No. 25-

IN THE

Supreme Court of the United States

JOHN STOCKTON, RICHARD EGGLESTON, M.D., THOMAS T. SILER, M.D., DANIEL MOYNIHAN, M.D., CHILDREN'S HEALTH DEFENSE, A NOT-FOR-PROFIT CORPORATION, AND JOHN AND JANE DOES, M.D.S 1-50,

Petitioners,

v.

NICK BROWN, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF WASHINGTON, AND KYLE S. KARINEN, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE WASHINGTON MEDICAL COMMISSION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. On September 16, 2025, the Washington Court of Appeals held that the State Medical Commission's COVID-19 misinformation enforcement policy targeting physicians for their public viewpoint speech did not serve a compelling state interest and violated the First Amendment. *Wilkinson v. Washington Medical Commission*, 576 P.3d 1191 (Wash. Ct. App. 2025). The next day, the Ninth Circuit refused to reach the merits of Petitioners' challenge to that same policy and affirmed dismissal under *Younger v. Harris*, 401 U.S. 37 (1971), finding that the policy served an "important state interest" justifying abstention. Appendix ("App.") A at 14a. The questions presented are whether a federal court may abstain under *Younger* when a State appellate court has held the same enforcement policy unconstitutional, thereby eliminating any ongoing "important state interest" on which abstention could rest.

2. Whether physician-Petitioners subject to ongoing state disciplinary proceedings for their public speech satisfy all justiciability requirements and are entitled to federal adjudication when: (a) they face concrete enforcement actions establishing Article III standing; (b) the state's own courts have declared the challenged enforcement policy unconstitutional; and (c) the only barrier to adjudication was *Younger* abstention, which the state court's ruling has eliminated.

3. Whether Petitioners are entitled to preliminary injunctive relief where: (a) the Medical Commission's policy is a content- and viewpoint-based restriction on public speech subject to strict scrutiny; (b) the state's own appellate court has held the policy unconstitutional; (c) Respondents presented no evidence of narrow tailoring or less-restrictive alternatives; (d) a continuing First Amendment violation constitutes irreparable injury; and (e) enjoining an unconstitutional policy serves the public interest.

4. Whether Petitioners Dr. Moynihan (speaker), John Stockton, and Children's Health Defense (listeners) satisfy Article III standing and all other justiciability requirements to challenge an enforcement policy that restricts access to protected speech on matters of public concern.

5. Whether this Court should grant certiorari to resolve professional speech protections in conjunction with *Chiles v. Salazar*, No. 24-539 (therapist–client speech, argued Oct. 7, 2025), and *Kory v. Bonta*, No. 24-932 (physician–patient speech, cert. pending), as this case presents the third category: physician public viewpoint speech on matters of public concern.

CORPORATE DISCLOSURE STATEMENT

Children's Health Defense ("CHD") is a nonprofit organization with no parent corporation or issuance of stock.

STATEMENT OF RELATED CASE PROCEEDINGS AND OPINIONS

The following federal decisions are directly related to this Petition:

- *Stockton, et al. v. Ferguson et al.*, No 24-3777. Published Ninth Circuit decision dated September 17, 2025, Appendix ("App.") A, 1a-49a.

- *Stockton, et al. v. Ferguson et al.* 24-A440, Application for Stay or Injunction.

- *Stockton, et al. v. Ferguson et al.*, No. 24-3777. Preliminary Injunction order. App. B, 50a-51a.

- *Stockton, et al. v. Ferguson et al.*, Case No. 2:24-cv-00071-TOR. Decision and final judgment App. C and D, 52a-71a.

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PETITION FOR WRIT OF CERTIORARI

Petitioners John Stockton, Richard Eggleston, M.D., Thomas T. Siler, M.D., Daniel Moynihan, M.D., and Children's Health Defense respectfully petition for a writ of certiorari to review the final decision of the United States Court of Appeals for the Ninth Circuit.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Ninth Circuit's decision affirming the lower court's dismissal of this action was dated and entered September 17, 2025. This petition is being filed within 90 days of that date on November 19, 2025, making this petition timely.

CONSTITUTIONAL AND POLICY AND PRACTICE PROVISIONS

United States Constitution, First Amendment

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Washington Medical Commission COVID-19 Position Statement dated September 21, 2021:

> The Washington Medical Commission's (WMC) position on COVID-19 prevention and treatment is that COVID-19 is a disease process like other

disease processes, and as such, treatment and advice provided by physicians and physician assistants will be assessed in the same manner as any other disease process. Treatments and recommendations regarding this disease that fall below standard of care as established by medical experts, federal authorities and legitimate medical research are potentially subject to disciplinary action.

The WMC supports the position taken by the Federation of State Medical Boards (FSMB) regarding COVID-19 vaccine misinformation. The WMC does not limit this perspective to vaccines but broadly applies this standard to all misinformation regarding COVID-19 treatments and preventive measures such as masking. Physicians and Physician Assistants, who generate and spread COVID-19 misinformation, or disinformation, erode the public trust in the medical profession and endanger patients.

The WMC will scrutinize any complaints received about practitioners granting exemptions to vaccination or masks that are not based in established science or verifiable fact. A practitioner who grants a mask or other exemption without conducting an appropriate prior exam and without a finding of a legitimate medical reason supporting such an exemption within the standard of care, may be subjecting their license to disciplinary action.

> The WMC bases masking and vaccination safety on expert recommendations from the U.S. Centers for Disease Control and Prevention (CDC) and the Washington State Department of Health (DOH).
>
> The WMC relies on the U.S Food and Drug Administration approval of medications to treat COVID-19 to be the standard of care. While not an exhaustive list, the public and practitioners should take note:
>
> - Ivermectin is not FDA approved for use in treating or preventing COVID-19
>
> - Hydroxychloroquine (Chloroquine) is not FDA approved for use in treating or preventing COVID-19
>
> The public and practitioners are encouraged to use the WMC complaint forms when they believe the standard of care has been breached.

STATEMENT OF THE CASE

A. The Origins of Respondents' Covid Misinformation Enforcement Policy

Like *Kory v. Bonta,* No. 24-932, this case was precipitated by the July 29, 2021 press release by the Federation of State Medical Boards (the "Federation"), recommending that its state member boards sanction

their licensees for spreading "Covid misinformation" to the public and to patients.[1, 2]

The Washington Medical Commission (the "Commission") adopted the Federation's press release on September 21, 2021, after a half-hour public meeting. Complaint at ER224 ¶¶31-32. (A copy of the adoption statement is attached to the Runnells' Declaration at Exhibit B, ER137, and reproduced above.)

Petitioners are unaware of any other public or published information about the Commission's process or considerations in deciding to adopt the Federation's press release. Complaint, ER224 para. 33.[3] Thus, there is

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1. The relevant text of the press release is quoted in the Complaint at ER222 para. 29 continuing to ER223. (All references are to Dkt. Entry 15, in the Ninth Circuit's record, unless otherwise stated.) A copy of the press release is attached to the Runnells' Declaration at Exhibit A, ER134-135.

2. The American Medical Association in November 2021, its Young Physicians Section adopted a resolution calling for "language in federal and state medical board policies that physicians who disseminate medical disinformation are subject to disciplinary action, including suspension or revocation of license." *AMA Young Physicians Section, Resolution 2* (Nov. 2021), https://www.ama-assn.org/system/files/november-2021-yps-resolution-2.pdf?utm_source=chatgpt.com.

3. In contrast, in early 2022, the California Assembly introduced AB 2098 which would have implemented the Federation's press release, sanctioning physicians for Covid misinformation. However, the Legislature quickly realized that it would be unconstitutional for the bill to follow the Federation's call for sanctioning physicians' public speech. As a result, the final bill which went into effect limited the scope to communications between a doctor and patient. *See* ER179-198.

no evidence in the record that the Commission discussed or considered options less restrictive than targeting and sanctioning the public viewpoint speech of its licensees. That would include even after the Ninth Circuit has specifically told the Former Respondent/Attorney General Ferguson that the public speech of Washington state health care licensees receives "robust protection" in *Tingley v. Ferguson,* 47 F.4th 1055, 1072-73 (9th Cir. 2022).[4]

B. The Petitioners and Their Standing

Petitioners include individual physicians (two of whom are the subject of ongoing Medical Commission proceedings and unquestionably have standing, one who is not currently under investigation for Covid misinformation but had been), an individual listener, and an organization, connected through the exchange of constitutionally protected speech. All of the Petitioners' First Amendment injuries are caused by and traceable to Respondents' enforcement actions, and the requested relief would eliminate these injuries.

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4. [In *Pickup v. Brown,*] [w]e held that 'public dialogue' by a professional is at one end of the continuum and receives the greatest First Amendment protection. To illustrate, we explained that even though a state can regulate the practice of medicine, a doctor who *publicly* advocates for a position that the medical establishment considers outside the mainstream would still receive 'robust protection' from the First Amendment.

1. John Stockton

John Stockton is a lifelong Washington resident, former professional athlete, and host of a public podcast addressing public-health issues. Complaint, ER217 ¶9; Stockton Decl., ER112–113. He has a continuing and specific interest in receiving the speech of Washington-licensed physicians who dissent from prevailing narratives on COVID-19 and related medical issues. Stockton has a longstanding personal relationship with Petitioner Dr. Richard Eggleston, has hosted him on his podcast, and regularly reads and disseminates his published opinion pieces. Stockton Supp. Decl., Rule 10(e)(2) Motion to Supplement Record, Dkt. Entry 22, at 2–3. Through that direct speaker–listener relationship, Stockton asserts the First Amendment right to receive Eggleston's speech. His injury is concrete and ongoing: the Commission's policy chills Eggleston's expression, directly restricting Stockton's ability to hear and share that speech.

2. Richard Eggleston, M.D.

Dr. Eggleston is a retired Washington-licensed ophthalmologist and the subject of a disciplinary prosecution for opinion columns he published in the *Lewiston Tribune* in 2021 on COVID-19 policy. Complaint, ER218 ¶11; ER225 ¶38; Farrell Decl., ER96-104. The Commission charged him under RCW 18.130.180(1) and (13), statutes authorizing discipline for "moral turpitude" or "misrepresentation." As a result, he has limited his publishing public commentary pending the outcome of those proceedings. Complaint, ER225-226; Alford Decl.,

ER22. Eggleston's public speech is political expression on matters of public concern; it has been directly suppressed. His injury is ongoing and redressable by injunction.

3. Thomas T. Siler, M.D.

Dr. Siler was a retired Washington-licensed physician who published online commentaries about COVID-19 policy between February and October 2021. Complaint, ER66-84 (articles) and ER226 ¶¶41–42. After being notified of a Commission investigation for "misinformation," he stopped writing. Siler Decl., ER124. In late 2023, the Commission filed formal charges now pending. Richardson Decl., ER107-109. Dr. Siler's continuing self-censorship is a paradigmatic First Amendment injury.[5]

4. Daniel Moynihan, M.D.

Dr. Daniel Moynihan is a retired family medicine physician licensed in Washington. The First Amended Complaint alleges (verified by him) that "CHD has a Washington chapter and it and CHD national have members and volunteers including Washington licensed physician Plaintiff Daniel Moynihan, M.D. who wish to speak out in public about the latest studies about the Covid booster shots, as well as information about the off-label treatments for Covid." FAC ¶18, ER220.

Dr. Moynihan's declaration elaborated on his intended speech with additional detail that Covid vaccines are not "safe or effective." *Id.* ¶6, ER127. He wants to inform the public that "continued Covid boosters are unnecessary and even potentially dangerous for healthy adults and

5. Dr. Siler eventually gave up his medical license, but the Commission's case against him is still pending.

especially children." *Id.* ¶10, ER128. And he wants to tell the public that "off-label treatments such as Ivermectin and HCQ are highly effective (or were against past variants which had greater lethality than current strains of the virus)." *Id.* ¶11.

Dr. Moynihan specified that he wants to speak "in public" about these topics as a volunteer for CHD. *Id.* ¶¶9, 12, 13, ER128-129. He seeks to draw on his three decades as a family practice physician and his "experience with Covid vaccines and treatments, especially the off-label treatments which he endorses." *Id.* ¶¶10-13, ER128-129.

Dr. Moynihan's speech is presently chilled by concrete Commission action. He has already received a Commission complaint. *Id.* ¶8, ER128. He is on the Commission's "radar screen." *Id.* ¶9. He has witnessed the Commission prosecute other physicians, Dr. Eggleston and Dr. Siler for similar public statements about COVID-19. *Id.* ¶12. As a result, Dr. Moynihan "is reluctant to speak out in public" about his views. *Id.* ¶¶9, 12.

5. Children's Health Defense

Petitioner CHD is a nonprofit organization dedicated to protecting the public's right to receive accurate medical information and the rights of physicians to communicate. FAC, ER220-221 ¶¶17–20; Runnells Decl., ER131-132. CHD's 2,000 Washington members include physicians such as Dr. Moynihan, whose speech has been chilled, and parents and citizens who wish to receive that speech. CHD's mission to facilitate the exchange of information between those speakers and listeners places it within the protection recognized in *Virginia Board of Pharmacy* and reaffirmed in *Murthy v. Missouri*, 603 U.S. 43, 75 (2024).

Respondents' enforcement policy frustrates that mission and injures CHD's members by silencing identified speakers central to its work.

These interlocking speaker-listener relationships create a live controversy and concrete injuries to each Petitioner. Each has shown an actual or imminent restriction on speech traceable to Respondents' policy and redressable by declaratory and injunctive relief.

C. The Claims for Relief Upon Which Review is Sought

The first claim seeks declaratory and injunctive relief against any future action by the Respondents to investigate, prosecute, or sanction Washington licensed physicians for speaking out against the mainstream Covid narrative. Complaint, ER227-228, and ER234-235 no. 1. The physicians who already have been targeted (described in the Serrano Declaration, ER200, and the Farrell Declaration, ER89-93) create a reasonable fear for other physicians ER220 ¶19, Moynihan Decl. ER128, ¶¶9, 12.

The second claim seeks to stop all current investigations and prosecutions by the Respondents targeting the public speech of physicians. Complaint, ER228-231, and all the previous sources listed for the first claim. Petitioner physicians Eggleston, Siler and Moynihan assert their constitutional right to speak. Petitioners Stockton and CHD claim their right to hear the information of these and other physicians under attack.[6]

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6. The First Amended Complaint (hereinafter sometimes the "Complaint") asserted a third and fourth claim for due process violations which were rejected by both lower courts. This Petition is limited to the First Amendment issues raised in the first two claims.

THE PROCEEDINGS IN THIS CASE

A. The District Court's Decision

The United States District Court for the Eastern District of Washington denied Petitioners' motion for preliminary injunction, dismissed the case, and entered final judgment based on abstention, prudential ripeness, standing, and that the public speech of licensed physicians is not protected by the First Amendment. *Stockton v. Ferguson*, No. 2:24-cv-00071-TOR (E.D. Wash. May 22, 2024) Apps. C & D, 52a-71a

B. The Ninth Circuit's Denial of a Preliminary Injunction

Petitioners sought an injunction pending appeal under Federal Rule of Appellate Procedure 8(a)(2)(E). On September 3, 2024, a motions panel of the Ninth Circuit denied the motion without substantive discussion. App. B, 50a-51a.

C. Application to this Court

Petitioners filed an application for a stay or injunction (24-A440) which was denied by Justice Kagan on November 20, 2024. The Application was refiled with Justice Thomas on November 22, 2024, distributed and conferenced, and denied by the Court on January 13, 2025.

D. The Ninth Circuit's Decision on the Merits

On September 17, 2025, the Ninth Circuit affirmed the dismissal under *Younger* abstention for Eggleston and Siler and constitutional ripeness (the first part of standing) and prudential ripeness as to Petitioners

Stockton, Moynihan and Children's Health Defense. *Stockton v. Brown*, No. 24-3777 (9th Cir. Sept. 17, 2025). App. A, 1a-43a. Judge Bress concurred and concurred in the judgment. *Id.* at 44a-49a

SUMMARY OF THE ARGUMENT

For 80 years, every justice and judge to consider the question has recognized that the First Amendment robustly protects the rights of professionals to speak to the public as soapbox speakers.

On September 16, 2025, in *Wilkinson v. Washington Medical Commission*, 576 P.3d 1191 (Wash. Ct. App. 2025), the court held that the Commission's COVID-19 "misinformation" policy violates the First Amendment. *Id.* at 1215-1219. The court found that protecting the public from false speech is not a compelling government purpose and that the Supreme Court has not recognized a legitimate governmental interest in regulating physician speech outside the physician-patient relationship. *Id.* at 1218-1219.

The next day, the Ninth Circuit affirmed the dismissal of this case based under *Younger* abstention and ripeness, holding that federal courts must defer to state disciplinary proceedings because they implicate an "important state interest" in regulating medical practice and patient care. App. A at 14a. However, the result was obsolete in light of *Wilkinson*; an unconstitutional policy cannot have any important or legitimate interest.

