

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

DANE HADACHEK; NATHANIEL
HELLEWELL & LANDON MOODY,

Plaintiffs,

v.

THE STATE OF OREGON,

Defendant.

Case No. 25CV18224

DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

Oral Argument Requested

ORS 20.140 - State fees deferred at filing

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1 **UTCR STATEMENT**

2 Pursuant to UTCR 5.050(1), Defendant requests oral argument and estimates that two
3 hours will be required for a combined argument and requests official court reporting services.

4 **MOTION FOR SUMMARY JUDGMENT**

5 Defendant, the State of Oregon, moves the Court for an order granting summary
6 judgment in its favor on all claims in the Third Amended Complaint under ORCP 47 on the
7 grounds that Plaintiffs do not have standing to bring their claims, that the challenged statutes are
8 constitutional under Article I, section 20, and Article I, section 46, of the Oregon Constitution,
9 and that Plaintiffs' requested "extension" remedy is a violation of the constitutional separation of
10 powers doctrine. Defendant's motion is based on the allegations in the Third Amended
11 Complaint, the Declaration of Kate E. Morrow and accompanying exhibits, and the following
12 memorandum of law. Because there are no genuine issues of material fact and Defendant is
13 entitled to prevail as a matter of law, the Court should grant Defendant's Motion for Summary
14 Judgment.

15 **MEMORANDUM OF LAW**

16 **I. INTRODUCTION**

17 Female genital mutilation (FGM)¹ of minors is a crime in Oregon. Plaintiffs, three males,
18 challenge the constitutionality of Oregon's laws relating to FGM. Plaintiffs bring a facial
19 constitutional challenge to the FGM statutes on the ground that those statutes discriminate
20 against males by banning FGM but not banning male circumcision. Plaintiffs' case is without
21 merit.

22 The State enacted a set of two laws to prevent and prohibit female genital mutilation
23 (FGM). Those anti-FGM laws protect children with female anatomy from being circumcised,
24

25 ¹ Female genital mutilation is also referred to as female genital cutting in some circumstances
26 and female genital mutilation and/or cutting in others. Because the legislature used the term
"female genital mutilation" to define the practice, the State uses that term, and its abbreviation
"FGM," throughout this brief.

1 excised, or infibulated—in other words, from having their clitoris and labia amputated, altered,
2 or sewn together—in recognition that FGM occurs as a cultural practice to protect and control a
3 woman’s purity, viability for marriage, and reproductive role, and that it is done to young girls.

4 Plaintiffs’ challenge to those laws fails. First, as a threshold matter, Plaintiffs lack
5 standing because they have not established any injury beyond an abstract interest in advocating
6 for a change in Oregon’s FGM policy and because a decision from this Court will not have a
7 practical effect on them.

8 Second, on the merits, the Oregon legislature did not exceed its constitutional limits when
9 it enacted laws to prevent and prohibit young girls from being subject to harmful, sex-specific
10 practices that are (and can only be) performed on female bodies. The Oregon Constitution does
11 not prohibit the legislature from enacting a sex-specific law that prevents a harmful sex-specific
12 practice, just as it does not prohibit other laws or regulations that address sex-specific matters.
13 The anti-FGM laws are constitutional, and this Court should accordingly grant summary
14 judgment for the State.

15 Because Plaintiffs challenge the constitutionality of the laws on their face, the merits of
16 this case turn on purely legal issues that can and should be decided at summary judgment. This
17 case does not turn on the Plaintiffs’ allegations about their personal circumstances, nor is it about
18 the risks, harms, or benefits of male circumcision—all of which are immaterial to the Court’s
19 legal analysis of the whether the anti-FGM laws are valid. Any debate about male circumcision
20 is a policy issue, and Plaintiffs improperly seek to advance their anti-male circumcision cause by
21 attacking the State’s anti-FGM laws. In asking the Court to criminalize male circumcision,
22 Plaintiffs ask this Court to implement a major statewide policy change—a power reserved to the
23 legislative branch. This Court should reject Plaintiffs’ attempt at using this litigation to bypass
24 the legislative process.

II. BACKGROUND

A. Oregon's Anti-FGM Laws

1. Text in Context

In 1999, the Oregon Legislature enacted two laws that prohibit FGM and require the State to implement education and outreach activities about the harms of FGM. Or Laws 1999, ch 737. One of those laws, ORS 163.207, specifically criminalizes FGM of minors:

(1) A person commits the crime of female genital mutilation if the person:

(a) Knowingly circumcises, excises or infibulates the whole or any part of the labia majora, labia minora or clitoris of a child; or

(b) Is the parent, guardian or other person legally responsible for the care or custody of a child and knowingly allows the circumcision, excision or infibulation of the whole or any part of the child's labia majora, labia minor or clitoris.

(2) Female genital mutilation is a Class B felony.

(3) (a) A person who circumcises, excises or infibulates the whole or any part of a child's labia majora, labia minora or clitoris does not violate subsection (1) of this section if:

(A) The person is a physician, licensed to practice in this state; and

(B) The surgery is medically necessary for the physical well-being of the child.

(b) In determining medical necessity for purposes of paragraph (a)(B) of this subsection, a person may not consider the effect on the child of the child's belief that the surgery is required as a matter of custom or ritual.

ORS 163.207. The other law requires the State to engage in FGM prevention activities in certain communities in Oregon:

The Oregon Health Authority shall establish and implement appropriate education, prevention and outreach activities in communities that traditionally practice female circumcision, excision or infibulation for the purpose of informing:

(1) Those communities of the health risks and emotional trauma inflicted by the practices;

(2) Those communities and the medical community as to the existence and ramifications of ORS 163.207; and

(3) Those communities that the practices constitute physical injuries to a child for purposes of ORS 419B.005

1 ORS 431A.600. Together in context, those laws constitute Oregon’s two-pronged policy decision
2 to deter, prevent, and prohibit FGM.

3 **2. Legislative History**

4 The legislative history demonstrates that together, these laws implement the Legislature’s
5 policy goal of protecting young girls from a harmful and sex-specific practice. Prior to the floor
6 vote on the bill, the bill carrier explained that “[t]his bill should send a message that this state
7 feels strongly that [FGM] is not something we want to have happen to Oregon girls and young
8 women.” Senate Floor Proceedings, HB 3608, June 21, 1999, Audio Recording at 1:20:55
9 (statement of bill carrier Senator Brown)²; *see also* House Floor Proceedings, HB 3608, May 12,
10 1999 (PM), Audio Recording at 38:52 (“[I]nvestigations and prosecutions should be carried out
11 when necessary to send a strong message that Oregon abhors this practice and views its end
12 paramount to the health and welfare of these young girls.”).³ Proponents of the bill explained that
13 FGM is “an extreme form of child abuse” and a “violation of women’s basic human rights” that
14 is “known to be practiced on girls any time between infancy and puberty.” House Floor
15 Proceedings, HB 3608, May 12, 1999, Audio Recording at 35:49 (statement of Representative
16 Gianella).

17 As described to the legislature, FGM takes various forms and ranges from “cutting away
18 the hood of the clitoris” to “infibulation,” which includes the removal of some external female
19 genitalia and sealing the remainder by sewing the labia together over the vaginal opening.
20 Exhibit X, House Judiciary Committee on Crime, HB 3608, April 23, 1999, at 2–4 (written
21 testimony of Lynn Partin) (quoting excerpts from *Desert Flower The Extraordinary Journey of a
22 Desert Nomad*, Waris Dirie (1998)). Infibulation results in a woman’s genitals being “sealed up

23
24 ² The digitized audio recording of the June 21, 1999 Senate Floor Proceedings is available
25 through the Oregon State Archives at [https://records.sos.state.or.us/ORSOSCMSearch/Search/Se
archDetail.aspx?uri=4233225](https://records.sos.state.or.us/ORSOSCMSearch/Search/Se
archDetail.aspx?uri=4233225).

26 ³ The digitized audio recording of the May 12, 1999 (PM) House Floor Proceedings is available
through the Oregon State Archives at [https://records.sos.state.or.us/ORSOSCMSearch/Search/Se
archDetail.aspx?uri=4173190](https://records.sos.state.or.us/ORSOSCMSearch/Search/Se
archDetail.aspx?uri=4173190).

1 like a brick wall that no man would be able to penetrate until [her] wedding night, when [her]
2 husband would either cut [her] open with a knife or force his way in.” *Id.* at 4. According to the
3 legislative history, FGM, in all its forms, is typically performed “in primitive circumstances by a
4 midwife or village woman,” without anesthetic, and using a variety of implements including
5 razor blades, broken glass, or stones. *Id.* at 5.

6 The main proponent of the bill also explained that the consequences of girls being
7 subjected to FGM include both immediate and long-term health complications. *Id.* at 36:48. For
8 example, Representative Gianella explained on the house floor that the immediate complications
9 from FGM may include shock, hemorrhage, tetanus, septicemia, bladder infections, and death.
10 *Id.* She also explained that the long-term health complications include chronic vaginal and
11 uterine infections, pain during urination, menstruation, and sexual intercourse, obstetric
12 complications when giving birth, including brain damage or death to the infant during birth. *Id.*
13 at 37:00–37:21. Other complications include sterility from chronic pelvic infections, cysts and
14 abscesses around the vulva, dysmenorrhea, menstrual blood pooling in the abdomen, among
15 others. Ex X, House Judiciary Committee on Crime, HB 3608, April 23, 1999, at 5.

16 In advocating for the passage of the anti-FGM bill, Representative Gianella explained
17 that FGM is a cultural practice, and no religion requires it. *Id.* at 37:21. In cultures that practice
18 it, FGM is a rite of passage for girls to ensure their acceptance in the community and viability on
19 the marriage market. *Id.* at 37:33–37:56 (explaining that FGM is practiced “out of fear that no
20 man will want to marry an uncircumcised woman and that she will be an outcast in the
21 community” and that FGM “protect[s] family lineage through ensuring that wives are virgins at
22 marriage and that children are verifiably the men’s descendants”). The anti-FGM bill would
23 support a larger advocacy movement to end FGM by condemning FGM, requiring the state to be
24 proactive in education efforts, and build on work being done by African and Arab women’s
25 groups to make FGM a less taboo topic and to educate women and girls about reproductive
26 health. *Id.* at 38:14–39:43.

1 **B. Plaintiffs’ Claims**

2 Plaintiffs are three males who were circumcised in Oregon shortly after birth. 3d Am
3 Compl ¶¶ 12, 18, 22. Each Plaintiff alleges that he experienced physical and emotional harm
4 from being circumcised. *Id.* ¶¶ 13–14 (Hadachek); *Id.* ¶¶ 19–20 (Hellewell); *Id.* ¶¶ 23–24
5 (Moody). Each Plaintiff also alleges that his circumcision was a “stigmatizing injury,” and that
6 he has suffered a “stigmatic harm” because “he is unjustifiably deemed inherently less worthy of
7 bodily integrity, personal autonomy, and privacy due to his sex.” *Id.* ¶¶ 16–17, 21, 25. That
8 “stigmatic harm” makes each Plaintiff feel “humiliated and degraded.” *Id.* ¶¶ 15, 21, 25.

