

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

ALLYSON PHILLIPS, <i>et al.</i> ,	)	
	)	No. 23-1196-IV(I)
Plaintiffs,	)	
	)	<u>Three-Judge Panel</u>
v.	)	Chancellor Moskal
	)	Judge Donaghy
STATE OF TENNESSEE, <i>et al.</i> ,	)	Chancellor Culbreath
	)	
Defendants.	)	

MEMORANDUM AND ORDER ON DEFENDANTS’
MOTION FOR JUDGMENT ON THE PLEADINGS

This matter came before the three-judge panel on *Defendants’ Joint Motion for Judgment on the Pleadings*, seeking dismissal of Plaintiffs’ Second Amended and Supplemental Complaint (“second amended complaint” or “SAC”).¹ Plaintiffs filed a response in opposition, and Defendants filed a reply. Participating in the hearing were Attorneys Linda Goldstein and Nicholas Kabat, representing Plaintiffs; and Assistant Solicitor General Virginia N. Adamson and Senior Counsel Steven J. Griffin, representing Defendants. Based on the motion, response, reply, the second amended complaint, and arguments of counsel, the Court GRANTS, in part, and DENIES, in part, Defendants’ *Motion for Judgment on the Pleadings* for the reasons discussed below.

I. BACKGROUND AND STATEMENT OF CASE

This case involves Plaintiffs’ constitutional challenges to the Tennessee criminal abortion statute’s medical necessity exception, which became effective April 28, 2023. 2023 Tenn. Pub. Acts, ch. 313, §§ 1-3 (codified at Tenn. Code Ann. § 39-15-213(c)) (the “Medical Necessity

¹ As a preliminary matter at the hearing, the Court requested argument from the parties on Defendants’ *Motion to Exclude Plaintiffs’ Declarations*, which Plaintiffs had submitted as part of their opposition to Defendants’ motion for judgment on the pleadings. After argument, the Court took the motion to exclude under advisement to allow Plaintiffs the opportunity to file a written response. Plaintiffs have filed their response, and the Court is entering a separate order on Defendants’ motion.

Exception”). The criminal abortion statute was enacted in 2019 and became effective during 2022, making it a crime punishable as a Class C felony² for any person to perform or attempt to perform an abortion. Tenn. Code Ann. § 39-15-213(b). As originally enacted, the statute excluded from the definition of abortion the “removal of a dead fetus,” but did not include any exceptions based on medical necessity. The 2023 amendment revised the definition of abortion to also exclude the termination of an “ectopic or molar pregnancy,” *id.* § 39-15-213(a)(1), and created the Medical Necessity Exception, which provides:

Notwithstanding subsection (b), a person who performs or attempts to perform an abortion does not commit the offense of criminal abortion if the abortion is performed or attempted by a licensed physician in a licensed hospital or ambulatory surgical treatment center and the following conditions are met:

(A) The physician determined, using reasonable medical judgment, based upon the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman or to prevent serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman; and

(B) The physician performs or attempts to perform the abortion in the manner which, using reasonable medical judgment, based upon the facts known to the physician at the time, provides the best opportunity for the unborn child to survive, unless using reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk of death to the pregnant woman or substantial and irreversible impairment of a major bodily function.

Id. § 39-15-213(c)(1) (2023).

A. Prior Proceedings

On September 11, 2023, Plaintiffs Nicole Blackmon, Allyson Phillips, Kaitlyn Dulong, K. Monica Kelly, Kathryn Archer, Rebecca Milner, and Rachel Fulton (the “Plaintiff Patients”) filed their original complaint. Plaintiff Patients alleged that each of them were pregnant and sought medical care for their pregnancies and related health conditions. Each of them wanted to be

² Under Tennessee law, a Class C felony is punishable by a prison sentence of three to fifteen years and fines of up to \$10,000. Tenn. Code Ann. §§ 40-35-111, 40-35-112.

pregnant, and none of them sought an elective abortion. Each Plaintiff Patient developed serious and potentially life-threatening medical conditions and/or fatal fetal diagnoses but were denied or delayed in receiving medically necessary abortion care. They allege that each delay or denial was due to uncertainty within the medical community regarding the scope and application of the Medical Necessity Exception. Each Plaintiff Patient suffered a loss of her pregnancy, and several of them also suffered serious and life-threatening complications and injuries due to the delay or denial of medically necessary abortion care. Six of the seven Plaintiff Patients alleged they were again pregnant or wanted to become pregnant but feared they would not be able to obtain medically necessary abortion care in Tennessee, which they further alleged could place their lives and health at risk.

Plaintiffs Heather Maune, M.D. and Laura Andreson, D.O., (the “Plaintiff Physicians”) are obstetricians/gynecologists practicing medicine in Tennessee, and both were also original plaintiffs. They treat pregnant patients with a wide variety of obstetrical and other health conditions and complications that develop during pregnancies, including life- or health-threatening medical conditions. Before Tennessee’s criminal abortion statute went into effect, Drs. Maune and Andreson offered essential abortion care to their patients. They alleged that, after the effective date of the criminal abortion statute, they were limited in their ability to provide necessary abortion care and could only offer information about out-of-state options due to the uncertainty within the Tennessee medical community as to the scope and application of the Medical Necessity Exception. Both physicians sued on their own behalf and on behalf of their patients.

Defendants named in the original complaint were the State of Tennessee, Tennessee Attorney General Jonathan Skrmetti, the Tennessee Board of Medical Examiners (“TBME”), and the President of the TBME.

For their claims, Plaintiffs challenged the Medical Necessity Exception as violating Plaintiff Patients’ constitutional right to life (Count II), Plaintiff Patients’ constitutional right to equal protection (Count III), and Plaintiff Physicians’ constitutional right to due process as to the statute’s unconstitutional vagueness (Count IV). Plaintiffs requested prospective declaratory relief as to the scope of the Medical Necessity Exception (Count I), and injunctive relief against the enforcement of the criminal abortion statute and the Medical Necessity Exception as applied to physicians treating pregnant patients with critical or emergent medical conditions for whom medically necessary abortion care would prevent or alleviate the risk of death or serious health impairment.

On November 1, 2023, Defendants filed a motion to dismiss the original complaint. They sought dismissal of the entire complaint on two grounds: first, under Rule 12.02(1) for lack of subject matter jurisdiction under the doctrines of sovereign immunity and lack of standing; and second, under Rule 12.02(6) for failure to state claims for relief.

On January 8, 2024, before Defendants’ motion to dismiss was set for hearing, Plaintiffs filed their first amended and restated complaint, as a matter of right, alleging the same claims as their original complaint but adding as named defendants the TBME officers and members in their official capacities, the Tennessee Board of Osteopathic Examination (“TBOE”), and the TBOE officers and members in their official capacities. Also on January 8, 2024, Plaintiffs filed a motion for temporary injunction seeking a declaration as to the scope of the Medical Necessity Exception and an order prohibiting Defendants from enforcing the criminal abortion statute or instituting disciplinary actions for violations of the statute.

After extensive briefing and hearing, the Court entered two orders on October 17, 2024. On Defendants’ motion to dismiss, the Court granted it, in part, dismissing Plaintiff Nicole Blackmon’s claims based on lack of standing and, to the extent alleged in the first amended

complaint, Plaintiff Physicians’ facial vagueness challenge to the Medical Necessity Exception. The Court denied the remainder of the motion to dismiss as to the other Plaintiffs’ lack of standing, sovereign immunity, and failure to state claims for relief.

On Plaintiffs’ motion for temporary injunction, the Court denied the motion, in part, declining to enjoin the enforcement of the criminal abortion statute due to the Court’s lack of criminal jurisdiction. The Court granted the motion, in part, relying on Defendants’ concession during the injunction hearing that certain emergency pregnancy-related medical conditions come within the Medical Necessity Exception.³ The Court enjoined the TBME, the TBOE, and the Attorney General from instituting disciplinary proceedings against Plaintiff Physicians for providing abortion care for the parties’ agreed upon emergency pregnancy-related medical conditions. The Court denied all other requests for temporary injunctive relief. The temporary injunction was issued on October 18, 2024, and it remains in effect.

B. Plaintiffs’ Second Amended and Supplemental Complaint and Defendants’ Joint Motion for Judgment on the Pleadings

The Court conducted a scheduling conference with the parties to develop a schedule for the further progression of the case and entered the parties’ agreed scheduling order on January 9, 2025. Included in the scheduling order was a deadline for amending the pleadings, joining other parties, and setting the case for a two-week bench trial beginning on April 27, 2026.

Plaintiffs timely filed their motion for leave to amend and, by agreed order, filed their second amended and supplemental complaint on March 12, 2025. In their second amended complaint, Plaintiffs named the American Medical Association as an additional plaintiff, substituted some of the parties named as Defendant Members of the TBME and TBOE, and added

³ The Court explained that the specific medical conditions listed reflected Defendants’ concession made during the temporary injunction hearing, “[f]or purposes of the temporary injunction *only*,” that those conditions come within the Medical Necessity Exception based on the parties’ respective experts’ opinions. *See* Oct. 17, 2024, Order at 12 (emphasis added). Defendants limited their concession by stating at the hearing that they “reserve[d] the right to dispute these positions on the merits.” *Id.* at 12 n.4.

an equal protection claim with respect to pregnant people with mental health conditions (Count IV).⁴ Defendants answered the second amended complaint on March 27, 2025.

Effective April 17, 2025, after Plaintiffs had filed their second amended complaint and Defendants had answered, the General Assembly amended the criminal abortion statute to add two definitional subsections at Tenn. Code Ann. §§ 39-15-213(a)(5) and (6). 2025 Tenn. Pub. Acts, ch. 217, § 1 (the “2025 Amendment”). One of those subsections, -213(a)(6)(A), defined the term “serious risk of substantial and irreversible impairment of a major bodily function,” which is used in the Medical Necessity Exception at § 39-15-213(c)(1). Defendants contacted Plaintiffs to offer their agreement for Plaintiffs to further amend their complaint to address the 2025 Amendment, but Plaintiffs declined to do so. Defendants then filed their *Joint Motion for Judgment on the Pleadings* on May 13, 2025. After extensive briefing, the Court heard arguments on July 1, 2025.

II. THE 2025 AMENDMENT TO THE CRIMINAL ABORTION STATUTE

Defendants’ motion is premised on the effect of the 2025 Amendment on Plaintiffs’ constitutional challenges to the Medical Necessity Exception and request for declaratory relief as set forth in their second amended complaint on multiple grounds. To place the parties’ respective arguments in context, the Court reviews the substance of the 2025 Amendment.

Effective April 17, 2025, the General Assembly passed Senate Bill 1004, which was signed into law as Public Chapter 217. 2025 Tenn. Pub. Acts ch. 217, § 1. The 2025 Amendment adds two definitions to the criminal abortion statute as follows:

(a) As used in this section:

. . . .

(5) “Inevitable abortion” means a dilation of the cervix prior to viability of the pregnancy, either by preterm labor or cervical insufficiency;

⁴ Plaintiffs renumbered their void for vagueness claim as Count V.

(6) “Serious risk of substantial and irreversible impairment of a major bodily function”:

(A) Means any medically diagnosed condition that so complicates the pregnancy of a woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function;

(B) May include previable preterm premature rupture of membranes; inevitable abortion; severe preeclampsia; mirror syndrome associated with fetal hydrops; and an infection that can result in uterine rupture or loss of fertility; and

(C) Does not include any condition related to the woman’s mental health[.]

Tenn. Code Ann. §§ 39-15-213(a)(5), (6). The 2025 Amendment does not change subsection (b) of the criminal abortion statute, which makes it a Class C felony for any person to perform or attempt to perform an abortion, or subsection (c), which sets forth the Medical Necessity Exception to subsection (b), and is the central issue in this case.

Defendants submit that the 2025 Amendment is a “new law” such that Plaintiffs’ claims under the 2023 version of the statute no longer state claims for relief, are rendered moot, and should be dismissed. Defendants also renew the arguments asserted in their prior motion to dismiss based on sovereign immunity and raise several lack of standing defenses. Defendants further contend that the new definition and inclusion of a list of medically diagnosed conditions in subsections (6)(A) and (B) mean that abortions are now allowed when pregnant women experience those conditions or “conditions resembling those conditions.”

