

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

PLANNED PARENTHOOD
SOUTHWEST OHIO REGION, *et al.*,

Plaintiffs,

v.

OHIO DEPARTMENT OF HEALTH, *et al.*,

Defendants.

Case No. A 2101148

Judge Alison Hatheway

**PLAINTIFFS' THIRD MOTION FOR
PRELIMINARY INJUNCTION**

In this Third Motion for Preliminary Injunction, Plaintiffs seek to enjoin enforcement of three provisions of Ohio law that violate Ohioans' right to reproductive freedom by purporting to prohibit qualified and skilled advanced practice clinicians ("APCs") from providing medication abortion, regardless of their education, training, and experience. Those provisions are R.C. 4723.28(B)(30) and R.C. 4730.25(B)(24)—two provisions of the Ohio Revised Code that authorize APCs' respective licensing boards to impose sanctions on APCs for "[p]rescribing any drug or device to perform or induce an abortion, or otherwise performing or inducing an abortion." *See* R.C. 4723.28(B) (sanctions that may be imposed on nurse practitioners and certified nurse midwives); R.C. 4730.25(B) (sanctions that may be imposed on physician assistants). A third provision—Ohio Adm.Code 3701-47-01—defines "abortion" as the "practice of medicine and surgery," a definition that, when read in conjunction with R.C. 4731.41, could be understood to preclude qualified Nurse Practitioners ("NPs") and Certified Nurse Midwives ("CNMs") from providing abortions merely because they are licensed by the Board of Nursing rather than the Medical Board.

In a prior order, this Court already ruled that Plaintiffs had shown by clear and convincing evidence that they were substantially likely to prevail on their claim that other provisions of Ohio

law restricting the ability of duly qualified APCs to provide medication abortions violate the Ohio Constitution. *See* Decision and Order Granting Pls.’ Second Mot. for Prelim. Inj. ***nunc pro tunc* Aug. 29, 2024**, Sept. 10, 2024. Notwithstanding that the clear intent of this Court’s injunction was to forbid Defendants from penalizing APCs for providing medication abortion care, Defendants have refused to agree not to enforce R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio Adm.Code 3701-47-01 against APCs for providing such care while this Court’s preliminary injunction remains in place.

To conserve judicial and party resources, beginning September 23, 2024, Plaintiffs sought to negotiate an agreement with Defendants in good faith to ensure that these unconstitutional provisions would not be enforced given this Court’s preliminary injunction. Throughout the past five months, Defendants have continually indicated that they were open to agreeing to such a stipulation and ultimately assured Plaintiffs that the parties would reach such an agreement. When pressed, Defendants repeatedly indicated that they needed more time to discuss a stipulation internally, and any reservations described to Plaintiffs’ counsel related to the proposed stipulation’s form, rather than to Plaintiffs’ request overall. Despite these representations, on February 18, 2025, Defendants informed Plaintiffs that they would not agree to any stipulation not to enforce any of these clearly unconstitutional provisions.

Plaintiffs now seek a modest extension of this Court’s existing injunction to ensure that APCs are able to provide essential health care without facing sanction by their licensing boards. Specifically, Plaintiffs respectfully request that this Court issue an order enjoining Defendants, as well as their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from enforcing R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio

Adm.Code 3701-47-01 during the pendency of this litigation, as well as from taking any later enforcement action premised on conduct that occurred while such relief was in effect.¹

A proposed order will be submitted separately.

Respectfully submitted,

/s/ Michelle Nicole Diamond

Michelle Nicole Diamond (Pro Hac Vice)
Peter Neiman (Pro Hac Vice)
Cassandra Mitchell (Pro Hac Vice)
Zach Blair (Pro Hac Vice)
Nicole Castillo (Pro Hac Vice)
WilmerHale LLP
7 World Trade Center
New York, NY 10007
(212) 230-8800
michelle.diamond@wilmerhale.com
peter.neiman@wilmerhale.com
Counsel for Plaintiffs

Taylor Gooch (Pro Hac Vice)
WilmerHale LLP
50 California St., Ste. 3600
San Francisco, CA 94111
(628) 235-1000
taylor.gooch@wilmerhale.com
Counsel for Plaintiffs

Rauvin Johl (Pro Hac Vice)
WilmerHale LLP
60 State St.
Boston, MA 02109
(617) 526-6000
rauvin.johl@wilmerhale.com
Counsel for Plaintiffs

Alyssa Milstead (Pro Hac Vice)
WilmerHale LLP
2600 El Camino Real, Suite 400
Palo Alto, CA 94306

B. Jessie Hill (0074770)
Margaret Light-Scotece (0096030)
Freda J. Levenson (0045916)
ACLU of Ohio Foundation
4506 Chester Ave.
Cleveland, OH 44103
(216) 368-0553
(614) 586-1974 (fax)
bjh@cwru.edu
margaret.light-scotece@case.edu
flevenson@acluohio.org
*Counsel for Preterm-Cleveland and
Women's Med Group Professional
Corporation*

