IN THE MISSOURI SUPREME COURT
No. SC101176

THE STATE OF MISSOURI, et al.,

Appellants,

v.

COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, PLANNED PARENTHOOD GREAT RIVERS-MISSOURI,

Respondents,

On Appeal from the Circuit Court of Jackson County
Case No. 2416-CV31931
Honorable Jerri J. Zhang

RESPONDENTS' BRIEF

GILLIAN R. WILCOX, #61278
JASON ORR, #56607
ACLU of Missouri Foundation
406 West 34th Street, Ste. 420
Kansas City, MO 64111
Phone: (816) 470-9938
gwilcox@aclu-mo.org
jorr@aclu-mo.org

ELLA SPOTTSWOOD**
CAMILA VEGA**
VANESSA PAI-THOMPSON**
JENNIFER SANDMAN*
Planned Parenthood Federation of America
123 William Street, 9th Floor
New York, NY 10038
Phone: (212) 541-7800
ella.spottswood@ppfa.org
camila.vega@ppfa.org
vanessa.pai-thompson@ppfa.org
jennifer.sandman@ppfa.org

KRISTIN M. MULVEY, #76060
JONATHAN D. SCHMID, #74360
TORI M. SCHAFER, #74359
ACLU of Missouri Foundation
906 Olive Street, Suite 1130
St. Louis, Missouri 63101
Phone: (314) 652-3114
kmulvey@aclu-mo.org
jschmid@aclu-mo.org
tschafer@aclu-mo.org

CHELSEA TEJADA*
ACLU Foundation
125 Broad Street, Floor 18
New York, NY 10004
Phone: (212) 549-2633
ctejada@aclu.org

TIFFANIE MCDOWELL*
Crowell & Moring LLP
3 Park Plaza, 20th Floor
Irvine, CA 92614
Phone: (949) 263-8414
TMcdowell@crowell.com

VIRGINIA MARINO*
EMILY T. KAPPERS*
Crowell & Moring LLP
455 N. Cityfront Plaza Drive
Suite 3600
Chicago, IL 60611
Phone: (312) 321-4200
VMarino@crowell.com
EKappers@crowell.com

VIRGINIA MARINO*
EMILY T. KAPPERS*
JUNG UN SHIN*
YIXIN BAO*
Crowell & Moring LLP
455 N. Cityfront Plaza Drive,
Suite 3600
Chicago, IL 60611
Phone: (312) 321-4200
VMarino@crowell.com
EKappers@crowell.com
Jshin@crowell.com
Ybao@crowell.com

Attorneys for Respondents

** pro hac vice in trial court*
*** pro hac vice motion filed in Supreme Court*

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JURISDICTIONAL STATEMENT

For the reasons explained in Respondents' July 25 response to this Court's Order to Show Cause dated July 17, 2025, this Court does not have exclusive jurisdiction over interlocutory appeals of preliminary injunction orders and this case should be transferred to the Western District Court of Appeals.[1]

[1] There are also serious questions as to whether Senate Bill 22 (codified in § 526.010.2), which granted the Attorney General statutory authority to appeal preliminary injunctions, is in violation of Missouri Constitution article III, sections 21 & 23. These questions have been raised in *Nicholson v. State*, No. 25AC-CC03765 (Mo. Cole Cnty. Cir. Ct.), currently scheduled for trial on August 26, 2025. If this Court wishes to address these issues before addressing this appeal, Respondents respectfully request that the Court consider transferring this appeal to the Western District, or staying this appeal altogether, pending the outcome of *Nicholson*. In the alternative, if the Court wishes to decide the constitutionality of Senate Bill 22 without an evidentiary record, Respondents respectfully request the opportunity to submit supplemental briefing on those issues.

INTRODUCTION

In over 125 pages of briefing, Appellants have failed to identify even one valid reason for this Court to find that the trial court abused its discretion. The trial court properly preliminarily enjoined medically irrelevant laws that Appellants themselves have for decades characterized as abortion restrictions—laws that collectively all but eliminated abortion access in Missouri even before *Dobbs* allowed Missouri's total abortion bans to take effect.

Appellants recycle almost every argument used to defend and justify abortion restrictions over the last fifty years. While some of these arguments prevailed under the now-extinct federal undue burden standard, they are entirely irrelevant to Missouri's transformed constitutional landscape, which enshrines far more robust protections for reproductive freedom, including the right to abortion. Alternatively, Appellants attempt to distort the plain language of the Right to Reproductive Freedom, straining to characterize these restrictive laws as compatible with Missouri's newly heightened constitutional standards. Appellants' effort to make the Right to Reproductive Freedom a right in name only must fail.

Fundamentally, this case presents straightforward legal questions. The people of Missouri deliberately enshrined substantial protections for reproductive freedom in their Constitution. The challenged laws embody precisely the types of restrictions Missourians voted to prohibit. Only because of the trial court's preliminary injunctions have Respondents been able to resume providing abortions in Missouri. Permitting Appellants'

challenges to prevail would render meaningless both this constitutional right and the democratic will of the people who established it. The trial court's preliminary injunction order should be affirmed.

STATEMENT OF FACTS

I. The Right to Reproductive Freedom.

On November 5, 2024, Missouri voters approved the Right to Reproductive Freedom Initiative, adopting Section 36 of the Missouri Constitution ("Section 36").

With that vote, "the right to make and carry out decisions about all matters relating to reproductive health care, including . . . abortion," became a fundamental right under the Missouri Constitution. Mo. Const. art. I, §36.2. Under Subsection 36.3, "[t]he right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means." *Id.* §36.3 ("Subsection 3"). A "governmental interest is compelling only if it is [1] for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, [2] consistent with widely accepted clinical standards of practice and evidence-based medicine, and [3] does not infringe on that person's autonomous decision-making."[2] *Id.* Subsection 36.6 separately provides an antidiscrimination provision: "[t]he Government

[2] Post-viability, Subsection 4 provides that "under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person." Mo. Const. art. I, § 36.4. Fetal viability is defined as "the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures." *Id.* § 36.8(1).

shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." *Id.* §36.6 ("Subsection 6"). And Subsection 36.5 provides a safe haven: "Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so." *Id.* §36.5 ("Subsection 5"). This right to reproductive freedom is far more protective than the pre-*Dobbs* federal substantive due process standard ever was, in part because Subsection 3 requires the government to demonstrate a specific compelling state interest (which was not required under the federal "undue burden" standard) and Subsection 6 explicitly protects abortion providers and patients from discrimination—a principle federal law never adopted.

II. Abortion is safe and common.

Approximately one in four women, for a wide variety of reasons, have an abortion by the age of forty-five. D6, ¶8.[3] Some may not want to have children at all; some plan to have children (or additional children) when they are older and better equipped to care for them emotionally and financially; and some are in a violent relationship and fear that having a child will forever tether them to an abusive partner. Others learn of medical

[3] Much of the initial record evidence regarding abortion safety was submitted by Dr. Sandoval, one of Respondents' experts. Appellants baselessly smear Dr. Sandoval as having been "disciplined" when she was not. Br. 23–24. In fact, the official record of the incident to which they presumably refer expressly states that *no* disciplinary action was taken against Dr. Sandoval. And Appellants inexplicably discount Respondents' other expert, Dr. Grossman, who submitted a detailed ninety-page affidavit on rebuttal, supporting Dr. Sandoval's original testimony. *See* D57.

diagnoses affecting their health or the health of their wanted pregnancy. *Id.* ¶9. Abortion is a safe, common procedure with risks nearly identical to miscarriage management and lower than those associated with continuing pregnancy to term. D57, ¶¶7, 12, 86-97; D6, ¶¶17-20. But while abortion is very safe, the medical risks increase as pregnancy progresses. D6, ¶16. Indisputably, delay in accessing abortion increases a patient's health risks.

There are two methods of abortion: medication abortion and procedural abortion. *Id.* ¶10. For pregnancies up to twelve weeks, dated from the first day of a patient's last menstrual period ("LMP"), a patient may have an abortion using oral medications alone. *Id.* ¶6. No anesthesia or sedation is involved. The patient takes one medication and then a second one 24-48 hours later, passing the products of conception, usually at home, in a process comparable to an early miscarriage. *Id.* ¶¶11-12, 14; D57, ¶37.

Procedural abortion, which is also available early in pregnancy, involves dilating the cervix and using suction and/or instruments to empty the contents of the uterus. D6, ¶13. Starting at approximately fourteen weeks LMP, suction alone may no longer be sufficient, and it is common to use both suction and instruments to remove the pregnancy. *Id.* This process generally takes approximately 2-15 minutes. *Id.* Starting at approximately eighteen weeks LMP, patients usually require two consecutive days of care: cervical

dilation on the first day, and the abortion procedure on the second. *Id.* Procedural abortion is not surgery because it requires no incision into the patient's skin. *Id.*

Abortion is time-sensitive, essential health care. Delaying or denying access to abortion is extremely harmful for patients and their families. *Id.* ¶22. Even uncomplicated pregnancies carry risks and physical burdens that increase over time, since pregnancy taxes every major organ system in the pregnant person's body. *Id.* ¶¶17-20. Given this, every day a person is forced to remain pregnant against their will causes physical and sometimes psychological harm—particularly if the pregnancy worsens underlying health conditions or causes new health conditions. *Id.* Legal barriers to abortion compound existing logistical and financial challenges, especially for patients living on low incomes and juggling work and childcare responsibilities. Delays can force patients to have later or more complex procedures, and sometimes prevent patients' access to abortion altogether. *Id.* ¶22.

III. Missouri bans and restricts abortion.

The Missouri Legislature has relentlessly pursued its long-held goal to severely restrict—and ultimately eliminate—access to abortion in Missouri. *See, e.g.*, §188.010, RSMo 2016[4] ("It is the intention of the general assembly of the state of Missouri to . . .

[4] All statutory citations are to Missouri Revised Statutes (2016), as updated, unless otherwise noted.

regulate abortion to the full extent permitted by the Constitution . . . ."). Missouri has passed nearly every abortion ban and restriction conceived of by the anti-abortion movement, culminating in the 2019 passage of a total abortion ban which took effect within forty-five minutes of the U.S. Supreme Court overturning *Roe v. Wade*, 410 U.S. 113 (1973) in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). §188.017 (the "Total Ban").

In addition to that Total Ban, Missouri has multiple, overlapping abortion bans starting at eight weeks LMP, §188.056, fourteen weeks LMP, §188.057, eighteen weeks LMP, §188.058, and twenty weeks LMP, §188.375 (collectively, the "Gestational Age Bans"),[5] as well as a ban on abortion where the provider "knows" a patient is seeking an abortion "solely because of a prenatal diagnosis, test, or screening indicating Down syndrome" or the potential for it, or on the basis of the sex or race of the embryo or fetus, §§188.038, 188.052; 19 C.S.R. §10-15.010(1) ("Reasons Ban"). The Total Ban and Gestational Age Bans have no exceptions, but each contains a single, narrow affirmative defense for medical emergencies.

Beyond these outright bans, Missouri spent over two decades enacting successive waves of medically unnecessary restrictions that single out, stigmatize, and interfere with

[5] Each of the Gestational Age Bans takes effect prior to viability. D6, ¶25. Each of the Gestational Age Bans is also purportedly "severable" such that, in the event any of them is found unconstitutional or invalid, the other Gestational Age Bans are intended to remain in effect. *See* §§188.056.4, 188.057.4, 188.058.4, 188.375.9.

abortion care, treating it differently from all other health care (collectively, "Targeted Restrictions on Abortion Providers laws" or "TRAP laws"). These laws discriminate against and treat abortion distinctly even from miscarriage care, which involves exactly the same drugs and procedures as abortion care. The TRAP laws all but shut down abortion access in the state even before *Dobbs* allowed the Total Ban to take effect. As relevant to this case, these include:

- Laws singling out abortion for medically unnecessary, onerous, hospital-like requirements that forced most health centers to stop providing abortion in 2018. §§197.200-.235, 334.100.2(27); 20 C.S.R. §2150-7.140(2)(V), 19 C.S.R. §§30-30.050-.070 (the "Abortion Facility Licensing Requirement"). These restrictions include a requirement that any health center that provides an abortion—even a single medication abortion—must be annually licensed as an "ambulatory *surgical* center," with large, hospital-like corridors, doorways, and rooms, despite that neither medication nor procedural abortion is surgery.
- Several overlapping requirements that abortion providers have admitting privileges (or similar) at a local hospital—privileges which abortion providers often cannot obtain, for example because the nature of their practice means they do not regularly admit patients to the hospital. §§188.080, 188.027.1(1)(e), 197.215.2; 19 C.S.R. §30-30.060(1)(C)(4) (the "Hospital Relationship Restrictions"). These privileges are medically irrelevant for the safe provision of abortion and are not required for other equivalent care.

- A special, Department of Health and Senior Services ("DHSS")-approved "complication plan" that DHSS historically has made a moving target and that requires medication abortion providers to have a detailed contract with an ob-gyn who will be "on-call and available" around the clock to "personally treat all complications" arising from medication abortion, §188.021.2 ("Medication Abortion Complication Plan Statute"), 19 C.S.R. §30-30.061 ("Medication Abortion Complication Plan Regulation") (collectively, the "Medication Abortion Complication Plan Requirement"). No other medication is subject to such onerous and unnecessary requirements.

- A requirement that all tissue removed from an abortion be promptly sent to a pathologist for examination and report, regardless of medical need. §188.047; 19 C.S.R. §10-15.030, 30-30.060(5)(B) (the "Pathology Requirement"). This requirement is not imposed on other procedures.

- A requirement to give every patient a lengthy list of state-mandated, biased information and materials, including graphic illustrations of fetal development and information about carrying a pregnancy to term, designed to interfere with the patient's autonomous decision to have an abortion. §§188.027, 188.033, 188.039 (the "Biased Information Law"). There is no other obstetric or gynecological care in Missouri for which a similar script is mandated, and Respondents are not aware of any other medical care for which Missouri law imposes such a requirement. D6, ¶45.

- Restrictions that force patients to travel to a health center for two in-person appointments, at least seventy-two hours apart, with the same doctor who will provide the abortion. These restrictions create often insurmountable hurdles for patients, as well as logistical challenges for providers, and are not imposed on other medical care. §§188.027, 188.039 (the "Waiting Period, In-Person, Same Physician Restrictions"). The purpose of the first in-person appointment, which delays already extremely time-sensitive health care, is simply to present the patient with the state-scripted mandatory "disclosures" described above.

- A ban on telemedicine abortion, requiring a patient to take the first of the two medication abortion drugs "in the same room and in the physical presence" of the prescribing physician. §188.021.1 (the "Telemedicine Ban"). This Telemedicine Ban applies only to abortion; all other health care within the scope of a provider's practice may be provided via telemedicine when the provider determines it is appropriate to do so. And the same medication need not be taken in the physical presence of the prescribing physician when taken for non-abortive purposes, such as miscarriage management.

- Restrictions that ban qualified, licensed health care professionals other than physicians from providing abortion care, including medication abortion, §§188.020, 188.080, 334.245, 334.735.3, even though this care falls well within the scope of practice for advanced practice clinicians ("APCs"), such as physician's assistants or advanced practice registered nurses, who, in addition to

providing even more complex care, routinely and safely provide the exact same medications and procedures for miscarriage management (the "APC Ban").

Missouri enforces all of the above laws with criminal penalties, as well as potentially catastrophic licensing and other civil penalties against providers. Violations of the Total Ban, Gestational Age Bans, and the APC Ban are each a Class B felony punishable by five to fifteen years in prison. §§188.017.2, 188.056.1, 188.057.1, 188.058.1, 188.375.3, 188.080, 334.245; *see also* §558.011.1(2). All of the other laws described above are class A misdemeanors punishable by up to one year of imprisonment. *See* §§188.075, 197.235, 188.080; *see also* §558.011.1(6).

These laws, which blatantly discriminate against abortion patients and providers, have collectively and individually denied, interfered with, delayed, and restricted Missourians' access to abortion for many years. This can no longer stand under the plain language of Section 36.

IV. Respondents' Lawsuit.

Respondents are non-profit organizations that provided abortions in Missouri until the restrictive laws described above forced them to stop. Following the trial court's partial preliminary injunction in this case, they have resumed providing some procedural abortions and seek to permanently restore both procedural and medication abortion services to effectuate the rights established by the Right to Reproductive Freedom Initiative. Comprehensive Health of Planned Parenthood Great Plains ("Comp Health") operates four health centers in the state. Comp Health stopped providing abortions in

Missouri in 2018 because Missouri's many overlapping, overly restrictive TRAP laws proved impossible to comply with. D7, ¶¶5-16. Planned Parenthood Great Rivers-Missouri ("Great Rivers") is based in Missouri and operates six health centers in the state. D8, ¶3 & n. 2. Through an affiliated organization, Great Rivers (then operating as Planned Parenthood of the St. Louis Region and Southwest Missouri) stopped providing abortion in Missouri on June 24, 2022, when the Total Ban went into effect. *Id.* ¶3. Even before 2022, however, Great Rivers was providing only procedural abortions, not medication abortions, and only at a single health center, because of Missouri's TRAP laws. *Id.*

On November 6, 2024, Respondents filed suit seeking preliminary injunctive relief against enforcement of the Total Ban, the Gestational Age Bans, the Reasons Ban, the Abortion Facility Licensing Requirement, the Hospital Relationship Restrictions, the Medication Abortion Complication Plan Requirement, the Pathology Requirement, the Biased Information Law, the Waiting Period, In-Person, and Same Physician Restrictions, the Telemedicine Ban, and the APC Ban (the "Challenged Laws").[6] Respondents argued that these laws likely violated the newly enacted constitutional provisions for two main reasons relevant to this appeal: first because they likely "denied, interfered with, delayed, or otherwise restricted" abortion access in Missouri; and

[6] Respondents challenged other restrictions in their operative Petition as well, but moved for preliminary injunctive relief only on the laws listed above.

second because they likely "discriminate[d] against persons providing or obtaining reproductive health care or assisting another person in doing so." Mo. Const. art. I, §36.[7] Respondents also argued that they would be irreparably harmed if the laws were not preliminarily enjoined, and that the balance of harms and the public interest weighed in favor of a preliminary injunction.

