UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RIGHT TO LIFE OF MICHIGAN; AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS AND GYNECOLOGISTS, on behalf of itself, its members, and their patients; GINA JOHNSEN, Representative, Michigan House of Representatives; LUKE MEERMAN, Representative, Michigan House of Representatives; JOSEPH BELLINO, JR., Senator, Michigan Senate; MELISSA HALVORSON, M.D.; CHRISTIAN MEDICAL AND DENTAL ASSOCIATIONS, on behalf of itself, its members, and their patients; CROSSROADS CARE CENTER; CELINA ASBERG; GRACE FISHER; JANE ROE, a fictitious name on behalf of preborn babies; ANDREA SMITH; JOHN HUBBARD; LARA HUBBARD; SAVE THE 1, on behalf of itself and its members; and REBECCA KIESSLING,

Plaintiffs,

v

GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan; DANA NESSEL, in her official capacity as Attorney General of the State of Michigan; and JOCELYN BENSON, in her official capacity as Secretary of State of the State of Michigan,

Defendants.

No. 1:23-cv-01189

HON. PAUL L. MALONEY

MAG. JUDGE RAY KENT

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

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Defendants file this notice, bringing to this Court's attention the recent U.S. Supreme Court decision *Food and Drug Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024) ("*AHM*"), which was decided after the parties completed briefing on Defendants' motion to dismiss. Like this case, *AHM* involved

"[t]he threshold question . . . whether the plaintiffs ha[d] standing to sue under Article III of the Constitution." *Id.* at 378. The case is pertinent and significant for two reasons:

First, the Supreme Court rejected the plaintiff doctors' injury—that they may be required to provide abortion care against their consciences—on the ground that "federal conscience laws definitively protect doctors from being required to perform abortions or to provide other treatment that violates their consciences." *Id.* at 387 (citing 42 U.S.C. § 300a–7(c)(1); H. R. 4366, 118th Cong., 2d Sess., Div. C, Title II, § 203 (2024)). Like the *AHM* plaintiffs, Plaintiffs here allege a conscience injury, (ECF No. 23, PageID.148–151, 153, 180), and like the Supreme Court rejected those plaintiffs' injuries, so too should this Court.

Second, the Supreme Court also rejected plaintiff medical associations' injuries—that they have been " 'forced' . . . 'to expend considerable time, energy, and resources' " to oppose the FDA's actions "to the detriment of other spending priorities"—as sufficient to show standing. *AHM*, 602 U.S. at 394. In doing so, the Court not only confirmed that an organization "cannot spend its way into standing[,]" *id.*, it also rejected the plaintiffs' reliance on *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), explaining that the defendant in *Havens* "had provided [the plaintiff's] black employees false information about apartment availability[,]" *AHM*, 602 U.S. at 395. Reasoning that the *Havens* defendant's "actions directly affected and interfered with . . . [the plaintiff's] core business activities[,]" the Court refused to extend this "unusual case" "beyond its context."

Id. at 395–96. Like the *AHM* plaintiffs, Plaintiffs here rely on *Havens* to support their own organizational standing. (ECF No. 34, PageID.313–14.) *AHM* forecloses this argument. (*See also* ECF No. 35, PageID.360–61.)

Respectfully submitted,

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