David J. Carey (0088787)
ACLU of Ohio Foundation
1108 City Park Ave., Ste. 203
Columbus, OH 43206
(380) 215-0997
dcarey@acluohio.org
*Counsel for Preterm-Cleveland and
Women's Med Group Professional
Corporation*

Meagan Burrows (Pro Hac Vice)
Johanna Zacarias (Pro Hac Vice)
American Civil Liberties Union
125 Broad St., 18th Fl.
New York, NY 10004
(212) 549-2601
mburrows@aclu.org
jzacarias@aclu.org

¹ Plaintiffs respectfully request that the Court's two prior preliminary injunctions remain in effect. *See* Entry Granting Pls.' Mot. for a Prelim. Inj., Apr. 20, 2021; Decision and Order Granting Pls.' Second Mot. for Prelim. Inj. ***nunc pro tunc* Aug. 29, 2024**, Sept. 10, 2024.

(650) 858-6000
alyssa.milstead@wilmerhale.com
Counsel for Plaintiffs

Catherine Humphreville (Pro Hac Vice)
Vanessa Pai-Thompson (Pro Hac Vice)
Planned Parenthood Federation of America
123 William Street, 9th Floor
New York, NY 10038
(212) 541-7800 (Pai-Thompson)
(212) 247-6811 (fax)
catherine.humphreville@ppfa.org
vanessa.pai-thompson@ppfa.org
*Counsel for Planned Parenthood
Southwest Ohio Region, Sharon Liner,
M.D., Julia Quinn, and Planned
Parenthood of Greater Ohio*

*Counsel for Preterm-Cleveland and
Women's Med Group Professional
Corporation*

Fanon A. Rucker (0066880)
The Cochran Firm
527 Linton Street
Cincinnati, OH 45219
(513) 381-4878
(513) 672-0814 (fax)
frucker@cochranohio.com
*Counsel for Planned Parenthood
Southwest Ohio Region, Sharon Liner,
M.D., Julia Quinn, and Planned
Parenthood of Greater Ohio*

Dated: February 26, 2025

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

PLANNED PARENTHOOD
SOUTHWEST OHIO REGION, *et al.*,

Plaintiffs,

v.

OHIO DEPARTMENT OF HEALTH, *et al.*,

Defendants.

Case No. A 2101148

Judge Alison Hatheway

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF THIRD MOTION FOR
PRELIMINARY INJUNCTION**

On August 29, 2024, this Court granted Plaintiffs' Second Motion for Preliminary Injunction. Among other things, the Court held that Plaintiffs were substantially likely to succeed on their claim that a series of laws that prohibit qualified and skilled health care providers known as advanced practice clinicians ("APCs") from providing medication abortion, regardless of their education, training, and experience (the "APC Ban") violate the Ohio Constitution. *See* Decision and Order Granting Pls.' Second Mot. for Prelim. Inj. ("Second PI Order"), Aug. 29, 2024.

Notwithstanding the Court's injunction, Plaintiffs have since learned that APCs employed by Plaintiffs Planned Parenthood of Greater Ohio ("PPGOH") and Planned Parenthood Southwest Ohio Region ("PPSWO") face licensing sanctions if they actually provide abortions as contemplated under the Court's order. Although this Court has enjoined twelve Ohio provisions that give effect to the APC Ban,¹ two additional provisions in the Revised Code—R.C. 4723.28(B)(30) and R.C. 4730.25(B)(24)—expressly authorize APCs' respective licensing boards to inflict sanctions on APCs for "[p]rescribing any drug or device to perform or induce an abortion,

¹ This Court has enjoined R.C. 2317.56(B), 2919.11, 2919.123, 4723.44(B)(6), 4723.50(B)(1), 4723.151(C), 4730.02(E), 4730.03(F), 4730.39(B)(2), 4730.42(A)(1), and Ohio Adm.Code 4723-9-10(K) and 4730-2-07(E). *See* Second PI Order at 18; Decision and Order Granting Pls.' Second Mot. for Prelim. Inj. ***nunc pro tunc* Aug. 29, 2024**, Sept. 10, 2024 (enjoining R.C. 4730.39(B)(2)); Entry on Plaintiffs' Mot. for Clarification, Dec. 17, 2024 (clarifying that R.C. 2919.11 was erroneously excluded from the Second PI Order).

or otherwise performing or inducing an abortion.” *See* R.C. 4723.28(B) (sanctions that may be imposed on nurse practitioners and certified nurse midwives); R.C. 4730.25(B) (sanctions that may be imposed on physician assistants). A third provision—Ohio Adm.Code 3701-47-01—defines “abortion” as the “practice of medicine and surgery,” a definition that, when read in conjunction with R.C. 4731.41, could be understood to preclude qualified Nurse Practitioners or Certified Nurse Midwives from providing abortions merely because they are licensed by the Board of Nursing rather than the Medical Board.² While these three provisions remain in effect, APCs face revocation or suspension of their professional licenses, restrictions on these licenses, fines, and other discipline if they provide medication abortions in Ohio and are thus prevented from providing such care at all.

