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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

STACY SEYB, M.D., Plaintiff, v. MEMBERS OF THE IDAHO BOARD OF MEDICINE, in their official capacities; *et al*., Defendants.	)	Case No.: 1:24-cv-00244-BLW **PLAINTIFF'S SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS [Dkt. # 25 & 26]**

Plaintiff respectfully submits this memorandum of law in response to the Court's request for supplemental briefing on whether a party asserting third-party standing must demonstrate an Article III injury in fact that is constitutional in nature. The short answer is no. Any Article III injury in fact is sufficient to sustain third-party standing.

The Supreme Court has long recognized that "there may be circumstances where it is necessary to grant a third party standing to assert the rights of another." *Kowalski v. Tesmer*, 543 U.S. 125, 129-30 (2004). As an initial matter, a party asserting third-party standing must demonstrate that the party has suffered an injury in fact that meets the requirements of Article III. *See Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 393 n.5 (2024) ("[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." (citation omitted)). But neither the Supreme Court nor the Ninth Circuit has ever held that the Article III injury must be constitutional in nature.

Susan B. Anthony List v. Driehaus, 573 U.S. 149 (2014), does not support Defendants' contrary argument. There, the Supreme Court held that the plaintiff in a pre-enforcement challenge to a state statute had suffered an Article III injury in fact because it intended to engage in a "course of conduct arguably affected with a constitutional interest," but proscribed by the statute, and it faced a credible threat of prosecution. *Id.* at 161-64. The Court did not hold that the "course of conduct arguably affected with a constitutional interest" must implicate a plaintiff's own constitutional right. *Id.* at 161 (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)). And Defendants can point to no decision by the Supreme Court or Ninth Circuit in the decade since *Driehaus* was decided holding that a party bringing a pre-enforcement challenge to a statute is ineligible to assert third-party standing. To the

contrary, the Supreme Court has repeatedly allowed doctors and clinics seeking to provide abortion care to assert the constitutional rights of their patients in pre-enforcement challenges without any discussion of *Driehaus*. *See, e.g.*, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 233 (2022) (deciding constitutional claims asserted by "an abortion clinic, Jackson Women's Health Organization, and one of its doctors" on behalf of their patients against a newly enacted Mississippi statute); *June Med. Servs. v. Russo*, 591 U.S. 299, 318 (2020) (plurality) ("We have long permitted abortion providers to invoke the rights of their actual or potential patients in challenges to abortion-related regulations. And we have generally permitted plaintiffs to assert third-party rights in cases where the "'enforcement of the challenged restriction *against the litigant* would result indirectly in the violation of third parties' rights.'" (citations omitted)), *abrogated on other grounds by Dobbs*; *id.* at 354 n.4 (Roberts, C.J., concurring in the judgment) ("For the reasons the plurality explains, I agree that the abortion providers in this case have standing to assert the constitutional rights of their patients." (citation omitted)).[1]

Here, Dr. Seyb satisfies the requirements for Article III injury in fact because he intends to provide abortion care to patients with serious medical needs, which he argues is both constitutionally protected and proscribed by the challenged statutes, and he faces a credible threat of enforcement for the reasons explained in his prior briefing. *See* Pl.'s Consol. Resp. [Dkt. # 33] at 10-12. Further, he satisfies the additional requirements for third-party standing because "enforcement of the challenged restriction *against [him]* would result indirectly in the violation of third parties' rights." *Kowalski*, 543 U.S. at 130 (collecting cases); *accord June Med.*, 591 U.S. at 318 (collecting cases).

[1] Because the four-Justice plurality and Chief Justice Roberts agreed on the third-party standing analysis in *June Medical*, it constitutes the opinion of a majority of the Court.

Dated: December 20, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on December 20, 2024, the foregoing document was filed with the Clerk of the Court using the CM/ECF system, which will cause a copy to be served upon all counsel of record.

In addition, a copy of the foregoing document was sent via first-class mail to the following Defendants at the addresses listed below:

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