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CASE NUMBER: SN-2025-CV-000298
PII COMPLIANT

Court:	Shawnee County District Court
Case Number:	SN-2025-CV-000298
Case Title:	Aria Medical Clinic LLC, et al vs. Kansas State Board of Nursing, et al
Type:	ORD: Order Originated by Judge MEMORANDUM DECISION AND ORDER

SO ORDERED,

/s/ Honorable Teresa L Watson, District Court Judge

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION THREE

ARIA MEDICAL CLINIC LLC, et al.,

Plaintiffs

SN-2025-CV-298

KANSAS STATE BOARD OF NURSING, et al.,

Defendants

MEMORANDUM DECISION AND ORDER

This matter is before the Court on Defendants' motion to dismiss Plaintiffs' petition for declaratory and injunctive relief. Plaintiffs are Aria Medical Clinic ("Aria") in Wichita, Kansas, and Elyse Gilbert, an advanced practice registered nurse ("APRN") and contractor for Aria (collectively "Plaintiffs"). Defendants are the Kansas State Board of Nursing ("Board"); Andrea Watson, president of the Board; Carol Moreland, executive administrator for the Board; Kris Kobach, Kansas Attorney General; and Marc Bennett, Sedgwick County District Attorney (collectively "Defendants").

Plaintiffs' petition alleges that K.S.A. 65-1130(d)(1) and K.A.R. 60-11-104a(a)(2) violate Sections 1 and 2 of the Kansas Constitution Bill of Rights because they prevent an APRN from prescribing medication intended to cause an abortion. Plaintiffs ask this Court to grant declaratory and injunctive relief declaring portions of the statute and regulation unconstitutional, and prohibiting enforcement of the unconstitutional portions, with the effect of allowing APRNs to prescribe drugs intended to cause an abortion.

Defendants ask this Court to dismiss Plaintiffs' petition with prejudice on multiple bases. The motion to dismiss was fully briefed and argued to the Court. The Court is ready to rule.

STATEMENT OF FACTS

Because this is a motion to dismiss, the facts are taken from the allegations of Plaintiffs' petition.

Aria is a medical clinic in Wichita, Kansas. Aria offers medication abortion, miscarriage management, contraception, and ultrasound dating of pregnancy. Aria opened its clinic in January 2023. Aria's business model allows providers to see a high volume of patients, with the goal to schedule patients within seven days of a request. Aria employes one APRN, Gilbert. Gilbert works for Aria as an on-call medical advice provider for the Wichita clinic. Plaintiff Gilbert obtained her Kansas license in 2024. She prescribed medication for abortions in California for 10 years prior to that. She interacts with patients of the Wichita clinic but does not prescribe abortion drugs to them because it is prohibited by Kansas law.

APRNs have advanced education, specialized training, and a broader scope of practice than registered nurses ("RNs"), allowing them to diagnose and treat health conditions, prescribe medications, and perform certain medical procedures independently or in collaboration with

physicians pursuant to K.S.A. 65-1130 and K.A.R. 60-11-101, K.A.R. 60-11-104, K.A.R. 60-11-104a, and related statutes and regulations. The Board licenses APRNs and recognizes four types: nurse practitioners ("CNPs"), clinical nurse specialists ("CNSs"), certified nurse anesthetists ("CRNAs"), and certified nurse midwives ("CNMs"). Gilbert is licensed as a CNM. K.A.R. 60-11-105 describes the scope of services a CNM can provide.

CNMs function in an advanced role by applying skills and knowledge in "women's health care through the life span." K.A.R. 60-11-105. CNMs are authorized to provide independent nursing diagnosis and treatment, develop and manage medical plans for patient care, and provide health services within the scope of their training and competence, focusing on health care for women which may include gynecological care, prenatal care, childbirth, postpartum care, care of the newborn, family planning, and diagnosis of infertility and sexually transmitted diseases. *Id.*

In 2011, Kansas lawmakers passed an omnibus bill containing abortion-related restrictions for abortion providers in Kansas. See S.B. 36 (2011), enacted as L. 2011, ch. 82. Included within its provisions was a "physician-only law" pertaining to medication abortion. The Act provided that "[n]o abortion shall be performed or induced by any person other than a physician licensed to practice medicine in the state of Kansas" and that when either mifepristone or misoprostol are used for the purpose of inducing an abortion, the drug must be given "by or in the same room and in the physical presence of the physician who prescribed, dispensed or otherwise provided the drug" to the patient. L. 2011, ch. 82, sec.10(a), codified at K.S.A. 65-4a10(a) and (b)(1).

