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IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

COMMON PLEAS COURTS

PRETERM-CLEVELAND, *et al.*,

Plaintiffs,

v.

DAVID YOST, *et al.*,

Defendants.

Case No.: **A 2203203**

Judge: _____

PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER FOLLOWED BY
PRELIMINARY INJUNCTION;
REQUEST FOR HEARING

Pursuant to Civ.R. 65, Plaintiffs Preterm-Cleveland (“Preterm”); Planned Parenthood Southwest Ohio Region (“PPSWO”); Sharon Liner, M.D.; Planned Parenthood Greater Ohio (“PPGOH”); Women’s Med Group Professional Corporation (“WMGPC”); and Northeast Ohio Women’s Center, LLC (“NEOWC”) (collectively, “Plaintiffs”) move this Court for a temporary restraining order followed by a preliminary injunction to enjoin enforcement of Am.S.B. 2019-Ohio Laws File 23 (“S.B. 23”).

S.B. 23 bans virtually all abortions in Ohio starting at approximately six weeks of pregnancy, as dated from the first day of a patient’s last menstrual period (“LMP”). This allows approximately two weeks—at most—after a missed period to obtain an abortion, before many patients even know they are pregnant. Since taking effect on June 24, 2022, S.B. 23 has had devastating consequences on the health and well-being of Ohioans seeking fundamental reproductive health care. As supported by the accompanying Memorandum, its attached affidavits, the Complaint, and its attached exhibits, emergency injunctive relief is necessary to stop ongoing irreparable harm currently being inflicted on Plaintiffs’ patients by S.B. 23 and to prevent the closing of Plaintiff WMGPC on September 15.

S.B. 23 violates Ohioans' fundamental rights, including the fundamental right to abortion, as guaranteed by the Ohio Constitution's broad protections for individual liberties under Article I, Sections 1, 16, and 21, and the equal protection guarantee under Article I, Section 2. Plaintiffs have been forced to stop providing nearly all abortions, leaving many patients in Ohio without access to abortion care and forcing them to either attempt to travel long distances out of state to access care, at great burden and expense, or to continue pregnancies against their will. Without relief from this Court, S.B. 23 will continue to deprive numerous Ohioans of their fundamental constitutional rights and inflict serious and irreparable harm on their physical, mental and emotional health and well-being.

Plaintiffs request a hearing on this motion on a date that will allow sufficient time for this Court to issue the requested TRO before September 15, 2022, when Plaintiff WMGPC will be forced to close its Dayton area clinic if S.B. 23 remains in effect and Indiana's recently enacted total ban takes effect. Plaintiffs further request an expedited briefing and hearing schedule on the preliminary injunction that will provide sufficient time for the issuance of a preliminary injunction prior to the expiration of any TRO. Proposed orders will be filed separately.

Respectfully submitted,

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER FOLLOWED BY PRELIMINARY INJUNCTION**

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INTRODUCTION

Plaintiffs Preterm, PPSWO, Sharon Liner, M.D., PPGOH, WMGPC, and NEOWC (collectively “Plaintiffs”) move on behalf of themselves and their patients for a temporary restraining order followed by a preliminary injunction to enjoin Ohio Senate Bill 23 (“S.B. 23”), which has effected a near-total ban on abortion in Ohio.

S.B. 23 bans abortion after the detection of embryonic cardiac activity, which occurs approximately six weeks after the first day of a pregnant woman’s last menstrual period (“LMP”) and can occur as early as five weeks.¹ 2019 Am.Sub.S.B. No. 23; Compl. ¶ 4. Since taking effect on June 24, 2022, following the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* (“*Jackson Women’s Health Organization*”), S.B. 23 has had a catastrophic impact in Ohio. Each day S.B. 23 remains in effect, the harms to Ohioans’ health and well-being increase. Some Ohioans, including minors who were victims of sexual assault, have been forced to travel long distances out of state to access abortion care, enduring financial expense, logistical burdens, and delays in accessing care. Compl. ¶¶ 57, 59. For many other Ohioans, out-of-state travel is simply not an option. These women are forced to either carry their pregnancies to term and give birth against their will—incurring irreparable physical, economic, emotional, and psychological harms—or to resort to potentially unsafe methods of abortion. *Id.* at ¶¶ 7, 63. Absent immediate injunctive relief from this Court, Ohioans will continue to suffer serious and irreparable harms under a patently unconstitutional law. Plaintiffs respectfully request that this Court intervene to prevent this unconstitutional deprivation of rights and harm by issuing a

¹ Plaintiffs sometimes use “woman” or “women” herein to describe people who are or may become pregnant, but people of other gender identities, including transgender men and gender-diverse individuals, may also become pregnant, seek abortion services, and be harmed by S.B. 23.

temporary restraining order before September 15, 2022, when Plaintiff WMGPC will be forced to close its Dayton area clinic if S.B. 23 remains in effect and Indiana's recently enacted total ban takes effect. Plaintiffs further request that the Court set an expedited hearing and briefing schedule on Plaintiffs' request for a preliminary injunction.

PROCEDURAL BACKGROUND

On June 24, 2022, hours after the U.S. Supreme Court's decision in *Jackson Women's Health Organization*—which overruled nearly 50 years of precedent in holding that the right to abortion is not protected by the substantive due process clause of Fourteenth Amendment to the federal Constitution—the U.S. District Court for the Southern District of Ohio dissolved the injunction that had prevented S.B. 23's enforcement for nearly three years. On June 29, Plaintiffs filed a petition for a writ of mandamus with the Ohio Supreme Court, seeking an order from the Court declaring S.B. 23 unconstitutional, as well as a motion for an emergency stay of S.B. 23 while the merits of the writ of mandamus were pending. *See State ex rel. Preterm-Cleveland v. Yost*, Case No. 2022-0803. On July 1, 2022, the Ohio Supreme Court denied the motion for an emergency stay. *See id.*, announcement No. 2022-Ohio-2317.

While Plaintiffs' petition for mandamus has remained pending, S.B. 23 has been inflicting irreparable harm on Ohioans in need of vital abortion care, forcing some of Plaintiffs' patients to travel hundreds of miles out of state to try to access abortion care, and others who are unable to make the trip to continue pregnancies against their will or resort to potentially dangerous attempts to self-induce outside the medical system. *See infra*, at 11-17; *see also* Affidavit of Dr. Sharon Liner in Support of Plaintiffs' Motion for Temporary Restraining Order Followed by Preliminary Injunction ("Liner Aff.") ¶¶ 8, 11; Affidavit of David Burkons, M.D. in Support of Plaintiffs' Motion for Temporary Restraining Order Followed by Preliminary

Injunction (“Burkons Aff.”) ¶ 10; Affidavit of Allegra Pierce in Support of Plaintiffs’ Motion for Temporary Restraining Order Followed by Preliminary Injunction (“Pierce Aff.”) ¶ 6.

Moreover, Plaintiff WMGPC’s Dayton area clinic now faces imminent closure if S.B. 23 continues to remain in effect and Indiana’s new total ban on abortion also takes effect, which it is slated to do on September 15, 2022.² Given the persistent and ongoing irreparable harm and the imminent threat of closure of WMGPC’s Dayton clinic, Plaintiffs cannot wait any longer for a decision from the Ohio Supreme Court on the merits of their petition. Accordingly, on September 2, 2022, Plaintiffs applied to dismiss their petition, and now seek emergency relief from this Court.

FACTUAL BACKGROUND

A. Abortion is Extremely Common and Safe Medical Care, While Forced Pregnancy Imposes Serious Harms

The decision to terminate a pregnancy is informed by a combination of diverse, complex, and interrelated factors that are intimately related to an individual’s values, beliefs, culture, religion, health status, reproductive history, familial situation, resources, and economic stability. Compl. ¶ 28. Approximately one in four women in this country will have an abortion by the age of 45. See Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 Am.J.Pub.Health 1904, 1907 (2017). Legal abortion is one of the safest medical procedures in the United States and is substantially safer than continuing a pregnancy through to childbirth. Compl. ¶¶ 32-33. Complications from both medication and procedural abortion are extremely rare. *Id.* at ¶ 34; see also Natl. Academies of Sciences, Eng. & Medicine, *The Safety and Quality of Abortion Care in the United*

² See Compl., *Planned Parenthood Greater Northwest, Haw., Alaska, Ind., Ky., Inc. v. Licensing Bd. of Ind.*, No. 53C06-2208-PL-001756 (Ind.Cir.Ct., Monroe Cnty. Aug. 31, 2022).

States, 55, 60 (2018) (finding that complications from medication abortion occur in “no more than a fraction of a percent of patients” and that procedural abortions “rarely result in complications”).

In contrast, forcing someone to carry a pregnancy to term subjects them to devastating consequences. Compl. ¶¶ 35-39. Maternal mortality is a persistent crisis in the United States, and Ohio is no exception. U.S. Dept. of Health & Hum. Serv., Health Res. & Serv. Admin., Justification of Estimates for Appropriations Committees 172 (2022) (“In 2015, the U.S. ranked 46th among the 181 countries with a maternal mortality rate that is among the highest of developed countries.”). In Ohio, there are 14.7 deaths per 100,000 births. Ohio Dept. of Health, *A Report on Pregnancy-Associated Deaths in Ohio 2008 - 2016* (2019), <https://tinyurl.com/bk6yphh3> (accessed Aug. 31, 2022). In addition, during pregnancy, many patients are at high risk for health complications, such as high blood pressure and diabetes, or conditions that develop during the pregnancy, like infections or preterm labor. Natl. Inst. of Child Health & Human Dev., *What Are Some Common Complications of Pregnancy?*, <https://www.nichd.nih.gov/health/topics/pregnancy/conditioninfo/complications> (accessed Aug. 31, 2022) (identifying all as “common complications of pregnancy” in addition to infections, preterm labor, depression and anxiety, pregnancy loss or miscarriage, and stillbirth).

Pregnancy, childbirth, and additional children may also exacerbate an already difficult situation for those who have suffered trauma, such as sexual assault or domestic violence. Compl. ¶ 31. Survivors of intimate partner violence are “likely to have a particularly high risk of experiencing an unintended pregnancy.” Kinsey Hasstedt & Andrea Rowan, *Understanding Intimate Partner Violence as a Sexual and Reproductive Health and Rights Issue in the United States* 19 *Guttmacher Pol’y Rev.* 38 (2016),

<https://www.guttmacher.org/gpr/2016/07/understanding-intimate-partner-violence-sexual-and-reproductive-health-and-rights-issue> (accessed Aug. 31, 2022).

Forcing a person to continue an unwanted pregnancy may also have a detrimental impact on mental health. See Antonia Biggs et al., *Women's Mental Health and Well-Being 5 Years After Receiving or Being Denied an Abortion: A Prospective, Longitudinal Cohort Study*, 74 JAMA Psychiatry 169, 172 (2017) (finding that a week after seeking an abortion, women turned away because of gestational age limits are significantly more likely to report symptoms of anxiety than women who receive an abortion, and that anxiety in women who had abortions declined following the abortion but remained in women who were forced to carry to term).

Beyond the physical and emotional harms, the inability to access abortion also inflicts significant economic hardship. In the United States, the average new mother with health insurance will pay more than \$4,500 out of pocket for her labor and delivery alone. Michelle Moniz et al., *Out-Of-Pocket Spending for Maternity Care Among Women With Employer-Based Insurance*, 30 Health Affairs 1 (Jan. 2020). And once a child is born, it can place economic and emotional strain on a family and may interfere with an individual's life and career goals. Compl. ¶ 29. In addition, as most patients who seek abortion already have at least one child, families must consider how an additional child will impact their ability to care for the children they already have. *Id.*

These consequences of forced pregnancy fall disproportionately on communities of color. Compl. ¶ 39. In 2020, 48.1 percent of Ohioans who obtained abortions were Black, while the Black community represented only 13.2 percent of Ohio's population; 12.1 percent of Ohioans who obtained abortions were from other communities of color (Indigenous (American Indian), Asian/Pacific Islander, Multiracial, and Hispanic Ohioans) while those communities made up

only 10 percent of Ohio’s population. Ohio Dept. of Health, *Induced Abortions in Ohio*, Figure 2, Table 1, <https://tinyurl.com/2p8b9ayk> (accessed Aug. 31, 2022); U.S. Census Bureau, *Quick Facts: Ohio*, <https://www.census.gov/quickfacts/OH> (accessed Aug. 31, 2022). The maternal mortality rate in Ohio is also significantly higher for Black women: In Ohio, Black women are two and a half times more likely to die from a cause related to pregnancy than white women. Ohio Dept. of Health, *A Report on Pregnancy-Associated Deaths in Ohio 2008 - 2016* (2019), <https://tinyurl.com/bk6yphh3> (accessed Aug. 31, 2022) (Black women in Ohio have a maternal mortality rate of 29.5 deaths per 100,000 compared to 11.5 deaths per 100,000 births for white women). Additionally, in Ohio, Black infants are three times more likely than white infants to die before their first birthday. Ohio Dep’t of Health, *Ohio Infant Deaths in 2017 Second-Lowest on Record While Racial Disparities in Birth Outcomes Continued* (Dec. 6, 2018), <https://tinyurl.com/4zyehvna> (accessed Aug. 31, 2022); *see also* Hearing on S.B. 23, 133rd Leg.Sess. (2019) (statement of Sen. Sandra Williams) (“Ohio is continuing to fail to close the gap in racial disparities when it comes to infant mortality.”).

B. The Six-Week Ban

1. Statutory Framework

Under S.B. 23, if a patient’s pregnancy is located in the uterus, the law requires providers to determine whether embryonic cardiac activity is present and, if it is, makes it a crime to “perform or induce an abortion.” 2019 Am.Sub.S.B. No. 23, Section 1, amending R.C. 2919.195(A). Such activity typically presents at approximately six weeks LMP but can occur as early as five weeks LMP. Compl. ¶ 49. This is a very early point in gestation: the “cardiac

activity” detected at this stage is from cells that form the basis for the development of the heart later in pregnancy. *Id.*

S.B. 23 provides only two limited exceptions. Abortion is permitted after cardiac activity is detected only if it is necessary to prevent (1) the “death of the pregnant woman,” or (2) a “serious risk of the substantial and irreversible impairment of a major bodily function.” 2019 Am.Sub.S.B. No. 23, Section 1, amending R.C. 2919.195(B). “Serious risk of the substantial and irreversible impairment of a major bodily function” is defined in the statute to mean “any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function.” R.C. 2919.19(A)(12) and 2919.16(K). A “medically diagnosed condition that constitutes a ‘serious risk of the substantial and irreversible impairment of a major bodily function’ includes pre-eclampsia, inevitable abortion, and premature rupture of the membranes,” and “may include, but is not limited to, diabetes and multiple sclerosis,” but explicitly “does not include a condition related to the woman’s mental health.” *Id.*

A violation of S.B. 23 is a fifth-degree felony, punishable by up to one year in prison and a fine of \$2,500. 2019 Am.Sub.S.B. No. 23, Section 1, amending R.C. 2919.195(A); R.C. 2929.14(A)(5) and 2929.18(A)(3)(e). In addition to criminal penalties, the state medical board may assess a forfeiture of up to \$20,000 for each violation of S.B. 23, and limit, revoke, or suspend a physician’s medical license. *See* 2019 Am.Sub.S.B. No. 23, Section 1, amending R.C. 2919.1912(A) and 4731.22(B)(1). Moreover, Plaintiffs’ clinics could face civil penalties and revocation of their ambulatory surgical center licenses for a violation of S.B. 23. R.C. 3702.32; R.C. 3702.30(A)(2)(a).

