

DISTRICT COURT, CITY & COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202 (303) 606-2300	DATE FILED August 17, 2026 2:47 PM CASE NUMBER: 2025CV32424
Plaintiff: REBECCA COHEN, M.D., v. Defendants: JARED POLIS, in his official capacity as Governor of Colorado, COLORADO MEDICAL BOARD, and STATE OF COLORADO.	▲ COURT USE ONLY ▲
	Case Number: 2025CV32424 Courtroom: 414
ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION TO DISMISS	

In 2024, in the wake of the United States Supreme Court’s decision overruling nearly 50 years of precedent protecting the right to abortion under the United States Constitution, Colorado voters passed Amendment 79, enshrining the right to abortion in the State Constitution. That Amendment says: “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.

Following the passage of Amendment 79, Plaintiff, a doctor who provides abortion care to minors in Colorado, filed this lawsuit challenging the constitutionality of the Parental Notification Act (“PNA”), Colorado Revised Statute sections 13-22-701 to 708. With certain exceptions and various qualifications, the PNA prohibits unemancipated minors from obtaining an abortion until 48 hours

after written notice of the pending abortion has been delivered to their parent or guardian. *See id.* §§ 704–05. The PNA is predicated on the preservation of the traditional family unit and the protection of parents’ rights to be involved in important decisions in the lives of their minor children, including decisions related to pregnancy and abortion:

The people of the state of Colorado, pursuant to the powers reserved to them in Article V of the Constitution of the state of Colorado, declare that family life and the preservation of the traditional family unit are of vital importance to the continuation of an orderly society; that the rights of parents to rear and nurture their children during their formative years and to be involved in all decisions of importance affecting such minor children should be protected and encouraged, especially as such parental involvement relates to the pregnancy of an unemancipated minor, recognizing that the decision by any such minor to submit to an abortion may have adverse long-term consequences for her.

Id. § 702(1).

In this lawsuit, Plaintiff alleges that the PNA is unconstitutional because it violates the right to abortion recognized in and protected by Amendment 79 (Article II, section 32 of the Colorado Constitution). Plaintiff further alleges the PNA is unconstitutional because it impermissibly treats the sexes differently and therefore violates the equal-protection provisions found in Article II, section 25, and denies or abridges equal rights under the law on account of sex in violation of Article II, section 29.

Defendants, the State, the State Medical Board, and the Governor (in his official capacity) moved to dismiss Plaintiff’s Complaint for lack of jurisdiction

under Colorado Rule of Civil Procedure 12(b)(1) and for failure to state a claim on which relief can be granted under Rule 12(b)(5).

For the reasons explained further below, Defendants' Rule 12(b)(1) motion to dismiss for lack of standing is denied. Defendants' Rule 12(b)(5) motion to dismiss for failure to state a claim is denied as to Plaintiff's constitutional challenge to the PNA under Article II, section 32, and granted as to Plaintiff's constitutional challenges under Article II, section 25 and Article II, section 29.

BACKGROUND

Plaintiff is an obstetrician-gynecologist in Colorado who, as part of her practice, provides abortion care to pregnant minors. Complaint ("Compl.") ¶ 23. Plaintiff is required to comply with the PNA, which prohibits performing an abortion on an unemancipated minor until 48 hours after written notice of the pending abortion has been delivered to their parent or guardian, unless certain exceptions apply, including documented neglect or abuse, medical emergency, or written certification from the parent or guardian to be notified. C.R.S. § 13-22-704–705. Pregnant minors can also seek judicial bypass of the written notification requirement by filing a petition with a court, in response to which a judge may enter an order dispensing with the notice requirements if the judge determines that notice to the parents or guardians would not be in the minor's best interests or finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to have an abortion. *Id.* § 13-22-707.

In 2024, the Colorado voters amended the Constitution to recognize the right to abortion. That amendment states as follows: “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.

