IN THE SUPREME COURT OF MISSISSIPPI
No. 2024-SA-01281

AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS AND GYNECOLOGISTS,
ON BEHALF OF ITS MEMBERS,
Appellant,

v.

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE;
KENNETH CLEVELAND, M.D., IN HIS OFFICIAL CAPACITY
AS THE EXECUTIVE DIRECTOR OF THE
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE,
Appellees,

v.

LAUREN ALLEN; LILY HEMMINS; SARINA LARSON;
ALEXANDRA MELNICK; SHIRA MUROFF; NORA KATZ
Appellees

Appeal from the Chancery Court of
Hinds County, Mississippi

BRIEF OF THE APPELLANT AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS AND GYNECOLOGISTS

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons, agencies, and organizations have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. American Association of Pro-Life Obstetricians and Gynecologists, Plaintiff / Appellant.
2. Mississippi State Board of Medical Licensure, State Defendant / Appellee.
3. Kenneth Cleveland, M.D., in his official capacity as Executive Director of the Mississippi State Board of Medical Licensure, State Defendant / Appellee.
4. Lauren Allen, Intervenor Defendant / Appellee.
5. Lily Hemmins, Intervenor Defendant / Appellee.
6. Sarina Larson, Intervenor Defendant / Appellee.
7. Alexandra Melnick, Intervenor Defendant / Appellee.
8. Shira Muroff, Intervenor Defendant / Appellee.

9. Nora Katz, Intervenor Defendant / Appellee.

10. Aaron R. Rice, counsel for Appellant.

11. Scott G. Stewart, Justin L. Matheny, and Wilson D. Minor, counsel for State Appellees.

12. Robert B. McDuff, William B. Bardwell, Hillary Schneller, Maddy Gitomer, and Megan Jones, counsel for Intervenor Defendant Appellees.

13. Honorable Crystal Wise Martin, Chancellor, Hinds County.

SO CERTIFIED this the 23rd day of June, 2025.

/s/ Aaron R. Rice
AARON R. RICE
Counsel for Appellant

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2. Do physicians have private citizen standing to seek validation of a statute criminally banning elective abortion, when the ban is not being challenged in other litigation, it raises a question of law that has remained dormant for a prolonged period, there are judicially recognized obstacles to litigation by adversely affected individuals, and judicial resolution after prolonged dormancy would have widespread detrimental effects?

3. Do physicians who object to elective abortions referrals have a ripe claim to seek validation of a criminal ban on that conduct, when the ban's uncertain validity exposes them to conflicting industry ethical standards that are enforceable by the State, thus depriving them of notice, chilling and compelling their speech, and threatening state punishment?

4. Considering that the text, history, and precedent of the Mississippi Constitution clearly establish that it does not protect a right to abortion, and the great and sustained harm caused by this Court's contrary holding, should this Court overrule *Pro-Choice Mississippi v. Fordice*, 716 So. 2d 645 (Miss. 1998) and affirm the validity of MISS. CODE ANN. § 41-41-45?

STATEMENT OF ASSIGNMENT

The Supreme Court should retain this case for three, independent reasons. First, it presents a substantial constitutional question as to the validity of a statute prohibiting elective abortion—MISS. CODE ANN. § 41-41-45. Second, that question is a major question of first impression. Third, it involves fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the Supreme Court. *See* MISS. R. APP. P. 16(d)(1), (2), (3).

STATEMENT OF THE CASE

This appeal presents a single question of Mississippi law: is elective abortion a crime, or a constitutional right? The answer, it seems, depends on who you ask. The State Defendant-Appellees (MSBML) contend it is a crime. Record (R.) 466. The Intervenor-Appellees (Women Intervenors) argue it is a constitutionally protected right. R. 544. The American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG) says the law is unclear but urges this Court to resolve it. R. 416. This legal morass might suit those fond of a legal parlor game—but for AAPLOG physicians, the cost of guessing wrong could be ruinous. That's because powerful industry ethics rules—enforceable under state law—are poised to punish one course of action, while state criminal law is primed to punish the other.

Factual Background. In 1998, this Court held that "abortion is protected by the Mississippi Constitution." *Pro-Choice Mississippi v. Fordice*, 716 So. 2d 645, 666 (Miss. 1998). In 2022, the U.S. Supreme Court held that the U.S. Constitution does not protect a right to abortion. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022). Two weeks after that decision, on July 7, 2022, a statute designed to be activated if *Roe v. Wade* were overturned—MISS. CODE ANN. § 41-41-45—became effective, making it a felony to perform an abortion, absent necessity to save the mother's life or if the pregnancy were caused by rape (elective abortion ban). R. 694.

The *Fordice* decision has not been overruled by this Court. And the U.S. Supreme Court has "no authority to decide whether the abortion statute[] violate[s] the Mississippi Constitution." *Fordice*, 716 So.2d 645, 666 (Miss. 1998).

Meanwhile, professional medical organizations—the American College of Obstetricians and Gynecologists (ACOG), the American Board of Obstetrics and Gynecology (ABOG), and the American Medical Association (AMA)—maintain ethics standards requiring physicians with conscience objections to abortion to nonetheless provide referrals or guidance for obtaining the

procedure—when it is lawful in the physician's state. R. 45–51. Consequently, if elective abortion is a crime in Mississippi, then those ethical standards do not apply. R. 45–51. And, if a physician did refer, they would be an accessory to a felony. *See* MISS. CODE ANN. § 97-1-3. Conversely, if abortion is lawful, the ethical standards remain applicable. R. 45–51. And Mississippi law authorizes state discipline for violations of those private standards when enforced by professional organizations. MISS. CODE ANN. § 73-25-83(c) (Medical Practice Act).

While many AAPLOG physicians object to abortion referrals on conscience grounds, they believe that failure to refer could jeopardize their certification and licensure. R. 45–51. At the same time, referral could be criminally punishable. R. 45–51. The physicians are caught between conflicting legal duties: refer patients and risk prosecution under state law—or refuse to refer and risk professional ruin. They seek judicial resolution of that conflict before being forced to choose.

Procedural History. AAPLOG is an organization of pro-life obstetrician-gynecologists and other physicians. R. 20. On November 14, 2022, AAPLOG filed a Complaint on behalf of its Mississippi members, seeking a declaration overruling *Fordice* and affirming the validity of Mississippi's elective abortion ban. R. 18–337. The Complaint alleged that the ban's implementation, directly conflicting with *Fordice*, rendered the legal framework governing physicians' conduct incoherent, subjecting them to conflicting directives. R. 23–43. The named defendants were the Mississippi State Board of Medical Licensure and Kenneth Cleveland, M.D., in his official capacity as Executive Director (collectively MSBML). R. 18.

On January 27, 2023, the Women Intervenors and another proposed intervenor moved to intervene in opposition to AAPLOG's claims and submitted a proposed motion to dismiss. R. 357–380. AAPLOG moved for judgment on the pleadings on February 5, 2023. R. 381–420. MSBML followed with its own motion for judgment on the pleadings on March 24, 2023. R. 421–471.

On August 4, 2023, the chancery court granted the Women Intervenors' motion to intervene as defendants and deeming their motion to dismiss filed as of that date. R. 546–571.

A hearing on the parties' dispositive motions was held on August 16, 2023. R. 720–826. On October 15, 2024, the chancery court entered an order granting the motions filed by MSBML and the Intervenors and denying AAPLOG's motion for judgment on the pleadings. R. 693–708.

The chancery court held that AAPLOG lacked standing, reasoning that the physicians' alleged injuries were not concrete enough to constitute adverse impacts. R. 698–703. In so holding, the court rejected the implicit finding of standing in *Ward v. Colom*, 253 So. 3d 265 (Miss. 2018), which involved a plaintiff subject to conflicting law that authorized and prohibited the same conduct. R. 704. It also disregarded AAPLOG's allegations concerning chilled speech, claiming no such injury was pled, despite the Complaint's attachments describing precisely that harm. R. 704. As to compelled speech, the court held that doctrine applies only when a plaintiff has actually conformed their speech to the subject regulation. R. 704. Regarding the threat of future discipline, the court found that harm too speculative. R 703. It did not analyze the criminal penalties AAPLOG physicians may face if they comply with coercive referral obligations. R 702–3.

The chancery court also declined to apply Mississippi's private citizen standing doctrine, concluding that this Court overruled it *sub silentio* in *Midsouth Ass'n of Indep. Sch. v. Parents for Pub. Sch.*, 384 So. 3d 1226 (Miss. 2024) (*Midsouth*). R. 705. The court's sole support for that conclusion was *dicta* from a footnote in the *Midsouth* opinion. R. 705.

Finally, reading an "actual controversy" requirement into Rule 57 and applying Article III standards, the court concluded that AAPLOG's claims were not ripe. According to the court, the harms alleged had not yet materialized and remained contingent on other events. R. 703–05.

AAPLOG timely appealed. R. 709.

SUMMARY OF THE ARGUMENT

Standing. Mississippi law recognizes that standing may rest either on an adverse effect or, in appropriate cases, on the private-citizen doctrine. AAPLOG's allegations satisfy both. Its physicians are directly governed by two irreconcilable legal authorities: professional ethics standards, enforceable under state law, that require elective abortion referrals, and state criminal statutes that prohibit them. That conflict deprives them of fair notice of prohibited conduct, and this Court has understood that type of conflict to create an adverse effect *per se*.

AAPLOG physicians also suffer speech-related harms. The chancery court failed to meaningfully consider these allegations, dismissing them as speculative or legally insufficient. But the record shows that, due to the elective abortion ban's uncertain validity, physicians are chilled from offering some speech and compelled to offer other. That constitutes a present adverse effect.

They also face criminal penalties if, yielding to coercion from their certifying body, they provide a referral. The chancery court failed to analyze that risk, incorrectly asserting that AAPLOG had not alleged it. Conversely, refusal to refer carries the threat of state discipline. Contrary to the court's finding, that risk is nothing like the speculative harm at issue in *Midsouth*.

