

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

PRETERM-CLEVELAND, *et al.*,

Plaintiffs,

v.

DAVE YOST, *et al.*,

Defendants.

Case No. 24 CV 2634

Judge David C. Young

**PLAINTIFFS' REPLY IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

The text of Article I, Section 22 of the Ohio Constitution (the “Amendment”) is clear and unambiguous. It both establishes a demanding new legal standard for evaluating abortion restrictions and provides clinics and individual physicians with standing to challenge violations of the robust right to reproductive freedom it establishes. Yet, the version of the Amendment that the State conjures in Defendants’ Opposition to Plaintiffs’ Motion for Preliminary Injunction (“Opp. Br.”) is unrecognizable. Indeed, the State asks this Court to rewrite the text of the Amendment enacted by Ohio voters. The Court should decline to do so.

I. Plaintiffs Have Standing to Bring Claims Under the Amendment.

A. Plaintiffs Have Traditional Standing Under the Amendment.

Plaintiffs clearly possess traditional standing to assert the unconstitutionality of the Challenged Requirements under the Amendment. As documented in detail in their opening brief and supporting affidavits, Plaintiffs have suffered and continue to suffer concrete injury that is caused by the Challenged Requirements and that will be redressed by an injunction against their enforcement. *See, e.g., Moore v. Middletown*, 2012-Ohio-3897, ¶ 22 (“To succeed in establishing standing, plaintiffs must show that they suffered (1) an injury that is (2) fairly traceable to the

defendant’s allegedly unlawful conduct, and (3) likely to be redressed by the requested relief.”). In arguing otherwise, the State ignores Plaintiffs’ well-pled allegations, the plain language of the Amendment, and clear legal precedent.

Because standing is determined on a claim-by-claim basis, *see, e.g., Preterm-Cleveland v. Kasich*, 2018-Ohio-441, ¶ 30, this Court must consider Plaintiffs’ standing under the Amendment, which is the sole basis for relief they have asserted in this case. As the text of the Amendment makes clear, the State may not “directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against . . . [a] person or entity that assists an individual in exercising [their] right” to make and carry out their own reproductive decisions, including decisions on abortion. Ohio Const., art. I, § 22(B). This plain language clearly confers standing to assert violations of the Amendment on “person[s] or entit[ies]” who assist pregnant people in exercising their right to reproductive freedom. *Cf. Cool v. Frenchko*, 2022-Ohio-3747, ¶ 29 (10th Dist.) (noting that standing may be conferred by statute); *State v. Beach*, 2021-Ohio-4497, ¶ 13 (10th Dist.) (observing that a newly enacted constitutional amendment, Marsy’s Law, conferred standing on crime victims “where no such right existed before”). Indeed, the State has already effectively conceded as much, acknowledging that the Amendment “create[s] rights for both the individual woman and a *person or entity that assists* her in exercising her right,” Opp Br. at 8 (emphasis added). In litigating Ohio’s six-week abortion ban before the Ohio Supreme Court, the State likewise recognized that the Amendment creates a textual basis for clinics’ and physicians’ standing in claims brought under that Amendment. Supp. Br. of Appellants on Effect of Constitutional Amendment at 11, *Preterm-Cleveland, et al. v. Yost*, No. 2023-0004 (Feb. 2, 2023) (“[T]he new Amendment expressly protects the rights of a ‘person or entity that assists an individual exercising’ rights under the Amendment, such as a doctor or clinic performing an abortion. So doctors and clinics will now have their own

rights in the Ohio Constitution, and will likely be able to articulate reasons for their own standing . . .”).

