IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARSHA REYNGOLD, M.D., Ph.D.,

Plaintiff,

v.

NATIONAL INSTITUTES OF HEALTH,
NATIONAL LIBRARY OF MEDICINE,
&
DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants.

NO. 24-CIV-6496 (JHR)

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO THE DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

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INTRODUCTION

On August 28, 2024, Plaintiff, Marsha Reyngold, M.D., Ph.D., filed a Complaint against the National Institutes of Health, National Library of Medicine, and the U.S. Department of Health and Human Services (collectively, the "Government" or "Defendants"), alleging that Defendants' policy of not cross-referencing publications listed in PubMed—a search engine owned and operated by Defendants—to the same author who may have used multiple names violates both statutory and constitutional commands. *See* ECF 1. On November 22, 2024, Defendants filed a Motion to Dismiss the complaint, ECF 23, and Memorandum of Law in support of said Motion, ECF 24.

In their submission to the Court, the Government does not deny the substance of Dr. Reyngold's allegations. Specifically, the Government does not deny that Defendants do *not* cross-reference publications to the same author who may have used multiple names. *See* ECF 24 at 4–5. Nor does the Government deny that alternative mechanisms (such as searches by an Open Researcher and Contributor ID ("ORCID")) only work if the searcher knows these alternative identifiers *a priori*. *Id.* at 4. Instead, the Government argues that 1) Dr. Reyngold does not have standing to challenge Defendants' policies because she hasn't suffered a legal injury, and 2) that Defendants' policies do not actually violate any constitutional or statutory commands.

Because Defendants are wrong on both issues, the Court should deny their Motion and let this litigation proceed.

LEGAL STANDARD

To succeed on a motion under Fed. R. Civ. P. 12(b)(6), the movant must show that a complaint fails to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "'The

fundamental aspect of standing is its focus on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated' and 'the standing issue must therefore be resolved irrespective of the merits of the substantive claims.'" *Soule v. Connecticut Ass'n of Schs., Inc.*, 90 F.4th 34, 45 (2d Cir. 2023) (*en banc*) (quoting *United States v. Vazquez*, 145 F.3d 74, 80–81 (2d Cir. 1998)) (alterations omitted). In other words, "'[t]he issue is not whether a plaintiff is likely to prevail ultimately, but whether the claimant is entitled to offer evidence to support the claims.'" *Sims v. Artuz*, 230 F.3d 14, 20 (2d Cir. 2000) (quoting *Chance v. Armstrong*, 143 F.3d 698, 701 (2d Cir. 1998)).

At the 12(b)(6) stage, the Court must accept all allegations of the complaint as true and draw all reasonable inferences in Plaintiff's favor, *see, e.g.*, *Connecticut Gen. Life Ins. Co. v. BioHealth Lab'ys, Inc.*, 988 F.3d 127, 131 (2d Cir. 2021), and it is "the movant [who] bears the burden of proof on a motion to dismiss under Rule 12(b)(6)," *Pearl River Union Free Sch. Dist. v. Duncan*, 56 F. Supp. 3d 339, 351 (S.D.N.Y. 2014).

To establish standing, a Plaintiff "must establish three things: (1) that she has an injury in fact; (2) that there is a causal connection between her injury and the conduct complained of; and (3) that her injury will be redressed by a favorable judicial decision." *Costin v. Glens Falls Hosp.*, 103 F.4th 946, 952 (2d Cir. 2024) (quoting *Harty v. W. Point Realty, Inc.*, 28 F.4th 435, 442 (2d Cir. 2022)) (cleaned up). As with the inquiry under 12(b)(6), in order to satisfy standing, a plaintiff must only clear the plausibility bar. *See Brokamp v. James*, 66 F.4th 374, 386 (2d Cir. 2023), *cert. denied*, 144 S.Ct. 1095 (2024) ("[T]o plead Article III standing, a plaintiff must allege facts plausibly demonstrating" the existence of each of the three standing factors). In the equal protection context, the "injury in fact" requirement is met upon showing "the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the

benefit." *Gratz v. Bollinger*, 539 U.S. 244, 262 (2003). Additionally, "probable economic injury resulting from governmental actions that alter competitive conditions [is] sufficient to satisfy the Article III 'injury-in-fact' requirement." *Clinton v. City of New York*, 524 U.S. 417, 433 (1998) (quoting 3 K. Davis & R. Pierce, Administrative Law Treatise 13–14 (3d ed. 1994)) (cleaned up).

