

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

AT KANSAS CITY

RIGHT BY YOU,

Plaintiff,

Case No. 2516-CV13783

v.

Div. 1

STATE OF MISSOURI, *et al.*,

Defendants.

OMNIBUS ORDER

On the 13th day of August 2025, this matter came on for hearing before the Court. Plaintiff Right By You appeared by and through counsel, Rupali Sharma, Allison Zimmer, Juanluis Rodriguez and Ryan Agnew. Defendants State of Missouri ex rel. Andrew Bailey appeared by and through counsel, Michael Patton. Defendant Jackson County Prosecuting Attorney Melesa Johnson, appeared by and through counsel Amanda Langenheim and Joyce Johnson. At the hearing, the Court took up for consideration the following pending motions:

1. State of Missouri and the Missouri Attorney General (hereinafter ‘State Defendants’) *Motion to Dismiss*, filed on June 27, 2025, Plaintiff’s *Suggestions in Opposition in Opposition to Defendants’ Motion to Dismiss*, filed on July 07, 2025 and State Defendants’ *Reply* thereto, filed on July 14, 2025;
2. State Defendants’ *Motion to Stay*, filed on June 27, 2025, Plaintiff’s *Suggestions in Opposition to State Defendants’ Motion to Stay Proceeding for Failure to Obtain a Certificate of Authority*, filed on July 07, 2025 and State Defendants’ *Reply* thereto, filed on July 14, 2025; and
3. Defendant Jackson County Prosecutor Melesa Johnson’s (hereinafter ‘Defendant Johnson’) *Motion to Dismiss Petition for Injunctive and Declaratory Relief*, filed on June 27, 2025 and Plaintiff’s *Suggestions in Opposition in Opposition to Defendants’ Motion to Dismiss*, filed on July 07, 2025.

Following the hearing and having heard the oral arguments of the parties, the Court took the matters under advisement.

On the 2nd day of September 2025, this matter came on for hearing before the Court. Plaintiff appeared by and through counsel Rupali Sharma and Allison Zimmer. State Defendants appeared by and through

counsel, April Wood and Peter Donohue. Defendant Johnson appeared by and through counsel, Joyce Johnson. Also present was Prosecuting Attorney of Wright County, Missouri, John Tyrrell, and Prosecuting Attorney of Texas County, Missouri, Parke Stevens. At said hearing, the Court took up the Plaintiff's *Motion to Certify a Defendant Class*, filed on May 1, 2025; the State Defendants' *Suggestions in Opposition to Plaintiff's Motion for Class Certification*, filed on June 27, 2025; Plaintiff's *Reply Suggestions in Support of Its Motion to Certify a Defendant Class*, filed on July 7, 2025; and the *Texas County Prosecuting Attorney's Objections to Class Certification or Case Continuing as a Class Action Lawsuit*, filed on September 2, 2025.

Now on this the 7th day of October 2025, the Court having considered the arguments and the pleadings, and being fully and duly advised in the premises and the relevant law makes the following findings and orders:

I. BACKGROUND

On November 5, 2024, Missourians voted to adopt Mo. Const. art. I § 36, "Right to Reproductive Freedom Initiative." Art. I § 36 states in relevant part, "the Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions." *Mo. Const. art I § 36* (2024). Moreover, art. I § 36 states, "[t]he right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid." *Id.*

On January 1, 2022 Innovations in Reproductive Health (hereinafter IRHA) and Right By You (also known as RBY) entered into a Fiscal Sponsorship Agreement, whereby "as a sponsored *project* [emphasis added] of IRHA, RBY" can "solicit and obtain grants and donations restricted to RBY's use, *subject to written approval by an IRHA Principal* [emphasis added] and subject to bookkeeping and administrative fees to be agreed upon in writing and collected by IRHA." See *Plaintiff's Reply Suggestions in Support of Its Motion for Preliminary Injunction and Suggestions in Opposition to Defendant's Motion to Dismiss, Exhibit 3- Fiscal Sponsor Agreement* (filed July 7, 2025). While Right By You may decide how to spend its restrictive funds,

said funds must be spent “in accordance with all relevant state and federal laws, and for the *purposes within the mission of IRHA* [emphasis added].” *Id.*

According to Right By You’s *Petition for Injunction and Declaratory Relief*, Right By You is “fiscally sponsored by a 501(c)(3) nonprofit organization incorporated in California” with one employee in Illinois and volunteers in and outside of Missouri, all of whom work remotely.” See *Petition*, para. 22, pg. 7 (filed April 30, 2025). “Right By You’s core activity is to openly help young people in Missouri effectuate their own decisions about their pregnancies with dignity even if they lack parental support.” *Id.* “Right By you provides accurate, comprehensive, and non-judgmental counsel to young people throughout Missouri – including those without parental support – about: their pregnancy options; how to access contraception, prenatal care, and abortion care that is suitable for their unique needs in and outside of Missouri; and parenting and adoption resources,” which can include referrals to abortion providers *in* [emphasis added] Missouri. *Id.* Moreover, as part of its core activity, “Right By You also seeks to provide financial and practical support to young people seeking an abortion,” which “includes: 1) funding abortions; 2) funding transportation, lodging, childcare and other costs associated with accessing abortion care; 3) making abortion appointments and arrangements for such transportation and lodging; and 4) directly transporting young people.” See *Id.*, para. 24, pg. 8. Given its purpose and sponsorship through IRHA, it would appear that all of the foregoing are for the *purposes within the mission of IRHA*.

