IN THECIRCUIT COURT OF JACKSON COUNTY, MISSOURI

AT KANSAS CITY

RIGHT BY YOU,	)	
	)	CASE NO. 2516-CV13783
Plaintiff,	)	
	)	
v.	)	
	)	
THE STATE OF MISSOURI; **ANDREW BAILEY**, in his official capacity as Attorney General of Missouri; and **MELESA JOHNSON**, in her official capacity as Jackson County Prosecuting Attorney and on behalf of a Defendant Class of all Missouri Prosecuting Attorneys,	)	
Defendants.	)	

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

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INTRODUCTION

The Defendants ignore a democratic sea change to Missouri's Constitution. Whether they like it or not, the Missouri Constitution now guarantees the "the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to . . . abortion care." Mo. Const. art. I, § 36.2. This right expressly includes the right to "assist[] a person in exercising their right to reproductive freedom." *Id.* § 36.5. Plaintiff Right By You has provided uncontroverted evidence that the Challenged Abortion Restrictions deny, delay, penalize, otherwise restrict, and discriminate against young people's ability to have an abortion. *See, e.g.*, Declaration of Stephanie Kraft Sheley, JD, MHA ("Sheley Decl.") ¶¶ 29, 32–36, 38, 47–54, 56; Declaration of Kate Coleman-Minahan, Ph.D., R.N., FNP-BC ("Coleman-Minahan Decl.") ¶¶ 42–47, 50, 55–56, 58–61, 64–67; Declaration of Colleen McNicholas, DO, MSCI ("McNicholas Decl.")[1] ¶¶ 37–43, 47–48.

The Missouri Constitution now also expressly forbids State officials, including the Defendants, from interfering with the Right to Reproductive Freedom unless they can "demonstrate[] that such action is justified by a compelling governmental interest achieved

[1] This Court should overrule the State Defendants' objection to the admissibility of Dr. McNicholas's Declaration. *See* State Defs.' Suggestions in Support of Mot. to Dismiss & in Opp. to Pl.'s Mot. for Prelim. Inj. ("State Defs.' PI Resp. & MTD") at 56 n.14. Section 510.110, RSMo directs courts to allow a party to amend an "insufficient" affidavit. Moreover, "a preliminary injunction is customarily granted on the basis of procedures that are less formal . . . than in a trial on the merits." *Cook v. McElwain*, 432 S.W.3d 286, 292–93 (Mo. App. W.D. 2014) (quoting *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981)). Nevertheless, Right By You resubmits Dr. McNicholas's original Declaration, here notarized, and attached as Ex. 1.

by the least restrictive means."[2] Mo. Const. art. I, § 36.3. What is more, "a governmental interest is compelling only if it" 1) "is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care," 2) "is consistent with widely accepted clinical standards of practice and evidence-based medicine," *and* 3) "does not infringe on that person's autonomous decision-making." *Id.* (emphasis added).

The Defendants have utterly failed to carry that burden. They offer no evidence in support of the notion that the Challenged Abortion Restrictions do not infringe on young people's autonomous decision-making. This alone entitles Right By You to a preliminary injunction against the Challenged Abortion Restrictions.

At any rate, the Defendants misguidedly claim that the Challenged Abortion Restrictions promote young people's health and comport with widely accepted clinical standards of practice and evidence-based medicine. The Defendants ignore Right By You's evidence that the Challenged Abortion Restrictions do not actually help ensure that a young person will confide in a parent. *See* Coleman-Minahan Decl. ¶¶ 32–37, 39; McNicholas Decl. ¶ 28. At the same time, the Challenged Abortion Restrictions jeopardize young people's health and safety by: 1) undermining their doctor-patient relationship, McNicholas Decl. ¶¶ 37–39; 2) pressuring them to notify an abusive or neglectful parent even if they have the consent of one parent, Coleman-Minahan Decl. ¶¶ 49–52; and 3) increasing the risk that an abusive or neglectful parent will learn of the abortion because of the judicial bypass process's

[2] Defendant Johnson cites no authority in support of her allegation that this standard is something other than strict scrutiny. Def. Johnson's Suggestions in Opp. to Pl.'s Mot. for Prelim. Inj. & Mot. to Dismiss Pet. for Inj. & Declaratory Relief ("Def. Johnson's PI Resp. & MTD") at 3.

delays and logistical burdens, *id.* ¶¶ 62–63. Likewise, Defendants ignore Right By You's evidence that juvenile court judges do not offer information, support, or screening to young people beyond that of abortion providers. McNicholas Decl. ¶¶ 23–29; *see* Coleman-Minahan Decl. 64–67. At the same time, the judicial bypass process harms young people's health by inflicting stress, anxiety, and trauma on them. Coleman-Minahan Decl. ¶¶ 64–67; *see* Sheley Decl. ¶¶ 31–33.

Apart from that, the State Defendants' compelling interest arguments rely on discredited medical experts, Expert Rebuttal Declaration of Colleen Patricia McNicholas, DO, MSCI ("McNicholas Rebuttal Decl.") (Ex. 2) ¶¶ 11–30, debunked medical claims about even adults' capacity to decide to end a pregnancy, McNicholas Rebuttal Decl. ¶ 28, and debunked medical claims about the safety of abortion care as compared with carrying a pregnancy to term and childbirth, McNicholas Rebuttal Decl. 40–46.[3]

The State Defendants also erroneously rely on *Fitz-James v. Ashcroft*, 678 S.W.3d 194 (Mo. App. W.D. 2023), and *State ex rel. Planned Parenthood Great Plains v. Jacobs*, SC101123 (June 2, 2025), to contend that Right By You is not likely to prevail on the merits. Neither case addressed the question presented here: whether Right By You has established a likelihood of success on the claim that the Challenged Abortion Restrictions violate the Right

[3] The State Defendants spill a lot of ink on Planned Parenthood's alleged wrongdoings, which Planned Parenthood disputes entirely. *See* Suggestions in Support of Motion to Dismiss Based on the Right to Reproductive Freedom Initiative, *State v. Planned Parenthood Great Plains*, No. 24BA-CV00990 (Mo. 13th Cir. Ct. Boone Cnty. Mar. 21, 2025). But Planned Parenthood is not a party in this case. More importantly, the serious questions in this case call for evidence, not atmospherics. Yet, the State Defendants repeatedly resort to the latter. *See, e.g.*, State Defs.' PI Resp. & MTD at 25 (insinuating that Right by You is coercing or misleading its clients into having an abortion when the record reflects the contrary); *see* Sheley Decl. ¶¶ 2, 10–13, 23.

to Reproductive Freedom. Further, the fact that federal courts did not invalidate the Challenged Abortion Restrictions under a weaker federal abortion right (and entirely different evidence) does not affect the Challenged Abortion Restrictions' unconstitutionality under the more robust Right to Reproductive Freedom. The Defendants disregard Amendment 3's text, which is far more protective and precise than the right to abortion first recognized in *Roe v. Wade*, 410 U.S. 113 (1973). *E.g., compare Planned Parenthood Ass'n of Kansas City v. Ashcroft*, 462 U.S. 476, 487 (1983) (citation omitted), *abrogated by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (upholding a challenged abortion restriction because it was "reasonably related to generally accepted medical standards") *with* Mo. Const. art. I, § 36.3 (forbidding State officials from interfering with reproductive freedom "unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means").

The State Defendants' argument that the Fourteenth Amendment preempts the Right to Reproductive Freedom is equally meritless. The State Defendants baselessly accuse Right By You of assuming that "governmental power should supersede parental authority" in conflict with the Fourteenth Amendment. State Defs.' PI Resp. & MTD at 6 (quoting *Parham v. J.R.*, 442 U.S. 584, 602–03 (1979)). But the Defendants are the governmental authorities here. And Right By You has challenged their governmental authority to enforce the Challenged Abortion Restrictions against Missourians. That illegitimate governmental authority includes enabling a parent who does not support their child to override a supportive parent's wishes by forcing a young person to notify both parents of their abortion. *See* Pet. for Inj. & Decl. Relief ("Pet.") ¶ 91. The State Defendants' preemption argument fails because they misconstrue the nature of parents' rights under the Fourteenth Amendment.

Additionally, Right By You has shown that the Challenged Abortion Restrictions do not actually promote helpful communication between parents and their children, and—in some cases—undercut parental rights.[4] Pet. ¶ 85–88, 91–92, 108–10.

The State Defendants' procedural arguments are unfounded too. Their contention that Right By You lacks legal capacity to sue is a last-ditch effort to evade constitutional accountability. Right By You has the legal capacity to maintain this lawsuit because it is a fiscally-sponsored project of a nonprofit organization. *See* Mo. Sup. Ct. R. 55(a)(3); Pet. ¶ 22.

Right By You has standing to sue on its own behalf, and third-party standing to sue on behalf of its clients.[5] It has demonstrated that the Challenged Abortion Restrictions violate its own right to "assist[] [young people] in exercising their right to reproductive freedom." Mo. Const. art. I, § 36.5. For example, Missouri's Ban on Abortion Support prevents Right By You from providing the financial or practical support young people need to obtain an abortion in or outside Missouri. Sheley Decl. ¶¶ 47, 50–54. The State Defendants' position that only a physician can have third-party standing is at odds with binding precedent. *Planned Parenthood of Kan. v. Nixon*, 220 S.W.3d 732, 738 (Mo. 2007) (per curiam). Pursuant to that binding precedent, Right By You has demonstrated that its interests align closely with its clients.' *See id.* As an organization dedicated to providing vulnerable young people seeking

[4] Contrary to the State Defendants' assertion, Right By You maintains that the Challenged Abortion Restrictions, not "parents," bully pregnant young people. State Defs.' PI Resp. & MTD at 5; Pet. ¶ 1 ("The laws . . . bully pregnant young people without parental support into giving birth . . . .).

[5] Missouri Supreme Court Rule 52.02(a) and § 507.110 are inapposite because Right By You does not seek to represent an individual young person's interests. *See infra* at 52–53.

reproductive healthcare compassionate support, Right By You counsels its clients for as long as it takes to help them fulfill their unique needs, be it days or weeks. Sheley Decl. ¶¶ 2, 11–14, 18.

Moreover, Right By You's claims are ripe. For one thing, it has provided undisputed evidence that the Ban on Abortion Support prevents it from providing the financial or practical support young people need to obtain an abortion in or outside Missouri. Sheley Decl. ¶¶ 47, 50–54. Right By You has also provided undisputed evidence that at least some of its clients are unable to obtain parental consent and notice and must either seek a judicial bypass—with the attendant injuries—or leave the state for abortion care, or be forced to carry their pregnancies to term. *Id.* ¶¶ 24–29, 31–41, 53. The State Defendants' insistence that Right By You identify a particular young person who was unable to obtain an abortion because of the Challenged Abortion Restrictions lacks any legal foundation. *See Mo. Health Care Ass'n v. Atty. Gen. of Mo.*, 953 S.W.2d 617, 621 (Mo. banc 1997). It also lacks any foundation in the Right to Reproductive Freedom, which identifies many ways in which a law can infringe the right other than forcing someone to carry a pregnancy to term. *See, e.g.*, Mo. Const. art. I, § 36.3 (prohibiting State officials from "den[ying], interfer[ing] with, delay[ing], or otherwise restrict[ing]" the Right to Reproductive Freedom).

The State Defendants misstate the standard for granting facial relief. Because Right By You has demonstrated that all actual applications of the Challenged Abortion Restrictions violate its clients' Right to Reproductive Freedom and its own right to help them exercise it, facial relief is proper here. *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015). The State Defendants also incorrectly assume that the pleadings, rather than the demonstrated harms, control the remedies in a case. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331

(2010). Even if this Court were to find that the injuries inflicted by the Challenged Abortion Restrictions warrant as-applied relief, that finding would not justify dismissing the case. It would justify granting as-applied relief.

ARGUMENT

I. This Court Should Grant Right By You's Preliminary Injunction Motion

A. Right By You Has Shown That It is Likely to Prevail on the Merits of Its Claim Under Subsection 3 of the Right to Reproductive Freedom.

1. Right By You Has Shown That the Challenged Abortion Restrictions Are Presumptively Invalid Under Subsection 3.

The Defendants neglect to offer any evidence contesting the many ways in which the Challenged Abortion Restrictions infringe on the Right to Reproductive Freedom. *See* Pl.'s Suggestions in Support of Their Mot. for Prelim. Inj. ("Pl.'s PI") at 22–28, 32–35. That includes denying young people abortion care. *Id.* at 22–24, 33.

Instead, the State Defendants perversely frame the Challenge Abortion Restrictions as a "path for minors to get an abortion that they would not otherwise have." State Defs.' PI Resp. & MTD at 47. The State Defendants' error lies in misreading § 431.061, RSMo, which authorizes minors to consent to their own medical care in particular circumstances, including but not limited to "[p]regnancy," "[v]enereal disease," and certain "[d]rug or substance abuse." § 431.061, RSMo(1), (1)(4); *see* § 167.621.1, RSMo (referring to § 431.061, RSMo). The statute's "exclu[sion] [of] abortions" signifies that § 431.061, RSMo, unlike the Right to Reproductive Freedom, does not empower minors to consent to their own abortion care. There is no indication that the statute independently constrains minors seeking abortion care. *See* § 431.061(2), RSMo ("The provisions of sections 431.061 . . . shall be liberally construed

. . . ."). The notion that § 431.061, RSMo independently constrains minors when it contains zero guidance on how a parent would consent to their child's abortion is especially improbable given the procedures detailed in the Parental Consent and Notice Requirement, including the Judicial Bypass Requirement. *See, e.g.*, § 188.028(2)(1), RSMo (requiring judicial bypass petitions to set forth six separate forms of information). As a result, Defendants have utterly failed to rebut the extensive evidence that the Parental Consent and Notice Requirement is presumptively invalid and that an injunction prohibiting enforcement of the law would allow minors to obtain abortion care in accordance with their constitutional rights.

