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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION — TWELFTH DIVISION

EMILY WALDORF; THERESA VAN; CHELSEA STOVALL; ALLISON HOWLAND; KISHAYA HOLLOWAY; LEITAEA LOWRIMORE; and CHAD B. TAYLOR, M.D., on behalf of himself and his patients **PLAINTIFFS**

v. **CASE NO. 60CV-26-1539**

THE STATE OF ARKANSAS; SARAH HUCKABEE SANDERS, in her official capacity as Governor of the State of Arkansas; TIM GRIFFIN, in his official capacity as Attorney General of Arkansas; BRANDON CARTER, in his official capacity as Prosecuting Attorney of Washington and Madison Counties; DANIEL SHUE, in his official capacity as Prosecuting Attorney of Sebastian County; WILL JONES, in his official capacity as Prosecuting Attorney of Pulaski County; EDWARD "WARD" GARDNER, M.D., in his official capacity as Chairman of the Arkansas State Medical Board; and the members of the Arkansas State Medical Board, in their official capacities **DEFENDANTS**

ORDER ON DEFENDANTS' SECOND MOTION TO DISMISS

Before the Court is Defendants' Second Motion to Dismiss Plaintiffs' First Amended Verified Complaint, filed April 23, 2026, together with Defendants' brief in support, Plaintiffs' Response in Opposition filed June 1, 2026, and Defendants' Reply filed June 12, 2026. Plaintiffs' Response incorporates by reference their March 23, 2026, Opposition to Defendants' original motion to dismiss and their May 26, 2026, Reply in support of a preliminary injunction; Defendants' Reply likewise incorporates their earlier briefing. The Court has considered all of these filings, and the arguments of counsel at the hearing held on September 28th, 2026.

For the reasons stated below, the motion is **GRANTED IN PART** and **DENIED IN PART**. The motion is **GRANTED** as to Defendant the State of Arkansas and Defendant Sarah

Huckabee Sanders, in her official capacity as Governor, and Plaintiffs' claims against them are dismissed on the ground of sovereign immunity without prejudice. The motion is DENIED as to all other Defendants and on all other grounds.

I. BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs are six women who allege they were denied, delayed in obtaining, or forced to travel out of state for pregnancy-related care because of Arkansas's abortion laws (Emily Waldorf, Theresa Van, Chelsea Stovall, Allison Howland, Kishaya Holloway, and Leitaea Lowrimore), and Chad B. Taylor, M.D., a board-certified obstetrician-gynecologist practicing in Little Rock, who sues on his own behalf and on behalf of his patients. Am. Compl. ¶¶ 10-156. Defendants are the State of Arkansas; the Governor and the Attorney General; the Prosecuting Attorneys for Washington and Madison Counties, Sebastian County, and Pulaski County; and the Chairman and members of the Arkansas State Medical Board, each sued in an official capacity. *Id.* ¶¶ 157-167.

Plaintiffs challenge Ark. Code Ann. §§ 5-61-304 and 5-61-404 (the "Challenged Laws"), each of which provides that "[a] person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency." Ark. Code Ann. §§ 5-61-304(a), 5-61-404(a). A violation is an unclassified felony punishable by a fine of up to $100,000, imprisonment of up to ten years, or both. *Id.* §§ 5-61-304(b), 5-61-404(a). Act 387 of 2025 amended the definition of "medical emergency" to incorporate a "reasonable medical judgment" standard, effective July 2025. *See id.* §§ 5-61-303(3)–(4), 5-61-403(3)–(4); Am. Compl. ¶¶ 177–179.

The Amended Complaint asserts three facial claims under the Arkansas Constitution: (I) the Challenged Laws are void for vagueness in violation of the due-process guarantee of article 2, section 8; (II) they infringe the inherent and inalienable rights to enjoy and defend life and liberty

and to pursue happiness under article 2, section 2; and (III) they deny pregnant Arkansans equality under article 2, sections 2, 3, and 18. Am. Compl. ¶¶ 254–271. Plaintiffs seek declaratory relief and preliminary and permanent injunctions against enforcement.

Plaintiffs filed suit on February 2, 2026, and filed their First Amended Verified Complaint on April 9, 2026, adding Ms. Holloway and Ms. Lowrimore as plaintiffs. Defendants moved to dismiss the Amended Complaint on April 23, 2026. On April 29, 2026, this Court dismissed the case for lack of subject-matter jurisdiction under Act 975 of 2025. The following day, the Arkansas Supreme Court held Act 975 unconstitutional. *Norris v. Independence County*, 2026 Ark. 91. On May 22, 2026, this Court granted Plaintiffs' motion under Rule 60 of the Arkansas Rules of Civil Procedure and reinstated the case. The parties then completed briefing on Defendants' Second Motion to Dismiss.

