned Parenthood's Columbia and St. Louis facilities. In "highly emotional situations" like an "unintended pregnancy," adolescent decision making is "impulsive" and "less rational." Coleman Aff. ¶ 13. During a crisis pregnancy, most adolescents seeking abortion would not think to screen the reputations of abortion facilities and abortion providers. That was certainly the experience of all the witnesses in this case who had abortions as minors without parental consent. *See* S.J. Aff.; B.P. Aff.; S.O. Aff. S.J., for example, had an abortion at Planned Parenthood in Kansas City when she was sixteen. *See* S.J. Aff. ¶ 3. She had such a bad experience that she "just couldn't go back" to Planned Parenthood even though they "instructed [her] to return for a checkup." *Id.* ¶ 10. And when S.J. had her second abortion as an adult, she opted instead to go to the University of Kansas Medical Center. *Id.* ¶ 12. Had S.J.'s parents been involved, they could have helped S.J. seek care with a reputable provider if she chose to go forward with the abortion. The same is true for other minors across the State of Missouri. As Right By You's own witness illustrates, not all abortion facilities provide

adequate care. When possible, minors should have their parents' assistance in determining if and where to seek an abortion.

4. Next, parental consent—with the alternative of judicial bypass—is consistent with longstanding, widely accepted medical practices. Parental consent before surgical or medical treatment is ubiquitous. Subject to a few narrow exceptions, Missouri generally requires parents to consent "to any surgical, medical, or other treatment or procedures" on behalf of their children. § 431.061.1; *see also* § 167.621.1 (requiring healthcare providers in schools to "obtain authorization from a parent or guardian of the child before providing services as provided by section 431.061"); § 217.420.1 (requiring parental consent for "any major surgery to be performed upon or general anesthetic to be administered" to a minor who is incarcerated by the Department of Correction).

Dr. Wubbenhorst also attests that "as a general matter in all medical contexts, parents must give consent for their child to undergo procedures and interventions carried out by a physician. Every medical intervention to be performed in a minor requires consent of one or both parents or a legal guardian." Wubbenhorst Aff. ¶ 41; *see also* Children's Hospital of Philadelphia, *Informed Consent for Surgery* ("[P]arental (or legal guardian) consent is required for any diagnostic or surgical procedure performed on a child under the age of 18.");[17] Johns Hopkins Medicine,

[17] https://www.chop.edu/patients-and-visitors/guide-your-childs-surgery/your-childs preoperative-appointment/informed-consent-surgery

Checklist for Surgery/Consent Forms/Insurance Information ("A child must have a parent's consent before any surgery or procedure can be done.").[18]

Sections 188.028 and 188.250 create an exception to the general rule that a minor's parents must consent to their medical treatments, § 431.061.1. Specifically, §§ 188.028 and 188.250 establish judicial bypass as an alternative, making it possible for a minor to obtain abortion without parental consent. A judicial-bypass order also "bar[s] an action by the parents or guardian of the minor on the grounds of battery of the minor by those performing or inducing the abortion." § 188.028.2(4). This scheme is consistent with the laws in a supermajority of States. As Dr. Coleman notes, "[a]ccording to recent data from the [pro-abortion] Guttmacher Institute, 35 U.S. states maintain a judicial bypass procedure that allows a minor to ask a judge for authorization to obtain an abortion without parental notification or consent." Coleman Aff. ¶ 46.

Sections 188.028 and 188.250 are therefore consistent with widely accepted medical practice. They treat abortion *more* favorably than most medical treatments and, like a supermajority of states, they provide judicial bypass as an alternative to parental consent.

5. Finally, Sections 188.028 and 188.250 are narrowly tailored. As explained at length above, sections 188.028 and 188.250 necessary to guard several compelling interests. They combat forced abortions by sex traffickers and abusers.

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[18] https://www.hopkinsmedicine.org/health/treatment-tests-and-therapies/checklist-for-surgery-- consent-forms--insurance-information

They also ensure that minors have a trusted adult to help them make the abortion decision—a decision with potentially significant mental, emotional, and physical effects. No wonder a super-majority of States agree that these laws are necessary. *See* Coleman Aff. ¶ 46.

To guard these compelling interests while also upholding reproductive freedom, Missouri has made §§ 188.028 and 188.250 as narrow as possible. The statutory scheme actually includes two forms of judicial bypass. First, a court could grant the minor a "right to *self-consent* to the abortion." § 188.028.1(3) (emphasis added). But even if the court finds that the minor is not mature enough to self-consent, the statute explicitly creates a second alternative: judicial consent. In other words, the *court* can directly "grant[ ] consent to the abortion by court order." § 188.028.1(4). Section 188.028.2(1) expressly instructs that courts should consider this alternative: "if the court does not grant the minor [19]for the purpose of consent to the abortion, the court should find that the abortion is in the best interest of the minor and give judicial consent to the abortion.""

