IN THE COURT OF COMMON PLEAS
FOR HAMILTON COUNTY, OHIO

PLANNED PARENTHOOD SOUTHWEST OHIO REGION, *et al.*,	:	Case No. A 2101148
Plaintiffs,	:	Judge Alison Hatheway
v.	:	
OHIO DEPARTMENT OF HEALTH, *et al.*,	:	
Defendants.	:	

THE STATE'S OMNIBUS RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT AND THIRD MOTION FOR PRELIMINARY INJUNCTION

Over the State's opposition, this Court has preliminarily enjoined several provisions of Ohio law regulating ***who*** can prescribe medications to induce abortion and ***how*** they are prescribed—but not ***whether*** patients can obtain medically induced abortions. This Court's preliminary relief is temporary in nature and does not represent a final decision on the merits. The State respectfully preserves its previous assertions in opposition to this Court's previous rulings. The State intends to continue its defense of these laws as the case proceeds to final judgment, when the Court will have a full record on which to judge Plaintiffs' claims.

Now, Plaintiffs seek leave to amend their complaint, and they seek an immediate third amended preliminary injunction to enjoin additional Ohio provisions of law, provisions Plaintiffs have not challenged thus far. Plaintiffs' proposed amended complaint is no more than a formality—

it includes these new provisions among the list it seeks to enjoin, and it updates the identity certain parties to reflect successions that happened since the original complaint was filed. The State does not oppose this purely procedural filing, although it will continue to defend against the substance of Plaintiffs' claims.

But Plaintiffs motion for a third amended preliminary injunction should be denied. As an initial matter, the State must oppose this motion because many of the State's previous assertions apply equally to these new provisions meaning these provisions should not be enjoined any more than the others. The State incorporates these previous assertions into this opposition. In brief essence, the challenged provisions (including those at issue now) protect the health and safety of Ohioans without infringing on any reproductive freedom protected by Article I, Section 22 of the Ohio Constitution. The State invites the Court, if it is so inclined, to consider these previous assertions again in light of Plaintiffs' latest motion for additional injunctive relief.

But if the Court chooses not to revisit these previous assertions, it should still deny the motion. Plaintiffs ask this court to enjoin these new provisions in their entirety. *See* Plaintiffs' Proposed Order (adding to previous orders that "[a]ll Defendants and their officers, successors, agents, servants, employees, attorneys and those persons in active concert or participation with them are PRELIMINARILY ENJOINED from enforcing R.C. 4723.28(B)(30), R.C. 4730.25(B)(24), and Ohio Admin. Code 3701-47-01 until final judgment is entered in this case"). This goes way too far. If this Court were to grant the proposed order, it would extend the relief in this case beyond its current scope and beyond what any reasonable person would find appropriate. Enjoining the entirety of these new provisions, as Plaintiffs request, would mean that every registered nurse and every dialysis technician would be immune from discipline for prescribing

abortion drugs, even though nurses (other than nurse practitioners) and dialysis technicians generally have no prescription authority in ***any*** context. Worse yet, these nurses and dialysis technicians would be shielded from discipline not just for prescribing abortion drugs, but also for "otherwise performing or inducing an abortion." R.C. 4723.28(B)(30).

In this and in other cases, the State has shown that it recognizes and respects the proper scope of Ohio's constitutional limitations pertaining to reproductive rights, including Section 22, the amendment that voters approved in 2023. Respecting the will of the voters requires two things. First, to be sure, the State must acknowledge, as it has, when a new constitutional amendment invalidates pre-existing law. Second, and just as important, the State must oppose efforts by individual and institutional plaintiffs to obtain judicial veto of laws regulating matters beyond the scope of constitutional limitations. Voters approved Section 22 ***as written***, not as some would prefer to inflate it.

Here, Plaintiffs seek additional preliminary injunctive relief that not only exceeds the scope of Section 22, but also that exceeds the scope of what the Plaintiffs' themselves define as the alleged constitutional infraction. Accordingly, Plaintiffs' motion should be denied.

PROCEDURAL BACKGROUND

Plaintiffs filed this action on April 1, 2021, seeking temporary, preliminary, and permanent injunctive relief against Ohio's prohibition on the use of the drug mifepristone to induce abortions remotely via telemedicine. Plaintiff Clinics purport to bring this lawsuit on behalf of themselves and their patients. Following the entry of temporary and preliminary injunctions, the case was stayed in July 2022 pending resolution of *State ex rel. Preterm-Cleveland v. Yost*, No. 2022-0803 (Ohio, June 29, 2022). In November 2023, Article I, Section 22 was added to the Ohio Constitution

("Section 22" or the "Amendment") which prohibits the State from "burden[ing], penaliz[ing], prohibit[ing], interfer[ing] with, or discriminat[ing] against" individuals' rights to carry out their own "reproductive decisions", or the rights of those assisting such individuals. Ohio Constitution, Article I, Section 22. *Preterm-Cleveland* was dismissed in December 2023.

