DISTRICT COURT, CITY & COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80203	
Plaintiff: REBECCA COHEN, M.D., v. **Defendants:** JARED POLIS, in his official capacity as Governor of Colorado; COLORADO MEDICAL BOARD, and STATE OF COLORADO.	
Attorney for Defendants Jared Polis, in his official capacity as Governor of Colorado, and State of Colorado: PHILIP J. WEISER, Attorney General EMILY BURKE BUCKLEY, #43002* Senior Assistant Attorney General Colorado Attorney General's Office 1300 Broadway Denver, CO 80203 Telephone: (720) 508-6000 Email: emily.buckley@coag.gov *Counsel of Record *Attorneys for Defendant Colorado Medical Board*: PHILIP J. WEISER, Attorney General ASHLEY B. CARTER, #52945* Senior Assistant Attorney General COLETTE R. KAVANAGH, #56864* Assistant Attorney General Colorado Attorney General's Office 1300 Broadway Denver, CO 80203 Telephone: (720) 508-6000 Email: ashley.carter@coag.gov; colette.kavanagh@coag.gov *Counsel of Record	**▲COURT USE ONLY▲** Case No.: 2025CV32424 Courtroom: 414
DEFENDANTS' JOINT MOTION TO DISMISS UNDER RULES 12(B)(1) AND (5)	

Defendants, Jared Polis, in his official capacity as Governor of Colorado; the Colorado Medical Board; and the State of Colorado, move to dismiss the *Complaint for Declaratory and Injunctive Relief* ("Complaint") under Colorado Rules of Civil Procedure 12(b)(1) and (5).

CERTIFICATE OF CONFERRAL

Undersigned counsel conferred with Plaintiff's counsel on September 19, 2025. Plaintiff opposes the relief requested in this Motion.

INTRODUCTION

Colorado law has long protected abortion access, and voters recently amended its Constitution to recognize a right to abortion. But the State has not relinquished the ability to regulate abortion in a reasonable and non-obstructive manner. The law challenged here, the Parental Notification Law ("PNL"), §§ 13-22-701–708, C.R.S,[1] was adopted by voters in 1998. The PNL imposes a requirement that, with certain safety-related exceptions, a parent of a child 17 years old or younger (a "minor") be notified before the minor obtains an abortion. The PNL does not require parental notification where a medical emergency exists, the minor alleges abuse or neglect, or a judge determines notification is not required. Further, the PNL itself represents a less-stringent exception to the general rule in Colorado that parental consent is required for minors' medical treatment. *See* § 13-22-103. Absent the PNL, a parent would need to consent before a minor could receive abortion care.

Because she raises a facial challenge, Dr. Cohen must show the law is unconstitutional in *all* its applications and that it is *impossible* to apply the law in a constitutional manner. Her allegations fall far short. The PNL does not violate the right to abortion, the equal protection

[1] All statutory references are to the 2025 Colorado Revised Statutes unless otherwise indicated.

guarantee, or Colorado's Equal Rights Amendment, and Dr. Cohen fails to plausibly allege otherwise. For the reasons set forth herein, the Complaint should be dismissed under Rules 12(b)(1) and (5).

BACKGROUND AND LEGAL FRAMEWORK

The Parental Notification Law

The PNL requires parental notification before an unemancipated minor obtains an abortion, with several well-established exceptions. *See generally* §§ 13-22-701–708. The PNL does not require parental consent. First enacted by the voters in 1998,[2] the PNL requires that a parent, or in some instances, an adult relative, of an unemancipated minor be notified at least 48 hours before the minor receives abortion care. § 13-22-704; https://www.leg.state.co.us/lcs/ballothistory.nsf/.

Notification may be carried out by the service of a written notice, effected either by certified mail or personal delivery,[3] directed to a parent at their home or usual place of abode. §§ 13-22-704(1)(e)(I), 13-22-704(1)(a)(I)–(IV). The PNL alternatively permits written notice to an adult relative if the minor resides with that relative and not their parent. § 13-22-704(2)(a). The PNL only requires notification of one parent. § 13-22-704(1)(e)(II). Depending on the

[2] The General Assembly amended the PNL in 2003 after the Tenth Circuit held that the law was unconstitutional because the 1998 version did not include an exception for medical emergencies. *Planned Parenthood of Rocky Mountain Servs. Corp. v. Owens*, 287 F.3d 910, 927 (10th Cir. 2002); H.B. 1376, 64th Gen. Assemb., 1st Reg. Sess. (Colo. 2003). In 2018, the PNL was repealed and relocated from §§ 12-37.5-104–108, to §§ 13-22-701–708. S.B. 32, 71st Gen. Assemb., 2d Reg. Sess. (Colo. 2018).

[3] In the case of personal delivery, the written notice may be delivered by the attending physician or a member of their staff over the age of eighteen; any person over the age of eighteen who is unrelated to the minor; the sheriff or deputy of the county where notification is required; or a clergy member over the age of eighteen. §§ 13-22-704(1)(a)(I)–(IV).

method of notification, proof of mailing or return of service must be maintained by the physician. §§ 13-22-704(1)(d)(III), (e)(III).