9 Based on those alleged harms, Plaintiffs assert that ORS 163.207 and ORS 431A.600
10 violate two provisions of the Oregon Constitution, (1) the Privileges and Immunities Clause, and
11 (2) the Equal Rights Amendment. *Id.* ¶¶ 49–56 (citing Or Const, Art I, §§ 20, 46). Plaintiffs
12 claim that, had they been born female, the law would not have allowed their penile foreskin to be
13 partially removed shortly after birth. *Id.* ¶¶ 30–31. Plaintiffs allege that, because the law protects
14 only female genitalia of minors from being cut, and not male genitalia of minors, the law
15 discriminates against them. *Id.* ¶¶ 54. Plaintiffs ask this Court to enjoin the State from enforcing
16 the two challenged laws and to declare them unconstitutional. *Id.* at 15 (Prayer). In doing so,
17 Plaintiffs ask this Court to either interpret the challenged laws as prohibiting male circumcision
18 or to strike them down as unconstitutional. *Id.*

19 **C. Procedural Background**

20 Plaintiffs filed both their original complaint and the First Amended Complaint on March
21 27, 2025. There were five named plaintiffs in the First Amended Complaint. 1st Am Compl ¶ 1.
22 Plaintiffs filed a Second Amended Complaint on July 17, 2025, adding two plaintiffs who were
23 uncircumcised minors. The State moved to dismiss the Second Amended Complaint on July 23,
24 2025. The State argued that this Court lacked subject matter jurisdiction because Plaintiffs lacked
25 standing under the Uniform Declaratory Judgments Act and that no justiciable controversy
26 existed. Def’s Mot to Dismiss at 1. After briefing and argument, this Court granted that motion

1 as to five of the seven plaintiffs and denied it as to two plaintiffs, Dane Hadachek and Landon
2 Moody. Order, Oct 31, 2025 (Judge Oden-Orr). The Court also required Plaintiffs to amend the
3 complaint. *Id.* Plaintiffs filed their Third Amended Complaint on January 14, 2026, adding a new
4 plaintiff, Nathan Hellewell. 3d Am Compl ¶ 18. The State filed its Answer to the Third Amended
5 Complaint on February 11, 2026. Depositions of the Plaintiffs took place in late April and early
6 May. Trial is currently set for eight days beginning on December 7, 2026.

7 III. LEGAL STANDARDS

8 A party is entitled to summary judgment upon a showing that there is no genuine issue of
9 any material fact and that it is entitled to prevail as a matter of law. ORCP 47 C. “No genuine
10 issue as to a material fact exists if, based on the record before the court viewed in a manner most
11 favorable to the adverse party, no objectively reasonable juror could return a verdict for the
12 adverse party on the matter that is the subject of the motion for summary judgment.” *Id.*

13 Where a party makes a summary judgment argument that raises a factual issue that the
14 other party has an opportunity to controvert by coming forward with opposing evidence, “[t]o
15 survive a motion for summary judgment, the party with the burden of proving a claim must
16 present evidence that gives the factfinder a basis other than sheer speculation to conclude that the
17 elements of the claim have been met.” *Peterson Mach. Co. v. May*, 313 Or App 454, 455 (2021)
18 (internal quotation marks omitted). The Court generally may consider evidence only to the extent
19 that it is properly presented and otherwise admissible. *See Hickey v. Settlemier*, 318 Or 196, 206
20 n 9 (1993); *Demaray v. Dep’t of Env’t Quality*, 127 Or App 494, 497, *rev den*, 319 Or 625
21 (1994). The Court must construe that evidence, and draw any reasonable inferences therefrom, in
22 the light most favorable to the nonmoving party. *Dewsnup v. Farmers Ins.*, 349 Or 33, 35 (2010).

23 Where the question before the court is “purely a legal issue,” and the facts are undisputed
24 or immaterial, summary judgment is appropriate. *See George-Buckley v. Medford Sch. Dist.*
25 *549C*, 318 Or App 821, 827 (2022); *Staten v. Steel*, 222 Or App 17, 33 (2008), *rev den*, 345 Or
26 618 (2009) (noting that order denying a summary judgment motion “that involve[s] purely legal

1 issues” is reviewable on appeal); *Freeman v. Stuart*, 203 Or App 191, 194 (2005) (stating that
2 facts are immaterial to a facial challenge to the constitutionality of a statute).

3 IV. ARGUMENT

4 The State is entitled to summary judgment as a matter of law. First, this Court does not
5 have jurisdiction over Plaintiffs’ claims because Plaintiffs lack statutory standing under the
6 UDJA. Plaintiff Hellewell lives outside the territorial jurisdiction of Oregon law, and thus,
7 cannot be injured or affected by it. Based on the admissions of all three Plaintiffs, they have not
8 suffered an injury to a legally cognizable interest nor will any favorable decision from this Court
9 have a practical effect on them. No genuine issue as to those facts exists.

10 Second, the State is entitled to prevail on the merits as a matter of law. Because
11 Plaintiffs’ claim challenges the facial constitutionality of the anti-FGM statutes, the merits
12 questions are pure questions of law and the facts are immaterial. The State is entitled to prevail
13 as a matter of law because the anti-FGM statutes are constitutional. They are based on specific
14 biological differences that are related to the purpose of the statutes. Thus, they survive
15 constitutional scrutiny under the Privileges and Immunities Clause, Or Const, Art I, § 20. As for
16 the Equal Rights Amendment (“ERA”), that provision does not apply to statutes that grant a
17 privilege to one class. Even if it did, the anti-FGM statutes are based on a characteristic that is
18 unique to one sex and thus, fall outside the scope of the ERA. Therefore, they are constitutional
19 under the ERA.

20 Finally, even if Plaintiffs could prevail on the merits, the separation of powers doctrine
21 prohibits this Court from granting their requested “extension” remedy. “Extending” the statutes
22 to prohibit male circumcision would require this Court to rewrite the statutes, which is a
23 legislative, not judicial, power under the Oregon Constitution.

24 Because facts relating to standing are indisputable and facts are immaterial to the merits
25 question, no genuine issue of material fact exists in this case. As explained below, the State is
26

1 entitled to prevail as a matter of law. Accordingly, this Court should grant summary judgment
2 for the State.

3 **A. Plaintiffs’ claims are not justiciable because they lack standing.**

4 Oregon courts do not have jurisdiction over claims unless a justiciable controversy exists.
5 *Cummings Constr. Co. v. School Dist. No. 9*, 242 Or 106, 113 (1965). To satisfy the justiciability
6 requirement at summary judgment, plaintiffs must demonstrate that they have standing as a
7 factual matter. *See* ORCP 47 C. The standing requirement—that an “actual controversy” exist—
8 is based on the rule against advisory opinions, which are “a function this court cannot
9 undertake.” *Hazell v. Brown*, 352 Or 455, 468 (2012); *see id.* (citing *Gortmaker v. Seaton*, 252
10 Or 440, 444 (1969) (“In this state, however, we have strong precedent against advisory opinions.
11 Mere difference of opinion as to the constitutionality of an act does not afford ground for
12 invoking a judicial declaration having the effect of adjudication.”)). None of the Plaintiffs in this
13 case can establish the required elements of standing, and thus, the State is entitled to prevail as a
14 matter of law.

15 Under the Uniform Declaratory Judgments Act (UDJA), a plaintiff ““must establish that
16 his or her “rights, status, or other legal relations” are “affected by” the relevant instrument.””
17 *Advocates for School Trust Lands v. State*, 346 Or App 668, 687 (2026) (quoting *Morgan v.*
18 *Sisters School District #6*, 353 Or 189, 194–95 (2013)); *see also Couey v. Atkins*, 357 Or 460
19 (2015); ORS 28.020 (UDJA provision). To make that showing, a plaintiff must establish three
20 elements. *Id.* First, they must establish ““that the challenged law causes “some injury to or
21 impact upon a legally recognized interest of the plaintiff’s, beyond an abstract interest in the
22 correct application or the validity of the law.””” *Advocates for School Trust Lands*, 346 Or App
23 at 687 (quoting *MT & M Gaming, Inc. v. City of Portland*, 360 Or 544, 554–55 (2016)). Second,
24 they must establish ““that the claimed injury or impact is real or probable, not hypothetical or
25 speculative.”” *Id.* (quoting *MT & M Gaming, Inc.*, 360 Or at 555). Third, they must establish that
26 ““a decision by the court will in some sense rectify the injury, *i.e.*, that it will have “a practical

1 effect on the rights that the plaintiff is seeking to vindicate.””” *Id.* at 687–88 (quoting *MT & M*
2 *Gaming, Inc.*, 360 Or at 555).

3 When a summary judgment motion raises a factual challenge to a party’s standing, a
4 plaintiff has the burden to establish standing by presenting evidence that “gives the factfinder a
5 basis other than sheer speculation to conclude that the elements of the claim have been met.”
6 *Peterson Mach. Co.*, 313 Or App at 455; *see* ORCP 47 C. Unlike in a motion to dismiss on
7 standing grounds, where the standard of review requires that the plaintiff’s factual allegations are
8 assumed to be true, a plaintiff opposing summary judgment on a UDJA claim has the burden to
9 factually establish that they have an injury to a cognizable legal interest, that their injury is real,
10 and that a court decision will have a practical effect on their rights. This Court previously ruled,
11 on the State’s motion to dismiss, that two Plaintiffs had *alleged* facts sufficient to establish
12 standing.⁴ Order, October 31, 2025. This motion raises a factual challenge to Plaintiffs’ standing,
13 and the question for this Court at this stage is whether Plaintiffs can meet their burden of proof to
14 establish standing. As explained below, they cannot establish either the redressability or injury
15 requirements of standing, and there are no genuine issues of material fact regarding the
16 Plaintiffs’ standing. Thus, the State is entitled to prevail as a matter of law.

17 **1. Plaintiff Hellewell lives outside the territorial jurisdiction of Oregon**
18 **courts.**

19 Plaintiff Hellewell does not have standing because he does not live in Oregon and has no
20 concrete plans to move to Oregon. Therefore, an Oregon law cannot stigmatize him nor can he
21 be practically affected by a change in Oregon law.

22
23
24 ⁴ The State previously moved to dismiss on the ground that Plaintiffs lack standing, which was
25 granted in part and denied in part. This Motion does not seek to reconsider the Court’s prior
26 ruling, nor does it re-raise issues already decided by this Court. This Court has not yet had the
opportunity to determine whether Plaintiffs have met their burden on summary judgment, which
is distinct from their burden to survive a motion to dismiss. *Compare* ORCP 21 A *with* ORCP
47 C.

1 Oregon law cannot injure Plaintiff Hellewell’s rights because he does not, and has not,
2 lived in Oregon. Plaintiff Hellewell currently lives in Richmond, Kentucky. Morrow Decl Ex 2
3 (“Hellewell Tr”), at 5 (Tr 8:25).⁵ Before that, he grew up “mostly” in Federal Way, Washington,
4 and his family lived in Washington when he was born. *Id.* at 5–6 (Tr 8:20–9:15). Although he
5 was born in a hospital in Oregon and circumcised there, *id.* at 5 (Tr 8:16), he has no legally
6 cognizable right to be free from any alleged stigma under the Oregon Constitution when he has
7 never been an Oregon resident. *See Berry v. State Tax Commission*, 241 Or 580, 584–85 (1964)
8 (explaining that Article I, § 20, of the Oregon Constitution “does not purport to deal with the
9 rights of nonresidents”); *see also State v. Williams*, 326 Or App 64, 70–74 (2023) (discussing the
10 territorial jurisdiction principle generally). *Cf. Hale v. State*, 259 Or App 379, 384 (2013)
11 (requiring “present facts” to establish constitutional justiciability). Because Plaintiff Hellewell is
12 a nonresident, Oregon laws and the Oregon Constitution have no power to affect his rights.
13 Therefore, his legal interests cannot, as a matter of law, be injured by Oregon law for purposes of
14 seeking a declaratory judgment from this Court.