In 2022, lawmakers amended K.S.A. 65-1130(d). This statute now provides that APRNs can prescribe any drug, including controlled substances, but specifically excludes any drug "intended to cause an abortion" from an APRN's prescribing authority. K.S.A. 65-1130(d)(1). In

2022, the Board adopted an administrative regulation addressing APRN prescribing authority. That regulation contains the same language as K.S.A. 65-1130(d)(1) and allows APRNs to "prescribe, procure, and administer any drug consistent with the licensee's specific role and population focus, except any drug that is intended to cause an abortion." K.A.R. 60-11-104a(a)(2).

On July 5, 2024, the Kansas Supreme Court decided *Hodes & Nauser v. Stanek,* 318 Kan. 995, 551 P.3d 62 (2024), striking down S.B. 36 and associated regulations, including the physician-only laws, because they violated Section 1 of the Kansas Constitution Bill of Rights. The 2022 amendment to K.S.A. 65-1130(d) and the adoption of K.A.R. 60-11-104a(a)(2) were not part of the S.B. 36 provisions, thus were not before the court and not part of the *Hodes* decision.

Plaintiffs allege medication abortion is safe and effective in early stages of pregnancy. Plaintiffs allege that studies show APRNs can prescribe medication intended to cause abortion as safely as a physician. Plaintiffs allege that leading medical and professional associations support the notion of APRNs prescribing medication intended to cause abortion. Plaintiffs allege that APRNs are allowed to prescribe many other medications, including controlled substances. Plaintiffs allege that, under Kansas law, APRNs are allowed to prescribe misoprostol and mifepristone, abortion-inducing drugs, for purposes other than causing an abortion.

Plaintiffs allege that Aria's prospective patients complete a brief online survey and then a detailed health intake form at the clinic. If medication abortion is desired and appropriate, the clinician administers and dispenses the necessary medications after the patient receives information and gives informed consent. The patient interacts with the clinician either in person or remotely via telehealth while the patient is in the Wichita clinic.

Plaintiffs allege that demand for abortion in Kansas has increased in recent years. Plaintiffs cite studies indicating that clinicians provided 19,200 abortions in Kansas in 2023, which is a 135% increase in clinician-provided abortions since 2020. Plaintiffs state that 65% of clinician-provided abortions in Kansas were medication abortions in 2023. In 2024, Kansas health care facilities provided an estimated 22,720 abortions — an increase of around 3,500, or 18.1%, from the year prior. Four organizations provide in-person abortions in Kansas. Plaintiffs allege that Aria provides medication abortions to patients from not only Kansas, but also Texas, Missouri, Arkansas, Oklahoma, and Louisiana, all states that have abortion restrictions.

Plaintiffs allege Aria "struggles to find enough doctors to cover appointments." Plaintiffs allege that Kansas' "climate of hostility" against abortion makes it difficult for them to find doctors willing to work for Aria. Plaintiffs state that Aria could provide more medication abortions and provide them with shorter wait times if it was allowed to hire APRNs to prescribe the medications. Plaintiffs state that the inability to hire APRNs to provide medication abortions "negatively impacts Aria . . . financially."

Plaintiffs allege that Aria strives to provide services regardless of a patient's ability to pay, "making it even more crucial" that Aria "is able to engage in cost savings by employing APRNs to prescribe medication abortion." Further, Plaintiffs say Kansas law limits Gilbert's ability to "increase her income" because she is not allowed to prescribe medication abortion.

Plaintiffs allege that Kansas has a significant rural population and a large percentage of residents living in poverty. Plaintiffs allege that because of abortion regulations like the ones at issue, there are few abortion clinics in Kansas. This means patients must travel longer distances to the clinics, thus incurring greater financial burdens and requiring more complicated arrangements

to leave work or find childcare. Plaintiffs allege that because of abortion regulations like the ones at issue, there are fewer medication abortion providers, thus patients experience longer wait times to obtain an abortion, potentially beyond the window in which a medication abortion is appropriate. Plaintiffs allege that patients seeking an abortion suffer social stigma and collateral personal consequences for the decision to seek an abortion.