There are four exceptions to the written notice requirement: (1) the person entitled to notice certifies in writing that they have already been notified; (2) the minor declares that they are a victim of abuse or neglect by the person entitled to notice, and a provider reports said abuse or neglect; (3) a provider certifies in the minor's medical record that a medical emergency exists and there is insufficient time to provide notice; or (4) the minor obtains a judicial bypass. §§ 13-22-705(1)(a)–(e).

The PNL represents a balanced compromise between minors' autonomy over reproductive choices and parental rights in Colorado. *See People ex rel. J.G.*, 370 P.3d 1151, 1158 (Colo. 2016) (discussing "the bedrock principle that the right to parent one's children is a fundamental liberty interest"). Recognizing the unique circumstances that exist when a minor seeks abortion care, the PNL requires only parental notification, not consent, and includes meaningful exceptions that protect a minor's constitutional rights. §§ 13-22-705(1)(a)–(e).

Amendment 79

In November 2024, voters approved Amendment 79 to the Colorado Constitution, recognizing the right to abortion and repealing existing limitations on the use of State and local funds for abortion care. Section 32 of the Bill of Rights states: "The right to abortion is hereby recognized. Government shall not deny, impede, or discriminate against the exercise of that right, including prohibiting health insurance coverage for abortion." Colo. Const. art. II, § 32. The 2024 General Election Blue Book explained that placing the right to abortion in the Constitution may limit lawmakers' ability to pass policies regulating abortion moving forward.

See 2024 State Ballot Information Booklet, Legislative Council of the General Assembly, Research Publication No. 815 at 27. Neither the text of the ballot initiative nor the Blue Book indicated an intent to repeal the existing PNL through passage of the amendment. Amendment 79 went into effect on December 17, 2024. *See* Colo. Const. art. II, § 32.

Dr. Cohen's Complaint

Plaintiff Dr. Rebecca Cohen, M.D., M.P.H., is Board-certified in Obstetrics and Gynecology and Complex Family Planning. Compl. ¶ 23. Dr. Cohen provides abortion care to patients, including young people, at a family planning and OB/GYN clinic in Denver, Colorado. *Id.* Dr. Cohen brings this lawsuit "on behalf of herself and her patients who are young people." *Id.* Dr. Cohen alleges that the PNL is unconstitutional under the Colorado Constitution because it violates (1) Amendment 79; (2) the Due Process Clause and Equal Protection Guarantee; and (3) the Equal Rights Amendment. Her Complaint also seeks injunctive and declaratory relief.

LEGAL STANDARDS

I. Rule 12(b)(1) standard.

Whether a Colorado court has subject matter jurisdiction is properly addressed by a motion to dismiss. C.R.C.P. 12(b)(1); *Henderson v. City & Cnty. of Denver*, 300 P.3d 977, 980 (Colo. App. 2012). "Pursuant to C.R.C.P. 12(b)(1), a plaintiff has the burden of proving that the trial court has jurisdiction[.]" *Lee v. Banner Health*, 214 P.3d 589, 594 (Colo. App. 2009). A lack of subject matter jurisdiction renders a court unable to hear a case or enter a judgment. *Currier v. Sutherland*, 218 P.3d 709, 714 (Colo. 2009). Trial courts determine subject matter jurisdiction "by examining the substance of the claim based on the facts alleged and the relief requested." *City of Aspen v. Kinder Morgan, Inc.*, 143 P.3d 1076, 1078 (Colo. App. 2006) (citation omitted).

Further, "[a] trial court may consider any competent evidence pertaining to a C.R.C.P. 12(b)(1) motion to dismiss for lack of subject matter jurisdiction without converting the motion to a summary judgment motion." *Lee*, 214 P.3d at 593.

II. Rule 12(b)(5) standard.

To survive a motion to dismiss under Rule 12(b)(5), a complaint must contain factual allegations sufficient to raise a right to relief "'above the speculative level'" and "'state a claim for relief that is plausible on its face.'" *Warne v. Hall*, 373 P.3d 588, 589, 591 (Colo. 2016) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citation omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citation omitted).

III. The presumption of constitutionality.

The judicial branch is tasked with construing the meaning of constitutional language. Colo. Const. art. VI, § 1; *Danielson v. Dennis*, 139 P.3d 688, 690–91 (Colo. 2006). Colorado courts approach the potential invalidation of legislative acts "cautiously" and presume a statute is constitutional. *Danielson*, 139 P.3d at 691 (citing *People ex rel. Tucker v. Rucker*, 5 Colo. 455, 458 (1880); *Garhart ex rel. Tinsman v. Columbia/Healthone, LLC*, 95 P.3d 571, 581 (Colo. 2004)). To overcome the presumption of constitutionality, a plaintiff must establish that "[t]he precise point of conflict between the statute and the constitution ... appear[s] plain, palpable, and inevitable, or else the act of the general assembly must be held to prevail." *Id.* (citing *Union Pac.*

Ry. Co. v. De Busk, 20 P. 752, 756 (Colo. 1889); *Garhart*, 95 P.3d at 581 ("[U]nless the conflict between the constitution and the law is clear and unmistakable, we will not disturb the statute.")).

