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CLERK OF THE JOHNSON COUNTY DISTRICT COURT
CASE NUMBER: 23CV03140
PII COMPLIANT

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

HODES & NAUSER, MDs, P.A., on behalf of itself, its patients, physicians, and staff; TRACI LYNN NAUSER, M.D.; and COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, on behalf of itself, its patients, physicians, and staff, *Plaintiffs*,	
	Case No. 23CV03140
v.	Division No. 12 K.S.A. Chapter 60
KRIS KOBACH, in his official capacity as Attorney General of the State of Kansas; STEPHEN M. HOWE, in his official capacity as District Attorney for Johnson County; MARC BENNETT, in his official Capacity as District Attorney for Sedgwick County; MARK A. DUPREE SR., in his official capacity as District Attorney for Wyandotte County; State of Kansas *ex rel.* Kansas State Board of Healing Arts; and JANET STANEK, in her official capacity as Secretary of the Kansas Department of Health and Environment, *Defendants.*	

STATE DEFENDANTS' REPLY IN SUPPORT OF MOTION TO NARROW OR VACATE INJUNCTION AND TO DISMISS WITHOUT PREJUDICE

(Filing Contains Material Subject to the Court's 7/22/2024 Protective Order)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

INTRODUCTION

Plaintiffs' response significantly narrows the issues the Court must resolve to decide this motion. They don't dispute that, as a matter of both Kansas law and federal due process, a conflict of interest between them and their patients would bar their third-party claims. Instead, they argue that court decisions foreclose a finding of a conflict and that no such conflict exists. They are wrong on both counts.

No prior decision has resolved the question of third-party standing. While this Court found standing as a preliminary matter in granting a temporary injunction, because standing is jurisdictional, the Court has a duty to consider the issue at each stage of the case. The Kansas Supreme Court has not resolved the issue either—it has addressed the question of third-party standing only in reliance on federal law and in inapposite cases, and it has not revisited the issue since the U.S. Supreme Court repudiated its abortion-rights case law, much less considered the problem of conflicts of interest. Plus, in overruling those prior decisions, the U.S. Supreme Court cited with approval opinions highlighting the conflict of interest between abortion providers and their patients.

There is no issue of material fact whether a conflict exists here. The conflict is built into the fundamental structure of this case: Plaintiffs invoke their patients' rights in an effort to obtain a judicial ruling that would prevent women from receiving medical information that may cause them to reconsider having an abortion (thereby hurting Plaintiffs' bottom-line) while also limiting their patients' ability to sue them. Strangely, Plaintiffs respond that the rights given to women under the WRTKA actually violate those same patients' autonomy. But the merits of a given claim are irrelevant to the conflict, and in any event, the evidence shows otherwise. The only testimony of actual women who have had abortions shows that they wish they had the disclosures the WRTKA provides—not, as Plaintiffs contend, that they wish they had been able to rush through the abortion process even

quicker. There is no disputing that at least some women would want the state-required consent that Plaintiffs are trying to deprive them. And that means that the group of women whose rights Plaintiffs invoke are not adequately represented.

Finally, Plaintiffs' response also narrows whether their patients must be joined to a proceeding that purports to decide their rights. Plaintiffs "agree that it would be infeasible for every past and future patient from Kansas and elsewhere to join this litigation." Pls.' Opp'n to State Defs.' Mot. to Narrow or Vacate Inj. and to Dismiss Without Prejudice at 17 ("Pls.' Opp'n). But they offer no adequate defense of why they should be able to adjudicate the constitutional and statutory rights of their patients—including the right of their patients to sue them—without joining *any* of those patients to the proceeding. Due process requires the patients be joined to this case, and the infeasibility of doing so requires dismissal.

The right to autonomy ought to be litigated by those who hold the right and make the autonomous decision to file suit. It cannot be litigated by those who seek to insulate themselves from liability to the right-holders. The Court should dismiss and vacate.

ARGUMENT

I. Plaintiffs lack standing to sue on behalf of their patients.

Plaintiffs do not dispute the critical legal question that governs their ability to assert third-party standing here under Kansas law and federal right to due process: whether their interests conflict with the interests of their patients whom they seek to represent. They instead argue that this question has been decided and that no conflict exists. Neither point is correct. A court must always possess subject matter jurisdiction, and the precedents of the Kansas Supreme Court and the U.S. Supreme Court do not establish third-party standing here. Nor can Plaintiffs rebut the conflict with their patients, which is both inherent in the nature of their

challenge and established by unrebutted record evidence. Plaintiffs lack third-party standing and the claims they assert on that theory should be dismissed.

