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 Department of Law Ralph L. Carr Colorado Judicial Center 1300 Broadway Denver, CO 80203 Telephone: (720) 508-6403 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 Department of Law Ralph L. Carr Colorado Judicial Center 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
REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION TO DISMISS UNDER RULES 12(B)(1) AND (5)	

As set forth in State Defendants' Motion to Dismiss and herein, the Complaint should be dismissed under Rules 12(b)(1) and (5) because Plaintiff, Dr. Rebecca Cohen, lacks standing and fails to plausibly allege the Parental Notification Law ("PNL"), §§ 13-22-701–708, C.R.S.,[1] is facially unconstitutional.

I. Under Colorado law, parents generally must consent to medical care for a minor, and the PNL represents an exception to this general rule.

Sections 13-22-101 and -103 require a parent to consent before a minor can receive most forms of medical care. Confusingly, Dr. Cohen ignores this express requirement and argues that Colorado law does not require physicians to obtain parental consent before providing medical care to a minor. Opp. pp. 7-8. This argument lacks merit and should be rejected.

In interpreting a statute, courts first look at the text and "apply the plain and ordinary meaning of the provision." *Allman v. People*, 451 P.3d 826, 830 (Colo. 2019) (quoting *Perfect Place, LLC v. Semler*, 426 P.3d 325, 332 (Colo. 2018)). Article 22, titled Age of Competence, located within Title 13 (Courts and Court Procedure), sets forth the age of competence in Colorado. Under that statute, persons are deemed to be "of full age at the age of eighteen years" for making "decisions in regard to his own body… to the full extent allowed to any other adult person." § 13-22-101. Plainly, subsection 101(1)(d) sets the age for making decisions about one's body at 18. Section 101 also establishes 18 as the age of competency for other activities: contracting, managing an estate, and suing or being sued. § 13-22-101(1)(a)-(c). Each of these provisions uses text similar to 101(1)(d), stating the rights at 18 are "to the full extent" or in the same manner. *Id.* Colorado courts have found that the inverse of these provisions is also true, i.e.,

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

that a minor is not competent to sue. *Bartlett v. Elgin*, 973 P.2d 694, 697 (Colo. App. 1998); *see also Jones v. Dressel*, 623 P.2d 370, 373 (Colo. 1981) (minor could void or ratify contract after turning 18). The only reasonable reading of 101(1)(d) is that minors cannot consent to their own medical care.

The remainder of Title 13, Article 22 lists exceptions to section 101. Dr. Cohen highlights 103, which creates an exception for consent to organ donation and other healthcare for *certain* 15-year-olds. Dr. Cohen argues the section only exists to ensure providers do not, on their own, require parental consent—not because parental consent is required by 101. Opp. p. 8, n.7. Dr. Cohen's conclusion that minors can consent to most medical treatment contradicts section 13-22-103(3), which specifically affords parents the right to decide whether to consent to medical care for their child. *See id.* ("any parent… may request and consent to… the furnishing of hospital, medical, dental, emergency health, and surgical care to his or her child"). Further, Dr. Cohen's reading does not accord with the plain language of 101, or general principles of statutory interpretation. Colorado courts interpret "the statute as a whole, construing each provision consistently and in harmony with the overall statutory design." *Whitaker v. People*, 48 P.3d 555, 558 (Colo. 2002). As explained above, Article 22 states that 18 is the age of competence and creates several explicit exceptions. Dr. Cohen's suggested reading of 103 renders the exceptions for substance abuse treatment (section 13-22-102) and contraception (section 13-22-105) superfluous, which is a result that reviewing courts should avoid. *Dep't of Revenue v. Agilent Techs., Inc.*, 441 P.3d 1012, 1016 (Colo. 2019).

Finally, the history of sections 13-22-101 and -103 support that the PNL exists as an exception to the general requirement for parental consent. These sections were enacted in 1973

and 1971, respectively (*not* 2000 as Dr. Cohen incorrectly represents, Opp. p. 13). *See* 1973 Colo. Sess. Laws 543; 1971 Colo. Sess. Laws 494. These sections did not render the PNL unnecessary because the PNL requires only notification, not consent. *See* Opp. p. 8.