Plaintiffs respond that Defendants “mischaracterize” the 2025 Amendment as a “new” statute, rather than as an amended statute. Plaintiffs further argue that, in any event, the 2025 Amendment fails to cure or address the statute’s defects as alleged in their second amended complaint. Plaintiffs submit that the 2025 Amendment, in fact, creates more vagueness and uncertainty as to when medically necessary abortion care may legally be provided than the 2023 version of the statute.

A comparison of the 2023 version of the criminal abortion statute to the 2025 Amendment reveals that aside from adding the two new definitions, the remainder of the statute is unchanged. First, subsection (a)(5) of the 2025 Amendment adds a definition for the term “*inevitable abortion*,” as “a dilation of the cervix prior to viability of the pregnancy, either by preterm labor or cervical insufficiency,” and this term is included in the list of pregnancy related medical conditions listed in subsection (a)(6)(B).

Second, subsection (a)(6)(A) of the 2025 Amendment adds a definition for the term “[s]erious risk of substantial and irreversible impairment of a major bodily function,” as “any medically diagnosed condition that so complicates the pregnancy of a woman as to directly or indirectly cause the *substantial and irreversible impairment of a major bodily function*.” Thus, subsection (a)(6)(A) defines the term “substantial and irreversible impairment of a major bodily function” as one causing “substantial and irreversible impairment of a major bodily function.” *Accord, e.g., Clackamas Gastroenterology Assocs., P. C. v. Wells*, 538 U.S. 440, 444 (2003) (finding circular the definition of “employee” as “an individual employed by an employer”); *see also Friedli v. Kerr*, No. M1999-02810-COA-R9-CV, 2001 WL 177184, at *4 & n.10 (Tenn. Ct. App. Feb. 23, 2001) (holding the definition of “equine activity” was circular because it was defined in part as “equine activities”). Circular definitions that use the same terms to define themselves “explain[] nothing.” *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 323 (1992); *see also United States v. Bestfoods*, 524 U.S. 51, 66 (1998) (noting that a definition of “operator” as “any person . . . operating” was similarly “useless[]”).

Subsection (a)(6)(B) lists five pregnancy-related conditions that “may” be included as coming within the definition of “serious risk of substantial and irreversible impairment of a major bodily function.” Defendants claim that this Court’s October 17, 2024 temporary injunction order declared these five conditions as coming within the Medical Necessity Exception and are now

incorporated into subsection (a)(6)(B). *But see* note 3, *supra*. This subsection provides that the five conditions listed “[~~m~~ay]” be included as a “serious risk of substantial and irreversible impairment of a major bodily function,” and not that they *are* included. Defendants suggest that the term “may” is intended to be expansive and illustrative, and that other medical conditions could also warrant intervention. But a statute’s use of “may” can be read two ways. “May” “ordinarily connotes discretion or permission.” *See In re Est. of Rogers*, 562 S.W.3d 409, 424 (Tenn. Ct. App. 2018) (quoting *Colella v. Whitt*, 308 S.W.2d 369, 371 (Tenn. 1957)). But “the use of the word ‘may’ also indicates that the [exception] ‘may,’ or *may not*” apply. *See Embraer Aircraft Maint. Servs., Inc. v. AeroCentury Corp.*, 538 S.W.3d 404, 412 (Tenn. 2017) (emphasis added); *accord Bouarfa v. Mayorkas*, 604 U.S. 6, 13 (2024). Consequently, while the 2025 Amendment “may” permit medically necessary abortion care for some pregnant women with one of the medical diagnoses listed, it also “may not” permit medically necessary abortion care for a pregnant woman who is diagnosed with one or more of the listed conditions.⁵ Lastly, subsection (a)(6)(C) excludes from the added definition of “*serious risk of substantial and irreversible impairment of a major bodily function*” “any condition related to the woman’s mental health.” This exclusion appears to

⁵ The legislative history of the 2025 Amendment contains a statement by the bill’s Senate sponsor during floor debate that the Amendment “does not change existing law.” *See* Senate Session, 20th Leg. Day, *Debate on S.B. 1004*, 114th Gen. Assemb., 1st Sess., at 37:55 (Tenn. Apr. 7, 2025) (statement of Sen. Briggs), <https://perma.cc/5WB2-KNPW>. The Senate sponsor also stated during the committee process that, consistent with the 2025 Amendment’s use of “may,” and while the listed conditions can “cause serious risk of substantial and irreversible impairment of a major body function,” “abortion does not have to be the outcome in all of these situations.” *Hearing on S.B. 1004 Before the S. Judiciary Comm.*, 114th Gen. Assemb., 1st Sess., at 5:15 (Tenn. Mar. 25, 2025) (statement of Sen. Briggs), <https://perma.cc/MF44-C9EH>. *See Parents’ Choice Tenn. v. Golden*, No. M2022-01719-COA-R3-CV, 2024 WL 1670663, at *18 (Tenn. Ct. App. Apr. 18, 2024) (comparing the court’s plain language reading of a statute with its legislative history).

The bill’s House sponsor explained that qualifying as a medically diagnosed condition under the Medical Necessity Exception would be a “two-step process”: “Step one is that you have the diagnosis. Step two is you have to determine whether the severity and the circumstances impose a substantial risk.” *Hearing on H.B. 990 Before the H. Health Comm.*, 114th Gen. Assemb., 1st Sess., at 1:42:50 (Tenn. Apr. 1, 2025) (statement of Rep. Terry, Chair, H. Health Comm.), <https://perma.cc/SN3H-TZZT>. The House sponsor stated that, in his view, the 2025 Amendment only clarified the first step of the process. *See id.*

restate, in part, the mental health exclusion set forth in the 2023 version of the statute at subsection (c)(2), which subsection remains in the 2025 Amendment, and provides:

An abortion is not authorized under (c)(1)(A) [the Medical Necessity Exception] and a greater risk to the pregnant woman does not exist under subdivision (c)(1)(B) if either determination is based upon a claim or a diagnosis that the pregnant woman will engage in conduct that would result in her death or the substantial and irreversible impairment of a major bodily function or for any reason relating to the pregnant woman's mental health.

Tenn. Code Ann. § 39-15-213(c)(2).

III. DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

"[A]ny party may move for judgment on the pleadings" under Rule 12.03 of the Tennessee Rules of Civil Procedure "after the pleadings are closed but within such time as not to delay trial." Tenn. R. Civ. P. 12.03. On May 13, 2025, Defendants filed their Rule 12.03 motion for judgment on the pleadings based on the 2025 Amendment.⁶ Defendants argue the 2025 Amendment deprives this Court of subject matter jurisdiction under the doctrines of mootness, lack of standing, and sovereign immunity. Defendants further contend that, as a result of the 2025 Amendment, Plaintiffs' second amended complaint fails to state any claims for relief.

A. Subject Matter Jurisdiction

A Rule 12.03 motion for judgment on the pleadings raising the defense of lack of subject matter jurisdiction applies the same standard as a Rule 12.02(1) motion for lack of subject matter jurisdiction. Once raised, a plaintiff bears the burden of establishing a prima facie showing of jurisdiction. *See Chenault v. Walker*, 36 S.W.3d 45, 56 (Tenn. 2001). "[S]ubject matter jurisdiction involves a court's power to adjudicate a particular type of controversy." *Dishmon v. Shelby St. Cmty. Coll.*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999) (citing *Meighan v. U.S. Sprint*

⁶ On April 25, 2025, Defendants requested a status conference with the Court to address the 2025 Amendment and additional substantive and scheduling issues in this case. A status conference was held on May 8, and an order was entered on May 9, 2025, establishing a filing and briefing schedule for Defendants' proposed Rule 12.03 motion. *See* May 9, 2025 Order.

Comms., Co., 924 S.W.2d 632, 639 (Tenn. 1996)). “Statutes or constitutional provisions confer and define a court’s subject matter jurisdiction, and parties to litigation cannot confer or expand subject matter jurisdiction by consent or waiver.” *New v. Dumitrache*, 604 S.W.3d 1, 14-15 (Tenn. 2020) (citing *Tennessean v. Metro. Gov’t of Nashville*, 48 S.W.3d 857, 863 (Tenn. 2016)). Subject matter jurisdiction depends upon the nature of the cause of action and the relief sought. *See id.* Judgments entered by courts lacking subject matter jurisdiction are void; thus, whether a court has subject matter jurisdiction is a “threshold inquiry” to be decided at the earliest instance. *In re Est. of Trigg*, 368 S.W.3d 483, 489 (Tenn. 2012). If subject matter jurisdiction is lacking, the dismissal is without prejudice. *See Dishmon*, 15 S.W.3d at 480.

A challenge to subject matter jurisdiction can be facial or factual. *See Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, 531 S.W.3d 146, 159-60 (Tenn. 2017). The Tennessee Supreme Court has explained that distinction as follows:

A facial challenge attacks the complaint itself and asserts that the complaint, considered as a whole, fails to allege facts showing that the court has subject matter jurisdiction to hear the case. When evaluating a facial challenge to subject matter jurisdiction, a court limits its consideration to the factual allegations of the complaint and considers nothing else. The court presumes the factual allegations of the complaint are true. If these factual allegations establish a basis for the court’s exercise of subject matter jurisdiction, then the court must uncritically accept those facts, end its inquiry, and deny the motion to dismiss. Thus, when evaluating facial challenges to subject matter jurisdiction, courts are to utilize the familiar analytical framework that applies to motions to dismiss for failure to state a claim.

In contrast, factual challenges to subject matter jurisdiction do not attack the allegations of the complaint as insufficient. Rather, a factual challenge admits that the alleged facts, if true, would establish subject matter jurisdiction, but it attacks the sufficiency of the evidence to prove the alleged jurisdictional facts. When resolving a factual attack on subject matter jurisdiction, a court may consider matters outside the pleadings, such as affidavits or other documents. Furthermore, motions challenging subject matter jurisdiction are not converted to summary judgment motions when matters outside the pleadings are considered or when disputes of material fact exist. Rather, courts presented with such motions must weigh the evidence, resolve any factual disputes, and determine whether subject matter jurisdiction exists.

Id. at 160-61 (citations omitted).

In support of their response, Plaintiffs submitted their declarations addressing the 2025 Amendment and its failure to address their allegations in their second amended complaint of fear of being able to obtain medically necessary abortion care or facing criminal prosecution and loss of their medical licenses. Defendants have moved to exclude those declarations. The Court is entering a separate order granting, in part, Defendants’ motion to exclude, and denying it, in part. *See* Oct. 16, 2025 Order on Mot. to Exclude.⁷ The Court finds that Defendants raise a factual challenge to subject matter jurisdiction based on the 2025 Amendment, and the Court will consider Plaintiffs’ declarations for the purposes of Defendants’ motion for lack of subject matter jurisdiction on the grounds of mootness, lack of standing, and sovereign immunity.⁸

1. Mootness

Defendants first argument is that Plaintiffs’ constitutional right to life and vagueness claims are rendered moot by passage of the 2025 Amendment. “A case becomes moot when ‘by a court decision, acts of parties, or other causes occurring after the commencement of the action the case has lost its controversial character.’” *State v. Sokolosky*, No. M2022-00873-SC-R11-CD, 2025 WL 2016420, at *2 (Tenn. July 18, 2025) (quoting *West v. Vought Aircraft Indus., Inc.*, 256 S.W.3d 618, 625 (Tenn. 2008)). A case that is moot “no longer serves as a means to provide some sort of judicial relief to the prevailing party.” *Norma Faye Pyles Lynch Fam. Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 204 (Tenn. 2009). The mootness doctrine helps courts “stay their hand in cases that do not involve a genuine and existing controversy requiring the present adjudication of present rights,” *McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994), since the proper “province of a court is to decide, not advise, and to settle rights, not to give abstract

⁷ In its October 16, 2025 Order on Motion to Exclude, the Court also denied Defendants’ *Motion for Expedited Consideration of Their Motion to Exclude Plaintiffs’ Declarations* as moot.