Respondents also obtained certification of a defendant class of local prosecutors who have concurrent enforcement authority with the Attorney General over most of the Challenged Laws. D11; D128. The Jackson County Prosecutor, which has enforcement authority in the county where Comp Health operates a health center, was named as the class representative. D128. Appellants moved to dismiss the Jackson County Prosecutor[8] and to transfer venue to Cole County.

The trial court denied Appellants' motion to dismiss the Jackson County Prosecutor and transfer venue. D69. Appellants sought writs in both the Western District and this Court on the venue decision. These writs were summarily denied, and the case has since been steadily proceeding in Jackson County. Order, *State ex rel. Parson v.*

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[7] Respondents also brought claims alleging that the Challenged Laws and their criminal penalties violate Subsection 5's prohibition on "penaliz[ing], prosecut[ing], or otherwise subject[ing] to adverse action" anyone who "assist[s] a[nother] person in exercising their right to reproductive freedom with that person's consent." Mo. Const. art. I, §36.5.

[8] The current Jackson County Prosecutor, Melesa Johnson, was substituted as a defendant in this case after she was elected.

Zhang, No. WD87694 (Mo. App. W.D. Dec. 17, 2024); Order, *State ex rel. Parson v. Zhang*, No. SC100906 (Mo. banc Feb. 18, 2025.).

V. The trial court preliminarily enjoined many of Missouri's abortion restrictions.

On December 20, 2024, after hundreds of pages of briefing, dozens of affidavits, and extensive oral argument, the trial court granted in part and denied in part Respondents' motion for preliminary injunction. D92. Finding that Respondents had met their burden for preliminary injunctive relief, the Court preliminarily enjoined the Total Ban, Gestational Age Bans, Reasons Ban, Telemedicine Ban, Hospital Relationship Restrictions, Pathology Requirement, Biased Information and Waiting Period Requirements, Reporting Requirements, and the Medication Abortion Complication Plan Regulation. It declined to preliminarily enjoin the Abortion Facility Licensing Requirement, the Medication Abortion Complication Plan Statute, the In-Person and Same Physician Requirements, and the APC Ban. It did not consider Respondents' arguments that the Challenged Laws violated the anti-discrimination provisions in Section 36, instead exclusively evaluating Respondents' motion, under the then-applicable preliminary injunction standard articulated in *State ex rel. Director of Revenue, State of Missouri v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996), that there was a showing of probability of success on the merits of the claims that those laws "denied, interfered with, delayed, or otherwise restricted" the Right to Reproductive Freedom, Mo. Const. art. I, §36.3. The trial court noted that Respondents had shown irreparable harm "[w]here the

statutes at issue unquestionably conflict with the newly established rights afforded by Amendment 3." D92, p.8. The trial court also found that the balance of harms and the public interest weighed in Respondents' favor, where "Defendants only stand to lose the ability temporarily to enforce some laws that are likely to be held unconstitutional and which further no valid compelling state interest," and where "the public interest is clear that voters, i.e. the public, intended to create a new fundamental right to reproductive freedom for all Missourians." *Id.* pp.8-9. The trial court also relied on Subsection 5 to specifically enjoin the criminal penalties corresponding with each of the laws the court had also enjoined under Subsections 6 and 3. D196, pp.19-20.

Despite the relief granted by the trial court, Respondents remained unable to provide abortions in Missouri because the Abortion Facility Licensing Requirement remained enforceable. Appellants therefore moved for reconsideration, only on that specific law, requesting that the trial court reconsider its arguments that it was unconstitutionally discriminatory under Subsection 6.

After supplemental briefing and oral argument on Respondents' Motion for Reconsideration, the trial court granted the motion on February 14, 2025. D129. As to the Abortion Facility Licensing Requirement, the trial court found Respondents had "demonstrated a likelihood of success" on the claim that "the facility licensing requirement is facially discriminatory because it does not treat services provided in abortion facilities the same as other types of similarly situated health care, including miscarriage care." D129, p.3.

Appellants filed a writ related to the preliminary injunction orders with the Western District on March 12, which was summarily denied, and with this Court on March 21. On May 7, they also filed an appeal from the December 20 and February 14 preliminary injunction orders after the Missouri Legislature granted the Attorney General the unique and unilateral ability to do so, despite that the preliminary injunctions were issued before the Attorney General gained this new power to directly appeal the interlocutory orders.

The trial court's preliminary injunction orders allowed both Respondents to resume providing procedural abortions in Missouri. They have been unable to provide medication abortions because DHSS has declined to approve the complication plans submitted by Respondents, as required by the Medication Abortion Complication Plan Statute, which remained enforceable, unlike the regulation issued under its authority. Rather than considering Respondents' application for DHSS approval of their medication abortion complication plans, Appellants issued a new, even more onerous emergency regulation under the Medication Abortion Complication Plan Statute while this case was pending.[9] 19 C.S.R. §30-30.062. After issuing this new regulation, Appellant DHSS denied Respondents' pending applications for approval of their complication plans (submitted before the new regulation was issued), but not before Appellant Attorney General issued

[9] These new regulations are virtually identical to the original regulations, but more onerous because they require an abortion provider to have two separate DHSS-approved complication plans, depending on how far away a patient lives from the health center. The new regulations are the subject of a new preliminary injunction motion and are not at issue in this appeal.

both Respondents Cease and Desist Letters directing them not to provide medication abortions (which, as Appellants knew, they were not providing).[10] D133, pp.4-6; D134, ¶¶12-15; D135, ¶¶12, 14-16.

In order to provide medication abortion in Missouri, Respondents then had to amend their petition and move for a second preliminary injunction against the new complication plan regulation enacted while the lawsuit was pending, the Medication Abortion Complication Plan Statute, and a requirement to carry "tail insurance" in order to provide medication abortion, §188.044. The trial court has scheduled oral argument on this motion for September 10, 2025.

VI. This Court's peremptory writ and the trial court's new order.

On May 27, 2025, in response to Appellants' writ, this Court issued a peremptory writ clarifying the preliminary injunction standard. The Court ruled that the standard articulated in *Gabbert* was no longer correct in light of legal developments in the Eighth Circuit. Instead, the Court adopted the standard articulated in *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, 530 F.3d 724, 731-33 (8th Cir. 2008). Unlike *Gabbert*, the *Rounds* standard requires that "where a preliminary injunction is sought to enjoin the implementation of a duly enacted state statute," the district court must

[10] Respondents sued the Attorney General for baselessly issuing these letters, but voluntarily dismissed those lawsuits without prejudice when the letters expired. *See Planned Parenthood Great Rivers v. Bailey*, No. 2522-CC00590 (Mo. Cole Cnty. Cir. Ct.); *Comprehensive Health of Planned Parenthood Great Plains v. Bailey*, No. 2516-CV10799 (Mo. Cole Cnty. Cir. Ct.).

make a "threshold finding that a party is likely to prevail on the merits," not just that they have a fair chance of doing so. *Id.* at 732-33. The peremptory writ directed the trial court to vacate its preliminary injunction orders and reevaluate the request for preliminary injunctive relief "in light of this standard." Peremptory Writ, *State ex. rel. Kehoe v. Zhang*, No. SC101026, 2025 WL 1564397 (Mo. banc May 27, 2025). On June 11, 2025, the trial court vacated its preliminary injunction orders, once again shutting off access to legal abortion care in Missouri. After allowing both parties to state their positions on how it should proceed and limited briefing on the applicable standard, the trial court determined that it did not need another fulsome round of briefing or argument to apply the *Rounds* standard. D195. For context, to date, there have been over 1,500 pages submitted to the trial court and a combined eight hours of oral argument on Respondents' preliminary injunction motion and motion to reconsider.

On July 3, 2025, the trial court reassessed the record and issued a new preliminary injunction order applying the *Rounds* standard. Finding that Respondents had met their burden for preliminary injunctive relief, including likelihood of success on their Subsection 3 or Subsection 6 claims, the Court preliminarily enjoined the Total Ban, Gestational Age Bans, Reasons Ban, Telemedicine Ban, Hospital Relationship Restrictions, Pathology Requirement, Biased Information and Waiting Period Requirements, Medication Abortion Complication Plan Regulation, and the Abortion Facility Licensing Requirement. It declined to preliminarily enjoin the Medication Abortion Complication Plan Statute, the In-Person and Same Physician Requirements,

and the APC Ban. Respondents have since resumed providing procedural abortion. However, Respondents remain barred from providing medication abortion. D133, pp.1, 3.

Appellants appealed directly to this Court. On July 18, this Court issued an Order to Show Cause regarding jurisdiction over this appeal, and the parties submitted simultaneous briefing on July 25. No decision has been issued on the Order to Show Cause.

STANDARD OF REVIEW

A trial court "has broad discretion in ruling on requests for preliminary injunctions," and such rulings are reviewed for abuse of discretion and will be reversed on appeal based only on "'clearly erroneous factual determinations, an error of law, or an abuse of that discretion.'" *Kroupa v. Nielsen*, 731 F.3d 813, 818 (8th Cir. 2013) (quoting *Med. Shoppe Int'l v. S.B.S. Pill Dr.*, 336 F.3d 801, 803 (8th Cir. 2003). A trial court abuses its discretion only when its "ruling is clearly against the logic of the circumstances then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration." *Lozano v. BNSF Ry. Co.*, 421 S.W.3d 448, 451 (Mo. banc 2014) (citing *In re Care & Treatment of Donaldson*, 214 S.W.3d 331, 334 (Mo. banc 2007)). "If reasonable persons can differ as to the propriety of the trial court's action, then it cannot be said that the trial court abused its discretion." *St. Louis Cnty. v. River Bend Ests. Homeowners' Ass'n,* 408 S.W.3d 116, 123 (Mo. banc 2013) (quoting *Donaldson,* 214 S.W.3d at 334). A "trial court's finding is clearly erroneous only if the reviewing court is

left with a definite and firm conviction a mistake has been made." *State v. Smulls*, 935 S.W.2d 9, 15 (Mo. banc 1996).

"[I]t is well settled that if the action of the trial court was proper on any ground, although not asserted, such action will be upheld." *Franklin v. Friedrich,* 470 S.W.2d 474, 476 (Mo. 1971). "[I]t is immaterial on what ground the objection or ruling was made or whether such ground is good; and the sufficiency of the reason need not be considered." *Id.*

ARGUMENT

The trial court's preliminary injunction order should be affirmed. Considering the ample record and strong constitutional mandate, the trial court did not abuse its discretion by granting Respondents partial preliminary relief. Appellants' threshold arguments merely re-litigate well-established law. And their likelihood-of-success-on-the-merits arguments contort the language of both the Challenged Laws and Section 36 beyond recognition. The trial court's preliminary injunction has allowed Respondents to restore some abortion access to Missouri. If the injunction is overturned, Missourians will be unable to access abortion in their state and the constitutional protections voters established through Section 36 will be rendered meaningless.

I. Section 36 establishes broad, unambiguous protections for reproductive freedom.

Section 36's plain language makes clear that the Constitution's new protections for reproductive freedom are robust, and that Missourians intended for any abortion regulations to be subject to a demanding heightened strict scrutiny review.

As Section 36 states, if a law "denie[s], interfere[s] with, delay[s], or otherwise restrict[s]" the "right to make and carry out decisions about . . . reproductive health care, including . . . abortion care," the infringing law "shall be presumed invalid" and the burden is on the government to "demonstrate[] that such action is justified" under a heightened strict scrutiny standard. Mo. Const. art. I, §§36.2-.3. While state statutes may ordinarily be entitled to a presumption of constitutionality, Section 36 eliminates that presumption for laws infringing on the fundamental right to reproductive freedom (i.e., the Challenged Laws). *See also* Reply Br. of Appellant 6, *Fitz-James v. Ashcroft*, 678 S.W.3d 194 (Mo. App. W.D. 2023) (No. WD 86595) (arguing that "*[e]very* regulation is . . . presumed invalid. And that presumption is rebuttable only if . . . state or local officials satisfy a standard even stricter than strict scrutiny"); *id.* at 8 (arguing the "presumption can be rebutted only by satisfying a new tier of scrutiny much more stringent even than strict scrutiny"); *id.* at 10 (stating restrictions that delay abortions are subject to "ultrastrict

scrutiny"). Instead, Appellants have the burden to prove that a challenged abortion restriction is constitutional.[11]

Marshalling that proof requires Appellants to demonstrate both that a challenged restriction is "justified by a compelling governmental interest" and that such interest is being "achieved by the least restrictive means." Mo. Const. art. I, §36.3. Subsection 3 also circumscribes the governmental interest that may be compelling:

> [A] governmental interest is compelling only if it [1] is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, [2] is consistent with widely accepted clinical standards of practice and evidence-based medicine, and [3] does not infringe on that person's autonomous decision-making.

Id. The asserted governmental interest must meet *all three* of these requirements to be compelling. But because of requirement [1], the *only* government interest that ever can be

[11] The presumption of unconstitutionality can be found in other areas of constitutional law as well. *See, e.g., Fox v. State*, 640 S.W.3d 744, 750 (Mo. banc 2022) ("Laws that regulate speech based on its communicative content 'are *presumptively unconstitutional* and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.'" (emphasis added)); *Preterm-Cleveland v. Yost* ("*Preterm-Cleveland II*"), No. A2203203, 2024 WL 4577118, at *12 (Ohio C.P. Oct. 24, 2024) ("Interestingly, the structure of the [Ohio Reproductive Rights] Amendment places the right to abortion in Ohio on par with the right to possess a firearm under the U.S. Supreme Court's decision in *New York State Rifle & Pistol Assoc, Inc. v. Bruen*, 597 U.S. 1 (2022) . . . [which] places the burden on [the] State . . . to prove that gun regulations are [constitutional.]"); *cf. Hodes & Nauser, MDs, P.A. v. Stanek*, 551 P.3d 62, 74 (Kan. 2024) (finding, under Kansas constitution, any infringement "*regardless of degree* and *even if the infringement is slight*" is sufficient to trigger the government's burden under traditional strict scrutiny).

found compelling must be an interest in improving or maintaining the health of the person seeking care (here, the pregnant person seeking an abortion).

The plain terms of the amendment create a low bar for triggering the presumption of invalidity under Subsection 3. The term "*interfere with*" means to "make (something) slower or more difficult." *Interfere with*, Merriam-Webster.com Dictionary (July 18, 2025), https://www.merriam-webster.com/dictionary/interfere%20with. *Any* law which makes abortion "slower or more difficult" to access must be subject to the heightened strict scrutiny standard of Subsection 3. Laws that do not outright "deny" access to abortion, but simply "interfere with" access, still trigger heightened strict scrutiny. *See generally Northland Fam. Plan. Ctr. v. Nessel*, No. 24-000011-MM, 2025 WL 2098474 (Mich. Ct. Cl. May 13, 2025) (enjoining multiple laws that interfere with abortion access under very similar state constitutional provision).[OBJ]

Similarly, Subsection 6 explicitly prohibits discrimination based on abortion: "The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so." Mo. Const. art. I, §36.6. This provision, by its plain language, prevents discrimination based on a patient's decision to have, or a provider's decision to provide, an abortion. Appellants cannot enforce laws, like the Challenged Laws, that target abortion patients and their providers solely based on the type of health care they seek and provide. Laws that single out abortion care for regulation different from other health care—including miscarriage care, which involves identical drugs and procedures—fail the plain terms of Subsection 6. Unlike Subsection

3, the constitutional language of Subsection 6 does not allow the Government to discriminate on the basis of obtaining or providing an abortion *in any circumstance.* This discrimination therefore can never be justified.[12]

Finally, the safe haven provision of Subsection 5 prohibits "penaliz[ing]" or "prosecut[ing]" someone for helping another person "exercis[e] their right to reproductive freedom"—thus invalidating criminal penalties for providing or assisting with abortion. Mo. Const. art. I, §36.5.

II. The preliminary injunction was properly granted.

As the trial court found, Respondents are likely to succeed on the merits of their claims under Section 36. D196, pp.7-8 (Total Ban); 8-9 (Gestational Age Bans); 9-10 (Reasons Ban); 11 (Abortion Facility Licensing Requirement); 11-12 (Hospital Relationship Restrictions); 12-13 (Medication Abortion Complication Plan Regulation); 13-14 (Pathology Requirement); 15-16 (Biased Information Law); 16-18 (Waiting Period Requirement); 18-19 (Telemedicine Ban). In arriving at its conclusion, the trial court made

[12] Even under Missouri's equal protection clause, "when a right is explicit in the state constitution, it is a fundamental right, and government action that *discriminates on the basis of* exercising this right is subject to strict judicial review." *Mo. Corr. Officers Ass'n v. Mo. Off. of Admin.* ("*Officers Association"*), 662 S.W.3d 26, 40 (Mo. App. W.D. 2022) (emphasis added). The Right to Reproductive Freedom is a fundamental right. Mo. Const. art. I, §36.2. Its protections must be read as more protective than those already in the constitutional text, or it would be surplusage. Thus, if the Court finds that there must be some government interest that is sufficiently compelling to warrant discrimination on the basis of obtaining or providing an abortion, the definition of "compelling government interest" provided in Subsection 3 must apply to all of Section 36, including Subsection 6. *See* Mo. Const. art. I, §36.3 (noting that the definition applies in "this Section").

extensive, well-supported factual findings and properly applied the Missouri Constitution's plain text, neither abusing its discretion nor committing legal errors. That is primarily because all of the Challenged Laws likely violate Subsection 3 and Subsection 6.[13]

Abortion Bans. Missouri's (1) Total Ban; (2) four separate Gestational Age Bans prohibiting abortions at and after eight, fourteen, eighteen, and twenty weeks LMP; and (3) Reasons Ban each prohibit pre-viability abortions, and therefore deny and restrict the right to reproductive freedom in violation of Subsection 3. *See* D196, pp.7-10. Indeed, these bans strike directly at the heart of reproductive freedom: "the right to make and carry out decisions about all matters relating to reproductive health care, including . . . abortion." Mo. Const. art. I, §36.2; *see* §188.017 (Total Ban); §§188.056, 188.057, 188.058, 188.375 (Gestational Age Bans); §§188.038, 188.052, 19 C.S.R. §10-15.010(1) (Reasons Ban). The Government cannot overcome the presumption of the bans' invalidity under Subsection 3, nor has it seriously attempted to do so in this case.