This Court has already held that Plaintiffs had shown by clear and convincing evidence that they were substantially likely to prevail on their claim that “the APC Ban serves no medical purpose and does nothing to advance patient health,” instead “risk[ing] harm[] [to] patient health and well-being.” Second PI Order at 14–15. R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio Adm.Code 3701-47-01 do the same, and are unconstitutional because they, like the other provisions giving effect to the APC Ban, burden, penalize, prohibit, interfere with, and discriminate against Ohioans’ access to safe, effective reproductive health care with no countervailing benefit to patient health. These provisions effectively prevent qualified APCs from providing medication abortions, even though APCs can legally prescribe the exact same drugs for other purposes, including miscarriage management. Accordingly, they unnecessarily restrict the number of available abortion providers and the number of available appointments and locations from which abortion can be provided, thus delaying patients’ access to abortion care.

² The language is identical to R.C. 2919.11, which this Court has already enjoined. *See* Entry on Pls.’ Mot. for Clarification, Dec. 17, 2024.

Plaintiffs and their patients will suffer irreparable injury if the injunction is not granted. Not only does a violation of a constitutional right constitute irreparable harm, but Plaintiffs and their patients suffer numerous other harms while these laws and regulations remain enforceable. These provisions, as well as the others giving effect to the APC Ban, force patients to unnecessarily delay time-sensitive abortion care and travel further distances to receive that care, while inflicting medical, emotional, financial, and psychological harms on patients. Additionally, no third parties will be harmed should the Court enjoin these provisions, and the public interest will indeed be served by preventing these ongoing violations of constitutional rights.

For these reasons, Plaintiffs respectfully request a preliminary injunction enjoining the enforcement of R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio Adm.Code 3701-47-01.

STATEMENT OF FACTS³

A. Overview of the APC Ban

A series of Ohio statutory and regulatory provisions preclude APCs from providing abortion care, including medication abortion. *See* R.C. 2317.56(B), 2919.11, 2919.123, 4723.44(B)(6), 4723.50(B)(1), 4723.151(C), 4730.02(E), 4730.03(F), 4730.39(B)(2), 4730.42(A)(1); Ohio Adm.Code 4723-9-10(K), 4730-2-07(E); *see also* R.C. 4723.28(B)(30), 4730.25(B)(24); Ohio Adm.Code 3701-47-01. Multiple provisions in the Ohio Revised Code and Ohio Administrative Code expressly prohibit APCs, which include Nurse Practitioners (“NPs”), Certified Nurse Midwives (“CNMs”),⁴ and Physician Assistants (“PAs”), from prescribing any “drug or device to perform or induce an abortion.” R.C. 4723.44(B)(6), 4730.02(E); Ohio

³ Plaintiffs presume the Court’s general familiarity with the facts and circumstances of this litigation and thus focus this fact section on only those allegations relevant to this motion. Plaintiffs incorporate by reference, and respectfully refer the Court to, the statement of facts in the memorandum accompanying Plaintiffs’ Second PI Motion and its accompanying exhibits, and the background section of this Court’s Second PI Order. Pls.’ Memorandum in Support of Second Mot. for Prelim. Inj. (the “Second PI Memo”), May 22, 2024, at 5-18; Second PI Order at 1-6.

⁴ NPs and CNMs are both types of advanced practice registered nurses (“APRNs”). *See* Second PI Memo at 9, n. 5.

Adm.Code 4723-9-10(K), 4730-2-07(E). The Revised Code also expressly prohibits non-physicians from providing, selling, dispensing, or administering mifepristone “for the purpose of inducing an abortion in any person or enabling the other person to induce an abortion in any person.” R.C. 2919.123(A). Finally, the Revised Code requires that, at least 24 hours prior to an abortion, a physician (and not an APC) meet in person with a patient to inform them of the nature and purpose of the abortion as well as its medical risks, in addition to other information. R.C. 2317.56(B).⁵ Absent relief from this Court, APCs face severe consequences for violating these physician-only restrictions, including possible criminal charges, civil penalties, civil forfeiture, and professional sanctions. R.C. 4723.28(B)(30), 4723.99(A), 4730.25(B)(24), 4730.252, 4730.99(A).

While certain additional provisions—specifically R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio Adm.Code 3701-47-01—were not among those included in the list of specific provisions giving effect to the APC Ban from which Plaintiffs sought relief in their second motion for a preliminary injunction, these provisions could be read to preclude APCs from providing medication abortion care, notwithstanding the Court’s prior order preliminarily enjoining other restrictions on APCs.⁶ Thus, on its face, the Revised Code continues to authorize

⁵ R.C. 2317.56 is currently enjoined in a separate constitutional challenge in the Franklin County Court of Common Pleas. *Preterm-Cleveland, et al. v. Dave Yost, et al.*, Franklin C.P. No. 24-cv-2634, Mar. 29, 2024. Plaintiffs challenge it here to the extent that it prohibits APCs from conducting this visit.