Likewise, the State Defendants deny that delays to abortion care can infringe on the Right to Reproductive Freedom despite both its plain text, Mo. Const. art. I, § 36.2, and Right By You's undisputed evidence of how such delays harm young people, *see, e.g.*, Coleman-Minahan Decl. ¶ 40 ("A delay of five days could increase the cost of abortion care, push adolescents past the gestational limit of the clinic or state, limit their choice of abortion methods available for certain gestational ages, and, even though still safe, may result in increased physical risks of procedures performed later in pregnancy."); McNicholas Decl. ¶ 41. The State Defendants flippantly ignore the serious consequences of meaningful delays when they argue that this Court would render "[s]peed limits" unconstitutional by recognizing delays to abortion care as infringements on the Right to Reproductive Freedom. State Defs.' PI Resp. & MTD at 47. Right By You is not contending that *de minimis* delays violate the right.

Equally puzzling is the State Defendants' assertion that delays to abortion care are not presumptively invalid because they safeguard young people's ability to decide to give birth.

Supra at 2–3. But the State Defendants never explain how the delays and other injuries inflicted by the Challenged Abortion Restrictions help young people make healthy decisions.

For instance, Right By You has demonstrated that some young people find the process of securing an attorney, filing a petition, and testifying in court so daunting that they do not even try to undertake it, which prevents them from seeking an abortion or forces them to leave Missouri for abortion care. Sheley Decl. ¶¶ 32, 34; *see* Coleman-Minahan Decl. ¶ 42; *Am. Acad. of Pediatrics v. Lungren*, 940 P.2d 797, 831 (Cal. 1997) ("[M]inors frequently may be too embarrassed or frightened to seek judicial authorization and may endanger their health or forfeit their right of choice rather than venture into an unfamiliar and intimidating court setting.") How does this intimidation provide an "opportunity to discuss their decision with a trusted adult, such as a parent or (at least) a court"? State Defs.' PI Resp. & MTD at 49 (citation omitted).

Similarly, Right By You has shown that the Ban on Abortion Support denies abortion care to some young people who need financial and practical support to obtain an abortion, but who cannot obtain parental or judicial consent. Sheley Decl. ¶¶ 35, 37, 47, 52, 56; *see* Coleman-Minahan Decl. ¶¶ 43. How does depriving young people of a decision at all help them "choose freely how to proceed with an unplanned pregnancy"? State Defs.' PI Resp. & MTD at 49 (citation omitted).

At bottom, the Defendants never counteract Right By You's evidence that the Challenged Abortion Restrictions do not overcome toxic family dynamics to help ensure that young people who would not already speak with a parent do so, or if they do, that they come away with guidance or support, as opposed to higher risks of parental neglect, violence, and coercion. Coleman-Minahan Decl. ¶¶ 33–37; McNicholas Decl. ¶ 36 ("I have never seen a

parental involvement requirement improve a young person's relationship with their parent."). By the same token, the Defendants never counteract Right By You's evidence that the Challenged Abortion Restrictions do not ensure that young people lacking parental support will seek a judicial bypass, or that judges will provide information, guidance, or screening to young people superior to that supplied by abortion providers pursuant to legal, ethical, and professional requirements.[6] Coleman-Minahan Decl. ¶ 55; Sheley Decl. ¶ 32; McNicholas Decl. ¶¶ 24–31; *see* § 188.028, RSMo; *infra* at 12–14.

The State Defendants' assertion that delays to abortion care are not presumptively invalid also rests on a discredited medical expert's debunked medical claims about the capacity not only of young people to decide to end a pregnancy, but also of adults. McNicholas Rebuttal Decl. ¶ 28. Unlike Dr. McNicholas, Dr. Coleman does not counsel abortion patients, ensure that they are providing informed consent to their care, or provide abortion care. McNicholas Decl. ¶ 24; *see* McNicholas Rebuttal Decl. ¶ 6. Dr. Coleman's opinion that adolescent decision-making about a pregnancy is inferior to that of adults relies heavily—and wrongly—on studies that are not limited to decisions about pregnancy and therefore have limited, if any, relevance to pregnancy decision-making. McNicholas Rebuttal Decl. ¶ 28. (Though presumably, Dr. Coleman believes that young people are capable of making the momentous decisions to carry a pregnancy to term and become a parent or arrange for the adoption of their child.) Dr. Coleman's deep skepticism of even adult women's

[6] The State Defendants try to circumvent this by casting unfounded aspersions on abortion providers. *See supra* at 3 n.3. In any event, the State Defendants do not explain how the Challenged Abortion Restrictions regulate supposedly unscrupulous abortion providers any more effectively than their other legal, ethical, and professional obligations to obtain informed consent. *See infra* at 13–14.

capacity to decide to have an abortion suggests that her opinions are less about young people and more about her fundamental opposition to abortion. *See, e.g.*, State Defs.' PI Resp. & MTD, Ex. 103, Expert Affidavit of Dr. Priscilla K. Coleman ("Coleman Aff.") ¶ 12 ("An expansive professional literature has shown that abortion decision-making is complex for significant percentages of women . . . . These profound realities often lead to decision making difficulties. . . ."); McNicholas Rebuttal Decl. ¶¶ 11, 20. Dr. Coleman's opinion is, therefore, at odds with the weight of medical authority. McNicholas Rebuttal Decl. ¶¶ 8, 28; *see* McNicholas Decl. ¶ 27.

Thus, Right By You has shown that the Challenged Abortion Restrictions are presumptively invalid under Subsection 3 of the Right to Reproductive Freedom.

2. The Defendants Have Not Demonstrated that the Challenged Abortion Restrictions Promote Young People's Autonomy and Health and Widely Accepted Standards of Medicine.

i. The Defendants Have Not Demonstrated That the Challenged Abortion Restrictions Do Not Infringe on the Autonomous Decision-Making of Young People Seeking an Abortion.

The Defendants offer no evidence in support of the notion that the Challenged Abortion Restrictions do not infringe the autonomous decision-making of young people seeking an abortion. This alone entitles Right By You to a preliminary injunction against the Challenged Abortion Restrictions. *See* Mo. Const. art. I, § 36.3.

3. The Defendants Have Not Demonstrated That the Challenged Abortion Restrictions Have the Limited Purpose and Limited Effect of Improving or Maintaining the Health of Young People Seeking an Abortion.

i. The Defendants Have Not Demonstrated that the Challenged Abortion Restrictions Help Protect Young People from Coercion.

The Defendants have also failed to show that the Challenged Abortion Restrictions protect young people from being coerced into an abortion. As discussed above, the Defendants have not refuted Right By You's evidence that the Challenged Abortion Restrictions do not actually promote communication between parents and children or ensure that a young person will seek a judicial bypass given the physical and mental trauma it entails. *Supra* at 9; *see* Coleman-Minahan Decl. ¶¶ 55–56, 64–68. Defendants also fail to counteract Right By You's evidence of the significant harms that the judicial bypass process inflicts on young people's health. *See id.* ¶ 66 ("[S]ome young people describe persistent thoughts about the judicial bypass experience months to years later, suggesting that for some young people, the judicial bypass process causes long-term trauma and potentially post-traumatic stress syndrome, depression, or anxiety."); Sheley Decl. ¶¶ 31–33.

Moreover, abortion providers are both 1) eminently more qualified to screen for coercion in a pregnancy decision than juvenile court judges, and 2) not only legally, but also ethically and professionally obligated to do so.[7]

[7] Defendants also ignore that reproductive coercion can constitute coercion to carry a pregnancy to term rather than coercion to end a pregnancy. *See* Am. College of Obstetricians and Gynecologists, *Reproductive & Sexual Coercion. Committee Opinion No. 554*, OBSTETRICS & GYNECOLOGY, 121, 411–415 (2013), https://pubmed.ncbi.nlm.nih.gov/23344307/#:~:text=Because%20of%20the%20known%20link,care%20(at%20the%20first%20prenatal.

Like other healthcare providers, abortion providers are extensively trained to obtain informed consent for medical treatment. McNicholas Decl. ¶¶ 23–31. As an obstetrics-gynecology surgeon, Dr. McNicholas has been counseling patients and ensuring that they provide informed consent for medical procedures, including abortions and surgeries, for over twenty years. *Id.* ¶ 24. The informed consent process includes collecting patients' medical histories, which may involve violence, and screening for any coercion or abuse in the patient's current life. *Id.* ¶ 29. "Interventions [for coercion] include education on the effect of reproductive and sexual coercion and intimate partner violence on patients' health and choices, counseling on harm-reduction strategies, and prevention of unintended pregnancies by offering long-acting methods of contraception that are less detectable to partners."[8] *See id.* ¶ 29. Judges have no such training, experience, or tools to help young people at risk of a coerced pregnancy outcome.

What is more, abortion providers' legal, ethical, and professional obligations all forbid them from providing an abortion to anyone who does not consent to one. *Id.* ¶¶ 20–22. Both physicians and judges are mandated reporters. *See* § 210.115(1), RSMo (Physicians who have "reasonable cause to suspect that a child has been or may be subjected to abuse" must "immediately report to the [Missouri children's division]."). But abortion providers must also ensure "valid consent" or else face criminal and malpractice liability. *Cruzan by Cruzan v.*

[8] Am. College of Obstetricians and Gynecologists, *Reproductive & Sexual Coercion. Committee Opinion No. 554*, OBSTETRICS & GYNECOLOGY, 121, 411–415 (2013), https://pubmed.ncbi.nlm.nih.gov/23344307/#:~:text=Because%20of%20the%20known%20link,care%20(at%20the%20first%20prenatal.

Harmon, 760 S.W.2d 408, 417 (Mo. banc 1988) (holding that "valid consent" is "made voluntarily and without coercion"); *see Aiken v. Clary*, 396 S.W.2d 668, 673 (Mo. 1965).

The four core principles of medical ethics also bind abortion providers:

> Beneficence reflects the duty to act for the benefit of the patient; nonmaleficence, the duty not to cause harm to the patient. Autonomy requires respect for the patient's capacity for self-determination and is rooted in the intrinsic and unconditional worth of all persons, and their ability to make rational decisions and moral choices. Justice requires the equal and equitable treatment of all people.

McNicholas Decl. ¶ 22. Providing an abortion to a patient without a considered evaluation tailored to the patient's unique circumstances, needs, and desires contradicts these time-honored principles. *See id.* ¶ 25. And among other things, the American College of Obstetricians and Gynecologists ("ACOG") directs healthcare providers to "screen women and adolescent girls for intimate partner violence and reproductive and sexual coercion at periodic intervals . . . ."[9] *See id.* ¶ 29.

The State Defendants baselessly accuse abortion providers of ineffectively screening for coercion. Unlike Dr. McNicholas, however, the State Defendants' experts have no experience providing abortion care or ensuring that patients are providing informed consent to abortion care. *See, e.g.*, McNicholas Rebuttal Decl. ¶¶ 15, 47.

Beyond that, Drs. Coleman and Skop have been widely discredited for inaccurate and overstated views about abortion care. *See, e.g.*, McNicholas Rebuttal Decl. ¶¶ 12, 20–25; *id.* ¶¶ 13–14 (noting that in 2024, Sage Publishing retracted three recent articles co-authored by Dr. Skop because of significant deficiencies in the articles); *Planned Parenthood of Sw. & Cent. Fla. v. Florida*, No. 2022 CA 912, 2022 WL 2436704, at *13 (Fla. Cir. Ct. July 5, 2022),

[9] *Id.*

rev'd on other grounds by 344 So.3d 637 (Fla. 1st DCA 2022) ("Dr. Skop has no experience in performing abortions; admitted that her testimony on the risks of certain abortion complications was inaccurate and overstated, or based on data from decades ago; admitted that her views on abortion safety are out of step with mainstream, medical organizations; and provided no credible scientific basis on her disagreement with recognized high-level medical organizations in the United States."). Likewise, Dr. Wubbenhorst has testified in her capacity as a medical expert that abortion is "intentional feticide," a "moral and social evil," and that "a physician who provides an abortion has committed murder." *Id.* ¶ 16, Ex. A, Wubbenhorst Dep. Tr. at 68:20-23, 69:12-17, 134:7-14. Dr. Wubbenhorst's sworn statements reflect a clear ideological bias against abortion care.

The Lederer & Wetzel study fails to support the Challenged Abortion Restrictions. *See* McNicholas Rebuttal Decl. ¶ 51. For one thing, the State Defendants "cherry-pick lines from the study to exaggerate the prevalence of licensed abortion providers"—the clinical treatment facilities in the study also included "urgent care clinics, women's health clinics, neighborhood clinics, and private practices" where the abortions may not have been provided by licensed abortion providers. *Id.* Further, "it is unclear how much time had passed between the survivors' experiences and the time of data collection," and "health conditions were self-reported, which can lead to recall bias, particularly in cases involving trauma." *Id.* ¶ 52.