ARGUMENT

Before delving into Defendants' arguments, it is necessary to clarify the nature of Dr. Reyngold's objection to the current PubMed system. Though Dr. Reyngold has changed her last name, she is *not* requesting that PubMed amend the names that appear in the originally published articles. Rather, she is asking PubMed for equal treatment. Dr. Reyngold recognizes and commends Defendants for taking first steps down that road by allowing researchers to create an ORCID and to link all versions of their names to that unique identifier. However, as Dr. Reyngold has explained in her complaint, while PubMed permits authors to create an ORCID and to link all iterations of their names to that number, "even where an author has [done so], selecting a hyperlink with that author's name does not produce articles that have been authored under a prior name." ECF 1 at ¶24. Furthermore, Defendants do not even alert members of the public that a given author has an ORCID, much less advise them on what that identifier is. *See* ECF 1 at ¶25.

This policy places female researchers like Dr. Reyngold at a disadvantage and inflicts a "probable economic injury," *Clinton v. New York*, 524 U.S. at 433, on Dr. Reyngold. Fortunately, this injury can be easily remedied. All Defendants need to do is to display the ORCID associated with any given author when the search is conducted by that author's name. At that point, any searcher can continue the search utilizing the ORCID and have that search return the full set of an author's contributions to scientific literature. It is Defendants' failure to adopt this simple fix that makes their cross-referencing policy unlawful.

I. DR. REYNGOLD HAS STANDING TO PURSUE THIS CASE

In her complaint, Dr. Reyngold alleged that "[b]ecause search results in PubMed do not return Dr. Reyngold's full scientific contribution, she is disadvantaged when applying for various scientific grants, conferences, panel presentations and the like." ECF 1, ¶27. Defendants now suggest that this allegation is insufficient to establish standing, because according to Defendants, Dr. Reyngold "fail[ed] to allege that she has ever been passed over for a professional opportunity as a result of the alleged omission of this single publication from her PubMed search results." ECF 24 at 10. Defendants apparently misunderstand both the allegation and the governing law.

As to the allegation, Dr. Reyngold is not alleging that she failed to receive any particular grant or was passed over for any specific opportunity. Indeed, such an allegation would be hard to make and nearly impossible to prove—after all, grantmaking, hiring, promotion, and similar decisions are made on the basis of a multitude of factors that are weighed in various ways by different decision-makers. Indeed, any given decision may be made by a committee rather than a single decision-maker, with each committee member giving a somewhat different weight to each of the factors that may be relevant to the opportunity in question. Furthermore, the reasoning behind these decisions is more often than not confidential. Thus, it would be near-impossible to prove that a particular opportunity was denied to Dr. Reyngold solely because of PubMed's failure to keep an accurate record of her scientific contributions. Fortunately, the gravamen of Dr. Reyngold's allegation is not that she "has ever been passed over for a professional opportunity," but that she is "she is *disadvantaged* when applying" for such opportunities. ECF 1 at ¶27. The harm that Dr. Reyngold alleges and seeks relief from is the harm stemming from disadvantages imposed on her by Defendants' cross-reference policy. The fact that Dr. Reyngold, through her own hard work, might have been able to mitigate the effects of the harm visited on her by Defendants does not make the harm any less real or any less legally cognizable.

The harm stemming from Defendants' cross-reference policy is the unlawful "imposition of [a] barrier" in Plaintiff's path to a benefit. *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 657 (1993). Indeed, at least insofar as standing analysis is concerned, this case fully tracks *Northeastern Florida*. In *Northeastern Florida*, plaintiff complained that Jacksonville's ordinance requiring a certain percentage of city's contracts to be set aside for minority-owned businesses violated the Equal Protection Clause. The Eleventh Circuit ordered the complaint dismissed for lack of standing because plaintiff "ha[d] not demonstrated that, but for the [challenged] program, [it] would have bid successfully for any of the[] contracts." *Id.* at 660. The Supreme Court reversed, holding that "in the context of a challenge to a set-aside program, the 'injury in fact' is the inability to compete on an equal footing in the bidding process, not the loss of a contract." *Id.* at 666. This is exactly the injury Dr. Reyngold complains of here—the inability to be judged on equal footing, *i.e.*, based on her *actual* scientific contributions, rather than the truncated version presented by PubMed. That she does not allege that "she has ever been [actually] passed over for a professional opportunity" is irrelevant to the standing analysis.[1]