Following the passage of the Amendment, Plaintiffs amended their complaint to add challenges to: (1) a set of Ohio statutes that prohibit non-physician healthcare providers, referred to in the complaint as advanced practice clinicians, from performing medication-induced abortions (collectively, "Physician Mandate"); and (2) the statutory prohibition in R.C. 2919.123(B) against the off-label, evidence-based use of mifepristone to induce abortions ("FDA Label Law"). On May 22, 2024, they filed Plaintiffs' Second Motion for Preliminary Injunction, which sought to prevent enforcement of various statutes that required medication abortion be prescribed only by a licensed physician, and that such prescription be done in accordance with state and federal law. This Court granted the motion over the State's opposition. The Court's order preliminarily 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); Ohio Adm. Code 4723-9-10(K), 4730-2-07(E) (collectively "the Physician Mandate), and R.C. 2919.123 (the "Federal Label Law").

Then Plaintiffs filed a motion for clarification asking the Court to clarify its second preliminary injunction order. While the Court did clarify that R.C. 2919.11 was erroneously omitted from its original order, it said that "it would be improper for this Court to enjoin 'any other Ohio statute or regulation that could be understood to give effect' to the APC and Evidence-Based Use Bans without knowing what those statutes are. Should Plaintiffs wish to preliminarily enjoin additional statutes and regulations, they must file a motion identifying such statutes and

regulations, and addressing them under the preliminary injunction standard." Entry on Plaintiffs' Motion for Clarification, December 17, 2024, at 1. Plaintiffs then moved for leave to amend their complaint again on February 26, 2025 and contemporaneously filed a third motion for preliminary injunction.

LEGAL STANDARD

Ohio Civil Rule 65(B) empowers courts to issue preliminary injunctions in only limited circumstances. A preliminary injunction is a form of injunctive relief. And an "injunction is an extraordinary remedy in equity where there is no adequate remedy available at law. It is not available as a right." *Garono v. State*, 37 Ohio St. 3d 171, 173 (1988). Given the extraordinary nature of this relief, courts must "take particular caution in granting injunctions, especially in cases affecting a public interest where the court is asked to interfere with or suspend the operation of important works or control the action of another department of government." *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgmt. Dist.*, 73 Ohio St. 3d 590, 604 (1995) (quotations omitted). "The purpose of both a temporary restraining order and a preliminary injunction is to preserve the status quo of the parties pending a decision on the merits." *State ex rel. Kilgore v. City of Cincinnati*, 2012-Ohio-4406 ¶21 (1st Dist.) (quotations omitted).

"In determining whether to grant a temporary restraining order, a trial court must consider [1] whether the movant has a strong or substantial likelihood of success on the merits of his underlying claim, [2] whether the movant will be irreparably harmed if the order is not granted, [3] what injury to others will be caused by the granting of the motion, and [4] whether the public interest will be served by the granting of the motion." *Coleman v. Wilkinson*, 147 Ohio App.3d 357, 2002-Ohio-2021 ¶2. The same standard governs motions for preliminary injunctions.

Castillo-Sang v. Christ Hosp. Cardiovascular Assocs., LLC, 2020-Ohio-6865 ¶16 (1st Dist.) (citing *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267–268 (1st Dist. 2000)).

If a plaintiff "d[oes] not prevail on one of the required elements," of this four-element test, the court "need not consider the remainder of the elements." *Intralot, Inc. v. Blair*, 2018-Ohio-3873 ¶47 (10th Dist.); *see also Aero Fulfillment Servs., Inc. v. Tartar*, 2007-Ohio-174 ¶¶23, 41 (1st Dist.). Furthermore, the Ohio Supreme Court has cautioned that a court "cannot employ equitable principles to circumvent valid legislative enactments." *Lake Hosp. Sys., Inc. v. Ohio Ins. Guar. Assn.*, 69 Ohio St. 3d 521, 526, 1994-Ohio-330 (1994).

ARGUMENT

I. Plaintiffs Fail to Establish the Necessary Factors for a Preliminary Injunction.

A. No preliminary injunction is needed because Plaintiffs are not threatened with any harm.

After this Court granted their second preliminary injunction request, Plaintiffs say that they "learned that APCs employed by Plaintiffs Planned Parenthood of Greater Ohio ("PPGOH") and Planned Parenthood Southwest Ohio Region ("PPSWO") face licensing sanctions if they provide abortions as contemplated under the Court's order." 3d PI Mot. at 1. They do not say, however, how they learned of this purported threat, who made the threat, or who was threatened. Without more, Plaintiffs' claim that they are threatened with enforcement of these provisions is naked speculation and cannot demonstrate the concrete threat of harm necessary for preliminary relief. *See Aero Fulfillment Servs., Inc. v. Tartar*, 1st Dist. Hamilton No. C-060071, 2007-Ohio-174, ¶ 26 ("In an action for injunctive relief, where the threat of harm is speculative, the moving party must do more than make a conclusory allegation of the threat of harm. There must be evidence to support that allegation."). This Court need not issue any additional injunction to give effect to its