Far from Right By You's representations, the judicial bypass statute is designed to be as fast and easy as possible for minors. After the minor files the petition, a court must hold a hearing "as soon as possible within five days of the filing of the petition." § 188.028.2(2). And if the minor does not have counsel, "the court shall appoint counsel at least twenty-four hours before the time of the hearing." *Id.* Further, a court cannot deny a judicial bypass petition for any reason. It must find

[19] Meaning the right to consent to abortion like an adult.

"good cause" for denial, *Ashcroft*, 462 U.S. at 493 (interpreting § 188.028), and "set forth the grounds on which the petition is denied." Further, if the court denies a minor's petition, the minor may appeal on an extremely expedited timeline ("five days" to perfect the appeal). § 188.028.2(5).

One of Right By You's declarants, Stephanie Kraft Sheley, claims that "juvenile courts" in Missouri "are not currently offering judicial bypass," as if to suggest that judicial bypass is not an available alternative to parental consent. Sheley Decl. ¶ 26. But Sheley provides no detail regarding why she believes this to be true. Without more, the Court should disregard Sheley's claim. Section 188.028 gives minors a statutory right to seek a judicial bypass, requires courts to hold judicial bypass hearings, and requires courts to issue an order granting or denying the minor's petition. § 188.028.1(3)–(4), .2(1)–(3). Also, Missouri CaseNet still allows parties to file a judicial bypass petition for a minor's abortion. *See, e.g.*, Ex. 116, Ex. 117. There is no reason to believe that a Missouri court would refuse to process a judicial bypass petition if it were filed.

In any event, even if all Missouri courts are not offering judicial bypass (as Sheley claims), that would not be a constitutional defect *in the challenged statutes*. The challenged statutes *require* judicial bypass to be an available alternative. § 188.028.1(3)–(4), .2(1)–(3). Any problem would lie with *the court system's failure* to hear a judicial bypass petition, not with §§ 188.028 and 188.250.

* * *

For these reasons, Right By You fails to show that it is likely to succeed on its claim under subsection 3 because: (1) Right By You it is not a "person" with a "right to reproductive freedom," Mo. Const. art. I, § 36.2, .3; (2) sections 188.028 and 188.250 do not trigger heightened scrutiny; and (3) sections 188.028 and 188.250 would easily satisfy heightened scrutiny.

F. Right By You is unlikely to succeed on its claim that the challenged laws violate subsection 5 of Amendment 3.

The Court should also reject Right By You's claim that the challenged laws violate subsection 5 of Amendment 3. Subsection 5 states, in relevant part:

> No person shall be *penalized*, *prosecuted*, or *otherwise subjected to adverse action* based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion.

Mo. Const. art. I, § 36.5 (emphasis added). Right By You claims that §§ 188.028 and 188.250 unconstitutionally subject minors to "adverse action" by requiring parental or judicial involvement before an abortion. SIS MPI at 28, 34–35. But that argument is plainly wrong, especially in light of the broader text of subsection 5.

The Missouri Supreme Court has long held that "context is important 'in determining the scope and extent of more general words.' " *Circuit City Stores, Inc. v. Dir. of Revenue*, 438 S.W.3d 397, 401 (Mo. banc 2014) (quoting *Standard Operations, Inc. v. Montague*, 758 S.W.2d 442, 444 (Mo. banc 1988)). And "where general words follow specific words, the general are construed to include only objects similar in nature to those enumerated specifically." *Four B. Corp. v. City of Harrisonville*, 667 S.W.3d 169, 176 (Mo. App. W.D. 2023).

Here, context limits the scope of the phrase "subjected to an adverse action." Mo. Const. art. I, § 36.5. That phrase refers to actions where the person seeking an abortion is a defendant—similar to a "prosecut[ion]" or an action where the person could be "penalized." *Id.* It is not about minors speaking with their parents or participating in a judicial bypass proceeding. As noted above, § 188.028 expands the liberties of minors by creating an exception to the usual rule that minors need parental consent before medical procedures. *See* § 431.061; *supra* Part V.E.1. So § 188.028 provides an additional *benefit* to minors; it does not subject them to a potentially adverse judgment restricting liberties that they would otherwise enjoy.