Nor is this analysis confined solely to equal protection challenges. Thus, in *Clinton v. City of New York*, the Supreme Court concluded that one of the challengers to the constitutionality of line-item veto had standing because one of the line-item vetoes issued by President Clinton "inflicted a sufficient *likelihood* of economic injury," 524 U.S. at 432, to satisfy the standing requirement. The Court held that the challenger did not need to show that it actually was unable

[1] True enough, as Defendants correctly point out, in this case the gender-based discrimination is not facial, *i.e.*, the policy does not "expressly classif[y] persons on the basis of race or gender," ECF 24 at 11. However, this is relevant only (if at all) to the *merits* of Dr. Reyngold's challenge not to her *standing* to bring one.

to complete the contemplated transaction because of the line-item veto, and that a showing that such a transaction became less likely was sufficient. Indeed, the Court noted that it "routinely recognizes probable economic injury resulting from governmental actions that alter competitive conditions as sufficient to satisfy the Article III 'injury-in-fact' requirement." *Id.* at 433 (quoting 3 K. Davis & R. Pierce, Administrative Law Treatise 13–14 (3d ed. 1994)) (cleaned up). According to the Court, "any petitioner who is likely to suffer economic injury as a result of governmental action that changes market conditions satisfies this part of the standing test." *Id.* (cleaned up). This is precisely the situation Dr. Reyngold finds herself in. Dr. Reyngold "is likely to suffer economic injury" because she is less competitive in her attempts to secure grants or patients, and this likelihood is increased "as a result of governmental action," to wit, Defendants' creation of and adherence to its discriminatory cross-reference policy.[2]

Furthermore, as Dr. Reyngold explains in the attached affidavit, Exh. 1, patients who seek treatment at her place of employment are provided with information about various doctors who can become their treating physicians, including information on how to search these doctors' scientific contributions on PubMed. It is certainly plausible (if not outright obvious) that at least some patients make their choices, at least in part, based on the number of papers a particular physician has authored. In turn, Dr. Reyngold's compensation depends on her patient load. It is equally plausible that this pattern will continue into the future and that at least some prospective patients will not choose Dr. Reyngold as their doctor, at least in part because it will erroneously

[2] The Second Circuit has followed the same approach. Thus, in *Brody v. Vill. of Port Chester*, 345 F.3d 103 (2d Cir. 2003) (Sotomayor, J.), the Court of Appeals held that a plaintiff has standing to complain about failure to receive proper notice of a condemnation process without having to show that had he gotten the notice, he would have prevailed in his appeal against the Village's initial decision.

appear to those patients (following a PubMed search) that Dr. Reyngold is not as well-published as her male colleagues. As a result, it is plausible (and indeed near certain) that Dr. Reyngold's compensation from her employer will be negatively impacted. It is therefore at the very least plausible that Dr. Reyngold *has* and will *continue to* suffer damages of at least $1—and likely much more than that—damages that the Supreme Court has previously held suffice to establish standing. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 464 (2017) ("For standing purposes, a loss of even a small amount of money is ordinarily an 'injury.'"); *United States v. Students Challenging Regul. Agency Procs. (SCRAP)*, 412 U.S. 669, 689 n.14 (1973) (rejecting any *de minimis* standard for standing).

Moreover, under the governing Second Circuit caselaw, mere "fear or anxiety of future harm" is sufficient to establish standing. *Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006). Because Dr. Reyngold's "fear and anxiety" about losing out on professional opportunities, including grants, conference invitations, being selected by patients, and the like, are in no way irrational or paranoid, she meets the *Denney* standard and thus meets Article III standing requirements.