A. This Court must rule on third-party standing.

Plaintiffs try to take the question of third-party standing off the table by arguing that it has been conclusively decided. None of their efforts succeed.

First, Plaintiffs claim that because this Court ruled on third-party standing in granting a temporary injunction, this motion is moot. That's incorrect. To begin, jurisdiction is mandatory and non-waivable, *State v. Berreth*, 294 Kan. 98, 117, 273 P.3d 752, 764 (2012), and so if the Court dismisses for lack of jurisdiction (or failure to join a necessary party), it must necessarily vacate the injunction. That's proper under the terms of the stipulation, which contemplates that the State Defendants may resume enforcement following a final judgment. Joint Stipulation and Order to Stay Disc. Pending Briefing on Appeal (Nov. 30, 2023) at 1. As a result, Plaintiffs' argument that the parties' stipulation concerning briefing pending appeal prevents the State Defendants from revisiting the injunction is meritless. Pls.' Opp'n at 4.

Second, mandatory questions like jurisdiction are not waived simply because a party does not seek reconsideration of a preliminary order on the question. For one, the State Defendants repeatedly and timely raised the issue of third-party standing: they objected to it in their briefing on the temporary injunction, asserted the defense in their answer, and sought discovery on that theory. *See* State Defs.' Opp'n to Pls.' Mot. for Temp. Inj. (July 7, 2023) at 6–9; State Defs.' Answer to Pls.' Suppl. Second Am. Pet. (Dec. 20, 2024) at 27 (Twelfth Affirmative Defense); Journal Entry on State Defs.' Second Mot. to Compel (Mar. 28, 2025) at 13–15. The Court's preliminary findings on third-party standing were not final, and it remains Plaintiffs' burden to demonstrate standing "at all stages of litigation," and "with the manner and degree of evidence required at the successive stages of the litigation." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) (quotation omitted); *see also*

State Defs.' Reply in Supp. of Mot. for Summ. J. § II. The State Defendants thus renew their jurisdictional objections now that discovery is complete. And the law and the record now establish beyond dispute the structural conflict of interest between Plaintiffs and the patients whose rights they seek to adjudicate. That forecloses third-party standing.

Third, Plaintiffs say that the Kansas Supreme Court has already decided that abortion providers have third-party standing to sue on behalf of their patients. But that representation is overbroad by half. The only Kansas Supreme Court decision to directly address third-party standing did not consider any conflict of interest and relied solely on federal precedent, *Alpha Med. Clinic v. Anderson*, 280 Kan. 903, 921, 128 P.3d 364, 377 (2006), which the Supreme Court has since disapproved for having "ignored the Court's third-party standing doctrine." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 286–87 (2022). While Plaintiffs focus on Kansas's local standing test (which contains just two elements of the federal test), *Alpha Medical* did not even mention that doctrine. And unlike this case, there was no conflict of interest, since the interests of patients and providers were aligned concerning privacy of records. None of the other Kansas decisions cited by Plaintiffs addressed third-party standing, much less did so after *Dobbs* and on a robust record like the one developed here. *See* Pls.' Opp'n at 6 (collecting cases). And the stipulation Plaintiffs cite by a different attorney general in a different case two years before *Dobbs* cannot bind the parties here, especially on jurisdictional questions that cannot be stipulated. *Cf.* Pls.' Opp'n at 6 n.2 (citing *Hodes & Nauser MDs, P.A. v Norman*, No. 2011-CV-1298, 2021 WL 7906942 (Kan. Dist. Ct. Dec. 3, 2021)). Kansas precedent has not addressed, much less resolved, this issue.

Fourth, Plaintiffs argue that the result in *June Medical Services LLC v. Russo*, 591 U.S. 299 (2020), forecloses the State Defendants' due process arguments. That's not right either. The opinion they cite was not a majority but a four-justice