15 A favorable court decision about Oregon law cannot have a practical effect on Plaintiff
16 Hellewell because he is not subject to Oregon law, and he seeks only prospective relief. Even
17 assuming that his alleged “stigma” is a legally cognizable injury, any change in Oregon law
18 could only have a practical effect on him if he moved to Oregon. *See* 3d Am Compl at 15
19 (seeking injunctive and declaratory relief). But he does not have any non-speculative plans to
20 move to Oregon:

21 Q: And these are both Oregon laws. Do you have any plans to move to Oregon?

22 A: Potentially, yes.

23 Q: Can you elaborate.
24
25

26 ⁵ Citations to deposition transcripts throughout this brief cite to the exhibit page number and also include a parenthetical citing to the internal pagination and line number of the transcript.

1 A: I miss the West Coast a lot. And most of my family lives in Oregon; so I have
2 been considering moving back to Oregon. And it might—I would say it’s probably likely
3 that I move back to Oregon in the next five years or so, but I don’t have any strict plans.
4 Hellewell Tr at 25 (Tr 41:5–13). Because any potential future move to Oregon is speculative and
5 dependent on future unknown events, any relief that he would experience will not occur until that
6 unknown hypothetical date in the future. Plaintiff Hellewell thus cannot establish a justiciable
7 claim for declaratory relief. *See TVKO v. Howland*, 335 Or 527, 534–535 (2003) (holding that
8 declaratory relief is not available without an effect “in the present,” especially in constitutional
9 cases); *Oregon Medical Ass’n v. Rawls*, 276 Or 1101, 1106–07 (1976) (discussing reasons to
10 decline jurisdiction based on justiciability issues relating to “prematurity and comparative
11 abstractness, or uncertainties” that leave courts “without an adequate basis for decision” (internal
12 quotation marks omitted)). Because Plaintiff Hellewell is not currently subject to the laws and
13 constitution of Oregon, and has no non-hypothetical plans to move to Oregon, he cannot
14 establish that he will be practically affected by this Court’s decision. Therefore, this Court lacks
15 jurisdiction over the Plaintiff Hellewell’s claim.

16 **2. No Plaintiff can establish an injury under the UDJA.**

17 Plaintiffs’ claims are not based solely on their claimed physical injury of being
18 circumcised shortly after birth at various hospitals in Oregon.⁶ Rather, their claims are based on a
19 theory that they were denied equal treatment based on their sex, and that unequal treatment
20 caused them to be circumcised. *See* 3d Am Compl ¶¶ 15–17, 21, 25.⁷ But no Plaintiff can prove
21 that they continue to suffer a legally cognizable “stigmatic harm”—any “stigmatic” injury that
22

23 ⁶ This case is not a tort case. Any tort claim based on that physical injury could be brought
24 against their parents or their physicians, but not against the State because there is no allegation or
25 fact in this case that suggests that the State performed their circumcision. Additionally, Plaintiffs
26 are not seeking damages for their physical injury, and if they were, those claims would be subject
27 to the Oregon Tort Claims Act, which Plaintiffs have not complied with in bringing this case.

28 ⁷ The State does not concede that the anti-FGM laws “caused” Plaintiffs to be circumcised, nor
29 caused their claimed injuries from being circumcised.

1 Plaintiffs have identified is merely another way of saying that Plaintiffs have an abstract interest
2 in the law.⁸ An abstract interest in the law cannot suffice to establish an injury under the UDJA.
3 *See Advocates for School Trust Lands*, 346 Or App at 687.

4 **a. Plaintiff Dane Hadachek**

5 Plaintiff Hadachek became a plaintiff in this lawsuit “because [he] agree[s] with it
6 morally” after his boss and his parents talked to him about the opportunity to join this lawsuit.
7 Morrow Decl Ex 1 (“Hadachek Tr”), at 5–6 (Tr 15:24–16:9). He has felt embarrassed that he has
8 been circumcised, he has been the subject of jokes from his friends about circumcision, he has
9 felt humiliated when having sex, and his ego and feelings have been hurt based on those
10 experiences. *Id.* at 7–9 (Tr 17:6–19:19). He has never been harassed or threatened because of his
11 circumcision, but he has been distracted by jokes and banter about his circumcision at his work.
12 *Id.* at 9–10 (Tr 19:20–20:13).⁹ In his own words, the anti-FGM laws harm him because the laws
13 are “only for one side” and are “a double standard.” *Id.* at 11, 12 (Tr 22:17–24, 23:11–20). But
14 “strong feelings are not relevant” in the context of UDJA standing. *Foote v. State*, 364 Or 558,
15 565 (2019); *see also Eacret v. Holmes*, 215 Or 121, 124–25 (1958) (holding that governor’s
16 commutation power does not affect the parents of a murder victim any differently than every
17 other Oregonian despite their understandably stronger feelings about the matter).

18
19
20 ⁸ At the hearing on the Motion to Dismiss, this Court addressed the question of what kind of
21 harm suffices to establish UDJA standing when a “stigmatic harm” is alleged. It explained that it
22 was dismissing some plaintiffs because “I do not believe they have carried the burden to show
23 the kind of harm that supports concrete injury in fact in connection with stigmatic harm.” FTR
24 Recording, Motion to Dismiss Hearing, October 23, 2025, 2:27:58pm (Judge Oden-Orr). While
25 bare allegations of experiencing a stigmatic harm may have been sufficient for purposes of the
26 motion to dismiss, on summary judgment, Plaintiffs now have the burden to provide factual
support to establish that alleged harm. *See* ORCP 47 C. Without conceding or waiving any future
challenge to this Court’s earlier ruling, the State takes this Court’s prior formulation of the injury
required for standing—a concrete injury in fact in connection with stigmatic harm—as
controlling for purposes of evaluating whether Plaintiffs have met their burden at this stage.

⁹ Oregon law protects individuals of all sexes from sexual harassment in the workplace. *See* ORS
659A.030; ORS 659A.375; OAR 839-005-0030(1).

1 Plaintiff Hadachek’s feelings of being humiliated, embarrassed, and made fun of are
2 related to the fact that he is circumcised and is apparently being harassed at his place of
3 employment, not to any ongoing stigma imposed by the State through the anti-FGM law.
4 Plaintiff Hadachek thus has not, and cannot, establish that those feelings are a protected legal
5 interest that is affected by the challenged statute. *See* ORS 28.020. Any ongoing stigmatic harms
6 that Plaintiff Hadachek experiences from the anti-FGM law are related only to his belief that the
7 law imposes “a double standard”—which, if true, is not a distinct stigmatic injury separate from
8 the abstract interest in the law that any Oregonian has.

9 **b. Plaintiff Nathaniel Hellewell**

10 Similarly to Plaintiff Hadachek, Plaintiff Hellewell cannot establish anything more than
11 an abstract interest in the validity of the anti-FGM laws. Plaintiff Hellewell was circumcised and
12 asserts that he continues to suffer complications from issues during his circumcision. Hellewell
13 Tr at 11–12 (Tr 22:23–23:12). But the only harm he claims to have experienced from the anti-
14 FGM laws was being circumcised. Hellewell Tr at 21 (Tr 34:17–18). He cannot establish that he
15 has an ongoing stigmatic harm separate from that past physical harm—he is simply interested in
16 advocating for the cause of banning male circumcision:

17 A: [I] became a plaintiff in this case because I was a part—so I was interested in
18 trying to fix what went wrong. So I was looking online. I found a project called Foregen,
19 which is—they’re trying to medically reproduce foreskins and reimplant them on people.
20 And through that, I found the charity that Eric’s law firm works with.

21 And then I saw that they were seeking plaintiffs for their lawsuit. And it said, hey,
22 people who were born here between these dates and are interested in this—and I was like,
23 “Hey, I’m born between this—that’s—Hey, look at that.” So I applied, and then I’m here.
24 Hellewell Tr at 13–14 (Tr 24:14–25:1). Further, Plaintiff Hellewell believes that Oregon’s anti-
25 FGM laws are “unfair” because they “only protect[] people of one sex and not people of both
26

1 sexes. And having equality is very important.” *Id.* at 21 (Tr 34:4–23). Plaintiff Hellewell is “very
2 interested in and passionate” about issues around male circumcision. *Id.* at 20 (Tr 32:4–5).

3 Plaintiff Hellewell’s ongoing stigmatic injuries are based upon private interactions that
4 are not related to the State of Oregon. Those claimed injuries are apparently based upon his
5 having had potential romantic partners “suddenly become uninterested in pursuing dating or
6 other, like, similar social interactions when they learn that I was circumcised. And that definitely
7 felt like a stigma.” *Id.* at 15–16 (Tr 26:24–27:13). Plaintiff Hellewell has not been publicly
8 humiliated for being circumcised, but he attributes private sexual difficulties to his circumcision.
9 *Id.* at 17–18 (Tr 28:25–29:2). He has been “very upset” on multiple occasions when he has “been
10 having sex with somebody and I’m unable to actually get anywhere or participate,” and that it
11 “really is humiliating and upsetting when you’re sitting there and you’re just—can’t do
12 anything.” *Id.* at 17–18 (Tr 28:18–29:2). But Plaintiff is not currently, nor about to, suffer that
13 relationship-based stigma: “[C]urrently, it doesn’t really affect me too much because I’m in a
14 relationship where I’m not pursuing anybody; so there’s not really a reason for me to discuss that
15 with anyone.” *Id.* at 16–17 (Tr 27:23–28:1). By his own admission, Plaintiff Hellewell’s only
16 “stigmatic” harm is that he has been upset in the past when rejected by potential sexual partners.
17 *Id.* Although understandable, like Plaintiff Hadachek, Plaintiff Hellewell’s “strong feelings are
18 not relevant in this context.” *Footnote*, 364 Or at 565. Furthermore, the State of Oregon is not
19 responsible for the private conduct or subjective motivations of Plaintiff Hellewell’s sexual
20 partners, nor do Plaintiff Hellewell’s personal difficulties bear any connection to the anti-FGM
21 laws.

22 **c. Plaintiff Landon Moody**

23 Plaintiff Moody cannot establish an injury beyond an abstract interest in the validity of
24 the law. He became a plaintiff in this lawsuit by volunteering to be one after his attorney
25 “reached out to [him] personally through email.” Morrow Decl Ex 3 (“Moody Tr”), at 5 (Tr
26 15:18–24). He has no legally cognizable injury from the anti-FGM laws:

1 Q: Okay. How have you been harmed by the law prohibiting the practice of female
2 genital mutilation of minors?

3 A: I have not.

4 *Id.* at 7 (Tr 21:3–21:6). When prompted by his attorney to clarify that answer, Plaintiff Moody
5 responded “I should have clarified that, indirectly, it did not protect me because it was
6 discriminating against males—which I am. So indirectly it did harm me,” and that the statute
7 “does directly harm me because it does not protect males.” *Id.* at 11–12 (Tr 25:22–26:4). In other
8 words, his “clarification” merely restated Plaintiffs’ legal theory but did not add any factual
9 support for that legal conclusion. Plaintiff Moody has not experienced any individualized stigma
10 beyond his physical harm of being circumcised that can establish standing under the UDJA, and
11 he again repeated Plaintiffs’ legal theory of being discriminated against under the law when
12 asked to explain what stigma he personally experiences:

13 Q: So what is the stigma to you, personally, as it relates to male circumcision?

14 A: That I’m treated differently compared to females.

15

16 Q: Can you give me an example of a—has there ever been a specific time that you
17 felt stigmatized for being circumcised?