⁶ Plaintiffs notified Defendants on September 23, 2024 that they had become aware that APCs face licensing sanctions if they provide medication abortions as contemplated under the Court’s order. Plaintiffs asked Defendants if they would agree not to enforce those provisions. On September 24, 2024, counsel for Defendants informed Plaintiffs that they were working with their office and would inform Plaintiffs of their position on the stipulation. On October 7, 2024, the parties met and conferred to discuss whether Defendants would agree to stipulate not to enforce any other statutes or regulations that would give effect to the APC and Evidence-Based Use Bans. Counsel for Defendants again indicated that Defendants would provide their position shortly. Defendants did not offer a position on the stipulation. Plaintiffs therefore filed a Motion for Clarification on November 1, 2024, requesting that the Court clarify that the Second PI Order “should, in fact, be read to enjoin those laws and regulations that could be interpreted to prohibit APCs from providing medication abortions,” including R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Adm.Code 3701-47-01. *See* Mot. for Clarification, Nov. 1, 2024. On December 17, 2024, in its Entry on Plaintiffs’ Motion for Clarification, this Court confirmed that it “intended to enjoin each statute of the APC Ban,” but stated that, “[s]hould Plaintiffs wish to preliminarily enjoin additional statutes and regulations, they

the Ohio Board of Nursing to impose certain sanctions on an NP or CNM for “[p]rescribing any drug or device to perform or induce an abortion, or otherwise performing or inducing an abortion.” R.C. 4723.28(B)(30). Namely, the Board of Nursing may “deny, revoke, suspend or place restrictions” on that NP or CNM’s nursing license; “reprimand or otherwise discipline” the NP or CNM; or “impose a fine of not more than five hundred dollars per violation” of this provision. R.C. 4723.28(B). Likewise, on its face, the Revised Code continues to authorize the State Medical Board of Ohio to impose sanctions on a PA for “[p]rescribing any drug or device to perform or induce an abortion, or otherwise performing or inducing an abortion.” R.C. 4730.25(B)(24). For any violation of this provision, the Medical Board may “limit, revoke, or suspend an individual’s license to practice . . . or prescriber number,” “refuse to renew a license,” or “reprimand or place on probation the holder of a license.” R.C. 4730.25(B).

In addition, certain provisions of Ohio law provide that abortion constitutes the practice of medicine or surgery. *See* R.C. 2919.11; Ohio Adm.Code 3701-47-01. Another provision states that medicine or surgery can only be practiced or performed by a person licensed by the State Medical Board of Ohio. *See* R.C. 4731.41(A). Taken together, these provisions could be read to preclude duly qualified NPs or CNMs from providing medication abortions merely because they are licensed by the Board of Nursing instead of the Medical Board.

B. Impact of the APC Ban

“APCs are highly skilled, comprehensively regulated, and qualified health professionals, subjected to rigorous education and certification requirements and delegated broad authority by

must file a motion identifying such statutes and regulations, and addressing them under the preliminary injunction standard.” Entry on Pls.’ Mot. for Clarification, Dec. 17, 2024. After the issuance of the Court’s order, Plaintiffs renewed negotiations with Defendants in an attempt to resolve the dispute. After months of back-and-forth, Defendants finally informed Plaintiffs on February 18, 2025 that they could not stipulate not to enforce the clearly unconstitutional provisions. Plaintiffs therefore bring this motion in accordance with this Court’s instruction.

the State Medical Board of Ohio (for PAs) and the Ohio Board of Nursing (for NPs and CNMs).” Second PI Order at 11. Research shows that “APCs can provide medication abortion at least as safely as physicians and have shown no difference in outcome between a medication abortion provided by an APC and one provided by a physician.” Second PI Order at 12. In recognition of this skill and expertise, APCs are permitted under Ohio law to administer mifepristone and misoprostol (the two medications used in medication abortions) for purposes other than abortion, including miscarriage management. *See* Second PI Order at 11.

Even so, as with the APC Ban provisions already preliminarily enjoined by this Court, R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio Adm.Code 3701-47-01 significantly restrict and delay access to abortion by limiting the pool of providers able to provide this care in Ohio. Second PI Order at 12-13. The additional provisions either define “abortion” as the “practice of medicine and surgery,” Ohio Adm.Code 3701-47-01, effectively excluding APCs from providing medication abortions and limiting the available provider pool solely to physicians, or authorize the State Medical Board of Ohio and the Ohio Board of Nursing to sanction APCs who prescribe “any drug or device to perform or induce an abortion, or otherwise perform[] or induc[e] an abortion,” R.C. 4723.28(B)(30), 4730.25(B)(24), creating serious risk for APCs who would otherwise seek to provide medication abortion care in reliance on this Court’s second preliminary injunction. *See* Second PI Memo at 9 (“APCs face severe consequences for violating the APC Ban’s physician-only restrictions, including possible criminal charges, civil penalties, civil forfeiture, and professional sanctions.”) (citing R.C. 4723.28(B)(30), 4723.99(A), 4730.25(B)(24), 4730.252, 4730.99(A)).