2. S.B. 23 Bans Abortion Before Many Women Know They Are Pregnant And Marks A Radical Departure from the Longstanding Prior State of Abortion Access

Until June 24, 2022, abortion was legal and available in Ohio prior to 20 weeks post-fertilization, which is 22 weeks LMP. R.C. 2919.201; Compl. ¶ 40. In accordance with existing law, Plaintiffs provided medication abortion (available up to ten weeks LMP), and/or procedural abortion (available up to 21 weeks and 6 days LMP), depending on the clinic. Compl. ¶¶ 9-10, 12-14.

S.B. 23 has radically shifted the abortion landscape in Ohio by banning abortion starting at approximately six weeks, which is such an early point in pregnancy that many women are not even aware they are pregnant. *Id.* at ¶¶ 49, 51. For example, many women do not have periods at precise, regular intervals every four weeks, often due to their age or common medical conditions. *Id.* at ¶ 51; Office on Women's Health, U.S. Dept. of Health & Human Servs., *Period Problems*, <https://www.womenshealth.gov/menstrual-cycle/period-problems/#2> (accessed Aug. 31, 2022); *see also* Lucy Whitaker & Hilary O.D. Critchley, *Abnormal Uterine Bleeding*, 34 *Best Practice & Research Clinical Obstetrics & Gynecology* 54 (July 2016) (finding that 14 to 25 percent of women have irregular menstrual cycles). A ban on abortion at and after six weeks only allows two weeks, at most, for a woman to learn she is pregnant, decide whether to have an abortion, and seek and obtain abortion care.

For those who do know they are pregnant, two weeks often is not sufficient time to decide to end a pregnancy and make necessary arrangements to receive abortion care. More time is frequently needed to obtain leave from work, arrange for childcare (since the majority of women who obtain abortions already have at least one child), find transportation to a provider, secure funds for the abortion and/or travel, and actually travel to a provider. Compl. ¶ 52.

The delay is compounded by Ohio’s other abortion regulations. Ohio law mandates that patients make an in-person trip to a clinic at least 24 hours before obtaining an abortion for mandated counseling and consent procedures. R.C. 2317.56. In addition, Ohio law prohibits the use of public funds to cover abortion services in nearly all circumstances, making it more difficult for women—particularly those who are poor or low-income—to obtain the money necessary to promptly access abortion care. *See* R.C. 9.04 and 3901.87; R.C. 5101.56.

For all of these reasons, it is extremely difficult to obtain an abortion in Ohio before six weeks LMP. Indeed, before S.B. 23 went into effect, 89 percent of abortions in Ohio took place after six weeks LMP. Abigail Norris Turner et al., *Who Loses Access to Legal Abortion With a 6-Week Ban?*, *Am. J. of Obstetrics & Gynecology* (June 25, 2022), [https://www.ajog.org/article/S0002-9378\(22\)00486-0/fulltext](https://www.ajog.org/article/S0002-9378(22)00486-0/fulltext) (accessed Aug. 31, 2022).

C. S.B. 23’s Impact Since Going into Effect

S.B. 23 has drastically restricted Ohioans’ access to abortion and will continue to do so absent injunctive relief. When S.B. 23 went into effect, providers canceled the appointments of patients—some of whom had already had their first of two mandated appointments—because they were past S.B. 23’s six-week-limit. And in the months since, Plaintiffs have been forced to turn away many others seeking abortion care. *See, e.g.* Liner Aff. ¶ 5 (PPSWO has “had to cancel over 600 patient appointments”). By way of example:

- Affidavit of Dr. Adarsh E. Krishen in Support of Plaintiffs’ Motion for Temporary Restraining Order Followed by Preliminary Injunction (“Krishen Aff.”) ¶ 19: “[O]ne patient who was experiencing homelessness and between shelters...began to experience panic and stress because she did not see how she would be able to travel out of state.”
- Burkons Aff. ¶ 9: “[O]ne young woman, who became pregnant near the end of her senior year of high school, suffered from hyperemesis (excessive vomiting) as a result of her pregnancy. None of the medication that she had been prescribed for her condition was working, and she was so ill that she could not sit in a classroom

without throwing up. The pregnancy was therefore preventing the young woman from finishing her schooling. She was hoping to end her pregnancy and obtain her high school diploma, but we had to turn her away shortly after the ban went into effect. We later learned that she ended up in the hospital on suicide watch.”

- Pierce Aff. ¶ 4: “I saw a 19-year-old patient...I detected fetal heart tones. When I broke this news to her and explained that Preterm would be unable to provide her with an abortion because of SB 23, she was shocked and began hysterically cryingShe was so upset that she could not move. Many members of our staff tried to comfort her, myself included, but it took her several hours to calm down enough to leave the clinic.”

As these stories show, Ohio’s most vulnerable and innocent citizens bear the brunt of S.B. 23’s ban. In another particularly horrifying and widely-covered example, soon after S.B. 23 took effect, a 10-year-old rape victim was unable to receive an abortion in Ohio because she was six weeks and three days pregnant. She was therefore forced to seek care out of state. *See* Vakil, Caroline, *10-year-old girl denied abortion in Ohio*, The Hill (July 2, 2022, 9:30 A.M.), <https://thehill.com/policy/healthcare/3544588-10-year-old-girl-denied-abortion-in-ohio/> (accessed Aug. 31, 2022); *see also* Bethany Bruner et al., *Arrest made in rape of Ohio girl that led to Indiana abortion drawing international attention*, The Columbus Dispatch (July 13, 2022, updated July 31, 2022, 1:25 P.M.), <https://www.dispatch.com/story/news/2022/07/13/columbus-man-charged-rape-10-year-old-led-abortion-in-indiana/10046625002/> (accessed Aug. 31, 2022) (the victim’s accused rapist confessed to raping the 10-year-old and was arrested on July 12, 2022). As but one other example, on June 24, a sixteen-year-old patient visited WMCD for her statutorily-mandated pre-procedure appointment, during which cardiac activity was detected, and she was scheduled to return for a medication abortion four days later. Affidavit of Aeran Trick in Support of Plaintiffs’ Motion for Temporary Restraining Order Followed by Preliminary Injunction (“Trick Aff.”) ¶ 7. Mere hours after she left the clinic, SB 23 went into effect, and WMCD was forced to cancel the patient’s appointment. *See id.*

The consequences of being turned away are devastating for many patients. One woman with stage III melanoma was denied cancer treatment by her physicians until she was able to receive an abortion—which she could not do in Ohio because of S.B. 23. Trick Aff. ¶ 6. When the patient learned she could not receive an abortion in Ohio, she “broke down and cried inconsolably despite the attempts of multiple staff members...to comfort her.” *Id.* Some patients have even been denied abortion care when their lives were at risk—despite falling within the scope of S.B. 23’s narrow exceptions—because doctors are afraid to treat them due to the threat of S.B. 23’s severe criminal and civil penalties. *See* Burkons Aff. ¶ 17 (“We have also had two patients who confided that they had visited hospital ERs for treatment of tubal (ectopic) pregnancies, but the doctors were afraid to treat them without being absolutely certain that there was no intrauterine pregnancy. In one case, the patient’s fallopian tube ruptured, and surgery rather than medical management was required. In the other, my nurse intervened to convince the physician to treat the patient, but only several days later, which was emotionally wrenching for the patient.”); *see also* Abigail Abrams, “*Never Ending Nightmare*”: *An Ohio Woman Was Forced to Travel Out of State for an Abortion*, *Time* (Aug. 29, 2022, 7:00 A.M.), <https://time.com/6208860/ohio-woman-forced-travel-abortion/> (accessed Aug. 31, 2022) (detailing the difficulties one woman faced in obtaining an out-of-state abortion after she learned at 20 weeks LMP that her fetus would likely not survive outside the womb and carrying to term could cause her to “become dangerously ill or suffer a blood clot that could threaten her life”; her hospital in Ohio would not provide an abortion because it “wasn’t confident her conditions met the limited exceptions in [S.B. 23]”).

For those patients past six weeks LMP, traveling out of state is the only option to obtain an abortion, but appointments in other states are increasingly difficult to secure given rising

demand on out-of-state providers and additional abortion bans taking effect. *See* Liner Aff. ¶ 7; Krishen Aff. ¶ 7; Pierce Aff. ¶ 6; *see also* Compl. ¶ 61. In Indiana, where many patients in Ohio have sought abortion care since S.B. 23 went into effect, Governor Eric Holcomb has signed into law a near-total ban on abortion that is expected to go into effect on September 15. Arika Herron, *Indiana adopts near-total abortion ban as governor signs SB 1 into law*, *IndyStar* (Aug. 5, 2022, updated Aug. 6, 2022, 6:07 P.M.)

<https://www.indystar.com/story/news/politics/2022/08/05/indiana-abortion-law-passed-final-vote-to-come/65391000007/> (accessed Aug. 31, 2022); *see also supra* note 2, at 6.³ Kentucky has also passed a near-total ban on abortion, which remains in effect pending a final decision from the state supreme court. *See EMW Women’s Surgical Ctr., P.S.C. v. Cameron*, No. 2022-SC-0326-I, 2022 WL 3641196 (Ky. Aug. 18, 2022) And clinics in other nearby states, such as Michigan and Pennsylvania, are already experiencing long wait times. *Burkons Aff.* ¶ 13 (“[S]ome Pennsylvania clinics are scheduling patients a month out.”); *Krishen Aff.* ¶ 7 (“[P]roviders in the Pittsburgh area have had waiting lists of over 300 patients.”); *Liner Aff.* ¶ 7 (“Though Michigan is closer for most of our patients, it has been hard for patients to schedule appointments in a timely manner due to the lack of availability.”).

Moreover, travel to another state is often extremely difficult, if not entirely impracticable, for many patients due to time and expense constraints:

- *Liner Aff.* ¶ 13: One woman stated that “the only time she can go to a medical appointment is when her children are in day care, and she needs to pick them up by 3:00 pm. She asked, ‘How am I supposed to get out of the state?’”

³ If Indiana’s ban goes into effect, Indiana will no longer be an option for patients from Ohio in need of abortion care. *See* Affidavit of W.M. Martin Haskell, M.D., in support of Plaintiffs’ Motion for Temporary Restraining Order Followed by Preliminary Injunction (“Haskell Aff.”) ¶¶ 11-12.

- Trick Aff. ¶ 3: “[A] number of patients told us that they were unable to travel out of state for abortion care. Moreover, about ten of our previously scheduled patients were already too far along in their pregnancy to obtain an abortion in Indiana, where our Indianapolis clinic only provides up to 13 weeks and 6 days LMP[.]”
- Krishen Aff. ¶¶ 10-11: “The need to travel increases the financial burden of an abortion dramatically, as it is exacerbated by travel costs and greater procedural costs due to a later gestational age and the increased time off work results in loss of wages.... We have also spoken with parents who must bring their children to their appointments because they have no childcare options. This increases travel-related costs (e.g., needing a larger hotel room, more expensive food, etc.) and requires a reliable support person to serve dual roles of escort and child care provider. Not every patient has such support readily available.”
- Pierce Aff. ¶ 6: “The majority of patients I talk to say that they can’t travel out of state to access abortion care. Even though many patients can access sources of funding for seeking an abortion, there are so many barriers that make traveling out of state inaccessible for many of our patients, including the cost of travel, child care responsibilities, and difficulty getting time off of work, to name just a few. Even those patients who are able to travel out of state often have a hard time getting an appointment due to increasingly long wait times at clinics in states where abortion is still legal.”

This is particularly true for those in low-income communities, which comprise the majority of patients seeking abortion. See Natl. Academies of Sciences, Eng. & Medicine, *The Safety and Quality of Abortion Care in the United States*, 29 (2018) (49 percent of people seeking an abortion had a household income below the federal poverty level (FPL) and 26 percent had a household income of 100 to 199 percent of the FPL); see also Compl. ¶ 66. Patients in these communities are already more likely to be subjected to delays in seeking medical care because of associated costs. See Bd. of Governors of the Fed. Res. Sys., *Report on Economic Well-Being of U.S. Households in 2021* (May 2022), <https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm> (accessed Aug. 31, 2022). It is also the case for patients experiencing intimate partner violence,

for whom the burdens of traveling out of state may pose a “significant, if not insurmountable, burden.” *See* Krishen Aff. ¶¶ 9, 13.

Women who cannot obtain an abortion in Ohio and are unable to obtain care out of state are being forced to either carry their pregnancy to term and give birth against their will— incurring irreparable physical, economic, emotional, and psychological harms—or to resort to potentially unsafe methods of abortion. Compl. ¶ 63; *see also* Diana Greene Foster, Ph.D, *The Turnaway Study: The Cost of Denying Women Access to Abortion* (2020) (examining the physical, mental, and socioeconomic consequences of receiving an abortion compared to carrying an unwanted pregnancy to term). Indeed, at Plaintiffs’ facilities, patients have “threatene[ed] to commit suicide” after being denied abortion care. Limer Aff. ¶ 11 (“We have had at least 3 patients threaten to commit suicide.”); Burkons Aff. ¶ 9 (describing a young woman who ended up on suicide watch after being denied an abortion in Ohio). Others have indicated they would attempt dangerous methods for self-inducing abortions after being denied care at a health center. Limer Aff. ¶ 11 (“[A] patient stated that she would attempt to terminate her pregnancy by drinking bleach. Another asked how much Vitamin C she would need to take to terminate her pregnancy.”); Burkons Aff. ¶ 10 (“One patient said ... ‘What do you want me to do, ... throw myself down the steps?’”). Neither the limited exceptions to S.B. 23—which allow an abortion only to prevent the “death of the pregnant woman” or the “serious risk of the substantial and irreversible impairment of a major bodily function” but explicitly exclude mental health conditions—nor the Attorney General’s vague and non-binding guidance adequately address these concerns. *See* 2019 Am.Sub.S.B. No. 23, Section 1, amending R.C. 2919.195(A); *see also* Compl. ¶ 45. Moreover, time is particularly of the essence in light of the imminent closure of Plaintiff WMGPC’s Dayton clinic. *See* Haskell Aff. ¶¶ 11-12.