IV. The standard for facial constitutional challenges.

A party asserting a facial challenge "has the daunting burden of showing 'no set of circumstances exists under which the Act would be valid, *i.e.* that the law is unconstitutional in all of its applications.'" *Indep. Inst. v. Coffman*, 209 P.3d 1130, 1143 (Colo. App. 2008) (Connelly, J., specially concurring) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008)); *Worley v. Fla. Sec'y of State*, 717 F.3d 1238, 1250 (11th Cir. 2013). "[A] facial challenge can only succeed if the complaining party can show that the law is unconstitutional in all its applications." *Dallman v. Ritter*, 225 P.3d 610, 625 (Colo. 2010). Here Dr. Cohen must prove "beyond a reasonable doubt that it is impossible to apply" the PNL "in a constitutional manner." *Qwest Services Corp. v. Blood*, 252 P.3d 1071, 1083 (Colo. 2011).

ARGUMENT

I. Dr. Cohen lacks standing under Rule 12(b)(1) because her claims, as pled, are not redressable.

Standing hinges on "whether a plaintiff has asserted a legal basis on which a claim for relief can be predicated." *In re C.T.G.*, 179 P.3d 213, 215 (Colo. App. 2007) (quoting *Bd. of Cnty. Comm'rs v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1052 (Colo. 1992)). Colorado's test for standing mirrors many of the considerations of the federal analysis. "Because Colorado standing doctrine is rooted in [the Colorado] constitution and rules of judicial self-governance, Colorado standing jurisprudence does not duplicate all the features of federal standing doctrine. However, similar considerations underlie both Colorado and federal standing law, and [Colorado courts] frequently consult federal cases for persuasive authority." *City of Greenwood Vill. v.*

Pet'rs for Proposed City of Centennial, 3 P.3d 427, 436 n.7 (Colo. 2000). "Colorado's standing requirement, like that employed in the federal courts, embraces both constitutional and prudential concerns." *Id.* at 436 (citation omitted).

Courts have found that plaintiffs lack standing when the court is unable "to provide [p]laintiffs with meaningful relief due to ... unchallenged ... restrictions[.]" *We the Patriots, Inc. v. Lujan Grisham*, 119 F.4th 1253, 1259 (10th Cir. 2024); *see also Bishop v. Smith*, 760 F.3d 1070, 1078 (10th Cir. 2014) ("plaintiffs fail to establish redressability only when an unchallenged legal obstacle is enforceable separately and distinctly from the challenged provision."). Whether a plaintiff's claim is redressable is a prudential concern that appropriately informs whether the plaintiff has standing.

Here, Dr. Cohen seeks injunctive and declaratory relief, which, if granted, would prevent application of the PNL. Compl. p. 29 ¶¶ A-D. But in the absence of the PNL, Colorado's more general law requiring parental consent for minors' medical treatment would apply to unemancipated minors seeking abortion care. With few exceptions,[4] minors cannot consent to medical treatment under Colorado law; parental consent is required by section 13-22-103. But Dr. Cohen does not challenge section 13-22-103 here. Thus, enjoining the PNL would not provide the remedy Dr. Cohen seeks; instead, parental consent would be required for abortion

[4] Exceptions to parental consent include permitting health-care providers to prescribe contraceptive care to minors, to conduct an examination after a sexual assault occurs, and to provide care for substance use disorder. §§ 13-22-102, -105, -106. Pregnant minors can obtain care related to their pregnancy. § 13-22-103.5. Minors can independently obtain mental health treatment at age 12 if they knowingly and voluntarily seek it out and it is clinically indicated. § 12-245-203.5.

care under section 13-22-103. *See Bishop*, 760 F.3d at 1078. Dr. Cohen fails to establish that her claim is redressable, and this Court is unable to grant her requested relief. Dr. Cohen therefore lacks standing.

II. Dr. Cohen fails to plausibly allege the PNL is unconstitutional under Amendment 79 (Claim I).

A. Amendment 79 did not repeal the PNL.

Statutory repeals by implication are disfavored. *Smith v. Zufelt*, 880 P.2d 1178, 1183 (Colo. 1994); *Casados v. People,* 204 P.2d 557, 559 (Colo. 1947) ("Repeals by implication are not favored[.]... The courts will not hold to a repeal if they can find reasonable grounds to hold to the contrary."); *see also Prop. Tax Adm'r v. Prod. Geophysical Servs., Inc.*, 860 P.2d 514, 518 (Colo. 1993) ("[A]n intent to repeal by implication to be effective must appear clearly, manifestly, and with cogent force.").