CONCLUSIONS OF LAW

SUMMARY OF THE ARGUMENTS.

Plaintiffs claim the challenged laws violate their patients' rights of bodily autonomy and self-determination and violate the equal protection rights of Plaintiffs and their patients. Defendants argue that Plaintiffs' first two claims, asserted on behalf of their patients, fail because Plaintiffs do not allege facts sufficient to give rise to third-party standing. Defendants assert that those claims also fail because Plaintiffs' patients are necessary parties. Defendants argue that Plaintiffs' third and fourth claims, which Plaintiffs assert on their own behalf, fail because there is no right to perform an abortion under the Kansas Constitution. Finally, Defendants assert that all of Plaintiffs' claims are barred by the doctrine of laches and fail for lack of irreparable harm given the timing of this lawsuit.

STANDARD FOR EVALUATING A MOTION TO DISMISS.

In ruling on a motion to dismiss, courts "accept the facts alleged in the petition as true, along with any inferences that can be reasonably drawn therefrom." *Bd. of Cnty. Commissioners of Sumner Cnty. v. Bremby,* 286 Kan. 745, 751, 189 P.3d 494 (2008). "Dismissal is proper only when the allegations in the petition clearly demonstrate that the plaintiff does not have a claim." *Steckline Commc'ns, Inc. v. J. Broad. Grp. of Kansas, Inc.,* 305 Kan. 761, 768, 388 P.3d 84 (2017).

ANALYSIS.

A. WHETHER PLAINTIFFS LACK STANDING TO SUE ON BEHALF OF THEIR PATIENTS. (CLAIMS 1 AND 2)

Defendants first argue that Plaintiffs lack standing to sue on behalf of their patients, thus Plaintiffs' Claims 1 and 2 made on behalf of their patients must be dismissed. Plaintiffs' Claim 1 seeks relief for violation of their patients' right to personal autonomy under the Kansas Constitution Bill of Rights Sections 1 and 2. Claim 1 asserts that the challenged provisions of K.S.A. 65-1130 and K.A.R. 60-11-104a restrict APRNs from prescribing medication intended to cause abortion and thus prevent, delay, or burden pregnant women who seek medication abortions in Kansas. Claim 2 asserts that the challenged provisions of K.S.A. 65-1130 and K.A.R. 60-11-104a violate the equal protection guarantees of the Kansas Constitution by treating women who seek the drugs used for medication abortion differently than women who need the same drugs for purposes other than abortion.

Standing is a component of subject matter jurisdiction. It can be raised at any time, and it cannot be waived. *Hodes & Nauser, MDs, P.A. v. Stanek,* 318 Kan. 995, 1002, 551 P.3d 62 (2024).

> Under Kansas' traditional standing test, parties must demonstrate they personally suffered a cognizable injury and a causal connection between the injury and the challenged conduct. As such, a party generally has standing to challenge the constitutionality of an ordinance or statute only to the extent it adversely impacts that party's own rights. So if there is no constitutional defect in the application of the statute to a litigant, [the litigant] does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations. *City of Wichita v. Griffie,* 318 Kan. 510, 516–17, 544 P.3d 776 (2024) (internal quotations and citations omitted).

Courts have recognized exceptions to the traditional standing test that would allow a third party to assert claims on behalf of another.

> Generally, standing must be based on a violation of a plaintiff's personal rights, not a violation of a third party's rights, but there are special situations in which a litigant may bring an action on behalf of a third party. To have this third-party standing, the litigant: (1) must have suffered an injury in fact, thus giving him or her a sufficiently concrete interest in the outcome of the issue in dispute; (2) must have a close relation to the third party; and (3) there must exist some hindrance to the third party's ability to protect his or her own interests. *Landrith v. Jordan,* 2014 WL 1302623, at *4 (Kan.App. 2014) (unpublished), citing *Powers v. Ohio,* 499 U.S. 400, 410–11 (1991).