Only this Court's immediate intervention can stop the serious and irreparable harms that Ohioans experience each day that S.B. 23 is in effect.

ARGUMENT

A. Standard of Review

Plaintiffs seek a temporary restraining order followed by a preliminary injunction to stop the ongoing constitutional, medical, emotional, financial, and psychological harms that S.B. 23 is inflicting on women in Ohio.⁴ Courts in Ohio grant such relief where, as here, the moving party demonstrates “that [it] has a substantial likelihood of success in the underlying suit; that [it] will suffer irreparable harm if the order does not issue; that no third parties will be harmed if the order is issued; [and] that the public is served by issuing the order.” *City of Cincinnati v. City of Harrison*, 1st Dist. Hamilton No. C-090702, 2010-Ohio-3430, ¶ 8, citing *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267-268, 747 N.E. 2d 268 (1st Dist.2000).

For the reasons stated below, Plaintiffs meet this standard, as they are likely to succeed on their claims that S.B. 23 violates the Ohio Constitution's protections for individual liberties and its equal protection guarantee. In addition, S.B. 23 is subjecting Ohioans to irreparable

⁴ It is well established in Ohio that Plaintiffs possess third-party standing to bring claims on behalf of their patients. See *Planned Parenthood Southwest Ohio Region v. Ohio Dept. of Health*, Hamilton C.P. No. A 2100870, at 3 (Jan. 31, 2022); *Planned Parenthood Southwest Ohio Region v. Ohio Dept. of Health*, Hamilton C.P. No. A 2101148, at 5 (Apr. 19, 2021); see also *State v. Madison*, 160 Ohio St.3d 232, 2020-Ohio-3735, 155 N.E.3d 867, ¶ 95 (recognizing that defendants may rely on “third-party standing to challenge on equal-protection grounds the exclusion of petit jurors on the basis of race or sex”), *reconsideration denied*, 160 Ohio St.3d 1410, 2020-Ohio-4574, 153 N.E.3d 116 (Table), *cert. denied sub nom. Madison v. Ohio*, 141 S.Ct. 2597 (Mem), 209 L.Ed.2d 733 (2021); *Util. Serv. Partners, Inc. v. Pub. Util. Comm.*, 124 Ohio St.3d 284, 2009-Ohio-6764, 921 N.E.2d 1038, ¶ 49, quoting *Kowalski v. Tesmer*, 543 U.S. 125, 129-130, 125 S.Ct. 564, 160 L.Ed.2d 519 (2004).

harm, and enjoining its enforcement will not cause any harm to third parties and will serve the public interest by preventing the violation of Ohioans' constitutional rights.

B. Likelihood of Success on the Merits

1. Plaintiffs Are Likely to Succeed on Their Claim That S.B. 23 Violates Ohioans' Substantive Due Process Rights Under the Ohio Constitution.

Plaintiffs have a substantial likelihood of success on the merits of their claim that S.B. 23 violates Ohioans' substantive due process rights, as protected by Article 1, Sections 1, 16, and 21 of the Ohio Constitution. These protections for individual liberties are broader than those of the federal constitution and encompass the fundamental right to abortion. Because S.B. 23 infringes on the fundamental right to abortion, it is subject to strict scrutiny. The State cannot overcome its heavy burden of showing that S.B. 23 survives strict scrutiny, and S.B. 23 is thus unconstitutional.

a. *The Ohio Constitution Provides Broader Protections for Individual Liberties Than the United States Constitution.*

As the Ohio Supreme Court has acknowledged, "the Ohio Constitution is a document of independent force," and Ohio courts can (and routinely do) interpret the Ohio Constitution more broadly than its federal counterpart. *Arnold v. Cleveland*, 67 Ohio St.3d 35, 42, 616 N.E.2d 163 (1993); *see also City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 293, 102 S.Ct. 1070, 71 L.Ed.2d 152 (1982) ("[A] state court is entirely free to read its own State's constitution more broadly than this Court reads the Federal Constitution[.]"); *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, ¶ 21 ("Federal opinions do not control [the Court's] independent analyses in interpreting the Ohio Constitution, even when [it looks] to federal precedent for guidance.").

The Ohio Supreme Court has expressly held that the Ohio Constitution is more protective of individual rights than the federal Constitution, including in the contexts of free exercise of religion, *Humphrey v. Lane*, 89 Ohio St.3d 62, 728 N.E.2d 1039 (2000); juveniles' right to counsel, *State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156; government appropriation of private property, *City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115; exclusion of physical evidence obtained due to unmirandized statements, *State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985; and warrantless arrests for minor misdemeanors, *State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175. In so doing, the Court has made clear that the Ohio Constitution can—and often does—provide greater protections where the United States Supreme Court has narrowed the scope of corresponding federal rights. *See, e.g., Humphrey*, 89 Ohio St.3d at 67 (expressly departing from the U.S. Supreme Court's decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990)).

b. ***The Ohio Constitution's Due Course of Law Clause Protects the Substantive Due Process Right to Abortion.***

The Ohio Constitution's broad substantive due process protections encompass the fundamental right to abortion. The Ohio Constitution's Due Course of Law Clause provides:

All courts shall be open, and every person, for an injury done him in his land, goods, *person*, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

(Emphasis added.) Ohio Constitution, Article I, Section 16. This provision protects substantive as well as procedural due process rights. *See Stolz v. J.&B Erectors, Inc.*, 155 Ohio St.3d 567,

2018-Ohio-5088, 122 N.E.3d 1228, at ¶ 13, citing *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶¶ 48-49.

Ohio courts have recognized the breadth of the Ohio Constitution’s substantive due process protections, finding that they extend to “matters involving privacy, procreation, bodily autonomy, and freedom of choice in health care decision making.” *Planned Parenthood Southwest Ohio Region v. Ohio Dept. of Health*, Hamilton C.P. No. A 2101148, at 8 (Apr. 19, 2021) (“*Planned Parenthood Southwest Ohio I*”), citing *Stone v. City of Stow*, 64 Ohio St.3d 156, 160-63, 593 N.E.2d 294 (1992) (referencing a right to privacy protected by the Ohio Constitution); see also *State v. Boeddeker*, 1st Dist. Hamilton No. C-970471, 1998 WL 57234, *2 (Feb. 13, 1998) (substantive due process under the Ohio Constitution includes a right to privacy that, in the context of “sexual and reproductive matters,” is “fundamental”); *Planned Parenthood Southwest Ohio Region v. Ohio Dept. of Health*, Hamilton C.P. No. A 2100870, at 6 (Jan. 31, 2022) (“*Planned Parenthood Southwest Ohio II*”) (recognizing the “breadth of the Ohio Constitution’s guarantees of bodily autonomy, privacy, and freedom of choice in health care,” including the right to abortion).

The Due Course of Law Clause affirmatively guarantees “remedy by due course of law” to “every person, for an injury done him in his land, goods, *person*, or reputation.” (Emphasis added.) Ohio Constitution, Article I, Section 16. As one court in this county observed in analyzing this language, “[d]eprivation of reproductive autonomy falls squarely within the meaning of an injury done to one’s person under the Ohio Constitution.” *Planned Parenthood Southwest Ohio I* at 10. Indeed, protection from injuries to one’s “person” necessarily includes the right to bodily integrity, which in turn encompasses the right to terminate a pregnancy. Given the significant physical impacts and health risks of pregnancy, there is no doubt that the

forced continuation of pregnancy infringes on a woman’s right to bodily integrity. *See Preterm Cleveland v. Voinovich*, 89 Ohio App.3d 684, 712, 627 N.E.2d 570 (10th Dist.1993) (Petree, J., concurring in part and dissenting in part) (noting the “tremendous demands and the innate risks of reproduction” in finding that “regulation of abortion inherently impacts on a right to bodily integrity”); *see also, e.g., Hodes & Nauser, MDS, P.A. v. Schmidt*, 309 Kan. 610, 646, 440 P.3d 461, 484 (2019) (“[A]bortion laws do not merely restrict a particular action; they can impose an obligation on an unwilling woman to carry out a long-term course of conduct that will impact her health and alter her life. Pregnancy often brings discomfort and pain and, for some, can bring serious illness and even death.”); *Planned Parenthood of Mich. v. Atty. Gen. of Mich.*, 22-000044-MM, Opinion & Order at 21 (Mich.Ct.Cl. May 17, 2022) (“Pregnancy implicates bodily integrity because even for the healthiest women it carries consequential medical risks. Pregnant women face the prospect of developing conditions that may result in death, or may forever transform their health, such as blood clots and hypertensive disorders.”).⁵

c. *The Ohio Constitution’s Protections of the Fundamental Right to Liberty and Health Care Freedom Reinforce the Fundamental Right to Abortion.*

Other distinctive provisions in the Ohio Constitution, when considered together with Ohio’s Due Course of Law Clause, confirm that a fundamental right to abortion is protected under the Ohio Constitution. Article I, Section 1 of the Ohio Constitution provides that “[a]ll

⁵ Michigan’s abortion ban remains enjoined pursuant to an August 19, 2022 preliminary injunction order. *See* Order of Preliminary Injunction at 1, *Whitmer v. Linderman*, No. 22-193498-CZ (Mich.Cir.Ct. Aug. 19, 2022). In issuing the injunction, the Court concluded that “[a] person carrying a child has the right to bodily autonomy and integrity”. Kara Berg, *County prosecutors can’t enforce Michigan abortion ban, Oakland Co. judge rules*, Detroit News (Aug. 19, 2022 6:57 P.M.), <https://www.detroitnews.com/story/news/local/oakland-county/2022/08/19/abortion-michigan-whitmer-ban-unconstitutional-lawsuit-roe-wade/7836166001/> (accessed Aug. 31, 2022).

men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.” While this section is not an independent source of self-executing protections, *see State v. Williams*, 88 Ohio St.3d 513, 524, 728 N.E.2d 342 (2000), it is a statement of fundamental rights that is given practical effect by other constitutional provisions, such as the Due Course of Law Clause, *see, e.g., Steele v. Hamilton Cty. Community Mental Health Bd.*, 90 Ohio St.3d 176, 180-81, 736 N.E.2d 10 (2000). Indeed, this affirmative statement of Ohioans’ fundamental right to liberty is more expansive than any provision of the federal Constitution. *See, e.g., Preterm Cleveland*, 89 Ohio App.3d at 691, 627 N.E.2d 570.

The Ohio Supreme Court has long recognized that Article I, Section I encompasses Ohioans’ liberty interests in “personal security, bodily integrity, and autonomy,” which “are rights inherent in every individual.” *Steele*, 90 Ohio St.3d at 180-181 (recognizing Ohioans’ fundamental right to refuse medical treatment stemming from these “cherished liberties”). Over a century before its decision in *Steele*, the Supreme Court held that Article I, Section I “embrace[s] the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare.” *Palmer v. Tingle*, 55 Ohio St. 423, 441, 45 N.E. 313 (1896). Recognizing this considerable history, and given the broad scope of the Ohio Constitution’s liberty provision, at least one Ohio Court of Appeals has concluded that the right to an abortion is protected by the Ohio Constitution. *See Preterm Cleveland*, 89 Ohio App.3d at 691, 627 N.E.2d 570 (“[I]t would seem almost axiomatic that the right of a woman to choose whether to bear a child is a liberty” protected by the Ohio Constitution). In *Preterm Cleveland*, the Court explained that Article I,

Section I recognizes inherent and inalienable rights, and therefore provides broader protection for rights than the United States Constitution. *See id.* (“In that sense, the Ohio Constitution confers greater rights than are conferred by the United States Constitution[.]”).⁶

Article I, Sections I and 16 must also be read in light of Article I, Section 21 of the Ohio Constitution—the Health Care Freedom Amendment (“HCFA”)—which has no analogue in the United States Constitution. The Amendment, enacted in 2011 with overwhelming two-to-one support from Ohio voters, “[p]reserv[es] [Ohioans’] freedom to choose health care and health care coverage”—expressly providing for the protection of individual autonomy in medical decision-making. Ohio Constitution, Article I, Section 21; *see also* Ohio Sec’y of State, *State Issue 3: November 8, 2011 Official Results*, <https://www.ohiosos.gov/elections/election-results-and-data/2011-elections-results/state-issue-3-november-8-2011/> (accessed Aug. 31, 2022).

When read together with the provisions discussed above, the HCFA further bolsters the Ohio Constitution’s protection of liberty and personal autonomy and reinforces that these protections extend to Ohioans’ right to make decisions about their own bodies—including the fundamental right to make a decision as private and as central to a person’s bodily integrity as the decision to have an abortion. *See* Paul Blumenthal, *How An Amendment Backed by Anti-Abortion Groups Could Help Save Abortion Rights in Ohio*, HuffPost (Aug. 3, 2022, 10:51 A.M.) available at https://www.huffpost.com/entry/ohio-abortion-rights_n_62e988dbe4b09fecea48ac7f (accessed

⁶ In *Preterm Cleveland*, Court of Appeals reversed a trial court decision concluding that an informed-consent statute was unconstitutional, relying upon the United States Supreme Court’s intervening opinion in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S.Ct. 2791, 120 L.ed.2d 674 (1992), which changed the framework for analyzing state restrictions on abortion. 89 Ohio App. 3d at 705. The Court of Appeals emphasized that while it was applying the *Casey* standard in its decision, it remained “free to find a statute to violate the Ohio Constitution, *even though it does not violate the United States Constitution.*” (Emphasis added.) *Id.* at 695 n.9, 627 N.E.2d 570.

Aug. 31, 2022) (quoting Steven Steinglass, an Ohio constitutional expert: “[The HCFA] underscores the importance of health care and when read in conjunction with other provisions of the Ohio Constitution it provides a solid credible basis for concluding that the Ohio Constitution properly construed protects reproductive freedom.”).⁷

In keeping with the Ohio Constitution’s broad protections for individual rights, personal autonomy, and health care freedom, Ohio courts should join the many other courts that have confirmed state constitutional protections for abortion that are independent of any provision of the United States Constitution. *See, e.g., Hodes*, 309 Kan. at 646-67, 440 P.3d 461 (holding the right to decide whether to continue a pregnancy falls under the natural right to personal autonomy guaranteed by the Kansas Constitution); *Pro-Choice Miss. v. Fordice*, 716 So.2d 645, 653, 654 (Miss. 1998) (concluding that Mississippi Constitution’s right to privacy encompasses the right to choose whether or not to have an abortion); *Right to Choose v. Byrne*, 91 N.J. 287, 303, 306, 450 A.2d 925 (1982) (holding the New Jersey Constitution protects the fundamental right to choose whether to have an abortion); *Women of State of Minn. v. Gomez*, 542 N.W.2d 17, 27 (Minn. 1995) (holding that the right to privacy under the Minnesota Constitution, which is grounded in “protecting the integrity of one’s own body” and “protects only fundamental rights,” “encompasses a woman’s right to decide to terminate her pregnancy”).⁸

⁷ At least one other state court has enjoined an abortion ban after concluding that a constitutional provision establishing the right to make “health care decisions” may extend to the decision to have an abortion. *See* Order Granting Motion for Preliminary Injunction at ¶ 29, *Johnson v. State*, Civil Action No. 18732 (Wyo. 9th Dist., Teton Cty. Aug. 10, 2022) (“The Court could find that the constitutional amendment adopted by the voters of Wyoming... unambiguously provides competent Wyoming citizens with the right to make their own health care decisions[.] That analysis lends itself to finding that a decision to have an abortion is a health care decision.”).