Amendment 79 does not clearly and unmistakably repeal the PNL, and Dr. Cohen does not claim the Amendment impliedly repealed the PNL. Indeed, Amendment 79 specifically repealed a *different* existing abortion-related law, i.e., the prohibition on health insurance coverage for abortion at Colo. Const. art. V, § 50 (1985). Amendment 79 could have been drafted to repeal the PNL, but it was not. Further, the express repeal of the insurance requirement demonstrates that voters intended to leave all other existing laws intact. *See City & Cnty. of Denver v. Rinker*, 366 P.2d 548, 550 (Colo. 1961) (stating "there is a presumption that all laws are passed with knowledge of those already existing"); *see also Colo. Ethics Watch v. Sen. Majority Fund, LLC*, 269 P.3d 1248, 1254 (Colo. 2012) ("The electorate … must be presumed to know the existing law at the time it amends or clarifies the law." (quoting *Common Sense All. v. Davidson*, 995 P.2d 748, 754 (Colo. 2000)). The legislative declaration to Amendment 79 is

devoted to discussing the consequences of the prohibition on the use of State funds for abortion care and the importance of its repeal following the overturning of *Roe v. Wade*, 410 U.S. 113 (1973). *See* Exhibit 1, 2023-2024 Proposed Initiative #89 § 1 (later designated as Amendment 79 for the 2024 Colorado Ballot).[5] It does not mention the PNL.

Nor did the ballot question text indicate Amendment 79 would repeal the PNL. It provided:

> Shall there be a change to the Colorado constitution recognizing the right to abortion, and, in connection therewith, prohibiting the state and local governments from denying, impeding, or discriminating against the exercise of that right, allowing abortion to be a covered service under health insurance plans for Colorado state and local government employees and for enrollees in state and local governmental insurance programs?

Colo. Sec'y of State, Nov. 5, 2024, Gen. Election Results, Ballot Questions: Amend. 79, https://historicalelectiondata.coloradosos.gov/contest/26545. The ballot question language focuses on establishing a general constitutional right and the specific repeal of the prohibition on health insurance coverage for abortion. Because repeals by implication are disfavored, and this Court must exercise constitutional avoidance, it should not read Amendment 79 to repeal the PNL. *See City of Florence v. Pepper*, 145 P.3d 654, 660–61 (Colo. 2006); *People v. Lybarger*, 700 P.2d 910, 915 (Colo. 1985).

Further, the Blue Book analysis concerning Amendment 79 did not identify the repeal of the PNL as either an objective or consequence of passing the amendment. *See In re Interrogs. on S.B. 21-247*, 488 P.3d 1008, 1018 (Colo. 2021) (when construing a constitutional amendment,

[5] *See Amendment 79, Constitutional Right to Abortion*, 2024 Colorado Ballot Analysis, Colorado General Assembly, https://leg.colorado.gov/ballots/constitutional-right-abortion.

courts may "consider other relevant materials such as the 'Blue Book,' an analysis of ballot proposals prepared by the Legislative Council") (citing *Lobato v. State*, 218 P.3d 358, 375 (Colo. 2009)). The Blue Book states that Amendment 79 "could prevent Colorado from passing statutes *in the future* to regulate or restrict abortion in any way." 2024 State Ballot Information Booklet at 27 (emphasis added). It further states under "Arguments Against Amendment 79" that "[p]lacing the right to abortion in Colorado's constitution limits the ability of lawmakers to pass policies preventing abortions later in pregnancies, establishing parental notification laws, or creating safeguards if they are interpreted to impede a woman's right to abortion." *Id*. In other words, the Blue Book focuses on Amendment 79's impact on *future* laws, including potentially more stringent versions of the existing PNL. It does not state the Amendment would repeal existing laws, aside from the prohibition on health insurance coverage. Clearly, if Amendment 79 repealed the PNL, the Blue Book would have said so. The Blue Book favors a finding that Amendment 79 did not repeal the PNL.

Amendment 79's Fiscal Impact Statement likewise states that the Amendment's passage would have no fiscal impact, "as [the Amendment] reflects current law and practices," further confirming that Amendment 79 is harmonious with existing laws (excluding the explicit repeal of the ban on the use of government funds for abortion care). Legislative Council Staff, *Fiscal Impact Statement*, Initiative 89 (Nov. 28, 2023), https://leg.colorado.gov/sites/default/ files/ initiatives /2024%252389FIS_00.pdf.

Amendment 79 must be construed only to prohibit the government from passing future laws that deny, impede, or discriminate against the exercise of the right to abortion. *Cf.* Colo. Const. art. II, § 11 (prohibiting retroactive legislation); § 2-4-202 ("A statute is presumed to be

prospective in its operation."); *Strickler v. City of Colo. Springs*, 26 P. 313, 317 (Colo. 1891). Amendment 79 does not evince any intent to repeal the PNL.