Abortion Facility Licensing Requirement. Missouri law requires that any facility "in which abortions are performed or induced other than a hospital" be licensed as a specific type of Ambulatory Surgical Center called an "Abortion Facility." §§197.200-.235, 334.100.2(27); 20 C.S.R. §2150-7.140(2)(V), 19 C.S.R. §§30-30.050-.070. To be licensed as an Abortion Facility, among other things, health centers must have rooms and

[13] Subsection 5 provides an alternative basis to affirm the trial court's order, at least as to the criminal penalties attached to each of the Challenged Laws.

hallways of specific dimensions, and similarly specific requirements regarding facilities' HVAC systems and finishes for ceilings, walls, and floors. *See* 19 C.S.R. §30-30.070(3). These physical facility requirements apply to any facility offering any kind of abortion, even a single medication abortion.[14] *Id.*

Major medical organizations agree that the Abortion Facility Licensing Requirement is not necessary to advance or maintain patient health. D57, ¶88. Enjoining the Licensing Requirement does not eliminate patients' ability to view ultrasounds or providers' sanitation obligations, because Respondents remain subject to all generally applicable healthcare regulations. *See generally* D110. The Licensing Requirement also requires certain standards of operation that conflict with the medical standard of care. For example, the Requirement forces providers to perform an invasive and unnecessary pelvic exam on every abortion patient, even those seeking medication abortion, 19 C.S.R. 30-30.060(2)(D), which patients sometimes choose over a procedural abortion precisely because they do not wish to have anything inserted into their vagina. D6, ¶14. Because this requirement violates standards of high-quality, patient-centered care and harms the patient-provider relationship, Respondents' providers will not provide medication abortion if they must conduct pelvic exams on patients who do not need them. D7, ¶25; D8, ¶23. And because it operates to restrict abortion access across Missouri, and to functionally ban

[14] Facilities that hope to provide medication abortion also hope to provide treatment, including aspiration, for medication abortion complications. D110, p.10 n.4. The physical facility requirements therefore apply to them. 19 C.S.R. §30-30.070(1).

medication abortion due to the mandatory pelvic exam, the Abortion Facility Licensing Requirement also directly interferes with patient autonomy.

The Abortion Facility Licensing Requirement likely violates Subsection 6 because it singles out abortion providers and their patients—and only abortion providers and their patients—for worse treatment. D196, p.11. All other medical facilities must be licensed as ambulatory surgical centers only if they are "operated *primarily* for the purpose of performing surgical procedures or . . . childbirths." §197.200(2) (emphasis added); *see also* 19 C.S.R. §30-30.010(1)(B). None of Respondents' health centers are operated "primarily for the purpose of surgeries" and would not rise to that level, even if procedural abortion was considered surgery and Respondents were providing procedural abortions at pre-*Dobbs* levels. D7, ¶23; D8, ¶20. All other medical facilities are regulated by generally applicable professional licensing laws and regulations, as well as providers' professional obligations to comply with the standard of care. Those generally applicable provisions apply to providers of abortion care, yet the Abortion Facility Licensing Requirement singles out that care for additional onerous requirements.

The Abortion Facility Licensing Requirement also likely violates Subsection 3 because it limits abortion access in Missouri. For example, neither Respondent can comply with the pelvic exam requirement. And many of Respondents' health centers cannot meet the strict physical requirements imposed. Moreover, in all cases, DHSS remains the final, discretionary arbiter of who can obtain an abortion facility license. All of these factors "interfere with" abortion access. Appellants will not be able to show a qualifying

"compelling state interest" in the law for many reasons. The medical evidence contradicts Appellants' claim that the Licensing Requirement is necessary for patient health.[15] D57, ¶¶11, 86-97. And even assuming Appellants had a bona fide patient health interest in this requirement (which they do not), the Abortion Facility Licensing Requirement is inconsistent with "widely accepted clinical standards of practice and evidence-based medicine." Mo. Const. art. I, §36.3; D150, ¶¶91-102. Nor can Appellants show that the Licensing Requirement is the least restrictive means of achieving any interest.

Hospital Relationship Restrictions. The Hospital Relationship Restrictions require physicians providing abortion to have admitting privileges at a hospital near the health center where they provide any abortion. §§188.080, 188.027.1(1)(e), 197.215.1(2); 19 C.S.R. §30-30.060(1)(C)(4). A written transfer agreement with a nearby hospital is an option for complying with some, but not all, of these privileges requirements.

Because the Hospital Relationship Restrictions single out abortion from other health care, including miscarriage care, Respondents are likely to succeed in showing that they violate the nondiscrimination provision of Subsection 6. Mo. Const. art. I, §36.6. Miscarriages are frequently treated in ob-gyn and primary care provider offices, using the same medications and procedures as abortion care, with no requirement that the treating

[15] Indeed, the U.S. Supreme Court found that nearly identical requirements in Texas "have such a tangential relationship to patient safety in the context of abortion as to be nearly arbitrary." *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 619 (2016), *abrogated by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

provider have any kind of privileges or agreement with any hospital—let alone a hospital within fifteen minutes of the office. D6, ¶28.

The Hospital Relationship Restrictions are also likely to violate Subsection 3 because they make access to abortion contingent exclusively on third parties' willingness to associate with abortion providers. While admitting privileges requirements vary by hospital, they often require providers to admit a certain number of patients per year to the hospital. Because abortion is so safe, providers often do not have enough patients admitted to any hospital to meet that requirement. D7, ¶28. Many Catholic-affiliated hospitals categorically deny privileges to abortion providers. *Id.* ¶27. Some hospitals require local residency, or an agreement to take emergency department call shifts, which out-of-town providers cannot meet. *Id.* ¶28. And the Hospital Relationship Restrictions contain strict geographical limits, such that a provider would need to maintain privileges at multiple hospitals to work at multiple health centers. *Id.* ¶28; D8, ¶¶25-26.

Appellants are likely unable to demonstrate that they have the required compelling state interest in these restrictions for several reasons. D196, p.12. Importantly, hospital admitting privileges and transfer agreements do not advance patient health because they simply do not impact the hospital-based care provided to recent abortion patients. *Hodes & Nauser*, 551 P.3d at 81-82 (finding no evidence that requirement of admitting privileges at hospital within thirty miles of abortion facility furthered state's alleged interest in maternal health); *see also Planned Parenthood Sw. Ohio Region v. Hodges*, 138 F. Supp. 3d 948, 959-60 (S.D. Ohio 2015) (finding, in federal undue burden case challenging an

Ohio restriction that required abortion providers to have either a hospital transfer agreement or a variance from the state, that failure to meet this requirement did not pose risks to patient health and safety); *accord Comprehensive Health of Planned Parenthood Great Plains v. Williams*, No. 2:16-CV-04313-BCW, 2019 WL 8359569, at *6 (Mo. App. W.D. Feb. 22, 2019) (calling State's assertions of health benefits from Hospital Relationship Restrictions "dubious" even while denying preliminary injunction under the more-permissive federal undue burden standard); D4, pp.31-32 (citing to Ushma D. Upadhyay et al., *Admitting Privileges and Hospital-Based Care After Presenting for Abortion: A Retrospective Case Series*, 54 Health Servs. Rsch. 425 (2019)). And even if Appellants could demonstrate a compelling government interest, they cannot show that these restrictions are the least restrictive means of achieving it. D196, p.12.

Medication Abortion Complication Plan Requirement. Missouri requires that providers have a complex, unnecessary, and state-approved "complication plan" in place before providing medication abortion. §188.021.2. DHSS's implementing regulation singles out medication abortion providers and requires them to have a written contract with a board-certified or board-eligible ob-gyn (or ob-gyn group) who has agreed to be "on-call and available twenty-four hours a day, seven days a week" to "personally treat all complications" from medication abortion "except in any case where doing so would not be in accordance with the standard of care, or in any case where it would be in the patient's best interest for a different physician to treat her." 19 C.S.R. §30-30.061. Below, the trial

court enjoined the Medication Abortion Complication Plan Regulation, but not the statute. D196, pp.12-13.

These regulations do not apply to any other type of health care, including when the same medications are used for other indications, like miscarriage management, and therefore likely violate Subsection 6.

They also likely violate Subsection 3 because these regulations, by design, are nearly impossible to satisfy—and DHSS, which is the final, discretionary arbiter of abortion access in the State under this scheme, has inconsistently applied them so as to limit abortion access. Indeed, due to the Medication Abortion Complication Plan Regulation, Comp Health was blocked from providing medication abortion at its Columbia health center pre-*Dobbs* (even though it could, for a time, provide procedural abortions), D6, ¶¶33-34, and Great Rivers was forced to cancel plans to provide medication abortion at its Springfield health center. D8, ¶27.

There can be no compelling governmental interest to justify the Medication Abortion Complication Plan Requirement. In fact, after hearing two days of live testimony along with affidavits and deposition evidence, a federal court held that the Medication Abortion Complication Plan Requirement "has virtually no benefit" for patients. *Comprehensive Health of Planned Parenthood Great Plains v. Williams*, 322 F. Supp. 3d 921, 931 (Mo. App. W.D. 2018). And even if it did advance a compelling government interest, Appellants have not shown that it is the least restrictive means of doing so.

Pathology Requirement. Missouri requires that "[a]ll tissue . . . removed at the time of abortion shall be submitted within five days to a board-eligible or certified pathologist for gross and histopathological examination." §188.047. The pathologist then needs to file a "tissue report" with DHSS and provide a copy to the health center that provided the abortion. *Id.*; *see also* 19 C.S.R. §10-15.030, 19 C.S.R. §30-30.060(5)(B). Once again, the Pathology Requirement treats abortion very differently from miscarriages and other health care and therefore likely violates the anti-discrimination provisions of Subsection 6. Mo. Const. art. I, §36.6. If a provider removes tissue after a miscarriage, which is an extremely common and necessary post-miscarriage treatment, the provider exercises their professional judgment to decide whether to send the tissue to a pathologist. D6, ¶40. In fact, *no* other procedures—including significant surgeries—have a mandatory pathology requirement for all tissue. D7, ¶30; D8, ¶32.

The Pathology Requirement also denies, restricts, and interferes with abortion care and is therefore likely unconstitutional under Subsection 3. D196, pp.13-14. Because of the stigma attached to abortion care, Respondents are unaware of any pathologists in Missouri who are willing to contract with them to provide such an examination and report. D7, ¶30; D8, ¶31. Without a pathologist available to fulfill the Pathology Requirement, this law will prevent Respondents from providing any procedural abortions at all. D6, ¶42; D7, ¶30; D8, ¶31. And even if a pathologist could be found who was willing to take on this role, the medically irrelevant obligation would jeopardize Respondents' ability to provide abortions by forcing them to depend on a tenuous relationship. D7, ¶30. Appellants failed

to show that the Pathology Requirement has the limited purpose and effect of "improving or maintaining the health" of the pregnant person, that it is "consistent with widely accepted clinical standards of practice and evidence-based medicine," or that it "does not infringe on [the patient's] autonomous decision-making." Mo. Const. art. I, §36.3; *see also* D196, p.14. This Requirement does not have the limited purpose and effect of improving patient health, and it is contrary to widely accepted clinical standards, which allow each provider to decide, in their best professional judgment, whether to involve a pathologist in their patient's care. D6, ¶¶40-41; D7, ¶30. Nor does it advance a compelling government interest by the least restrictive means. D196, p.14.

Biased Information Law. Missouri law requires abortion providers to present their patients—who have already chosen to have an abortion—with a laundry list of biased materials and statements designed to stigmatize and discourage the patient's decision. §§188.027, 188.033, 188.039. This includes "printed materials provided by the department, which describe the probable anatomical and physiological characteristics of the [fetus] at two-week gestational increments from conception to full term," including "information about brain and heart functions," "information on when the [fetus] is viable" and "including color photographs or images of the developing [fetus] at two-week gestational increments." §188.027.1(2). "The printed materials shall prominently display the following statement: 'The life of each human being begins at conception. Abortion will terminate the life of a separate, unique, living human being.'" *Id.* The abortion provider must also provide the patient with materials describing medically inaccurate "risks" of abortion "including, but

not limited to… harm to subsequent pregnancies or the ability to carry a subsequent child to term, and possible adverse psychological effects associated with the abortion[.]" §188.027.1(1)(b). The materials also include misleading or outright false information about fetal pain.

No other health care is subject to comparably lengthy, biased, stigmatizing, and medically irrelevant mandatory counseling. The Biased Information Law therefore likely violates Subsection 6. Without the Biased Information Law, the provision of abortion care would function just as all other health care does: consistent with the medical provider's ethical duties, the providers share with each patient all the relevant information the individual needs to make their decision about whether to proceed with consenting to and obtaining the health care. D6, ¶45. Instead, "[t]he State is metaphorically putting its finger on the scale" with the Biased Information Law in an attempt to convince abortion patients to not have the abortion the patients requested. *Northland Fam. Plan. Ctr.*, 2025 WL 2098474, at *27.

The Biased Information Law is also likely unconstitutional under Subsection 3. D196, pp.15-16. This law directly "interfere[s] with" abortion care by mandating that abortion patients receive certain information about their pregnancy and the requested health care, including when it is irrelevant, redundant, or misleading to the individual patient. Mo. Const. art. I, §36.3. Indeed, the information in the Biased Information Law is designed to interfere with, delay, and restrict the right to abortion care. It "guide[s] a patient away from the choice of having an abortion by juxtaposing content that is clearly more relevant and

suitable to those seeking to complete a pregnancy." *Northland Fam. Plan. Ctr.*, 2025 WL 2098474, at *26 (finding similar mandatory consent requirements to "infringe upon a patient's right to make and effectuate decisions about abortion care"). In addition, the fact that some of the information is required to come from materials provided by DHSS "squarely inserts the [State] into the patient-provider relationship." *Id*. at *27. Appellants have no compelling governmental interest in the Biased Information Law, and certainly not one that does not "infringe on [a patient's] autonomous decision- making." Mo. Const. art. I, §36.3. Respondents already offer all relevant information to obtain informed consent, as required by medical ethics and the common law. D7, ¶32; D8, ¶34. As the trial court found, "the general laws of informed consent for any medical treatment and procedures sufficiently cover any separate purposes that may be served by" the Biased Information Law. D196, p.16. The Biased Information Law is therefore not the least restrictive means of achieving a compelling government interest. D196, pp.15-16.

Waiting Period. Before a patient in Missouri can obtain an abortion, Missouri law requires that the patient go to the health center at least seventy-two hours before the abortion to meet with the abortion provider in order to receive certain information, including the biased information mentioned above, and give informed consent for the abortion care in person. §§188.027, 188.039. This requirement, by its very nature, delays abortion—at least seventy-two hours more than medically necessary, but sometimes by a week or more depending on patient and provider schedules. D7, ¶35; D8, ¶36.

The waiting period is uniquely imposed on abortion providers and patients. Missouri law does not subject other health care to a similar requirement. D6, ¶¶49, 52. This requirement therefore likely violates Subsection 6.

It also likely violates Subsection 3. Requiring a patient to wait a minimum of seventy-two hours before they can receive abortion care they have already consented to is a de facto delay, which Subsection 3 expressly says is presumptively unconstitutional.[16] Appellants are unlikely to show that they have a compelling governmental interest in this delay. D196, pp.16-17. Although abortion is extremely safe, risks and complications of abortion increase with gestational age. D6, ¶16. Forcing every patient to delay their abortion cannot improve or maintain patient health, nor can it be the least restrictive means of doing so. This requirement interferes with patients' "autonomous decision-making" and is not "consistent with widely accepted clinical standards of practice and evidence-based medicine." Mo. Const. art. I, §36.3. Instead, a "mandatory delay exacerbates the burdens that patients experience seeking abortion care, including by increasing costs, prolonging wait times, increasing the risk that a patient will have to disclose their decision to others." *Northland Fam. Plan. Ctr.*, 2025 WL 2098474, at *36-37. It also has the impact of "potentially preventing a patient from receiving the type of abortion that they would

[16] In the event that the seventy-two-hour waiting period is enjoined, the law provides that the waiting period should become twenty-four hours. §§188.027.12, 188.039.7. Twenty-four hours is also an unconstitutional delay.

prefer." *Preterm-Cleveland v. Yost ("Preterm-Cleveland I")*, No. 24 CV 2634, 2024 WL 3947516, at *11 (Ohio C.P. Aug. 23, 2024).

Telemedicine Ban. Section 188.021 requires that the first of the two drugs usually used for a medication abortion be taken "in the same room and in the physical presence" of the prescribing provider. §188.021.1. This requirement, which serves no medical purpose, severely restricts access—forcing patients in Missouri's rural areas to drive several hours and arrange time off work and childcare simply to receive an oral medication they could safely take at home. The Telemedicine Ban likely violates Subsection 6 because it discriminates against abortion patients and providers by singling out abortion for different treatment compared to any other type of health care which can safely be provided through telemedicine. Missouri generally allows non-abortion health care providers to provide telemedicine services that fall within their scope of practice. §191.1145. For example, Missouri allows patients experiencing a miscarriage, but not patients who want an abortion, to access the exact same medication used in a medication abortion via telemedicine. D6, ¶54. And even where the miscarriage patient chooses to consult with a provider in person, unlike medication abortion patients, the law does not prevent the patient from taking the medication at home outside the provider's physical presence.