As Plaintiffs have previously argued and this Court has noted, limiting the pool of providers able to provide medication abortion care in Ohio is likely to delay patients past the gestational age

for medication abortion entirely. Second PI Order at 13. Such patients “will either need to have a procedural abortion, contrary to their preference or medical indication; leave the State to get the medication abortion they desire . . .; or may even be forced to carry a pregnancy to term against their will.” Second PI Memo at 12. Forcing patients to remain pregnant against their will causes “physiological stressors” and “emotional distress.” Second PI Order at 13. While abortion remains extremely safe overall, health risks do increase as pregnancy progresses, meaning that “patients are subjected to those heightened risks if and when they do obtain abortion care.” Second PI Order at 13. All the while, when forced to turn away patients or witness their patients face these significant and unnecessary hurdles to obtain care they need and deserve, the Plaintiff clinics’ providers and staff suffer emotional distress and psychological harms. Second PI Order at 13-14.

LEGAL STANDARD

A. Preliminary Injunction Standard

To succeed on a motion for preliminary injunction, the moving party must show (1) a “substantial likelihood that [it] will prevail on the merits,” (2) that it will “suffer irreparable injury if the injunction is not granted,” (3) that “no third parties will be unjustifiably harmed if the injunction is granted,” and (4) that “the public interest will be served by the injunction.” *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267, 747 N.E.2d 268 (1st Dist.2000).

B. Ohio’s Robust Constitutional Right to Reproductive Freedom

Article I, Section 22(A) of the Ohio Constitution broadly protects an individual’s “right to make and carry out one’s own reproductive decisions, including but not limited to decisions on . . . abortion.” Ohio Const., art. I, § 22(A). In conjunction with this newly enshrined right, Article I, Section 22(B) provides that the State must not “directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against” either Ohioans exercising this right, or people or entities assisting Ohioans in 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). As the Court has noted, this “language plainly establishes that [this standard] offers greater protection of individuals’ rights to make their own reproductive choices than those adopted by the U.S. Supreme Court” in *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). Second PI Order at 9.

ARGUMENT

A preliminary injunction is necessary and appropriate here to stop the ongoing harms inflicted by R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio Adm.Code 3701-47-01, which continue to effectuate the APC Ban previously enjoined by this Court. Plaintiffs satisfy all four factors necessary for obtaining such relief. These provisions, like the others giving effect to the APC Ban and enjoined by this Court, unconstitutionally restrict Ohioans’ access to medication abortion. They do not comport with widely accepted and evidence-based standards of care and do nothing to advance patient health, let alone by employing the “least restrictive means” to do so. Ohio Const., art. I, § 22(B). Instead, these provisions only harm patients by unnecessarily delaying their access to time-sensitive medication abortion, including (for some) to the point of entirely foreclosing access to medication abortion in Ohio. Plaintiffs are therefore substantially likely to succeed on the merits. And because all other factors warranting injunctive relief also weigh in Plaintiffs’ favor, their request for preliminary injunctive relief should be granted.

A. Plaintiffs Are Substantially Likely to Succeed on the Merits of Their Claims that the Provisions Are Unconstitutional

These provisions restrict and interfere with the ability of Plaintiffs to assist their patients in exercising their right to make their own reproductive choices, including about medication abortion. Accordingly, for these provisions to survive constitutional scrutiny, Defendants must

demonstrate that they are “using the least restrictive means to advance the individual’s health in accordance with widely accepted, evidence-based standards of care.” Ohio Const., art. I, § 22(B); *see also* Second PI Order at 10 (“[A]ny restrictions on abortion must be narrowly tailored to further protect patients’ health *and* such restrictions must be the least restrictive means to advance the patient’s health ‘in accordance with widely accepted and evidence-based standards.’”). Defendants cannot do so. Well-established medical evidence demonstrates that the provisions fail to advance patient health, delay and constrain access to medication abortion, and serve only to harm patient health and well-being. Plaintiffs are, therefore, substantially likely to succeed on the merits of their claims.

1. The Provisions Burden, Penalize, Interfere with, Discriminate Against, and Prohibit APCs from Assisting Their Patients in Obtaining Medication Abortions and May Prohibit Patients from Making and Carrying Out their own Reproductive Decisions

The three provisions that are the subject of this motion impose punitive consequences on APCs who provide medication abortions by exposing them to the threat of professional discipline. *See* R.C. 4723.28(B)(30); R.C. 4730.25(B)(24); Ohio Adm.Code 3701-47-01. These provisions therefore force Plaintiffs and their providers to turn away patients they otherwise would be able to assist and to deny those patients time-sensitive care. Second PI Order at 13-14. In so doing, they burden, interfere with, and prohibit the Plaintiff clinics and APCs like Plaintiff Julia Quinn from assisting patients in obtaining medication abortion and penalize them for doing so.