Further, Title 13's exception for minors seeking medical care related to the intended live birth of a child provides a vital exception to the general requirement for parental consent for care. Minors can consent to medical care for their own children. § 13-22-103(3). If the exception in section 13-22-103.5 did not exist, it would create an absurd result: A pregnant minor would need parental consent for medical care but would be able to consent to care for her child after giving birth. The distinction between the PNL and the exception for pregnancy is consistent with the difference between parents' and grandparents' rights in Colorado. For example, a grandparent does not have a right to petition for visitation unless there has been judicial intrusion or a natural parent has died. § 14-10-124.4(3). The statute "protects against unconstitutional intrusions on a parent's fundamental right to the care, custody, and management of his or her children." *In re D.C.*, 116 P.3d 1251, 1254 (Colo. App. 2005). Whereas Title 13 typically requires parental consent for minors seeking medical care, the PNL only requires notification (and includes health and safety related exceptions and a judicial bypass option).

II. Dr. Cohen lacks standing because the relief she requests would not redress her identified injury.

Dr. Cohen is correct that there is no "express requirement" of redressability for standing under Colorado law, however, it remains a valid prudential concern for this Court's consideration. Opp. p. 6. Regardless of whether this Court would grant the relief Dr. Cohen seeks, such relief is wholly impeded by her failure to also challenge section 13-22-103. Her claims as currently styled are not redressable.

Prudential considerations are "judicially self-imposed limits on the exercise of a court's jurisdiction." *Maurer v. Young Life*, 799 P.2d 1317, 1324 (Colo. 1989) (internal quotes and citation omitted). They recognize that courts should avoid unnecessary or premature determinations on constitutional questions. *City of Greenwood Vill. v. Pet'rs for Proposed City of Centennial*, 3 P.3d 427, 437 (Colo. 2000). "The constitutional prong [of standing] limits [courts'] inquiry to the resolution of actual controversies, whereas the prudential prong reflects considerations of judicial self-restraint." *C.W.B., Jr. v. A.S.*, 410 P.3d 438, 443 (Colo. 2018).

Colorado courts commonly consider prudential concerns, including for example, mootness. "[An issue] is moot when the relief sought, if granted, would have no practical legal effect on an existing controversy." *People ex rel. L.O.L.*, 197 P.3d 291, 293 (Colo. App. 2008); *Trinidad Sch. Dist. No. 1 v. Lopez*, 963 P.2d 1095, 1102 (Colo. 1998) (courts refrain from addressing moot issues). Recently, the Colorado Court of Appeals found that it could not grant relief to a petitioner appealing a Board of County Commissioners' decision where he had failed to also appeal a second Board decision that separately barred such relief. *Foothills Park & Recreation Dist. v. Bd. of Cnty. Comm'rs*, No. 21CA0031, 2022 WL 22923905, *3–4 (Colo. App. May 5, 2022) (unreported). Similarly, the Colorado Supreme Court rejected, as moot, a landowner's challenge to the construction of a facility where he failed to seek injunctive relief, and the facility was completed while the case was pending. *Zoning Bd. of Adjustment v. DeVilbiss*, 729 P.2d 353, 360 (Colo. 1986).

Here, redressability, like mootness, is a valid prudential concern. Dr. Cohen has challenged only the PNL, not section 13-22-103, which requires parental consent for most medical treatments. *See* above at pp. 1-3. The practical effect of granting Dr. Cohen's sought

relief would be that minors seeking an abortion would be subject to a more onerous standard, i.e., parental consent. That result is diametrically opposed to the relief she seeks, and as such, her claims are not redressable and should be dismissed.

III. The Complaint does not plausibly allege the PNL is unconstitutional in all applications (Claim I).

Because Dr. Cohen brings a facial claim, she must allege the PNL is unconstitutional in all applications. *Dallman v. Ritter*, 225 P.3d 610, 625 (Colo. 2010) ("[A] facial challenge can only succeed if the complaining party can show that the law is unconstitutional in all its applications."); *Qwest Servs. Corp. v. Blood*, 252 P.3d 1071, 1083 (Colo. 2011) (Plaintiff must prove "beyond a reasonable doubt that it is impossible to apply" the challenged law "in a constitutional manner."). As set forth in the Motion, pp. 7-19, Dr. Cohen fails to plausibly allege the PNL is unconstitutional in all applications and impossible to apply constitutionally.