The Kansas Supreme Court has recognized that abortion providers may pursue constitutional claims on behalf of their patients. See *Alpha Med. Clinic v. Anderson,* 280 Kan. 903, 921, 128 P.3d 364 (2006), citing *Singleton v. Wulff,* 428 U.S. 106, 117 (1976) ("physician had standing to assert rights of patients seeking abortions; patient may be chilled from such assertion by a desire to protect the very privacy of her decision from the publicity of a court suit").

Defendants argue that language in a recent United States Supreme Court decision, *Dobbs v. Jackson Women's Health Org.,* 597 U.S. 215 (2022), signals a change in approach to the historical "carte blanche" grant of third-party standing to abortion providers raising claims on behalf of their patients. See *Id.* at 286-87 (observing that the Supreme Court's previous abortion rulings have "ignored the Court's third-party standing doctrine."). Notwithstanding this brief reference in *Dobbs*, for purposes of this motion to dismiss, this Court will apply the third-party standing analysis in *Landrith*.

1. CLOSE RELATIONSHIP.

Defendants assert that Plaintiffs fail to allege the necessary close relationship with their patients. Defendants urge that there can be no close relationship because, according to the petition: 1) Aria has existed for only two years; 2) Aria's services are limited to abortions and contraception; 3) Aria is a high volume clinic where interaction with patients consists of a brief online survey and

a telehealth or in-person visit for dispensation of abortion medications; 4) most of Aria's patients are not from the surrounding community; and 5) Gilbert is a California-based CNM who only obtained her Kansas license in 2024 and who meets with patients by phone or text.

Plaintiffs counter that the services they provide are time-sensitive and do not lend themselves to lengthy provider-patient relationships, but that this does not impact the close nature of the relationships. Further, Plaintiffs argue that services they offer to women seeking abortions in "emotionally complex circumstances" necessarily create close bonds between provider and patient. Plaintiffs alleged in their petition that they have a close relationship with patients, that patients are "carefully screened" and "counseled on the process," that patients receive services even if they cannot pay for them, and that the care they receive is "compassionate."

The question at this early stage is whether Plaintiffs have alleged facts necessary to support third-party standing. Plaintiffs' allegations pertinent to a "close relationship" with their patients are enough to survive a motion to dismiss. Defendants' skepticism about whether the evidence establishes such a relationship must wait for another day.

2. **HINDRANCE TO BRINGING SUIT**.

Defendants next urge that Plaintiffs have not alleged facts to support the existence of "insurmountable obstacles" to their patients' ability to assert their own rights. This is not the existing standard in Kansas law. *Landrith* requires only "some hindrance" to patients' ability to bring suit on their own behalf. 2014 WL 1302623 at *4.

Plaintiffs have alleged that many of their patients live out of state, lack financial resources, and are burdened by work obligations and the need for childcare, all of which make it difficult to litigate a constitutional challenge involving the state regulation of abortion. Plaintiffs also allege

that their patients suffer judgment and stigma for their abortion decision, and that this can impact employment and social relationships, thus causing women to be unwilling to bring a lawsuit themselves. See *Alpha Medical Clinic,* 280 Kan. at 921.

Again, the question posed by Defendants' motion to dismiss is whether Plaintiffs have alleged facts necessary, if taken as true, to support third-party standing. Plaintiffs' allegations pertinent to "some hindrance" to patients' ability to bring suit on their own behalf are enough to survive a motion to dismiss. Defendants' doubt about whether evidence yet to be developed will establish a hindrance cannot be decided as a matter of law at this stage of the litigation.

3. DUE PROCESS.

Finally, Defendants argue that allowing Plaintiffs to sue on their patients' behalf violates due process because there is a conflict of interest between Plaintiffs – who have an economic stake in providing more medication abortions using lower paid prescribers – and the rights of women who benefit from the protections afforded under existing Kansas law, i.e., physician-only abortions. Plaintiffs point out that Aria "strives to provide care no matter the patient's ability to pay," thus negating the alleged economic conflict of interest. Defendants' argument is not fully developed in the briefs, and it appears to rely on a conflict of interest that has not been established on the face of the petition.

For these reasons, Defendants' motion to dismiss Claims 1 and 2 for lack of standing is denied.