The Ninth Circuit's *Younger* analysis contains several additional independent errors. First, the state's asserted interest in "regulating medical practice to ensure quality

healthcare" conflicts with Washington law, which defines "health care" as care provided to a patient, thus excluding public speech.

Second, the Ninth Circuit characterized the state interest at an impermissibly high level of generality. App. A at 14a. The state's actual interest is not in regulating how doctors treat patients, but in impermissibly suppressing the public speech of physicians where the Commission does not agree with its content and viewpoint. Finally, even before *Wilkinson*, the policy was unconstitutional under *Tingley*, which restated *Pickup*'s holding that physicians' public speech is robustly protected. (*See* page 5, footnote 4 above).

Once *Younger* abstention is removed, Petitioners Drs. Richard Eggleston and Thomas T. Siler clearly have standing since they are both being prosecuted under what *Wilkinson* has held to be an unconstitutional Commission policy. Both are entitled to a preliminary injunction.

Petitioner Dr. Daniel Moynihan credibly alleges an imminent threat of enforcement. Contrary to the panel's assertions (App. A 31a), Dr. Moynihan has specified what he wants to say: that COVID-19 vaccines are not "safe and effective" for the general population, that boosters are dangerous, and that early treatments such as Ivermectin and Hydroxychloroquine are effective. He intends to make these statements publicly as a volunteer for Children's Health Defense, drawing on thirty years of experience as a family physician treating COVID-19 patients. (*See* the expanded statements and citations to the record on pages 7-8 above.)

Dr. Moynihan satisfies all three prongs of *Susan B. Anthony List v. Driehaus,* 573 U.S. 149 (2014) for pre-enforcement standing, but the Ninth Circuit ignored these pleaded and sworn to facts.

Children's Health Defense and John Stockton have listener standing to challenge the suppression of speech they seek to receive. CHD is a national nonprofit with over 2,000 members in Washington whose mission includes protecting the public's right to receive information from physicians about vaccine safety and medical freedom. CHD has identified the specific speakers whose speech is being suppressed (Drs. Eggleston, Siler, and Moynihan), and the specific content it seeks to receive, as documented in forty pages of dissenting medical views the Commission deems "misinformation." John Stockton has a personal relationship with Dr. Eggleston; he has hosted him on his podcast, is an avid reader of his writings, and actively supports his legal defense. The Ninth Circuit's conclusion that these allegations are insufficient (App. A 32a-38a), conflicts with this Court's precedents recognizing listener standing.

Finally, this case together with *Chiles v. Salazar* (No. 24-539, argued October 7, 2025) and *Kory v. Bonta,* (No. 24-932, conferenced June 18, 2025, cert. pending), completes a trilogy defining the scope of First Amendment protection for all aspects of professional expression. *Chiles* addresses whether states may regulate what therapists say to clients during counseling sessions. *Kory* addresses whether states may regulate the information physicians provide to patients about matters of public and private health. This case addresses whether medical boards can sanction physicians for their soapbox speech. The

answer to this question will determine not only the rights of physicians, but also the rights of all citizens to hear dissenting views on matters of importance.

REASONS FOR GRANTING THIS PETITION

I. *Wilkinson* Eliminated the State Interest on Which the Ninth Circuit's *Younger* Abstention Finding Was Based

The second requisite element for invoking *Younger* abstention is that the proceedings sought to be enjoined *"implicate important state interests." Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982).[7] As indicated on September 16, 2025, the

7. In its decision, the lower court splits the second *Middlesex* element into two parts, the important state interest being the third element. App. A at 13a-14a. Contrary to the lower court's finding, (*id*. at 14a) Petitioners did not waive this argument. Throughout this case, Petitioners argued that the state could not have a compelling state interest to suppress the public speech of physicians because the state did not satisfy its strict scrutiny burden of proof. ("[s]ince this case involves a fundamental right, strict scrutiny means that the Defendants must prove a compelling state interest," and asking, "What is the compelling state interest to restrict physician free speech on matters of public interest on a new virus?" Plaintiffs' Reply in Supp. of Mot. for Prelim. Inj. at 14-15. Dkt No. 20, 5/7, 2024.) That argument necessarily encompassed the claim that the proceedings did not implicate an "important state interest" under *Younger*. The panel's citation to *Lui v. DeJoy*, 129 F.4th 770, 780 (9th Cir. 2025), App. A 15a fn. 6. is not relevant as *Lui* concerns forfeiture of issues "neither raised below or in the opening brief on appeal." Here, Petitioners raised the lack of state-interest issue at both the district court and the Ninth Circuit. Moreover, *Lui* itself recognizes that "[w]e have discretion to review an issue not raised by appellant...when it is

Washington Court of Appeals held in *Wilkinson* that the Commission's "COVID-19 misinformation" enforcement policy violated the First Amendment. The court rejected the State's asserted justification for disciplining physicians' public speech, explaining that "protecting the public from false speech is not a compelling government purpose" (*Wilkinson*, 576 P.3d at 1215) and concluding that "the State must, and has failed to, show a compelling interest in disciplining Dr. Wilkinson for his website blog." *Id*. at 1218. Unless and until the Washington Supreme Court grants review and subsequently reverses, *Wilkinson* is binding.[8]

The next day, the Ninth Circuit affirmed dismissal of this case, refusing to reach the merits for the physician Petitioners being prosecuted by the Commission under *Younger* abstention, finding that Commission proceedings serve an important state interest in regulating the practice of medicine to ensure quality health care and in licensing and disciplining physicians.[9]

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raised in the appellee's brief." *Id*. at 780. Respondents extensively briefed the "important state interest" element in their briefs, making it a central issue on appeal.

8. The Washington Attorney General filed a petition for review in the state supreme court on October 16, 2025, docketed as No. 102356-5.

9. "…the proceedings also implicate important state interests—namely, the State of Washington's interest in regulating the practice of medicine to ensure that patients receive quality health care." (citation omitted) … "[T]here is no question that the licensing and discipline of physicians involves important state interests." Quoting *Amanatullah v. Colo Bd. of Med. Examiners*, 187 F.3d 1160, 1163-65 (10th Cir. 1999). App. A, 14a.

Once *Wilkinson* declared the policy unconstitutional, there was no longer any legitimate state interest to which a federal court could defer.

This Court has repeatedly emphasized that abstention is the exception, not the rule. Federal courts possess a "virtually unflagging obligation" to exercise the jurisdiction conferred upon them. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). When a state's own courts have already resolved the federal constitutional issue against the state proceeding, comity deference evaporates.

Accordingly, since *Wilkinson* eliminates the very justification of the Ninth Circuit's abstention holding, the Court should reverse the lower courts' dismissal of the case on *Younger* abstention as to Petitioners Eggleston and Siler.

II. Other Clear Legal Error in the Lower Court's *Younger* Holding

A. The Lower Court's important state interest conflicts with state law

Washington law defines "health care" as proving medical care *to a patient*.[10] Therefore, the interest

10. Washington's RCW 70.02.010(15), defines "health care" as:

> "Any care, service, or procedure provided by a health care provider:
>
> (a) To diagnose, treat, or maintain a patient's physical or mental condition; or
>
> (b) That affects the structure or any function of the human body."

identified by the lower court is inconsistent with Washington law, as this case does not involve patient care.

B. The Ninth Circuit Failed to Identify a Specific State Interest

The Ninth Circuit framed the state interest abstractly as regulating the practice of medicine and ensuring good health care. App. A 14a, quoted in footnote 9 *supra.* The Fourth Circuit has stated that the important state interest must be tied to the specific enforcement action, not the general regulatory power. *Harper v. Public Serv. Comm'n of West Virginia,* 396 F.3d 348, 354 (4th Cir. 2005).

By framing the interest at the highest level of abstraction, "regulating medical professionals," the Ninth Circuit allowed the abstract interest to swallow the requirement that the state identify a specific interest in the particular policy being enforced.

III. Petitioners Eggleston and Siler Have Standing So the Case Can Proceed

The lower court based its decision dismissing Eggleston and Siler on *Younger* abstention. Now that *Wilkinson* and other arguments show that abstention cannot be sustained, it is an easy task to demonstrate Petitioners' standing (and constitutional and prudential ripeness). Eggleston and Siler are presently being prosecuted by the Commission under the same policy that *Wilkinson* has now declared unconstitutional. That resulting injury is concrete, traceable to the Commission's actions, and fully redressable by the relief sought, thus meeting all three elements of Article III standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Under *Murthy v. Missouri*, 603 U.S. 43, (2024) only one plaintiff in a multi-plaintiff case need have standing for the case to proceed on the merits. Accordingly, this case must move forward on both First Amendment claims.[11]

IV. Petitioners Are Entitled to Relief Under the Standard for a Preliminary Injunctions

Petitioners Eggleston and Siler remain subject to ongoing disciplinary proceedings, which proceedings are unconstitutional under *Wilkinson*.[12] Those facts satisfy the standards for a preliminary injunction.

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11. Although the lower court expressed no opinion on ripeness with respect to Eggleston and Siler, *Wilkinson* completely eliminates prudential ripeness in this case. Because even false public statements by physicians are constitutionally protected, the Commission now lacks any lawful authority to sanction such speech. There is nothing left for it to try, hear or determine. Ripeness cannot require Petitioners to exhaust a proceeding the State has no legal authority to conduct.

12. The Ninth Circuit also failed to address *National Rifle Association of America v. Vullo*, 602 U.S. 175 (2024), which Petitioners raised on appeal. In *Vullo*, decided May 30, 2024, eight days after the district court's ruling, the Court held that plaintiffs state a First Amendment claim when they challenge an informal government enforcement policy targeting disfavored speech, even where the policy operates under facially neutral regulatory authority. *Id.* at 190. The district court dismissed Petitioners' claims using a facial-versus-as-applied framework, reasoning that "Plaintiffs' First Amendment facial challenges or as-applied challenges to the Commission's authority must fail" because the underlying statute (RCW 18.130.180) regulates professional conduct. App. C, 65a. But Petitioners challenge the Commission's enforcement *policy* targeting COVID-19 viewpoint speech, not the neutral statute. Under *Vullo*, this states a claim. And of course, the District Court is wrong that the public speech of physicians is incidental to medical care.

Petitioners have demonstrated a strong likelihood of success on the merits and an ongoing, irreparable First Amendment injury. Since 1945, every justice and judge who has written about the public speech of professionals has opined that this speech is either robustly protected or not subject to government oversight or restriction at all. *See Thomas v. Collins*, 323 U.S. 516, 545-46 (1945) (Jackson, J., concurring)[13]; *Lowe v. SEC*, 472 U.S. 181, 232 (1985) (White, J., concurring); *Pickup v. Brown*, 740 F.3d 1208, 1227 (9th Cir. 2014), *abrogated on other grounds* by *Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018) ("*NIFLA*"); *Tingley v. Ferguson*, 47 F.4th at 1072-73 (language quoted in footnote 4 above); and of course, *NIFLA* itself directly criticized the *Pickup* holding restricting treatment speech because the Supreme Court had never recognized that the category of professional speech is unprotected (*NIFLA*, 585 U.S. at 767), which is exactly what the district court held, and the Ninth Circuit at least decided not to reverse or ever address.

Wilkinson confirms that the specific Washington Medical Commission's Covid enforcement policy does not survive strict scrutiny: "protecting the public from false speech is not a compelling government purpose" (*Wilkinson*, 576 P.3d at 1215), noting that this Court "has not recognized a legitimate government interest in the

13. [I]t is not the right, of the state to protect the public against false doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us.

regulation of physician speech outside of the physician-patient relationship" (*id.* at 1219) and dismissed the charges against Dr. Wilkinson relating to his clinic's website blog comments. *Id.* at 1219. Respondents' Covid misinformation enforcement policy which is the subject of this action is therefore unconstitutional.

The remaining injunction factors also favor Petitioners. The loss of First Amendment freedoms "for even minimal periods of time" constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. at 373. And the balance of equities and public interest favor the protection of speech over censorship. No identifiable harm flows from allowing physicians to express opinions that the government disapproves of, while the suppression of professional and public debate inflicts profound injury on both speakers and listeners.

Because the policy fails under *NIFLA*, *Alvarez*, and now *Wilkinson*, Petitioners satisfy every element for injunctive relief. The Court should order the lower courts to issue a preliminary injunction.

V. The Ninth Circuit's Dismissal of Petitioners Moynihan, CHD and Stockton for Lack of Standing and Prudential Ripeness is Wrong and Cert. Worthy

The Ninth Circuit dismissed the claims of Moynihan, CHD, and Stockton on standing and ripeness grounds. App. A at 32a-43a. For Moynihan, the lower court held that his claims were neither constitutionally nor prudentially ripe because no injury has yet been suffered and his fear of prosecution was "too speculative and non-concrete to satisfy the injury-in-fact requirement." *Id.* at 38a. For

CHD and Stockton, the court held they lacked Article III standing as listeners because their alleged injuries were "too speculative" and lacked a "concrete, specific connection to the speaker" necessary to satisfy *Mandel*. *Id.* at 32a. The lower court concluded that Stockton's connection to Dr. Eggleston was "a far cry from *Mandel*," and that CHD's injury was "entirely derivative of the rights of the speaker." *Id.* at 33a, 35a. These holdings conflict with this Court's standing and ripeness doctrines.

A. Moynihan Has Standing and His Claims are Ripe

1. The Ninth Circuit Ignored Pleaded and Sworn Facts

The Ninth Circuit dismissed Dr. Moynihan's claims as unripe, finding that " . . . there is a dearth of information about what Dr. Moynihan wishes to say on those topics, whom he wants to speak to, and under what circumstances he intends to speak. . . ." *Id.* at 30a-31a. The panel also stated that "the First Amended Complaint contains no details about Dr. Moynihan's speech except for its falling outside the 'mainstream COVID narrative.'" *Id.* at 30a. These findings are contradicted by the record.

Dr. Moynihan's declaration expressly adopted the First Amended Complaint's allegations about him as "true and correct." Moynihan Decl. ¶2, ER127. The Complaint specifically alleged that Dr. Moynihan wants to "speak out in public about the latest studies about the Covid booster shots, as well as information about the off-label treatments for Covid." FAC ¶18, ER220. Dr. Moynihan's declaration then provided additional specificity: he wants

to tell the public that COVID vaccines are not "safe or effective" (¶6, ER127); that "continued Covid boosters are unnecessary and even potentially dangerous for healthy adults and especially children" (¶10, ER128); and that "off-label treatments such as Ivermectin and HCQ are highly effective" (*id.* ¶11). He specified that he wants to speak "in public" about these topics (¶¶9, 12, 13, ER128-129) as a CHD volunteer, drawing on his "three decades as a family practice physician" and his "experience with Covid vaccines and treatments" (¶¶6, 10-12, ER127-128).[14]

The Ninth Circuit also mischaracterized the threat as speculative when it is concrete and immediate. Dr. Moynihan has already received a WMC complaint. Moynihan Decl. ¶8, ER128. He is on the Commission's radar screen. *Id.* ¶9, ER128. He has watched the Commission prosecute physicians like Dr. Eggleston and Dr. Siler for similar speech. *Id.* ¶12, ER128. Yet, the panel cited the district court's dismissal of his injury as "based solely on 'speculation and conjecture.'" App. A at 26a. A physician who has received a complaint and remains under Commission scrutiny faces a concrete, not speculative, threat.

On a motion to dismiss, the court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in favor of the non-moving party. *Daniels-Hall v. National Education Ass'n,* 629 F.3d 992, 998 (9th Cir. 2010). The Ninth Circuit did not do so.

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14. The record also contains the 40-page Verma Declaration (ER138-178), which details dissenting medical views on COVID-19, consistent with the views of the Petitioner physicians.

2. These Facts Establish Standing and Ripeness

The Ninth Circuit's factual errors are not harmless. The facts the panel ignored establish both Article III standing and ripeness. A plaintiff asserting a First Amendment chill satisfies Article III when he establishes "(1) an intention to engage in a course of conduct arguably affected with a constitutional interest, (2) that is proscribed by a statute, and (3) where there exists a credible threat of prosecution thereunder." *Susan B. Anthony List,* 573 U.S. at 159. Dr. Moynihan satisfied all three prongs. First, he intends to speak publicly about COVID-19 vaccines, boosters, and treatments. Moynihan Decl. ¶¶9-13, ER128-129; FAC ¶18, ER220. Second, the Commission's COVID policy proscribes dissenting public speech by physicians about these topics. Third, the threat of prosecution is not hypothetical; Dr. Moynihan has already received a complaint and is on the Commission's radar screen. Moynihan Decl. ¶¶8-9, ER128.

The threat is sufficiently imminent to satisfy Article III. This Court has held that "an allegation of future injury may suffice if the threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur." *Susan B. Anthony List*, 573 U.S. at 158. Dr. Moynihan need not "expose himself to actual arrest or prosecution to be entitled to challenge" the Commission's policy. *Id*. at 159 (quoting *Steffel v Thompson*, 415 U.S. at 459). Where, as here, a plaintiff has already been targeted by the regulatory body and remains under active scrutiny, the threat is certainly impending.