The State Defendants and Dr. Coleman refer to unsubstantiated accounts of abortion providers in Ohio and Colorado not detecting abuse in their patients' lives. *See* State Defs.' PI Resp. & MTD at 54; Coleman Aff. ¶¶ 81–84. Tellingly, both Ohio and Colorado have longstanding parental involvement requirements. *See* Ohio Rev. Code § 2919.121; Colo. Rev. Stat. §§ 13-22-701–708. Even if this Court were to assume that the accounts are true, which

it has no reason to do, the accounts support Right By You's position that the Challenged Abortion Restrictions do not actually help protect young people.[10]

Additionally, the State Defendants' targeted attacks on Dr. McNicholas are entirely unfounded. The State Defendants falsely insinuate that she provided or oversaw sub-par abortion care to three patients, twisting the findings of a 2020 decision by the Missouri Administrative Hearing Commission *granting* Planned Parenthood's application for renewal of its abortion facility license.

The Commission acknowledged that the "care Patient 1 received at Planned Parenthood did not deviate from the standard of care." State Defs.' PI Resp. & MTD, Ex. 115, AHC Decision, *Reproductive Health Services v. Department of Health and Senior Services*, No. 19-0879, ¶ 127 (May 29, 2020). In fact, the then-Director of the Missouri Department of Health and Senior Services acknowledged that Dr. McNicholas's decision to abandon a surgical abortion in favor of a medication abortion was an "accepted practice" and noted that the Department agreed with Dr. McNicholas that this patient did not present a serious complication. *See id*. ¶ 134.

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[10] This Court should discount "RT"'s affidavit because it is wholly irrelevant to this case. *See* State Defs.' PI Resp. & MTD, Ex. 109, Affidavit of R.T. ("R.T. Aff."). The affidavit concerns the alleged corporate deficiencies of a Texas Planned Parenthood. The affiant mentions young people in a single paragraph, *id.* ¶ 14, and speculates wildly about the counseling that the Texas clinic provided abortion patients even though she is not and was not a clinician, *id.* ¶¶ 4, 8–10, 14.

This Court should also discount "S.J."'s affidavit because it is irrelevant to this case. The affidavit centers on an abortion S.J. had as a sixteen-year-old in 1978. *See* State Defs.' PI Resp. & MTD, Ex. 106, Affidavit of S.J. ("S.J. Aff.) ¶¶ 3–10. S.J. claims she would not have had the abortion if her parents had been involved, but does not explain why they were not or whether legal requirements would have made a difference. *Id.* ¶ 11. Likewise, S.J. recounts talking to a minor years ago, but does not mention the minor's parents or the circumstances of the minor's abortion care. *Id.* ¶¶ 25–28.

As for Patient 2, contrary to State Defendants' assertion that she "suffered a severe infection due to a twin that abortion providers missed," State Defs.' PI Resp. & MTD at 59, the Commission concluded that "a mistake by [a staff member] in failing to identify [a] twin represent[ed] the most *plausible* explanation [for a continuing pregnancy] under the circumstances." State Defs.' PI Resp. & MTD, Ex. 115 ¶ 165 (emphasis added). The Commission further concluded that "Planned Parenthood's current procedures are appropriate and sufficient for identifying uterine abnormalities and multiple pregnancies. This single mistake does not demonstrate an institutional failure on behalf of Planned Parenthood." *Id.* Additionally, there is no indication that this resulted in an infection, let alone a "severe" one. McNicholas Rebuttal Decl. ¶ 43.

And for Patient 3's care, the Commission confirmed that "[a]lthough complications like this are rare, they are known and anticipated in abortion care. A single instance does not suggest an institutional failure of policy or procedure, nor does a single failed abortion suggest a deviation from the standard of care." State Defs.' PI Resp. & MTD, Ex. 115 ¶ 185.

The State Defendants also misrepresent the other results of Planned Parenthood's 2019 inspection, which were common administrative oversights and unrelated to patient care. McNicholas Rebuttal Decl. ¶ 58. Further, the State Defendants' accusation that Dr. McNicholas or other abortion providers were using "moldy" equipment on patients is flatly wrong. *See* State Defs.' PI Resp. & MTD at 60. In fact, the "mechanics" of the equipment in question "are such that the tube never comes into contact with the patient, since it simply connects two jars, and the directional flow is in the opposite direction (away from the patient)." McNicholas Rebuttal Decl. ¶ 56.

The State Defendants' reference to *Comprehensive Health of Planned Parenthood Great Plains v. Lyskowski*, No. 2:16-CV-04313-BCW, 2018 WL 10613876 (W.D. Mo. Oct. 3, 2018), is equally disingenuous. The court did not deny Planned Parenthood a preliminary injunction "in light of the 'moldy and rusty equipment' that was 'observed by DHSS during a September 26, 2018 inspection.'" State Defs.' PI Resp. & MTD at 61–62 (quoting *Lyskowski*, 2018 WL 10613876, at *2). Rather, *the State* "cit[ed] to instances of moldy and rusty equipment observed by DHSS during a September 26, 2018 inspection of the Columbia health center." *Lyskowski*, 2018 WL 10613876, at *2. The court separately "c[ould not] conclude Plaintiffs' claims [were] justiciable at th[e] time." *Id.*

Finally, the State Defendants unfairly suggest that Dr. McNicholas flouted Missouri's requirements for reporting abortion complications. In reality, the physician who treats the complication, who may not be the same physician who provided the abortion, is responsible for submitting the complication report. McNicholas Rebuttal Decl. ¶ 57. But for many years, physicians throughout Missouri, and not just abortion providers, misunderstood the requirements. *Id.* Consequently, physicians throughout Missouri did not submit the reports in a timely manner. *Id.* Once Planned Parenthood learned of the oversight, they notified physicians throughout the state, who began fully complying with the requirements. *Id.*

ii. The Defendants Have Not Demonstrated that the Challenged Abortion Restrictions Help Young People Make Careful Decisions About Their Pregnancy.

The State Defendants' assertions about young people's decision-making and abortion care's safety wrongly presuppose that the Challenged Abortion Restrictions help young

people reach a considered decision about whether to end a pregnancy.[11] *See, e.g.*, State Defs.' PI Resp & MTD at 55 ("Missouri therefore has a compelling interest in ensuring that a parent or a judge is available to help a minor make the abortion decision."). As discussed above, the record reflects that the Challenged Abortion Restrictions do not overcome family dysfunction to help ensure that young people who would not already confide in a parent do so, or if they do, that they come away with guidance or support, as opposed to higher risks of parental neglect, violence, and coercion. *Supra* at 9–10.

The record also reflects that the Challenged Abortion Restrictions do not ensure that young people without parental support will seek a judicial bypass, or that judges will provide better information, guidance, or screening to young people than abortion providers, who have legal, ethical, and professional obligations to do so. Coleman-Minahan Decl. ¶ 55; Sheley Decl. ¶¶ 31–32; McNicholas Decl. ¶¶ 23–31; *see* § 188.028, RSMo; *supra* at 12–14.

At any rate, the State Defendants' assertions about young people's decision-making and abortion care's safety are unfounded. [12] *Supra* at 10–11. An "exhaustive, peer-reviewed, evidence-based report on the safety of abortion care in the United States published by the National Academies of Science, Education, and Medicine ["NAS"]" "concluded that legal

[11] The State Defendants once again attack a strawman in arguing that Right By You "assumes that abortion is almost always the best option for minors." State Defs.' PI Resp & MTD at 55. To the contrary, Right By You exists to "help teens in Missouri effectuate *their own decisions* about their pregnancies with dignity even if they lack parental support. To that end, Right By You provides accurate, comprehensive, and non-judgmental counseling to teens throughout Missouri . . . about: their pregnancy options [and] how to access contraception, prenatal care, and abortion care . . . ." Sheley Decl. ¶ 2 (emphasis added). For clients who want to have a child, Right By You helps them "locate respectful prenatal and birthing health care options and programs offering support for young parents." *Id.* ¶ 13.

[12] In refusing to accept that abortion can be the right decision for some people, the State Defendants continue to overlook that Missourians voted to make it a fundamental right.

abortions—whether by medication, aspiration, D&E, or induction—are safe" and "serious complications are rare and occur far less frequently than during childbirth." McNicholas Rebuttal Decl. ¶ 40 (citations omitted).

Likewise, a 2009 American Psychological Association Task Force "concluded that the most methodologically sound research indicates that among women who have a single, legal, first-trimester abortion of an unplanned pregnancy for non-therapeutic reasons, the relative risks of mental health problems are no greater than the risks among women who deliver an unplanned pregnancy." *Id.* ¶ 32 (citation omitted). And the Turnaway Study, a seminal longitudinal cohort study of almost 1,000 pregnant people who sought abortion care found that both women who were denied an abortion and women who obtained one had "similar levels of depressive symptoms, post traumatic stress symptoms, symptoms of suicidal ideation, and depression and anxiety diagnoses up to five years after seeking abortion care." *Id.* ¶ 39. Note that "adolescents were no more likely to suffer from depression or anxiety, or to experience symptoms of post-traumatic stress than women aged twenty or older." *Id.*

The contrary views of the State Defendants' medical experts have been thoroughly debunked in light of the overwhelming evidence of abortion care's safety. *See, e.g.*, *id.* ¶¶ 11–17. For example, Dr. Wubbenhorst's criticism of the NAS report rests entirely on a "practice guideline" about medication abortion from the American Association of Pro-Life OBGYNs (AAPLOG) that deviates from generally accepted medical evidence and clinical practice standards. *Id.* ¶ 18. And Dr. Skop's conclusion that medication abortion may lead to one in ten women requiring emergency room care misreads the Liu and Ray (2023) study, which in fact "found that serious adverse events are extremely rare for both medication and

procedural abortions, at less than four in 1,000." *Id.* ¶ 46. "[T]he fact that patients may seek this care at emergency departments does not mean these are serious complications." *Id.*

In 2011, Dr. Coleman published a meta-analysis misguidedly concluding that abortion care leads to an increased risk of adverse mental health outcomes. Eight commentaries were published refuting the meta-analysis's findings. *Id.* ¶ 20. "One letter pointed out that Coleman's methodological approach violated at least three major principles of meta-analysis . . . ." *Id.* ¶ 21. Moreover, the editor of the journal in which Dr. Coleman published a 2009 study on abortion care's impact on mental health, and a leading psychiatric epidemiologist whose research generated the data used by the 2009 study, published a letter with the journal editor concluding that the 2009 study did not support its assertions. *Id.* ¶ 25; *see Planned Parenthood of Ind. & Ky., Inc. v. Comm'r, Ind. State Dep't of Health*, 896 F.3d 809, 826, 830 (7th Cir. 2018), *vacated sub nom. Box v. Planned Parenthood of Ind. & Ky., Inc*., 141 S. Ct. 184 (2020) ("For this proposition it relied on a controversial and much maligned . . . study by Priscilla K. Coleman which concluded that 'quite consistently ... abortion is associated with moderate to highly increased risks of psychological problems subsequent to the procedure.'") (citation omitted).

Notably, Dr. Wubbenhorst inaccurately claims that adolescents who end a pregnancy are more likely to engage in non-lethal self-harm than those who carry their pregnancies to term. State Defs.' PI Resp. & MTD, Ex. 105, Affidavit of Monique Chireau Wubbenhorst, M.D. ("Wubbenhorst Aff.") ¶ 17. The study she relies on, Goueslard et al. (2023), "found this increase for all pregnancy outcomes, pointing to high likelihood that it is the pregnancy itself, or underlying factors, that lead to self-harm." McNicholas Rebuttal Decl. ¶ 19.

Accordingly, the Defendants have failed to show that the Challenged Abortion Restrictions have the limited purpose and limited effect of improving or maintaining the health of young people seeking an abortion.

iii. The Defendants Have Not Demonstrated That the Challenged Abortion Restrictions Are Consistent with Widely Accepted Clinical Standards of Practice and Evidence-Based Medicine.

The Defendants have also failed to show that the Challenged Abortion Restrictions are consistent with widely accepted clinical standards of practice and evidence-based medicine. The Defendants neglect to address the fact that every major medical organization whose members provide adolescent or reproductive healthcare opposes parental involvement requirements for abortion.[13] *See* McNicholas Decl. ¶ 45 (identifying the American Academy of Pediatrics, the American Medical Association, American Public Health Association, American College of Obstetricians and Gynecologists, and the Society of Adolescent Medicine); *see* Pet. ¶¶ 113–17.

Unlike Right By You, the State Defendants cite laws rather than clinical standards of practice or evidence-based medicine in support of their position. *See* State Defs.' PI Resp. &

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[13] *See, e.g.*, 2.2.3(A) MANDATORY PARENTAL CONSENT TO ABORTION, AMA PRINCIPLES OF MEDICAL ETHICS at 3, https://code-medical-ethics.ama-assn.org/sites/default/files/2022-08/2.2.3%20Mandatory%20parental%20consent%20to%20abortion%20--%20background%20reports.pdf ("The expert opinion to date, and the available scientific evidence, support the view that physicians should not require minors to involve their parents before deciding whether to undergo an abortion."); *Ensuring Minors' Access to Confidential Abortion Services*, *Policy No. 20115*, AMERICAN PUBLIC HEALTH ASSOCIATION, (Nov. 1, 2011), https://www.apha.org/policy-and-advocacy/public-health-policy-briefs/policy-database/2014/07/03/11/14/ensuring-minors-access-to-confidential-abortion-services ("[P]arental involvement laws do not promote family communication as intended . . . .[The judicial bypass option] . . . also results in unnecessary negative emotional consequences for adolescent women.").

