IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

PRETERM-CLEVELAND, *et al.*, *Plaintiffs,* v. DAVE YOST, *et al.*, *Defendants.*	Case No. 24 CV 002634 Judge David C. Young

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Ohio Rule of Civil Procedure 56, Plaintiffs respectfully move this Court for summary judgment in their favor on both counts of the Complaint, on the ground that there are no genuine issues of material fact and Plaintiffs are entitled to judgment as a matter of law.

A memorandum in support is attached.

Dated: May 22, 2026

Respectfully submitted,

/s/ B. Jessie Hill
B. Jessie Hill (0074770)
Lead Counsel
Freda J. Levenson (0045916)
Rebecca Kendis (0099129)
Margaret Light-Scotece (0096030)
Katie Corwin (0105651)
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
bjh11@cwru.edu
flevenson@acluohio.org
rebecca.kendis@case.edu

Vanessa Pai-Thompson (PHV 27258-2024)
C. Peyton 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
peyton.humphreville@ppfa.org

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

Jessica Gerson*
Megan Howard*

margaret.light-scotece@case.edu
kjc150@case.edu
agilbert@acluohio.org

David J. Carey (0088787)
Carlen Zhang-D'Souza (0093079)
ACLU OF OHIO FOUNDATION
1108 City Park Ave., Ste. 203
Columbus, OH 43206
Telephone: (614) 586-1972
dcarey@acluohio.org
czhangdsouza@acluohio.org

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

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

Eva Lilienfeld*
Garrett E. Cunningham*
Sarah O'Farrell*
COVINGTON & BURLING LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001
Tel: (202) 662-6000
Fax: (202) 662-6291
jgerson@cov.com
mehoward@cov.com
elilienfeld@cov.com
gcunningham@cov.com
sofarrell@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*

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MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Ohio's Right to Reproductive Freedom with Protections for Health and Safety Amendment (the "Amendment") protects the right to "make and carry out one's own reproductive decisions," including whether to have an abortion, and instructs that the State "shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either: [a]n individual's voluntary exercise of this right or [a] person or entity that assists an individual exercising this right." Ohio Const. art. I, § 22(A)–(B). Despite this constitutional mandate, Ohio imposes draconian requirements on the provision of abortion under the guise of "informed consent." While informed consent is a central tenet of ethical medical care, the three abortion restrictions challenged in this case—the Waiting Period Requirement, the In-Person Requirement, and the State Information Requirement (together, the "Challenged Requirements," R.C. 2317.56, 2919.192–.194)—do nothing to promote informed consent and instead clearly burden, penalize, prohibit, interfere with, and/or discriminate against Ohioans' abortion decisions and the provision of abortion care in Ohio, as the undisputed facts make clear. They do so without furthering—and indeed, while affirmatively harming—patients' health.

In issuing a preliminary injunction on August 23, 2024, this Court previously recognized that Plaintiffs, who are abortion clinics and individual physicians providing abortions in Ohio, are likely to prevail on their claims that each of the Challenged Requirements violates the Amendment. Preliminary Injunction Order ("PI Order") at 18–21. The overwhelming, undisputed body of evidence developed over the course of the twenty months since that order demonstrates that the three Challenged Requirements—independently and in combination—do indeed violate the Amendment as a matter of law. Thus, as explained below, this Court should enter summary judgment for the Plaintiffs and issue a permanent injunction.

First, the Waiting Period Requirement imposes a medically unnecessary delay of at least 24 hours on patients seeking abortion care. This burdens, interferes with, and penalizes patients' abortion decisions by increasing the health risks, costs, and logistical barriers associated with accessing abortion. It likewise burdens and penalizes the abortion providers who assist those patients and interferes with their provision of abortion care by imposing on them a separate set of logistical barriers and causing them distress. It also discriminates against abortion patients and providers, because no other medical procedure or treatment is subject to a state-mandated waiting period under Ohio law. In some cases, the Waiting Period Requirement may also outright prohibit abortions or particular abortion methods by pushing patients past the point at which that care is accessible in Ohio.

Second, the In-Person Requirement mandates a medically unnecessary, separate in-person visit for informed consent.[1] This burdens, interferes with, and penalizes patients' abortion decisions by further delaying that care and thereby exacerbating health risks and the logistical and financial barriers associated with accessing abortion. It also imposes logistical and scheduling burdens on abortion providers. Further, the In-Person Requirement discriminates against abortion patients and providers because no other medical procedure or treatment is subject to an in-person informed consent requirement in Ohio. In some cases, the burdens created by the In-Person Requirement, alone and in tandem with the Waiting Period Requirement, may become insurmountable, thus prohibiting patients from accessing this care.

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[1] The In-Person Requirement challenged in this case is distinct from the Ohio law that separately prohibits the provision of "abortion-inducing drug[s]" outside the physical presence of a physician, which is located in a different section of the Ohio Revised Code. R.C. 2919.124(B) (the "Telemedicine Ban"). The Telemedicine Ban is being challenged in another lawsuit and has been preliminarily enjoined since April 20, 2021. Entry Granting Pltfs.' Mot. for Prelim. Inj., *Planned Parenthood Sw. Ohio Region v. Ohio Dep't of Health*, No. A 2101148 (Ohio Ct. Com. Pl. Hamilton Cnty. Apr. 20, 2021) (Exhibit 18).

Finally, the State-Mandated Information Requirement requires all abortion patients to receive the same information, regardless of their individual circumstances. This burdens, penalizes, and interferes with patients' abortion decisions, and the providers assisting them in carrying out those decisions, by forcing potentially inaccurate, misleading, stigmatizing, and/or distressing information on patients, and by suggesting to them that the State of Ohio (or even their own provider) does not trust them to make their own pregnancy decisions without governmental intervention.

Each of these evidentiary showings triggers a presumption of unconstitutionality under the Amendment. That presumption can only be overcome if the Defendants[2] show that the Challenged Requirements (1) advance patient health, (2) according to widely accepted and evidence-based standards of care, and (3) using the least restrictive means. Ohio Const. art. I, § 22(B). The State has come nowhere close to overcoming the Amendment's weighty presumption here. While the State has proffered two experts, neither has presented any evidence from which a trier of fact could reasonably conclude that the State has satisfied its burden under the Amendment to demonstrate that the Challenged Requirements actually improve patient health in Ohio, let alone do so according to widely accepted and evidence-based standards of care, or using the least restrictive means. To the contrary, the undisputed evidence makes clear that none of the three Challenged Requirements passes muster under the Amendment.

Because the undisputed evidence demonstrates that each of the Challenged Requirements burdens, penalizes, prohibits, interferes with, and/or discriminates against individuals' abortion decisions and those assisting them, and because the State has not introduced any evidence that

[2] Defendants (collectively, the "State") are the Attorney General of Ohio, the Secretary and Supervising Member of the State Medical Board of Ohio, the Director of the Ohio Department of Health, and the prosecutors of the counties and cities in which Plaintiffs provide abortions.

creates a genuine dispute of material fact as to whether the State can overcome the Challenged Requirements' presumptive unconstitutionality, summary judgment should be entered for the Plaintiffs.

STATEMENT OF UNDISPUTED FACTS

I. Abortion Care in Ohio

In Ohio, abortion is available through 21 weeks, 6 days after the first day of the patient's last menstrual period ("LMP"). R.C. 2919.201 (banning abortion after 20 weeks "probable postfertilization age," or 22 weeks LMP). Two types of abortion are available in Ohio: medication abortion, a method of terminating a pregnancy by taking medication, and procedural abortion, a method using suction, instruments, or a combination thereof to empty the contents of the uterus. Liner Rep. (Exhibit 9) ¶¶ 22–23; Romanos Rep. (Exhibit 10) ¶¶ 21–23; State's Answer to Supp. Compl. ¶ 38. Some people prefer medication abortion to procedural abortion because it feels more natural, can be done privately at home when the patient chooses, and does not involve inserting instruments into the body—which may be especially traumatic for those who have experienced rape or incest. Burkons Aff. (Exhibit 1) ¶ 33; Haskell Aff. (Exhibit 2) ¶ 28; Krishen Aff. (Exhibit 3) ¶ 22; Kumar Aff. (Exhibit 4) ¶ 5; Maple Aff. (Exhibit 5) ¶ 34; Romanos Rep. ¶ 23. In addition, procedural abortion may be medically contraindicated for some patients. Burkons Aff. ¶ 33; Krishen Aff. ¶ 22; Kumar Aff. ¶ 5; Liner Rep. ¶ 50.

