In the
Supreme Court of Ohio

MADELINE MOE, ET AL.,	:	Case No. _____
	:	
Appellees,	:	On appeal from the Franklin County
	:	Court of Appeals,
v.	:	Tenth Appellate District
	:	
DAVE YOST, ET AL.,	:	Court of Appeals
	:	Case No. 24AP-483
Appellants.	:	

EMERGENCY MOTION FOR STAY PENDING APPEAL

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INTRODUCTION

This case involves one of the State's most important powers and duties—protecting children. The challenged law falls squarely within that aim: it protects children from being subject to medical experimentation with lifelong effects, specifically, surgeries or drugs intended to "change" or "transition" boys into girls, and girls into boys. However well-meaning the proponents of such "gender transitions" for children may be, the People of Ohio disagree with those proponents. The People, acting through their representatives, have decided to regulate surgical and chemical transitions by delaying them until adulthood. Ohio law thus requires minors to wait until they can truly consent for themselves to undertake such a life-altering decision. As one expert, Dr. James Cantor, testified, cross-sex hormones "permanently sterilize[] the person," and there "is no technology currently to change that." Trial Tr. 7/17 126:3-12. And "13-year-olds and 14-year-olds have a very limited capacity to understand" the consequences, including the consequence of choosing "to have lifelong medical care." *Id.* 7/18 96:11–18.

An appeals court has now said that the People of Ohio cannot even hit pause on such treatments until adulthood, and that Ohio's Constitution grants a "right" to conduct chemical sex changes upon minors. *See Moe v. Yost*, 2025-Ohio-914, ¶125 (10th Dist.)("App. Op.") (the Tenth District did not address surgical procedures, because not even plaintiffs challenged that regulation). The State Defendants now appeal to this Court, and will soon file a jurisdictional memorandum detailing why the Court should

review this case. But for the moment, it should be enough to say that this is a critical issue facing Ohio, the nation, and even the world, and the case for further review is self-evident.

For now, the State asks the Court simply to preserve the status quo—protection for Ohio's children—until the Court decides what to do with the case. The State thus asks the Court to stay the appeals court's judgment pending this Court's resolution of the case, pursuant to Rule 7.01(A)(3). The State also files this as an emergency motion, even though in our view the stay is automatic, because it is urgent to erase any uncertainty, as detailed below.

The State believes that "the trial court in this case [will have] no jurisdiction to" enter any injunction "once the state [] file[s] its notice of appeal." *State v. Washington*, 2013-Ohio-4982, ¶8. Here, the appeals court did not purport to enter its own injunction, as it merely instructed the trial court to do so on remand. *See* App.Op. ¶125. Thus, since the trial court cannot do so now, the law remains in effect, because the trial court had ruled in the State's favor last year.

However, the parties disagree on the trial court's power to act, so this Court should act now to resolve any uncertainty. The State asked the lower court to issue a confirmatory stay, but it declined by a 2-1 vote without explanation. *See* Journal Entry (Apr. 3, 2025). Judge Dorrian would have granted the stay. *Id.* Plaintiffs, meanwhile, have said that the trial court may act to impose an injunction, even with an appeal pending here.

See Opposition to Stay (filed Mar. 27, 2025 in 10th Dist.), at 2–6. The trial court will need guidance, so to avoid any confusion on a matter of such great importance, the State urges the Court to grant a confirmatory stay to give clarity to parties and non-parties alike—as well as to settle ongoing confusion about the important question of how appeals and stays work under Ohio appellate procedure.

In the alternative, if the Court determines that the trial court is not automatically barred from acting, the State urges the Court to grant a stay to maintain the status quo and keep the law in effect. Such a stay is the best way to avoid confusion during further appeal, for at least three reasons.

First, and most important, a stay preserves the status quo and provides clarity for everyone. Many affected parties—potential child patients, parents, doctors, hospitals, and more—have adjusted to the world as it was in the last seven months. Changing that status quo now, especially when the change might turn out to be temporary, benefits no one. The appeals court sensibly declined to impose an injunction pending appeal last year, so it makes sense to stay the course until the case is over. More important, if this law is subject to an injunction until it is vindicated, that opens a window for more children every day to be made patients for life. Those irreversible consequences cannot be undone after appeal.