⁸ As also noted in the October 16, 2025 Order on Motion to Exclude, the Court will not consider the declarations with respect to Defendants’ failure to state claims for relief defenses.

opinions,” *Norma Faye*, 301 S.W.3d at 203 (quoting *State v. Wilson*, 70 Tenn. 204, 210 (1879)). Whether a case is moot turns on the facts and circumstances of a given case. *See id.* at 204.

The amendment of a statute may, in some cases, render a case moot. The Tennessee Supreme Court recently considered this issue in *Shaw v. Metropolitan Government of Nashville & Davidson County*, 651 S.W.3d 907 (Tenn. 2022). There, the plaintiffs challenged a local ordinance restricting home businesses. *Id.* at 909-10. While the case was on appeal, Metro Nashville “repealed the . . . provision that was the subject of the [plaintiffs’] complaint” and enacted a new, more relaxed ordinance. *Id.* at 910. As a result, Metro argued on appeal that the plaintiffs’ case was rendered moot, and the Court of Appeals agreed. *Id.* at 910-11. The Tennessee Supreme Court accepted review to determine whether the repeal and replacement of the challenged ordinance mooted the case. After oral argument, Metro again amended the challenged ordinance and asked the Supreme Court to consider post-judgment facts on the issue of mootness. *Id.* at 911.

The Supreme Court started its analysis by recognizing that there are some situations in which invoking the mootness doctrine is not appropriate. One of those situations is where there is a “voluntary cessation” of engaging in the challenged conduct, “because courts are wary of ‘permitting a litigant to cease its wrongful conduct temporarily to frustrate judicial review and then be free to resume the same conduct after the case is dismissed as moot.’” *Id.* (citations omitted). But where the voluntary cessation involves challenged conduct of a governmental entity by enacting new legislation or repealing the challenged legislation, such change may moot the case if it is “‘absolutely clear that the allegedly wrongful conduct cannot be reasonably expected to recur.’” *Id.* The plaintiffs in *Shaw* argued that their claims were not mooted by the enactment of a replacement ordinance because the new ordinance still disadvantaged them in the same fundamental way as the prior ordinance.

On this issue, the Supreme Court reviewed the United States Supreme Court’s decision in *Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville*, 508 U.S. 656 (1993). Noting that the United States Supreme Court had held that repeal alone does not moot a case if there is ongoing harm, the Tennessee Supreme Court adopted Justice Sandra Day O’Connor’s approach as set forth in her dissent, which did not disagree with the principles cited by the majority, but urged a “more traditional cautious” approach as follows:

Where a lawsuit challenges a statute or ordinance and seeks only prospective relief, and the statute or ordinance is simply repealed, the case will ordinarily be dismissed as moot because it is no longer possible for the court to grant any effectual relief.

The analysis changes, however, if the challenged law is amended or is repealed and replaced with a new law. On one end of the continuum, a defendant cannot moot a case by altering the challenged law in an insignificant way. On the other end of the continuum, if the challenged law is changed so as to clearly cure the alleged defect or in such a way that it no longer applies to the plaintiff, plainly there remains no “live controversy” for the court to decide. “Such cases functionally are indistinguishable from those involving outright repeal” and should be deemed moot.

Inhabiting the gray area in the middle is the situation where, while an appeal is pending, the challenged law is replaced by a new law that does not clearly or completely remedy the defect asserted by the plaintiff but “is more narrowly drawn.” In such circumstances, it may ultimately turn out that the new law retains the same “legal defect” as the old law. But it may also turn out that the challenged law was altered in a way that presents “a substantially different controversy” from the one originally decided by the trial court. When the appellate court “cannot be sure how the statutory changes will affect the plaintiff’s claims,” it should consider vacating the lower court’s decision and remanding to the trial court with instructions to permit the plaintiff to amend, including amendment to challenge the new law. The determination of whether a case should be remanded with leave to amend, rather than dismissed as moot, turns on the facts and circumstances of each case.

Shaw, 651 S.W.3d at 916-17 (citations omitted) (quoting *Northeastern Florida*, 508 U.S. at 670-71, 675 (O’Connor, J., dissenting)).⁹ Thus, the Tennessee Supreme Court concluded that whether

⁹ As the Tennessee Supreme Court noted in *Shaw*,

there was no disagreement between the majority and the dissent in *Northeastern Florida* on the basic principle. They disagreed only on where to draw the line—whether the new

a statutory repeal or amendment moots a case depends on whether, under the facts and circumstances, the amendment “clearly cures the alleged defect” and the change is “significant enough” to present a “substantially different controversy” from the original action. *Id.* at 917.

Defendants make several arguments in support of their mootness argument based on the 2025 Amendment under *Shaw*. First, they contend Plaintiff Physicians’ allegations of vagueness are cured through subsection (a)(6)(A)’s definition of “serious risk of substantial and irreversible impairment of a major bodily function.” Second, they contend that the pregnancy-related medical conditions Plaintiff Patients alleged they experienced under the 2023 version of the statute are now included in subsection (a)(6)(B)’s listing of conditions where medically necessary abortion care “may” be permitted, such that Plaintiffs no longer can plausibly allege a fear of future complications.¹⁰ (*See, e.g.*, SAC ¶¶ 140 (PPROM), 185(b) (severe preeclampsia), 220 (mirror syndrome associated with fetal hydrops)). Defendants further contend that, at the very least, these changes are significant enough to require Plaintiffs to amend their complaint, which they have refused to do. Finally, Defendants claim that because the second amended complaint only contains allegations about the criminal abortion statute as it existed before the 2025 Amendment, Plaintiffs’

ordinance in that case was sufficiently similar to the original ordinance to warrant an outright finding at the appellate level that the case was not moot.

651 S.W.3d at 915.

¹⁰ Defendants state several times in their motion for judgment on the pleadings that Plaintiffs have failed to “plausibly plead” their claims in the second amended complaint. This reference appears to rely on the federal “plausibility” pleading standard adopted in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Tennessee, however, adheres to a liberal “notice pleading” standard under Tennessee Rule of Civil Procedure 8.01, requiring only “a short and plain statement of the claim showing that the pleader is entitled to relief.” *See Webb v. Nashville Area Habitat for Human.*, 346 S.W.3d 422, 426-27 (Tenn. 2011) (expressly rejecting the federal “plausibility pleading” standard in favor of Tennessee’s more liberal “notice pleading” standard).

second amended complaint fails to adequately plead any claims under the 2025 Amendment that demonstrate an ongoing controversy.¹¹

Plaintiffs respond that the changes made in the 2025 Amendment are insignificant because the key definition uses circular language, its list of covered medical conditions warranting abortion care is conditional, and several of the critical defects about which they complain in their second amended complaint have not been cured or addressed, leaving their complaints unchanged.

Applying the approach adopted in *Shaw*, the Court concludes that Plaintiffs' complaint is not moot. Although this case is not one involving a statutory repeal or a repeal and replacement, it is one of an amendment to an existing statute. The Court finds that several of the defects in the criminal abortion statute as alleged by Plaintiffs in their second amended complaint are unaffected by the 2025 Amendment. For example, Plaintiffs allege that "[m]any quantitative terms used in the statute are undefined" and fail to "give content to what constitutes a 'serious risk' versus a 'risk'; or a 'substantial impairment' versus an 'impairment,'" or "a 'reversible impairment' versus an 'irreversible impairment,'" or "a 'major bodily function' versus a 'bodily function.'" (See SAC ¶ 237). The 2025 Amendment does not address these alleged defects. Plaintiffs further allege that the "statute is completely silent about the temporal aspect of the medical necessity determination," such as how close a patient must be to "'death' or to a 'substantial and irreversible impairment of a major bodily function' before her physician can perform a medically indicated abortion without fearing prosecution," or whether a physician can "perform an abortion when the pregnant woman is diagnosed with an emergent medical condition, or must . . . wait until the patient is in critical condition." (*Id.* ¶ 239). The 2025 Amendment does not address these alleged defects. Plaintiffs also challenge the statute's use of an objective "reasonable medical judgment" standard instead of

¹¹ Defendants also argue the case is moot because Plaintiffs no longer allege a cognizable injury, causation, or redressability. These arguments largely overlap with Defendants' standing arguments and are discussed in greater detail below.

allowing physicians to use their subjective best, good faith medical judgment, which Plaintiffs allege chills the physicians' decision-making in the moment out of fear they will be second-guessed by prosecutors and disciplinary boards. (*Id.* ¶¶ 241, 251-53). The 2025 Amendment does not address this alleged defect. *Cf. Green Party of Tenn. v. Hargett*, 700 F.3d 816, 824 (6th Cir. 2012) (declining to moot a case where a “core component” of the initial challenge “is still in effect” post-amendment).

The changes made by the 2025 Amendment do not significantly alter the status of this case. The key amendment is the definition of “serious risk of substantial and irreversible impairment of a major bodily function” in subsection 39-15-213(a)(6)(A). However, the Court finds that definition is circular and does not add much clarity to the kinds of conditions that may be treated by medically necessary abortion care. The statute’s inclusion of conditions that “may” qualify for care (while those same conditions also “may not” qualify under the facts of a given case) likewise do not cure the uncertainty around when abortion care is permitted. *Cf. Kenjoh Outdoor, LLC v. Marchbanks*, 23 F.4th 686, 692, 693 (6th Cir. 2022) (declining to moot a case when an amended regulation “imposes the same burdens on the plaintiff” and “operates in the same fundamental ways”).

Finally, as to Defendants’ further arguments that Plaintiffs no longer plausibly fear denial of necessary abortion care or criminal prosecution and loss of licensure, Plaintiffs have submitted their declarations to establish that those fears remain notwithstanding the 2025 Amendment, which the Court has determined are properly considered on Defendants’ factual challenge to subject matter jurisdiction under the mootness doctrine. By way of example, Plaintiff Phillips specifically attests that she “remain[s] fearful of being pregnant in Tennessee and anxious that [she] would not be able to obtain necessary healthcare if [she] experience[s] a pregnancy complication while the amended version of Tenn. Code Ann. § 39-15-213 is in effect.” Plaintiff Dr. Maune attests that

she “remain[s] fearful of providing medically necessary abortion care in Tennessee while the amended version of Tenn. Code Ann. § 39-15-213 remains in effect.”

Because the 2025 Amendment does not address a number of Plaintiffs’ allegations in their second amended complaint, and Plaintiffs’ alleged injuries persist under the Medical Necessity Exception of the criminal abortion statute as amended, the Court finds the 2025 Amendment does not moot Plaintiffs’ claims under *Shaw*.¹² See also *Norma Faye*, 301 S.W.3d at 204 (“In the absence of an explicit constitutional imperative, decisions to dismiss a case on the ground of mootness require the exercise of judgment based on the facts and circumstances of the case.”). Defendants’ motion for judgment on the pleadings on mootness grounds should therefore be denied.¹³

2. *Plaintiffs’ Standing*

Defendants next argue that none of the Plaintiffs have standing to bring this action after the 2025 Amendment. “Standing is one of the justiciability doctrines that guide courts in determining whether to hear and decide a particular case.” *Case v. Wilmington Tr., N.A.*, 703 S.W.3d 274, 281 (Tenn. 2024). The doctrine of standing determines “whether a particular litigant is entitled to have the court decide the merits of his or her dispute.” *Id.* Although a party’s standing may turn on the nature of the claim, likelihood of success on the merits is not a factor. *Id.* Standing

¹² The Court need not decide whether the 2025 Amendment “alter[s] the challenged law in an insignificant way” or instead “does not clearly or completely remedy the defect asserted by the plaintiff but ‘is more narrowly drawn,’” because the outcome is the same. *Shaw*, 651 S.W.3d at 917 (quoting *Northeastern Florida*, 508 U.S. at 671 (O’Connor, J., dissenting)).

