

1 **ORDD**

2
3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5
6 PLANNED PARENTHOOD MAR
7 MONTE, INC., a California non profit
8 corporation; and DR. DOE, an individual,

9 Plaintiff,

10 v.

11 STATE OF NEVADA ex rel THE
12 OFFICE OF THE NEVADA ATTORNEY
13 GENERAL; and ATTORNEY GENERAL
14 OF NEVADA,

15 Defendants.

CASE NO.: A-25-923661-C
DEPT NO.: XXVII

**ORDER DENYING APPLICATION FOR
PRELIMINARY INJUNCTION**

16 On July 23, 2025 Plaintiffs filed an Application for Preliminary Injunction. On August 11,
17 2025 Defendants filed an Opposition. On August 12, 2025 Plaintiffs filed a Reply. On August 18,
18 2025 the parties appeared before the Court for oral argument. This Court, having considered the
19 parties' filings and the arguments of counsel, rules as follows:

PROCEDURAL HISTORY

20 In 1985 the legislature passed Senate Bill 510, which included NRS 442.255 and NRS
21 224.2555, regulating abortions performed on minors. Specifically, the statutes required parental notice
22 or a Court order for a minor to undergo an abortion.

23 A federal court issued a preliminary injunction prohibiting enforcement of the statutes before
24 they went into effect. See, Glick v. McKay, 616 F.Supp. 322 (1985), aff'd 937 F.2d 434 (9th Cir. 1991).
25 The initial decision by the District Court to issue the preliminary injunction cited several concerns
26 about the statutes, but made findings as to constitutionality. Glick, 616 F.Supp. 322. The Ninth Circuit
27 found the statutes were unconstitutional as they did not conform with Supreme Court precedent setting
28 forth certain requirements for statutes limiting minors' access to abortion. Id., Bellotti v. Baird, 443

U.S. 622, 99 S.Ct. 3035 (1979), Ohio v. Akron Center for Reproductive Health, 497 U.S. 502, 110 S.Ct. 2972 (1990). Specifically, the Nevada statutes did not sufficiently account for whether the abortion was in the minor’s best interest and did not contain a specific time frame within which the Court must decide on a minor’s petition for review after a Court denies the initial request. Glick, 937 F.2d 434. Thereafter, the State announced it would not appeal the Ninth Circuit opinion. See, Planned Parenthood v. Monte Mar, Inc., v. Ford, 349 F.R.D. 213, 218 (2025). The U.S. District Court issued an order a few months after the Ninth Circuit opinion declaring the statutes unconstitutional and permanently enjoining them. Id., Glick v. McKay, 2023 WL 12064153 (D. Nev. 1991). Glick, and the federal cases the Court relied upon, are rooted in a woman’s constitutional right to terminate her pregnancy as set forth in Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705 (1973).

In 2022 the United States Supreme Court overruled Roe v. Wade, finding the United States Constitution does not provide a right to abortion and returned authority to regulate abortion to the states. Dobbs v. Jackson Women’s Health Organization, 597 U.S. 215, 142 S.Ct. 2228 (2022).

In 2023 two (2) Nevada district attorneys filed a motion in the U.S. District Court to dissolve the federal injunction issued in Glick. Planned Parenthood v. Monte Mar, Inc., v. Ford, 349 F.R.D. 213 (2025). Ten (10) months after the initial motion, the U.S. District Court held a hearing on the motion. Id. After the hearing, the U.S. District Court ordered the parties to submit supplemental briefing regarding alternative constitutional grounds to justify a continued injunction. Id. In the U.S. District Court there was no dispute that Dobbs effectively overruled Glick. Id. at 225. Planned Parenthood argued: the State’s motion was untimely; the State pursued relief under the wrong rule of civil procedure; and the State presented the wrong standard for relief. Id. The U.S. District Court found continued enforcement of the injunction would be inequitable because a change in law eliminated the basis for the injunction. Id. at 224-25. The Court further found the statutes survived rational basis review as required post Dobbs. Id.

The U.S. District Court acknowledged, however, that “concluding that Nevada’s parental notification law is no longer unconstitutional [] does not end the Court’s inquiry” as the Court could enjoin the statutes on other constitutional grounds. Id. at 226-27. Planned Parenthood argued the statutes were unconstitutional for three (3) alternative reasons: they violate the minors’ procedural due

1 process rights, are unconstitutionally vague, and/or violate the Equal Protection Clause. Id. Despite
2 the Court’s invitation, Planned Parenthood did not move for a preliminary injunction on these
3 alternative constitutional grounds. Id. at 227. The Court therefore noted it could not continue the
4 injunction based on other constitutional grounds without a request from Planned Parenthood and
5 granted the request to lift the injunction. Id. The Court ordered the injunction would be lifted in thirty
6 (30) days and explicitly granted Planned Parenthood leave to “file appropriate motions during this
7 time if it wishes to do so”. Id.

8 Thirty (30) days went by and Planned Parenthood did not request an injunction. However,
9 Planned Parenthood did appeal the matter to the Ninth Circuit and request a stay in the interim. Planned
10 Parenthood Monte Mar, Inc. v. Ford, 2024 WL 1210968 (D. Nev. 2025). The Court denied the request
11 for a traditional stay as Planned Parenthood failed to show a serious question going to the merits of its
12 case. Id. However, the Court granted a temporary administrative stay while Planned Parenthood
13 sought a stay in the Ninth Circuit. Id. The Court reiterated once again that it could issue an injunction
14 based on alternative grounds and “now that the Court has granted Defendants’ motion for relief, the
15 threat of enforcement is a live issue and Plaintiff could now file such motion”. Id., fn 1.

16 On July 18, 2025 the Ninth Circuit denied Planned Parenthood’s request for a stay. The federal
17 court thereafter lifted the stay. Planned Parenthood voluntarily dismissed the federal action.

18 On July 21, 2025 Plaintiffs filed a Complaint herein requesting declaratory and injunctive
19 relief. On July 23, 2024 Plaintiffs filed the instant Motion for Preliminary Injunction.

20 **REQUEST FOR PRELIMINARY INJUNCTION**

21 A preliminary injunction is appropriate only where the moving party can demonstrate it has a
22 reasonable likelihood of success on the merits and that, absent a preliminary injunction, it will suffer
23 irreparable harm for which compensatory damages will not suffice. Excellence Cmty. Mgmt., LLC v.
24 Gilmore, 131 Nev. 347, 531 P.3d 720 (2015), See, NRCP 65.

25 Defendant makes several arguments opposing the preliminary injunction. First, Defendant
26 argues Plaintiffs do not have standing to assert several of their arguments. Second, Defendant argues
27 Plaintiffs cannot establish there is a reasonable likelihood of success on the merits of the action. Third,
28 Defendants argue Plaintiffs cannot show they will suffer irreparable harm but for the injunction.

1 **STATUTES**

2 As described above, Plaintiffs challenge the constitutionality of two (2) statutes – NRS 442.255
3 and NRS 442.2555 – related to minors obtaining abortions.

4 NRS 442.255(1) prohibits a physician from knowingly performing an abortion upon an
5 unmarried, unemancipated minor unless: her parent or guardian is notified before the abortion; the
6 physician believes the abortion is immediately necessary to preserve the minor’s life or health; or the
7 minor obtains a court order authorizing the abortion. Where the parent or guardian cannot be notified
8 after reasonable effort, the physician must delay performing the abortion until the physician notifies
9 the parent or guardian by way of certified mail to the last known address. Id. NRS 442.256(3) requires
10 a physician performing abortions to maintain records describing efforts to give parental notice.

11 NRS 442.255(2) describes that a minor patient may request a court order to obtain an abortion
12 without parental notification. NRS 442.255(2) requires the Court to interview the minor at the earliest
13 practicable time, which must be not more than two (2) judicial days after the request. Thereafter, if
14 the Court finds: the minor is mature enough to make the decision to have an abortion; or she is
15 financially independent or emancipated; or parental notice would be detrimental to her best interest;
16 the Court must issue an order authorizing or denying an abortion without parental notice within one
17 (1) day of the interview. Id. If the Court does not issue a decision within one (1) day of the interview,
18 the authorization shall be deemed granted. NRS 442.255(3). If the Court denies the patient’s request,
19 the patient may petition for further judicial review under NRS 442.2555.

20 Pursuant to NRS 442.257, a person who violates a number of provisions related to abortion,
21 including performing an abortion on a minor contrary to the parental notification requirements and/or
22 failing to maintain proper records related to parental notification, is guilty of a misdemeanor.

23 The Court’s attention in this matter is focused on three (3) sections of the foregoing statutes.
24 First, NRS 442.255(1), which generally prohibits a physician from performing an abortion on a minor
25 absent parental notice, hereinafter the “Parental Notice” provision. Second, NRS 442.255(2) and NRS
26 442.2555, which set forth a procedure by which a minor may obtain a Court order for an abortion
27 without parental notice, and a method for further review if the Court denies the request, hereinafter
28

the “Judicial Bypass” provision. Third, NRS 442.255(3), which allows for a default order permitting abortion where the Court does not issue a timely decision, hereinafter “Pocket Approval” provision.