⁸ State courts have found that a number of different constitutional provisions may protect the right to abortion, including provisions explicitly establishing the right to privacy. *See, e.g., Armstrong v. State*, 296 Mont. 361, 379, 989 P.2d 364 (1999) (holding procreative autonomy is a fundamental right of individual privacy under the Montana Constitution); *Valley Hosp. Assn, Inc.*

d. ***S.B. 23 Violates the Fundamental Right to Abortion and Fails Strict Scrutiny.***

S.B. 23 infringes upon the fundamental rights to bodily integrity and abortion by banning abortions beginning at approximately six weeks LMP. Laws implicating fundamental rights are subject to strict scrutiny and are constitutionally permissible only if they are narrowly tailored to serve a compelling state interest. *See Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377, ¶ 155. Strict scrutiny places a “heavy” burden of proof on the state. *Crowe v. Owens Corning Fiberglas*, 8th Dist. Cuyahoga No. 732206, 1998 WL 767622, *4 (Oct. 29, 1998), *aff’d*, 87 Ohio St.3d 204, 718 N.E.2d 923 (Mem) (1999).

Neither of the purported interests asserted in the text of the legislation (and in the prior federal litigation over S.B. 23)—an “interest in protecting the health of the woman” and an interest in protecting potential life—can justify banning Ohioans from exercising their fundamental right to abortion starting as early as six weeks, nor is S.B. 23 narrowly tailored to address the purported interests. *See* 2019 Am.Sub.S.B. No. 23, Section 3(G); *see also* Ohio Legislative Service Commission Bill Analysis, S.B. 23, at 7; Resp. to Mot. for Prelim. Inj. at 3, 8, *Preterm-Cleveland v. Atty. Gen. of Ohio*, No. 1:19-cv-00360 (S.D. Ohio June 5, 2022), ECF No. 17; Resp. to Mot. for J. on the Pleadings and Prelim. Inj. at 3, 14, *Preterm-Cleveland v. Atty. Gen. of Ohio*, No. 1:19-cv-00360 (S.D. Ohio Oct. 10, 2022), ECF No. 15.

v. Mat-Su Coal. For Choice, 948 P.2d 963, 969 (Alaska 1997) (holding Alaska’s express constitutional privacy provision encompasses reproductive rights); *In re T.W.*, 551 So.2d 1186, 1193 (Fla. 1989) (holding that the Florida constitutional right to privacy encompasses a woman’s right to terminate pregnancy); *Comm. to Defend Reproductive Rights v. Myers*, 29 Cal.3d 252, 280-81, 172 Cal.Rptr. 866, 625 P.2d 779 (1981) (recognizing the right to procreative choice falls under the California constitutional right to privacy).

i. ***S.B. 23 Does Not Protect Ohioans' Health.***

The State's purported interest in "protecting the health of the woman"—as asserted in the text of the legislation—cannot justify banning Ohioans from exercising their fundamental right to abortion starting as early as six weeks LMP.

Abortion is a common and safe medical procedure. *See supra*, at 6-9. Complications from both medication and procedural abortion are extremely rare. *See id.* Denying access to abortion actually *harms*, rather than protects, patient health. *See id.*; *see also* Compl. ¶¶ 34-39; Diana Green Foster, Ph.D, *The Turnaway Study: The Cost of Denying Women Access to Abortion* (2020) (patients who were denied an abortion and gave birth reported more life-threatening complications, such as eclampsia and postpartum hemorrhage, compared to those who received wanted abortions); Amanda Jean Stevenson, *The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant*, 58 *Demography* 6, 6 (2021) (estimating that banning abortion in the U.S. would lead to a 21 percent increase in the number of pregnancy-related deaths overall and a 33 percent increase among Black women).⁹ Statutes that "harm patients' health by reducing access to abortion," as S.B. 23 does, do not further an interest in protecting women's health. *See Planned Parenthood Southwest Ohio I* at 8-9.

⁹ *See also* Trick Aff. ¶ 6 (a patient who could not receive treatment for Stage III melanoma until her pregnancy was terminated—which she could not do in Ohio under S.B. 23); *id.* at ¶ 11 (a patient who had no amniotic fluid and was informed her pregnancy was nonviable was discharged by her physician "with instructions to call the office if she had a fever"); *id.* at ¶¶ 9, 13 (two patients experiencing severe vomiting were forced to travel out of state to access abortion care).

ii. *There Is No Compelling State Interest in Potential Life at Six Weeks LMP.*

The State does not have a compelling interest in protecting potential life as early as six weeks LMP. *See* 2019 Am.Sub.S.B. No. 23, Section 3(G). Numerous state courts—including courts in Ohio—have recognized that the state’s interest in protecting fetal life is weaker earlier in pregnancy. *See Preterm Cleveland*, 89 Ohio App.3d at 692-93, 627 N.E.2d 570 (analyzing legislation regarding abortion under the Ohio Constitution and concluding that any state interest in protecting fetal life is not equally compelling at all points in pregnancy); *see also In re T.W.*, 551 So.2d at 1193 (recognizing that under the Florida Constitution the state’s interest in “the potentiality of life in the fetus” is less compelling early in pregnancy); *Comm. to Defend Reproductive Rights*, 625 P.2d at 795 (“[D]uring the first two trimesters of pregnancy, when the fetus is not viable, the state’s interest in protecting the fetus is not of compelling character”). The State cannot justify a prohibition so early in pregnancy, and cannot establish that it is compelling.

Moreover, here, “the state is not merely proposing to protect a fetus from general harm, but rather is asserting an interest in protecting a fetus vis-a-vis the woman of whom the fetus is an integral part,” and—as such—its interest “clashes head-on with the woman’s own fundamental right of procreative choice.” *Comm. to Defend Reproductive Rights* at 795. Put another way, an interest in protecting fetal life starting before many women *even know* they are pregnant is the functional equivalent of an interest in banning nearly *all* abortion. Such a sweeping, all-consuming interest is not sufficient to satisfy the first prong of a rigorous test intended *to protect* a woman’s fundamental right to make her own decisions about her body, her health, and her future. Indeed, were the State’s interest in fetal life to be considered “compelling” starting as early as six weeks in pregnancy, the exception contemplated by strict

scrutiny—that laws impinging on fundamental rights are permissible *only* where they are narrowly tailored to serve a compelling government interest—would risk swallowing the rule, and, with it, the right to abortion itself.

iii. S.B. 23 Is Not Narrowly Tailored.

S.B. 23 is also not narrowly tailored. Narrow tailoring requires the government to adopt “the *least* restrictive means of achieving the [state’s] compelling interest.” (Emphasis added.) *Bartell v. Lohiser*, 215 F.3d 550, 558 (6th Cir.2000); *see also Crowe*, 8th Dist. Cuyahoga No. 73206, 1998 WL 767622, at *5 (finding that a statute did not withstand strict scrutiny where it was not “the least restrictive alternative necessary to effectuate the asserted goal of the legislation”). S.B. 23 is *highly* restrictive—banning abortion almost entirely.

There are numerous alternative and less restrictive means that would do far more to advance the health of pregnant women without depriving them of a fundamental right. For example, the State could provide pregnant women with access to regular reproductive and prenatal health care, promote prenatal care by expanding access to medical insurance, and/or provide financial assistance for prenatal vitamins and nutritious meals. *See Emily E. Petersen et al., Vital Signs: Pregnancy-Related Deaths, United States, 2011–2015, and Strategies for Prevention, 13 States, 2013–2017, 68 Morbidity & Mortality Weekly Report 423 (May 10, 2019)* (finding that up to 60 percent of pregnancy-related deaths could be prevented through strategies including better access to clinical care and early prenatal treatment).

A near-total *ban* on abortion beginning at six weeks LMP is also not narrowly tailored to protect fetal life. Just as providing better prenatal care provides a less restrictive alternative to protecting pregnant women’s health, promoting such care—and providing other social and medical benefits—is a far less restrictive means of advancing the State’s interest in protecting

fetal life than banning abortion. Many women seek abortion because the physical, professional, economic, and personal burdens associated with carrying a pregnancy to term, giving birth, and parenting a child are immense. *See* Compl. ¶¶ 28-29. Forcing women to continue pregnancies when they lack access to the necessary support may actually *harm* fetal and newborn life. The U.S. Department of Health and Human Services has found that newborns whose mothers had no early prenatal care were five times more likely to die. *See* Office on Women’s Health, U.S. Dept. of Health & Human Servs., *Prenatal Care*, <https://www.womenshealth.gov/a-z-topics/prenatal-care> (accessed Aug. 31, 2022). Were the State to assist pregnant women and new parents in shouldering the costs of pregnancy, birth, and childcare, through better access to prenatal care, protections in the workplace, and better health care coverage, it could improve outcomes for pregnancy and parenthood, and thus further an interest in protecting fetal life—and the lives of children and their parents—without infringing on Ohioans’ fundamental rights.¹⁰

Accordingly, S.B. 23 fails strict scrutiny.

2. Plaintiffs Are Likely to Succeed on Their Claim That S.B. 23 Violates Ohio’s Equal Protection and Benefit Guarantee.

S.B. 23 also violates the Ohio Constitution’s guarantee of equal protection. The broad language of Ohio’s Equal Protection and Benefit Clause is more protective of individual rights than the federal Equal Protection Clause. The “language, history [and] early understandings” of the Clause, *see Stolz*, 155 Ohio St.3d 567, 2018-Ohio-5088, 122 N.E.3d 1228, at ¶ 38 (Fischer,

¹⁰ Before the Ohio Supreme Court, Defendants focused exclusively on protecting “unborn” life. *See* Response to Relator’s Motion for Emergency Stay at 37-38, *State ex rel. Preterm-Cleveland v. Yost*, Case No. 2022-0803. Any interest in protecting life undoubtedly must also include an interest in “protecting the lives of the living, both mother and child.” Order Granting Plaintiffs’ Unopposed Motion to Dismiss Without Prejudice, *Preterm-Cleveland v. Atty. Gen. of Ohio*, No. 1:19-cv-00360 (S.D. Ohio July 7, 2022), ECF No. 102.

J., concurring), all make clear that Ohio’s expansive Equal Protection and Benefit Clause precludes S.B. 23’s near total ban on abortion.

Legislation that “infringes upon a fundamental constitutional right *or* the rights of a suspect class” is subject to strict scrutiny review. (Emphasis added). *Arbino*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, at ¶ 64.¹¹ S.B. 23 does both: It discriminates against women (a suspect class) and infringes on the fundamental right to abortion.

a. *Ohio’s Equal Protection and Benefit Clause is More Protective of Individual Rights Than Its Federal Counterpart.*

Based on the foundational premise that “[a]ll political power is inherent in the people,” the Ohio Constitution declares as a fundamental matter that “Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.” Ohio Constitution, Article I, Section 2. Differences between the text of the U.S. Constitution’s Equal Protection Clause and Ohio’s Equal Protection and Benefit Clause illustrate that the Ohio Constitution confers more expansive protections than its federal counterpart. The Fourteenth Amendment of the United States Constitution frames the right to equal protection as a check against government action: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” (Emphasis added.) Fourteenth Amendment to the U.S. Constitution, Section 1. The Ohio Constitution, in contrast, frames equal protection as an

¹¹ Courts in Ohio have, at times, applied intermediate scrutiny to discriminatory classifications based on sex, *see State v. Thompson*, 95 Ohio St.3d 264, 2002-Ohio-2124, 767 N.E.2d 251, ¶ 13 (employing “heightened or intermediate scrutiny” to “a discriminatory classification based on sex”), but doing so runs afoul of settled precedent that strict scrutiny applies to laws that discriminate against suspect classes.

affirmative mandate for the government: “Government is instituted for [the people’s] equal protection and benefit[.]” Ohio Constitution, Article 1, Section 2. The Ohio Constitution thus elevates equal protection to one of the “foundational reasons for the existence of state government,” whereas the federal Constitution views it only as a limitation on the government, focused (at least textually) on “proscriptions against taking or denying benefits.” *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-65, 2022 WL 110261, ¶ 151 (Brunner, J., concurring).

The broad application of this expansive language is evident in decisions of the Ohio Supreme Court. In *State v. Mole*, for example, the Court found that “the guarantees of equal protection in the Ohio Constitution independently forbid” certain conduct, regardless of federal constitutional protections. 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, ¶ 23. *Mole* noted that the Supreme Court “can and will interpret [the Ohio] Constitution to afford greater rights to [Ohio] citizens” since it is “not confined by the federal courts’ interpretations of similar provisions in the federal Constitution.” *Id.* at ¶ 21. The Court reaffirmed that principle soon afterward, holding that “the Equal Protection Clause of the Ohio Constitution is coextensive with, or stronger than, that of the federal Constitution.” (Emphasis added.) *State v. Noling*, 149 Ohio St.3d 327, 2016-Ohio-8252, 75 N.E.3d 141, ¶ 11. More recent opinions continue to emphasize the broad reach of the Equal Protection and Benefit Clause, as compared to its federal counterpart. *See, e.g., League of Women Voters of Ohio* at ¶ 151 (Brunner, J., concurring).

b. *S.B. 23 Discriminates Against Women, A Suspect Class.*

The guarantees of Ohio’s Equal Protection and Benefit Clause are enforced by subjecting laws that discriminate against “suspect class[es]” to strict scrutiny. *See Arbino*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, at ¶ 64. Ohio courts hold that sex is a suspect class. *See,*

e.g., *Adamsky v. Buckeye Loc. School Dist.*, 73 Ohio St.3d 360, 362, 1995-Ohio-298, 653 N.E.2d 212 (“[A] suspect class . . . has been traditionally defined as one involving race, national origin, religion, or sex.”); *In re A.W.*, 5th Dist. Knox No. 15CA3, 2015-Ohio-3463, ¶ 23 (“Suspect classes include race, sex, religion, and national origin[.]”), *aff’d in part, appeal dismissed in part on other grounds*, 147 Ohio St.3d 110, 2016-Ohio-5455, 60 N.E.3d 1264 (Mem), *reconsideration denied*, 147 Ohio St.3d 1414, 2016-Ohio-7455, 62 N.E.3d 186 (Table).