Second, this Court is likely to grant review. Although the competing sides disagree on the preferred outcome, all agree that this is an issue of exceptional importance to the

people of this State. Indeed, two-thirds of Ohio's General Assembly enacted the challenge law—twice.

Third, the State is likely to prevail on appeal. Because this Motion is urgent, and because the State will soon file a jurisdictional memorandum with a lengthier preview of the merits, our merits discussion below is short. But it is straightforward: the Ohio Constitution does not, under the Health Care Freedom Amendment or the Due Course of Law Clause, create a constitutional right to use chemicals on children to transition their sex or gender. Neither Ohio's voters in 2011 nor the framers in 1802, nor any deeply rooted tradition of Ohio's People, creates a right to physically or chemically castrate children, whether by a surgeon's knife or a self-administered syringe.

ARGUMENT

I. While no stay is necessary, the Court should grant one to provide clarity to all parties and the public, both as to this law and as to where Ohio appellate procedure stands on stays and appeals.

This Court does not *need* to grant a stay here to maintain the status quo; the trial court now lacks power to enjoin enforcement of the law because the State filed its appeal in the Ohio Supreme Court promptly after the Tenth District's ruling on the State's stay motion. Without an injunction, the State will remain free to enforce the law. That is so because "the trial court in this case [will have] no jurisdiction to" enter any injunction "once the state [] file[s] its notice of appeal." *Washington*, 2013-Ohio-4982 at¶8. And the appeal court's judgment is not self-executing, as that court rightly followed the standard path of

instructing the trial court to enter an injunction. *See Moe v. Yost*, 2025-Ohio-914, ¶125 (10th Dist.) ("App. Op."). Thus, the State's appeal automatically maintains the status quo—because the law has been in effect since last August—now that its notice of appeal has been filed here.

The State nevertheless urges the Court to enter a confirmatory stay, not only to clarify the status of the challenged law here, but also to conclude whatever debate remains over how stays and appeals work in Ohio. It is not just that Plaintiffs here who disagree on the effect of this appeal on the trial court's jurisdiction. Other appeals courts are uncertain, and some of this Court's own decisions or opinions seem to suggest an exception to the normal rule stated in *Washington.* For example, the Court once used a different approach from *Washington*'s to address a similar scenario, and although the Court did not contradict *Washington*, a concurrence noted the concern. *See State v. Bishop*, 2018-Ohio-5132, ¶8; *id.* at ¶24 (DeWine, J., concurring). And in another case, one dissenting justice argued for an exception to the normal rule when a trial court maintains jurisdiction to act "in aid of the appeal"—something that existed in that case because of a looming deadline and thus a mootness concern, which is not present here. *See State ex rel. Bowling v. DeWine*, 2021-Ohio-3015, ¶2 (Brunner, J., concurring in part and dissenting in part) (emphasis omitted). Appeals courts are arguably split, as at least two have echoed *Washington*, while a pre-*Washington* case suggested a different view. *See, e.g., Midgett v. Sheldon*, 2021-Ohio-3096, ¶16 (5th Dist.) ("we lost jurisdiction to enforce our judgment when the state

filed its Notice of Appeal"); *State v. Thomas*, 2016-Ohio-8326, ¶13, 28 (8th Dist.) (same); *DeLost v. Ohio Edison Co.*, 2012-Ohio-4561 (7th Dist.) (holding, pre-*Washington*, that "[e]ven the filing of a notice of appeal to the Ohio Supreme Court does not generally give rise to any type of automatic stay of a judgment from a court of appeals.").

This Court could therefore resolve that uncertainty by granting the stay here, with a short, reasoned order noting that the trial court no longer has jurisdiction by virtue of the notice of appeal filed concurrent with this motion today. In the alternative, if the Court disagrees for any reason, the State explains below why that is the best outcome even if it is a discretionary choice by the Court.

II. This case warrants a stay, whether needed or not.

Rule 7.01(A)(3) authorizes the Court to grant "an immediate stay of the court of appeals' judgment that is being appealed." While neither the rule nor majority caselaw appears to supply a standard specifically for such stays, common sense suggests that the Court may look to the well-established test for preliminary injunctions to inform its inquiry, as both federal and Ohio courts typically do in considering stays before hearing an appeal. *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (quotations omitted); *see Davis v. McGuffey*, 2022-Ohio-2163, ¶¶3, 8 (Kennedy, C.J., dissenting).