The claim is also constitutionally ripe. This Court has recognized that "where threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 129 (2007). Dr. Moynihan has demonstrated "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder." *Susan B. Anthony List*, 573 U.S. at 159. He has also shown a present chill on his speech—he is "reluctant to speak out in public" because of the Commission's actions. Moynihan Decl. ¶¶9, 12, ER128. That is sufficient for constitutional ripeness.

The information he wishes to impart is set out in detail and his fear is not speculative in light of the ten other Covid misinformation prosecutions and his past history with the Commission. The Ninth Circuit's finding to the contrary is thus inconsistent with the pleaded and sworn to facts.

The Ninth Circuit's error warrants this Court's review because the decision creates uncertainty about the level of specificity required to establish standing in First Amendment chill cases and improperly applies a heightened pleading standard inconsistent with *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). This Court should grant certiorari to clarify that a plaintiff who alleges specific intended speech, identifies his audience and the context for speaking, and demonstrates a concrete threat of prosecution has established Article III standing and constitutional ripeness.

3. The Ninth Circuit Also Erroneously Found Forfeiture of Dr. Moynihan's Chilling Effect Argument

The Ninth Circuit stated that Dr. Moynihan's chilling effect argument was "raised for the first time at oral argument" and therefore forfeited. App. A, 27a-28a. This finding is contradicted by the record at every stage of this litigation.

The Complaint and Declaration: The First Amended Complaint specifically alleged that the Commission's actions "chill [Dr. Moynihan's] willingness to speak out in public on Covid" and that he asserted standing under the "hold your tongue and sue standing principle." FAC ¶14, ER218-219. Dr. Moynihan's Declaration stated unequivocally: "I am reluctant to speak out in public against the mainstream view because of what the Commission is doing to physicians like Dr. Eggleston and Dr. Siler "until the court clarifies that the Commission cannot sanction public speech." Moynihan Decl. ¶12, ER128. He elaborated that his reluctance stemmed from "the Commission's COVID policy statement, the prosecutions of other physicians for alleged COVID misinformation to the public, and the fact that [he is] 'on the Commission's radar screen.'" *Id.* ¶¶9, 12-13, ER128-129.

1. **District Court Briefing.** Petitioners' Motion for Preliminary Injunction argued: "Plaintiff Moynihan is not currently being prosecuted or investigated by the Defendants. However, he would like to express his dissenting opinions to the mainstream Covid narrative but fears doing

so based on the Defendants' actions against Plaintiffs Eggleston, Siler and the many other physicians prosecuted for Covid misinformation." Pls.' Mot. for Prelim. Inj., Dkt. No. 15 at 6-7 (W.D. Wash. Apr. 9, 2024). Petitioners' Reply reiterated: "Dr. Moynihan has said that his speech has been chilled" and that "he would speak out in public if a court declares it legal for him to do so ... but he is afraid to speak out (because of what is happening to Plaintiffs Eggleston and Siler) until the courts clarify his rights in this case." Pls.' Reply, Dkt No. 20 at 2, 13 (W.D. Wash. May 7, 2024).

2. **Ninth Circuit Briefing.** Petitioners' Opening Brief to the Ninth Circuit argued: "Appellant Moynihan makes clear that he would like to express his dissenting opinions to the mainstream Covid narrative, but fears doing so based on the Appellees' actions." Appellants' Opening Br., Dkt No. 14 at 13 (9th Cir. Aug. 28, 2024). The brief quoted directly from his declaration: "... based on the Commission's Covid policy statement, prosecution of physicians for alleged Covid misinformation to the public, and the fact that I am on the Commission's radar screen, I am reluctant to speak out in public about my beliefs...." *Id.* (citing Moynihan Decl., ER128 ¶9).

The chilling effect argument was thus preserved in the Complaint, the Declaration, district court briefing, and Ninth Circuit briefing. Chilling of speech by content-based restrictions is a well-established basis for First Amendment standing. *See Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 393 (1988); *Tingley*, 47 F.4th at 1064-65.

B. The Lower Courts Erred in Dismissing CHD and Stockton for Lack of Standing

The Ninth Circuit dismissed CHD and Stockton for lack of standing, holding their alleged injury as listeners was "too speculative" and lacked a "concrete, specific connection to the speaker." App. A at 32a-38a. The lower court stated that Stockton's connection to Dr. Eggleston was "a far cry from *Mandel*." *Id.* at 33a. This was error.

1. Stockton's Connection to Petitioner Eggleston Exceeds the Connection in *Mandel*

In *Kleindienst v. Mandel*, 408 U.S. 753, 762-65 (1972), university professors had standing to challenge exclusion of a foreign speaker they invited to campus. The Court required only a concrete interest in hearing the speaker.

Stockton's connection is stronger. He has a longstanding personal relationship with Dr. Eggleston, has hosted him on his podcast, regularly reads and disseminates his published opinion pieces, and actively supports his defense. Stockton Supp. Decl., Rule 10(e)(2) Motion to Supplement Record, Dkt. Entry 22, at 2–3. The Commission is actively prosecuting Eggleston, directly chilling the speech Stockton seeks to hear and amplify. That is a far more concrete and deeper connection than professors inviting a foreign lecturer.

2. CHD'S Connection to Dr. Moynihan Exceeds *Mandel* and Satisfies *Murthy*

CHD's standing is even clearer. Dr. Moynihan is a volunteer and member of CHD itself not an outside unaffiliated to the university speaker in *Mandel*.

Dr. Moynihan expressly asserts both his own right to speak and his rights to hear the information and opinions of doctors like Richard Eggleston and Thomas Siler who have similar views. Moynihan Decl. ¶14, ER129. CHD's organizational mission is protecting "the individual's right to receive the best information available based on a physician's best judgment." Complaint ¶17, ER220. CHD has 2,000 Washington members, including physicians whose speech is chilled and parents who wish to hear it.

The Commission's enforcement silences identified speakers, Moynihan, Eggleston, and Siler on identified content: dissenting COVID-19 views per the Verma Decl., ER138-178. This satisfies *Murthy,* 603 U.S. at 75, which requires a "concrete, specific connection to the speaker" and identified content. Unlike *Murthy's* plaintiffs, CHD identifies a named organizational member (Moynihan) who has been investigated and is self-censoring, and two other physicians (Eggleston and Siler) under active prosecution for the speech content CHD's members wish to hear. When an organization's own volunteer is chilled from speaking, and other identified speakers with whom the organization has concrete relationships are being prosecuted, listener standing exists.

Finally, *Wilkinson* completely eliminates the lower court's prudential ripeness argument App. A, 38a-42a.

The Commission's enforcement policy has been declared unconstitutional; it has no right to charge or sanction physicians for their public speech even if the Commission thinks it is false.

VI. This Case Presents an Issue of National Importance and Complements *Chiles* and *Kory* in Defining the Scope of First Amendment Protection for Professional Speech

The question presented here is of nationwide and recurring significance. State licensing boards across the country have adopted or proposed "misinformation" policies patterned on the Federation of State Medical Boards' July 2021 press release. Those policies extend beyond pandemic speech and have become the template for restricting professional speech. Whether health care boards may constitutionally punish public expression by licensed professionals is an urgent question of federal law that only this Court can resolve.

This petition also complements and provides the final part of the three types of professional speech; the other two being therapist communications within treatment per *Chiles*, and speech to patients which is not treatment, per *Kory* which is our companion petition (common petitioner, Children's Health Defense, and same counsel of record). Deciding this case (even if only by a grant, vacate and remand resulting from the *Chiles* decision), will allow the Court to cover the professional speech field. The three decisions together will, hopefully, better ensure compliance with *NIFLA*, ignored by the lower courts in *Chiles, Tingley, Kory* and in this case.

CONCLUSION

The First Amendment does not yield to professional licensure, and physicians do not surrender their right to speak as citizens by virtue of their calling. The Washington Court of Appeals' decision in *Wilkinson* confirms that truth; the Ninth Circuit's refusal to apply it denies it. This Court's intervention is needed to provide nationwide guidance to make clear that in a free society, open public debate by professionals cannot be misconduct. Rather, it is a foundational measure of liberty, even, and perhaps especially in times of crisis.

Dated: November 20, 2025

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED SEPTEMBER 17, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-3777
D.C. No. 2:24-cv-00071-TOR

JOHN STOCKTON; RICHARD EGGLESTON, MD; THOMAS T. SILER, MD; DANIEL MOYNIHAN, MD; CHILDREN'S HEALTH DEFENSE, NOT-FOR-PROFIT CORPORATION; JOHN AND JANE DOES, MDS 1-50,

Plaintiffs-Appellants,

v.

NICK BROWN,* ATTORNEY GENERAL OF THE STATE OF WASHINGTON; KYLE S. KARINEN, EXECUTIVE DIRECTOR OF THE WASHINGTON MEDICAL COMMISSION,

Defendants-Appellees.

Argued and Submitted May 14, 2025
San Francisco, California

Filed September 17, 2025

OPINION

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* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Nick Brown is automatically substituted for his predecessor, Robert Ferguson, as the Attorney General of the State of Washington. We accordingly grant the Appellants' motion to substitute (Dkt. 45).

Appendix A

Appeal from the United States District Court
for the Eastern District of Washington
Thomas O. Rice, District Judge, Presiding

Before: Sidney R. Thomas, Milan D. Smith, Jr., and Daniel A. Bress, *Circuit Judges*.

Opinion by Judge Milan D. Smith, Jr.,
Partial Concurrence by Judge Bress

M. Smith, *Circuit Judge*.

After the outbreak of the COVID-19 pandemic, the Washington Medical Commission investigated and brought professional disciplinary charges against physicians who had spread COVID-19 "misinformation." This included physicians who authored editorials on controversial issues related to COVID-19, including the efficacy of vaccines and alternative treatments. The plaintiffs in this case—physicians who have been charged with unprofessional conduct, physicians who have not been charged, and other advocates (collectively, the Plaintiffs)—brought free-speech and due-process challenges against this practice and raised related facial challenges to Washington law. The district court dismissed all the Plaintiffs' claims.

We affirm. We appreciate that the Plaintiffs vigorously disagree with the Washington Medical Commission's practices and actions. For several reasons, though, we cannot reach the merits of the Plaintiffs' constitutional challenges. The district court properly dismissed all the Plaintiffs' claims.

Appendix A

BACKGROUND

I. Factual Background

In July 2021, the Board of Directors of the Federation of State Medical Boards—a non-profit organization purporting to represent state medical boards throughout the United States—issued a statement in response to what it perceived as "a dramatic increase in the dissemination of COVID-19 vaccine misinformation and disinformation by physicians and other health care professionals on social media platforms, online and in the media[.]" According to the statement, "[p]hysicians who generate and spread COVID-19 vaccine misinformation or disinformation" were "risking disciplinary action by state medical boards" because spreading inaccurate information about the COVID-19 vaccine contradicts physicians' responsibilities to practice medicine in the best interest of their patients and to rely on scientifically grounded public health information. The statement also expressed concern that spreading inaccurate information about COVID-19 vaccines "threatens to further erode public trust in the medical profession and puts all patients at risk."

Afterwards, the Washington Medical Commission (the Commission) voted to adopt a similar guidance policy suggesting that the Commission would discipline physicians licensed in Washington who spread COVID-19 misinformation. The policy stated that the Commission supported the Federation of State Medical Boards's misinformation position—and that it would apply those principles more broadly, extending beyond vaccines to

"all misinformation regarding COVID-19 treatments and preventive measures such as masking." The Commission emphasized that COVID-19 prevention and treatment should be treated like any other disease response and, as such, "[t]reatments and recommendations regarding [COVID-19] that fall below [the] standard of care as established by medical experts, federal authorities and legitimate medical research are potentially subject to disciplinary action," and it encouraged the public and physicians to file complaints if they knew of instances in which the standard of care had been breached. The Commission stated that, in determining the standard of care, it relied on the FDA's approved list of medications to treat COVID-19, which did not include ivermectin or hydroxychloroquine.

According to the Plaintiffs, since the issuance of that policy, the Commission has investigated, prosecuted, and/or sanctioned as many as sixty physicians for communications related to COVID-19 under Washington's Uniform Disciplinary Act. *See* Wash. Rev. Code § 18.130.180.

One such physician is Dr. Richard Eggleston, a retired ophthalmologist and one of the Plaintiffs in this case. Since January 2021, Dr. Eggleston has been an opinion writer for the *Lewiston Tribune,* a newspaper in the Pacific Northwest. Dr. Eggleston often writes from what he deems to be a "conservative-oriented" perspective about high-profile issues—especially topics related to the COVID-19 pandemic. For example, Dr. Eggleston published an editorial entitled "When it comes

to COVID-19, dare to be a free thinker" expounding on his views of the dangers of the COVID-19 vaccine and his belief that ivermectin would soon be the standard of care for preventing and treating COVID-19.

In late 2021, the Commission began an investigation into Dr. Eggleston based on his articles. The Commission eventually charged him with professional misconduct based on his writings, contending that he had committed unprofessional conduct within the meaning of the Washington Uniform Disciplinary Act, namely an act of "moral turpitude, dishonesty, or corruption relating to the practice of [his] profession," as well as "[m]isrepresentation or fraud in any aspect of the conduct of the . . . profession." *See* Wash. Rev. Code § 18.130.180(1), (13). The prosecution of Dr. Eggleston remains ongoing. Dr. Eggleston contends that the investigation and prosecution has chilled his willingness to speak out about COVID-19 issues, in part because it motivated him to only write rebuttals to other editorials about COVID-19 rather than authoring his own opinions.

The Commission also took action against another plaintiff, Dr. Thomas T. Siler. Dr. Siler is a retired physician who wrote a series of posts for AmericanThinker.com about COVID-19, the safety and efficacy of the mRNA vaccine for the disease, and the CDC's recommendations. Based on these posts, he was investigated and charged with professional misconduct in the same manner as Dr. Eggleston. According to a declaration, after the investigation began, Dr. Siler wrote only one more

article because he was not sure what the outcome of the investigation would be.[1]

A third physician, Dr. Daniel Moynihan, is also one of the Plaintiffs here. Dr. Moynihan is a retired family medicine physician who volunteers for Children's Health Defense (CHD). Although he has not been prosecuted by the Commission, Dr. Moynihan states that his willingness to publicly speak out about COVID-19 issues has been chilled by the Commission's investigations and prosecutions. A Commission representative explained that it had received a complaint that Dr. Moynihan had been disseminating misinformation about COVID-19 vaccines but that it had investigated the complaint and closed it without taking action.

This case also involves three plaintiffs who are not physicians: (1) CHD, a non-profit corporation whose mission is to advocate for child medical welfare and medical freedom; (2) John Stockton, a former NBA player for the Utah Jazz, who considers himself "a vocal advocate against the mainstream Covid narrative" and hosts a

1. In our recitation of the facts and our analysis, we rely on information contained in articles and declarations attached to the parties' preliminary-injunction filings. Although we ordinarily refrain from looking at evidence extrinsic to the complaint when ruling on a motion to dismiss, we may do so when ruling on a jurisdictional challenge, as here. *See Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1141 n.5 (9th Cir. 2003). Additionally, *both* parties rely on material outside their complaint; indeed, the Defendants suggest that this material has been incorporated into the pleadings.

podcast that deals with issues such as the COVID-19 pandemic and medical freedom; and (3) John and Jane Does (the Doe Doctors), unknown doctors who are the subject of Commission investigations and prosecutions for speaking out on COVID-19 issues.

II. Procedural History

The Plaintiffs filed the operative First Amended Complaint on April 9, 2024. The First Amended Complaint named as Defendants the Attorney General of Washington and the Executive Director of the Commission, in their official capacities.

The First Amended Complaint challenged the Commission's investigation and prosecution of Dr. Eggleston and Dr. Siler, as well as the Commission's overall practice of disciplining physicians for COVID-19 misinformation. The Plaintiffs requested (1) a declaratory judgment that future investigations, prosecutions, and sanctioning of physicians for speaking out about COVID-19 violates the First Amendment (Claim I); (2) a declaratory judgment that current investigations, prosecutions, and sanctioning of physicians, including Dr. Eggleston and Dr. Siler, for speaking out about COVID-19 violates the First Amendment (Claim II); (3) a declaratory judgment that two provisions of the Washington Uniform Disciplinary Act, Wash. Rev. Code § 18.130.180(1) and (13), are facially unconstitutional, overbroad, and/or vague (Claim III); and (4) a declaratory judgment that the Commission proceedings violated the Plaintiffs' due process rights (Claim IV). The Plaintiffs sought injunctive relief on all four claims.