B. Colorado retains the power to regulate abortion under Amendment 79.

Colorado retains the power to regulate numerous aspects of abortion care following the adoption of Amendment 79. Aside from expressly repealing the prohibition on insurance coverage, the Amendment left all other existing abortion-related regulations in place. Indeed, Colorado continues to regulate abortion in myriad ways: it requires healthcare providers of abortion services to be licensed and to act within their scope of practice, § 12-240-110; it requires them to follow generally accepted standards or face discipline against their license, § 12-240-121(1)(j); and it requires them to establish a provider-patient relationship prior to providing patient care, *id.*; *see also* Exhibit 2, Colo. Med. Bd. Policy 40-03. The PNL—which provides an exception to § 13-22-103's general requirement of parental consent for minors to access medical treatment—similarly remains in place. These reasonable laws ensure that abortion care is performed safely and ethically in Colorado.

Dr. Cohen clearly disagrees with the PNL. But her recourse is with the legislature, not the courts. "[C]ourts must avoid making decisions that are intrinsically legislative. It is not up to the court to make policy or to weigh policy." *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 38 (Colo. 2000). And "[c]ourts may not rewrite statutes to improve them." *Prairie Mountain Publ'g Co. v. Regents of Univ. of Colo.*, 491 P.3d 472, 476 (Colo. App. 2021) (quoting *Dep't of Transp. v. City of Idaho Springs*, 192 P.3d 490, 494 (Colo. App. 2008)); *see also Yen, LLC v. Jefferson Cnt'y. Bd. of Comm'rs*, 498 P.3d 1140, 1146 (Colo. App. 2021). To the extent

that a party's argument may highlight shortcomings in a statute, it is for the legislature, not the courts, to rewrite it. *People ex rel. L.S.*, 524 P.3d 847, 854 n.3 (Colo. 2023).

C. Amendment 79 does not clearly and unmistakably conflict with the PNL, and the Complaint does not plausibly allege the PNL is unconstitutional in all applications.

Dr. Cohen's claim that the PNL is unconstitutional under Amendment 79 should be dismissed. The statutory and constitutional provisions do not clearly and unmistakably conflict and Dr. Cohen fails to allege the law is unconstitutional in all applications. *Dallman*, 225 P.3d at 625; *Qwest Servs.*, 252 P.3d at 1083. The PNL does not "deny, impede, or discriminate against the exercise of" the right to abortion, Colo. Const. art. II, § 32, and the Complaint fails to plausibly allege otherwise.

1. The PNL does not "deny" a minor's right to abortion.

The Complaint does not plausibly allege the PNL *denies* minors the right to an abortion. The Complaint cursorily avers the PNL "denies" the right to abortion in a one-sentence perfunctory restatement of Amendment 79's text. *See* Compl. ¶ 142 (alleging the PNL "denies … young people's exercise of their fundamental right to abortion without sufficient justification"). But Dr. Cohen makes no factual allegations that any individual was *denied* an abortion as a direct result of the PNL. The Complaint must do more than recite the text of Amendment 79 to plausibly state a claim. *See Iqbal*, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.") (citation omitted).

To the extent that Dr. Cohen asserts the PNL may *delay* an abortion, she fails to allege the 48-hour notice requirement equates to a denial for four reasons. *First*, the plain language of the PNL reveals there is *no* delay if a parent certifies they have already received notification, if

the physician certifies a medical emergency exists, or if the minor is a victim of abuse or neglect. § 13-22-705. *Second*, the 48-hour notice requirement is not tantamount to a denial. As the U.S. Supreme Court held with respect to another state's 48-hour parental notice requirement, a "48–hour delay imposes only a minimal burden on the right of the minor to decide whether or not to terminate her pregnancy." *Hodgson v. Minnesota*, 497 U.S. 417, 448–49 (1990). The "minimal burden" attached to notification does not equate to a denial of abortion rights.

Third, Amendment 79 recognizes a right to abortion; it does not guarantee an *immediate* abortion. Constitutional rights are commonly subject to reasonable delays in their exercise:

- The First Amendment is subject to well-established time, place, and manner restrictions on when, where, and how to speak. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). And states, through permit requirements, routinely impose waiting periods on group protest activity. *E.g.*, *Thomas v. Chicago Park Dist.*, 534 U.S. 316, 322, 324 (2002) (upholding requirement that gatherings of over 50 people in Chicago parks obtain a permit, which takes up to 28 days to issue).
- The "fundamental right" to vote, 52 U.S.C. § 20501(a)(1), requires registering before one can exercise that right. *See* 52 U.S.C. §§ 20503 *et seq*. Courts have upheld a waiting period between when a person registers and when that person may cast their vote. *See*, *e.g.*, *Ohio Democratic Party v. Husted*, 834 F.3d 620, 630 (6th Cir. 2016).
- The requirement that young Coloradans wait until they are at least 21 years of age to purchase a firearm from a licensed gun dealer does not violate the Second Amendment. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 104 (10th Cir. 2024) (upholding Colorado's age limits on commercial firearm purchases).