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

The Complaint does not plausibly allege the PNL *denies* minors the right to abortion. To plausibly state a claim, the Complaint must do more than just recite the text of Amendment 79. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.") (citation omitted). The Complaint's allegations about denial fail to identify any individual who was denied an abortion as a direct result of the PNL and therefore are cursory and speculative.

Dr. Cohen contends the PNL "denies some young people an abortion outright," namely "young people who are not fortunate enough to be able to confide in a parent and overcome the challenges of pleading for an abortion before a judge." Opp. p. 9. These arguments fall far short of her burden to show the PNL is unconstitutional in all applications. *Dallman*, 225 P.3d at 625.

First, although some young people may not wish to talk to a parent, Dr. Cohen concedes "*most* young people confide in a parent about their decision regardless of parental involvement requirements." Opp, p. 3 (emphasis added); Compl. ¶ 103. Based on this admission, the PNL does not "deny" an abortion to all, let alone most, minors. *Cf. Dallman*, 225 P.3d at 625.

Second, Dr. Cohen contends some minors are intimidated by the judicial bypass option, citing the example of a minor who feared the judicial bypass path would take months, according to a study cited in the Complaint.[2] Opp. p. 10 (citing Compl. ¶ 116). But the study does not show any minor was denied an abortion. Instead, a minor called "Grace" in the study obtained an abortion after availing herself of the judicial bypass option. Coleman-Minahan at 668-669. Grace reported participating in her judicial bypass hearing via cellphone and obtaining an abortion within 8 or 9 days of first contacting a legal assistance hotline. *Id.* Contrary to Dr. Cohen's argument, the Complaint fails to sufficiently allege the PNL denies the right to abortion.

B. 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. To overcome the presumption of constitutionality, a plaintiff must establish "[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." *Danielson v. Dennis*, 139 P.3d 688, 691 (Colo. 2006) (citation omitted). "[U]nless the conflict between the constitution and the law is clear and unmistakable, [courts] will not disturb the statute." *Garhart ex rel. Tinsman v.*

[2] 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 ("Coleman-Minahan").

Columbia/Healthone, LLC, 95 P.3d 571, 581 (Colo. 2004). Thus, it was incumbent on the Complaint to allege the PNL plainly "impedes" the right to abortion, but it did not.

1. Dr. Cohen has not pled that the PNL results in unconstitutional delays.

Instead of arguing the PNL impedes the right to abortion, Dr. Cohen argues the PNL may delay access to abortion. As set forth in the Motion, Amendment 79 does not create the right to an *immediate* abortion. Mot. 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, including scheduling, Compl. ¶ 54; obtaining informed consent, *id.* ¶ 37; and complying with ethical obligations to encourage minor patients "to consult a trusted adult," *id.* ¶ 41. After Amendment 79, Colorado retains the ability to regulate abortion, including requiring providers to be licensed, to act within their scope of practice, and to adhere to generally accepted healthcare standards. Mot. p. 12. Any of these requirements could result in delays in access to abortion care, as they may limit the number of providers. A short delay is not sufficient to show the right to abortion has been impeded. *See id.*

In arguing that the PNL delays abortion, Dr. Cohen states that the 48-hour period in the PNL "is in fact a 72-hour delay," Opp. p. 10, because if notice is made by mail, "delivery shall be conclusively presumed to occur… [at] noon on the next day on which regular mail delivery takes place." § 13-22-704(1)(e)(I). While notice *may* take up to 72 hours, it could also take less time, in the case of personal delivery, which can be made by any person over 18 unrelated to the minor, or where the person entitled to notice certifies they have been notified. §§ 13-22-704(1)(a)(I)–(IV); §§ 13-22-705(1)(a)–(e). This distinction is important because Dr. Cohen's challenge is a facial one. She needs to plausibly allege the PNL is unconstitutional in all

applications, which she cannot do when notice is made by personal delivery. And, as Dr. Cohen admitted, "most young people confide in a parent about their decision[.]" Opp. p. 3; Compl. ¶ 103. As such, mailed notice may not be required for "most" minors.