Next, Right By You claims that §§ 188.028 and 188.250 violate the latter half of subsection 5, which provides: "Nor shall any person *assisting* a person in exercising their right to reproductive freedom *with that person's consent* be penalized, prosecuted, or otherwise subjected to adverse action for doing so." (emphasis added). In a passing sentence, Right By You claims that §§ 188.028 and 188.250 are unconstitutional simply because they subject persons who "help young people obtain an abortion without parental involvement or judicial approval" to adverse action. SIS MPI at 28, 34–35. This argument fails for three reasons.

First, Right By You's argument rests on flawed assumptions. Right By You wrongly assumes that anyone helping a minor obtain an abortion is acting "with that [minor's] consent." Mo. Const. art. I, § 36.5. The fact that subsection 5 applies only when an abortion provider has received valid consent means that it does not undermine §§ 188.028 and 188.250, which themselves define the meaning of consent.

For nearly fifty years, §§ 188.028 and 188.250 have defined what constitutes valid consent in cases involving minors. Right By You offers no argument that subsection 5 reflects a different understanding when it uses the term "consent." Instead, Right By You simply alleges that it wants to provide abortion in circumstances where it *has not* received valid consent to assist the minors at issue in getting an abortion. SIS MPI at 28, 35. Thus, §§ 188.028 and 188.250 are constitutional. That ends the matter. *See State v. Johnson*, 524 S.W.3d 505, 511 (Mo. banc 2017) ("[T]he general rule is that a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court.").

Second, the caveat in subsection 5 that the assistance be provided with consent means that assisting a minor in receiving an abortion may, in at least some circumstances, be unprotected activity under subsection 5. A person assists in providing an abortion on a minor without consent when he or she (1) assists (2) a minor (3) in receiving an abortion (4) without the minor having been emancipated, (5) without the minor receiving a judicial bypass, or (6) when a parent has not consented. *See* § 188.028, RSMo. Sections 188.028 and 188.250 would bar an abortion in those circumstances, and subsection 5 does not change that outcome because there is no valid consent. Thus, § 188.250 is facially constitutional because it is indisputably constitutional in at least some circumstances. *See Perry*, 275 S.W.3d at 243.

Third, subsection 5 protects those "*assisting* a person in exercising their right to reproductive freedom." Mo. Const. art. I, § 36.5 (emphasis added). But § 188.250 creates a cause of action for scenarios where a minor was *not* assisted in exercising their reproductive freedom. Specifically, § 188.250.2 allows a damages action when an abortion in violation of § 188.250 causes "emotional injury" to a minor who would have exercised their right to "childbirth" if they had parental involvement, *see* Mo. Const. art. I, § 36.2; *see, e.g.*, S.J. Aff. (suffering this injury); B.P. Aff. (same); S.O. Aff. (same). Section 188.028 also protects against forced abortions by traffickers and abusers. These are two other scenarios where a minor is *not* assisted in exercising their reproductive freedom by a violation of § 188.028. As noted above in Part V.E.2, in these scenarios, both statutes are undoubtedly constitutional, so the Court should reject Right By You's facial challenge. *Perry*, 275 S.W.3d at 243.

G. Right By You is unlikely to succeed on its claim under subsection 6 of Amendment 3.

Subsection 6 of Amendment 3 invalidates a statute only when it "discriminate[s] against persons providing or obtaining reproductive health care or assisting another person in doing so." Mo. Const. art. I, § 36.6. Right By You claims that §§ 188.028 and 188.250 unconstitutionally discriminate against reproductive healthcare. SIS MPI at 27–28, 34. Not so. Both statutes actually favor abortion relative to almost all other types of healthcare. The *rule* in the vast majority of cases is that minors cannot consent at all without their parents' agreement. *See supra* Part V.E.1. Sections 188.028 and 188.250 create carve outs for abortion by providing two types of judicial bypass as an alternative. *See* § 188.028.1(3), (4).

Dozens of other statutes limit the kinds of healthcare and other significant life activities to which a minor can consent:

1. Section 431.061.1 provides the rule that parental consent is required for "any surgical, medical, or other treatment or procedures, including immunizations."

2. Section 167.621.1 requires healthcare providers in schools to "obtain authorization from a parent or guardian of the child before providing services as provided by section 431.061."

3. Section 324.520 prohibits a minor from getting a tattoo or body piercing without parental consent. Any person who provides a tattoo or body piercing without parental consent is guilty of a misdemeanor. And "[a]ny person who fraudulently misrepresents himself or herself as a parent is guilty of a class B misdemeanor."

4. Section 577.665.2 requires parental consent for a minor under 17 years old to use a tanning device in a tanning facility. And it subjects tanning facilities that violate that rule to criminal fines.

5. Section 451.090.2 prohibits the issuance of a marriage license for minors under the age of 18 without parental consent. And § 451.120 makes it a misdemeanor to solemnize such a marriage.