The Telemedicine Ban also likely violates Subsection 3. D196, pp.18-19. This law "denie[s], interfere[s] with, [and] delay[s]" patients in accessing constitutionally protected abortion care, including by requiring patients to overcome logistical challenges such as time off work, transportation, financial constraints, potentially hours of travel time, and

childcare needs that simply do not exist for telemedicine appointments. D7, ¶37; Mo. Const. art. I, §36.3. Mandatory in-person appointments also jeopardize patients' ability to keep their confidential health information private from potentially disapproving employers, colleagues, family, and abusive or controlling partners. D7, ¶37. Appellants are unlikely to be able to meet their burden under Subsection 3 to rebut the presumption of invalidity. There is no medical reason for the Telemedicine Ban. Providing medication abortion by telemedicine "is as safe and effective as in-person treatment." D57, ¶176; *see id.* ¶¶171-93; *see also Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.*, 865 N.W.2d 252, 268 (Iowa 2015) (finding little or no health benefit to an in-person medication abortion requirement); *Hodes & Nauser*, 551 P.3d at 80 (same). Indeed, the FDA stopped recommending in-person visits to prescribe mifepristone during the COVID-19 pandemic—and finalized removing the in-person requirement in a formal rule change in 2021. FDA v. *All. for Hippocratic Med.*, 602 U.S. 367, 376 (2024). And, indeed, even when the FDA had its in-person dispensing requirement, patients were not required to take the mifepristone in front of the provider as the Telemedicine Ban requires. D57, ¶38; D6, ¶57

The Telemedicine Ban also infringes on patients' autonomous decision-making because it restricts patients from deciding when and where to begin their abortions. And even if Appellants did show a compelling government interest, they have not shown the Telemedicine Ban is the least restrictive means of achieving that interest. D196, pp.18-19.

III. None of Appellants' arguments change this analysis.

Appellants rely on a laundry list of twenty points in their attempt to challenge the trial court's well-reasoned opinion. None change the above analysis.

A. Facial relief is appropriate. (Appellants' Point: I)

Under Missouri law, the "no set of circumstances" test Appellants propose is not appropriate for an affirmative facial challenge. Br. of Appellants ("Br.") 44-47. But even if it were, Respondents meet it handily in the context of the fundamental rights guaranteed by Section 36, where the Challenged Laws facially discriminate against abortion and interfere with it at every turn.

1. Appellants ignore the correct legal test.

As a matter of Missouri law, Respondents need not demonstrate that there are no patients or providers to whom the challenged statutes might be constitutionally applied to obtain facial relief. *See, e.g.*, *City of St. Louis v. State*, 643 S.W.3d 295, 301-03 (Mo. banc 2022) (reversing judgment as a matter of law and reviving declaratory judgment action seeking facial relief on constitutional grounds without applying "no set of circumstances" test advocated by Appellants). In Missouri, in an affirmative facial challenge to laws that violate a positive right conferred by the Constitution (like this one), the substantive legal standard the Constitution provides controls—not the factual question of whether there is any hypothetical "set of circumstances" under which the statute could theoretically be constitutionally applied. Here, that is the Section 36 standard.

No Bans on Choice v. Ashcroft is instructive on this point. 638 S.W.3d 484 (Mo. banc 2022). In that case, the plaintiffs challenged a law as unconstitutional under Missouri's right of referendum. Like here, the appellants argued that "to declare [the law] invalid, this Court must determine that a referendum proponent could *never*" comply with the statute. *Id.* at 492. But rather than asking whether the challenged law could be constitutionally applied in any hypothetical factual circumstances, this Court applied the established substantive standard for finding a violation of the right of referendum—whether the law "interferes with or impedes" the right. *Id.* Applying that standard, the Court explained that "[a] law need not prevent every individual referendum effort from being successful to 'interfere with or impede' the right of referendum itself" in order to be found unconstitutional. *Id*. Instead, because the laws violated the right of referendum itself, "they [could] *never* be constitutionally applied." *Id.*

Such is the case here, where each of the Challenged Laws discriminate against abortion patients and their providers and also "interfere[] with, delay[], or otherwise restrict[]" the right to reproductive freedom by inserting the State squarely between patients and their health care providers without a compelling governmental interest. Mo. Const. art. I, §§36.3, 36.6. Like in *No Bans on Choice*, the question is not whether the Challenged Laws "interfere[] with, delay[], or otherwise restrict[]" any particular person's access to abortion, but rather whether they violate "the right [to reproductive freedom] itself." *Id.*; *see also Beatty v. State Tax Comm'n*, 912 S.W.2d 492 (Mo. banc 1995) (citing *United States v. Salerno*, 481 U.S. 739, 745 (1987), but paraphrasing its holding to whether "there

are no possible interpretations of the statute that conform to the requirements of the constitution," and focusing its facial analysis on whether the challenged statute was unconstitutional as a matter of law, not on whether plaintiffs had demonstrated that the challenged law was unconstitutional in all possible applications).

This approach makes sense. Consider, for example, a policy that said that the state could arrest any person for any reason. This policy would be clearly unconstitutional, but, under Appellants' theory, would survive a facial challenge so long as Appellants could point to one person that could be constitutionally arrested, and the policy would be permitted to stand. This is an incomprehensible result. It is a "fundamental rule that 'legislation cannot limit or restrict the rights conferred by . . . constitutional provision[s].'" *Musser v. Coonrod*, 496 S.W.2d 8, 11 (Mo. banc 1973) (quoting *State ex rel. Elsas v. Mo. Workmen's Comp. Comm'n*, 2 S.W.2d 796, 801 (Mo. banc 1928)). "The legislature must not be permitted to use procedural formalities to interfere with or impede [a] constitutional right . . . " *No Bans on Choice*, 638 S.W.3d at 492.

Missouri case law further illustrates that even when courts do apply the "no set of circumstances" test in the way Appellants advocate, they do so in limited circumstances not applicable here. For example, this Court has generally looked at whether there could be individuals to whom the law could be constitutionally applied when a party claiming facial unconstitutionality was defending against an enforcement action.[17] *See State v. Kerr*,

[17] Notably, this was also the posture in *Salerno*. There, the defendants did *not* claim that the challenged act was "unconstitutional because of the way it was applied to the particular

905 S.W.2d 514, 515 (Mo. banc 1995) (citing "no set of circumstances" standard in appeal from criminal prosecution); *Donaldson v. Mo. State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 66 (Mo. banc 2020) (noting that "[i]t is not enough to show that, under some conceivable circumstances, 'the statute might operate unconstitutionally'" in appeal from medical license suspension); *cf. Beatty*, 912 S.W.2d at 495 (citing *Salerno* but not following the "no set of circumstances" test in affirmative facial challenge); *State v. Jeffrey*, 400 S.W.3d 303, 308 (Mo. banc 2013) ("[T]he general rule is that a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court." (internal quotations and citations omitted)).

Other states have similarly limited how—or even if—they apply the "no set of circumstances" test. *See, e.g.*, *Utah Pub. Emps. Ass'n v. State*, 131 P.3d 208, 213-15 (Utah 2006); *Robinson v. City of Seattle*, 10 P.3d 452, 458-59 (Wash. 2000); *Jackson v. Benson*, 578 N.W.2d 602, 611 n.4 (Wis. 1998); *Nw. Landowners Ass'n v. State*, 978 N.W.2d 679, 687-88 (N.D. 2022); *State v. Ryce*, 368 P.3d 342, 353-55 (Kan. 2016), *adhered to on reh'g*, 396 P.3d 711 (2017). *Cf. Martin v. State*, 259 So. 3d 733, 740-41 (Fla. 2018). Like these states, Missouri is not bound by federal case law on the "no set of circumstances" test. *See*

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facts of their case." 481 U.S. at 745 n.3. Instead, they raised a facial challenge to defend against a potentially *constitutional* application of a federal law. In this unique defensive posture, the United States Supreme Court required the defendants to meet the exceedingly high "no set of circumstances" test.

City of Chicago v. Morales, 527 U.S. 41, 55 n.22 (1999) (noting that *Salerno* is a prudential doctrine rooted in Article III standing concerns and therefore need not necessarily be adopted by the states).

Notably, even federal courts do not take the rigid approach Appellants advocate. *Citizens United v. Federal Election Commission*, 558 U.S. 310, 331 (2010), made clear that "the distinction between facial and as-applied challenges" has no "automatic effect" on a case, and it does not "control the pleadings and disposition in every case involving a constitutional challenge." There have also been areas of law where *Salerno*'s "no set of circumstances" test has never controlled. For example, when the U.S. Supreme Court recognized a federal due process right to abortion, it did not apply *Salerno*, but rather was guided by the undue burden standard articulated in *Planned Parenthood of Southeastern Pennsylvania v. Casey*. *See, e.g.*, *Janklow v. Planned Parenthood, Sioux Falls Clinic*, 517 U.S. 1174 (1996) (Stevens, J., respecting denial of certiorari); *Fargo Women's Health Org. v. Schafer*, 507 U.S. 1013 (1993) (O'Connor, J., concurring). First Amendment challenges are also subject to a different standard than *Salerno*. *See Salerno*, 481 U.S. at 745. And the U.S. Supreme Court has never applied *Salerno* in an Equal Protection challenge.[18]

[18] *Bondi v. VanDerStok*, 145 S. Ct. 857 (2025), is inapposite. In *Bondi*, the Supreme Court avoided explicitly importing the *Salerno* framework into the administrative law context, though the dissent noted the difficulties that would come of doing so. *Id.* at 894 n.5 (Alito, J., dissenting). Instead, in that case, the Court explicitly limited itself to the framing the litigating parties had chosen, making no finding as to whether it was correct. *Id.* at 865–66.

2. There is "no set of circumstances" in which the Challenged Laws are constitutional.

Even if the "no set of circumstances" test were applied in the way Appellants advocate, each statute facially challenged in this case cannot withstand the heightened strict scrutiny Section 36 demands because there are no circumstances in which the statutes can constitutionally operate under Section 36's legal strictures.

For example, the Biased Information Law is discriminatory in all applications because it applies only to abortion patients and providers and requires physicians to follow a government-drafted script when providing informed consent—something no other Missouri law requires. It is therefore facially discriminatory under Subsection 6. Mo. Const. art. I, §36.6. The same analyses apply to the Abortion Facility Licensing Requirement, the Pathology Requirement, the Hospital Relationship Restrictions, and the Telemedicine Ban. Each law singles out abortion for restrictions not applied to comparable medical procedures, making them facially discriminatory under Subsection 6.[19]

All of the Challenged Laws also violate Subsection 3 in every application because they "interfere[] with, delay[], or otherwise restrict[]" reproductive freedom by inserting the State squarely between patients and their health care providers without a compelling governmental interest. Const. art. I, §36.3. That compliance might be possible in some

[19] In appealing to alleged health and safety concerns, Appellants seem to forget (or consciously ignore) that Respondents remain subject to *all generally-applicable laws regulating all medical providers*.

cases does not cure this constitutional violation—the Missouri Constitution prohibits state interference in these medical decisions regardless of whether patients or providers can contort themselves to comply with unconstitutional requirements. Simply put, there is "no set of circumstances" under which the Challenged Laws survive a constitutional challenge.

Appellants' efforts to create such circumstances—for minors and post-viability abortions—are red herrings. Br. 52. The U.S. Supreme Court has made clear that, even when the "no set of circumstances" test is applied in assessing whether a law is facially unconstitutional, courts focus on those circumstances that are actually impacted by the conduct that the law requires or prohibits without regard for those circumstances under which the law would have no impact. *See, e.g.*, *City of Los Angeles, Cal. v. Patel*, 576 U.S. 409, 417 (2015). In *Patel*, decided decades after *Salerno*, the Supreme Court explained "how courts analyze facial challenges." *Id.* at 418. The Court reiterated that "a plaintiff must establish that a 'law is unconstitutional in all its applications.'" *Id.* (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008)). Importantly, however, it cautioned that "when assessing whether a statute meets this standard, the Court has considered only applications of the statute in which it actually authorizes or prohibits conduct." *Id.* The Court pointed to the example of *Casey*, where proponents of a law requiring women to notify their husbands of a planned abortion argued that facial relief was inappropriate given that the law at issue would not pose a burden on most women because they would voluntarily notify their husbands anyway, even absent the law. *Id.* "The Court rejected this argument, explaining: The '[l]egislation is measured for consistency

with the Constitution by its impact on those whose conduct it affects.'" *Id.* (citing *Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 894 (1992)). Therefore, "[t]he proper focus of the constitutional inquiry is the group for whom the law is a restriction, *not* the group for whom the law is irrelevant." *Id.* (emphasis added) (internal quotation mark omitted) (citing *Casey*, 505 U.S. at 894, to explain how to assess facial relief).

Here, the Challenged Laws are not applicable to minors or to post-viability abortions at the preliminary injunction stage. Missouri has a separate parental consent requirement for minors who seek an abortion, which Respondents have not challenged. §188.028. That statute would remain in effect even if this Court holds that all of the laws that are currently enjoined are likely to be facially unconstitutional. Similarly, because the Post-Viability Restriction is still in effect, post-viability abortions are not being provided and the preliminary injunction necessarily does not extend to them.[20] Ultimately, Appellants' complaint is about the scope of final relief available on the merits. But they put the cart before the horse at this stage of the litigation, especially on appeal of a preliminary injunction where the Challenged Laws' effect on minors or on post-viability abortions is not at issue.

[20] Respondents have not sought to preliminarily enjoin Missouri's Post-Viability Restriction.

Even if the Court disagrees, Appellants' reading of Subsections 3 and 4 is contrary to the Constitution's plain text. Subsection 3 is not, by its terms, limited to pre-viability abortions. While Subsection 4 expressly permits the government to regulate post-viability abortions, that provision is framed as an exception to Subsection 3—it does not amount to a savings clause for laws targeting abortion regardless of gestational age. Const. art. I, §36.4. And Subsection 4 is explicitly tempered by the commandment that "under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person."[21] *Id.* The Challenged Laws would violate this provision. For example, if a health care professional determined that a post-viability abortion "is needed to protect the . . . physical [health] . . . of the pregnant person," the 72-hour delay requirement would still unconstitutionally "interfere with, delay, [and] otherwise restrict" that abortion. *Id.* In short, providing even one post-viability abortion would become the exception that swallows the rule.

B. The trial court had jurisdiction to hear Respondents' claims. (Appellants' Points: II-VIII)

Perhaps seeking to draw focus from the clear unconstitutionality of the abortion bans and restrictions they seek to defend, Appellants throw up a series of meritless threshold arguments.

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[21] None of the Challenged Laws contain this exception.

1. Respondents have standing. (Appellants' Points: II-V)

Respondents have both traditional and third-party standing under Section 36. Appellants attempt to fabricate a lack of controversy based on a promise of non-enforcement, but this is unavailing. Non-binding, mid-litigation promises are no substitute for a court order preventing Appellants from enforcing the Challenged Laws, especially because enforcement plans can change as officeholders change and the Challenged Laws threaten steep criminal penalties. Furthermore, a long line of cases establishes Respondents' third-party standing to bring claims on behalf of their patients, especially because Respondents are the regulated entity without whom patients cannot exercise their fundamental rights.

a) Respondents have traditional, first-party standing. (Appellants' Points: II-III)

Respondents have direct, first-party standing. "Reduced to its essence, standing roughly means that the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote." *Ste. Genevieve Sch. Dist. R-II v. Bd. of Aldermen of the City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002). "A legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question or if the plaintiff's interest is conferred by statute." *Id.*

Here, Respondents plainly have legally protectable interests. If not for the Challenged Laws, Respondents would provide abortion care to their patients in accordance with widely accepted clinical standards of practice and evidence-based medicine.

Respondents' legally protectible interest in the outcome of this litigation, at a minimum, includes their desire to provide abortion care to their patients without being subjected to criminal liability or licensure penalties. Respondents have standing to bring their claims under the Right to Reproductive Freedom Initiative.

Additionally, the Constitution itself confers standing. Section 36 explicitly provides that no "person assisting a person in exercising their right to reproductive freedom" shall "be penalized, prosecuted, or otherwise subjected to adverse action for doing so." *Id.* §36.5. It further states that "[t]he Government shall not discriminate against persons providing . . . reproductive health care" or "assisting another person in" "providing or obtaining" such care. *Id.* §36.6. The plain text of Section 36 confers rights on reproductive health care providers. Appellants do not dispute that Respondents provide reproductive health care or that they assist Missourians in obtaining that care and exercising their right to reproductive freedom. Under Section 36, Respondent abortion providers have a legally protectible interest in challenging the Missouri laws restricting their ability to provide abortion care and assist Missourians in carrying out their decisions to have an abortion. *Cf. Planned Parenthood of Wis., Inc. v. Van Hollen*, 738 F.3d 786, 794-95 (7th Cir. 2013) (recognizing that abortion providers "have first-party standing to challenge laws limiting abortion when . . . penalties for violation of the laws are visited on the doctors" (citing *Doe v. Bolton*, 410 U.S. 179, 188 (1973), *abrogated on other grounds by Dobbs*, 597 U.S. 215)).[22]

[22] Indeed, a court analyzing Ohio's similar constitutional amendment, Ohio Const. art. I, §22, found that an abortion provider had standing because the amendment's "plain

b) The Attorney General's nonbinding, equivocal letter does not change Respondents' standing. (Appellants' Point: II)

Appellants try to evade Respondents' challenge by partially disavowing intent to enforce the Total Ban and the Gestational Age Bans.[23] Br. 22 (citing D30 (the "AG Letter")). This argument fails for several reasons. Most glaringly, Appellants claim that "[t]he injunction harms the State." Br. 61. This makes a mockery of their arguments that there is no controversy between the parties. If there were no controversy, Appellants would not care about the preliminary injunction; they plainly do.