According to the American Bar Association (hereinafter “ABA”) “fiscal sponsorship” is a contractual relationship that allows a non-tax-exempt entity to advance exempt activities with the benefit of the tax-exempt status of the sponsor organization. See “*Fiscal Sponsorship: What You Should Know and Why You Should Know It*,” https://www.americanbar.org/groups/business_law/resources/business-law-today/2015-may/fiscal-sponsorship-what-you-should-know/ (September 10, 2025).

The National Network of Fiscal Sponsors defines fiscal sponsorship as a relationship in which “a nonprofit organization (the ‘fiscal sponsor’) agrees to provide administrative services and oversight to, and assume limited legal and financial responsibility for, the activities of groups or individuals engaged in work that furthers the fiscal sponsor’s mission.” *National Network of Fiscal Sponsors “Guidelines for Pre-Approved*

Grant Relationship Fiscal Sponsor,” <https://static1.squarespace.com/static/5e5e9444031f011bf0e6a0f8/t/5ee917ad16f2fa739ca32b8c/1592334254300/NNFS+Guidelines+for+Pre-Approved+Grant+Fiscal+Sponsorship.pdf> (September 10, 2025).

Additionally, Plaintiff cites “Fiscal Sponsorship: What You Should Know and Why You Should Know It” authored by Erin Bradrick on September 15, 2015. According to Petitioner’s cited materials:

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)...*Because fiscal sponsorship does not refer to a relationship that is defined by law* [emphasis added], it may take many different forms....The fiscally sponsored project will *not be a separate legal entity* [emphasis added] once the fiscal relationship is formed...

“*Fiscal Sponsorship: What You Should Know and Why You Should Know It*,” authored by Erin Bradrick, <https://businesslawtoday.org/2015/09/fiscal-sponsorship-what-you-should-know-and-why-you-should-know-it/> (September 15, 2015).

On April 30, 2025, Right By You filed its *Petition for Injunctive and Declaratory Relief*, against the Attorney General and numerous prosecuting attorneys in Missouri, seeking the following:

1. Declaratory Judgment finding that:
 - a. Mo. Rev. Stat. § 188.028- Minors, Abortion Requirements and Procedure- violates Mo. Const. art. I. § 36;
 - b. Mo. Rev. Stat. § 188.250- Causing, Aiding, or Assisting a Minor to Obtain an Abortion Prohibited, Civil Penalty — Impermissible Defenses — Court Injunction Authorized, When- violates Mo. Const. art. I. § 36;
 - c. Mo. Rev. Stat. § 431.061(1)(4)(a)- Consent to Surgical or Medical, Who May Give, When- violates Mo. Const. art. I. § 36, to the extent that it may be construed to require anyone other than the young person herself to consent to her abortion;
2. Preliminary injunction restricting Defendants and their employees, agents, successors in office from enforcing Mo. Rev. Stat. §§ 188.028 and 188.250, on their face and/or in any circumstances in which their enforcement would be unconstitutional; and

3. Permanent injunction restricting Defendants and their employees, agents, successors in office from enforcing Mo. Rev. Stat. §§ 188.028 and 188.250, on their face and/or in any circumstances in which their enforcement would be unconstitutional.

On June 27, 2025 the State Defendants filed their *Motion to Dismiss and Suggestions in Support of Motion to Dismiss and Suggestions in Opposition to a Preliminary Injunction*, as well as their *Motion to Stay*. On that same date, Defendant Melesa Johnson also filed *Suggestions in Opposition to Motion for Preliminary Injunction and Motion to Dismiss Petition for Injunctive and Declaratory Relief*. The State Defendants seek dismissal on the basis of the following:

1. Right By You does not have legal capacity to sue;
2. Right By You’s claims are not ripe and Right By You lacks standing to sue on behalf of Missouri minors;
3. Right By You’s claims cannot satisfy the standard for a facial challenge; and
4. Right By You’s claims are preempted by the Fourteenth Amendment of the United States Constitution.

Defendant Melesa Johnson seeks dismissal on the basis that Right By You has failed to state a claim for which relief can be granted.