Even if those present harms were viewed as insufficient for adverse-impact standing, the chancery court erred in rejecting Mississippi's alternative standard. Rather than engage with Mississippi's private-citizen doctrine, the court mistakenly suggested it had been overruled *sub silentio*, in *dicta* contained in a mere footnote to this Court's recent decision in *Midsouth*. But no Mississippi decision has done so, and neither did this Court in the *Midsouth* footnote. In a case like this—where the law at issue is not being challenged in other litigation and raises a question of law that has remained dormant for a prolonged period—private-citizen standing remains available. That is especially true here, where there are judicially recognized obstacles to litigation by others and judicial resolution after prolonged dormancy would have widespread detrimental effects.

Ripeness. The chancery court applied a ripeness standard not grounded in Mississippi law. It imported an "actual controversy" requirement that Rule 57 does not impose, relied on inapplicable federal Article III standards, and failed to credit the present-day harms demonstrated by the record. Mississippi precedent confirms that a claim may be ripe even if enforcement has not yet occurred—particularly where the plaintiff is already governed by conflicting laws or policies that demand immediate compliance. AAPLOG's allegations fit squarely within that framework. Physicians are being chilled, compelled, and exposed to regulatory and legal risks every day this uncertainty continues. That is more than sufficient to support ripeness under Rule 57.

The Merits. Finally, this Court should overrule *Fordice*. That decision inferred a state constitutional right to abortion by adopting the reasoning of *Roe* and *Casey*, federal precedents that have since been overruled. It never grounded its holding in Mississippi's constitutional text, ignored the State's legal history—where abortion was criminalized both before and after the adoption of the Mississippi Constitution of 1890—and departed from Mississippi precedent, which had long rejected a right to abortion.

This Court has both the authority and the responsibility to resolve that conflict. This Court's precedents are clear that it may grant declaratory relief without remand, including in validation actions like this one. The issue is adversarially presented, given the Women Intervenors' participation, and a declaratory ruling would eliminate the ongoing uncertainty affecting AAPLOG physicians and the broader medical profession. Doctrines such as exhaustion of remedies or constitutional avoidance do not apply or warrant withholding review. Where, as here, the meaning of the Constitution is unsettled and the stakes are grave, resolution is not only permitted—it is warranted. And because *Fordice* was not only wrong but deeply harmful in its effects, stare decisis poses no barrier to its overruling.

ARGUMENT

I. AAPLOG Has Standing.

This Court reviews the question of standing de novo. *Midsouth*, 384 So. 3d at 1229 (citations omitted). "It is well settled that Mississippi's standing requirements are quite liberal." *Id*. at 1230 (citations omitted). This Court "has explained that while federal courts adhere to a stringent definition of standing, limited by Art. 3, § 2 of the United States Constitution to a review of actual cases and controversies, the Mississippi Constitution contains no such restrictive language." *Id*. Moreover, Mississippi courts are "more permissive in granting standing to parties who seek review of governmental actions." *Id*. (citing *Van Slyke v. Bd. of Trs. of State Insts. of Higher Learning*, 613 So. 2d 872, 875 (Miss. 1993).

An association has standing to bring suit on behalf of its members when "(1) its members would otherwise have standing to sue in their own right, (2) the interest[s] it seeks are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Mississippi Manufactured Hous. Ass'n v. Bd. of Aldermen of City of Canton*, 870 So. 2d 1189, 1192 (Miss. 2004).

AAPLOG seeks only prospective relief and raises only issues of law. Clerk's Papers (R.) 41-42. Thus, participation of AAPLOG's individual members is not required. *See Mississippi Manufactured Hous. Ass'n*, 870 So. 2d at 1194. Additionally, AAPLOG is an organization of obstetrician-gynecologists and other physicians who oppose elective abortion, including 35 members in Mississippi, and so the interests it seeks are germane to the organization's purpose. R. 45. AAPLOG physicians would have standing to sue in their own right on two separate grounds, either of which is independently sufficient to confer standing. First, they are adversely affected by the elective abortion ban's irreconcilable conflict with the *Fordice* opinion. Second, they are private citizens raising a constitutional conflict that is otherwise likely to escape judicial review.

A. AAPLOG Physicians Are Adversely Affected by the Elective Abortion Ban's Irreconcilable Conflict with the *Fordice* Decision.

To establish adverse-impact standing, a plaintiff must allege "an adverse effect different from that suffered by the general public from the implementation of" the law. *Butler v. Watson (In re Initiative Measure No. 65)*, 338 So. 3d 599, 606 (Miss. 2021). AAPLOG physicians would easily meet this standard, having been uniquely harmed in multiple ways.

First, the elective abortion ban's irreconcilable conflict with the *Fordice* decision has burdened AAPLOG physicians' due process rights by depriving them of fair notice and definite warning of the conduct that is prohibited, and this Court has understood that type of conflict to create an adverse effect *per se*. *See Ward*, 253 So. 3d 265.

Additionally, the Medical Practice Act directly imposes on AAPLOG physicians a statutory duty to comply with the ethical policies of the medical organizations of which they are members. MISS. CODE ANN. § 73-25-83(c). Because many AAPLOG physicians are required to maintain board certification, this imposes a duty for them to comply with the mandatory-referral ethical standards of the only certifying body for obstetrician-gynecologists in the United States. R. 46–48. Those ethical standards only apply in states where abortion is legal. R. 47. By rendering the legality of elective abortion uncertain, the ban has jeopardized AAPLOG physicians' medical licenses, which in turn has chilled and compelled their speech. R. 155–56.

Finally, in addition to these present and ongoing adverse effects, AAPLOG physicians face the threat of state punishment under conflicting statutory requirements. The ban prohibits them from referring patients for elective abortions. MISS. CODE ANN. § 41-41-45; MISS. CODE ANN. § 97-1-3. At the same time, the Medical Practice Act requires them to comply with the mandatory abortion referral standards of a medical organization of which they are involuntary members. MISS. CODE ANN. § 73-25-83(c). Either choice carries the risk of state punishment. R. 45–51.

1. AAPLOG Physicians' Due Process Rights Have Been Burdened.

Criminal laws must provide fair notice. A statute that criminalizes conduct without "fair notice and definite warning" runs afoul of due process. *State v. Roderick*, 704 So. 2d 49, 53 (Miss. 1997). "A person of ordinary intelligence reading the laws governing" their conduct must be able to "ascertain" what is forbidden. *Id*. at 54–55. That standard assumes coherence among well-established, binding legal sources: "judge-made rules of law are hard facts on which people must rely in making decisions and in shaping their conduct." *Lemon v. Kurtzman*, 411 U.S. 192, 199 (1973). When conflicting legal authorities simultaneously protect and criminalize the same conduct, and an individual is personally subject to both, that person suffers an adverse effect *per se*. *See Ward*, 253 So. 3d 265; *see also Women's Health Ctr. of W. Va. v. Miller*, No. 22-C-556, 2022 WL 3443446, at *1 (W. Va. Cir. Ct. July 20, 2022) ("[C]onflicting laws" criminalizing and protecting abortion deny the public "clear notice[,]" and every citizen "has a right to clearly know the laws under which they are expected to live[.]").

Ward offers a telling example. There, a Mississippi statute authorized enhanced concealed-carry licensees to carry firearms in courthouses. *Ward*, 253 So. 3d at 266. Yet, three chancellors issued a blanket order barring anyone from doing so in their judicial district. *Id*. The petitioner challenged the order, alleging it clearly conflicted with state law, and that he had been "directly impacted" as a license holder. *Id*. at 275–76 (King, J., dissenting). The chancellors dismissed his petition for lack of standing, *id.* at 276, reasoning that he alleged only "the possibility of future, not present arrest, prosecution or contempt." Petition for Writ of Prohibition, Exh. D at 4 (Chancery Court Order), *Ward v. Colom*, 2016-M-01072-SCT (Miss. 2016) (No. 2016-3250).

Undeterred, the petitioner sought a writ of prohibition from this Court. *Ward*, 253 So. 3d at 266. The Court granted relief, vacating the order and holding that it openly defied state law. *Id*.

at 270. The chancellors pressed their standing argument in a motion for rehearing. Motion at 2–3, *Ward v. Colom*, 2016-M-01072-SCT (Miss. 2016) (No. 2018-2405). The Court denied it. Decision at 1, *Ward v. Colom*, 2016-M-01072-SCT (Miss. 2016) (Oct. 4, 2018).

The chancery court here brushed that aside, reasoning that because the *Ward* opinion did not expressly say it found standing, no such finding occurred. R. 704. But that ignores how jurisdiction works. "When a court proceeds to judgment, it necessarily implies a finding by the court that it had jurisdiction"—no magic words required. *Drummond v. State*, 184 Miss. 738, 185 So. 207, 209 (1938) (citations omitted). And when standing was questioned by the parties, that finding is binding. *See Keyes v. State*, 331 So. 3d 52, 55 (Miss. Ct. App. 2021) (citing *McDaniel v. Cochran*, 158 So. 3d 992, 1001 (Miss. 2014)).

That's just what happened in *Ward*. Standing was hotly contested, addressed in the dissent, and implicitly recognized by the majority. That holding is binding. *See id*. The chancery court's contrary view was not just a misreading of precedent. It defied fundamental principles.

The chancery court's alternative theory fares no better. The court suggested that if *Ward* found standing at all, it did so under the now-retired "colorable interest" standard. R. 704. But that's not what the record shows. The petitioner didn't rest on an abstract interest—he alleged he had been "directly impacted" by the dueling legal directives. 253 So. 3d at 276 (King, J., dissenting). That is unmistakably an assertion of an adverse impact, not a mere colorable interest.

Put simply, the petitioner in *Ward* alleged one harm: he was personally subject to conflicting legal authorities that criminalized and protected the same conduct. This Court took the case and decided it on the merits. That should settle the matter here.

This case presents the same kind of legal conflict as in *Ward*—but with even higher stakes. There, one rule permitted what another prohibited. Here, physicians are squeezed between two

legal duties, each backed by penalties. The State says *Fordice* has been quietly overruled. R. 466. The Intervenors say it still governs. R. 544. AAPLOG says the law is unclear and asks this Court to say what it means. R. 416. If capable counsel on both sides can't settle on what the law requires, how, then, can physicians be expected to "ascertain" it's meaning, on pain of criminal sanction? *Roderick*, 704 So. 2d at 54.