B. WHETHER PLAINTIFFS' FAILURE TO JOIN THEIR PATIENTS AS PARTIES UNDER K.S.A. 60-219 REQUIRES DISMISSAL OF THE CASE.

Defendants assert that Plaintiffs' failure to join individual patients requires dismissal of Plaintiffs' claims under K.S.A. 60-219. There are three parts to this analysis: 1) whether the

persons are required to be joined; 2) whether it is feasible to join those persons; and 3) if it is not feasible, whether the lawsuit may proceed or must be dismissed. "Whether the evidence demonstrates that the statutory requirements for joinder have been met is a mixed question of fact and law." *Landmark Nat. Bank v. Kesler,* 289 Kan. 528, 532–33, 216 P.3d 158 (2009).

The first question is whether Plaintiffs' individual patients are required to be joined in this matter. K.S.A. 60-219(a) says, in pertinent part:

> (a) *Persons required to be joined if feasible.* (1) *Required party.* A person who is subject to service of process must be joined as a party if:
>
> (A) In that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (i) As a practical matter, impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations because of the interest.

The only argument Defendants make is that Plaintiffs' patients are required to be joined under K.S.A. 60-219(a)(1)(B)(i). This is so, they reason, because if a patient has an interest in protecting the "statutory right to safe medical care," i.e., an abortion performed by a physician, she will not be able to protect that interest unless she is joined as a party to this lawsuit, whether voluntarily, or involuntarily by the Court under K.S.A. 60-219(a)(2). Plaintiffs counter that any patient who seeks to protect her interest in a physician-only medication abortion may simply decline to obtain a medication abortion from anyone other than a licensed physician.

Most Kansas cases have applied K.S.A. 60-219 in the context of oil and gas leases or other contractual arrangements. The cases cited by Defendants from other federal jurisdictions are much the same, and they are not helpful. As Plaintiffs point out, other constitutional challenges to abortion regulations have wound their way through Kansas courts without individual patients as parties, and without any reference to K.S.A. 60-219. Defendants have failed to persuade at this point that Plaintiffs' individual patients must be joined as parties.

Defendants provide little analysis about the feasibility of joining these parties, even if required, or the factors the Court should consider in deciding whether an action should proceed if the joinder is required but not feasible. See K.S.A. 60-219(b). For this additional reason, the issue fails.

Defendants' motion to dismiss based on a failure to join required parties under K.S.A. 60-219 is denied.

C. WHETHER PLAINTIFFS FAIL TO STATE A CLAIM FOR EQUAL PROTECTION VIOLATIONS ON THEIR OWN BEHALF. (CLAIMS 3 AND 4)

Defendants assert that Plaintiffs have failed to state a claim for equal protection on their own behalf, thus Plaintiffs' Claims 3 and 4 must be dismissed. In Plaintiffs' Claim 3, Gilbert seeks relief for violation of her equal protection rights under the Kansas Constitution. Claim 3 asserts that the challenged provisions of K.S.A. 65-1130 and K.A.R. 60-11-104a treat APRNs who prescribe medications intended to cause abortion differently than those who prescribe the same medications for other purposes. Claim 3 also asserts that the challenged provisions of K.S.A. 65-1130 and K.A.R. 60-11-104a treat APRNs who prescribe medications intended to cause abortion differently than other medical professionals who are allowed to prescribe these medications for the purpose of abortion.

In Plaintiffs' Claim 4, Aria seeks relief for violation of its equal protection rights under the Kansas Constitution. Claim 4 asserts that the challenged provisions of K.S.A. 65-1130 and K.A.R. 60-11-104a violate equal protection by treating clinics that focus on medication abortion differently than other types of clinics – because clinics that offer services other than abortion are permitted by law to employ APRNs to perform various clinical services, but Aria cannot employ APRNs to prescribe medication intended to cause abortion.

The equal protection guarantees in the Kansas Constitution are "firmly rooted" in Section 2 of the Kansas Constitution Bill of Rights. *Rivera v. Schwab,* 315 Kan. 877, 894, 512 P.3d 168 (2022). Section 2 says: "All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit. No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency."

