

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

WOMEN'S HEALTH CENTER OF WEST VIRGINIA, *on behalf of itself, its staff, and its patients*; and DR. JOHN DOE, *on behalf of himself and his patients*,

Plaintiffs,

v.

ASHISH P. SHETH, *in his official capacity as President of the West Virginia Board of Medicine*; and MATTHEW CHRISTIANSEN, *in his official capacity as Secretary of the West Virginia Board of Medicine*,

Defendants,

STATE OF WEST VIRGINIA,

Intervenor-Defendant.

Civil Action No. 2:23-cv-00079

Hon. Irene C. Berger

INTERVENOR-DEFENDANT STATE OF WEST VIRGINIA'S MOTION TO DISMISS

**INTERVENOR-DEFENDANT STATE OF WEST VIRGINIA'S
MOTION TO DISMISS**

The State of West Virginia moves this Court for an order dismissing all of the claims asserted in the Complaint, with prejudice. Plaintiffs lack standing to assert claims on behalf of non-party patients whose interests conflict with their own. Plaintiffs also lack standing to assert claims on their own behalf because they fail to allege facts sufficient to plausibly conclude that any injury is traceable to government action, rather than the independent decisions of private parties.

Additionally, the Court should dismiss the Complaint because it fails to state a claim under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Rational basis

review applies to each claim because Plaintiffs do not invoke any fundamental right or suspect classification. And the challenged law satisfies the deferential requirements of rational basis as a matter of law.

Therefore, for the reasons set forth here and in the Memorandum of Law in Support of Intervenor-Defendant State of West Virginia's Motion to Dismiss, the State respectfully requests that the Court dismiss all claims with prejudice.

Respectfully submitted this 15th day of March, 2023.

Respectfully submitted,

By counsel,

PATRICK MORRISEY
West Virginia Attorney General

/s/ Curtis R. A. Capehart

Douglas P. Buffington II (WV Bar # 8157)
Chief Deputy Attorney General
Curtis R. A. Capehart (WV Bar # 9876)
Deputy Attorney General

OFFICE OF THE WEST VIRGINIA ATTORNEY GENERAL
State Capitol Complex
1900 Kanawha Blvd. E, Building 1, Room E-26
Charleston, WV 25305-0220
Telephone: (304) 558-2021
Facsimile: (304) 558-0140
Email: Curtis.R.A.Capehart@wvago.gov

Julia Payne*
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260
Tel.: (480) 444-0020
Fax: (480) 444-0028
jpayne@adflegal.org

Denise M. Harle *
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Rd. NE, Ste. D-1100
Lawrenceville, GA 30043

Tel.: (770) 339-0774
Fax: (770) 339-6744
dharle@adfllegal.org

** Visiting Attorneys*

Counsel for Intervenor, the State of West Virginia

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2023, I electronically filed the foregoing “Motion to Dismiss” with the Clerk of Court using the ECF system which will send notification of such filing to all counsel of record.

/s/ Curtis R. A. Capehart

Curtis R. A. Capehart

Deputy Attorney General