18 A: I guess when I understood the law and how it doesn’t protect me.

19 Q: When you say “the law,” are you—what are you referring to?

20 A: I’m referring to these two statutes, 163 and 431, and how it does not—there’s no
21 like, comparable law that protects males.

22 Q: Okay. And when did you first believe or learn about your personal stigma around
23 this issue?

24 A: I don’t know the exact date, but when I discovered the law and I read about what
25 Eric Clopper was doing—and Lake here.

26

1 *Id.* at 8–9 (Tr 22:16–23:13). Nor has Plaintiff Moody ever been denied anything based on his
2 status of being circumcised or harassed or threatened because he was circumcised—the only
3 harm he has identified is that he was circumcised. *Id.* at 12 (Tr 26:9–21). Without a specific
4 example of when or how he has experienced any stigma connected to his claimed physical harm
5 of being circumcised, he cannot establish standing under the UDJA.

6 The facts described above are undisputed, and no Plaintiff can establish facts that allow a
7 reasonable factfinder to infer that he has suffered an injury cognizable under the UDJA.
8 Plaintiffs thus cannot meet their burden to establish standing under the UDJA, and the State is
9 entitled to prevail as a matter of law.¹⁰ Accordingly, this Court should grant summary judgment
10 for the State on the UDJA standing issues.¹¹

11 **3. Nor will any decision from this Court have a practical effect on**
12 **Plaintiffs.**

13 To establish standing at summary judgment, Plaintiffs must also show that this Court’s
14 decision will “have a practical effect” on their rights. *Advocates for School Trust Lands*, 346 Or
15 App at 687–88. Unless a court decision has a practical effect on a specific plaintiff, it is an
16 impermissible advisory opinion. *See Childers Meat Co., Inc. v. City of Eugene*, 296 Or App 668,
17 685 (2019). To satisfy the “practical effect” requirement, “a connection must exist between the
18 rights that a plaintiff seeks to vindicate and the relief requested.” *Morgan*, 353 Or at 197. In other
19 words, “there must be ‘a real and substantial controversy admitting of specific relief through a
20 decree of conclusive character’” to satisfy the UDJA standing requirements. *Id.* (quoting
21 *Cummings Constr. Co.*, 242 Or at 110). A plaintiff has the burden to establish standing at
22

23 _____
24 ¹⁰ The Oregon Constitution imposes similar justiciability requirements to the statutory standing
25 requirements under the UDJA. For the same reasons that no plaintiff has standing under the
26 UDJA, this case is not justiciable under the Oregon Constitution. Because the reasons overlap
entirely in this case, the State does not separately argue constitutional justiciability.

¹¹ If the Court grants summary judgment for the State on UDJA standing, it has no jurisdiction to reach the merits question.

1 summary judgment. *Oregon Restaurant & Lodging Ass’n v. City of Bend*, 313 Or App 772, 778
2 (2021).

3 None of the Plaintiffs can satisfy that requirement because they have identified no
4 practical or specific way in which a decision from this Court would affect them. They have
5 instead demonstrated that they are advocating for a policy change—to criminalize male
6 circumcision in Oregon—and that relief from this Court would further their cause. That is not
7 sufficient to satisfy the “practical effect” requirement.

8 **a. Plaintiff Dane Hadachek**

9 Plaintiff Hadachek cannot identify an effect from this lawsuit that he will experience that
10 is specific to him beyond it making him feel better that he is helping protect *others* from being
11 circumcised. He described the relief that he is seeking in this lawsuit as that of an advocate, with
12 no practical effect on him personally: he hopes “[f]or general protection all around for newborns,
13 infants, kids, and anyone under the age of 18 when it comes to circumcision.” Hadachek Tr at 11
14 (Tr 22:4–7). He explained that the effect that a court decision in his favor will have on him is
15 “knowing that it’s—there’s some sort of change that makes it equal for all—everyone,” and that
16 a court decision “normalizes it for [him] as a person,” and “just generally makes [him] feel better
17 that [he is] doing something about it.” Hadachek Tr at 13 (Tr 24:7–18). Plaintiff Hadachek
18 cannot identify any way in which a decision from this Court will rectify his claimed injuries.
19 Hadachek Tr at 13 (Tr 24:24–25) (“[Counsel]: Will it fix any of your injuries? [Hadachek:] Not
20 directly.”). Plaintiff Hadachek explained that a court decision in this case will affect his day-to-
21 day life “[b]ecause it normalizes it generally” and because “it brings [him] up generally as a
22 person and allows [him] to kind of live with—[he] did something—even though [he] went
23 through something, [he] did something that’s morally and ethically positive and normalizes it
24 and makes [him] feel better as a person.” Hadachek Tr at 14 (Tr 25:1–9). He further explained
25 that he “feel[s] like [he] can live with that—it is—it outweighs what [he’s] been through as a
26 person.” Hadachek Tr at 14 (Tr 25:9–11).

1 Seeking “general protection” *for other individuals* whose parents may choose to
2 circumcise them in the future is not a practical effect on *this plaintiff*. See Hadachek Tr at 11 (Tr
3 22:5–7). Standing requires a practical effect on the plaintiff *personally*, and these plaintiffs are
4 not entitled to seek to vindicate the rights of others in this lawsuit. Nor is seeking to do
5 something “morally and ethically positive” to “outweigh” the fact that he was circumcised and
6 has suffered injuries because he was circumcised. Hadachek Tr at 14 (Tr 25:7–9). First, those
7 effects are not “specific relief” to Plaintiff Hadachek—they are effects that other Oregonians will
8 feel. Second, to the extent a court decision in his favor will “normalize” anything, it would be a
9 step toward normalizing a parent’s decision *not* to circumcise a male child—it would not change
10 the facts that Plaintiff Hadachek is circumcised or that he is made fun of for being circumcised.
11 Hadachek Tr at 10 (Tr 20:3–13). Because his claimed injuries would not be affected by a
12 decision in this case—he would generally “feel better” that he has helped others, *id.* at 13
13 (Tr 24:17–18)—he cannot establish a connection between an injury to his legal rights and the
14 relief sought. See *Morgan*, 353 Or at 197 (requiring connection). Therefore, he cannot establish
15 that a favorable decision from this Court will have a “practical effect,” and Plaintiff Hadachek
16 lacks standing under the UDJA.

17 **b. Plaintiff Nathaniel Hellewell**

18 Plaintiff Nathaniel Hellewell cannot establish that a favorable decision from this Court
19 will have a practical effect on him for similar reasons. Like Plaintiff Hadachek, Plaintiff
20 Hellewell confirms that the relief he is seeking is for the purpose of protecting others. Hellewell
21 Tr at 8 (Tr 15:1–2) (“[W]e’re just trying to seek equal protection for female and male children.”).
22 He describes his goals in this lawsuit as “[t]o further the cause of protecting female and male
23 children equally and preventing unnecessary genital mutilation of any children.” Hellewell Tr at
24 23 (Tr 38:12–14). Specifically, he describes the effect that a change in Oregon law will have on
25 him as allowing him to help protect others from experiencing what he did:

26 “It will affect me massively because it is a step forward in protecting the people
that I want to protect. Because there are people that are in the position that I was in when

1 I was hurt, and I want them to not—no longer be hurt. I have a lot of family in Oregon, I
2 have a lot of friends in Oregon, and I know a lot of people in Oregon. And when their
3 children are born, I want them to be protected, and I want them to be okay. And knowing
4 that we're getting closer and closer to having everybody be protected is good and would
5 make me feel mentally better, significantly, to know that steps are being made."

6 Hellewell Tr at 25–26 (Tr 41:16–42:2). When describing a “specific” way in which a favorable
7 decision from this Court would affect him, he readily admits that it would affect him because he
8 cares deeply about the cause of advocating to end male circumcision in the United States:

9 “I am, I would say, an active participant in advocacy for the cause that I believe
10 in. And so it would bring a change to my daily life to see furthering of the thing that I
11 believe in going across [the] United States. And hopefully it will cause more progress,
12 which can probably, you know, hopefully, eventually move closer to where I currently
13 live and other states[.]”

14 Hellewell Tr at 27 (Tr 43:8–15); *see also id.* at 9 (Tr 19:22–23) (“[I]t is a cause that is important
15 to me.”); *id.* at 10 (Tr 20:21–22) (“[FGM and male circumcision are] both awful, but we’re
16 making progress and we should continue making progress.”). But the fact that an effect on
17 Plaintiff Hellewell is tied only to the anti-circumcision cause making progress demonstrates that,
18 for Plaintiff Hellewell, any decision from this Court would be an advisory opinion. While
19 Plaintiff Hellewell is entitled to engage in political advocacy based on his personal views, he has
20 not established standing to bring suit against the State of Oregon based on his personal
21 experiences. He has not, and cannot, identify any specific way in which a favorable decision
22 from this Court would affect him in a practical way. To wit, Plaintiff Hellewell explained that a
23 favorable decision from this Court *does not* affect his circumcision and its injuries:

24 “It doesn’t solve my personal circumcision. It solves some of the mental trauma
25 that surrounds my circumcision, but it doesn’t fix mine specifically. It fixes people in the
26 future.”

27 Hellewell Tr at 28 (Tr 44:7–10). A decision from this Court would not affect him at work, at
28 home, or in any future educational opportunities. *Id.* at 28 (Tr 44:13–21). Thus, any effect on
29 him from a favorable decision would be no different than the effect on any Oregonian who
30 agrees with Plaintiffs’ policy position in this case, and thus, cannot establish the “specific relief”
31 required for standing. *Morgan*, 353 Or at 197.

1 **c. Plaintiff Landon Moody**

2 Plaintiff Landon Moody also cannot establish that a favorable decision from this Court
3 will have a practical effect on him. He does not think that invalidating the anti-FGM statutes will
4 alleviate the harms that he has suffered. Moody Tr at 7 (Tr 21:12–13). Any effect on him from
5 extending the law to prohibit male circumcision is no different than the effect on any other
6 Oregonian—he claims that he “would be treated equally and protected by the State just as they
7 protect females.” *Id.* (Tr 21:15–19). Plaintiff Moody claimed that a favorable decision from this
8 Court would result in his “no longer be[ing] discriminated against” by the State, but he could not
9 articulate any way in which a favorable decision would affect his day-to-day life. *Id.* at 7–8 (Tr
10 21:24–22:4).

11 But, as explained below regarding Plaintiff Moody’s alleged injuries, he has not
12 identified any injury to his legal rights beyond his claimed harm of being circumcised. Moody Tr
13 at 12 (Tr 26:19–20). He can identify only conclusory legal concepts—equal protection and
14 discrimination—without any facts that show how he will experience those concepts after a
15 favorable decision from this Court. *See id.* at 11 (Tr 25:20–25). That lack of supporting facts
16 demonstrates that he cannot prove that he will experience a practical effect from a favorable
17 decision of this Court, particularly because the only harm that Plaintiff Moody identifies that is
18 specific to him is having been circumcised. A decision from this Court will not undo Plaintiff’s
19 circumcision. Thus, he cannot establish a connection between an injury to his legal rights and the
20 relief he seeks. Thus, he cannot meet his burden to establish standing under the UDJA at
21 summary judgment.

