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The Collateral Effects of Reproductive Restrictions: Dispensing Methotrexate Violates Arizona, Arkansas, Louisiana, and Missouri's Public Accommodation Laws

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THE COLLATERAL EFFECTS OF REPRODUCTIVE RESTRICTIONS: DISPARATE TREATMENT IN DISPENSING METHOTREXATE VIOLATES ARIZONA, ARKANSAS, LOUISIANA, AND MISSOURI’S PUBLIC ACCOMMODATION LAWS

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I. INTRODUCTION

In 2022, Annie England Noblin routinely went to her local pharmacy to pick up her prescription for Methotrexate, which she used to manage her rheumatoid arthritis.¹ When Noblin attempted to pick up her medication in July 2022, the pharmacist informed her that Walgreens changed its policy regarding Methotrexate after the Supreme Court’s decision to overturn *Roe v. Wade* led to thirteen states enacting abortion trigger laws.² Because doctors historically prescribe Methotrexate off-label to treat ectopic pregnancies by inducing an abortion, the pharmacy needed explicit confirmation from Noblin’s physician that the Methotrexate prescription was

1. See Jen Christensen, *Women with Chronic Conditions Struggle to Find Medications After Abortion Laws Limit Access*, CNN HEALTH (Jul. 22, 2022, 7:11 AM), <https://www.cnn.com/2022/07/22/health/abortion-law-medications-methotrexate/index.html> (summarizing the experience of a pregnancy-capable individual in attempting to get their prescription for a chronic condition).

2. See *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2242 (2021) (holding that the Constitution does not provide the right to an abortion); see Christensen, *supra* note 1 (highlighting that the new policy requires extra steps of physicians when they prescribe Methotrexate to pregnancy-capable patients); Elizabeth Nash and Isabel Guarnieri, *13 States Have Abortion Trigger Bans—Here’s What Happens When Roe Is Overturned*, GUTTMACHER INST. (June 6, 2022), [guttmacher.org/article/2022/06/13-states-have-abortion-trigger-bans-heres-what-happens-when-roe-overturned](https://www.guttmacher.org/article/2022/06/13-states-have-abortion-trigger-bans-heres-what-happens-when-roe-overturned) (defining trigger laws as restrictive abortion laws that were designed to be “triggered” if *Roe* no longer applies).

not for an abortion.³ “My doctor and I should not be treated like criminals in the pharmacy line, and I shouldn’t be discriminated against because I have a body part that can produce a child,” Noblin said, frustrated by her experience at the pharmacy.⁴ In passing this law, some have felt that lawmakers assumed patients did not make an informed decision with their physician to take Methotrexate while considering the potential risks of the medication.⁵ She voiced her complaint to the regional pharmacy’s management office, which confirmed the new policy.⁶

Also negatively affected by new post-Dobbs policies, 14-year-old Emma Thompson was completely denied her medication at an Arizona Walgreens.⁷ Thompson had been using Methotrexate since she was a young child to manage her rheumatoid arthritis.⁸ A pharmacist informed Thompson’s mother that Walgreens denied the prescription for her vital medication because Methotrexate could induce an abortion and Thompson was of reproductive age.⁹

On June 24, 2022, the Supreme Court released its decision in *Dobbs v. Jackson Women’s Health Organization* to overturn the privacy right to abortion access, allowing more than thirteen states to enact trigger bans that

3. See Christensen, *supra* note 1 (illustrating that the policy change after *Dobbs* is in response to states with restrictive abortion policies that classify Methotrexate as an abortion-inducing drug); Panagiotis Rigopoulos, Ioanis Dardalas, and Chryssa Pourzitaki, *Emphasis on the Off-Label Use of Methotrexate for Ectopic Pregnancy*, 300 ARCHIVES OBSTETRICS & GYNECOLOGY 1093 (2019) (recognizing the undeniable value of Methotrexate for treating ectopic pregnancies and the importance of noting its off-label use).

4. See Christensen, *supra* note 1 (highlighting the discomfort that patients are experiencing due to the new policy).

5. See Christensen, *supra* note 1 (recognizing that the Walgreens policy treats men and women differently when they pick up the same prescription due to the extra steps required of pregnancy-capable patients to verify that the prescription is not for abortion purposes).

6. See *id.*

7. See Maria Luisa Paúl, *14 Year-Old’s Arthritis Meds Denied After Ariz. Abortion Ban, Doctor Says*, WASH. POST (Oct. 5, 2022, at 1:18 AM), <https://www.washingtonpost.com/nation/2022/10/05/abortion-arizona-arthritis-prescription-refill/> (noting that the denial occurred two days after Arizona’s abortion ban began).

8. See *id.* (explaining that the pharmacy did not consider the patient’s reliance on the medication when her prescription was denied).

9. See *id.* (demonstrating that the relevant characteristics upon which Walgreens was denying Thompson’s prescription only affect pregnancy-capable individuals).

prohibit or severely limit access to abortion in most cases.¹⁰ Pharmacies have been restricting access to medications like Methotrexate pursuant to state enforcement of strict abortion restrictions following the *Dobbs v. Jackson Women's Health Organization* decision.¹¹ Restrictions after *Dobbs* have affected about one-third of individuals of reproductive age who are capable of becoming pregnant in the US and have led to increased hardships, especially on those from low-income backgrounds.¹²

In response to *Dobbs*, CVS and Walgreens have added new policies to avoid criminal sanctions contained in trigger laws.¹³ These policies add the additional step of making doctors confirm they are not prescribing pregnancy-capable¹⁴ patients Methotrexate to induce an abortion.¹⁵ Two months after the Supreme Court decision, fourteen states have enacted legislation to impose criminal penalties on abortion providers, including physicians who call in Methotrexate prescriptions for their pregnancy-capable patients.¹⁶ For example, Arizona and Louisiana punish abortion

10. See Sarah McCammon, *Two Months After the Dobbs Ruling, New Abortion Bans are Taking Hold*, NPR (Aug. 23, 2022, 2:42 PM), <https://www.npr.org/2022/08/23/1118846811/two-months-after-the-dobbs-ruling-new-abortion-bans-are-taking-hold> (showing the significant impact of the *Dobbs* decision); see generally *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022) (holding that there is no constitutional protection for the right to an abortion).

11. See Paúl, *supra* note 7 (explaining that the new policy was enacted to avoid liability under strict abortion restrictions).

12. See Cameron Scott, *Model Shows Where Women Lost Access to Abortion After Dobbs*, UNIV. CAL. (Nov. 4, 2022), <https://www.universityofcalifornia.edu/news/model-shows-where-women-lost-access-abortion-after-dobbs> (highlighting excessive travel times and increased expenses associated with travel).

13. See Tony Murphy, *CVS Seeks Verification on Drugs with Possible Abortion Use*, AP NEWS (July 21, 2022), <https://apnews.com/article/abortion-us-supreme-court-health-medication-1f2e8da6ac0ff43e0128c683f40689db> (describing extra steps CVS requires of pregnancy-capable patients involving getting verification of the use for the medication).

14. See *Inclusive and Gender-Neutral Language*, NAT'L INSTS. HEALTH (Oct. 20, 2022), <https://www.nih.gov/nih-style-guide/inclusive-gender-neutral-language> (this Comment will use the term "pregnancy-capable" to refer to individuals who are affected by the policies because this term is gender-neutral and recognizes that not only women can become pregnant).

15. See Murphy, *supra* note 13 (noting the effect of the policy).

16. See ARIZ. REV. STAT. ANN. § 36-2324 (2022) (restricting access to abortion in Arizona); ARIZ. REV. STAT. ANN. § 13-604 (2021) (categorizing providing an abortion as a Class 6 felony); LA. STAT. ANN. § 40:1061.1 (2022) (restricting access to abortion).

providers with up to eighteen months and two years in prison, respectively.¹⁷ Arkansas and Missouri also have severe punishments for abortion providers.¹⁸ In Arkansas, abortion providers can be charged with an unclassified felony and face up to ten years in prison, a \$100,000 fine, or both.¹⁹ In Missouri, physicians face ten to twenty years in prison for providing medication for an abortion.²⁰

This Comment argues that the policies enacted by CVS and Walgreens in Arizona, Arkansas, Louisiana, and Missouri, requiring physicians to confirm they are not prescribing Methotrexate to their pregnancy-capable patients to induce an abortion or denying pregnancy-capable patients their Methotrexate prescription altogether, violate the states' public accommodation statutes by discriminating on the basis of sex.²¹ Part II summarizes the CVS and Walgreens policies, outlines the disparate effects of the policies, and compares the public accommodation statutes in the four states.²² Part III applies the framework for discrimination claims to the pharmacy policies at issue.²³ Part IV recommends that the federal government codify the right to bodily autonomy through legislation and that the four states clarify the distinct roles of physicians and pharmacists in their abortion statutes to prevent pharmacies from enacting discriminatory policies.²⁴ Finally, Part V concludes that the CVS and Walgreens policies are a violation of each state's

17. See ARIZ. REV. STAT. ANN. § 13-604 (2022) (criminalizing healthcare providers who provide any abortion medication or procedures); LA. STAT. ANN. § 40:1061.29 (2022) (providing sentencing for abortion providers); *After Roe Fell: Abortion Laws by State*, CTR. FOR REPRODUCTIVE RTS. (Jun., 2022), <https://reproductiverights.org/maps/abortion-laws-by-state/> (overviewing that, in addition to the fourteen states that have criminalized abortion, ten states have "hostile" abortion laws).

18. See ARK. CODE ANN. § 5-61-404 (2021) (asserting that abortion providers in Arkansas will receive a felony sentence); MO. ANN. STAT. § 557-021 (West 2020) (noting that providing medication for abortion is a Class B Felony with a penalty of between ten to twenty years).

19. See § 5-61-404 (establishing that abortion providers in Arkansas will receive an unclassified felony sentence).

20. See § 557-021 (establishing that physicians would face up to twenty years for a Class B felony sentence).

21. See *infra* Part II (overviewing the policies that disparately affect pregnancy-capable individuals).

22. See *id.* (discussing the protections afforded by public accommodation statutes in the four states).

23. See *infra* Part III (comparing cases that analyzed discrimination in various public accommodation contexts).

24. See *infra* Part IV (recommending that federal legislation be passed to protect bodily autonomy).

public accommodation statutes.²⁵

II. BACKGROUND

A. CVS and Walgreens Policies Post *Dobbs*

Methotrexate has been approved by the Food and Drug Administration (“FDA”) to treat rheumatoid arthritis, childhood leukemia, psoriasis, lupus, and other autoimmune disorders.²⁶ Side effects of Methotrexate include nausea, mucosal ulcers, alopecia, pancreatitis, and renal failure, among others.²⁶ Physicians have a duty to inform their pregnancy-capable patients of the possible side effects of Methotrexate because of the complications it can cause in pregnant individuals; this practice has existed long before the new abortion bans.²⁷ Previously, physicians made appropriate medical decisions with their patients while considering this information.²⁸ However, Methotrexate has a history of being used for the off-label purpose of treating an ectopic pregnancy.²⁹ Once the FDA approves a drug, healthcare providers can generally prescribe the drug for unapproved uses, or “off-label” uses, when they find it would be an appropriate treatment for their patient.³⁰ The

25. See *infra* Part V (concluding that the pharmacies’ actions following *Dobbs* violate public accommodation statutes).