People seek abortion care for varied reasons, including financial concerns,[3] pursuing educational or career goals, fetal diagnoses, escaping intimate partner violence, being pregnant due to rape or incest, or simply not wanting to be pregnant. Burkons Aff. ¶ 10;Coleman Rep.

[3] People with very limited financial resources comprise the majority of both patients trying to access abortion care nationwide and Plaintiffs' patient population in Ohio. Burkons Aff. ¶ 9; Maple Aff. ¶ 6; Romanos Rep. ¶ 19; *see also* Coleman Dep. 120:22–24.

(Exhibit 7) ¶ 43; Liner Rep. ¶ 25; Romanos Rep. ¶16; Coleman Dep. (Exhibit 12) 72:4–12, 120:22–24 ("[O]ne of the main reasons women choose abortion is because of poverty."), 206:1–4 (stating that college students may choose abortion "so they can stay in school," or due to financial concerns).

II. Informed Consent

A. Informed Consent in General

Informed consent is the process by which a health care provider educates a patient about the nature and purpose of, risks and benefits of, and alternatives to a medical procedure or treatment to ensure that the patient is able to make a fully informed and voluntary decision about whether to undergo the procedure or intervention. Burkons Aff. ¶¶ 14–15; Haskell Aff. ¶ 13; Krishen Aff. ¶ 7; Kumar Aff. ¶ 5; Lappen Rep. (Exhibit 8) ¶ 20; Liner Rep. ¶ 28; Romanos Rep. ¶ 26; Valley Rep. (Exhibit 11) ¶ 7; Coleman Dep. 47:1–48:10, 159:19–21; Valley Dep. (Exhibit 16) 108:10–20.

Informed consent is a core requirement of medical ethics, in keeping with the provider's obligation to respect patient autonomy. Burkons Aff. ¶ 20; Krishen Aff. ¶ 7; Kumar Aff. ¶ 5; Lappen Rep. ¶¶ 21–22; Romanos Rep. ¶¶ 26, 28; Valley Rep. ¶ 7; Liner Dep. (Exhibit 14) 96:9–97:18, 187:7–10; Valley Dep. 108:21–24 (acknowledging that informed consent is "a core requirement" of medical ethics), 109:20–110:3 (discussing components of informed consent). Obtaining informed consent prior to providing medical treatment is the standard of care. Burkons Aff. ¶ 20; Krishen Aff. ¶ 7; Kumar Aff. ¶ 5; Lappen Rep. ¶¶ 21–22; Romanos Rep.¶¶ 26, 28; Valley Rep. ¶ 7; Liner Dep. 96:9–97:19, 187:7–10; Valley Dep. 108:21–24.

Medical ethics require that health care providers ensure the informed consent process takes into account the patient's individualized, unique values, needs, preferences, and ability to understand information. Haskell Aff. ¶ 30; Krishen Aff. ¶¶ 7–8; Kumar Aff. ¶ 5; Lappen Rep. ¶

20; Liner Rep. ¶ 28; Romanos Rep. ¶¶ 28–29; Valley Rep. ¶ 7 (citing American College of Obstetricians and Gynecologists guidelines); Coleman Dep. 51:8–20; Romanos Dep. (Exhibit 15) 147:6–149:1; Valley Dep. 112:13–113:3, 118:22–119:15, 131:6–132:8 (discussing American Medical Association Code of Medical Ethics). In addition, because it is not possible to inform a patient of every possible risk and benefit, to obtain informed consent, clinicians provide relevant information about significant or material risks and benefits to a patient during the informed consent discussion. Lappen Rep. ¶¶ 27–29, 34; Valley Rep. ¶ 28 ("It is generally accepted and understood that patients must be informed about material risks."); Coleman Dep. 50:15–51:20, 159:19–22 ("[P]art of the purpose of informed consent is for women to understand alternatives and for it to be personally relevant information."); Valley Dep. 95:16–96:7, 112:4–12, 113:5–13, 127:10–20, 128:2–3.

B. Informed Consent for Abortions in Ohio

Both before and after the issuance of the preliminary injunction in this case, the shared practice among all Plaintiffs has been to ensure that their patients have made a fully informed and voluntary decision to consent to an abortion before proceeding to provide care. Burkons Aff. ¶¶ 17, 19, 40; Haskell Aff. ¶ 14; Liner Rep. ¶ 29; Romanos Rep. ¶ 31. The State does not and cannot dispute any of these facts pertaining to Plaintiffs' informed consent practices. Coleman Dep. 76:20–79:2 (admitting that she has not reviewed the informed consent policies or guidelines of the Plaintiffs' clinics and is not familiar with the pre-abortion counseling process at any of the Plaintiffs' clinics), 299:15–24 (acknowledging that her conclusions are based on "generalized . . . information about poverty, about women seeking abortions who are living in poverty," rather than information about counseling processes at Plaintiffs' clinics); Valley Dep. 78:2–79:14 (admitting that he has not reviewed the informed consent policies or guidelines of any of the Plaintiffs' clinics and is not familiar with the pre-abortion counseling process at any of the plaintiff clinics).

Plaintiffs ensure that every patient is informed of the nature and purpose of abortion, as well as its risks, benefits, and alternatives, and that every patient has opportunities to ask questions. Burkons Aff. ¶¶ 15–16; Krishen Aff. ¶ 7; Kumar Aff. ¶ 5; Maple Aff. ¶¶ 12–20; Liner Rep. ¶¶ 29–33; Romanos Rep. ¶¶ 26, 31–33. Because patients' unique medical histories and circumstances may impact abortion risks and benefits, Plaintiffs tailor this discussion to each patient, providing full and comprehensive information in accessible terms. Krishen Aff. ¶ 8; Kumar Aff. ¶ 5; Liner Rep. ¶¶ 28–29; Romanos Rep. ¶¶ 27–29.

Plaintiffs are also trained to, and do, screen all patients for signs of coercion, to ensure that their decisions are truly voluntary. Burkons Aff. ¶ 18; Krishen Aff. ¶ 10; Kumar Aff. ¶¶ 5, 11; Maple Aff. ¶ 17; Biggs Rep. (Exhibit 6) ¶ 92; Liner Rep. ¶ 30–31; Romanos Rep. ¶ 34; Lappen Dep. (Exhibit 13) 56:56–57:17; Liner Dep. 109:1–114:7; *see also* Coleman Dep. 190:19–193:17 (admitting unfamiliarity with Plaintiffs' practices and protocols for providing care to victims of intimate partner violence and detecting coercion). If Plaintiffs or their staff sense hesitancy, they investigate that concern privately with the patient. Burkons Aff. ¶¶ 17, 19; Maple Aff. ¶¶ 12, 14, 16; Krishen Aff. ¶ 10; Kumar Aff. ¶ 5; Liner Rep. ¶ 30; Romanos Rep. ¶ 34; Liner Dep. 112:21–120:22. Plaintiffs do not proceed with an abortion unless the patient is sure of their decision and the provider is comfortable that the patient's decision is fully informed and voluntary. Burkons Aff. ¶ 18; Kumar Aff. ¶ 11; Maple Aff. ¶¶ 15–17, 20; Liner Rep. ¶¶ 27, 29–33; Romanos Rep. ¶¶ 31, 34; Liner Dep. 105:1–14.

Since the preliminary injunction in this case, many patients choose to have an abortion on the same day they provide informed consent. Kumar Aff. ¶ 8; Liner Rep. ¶¶ 54–61; Lappen Dep. 93:10–19 (stating the injunction "has allowed us to provide same day care in the right circumstances if it were appropriate"); Romanos Dep. 72:9–73:14. Other patients continue to take

additional time to make their decision, and Plaintiffs continue to support them in doing so. Kumar Aff. ¶ 11; Romanos Dep. 73:3–14 ("[I]f they decide they want to go home and come back another day, that's their decision now."), 74:24–76:13 (explaining that patients still see multiple staff members and have ample opportunity to ask questions before the abortion); Liner Rep. ¶¶ 30, 32; Liner Dep. 111:3–112:16.