¹³ Defendants also argue in passing that if the Court disagrees with them and finds the case is not moot, it should still dismiss because Plaintiffs have refused to amend their complaint which should be required. However, the options under *Shaw* are not binary. A court can dismiss a case where a statutory amendment results in a substantially different controversy. But, where the amendment is insubstantial or comes within the “gray area in the middle,” a court can grant leave to amend “*if necessary*.” *Shaw*, 651 S.W.3d at 916, 917 (quoting *N.Y. State Rifle & Pistol Ass’n, Inc. v. City of New York*, 590 U.S. 336, 339 (2020) (per curiam) (emphasis added)). Plaintiffs’ decision not to further amend their second amended complaint does not necessarily require the complaint’s dismissal on Defendants’ motion.

is a threshold issue, and a trial court determines standing as of the date of filing the complaint or amendment. *See Fisher v. Hargett*, 604 S.W.3d 381, 396 (Tenn. 2020); *LaFollette Med. Ctr. v. City of LaFollette*, 115 S.W.3d 500, 504 (Tenn. Ct. App. 2003); *Bowers v. Est. of Mounger*, 542 S.W.3d 470, 481 (Tenn. Ct. App. 2017). Thus, in this case, Plaintiffs standing is determined as of March 12, 2025, the date Plaintiffs filed their second amended complaint.

The Tennessee Supreme Court recently clarified the standing inquiry under Tennessee law in *Case v. Wilmington Trust*. 703 S.W.3d at 281. Under prior cases, such as *City of Memphis v. Hargett*, the Tennessee Supreme Court drew a distinction between two categories of standing—constitutional and non-constitutional standing—relying on federal jurisprudence. 414 S.W.3d 88, 98 (Tenn. 2013). In *Wilmington Trust*, however, the Court reexamined the doctrine of standing under the Tennessee Constitution, finding it “is not coincident with the United States Constitution in its constraint on judicial power.” *Id.* at 286. Tennessee’s approach to standing is not grounded in the “cases” or “controversies” language of the United States Constitution but instead turns on two separate state constitutional provisions. First, the Open Courts Clause requires that “all courts shall be open,” and anyone who suffers “an injury done him in his lands, goods, person or reputation” has a right to pursue a remedy. *Id.* at 286 (citing Tenn. Const. art. I, § 17). Second, the Separation of Powers Clause prohibits the judicial branch from exercising powers of either the legislative or executive branches of government such that those seeking a remedy in court must “allege an injury in fact not common to the public.” *Id.* at 291 (citing Tenn. Const. art. II, § 2). The Court further recognized that the role of state courts, as courts of general jurisdiction, are “inherently different from the role of federal courts of limited jurisdiction.” *Id.* (citations omitted).

Under the Open Courts provision of the Tennessee Constitution, the Court concluded that, in “private right” cases, a plaintiff has standing if they “assert injury to a cognizable legal right.” *Id.* That is, the violation of a legal right alone, such as a trespass to land, is sufficient to access the

courts even if there is no “injury in fact.” *Id.* In such cases, nominal damages may be awarded. *Id.*

In “public rights” cases, however, the Separation of Powers Clause demands more.¹⁴ In addition to alleging a violation of a legal right, plaintiffs in public rights cases must also establish the three “indispensable elements” of standing. *See City of Memphis*, 414 S.W.3d at 98 (quoting *ACLU of Tenn. v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006)). “First, a party must show an injury that is ‘distinct and palpable’; injuries that are conjectural, hypothetical, or predicated upon an interest that a litigant shares in common with the general citizenry are insufficient in this regard.” *Id.* (quoting *Darnell*, 195 S.W.3d at 620). Second, “a party must demonstrate a causal connection between the alleged injury and the challenged conduct.” *Id.* And third, “the injury must be capable of being redressed by a favorable decision of the court.” *Id.*

Plaintiffs in this case seek declaratory relief under the Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101, *et seq.*, not only to declare the scope of the Medical Necessity Exception, but also for prospective relief for violations of their constitutional rights. Under the Declaratory Judgment Act, “the only ‘controversy’ needed . . . is that ‘the question must be real, and not theoretical; the person raising it must have a real interest, and there must be some one having a real interest in the question who may oppose the declaration sought.’” *Wilmington Trust*, 703 S.W.3d at 289 n.13 (quoting *Miller v. Miller*, 261 S.W. 965, 972 (Tenn. 1924)); *see also Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 838 (Tenn. 2008) (noting that, even if a present injury is not alleged, only “a bona fide disagreement must exist” between the parties). Furthermore, the Declaratory Judgment Act in cases seeking prospective relief “should operate as preventive clinics

¹⁴ The Court in *Wilmington Trust* declined to “articulate a test distinguishing between public and private rights” beyond existing case law. 703 S.W.3d at 291 n.16; *cf. Patten v. City of Chattanooga*, 65 S.W. 414, 420 (Tenn. 1901). However, the parties before this Court agree that public rights claims are involved.

as well as hospitals for the injured.” *Colonial Pipeline*, 263 S.W.3d at 836-37 (quoting Henry R. Gibson, *Gibson’s Suits in Chancery*, § 545 (6th ed.1982)).

Defendants in this case challenge the standing of each group of Plaintiffs on different grounds, which the Court considers under the principles discussed above.

a. Plaintiff AMA’s Standing

Defendants assert that the AMA cannot be a plaintiff because Tennessee courts no longer recognize the doctrine of associational standing after the Tennessee Supreme Court’s decision in *Wilmington Trust* and, in any event, its individual members lack standing. Under the doctrine of associational standing, a private organization can bring claims on behalf of its members even if the organization itself has not suffered injury so long as “it alleges sufficient facts to establish a case or controversy had the members themselves brought suit.” *Union Cnty. Educ. Ass’n v. Union Cnty. Bd. of Educ.*, No. E2013-02686-COA-R3CV, 2014 WL 4260812, at *4 (Tenn. Ct. App. Aug. 28, 2014) (quoting *Rains v. Knox Cnty. Bd. of Comm’rs*, No. 711, 1987 WL 18065 at *1 (Tenn. Ct. App. Oct. 9, 1987)). In *Darnell*, the Tennessee Supreme Court held that in order to satisfy associational standing, the organization must show that: “(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.” 195 S.W.3d at 626. Additionally, “courts are more likely to find organizational standing when the nature of the relief sought is prospective.” *Union Cnty. Educ. Ass’n*, 2014 WL 4260812, at *4.

Defendants contend that the foregoing associational standing principles did not survive *Wilmington Trust*. They claim that because the Supreme Court tied its standing jurisprudence to the Open Courts Clause, the only people who can seek redress in Tennessee courts are those who suffer “an injury done him.” Tenn. Const. art. I, § 17. And since the concept of associational

standing allows an organization to sue on behalf of its members without the organization suffering an injury, Defendants argue that the associational standing doctrine is squarely at odds with the holding in *Wilmington Trust*. Plaintiffs respond that *Wilmington Trust* did not eliminate associational standing under Tennessee law, and that the AMA meets the elements outlined under *Darnell*.

The Court concludes that Defendants read too much into the *Wilmington Trust* decision. That case specifically addressed the issue of whether plaintiffs bringing “*private rights*” claims are required to allege the three elements of standing for “*public rights*” claims as outlined in *Darnell* and *City of Memphis*—that is, concrete injury in fact as well as causation and redressability. The Supreme Court found that they did not and held instead that “[i]n private rights claims, injury in law is sufficient.” *Wilmington Trust*, 703 S.W.3d at 291. *Wilmington Trust* did not address, discuss, or purport to overrule any prior associational standing cases. “The absence of any language in [*Wilmington Trust*] purporting to overrule precedent serves to indicate that [*Wilmington Trust*] should not be read to, in fact, overrule decades of clear Tennessee case law in this regard.” *State v. Enix*, 653 S.W.3d 692, 700 (Tenn. 2022).

On the issue of whether Plaintiffs have adequately alleged the AMA’s associational standing, the Court concludes that they have. First, the Court finds the AMA members, which include the two Plaintiff Physicians who were original plaintiffs in this action, would otherwise have standing for all the reasons discussed in the section below on the issue of Plaintiff Physicians’ standing. Second, the interests the AMA seeks to protect “are germane to [its] purpose.” *Darnell*, 195 S.W.3d at 626. The second amended complaint alleges that the AMA “opposes the imposition of criminal and civil penalties . . . for providing reproductive health services” and that “physicians must have latitude to act in accord with their best professional judgment.” (See SAC ¶¶ 197, 199; see also *id.* ¶¶ 168-80 (Plaintiff Physician allegations)). The interests that the AMA seeks to

protect—their physicians’ ability to provide medically necessary abortion care without fear of criminal prosecution or loss of licensure—squarely aligns with its purpose. (*See id.*, Prayer for Relief ¶¶ A, E-F). Finally, the AMA’s claim challenging the Medical Necessity Exception and seeking prospective declaratory relief is identical for all AMA members, so the participation of additional AMA members is not needed. *See Union Cnty. Educ. Ass’n*, 2014 WL 4260812, at *9 (“Where an association seeks only a prospective remedy, it is presumed that the relief to be gained from the litigation ‘will inure to the benefit of those members of the association actually injured.’ Accordingly, requests made by an association for prospective relief generally do not require the individual participation of the organization’s members.” (quoting *St. Louis Ass’n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 624 (Mo. 2011))). The Court concludes that the AMA has standing.

b. Plaintiff Physicians’ Standing

Defendants next argue Plaintiff Physicians lack standing to bring their claims seeking pre-enforcement declaratory relief because Tennessee courts no longer recognize pre-enforcement standing, again after the decision in *Wilmington Trust*, and they have not adequately alleged credible fear of criminal prosecution. In addition to the traditional standing elements in public rights cases, a plaintiff bringing a “pre-enforcement” constitutional challenge to a criminal law carries an additional burden of adequately “(1) alleging ‘an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by statute’ and (2) showing the existence of ‘a credible threat of prosecution thereunder.’” *Frogge v. Joseph*, No. M2020-01422-COA-R3-CV, 2022 WL 2197509, at *11 (Tenn. Ct. App. June 20, 2022) (quoting *Tennesseans for Sensible Election Laws v. Slatery*, No. M2020-01292-COA-R3-CV, 2021 WL 4621249, at *3 (Tenn. Ct. App. Oct. 7, 2021)). Defendants additionally argue that any alleged fear of enforcement is not credible because the two District Attorneys General in Davidson and

Williamson Counties—where Plaintiff Physicians practice—have stated they do not intend to enforce the criminal abortion statute.¹⁵

The allegations of the second amended complaint, together with Plaintiff Physicians’ declarations, are adequate to show that Plaintiff Physicians remain subject to potential prosecution under the criminal abortion statute. Defendants’ argument that pre-enforcement standing did not survive the decision in *Wilmington Trust* is again based on a reading of that case that goes beyond its holding. *Wilmington Trust* did not discuss, address, or overrule any Tennessee cases on pre-enforcement standing. *See Enix*, 653 S.W.3d at 700. The Court finds this argument is without merit.¹⁶

With respect to Plaintiff Physicians’ ongoing fear of criminal prosecution, this Court previously found Plaintiffs’ allegations were sufficient because the Attorney General publicly expressed his intent to appoint district attorneys general *pro tem* in Davidson and Williamson Counties if there was “a situation where prosecution would be merited.”¹⁷ *See* Tenn. Code Ann. § 8-7-106(a)(2) (authorizing the Attorney General to “petition the supreme court for appointment of a district attorney general *pro tem*” when a district attorney general “peremptorily and categorically refuses to prosecute all instances of a criminal offense without regard to facts or

¹⁵ Defendants additionally argue that Plaintiff Physicians have failed to allege any claim of prosecution “under the governing 2025 statute” such that they cannot show causation or redressability. This position again presumes that the 2025 Amendment is a “new law” that cures the defects alleged under the prior version of the statute, and that Plaintiffs’ decision not to amend their second amended complaint is a failure to allege facts directed to the current criminal abortion statute. The Court rejects this argument for the same reasons discussed above on the mootness issue.

¹⁶ Defendants briefly argue that *Wilmington Trust* also does away with third-party standing such that Plaintiff Physicians cannot bring claims on behalf of their patients. This argument is misplaced for the same reason—*Wilmington Trust* did not overrule any of these precedents.