26. See Maryam Hannoodee and Meenal Mittal, *Methotrexate*, NAT’L CTR. BIOTECHNOLOGY INFO., [HTTPS://WWW.NCBI.NLM.NIH.GOV/BOOKS/NBK556114/](https://www.ncbi.nlm.nih.gov/books/NBK556114/) (AUG. 16, 2023) (explaining the uses, risks, and adverse effects of Methotrexate); West-Ward Pharmaceuticals Corp., *Methotrexate*, FDA (Aug. 2020), https://www.accessdata.fda.gov/drugsatfda_docs/label/2020/040054s015,s016,s017.pdf (detailing information that physicians must convey to their patients when they prescribe Methotrexate) [hereinafter *FDA Methotrexate*].

26. See Hannoodee & Mittal, *supra* note 26 (emphasizing that a physician has to inform female patients of reproductive age of these side effects and inform them that they must use double contraception when using Methotrexate).

27. See *id.* (warning of low white cell count, GI bleeding, and renal failure as possible adverse effects of using Methotrexate when pregnant).

28. See *FDA Methotrexate*, *supra* note 26 (outlining all the dosage and administration recommendations for Methotrexate).

29. *FAQs Ectopic Pregnancy*, THE AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS (Feb. 2018), <https://www.acog.org/womens-health/faqs/ectopic-pregnancy#:~:text=The%20most%20common%20drug%20used,removal%20of%20the%20fallopian%20tube> (defining an ectopic pregnancy as a condition that occurs when a fertilized egg grows outside the uterus that can lead to a rupture in the patient’s fallopian tube).

30. *Understanding Unapproved Use of Approved Drugs “Off Label,”* FOOD AND DRUG ADMIN. (Feb. 5, 2018), <https://www.fda.gov/patients/learn-about-expanded->

alternative option to using Methotrexate to treat an ectopic pregnancy is surgery, which may lead to more serious complications compared to taking medication.³¹

Following the *Dobbs* decision, the spokesperson for CVS Health, Mike DeAngelis, confirmed its pharmacies in Alabama, Arkansas, Idaho, Oklahoma, and Texas require physicians to verify they are not prescribing Methotrexate to induce an abortion.³² CVS established this policy in a memo sent out by CVS headquarters to pharmacies in “high-risk” states where restrictive abortion measures were enacted and started enforcing the policy during the first week of July 2022.³³ The policy has led to patients facing delays in receiving their prescription or being completely denied Methotrexate at CVS pharmacies in Missouri because pharmacists have the additional step of confirming the prescribed purpose for the medication with the patient’s physician.³⁴

A similar memo was given to staff in Arizona from the Walgreens Headquarters, which detailed the new procedure for dispensing Methotrexate, Mifepristone, and Misoprostol — all medications used to safely induce abortions as well as treat other medical conditions.³⁵ The

access-and-other-treatment-options/understanding-unapproved-use-approved-drugs-label (outlining the factors patients and physicians should consider when using a drug for an “off label” purpose).

31. See FAQs Ectopic Pregnancy, *supra* note 30 (distinguishing between the side effects of Methotrexate, which include nausea, vomiting, diarrhea, and dizziness, versus the side effects of surgery, which include pain, fatigue, bleeding and infection).

32. See Murphy, *supra* note 13 (clarifying that CVS will continue to fill prescriptions for miscarriages and ectopic pregnancies).

33. See *id.* (illustrating that the policy started soon after the *Dobbs* decision was released); see also Laura Weiss, *After Roe’s Repeal, CVS Told Pharmacists to Withhold Certain Prescriptions*, NEW REPUBLIC (July 20, 2022), <https://newrepublic.com/article/167087/roe-cvs-methotrexate-abortion-pills> (clarifying that the difficulty pregnancy-capable individuals have experienced in getting their prescription is not a “rogue” pharmacist but rather a corporate policy).

34. See Weiss, *supra* note 34 (chronicling the negative experiences of patients when they have tried to get their Methotrexate prescription); see also Christensen, *supra* note 1 (showing disparate treatment between pregnancy-capable and non-capable individuals).

35. See Paúl, *supra* note 7 (noting that many of the medications that are being targeted are teratogens that can result in fetal abnormalities or miscarriages if taken by someone who is pregnant); see also Piper Hutchinson, *Doctors Spell Out Their Opposition to Louisiana’s Abortion Law*, LA. ILLUMINATOR (July 6, 2022, at 10:50 AM) <https://lailluminator.com/2022/07/06/doctors-spell-out-their-opposition-to-louisianas-abortion-law/> (emphasizing that providers are experiencing a fear of punishment and a

procedure involves a pharmacist, rather than a physician, determining whether a prescription can be filled for its off-label purpose.³⁶ The policy requires a diagnosis code to be included in the prescription to fill it for a pregnancy-capable patient; this was not the typical procedure of the pharmacy pre-*Dobbs*.³⁷

The new policies outlined in the CVS and Walgreens memos puts pharmacists, physicians, and patients in the legal crosshairs of reproductive access.³⁸ Pharmacists and physicians have to navigate serving their patients and the legal consequences of violating restrictive abortion laws with limited guidance.³⁹ On the other hand, patients are being denied access to medications that treat chronic illnesses.⁴⁰

B. Alabama, Arkansas, Louisiana, and Missouri have statutory protections prohibiting discrimination based on sex

In 1964, Congress passed the Civil Rights Act (“CRA”), including Title II, which provides protections against discrimination in public accommodations on the basis of race, color, religion, or national origin.⁴¹ While sex and gender were not included as protected classes in Title II at the federal level, several states have explicitly included sex in their respective public accommodation statutes.⁴² Public accommodation statutes apply to

lack of clarity on how to navigate the restrictive abortion laws); *see also* Weiss, *supra* note 34 (detailing that some pharmacists are torn between doing right by their patients and following the policy).

36. *See* Weiss, *supra* note 34 (noting that it is unprecedented to dispense drugs this way except for methadone and suboxone).

37. *See id.* (stating that the pharmacist had dispensed these medications “countless times, no questions asked”).

38. *See id.* (emphasizing that legal interference in healthcare tends to worsen existing discrimination in the system).

39. *See id.* (criticizing legislators for making rules without fully understanding health and medicine).

40. *See id.* (pointing to language in the memo that clearly states that the CVS policy only applies to “women of child-bearing potential” who are seeking to fill their Methotrexate prescription).

41. *See* 42 U.S.C. § 2000a (providing protections for four classes in Title II).

42. *See* ARIZ. REV. STAT. ANN. § 41-1441(2) (2010) (including places that offer goods or services in the definition of “places of public accommodation”); ARK. CODE ANN. § 16-123-102 (2017) (establishing that a place of public accommodation is any establishment that supplies goods and services to the general public); LA. REV. STAT. § 51:2232(9) (2022) (defining “a place of public accommodation” to include stores); MO. ANN. STAT. § 213.010(15) (West 2017) (defining “places of public accommodation” as businesses that offer goods and services for the health and welfare of the general public).

establishments that provide goods or services to the general public.⁴³ Accordingly, pharmacies meet the definition of public accommodation in each of the four states.⁴⁴ Some states lack case law applying their state public accommodation statute or the state Civil Rights Act to instances of sex-based discrimination, but courts have analyzed sex discrimination using the same framework as discrimination in public accommodations based on age, race, or physical condition.⁴⁵ The Supreme Court has ruled that sex discrimination includes discrimination on the basis of pregnancy.⁴⁶ These classes are all protected under the same section of the state public accommodation statute.⁴⁷

I. Arizona

The Arizona Civil Rights Act (“ACRA”) addresses public accommodations and explicitly provides protections against discrimination based on race, color, religion, sex, national origin, or ancestry.⁴⁸ The ACRA defines places of public accommodation to include all venues that provide goods or services to the general public.⁴⁹ Because pharmacies are privately owned businesses that sell medical products and offer prescription

43. See 28 C.F.R. § 36.104 (2016) (including pharmacies as places of public accommodation along with professional offices of healthcare providers, hospitals, and insurance offices).

44. See *id.* (extending applicability of the statute to pharmacies because they sell medication and other medical products and provide medical services).

45. See *Semien v. Pizza Hut of Am., Inc.*, 204 F.3d 1115 (5th Cir. 1999) (concluding that the correct framework to use to analyze Louisiana’s discrimination statute is the framework used in Title II cases); *York v. JPMorgan Chase Bank, Nat’l Ass’n.*, No. CV-18-04039-PHX-SPL, 2019 WL 3802535, at *2 (D. Ariz. Aug. 13, 2019) (establishing the framework for analyzing discrimination cases); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 614-16 (1984) (utilizing a three-part analysis to address sex-based discrimination by a private organization); *R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420, 425 (Mo. 2019) (using a three-element framework to analyze claims of discrimination based on a protected class under the Missouri Human Rights Act).

46. See *California Fed. Sav. & Loan Ass’n v. Guerra*, 479 U.S. 272, 276-77 (1987) (citing to Title VII of the Civil Rights Act, which was amended by the Pregnancy Discrimination Act); 42 U.S.C. § 2000e(k) (West) (establishing that the term “on the basis of sex” includes on the basis of “pregnancy, childbirth, or related medical conditions”).

47. See ARIZ. REV. STAT. ANN. § 41-1442 (2010) (protecting civil rights of six protected classes); ARK. CODE ANN. § 16-123-107 (2017) (protecting five suspect groups from discrimination); LA. STAT. ANN. § 51:2247 (2015) (extending protections to two additional classes including creed and disability); MO. REV. STAT. § 213.065 (2017) (enumerating seven protected categories that civil rights protections apply to).

48. See ARIZ. REV. STAT. ANN. § 41-1442 (2010) (establishing a state statute that mirrors protections in Title II but expands these rights to other discrete groups).