plurality. *See* 591 U.S. at 304 (Breyer, J., joined by Ginsburg, Sotomayor & Kagan, J.J.). And only two years later, *Dobbs* overturned the *Roe* regime and overruled *June Medical*, citing the *June Medical* dissents on third-party standing with approval. 597 U.S. at 287 n.61. As Justice Alito's dissent in *June Medical* explained, "an abortion provider seeking to strike down" a law enacted to promote the health of women "should not be able to rely on the constitutional rights of women." 591 U.S. at 402 (Alito, J., dissenting). Relying on *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1 (2004), he reasoned that "third-party standing is not appropriate where there is a potential conflict of interest between the plaintiff and the third party." 591 U.S. at 402 (Alito, J., dissenting); *see also* Defs.' Br. in Supp. of Mot. to Narrow or Vacate Inj. and to Dismiss Without Prejudice at 13 n.1, 15–16 ("State Defs.' Mot."). [1] Justice Alito also applied due process principles from class action cases, which demand that Plaintiffs also meet the constitutional standards for "adequate representation"—especially because they are not even members of the group of individuals they seek to represent. *June Medical*, 591 U.S. at 402 (Alito, J., dissenting) (quotation omitted). In short, these federal cases suggest the opposite of what Plaintiffs argue.

B. Conflicts between Plaintiffs and their patients bar standing.

This Court must therefore decide whether Plaintiffs can sue on their patients' rights consistent with due process and the third-party standing doctrine. Plaintiffs' response shows that the parties largely agree regarding the stakes of this question. There is no dispute that Plaintiffs seek to adjudicate the constitutional rights of their current and future patients. *Compare* State Defs.' Mot. at 2, *with* Pls.' Opp'n at 5. There is no dispute that a decision in Plaintiffs' favor will deprive their

[1] *Dobbs*'s approval of Justice Alito's *June Medical* dissent supersedes any suggestion that *Elk Grove* found no conflict of interest in abortion cases on third-party standing. *Cf.* Mot. to Compel Order at 13–14.

patients of any state enforcement of the WRTKA. *Compare* Defs.' Mot. at 17, *with* Pls.' Opp'n at 16. And there is no dispute that such a decision, if affirmed on appeal, would be "just as fatal as preclusion" to the claims of Plaintiffs' women patients in Kansas courts. *Compare* Defs.' Mot. at 18, *with* Pls.' Opp'n at 14. In fact, Plaintiffs appear to go further by claiming that *even before an appellate decision*, a judgment by this Court will bar any claims by their patients: "[O]nce the WRTK Act is struck down, an individual patient will not be able to sue to revive it." Pls.' Opp'n at 14.

Plaintiffs cite nothing in support of such an extraordinary view of the preclusive effect third-party standing, which is inconsistent with due process under *Taylor v. Sturgell*, 553 U.S. 880, 884 (2008). But whatever the merits of their position, there is no question that this Court's decision on Plaintiffs' third-party claims would have a significant effect on their patients' rights. Deciding those rights without joining the patients contravenes the "due process principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 846 (1999) (quotation omitted). Thus, at minimum, Plaintiffs must show their interests are sufficiently aligned with their patients that they may invoke those rights to sue to strike down the WRTKA in its entirety. *June Medical*, 591 U.S. at 401 (Alito, J., dissenting); *Elk Grove*, 542 U.S. at 15. They cannot.

1. Plaintiffs' claims raise a conflict as a matter of law.

This case features a structural conflict much more extreme than the "blatant conflict of interest" in *June Medical*. *See* 591 U.S. at 401 (Alito, J., dissenting). For the women's health statute at issue in that case, the conflict existed because "an abortion provider has a financial interest in avoiding burdensome regulations." *Id.* In contrast, women seeking an abortion "have an interest in the preservation of regulations that protect their health." *Id.*

What was true in *June Medical* is even more true here. In addition to Plaintiffs' financial interest in performing abortions, *see* Ex. A to Defs.' Mot., Katie Benner, *Botched Care and Tired Staff: Planned Parenthood in Crisis*, N.Y. Times 10–11 (Feb. 15, 2025), the WRTKA expressly creates adversity by giving patients the right to sue Plaintiffs for breach of those requirements, whether in tort or under the statute. K.S.A. 65-6709, 65-6716(h)(1); *Kelly v. VinZant*, 287 Kan. 509, 519, 197 P.3d 803, 810 (2008). If Plaintiffs prevail in holding the WRTKA unconstitutional, it will prevent any woman from suing because she did not receive its required disclosures. Thus, in this challenge to the constitutionality of a state law that creates a legal claim, a prospective defendant claims to represent the interests of a prospective adverse plaintiff in seeking to overturn the law.