22 **B. Plaintiffs’ claims fail on the merits as a matter of law because the**
23 **Legislature’s policy choice to address a harmful practice that only happens**
24 **to females is constitutional.**

25 If the Court were to conclude that one or more Plaintiffs has standing, it should go on to
26 decide the merits of the case—to determine whether Plaintiffs prevail on their legal theory that
the anti-*female* genital mutilation laws unconstitutionally discriminate against *males*. Their legal

1 theory is meritless. The anti-FGM laws are constitutional. In addressing a harmful practice that
2 only happens to females, the laws do not unlawfully discriminate against males under either the
3 Privileged and Immunities Clause or the Equal Rights Amendment (“ERA”). The anti-FGM laws
4 are constitutional under the Privileges and Immunities Clause because they are based on specific
5 biological differences—differences in female and male genital anatomy—and those differences
6 are related to the purpose of the anti-FGM laws, which were intended to prohibit a female-
7 anatomy-specific practice.

8 The anti-FGM laws are also constitutional under the ERA. First, the ERA prohibits laws
9 that deny or abridge rights, but it does not apply to laws, like the anti-FGM laws, that favor one
10 class. Second, even if the ERA did apply, the anti-FGM laws are constitutional because they are
11 based on a characteristic unique to one sex, not on sex alone. Therefore, they are outside the
12 scope of the prohibition enshrined in the ERA. Because both laws are constitutional, the State is
13 entitled to prevail on the merits as a matter of law.

14 As noted above, this case involves a facial constitutional challenge to a statute. It is black
15 letter law that facts are immaterial to facial constitutional challenges to the validity of laws,
16 because such claims turn on legal questions to which facts are immaterial. *Freeman*, 203 Or App
17 at 194; *Payless Drug Stores Northwest v. Brown*, 300 Or 243, 247 (1985) (“The constitutionality
18 of a law as enacted is rarely if ever dependent on facts[.]”). Therefore, the Court can and should
19 resolve this case as a matter of law at summary judgment. *See e.g., Kramer v. City of Lake*
20 *Oswego*, 365 Or 422, 450–62, *adh’d to as modified on recons*, 365 Or 691 (2019) (affirming
21 summary judgment on Article I, section 20, claim); *Jungen v. State*, 94 Or App 101, 105 (1988)
22 (affirming trial court’s grant of motion to dismiss Article I, section 20, claim based on pure legal
23 question).

24 For that reason, the facts asserted in the complaint are immaterial to the legal issues of
25 whether the anti-FGM laws are unconstitutional. Even assuming truth of the allegations in the
26

1 Third Amended Complaint for purposes of summary judgment (which the State does not
2 concede are true), the anti-FGM laws are facially valid for the reasons set out below.¹²

3 **1. The anti-FGM laws are constitutional under Article I, section 20, of**
4 **the Oregon Constitution because they are based on biological**
5 **differences that are rationally related to the purpose of the statute.**

6 The Privileges and Immunities Clause, Article I, section 20, of the Oregon Constitution
7 “prohibits granting privileges or immunities to one citizen or class of citizens that are not equally
8 available to all citizens.”¹³ *Tanner v. Oregon Health Sciences University*, 157 Or App 502, 520
9 (1998). The purpose of Oregon’s Privileges and Immunities Clause is to “prevent[] the
10 enlargement of rights.” *Hewitt v. SAIF*, 294 Or 33, 42 (1982) (describing Oregon’s Privileges
11 and Immunities Clause as the “antithesis” of the equal protection clause of the federal
12 constitution, which prohibits the curtailment of rights); *see id.* (citing Hans Linde, *Without “Due*
13 *Process*,” 49 Or L Rev 125, 141 (1969–1970)). The Oregon Privileges and Immunities Clause
14 protects against “disparate treatment of true classes,” which are those “that have identity apart
15 from the challenged law itself.” *Tanner*, 157 Or App at 521. True classes may be either suspect
16 or nonsuspect. *Id.* at 521–22 (discussing *Hewitt*). A suspect class is a class with characteristics
17 that “are historically regarded as defining distinct, socially-recognized groups that have been the
18 subject of adverse social or political stereotyping or prejudice.” *Tanner*, 157 Or App at 523. Sex
19 is a suspect class for purposes of determining whether a challenged law’s classification is
20 constitutional. *Id.* at 522–23.

21 To withstand a constitutional challenge, a statute’s classification based on sex “may be
22 overcome if the reason for the classification reflects specific biological differences between men
23 and women.” *Hewitt*, 294 Or at 46; *see also Tanner*, 157 Or App at 523–24 (applying that test to

24 ¹² No challenge alleging the laws are only unconstitutional “as applied” in particular
25 circumstances has been brought here, nor could it be.

26 ¹³ In its entirety, Article I, section 20, of the Oregon Constitution provides: “No law shall be
passed granting to any citizen or class of citizens privileges, or immunities, which, upon the
same terms, shall not equally belong to all citizens.”

1 a policy that prevented “domestic partners of homosexual OHSU employees” from having health
2 insurance benefits that married partners of heterosexual OHSU employees were entitled to);
3 *McIntyre v. Crouch*, 98 Or App 462, 469–70 (1989) (applying that test and upholding a law that
4 provided parentage to an unmarried female who bears an artificially inseminated child but not to
5 the unmarried male who donates semen). A sex or gender classification that “rel[ies] on gender
6 as legislative shorthand for dependency,” is exactly “the kind of stereotype” that the Privileges
7 and Immunities Clause prohibits. *Hewitt*, 294 Or at 46–47 (explaining that classifications based
8 on social roles or personal characteristics that are stereotypically associated with a certain gender
9 do not withstand a constitutional challenge).

10 Oregon courts have refined that *Hewitt* test into a two-part test: “A statute that gives a
11 privilege to women while denying it to men is inherently suspect and subject to strict scrutiny,
12 unless the classification (1) is based on specific biological differences between men and women
13 and (2) is rationally related to the purposes of the statute.” *McIntyre*, 98 Or App at 469
14 (upholding the challenged law that treats males and females differently based on their
15 reproductive biology on summary judgment).

16 Both of those prongs involve pure legal questions of statutory interpretation. *See State v.*
17 *Gaines*, 346 Or 160, 171 (2009) (discerning legislative intent is purpose of statutory
18 interpretation); *McIntyre*, 98 Or App at 469–70 (relying on text of statute in determining
19 biological differences prong); *Hewitt*, 294 Or at 47–50 (examining legislative history). When
20 terms are not defined in statute, Oregon courts look to Webster’s Third New International
21 Dictionary, to help discern the term’s “plain, natural and ordinary meaning.” *Oregon Ass’n of*
22 *Acupuncture and Oriental Medicine v. Board of Chiropractic Examiners*, 260 Or App 676, 680
23 (2014) (citing *Gaines*, 346 Or at 175). When a statutory term is borrowed from a specialized
24 trade or field, like medicine, courts determine their meaning “based on how they are used and
25 understood in the specialized field, trade, or profession, and using sources that best accord with
26 the legislature’s intent.” *Comcast Corp. v. Dept of Revenue*, 356 Or 282, 296 (2014); *see also*

1 *Hopkins v. SAIF*, 349 Or 348, 360–64 (2010) (interpreting a statutory term “arthritis” using both
2 *Webster’s Third International Dictionary* and medical dictionaries in use at the time the statute
3 was enacted).

4 Both ORS 163.207 and ORS 431A.600 survive constitutional scrutiny under the *Hewitt*
5 two-part test as a matter of law. As explained further below, both statutes treat females and males
6 differently based on legitimate sex-specific differences in external genitalia and reproductive
7 biology. That differential treatment of females is rationally related to the purposes of the anti-
8 FGM statutes because those statutes seek to prevent, deter, and prohibit FGM—a female-specific
9 practice—from being practiced on young girls and women.

10 On the first prong of the test, the classification in the anti-FGM statutes is based on
11 specific biological differences between males and females because the classification is about
12 female-specific anatomical structures and female reproductive biology. Only females have a
13 clitoris, labia majora, and labia minora, and only females are subjected to FGM because it is
14 practiced only on female external genitalia as described in the statutes. *See* ORS 163.207; ORS
15 431A.600. In that respect, the anti-FGM statutes are similar to the statute that was upheld in
16 *McIntyre* because that statute also provided for differential treatment based on differences in
17 reproductive biology between males and females by limiting the parentage rights of a “donor of
18 semen.” *See* 98 Or App at 466, 469–70 (“Here, the classification of unmarried males and
19 unmarried females is based on biological differences between men and women. Only a male
20 could contribute the sperm to accomplish conception; only a female could conceive and bear the
21 child.”). The fact that the anti-FGM statutes do not address male genital anatomy and male
22 circumcision does not change the fact that female and male reproductive anatomy and biology
23 are distinct and the statutes are based upon those distinctions.

24 More specifically, ORS 163.207 plainly creates a classification based on biology: it
25 prohibits the knowing circumcision, excision, or infibulation of any child’s “labia majora, labia
26 minora or clitoris.” The plain meaning of those terms demonstrates that they are female body

1 parts—the “clitoris,” “labia majora,” and “labia minora” are part of the “vulva,” which is “the
2 external parts of the female genital organs.” *See Webster’s Third New Int’l Dictionary* 425
3 (defining “clitoris”); *id.* at 1259 (defining “labia minora” and “labia majora”); *id.* at 2567
4 (defining “vulva”). Medical dictionaries confirm that the clitoris, labia majora, and labia minora
5 are anatomical structures specific to female biology.¹⁴ Therefore, because the plain meaning of
6 the statutory terms “clitoris,” “labia majora,” and “labia minora” shows that they refer to female
7 anatomical structures, the statute’s classification is based on specific biological differences.

8 Similarly, ORS 431A.600 creates a classification using the phrase “female circumcision,
9 excision or infibulation” and by referencing ORS 163.207. Both statutes were enacted in the
10 same bill. Or Laws 1999, ch 737. The plain meaning of the term “female,” as used in the context
11 of “female circumcision, excision or infibulation” is a descriptor for the sex that produces eggs
12 and bears young. *See Webster’s* at 836–37; *see also Stedman’s Medical Dictionary* 635 (26th ed
13 1995) (“female”: “denoting the sex that bears the young or the ovum”). That meaning of
14 “female” is specific to female reproductive biology, as compared to male reproductive biology.
15 *See Webster’s* at 1366 (defining “male” as “. . . of, relating to, or being the sex that produces
16 relatively small, usu. motile gametes (as sperms, spermatozoids, spermatozoa)”; *Stedman’s* at
17 1057 (same). The practices of female circumcision, excision, or infibulation are also defined in
18 legal dictionaries by reference to female genital mutilation. *Black’s Law Dictionary* (12th ed
19 2024 (online)), “female circumcision” (“See female genital mutilation”); *id.* “excision” (same);
20 *id.* “infibulation” (same). “Female genital mutilation” is defined as “[t]he practice or an instance
21

22 ¹⁴ *See also Stedman’s Medical Dictionary* 353 (26th ed 1995) (“clitoris”: “[a] cylindric, erectile
23 body, rarely exceeding 2 cm in length, situated at the most anterior portion of the vulva and
24 projecting between the branched limbs or laminae of the labia minora, which form its prepuce
25 and frenulum. It consists of a glans, a corpus, and two crura, and is the homologue of the penis in
26 the male, except that it is not perforated by the urethra and does not possess a corpus
spongiosum”); *Stedman’s Medical Dictionary* 956 (27th ed 2000) (“labia”: “plural of labium”);
id. (“labium majus”: “one of two rounded folds of integument forming the lateral boundaries of
the pudendal cleft. The labia majora are the female homolog of the scrotum”); *id.* (“labia minus”:
“one of two narrow longitudinal folds of mucous membrane enclosed in the pudendal cleft
within the labia majora”).