The AG Letter does not undo the controversy between the parties; nor does it prevent enforcement by Appellants. The opinions of the Attorney General are merely advisory as he "may not declare a statute unconstitutional. This power is reserved to the courts by the Constitution." *Gershman Inv. Corp. v. Danforth*, 517 S.W.2d 33, 35 (Mo. banc 1974). While an Attorney General's opinion "may be persuasive," an opinion stating that a law is unconstitutional is "entitled to no more weight than that given the opinion of

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language . . . confers rights to [the provider] because she is a person assisting individuals exercising their reproductive rights." *Preterm-Cleveland I*, 2024 WL 3947516, at *8. And the provider faced direct injuries in the form of interference with her "ability to provide high quality, trauma informed abortion care," a negative impact on her "relationship with pregnant patients," and being "subject to the threat of civil and criminal penalties for violating the challenged statutes." *Id*. The same is true here. D7, ¶46; D8, ¶¶45–47; D6, ¶¶64–65.

[23] The AG Letter does nothing to disavow enforcement of the Reasons Ban or any of the TRAP laws and thus cannot defeat Respondents' standing to challenge those laws.

any other competent attorney." *Gershman Inv. Corp.*, 517 S.W.2d at 35-36. After all, "the current Attorney General could change [the opinion] whenever he sees fit, as could any future Attorneys General." *Northland Fam. Plan. Clinic v. Cox*, 487 F.3d 323, 342 (6th Cir. 2007); *see Va. Soc'y for Hum. Life, Inc. v. Fed. Election Comm'n*, 263 F.3d 379, 388 (4th Cir. 2001) ("[T]here is a presumption of a credible threat of prosecution" despite non-binding policy of non-enforcement that could be changed "when a statute on its face restricts" a plaintiff's proposed activities.), *overruled on other grounds, The Real Truth About Abortion v. Fed. Election Comm'n*, 681 F.3d 544 (4th Cir. 2012). To the extent the Court finds that the AG Letter could somehow lessen Defendant Bailey's controversy with Respondents as to certain laws, it is a textbook example of litigation-induced voluntary cessation of enforcement that still does not eliminate the controversy. *Bratton v. Mitchell,* 979 S.W.2d 232, 236 (Mo. App. W.D. 1998); *Ctr. for Special Needs Tr. Admin., Inc. v. Olson,* 676 F. 3d 688, 697 (8th Cir. 2012).

Second, the AG Letter has no effect on the other Defendants in this case. As to the defendant class of prosecuting attorneys, "[t]he Attorney General's Office does not have the authority to override the decisions of a local prosecutor."[24] "Local prosecuting attorneys . . . are not employees of the Attorney General's Office and are not supervised

[24] Mo. Att'y Gen., *Public Safety*, *Who Supervises My City or County Prosecutor, County Sheriff, or Police Chief?*, https://ago.mo.gov/divisions/public-safety/ (last visited Aug. 9, 2025).

by this Office."[25] Any "promise of immunity from prosecution by the Attorney General is not binding on the [prosecuting attorneys], and constitutes no bar to . . . prosecution." *State v. Myers*, 49 S.W.2d 36, 40 (Mo. 1932). The AG Letter is also not binding on any of the other Appellants, including DHSS, the Board of Healing Arts, and the Board of Nursing, who continue to have the authority to impose licensing penalties (including revocation) for violations of the Challenged Laws.

Third and critically, the AG Letter does not actually disavow enforcement of the Total Ban and Gestational Age Bans. Indeed, the Attorney General expressly pledges to "vigorously enforce" the Total Ban and Gestational Age Bans in some circumstances, including when parents have not consented to a minor's abortion—apparently even if the minor and abortion provider have complied with Missouri's parental involvement law (for example by obtaining a judicial bypass).[26] This pledge is in sharp contrast to the unequivocal statements disavowing future enforcement that have been found sufficient to defeat standing. *Compare Elias Bochner, 287 7th Ave. Realty LLC v. City of New York*, 118 F.4th 505, 525 (2d Cir. 2024) ("Neither the City nor any other defendant has *any*

[25] *Id*.

[26] Notably, the AG Letter also pledges enforcement of these criminal abortion bans if he believes a patient's abortion decision has "unlawfully been pressured," D30, p.3, but provides no clarity as to what constitutes unlawful pressure. At any rate, Respondents—like other health care providers—are professionally and ethically bound to provide all health care only if the patient has made a voluntary and informed decision. Appellants fail to explain why abortion should be treated differently from all other medical services.

intention of enforcing the guaranty law—*full stop*.'" and "Counsel '*categorically disavow[s] any future enforcement* of the Guaranty Law.'" (emphases added)), *with Poe v. Snyder*, 834 F. Supp. 2d 721, 730 (W.D. Mich. 2011) ("[T]hese equivocal statements cannot be accepted as a disavowal[.]"). Courts are also particularly reluctant to find that disavowal defeats standing, when it is taken *after* the commencement of litigation, as is the case here. *See, e.g.*, *Lopez v. Candaele*, 630 F.3d 775, 788 (9th Cir. 2010) (While the government's interpretation of a "challenged law as not applying to the plaintiffs' activities" can show lack of standing, its "disavowal must be more than a mere litigation position.").[27]

c) The trial court properly reached Respondents' challenge to the Reasons Ban. (Appellants' Point: III)

Appellants similarly suggest the trial court erred in deciding Respondents' preliminary injunction motion as to the Reasons Ban, this time because they contend the court should have considered this motion only in the context of a specific patient. But Respondents' challenge to the Reasons Ban is ripe, because the Reasons Ban negatively affects and interferes with the patient-provider relationship—regardless of whether the provider knows that a patient wants to have an abortion for prohibited reasons.[28]

[27] The AG Letter in this case was issued on Friday, November 22, 2024, and Appellants' suggestions in opposition to preliminary injunction were due the following Monday.

[28] Appellants frame their challenge to the Reasons Ban injunction as one of standing, but—as their argument acknowledges—it is actually about ripeness. Br. 62–63; *Mo. Health Care Ass'n v. Att'y Gen.*, 953 S.W.2d 617, 621 (Mo. banc 1997).

As Respondents' physician explained, if there is any reference to a fetus's sex or race during patient counseling, or if the patient has had any prenatal screening indicating Down Syndrome, under the Reasons Ban she and her colleagues "may need to violate best medical practices by probing a patient's reasons for seeking abortion care, even when the patient does not volunteer that information, so as to avoid personal legal liability." D6, ¶26 n.18. This is harmful. "It is inconsistent with the ethical obligations of a physician to intrude on my patients' privacy in this way and would interfere with the doctor-patient relationship." *Id.* Respondent's expert, Dr. Grossman, added that "the Reasons Ban incentivizes patients to withhold screening and diagnostic test results from their medical providers—or to forgo those tests altogether. Either approach could negatively affect the physician's ability to care for the patient, and in turn the patient's health." D76, ¶78.

In other words, the Reasons Ban negatively impacts patients in ways Respondents might never learn about—precisely by discouraging open and collaborative communication from patient to provider. Appellants did not rebut these points below.[29]

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[29] Appellants rely on *Reproductive Health Services of Planned Parenthood of St. Louis Region, Inc. v. Parson*, 389 F. Supp. 3d 631 (W.D. Mo. 2019), to argue that Respondents "lack standing," but that case (a) did not find that the plaintiff lacked standing, but rather found the plaintiff was likely to succeed in its challenge to the Reasons Ban, (b) never considered the arguments raised by Respondents here, (c) was decided under the federal undue burden standard, and (d) was later modified to preliminarily enjoin the Reason Ban prohibiting abortion on the sole basis of Down syndrome by *Reproductive Health Services of Planned Parenthood of the St. Louis Region, Inc. v. Parson,* 408 F. Supp. 3d 1049, 1053 (W.D. Mo. 2019) (stating "[o]ur cases do not uniformly require plaintiffs to demonstrate that it is literally certain that the harms they identify will come about" (internal quotation marks omitted)).

Because the Reasons Ban negatively impacts Respondents' providers and patients, Respondents' challenge is ripe, and Respondents need not wait until a specific patient is before them to challenge the law. *See Mo. Health Care Ass'n v. Att'y Gen.,* 953 S.W.2d 617, 621-22 (Mo. banc 1997); *Alpert v. State*, 543 S.W.3d 589, 595 (Mo. banc 2018).

d) Respondents have third-party standing. (Appellants' Points: IV-V)

Respondents also have third-party standing. For decades, federal and Missouri courts have recognized the third-party standing of abortion providers to bring claims on behalf of their patients. *Planned Parenthood of Kan. & Mid-Mo. v. Nixon*, 220 S.W.3d 732, 738 (Mo. banc 2007) ("Planned Parenthood and other abortion providers have repeatedly been allowed to assert third party standing on behalf of their minor patients."); *June Med. Servs. L.L.C. v. Russo*, 591 U.S. 299, 318 (2020) (collecting cases), *abrogated on other grounds by Dobbs*, 597 U.S. 215. This Court has long rejected Appellants' arguments that abortion providers' interests are adverse to their patients. *Nixon*, 220 S.W.3d at 738. Indeed, there is a clear alignment of interests where patients' ability to access abortion is "inextricably bound," *Singleton v. Wulff*, 428 U.S. 106, 114 (1976) (plurality opinion), with Respondents' ability to engage in the conduct prohibited by the Challenged Laws.

The United States Supreme Court's ruling in *Dobbs* did not change this analysis. In fact, because standing is a prerequisite for the Court to reach the substance of a party's claims, the Court impliedly found that the abortion provider-plaintiff had standing by

addressing the merits of the constitutional claims. This aligns with longstanding federal law permitting medical providers, businesses, and trade associations to bring claims on behalf of patients, customers, and others with whom they share a close relationship. *See, e.g.*, *Craig v. Boren*, 429 U.S. 190, 195 (1976) (citing *Warth v. Seldin*, 422 U.S. 490, 510 (1975) and *Eisenstadt v. Baird*, 405 U.S. 438 (1972). It is axiomatic that third-party standing is appropriate where, as here, "enforcement of the challenged restriction against the litigant would result indirectly in the violation of third parties' rights." *Warth*, 422 U.S. at 510.

Appellants rely on *Missouri State Medical Association v. State* ("*Medical Association*"), 256 S.W.3d 85 (Mo. banc 2008), but nothing in that case changes this result. In that case, physicians attempted to challenge a law that legalized midwifery but did not regulate physicians in any way. This Court found that the physicians could not assert third-party standing on behalf of the patients of *certified midwives*. In so doing, this Court affirmed, rather than undercut, *Nixon*'s holding that physicians have third-party standing to assert their patients' rights "as against governmental interference with the abortion decision." *Id.* at 89 (quoting *Nixon*, 220 S.W.3d at 737).[30]

[30] *Medical Association* is further distinguishable because the plaintiff physicians' challenges to the statute were based on the original purpose, single subject, and clear title requirements of the Missouri Constitution article III, Sections 21 and 23, rather than on the direct, fundamental rights of their patients to access and receive medical care.

Appellants casually suggest overruling *Nixon*, but do not address the high hurdle this Court has set for overturning its own precedent, namely (1) "when the application of prior decisions would be 'evidently contrary to reason' or 'flatly absurd or unjust'" (2) "when it results in 'recurring injustice or absurd results,'" (3) "the precedent is demonstrated unreasonable or incorrect through the passage of time and experience," or (4) "it is 'clearly erroneous and manifestly wrong.'" *Lucas v. Ashcroft*, 688 S.W.3d 204, 214 (Mo. banc 2024) (quotations omitted). None of these *stare decisis* factors apply here.

As this Court has recognized, third-party standing is appropriate "'where individuals not parties to a particular suit stand to lose by its outcome and yet have no effective avenue of preserving their rights themselves.'" *State v. Mahan*, 971 S.W.2d 307, 311-12 (Mo. banc 1998) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). This reasoning applies here.

Under Appellants' standing argument—combined with their facial challenge theory—every person seeking an abortion would have to individually challenge all restrictive laws before accessing constitutionally protected care. This approach would be both unworkable—not just in terms of scale but also due to time constraints inherent in seeking pregnancy-related care[31]—and contrary to Section 36's purpose, as it would

[31] *See Singleton*, 428 U.S. at 117–18 ("Only a few months, at the most, after the maturing of the decision to undergo an abortion, her right thereto will have been irrevocably lost. . . . But if the assertion of the right is to be 'representative' . . . there seems little loss in terms of effective advocacy from allowing its assertion by a physician." (internal citations omitted)).

effectively deny patients abortion access through burdensome provider regulations regardless of the strength of their constitutional claims.

The overwhelming majority of states addressing this issue post-*Dobbs* have found that abortion providers have standing to bring claims on behalf of their patients. *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 309 A.3d 808, 842 & n.23 (Pa. 2024) (so finding and collecting cases, including *Nixon*); *see also Planned Parenthood Great Nw. v. State,* 522 P.3d 1132, 1160 (Idaho 2023); *Planned Parenthood Ass'n of Utah v. State*, 554 P.3d 998, 1019 (Utah 2024); *Yellowhammer Fund v. Marshall,* 776 F. Supp. 3d 1071, 1095 (M.D. Ala. 2025). *Cameron v. EMW Women's Surgical Center., P.S.C.*, 664 S.W.3d 633 (Ky. 2023), cited by Appellants, is the *only* state supreme court decision since *Dobbs* finding that abortion providers lacked standing under that state's law—and did not involve an explicit right to reproductive freedom amendment like Missouri's. While an intermediate appeals court in Florida also held that abortion providers lacked standing, *State v. Planned Parenthood of Sw. & Cent. Fla.*, 342 So.3d 863, 867-68 (Fla. 1st Dist. Ct. App. 2022), the state's supreme court still reached the merits of the case. *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67 (Fla. 2024). All other courts to have considered this issue have reached the merits of abortion provider-plaintiffs' claims. The lower court did not err in likewise addressing the likelihood of success on Respondents' claims.

2. Venue is not on appeal—but if it were, Respondents' claims properly have venue in Jackson County. (Appellants' Point: VI)

The only order on appeal—indeed the only order authorized to be appealed under §526.010[32]—is the trial court's preliminary injunction order. That order does not address venue, nor is any decision on venue in this case a final appealable judgment. D196. The appropriate interlocutory mechanism to challenge a decision on venue is through an extraordinary writ. Here, Appellants have already tried (unsuccessfully) to writ the trial court's decision on venue. Order, *State ex rel. Parson v. Zhang*, No. SC100906 (Mo. Feb. 18, 2025). This Court should reject Appellants' attempt to retread this ground.

At any rate, Appellants' arguments that venue cannot lie in Jackson County because the Jackson County Prosecutor is not a proper defendant are unavailing. When there are multiple defendants, venue is proper wherever any one of them resides. §508.010.2. The Jackson County Prosecutor is authorized to enforce Missouri's myriad criminal abortion restrictions and Respondents cannot obtain complete relief without an injunction binding that office.[33] An individual officeholder's position on enforcement is by definition

[32] The only authorization for the current appeal comes from §526.010.2. That provision allows that, in "any action" in which the state is preliminarily enjoined from enforcing Missouri law, "the attorney general may appeal the preliminary injunction." §526.010.2. This narrow grant of appellate jurisdiction does not extend to any and all other rulings in the same case as a preliminary injunction order.

[33] Vague campaign-trail and other non-binding statements are no substitute for a binding judgment. The Jackson County Prosecutor's Office has *repeatedly* acknowledged its duty to enforce Missouri's laws, including the criminal laws at issue in this case, and that it lacks the power to decline enforcement. *See, e.g.*, Dec. 4 Tr. (Vol. I) at 28:9–13.

impermanent.[34] The trial court properly applied these straightforward principles in denying Appellants' Motion to Dismiss and Transfer Venue.[35]

The Jackson County Prosecutor is also a *necessary* party. Missouri law provides that "[w]hen declaratory relief is sought, *all* persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings." §527.110 (emphasis added); *see also* Rules[36] 87.04 and 52.04.[37] And "[t]he state official empowered to enforce a law that is challenged through a declaratory judgment action has an interest that would be affected by a court's declaration." *Mo. Health Care*, 953 S.W.2d at 621 (finding that official with enforcement authority is appropriate defendant in declaratory judgment action

[34] Appellants unavailingly try to distinguish *Turtle Island Foods, SPC v. Thompson*, 992 F.3d 694 (8th Cir. 2021), and *Mo. Association of School Librarians v. Baker*, No. 2316-CV05732 (Mo. Jackson Cnty. Cir. Ct.) in arguing that the Jackson County Prosecutor is "supporting Planned Parenthood." Br. 74. This statement about the Jackson County Prosecutor lacks any factual basis, and those cases are examples of the straightforward proposition that when a plaintiff challenges the constitutionality of a statute, complete relief cannot be afforded absent a judicial determination binding all parties that are able to enforce the statute. The same is true here.

[35] Appellants suggest that the endorsement of Ms. Johnson's candidacy by Planned Parenthood Great Plains Votes is evidence of a "collusive" lawsuit. Br. 77–78. Planned Parenthood Great Plains Votes is not a party to this lawsuit, and Comp Health does not endorse candidates for election. *See* D20, ¶4.

[36] All Rule references are to Missouri Supreme Court Rules, as updated, unless otherwise noted.