MTD at 63–64. The Children's Hospital of Philadelphia and Johns Hopkins Medicine information sheets themselves refer to state law. Children's Hospital of Philadelphia, *Informed Consent for Surgery* ("*In Pennsylvania*, parental (or legal guardian) consent is required for any diagnostic or surgical procedure performed on a child under the age of 18.") (emphasis added);[14] Johns Hopkins Medicine, *Checklist for Surgery/Consent Forms/Insurance Information* ("A child must have a parent's consent before any surgery or procedure can be done . . . . Laws may vary from state to state. It's important to know your own state's law about emancipated and mature minors.").[15]

To make matters worse, the State Defendants often look to laws regulating young people's medical care generally, regardless of age or treatment, rather than laws regulating young people's abortion care or their other pregnancy-related healthcare.[16] Missouri itself does not require parental involvement for any pregnancy-related healthcare other than abortion or restrict the support that can be provided to young people seeking any other pregnancy-related healthcare. *See* §§ 431.061(1)(4), RSMo (recognizing that young people seeking "any surgical, medical, or other treatment or procedures, including immunizations,"

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[14] *Your Child's Preoperative Appointment*, CHILDREN'S HOSPITAL OF PHILADELPHIA, https://www.chop.edu/patients-and-visitors/guide-your-childs-surgery/your-childs-preoperative-appointment.

[15] *Checklist for Surgery/Consent Forms/Insurance Information*, JOHNS HOPKINS MEDICINE, https://www.hopkinsmedicine.org/health/treatment-tests-and-therapies/checklist-for-surgery--consent-forms--insurance-information.

[16] Though immaterial to the question of whether the Challenged Abortion Restrictions advance a compelling interest, the State Defendants note that a "supermajority" of states have parental involvement requirements for abortion. State Defs.' PI Resp. & MTD at 64. But states provide dramatically different protections for people seeking abortion care, with some states providing none at all. Missourians, however, made their will clear in enacting the Right to Reproductive Freedom.

related to 1) "[p]regnancy, but excluding abortions" can consent to their own medical care); § 431.061(1)(3), RSMo (allowing young people who are parents to consent to any medical care for themselves or their child).

Thus, the Defendants have failed to demonstrate that the Challenged Abortion Restrictions are consistent with widely accepted clinical standards of practice and evidence-based medicine.

4. The Defendants Have Not Demonstrated That the Challenged Abortion Restrictions Are the Least Restrictive Means of Achieving a Compelling Governmental Interest.

Even if the Challenged Abortion Restrictions met the demanding compelling interest standard set forth in the Right to Reproductive Freedom, which they do not, the Defendants have not shown that the Challenged Abortion Restrictions are narrowly tailored. Their argument consists mostly of reproducing the text of the Judicial Bypass Requirement and claiming that "it is designed to be as fast and easy as possible for minors." State Defs.' PI Resp. & MTD at 65. Regardless of its design, however, Right By You has produced undisputed evidence that the judicial bypass process:

- deters some young people from even trying to obtain an abortion in Missouri, Sheley Decl. ¶ 32; *see* Coleman-Minahan Decl. ¶ 42,
- significantly delays young people's abortion care, with the attendant loss of abortion options, added medical risks, added expenses, and distress, Coleman-Minahan Decl. ¶¶ 55–58, 61; Sheley Decl. ¶¶ 36, 38; *see* McNicholas Decl. ¶¶ 18–19, 41,
- inflicts stress, anxiety, and trauma on young people, Coleman-Minahan Decl. ¶ 64 ("[Adolescents who had been through the judicial bypass process] described 'fight or flight' responses such as nausea and shaking, and feared that saying the wrong thing could mean being forced to carry the pregnancy to term."); *id.* ¶¶ 65–67; *see* Sheley Decl. ¶¶ 31–33, and
- coerces young people to divulge intimate information to a series of strangers to obtain an abortion, Coleman-Minahan Decl. ¶ 65 ("Young women described disclosing

extremely personal information to strangers and authority figures, including their sexual history and sometimes personal and family trauma."); *id.* ¶¶ 64, 66–67; Sheley Decl. ¶ 31.

Thus, the Judicial Bypass Process is part of the Challenged Abortion Restrictions' harms, not indicative of their restraint. Moreover, the plain text of the Challenged Abortion Restrictions belies the State Defendants' contention that any defects of judicial bypass proceedings cannot be attributed to the Challenged Abortion Restrictions. On their face, the Challenged Abortion Restrictions force young people to carry their pregnancies to term unless they secure parental or judicial consent.

The Challenged Abortion Restrictions plainly lack narrow tailoring in another way. The Defendants never explain the purpose of requiring a young person to notify a parent of their abortion once they have already obtained another parent's consent. As Right By You has shown, requiring parental notice on top of parental consent increases the young person's risks of abuse, neglect, and being coerced into carrying their pregnancy to term. Coleman-Minahan Decl. ¶¶ 50, 52.

Right By You has therefore demonstrated that it is likely to succeed on the merits of its claim under Subsection 3 of the Right to Reproductive Freedom.

B. Right By You Has Shown That It is Likely to Prevail on the Merits of Its Claim Under Subsection 5 of the Right to Reproductive Freedom.

The Defendants do not dispute that the Challenged Abortion Restrictions force young people to involve their parents in their pregnancy decision regardless of their home environment or to petition a court to avoid that intrusion "based on their actual, potential [or] perceived . . . pregnancy outcome[]" of "abortion." Mo. Const. art. I, § 36.5. Rather, the State Defendants argue that the "adverse action" in Subsection 5 is limited to "actions where the

person seeking an abortion is a defendant . . . .” State Defs.’ PI Resp. & MTD at 68. There are two problems with this argument.

First, the State Defendants overlook fundamental rules of constitutional interpretation. “Every word in a constitutional provision is presumed to have effect and meaning, and is not mere surplusage.” *Fitz-James*, 678 S.W.3d at 205 (citing *State ex rel. Dep’t of Health & Senior Servs. v. Slusher*, 638 S.W.3d 496, 498 (Mo. banc 2022)). Further, “[p]articular phrases cannot be read in isolation . . . . Instead, the provisions of a constitutional amendment are ‘construed together and read in harmony’ with the entire amendment.” *Id.* (quoting *Gash v. Lafayette Co.*, 245 S.W.3d 229, 232 (Mo. banc 2008)). Thus, this Court must read Subsection 5 not only in *its* entirety, but in light of the entire Right to Reproductive Freedom.

The Amendment’s expansive nature cuts against eschewing the Dictionary definition of “adverse action” in favor of a narrow reading. *See supra* at 1-2. The Amendment’s express prohibition against denying, delaying, otherwise restricting, and discriminating against someone’s ability to exercise reproductive freedom indicates that the Amendment was intended to account for the many ways that a law can impinge someone’s reproductive freedom. *See* Mo. Const. art. I, § 36.3–6. Allowing someone to suffer adverse action (as commonly understood) for seeking a particular pregnancy outcome would frustrate the Amendment’s clear purpose. Even if this Court were to limit its reading of “adverse action” to Subsection 5, which would be improper, there is no indication that “penalized” is itself limited to situations when an abortion seeker is a defendant, and it would also then be unclear what “adverse action” would add to Subsection 5. *See Fitz-James*, 678 S.W.3d at 205.

The State Defendants’ remaining Subsection 5 arguments are equally unavailing. In contending that the Challenged Abortion Restrictions define “consent” in the Missouri

Constitution, the State Defendants profoundly misunderstand the hierarchy of legal authorities. Constitutions control statutes, not the other way around. *Coleman v. Ashcroft*, 696 S.W.3d 347, 367 (Mo. banc 2014) ("[W]hen . . . statutes interfere with or impede a right conferred by the constitution, the statute must be held unconstitutional.") (quoting *Rekart v. Kirkpatrick*, 639 S.W.2d 606, 608 (Mo. banc 1982)). Presuming that most people under eighteen lack the capacity to consent to abortion care runs counter to the Amendment's language, which grants all "persons" "the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to . . . abortion care."[17] Mo. Const. art. I, § 36.1–6.

Right By You has therefore demonstrated that it is likely to succeed on the merits of its claim under Subsection 5 of the Right to Reproductive Freedom.[18]

C. Right By You Has Shown That It is Likely to Prevail On The Merits of Its Claim Under Subsection 6 of the Right to Reproductive Freedom.

The State Defendants wrongly argue that the Challenged Abortion Restrictions privilege rather than discriminate against abortion patients. The State Defendants err in comparing the Challenged Abortion Restrictions to laws regulating young people more broadly, rather than laws regulating young people's access to other pregnancy-related healthcare.[19] *See, e.g.*, State Defs.' PI Resp. & MTD at 71 (citing, among other laws, §

[17] The State Defendants' other Subsection 5 argument falls flat because their arguments about facial relief are misguided. *Infra* at 55-58.

[18] As explained above, Right By You has established that the Challenged Abortion Restrictions will not survive strict scrutiny. *Supra* at 7-25.

[19] The State Defendants also err in asserting that abortion is risky, *supra* at 19-20, and in portraying the judicial bypass process as facilitating rather than impeding abortion care, *supra* at 2-3, 6, 8-9. *See* State Defs.' PI Resp. & MTD at 72.

324.520(2), RSMo, which prohibits tattooing or body piercing services for minors without parental consent).

A right to be free from discrimination typically requires that State officials treat similarly situated people alike. *See Klinger v. Dep't of Corrs.*, 31 F.3d 727, 731 (8th Cir. 1994) (concerning the Equal Protection Clause). Abortion care is similarly situated to other pregnancy-related healthcare. To illustrate, both medication and procedural abortion care often mirror miscarriage management care, and labor induction is both an abortion method and a childbirth method. *See* McNicholas Decl. ¶ 16; Order, *Comprehensive Health of Planned Parenthood Great Plains v. State*, No. 2416-CV31931, at 11 (16th Cir. Ct. Jackson Cnty. July 3, 2025) ("The Court finds the facility licensing requirement is facially discriminatory because it does not treat services provided in abortion facilities the same as other types of similarly situated health care, including miscarriage care.").

The State Defendants seem to contest that abortion care and other pregnancy-related healthcare are similarly situated based on the misapprehension that young people can be coerced into an abortion, but not into carrying to term. The record refutes this. *See, e.g.*, Coleman-Minahan Decl. ¶ 33 ("Many adolescents report fearing irreversible damage to their relationship with a parent, physical or emotional abuse, abandonment, or being forced to carry the pregnancy to term."); *id.* ¶¶ 35, 37, 48, 50; *see also supra* at 12, n.7. Likewise, the State Defendants erroneously dispute that pregnancy-related healthcare other than abortion can be elective. Pregnancy-related healthcare other than abortion can involve a plethora of choices, including but not limited to whether to obtain particular prenatal care, have an amniocentesis, receive anesthesia during childbirth, or have a cesarean section. *See* McNicholas Decl. ¶¶ 8–9 (describing risks and complications associated with pregnancy).

At the same time, the State Defendants acknowledge that Missouri law, specifically § 431.061(1)(4), RSMo, authorizes young people to obtain pregnancy-related healthcare other than an abortion. *See* State Defs.' PI Resp. & MTD at 72 ("§ 431.061(1)(4) is just another exception to the general rule that parental consent is always required."). Indeed, § 431.061(1)(4), RSMo, gives a physician the discretion to advise a young person's parent of the pregnancy-related healthcare without the young person's consent, but—unlike the Parental Consent and Notice Requirement—it does not require the young person and her physician to secure parental consent or notice before the young person can receive care. *See* § 431.062(3), RSMo. By extension, Missouri does not require a young person receiving pregnancy-related healthcare other than abortion to make the case to a judge that they are capable of deciding to seek pregnancy-related healthcare or that the pregnancy-related healthcare is in the young person's best interest.

Right By You has therefore demonstrated that it is likely to succeed on the merits of its claim under Subsection 6 of the Right to Reproductive Freedom.[20]

D. *Fitz-James* and *Planned Parenthood Great Plains* are Immaterial to Right By You's Likelihood of Prevailing on the Merits of Its Claims.

