IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

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OCT 12 2022

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PRETERM-CLEVELAND, *et al.*,	:	Case No.: A2203203
Plaintiffs,	:	
v.	:	Judge Christian A. Jenkins
DAVID YOST, *et al.*,	:	
Defendants.	:	Preliminary Injunction Order

Introduction

In accordance with Civ. R. 65(B), a duly noticed evidentiary hearing on Plaintiffs' motion for preliminary injunction was conducted before this Court on October 7, 2022. Prior to said hearing, the parties were afforded the opportunity to undertake limited expedited discovery in preparation for the hearing. However, the trial on the merits in this matter was not consolidated with the hearing on Plaintiffs' motion for preliminary injunction pursuant to Civ. R. 65(B)(2). Thus, at trial on the merits, admissible evidence received during the preliminary injunction hearing shall become part of the record at trial and need not be re-presented.[1]

The Court having considered the record in this matter, including the record before the Court on Plaintiffs' motion for temporary restraining order, the filings of the parties in support of and in opposition to the motion for preliminary injunction, and the evidence and arguments received at

[1] The Court's findings at this stage are based on the limited record before the Court. This matter shall be set for a case management conference at which time the Court shall issue a scheduling order providing the parties with adequate time to conduct full discover in preparation for trial in accordance with Civ. R. 16(B). The parties are directed to comply with Civ. R. 26(F) and the Court's standing orders (https://hamiltoncountycourts.org/index.php/common-please-court-judge-christian-a-jenkins/) in advance of the case management conference.

the October 7, 2022 hearing, finds that plaintiffs have demonstrated by clear and convincing evidence a strong likelihood of success on the merits and that they face immediate, irreparable injury, such that the issuance of a preliminary injunction enjoining the enforcement of S.B. 23 (as described in detail below) is appropriate during the pendency of this matter. In support thereof, the Court incorporates the reasons set forth in its September 14, 2022 Decision and Entry, the reasons set forth on the record on October 7, 2022, and the following findings of fact and conclusions of law:

FINDINGS OF FACT

Senate Bill 23

1. On April 10, 2019, the Ohio General Assembly passed 2019 Am.Sub.S.B. No. 23 ("S.B. 23").

2. Under S.B. 23, if a pregnancy is located in the uterus, the provider who intends to perform an abortion is required to determine whether there is cardiac activity. If there is cardiac activity, S.B. 23 makes it a crime to "caus[e] or abet[] the termination of" the pregnancy. S.B. 23, Section 1, amending R.C. 2919.192(A), 2919.192(B), and 2919.195(A). Cardiac activity typically occurs approximately six weeks into pregnancy (as measured from the first day of a patient's last menstrual period, or "LMP") but can occur as early as the fifth week LMP.

3. S.B. 23 has two limited exceptions. After cardiac activity is detected, abortion is permitted only if it is necessary (1) to prevent the woman's death, or (2) to prevent a "serious risk of the substantial and irreversible impairment of a major bodily function." S.B. 23, Section 1, amending R.C. 2919.195(B). The statute defines "'[s]erious risk of the substantial and irreversible impairment of a major bodily function' [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. 2919.16(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 "does not include a condition related to the woman's mental health." *Id.*

4. 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. S.B. 23, Section 1, amending R.C. 2919.195(A); R.C. 2929.14(A)(5) and 2929.18(A)(3)(e).

5. In addition to criminal penalties, the state medical board may assess a forfeiture of up to $20,000 for each violation, S.B. 23, Section 1, amending R.C. 2919.1912(A), and limit, revoke, or suspend a physician's medical license based on a violation of S.B. 23, *see* R.C. 4371.22(B)(10).

6. Clinics providing abortion care also face civil penalties and revocation of their ambulatory surgical facility licenses for a violation of S.B. 23. R.C. 3702.32; R.C. 3702.30(A)(2)(a).

7. A patient may also bring a civil action against a provider who violates S.B. 23 and recover damages in the amount of $10,000 or more. S.B. 23, Section 1, amending R.C. 2919.199(B)(l).

8. On July 3, 2019, a federal district court preliminarily enjoined S.B. 23 before it went into effect, finding that the ban would pose an "insurmountable" obstacle to abortion access and "prohibit almost all abortion care in Ohio," violating Ohioans' rights under the Fourteenth Amendment of the United States Constitution. *Preterm-Cleveland v. Yost*, 394 F.Supp.3d 796, 800-801 (S.D. Ohio 2019).

9. On June 24, 2022, following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 213 L.Ed.2d 545 (2022), the district court vacated the

preliminary injunction and S.B. 23 went into effect. *Preterm-Cleveland v. Yost*, No. 1:19-cv-00360, Dkt. #100.

10. On September 14, 2022, this Court entered a 14-day temporary restraining order ("TRO"), which it later extended to October 12, 2022. The TRO enjoined enforcement of S.B. 23 and any later enforcement action premised on a violation of S.B. 23 that occurred while such relief was in effect.

11. The Court held a preliminary injunction hearing on October 7, 2022, during which it heard live testimony from three witnesses for the Plaintiffs and two for Defendants.

The Parties

12. Plaintiffs Preterm-Cleveland ("Preterm"), Planned Parenthood Southwest Ohio Region ("PPSWO"), Planned Parenthood of Greater Ohio ("PPGOH"), Women's Med Group Professional Corporation ("WMGPC"), Northeast Ohio Women's Center, LLC ("NEOWC"), and Sharon Liner, M.D. provide abortion services in Ohio.

13. Defendant David Yost is the Attorney General of Ohio. He is the chief law officer for the state, and ultimately responsible for the criminal enforcement of S.B. 23. R.C. 109.02. He is also charged with commencing and prosecuting civil forfeiture under S.B. 23 when directed to do so by the State Medical Board. S.B. 23, Section 1, amending R.C. 2919.1912(B). He is sued in his official capacity.

14. Defendant Bruce T. Vanderhoff, M.D., M.B.A., is the Director of the Ohio Department of Health ("ODH"), which is responsible for promulgating rules to assist in compliance with S.B. 23. He is charged with administering ODH. He is sued in his official capacity.

15. Defendant Kim G. Rothermel, M.D., is the Secretary of the State Medical Board of Ohio, which is charged with enforcing the physician licensing and civil penalties contained in S.B. 23. She is sued in her official capacity.

16. Defendant Bruce R. Saferin, D.P.M., is the Supervising Member of the State Medical Board of Ohio, which is charged with enforcing the physician licensing and civil penalties contained in S.B. 23. He is sued in his official capacity.

17. Defendants Michael C. O'Malley, Cuyahoga County Prosecutor, Joseph T. Deters, Hamilton County Prosecutor, G. Gary Tyack, Franklin County Prosecutor, Mathias H. Heck, Montgomery County Prosecutor, Julia R. Bates, Lucas County Prosecutor, and Sherri Bevan Walsh, Summit County Prosecutor, are responsible for prosecuting criminal violations of S.B. 23 that occur within their respective jurisdictions. They are sued in their official capacities.

Witnesses

Plaintiffs' Witnesses

18. Sharon Liner, M.D., is a board-certified family physician with 19 years of experience in women's health. She is licensed to practice medicine in the state of Ohio. For nearly 17 years, she has been the Director of Surgical Services and, since October 2018, the Medical Director of PPSWO in Cincinnati, Ohio. She has worked as a physician at PPSWO since 2004, and has provided abortion in an outpatient setting since 2002. Before S.B. 23 went into effect, Dr. Liner provided medication abortions up to 10 weeks LMP and procedural abortions through 21 weeks 6 days LMP. She oversees all medical services that PPSWO provides, including abortion. This includes supervising other physicians and clinicians, developing PPSWO's policies and procedures, and providing direct reproductive health care to patients. Without objection, the Court

accepted Dr. Liner as an expert qualified on the treatment and care of pregnant persons and the provision of abortion care in Ohio. (Liner Direct; PX-2 (Liner CV)).