¹⁷ The Court takes judicial notice of this statement as the “undisputed position[] of a public official.” *See State ex rel. Harman v. Trinity Indus., Inc.*, No. M2022-00167-COA-R3-CV, 2023 WL 3959887, at *18 n.29 (Tenn. Ct. App. June 13, 2023). Both parties also rely on the Attorney General’s public statement in support of their respective arguments.

circumstances”). Defendants argue that this scenario is too abstract to establish standing because the Attorney General must first petition the Supreme Court, which independently decides whether to appoint a district attorney general *pro tem*. Defendants point to a recent Sixth Circuit case, *Friends of George’s, Inc. v. Mulroy*, where the court found no credible threat of prosecution where a district attorney general stated his general intention, “in the abstract,” to enforce “all State of Tennessee laws that fall within his prosecutorial jurisdiction,” but without stating that he would enforce the law against the plaintiff’s specific conduct. 108 F.4th 431, 440 (6th Cir. 2024).

Friends of George’s is distinguishable from the present case where the Attorney General has publicly stated he will take the extra step of seeking appointment of a district attorney general *pro tem* for prosecution of the criminal abortion statute under section 8-7-106 where appropriate. Taking Plaintiff Physicians’ allegations as true and drawing all reasonable inferences therefrom, the district attorneys general in their respective counties of practice have already expressed an intent to “categorically decline[] to enforce Tennessee’s criminal abortion ban.” (SAC ¶ 23). The 2025 Amendment does not change any of these factual allegations. Moreover, Plaintiff Physicians have attested in their declarations that after the 2025 Amendment, the Medical Necessity Exception remains unconstitutionally vague and continues to make them fearful of criminal prosecution. Therefore, unlike *Friends of George’s*, the fear of prosecution does not stem from a generalized statement of “intention to enforce Tennessee law ‘*in the abstract*.’” 108 F.4th at 440 (emphasis in original) (quoting *Davis v. Colerain Twp.*, 51 F.4th 164, 172 (6th Cir. 2022)). Instead, their fear of prosecution comes from a presently and publicly stated intention to initiate prosecution under the criminal abortion statute, regardless of the stated intent not to prosecute by the elected district attorneys general (who ordinarily “ha[ve] the sole duty, authority, and discretion to prosecute criminal matters in the State of Tennessee,” *State v. Spradlin*, 12 S.W.3d 432, 433-34 (Tenn. 2000)) in a given district. The Court finds at this stage of the case, taking the Plaintiff

Physicians factual allegations as true and drawing all reasonable inferences therefrom, the allegations are sufficient to state a credible fear of prosecution for standing purposes.

c. Plaintiff Patients' Standing

Defendants argue that Plaintiff Patients have not sufficiently alleged cognizable injury, causation, or redressability to demonstrate their standing after the 2025 Amendment. In Defendants' view, in order for Plaintiff Patients to allege the required injury in fact under the 2025 Amendment, they have to allege that they will become pregnant, develop a "high-risk or complicated pregnancy," and then have doctors "over-comply" and refuse to treat them by providing medically necessary abortion care. Additionally, Defendants contend the 2025 Amendment explicitly allows for abortion care for the type of conditions Plaintiff Patients previously alleged, making their claims even more speculative. Defendants also assert that Plaintiff Patients' allegations do not plead causation because their alleged injuries occurred under the prior version of the criminal abortion statute, and their alleged injuries actually were caused by their doctors' overcompliance. Defendants further argue Plaintiff Patients cannot show redressability because a construction of the previous statute does nothing to affect operation of the 2025 Amendment. Moreover, a ruling would not bind the parties "who matter" because enjoining the Attorney General or Board Defendants would not stop non-party prosecutors from enforcing the law.

Plaintiff Patients reply that their injuries continue under the current version of the statute, even after the 2025 Amendment, because their injuries stem from threatened enforcement of the criminal abortion law, uncertainty under the Medical Necessity Exception, and their resulting inability to access medically necessary abortion care. They contend that a declaration of their rights and the scope of the Medical Necessity Exception would sufficiently redress their grievances.

The Court agrees that Plaintiff Patients have sufficiently alleged standing. First, Plaintiffs' standing is determined as of the date their second amended complaint was filed on March 12, 2025, *before* the April 17 effective date of the 2025 Amendment. *See LaFollette Med. Ctr.*, 115 S.W.3d at 504; *Bowers*, 542 S.W.3d at 481. Consequently, the 2025 Amendment should not be considered in determining Plaintiff Patients' standing as of the filing date of March 12, 2025.

Second, Defendants' arguments largely presume that the 2025 Amendment has cured all of the defects alleged in Plaintiffs' first amended complaint and will allow medically necessary abortion care in the future for situations like the ones Plaintiff Patients experienced in the past. As discussed above, the 2025 Amendment does not cure all alleged defects. It instead adopts a circular definition that "explains nothing," *Darden*, 503 U.S. at 323, and provides only that the listed conditions "may" warrant abortion care while leaving all other alleged defects in place, (*see also* SAC ¶¶ 237, 239-41, 243). In addition to the injuries alleged stemming from those continuing defects, Plaintiff Patients offer declarations that each of them "remain fearful of being pregnant in Tennessee and anxious that [they] would not be able to obtain necessary healthcare if [they] experience a pregnancy complication while the amended version of Tenn. Code Ann. § 39-15-213 is in effect." This is enough to establish "some real interest in dispute" for standing purposes. *Colonial Pipeline*, 263 S.W.3d at 838 (citing *Goetz v. Smith*, 278 S.W. 417, 418 (Tenn. 1925)).

Third, Plaintiff Patients' alleged harm can be fairly traced to Defendants' actions. The causation requirement is "not onerous" and only requires a party to allege that their injury is "fairly traceable" to the conduct of the given defendant. *City of Memphis*, 414 S.W.3d at 98 (quoting *Darnell*, 195 S.W.3d at 620). Plaintiff Patients have met that burden by alleging in their second amended complaint that they suffered harm from the delay or denial of medically necessary abortion care is directly caused by their doctors' fear and uncertainty around enforcement of the criminal abortion statute by Defendants. (*See, e.g.*, SAC ¶ 142 (Plaintiff Milner did not receive

medically necessary abortion care because her doctor “believed doing so would have placed him in legal jeopardy”)). While Defendants seek to shift the blame onto the doctors themselves for “over-complying” with the law, the causation prong of standing with respect to other parties’ injurious actions only requires the Plaintiff Patients to allege that “a defendant’s conduct was a motivating factor.” *Rutan-Ram v. Tenn. Dep’t of Child. Servs.*, No. M2022-00998-COA-R3-CV, 2023 WL 5441029, at *12 (Tenn. Ct. App. Aug. 24, 2023) (quoting *Parsons v. U.S. Dep’t of Justice*, 801 F.3d 701, 713 (6th Cir. 2015)). Taking the factual allegations in the second amended complaint and Plaintiffs’ declarations as true, Plaintiff Patients have made the required showing.

Finally, Plaintiff Patients have met the redressability element. A declaration under the Declaratory Judgment Act that the Medical Necessity Exception of the criminal abortion statute is unconstitutional would provide Plaintiff Patients “with the benefits which they had been denied.” *Id.* at *16. Tennessee courts have regularly found that an “alleged injury could be redressed judicially in the form of a court order declaring the [law] unconstitutional.” *Metropolitan Gov’t of Nashville & Davidson Cnty. v. Tenn. Dep’t of Educ.*, No. M2022-01786-COA-R3-CV, 2024 WL 107017, at *13 (Tenn. Ct. App. Jan. 10, 2024); *see, e.g., City of Memphis*, 414 S.W.3d at 99 (noting that declaring a statute unconstitutional would provide redress to the plaintiffs because it “would render the [challenged law] unenforceable”). That same principle applies here. Defendants’ remaining argument—that a ruling favorable to Plaintiffs would not bind the parties “who matter”—is unclear to the Court because where a law is declared unconstitutional, those who then attempt to enforce it in any way are acting wholly without the State’s authority. *See Colonial Pipeline*, 263 S.W.3d at 852 (“[A]n officer acting pursuant to a statute that is unconstitutional and void does not act as an agent of the State. Any such action is *ultra vires*—that is, beyond the authority granted by the State.”); *Lynn v. Polk*, 76 Tenn. (8 Lea.) 121, 258 (1881) (“The State can not be supposed to be standing behind its officer urging the execution of an unconstitutional law,

especially when where there is nothing to show this but the unconstitutional law itself.”). What Defendants seem to be arguing is that the Attorney General and the Board Defendants are not responsible for enforcing the law at issue, conflating the causation element of standing with their sovereign immunity arguments. The Court finds that Plaintiff Patients’ grievances can be redressed in this lawsuit.

The Court concludes that the AMA, Plaintiff Physicians, and Plaintiff Patients have standing as of the date of filing their second amended complaint in this case. Defendants’ motion for judgment on the pleadings based on lack of standing should be denied.

3. *Defendants’ Sovereign Immunity*

Defendants next contend that they are entitled to judgment on the pleadings dismissing Plaintiffs’ second amended complaint under the doctrine of sovereign immunity.¹⁸ The Tennessee Constitution provides that “[s]uits may be brought against the State in such manner and in such courts as the Legislature may by law direct.” Tenn. Const. art. I, § 17. Accordingly, the State cannot be sued unless the suit is expressly authorized. *See Mullins v. State*, 320 S.W.3d 273, 278 (Tenn. 2010) (“It has long been well-established that the State of Tennessee, as a sovereign, is immune from lawsuits except as it consents to be sued.”); *Recipient of Final Expunction Ord. in McNairy Cnty. Cir. Ct. Case No. 3279 v. Rausch*, 645 S.W.3d 160, 167-68 (Tenn. 2022); *cf.* Tenn. Code Ann. § 20-13-102 (“No court in the state shall have any power, jurisdiction, or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds, or property . . .”). There is a presumption of sovereign immunity and, in order for the Court to find a waiver, Plaintiffs must show that their

¹⁸ As noted above, many of Defendants’ standing and sovereign immunity arguments overlap. This is because when a party brings a claim under a statute that provides a cause of action, such as the Declaratory Judgment Act, the two are often “conflat[ed].” *In re Est. of Wilson*, 680 S.W.3d 220, 230 (Tenn. Ct. App. 2023) (quoting *Bowers*, 542 S.W.3d at 480).

suit is “explicitly authorized by statute.” *See Rausch*, 645 S.W.3d at 167-68; *Colonial Pipeline*, 263 S.W.3d at 849.

Defendants previously moved to dismiss Plaintiffs’ first amended complaint on sovereign immunity grounds, which the Court denied. Defendants renew those arguments in their motion for judgment on the pleadings. In response, Plaintiffs again rely on Tenn. Code Ann. § 1-3-121 to demonstrate that their lawsuit is explicitly authorized by statute. Alternatively, they rely on the holding in *Colonial Pipeline v. Morgan*, 263 S.W.3d 827 (Tenn. 2008), that sovereign immunity does not attach to unconstitutional acts of state officials.

Tennessee Code Annotated § 1-3-121 provides:

Notwithstanding any law to the contrary, a cause of action shall exist under this chapter for any affected person who seeks declaratory or injunctive relief in any action brought regarding the legality or constitutionality of a governmental action. A cause of action shall not exist under this chapter to seek damages.

The Tennessee Supreme Court held in *Rausch* that the legislature “clearly and unmistakably waived sovereign immunity by enacting Tennessee Code Annotated section 1-3-121.” 645 S.W.3d at 168. As the Court explained, this statute contains “distinct language . . . to adopt a unique, claim-specific and remedy-specific waiver of sovereign immunity.” *Id.* The Court determined that the statute’s plain language “expressly recognizes the existence of causes of action ‘regarding the legality or constitutionality of a governmental action’ that seek declaratory or injunctive relief” and waives sovereign immunity in those cases. *Id.*; *see also Parents’ Choice Tennessee*, 2024 WL 1670663, at *17-18 (discussing the applicability of § 1-3-121).

Defendants claim, however, that Plaintiffs have forfeited any reliance on section 1-3-121 by failing to plead their claims specifically under that provision. Defendants also claim that, even without Plaintiffs’ forfeiture, they fail to meet the requirements of section 1-3-121 because the statute requires that Plaintiffs must be “affected person” who challenge “governmental action,” and neither element is present here.