III. The Waiting Period Requirement Creates Delays That Harm Patients' Health and Imposes Barriers to Accessing Care

The Waiting Period Requirement mandates that "[a]t least twenty-four hours prior to the performance or inducement of the abortion, a physician meets with the pregnant woman" to obtain informed consent and provide certain state-mandated information. R.C. 2317.56(B)(1); *see infra* Part V (describing the State-Mandated Information Requirement).[4] Additionally, the abortion provider must test for fetal or embryonic cardiac activity and, if such activity is detected, the Waiting Period Requirement further mandates that the patient wait at least 24 hours after receiving additional state-mandated information before an abortion can be provided. R.C. 2919.192–194; R.C. 2317.56(B)(2)(c)–(B)(3); *infra* Part V. The only narrow exception to these requirements is for cases of medical emergency or medical necessity, defined as applying only if an "immediate" abortion is necessary due to a pregnancy complication. R.C. 2317.56(A)(1)–(2), 2317.56(B), and 2919.16(F). In all other circumstances—including rape, incest, a fatal fetal diagnosis, or intimate partner violence—the Waiting Period Requirement is mandatory. R.C. 2317.56(B); 2919.194(B).

Failure to comply with the Waiting Period Requirement exposes the clinician to severe professional, civil, and criminal penalties. Violation of the Waiting Period Requirement may result in license revocation and a civil action for damages. R.C. 4731.22(B)(23) (allowing the state

[4] Before a patient can receive abortion care, they must certify in writing that the provider has given them all of the required materials, that all of their questions have been answered, and that they are consenting to the procedure knowingly and voluntarily. R.C. 2317.56(B)(4).

medical board to limit, revoke, or suspend a physician's medical license based on a violation of R.C. 2317.56); R.C. 2317.56(G)(1)–(H) (authorizing civil suit for compensatory and exemplary damages for "injury, death, or loss to person or property" as a result of noncompliance with R.C. 2317.56). And a clinician who fails to wait 24 hours to perform an abortion after detecting cardiac activity faces additional criminal penalties. R.C. 2919.194(E) (stating that the first offense constitutes a misdemeanor and each subsequent offense a fourth-degree felony).

The risks associated with abortion increase incrementally as pregnancy progresses, such that delaying a patient's access to abortion care increases the medical risk to the patient. Lappen Rep. ¶¶ 98–100; Liner Rep. ¶ 46; Romanos Rep. ¶ 58; *see also* Coleman Rep. ¶ 20 (noting that medical literature shows increased medical risk associated with abortion as gestation increases); Coleman Dep. 114:19–119:18; Valley Dep. 218:4–220:15. Patients who are delayed in having an abortion—and who are thus forced to stay pregnant longer—also face a greater risk of pregnancy-related complications, including the onset of new conditions or aggravation of pre-existing ones, than if they had been able to have an abortion earlier in pregnancy. Lappen Rep. ¶¶ 99–100; Liner Rep. ¶ 46; Romanos Rep. ¶¶ 59–60. For other patients, the delay may require them to have a more medically complex, two-day procedure rather than a single-day procedure. Maple Aff. ¶ 36; Haskell Aff. ¶ 26; Romanos Rep. ¶ 57; Romanos Dep. 107:1–6; Valley Dep. 219:4–220:15.

The Waiting Period Requirement may also delay some patients beyond the point of eligibility for their preferred or medically indicated method of abortion. Burkons Aff. ¶¶ 33–34; Haskell Aff. ¶ 28; Krishen Aff. ¶ 22; Kumar Aff. ¶ 5; Liner Rep. ¶ 50; Romanos Rep. ¶ 57; *see also Supra* Statement of Undisputed Facts ("SOUF") Part I (discussing contraindications for procedural care). For example, the compounding delays may push patients past the legal limit for the provision of medication abortion in Ohio, requiring them to seek procedural abortion instead.

Burkons Aff. ¶¶ 33–34; Haskell Aff. ¶ 28; Krishen Aff. ¶ 22; Kumar Aff. ¶ 5; Liner Rep. ¶ 50; Romanos Rep. ¶ 57; *see also supra* Part I. Additionally, as the State's expert acknowledges, the delay imposed by the Waiting Period Requirement may push a patient past the gestational limit for abortion in Ohio, preventing them from obtaining an abortion in the state entirely. Maple Aff. ¶ 35; Lappen Rep. ¶ 85; Romanos Rep. ¶ 57; Liner Rep. ¶ 38; Valley Dep. 221:13–224:1.

The State does not dispute that the Waiting Period Requirement also imposes financial and logistical constraints that create barriers to accessing abortion care. Biggs Rep. ¶¶ 95–96; Romanos Rep. ¶ 52; Valley Dep. 227:1–9. Delays in accessing abortion care can increase the cost of the abortion itself, as abortion becomes more complex, and thus more costly, later in pregnancy. Haskell Aff. ¶ 29; Maple Aff. ¶ 32; Liner Rep. ¶ 51; Romanos Rep. ¶ 55; Coleman Dep. 267:19–268:4 (acknowledging increased cost of care attributable to delayed access); Liner Dep. 170:3–8; Romanos Dep. 106:19–107:6. When combined with the In-Person Requirement, the Waiting Period Requirement effectively forces the vast majority of patients to make two trips to the clinic and to cover all of the transport, childcare, and other costs that may be associated with attending the appointment twice which can, in turn, further delay care.[5] Indeed, for some patients, cardiac activity is not detected during the first visit but is detected during the second visit, necessitating a second 24-hour waiting period and a *third* in-person visit in order to obtain an abortion. R.C.

[5] As noted above, *see supra* note 1, Ohio has a separate ban on providing abortion through telemedicine ("Telemedicine Ban") that is preliminarily enjoined by the Hamilton County Court of Common Pleas. Entry Granting Pltfs.' Mot. for Prelim. Inj., *Planned Parenthood Sw. Ohio Region v. Ohio Dep't of Health*, No. A 2101148 (Ohio Ct. Com. Pl. Hamilton Cnty. Apr. 20, 2021). With both the Telemedicine Ban and the In-Person Requirement currently enjoined, some eligible patients are legally able to obtain medication abortions via telemedicine without having to travel to an abortion provider. Kumar Aff. ¶ 9. If the In-Person Requirement is reinstated, even if the Telemedicine Ban remains blocked, these patients would be forced to make at least one visit to an abortion clinic for informed consent. R.C. 2317.56(B)(2).

2919.194 (making it a crime to perform an abortion less than 24 hours after embryonic or fetal cardiac activity is detected); Romanos Rep. ¶ 54.

Further, forcing providers to delay patient care for no medical purpose places a strain on their ability to schedule patients efficiently, and these scheduling constraints can add to the delays experienced by patients. Burkons Aff. ¶ 8; Krishen Aff. ¶ 29; Kumar Aff. ¶ 5; Romanos Rep. ¶ 45; Liner Rep. ¶ 43; Liner Dep. 146:11–24. Additionally, because it is the clinic staff and clinicians that must enforce this mandated unnecessary delay for patients, it takes a heavy emotional toll on Plaintiffs' staff and erodes Plaintiffs' ability to build trust with their patients. Burkons Aff. ¶¶ 21, 23; Maple Aff. ¶¶ 31; 40–41; Krishen Aff. ¶¶ 25–29; Kumar Aff. ¶ 5; Romanos Rep. ¶ 81.

It is similarly undisputed that since the preliminary injunction, unnecessary delays in access to care have been reduced and patients have been able to receive care more quickly than before. Kumar Aff. ¶¶ 8, 10; Liner Rep. ¶¶ 59–61; Lappen Dep. 93:10–19 (stating the injunction "has allowed us to provide same day care in the right circumstances if it were appropriate"); Liner Dep. 147:8–17 ("[W]e've been able to have patients come in for same-day appointment[s]"), 178:1–25 (estimating that the process takes two to three weeks less post-injunction); Romanos Dep. 72:9–73:14.