The district court dismissed the First Amended Complaint on the Defendant's motion. The district court granted the motion to dismiss because (1) the Plaintiffs' claims were constitutionally unripe; (2) the Plaintiffs' claims were prudentially unripe; and (3) the district court was required under *Younger v. Harris,* 401 U.S. 37 (1971), to abstain from exercising jurisdiction because the Plaintiffs' claims challenged ongoing state disciplinary proceedings. The district court further ruled, on the merits, that (1) the Plaintiffs failed to state an as-applied First Amendment claim; (2) even if the Plaintiffs' claim was plausible, the State could regulate the physicians' professional misconduct without regulating speech; and (3) the Plaintiffs' due process challenges failed.[2]

The Plaintiffs timely appeal. *See* Fed. R. App. P. 4(a)(1)(A).

JURISDICTION AND STANDARD OF REVIEW

We have appellate jurisdiction pursuant to 28 U.S.C. § 1291. We review abstention, standing, and ripeness issues de novo. *See 50 Exch. Terrace LLC v. Mount Vernon Specialty Ins. Co.,* 129 F.4th 1186, 1187 (9th Cir. 2025) (ripeness and standing); *Betschart v. Oregon,* 103 F.4th 607, 616 (9th Cir. 2024) (abstention).

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2. The district court also concluded that the Plaintiffs were not entitled to amend their pleadings for a second time. The Plaintiffs raise no challenge to this aspect of the district court's ruling, so we will not discuss it further.

Appendix A

ANALYSIS

The district court dismissed the Plaintiffs' claims on abstention and ripeness grounds, as well as on the merits. We begin—and end—our analysis on the first two grounds. Because we conclude that all of the Plaintiffs' claims are barred based on the doctrines of abstention and ripeness, we lack jurisdiction to address the merits of the Plaintiffs' constitutional challenges. In the course of our de novo review, we will address abstention and ripeness on a claim-by-claim basis. *See Murthy v. Missouri,* 603 U.S. 43, 61 (2024) ("'[S]tanding is not dispensed in gross.' That is, 'plaintiffs must demonstrate standing for each claim that they press' against each defendant, 'and for each form of relief that they seek.'" (citation omitted) (quoting *TransUnion LLC v. Ramirez,* 594 U.S. 413, 431 (2021))); *Pizzuto v. Tewalt,* 997 F.3d 893, 903 (9th Cir. 2021) (applying "principles of ripeness . . . to each of the plaintiffs' specific claims"); *Herrera v. City of Palmdale,* 918 F.3d 1037, 1048-49 (9th Cir. 2019) (considering *Younger* abstention on a claim-by-claim basis).

Appendix A

I. Abstention

We begin with abstention.[3] The district court concluded that the doctrine of *Younger* abstention required it to abstain from considering any of the Plaintiffs' claims. We agree in part—Claims II, III, and IV are indeed barred. So is Claim I as asserted by Dr. Eggleston and Dr. Siler. But abstention is inapplicable as to Claim I as asserted by Dr. Moynihan, Stockton, and CHD.

A. Principles of *Younger* Abstention

"Federal courts have a presumptive, or what is sometimes said to be 'virtually unflagging,' obligation to decide cases within their jurisdiction." *Yelp Inc. v. Paxton,* 137 F.4th 944, 950 (9th Cir. 2025) (quoting *Sprint Commc'ns, Inc. v. Jacobs,* 571 U.S. 69, 77 (2013)). "*Younger* abstention is an exception to that rule, reflecting a 'national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances.'" *Id.* (quoting *Younger,* 401 U.S. at 41). "This doctrine is based on 'a strong federal policy against

3. The parties and the district court discussed ripeness before reaching *Younger* abstention. However, we have discretion to begin with the *Younger* abstention issue. *See Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.,* 549 U.S. 422, 431 (2007) ("Nor must a federal court decide whether the parties present an Article III case or controversy before abstaining under *Younger*[.]"); *Ruhrgas AG v. Marathon Oil Co.,* 526 U.S. 574, 585 (1999) ("[C]ourts do not overstep Article III limits when they . . . abstain under *Younger* . . . without deciding whether the parties present a case or controversy." (citations omitted)).

federal-court interference with pending state judicial proceedings,' and on the recognition that '[c]ourts have long had discretion not to exercise equity jurisdiction when alternatives are available.'" *Id.* (alteration in original) (first quoting *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n,* 457 U.S. 423, 431 (1982); then quoting *Gilbertson v. Albright,* 381 F.3d 965, 970 (9th Cir. 2004) (en banc)). The doctrine is "[r]ooted in overlapping principles of equity, comity, and federalism." *Roshan v. McCauley,* 130 F.4th 780, 782 (9th Cir. 2025) (quoting *Arevalo v. Hennessy,* 882 F.3d 763, 765 (9th Cir. 2018)).

Although *Younger* itself involved criminal proceedings, the abstention doctrine has since "been extended to prevent federal court injunctions of certain ongoing state civil proceedings." *Yelp,* 137 F.4th at 950; *see also Bristol-Myers Squibb Co. v. Connors,* 979 F.3d 732, 735 (9th Cir. 2020) (observing that a "concern for comity and federalism" led the Supreme Court to "expand the protection of *Younger* beyond state criminal prosecutions, to civil enforcement proceedings" (quoting *New Orleans Pub. Serv., Inc. v. Council of New Orleans,* 491 U.S. 350, 367-68 (1989))). "For civil cases, '*Younger* abstention is appropriate only when the state proceedings: (1) are ongoing, (2) are quasi-criminal enforcement actions or involve a state's interest in enforcing the orders and judgments of its courts, (3) implicate an important state interest, and (4) allow litigants to raise federal challenges.'" *Yelp,* 137 F.4th at 950 (quoting *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund,* 754 F.3d 754, 759 (9th Cir. 2014)). "If these requirements are met, 'we then consider whether the federal action would have the

practical effect of enjoining the state proceedings and whether an exception to *Younger* applies.'" *Id.* (quoting *ReadyLink Healthcare,* 754 F.3d at 759).

B. Application

Reviewing the issues de novo, we conclude that abstention under *Younger* is required for Claims II, III, and IV, which relate to *ongoing* investigations and prosecutions of physicians. But, at least with respect to some of the Plaintiffs, abstention is inappropriate as to Claim I, which seeks to enjoin *future* investigations and prosecutions.[4]

1. Claims II, III, and IV

We turn first to whether *Younger* abstention was proper with respect to the claims that challenge the ongoing investigation and prosecution of Dr. Eggleston, Dr. Siler, and the Doe Doctors (Claims II, III, and IV).

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4. In dividing Claim I from Claims II, III, and IV for purposes of the *Younger* analysis, we follow the Plaintiffs' own framing. The Plaintiffs cast Claim I as focusing on future investigations and thus falling outside the ambit of *Younger* abstention. However, they do not raise that argument as to Claims II, III, and IV, instead relying on other arguments as to why *Younger* abstention does not apply to those claims. That delineation makes sense in light of the First Amended Complaint. Claim II clearly relates to "current" ongoing investigations. And although it is less clear from the face of the First Amended Complaint whether Claims III and IV seek relief from current enforcement proceedings or are wholly prospective, we will follow the Plaintiffs' framing and treat only Claim I as prospective.

See supra n.4. For the reasons given below, abstention is proper, so we cannot reach the merits of these claims.

a. Elements for *Younger* Abstention

As indicated above, *Younger* abstention is appropriate in cases involving state civil proceedings if (1) the state civil proceedings are ongoing; (2) the state civil proceedings are, *inter alia,* quasi-criminal enforcement actions; (3) the proceedings implicate an important state interest; and (4) the litigants have an opportunity to raise federal challenges to the state proceedings. *See Yelp,* 137 F.4th at 950. All of these elements are present here.

First, this case clearly involves ongoing state civil proceedings—the disciplinary proceedings against Dr. Siler, Dr. Eggleston, and the Doe Doctors. The Plaintiffs concede as much, describing the proceedings as "ongoing" and insisting that Dr. Eggleston and Dr. Siler are "actively defending against" disciplinary charges. Likewise, the First Amended Complaint expressly challenges "current" investigations and prosecutions.

Second, the medical disciplinary proceedings at issue qualify as quasi-criminal state enforcement proceedings within the meaning of *Younger. See Middlesex Cnty. Ethics Comm.,* 457 U.S. at 433-35 (concluding that *Younger* abstention was appropriate in bar disciplinary proceedings); *Roshan,* 130 F.4th at 783 (concluding that a disciplinary procedure that could result in revocation of a real estate license was a quasi-criminal proceeding); *Alsager v. Bd. of Osteopathic Med. & Surgery,* 573 F. App'x

619, 620 (9th Cir. 2014) (abstaining under *Younger* from hearing a challenge to disciplinary proceedings conducted by Washington's Board of Osteopathic Medicine and Surgery);[5] *accord Amanatullah v. Colo. Bd. of Med. Exam'rs,* 187 F.3d 1160, 1163-65 (10th Cir. 1999) (abstaining under *Younger* from reviewing administrative proceedings conducted by the Colorado Board of Medical Examiners). The Plaintiffs raise no argument to the contrary.

Third, the proceedings also implicate important state interests—namely, the State of Washington's interest in regulating the practice of medicine to ensure that patients receive quality health care. *See Buckwalter v. Nev. Bd. of Med. Exam'rs,* 678 F.3d 737, 747 (9th Cir. 2012) ("It is self-evident that the Board's disciplinary proceedings implicate the important state interest of ensuring quality health care."); *see also Alsager,* 573 F. App'x at 620; *accord Amanatullah,* 187 F.3d at 1164-65 ("[T]here is no question that the licensing and discipline of physicians involves important state interests. . . . ").

The Plaintiffs suggest that the State lacks a legitimate (let alone an important) interest in regulating speech. But the Plaintiffs did not argue to the district court that this element was not met, so they have forfeited any challenge on this point. *See Lui v. DeJoy,* 129 F.4th 770, 780 (9th Cir. 2025). In any event, the Plaintiffs' argument is unavailing; such a cribbed view of the interest at issue

5. Although it is not binding, the panel's decision in *Alsager* is persuasive and well-reasoned, so we rely on it here.

would necessarily foreclose *Younger* abstention in all cases involving an alleged deprivation of free-speech rights. Additionally, "[t]he importance of the interest is measured by considering its significance broadly, rather than by focusing on the state's interest in the resolution of an individual case." *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 618 (9th Cir. 2003). Thus, the inquiry is not whether the state has an interest in these specific disciplinary decisions but whether it has a legitimate interest in medical disciplinary proceedings generally. *See id.*; *see also Bristol-Myers Squibb,* 979 F.3d at 738 (looking to "the general class of cases of which this state proceeding is a member" to determine whether there is a legitimate interest). It clearly does.

Fourth, the disciplinary process contains an avenue for judicial review of federal claims—that is, physicians who are disciplined by the Commission have a right to appeal to state court and may raise claims that the Commission's disciplinary order "is in violation of constitutional provisions on its face or as applied[.]" Wash. Rev. Code § 34.05.570(3)(a). As a panel of our Court explained in *Alsager,* this process affords litigants an "adequate opportunity to raise [their] constitutional claims."[6] 573 F. App'x at 620-21; *see also Buckwalter,* 678

6. In their reply brief, Plaintiffs argue that the fourth element is not met because they cannot raise constitutional challenges before the Commission and must wait until an appeal is taken to state court. This argument is doubly forfeited, as it was not raised in the Plaintiffs' district court briefing or in their opening brief. *See Lui,* 129 F.4th at 780. Regardless, this argument fails under binding precedent. *See Buckwalter,* 678 F.3d at 747 ("The

F.3d at 748 ("Should he lose in the disciplinary hearing, Buckwalter will have an adequate opportunity to raise his federal constitutional challenges on appeal to the Nevada courts.").

With the four threshold elements of *Younger* satisfied for Claims II, III, and IV, the inquiry becomes "whether the federal action would have the practical effect of enjoining the state proceedings and whether an exception to *Younger* applies." *Yelp,* 137 F.4th at 951 (quoting *ReadyLink Healthcare,* 754 F.3d at 759). The first of these questions is easily resolved because the Plaintiffs *expressly* requested "permanent injunctive relief barring the Defendants from continuing all current investigations and prosecutions[ ] of physicians" that are allegedly based on protected speech. We thus turn to the exceptions to *Younger* abstention.

b. Exceptions to *Younger* abstention

"*Younger* indicated that abstention would not be warranted upon a 'showing of bad faith, harassment, or any other unusual circumstance that would call for equitable

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. . . factor is satisfied by the fact that Nevada courts may entertain federal questions when they review the Board's judgments."); *Kenneally v. Lungren,* 967 F.2d 329, 332 (9th Cir. 1992) ("'[E]ven if a federal plaintiff cannot raise his constitutional claims in state administrative proceedings that implicate important state interests, his ability to raise the claims via state judicial review of the administrative proceedings suffices.'" (quoting *Partington v. Gedan,* 880 F.2d 116, 124 (9th Cir. 1989), *rev'd on other grounds,* 497 U.S. 1020 (1990) (mem.))).

relief.'" *Yelp,* 137 F.4th at 951 (quoting *Younger,* 401 U.S. at 54); *see also Arevalo,* 882 F.3d at 765-66 ("[E]ven if *Younger* abstention is appropriate, federal courts do not invoke it if there is a 'showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate.'" (quoting *Middlesex Cnty. Ethics Comm.,* 457 U.S. at 435)).

The Plaintiffs argue that this case falls within these exceptions for several reasons. They first argue that the state enforcement proceedings were brought in bad faith because they were intended to deter unpopular speech in violation of the First Amendment. This argument is insufficient for avoiding *Younger.*

"'[I]n the *Younger* abstention context, bad faith "generally means that a prosecution has been brought without a reasonable expectation of obtaining a valid conviction."'" *Yelp,* 137 F.4th at 951 (quoting *Baffert,* 332 F.3d at 621). Such bad faith might be shown by repeated harassment, bias, or when the proceeding is brought with no legitimate purpose. *See id.* at 951-52; *see also Bristol-Myers Squibb,* 979 F.3d at 738; *Krahm v. Graham,* 461 F.2d 703, 707 (9th Cir. 1972). But a mere allegation of bad faith or unconstitutionality is not a get-out-of-abstention-free card. *See Yelp,* 137 F.4th at 952-53. Otherwise, "every state court defendant could become a federal court plaintiff seeking an injunction of the state proceedings in which its defenses could properly be interposed." *Id.* at 952. Under this standard, we are unconvinced that this is one of the rare cases where the proceedings were "brought without a reasonable expectation of obtaining a valid judgment" against the physicians. *Id.*

The Plaintiffs point to cases indicating that the bad faith exception can apply "when a state commences a prosecution or proceeding to retaliate for" constitutionally protected conduct. *See, e.g., Bishop v. State Bar of Tex.*, 736 F.2d 292, 294 (5th Cir. 1984). According to the Plaintiffs, because the disciplinary proceedings were brought in retaliation for protected speech—and to deter unpopular speech—*Younger* abstention does not apply. But this rule does not help the Plaintiffs escape abstention.

As with an allegation of bad faith, an allegation of a retaliatory motive is not a "talisman sufficient to overcome an otherwise proper exercise of abstention." *Yelp,* 137 F.4th at 953 (quoting *Applied Underwriters, Inc. v. Lara,* 37 F.4th 579, 597 (9th Cir. 2022)). Because *Younger* abstention is based on concerns of federalism and comity, we intervene in pending state proceedings only when the "retaliatory motive or harassment [is] sufficiently severe or pervasive to legitimize our halt of state court proceedings in which these same constitutional objections could be raised." *Id.* at 954.

Although the Plaintiffs insist that this is one of those cases given the volume of purportedly unconstitutional charges brought against physicians, we are unpersuaded. Even leaving aside the fact that the record lacks details about any proceedings except for those against Dr. Eggleston and Dr. Siler, the Plaintiffs have failed to show why their free-speech rights could not be adequately protected by the state courts. This is a far cry from the extreme circumstances in which courts have applied this aspect of the bad faith exception, which have involved

charges clearly filed for harassment or some other improper purpose. *Cf. Krahm,* 461 F.2d at 707 (concluding that abstention was inappropriate in a case involving over a hundred prosecutions and where successful defense against some prosecutions just led to the filing of additional charges); *Cullen v. Fliegner,* 18 F.3d 96, 104 (2d Cir. 1994) (concluding that abstention was inappropriate where the proceedings were instituted due to personal conflicts and animus).[7] These cases set forth a strikingly "narrow" exception to *Younger*. *See Yelp,* 137 F.4th at 953-56.

This is not one of the cases that fall within that narrow exception, notwithstanding the First Amendment interests at play. *See id.* at 955 (concluding that a plaintiff had not shown harassment or retaliation when it failed to show bias by the tribunal, a serial pattern of litigation against the plaintiff, or a history of personal conflict or animus). By the allegations of the operative complaint, there was no concerted bad-faith campaign against any of the physicians; to the contrary, there is only a bald assertion that the Commission is infringing the First Amendment rights of the physicians by disciplining them.