The Court finds Plaintiffs have not waived their reliance on section 1-3-121. They specifically allege in their second amended complaint that “[s]overeign immunity has been waived pursuant to T.C.A. § 1-3-121.” (SAC ¶ 45). Defendants argue that the “Claims for Relief” section of their second amended complaint only references the Declaratory Judgment Act; therefore, Plaintiffs have failed to explicitly state claims under section 1-3-121. The Court disagrees. *Cf.* note 10, *supra*. The liberal notice pleading standard of Tennessee Rule of Civil Procedure 8.01 only requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” *Webb*, 346 S.W.3d at 437. Tennessee courts apply this “liberal” standard because “the primary purpose of pleadings is to provide notice of the issues presented to the opposing party and court.” *Id.* at 436. Defendants, here, are on notice of Plaintiffs’ reliance on the sovereign immunity waiver of section 1-3-121, and the Court concludes Plaintiffs have sufficiently and explicitly alleged section 1-3-121 as a basis for waiver of Defendants’ sovereign immunity.

Defendants further argue that Plaintiffs are not “affected persons” under section 1-3-121 due to the speculative nature of their alleged injuries. Defendants suggest that for Plaintiff Patients to be “affected persons” under the 2025 Amendment, they would need to again become pregnant, develop serious complications, and again be denied medically necessary abortion care. Defendants also argue that Plaintiff Physicians have not alleged discrete governmental enforcement action taken against them as required under section 1-3-121 during the pendency of this action, much less under the 2025 Amendment.

Plaintiff Patients respond they are “affected persons” because they desire to become pregnant again but fear that if they do and need medically necessary abortion care, they will be unable to obtain such care, placing their lives at risk. Plaintiff Physicians respond they are “affected persons” because they have stopped providing medically necessary abortion care to their patients out of fear of criminal prosecution and disciplinary action due to the unconstitutional

vagueness of the Medical Necessity Exception. All Plaintiffs contend that the enactment of the criminal abortion statute with the alleged unconstitutionally vague Medical Necessity Exception is the challenged “government action,” and the passage of the 2025 Amendment does not change or affect their challenge.

Defendants’ sovereign immunity arguments mirror their standing arguments. The Court concludes those arguments fail for largely the same reasons. Taking all of the allegations in the second amended complaint and Plaintiffs’ declarations as true, Plaintiffs have sufficiently alleged they are “affected persons” for purposes of the section 1-3-121. Plaintiff Patients continue to fear becoming pregnant and needing but being unable to obtain medically necessary abortion care in Tennessee. Plaintiff Physicians allege that the criminal abortion statute’s vague scope and application has altered their practice to no longer provide the medically necessary abortion care they previously provided for fear of prosecution and loss of licensure. The Court has found that the 2025 Amendment does not change many of the defects Plaintiffs challenge in their second amended complaint. Not only do Plaintiffs’ claims sufficiently allege “some real interest . . . in dispute” for standing purposes under the Declaratory Judgment Act, *see Colonial Pipeline*, 263 S.W.3d at 838, their claims sufficiently allege that they are “affected persons” under section 1-3-121 for sovereign immunity purposes. Likewise, Plaintiffs sufficiently allege “governmental action.” Their claims arise from enactment of the criminal abortion statute and the Medical Necessity Exception. Plaintiffs’ alleged defects in the Medical Necessity Exception are not cured by the 2025 Amendment. *Cf. Planned Parenthood of Middle Tenn. v. Sundquist*, 38 S.W.3d 1, 4, 18 (Tenn. 2000), *superseded on other grounds* by Tenn. Const. Art. I, § 36 (allowing a constitutional challenge to a previous version of the criminal abortion statute before section 1-3-121 was enacted in 2018). And, none of the Plaintiffs seeks money damages.

Plaintiffs alternatively rely on the holding in *Colonial Pipeline* in support of their argument that sovereign immunity did not attach to the state officers' unconstitutional actions. The Tennessee Supreme Court held that sovereign immunity "does not bar a suit for declaratory judgment asking state officers to be enjoined from enforcing such a statute so long as the action does not seek money damages." 263 S.W.3d at 832. This is because

an officer acting pursuant to an unconstitutional statute does not act under the authority of the state; thus, the officer does not enjoy the immunity that would normally be granted pursuant to official authority. In other words, the officer loses immunity when acting beyond the scope of the power of the State, and the power of the State is limited by the state and federal constitutions. The issue is not whether the State has waived sovereign immunity for this specific classification of suit; sovereign immunity simply does not attach.

Id. at 850. This exception is limited to "suits preventing the enforcement of an unconstitutional statute." *Id.* Here, Plaintiffs contend they come within the holding of *Colonial Pipeline* because they bring their claims for prospective relief under the Declaratory Judgment Act challenging the validity of the Medical Necessity Exception in violation of their constitutional rights and do not seek monetary damages.

Defendants claim that *Colonial Pipeline* does not apply for two main reasons, that again mirror their standing arguments. First, they say that the Attorney General is not "responsible for enforcing" the criminal abortion statute—district attorneys generals are. Second, they argue Plaintiff Physicians cannot show a credible threat of enforcement by either the Attorney General or the Board Defendants.

This Court found this argument on Defendants' prior motion to dismiss was not persuasive. As discussed above, the Attorney General has publicly stated his intent to seek appointment of district attorneys general *pro tem* to enforce the criminal abortion statute where local prosecutors "peremptorily and categorically refuse[] to prosecute all instances of a criminal offense without regard to facts or circumstances." Tenn. Code Ann. § 8-7-106(a)(2). Plaintiff Physicians have

alleged that their local district attorneys general have expressed their intent to do just that. (*See* SAC ¶ 23). Defendants are left to argue that the process for seeking a district attorney general *pro tem* is too attenuated to impute enforcement duties onto the Attorney General. The Court rejected that argument under its standing analysis, discussed above. The Court rejects it here, too. *Accord Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1047 (6th Cir. 2015) (holding under federal law that “at the point that a threatened injury becomes sufficiently imminent and particularized to confer Article III standing, that threat of enforcement also becomes sufficient to satisfy [waiver of sovereign immunity]”).

With respect to the threat of disciplinary enforcement by the Board Defendants, the relevant statutory provisions establish that threat. The TBME statutes require those Board Defendants to “investigate any supposed violation of this chapter and report to the proper district attorney general all the cases that in the judgment of such member or members warrant prosecution.” Tenn. Code Ann. § 63-6-213(a). The TMBE also is statutorily mandated to professionally discipline anyone who violates “the laws governing abortion,” such as the criminal abortion statute. *See* Tenn. Code Ann. § 63-6-214(b)(6); *see also id.* -214(b)(2) (“any criminal statute of the state”). The TBOE statutes are similar.¹⁹ They require the Board to invoke its investigatory and disciplinary powers in the event someone violates “the laws governing abortion.” Tenn. Code Ann. § 63-9-111(b)(6); *see also id.* -111(b)(2) (“any criminal statute of the state”). As a result, disciplinary investigations and proceedings are not as speculative as Defendants suggest,

¹⁹ With respect to the TBOE, in addition to the “proper district attorney general,” the Attorney General is also charged with “prosecut[ing] violations of this chapter”—meaning Chapter 9 of Title 63. *See* Tenn. Code Ann. §§ 63-9-110(a), (c). Defendants deny that this command covers prosecution under the criminal abortion statute since that is a “separate criminal offense[] codified in [Title] 39.”

The Court previously noted that the list of actionable violations of Title 63, Chapter 9, include an osteopathic physician’s violation of “the laws governing abortion.” Tenn. Code Ann. § 63-9-111(b)(6). Therefore, the Attorney General is required to seek disciplinary action against osteopathic physicians who violate the criminal abortion statute.

but are statutorily required. And because of those statutory requirements, Defendants' sovereign immunity shield does not attach if they engage in conduct to enforce unconstitutional acts, as Plaintiffs have alleged.²⁰

The Court concludes Plaintiffs have sufficiently alleged facts in their second amended complaint that Defendants sovereign immunity is waived under section 1-3-121, or that sovereign immunity does not attach to Defendants' actions under the holding in *Colonial Pipeline*. The Court concludes Defendants' motion for judgment on the pleadings on grounds of sovereign immunity should be denied.

B. Failure to State Claims for Relief

Defendants also move for judgment on the pleadings on the grounds that the second amended complaint fails to state claims for relief under the 2025 Amendment. The standard for reviewing a Rule 12.03 motion for judgment on the pleadings based on the defense of failure to state claims for relief is the same standard applied under Rule 12.02(6). *See Binns*, 690 S.W.3d at 247; *cf. Webb*, 346 S.W.3d at 426 (discussing Rule 12.02(6) standards). The court construes the complaint liberally under the Rule 8.01 notice pleading standard, presumes all factual allegations to be true, draws all reasonable inferences from those alleged facts in favor of the non-moving party, and can dismiss the complaint only if there are no set of facts that state a claim for relief. *See Binns*, 690 S.W.3d at 247; *Webb*, 346 S.W.3d at 426. In deciding a motion for failure to state claims for relief, the trial court only looks to the well-pleaded factual allegations in the complaint and is not required to accept legal conclusions as true.²¹ *See McClenahan v. Cooley*, 806 S.W.2d

²⁰ Defendants also suggest that the lengthy administrative process with respect to licensure discipline makes the threat of enforcement even more remote. However, just because the process may take time to complete does not change the fact that it is statutorily required to take place.

²¹ As discussed above, the Court excludes Plaintiffs' declarations under the Rule 12.02(6) standard and will not consider them on the portion of Defendants' motion asserting Plaintiffs have failed to state claims for relief.

767, 769 (Tenn. 1991). A motion for judgment on the pleadings should only be granted when the moving party is “clearly entitled to judgment” as a matter of law. *Id.*

1. Right to Life Claim (Count II)

In Count II of Plaintiffs’ second amended complaint, Plaintiff Patients reallege that the criminal abortion statute violates their right to life “[t]o the extent Tennessee’s abortion ban bars the provision of abortion to pregnant people to treat patients with high-risk or complicated pregnancies for whom abortion is within the standard of care.” (SAC ¶ 288). This claim arises under Tennessee Constitution Article I, § 8, which provides that no person may be “deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land.” The Tennessee Supreme Court has held that this provision prevents “deprivations of fundamental rights like the right to marry, have children, make child rearing decisions, determine child custody, and maintain bodily integrity” without due process. *Lynch v. City of Jellico*, 205 S.W.3d 384, 391-92 (Tenn. 2006). The level of protection afforded against government action depends on the nature of the right asserted. If a law violates a fundamental right, courts will only uphold it if “the infringement is narrowly tailored to serve a compelling state interest.” *Est. of Alley v. State*, 648 S.W.3d 201, 225 (Tenn. Crim. App. 2021). Where a fundamental right is not implicated, a law will survive a due process challenge “if it bears ‘a reasonable relation to a proper legislative purpose’ and is ‘neither arbitrary nor discriminatory.’” *Gallaher v. Elam*, 104 S.W.3d 455, 463 (Tenn. 2003) (quoting *Riggs v. Burson*, 941 S.W.2d 44, 51 (Tenn. 1997)).

The parties disagree about the scope of the rights being asserted here. Defendants contend Plaintiffs seek recognition of the right to an abortion when faced with “any high-risk or complicated pregnancy for which abortion is within the standard of care.” They argue that this is an extremely broad standard that would allow for abortions in a number of cases in contravention of Tennessee Constitution Article I, § 36, which provides there is no “right to abortion,” although

it allows for regulation in cases “including, but not limited to, circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother.” Plaintiffs respond that this claim is grounded in their fundamental right to life under Article I, § 8 of the Tennessee Constitution and “includes the right to receive essential, life-preserving medical care—including, when necessary, an abortion.”

There is no dispute that the right to life is a fundamental right protected under the Tennessee Constitution by due process. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 714 (1997) (“The right to life and to personal security is not only sacred in the estimation of the common law, but it is inalienable.” (quoting *Martin v. Commonwealth*, 37 S.E.2d 43, 47 (Va. 1946))); *Gideon v. Wainwright*, 372 U.S. 335, 349 (1963) (Clark, J., concurring in the judgment) (“The Fourteenth Amendment requires due process of law for the deprivation of ‘liberty’ just as for deprivation of ‘life’”); *cf. Roe v. Wade*, 410 U.S. 113, 173 (1973) (Rehnquist, J., dissenting), *overruled by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (“If the Texas statute were to prohibit an abortion even where the mother’s life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective”). The issue presented in this case is the constitutional reach of the right to life.