Left with no clear answer, AAPLOG physicians must guess. R. 51. Though many personally object to elective abortion referrals, they believe they are required to provide lawful referrals to safeguard their board certification and state medical license. R. 45–51. That is enough to establish standing even under stringent Article III standards. *See Epperson v. State*, 393 U.S. 97, 100 (1968) (teacher had standing to challenge anti-evolution law because she believed school's curriculum required her to teach it); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 163 (2014) (plaintiff need not confess intent to break the law to bring a constitutional claim).

Until this Court exercises its power to "'say what the law is[,]'" AAPLOG physicians will remain without fair notice of the criminal laws they are expected to obey. *Orick v. State*, 105 So. 465, 467 (Miss. 1925) (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)). This constitutes an adverse effect *per se*, which is not contingent on any future events. *See Ward*, 253 So. 3d at 266; *see also State ex rel. Moore v. Molpus*, 578 So. 2d 624, 634 (Miss. 1991) (alleged denial of right to propose ballot initiative constituted adverse effect *per se*).

2. AAPLOG Physicians' Speech Has Been Chilled.

Even under stringent Article III standing, federal courts have "repeatedly held, in the pre-enforcement context, that '[c]hilling a plaintiff's speech is a constitutional harm adequate to satisfy the injury-in-fact requirement.'" *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330–31 (5th Cir. 2020) (quotation omitted). A chilling effect may arise from "governmental regulations that fall short of

a direct prohibition against the exercise of First Amendment rights." *Laird v. Tatum*, 408 U.S. 1, 11 (1972). For that reason, to establish standing, a claimant does not have to show that his speech is in fact prohibited. *Speech First, Inc.*, 979 F.3d at 332. Rather, he must show only that his speech "is *arguably* proscribed, or at least *arguably* regulated[.]" *Id*. (citation omitted) (emphasis supplied).

Many Mississippi AAPLOG physicians believe that referring or offering guidance to assist patients in obtaining an elective abortion would constitute material cooperation with the killing of one of their patients, which they cannot ethically do. R. 46, 50. But due to the uncertain validity of the elective abortion ban, they cannot express this viewpoint to a patient desiring an elective abortion—or to anyone else—for fear of discipline by private medical organizations, which would constitute independent grounds for state discipline by MSBML. R. 46–50, 155–56. Thus, regardless of whether this threatened discipline ever occurs, its specter causes a present, ongoing adverse effect by chilling AAPLOG physicians' speech in the here and now. R. 155–56.

This chilling effect begins with anti-conscience ethical standards that, despite arising from private medical organizations, are effectively mandatory for many AAPLOG physicians. One of those organizations is ABOG, the only body that provides board certification to obstetrician-gynecologists in the United States. R. 48. Many AAPLOG physicians have no choice but to maintain ABOG certification, as it is required by the Mississippi hospitals where they hold privileges. R. 48. To maintain board certification, ABOG requires physicians to comply with the ethical standards adopted by ACOG, a professional medical society for obstetrician-gynecologist. R. 34–35, 48. ACOG, in turn, has adopted Ethics Committee Opinion Number 385, which directs that physicians who have conscience-based objections to performing lawful abortions have an ethical duty to refer patients to abortion providers, and in emergencies, to perform lawful abortions.

R. 28–29, 47. Violation of this standard can result in discipline by ACOG and revocation of board certification by ABOG. R. 28, 46–47. However, in states where elective abortions are unlawful, refusal to refer for or perform them does not violate the standard. R. 33, 47.

Additionally, some AAPLOG physicians in Mississippi are members of AMA, the largest medical society in the nation. R. 49. AMA has adopted Code of Ethics Opinion 4.1.2, which directs that physicians who have conscience-based objections to performing lawful abortions should refer those patients to abortion providers. R. 40, 50. AMA has also adopted Medical Ethics Opinion 1.1.7, which directs that physicians who have conscience-based objections to referring patients for any lawful medical services should offer "impartial guidance" to patients on how to access those services. R. 49–50. Violation of these ethical standards can result in discipline by AMA. R. 39, 49. In states where elective abortions are unlawful, however, refusing to provide referrals or impartial guidance for them does not violate AMA's standards. R. 40, 50.

Mississippi law effectively incorporates the ethical standards of these private medical organizations. Under Mississippi's Medical Practice Act, physicians are subject to discipline by MSBML if they have disciplinary action taken against them by any professional medical association or society or if they lose their hospital privileges. R. 27; MISS. CODE ANN. § 73-25-83(c). Thus, if AAPLOG physicians are disciplined by ABOG, ACOG, or AMA, they are also subject to discipline by the State. R. 48–50. The justified fear this instills is not some recent invention. Long before the commencement of this action, AAPLOG had repeatedly and publicly relayed its members' well-founded fears to relevant decision makers. R. 29–32, 35–37.

The chancery court acknowledged that AAPLOG physicians have "genuine fears of State discipline." R. 705. It nonetheless found the physicians were not adversely affected, asserting that AAPLOG did not specifically allege that its members' speech had been chilled. R. 704. But that

was established by the evidence AAPLOG presented in its pleadings. R. 155–56. *See also* R. 745, 792, 804–5. The chancery court simply ignored it.

Relying on *Laird*, 408 U.S. at 13–14, the chancery court further concluded that allegations of "a subjective 'chill'" do not confer standing. R. 704. But the "subjective" chill described in *Laird* is one that a plaintiff claims to experience despite not being personally subject to the challenged law. *Laird*, 408 U.S. at 11, 13–14. *See also Speech First, Inc.*, 979 F.3d at 335 ("according to *Laird*, a plaintiff who belongs in a class subject to the challenged policies has standing[.]"). *Laird* simply does not prevent AAPLOG, whose members are subject to the Medical Practice Act, from having standing.

Below, the State relied on other arguments not adopted by the chancery court. First, the State contended that AAPLOG has misinterpreted the private medical organizations' policies. R. 437–39, 447. This Court, however, does not need to resolve that dispute. AAPLOG's interpretation of the policies is arguably correct, as demonstrated by the fact that ACOG has asserted before other courts that its policies require physicians to refer for abortions.[1] For standing purposes, Plaintiff's arguably correct interpretation controls. *See e.g. Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 392, 394 (1988). ("[T]he State argues that the statute's coverage is much narrower than plaintiffs allege[,]" but standing "is met here, as the law is aimed directly at plaintiffs, who, *if their interpretation of the statute is correct*, will risk criminal prosecution.") (emphasis supplied)).

[1] *See e.g.* Brief of *Amici Curiae* ACOG, *Nat'l Inst. of Fam. and Life Advocs v. Rauner*, 3:16-cv-50310, Doc. 46 at 15 (N.D. Ill. March 24, 2017) (*NIFLA II*) (Ethics Committee Opinion 385 is maintained, "*requiring* health care providers with conscience objections to make direct referrals to medical professionals who offer the needed services.") (emphasis supplied); Brief of *Amici Curiae* ACOG, *California by and through Becerra v. Azar*, 2019 WL 3208633 at * (9th Cir. 2020) (Ethics Committee Opinion 385 "routinely *require[s]* physicians to make appropriate referrals.") (emphasis supplied).

The State also argued that physicians' rights are shielded by the Mississippi Health Care Rights of Conscience Act, MISS. CODE ANN. § 41-107-1 ("HCRCA"). R. 440. However, when courts have interpreted other states' identical laws, ACOG has urged that the laws' protections are not absolute and do not prevent physicians from being required to refer for abortions in certain circumstances.[2] Mississippi courts have never interpreted or applied the HCRCA and, if they do, may adopt the construction urged by ACOG.[3] Moreover, even if the HCRA does protect against mandatory abortion referrals, that simply means that AAPLOG physicians are subject to another pair of dueling legal authorities which simultaneously protect and proscribe the same conduct. That would simply add another basis for standing. *See Ward*, 253 So. 3d at 266.

The State further resisted standing on the basis that, if state law does regulate or proscribe AAPLOG physicians' speech, it does so only indirectly. R. 619. However, a chilling effect on speech, "even though unintended, may inevitably follow from varied forms of governmental action" and thus confer standing. *Nat'l Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 461 (1958); *Harman v. Forssenius*, 380 U.S. 528, 540 (1965) ("Constitutional rights would be of little value if they could be indirectly denied.").

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[2] *NIFLA II* is a pending case involving an Illinois statute, the Health Care Right of Conscience Act ("HCRCA"), which was identical to Mississippi's HCRCA until the Illinois law was amended in 2017 to explicitly require abortion referrals. *See NIFLA II*, 2017 WL 11570803, at *6 (N.D. Ill. 2017). When physicians with conscience-based objections challenged the mandatory-referral amendments, ACOG argued that, even under the unamended law (identical to Mississippi's), physicians had been required to make abortion referrals. *See* Brief of *Amici Curiae* ACOG, *NIFLA II*, 3:16-cv-50310, Doc. 157 at 11 (N.D. Ill. December 3, 2019) (HCRCA was never intended "to make the right of religious refusal absolute"); Brief of *Amici Curiae* ACOG, *NIFLA II*, 3:16-cv-50310, Doc. 46 at 15 (N.D. Ill. March 24, 2017) ("The 2017 Amendments do not create new duties for religious objectors; they simply make [existing duties] clear[.]").

[3] The U.S. Supreme Court recently held that federal conscience laws protect doctors from being required to perform abortions. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 387 (2024). However, the Court's opinion did not address referrals. *Id*. The FDA maintained that the only way physicians could obtain protection under the federal conscience laws was by "*referring the woman to a non-objecting doctor*"—the very speech AAPLOG physicians oppose here. FDA Petition for A Writ of Certiorari, *Food & Drug Admin. v. All. for Hippocratic Med.*, 2023 WL 5979790, at *14 (U.S.) (emphasis supplied). Moreover, as noted, Mississippi's HCRCA has not been interpreted by any court.

Finally, the State maintained that, in statements contained in its briefs, MSBML has disavowed enforcement of the Medical Practice Act in the way that AAPLOG physicians fear. R. 437–39, 447. Those statements, however, are not binding on MSBML, its officers, or their successors in office and thus do not defeat standing. *Speech First, Incorporated*, 979 F.3d at 329; *Brady v. John Hancock Mut. Life Ins. Co.*, 342 So.2d 295, 300–305 (Miss. 1977).