- The Sixth Amendment right to a speedy trial does not provide that criminal defendants—who face deprivation of liberty and property—are entitled to an *immediate* trial, but rather can be detained pending trial within reasonable constitutional limits. *See Barker v. Wingo*, 407 U.S. 514, 530-32 (1972).
- Prior to *Dobbs*, the U.S. Supreme Court recognized that the then-federal constitutional right to abortion could be subject to waiting periods, which could make the decision "more informed and deliberate" due to "some period of reflection" which did "not strike [the Court] as unreasonable." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 885 (1992), *overruled on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

Fourth, there are inherent wait times involved in scheduling abortion-related medical appointments, Compl. ¶ 54, which may permit the 48-hour notice period to run concurrent with the wait for an appointment, resulting in little or no actual delay. The Complaint alleges that an individual may need to wait for an abortion because "[t]he influx of out-of-state patients in Colorado following the *Dobbs* decision has taxed the capacity of Colorado abortion facilities" leading to "wait times for appointments" and "increased demand." *Id*. The Complaint does not allege any increased demand is traceable to the PNL, rather than restrictive abortion laws in other states. Regardless, due to "wait times" associated with scheduling, "the 48–hour waiting period may run concurrently with the time necessary to make an appointment for the procedure, thus resulting in little or no delay." *Hodgson*, 497 U.S. at 449. The Complaint fails to show the PNL "denies" minors the right to an abortion.

2. The PNL does not "impede" a minor's right to abortion.

The Complaint does not plausibly allege the PNL "impedes" a minor's right to abortion. Although Amendment 79 does not define "impede," the term as used in the Amendment requires more than a brief delay. Courts give statutory text its plain and ordinary meaning. *Am. Fam. Mut. Ins. Co. v. Barriga*, 418 P.3d 1181, 1183–84 (Colo. 2018). "Impede" is commonly defined as "to interfere with or get in the way of the progress of: hold up: block." *Webster's Third New Int'l Dictionary* 1132 (unabridged ed. 2002); *see also United States v. Sandlin*, 575 F. Supp. 3d 16, 24 (D.D.C. 2021) ("to 'impede' is to 'hinder' or to 'retard in progress or action by putting obstacles in the way,'" (citing *Impede*, def. a, *Oxford Eng. Dictionary* (2d ed. 1989)). Further, Colorado courts must consider the statute as a whole, giving "consistent, harmonious, and sensible effect to all of its parts" and avoiding constructions that would "lead to illogical or absurd results." *Barriga*, 418 P.3d at 1183 (citing *Pineda-Liberato v. People*, 403 P.3d 160, 164 (Colo. 2017)).

As detailed above, Amendment 79 does not create the right to an *immediate* abortion, *see supra*, pp.14-15. If it had, any State-supported clinic—and indeed Dr. Cohen herself—could be accused of constitutional violations due to routine delays associated with medical treatment, including scheduling appointments a few days out to accommodate staffing and an influx of patients from other states post-*Dobbs*, Compl. ¶ 54; obtaining informed consent, *id.* ¶ 37; or complying with abortion providers' existing ethical obligations "to encourage patients who are minors to consult a trusted adult about their decision if they have not done so already," *id.* ¶ 41, for example. And, as set forth above in II.B., after Amendment 79, Colorado retains the ability to *regulate* abortion—which may lead to inherent delays in accessing an abortion—including requiring that providers be licensed, act within their scope of practice, and adhere to generally

accepted healthcare standards. A short delay in access to abortion services is not sufficient to show that the constitutional right to abortion has been *impeded*.

Judicial Bypass. The Complaint's factual allegations on impediment primarily focus on the judicial bypass exception. *Id.* ¶¶ 100–01. The Complaint alleges the PNL "impedes" a minor's right to abortion because minors "who are unable or reasonably unwilling to notify a parent"—and who are not suffering a medical emergency or abuse or neglect—must "seek a judicial bypass[.]" *Id.* ¶ 100. The Complaint alleges that judicial bypass causes delays and may be so "daunting" that minors decline to pursue it. *Id.* ¶ 101.

But the PNL includes many provisions to make the judicial bypass process accessible to minors. It allows courts to appoint counsel and guardian ad litem for these minors, § 13-22-707(1)(b), and exempts minors from filing fees, § 13-22-707(1)(e). The PNL requires the Colorado Supreme Court to create a form petition to make filing easier, § 13-22-707(1)(g); *see also* JDF-10. Judicial bypass proceedings are "confidential" and must be given "precedence over other pending matters so that the court may reach a decision promptly without delay in order to serve the best interests of the minor." § 13-22-707(1)(c).

Further, the judicial bypass exception ensures expedited judicial review. District courts must rule within four calendar days and the Court of Appeals must rule within five days. § 13-22-707(1)(c)–(d). This expedited timeline is constitutional and does not impede the right to abortion. *See Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502, 514 (1990) (pre-*Dobbs*, rejecting facial challenge to state judicial bypass provision and holding "the mere possibility that the procedure may require up to 22 days in a rare case is plainly insufficient to invalidate the statute on its face"). Although the Complaint alleges one minor experienced a "2-3 week delay"

and another experienced an "8-9 day delay," the cited report indicates that those periods reflect the time between first placing a call to a legal support hotline and the date the individual obtained an abortion. Comp. ¶ 118; Kate Coleman-Minahan et al., *Expl. Adolescents' & Young Adults' Abortion Disclosure & Adolescents' Experiences Navigating Colo.'s PNL*, 76 J. ADOLESCENT HEALTH 665, 669 (2025), https://www.jahonline.org/action/showPdf?pii=S1054-139X%2824%2900835-8. As such, additional delays may be attributable to sources other than the PNL, including delays in clinic scheduling. *See* Compl. ¶ 54 (describing "increased demand" and "wait times for appointments").