Here, it is undisputed that Plaintiff Dr. Romanos and the clinic Plaintiffs in this case are “person[s] or entit[ies]” assisting individual patients exercising their reproductive rights. Moreover, Plaintiffs have more than sufficiently demonstrated the direct injuries they are suffering as a result of the Challenged Requirements. Pls.’ Mem. in Supp. of Mot. for Prelim. Inj. (“Pl. Br.”) at 15-16, 19-20, 22-23 (detailing the numerous ways that the Challenged Requirements burden, penalize, interfere with, and discriminate against Plaintiffs for assisting their patients in obtaining abortion care, including by forcing providers to act contrary to the standard of care and their ethical duties; preventing them from providing the best medical advice and medical care; and forcing them to inflict unnecessary emotional pain on their patients which interferes with the patient-provider relationship); *see also Colwell v. Dep’t of Health & Hum. Servs.*, 558 F.3d 1112, 1122 (9th Cir. 2009) (finding standing based in part on interference with doctor-patient relationship and medical judgment); *Am. Med. Ass’n v. Weinberger*, 395 F. Supp. 515, 520 (N.D. Ill. 1975), *aff’d*, 522 F.2d 921 (7th Cir. 1975) (same); Ohio Policy Evaluation Network, *An Assessment of Burdens and Challenges to Abortion Seekers Resulting from Ohio’s Waiting Period and Two-Appointment Requirements* (May 8, 2024) (“OPEN”), at 2-5, <https://open.osu.edu/an-assessment-of-burdens-may-2024> (summarizing research showing how Ohio’s waiting period and in-person requirements burden abortion patients and providers).¹ Thus, Plaintiffs have traditional, first-party standing to assert a claim that the explicit protections of the Amendment are being infringed by the Challenged Requirements.

¹ Plaintiffs have also shown that these harms are caused by the Challenged Requirements and can be redressed by the relief sought. Pl. Br. 11-23.

This Court should reject the State’s misguided attempt to rely on *Preterm-Cleveland v. Kasich*, 2018-Ohio-441, to counteract the overwhelmingly plain text of the Amendment. *Kasich* involved a challenge to various abortion restrictions under Ohio’s Single Subject Clause, which—in contrast to the Amendment—provides no explicit protections to abortion clinics or providers. *Id.* at ¶ 1; Ohio Const., art. II, § 15(D) (“No bill shall contain more than one subject, which shall be clearly expressed in its title.”); *see also Ohioans for Concealed Carry v. City of Columbus*, 2019-Ohio-3105 (10th Dist.), *aff’d*, 2020-Ohio-6724, (“Indeed, the discussion of standing in *Preterm-Cleveland* appears to be specific to parties alleging a violation of the Single Subject Clause.”). Thus, the State’s insistence that this Court must come to the same standing conclusion in the present challenge, Opp. Br. at 6-7, is simply wrong: because *Kasich* did not involve a challenge under the Amendment, which explicitly creates standing for persons and entities such as Plaintiffs who help individuals to exercise their reproductive freedom, it has no bearing on the Plaintiffs’ standing here.

The State’s argument also ignores that—unlike in *Kasich*—the present challenge is brought by *both* clinics *and* an individual physician plaintiff. Here, Dr. Romanos has individual standing as an abortion provider who assists individuals in carrying out their reproductive decisions because the Challenged Requirements are directly enforceable against her, and, as detailed in her affidavit, force her to deviate from professional standards of care, medical ethics, and best medical practice when providing abortion care, under threat of criminal, civil, and professional penalties. Romanos Aff. ¶¶ 9-10, 76-80; Am. Compl. ¶¶ 10-15, 64, 69; *see also Klein v. Leis*, 146 Ohio App.3d 526, 533(1st Dist. 2002) (“The real threat of prosecution for a violation of a criminal statute is sufficient to confer standing—an actual violation of the statute and prosecution is not required.”). The State’s

cursory claim that Dr. Romanos “cannot proceed based on her own alleged harms,” Opp. Br. at 8, is baseless; indeed, the State does not cite a single case in support of this assertion.

