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

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| MADELINE MOE, *et al.*,<br>Plaintiffs,<br>v.<br>DAVE YOST, *et al.*,<br>Defendants. | :: | Case No. 24 CV 002481<br><br>Judge Michael J. Holbrook |

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**DEFENDANTS' REPLY IN SUPPORT OF**
**MOTION TO CLARIFY**
**TEMPORARY RESTRAINING ORDER**

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**REPLY IN SUPPORT OF MOTION FOR CLARIFICATION OF TEMPORARY RESTRAINING ORDER**

The Court should not be misled by Plaintiffs' Response to the State's Motion to Clarify the scope of the TRO. Their responses are either mistaken or irrelevant to the points that the State is making about the TRO's overbroad scope. The State's point is simple: Any *preliminary* relief must be tailored to addressing these *specific Plaintiffs'* alleged *specific harms.* That limit is required by Rule 65, statute, and textbook law of preliminary relief. In the other column, an overbroad injunction harms the State and the many people the new law would protect. Nothing else about the claimed ultimate merits matters for the State's motion.

***First,*** Plaintiffs' reliance on the single-subject-clause claim as a basis for overbroad *preliminary* relief misses the point that special rules about narrowness exist for *preliminary* injunctions. Even assuming, for present purposes, that "whole-bill relief" would be appropriate for *final* judgment, that does not authorize violating Rule 65's limit to preliminary relief. Indeed, Plaintiffs cite not a single case granting *preliminary* relief against an entire bill on single-subject grounds or on any grounds. *See* Mem. Contra at 2. *City of Toledo v. State*, 2018-Ohio-4534, 123 N.E.3d 343, ¶1 (6th Dist.) granted *final* summary judgment for plaintiffs in single-subject case. *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 500, 715 N.E.2d 1062 (1999) granted *final* mandamus and prohibition relief, not injunctive relief. *Magda v. Ohio Elec. Comm.*, 2016-Ohio-5043, 58 N.E.3d 1188, ¶1 (10th Dist.) granted *final* summary judgment in free-speech case. *Adkins v. Boetcher*, 4th Dist. Ross No. 08CA3060, 2010-Ohio-554, ¶1 granted *permanent* injunction after trial, and regarding only one nuisance, not a facial challenge to the law.

Plaintiffs' doubling down on their premature argument as to the proper scope of *ultimate* relief—the relief that comes only *after* the parties have their chance to present their cases—reveals one of two things. At best, Plaintiffs still misunderstand this critical and fundamental distinction

between what a court has the power to order *before* the parties can be fully heard and what a Court has the power to do *after* the full process of litigation has concluded.

At worst, it suggests that Plaintiffs, through counsel, are intent upon steering this Court toward maintaining a preliminary order that exceeds this Court's power, even though the proposed *revised* TRO would still *fully* protect the Plaintiffs *themselves* from *all* their alleged harm for as long as the TRO is in effect. Make no mistake: Plaintiffs themselves, the real families that have petitioned this Court for redress, have no need whatsoever to even *oppose* the State's motion to clarify. Unnamed and uncounted *other* individuals and entities, on the other hand, may have an incentive to *leverage* the preliminary relief that these families have obtained into a statewide judicial veto of the legislation as a whole, for as long as can be sustained.

The State believes the Court intended to issue a temporary judicial order that affects the parties in this case, as is typical, and as is within the Court's authority to issue. The State is concerned that the language of the original TRO goes beyond that intent, and thus seeks clarification. In response, Plaintiffs, through counsel, signal that they want to preserve the ability of unnamed *others* to use the TRO as a temporary judicial *veto* of the legislation as a whole—that is, as a judicial override of the General Assembly's own override of the Governor's veto of the same legislation—a judicial veto obtained in a courtroom, but not even as a result of a full presentation of the case. That only confirms the need for the State's requested clarification.

***Second***, Plaintiffs' argument about *Labrador v. Poe* misunderstands why that recent U.S. Supreme Court case matters. That case, just like this one, involves the scope of *preliminary* relief under an identical federal rule and background principles of equity that apply the same in state and federal court. Ohio Rule 65, just like federal Rule 65, is limited to relief for the "applicant." *See also* R.C. 2727.02 (authorizing preliminary relief for a "plaintiff"). Nothing in Ohio law creates a right to give preliminary relief for non-parties, and a sole concurrence in one Eighth District case

(about class certification, no less) does not outweigh the text of Rule 65 or R.C. 2727.02 or controlling precedent of the Tenth District. *See Coleman v. Wilkinson*, 2002-Ohio-2021, ¶2, 147 Ohio App. 3d 357, 358, 770 N.E.2d 637, 638 (preliminary relief for "applicant" or "movant"). And the fact that Idaho's *Labrador* case and this case involve parallel laws about medically transitioning minors does not go to the merits (at this stage), but instead demonstrates that courts should not give broad and unwarranted preliminary relief to other parties, against the democratic will, with no showing that those unknown others have *any* meritorious claim. The biggest difference between *Labrador* and this case, for present purposes, is that this TRO, unless clarified or modified, is an even worse overreach than in *Labrador*, because it not only enjoins the law for untold unknown Ohioans as to medical services (as in Idaho), but also affects female athletes and parents in custody disputes, with literally zero allegations about any harms as to anyone from the sports and custody provisions of the law.

***Third***, Plaintiffs are wrong to insist that no others are enjoined by an overbroad injunction: if it purports to put the sports and custody provisions on hold, if it leaves girls' and women's sports and parental custody unprotected, it harms the Ohioans protected by those provisions. Alternatively, if the TRO does *not* purport to affect private parties' use of the new law—that is, if it only governs those spheres as long as the State Defendants are not doing the enforcing—then this Court should say precisely that in a clarification. And Plaintiffs' approval of a "benefit" for other parties again runs headlong into the text of Rule 65 and R.C. 2727.02.

***Fourth***, Plaintiffs' complaints about "aiding and abetting" liability for the Moe and Goe Plaintiffs' "other" unnamed providers misses the mark in several ways, but it suffices to respond for now that the State's proposed clarified TRO would retain the TRO for *anyone* treating Moe or Goe. And there are ample ways of ensuring effective enforcement of a TRO limited to the Plaintiffs themselves without endangering the anonymity of the Plaintiffs or enjoining the entire law

statewide based on the possibility that any provider in the state might be the provider that happens to treat these anonymous Plaintiffs. To the extent that concern is genuine, the State is more than willing to work with their counsel to eliminate that extremely unlikely possibility.

***Finally***, regarding the timing and duration of the TRO, the State had no intention of altering the original timing or duration of the original TRO. To the contrary, if the Court grants this Motion and issues a revised TRO, the State asks only that the timing and duration of the revised TRO be the same as that of the original TRO.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that the foregoing Reply in Support of Motion to Clarify Temporary Restraining Order was filed and served electronically and served by U.S. mail on this 19th day of April, 2024, upon the following:

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