49. *Id.* § 41-1441(2).

dispensing services to the general public, they fit within that definition.⁵⁰

Arizona courts have turned to the framework established in Section 1981 of the federal Civil Rights Act (“Section 1981”), that provides protections against discrimination based on race, for guidance when analyzing whether a business acted in a discriminatory manner and violated the state public accommodation statute.⁵¹ In *York v. JPMorgan Chase Bank, National Ass’n.*, Alison York alleged discrimination based on her race by bank employees when she tried to withdraw funds from her account.⁵² The court established that a plaintiff must meet four elements to make a prima facie discrimination case under Section 1981 and the ACRA: (1) the plaintiff must be a member of a protected class; (2) the plaintiff must attempt to contract for certain services; (3) the plaintiff must have been denied the right to contract for those services; and (4) the services must remain available to similarly situated individuals who were not members of the plaintiff’s protected class.⁵³ The court clarified that the discrimination must lead to the actual loss of a contract interest and not just a delay.⁵⁴

The court found that Alison York met the first and second elements because she was African-American and was attempting to withdraw money from her account.⁵⁵ The court also found that York pled sufficient facts that non-African-American customers who attempted to withdraw money did not experience the treatment York had experienced.⁵⁶ But, the court concluded that because York was ultimately able to make her transaction after a delay,

50. *See id.* (applying the definition of public accommodations in Arizona to pharmacies).

51. *See York v. JPMorgan Chase Bank, Nat’l Ass’n.*, No. CV-18-04039-PHX-SPL, 2019 WL 3802535, at *2 (D. Ariz. Aug. 13, 2019) (emphasizing that the Civil Rights Act protects the right to make and enforce contracts).

52. *See id.* at *1 (detailing that York was wearing an African-style hair wrap and dress that she usually only wears at home).

53. *See id.* at *2 (establishing the framework for a prima facie discrimination case).

54. *See id.* at *3 (citing *Jeffery v. Home Depot U.S.A., Inc.*, 90 F. Supp. 2d 1066, 1069 (S.D. Cal. 2000)) (holding that if an individual is ultimately served, their claim does not meet the third required element of denial of service).

55. *See id.* at *3 (stating that York’s claim met the first element because it was based on racial discrimination and the second element because she was attempting to contract with the bank).

56. *See id.* at *4 (recognizing that the allegation that white customers were not subject to the same treatment that York encountered may not have been conclusory on its own, but York provided sufficient facts to support the “plausible inference” that other individuals were not treated the same, thereby meeting the fourth element).

she did not suffer any actual loss of contract interests.⁵⁷ The court held that York did not meet her burden for establishing a prima facie case for discrimination.⁵⁸

Alternatively, the court in *Hameen v. Dollar Tree Stores Inc.* applied the framework established in *York* and determined that the plaintiff pled sufficient facts to support a discrimination claim based on race under the ACRA because he never received service in the store.⁵⁹ Michael Hameen brought suit against Dollar Tree when he was approached by an employee and told to leave the store in a hostile manner.⁶⁰ Another employee then refused to give Hameen the store manager's information when asked, prompting Hameen to leave and call the store the next day to make a complaint.⁶¹ Hameen filed a charge complaint of public accommodation discrimination under the ACRA and Section 1981.⁶² Section 1981 provides federal protections for the rights of all citizens to enter contractual agreements at the same level as enjoyed by white citizens.⁶³

The court acknowledged the lack of case law applying the ACRA and decided to apply the same four elements as cases brought under Section 1981 due to the similarity in the statutes.⁶⁴ Firstly, Hameen is African-American.⁶⁵ Secondly, he attempted to enter into a contract by buying candles from the Dollar Tree store.⁶⁶ Thirdly, Hameen was denied the ability to enter into a contract to buy the goods.⁶⁷ Finally, an inference of intentional

57. *See id.* at *3 (emphasizing that delayed service is not equivalent to complete denial of service).

58. *See id.* at *4 (highlighting that because the plaintiff ultimately received service in the bank after a time delay, she did not have a legal claim for race discrimination).

59. *See Hameen v. Dollar Tree Stores Inc.*, No. CV-22-00751-PHX-JJT, 2022 WL 17416768, at *5 (D. Ariz. Dec. 5, 2022) (denying the defendant's motion to dismiss).

60. *See id.* at *1 (observing that a white woman was able to make her purchase at the same store while Hameen was denied service).

61. *See id.* (emphasizing the challenges Hameen faced in raising concerns to the manager of Dollar Tree).

62. *See id.* (outlining the legal basis for the claims).

63. *See* 42 U.S.C. § 1981 (extending a guarantee to all citizens to certain rights, including the right to contract, to sue, and to give evidence).

64. *See Hameen*, 2022 WL 17416768, at *5 (holding that the Arizona public accommodation statute is "very similar" to Section 1981).

65. *See id.* at *3, n.1 (finding that Hameen was a member of a protected class, so his claim met the first element).

66. *See id.* at *2 (noting that Dollar Tree Store did not object to finding that public accommodation protections extend to it because it sells goods to the public).

67. *See id.* at *4 (finding that, unlike York, Hameen was denied service rather than delayed service).

discrimination existed, as a white woman received service at the time the plaintiff did not.⁶⁸ Because Hameen pled sufficient facts for each element under the Section 1981 framework to support a reasonable inference of intentional discrimination, the court determined that Hameen sufficiently pled a claim under the ACRA.⁶⁹

Although *York* and *Hameen* were claims of racial discrimination, the court in *Fuentes v. Planet Fitness* clarified that courts should use the Section 1981 framework to evaluate discrimination claims on the basis of other protected categories, including sex.⁷⁰ In that case, Pete Fuentes alleged discrimination on the basis of his sex and national origin when employees denied him entry into a Planet Fitness and made statements telling him to “go back to Mexico,” and engaged in unwanted sexual talk.⁷¹ The court found Pete Fuentes met the first and second elements of his discrimination claim based on national origin and sex because he is Mexican, male, and was attempting to enter Planet Fitness to use their services.⁷² But, he failed on the third element because derogatory or sexual remarks referencing an individual’s protected class is not, on its own, a denial of goods and services.⁷³ In addition, the defendants provided a legitimate reason for denying Fuentes entry into the gym by pointing to reports from gym employees alleging that he was harassing them by “asking probing questions about their sex lives.”⁷⁴ *York*, *Hameen*, and *Fuentes* based their discrimination claims under the ACRA on different protected categories, and the respective courts have held that these claims

68. *See id.* at *3 (finding an inference of discrimination because a similarly situated individual outside of the plaintiff’s protected class received preferential treatment while recognizing that the comparator does not need to be identical to the plaintiff but must be similar in material respects).

69. *See id.* (denying the defendant’s motion to dismiss the discrimination claim under ACRA).

70. *Fuentes v. Planet Fitness*, No. CV-21-00818-PHX-DLR, 2022 WL 3577275, at *1 (D. Ariz. Aug. 19, 2022) (finding that the plaintiff did not meet the elements of discrimination because he was not denied of any goods or services).

71. *See id.* (pointing to additional statements from Planet Fitness employees that Fuentes should “go pick cotton” and sharing an explicit photo of another male in his underwear).

72. *See id.* at *2 (discussing that the governing analytical framework for claims under the ACRA and Section 1981 are the same but the latter only addresses intentional discrimination based on race).

73. *See id.* (granting the motion for summary judgment).

74. *See id.* (providing an alternative, nondiscriminatory reason for denying Fuentes access to gym).

must be analyzed under the same Section 1981 framework.⁷⁵

2. *Arkansas*

The Arkansas Civil Rights Act (“the Arkansas Act”) protects against discrimination in places of public accommodation on the basis of race, religion, national origin, gender, or disability.⁷⁶ The purpose of the Arkansas Act is tied to a legitimate state interest — to provide protections for the enumerated classes, including sex, that have been historically discriminated against.⁷⁷ The Arkansas Act defines a place of public accommodation as any establishment that supplies goods and services to the general public or accepts the patronage of the general public.⁷⁸ The statute refers to the federal Civil Rights Act for guidance regarding the construction and application of the statute.⁷⁹ Arkansas case law has not addressed the issue of discrimination in public accommodations; but, the Eighth Circuit and Supreme Court have provided guidance on how to analyze such discrimination.⁸⁰

In *Roberts v. United States Jaycees*, the Court looked at a discrimination claim against the United States Jaycees (“the Jaycees”).⁸¹ The Jaycees limits regular membership to young men between the ages of eighteen and thirty-five, while only allowing women to be associate members with no voting or

75. See *York v. JPMorgan Chase Bank, Nat’l Ass’n.*, No. CV-18-04039-PHX-SPL, 2019 WL 3802535, at *5 (D. Ariz. Aug. 13, 2019) (concluding that the York failed to meet the elements of a discrimination claim under the ACRA and Section 1981); *Hameen*, 2022 WL 17416768, at *5 (determining that the plaintiff plead sufficient facts to meet the elements of a discrimination claim under both the ACRA and Section 1981); *Fuentes*, 2022 WL 3577275, at *2 (finding that Fuentes failed to make a valid claim under the ACRA).

76. See ARK. CODE ANN. § 16-123-107 (2017) (protecting five suspect groups from discrimination).

77. See *Roberts*, 468 U.S. at 624 (looking to the fact that states enacted their respective Civil Rights Acts to protect the enumerated groups following the federal Civil Rights Acts showing the intent to extend protections to discrimination on the basis of sex).

78. See ARK. CODE ANN. § 16-123-102 (2017) (excluding lodging establishments with five or fewer rooms and private clubs from the definition of public accommodation).

79. See ARK. CODE ANN. § 16-123-105 (West 2003) (providing guidance on analyzing the state’s Civil Rights Statute).

80. See *Roberts v. U.S. Jaycees*, 468 U.S. 609, 611-612 (1984) (reversing the Eighth Circuit and analyzing the tension between the Minnesota Human Rights Act and the freedoms asserted by a private organization).