II. MOTION TO STAY:

The Court first takes up for consideration the State Defendants’ *Motion to Stay Proceeding for Failure to Obtain a Certificate of Authority*. The State Defendants’ *Motion to Stay* is rooted in Mo. Rev. Stat. §§ 351.572.1 and 355.751.1, which state in relevant part, “[a] foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority. See *Mo. Rev. Stat. § 351.572.1* (1990); see also *Mo. Rev. Stat. § 355.756* (1995). For a foreign corporation or a foreign non-profit organization to do business in Missouri, a certificate of existence or certificate of authority must be obtained. Pursuant to Mo. Rev. Stat. § 355.051.2, “[t]he certificate of existence shall set forth: (1) the domestic corporation’s corporate name or the foreign corporation’s corporate name used in this state; (2) the domestic corporation is duly incorporated under the law of this state, the date

of its incorporation, or that the foreign corporation is authorized to transact business in this state; (3) that the corporation has complied with all requirements of the corporation division of the secretary of state.” *Mo. Rev. Stat. § 355.051* (1995).

Here, State Defendants contend that Plaintiff Right By You is required to obtain a certificate of authority to maintain this present cause, and absent receipt of such certificate they have no legal authority to bring suit. Plaintiff, conversely, asserts that its activities in the State of Missouri do not rise to the level of “transacting business” within the context of Mo. Rev. Stat. §§ 351.572.1 and 355.751, and therefore it is exempt from obtaining a certificate of authority. The Court disagrees.

“There is no definitive definition of what constitutes ‘doing business’ within Missouri so as to subject a foreign corporation to registration requirements.” *State v. Murray's*, 767 S.W.2d 127, 129 (Mo. Ct. App. 1989). “A finding of what constitutes ‘doing business’ in the state is to be determined on the facts in each individual case.” *Id.* (citing *Filmakers Releasing Organization v. Realart Pictures of St. Louis, Inc.*, 374 S.W.2d 535, 540 (Mo. App. 1964)). “However, it can be said with certainty that in order to be required to register under the statutes, it is necessary that a foreign corporation transact a substantial part of its ordinary business in the state.” *American Trailers, Inc. v. Curry*, 480 F. Supp. 663, 664 (Dist. Mo. E.D. 1979) (citing *Filmakers Releasing Organization*, 374 S.W.2d at 540). The burden of proof is on the Defendants to establish Plaintiff was doing business in this state. *American Trailers, Inc. v. Curry*, 621 F.2d 918, 919 (8th Cir. 1980) (citing *Filmakers Releasing Organization*, 374 S.W.2d at 535).

Despite Plaintiff’s assertions to the contrary, the Court finds that Right By You is conducting business in Missouri. Right By You asserts in paragraph 19 of its Petition that its core activity “is to openly help young people in Missouri effectuate their own decisions about their pregnancies.” See *Petition*, para. 19, pg. 6. Right By You further asserts it “provides accurate, comprehensive and non-judgmental counseling to young people throughout Missouri....” See *Petition*, para. 22, pg. 7 (filed April 30, 2025); see also *Plaintiff’s Suggestions in Support of Their Motion for Preliminary Injunction, Exhibit A- Declaration of Stephanie Kraft Sheley, JD, MHA*, para. 2, pg. 1 (filed April 30, 2025). Right By You provides financial and practical support to young people in Missouri seeking an abortion, including “1) funding abortions; 2) funding transportation, lodging,

childcare and other costs associated with accessing abortion care; 3) making abortion appointments and arrangements for such transportation and lodging; and 4) directly transporting young people.” See *Petition*, para. 24, pg. 7 (filed April 30, 2025).

Right By You also partners with businesses located in Jefferson City to distribute “discreetly packed kits that Right By You prepares with emergency contraception, a pregnancy test, condoms, stickers and information about teens’ pregnancy options and Right By You’s text line.” See *Plaintiff’s Suggestions in Support of Their Motion for Preliminary Injunction, Exhibit A- Declaration of Stephanie Kraft Sheley, JD, MHA*, para. 19, pg. 5 (filed April 30, 2025). Right By You also engaged in “Abortion Help MO,” which was a “year-long campaign to educate Missourians about legal abortion care. See *Id.* at para. 20, pg. 5.

With eleven (11) volunteers, seven (7) of whom live in Missouri, Right By You’s services are targeted at Missourians, to include providing contraceptives, counseling, and assisting with travel to obtain an abortion. Although Right By You argues that it is not doing business in Missouri because the counseling and other services are offered “remotely,” the Court finds this argument unpersuasive. The Court is further unpersuaded by the argument that two people on the phone in Missouri, discussing services to be provided in Missouri, are remote because phones are utilized. While Right By You relies on *Ozark Empl. Specialists v. Beeman* in support of its position that it is not doing business in Missouri, the Court is unpersuaded by this argument. In *Ozark Empl. Specialists*, the parties met once in Missouri while in the formation stage of their relationship, and thereafter spoke on the phone. See *Ozark Empl. Specialists v. Beeman*, 80 S.W.3d 882, 892 (Mo. App. W.D. 2003). Moreover, while there was a contract signed in Missouri the purpose of the contract between the parties “was not to be performed in Missouri.” *Id.* Here, Right By You clearly intends to conduct business in Missouri, as evidenced by its openly stated purpose.