The State Defendants incorrectly rely on *Fitz-James v. Ashcroft*, 678 S.W.3d 194 (Mo. App. W.D. 2023), to contest that Right By You is likely to prevail on the merits of its claims. The case concerned the summary statements of various initiative petitions, parts of which became the Right to Reproductive Freedom. *Id.* at 199. The question was "not whether the summaries drafted [were] the best summar[ies], "but whether [they] g[ave] the voter a

[20] As explained above, Right By You has established that the Challenged Abortion Restrictions do not survive strict scrutiny. *Supra* at 7-25.

sufficient idea of what the proposed amendment would accomplish, without language that [wa]s intentionally unfair or misleading." *Id.* at 203. The court concluded that it was not the "legal and probable" effect of the initiative petitions to "guarantee[] the right of any woman, including a minor, to end the life of their unborn child at any time." *Id.* at 210. The court reasoned that the petitions did not contain language about minors. *Id.* The State Defendants' most obvious error is that *Fitz-James* did not consider the Challenged Abortion Restrictions, any particular laws at all, or even the Right to Reproductive Freedom. At any rate, enjoining the Challenged Abortion Restrictions would not result in any minor being able to obtain an abortion "at any time." *Id.*

The State Defendants' reliance on the developments in the Attorney General's prosecution of Planned Parenthood for allegedly violating the Ban on Abortion Support is equally misplaced. The circuit court's decision denying Planned Parenthood's motion to dismiss is not binding on this Court, nor does it offer any written explanation. Order, *State ex rel. Bailey v. Planned Parenthood Great Plains*, 24BA-CV00990 (13th Jud. Cir. Ct. Apr. 28, 2025). Likewise, the Western District and Supreme Court decisions denying Planned Parenthood the "extraordinary remedy" of a writ of prohibition offer no guidance on Right By You's likelihood of success in this case. *State ex rel. Seals v. Holden*, 579 S.W.3d 235, 240 (Mo. App. S.D. 2019) ("The writ of prohibition, an extraordinary remedy, is to be used with great caution, forbearance and only in cases of extreme necessity.") (quoting *State ex rel. HeplerBroom, LLC v. Moriarty*, 566 S.W.3d 240, 243 (Mo. banc 2019)); *see* Order, *State ex rel. Planned Parenthood Great Plains v. Jacobs*, SC101123 (June 2, 2025); Order, *State ex rel. Planned Parenthood Great Plains v. Jacobs*, WD88036 (May 14, 2025).

E. Cases Decided Under the Federal Abortion Right Are Immaterial to Right By You's Likelihood of Prevailing on the Merits of Its Claims.

The fact that federal courts did not invalidate the Challenged Abortion Restrictions under a weaker federal abortion right is immaterial to the Challenged Abortion Restrictions' unconstitutionality under the far more robust Right to Reproductive Freedom. The State Defendants' claim that voters understood Amendment 3 as merely restoring *Roe* in Missouri is not only untrue, but also beside the point.[21] While the State Defendants are correct that the

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[21] The State Defendants' sources are overwhelmingly flimsy. They include: 1) a call by Missourians for Constitutional Freedom to "end the state's total abortion ban and restore the right to make personal reproductive health decisions," with no reference to *Roe*; 2) a call by Missourians for Constitutional Freedom to "tak[e] back our freedom" following the enactment of Missouri's abortion bans "after the Supreme Court overturned *Roe*"; 3) a malfunctioning hyperlink and missing exhibits; and 4) a letter to the editor from a single Missourian. *See* State Defs.' PI Resp. & MTD at 43–44; *Amendment 3 Is On the Ballot: Missourians for Constitutional Freedom Statement on Missouri Supreme Court Decision*, YES ON 3 (Sept. 10, 2024), https://moconstitutionalfreedom.org/amendment-3-is-on-the-ballot-missourians-for-constitutional-freedom-statement-on-missouri-supreme-court-decision/; Missourians for Constitutional Freedom (@Missourians4CF), X (June 24, 2024 at 08:39 CT), https://x.com/Missourians4CF/status/1805234310846292316.

There is equivalent evidence that voters understood Amendment 3 as transcending *Roe*. For example, some sources emphasized that Amendment 3 would not only protect abortion access, but reproductive healthcare more broadly. *See, e.g.*, Celisa Calacal, *Missouri Amendment 3*, KC VOTER GUIDE (Aug. 21, 2024), https://www.kcur.org/kcvoterguide2024/missouri/general-amendment-3; Meg Cunningham, *Missouri Amendment 3: What to Know About the Abortion Rights Vote in November's Election*, KCUR (Sept. 13, 2024), https://www.kcur.org/politics-elections-and-government/2024-09-13/missouri-amendment-3-abortion-rights-ballot-measure-election-2024.

And some sources highlighted that Amendment 3 conflicted with the Challenged Abortion Restrictions. *See, e.g.*, Natanya Friedheim, *Proposed Abortion Amendment Sparks Far-Reaching Debate*, COLUMBIA MISSOURIAN (Oct. 6, 2024), https://www.columbiamissourian.com/news/elections/ballot-initiatives/proposed-abortion-amendment-sparks-far-reaching-debate/article_7c075134-7b80-11ef-ac2e-f766f88df444.html; Susan Szuch, *Here's What to Know About Missouri's Abortion Ballot Question Before the Election*, SPRINGFIELD NEWS-LEADER (Oct. 10, 2024), https://www.news-leader.com/story/news/politics/elections/2024/10/10/missouri-

Court "should undertake to ascribe to words the meaning which the people understood them to have when the [constitutional] provision was adopted," the Supreme Court of Missouri has "emphasized reliance on the natural and ordinary meaning of words. . . ." *State ex inf. Danforth v. Cason*, 507 S.W.2d 405, 408 (Mo. banc 1973). That is, "[t]he only way we can determine what meaning was conveyed to the voters by the provision is to determine what it means to us, giving the words used their ordinary and usual meaning." *Id.* at 409 (quoting *Household Fin. Corp v. Schaffner*, 203 S.W.2d 734, 737 (Mo. 1947)); *see id.* at 408–09 ("If . . . the words embody a definite meaning, which involves no absurdity and no contradiction between different parts of the same writing, then that meaning, apparent on the face of the instrument, is the one which alone we are at liberty to say was intended to be conveyed.") (quoting *State ex rel. Heimberger v. Bd. of Curators of Univ. of Mo.*, 188 S.W. 128, 130 (Mo. banc 1916)). *Doyle v. Tidball*, which the State Defendants rely on, itself looked to the "plain language" of the Missouri Constitution. 625 S.W.3d 459, 463 (Mo. banc 2021); *see id.* at 466 ("When, as here, the language of a statute is plain and unambiguous, the Court 'must give effect to the language as written,' and 'extrinsic aids to statutory construction cannot be used.'" (citations omitted)).

Federal courts' consideration of the Challenged Abortion Restrictions has no bearing on Right By You's likelihood of success because the Right to Reproductive Freedom's

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amendment-3-abortion-election-ballot-question/75596624007; Mo. GOP (@MissouriGOP), X (Aug. 21, 2024, 11:11 CT), https://x.com/MissouriGOP/status/1826290978648621560; Mo. Right to Life Political Action Committee, *10 Reasons to Vote No on Pro-Abortion Amendment 3*, https://missourilifepac.org/wp-content/uploads/2024/08/10-Reasons-to-VOTE-NO-on-Pro-Abortion-Amendment-3-MRL-PAC-8-16-24.pdf.

natural, ordinary, and plain meaning establishes that the right is materially different from and far more protective than the federal abortion right. *See supra* at 1-2 (describing the Right to Reproductive Freedom and the strict scrutiny test that applies to laws that restrict that right).

The Right to Reproductive Freedom expressly extends to any person providing or facilitating an abortion in addition to any person seeking one. Mo. Const. art. I, § 36.1–6. The federal abortion right did not extend to anyone who provided or facilitated an abortion. *See June Med. Servs. L.L.C. v. Russo*, 519 U.S. 299, 318 (2020) ("We have long permitted abortion providers to invoke the rights of their actual or potential patients in challenges to abortion-related regulations.").

The Right to Reproductive Freedom expressly forbids State officials from denying, delaying, penalizing, otherwise restricting, and discriminating against someone's ability to have an abortion. Mo. Const. art. I, § 36.3–6. This distinguishes the Right to Reproductive Freedom from the far less protective and precise right to abortion under *Roe* and its progeny. Indeed, because the federal right was less protective than the Right to Reproductive Freedom, federal courts struggled to discern whether delays, penalties, and discrimination infringed on the federal abortion right. *See, e.g.*, *Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 885–87 (1992) (holding that a mandatory twenty-four-hour delay whose "practical effect [would] often be a delay of much more than a day" and "travel [for] long distances" did not satisfy the undue burden test). But no such uncertainty exists here.

The Right to Reproductive Freedom expressly makes abortion restrictions "presumptively invalid," and thus requires State officials to "demonstrate[] that such action is justified by a compelling governmental interest achieved by the least restrictive means." Mo. Const. art. I, § 36.3. The last iteration of the federal abortion right famously allowed

abortion restrictions unless they "impose[d] an 'undue burden' on a woman's decision to have an abortion before fetal viability." *Nixon*, 220 S.W.3d at 743 (quoting *Casey*, 505 U.S. at 876–77).

The Right to Reproductive Freedom even expressly cabins State officials' potential compelling governmental interest to that which is 1) "for the limited purpose and [with] the limited effect of improving or maintaining the health of a person seeking care," 2) "consistent with widely accepted clinical standards of practice and evidence-based medicine," *and* that 3) "does not infringe on that person's autonomous decision-making." Mo. Const. art. I, § 36.3 (emphasis added).

Accordingly, Right By You is likely to succeed on the merits of its claims under the Right to Reproductive Freedom even if it would not have done so under the weaker federal abortion right.

F. Right By You Has Shown That The Challenged Abortion Restrictions Are Irreparably Harming It and Its Clients.

The State Defendants do an about-face and claim that Right By You has not established that the Challenged Abortion Restrictions are irreparably harming it or its clients because § 431.061(1)(4), RSMo, requires a young person to obtain parental consent for an abortion anyhow. As discussed above, *supra* at 23-24, and by the State Defendants' own admission, *supra* at 29, this is patently false. Right By You has asked this Court to permanently enjoin § 431.061(1)(4), RSMo "[t]o the extent that Defendants construe the exclusion of 'abortion' from Section 431.061(1)(4), RSMo as requiring anyone other than the young person herself to consent to her abortion—which is an improper reading of the statute." Pet. ¶ 165, Prayer for Relief at 58.

Contrary to the State Defendants' assertions, "the denial of a constitutional right is a cognizable injury and an irreparable harm." *Ng v. Bd. of Regents of Univ. of Minn.*, 64 F.4th 992, 998 (8th Cir. 2023) (citation omitted). So, too "deprivations of temporally isolated opportunities," including abortion care. *D.M. by Bao Xiong v. Minn. State High Sch. League*, 917 F.3d 994, 1003 (8th Cir. 2019); *see* Pl.'s PI at 37.

As discussed throughout this brief, Right By You has shown that the Challenged Abortion Restrictions are denying its clients their right to obtain an abortion and its own right to help them do so. For instance, Right By You has provided uncontroverted evidence that at least some of its clients are unable to obtain parental consent and notice, and must either seek a judicial bypass—with the attendant injuries—or leave the state for abortion care, or be forced to carry their pregnancies to term. *Supra* at 6; Sheley Decl. ¶¶ 24–29, 31–41, 53. Right By You has also provided uncontroverted evidence that the Ban on Abortion Support is preventing it from providing financial or practical support that its clients need to obtain an abortion in or outside Missouri because they are unable to comply with the Parental Consent and Notice Requirement. *Supra* at 5-6; Sheley Decl. ¶¶ 47, 50–54. By insisting that Right By You identify a particular client who was unable to obtain an abortion, the State Defendants create a requirement out of whole cloth and reduce the Right to Reproductive Freedom to a shell of itself.

G. Right By You Has Shown That The Public Interest and Balance of Equities Weigh in Favor of a Preliminary Injunction.

Right By You has established that there is little on Defendants' side of the ledger. The record reflects that the Challenged Abortion Restrictions do not overcome family dysfunction to help ensure that young people who would not already confide in a parent do so, or if they

do, that they come away with guidance or support, as opposed to higher risks of parental neglect, violence, and coercion. *Supra* at 9-10; Coleman-Minahan Decl. ¶¶ 33–37; McNicholas Decl. ¶ 36. The record also reflects that the Challenged Abortion Restrictions do not ensure that young people without parental support will seek a judicial bypass, or that judges will provide better information, guidance, or screening to young people than abortion providers, who have legal, ethical, and professional obligations to do so. *Supra* at 10; Coleman-Minahan Decl. ¶ 55; Sheley Decl. ¶¶ 31–32; McNicholas Decl. ¶¶ 23–31.

Further, Right By You moved for a preliminary injunction as expeditiously as possible, at the end of April, after abortions resumed in Missouri in mid-February.[22] *See* Pl.'s PI at 21–22, 36–37. "[T]he determination of the reasonableness of a delay is context dependent." *Ng*, 64 F.4th at 998 (noting that the Eighth Circuit has found delays of five months, seven months, and eight months reasonable).

H. The Remainder of the State Defendants' Contentions Concerning Right By You's Likelihood of Success Fall Flat.

As explained above, Right By You satisfies all of the requirements for a preliminary injunction: a likelihood of success on the merits under three separate provisions of the Right to Reproductive Freedom, irreparable harm, and a showing that the public interest and the balance of equities weigh in favor of a preliminary injunction. None of Defendants' remaining meritless arguments disturb that conclusion.