81. See *id.* at 612-13 (describing the Jaycees as a nonprofit membership corporation that provides members with the opportunity for personal development).

leadership rights.⁸² When the Minneapolis and St. Paul chapters of the Jaycees began admitting women as regular members, the president of the national organization stated that he would consider a motion to revoke its charters.⁸³ The two chapters of the Jaycees alleged that the general Jaycees practice was a violation of the Minnesota Human Rights Act.⁸⁴

The Court evaluated whether the public accommodation statute applied to the Jaycees, what state interest was being advanced in the statute, and whether those interests were being advanced in the least restrictive means possible when applied to the Jaycees.⁸⁵ The Court first found that the Jaycees were a place of public accommodation within the definition because they offered various commercial programs and benefits to its members and accepted members from the general public.⁸⁶ Next, the Court found that the state had advanced its interest in protecting the civil rights of historically disadvantaged groups in the least restrictive means possible by requiring the admission of women as full voting members.⁸⁷ This policy change did not impede the organization's ability to conduct its activities.⁸⁸ The Court concluded that the practice of the Jaycees was discriminatory and violated the Minnesota Human Rights Act.⁸⁹ Although this case specifically addressed the Minnesota Human Rights Act, the decision would be controlling in Arkansas because both states are in the Eighth Circuit and the contents of the Arkansas Act similarly protect citizens from discrimination in places of public accommodation.⁹⁰

82. *See id.* at 609 (detailing the practice that was challenged).

83. *See id.* at 614 (explaining that the plaintiffs filed charges of discrimination before their charters were actually revoked).

84. *See id.* 614-15 (alleging that the Act was violated because of discrimination based on gender).

85. *See id.* at 626, 628, 630-31 (establishing the analytic framework for discrimination claims based on the state Civil Rights statute).

86. *See id.* at 615-6 (defining "place of public accommodation" to include businesses whose goods, privileges, and services are available to the public and citing to the state Supreme Court's decision to certify that appellee falls within the definition).

87. *See id.* at 626-27 (pointing to the fact that women had already been allowed to participate in the organization, just without the full rights of regular members).

88. *See id.* (enumerating fundraising, lobbying, and disseminating its preferred views as the organization's activities).

89. *See id.* at 630-31 (reversing the Court of Appeals' judgment).

90. *Compare* ARK. CODE ANN. § 16-123-107 (ensuring the right of citizens to fully enjoy places of public accommodation), *with* MINN. STAT. ANN. § 363A.11 (West 2023) (prohibiting discriminatory practices in places of public accommodation).

3. Louisiana

The Louisiana Human Rights Act (“LHRA”) prohibits discrimination against an individual’s enjoyment of a place of public accommodation based on eight protected classes.⁹¹ A place of public accommodation includes any store that supplies goods or services to the general public.⁹² Pharmacies fit this definition because they sell medications and other goods to the public and provide services like dispensing prescription medications.⁹³ The statute also defines “discriminatory practice” as any direct or indirect act that treats members outside of a protected class in a different or preferential way.⁹⁴ The Fifth Circuit has stated the LHRA is similar to Title II of the federal Civil Rights Act and, therefore, courts may use the analysis of Title II cases as guidance for analyzing claims under the state statute.⁹⁵

For example, in *Harrison v. Vici Properties, Inc.*, Deja Dashante Harrison claimed she was discriminatorily denied entry into a hotel-casino in New Orleans based on her race and gender.⁹⁶ The court established that claims under Title II of the federal Civil Rights Act can be proven by direct or circumstantial evidence.⁹⁷ Direct evidence includes statements that acknowledge the characteristic of the individual that would implicate their membership in a protected class.⁹⁸ In the absence of direct evidence, a plaintiff must produce circumstantial evidence that plausibly supports a claim of discrimination after drawing all reasonable inferences.⁹⁹ Harrison did not allege that there were any explicit or direct references to her race or

91. See LA. STAT. ANN. § 51:2247 (2015) (detailing that the protected classes include race, creed, color, religion, sex, age, disability, or national origin).

92. See § 51:2232(9) (defining “a place of public accommodation” in the statute).

93. See *id.* (defining a “place of public accommodation” as an entity that supplies goods or services to the general public).

94. See § 51:2232(5) (clarifying that the discriminatory act includes practices of exclusion, refusal, or restriction meant to treat an individual differently due to their protected class).

95. See, e.g., *Semien v. Pizza Hut of Am., Inc.*, 204 F.3d 1115 (5th Cir. 1999) (extending the protections in Title II to sex).

96. See *Harrison v. Vici Properties, Inc.*, No. CV 21-2310, 2022 WL 3586754, at *1-2 (E.D. La. Aug. 22, 2022) (highlighting Harrison’s identity as an African- American woman).

97. See *id.* at *4 (citing *Fahim v. Marriott Hotel Servs., Inc.*, 551 F.3d 344, 349 (5th Cir. 2008)) (considering direct or circumstantial evidence during a Title II claim).

98. See *Sandstad v. CB Richard Ellis, Inc.*, 309 F.3d 893, 897 (5th Cir. 2002) (defining direct evidence as evidence that proves discrimination without any inferences or presumptions).

99. See *Harrison*, 2022 WL 3586754, at *3 (clarifying that any inferences must be viewed in the light most favorable to the plaintiff).

gender by the casino employees, but rather that the casino has a pattern or practice of discrimination.¹⁰⁰ Though Harrison pointed to two previous occasions of discriminatory behavior toward African-Americans, the court found that this did not rise to the level of a pattern of discriminatory behavior.¹⁰¹

Louisiana also provides protections against discrimination based on sex in its constitution.¹⁰² The state constitution protects individuals from discriminatory behavior in public accommodations based on race, religion, national ancestry, age, sex, or physical condition.¹⁰³ In contrast to *Harrison*, the court in *Lincoln v. Mendler* focused on whether the plaintiff's discrimination claim was based on a protected category.¹⁰⁴ Charles Lincoln alleged that he had been discriminated against due to his race and religion.¹⁰⁵ The defendant, a café owner, asked Lincoln, a patron, to stop spending time at the cafe due to the plaintiff's appearance on television and comments regarding the local Jefferson Davis Monument.¹⁰⁶ The court found that the plaintiff did not meet the elements of a discrimination claim based on any protected category under the high threshold established by Louisiana law.¹⁰⁷

100. *See id.* at *4 (defining a pattern or practice as more than an isolated, accidental, or sporadic discriminatory act).

101. *See id.* at *5 (alluding that a pattern of discriminatory behavior must be more than two instances of discrimination).

102. *See* LA. CODE ANN. art. I, § 12 (providing an alternative claim for discrimination in places of public accommodations).

103. *See id.* (protecting six classes of individuals from discrimination in public areas and accommodations).

104. *See* *Lincoln v. Mendler*, No. CV 18-4542, 2018 WL 4205421, at *3 (E.D. La. Sept. 4, 2018) (assessing whether Lincoln's discrimination claim fell within a protected category).

105. *See id.* at *2 (claiming that Mendler violated Lincoln's civil rights and committed multiple torts).

106. *See id.* at *1 (noting plaintiff's opposition to the New Orleans city government's plan to take down monuments dedicated to Confederate leaders).

107. *See id.* at *3 (finding that claims under the Louisiana Constitution could not proceed because they did not plausibly allege race and religious discrimination).

4. *Missouri*

Similar to Arizona, Arkansas, and Louisiana, Missouri also has a public accommodation statute, the Missouri Human Rights Act (“MHRA”).¹⁰⁸ It ensures that all citizens of Missouri can enjoy places of public accommodation free from discrimination based on race, color, religion, national origin, sex, ancestry, or disability.¹⁰⁹ The MHRA defines discrimination as any conduct that is taken particularly due to an individual’s protected characteristic.¹¹⁰ The MHRA defines places of public accommodation as any place that provides goods, services, or facilities to the general public.¹¹¹ Under that definition, pharmacies are places of public accommodation because they provide both goods and services to the general public, so the MHRA applies to pharmacies.¹¹²

Missouri courts have looked at public accommodation discrimination in various settings that meet the definition of public accommodations, including public restrooms.¹¹³ In *R.M.A. by Appleberry v. Blue Springs R-IV School District*, a transgender student brought a suit against the school district alleging discrimination in the use of a public restroom due to his legal sex.¹¹⁴ The court established a three-part framework to analyze sex-based discrimination claims under the MHRA: (1) the plaintiff must be a member of a protected class under the statute; (2) the plaintiff must have been discriminated against in the use of a public accommodation; and (3) the plaintiff’s membership in the protected class must have been a contributing factor to the discrimination.¹¹⁵

108. Compare MO. REV. STAT. § 213.065 (2017), with ARIZ. REV. STAT. ANN. § 41-1442 (2010) (prohibiting both direct and indirect refusals of the enjoyment of facilities of privileges of a place of public accommodations).

109. See MO. REV. STAT. § 213.065 (2017) (outlining similar protected categories to Louisiana’s public accommodation statute).

110. See *id.* § 213.010(6) (protecting employment, housing, and public accommodations).

111. *Id.* (referring explicitly to accommodations for the health of the general public).

112. See *id.* (clarifying that the enumerated classes are protected from discriminatory behavior toward them in places of public accommodation such as pharmacies); *id.* § 213.065 (extending protection against discrimination to places of public accommodation).

113. See *R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420, 424 (Mo. 2019) (vacating the circuit court’s decision to sustain the defendant’s motion to dismiss).

114. See *id.* at 424 (explaining that the student was denied access to the boys’ restrooms and locker rooms at his public school).

115. See *id.* at 424-25 (applying the legal framework for analyzing employment discrimination to discrimination in public accommodations with minor changes).

R.M.A.'s petition pled sufficient facts that he was a member of a protected class under the statute because it alleged that "R.M.A.'s legal sex is male."¹¹⁶ The court recognized that R.M.A. was denied "full and equal use and enjoyment" of the public restroom as a public accommodation.¹¹⁷ Finally, the court ruled that the plaintiff's legal sex was a contributing factor to the disparate treatment he faced when trying to access the public male restroom because the school denied him access to the boys' restrooms and locker rooms and required him to use a completely separate facility.¹¹⁸ The court ultimately held that the plaintiff succeeded in meeting the requirements for a prima facie discrimination claim under the MHRA.¹¹⁹

In another case, *Jordan v. Bi-State Development Agency*, the court clarified that the standard for a MHRA claim is to determine whether discrimination is a "contributing factor" in the challenged actions.¹²⁰ Although that case was in an employment context, the court in *Gustafson v. Bi-State Development Agency* determined that the "contributing factor" analysis applies outside of an employment context.¹²¹ Missouri case law has clarified the scope of a discrimination claim under the MRHA by limiting who these claims can be asserted against.¹²² Public accommodation discrimination claims can only be asserted against a "person" as defined in the MHRA.¹²³

116. *See id.* at 427 (finding that the discrimination claim was based on sex, specifically sexual orientation).

117. *See id.* at 426 (comparing the plaintiff's access to the public restroom to that of a biological male).

