ROB BONTA
Attorney General of California
EDWARD KIM, State Bar No. 195729
DARRELL W. SPENCE, State Bar No. 248011
Supervising Deputy Attorneys General
MARSHA E. BARR-FERNANDEZ, State Bar No. 200896
CHRISTINE FRIAR WALTON, State Bar No. 228421
KEVIN L. QUADE, State Bar No. 285197
Deputy Attorneys General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7693
Fax: (916) 324-5567
E-mail: Kevin.Quade@doj.ca.gov
Christine.Walton@doj.ca.gov
Marsha.BarrFernandez@doj.ca.gov
*Attorneys for the State Defendants*

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

**UNITED SPINAL ASSOCIATION; NOT DEAD YET; INSTITUTE FOR PATIENTS' RIGHTS; COMMUNITIES ACTIVELY LIVING INDEPENDENT AND FREE; LONNIE VANHOOK; INGRID TISCHER,**

Plaintiffs,

**v.**

**STATE OF CALIFORNIA; GAVIN NEWSOM, in his official capacity as Governor; ROBERT BONTA in his official capacity as Attorney General; CALIFORNIA DEPARTMENT OF PUBLIC HEALTH; TOMÁS J. ARAGÓN, in his official capacity as Director and State Public Health Officer; CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES; MICHELLE BAASS, in her official capacity as Director; MENTAL HEALTH SERVICES OVERSIGHT AND ACCOUNTABILITY COMMISSION; MARA**

2:23-cv-03107-FLA (GJSx)

**STATE DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS**

| | |
|---|---|
| Date: | September 22, 2023 |
| Time: | 1:30 p.m. |
| Courtroom: | Courtroom 6 |
| Judge: | The Honorable Fernando L. Aenlle-Rocha |
| Trial Date: | n/a |
| Action Filed: | April 25, 2023 |

**MADRIGAL-WEISS, in her official capacity as Chair; MEDICAL BOARD OF CALIFORNIA; KRISTINA D. LAWSON, in her official capacity as President; DISTRICT ATTORNEY'S OFFICE FOR LOS ANGELES COUNTY; GEORGE GASCÓN, in his official capacity as District Attorney; and DOES 1 through 20, inclusive,**

Defendants.

PLEASE TAKE NOTICE that on September 22, 2023, at 1:30 p.m., or as soon thereafter as the matter may be heard before the Honorable Fernando L. Aenlle-Rocha, in the United States District Court for the Central District of California, Courtroom 6B—6th Floor, located at the First Street Courthouse, 350 W. 1st Street, Los Angeles, California, Defendants State of California; Gavin Newsom, in his official capacity as Governor of California; Rob Bonta in his official capacity as Attorney General of California; California Department of Public Health; Tomás J. Aragón, in his official capacity as Director of the California Department of Public Health and State Public Health Officer; California Department of Health Care Services; Michelle Baass, in her official capacity as Director of the California Department of Health Care Services; Mental Health Services Oversight and Accountability Commission; Mara Madrigal-Weiss, in her official capacity as Chair of the Mental Health Services Oversight and Accountability Commission; Medical Board of California; and Kristina D. Lawson, in her official capacity as President of the Medical Board of California (collectively, State Defendants), will and hereby do move the Court to dismiss this action under Federal Rules of Civil Procedure 12(b)(1) and (6).

This Motion seeks dismissal of the Complaint against State Defendants on the following grounds:

(1) The individual-patient Plaintiffs lack standing because they cannot demonstrate a concrete, non-speculative injury in fact that is fairly traceable to any conduct of the State Defendants;

(2) The organizational Plaintiffs lack direct standing because California's End of Life Option Act (EOLOA or Act) does not impede, restrict, or otherwise frustrate these Plaintiffs' ability to pursue their organizational mission and, thus, any alleged injury flowing from diversion of resources to counteract the EOLOA was self-inflicted and not fairly traceable to any conduct of the State Defendants. The organizational Plaintiffs, to the extent they have members, also lack associational standing because their members, like the individual-patient Plaintiffs, cannot demonstrate a concrete, non-speculative injury in fact.

(3) Plaintiffs' constitutional claims against Defendants Newsom, Aragón, and Madrigal-Weiss are barred by California's immunity under the Eleventh Amendment because these public officials do not have the type of direct connection to the EOLOA's process that permits liability.

(4) Plaintiffs fail to state a claim for facial violation of Title II of the Americans with Disabilities Act because they cannot demonstrate that the EOLOA, in any application, let alone all applications, disadvantages and discriminates against terminally ill disabled persons.

(5) Plaintiffs fail to state a claim for facial violation of Section 504 of the Rehabilitation Act because they cannot demonstrate that the EOLOA, in any application, let alone all applications, disadvantages and discriminates against terminally ill disabled persons.

(6) Plaintiffs fail to state a claim for facial violation of the Fourteenth Amendment's Equal Protection Clause because terminally ill patients eligible for aid in dying under the EOLOA are not similarly situated to Plaintiffs' other comparative classification and, in any event, differential treatment under the Act

does not burden any fundamental right and is rationally related to important state interests.

(7) Plaintiffs fail to state a claim for facial violation of the Fourteenth Amendment's Due Process Clause because they cannot demonstrate that all applications of the EOLOA involve an involuntary decision by the patient. To the contrary, the Legislature drafted the Act to specifically ensure that a patient's voluntary consent is confirmed at each step of the process.

This Motion is based on this Notice of Motion and Motion, the concurrently filed Memorandum of Points and Authorities, the pleadings and papers filed in this matter, and the arguments of counsel at the time of the hearing.

This Motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on July 13, 2023. At the conference, the parties discussed the State Defendants' grounds for seeking dismissal. Plaintiffs stated their disagreement with those arguments and intent to oppose the instant Motion.

Dated: July 20, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
EDWARD KIM
DARRELL W. SPENCE
Supervising Deputy Attorneys General

KEVIN L. QUADE
CHRISTINE FRIAR WALTON
MARSHA E. BARR-FERNANDEZ
Deputy Attorneys General
*Attorneys for the State Defendants*

ROB BONTA
Attorney General of California
EDWARD KIM, State Bar No. 195729
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CHRISTINE FRIAR WALTON, State Bar No. 228421
KEVIN L. QUADE, State Bar No. 285197
Deputy Attorneys General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7693
Fax: (916) 324-5567
E-mail: Kevin.Quade@doj.ca.gov
Christine.Walton@doj.ca.gov
Marsha.BarrFernandez@doj.ca.gov
*Attorneys for the State Defendants*

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

**UNITED SPINAL ASSOCIATION; NOT DEAD YET; INSTITUTE FOR PATIENTS' RIGHTS; COMMUNITIES ACTIVELY LIVING INDEPENDENT AND FREE; LONNIE VANHOOK; and INGRID TISCHER,**

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2:23-cv-03107-FLA (GJSx)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

Date: September 22, 2023
Time: 1:30 p.m.
Courtroom: Courtroom 6
Judge: The Honorable Fernando L. Aenlle-Rocha
Trial Date: n/a
Action Filed: April 25, 2023

**capacity as Chair; MEDICAL BOARD OF CALIFORNIA; KRISTINA D. LAWSON, in her official capacity as President; DISTRICT ATTORNEY'S OFFICE FOR LOS ANGELES COUNTY; GEORGE GASCÓN, in his official capacity as District Attorney; and DOES 1 through 20, inclusive,**

Defendants.

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## INTRODUCTION

This lawsuit seeks to invalidate and permanently enjoin California's End of Life Option Act (EOLOA or Act). Enacted in 2015 and reauthorized in 2021, the EOLOA provides Californians suffering from a terminal illness, who satisfy strict criteria and complete a thorough, multi-step assessment process, the ability to obtain aid-in-dying (AID) medication.

The EOLOA's statutory scheme is organized around the central principle that an eligible patient's decision to obtain and take an AID drug must be voluntary. Every step of the Act's rigorous process is geared toward ensuring a patient's voluntary and informed consent. An AID medication cannot be prescribed absent, among other things, multiple oral and written requests by an eligible patient, attestation by multiple witnesses concerning the patient's mental state, and evaluation for capacity and voluntariness by multiple physicians.

Plaintiffs—four disability rights organizations and two individuals—disagree with the State's legislative decision to afford certain Californians the option of AID medication. Their Complaint alleges that the EOLOA creates a risk that terminally-ill disabled patients will be steered towards AID medication, ultimately leading to involuntary deaths. As a result, operation of the EOLOA allegedly constitutes unlawful disability discrimination under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504), and that it violates the federal constitutional rights to equal protection and due process.

Plaintiffs' lawsuit should be dismissed without leave to amend. This Court lacks jurisdiction because Plaintiffs lack standing. The individual patient Plaintiffs cannot establish a cognizable injury as they are not currently eligible for an AID drug and their allegations are too remote and dependent on too many contingencies. The organizational Plaintiffs cannot demonstrate that the Act has any tangible direct effect on their operations or ability to pursue their missions. To the extent these

organizations elected to divert funding, that choice was not forced by any particularized threat to the organization and, thus, is not fairly traceable to the alleged conduct of any State Defendant. Additionally, as to some of the public officials named in their constitutional challenges, Plaintiffs have not shown that they have the type of direct connection to enforcement of the EOLOA that would justify an exception to the State's immunity under the Eleventh Amendment.

Plaintiffs also fail to state viable claims for relief. Their claims of unlawful discrimination under the ADA and Section 504 cannot succeed because the Act does not exclude or disadvantage terminally ill disabled persons in any way. To the contrary, the law affords eligible patients an additional, yet fully voluntary, option for end-of-life care. To the extent a terminally ill patient seeking AID medication experiences differential medical treatment, any disparity flows from the patient's voluntary request for such treatment as appropriate for their unique medical circumstances, not unlawful discrimination based on disability.