LIKELIHOOD OF SUCCESS – STANDING

The State concedes Dr. Doe has standing to challenge the Parental Notice provision¹, which precludes physicians from performing an abortion on a minor without parental notice unless certain conditions are met; and the Pocket Approval provision², which provides for default court approval for an abortion without parental notice where the Court fails to issue a timely decision. However, the State argues Planned Parenthood does not have standing at all; and Dr. Doe does not have standing to litigate on behalf of patients. The State’s argument is therefore that neither Plaintiff has standing to challenge the Judicial Bypass provision³, which sets forth the procedure by which a minor may obtain a court order for an abortion without parental notice.

The question of standing concerns whether the party seeking relief has a sufficient interest in the litigation. Schwartz v. Lopez, 132 Nev. 732, 328 P.3d 886 (2016)(internal citations omitted). The primary purpose of requiring standing is to ensure the litigant will vigorously and effectively present the case against the adverse party. Id. Standing generally requires a showing of injury in fact, redressability, and causation. National Association of Mutual Insurance Companies v. Department of Business and Industry Division of Insurance, 139 Nev. 18, 524 P.3d 470 (2023), hereinafter “NAMIC”. Here, the State argues Plaintiffs cannot establish redressability and/or, in some instances, injury. The State does not dispute causation.

Redressability – All Provisions of NRS 442.255 and NRS 442.2555

The State argues Plaintiff do not have standing as Plaintiffs cannot show redressability and therefore do not have standing. The State, by way of the Attorney General, argues the underlying case does not afford the relief requested because an injunction against the Attorney General has no legal effect on District Attorneys, including the District Attorneys who moved to vacate the federal injunction and thereby activate NRS 442.255.

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¹ NRS 442.255(1)

² NRS 442.255(3)

³ NRS 442.255(2)

1 Where a litigant challenges the constitutionality of a statute the litigant must show invalidating
2 the statute would redress his personal injury to establish standing. Monrency v. Department of
3 Education, 137 Nev. 622, 496 P.3d 584 (2021), citing Elley v. Stephens, 104 Nev. 413, 760 P.2d 768
4 (1988).

5 The State argues the Court could only issue an injunction to preclude the instant Defendant,
6 the Attorney General, from enforcing the statute and the resulting injunction would therefore not
7 prevent any District Attorney, including those who sought to reactivate the statutes, from enforcing
8 the statute. The Court is not certain whether the State's argument is: the pending requested relief – a
9 *preliminary* injunction – is only enforceable against the Attorney General; or Plaintiff's ultimate
10 requested remedy of a *permanent* injunction is only enforceable against the Attorney General.

11 To the extent the argument is specific to a preliminary injunction, the State does not provide
12 persuasive authority to suggest the question of redress to establish standing is appropriately directed
13 at whether the preliminary injunction provides redress, as opposed to the object of the case as a whole
14 redresses a plaintiff's purported injury. To the extent Plaintiff is suggesting a preliminary injunction
15 would not provide any relief because such is only enforceable against the Attorney General, such is
16 an argument as to whether the preliminary injunction is necessary to avoid irreparable harm, not
17 whether or not Plaintiff has standing.

18 To the extent the argument is permanent injunctive relief would only bind the Attorney General
19 and therefore not provide effective redress, even assuming as much is true, the State ignores Plaintiffs'
20 request for declaratory relief finding the statutes unconstitutional. The State does not dispute that the
21 Attorney General is the proper State agency to respond to constitutional challenges, which is the
22 subject of the underlying matter. The State also does not dispute that, if Plaintiffs succeed in
23 persuading, ultimately the Supreme Court, to find the statutes were unconstitutional, such would
24 preclude any law enforcement agency from enforcing the statute and thereby redress Plaintiffs'
25 injuries. Thus the State has not established the underlying case would not afford appropriate redress
26 for Plaintiffs' potential injuries to preclude standing.

27 The Court finds Plaintiffs establish the instant case would afford proper redress for any injuries
28 to Plaintiffs caused by deficiencies in statutes.

1 **Injury – Judicial Bypass – Plaintiffs of Behalf of Themselves and/or Patients**

2 **Plaintiffs on Behalf of Themselves**

3 Plaintiffs do not strongly suggest they suffer any direct injury by way of the Judicial Bypass
4 provision. However, they argue that they face injury by way of criminal prosecution under the Parental
5 Notice provision and, in order to comply with the Parental Notice provision they must understand the
6 Judicial Bypass provision. Plaintiffs do not provide any legal authority to suggest their injury by way
7 of one statute logically extends standing to other statutes. Further, even if such legal authority exists,
8 the argument is unpersuasive. Physicians looking to comply with the Parental Notice provision do not
9 need to understand how the Judicial Bypass provisions work. To comply with the Parental Notice
10 provisions the physician must determine whether parental notice occurred and, if no, is there court
11 approval for the abortion – either by an order granting the procedure or via pocket approval. Aside
12 from the timeline to secure pocket approval, the physician does not need to know or understand the
13 procedure by which the patient obtains court approval.

14 Plaintiffs do not establish face an injury to establish they have standing to challenge the
15 Judicial Bypass procedure on behalf of themselves.

16 **Plaintiffs on Behalf of Patients**

17 Whether Plaintiff have standing to sue on behalf of patients is most relevant to the Judicial
18 Bypass provision of the statutes as Plaintiffs themselves do not face potential injury by way of the
19 Judicial Bypass provisions. Plaintiffs argue they have standing to challenge the Judicial Bypass
20 provisions on behalf of patients pursuant to the public importance doctrine. The public importance
21 doctrine is a narrow exception to the injury requirement for standing in certain cases. See, Schwartz,
22 132 Nev. 732. However, the Supreme Court has only found standing by way of “significant public
23 importance” in matters involving a legislative expenditure or appropriation and/or in certain limited
24 situations involving separation of powers. Id.; Morency v. Department of Education, 137 Nev. 622,
25 496 P.3d 584 (2021); Nevada Policy Research Institute, Inc. v. Cannizzaro, 138 Nev. 259, 507 P.3d
26 1203 (2022).

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1 The public importance doctrine, as explained in Schwartz and Nevada Policy Research
2 Institute, is confined to very narrow circumstances that do not exist here. Plaintiff essentially conceded
3 at oral argument that, as of now, the public importance doctrine does not cover the instant controversy
4 and such would require a determination by the Nevada Supreme Court.

5 Plaintiff cites to several cases on third party standing from other jurisdictions as persuasive
6 authority supporting Plaintiff's standing on behalf of patients. See, Planned Parenthood Ass'n of Utah
7 v. State, 554 P.3d 998 (Utah 2024); Singleton v. Wulff, 428 U.S. 106, 96 S.Ct. 2868 (1976); U.S. Dept
8 of Labor v. Triplett, 494 U.S. 715 (1990); June Med. Servs. LLC v. Russo, 591 U.S. 299 (2020) Craig
9 v. Boren, 429 U.S. 190 (1976). However, all but one (1) of the cited cases found third party standing
10 existed, in large part, due to a controversy affecting a constitutional right of the absent party⁴.
11 Following Dobbs, 597 U.S. 215 (2022), Plaintiffs' patients no longer have a constitutionally protected
12 right to an abortion.

13 The only cited case allowing third party standing in the absence of a constitutional right is
14 Planned Parenthood Ass'n of Utah v. State, 554 P.3d 998 (Utah 2024). The challenged law in the Utah
15 case is materially different than those at issue here as the Utah law included broad restrictions on all
16 abortions for all patients⁵. Here, allowing standing on behalf of minor patients to challenge how the
17 state should balance a potential conflict of interest between minor patients and their parents involves
18 substantially different policy considerations and third party standing analysis⁶. Further, in overturning
19 Roe, the Supreme Court specifically referred to Roe's "disruptive effect on other areas of law", to
20 specifically include erosion of the third party standing doctrine. Dobbs, 597 U.S. at 286, fn 61.

23 ⁴ Singleton v. Wulff, 428 U.S. 106 (1976); U.S. Dept of Labor v. Triplett, 494 U.S. 715 (1990); June Med. Servs. LLC v.
24 Russo, 591 U.S. 299 (2020) Craig v. Boren, 429 U.S. 190 (1976).

25 ⁵ Utah SB 174 prohibited abortion at any point during pregnancy and subjected the physician to felony conviction and up
26 to fifteen (15) years in prison. The only exceptions to the prohibition were where the abortion was necessary to alleviate
27 serious health risks to the mother; where the baby had a lethal condition or severe brain abnormality; or where the
28 pregnancy was the result of rape or incest which was reported to law enforcement.

⁶ See, Bellotti v. Vaird, 443 U.S. 622, 99 S.Ct. 3035 (1979)(childrens' rights cannot be equated to those of adults due to
childrens' vulnerabilities, inability to make informed decision, and importance of parental role in child rearing); Ohio v.
Akron Center for Reproductive Health, 497 U.S. 502, 110 S.Ct. 2972 (1990); Moore v. East Cleveland, 431 U.S. 494, 97
S.Ct. 1932 (1977)(recognizing the unique role of family in society to pass down values); See, Singleton, 428 U.S. 106
(discussing reasons against third party standing, analysis of relationship between parties, and whether there is some
obstacle to the third party asserting their own rights).

1 In light of the foregoing, the Court does not find it appropriate for this Court, as opposed to
2 the Supreme Court, to extend third party standing beyond that currently allowed by Nevada law.
3 Plaintiffs do not establish they have standing to challenge any provision on behalf of patients.