Plaintiff alleges that the PNA impedes pregnant minors’ access to abortion care because it delays their access to abortion care. Compl. ¶ 5. Plaintiff further alleges pregnant minors’ right to abortion is impeded in cases where they pursue the judicial bypass process because it delays their abortion care and subjects them to an intrusive judicial process. *Id.* ¶¶ 6, 121. Plaintiff alleges the PNA discriminates against minors who seek abortion care because Colorado does not require parental notification or judicial bypass of parental notification for pregnant minors seeking care related to their intent to carry their pregnancies to term. *Id.* ¶¶ 9, 65-66, 88, 93. Colorado law specifically allows pregnant minors to authorize medical care related to the intended live birth of a child without the need for parental consent or notification. C.R.S. § 13-22-103.5 (“[A] pregnant minor may authorize prenatal, delivery, and post-delivery medical care for herself related to the intended live birth of a child.”).

The Colorado Constitution also provides that “[n]o person shall be deprived of life, liberty or property, without due process of law.” Colo. Const. art II, § 25. Plaintiff challenges the PNA as violative of this amendment because the PNA

imposes gender-based obligations on pregnant minors but imposes no similar obligations on their non-pregnant male partners. Compl. ¶ 146.

Finally, the Colorado Constitution provides that “the equality 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.” Colo. Const. art II, § 29. Plaintiff alleges the PNA violates the Colorado Constitution because although pregnant minors are required to notify their parent and/or guardians before receiving an abortion, there are no similar requirements for their non-pregnant male counterparts. Compl. ¶¶ 10, 94, 98.

LEGAL ANALYSIS

Defendants move to dismiss under Colorado Rule of Civil Procedure 12(b)(1), for lack of standing, and Rule 12(b)(5), for failure to state claims upon which relief can be granted.

I. Defendants’ Motion To Dismiss For Lack Of Standing Is Denied.

Defendants challenge Plaintiff’s standing, and this Court’s subject matter jurisdiction, on redressability grounds. *See* Motion to Dismiss (“Mot.”) at 7-9; Reply at 3-5. Defendants argue that even if Plaintiff is successful in her challenge to the PNA, it would not redress the alleged harm because then minors seeking an abortion could obtain one only after parental consent, not merely parental notification. This is so, Defendants argue, because if the PNA does not apply, then

Colorado's more general law requiring parental consent before a minor can obtain medical care would apply. *See* Mot. at 8 (citing C.R.S. § 13-22-103).

But, as Plaintiff points out, and Defendants then concede, redressability is not a requirement for standing under Colorado law. *See* Opposition ("Opp.") at 6-7; Reply at 3. To have standing, a plaintiff in Colorado state courts must satisfy a two-prong test: the plaintiff must have suffered (1) an injury-in-fact, (2) to a legally protected interest. *Ainscough v. Owens*, 90 P.3d 851, 855 (Colo. 2004). Defendants do not challenge Plaintiff's standing under either prong; they do not argue that Plaintiff has not suffered an injury in fact, or that the alleged injury was and is to a legally protected interest. The Court concludes that Plaintiff has standing to proceed with her claims under the applicable two-part standing test.

True, the Court can consider prudential concerns. *See* Reply at 3-4. But the Court does not find that those concerns support a judicially self-imposed limit on the Court's exercise of its jurisdiction in this case. To begin with, it is far from clear that, if the PNA were declared unconstitutional, doctors would (and would have to) require parental consent before unemancipated minors can have an abortion. *Compare* Opp. at 7 ("[A] holding that the Parental Notice Requirement is unconstitutional would allow young people to consent to an abortion just as they consent to medical care to deliver a baby.") *with* Reply at 5 ("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.”).¹ And, in any event, even under the federal redressability standard, a partial remedy satisfies the federal redressability requirement. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291 (2021) (“[W]hen a plaintiff’s requested relief cannot provide full redress with respect to an injury, a federal court’s ability to effectuate a partial remedy satisfies the redressability requirement.”) (internal quotation omitted).

The Court concludes that Plaintiff has standing to maintain her constitutional challenge to the PNA and therefore denies Defendants’ motion to dismiss this case for lack of standing on redressability grounds.

II. Defendants’ Motion To Dismiss For Failure To State A Claim That The PNA Is Unconstitutional Under Amendment 79 Is Denied.

Defendants argue Plaintiff fails to state a plausible claim that the PNA is facially unconstitutional under Amendment 79 because: (1) Amendment 79 did not repeal the PNA; (2) Colorado retains the power to regulate abortions; and (3) the PNA does not deny, impede, or discriminate a pregnant minor’s right to abortion. Mot. at 9-19; *see also* Reply at 5-13. The Court will address each argument in turn.