S.B. 23 expressly targets “pregnant wom[e]n.” *See, e.g.*, 2019 Am.Sub.S.B. No. 23, Section 1, amending R.C. 2919.192(A) (requiring “[a] person who intends to perform or induce an abortion on a pregnant woman” to determine “whether there is a detectable fetal heartbeat”); *id.*, Section 3(H) (asserting that “the pregnant woman” has a purported “valid interest in knowing the likelihood of the fetus surviving to full-term birth based upon the presence of cardiac activity”). It “is a provision regulating abortion services conducted on women.” *Preterm Cleveland*, 89 Ohio App.3d at 714, 627 N.E.2d 570 (Petree, J., concurring in part and dissenting in part) (observing that abortion law’s “special waiting periods, informed consent protections, and counseling mandates will never apply in like measure to a man getting a vasectomy or making other important reproductive decisions affecting society”); *Planned Parenthood Southwest Ohio I* at 8 (concluding that fetal tissue disposal law triggered strict scrutiny because it discriminates against women). In particular, S.B. 23 “denies pregnant women access to safe, effective health care” and is even *more* restrictive than other laws that have merited strict scrutiny “[b]y effectively banning a method of abortion.” *Id.* at 7-8 (citation omitted). The “express terms of [the] statute” thus target a suspect class and warrant strict scrutiny. *Garner v. City of Cuyahoga Falls*, N.D. Ohio No. 5:07CV2099, 2008 WL 11377807, *7 (Jan. 29, 2008).

aff'd, 311 F.Appx. 896 (6th Cir.2009) (citation omitted), quoting *Sioux City Bridge Co. v. Dakota Cty.*, 260 U.S. 441, 445, 43 S.Ct. 190, 67 L.Ed. 340 (1923).

S.B. 23 also discriminates against women by subordinating them to men based on antiquated notions and stereotypes regarding women's roles as child-bearers and caregivers. The justification given in the text of S.B. 23—namely, that severely restricting abortion “protect[s] the health of the woman,” *see* 2019 Am.Sub.S.B. No. 23, Section 3(G)—is inextricably intertwined with other outdated justifications for early abortion bans. *See* Reva Siegel, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 *Stan.L.Rev.* 261, 280-323 (1992) (recounting how nineteenth-century doctors argued that banning abortion would protect a woman's health, enforce wives' marital duties, protect fetal life, and control the relative birthrates of “native” and immigrant populations, in order to preserve the demographic character of the nation). S.B. 23 perpetuates similar misguided and misogynistic stereotypes by stripping women of their autonomy, agency, and ability to make decisions about their bodies under the patronizing guise of “protecting” them. It also relies on erroneous medical claims, in line with those promoted by nineteenth century physicians who claimed that abortion would “insidiously undermine[]” women's reproductive organs, and “permanently incapacitate[] [women] for conception.” *See* Horatio Storer, *Why Not? A Book For Every Woman* 50 (1866); *see also* O.S. Phelps, *Criminal Abortion: Read Before the Calhoun County Medical Society*, 1 *Detroit Lancet* 725, 728 (1878) (“A woman who has an abortion ‘destroys her health . . . [and] sooner or later comes upon the hands of the physician suffering with uterine disease.’”). In fact, childbirth is far more dangerous to women's health than is abortion. *See* *Natl. Academies of Sciences, Eng. & Medicine* 74 (finding that childbirth is nearly thirteen times more likely than abortion to result in death). S.B. 23 is

premised upon the spurious assumption that abortion is innately harmful to women—rather than allowing women to determine for themselves what risks they are willing to assume in the course of their medical care.¹²

c. S.B. 23 Fails Strict Scrutiny and Intermediate Scrutiny.

The Ohio Constitution categorically subjects legislation to strict scrutiny when a law infringes upon a fundamental right or discriminates against a suspect class. *See Arbino*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, at ¶ 64. For the reasons discussed above, S.B. 23 fails strict scrutiny. The State can identify no compelling interest served by the law, nor demonstrate that the statute is narrowly tailored to further any purported compelling interest. *See supra*, at 26-30.

Even if this Court were to apply only intermediate scrutiny, S.B. 23 cannot stand. Intermediate scrutiny requires that “the classification be substantially related to an important governmental objective.” *Thompson*, 95 Ohio St.3d 264, 2002-Ohio-2124, 767 N.E.2d 251, at ¶ 13. For all the reasons discussed above, S.B. 23 is not substantially related to any important governmental objective. S.B. 23 bears no relation to the purported interest of protecting the

¹² S.B. 23 also imposes an impermissible classification on the basis of sex by discriminating against “pregnant” women. In its landmark decision in *United States v. Virginia*, in striking down the Virginia Military Institute’s male-only admissions policy, the Supreme Court held that the federal Constitution’s guarantee of equal protection means that sex “classifications may not be used, as they once were . . . to create or perpetuate the legal, social, and economic inferiority of women.” 518 U.S. 515, 534, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996). Later, in *Nevada Dept. of Human Resources v. Hibbs*, the Court held that pregnancy-based regulations anchored in subordinating stereotypes about gender roles can violate the federal Equal Protection Clause. 538 U.S. 721, 736-37, 23 S.Ct. 1972, 155 L.Ed.2d 953 (2003). S.B. 23 “denies ‘pregnant wom[e]n’ access to safe, effective healthcare . . . , and all the benefits such care brings without any countervailing benefit.” *Planned Parenthood Southwest Ohio I* at 7. This Court should apply, at minimum, the conclusion compelled by *Virginia*, *Hibbs*, and common sense: that laws regulating pregnancy are sex-based classifications that violate the equal protection clause unless they satisfy strict scrutiny analysis.

health of pregnant women. A law that so clearly fails to advance a purported interest—and moreover, relies on the “baggage of sexual stereotypes” as described above—is not “substantially related” to that interest. *See Cintron v. Nader*, 8th Dist. Cuyahoga No. 39564, 1980 WL 354341, *7 (June 26, 1980) (gender classification was not substantially related to any “important” goals in part because it relied on the “baggage of sexual stereotypes”); *Crawford Cty. Child Support Enforcement Agency v. Sprague*, 3rd Dist. Crawford No. 3-97-13, 1997 WL 746770, *4 (Dec. 5, 1997) (statute that undermined the state’s purported interest was not substantially related to that interest).

Moreover, the State’s claimed interest in protecting potential life at six weeks is not a sufficiently “important government objective.” *See Thompson*, 95 Ohio St.3d 264, 2002-Ohio-2124, 767 N.E.2d 251, at ¶ 13. Under intermediate scrutiny review, when a law places a significant burden on a constitutional right—as S.B. 23 does—the State bears the burden to demonstrate the importance of its interest. *See State v. Wheatley*, 2018-Ohio-464, 94 N.E.3d 578, ¶ 16 (4th Dist.), quoting *Tyler v. Hillsdale Cty. Sheriff’s Dept.*, 837 F.3d 678, 685-686 (6th Cir. 2016) (“[T]he government bears the burden of justifying the constitutionality of the law under a heightened form of scrutiny.”). The State cannot meet that burden here.

Finally, S.B. 23 is not substantially related to the State’s purported interest in protecting potential life. There are obvious non-restrictive alternatives to advance the State’s purported interest in protecting potential life at six weeks, and thus the State cannot meet its burden under intermediate scrutiny review. *See supra*, at 28-30.

C. **Plaintiffs and Their Patients Are Suffering and Will Continue to Suffer Irreparable Harm.**

Since S.B. 23 took effect, many women have already suffered irreparable harm by being denied their fundamental right to abortion. Without immediate injunctive relief, untold

additional women who are currently or may become pregnant and need abortion care will permanently lose the ability to exercise their fundamental constitutional right to abortion in Ohio.

It is well-established that violations of constitutional rights are in and of themselves an irreparable harm. *See Magda v. Ohio Elections Comm.*, 2016-Ohio-5043, 58 N.E.3d 1188, ¶ 38 (10th Dist.), citing *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir.2001) (“A finding that a constitutional right has been threatened or impaired mandates a finding of irreparable injury.”); *see also Lamar Advantage GP Co., LLC v. City of Cincinnati*, Hamilton C.P. No. A-18-04125, 114 N.E.3d 805, 829 (Oct. 17, 2018), quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) (“[T]he loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury.”); *United Auto Workers, Local Union 1112 v. Philomena*, 121 Ohio App.3d 760, 781, 700 N.E.2d 936 (10th Dist.1998) (“Loss of the constitutional rights of speech and assembly for a minimal time results in irreparable harm.”).

In addition to denying patients their fundamental rights, S.B. 23 gives rise to numerous concrete harms. When S.B. 23 went into effect, providers were forced to cancel the appointments of patients because they were past S.B. 23’s six-week-limit. And in the months since, Plaintiffs have been forced to turn away many others seeking abortion care. *See supra*, at 12-14; *see also Trick Aff.* ¶¶ 3-5 (“We have continued to receive calls from pregnant people seeking abortions at our Dayton clinic, but...we have had to turn most of them away or advise them to seek care out of state.”).

Absent access to care in Ohio, many women will be unable to ultimately obtain an abortion, given the increasing difficulty securing appointments in other states due to rising demand on out-of-state providers, the time and expense associated with travel, and abortion bans enacted by neighboring states. *See, e.g., Trick Aff.* ¶ 15 (patients have reported “transportation

issues,” “needing to obtain additional funds to cover the additional cost of travel,” and “long wait times for appointments at clinics in other states”); *see also* Liner Aff. ¶ 7; Krishen Aff. ¶ 7.

Therefore, many Ohioans will either be subjected to the physical, economic, emotional and psychological harms of carrying an unwanted pregnancy to term, or will be forced to resort to potentially unsafe methods of abortion. *See supra*, at 15-17; *see also* Pierce Aff. ¶ 5 (“Many patients...worry they may lose their jobs, will seriously struggle to support their families or the children they already have if they have another child, or will suffer harm to their physical or mental health if they have to remain pregnant, but do not see another option.”).

These irreparable harms are ongoing and will continue as long as S.B. 23 is in effect.

D. The Other Factors Relevant to Preliminary Relief Weigh in Favor of Plaintiffs

Plaintiffs have been safely providing abortion care in Ohio for years and, until June 24, 2022, abortion up to 22 weeks LMP. After a nearly 50-year period where patients safely received abortions up to 22 weeks LMP, a mere two months ago, the state of abortion access in Ohio shifted dramatically from the longstanding status quo, with devastating consequences across Ohio. Defendants cannot demonstrate any harm to third parties if S.B. 23 is enjoined.

Additionally, the public interest will be served by stopping S.B. 23’s violation of Ohioans’ fundamental rights. “[I]t is always in the public interest to prevent violation of a party’s constitutional rights.” *Lamar Advantage GP Co., LLC*, Hamilton C.P. No. A-18-04105, 114 N.E.3d at 829, quoting *Miller v. City of Cincinnati*, 709 F.Supp.2d 605, 627 (S.D. Ohio 2008). As explained, *supra*, at 19-36, S.B. 23 violates both the substantive due process and equal protection guarantees of the Ohio Constitution because it simultaneously infringes upon the fundamental right to an abortion and denies Ohioans equal protection under the law by

discriminating against a suspect class. Enjoining this law—and ensuring that Ohioans can rely upon their fundamental right to abortion care—serves the public interest.

E. The Injunction Should Issue Without Bond

This Court has broad discretion to waive the Civ.R. 65(C) bond requirement. *See Vanguard Transp. Sys. Inc. v. Edwards Transfer & Storage Co., Gen. Commodities Div.*, 109 Ohio App.3d 786, 793, 673 N.E.2d 182 (10th Dist. 1996) (recognizing courts have discretion to issue preliminary injunctions without requiring bond). The Court should exercise that discretion here, where the relief sought will result in no monetary loss to Defendants. *See Molton Co. v. Eagle-Picher Industries*, 55 F.3d 1171, 1176 (6th Cir. 1995) (affirming decision to require no bond because of “the strength of [the plaintiff’s] case and the strong public interest involved”); *Preterm-Cleveland v. Yost*, 394 F.Supp.3d 796, 804 (S.D. Ohio 2019) (waiving bond).

CONCLUSION

For the foregoing reasons, Plaintiffs ask this Court to issue a temporary restraining order followed by a preliminary injunction, and enjoin Defendants, their employees, agents, and successors in office, from enforcing S.B. 23.

Dated: September 2, 2022

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Respectfully submitted,

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2022, the foregoing was filed in-person with the Hamilton County Clerk of Courts. I further certify that a copy of the foregoing was served via electronic mail upon counsel for the following parties:

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/s/ B. Jessie Hill

B. Jessie Hill (0074770)

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

PRETERM-CLEVELAND, *et al.*,

Plaintiffs,

v.

DAVID YOST, *et al.*,

Defendants.

Case No.: _____

Judge: _____

**AFFIDAVIT OF DR. SHARON LINER IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER FOLLOWED BY PRELIMINARY
INJUNCTION**

I, Dr. Sharon Liner, a Plaintiff in this action, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge:

1. I am a board-certified family physician with 19 years of experience in women's health. I am licensed to practice medicine in the State of Ohio.

2. I am the Medical Director of Planned Parenthood Southwest Ohio Region ("PPSWO"), also a Plaintiff in this case. I am also PPSWO's Director of Surgical Services, a position I have held for nearly 17 years. I have worked as a physician for PPSWO since 2004. Throughout that time, I have provided sexual and reproductive health care, including abortions, to our patients.

3. Until Friday, June 24, 2022, the day S.B. 23 took effect, PPSWO provided procedural abortions through 21 weeks 6 days from the first day of a patient's last menstrual period ("LMP") and medication abortion through 10 weeks LMP at our health center in

Cincinnati. PPSWO is now able to provide abortion only to approximately 6 weeks LMP, when embryonic cardiac activity is generally detectable. For some patients, embryonic cardiac activity is detectable even earlier.

4. In my role at PPSWO, I am familiar with the operational and schedule changes we have had to make since S.B. 23 took effect, and the impacts of S.B. 23 on PPSWO, our staff, and our patients.

5. S.B. 23 caused mass confusion and panic when it went into effect. On Friday, June 24, 2022, the day S.B. 23 took effect, PPSWO received more than double the number of phone calls we receive on a typical Friday. In the days immediately after S.B. 23 took effect, we had to cancel over 600 patient appointments. Many patients broke down in tears in our office. Many patients that we could not reach by phone who came to our health center expecting to have their appointment were extremely upset; some threatened to hurt themselves because they were so distraught.