The State admits that Ohio law does not impose a mandatory waiting period for any other medical procedure or treatment. State's Resp. to Interrog. (Exhibit 17) No. 13 ("The State has not identified any medical interventions, treatments or procedures that are subject to a mandatory waiting period under Ohio law."); *see also* Burkons Aff. ¶ 24; Haskell Aff. ¶ 20; Liner Rep. ¶ 36; Romanos Rep. ¶¶ 43, 78, 80; Lappen Dep. 138:21–139:14; Romanos Dep. 101:13–104:13, 261:5–262:3. Rather, it is common for informed consent to be sought and provided on the same day as a medical procedure or treatment. Burkons Aff. ¶ 24; Romanos Rep. ¶¶ 30, 43–44. This is even true

for major surgeries like tubal ligations and cesarean sections, which carry greater risks than abortion. Burkons Aff. ¶ 24; Romanos Rep. ¶ 30. Moreover, Ohio law does not prohibit patients from accessing miscarriage care—which all parties agree is essentially the same as abortion in terms of both technique and physical risks, *see* Lappen Rep. ¶¶ 45–48; Romanos Rep. ¶ 43; Valley Dep. 36:20–23, 39:23–41:10—on the same day they present for treatment. State's Resp. to Interrog. No. 13. Thus, no medical providers other than abortion providers are required to either force their patients to delay desired care or face severe penalties for non-compliance. Haskell Aff. ¶ 34; Liner Rep. ¶ 36; Romanos Rep. ¶ 35, 39, 58, 61, 64, 75–77; Romanos Dep. 107:23–108:3; Valley Dep. 239:5–14.

IV. The In-Person Requirement Creates Delays that Harm Patient Health and Imposes Barriers to Accessing Care

The In-Person Requirement is derived from several statutory provisions which mandate that abortion patients attend an unnecessary in-person appointment before receiving care. Specifically, R.C. 2317.56(B)(2) requires the patient to receive certain state-mandated information "in person" during their first visit to an abortion provider, even though the information could be provided remotely or on the same day as an abortion provided in person. R.C. 2919.192, 2919.193, and 2919.194 require the provider to test for embryonic and fetal cardiac activity—something that can only be done in person—during that initial visit as well.

Failure to comply with the In-Person Requirement exposes the clinician to severe professional, civil, and criminal penalties. Violation of the In-Person Requirement may result in license revocation and a civil action for damages. R.C. 4731.22(B)(23) (allowing the state medical board to limit, revoke, or suspend a physician's medical license based on a violation of R.C. 2317.56); R.C. 2317.56(G)(1)–(H) (authorizing civil suit for compensatory and exemplary damages for "injury, death, or loss to person or property" as a result of non-compliance with R.C.

2317.56). And failure to test for embryonic or fetal cardiac activity prior to providing an abortion is a fifth-degree felony. R.C. 2919.193(A).

It is undisputed that these mandates forced the vast majority of patients to make at least two trips to an abortion provider in order to receive care. Burkons Aff. ¶ 8, 28; Haskell Aff. ¶ 23; Krishen Aff. ¶ 12; Kumar Aff. ¶ 5; Maple Aff. ¶ 33; Liner Rep. ¶¶ 13, 37; Romanos Rep. ¶ 49. The financial and logistical difficulties associated with having to schedule and attend multiple in-person appointments can delay care, which in turn subjects patients to increased risks to their health. Burkons Aff. ¶¶ 35–36, 40; Liner Rep. ¶¶ 26–35; Romanos Rep. ¶¶ 52–55; *supra* Part III (discussing how delay increases risk of harm).

Indeed, to attend even one appointment at one of Plaintiffs' health centers, patients must often arrange time off work—which can mean forgoing wages—and/or arrange and pay for childcare, transportation, and lodging, on top of ensuring they have the funds to cover the cost of their medical care. Burkons Aff. ¶ 29; Haskell Aff. ¶ 23; Krishen Aff. ¶¶ 16, 19; Kumar Aff. ¶ 5; Biggs Rep. ¶ 96; Liner Rep. ¶¶ 26, 39–41, 43; Romanos Rep. ¶¶ 46, 53; Romanos Dep. 107:14–19. Defendants cannot and do not dispute the existence of these obstacles to care. Coleman Dep. 272:23–273:5, 272:14–19, 274:13–275:4, 277:2–13, 276:18–277:1 (admitting that it is possible that women with low incomes can be resourceful and resilient and still face barriers to accessing abortion care that prevent or delay their access to care); *cf.* Valley Dep. 230:19–231:3 (acknowledging that when opining on harm caused by the Challenged Requirements, his understanding of the term "harm" is limited to "something that is either a complication that occurs at the time [of the procedure], or even some other longstanding effect of a complication that could . . . be a forward-driven, longstanding complication or effect").

Requiring patients to make multiple trips to a health center compounds these costs and can put patients' employment at risk. Burkons Aff. ¶ 29; Haskell Aff. ¶ 23; Krishen Aff. ¶ 19; Kumar Aff. ¶ 5; Maple Aff. ¶ 33; Liner Rep. ¶¶ 39–41; Romanos Rep. ¶ 49; Valley Dep. 226:2–227:10 (acknowledging that a patient is "going to have the same logistical issues" with the second appointment as they did with the first—"if [they] had trouble getting to the first [appointment], [they] might have trouble getting to [the second] one."); *cf.* Coleman Dep. 267:6–268:4 (acknowledging that not being able to receive same-day care may cost patients "extra money, a loss of a day or two of work, or a taxi drive . . .").

The costs and logistical obstacles associated with making two or more trips to a clinic are multiplied for those patients who must travel longer distances to attend the appointments, including those traveling from out of state. Burkons Aff. ¶¶ 8, 28; Haskell Aff. ¶ 23; Krishen Aff. ¶ 12; Kumar Aff. ¶ 5; Maple Aff. ¶ 33; Liner Rep. ¶¶ 40–41; Romanos Rep. ¶ 49; Valley Dep. 226:2–227:10. These burdens are also particularly onerous for patients who are experiencing homelessness, Krishen Aff. ¶ 18; Kumar Aff. ¶ 5; Romanos Dep. 121:22–122:9, or intimate partner violence, Haskell Aff. ¶ 24; Krishen Aff. ¶ 17; Kumar Aff. ¶ 5; Maple Aff. ¶ 31; Biggs Rep. ¶ 91; Liner Rep. ¶ 42; Romanos Rep. ¶ 66; Liner Dep. 201:18–203:20; Romanos Dep. 122:14–23, 202:18–203:23. For example, requiring multiple trips to a clinic increases the likelihood that an abusive partner will become aware of the patient's pregnancy or discover that the patient is seeking abortion care, as patients must account for repeated absences from home, work, or caregiving responsibilities. Haskell Aff. ¶ 24; Krishen Aff. ¶ 17; Kumar Aff. ¶ 5; Maple Aff. ¶ 31; Biggs Rep. ¶ 91; Liner Rep. ¶ 42; Romanos Rep. ¶ 66; Coleman Dep. 276:18–277:1 (acknowledging that "an abusive partner" may create barriers to care for some patients); Liner Dep. 201:18–203:20; Romanos Dep. 122:14–23, 202:18–203:23. For some patients, the obstacles imposed by the

requirement to make two separate trips to a provider may prove insurmountable, thus effectively prohibiting those patients from receiving care in Ohio. Haskell Aff. ¶22; Liner Rep. ¶ 38; Romanos Rep. ¶ 57; Romanos Dep. 179:11–14.

In addition, forcing providers to schedule all patients for an additional, medically unnecessary appointment places a strain on their ability to schedule patients efficiently, and these scheduling constraints can add to the delays experienced by patients. Burkons Aff. ¶ 8; Haskell Aff. ¶ 23; Krishen Aff. ¶¶ 12, 29; Kumar Aff. ¶ 5; Liner Rep. ¶ 44; Romanos Rep. ¶ 45; Liner Dep. 146:11–24.

Ohio law does not require a separate in-person visit for informed consent for any other medical procedure or treatment.[6] Indeed, Ohio law broadly permits clinicians to provide information to patients, obtain informed consent, and render medical care via telehealth, including for contraception and miscarriage management. R.C. 4743.09 (permitting telehealth to be used as long as it meets the standard of care); O.A.C. 4731-37-01 (same).