Plaintiffs acknowledge the conflict with their patients in their Petition concerning H.B. 2264's amendments to the WRTKA. They allege their free speech rights are injured by the prospect that disregarding the WRTKA's disclosures about reversing medication abortion "subjects Plaintiffs to potential . . . liability"—that is, liability to their patients. Pls.' Suppl. Second Am. Pet. (July 1, 2024) ¶ 109 ("Pls.' Pet."). Of course, Plaintiffs cannot represent their patients' interests while also claiming they are harmed by the prospect of being held liable to them.

Plaintiffs say this adversity is "of no consequence," because if the WRTKA is upheld, they would just "stop providing medication abortion." Pls.' Opp'n at 11 n.3. But what Plaintiffs say they would do if they lose this case is irrelevant to whether their interests currently conflict with their patients. The greater problem is if they win: the Court would have struck down a law that gives their patients the right to sue them over failure to provide these disclosures.

2. Unrebutted record evidence establishes the conflict.

Plaintiffs try to dodge the conflict by saying they are right on the merits—that the protections the WRTKA provides to women "are not 'rights' at all," but "are

in fact infringements of the right to bodily autonomy." Pls.' Opp'n at 11. That won't wash. Justice Alito rejected the same argument in *June Medical*, explaining that "an abortion provider's ability to assert the rights of women when it challenges ostensible safety regulations should not turn on the merits of its claim." 591 U.S. at 401 (Alito, J., dissenting). The same goes here. The right of patients to receive informed consent and sue their physician for shortcomings is plainly a right, and Plaintiffs' effort to have that right declared unconstitutional conflicts with their patients' interests.

In any event, Plaintiffs' claim that the WRTKA does not give meaningful rights to their patients lacks any record support. The unrebutted testimony from actual women patients is that they wish they would have had the rights given by the WRTKA when they got their abortions:

- **Donna Pond** wishes she had been told abortion ends a human life and been given information on alternatives. JA Ex. 66, Tr. of Donna Pond (Jan. 23, 2025) at 62:14–20, 63:7–18. Plaintiffs seek to overturn the WRTKA's demand that they provide that information. K.S.A. 65-6709(a)(3), (b)(5).
- **Melissa Cole** wishes she had information about the development of the fetus. JA Ex. 62, Tr. of Melissa Cole (Feb. 10, 2025) at 93:11–96:14. Plaintiffs seek to overturn the WRTKA's demand that they provide that information. K.S.A. 65-6710.
- **Sheryl Hoyle** wishes she had "seen the sonogram, seen the heartbeat," received information about adoption, and received information about fetal pain. JA Ex. 64, Tr. of Sheryl Hoyle (Feb. 13, 2025) at 52:7–12, 54:8–55:1, 67:12–68:2. Plaintiffs seek to overturn the WRTKA's demand that they provide that information. K.S.A. 65-6709(a)(6), (b)(2), (h), (i).
- **Elizabeth Gillette** wishes she had more time: "[E]ven 24 hours would have helped me, really." JA Ex. 63, Tr. of Elizabeth Gillette (Feb. 4, 2025) at 223:13–17, 81:1–8, 83:16–21, 83:24–84:18, 139:19–140:10. Plaintiffs seek to overturn the WRTKA's demand that they provide informed consent materials 24 hours before an abortion and a physician consultation 30 minutes before an abortion. K.S.A. 65-6709(a)–(d).
- **Leslie Wolbert** wished she received information about parenting, the availability of support, the presence of a heartbeat, and the side effects of the abortion pill. JA Ex. 67, Tr. of Leslie Wolbert (Feb. 7, 2025) at 86:16–87:6,

92:16–22, 102:6–17, 121:7–122:18. Plaintiffs seek to overturn the WRTKA's demand that they provide that information. K.S.A. 65-6709(a)(3), (b)(1), (3), (i).

- **Arianna Neely** changed her mind about getting an abortion after viewing an ultrasound that gave her "a thorough understanding" of the stakes. JA Ex. 65, Tr. of Arianna Neely (Feb. 12, 2025) at 106:19–107:11; 110:24–111:8. Plaintiffs seek to overturn the WRTKA's demand that they provide information about the right to an ultrasound. K.S.A. 65-6709(h).

Plaintiffs dismiss the testimony of these women in a footnote as involving "abortions from other providers operating under other regulatory regimes." Pls.' Opp'n at 13 n.5. This argument misses the point, which concerns the interests of prospective women patients, regardless of the specific provider or location at issue. [redacted] Despite the unrebutted testimony of these six women about the importance of these disclosures, Plaintiffs now seek judicial relief to deny those disclosures to any woman who gets an abortion in Kansas. Plaintiffs are entitled to ask for that relief on their own behalf, "but it is deeply offensive to our rules of standing to permit them to sue in the name of their patients when they challenge laws enacted to protect their patients' safety." *June Medical*, 591 U.S. at 409 (Alito, J., dissenting).