3. AAPLOG Physicians Are Subjected to Compelled Speech.

"[C]ompelling individuals to speak a particular message," particularly one they are "devoted to opposing[,]" presumptively violates their right to free speech. *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 766 (2018) (*NIFLA I*) (statute requiring medical personnel at pro-life crisis pregnancy centers to "inform women how they can obtain state-subsidized abortions" likely violated the First Amendment). By effectively incorporating the anti-conscience ethical standards of private medical organizations, the Medical Practice Act requires physicians to refer patients for elective abortions and offer "impartial guidance" to assist patients in obtaining elective abortions—the very practice they are devoted to opposing. R. 27–29, 34–35, 40, 46–50; MISS. CODE ANN. § 73-25-83(c). Ordinarily, enactment of the elective abortion ban would have nullified these requirements, since they do not apply to unlawful abortions. R. 33, 38, 41. Because the ban directly conflicts with *Fordice*, however, the anti-conscience provisions remain potentially applicable and thus continue to compel AAPLOG physicians' speech. R. 27.

The chancery court concluded that, because no instance of a physician being driven by the Medical Practice Act to provide an abortion referral is alleged, the physicians have not been adversely affected. R. 704. But that is a misreading of the compelled speech doctrine. Even under stringent Article III standards, the mere existence of a law requiring individuals to speak a message inflicts constitutional harm. *NIFLA I*, 585 U.S. at 766. A plaintiff is therefore not required to allege that he has conformed his speech to the subject regulation. *Id*.

4. AAPLOG Physicians Face the Risk of State Discipline.

"[I]n specific contexts, a declaration of rights is available even though the plaintiff has not yet been harmed[.]" 2 Jeffrey Jackson *et al*., *Encyclopedia of Miss. Law* § 13:218 (3d ed.), Westlaw (database updated October 2024). One such context is an action that seeks review of a statute "even before the statute has been violated by the plaintiff[.]" *Id*. In that setting, government regulations that require or forbid some action by the plaintiff typically establish standing. *See e.g. State v. Wood*, 187 So. 2d 820, 822 (Miss. 1966) (unnecessary to wait to be fined or jailed to contest constitutionality of a statute); *Crook v. City of Madison*, 168 So. 3d 930, 935 (Miss. 2015) (property owner had standing to challenge ordinance requiring advance consent to inspections); *Pascagoula-Gautier Sch. Dist. v. Bd. of Supervisors of Jackson Cnty.*, 212 So. 3d 742, 749 (Miss. 2016) (school district and city had standing to challenge tax assessment where both had statutory duties adversely effected by it); *State v. Quitman Cnty.*, 807 So. 2d 401, 405 (Miss. 2001) (county had standing where challenged statute imposed financial duties on it).

If AAPLOG physicians refer a patient for an elective abortion—a practice which many oppose but face intimidation and pressure to engage in—they could face criminal prosecution as an accessory to a felony. R. 20; MISS. CODE ANN. § 41-41-45; MISS. CODE ANN. § 97-1-3. On the other hand, if AAPLOG physicians refuse to refer a patient for an elective abortion, they could face discipline by the private medical organizations, and in turn, be disciplined by the State. R. 20.

The chancery court nonetheless found that the threat of State discipline faced by AAPLOG physicians is not sufficient to confer standing. R. 703. That finding, however, rests on several errors involving the harms that may result from coerced referral and conscience-based non-referral.

First, the chancery court failed to address the threat of criminal penalties faced by AAPLOG physicians if they *do* provide a coerced referral. R. 702–3. Instead, the court laid out—

in only two sentences—it's asserted reasons for not confronting those harms. R. 702–3. The court first announced that "AAPLOG does not claim that the abortion ban adversely impacts its members." R. 703. For support, the court cited a statement in AAPLOG's briefing which merely says that, while AAPLOG "has experienced an adverse effect[,]" it has not been "discriminated against" by the ban. R. 394. At oral argument, AAPLOG's counsel clarified that this statement was simply intended to convey that, in principle, AAPLOG physicians support the ban, despite being adversely affected by it "as things currently stand." R. 815–16.[4]

The chancery court next asserted that the risks from referrals do not adversely affect AAPLOG physicians because they oppose abortion "and *many* refuse to perform abortions or refer patients for abortions." R. 703. (emphasis supplied). *Cf*. R. 46 (Affidavit of Donna Harrison, M.D.) ("*Many* of AAPLOG's Mississippi members are currently declining" to refer for elective abortions.) (emphasis supplied). But, as the court implicitly acknowledged, some AAPLOG physicians nonetheless remain vulnerable to sanction for providing a coerced referral. R. 703.

Aside from the two sentences discussed above, the chancery court did not confront referral-based harm *at all*. Reversal of the chancery court's order is warranted on that basis alone.

Turning to the dangers posed by non-referral, the chancery court found that, because MSBML is not alleged to have previously taken or threatened anti-conscience disciplinary action, the prospect of future harm is too speculative to confer standing. R. 703. The court relied on *Midsouth*, which explained that "[t]hough permissive, the standing requirements in Mississippi [] have limitations" when it comes to "speculative, future harm[.]" 384 So. 3d at 1232. But in *Midsouth*, this Court did not categorically reject standing for any future harm that lacks a prior

[4] *See also id*. at 816. (MR. RICE … "But as it is right now, my clients are prejudiced by the elective abortion ban because it directly addresses their conduct or is geared towards their conduct, and it imposes a severe criminal penalty. And, again, every lawyer in this room doesn't know what the law is right now on that.").

precedent. *Id*. Rather, the Court merely acknowledged that there are limits to standing and found that the harm alleged in that case strayed beyond those limits. *Id*. The harm faced by AAPLOG physicians, however, is nothing like the harm alleged in that case.

Midsouth involved a challenge by a public-school advocacy group to laws allowing private schools to apply for reimbursable grants to fund infrastructure projects. *Id*. at 1228. The funds at issue were federal funds that were never earmarked for educational purposes. *Id*. at 1231. Thus, by definition, the allocation of the funds to private schools could not have diverted education funds away from public schools. *Id*. The plaintiff alleged, however, "that somewhere down the road," the grants would adversely affect public schools by giving a "competitive advantage" to private schools. *Id*. Finding that this allegation involved "merely speculative, future harm[,]" the Court held that the advocacy group lacked standing, noting that even under Mississippi's permissive[5] standards, "threatened injury [has] its limitations[.]" *Id*. at 1231–32.

As a threshold matter, to the extent that the chancery court's invocation of *Midsouth* could be read to take aim at the harm left unaddressed in its order—punishment prompted by coerced referrals—there is no comparison between the two. AAPLOG does not allege that *government benefits* provided to *others* may harm its members *indirectly* through *competitive forces*. *Id*. at 1231. Rather, AAPLOG seeks a determination of the validity of "*criminal statutes*" that "*directly operate*" against *its members* in the event they are coerced into referring a patient for "an abortion that does not meet the statutory exceptions and conditions." *Doe v. Bolton*, 410 U.S. 179, 188

[5] The Intervenor Women—but not the chancery court—also urged below that this "permissive" standing rule does not apply here because AAPLOG does not seek review of "governmental action." R. 532. To be sure, the decisions of this Court often state that permissive standing is allowed for parties who seek review of "governmental actions[.]" *See e.g. Araujo*, 283 So. 3d at 77. But other descriptions of this more permissive standard have explained that it applies to plaintiffs who seek review of *"the constitutionality and/or* review of administrative or other government action[.]'" *Van Slyke*, 613 So. 2d at 875. (quotation omitted) (emphasis supplied). Moreover, here, "governmental action" would be satisfied by the future harm alleged by AAPLOG. *See Wood*, 187 So. 2d at 822 (unnecessary to wait to be fined or jailed).

(1973) *abrogated on other grounds by Dobbs*, 597 U.S. 215 (2022) (finding Article III standing) (emphasis supplied). *See also Texas v. Becerra*, 623 F. Supp. 3d 696, 718 (N.D. Tex. 2022) (finding Article III standing because "AAPLOG doctors are regulated by [the challenged law] and face dire penalties under it.").

Refusal to refer likewise carries a risk of future harm that is vastly different from the harm alleged in *Midsouth*. The future harm alleged in that case was contingent on the unfettered choices of thousands, if not tens of thousands of people—among other factors. The plaintiff contended that a competitive advantage would emerge favoring private schools, that those schools would then "draw[] students away from public schools," and this would ultimately lead to "less funding for those public schools." *Midsouth*, 384 So. 3d at 1226 1230–31. All of this would have depended on the choices and capacities of public schools, competing private schools, parents, students, teachers, and administrators—in addition to even more indeterminate factors like the future conditions of the economy, housing markets, property values, ad valorem tax receipts, crime rates, and the like.

Here, in contrast, the Medical Practice Act directly imposes on AAPLOG physicians a statutory duty to comply with the ethical policies of the medical organizations of which they are members (involuntarily in the case of AAPLOG physicians). MISS. CODE ANN. § 73-25-83(c). To be sure, the discipline feared by AAPLOG physicians would be a new development in the pressure tactics they have long faced. But the causal chain between the law at issue and the asserted harm is far less attenuated here than in *Midsouth*. AAPLOG physicians could be subject to discipline from the actions of one patient and one private medical organization—not tens of thousands of people. Even under Article III standards, the U.S. Supreme Court regularly accepts similar cases. *See e.g. Doe v. Bolton*, 410 U.S. at 188 (standing to challenge elective abortion ban despite enforcement depending on a patient requesting an unlawful, elective abortion.).

Moreover, if state discipline occurred, it would not be an indirect economic harm at the hands of private competitors. It would be a personally and professionally ruinous sanction delivered directly from an arm of the State. That is a risk that AAPLOG physicians should not be required to take. *See e.g. Wood*, 187 So. 2d at 822 (unnecessary to wait to be fined or jailed).