The Supreme Court's recent decision in *Murthy v. Missouri*, 603 U.S. 43 (2024), in no way changes the analysis. *Murthy* stands for the simple proposition that a plaintiff cannot rely solely on past injury to secure forward-looking relief. However, Dr. Reyngold is not relying merely on past injury. She is alleging that she will be at a competitive disadvantage for various professional opportunities so long as Defendants maintain their discriminatory cross-reference policy. And there is, of course, no dispute that the challenged policy remains in effect. This stands in sharp contrast to the factual situation in *Murthy*. In *Murthy*, the Court found that according to the record before it, the challenged conduct had largely ceased by the time the case reached it (and likely by

the time it was filed.) 603 U.S. at 71 ("On this record, it appears that the frequent, intense communications that took place in 2021 had considerably subsided by 2022.").[3]

Moreover, this case is in a different procedural posture than *Murthy*. That case reached the Supreme Court on the government's appeal from the lower courts' grant of a preliminary injunction—a remedy Plaintiff is not seeking here. The burden is far lower at the pleadings stage, where allegations are accepted as true, than at the preliminary injunction phase, at which time plaintiffs must make a "clear showing" to substantiate standing. *See Murthy*, 603 U.S. at 58 ("At the preliminary injunction stage, then, the plaintiff must make a '*clear showing*' that she is '*likely*' to establish each element of standing.") (quoting *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008)) (emphasis added); *Texas All. for Retired Americans v. Hughs*, 976 F.3d 564, 567 n.1 (5th Cir. 2020) (differentiating between "minimal showing of standing that a plaintiff must show to overcome a motion to dismiss, [and] 'clear showing' of standing required to maintain a preliminary injunction.") (quoting *Barber v. Bryant*, 860 F.3d 345, 352 (5th Cir. 2017)).

As a result, Dr. Reyngold need not show that she is "likely" to prevail on her suit, but merely that she "is entitled to offer evidence to support the claims." *Sims*, 230 F.3d at 20 (quoting

[3] It is worth noting that *Murthy* was decided after some (albeit limited, expedited preliminary-injunction related) discovery had taken place, thus causing the Court to hold that "plaintiff [could no longer] rest on 'mere allegations,' but [was required] instead point to factual evidence." 603 U.S. at 58. In contrast, here no discovery at all has taken place. Accordingly, Dr. Reyngold is entitled to rely on "mere allegations," which this Court, given the procedural posture of the case, must accept as true. It should also be noted that following the Supreme Court's decision and remand, the district court did not dismiss the *Murthy* complaint, but instead permitted additional (though still limited) discovery on the question of standing. This further supports Dr. Reyngold's argument that at this stage of the proceedings, without any discovery having taken place, and given the requirement that all reasonable inferences must be drawn in her favor, dismissal for lack of standing is inappropriate.

Chance, 143 F.3d at 701). Nor is she required to meet the "clear showing" standard. Rather, she must meet a much lower threshold. As the Second Circuit explained "[i]njury in fact is a low threshold, which … 'need not be capable of sustaining a valid cause of action,' but 'may simply be the fear or anxiety of future harm.'" *Ross v. Bank of Am., N.A. (USA)*, 524 F.3d 217, 222 (2d Cir. 2008) (quoting *Denney*, 443 F.3d at 264 (2d Cir.2006)). Thus, *Murthy* offers no help to Defendants.

II. DR. REYNGOLD HAS STATED A CLAIM UNDER THE EQUAL PROTECTION CLAUSE

Dr. Reyngold has plausibly alleged a violation of the Fifth Amendment's equal protection guarantees.[4] Defendants do not appear to dispute Dr. Reyngold's allegation that their cross-referencing policy has disparate impact on men and women. *See* ECF 1 at ¶¶29–30. Dr. Reyngold does not dispute that under the governing caselaw, to succeed on an equal protection claim, she must show that the discrimination on the basis of sex was intentional. Nor does she dispute that Defendants' cross-referencing policy does not discriminate on its face, *i.e.*, the policy does not expressly classify persons on the basis of sex. However, as Defendants acknowledge, facial discrimination is not the only way to satisfy the intentionality requirement. This requirement can be satisfied by showing that the seemingly neutral statute (or policy) has a discriminatory effect and that this effect stems from discriminatory animus.

It can be plausibly inferred from Dr. Reyngold's complaint that Defendants' failure to correct their cross-reference policy even after having been alerted to its discriminatory effects, *see*

[4] Defendants correctly point out that the Fourteenth Amendment's Equal Protection Clause does not directly apply to the federal government, ECF 24 at 11, but as Defendants acknowledge, the "approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment." *Id.* (quoting *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975)).