Plaintiffs' equal protection claim fails because terminally ill patients eligible for AID medication are not similarly situated to other members of the population. Only these individuals face the imminent and irreversible prospect of death, along with the pain, suffering, and mental anguish associated with the dying process. Even if Plaintiffs could establish similarly situated classifications, the EOLOA's affording this uniquely narrow group of patients the option of utilizing AID medication rationally serves California's legitimate interest in protecting the physical and mental well-being of its people.

Finally, Plaintiffs fail to state a due process claim. Plaintiffs allege that the EOLOA contains insufficient safeguards and creates an untenable risk that patients will utilize the Act in an involuntary manner. But the law was crafted to prevent the risk that Plaintiffs articulate, and its procedural requirements ensure a patient's voluntary consent at every step. Plaintiffs have not pled and cannot establish the

deliberate State indifference to a foreseeable danger necessary for a due process claim. The Court should dismiss this entire action with prejudice.

## BACKGROUND

The EOLOA authorizes a mentally competent adult, diagnosed by their attending physician with an irreversible terminal disease, to request AID medication. Cal. Health & Safety Code § 443.2. The Act's structure and process is designed to ensure that a patient's decision to obtain and self-administer an AID drug is voluntary.

To that end, the EOLOA mandates compliance with stringent protocols and procedures by patients and health care providers. *See* Cal. Health & Safety Code §§ 443.2-443.11. A patient seeking AID medication must make two oral requests, at least 48 hours apart, along with a written request on a legislatively specified form. *Id.* § 443.3(a). The written request must be executed in the presence of two adult witnesses who also must execute the form attesting that they know the patient, the form was voluntarily signed in their presence, and that the patient is of sound mind and not under duress, fraud, or undue influence. *Id.* § 443.3(b)(3).

Before prescribing an AID drug, the attending physician who receives the patient's request must confirm the terminal disease diagnosis, and then assess the patient's mental state to determine: (1) whether the patient has capacity to make medical decisions; (2) whether the decision to seek AID medication has been voluntarily made; and (3) whether the patient's decision is an informed one. Cal. Health & Safety Code § 443.5(a)(1)-(2). In defining "capacity to make medical decisions," the Act draws from the California Probate Code's well-established definition, requiring a determination that "the individual has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risks, and alternatives, and the ability to make and communicate an informed decision to health care providers." *Id.* § 443.1(e); *see* Cal. Prob. Code § 4609. An "informed decision," in turn, is defined as "a

decision by an individual with a terminal disease to request and obtain a prescription for a drug that the individual may self-administer to end the individual's life, that is based on an understanding and acknowledgment of the relevant facts, and that is made after being fully informed by the attending physician" of the following information:

> (1) The individual's medical diagnosis and prognosis. (2) The potential risks associated with taking the drug to be prescribed. (3) The probable result of taking the drug to be prescribed. (4) The possibility that the individual may choose not to obtain the drug or may obtain the drug but may decide not to ingest it. (5) The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

*Id.* §§ 443.1(j), 443.5(a)(2); *see Arato v. Avedon*, 5 Cal. 4th 1172, 1183, 1187 (1993) (outlining California's standard for informed consent).

If the attending physician perceives *any* indication of a mental disorder, the physician must refer the patient for a mental health specialist assessment. Cal. Health & Safety Code § 443.5(a)(1)(A). In that case, no AID drug can be prescribed unless the mental health specialist determines that the patient has capacity to make medical decisions, has made a voluntary decision to request AID medication, and is not suffering from impaired judgment due to a mental disorder. *Id.* §§ 443.5(a)(1)(A)(iii), 443.7. The attending physician must also discuss the request with the patient privately—with no others present—to determine whether the patient is feeling coerced or unduly influenced by another person, and to counsel the patient about the importance of, among other things, participating in a hospice program, and informing the individual that they may withdraw or rescind their request for AID medication at any time. *Id.* § 443.5(a)(4)-(6).

If the attending physician determines that the patient is eligible for AID medication, the patient must be referred to a consulting physician for an independent evaluation. The patient is not eligible for AID medication unless that second physician separately medically confirms the patient's terminal disease diagnosis and prognosis, determines that the patient has capacity to make medical

decisions under the standards detailed above, and finds compliance with all necessary procedures. Cal. Health & Safety §§ 443.5(a)(3), 443.6. The consulting physician's evaluation includes a review of relevant medical records and an independent determination that the patient's request is voluntary and constitutes an informed decision. *Id.* § 443.6(a)-(c). As with the attending physician, the consulting physician must refer the patient to a mental health specialist if there is any indication impaired judgment caused by a mental disorder. *Id.* § 443.6(d).

After the consulting physician completes their evaluation, and before the attending physician can actually prescribe an AID drug, the attending physician must explicitly offer the patient an opportunity to withdraw their request. Cal. Health & Safety Code § 443.5(a)(7). The attending physician must then verify yet again that the patient is making an informed decision. *Id.* §§ 443.5(a)(8), 443.10. Only after all of these steps have been satisfied, may the attending physician prescribe an AID drug for later dispensing at the patient's request or deliver the drug to the patient directly. *Id.* § 443.5(b). The patient then may choose to ingest or not ingest the AID drug at their own discretion, but any ingestion must be "self-administer[ed]" by the patient, which is defined as an "affirmative, conscious, and physical act of administering and ingesting the aid-in-dying drug to bring about their own death." *Id.* § 443.1(q).

## APPLICABLE LEGAL STANDARDS

Under Rule 12(b)(1), the party asserting federal subject-matter jurisdiction bears the burden of establishing its existence. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The court must dismiss a claim where it lacks subject-matter jurisdiction, and may review evidence, such as affidavits and testimony, concerning facts bearing on the existence of jurisdiction. *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988). Under Rule 12(b)(6), a complaint should be dismissed for failure to state a claim "where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal

theory." *Zamani v. Carnes*, 491 F.3d 990, 996 (9th Cir. 2007); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court must accept as true the factual allegations in the complaint, but not conclusory allegations, unwarranted factual deductions, or unreasonable inferences. *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004).

Where, as here, a plaintiff asserts facial challenges to a state law, they must establish "that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987); *S.D. Myers, Inc. v. City and Cnty. of San Francisco*, 253 F.3d 461, 467-68 (9th Cir. 2001). The *Salerno* standard applies not only to facial constitutional challenges, but also where a challenged law or ordinance is claimed facially invalid under a federal statute. *See Anderson v. Edwards*, 514 U.S. 143, 155 n.6 (1995); *Sprint Telephony PCS, L.P. v. Cnty. of San Diego*, 543 F.3d 571, 579 (9th Cir. 2008) (en banc); *Witzke v. Idaho State Bar*, __ F. Supp. 3d __, 2022 WL 17340272 at *13 (D. Idaho, Nov. 29, 2022) (applying *Salerno* standard to facial ADA challenge).

## ARGUMENT

### I. THIS COURT LACKS SUBJECT MATTER JURISDICTION

#### A. The Individual Patient Plaintiffs Lack Standing

Plaintiffs VanHook and Tischer cannot establish Article III standing to assert claims against any Defendants. Standing requires: (1) an injury in fact; (2) that is fairly traceable to the challenged conduct of the defendant; and (3) is likely to be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Failure to establish all three components of standing deprives the court of jurisdiction to entertain the case. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 109-10 (1998).

To demonstrate injury, a plaintiff must make a "clear showing" of injury in fact that is actual and concrete, not conjectural or hypothetical. *Lujan*, 504 U.S. at 560. "Abstract injury is not enough." *City of Los Angeles v. Lyons*, 461 U.S. 95,

101 (1983). Where prospective injunctive and declaratory relief is sought, an alleged threatened injury must be "'certainly impending.'" *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013).

Initially, the allegations in the Complaint make clear that neither individual Plaintiff is currently eligible for AID medication under the EOLOA. As such, these Plaintiffs lack standing. *See Lee v. Oregon*, 107 F.3d 1382, 1388, 1390 n.2 (9th Cir. 1997) (recognizing that ineligibility under AID prescription scheme deprives patient plaintiff of a cognizable injury, but assuming eligibility in analysis).

Though Plaintiffs VanHook and Tischer assert that they have qualifying "terminal disease[s]," Dkt. 1 ¶¶ 34, 38, such conclusory allegations are not supported by the balance of the Complaint and cannot be accepted as true. *Cholla Ready Mix, Inc.*, 382 F.3d at 973. The EOLOA defines "terminal disease" for the purpose of eligibility to mean "an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months." Cal. Health & Safety Code § 443.1(r). The Complaint makes unequivocally clear that both Plaintiffs have lived with their medical disabilities for many years. *See* Dkt. 1 ¶¶ 36 (referencing post-depression support provided by a "long-time physician who has followed Plaintiff VanHook's medical care for over 33 years."), 37-38 (alleging that Plaintiff Tischer was born with muscular dystrophy and referencing past experiences with discrimination based on her disabilities). The Complaint does not allege that either Plaintiffs VanHook or Tischer have been deemed eligible for AID medication by a doctor, or that their medical conditions are no longer susceptible to the same treatments that have sustained them throughout their lives.

Plaintiffs assert that, notwithstanding their apparent long history of life-sustaining treatment, they nevertheless qualify for AID medication because they would die within six months without their medical supports. Dkt. 1 ¶¶ 34, 38; *see id.* ¶ 190 (Plaintiffs are "likely to die at some future time if they cease or fail to

receive treatment"). But this allegation does not alter their current status. Critically, the Complaint does not allege that either Plaintiff has received a prognosis that their disease will, within reasonable medical judgment, result in their death within six months. Nor does the Complaint allege that either Plaintiff has or will be deprived of access to their medical treatments.