The Intervenor Women—but not the chancery court—have also resisted AAPLOG's standing by contending that any alleged adverse effect must result "from the conduct of the defendant[,]" which they claim AAPLOG has not alleged. R. 372. This Court's formulation of the standing requirement often—but not always—recites this phrase. *Compare Araujo*, 283 So. 3d at 77 (adverse effect "from the conduct of the defendant") *with Butler*, 338 So. 3d at 606 (adverse effect "from the implementation of" the challenged law). Rule 57 requires that declaratory judgment actions be filed against the defendant for whom "the coercive legal remedy" for the future harm "would be against[,]" if it were realized. *S & F Pub. Co. v. Gulf Pub. Co.*, 760 So. 2d 38, 41 (Miss. Ct. App. 2000); *see also Desoto Times Today v. Memphis Pub. Co.,* 991 So.2d 609, 612 (Miss. 2008). Here, the alleged future harm—state discipline—if realized, would come from the conduct of MSBML. *See Wood*, 187 So. 2d at 822 (unnecessary to wait to be fined or jailed). Consequently, the coercive legal remedy for realized harm would be against MSBML.

Moreover, under *Butler*'s formulation of the standing requirement, the "conduct of the defendant" is irrelevant in a pre-enforcement challenge such as this one. *See Butler*, 338 So. 3d at 606 ("from the implementation of" the challenged law.) The implementation of the ban—resulting in irreconcilable legal directives—caused the adverse effect. That is the only causal link required. *Butler*, 338 So. 3d at 606. Even if that were not so, the requisite actor whose "conduct" caused the uncertain implementation of the ban would be the State of Mississippi. And MSBML is an "alter

ego of the state[,]" and thus "the state is the real party in interest" in suits against MSBML. *See e.g. Williams v. Morgan*, 710 F. Supp. 1080, 1083–85 (S.D. Miss. 1989).

B. Mississippi Law Allows Private Citizens to Raise Constitutional Conflicts That Are Otherwise Likely to Escape Judicial Review.

As an alternative to adverse-impact standing, Mississippi law allows a "private citizen" to seek review of a statute where the statute "would otherwise escape challenge[,]" even if the citizen has "alleged no injury or threat of an injury." *Green v. Cleary Water, Sewer & Fire Dist.*, 17 So. 3d 559, 569 (Miss. 2009) (quotation omitted). While this Court recently abandoned the "colorable interest" standard in *Reeves v. Gunn*, 307 So. 3d 436, 438-39 (Miss. 2020), the private citizen standing doctrine remains intact. *See id*. at 445 (J. Maxwell, concurring) (noting that the "colorable interest" standard did "not present the scenario envisioned by" private citizen standing.). The chancery court wrongly asserted, however, that subsequent *dicta* contained in a mere footnote of this Court's opinion in *Midsouth* implicitly overruled a body of law recognizing private citizen standing. R. 705 (citing *Midsouth*, 384 So. 3d at 1232, n.2; *id*. at 1237 (King, J., dissenting)).

In his dissenting opinion in *Midsouth*, Justice King observed that the Court had long "preserved liberal standing requirements when challenging governmental actions, because 'how else may constitutional conflicts be raised[?]'" 384 So. 3d at 1237 (King, J., dissenting) (quoting *Van Slyke*, 613 So. 2d at 875). The rhetorical question posed by Justice King quoted from *Van Slyke*, one of the seminal cases addressing private citizen standing. *Id*. The *Midsouth* majority, in Footnote 2 of its opinion, responded that the Court was "not tasked to determine what individual would have standing aside from [the plaintiff] but rather, whether [the plaintiff] ha[d] standing in the present case." *Id*. at 1232, n.2.

This *dicta* in *Midsouth*, which the majority relegated to a footnote of the opinion, did not overrule an entire body the Court's precedent without even bothering to say so. For starters, it is

axiomatic that "long established legal interpretations ought not lightly be disturbed." *Molpus*, 578 So. 2d at 634 (Miss. 1991). The private citizen standing doctrine is based on long-standing precedent, rooted in cases spanning a century. *See e.g. Miller v. Lamar Life Insurance Company*, 158 Miss. 753, 131 So. 282, 286 (1930) (no adverse-impact required where "there is no probability of the validity of the statute being challenged by one of the class discriminated against[.]").

More importantly, the *Midsouth dicta* is perfectly consistent with the private citizen standing doctrine. The mere existence of other individuals who would have standing does not prevent a private citizen from seeking judicial review, so the *Midsouth* majority did not need to decide that question. *See Araujo v. Bryant*, 283 So. 3d 73, 78, n. 2 (Miss. 2019); *Van Slyke*, 613 So.2d at 875. Rather, while no specific test has been articulated, the Court has applied the doctrine in limited circumstances under which it finds that a statute "would otherwise escape challenge," *Green*, 17 So. 3d at 569, including when the statute is not being challenged in other pending litigation and presents a question of law that has remained dormant for a prolonged period. *See Araujo*, 283 So. 3d at 78, n. 2; *Van Slyke*, 613 So.2d at 875.

For example, *Araujo* involved a challenge to the Mississippi Charter Schools Act of 2013 brought by taxpaying parents of children attending public schools. 283 So. 3d at 78. Two public school districts also "unquestionably [had] standing" to challenge the Act. *Id*. at 78, n. 2. However, in the six years since the Act's adoption, neither of those districts had filed suit. *Id*. This Court held that, in addition to having standing as taxpayers, the parents also had standing as private citizens, noting that if they were not afforded standing, there was "'no probability of the statute being challenged[.]'" *Id*. at 78 (quoting *Van Slyke*, 613 So.2d at 875).

Similarly, in *Van Slyke*, a private citizen challenged the composition of the Board of Trustees of State Institutions of Higher Learning. 613 So.2d at 875. Any university "student [or]

faculty member" would have had standing to bring the same challenge. *Id*. But no such plaintiff had filed suit since the Board's establishment in 1944, and the private citizen was afforded standing so that the "constitutional conflict[] [could] be raised." *Id*. at 875 (quotation omitted).

Here, the same considerations counsel for AAPLOG physicians to be afforded standing as private citizens. First, AAPLOG's action is the only one currently seeking review of the elective abortion ban. A separate challenge was filed by the state's only abortion clinic on June 27, 2022, hours after the Mississippi Attorney General issued a determination required to implement the ban. *See* Petition for Interlocutory Appeal at 1–2, *Jackson Women's Health Organization v. Dobbs*, 2022-M-00681-SCT (Miss. 2022) (No. 2022-1976). However, the clinic later voluntarily dismissed its suit and ceased its operations. *See* Notice of Dismissal at 1, *Jackson Women's Health Organization v. Dobbs*, 2022-M-00681-SCT (Miss. 2022) (No. 2022-2089). As a result, there currently exist no abortion clinics in Mississippi that could challenge the elective abortion ban.

The chancery court noted that pregnant women who desire abortion services and their physicians would have standing. R. 705. But, as previously noted, there mere existence of other individuals who would have standing does not preclude the application of private citizen standing. *See Araujo*, 283 So. 3d at 78, n. 2; *Van Slyke*, 613 So.2d at 875. It is also unlikely that pregnant women will file suit. As this Court has long recognized, there are "several obstacles to a woman asserting her own right to have an abortion, including the desire to keep her decision private and the limited time for obtaining an abortion compared to the time consumed in court proceedings." *Fordice*, 716 So. 2d at 663. The availability of abortion in other states further reduces the likelihood that either pregnant woman or their physicians will pursue litigation.

That may explain why the question presented here has laid dormant for a prolonged period. The elective abortion ban took effect on July 7, 2022. R. 694. This was a watershed change in

Mississippi law, purporting to override what many had come to view as a right that was "central" to a woman's "capacity to chart her life's course" and so "interwoven [into] the fabric of our constitutional law" that it "defin[ed] what it means to be an American." *Dobbs*, 142 S. Ct. at 2320–2327 (Breyer, J., dissenting). If any individual was willing and able to challenge this seismic shift in state law, they would have done so immediately. And yet, other than the since-abandoned suit by the now-shuttered abortion clinic, no one has brought a challenge to the ban.

Butler offers a telling illustration of the dangers posed when developments in the law give rise to a constitutional question of fundamental importance which, for whatever reason, is only presented to the courts after decades of dormancy. 338 So. 3d at 603. In that case, a census resulted in a reduction of Mississippi's congressional representation, which raised questions about the constitutionality of Mississippi's ballot initiative procedures. *Id*. Despite those questions, a challenge was not brought for twenty years. *Id*. When a challenge to the validity of a ballot initiative was finally presented, several other initiatives had already been approved under the questionable procedures. *Id*. Nevertheless, this Court found that it had a duty to void the challenged initiative, which had been approved by a "strong, if not overwhelming" majority of Mississippi's voters. *Id*. at 602. The Court's decision also implicated the validity of several other ballot initiates long-since approved by the voters. *Id*. at 603.

Here, judicial resolution after a prolonged period of dormancy would risk equally widespread repercussions. If, decades from now, this Court holds that *Fordice* is still controlling law, then the constitutional rights of countless Mississippians would have been violated during the intervening years. Conversely, if the Court later overrules *Fordice*, then AAPLOG physicians—and everyone else—would have been needlessly subjected to years of legal uncertainty about an issue of fundamental importance.

The private citizen standing doctrine does not require unfettered access to the courts for citizens to challenge any law they disagree with. This Court has applied the doctrine in limited circumstances under which it finds that a statute "would otherwise escape challenge[.]" *Green*, 17 So. 3d at 569. But if there were ever a case in which individuals should be afforded standing as private citizens to raise a constitutional conflict, this is it.

II. AAPLOG's Claim is Ripe.

The ripeness doctrine is a prudential consideration which generally requires that, before a suit is commenced, a "cause of action must exist and be complete" and that the suit involve "'controversies that are definite and concrete[.]'" *Swaney v. Swaney*, 962 So. 2d 105, 107–08 (Miss. Ct. App. 2007) (quotation and citations omitted). However, "Mississippi made an important refinement of its ripeness doctrine in 1982" with the promulgation of Rule 57. 3 Jeffrey Jackson *et al*., *Encyclopedia of Miss. Law* § 19:212 (3d ed.), Westlaw (database updated October 2024). Rule 57 authorizes declaratory judgment actions when there is either "uncertainty *or* controversy" concerning the parties' rights or obligations, "*regardless* of whether further relief is or could be claimed." MISS. R. CIV. P. 57 (emphasis supplied).