ECF 1 at ¶35, is a result of discriminatory animus. Defendants deny that they have such an animus, *see* ECF 24 at 13, but this dispute cannot be resolved on a motion to dismiss. Defendants' explanation that PubMed simply "relies on bibliographic data supplied by journals and publishers," ECF 24 at 13, does nothing to explain why it has continued to maintain a system where "even whe[n] an author has created an ORCID and linked all of the iterations of her name to it, selecting a hyperlink with that author's name does not produce articles that have been authored under a prior name," ECF 1 at ¶24.[5]

It is unsurprising that at this stage of litigation, prior to any discovery, Dr. Reyngold is unable to point to any specific facts that would *prove* discriminatory intent on the part of Defendants. But she is not required to do so—that is what discovery is for. Perhaps, Defendants' denial of any discriminatory intent will prove correct, but at this stage of litigation, the Court is obliged to draw all reasonable inferences in Dr. Reyngold's favor. Accordingly, Defendants' motion is premature and should be denied.

III. DR. REYNGOLD HAS STATED A CLAIM UNDER THE DUE PROCESS CLAUSE

Dr. Reyngold has also stated a claim under the Due Process Clause. The gravamen of Dr. Reyngold's Due Process Clause challenge is not that Defendants' policies make it impossible to get either married or divorced (obviously they do not), but that their policies erect unlawful barriers to incidents of marriage and/or impose additional costs on women who choose to get married or divorced. *See* ECF 1 at ¶40 (alleging that "Defendants' adoption of and maintenance of a policy

[5] To clarify, Dr. Reyngold is *not* asking for PubMed to alter the way names are listed in the database or alter electronic versions of journals that it makes available. Rather, all Dr. Reyngold seeks is for PubMed to *cross-reference* different versions of her name on the basis of an ORCID that she has previously created. In other words, all Dr. Reyngold asks is for PubMed to list her ORCID when anyone clicks on the hyperlink with her name. (Once the ORCID is displayed, the searcher would be able to search by ORCID to obtain a full listing of articles).

of refusing to cross[-]reference authors of scientific publications, even after they have set up a unique identifier like ORCID, to all the names that such authors have used *unjustifiably burdens* the right to marry and/or to divorce.") (emphasis added). Defendants do not actually dispute that their policy erects a burden to marriage and/or divorce, and instead argue that the burden is not a sufficiently "direct and substantial burden" to trigger strict scrutiny. ECF 24 at 16–17. However, *all* of the cases cited by Defendants for the proposition that, so long as marriage or divorce themselves remain possible, incidental barriers are of no consequence concern the availability of immigration benefits that flow from marital union. None of the cases cited by Defendants stands for the broader proposition (advanced by them) that no restriction short of direct prohibition on the exercise of the fundamental right to marriage runs afoul of the Constitution. To the contrary, the Supreme "Court has never required that plaintiffs be fully prevented from exercising their right to marriage before invoking it. Instead, the question is whether a challenged government action burdens the right." *Dep't of State v. Muñoz*, 602 U.S. 899, 933 (2024) (Sotomayor, J., dissenting).

And while legislation at issue in *Muñoz* and other cases cited by Defendants did burden the right to marry, as the Court explained, the immigration context is unique. *See id.* at 910–12 (explaining that "the right to bring a noncitizen spouse to the United States is [not] "'deeply rooted in this Nation's history and tradition.'") (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). But that doesn't follow that all other usual incidents to marriage are similarly not "deeply rooted in this Nation's history and tradition." *Id.* For example, the right and ability to change one's name upon marriage (or divorce) is so deeply rooted in this Nation's history and tradition and is so central to marriage "in its comprehensive sense," *Obergefell v. Hodges*, 576 U.S. 644, 671 (2015), that "79% of women under the age of 50 choose, upon marriage, to take their partner's name," ECF 1 at ¶28, despite the detrimental effect such a choice may have on "their careers, work

relationships, and job prospects," *id.* at ¶29. Thus, even if the right asserted by Dr. Reyngold were to be re-characterized not as a fundamental right to marry and divorce, but a right to change one's name upon marriage (or divorce), the same analysis applies. And under this analysis, Defendants cannot meet their burden. The mere fact that Dr. Reyngold was previously married and divorced (and had changed her name) does nothing to weaken her claim that Defendants' cross-referencing policy places impermissible obstacles to her exercise of the right to do so.