Further, as argued in the Motion and unrefuted by the Opposition, there are inherent "wait times" involved in scheduling abortion-related medical appointments. Mot. p. 15; Compl. ¶ 54. Accordingly, the 48–hour mail notice period may run concurrently with the wait for an appointment, resulting in little or no additional delay. Mot. p. 15.

Last, Dr. Cohen asserts State Defendants' argument that constitutional rights may be commonly subject to reasonable delays in their exercise, Mot. pp. 14–15, "wrongly conflates all rights and right-bearers," Opp. p. 11. But Amendment 79 did not elevate the right to abortion above all others; it placed abortion within the panoply of rights afforded to Coloradans, including the rights to speech and due process. As such, State Defendants' analogies to other rights that may be constitutionally subject to a short delay are apt. As set forth in the Motion, any brief delay associated with the PNL seeks to carefully balance minors' unique status, parental rights, and the right to abortion. For those reasons, the PNL does not impede the right to abortion.[3]

2. Dr. Cohen has not pled that the PNL interferes with the doctor/patient relationship so as to "impede" minors' right to abortion.

Because Dr. Cohen raises a facial challenge, the Court must determine whether the PNL violates Amendment 79 in all applications. She asserts the PNL "undermines" the doctor/patient

[3] Dr. Cohen argues State Defendants improperly cite United States Supreme Court cases applying *Roe v. Wade*, 410 U.S. 113 (1973). Opp. pp. 10–11, n.8. These cases were of course abrogated by *Dobbs v. Jackson Women's Health Organization et al.*, 597 U.S. 215 (2022). And Colorado's right to abortion derives from a specific constitutional provision, i.e., Amendment 79, not the now-abrogated *Roe* decision. However, the Court may refer to the reasoning in these cases to the extent it finds it persuasive and relevant here.

relationship, specifically because doctors need to provide "otherwise… protected medical information" to parents. Opp. p. 12. The requirements for physicians under the PNL are in harmony with existing ethical duties and regulations, and as such cannot violate Amendment 79.

As explained in the Motion to Dismiss and above at pages 1-3, section 13-22-103 generally requires parental consent for minors' medical care with limited exceptions. To obtain parental consent, doctors necessarily share pertinent medical information with parents. This is not new or unique to the PNL. And Dr. Cohen concedes most minors, irrespective of the PNL, involve a parent in their abortion care, regardless of the PNL's notice requirement. Opp. p. 15; Compl. ¶ 103. If a minor has not yet consulted a trusted adult, Dr. Cohen concedes she will encourage them to do so, regardless of her obligations under the PNL. Opp. p. 5; Compl. ¶ 41.

Dr. Cohen cites federal regulation 45 CFR § 164.502(g)(5), which permits covered entities under HIPAA not to treat an individual as a patient's personal representative if there is a reasonable belief the individual is abusing the patient or doing so would endanger the patient. *See id*.; Opp. p. 12. But the PNL is consistent with this regulation and does not require parental notice where the physician suspects abuse or neglect.[4] § 13-22-705(1)(c). Physicians are under an existing duty to mandatorily report abuse and neglect. § 19-3-304(2)(a). The PNL reiterates this mandatory reporting duty. § 13-22-705(1)(c). A reporting physician is barred from sharing how they learned of the abuse or neglect, further protecting the minor's privacy. *Id*.

[4] The bar for reporting abuse or neglect is merely whether the physician has "reasonable cause to know or suspect that a child has been subjected to abuse or neglect or… has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect." § 19-3-304(1)(a). A pregnant minor who is a victim of abuse or neglect does not face a large hurdle in providing their physician with "reasonable cause."

In short, physicians already share medical information with parents for consent purposes, encourage minors to involve parents in their abortion care as appropriate, protect patients from abuse or neglect, and make mandatory reports when required. The PNL is cohesive with existing duties placed on physicians caring for minors and does not meaningfully add to or alter these duties so as to impede the right to abortion.