1 of cutting, or cutting off, one or more female sexual organs.” *Black’s Law Dictionary* (online).¹⁵
2 Thus, the classification of “female circumcision, excision or infibulation” in ORS 431A.600 is
3 also based on the reproductive biology of females being different from males and its sex-based
4 classification is based on a specific biological difference—different reproductive anatomy.

5 On the second prong of the analysis, the sex-based classification in the anti-FGM statutes
6 is rationally related to the purpose of the statutes because the legislature intended only to prohibit
7 and deter the sex-specific practice of FGM. The text and context of the anti-FGM statutes make
8 the legislature’s intent clear: it sought to prevent and prohibit young girls from being subjected to
9 female genital mutilation. ORS 163.207 (criminalizing the circumcision, excision, or infibulation
10 of the clitoris, labia majora, or labia minora as a Class B felony); ORS 431A.600 (requiring
11 education and outreach on FGM); *see Gaines*, 346 Or at 171 (“[T]here is no more persuasive
12 evidence of the intent of the legislature than the words by which the legislature undertook to give
13 expression to its wishes.” (internal quotation marks omitted)). The two laws were passed as two
14 sections of the same bill, which demonstrates the legislature’s intent to address FGM through a
15 two-pronged approach: deter the practice of FGM by creating criminal consequences for
16 practicing FGM, ORS 163.207, and educate communities on the “health risks and emotional
17 trauma inflicted” by FGM, including the criminal and child abuse reporting consequences of
18 FGM, ORS 431A.600. Or Laws 1999, ch 737.

19 The legislative history confirms the meaning established by the text and context: the
20 purpose of the anti-FGM laws is to prevent and prohibit young girls from being subjected to a
21 harmful practice that is performed only on girls to protect their virginity, purity, and viability for
22 marriage in their community. When the anti-FGM laws were discussed in legislative committees,
23 the proponents of the bill described the problem that the anti-FGM laws were attempting to
24

25 ¹⁵ “Infibulation” is defined as “an act or practice of fastening by ring, clasp, or stitches the labia
26 majora in girls and the prepuce in boys in order to prevent sexual intercourse.” *Webster’s* at
1159. Female excision is not specifically defined, but circumcision is defined separately for
males and females. *Id.* at 409.

1 address only as to young girls. They introduced testimony, news articles, and excerpts of a book
2 written by an FGM survivor and anti-FGM activist, and those exhibits discuss a very specific set
3 of cultural practices that are practiced on girls in those communities. Exhibit X, House Judiciary
4 Committee on Crime, HB 3608, April 23, 1999 (written testimony of Lynn Partin) (excerpting
5 sections of *Desert Flower: The Extraordinary Journey of a Desert Nomad* by Waris Dirie
6 (1998)); Written Testimony, Senate Judiciary Committee, HB 3608, May 19, 1999 (same);
7 Testimony, House Judiciary Committee on Crime, HB 3608, April 23, 1999, Audio Recording at
8 2:52:59 (discussion of Oregonian article).

9 The legislature intended the anti-FGM laws to be sex-specific. Proponents of the bill
10 described the purpose of FGM as a way for communities with social norms that require a woman
11 to be a virgin when she gets married to ensure that is the case. Testimony, Senate Judiciary
12 Committee, HB 3608, May 19, 1999, Audio Recording at 25:40–25:59 (statement of Lynn
13 Partin). Describing the purpose of the bill generally, proponents explained that it would “send the
14 message that the state feels strongly that this is not something we want to have Oregonian girls
15 and young women experience.” *Id.* at 22:55. When explaining the bill in a speech on the House
16 floor, the carrier of the bill explained that “[a]ccording to the World Health Organization, most
17 families allow their daughters to undergo the FGM out of fear that no man will want to marry an
18 uncircumcised woman and that she will be an outcast in the community. In some tribes [FGM] is
19 performed to protect family lineage through ensuring that wives are virgins at marriage and that
20 other children are verifiably the men’s descendants.” House Floor Proceedings, HB 3608, May
21 12, 1999 (PM), Audio Recording at 37:33–37:56 (statement of Rep Juley Gianella).

22 The legislature was also presented with female-specific health consequences of FGM. As
23 presented, those consequences include chronic vaginal infections, obstetric complications when
24 giving birth, and pain during urination and menstruation. *Id.* at 37:00–37:21. FGM was described
25 as “an extreme form of child abuse and a violation of women’s basic rights” that “is known to be
26 practiced on girls any time between infancy and puberty.” *Id.* at 35:49–36:07. At no point during

1 any committee meeting or floor speech did legislators discuss genital cutting generally,
2 protecting all children, male circumcision, or male genital anatomy. Legislators consistently
3 referred to “girls” and “women” in describing the people who may be subjected to FGM, and the
4 purpose of the anti-FGM bill was to “send a strong message that Oregon abhors this practice and
5 views its end [as] paramount to the health and welfare of these young girls.” *Id.* at 38:52.

6 The sex-based classification in the anti-FGM statutes is rationally related to the purpose
7 of those statutes. The text, context, and legislative history demonstrate that the purpose of the
8 anti-FGM statutes is to prevent, deter, and prohibit a female-specific practice that involves the
9 mutilation of female genitals and is used to control women’s reproductive biology. The sex-
10 based classification in the anti-FGM statutes is that they apply to the “clitoris,” “labia majora,”
11 and “labia minora” of any child and to “female circumcision, excision or infibulation.” ORS
12 163.207; ORS 431A.600. The classification and the purpose are rationally related because the
13 purpose is to prohibit a sex-specific practice, and the classification does just that. The anti-FGM
14 statutes are based on specific biological differences—the differences in genitalia, and thus, in
15 reproductive anatomy between males and females. The anti-FGM statutes serve to prohibit a
16 practice that is done to the female body because of its reproductive biology. Because the sex-
17 based classification is based on specific biological differences between male and female
18 reproductive anatomy and rationally related to the purpose of the statute, it is constitutional
19 under Article I, section 20, of the Oregon Constitution. Accordingly, the State is entitled to
20 prevail as a matter of law.

21 **2. Plaintiffs’ Article I, section 46, claim fails as a matter of law.**

22 Article I, section 46, of the Oregon Constitution is the Oregon Equal Rights Amendment
23 (“ERA”). It prohibits the denial or abridgment of rights “on account of sex.” That provision was
24 enacted by ballot measure in 2014. Or Laws 2015 at xi (ballot measures enacted on November 4,
25 2014). No Oregon appellate court has announced the test that a statute must pass to survive a
26 challenge brought under that provision of the Oregon Constitution. However, Plaintiffs claim

1 under Article I, section 46 fails as a matter of law because the ERA is inapplicable to the laws
2 challenged here, and because laws that make classifications based on particular physical
3 characteristics that are unique to one sex are outside the scope of the ERA.

4 **a. The ERA is inapplicable to the anti-FGM statutes.**

5 As a threshold matter, the ERA does not apply to the anti-FGM laws because the anti-
6 FGM laws do not deny or abridge equality of rights, which is what the ERA addresses. The ERA
7 is written in terms of granting a negative right, that is, it provides that equality of rights under the
8 law “shall not be denied or abridged.” Or Const, Art I, § 46. But a prohibition on *denying a right*
9 is not the same as a prohibition on *granting a privilege*. See *Delta Air Lines, Inc. v. Dep’t of*
10 *Revenue*, 374 Or 58, 76 (2025). In that sense, the ERA prevents the government from “unfairly
11 disadvantaging classes,” while the Privileges and Immunities Clause “was adopted to prevent the
12 government from unfairly *favoring* classes.” *Id.* (citing *Hewitt*, 294 Or at 42). The anti-FGM
13 laws, by their terms, provide a privilege to female minors—a protection from FGM—that is not
14 extended to males. The constitutionality of a provision that extends a privilege to one group but
15 not another is properly determined under the Privileges and Immunities Clause because that is
16 the constitutional provision that “prevents the enlargement of rights” for one group and not
17 another. *Hewitt*, 294 Or at 42. The ERA does the opposite, prohibiting only laws that limit the
18 rights of one group. See *Delta Air Lines, Inc.*, 374 Or at 76 (discussing differences between
19 federal equal protection law and Oregon’s Privileges and Immunities Clause). It thus does not
20 apply to laws that grant a privilege to one class.

21 The anti-FGM laws grant a privilege to one class, female minors. They do not address
22 males at all, and they certainly do not restrict the rights of male minors. See ORS 163.207; ORS
23 431A.600.

24 The anti-FGM laws do not deny or abridge Plaintiffs’ alleged rights to bodily integrity,
25 personal autonomy, or privacy. See 3d Am Compl ¶ 54. And even assuming that those rights
26 were denied to Plaintiffs through the circumstance of them being circumcised as babies, it would

1 be because they lacked legal capacity to make their own medical decisions and their parents
2 made medical decisions on their behalf that they now disagree with. *See* ORS 109.640(4)
3 (providing the age of consent for a minor for hospital care and medical or surgical diagnosis or
4 treatment); *see also* ORS 109.621 (age of majority is 18). Therefore, because the anti-FGM laws
5 do not restrict the rights of males, and because they do not affect a parent’s control over a child’s
6 medical or surgical treatment, they cannot as a matter of law abridge or deny any of the rights
7 that Plaintiffs have identified. Thus, the ERA does not apply to those laws. The State is entitled
8 to summary judgment on the ERA claim on that ground alone.

9 **b. Assuming that the ERA does apply to the anti-FGM laws, they**
10 **do not violate the ERA.**

11 Even if Plaintiffs had alleged a claim that the ERA applies to, the FGM laws are
12 constitutional. The intent of the ERA was not to prohibit *all* sex-specific laws. If it did, it would
13 nullify laws that address issues or conditions that impact only one sex based on the specific
14 characteristics of that sex, such as the anti-FGM laws and laws that protect females from
15 discrimination in connection with pregnancy and lactation. That interpretation of the ERA is
16 supported by the voters’ intent in enacting the ERA, which was to *protect* women’s rights, not to
17 undermine them, and is consistent with legal tests adopted in other states with identical equal
18 rights amendments.