In asserting a theory of eligibility (and, thus, injury) premised on cessation of their medical supports, Plaintiffs allege a hypothetical harm that would necessarily flow from their own choices to terminate treatment. But a plaintiff cannot create standing by causing their own injury. *Clapper*, 568 U.S. at 415-18. To the extent Plaintiffs' allegations go even further, positing a theory of injury that their threshold decision to discontinue life-sustaining treatment (thereby rendering them eligible for AID medication) could itself be an involuntary, that decision is not subject to or affected by the EOLOA in any way. Wholly separate principles of law govern when a patient is competent to choose to discontinue life-sustaining treatment. *See Conserv. of Wendland*, 26 Cal. 4th 519, 535 (2001); *see also* Cal. Prob. Code §§ 2355, 4650. The claims for relief in this lawsuit do not speak to this necessary component of Plaintiffs' theory of eligibility under the Act.

Nevertheless, even if it were assumed that the individual Plaintiffs are currently eligible, standing is squarely foreclosed by *Lee*, 107 F.3d at 1388-90. In *Lee*, a plaintiff patient with progressive muscular dystrophy sought to invalidate Oregon's AID medication law, specifically alleging that her history of clinical depression and prior ambivalence to continuing her life created a risk that she would ultimately succumb to her mental state and use the law to involuntarily end her life. *Id.* at 1388. The Ninth Circuit held that the asserted injury was dependent on a "chain of speculative contingencies" too remote and uncertain to justify Article III standing. *Lee*, 107 F.3d at 1388-89. Since at least seven distinct contingencies were necessary for the plaintiff's alleged injury to manifest, the allegations failed to demonstrate an "'*individualized* showing that there is a very significant possibility

that the future harm will ensue.'" *Id.* (quoting *Nelson v. King Cnty.*, 895 F.2d 1248, 1250 (9th Cir. 1990)).

*Lee* controls here. Plaintiffs VanHook and Tischer allege an identical injury to that alleged in *Lee* and, as in that case, a nearly identical chain of speculative contingencies would have to occur in order for that injury to manifest. *See Lee*, 107 F.3d at 1388 (listing contingencies). Specifically, an individual Plaintiff would have to (1) become so depressed that they would be unable to make an informed decision about whether to take their own life; (2) make an oral request to their attending physician for AID medication, Cal. Health & Safety Code § 443.3(a); (3) submit a written request to their physician, Cal. Health & Safety Code § 443.3(a)-(c); (4) both witnesses to this written request would have to fail to recognize that the Plaintiff's decision is not the product of a sound mind, but rather, the duress caused by depressive mental illness, Cal. Health & Safety Code § 443.3(b)(3); (5) the attending physician, after discussing with the Plaintiff, among other things, the diagnosis, prognosis, and feasible alternative treatments and end-of-life options, would have to mistakenly conclude that the Plaintiff had capacity, had made a voluntary decision, and that the decision is not the product of a mental disorder, Cal. Health & Safety Code § 443.5(a)(1)-(2);[1] (6) a consulting physician, after examining the Plaintiff and relevant medical records, would have to mistakenly conclude that the Plaintiff had capacity, had made a voluntary decision, and that the decision is not the product of a mental disorder, Cal. Health & Safety Code §§ 443.5(a)(3), 443.6(c); (7) at least 48 hours after the initial oral and written requests, the Plaintiff would have to be still suffering in a debilitating mental state and make a second oral request to their attending physician, Cal. Health & Safety Code §

[1] If the attending physician did identify indications of a mental disorder, the Plaintiff would be referred for assessment by a mental health specialist. No AID drug could then be prescribed unless and until the mental health specialist determined that the Plaintiff had capacity to make medical decisions and was not suffering from impaired judgment due to a mental disorder. *See* Cal. Health & Safety Code § 443.5(a)(1)(A)(ii)-(iii).

443.3(a); (8) immediately prior to writing the prescription, the attending physician would have to again fail to recognize that the Plaintiff was not making an informed and voluntary decision, Cal. Health & Safety Code § 443.5(a)(8); (9) immediately prior to receiving the prescription, the Plaintiff would have to persist in their request, despite being explicitly offered an opportunity to withdraw or rescind the request, Cal. Health & Safety Code §§ 443.4(b), 443.5(a)(6)-(7); and (10) after receiving the prescription and obtaining an AID medication, the Plaintiff would have to self-administer the medication, taking their own life against their true wishes. Since non-satisfaction of any link in this lengthy chain of contingencies would render Plaintiffs' theory of injury impossible, Plaintiffs' allegations are nothing more than speculation and conjecture. *Lee*, 107 F.3d at 1388-90; *see Lyons*, 461 U.S. at 108 (finding no standing, notwithstanding the fact that someone could be killed by an unconstitutional chokehold, because it was only speculation that plaintiff would be killed).[2]

The individual Plaintiffs similarly cannot establish that their alleged injury is (or will be) fairly traceable to any conduct of the State Defendants. *See Lujan*, 504 U.S. at 560. To satisfy the causality element of Article III standing, the line of causation between a defendant's action and the plaintiff's harm must be more than attenuated. *Wash. Env't Council v. Bellon*, 732 F.3d 1131, 1141 (9th Cir. 2013). In this case, however, Plaintiffs have not alleged that any of the State Defendants have anything more than a peripheral, second-hand connection to the EOLOA's process. Plaintiffs' allegations concerning the State Defendants' conduct range from bare assertions of generalized supervisory authority and blanket obligations to enforce all laws, to ministerial tasks that have no impact whatsoever on the EOLOA's substantive operation, as well as basic claims about the State's administrations of

[2] Plaintiffs' inability to plead a sufficient injury in fact also establishes that their claims are not ripe for adjudication. *See Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1094 n. 2 (9th Cir. 2003) ("The constitutional component of ripeness is synonymous with the injury-in-fact prong of the standing inquiry.").

its vast health care service programs and regime for regulating physician conduct. *See* Dkt. 1 ¶¶ 40-50. The through line in all of these allegations is that none of the alleged government conduct has any direct relationship to Plaintiffs' purported injuries. *See Lujan*, 504 U.S. at 562 (where injury arises from government's action or inaction on someone else, "much more is needed" to show causation).

Moreover, in a case like this, where the theory of injury depends on a casual chain that involves numerous third parties whose independent conduct collectively has significant bearing on the alleged injury, courts have recognized the absence of traceability. *Bellon*, 732 F.3d at 1142; *see Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2566 (2019) (a plaintiff's theory of standing cannot "rest on mere speculation about the decisions of third parties"). Here, as explained, the individual Plaintiffs' alleged injuries are entirely contingent on the possible conduct of multiple independent third parties—mistaken attestations by personal witnesses and errant evaluations by multiple doctors. *See* Cal. Health & Safety Code §§ 443.3(b)(3), 443.5(a)(1)-(3), 443.6(c). The highly unlikely probability of this chain of conduct by third parties necessarily severs any casual chain between the alleged injury and any conduct of the State Defendants. *Dep't of Commerce*, 139 S. Ct. at 2566 (where causation is dependent on third party actions, a plaintiff must show that those third parties are "likely to react in predictable ways").

**B. The Organizational Plaintiffs Lack Standing**

**1. Direct standing**

The organizational Plaintiffs also lack standing. As with individual plaintiffs, an organizational plaintiff must establish the "irreducible constitutional minimum" of injury in fact, causation, and redressability. *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378 (1982)).

An organization suing on its own behalf can establish an injury in fact when it suffers *both* frustration of its mission *and* diversion of its resources. *Sabra v.*

*Maricopa Cnty. Comm. Coll. Dist.*, 44 F.4th 867, 879 (9th Cir. 2022). Yet, an organization cannot manufacture an injury by "simply choosing to spend money fixing a problem that otherwise would not affect the organization at all." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) (internal quotation marks and citations omitted). Instead, the organization must demonstrate that it would have suffered some other injury had it not diverted resources to counteracting the problem. *Id.*

Under ordinary standing principles, this "other injury" must be actual and concrete. *Pierce v. Ducey*, 965 F.3d 1085, 1089 (9th Cir. 2020) (per curiam). The defendant's conduct must do more than offend or setback the priorities and values of the organization; it must result in an actual impediment to the organization's real-world efforts on behalf of such principles. *See Havens*, 455 U.S. at 378-79 (organization suffered injury in fact where defendant's practices "perceptibly impaired" the organization's ability to provide counseling and referral services); *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1135 (9th Cir. 2019) ("The organizational plaintiffs have not explained how the City's retention of Lori's guns either impedes their ability to carry out their mission or requires them to divert substantial resources away from the organizations' preferred uses—let alone both."). The defendant's actions, in other words, must impair the organization's ability to function as an organization. *See, e.g.*, *Am. Fed'n of Gov't Emps. Local 1 v. Stone*, 502 F.3d 1027, 1033 (9th Cir. 2007) (defendant's conduct increased difficulty in recruiting members); *Walker v. City of Lakewood*, 272 F.3d 1114, 1124-25 (9th Cir. 2001) (defendant's conduct delayed and canceled contracts, making it difficult to obtain funding).

An organizational plaintiff's alleged diversion of resources must be tied to this concrete threat to the organization's operations. The organization must establish that the defendant's conduct (which, allegedly burdens the organization's purpose), in fact, forced the organization to divert resources to defend its ability to operate

and fulfill its mission. *See, e.g.*, *Rodriguez*, 930 F.3d at 1136 (must find the issue "requires" diverting resources); *La Asociacion de Trabajadores*, 624 F.3d at 1088 n.4 (organization must be "forced to choose" between suffering actual injury to its purpose or diverting resources to counteract the injury). This flows from the requirement that a plaintiff's injury be "fairly traceable" to the challenged conduct. *See Lujan*, 504 U.S. at 560. Where a defendant's conduct did not force the plaintiff to divert resources to defend its ability to fulfill its mission, any diversion injury comes from the plaintiff's own actions, and a self-inflicted injury cannot be fairly traceable to the defendant. *La Asociacion de Trabajadores*, 624 F.3d at 1088 n.4.