4 **Injury – Parental Notice and Pocket Approval – Planned Parenthood on Behalf of Itself**

5 The State argues Planned Parenthood does not have standing on behalf of itself as it does not
6 face a threat of criminal prosecution. The State argues both that there is no real threat that any law
7 enforcement agency will take steps to enforce the statute; and that, even if an agency attempted to
8 enforce the statute, Planned Parenthood the organization would not be subject to criminal prosecution.

9 For a party to pursue a pre enforcement challenge of a criminal statute the threat of criminal
10 prosecution must present an existing controversy, not merely the threat of a future problem. Doe v.
11 Bryan, 102 Nev. 523, 728 P.2d 443 (1986). A court may find a credible threat of prosecution exists
12 by way of an admission of a prosecuting agency and/or any other evidence before the Court. See,
13 Younger v. Harris, 401 U.S. 37, 42, 91 S.Ct. 746, 749 (1971). Where the question is whether a
14 *particular party* faces a credible threat of prosecution, such is an issue of *standing*. See, In re T.R.,
15 119 Nev. 646, 80 P.3d 1276 (2003). However where the question of a credible threat is related to
16 *timing*, such is an issue of *ripeness*. Id.

17 A “credible threat” does not arise from imaginary and speculative concerns. Id. However,
18 where the threat is not imaginary or speculative, a plaintiff need not expose himself to actual arrest or
19 prosecution to challenge the statute. Babbitt v. United Farm Workers Nat. Union, 442 U.S. 289, 99
20 S.Ct. 2301 (1979). When there is an alleged intention to engage in a course of conduct arguably
21 affected with a constitutional interest, but proscribed by statute, and there exists a credible threat of
22 prosecution. Id.

23 In Doe v. Bryan, plaintiffs pursued declaratory relief as to the constitutionality of NRS
24 201.190, which prohibited certain sexual acts between consenting adults of the same sex. Doe, 102
25 Nev. 523. The Court found there was no credible threat of prosecution as plaintiffs had not been
26 arrested and the record did “not reflect any enforcement efforts by the State against appellants or
27 others”. Id. In Babbitt, by contrast, the Supreme Court found a credible threat of prosecution where a
28 national union had previously engaged in consumer publicity campaigns and the challenged statute

1 contained a criminal penalty for “dishonest, untruthful, and deceptive publicity”. Babbitt, 442 U.S.
2 289. While the State had never prosecuted a party under the statute, the Supreme Court found that,
3 because the union intended to continue their publicity campaigns, the statute on its face affected the
4 campaigns, and the State did not disavow intention of invoking criminal penalty, then the union was
5 not without reason to fear prosecution. Id.

6 Doe v. Bryan, and other cases challenging criminal statutes for consensual same sex conduct,
7 represent one extreme on the spectrum of credible threat of prosecution. Neither party provides
8 authority for analyzing where the line of a credible threat of prosecution lies. Under federal law, to
9 evaluate the threat of prosecution, the Court must consider: 1) whether plaintiff has a concrete plan to
10 violate the law; 2) whether law enforcement has communicated a specific warning or threat to initiate
11 proceedings; and 3) whether there is a history of past prosecution or enforcement. Thomas v.
12 Anchorage Equal Rights Com’n, 220 F.3d 1134 (9th Cir. 2000).

13 Here, Plaintiffs have not alleged an intent to violate the law, but do allege they intend to offer
14 abortions to pregnant minors and are trying to determine how to do so lawfully. Law enforcement has
15 not made a specific warning or threat that they will initiate proceedings, but two (2) District Attorneys
16 took affirmative steps to ensure the forty (40) year injunction as lifted, signaling at the very least, their
17 belief that they believe the provisions are important to public interest. Whether law enforcement
18 believes resurrection of the statutes satisfies public interest in limiting minors’ access to abortion, as
19 opposed to directed criminal investigations demanding criminal liability for innocent missteps, is
20 unclear. There is of course no history of enforcement, but such was precluded by the injunction,
21 therefore the absence of prior enforcement does not signal a policy position.

22 Looking to the limited Nevada law, Plaintiffs fear of prosecution is not akin to Doe. In Doe,
23 aside from the absence of an actual arrest, and no history of enforcement of an active statute, there
24 was an inherent practical problem of prosecuting someone for the prohibited conduct. Specifically, as
25 the would be offenders are also willing participants, there is generally no witnesses or evidence to
26 establish same sex sexual conduct occurred. The absence of evidence greatly diminishes the likelihood
27 of prosecution. Here, however, NRS 442.256 requires the physician to keep records related to the
28 procedure thereby mandating a paper trail of evidence related to the abortion. Further, in any pregnant

1 minor's life there may be a number of people who may know about the pregnancy, object to an
2 abortion, and therefore have an interest in reporting an abortion to law enforcement – the pregnant
3 minor's parent, the baby's father, and/or, if the baby's father is also a minor, his parents. Moreover,
4 two (2) District Attorneys took the affirmative step of reinvigorating a dormant federal lawsuit to lift
5 a decades old injunction to activate the statute. Such is more persuasive evidence of a credible threat
6 of prosecution than that presented in Babbitt, where the Supreme Court found a credible threat existed.
7 Based on the limited legal authority provided, the Court will assume a credible threat exists to establish
8 potential injury for those subject to prosecution⁷.

9 As to whether Planned Parenthood would be subjected to criminal liability, the State
10 acknowledges an entity may be criminally liable, but provides no meaningful analysis for why Planned
11 Parenthood would not be subject to criminal liability here. The State's argument alleges that, because
12 the statute refers to "physicians" rather than "persons", which by legal definition includes an entity,
13 Planned Parenthood would not be prosecuted under the statute. However, the use of "physician" in
14 the statute as opposed to "person" is likely because a non physician "person" performing an abortion
15 would be subject to other, more significant criminal penalties. See, NRS 630.400. Further, such
16 argument does not account for conspiracy and/or aiding and abetting liability. NRS 442.256 requires
17 certain record keeping procedures to establish a physician complied with his or her duty regarding
18 parental notice. Where, as here, the physician is working with a major medical organization, which is
19 likely responsible for all record keeping procedures and record retention on the physician's behalf,
20 NRS 442.256 provides further basis for a prosecuting agency to attribute criminal responsibility to the
21 entity for a violation of the Parental Notice provision.

22 The Court finds Planned Parenthood faces potential injury by way of the Parental Notice and
23 Pocket Approval provisions.

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28 ⁷ As described above, the question of whether there is a credible threat to a *particular party* to establish standing is
different than the question of *timing* of the credible threat, which goes to ripeness. See, In re T.R., 119 Nev. 646, 80 P.3d
1276 (2003).

1 **Injury – Parental Notice and Pocket Approval – Planned Parenthood on Behalf of Staff**

2 Planned Parenthood argues it has standing to pursue claims on behalf of its physician staff by
3 way of representational standing. Pursuant to NAMIC, 139 Nev. 18 (2023), an entity may assert
4 representational standing on behalf of its members if it can establish: 1) its members would otherwise
5 have standing to sue in their own right; 2) the interests it seeks to protect are germane to the
6 organization’s purpose; and 3) neither the claim asserted nor the relief requested requires the
7 participation of the individual members in the law suit. Defendant acknowledges representational
8 standing is permissible at times, but argues Planned Parenthood as an employer is not analogous to
9 the trade association in NAMIC.

10 The State’s Opposition and, as a result, Plaintiff’s Reply, contain minimal analysis as to
11 representational standing on behalf of staff. As Defendant acknowledges Dr. Doe has standing to
12 challenge certain provisions of the statute, there is no dispute the first requirement for representational
13 standing is present. As to the second requirement – whether the interests Planned Parenthood seeks to
14 protect are germane to the organization’s purpose – the question is not so clear. Planned Parenthood
15 argues it is furthering its own organizational purpose by seeking to “reduce barriers to evidence based
16 health care consistent with the recommendations of leading medical associations”. Reply, p.5.
17 However, the purpose of the lawsuit, as it relates to physicians, is to protect physicians from potential
18 criminal liability by way of purportedly vague statutes. As to the third requirement, individual
19 participation is less significant where the object of the suit is declaratory relief as such does not require
20 an individualized showing of harm for each member.

21 In light of the limited information and argument provided as to representational standing, the
22 Court declines to consider whether Planned Parenthood has standing to pursue claims on behalf of its
23 employees at this time as it is not dispositive of any issues related to the request for preliminary
24 injunction.

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1 **Standing**

2 The Court finds Dr. Doe and Planned Parenthood have standing to challenge the Parental
3 Notice and Pocket Approval provisions on behalf of themselves. Plaintiffs do not have standing to
4 challenge the Judicial Bypass provision on behalf of themselves. Plaintiffs do not have standing to
5 challenge any provision on behalf of their patients. As a result, Plaintiffs do not have standing to
6 challenge the Judicial Bypass provision and therefore cannot establish a likelihood of success as to
7 any challenges to the Judicial Bypass provision. The Court declines to consider whether Planned
8 Parenthood has standing to challenge the statutes on behalf of its staff at this time.