19. Steven J. Ralston, M.D., M.P.H. is a board-certified obstetrician/gynecologist (OB/GYN) with more than two decades of experience with abortion care, high-risk pregnancies, prenatal diagnosis, and fetal therapy. He is also board-certified in maternal-fetal medicine (MFM), an area of obstetrics that focuses on the medical and surgical management of high-risk pregnancies. He is currently a clinical professor at the University of Maryland School of Medicine in Obstetrics, Gynecology and Reproductive Services. He is also the Director of the Obstetric Care Unit, where he is responsible for the functioning of the labor and delivery floor, as well as for making sure that the policies and guidelines for the care and treatment of pregnant women are evidence-based and up-to-date. He is also responsible for the education of fellows, residents, and medical students on the labor floor. Dr. Ralston provides care to pregnant patients throughout their pregnancies (from the point they first learn they are pregnant through to birth), and also provides abortion care to patients who have made the decision to end a pregnancy. Dr. Ralston is very familiar with the complications that can arise during pregnancy, childbirth, and abortion, and with the relative safety of abortion as compared to childbirth. Dr. Ralston is licensed to practice medicine in Maryland, Pennsylvania and the District of Columbia. He has also been licensed in New Jersey, South Carolina and Massachusetts in the past. Without objection, the Court accepted Dr. Ralston as an expert qualified on obstetrics, gynecology and the provision of abortion care. (Ralston Direct; PX-10 (Ralston CV)).

20. Steven Joffe, M.D., M.P.H. is the Art and Ilene Penn Professor of Medical Ethics & Health Policy and Professor of Pediatrics at the University of Pennsylvania Perelman School of Medicine. In this capacity, he teaches and conducts research into various topics related to medical ethics. He

also serves as Chair of the Department of Medical Ethics and Health Policy and as Chief of its Medical Ethics Division. In this role, he oversees faculty, trainees, and staff and supervises biomedical ethics research initiatives. In addition, he serves as Director of the Penn Postdoctoral training program in the Ethical, Legal, and Social Implications of Genetics and Genomics. Dr. Joffe also trained as a pediatrician and as a pediatric hematologist/oncologist. Until 2019, he practiced at the Children's Hospital of Philadelphia, where he took care of children undergoing bone marrow transplants for cancer and other serious diseases. He has authored and co-authored over 150 peer-reviewed research articles and chapters in medical textbooks, including numerous articles and chapters on issues of medical ethics. In addition, he regularly speaks and presents on bioethical issues that arise in clinical practice to a variety of different audiences at national medical conferences, as well as at medical centers and universities. He has also led and been a member of numerous national and institutional ethics committees, including acting as the Chair of the Bioethics Committee of the Children's Oncology Group, the world's largest pediatric cancer research organization, between 2008 and 2017, and acting as a member of the Pediatric Ethics Subcommittee of the Food and Drug Administration between 2007 and 2022. He has completed four fellowships, including a medical ethics fellowship at Harvard Medical School and a professional ethics faculty fellowship at the Center for Ethics and the Professions at Harvard University. Without objection, the Court accepted Dr. Joffe as an expert qualified in medical ethics. (Joffe Direct; PX-12 (Joffe CV)).

21. Plaintiffs' witnesses testified credibly, cogently, and thoroughly.

Defendants' Witnesses[2]

22. Dennis M. Sullivan, M.D., M.A. is a physician who was licensed to practice medicine from 1978 until 2020. Without objection, the Court accepted Dr. Sullivan as an expert qualified in medical ethics. Dr. Sullivan has no formal training in obstetrics, no training in the clinical practice of abortion, and has never observed an abortion. (Sullivan Cross). He has not cared for the pregnancies of pregnant women in the U.S. (Sullivan Cross). He is not an expert on the safety of abortion as compared to childbirth, nor is he an expert on the topic of mental health outcomes as related to abortion care. (Sullivan Cross). He testified that he could not comment on the clarity of the legal language of S.B. 23 since he is neither a legal scholar nor a physician practicing under the law's limitations. (Sullivan Cross). He has been a member of and held positions in Ohio Right to Life and the Christian Medical and Dental Association, two organizations with defined anti-abortion missions and position statements. Dr. Sullivan opined that S.B. 23 is in accord with the four widely-accepted principles of medical ethics—patient autonomy, beneficence, non-maleficence, and distributive justice—because, in his view, it appropriately subordinates the patient's autonomy to non-maleficence to the fetus, which Dr. Sullivan asserted is due moral regard from conception and throughout pregnancy. Dr. Joffe, who testified in rebuttal, agreed with Dr. Sullivan's identification of the four relevant principles, but strongly disagreed with Dr. Sullivan's near-absolute privileging of non-maleficence as it pertains to the fetus. Dr. Joffe testified that, by according almost absolute weight to non-maleficence towards the fetus no matter the situation, Dr. Sullivan presumes that all patients and physicians share his opinion that the fetus should be accorded moral status throughout pregnancy. (PX-11 ¶ 22 (Joffe Decl.); Joffe Direct).

[2] Defendants originally informed the Court they would call a third witness, Dr. C. Brent Boles. At the October 7, 2022 preliminary injunction hearing, Defendants withdrew Dr. Boles as a witness, as well as his expert report.

But Dr. Sullivan admitted that there is a diversity of views on the issue of a fetus's moral status and extensive disagreement within medical ethics as to whether and when the fetus should be accorded moral status. (Sullivan Cross). Dr. Joffe testified that Dr. Sullivan ignores that debate and instead seeks to impose his own view on all patients regardless of their moral or personal views, whereas the proper medical ethical approach would respect the views and commitments of the patient. (PX-11 ¶¶ 17-22 (Joffe Decl.); Joffe Direct). The Court does not credit the testimony of Dr. Sullivan. Dr. Sullivan was offered as an expert on biomedical ethics, but on questioning by the Court could not provide a cogent explanation of his near complete disregard for the rights of pregnant women in favor of the rights of zygotes, embryos and fetuses, regardless of any of factors such as fetal anomalies that preclude fetal survival. Dr. Sullivan's evasive responses and obvious personal bias further diminish the value of his testimony in the Court's view.

23. Michael S. Parker, M.D., is a board-certified OB/GYN licensed to practice medicine in Ohio. Without objection the Court accepted Dr. Parker as an expert in the practice of obstetric and gynecological medicine. Dr. Parker has not performed or assisted in performing an abortion in the last 29 years. (Parker Cross). He currently serves as a medical advisor and Board Member for the Women's Care Center of Columbus, an anti-abortion Crisis Pregnancy Center located across the street from the largest abortion care provider in the region, and which measures its success by the number of women it discourages from getting abortions. (Parker Cross). Dr. Parker served as the president of the Catholic Medical Association (CMA) and signed off on a brief filed by the CMA with the Supreme Court advocating for the overturn of *Roe v. Wade.* (Parker Cross). He was previously a member of the American College of Obstetricians and Gynecologists ("ACOG") but resigned because of ACOG's position on abortion. (Parker Cross). He is a member of the American Association of Pro-Life Obstetricians and Gynecologists, and testified in support of the

passage of S.B. 23. (Parker Cross). Dr. Parker initially opined that the exceptions in S.B. 23 were easy to apply, but under questioning, he admitted that he himself was confused as to whether many scenarios fell within the scope of the exceptions. (Parker Direct; Parker Cross; Parker Responses to Court Questions). While he expressed the view that abortion was a risky procedure, Dr. Parker acknowledged that he did not review the National Academies of Sciences, Engineering, and Medicine ("National Academies") report on the safety of abortion until after his deposition in this case, and his testimony did not identify any persuasive reason to question the accuracy of the conclusions of the National Academies. (Parker Cross); *see also* PX-19 at 74-76 (National Academies of Sciences, Engineering, and Medicine, *The Safety & Quality of Abortion Care in the United States* (2018))). Dr. Parker also acknowledged that terminating a pregnancy could help relieve medical conditions exacerbated by that pregnancy. (PX-29 129:13-17 (Parker Deposition Tr.); Parker Direct; Parker Cross; Parker Responses to Court Questions). Dr. Ralston testified credibly and persuasively that there is extensive and reliable research on the relative safety of abortion as compared to pregnancy, and that the exceptions under S.B. 23 are extremely unclear and difficult to apply. (Ralston Direct). The Court does not view the testimony of Dr. Parker on safety as sufficient to rebut the testimony of Dr. Ralston and the ample research supporting Dr. Ralston's testimony. The Court further finds that Dr. Parker's testimony regarding application of the exceptions to S.B. 23's limits on abortion provides strong support to Plaintiffs' claims that S.B. 23 effectively bans all or almost all abortions after six weeks LMP.

Abortion Is Safe Healthcare

24. Abortion is a medical procedure and a component of health care. (PX-9 ¶¶ 16-20 (Ralston Decl.); Liner Direct; Ralston Direct).[3] Healthcare encompasses social, emotional, economic, and familial health. (Ralston Direct).

25. Abortion is a safe medical procedure. (PX-1 ¶ 16 (Liner Decl.); PX-9 ¶¶ 24-28, 31 (Ralston Decl.); Liner Direct; Ralston Direct). Approximately one in four women in this country will have an abortion by the age of forty-five. (PX-1 ¶ 16 (Liner Decl.); Compl. ¶ 27).