¹ Defendants will, of course, be free to present evidence that parental consent would be the unintended consequence of a successful challenge to the PNA in addressing the merits of and remedy for Plaintiff’s claims.

A. The PNA is not immune from constitutional challenges.

Defendants argue that Plaintiff's complaint should be dismissed because Article 32 did not clearly and unmistakably repeal the PNA, as it did with a different abortion-related law. Mot. at 9-12.

The Court disagrees with Defendants' position that because repeals by implication are "disfavored," Mot. at 9, a plaintiff fails to state a plausible claim for relief unless the plaintiff pleads that the constitutional provision in question clearly and unmistakably repealed the prior (allegedly unconstitutional) statutory enactment. Defendants cite no authority, and the Court is aware of none, that a complaint challenging the constitutionality of a statute should be dismissed at the pleading stage for failure to state a claim if the constitutional amendment pursuant to which the challenge is brought did not expressly repeal the challenged law. There may well be, as Defendants argue, a "presumption" against repeal by implication and in favor of constitutionality, but that does not translate to a heightened pleading burden, much less an immunity from constitutional challenge for all legislative enactments that pre-date the constitutional amendment.

As the Colorado Supreme Court has explained, "[i]n examining the interaction between a challenged statute and a constitutional amendment, [the court's] inquiry focuses on whether the two provisions necessarily conflict." *In re Interrogatories on Senate Bill 21-247 Submitted by Colo. Gen. Assembly*, 488 P.3d 1008, 1018 (Colo. 2021). Where, as is alleged to be the case here, legislation "directly

or indirectly impairs, limits or destroys rights granted by . . . constitutional provisions[, the legislation] is not permissible.” *Id.* (internal quotation omitted); *see also id.* (“We endeavor to avoid a narrow or technical reading of language contained in an initiated constitutional amendment if to do such would defeat the intent of the people.”) (internal quotation omitted). Plaintiff has alleged that the PNA delays, impedes, or discriminates against the right to abortion recognized in Amendment 79, now embodied in Article II, Section 32 of the Colorado Constitution. Defendant cites no authority suggesting that this is not enough to state a claim, and their motion is denied insofar as it seeks dismissal on the ground that Amendment 79 did not repeal the PNA.

B. Colorado may regulate abortions, but only in a manner consistent with the Constitution.

Defendants also appear to argue that Plaintiff fails to state a claim that the PNA is unconstitutional because Amendment 79 does not prohibit the State from regulating abortion. *See Mot.* at 12. As with the prior argument, Defendants cite no authority suggesting that the fact that a constitutional amendment does not expressly address (and prohibit) a specific prior statutory enactment means that the prior statutory enactment is immune from constitutional challenge, much less that a complaint asserting such a challenge fails to state a plausible claim for relief requiring dismissal at this stage. In the absence of such authority, the Court declines to impose such a requirement. There is no dispute that Colorado may continue to regulate abortions. That does not mean, however, that a plaintiff’s

challenge to the constitutionality of a specific abortion regulation necessarily fails, as a matter of law, to state a claim upon which relief can be granted.² The question, as discussed above, is whether the prior legislation directly or indirectly impairs, limits, or destroys a right granted in a subsequent constitutional amendment. Defendants' motion to dismiss on the ground that the State retains the power to regulate abortion is denied.

C. Plaintiff has adequately alleged that the PNA is unconstitutional.

Finally, Defendants argue that Plaintiff's constitutional challenge to the PNA under Amendment 79 should be dismissed because the Complaint does not plausibly allege that the statute is unconstitutional in all of its applications. Mot. at 13-19. To prevail on her facial challenge, Plaintiff will have to show that the PNA is unconstitutional in all of its applications. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008); *Dallman v. Ritter*, 225 P.3d 610, 625 (Colo. 2010). At this stage, of course, Plaintiff's factual allegations are taken as true, and all reasonable inferences therefrom are drawn in her favor. *See, e.g., Woodall v. Godfrey*, 553 P.3d 249, 255, 259 (Colo. App. 2024). Nonetheless, she must plead sufficient facts to state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also generally Warne v. Hall*, 373 P.3d 588 (Colo. 2016). That is, and in this context, Plaintiff's Complaint must plead facts that allow the Court to draw

² Stated differently: just because the State retains the right to regulate does not mean that all regulations are automatically constitutional or immune from constitutional challenge, as Defendants' argument would seem to imply.

the reasonable inference that no set of circumstances exist under which the PNA would be valid.