Moreover, review of Exhibits 7-11 filed with the State Defendants’ *Reply* is further evidence that Right By You is doing business in Missouri. In 2024, Right By You conducted a “pop up” to hand out emergency contraceptives. See State Defendants’ *Reply Suggestions in Support of Motion to Stay, Exhibit 11* (filed July 14, 2025). In February 2025, Right By You sought volunteers to pack free emergency contraceptive kits in University City, Missouri, and later partnered with the Missouri Abortion Fund to distribute those kits in

Missouri. See *Id.*, Exhibits 8 and 9. In March 2025, Right By You participated in the 2025 “Fund-a-Thon,” the largest “reproductive care fundraiser in the country” and every dollar it raised was said to go directly to support Missourians. See *Id.*, Exhibit 7. These activities, posted on Right By You’s Instagram page, along with the other services provided by Right By You go beyond isolated incidents, and based upon the evidence adduced, the Court finds that Right By You is doing business in Missouri within the context of Mo. Rev. Stat. §§ 351.572.1 and 355.751.

Nonetheless, Mo. Rev. Stat. §§ 351.572.1 and 355.751 are applicable only to *foreign* corporate entities [emphasis added], and there is insufficient evidence to determine that Right By You is a foreign entity, as there is no evidence of its incorporation or other legal entity status in any jurisdiction. See *Plaintiff’s Suggestions in Support of Their Motion for Preliminary Injunction, Exhibit A- Declaration of Stephanie Kraft Sheley, JD, MHA*, para. 8, pg. 3 (filed April 30, 2025). (“Right By You is a fully remote organization that is fiscally sponsored by IRHA, a 501(c)(3) nonprofit organization incorporated in California.”). As demonstrated in Right By You’s *Suggestions in Opposition to the Motion to Stay* it refers to itself as a “fiscally sponsored project [emphasis added] project of a ‘501(c)(3) nonprofit organization incorporated in California.’” See *Suggestions in Opposition to State Defendants’ Motion to Stay Proceedings for Failure to Obtain a Certificate of Authority*, pg. 2 (filed July 7, 2025). Furthermore, Right By You attached to its *Response in Opposition to the Motion to Dismiss* the “Fiscal Sponsor Agreement,” which in relevant part states, “[a]s a sponsored project of IRHA, RBY [Right By You] may solicit and obtain grants and donations restricted to RBY’s use, subject to written approval by an IRHA Principal and subject to bookkeeping and administrative fees to be agreed upon in writing and collected by IRHA.” See *Plaintiff’s Reply Suggestions in Support of Its Motion for Preliminary Injunction and Suggestions in Opposition to Defendants’ Motions to Dismiss, Exhibit 3* (filed July 7, 2025). There is no authority in Missouri for the Court to stay the proceedings for a non-entity to obtain a certificate of authority.

Indisputably the evidence supports a finding that IRHA is a foreign entity. See *Suggestions in Opposition to State Defendants’ Motion to Stay Proceedings for Failure to Obtain a Certificate of Authority, Exhibits 4 and 5*. To that end, the evidence could support a finding that the activities and operations of Right

By You as a project are actually business activities conducted under auspices and control of IRHA. Yet, neither the State Defendants nor Defendant Johnson argued that Right By You was in fact acting under a fictitious name¹ on behalf of IRHA or was acting as an agent² of IRHA, which might have otherwise required IRHA to file for a certificate of authority to do business in Missouri through Right By You.

Reliance on the “fiscal sponsorship” relationship seems to indicate that IRHA may be attempting to subvert the registration requirements of the State of Missouri, to do its own work through the Fiscal Sponsorship Agreement, however this issue was not raised with the Court. Nothing in the evidence supports a finding that Right By You is a foreign entity, which could otherwise receive a certificate of authority. IRHA is the only business incorporated in any state, and thus the only entity potentially entitled to a stay to obtain a certificate of authority. Nevertheless, IRHA’s capacity to sue and whether its acts constitute doing business within the meaning of Mo. Rev. Stat. §§ 351.572.1 and 355.751.1, are not before the Court. Accordingly, the Court finds that a late substitution of IRHA as the Plaintiff, as suggested by Plaintiff Right By You, for the purposes of this suit would be improper and ineffective because IRHA has not received the requisite certificate of authority to do business in Missouri, and no evidence was presented that it is otherwise exempt from obtaining said certificate. Moreover, the Court finds there is no legal authority to grant a stay to allow a fiscally sponsored project or entity to obtain a certificate of authority pursuant to Mo. Rev. Stat. § 335.756.

