

RAÚL R. LABRADOR
ATTORNEY GENERAL

JAMES E. M. CRAIG, ISB #6365
Chief, Civil Litigation and
Constitutional Defense

AARON M. GREEN, ISB #12397
KYLE D. GRIGSBY, ISB #10709
Deputy Attorneys General
Office of the Attorney General
P. O. Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8073
james.craig@ag.idaho.gov
aaron.green@ag.idaho.gov
kyle.grigsby@ag.idaho.gov

*Attorneys for Defendants Members
of the Idaho Board of Medicine and
42 County Prosecutors*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

STACY SEYB, M.D.,

Plaintiffs,

v.

MEMBERS OF THE IDAHO
BOARD OF MEDICINE, in their
official capacities; *et al.*,

Defendants.

Case No. 1:24-cv-00244-BLW

**DEFENDANTS'
SUPPLEMENTAL BRIEF ON
INJURY REQUIRED FOR THIRD
PARTY STANDING IN SUPPORT
OF DEFENDANTS' MOTIONS
TO DISMISS [DKT. 25 AND
DKT. 26]**

DEFENDANTS' SUPPLEMENTAL BRIEF ON INJURY REQUIRED FOR
THIRD PARTY STANDING IN SUPPORT OF DEFENDANTS'
MOTIONS TO DISMISS [DKT. 25 AND DKT. 26]

“Article III standing ... is a jurisdictional prerequisite to the consideration of any federal claim.” *Gerlinger v. Amazon.com Inc.*, 526 F.3d 1253, 1255 (9th Cir. 2008). Third-party standing is merely an exception to prudential limits on standing and does not independently provide Article III standing; therefore, “any arguments about third-party standing are moot here if [Dr. Seyb] cannot satisfy Article III.” *Pioneer Mem. Healthcare Dist. v. Imperial Valley Healthcare Dist.*, ___ F.Supp.3d ____, 2024 WL 3858135, at *5 (S.D. Cal. 2024).

Standing requires that the plaintiff show that he “*personally* suffered a concrete and particularized injury in connection with the conduct about which he complains.” *Trump v. Hawaii*, 585 U.S. 667, 697–98 (2018) (internal quotation and citation omitted) (emphasis added). “A plaintiff must always have suffered a distinct and palpable injury to *himself*.” *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 100 (1979) (internal quotation omitted) (emphasis added). Where the alleged injury is threatened enforcement of a law, “a plaintiff satisfies the injury-in-fact requirement where he alleges ‘an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute’” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)). “[I]t is not necessary that [the plaintiff] first expose himself to actual arrest or prosecution to be entitled to challenge [the] statute that he claims deters the exercise of *his* constitutional rights.” *Babbitt*, 442 U.S. 289, 298 (1979) (quoting *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (emphasis added)); *see also Driehaus*, 573 U.S. at 159–60, 162.

Thus, pre-enforcement standing arises from conduct that affects plaintiffs’ *own* constitutional interests, not the constitutional interests of a third party. “[E]xceptions to the prudential rule presuppose a litigant who has *already* met the constitutional requirements.”

Fleck and Assocs, Inc. v. City of Phoenix, 471 F.3d 1100, 1105 (9th Cir. 2006). The *Fleck* court cited *Kowalski v. Tesmer*, 543 U.S. 125, 128–29 (2004), which “reiterat[ed] that constitutional standing limits are separate and distinct from the prudential rule against asserting third-party rights.” *Fleck*. 471 F.3d at 1105. Where a plaintiff lacks “a cognizable personal injury, the prudential limits on ‘third-party standing’ are beside the point.” *Id.*

Importantly, Dr. Seyb only asserts standing for a pre-enforcement challenge, and asserts no other injury, Dkt. 33 at 16-20, but he has no constitutional rights at issue here. “[T]here is no right to practice medicine which is not subordinate to the police power of the states.” *Lambert v. Yellowley*, 272 U.S. 581, 596 (1926). Even under *Roe*, “the woman’s right [was] protected. The physician has no fundamental right to perform an abortion or any other medical procedure.” *Leigh v. Olson*, 497 F.Supp. 1340, 1345 n.2 (D.N.D. 1980).

Plaintiff cannot assert the constitutional rights of third parties to “shoehorn” himself into court without an injury to himself. “[E]ven when we have allowed litigants to assert the interests of others, the litigants themselves still must have suffered an injury in fact, thus giving them a sufficiently concrete interest in the outcome of the issue in dispute.” *F.D.A. v. All. for Hippocratic Med.*, 602 U.S. 367, 393 n.5 (2024) (citation omitted). “The third-party standing doctrine does not allow doctors to shoehorn themselves into Article III standing simply by showing that their patients have suffered injuries or may suffer future injuries.” *Id.*

Dobbs v. Jackson Women’s Health Org., 597 U.S. 215, 286–87, 287 n.61 (2022) held that *Roe* was not entitled to stare decisis due, in part, to “distor[tion]” of doctrines including standing. *Dobbs* thus necessarily determined that abortion cases like *June Med. Servs. L.L.C. v. Russo*, 591 U.S. 299 (2020) “ignored third party standing doctrine.” *Dobbs*, 597 U.S. at 287.

DATED: December 20, 2024.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Aaron M. Green
AARON M. GREEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 20, 2024, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Jamila Johnson
jjohnson@lawyeringproject.org

Tanya Pellegrini
tpellegrini@lawyeringproject.org

Paige Suelzle
psuelzle@lawyeringproject.org

Stephanie Toti
stoti@lawyeringproject.org

Wendy S. Heipt
wheipt@legalvoice.org

Attorneys for Plaintiff

/s/ Aaron M. Green
AARON M. GREEN

AND I FURTHER CERTIFY that on such date, the foregoing was served on the following non-CM/ECF registered participants in the manner indicated:

Via first class mail, postage prepaid and addressed as follows:

Shondi Lott
190 S. 4th E St.,
Mountain Home, ID 83647
slott@elmorecounty.org

Justin Oleson
P.O. Box 30
Challis, ID 83226
custerpa@gmail.com

Pro se Defendants

/s/ Aaron M. Green
AARON M. GREEN