Plaintiff has done enough to satisfy her pleading burden at this stage. Amendment 79 recognizes the right to abortion and provides that the government shall not deny, impede, or discriminate against the exercise of that right. Colo. Const. art. II, § 32. Plaintiff alleges, *inter alia*, that the PNA imposes parental notification obligations on pregnant minors who want to have an abortion that are not imposed on pregnant minors who want to carry their pregnancies to term. Those additional obligations are apparent on the face of the PNA, which prohibits performing an abortion upon an unemancipated minor until at least 48 hours after written notice has been delivered to the parent, C.R.S. § 13-22-704, unless the person to be notified certifies in writing that he or she has been notified, *id.* § 705(1)(a), (b), the pregnant minor declares she is a victim of abuse or neglect and the attending physician reports it, *id.* § 705(1)(c), the attending physician certifies that there is a medical emergency and there is insufficient time to provide notice, § 705(1)(d), or the minor obtains a valid court order through judicial bypass procedures, *id.* §§ 705(1)(e), 707.

Defendant argues that those requirements do not deny, impede, or discriminate against pregnant minors' exercise of the right to abortion because they can still have an abortion (and the right is not therefore denied), a delay is not tantamount to denial, the additional obligations imposed on pregnant minors

seeking abortion care do not rise to the level of impediments, and there is no discrimination because pregnant minors remain minors who can be and are treated differently under the law. *See* Mot. at 13-20.

The Court disagrees and finds that, at a minimum, Plaintiff has stated a plausible claim that the PNA, in all of its applications, discriminates against pregnant minors who want to get an abortion. None of the requirements set out in the PNA are imposed on pregnant minors who intend to carry their pregnancies to term. All pregnant minors who want to get an abortion are subject to the additional notice requirements—or the requirements necessary to obtain an exemption to actual notice—set out in the PNA. By contrast, no pregnant minors who want to carry their pregnancies to term are subject to those or any comparable notice requirements, and, in fact, they can, by separate statute, authorize prenatal, delivery, and post-delivery medical care related to the intended live birth of a child without the need for parental notification or consent, or the need to seek and obtain an exemption from such requirement. *See* C.R.S. § 13-22-103.5 (“[A] pregnant minor may authorize prenatal, delivery, and post-delivery medical care for herself related to the intended live birth of a child.”).

The Court rejects Defendants’ argument that pregnant minors who intend to carry to term are not similarly situated to pregnant minors who intend to have an abortion. *See* Reply at 12. Defendants cite no authority for their argument on this score, the acceptance of which would immunize most laws from constitutional

discrimination challenges, requiring comparison of the application of laws to identically, rather than similarly, situated individuals. *Cf., e.g., Planned Parenthood of The Great Northwest v. State*, 375 P.3d 1122, 1136 (Alaska 2016) (“The parties agree that the relevant classes are pregnant minors seeking termination and pregnant minors seeking to carry to term.”); *Planned Parenthood of Cent. New Jersey v. Farmer*, 762 A.2d 620, 631 (N.J. 2000) (“The Parental Notification for Abortion Act is designed to impose restrictions on young women who seek an abortion, treating them differently than it treats young women who decide to carry to term.”).

In sum, the Court concludes that Plaintiff has adequately alleged that the PNA discriminates against pregnant minors’ right to abortion by requiring parental notification (or an exemption thereto) that is not required for pregnant minors who intend to carry their pregnancies to term. To be clear, the Court is not deciding that the requirements imposed by the PNA do, as a matter of law, rise to the level of unconstitutional discrimination,³ only that, at this stage, drawing all reasonable inferences in Plaintiff’s favor, she has stated a plausible claim that the PNA is unconstitutional. Whether or not Plaintiff will be able to prove that claim, or perhaps prove some subset of that claim, demonstrating, for example, that the PNA

³ Nor is the Court deciding any questions about the State’s interest (legitimate, compelling, or otherwise) in requiring parental notification.

is unconstitutional only in certain applications, are merits and remedies questions better addressed after the presentation of evidence and not on a motion to dismiss.