9 **LIKELIHOOD OF SUCCESS – RIPENESS**

10 As discussed above, for a party to pursue a pre enforcement challenge of a criminal statute the
11 threat of criminal prosecution must present an existing controversy, not merely the threat of a future
12 problem. Doe v. Bryan, 102 Nev. 523, 728 P.2d 443 (1986). The threat of criminal prosecution affects
13 both standing and ripeness. Where the question is whether a *particular party* faces a credible threat of
14 prosecution, such is an issue of *standing*. See, In re T.R., 119 Nev. 646, 80 P.3d 1276 (2003). The
15 Court already acknowledged that there is a credible threat of prosecution against both Dr. Doe and
16 Planned Parenthood to establish potential injury as it relates to standing. However where the question
17 of a credible threat is related to *timing*, such is an issue of *ripeness*. Id.

18 In determining whether an issue is ripe, the Court should consider: 1) the hardship of the parties
19 of withholding judicial review; and 2) the suitability of the issues for review. In re T.R., 119 Nev. 646,
20 80 P.3d 1276 (2003). A primary focus should be the degree to which the harm is sufficiently concrete,
21 rather than remote or hypothetical, to yield a justiciable controversy. Id. Alleged harm that is
22 speculative or hypothetical is insufficient. Id. While the harm need not already have been suffered, it
23 must be probable for the issue to be ripe. Id. The Court should be able to evaluate the provision and
24 challenge in light of a concrete factual context. Id. See also, Herbst Gaming, Inc. v. Heller, 122 Nev.
25 877, 141 P.3d 1224 (2006).

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1 Here, the most compelling question as to whether there is a credible threat of harm is the
2 timing, or ripeness. As to the Parental Notice provision alone, the question of what physicians must
3 do as far as contacting the parents to the comply with the Parental Notice provision is ripe as Plaintiffs
4 must now start complying with their duties to effectuate parental notice.

5 As to the Judicial Bypass and Pocket Approval provision, Plaintiffs' arguments assume the
6 Courts will fail in effectuating the Judicial Bypass procedure. Plaintiffs do not identify a particular
7 patient who has attempted to obtain pursue Judicial Bypass and/or situation where doctors struggled
8 to determine whether a Pocket Approval had been awarded. The Courts, like all of Nevada for the last
9 forty (40) years, were not anticipating applying these statutes. The statutes are now active, the Courts
10 are on notice, and will hopefully respond accordingly.

11 The parties did not directly address the question of ripeness, however such is intertwined with
12 other standing questions. However, despite Plaintiffs' concern that the Courts will not properly
13 effectuate the Judicial Bypass provision, the Courts may very well transition to handling Judicial
14 Bypass requests with minimal difficulty. As the arguments are based on a future hypothetical failure,
15 the hardship is speculative and there is no factual context rendering the issue suitable for review. The
16 outstanding question of ripeness undercuts Plaintiff's likelihood of success in ultimately prevailing
17 with the underlying challenges.

18 **LIKELIHOOD OF SUCCESS – CONSTITUTIONAL CHALLENGES**

19 Plaintiff sets forth three (3) constitutional challenges to the statutes. First, Plaintiffs argue the
20 statutes were void ab initio and therefore unenforceable. Second, Plaintiffs argue the statutes are
21 unconstitutionally vague. Third, Plaintiffs argues the statutes do not afford sufficient procedural due
22 process.

23 **Ultra Vires**

24 Plaintiffs argue the statutes were unconstitutional at the time they were enacted and therefore
25 ultra vires and void ab initio. The State argues Plaintiffs are unlikely to succeed on this argument as
26 the basis for the unconstitutionality, Roe, has since been overturned.

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1 When a statute is held to be unconstitutional, it is null and void ab initio and affords no
2 protection and confers no rights. Nev. Power Co. v. Metro Dev. Co., 104 Nev. 684, 686, 765 P.2d
3 1162 (1988). Plaintiff argues that because the statutes were found to be unconstitutional at the time
4 they were enacted, they are deemed to have never existed and cannot be revived. The cases Plaintiff
5 cites as to ultra vires are distinguishable. See, Nev. Power Co. v. Metro Dev. Co., 104 Nev. 684, 686,
6 765 P.2d 1162 (1988); We the People Nevada ex rel. Angle v. Miller, 124 Nev. 874, 192 P.3d 1166
7 (2008); State ex rel. Bible v. Malone, 68 Nev. 32, 231 P.2d 599 (1951); City of Fernley v. State, Dep't
8 of Tax, 132 Nev. 32, 366 P.3d 699 (2016). None of those cases involved a statute, found to be
9 unconstitutional based on a legal principle that was since overturned. The question of the effect of an
10 unconstitutional statute generally arises where involved parties seek to invoke the some type of right
11 or protection by way of the statute despite the current status of the statute as unconstitutional. See,
12 Nev. Power Co. v. Metro Dev. Co., 104 Nev. 684, 686, 765 P.2d 1162 (1988), Batesel v. Schultz, 91
13 Nev. 553, 540 P.2d 100 (1975); State ex rel. Bible v. Malone, 68 Nev. 32, 231 P.2d 599 (1951).

14 There is a relevant distinction between the Nevada law rendering an unconstitutional statute
15 void so as to confer no rights, and Plaintiff's extension of said rule to the conclusion that an
16 unconstitutional statute is erased from law. The question is whether a finding of unconstitutionality
17 erases a statute from the law or simply renders it dormant. Neither party provides any authority for
18 whether a statute remains void where the statute was unconstitutional when it was enacted, but the
19 basis for the unconstitutionality is subsequently overturned. The only authority the Court discovered
20 is State v. SisterSong Women of Color Reproductive Justice Collective, 317 Ga. 528, 894 S.E.2d 1
21 (2023). SisterSong, like here, involved an abortion statute that was unconstitutional by way of Roe v.
22 Wade, 410 U.S. 113, 93 S.Ct. 705 (1973) at the time of passage in 2019. Id. Following Dobbs, a
23 federal court vacated an injunction prohibiting enforcement of the statute. Id. The parties took the
24 matter to State court, leading the Georgia Supreme Court to consider whether the statute was void ab
25 initio. Id. The Georgia Supreme Court considered its own precedent, similar to Nevada ultra vires
26 precedent cited by Plaintiff, and found the statute was not void ab initio and therefore enforceable in

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2023. Id. The Court reasoned, the meaning of the Constitution does not change, only the Court's interpretation. Id. Thus, to determine whether an abortion statute is constitutional when enacted, a reviewing Court must look to Dobbs, not Roe. Id.

Here, the Court previously found the statutes were unconstitutional by way of Bellotti v. Baird, 443 U.S. 622 (1979), which is dependent on Roe v. Wade. At oral argument, the parties conceded Bellotti is no longer good law following Dobbs. The law regarding the status of a law like those at issue here, which were unconstitutional when enacted, but for which the basis of the unconstitutionality no longer exists, is at best unclear. Plaintiff therefore has not demonstrated a likelihood of success as to the ultra vires argument to warrant a preliminary injunction.

Unconstitutionally Vague

Plaintiffs argue the Parental Notice and Judicial Bypass provisions violate the due process guarantee of the Nevada State Constitution because they are unduly vague.

A statute is presumed valid. Sheriff v. Burd, 118 Nev. 853, 59 P.3d 484 (2002). The challenger bears the burden of establishing, by a clear showing of invalidity, that a statute is unconstitutional. Id. Generally, the party asserting a facial vagueness challenge must establish the statute is impermissibly vague in all applications. Flamingo Paradise Gaming v. Chanos, 125 Nev. 502, 217 P.3d 546 (2009). However, where the statute involves a criminal penalty, the burden is lower. The movant must show the vagueness permeates the text so the statute cannot pass the vagueness standards under most circumstances. Id. Thus, here, Plaintiffs must show the Parental Notice provision is vague under most circumstances. However, Plaintiffs must show the Judicial Bypass and Pocket Approval provisions are vague in all applications.

Several points of statutory interpretation are significant in analyzing whether a statute is unconstitutionally vague. Mathematical precision is not required as there are practical considerations that limit the specificity with which legislators can spell out prohibitions. Sisolak v. Polymer80, 546 P.3d 819, 140 Nev. Adv. Op. 30 (2024). Where terms are undefined in a statute, the statute will not be deemed unconstitutional if the term has a well-settled and ordinarily understood meaning. Collins v. State, 125 Nev. 60, 63, 203 P.3d 90, 92 (2009). Where a word has multiple plain and ordinary meanings, the Court should consider context and structure to determine which meaning applies.

1 Lofthouse v. State, 136 Nev. 378, 380, 467 P.3d 609, 611 (2020); See also, Blackburn v. State, 129
2 Nev. 92, 97, 294 P.3d 422, 426 (2013)⁸. Statutes must be interpreted in light of the policy and spirit
3 of the law. Flamingo Paradise, 125 Nev. at 509, 217 P.3d at 551. Further, vagueness analysis does not
4 treat statutory text as a closed universe. State v. Casteneda, 126 Nev. 478, 483, 245 P.3d 550, 553
5 (2010). As a result, “[e]nough clarity to defeat a vagueness challenge may be supplied by judicial
6 gloss on an otherwise uncertain statute.” Id. (internal quotation marks omitted).