The provisions also discriminate against APCs who seek to provide abortion care by singling them out for differential and unfavorable treatment, prohibiting them from providing care that they are trained and qualified to provide and that is otherwise within their scope of practice, solely because it is abortion care. *See* Second PI Order at 14 (“[T]he Amendment protects all persons and entities assisting a pregnant person in obtaining an abortion – the Amendment’s

protections are not limited to physicians.”); *see also* Second PI Memo at 10-11, 23 (explaining that APCs provide other reproductive health care of equal or greater technical complexity with equal or greater risk than medication abortion). This discrimination is made especially stark by the fact that Ohio permits APCs to prescribe the *same* medications utilized for medication abortion for other, non-abortion purposes, including miscarriage management. Second PI Order at 12.

The threat of discipline created by R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio Adm.Code 3701-47-01 also “forces patients to rely exclusively on physicians to provide them with medication abortion care in Ohio,” resulting in limits on “the number of available medication abortion appointments, the timing of such appointments, and the number of sites where medication abortions are offered.” Second PI Order at 12-13; *see also* Second PI Memo at 20-22. Patients thus may experience delays in care by virtue of being forced to manage heightened logistical and financial burdens and/or to travel further to access the care they need and want. Second PI Memo at 12. Without these restrictions, Plaintiffs could expand access to medication abortion by training their APCs to provide medication abortion, hiring additional APCs to provide such care, and/or expanding the locations from which they offer these services. Second PI Memo at 13 (“APCs at PPSWO’s and PPGOH’s health centers, including Plaintiff Quinn, are highly qualified and trained clinicians who, but for the APC Ban, would be trained to provide safe medication abortion care.”).

Unnecessary delays in accessing abortion care subject patients to greater health risks. Second PI Order at 13; *see also* Second PI Memo at 12-13. If patients are delayed such that they are no longer eligible for medication abortion,⁷ they may be unable to receive their preferred, or medically indicated, form of abortion care in the State. Second PI Order at 13 (“As a result of the

⁷ The Evidenced-Based Use Ban, which effectively prohibits provision of medication abortion after 70 days LMP, has been preliminarily enjoined, *see* Second PI Order at 18, but patients still face medical limits on their ability to obtain medication abortion tied to their eligibility for such care based on gestational age.

difficulties [the APC Ban] creates, patients may be delayed past the gestational age limit for medication abortion entirely. Therefore, to obtain an abortion, ‘such patients will either need to have a procedural abortion, contrary to their preference or medical indication; leave the state to get the medication abortion they desire . . .; or may even be forced to carry a pregnancy to term against their will.’”) (citations omitted).

2. Like the Other Provisions Making Up the APC Ban, These Challenged Provisions Do Not Advance Patient Health

“APCs can (and do in many other states) provide medication abortion just as safely and effectively as physicians,” and Defendants have not addressed how the APC Ban “constitutes the ‘least restrictive means’ of advancing patient health.” Second PI Order at 14.

As the Court previously found, the APC Ban has no medical justification, does nothing to advance patient health, and instead only risks harm to patients and their well-being. *See* Second PI Order at 15. And even if the APC Ban had some sort of medical justification, categorically banning several types of highly-trained, well-credentialed, competent clinicians from providing medication abortion care within their scope of practice is not the “least restrictive means” of advancing patient health. Second PI Memo at 14. The additional provisions challenged here have the same effect as the APC Ban provisions previously enjoined: they prevent APCs from providing medication abortions, even if they are otherwise qualified to do so. And just like the other provisions of the APC Ban, these restrictions have no medical justification whatsoever. Accordingly, Defendants cannot satisfy their burden under the Amendment, and Plaintiffs are substantially likely to succeed on their claim that R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio Adm.Code 3701-47-01 are unconstitutional.

B. Plaintiffs and Their Patients Are Suffering and Will Continue to Suffer Irreparable Harm Because of the Bans

A finding of irreparable harm is also warranted. Under the broad protections of the Amendment, R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio Adm.Code 3701-47-01 are a patent violation of Ohioans' constitutional right to reproductive decision-making, including decision-making related to abortion, and their providers' ability to assist them in effectuating those decisions. As this Court has previously recognized, an impairment of a constitutional right constitutes irreparable harm. *See* Second PI Order at 16–17 (citing *Magda v. Ohio Elections Comm'n.*, 2016-Ohio-5043, 58 N.E.3d 1188, ¶ 38 (10th Dist.)). Accordingly, Plaintiffs' patients presently suffer, and will continue to suffer, irreparable harm, stemming from the impairment of their constitutional rights, every day these provisions remain in effect.

The APC Ban gives rise to numerous other harms to the physical and mental health and dignity of Plaintiffs' patients that are not compensable or remediable at law. The direct and ongoing effect of the APC Ban is to make medication abortion significantly less obtainable in Ohio, compelling patients to remain pregnant against their will; to travel further and contend with more complex financial and logistical challenges to obtain medication abortion; and to face a host of additional medical risks, physiological stressors, and emotional distress from remaining pregnant longer against their will. *See supra* at 7; Second PI Order at 17 (“[P]atients all across the state will still be irreparably harmed by obstacles to care and regulations that are more restrictive than the Amendment allows. These current regulations . . . cause unnecessary harm by burdening [patients] with excessive financial, physical, and emotional costs.”). In some cases, the APC Ban may force patients to undergo procedural abortions to get their desired outcome, even where procedural abortions may be more invasive, traumatizing, or even medically contraindicated for some patients. Courts recognize that harms of this nature are irreparable. Second PI Order at 17

(“Each day the[] Ban[] remain[s] in place, Plaintiffs’ and their patients continue to suffer irreparable harm.”). Moreover, Plaintiffs themselves have suffered—and will continue to suffer—the emotional and moral distress that arises from being forced to act contrary to the standard of care, evidence-based medical practice, and their ethical duties, and from the ensuing deterioration of the patient-provider relationship. *See* Second PI Memo at 13.