V. The State-Mandated Information Requirement Forces Providers to Give Patients Potentially Inaccurate, Misleading, Stigmatizing, and/or Upsetting Information

The State-Mandated Information Requirement requires patients seeking abortion to receive certain state-mandated information before the abortion from a physician,[7] as well as copies of

[6] The only law that the State identified as purportedly requiring a separate in–person informed consent visit is a statute that requires written informed consent be obtained prior to prescribing opioids to minors. *See* State's Resp. to Interrog. No. 14 (citing R.C. 3719.061). But as explained *infra*, this statute does not specify that the written informed consent must be obtained in person as opposed to remotely. Nor does it require a separate visit. *See infra* Argument Part II.B.

[7] The State-Mandated Information Requirement mandates that a "physician," rather than another qualified clinician, must provide this information. R.C. 2317.56(B)(1). The ban on qualified advanced practice clinicians (including nurse practitioners, physician assistants, and certified nurse midwives) providing, and obtaining informed consent for, medication abortion is currently preliminarily enjoined. Dec. & Order Granting Pltfs.' Second Mot. for Prelim. Inj., *Planned Parenthood Sw. Ohio Region v. Ohio Dep't of Health*, No. A 2101148 (Ohio Ct. Com. Pl. Hamilton Cnty. Aug. 29, 2021) (Exhibit 19). However, the injunction in that case does not

state-produced materials about fetal development, family planning information, and publicly-funded support options. R.C. 2317.56. The physician or their agent must also inform the patient that these written materials "are published by the state and that they describe the zygote, blastocyst, embryo, or fetus and list agencies that offer alternatives to abortion." R.C. 2317.56(B)(2)(c). In addition, the abortion provider is compelled to test for embryonic or fetal cardiac activity prior to an abortion, and, if such activity is detected, to provide the patient with additional state-mandated information. R.C. 2919.192–194, 2317.56(B)(2)(c)–(B)(3). Specifically, the physician must: (1) give the patient written confirmation that cardiac activity is present; (2) tell the patient the statistical probability of bringing the embryo or fetus to term based on gestational age; and (3) have the patient sign a form acknowledging receipt of this information. R.C. 2919.194(A)(1)–(3). Before a patient can receive abortion care, the patient must certify in writing that they have received all of the required information and materials (collectively, the "State-Mandated Information"). R.C. 2317.56(B)(4); 2919.194(A)(3). These statutory requirements may be waived only in cases of documented medical emergency; in all other circumstances, the requirements of R.C. 2919.192, 2919.193, and 2919.194 are mandatory. R.C. 2317.56(B); 2919.193(B).

Failure to provide the required information pertaining to embryonic or fetal cardiac activity and receive written acknowledgement from the patient is a first-degree misdemeanor on the first offense and a fourth-degree felony on subsequent offenses. R.C. 2919.914(E). Providers may also face civil suits for compensatory and punitive damages, as well as discipline from the state medical board, for failure to provide any of the State-Mandated Information. R.C. 2317.56(H); R.C. 2919.193; R.C. 4731.22(B)(23).

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impact the claims in this case, which concern the existence of the information requirement, separate and apart from the question of who is permitted to provide the information under Ohio law.

It is undisputed that the statistical probability of carrying a pregnancy to term is impossible to calculate accurately based solely on the point in gestation. *See* Lappen Dep. 126:23–127:8; Valley Dep. 144:6–13 (admitting that the probability of carrying a pregnancy requires considering factors other than gestational age). Informing patients of a purported statistical probability of carrying their pregnancy to term based on the gestational stage alone fails to account for unique patient circumstances and their medical history. Lappen Rep. ¶ 31; Valley Dep. 144:6–13 (acknowledging that a statistical estimate of likelihood of carrying a pregnancy to term would be based not just on gestational age, but what a physician knows about the patient's pregnancy history, and "the likelihood of complications that would occur prior to term in their situation"). For example, a patient's history of experiencing a specific obstetric condition (like pre-eclampsia or hypertension) can impact the likelihood of carrying a subsequent pregnancy to term. Lappen Rep. ¶¶ 31–33; Romanos Rep. ¶ 71; *cf.* Valley Dep. 150:18–152:2 (acknowledging that individual factors, like age and specific obstetric history, including any history of pre-eclampsia or preterm delivery, could impact the probability of carrying a pregnancy to term). Indeed, the State's own medical expert admitted that he only sometimes provides the statistical probability of carrying a pregnancy to term to his pregnant patients, Valley Dep. 143:21–144:13, and when he does provide this information, he attempts an "estimate" based on other factors in addition to gestational age, including the patient's specific medical history. Valley Dep. 144:6–13, 150:18–152:2. Yet, on its face, the statute does not permit providers to account for any factors other than gestational age. R.C. 2919.194(A)(1)–(3).

The State-Mandated Information Requirement thus requires providers to present patients with medically irrelevant information that compromises their ability to make health care decisions, causes them emotional harm, and provides no medical benefit. *See* Haskell Aff. ¶ 19, Maple Aff.

¶ 38, Romanos Rep. ¶ 69; *cf.* Valley Dep. 126:17–127:9, 127:16–20, 128:2–3 (agreeing that patients should not receive medically irrelevant information, such as information that would inflict harm or suffering upon the patient). The State-Mandated Information Requirement also does not allow providers to tailor information based on individual patient needs, which goes against best medical practice. *Supra* Part II.A.

In addition, the State-Mandated Information is often irrelevant or upsetting and stigmatizing to patients. For example, patients who have wanted pregnancies and receive fetal diagnoses that have led them to choose abortion are forced to learn whether cardiac activity exists and to be told the estimated age of the fetus, which often deepens the grief they are already experiencing. Haskell Aff. ¶ 31; Liner Rep. ¶ 49; Romanos Rep. ¶ 73. Some patients who are pregnant as a result of rape or incest are also upset by this information because telling the patient the estimated gestational age of the embryo or fetus reminds them of the date of their assault. *See* Romanos Rep. ¶ 72. Even outside of these cases, the State-Mandated Information Requirement can drive a wedge between patients and their doctors by causing patients to feel belittled and judged for their decision to terminate their pregnancy, therefore interfering with the doctor-patient relationship. *See* Haskell Aff. ¶¶ 33, 35; Krishen Aff. ¶ 27; Kumar Aff. ¶ 5; Maple Aff. ¶¶ 39, 41; Lappen Rep. ¶ 34; Liner Rep. ¶ 48; Romanos Rep. ¶ 78; Romanos Dep. 106:19–23, 107:23–108:3. It also suggests to patients seeking abortion that they are unable to arrive at their own health care decisions without State intervention and perpetuates stereotypes of women as ignorant, irrational, and untrustworthy. *See* Haskell Aff. ¶ 33; Maple Aff. ¶ 38; Romanos Rep. ¶ 78; Romanos Dep. 107:23–108:3, 264:20–24.

STANDARD OF REVIEW

Summary judgment is appropriate where, as here, "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Civ. R. 56(C); *see also Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). Once the moving party makes such a showing, the burden shifts to the opposing party, who "must set forth specific facts showing that there is a genuine issue for trial." Civ. R. 56(E); *Dresher*, 75 Ohio St.3d at 293.

Facts that are not countered by evidence from the non-moving party are deemed to be true. *Stemen v. Shibley*, 11 Ohio App.3d 263, 268 (6th Dist. 1982) ("[W]here the [non-movant] has not produced countering affidavits, [the movants'] affidavits are accepted as true.") (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 161 (1970), and *Jones v. Halekulani Hotel, Inc.*, 557 F.2d 1308, 1310 (9th Cir. 1977)); *Kay Way, Inc. v. Navistar Int'l Transp. Corp.*, No. 88AP-1112, 1989 WL 57587, at *2 (Ohio Ct. App. 10th Dist. May 30, 1989) (finding summary judgment appropriate where non-movant "has offered no specific facts to counter either the affidavits or the acknowledgments contained in the instruments provided the trial court"). Additionally, the opposing party's burden cannot be met "with unsupported assertions and conclusions." *Robol v. Columbus*, 2025-Ohio-973, ¶ 32, *appeal not allowed*, 178 Ohio St.3d 1509 (2025), and *cert. denied*, 146 S. Ct. 392 (2025). Rather, the party opposing summary judgment must "set forth specific facts showing that there is a genuine issue for trial." *Aurora Bank FSB v. Stevens*, 2014-Ohio-1713, ¶ 8, 11 (10th Dist.); *see also Todd Dev. Co. v. Morgan*, 116 Ohio St.3d 461, 463 (2008) (citing Civ. R. 56(E)).