[37] Because this is a declaratory judgment action, Rule 87.04 governs. However, the Jackson County Prosecutor is also a necessary party under Rule 52.04(a).

challenging constitutionality of enforcement statute); *see also Midwest Freedom Coal., LLC v. Koster*, 398 S.W.3d 23, 27 (Mo. App. W.D. 2013) (dismissing case because, in part, the local prosecuting attorney, who was not named in the case, "was the proper party to sue and a necessary party").[38]

3. Great Rivers' claims also properly have venue in Jackson County. (Appellants' Point: VII)

Despite briefing the issue of venue multiple times, this is the *very first time* Appellants raise the argument that Great Rivers cannot sue in Jackson County. That argument is unpreserved and has been squarely forfeited. *State ex rel. Johnson v. Griffin,* 945 S.W.2d 445, 446 (Mo. banc 1997). Appellants *conceded* before the trial court, subject to their objections about standing and class representative suitability, that "[v]enue for Great Rivers' *statutory* claims would be proper in Jackson County under §508.010.2(2), because the [sic] Defendant Johnson can remain a defendant for the *statutory* claims." D189, p.17 (emphasis in original).

In any event, venue in Jackson County is independently appropriate for Great Rivers' claims. Great Rivers has challenged the Telemedicine Ban and seeks to be able to provide medication abortion via telehealth to patients located in Jackson County. D150,

[38] *Schweich v. Nixon*, 408 S.W.3d 769 (Mo. banc 2013), on which Appellants rely, is not to the contrary—unlike *Missouri Health Care*, it did not involve a challenge to an enforcement statute and, in fact, it reaffirmed *Missouri Health Care* by quoting it as the source of the standing analysis.

¶181 (explaining that "[i]f the Telemedicine Ban were enjoined . . . patients would not have to travel to obtain medication abortion").[39] Thus Great Rivers, too, has a conflict with the Jackson County Prosecutor—as it does with all of the local prosecutors in the Defendant Class.[40] And it is fully appropriate, as a matter of law and judicial economy, for Great Rivers and Comp Health to jointly bring their identical claims in a single case. If needed, Great Rivers may appropriately base its venue, in part, on the permissive joinder statute. §507.040. Because joinder is justified by statute, and not simply "court rule," Rule 51.01 has no bearing here and does not conflict with the statutes that do apply. *Cf. State ex rel. Johnson & Johnson v. Burlison*, 567 S.W.3d 168, 174 (Mo. banc 2019) (holding that court rules cannot extend venue beyond the limitations in statute).

4. Respondents are not required to seek waivers of laws challenged as unconstitutional. (Appellants' Point: VIII)

Respondents need not seek waivers from specific requirements imposed under the Abortion Facility Licensing Requirement before seeking facial relief from the entire unconstitutional scheme. *Planned Parenthood of the St. Louis Region v. Knodell*, 685 S.W.3d 377, 385 (Mo. banc 2024) ("Where there is a constitutional challenge to a statute

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[39] Appellants have explicitly conceded Great Rivers' venue in Jackson County for this claim, because the Telemedicine Ban is statutory.

[40] As to different claims, statute also holds that a plaintiff "may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party." §509.060. And of course, in a suit with multiple defendants, venue is proper in any county in which one defendant resides. §508.010.2(2).

which forms the *only* basis for granting declaratory judgment, exhaustion of administrative remedies is not required."). This would be true even if all of the requirements at issue were waivable, which they are not.[41] Respondents do not seek administrative remedies, but rather relief from the statutory requirements as a whole. Only courts within the Missouri judiciary, not tribunals under the state's executive branch, have the authority to determine the constitutionality of a statute or legislative enactment. *Id.* at 385.

C. Appellants misstate the Right to Reproductive Freedom standard. (Appellants' Points: IX-XII)

Missouri's abortion bans and restrictions are flatly incompatible with the robustly protective right to reproductive freedom that Missourians voted to approve in November 2024. Respondents are highly likely to succeed under the heightened standards of Subsections 3 and 6 of the Right to Reproductive Freedom Initiative, which provide far stronger protections than those previously articulated under *Roe* and *Casey*.

[41] For instance, DHSS has expressly disclaimed any authority to grant waivers from the forced pelvic examination "standard." *See* 45 Mo. Reg. 1, 67 (Jan. 2, 2020) (stating that "the department's administrative rules in this particular context provide limited authority to permit waivers—authority which does not include waiving the pelvic-examination requirement"), available at https://www.sos.mo.gov/CMSImages/AdRules/moreg/2020/v45n1Jan2/v45n1a.pdf. This is one of many instances in which the State's regulations—or its interpretation of them—have been a moving target, as the State waived the pelvic exam requirement for one of Comp Health's centers in 2010. D31, p.20.

1. Subsection 3's plain text controls and does not distinguish between direct and indirect infringement. (Appellants' Point: IX)

Appellants would write Section 36's sweeping protections out of existence by suggesting they somehow apply only to "direct" limitations on abortion, and contend that if the constitutional amendment is understood to apply to "incidental" limitations on abortion then the State would be unable to repair roads without running the risk of being held to violate the constitutional amendment by delaying an abortion patient's travel. Br. 85. This argument is absurd. Generally applicable infrastructure laws, by definition, do not target reproductive healthcare or any type of reproductive healthcare. The Challenged Laws, by contrast, each single out abortion providers and patients and treat them differently than other patients and providers, including those providing or seeking miscarriage management—a critical distinction Appellants ignore.[42]

As Section 36 inherently acknowledges, the right to make a decision is meaningless without the right to carry out that decision. Restrictions on abortion providers' ability to provide care directly restrict patients' rights to carry out their decision to obtain an abortion, which is exactly what the Challenged Laws were intended to do. Despite decades of touting these laws as victories in their campaign against abortion, Appellants now attempt to recast

[42] Because all of the Challenged Laws target abortion and abortion alone, this Court does not need to decide whether the direct versus indirect distinction Appellants attempt to import from *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011), and *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), should apply to Section 36. Br. 86. Even if it did, every Challenged Law is designed to *directly* impact abortion.

them as neutral regulations with merely incidental effects. This revisionist narrative cannot be squared with either the laws' history, their targeted and restrictive purposes, or their discriminatory operation.

Take Appellants' examples: The pathology testing requirement forces unnecessary procedures and delays specifically and uniquely for abortion patients. The hospital privileges requirement creates barriers that exist nowhere else in medicine for comparable procedures. The biased information provisions mandate state-scripted disclosures designed to dissuade patients from their chosen healthcare.[43] These are not incidental burdens—they are targeted restrictions that directly interfere with patients' ability to carry out their reproductive healthcare decisions.[44]

Appellants' claim that some laws, like the Pathology Requirement, merely regulate "what happens *after* abortion" fundamentally misunderstands how healthcare works. Br. 87. Providers cannot offer the care until they know they can comply with the law; the restriction thus limits access on the front end. As already described, this makes abortion access dependent on fragile business relationships that provide no patient health benefit.

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[43] Appellants argue that the preliminary injunction orders mean that "coerced abortions" are now permissible in the State. Br. 41. Not so. Coercion of a patient to receive *any* medical treatment, including abortion, is still unlawful.

[44] For the same reason, Appellants' repeated fearmongering about "contain[ing] the blast radius" of the trial court's decision is unwarranted. Br. 85 (quoting *Moore v. United States*, 602 U.S. 572, 592 (2024)). Respondents do not challenge generally-applicable laws. But laws that single out abortion, and only abortion, for more rigorous requirements and penalties than other health care spectacularly fail Section 36.

More fundamentally, Section 36 makes no distinction between pre- and post-procedure restrictions. Targeted requirements that increase costs, create delays, or impose unnecessary procedures directly affect patients' ability to access care, regardless of when in the process they apply.

Contrary to Appellants' arguments, applying the heightened standard required by Subsection 3 does not result in a "heckler's veto" or "punish the State for actions outside of [its] control." Br. 87-88. Regardless of whether Respondents could ultimately comply with these laws, they are still unconstitutional. The fact that Respondents largely cannot comply—as the evidence overwhelmingly demonstrates—merely illustrates these laws' devastating effect on abortion access in Missouri.

Missouri voters chose expansive language—"all matters relating to reproductive health care"—and courts must give effect to that choice. Mo. Const. art. I, §36.2. Appellants' effort to import restrictive doctrine from other contexts should be rejected.

2. Section 36 does not allow Appellants to impose mandatory delays on abortion by claiming they are facilitating childbirth. (Appellants' Point: X)

The 72-hour waiting period requirement, as Appellant concedes, is indisputably a "provision[] that delay[s] abortion," Br. 91. Under the plain text of the Constitution, such a delay is presumptively unconstitutional and triggers heightened strict scrutiny. Mo. Const. art. I, §36.3. Contrary to Appellants' claims, waiting periods for abortion do not protect reproductive freedom or further any bona fide patient health interest—they

undermine both. The Waiting Period Requirement begins when a patient provides informed consent for the abortion—in other words, after the patient has already indicated they are certain about their choice. And as Respondents' expert explained, the vast majority of patients who chose abortion remain certain about their choice, even if forced to observe a waiting period. D57, ¶¶132-37. Mandatory delays simply force patients to take additional time off work, arrange additional childcare, and travel multiple times to receive care. Mandatory delays cause patients "significant stress" and a "feeling of powerlessness." *Id.* ¶142. For patients experiencing coercion, mandatory delays do not help prevent coercion—instead, they provide additional opportunities for coercive partners or family members to interfere with healthcare decisions. *Id.* ¶15. And every day that a person is pregnant against their will they incur the risks of pregnancy and increased risk, however incremental, if they are eventually able to obtain an abortion. That the trial court credited Respondents' expert over Appellants' on these points was not an abuse of discretion.

Appellants' attempts to rebrand their abortion restrictions as "facilitat[ing] the constitutional right" to choose childbirth, Br. 94, fails for a fundamental reason: Section 36 treats abortion and childbirth as equally protected components of reproductive healthcare. Nothing in Section 36 allows Appellants to restrict access to abortion while claiming to protect access to childbirth. Appellants' theory would permit government interference with any reproductive healthcare decision, so long as officials claim to be protecting some other reproductive choice. For example, if accepted, Appellants could delay contraception access

by claiming to protect fertility. Section 36 forbids such governmental interference with individual healthcare decisions.

Indeed, Appellants' comparison to childbirth proves the point: patients may give birth in Missouri without mandatory waiting periods, state-scripted counseling, or biased information about childbirth risks. Providers may assist with delivery without the regulatory burdens imposed uniquely on abortion care. It was therefore not an abuse of discretion to preliminarily enjoin the Waiting Period Requirement under Subsection 3.[45] For similar reasons, the mandatory Waiting Period Requirement also discriminates against abortion in violation of Subsection 6.

3. This Court has not predetermined that a preliminary injunction based on Section 36 may never be issued. (Appellants' Point: XI)

Appellants fundamentally mischaracterize pre-amendment cases to manufacture a supposed bar to preliminary relief. Their argument—that *Coleman* and *Fitz-James* make preliminary injunctions "doctrinally impossible"—would create an unprecedented and illogical exception to established preliminary injunction principles. Br. 95. No court has ever held that an entire subject area or constitutional provision is immune from preliminary relief, and these two ballot summary cases provide no support for such an extraordinary

[45] Here, as elsewhere, Appellants' citations to *Casey*, which found the waiting period law at issue justified by "the State's interest in protecting the life of the unborn," cannot apply to the plain text of Section 36, which does not recognize fetal life as a compelling state interest. 505 U.S. at 886.

proposition. *Coleman* resolved a narrow procedural question: whether initiative petitions must catalog every statute that might be affected by a proposed amendment. 696 S.W.3d 347, 351 (Mo. banc 2024). This Court explicitly stated the case was "about form and procedure, not substance," not "about abortion," and that potential statutory impacts were "not at all relevant to, far less dispositive of" the procedural issues presented. *Id.* at 351, 370.

Appellants' attempt to transform *Coleman*'s procedural holding into a substantive constitutional barrier ignores the case's limited scope, this Court's explicit statements, and basic legal principles. *Coleman*'s observation that the Amendment's effects were uncertain in the petition context cannot, once the Amendment passed, preclude courts from evaluating specific statutory challenges with developed factual records. *Id.* at 366.[46] If Appellants' logic were correct, no constitutional amendment could ever support preliminary relief because pre-enactment uncertainty would forever bar such claims. If anything, *Coleman*'s statement that, if passed, the amendment would "*likely* [] affect . . . some uncertain number of statutes" supports the trial court's finding of a likelihood of success on the merits of invalidation. *Id.* at 370 (emphasis added).

[46] Respondents' counsel's prior statements are fully consistent with the positions taken in this case. Appellants' selective, out-of-context quotations of one of Respondents' counsel—in other cases, on behalf of other clients—do not mean what Appellants claim and, in any event, have no bearing here. *See* Pls.' Suggestions in Opp'n to Pet. for Writ of Mandamus or Prohibition at 20–25, *State. ex. rel. Kehoe v. Zhang*, No. SC101026 (Mo. Apr. 3, 2025).

Fitz-James similarly addressed ballot summary requirements, not constitutional merits. The Western District struck down a misleading ballot summary that falsely claimed Section 36 would permit "dangerous, unregulated, and unrestricted abortions." 678 S.W.3d at 208-09. The court's corrective language—that Section 36 would "allow regulation of reproductive health care to improve or maintain health of patient [sic]"—simply reflected the Amendment's text. *Id*. at 217. Here again, Appellants left out critical context. *Fitz-James* explicitly disclaimed any substantive constitutional analysis, noting that courts reviewing initiative petitions "will not sit in judgment on the wisdom or folly of the initiative proposal presented, nor will this Court issue an advisory opinion as to whether a particular proposal, if adopted, would violate a superseding law." *Id.* at 203 (quoting *Brown v. Carnahan*, 370 S.W.3d 637, 645 (Mo. banc 2012)).

Nothing in *Fitz-James* can be interpreted to prevent the trial court in an entirely separate case from preliminarily enjoining a statute following the passage of an amendment via an initiative petition.

4. Section 36 is far more protective than *Roe* or *Casey*. (Appellants' Point: XII)

The fundamental right to reproductive freedom is more protected under the Missouri Constitution than it ever was under the federal Constitution. Although *Roe* subjected abortion restrictions to traditional strict scrutiny, subsequently in *Casey* the Supreme Court required only that abortion restrictions not impose an "undue burden" on the right, *i.e*., a substantial obstacle in the path of a person seeking an abortion. *Compare*

Casey, 505 U.S. at 877 ("A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus."), *with Roe*, 410 U.S. at 155 (holding that abortion regulations "may be justified only by a 'compelling state interest,' and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake." (citations omitted)).

Section 36 is more demanding than either *Roe* or *Casey*—its text making explicit that an abortion restriction fails unless it advances patient health by the least restrictive means, is consistent with accepted clinical standards and evidence-based medicine, and does not infringe on "autonomous decision-making." Mo. Const. art. I, §36.3. Section 36 also protects against discrimination on the basis of providing or accessing abortion, *id.* §36.6, and prohibits penalizing people for obtaining or providing abortion, *id.* §36.5, neither of which were explicitly included in the *Roe*/*Casey* framework. *See* D4, pp.18-19; D56, pp.24-25.[47]

Statutes and regulations previously ruled unconstitutional for imposing undue burdens would still be unconstitutional under Missouri's heightened strict scrutiny standard, but the same is not true for those previously deemed to satisfy the *Casey* rubric. Given Section 36's far more protective analytical framework for abortion rights, that laws

[47] Appellants' references to "original meaning" and *Doyle v. Tidball*, 625 S.W.3d 459, 463 (Mo. banc 2021), do not change fundamental principles of textual interpretation. Br. 97.

were deemed constitutional under *Roe* or *Casey* affords no ongoing protection against challenges under Missourians' new constitutional right.[48] D92, p.18.

Appellants improperly attempt to limit Section 36's scope by referencing campaign statements rather than by analyzing the constitutional text itself. Campaign rhetoric cannot constrain judicial interpretation of constitutional language. More fundamentally, Appellants mischaracterize what the campaign promised. Advocates campaigned on restoring Missourians' right to make reproductive healthcare decisions—a right that had been effectively eliminated in Missouri. Promising to restore reproductive choice is entirely different from promising to resurrect the specific legal framework of *Roe* and *Casey*.

D. The trial court correctly analyzed specific laws. (Appellants' Points: XIII-XVIII)

When the appropriate Section 36 standard is applied, there can be no doubt that Respondents are likely to succeed on the merits of each of their claims. Appellants' attempts to show otherwise are nothing but smoke and mirrors—efforts to confuse and distract when faced with the plain text of the Missouri Constitution.

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[48] Other courts, interpreting new state constitutional amendments similar to Section 36, have concluded that the plain text of those amendments was also more protective of abortion rights than the pre-*Dobbs* federal standard. *Northland Fam. Plan. Ctr.*, 2025 WL 2098474, at *10–11 (finding that "Michigan voters dramatically changed the Michigan Constitution" from the previously-adopted *Casey* standard and that "'[u]ndue' is not a part of the [new] constitutional text"); *Preterm-Cleveland I,* 2024 WL 3947516, at *9–11 ("The pre-*Dobbs* legal standard is less rigorous than the test set forth in the plain language of [Ohio's new constitutional] Amendment.").

1. The trial court correctly enjoined the Abortion-Specific Facility Licensing Requirement. (Appellants' Point: XIII)

The Abortion Facility Licensing Requirement is plainly discriminatory and likely violates Subsection 6, as the trial court held. The abortion-specific facility licensing requirement, which requires standards that are medically unnecessary for the provision of abortion care, applies to any facility that provides a single abortion. §197.200.1; §188.015.2. The abortion-specific license does not authorize a facility to do anything other than provide this very specific health care. It singles out abortion for unique regulatory burdens, thereby violating Subsection 6's.