6. Section 95.03 prohibits a minor from changing her name without parental consent.

7. Section 191.480.1(d) requires parental consent before a minor can be administered an investigational drug to treat a terminal illness.

8. Section 630.115 provides that patients in the custody of the Department of Mental Health cannot "be subjected to any hazardous treatment or surgical procedure unless he, his parent, if he is a minor, or his guardian consents." And the "head of a mental health or developmental disability facility may authorize the medical and surgical treatment of a patient or resident" only "[u]pon consent of a parent or legal guardian of a patient or resident who is a minor."

9. Section 217.420.1 requires parental consent for "any major surgery to be performed upon or general anesthetic to be administered" to a minor who is incarcerated by the Department of Corrections.

10. Section 219.066.1: "Except in case of emergency, the division shall not authorize or permit any major surgery to be performed upon or general anesthetic to be administered to any child committed to the division [of youth services] unless specific written consent thereto shall first have been obtained from the parent or guardian of such child, or, in the absence of such consent, from the court which vested legal custody of such child in the division or any court that has jurisdiction."

Those examples show that Missouri law holds minors incapable of consenting to not only to medical procedures, but other significant or potentially dangerous activities as well. Abortion is much riskier than an ear piercing or a visit to the tanning salon, so the State has an extremely strong interest in ensuring parents consent to a minor's abortion. And unlike many of the parental consent laws discussed above, Missouri allows for a judicial bypass in the abortion context. *See* § 188.028.2. So abortion is treated *better* than other medical procedures and significant life activities.

Right By You also claims that §§ 188.028 and 188.250 discriminate against abortion because § 431.061.1(4) allows minors to consent to pregnancy care without parental consent or a judicial bypass. But § 431.061.1(4) is just another exception to the general rule that parental consent is always required. And, like §§ 188.028 and 188.250, § 431.061.1(4) furthers reproductive freedom by ensuring that a minor can access "prenatal care, childbirth, postpartum care, . . . and respectful birthing conditions."

Additionally, Pregnancy does not implicate the need for a judicial bypass like abortion for a number of reasons. First, abusers and sex traffickers are motivated to force women into abortions, not allow them to give birth. *See*, *e.g.*, Coleman Aff. ¶¶ 75–84. Second, pregnancy care is not an elective treatment like abortion. When a minor is pregnant, she is going to need care—whether the pregnancy ends in

miscarriage or childbirth. And in the few cases where abortion is not elective, § 188.028 creates an exception by allowing abortions without parental or judicial involvement. *See* § 188.028.1 (creating exception "in the case of a medical emergency"). So neither § 188.028 nor § 188.250 discriminate against "reproductive health care." Mo. Const. art. I, § 36.6. And neither violate subsection 6 of Amendment 3.

* * *

For these reasons, this Court should determine that Right By You is unlikely to succeed on the merits. Because this is the most important factor in determining whether to issue a preliminary injunction, this Court should deny the motion for preliminary injunction. *See* Peremptory Writ, *State ex rel. Kehoe v. Zhang*, SC101026 (May 27, 2025).

VI. Plaintiffs lack irreparable harm.

Right By You's failure to make a threshold showing that it is likely to succeed on the merits a sufficient reason to deny a preliminary injunction. The remaining preliminary injunction factors "cannot tip the balance of harms in the movant's favor when the [likelihood of success] requirement is not satisfied." *Rounds*, 530 F.3d at 738 n.11. But likelihood of success is not the only "threshold showing that must be met by a movant for a preliminary injunction." *Id.* 732 n.5. Right By You was also required prove that it will suffer irreparable harm, and its failure to do so can independently "begin and end the [preliminary injunction] analysis." *Id.* Right By You will suffer no irreparable harm in the absence of an injunction for three reasons.

First, Right By You's requested remedy—a preliminary injunction against § 188.028 and § 188.250—will not redress its alleged harms. Right By You challenged § 431.061(1)(4)(a) in its Petition, but it did not ask this Court to preliminarily enjoin enforcement of that statute. *See* MPI at 1. But § 431.061, by prohibiting minors from consenting to their own abortion—creates the backdrop against which § 188.028 and § 188.250 operate. If § 188.028 and § 188.250 are preliminarily enjoined, it will still be against the law for a minor to obtain an abortion without parental consent because of § 431.061. In fact, § 431.061 is *more* restrictive than § 188.028 and § 188.250 because it categorically prohibits minors from consenting to abortions. It is § 188.028 that creates a pathway for a minor to obtain an abortion without parental consent through a judicial bypass. Because Right By You is not asking this Court to enjoin §431.061, parental consent for abortions would still be required even if the requested injunction was granted. Right By You's alleged harms would not be redressed, and it would be in a worse position because the statute creating judicial bypass procedures would be enjoined.