19 To determine the meaning of a constitutional provision and what test applies, Oregon
20 courts seek to discern the intent of the voters in enacting the measure by looking to the text,
21 context, and the history of the ballot measure. *Knopp v. Griffin-Valade*, 372 Or 1, 9 (2024)
22 (“[W]hen interpreting a constitutional amendment adopted through an initiated ballot measure,
23 we consider ‘the voters’ intent,’ focusing on the text and context as well as ‘the measure’s
24 history, should it appear useful to our analysis.’” (quoting *State v. Algeo*, 354 Or 236, 246
25 (2013))); *see also* *Couey*, 357 Or at 490–91 (describing the goal of the *Priest v. Pearce*, 314 Or
26 411 (1992), constitutional interpretation methodology as “to determine the meaning of the

1 provision at issue most likely understood by those who adopted it”). The “history” of a ballot-
2 measure-enacted constitutional provision includes the ballot title and the materials in the voters’
3 pamphlet. *Id.*

4 Applying that methodology, Oregon’s ERA prohibits the State, among other entities,
5 from enacting laws that deny a right to a person based on sex. The ERA provides: “Equality of
6 rights under the law shall not be denied or abridged by the State of Oregon or by any political
7 subdivision in this state on account of sex.” Or Const, Art I, § 46. Examining the plain meaning
8 of that text in context, “sex” includes “one of the two divisions of organic especially human
9 beings respectively designated male or female[.]” *Webster’s* at 2081. As a legal term, “sex”
10 includes “[t]he sum of the peculiarities of structure and function that distinguish a male from a
11 female organism.” *Black’s Law Dictionary* (online). Those definitions indicate that the term
12 “sex” includes the categories of being biologically male or female. The meaning of the phrase
13 “on account of” is clear: it is synonymous with “by reason of” or “because of.” *Webster’s* at 13.
14 Thus, the text indicates that the ERA prohibits denial or abridgement of rights because of sex,
15 which includes biological sex.

16 The ballot title is part of the “measure history” for interpreting initiated constitutional
17 amendments. *Knopp*, 372 Or at 9. The ballot title includes the summary and description of a
18 “yes” vote and “no” vote. *See* Morrow Decl Ex 4 (Measure 89). The summary of the ERA
19 explained that Article I, section 20, had been interpreted as prohibiting laws “treating people
20 differently based on sex unless justified by specific biological differences,” but that “[n]o current
21 provision in constitution expressly states that prohibition.” *Id.* The “result of ‘no’ vote”
22 description provided that a “[n]o vote retains current prohibition on laws granting/denying
23 privileges or immunities on account of sex, unless justified by specific biological differences
24 between men/women.” *Id.* A “yes” vote would “prohibit[] state . . . from denying or abridging
25 equality of rights under the law on account of sex.” *Id.* Thus, the ballot title is ambiguous as to
26 the ERA’s scope regarding laws that address specific issues affecting one sex but not the other.

1 The explanatory statement and arguments in favor are additional evidence of the meaning
2 of the ERA. *See Knopp*, 372 Or at 9 (explaining that “measure history” includes “other materials
3 in the voters’ pamphlet”). It describes the ERA as an “express” constitutional prohibition on “the
4 denial or abridgement of equality of rights on account of sex.” *Morrow Decl Ex 5*, at 3. That
5 statement demonstrates that the ERA is at least as protective as the Privileges and Immunities
6 Clause, which included an implied protection against sex discrimination. *See id.* The arguments
7 in favor of the ERA suggest that the ERA goes further. *See id.* at 7 (stating that the ERA will
8 allow women to “gain a higher level of protection against sex discrimination than we have
9 now”). Those arguments describe the effect of the ERA as enshrining equality for women and
10 girls. *See id.* at 4–10 (arguments in favor discussing women’s lack of equal rights regarding
11 salary, leadership opportunities, domestic violence, healthcare, and harassment implications).¹⁶

12 Proponents of the ERA addressed reproductive rights and access to women’s healthcare
13 specifically. They argued that the ERA “will affirm[] Oregonians’ repeated support for women’s
14 right to the full range of reproductive options.” *Id.* at 5. Another supporter argued that “[t]he
15 young women of our state need this so that they can do whatever they want to do and become
16 whatever they want to become.” *Id.* Other supporters echoed that sentiment and argued that,
17 under the ERA, “every woman will be guaranteed the right to control her own life, to liberty in
18 her choices including healthcare, and to pursue the happiness she chooses for herself.” *Id.*; *see*
19 *also id.* at 6 (stating that the ERA would “[h]elp defend against possible challenges to equal
20 access to healthcare and reproductive rights for women”). The focus throughout the arguments in
21 favor was that women had historically not had access to equality of rights—to equal opportunity
22 or to control their own bodies—and that the ERA would provide a legal guarantee of equal rights
23 going forward.

24
25
26 ¹⁶ No arguments against the ERA were submitted to the voters’ pamphlet. *See Morrow Decl Ex 5*, at 10.

1 Taking that text, context, and measure history together, the intent of passing Oregon's
2 ERA was to enshrine women's equality in the law by providing for an express protection against
3 sex-based discrimination in the Oregon Constitution. The measure history also demonstrates,
4 consistent with the text of the ERA, that the voters' intent was to prohibit laws that are *barriers*
5 to achieving equality of rights, including reproductive rights and access to healthcare. That intent
6 supports an important limiting principle to the ERA's scope: the ERA does not prohibit laws that
7 apply to only one sex because they are based on a characteristic that is unique to that sex. Rather,
8 it only prohibits laws that discriminate between the sexes.

9 The existence of other laws that apply to one sex based on a sex-specific characteristic
10 illustrates that the voters enacting the ERA would not have intended it to prohibit laws like the
11 anti-FGM laws—those that apply to one sex and do not discriminate between the sexes.
12 Importantly, Oregon has laws that address sex-specific characteristics such as pregnancy and
13 lactation. Just as the anti-FGM laws address a sex-specific practice that affects a characteristic
14 unique to one sex—that characteristic being female reproductive anatomy and its corresponding
15 external genitalia—other state laws provide protections or address issues that only impact female
16 characteristics. For example, ORS 653.077 requires Oregon employers to provide
17 accommodations for employees to express breast milk. Obviously, that law only protects
18 individuals who have the biological capacity to express breast milk. Similarly, ORS 659A.147
19 provides employment protections for workers who have limitations relating to pregnancy,
20 childbirth, and lactation. That law also involves differential treatment based on a characteristic
21 that is unique to one sex—the biological capacity to be pregnant, give birth, and produce milk.
22 Another law, ORS 435.210, establishes a statutory right for an individual to decide to continue a
23 pregnancy to term or to terminate it. That law also applies only to individuals with the unique
24 characteristic of being pregnant.

25 Those laws do not offer any protections to individuals who do not lactate, who cannot get
26 pregnant, and who cannot bear children, and that does not make them unconstitutional. Similarly,

1 the anti-FGM laws do not offer any protections to individuals who do not have female genitals.
2 Yet these laws are all valid because laws that do not apply to males are not *per se* discriminatory
3 against males. These laws provide protections that allow for equality of rights by ensuring that
4 lactating, pregnant, and child-bearing individuals can participate in society on equal footing, on
5 their own terms, as those who do not share those characteristics. It would contradict the purpose
6 of the ERA to conclude that the voters intended to ban such laws, which further women’s ability
7 to achieve equality, when they passed the ERA. Yet Plaintiffs’ legal theory demands just that.
8 Under Plaintiffs’ legal theory, these laws would all be unconstitutional. The Court should not
9 entertain Plaintiffs’ male-centered legal theory that seeks to erase females by eliminating
10 protections for female-specific experiences.

11 The principle that the ERA is broad, but not absolute, is not only well-supported by the
12 text, context, and measure history of the ERA in Oregon, but also by commentary on the
13 proposed federal ERA and well-reasoned case law in Washington. The text that Oregon adopted
14 is nearly identical to that of the proposed federal ERA: “Equality of rights under the law shall not
15 be denied or abridged by the United States or any State on account of sex.” *See* 117 Cong Rec
16 35,782–815 (1971) (house debate and vote); *see also* Colo Const, Art II, § 29; Haw Const, Art I,
17 § 3; Ill Const, Art I, § 18; Wash Const, Art XXXI, § 1.¹⁷ Although not binding on this Court,
18 judicial decisions on other states’ ERAs help inform how this Court should scrutinize a statute
19 when it is challenged under Oregon’s ERA. *See State v. Soriano*, 68 Or App 642, 645–46 (1984)
20 (“Judicial opinions from other jurisdictions are helpful in interpreting the Oregon Constitution to
21 the extent that their reasoning is persuasive and their background is applicable to Oregon.”).

22 In interpreting Washington’s nearly identical ERA, the Washington Supreme Court
23 describes the test for evaluating a law challenged under the ERA quite simply: courts ask “[i]s

24 ¹⁷ The status of the federal ERA is debated. On December 17, 2024, the Archivist of the United
25 States issued a statement that she could not certify the ERA as part of the U.S. Constitution
26 because of a ratification deadline established by Congress. *See Statement on the Equal Rights
Amendment Ratification Process*, Media Alert, Archives.gov (Dec 17, 2024),
<https://www.archives.gov/press/press-releases/2025/nr25-004>.

1 the classification by sex discriminatory?” *Guard v. Jackson*, 132 Wash 2d 660, 664 (1997)
2 (quoting *Marchioro v. Chaney*, 90 Wash 2d 298, 305 (1978)). But Washington courts have
3 expressly noted that there were exceptions to the otherwise absolute prohibition in the ERA.
4 *Darrin v. Gould*, 85 Wash 2d 859, 872 n 8 (1975) (stating that exceptions to the prohibition on
5 discriminatory treatment based on sex may exist for regulations of “dissimilar treatment on
6 account of a characteristic unique to one’s sex,” among other categories); *see also City of Seattle*
7 *v. Buchanan*, 90 Wash 2d 584, 587, 591 (1978) (upholding a law that was based upon differences
8 between female and male breasts); Brown, Emerson, Falk, and Freedman, The Equal Rights
9 Amendment: A Constitutional Basis for Equal Rights for Women, 80 Yale LJ 871, 904 (1971)
10 (discussing intent of proposed federal ERA).¹⁸ Washington courts have also upheld “affirmative
11 action programs which were designed to alleviate effects of past discrimination and attain
12 equality in fact.” *Guard*, 132 Wash 2d at 664; *see also Southwest Wash. Chapter, Nat’l*
13 *Electrical Contractors Ass’n v. Pierce County*, 100 Wash 2d 109, 127 (1983) (upholding
14 affirmative action plan for minority and women’s businesses in public contracting). Thus,
15 Washington courts recognize the breadth of the ERA’s reach while also recognizing that not all
16 differential treatment is discriminatory.

18 ¹⁸ That law review article is cited by other states’ courts to define the scope of the ERA. *E.g.*,
19 *Darrin*, 85 Wash 2d at 871. Specifically, the law review authors explained:

20 “The fundamental legal principle underlying the [ERA], then, is that the law must deal
21 with particular attributes of individuals, not with a classification based on the broad and
22 impermissible attribute of sex. This principle, however, does not preclude legislation (or
23 other official action) which regulates, takes into account, or otherwise deals with a
24 physical characteristic unique to one sex. In this situation it might be said that, in a
25 certain sense, the individual obtains a benefit or is subject to a restriction because he or
26 she belongs to one or the other sex. Thus a law relating to wet nurses would cover only
women, and a law regulating the donation of sperm would restrict only men. Legislation
of this kind does not, however, deny equal rights to the other sex. So long as the law
deals only with a characteristic found in all (or some) women but *no* men, or in all (or
some) men but *no* women, it does not ignore individual characteristics found in both
sexes in favor of an average based on one sex. Hence such legislation does not, without
more, violate the basic principle of the [ERA].”

Brown et al, 80 Yale LJ at 893.