Here, the organizational Plaintiffs claim direct injury from diversion of resources in response to the EOLOA. Dkt. 1 ¶¶ 22, 25, 27, 32. But they do not sufficiently allege that Defendants' EOLOA-related conduct actually impedes and frustrates their stated missions. The EOLOA does not criminalize, regulate, restrict, or have any impact whatsoever on the operations of these Plaintiffs. The organizations allege that permitting terminally ill persons to obtain AID medication under the EOLOA is inconsistent with their missions of seeking to empower, advocate for, or serve persons with disabilities. *See* Dkt. 1 ¶¶ 19, 23, 26, 29. But none of the organizational Plaintiffs assert that the Act, or the State Defendants' conduct related to the Act, specifically harms their abilities to function as organizations or to fulfil their organizational mission. *See Havens*, 455 U.S. at 379. Plaintiffs remain unencumbered in their advocacy for the lives and conditions of people with disabilities, as well as their activism in opposition to laws that permit AID medication for certain terminally ill persons. Absent allegations that the State Defendants' conduct actually interferes with these organizations' ability to operate and further the purposes for which they were formed, the alleged frustration of mission in this case amounts to nothing more than an insufficient assertion that the EOLOA offends their organizational principles. *Id.* at 378-79; *Rodriguez*, 930 F.3d at 1135; *Project Sentinel v. Evergreen Ridge Aparts.*, 40 F. Supp. 2d 1136, 1139

(N.D. Cal. 1999) (allegations "nothing more than a setback to the organization's abstract social interest in gaining compliance with fair housing laws").

Necessarily then, the diversions of resources alleged in the Complaint fail to demonstrate the type of injury warranting organizational standing. Since the organizational Plaintiffs were not put to a forced choice—i.e., accept an EOLOA-based interference on your ability to further your organizational mission or divert resources away from other initiatives to counter this injury—any diversion of resources was not caused by or fairly traceable to any conduct of the Defendants in the way required to establish standing. *La Asociacion de Trabajadores*, 624 F.3d at 1088 & n.4; *accord Rodriguez*, 930 F.3d at 1136. Any alleged diversions of resources are self-inflicted, the result of the organizational Plaintiffs' internal policy decisions and discretionary spending choices. *See California v. Texas*, 141 S. Ct. 2104, 2114-15 (2021) (alleged monetary injuries based on the cost of buying insurance were purely voluntary and not fairly traceable to government action absent a government enforcement mechanism).[3]

**2. Associational standing**

Plaintiff United Spinal Association (United Spinal) likewise cannot establish associational standing to sue on behalf of its members.[4] An association has standing to sue on behalf of its members when: (1) its members would otherwise

[3] Concerning Plaintiff Communities Actively Living Independent and Free (CALIF), the Complaint alleges that EOLOA will "further[] the deaths of constituents that would have sought out and benefitted from CALIF's services." Dkt. 1 ¶ 32. The balance of CALIF injury allegations, however, concern similar alleged diversion of resources to those asserted by the other organizational Plaintiffs and the Complaint does not specifically allege that any CALIF consumer has or will end their life pursuant to the EOLOA, thus diminishing CALIF's ability to provide its offered services. Yet, even assuming CALIF intended to make such an allegation, as explained above, this theory of injury in fact necessarily depends on far too many contingent events to establish a concrete, non-speculative injury. *Lujan*, 504 U.S. at 560; *Lee*, 107 F.3d at 1388-90.

[4] United Spinal is the only organizational Plaintiff alleged to have members and the only Plaintiff for which associational standing is alleged. *See* Dkt. 1 ¶ 21. However, to the extent CALIF is also alleged to have members for the purpose of associational standing, the deficiencies in United Spinal's claim for standing apply with equal force.

have standing to sue in their own right; (2) the interests it seeks to protect 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. *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977).

Here, members of United Spinal would not have standing to sue in their own right. *Lee*, 107 F.3d at 1388-90. As explained above, the theory of injury for an individual—that an EOLOA-eligible person will succumb to a mental disorder, request AID medication, navigate the many hurdles of the EOLOA without obstruction, and obtain and involuntarily take an AID drug—is far too speculative and contingent to confer standing. *Lee*, 107 F.3d at 1388-90. Indeed, the Ninth Circuit in *Lee* explicitly rejected the theory of associational standing now asserted, explaining that residential care facilities in that case "would be asserting the interest of unnamed patients who are no closer to suffering the asserted injury" than the named plaintiff. *Id.* at 1390.

### C. Eleventh Amendment Immunity Bars Plaintiffs' Constitutional Claims Against Some of the State Defendants

As to Plaintiffs' constitutional claims, California's immunity under the Eleventh Amendment forecloses litigation against some State Defendants. *Pennhurst State Sch. and Hosp. v. Helderman*, 465 U.S. 89, 98-100 (1983) (Eleventh Amendment bars a citizen from bringing suit against his own state, in federal court, without the state's consent); *Fla. Dep't of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 684 (1982) (immunity applies to state agencies).

*Ex parte Young*, 209 U.S. 123, 155-56 (1908) permits claims for prospective declaratory and injunctive relief against state officials for alleged violations of federal law. Yet that exception only applies where the state officer sued has "some connection with the enforcement of the act." *Ex parte Young*, 209 U.S. at 157. "[T]hat connection 'must be fairly direct; a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the

challenged provision will not subject an official to suit.'" *Coal. to Defend Affirm. Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012) (quoting *L.A. Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992)).

Here, as to some of the named public officials, Plaintiffs have alleged nothing than an attenuated and generalized connection to the EOLOA. For instance, Governor Newsom is alleged to be "vested with the supreme executive power of the State and has the duty to see that the State's laws are faithfully executed." Dkt. 1 ¶ 40 (citing Cal. Const. art. V, § 1) The Governor is also alleged to direct specific actions of the Attorney General, to supervise and assign functions of executive agencies, and to appoint members of the Medical Board of California (MBC) and the Mental Health Services Oversight and Accountability Commission (MHSOAC). *Id.* But none of these allegations concern the type of direct involvement in enforcement that is necessary for application of the *Ex parte Young* exception. *See Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 943 (9th Cir. 2013) (insufficient enforcement connection for Governor).

DPH Director Aragòn and MHSOAC Chair Madrigal-Weiss, as the leaders of their agencies, are alleged to coordinate statewide suicide prevention efforts consistent with implementation of California's Strategic Plan for Suicide Prevention 2020-2025. Dkt. 1 ¶¶ 42, 47. DPH is further alleged to facilitate the EOLOA by providing forms, collecting data, and publishing an annual repor documenting the prescription and use of AID medication. Dkt. 1 ¶ 43. These allegations, however, failed to show the type of association with the Act's operation required for *Ex parte Young*. DPH's collection and publishing of data is purely ministerial and bears only a secondary, after-the-fact relation to the Act's process. Moreover, although DPH and MHSOAC (and their respective leaders) manage certain suicide prevention initiatives, the availability of AID medication under the EOLOA does not operate to exclude any person from any program administered by these agencies. Thus, as to these public officials, Plaintiffs have failed to allege a

substantive connection to the EOLOA that would justify an exception to Eleventh Amendment immunity. *Coal. to Defend Affirm. Action*, 674 F.3d at 1134.

## II. PLAINTIFFS FAIL TO STATE VIABLE CLAIMS FOR RELIEF

This case should also be dismissed because Plaintiffs fail to state any viable claim for relief. The facts, as alleged in the Complaint, do not support a cognizable legal theory of liability under Title II of the ADA, Section 504 of the Rehabilitation Act, or the Equal Protection and Due Process Clauses.

### A. Plaintiffs Fail to State Viable Claims Under the ADA and Section 504 of the Rehabilitation Act

#### 1. ADA and Section 504 background

Title II of the ADA, which prohibits disability discrimination by public entities or in public programs, was expressly modeled on Section 504 of the Rehabilitation Act. *Zukle v. Regents of the Univ. of Cal.*, 166 F.3d 1041, 1045 (9th Cir. 1999). Title II specifically provides that "[s]ubject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Section 504 similarly provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a).[5]

To establish a violation of either statute, a plaintiff must show that: (1) they are disabled within the meaning of the statutes; (2) they are otherwise qualified to participate in or receive the benefit of the government services, programs, or

[5] Since "there is no significant difference in the analysis of rights and obligations create by [ADA and Section 504], *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1098 (9th Cir. 2013), courts routinely address claims under both statutes together, *see Martin v. Cal. Dep't of Veterans Affairs*, 560 F.3d 1042, 1047 n.7 (9th Cir. 2009). The State Defendants will do the same.

activities at issue; (3) they were excluded from participation in or denied the benefit of the services, programs, or activities, or otherwise discriminated against, because of their disability; and (4) the entity denying services or discriminating received federal financial assistance (for the Section 504 claim) or was a public entity (for the Title II ADA claim). *Martin*, 560 F.3d at 1047.[6]

**2. Plaintiffs cannot demonstrate that the EOLOA violates the ADA and Section 504 in all circumstances**

In their ADA and Section 504 claims, Plaintiffs allege that the State Defendants facially discriminate against all EOLOA-eligible disabled persons by denying them the benefits of various State laws, public services, and programs, which collectively aim to prevent suicide. Dkt. 1 ¶¶ 170-72, 174, 182-84, 185 (citing *Bay Area Addiction Rsch. & Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 735 (9th Cir. 1999) (facial disability discrimination is a per se violation of the ADA)). Plaintiffs thus bear the heavy pleading burden of demonstrating that "'no set of circumstances exist'" under which the EOLOA does not conflict with these federal statutes. *Sprint Telephony PCS, L.P.*, 543 F.3d at 597 (quoting *Salerno*, 481 U.S. at 745). Plaintiffs do not satisfy this substantial burden.