Plaintiffs respond by citing their own testimony, vouching for the quality of their relationships with their patients, and denying they have any pecuniary motivation. Pls.' Opp'n at 5, 9, 12–13. But this self-serving evidence is no answer to the inherent structural conflict in their claims. Plus, a vast mountain of unrebutted evidence to the contrary establishes this conflict. The women identified above attest to the lack of care and critical information they received when they went to get an abortion. Defs' Mot. at 7–11. [redacted] And the New York Times has highlighted scores of patient care problems at Planned Parenthood nationally,

including its "conveyor belt" approach to dispensing ever more abortions to boost the bottom line. Ex. A to Defs.' Mot., Benner at 10–11.[2] The fact that Plaintiffs personally disagree with these many charges only reinforces the conflict of interest between them and their patients and the lack of the required "close relationship" between them. *June Medical*, 591 U.S. at 403 (Alito, J., dissenting).

3. Diverse patients cannot be represented as a single group.

Plaintiffs say that class action principles do not apply here because Plaintiffs are not seeking to represent a class. Pls.' Opp'n at 14 n.6. To the contrary, "Plaintiffs are essentially seeking to act as a representative for a class of all their patients" affected by the WRTKA—thousands of women a year. *EMW Women's Surgical Ctr., P.S.C. v. Friedlander*, 960 F.3d 785, 813 n.2 (6th Cir. 2020) (Bush, J., dissenting), *abrogated by Dobbs*, 597 U.S. 215, and *vacated on reh'g,* No. 19-5516, 2022 WL 2866607 (6th Cir. July 21, 2022). In fact, those class action principles apply with even greater force here because this action has none of the key protections of a class action—representative litigants who are members of the class, who share the same interest as the class, and who will adequately represent it. *See June Medical*, 591 U.S. at 402 (Alito, J., dissenting) (citing Fed. R. Civ. P. 23(a)(4)).

In particular, the due process demand for adequate representation in class actions "serves to uncover conflicts of interest" between representative litigants and those they claim to represent. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625–26 (1997). The record does not support Plaintiffs' claim that the interests of the group of women they seek to represent uniformly support unregulated and immediate access to abortion. Even if some unidentified women do oppose the

[2] Plaintiffs' hearsay objection does not deprive the Court of the ability to consider that article as a matter of "legislative fact" in evaluating the existence of a conflict of interest between abortion providers and their patients. *See Menora v. Illinois High Sch. Ass'n*, 683 F.2d 1030, 1036 (7th Cir. 1982) (Posner, J.); Fed. R. Evid. 201, Advisory Committee Note.

WRTKA (though Plaintiffs have not adduced any admissible evidence of such opposition), the evidence proffered by the State Defendants shows that others value the law's disclosures. Such "diversity" and "disparity" within the group Plaintiffs claim to represent means "the interests of those within the single class are not aligned," and assigning one representative to speak for all of them would be constitutionally inadequate. *Id.* at 626. Plaintiffs' invocation of third-party standing thus provides "no structural assurance of fair and adequate representation for the diverse groups and individuals affected," and so it cannot stand under due process. *Id.* at 627. They cannot represent their patients when they are seeking relief that would impair their patients' ability to sue them.

II. Plaintiffs' WRTKA challenge requires joining the affected patients.

Plaintiffs acknowledge that their current and future patients have two types of rights at stake here. First, Plaintiffs seek to adjudicate their patients' right to autonomy, which they say requires striking down the WRTKA in its entirety. Pls.' Pet. ¶¶ 145, 149, 151–52. And second, Plaintiffs say that if they prevail (particularly on appeal), it will strip away their patients' right to sue them under the WRTKA. Pls.' Opp'n at 14. Due process demands joining the right-holders.

The record shows those rights matter to Plaintiffs' patients. While Plaintiffs couch the right to autonomy as favoring abortion on demand without limitation, the unrebutted testimony of actual women who have had abortions shows they see it differently, wishing they had been provided the disclosures the WRTKA requires. *See supra* at I.B.2. And the [redacted], coupled with national recognition of the patient harm caused by its provision of abortion, shows the importance of patients' ability to hold abortion providers to account under the WRTKA. *See* Ex. A to Defs.' Mot., Benner at 10–11; [redacted]. The fact that patients have not yet brought suit does not mean that their statutory right to do so can be so cavalierly dismissed.