Based upon the foregoing, the Court finds that the evidence presented is insufficient to grant a stay of the proceedings under Mo. Rev. Stat. § 355.756. Accordingly, the State Defendants’ *Motion to Stay Proceeding for Failure to Obtain a Certificate of Authority* is hereby **DENIED**.

¹ Mo. Rev. Stat. § 417.200 provides that “every name under which any person shall do or transact any business in this state, other than the true name of such person, is hereby declared to be a fictitious name, and it shall be unlawful for any person to engage in or transact any business in this state under a fictitious name without first registering same with the secretary of state as herein required.” *Mo. Rev. Stat. § 417.200* (1939). “Person” is defined as “any individual, firm, partnership, corporation, association, union or other organization.” *Mo. Rev. Stat. § 417.005* (1995). “The purpose of fictitious name registration is to prevent fraud and inform the public of the identity of those with whom they are dealing.” *State ex rel. Nixon v. RCT Dev. Ass’n*, 290 S.W.3d 756, 761 (Mo. App. W.D. 2009).

² “Missouri courts have defined ‘agent’ as ‘a person authorized by another to act for him, one intrusted [sic] with another’s business.” *State ex rel. Elson v. Koehr*, 856 S.W.2d 57, 60 (Mo. 1993) (citing *State ex rel. Pagliara v. Stussie*, 549 S.W.2d 900, 903 (Mo. App. 1979), quoting *Black’s Law Dictionary* 85 (4th ed. 1968)). Furthermore, “agency” has been defined as “the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.” *Id.* (citing § *Restatement (Second) of Agency*).

III. MOTION(S) TO DISMISS:

The Court denying to stay the proceedings in order for Right By You to obtain a certificate of authority next takes up the State Defendants' *Motion to Dismiss* and Defendant Johnson's *Motion to Dismiss*.

Missouri Courts have long held that in review of a motion to dismiss the Court treats "the facts contained in the petition as true and in the light most favorable to the Plaintiff." See *Metro. St. Louis Sewer Dist. v. City of Bellefontaine Neighbors*, 476 S.W.3d 913, 915 (Mo. Banc 2016). The petition should be reviewed in "an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action." *Doran v. Chand*, 284 S.W.3d 659, 664 (Mo. App. W.D. 2009). The Court should not weigh the factual allegations to determine whether they are credible or persuasive. *McDonnell v. W. Bend Mut. Ins. Co.*, 606 S.W.3d 181, 189 (Mo. App. WD 2020). If the Petition sets forth any set of facts that, if proven, would entitle the Plaintiff to relief, then the Petition states a claim. *Id.* "A petition 'should not be dismissed for mere lack of definiteness or certainty or because of informality in the statement of an essential fact.'" *Moynihan v. City of Manchester*, 203 S.W.3d 774, 776 (Mo. App. E.D. 2006) citing *Grewell v. State Farm Mut. Auto. Ins. Co., Inc.*, 102 S.W.3d 33, 36 (Mo. banc 2003).

However, the Court has "a duty to determine if a party has standing prior to addressing substantive issues of the case." *CACH, LLC v. Askew*, 538 S.W.3d 58, 61 (Mo. banc 2012); see also *Foster*, 641 S.W.3d at 424. Mo. Sup. Ct. R. 55.13 governs averments as to capacity or authority of parties to sue or be sued. See *Mo. Sup. Ct. R. 55.13* (1994). Generally, "[i]t shall be sufficient to aver the ultimate fact of the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of a corporation or of an organized association of persons that is made a party...." *Id.* When the issue(s) of lack of capacity, authority, or legal existence appear on the face of the pleadings or can be discerned therefrom, the issue(s) can be raised by a motion to dismiss. See *Jeschke Ag Serv., LLC v. Bell*, 652 S.W.3d 305, 318 (Mo. App. W.D. 2022).

Here, the Court prior to addressing any of the substantive matters outlined in the State Defendants' *Motion to Dismiss* and Defendant Johnson's *Motion to Dismiss*, the Court must first determine whether Plaintiff has the standing and/or legal capacity to bring this suit in the first instance.