First, as discussed *infra* at 38-40, enjoining the Challenged Abortion Restrictions under the Right to Reproductive Freedom would not encourage state interference with parent-

[22] As discussed below, Right By You is a foreign nonprofit corporation entitled to maintain this lawsuit and to obtain any appropriate relief in it. *See infra* at 40-43.

child-relationships in conflict with parents' rights under the Fourteenth Amendment. Thus, the canon of constitutional avoidance is irrelevant to this case because a ruling for Right By You would not call into question the constitutional validity of the Right to Reproductive Freedom under the Fourteenth Amendment. *See* State Defs.' PI Resp. & MTD at 41. In any case, Right By You has not claimed that the Right to Reproductive Freedom "makes it unconstitutional for a parent to withhold consent to an abortion on behalf of their minor child." *Id.* at 42. Constitutions typically bind the state, not the public, and, by enforcing the Challenged Abortion Restrictions, the Defendants are violating Right By You's and its clients' constitutional rights.

Second, whether Right By You is likely to succeed on the merits of its claims is a different question than which remedies are appropriate to address its injuries. *Infra* at 57–58. Right By You is likely to succeed on the merits of its claims and is entitled to facial relief. *Id.* But a finding that Right By You is instead entitled to as-applied relief would not affect its likelihood of success on the merits of its claims. *Id.*

For all of these reasons, this Court should grant Right By You's Motion for a Preliminary Injunction.

II. This Court Should Deny Defendants' Motions to Dismiss

"[A] motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition." *Reynolds v. Diamond Foods & Poultry, Inc.*, 79 S.W.3d 907, 909 (Mo. banc 2002). "If the petition sets forth any set of facts that, if proven, would entitle the plaintiffs to relief, then the petition states a claim." *Ward v. W. Cnty. Motor Co.*, 403 S.W.3d 82, 84 (Mo. banc 2013). When evaluating a motion to dismiss for failure to state a claim, "the facts contained in the petition are assumed true and construed in favor of the

plaintiff[].” *Id.* Likewise, when reviewing a motion to dismiss for lack of standing, the court must “assume[] all of the plaintiff’s claims are true ‘and liberally grant[] to [the] plaintiff all reasonable inferences therefrom.’” *State ex rel. Hawley v. Pilot Travel Ctrs., LLC*, 558 S.W.3d 22, 26–27 (Mo. banc 2018) (citation omitted).

A. The State Defendants’ Preemption Claim is Unavailing.

The State Defendants’ preemption claim lacks merit for two reasons. One, the State Defendants distort parents’ rights under the Fourteenth Amendment. Two, they ignore Right By You’s allegations that the Challenged Abortion Restrictions do not actually help ensure that a young person will confide in a parent and sometimes interfere with a parent’s ability to guide and care for their child.

“When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls.” *Reynolds v. Sims*, 377 U.S. 533, 584 (1964); *see Household Fin. Corp. v. Shaffner*, 203 S.W.2d 734, 736 (Mo. banc 1947). That is, “state constitutional provisions should be deemed violative of the Federal Constitution only when validly asserted constitutional rights could not otherwise be protected and effectuated.” *Reynolds*, 377 U.S. at 584. For example, in *Romer v. Evans*, the U.S. Supreme Court held that an amendment to the Colorado Constitution that “prohibit[ed] all legislative, executive or judicial action at any level of state or local government designed to protect . . . gays and lesbians” violated the federal Equal Protection Clause. 517 U.S. 620, 624, 635–36 (1996).

Parents’ rights under the Fourteenth Amendment do not preempt the Right to Reproductive Freedom because enjoining enforcement of the Challenged Abortion Restrictions under the Right to Reproductive Freedom would not make it impossible to protect and effectuate parents’ rights. Importantly, “the fundamental right of parents to make

decisions concerning the care, custody, and control of their children" obligates *the state* not to interfere with parents' direction of their children's upbringing; it does not impose obligations on members of *the public*, such as Right By You. *Troxel v. Granville*, 530 U.S. 57, 66, 72–73 (2000) ("[T]he Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better' decision could be made."); *see Anspach ex rel. Anspach v. City of Phila., Dep't of Pub. Health*, 503 F.3d 256, 262 (3d Cir. 2007) ("Courts have recognized the parental liberty interest only where the behavior of the state actor compelled interference in the parent-child relationship."); *id.* at 258, 267 (dismissing a parental rights claim where a state agency provided a teenager with emergency contraception without parental notice because the "facts in no way suggest[ed] that the state injected itself into the . . . private familial sphere as required for a constitutional violation"); *Doe v. Irwin*, 615 F.2d 1162, 1168 (6th Cir. 1980) ("In each of the Supreme Court cases the state was either requiring or prohibiting some activity." (first citing *Meyer v. Nebraska*, 262 U.S. 390 (1923); then citing *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925); then citing *Wisconsin v. Yoder*, 406 U.S. 205 (1972); and then citing *Prince v. Massachusetts*, 321 U.S. 158 (1944))).[23]

Enjoining the Challenged Abortion Restrictions under the Right to Reproductive Freedom would not result in the state *prohibiting* parents from providing guidance and

[23] *Parham v. J. R.*, 442 U.S. 584 (1979), is distinguishable from this case. *Parham* concerned children suffering from severe mental health problems, not young people seeking pregnancy-related healthcare. *See id.* at 590–91. Additionally, the parents sought the mental healthcare at issue in the case, and the children objected. *Id.* at 587–88. *Parham* did not address the circumstances here, where young people are seeking the healthcare, and some parents object.

support to their pregnant children, so there is no conflict between the Right to Reproductive Freedom and the Fourteenth Amendment. To the contrary, the Challenged Abortion Restrictions actually interfere with some parent-child relationships because they sometimes enable a parent who does not support their child to override a supportive parent's wishes by forcing a young person to notify both parents of their abortion. Pet. ¶ 91. Beyond this, the Challenged Abortion Restrictions do nothing to preserve or strengthen parent-child relationships because they do not help ensure that a young person will confide in a parent. Most young people willingly confide in a parent regardless of parental involvement requirements. *Id.* ¶ 85. The small proportion of young people who do not willingly confide in a parent are not swayed by parental involvement requirements. *Id.* ¶¶ 86–90. They typically have unavailable, incapacitated, abusive, or unsupportive parents. *Id.* For example, "[i]n a recent large-scale study of why young people choose not to inform their parents of their pregnancy, 41% feared being thrown out or cut off from the family, 27% feared damage to family relationships, and 13% feared physical or emotional abuse." *Id.* ¶ 87. "Studies show that young people correctly predict these responses based on their experience with their parents and their parents' responses to siblings and other family members." *Id.*

Accordingly, enjoining the Challenged Abortion Restrictions would, at the very least, not affect parent-child relationships. This falls far short of the "unavoidable conflict" necessary for State Defendants' preemption claim. *Reynolds*, 377 at 584.

B. Right By You Has the Legal Capacity to Sue.

As a fiscally-sponsored project of a nonprofit organization incorporated in California, Right By You has the legal capacity to maintain this lawsuit. *See* Mo. Sup. Ct. R. 55(a)(3); Pet. ¶ 22. Defendants' transparent and misguided attempt to sow confusion about Right By

You's corporate structure flies in the face of the Petition and the evidence submitted in this case.[24]

The State Defendants waste space recounting the irrelevant rules that apply to lawsuits initiated by unincorporated associations. *See* State Defs.' PI Resp. & MTD at 20–21. But Right By You is neither an unincorporated association nor a membership organization; to the contrary, it is a fiscally-sponsored project of a nonprofit that is incorporated under California law. Pet. ¶ 22. Defendants' erroneous assertion that Right By You has failed to "allege that it is a corporation or other official entity under the law of Missouri or some other state," State Defs.' PI Resp. & MTD at 20, is contradicted by the Petition, which provides adequate notice of Right By You's corporate structure and its relationship with a nonprofit incorporated in California, Pet. ¶ 22.

Fiscal sponsorship is a lawful and common arrangement for a small and relatively new charitable initiative like Right By You. "Fiscal sponsorship is a contractual relationship that allows a person or organization that is not tax-exempt to advance charitable or otherwise exempt activities with the benefit of the tax exempt status of a sponsor organization that is exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3)."[25]

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[24] Because "[e]vidence outside the pleadings cannot serve as the basis for granting a motion to dismiss, including a motion to dismiss for lack of standing," *Stabler v. Stabler*, 326 S.W.3d 561, 564 (Mo. Ct. App. E.D. 2010), this Court should consider only the allegations in Right By You's Petition when reviewing Defendants' motions to dismiss. However, to the extent that Defendants also argue that Right By You lacks legal capacity to sue in support of their opposition to Plaintiff's Motion for a Preliminary Injunction, the evidence in the record confirms Right By You's corporate structure and affiliation with an incorporated nonprofit. *See, e.g.*, Sheley Decl. ¶ 8; *infra* at 41.

[25] Erin Bradrick, *Fiscal Sponsorship: What You Should Know and Why You Should Know It*, BUS. L. TODAY (Sept. 15, 2015), https://businesslawtoday.org/2015/09/fiscal-sponsorship-what-you-should-know-and-why-you-should-know-it/.

Fiscal sponsor agreements have been endorsed by the federal Internal Revenue Service[26] and used for decades as a cost-effective and tax-compliant structure for nonprofit projects in every state in the country, including Missouri.[27] Crucially, fiscally-sponsored projects of incorporated nonprofits regularly sue in their own name in courts across the country. *See, e.g.*, *MobilizeGreen, Inc. v. Cmty. Found. for the Cap. Region*, 267 A.3d 1019, 1024–25 (D.C. 2022) (describing fiscal sponsorship agreement between plaintiff, a nonprofit project, and defendant, the fiscal sponsor); *Balt. Police Dep't v. Open Just. Balt.*, 301 A.3d 201, 237 n.32 (Md. 2023) (observing that Open Justice Baltimore, which filed the lawsuit, is a fiscally sponsored project of a nonprofit organization).

That Right By You's fiscal sponsor is incorporated under the laws of California instead of Missouri does not deprive Right By You of the legal capacity to sue. Missouri courts often hear cases brought by organizations that are incorporated in other states. *See, e.g.*, *Kayser Roth Co. v. Holmes*, 693 S.W.2d 907, 907–08 (Mo. Ct. App. W.D. 1985) (authorizing suit by foreign corporation that was engaged in interstate commerce in the State of Missouri);

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[26] Advisory Comm. on Tax Exempt & Gov't Entities, IRS, *Report of Recommendations* 34 (2012), https://www.irs.gov/pub/irs-tege/tege_act_rpt11.pdf; Joan Macleod Heminway, *Choice of Entity: The Fiscal Sponsorship Alternative*, 23 TRANSACTIONS: TENN. J. BUS. L. 526, 534 (2022).

[27] *See, e.g.*, Emma Geering, Note, *The Legal Value of Fiscal Sponsorship: A Proposal of New Law*, 72 HASTINGS L. J. 1605, 1608 (2021). For example, several Missouri nonprofits advertise that they serve as 501(c)(3) fiscal sponsors for nonprofit projects, including the Community Capital Fund of Kansas City and the Community Foundation of the Ozarks. *See Fiscal Sponsorships for Social Ventures*, CMTY. CAP. FUND, https://www.ccfkansascity.org/fiscal-sponsorship (last visited July 1, 2025); *About Fiscal Sponsorships*, CMTY. FOUND. OF THE OZARKS, https://www.cfozarks.org/resources/fiscal-sponsorships (last visited July 1, 2025).

Filmakers Releasing Org. v. Realart Pictures of St. Louis, Inc., 374 S.W.2d 535, 538–40 (Mo. Ct. App. St. Louis 1964) (same).[28]

Finally, to the extent that Defendants also assert that Right By You's Motion for a Preliminary Injunction should be denied because it lacks capacity to sue, the attached exhibits further rebut that argument by clearly explaining Right By You's sponsorship by an incorporated nonprofit. As evidenced by the attached fiscal sponsor agreement, Right By You is a fiscally-sponsored project of Innovations in Reproductive Health Access, a tax-exempt 501(c)(3) organization. *See* Ex. 3 (Fiscal Sponsor Agreement); Ex. 4 (Innovations IRS Approval Letter). Innovations in Reproductive Health Access is incorporated as a nonprofit organization under the laws of California. *See* Ex. 5 (Innovations Annual Registration Renewal Letter California). As a result, both the allegations in the Petition and the record confirm Right By You's legal capacity to maintain this lawsuit.

C. This Case Presents a Justiciable Controversy.

A case is justiciable if the plaintiff has standing to assert its claims and the controversy is ripe for judicial determination. *See Schweich v. Nixon*, 408 S.W.3d 769, 773–74 (Mo. banc

[28] Indeed, § 355.756, RSMo, which applies to foreign non-profit corporations, expressly contemplates that there will be times when foreign non-profit corporations can maintain lawsuit in Missouri courts. As explained in detail in Plaintiff's Suggestions in Opposition to the State Defendants' Motion to Stay ("Pl.'s SIO State Defs.' Mot. to Stay"), Plaintiff has the right to maintain suit in Missouri as a foreign corporation even without a "certificate of authority" because it is not "transacting business" in the state of Missouri. *See* Pl.'s SIO State Defs.' Mot. to Stay. As a result, Plaintiff has just as much right to maintain this lawsuit as the many foreign organizations permitted to sue in Missouri to vindicate rights that do not stem from the "transaction of business" within the state of Missouri. *See, e.g.*, *Kayser Roth Co.*, 693 S.W.2d at 907–08; *Filmakers Releasing Org.*, 374 S.W.2d at 536, 538–41.

2013). Right By You has met its burden of alleging sufficient facts to support standing and ripeness, and this Court should reject Defendants' arguments to the contrary.