As a result, the requirements of an existing cause of action and an actual controversy only apply to claims "*aside* from those claims brought under Rule 57." *Swaney*, 962 So. 2d at 108 (emphasis supplied). Instead, Rule 57 actions are ripe for review so long as a judgment would "terminate the uncertainty or controversy giving rise to the proceeding." Miss. R. Civ. P 57.

The chancery court nonetheless held that declaratory judgment actions must involve an "actual controversy." R. 706. That was error. For support, the court quoted *Greenville Pub. Sch. Dist. v. W. Line Consol. Sch. Dist.*, 575 So. 2d 956 (Miss. 1990). R. 706. That case was decided in 1990 and quoted the then-existing Committee Note to Rule 57 for the same proposition. *See Greenville Pub. Sch. Dist.,* 575 So. 2d at 966. However, in 2014, that Committee Note was repealed

and replaced with a new Advisory Committee Note that does not include the incorrect suggestion of an "actual controversy" requirement. *See In Re: The Rules of Civil Procedure*, 89-R-99001-SCT (Miss. June 12, 2014). That revision accurately reflected Rule 57's purpose. *See Jordan v. McAdams*, 85 So. 3d 932, 935 (Miss. Ct. App. 2012) ("A declaratory judgment seeks relief from uncertainty, *before* wrongdoing has actually occurred.") (citation omitted) (emphasis supplied).

The former Committee Note was not binding authority on the courts to begin with. *Hicks v. State*, 294 So.3d 1191, 1196 (Miss. App. 2019). It certainly is not binding after its repeal. As with statutory modifications, the revision of the comments to Rule 57 had "the same effect as though the [comment] had all the while previously existed in the same language as that contained in the modified [comment]." *Cf. Beatty v. State*, 627 So.2d 355, 357 (Miss. 1993). Consequently, post-2014 cases correctly omit any suggestion that an "actual controversy" is required, as opposed to "uncertainty *or* controversy." *See e.g. Putney v. Sanford*, 282 So.3d 627, 631 (Miss. App. 2019).

The chancery court next purported to apply a test employed by the United States Supreme Court to evaluate ripeness, which considers: (1) whether the issue is fit for judicial review, and (2) whether denial of judicial review would impose a substantial hardship on the petitioners. R. 706–07 (citing *Susan B. Anthony List*, 573 U.S. at 167–68). As a threshold matter, the chancery court's resort to Article III caselaw is a testament to the fact that current Mississippi law does not, in fact, impose this test in Rule 57 cases. But even if it did, the chancery court misapplied the test.

First, the chancery court held that declaratory judgment actions involving contingent future events are categorically not ripe for adjudication. R. 706. Then, applying that holding, the court found that AAPLOG's claim is "unfit for review" because state discipline of AAPLOG physicians is contingent on discipline by a private medical organization. R. 706–07. But that conclusion was fundamentally flawed. For starters, it was based on a false premise, due to the chancery court's

failure to follow this Court's implicit finding in *Ward*. R. 704. The deprivation of AAPLOG physicians' right to fair notice of prohibited conduct is *not* contingent on future events. It is an adverse effect *per se*. *See Ward*, 253 So. 3d at 266; *see also Molpus*, 578 So. 2d at 634 (denial of right was adverse effect *per se*).

Moreover, the court's holding that "contingent future events" cannot support a ripe claim relied—again—on a federal case applying stringent Article III standards. R. 706. (quoting *Texas v. U.S.*, 523 U.S. 296, 300 (1998) (internal quotation omitted). Those standards are not controlling here. *Midsouth*, 384 So. 3d at 1230. And under Mississippi law, a Rule 57 case is not unfit for review simply because the alleged harm is contingent on other events. *See e.g. Harrison Cnty. v. City of Gulfport*, 557 So. 2d 780, 787–88 (Miss. 1990) (standing despite adverse effect being contingent on the U.S. Attorney General refusing to preclear a statutory repeal under the Voting Rights Act of 1965, and Court having "no way of knowing whether" preclearance would occur).

The chancery court also found that AAPLOG's claim is "unfit for review" because the harm it alleges is "speculative," given that AAPLOG is not aware of any instances of the private medical organizations or MSBML taking or threatening anti-conscience disciplinary action. R. 707. But again, the court's reasoning was based on a faulty premise, due to its failure to follow *Ward*. R. 704. The harm caused by the lack of fair notice here is not "speculative"—it is an adverse effect *per se*. *See Ward*, 253 So. 3d at 266; *Molpus*, 578 So. 2d at 634.

Further, Mississippi law does not require harm to be imminent or inevitable to be fit for judicial review. Indeed, Mississippi's jurisprudence abounds with cases in which the probability of harm being realized was nonobvious or even nonexistent. *See e.g. Harrison Cnty.*, 557 So. 2d at 787–88 (reviewable despite "no way of knowing whether" adverse effect would occur); *Desoto Times Today,* 991 So. 2d at 612 (reviewable for mere possibility that newspaper was unqualified

to publish legal notices); *City of Jackson v. Pittman*, 484 So. 2d 998, 999 (Miss. 1986) (reviewable for mere possibility that city's ad valorem tax rebate was *ultra vires*); *Van Slyke*, 613 So. 2d at 880 (reviewable despite fact that "alleged injury was rendered moot").

Turning to the second prong of the Article III ripeness test, the chancery court found that, because no known anti-conscience disciplinary action has been taken by the private medical organizations or MSBML, denial of judicial review would not "impose a substantial hardship" on AAPLOG physicians. R. 707. But, as the chancery court itself acknowledged, AAPLOG physicians have "genuine fears of State discipline" because of the conflicting legal directives they are personally subject to. R. 705. Forcing them to continue living under that Damoclean sword does impose a real and substantial hardship on them. R. 155–56, 745, 792, 804–5.

In short, the chancery court's invocation and misapplication of irrelevant legal standards runs counter to the caselaw construing Rule 57 since its adoption in 1982, which bears out that state law does not impose rigid ripeness requirements in declaratory judgment actions. Especially in actions concerning the validity of state laws—one of Rule 57's most prominent uses—which typically present pure legal questions requiring no factual development. *See* 3 Jeffrey Jackson *et al*., *Encyclopedia of Miss. Law* §§ 19:212–13 (3d ed.), Westlaw (database updated October 2024).

Indeed, the only apparent instance in which Rule 57 actions questioning the validity of state laws have been found not ripe for review was in a related pair of actions challenging ballot initiatives that had not been approved by the voters and thus were not even laws yet. *See Speed v. Hosemann*, 68 So.3d 1278 (Miss. 2011); *Hughes v. Hosemann*, 68 So.3d 1260 (Miss. 2011). Still, the Court made clear that "when the laws *have been passed*" an "inquiry can *then* be made" regarding their validity. *Speed*, 68 So.3d at 1280 (quotation omitted) (emphasis original) (alteration removed). And even then, legal commentators maintained that the cases had presented ripe claims

because "a preelection declaration would have "terminate[d] the uncertainty[.]" 3 Jeffrey Jackson *et al*., *Encyclopedia of Miss. Law* § 19:213 (3d ed.), Westlaw (database updated October 2024).

III. This Court Should Overrule *Fordice* and Validate the Elective Abortion Ban.

The holding of *Fordice* represents an indefensible abuse of judicial power. The decision rests on irredeemably flawed reasoning, departs from this Court's long-established principles of constitutional construction, and causes great harm to the people, the coordinate branches of government, and the judiciary of this State. This case presents a justiciable claim, which this Court is empowered to rule on. It should overrule *Fordice* and affirm the validity of Mississippi's elective abortion ban.

A. This Court May and Should Rule on the Merits.

The pure legal question presented in this case—whether the Mississippi Constitution protects a right to abortion—can only be authoritatively resolved by this Court. Remand would serve no purpose. And this action meets all requisites for adjudication on the merits by this Court.

1. Precedent Supports Declaratory Judgment In Lieu of Remand.

This Court is empowered to rule on the merits. *See Fordice v. Bryan*, 651 So. 2d 998, 1001, n.1 (Miss. 1995), *overruled on other grounds by Reeves v. Gunn*, 307 So. 3d 436 (Miss. 2020) (The appellate court "'may and should exercise its independent judgment on the propriety of granting declaratory relief" and "has a free hand in granting such judgment as it considers proper, instead of reversing for some minor error.'") (quotation omitted); *see also White v. Gautier Utility District of Jackson County, Mississippi*, 465 So.2d 1003, 1015 (Miss. 1985) (holding legislation constitutional on review of trial court order dismissing declaratory judgment action).

2. Validation Actions Are Authorized by Rule 57.

As a practical matter, declaratory judgment actions often seek to invalidate a statute. However, nothing in the plain language of Rule 57 limits it to this use. To the contrary, the Rule

states that litigants may pose "any question" of validity that arises about a statute. Miss. R. Civ. P. 57(b). Moreover, this Court has confirmed that Rule 57 actions may seek a declaration affirming the validity of a statute. *See Alexander v. State By & Through Allain*, 441 So. 2d 1329, 1334 (Miss. 1983); *Molpus*, 578 So. 2d at 631 (Miss. 1991); *Pittman*, 484 So. 2d 998, 999 (Miss. 1986).

3. Adversarial Presentation of the Issues Is Preserved.

The chancery court briefly asserted that this action lacks an "actual antagonistic interest between the parties." R. 708. Though the court did not elaborate, it may have been suggesting that the case lacks adversarial presentation because the State agrees with AAPLOG on the constitutional issue. However, to the extent the court reached that conclusion, the Women Intervenors' participation resolves any such concern. *See e.g. I.N.S. v. Chadha*, 462 U.S. 919, 931 n. 6 (1983) ("[C]oncrete adverseness" was ensured by intervention of a party "defend[ing] the constitutionality" of the challenged statute, even though the plaintiff and the defendant agency agreed that the statute was unconstitutional.); *U.S. v. Windsor*, 570 U.S. 744, 745 (2013) (A "'friendly, non-adversary, proceeding' [regarding] the constitutionality of [a] legislative act" can be entertained so long as "adversarial presentation of the issues is assured by the participation of *amici curiae* prepared to defend with vigor.") (quotation omitted).