Furthermore, even on Defendants' own terms, *i.e.*, under rational basis review, *see* ECF 24 at 18, they have not established that their cross-referencing policy meets the standard. Dr. Reyngold does not dispute that it is rational for PubMed search results to reflect the actual language (whether title of the article or author's name) in the original publication. Indeed, doing anything different would make PubMed searches problematic. But it is *not* rational to refuse to identify each author by her ORCID when the hyperlink to that author's name is clicked. To be clear (and Defendants do not dispute it), once an author creates an ORCID and links all versions of her name to it, PubMed has all the necessary information to cross-reference the author's different names to the same ID. Indeed, PubMed *already does so*, because whenever someone searches by ORCID, all linked versions of an author's name come up and are shown on the screen, allowing the searcher to "click through" all names to find all articles. But the reverse is not true, *i.e.*, when one searches by an author's last name, her ORCID does not appear on the screen and thus the searcher is unable to "click through" to find out what else may be linked to the searched name. Defendants have advanced no reasons, rational or otherwise, in support of their refusal to make this search option available. Defendants do not even suggest that adding this feature to the PubMed search engine would be difficult or costly. Accordingly, at this stage of litigation, Defendants failed to meet their burden, so their motion to dismiss Dr. Reyngold's Due Process claim should be denied.

IV. DR. REYNGOLD HAS STATED A CLAIM UNDER THE ADMINISTRATIVE PROCEDURE ACT

Finally, Dr. Reyngold has stated a claim under the APA, because Defendants' cross-referencing policy violates the statutory requirement that the National Library of Medicine "organize the materials [such as 'books, periodicals, prints, films, recording, and other library materials pertinent to medicine] by appropriate cataloging, indexing, and bibliographical listings." 42 U.S.C. § 286(b)(2).

Once again, Defendants misunderstand (and therefore mischaracterize) Dr. Reyngold's allegations. Defendants argue that because "[a]ppropriate" merely means 'suitable for a particular person, condition, occasion, or place; fitting,'" ECF 24 at 19 (quoting American Heritage Dictionary (5th ed. 2022)) (cleaned up), and because it is entirely "suitable" to "organize[] material according to bibliographical listings [which] are provided directly by the publisher of the material itself," *id.*, they have complied with the statute. But Dr. Reyngold does not take issue with, and indeed endorses, PubMed's obvious choice to organize bibliographic listings in the manner described. What Dr. Reyngold objects to (as previously explained) is Defendants' failure to display (and hyperlink) her ORCID following a third party's search of PubMed by her last name.

Defendants necessarily have this capacity because when the search is done in reverse (*i.e.*, by ORCID), PubMed returns all the names associated with a particular ORCID. Because there is nothing "appropriate" nor "suitable" to a system that, despite the fact that "79% of women under the age of 50 choose, upon marriage, to take their partner's name," ECF 1 at ¶28, fails to structure its search engine in a way to recognize this effect, to the detriment of female scientists like Dr. Reyngold. A failure to recognize and address obvious facts is by definition arbitrary, capricious, and irrational. *See Ohio v. EPA*, 603 U.S. 279, 292–93 (2024) (holding that "[a]n agency action qualifies as 'arbitrary' or 'capricious'" when the agency "simply ignore[s] 'an important aspect of

the problem.'"); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (holding that "[i]t would be arbitrary or capricious to ignore" newly developed facts).

Defendants have offered no explanation as to why they have ignored the well-known fact that a vast majority of women change their names upon marriage when designing and maintaining PubMed's search functionalities. Nor have they explained why they fail to display a contributor's ORCID when the initial search is conducted by last name. Absent such explanations, and because at this stage of litigation the Court must draw all reasonable inferences in favor of Dr. Reyngold, the Court should deny Defendants' Motion to Dismiss.

CONCLUSION

Because Dr. Reyngold has suffered a particularized injury and will continue to suffer it absent relief from this Court, and because she has alleged sufficient facts that make her claims plausible on their face, the Court should deny Defendants' Motion to Dismiss, ECF 23.

January 17, 2025

Respectfully submitted,

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