7 Parental Notice

8 The parties agree that to succeed on a facial vagueness challenge to a criminal statute the
9 movant must establish the statute: 1) fails to provide sufficient notice to enable persons of ordinary
10 intelligence to understand what conduct is prohibited; and 2) lacks specific standards, thereby
11 encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement. Silvar
12 v. Eighth Judicial Dist. Court ex rel County of Clark, 122 Nev. 289, 129 P.3d 682 (2006); City of Las
13 Vegas v. Eighth Judicial Dist. Court ex rel. County of Clark, 118 Nev. 859, 59 P.3d 477 (2002).

14 In City of Las Vegas the movant challenged NRS 207.260, which prohibited “annoying or
15 molesting a minor”. Id. The Court noted the statute did not specify what type of “annoying” behavior
16 was prohibited or define “annoy” or “molest”. Id. The plain meaning of “annoy” – “to disturb or
17 irritate [especially] by repeated acts” did not provide much further direction. Id. The statute also did
18 not have an intent requirement. Id. The Court found the statute was unduly vague as citizens must
19 guess when conduct bothers, disturbs, irritates, or harasses a minor rises to criminal conduct under
20 NRS 207.260. Id. Further, without a more specific definition, the Court found the statute authorized
21 and encouraged arbitrary enforcement as such awarded law enforcement unfettered and unguided
22 discretion as to what conduct falls within the statute. Id.

23 Further, in Silvar v. Eighth Judicial Dist. Court ex rel County of Clark, 122 Nev. 289, 129 P.3d
24 682 (2006), the Court considered whether an ordinance prohibiting loitering for the purpose of
25 prostitution was unconstitutionally vague. The ordinance made it unlawful “to loiter [] in a manner
26 and under circumstances manifesting the purpose of inducing, enticing, soliciting for or procuring

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28 ⁸ “A statute cannot be dissected into individual words, each one being thrown onto the anvil of dialectics to be
hammered into a meaning which has no association with the words from which it has been violently separated.” Id. at 97
(internal citations omitted).

1 another to commit an act of prostitution”. Id. The ordinance went on to describe circumstances to
2 consider in determining the purpose of one’s loitering⁹ and mandated that, prior to making an arrest,
3 an officer must afford a suspect the opportunity to explain of the conduct”. Id. Further, a suspect could
4 not be convicted at trial if his explanation appeared true and disclosed a lawful purpose. Id. The
5 Nevada Supreme Court found the statute did not provide adequate notice of the prohibited conduct as
6 the ordinance was unduly open ended such that a person could not be sure what acts “manifest” illegal
7 activity. Id. Further, the Court found the ordinance did not provide sufficient information to define
8 circumstances for which a person could be arrested and therefore allowed for arbitrary and
9 discriminatory enforcement. Id.; See also, Gallegos v. State, 123 Nev. 289, 163 P.3d 456 (2007).

10 In Flamingo Paradise Gaming, 125 Nev. 502 (2009), the Supreme Court considered a
11 vagueness challenge to the criminal provision of the recently passed Nevada Clean Indoor Air Act,
12 which prohibited indoor smoking in many places. NRS 202.2483(7) required law enforcement to issue
13 citations for violations of the statute, however, the law did not describe who could be cited – the actual
14 customer smoking, an employee present, and/or the business owner. Id. Further, the statutes included
15 terms the Supreme Court found unreasonably vague, including “smoking paraphernalia” and “large
16 room”. Id. The Court therefore found the criminal provision of the statute was unconstitutionally
17 vague. Id.

18 Contrary to the above cases, criminal statutes survived constitutional vagueness challenges in
19 Sisolak v. Polymer80, Inc, 546 P.3d 819, 140 Nev. Adv. Op. 30 (2024); Berry v. State, 125 Nev. 265,
20 212 P.3d 1085 (2009), and Smith v. State, 112 Nev. 1269, 927 P.2d 14 (1996).

21 In Smith, 112 Nev. 1269, the Court considered the criminal child abuse statute, which renders
22 an act criminal if one places a child “in a situation where the child may suffer physical pain or mental
23 suffering as a result of abuse or neglect”. See, NRS 200.508. The statute included definitions for
24 “abuse or neglect” and scienter requirements of knowledge and reasonableness, which would preclude
25 punishment for inadvertent or ignorant acts. Id. The Court also considered the statute defining
26 “negligent treatment or maltreatment”, which, in part, includes a child who lacks medical care

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28 ⁹ “such person repeatedly beckons to, stops, attempts to stop or engages persons passing by in conversation, or
repeatedly stops or attempts to stop motor vehicles operators by hailing, waving of arms or any bodily gesture”. Id.

1 necessary for the well being of the child because of the faults and habits of the personal responsible
2 for his welfare. Id., NRS 432B.140. While in Smith the Supreme Court considered an as applied, as
3 opposed to facial challenge, the Court found the statute sufficiently put the movant on notice of the
4 prohibited conduct to survive a vagueness challenge. Id.

5 Further, in Berry v. State, 125 Nev. 265, 212 P.3d 1085 (2009), the Court considered NRS
6 201.210, which provides nothing more than “a person who commits any act of open or gross lewdness
7 is guilty of” and thereafter sets forth penalties dependent upon whether the actor has prior convictions
8 for the same offense. The Court found “open”, “gross”, and “lewdness” all have well defined and
9 understood meanings to put an average person on notice of what conduct is prohibited. Id. The Court
10 therefore found the open and gross statute was not unconstitutionally vague. Id.; See also, State v.
11 Casteneda, 126 Nev. 478, 245 P.3d 550 (2010).

12 Moreover, in Sisolak, 546 P.3d 819, the Supreme Court considered several statutes intended
13 to regulate “ghost guns”, which prohibited possession of various unfinished parts of firearms. The
14 Court acknowledged the statute did not contain an express scienter requirement or definitions for
15 material terms, including “finished frame or receiver”, “blank”, “casting”, “major machining
16 operations”, “fire-control cavity area”, and “machined body”. Id. The Court noted that, while several
17 of the terms are generic and broad, they must be interpreted in context with the remainder of the
18 statute. Id. The Court found the purportedly vague terms to have specific enough ordinary meaning to
19 put citizens on notice of the prohibited conduct and not present a risk of arbitrary enforcement. Id.
20 Further, the Court acknowledged that analysis of whether every hypothetical set of facts falls within
21 the prohibited conduct is not required to survive a vagueness challenge as courts are permitted to make
22 determinations as to whether particular sets of facts fall within the scope of a statute during the
23 ordinary course of fact finding. Id.

24 Here, Plaintiffs argue the Parental Notice provision is unduly vague. NRS 442.255(1)
25 specifically provides:

26 Unless in the judgment of the attending physician an abortion is immediately necessary
27 to preserve the patient’s life or health or an abortion is authorized pursuant to
28 subsection 2 or NRS 442.2555, a physician shall not knowingly perform or induce an
abortion upon an unmarried and unemancipated woman who is under the age of 18
years unless a custodial parent or guardian of the woman is personally notified before
the abortion. If the custodial parent or guardian cannot be so notified after a reasonable

1 effort, the physician shall delay performing the abortion until the physician has notified
2 the parent or guardian by certified mail at the last known address of the parent or
guardian.

3 Plaintiffs argue the provision is unduly vague because: there are no standards by which a physician is
4 to determine the marital or emancipated status of the patient, the parents' last known address, and/or
5 provide notice to the parent or guardian. Plaintiffs also argue the provision is vague as it does not set
6 forth what is a "reasonable effort" at "personal notification". Plaintiff argues further that physicians
7 cannot be sure whether to proceed with an abortion absent an affirmative Court order in the face of a
8 Pocket Approval.

9 Plaintiffs' argument suggests the statute should define words with common understanding and
10 a level of mathematical precision that is not required to survive a vagueness challenge. A physician
11 reading the Parental Notice provision would understand he first must take steps to determine whether
12 a minor patient is married or unemancipated. If yes, no parental notification is required. The statute
13 does not, on its face, require proof of marriage or emancipation, however, such is readily ascertainable
14 by way of patient provided proof where a physician wants to take extra precaution. Assuming the
15 answer to both of those question is no, the physician moves on to taking reasonable steps to ensure a
16 parent is personally notified.

17 In the vast majority of cases, the patient will be able to provide contact information to notify a
18 parent¹⁰. While Plaintiffs argue "reasonable efforts" is vague, such is unpersuasive as such only
19 becomes an issue if the parent cannot be notified and, in that event the statute provides specific
20 direction as to the next steps to avoid criminal liability. Specifically, notification by way of certified
21 mail. Moreover, juries and judges are routinely asked, as a part of fact finding, to determine what is
22 "reasonable".

23 As to uncertain liability in the absence of an actual Court order where Pocket Approval occurs,
24 such is readily ascertainable from the Court record. An Order exists or it does not. If the Order exists,
25 it will be in the Court record. If it does not exist, the record will be silent and thereby convey Pocket
26 Approval¹¹. While of course a physical order approving an abortion is preferable, the Pocket Approval

27 ¹⁰ If they do not want to provide contact information, such is another question, the patient would then move on to
28 obtaining a court order by way of the Judicial Bypass.

¹¹ Further highlighting the ripeness issues associated with challenging the Pocket Approval provision – Plaintiffs' argument assumes the Courts would not implement the availability of some sort of default document issued by the clerk

1 provision is a safeguard to the benefit of physicians and patients, allowing them to proceed without
2 delay. See, Ohio v. Akron Center for Reproductive Health, 497 U.S. 502, 514-15, 110 S.Ct. 2972,
3 2981 (1990)(discussing default court approval in the context due process). The Pocket Approval
4 provision protects physicians against unreasonable criminal liability as so long as there is no order
5 denying the abortion the physician can proceed.