Plaintiffs say none of this matters because the "statutory rights" of patients "are actually infringements of patients' right to personal autonomy." Pls.' Opp'n at 16 n.8. But that's the same problem as above: a defense on the merits does not answer concerns of conflicts and due process. *June Medical*, 591 U.S. at 401 (Alito, J., dissenting). And because "[p]arties naturally 'tailor their own presentation to the interest that each of them has,'" Plaintiffs are ill-suited to speak to whether their patients care about preserving their rights to sue Plaintiffs under the WRTKA. *Id.* at 402 (quoting Wright & Miller, 7C Fed. Prac. & Proc. § 1909). Rather, if anyone is well positioned to decide how the WRTKA affects patient autonomy, it is the patients themselves—not abortion providers who seek a precedent that will foreclose their patients' right to sue them.

To decide patients' constitutional rights and strip away their statutory rights without joining them violates due process. *See* Wright & Miller, 7 Fed. Prac. & Proc. Civ. § 1602 (3d ed.); *State of N.C. ex rel. Long v. Warren*, 37 F.3d 1495 (4th Cir. 1994) (table); *Britton v. Green*, 325 F.2d 377, 383 (10th Cir. 1963). Plaintiffs try to distinguish the authorities on the due process requirements of Rule 19 on the ground that they involved a nonparty's "clear and tangible financial interest" in the dispute. Pls.' Opp'n at 17 n.9. But that distinction cuts in favor of joinder—if deciding a nonparty's mere financial *interest* is sufficient to merit joinder, then surely a decision on a nonparty's constitutional and statutory *rights* demands the same. Especially where those rights concern the nonparty's ability to bring a claim against one of the parties and the substance of that claim.

Plaintiffs' procedural objections fare no better. They complain that this issue "could and should have been raised much earlier in this case." Pls.' Opp'n at 15 n.7. But State Defendants have focused on the interests of Plaintiffs' patients from the inception of this case, and by statute, the necessary party objection is never waived and may be raised at any stage, including "at trial." K.S.A. 60-212(h)(2)(C).

Plaintiffs also complain that the State Defendants have not identified the specific persons whom they claim must be joined. Pls.' Opp'n at 15. But that is not a problem for the State Defendants, but for Plaintiffs, who have sought to adjudicate and represent the constitutional and statutory rights of an inchoate and diverse group of all women who might ever seek an abortion in Kansas. Pls.' Pet. ¶¶ 145, 149, 151–52. In considering analogous representative litigation of the rights of future claimants, the Supreme Court was doubtful whether "notice sufficient under the Constitution . . . could ever be given to legions so unselfconscious and amorphous." *Amchem Prods.*, 521 U.S. at 628. Here too, Plaintiffs specifically state that they "agree that it would be infeasible for every past and future patient from Kansas and elsewhere to join this litigation." Pls.' Opp'n at 17. The infeasibility of joining the women whose rights Plaintiffs seek to decide demands dismissal.

Plaintiffs warn that "dismissing this case on joinder grounds would spell the end of a meaningful right to abortion in Kansas." Pls.' Opp'n at 17. That's absurd. Abortion is broadly legal in Kansas and requiring financially motivated abortion providers to provide informed consent will no more stop abortion in Kansas than upholding a similar requirement did in Casey. Further, Plaintiffs wrongly assume that women do not litigate over abortion rights. The most famous abortion rights case ever was filed by a woman, not an abortion clinic, *see Roe v. Wade*, 410 U.S. 113, 125 (1973), and "the capable-of-repetition-yet-evading-review exception to mootness" ensures jurisdiction over such claims. *June Medical*, 591 U.S. at 405 (Alito, J., dissenting). When the Supreme Court first allowed third-party standing in abortion cases, its "docket regularly contain[ed] cases in which women, using pseudonyms, challenge statutes that allegedly infringe their right to exercise the abortion decision." *Singleton v. Wulff*, 428 U.S. 106, 126 (1976) (Powell, J., concurring in part and dissenting in part).

Plaintiffs' notion that women cannot be expected to stand up for their own autonomy is the height of both irony and paternalism. The Court should reject it.

CONCLUSION

The Court should dismiss Plaintiffs' third-party standing theories and narrow the injunction accordingly, or dismiss this action and vacate the injunction.

April 25, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 25, 2025, I filed the above document using Kansas e-filing and served the document to:

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