In order to obtain a permanent injunction, in addition to showing an entitlement to relief by clear and convincing evidence, a party must demonstrate "that an injunction is necessary to prevent irreparable harm, and that no adequate remedy at law exists." *Whitney Woods Homeowners' Ass'n, Inc. v. Steagall*, 2025-Ohio-2784, ¶ 45 (10th Dist.) (quoting *McDowell v. Gahanna*, 2009-Ohio-6768, ¶ 9 (10th Dist.) (internal quotation marks omitted).

ARGUMENT

The Amendment provides that "[e]very individual has a right to make and carry out one's own reproductive decisions," including decisions regarding "abortion." Ohio Const. art. I, § 22(A). Further, the "State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against" an "individual's voluntary exercise of this right," or those assisting individuals exercising this right, unless the State demonstrates "that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." *Id.* § 22(B). Thus, Plaintiffs bear a threshold burden of showing that the Challenged Requirements directly or indirectly burden, penalize, prohibit, interfere with, or discriminate against individuals' reproductive decisions or those assisting them. Under the Amendment's plain text, Plaintiffs need only show that *one* of these requirements is met—i.e., that the state law burdens *or* penalizes *or* prohibits *or* interferes with *or* discriminates against the fundamental right to abortion.

Once Plaintiffs make that threshold showing, the Challenged Requirements are presumed unconstitutional. The burden then shifts to the State to overcome this presumption, which it can only do by meeting a rigorous, constitutionally prescribed standard: demonstrating that the Challenged Requirements constitute the "least restrictive means" to advance patient health in accordance with widely accepted and evidence-based standards of care.

Because there is no genuine dispute as to whether the Challenged Requirements burden, penalize, prohibit, interfere with, and/or discriminate against Ohioans' abortion decisions and the provision of abortion care, and because Defendants have introduced nothing into the record that would enable a trier of fact to conclude that such harms are constitutionally justified under the Amendment's rigorous standard, Plaintiffs are entitled to judgment as a matter of law on each of their claims.

I. The Waiting Period Requirement Violates the Amendment as a Matter of Law

A. The Waiting Period Requirement Burdens, Penalizes, Prohibits, and Interferes with Ohioans' Abortion Decisions and the Provision of Abortion Care

The undisputed facts demonstrate that the Waiting Period Requirement unconstitutionally burdens, penalizes, and interferes with patients' access to abortion in Ohio, and in some cases may actually prohibit patients from obtaining their preferred or medically indicated method of abortion, or from obtaining an abortion in Ohio altogether.

There is no dispute that the Waiting Period Requirement, by definition, delays abortion care by *at least* 24 hours. R.C. 2317.56(B); R.C. 2919.194. This forced delay, in and of itself, burdens, penalizes, and interferes with the ability to obtain an abortion in Ohio. *Supra* Statement of Undisputed Facts ("SOUF") Part III. This delay also imposes medical risks as well as logistical and financial barriers that further burden, penalize, and interfere with patients' abortion decisions. *Id.* Plaintiffs have thus unquestionably met their threshold burden under the Amendment of showing that the Waiting Period Requirement burdens *or* penalizes *or* interferes with their voluntary exercise of their right to an abortion.

It is further undisputed that the delay caused by the Waiting Period Requirement renders some patients ineligible for their chosen or recommended care, as the gauntlet of barriers and ensuing delay pushes some patients past the point in gestation at which certain types of abortion

care are available. *Id.* Moreover, as the undisputed evidence makes clear, the Waiting Period Requirement can prevent some patients from receiving abortion care in Ohio altogether, as the delay it creates may push some patients past Ohio's gestational limit for abortion. *Id.* In these situations, the Waiting Period Requirement prohibits Ohio patients from accessing their desired abortion care in Ohio.

There is also no dispute that the Waiting Period Requirement burdens, penalizes, prohibits, and interferes with Plaintiffs' ability to provide abortion care. *Id.* It is undisputed that the Waiting Period Requirement burdens Plaintiffs and clinic staff, both by creating logistical and scheduling difficulties and by impacting their relationship with pregnant patients, causing emotional distress. *Id.* The Waiting Period Requirement thus functions as an obstruction between patients and abortion providers—undermining the patient-provider relationship under the guise of protecting patients. *Id.* Moreover, it is undisputed that clinicians face the threat of both criminal and civil penalties for violating the Waiting Period Requirement. *Id.* In this way, it not only burdens, penalizes, and interferes with patients' access to care, but it does the same to those endeavoring to provide that care. *See* Ohio Const. art. I, § 22(B) (protecting individuals exercising their right to make and carry out reproductive decisions as well as those assisting them in doing so).

B. The Waiting Period Requirement Discriminates Against Patients Seeking Abortion and Those Who Provide It

The undisputed facts also make clear that the Waiting Period Requirement discriminates against abortion patients and their providers by singling them out for differential, unfavorable treatment. Aside from abortion, no other medical treatments or procedures are subject to a mandatory waiting period under Ohio law. *Supra* SOUF Part III. Indeed, there is nothing in Ohio law preventing patients from receiving miscarriage care—which all parties agree is essentially the same as abortion in terms of both technique and physical risks—on the same day they present for

treatment. *Id.* Moreover, it is undisputed that other procedures carrying equal or greater medical risks can be consented to without a mandatory delay. *Id.* Similarly, the Waiting Period Requirement compels abortion providers—and not other health care providers—to unnecessarily force their patients to delay desired care, or face severe penalties for non-compliance. *Id.*

C. The Record Contains No Evidence Demonstrating That the Waiting Period Requirement Advances Patient Health in Accordance with Widely Accepted and Evidence-Based Standards of Care

While Plaintiffs' extensive evidence demonstrates even further harms, the above undisputed facts are unquestionably sufficient to carry Plaintiffs' threshold burden under the Amendment and trigger the presumption of unconstitutionality. Accordingly, the burden then shifts to the State to overcome that presumption by proving that such harms are justified because the Waiting Period Requirement is "the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." Ohio Const. art. I, § 22(B). The State cannot meet that burden as a matter of law.

There is no genuine dispute of fact that the Waiting Period Requirement harms rather than advances patient health. The State has introduced nothing from which a trier of fact could reasonably find that forcing patients to wait at least 24 hours before obtaining abortion care improves patient health in any way, let alone in accordance with evidence-based and widely accepted standards of care. Indeed, it is undisputed that the medical risks to patient health increase when abortion care is delayed and patients are subjected to pregnancy-related risks longer than necessary. *Supra* SOUF Part III. Additionally, it is undisputed that the medically unnecessary delay in the provision of time-sensitive abortion care can cause some patients to require care that involves greater medical risk. *Id.* That Ohio law imposes no such mandatory waiting period for

any other medical procedure or treatment, *id.*, is further indication that it is not a necessary measure for advancing patient health.

D. The Record Contains No Evidence Demonstrating That the Waiting Period Requirement Is the Least Restrictive Means of Advancing Patient Health

Notably, the State has made no attempt to introduce any evidence showing that there are no less restrictive means it could employ to advance any alleged goal of advancing patient health. Thus, even if there were a genuine dispute as to whether the Waiting Period Requirement advances patient health—and there is not—that would not change the outcome here. The State's failure to introduce any evidence demonstrating that the Waiting Period Requirement is the least restrictive means *alone* entitles Plaintiffs to judgment as a matter of law. Indeed, an inflexible, one-size-fits-all forced delay of 24 hours—even for patients who are certain about their abortion decision when they arrive at the clinic, and even for patients who face harm from the delay—is manifestly not the least restrictive means of advancing any state interest in patient health.