118. *See id.* at 426 (deciding that the plaintiff was discriminated against due to his transgender identity); *Cox v. Kansas City Chiefs Football Club, Inc.*, 473 S.W.3d 107, 119-20 (Mo. 2015) (defining disparate treatment as intentionally treating a member of a protected class differently than a similarly situated individual who is outside of a protected class).

119. *See R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d at 430 (vacating the lower court's decision and remanding the case).

120. *See* 561 S.W.3d 57, 58-59 (Mo. Ct. App. 2018) (alleging that Jordan was fired in retaliation for rejecting her supervisor's sexual advances, which constitutes employment discrimination based on sex under the MHRA).

121. *See* 361 F. Supp. 3d 917, 920 (E.D. Mo. 2019) (extending the "contributing factor" analysis to public accommodation contexts).

122. *See* L.B. ex rel. Buschman v. Jefferson City Public School District, No. 2:18-CV-04060-BCW, 2018 WL 11473784, at *2 (W.D. Mo. Oct. 26, 2018) (granting the defendant's motion to dismiss).

123. *See id.* (finding found that a school district did not fall under the definition of a "person," so the plaintiff could not bring the action forward under the MHRA).

C. *Enforcing Public Accommodation Statutes*

Each state has its own procedures for citizens to assert a violation of their civil rights.¹²⁴ In Arizona, Louisiana, and Missouri, an individual has 180 days after the discriminatory act takes place to file a complaint with the state Civil Rights Division or Commission.¹²⁵ If the division completes an investigation and finds that there is reasonable cause for the complaint, the division and the individual can bring civil actions against the party.¹²⁶ In contrast to those states, Arkansas gives aggrieved individuals the opportunity to bring a civil action without having to first make a complaint to a state agency.¹²⁷ These processes are detailed on each states' respective Civil Rights Commission websites and provide individuals with resources to help evaluate their claims.¹²⁸

124. See ARIZ. REV. STAT. ANN. § 41-1471 (2022) (giving authority to the Civil Rights Division to investigate and determine the validity of the claim); ARK. CODE ANN. § 16-123-107(b) (2017) (establishing a civil remedy as the only type of remedy); LA. STAT. ANN. § 51:2257 (1988) (detailing a complaint process similar to that of Arizona); MO. ANN. STAT. § 213.075 (West 2017) (outlining the procedure for filing and investigating a claim of discrimination).

125. See ARIZ. REV. STAT. ANN. § 41-1471 (2022) (clarifying that the plaintiff may appeal the division's decision in the superior court in the county where the act(s) occurred); LA. STAT. ANN. § 51:2257 (1988) (establishing that a complainant can file a civil action after the investigation is completed); § 213.075 (providing time to eliminate discriminatory practices before further actions are taken).

126. See ARIZ. REV. STAT. ANN. § 41-1471 (2022) (noting that the individual must bring a civil action within thirty days after the division issues its determination).

127. See ARK. CODE ANN. § 16-123-107(b) (2017) (allowing the individual to file the civil action to enjoin the defendant and receive damages).

128. *Public Accommodation Discrimination*, ATT'Y GEN. STATE OF ARIZ., <https://www.azag.gov/civil-rights/discrimination/public-accommodation#:~:text=If%20a%20person%20thinks%20they,on%20the%20area%20of%20discrimination> (last visited Aug. 30, 2023) (including a section to answer frequently asked questions regarding public accommodation discrimination claims); *LCHR Public Accommodations Discrimination Intake Form*, LA. OFFICE OF THE GOVERNOR, [https://gov.louisiana.gov/index.cfm/form/home/28#:~:text=According%20to%20Louisiana%20Law%20\(LA,of%20race%2C%20creed%2C%20color%2C](https://gov.louisiana.gov/index.cfm/form/home/28#:~:text=According%20to%20Louisiana%20Law%20(LA,of%20race%2C%20creed%2C%20color%2C) (last visited Aug. 30, 2023) (providing an intake form for the claim and outlining the required evidence); *File a Complaint of Discrimination*, Missouri Department of Labor (no date), <https://labor.mo.gov/mohumanrights/file-complaint> (allowing aggrieved parties to take a complaints assessment to determine whether the MCHR has jurisdiction).

III. ANALYSIS

A. *CVS's and Walgreens's Policies About Dispensing Methotrexate Violate State Public Accommodation Statutes*

In Arizona, Arkansas, Louisiana, and Missouri, pharmacy policies against Methotrexate encroach upon the relationship between a physician and their pregnancy-capable patients.¹²⁹ A physician should make the best decision with their patient based on their patient's medical history, demographics, and comfort with the side effects of the medication.¹³⁰ These new policies add pharmacists into this decision-making process.¹³¹ Pharmacists are responsible for ensuring the quality of medicines, advising on over-the-counter medicines, and providing services like vaccine distribution.¹³² This role does not include acting as a gatekeeper to the medication that physicians prescribe to their patients.¹³³

The public accommodation statutes codified in state Civil Rights Acts or another part of the state regulations in Arizona, Arkansas, Louisiana, and Missouri have similar language and provide protection from discrimination in public places based on sex.¹³⁴ Under the state statutes, pharmacies are

129. See Murphy, *supra* note 13 (summarizing the requirements for prescribing Methotrexate in Arkansas); Paúl, *supra* note 7 (summarizing the requirements in Arizona for getting Methotrexate following the *Dobbs* decision); Hutchinson, *supra* note 36 (summarizing the requirements in Louisiana for dispensing Methotrexate following a statute punishing abortion providers); Christensen, *supra* note 1 (summarizing the requirements in Missouri for getting Methotrexate following criminal punishment for abortion providers).

130. See Madelyn Pollock et al., *Appropriate Prescribing of Medications: An Eight-Step Approach*, 75 AM. FAM. PHYSICIAN 231, 231-35 (2007) (detailing the steps a physician must follow to responsibly prescribe medication that includes using the STEPS (Safety, Tolerability, Effectiveness, Price, Simplicity) framework when evaluating and defining a patient's problem, specifying the therapeutic objective, selecting the appropriate drug therapy, and giving warnings associated with the drug).

131. See *id.* (emphasizing that pharmacists have not been traditionally involved in the relationship between the physician and their patient).

132. See Hemant Kumar Sinha, *Role of Pharmacists in Retailing of Drugs*, 5 J. ADVANCED PHARM. TECH. & RSCH. 107, 107 (2004) (clarifying that pharmacists act as a bridge between a physician and patient by answering questions patients may have about medications, but they are not gatekeepers who can prevent patients from accessing their medication).

133. See *id.* (noting that a pharmacist's responsibilities to the patient do not begin before a prescription is written).

134. See ARIZ. REV. STAT. ANN. § 41-1442 (2010) (establishing Civil Rights protections in Arizona that prevent and punish discriminatory behavior); ARK. CODE

“places of public accommodation” and statutes prohibiting discrimination apply to them.¹³⁵ The CVS and Walgreens policies treat pregnancy-capable and non-pregnancy-capable people in disparate ways and thereby discriminate based on sex.¹³⁶

I. Arizona

Using the elements established in *York*, the Walgreens policy that prevented Emma Thompson, an Arizona resident, from accessing her Methotrexate prescription meets all the elements required to establish a violation of the ACRA.¹³⁷ Firstly, the policy only denies Methotrexate to individuals who are pregnancy-capable which is discrimination based on sex, a protected category.¹³⁸ Secondly, pharmacies fit Arizona’s definition for places of public accommodation because they sell medical and nonmedical products to the public and offer services to the public like dispensing prescription medicine and providing vaccinations.¹³⁹ Thompson, a fourteen year old, was trying to have her prescription for Methotrexate

ANN. § 16-123-107 (2017) (outlining Civil Rights protections in Arkansas); LA. STAT. ANN. § 51:2247 (2015) (describing the protections citizens have in public accommodations in Louisiana); LA. CONST. ANN. art. I, § 12 (1974) (providing an additional provision for civil rights protections that individuals may use to bring their grievances to the appropriate authority); MO. ANN. STAT. § 213.065 (West 2017) (providing protections for historically marginalized groups who have been discriminated against).

135. See ARIZ. REV. STAT. ANN. § 41-1441 (1965) (defining “places of public accommodation” and including places of recreation and establishments that provide goods and services to the public); ARK. CODE ANN. § 16-123-102 (2017) (including pharmacies because they offer goods and services to the public); LA. REV. STAT. § 51:2232(9) (2022) (defining places of public accommodation to include stores, which pharmacies are because they sell medical and nonmedical goods to the public); MO. ANN. STAT. § 213.010(16) (West 2017) (defining places of public accommodation to include businesses that offer public health goods and services).

136. See Christensen, *supra* note 1 (showing the disparate effect of the pharmacy policy in Missouri); Paúl, *supra* note 7 (emphasizing the discriminatory effect of the pharmacy policy in Arizona); Murphy, *supra* note 13 (noting the disparate application of the pharmacy policy in Arkansas); Hutchinson, *supra* note 36 (highlighting the discriminatory practice of pharmacies in Louisiana).

137. See generally Paúl, *supra* note 7 (emphasizing that the Walgreens policy was enacted as a response to *Dobbs*).

138. See *id.* (describing that the new policy in Arizona about dispensing Methotrexate following *Dobbs* was enacted to protect Walgreens from criminal and civil liability for being an abortion provider).

139. See *York*, 2019 WL 3802535 at *4 (clarifying the scope of public accommodation laws).

filled by the pharmacy; therefore, the second element is met.¹⁴⁰ Thirdly, unlike *York*, the Walgreens policy completely denies the pregnancy-capable patient their Methotrexate prescription, which meets the requirement that the plaintiff must be denied the right to contract.¹⁴¹

To determine whether the discrimination in the Walgreens policy meets the fourth requirement, the court must decide whether the services remained available to similarly situated individuals who were not members of the plaintiff's protected class and whether the discrimination was intentional.¹⁴² The only difference between a fourteen year old male patient trying to pick up his prescription and Thompson is that Thompson is capable of pregnancy, which places her within the protected category based on sex.¹⁴³ The male patient would still have access to Methotrexate because, although he is of the same "childbearing age," he is not capable of becoming pregnant, so the fourth element is met.¹⁴⁴ Additionally, the discrimination in the Walgreens policy is intentional because it systematically imposes the policy only on patients who are capable of becoming pregnant.¹⁴⁵ Because the Walgreens policy meets all the elements for a discrimination claim outlined in *York* and *Hameen*, a court would likely find that the Walgreens policy violates the Arizona Civil Rights Act.¹⁴⁶

140. See *id.* at *5 (noting that *York*'s attempt at withdrawing funds was part of the banking contract between the parties).