Informed Consent. Dr. Cohen also alleges that the PNL "impedes" a minor's right to abortion because minors can make informed decisions, and the law interferes with the doctor-patient relationship. Compl. ¶ 102-103. But under Colorado law, the default rule is that minors cannot consent to medical treatment. § 13-22-103. The PNL establishes a specific exception for minors seeking abortion care: a parent must be notified but need not consent. As such, the PNL supports minors' reproductive choices and does not impede the right to abortion.

3. The PNL does not "discriminate against" a minor's right to abortion.

The PNL does not discriminate against a minor's exercise of the right to abortion. As explained above, under Colorado law, there is a *separate* and *independent* requirement that generally, parental consent is required before a minor receives medical treatment. § 13-22-103. The PNL establishes a less onerous standard for minors seeking abortion care. As such, the PNL does not discriminate against the right to abortion.

Like other areas of Colorado law, through the PNL, the State treats minors differently than adults. For example, the Second Amendment notwithstanding, individuals must be at least twenty-one years of age to purchase a firearm from a licensed gun dealer. § 18-12-112(2)(f); *Rocky Mountain Gun Owner*, 121 F.4th at 104 (holding age limits on firearm purchases did not violate the Second Amendment). And individuals under 18 cannot vote in state or federal elections, Colo. Const. art. VII, § 1, despite voting being a "fundamental right of every citizen." *Jarmel v. Putnam*, 499 P.2d 603, 603 (Colo. 1972). The age of competence is 18 to enter a contract, manage an estate, sue, and manage decisions regarding one's own body. § 13-22-101. To obtain a marriage license, individuals in Colorado must be 18 (or 16 with judicial approval). § 14-2-106. The Children's Code establishes a body of special laws and processes for children pertaining to child protection, dependency and neglect, juvenile justice, and child support. *See generally*, Title 19, C.R.S. Specifically in the criminal law context, juveniles are considered less culpable for their behavior in recognition of their "increased susceptibility to outside pressure, immature behavior, and impulsiveness," and as such, are typically subject to juvenile justice laws rather than adult criminal laws. *People ex rel. T.B.*, 489 P.3d 752, 761 (Colo. 2021) (citations omitted) (holding mandatory lifetime sex offender registration for offenders with multiple juvenile adjudications violates Eighth Amendment). The Colorado statute of limitations does not apply to a minor because they are considered a "person under disability." § 13-81-101(3). Finally, body artists must obtain parental consent to perform a body art procedure on a minor. § 25-4-2103. These laws, like the PNL, recognize that minors have different legal status and capacity than adults. In requiring parental notification in most instances, the PNL does not discriminate against a minor's constitutional rights.

III. The PNL does not violate equal protection (Claim II).

Dr. Cohen alleges the PNL "draws a gender-based classification that impinges on young females' fundamental right to abortion under the Colorado Constitution without sufficient justification." Compl. ¶ 146. Dr. Cohen's claim appears to be that the PNL requires parental notification of a pregnant female minor but does not require parental notification of her male partner's parent. *See id*. ¶ 10 ("Colorado does not comparably punish or burden young males who cause a pregnancy."), *id.* ¶ 98 (same).

Under the federal Equal Protection Clause, no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. While the Colorado Constitution does not contain an equal protection clause, the Colorado Supreme Court has construed article II, section 25 of the Colorado Constitution "to imply a similar guarantee." *Dean v. People*, 366 P.3d 593, 596 (Colo. 2016). Equal protection ensures "the like treatment of all persons who are similarly situated." *Id.* In an equal protection challenge, the threshold question is whether the classes of persons are similarly situated. *People v. Young*, 859 P.2d 814, 816 (Colo. 1993).

The level of judicial scrutiny applied when a plaintiff raises an equal protection challenge depends on the type of classification identified and the nature of the right affected. *People ex rel. S.P.B.*, 651 P.2d 1213, 1215 (Colo. 1982). Gender-based distinctions must serve important governmental objectives, and a discriminatory classification must be substantially related to the achievement of those objectives to withstand judicial scrutiny under the equal protection clause. *Id.* (citing *Miss. Univ. for Women v. Hogan*, 458 U.S. 718 (1982); *R.McG. v. J.W.*, 615 P.2d 666 (Colo. 1980)).