6 Finally, misdemeanor criminal liability is limited to only where physician “knowingly”
7 violates the statute, which would preclude a finding of guilt unless he has knowledge of the facts that
8 exist to constitute the crime. See, NRS 193.017. Allowing a fact finder to determine whether a
9 physician knowingly performed an abortion without parental notice or court approval is not beyond
10 the purview or ordinary fact finding.

11 The Parental Notice provision is far more specific than the statutes surviving vagueness
12 challenges in Sisolak, Berry, Smith. Unlike Flamingo Gaming, the statute specifically identifies who
13 is liable for an abortion performed in violation of the statute and does not include terms as ambiguous
14 as “large room”. Unlike City of Las Vegas, 118 Nev. 859, the statute includes the requirement that the
15 physician act “knowingly”. Unlike Silvar, the statutes do not require a party to modify his conduct
16 based on what another party thinks is the movant’s intent without any definitive act in furtherance of
17 said intent. Further, the conduct described in the statute is not so vague and overly broad so as to risk
18 unreasonable discretion in enforcement like the laws considered in City of Las Vegas or Silvar.

19 Ultimately, Plaintiff does not establish a likelihood of success in establishing the Parental
20 Notice provision is unconstitutionally vague.

21 Judicial Bypass

22 As described above, Plaintiffs do not have standing to challenge the Judicial Bypass provision.
23 However, as to the substantive argument, Plaintiffs argue the Judicial Bypass provision is vague as it
24 does not establish standards or procedures by which the patient may initiate a request for a Court Order
25 for an abortion without parental notice. NRS 442.255(2) specifically provides:

26 2. An unmarried or unemancipated woman who is under the age of 18 years may
27 request a district court to issue an order authorizing an abortion. If so requested, the
28 court shall interview the woman at the earliest practicable time, which must be not

or default designation in the record to establish the Pocket Approval.

1 more than 2 judicial days after the request is made. If the court determines, from any
2 information provided by the woman and any other evidence that the court may require,
that:

3 (a) She is mature enough to make an intelligent and informed decision concerning
the abortion;

4 (b) She is financially independent or is emancipated; or

5 (c) The notice required by subsection 1 would be detrimental to her best interests,
the court shall issue an order within 1 judicial day after the interview authorizing a
6 physician to perform the abortion in accordance with the provisions of NRS 442.240
to 442.270, inclusive.

7 NRS 442.255(3) thereafter includes the Pocket Approval provision and NRS 442.2555 sets forth a
8 procedure for further review and appeal if the Court issues an order denying the abortion.

9 As described above, as the Judicial Bypass provision does not contain a criminal penalty,
10 Plaintiff must show the Judicial Bypass and Pocket Approval provisions are vague in all applications
11 to establish a constitutional infirmity. As discussed above in connection with ripeness, and below in
12 connection with procedural due process, Plaintiff is unlikely to succeed on the challenges to the
13 Judicial Bypass provision based solely on a speculative argument assuming the Court will fail. To the
14 extent the Supreme Court would be inclined to consider the argument, vagueness analysis does not
15 treat statutory text as a closed universe and the Court may supply a judicial gloss on otherwise
16 uncertain statute. Plaintiff has not established a reviewing Court could not clarify the method by which
17 to initiate the bypass, such as via petition, and thereby resolve uncertainty.

18 **Procedural Due Process**

19 Plaintiffs argue the Judicial Bypass and review provisions violate patients' procedural due
20 process rights. As described above, Plaintiffs do not have standing to challenge the Judicial Bypass
21 on behalf of patients and the questions related to the Judicial Bypass provisions are not ripe for review.
22 However, in an abundance of caution, the Court addresses Plaintiffs' likelihood of success as to the
23 Judicial Bypass provision.

24 As Plaintiffs have not identified a particular patient or situation where the Judicial Bypass
25 purportedly failed, Plaintiff's argument as to procedural due process is a facial attack. A facial
26 challenge requires Plaintiff to show there is no set of circumstances under which the statute would be
27 valid¹². Flamingo Paradise Gaming, LLC v. Chanos, 125 Nev. 502 (2009); U.S. v. Salerno, 481 U.S.

28 ¹² The Court acknowledges Plaintiff challenges the statutes under the Nevada Constitution rather than the United States
Constitution. However, Nevada courts have followed federal precedent in distinguishing between facial and as applied

739, 108 S.Ct. 2095 (1987); Webster v. Reproductive Health Services, 492 U.S. 490, 524, 109 S.Ct. 3040, 3060 (1989)(O'Connor, concurring, applying Salerno to facial attack on abortion statute); Rodriguez Diaz v. Garland, 53 F.4th 1189 (9th Cir. 2022); See, William Jefferson & Co., Inc. v. Board of Assessment and Appeals No. 3 ex rel Orange County, 695 F.3d 960 (9th Cir. 2012)(applying Salerno to facial procedural due process challenge). The fact that a statute may operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid. Id.

Pursuant to the Nevada Constitution, no person shall be deprived of life, liberty, or property, without due process of law. Nev. Const. Art I, § 8(2). Procedural due process violations exist when: 1) the State interferes with a liberty or property interest; and 2) the procedures attendant upon that deprivation are constitutionally insufficient to ensure due process. See, Malfitano v. County of Storey By & Through Storey County Board of County Commissioners, 133 Nev. 276, 396 P.3d 815 (2017). The State does not dispute that patients have a due process right in an interview and/or decision on the request for court approval.

What process is due to satisfy the Constitution depends on the particular situation. Nellis Motors v. State, Dept. of Motor Vehicles, 124 Nev. 1263, 197 P.3d 1061 (2008). The parties agree that to determine the amount of process required, the Court should consider: 1) the private interest affected; 2) the risk of erroneous deprivation by procedures used; and 3) the governmental interest to be protected in light of the fiscal and administrative burdens imposed by additional safeguards. Id., State v. Vezeris, 102 Nev. 232, 720 P.2d 1208 (1986), both citing Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893 (1976). The Court must balance the foregoing factors and determine whether, in light of the balance, the challenged procedure affords sufficient due process. Id.

As to the private interest affected, Plaintiff argues the judicial bypass is a substantial interest as for some minors it is necessary to ensure timely access to essential health care. Motion, p.22. The State does not dispute the strength of pregnant minors' interest in a right to an interview and/or decision from the Court.

Constitutional challenges rooted in several different sections of the Constitution. See, Flamingo Paradise Gaming, LLC v. Chanos, 125 Nev. 502, 219 P.3d 546 (2009); Déjà vu Showgirls v. State, Dept. of Tax, 130 Nev. 719, 334 P.3d 392 (2014); Wilson v. First Judicial District Court in and for County of Carson City, 547 P.3d 122, 140 Nev. Adv. Op. 7 (2024).

1 As to risk of erroneous deprivation by procedures used, Plaintiffs argue that, because the
2 statutes do not include specific information as to how to initiate the request for an interview, such
3 creates a heightened risk of a prospective applicant being deprived of an interview and/or decision.
4 Motion, p.22-23. The State responds that Plaintiffs' arguments are speculative and, even if such fears
5 were realized, the patient would have relief by way of an Emergency Petition for Writ of Mandamus.
6 Plaintiff argues post denial remedies are insufficient as the patient may be denied an abortion as a
7 logical consequence of the delay.

8 As to the government interest to be protected by burden imposed by additional procedural
9 safeguards, Plaintiff argues the Judicial Bypass Order is a State created right therefore the State cannot
10 argue it has an interest in avoiding procedural safeguards that would ensure the right. Motion, p.23-
11 24. The State does not dispute Plaintiff's position.

12 Neither party provides examples of cases involving similar statutes, specifically those where
13 the statute sets forth a judicial procedure with availability of multiple layers of court review, but does
14 not articulate the method by which one would initiate the procedure. Plaintiffs' suggests "bypasses may
15 be randomly denied" and cites to Scott v. First Jud. Distr. Ct., 131 Nev. 1015, 363 P.3d 1159 (2015)
16 to suggest a procedure allowing different enforcement standards from judge to judge would violate
17 procedural due process. However, Scott discussed shifting law enforcement standards in the context
18 of a constitutional vagueness challenge of a criminal statute, not procedural due process.

19 The State points out that Plaintiff's arguments that the procedure will fail are speculative and
20 unfounded. In response, Plaintiff argues their arguments are not speculative as, despite the injunction
21 being lifted, that "Attorney General identifies no functioning judicial bypass procedures beyond the
22 bare statutory text" and that the Court websites are "devoid of information about judicial bypass
23 procedures". Reply, p.21-22. Plaintiffs therefore conclude the "absence of basic information confirms
24 exactly what Plaintiffs have argued: these statutes promise a judicial bypass process that does not
25 actually exist in any meaningful, accessible form". Id. at 22. Plaintiff also references the United States
26 District Court's concern for lack of uniform procedures to effectuate the Judicial Bypass procedure
27 when issuing a preliminary injunction in 1985. Id. at 23, citing Glick, 616 F.Supp. 322. However, the
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1 Ninth Circuit thereafter found the statutes unconstitutional based on other issues without mentioning
2 concern for varying procedural requirements. See, Glick, 937, 937 F.2d 434.