1. Right By You Has Standing to Sue on its Own Behalf and Third-Party Standing to Sue on Behalf of its Clients.

"To assert standing successfully, a plaintiff must have a legally protectable interest" in the litigation. *St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 623 (Mo. banc 2011). A legally protected interest exists as long as the plaintiff is "directly and adversely affected" by the challenged law and has a "stake in the outcome of the litigation," even if that interest is "attenuated, slight or remote." *Ste. Genevieve Sch. Dist. R-II v. Bd. of Aldermen*, 66 S.W.3d 6, 10 (Mo. banc 2002). Additionally, "[t]he requirement of a personal stake in the outcome of the litigation means that the remedy sought must relate to the alleged injury." *St. Louis County v. State*, 424 S.W.3d 450, 453 (Mo. banc 2014). Here, Right By You has standing to assert its claims under two theories: (1) first-party standing on its own behalf, and (2) third-party standing on behalf of the clients it serves.

i. Right By You Has Standing to Sue on its Own Behalf.

The State Defendants' arguments about Right By You's standing do not acknowledge that it asserts standing to sue on its own behalf.[29] However, Right By You's Petition includes ample allegations regarding a host of legally protected interests. Collectively, these allegations eviscerate Defendants' meritless contention that Right By You lacks standing.

[29] The State Defendants misleadingly use an ellipsis to avoid quoting Right By You's clear assertion that it is suing on behalf of itself as well as its clients. *See* State Defs.' PI Resp. & MTD at 22; Pet. ¶ 25 ("Right By You sues on behalf of itself, its staff and volunteers, and the young people it serves.").

First, Right By You has a legally protectable interest in this lawsuit because the Challenged Abortion Restrictions violate its Right to Reproductive Freedom, including the right to be free from discrimination, penalization, prosecution, or adverse action for "assisting a person in exercising their right to reproductive freedom." *See supra* at 5–6. It is axiomatic that a person or organization has standing to challenge a law that concretely violates its constitutional rights, including its right to be free from discrimination. *See, e.g.*, *Nixon*, 220 S.W.3d at 737; *see also Unverferth v. City of Florissant*, 419 S.W.3d 76, 86–87 (Mo. Ct. App. E.D. 2013) (holding that plaintiff had standing to challenge the constitutionality of an ordinance that directly affected him), *overruled on other grounds by City of Moline Acres v. Brennan*, 470 S.W.3d 367 (Mo. banc 2015).

Right By You also has standing in this case because it faces a concrete threat of liability under both the Parental Consent and Notice Requirement and the Ban on Abortion Support. The Parental Consent and Notice Requirement subjects Right By You to third-party criminal liability for helping young people obtain an abortion in Missouri without parental involvement or judicial approval. *See* § 562.041, RSMo (providing third-party criminal liability); Pet. ¶¶ 19, 23, 72. Likewise, the Ban on Abortion Support subjects Right By You to direct civil liability, including uncapped damages and injunctive relief, for providing critical financial and practical support to young people seeking an abortion who cannot comply with the Parental Consent and Notice Requirement. *See* § 188.250(2), RSMo; Pet. ¶¶ 15, 119–20, 132–33.

The concrete threat of liability under the Challenged Abortion Restrictions prevents Right By You from fulfilling its core activity of helping young people in Missouri effectuate their own decisions about their pregnancies with dignity even if they lack parental support.

See, e.g., Pet. ¶¶ 19, 24.[30] If the Challenged Abortion Restrictions were enjoined, Right By You would no longer face liability for engaging in its core activity by (1) referring young people to abortion providers even when they lack parental support, (2) funding abortions, (3) funding transportation, lodging, childcare, and other costs associated with accessing abortion care, (4) making abortion appointments and arrangements for such transportation and lodging, and (5) directly transporting young people to their abortion appointments. *Id.*

Missouri courts have repeatedly held that threatened liability under a challenged law gives rise to a legally protectable interest. For example, in *Blue Cross & Blue Shield of Kansas City, Inc. v. Nixon*, the en banc Missouri Court of Appeals for the Western District held that the plaintiff had standing to challenge the constitutionality of a law that, if enforced pursuant to the Attorney General's threats, would expose it to significant liability for proceeding with proposed business mergers. 26 S.W.3d 218, 224–25 (Mo. Ct. App. W.D. banc 2000). Like the plaintiff in that case, Right By You faces a concrete threat of liability if it were to pursue initiatives to further its core activity. *See id.* (holding that Blue Cross and Blue Shield's "ability to conduct its business and operations" was "adversely affect[ed]" by the threatened enforcement action); *see also Mo. Health Care Ass'n v. Att'y Gen.*, 953 S.W.2d 617, 620 (Mo. banc. 1997) (holding that plaintiff had standing to challenge an unconstitutional law that threatened it with liability because "[t]he interest in doing business free from the constraints of an unconstitutional law is entitled to legal protection"); *Roberts*

[30] To the extent that Defendant Johnson's Suggestions in Support of her Motion to Dismiss argue that Right By You does not have standing because it is not personally injured by the Challenged Abortion Restrictions, *see* Def. Johnson's PI Resp. & MTD at 8–10, the Petition makes clear that Right By You's core activity and constitutional rights are directly implicated by the Challenged Laws. *See, e.g.*, Pet. ¶¶ 15, 19, 24, 119–120, 132–33.

v. BJC Health Sys., 391 S.W.3d 433, 438 (Mo. banc. 2013) ("Plaintiffs' assertions of their *potential liability* for the alleged overcharges demonstrate a *legally cognizable interest* in this litigation and a *threatened injury*.").

Similarly, Right By You has standing to assert its own interests as an organization because the Challenged Abortion Restrictions have resulted in a "concrete and demonstrable injury to [its] activities," which "drain[s] … [its] resources" and is "more than simply a setback to [its] abstract social interests." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). Although Missouri courts have not specified a test for organizational standing, they have relied on federal standing cases when addressing standing in similar circumstances. *See St. Louis Ass'n of Realtors*, 354 S.W.3d at 622–23. Recently, the U.S. Supreme Court clarified that organizational standing requires the plaintiff to demonstrate that the challenged law directly affects its "core business activities." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024) [hereinafter *AHM*].

Right By You meets the federal test for organizational standing because it has demonstrated that the Parental Consent and Notice Requirement and the Ban on Abortion Support "perceptibly impair[]" its core activity of openly helping Missouri young people effectuate their own decisions about their pregnancies with dignity regardless of whether they have parental support. *Id.* (quoting *Havens*, 455 U.S. at 379); *see* Pet. ¶¶ 22–24. Specifically, Right By You must expend a substantial amount of time and money "providing information and emotional support to young people to mitigate the injuries that the [Parental Consent and Notice Law] inflicts on them." Pet. ¶ 23. Likewise, the Ban on Abortion Support burdens Right By You's core activity by preventing it from providing necessary financial and practical support to young people who are seeking an abortion but who cannot comply with

the Parental Consent and Notice Requirement. *See, e.g.*, *id.* ¶¶ 23–24. These allegations are more than sufficient to establish standing. *See, e.g.*, *Holmes v. Knodell*, 733 F. Supp. 3d 775, 794 (W.D. Mo. 2024) (holding that organization had standing where defendants' failure to properly administer a federal program required it to "divert significant financial and staffing resources" from its core organizational work); *Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790, 798 (W.D. Mo. 2020) ("The Court is thus satisfied Plaintiffs each have standing through diversion of resources from [their] other core work . . . , and that these diversions of resources are more than a minimal setback to an abstract interest.").[31]

ii. Right By You Has Standing to Sue on Behalf of its Clients.

In addition to first-party standing, *supra* at 46–48, Right By You has standing to assert its clients' claims under well-established Missouri precedent. *See Nixon*, 220 S.W.3d at 737. In Missouri, a plaintiff can assert the rights of a third party if it establishes: "(1) a concrete injury, (2) a close relation to the third party, and (3) some hindrance to the third party's ability to protect its own interests." *State ex rel. Delmar Gardens N. Operating, LLC v. Gaertner*, 239 S.W.3d 608, 610–11 (Mo. banc 2007).

Defendants grossly mischaracterize the holding of *Missouri State Medical Ass'n v. State* when they argue that it limited third-party standing to abortion providers. *See* State Defs.' PI Resp. & MTD at 24. Although the Court in *Missouri State Medical Ass'n* rejected the plaintiff's assertion of third-party standing, its decision did not rest on the fact that the plaintiff was not an abortion provider. 256 S.W.3d 85, 88–89 (Mo. banc 2008) (explaining

[31] To the extent that Defendants' standing arguments also apply to its opposition to Right By You's motion for a preliminary injunction, the evidence confirms every element of Plaintiff's standing. *See, e.g.*, Sheley Decl. ¶¶ 39–42, 47–50, 57–58.

the holding of *Nixon* without announcing a new substantive limitation on third-party standing).[32] Instead, the Court emphasized the inherent conflict of interest between the Missouri State Medical Association, which sought to invoke the rights of its patients to challenge a law legalizing midwifery, and patients who *wanted* to use midwifery services. *Id.* (citing *Singleton v. Wulff*, 428 U.S. 106, 113–15 (1976)).

Binding Missouri Supreme Court precedent confirms that no similar conflict exists here. *Nixon*, 220 S.W.3d at 738 (upholding abortion clinic's third-party standing in challenge to Ban on Abortion Support). Right By You seeks to represent the interests of its clients—young people who seek support accessing an abortion even when they do not have parental involvement, but who cannot obtain that support because of the Challenged Abortion Restrictions. Right By You's clients do not hold rights that they "may not wish to assert," *Mo. State Med. Ass'n*, 256 S.W.3d at 89; they are young people who the Challenged Abortion Restrictions adversely and concretely injure because the Restrictions limit the clients' ability to effectuate their own pregnancy decisions with dignity, *see, e.g.*, Pet. ¶¶ 90–92, 98–99, 136–43.[33] The Missouri Supreme Court has expressly rejected the argument that the abstract

[32] Even if *Missouri State Medical Ass'n* somehow limited third-party standing doctrine, that case characterized the rule in *Nixon* as "limited to *abortion* cases"—not limited to abortion *providers*. 256 S.W.3d at 89 (emphasis added). This case is indisputably an abortion case, so it would clearly fall under such a limitation even if one existed.

[33] Likewise, the State Defendants' argument that Right By You "has not and cannot show that it represents the interest of *every* minor in Missouri" is a red herring. State Defs.' PI Resp. & MTD at 25 (emphasis added). Plaintiff does not seek to represent the interests of *all* young people—it only seeks to assert the constitutional rights of its clients. Pet. ¶ 20. Relief in this case would eliminate the requirement mandating that young people obtain consent and notice from their parents or endure a lengthy and burdensome judicial bypass process before they can obtain constitutionally-protected healthcare. Enjoining the Challenged Abortion Restrictions would have no impact on the majority of young people

possibility that a young person and an organization might be on "opposite sides of civil litigation in the event that [a] statute is violated" defeats third-party standing. *Nixon*, 220 S.W.3d at 738 (holding that possibility that a minor could sue Planned Parenthood under the Ban on Abortion Support did not defeat third-party standing).

The State Defendants' specious assertion that third-party standing doctrine is exclusively reserved for abortion providers is also belied by the many cases where non-abortion provider plaintiffs have been permitted to raise the interests of third parties. *See, e.g.*, *Delmar Gardens*, 239 S.W.3d at 610–11 (permitting a skilled nursing facility to assert the rights of its employee); *State ex rel. Riederer v. Coburn*, 830 S.W.2d 427, 431 (Mo. Ct. App. W.D. 1991) (holding that state could raise constitutional rights of third-parties whose equal protection rights were violated when they were stricken from the jury); *see also Craig v. Boren*, 429 U.S. 190, 195–96 (1976) (holding that beer vendor had third-party standing to raise equal protection rights of customers). Indeed, in *Nixon* itself—which Defendants cite in support of their argument about the abortion provider limitations of third-party standing—the Missouri Supreme Court rejected the State's argument that Planned Parenthood could not assert the interests of its patients because it was a clinic instead of an individual abortion

who voluntarily seek to involve their parents in their abortion decision even in the absence of a legal requirement. *Supra* at 40. Therefore, it would not "cut parents writ large" out of a young person's healthcare decisions, but rather relieve young people of the burdens of the Parental Consent and Notice Law when they are unable to involve a parent due to abuse, incapacity, or many other legitimate reasons. State Defs.' PI Resp. & MTD at 26–27; *supra* at 40.

provider. 220 S.W.3d at 737–38 ("[T]hird party standing to challenge abortion restrictions is not limited solely to physicians.").[34]

Here, Right By You meets the third-party standing test from *Delmar Gardens* and *Nixon*. As explained above, Right By You has established a concrete injury. *See supra* at 5, 47–48. It also has a close relationship with the clients whose interests it seeks to represent. *See, e.g.*, Pet. ¶¶ 22–25 (describing Right By You's mission, the counseling and non-judgmental support it provides its clients, and the additional support it would provide clients if not for the Challenged Abortion Restrictions).[35] That Right By You's volunteers do not

[34] After exhaustively arguing that third-party standing is limited to abortion providers, the State Defendants then conclude that abortion providers actually *lack* third-party standing to sue on behalf of their patients. *See* State Defs.' PI Resp. & MTD at 27–28. This argument is irrelevant because, as Defendants repeatedly concede, Right By You is not an abortion provider and it seeks to assert the rights of third parties under the longstanding test that has been applied in both abortion and non-abortion cases. *Id.* at 24–25; *supra* at 48–51. In any event, Defendants' argument is also wrong—the suggestion that *Dobbs* "upended the law of standing" "in eight words" has been roundly rejected by courts across the country. *Yellowhammer Fund v. Att'y Gen.*, 733 F. Supp. 3d 1167, 1184 (M.D. Ala. 2024). The lone federal support Defendants cite for this conclusion comes from a footnote in an appellate order on a motion to stay in a case that was later overturned by the U.S. Supreme Court. *See AHM*, 602 U.S. 367 (2024). And even if it were true that *Dobbs* implicitly disturbed decades of standing precedent, neither of the cases Defendants cite support the remarkable assertion that Missouri Supreme Court cases are *automatically* reversed when some of the sources they cite are questioned. *See Jamison v. State, Dep't of Soc. Servs., Div. of Fam. Servs.*, 218 S.W.3d 399, 405 & n.7 (Mo. banc 2007) (considering federal cases when interpreting state law); *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 161 (Mo. Ct. App. W.D. 2006) (same). As a result, *Nixon* remains good law, and it is dispositive on the issue of third-party standing in this case.