Of course, the clinic Plaintiffs suffer the same sorts of injuries as Dr. Romanos, which are likewise sufficient to establish their standing. Pl. Br. at 15-16, 19-20, 22-23. But because Dr. Romanos clearly has standing even under the State’s cramped understanding of the law, this Court need not even reach the question of whether the Plaintiff clinics also have standing. Ohio courts have long held that in cases with multiple plaintiffs, only one plaintiff must satisfy the standing requirement for each claim in order for the court to have jurisdiction and proceed on the merits. *See, e.g., Beaver Excavating Co. v. Testa*, 2012-Ohio-5776, ¶ 16 (“[I]t is sufficient for purposes of jurisdiction that at least one plaintiff has standing for the claims of the remaining plaintiffs to be heard and the court to proceed to decide the case on the merits.”); *Cincinnati Golf Mgmt., Inc. v. Testa*, 2012-Ohio-2846, ¶ 13 (holding that because one party has standing to bring a claim, there “there is no jurisdictional necessity to determine” whether another party has standing); *State ex rel. Ohio Gen. Assembly v. Brunner*, 2007-Ohio-3780, ¶ 22; *Ohio Democratic Party v. LaRose*, 2020-Ohio-4778, ¶ 15 (10th Dist.).² This Court should therefore reject the State’s request to depart from this long line of precedent, and find that Plaintiffs have the requisite standing to pursue their claim under the Amendment.

² *Estate of Mikulski v. Centerior Energy Corp.*, 2019-Ohio-983 (8th Dist.), cited by Defendants, Opp. Br. at 6, is not on point. In *Mikulski*, a class action, the court reiterated that “[o]nly the representatives of the class need to have proper standing, which requires those representatives to ‘possess the same interest and suffer the same injury shared by all members of the class that [they seek] to represent.’” *Id.* ¶ 60.

B. Plaintiffs Also Have Third-Party Standing to Assert the Rights of Their Patients Under the Amendment.

Although courts need only find one basis on which a plaintiff has standing, *see State ex rel. Ohio Gen. Assembly v. Brunner*, 2007-Ohio-3780, ¶ 22, Plaintiffs also meet the requirements for third-party standing to bring claims on behalf of their patients. *See* Am. Compl. ¶¶ 10-15 (stating that all Plaintiffs are suing on behalf of themselves and their patients).

As the State itself acknowledges, Ohio courts recognize the doctrine of third-party standing. Opp. Br. at 8 (citing *Util. Serv. Partners v. PUC*, 2009-Ohio-6764, ¶ 49). Third-party standing is appropriate where a claimant “(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.” *City of E. Liverpool v. Columbiana Cty. Budget Comm.*, 2007-Ohio-3759, ¶ 22 (quoting *Kowalski v. Tesmer*, 543 U.S. 125, 129-130 (2004)). Plaintiffs meet each of these elements.

As detailed above, Plaintiffs have established their own injury-in-fact under the Amendment as a result of the Challenged Requirements, satisfying the first element. Second, Plaintiffs have a close relationship with their patients whose rights they are asserting. For nearly half a century, the U.S. Supreme Court has recognized the “closeness of the relationship” for third party standing purposes between a patient and health care provider in the context of abortion.” *Singleton v. Wulff*, 428 U.S. 106, 117 (1976) (plurality) (“Aside from the woman herself . . . the physician is uniquely qualified to litigate the constitutionality of the State’s interference with, or discrimination against, [the abortion] decision.”); *Griswold v. Connecticut*, 381 U.S. 479, 481

(1965).³ The closeness of this relationship is further buttressed by the language of the Amendment itself, which specifically ties individuals’ right to have an abortion to the rights of those who assist them. *See* Ohio Const., art. I, § 22(B).

Lastly, courts have long recognized the barriers faced by abortion patients that hinder them from seeking relief from the court system, such as the distress caused by denial of abortion care and the traditionally lengthy timeline of litigation, which, in combination with the timeline of pregnancy and the short period before which the right to abortion is “irrevocably lost,” disincentivizes patients from pursuing their own claims against abortion restrictions. *See, e.g., Singleton*, 428 U.S. at 116-18; *Planned Parenthood Sw. Ohio Region, et al. v. Ohio Dept. of Health, et al.*, Hamilton C.P. No. A 2101148, at 5 (Apr. 19, 2021); *Planned Parenthood Sw. Ohio Region, et al. v. Ohio Dept. of Health, et al.*, Hamilton C.P. No. A. 2100870 at 5 (Jan. 31, 2022); *Akron Ctr. For Reproductive Health v. North Coast Christian Community*, 9th Dist. Summit No. 12414, 1986 WL 7753, *2-3; *Preterm-Cleveland, et. al v. Yost, et al.*, Hamilton C.P. No. A2203203 at 25-26 (Oct. 12, 2022). Indeed, patients harmed by the logistical burdens imposed by the Challenged Requirements are unlikely to undergo extended litigation that will add additional burdens and delay. Thus, Plaintiffs, who themselves are directly targeted and regulated by the Challenged Requirements, are best positioned to bring claims on behalf of their patients.