26. Abortion is substantially safer than continuing a pregnancy through childbirth. (PX-1 ¶ 19 (Liner Decl.); PX-9 ¶¶ 32-40 (Ralston Decl.); Liner Direct; Ralston Direct). The National Academies found that childbirth is approximately thirteen times more likely than abortion to result in death. (Liner Direct; PX-19 at 74-76 (National Academies of Sciences, Engineering, and Medicine, *The Safety & Quality of Abortion Care in the United States* (2018)); *see also* PX-39 at 57 (Caitlin Gerdts, Loren Dobkin, Diana Greene Foster, and Eleanor Bimla Schwarz, *Side Effects, Physical Health Consequences, and Mortality Associated with Abortion and Birth after an Unwanted Pregnancy*, 26 Women's Health Issues 55 (2016))). These findings are supported by Plaintiffs' experts' clinical observations. (Liner Direct; Ralston Direct).

27. Denying women access to abortion care subjects them to potentially significant risks and consequences. (PX-16 ¶ 36 (Affidavit of Dr. Sharon Liner in Support of Plaintiff's Motion for Temporary Restraining Order Followed by Preliminary Injunction) ("Liner Aff."); PX-1 ¶ 22 (Liner Decl.); Liner Direct). For healthy patients, pregnancy can pose dangers to their health. Pregnancy stresses most major organs. (*Id.*). Mid-pregnancy, a woman's body needs to pump 50 percent more blood than usual, resulting in an increased heart rate. (*Id.*). The increased blood

[3] Indeed, the State's expert witnesses acknowledged that health care encompasses many procedures beyond those solely intended to cure disease, such as preventative care, diagnostic care, and mental health care. (Sullivan Cross; PX-30 60:18 (Sullivan Deposition Tr.)).

flow, in turn, enlarges the kidneys, and the liver must produce more clotting factors to prevent hemorrhage when the placenta separates from the uterus. (*Id.*). These changes increase the chances of blood clots or thrombosis. (*Id.*).

28. Pregnancy also affects a woman's lungs: they must work harder to clear not only the carbon dioxide created by her own body, but also the carbon dioxide produced by the fetus. (PX-16 ¶ 23 (Liner Aff.); PX-1 ¶ 23 (Liner Decl.); Liner Direct). As the pregnancy progresses, the lungs are compressed by the growing fetus, leaving most pregnant women feeling chronically short of breath. (*Id.*). Every organ in the abdomen—*e.g.*, intestines, liver, spleen—is increasingly compressed throughout pregnancy by the expanding uterus. (*Id.*).

29. Pregnancy can exacerbate pre-existing conditions such as high blood pressure, hypertension, and diabetes. (PX-16 ¶ 37 (Liner Aff.); PX-1 ¶ 24 (Liner Decl.); Liner Direct). Pregnancy can also introduce new health conditions such as new onset high blood pressure, gestational diabetes, preeclampsia, and eclampsia. (*Id.*).

30. Labor and delivery also carry risks of negative physical health outcomes both during and after childbirth. (PX-1 ¶ 26 (Liner Decl.)). For example, during labor, increased blood flow to the uterus places the patient at risk of hemorrhage and potentially death. (*Id.*). Other potential adverse events include unexpected hysterectomy, ruptured uterus or liver, stroke, respiratory failure, kidney failure, hypoxia (an absence of sufficient oxygen in bodily tissue to sustain function), and amniotic fluid embolism (a condition in which the fluid surrounding a fetus during pregnancy enters the patient's bloodstream). (*Id.*).

31. Many Ohioans deliver via cesarean section ("C-section") rather than vaginally. (Liner Expert Decl. ¶ 27; Liner Direct). A C-section is an open abdominal surgery that requires hospitalization for 3-4 days on average, and carries greater risk of hemorrhage, infection, blood

clots, and injury to internal organs, including major blood vessels, the bowel, ureter, and bladder, as compared to vaginal delivery. (*Id.*). It can also have long-term risks, including an increased risk of placenta accreta in later pregnancies (when the placenta grows into and possibly through the uterine wall causing a need for complicated surgical interventions, massive blood transfusions, hysterectomy, and risk of maternal death), placenta previa in later pregnancies (when the placenta covers the cervix, resulting in vaginal bleeding and requiring bed rest), and bowel or bladder injury in future deliveries. (*Id.*). Individuals with a history of C-sections are also more likely to need C-Sections with subsequent births. (*Id.*).

32. The starkest risk of carrying a pregnancy to term is death. In Ohio, women died from pregnancy related causes at a ratio of 14.7 per 100,000 live births from 2008 through 2016. (Compl. ¶ 38; PX-1 ¶ 28 (Liner Decl.)). In 2018, the maternal mortality rate was 14.1 per 100,000 live births. (*Id.*).

33. The maternal mortality rate in Ohio is 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. (Compl. ¶ 39; PX-1 ¶ 29 (Liner Decl.)).

34. Pregnancy may also induce or exacerbate mental health conditions. Those with histories of mental illness may experience a return of their illness during pregnancy. (PX-1 ¶ 25 (Liner Decl.); PX-37 (M. Antonia Biggs, Ushma D. Upadhyay, and Charles E. McCulloch, *Women's Mental Health and Well-Being 5 Years After Receiving or Being Denied an Abortion: A Cohort Study*, 74 JAMA Psychiatry 169 (Feb. 2017))). These risks can be higher for patients with unintended pregnancies, who may face physical and emotional changes and risks that they did not choose to take on. (*Id.*). Pregnant people with a prior history of mental health conditions also face a heightened risk of postpartum illness, which may go undiagnosed for months or even years. (*Id.*).

35. Women experiencing intimate partner violence also face increased risk of harm from being denied abortion care under S.B. 23. (Liner Direct; *see also* Affidavit of Dr. Adarsh Krishen in Support of Plaintiff's Motion for Temporary Restraining Order Followed by Preliminary Injunction ("Krishen Aff.") ¶ 13; Affidavit of Dr. David Burkons in Support of Plaintiff's Motion for Temporary Restraining Order Followed by Preliminary Injunction ("Burkons Aff.") ¶ 16). These women are more likely to be tied to perpetrators of intimate partner violence when they are denied abortion care. (Liner Direct).

36. Denying women access to abortion services can create or exacerbate a number of economic and social harms. Due to structural barriers that limit access to contraceptives, people with lower incomes experience disproportionately high rates of unintended pregnancy. (PX-1 ¶ 31 (Liner Decl.); Liner Direct). For patients already facing an array of economic hardships, the cost of pregnancy can have especially long-term and severe impacts on their family's financial security. For some patients, the side-effects of pregnancy render them unable to work, or unable to work the same number of hours as they otherwise would. (PX-1 ¶ 31 (Liner Decl.)). For example, some patients have hyperemesis gravidarum causing them to vomit throughout the day. (*Id.*). Others with preeclampsia must severely limit activity for a significant amount of time. (*Id.*).

37. Pregnancy-related health care and childbirth are expensive hospital-based health services, especially for complicated or at-risk pregnancies. (PX-1 ¶ 32 (Liner Decl.)). This financial burden can weigh most heavily on patients without insurance. (*Id.*). Even insured pregnant patients must often still pay for considerable labor and delivery costs out of pocket. (*Id.*).

38. Almost 60% of patients who seek abortion already have at least one child, so many pregnant women and families must consider how another child will impact their ability to care for the children they already have. (Compl. ¶ 29 n.3). Beyond childbirth, raising a child is expensive,

both in terms of direct costs and due to lost wages. On average, women experience a large and persistent decline in earnings following the birth of a child, an economic loss that compounds the additional costs associated with raising a child. (PX-1 ¶ 33 (Liner Decl.)). Women who were denied abortions had higher odds of poverty six months after denial compared to those who received abortions, and their children were more likely to suffer measurable reductions in achievement of child developmental milestones. (PX-33 (Diana G. Foster, M. Antonia Biggs, Lauren Ralph et. al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*)).

39. Pregnancy, childbirth, and additional children can also exacerbate an already difficult situation for those who have suffered trauma, such as sexual assault or domestic violence. (Krishen Aff. ¶¶ 21-22; PX-41 (Advancing New Standards in Reproductive Health, *Introduction to the Turnaway Study* (March 2020))).

S.B. 23 Effectively Bans Virtually All Abortions

40. Before S.B. 23 went into effect, almost 90% of abortions in Ohio took place after six weeks LMP. (Compl. ¶ 55; Liner Direct).