Despite recent interpretations of Section 1 of the Kansas Constitution Bill of Rights in regard to abortion, "it has not changed our historical and fundamental interpretation of the scope of equal protection found in section 2." *Rivera,* 315 Kan. at 894. "[T]he equal protection guarantees found in section 2 are coextensive with the equal protection guarantees afforded under the Fourteenth Amendment to the United States Constitution." *Id.* "Therefore, Kansas courts shall be guided by United States Supreme Court precedent interpreting and applying the equal protection guarantees of the Fourteenth Amendment of the federal Constitution when . . . called upon to interpret and apply the coextensive equal protection guarantees of section 2 of the Kansas Constitution Bill of Rights." *Id.*

"The guiding principle of the Equal Protection Clause is that similarly situated individuals should be treated alike." *State v. Limon,* 280 Kan. 275, 283, 122 P.3d 22 (2005). Kansas courts approach an equal protection analysis as follows: 1) if "arguably indistinguishable" persons are being treated differently, identify the nature of the legislative classification and the rights affected; 2) apply the appropriate level of scrutiny; and 3) decide whether the classification withstands the scrutiny. *State v. LaPointe,* 309 Kan. 299, 316, 434 P.3d 850 (2019).

There are three levels of scrutiny for equal protection claims: "(1) the rational basis standard to determine whether a statutory classification bears some rational relationship to a valid legislative purpose; (2) the heightened or intermediate scrutiny standard to determine whether a statutory classification substantially furthers a legitimate legislative purpose; and (3) the strict scrutiny standard to determine whether a statutory classification is necessary to serve some compelling state interest." *Miami Cnty. Bd. of Comm'rs v. Kanza Rail-Trails Conservancy, Inc.,* 292 Kan. 285, 316, 255 P.3d 1186 (2011). "The general rule is that a law will be subject to the rational basis test unless the legislative classification targets a suspect class or burdens a fundamental right." *Limon,* 280 Kan. at 283-84.

Defendants assert that Plaintiffs fail to state a claim for equal protection violations on their own behalf because clinics and practitioners have no recognized constitutional right to perform abortions under state or federal law and they are not a suspect class. Even if true, this does not necessarily rule out an equal protection claim; rather, it may suggest application of a rational basis test to any classifications. Defendants posit that the challenged provisions here would survive application of the rational basis standard.

Plaintiffs counter that K.S.A. 65-1130 and K.A.R. 60-11-104a result in disparate treatment of APRNs who seek to prescribe medication intended to cause abortion and clinics that employ them. Plaintiffs allege in their petition that this causes economic harm to the clinics and practitioners and imposes a "burden [on] their patients' fundamental rights," making the statute and the regulation susceptible to an equal protection challenge by Plaintiffs, and furthermore, subject to strict scrutiny. In any case, Plaintiffs insist that any classifications here cannot survive even rational basis scrutiny.

These are all questions for another day. Plaintiffs' allegations are sufficient to state an equal protection claim. A comprehensive analysis of this issue requires development of facts beyond the pleadings and legal analysis beyond what has been provided in the briefs on the instant motion. Defendants' arguments at this point do not compel dismissal of Claims 3 and 4 as a matter of law.

Defendants' motion to dismiss Aria and Gilbert's equal protection claims is denied.

D. WHETHER PLAINTIFFS' CLAIMS ARE BARRED BY LACHES.

Defendants assert that Plaintiffs' claims are barred by the doctrine of laches. "Laches is an equitable doctrine meant to bar stale claims." *Matter of Marriage of Doud & Modrcin,* 59 Kan. App. 2d 244, 253, 480 P.3d 800 (2020). "The doctrine of laches is based upon the maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as the neglect to assert a right or claim which, taken together with the lapse of time and other circumstances causing prejudice to the adverse party, operates as a bar in a court of equity." *State ex rel. Stovall v. Meneley,* 271 Kan. 355, 388–89, 22 P.3d 124 (2001).

"The mere passage of time, however, is not enough to invoke the doctrine of laches. For laches to apply, the court must consider the circumstances surrounding the filing of the suit and

any disadvantage to the other party caused by the plaintiff's delay." *Gillespie v. Seymour,* 250 Kan. 123, 134, 823 P.2d 782 (1991). And "courts have discretion over all the facts and circumstances to determine the question." *Blevins v. Hiebert,* 13 Kan.App.2d 318, 322, 770 P.2d 486 (1989), *aff'd* 247 Kan. 1 (1990).