6. Since then, we have had to turn away hundreds of patients and will continue to have to do so. Some patients already know they are more than 6 weeks LMP when they initially call us, and we have to let them know that they will not be able to get an abortion in Ohio. Others do not know how far along they are, or think they are early enough to obtain an abortion in Ohio, so they come in for an initial appointment only to find out fetal heart tones are present and we can't take care of them. Most patients who come in for an initial appointment are turned away after we detect fetal heart tones. For example, in July 60% of patients were turned away after an initial ultrasound. Still other patients who appear at their first appointment to be eligible for an abortion in Ohio return for their second appointment after waiting the required 24 hours only to discover that fetal heart tones have appeared and that they cannot obtain care in-state.

This happens to a significant portion of patients who return for a second visit. For example, in July 16% of patients who returned for a day 2 visit had to be turned away. When we tell patients we cannot help them they are extremely distressed, and all we can offer them is resources, information and emotional support.

7. Our patients who are too far in their pregnancy to obtain an abortion in Ohio are attempting to find providers out of state with appointment availability, but with the number of abortion patients in Ohio who now need to travel, out-of-state providers are quickly becoming backed up, delaying our patients' care. Most of our patients are traveling to Michigan and Illinois to obtain care, and they are encountering wait times of 2-4 weeks. Though Michigan is closer for most of our patients, it has been hard for patients to find appointments in a timely manner due to the lack of availability. Illinois has had more appointments available, however it is a further drive, and accommodations in the greater Chicago area are expensive.

8. On top of problems with finding prompt appointments out of state, traveling is very difficult for many of our patients because of the increased expense of traveling and potentially an overnight stay out of town, the need to take time off work and arrange for child care, and the need to find a support person with availability to travel with them. These barriers not only can compromise the confidentiality of the patient's pregnancy and abortion decision, they also delay our patients in getting care out of state and, while it is still very safe, the risk of complications of abortion does increase as gestational age increases. Other patients may be pushed so late in pregnancy that they are not able to obtain an abortion at all and will be forced to carry unwanted pregnancies to term or to resort to trying to terminate their pregnancies outside the medical system.

9. Our patients have been devastated when we have informed them that S.B. 23 has taken effect and we cannot provide them with the care they need. Patients who thought they were early enough in pregnancy to get care in-state have sobbed uncontrollably when we have detected embryonic cardiac activity.

10. Other patients have been extremely angry. One was slamming tables and doors in our office.

11. We have had at least 3 patients threaten to commit suicide. Another patient stated that she would attempt to terminate her pregnancy by drinking bleach. Another asked how much Vitamin C she would need to take to terminate her pregnancy.

12. One 20-year-old student stated that she lives with her parents and she did not have a way to get out of town for care without her parents knowing. She was terrified her parents would cut her off financially, she would have nowhere to live, and she would not be able to continue her education.

13. Another patient was very upset and explained that she could not travel for care because of her children. She stated the only time she can go to a medical appointment is when her children are in day care, and she needs to pick them up by 3:00 pm. She asked, "How am I supposed to get out of the state?"

14. One 25-year-old presented for consultation the week after S.B. 23 took effect. This patient is already the parent to one child. This patient was undergoing chemotherapy for a recurrent cancer and had already missed one treatment due to finding out she was pregnant. At the time of her visit, she was found to be 8 weeks pregnant with cardiac activity making her ineligible for an abortion under the law in Ohio. Due to the patient having cancer and being unable to obtain treatment for her cancer while pregnant, we sought documentation to support a

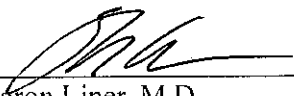
medical exception to S.B. 23 for this patient. Her provider of care did not feel comfortable providing this and the patient had to travel out of state for her abortion to resume her cancer treatment, which caused even further delay.

15. We also had a patient whose desired pregnancy was diagnosed with severe fetal anomalies two days prior to S.B. 23 taking effect; these anomalies included a lack of lower extremities and the contents of the fetus's abdomen, including possibly the heart, protruding through a defect in the abdominal wall. The patient had to be navigated out of state for care. Due to the recent decline in access in many states and the fact that this patient was in the second trimester of pregnancy (when most fetal anomalies are diagnosed), she had to wait even longer for an appointment, putting her further into the second trimester when she could finally be seen for care out of state. Being forced to carry a pregnancy with severe anomalies for longer can be extremely distressing for patients.

16. These are only some examples of our patients' experiences. The past two months have been horrendous for our patients, and this will continue to be the case as long as S.B. 23 remains in effect. We will continue to have to turn away patients, whose care will necessarily be delayed by the need to travel, or who will not be able to access abortion at all and will be forced to carry pregnancies to term against their will with devastating consequences for their lives.

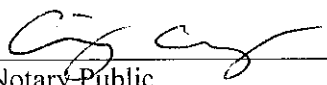
The undersigned hereby affirms that the statements made in the foregoing affidavit are true,
under penalty of perjury.

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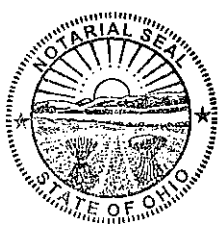


Sharon Liner, M.D.
Planned Parenthood of Southwest Ohio

Sworn to and subscribed before me this 31 day of August, 2022.



Notary Public



ATIF ASHRAF
Notary Public, State of Ohio
My Commission Expires:
04/12/2023

SEP - 2 2022

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

COMMON PLEAS COURTS

PRETERM-CLEVELAND, *et al.*,

Plaintiffs,

v.

YOST, *et al.*,

Defendants.

Case No.

A2203203

Judge

**AFFIDAVIT OF DAVID BURKONS, M.D., IN SUPPORT OF PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER FOLLOWED BY PRELIMINARY
INJUNCTION**

I, David Burkons, M.D., being duly sworn on oath, do depose and state as follows:

1. I am a board-certified obstetrician-gynecologist. I received my M.D. degree from the University of Michigan in 1973.

2. I am licensed to practice medicine in the state of Ohio. In 2014, I founded the Northeast Ohio Women's Center (NEOWC), where I serve as Medical Director. Prior to starting NEOWC, I was in private practice with University Hospitals in Cleveland, and I also served as Medical Director of Preterm for approximately ten years.

3. As NEOWC's Medical Director, I supervise physicians and clinicians and provide direct reproductive health care to patients. I also oversee the provision of all abortion services at NEOWC, and I am responsible for developing and approving NEOWC's policies and procedures. In addition, I personally provide both medication and procedural abortions at NEOWC.

4. I submit this affidavit in support of Plaintiffs' Motion for a Temporary Restraining Order Followed by Preliminary Injunction to prevent enforcement of Ohio Senate Bill 23 ("S.B. 23"), which bans abortion after approximately 6 weeks of pregnancy.

5. The facts I state here are based on my experience, information obtained in the course of my duties at NEOWC, and personal knowledge that I have acquired through my role at NEOWC. If called and sworn as a witness, I could and would testify competently thereto.

6. NEOWC operates an ambulatory surgical facility located in Cuyahoga Falls, Ohio (near Akron), which offers both procedural and medication abortion, as well as a medication-only abortion clinic in Shaker Heights, Ohio (near Cleveland), and another medication-only abortion clinic in Toledo, Ohio (Toledo Women's Clinic).

7. Prior to June 24, 2022, when the Supreme Court decided *Dobbs v. Jackson Women's Health Organization*, NEOWC provided procedural abortions up to 16 weeks, 6 days LMP and medication abortions through 9 weeks, 6 days LMP at its Cuyahoga Falls location. However, at approximately 6 p.m. on the day that *Dobbs* was decided, a federal judge presiding over a federal constitutional challenge to S.B. 23 lifted the injunction blocking enforcement of S.B. 23, and the law was permitted to go into effect. Since then, NEOWC has been providing medication and procedural abortions only before embryonic cardiac activity is detected—which occurs at approximately 6 weeks LMP, and even earlier in some patients. This has caused our patient volume to decrease by approximately 55%, thus making our long term survival problematic.

8. The impact of S.B. 23 taking effect has been devastating for patients. I have both personally witnessed and learned from my staff about the tragic situations into which our patients are forced by S.B. 23.

9. For example, one young woman, who became pregnant near the end of her senior year of high school, suffered from hyperemesis (excessive vomiting) as a result of her pregnancy. None of the medication that she had been prescribed for her condition was working, and she was so ill that she could not sit in a classroom without throwing up. The pregnancy was therefore preventing the young woman from finishing her schooling. She was hoping to end her pregnancy and obtain her high school diploma, but we had to turn her away shortly after the ban went into effect. We later learned that she ended up in the hospital on suicide watch.

10. Many patients became extremely angry when they were told that they could not have a scheduled abortion in the days after the ban took effect. One patient said to one of our staff members, “What do you want me to do ... throw myself down the steps?”

11. We have also heard from a number of patients that were delayed in seeking care because they were misled by crisis pregnancy centers (CPCs)—organizations that pose as medical clinics but exist primarily to dissuade pregnant individuals from choosing abortion. Some patients had visited those centers without realizing that they did not provide a full range of reproductive health services. By the time a patient waits for an appointment with the CPC, learns the true nature of the organization, and then schedules an appointment at one of our clinics, she is often too late to have an abortion in Ohio. It should be noted that these facilities are often funded by the State.

12. We inform patients who call for an appointment that they shouldn't even come in for an initial appointment if their last period was more than six weeks ago. A number of patients who are past six weeks LMP still insist on making appointments, because they hope that there will be no cardiac activity on the ultrasound. Unfortunately, we almost always have to send those patients away.

13. The resulting burdens on patients are made worse by the fact that several clinics in surrounding states have lengthy wait times for appointments. I understand, for example, that some Pennsylvania clinics are scheduling patients a month out.

14. Many other patients express feeling extremely rushed in the decision-making process and say that they wished they had more time to reflect, but that they are concerned that they will not be able to have the choice whether to terminate the pregnancy if they wait any longer.

15. Often, patients discover they are too far in pregnancy to receive an abortion after they have arrived at the clinic for an initial ultrasound. They are usually very distressed when this happens. It's even worse when the patient learns this after the ultrasound is repeated at the second appointment. For example, I saw one patient at our Toledo clinic for her initial appointment and ultrasound. No embryonic cardiac tones were detected, and so she wanted to schedule a time to come back to the Toledo clinic later in the week for a medication abortion. I informed her that, because the Toledo clinic was not open every day, her best bet was to travel to Cuyahoga Falls (approximately two hours away) for an earlier appointment. She scheduled her appointment for the next day at the Cuyahoga Falls clinic; however, when we repeated the ultrasound, we detected embryonic cardiac activity and had to tell her she could not receive an abortion in Ohio. We advised her to travel out of state.

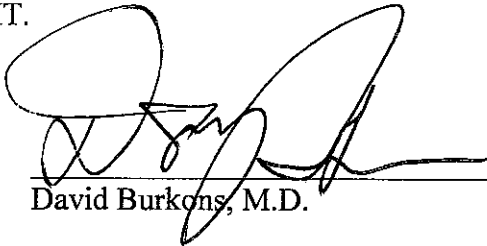
16. Another patient arrived at our Toledo clinic who was terrified to tell her boyfriend about her plans to have an abortion. She had already rescheduled her appointment twice. When she went to the car and told him, he tried to get into the clinic. The clinic escorts who work outside the building calmed him down. He then kicked her out of the car and drove away, leaving

the woman hysterical because she already had two children and didn't know what to do. By the time she sought care, she was a few days too late to have her abortion in Ohio.

17. We have also had two patients who confided that they had visited hospital ERs for treatment of tubal (ectopic) pregnancies, but the doctors were afraid to treat them without being absolutely certain that there was no intrauterine pregnancy. In one case, the patient's fallopian tube ruptured, and surgery rather than medical management which would have been possible if they had acted sooner. In the other, my nurse intervened to convince the physician to treat the patient, but only several days later, which was emotionally wrenching for the patient. Thus, although S.B. 23 does not apply to ectopic pregnancies, I am concerned that the law's stiff criminal penalties are deterring some physicians from providing even legal care that is medically necessary. We are also learning of similar situations occurring when patients seek care for miscarriages.

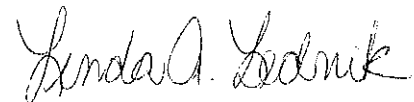
18. These are just a few examples of the many harms my patients have experienced due to S.B. 23. I am deeply concerned that these sorts of situations will continue to occur, and Ohioans will continue to be harmed, if S.B. 23 remains in effect.

FURTHER AFFIANT SAYETH NAUGHT.



David Burkons, M.D.

Signed before me this 31 day of August, 2022



Linda A Lednik
NOTARY PUBLIC
State of Ohio 5
My Commission Expires 11/23/2025

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

PRETERM-CLEVELAND, *et al.*,

Plaintiffs,

v.

DAVID YOST, *et al.*,

Defendants.

Case No.

Judge

**AFFIDAVIT OF AERAN TRICK IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER FOLLOWED BY PRELIMINARY
INJUNCTION**

I, Aeran Trick, L.P.N., having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge:

1. I am the Operations Manager for Women's Med Center of Dayton ("WMCD") as well as our sister clinic, Women's Med Indianapolis ("WMI"). Both clinics are operated by Women's Med Group Professional Corporation ("WMGPC"). I have been employed by WMGPC for 20 years. As Operations Manager at WMCD, I oversee clinic operations, training and supervision of clinic personnel, clinic security, and patient relationship management.
2. Before Senate Bill 23 ("SB 23") went into effect on Friday, June 24, 2022, WMCD provided medication abortions up to 10 weeks from the first day of a person's last menstrual period ("LMP"), and procedural abortions up to 21 weeks and 6 days LMP.

3. At the time SB 23 went into effect, WMCD had 74 patients who had already come in for their statutorily-mandated pre-procedure appointment and were scheduled to return for their abortion procedure over the next two weeks. My staff and I had to call most of these patients to tell them that we are no longer able to perform their abortion at our Dayton clinic because embryonic cardiac activity was detected during their first appointment. Some of these patients may have been able to seek care in Indiana, at our clinic or another clinic. However, a number of patients told us that they were unable to travel out of state for abortion care. Moreover, about ten of our previously scheduled patients were already too far along in their pregnancy to obtain an abortion in Indiana, where our Indianapolis clinic only provides up to 13 weeks and 6 days LMP, so we provided them with information regarding clinics in Illinois.
4. In addition to these patients, when SB 23 took effect on Friday evening, WMCD had 200 new patients with future appointments scheduled for the coming days and weeks. Given the extremely limited time period during which abortions can now be performed in Ohio under SB 23, we rescheduled most of these initial appointments for Monday, June 27 through Wednesday June 29. However, the majority of the rescheduled patients were not able to receive abortion care in Ohio because fetal heart tones were detected during their visit.
5. We have continued to receive calls from pregnant people seeking abortions at our Dayton clinic, but we have had to turn most of them away or advise them to seek care out of state. In July, we were only able to provide abortions to 77 patients at our Dayton clinic. This number is a small fraction of the abortions that were performed at the Dayton clinic prior to SB 23 going into effect.