The State’s argument that Plaintiffs lack third-party standing is therefore incorrect. In addition, this basis for Plaintiffs’ standing further distinguishes the present case from *Kasich*, as the plaintiff in *Kasich* did not assert third-party standing. This Court should therefore reject the

³ The U.S. Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), did not overrule the federal third-party standing analysis and in fact decided the plaintiff clinics’ challenge on the merits. *Id.* at 231.

State’s summary assertion that Plaintiffs do not have third-party standing, which lacks any explanation as to why the court should depart from this well-established precedent. Opp. Br. at 8.

II. Plaintiffs Have a Substantial Likelihood of Success on the Merits.

A. The Text of the Amendment Is Clear as to the Stringent Legal Standard to Be Applied, Which Is More Demanding than Under *Casey* and *Roe*.

When interpreting voter-enacted constitutional provisions, as with statutes, Ohio courts must look first to the plain meaning of the text. *City of Centerville v. Knab*, 2020-Ohio-5219, ¶ 22. Indeed, courts look to the context surrounding passage of the amendment to ascertain intention only “when the language is obscure or of doubtful meaning.” *State ex rel. Swetland v. Kinney*, 69 Ohio St.2d 567, 570 (1982) (citing *Cleveland v. Bd. of Tax Appeals*, 153 Ohio St. 97, 103 (1950)). Here, the Amendment’s language is explicit and unambiguous as to the proper legal standard that courts must apply to restrictions on abortion: such laws pass muster only if they are the least restrictive means of “advanc[ing] [patient] health in accordance with widely accepted and evidence-based standards of care.” Ohio Const., art. I, § 22. The Court must therefore reject the State’s attempts to obscure this straightforward language by appeals to stray comments made by individuals or groups unaffiliated with the ballot initiative campaign and not party to this lawsuit.⁴

⁴ Unlike the amendment at issue in *State v. Carswell*, 2007-Ohio-3723, cited by the State, the Amendment was clearly intended and understood to provide a new legal test for Ohio courts to apply when considering the constitutionality of laws that regulate or restrict the individual’s right to reproductive freedom, including abortion. The Court’s holding in *State v. Carswell* turned on whether Ohio’s Defense of Marriage Amendment was ever understood or intended to have the impact of preventing unmarried cohabitating victims of domestic violence from being protected under the state’s domestic violence statute—a question that was not explicitly addressed by the text of the amendment. *Id.* at ¶¶ 2-4; *see also id.* at ¶ 10 (“In determining whether a statute and a constitutional provision are clearly incompatible, we use the plain and ordinary meaning of the words in question . . .”). There is no similar ambiguity in the Amendment; thus, the Court need only look to the plain text of the Amendment to determine its requirements.

The plain text of the Amendment makes it abundantly clear that that its new standard for reviewing the constitutionality of statutes infringing the right to abortion is much more stringent than the legal standard adopted by the U.S. Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and even stronger than the more protective standard of *Roe v. Wade*, 410 U.S. 133 (1973). While *Roe* subjected abortion restrictions to strict scrutiny, which requires the restriction to be narrowly tailored to a compelling government interest, the Supreme Court in *Casey* established a new, less demanding “undue burden” standard, requiring only that abortion restrictions not impose an “undue burden” on the right, *i.e.*, a substantial obstacle in the path of a person seeking an abortion prior to viability. *Compare Casey*, 505 U.S. at 877 *with Roe*, 410 U.S. at 155. The Amendment is much more demanding than both *Roe* and *Casey*, making explicit in its text that an abortion restriction can pass muster *only* if it advances one particular compelling interest—an interest in patient health—and does so using the least restrictive means. Ohio Const., art. IV, § 22.