C. The Other Factors Relevant to Preliminary Relief Weigh in Plaintiffs’ Favor

No third parties will be harmed if these provisions are enjoined. Substantial evidence shows that trained APCs can safely and effectively provide medication abortion care. *See* Second PI Order at 17. An injunction will not harm Defendants, as the State is not harmed by being unable to enforce unconstitutional laws, nor will an injunction harm any third party. *See* Second PI Order at 17; Second PI Memo at 30-31. Instead, these provisions only impair patient health and well-being and violate Ohioans’ constitutional rights. *See* Second PI Order at 17; Second PI Memo at 30-31.

Additionally, an injunction will serve the public interest, since “it is always in the public interest to prevent violation of a party’s constitutional rights.” *Lamar Advantage GP Co., LLC v. City of Cincinnati*, Hamilton C.P. No. A-18-04105, 114 N.E.3d 805, 829 (quoting *Miller v. City of Cincinnati*, 709 F.Supp.2d 605, 627 (S.D.Ohio 2008)); *see also* Second PI Order at 17 (“[T]he public interest is served when the Ohio Constitution is properly applied.”). Because a preliminary injunction against these three provisions will ensure that the protections afforded Ohioans by the Ohio Constitution are properly vindicated, and because it will prevent violations of Ohioans’ rights under Article I, Section 22, it clearly serves the public interest.

D. The Injunction Should Issue Without Bond

In line with its prior orders granting Plaintiffs’ motions for preliminary injunctions, the Court should exercise its discretion to waive the bond requirement set forth in Civil Rule 65(c),

given that the relief sought will not result in a monetary loss to Defendants, there is a strong public interest in the case, and Plaintiffs are substantially likely to succeed on the merits. *See* Second PI Memo at 31 (citing *Molton Co. v. Eagle-Pitcher Industries*, 55 F.3d 1171, 1176 (6th Cir. 1995)).

CONCLUSION

For the foregoing reasons, Plaintiffs ask this Court to issue a preliminary injunction, and enjoin Defendants, as well as their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from enforcing R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and/or Ohio Adm.Code 3701-47-01 during the pendency of this litigation, as well as from taking any later enforcement action premised on conduct that occurred while such relief was in effect.

Respectfully submitted,

/s/ Michelle Nicole Diamond
Michelle Nicole Diamond (Pro Hac Vice)
Peter Neiman (Pro Hac Vice)
Cassandra Mitchell (Pro Hac Vice)
Zach Blair (Pro Hac Vice)
Nicole Castillo (Pro Hac Vice)
WilmerHale LLP
7 World Trade Center
New York, NY 10007
(212) 230-8800
michelle.diamond@wilmerhale.com
peter.neiman@wilmerhale.com
Counsel for Plaintiffs

Taylor Gooch (Pro Hac Vice)
WilmerHale LLP
50 California St., Ste. 3600
San Francisco, CA 94111
(628) 235-1000
taylor.gooch@wilmerhale.com
Counsel for Plaintiffs

Rauvin Johl (Pro Hac Vice)
WilmerHale LLP
60 State St.

B. Jessie Hill (0074770)
Margaret Light-Scotece (0096030)
Freda J. Levenson (0045916)
ACLU of Ohio Foundation
4506 Chester Ave.
Cleveland, OH 44103
(216) 368-0553
(614) 586-1974 (fax)
bjh@cwru.edu
margaret.light-scotece@case.edu
flevenson@acluohio.org
*Counsel for Preterm-Cleveland and
Women's Med Group Professional
Corporation*

David J. Carey (0088787)
ACLU of Ohio Foundation
1108 City Park Ave., Ste. 203
Columbus, OH 43206
(380) 215-0997
dcarey@acluohio.org
*Counsel for Preterm-Cleveland and
Women's Med Group Professional
Corporation*

Boston, MA 02109
(617) 526-6000
rauvin.johl@wilmerhale.com
Counsel for Plaintiffs

Alyssa Milstead (Pro Hac Vice)
WilmerHale LLP
2600 El Camino Real, Suite 400
Palo Alto, CA 94306
(650) 858-6000
alyssa.milstead@wilmerhale.com
Counsel for Plaintiffs

Catherine Humphreville (Pro Hac Vice)
Vanessa Pai-Thompson (Pro Hac Vice)
Planned Parenthood Federation of America
123 William Street, 9th Floor
New York, NY 10038
(212) 541-7800 (Pai-Thompson)
(212) 247-6811 (fax)
catherine.humphreville@ppfa.org
vanessa.pai-thompson@ppfa.org
*Counsel for Planned Parenthood
Southwest Ohio Region, Sharon Liner,
M.D., Julia Quinn, and Planned
Parenthood of Greater Ohio*