1 Turning back to the question for this Court—whether the anti-FGM laws violate
2 Oregon’s ERA simply because they address a female-specific issue—this Court should follow
3 Washington’s rationale and conclude that a law that treats individuals differently based on a
4 physical “characteristic unique to one’s sex” falls outside of the scope of what the ERA
5 prohibits. *Darrin*, 85 Wash 2d at 872 n 8. The anti-FGM laws fall into that category. Just as laws
6 relating to pregnancy and lactation only apply to females, and laws relating to sperm donors only
7 apply to males, the anti-FGM laws relate to individuals with a clitoris, labia majora, or labia
8 minora that may be subject to female circumcision, excision, or infibulation. ORS 163.207; ORS
9 431A.600. Those are specific physical characteristics that are part of a female’s reproductive
10 anatomy and not a male’s reproductive anatomy. Legislation relating to those sex-specific
11 characteristics thus does not deny equal rights to males any more than legislation relating to
12 sperm donors denies equal rights to females.

13 In short, the anti-FGM statutes are constitutional under the ERA because it does not
14 prohibit the legislature from enacting laws that address particular characteristics that are unique
15 to one sex. As explained above in the Privileges and Immunities Clause argument, there is no
16 genuine dispute that the clitoris, labia majora, and labia minora are female-specific anatomical
17 structures and that female circumcision, excision, and infibulation are female-specific practices
18 done only to female bodies because they have female characteristics. A law addressing those
19 practices does not fall within the scope of the ERA’s prohibition. The State is thus entitled to
20 prevail as a matter of law, and this Court should grant summary judgment for the State.

21 **C. The remedy of “extending” the anti-FGM statutes to prohibit male**
22 **circumcision violates separation of powers because it requires this Court to**
23 **rewrite statutes enacted by the legislature.**

24 Plaintiffs ask this Court to either extend the anti-FGM statutes or strike them down. *See*
25 3d Am Compl at 15 (Prayer). This argument focuses on the remedy seeking to “extend” the anti-
26 FGM laws to ban male circumcision. That requested remedy is unavailable as a matter of law
because it violates the separation of powers doctrine. The question of whether a declaratory

1 judgment would violate the separation of powers is “purely a legal issue” that does not turn on
2 any disputed material facts. *George-Buckley*, 318 Or App at 827. Because the “extension”
3 remedy is not available as a matter of law, the State is entitled to prevail as to that issue.

4 The Oregon Constitution prohibits one branch of government from exercising the
5 functions of another branch. Or Const, Art III, § 1. Specifically, it provides that “no person
6 charged with official duties under one of the[] branches [of government], shall exercise any of
7 the functions of another.” *Id.* Separation of powers is violated when “one department is
8 performing the functions committed to another department.” *Rooney v. Kulongoski*, 322 Or 15,
9 28 (1995) (explaining the two ways that the separation of powers constitutional provision may be
10 violated). The purpose of prohibiting one branch of government from performing the functions
11 of another is to avoid “the potential for concentration of separate powers in one department.”

12 A judicial declaration purporting to “extend” the anti-FGM statutes—which exclusively
13 address FGM—to also address male circumcision would violate the separation of powers
14 doctrine. A judicial declaration of that nature would perform a legislative function by rewriting
15 the anti-FGM statutes in two ways: (1) it would criminalize male circumcision of minors—
16 conduct that the legislature has not determined to be a crime—and (2) it would require Oregon
17 Health Authority, a state agency, to engage in education and outreach about male circumcision
18 that the legislature has not required it to engage in. But “[r]ewriting statutes is not part of the
19 judicial function.” *State v. Andrews*, 341 Or App 403, 405 (2025); *see also* ORS 174.010 (“[T]he
20 office of the judge is simply to ascertain and declare what is, in terms or in substance, contained
21 therein, not to insert what has been omitted, or to omit what has been inserted[.]”). In fact,
22 making laws to implement the policy of the State of Oregon, especially in the context of
23 determining what conduct is criminal, is the very essence of the State’s legislative power, which
24 is vested in the legislature and, in certain circumstances, reserved to the people. Or Const, Art
25 IV, § 1 (reserving to the people the initiative and referendum powers and limiting the legislative
26 power of the state to the Legislative Assembly). It is axiomatic that the legislature has not

1 delegated its lawmaking authority to the judicial branch, and this Court should reject Plaintiffs’
2 invitation to do so by rewriting the anti-FGM statutes.

3 Three additional reasons support rejecting Plaintiffs’ invitation to rewrite and expand the
4 anti-FGM statutes. First, Plaintiffs themselves allege that male circumcision is “commonly
5 performed” in the United States. 3d Am Compl ¶ 9. If the legislature had intended to criminalize
6 such a commonly performed practice, it would have said so expressly. *See Hernandez v.*
7 *Catholic Health Initiatives*, 311 Or App 70, 76 (2021) (“That [the challenged law] identifies with
8 specificity who is governed by the provision tends to suggest that, when the legislature intended
9 for a provision to apply to a limited set of persons or entities, it said so explicitly.”); *State v.*
10 *Shockey*, 285 Or App 718, 725–26 (2017) (holding that, had the legislature intended a wildlife
11 statute to effect a criminal restitution statute, it “would have said so explicitly”). The anti-FGM
12 statutes expressly, and unambiguously, identify female-specific anatomy and practices, and had
13 the legislature intended to criminalize any other conduct, it would have, and must have, done so
14 expressly.¹⁹ Had the Oregon legislature intended to become the only state in the country to ban
15 male circumcision of minors, surely, it would have done so expressly.

16 Second, it is telling that Plaintiffs have not identified what a judicial declaration
17 “extending” the law would entail—if they had, it would be clear that the declaration would
18 require rewriting the anti-FGM statutes, not a mere “extension” consistent with the original
19 legislative intent. Instead, Plaintiffs ask this Court to “[i]nterpret ORS 163.207 and 431A.600 to
20 extend to male circumcision, such that Plaintiffs will no longer be stigmatized by unequal
21 protection,” without specifying the “extended” statutory language that they are asking the Court
22 to impose through a judicial order. 3d Am Compl at 15 (Prayer). Plaintiffs’ requested

23 ¹⁹ Moreover, in the criminal context, the legislature violates the Oregon Constitution and United
24 States Constitution if a criminal statute is vague, or, in other words, if it is not “sufficiently
25 explicit to inform those who are subject to it of what conduct on their part will render them liable
26 to its penalties.” *State v. Dimolfetto*, 342 Or App 456, 493 (2025) (quoting *State v. Graves*, 299
Or 189, 195 (1985)). Nothing in the terms of the anti-FGM statutes would lead any individual to
understand that ORS 163.207 criminalizes performing male circumcision, and thus, the
legislature was required to expressly do so if that is what it intended.

1 interpretation requires inserting what has been omitted in ORS 163.207 and omitting what has
2 been inserted in ORS 431A.600. *See* ORS 174.010.

3 Namely, as previously explained, nothing in the terms “labia majora, labia minora or
4 clitoris,” ORS 163.207, or “female circumcision, excision or infibulation,” ORS 431A.600, can
5 be interpreted to extend to the penile foreskin. To accomplish the “interpretation” that Plaintiffs
6 seek, this court would need to rewrite ORS 163.207 to include “penile foreskin” in the list of
7 anatomical structures and remove the word “female” throughout the statutes. Those additions
8 and deletions do “violence to that section” of the anti-FGM laws. *Salem Coll. & Acad., Inc. v.*
9 *Emp. Div.*, 298 Or 471, 494 (1985). Specifically, those amendments would alter the entire
10 purpose of the statute—to prohibit a sex-specific practice that is performed on female bodies—a
11 change that is well outside the legislative intent in enacting the statute.

12 Third, Plaintiffs cannot establish that they would otherwise be legally entitled to their
13 requested remedy of “extending” the anti-FGM statutes to address male circumcision of minors.
14 Extending the reach of an under-inclusive statute can be a proper remedy in some cases
15 challenging the constitutionality of a statute under Article I, section 20, of the Oregon
16 Constitution. However, that remedy is *limited* to extensions that ““advance[] the purpose of the
17 legislation and comport[] with the overall statutory scheme.”” *In re Madrone*, 271 Or App 116,
18 126 (2015) (quoting *Hewitt*, 294 Or at 53). As explained above in Section IV.B.1, the purpose of
19 the legislation and the overall statutory scheme of the anti-FGM statutes is to prohibit the sex-
20 specific practice of female genital mutilation. For this Court to declare that those statutes
21 criminalize male circumcision would do “violence to that section” of the laws because to declare
22 that a statute means something that the legislature did not intend is equivalent to rewriting the
23 statute. *Salem Coll. & Acad., Inc.*, 298 Or at 493–95 (extending an underinclusive law only after
24 determining the legislature’s intent in enacting the law and finding the extension consistent with
25 that intent). Because the purpose of the anti-FGM laws and the statutory scheme enacted to serve
26 that purpose does not include a prohibition on male circumcision or genital cutting generally, it is

1 inconsistent with the legislative intent—and therefore, an invasion into the legislative power—to
2 interpret the anti-FGM statutes as extending to male circumcision.

3 In sum, because a declaration from this Court that “extends” the anti-FGM laws to
4 criminalize male circumcision and require education targeted to specific communities about male
5 circumcision would require rewriting the statutes, that remedy would violate the separation of
6 powers. It is unavailable to Plaintiffs as a matter of law.

7 V. CONCLUSION

8 For the foregoing reasons, no genuine issues of material fact exist and the State is entitled
9 to prevail as a matter of law. Accordingly, this Court should grant summary judgment for
10 Defendant on all claims.

11 DATED July 2, 2026.

12 Respectfully submitted,

13 DAN RAYFIELD
14 Attorney General

15
16 s/ Kate Morrow
SADIE FORZLEY #151025
CARLA A. SCOTT #054725
Senior Assistant Attorneys General
KATE E. MORROW #215611
Assistant Attorney General
Trial Attorneys
Tel (971) 673-1880 / Fax (971) 673-5000
sadie.forzley@doj.oregon.gov
carla.a.scott@doj.oregon.gov
kate.e.morrow@doj.oregon.gov
Of Attorneys for Defendant

1 **CERTIFICATE OF SERVICE**

2 I certify that on July 2, 2026, I served the foregoing DEFENDANT'S MOTION FOR
3 SUMMARY JUDGMENT upon the parties hereto by the method indicated below, and addressed
4 to the following:

5 Lake James H. Perriguey
6 Law Works LLC
7 1906 SW Madison St.
8 Portland, OR 97205
9 *Attorney for Plaintiffs*

HAND DELIVERY
X MAIL DELIVERY
 OVERNIGHT MAIL
X SERVED BY E-FILING
X SERVED BY EMAIL
lake@law-works.com

9 Eric Clopper
10 The Clopper Law Firm PC
11 2482 Cheremoya Ave.
12 Los Angeles, CA 90068
13 *Attorney for Plaintiffs*
14 ** pro hac vice*

HAND DELIVERY
X MAIL DELIVERY
 OVERNIGHT MAIL
X SERVED BY E-FILING
X SERVED BY EMAIL
eric@clopper.law

15
16 s/ Kate Morrow
17 SADIE FORZLEY #151025
18 CARLA A. SCOTT #054725
19 Senior Assistant Attorneys General
20 KATE E. MORROW #215611
21 Assistant Attorney General
22 Trial Attorneys
23 Tel (971) 673-1880 / Fax (971) 673-5000
24 sadie.forzley@doj.oregon.gov
25 carla.a.scott@doj.oregon.gov
26 kate.e.morrow@doj.oregon.gov
Of Attorneys for Defendant