II. STANDARD OF REVIEW

In ruling on a motion to dismiss, the Court treats the facts alleged in the complaint as true and views them in the light most favorable to the plaintiff; all reasonable inferences are resolved in favor of the complaint, and the pleadings are liberally construed. *Ark. State Claims Comm'n v. Duit Constr. Co.*, 2014 Ark. 432, 445 S.W.3d 496, 501. Arkansas is a fact-pleading state, and a complaint must state facts, not mere conclusions, to entitle the pleader to relief. *Id.* The Court accepts as true only the facts alleged, not a plaintiff's legal conclusions or interpretation of a statute. *Dockery v. Morgan*, 2011 Ark. 94, at 6, 380 S.W.3d 377, 382.

The same fact-pleading standard governs whether a complaint states facts sufficient for an exception to sovereign immunity to apply. *Ark. Dev. Fin. Auth. v. Wiley*, 2020 Ark. 395, 611 S.W.3d 493, 498; *Lowe v. McCastlain*, 2026 Ark. 34, 2, 728 S.W.3d 752, 754 (2026) (A petitioner seeking to surmount sovereign immunity under this exception is not exempt from complying with

our fact-pleading requirements.). In resolving that question at this stage, the Court considers only the complaint. *Rutledge v. Remmel*, 2022 Ark. 86, at 5, 643 S.W.3d 5, 8. Because the motion presents questions of law on the face of the pleadings, the Court has not considered matters outside the pleadings, and the motion is not converted to one for summary judgment. Ark. R. Civ. P. 12(b).

III. SUBJECT-MATTER JURISDICTION

Defendants contend that the Court lacks subject-matter jurisdiction because Act 975 of 2025 vested exclusive original jurisdiction over facial constitutional challenges in the Arkansas Court of Appeals. Defs.' Br. 7-10 (relying on Ark. Const. amend. 80, §§ 9–10). In their Reply, Defendants state that they preserve the argument, noting that a petition for rehearing was filed in *Norris* on May 18, 2026. Defs.' Reply 1 n.1[1].

The argument is foreclosed. The Arkansas Supreme Court has held that Act 975 contravenes the constitutional limits of Amendment 80, and that "the constitution does not provide for another court to adjudicate facial constitutional challenges. These matters properly belong in circuit court." *Norris v. Independence Cnty*., 732 S.W.3d 688, 696, 2026 Ark. 91, 12 (Ark., 2026). After previously dismissing this action pursuant to Act 975, this Court vacated its dismissal and is therefore bound by the holding in *Norris*. Under Amendment 80, section 6, this Court has original jurisdiction over Plaintiffs' claims. The motion to dismiss for lack of subject-matter jurisdiction is **DENIED**.

IV. SOVEREIGN IMMUNITY

Article 5, section 20 of the Arkansas Constitution provides that "[t]he State of Arkansas shall never be made defendant in any of her courts." The bar extends to suits against state officials

[1] Rehearing denied July 16, 2026.

in their official capacities. *Land v. BAS, LLC*, 2025 Ark. 107, at 4–5, 713 S.W.3d 1, 6. A suit against the State is barred by sovereign immunity if a judgment for the plaintiff will control the State's action or subject the State to liability. *See Ark. Dep't of Envtl. Qual. v. Al–Madhoun*, 374 Ark. 28, 285 S.W.3d 654 (2008). The Supreme Court has recognized a narrow exception where "a state agency, or an officer, acts in a manner that is illegal, unconstitutional, or ultra vires." *Arkansas Highway Police v. Mays*, 732 S.W.3d 1, 5, 2026 Ark. 57, 4 (Ark., 2026). A plaintiff seeking to overcome sovereign immunity must provide sufficient facts in the complaint to state a claim based on the alleged illegal, unconstitutional, or ultra vires state action. *Banks*, 2019 Ark. 204, at 4, 575 S.W.3d 111. "Courts evaluating a claim of immunity must first determine if the facts alleged demonstrated the deprivation of an actual constitutional right." *Harmon v. Payne*, 2020 Ark. 17, at 6, 592 S.W.3d 619,623.

Under the exception, a plaintiff may seek only declaratory or injunctive relief and must satisfy Arkansas's fact-pleading requirements. *Brizendine v. Dep't of Hum. Servs.*, 2025 Ark. 34, 708 S.W.3d 351; *Wiley*, 2020 Ark. 395, 611 S.W.3d 498. Because the exception turns on whether the named agency or officer "acts" illegally or unconstitutionally, the complaint must allege facts showing that each defendant has a role in carrying out the challenged law. An officer with no authority over a statute cannot act unconstitutionally under it, and an injunction against that officer would not redress the plaintiff's injury. Plaintiffs here seek only prospective declaratory and injunctive relief. Citing to *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 144 (1908), Defendants each move to dismiss on the basis of sovereign immunity, arguing that they are not the officials responsible for enforcing the challenged law and thus cannot act illegally under the facts of this case. The Court therefore examines each Defendant separately, as the immediate appealability of rulings on sovereign immunity requires. *See* Ark. R. App. P.–Civ. 2(a)(10).