41. Because embryonic cardiac activity can be detected starting at approximately six weeks LMP—and sometimes as early as the fifth week of pregnancy LMP—S.B. 23 effectively bans abortion before many patients are aware that they are pregnant. (PX-1 ¶ 11 (Liner Decl.); Liner Direct). Some people have irregular menstrual cycles for a variety of reasons, including certain medical conditions, contraceptive use, obesity, and age, all of which could result in them taking longer to realize they have missed a period and might be pregnant. (PX-1 ¶ 12 (Liner Decl.)). And even those with highly regular cycles are four weeks LMP by the time of a missed period, and

before that time, most over-the-counter pregnancy tests are not sensitive enough to detect a pregnancy. (*Id.*).

42. For patients who are aware they are pregnant prior to six weeks LMP, there are a number of obstacles that frequently prevent them from receiving abortion care within six weeks LMP. Many patients must secure funds for the abortion and/or travel, obtain leave from work, and arrange for child care and transportation to an abortion provider. (PX-1 ¶ 14 (Liner Decl.); Krishen Aff. ¶ 11). These delays can result in the denial of abortion care under S.B. 23.

43. These difficulties are compounded by Ohio's other abortion regulations, such as Ohio's requirement that patients make an in-person trip to a clinic for mandated counseling and consent procedures at least 24 hours before obtaining an abortion. (PX-16 ¶ 6 (Liner Aff.); PX-1 ¶ 24 (Liner Decl.); Liner Direct). Some patients return for their second appointment after waiting the required 24 hours and discover that embryonic cardiac activity has appeared and they cannot obtain in-state abortion care. (PX-16 ¶ 6 (Liner Aff.); Liner Direct). As an example, in July 2022, 16% of PPSWO's patients who returned for a second visit had to be turned away because cardiac activity had developed in the 24 hours between their first appointment and return visit. (PX-16 ¶ 6 (Liner Aff.); Liner Direct).

44. Since S.B. 23 went into effect, numerous patients have been unable to obtain abortions in Ohio because cardiac activity was detected. In July 2022, 60% of PPSWO's patients were turned away after an initial ultrasound because cardiac activity was detected. (PX-16 ¶ 6 (Liner Aff.); Liner Direct). WMGPC's Dayton clinic performed 77 abortions in July, a 79 percent decrease in the number performed prior to S.B. 23 going into effect. (Affidavit of W.M. Martin Haskell, M.D., in Support of Plaintiffs' Motion for Temporary Restraining Order Followed by Preliminary

Injunction ("Haskell Aff.") ¶ 10; Affidavit of Aeran Trick in Support of Plaintiffs' Motion for Temporary Restraining Order Followed by Preliminary Injunction ("Trick Aff.") ¶ 5).

S.B. 23's Exceptions Provide Insufficient Guidance to Providers

45. S.B. 23 has limited exceptions that allow a physician to perform an abortion after the detection of cardiac activity to (1) to prevent the woman's death, or (2) to prevent a "serious risk of the substantial and irreversible impairment of a major bodily function." *See supra* ¶ 3.

46. These limited exceptions include vague and imprecise language regarding when an abortion may be provided after the detection of cardiac activity. (PX-9 ¶ 44 (Ralston Decl.)). For example, the terms "substantial" and "serious" are not medically defined and leave open to debate exactly how sick a patient must be before the physician can act. (*Id.*; Liner Direct).

47. Plaintiffs' witnesses credibly testified that physicians and abortion care providers cannot clearly understand which conditions are covered by the exceptions or how the exceptions will apply to any particular circumstance. (PX-1 ¶ 39 (Liner Decl.); Liner Direct; Ralston Direct).

48. One of the State's expert witnesses, Dr. Parker, was called by the State in part to opine on the clarity of the law. (Parker Direct). He testified that whether a specified condition like preeclampsia was severe enough to fall into one of the exceptions was a complicated decision that required a team approach, extensive discussion, the consideration of many factors and potentially legal advice. (Parker Cross).

49. Dr. Parker also changed his opinion several times during his testimony regarding whether a "one-percent" chance of death could provide sufficient justification to perform an abortion under S.B. 23. (Parker Cross). Dr. Parker stated that medicine is not "black and white" and that it was difficult to make decisions involving life and death situations. (Parker Cross). He also offered an opinion that a hysterectomy did not constitute an abortion because it was not a "direct act." (PX-

3 ¶ 29 (Parker Decl.); Parker Cross). But this testimony did not accord with the statutory definition of abortion: "the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a live birth or to remove a dead fetus or embryo." RC. 2919.11. Ultimately, Dr. Parker acknowledged that there is significant confusion as to how to apply the law, when an abortion is permissible and when it is a felony. (Parker Cross; Parker Responses to Court Questions).

50. Plaintiffs' expert witnesses, Dr. Sharon Liner and Dr. Steven Ralston, testified that the consequences of violating S.B. 23—which includes the loss of a physician's medical license and potential jail time—will deter physicians from performing abortions even in cases where the medical exception may apply, for fear that their medical judgment will be second-guessed by the State. (Liner Direct; Ralston Direct). Indeed, when S.B. 23 was in effect, physicians delayed or denied care to women potentially suffering from ectopic pregnancies (which are specifically excluded by the language of the statute) because of a fear that—if wrong about the diagnosis—they would be punished under S.B. 23. (Affidavit of David Burkons, M.D., in Support of Plaintiffs' Motion for Temporary Restraining Order Followed by Preliminary Injunction ("Burkons Aff.") ¶ 17).

51. Dr. Liner further testified that she was not aware of any medical procedure—including medical procedures which are only available to men—that carry the potential for criminal penalties, as S.B. 23 does. (Liner Responses to Court Questions).

52. Even the State's own witness agreed that no doctor should have to fear going to jail if their medical judgment was questioned. (Parker Cross). Dr. Parker also acknowledged that a doctor could go to jail under S.B. 23 if a prosecutor and jury disagreed with that doctor's judgment, and that the fear of going to jail could make doctors rethink their medical decision. (Parker Cross).

53. Dr. Liner testified that the exceptions to S.B. 23 will actually encourage physicians to delay care until their patients get sicker, in order to avoid potentially being second-guessed on their medical judgment by the State. (Liner Direct).

54. Moreover, S.B. 23's limited exceptions do not cover many significant health issues associated with pregnancy. For example, Dr. Liner testified that one of her clinic's patients was undergoing chemotherapy and was unable to obtain cancer treatment while pregnant. (Liner Direct; PX-16 ¶ 14 (Liner Aff.)). Dr. Liner said that her clinic was unable to provide abortion care to this patient because they could not confirm whether S.B. 23's exceptions applied. (Liner Direct; *see also* Trick Aff. ¶ 6 (describing another patient who was denied cancer treatment until she was able to receive an abortion—which she could not do in Ohio because of S.B. 23)).

55. Dr. Parker, the State's expert witness, testified that although there are conditions that he would consider to be a "substantial and irreversible impairment of a major bodily function," it is not clear whether the State Attorney General, State prosecutors, or Ohio juries would agree with his assessment. (Parker Cross).

56. Finally, S.B. 23's exceptions are insufficient to protect the health and wellbeing of pregnant women. S.B. 23 does not contain exceptions for rape, incest, fetal anomalies (including lethal fetal anomalies), mental health conditions, or the myriad of other complicated reasons that pregnant women seek abortion care. *See supra* ¶ 3.

57. As one example that illustrates the insufficiencies of S.B. 23's exceptions, most fetal anomalies are diagnosed well after six weeks LMP. (Liner Responses to Court Questions). Many patients who receive diagnoses of fetal anomalies choose not to continue their pregnancies. (PX-9 ¶ 51 (Ralston Report)). Under S.B. 23, women faced with a lethal fetal condition will be forced to carry their pregnancies to term, and will suffer the discomfort and risks of complications

associated with pregnancy and childbirth. (*Id.*). Dr. Liner testified about a patient who had a desired pregnancy, but the fetus was diagnosed with severe fetal anomalies that resulted in a lack of lower extremities and the contents of the fetus's abdomen protruding through its abdominal wall. (Liner Direct; PX-16 ¶ 15 (Liner Aff.)). Dr. Liner confirmed this diagnosis, but was unable to perform an abortion because the diagnosis did not fall within the scope of S.B. 23's exceptions. (Liner Direct).

58. S.B. 23's failure to include an exception for fetal anomalies places a great burden on pregnant women, increases the risk to their health, and—if the anomaly will result in the eventual death of the child during or shortly after birth—subjects them to the grief of carrying that pregnancy to term. (Court Note after Liner Testimony).