Courts typically assess injunctions pending appeal using the same four-factor framework that trial courts use for preliminary injunctions. *See OPAWL - Bldg. AAPI Feminist Leadership v. Yost*, 118 F.4th 770, 774 (6th Cir. 2024) (order) (expressly adopting equivalent

standard for pre-appeal stays); *Davis,* 2022-Ohio-2163, ¶¶3, 8 (Kennedy, C.J., dissenting). Preliminary injunctions, in turn, look at both the likelihood of success on the merits of the underlying claim and the equities, with the latter measuring harm to the parties, to others, and to the public interest. *Id; Coleman v. Wilkinson*, 2002-Ohio-2021, ¶2; *see Garb-Ko, Inc. v. Benderson*, 2013-Ohio-1249, ¶32 (10th Dist.).

The relevant adjustments for context are these: The merits prediction should look to whether this Court will *grant* review, as well as to what will happen on review. *See Maryland*, 567 U.S. at 1302 (Roberts, C.J., in chambers). And the equities should consider the timeframe: This Court should, for now, look to what the status quo should be in the immediate weeks or months until the Court grants or declines discretionary review. At that point, if the Court grants review, it can reconsider the status quo if Plaintiffs persuade it to do so, but the grant itself would be support for maintaining the status quo through a stay. And of course, if it denies review—despite the State's forthcoming arguments in favor of jurisdiction—then the case can return to the trial court, and such a short stay will add little to the several months the law has been in effect.

A. The law has been in effect since last summer, so retaining that status quo is the least disruptive approach for institutions and the public.

The strongest reason to grant a stay here is that it would preserve the status quo in Ohio that has prevailed for over seven months now. Changing direction now, for what might turn out to be a short stretch, does more harm than good, especially for the children who could be started on a lifetime course of medical experimentation that has come under

increasing scrutiny around the world for inflicting irreversible damage on minors.

A recap: While the trial court briefly enjoined the law, the appeals court allowed it to go into effect while it considered the appeal. The trial court's judgment in the State's favor, on August 6, 2024, lifted its preliminary injunction and allowed the law to go into effect on that date. Plaintiffs immediately asked the Tenth District to impose an injunction pending appeal. The State opposed that request, and it asked to expedite the appeal instead. While the appeals court never formally *denied* Plaintiffs' request, it did so functionally; it never granted that an injunction pending appeal, while it did expedite briefing and argument. *See* Journal Entry (Aug. 14, 2024). Thus, the appeals court allowed the law to remain in effect after the trial court upheld it.

Ohio's hospitals and doctors immediately began complying with the law, as many announced publicly. For example, Cincinnati Children's Hospital says that it "follows Ohio Law in regard to care of Transgender patients" and is thus "unable to provide" puberty blockers. *See* Cincinnati Children's Transgender Health Clinic, *Frequently Asked Questions*, https://perma.cc/6EM9-JEWR.

Keep in mind that Ohio's law already grandfathered in any patients receiving treatment before the law's enactment, so they may indefinitely continue any course of medication that began by the law's effective date. R.C. 3129.02(B). So the law affects only the start of new medications or new patients under 18 years old.

Regardless of one's view about the final outcome, putting the law on hold (again) for

only a short time is not a significant benefit, but instead causes serious harm. Having hospitals re-open and re-close such operations to new patients for a short window, which is of course possible, is difficult for those institutions, and even for the potential children that might start chemical interventions during that window.