Plaintiffs allege that the criminal abortion statute “forces pregnant patients with high-risk or complicated pregnancies to surrender their lives, health, and/or fertility” and details situations where Plaintiff Patients experienced serious complications that they contend should have been covered under the Medical Necessity Exception. (SAC ¶ 258; *see also, e.g., id.* ¶¶ 73-85 (detailing Plaintiff Phillips’ pregnancy complications)). They further allege, however, that the Medical Necessity Exception’s vagueness coupled with their physicians’ fear of prosecution and loss of licensure led each of them to being denied or delayed in receiving medically necessary abortion care, placing Plaintiff Patients’ life and health at risk. They also allege other potential medical

complications for which abortion care comes within the standard of medical care, but these complications currently cannot be treated due to “fear that a disciplinary board, prosecutor or jury second guessing their medical judgment will revoke their medical license or send them to prison.” (*Id.* ¶ 224; *see also id.* ¶¶ 206-22 (listing other pregnancy-related conditions that could threaten the life and health of the mother)).

Defendants argue in response that all of these allegations are based on events that occurred before the effective date of the 2025 Amendment, and the statutory definitions added in subsections 39-15-213(a)(5) and (6) cure these defects in the statute.

On a motion for judgment on the pleadings for failure to state a claim for relief, the Court must apply the well-recognized Rule 12.02(6) standard. For the reasons discussed above on the issue of mootness, the Court has found that the 2025 Amendment does not cure all of the statutory defects alleged by Plaintiffs. Taking Plaintiffs’ allegations as true and drawing all reasonable inferences in their favor, the Court finds that Plaintiffs have sufficiently alleged that the defects in the Medical Necessity Exception place their lives at risk in violation of their constitutional right to life, and Defendants’ motion seeking dismissal of this claim should be denied.²²

2. *Equal Protection Claim -- Access to Medical Care (Count III)*

Plaintiff Patients also reallege in Count III that the criminal abortion statute violates their right to equal protection for access to medical care. Tennessee Constitution Article XI, § 8 provides that the legislature may not “pass any law granting to any individual or individuals, rights, privileges, immunitie[s], or exemptions other than such as may be, by the same law extended to any member of the community.” The Tennessee Supreme Court interprets this provision to provide that “all persons similarly circumstanced shall be treated alike.” *State v. Robinson*, 29

²² Defendants also argue that Tennessee Constitution Article I, § 8 “provides procedural, not substantive, protections.” Defendants recognize that this argument is foreclosed by Tennessee Supreme Court precedent, and they include it only “for preservation purposes.” *See Lynch*, 205 S.W.3d at 391.

S.W.3d 476, 480 (Tenn. 2000) (quoting *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993)). “Depending on the nature of the right asserted, [courts] apply one of three standards of scrutiny: (1) strict scrutiny, (2) heightened scrutiny, and (3) reduced scrutiny, applying the rational basis test.” *Id.* at 481 (citations omitted). The parties agree that rational basis review applies in this case, which means that the judicial inquiry is “limited to whether the classifications have a reasonable relationship to a legitimate state interest.” *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994) (quoting *Small Schools*, 851 S.W.2d at 153). “The individual challenging the statute has the burden of demonstrating that the legislative classification is unreasonable,” and reasonableness turns on the facts and circumstances of each case. *Id.* at 829. Under the rational basis standard, the constitutional bar is low; “if some reasonable basis can be found for the classification, or if any state of facts may reasonably be conceived to justify it, the classification will be upheld.” *Small Schools*, 851 S.W.2d at 153 (Tenn. 1993) (quoting *Harrison v. Schrader*, 569 S.W.2d 822, 826 (Tenn. 1978)).

In considering an equal protection challenge, “[t]he threshold inquiry is whether the classes of persons at issue are similarly situated; if they are not, then there is no basis for finding a violation.” *City of Memphis*, 414 S.W.3d at 110. The classes, as proposed by Plaintiffs, are pregnant persons seeking medically necessary care for which abortion comes within the standard of care as compared to non-pregnant persons seeking medically necessary care that is within the standard of care. (See SAC ¶¶ 294-95). The difference turns on what kind of medical care is within the standard of care patients seek: if the standard of care includes abortion care, then the criminal abortion statute denies that care to pregnant persons; if the standard of care does not include abortion care, then that type of medical care will be provided. Defendants argue that, essentially, abortion is *sui generis* in the medical community because “no other procedure involves

the purposeful termination of a potential life.” *See Harris v. McRae*, 448 U.S. 297, 325 (1980). Therefore, it would be improper to find the proposed classes are similarly situated.

The Tennessee Court of Appeals recently addressed the issue of whether classes of persons were similarly situated on remand in *Shaw*, the same case discussed above. *Shaw v. Metro. Gov’t of Nashville and Davidson County*, No. M2023-01568-COA-R3-CV, 2025 WL 2205914 (Tenn. Ct. App. Aug. 4, 2025) (*Shaw II*). The Court of Appeals explained that the classes need not be identical; instead, the focus should be on whether the classes share “relevant similarit[ies]” such that they are “similarly situated in *all material respects*.” *Id.* at *6 (first quoting *City of Memphis*, 414 S.W.3d at 110; and then quoting *Loesel v. City of Frankenmuth, Mich.*, 692 F.3d 452, 462 (6th Cir. 2012) (emphasis in original)). A similarity is material when it “relates to the purpose of the law being challenged.” *Id.* (citing *State of Ohio ex rel. Lloyd v. Dollison*, 194 U.S. 445, 447 (1904)).

The Court finds that Plaintiff Patients adequately allege that they are similarly situated in material respects under the facts of this case. Plaintiff Patients challenge the criminal abortion statute on the basis that its uncertain application and their doctors’ fear of prosecution deny them access to necessary life- and health-saving medical care where abortion care comes within the standard of medical care for given complications. In the non-pregnant patient group, a person seeks access to necessary medical care, and they are able to receive the care they need that is within the standard of medical care. In the other group, a pregnant person seeks access to necessary medical care, but if the care they need is within the standard of care and involves abortion care, they are denied such care. Again, applying the motion for judgment on the pleadings standard for failure to state a claim for relief, Plaintiffs’ allegations are sufficient to show that the two classes identified in the second amended complaint are similarly situated for the purpose of their equal protection claim.

Defendants argue Plaintiff Patients' equal protection claim is foreclosed by the decision in *Planned Parenthood of Middle Tennessee v. Sundquist*, No. 01A01-9601-CV-00052, 1998 WL 467110 (Tenn. Ct. App. Aug. 12, 1998), *aff'd in part, rev'd in part*, 38 S.W.3d 1 (Tenn. 2000), *superseded in part by* Tenn. Const. art. I, § 36. Defendants contend that *Planned Parenthood* held, as a matter of law, that “[p]regnant women are distinctly different from other women seeking reproductive or any other type of healthcare.” *Id.* at *27. But the statement on which Defendants rely is contravened by the immediately preceding sentence in the decision stating that “[p]regnancy, as a medical condition, provides a natural, appropriate basis for classifying women with regard to the provision of medical services.” *Id.* Indeed, the Court of Appeals in *Sundquist* proceeded to the equal protection analysis and concluded that the challenged provision was not unconstitutional. *Id.* at *53. The Court could not have conducted the equal protection analysis without first satisfying “the threshold inquiry [of] whether the classes of persons at issue are similarly situated.” *City of Memphis*, 414 S.W.3d at 110. Therefore, this Court is not persuaded by the Defendants' reliance on the *Planned Parenthood* decision.

Upon finding that the classes of persons are similarly situated, the Court must next determine whether Plaintiff Patients have adequately alleged facts showing that the Medical Necessity Exception of the criminal abortion statute does not have a reasonable relationship to a legitimate state interest. *See Tester*, 879 S.W.2d at 829 (noting the plaintiff bears the burden on rational basis review). Defendants point to a number of justifications such as protecting fetal life and preserving the integrity of the medical profession. *See, e.g., Dobbs*, 597 U.S. at 301 (listing justifications).

Rational basis review “employs a relatively relaxed standard reflecting the Court’s awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one.” *United States v. Skrametti*, 605 U.S. ___, 145 S. Ct. 1816, 1835 (2025) (quoting

Mass. Bd. of Retirement v. Murgia, 427 U.S. 307, 314, (1976) (per curiam)). When rational basis review applies, those challenging the constitutionality of a statute carry “the greatest burden of proof.” *Riggs v. Burson*, 941 S.W.2d 44, 53 (Tenn. 1997) (quoting *Brown v. Campbell County Bd. of Educ.*, 915 S.W.2d 407, 413 (Tenn. 1995)). Indeed, as the United States Supreme Court has noted, “[w]here there exist ‘plausible reasons’ for the relevant government action, ‘our inquiry is at an end.’” *Skrmetti*, 145 S. Ct. at 1835 (quoting *Murgia*, 427 U.S. at 313-14).

Defendants assert that there are several valid legislative justifications for the criminal abortion statute’s passage, including preserving and protecting both the life of the unborn child and that of the mother. Plaintiffs bear the burden of proving the State’s justifications are unreasonable or not rational. The allegations in the second amended complaint focus on the irreconcilable conflict between competing state interests. Plaintiffs allege that, the interest in protecting the life and health of the mother is being violated for the purpose of furthering the interest in protecting the life of the unborn. (See SAC ¶¶ 240, 242). Thus, , Plaintiffs allege that the criminal abortion statute operates in a way that creates inherently conflicting interests and irreconcilable results.. See *e.g.*, *Harris*, 448 U.S. at 345 (Marshall, J., dissenting) (“[T]he Government’s interest in protecting fetal life is not a legitimate one when it is in conflict with the preservation of the life or health of the mother.”). Justice Kavanaugh recognized in his concurring opinion in *Dobbs* that “[a]bortion is a profoundly difficult and contentious issue because it presents an irreconcilable conflict between the interests of a pregnant woman who seeks an abortion and the interests in protecting fetal life. The interests on both sides of the abortion issue are extraordinarily weighty.” 597 U.S. at 337 (Kavanaugh, J., concurring). One side must ultimately yield; it is a matter of when and under what circumstances, not if. *Accord Planned Parenthood S. Atl. v. State*, 882 S.E.2d 770, 825 (S.C. 2023) (Kittredge, J., dissenting) (“Justice Kavanaugh may be correct that the subject of abortion presents what appears to be an ‘irreconcilable conflict,’ but

the conflict must be settled, for the rule of law and the necessity for order in our civil society demand a resolution.”).

The Court concludes that in the context of challenging the constitutionality of the criminal abortion statute, the State’s legitimate, but competing and irreconcilable interests in protecting the life of the mother and the unborn, should not be resolved on a motion for judgment on the pleadings for failure to state a claim for relief, which is limited to testing only “the legal sufficiency of the plaintiff’s complaint,” and not the strength of the allegations. *Mortg. Elec. Registration Sys., Inc. v. Ditto*, 488 S.W.3d 265, 275 (Tenn. 2015). , The allegations of Plaintiffs’ second amended complaint highlight those circumstances where competing state interests collide. Plaintiffs’ allegations, taken as true with all reasonable inferences drawn in Plaintiffs’ favor, are sufficient to state a claim for relief for purposes of a motion for judgment on the pleadings. Thus, Defendants’ motion on this equal protection claim should be denied.

3. *Equal Protection Claim – Mental Health Conditions (Count IV)*

Plaintiff Patients add a new claim to their second amended complaint based on the statutory exclusion of any abortion care based on a pregnant woman’s mental health condition. Plaintiffs allege that to the extent the criminal abortion statute prohibits all abortion care to a pregnant person with a life- or health-endangering mental health condition, while allowing a pregnant person with a life- or health-endangering physical condition in certain circumstances to receive such care, the statute violates the equal protection rights of pregnant persons with serious mental health conditions. (SAC ¶ 303). Plaintiffs allege that the mental health exclusion from the Medical Necessity Exception does not serve a compelling or important state interest and is not narrowly tailored to serve a compelling interest, (*id.* ¶ 304), and as applied, lacks a rational relationship to protecting life, health, or any other legitimate state interest, (*id.* ¶ 305). The 2025 Amendment adds the definition at subsection (a)(6)(C) that “[s]erious risk of substantial and irreversible

impairment of a major bodily function . . . [d]oes not include any condition related to the woman’s mental health,” Tenn. Code Ann. § 39-15-213(a)(6)(C) which remains excluded under the Medical Necessity Exception both before and after the 2025 Amendment, *see id.* § 39-15-213(c)(2).