Indeed, as Defendant Attorney General Yost himself explained in a legal analysis of the Amendment issued before the election, the Amendment “creates a new, legal standard that goes beyond what *Roe* and *Casey* said,” thus giving “greater protection to abortion to be free from regulation than at any time in Ohio’s history.” Issue 1 on the November 2023 Ballot: A Legal Analysis by the Ohio Attorney General, <https://www.ohioattorneygeneral.gov/SpecialPages/FINAL-ISSUE-1-ANALYSIS.aspx>, at 3, 5-6 (accessed May 10, 2024) [<https://perma.cc/Q7YX-C4MZ>] (hereinafter “Legal Analysis”). Defendant Yost explained that the Amendment would enact a new legal test that: (1) does not depend on a law being found to be an “undue burden” in order to be invalidated, but rather applies to “any burden” at all; (2) allows the State to pursue only one interest in restricting abortion—patient health; (3) limits the State to using the *least*

restrictive means to advance that interest; and (4) requires the State to prove that widely accepted and evidence-based standards of care support its use of a particular restriction to further that interest. *Id.* at 5-7. Defendant Yost thus made clear that the constitutional standard for upholding intrusions into reproductive health care decisions is significantly higher than under either of the standards provided by *Roe* or *Casey*.⁵

While, as noted above, the text of the Amendment controls the analysis here and clearly forecloses the State’s argument, Defendant Yost’s Legal Analysis is important because he is a Defendant in this case and the chief law enforcement officer in the State. Thus, to the extent this Court were to do as the State requests and look beyond the text of the Amendment to consider what the public understood the Amendment to do when voting for it, Defendant Yost’s Legal Analysis would be far more relevant than the statements of a single non-profit organization and legal scholars cited by the State. *See* Opp. Br. 12-13. Defendant Yost, the State’s chief law enforcement officer, used his official position to share his Office’s understanding of the Amendment with the public, and Ohio voters, armed with this information, enacted a significantly higher standard of review for laws impacting reproductive decision making. *See* A Message from Attorney General Dave Yost, <https://www.ohioattorneygeneral.gov/Ballot-Initiatives> (accessed May 10, 2024) [<https://perma.cc/MP3L-3ZL3>] (“This is not an exercise in advocacy. Rather, it is

⁵ The State attempts to conflate the stringent strict scrutiny standard of *Roe* with the more forgiving undue burden standard of *Casey*, repeatedly citing cases that purportedly show the Challenged Requirements have “already survived a constitutional challenge under the *Roe/Casey* regime,” Opp. Br. at 16, but that in fact relied exclusively on the far lower “undue burden” standard established in *Casey*. Indeed, even assuming, *arguendo*, that the Amendment simply returned to the legal standard of *Roe*, as the State argues, the State ignores that the U.S. Supreme Court struck down provisions very similar to the Challenged Requirements under the *Roe* standard. *See City of Akron v. Akron Ctr. for Reproductive Health*, 462 U.S. 416, 445-51 (1983) (holding that a 24-hour waiting period and certain state-mandated information requirements for abortion were unconstitutional under the *Roe* standard).

an effort to help Ohioans understand the legal impacts that Issue 1 and Issue 2 generate.”) (emphasis original).

The State thus wrongly relies on *Casey* and other cases decided under the significantly less rigid “undue burden” standard to assert that the Challenged Requirements are constitutional. Opp. Br. at 15-17 (citing *Casey*, *Cincinnati Women’s Services v. Taft*, 468 F.3d 361 (2006), and *Preterm Cleveland v. Voinovich*, 89 Ohio App.3d 684, 696 (10th Dist. 1993)).⁶ These cases, in which courts applied a completely different, much more lenient standard, are entirely inapposite in the face of the Amendment’s clear text here. The Court should therefore reject the State’s cursory conclusion that they necessarily dictate the outcome in this case.