For example, miscarriage care, which uses the same medications and procedures as abortion, is available without a special facility license. The trial court found that "miscarriage management and abortion medication/procedures often mirror each other." D196, p.11. This finding is supported by the record: Respondents' experts testified that miscarriage care "involves the same medications and procedures" and "the same risks of complication as abortion." D57, ¶¶11-12, 22-23; D6, ¶¶28, 66. The trial court also found "miscarriage management can be provided on an outpatient basis without a special facility license." D196, p.11. And the record reflects that "[m]edications and procedures which carry similar or greater complexity and risk to abortion are routinely provided in

unlicensed, office-based settings, including miscarriage care." D57, ¶11; *see also* D6, ¶28.[49]

Appellants take issue with the trial court's findings by asserting—without citation to the record—that miscarriage treatment often takes place in hospitals or ambulatory surgical centers requiring general-purpose facility licenses. But the record reflects otherwise: that miscarriage treatment is commonly provided in outpatient medical offices that require no facility license. D57, ¶11; D6, ¶28. This distinction exposes the licensing requirement's constitutional infirmity. Missouri permits identical medical procedures—aspiration or the use of medications to evacuate the uterus—in unlicensed office settings when treating miscarriage, but prohibits providing the same procedure in the same setting when the patient seeks an abortion.

Backed into a corner on the fact that the exact same medications and procedures used for abortion are legally available without a facility license when provided for miscarriage management, Appellants claim that this differential treatment should be permissible because the Legislature "need not 'strike at all evils at the same time.'" Br. 103 (quoting *Ocello v. Koster*, 354 S.W.3d 187, 202 (Mo. banc 2011)). But while the Legislature can pass health and safety laws, it may not do so in a way that "discriminate[s]

[49] Other courts, too, have relied on comparisons between abortion and other kinds of pregnancy care, including miscarriage care, to invalidate abortion-specific requirements. *See, e.g.*, *Hodes & Nauser*, 551 P.3d at 81, 83 (invalidating Kansas's abortion facility licensing scheme based, in part, on comparison to miscarriage care); *Glossip v. Mo. Dep't of Transp. & Highway Patrol Emps.' Ret. Sys.*, 411 S.W.3d 796, 803 (Mo. banc 2013).

against persons providing or obtaining reproductive health care." Mo. Const. art. I, §36.6. Treating abortion less favorably than the medically equivalent miscarriage care—indeed, in such an unfavorable way that it functions to deny access to constitutionally protected care[50]—is not constitutional.

Appellants' assertion that hospitals are required to comply with the Abortion Facility Licensing Requirement is incorrect on its face. Appellants ignore the requirement's plain text, which explicitly states that it does *not* apply to hospitals. §188.015.2 (stating that an "Abortion Facility" is "a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital"); 19 C.S.R. §30-30.050(1)(B) (same).[51] Appellants' assertion appears to be a litigation position only, supported by a citation to a federal "CMS State Operations Manual," with no evidence in the record that in practice hospitals in Missouri follow the many detailed and medically unnecessary practices that the Abortion Facility Licensing Requirement imposes. Br. 102-03.

[50] *See supra* Section II. While the laws at issue in *Ocello* "establish[ed] reasonable and uniform regulations" that had "neither the intent nor effect of . . . restrict[ing] or deny[ing] access" to the regulated activity, *Ocello*, 354 S.W.3d at 200 (quoting §573.525.1), the same cannot be said of the targeted restriction at issue here.

[51] The abortion-specific facility license does apply to general-purpose ambulatory surgical centers—which may not provide an abortion, even a medication abortion, without also holding an abortion-specific facility license.

Appellants also take issue with the fact that the preliminary injunction order includes §§197.205 and 197.215, which apply to both "abortion facilities" and to non-abortion-providing "ambulatory surgical facilities." Br. 48-49. But the trial court's order clearly only applies to the "set of statutes and regulations [that] apply only to abortion facilities[.]" D196, p.11. The order therefore applies only to the portions of the licensing laws that govern abortion facilities, not those governing the more general-purpose ambulatory surgical facilities. At best, Appellants complain of an easily resolved clerical error.[52]

The lower court did not err in finding that Respondents are likely to succeed on their claim that the Abortion Facility Licensing Requirement, by targeting abortion and only abortion, discriminates against Missourians providing or obtaining reproductive health care in violation of Subsection 6.

Alternatively, Subsection 3 provides an additional basis to affirm the trial court's injunction. Although the trial court based its injunction in the antidiscrimination provision, it made at least one finding that shows that the Abortion Facility Licensing Requirement is not the least restrictive means of promoting patient health. Specifically, it found the law "require[s] physicians to perform certain exams and tests that are unnecessary when the physicians themselves are authorized and enabled to make the determination on what is

[52] Moreover, Appellants did not preserve this argument below, despite Respondents repeatedly defining the Abortion Facility Licensing Requirements to include §§197.200-.235, D4, pp.11, 13–14, 23; D96, pp.2, 7.

and is not necessary for their individual patients." D196, p.11. This finding is supported: 19 C.S.R. §30-30.060 requires that abortion patients' pregnancies be confirmed by "clinical evidence *and* laboratory tests," 19 C.S.R. §30-30.060(2)(D) (emphasis added), and that every abortion patient be subject to "hemoglobin; urinalysis, including pregnancy test; and Rh typing," 19 C.S.R. §30-30.060(5)(C). The record shows that subjecting *every* abortion patient to *all* of these tests is duplicative and serves no medical purpose, particularly where patients receiving miscarriage care have no such requirement. D110, p.15; D6; D57, ¶¶11-13.

Appellants cherry-pick regulations and attempt to use them to justify the entire scheme.[53] Respondents take no issue with being regulated by generally applicable health care laws, but that is not what is at issue here. Respondents' challenge targets the entire, discriminatory requirement to maintain an abortion-specific facility license, not any single regulation. The statutes and regulations that make up the Abortion Facility Licensing

[53] In keeping with this theme, Appellants also point to a New York Times article that itself cherry-picks alleged deficiencies and incidents at health centers operated by other Planned Parenthood affiliates in other parts of the country. Br. 17. Every Planned Parenthood affiliate is an independent nonprofit corporation with its own board of directors and leadership team. The article does not mention Comp Health, Great Rivers, or any health care provided in Missouri. Moreover, the article itself has been criticized as imbalanced, dangerous reporting that is thin on support and trades on inaccurate anti-abortion tropes. Carrie N. Baker & Jenifer McKenna, *New York Times' Shameful Reporting on Planned Parenthood Bolsters Right-Wing Attacks on Reproductive Healthcare Access*, Ms. Magazine (Feb. 21, 2025), https://msmagazine.com/ 2025/02/21/new-york-times-planned-parenthood/.

Requirement take up seventeen pages of the Appendix.[54] App. at 85-97, 102-06. It is enforced, in part, through criminal penalties for abortion providers and staff. §188.075. The problem is not that equipment sterilization is unreasonable; the problem is that identical medical procedures receive vastly different regulatory treatment—not limited to equipment sterilization or patient discharge instructions—based solely on the reason for treatment.[55] And that differential treatment comes at potential licensing and criminal cost. Missouri does not subject miscarriage management—involving the same medicines and procedures as abortion care—to special facility licensing requirements. *See Hodes & Nauser*, 551 P.3d at 82 (noting that disconnect between abortion facility licensing and regulations governing ambulatory surgical centers "where care similar to, or more complex than, abortion is performed" undermines the state's claimed maternal health interest). The disparity undermines any claimed patient health interest.

[54] If the injunction on the Abortion Facility Licensing Requirement was lifted in full, those regulations would also reimpose other preliminarily enjoined laws as likely unconstitutional, including the Biased Information Law and the Waiting Period Requirement. 19 C.S.R. §30-30.060(2)(B)(D); 19 C.S.R. §30-30.060(3)(D)(2)–(3).

[55] In virtually every filing in this case, Appellants have attached the photo taken at an unannounced September 2018 inspection of a tube that needed to be replaced in one of the machines used for procedural abortions. The DHSS inspection report from that visit notes that the problem "was *not* an infection control issue," State Index of Exhibits, Ex. 8, at 361 *State. ex. rel. Kehoe v. Zhang*, No. SC101026 (Mo. Mar. 21, 2025) (emphasis added), and at no point has there been a finding that this tube was "moldy" as Appellants misleadingly claim. As they are well aware due to voluminous briefing on this issue, this tube posed no risk to patient health because of the way the machine works (i.e., the suction flows into the machine, not out of it), and Comp Health worked quickly at the time to ensure that any issue was corrected. This non-event from seven years ago provides no basis for determining the constitutionality of any of the laws at issue in this case.

2. The trial court correctly enjoined the Biased Information Law. (Appellants' Point: XIV)

The Biased Information Law was correctly enjoined under Subsection 3. As Respondents' expert testified, the Biased Information Law forces providers to give patients false information that damages the patient-provider relationship, violates medical ethics, and undermines informed consent. D57, ¶¶115-27. *See supra* Section II. Rather than demonstrating with evidence that the Biased Information Law serves a compelling state interest under Subsection 3, Appellants rely solely on two outdated First Amendment cases with completely different records than the one relied on by the trial court here. Br. 107-10 (citing *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 734, 738 (8th Cir. 2008) and *Reprod. Health Servs. of Planned Parenthood of St. Louis Region v. Nixon* ("*Nixon 2006*"), 185 S.W.3d 685, 690 (Mo. banc 2006)). *Rounds* additionally relied on certain no-longer-relevant principles from the far less protective *Casey* era, such as the legitimacy of a governmental interest in "fetal life." *See Rounds*, 530 F.3d at 734 (quoting *Gonzalez v. Carhart*, 550 U.S. 124, 157 (2007)). Indeed, Appellants' citation to *Casey* itself is telling, as *Casey* recognized that the "informed consent" requirements it upheld were designed to further the state's "goal of protecting the life of the unborn" and to "express[] a preference for childbirth over abortion." *Casey*, 505 U.S. at 883; *see supra* Section III.C.4 (explaining why fetal life is not a legitimate state interest under Section 36). Relatedly, *Rounds* should be disregarded here because it relied in part on the idea that a *statutory* definition of "life" could be controlling, which is simply not the case under Section 36.

Rounds, 530 F.3d at 735. And *Nixon 2006* addressed only a vagueness challenge to section 188.039 and did not address the substantial remainder of the Biased Information Law, sections 188.027 and 188.033. *Nixon 2006*, 185 S.W.3d 685. Appellants' attempts to meet their burden solely through citation to these outdated cases fall short.

Alternatively, the trial court's injunction of the Biased Information Law may be affirmed because that law discriminates on the basis of a patient's exercise of a fundamental right, violating Subsection 6, as discussed *supra* Section II.

3. The trial court correctly enjoined the Telemedicine Ban. (Appellants' Point: XV)

The trial court did not abuse its discretion in enjoining the Telemedicine Ban. §188.021.1. Its decision does not conflict with federal law, as Appellants incorrectly argue, and the Telemedicine Ban likely fails under either Subsection 3 or Subsection 6.

a) Enjoining the Telemedicine Ban does not conflict with federal law.

The trial court's decision does not conflict with federal law. In arguing to the contrary, Appellants ignore longstanding, congressionally ratified precedent in their attempt to misread 18 U.S.C. §§1461 and 1462 to ban sending medications for lawful abortions. The courts, Congress, and the executive branch have all made these statutes' limited reach clear.

As the Department of Justice's Office of Legal Counsel ("OLC") explained in its December 2022 opinion ("OLC Opinion"), for over one hundred years, federal courts have made clear that 18 U.S.C. §§1461 and 1462 do not apply to sending or receiving

medications absent an intent that those medications will be used for *unlawful* abortions. *See* Department of Justice, Office of Legal Counsel, *Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions* (December 23, 2022), https://www.justice.gov/olc/opinion/file/1560596/dl?inline; *see also, e.g.*, *Bours v. United States*, 229 F. 960, 964 (7th Cir. 1915) ("[A] physician may lawfully use the mails to say that if an examination shows the necessity of an [abortion] operation to save life."); *Youngs Rubber Corp. v. C.I. Lee & Co.*, 45 F.2d 103, 109 (2d Cir. 1930); *United States v. One Package*, 86 F.2d 737, 739 (2d Cir. 1936); *Davis v. United States*, 62 F.2d 473, 475 (6th Cir. 1933); *United States v. Nicholas*, 97 F.2d 510, 512 (2d Cir. 1938); *Consumers Union of U.S., Inc. v. Walker*, 145 F.2d 33, 35 (D.C. Cir. 1944).[56]

In 1948, Congress expressly acknowledged this case law when it created Title 18 to the United States Code and codified predecessor statutes into 18 U.S.C. §§1461 and 1462. Specifically, it attached a Historical and Revision note from a 1945 report to the House Committee on the Revision of Laws that "invited" the "attention of Congress" to three of the decisions noted above and described them in detail. 18 U.S.C. §1461 (Historical and Revision Note) ("The attention of Congress is invited to the following decisions of the Federal courts construing this section and section 1462 of this title.") (citing *Davis*, 62 F.2d

[56] In light of this pre-*Roe* precedent, which Congress expressly considered (decades before *Roe*), Appellants' observation that "[d]uring the *Roe* era, courts did not grapple with the statute's abortion-related provisions" is irrelevant to their ongoing force. Br. 111. They are not impacted by *Dobbs*.

473; *Nicholas*, 97 F.2d 510; *Youngs Rubber Corp.*, 45 F.2d 103). After considering the decisions' limiting construction, Congress reenacted the same statutory language.

Appellants also grasp at straws in their claim that "since *Dobbs*, it appears every judge to interpret the statute has agreed that it obviously prohibits the mailing of abortion drugs." Br. 111. To begin, this statement aggrandizes what it cites—the opinions of a single district court judge and a lone concurrence, both of which were reversed on standing grounds by a unanimous Supreme Court. *All. for Hippocratic Med. v. FDA*, 78 F.4th 210, 267-70 (5th Cir. 2023) (Ho, J., concurring), *panel op. rev'd on other grounds*, 602 U.S. 367 (2024); *All. for Hippocratic Med. v. FDA*, No. 23-10362, 2023 WL 2913725, at *2021 (5th Cir. Apr. 12, 2023); *All. for Hippocratic Med. v. FDA*, 668 F. Supp. 3d 507, 539-43 (N.D. Tex. 2023). More fundamentally, however, Appellants ignore that the binding decisions outlined above, and Congress' ratification of them, pre-dated the Supreme Court's 1973 decision in *Roe* by decades. Courts, thus, had no reason to revisit and "grapple with" 18 U.S.C. §§1461 and 1462's purview. Br. 111. The law was settled—and without reference to the federal constitution. These Congressionally ratified controlling decisions interpret both statutory provisions entirely independently of any constitutionally protected right to abortion. Appellants' *Dobbs*-based arguments are merely a distraction.

In advancing their incorrect reading of 18 U.S.C. §§1461 and 1462, Appellants ignore multiple errors in logic and interpretation that are fatal to their arguments. Their statutory conflict avoidance arguments fail as a result. First, Appellants ignore that, on their theory, 18 U.S.C. §§1461 and 1462 would prohibit sending *any* supplies or medications

intended to be used for abortion, despite that abortion has been openly and lawfully provided in this country for decades, including prior to *Roe* and after *Dobbs*. And they also ignore that this occurred without any suggestion by Congress or the executive branch that sending or receiving medication or supplies for use in lawful abortion care violates federal law, and that abortion care remains protected by multiple state constitutions—including Missouri's. Next, they ignore that Congress never responded to the open provision of lawful abortion by amending the laws it codified into Title 18 (with the precedent described above explicitly in mind) to make them applicable to sending medication or items in connection with lawful abortion care. Additionally, since 2021, the FDA has explicitly allowed mifepristone to be dispensed for medication abortion without an in-person appointment—a decision wholly inconsistent with Appellants' inaccurate reading of 18 U.S.C. §§1461 and 1462. Appellants suggest that this change in mifepristone's dispensing requirement is counter to federal law, Br. 111-12, by again ignoring that the courts, Congress, and the executive branch have long interpreted 18 U.S.C. §§1461 and 1462 to not apply absent intent that the medication shipped be used for unlawful abortions. Finally, Appellants ignore that in reversing *Roe* and *Casey* in 2022, the U.S. Supreme Court expressly returned the abortion issue to the political process, *Dobbs*, 597 U.S. at 302—and much as Appellants dislike it, the people of Missouri have spoken and enshrined comprehensive reproductive healthcare, including abortion, in the state Constitution.

b) The Telemedicine Ban is likely unconstitutional under Subsection 3.

The Telemedicine Ban was correctly enjoined under Subsection 3. Appellants do not even argue that the trial court erred in finding that they had not shown, as they must, that the Telemedicine Ban is not "consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on [abortion patients'] autonomous decision-making." Mo. Const. art. I, §36.3. Nor could they, as the overwhelming majority of scientific evidence demonstrates that medication abortion can safely be administered via telemedicine. D57, ¶¶176-79. And requiring patients to take mifepristone in the provider's physical presence infringes on patients' autonomous decision-making by restricting them from deciding when and where to begin their abortions. *Id.*

Appellants cannot establish that the Telemedicine Ban is necessary to advance patient health, much less that it is the least restrictive means to do so in accordance with evidence-based care. Instead, Appellants repeat unfounded arguments claiming that medication abortion carries safety risks that necessitate in-person administration. Br. 112. First, they treat "complications" in the scientific literature as essentially synonymous with harm. This is inaccurate. "Complications" includes situations in which a medication abortion regimen simply fails to complete the abortion. *See* D57, ¶¶27, 40-48, 210. In such cases, the patient has experienced a complication because the desired medical outcome was not achieved, but it is inaccurate to suggest that such cases result in harm that justifies

banning this care. Rather, patients generally receive either an additional dose of misoprostol or procedural care to complete the abortion. D57, ¶¶41-42.