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7. That was also the case in *Dombrowski v. Pfister,* a pre-*Younger* case relied on heavily by the Plaintiffs. *See* 380 U.S. 479, 483-86 (1965) (concluding that irreparable injury was shown when statutes were threatened to be enforced in a racially discriminatory manner and to harass Black citizens). The Plaintiffs also fail to reckon with the fact that the general principles set forth in *Dombrowski* were limited by *Younger* itself. *See Younger,* 401 U.S. at 50-53 (making clear that a chilling effect on speech alone is not sufficient to justify federal interference in state proceedings).

The Plaintiffs further insist that the bad-faith exception applies because this case involves "censorship" in violation of the First Amendment. This argument fails: notwithstanding the importance of free speech rights in our democratic society, there is no free-speech exception to *Younger* abstention. *See Yelp,* 137 F.4th at 953; *Bristol-Myers Squibb,* 979 F.3d at 738 (rejecting the argument that because "First Amendment interests are at stake," greater scrutiny of *Younger* abstention was warranted because "*Younger* abstention routinely applies even when important rights are at stake"); *accord Younger,* 401 U.S. at 50 (rejecting the argument that a chilling effect on speech can, alone, be sufficient to justify federal intervention into a state proceeding). As we reasoned in *Yelp,* "[m]any cases applying *Younger*—and *Younger* itself—abstained from enjoining state court proceedings in the face of arguments that applying a state statute would be unconstitutional, including under the First Amendment." 137 F.4th at 953. In short, free-speech rights are treated like other constitutional rights in the *Younger* analysis—in the interest of comity, we generally rely on state courts to vindicate those rights in state proceedings.

Finally, "[f]ederal courts will not abstain under *Younger* in 'extraordinary circumstances where irreparable injury can be shown.'" *Page v. King,* 932 F.3d 898, 902 (9th Cir. 2019) (quoting *Brown v. Ahern,* 676 F.3d 899, 903 (9th Cir. 2012)). Mirroring their argument on bad faith, the Plaintiffs insist that this exception applies because of the importance of the free-speech rights involved and the scope of the Commission's purportedly unlawful activities.

We are unpersuaded. The fact that a case involves "First Amendment concerns" is not enough to "bring [that] case within the scope of the [extraordinary-circumstances] exception." *Bristol-Myers Squibb,* 979 F.3d at 738. This is not a situation where the Plaintiffs' rights cannot be vindicated in due course in state court. *Cf. Bean v. Matteucci,* 986 F.3d 1128, 1134-35 (9th Cir. 2021) (concluding that the extraordinary-circumstances exception applied because a plaintiff could not later vindicate his right to be free from forcible medication). Thus, the exception is inapplicable.

2. Claim I

We agree with the district court's decision that *Younger* abstention forecloses consideration of Claim I for Dr. Eggleston and Dr. Siler but disagree with that conclusion as to the remaining Plaintiffs.

Dr. Eggleston and Dr. Siler are the subjects of ongoing state disciplinary proceedings. Yet through Claim I they would purport to obtain a court order declaring future proceedings of the same kind unlawful under the First Amendment. Such a shortcut around *Younger* is not permissible. It takes little imagination to see that such an order would have the practical effect of enjoining Dr. Eggleston's and Dr. Siler's own ongoing state proceedings. *See Yelp,* 137 F.4th at 951.

As a leading treatise explains, if a *Younger*-qualifying state proceeding is pending, "the defendant in that action cannot escape the bar of *Younger* by suing in federal court

only to enjoin future state prosecutions, since there would be a risk that a federal court judgment would influence the pending state court prosecution." 17B WRIGHT & MILLER'S FEDERAL PRACTICE & PROCEDURE § 4252 (3d ed. 2025); *see also, e.g., Ballard v. Wilson,* 856 F.2d 1568, 1570 (5th Cir. 1988) ("Although Ballard confines his request to future prosecutions, we cannot ignore the fact that any injunction or declaratory judgment issued by a federal court would affect the course and outcome of the pending state proceedings. . . . This is precisely the sort of interference condemned by the Supreme Court in *Younger*. . . . "); *Suggs v. Brannon,* 804 F.2d 274, 279 (4th Cir. 1986) (concluding that the district court "did not err by denying injunctive relief against future searches and seizures" because such an injunction "would intrude upon the pending state prosecutions where the appellants can question the constitutionality of the searches and seizures"); *United Books, Inc. v. Conte,* 739 F.2d 30, 33 (1st Cir. 1984) (affirming the district court's decision to decline an injunction enjoining future prosecutions because such an injunction would interfere with an ongoing prosecution of the plaintiff).

Younger abstention does not foreclose Claim I as to Dr. Moynihan, Stockton, and CHD, however. As the Plaintiffs accurately observe, *Younger* abstention generally applies only when a party seeks to interfere with "ongoing" state proceedings—not future proceedings. In other words, when a party who is not otherwise the subject of ongoing state proceedings seeks "wholly prospective" relief, *Younger* abstention is inapplicable. *Wooley v. Maynard,* 430 U.S. 705, 711 (1977). That is precisely the

case here. In Claim I, the Plaintiffs requested declaratory and injunctive relief prohibiting "future investigations, prosecutions, and sanctioning of physicians" based on their COVID-19-related speech. Thus, at least for some of the Plaintiffs—namely, Dr. Moynihan, Stockton, and CHD, who are not the subject of ongoing disciplinary proceedings—*Younger* abstention poses no bar to our consideration of Claim I. *See id.*; *see also Seattle Pac. Univ. v. Ferguson,* 104 F.4th 50, 63-65 (9th Cir. 2024) (concluding that *Younger* abstention was inapplicable when the state attorney general had not yet initiated enforcement actions).

In short, Claims II, III, and IV, as asserted by all of the Plaintiffs, are barred by *Younger* abstention because, as the Plaintiffs have framed them, they challenge ongoing state proceedings.[8] So is Claim I as asserted by Dr.

8. The concurring opinion concludes that Claims III and IV as asserted by Dr. Moynihan are not barred by *Younger* abstention. Under the unique circumstances of this case, we disagree for two reasons. *First,* the Plaintiffs themselves expressly frame Claims III and IV as challenging "current enforcement activities," *see supra* n.4, rather than the more abstract legal challenge present in the case which the concurring opinion cites, *Green v. City of Tucson,* 255 F.3d 1086, 1099-1100 (9th Cir. 2001). These claims thus run headlong into *Younger* abstention. *Second,* the concurring opinion is certainly correct that "when the federal plaintiff is not a party to the state court action, a mere commonality of interest with a party to the state litigation is not sufficient to justify abstention." *Id.* at 1100. But *Younger* will "oust a district court of jurisdiction over a case where the plaintiff is not a party to an ongoing state proceeding" when the plaintiff 's "interest is so intertwined with those of the state court party that direct interference with the state court proceeding

Eggleston and Dr. Siler. We accordingly conclude that the district court properly dismissed these claims. It will be up to the state courts to address the constitutional questions raised in those claims. But *Younger* abstention is inapplicable to Claim I as asserted by the remaining Plaintiffs.

II. Ripeness

"'The ripeness doctrine is "drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction. . . ."'" *Project Veritas v. Schmidt,* 125 F.4th 929, 941 (9th Cir. 2025) (en banc) (quoting *Nat'l Parks Hosp. Ass'n v. Dep't of Interior,* 538 U.S. 803, 808 (2003)) (omission in original). "The ripeness doctrine 'is peculiarly a question of timing,' designed 'to separate matters that are premature for review because the injury is speculative and may never occur from those cases that are appropriate for federal court action.'" *Wolfson v. Brammer,* 616 F.3d 1045, 1057 (9th Cir. 2010) (first quoting *Blanchette v. Connecticut*

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is inevitable[.]" *Id.* By framing Dr. Moynihan's Claims III and IV as challenges to ongoing proceedings against Dr. Siler, the

Plaintiffs have entangled Dr. Moynihan's Claims III and IV with those of Dr. Eggleston and Dr. Siler. We could not reach Dr. Moynihan's challenge to those enforcement activities without directly interfering with the ongoing disciplinary proceedings of Dr. Eggleston and Dr. Siler. Indeed, Plaintiffs make no effort to argue that Dr. Moynihan's Claim III and Claim IV are different from those of the other Plaintiffs for purposes of *Younger.* Seen through that lens, we see Claims III and IV as barred by *Younger* abstention across the board.

Gen. Ins. Corps., 419 U.S. 102, 140 (1974); then quoting *Portman v. Cnty. of Santa Clara*, 995 F.2d 898, 902 (9th Cir. 1993)). "There are two ripeness considerations: constitutional and prudential." *Stavrianoudakis v. U.S. Fish & Wildlife Serv.*, 108 F.4th 1128, 1139 (9th Cir. 2024).

A. Constitutional Ripeness

For a claim to be justiciable, it must be constitutionally ripe. *See Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1173 (9th Cir. 2022), *as amended* (Dec. 14, 2022). "[T]he constitutional component of ripeness is synonymous with the injury-in-fact prong of the standing inquiry." *Id.* (quoting *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1094 n.2 (9th Cir. 2003)). "Whether framed as an issue of standing or ripeness, an injury must involve 'an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.'" *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)) (alteration omitted); *see also Stavrianoudakis*, 108 F.4th at 1139 ("Constitutional ripeness overlaps with the injury-in-fact element of Article III standing, and 'therefore the inquiry is largely the same: whether the issues presented are definite and concrete, not hypothetical or abstract.'" (quoting *Ass'n of Irritated Residents v. EPA*, 10 F.4th 937, 944 (9th Cir. 2021))). "But '[w]hile standing is primarily concerned with *who* is a proper party to litigate a particular matter, ripeness addresses *when* that litigation may occur.'" *Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky. v. Labrador*, 122 F.4th 825, 839 (9th Cir. 2024) (quoting *Lee v. Oregon*, 107 F.3d 1382, 1387 (9th Cir. 1997)) (alteration in original).

The district court concluded that the Plaintiffs' claims were constitutionally unripe because they failed to allege a cognizable injury to any Plaintiff with concreteness and particularity. That included the claims of Dr. Moynihan, Stockton, and CHD, as the district court found the injuries to those Plaintiffs to be based solely on "speculation and conjecture."

As with *Younger* abstention, we will undertake the claim-by-claim analysis that the district court did not. In doing so, we are guided by the Plaintiffs' own framing of the ripeness issue.[9]

We begin with Claims II, III, and IV. The Plaintiffs argue at length that Dr. Eggleston and Dr. Siler have suffered the requisite injury-in-fact to make Claims II, III, and IV ripe. They also argue that Dr. Moynihan has suffered the requisite injury-in-fact for purposes of Claims II and III. But we need not reach these arguments in light of our conclusion that *Younger* abstention bars our consideration of Claims II, III, and IV as asserted by all Plaintiffs. *See Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.,* 549 U.S. 422, 431 (2007); *Potter v. Hughes,* 546 F.3d 1051, 1055 (9th Cir. 2008). In light of our conclusion regarding *Younger* abstention, we also do not reach the question of whether Claim I, as asserted by Dr. Eggleston and Dr. Siler, is constitutionally ripe.

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9. The Plaintiffs cast the constitutional-ripeness inquiry as one of standing. In this context, the constitutional ripeness and standing inquiries are "substantively similar," and we will treat the Plaintiffs' standing arguments as bearing on the constitutional ripeness issue. *See Twitter,* 56 F.4th at 1173-74.

We are thus left with the question of whether Claim I as asserted by the remaining Plaintiffs is constitutionally ripe. At oral argument, the Plaintiffs asserted that they had suffered the requisite injury-in-fact for Claim I because (1) Dr. Moynihan's speech had been chilled due to his fear of disciplinary proceedings being brought against him and (2) the Plaintiffs suffered an injury to their right to listen to views about COVID-19 that fall outside the "mainstream" narrative. As explained below, the Plaintiffs have waived the former argument, and the latter argument is unavailing.

1. Purported Chilling of Dr. Moynihan's Speech

At oral argument, the Plaintiffs suggested that the concrete injury for purposes of Claim I could be based on a chilling of Dr. Moynihan's speech—that is, that Dr. Moynihan feared to express his opinions about COVID-19 out of fear of being investigated and disciplined by the Commission, so he has suffered the necessary injury to bring a general challenge to future investigations and prosecutions. However, we deem this argument waived.

"We review only issues which are argued specifically and distinctly in a party's opening brief. We will not manufacture arguments for an appellant, and a bare assertion does not preserve a claim, particularly when, as here, a host of other issues are presented for review." *Brownfield v. City of Yakima,* 612 F.3d 1140, 1149 n.4 (9th Cir. 2010) (quoting *Greenwood v. FAA,* 28 F.3d 971, 977 (9th Cir. 1994)). Likewise, arguments that are raised for

the first time at oral argument are deemed waived, and we will not reach them. *See McKay v. Ingleson,* 558 F.3d 888, 891 n.5 (9th Cir. 2009); *Wood v. Hall,* 130 F.3d 373, 377 (9th Cir. 1997).

In their appellate briefing, the Plaintiffs argue only that the alleged chilling of Dr. Moynihan's speech qualified as the requisite injury-in-fact for purposes of challenging ongoing, as opposed to future, proceedings through Claims II and III—claims that are, as explained above, barred by the doctrine of *Younger* abstention. In contrast, when arguing that they had suffered a cognizable injury-in-fact for purposes of Claim I, the Plaintiffs argue only that they had suffered an injury to their right to hear and receive information. Thus, there is no argument in the appellate briefing that the concrete injury for purposes of Claim I could be based on a chilling impact to Dr. Moynihan.

Moreover, even where the Plaintiffs mention the alleged chilling of Dr. Moynihan's speech in their briefing with respect to Claims II, III, and IV, their arguments do not persuade.

We "appl[y] the requirements of ripeness and standing less stringently in the context of First Amendment claims." *Twitter,* 56 F.4th at 1173-74 (quoting *Wolfson,* 616 F.3d at 1058). "This does not mean, however, that any plaintiff may bring a First Amendment claim 'by nakedly asserting that his or her speech was chilled. . . .'" *Id.* (omission in original) (quoting *Getman,* 328 F.3d at 1095). Our pre-enforcement standing inquiry "focuses on (1) whether the plaintiffs have articulated a concrete plan

to violate the law in question, (2) whether the prosecuting authorities have communicated a specific warning or threat to initiate proceedings, and (3) the history of past prosecution or enforcement under the challenged statute." *Twitter,* 56 F.4th at 1174 (quoting *Alaska Right to Life Pol. Action Comm. v. Feldman,* 504 F.3d 840, 849 (9th Cir. 2007)); *see also Tingley v. Ferguson,* 47 F.4th 1055, 1067 (9th Cir. 2022).

The Plaintiffs' briefing barely mentions this rubric and does not even attempt to explain how the purported chilling injury to Dr. Moynihan satisfies it. They raise only the "bare assertion," *Brownfield,* 612 F.3d at 1149 n.4, that "Moynihan's speaking out against the mainstream COVID narrative appears to be prohibited by Appellees' program" and that "[t]his satisfies pre-enforcement standing." Such barebones briefing, which requires the court to perform all of the analytical heavy lifting and fill in the blanks left empty by the appellant, comes dangerously close to waiving the issue.

In any event, the Plaintiffs have failed to bear their burden to show the requisite injury-in-fact to confer subject-matter jurisdiction. *See Bishop Paiute Tribe v. Inyo Cnty.,* 863 F.3d 1144, 1151 (9th Cir. 2017). Notwithstanding the relaxed standing principles in the context of the First Amendment, "'[t]he potential plaintiff must have an 'actual or well-founded fear that the law will be enforced against' it." *Twitter,* 56 F.4th at 1174 (quoting *Feldman,* 504 F.3d at 851). The potential plaintiff must thus "giv[e] details about their future speech such as 'when, to whom, where, or under what circumstances'" they intend

to violate the law in question. *Lopez v. Candaele,* 630 F.3d 775, 787 (9th Cir. 2010), *as amended* (Dec. 16, 2010) (quoting *Thomas v. Anchorage Equal Rights Comm'n,* 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc)).[10]

The First Amended Complaint contains no details about Dr. Moynihan's speech except for it falling outside the "mainstream COVID narrative." Nor does Dr. Moynihan's declaration set forth enough for us to conclude that a chilling injury is present. Dr. Moynihan's declaration explains that he "think[s]" that "continued COVID boosters are unnecessary and even potentially dangerous" and that he "believe[s] that . . . Ivermectin and [Hydroxychloroquine] are highly effective." But

10. This showing is relaxed if the plaintiff can show that he previously violated the law in question. *See Tingley,* 47 F.4th at 1068 ("[W]e de not require plaintiffs to specify 'when, to whom, where, or under what circumstances' they plan to violate the law when they have already violated the law in the past."); *see also Meinecke v. City of Seattle,* 99 F.4th 514, 520 (9th Cir. 2024). Although Dr. Moynihan was previously investigated by the Commission, it is hard to see how he could reap the benefits of this rule. Dr. Moynihan was investigated by the Commission after it received a complaint that he "had given informed consent about the Covid vaccines" to a patient. According to the Commission, it investigated the complaint, which was based on the allegation that Dr. Moynihan "was disseminating misinformation about COVID-19 vaccines," and closed its investigation without taking action. In the absence of more detailed allegations about this past investigation, we are unpersuaded that this is a situation where Dr. Moynihan "already violated the law [at issue] in the past." *Tingley,* 47 F.4th at 1068. Furthermore, the Plaintiffs make no effort to invoke this rule or explain why Dr. Moynihan would fit within it.

there is a dearth of information about what Dr. Moynihan wishes to say on those topics, whom he wants to speak to, and under what circumstances he intends to speak. The Plaintiffs' briefing is silent on how these statements would be sufficient and whether they would comport with our framework for pre-enforcement standing and ripeness.