A. The State of Arkansas

Defendants argue that the State itself must be dismissed because article 5, section 20 provides that "[t]he State of Arkansas shall never be made defendant in any of her courts," and the exception the Supreme Court has recognized reaches only "a state agency, or an officer," that acts illegally, unconstitutionally, or ultra vires. Defs.' Br. 12–13; Defs.' Reply 3 (quoting *Mays*, 2026 Ark. 57, at 4, 732 S.W.3d at 5). Plaintiffs' Response asserts that "the State is not protected by sovereign immunity" but offers no argument in support. Pls.' Resp. 8. The Amended Complaint cites *Ark. Dep't of Educ. v. Jackson*, 2023 Ark. 140, for the proposition that prospective relief is available against the State. Am. Compl. ¶ 157.

The Court agrees with Defendants. The text of article 5, section 20 is unqualified. The exception for illegal, unconstitutional, or ultra vires acts permits suits against state agencies and officers on the premise that a suit to restrain such an act is not a suit against the State itself. *See Thurston v. League of Women Voters of Ark.*, 2022 Ark. 32, 639 S.W.3d 319, 323 (Wood, J., concurring). That premise does not extend to a suit naming the State in its own right. Consistent with that premise, the Supreme Court has described the exception as reaching "a state agency, or an officer." *Mays*, 2026 Ark. 57, at 4, 732 S.W.3d at 5; *see also Land*, 2025 Ark. 107, at 4–5, 713 S.W.3d at 6.

Neither authority on which the Plaintiffs rely holds otherwise. *Jackson* involved claims against a state department and state officials, not the State as a named party. In *State v. Good Day Farm Arkansas, LLC*, the State was a named party, but the Supreme Court did not address whether the State itself was a proper defendant. 2025 Ark. 207, at 4 n.2, 725 S.W.3d 1, 4 n.2. A decision that does not consider a question is not authority on it. *See City of Van Buren v. Smith*, 345 Ark. 313, 46 S.W.3d 527 (2001) (holding that this court does not consider arguments that are unsupported by convincing argument or sufficient citation to legal authority).

Dismissing the State does not diminish the relief available to Plaintiffs. Plaintiffs seek only prospective declaratory and injunctive relief against enforcement of the Challenged Laws. That relief remains available, if warranted, against the officer Defendants charged with enforcing them. *See* Parts IV.C–E, *infra*. The State's interest in defending the Challenged Laws is fully represented by the state agencies and officials who remain as parties.

The motion is **GRANTED** as to the State of Arkansas, and Plaintiffs' claims against the State are **DISMISSED WITHOUT PREJUDICE.**

B. Governor Sarah Huckabee Sanders

The Amended Complaint alleges that the Governor is the State's chief executive, responsible for approving legislation and managing the executive branch. Am. Compl. ¶ 158 (citing Ark. Const. amend. 6, §§ 2, 15). It alleges that she has publicly advanced an anti-abortion policy and opposed exceptions. *Id.* ¶ 159. It also alleges that, while Ms. Waldorf was hospitalized in September 2024, her sister and a friend called the Governor's office and asked staff to interpret the law for the hospital, grant Ms. Waldorf an exception, or help her leave the State. *Id.* ¶¶ 21-23. Staff asked, "What do you expect the Governor to do?", said they could not advise, recommended that Ms. Waldorf obtain a lawyer, and did not call back. *Id.* ¶¶ 22-23.

Taken as true, these allegations do not show that the Governor has any authority to enforce the Challenged Laws, or that she has acted under them. The Challenged Laws are felonies. Felony prosecutions are commenced by information or indictment, and only the prosecuting attorney may file a criminal information. *Simpson v. State*, 310 Ark. 493, 497, 837 S.W.2d 475, 477 (1992) (citing Ark. Const. amend. 21, § 1); *see* Ark. Code Ann. § 16-21-103. The Amended Complaint identifies no statute giving the Governor a role in investigating, prosecuting, or otherwise enforcing the Challenged Laws.

The Governor's general executive authority is not enough. *See Digital Recognition*, 803 F.3d at 960 (general duty to enforce state law insufficient); *Bio Gen*, 142 F.4th at 605 (governor's general take-care responsibility not a specific method of enforcement). Nor is her approval of the legislation. *Milligan v. Singer*, 2019 Ark. 177, at 3–4, 574 S.W.3d 653, 656. Public statements about policy, however strongly expressed, are not acts of enforcement.

The allegations about the Governor's office do not alter this conclusion. Plaintiffs characterize the office's response as "an affirmative exercise of power that directly contributed to the harms Ms. Waldorf suffered." Pls.' Resp. 8–9. But the Amended Complaint alleges inaction, not action: it alleges that no one in state government "attempted to decipher, inform, or in any way aid" patients or physicians. Am. Compl. ¶ 3. Plaintiffs cite no authority under which the Governor could have granted Ms. Waldorf, or her physician, an exception from a criminal statute or issued a binding interpretation of it. Statements to the press that the Governor "looks forward to defending Arkansas's pro-life laws in court" are not alleged in the Amended Complaint, *see* Pls.' Resp. 9 n.3, and describe the defense of litigation rather than enforcement.