Travel to Another State Is Not an Option for Many Ohioans and Causes Numerous Hardships

59. Once embryonic cardiac activity has been detected, traveling out of state is the only option to obtain an abortion under SB 23. But facilities in other states are experiencing an influx of patients from Ohio and neighboring states that have enacted abortion bans. (PX-16 ¶ 7 (Liner Aff.); Affidavit of Allegra Pierce in Support of Plaintiff's Motion for Temporary Restraining Order Followed by Preliminary Injunction ("Pierce Aff.") ¶ 6). As a result, Ohioans who are able to travel have struggled to schedule appointments with out-of-state providers. (*Id.*). Many patients have traveled to Michigan and Illinois to obtain care, and encountered wait times of two to four weeks. (PX-16 ¶ 7 (Liner Aff.)). For patients enduring physical side effects of pregnancy, the wait times and forced travel prolong their suffering and make travel more difficult; for one patient, Dr. Liner had to prescribe anti-nausea medication so that the patient would be able to make the drive to an out-of-state location. (Liner Direct). Wait times can sometimes stretch long enough that they push patients outside the window in which they are able to obtain an abortion. (*Id.*).

60. Traveling out of state can be challenging for many patients due to time and expense constraints. Patients often need to take time away from work, arrange for childcare, obtain the necessary funds to pay for transportation and hotel costs, as well as find a support person with availability to travel with them. (Liner Direct; PX-16 ¶ 8 (Liner Aff.)). Making these arrangements can compromise the confidentiality of patients' pregnancies and abortion decisions. (*Id.*). When faced with these barriers, many patients feel that they have no choice but to continue with their pregnancy. (Pierce Aff. ¶ 5).

61. Forcing patients to travel out of state also delays their ability to obtain timely abortion care and subjects them to further risk of complications. (Liner Direct; PX-16 ¶ 8 (Liner Aff.)). Some patients are pushed so late into their pregnancies that they become unable to obtain abortions out of state. Under S.B. 23, they will either be forced to carry unwanted pregnancies to term or resort to trying to terminate their pregnancies outside the medical system. (Liner Direct; PX-16 ¶ 8 (Liner Aff.)).

62. These delays subject patients to greater distress and emotional trauma. (Liner Direct; PX-16 ¶¶ 8-9 (Liner Aff.); Krishen Aff. ¶ 14). This is particularly true for those who are forced to carry a pregnancy with severe fetal anomalies. The patient who received a diagnosis of severe fetal anomalies had to be referred outside of Ohio for care, but was delayed due to the lack of access in many states and the fact that she was in her second trimester. (*See supra* ¶ 57; Liner Direct; PX-16 ¶ 15 (Liner Aff.)).

S.B. 23 Imposed Significant Harm on Providers and Their Patients When It Was in Effect

63. The harms caused by S.B. 23 are not hypothetical. S.B. 23 was in place for over two months and, during that time, pregnant women in Ohio experienced significant physical, economic, emotional, and psychological harms.

64. When S.B. 23 went into effect, providers were forced to turn away patients seeking abortion care. (*See, e.g.*, Liner Direct; PX-16 ¶ 5 (Liner Aff.) (PPSWO has "had to cancel over 600 patient appointments"); Krishen Aff. ¶ 9; Burkons Aff. ¶ 9; Pierce Aff. ¶ 4; Haskell Aff. ¶¶ 8, 10).

65. The harms of being turned away were inflicted on some of Ohio's most vulnerable and innocent citizens. As one example, a ten-year-old rape victim was denied an abortion in Ohio and forced to travel to Indiana to receive an abortion. (*See* Compl. ¶ 57). Plaintiffs' affiants recounted the stories of other minors and victims of sexual assault whom they were forced to turn away. (Trick Aff. ¶¶ 6, 9, 14; Krishen Aff. ¶¶ 16, 21). Dr. Sullivan acknowledged that these patients do not fall within an exception to S.B. 23, and was unable to provide a response when asked whether the autonomy of a rape victim should be given less value than fetal life. (Sullivan Responses to Court Questions).

66. Plaintiffs submitted supporting affidavits detailing the physical consequences of denying patients access to abortion. (Krishen Aff. ¶ 15 ("Patients who had previous high-risk pregnancies, or patients with chronic illness ... cannot physically or emotionally endure another pregnancy or a delay in obtaining abortion care."); Pierce Aff. ¶ 5 ("Many patients, upon learning that they will be denied care because of S.B. 23 fear for their physical and mental health if they remain pregnant.")). This includes patients who were forced to travel out of state despite medical conditions caused by pregnancy. (Krishen Aff. ¶ 23 (patient who had major orthopedic surgery faced worsened chronic physical pain as a result of pregnancy but was forced to endure the physical toll of traveling out of state for care); Trick Aff. ¶ 9 (patient with severe vomiting who had lost more than 20 pounds was forced to seek care out of state, necessitating hours of travel); *id.* at ¶ 13 (woman with severe vomiting was denied an abortion and had to travel out of state despite her

medical condition)). It also includes patients who were unable to obtain cancer treatment until they were able to receive an abortion—which they could not do in Ohio because of S.B. 23. (Trick Aff. ¶ 6; PX-1 ¶ 14 (Liner Decl.)).

67. Denying patients access to abortion also subjected them to significant emotional, mental and psychological harms. (Liner Direct; *see also* PX-37 (M. Antonia Biggs, Ushma D. Upadhyay, and Charles E. McCulloch, *Women's Mental Health and Well-Being 5 Years After Receiving or Being Denied an Abortion: A Cohort Study* (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))).

68. During the time when S.B. 23 was in effect, Plaintiffs witnessed their patients experience serious distress when told they could not access abortion in Ohio. (PX-16 ¶ 5 (Liner Aff.); Krishen Aff. ¶¶ 14, 19; Burkons Aff. ¶ 9). For those who have suffered trauma, such as sexual assault, domestic violence, or difficult prior pregnancies, being denied an abortion increases risk of re-traumatization. (*See* Krishen Aff. ¶ 16; Trick Aff. ¶¶ 12, 14). One patient who was experiencing homelessness and was in between shelters began to experience panic and stress when she was informed she could not obtain an abortion in-state due to S.B. 23 because she did not know how she would travel out of state given the barriers she was experiencing in her life. (Krishen Aff. ¶ 19). Dr. Liner testified that she could hear wailing outside of ultrasound rooms when patients learned that cardiac activity has been detected and they would be unable to obtain an abortion. (Liner Direct; *see also* PX-16 ¶¶ 9-10 (Liner Aff.)). Even the State's expert witness, Dr. Sullivan, recognized that being denied abortion access is agonizing for women. (Sullivan Cross).

69. When denied access to abortion care, Plaintiffs' patients considered resorting to unsafe abortion methods or self-harm. (Liner Direct; PX-16 ¶ 11 (Liner Aff.); Burkons Aff. ¶ 10; *see also* Haskell Aff. ¶ 13 (describing the "devastating infections, complications, sterility, and even death that resulted from illegal abortions and self-induced abortions prior to" *Roe*)). When S.B. 23 was in effect, three of PPSWO's patients threatened to commit suicide when they were told they could not obtain an abortion. (PX-16 ¶ 11 (Liner Aff.)). Another patient said she would attempt to terminate her pregnancy by drinking bleach. (*Id.*). Another asked how much Vitamin C she would need to take to terminate her pregnancy. (*Id.*).

70. Beyond the physical and emotional harms, S.B. 23 inflicted significant economic hardship on Ohioans. (*See supra* ¶¶ 36, 38; *see also* Pierce Aff. ¶ 5 (patients reported that they felt that they have no choice but to go through with their pregnancy, despite fears they may lose their jobs and struggle to support their families or children); Trick Aff. ¶ 8 (patient struggled to find abortion care in a location to which she could afford to travel); *id.* at ¶ 13 (patient who feared that she would lose her job if she took time off was forced to travel to and rent a hotel room in Indianapolis)).

71. All of these harms were felt disproportionately by women of color and women in low-income communities. (PX-1 ¶ 31 (Liner Decl.); Compl. ¶ 65).

CONCLUSIONS OF LAW

72. Plaintiffs are entitled to preliminary injunctive relief enjoining Defendants, their agents, employees, and successors in interest, from enforcing S.B. 23 in its entirety and from taking any later enforcement action premised on a violation of S.B. 23 that occurred while this Court's preliminary injunctive relief was in effect.[4]

[4] The Court also enjoins emergency regulation O.A.C. 3701-47-07 (requiring a second ultrasound immediately before an abortion procedure to determine whether fetal or embryonic cardiac activity is present). This regulation was promulgated by ODH pursuant to R.C. 2919.192, but with the enjoining of S.B. 23, there is no longer statutory authority for it.