Our recent decision in *Flaxman v. Ferguson,* ___ F.4th ___ (9th Cir. Aug. 22, 2025), does not require a different result. That case involved a pair of University of Washington professors who moderated a campus listserv. Slip Op. at 5. The professors alleged that they had previously been retaliated against for their protected speech in moderating the listserv, and they sought to challenge specific speech-restricting policies and practices that allegedly chilled their speech. Slip Op. at 11-12. Here, unlike the plaintiffs in *Flaxman,* Dr. Moynihan was not previously disciplined for his speech, and his challenge is comparably much less specific.

"At bottom," the Plaintiffs bear the burden of showing federal subject-matter jurisdiction, "and we are not obliged to take up their mantle" and flesh out perfunctory justiciability arguments that the Plaintiffs failed to develop or make with any specificity. *Shields Law Grp., LLC v. Stueve Siegel Hanson LLP,* 95 F.4th 1251, 1292 (10th Cir. 2024). That is the situation here. Plaintiffs' opening brief never argued that Claim I was constitutionally ripe based on an injury to Dr. Moynihan's right to speak. And even when it did mention Dr. Moynihan's right to speak (in respect to other claims), it did so in an undeveloped and cursory manner. Accordingly, we conclude that given the

non-specific allegations and the presentation of the issues before us, Claim I cannot be constitutionally ripe based on a chilling impact on Dr. Moynihan's speech.

2. Listener Standing

We turn now to the Plaintiffs' main argument: that, for the purposes of Claim I, there has been an injury to Dr. Moynihan, Stockton, and CHD, who have a right to hear information about COVID-19 from physicians who want to air their dissenting views. For the reasons below, we reject this argument and conclude that the Plaintiffs have not alleged the required injury-in-fact to make Claim I constitutionally ripe as to these Plaintiffs.

"[T]he Constitution protects the right to receive information and ideas. This right to receive information and ideas, regardless of their social worth, is fundamental to our free society." *Thunder Studios, Inc. v. Kazal,* 13 F.4th 736, 743 (9th Cir. 2021) (quoting *Stanley v. Georgia,* 394 U.S. 557, 564 (1969)). But although the Supreme Court has recognized a "'First Amendment right to receive information and ideas,' [it has] identified a cognizable injury only where the listener has a concrete, specific connection to the speaker." *Murthy,* 603 U.S. at 75 (quoting *Kleindienst v. Mandel,* 408 U.S. 753, 762 (1972)). Thus, the Supreme Court has held that a group of professors had a First Amendment interest in challenging the visa denial of an individual they had invited to speak and debate at a conference. *See Mandel,* 408 U.S. at 762-75. And it concluded that prescription-drug consumers could challenge prohibitions on advertising drug prices. *See Va.*

State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc., 425 U.S. 748, 756-57 (1972). In contrast, the plaintiffs in *Murthy* had no standing to challenge the censorship of others on social media. *See* 603 U.S. at 75. They had no freestanding interest in hearing such information and they had failed to show the requisite connection based on the theory that hearing unfettered speech was crucial to their work and advocacy. *See id.* The plaintiffs failed to identify specific speakers or topics that they were unable to listen to. *See id.* at 74-76.

The Plaintiffs assert three different theories on which they have listener standing. *First,* relying on *Mandel* and *Murthy,* the Plaintiffs assert that Stockton has a sufficient connection with Dr. Eggleston such that Stockton has suffered a concrete injury from Dr. Eggleston's prosecution and investigation. We disagree. Even taking into account the additional materials that Stockton has provided in his motion to supplement,[11] the record shows only that Stockton is an avid reader of Dr. Eggleston's work, has hosted Dr. Eggleston on his podcast, and helped to connect Dr. Eggleston with Robert F. Kennedy, Jr. and CHD to bring this case. Although this evidence shows that Stockton had some connection with Dr. Eggleston, this does not rise to the requisite level for a constitutional injury-in-fact. *See Murthy,* 603 U.S. at 75. This is a far cry from *Mandel.* There, the plaintiffs had a First Amendment interest in meeting with, hearing from, and debating a foreign national that they had invited to a conference. *See* 408 U.S. at 762-65. Here, in contrast,

11. Stockton's motion to supplement is granted (Dkt. 22).

there is no such connection beyond an avid interest in, and affection for, Dr. Eggleston and his work; there is no suggestion, for example, that Stockton wished to have Dr. Eggleston on his podcast again but was prevented from doing so due to the proceedings against Dr. Eggleston. On the continuum from *Murthy* to *Mandel,* Stockton falls far closer to the insufficient showing in *Murthy. See* 603 U.S. at 74-76.

The Plaintiffs' theory of injury would seemingly give any listener who has an interest in a speaker's work standing to challenge laws that purportedly restrict the speaker's speech. We refuse to countenance such a "startlingly broad" theory of injury. *See Murthy,* 603 U.S. at 74-75 (rejecting listeners' argument that because of their "interest in reading and engaging with the content of other speakers on social media," they had standing to challenge the alleged censorship of those other speakers).

Furthermore, even if this connection was sufficient to give Stockton an injury from the prosecution and investigation of Dr. Eggleston's speech, it would still not help establish a sufficient injury-in-fact for purposes of Claim I. Unlike Claims II, III, and IV, Claim I focuses on the speech of future, hypothetical doctors. Any purported injury to Stockton from the regulation of those other doctors is, as the district court said, "based on speculation and conjecture."

Second, the Plaintiffs, again relying on *Mandel,* assert that CHD has a personal connection with Dr. Moynihan, who allegedly has had his COVID-19 speech

chilled by the Commission's actions.[12] But, as explained above, the Plaintiffs have waived the argument that Dr. Moynihan has suffered a concrete injury from the chilling of his speech for purposes of Claim I. Even if the theory were not waived, the Plaintiffs have failed to show a concrete injury to Dr. Moynihan's right to speak. There can thus be no injury to CHD's right to receive information from Dr. Moynihan—after all, CHD's theory depends on there actually being an injury to Dr. Moynihan's right to speak. *See Murthy,* 603 U.S. at 75 (explaining the limited circumstances in which an individual could sue over "*someone else's* censorship"); *Pennsylvania Fam. Inst., Inc. v. Black,* 489 F.3d 156, 165 (3d Cir. 2007) ("[T]he right to receive speech is 'entirely derivative' of the rights of the speaker." (quoting *In re Application of Dow Jones & Co., Inc.,* 842 F.2d 603, 608 (2d Cir. 1988)); *see also Indiana Right to Life, Inc. v. Shepard,* 507 F.3d 545, 549 (7th Cir. 2007) (explaining that there is no listener standing "[i]f

12. To the extent that CHD intends to assert this claim on behalf of its members—rather than on its own behalf—it has waived that argument. To be sure, "[o]rganizations can assert standing on behalf of their own members or in their own right." *E. Bay Sanctuary Covenant v. Biden,* 993 F.3d 640, 662 (9th Cir. 2021), *as amended* (March 24, 2021) (citations omitted). The former is sometimes called associational standing and carries its own set of requirements. *See Hunt v. Wash. State Apple Advert. Comm'n,* 432 U.S. 333, 343 (1977). Fatally, although the Plaintiffs assert in passing that CHD has standing to sue on behalf of its members, any argument that CHD has associational standing is waived by being raised only in a footnote. *See City of Emeryville v. Robinson,* 621 F.3d 1251, 1262 n.10 (9th Cir. 2010). There is simply no assertion that the *Hunt* requirements for associational standing have been met.

there is no willing speaker, *or if no speaker has been subjected to* sanctions" (emphasis added)).

We note also that the Plaintiffs have made little effort to explain how the listener—CHD—"has a concrete, specific connection to the speaker," Dr. Moynihan. *Murthy,* 603 U.S. at 75. The Plaintiffs assert, generally, that they "have the right to hear the views of any Washington licensed physician who may choose to speak out against the public health Covid narrative." All that is alleged about the connection between Dr. Moynihan and CHD, though, is that Dr. Moynihan is a member of and volunteers for CHD. There are no details besides those indicating how CHD would be impacted by purported restrictions on the speech of its members and volunteers. Indeed, it is unclear what the role of such members and volunteers is within CHD, so we cannot conclude that CHD has shown that it is injured by restrictions on Dr. Moynihan's speech.

Plaintiffs cite no authority for the proposition that the connection between an organization and a member is enough to invoke listener standing under *Mandel.* Indeed, there is far less of a concrete connection between CHD and Dr. Moynihan's speech than was present in *Mandel.* There, the listeners specifically invited the third-party speaker to conferences for the purpose of making speeches and debating and thus suffered an injury when he was not permitted to enter the United States to attend. *See* 408 U.S. at 762-65. The conclusory statements here about the connection between CHD and Dr. Moynihan do not rise to that level.

Third, the Plaintiffs assert that they (especially CHD) have been injured for purposes of Claim I because they have an interest in consuming information about COVID-19 that is being suppressed as a result of the Commission's investigations and prosecutions. According to them, such an injury is cognizable based on *Virginia State Board of Pharmacy* and *Murthy.*

We disagree. *Murthy* expressly rejected the argument that it is sufficient for standing to "claim an interest in" another's speech. 603 U.S. at 74. It observed that *Virginia State Board of Pharmacy* fell outside this general rule because in that case "prescription-drug consumers had an interest in challenging the prohibition on advertising the price of those drugs." *Id.* at 75 (citing *Va. State Bd. of Pharmacy,* 425 U.S. at 755-76). The Plaintiffs frame themselves as "consumers of information" and insist that this is sufficient. But, in doing so, the Plaintiffs overread *Virginia State Board of Pharmacy,* which holds only that consumers of a product can challenge restrictions on the dissemination of information about that product. *See Murthy,* 603 U.S. at 75; *Va. State Bd. of Pharmacy,* 425 U.S. at 755-56.

Moreover, we cannot countenance the Plaintiffs' sweeping theory that an interest in consuming content can form the basis for an injury-in-fact. Accepting that argument would water down the injury-in-fact requirement in First Amendment cases beyond recognition. And it would be at odds with the thrust of *Murthy,* which rejected a similarly broad theory of listener standing. *See* 603 U.S. at 75. Indeed, this case shows the importance of ensuring that ripeness and standing provide guardrails, even in

First Amendment cases. At bottom, the Plaintiffs' theory for Claim I is that there is an injury to their right to listen to discourse about COVID-19 from hypothetical future speakers—speakers who may or may not speak, who may or may not be disciplined, who may or may not have their speech chilled, and who may or may not be connected with the Plaintiffs. This is too speculative and non-concrete to satisfy the injury-in-fact requirement.

For those reasons, Claim I is constitutionally unripe because no injury has yet been suffered. It is thus nonjusticiable and was properly dismissed.

B. Prudential Ripeness

Finally, we turn to the prudential component of ripeness. The district court concluded that none of the Plaintiffs' claims are prudentially ripe and thus must be dismissed. In light of our conclusion that we must abstain from reaching the merits of Claims II, III, and IV as raised by all Plaintiffs and Claim I as raised by Dr. Eggleston and Dr. Siler, we express no opinion as to whether those claims are prudentially ripe. *See Sinochem Int'l,* 549 U.S. at 431; *Potter,* 546 F.3d at 1055. As to Claim I asserted by the remaining Plaintiffs, we agree that that claim is not prudentially ripe, which is an independent basis for dismissal.

At the outset, we first address the Plaintiffs' request that we jettison the doctrine of prudential ripeness. We cannot do as the Plaintiffs ask. The Plaintiffs are correct that "[t]he Supreme Court has stated that the prudential ripeness doctrine is 'in some tension' with 'the principle

that "a federal court's obligation to hear and decide" cases within its jurisdiction "is virtually unflagging."'" *Planned Parenthood Great Nw.,* 122 F.4th at 840 (quoting *Susan B. Anthony List v. Driehaus,* 573 U.S. 149, 167 (2014)). But, as a three-judge panel, we remain bound by our prudential ripeness precedents unless they are "clearly irreconcilable with the reasoning or theory of intervening higher authority." *Miller v. Gammie,* 335 F.3d 889, 893 (9th Cir. 2003) (en banc). That is a "high standard." *Lair v. Bullock,* 697 F.3d 1200, 1207 (9th Cir. 2012) (quoting *United States v. Delgado-Ramos,* 635 F.3d 1237, 1239 (9th Cir. 2011) (per curiam)). "It is not enough for there to be 'some tension' between the intervening higher authority and prior circuit precedent, or for the intervening higher authority to 'cast doubt' on the prior circuit precedent[.]" *Id.* (first quoting *United States v. Orm Hieng,* 679 F.3d 1131, 1140-41 (9th Cir. 2012); then quoting *Delgado-Ramos,* 635 F.3d at 1239 (citations omitted).

Under this standard, the Supreme Court's observation in *Driehaus* does not relieve us of our obligation, as a panel, to follow our prudential ripeness precedents. Thus, "[b]ecause the Supreme Court 'has not yet had occasion to "resolve the continuing vitality of the prudential ripeness doctrine,"' we apply it [ ] regardless of any uncertainty about its life expectancy." *Skyline Wesleyan Church v. Cal. Dep't of Managed Health Care,* 968 F.3d 738, 751 n.9 (9th Cir. 2020), *as amended* (July 21, 2020) (quoting *Fowler v. Guerin,* 899 F.3d 1112, 1116-18, 1116 n.1 (9th Cir. 2018)).[13]

13. To be sure, considerations of prudential ripeness are discretionary, and we are not obligated to apply them in every case. *See Bishop Paiute Tribe,* 863 F.3d at 1154. That does not change the reality that we, as a three-judge panel, lack the power to abolish the doctrine altogether.

Having established that the prudential ripeness doctrine remains viable, we turn to whether it is satisfied. "The prudential ripeness inquiry is 'guided by two overarching considerations: the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" *Project Veritas,* 125 F.4th at 941 (quoting *Bishop Paiute Tribe,* 863 F.3d at 1154). "The prudential considerations of ripeness are amplified where constitutional issues are concerned." *Scott v. Pasadena Unified Sch. Dist.,* 306 F.3d 646, 662 (9th Cir. 2002).

"The fitness prong is met when 'the issues raised are primarily legal, do not require further factual development, and the challenged action is final.'" *Tingley,* 47 F.4th at 1070 (quoting *Stormans, Inc. v. Selecky,* 586 F.3d 1109, 1126 (9th Cir. 2009)). "We consider whether the action 'has a direct and immediate effect on the complaining parties; whether the action has the status of law; and whether the action requires immediate compliance with its terms.'" *Id.* (quoting *Stormans,* 586 F.3d at 1126).

"Evaluating whether withholding judicial review presents a hardship requires looking at whether the challenged law 'requires an immediate and significant change in the plaintiffs' conduct of their affairs with serious penalties attached to noncompliance.'" *Id.* at 1070-71 (quoting *Stormans,* 586 F.3d at 1126).

Applying these standards, we conclude that Claim I is not prudentially ripe as to Dr. Moynihan, Stockton, or CHD. "[W]e do not decide '"constitutional questions in a

vacuum."'" *Thomas,* 220 F.3d at 1141 (quoting *American-Arab Anti-Discrimination Comm. v. Thornburgh,* 970 F.2d 501, 511 (9th Cir. 1992)). Unlike Claims II, III, and IV, Claim I involves hypothetical, future prosecutions, largely against unnamed and unknown doctors. In this circumstance, further factual development would not just be helpful; it would be necessary. We do not know what these hypothetical doctors are alleged to have said. Nor do we know what punishments they face. These are strong indicators that the claim is not ripe. *See Thomas,* 220 F.3d at 1141 (concluding that a case "devoid of any specific factual context" and involving no identifiable plaintiffs, was unripe for review).

The same is true with respect to Dr. Moynihan. At this juncture, no proceedings are pending against him, and it is unclear what speech such proceedings would be based upon. Again, further factual development would be needed for us to pass on Dr. Moynihan's Claim I.