3 In Ohio v. Akron Center for Reproductive Health, 497 U.S. 502, 110 S.Ct. 2972 (1990), the
4 United States Supreme Court considered a pre Dobbs challenge to Ohio statutes requiring parental
5 notice for a minor to obtain an abortion. The Court pointed out that, as a facial challenge, appellees
6 must show no set of circumstances exist under which the act would be valid. Id. at 514. The Court
7 refused to invalidate a statute on constitutional grounds “based on a worst case analysis that may never
8 occur”. Id. Further, the Court found that, absent a demonstrated pattern or abuse or defiance, States
9 may expect judges will follow mandated procedural requirements. Id. at 515.

10 The Court pointed out that the statute included a procedural safeguard, similar to the Nevada
11 Pocket Authorization provision, which permitted a minor to obtain an abortion without parental notice
12 if the Court failed to issue a decision within a specific amount of time. Id. at 514-15. The Court was
13 unpersuaded by Appellants’ argument that the default approval was insufficient protection as
14 physicians would be unlikely to proceed without an affirmative order. Id.

15 Unlike the Nevada statute, the Ohio statute did provide specific instruction as to how to initiate
16 the bypass procedure. However, the foregoing principles, as to speculative arguments regarding facial
17 challenges, still apply. Further, the weight of the patients’ interest in Akron Center for Reproductive
18 Health carried more weight in the balancing analysis than to be currently applied as, at the time, there
19 was a constitutionally protected right to abortion.

20 Again, Plaintiffs’ arguments are speculative as to what may or may not occur as Courts respond
21 to the Judicial Bypass procedure. Plaintiffs cannot establish they are likely to succeed on a facial
22 procedural due process challenge based on a worst case analysis that may never occur.

23 **IRREPARABLE HARM**

24 Plaintiffs argue, absent injunctive relief, they will suffer irreparable harm by way of a loss of
25 constitutionally protected rights. Specifically, they will be subject to uncertain legal obligations and a
26 threat of arbitrary prosecution. As described above, Plaintiffs are have not shown they are likely to
27 succeed in their constitutional challenges, therefore they cannot establish there is a likelihood of
28 irreparable harm by way of a loss of those rights.

1 Further, as to concern of uncertain legal obligations and threats of arbitrary prosecution,
2 Plaintiffs have not established a preliminary injunction issued by this Court against the Attorney
3 General addresses the true source of the potential harm. If the requested preliminary injunction is
4 ineffective to address the purported harm, then the harm does not warrant a preliminary injunction.
5 While the Court found there is a credible threat of enforcement to allow standing for the lawsuit, for
6 purposes of the irreparable harm analysis, the Court notes the main source of threat of enforcement
7 derives from actions of two (2) specific District Attorneys. Plaintiffs do not allege those District
8 Attorneys' jurisdiction is within the areas Plaintiffs practice or within this Court's jurisdiction¹³.
9 Plaintiffs have not presented any information to suggest local law enforcement agencies within this
10 Court's jurisdiction are likely to mobilize efforts to prosecute good faith efforts to comply with the
11 statutes. Plaintiff has not suggested this Court can compel the Attorney General to exercise its
12 supervisory power outside Clark County to preclude local prosecutors elsewhere from enforcing the
13 statute. Plaintiff cites Platinum Sports Ltd. v. Snyder, 715 P.3d 615 (6th Cir. 2013) to suggest an
14 injunction against an attorney general binds local prosecutors. However, Platinum Sports addressed a
15 permanent injunction issued by a federal court upon attorney general stipulation, along with a finding
16 of unconstitutionality. Id. Thus the issuing court had more expansive jurisdiction than this Court, the
17 Court also issued a finding of unconstitutionality, and the attorney general stipulated to the result.

18 Plaintiffs also argue their patients will suffer irreparable harm in various ways. As discussed
19 above, Plaintiffs do not have standing to assert constitutional challenges on behalf of the patients.
20 However, the thrust of the anticipated harm to patients is rooted in Plaintiffs' general opinion that
21 minors should not have to involve their parents in the decision, as opposed to any of the alleged
22 constitutional deficiencies in the law. See, Motion, p. 9-10. However, the U.S. District Court already
23 found the provisions survived rational basis review, the relevant constitutional standard following
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26 ¹³ Neither party specifically identifies which two (2) District Attorneys initiated the action in federal court. Review of the
27 federal case opinions includes multiple District Attorneys brought in as substitute defendants, but does not clearly
28 identify which ones initiated the proceeding. Plaintiff, in responding to the argument about whether there is a credible
threat of prosecution acknowledges "the suit may not directly involve the district attorneys of Pershing or White Pine
Counties", which would suggest they are the parties who revived the suit. Regardless, Plaintiffs have not alleged the
Clark County District Attorney, operating within this Court's jurisdiction was one to initiate the proceeding.

1 Dobbs. Planned Parenthood Monte Mar, Inc., 349 F.R.D. 213. Thus, Plaintiffs’ argument regarding
2 whether or not parental notice should be required seems more appropriately directed to the legislature.

3 Further, to the extent the potential harm to patients is specific to the purported constitutional
4 deficiencies, the potential harm is by way of delays caused anticipated failures of the Judicial Bypass
5 and/or Pocket Approval procedure. However, despite Plaintiffs’ concerns as to the Judicial Bypass
6 procedure, they have not shown it will not work, or is not working, in practice. The parties conceded
7 at oral argument that the statutes are now “live”, yet Plaintiffs have not suggested the procedure failed
8 yet. As of now, there is no reason to assume the procedure would fail. Plaintiffs have not identified a
9 specific patient who attempted to pursue the judicial bypass procedure or whose plans have stalled as
10 a result of the parental notice and/or judicial bypass procedure.

11 The only other harm Plaintiffs argue they personally would incur that do not arise from
12 criminal liability, is that uncertain requirements force providers to withhold care, even where such
13 contradicts their medical judgment and ethical obligations. However, Plaintiff does not allege specific
14 circumstances that would force them to withhold care in contradiction to their medical judgment and
15 ethical obligations. Notably, the Parental Notice provision includes an exception where the abortion
16 is necessary to preserve a patient’s life or health. Thus, there is no concern the statutes would preclude
17 an abortion in the face of significant health concerns. Plaintiff cites to ¶ 69, 73 of Dr. Doe’s declaration
18 to support their position regarding ethical concerns. See, Motion, p.26. Paragraph 69 describes care
19 will be delayed when patients cannot demonstrate the judicial bypass is authorized, however, does not
20 explain how such would be contrary to their medical judgment or ethical obligations, other than
21 alleging the doctor believes the minor patient should be permitted to make the decision. Paragraph 73
22 incorporates the foregoing 72 paragraphs to state “all of these” can be damaging to providers’ ability
23 to fulfill their medical and ethical obligations, but does not explain how.

24 The Court interprets the arguments and Dr. Doe’s declaration to refer to two (2) issues they
25 would categorize as situations contradicting physicians’ medical judgment and/or ethical obligations.

26 First, general concern for delaying an abortion. Dr. Doe describes generally that the risks of
27 pregnancy increase with gestational age¹⁴. Dr. Doe also describes that the convenience of abortion
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¹⁴ Dr. Doe Declaration ¶ 18-21

1 decreases with gestational age while the discomfort and risks of abortion increase with gestational
2 age¹⁵. Dr. Doe distinguishes between the advantages of a medical abortion over a procedural
3 abortion¹⁶. Medical abortion is offered at both of Planned Parenthood’s Nevada locations, located in
4 North Las Vegas and Reno, through the eleventh week of pregnancy¹⁷. Planned Parenthood offers a
5 procedural abortion through the twelfth week of pregnancy, but only at the Reno clinic¹⁸. Though
6 Planned Parenthood offers abortions only through twelve (12) weeks, abortion is legal in Nevada
7 through twenty-four (24) weeks¹⁹.

8 Setting aside Plaintiffs’ speculative argument that the Judicial Bypass provisions will fail
9 completely, Plaintiffs would have an affirmative court decision or pocket approval within three (3)
10 business days of a request. Thus, Plaintiffs’ general description of risks of pregnancy and abortion
11 alone does not suggest Plaintiffs will be faced with ethical dilemma in waiting for a patient to submit
12 a request, then three (3) business days for a court decision or pocket approval. While a petition for
13 review of a denial would take longer, the procedures setting forth the petition and appeal process
14 similarly include expedited deadlines.

15 Second, Plaintiffs’ opinions that minors should not have to involve their parents in the decision
16 to have an abortion and requiring such involvement is often detrimental to the patients. However,
17 absent further explanation, the Court cannot connect this concern to a threat to ethical obligations to
18 amount to irreparable harm. As described above, Plaintiffs’ opinions, and evidence concerning,
19 whether or not parental notification is wise policy should be directed to the legislature.

20 In light of the foregoing, Plaintiffs do not demonstrate they will suffer irreparable harm absent
21 an injunction.

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27 ¹⁵ Dr. Doe Declaration ¶ 12-14, 29, 70, 79-83

28 ¹⁶ Dr. Doe Declaration ¶ 14

¹⁷ Dr. Doe Declaration ¶ 9, 12, 30.