Dr. Cohen's equal protection challenge premised on gender fails at the threshold level because Dr. Cohen fails to identify a similarly situated gender-based class; she does not plausibly allege non-pregnant male minors are similarly situated. *See Young*, 859 P.2d at 816. A pregnant person who physically carries a pregnancy is legally entitled to make decisions regarding that pregnancy. *S.P.B.*, 651 P.2d at 1216. A male partner who caused a pregnancy has no legal right to decide whether to end or to continue a pregnancy. *Id.* The Complaint thus fails to allege that non-pregnant male minors are similarly situated.

Even if Dr. Cohen had identified a similarly situated gender-based class, she fails to plausibly allege the gender-based distinction fails to serve important governmental objectives and is not substantially related to the achievement of those objectives. *Id.* at 1215. Under established Colorado Supreme Court precedent, male partners have no right to decide to terminate a partner's pregnancy. Only the pregnant individual may do so. *Id.* at 1216 (denying father's equal protection challenge to child support law on grounds that he was unable to "demand the termination" of his partner's pregnancy). "[A]t no stage does the … right to be free from gender-based classifications outweigh the substantial and legitimate competing … state's interest in protecting [a pregnant person's] fundamental right to make decisions relating to her pregnancy." *Id.*

IV. Dr. Cohen fails to plausibly allege the PNL violates the Equal Rights Amendment (Claim III).

Dr. Cohen alleges that the PNL violates Colorado's Equal Rights Amendment ("ERA"), Colo. Const. art. II, § 29, because it "discriminates against females based exclusively on their sex, social stereotypes connected with gender, and culturally induced dissimilarities without sufficient justification." Compl. ¶ 151. At the outset, this claim simply restates the text of the

ERA without any specific allegations as to how the PNL interacts with the law. *Cf.* Colo. Const. art. II, § 29 (providing that "[e]quality of rights under the law shall not be denied or abridged by the state of Colorado or any of its political subdivisions on account of sex."). As such, it is insufficiently pled. *See Warne*, 373 P.3d at 589, 591.

Further, Dr. Cohen fails to plausibly allege that the PNL denies "equality of rights under the law … on account of sex." The PNL does not differentiate based on sex. The PNL draws an *age-based* distinction between pregnant minors and pregnant adults; these two groups are treated differently under the PNL. Pregnant minors are not treated differently on account of sex; they are treated differently on account of age, consistent with Colorado law establishing that minors have different legal rights and capabilities than adults. *See supra*, II.C.3. The PNL also draws a distinction between unemancipated minors and emancipated minors—a distinction that is not a sex-based classification but based on a minor's legal status.

The fact that the PNL draws distinctions based on age and legal status differentiates this claim from Colorado precedent finding a pregnancy-based distinction violates the Equal Rights Amendment. *See Colo. C.R. Comm'n v. Travellers Ins. Co.*, 759 P.2d 1358, 1364–65 (Colo. 1988) (employer's denial of insurance coverage for pregnancy-related medical treatment violated ERA where employer failed to show differentiation was reasonably justified). In other contexts, the Colorado Supreme Court has upheld age-based distinctions in the face of Equal Rights Amendment challenges. *People v. Salinas*, 551 P.2d 703, 706 (Colo. 1976) (upholding then-existing age and sex-based statutory rape laws); *cf. Colo. C.R. Comm'n*, 759 P.2d at 1364–65 (holding that economic considerations did not prove differential treatment was reasonable).

Further, to the extent Dr. Cohen alleges that the PNL differentiates on account of sex because non-pregnant partners are not subject to the PNL, she fails to state a claim under the ERA. The ERA "prohibits differential treatment that is based 'exclusively on the circumstance of sex, social stereotypes based on gender, and culturally induced similarities,' but does not prohibit differential treatment based on reasonably and genuinely based physical differences." *In re Est. of Musso*, 932 P.2d 853, 855 (Colo. App. 1997) (citing *Salinas*, 551 P.2d at 706)). "To be reasonable, a differentiation based on gender must serve an important government objective and be substantially related to that objective." *Id.* (citing *Austin v. Litvak,* 682 P.2d 41 (Colo. 1984)). Here, any sex-based differentiation is premised on the reality that only a pregnant person has the right to decide to terminate or carry a pregnancy to term. As the Colorado Supreme Court recognized, male partners have no legal right to decide whether to terminate or continue a partner's pregnancy. *S.P.B.*, 651 P.2d at 1215. In doing so, the Supreme Court held, "the right to be free from gender-based classifications" does not "outweigh the substantial and legitimate competing … interest in protecting [a pregnant person's] fundamental right to make decisions relating to her pregnancy." *Id.* at 1216. Dr. Cohen fails to plausibly allege the PNL violates the ERA.

CONCLUSION

For the reasons set forth herein, Defendants respectfully request the Complaint be dismissed in full.

DATED: September 23, 2025.

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CERTIFICATE OF SERVICE

The undersigned certifies that she duly served the foregoing **DEFENDANTS' JOINT MOTION TO DISMISS UNDER RULES 12(B)(1) AND (5)** upon all counsel of record for the parties to Case No. 2025CV32424 electronically via the Colorado Courts E-filing system on September 23, 2025.

/s/ Carmen Van Pelt