Plaintiffs Have Standing to Challenge S.B. 23

73. It is settled law that Plaintiffs have standing to raise claims on behalf of their clients and patients. *See, e.g., Preterm-Cleveland v. Voinovich*, 89 Ohio App. 3d 684, 627 N.E.2d 570 (10th Dist. July 27, 1993); *Planned Parenthood Southwest Ohio Region v. Ohio Dep't of Health*, Hamilton C.P. No. A 2101148 at 5 (Apr. 19, 2021) ("*Planned Parenthood Southwest Ohio I*"); *Planned Parenthood Southwest Ohio Region v. Ohio Dep't of Health*, Hamilton C.P. No. A. 2100870 at 3 (Jan. 31, 2022) ("*Planned Parenthood Southwest Ohio II*").

74. Ohio courts follow their federal counterparts when assessing standing. *See Brinkman v. Miami Univ.*, 12th Dist. Butler No. CA2006-12-313, 2007-Ohio-4372 ¶ 43. And the U.S. Supreme Court has "long permitted abortion providers to invoke the rights of their actual or potential patients in challenges to abortion-related regulations." *June Med. Servs. LLC v. Russo*, 140 S. Ct. 2103, 2118 (2020) (citing nine Supreme Court cases dating back to 1973 in which providers challenged abortion restrictions).

75. Ohio law recognizes that there are circumstances where third-party standing is appropriate. *See Util. Serv. Partners, Inc. v. Pub. Util. Comm.*, 124 Ohio St.3d 284, 2009-Ohio-6764, 921 N.E.2d 1038, ¶ 49 (citations omitted); *City of E. Liverpool v. Columbiana County Budget Comm'n*, 114 Ohio St.3d 133, 2007-Ohio-3759, 870 N.E.2d 705, ¶ 25; *Cincinnati City Sch. Dist. V. State Bd. of Educ.*, 113 Ohio App.3d 305, 314, 680 N.E.2d 1061 (10th Dist.1996); *Akron Ctr. for Reproductive Health v. N. Coast Christian Community*, 9th Dist. Summit No. 12414, 1986 Ohio App. LEXIS 7534, *7 (July 9, 1986).

76. Third-party standing is appropriate where the asserting party "(i) suffers its own injury in fact, (ii) possesses a sufficiently 'close' relationship with the person who possesses the right,' and (iii) shows some 'hindrance' that stands in the way of the claimant seeking relief." *E. Liverpool*

v. Columbiana Cnty. Budget Comm., 114 Ohio St. 3d 133, 2007-Ohio-3759, 860 N.E.2d 705, ¶ 25, citing *Craig v. Boren*, 429 U.S. 190, 196-197 (1976). Each of those factors is met here.

77. Plaintiffs were injured by S.B. 23, which had a significantly negative impact on their financial stability. (*See* Haskell Aff. ¶¶ 9-12; Krishen Aff. ¶¶ 5-6).

78. Plaintiffs were also threatened with criminal and civil penalties. *See supra* ¶¶ 45-58. This threat is heightened by S.B. 23's unconstitutional vagueness.[5] In particular, S.B. 23 fails to give providers adequate notice of the circumstances under which they can perform abortions after the detection of cardiac activity. (PX-9 ¶ 44 (Ralston Decl.); PX-1 ¶ 39 (Liner Decl.); Liner Direct).

79. *Second*, Plaintiffs are in a "sufficiently 'close' relationship with the person who possesses the right to abortion being infringed by S.B. 23. *E. Liverpool*, 2007-Ohio-3759, ¶ 25; *see also Singleton v. Wulff*, 428 U.S. 106, 117 (1976) (holding that the "closeness of the relationship" between a patient and doctor "is patent," as "[a] woman cannot safely secure an abortion without the aid of a physician.").

80. *Third*, there is "some 'hindrance' that stands in the way of" individual patients seeking relief. Precedent has long held that women seeking abortions face "several obstacles" to asserting their own rights, including that they "may be chilled from such assertion by a desire to protect the very privacy of [their] decision from the publicity of a court suit" and that an individual woman's claims face "imminent mootness," with any ability to obtain an abortion "irrevocably lost" within months, if not weeks or days, of the need arising. *Singleton*, 428 U.S. at 117. All of these hindrances are present here. Plaintiffs' affidavits and testimony recount numerous obstacles that

[5] Plaintiffs have also brought a claim that S.B. 23 is unconstitutionally void for vagueness. Compl. ¶¶ 80-82. Although Plaintiffs did not move for a preliminary injunction on this claim, Defendants proffered expert witnesses that disputed the vagueness of S.B. 23's exceptions, Plaintiffs' expert witnesses responded to those assertions, and the Court heard testimony on the matter at the October 7, 2022 preliminary injunction hearing.

hinder patients from advancing the claims brought by Plaintiffs. (*See, e.g.*, PX-16 ¶ 14 (Liner Aff.); Krishen Aff. ¶¶ 9-13, 16, 19; Burkons Aff. ¶¶ 9, 17; Trick Aff. ¶¶ 6-7, 9, 13, 15; Pierce Aff. ¶¶ 4-5). Moreover, because the "enforcement of the challenged restriction against the litigant would result indirectly in the violation of third parties' rights," abortion providers are "the obvious claimant" and "the least awkward challenger" to S.B. 23. *June Medical Servs.*, 140 S. Ct. at 2118-2119.

S.B. 23 Violates Ohioans' Substantive Due Process Rights Under the Ohio Constitution

Likelihood of Success on the Merits

81. 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.

The Ohio Constitution Provides Broader Protections for Individual Liberties Than the U.S. Constitution

82. Ohio courts interpret the Ohio Constitution more broadly than its federal counterpart. *See Arnold v. Cleveland*, 67 Ohio St.3d 35, 42, 616 N.E.2d 163 (1993) ("[T]he Ohio Constitution is a document of independent force."); *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.").

83. The Ohio Supreme Court has held that the Ohio Constitution is more protective of individual rights than the federal Constitution in various respects. *Humphrey v. Lane*, 89 Ohio St.3d 62, 728 N.E.2d 1039 (2000) (free exercise of religion); *State v. Bode*, 144 Ohio St.3d 155,

2015-Ohio-1519, 41 N.E.3d 1156 (juveniles' right to counsel); *City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115 (government appropriation of private property); *State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985 (exclusion of physical evidence obtained due to unmirandized statements); *State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175 (warrantless arrests for minor misdemeanors); *Vail v. Plain Dealer Publishing Co.*, 72 Ohio St.3d 279, 280-82, 649 N.E.2d 182 (1995) (expressions of opinion by the press).

The Ohio Constitution Protects the Substantive Due Process Right to Abortion

84. The Ohio Constitution's substantive due process protections encompass the fundamental right to abortion. Indeed, an Ohio Court of Appeals concluded that:

> In light of the broad scope of "liberty" as used in the Ohio Constitution, it would seem almost axiomatic that the right of a woman to choose whether to bear a child is a liberty within the constitutional protection. This necessarily includes the right of a woman to choose to have an abortion so long as there is no valid and constitutional statute restricting or limiting that right.

Preterm Cleveland v. Voinovich, 89 Ohio App.3d 684, 691-92, 627 N.E.2d 570, 575 (10th Dist.1993).

85. This interpretation of the Ohio Constitution is supported by several distinctive provisions. Article 1, Section 16 of the Ohio Constitution (the "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 a 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).

86. 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.

87. Under Ohio's substantive due process jurisprudence, governmental action that limits the exercise of a fundamental constitutional right is subject to the highest level of judicial scrutiny. *See Sorrell v. Thevenir*, 69 Ohio St. 3d 415, 423, 633 N.E.2d 504 (1994).

88. Ohio courts have found that the Ohio Constitution's substantive due process protections extend to "matters involving privacy, procreation, bodily autonomy, and freedom of choice in health care decision making." *Planned Parenthood Southwest I* at 8, 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 II* at 6 (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).