Fatal to Plaintiffs' claim is that the EOLOA does not exclude any person from participating in any other government program. Where medically appropriate in an individual case, all government services at issue remain open and available for terminally-ill patients. Indeed, rather than excluding such patients, the Act and its process unequivocally confers on terminally-ill disabled persons *more rights and*

[6] A person is "disabled" under the ADA and Section 504 if he or she has "a physical or mental impairment that substantially limits one or more major life activities of such individual . . . ." 42 U.S.C. § 12102(1). Major life activities include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." *Id.* § 12102(2)(A). Major life activities also include the operation of major bodily functions, such as "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions." *Id.* § 12102(2)(B).

*services*—an additional voluntary option for end-of-life care—than non-terminally-ill and non-disabled Californians. The EOLOA, on its face and in its operation, thus cannot be credibly alleged to disadvantage a class of disabled individuals, which is the fundamental gravamen of any viable ADA or Section 504 claim. *See Mark H. v. Lemahieu*, 513 F.3d 922, 939 (9th Cir. 2008) (recognizing that Section 504 prohibits "disability-based disadvantage"); *Memmer v. Marin Cnty. Cts.*, 169 F.3d 630, 633 (9th Cir. 1999) (no viable ADA claim where record established that plaintiff was not "disadvantaged in any way by her disability" and the failure to provide an accommodation).

Plaintiffs characterize the additional rights provided by the EOLOA as discriminatory, asserting that the availability of AID medication actually harms terminally-ill disabled persons. But this characterization is wholly predicated on the speculative allegation that the EOLOA can result in involuntary deaths. As explained in detail above, the statutory scheme fully accounts for and mandates compliance with multiple safeguards put in place to eliminate this possibility. In order for an eligible terminally-ill person to obtain an AID drug, they must strictly comply with a bevy of stringent requirements, all of which serve to flesh out whether the person's decision is voluntary. *See* Cal. Health & Safety Code §§ 443.3-443.6. The Act was explicitly designed with "numerous safeguards . . . to ensure that, at every stage of the process, a person demonstrates their voluntary consent." *Shavelson v. Bonta*, 608 F. Supp. 3d 919, 928 (N.D. Cal. 2022). Still, even if Plaintiffs could credibly allege that involuntary death was possible under the EOLOA, they cannot show that *all applications* of the Act result in involuntary death. *Salerno*, 481 U.S. at 745.

Plaintiffs additionally contend that the effect of the law is that a terminally-ill disabled person's expression of suicidal ideation is treated one way, while a non-disabled person's expression of suicidal ideation receives a different, more-protective response. *See* Dkt. 1 ¶¶ 170-72, 182-84. But such differential treatment

is the product of a patient's voluntary choice and, as explained, Plaintiffs cannot demonstrate that all such decisions are involuntary. *Salerno*, 481 U.S. at 745. In any event, Plaintiffs' arguments fundamentally misunderstand the intersection of the medical field and federal disability law. Individual patients necessarily have differing interactions with their doctors and receive different medical interventions based on their unique medical circumstances. Not every medical treatment is appropriate for every patient, even those with the same condition. For this reason, courts have long recognized in the ADA and Section 504 context that, "[w]here the handicapping condition is related to the condition(s) to be treated, it will rarely, if ever, be possible to say . . . that a particular decision was discriminatory." *Johnson by Johnson v. Thompson*, 971 F.2d 1487, 1494 (10th Cir. 1992) (medical decisions concerning appropriate treatment for spina bifida, made based on the fact and degree of patient's disability, did not violate Section 504); *see McGugan v. Aldana-Bernier*, 752 F.3d 224, 234 (2d Cir. 2014) (ADA and Section 504 prohibit discrimination against a disabled person only where the disability is unrelated to, and thus improper to consideration of, the treatment decisions in question); *see also Simmons v. Navajo Cnty.*, 609 F.3d 1011, 1022 (9th Cir. 2010) (ADA does not create remedy concerning specific treatment for a disability), *overruled on other ground by Castro v. Cnty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016) (en banc).

This fundamental flaw in Plaintiffs' claims is clearly illustrated in their allegations that the EOLOA works to deny terminally-ill disabled Californians the enforcement benefit of protective criminal and civil laws. Plaintiffs argue that the Act discriminates because doctors who legally prescribe AID medication are not subject to criminal prosecution and civil sanctions. Dkt. 1 ¶¶ 171, 183. But this conception of ADA and Section 504 liability would seemingly apply in a host of other medical scenarios. For instance, under Plaintiffs' theory, a diabetes patient who undergoes surgery to remove an extremity infected with gangrene would be identically unprotected by criminal and civil protections against battery. But non-

enforcement of these sanctions against the patient's surgeon by State officials, of course, does not give rise to ADA or Section 504 liability, even though the doctor, by conducting the surgery, has treated the diabetes patient different than other patients and done so on the basis of the patient's disability. In this case, Plaintiffs have not and cannot allege a viable claim for disability discrimination.

**B. Plaintiffs Fail to State a Viable Equal Protection Claim**

Plaintiffs also cannot establish liability under the Equal Protection Clause. To prevail on an equal protection claim, a plaintiff "must show that a class that is similarly situated has been treated disparately." *Roy v. Barr*, 960 F.3d 1175, 1181 (9th Cir. 2020). A court must first "identify the [government's] classification of groups" in a statute, and then search for a comparative group "composed of individuals who are similarly situated to those in the classified group in respects that are relevant to the [government's] challenged policy." *Id*. Proposed classifications are similarly situated if they are shown to be "'arguably indistinguishable.'" *Engquist v. Or. Dep't of Ag.*, 553 U.S. 591, 601 (2008). The inquiry turns on an analysis of the purposes of the law in question. *Williams v. Field*, 416 F.2d 483, 486 (9th Cir. 1969).

Where a plaintiff demonstrates similarly situated groups, "the Court determines the appropriate level of scrutiny and then appl[ies] it." *Roy*, 960 F.3d at 1181. Classifications based on a suspect characteristic, such as race, alienage, or national origin, along with those that burden a fundamental right, will be sustained only if narrowly tailored to serve a compelling state interest. *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982). Classifications not concerning a protected group or fundamental right are constitutional if shown to be rationally related to a legitimate state interest. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

For their facial challenge to survive, Plaintiffs' allegations would have to establish "that no set of circumstances exists" under which the Act would not violate equal protection principles. *S.D. Myers, Inc.*, 253 F.3d at 467-68. Plaintiffs

have made no such showing. Indeed, their claim fails at the threshold because the EOLOA does not create similarly situated classes for equal protection purposes. As noted, whether proposed classifications are similarly situated turns on the purposes of the challenged law. *Williams*, 416 F.2d at 486. Here, Plaintiffs' proposed classes appear to be, on the one hand, terminally-ill patients eligible for the EOLOA, and, on the other hand, "other groups of people ineligible to participate in EOLOA who nevertheless share similar concerns about losing autonomy, the loss of dignity, losing control of bodily functions, becoming a burden on caregivers, pain, and/or financial costs associated with continued living." Dkt. 1 ¶ 191.

However, patients with a "terminal disease" under the Act are fundamentally different, for purposes of the law, than all other individuals in Plaintiffs' alternative classification. *See Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (equal protection "keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike."). Only the former have "an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months. *See* Cal. Health & Safety Code § 443.1(r). Such patients face an imminent and distinctive prospect of pain and suffering associated with the dying process, along with heightened emotional anxiety related to that process. All individuals in Plaintiffs' comparative class do not. This fundamental difference, as viewed through the balancing of competing interests and considerations struck by the Legislature, renders individuals with a "terminal disease" differently situated than all other persons, even those with debilitating and painful disabilities or terminal illnesses with more positive, longer-term prognoses. That the EOLOA affords these uniquely situated patients the additional right to obtain AID medication does not violate equal protection.

Further, even if Plaintiffs could establish similarly situated classifications, the disparate treatment alleged easily passes constitutional muster. As pled in the Complaint, the EOLOA's purported discrimination is "based on physical health,"

Dkt. 1 ¶ 191, a non-suspect classification that must be sustained if rationally related to a legitimate state interest, *see Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 367-68 (2001). Plaintiffs allege that strict scrutiny nevertheless applies because the EOLOA "implicates a fundamental right—the right to live." Dkt. 1 ¶ 192. Where a classification scheme has only an incidental or marginal effect on fundamental rights, however, the appropriate analytical standard remains rational basis. *See Lyng v. Castillo*, 477 U.S. 635, 638-39 (1986) (statutory classification did not directly and substantially interfere with fundamental right to family living arrangements); *accord Aleman v. Glickman*, 217 F.3d 1191, 1200 (9th Cir. 2000). In this case, while the end result of the EOLOA's stringent process is the death of the terminally ill patient, as explained above, that treatment is fully voluntarily at every step and, to the extent Plaintiffs allege a risk of involuntary death, the chain of contingencies necessary for such a result renders that assertion impossibly speculative. Accordingly, the Act cannot be said to directly and substantially burden the fundamental right to life. *See Lyng*, 477 U.S. at 638-39.

Under rational basis scrutiny, the EOLOA's differential treatment serves California's undoubtedly legitimate interest in providing for the general welfare of its citizens, which rationally includes ensuring that certain terminally ill patients at the end of their disease progression have an option to avoid suffering a prolonged and painful dying process if they so choose. Indeed, rather than discriminate, the Act affords this group the "extra" option of AID medication not afforded to others in the population. *See Roy*, 960 F.3d at 1184. The Act also serves California's interests in providing terminally ill patients with the personal autonomy to dictate the terms of their own lives and the peace of mind of knowing they will have an option to forego an otherwise painful death. And, even under strict scrutiny, all of these State interests are compelling and achieved through EOLOA's creation of a narrowly tailored classification of terminally ill patients who, upon multiple

voluntary requests and with assessment of witnesses and concurrence of their doctors, may be prescribed an AID drug.