II. The In-Person Requirement Violates the Amendment as a Matter of Law

A. The In-Person Requirement Burdens, Penalizes, Interferes with, and Prohibits Ohioans' Abortion Decisions and the Provision of Abortion Care

The undisputed facts make clear that the In-Person Requirement burdens, penalizes, prohibits, and interferes with patients' abortion decisions and exacerbates the harms caused by the Waiting Period Requirement.

It is undisputed that the In-Person Requirement—in conjunction with the Waiting Period Requirement—forces the vast majority of abortion patients to make at least two separate trips to a clinic in order to obtain care. *Supra* SOUF Part IV. The financial and logistical obstacles associated with having to schedule and attend multiple in-person appointments causes additional and unnecessary delays in patients' access to abortion care, thereby incrementally increasing the risks

to their health. This delay—and its attendant risk of harm—burdens, interferes with, and penalizes Ohioans' decision to seek abortion. *Id.*

Moreover, traveling to a clinic for even a single visit requires patients to take time off work, arrange childcare, secure transportation, and, for some, travel significant distances and obtain overnight lodging. *Id.* As even the State's experts admit, requiring patients to make multiple trips necessarily compounds these burdens. *Id.* The costs and logistical obstacles associated with making two or more trips to a clinic fall particularly heavily on some groups of patients, such as those traveling longer distances and those experiencing homelessness or intimate partner violence. *Id.* Further, it is undisputed that for some patients, these financial and logistical obstacles and the associated delays can prevent them from accessing their desired care in Ohio, thus prohibiting them from exercising their right to reproductive freedom. *Id.*; *cf.* Ruling of the Superior Court, *Isaacson v. State of Arizona*, No. CV 2025-017995, Dkt. Code 901, ¶ 112 (Maricopa Cnty. Super. Ct. Feb. 2, 2026) (Exhibit 20) (granting permanent declaratory and injunctive relief) ("Mandating that the disclosure [of state-mandated information] be in-person and at least 24 hours before an abortion causes delay, which increases the risk of abortion and sometimes prevents a woman from having an abortion altogether.").

The In-Person Requirement also places significant burdens on Plaintiffs as abortion providers and interferes with their ability to provide timely abortion care to their patients by forcing them to require an additional in-person visit for no medical reason. *Supra* SOUF Part IV. And it forces them to do so upon threat of significant criminal, civil, and professional penalties for helping their patients carry out their constitutionally protected right to have an abortion. *Id.*

B. The In-Person Requirement Discriminates Against Patients Seeking Abortion and Those Who Provide It

It is undisputed that the In-Person Requirement singles out abortion patients by mandating that they make a separate in-person visit to obtain certain state-mandated information in advance of receiving care. *Id.* This requirement is not imposed on patients seeking any other type of medical care in Ohio—including patients seeking pregnancy-related care and miscarriage management. *Id.* Likewise, only abortion providers are forced—under threat of criminal penalty—to require their patients to visit them in person in order to obtain certain information about a contemplated medical treatment. *Id.*

The only thing the State has introduced into the record on this point is a reference to a law requiring that written informed consent be obtained prior to prescribing opioids to minors. *See* State's Resp. to Interrog. 14 (citing R.C. 3719.061). However, nothing in this statute specifies that the written consent cannot be provided remotely. And even if it did require in-person informed consent, unlike the In-Person and Waiting Period Requirements here, there is nothing in that law that requires the patient then delay their contemplated treatment and return later for a *second* in-person visit to receive the prescription, as opposed to receiving it at the time that consent is provided. Moreover, unlike the In-Person Requirement, the law applies only to minors, not to all patients. R.C. 3719.061.

C. The Record Contains No Evidence Demonstrating That the In-Person Requirement Advances Patient Health in Accordance with Widely Accepted and Evidence-Based Standards of Care

As with the Waiting Period Requirement, extensive, undisputed facts show that the In-Person Requirement burdens, penalizes, prohibits, interferes with, and discriminates against patients' abortion decisions and the provision of abortion care. That showing is more than sufficient to trigger the presumption of unconstitutionality under the Amendment and shift the

burden to the State to demonstrate that the In-Person Requirement is the least restrictive means of advancing patient health in accordance with evidence-based and widely accepted standards of care. Ohio Const. art I, § 22(B). The State again cannot meet that burden as a matter of law.

The State has put forth no evidence that would enable a trier of fact to conclude that the In-Person Requirement advances patient health, let alone that it does so in a manner consistent with widely accepted and evidence-based standards of care, as required by the Amendment. The State has introduced no evidence demonstrating that requiring abortion providers to obtain informed consent from their patients during a separate, in-person visit actually improves patient care. Nor has the State introduced any facts establishing that an in-person visit is necessary in order to meet the ethical requirements of informed consent, which obligate providers to ensure that the patient understands the care they are receiving, as well as the potential benefits, risks, and alternatives. *Supra* SOUF Part II.A.

In contrast, Plaintiffs have introduced extensive, unrebutted evidence demonstrating that the In-Person Requirement harms patient health. By forcing patients to make an unnecessary additional trip to the clinic, the In-Person Requirement exacerbates the financial and logistical harms and delays imposed by the Waiting Period Requirement and thus risks subjecting patients to harms associated with being forced to delay their abortion and remain pregnant longer. *Supra* SOUF Part III. In addition, the In-Person Requirement is particularly harmful to patients experiencing intimate partner violence as they may have difficulty explaining their whereabouts or concealing their abortion from an abusive partner once—let alone twice. *Supra* SOUF Part IV. Thus, the In-Person Requirement undermines patient health by delaying care, increasing risk, and imposing unnecessary barriers to access. The State has introduced no evidence to dispute these harms.

D. The Record Contains No Evidence Demonstrating That the In-Person Requirement Is the Least Restrictive Means of Advancing Patient Health

The State has introduced no evidence to show that the In-Person Requirement is the least restrictive means of advancing patient health. Indeed, Ohio law permits informed consent to be obtained through less restrictive means—*i.e.*, through the use of telehealth and remote technologies—for all other types of medical treatment, as long as the standard of care is met. *Id.* Moreover, Plaintiffs' undisputed current practices under the injunction ensure that patients receive all of the necessary information about their care options, have their questions answered and any concerns addressed, and feel fully informed and confident in their decisions. *Supra* SOUF Part II.B. Defendants have introduced nothing to demonstrate that these current practices are in any way deficient or inadequate for ensuring that patients provide fully informed, voluntary consent to their desired abortion care.

III. The State-Mandated Information Requirement Violates the Amendment as a Matter of Law

A. It Is Undisputed That the State-Mandated Information Requirement Burdens, Penalizes, and Interferes with Ohioans' Abortion Decisions and the Provision of Abortion Care

The undisputed facts make clear that the State-Mandated Information Requirement burdens, penalizes, and interferes with Ohio patients' abortion decisions and the provision of abortion care.

The State-Mandated Information Requirement burdens, penalizes, and interferes with patients' access to abortion insofar as it deviates from the requirement that informed consent be a tailored process for providing individualized, relevant medical information to patients so as to enable them to exercise their autonomy. *Supra* SOUF Part V. Indeed, the law's requirement to inform patients of the statistical probability of carrying a pregnancy to term based solely on the gestational stage burdens, penalizes, and interferes with patients' abortion decisions. It does so by

forcing potentially inaccurate and misleading—and thus, by definition, irrelevant—information upon them. *Id.* It is undisputed that any "statistical probability of carrying a pregnancy to term" calculation is necessarily an estimate, and is incomplete if based solely on gestational stage, without considering other important factors like a particular patient's medical and obstetric history. *Id.* Moreover, it is indisputable that the statute on its face only permits providers to take into account gestational age when calculating the statistical probability of carrying to term. R.C. 2919.194(A)(2) ("The person intending to perform or induce the abortion shall inform the pregnant woman, to the best of the person's knowledge, of the statistical probability of bringing the unborn human individual possessing a detectable fetal heartbeat to term *based on the gestational age* of the unborn human individual the pregnant woman is carrying." (emphasis added)).