Finally, Plaintiffs contend that the extent of the Governor's involvement is a question for discovery. Pls.' Resp. 9. Whether a complaint's allegations surmount sovereign immunity is determined on the complaint alone. *Rutledge*, 2022 Ark. 86, at 5, 643 S.W.3d at 8. Discovery cannot supply facts the complaint does not plead.

Because the Amended Complaint does not allege facts showing that the Governor has acted, or has authority to act, illegally or unconstitutionally under the Challenged Laws, the exception does not apply. The motion is **GRANTED** as to Governor Sanders, and Plaintiffs' claims against her are **DISMISSED WITHOUT PREJUDICE**.

C. Attorney General Tim Griffin

The Attorney General stands differently. The Amended Complaint alleges that his office is the State's chief law-enforcement agency, Am. Compl. ¶ 161 (citing Ark. Code Ann. §§ 25-16-702, 25-16-713), and that he is empowered to assist the State Medical Board in investigating and revoking physicians' licenses for unprofessional conduct under Ark. Code Ann. § 17-95-409. *Id.* As alleged, unprofessional conduct under that statute includes "[p]rocuring or aiding or abetting in procuring a wrongful and criminal abortion." *Id.* ¶ 173 (quoting Ark. Code Ann. § 17-95-409(a)(2)(D)). The Amended Complaint further alleges that the Attorney General's office certified the ban and pledged to "assist those charged with enforcing" it, *id.* ¶¶ 162, 168, and that the current Attorney General has stated that he "will continue fighting to enforce the laws of our state" with respect to abortion, *id.* ¶ 163.

Act 14 of the 1933 General Assembly provides: 'The Attorney General shall be the attorney for all State officials, departments, institutions and agencies, and whenever any officer or department, institution or agency of the State needs the services of an attorney the matter shall be certified to the Attorney General for attention.' *Parker v. Murry*, 221 Ark. 554, 559, 254 S.W.2d 468, 471 (1953). As such, the Attorney General has authority to control the litigation of any department or agency of the State and intervene or participate when it deems necessary.

Liberally construed, in the light most favorable to the Plaintiffs, these allegations describe a role in the State's toolbox by which the Challenged Laws are enforced against physicians: participation in license-revocation proceedings premised on a "wrongful and criminal abortion" as well as investigative efforts to seek prosecution of alleged violators of the Challenged Laws.[2]

[2] The Court notes its review of the supplemental filings dated October 21st, 2026, by Plaintiffs' counsel and October 23rd, 2026, by Defendants' counsel regarding Defendant Griffin's representations in pleadings filed in unrelated federal litigation; however, any such consideration

These allegations also imply the Attorney General's ability to exercise police powers and their role in prosecuting criminal offenses as authorized by statute and/or deputized by county prosecutors. That distinguishes *Digital Recognition*, where the Attorney General's only alleged role was defending the statute in litigation, and *Bio Gen*, where the only alleged act was certification (*See Digital Recognition Network, Inc. v. Hutchinson,* 803 F.3d 952, 960 (8th Cir. 2015); *Bio Gen LLC v. Sanders*, 142 F.4th 591, 604 (8th Cir. 2025)). Defendants' observation that the cease-and-desist letters were issued under the Deceptive Trade Practices Act does not address the allegations of police powers involving investigative and licensing authority. Defs.' Br. 15. The motion is **DENIED** as to the Attorney General.

D. The Arkansas State Medical Board Chairman and Members

Defendants argue that the Board's authority arises under separate licensing statutes and that any connection to the Challenged Laws is "contingent on … a prosecutor's decision to prosecute and a jury's decision to convict." Defs.' Br. 15–16. The Amended Complaint, however, alleges two distinct grounds for discipline: "[c]onviction of a felony," Ark. Code Ann. § 17-95-409(a)(2)(A), and "[p]rocuring or aiding or abetting in procuring a wrongful and criminal abortion," *id.* § 17-95-409(a)(2)(D). Am. Compl. ¶¶ 167, 173.

The Court acknowledges that on its face, subsection (D) does not require a conviction and is a separate statute from the Challenged Laws at issue. However, it authorizes the Board itself to determine whether a physician has procured a "wrongful and criminal abortion," a determination that necessarily applies the Challenged Laws, and to impose discipline up to revocation of the physician's license. That is a method of enforcing the Challenged Laws that the Board has at its

by this Court of said filings would be reviewing evidence beyond the face of the Complaint as required by ACP 12(b)(6), thereby converting this motion to a summary judgment motion.

own disposal. As the Court in *Bio Gen* analyzes, for a sufficient connection to the enforcement of a challenged law, an officer must have methods of enforcement for the challenged law at its disposal. *Id.* at 142 F.4th 605 ,606. The method of enforcement can arise out of the general law or be specially created by the act itself. *Id.* It need not be a primary authority to enforce the challenged law but plaintiffs must identify a method of enforcement that the officer has the authority to wield. *Id.* The motion is **DENIED** as to the Chairman and members of the Arkansas State Medical Board.