**C. Plaintiffs Fail to State a Viable Due Process Claim**

Finally, Plaintiffs cannot state a claim for violation of due process. In essence, they allege that the EOLOA provides insufficient safeguards to ensure that a terminally ill patient's decision is truly voluntarily, thus permitting patients to relinquish their fundamental right to life in violation of their due process rights. Dkt. 1 ¶¶ 197-98.

Here again, Plaintiffs' claim fails under the demanding pleading requirements for a facial challenge. Even if Plaintiffs could establish that that the EOLOA was capable of resulting in some involuntary deaths (they cannot), they have not alleged and cannot demonstrate that in *all* applications of the EOLOA the terminally ill patient's decision to end their life would be involuntary. And that forecloses their facial challenge. *Salerno*, 481 U.S. at 745.

Moreover, Plaintiffs' due process claim is logically foreclosed by circuit precedent. As explained above, the Ninth Circuit, in *Lee*, held that allegations about the possibility of a patient involuntarily using Oregon's AID medication law were too speculative and contingent to establish the concrete injury needed for standing. *Lee*, 107 F.3d at 1388-90. Here, Plaintiffs' due process claim is founded on an identical theory of constitutional harm. If allegations about the potential for involuntary application were too speculative to support standing as to the particular plaintiffs in *Lee*, they are *a fortiori* insufficient to establish that a violation will happen as to *every* person to whom the law might be applied.

Plaintiffs contend that the EOLOA constitutes a "state-created danger" that obligates the State to affirmatively protect terminally ill patients that the Act places in danger. Dkt. 1 ¶ 197 (citing *Martinez v. City of Clovis*, 943 F.3d 1260, 1271 (9th Cir. 2019)). To succeed on a claim under the state-created danger doctrine, a plaintiff must establish: (1) that state officials' affirmative actions created or

exposed the plaintiff to actual, particularized danger that the plaintiff would not have otherwise faced; (2) that the injury suffered by the plaintiff was foreseeable; and (3) that the state officials were deliberately indifferent to the known danger. *Martinez*, 943 F.3d at 1271.

Plaintiffs cannot establish any one of these elements, let alone all three. Given the many contingencies necessary for an involuntary death to actually occur under the EOLOA, Plaintiffs cannot demonstrate an actual, particularized danger, and certainly not one that is reasonably foreseeable. Even if prescription of AID medication as an abstract concept were capable of the type of foreseeable danger alleged, in this instance, California has not acted with deliberate indifference to that danger. To the contrary, the EOLOA's "numerous safeguards . . . ensure that, at every stage of the process, a person demonstrates their voluntary consent." *Shavelson*, 608 F. Supp. 3d at 928. The State has designed its AID medication scheme around the guiding principle that a patient's decision must be affirmatively and conclusively shown to be voluntary. As this Court implicitly recognized in a prior case, prescription of AID medication under the EOLOA requires "the individual's informed medical decisions regarding his or her treatment." *See Christian Med. and Dental Ass'n v. Bonta*, 625 F. Supp. 3d 1018, 1038 (C.D. Cal. 2022) (rejecting due process challenge to the definition of "terminal disease").

## CONCLUSION

For the foregoing reasons, this Court should dismiss Plaintiffs' Complaint with prejudice and without leave to amend.

Dated: July 20, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
EDWARD KIM
DARRELL W. SPENCE
Supervising Deputy Attorneys General

KEVIN L. QUADE
CHRISTINE FRIAR WALTON
MARSHA E. BARR-FERNANDEZ
Deputy Attorneys General
*Attorneys for the State Defendants*

## CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Kevin L. Quade, certifies that this brief contains 8,419 words, which:

__ complies with the word limit of L.R. 11-6.1.[7]

Dated: July 20, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California

KEVIN L. QUADE
Deputy Attorney General
*Attorneys for the State Defendants*

[7] The State Defendants concurrently filed an *ex parte* application to file an oversized memorandum of points and authorities in support of their motion to dismiss.

**Tomas A. Guterres, Esq. (State Bar No. 152729)**
**Robert R. Yap, Esq. (State Bar No. 263763)**
**COLLINS + COLLINS LLP**
**790 E. Colorado Boulevard, Suite 600**
**Pasadena, CA 91101**
**(626) 243-1100 – FAX (626) 243-1111**
**Email: tguterres@ccllp.law**
**Email: ryap@ccllp.law**

Attorneys for Defendants
COUNTY OF LOS ANGELES, erroneously sued as "District Attorney's Office of Los Angeles County" and GEORGE GASCÓN, in his official capacity as District Attorney of Los Angeles County

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

UNITED SPINAL ASSOCIATION; NOT DEAD YET; INSTITUTE FOR PATIENTS' RIGHTS; COMMUNITIES ACTIVELY LIVING INDEPENDENT AND FREE; LONNIE VANHOOK; INGRID TISCHER,

Plaintiffs,

vs.

STATE OF CALIFORNIA; GAVIN NEWSOM, in his official capacity as Governor; ROBERT BONTA in his official capacity as Attorney General; CALIFORNIA DEPARTMENT OF PUBLIC HEALTH; TOMAS J. ARAGON, in his official capacity as Director and State Public Health Officer; CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES; MICHELLE BAASS, in her official capacity as Director;

CASE NO. 2:23-CV-03107 DMG (PVCx)
*Assigned to Hon. Fernando L. Aenlle-Rocha, Ctrm. 6B*

**DEFENDANTS COUNTY OF LOS ANGELES AND GEORGE GASCÓN'S NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

[Filed concurrently with Declaration of Robert R. Yap and (Proposed) Order]

**Date:** **September 29, 2023**
**Time:** **1:30 p.m.**
**Ctrm:** **6B**
**Place:** **350 West First Street**
**Los Angeles, CA 90012**

**Complaint Filed:** **4/25/2023**
**Trial Date:** **none**

MENTAL HEALTH SERVICES OVERSIGHT AND ACCOUNTABILITY COMMISSION; MARA MADRIGAL-WEISS, in her official capacity as Chair; MEDICAL BOARD OF CALIFORNIA; KRISTINA D. LAWSON, in her official capacity as President; DISTRICT ATTORNEY'S OFFICE FOR LOS ANGELES COUNTY; GEORGE GASCON, in his official capacity as District Attorney; and DOES 1 through 20, inclusive,

Defendants.

**TO THE HONORABLE COURT, ALL PARTIES HEREIN, AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on September 29, 2023 at 1:30 a.m. or as soon thereafter as may be heard in Courtroom 6B of the United States District Court, Central District of California – Western Division, First Street Courthouse located at 350 West First Street, Los Angeles, California 90012, Defendants County of Los Angeles, erroneously sued as "District Attorney's Office of Los Angeles County," and George Gascón, in his official capacity as District Attorney of Los Angeles County, will move the Court for an order dismissing Plaintiffs United Spinal Association, Not Dead Yet, Institute for Patients' Rights, Communities Actively Living Independent and Free, Lonnie VanHook, and Ingrid Tischer's complaint with prejudice.

This motion is made after counsel for the County and DA Gascón (collectively, movants) conferred with counsel for Plaintiffs and all other parties pursuant to Local Rule 7-3 on July 13, 2023. *See* Declaration of Robert R. Yap, Paragraphs 4-9 and Exhibit A.

COLLINS + COLLINS LL
790 E. Colorado Blvd., Suite 600, Pasadena, CA 91101
T: (626) 243-1100
F: (626) 243-1111
Fax (626) 243-1111

Movants' motion is made pursuant to Federal Rule of Civil Procedure 12(b)(6) on the grounds that Plaintiffs' complaint, and all causes of action against movants therein, fail to state a claim upon which relief can be granted because: (1) Plaintiffs do not allege any actual case or controversy as they have not pleaded any injury as any result of movants' conduct; (2) Plaintiffs' claims are barred by prosecutorial immunity; (3) Plaintiffs' claims are barred by Eleventh Amendment immunity; (4) Plaintiffs fail to plead the essential elements for a claim under the Americans with Disabilities Act (ADA) as to movants; (5) Plaintiffs fail to plead the essential elements for a claim under the Rehabilitation Act as to movants; (6) Plaintiffs fail to plead the essential elements for a claim under 42 U.S.C. § 1983 as to movants; (7) Plaintiffs fail to plead any "great and immediate" irreparable injury for equitable or injunctive relief against movants; and (8) federal courts may not interfere with or restrain state court criminal prosecutions.

This motion is based upon this notice, the memorandum of points and authorities attached hereto, the records and files of this Court, and such further evidence and argument as may be presented prior to or at the time of the hearing.

DATED: July 21, 2023

**COLLINS + COLLINS LLP**

By: */s/ Robert R. Yap*
TOMAS A. GUTERRES
ROBERT R. YAP
Attorneys for Defendants
COUNTY OF LOS ANGELES, erroneously sued as "District Attorney's Office of Los Angeles County" and GEORGE GASCÓN, in his official capacity as District Attorney of Los Angeles County

COLLINS + COLLINS LLP
790 E. Colorado Blvd., Suite 600, Pasadena, CA 91101
T: (626) 243-1100
F: (626) 243-1111
Fax (626) 243-1111

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790 E. Colorado Blvd., Suite 600, Pasadena, CA 91101
T: (626) 243-1100
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Fax (626) 243-1111

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790 E. Colorado Blvd., Suite 600, Pasadena, CA 91101
T: (626) 243-1100
F: (626) 243-1111
Fax (626) 243-1111

**FEDERAL STATUTES**



COLLINS + COLLINS LL
790 E. Colorado Blvd., Suite 600, Pasadena, CA 91101
T: (626) 243-1100
F: (626) 243-1111
Fax (626) 243-1111

# MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiffs contend that the End of Life Option Act (the Act) is unconstitutional and violates the ADA and Rehabilitation Act. Regardless of whether they ultimately succeed in repealing the Act, Plaintiffs have no valid claim against the movants. The County and DA Gascón neither enacted the Act or any regulation pursuant to the Act, nor have the authority to repeal them. As Plaintiffs admit, conduct pursuant to the Act is lawful and not subject to prosecution or criminal penalty. The County and DA Gascón cannot be liable for not investigating or not prosecuting lawful activity. Movants are improper defendants to this litigation and should be dismissed.