The General Assembly addressed real harms to children. The trial court heard testimony from several expert witnesses who testified to the serious risks from medical interventions to transition the sex or gender of children. Even the Plaintiffs' experts admitted chemically-driven transition procedures are risky. Even more important, even Plaintiffs' experts admitted that the effects of chemical interventions are irreversible. For example, Dr. Cantor, one of the State's experts, explained that cross-sex hormones sterilize a child forever: "exposure of a prepubescent body, specifically prepubescent ovaries and testicles, to cross-sex hormones, *permanently sterilizes the person*," and there "is no technology currently to change that." Tr. 7/17 126:3-12. Plaintiffs' expert Dr. Jack Turban, although supporting the use of such hormones on minors with gender dysphoria, acknowledged that doctors "counsel patients . . . essentially assuming that [hormone treatment] will cause infertility." Tr. 7/15 249:23-24. Dr. Turban also admitted risks such as blood clots, Tr. 7/15 248:22-249:1; and Dr. Cantor explained the significant risk of low bone density leading to increased risk of osteoporosis. Tr. 7/17 125:24-126:1; Tr. 7/19 31:18-32:3.

On top of this medical evidence, the record includes the testimony of Chloe Cole, who "detransitioned" to her natural female identity after undergoing years of medical

intervention, from puberty blockers to cross-sex testosterone hormones to surgical removal of her breasts. Now, she struggles with the grief of knowing "that parts of [] myself as an adult, as an aspiring mother, were being ripped away from me at a time where I had no idea just how much that would mean to me as a grown woman." Tr. 7/19 114:14-18.

If enforcement of Ohio's law is enjoined, every day another child is at risk of being sent on the painful journey that Chloe Cole will be recovering from for the rest of her life.

B. This Court is likely to review this decision.

While this Court will of course decide for itself whether to grant review—and the State's jurisdictional memorandum is coming soon—it should be fair to say for immediate-stay purposes that the Court is at least *likely* to hear the case. After all, this issue not only raises constitutional issues, but it is also an issue of great general interest. Indeed, the United States Supreme Court is currently reviewing near-identical laws from Ohio's neighbor states, Kentucky and Tennessee, albeit under federal rather than State constitutional provisions. *See United States v. Skrmetti*, 144 S. Ct. 2679 (2024) (granting certiorari). Surely, had the appeals court affirmed the trial court, Plaintiffs would have appealed. Plaintiffs' counsel was correct in recently saying that "this litigation will likely not end here." ACLU, *Press Releases* (March 18, 2025), https://perma.cc/K5VX-JNG3. Such likely further review counsels a stay here.

C. The State will likely prevail on appeal.

While full merits review is of course down the road, the Court can and should consider for stay purposes that the State has strong arguments on the merits.

1. The Health Care Freedom Amendment preserves state authority to punish "wrongdoing," and does not delegate Ohio's authority to regulate the practice of medicine to industry groups.

The State will likely prevail on reversing the Tenth District's conclusion that Ohio's law violates the Health Care Freedom Amendment. The Tenth District's view of that Amendment relies on an untenable reading of what Ohio's voters did in 2011, even though its reading rightly rejected Plaintiffs' theory as too broad. Plaintiffs broadly claimed that the Amendment essentially allows doctors to do whatever one willing doctor and one willing patient will try, or at most, Plaintiffs said, the State may limit only "conduct that was already unlawful" when it was enacted. *See* App.Op. at ¶66 n.31 (quoting Appellants' Br. at 53). The appeals court rightly rejected those broadest claims, which are incorrect on the law and would spell disaster for the medical profession in Ohio. The court did not hold that the Amendment protects whatever one willing doctor and one willing patient will try in exchange for payment. But in so doing, it adopted a standard that is just as untethered from the Amendment's text.

Instead of interpreting the Amendment to impose Plaintiffs' wild-west reading, the Tenth District instead relied for a limiting principle on what it described as the "prevailing standards of care accepted by the professional medical community." *Id.* It explained

that, "this is not to say that the HFCA guarantees Ohioans the right to receive *any* treatment alleged to be 'health care,'" but only what has been approved by the "professional medical community." *Id.* at ¶73. The court also relied on the idea that Ohio's General Assembly may "appropriately *regulate* the practice of medicine," but may not "categorically ban" what doctors recommend. *Id.* In other words, instead of saying every individual doctor can self-declare the law, it decided that industry professional associations decide what Ohio law is.