141. See Paúl, *supra* note 7 (noting that filling prescriptions is a service that Walgreens provides to the public); *York*, 2019 WL 3802535, at *5, 7 (explaining that the plaintiff's claim did not meet the third requirement for prima facie discrimination in the place of public accommodation).

142. See *York*, 2019 WL 3802535, at *5, 7 (looking to the experience of other non-African-American bank customers who were trying to withdraw funds in the same way *York* was).

143. See Paúl, *supra* note 7 (illustrating that there are similarly situated individuals who are not members of the protected class who still have the right to contract for the same service at Walgreens).

144. See *id.* (showing the disparate effect of the Walgreens policy concerning males and females of the same age).

145. See *id.* (denying Thompson her medication because she was considered to be of childbearing age).

146. See *id.* (noting that the American College of Rheumatology urged pharmacists to fill Methotrexate prescriptions "without delay and with the assumption that they are not being used to terminate a pregnancy.").

2. *Arkansas*

CVS policies that place restrictions on dispensing Methotrexate for pregnancy-capable patients violate the Arkansas public accommodation statutes found in the Arkansas Civil Rights Act.¹⁴⁷ *Roberts v. United States Jaycees* concerned the action of the United States Jaycees in Minnesota and can provide guidance to discrimination cases in Arkansas because both states are controlled by the Eighth Circuit.¹⁴⁸

Like the discriminatory membership policy that deprives women of the right to enjoy services and privileges of the Jaycees, a place of public accommodation, the CVS policy deprives pregnancy-capable individuals of their right to enjoy CVS's services.¹⁴⁹ The first question a court would address is whether the private actor falls within the definition of a place of public accommodation under the state Civil Rights Act.¹⁵⁰ Pharmacies supply medical and non-medical goods and accept patronage from the public; therefore, they fall within the definition of a place of public accommodation.¹⁵¹ Next, the court would have to identify what state interest the respective Acts attempt to further.¹⁵² The language in the Arkansas Civil Rights Act is similar to that in the Minnesota Human Rights Act and provides protections for the full enjoyment of public accommodations free from discrimination on the basis of sex.¹⁵³ Finally, the court must determine whether the state would be advancing the interest through the least restrictive

147. See ARK. CODE ANN. § 16-123-102 (2017) (prohibiting the denial of the "full and equal enjoyment" of the services places of public accommodation provide).

148. See 468 U.S. at 609 (1984) (reversing the Court of Appeal's decision not to apply the Minnesota Human Rights Act to the Jaycees for their discriminatory behavior).

149. See *id.* at 613 (including access to supplementary education for personal development and achievement as a privilege that the Jaycees provides).

150. See *id.* at 626 (turning to a Minnesota Supreme Court administrative hearing that found that the Jaycees is a place of public accommodation); § 16-123-102 (defining place of public accommodation to include establishments that accept patronage from the general public).

151. See § 16-123-107 (2017) (looking to the Arkansas Civil Rights Act for the definition of a place of public accommodation, which is similar to the definition in the Minnesota Human Rights Act).

152. See *Roberts*, 468 U.S. at 624 (finding that furthering civil rights protections is a legitimate interest of the state).

153. See § 16-123-107 (establishing the Arkansas Civil Rights Act); 2023 MINN. SESS. LAW SERV. 52 § 363A.11 (West) (outlining protections under the Minnesota Human Rights Act that states that it is an "unfair discriminatory practice" to deny an individual the full and equal enjoyment of the services a public accommodation provides based on race, color, creed, religion, disability, national origin, marital status, sexual orientation, or sex).

means possible.¹⁵⁴ Like the Jaycees, CVS would not be significantly affected by removing restrictions that require confirmation about the use of Methotrexate for physicians and their pregnancy-capable patients.¹⁵⁵ Pharmacies could operate in the same business capacity without the extra requirements that have been placed on dispensing Methotrexate after *Dobbs* triggered abortion restrictions since these prescription validations were not required before the restrictions were put in place.¹⁵⁶ Requiring CVS to remove the extra steps for dispensing Methotrexate to pregnancy-capable patients would not infringe upon the corporation's rights.¹⁵⁷ Based on these factors, and the holding in *Roberts*, the court would likely find that CVS's policy discriminates against its pregnancy-capable patients.¹⁵⁸

3. Louisiana

Semien v. Pizza Hut of Am. established that courts could use the Title II framework to analyze whether Walgreens' policy regarding filling Methotrexate prescriptions violates the Louisiana public accommodation statute.¹⁵⁹ Both *Harrison* and the discriminatory policy of Walgreens address sex discrimination.¹⁶⁰ However, unlike *Harrison*, where the plaintiff argued that the discriminatory behavior from the casino was established by circumstantial evidence, the discriminatory nature of the Walgreens policy

154. See *Roberts*, 468 U.S. at 626 (outlining the third factor of the analysis, which balances the public policy interests of the government with the private actor's right to act independently without government overreach).

155. See Murphy, *supra* note 13 (detailing the additional steps that pregnancy-capable patients experience post-*Dobbs* and comparing these experiences to pregnancy-capable individuals accessing Methotrexate pre-*Dobbs*).

156. See *id.* (highlighting that CVS has operated without these restrictions before and did not experience any significant change in its functioning).

157. See *Roberts*, 468 U.S. at 631 (holding that Jaycees' ability to operate with women as full members was not an undue burden).

158. See *id.* (concluding that the Jaycees were acting in a discriminatory manner when they excluded women as full members of the organization and threatened sanctions against two chapters of the organization that accepted women).

159. See *Semien*, 204 F.3d 1115 (5th Cir. 1999) (establishing that the correct framework to analyze the Louisiana public accommodation statute is the same framework used to analyze Title II of the federal Civil Rights Act).

160. See *id.* (establishing the similarities between the plaintiff's claim and the claim under the Walgreens policy); *Harrison v. Vici Properties, Inc.*, No. CV 21-2310, 2022 WL 3586754, at *5 (E.D. La. Aug. 22, 2022) (analyzing a racial discrimination claim by a plaintiff who was denied entry into a casino); see also Hutchinson, *supra* note 36 (describing the effect of the Walgreens policy).

in Louisiana can be established by direct evidence.¹⁶¹ Walgreens refuses to fill prescriptions for Methotrexate to pregnancy-capable people even after they confirm the purpose of the prescription.¹⁶² Meanwhile, pharmacies are not placing extra hurdles or denying to fill Methotrexate prescriptions for non-pregnancy-capable individuals.¹⁶³

Walgreens' actions are pursuant to a policy that was enforced after the *Dobbs* decision, and likely constitute a pattern of discrimination.¹⁶⁴ In *Harrison*, the court rejected the idea that two instances of discrimination by the casino against African-Americans did not constitute a pattern or practice of discrimination.¹⁶⁵ A policy that specifically targets a certain group of people would affect every customer with that particular characteristic; in the case of the Walgreens, its policy would affect every pregnancy-capable individual.¹⁶⁶ Therefore, a court would likely find the effect of the Walgreens policy is a pattern of discriminatory behavior.¹⁶⁷

In addition to the Louisiana public accommodation statute, discrimination in public spaces can be analyzed under the Louisiana Constitution, which provides protection from discriminatory behavior based on race, religion, national ancestry, age, sex, or physical condition.¹⁶⁸ Unlike the discrimination based on political ideology challenged in *Lincoln*, the Walgreens policy explicitly discriminates based on sex, an enumerated protected category under the state constitution.¹⁶⁹ Only pregnancy-capable individuals of child-bearing age are being targeted by the policy held by

161. See *Harrison*, 2022 WL 3586754, at *5 (asserting that Title II claims can be proved by direct or circumstantial evidence).

162. See *id.* at *4 (explaining types of direct evidence that can be used to establish the discriminatory treatment by Walgreens).

163. See Hutchinson, *supra* note 36 (evidencing disparate treatment by comparing the experience of pregnancy-capable and non-pregnancy-capable individuals when getting their prescription for Methotrexate).

164. See *id.* (emphasizing that the Walgreens policy was codified).

165. See *Harrison*, 2022 WL 3586754, at *5 (E.D. La. Aug. 22, 2022) (recapping the analysis of whether the actions constituted a pattern or practice of discrimination).

166. See Hutchinson, *supra* note 36 (detailing a policy that would better meet the court's definition of a pattern of discriminatory behavior).

167. See *id.* (noting that the policy would affect every pregnancy-capable patient trying to get their Methotrexate prescription filled, which will likely affect more than three patients).

168. See LA. CONST. ANN. ART. I, § 12 (providing an alternative statute under which plaintiffs can make claims for discrimination in a place of public accommodation).

169. See *Lincoln v. Mendler*, No. CV 18-4542, 2018 WL 4205421, at *5 (E.D. La. Sept. 4, 2018) (explaining the context for Lincoln's discrimination claim).

Walgreens.¹⁷⁰ This discrimination on the basis of sex is explicitly prohibited by both the Louisiana public accommodation statute and the Louisiana Constitution.¹⁷¹

4. *Missouri*

The Missouri Human Rights Act (“MHRA”) has comparable protections to the Civil Rights Acts of other states and uses a similar framework that can be used to analyze the CVS policy.¹⁷² The plaintiff in *R.M.A. by Appleberry* claimed sex discrimination because, despite presenting as a male, he was denied access to a male restroom.¹⁷³ The discrimination claims by the plaintiff in *R.M.A. by Appleberry* and by individuals who are affected by the CVS policy are based on sex.¹⁷⁴ When asked about the policy, CVS confirmed that only physicians for pregnancy-capable patients are asked to take the extra steps to verify that their prescription of Methotrexate is not being used to induce an abortion.¹⁷⁵ Under the MHRA’s definition of discrimination, pregnancy-capable people are being denied “full and equal use” of the services that CVS provides, which includes dispensing prescription medication.¹⁷⁶ Although patients are ultimately provided with their medication after confirmation from their physicians that the medication is not to induce an abortion, the new policy does not provide “equal use” of

170. *See id.* at *3 (illustrating that the discrimination in the Walgreens policy is toward a protected class due to sex).

171. *See* LA. STAT. ANN. § 51:2247 (2015) (protecting citizens from discrimination based on race, creed, color, religion, sex, age, disability, and national origin); LA. CONST. ANN. ART. I, § 12 (protecting citizens from discrimination in public areas based on race, religion, national ancestry, age, sex, or physical condition).

172. *See* MO. REV. STAT. § 213.065 (2017) (protecting against discrimination in places of public accommodations).