89. 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, citing *Stone v. City of Stow*, 64 Ohio St. 3d 156, 160-163, 593 N.E.2d 294 (1992); *see also Steele v. Hamilton County Community Mental Health Bd.*, 90 Ohio St.3d 176, 180, 736 N.E.2d 10 (2000) ("personal security, bodily integrity, and autonomy are cherished liberties"); *Preterm-Cleveland v. Voinovich*, 89 Ohio App. 3d 684, 712, 627 N.E.2d 570 (10th Dist. July 27, 1993) (Petree, J. concurring in part and dissenting in part) ("Manifestly, a fundamental right to bodily integrity must be acknowledged as a necessary precondition to the

enjoyment of our express guarantees of freedom in the Ohio Bill of Rights"); *Biddle v. Warren General Hospital*, 86 Ohio St.3d 395, 399-402, 1999-Ohio-115, 715 N.E.2d 518 (1999) (recognizing fundamental privacy interest in physician-patient relationship sufficient to support creation of entirely new species of tort claim for disclosure of confidential medical information).

90. Other distinctive provisions in the Ohio Constitution, when considered together with the Due Course of Law Clause,[6] make clear that the Ohio Constitution's protections extend to the fundamental right to abortion.

91. Article 1, Section 1 of the Ohio Constitution provides that "[a]ll 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." This is a statement of fundamental rights that is given practical effect by other constitutional provisions, including 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). Ohio courts have explained that Article I, Section 1 recognizes inherent and inalienable rights, and therefore provides broader protection for rights than the United States Constitution. *Preterm Cleveland*, 89 Ohio App.3d at 691, 627 N.E.2d 570 ("In that sense, the Ohio Constitution confers greater rights than are conferred by the United States Constitution[.]").[7]

[6] The provisions of the Ohio Constitution are not considered independently and in a void; Ohio courts are directed to "give a construction to the Constitution as will make it consistent with itself, and will harmonize and give effect to all its various provisions." *See Smith v. Leis*, 106 Ohio St.3d 309, 2005-Ohio-5125, 835 N.E.2d 5, ¶ 59 (citation omitted); *Toledo Edison Co. v. City of Bryan*, 90 Ohio St.3d 288, 292, 2000-Ohio-169, 737 N.E.2d 529 ("Where provisions of the Constitution address the same subject matter, they must be read in pari materia and harmonized if possible."); *see also Steele v. Hamilton Cnty. Cmty. Mental Health Bd.*, 90 Ohio St.3d 176, 181, 736 N.E.2d 10, 15 (2000) (reading Section 1 and Section 16 as providing the basis for the "fundamental right" to refuse medical treatment).

[7] Article I, Section 1 also protects the right to "seek[] and obtain[] happiness and safety." Such a right is squarely at odds with S.B. 23, which prevents patients from exercising autonomy and making decisions about their own healthcare, at great risk to their physical, mental, and emotional wellbeing. *See supra* ¶¶ 27-39; 63-71.

92. Article 1, Section 7 of the Ohio Constitution provides that:

> No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; *nor shall any interference with the rights of conscience be permitted.*

(Emphasis added). This provision provides further support for the finding that the Ohio Constitution protects against governmental interference in private decisions, particularly where there is a wide diversity of views on the issue, as there is with abortion. (Joffe Direct).

93. Sections 1, 7 and 16 must 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 HCFA, which was adopted as part of Ohio's Bill of Rights in 2011 by popular referendum, provides in pertinent part:

> (B) No federal, state, or local law or rule shall prohibit the purchase or sale of health care or health insurance.
>
> (C) No federal, state, or local law or rule shall impose a penalty or fine for the sale or purchase of health care or health insurance.

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-resultsand-data/2011-elections-results/state-issue-3-november-8-2011/.

94. In so doing, the HCFA "[p]reserv[es] [Ohioans'] freedom to choose health care and health care coverage." *See id.* Abortion clearly constitutes health care "within the ordinary meaning of that term." TRO Decision at 13; *see also Adams v. DeWine,* __ Ohio St. 3d __, 2022-Ohio-89, ¶ 28 ("'It is emphatically the province and duty of the judicial department to say what the law is.' Our function here is to determine whether the act transcends the limits of legislative power."). Abortion is a medical procedure that is an essential component of health care. (PX-9 ¶¶ 16-20 (Ralston Decl.); Liner Direct; Ralston Direct; *see also supra* ¶¶ 50, 54, 65-66)). Patients may seek

abortion for a wide variety of reasons related to their physical, mental, emotional and economic health. *See supra* ¶¶ 27-39; 63-71.

95. When read together with the provisions discussed above,[8] the HCFA further bolsters the Ohio Constitution's protection of liberty and personal autonomy and reinforces that these protections extend to Ohioans' the 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.

96. That the right to abortion is not specifically named in the Ohio's Constitution is of no import. Article I, Section 20 of the Ohio Constitution confirms that the "enumeration of rights" in Article I "shall not be construed to impair or deny others retained by the people."

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

97. S.B. 23 infringes upon the fundamental rights to bodily integrity and abortion by effectively banning abortions beginning at approximately six weeks LMP—a point at which many women do not know they are pregnant and before which the overwhelming majority of pregnant Ohioans are unable to access abortion. *See supra* ¶¶ 40-44.

98. Laws implicating fundamental rights are subject to strict scrutiny and are constitutional only if they are narrowly tailored to serve a compelling state interest. *See State v. Weber*, 163 Ohio St.3d 125, 2020-Ohio-6832, 168 N.E.3d 468, ¶ 17.

99. 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); *see also Beatty v. Akron City Hospital*, 67 Ohio St.2d 483, 492, 424 N.E.2d 586 (1981). The State has not met that burden here.

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[8] *See supra* n.6.

100. The text of S.B. 23 asserts an "interest in protecting the health of the woman" and an interest in protecting potential life. *See* 2019 Am.Sub.S.B. No. 23, Section 3(G). Neither purported interest can justify banning abortion as early as six weeks LMP.

S.B. 23 Serves No Compelling Interest

101. S.B. 23 does not protect Ohioans' health. As discussed above, abortion is a common and safe medical procedure. *See supra* ¶¶ 24-26. Legal abortion is one of the safest medical procedures in the United States, and is substantially safer than childbirth. (PX-19 at 55, 60 (National Academies of Sciences, Engineering, and Medicine, *The Safety & Quality of Abortion Care in the United States* (2018)); *see also* PX-9 ¶¶ 24-32 (Ralston Decl.)).

102. In Ohio, legal abortion is safer than childbirth. *See supra* ¶¶ 32-33. In contrast, the denial of abortion care actively harms women's physical health. (PX-41 at 3 (*Introduction to the Turnaway Study*) ("In the short term, women giving birth after being denied an abortion experience more potentially life-threatening complications such as preeclampsia and postpartum hemorrhage. Over five years, women denied abortions who give birth report more chronic pain and rate their overall as health as worse.")); *see also supra* ¶¶ 26-33.

103. Denying abortion care also has adverse effects on patients' mental health. *See supra* ¶ 67. Plaintiffs' patients experienced severe panic and stress upon being denied an abortion, and in some cases threatened to resort to unsafe abortion methods or self-harm. *See supra* ¶¶ 67-69.

104. Statutes that "harm patients' health by reducing access to abortion," as S.B. 23 so, do not further an interest in protecting women's health. *See Planned Parenthood Southwest Ohio I* at 8-9.

105. With respect to the other state interest asserted by S.B. 23 — protecting potential life — 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). Indeed, numerous state courts have recognized that the state's interest in protecting fetal life is weaker early 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 1186, 1193 (Fla. 1989) (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 Reprod. Rts. v. Myers*, 625 P.2d 779, 795 (Cal. 1981) ("[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").

106. Moreover, asserting an absolute interest in protecting potential life places no value on the rights of the pregnant person and fails to take into account the wide diversity of views on the issue–an issue for which the principles of medical ethics demand we look to the views of each specific patient to help resolve. (PX-11 (Joffe Decl.); Joffe Direct).

<u>S.B. 23 Is Not Narrowly Tailored</u>

107. S.B. 23 is also not narrowly tailored to address any purported state interest. Narrow tailoring requires that the state 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.

108. S.B. 23, which effectively bans nearly all abortions after six weeks LMP, is not narrowly tailored to advance women's health or to protect fetal life. (Compl. ¶ 55 (before S.B. 23

went into effect, 89 percent of abortions in Ohio took place after six weeks LMP); *see also* PX-16 ¶ 8 (Liner Aff.); Burkons Aff. ¶ 15); *supra* ¶¶ 40-44.

109. Patients have been denied abortion even when doing so could have potentially devastating consequences for their health. *See supra* ¶¶ 27-39; 63-71. S.B. 23's limited exceptions fail to provide clarity as to when abortion may be performed, and are insufficient to protect pregnant patients' lives, health and well-being. (PX-9 ¶¶ 24-32 (Ralston Decl.)).