The State-Mandated Information Requirement also burdens, penalizes, and interferes with patients by forcing potentially stigmatizing and/or upsetting information upon them regardless of their individual circumstances. *Supra* SOUF Part V. This includes patients ending wanted pregnancies due to fetal diagnoses, who are forced to hear a fetal heartbeat and be told information about the likelihood of carrying a (presumptively healthy) fetus to term at that gestational stage. *Id.*; R.C. 2919.194. It also includes survivors of rape and incest, who are forced to be reminded of the date of their assault. *Supra* SOUF Part V. The State-Mandated Information Requirement further penalizes and burdens abortion patients by suggesting that they are unable to arrive at their own health care decisions without the State intervening to tell them what information to consider, echoing stereotypes about women as ignorant, irrational, and untrustworthy, and in turn, shaming and stigmatizing them. *Id.*; *cf. Northland Family Planning Center v. Nessel*, 2025 WL 2098474, at *26 (Mich.Ct.Cl. May 13, 2025) (finding that state-mandated information for abortion patients "certainly impacts the patient's choice to seek abortion care and encroaches on the patient's

decision-making process" and "therefore burden[s] and infringe[s] upon a patient's right to make and effectuate decisions about abortion care").

Additionally, it is undisputed that the State-Mandated Information Requirement burdens, penalizes, and interferes with abortion providers by forcing them to provide potentially inaccurate, misleading, irrelevant, distressing, and/or stigmatizing information. It prevents clinicians from using their best medical judgment and tailoring the informed consent process to their patients' needs, thereby deviating from the standard of care. *Supra* SOUF Part V. Further, the undisputed evidence shows that State-Mandated Information Requirement interferes with provider-patient relationships and causes patients to feel hurt and judged by their providers. *Id.*

B. The Record Contains No Evidence Demonstrating That the State-Mandated Information Requirement Advances Patient Health in Accordance with Widely Accepted and Evidence-Based Standards of Care

Altogether, the undisputed facts detailed above render the State-Mandated Information Requirement presumptively unconstitutional under the Amendment. Yet again, the State cannot, as a matter of law, carry its heavy burden of overcoming that presumption.

The State has put forth no evidence that would enable a trier of fact to conclude that the State-Mandated Information Requirement advances patient health at all, let alone in accordance with widely accepted and evidence-based standards of care. The parties agree that informed consent advances patient health by ensuring that their treatment path is voluntary and they are making a choice about medical care with full awareness of the nature of the treatment and the potential risks, benefits, and alternatives. *Supra* SOUF Part II.A. However, the State has introduced no evidence demonstrating that the State-Mandated Information, in particular, is necessary to ensure informed consent to an abortion. As the State's own medical expert acknowledges, informed consent at its core requires that the patient understands what treatment they are receiving, as well as the potential benefits, risks, and alternatives. *Id.* The undisputed evidence also

demonstrates that best medical practice requires that informed consent should be tailored to individual patients, which the State Mandated Information is not. *Id.* Forcing the same information on *all* patients—irrespective of their unique circumstances, desires, and wishes, and notwithstanding the information's potential irrelevance, inaccuracy, and/or harmful impact—not only defies these widely accepted (and, indeed, undisputed) standards of care, but risks actively harming patients by confusing, distressing, and stigmatizing them. *Supra* SOUF Part V. Thus, the State has come nowhere close to satisfying its burden here.

C. The Record Contains No Evidence Demonstrating That the State-Mandated Information Requirement Is the Least Restrictive Means of Advancing Patient Health

Finally, as with the other Challenged Requirements, the State has introduced no evidence demonstrating that the State-Mandated Information Requirement is the least restrictive means of advancing patient health. By definition, a one-size-fits-all mandate to provide the same information to every patient regardless of that patient's individual circumstances cannot qualify as the least restrictive means of meeting patients' individualized health care needs. Plaintiffs already provide a less restrictive, tailored process of ensuring patients consent voluntarily and knowingly to their medical treatment. *Supra* SOUF Part II.B. Once again, the State's inability to satisfy its burden of demonstrating least restrictive means here is dispositive and entitles Plaintiffs to judgment as a matter of law on their claim that the State-Mandated Information Requirement violates the Amendment.

IV. Plaintiffs Will Suffer Irreparable Harm in the Absence of an Injunction, and They Have No Remedy at Law

In addition to demonstrating their entitlement to summary judgment on the merits, Plaintiffs easily satisfy the remaining requirements for a permanent injunction: They will suffer irreparable harm in the absence of injunctive relief, and they have no remedy at law. As the Tenth

District Court of Appeals has explained, "[a] finding that a constitutional right has been threatened or impaired mandates a finding of irreparable injury." *Magda v. Ohio Elections Comm.*, 2016-Ohio-5043, ¶ 38 (10th Dist.) (citing *Bonnell v. Lorenzo,* 241 F.3d 800, 809 (6th Cir. 2001)); *United Auto Workers, Loc. Union 1112 v. Philomena*, 121 Ohio App.3d 760, 781 (10th Dist. 1998); PI Order at 22 ("The constitutional rights of Plaintiffs and their patients are threatened. Thus, irreparable harm is presumed."). Moreover, in the absence of an injunction, patients seeking abortions in Ohio will be forced to overcome medically unnecessary obstacles to care that endanger their health, inflicting upon them additional irreparable harm. *Supra* SOUF Parts III–V; *see Int'l Res., Inc. v. N.Y. Life Ins. Co.*, 950 F.2d 294, 302 (6th Cir. 1991) (upholding trial court's finding that likely future damage to an individual's health constitutes irreparable harm).

Likewise, Plaintiffs have no remedy at law. Indeed, no civil damages remedy is available for violations of the Ohio Constitution. *Dillon v. Hamlin*, 718 F.Supp.3d 733, 739 (S.D.Ohio 2024); *Provens v. Stark Cnty. Bd. of Mental Retardation & Developmental Disabilities*, 64 Ohio St.3d 252, 261 (1992); *see also Harris v. Columbus*, 2016-Ohio-1036, ¶ 24 (10th Dist.) ("[T]here is no private right of action for damages based on a violation of the Ohio Constitution."). Even if there were, no award of damages could compensate Plaintiffs or their patients for physical and emotional harm caused by the Challenged Requirements. *Cf. Kallstrom v. City of Columbus*, 136 F.3d 1055, 1069 (6th Cir. 1998) (holding that no remedy at law could compensate plaintiffs for the "physical, psychological, or emotional trauma" caused by illegal release of their personal information).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that they are entitled to judgment as a matter of law and this Court should issue a permanent injunction enjoining Defendants, their agents, employees, servants, and successors, and any persons in active concert or participation with them, from enforcing R.C. 2317.56, 2919.192, 2919.193, and 2919.194, and any other provision of the Ohio Revised Code and the Ohio Administrative Code that could be construed to give them effect.

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Respectfully submitted,

/s/ B. Jessie Hill

B. Jessie Hill (0074770)
Lead Counsel
Freda J. Levenson (0045916)
Rebecca Kendis (0099129)
Margaret Light-Scotece (0096030)
Katie Corwin (0105651)
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
bjh11@cwru.edu
flevenson@acluohio.org
rebecca.kendis@case.edu
margaret.light-scotece@case.edu
kjc150@case.edu
agilbert@acluohio.org

David J. Carey (0088787)
Carlen Zhang-D'Souza (0093079)
ACLU OF OHIO FOUNDATION
1108 City Park Ave., Ste. 203
Columbus, OH 43206
Telephone: (614) 586-1972
dcarey@acluohio.org

Vanessa Pai-Thompson (PHV 27258-2024)
C. Peyton 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
peyton.humphreville@ppfa.org

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

Jessica Gerson*
Megan Howard*
Eva Lilienfeld*
Garrett E. Cunningham*
Sarah O'Farrell*
COVINGTON & BURLING LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001
Tel: (202) 662-6000
Fax: (202) 662-6291
jgerson@cov.com
mehoward@cov.com

czhangdsouza@acluohio.org

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

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

elilienfeld@cov.com
gcunningham@cov.com
sofarrell@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 22, 2026 the foregoing was electronically filed via the Court's e-filing system. Notice of this filing will be sent to counsel for all parties by function of that system, and it may be accessed through that system

/s/ *B. Jessie Hill*
B. Jessie Hill (0074770)
Counsel for Plaintiffs