F. Fact-Pleading an Unconstitutional Act

In addition to the lack of enforcement connection, Defendants further argue that no Defendants' immunity is overcome because the Amended Complaint fails to plead facts showing an actual constitutional violation. Defs.' Br. 16–17; Defs.' Reply 2–5. The unconstitutional-act exception does not apply unless the complaint alleges facts that, if proven, would demonstrate a constitutional violation, so the Court must first determine whether the facts alleged show the deprivation of an actual constitutional right. *Williams v. McCoy*, 2018 Ark. 17, 535 S.W.3d 266, 269; *Harmon v. Payne*, 2020 Ark. 17, 592 S.W.3d 619, 623. Plaintiffs' contention that Defendants improperly "bootstrap" the merits into the immunity analysis, Pls.' Resp. 7, is therefore rejected by this Court. As set out further below, the Court concludes that the Amended Complaint sufficiently pleads a claim under each count. Accordingly, sovereign immunity does not bar Plaintiffs' claims against the remaining Defendants.

V. STANDING

Defendants argue that Dr. Taylor lacks third-party standing to assert the rights of pregnant women under Counts II and III of the Amended Complaint, and that the Patient Plaintiffs lack

standing to assert the physician's due-process right under Count I. Defs.' Br. 36-38; Defs.' Reply 1-2. Defendants do not dispute that each Plaintiff may assert his or her own rights. Defs.' Reply 1.

A. First-Party Standing

A party whose rights are affected by a statute has standing to challenge it on constitutional grounds. *Jegley v. Picado*, 349 Ark. 600, 619, 80 S.W.3d 332, 341 (2002); *see also Martin v. Kohls*, 2014 Ark. 427, 444 S.W.3d 844, 849. Dr. Taylor is a licensed physician whose clinical practice involves the medical care of pregnant women, thereby directly regulated by the Challenged Laws under threat of felony prosecution and loss of licensure. Am. Compl. ¶¶ 139-152, 172-173. He alleges specific clinical situations in which he could not determine whether the medical-emergency exception permitted the care his patients required. *Id.* ¶¶ 148-152. He has standing to assert his own due-process challenge in Count I. *See Ross v. State*, 347 Ark. 334 (2002) (cited at Am. Compl. ¶ 155).

The Patient Plaintiffs allege that they were denied or delayed in receiving care, or forced to travel out of state, because of the Challenged Laws. Am. Compl. ¶¶ 10-138. Each alleges that she wishes to become pregnant again, or may become pregnant, and fears the same harm will recur, and each invokes the doctrine of injuries capable of repetition yet evading review. *Id.* ¶¶ 45-46, 65, 85, 101-102, 113-114, 137-138. Defendants do not challenge the Patient Plaintiffs' standing to assert their own rights, and the Court finds those allegations sufficient at the pleading stage.

B. Third-Party Standing

Constitutional rights are personal and ordinarily may not be asserted by a third party, subject to a narrow exception. *Kennedy v. Kelly*, 295 Ark. 678, 680-81, 751 S.W.2d 6, 7-8 (1988); *Cox v. Stayton*, 273 Ark. 298, 302, 619 S.W.2d 617, 619-20 (1981). As plead, Count I asserts "physicians' right to due process." Am. Compl. ¶ 255. Every count in the Amended Complaint is

asserted by at least one Plaintiff in his or her own right: Count I by Dr. Taylor and Counts II and III by the Patient Plaintiffs. Dismissing Dr. Taylor's representative capacity would not dispose of any claim or narrow the relief available, as his claim addresses enforcement of the Challenged Laws. In addition, the Court construes Count I as asserted by Dr. Taylor in his own right. The Court likewise construes Counts II and III as asserted by the Patient Plaintiffs in their own right, together with Dr. Taylor in a representative capacity. Further, the U. S. Supreme Court has recognized categorically that abortion and reproductive health care providers and physicians have third-party standing to assert the rights of their patients. *Little Rock Fam. Plan. Servs. v. Jegley*, 549 F. Supp. 3d 922, 932 (E.D. Ark. 2021) (citing *Singleton v. Wulff*, 428 U.S. 106, at 118, 96 S. Ct. 2868, 49 L. Ed. 2d 826 (1976)); *see also, e.g., Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 136 S. Ct. 2292, 195 L.Ed.2d 665 (2016) (adjudicating physicians' and clinics' 42 U.S.C. § 1983 action against abortion restrictions on behalf of themselves and their patients); *Gonzales v. Carhart*, 550 U.S. 124, 133, 127 S.Ct. 1610, 167 L.Ed.2d 480 (2007); *Stenberg v. Carhart*, 530 U.S. 914, 922, 120 S.Ct. 2597, 147 L.Ed.2d 743 (2000); *Planned Parenthood of Se. Pa. v. Casey,* 505 U.S. 833, 845, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992)). Standing can also derive from a different, lesser injury, such as a potential financial impact on a physician from an abortion restriction. *See Singleton*, 428 U.S. at 112-13, 96 S.Ct. 2868 (finding that physicians "suffer[ed] concrete injury from the operation of the challenged statute" which prevented them from receiving Medicaid reimbursements if certain requirements about the nature of the procedure were not met). The motion to dismiss for lack of third-party standing is **DENIED** without prejudice to Defendants raising the issue again at a later stage.