110. Moreover, there are numerous alternative and less restrictive means to advance the State's interest in promoting women's health and protecting fetal life. (*See* Emily E. Petersen et al., *Vital Signs: Pregnancy-Related Deaths, United States, 2011-2015, and Strategies/or 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); Office on Women's Health, U.S. Dept. of Health & Human Servs., *Prenatal Care*, https://www.womenshealth.gov/a-ztopics/ prenatal-care (newborns whose mothers had no early prenatal care were five times more likely to die)).

111. For example, as noted by the State's own expert, the State could further any goal of reducing the number of abortions by instead providing comprehensive sex education and increasing access to contraception. (Sullivan Cross).

S.B. 23 Violates Ohio's Equal Protection and Benefit Guarantee

Likelihood of Success on the Merits

112. Plaintiffs have a substantial likelihood of success on the merits of their claim that S.B. 23 violates the Ohio Constitution's guarantee of equal protection.

Ohio's Equal Protection and Benefit Clause Is More Protective of Individual Rights Than Its Federal Counterpart

113. While the Ohio Supreme Court has in the past followed federal decisions in the equal protection area, "there is no mandate to that effect." *Preterm-Cleveland* at 713 (Petree, J. concurring in part and dissenting in part)). And in recent decisions, Ohio Supreme Court justices have indicated that Ohio's Equal Protection and Benefit Clause conveys broader protections than its federal counterpart. *See State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, ¶ 23; *State v. Noling*, 149 Ohio St.3d 327, 2016-Ohio-8252, 75 N.E.3d 141, ¶ 11; *League of Women Voters of Ohio*, 2022-Ohio-65, ¶ 151 (Brunner, J. concurring).

114. That interpretation is confirmed by the text of the Equal Protection and Benefit Clause, which frames equal protection as an affirmative mandate for the government: "Government is instituted for [the people's] equal protection and benefit[.]" Ohio Constitution, Article 1, Section 2. In contrast, the Fourteenth Amendment of the United States Constitution merely 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." 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).

S.B. 23 Discriminates Against Women, a Suspect Class

115. Under Ohio law, laws that "infringe[] upon a fundamental constitutional right *or* the rights of a suspect class" are subject to strict scrutiny review. (Emphasis added). *Arbino*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, at ¶ 64. S.B. 23 discriminates against women

with respect to the protection of a fundamental constitutional right, and is thus subject to strict scrutiny.

116. 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.").

117. 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").

118. S.B. 23 discriminates against women by restricting their bodily autonomy and health care choices. *See 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). As a result of S.B. 23, Plaintiffs have been forced to turn away and cancel the appointments of patients seeking abortion care. (*See* PX-16 ¶¶ 5-6 (Liner Aff.); Burkons Aff. ¶ 12; Trick Aff. ¶¶ 3-5; Pierce Aff. ¶ 3; Krishen Aff. ¶ 7; Haskell Aff. ¶ 10).

119. It would be inconsistent for the Court to find that the Ohio Constitution protects the fundamental right to privacy, procreation, bodily integrity and freedom of choice in health care decision making, but hold that a law that limits only pregnant women in the exercise of such rights by effectively outlawing abortion does not discriminate against them based on the rationale that

there is no one else who seeks or needs abortion services. *See* TRO Decision at 17; *see also* *Obergefell v. Hodges*, 576 U.S. 644, 671, 135 S.Ct. 2584, 2602, 192 L.Ed.2d 609 (2015) ("It is inconsistent with the approach this Court has used in discussing other fundamental rights, including marriage and intimacy. *Loving* did not ask about a 'right to interracial marriage'; *Turner* did not ask about a 'right of inmates to marry'; and *Zablocki* did not ask about a 'right of fathers with unpaid child support duties to marry.' Rather each case asked about the right to marry in its comprehensive sense . . ."). Here, women, and specifically pregnant women, are denied these rights by S.B. 23, which denies them the right to abortion care.

S.B. 23 Fails Under Both Strict Scrutiny and Intermediate Scrutiny

120. 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* ¶¶ 97-111.

121. Even were the Court to apply intermediate scrutiny,[9] S.B. 23 would fail to survive. 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.

122. S.B. 23 is not "substantially related" to the purported interest of protecting the health of pregnant women. As detailed above, it prevents women from seeking healthcare necessary for their physical, emotional and mental wellbeing, and moreover, relies on a "baggage of sexual stereotypes." *See Cintron v. Nader*, 8th Dist. Cuyahoga No. 39564, 1980 WL 354341,

[9] 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.

*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).

123. S.B. 23 is also 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* ¶¶ 97-111; *see also 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.").

S.B. 23 Subjects Both Patients and Providers to Irreparable Harm

124. Plaintiffs have demonstrated that they and their patients will suffer irreparable harm under S.B. 23.

125. A finding that a constitutional right has been threatened or impaired mandates a finding of irreparable injury. *See Magda v. Ohio Elections Comm'n*, 2016-Ohio-5043, 58 N.E.3d 1188, ¶ 38 (10th Dist.); citing *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir.2001); *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976); *see also Ohio Democratic Party v. LaRose*, 2020-Ohio-4664, 159 N.E.3d 852, ¶ 61.

126. Beyond denying patients their fundamental rights, if S.B. 23 is permitted to take effect again, it will have an immediate and irreversible effect on patient health and wellbeing. When S.B. 23 was in effect, patients were turned away, and faced difficulties securing

appointments in other states, due to appointment wait times and barriers to travel. (*See* PX-16 ¶¶ 6-8 (Liner Aff.); Krishen Aff. ¶¶ 7-13; Trick Aff. ¶¶ 3-5, 15; Pierce Aff. ¶¶ 3-6).

127. Patients will experience significant emotional distress as a result of being denied abortion care under S.B. 23, especially those who are particularly vulnerable, including minors, those who are housing insecure, and survivors of incest, sexual assault and emotionally abusive relationships. *See supra* ¶¶ 35, 67-69.

128. Patients will suffer devastating physical consequences as a result of being denied abortion. *See supra* ¶ 66.

129. Patients who cannot afford to travel may be forced to carry their pregnancies to term, with attendant physical, economic, emotional and psychological consequences. (*See* Pierce Aff. ¶¶ 5-6). While S.B. 23 was in effect, patients who were turned away threatened to resort to self-harm and potentially unsafe methods of terminating their pregnancies. (PX-16 ¶ 11 (Liner Aff.); Burkons Aff. ¶ 10). Other patients expressed concerns that they did not have enough time to consider their options, as if they waited, they would no longer be able to obtain an abortion in Ohio. (*See* Pierce Aff. ¶¶ 7-8; Burkons Aff. ¶ 14).

130. Dr. Liner and providers employed or engaged by the other Plaintiffs are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they provide care in violation of S.B. 23. (*See supra* ¶¶ 4-7; PX-9 ¶¶ 15, 43-45, 49-50 (Ralston Decl.)).

<u>Plaintiffs Satisfy All Other Preliminary Injunction Factors</u>

131. Enjoining S.B. 23 will not cause any harm to third parties, as it will preserve the status quo of legal and safe abortion access that has been in place in Ohio for nearly five decades.

132. The public interest is served by stopping S.B. 23's violation of Ohioans' fundamental rights and the concrete harms of denying women access to abortion.

Bond Requirement Waived

133. The Court has broad discretion to waive the bond requirement of Rule 65(C) of the Federal Rules of Civil Procedure. *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). *See also Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir.1995). Because the relief sought by Plaintiffs will result in no monetary loss to Defendants, the Court shall waive this requirement.

Scope of Injunctive Relief

134. This Order enjoins the enforcement of SB 23 in its entirety except the provisions thereof relating only to adoption and foster care (R.C. 2919.1910 and R.C. 5103.11), section 2919.193 naming the Act, and R.C. 2317.56(C)(2) regarding the internal Ohio Department of Health process for producing informed consent materials for the Department of Health. Otherwise, enforcement of S.B. 23 is enjoined in its entirety during the pendency of this matter, and Defendants are further enjoined from later taking any enforcement action premised on a violation of S.B. 23 that occurred while such relief was in effect. Consistent with the Court's Order enjoining enforcement of SB 23, while this Order is in effect prior law(s) modified by SB 23 shall be effective in their pre-SB 23 form. Other provisions of Ohio law respecting abortion are unaffected by this Order. This Court's Order shall not be construed to affect any other orders respecting abortion in Ohio in effect from any other court of competent jurisdiction.

135. This Order is binding upon the parties to this action, their officers, agents, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order whether by personal service or otherwise.

So ordered.

Date: 10/12/22

Judge Christian A. Jenkins