Relevant amendments to K.S.A. 65-1130 became effective on July 1, 2022. Relevant amendments to K.A.R. 60-11-104a became effective on October 14, 2022. Neither the statute nor the regulation have been modified since. Defendants assert that laches bars Plaintiffs' claims because the three-year delay in bringing this challenge has prejudiced the State. Defendants reason that for years – even predating the 2022 amendments to the statute and regulation here – the State has "reasonably relied on the validity of its longstanding limitation that only doctors can perform abortions." Defendants point out that Kansas' regulatory scheme for abortion is built upon this notion, and to allow an APRN to perform an abortion by prescribing a pill would upend the entire regulatory framework.

Plaintiffs' petition alleges that: 1) Aria opened in January 2023 and has provided medication abortions since that time; 2) Gilbert obtained her Kansas APRN/CNM license in 2024 (month not specified in the petition); and 3) the Kansas Supreme Court issued its decision in *Hodes* on July 5, 2024, which Plaintiffs describe as "striking down the entirety of S.B. 36 and associated regulations, including the physician-only laws because they violated Section 1 of the Kansas Constitution Bill of Rights"; and 4) K.S.A. 65-1130 and K.A.R. 60-11-104a were not part of the *Hodes* litigation. The instant suit was filed on April 22, 2025.

Taking as true the pertinent portions of Plaintiffs' petition and considering the timing of the filing of the lawsuit, Plaintiffs have alleged circumstances sufficient to survive a motion to

dismiss based on laches. Plaintiffs' petition does not frame a three-year delay as suggested by Defendants. Rather, Plaintiffs suggest that it was reasonable to delay suit until after Gilbert obtained her Kansas license, and after the Kansas Supreme Court decided *Hodes*, both of which occurred in 2024. Further, at this early stage, prejudice to the Defendants is not established as a matter of law on the face of the petition or by Defendants' citations to case law.

Defendants' motion to dismiss based on the doctrine of laches is denied.

E. WHETHER PLAINTIFFS FAIL TO ALLEGE IRREPARABLE HARM REQUIRING DISMISSAL OF THE REQUEST FOR PERMANENT INJUNCTIVE RELIEF.

On a related note, Defendants assert that Plaintiffs failed to allege facts supporting irreparable harm, and without that necessary element, Plaintiffs are not entitled to a permanent injunction. A person seeking permanent injunctive relief must prove five things, one of which is that the "absence of an injunction would lead to irreparable harm." *Roll v. Howard,* 59 Kan.App.2d 161, 175, 480 P.3d 192 (2020). Irreparable harm "does not readily lend itself to definition, and is not an easy burden to fulfill." *Fish v. Kobach,* 840 F.3d 710, 751-52 (10th Cir. 2016) (internal quotations and citations omitted). Irreparable harm is harm that cannot be undone or fully compensated with money damages. *Id.* "When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Id.* at 752. Indeed, "the violation of a constitutional right must weigh heavily" in determining the existence of irreparable harm. *Id.*

Plaintiffs allege in their petition that Aria, Gilbert, and their patients "have been, and are continuing to be, irreparably harmed" by violation of their rights under Sections 1 and 2 of the Kansas Constitution's Bill of Rights. Plaintiffs' allegations of constitutional violations are joined by allegations of economic and professional consequences to Aria and Gilbert, in that removing

the restrictions on APRNs would lower Aria's cost to provide medication abortions and increase Gilbert's income and her range of professional practice.

Defendants argue that Plaintiffs' delay in challenging K.S.A. 65-1130 and K.A.R. 60-11-104a cuts against the request for a permanent injunction because it suggests a lack of urgency. This is not an argument that can be decided as a matter of law based only on the allegations of the petition and the timing of Plaintiffs' instant suit. Plaintiffs insist that they must be allowed to present facts supporting the reasonableness of the timing of their lawsuit and the nature of the harms alleged in the petition. Plaintiffs have pled enough in their petition to survive a motion to dismiss.

Defendants' motion to dismiss the claim for permanent injunction based on failure to plead an irreparable injury is denied.

CONCLUSION

For the reasons set forth above, Defendants' motion to dismiss Plaintiffs' petition is denied.

This order is effective on the date and time shown on the electronic file stamp.

IT IS SO ORDERED.

HON. TERESA L. WATSON
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was filed electronically providing notice to counsel of record.

/s Angela Cox
Administrative Assistant