3. Dr. Cohen has not pled the PNL's judicial bypass provision impedes minors' right to abortion.

Because Dr. Cohen raises a facial challenge, this Court must determine whether the text of the PNL, including its judicial bypass provision, violates Amendment 79 in every instance. But in her Opposition, Dr. Cohen relies on anecdotal characterizations of the judicial bypass process, instead of the actual statutory provisions. Opp. p. 13. The PNL requires only that a judicial officer determine whether "the minor is sufficiently mature to decide whether to have an abortion." § 13-22-707(1)(a). The PNL does not mandate judicial scrutiny over a minor's sexual history, gender identity, or socioeconomic background, as posited in Dr. Cohen's Opposition, Opp. p. 13. To the extent that the statute is *applied* in an intrusive manner, as Dr. Cohen alleges, that is not an appropriate basis for this Court to hold the PNL facially unconstitutional.[5]

Contrary to Dr. Cohen's description, the judicial bypass process is confidential, expedited, requires no filing fees, and empowers the court to appoint counsel or a guardian ad litem for the petitioning minor. § 13-22-707(1). A minor need not "publicly plead" her case as Dr. Cohen asserts, Opp. p. 13, because all judicial bypass proceedings are expressly confidential.

[5] To the extent a minor was faced with inappropriate questioning in court, such situation presents an opportunity for legal education, not a finding that the entire statutory scheme is unconstitutional.

What's more, if a trial or appellate court fails to abide by the statutory timelines, the notification requirement is moot for the minor petitioner. § 13-22-707(1)(f). While any engagement in the judicial system has the potential to be intimidating and confusing, the legislature struck a careful balance to enable minors to obtain abortion care without parental notification when a judicial officer finds them to be sufficiently mature. That some minors may find the process daunting does not render the statute facially unconstitutional.

Dr. Cohen points to states whose parental notification or consent statutes have been overturned and asserts these states had "virtually the same" judicial bypass provisions. Opp. p. 13. Upon close reading, these cases are readily distinguishable and have no bearing on the propriety of the PNL's judicial bypass provision. Unlike the PNL, two of the other state bypass proceedings required the minor petitioner to make a "clear and convincing" showing to the court.[6] Several required the court to conduct a broader and more invasive analysis beyond the minor's maturity to consent to an abortion, addressing whether the minor was subject to abuse or, regardless of maturity, whether or not it was in her best interest to require parental notification or consent.[7] And two state bypass proceedings required *both* a "clear and convincing" showing and a broader juridical inquiry.[8] Notably, Dr. Cohen also cites *Planned Parenthood League of Mass., Inc. v. Att'y Gen.*, in which the court found the Massachusetts

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[6] *Planned Parenthood of the Great Nw. v. State*, 375 P.3d 1122, 1131 (Alaska 2016); *Planned Parenthood of Cent. N.J. v. Farmer*, 762 A.2d 620, 624 (N.J. 2000).

[7] *Planned Parenthood of the Great Nw.*, 375 P.3d at 1131; *Planned Parenthood of Cent. N.J.*, 762 A.2d at 624; *Am. Acad. of Pediatrics v. Lungren*, 940 P.2d 797, 804-05 (Cal. 1997); *Planned Parenthood of Mont. v. State*, 554 P.3d 153, 162 (Mont. 2024).

[8] *Planned Parenthood of the Great Nw.*, 375 P.3d at 1131; *Planned Parenthood of Cent. N.J.*, 762 A.2d at 624.

judicial bypass procedure, which mandated a broader judicial inquiry than the PNL's, was not unconstitutional and held only that the requirement that the minor obtain consent from both parents was unconstitutional. 677 N.E.2d 101, 109 (Mass. 1997). Lastly, the unpublished Minnesota state district court order Dr. Cohen cites includes no information about what the judicial bypass required and thus cannot serve as a meaningful comparison. *See Doe v. State*, No. 62-CV-19-3868, 2022 WL 2662998 (Minn. Dist. Ct. July 11, 2022) (unreported). Dr. Cohen has not sufficiently pled the PNL's judicial bypass process impedes the right to abortion.