6. I have personally witnessed the devastating harms that SB 23 is causing our patients and pregnant Ohioans desperately seeking abortion care. For example, on Monday, June 27, WMCD saw a 37-year-old woman for her statutorily-mandated pre-procedure appointment. This patient has stage III melanoma and was told by her doctors that they cannot provide the treatment she needs until her pregnancy is terminated. Because our medical staff detected fetal heart tones during her examination, she had to travel to Indiana for her procedure. Upon learning that she would need to travel out of state to have her abortion, the patient broke down and cried inconsolably despite the attempts of multiple staff members, including myself, to comfort her.
7. On Friday, June 24, a sixteen-year-old patient came to WMCD for her statutorily-mandated pre-procedure appointment, accompanied by her mother. This patient has a history of anxiety, depression, and drug addiction. She said that she was working hard to move forward with her life, and felt that having an abortion was critical to doing so. During her appointment, our medical staff determined that she was 5 weeks and 5 days LMP with fetal heart tones. The patient was scheduled to return for a medication abortion on Tuesday, June 28. However, hours after she left the clinic, SB 23 went into effect. I had to call this patient to explain that she can no longer legally obtain an abortion in Ohio. She was devastated by this news. Although she subsequently made plans to travel to our clinic in Indianapolis for her procedure, she was required by Indiana law to make two separate trips to the health center, delaying her care and adding to the travel-associated burdens that she faced.
8. In the days after SB 23 went into effect, patients continued to suffer similar harms. For example, I spoke with an Ohio woman who had been calling clinics all weekend,

attempting without success to find abortion care in a location that she could afford to travel to. She was 18 weeks pregnant and recently learned that her fetus has genetic abnormalities. We had to turn her away because she was too far along in her pregnancy to have an abortion in Ohio under SB 23, and our Indianapolis clinic only provides up to 13 weeks and 6 days LMP. We provided this patient with information about clinics located in Illinois, but we have not been able to determine whether the patient received care.

9. Our office manager also spoke with the mother of a sixteen-year-old patient who had completed her statutorily-mandated pre-procedure appointment at our clinic on Wednesday, June 22, and was scheduled to return for a medication abortion on Wednesday, June 29. The girl had been experiencing severe vomiting and had lost more than 20 pounds. We had to call and cancel her procedure at WMCD because it was too late for her to receive an abortion in Ohio. The mother was distraught over what would happen to her daughter if she was unable to obtain an abortion. As a result of car problems, the mother was forced to rent a car to transport her daughter to Indianapolis for her procedure, because she was concerned that her car would break down during the trip. They also had to make two separate trips to the Indianapolis health center, as required by Indiana law.
10. Another patient—who is currently in foster care—had filed a petition for a judicial bypass before the United States Supreme Court’s ruling in *Dobbs*. Her foster mother had wanted to help her access the abortion care she needed, but she was not legally permitted to provide her consent for the procedure, thus forcing the patient to turn to the court. The court granted the judicial bypass order on June 27, 2022, after SB 23 had already gone into effect in Ohio. She came into our Dayton clinic and our medical staff determined that

she was 16 weeks and 3 days pregnant. As a result, we had to turn her away because she was too far along in her pregnancy to have an abortion in Ohio under SB 23, and our Indianapolis clinic only provides up to 13 weeks and 6 days LMP. She was ultimately forced to travel to Illinois, but this greatly delayed her care, thus increasing the risks to her health.

11. In July, our office received a call from a 39-year-old Ohio woman who was approximately 13 weeks pregnant and had no amniotic fluid. The patient had experienced amniotic fluid leakage while undergoing a prenatal test, and was informed by her physician that this would render the pregnancy nonviable. However, because the fetus still had fetal heart tones, the physician discharged her with instructions to call the office if she developed a fever. The patient was very distressed and expressed to WMCD staff that she felt abandoned by her physician during an incredibly difficult experience. I'm concerned that confusion over the meaning of SB 23's health exception has led physicians to avoid providing medically necessary care out of caution, and I worry about patients in similar positions who aren't able to independently find an accessible abortion provider without their physician's help.

12. Also in July, our clinic was contacted by a 28-year-old pregnant woman from Cincinnati who was seeking an abortion after her birth control failed. She had experienced a late miscarriage during a previous pregnancy, and this experience was so traumatizing that she said she was not able to go through another pregnancy. The woman was too far along in her pregnancy to receive an abortion in Ohio and had to travel to Indiana, causing her additional distress.

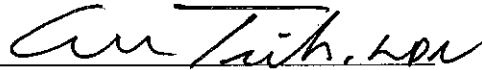
13. Another patient came to WMCD after experiencing persistent severe vomiting caused by her pregnancy, having already visited the hospital on four occasions for treatment of this condition. During her initial appointment at WMCD, the patient was so sick that she was lying on the floor vomiting into a bucket. Our medical staff determined that despite being very early in pregnancy, fetal heart tones were detectable, and she was therefore unable to have an abortion in Ohio. The patient was incredibly concerned that she would not be able to make it to Indianapolis for her procedure due to her severe vomiting. On top of this, traveling out of state was particularly difficult for the patient who had four children between the ages of three and thirteen and worked as a manager at a large retail store. She was concerned that she was going to lose her job because of all the time she had to take off to travel to and from the clinic for abortion care in addition to her repeated absences due to being hospitalized for her condition. Ultimately, she was forced to get a hotel room in Indianapolis and travel there with her mother and four children to obtain the care she needed.

14. In July, we were contacted about a sixteen-year-old girl living in Southwest Ohio who had become pregnant after she was sexually assaulted by a family member. The girl was unable to have an abortion in Ohio due to the presence of fetal heart tones, so she was forced to go to Indiana to have an abortion. The local Ohio law enforcement agency—which was already involved at the time the clinic was contacted about the patient—had to drive to our Indianapolis clinic to retrieve the tissue for crime lab testing related to the sexual assault investigation. I am concerned that Ohio's ban and the need to travel increasingly far distances to obtain abortion care not only causes unimaginable harm to

these young victims, but could also hamper law enforcement's ability to investigate and prosecute these cases in the future.

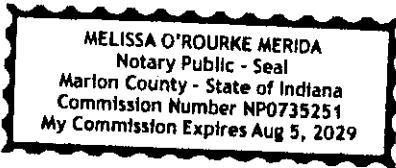
15. The above-described experiences are just a few examples of the devastating consequences that SB 23 has already had on our patients. Patients have reported barriers to seeking an abortion out of state, such as transportation issues or needing to obtain additional funds to cover the additional cost of travel. Patients have also reported long wait times for appointments at clinics in other states. I fear that the many pregnant people in need of our services who we are required to turn away under SB 23 will not be able to access abortion care out of state, and will be forced to continue their pregnancies.
16. I am also concerned that accessing abortion will soon become exponentially more difficult for Ohio women. Since SB 23 went into effect, many women who we had to turn away from our Ohio clinic sought abortions in Indiana. However, this will no longer be an option starting on September 15, when Indiana's abortion ban is scheduled to go into effect. I fear that this will force many more patients seeking abortion care to continue their pregnancies or attempt to end their pregnancies on their own, which can be dangerous.

The undersigned hereby affirms that the statements made in the foregoing affidavit are true,
under penalty of perjury.

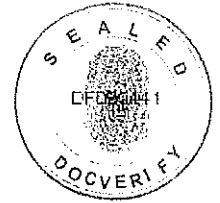

Aeran Trick, LPN
Women's Med Dayton

Sworn to and subscribed before me this 26 day of August, 2022.

(Seal)




Notary Public



A. Pierce Affidavit iso TRO.pdf

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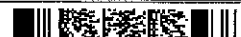
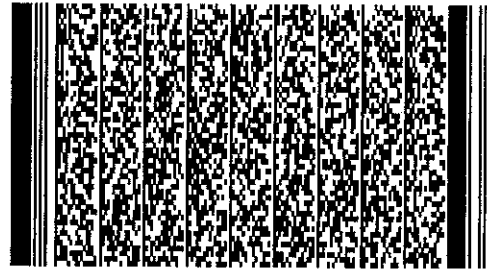
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E-Signature Summary

E-Signature 1: Alegra Leann Pierce (ALP)
September 01, 2022 07:53:03 -8:00 [C5A2746C030F] [75.179.56.90]
apierce@preterm.org (Principal)

E-Signature Notary: Theresa M Sabo (TMS)
September 01, 2022 07:53:03 -8:00 [A29688F55360] [65.60.211.87]
tess.sabo@gmail.com
I, Theresa M Sabo, did witness the participants named above electronically sign this document.



IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

PRETERM-CLEVELAND, *et al.*,

Plaintiffs,

v.

DAVID YOST, *et al.*,

Defendants.

Case No.

Judge

**AFFIDAVIT OF ALLEGRA PIERCE IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER FOLLOWED BY PRELIMINARY
INJUNCTION**

I, Allegra Pierce, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge:

1. I am a Medical Assistant at Preterm-Cleveland ("Preterm"), where I have been employed for 25 years. As a Medical Assistant at Preterm, I perform ultrasounds, work in the appointment center, and follow up with patients who have medication abortions. In addition, I am trained as a patient navigator and I help patients through their pregnancy decision-making process.
2. Before Senate Bill 23 ("SB 23") went into effect on June 24, 2022, Preterm provided procedural abortions through 21 weeks 6 days from the first day of a person's last menstrual period ("LMP"), and provided medication abortions up to 10 weeks LMP.
3. SB 23 went into effect on a Friday evening, and because Preterm is open on Saturdays, our staff subsequently had to cancel almost all of the appointments that were scheduled for the following day. We were not able to reach some of the patients by phone, so we



had to inform them that they would no longer be able to get abortion care in Ohio when they came into the clinic on Saturday. We did our best to provide patients with what information we could about clinics located in other states, but many felt like they were left without any real options. The patients we turned away just did not know what to do—most seemed to be in a state of total disbelief.

4. Preterm currently provides abortion in compliance with SB 23. As a result, we cannot provide abortion care to most of the patients that contact our clinic. Because I perform ultrasounds on patients, I see firsthand every day how devastated our patients are when they find out that they are not able to have an abortion due to the detection of fetal heart tones. For example, I saw a 19-year-old patient who had assumed that she was early enough in her pregnancy to be able to obtain an abortion in Ohio, and came in for her first appointment thinking that she would be able to schedule another appointment to obtain an abortion at Preterm. However, when I performed an ultrasound on her I detected fetal heart tones. When I broke this news to her and explained that Preterm would be unable to provide her with an abortion because of SB 23, she was shocked and began hysterically crying. I gave her information about clinics that she could go to in other states, but she felt like traveling out of state for care was not a realistic option for her. She was so upset that she could not move. Many members of our staff tried to comfort her, myself included, but it took her several hours to calm down enough to leave the clinic. I do not know if this patient was ever able to receive care out of state.
5. While reactions vary when I tell a patient that she cannot have an abortion in Ohio because the ultrasound detected fetal heart tones, the devastating impact of this news is always apparent. Many patients tell me that they feel they have no choice but to go



through with the pregnancy. They worry they may lose their jobs, will seriously struggle to support their families or the children they already have if they have another child, or will suffer harm to their physical or mental health if they have to remain pregnant, but do not see another option.

6. The majority of patients I talk to say that they can't travel out of state to access abortion care. Even though many patients can access sources of funding for seeking an abortion, there are so many barriers that make traveling out of state inaccessible for many of our patients, including the cost of travel, child care responsibilities, and difficulty getting time off of work, to name just a few. Even those patients who are able to travel out of state often have a hard time getting an appointment due to increasingly long wait times at clinics in states where abortion is still legal.
7. The harms caused by SB 23 are not limited to the patients who are denied abortion care in Ohio. As a result of my ultrasound duties, I also see the negative impact that the law has on many of our patients who are early enough in their pregnancy to legally have an abortion in Ohio. When performing an ultrasound, I watch as patients hold their breath, waiting to find out if they are eligible to receive abortion care. However, when I let patients know that no fetal heart tones have been detected, their initial relief often shifts to a different type of stress. Fetal heart tones typically occur around 5 to 6 weeks LMP, so these patients are very early on in their pregnancies and many of them have not had a chance to fully wrap their minds around the fact that they are pregnant. A number of patients have told me that they wish they had more time to think about whether to continue the pregnancy, but feel like they need to go forward with having an abortion before they lose the ability to make this choice. For example, I recently spoke with a



patient with a young baby at home who had become pregnant again only months after giving birth. She had experienced many post-partum health issues, and she was not sure if she was physically or mentally ready to go through a pregnancy again so soon. She wanted time to work through this decision but was terrified that if she waited she would no longer be able to have an abortion.

8. I do my best to make these patients feel supported through their decision-making process and assure them that they do not need to rush into any decision that they are not ready to make. However, the reality is that fetal heart tones can develop within hours or days of a patient's first appointment, and Ohio law mandates an additional twenty-four-hour waiting period before the patient can return for a second ultrasound and, if there are no fetal cardiac tones, the abortion procedure. Thus, the time to make this decision is in fact very limited.
9. The panic and desperation that SB 23 has caused is also evidenced by a new trend I have observed regarding the timing of patient appointment requests. I have noticed that more people are trying to schedule appointments much earlier in pregnancy. Some patients have been coming in so early that an ultrasound cannot definitively say whether they are pregnant, which leaves us unable to provide the patients with any services. This goes to show how terrified people are that they will be forced to continue an unwanted pregnancy.
10. These are just a few examples of SB 23's widespread harms that I witness every day. I worry about the lasting impact this ban will have on all of our patients, and I fear that the current situation will only get worse as more states outlaw abortion and clinics in Ohio and surrounding states close.



The undersigned hereby affirms that the statements made in the foregoing affidavit are true,
under penalty of perjury.

Allegra Leann Pierce
Signed on 09/01/2022 13:21:30

Allegra Pierce
Preterm-Cleveland

09/01/2022

Sworn to and subscribed before me this _____ day of September, 2022.

(Seal)

Theresa M Sabo
Signed on 09/01/2022 13:21:40

Notary Public



Notarial act performed by audio-visual communication



**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

PRETERM-CLEVELAND, et al.,

Plaintiffs.

v.

DAVID YOST, et al.,

Defendants.