As detailed in Plaintiffs’ opening brief and supporting affidavits, Plaintiffs have demonstrated that they are substantially likely to succeed on their claim that the Challenged Requirements are unconstitutional under the heightened legal standard of the Amendment. Indeed, the State makes no effort to defend the Challenged Requirements under the applicable legal standard—either by contesting Plaintiffs’ extensive factual allegations that they “directly or indirectly, burden, interfere with, prohibit, penalize, or discriminate against” the right to abortion and the ability of providers to assist those exercising that right,⁷ or by attempting to satisfy its

⁶ Indeed, the State relies heavily on *Voinovich*, 89 Ohio App.3d at 684, upholding a requirement of providing state-mandated information to abortion patients (without a waiting period), for the proposition that the Challenged Requirements in this case are constitutional. The trial court had found that law unconstitutional, but the appellate court reversed because *Casey* had been decided while the appeal was pending. If not for the application of the new undue burden standard recently adopted in *Casey*, it is clear that the challenged provisions would have similarly been found unconstitutional. *Id.* at 696, 701-704.

⁷ The State suggests that the Challenged Requirements do not create a substantial obstacle to obtaining abortion care because Plaintiffs’ patients are largely steadfast in their decisions to seek abortions despite the Challenged Requirements. Opp. Br. at 19-20. However, Plaintiffs need not show that the Challenged Requirements *prevent* patients from accessing care—only that the laws directly or indirectly burden, interfere with, penalize, *or* discriminate against their reproductive decision making. Ohio Const., art. I, § 22(B). Plaintiffs have already detailed the myriad ways the

heavy burden of showing that the Requirements employ the least restrictive means of advancing patient health in accordance with “widely accepted and evidence-based standards of care.”⁸ Ohio Const., art. I, § 22. Accordingly, the State has effectively conceded that the Challenged Requirements cannot pass constitutional muster under this standard, and that Plaintiffs are therefore likely to succeed on the merits of their claim.

III. Plaintiffs Have Satisfied the Other Factors for a Preliminary Injunction.

The test for determining whether it is appropriate to grant a preliminary injunction requires showing (1) a substantial likelihood of success on the merits, (2) the presence of irreparable injury if the injunction is not granted, (3) potential harm to third parties if the injunction is not granted, and (4) that an injunction serves the public interest. *Thomson v. Ohio Dept. of Rehab. & Corr.*, 2010-Ohio-416, ¶ 23 (10th Dist.). There is no independent requirement that a preliminary injunction must maintain the status quo in order to be a valid application of the law. In fact, courts often enjoin enforcement of laws (including abortion restrictions) that have long been in effect where plaintiffs have established a likelihood of success on the merits and irreparable harm. *E.g.*,

Challenged Requirements do precisely that, and the State makes no meaningful attempt to contest those detailed factual allegations. Pl. Br. at 26-33.

⁸ To the extent the State argues that the Challenged Requirements ensure the voluntariness of Plaintiffs’ patients’ decisions, this assertion is entirely without foundation. Ohio law already requires physicians to inform patients of the risks and benefits of, alternatives to, and nature of a contemplated treatment or procedure, and Plaintiffs have consistently maintained that they are subject to the general requirements of informed consent under Ohio common law. *See* Pl. Br. at 7-10, 30. Plaintiffs are not challenging the general requirement of informed consent, but rather the arbitrary, inflexible, discriminatory, and unnecessary requirements that force their patients to receive specific information in-person and then to delay their abortion care for at least 24 hours. As detailed in Plaintiffs’ opening brief and attached affidavits, these requirements do nothing to enhance or improve informed consent, instead only undermining the discretion of the provider to appropriately tailor informed consent to the individual patient’s needs, and they harm patient and health and well-being by, *inter alia*, forcing patients to unnecessarily delay accessing time-sensitive health care. Pl. Br. at 26-33; Romanos Aff. ¶ 35; Maple Aff. ¶ 37; Liner Aff. ¶ 23; Burkons Aff. ¶ 20.