Plaintiffs fail to state any claim against movants. They do not allege any actual case or controversy as they have not pleaded any injury as any result of movants' conduct. Plaintiffs' claims are barred by prosecutorial immunity and Eleventh Amendment immunity. Plaintiffs do not plead the essential elements for claims under the ADA, the Rehabilitation Act, or 42 U.S.C. § 1983 as to movants. Plaintiffs do not plead any the essential elements for equitable or injunctive relief against movants. Plaintiffs' complaint against the County and DA Gascón should be dismissed.

## II. SUMMARY OF PLAINTIFFS' ALLEGATIONS

### A. Plaintiff's Allegations Regarding The Act

The Act "permit[s] physicians to prescribe lethal drugs to people who, in the opinion of the physician, have six months or less to live." Complaint, ¶ 3. Under the Act, "[a] person whose actions are compliant with the provisions of the End of Life Option Act [] shall not be prosecuted." *Id.*, ¶ 115. "Under the Act, 'a health care provider or a health care entity shall not be subject' to any criminal sanction, penalty, other liability for participating in [the Act]." *Ibid.* "Thus, Californian law still protects most people from doctors willing to prescribe lethal drugs …" *Id.*, ¶ 115.

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T: (626) 243-1100
F: (626) 243-1111
Fax (626) 243-1111

The Act's "broad exemption from criminal liability extends to all criminal laws so long as the physician complies with the Act's limited requirements." *Id.*, ¶ 116.

**B. Plaintiff's Allegations Against Movants**

"Upon information and belief, the [County District Attorney's Office and DA Gascón] ha[ve] not investigated or prosecuted any health care provider who has furnished lethal drugs to patients under [the Act], with the purpose of facilitating their death." Complaint, ¶ 51; *see also id.*, ¶ 118. DA Gascón "is charged with prosecuting criminal violations of the laws of California." *Id.*, ¶ 52. Movants "are all responsible to ensure fair and equal enforcement of the law [and] fail to discharge this responsibility and deny this public benefit to individuals with terminal disabilities when they permit physicians to assist in suicides of people with impaired judgment without legal consequence." *Id.*, ¶ 113; *see also id.*, ¶¶ 171 and 183 (Movants "are responsible for enforcing the laws of the State, including criminal laws and certain civil laws protecting older people and those with disabilities, and suicidal people, but fail to discharge their duties to enforce these laws pursuant to [the Act]"; *see also id.*, ¶¶ 193 and 199).

Movants "violate the ADA[,] [the Rehabilitation Act,] and [their] implementing regulations by (1) denying people with terminal disabilities the opportunity to benefit from enforcement of criminal and certain civil laws; (2) providing an opportunity to people with terminal disabilities to benefit from enforcement of criminal and certain civil laws that is not equal to that afforded to others; (3) providing a benefit of enforcement of criminal and certain civil laws to people with terminal disabilities that is not as effective in affording equal opportunity to obtain the same result or benefit as that provided to others; (4) unnecessarily providing a different or separate benefit of enforcement of criminal and certain civil laws to individuals with terminal disabilities; (5) limiting people with terminal disabilities in the enjoyment of rights, privileges, advantage, or opportunities enjoyed by others, including the benefit of enforcement of criminal and certain civil laws; and

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T: (626) 243-1100
F: (626) 243-1111
Fax (626) 243-1111

(6) using criteria or methods of administration that have the effect of discriminating against people with terminal disabilities and substantially impairing accomplishment of the objectives of these public entities with respect to individuals with terminal disabilities." *Id*., ¶¶ 171 and 183.

"District Attorney Gascón violates[s] the Equal Protection Clause by offering protection and public services to people without terminal disabilities who become suicidal, while simultaneously justifying, validating, steering, and assisting the suicide of those with terminal disabilities when they become suicidal." Complaint, ¶¶ 193. "District Attorney Gascón ha[s] been deliberately indifferent in creating and/or exposing individuals with terminal disabilities to the foreseeable dangers of physician-assisted suicide that otherwise would have not existed but for [his] enforcement, implementation, and administration of [the Act]. *Id*., ¶ 197.

Plaintiffs assert no other allegation against the County District Attorney's Office or DA Gascón. *See generally* Complaint.

## III. LEGAL AUTHORITY

Courts must dismiss a complaint for failure to state a claim upon which relief can be granted. Rule 12(b)(6). "A Rule 12(b)(6) motion tests the legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but has not 'show[n]'—that the pleader is entitled to relief." *Id*. at 1950. In addition, "[d]ismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

"[T]he court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts

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T: (626) 243-1100
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alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-755 (9th Cir. 1994); *see also Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (Courts are not "required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences"). The Court "is not required to indulge unwarranted inferences in order to save a complaint from dismissal." *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1064-1065 (9th Cir. 2008). "[C]onclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim." *In re Syntex Corp. Securities Litigation*, 95 F.3d 922, 926 (9th Cir. 1996).

## IV. ARGUMENT

### A. Plaintiffs' Fail To Allege Any Injury Or A Case Or Controversy

"Art. III of the Constitution [requires] that those who seek to invoke the power of federal courts must allege an actual case or controversy." *O'Shea v. Littleton*, 414 U.S. 488, 493 (1974). "Plaintiffs in the federal courts 'must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction' " (internal citation omitted). *Ibid*. "There must be a 'personal stake in the outcome' such as to 'assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions' " (internal citation omitted). *Id*. at 493-494. The same requirement applies "where statutory issues are raised." *Id*. at 494.

"Abstract injury is not enough." *O'Shea*, 414 U.S. at 494. It must be alleged that the plaintiff 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged statute or official conduct" (internal citation omitted). *Ibid*. "The injury or threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical' " (internal citation omitted). *Ibid*.

In *O'Shea*, the Supreme Court held that the plaintiffs failed to allege an actual case or controversy. *Id*., 414 U.S. at 493. The *O'Shea* plaintiffs alleged that the defendants county magistrate and judge " 'have engaged in and continue to engage

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T: (626) 243-1100
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in, a pattern and practice of conduct . . . all of which has deprived and continues to deprive plaintiffs and members of their class of their' constitutional rights and, again, that petitioners 'have denied and continue to deny to plaintiffs and members of their class their constitutional rights' by illegal bond-setting, sentencing, and jury-fee practices." *Id*. at 495. The Supreme Court found that "[n]one of the named plaintiffs [wa]s identified as himself having suffered any injury in the manner specified … [and that] the claim[s] against [the county magistrate and judge] allege[] injury in only the most general terms." *Ibid*. It also found that "the threat of a new prosecution was not sufficiently imminent to satisfy the jurisdictional requirements of the federal courts" and that "the threat of injury from the alleged course of conduct [the plaintiffs] attack [wa]s simply too remote to satisfy the case-or-controversy requirement and permit adjudication by a federal court." *Id*. at p. 498.

Here, Plaintiffs do not allege that any specific act or conduct by either the County District Attorney's Office or DA Gascón caused any actual injury to any member of United Spinal, Not Dead Yet, Institute for Patients' Rights, Communities Actively Living or to either Mr. VanHook or Ms. Tischer. Plaintiffs also do not allege that any threatened or imminent act or conduct by either the County District Attorney's Office or DA Gascón will result in any actual injury to any Plaintiff. Plaintiffs lack Article III standing and fail to allege any case or controversy against movants.

**B. Movants Are Immune**

Plaintiffs' claims are barred by prosecutorial immunity and the Eleventh Amendment. "The common-law rule of [prosecutorial] immunity is … well settled." *Imbler v. Pachtman*, 424 U.S. 409, 424 (1976). The Supreme Court reasoned:

> The office of public prosecutor is one which must be administered with courage and independence. Yet how can this be if the prosecutor is made subject to suit by those whom he accuses and fails to convict? To allow this would open the way for unlimited harassment and embarrassment of the most conscientious officials by those who

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> would profit thereby. There would be involved in every case the possible consequences of a failure to obtain a conviction. There would always be a question of possible civil action in case the prosecutor saw fit to move dismissal of the case. . . . The apprehension of such consequences would tend toward great uneasiness and toward weakening the fearless and impartial policy which should characterize the administration of this office. The work of the prosecutor would thus be impeded, and we would have moved away from the desired objective of stricter a fairer law enforcement.
>
> *Imbler*, 424 U.S. at 423-424.

"[A] criminal prosecutor is fully protected by absolute immunity when performing the traditional functions of an advocate." *Kalina v. Fletcher*, 522 U.S. 118, 118 (1997); *see also Imbler*, 424 U.S. at 431 ("[A]bsolute immunity appl[ies] with full force" for "activities … intimately associated with the judicial phase of the criminal process"). "[P]rosecutors enjoy absolute immunity for their decisions to prosecute." *Reichle v. Howards*, 566 U.S. 658, 668 (2012). " '[A]ctions preliminary to the initiation of a prosecution and actions apart from the courtroom' … are nonetheless entitled to absolute immunity." *Buckley v. Fitzsimmons*, 509 U.S. 259, 272 (1993).