A. Standing and Legal Capacity to Sue- Generally

Standing is a threshold issue and a prerequisite to the Court’s authority to address any substantive issues. See *Byrne & Jones Enterprises, Inc. v. Monroe City R-I School Dist.*, 493 S.W.3d 847, 851 (Mo. banc 2016); see also *Querry v. State Highway & Trasn. Comm’n*, 60 S.W.3d 630, 634 (Mo. App. W.D. 2001) (citing *In re: Estate of Scott*, 913 S.W.2d 104, 105 (Mo. App. E.D. 1995); see also *Foster v. Dunklin County*, 641 S.W.3d 421, 423 (Mo. App. S.D. 2022). As a general matter, “[s]tanding refers to a party’s right to seek relief.” *Foster*, 641 S.W.3d at 424 (citing *Bellistri v. Ocwen Loan Servicing, LLC*, 284 S.W.3d 619, 622 (Mo. App. 2009)). The party seeking relief has the burden to establish standing to maintain their lawsuit. *Borges v. Mo. Pub. Entity Risk Mgmt. Fund (MOPERM)*, 358 S.W.3d 177, 181 (Mo. App. W.D. 2012). “Only those adversely affected by a statute have standing to challenge the constitutionality of the statute.” *State v. Young*, 362 S.W.3d 386, 396 (Mo. 2012) (citing *Lester v. Sayles*, 850 S.W.2d 858, 873 (Mo. banc 1993)). Thus, the party “seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote.” *Id.* (citing *Ste. Genevieve School Dist. R II v. Board of Alderman of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002)).

In the context of a declaratory judgment action, to have standing, the petitioner must “have a legally protectable interest at stake in the outcome of the litigation.” *Foster*, 641 S.W.3d at 424 (citing *Cope v. Parson*, 570 S.W.3d 579, 583 (Mo. banc 2019) (quoting *State ex rel. Kan. City Power & Light Co. v. McBeth*, 322 S.W.3d 525, 531 (Mo. banc 2010)). “A legally protected interest...means a pecuniary or personal interest directly in issue or jeopardy which is subject to some consequential relief, either immediate or prospective.” *Id.* (citing *Dodson v. City of Wentzville*, 133 S.W.3d 528, 535 (Mo. App. 2004)). The question of standing is determined as a matter of law, based upon the petition “along with any other non-contested facts accepted as true by the parties at the time” a motion to dismiss is argued. See *Exec. Bd. of the Mo. Baptist Convention v. Carnahan*, 170 S.W.3d 437, 445 (Mo. App. W.D. 2005) (citing *Inman v. Mo. Dep’t of Corr.*, 139 S.E.3d 180, 184 (Mo. App. W.D. 2004). “A party cannot obtain relief from a court if that party lacks standing.” *Id.*

“The issue of capacity to sue may be confused with the issue of standing to sue.” *Indian Springs Owners Ass’n v. Greeves*, 277 S.W.3d 793, 797 (Mo. App. E.D. 2009). The distinction is important because

a claim that a party does not have capacity to sue can be waived or avoided by an amendment of pleadings, while a claim for lack of standing cannot be waived. *Id.*; see also *City of Wellston v. SBC Communications, Inc.*, 203 S.W.3d 189, 193 (Mo. banc 2006). Unlike standing, “capacity to sue refers to the status of a person or group as an entity that can sue or be sued.” *Id.* “Some courts have referred to a party’s capacity to sue as the party’s right to have access to the courts, while others have referred to a party’s capacity to sue as the party’s authority to sue.” *Id.* (citing *Midwestern Health Mgmt. v. Walker*, 208 S.W. 295, 298 (Mo. App. W.D. 2006)); see also *Earls v. King*, 785 S.W.2d 741, 743 (Mo. App. S.D. 1990). A claim that a party lacks capacity to sue is waived if it is not raised in a motion or responsive pleading. *Cornejo v. Crawford County*, 153 S.W.3d 898, 901 (Mo. App. S.D. 2005). Here, the State Defendants have raised that Missouri does not recognize fiscally sponsored entities in their motion to dismiss, and therefore has properly challenged Right By You’s capacity to sue as a legal entity.

B. *Unincorporated Entities*

“Capacity to sue refers to the status of a person or group as an entity that can sue or be sued, and is not dependent on the character of the specific claim alleged in the lawsuit.” *Moon, Plaster & Sweere, L.L.P. v. Kelley*, 413 S.W.3d 700, 703 (Mo. App. S.D. 2013) (citing *City of Wellston v. SBC Communications, Inc.*, 203 S.W.3d 189, 193 (Mo. banc 2006)). It remains undisputed that Right By You is not incorporated and does not otherwise have a statutorily authorized legal entity status in Missouri. Right By You’s cited authority clearly states, “fiscal sponsorship is contractual, rather than a legally prescribed relationship.” See “*Fiscal Sponsorship: What You Should Know and Why You Should Know It*,” authored by Erin Bradrick, <https://businesslawtoday.org/2015/09/fiscal-sponsorship-what-you-should-know-and-why-you-should-know-it/> (September 15, 2015). Right By You, by its own assertions and exhibits, including the Fiscal Sponsorship Agreement, identify Right By You a “fiscally sponsored project” of IRHA, and there is no legal authority in Missouri permitting a project of any kind to bring suit. The Court has also reviewed and considered the cited authority provided by Right By You demonstrating that fiscally sponsored entities have been permitted to bring suit. However, no such case was brought in the State of Missouri, and no legal authority was presented that

supports the conclusion that a fiscally sponsored unincorporated entity that holds itself out to be a “project” has the legal capacity to bring suit in its own name in Missouri, as has been done here.