Nor is this the kind of case that presents only legal questions. "[B]ringing a First Amendment challenge to a law does not necessarily mean that the issues presented are 'purely legal.'" *Tingley,* 47 F.4th at 1070 (quoting *Thomas,* 220 F.3d at 1142). For instance, in *Thomas,* First Amendment claims centering around hypothetical future tenants were found to depend on further factual development. 220 F.3d at 1142; *accord Tingley,* 47 F.4th at 1070 (suggesting that "claims concerning *future* clients rest upon hypothetical situations with hypothetical clients" and would require further factual development). So too here. The Plaintiffs insist that strict scrutiny is the proper

standard to apply. But we cannot apply that standard in the absence of factual context, such as the content of the speech and the nature of the regulation.

Likewise, by its nature, Claim I involves future proceedings that have not yet concluded—or even begun. Thus, this case does not involve "final" action by the Commission. *Tingley,* 47 F.4th at 1070 (quoting *Stormans,* 586 F.3d at 1126). No action has occurred that "has the 'status of law'" and no immediate compliance is required. *See id.* (quoting *Stormans,* 586 F.3d at 1126). In sum, the fitness-of-the-issues prong weighs strongly against this case being considered prudentially ripe.

The hardship issue points the same way. This inquiry "dovetails" with the constitutional ripeness inquiry discussed above. *See Thomas,* 220 F.3d at 1142. For the reasons given above, this case is not constitutionally ripe. And even if Dr. Moynihan had credibly argued that his speech was chilled, *see Wolfson,* 616 F.3d at 1060 (recognizing that self-censorship can give rise to the requisite hardship), that would not change the reality that further factual development is necessary to pass on Claim I.

In sum, even if we were to conclude that it is constitutionally ripe, we would still affirm the dismissal of Claim I as asserted by Dr. Moynihan, Stockton, and CHD, on the ground that it is not prudentially ripe.

Appendix A

CONCLUSION

The Plaintiffs raise First Amendment and due process challenges to the Washington Medical Commission's investigation and prosecution of doctors who spread COVID-19 misinformation. But we do not resolve those questions today. Claims II, III, and IV of the First Amended Complaint raise challenges to ongoing state proceedings, so *Younger* abstention bars our consideration of those claims. So is Claim I as asserted by Dr. Eggleston and Dr. Siler. As for the remainder of Claim I, which challenges future investigations and prosecutions on behalf of Dr. Moynihan, Stockton, and CHD, that claim is neither constitutionally nor prudentially ripe. As such, the district court did not err in dismissing the First Amended Complaint.

AFFIRMED.

BRESS, *Circuit Judge*, concurring in part and concurring in the judgment:

This case involves various claims brought by various plaintiffs concerning the Washington Medical Commission's efforts to discipline doctors for disseminating alleged misinformation related to COVID-19. Part of the difficulty in this case is that the plaintiffs are not all similarly situated, yet all plaintiffs are purporting to bring roughly the same claims. The lack of clear delineation between the different plaintiffs and claims has complicated the decisional process. Ultimately, I agree with the majority that the plaintiffs' claims cannot move forward, but I disagree in some respects with the majority's reasoning.

The Commission has initiated disciplinary proceedings against Dr. Richard Eggleston and Dr. Thomas T. Siler for professional misconduct based on their writings about COVID-19. These proceedings are taking place before the Commission, but an aggrieved doctor can seek review of an adverse Commission decision in state court. Wash. Rev. Code § 18.130.140. Dr. Eggleston and Dr. Siler are both plaintiffs in this federal lawsuit. Dr. Daniel Moynihan is also a plaintiff in this case. He fears discipline from the Commission for expressing his views on COVID-19, but the Commission has not initiated proceedings against him. The two other named plaintiffs are non-profit organization Children's Health Defense (CHD) and former NBA basketball player John Stockton, who hosts a podcast about COVID-19-related issues.

The operative complaint alleges four claims. The first three claims are brought on behalf of all plaintiffs, and the final claim is brought on behalf of the three doctors only. In Claim 1, plaintiffs seek a declaratory judgment that the Commission's future investigations and "prosecutions" of doctors for spreading alleged misinformation about COVID-19 would violate the First Amendment. In Claim 2, plaintiffs seek a declaratory judgment that the Commission's current investigations and "prosecutions" of doctors for spreading alleged misinformation about COVID-19 violate the First Amendment. In Claim 3, plaintiffs claim that Wash. Rev. Code § 18.130.180(1) and (13), which allows the Commission to punish "moral turpitude, dishonesty, or corruption" of a person's profession (including the medical profession), as well as fraud and misrepresentation in the conduct of that profession, is overbroad and facially unconstitutional under the First Amendment. Finally, in Claim 4, the doctor plaintiffs allege that the Commission's procedures for disciplining doctors for professional misconduct violate due process.

I agree with majority's resolution of this case in some, but not all, respects, as follows.

1. Dr. Eggleston and Dr. Siler

The majority holds that *Younger* abstention, *see Younger v. Harris,* 401 U.S. 37 (1971), precludes Drs. Eggleston and Siler from pursuing Claims 1-4 in federal court, and that no exception to *Younger* applies. I agree. It is obvious why Claim 2—seeking to enjoin ongoing

state proceedings, which would include Dr. Eggleston's and Siler's own ongoing state disciplinary proceedings—contravenes *Younger.* Dr. Eggleston's and Dr. Siler's Claim 1 contravenes *Younger* because in seeking to enjoin future disciplinary proceedings against doctors, these plaintiffs effectively seek a court ruling that would enjoin their own ongoing disciplinary proceedings. *See* 17B WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 4252 (3d ed. 2025). And as the majority explains, as to Drs. Eggleston and Siler, Claims 3 and 4 also run afoul of *Younger* because resolving these claims "would have the practical effect of enjoining the state proceedings" involving these same plaintiffs. *Yelp Inc. v. Paxton,* 137 F.4th 944, 951 (9th Cir. 2025) (quoting *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund,* 754 F.3d 754, 759 (9th Cir. 2014)).

2. Dr. Moynihan

The majority concludes that Dr. Moynihan's Claim 1 fails because he insufficiently preserved that claim on appeal. I agree that is a sufficient basis for affirming on this claim, and that Dr. Moynihan's pre-enforcement allegations are otherwise inadequately advanced. A more particularized pre-enforcement challenge may lie in this area, but the one before us is not sufficiently presented and is complicated by the plaintiffs' presentation of the issues, which involve overlapping claims by various plaintiffs.

The majority further holds that *Younger* bars Dr. Moynihan's Claims 2-4. This is only partially correct. *Younger* does bar Dr. Moynihan's Claim 2, which purports to seek a declaratory judgment that the Commission's

current investigations and prosecutions of doctors for spreading alleged misinformation about COVID-19 violate the First Amendment. Although Dr. Moynihan is not the subject of a pending state court proceeding, he would seek to enjoin ongoing Commission proceedings brought against other doctors (like Drs. Eggleston and Siler). That is not proper under *Younger*. *See Hicks v. Miranda,* 422 U.S. 332, 349 (1975) (holding that "the same comity considerations apply" under *Younger* "where the interference [with state proceedings] is sought by" people who are "not parties to the state case") (quoting *Allee v. Medrano,* 416 U.S. 802, 831 (1974) (Burger, C.J., concurring)) (brackets omitted).

But I do not think that Dr. Moynihan's Claims 3 and 4 are barred by *Younger*. As I noted above, Claim 3 seeks to declare facially unconstitutional provisions of Washington law allowing the Commission to punish moral turpitude, dishonesty, corruption, and fraud relating the practice of one's profession. Wash. Rev. Code § 18.130.180(1) and (13). Claim 4 seeks to declare invalid certain Commission practices at the administrative level. When brought by a plaintiff who is not himself subject to state court proceedings, I do not think these kinds of challenges run afoul of *Younger*. We have explained that "when the federal plaintiff is not a party to the state court action, a mere commonality of interest with a party to the state litigation is not sufficient to justify abstention." *Green v. City of Tucson,* 255 F.3d 1086, 1100 (9th Cir. 2001). This is true even when the parties are "represented by common counsel" and have identical challenges to state law. *Doran v. Salem Inn, Inc.,* 422 U.S. 922, 928-29 (1975). In the

case of claims brought by a plaintiff who is not subject to ongoing state proceedings, we have never held that the possible impact of a successful facial challenge on other extant state proceedings is sufficient to justify *Younger* abstention. Nor do I see what the majority describes as "unique circumstances" counseling a different approach in this case, based on the way plaintiffs have framed Dr. Moynihan's allegations.

Because Dr. Moynihan's Claims 3 and 4 are not barred by *Younger*, I would resolve them on the merits. The majority does not address the merits and so I will not address the issue in any detail, except to note that in my view, the facial constitutional challenges in Claims 3 and 4 would fail as a matter of law.

3. CHD and Stockton

These plaintiffs' claims are based on a First Amendment right to listen. I agree with the majority that as to Claim 1, these plaintiffs lack standing because their claims are too hypothetical, given that they concern unidentified doctors and unidentified speech. Claim 2, which seeks to use a First Amendment right to listen to enjoin ongoing state disciplinary proceedings, fails under *Younger*, in the same way that Dr. Moynihan's Claim 2 fails. This makes it unnecessary to evaluate whether the

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1. I would not resolve any of the claims based on prudential ripeness, a discretionary doctrine that need not be invoked when there are other valid bases for dismissal. *See Bishop Paiute Tribe v. Inyo Cnty.*, 863 F.3d 1144, 1154 (9th Cir. 2017). It is not clear the majority needs to reach prudential ripeness either, given that it resolves the various claims on multiple other grounds.

relationships between Stockton and Dr. Eggleston, and CHD and Dr. Moynihan, are sufficient to create standing under *Murthy v. Missouri*, 603 U.S. 43, 75 (2024). And as to Claim 3, the facial challenge to Wash. Rev. Code § 18.130.180(1) and (13), CHD and Stockton once again lack standing.

In sum, I concur in those portions of the majority opinion consistent with my above analysis, and I otherwise concur in the judgment.

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED SEPTEMBER 3, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-3777

JOHN STOCKTON; *et al.*,

Plaintiffs-Appellants,

v.

ROBERT FERGUSON, ATTORNEY GENERAL OF THE STATE OF WASHINGTON AND KYLE S. KARINEN, EXECUTIVE DIRECTOR OF THE WASHINGTON MEDICAL COMMISSION,

Defendants-Appellees.

Filed September 3, 2024

ORDER

D.C. No. 2:24-cv-00071-TOR
Eastern District of Washington, Spokane

Before: SCHROEDER and HURWITZ, *Circuit Judges.*

The motion for injunctive relief (Docket Entry No. 7) is denied. *See Feldman v. Ariz. Sec y of State*, 843 F.3d 366, 367 (9th Cir. 2016) ("The standard for evaluating an

injunction pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction."); *see also Winter v. Natural Res. Def Council, Inc.*, 555 U.S. 7, 20 (2008) (defining standard for preliminary injunction in district court).

The existing briefing schedule remains in effect.

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON, FILED MAY 22, 2024

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

No. 2:24-CV-0071-TOR

JOHN STOCKTON, RICHARD EGGLESTON, M.D., THOMAS T. SILER, M.D., DANIEL MOYNIHAN, M.D., CHILDREN'S HEALTH DEFENSE, A NOT-FOR-PROFIT CORPORATION, AND JOHN AND JANE DOES, M.D.S 1-50,

Plaintiffs,

v.

ROBERT FERGUSON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF WASHINGTON, AND KYLE S. KARINEN, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE WASHINGTON MEDICAL COMMISSION,

Defendants.

Filed May 22, 2024

ORDER GRANTING MOTION TO DISMISS AND DENYING PRELIMINARY INJUNCTION

Appendix C

BEFORE THE COURT are Plaintiffs' Motion for Preliminary Injunction (ECF No. 15) and Defendants' Motion to Dismiss (ECF No. 17). Plaintiffs request oral argument. ECF No. 23. Pursuant to LCivR 7(i)(3)(B)(iii), the Court determines oral argument is unwarranted. The Court has reviewed the record and files herein, the completed briefing, and is fully informed. For the reasons discussed below, Plaintiffs' Motion for Preliminary Injunction, ECF No. 15, is DENIED and Defendants' Motion to Dismiss, ECF No. 17, is GRANTED.

BACKGROUND

This case arises out of Plaintiffs' challenge to the Washington Medical Commission's ("the Commission") investigations of two licensed medical professionals who published false information about the SARS-CoV-2 virus ("COVID-19") in print news media and online. Plaintiffs filed the operable First Amended Complaint ("FAC") on April 9, 2024. ECF No. 14. The FAC raises four causes of action requesting: (1) declaratory judgment that Defendants' future investigations, prosecutions, and sanctions violates Plaintiffs' First Amendment Rights; (2) declaratory judgment that Defendants' current investigations, prosecutions, and sanctions violates Plaintiffs' First Amendment Rights; (3) declaratory judgment that RCW 18.130.180(1) and (13) are facially unconstitutional and unconstitutionally overbroad and/or vague; and (4) declaratory judgment that the Commission's interpretation of its laws violates Plaintiffs Eggleston, Siler and Moynihan's Fifth and Fourteenth Amendment Due Process rights. *Id.*

Appendix C

Plaintiff John Stockton is actively involved in matters of public interest and co-hosts a podcast dealing with various topics including COVID-19. He is not a doctor nor subject to the regulations or procedures of the Commission. He contends that he has a right to hear licensed physicians who disagree with the "mainstream COVID narrative." ECF No. 14 at 5-6, ¶¶ 9-10; *see also* ECF No. 15-1.

Plaintiff Richard Eggleston is a retired ophthalmologist and is currently the subject of an administrative proceeding by the Commission. That proceeding has not been finalized. ECF No. 14 at 6, ¶¶ 11-12; *see also* ECF No. 15-2.

Plaintiff Thomas T. Siler is a retired physician who is currently the subject of an administrative proceeding by the Commission. That proceeding has not been finalized. ECF No. 14 at 6, ¶ 13; *see also* ECF No. 15-3.

Plaintiff Daniel Moynihan is a retired family medicine physician who is not subject of any administrative proceeding but complains that his speech is chilled by the Commission's actions and that he would like to hear from other physicians speaking out against the mainstream COVID narrative. ECF No. 14 at 6-7, ¶ 14; ECF No. 15-4.

Plaintiffs' counsel does not know who John and Jane Does 1-50 are and therefore does not represent them. Plaintiffs' counsel alleges that the Doe Plaintiffs are licensed Washington physicians currently subject to the Commission's investigations and prosecutions. ECF No. 14 at 7, ¶ 15.

Appendix C

Plaintiff Children's Health Defense ("CHD") is a non-profit corporation whose mission is to end childhood health epidemics. Its mission includes advocating for medical freedom, bodily autonomy, and an individual's right to receive the best information available based on a physician's best judgment. *Id.* at 7-9, ¶¶ 16-24. CHD asserts that its physician members are chilled from speaking out about the risk profile of the COVID vaccines and that its lay members have a right to receive such nonconforming opinions. *Id.* at 8, ¶ 19; *see also* ECF Nos. 15-5.

Defendant Robert Ferguson is the Washington State Attorney General. His office and staff represent the Commission in its prosecution of physicians in disciplinary cases. *Id.* at 10, ¶¶ 25-26.

Defendant Kyle S. Karinen is the Commission's Executive Director and oversees the investigations and prosecutions of physicians for misconduct. *Id.* at ¶ 28.

The Commission regulates physicians to assure accountability and public confidence in the practice of medicine. ECF No. 17 at 5. It investigates "all complaints or reports of unprofessional conduct" against licensed physicians. RCW 18.130.050(2). This includes, as relevant here, complaints alleging "moral turpitude, dishonesty, or corruption relating to the practice of" medicine, and "[m] isrepresentation or fraud in any aspect of" the practice of medicine. RCW 18.130.180(1), (13).

The Commission's response to complaints received about licensed physicians is guided by the Uniform

Disciplinary Act (UDA), RCW 18.130 *et seq.* Under the UDA, each complaint received by the Commission is reviewed by a panel of three commissioners. ECF No. 18 at 3, ¶ 8. The panel determines whether to initiate an investigation or close the complaint. *Id.* If an investigation is authorized, the complaint will be assigned to an investigator, who undertakes discovery and prepares an objective report. *Id.* at ¶¶ 9-10. The objective report is forwarded to a reviewing commissioner and a panel of at least three commissioners. *Id.* at ¶ 10. The panel may elect to (1) close the case, (2) investigate further, (3) offer a stipulation to informal disposition, or (4) issue a Statement of Charges. *Id.* If the panel decides to issue a Statement of Charges, then an Assistant Attorney General will review the file and sign off on the Charges before service is made on the respondent physician. *Id.* at 4, ¶ 12. Service of the Statement of Charges formally commences the administrative adjudicative process. *Id.* at ¶ 13. When a respondent timely requests a hearing to contest the charges issued against him, a formal hearing is held in front of a panel of three commissioners with a health law judge acting as the presiding officer. *Id.* at ¶ 14. Both sides are entitled to present opening and closing statements, evidence, and witnesses. *Id.* at ¶ 15. At the termination of the adjudicative proceeding, the panel determines whether to take disciplinary action against the respondent and issues a written order. *Id.* at 5, ¶ 16. A respondent who disagrees with the panel's final disposition of his case may seek reconsideration from the panel or direct judicial review in a Washington state superior court or court of appeals. *Id.* at ¶ 17.