C. 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 in the Motion to Dismiss. Dr. Cohen disagrees with the State's non-discrimination arguments for two reasons. First, she confusingly, and concerningly, seems to believe that doctors do not need to obtain parental consent before treating minor children. Opp. p. 14. As discussed above at pages 1-3, this belief is contrary to Colorado law, because there is an independent law requiring parental consent before a minor receives medical treatment. § 13-22-103. As such, the PNL establishes a less onerous notification requirement for minors seeking abortion care and does not discriminate against the right to abortion.

Second, Dr. Cohen argues the law discriminates against two classes of pregnant minors: those who wish to terminate a pregnancy and those who intend to continue a pregnancy and give birth to a child. These two classes are not similarly situated because they have different intentions; one class intends to terminate the pregnancy, and the other intends to carry the pregnancy to term and give birth to a child. These separate intentions differentiate these two groups of minors significantly and therefore the PNL does not produce "'dissimilar treatment of

similarly situated individuals.'" *Dallman*, 225 P.3d at 634 (quoting *Indus. Claim Appeals Off. v. Romero*, 912 P.2d 62, 66 (Colo. 1996)). As such, the Complaint fails to plausibly plead the PNL discriminates against abortion.

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

Equal protection ensures "the like treatment of all persons who are similarly situated." *Dean v. People*, 366 P.3d 593, 596 (Colo. 2016). The threshold question is whether the classes of persons are similarly situated. *People v. Young*, 859 P.2d 814, 816 (Colo. 1993). The Complaint alleges the PNL violates equal protection by requiring parental notification of a pregnant female minor but not of her male partner's parent. Compl. ¶¶ 10, 98, 146. As set forth in the Motion, these two groups are not similarly situated. Mot. pp. 20–21.

In the Opposition, Dr. Cohen insists that non-pregnant male minors and pregnant female minors are similarly situated, but the Complaint fails to plausibly allege this. Indeed, those two groups are physically different—one is pregnant and the other is not—and legally different—one can make decisions about that pregnancy and the other cannot. Under Colorado precedent, a male partner who caused a pregnancy has no legal right to decide whether to end or continue a pregnancy. Mot. pp. 20–21; *People ex rel. S.P.B.*, 651 P.2d 1213, 1216 (Colo. 1982). By contrast, a pregnant person who physically carries a pregnancy is constitutionally entitled to make decisions regarding that pregnancy, including whether to obtain an abortion or carry the pregnancy to term. *Id.* As such, these groups are not similarly situated, *Young*, 859 P.2d at 816.

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

Dr. Cohen alleges 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 v. Hall*, 373 P.3d 588, 589, 591 (Colo. 2016).

Dr. Cohen fails to plausibly allege that the PNL denies equality of rights under the law on account of sex. *See* Mot. pp. 21-23. The Opposition contends the PNL differentiates on account of sex because non-pregnant male partners are not subject to the PNL. But as explained in the Motion, the ERA "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 *People v. Salinas*, 551 P.2d 703, 706 (Colo. 1976)). "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 physical and legal realities that only a pregnant person has the right to decide to terminate or carry a pregnancy to term. 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. 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.

VI. The PNL serves compelling State interests.

Dr. Cohen contends that the State Defendants fail to identify the State interests supporting the PNL, but notably, that is not the standard under Rule 12(b). Because the State Defendants filed a Motion to Dismiss based on standing and the insufficiency of the Complaint's allegations, they were not required to plead all aspects of the case. But to be sure, the PNL advances the State's compelling interests in parental rights, in aiding parents in fulfilling their parental responsibilities, in the support and education of minors, and in protecting minors. *See, e.g.*, *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") (cited at Mot. p. 4); *Clerkin v. Geisendorfer*, 323 P.2d 633, 634 (Colo. 1958) ("support and education of minors" is a state interest); *People v. Maloy*, 465 P.3d 146, 158 (Colo. App. 2020) (State's interest in safeguarding the physical and psychological well-being of a minor is compelling).

CONCLUSION

The State Defendants respectfully request that the Complaint be dismissed.

DATED: December 5, 2025.

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CERTIFICATE OF SERVICE

The undersigned certifies that she duly served the foregoing **REPLY IN SUPPORT OF 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 December 5, 2025.

/s/ Carmen Van Pelt