Plaintiff Patients allege that the distinction drawn in the statute between physical and mental health conditions violates equal protection. The proposed comparator classes are pregnant persons with “life- or health-endangering *mental health* condition[s]” versus pregnant persons with “life- or health-endangering *physical medical* conditions.” (SAC ¶ 303). While Plaintiffs allege there is ambiguity or vagueness about whether and when medically necessary abortion care may be provided to a pregnant person experiencing life- or health-threatening physical conditions, abortion care is unconditionally excluded for any and all mental health condition experienced by pregnant persons.

Defendants argue that these two groups are not similarly situated for equal protection purposes. They point to a variety of medical and legal journals that posit abortion can never be within the standard of care for mental health complications arising from pregnancy. These medical and legal journals are, of course, matters outside the pleadings which the Court declines to consider on a motion for judgment on the pleadings for failure to state a claim for relief. In any event, taking the allegations in the second amended complaint as true, the Court rejects Defendants argument. Plaintiffs Physicians allege in the second amended complaint they have treated patients with several serious conditions arising from pregnancy, including “psychiatric conditions . . . that may lead to suicide.” (SAC ¶¶ 170, 176). And they identify several specific mental health conditions, such as bipolar disorder, major depressive disorder, and psychotic disorders, that can “make a pregnancy high-risk, depending on the circumstances.” (*Id.* at ¶ 216). Plaintiffs point out that no matter the cause, the result is the same—complications during a pregnancy that can threaten the life or endanger the health of the mother. Yet if that threat comes from a mental health

condition, the Medical Necessity Exception prohibits abortion care in any and all circumstances. The Court finds that based on these factual allegations, the two classes are similarly situated in all material respects.

The parties agree that rational basis review also applies to this equal protection claim. Therefore, the legislative classification will pass constitutional muster if “some reasonable basis can be found for the classification, or if any state of facts may reasonably be conceived to justify it.” *Small Schools*, 851 S.W.2d at 153 (Tenn. 1993) (quoting *Harrison*, 569 S.W.2d at 826). Plaintiffs respond that there is no reason for making this distinction when both conditions lead to life- and health-endangering conditions.

Again, taking the allegations in the second amended complaint as true, the Court concludes Plaintiffs have adequately alleged an equal protection claim with respect to Count IV for the same reasons they have adequately alleged an equal protection claims with respect to Count III, as discussed above. For those same reasons, the State’s interests in protecting unborn children conflict directly, and at times irreconcilably, with the State’s interests in protecting the life and health of the mother when a woman seeks medically necessary abortion care based on mental health conditions. Applying the standard applicable to a motion for judgment on the pleadings for failure to state a claim for relief, Plaintiffs allegations are sufficient. Accordingly, the Court concludes that Defendants’ motion to dismiss Count IV should also be denied.

4. *Due Process Void for Vagueness Claim (Count V)*

Plaintiff Physicians allege that the Medical Necessity Exception of the criminal abortion statute violates Plaintiff Physicians’ due process rights because it is unconstitutionally vague. The void for vagueness doctrine exists “to ensure that our statutes provide fair warning as to the nature of forbidden conduct so that individuals are not ‘held criminally responsible for conduct which [they] could not reasonably understand to be proscribed.’” *State v. Crank*, 468 S.W.3d 15, 22-23

(Tenn. 2015) (alteration in original) (quoting *United States v. Harriss*, 347 U.S. 612, 617 (1954)). Under Tennessee Supreme Court precedent, the test for determining whether a statute is unconstitutionally vague is whether the statute “define[s] the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 532 (Tenn. 1993) (quoting *Kolender v. Lawson*, 461 U.S. 352, 358 (1983)).

Plaintiff Physicians contend that they bring both facial and as-applied vagueness challenges to the Medical Necessity Exception to the criminal abortion statute.²³ “A statute that provides ‘no legally fixed standards and leaves to ‘personal predilections’ of an officer, prosecutor, judge or jury the determination of the illegality of conduct’ may be held vague on its face.” *State v. Burkhart*, 58 S.W.3d 694, 699 (Tenn. 2001) (quoting *State v. Lyons*, 802 S.W.2d 590, 591 (Tenn. 1990)). In order to show a statute is facially vague, a plaintiff must show the statute is “impermissibly vague in all its applications.” *Id.* (citing *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494-95 (1982)); *see also Waters v. Farr*, 291 S.W.3d 873, 882 (Tenn. 2009) (holding that, on a facial constitutional challenge, “the challenger must establish that no set of circumstances exists under which the statute, as written, would be valid”). Plaintiffs, however, dispute this facial challenge standard, citing to *Davis-Kidd* and *City of Knoxville v. Entertainment Resources, LLC*, 166 S.W.3d 650 (Tenn. 2005), for the proposition that the “no set of circumstances” test does not apply where the vagueness challenge goes to a statute that is

²³ Defendants argue that the second amended complaint only alleges a “facial” due process challenge. But Plaintiffs specifically ask the Court to “determine the validity under the Tennessee Constitution of Tennessee’s abortion ban as applied in circumstances of high-risk or complicated pregnancies” and state that enforcing the statute “as applied to a physician treating a pregnant person with a high-risk or complicated pregnancy for whom an abortion would be within the standard of care” violates that physician’s due process rights. (SAC ¶¶ 285, 311). The Court finds that Plaintiff Physicians allege an “as applied” due process challenge.

“alleged to chill the exercise of a constitutional right.” The Court finds that under the Supreme Court’s decision in *City of Knoxville*, its alternative pleading standard only applies to allegedly vague laws “implicating the First Amendment to the United States Constitution and Article I, section 19 of the Tennessee Constitution.” 166 S.W.3d at 655. Here, Plaintiff Physicians’ vagueness challenge does not implicate their First Amendment rights; accordingly, to state a facial vagueness challenge to the Medical Necessity Exception of the criminal abortion statute, they must allege is “impermissibly vague in all its applications.” *Id.* at 660 (Drowota, C.J., concurring in the judgment); *Burkhart*, 58 S.W.3d at 699. The Court concludes Plaintiffs Physicians have not sufficiently alleged a “facial” challenge to the Medical Necessity Exception.

The pleading requirements for an “as applied” vagueness challenge are less stringent. In order to state a claim for relief, a plaintiff must allege facts showing the statute is vague “as construed and applied in actual practice against the plaintiff under the facts and circumstances of the particular case.” *Fisher*, 604 S.W.3d at 397 (citing *City of Memphis*, 414 S.W.3d at 107). Defendants argue that Plaintiff Physicians have not adequately alleged an “as applied” challenge because the Medical Necessity Exception is not vague as a matter of law. But taking the allegations in the second amended complaint as true, Plaintiff Physicians who previously provided medically necessary abortion care are no longer providing that care out of “fear that prosecutors and politicians will target them personally if they provide abortion care to pregnant people with life or health threatening conditions.” (SAC ¶¶ 171, 177). The Plaintiff Physicians further allege that “widespread fear and confusion regarding the scope of Tennessee’s abortion ban and its exception has chilled the provision of necessary obstetric care, including abortion care.” (*Id.*). Thus, taking the allegations of the second amended complaint as true, Plaintiff Physicians allege that the uncertain scope and unclear application of Medical Necessity Exception has resulted in fear and confusion in the medical community, resulting in pregnant persons being denied access to

medically necessary abortion care. These alleged facts adequately state a claim that the Medical Necessity Exception is unconstitutionally vague.

Lastly, Defendants argue Plaintiffs' complaints about the statute's lack of clarity have been cured by the 2025 Amendment, and Plaintiffs have declined to amend their complaint to allege new facts under the "new" law. The Court has found that Plaintiffs' claims are not rendered moot by the 2025 Amendment, which adds a circular definition of a key term and "explains nothing," and where the defects alleged by the Plaintiffs in their second amended complaint are not clearly cured by that amendment. *Darden*, 503 U.S. at 323; (see SAC ¶¶ 237, 239-41, 243). For the foregoing reasons, Defendants' motion should be granted, in part, to the extent Plaintiff Physicians allege a "facial" vagueness challenge and should be denied, in part, as to their "as applied" vagueness challenge.

IV. CONCLUSION

Based on the foregoing, the Court concludes that Defendants' *Joint Motion for Judgment on the Pleadings* should be GRANTED, in part, and DENIED, in part as follows:

A. Defendants' *Joint Motion for Judgment on the Pleadings* is **GRANTED** with respect to Plaintiff Physicians' "facial" constitutional challenge to the Medical Necessity Exception on the grounds of vagueness (Count V) for failure to state a claim for relief, and that claim is hereby DISMISSED, with prejudice;

B. Defendants' *Joint Motion for Judgment on the Pleadings* for lack of subject matter jurisdiction is **DENIED** with respect to the justiciability doctrines of mootness, lack of standing, and sovereign immunity;

C. Defendants' *Joint Motion for Judgment on the Pleadings* for failure to state claims for relief is **DENIED** with respect to Plaintiff Patients' constitutional claims for violation of their right to life (Count II) and equal protection (Counts III and IV), and Plaintiff Physicians "as

applied” constitutional challenge to the Medical Necessity Exception on the grounds of vagueness (Count V).

All other issues are reserved.

s/ Patricia Head Moskal
CHANCELLOR PATRICIA HEAD MOSKAL,
CHIEF JUDGE

s/ Sandra Donaghy
JUDGE SANDRA DONAGHY

s/ Kasey Culbreath
CHANCELLOR KASEY CULBREATH

CLERK’S CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing is being forwarded by electronic service to the following:

Scott P. Tift, Attorney at Law
Nicole A. Chanin, Attorney at Law
BARRETT, JOHNSTON, MARTIN & GARRISON
PLLC
200 31st Avenue North
Nashville, TN 37203
stift@barrettjohnston.com
nchanin@barrettjohnston.com

Linda C. Goldstein, *Pro Hac Vice*
Marc Hearron, *Pro Hac Vice*
Nicolas Kabat, *Pro Hac Vice*
Alexandra Willingham, *Pro Hac Vice*
CENTER FOR REPRODUCTIVE RIGHTS
199 Water Street, 22nd Floor
New York, NY 10038
lgoldstein@reprorights.org
mhearron@reprorights.org
nkabat@reprorights.org

Jasmine Yunus, *Pro Hac Vice*
CENTER FOR REPRODUCTIVE RIGHTS
1634 Eye St. NW, Suite 600
Washington, D.C. 20006
jyunus@reprorights.org

Virginia Adamson, Asst. Solicitor General
Steven Griffin, Senior Counsel
Reed Smith, Strategic Litigation Counsel
Jacob Durst, Asst. Attorney General
Jessica Burk, Attorney *Pro Hac Vice*
Zachary R. Clark, Attorney *Pro Hac Vice*
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 20207
Nashville, TN 37202-0207
Jenna.Adamson@ag.tn.gov
Steven.Griffin@ag.tn.gov
Reed.Smith@ag.tn.gov
Jacob.Durst@ag.tn.gov
Jessica.Berk@ag.tn.gov
Zachary.Clark@ag.tn.gov
Attorneys for Defendants

Marvin Williamson II, 3-Judge Panel Paralegal
ADMINISTRATIVE OFFICE OF THE COURTS
511 Union Street, Suite 600
Nashville, TN 37219
marvin.williamson@tncourts.gov

Jamie A. Levitt, *Pro Hac Vice*
J. Alexander Lawrence, *Pro Hac Vice*
MORRISON & FOERSTER LLP
250 W. 55th Street
New York, NY 10019
jlevitt@mofo.com
alawrence@mofo.com

Adi Kamdar, *Pro Hac Vice*
MORRISON & FOERSTER LLP
2100 L St. NW
Washington, DC 20037
(202) 887-1500
akamdar@mofo.com

Attorneys for Plaintiffs

s/ Christy Smith
Deputy Clerk & Master

10/16/2025
Date