4. Declaratory Judgment Would Terminate the Uncertainty.

Courts may forgo declaratory judgment where it "would not terminate the uncertainty or controversy giving rise to the proceeding." MISS. R. CIV. P. 57(a). Here, if the elective abortion ban's validity is affirmed, AAPLOG physicians will have certainty that the elective abortion ban's criminal penalties are enforceable. They will also know that the Medical Practice Act's compelled compliance with industry anti-conscience standards is unenforceable. R. 33, 38, 41; s*ee Mississippi Department of Corrections v. Cook*, 210 So.3d 965, 967 (Miss. 2017) (even under former Chevron

deference, agency statutory interpretations were not upheld if they were "not in accordance with law."). Any uncertainty that may persist regarding the private medical organizations does not affect the availability of declaratory judgment. "Not all issues need be resolved, however, 'as long as one or more legal issues'" are capable of resolution, the court "'generally ought to hear and adjudicate the case[.]'" *Hall v. Bowman*, 749 So. 2d 182, 184 (Miss. Ct. App. 1999) (quotation omitted).

5. The Exhaustion Doctrine Does Not Apply to This Action.

The exhaustion doctrine does not apply to this action. *See e.g. Warren v. Mississippi Workers' Compensation Com'n*, 700 So.2d 608, 618 (Miss. 1997) ("plaintiffs were not required to have exhausted [claims] through the administrative process" because "the Commission did not have jurisdiction to grant the relief that was requested in this case: a declaration that the workers' compensation scheme was unconstitutional[.]").

6. Constitutional Avoidance Is Not Warranted.

The parties' disagreement about the scope of conscience protection afforded by Mississippi's HCRCA does not warrant constitutional avoidance, for several reasons. First, the declaration AAPLOG seeks would provide more relief to its members, as it would not only prevent state discipline, but would also have the practical effect of preventing discipline by the private medical organizations, whose ethical guidelines do not apply to unlawful abortions. A declaration regarding the HCRCA could not provide that benefit.

Moreover, this Court has held when the very "purpose for which the suit was brought was to test the [constitutional] question[,]" the court may forgo constitutional avoidance. *State ex rel. Collins*, 64 So. 241, 257 (Miss. 1914). Thus, even aside from the broader relief afforded by a declaration regarding the elective abortion ban, this Court's precedent supports resolution of the constitutional question here.

Finally, as legal commentators have counseled, "[w]here a point of constitutional law is not clear or where prior decisions may be in apparent conflict or decided in a prior era, there may be practical benefit from the court deciding the point, particularly where the point has been properly preserved in the courts below[.]" 3 Jeffrey Jackson *et al*., *Encyclopedia of Miss. Law* § 19:41 (3d ed.), Westlaw (database updated October 2024). The great magnitude of the constitutional question, its present state of dormancy, and the current incoherence of a criminal statue carrying dire consequences further counsel against constitutional avoidance here.

B. The Stare Decisis Factors Weigh in Favor of Overruling *Fordice*.

The doctrine of stare decisis holds that a former decision "should not be departed from, unless the rule therein announced is not only manifestly wrong, but mischievous." *Forest Prod. & Mfg. Co. v. Buckley*, 107 Miss. 897, 899, 66 So. 279 (1914). However, "[s]tare decisis 'is flexible enough to allow the Court to admit change . . . where the previous rule of law would perpetuate error and wrong would result if the decisions were followed.'" *Reeves*, 307 So. ar 438 (quotation omitted) (emphasis removed). Stare decisis is at its weakest in matters of constitutional interpretation because "'the ultimate touchstone of constitutionality is the Constitution itself, not what [the Justices have] said about it.'" *Molpus*, 578 So. 2d at 634 (quotation omitted) (alteration original). "One accepted ground for judicial overruling of a demonstrably erroneous prior constitutional interpretation is that, across the years, it has produced great and sustained harm[.]" *Id*. at 635.

Here, all the factors weigh in favor of overruling *Fordice*. First, *Fordice* erroneously held that the Mississippi Constitution protects a right to abortion. No provision of the Constitution makes any mention of abortion, and Mississippi's history and precedent make clear that its Constitution does not protect abortion.

Additionally, *Fordice* has produced great and sustained harm. As the U.S. Supreme Court has recognized, the exercise of the right announced in *Fordice* "terminates 'life or potential life.'" *Dobbs*, 597 U.S. at 290 (quotation omitted). And the "abuse of judicial authority" by *Fordice* denies "the people and their elected representatives" their rightful "authority to regulate abortion" in pursuit of numerous legitimate interests. *Id*. at 231, 292. It also undermines the legitimacy of the judiciary. *See Chevron U.S.A. Inc. v. State*, 578 So. 2d 644, 649 (Miss. 1991).

Finally, failure to overrule *Fordice* would perpetuate error and wrong would result if the decision were followed. This fact is self-evident, given that the harms produced by *Fordice* are a necessary effect of its holding and cannot be avoided if *Fordice* continues to be followed.

C. The Mississippi Constitution Does Not Protect a Right to Abortion.

Fordice relied on neither the text nor the history of the State Constitution, but on borrowed reasoning from federal decisions that have now been repudiated. Had the *Fordice* majority followed this Court's well-established principles of constitutional construction, it would instead have unavoidably concluded that Mississippi's Constitution does not protect a right to abortion.

1. *Fordice* Rests on A Mere Echo of Since-Repudiated Federal Cases.

Mississippi law does not permit rights to be mindlessly read into our Constitution based on trends in the U.S. Supreme Court's interpretation of the federal Constitution. *See e.g. Penick v. State*, 440 So. 2d 547, 552 (Miss. 1983) ("The words of our Mississippi Constitution are not balloons to be blown up or deflated every time, and precisely in accord with the interpretation the U.S. Supreme Court, following some tortuous trail, is constrained to place upon similar words in the U.S. Constitution."). *Fordice* nonetheless grounded its analysis entirely on *Casey*'s "undue burden" standard and *Roe*'s vision of privacy. *See Fordice*, 716 So. 2d at 645, 651, 655 (deciding to "adopt the wellreasoned decision in *Casey*," which updated "[t]he monumental United States Supreme Court abortion case, *Roe v. Wade*[.]").

As a result, the *Fordice* Court's decision rests on a mere echo of fatally flawed reasoning by the U.S. Supreme Court, which has since thoroughly repudiated its error. In *Dobbs*, the U.S. Supreme Court was unequivocal: *Roe* was "egregiously wrong," and *Casey* merely "perpetuated its errors." 597 U.S. at 268, 294. But *Dobbs* did just abandon those decisions—it thoroughly demonstrated the logical flaws and factual inaccuracies underpinning them. *Id*. at 2249–56. In doing so, *Dobbs* not only overruled federal precedent but also removed any room for doubt that *Ford*'s foundation was unsound.

2. The State Constitution's Plain Text Makes No Mention of Abortion.

The Mississippi Constitution is "the supreme law of our state" and an "expression of the will of [the] people[.]" *Pitts*, 405 So. 3d at 1252. It bends for none but binds all three branches of government—including the judiciary. *Chevron*, 578 So. 2d at 648–49. If the people wish to secure new rights, they may do so through amendment. *Id*. at 649. "Perhaps the most fundamental concept of constitutional superiority is that constitutional rights cannot be created by . . . judicial action." *Id*. That principle preserves the rule of law—and the legitimacy of the judiciary. *See id*.

Any claim of a constitutional right to abortion must begin with the plaint text of the Constitution itself, giving its words and terms "their 'usual and popular signification and meaning[.]'" *Butler*, 338 So. 3d at 607 (quoting *Town of Sumner v. Ill. Cent. R. Co.*, 111 So. 2d 230, 233 (Miss. 1959)). If that meaning is ambiguous, courts may "look to the history of the times and examine the state of things in existence when the Constitutional provision in question was adopted, in order to ascertain the mischief sought to be remedied." *McCaskill v. State*, 227 So. 2d 847, 850 (Miss. 1969). Here, that claim flounders under either method.

The lone textual hook in *Fordice*—Article 3, Section 32—cannot sustain the right the Court claimed to find. That section says nothing about abortion. It states: "The enumeration of rights in

this constitution shall not be construed to deny and impair others retained by, and inherent in, the people." Miss. Const. art. III § 32 (1890). Nor does Section 32 allow courts to "take liberties[.]" with it. *Butler*, 338 So. 3d at 607.

3. Mississippi's History Negates the Existence of a Right to Abortion.

In addition to lacking any textual basis for concluding that Section 32 provides a right to abortion, *Fordice* ignored Mississippi's long and unbroken history of treating abortion, absent necessity to save the mother's life, as criminal. *McCaskill*, 227 So. 2d at 850 (courts may consider the "state of things in existence when the constitutional provision in question was adopted"). That tradition spans both a statute prohibiting the destruction of a "quick child" in existence at the time of the Convention, and a near-identical prohibition that was brought forward shortly after the Convention which, with minor amendments, persisted up until the time that *Fordice* was decided. *See* MISS. REV. CODE § 2884 (1880); MISS. CODE §1157 (1892).

The framers of the Constitution also made plain that that there was no abortion right. They drafted Section 274, which directed that only statutes "not repugnant" to the Constitution should be brought forward in a new Code. Miss. Const. art. XV § 274 (1890). Thus, when the framers immediately recodified the criminal prohibition of abortion, they left no question about their view of its constitutional validity. *See Ryals v. Pigott*, 580 So.2d 1140, 1153 (Miss. 1990) ("statutes enacted in temporal proximity to constitutional utterances inform the meaning of the latter.").

Further, Mississippi's Convention-era criminal prohibition of abortion reflected the widespread consensus of the time among other states and legal commentators that performing abortion was criminally punishable. *See* 1 Wharton's Criminal Law §§783-795 (1932 ed.); 11 IV Cooley's Blackstone § 198 at 1364 (1883). This policy was designed both to protect unborn life and to uphold ethical standards in medicine. *Id*.

In short, the historical record leaves no room for the claim that the Constitution of 1890, at the direction of the people of Mississippi, enshrined a right to abortion. If the Constitution had reversed Mississippi's "long-settled public policy" of criminalizing the performance of abortion, "[i]t could not have remained a secret" until its discovery by the *Fordice* Court. *See State Teachers' Coll. v. Morris*, 144 So. 374, 379 (1932).