VI. FAILURE TO STATE A CLAIM

The question at this stage is not whether Plaintiffs will prevail, but whether the Amended Complaint, taken as true and liberally construed, states facts allege illegal and unconstitutional acts by the State as an exception to the sovereign immunity doctrine, and therefore must comply with our fact-pleading rules. *Williams v. McCoy*, 2018 Ark. 17, 3, 535 S.W.3d 266, 268 (2018). Plaintiffs who bring a facial challenge bear the burden of proving the statute unconstitutional. *Ward v. Hutchinson*, 2018 Ark. 313, at 10, 558 S.W.3d 856, 862. The Court addresses whether that burden has been adequately pleaded, not whether it has been met.

A. Count I — Vagueness (Article 2, Section 8)

Plaintiffs, namely Dr. Chad Taylor, claim that the challenged statutes fail to give physicians fair knowledge of how to ensure their conduct falls within the limit of the medical emergency exception to the general abortion bans. Am. Compl. ¶¶ 146-155. They assert that this permits arbitrary enforcement of the abortion bans. As such, Plaintiffs argue that the abortion bans are unconstitutionally vague and violate physicians' right to due process as guaranteed by Article 2, Section 8 of the Arkansas Constitution. Am. Compl. ¶ 255.

A law is unconstitutionally vague if it lacks ascertainable standards of guilt, so that persons of average intelligence must necessarily guess at its meaning and differ as to its application, or if it is so broad that it is susceptible to discriminatory enforcement. *Jones v. State*, 333 Ark. 208, 211, 969 S.W.2d 618, 620 (1998). A more stringent test applies to criminal statutes and to laws that threaten the exercise of protected interests. *Abraham v. Beck*, 2015 Ark. 80, 456 S.W.3d 744, 753. A statute is not vague merely because close cases can be imagined. *Talbert v. State*, 367 Ark. 262, 272, 239 S.W.3d 504, 513 (2006); *Booker v. State*, 335 Ark. 316, 326, 984 S.W.2d 16, 21 (1998). Further, when a person brings a pre-enforcement facial challenge to the vagueness of a law, the

relevant inquiry is whether the ordinance is impermissibly vague in all of its applications. *Abraham,* 2015 Ark. 80 (2015). In other words, under the constitutional standard applicable to facial challenges, the proponent must establish that no set of circumstances exists under which the Act would be valid. *Id.* (citing *United States v. Salerno*, 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)).

Here, Defendants argue that the medical-emergency definition is detailed; that its "reasonable medical judgment" standard is objective and familiar from tort law; that the statute's scienter requirements mitigate any vagueness; and that the Amended Complaint concedes clear applications, which defeats a facial challenge. Defs.' Br. 17-24 (citing *Landmark Novelties, Inc. v. Ark. State Bd. of Pharm.*, 2010 Ark. 40, 358 S.W.3d 890; *Karlin v. Foust*, 188 F.3d 446 (7th Cir. 1999); *State v. Zurawski*, 690 S.W.3d 644 (Tex. 2024)). They further argue that Ms. Lowrimore's circumstances show provider error, not vagueness, because the statute expressly carves an exception to abortion if termination is removal of an ectopic pregnancy. Defs.' Reply 6-7.

Considering the facts alleged by the Plaintiffs, the Court finds Count I is sufficiently plead, thereby defeating dismissal. Dr. Taylor alleges specific, recurring clinical situations in which he and his colleagues could not determine whether the exception permitted intervention: patients with previable preterm premature rupture of membranes (or PPROM) and placenta previa whom he did not offer termination; a twin pregnancy in which one twin had died and descended while the other retained cardiac activity; and a cardiac team debating whether a 10 or 30 percent risk of death sufficed. Am. Compl. ¶¶ 147-151. He alleges that physicians continue to find the exception unclear after the 2025 amendment. *Id.* ¶ 180. Ms. Lowrimore alleges that in February 2026, after the amendment, an Arkansas physician who believed her pregnancy was "more likely than not" ectopic declined to treat her, citing the risk of "10 years in the poky." *Id.* ¶ 125.

Taken as true, these allegations plausibly state that the statute does not tell a physician *when* a deteriorating condition becomes one in which termination is "necessary to preserve the life" of the patient, and that the answer is supplied only *after the fact* by a prosecutor, a jury, or a licensing board. *Id.* ¶¶ 180, 206-207. The statutory language of "purposely" in Ark. Code Ann. § 5-61-304(a) prefaces the action of "performing or attempting to perform" the abortion, while the measurement of a "medical emergency" is judged by a purportedly objective medical standard, rather than considering the good-faith belief of the medical provider. *See* Ark. Code Ann. §§ 5-61-303(3)-(4), 5-61-304(a). As applied, the ultimate fact finder in a criminal proceeding, will be asked to determine, beyond a reasonable doubt, whether the accused at issue failed to exercise reasonable medical judgment when "*purposely performing*" an abortion to prevent the death of a pregnant woman, and not whether the accused "reasonably believed" his purposeful actions were prohibited[3]. When considering the facts as true, the Court finds the statute's scienter requirement not met and does not resolve the question at this stage.