Movants are also protected by the Eleventh Amendment. *Del Campo v. Kennedy* 517 F.3d 1070, 1073 (2008). "California DAs serve both state and county functions: They act as state officials, and so possess Eleventh Amendment immunity, when 'acting in [their] prosecutorial capacity.' " *Ibid.*

Pursuant to prosecutorial immunity and the Eleventh Amendment, movants are absolutely immune for their alleged actions and decisions relating to prosecutions of medical providers who furnish lethal drugs to patients.[1]

[1] Prosecutors are also entitled to "qualified immunity when he is not acting as an advocate, as where he functions as a complaining witness in presenting a judge with a complaint and supporting affidavit to establish probable cause for an arrest." *Kalina*, 522 U.S. at 118. "Under [qualified] immunity, government officials are not subject to damages liability for the performance of their discretionary functions when 'their conduct does not violate clearly established statutory or

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T: (626) 243-1100
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**C. Plaintiffs' ADA And Rehabilitation Act Claims Are Deficient**

Plaintiffs' first and second claims for violation of the ADA and Rehabilitation Act are defective. "To state a prima facie case under the ADA, [the plaintiff] must show (1) that she is disabled within the meaning of the ADA … and (3) that she was discriminated against because of her disability." *Smith v. Clark County School Dist.*, 727 F.3d 950, 955 (2013). Similarly, "[t]o state a prima facie case under the [Rehabilitation] Act, a plaintiff must show that (1) he is a person with a disability … and (3) suffered discrimination because of his disability." *Daniel MCook Brewer v. United States Postal Service, et al.*, 2023 WL 4637112At *1 (9th Cir. 2023).

Plaintiffs do not plead that any of movants' alleged conduct was due to the disability of any Plaintiff. *See Hyer v. City and County of Honolulu*, 2023 WL 1766456 at *23 (D. Haw. 2023) ("Plaintiffs have failed to show that officers [arrested plaintiff] solely because of his disability"). Plaintiffs fail to plead the elements for a claim under the ADA or Rehabilitation Act.

**D. DA Gascón Is/Was Not An Integral Participant**

Plaintiffs' third and fourth claims for violation of 42 U.S.C. § 1983 fail. "[D]efendants cannot be held liable for a constitutional violation under 42 U.S.C. § 1983 unless they were integral participants in the unlawful conduct." *Keates v. Koile*, 883 F.3d 1228, 1241 (9th Cir. 2018). A defendant is not an "integral participant" if they were not a "party to 'a collective decision making process.' " *Newberry v. County of San Bernardino*, 750 Fed.Appx. 534, 536 (9th Cir. 2018) *citing Sjurset v. Button*, 810 F.3d 609, 619 (9th Cir. 2015). In *Newberry*, the plaintiffs alleged "that their homes were unlawfully searched for municipal code violations by officers of the County of San Bernardino." *Newberry*, 750 Fed.Appx. at 535. The evidence later showed that the search "was initiated, coordinated, and for the most part conducted by officers of the City of San Bernardino, not officers of the

constitutional rights of which a reasonable person would have known' " (internal citation omitted). *Buckley*, 509 U.S. at 273.

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T: (626) 243-1100
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County." *Ibid*. The plaintiffs, nevertheless, "argued that the [defendant] County officers were integral participants in the searches conducted by their City partners, such that they may be deemed liable for searches of the named plaintiffs' homes." *Id*. at p. 536.

The Ninth Circuit held that the County officers were not integral participants. *Newberry*, 750 Fed.Appx. at 536. It reasoned:

> The County and its officers played no role in planning the [] search generally. They played no role in securing the warrant. And except as passive observers, they played no role in the operational briefing held on the morning the warrant was executed.
>
> *Newberry*, 750 Fed.Appx. at 536.

Similarly in *Sjurset*, the plaintiff-father asserted a section 1983 claim arising from the removal of his children from his home by Stayton police officers pursuant to a decision made by Oregon Department of Human Services employees. *Id*., 810 F.3d at 612-613. The Ninth Circuit found that the officers were not integral participants because the decision to remove the children was made by the state agency. *Id*. at 619 ("[N]o facts in this case suggest that the Stayton officers were privy to any discussions, briefings, or collective decisions made by DHS in its protective-custody determination").

DA Gascón is and was not an integral participant. It is indisputable that he was neither a party to nor any way involved in the enactment of the Act, and that he has no authority to repeal it. DA Gascón cannot be liable under section 1983 to the extent that the Act is unconstitutional.

**E. Plaintiffs Are Not Entitled To Any Relief From Movants**

The only relief Plaintiffs seek against movants is for an order "permanently enjoining Defendants from enforcing [the Act]." Complaint at 91:22-23. Plaintiffs cannot obtain such relief against movants. "[T]he 'basic doctrine of equity jurisprudence that courts of equity should not act, and particularly should not act to

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T: (626) 243-1100
F: (626) 243-1111
Fax (626) 243-1111

restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief.' " *O'Shea*, 414 U.S. at 499 *citing Younger v. Harris*, 401 U.S. 37, 43-44 (1971). "Additionally, recognition of the need for a proper balance in the concurrent operation of federal and state courts counsels restraint against the issuance of injunctions against state officers engaged in the administration of the State's criminal laws in the absence of a showing of irreparable injury which is 'both great and immediate.' " *O'Shea*, 414 U.S. at 499; *see also Younger*, 401 U.S. at 46 ("[I]n view of the fundamental policy against federal interference with state criminal prosecutions, even irreparable injury is insufficient unless it is 'both great and immediate' ").

For the same reasons it found that the *O'Shea* plaintiffs did not allege a case or controversy, the Supreme Court found that they "failed … to establish the basic requisites of the issuance of equitable relief … the likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law." *O'Shea*, 414 U.S. at 502. "[T]he threatened injury to which respondents [we]re allegedly subjected" was "necessarily conjectural [in] nature." *Ibid*. Given that Plaintiffs here similarly do not allege that any threatened or imminent act or conduct by either the County District Attorney's Office or DA Gascón will result in any substantial or imminent injury to any Plaintiff, they fail to satisfy the requirements for equitable relief.

Further, Plaintiffs requested relief against movants is improper. First, "the possible unconstitutionality of a statute 'on its face' does not in itself justify an injunction against good-faith attempts to enforce it." *Younger*, 401 U.S. at 54. All of Plaintiffs' claims are based on their allegation that movants "ha[ve] not investigated or prosecuted any health care provider who has furnished lethal drugs to patients under [the Act], with the purpose of facilitating their death." Complaint, ¶¶ 51 and 118. Given that such conduct is lawful under the Act, Complaint ¶¶ 3 and 115-116, Plaintiffs cannot enjoin movants from not investigation and not prosecuting lawful

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T: (626) 243-1100
F: (626) 243-1111
Fax (626) 243-1111

conduct regardless of Plaintiffs' belief that the Act is unconstitutional.

Second, "federal court[s] should not intervene to establish the basis for future intervention that would be so intrusive and unworkable." *O'Shea*, 414 U.S. at 500. In *O'Shea*, the plaintiffs sought "an injunction aimed at controlling or preventing the occurrence of specific events that might take place in the course of future state criminal trials." *Ibid.* As another basis for holding that the plaintiffs were not entitled to the requested injunction, the Supreme Court found that the requested injunction was "nothing less than an ongoing federal audit of state criminal proceedings." *Ibid.* It reasoned that the "injunction of the type contemplated by [the plaintiffs] and the Court of Appeals would disrupt the normal course of proceedings in the state courts via resort to the federal suit for determination of the claim ab initio." *Id.* at p. 501. "It would require for its enforcement the continuous supervision by the federal court over the conduct of the petitioners in the course of future criminal trial proceedings involving any of the members of the respondents' broadly defined class." *Ibid.* "[B]ecause an injunction against acts which might occur in the course of future criminal proceedings would necessarily impose continuing obligations of compliance, the question arises of how compliance might be enforced if the beneficiaries of the injunction were to charge that it had been disobeyed." *Ibid.* The injunction sought by Plaintiffs here is similarly problematic. Plaintiffs' request for an injunction ensuring that movants investigate and prosecute medical providers health care provider who furnish lethal drugs to patients would require the same ongoing interference and continuous supervision of Los Angeles County prosecutions that the *O'Shea* court deemed improper.

Plaintiffs cannot obtain the requested relief against movants. Their complaint should be dismissed on these grounds alone.

## V. CONCLUSION

Plaintiffs fail to satisfy the requirements of Article III and fail to allege any case or controversy. Their claims are barred by prosecutorial immunity and the

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T: (626) 243-1100
F: (626) 243-1111
Fax (626) 243-1111

Eleventh Amendment. Their claims are deficiently pled. They are not entitled to any injunctive relief against movants. Movants respectfully request that the Court grant their motion without leave to amend and dismiss the entirety of Plaintiffs' complaint with prejudice.

DATED: July 21, 2023

**COLLINS + COLLINS LLP**

By: */s/ Robert R. Yap*
TOMAS A. GUTERRES
ROBERT R. YAP
Attorneys for Defendants
COUNTY OF LOS ANGELES, erroneously sued as "District Attorney's Office of Los Angeles County" and GEORGE GASCÓN, in his official capacity as District Attorney of Los Angeles County

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T: (626) 243-1100
F: (626) 243-1111
Fax (626) 243-1111

**CERTIFICATE OF COMPLAINCE**

Pursuant to Local Rule 11-6.2, the undersigned counsel of record for movants certifies that this brief contains 3,316 words, which complies with the word limit of Local Rule 11.6.1.

DATED: July 21, 2023

**COLLINS + COLLINS LLP**

By: */s/ Robert R. Yap*
TOMAS A. GUTERRES
ROBERT R. YAP
Attorneys for Defendants
COUNTY OF LOS ANGELES, erroneously sued as "District Attorney's Office of Los Angeles County" and GEORGE GASCÓN, in his official capacity as District Attorney of Los Angeles County

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790 E. Colorado Blvd., Suite 600, Pasadena, CA 91101
T: (626) 243-1100
F: (626) 243-1111
Fax (626) 243-1111