Right By You also maintains that it is a nonprofit organization with a Director/Founder who manages “the *organization’s* [emphasis added] operations and programs,” “closely supervises” the staff and volunteers, and ensures “the *organization’s* [emphasis added] compliance with applicable laws and regulations.” See *Plaintiff’s Suggestions in Support of Their Motion for Preliminary Injunction, Exhibit A- Declaration of Stephanie Kraft Sheley*, para. 2, pg. 1-2. Be that as it may, there is no statutory authority in Missouri permitting a fiscally sponsored entity, claiming to be a project of an unregistered foreign nonprofit corporation to bring suit in Missouri.

Yet, “[r]eview of a motion to dismiss requires the Court to treat all facts alleged as true, and give the non-moving party the benefit of all reasonable inferences that are fairly deducible from the facts,” *Evergreen Nat’l Corp. v. Killian Constr. Co.*, 876 S.W.2d 633, 635 (Mo. App. W.D. 1994) (citing *Murphy v. A.A. Mathews*, 841 S.W.2d 671, 672 (Mo. banc 1992)), and while not raised by the State Defendants, Defendant Johnson or Right By You, giving all reasonable inferences to Plaintiff Right By You, the Court analyzes Right By You’s capacity to sue under the theory that it is operating as an unincorporated association.

“An ‘association’ is ‘a body of persons acting together, without a charter, but upon the methods and forms used by incorporated bodies, for the prosecution of some common enterprise,’” ordinarily operating in a manner similar to that of a corporation. *Exec. Bd. of the Mo. Baptist Convention*, 170 S.W.3d at 445-46 (citing *Clark v. Grand Lodge of Bhd of R.R. Trainmen*, 43 S.W.2d 404, 408 (Mo. banc 1931)). The business carried on by a corporation may be unchanged from that of an association, however, without the formalities of incorporation “voluntary unincorporated associations exist under common law right of contract and have no existence apart from the contract of the association.” *Id.* (citing *State ex rel. Auto. Club Inter-Ins. Exch. v. Gaertner*, 636 S.W.2d 68, 70 (Mo. banc 1982) (citing *Morris v. Willis*, 338 S.W.2d 777, 779 (Mo. 1960))). They are “purely a creature of convention.” *Id.*

The constitution of an unincorporated entity, and its rules and bylaws “establish an enforceable contract between the members,” and by joining an association, members agree to be bound by the terms of the governing

documents. *Id.* at 447. “An association determines its own rules of conduct through its constitution and its bylaws and must abide by them to procure judicial redress.” *Id.* Right By You presented no rules, bylaws, or other governing documents to support any contention that it meets the requisites of an unincorporated association entitled to bring suit in its name. In fact, only contract presented to the Court was the Fiscal Sponsorship Agreement, which deems Right By You a “fiscally sponsored project” of IRHA, required to operate “within the mission of IRHA.” See *Plaintiff’s Reply Suggestions in Support of Its Motion for Preliminary Injunction and Suggestions in Opposition to Defendant’s Motion to Dismiss, Exhibit 3* (filed July 7, 2025).

In the absence of statutory authority, a voluntary or unincorporated association cannot sue or be sued as such. See *Newton County Farmers’ & Fruit Growers’ Exchange v. Kansas C.S.R. Co.*, 31 S.W.2d 803, 804 (Mo. 1930); see also *Jeschke Ag Serv., LLC v. Bell*, 652 S.W.3d 305, 321 (Mo. App. W.D. 2022) (“As a general rule, an unincorporated voluntary association is not a legal entity apart from its members and therefore cannot sue or be sued as a separate entity.”) (citing *State ex rel. Missouri State High School Activities Ass’n v. Ruddy*, 643 S.W.2d 596, 598 (Mo. banc 1983)); see also *Indian Springs Owners Ass’n*, 277 S.W.3d at 798; see also *Lake Arrowhead Prop. Owners Ass’n v. Bagwell*, 100 S.W.3d 840, 842 (Mo. App. W.D. 2003). Consequently, absent incorporation or other formal legal registration of Right By You with the Missouri Secretary of State, it remains purely a voluntary association with “no entity status beyond the status of those persons who comprise the association.” *Exec. Bd. of the Mo. Baptist Convention*, 170 S.W.3d at 445. Accordingly, Right By You lacks the legal capacity and standing to sue or be sued in the name of Right By You. *Id.* (citing *Forest City Mfg. Co. v. Int’l Ladies’ Garment Workers’ Union, Local No. 104*, 111 S.W.2d 934, 936 (Mo. App. 1938)).