Weems v. State, 440 P.3d 4 (Mont. 2019); *Kermani v. N.Y. State Bd. of Elections*, 487 F.Supp.2d 101, 117 (N.D.N.Y. 2006) (declaring unconstitutional New York campaign finance law enforced since the early 1900s); *Brown v. Buhman*, 947 F.Supp.2d 1170, 1234 (D. Utah 2013), *vacated on other grounds*, 822 F.3d 1151 (10th Cir. 2016) (declaring unconstitutional Utah criminal law, enforced since 1973); *De Leon v. Perry*, 975 F.Supp.2d 632, 666 (W.D. Tex. 2014), *aff'd sub nom. De Leon v. Abbott*, 791 F.3d 619 (5th Cir. 2015) (preliminarily enjoining Texas family law provision, enforced since 2003, prohibiting same-sex marriage).

Moreover, the status quo in Ohio radically shifted in December of 2023, when the Reproductive Freedom Amendment took effect: at that point, Ohioans came to possess a new constitutional right, and existing laws that may have not previously inflicted constitutionally cognizable harm began to do so. *Cf. Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974) (“If the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury . . . The focus always must be on prevention of injury by a proper order, not merely on preservation of the status quo.”).⁹

The State’s remaining arguments regarding the remaining preliminary injunction factors largely rest on their faulty standing claims and their misguided assertion that the Amendment only restores the *Casey* standard for reviewing abortion restrictions and thus, that pre-*Dobbs* federal case law applying that standard control the outcome here. Opp. Br. 22-25. Because, as explained above, those arguments fail, the State's other arguments premised on them must also fail.

⁹ In *Thomson*, cited by Defendants, Opp. Br. at 21, the court noted that a preliminary injunction was not necessary because—unlike here—the movant did not face any imminent harm. *Thomson*, 2010-Ohio-416, ¶ 24 (“[N]othing in plaintiff’s complaint asserts he will lose protective control status . . . [N]o injunctive relief is needed to preserve the status quo while the administrative review process resolves plaintiff’s protective control status.”). *Thomson* is therefore inapposite here where, as noted below, *infra* p. 14, Plaintiffs face irreparable harm each day the Challenged Requirements are in effect.

Moreover, Plaintiffs have provided extensive evidence of irreparable harm. First, the violation of constitutional rights is, in and of itself, a form of irreparable harm. Pl. Br. at 34. Additionally, Plaintiffs’ affidavits articulate numerous ways in which the Challenged Requirements irreparably harm both their patients and Plaintiffs themselves in their provision of abortion care, including the harm of delaying care unnecessarily; the harm to patients of being forced to continue a pregnancy with its attendant serious health risks; the harm of state-imposed stigma; the harm of receiving or giving irrelevant and often distressing information; and the emotional harm and moral distress to Plaintiffs of being forced to act contrary to the dictates of medical ethics, compounded by the ensuing loss of their patient’s trust. Pl. Br. at 34-35 (citing Plaintiffs’ affidavits). The documented harm to Plaintiffs’ and their patients’ dignity, physical health, and mental health are not compensable or remediable at law.¹⁰ And, contrary to the State’s assertion, Opp. Br. at 23-24, the harms detailed by Plaintiffs are imminent, because they are occurring every day that the law is in effect, harming Plaintiffs and their patients repeatedly as they try to provide and access abortion care in Ohio. *See Akron Ctr. for Reprod. Health*, 1986 WL 7753, *3 (9th Dist. July 9, 1986) (“Injunction is the proper remedy to restrain a repeated or continuing injury.”).