The Court agrees with Defendants that the removal of an ectopic pregnancy is expressly excluded from the definition of abortion. *Id.* §§ 5-61-303(1)(B)(iii), 5-61-403(1)(B)(iii). Whether that exception gives fair notice where the diagnosis is not yet confirmed, however, is a question

[3] The Court uses as persuasive guidance *Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187 (6th Cir. 1997) where the Sixth Circuit (citing two Eighth Circuit cases) found that Ohio's statute regarding the medical necessity exception to its abortion ban without a scienter requirement was unconstitutionally vague, finding a physician need not act willfully or recklessly in determining whether a medical emergency or medical necessity existed in order to be held criminally or civilly liable; rather, under the Ohio law, physicians faced liability even if they acted in good faith according to their best medical judgment. The objective standard combined with strict liability for even good faith determinations could have a profound chilling effect on the willingness of physicians to perform abortions when abortions were permitted post-viability when the woman's health or life was threatened. Similarly comparable A.C.A. § 5-61-403's statutory language fails to examine the scienter of the accused while exercising his medical judgment.

that depends on facts not before the Court. In addition, the Court finds Defendant's proposition that this is an admission by Plaintiff of a circumstance where an abortion can be performed is misplaced. Defs.' Br. 21. Because the statute expressly defines termination of an ectopic pregnancy as an exclusion from the definition of abortion, such circumstances would be inapplicable to the medical emergency exception. *Id*. §§ 5-61-303(1)(B)(iii).

Whether Plaintiffs can carry their burden on a facial challenge is a question for a later stage. The motion is **DENIED** as to Count I.

B. Count II — Inherent and Inalienable Rights (Article 2, Section 2)

Article 2, section 2 provides that all persons "have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and liberty … and of pursuing their own happiness." Ark. Const. art. 2 § 2. Defendants argue that the provision must be read according to its original public meaning, *Taylor v. Ferguson*, 2025 Ark. 180, 722 S.W.3d 498, 503, and that Arkansas's criminalization of abortion in 1837 and its extension of that prohibition in 1875 show the provision was never understood to protect a right to abortion. Defs.' Br. 24-31 (citing *State v. Reed*, 45 Ark. 333 (1885); *Burris v. State*, 73 Ark. 453, 84 S.W. 723 (1904); *McClure v. State*, 214 Ark. 159, 215 S.W.2d 524 (1948)). They further argue that the provision must be harmonized with Amendment 68, section 2, which declares a policy "to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution." Defs.' Br. 27-28. And taken with the U.S. Supreme Court's holding in *Dobbs*, which held that the federal constitution does not provide a right to abortion, and authority to regulate abortion must be returned to the people and their elected representatives, this Court must consider the historical governance of abortions in Arkansas and its potential infringement on a person's inalienable right to life. *Dobbs v. Jackson Women's Health Org*, 597 U.S. 215, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022).

The Court agrees Defendants' historical argument is correct to the extent that Arkansas has never historically protected the unfettered right to have an abortion, but that is not the question presented. As the Court understands Plaintiffs' challenge here is one of first impression: whether and to what extent Arkansas' Life and Liberty Provision protects a pregnant woman's life and her ability to obtain care necessary to protect her own life and health?

The Arkansas Constitution may afford greater protection than its federal counterpart. *See Jegley v. Picado,* 349 Ark. 600, 624, 80 S.W.3d 332, 345 (2002)("Though it is clear that no fundamental right to engage in homosexual sodomy is protected by the United States Constitution, the textual and structural differences between the Bill of Rights and our own Declaration of Rights mandate that we explore whether such a right exists under the Arkansas Constitution."). It has been said that the terms "life," "liberty," and "property" are representative terms and their comprehensive scope embraces "all our liberties, civil, personal and political; in short all that makes life worth living" and that each of these rights "carries with it, as its natural and necessary coincident, all that effectuates and renders complete and full, unrestrained enjoyment of that right." *Carroll v. Johnson*, 263 Ark. 280, 289, 565 S.W.2d 10, 15–16 (1978) (quoting *In re Flukes*, 157 Mo. 125, 57 S.W. 545 (1900)). Therefore, the Life and Liberty Provision's express protection of the right of "defending life" bears directly on the allegations at issue here, and an examination of the facts as pled question whether, in a medical emergency, a pregnant woman's right to life by means of necessary medical care is abridged by the Challenged Laws due to its chilling effect on the medical community.