173. *See* *R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420, 424 (Mo. 2019) (laying out a three-element framework to apply to cases of sex discrimination: 1) the plaintiff must be a member of a protected class under the Missouri Human Rights Act, (2) the plaintiff must experience discrimination in a public place, and (3) the plaintiff’s membership in the protected class must be a driving factor in the discrimination).

174. *See id.* at 426 (noting that discrimination based on an individual’s transgender identity is sex discrimination).

175. *See id.* (showing that the CVS policy is only affecting pregnancy-capable individuals that is a category based on sex).

176. MO. REV. STAT. § 213.065 (2017) (including directly or indirectly refusing to allow an individual to enjoy the services a place of public accommodation provides).

CVS services for all individuals.¹⁷⁷ Women and other pregnancy-capable individuals are facing additional hurdles and wait times to receive their medication compared to similarly situated males.¹⁷⁸ This disparate treatment constitutes discrimination because the patient's sex is the driving factor for the conduct.¹⁷⁹ The CVS policy succeeds in establishing the three elements for a discrimination claim defined in *R.M.A by Appleberry* and a court would likely find that the policy is discriminatory.¹⁸⁰

In addition to the three elements outlined in *R.M.A by Appleberry*, the individuals facing discrimination as a result of the CVS policy must be facing the discrimination because they are pregnancy-capable, therefore part of a protected class.¹⁸¹ Although the context in *Jordan* was about employment discrimination, under *Gustafson* the "contributing factor" analysis applies to any discrimination under the MHRA.¹⁸² In CVS's policy, the sex of the patient and, consequently, their reproductive capabilities, are the only factors that differentiate the way a pregnancy-capable patient's Methotrexate prescription is filled versus a non-pregnancy capable patient.¹⁸³ Because the patient's protected characteristic is the only factor pharmacists consider when deciding how to treat that patient, the actions constitute disparate treatment, therefore satisfying and exceeding the "contributing factor" requirement.¹⁸⁴

177. See Christensen, *supra* note 1 (examining the CVS policy and how it discriminates on the basis of sex because it only affects the members of the protected class).

178. See *id.* (explaining that although women and other pregnancy-capable individuals are not being denied service, they are being disparately treated under the CVS policy).

179. See MO. REV. STAT. § 213.065 (2017) (defining a denial of service as an unlawful discriminatory practice).

180. See *RMA by Appleberry*, 568 S.W.3d at 428-29 (concluding that the plaintiff sufficiently plead the elements for a sex discrimination claim).

181. See *Jordan v. Bi-State Dev. Agency*, 561 S.W.3d 57, 61 (Mo. Ct. App. 2018) (differentiating between the "contributing factor" requirement of the MHRA and the "motivating factor" requirement of the Illinois Human Rights Act and concluding that the contributing factor analysis increases the liability of the actor accused of violating the Act).

182. See *Gustafson v. Bi-State Dev. Agency*, 361 F. Supp. 3d 917, 920 (E.D. Mo. 2019) (expanding the application of the "contributing factor" requirement to contexts of discrimination beyond employment).

183. See *id.* (citing to *Doe ex rel. Subia v. Kansas City, Mo. Sch. Dist.*, 372 S.W.3d 43, 53-55 (Mo. Ct. App. 2012) where the courts applied the contributing factor analysis to sex discrimination in a public school).

184. See *id.* (granting the defendant's motion to dismiss).

A discrimination claim challenging the CVS policy satisfies the requirement set out in the MHRA that claims must be asserted against a “person.”¹⁸⁵ Unlike the holding in *Buschman* that found that a school district is not a “person,” CVS is a “person” according to the definition in the MHRA because a “person” includes corporations.¹⁸⁶ According to the 2022 Annual Report to the Securities and Exchange Commission (“SEC”), CVS is a corporation that is incorporated in Delaware.¹⁸⁷ Because CVS meets the definition of a “person,” the protection afforded to Missouri citizens by the MHRA can be asserted against CVS.¹⁸⁸

B. Citizens in Arizona, Arkansas, Louisiana, and Missouri can bring civil actions against CVS and Walgreens to enjoin discriminatory practice and recover damages

I. Arizona

Because a patient who faced difficulties in getting their prescription for Methotrexate in a Walgreens in Arizona has a valid discrimination claim under the test established in *York*, they would have to bring their claim to the Civil Rights Division within 180 days of their discriminatory experience.¹⁸⁹ The Civil Rights Division will then conduct an investigation to determine whether Walgreens has unlawful discriminatory practices in place.¹⁹⁰ Once it determines there is reasonable cause to believe that Walgreens is acting unlawfully, it will likely enter an order of its findings and try to remedy the

185. See L.B. ex rel. *Buschman v. Jefferson City Pub. Sch. Dist.*, No. 2:18-CV-04060-BCW, 2018 WL 11473784, at *2 (W.D. Mo. Oct. 26, 2018) (clarifying when a discrimination claim may be brought under the MHRA).

186. See *id.* (holding that a school district does not fall under the definition of a “person” and, therefore, the protections under the MHRA are not applicable against school districts).

187. SEC *CVS Health Corporation, Form 10-K*, (Feb. 8, 2023), <https://www.sec.gov/Archives/edgar/data/64803/000006480321000011/cvs-20201231.htm> (establishing that CVS is a corporation and meets the definition of a “person” under the statute).

188. See generally *Buschman*, 2018 WL 11473784, at *2 (extending that the protections afforded by the state statute can be asserted against CVS because it is a corporation).

189. See ARIZ. REV. STAT. ANN. § 41-1471 (2022) (establishing a strict time restriction on asserting a violation of the state public accommodation statute); *York v. JPMorgan Chase Bank, Nat’l Ass’n.*, No. CV-18-04039-PHX-SPL, 2019 WL 3802535, at *2 (outlining that four elements must be met).

190. See § 41-1471 (authorizing the Civil Rights Division to investigate and make legal determinations about the actions of the parties).

discriminatory behavior.¹⁹¹ If Walgreens refuses to eliminate its disparate policy of requiring extra steps of physicians prescribing Methotrexate to pregnancy-capable individuals, the division will file a civil action for enforcement of the remedy.¹⁹² The patient also has the right to file a civil action for damages caused by the policy.¹⁹³

2. *Arkansas*

Arkansas has fewer restrictions on when a patient can pursue civil charges in response to discriminatory treatment in places of public accommodation, so it is easier for an aggrieved party to bring a discrimination claim as long as it meets the Section 1981 framework established in *Roberts*.¹⁹⁴ A patient who faced discrimination in getting their Methotrexate prescription due to the CVS policy could file a civil suit to enjoin further discrimination and recover damages for the difficulties they faced, such as the backpay for sick days due to pain from the untreated condition.¹⁹⁵ Unfortunately, Arkansas does not empower the Arkansas Office of Civil Rights to bring a civil action for discrimination in places of public accommodation.¹⁹⁶

3. *Louisiana*

A patient who experienced discriminatory behavior that meets the requirement of Title II claims in a Louisiana Walgreens when trying to get their Methotrexate prescription must file a complaint with the Louisiana Commission on Human Rights within 180 days of when the patient attempted to get their prescription.¹⁹⁷ The Commission will then investigate the allegations and serve Walgreens with a copy of the complaint within five

191. *See id.* (providing the business with the opportunity to rectify its actions before moving forward in the process).

192. *See id.* (emphasizing that the division and the complainant have enforcement abilities once an investigation ends).

193. *See id.* (allowing individuals to pursue damages regardless of the division's decision to file a civil action).

194. *See* ARK. CODE ANN. § 16-123-107(b) (2017) (proffering minimal guidance on how to assert a person's civil rights); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 611-612 (1984) (applying a three-part analysis).

195. *See* § 16-123-107(b) (delineating that the damages can be compensatory or punitive and may cover the cost of litigation at the discretion of the court).

196. *See id.* (establishing that remedies for discrimination in places of public accommodation can only be pursued by the individual and not by the state).

197. *See* LA. STAT. ANN. § 51:2257 (1988) (asserting that the complaint must be a sworn statement and explain the facts upon which the complaint rests).

days of the complaint being made.¹⁹⁸ If the Commission determines that there is probable cause to believe that Walgreens has engaged in unlawful discrimination, it will try to eliminate the discriminatory behavior.¹⁹⁹ If Walgreens does not amend its policy regarding Methotrexate to remedy the discriminatory behavior, then the Commission may file civil charges with the court.²⁰⁰ In addition, the complainant would have the right to request that the Commission terminate its inquiry and pursue civil charges against Walgreens themselves if the Commission does not file charges within 180 days of the filing date or decides to dismiss the complaint.²⁰¹

4. *Missouri*

A pregnancy-capable patient in Missouri who faces extra steps when trying to get their Methotrexate prescription at CVS would have to first file a complaint with the Missouri Human Rights Commission within 180 days of their experience of discrimination.²⁰² The Commission does not have automatic jurisdiction to investigate all types of discrimination cases, so it will first have to determine whether it has jurisdiction.²⁰³ After the Commission makes that determination, it will investigate the complaint and determine if there is sufficient probable cause for the allegations against CVS.²⁰⁴ The Commission would likely find that there is sufficient probable cause in the case of the CVS policy because the policy only delays or denies Methotrexate prescriptions for pregnancy-capable patients and the commission would require CVS to remedy the discrimination.²⁰⁵ If CVS

198. *See id.* (setting forth the timeline that the complaint will be processed).

199. *See id.* (adding that if the Commission finds no probable cause, then it will issue an order dismissing the complaint).

200. *See id.* (detailing the state's approach to enforcing the Louisiana public accommodation statute).

201. *See id.* (providing an alternative path for relief for individuals if the Commission decides not to pursue any charges against the transgressor).

202. *See* MO. REV. STAT. § 213.075 (West 2017) (noting that the complaint must include the name and address of the place of public accommodation and should set forth the specifics of the alleged discrimination with sufficient information such that the claim can be thoroughly investigated).

203. *See id.* (emphasizing that a failure to make a claim within 180 days deprives the Commission of its jurisdiction to investigate the allegations).

204. *See id.* (establishing a process to enforce the statutes that is similar to the processes in Arizona and Louisiana which also require an investigative period for the respective commissions to gather information about the alleged incident of discrimination and the private actor generally).