¹⁸ Dr. Doe Declaration ¶ 12, 31.

¹⁹ Dr. Doe Declaration ¶ 84, NRS 442.250.

1 **BALANCE OF HARDSHIPS**

2 Plaintiffs cite mostly federal case law to suggest the Court should weigh the balance of
3 hardships and, “the more the balance of hardships tips in favor of the plaintiffs, the less that plaintiffs’
4 probability of success must be demonstrated. See, Motion, p.13, citing Saini v. International Game
5 Technology, 434 F.Supp.2d 913 (D. Nev. 2006); Walczak v. EPL Prolong, Inc., 198 F.3d 725 (9th Cir.
6 1999); Motion, p.28, citing Index Newspapers LLC v. United States Marshals Serv., 977 F.3d 817 (9th
7 Cir. 2020); OPAWL Bldg. AAPI Feminist Leadership v. Yost, 118 F.4th 770 (6th Cir. 2024); ADVD
8 Holdings, LLC v. Taproot Holdings NV, LLC, 554 P.3d 206, 2024 WL 3841693 (2024); No. One
9 Rent-A-Car v. Ramada Inss, Inc., 94 Nev. 779, 587 P.2d 1329 (1978). The State points out that the
10 balance of hardships analysis in regard to whether a preliminary injunction is warranted has not been
11 adopted by the Nevada Supreme Court, but acknowledges the Ninth Circuit uses a “sliding scale”
12 approach where a stronger showing of one element may offset a weaker showing of another. See,
13 Opposition, p.17, citing Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky v.
14 Labrador, 122 F.4th 924 (9th Cir. 2024).

15 Specific to Nevada, the Nevada Supreme Court has acknowledged the Court “may” consider
16 public hardships and public interests in addition to likelihood of success and irreparable harm, but has
17 not indicated such factors mitigate movant’s duty to show a likelihood of success. See, ADVD
18 Holdings, 554 P.2d 206; Clark County School Dist. v. Buchanan, 112 Nev. 1146, 924 P.2d 716 (1996);
19 Ellis v. McDaniel, 95 Nev. 455, 596 P.2d 222 (1979). Assuming arguendo the balance of hardships
20 analysis applies, there are several relevant considerations.

21 First, aside from the constitutional vagueness concerns, which the Court found are unlikely to
22 succeed, the thrust of the harm is not to Plaintiffs. The thrust of the asserted harm is to patients and
23 the public interest.

24 Second, the potential harm to patients, is to a very small, albeit significant, portion patients.
25 Specifically, pregnant minors who face true hardship upon parental notice²⁰ and, because of the
26 judicial bypass option, only those at a point in their pregnancies where delay carries significant

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28 ²⁰ Planned Parenthood provides examples of pregnant minors who are pregnant by an abusive parent, pregnant minors
who will face physical abuse by way of a parent if the parent is notified, or a pregnant minor who has been abandoned and
cannot locate her parent.

1 consequences. Further, again, the extent of the hardship is speculative as Plaintiffs’ arguments assume
2 the judicial bypass system will fail. The potential hardship here is not akin to cases challenging broad
3 sweeping abortion laws, which prohibit abortion for all patients with few exceptions.

4 Third, the parties’ public interest analysis ignores a significant compelling factor – parents’
5 interest in involvement in the decision. Even prior to Dobbs, the Supreme Court acknowledged parents
6 have an important interest in guiding their daughters’ decisions regarding pregnancy. Bellotti v. Baird,
7 443 U.S. 622, 99 S.Ct. 3035 (1979), Ohio v. Akron Center for Reproductive Health, 497 U.S. 502,
8 110 S.Ct. 2972 (1990)²¹. Such interest was so strong that it outweighed a minor’s complete access to
9 abortion even when abortion was considered a constitutional right. Id. Despite that interest, an
10 injunction allows minors of any age unfettered access to abortion regardless of her parental
11 circumstances, to include even when she has supportive loving parents²².

12 Fourth, Plaintiffs suggests the general public has repeatedly reaffirmed an intent to protect
13 access to abortion, therefore an injunction is in the public interest. See, Reply, p.25. NRS 442.250,
14 which sets forth the conditions under which abortion is available, does not include an age restriction.
15 However, NRS 442.250 when enacted in 1973 required written parental consent for minors. See, 1973
16 A.B. 319. The condition was not removed until 1981 when a parental notice requirement was
17 implemented in a separate section of Chapter 442. See, 1981 A.B. 596. Thereafter, in 1985 the
18 Legislature passed S.B. 510 to include the Judicial Bypass option and Parental Notice within NRS
19 442.255. However, the Glick proceedings commenced and, ultimately parental notice was enjoined.
20 NRS 129.030 addresses circumstances under which minors may receive other health care without
21 parental consent. Such applies in very limited circumstances. Id. NRS 129.030 previously specifically
22 excluded abortion by incorporating NRS 442.250. See, 1981 A.B. 596. Such was not removed until
23 the legislature created the parental notice requirement for abortion. The Legislature did pass the Trust

24 ²¹ “[The minor’s] decision will embrace her own destiny and personal dignity, and the origins of the other human life
25 that lie within the embryo. The State is entitled to assume that, for most of its people, the beginnings of that
26 understanding will be within the family, society’s most intimate association. It is both rational and fair for the State to
27 conclude that, in most instances, the family will strive to give a lonely or even terrified minor advice that is both
28 compassionate and mature.” [] “It would deny all dignity to the family to say that the State cannot take this reasonable
step in regulating its health professions to ensure that, in most cases, a young woman will receive guidance and
understanding from a parent.” Id. at 520.

²² Subject of course to the same restrictions on abortion applied to adults. Plaintiffs admit that, other than generally
encouraging minor patients to involve a parent in the decision, they do not treat a minor seeking an abortion any
differently than an adult. See, Dr. Doe Declaration, ¶ 30-40.

1 Nevada Women Act, S.B. 179 in 2019, which Plaintiff describes as expanding access to abortion.
2 However, during committee meetings there was debate and concern as to parental involvement,
3 abortions performed on girls in their preteen years, and sex trafficking victims obtaining abortions as
4 a result of a pimp's encouragement²³. One senator specifically reassured, "the bill does not address
5 parental notification. What is in the statute today will stay in the statute" and, while acknowledging
6 the Glick injunction "everything related to parental notification, NRS 442.255, 442.2555, and NRS
7 442.268 will stay in the statute"²⁴. The Court will not presume that, even a community strongly
8 supporting an adult woman's ability to procure and abortion with minimal restrictions, would support
9 the same for girls of any age.

10 Fifth, while the law has been enjoined for forty (40) years, the State is correct in pointing out
11 that anytime the State is enjoined from effectuating statutes enacted by representatives of the people
12 it suffers a form of irreparable injury. See, Maryland v. King, 567 U.S. 1301 (2012). Such alone may
13 not be compelling here after forty years if the interest sought to be protected was merely that of State
14 enforcement. However, the interest in lifting an injunction on a law which attempts to balance the
15 interests of pregnant minors and their parents is not insignificant when taking into account the interests
16 of the parents.

17 Even if the balance of hardships weighed strongly in Plaintiffs' favor or if the injunction was
18 against public interest, thereby requiring a lesser showing of likelihood that Plaintiff's claims will
19 prevail, Plaintiffs' duty to make some showing survives. Here, even considering a sliding scale, the
20 Court does not find Plaintiffs present argument to prevail on the balancing test to warrant a preliminary
21 injunction.

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26 ²³ Senate Committee on Health and Human Services, 3/18/19,
27 <https://www.leg.state.nv.us/Session/80th2019/Minutes/Senate/HHS/Final/492.pdf>; Senate Committee on Health and
28 Human Services, 4/1/19 <https://www.leg.state.nv.us/Session/80th2019/Minutes/Senate/HHS/Final/629.pdf>; Assembly
Committee on Health and Human Services, 5/8/19,
<https://www.leg.state.nv.us/Session/80th2019/Minutes/Assembly/HHS/Final/1164.pdf>; Assembly Committee on Health
and Human Services, 5/13/19, <https://www.leg.state.nv.us/Session/80th2019/Minutes/Assembly/HHS/Final/1220.pdf>

²⁴ Senate Committee on Health and Human Services, 3/18/19, *supra* fn 23.

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CONCLUSION

In light of the foregoing, Plaintiffs’ request for a preliminary injunction is DENIED. Plaintiffs have not established a likelihood of success on several arguments due to preliminary question of standing and ripeness. Further, Plaintiffs have not established a likelihood of success on their substantive arguments. Moreover, Plaintiffs have not established an injunction is necessary to avoid irreparable harm.

Dated this 26th day of September, 2025



**B71 C15 BB5D A545
Erika Mendoza
District Court Judge**

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **Planned Parenthood Mar Monte,**
7 **Inc., Plaintiff(s)**

CASE NO: A-25-923661-C

8 **vs.**

DEPT. NO. Department 27

9 **State of Nevada ex rel. The**
10 **Office of the Nevada Attorney**
11 **General, Defendant(s)**

12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Denying was served via the court's electronic eFile system to all
15 recipients registered for e-Service on the above entitled case as listed below:

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25 If indicated below, a copy of the above mentioned filings were also served by mail
26 via United States Postal Service, postage prepaid, to the parties listed below at their last
27 known addresses on 9/29/2025
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