Appendix C

The Commission issued a Statement of Charges against Dr. Eggleston on August 3, 2022 concerning newspaper articles he wrote about COVID-19. ECF No. 17 at 7. Dr. Eggleston's articles minimized deaths from the SARS-CoV-2 virus, incorrectly asserted that PCR tests for a COVID diagnosis are inaccurate, and falsely stated that COVID-19 vaccines and mRNA vaccines are harmful or ineffective and that ivermectin is a safe and effective treatment for COVID-19. *See, e.g.,* ECF No. 20-2 at 4-21. A full and final hearing by the Commission has not been conducted at this time and no penalties have been imposed. ECF No. 18 at 5-6, ¶ 19.

The Commission issued a Statement of Charges against Dr. Siler on October 25, 2023, after it received complaints about Internet blog posts by Dr. Siler. Dr. Siler wrote false statements about the risks of contracting COVID-19, the effectiveness of hydroxychloroquine and ivermectin as treatments for COVID-19, the transmissibility of COVID-19 from children, and the safety of COVID-19 vaccines. *See, e.g.,* ECF No. 20-2 at 42-61. A full and final hearing has not been conducted at this time and no penalties have been imposed. ECF No. 18 at 5-6, ¶ 19.

DISCUSSION

Plaintiffs move for a preliminary injunction. ECF No. 15. Defendants oppose Plaintiff's motion and move to dismiss. ECF No. 17. The Court grants the motion to dismiss because Plaintiff's claims are unripe, the *Younger* doctrine requires abstention, Plaintiffs have not stated

a plausible as-applied First Amendment challenge, and Plaintiffs' First Amendment and Due Process challenges are without merit. The Court declines to award attorneys' fees.

I. Legal Standard

Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." A Rule 12(b)(6) motion will be denied if the plaintiff alleges "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007)). While the plaintiff's "allegations of material fact are taken as true and construed in the light most favorable to the plaintiff," the plaintiff cannot rely on "conclusory allegations of law and unwarranted inferences. . . to defeat a motion to dismiss for failure to state a claim." *In re Stac Elecs. Sec. Litig.,* 89 F.3d 1399, 1403 (9th Cir. 1996) (citation and brackets omitted). That is, the plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements." *Twombly,* 550 U.S. at 555.

When deciding a motion to dismiss, the Court's review is limited to the complaint, documents incorporated into the complaint by reference, and matters subject to judicial notice. *Metzler Inv. GMBH v. Corinthian Colls., Inc.,* 540 F.3d 1049, 1061 (9th Cir. 2008).

Appendix C

A. Ripeness

Ripeness is a justiciability doctrine designed "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Nat'l Park Hosp. Ass'n v. Dep't of Interior,* 538 U.S. 803, 807-08 (2003) (citations omitted). The ripeness doctrine is "drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction[.]" *Id.* at 808 (citation omitted); *see also Thomas v. Anchorage Equal Rights Comm'n,* 220 F.3d 1134, 1138 (9th Cir. 2000) ("[T]he ripeness inquiry contains both a constitutional and a prudential component.") (internal quotations and citations omitted).

The constitutional aspect of ripeness collapses with the injury-in-fact prong of standing. *Id.* "Whether framed as an issue of standing or ripeness, an injury[-in-fact] must involve 'an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.'" *Twitter, Inc. v. Paxton,* 56 F.4th 1170, 1173 (9th Cir. 2022) (quoting *Lujan v. Defs. of Wildlife,* 504 U.S. 555, 560 (1992)).

By contrast, prudential ripeness requires courts to evaluate "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Wolfson v. Brammer,* 616 F.3d 1045, 1060

(9th Cir. 2010) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). "A claim is fit for decision if the issues raised are primarily legal, do not require further factual development, and the challenged action is final." *Id.* (internal quotations and citations omitted).

Plaintiffs' claims are constitutionally unripe because they fail to allege a cognizable injury with concreteness and particularity. Plaintiffs Eggleston, Siler, and the unknown Doe physicians have not been sanctioned for their speech by the Commission. *See Twitter,* 56 F.4th at 1173-74 (although the requirements of ripeness are applied "less stringently in the context of First Amendment claims," a plaintiff may not "nakedly assert[ ] that his or her speech was chilled") (internal quotations and citations omitted). While Plaintiffs allege that the Commission's actions have a chilling effect, Plaintiffs have in fact continued to press their narratives about COVID-19 while Commission proceedings have been ongoing. *See* ECF No. 17 at 13 (describing how Dr. Eggleston continued to publish false claims about COVID after the filing of the Statement of Charges against him). This tends to cut against any argument that the Commission's investigations have actually chilled Plaintiffs' speech. Plaintiffs' argument that the Commission's investigations or imposition of sanctions might chill their speech in the future is likewise impermissibly speculative.

Plaintiffs Stockton, Moynihan, and CHD's and its members' claims are also based on speculation and conjecture. The remaining Plaintiffs claim they are injured by the alleged chill of licensed physicians presenting an alternative narrative about COVID. But Plaintiffs have

not shown that they are impeded from otherwise accessing this information, or that Drs. Eggleston and Siler's speech has been or will likely be chilled by the Commission's actions.

Plaintiffs' claims are also prudentially unripe. Plaintiffs seek to enjoin non-final agency actions that are contingent upon future factual developments, and Plaintiffs have not otherwise established that hardship would result from the Court declining to exercise jurisdiction as those proceedings are ongoing. In evaluating a claim of hardship, a court must consider whether abstaining from reviewing would "require[ ] an immediate and significant change in plaintiffs' conduct of their affairs." *Wolfson,* 616 F.3d at 1060 (internal quotations and citations omitted). Plaintiffs have not established that their conduct has changed in the interim of Commission proceedings or that their behavior is likely to change otherwise. Accordingly, Plaintiffs' claims are nonjusticiable.

B. *Younger* Abstention

The *Younger* abstention doctrine also requires this Court to abstain from considering Plaintiffs' claims. Under *Younger,* a court may not hear claims for equitable relief while state proceedings are pending. *Younger v. Harris,* 401 U.S. 37, 41 (1971). In the Ninth Circuit, *Younger* requires federal courts to abstain from hearing claims for equitable relief when:

> (1) [T]here is an ongoing state judicial proceeding; (2) the proceeding implicates

> important state interests; (3) there is an adequate opportunity in the state proceedings to raise [federal] constitutional challenges; and (4) the requested relief seeks to enjoin or has the practical effect of enjoining the ongoing state judicial proceedings.

Page v. King, 932 F.3d 898, 901-02 (9th Cir. 2019) (citation omitted). Further, "even if *Younger* abstention is appropriate, federal courts do not invoke it if there is a 'showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate.'" *Id.* (citation omitted). Additionally, there is a recognized "irreparable harm" exception to *Younger,* under which courts may refrain from abstention in "extraordinary circumstances where the danger of irreparable loss is both great and immediate." *World Famous Drinking Emporium, Inc. v. City of Tempe,* 820 F.2d 1079, 1082 (9th Cir. 1987).

Plaintiffs' arguments that the threshold *Younger* elements are not met in this case contravene caselaw directly on point. *See Alsager v. Bd. of Osteopathic Med. & Surgery,* 945 F. Supp. 2d 1190 (W.D. Wash. 2013), *aff'd,* 573 F. App'x 619 (9th Cir. 2014); *see also Amanatullah v. Colorado Bd. of Med. Examiners,* 187 F.3d 1160 (10th Cir. 1999). As those cases make plain, active state medical board investigations and hearings are ongoing state judicial proceedings; the regulation of medical practice is an important state issue; and federal constitutional challenges to medical board determinations may be raised on appeal in state court. *Alsager,* 945 F. Supp. 2d at 1195-96.

All *Younger* elements are met here. Medical disciplinary board hearings constitute state proceedings, and since none of the Plaintiffs have completed the hearing process, the proceedings are ongoing; medical board disciplinary proceedings clearly implicate an important state interest in ensuring adequate healthcare; and Washington law provides Plaintiffs with an opportunity to raise federal constitutional challenges on appeal to Washington state courts. *See* RCW 18.130.140. Additionally, a hearing on the merits of Plaintiffs' claims would enjoin the ongoing state proceedings, which would violate the Ninth Circuit's implied fourth element to the abstention doctrine. *AmerisourceBergen Corp. v. Roden,* 495 F.3d 1143, 1148-49 (9th Cir. 2007) (citation omitted).

Plaintiffs' claims to the *Younger* irreparable harm exception are also without merit. The Ninth Circuit has applied the exception only where a person's physical liberty will not be vindicated after trial. *See Bean v. Matteucci,* 986 F.3d 1128, 1133-34 (9th Cir. 2021). Plaintiffs' claims of harm are insufficient to establish the extraordinary circumstances required to apply the exception.

Moreover, this Court has already ruled that Dr. Eggleston's effort to terminate the Commission's investigation of him was precluded by the *Younger* abstention doctrine. *Wilkinson v. Rodgers,* 1:23-CV-3035-TOR, 2023 WL 4410936 (E.D. Wash. July 7, 2023). Thus, Dr. Eggleston is collaterally estopped from arguing otherwise in this proceeding.

Consequently, this Court would be required to abstain from exercising jurisdiction.

C. Failure to State Plausible Claim

Plaintiffs have also failed to state a plausible as-applied First Amendment claim based on the Commission's investigations into any physicians. The Commission's investigations regulate professional conduct, with only an incidental impact on speech. Although Plaintiffs' challenges to the investigations arise out of the COVID-19 pandemic, it is within the State's long-recognized authority to regulate medical professionals, and that authority does not run afoul of the First Amendment. Critically, "States may regulate professional conduct, even though that conduct incidentally involves speech." *Tingley v. Ferguson,* 47 F.4th 1055, 1074-75 (9th Cir. 2022) (citation omitted).

While the Commission's investigations and prosecutions are ongoing, there is nothing for this Court to review. The Commission's investigations are narrowly tailored to achieve the compelling government interest in regulating medical professionals and protecting the public health. Thus, Plaintiffs have failed to state a plausible claim.

D. First Amendment Challenges

Even if the ripeness and abstention doctrines did not create a barrier to judicial review and Plaintiffs had presented a plausible as-applied First Amendment challenge, this Court still could not grant them relief on their First Amendment claims.

As discussed above, the Commission may fully regulate professional conduct of physicians licensed to practice in this state. States may regulate professional conduct, even though that conduct incidentally involves speech. T*ingley v. Ferguson,* 47 F.4th 1055, 1074 (9th Cir. 2022). "[C]onduct may indicate unfitness to practice medicine if it raises reasonable concerns that the individual may abuse the status of being a physician in such a way as to harm members of the public, or if it lowers the standing of the medical profession in the public's eyes." *Haley v. Med. Disciplinary Bd.,* 117 Wash. 2d 720, 733 (1991). The Commission's regulation of medical professionals does not violate the First Amendment. Accordingly, Plaintiffs' First Amendment facial challenges or as-applied challenges to the Commission's authority must fail.

As discussed in the preceding sections, the other Plaintiffs who are not subject to the Commission have also failed to articulate a First Amendment violation. The State has not prevented them from hearing what they want to hear. As such, Plaintiffs' First Amendment claims must be dismissed.

E. Due Process Challenges Fail

Plaintiffs contend that it violates their procedural and substantive due process rights that: (1) they cannot raise a constitutional challenge to the Washington Medical Commission's disciplinary rules until a state court reviews the proceedings; and (2) state courts have declined to enjoin their ongoing disciplinary proceedings. ECF No. 14 at ¶¶ 20-22, 62-71.

Numerous cases hold that "judicial review of state agency decisions provides a sufficient opportunity to raise federal claims, even when the state agency may not consider those claims in the first instance." *See e.g., Alsager v. Bd. of Osteopathic Med. & Surgery,* 573 Fed. App. 619, 620-21 (9th Cir. 2014). Plaintiffs have failed to show any due process violation. Plaintiffs' citation to certain cases are inapposite and do not apply to the issue before the Court. Plaintiffs' due process challenges therefore fail and must be dismissed.

F. Not Entitled to Preliminary Injunction

To prevail on their motion for a preliminary injunction, Plaintiffs must demonstrate (1) a likelihood of success on the merits, (2) a likelihood of irreparable injury if the injunction does not issue, (3) that a balancing of the hardships weighs in their favor; and (4) that a preliminary injunction will advance the public interest. *Winter v. Natural Res. Def. Council,* 555 U.S. 7, 20 (2008) (citation omitted).

Plaintiffs have failed to satisfy the four prerequisites for a preliminary injunction, even if this Court had jurisdiction to proceed. The request for an injunction is therefore denied.

II. Amendment

Federal Rule of Civil Procedure 15(a) provides that "a party may amend its pleading only with the opposing party's written consent or the court's leave," which "[t]

he court should freely give . . . when justice so requires." Fed. R. Civ. P. 15(a)(2). The Ninth Circuit has directed that this policy be applied with "extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citation omitted). In ruling upon a motion for leave to amend, a court must consider whether the moving party acted in bad faith or unduly delayed in seeking amendment, whether the opposing party would be prejudiced, whether an amendment would be futile, and whether the movant previously amended the pleading. *United States v. Corinthian Colleges,* 655 F.3d 984, 995 (9th Cir. 2011). "Absent prejudice, or a strong showing of any of the remaining [ ] factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to amend." *C.F. ex rel. Farnan v. Capistrano Unified Sch. Dist.,* 654 F.3d 975, 985 (9th Cir. 2011) (citation omitted) (emphasis in original).

Here, Plaintiffs' FAC fails to address any of the deficiencies identified by the Court. Additionally, further amendment would be futile given the stage of the underlying administrative proceedings. Therefore, Plaintiffs are not granted leave to amend, and the FAC must be dismissed with prejudice.

III. Attorneys' Fees

Defendants seek attorneys' fees under 42 U.S.C. § 1988(b). Under that statute, the court, in its discretion, may allow the prevailing party reasonable attorney's fee as part of the costs. But attorneys' fees should only be awarded to a prevailing defendant when the court finds

that the plaintiffs' action "was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." C*hristiansburg Garment Co. v. EEOC,* 434 U.S. 412, 421 (1978). Here, the Court finds this lawsuit is unwarranted given the stage of the administrative proceedings, but does not find it frivolous, unreasonable, or without foundation.

Accordingly, attorneys' fees are denied.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Plaintiffs' Motion for Preliminary Injunction, ECF No. 15, is DENIED. Plaintiffs' First Amended Complaint is dismissed with prejudice.

2. Defendants' Motion to Dismiss, ECF No. 17, is **GRANTED**.

The District Court Executive is directed to enter this Order, enter Judgment in favor of Defendants, furnish copies to counsel, and **CLOSE** the file.

DATED May 22, 2024.

/s/
Thomas O. Rice
United States Distict Judge

APPENDIX D — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON, FILED MAY 22, 2024

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF WASHINGTON

Civil Action No. 2:24-CV-0071-TOR

JOHN STOCKTON, RICHARD EGGLESTON, M.D., THOMAS T. SILER, M.D., DANIEL MOYNIHAN, M.D., CHILDREN'S HEALTH DEFENSE, A NOT-FOR-PROFIT CORPORATION, AND JOHN AND JANE DOES, M.D.S 1-50,

Plaintiffs,

v.

ROBERT FERGUSON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF WASHINGTON, AND KYLE S. KARINEN, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE WASHINGTON MEDICAL COMMISSION,

Defendants.

Filed May 22, 2024

JUDGMENT IN A CIVIL ACTION

Appendix D

The court has ordered that *(check one)*:

☐ the plaintiff (name) _____ recover from the defendant (name) _____ the amount of _____ dollars ($), which includes prejudgment interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) _____ recover costs from the plaintiff (name) _____.

☒ other: Plaintiffs' Motion for Preliminary Injunction, ECF No. 15, is DENIED. Defendants' Motion to Dismiss, ECF No. 17, is GRANTED. Plaintiffs' First Amended Complaint is dismissed with prejudice. Judgment is entered in favor of Defendants.

This action was *(check one)*:

☐ tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

☐ tried by Judge _____ without a jury and the above decision was reached.

☒ decided by Judge Thomas O. Rice on a motion to dismiss.

Appendix D

Date: May 22, 2024

Sean F. McAvoy
Clerk of Court

/s/_____
Lee Reams
Deputy Clerk