[35] To the extent this Court also considers Right By You's' third-party standing argument in connection with the Motion for a Preliminary Injunction, the record further illustrates Right By You's close relationship with its clients. Specifically, Right By You's volunteers develop close relationships with clients as they learn about their unique circumstances and counsel them about their options to ensure that they get the appropriate care and support to effectuate their pregnancy decisions. Sheley Decl. ¶¶ 10–14. Because Right By You counsels clients for as long as it takes to fulfill their needs, volunteers spend between a few days to several weeks

receive the same training as doctors, *see* State Defs.' PI Resp. & MTD at 25, does not disturb this conclusion, as no court has ever instituted a training or education threshold for the assertion of third-party standing. *Cf. Craig*, 429 U.S. at 455–57 (holding that beer vendor had third-party standing to sue on behalf of customers).

Additionally, Right By You's clients are hindered from protecting their own interests because any individual client will not know whether they will need abortion support without parental involvement until they are pregnant and seeking an abortion. Once Missouri teens need this support, they will not have the time or ability to raise their own interests in court because it will be financially and logistically challenging—if not impossible—for them to navigate missing school, work, and other responsibilities to obtain an attorney, prepare for, and attend a hearing. *See, e.g.*, Pet. ¶¶ 103–04 (describing the similar difficulties young people face when preparing for and attending a judicial bypass hearing). These hindrances are compounded by the fact that young people often discover they are pregnant later than adults, *id.* ¶ 49, and face a risk of accidental disclosure to their parents if they were to file their own lawsuit—the very fate they would seek to avoid by asserting their own constitutional rights against the Challenged Abortion Restrictions.

Finally, Missouri Supreme Court Rule 52.02(a) and § 507.110, RSMo, are both inapposite.[36] Plaintiff's standing is based on binding third-party standing precedent, not an

providing support and maintaining a close relationship with clients until they are able to obtain the care they need. *Id.* ¶ 18.

[36] Both Mo. Sup. Ct. R.52.02(a) and § 507.110, RSMo define the requirements for lawsuits *by* minors. This lawsuit is being brought by Right By You, not an individual minor, under third-party standing principles. *See Nixon*, 220 S.W.3d at 737–38 (authorizing organization to assert minor clients' rights).

assertion that it stands in the place of a young person's parent or guardian. *Sellars By and Through Booth v. Denney*, relied upon by Defendants, is irrelevant here because that case involved a grandmother who was erroneously trying to sue on behalf of her grandchild as "next friend." 945 S.W.2d 63, 64 (Mo. App. S.D. 1997). Unlike Right By You, the grandmother in *Sellars* did not rely on third-party standing principles. In any event, the notion that only a young person's parent or guardian could challenge the Challenged Abortion Restrictions belies the State Defendants' own, flawed position that the Restrictions promote parental rights. If this allegation had merit, which it doesn't, no parent or guardian would ever challenge either law.

iii. Right By You's Claims are Ripe.

In arguing that Right By You's claims are not ripe for adjudication, the State Defendants fabricate a ripeness test out of whole cloth. The State Defendants argue without support that Plaintiffs cannot establish a ripe controversy unless they identify a *specific* young person who has been unable to obtain an abortion due to the Challenged Abortion Restrictions.[37] State Defs.' PI Resp. & MTD at 29. The correct ripeness test requires a plaintiff to establish that the controversy is "of sufficient immediacy and reality to warrant the issuance of a declaratory judgment" and that the "facts necessary to adjudicate the underlying claims" are "fully developed." *Mo. Health Care Ass'n*, 953 S.W.2d at 621.[38]

[37] Not only do State Defendants advance the wrong standard, but their formulation of the standard also ignores that the constitutional Right to Reproductive Freedom explicitly identifies many ways in which a State official can infringe on the right other than by forcing someone to carry a pregnancy to term. *Supra* at 6.

[38] Importantly, the Missouri Supreme Court has affirmed that a "ripe controversy . . . may exist before [a] statute is enforced." *Mo. Health Care Ass'n*, 953 S.W.2d at 621. Although

Here, Right By You has an "immediate, concrete" dispute with the Defendants because Right By You and its clients are both concretely injured every day that the Challenged Abortion Restrictions remain in effect. *Id.* (citing cases). Right By You has alleged that the Ban on Abortion Support is currently preventing it from providing financial or practical support to young people who cannot comply with the Parental Consent and Notice Requirement, but that it does not affect young people who choose to carry their pregnancies to term. *See, e.g.*, Pet. ¶¶ 24, 132–34, 143.

Courts in Missouri have been clear that a party need not subject itself to prosecution or penalties under the law to assert a claim that the law is unconstitutional. *See, e.g.*, *Nixon*, 220 S.W.3d at 739; *Foster v. State*, 352 S.W.3d 357, 360 (Mo. banc 2011) ("[O]ne of the primary functions of a declaratory judgment . . . is to resolve conflicts before a loss occurs."). Therefore, the fact that the Challenged Abortion Restrictions prevent Right by You from engaging in its core activity is sufficient, even in the absence of active prosecution, to give rise to a ripe controversy. Right By You has further alleged that its inability to provide financial and practical support to its clients prevents some young people from even seeking

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Right By You is not being prosecuted for a violation of the Ban on Abortion Support, Defendants are currently prosecuting Planned Parenthood in Missouri. *See* State Defs.' PI Resp. & MTD at 13; *supra* at 30.

. The Attorney General has also been vocal about his desire to enforce the Challenged Abortion Restrictions and his belief that providing financial or practical support to help a young person access an abortion can be prosecuted under the Ban on Abortion Support. *See* Press Release, *Attorney General Bailey Issues Statement After Planned Parenthood Claims Constitutional Right to Traffic Missouri Minors for Abortions*, https://ago.mo.gov/attorney-general-bailey-issues-statement-after-planned-parenthood-claims-constitutional-right-to-traffic-missouri-minors-for-abortions/. The ongoing lawsuit against Planned Parenthood only adds to the well-founded and concrete threat of prosecution against Right By You and prevents it from engaging in its core activity. *Supra* at 30.

an abortion or forces them to leave Missouri for care; delays young people's abortion care; inflicts stress, anxiety, and trauma on them; eviscerates their privacy; and isolates them from informed and compassionate adults who seek to help them. *Id.* ¶¶ 135–45.

Likewise, Right By You alleges that the Parental Consent and Notice Requirement prevents some young people from even seeking an abortion or forces them to leave Missouri for care; delays young people's abortion care; inflicts stress, anxiety, and trauma on them, including by subjecting them to the harms of the judicial bypass process; and eviscerates their privacy. *See, e.g.*, *id.* ¶¶ 86–99, 103–07. In the context of Plaintiff's Motion for a Preliminary Injunction, the undisputed evidence also confirms that the dispute between Right By You and Defendants is concrete and ripe for review. *See, e.g.*, Sheley Decl. ¶¶ 22–29, 32–42, 47–58.

Contrary to Defendants' arguments, Right By You's Petition includes ample allegations about the young people who are directly impacted by the Challenged Abortion restrictions. *See, e.g.*, Pet. ¶¶ 86–99, 103–07. These include specific allegations about the young people in Missouri who require financial and logistical support to obtain abortion care, but who are unable to receive it due to the Challenged Abortion Restrictions. *See id.* ¶¶ 54, 57–58, 137–39. These facts are sufficiently alleged and undisputed. *See Mo. Health Care Ass'n*, 953 S.W.2d at 621. In the face of these allegations, there can be no dispute that the Challenged Abortion Restrictions are currently harming Right By You and the young people it serves every day, and that they interfere with the Right to Reproductive Freedom of abortion seekers and supporters.

D. Right By You Has Satisfied the Standard for Facial Relief.

Right By You has shown that it is likely to succeed on the merits of its claims. *Supra* at 7–34. Because Right By You has demonstrated that the actual applications of the

Challenged Abortion Restrictions violate its clients' Right to Reproductive Freedom and its own right to help them exercise it, facial relief is appropriate. But even if this Court were to find that the injuries inflicted by the Challenged Abortion Restrictions warrant different relief, that finding would not justify dismissing the case. It would justify granting that relief. The State Defendants misstate the standard for granting facial relief and incorrectly assume that the pleadings, rather than the demonstrated harms, control the remedies in a case.

The U.S. Supreme Court has held that the "no set of circumstances" standard requires a court to consider "only applications of the statute in which it actually authorizes or prohibits conduct." *Patel*, 576 U.S. at 418. In other words, "[t]he proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." *Id.* (citation omitted). In *Patel*, for example, the City argued that facial relief from statutes authorizing warrantless searches was improper because searches where the subject consented, police were acting under a court-ordered warrant, or police were responding to an emergency were all valid applications of the statutes. *Id.* at 417–18. The Supreme Court rejected this argument because, "[i]f exigency or a warrant justifies an officer's search, the subject of the search must permit it to proceed irrespective of whether it is authorized by statute. Statutes authorizing warrantless searches also do no work where the subject of a search has consented." *Id.* at 418–19.

Likewise, the following scenarios are "irrelevant to [this Court's] analysis because they do not involve actual applications of the statute[s]":

1) a physician would not provide an abortion to anyone who did not consent to it regardless of the Challenged Abortion Restrictions, Pet. ¶ 47; *see* State Defs.' PI Resp. & MTD at 31–32, 39–40,

2) most young people confide in a parent about their pregnancy regardless of the Challenged Abortion Restrictions, Pet. ¶ 85, and

3) Right By You's clients are unable to obtain an abortion after viability in Missouri or its neighboring states except to preserve their health regardless of the Challenged Abortion Restrictions,[39]

Patel, 576 U.S. at 419. As a result, this Court should reject the argument that the scenarios above prevent facial relief here.

Even if this Court were to find that the injuries inflicted by the Challenged Abortion Restrictions warrant as-applied relief, that finding would not justify dismissing the case. It would justify granting as-applied relief. The State Defendants are flatly wrong that Right By You cannot obtain as-applied relief because it requested facial relief. In holding a statutory provision unconstitutional on its face even though the plaintiff had challenged it only on an as-applied basis, the U.S. Supreme noted that "the distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge. . . . *[I]t goes to the breadth of the remedy employed by the Court, not what must be pleaded in a*

[39] § 188.030(1), RSMo (prohibiting the "abortion of a viable unborn child" except in the case of medical emergency or if "necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman"); 775 Ill. Comp. Stat. 55/1-25(a) ("If [a] health care professional determines that there is fetal viability, the health care professional may provide abortion care only, if in the professional judgment of the health care professional, the abortion is necessary to protect the life or health of the patient."); Kan. Stat. Ann. 65-6703(a) (prohibiting abortion "when the unborn child is viable" unless two physicians determine that the "abortion is necessary to preserve the life of the pregnant woman," or "a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman").

complaint." *Citizens United*, 558 U.S. at 331 (emphasis added); *see Colbert v. State, Family Support Div.*, 264 S.W.3d 699, 702 (Mo. Ct. App. W.D. 2008) ("'[W]hile Missouri courts are restrained from deciding an unpleaded factual issue, a court of equity can grant any relief warranted by pleaded issues whether or not it was specifically included in the prayer for relief . . . .'" (citation omitted)).

Accordingly, Right By You is entitled to the relief needed to address the injuries it has shown irrespective of the remedies pleaded in its complaint.[40]

CONCLUSION

For the reasons set forth above, Right By You respectfully asks this Court to grant its preliminary injunction motion and deny the Defendants' motions to dismiss.

[40] Far from calling for an "advisory opinion," Right By You's request that this Court enjoin the Challenged Abortion Restrictions "in any circumstances in which their enforcement would be unconstitutional" refers to the harms it has proven. State Defs.' PI Resp. & MTD at 35; Pet., Prayer for Relief at 58.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ryan R. Agnew, do hereby certify that on July 7, 2025, I caused the foregoing to be electronically filed using the Missouri E-Filing system. Service will be made on all counsel of record by operation of the Missouri E-Filing system.

/s/ Ryan R. Agnew
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