Case No.: _____

Judge: _____

**AFFIDAVIT OF DR. ADARSH E. KRISHEN IN SUPPORT OF PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER FOLLOWED BY PRELIMINARY
INJUNCTION**

I, Dr. Adarsh E. Krishen, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge:

1. I am a board-certified physician with over 30 years of experience in family medicine. I am licensed to practice medicine in the state of Ohio. Since 2017, I have been the Chief Medical Officer of Planned Parenthood of Greater Ohio ("PPGOH"), a Plaintiff in this case.

2. PPGOH was formed in 2012 through a merger of several local and regional Planned Parenthood affiliates that had served patients in Ohio for decades. PPGOH serves patients in northern, eastern, and central Ohio.

3. Before S.B. 23 took effect on Friday, June 24, 2022, PPGOH provided both procedural and medication abortions at our two ambulatory surgical facilities ("ASF") in East Columbus and Bedford Heights, a suburb of Cleveland. We provided procedural abortions at both locations up to 19 weeks 6 days from the first day of a patient's last menstrual period

("LMP"), and we provided medication abortions through 10 weeks LMP. Since S.B. 23 took effect, we are able to provide abortions up to only approximately 6 weeks LMP.

4. As PPGOH's Chief Medical Officer, I am familiar with the impact that S.B. 23 has had on our operations and our patients.

5. PPGOH has experienced a significant operational impact as a result of S.B. 23. The ban is causing a financial drain on PPGOH. We have also lost staff as a result of the law. PPGOH had entered a contract with a physician who was in the process of being onboarded but withdrew after the ban went into effect. PPGOH also lost its director of nursing, who was worried about job stability following the ban.

6. Our abortion volume has been drastically reduced since S.B. 23 went into effect. Because of this, when possible PPGOH has tried to move abortion staff to family planning services, but the reduction in volume has caused hardships for our staff, who now at times have to travel to Columbus from Cleveland on days when the Cleveland clinic is closed.

7. Over the past more than 2 months since S.B. 23 took effect, we have had to turn away around 200 of patients per month. We turn away some patients when they initially call to make an appointment, since they already know that they are too far along in pregnancy to obtain an abortion in Ohio. Others come in for their first informed consent appointment and we have to turn them away when we discover embryonic cardiac activity. Still others, who appeared at their first appointment to be eligible for an abortion in Ohio, have to be turned away after complying with Ohio's 24-hour waiting period because embryonic cardiac activity has appeared between the two appointments. Patients who learn they cannot access an abortion in Ohio are uniformly distressed and overwhelmed as they attempt to figure out their next steps. Most of these patients have attempted to access care in Michigan, Pennsylvania, New York, Illinois, and Washington,

D.C. However, out-of-state providers are experiencing extremely high demand and long wait times. For example, providers in the Pittsburgh area have had waiting lists of over 300 patients at times since the United States Supreme Court decision overturning *Roe v. Wade* on June 24. One patient who called a Pittsburgh clinic was told the clinic was full and no longer accepting patients. Others are seeing very long wait times of up to 3–4 weeks, depending on the patient's LMP and other medical needs, because receiving clinics prioritize patients with higher gestational ages. Surrounding states also have bans, further impacting the capacity of these out-of-state clinics. For example Kentucky has a total abortion ban, and I understand Indiana has a total abortion ban scheduled to go into effect on September 15, which will make the access situation even worse.

8. Even if patients are able to access an appointment out-of-state, many are facing numerous barriers to travel.

9. The time required to obtain an out-of-state abortion imposes a significant, if not insurmountable, burden on our patients. Many patients need to take time off work, including potentially multiple days, for travel, the appointment, and recovery. Some of these patients have already had one, if not two, appointments at one of our health centers and need to secure additional time off to travel out of state. Patients who do not have PTO need to take unpaid time off work to travel. We have also spoken with patients who are about to start new jobs and had to delay their start dates due to travel.

10. The need to travel increases the financial burden of an abortion dramatically, as it is exacerbated by travel costs and greater procedural costs due to a later gestational age and the increased time off work results in loss of wages.

11. Many of our patients also already have children. They must arrange for and pay for childcare or bring their children to their appointment out-of-state. We have spoken with single parents who must tell two or more people about their need to travel in order to have an escort driver and childcare provider, which compromises the confidentiality of their pregnancy and abortion decision. We have also spoken with parents who must bring their children to their appointments because they have no childcare options. This increases travel-related costs (e.g., needing a larger hotel room, more expensive food, etc.) and requires a reliable support person to serve dual roles of escort and child care provider. Not every patient has such support readily available.

12. These increased challenges are taking place in the context of more than two years of the COVID-19 pandemic and related economic hardship: many patients have recently lost jobs, struggled with precarious housing, or are working multiple jobs to make ends meet.

13. These burdens, while significant for all of our patients, are especially difficult for patients experiencing intimate partner violence (“IPV”), young people with limited resources, and patients experiencing homelessness. Patients who are experiencing IPV have immense difficulty navigating travel to another state without being detected by their abusive partner – this includes not only finding a way to explain their physical absence, but also obtaining transportation and the funds needed for the travel and the procedure. This decreases the safety for the patient; even absent these obstacles, pregnancy on its own is a risk factor for IPV homicide. Young adults, especially students, who have limited financial/transportation resources and are living away from their support system (either away from family of origin or support system established at school settings) or are traveling for summer internships have a particularly challenging time traveling to obtain the care they need.

14. Nearly all patients, regardless of resources, experience immense emotional distress when they are told they cannot access care in Ohio.

15. We have had patients who had previous high-risk pregnancies, or patients with chronic illness, who cannot physically or emotionally endure another pregnancy or a delay in obtaining abortion care.

16. There are sexual assault survivors seeking care who are retraumatized by not being able to access care close to home.

17. There are also patients who have already made the decision to end a pregnancy but are forced to continue being pregnant as they wait for out of state appointments, travel, etc.

18. In addition, the delay in having an abortion has also impacted some patients' ability to have their desired abortion method, particularly if they prefer to have a medication abortion as opposed to a procedural abortion.

19. Individual patient experiences show that S.B. 23's impact has been horrific. We had one patient who was experiencing homelessness and between shelters. When we called to inform her of the change in the law, she began to experience panic and stress because she did not see how she would be able to travel out of state given the barriers she is experiencing in her life and the distance she would have to travel. She was so distressed and overwhelmed that our staff had to call the Ohio crisis intervention hotline to go to her location and assist her.

20. Another patient had traveled to Ohio from Texas, where abortion has been banned after approximately 6 weeks LMP since September. She had already had her initial pre-abortion appointment here at PPGOH on June 22, and on June 24, before she was able to return for her abortion, S.B. 23 went into effect. We had to inform her that she would no longer be able to



access care here. This patient experienced extreme stress, frustration, and fear that she would not be able to access care in a third state.

21. Another patient—a minor—was sexually assaulted and had to travel to Michigan with her mother to obtain care because she could not access abortion in Ohio as a result of S.B.

23. This patient experienced immense trauma from the assault itself and then endured further trauma from a forensic interview alongside a physical exam to collect evidence for the ongoing police investigation. This trauma was further exacerbated by needing to wait over 3 weeks for her appointment. In each step of this process she felt the complete denial of bodily autonomy and safety, something that all people, especially children, should unequivocally have at all times.

22. Another patient had recently left an emotionally abusive relationship and had no contact with her former partner for several weeks when she found out she was pregnant. She was very confident in her decision to have an abortion and decided to keep her decision private. Two days before her consultation, she found out through an acquaintance that her former partner died by suicide. The extreme time constraints created by the 6-week ban made the process incredibly stressful and overwhelming for her, as it was further compounded by grief and shock on learning the news of her former partner's death. The patient stated that even though her decision did not change, she wished she had more time before her procedure appointment to process this grief but was unable to delay her care in the event that it would require her to leave the state.

23. Another patient—a single mother of two—recently had major orthopedic surgery. This patient's postoperative healing is extensive and her pregnancy is exacerbating the chronic physical pain she is experiencing. She stated that she does not believe she can physically endure this pregnancy. This patient is scheduled for an appointment in Pennsylvania and is concerned about the physical toll of traveling. She also discussed the emotional impact of needing to leave

the state and how she knows she is making the right decision for herself but feels very alone in the process as she does not have an adequate support system to help her navigate the burdens of traveling to another state for her abortion.

24. These are only a few examples of the devastating circumstances our patients are in. I know that S.B. 23 is harming, and will continue to harm, PPGOH's patients by delaying their access to care, if they are fortunate enough to find an appointment out of state, or by forcing them to carry unwanted pregnancies to term.

The undersigned hereby affirms that the statements made in the foregoing affidavit are true,
under penalty of perjury.

Adarsh E. Krishen

Adarsh E. Krishen, M.D.

Sworn to and subscribed before me this 31 day of August, 2022.

William J Sweress

Notary Public



WILLIAM J SWERESS
Notary Public, State of Ohio
My Commission Expires
November 29, 2025

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

PRETERM-CLEVELAND, *et al.*,

Plaintiffs,

v.

DAVID YOST, *et al.*,

Defendants.

Case No.

Judge

**AFFIDAVIT OF W.M. MARTIN HASKELL, M.D., IN SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY RESTRAINING ORDER FOLLOWED BY
PRELIMINARY INJUNCTION**

I, W.M. Martin Haskell, M.D., being duly sworn on oath, do depose and state as follows:

1. I am the sole shareholder and Medical Director of Women's Med Group Professional Corporation ("WMGPC"), which has owned and operated a clinic that provides abortion care in Kettering, Ohio (near Dayton) since 1983. WMGPC currently holds an Ambulatory Surgical Facility ("ASF") license and operates under the business name Women's Med Center Dayton ("WMCD").
2. WMGPC also owns and operates a clinic in Indianapolis, Indiana, called Women's Med Indianapolis ("WMI"). WMI has provided safe abortion care in Indiana since 2001.
3. I submit this affidavit in support of Plaintiffs' Motion for Temporary Restraining Order Followed by Preliminary Injunction to block the enforcement of Ohio's S.B. 23. It is my understanding that S.B. 23 bans abortion, except in very limited circumstances, after detection of fetal cardiac activity.
4. I am over the age of eighteen, I am competent to testify, and I make this affidavit

based on personal knowledge.

5. WMGPC is a corporation organized under the laws of the State of Ohio. WMGPC provides pregnancy testing, abortion, and birth control at both the Dayton and Indianapolis clinic locations. WMGPC and its predecessor organizations have provided safe and compassionate reproductive health care in Ohio since 1973 and in Indiana since approximately 1975. However, as explained below, both of my clinics will have to cease providing abortion care if neither clinic is able to provide abortions after fetal cardiac activity may be detected.

6. Prior to June 24, 2022, when the Supreme Court decided *Dobbs v. Jackson Women's Health Organization*, WMCD provided procedural abortions up to 21 weeks, 6 days LMP and medication abortions up to 10 weeks LMP. However, at approximately 6 p.m. on the day that *Dobbs* was decided, I learned from my attorney that a federal judge presiding over a federal constitutional challenge to S.B. 23—in which WMGPC was a plaintiff—lifted the injunction blocking enforcement of S.B. 23, and the law was permitted to go into effect. Since then, WMCD has been providing medication and procedural abortions only before fetal cardiac activity is detected—which occurs at approximately 6 weeks LMP, but it can occur earlier in some patients.

7. WMCD is the only abortion provider in the Dayton, Ohio area, and one of only 9 abortion clinics in the state.

8. Since S.B. 23 took effect, WMCD has had to turn away many patients whose pregnancies are too advanced to receive an abortion in Ohio. Some of these patients have been able to travel to Indiana, as long as they are able to receive the procedure before they reach 13 weeks, 6 days LMP, which is the latest gestational age at which abortions may be performed

outside a hospital in Indiana.¹ Patients who cannot access care in Indiana before that gestational stage must travel further (generally to Illinois or Pennsylvania), or they are forced either to carry their pregnancies to term or to attempt to end their pregnancies outside the medical system.

9. When S.B. 23 took effect, WMI experienced an enormous increase in patient volume. Prior to S.B. 23 taking effect, from March 2022 through June 2022, WMI performed an average of about 237 abortions each month (257 in March 2022, 210 in April 2022, 219 in May 2022, and 263 in June 2022). However, in July 2022 WMI saw 474 patients, which is double WMI's previous average patient volume. Moreover, according to WMI's records, the overwhelming majority of this increased volume consists of patients from Ohio.

10. At the same time, WMCD experienced an even more dramatic decrease in patient volume. Only 77 abortions were performed at WMCD in July 2022, which was a decrease of approximately 79% from our average volume of approximately 372 patients per month. Financially, with WMCD operating at only 21% capacity, WMGPC has been able to sustain operations at WMCD since June 24 only because of the increase in patient volume at WMI. The current patient volume at WMCD is not sufficient to defray the cost of overhead and salaries needed to run the clinic.

11. On August 5, the Indiana legislature passed a total ban on abortion, which is set to go into effect on September 15. If that law takes effect, WMI will close, and WMCD will become financially unsustainable. My plan is thus to close both WMCD and WMI on September 15, 2022, if Indiana's law takes effect as scheduled.²

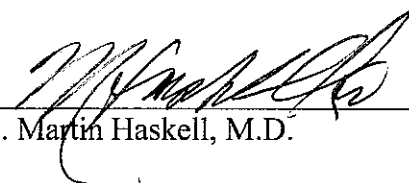
¹ Because Indiana hospitals generally do not provide abortions except in extremely limited circumstances, abortion is available for almost all patients in Indiana only until 13 weeks, 6 days LMP.

² A challenge to Indiana's abortion ban has been filed in Indiana state court, and WMGPC is a plaintiff in that lawsuit.

12. Even if abortion becomes legal again beyond 6 weeks LMP in Ohio and/or Indiana sometime after September 15, if I close WMCD and WMI on September 15 I would not be able to reopen them. In order to wind down the businesses, I will have to lay off staff, who will presumably find other positions. I will also sell our facilities and medical equipment. To reopen either clinic after completing this process would be far too difficult and expensive a task for me to take on at this stage of my career (age 76 and counting).



13. My training in medicine began in 1968 and I received my medical license in Alabama in 1973. I have seen first-hand the devastating infections, complications, sterility, and even death that resulted from illegal abortions and self-induced abortions prior to 1973 when abortions were legalized in this country. Though some patients may continue access abortion in other states, I am concerned that some patients will be forced to carry to term, and others may resort to desperate measures and attempt to obtain abortions under conditions that are not safe. This number will surely grow if safe and legal abortion continues to become even less accessible across our state.

FURTHER AFFIANT SAYETH NAUGHT.



W.M. Martin Haskell, M.D.

Signed before me this 31 day of August, 2022



RYAN A NATICCHIONI
Notary Public
State of Ohio
My Comm. Expires
April 18, 2027