4. This Court's Precedents Refute the Existence of a Right to Abortion.

This Court long confirmed the unsurprising fact that the language of Section 32 does not convey a right to abortion. Prior to *Fordice*, the Supreme Court repeatedly signaled approval of the criminal sanctions for abortion. *See, e.g. McCaskill*, 227 So.2d at 850 (upholding a criminal abortion statute); *Mississippi State Board of Health v. Johnson*, 19 So.2d 445, 448 (1944) ("[l]acking lawful justification for the act, it mattered not whether it was done by giving medicine or using instruments—it was abortion"), *appeal dismissed*, 324 U.S. 822 (1945); *Smith v. State*, 112 Miss. 802, 73 So. 793 (1916) *overruled on other grounds by Ladnier v. State*, 155 Miss. 348, 124 So. 432, 432 (1929) (noting with approval that "statutes of the state" criminalize abortion).

Other decisions of this Court likewise confirm the absence of an abortion right. Both before and after the Constitution's adoption, this Court has recognized certain rights of unborn children. For example, a child that was conceived but not yet born at the time of the decedent's death has the right to inherit property. *Harper v. Archer*, 12 Miss. 99, 108-09 (1845); *Scott v. Turner*, 102 So. 467,468 (Miss. 1925). Any supposed right to abort an unborn child would plainly be irreconcilable with the Court's recognition of that unborn child's legal rights.

Further, while a right to privacy has been recognized under Section 32, abortion does not fit within that right. As *Dobbs* recognized, abortion differs in kind from other privacy-related choices—such as contraception, family decisions, or medical autonomy—because it destroys "'life

or potential life[,]'" which the State has a significant interest in protecting. *Dobbs*, 597 U.S. at 290 (quotation omitted). *See also e.g. PHE, Inc. v. State*, 877 So. 2d 1244, 1249 (Miss. 2004) (access to sexual devices is not comparable to contraceptives or medical autonomy and thus not protected by Section 32's "right of privacy.").

* * *

Fordice was wrong the day it was decided. It invented a right that appears nowhere in Mississippi's Constitution, ignored this State's constitutional history and precedent, and deprived the people of their sovereign right to protect unborn human life. This Court should correct that error, restore constitutional fidelity, and affirm the validity of Mississippi's elective abortion ban.

CONCLUSION

This Court should reverse the chancery court's judgment and render judgment declaring that *Pro-Choice Mississippi v. Fordice*, 716 So. 2d 645 (Miss. 1998) is overruled and that MISS. CODE ANN. § 41-41-45 is valid under the Mississippi Constitution.

CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing was electronically filed with the Clerk of this Court using the Court's MEC system, which transmitted a copy to all counsel of record.

A hard copy of the foregoing has also been mailed to the following person via U.S. Mail:

Hon. Crystal Wise Martin
Chancery Court Judge
Fifth Chancery District
P.O. Box 686
Jackson, MS 39205

This the 23rd day of June, 2025.

/s/ Aaron R. Rice
AARON R. RICE
Counsel for Appellant

APPENDIX

SECTION 32. Construction of enumerated rights.

The enumeration of rights in this constitution shall not be construed to deny and impair others retained by, and inherent in, the people.

SOURCES: 1817 art I; 1832 art I; 1869 art I § 32.

ARTICLE 4
LEGISLATIVE DEPARTMENT

SECTION 33. Composition of Legislature.

The legislative power of this state shall be vested in a Legislature which shall consist of a Senate and a House of Representatives.

SOURCES: 1817 art III § 4; 1832 art III § 4; 1869 art IV § 1.

SECTION 34. Composition of House of Representatives.

The House of Representatives shall consist of members chosen every four years by the qualified electors of the several counties and Representative districts.

SOURCES: 1869 art IV § 2.

SECTION 35. Composition of Senate.

The Senate shall consist of members chosen every four years by the qualified electors of the several districts.

SOURCES: 1869 art IV § 4.

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Proposed Legislation

West's Annotated Mississippi Code
Title 41. Public Health (Refs & Annos)
Chapter 41. Surgical or Medical Procedures; Consents
Performance of Abortion; Consent (Refs & Annos)

Miss. Code Ann. § 41-41-45

§ 41-41-45. Abortion; definition; prohibition; exceptions

Currentness

(1) As used in this section, the term "abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus.

(2) No abortion shall be performed or induced in the State of Mississippi, except in the case where necessary for the preservation of the mother's life or where the pregnancy was caused by rape.

(3) For the purposes of this section, rape shall be an exception to the prohibition for an abortion only if a formal charge of rape has been filed with an appropriate law enforcement official.

(4) Any person, except the pregnant woman, who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion in the State of Mississippi, except in the case where necessary for the preservation of the mother's life or where the pregnancy was caused by rape, upon conviction, shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than ten (10) years.

Credits
Added by Laws 2007, Ch. 441, § 2, eff. ten days after publication of determination of constitutionality.

Editors' Notes

DATE EFFECTIVE AND CONSTRUCTION

<Section 2 of Laws 2007, Ch. 441 added this section. Laws 2007, Ch. 441 also amended § 41-41-55 and added § 41-41-34. Sections 4, 5, and 6 of Laws 2007, Ch. 441 provide:>

<"SECTION 4. At such time as the Attorney General of Mississippi determines that the United States Supreme Court has overruled the decision of Roe v. Wade, 410 U.S. 113 (1973), and that as a result, it is reasonably probable that Section 2 of this act would be upheld by the court as constitutional, the Attorney General shall publish his determination of that fact in the administrative bulletin published by the Secretary of State as provided in Section 25-43-2.101, Mississippi Code of 1972.>

<"SECTION 5. (1) If any provision of Chapter 441, Laws of 2007, is found to be unconstitutional, the provision is severable; and the other provisions of Chapter 441, Laws of 2007 remain effective, except as provided in other sections of Chapter 441, Laws of 2007.>

<"(2) Nothing in Chapter 441, Laws of 2007 may be construed to repeal, by implication or otherwise, any provision not explicitly repealed.>

<"(3) If any provision of Chapter 441, Laws of 2007 is ever declared unconstitutional or its enforcement temporarily or permanently restricted or enjoined by judicial order, the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be enforced. However, if such temporary or permanent restraining order or injunction is subsequently stayed or dissolved or such declaration vacated or any similar court order otherwise ceases to have effect, all provisions of Chapter 441, Laws of 2007 that are not declared unconstitutional or whose enforcement is not restrained shall have full force and effect.>

<"(4) Nothing in the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be construed to permit any action that is prohibited by Chapter 441, Laws of 2007, and to the extent that any provision of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, would be so construed, then the provisions of Senate Bill No. 2391, 2007 Regular Session, shall take precedence.>

<"SECTION 6. Sections 1, 3, 4 and 5 of this act shall take effect from and after July 1, 2007. Section 2 of this act shall take effect and be in force from and after ten (10) days following the date of publication by the Attorney General of Mississippi in the administrative bulletin published by the Secretary of State as provided in Section 25-43-2.101, Mississippi Code of 1972, that the Attorney General has determined that the United States Supreme Court has overruled the decision of Roe v. Wade, 410 U.S. 113 (1973), and that it is reasonably probable that Section 2 of this act would be upheld by the court as constitutional.">

<Senate Bill No. 2391, 2007 Regular Session became effective as Laws 2007, Ch. 441.>

DATE EFFECTIVE AND CONSTRUCTION

<For the overruling of Roe v. Wade, see Dobbs v. Jackson Women's Health Org., No. 19-1392, 597 U.S. 215, 142 S.Ct. 2228, (U.S. June 24, 2022).>

Miss. Code Ann. § 41-41-45, MS ST § 41-41-45
The Statutes and Constitution are current with laws from the 2025 Regular Session effective through April 23, 2025. Some statute sections may be more current, see credits for details. The statutes are subject to changes provided by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

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Proposed Legislation

West's Annotated Mississippi Code
Title 73. Professions and Vocations
Chapter 25. Physicians
Medical Discipline at Behest of Physician Members of State Board of Medical Licensure

Miss. Code Ann. § 73-25-83

§ 73-25-83. Board authority to discipline licensees

Currentness

The board shall have authority to deny an application for licensure or other authorization to practice medicine in this state and to discipline a physician licensed or otherwise lawfully practicing within this state who, after a hearing, has been adjudged by the board as unqualified due to one or more of the following reasons:

(a) Unprofessional conduct as defined in the physician licensure and disciplinary laws, pursuant to Section 73-25-29;

(b) Professional incompetency in the practice of medicine or surgery; or

(c) Having disciplinary action taken by his peers within any professional medical association or society, whether any such association or society is local, regional, state or national in scope, or being disciplined by a licensed hospital or medical staff of said hospital, or the voluntary surrender or restriction of hospital staff privileges while an investigation or disciplinary proceeding is being conducted by a licensed hospital or medical staff or medical staff committee of said hospital. Provided further, anybody taking action as set forth in this paragraph shall report such action to the board within thirty (30) days of its occurrence.

Credits
Laws 1977, Ch. 412, § 2; Laws 1987, Ch. 386, eff. July 1, 1987.

Notes of Decisions (6)

Miss. Code Ann. § 73-25-83, MS ST § 73-25-83
The Statutes and Constitution are current with laws from the 2025 Regular Session effective through April 23, 2025. Some statute sections may be more current, see credits for details. The statutes are subject to changes provided by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

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West's Annotated Mississippi Code
Title 97. Crimes
Chapter 1. Conspiracy, Accessories and Attempts (Refs & Annos)

Miss. Code Ann. § 97-1-3

§ 97-1-3. Accessory before fact deemed principal

Currentness

Every person who shall be an accessory to any felony, before the fact, shall be deemed and considered a principal, and shall be indicted and punished as such; and this whether the principal have been previously convicted or not.

Notes of Decisions (234)

Miss. Code Ann. § 97-1-3, MS ST § 97-1-3
The Statutes and Constitution are current with laws from the 2025 Regular Session effective through April 23, 2025. Some statute sections may be more current, see credits for details. The statutes are subject to changes provided by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

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