205. *See id.* (providing the party that acted discriminatorily with the opportunity to rectify their actions).

fails to remedy the discriminatory behavior by changing their policy for Methotrexate so that it no longer discriminates against pregnancy-capable individuals, then the Commission will serve CVS with a notice to answer to the charges at a hearing in front of three members of the Commission.²⁰⁶ If the Commission finds that CVS improperly failed to remedy its actions, civil penalties may be imposed that are paid directly to the state Human Rights Fund, which funds local organizations that enhance human rights in their community.²⁰⁷ Overall, the enforcement mechanisms in Arizona, Arkansas, Louisiana, and Missouri vary in terms of who can bring the claims and how they are assessed.²⁰⁸ But, patients experiencing discriminatory behavior in CVS and Walgreens have several paths in these states to enjoin the application of the policies and recover for the disruption these policies have caused.²⁰⁹

IV. POLICY RECOMMENDATION

The new CVS and Walgreens policies are a reaction to the strict abortion laws that have been passed in states throughout the country after the Supreme Court overturned *Roe v. Wade* and held that there is no constitutional right to abortion.²¹⁰ In order to prevent the discriminatory effect that these policies have on pregnancy-capable individuals, the federal government must pass legislation protecting the right to bodily autonomy so states cannot impose

206. *See id.* (clarifying that the three members of the Commission in front of whom the hearing will take place are appointed by the executive director).

207. *See id.* (determining that the civil penalty may be between \$2,000 and \$10,000 depending on whether the respondent has been adjudged to have violated the statute and the number of violations).

208. *See* ARIZ. REV. STAT. ANN. § 41-1471 (2022) (establishing that any aggrieved party may file a charge); ARK. CODE ANN. § 16-123-107(b) (West 2017) (including language that the discrimination must be intentional); LA. STAT. ANN. § 51:2257 (1988) (outlining the investigative process of evaluating the discrimination claim); MO. ANN. STAT. § 213.075 (West 2017) (allowing additional parties to be enjoined in the complaint during the investigative process if they are found to be involved in the incident of discrimination).

209. *See* ARIZ. REV. STAT. ANN. § 41-1471 (2022) (detailing the lengthy process an aggrieved party must go through before filing a civil suit to recover for damages); ARK. CODE ANN. § 16-123-107(b) (West 2017) (allowing aggrieved parties to directly file a civil suit to recover damages); LA. STAT. ANN. § 51:2257 (1988) (mirroring the process to recover in Arizona); MO. ANN. STAT. § 213.075 (West 2017) (limiting maximum recovery to \$10,000).

210. *See* Weiss, *supra* note 34 (detailing that these policies are trying to avoid criminal liability on abortion providers).

criminal penalties on physicians, pharmacies, or patients.²¹¹ Although Methotrexate is not primarily a medication used to induce abortions, like Mifepristone or Misoprostol, it is a drug that is being treated in the same manner.²¹²

The Women's Health Protection Act ("WHPA") was introduced by Nancy Pelosi in August 2021.²¹³ The WHPA was introduced to codify a nationwide right to abortion and preserve the legal protection in preceding case law.²¹⁴ The WHPA would prevent states from being able to impose criminal liability on abortion providers and, therefore, CVS and Walgreens would not need to protect themselves from potential risk by placing restrictions on dispensing Methotrexate.²¹⁵ While the Act passed the House of Representatives, it unfortunately failed twice in the Senate.²¹⁶ Subsequent legislation is necessary to codify the right to medical autonomy.²¹⁷

In addition to protecting pregnancy-capable individuals from medical discrimination due to restrictive abortion laws on a federal level, each state legislature must look closely at the disparate, collateral effects caused by their restrictive abortion laws and amend them for a more equal application of the law.²¹⁸ First, Arizona, Arkansas, Louisiana, and Missouri should

211. See Christine Fernando, *House Democrats Introduce Bill That Would Enshrine Federal Abortion Rights*, USA TODAY (Mar. 30, 2023, 4:53 PM), <https://www.usatoday.com/story/news/nation/2023/03/30/house-democrats-introduce-bill-restore-federal-abortion-rights/11570943002/> (detailing the Women's Health Protection Act that would codify reproductive rights).

212. See Weiss, *supra* note 34 (recognizing that Methotrexate is not being targeted in the same way Mifepristone or Misoprostol are, but patients using Methotrexate are experiencing the collateral effect of abortion bans).

213. See Ian Millhiser, *Democrats Have a High-Risk, High-Reward Plan to Save Roe v. Wade*, VOX (September 8, 2021, 7:30 AM), <https://www.vox.com/20930358/codify-roe-wade-womens-health-protection-act-supreme-court-nancy-pelosi-democrats> (detailing how Democrats were trying to minimize the detrimental effect of *Roe v. Wade* being overturned).

214. See *id.* (garnering support from reproductive rights groups and major Democratic players such as President Joe Biden).

215. See *id.* (noting that the WHPA would preempt state laws seeking to restrict access to reproductive care).

216. See *id.* (emphasizing that The Women's Health Protection Act provides more protections than other bills that have been introduced to address this issue).

217. See *id.* (predicting that the WHPA may be sustained under Congress's power to regulate the national economy but warning that an unfavorable Supreme Court presents a major obstacle).

218. See *Human Rights Crisis: Abortion in the United States After Dobbs*, HUM. RTS. WATCH (Apr. 18, 2023), <https://www.hrw.org/news/2023/04/18/human-rights-crisis->

eliminate criminal sanctions for abortion providers.²¹⁹ These harsh punishments prevent physicians and pharmacists from adequately fulfilling their duty of care to their pregnancy-capable patients who need Methotrexate to comfortably live their lives.²²⁰ If states are unwilling to remove criminal sanctions, legislatures need to define the distinct role of physicians and pharmacists in order to prevent the type of overreach that is occurring in CVS pharmacies and Walgreens in Arizona, Arkansas, Louisiana, and Missouri.²²¹

Instead, states could provide clarifications in the “definitions” section of each abortion-restricting statute.²²² The explanations should fortify a physician’s role and competence in prescribing medication and their duty to follow the law when doing so.²²³ The statute should also use language to emphasize that pharmacists do not have the authority to be gatekeepers in the prescription process, as their role only begins once a prescription is written.²²⁴ Although the clarification will not completely solve the problems created by strict abortion restriction in the four states discussed, it will solve the problem of pharmacists taking it upon themselves to deny pregnancy-

abortion-united-states-after-dobbs (discussing how anti-abortion laws have a disparate effect on persons of lower socio-economic status including those living in poverty).

219. See ARIZ. REV. STAT. ANN. § 13-604 (2021) (charging abortion providers with a Class 6 felony); ARK. CODE ANN. § 5-61-404 (West 2021) (penalizing abortion providers with possible punishments of ten years in prison and \$100,000); MO. ANN. STAT. § 557-021 (West 2020) (noting that the punishment for a Class B Felony is ten to twenty years); LA. STAT. ANN. § 40:1061.29 (2015) (penalizing abortion providers with \$1,000 per incidence, two years in prison, or both).

220. See Sonja Sharp, *Post-Roe, Many Autoimmune Patients Lose Access to ‘Gold Standard’ Drug*, LA TIMES (July 11, 2022 at 5:00 AM), <https://www.latimes.com/california/story/2022-07-11/post-roe-many-autoimmune-patients-lose-access-to-gold-standard-drug> (outlining the fears surrounding prescribing Methotrexate after the *Dobbs* decision upended protections established by *Roe*).

221. See LA. STAT. ANN. § 14:87.1 (2022) (including a basic definition of pharmacist with no reference to the duties of a pharmacist in the context of the abortion restriction bill); MO. ANN. STAT. § 188.015 (2019) (providing a definition of “physician” similar to the Louisiana statute).

222. See ARIZ. REV. STAT. ANN. § 36-2321 (2022) (defining the terms used in the “Protection of Fetus or Embryo” Act); ARK. CODE ANN. § 5-61-403 (West 2021) (omitting any references to physicians or pharmacists in the list of defined terms used in the Arkansas Unborn Child Protection Act).

223. See Hannoodee and Mittal, *supra* note 26 (outlining the information that a physician must share with their patient to make the best medical decisions with them).

224. See Hemant Kumar Sinha, *Role of Pharmacists in Retailing of Drugs*, 5 J. ADVANCED PHARM. TECH. RSCH. 107, 107 (2004) (defining that the role of a pharmacist is to be a resource to patients and distinguishing their role from a physician’s role).

capable individuals their prescription for Methotrexate or to add unnecessary and discriminatory hurdles in front of these patients despite a physician's prescription for the medication.

V. CONCLUSION

The practices that pharmacies in Arizona, Arkansas, Louisiana, and Missouri have enacted due to their fear of liability under strict abortion laws are discriminatory.²²⁵ Pharmacies fall within the definition of “places of public accommodation” in each state and must operate within the states’ Civil Rights Acts or other public accommodation statutes.²²⁶ These policies place obstacles in front of women and other pregnancy-capable individuals when trying to get their Methotrexate prescriptions to manage various disorders and are not imposed on men and non-pregnancy-capable individuals trying to access the same medication.²²⁷

While recognizing that pharmacies are acting to protect themselves in the face of punitive abortion laws, these policies ignore the competency of physicians in making the best medical decisions with their patients while considering factors like the possibility of pregnancy, age, sex, etc. Every individual should have the autonomy to make the best medical decisions for themselves and pharmacies have no role in this decision-making process. *Dobbs* stripped the bodily autonomy of pregnant individuals across the nation and has collaterally affected the ability of countless others to make medical decisions for themselves.²²⁸ States have a duty to prevent disparities in public accommodations stemming from discrimination.²²⁹ Prohibiting

225. See Weiss, *supra* note 34 (emphasizing that the changes in policy came after *Dobbs* was released and restrictive abortion laws were passed throughout the nation).

226. See ARIZ. REV. STAT. ANN. § 41-1441(2) (2010) (including places that offer services, like dispensing medication, in the definition of “places of public accommodation”); ARK. CODE ANN. § 16-123-102 (2017) (establishing that a place of public accommodation is any establishment that supplies goods and services to the general public like providing medication); LA. REV. STAT. § 51:2232(9) (2022) (defining “a place of public accommodation” to include establishments that sell goods like medicine); MO. ANN. STAT. § 213.010(15) (West 2017) (defining “places of public accommodation” as businesses that offer health goods and services to the general public).

227. See Weiss, *supra* note 34 (highlighting the disparate and discriminatory effect of the policies).

228. See *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2242 (2021) (emphasizing that *Dobbs* has had both direct and collateral effects on bodily autonomy and access to healthcare).

229. 42 U.S.C. § 2000a (providing a foundation for the prohibition on discrimination in places of public accommodation that states have adopted in their respective civil rights statutes).

pharmacies from enacting such policies regarding Methotrexate is a crucial step in protecting women and pregnancy-capable patients.