Meagan Burrows (Pro Hac Vice)
Johanna Zacarias (Pro Hac Vice)
American Civil Liberties Union
125 Broad St., 18th Fl.
New York, NY 10004
(212) 549-2601
mburrows@aclu.org
jzacarias@aclu.org
*Counsel for Preterm-Cleveland and
Women's Med Group Professional
Corporation*

Fanon A. Rucker (0066880)
The Cochran Firm
527 Linton Street
Cincinnati, OH 45219
(513) 381-4878
(513) 672-0814 (fax)
frucker@cochranohio.com
*Counsel for Planned Parenthood
Southwest Ohio Region, Sharon Liner,
M.D., Julia Quinn, and Planned
Parenthood of Greater Ohio*

Dated: February 26, 2025

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2025, the foregoing was electronically filed via the Court's e-filing system. I further certify that a copy of the foregoing was served via electronic mail upon counsel for the following parties:

OHIO DEPARTMENT OF HEALTH

246 N. High Street
Columbus, OH 43215
Email: Amanda.Narog@OhioAGO.gov

BRUCE T. VANDERHOFF, M.D., MBA

Director, Ohio Department of Health
246 N. High Street
Columbus, OH 43215
Email: Amanda.Narog@OhioAGO.gov

KIM G. ROTHERMEL, M.D.

Secretary, State Medical Board of Ohio
30 E. Broad Street, 3rd Floor
Columbus, OH 43215
Email: Kim.Rothermel@Med.Ohio.gov

HARISH KAKARALA, M.D.

Supervising Member, State Medical Board of Ohio
30 E. Broad Street, 3rd Floor
Columbus, OH 43215
Email: harish.kakarala@med.ohio.gov; kakarah@ccf.org

ERIN KEELS, DNP, APRN-CNP

President, Ohio State Board of Nursing
8995 East Main Street
Reynoldsburg, OH 43068
Email: BoardMembers@Nursing.Ohio.gov

CANDY SUE RINEHART, DNP, APRN-CNP

Supervising Member for Disciplinary Matters, Ohio State Board of Nursing
8995 East Main Street
Reynoldsburg, OH 43068
Email: BoardMembers@Nursing.Ohio.gov

CONNIE PILLICH

Hamilton County Prosecutor
230 E. Ninth Street, Suite 4000
Cincinnati, OH 45202
Email: connie.pillich@hcpros.org

SHAYLA D. FAVOR
Franklin County Prosecutor
373 S. High Street, 14th Floor
Columbus, OH 43215
Email: sfavor@franklincountyohio.gov

MICHAEL C. O'MALLEY
Cuyahoga County Prosecutor
Justice Center, Courts Tower
1200 Ontario Street, 9th Floor
Cleveland, OH 44113
Email: mcomalley@prosecutor.cuyahogacounty.us

MATHIAS H. HECK, JR.
Montgomery County Prosecutor
301 W. Third St., 5th Floor
P.O. Box 972
Dayton, OH 45402
Email: heckm@mcOhio.org

ELLIOT KOLKOVICH
Summit County Prosecutor
175 S. Main Street
Akron, OH 44308
Email: ekolkovich@prosecutor.summitoh.net

KELLER J. BLACKBURN
Athens County Prosecutor
Athens County Courthouse
1 South Court Street, First Floor
Athens, OH 45701
Email: kim@athenscountyprosecutor.org

KYLE L. STONE
Stark County Prosecutor
110 Central Plaza South, Suite 510
Canton, OH 44702
Email: klstone@starkcountyohio.gov

CONNIE J. LEWANDOWSKI
Portage County Prosecutor
The Portage County Prosecutor's Office
241 South Chestnut Street
Ravenna, OH 44266
Email: clewandowski@portageco.com

JODIE M. SCHUMACHER
Richland County Prosecutor
38 South Park Street, 2nd Floor
Mansfield, OH 44902
Email: Jschumacher@richlandcountyoh.us

JULIA R. BATES
Lucas County Prosecutor
Common Pleas Court
700 Adams Street
Toledo, OH 43604
Email: jrbates@co.lucas.oh.us

LYNN MARO
Mahoning County Prosecutor
21 W Boardman Street, 6th Floor
Youngstown, OH 44503
Email: lynn.maro@mahoning.gov

MICHAEL T. GMOSE
Butler County Prosecutor
315 High Street, 11th Floor
P.O. Box 515
Hamilton, OH 45012
Email: gmosemt@butlercountyohio.org

DANIEL P. DRISCOLL
Clark County Prosecutor
50 E. Columbia Street, Suite 449
Springfield, OH 45502
Email: ddriscoll@clarkcountyohio.gov

/s/ Michelle Nicole Diamond
Michelle Nicole Diamond (Pro Hac Vice)
Counsel for Plaintiffs