Second, Right By You's irreparable harm argument is conclusory. Right By You argues that it has shown irreparable harm "because it has shown that the restrictions are violating young people's Right to Reproductive Freedom and its own right to help them exercise that freedom." SIS MPI at 36–37. But as explained above Right By You has not shown that the challenged laws conflict with Amendment 3, so Right By You's claim of irreparable harm fails along with the merits.

Third, Right By You also argues that it "has shown that the Challenged Abortion Restrictions have deprived young people of abortion care . . . and will continue to do so without this Court's intervention." *Id*. at 37. But Right By You fails to back up that claim. Right By You's argument and declarations fail to identify a single minor who is unable to obtain an abortion because of the challenged laws or a minor that Right By You wants to pay for or transport to an abortion at this time. Right By You's speculation and argument about the potential impact of the challenged laws is insufficient to warrant the extraordinary remedy of a preliminary injunction against duly enacted statutes. Rather, to "succeed in demonstrating a threat of irreparable harm, 'a party must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief.'" *Roudachevski v. All-Am. Care Centers, Inc.*, 648 F.3d 701, 706 (8th Cir. 2011) (quoting *Iowa Utils. Bd. v. Fed. Commc'ns Comm'n*, 109 F.3d 418, 425 (8th Cir. 1996)). Because Right By You has failed to show that it harm is certain or imminent, this Court should deny its motion for a preliminary injunction.

VII. The public interest and the balance of the equities weigh heavily against a preliminary injunction.

The public interest and the balance of the equities strongly favor denying Right By You's motion for a preliminary injunction. On the State Defendants side of the ledger are laws that protect "the oldest of the fundamental liberty interests" recognized in American law—a parents' rights over the "care, custody, and control of their children." *Troxel*, 530 U.S. at 65. And these laws operate against the "presumption that parents possess what a child lacks in maturity, experience, and

capacity for judgment required for making life's difficult decisions" and that the "natural bonds of affection lead parents to act in the best interests of their children." *Parham*, 442 U.S. at 602. On the other side, Right By You seeks to enjoin those laws facially and prevent any enforcement, even in situations of coercion, sexual abuse, and trafficking. The challenged statutes, upheld for decades by the U.S. and Missouri Supreme Courts, *see supra* Background Part I, ensure parental or judicial oversight for critical medical decisions, safeguarding Missouri's "compelling interest in protecting minor children" mentally and physically. *Mitchell*, 959 F.3d at 897; *see also Ashcroft*, 462 U.S. at 490–93; *Nixon*, 220 S.W.3d at 743–44.

Two other equitable factors weigh against granting a preliminary injunction. First, Right By You waited months to bring this challenge. "[U]nreasonable delay in moving for the injunction can undermine a showing of irreparable harm and "is a sufficient ground to deny a preliminary injunction." *Ng v. Bd. of Regents of Univ. of Minn.*, 64 F.4th 992, 997 (8th Cir. 2023) (quoting *Phyllis Schlafly Revocable Tr. v. Cori*, 924 F.3d 1004, 1009 (8th Cir. 2019)). Amendment 3 was passed by voters over six months before Right By You filed this suit. And then after filing, Right By You took two additional weeks to even serve State Defendants. Those delays show that Right By You will not suffer irreparable harm in the absence of an injunction if it has to wait for a full trial on the merits.

Second, Right By You seeks an injunction that would allow it to expand its business in Missouri when it is not a Missouri corporation or registered to do business in the State. *See supra* Part I; Pet. ¶ 22. If Right By You is allowed to conduct such

business, it is not clear that it is the kind of entity that can be sued if it harms Missouri citizens. Right By You has an out-of-state "Director" and operates through a group of unknown "volunteers" from "in and outside of Missouri, all of whom work remotely." Pet. ¶ 22. Right By You should not be allowed to benefit from the extraordinary remedy of a preliminary injunction when it has failed to comply with Missouri's laws for conducting business in the state. The public interest in protecting minors and the clear imbalance of equities pitting speculative harm against concrete risks to vulnerable adolescents is a strong reason for this Court to deny the preliminary injunction.

CONCLUSION

This Court should grant Defendants' motion to dismiss and deny Right By You's motion for a preliminary injunction.

Dated: June 27, 2025

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CERTIFICATE OF SERVICE

I hereby certify that, on June 27, 2025, the foregoing was filed electronically through the Court's electronic filing system to be served electronically on all parties.

/s/J. Michael Patton