Finally, neither the State nor the public interest would be harmed by an injunction. The State’s arguments to the contrary rest almost entirely on the premise that the challenged laws are

¹⁰ The State complains that Dr. Romanos “nowhere asserts that these ‘harms’ meet the legal standard of irreparable harms.” Opp. Br. at 23. However, there is no requirement that non-lawyer affiants use the specific language of “irreparable harm” in their affidavits. The State also cites *EMW Women’s Surgical Ctr., P.S.C. v Beshear*, 920 F.3d 421 (6th Cir. 2019), to support its argument that the myriad harms identified by Plaintiffs do not constitute irreparable harm. Opp. Br. at 23. But the passages cited by the State deal with the Sixth Circuit’s rejection of the Plaintiffs’ substantive First Amendment claims—on appeal after a summary judgment ruling—and do not even mention the irreparable harm standard, much less imply that the identified forms of injury fail to meet that standard.

constitutional—a premise that Plaintiffs have refuted. Rather, because Plaintiffs have credibly alleged that the challenged restrictions burden and harm patients in exercising their right to abortion, and because the State has failed to show that the restrictions advance patient health, enjoining their application will necessarily cause no harm to the State, whereas failure to enjoin will harm both third parties and the public. *See* Pl. Br. at 34; *see also MetroHealth System v. Khandelwal*, 2022-Ohio-77, ¶ 40 (8th Dist.) (holding that decreased public access to medical care is a form of harm to third parties and the public interest to be remedied by a preliminary injunction).

CONCLUSION

For the foregoing reasons, and the reasons stated in their opening brief, Plaintiffs respectfully ask this Court to grant their Motion for Preliminary Injunction.

Respectfully submitted,

/s/ B. Jessie Hill

B. Jessie Hill (0074770)
Lead Counsel
 Freda J. Levenson (0045916)
 Rebecca Kendis (0099129)
 Margaret Light-Scotece (0096030)
 Amy Gilbert (0100887)
 ACLU of Ohio Foundation
 4506 Chester Ave.
 Cleveland, OH 44103
 Tel: (216) 368-0553 (Hill)
 (216) 541-1376 (Levenson)
 Fax: (216) 763-9580
 bjhl1@cwru.edu
 flevenson@acluohio.org
 rebecca.kendis@case.edu
 margaret.light-scotece@case.edu
 agilbert@acluohio.org

David J. Carey (0088787)
 Carlen Zhang-D'Souza (0093079)

Vanessa Pai-Thompson (PHV 27258-2024)
 Catherine Humphreville (PHV 27358-2024)
 Planned Parenthood Federation of America
 123 William Street, 11th Floor
 New York, NY 10038
 Tel: (212) 541-7800
 vanessa.pai-thompson@ppfa.org
 catherine.humphreville@ppfa.org

*Counsel for Plaintiffs Planned Parenthood
 Southwest Ohio Region and Planned
 Parenthood Greater Ohio*

Sarah Tremont*
 Lauren Gerber*
 Jessica Gerson*
 Jess Davis*
 Megan Howard*
 Covington & Burling LLP
 One City Center
 850 Tenth Street, NW

ACLU of Ohio Foundation
1108 City Park Ave., Ste. 203
Columbus, OH 43206
Telephone: (614) 586-1972
dcarey@acluohio.org
czhangdsouza@acluohio.org

Counsel for Plaintiffs

Meagan Burrows (PHV 26014-2024)
Johanna Zacarias (PHV 27546-2024)
Brigitte Amiri (PHV 25768-2024)
American Civil Liberties Union
125 Broad St., 18th Fl.
New York, NY, 10004
Tel: 212-549-2601
mburrows@aclu.org
jzacarias@aclu.org
bamiri@aclu.org

*Counsel for Plaintiffs Preterm-Cleveland,
Women's Med Group Professional
Organization, Northeast Ohio Women's
Center, LLC, and Catherine Romanos, M.D.*

Washington, DC 20001
Tel: (202) 662-6000
Fax: (202) 662-6291
stremont@cov.com
lgerber@cov.com
jgerson@cov.com
jdavis@cov.com
mehoward@cov.com

*Counsel for Plaintiffs Preterm-Cleveland,
Women's Med Group Professional
Organization, and Northeast Ohio Women's
Center, LLC,*

**Motions for pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2024, the foregoing was electronically filed via the Court's e-filing system. I further certify that a copy of the foregoing was served by email upon all defendants.

/s/ B. Jessie Hill

B. Jessie Hill (0074770)

Counsel for Plaintiffs