Mo. Sup. Ct. R. 52.10 permits an unincorporated association to sue by designating certain members as representative parties in an action, if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. *Mo. Sup. Ct. R. 52.10* (1972); see also *Exec. Bd. of the Mo. Baptist Convention*, 170 S.W.3d at 445; see also *Ashcroft*, 672 S.W.2d at 118; see also *Lake Arrowhead Prop. Owners Ass’n*, 100 S.W.3d at 843; see also *Mo. Sup. Ct. R. 52.10* (1972). Rule 52.10 exists to “give an aggregate of persons, already bound together by jural relations, but otherwise without the capacity to sue or be

sued, jural ‘entity treatment’ as a class for that purpose.” *Id.* (citing *State ex rel. Ashcroft v. Kansas City Firefighters Local No. 42*, 672 S.W.2d 99, 123 (Mo. App. W.D. 1984)). Jural relations are defined as “of or relating to rights and obligations.” See *Jural*, Black’s Law Dictionary (9th ed. 2009). No evidence was presented that Right By You is “bound together by jural relations.” The only evidence presented is that Right By You has a Director/Founder, two (2) paid staff members, and eleven (11) volunteers. See *Declaration of Stephanie Kraft Sheley, JD, MHA*, para. 8, pg. 3. Right By You has not registered with the Missouri Secretary of State and asserts it is a “fully remote organization... fiscally sponsored by a 501(c)(3) nonprofit organization incorporated in California.” See *Plaintiff’s Suggestions in Support of Their Motion for Preliminary Injunction*, pg. 10, para. D; see also *Plaintiff’s Suggestions in Support of Their Motion for Preliminary Injunction, Exhibit A*, “*Declaration of Stephanie Kraft Sheley, JD, MHA*, para. 8, pg. 3. Right By You presented no evidence that it has any members who could fairly and adequately protect the interests of the association, and therefore has no capacity to sue as a class under Mo. Sup. Ct. R. 52.10.

C. Substitution of Plaintiff

While Right By You maintains its right to bring suit as a fiscally sponsored entity, at the hearing on the *Motion to Stay* and *Motions to Dismiss*, it appeared Right By You may believe IRHA could be substituted as Plaintiff here. “Rule 52.06 reflects Missouri’s policy that, absent a showing of bad faith or prejudice in failing to sue in the name of the proper party, “[t]he law in Missouri for nearly a century is a new action is not commenced by substituting the party having the legal right to sue instead of a party improperly named.” *City of Wellston*, 203 S.W.3d at 195. More specifically, Rule 52.06 states “[m]isjoinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.” *Mo. Sup. Ct. R. 52.06* (1972). However, even if the Court were to give the benefit of all reasonable inferences to Plaintiff Right By You that it has sued in the wrong name, IRHA has no legal right to sue, as it too is unregistered in the State of Missouri. Consequently, the Court finds granting leave to amend to substitute the Plaintiff would be inappropriate at this juncture.

D. Substantive Arguments Otherwise Not Addressed

The State Defendants and Defendant Johnson argued in the *Motions to Dismiss* that: 1) Right By You's claims are not ripe and Right By You lacks standing to sue on behalf of Missouri minors; 2) Right By You's claims cannot satisfy the standard for a facial challenge; and 3) Right By You's claims are preempted by the Fourteenth Amendment of the United States Constitution. However, upon granting the *Motions to Dismiss* due to lack of capacity for Right By You to bring this suit, the Court does not, at this time, address the other substantive arguments made in the State Defendants' *Motion to Dismiss* and Defendant Johnson's *Motion to Dismiss*.

The Court has considered the evidence in the light most favorable to Plaintiff and ultimately finds that Right By You lacks the capacity to either sue or be sued. Based upon the foregoing, the Court finds that the *Motions to Dismiss* should be **GRANTED**. Nor does the Court take up the matters raised in the Plaintiff's *Motion to Certify*. Therefore, the Court being fully and duly advised in the premises and the relevant law makes the following orders:

IT IS HEREBY ORDERED that the *Motion to Stay Proceedings* shall be and is hereby **DENIED**.

IT IS FURTHER ORDERED that the State Defendants' *Motion to Dismiss* shall be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that Defendant Johnson's *Motion to Dismiss* shall be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the *Motion to Certify a Defendant Class* shall be and is hereby **DENIED AS MOOT**.

IT IS FURTHER ORDERED that the above captioned matter shall be and is hereby **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that all claims for relief not otherwise addressed in this order shall be **DENIED.**

SO, ORDERED.

October 7, 2025

Date


Judge

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