Appellants also misrepresent the Mifeprex label by stating that "up to 4.6% of women will *need* emergency *care* after taking mifepristone." Br. 112 (citing Mifeprex label) (emphasis added). This statistic refers to the percentage of patients who *chose* to *visit* an emergency room after taking mifepristone. This includes patients who visit an emergency department with normal rates of bleeding (i.e. within the medically expected range) that does not require treatment. D57, ¶27. These patients visit emergency departments out of caution about their bleeding—which is actually a normal, expected side effect. They do not "need emergency care" as Appellants falsely claim. Br. 112, *see also* Br. 27-28, 88, 113. The statistic is also based upon only two U.S. studies that involved a combined total of only 1,043 participants.[57] The same table observes that, across 14,339 patients in three studies, well under one percent (only 0.04-0.6%) required hospitalization.[58] *Id.* And, while Appellants encourage this Court to chase one inaccurately characterized statistic into the weeds, the fact remains that research establishes that medication abortion is safe and effective. *Supra* Statement of Facts Section II.

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[57] FDA, *MIFEPREX: Highlights of Prescribing Information*, 8 tbl. 2 (2016), https://www.accessdata.fda.gov/drugsatfda_docs/label/2016/020687s020lbl.pdf. The same table includes one non-U.S. study with 95 participants that reported zero ER visits. *Id.*

[58] "Hospitalization" includes any hospital admission or prolongation of hospitalization. FDA, *What is a Serious Adverse Event?*, https://www.fda.gov/safety/reporting-serious-problems-fda/what-serious-adverse-event.

Finally, Appellants demonstrate their lack of knowledge about medication abortion when they claim that taking mifepristone at home creates complications "outside the supervision of a doctor." Br. 112. Even patients who take mifepristone in their provider's presence leave the office shortly thereafter. Most complications, if they occur at all, happen only after the second medication (misoprostol), taken 24-48 hours later. D57, ¶¶39-41; D6, ¶11. Since complications do not occur during mifepristone administration, requiring patients to take this medication in a provider's physical presence cannot be the least restrictive means of achieving any legitimate patient health interest.

The trial court did not err in finding that Respondents are likely to succeed on their claim that the Telemedicine Ban unjustifiably interferes with Missourians' Right to Reproductive Freedom in violation of Subsection 3. Alternatively, the trial court's injunction of the Telemedicine Ban may be affirmed because that law discriminates on the basis of a patient's exercise of a fundamental right, violating the antidiscrimination provision of Subsection 6, as discussed *supra* Section II.

4. The trial court correctly enjoined the Medication Abortion Complication Plan Regulation. (Appellants' Points: XVI-XVII)

The trial court did not err in finding that Respondents are likely to succeed on the merits of their claim that the Medication Abortion Complication Plan Regulation imposes medically irrelevant requirements that directly interfere with patient autonomy to select the method of abortion that is best for them.

a) The trial court correctly found that the Medication Abortion Complication Plan Regulation likely violates Subsection 3. (Appellants' Points: XVI)

The trial court did not err in finding that Respondents are likely to succeed on the merits of their claim that the Medication Abortion Complication Plan Regulation, 19 C.S.R. §30-30.061, is presumptively unconstitutional. D196, pp.12-13; *see also* Mo. Const. art. I, §36.3.[59]

Appellants misstate the trial court's ruling when they claim: "The *only* reason the circuit court gave for enjoining this regulation is that it supposedly 'would not benefit' a person 'who travels three hours to get a medication abortion and then returns home.'" Br. 114. This was merely *an example* the trial court provided; it was not its sole basis for enjoining the regulation. D196, pp.12-13 ("*For example*…" (emphasis added)).

This Court can also affirm the trial court's order because the Medication Abortion Complication Plan Regulation violates Subsection 6 by discriminating against abortion. No other uses of mifepristone or misoprostol, including for miscarriage care, are subject to anything like the Complication Plan Regulation's onerous requirements. By treating medication abortion care as categorically different from medication-only miscarriage care, the law discriminates against providers and patients who need or choose abortion care.

[59] As with their arguments against enjoining the Telemedicine Ban, *supra* Section III.D.3.b, Appellants mischaracterize complication data regarding medication abortion. Br. 113. These arguments are unpersuasive for the same reasons explained above.

Further, the regulation imposes standards not imposed on *any* other oral medication, and indeed, not imposed on invasive surgeries or other procedures with greater complication rates than medication abortion. D6, ¶28.

b) The trial court's ruling does not rest on a finding that Section 36 creates "a right to a specific abortion procedure". (Appellants' Point: XVII)

Appellants next argue that Section 36 "establishes a generic right to abortion, not a right to a *specific* procedure"[60] and, because procedural abortion is still available at early stages of pregnancy, restrictions on medication abortion—the most common kind of abortion by far—are not unconstitutional. Br. 115. As Respondents demonstrated in briefing and during the preliminary injunction hearings, limiting the availability of abortion services between which patients can choose is an "interfere[nce] with" a "person's fundamental right to reproductive freedom," that cannot be justified because it "infringe[s] on that person's autonomous decision-making." Mo. Const. art. I, §§36.2-.3.[61] The trial court did not abuse its discretion when it found that Respondents are likely to succeed in

[60] Appellants' claim that even Missouri's dilation and extraction ban (or so-called "partial-birth abortion ban") would not survive under a "right to a specific abortion procedure" is a diversionary tactic that does not undermine the trial court's conclusion that the *Medication Abortion* Complication Plan Regulation should be preliminarily enjoined. Br. 115. Respondents have not challenged the dilation and extraction ban. Dilation and extraction abortion is rare, strictly federally regulated, and not at issue in this case.

[61] Once again, Appellants' citations to *Casey*-era cases like *Gonzales*, 550 U.S. 124, entirely ignore the plain text of Section 36.

their challenge to the constitutionality of the Medication Abortion Complication Plan Regulation.

5. The trial court correctly enjoined the Pathology Requirement. (Appellants' Point: XVIII)

The trial court correctly enjoined the Pathology Requirement under Subsection 3. D196, pp.13-14. Appellants' argument that Respondents must establish that they "*cannot* comply with the statute" to show interference with the abortion right, Br. 118 (emphasis added), overstates what Subsection 3 requires—Appellants stop at the word "deny" without acknowledging that "interfere with, delay, or otherwise restrict" also trigger heightened strict scrutiny. Mo. Const. art. I, §36.3. The record supports the trial court's finding that the Pathology Requirement interferes with abortion access and is presumptively unconstitutional.

The record further shows that Appellants have not carried their burden to demonstrate that the Pathology Requirement is justified by a compelling government interest achieved by the least restrictive means. The trial court credited Respondents' expert that pathology of tissue removed during an abortion cannot determine whether the abortion is incomplete. D196, p.14 (D57, ¶112). Respondents' expert further testified that the Pathology Requirement is not in keeping with "widely accepted clinical standards of practice and evidence-based medicine," Mo. Const. art. I, §36.3, because leading professional organizations do not require pathology of tissue removed from an abortion and the vast majority of states do not require such pathology. D57, ¶113.

Appellants' attempt to overturn these record-based trial court findings relies primarily on an inapplicable and outdated *Roe*-era decision from 1983, *Planned Parenthood Ass'n of Kan. City, Mo., Inc. v. Ashcroft*, 462 U.S. 476, 487 (1983), as well as their own alleged expert who does not address the opinions of Respondents' expert. Br. 117. That the trial court credited Respondents' expert over Appellants' in granting a preliminary injunction is well within the trial court's discretion, not reversible error.

In addition, the Pathology Requirement discriminates on the basis of a fundamental right by singling out abortion, and only abortion, for differential treatment. Missouri law does not include a similar requirement for pregnancy tissue removed during procedural miscarriage management. The Pathology Requirement therefore likely violates Subsection 6, and the injunction should be affirmed for that reason, too. Mo. Const. art. I, §36.6. *See supra* Section II.

E. The remaining preliminary injunction factors favor Respondents. (Appellants' Points: XIX-XX)

Finally, the remaining preliminary injunction factors squarely favor Respondents. Respondents will be irreparably harmed absent a preliminary injunction. Absent a preliminary injunction, Missourians will be unable to access the abortion right they voted to enshrine until after a trial on the merits, more than a year after Section 36 became effective. This is a fundamentally undemocratic, impermissible result. The public interest weighs in favor of giving effect to Missourians' clear call for abortion to be accessible in their home state.

1. The trial court correctly determined that the balance of the equities and the public interest favors Respondents. (Appellants' Point: XIX)

The balance of equities and the public's interest in enforcing the Missouri Constitution strongly favor injunctive relief. Appellants can have no interest in enforcing unconstitutional laws. Appellants point to *Maryland v. King*, 567 U.S. 1301, 1303 (2012), for the proposition that Appellants are irreparably harmed by an inability to effectuate a statute. Br. 121. But "if a law is unconstitutional, how is the State harmed by not being able to enforce it?" *Garden State Equal. v. Dow*, 79 A.3d 1036, 1041 (N.J. 2013).

Appellants' contention that "the State has already given Planned Parenthood most of what they want" ignores reality. Br. 119. It is far from obvious that "[e]very defendant"—including all 115 local prosecutors—agree that any of the laws at issue cannot be enforced, or even that the AG Letter opining about the Total and Gestational Age Bans binds future prosecutors. Br. 119. The Attorney General himself can change his mind about what is enforceable and what is not without any notice to Respondents. In fact, the Attorney General has already threatened enforcement against Respondents for non-existent violations.[62] Given the criminal penalties at stake, Respondents cannot rely on these shifting promises.

Despite attacking abortion access at every turn, Appellants claim the Challenged Laws don't prohibit abortion. But Section 36 doesn't require outright prohibition to trigger

[62] D133, pp.4–6.

constitutional violations. The Challenged Laws plainly interfere with, delay, and restrict care through mandatory waiting periods and requirements giving DHSS complete discretion over abortion access—restrictions imposed on no other healthcare providers. And as noted above, the Challenged Laws are far more than "commonsense regulations"—and Respondents remain subject to all generally applicable health care regulations. *See supra* Section II. Decades of litigation history confirm Respondents cannot comply with these targeted restrictions.

Further, Appellants vastly overread this Court's peremptory writ. The Court's two-page order stated only that it was articulating a new standard governing preliminary injunctions in Missouri. It made no comment on Appellants' alleged harm, and certainly did not attribute any such harm to the preliminary injunction. In any event, the trial court considered Appellants' assertion that they are irreparably harmed when they are enjoined from enforcing statutes enacted by the Legislature. D196, pp.5-6. It balanced this against the harm to Respondents and their patients in being subjected to likely unconstitutional laws. There was no abuse of discretion in finding that the balance of the equities tips in favor of Respondents.

The public interest also weighs heavily in Respondents' favor. Through the initiative process, itself a fundamental right in Missouri, the people have approved Section 36, establishing a right to reproductive freedom, which unavoidably conflicts with the statutes challenged here. Though Appellants claim that they are "the representative of the public interest," they are not the sole authority on that interest—and, in fact, they have

attempted to thwart the people's will at every turn. Br. 119 (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). As described below, it is not Appellants but the *people of Missouri* who would be irreparably harmed if the statutes are not enjoined, and, as a result, both the equities of the case and the public interest in effectuating the initiative process strongly favor injunctive relief.

2. Respondents will suffer irreparable harm absent a preliminary injunction.
(Appellants' Point: XX)

"The United States Supreme Court has held being subject to an unconstitutional statute, for even minimal periods of time, unquestionably constitutes irreparable injury." D196, p.4 (internal quotation marks omitted) (citing *Rebman v. Parson*, 576 S.W.3d 605, 612 (Mo. banc 2019)). Because Respondents are likely to succeed on the merits, they are also likely to experience irreparable harm absent an injunction. This is sufficient to meet this preliminary injunction prong. "Where the statutes at issue unquestionably conflict with the newly established rights afforded by Amendment 3 . . . irreparable injury has been established." D196, p.5 (quoting Mo. Const. art. I, §36.3). Moreover, the trial court did not "focus[] solely on whether Planned Parenthood established likelihood of success." Br. 122. As it also held, "[t]he threat of irreparable harm is especially apparent in the context of abortion care, because it is a decision and procedure that 'simply cannot be postponed, or it will be made by default with far-reaching consequences.'" D196, p.5 (quoting *Bellotti v. Baird,* 443 U.S. 622, 643 (1979)). To call forced pregnancy and childbirth a "*de minimis*"

harm is not only callous, it ignores Supreme Court precedent, basic biology, and the will of Missouri voters. Br. 122.[63]

In arguing that Respondents would not be irreparably harmed, Appellants rely on the fact that abortion is available to Missourians who travel to Kansas or Illinois, even if Missouri's laws prevent Missourians from accessing abortion within the state. Br. 122-23. The irreparable harm of being required to travel and cross state borders to obtain a legal and safe abortion is *precisely* the harm that Missourians organized and voted in droves to prevent—passing the Right to Reproductive Freedom to ensure their right to *in-state* access to abortion. D6, ¶21; D57, ¶¶64, 149-152; D58, Ex.2, ¶¶15-18; D59, Ex.1, ¶¶48-49. The availability of abortions in a bordering state does nothing for those who lack the means or time to travel to another state to obtain critical health care services—and it does not fulfill the promises of the *Missouri* Constitution. And the impacts are all the more onerous for the Missourians who live farther away from the state border and could, with a preliminary injunction, seek care closer to home (for example, in Columbia). D58, Ex.2, ¶15; D59, Ex.1, ¶48.

Appellants next argue that Respondents' statements about resuming abortion care have been proven false. Br. 124. But Appellants omit their substantial role in preventing

[63] Appellants' citation to *Rostker v. Goldberg*, 448 U.S. 1306 (1980) (Brennan, J., in chambers), is not to the contrary—that case found no irreparable harm from required military draft registration pending a challenge to the Selective Service Act, in part because registration can be reversed. *Id.* at 1310–11. By contrast, a pregnant person's lack of abortion access today is not easily reversible at the end of this case.

Respondents from resuming services—including (1) filing a preliminary injunction motion in Cole County Circuit Court to try to stop Comp Health from providing abortion altogether, in direct conflict with the Jackson County Circuit Court's order below;[64] (2) refusing to take action on Respondents' medication abortion complication plans and then denying them on the basis of hastily issued, onerous emergency regulations designed to delay any need to consider Respondents' applications; and (3) issuing Respondents cease and desist orders threatening them with felony penalties for providing medication abortion (which they were not providing, because they were waiting for state approval of their complication plans). State's Mot. for TRO, *State ex rel. Bailey v. Comprehensive Health of Planned Parenthood Great Plains*, No. 24AC-CC09811 (Mo. Cole Cnty. Cir. Ct. Feb. 22, 2025) (State's attempt to enjoin Comp Health from providing abortion at all); D133 (Respondents' Renewed and Second Motions for Preliminary Injunction).

Appellants' insistence that *Respondents* are to blame for these delays in providing this care to Missourians is readily controverted by historical facts. Moreover, nowhere in the preliminary injunction order does the trial court rely on any statement by Respondents regarding the timing by which they intend to set up their abortion services within the state. D196. Regardless, Respondents have resumed providing procedural abortion care under the preliminary injunction order at issue here and are ready to immediately begin providing

[64] D102 (citing *State ex rel. Bailey v. Comprehensive Health of Planned Parenthood Great Plains*, No. 24AC-CC09811 (Mo. Cole Cnty. Cir. Ct.)).

medication abortion at their health centers once the remaining restrictions on medication abortion are enjoined.

CONCLUSION

The trial court's preliminary injunction order should be affirmed.

Respectfully submitted,

/s/ Gillian R. Wilcox

GILLIAN R. WILCOX, #61278
JASON ORR, #56607
ACLU of Missouri Foundation
406 West 34th Street, Ste. 420
Kansas City, MO 64111
Phone: (816) 470-9938
gwilcox@aclu-mo.org
jorr@aclu-mo.org

KRISTIN M. MULVEY, #76060
JONATHAN D. SCHMID, #74360
TORI M. SCHAFER, #74359
ACLU of Missouri Foundation
906 Olive Street, Suite 1130
St. Louis, Missouri 63101
Phone: (314) 652-3114
kmulvey@aclu-mo.org
jschmid@aclu-mo.org
tschafer@aclu-mo.org

CHELSEA TEJADA*
ACLU Foundation
125 Broad Street, Floor 18
New York, NY 10004
Phone: (212) 549-2633
ctejada@aclu.org

TIFFANIE MCDOWELL*
Crowell & Moring LLP
3 Park Plaza, 20th Floor
Irvine, CA 92614
Phone: (949) 263-8414
TMcdowell@crowell.com

ELLA SPOTTSWOOD**
CAMILA VEGA**
VANESSA PAI-THOMPSON**
JENNIFER SANDMAN*
Planned Parenthood Federation of America
123 William Street, 9th Floor
New York, NY 10038
Phone: (212) 541-7800
ella.spottswood@ppfa.org
camila.vega@ppfa.org
vanessa.pai-thompson@ppfa.org
jennifer.sandman@ppfa.org

VIRGINIA MARINO*
EMILY T. KAPPERS*
Crowell & Moring LLP
455 N. Cityfront Plaza Drive
Suite 3600
Chicago, IL 60611
Phone: (312) 321-4200
VMarino@crowell.com
EKappers@crowell.com

VIRGINIA MARINO*
EMILY T. KAPPERS*
JUNG UN SHIN*
YIXIN BAO*
Crowell & Moring LLP
455 N. Cityfront Plaza Drive,
Suite 3600
Chicago, IL 60611
Phone: (312) 321-4200
VMarino@crowell.com
EKappers@crowell.com
Jshin@crowell.com
Ybao@crowell.com

Attorneys for All Respondents

** pro hac vice in trial court*

*** pro hac vice motion filed in Supreme Court*

CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned hereby certifies that on August 11, 2025, the foregoing brief was filed electronically and a copy of it was served automatically on counsel for all parties.

The undersigned further certifies that pursuant to Rule 84.06(c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06; (3) contains 26,691 words, in compliance with Rule 84.06(b), as determined using the word-count feature of Microsoft Office Word, which includes all material in the brief other than the cover, certificate of service, signature block, and separately filed appendix. Finally, the undersigned certifies that electronically filed brief was scanned and found to be virus free.

/s/ *Gillian R. Wilcox*