The Amended Complaint alleges facts concerning pregnancies complicated by cervical insufficiency, placenta previa, oligohydramnios, previable rupture of membranes, and a suspected ectopic pregnancy, in which Plaintiffs allege their lives and health were endangered by delays or

refusal in care. Am. Compl. ¶¶ 12-35, 50-58, 119-135, 148-152. As enacted, the Challenged Laws permit an abortion only to save the life of the pregnant woman. Taken as true, the Court finds the Amended Complaint states a claim that the Challenged Laws infringe a right protected by article 2, section 2 in at least some of the circumstances alleged. At this stage, Plaintiffs is not required to develop the full breadth of the right they assert. Although the Court finds the facts as alleged sufficiently plead a question regarding whether the right to life and life-preserving health care is purportedly infringed by the Challenged Laws, the Court in its inquiry is not determining the scope of any right or expansion of pre-existing rights.

Furthermore, harmonizing Amendment 68 with article 2, section 2 does not yield a different result at this stage either. Amendment 68 declares that "[t]he policy of Arkansas is to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution." Ark. Const. amend. 68, § 2. The import of Amendment 68 remains a compelling expression of Arkansas's public policy, *Aka v. Jefferson Hosp. Ass'n, Inc*., 344 Ark. 627, 641, 42 S.W.3d 508, 517 (2001), albeit without any practical or operative provision for its application. In *Knowlton v. Ward*, 318 Ark. 867, 889 S.W.2d 721 (1994), the Supreme Court held that Amendment 68, "Section 2 was indeed a mere expression of Arkansas's public policy…[and] that Section 2 'does not provide any means by which the policy is to be effectuated and therefore cannot be considered a self-executing provision.'" *Id*.

Plainly stated, Section 2 of that amendment is a guiding principle and not self-executing, and by its own terms, it operates "to the extent permitted by the Federal Constitution." *Unborn Child Amendment Comm. v. Ward*, 328 Ark. 454, 462, 943 S.W.2d 591, 595 (1997). Therefore, this Court declines to interpret a non-self-executing statement of policy to limit the scope of a protected right secured by the Life and Liberty provision. The motion is **DENIED** as to Count II.

C. Count III — Right to Equality (Ark. Const. Art. 2, §§ 2, 3, 18)

Article 2, sections 2, 3, and 18 of the Arkansas Constitution guarantee equal protection under the law. *Arnold v. State*, 2011 Ark. 395, 384 S.W.3d 488. A statute that impinges on a fundamental right is subject to heightened scrutiny. *Id.* 384 S.W.3d at 495. Defendants argue that the Challenged Laws are facially neutral, that no discriminatory purpose is pleaded, *Thurston v. League of Women Voters of Ark.*, 2024 Ark. 90, 687 S.W.3d 805, 812, that pregnancy-based classifications are not sex-based, *United States v. Skrmetti*, 605 U.S. 495 (2025); *Geduldig v. Aiello*, 417 U.S. 484, 496 (1974), and that the laws satisfy rational-basis review. Defs.' Br. 31–36.

Count III alleges that the Challenged Laws "discriminate against pregnant Arkansans in the exercise of their fundamental rights under the Arkansas Constitution," and that they cannot satisfy heightened scrutiny. Am. Compl. ¶¶ 267-268. Because the Court has concluded that Count II states a claim that the Challenged Laws burdens a right protected by article 2, section 2, Count III's fundamental-rights theory likewise states a claim at this stage. The Court need not, and does not, decide now whether a pregnancy-based classification is a sex-based classification under the Arkansas Constitution. The motion is **DENIED** as to Count III.

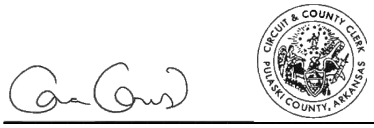
VII. CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. Defendants' Second Motion to Dismiss is **GRANTED IN PART and DENIED IN PART**.
2. The motion is **GRANTED** as to Defendant the State of Arkansas and Defendant Sarah Huckabee Sanders, in her official capacity as Governor of the State of Arkansas. Plaintiffs' claims against these Defendants are **DISMISSED WITHOUT PREJUDICE** on the ground of sovereign immunity.

3. The motion is **DENIED** insofar as it seeks dismissal for lack of subject-matter jurisdiction under Act 975 of 2025.
4. The motion is **DENIED** insofar as it seeks dismissal on the ground of sovereign immunity as to Attorney General Tim Griffin and the Chairman and members of the Arkansas State Medical Board.
5. The motion is **DENIED** insofar as it seeks dismissal for lack of third-party standing, without prejudice. Count I is construed as asserted by Dr. Taylor in his own right.
6. The motion is **DENIED** insofar as it seeks dismissal of Counts I, II, and III for failure to state a claim.
7. The remaining Defendants shall file their answer to the First Amended Complaint within 20 days of the entry of this Order. *See* Ark. R. Civ. P. 12(a).

IT IS SO ORDERED.



HON. CARA CONNORS
CIRCUIT COURT JUDGE

DATE: NOVEMBER 6th, 2026