That is wrong. However Ohio's Health Care Freedom Amendment affects State authority over the practice of medicine, it plainly does not delegate state policymaking to private industry groups. Ohio law ensures that the practice of medicine is governed by the People through its own representatives in the General Assembly, which retains the right to define and regulate "wrongdoing," as the Amendment provides. Ohio Const. Article I, Section 21(D). To the extent Ohio delegates power over the practice of medicine, it is to the Medical Board, under standards still established by the General Assembly. Democratically accountable legislators, and gubernatorial appointees tasked with regulating health care under laws made by the General Assembly, get to decide when to look to industry standards or not. Ohio did not permanently convert the medical profession into a self-regulatory organization accountable only to what judges think a majority of experts and trade associations believe is best for children.

While the appeals court rightly acknowledged that Ohio could *regulate,* it wrongly

said that this regulation was off-limits for being a "categorical ban." The "regulation or ban" description is a classic question of the appropriate level of generality. True, if one defines the law as addressing "chemical gender transition *for minors*," it is a complete prohibition, at least prospectively (because it grandfathers in ongoing treatment). But if one defines the law as addressing when "gender transition" is permitted for any individual, then Ohio's law is not a ban, but a regulation: an age-based limitation on chemical treatments intended to transition sex or gender. It simply requires minors to wait until they are 18 years old, while leaving adults generally free to access such medical interventions. The second reading is the better one, and under that reading, the law should pass muster under a proper understanding of the Health Care Freedom Amendment.

2. The Due Course of Law Clause does not protect a substantive right for parents to obtain sex-transition procedures for their minor children.

The State is also likely to prevail in reversing the appeals court's holding as to "due course of law." Plaintiffs barely mentioned this argument in appellate briefing, using just over two of 79 pages on the topic. Plaintiffs relied more heavily on all their other three claims, giving this one scant weight. Most of the appeals court's reasoning related to this Due Course of Law theory was not even briefed.

That reasoning took several wrong turns. As the appeals court acknowledged, this "Court has equated the Ohio's Due Course of Law Clause with the Due Process of Law Clause of the Fourteenth Amendment." App.Op. at ¶79 (citing *State v. Aalim*, 2017-Ohio-

2956, ¶15.). And as the appeals court also noted, the Sixth Circuit rejected an identical claim under the federal due-process clause. App.Op. at ¶90 n.35 (citing *L. W. by & through Williams v. Skrmetti*, 83 F.4th 460 (6th Cir. 2023), *cert. dismissed in part sub nom. Doe v. Kentucky*, 144 S. Ct. 389 (2023), and *cert. granted sub nom. United States v. Skrmetti*, 144 S. Ct. 2679 (2024). But the Court nevertheless rejected the reasoning of *L.W.* by sidestepping *Aalim*'s default lockstepping rule, relying instead on *State v. Bode,* 2015-Ohio-1519, ¶24, in which this Court read the Ohio Due Course clause differently from its federal counterpart. App.Op. at ¶90 n.35 (citing *Bode*, 2015-Ohio-1519 at ¶¶13–28).

But *Aalim,* not *Bode,* is the better precedent for this Court to follow here, for several reasons. First, *Aalim* came later in time, and it explains that any deviation under Ohio's Constitution, compared to its federal counterpart, requires a basis to do so—something that *Bode* did not provide. Second, this Court has not relied on *Bode* since *Aalim* to expand Due Course protections beyond the Due Process Clause, while it *has* relied upon *Aalim* to reject such expansion or to reiterate that Ohio clause matches the federal one. *See State v. Ireland*, 2018-Ohio-4494, ¶37 ("we see no reason … to depart from the general rule that" the two clauses "provide the same degree of protection"); *State v. Worley*, 2021-Ohio-2207, ¶77 n.2 (noting general rule). Indeed, *Ireland* described *Bode* as "depart[ing] from the general rule." 2018-Ohio-4494 at ¶37. Third, *Bode* involved a *procedural* right in a criminal case—the right to counsel for juveniles—so it differs categorically from substantive-due-process analysis, which requires a deeply rooted history of a right. Ohio's deeply-rooted

history does not differ from America's National history on this topic. There is no substantive right for parents to obtain sex- or gender-transition procedures for their minor children.

For all these reasons, this Court is likely to reverse the judgment below as to both its Health Care Freedom Amendment ruling and its Due Course of Law holding.

CONCLUSION

The Court should stay the judgment below pending disposition of the State's appeal.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Stay Pending Appeal was served by e-mail this 3rd day of April, 2025, upon the following counsel:

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