III. Defendants’ Motion To Dismiss For Failure To State A Claim That The PNA Is Unconstitutional On Equal-Protection Grounds Is Granted.

In her second claim for relief, Plaintiff alleges that the PNA is unconstitutional under article II, section 25 of the Colorado Constitution because it “draws a gender-based classification that impinges on young females’ fundamental right to abortion.” Compl. ¶ 146. Plaintiff alleges that the PNA violates Colorado’s equal-protection guarantees because it does not impose similar notification requirements on males who cause a minor’s pregnancy. Compl. ¶¶ 10, 94, 98; *see also* Opp. at 17-20 (arguing that the PNA violates the right to equal protection because it does not impose comparable burdens on pregnant minors’ male partners who caused the pregnancy).

Defendants move to dismiss this claim on the ground that non-pregnant males are not similarly situated to pregnant minors. *See* Mot. at 20-21.

The Court agrees. The Equal Protection Clause of the United States Constitution provides that 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 have 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), which “assures the like treatment of all persons who are similarly situated,” *id.*

Plaintiff fails to state a plausible gender-based equal protection claim. Simply put, non-pregnant males who cause pregnancies are not similarly situated to the pregnant females whom they impregnate. *See supra* at 12-13 (citing cases recognizing that pregnant minors who intend to carry to term is the appropriate comparator class); *cf. Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 236 (2022) (“[A] State’s regulation of abortion is not a sex-based classification . . .”).

Defendants’ motion to dismiss Plaintiff’s second claim for relief is granted, and that claim is dismissed.

IV. Defendants’ Motion To Dismiss For Failure To State A Claim That The PNA Violates The Colorado Equal Rights Amendment Is Granted.

In Plaintiffs’ third claim for relief, Plaintiff alleges that the PNA is unconstitutional under Colorado’s Equal Rights Amendment (“ERA”) because it “discriminates against females based exclusively on their sex, social stereotypes connected with gender, and culturally induced dissimilarities without sufficient justification.” Compl. ¶ 151. “Dr. Cohen challenges the [PNA’s] classification between young women seeking abortions and their partners who are young men.” Opp. at 21.

Colorado’s ERA provides as follows: “Equality 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.” Colo. Const. art. II, § 29. The ERA “prohibits unequal treatment based exclusively on the circumstance of sex, social stereotypes connected with gender, and culturally induced dissimilarities.” *People v. Salinas*, 551 P.2d 703, 706

(Colo. 1976). It does not, however, “prohibit differential treatment among the sexes when . . . that treatment is reasonably and genuinely based on physical characteristics unique to just one sex. . . . In such a case, the sexes are not similarly situated and thus, equal treatment is not required.” *Id.*

Defendants argue, *inter alia*, that Plaintiff fails to state a claim based on non-pregnant male partners not being subject to the PNA. *See* Mot. at 23; Reply at 13-14. Again, the Court agrees. As discussed above, the appropriate comparator class is pregnant minors who intend to carry to term, not minor male partners (assuming, indeed, there is one). To the extent the PNA is discriminatory, it is not on the basis of sex, but rather—and as articulated in Plaintiff’s first claim for relief, and as will be the subject of this case going forward—on the ground that it treats pregnant minors who want to get an abortion differently from pregnant minors who want to carry their pregnancies to term.

Defendants’ motion to dismiss Plaintiff’s claim under the ERA is granted, and Plaintiff’s third claim for relief is dismissed.

CONCLUSION

For the reasons set forth above, Defendants’ motion to dismiss is granted in part and denied in part. The motion is granted as to Plaintiff’s second and third claims for relief and otherwise denied.

Defendants shall answer what remains of Plaintiff’s complaint within 14 days.

Dated: August 17, 2026

A handwritten signature in black ink, appearing to read "Ian J. Kellogg", written over a horizontal line.

Ian J. Kellogg
District Court Judge