prior orders. A preliminary injunction is an act in equity. *Garono,* 37 Ohio St. 3d at 173. But our Supreme Court has often repeated the maxim: '"equity will not decree a vain thing.'" *Motorists Mut. Ins. Cos. v. Handlovic,* 23 Ohio St.3d 179, 183, 492 N.E.2d 417 (1986), quoting *Watterson v. Ury* (1891), 5 C.C. 347, 360, affirmed 52 Ohio St. 637. This Court's prior preliminary injunction orders have already given Plaintiffs the relief they again seek here regarding the provision of medication abortions by APCs. The Court has unquestionably enjoined enforcement of laws that prohibit advanced practice clinicians from providing medication abortion, and Plaintiffs acknowledged as much in their motion: "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." 3d PI. Mot at 1. The State recognizes that during the pendency of this case, it is bound by that order, therefore no further injunction is necessary.

B. The injunctive language requested here would substantially expand the Court's prior order.

While Plaintiffs claim that they "seek a modest extension of existing injunction," the effect of the requested relief would go far beyond this Court's prior orders. Such an order would not meet the requirements for equitable relief. "Although a trial court has 'broad discretion in fashioning the terms of an injunction,' the 'injunction must not be overly broad,' and '[e]quity requires that any injunction be narrowly tailored to prohibit only complained-of activities.' *West v. City of Cincinnati*, 2024-Ohio-1951, 245 N.E.3d 304, ¶ 32 (1st Dist.), quoting *Miami Twp. Bd. of Trustees v. Weinle*, 2021-Ohio-2284, 174 N.E.3d 1270, ¶ 47, 50 (1st Dist.), citing *Brackett v. Moler Raceway*

Park, LLC., 195 Ohio App.3d 372, 2011-Ohio-4469, 960 N.E.2d 484, ¶ 16 (12th Dist.), and *Myers v. Wild Wilderness Raceway, L.L.C.*, 181 Ohio App.3d 221, 2009-Ohio-874, 908 N.E.2d 950, ¶ 28 (4th Dist.). Plaintiffs have failed to tailor their request in a manner that reaches only the activities that they claim are the subjects of their concern.

First, their Motion requests that the State be enjoined "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." 3d PI Mot. at 14. Neither injunction order in this case has included any such language aimed at binding the State to it long after its expiration.

Of course, "[p]reliminary injunctions by their very nature are interlocutory, tentative, and impermanent; they are generally regarded as being superseded by a final judgment that is rendered on the merits in the underlying controversy." *Burns v. Daily* (1996), 114 Ohio App.3d 693, 708, 683 N.E.2d 1164, citing *Ameron, Inc. v. United States Army Corps of Engineers* (D.N.J. 1985), 610 F. Supp. 750, 757, affirmed as modified (C.A.3, 1986), 787 F.2d 875. "Consequently, preliminary injunctions are not enforceable after final judgment has been entered." *Hosta v. Chrysler*, 172 Ohio App.3d 654, 2007-Ohio-4205, 876 N.E.2d 998, ¶ 31 (2d Dist.), *citing Burns*, 114 Ohio App.3d at 708. Plaintiffs request relief that is far beyond what such provisional relief, by its own nature, can provide. That expansion would be inappropriate here.

Secondly, though Plaintiffs repeatedly refer to medication abortion as the target of their preliminary relief, the order they seek would not be so limited. Both R.C 4723.28(B)(30) and R.C. 4730.25(B)(24) include not only "[p]rescribing any drug or device to perform or induce and abortion," but goes on to say "or otherwise performing or inducing an abortion." If the Court

issued the requested injunction, it would prevent the Medical and Nursing Boards from sanctioning their members for provision of surgical abortions.

Specifically, R.C. 4723. 28(B)(30) provides:

> Except as provided in section 4723.092 of the Revised Code, the board of nursing, by a vote of a quorum, may impose one or more of the following sanctions: deny, revoke, suspend, or place restrictions on any nursing license or dialysis technician certificate issued by the board; reprimand or otherwise discipline a holder of a nursing license or dialysis technician certificate; or impose a fine of not more than five hundred dollars per violation. The sanctions may be imposed for any of the following: (30) Prescribing any drug or device to perform or induce an abortion, or otherwise performing or inducing an abortion;

While other provisions of the statute limit the effect of a particular subsection to advanced practice nurses, (B)(30) contains no such language. *See, e.g.,* R.C. 4723. 28(B)(28) ("In the case of an advanced practice registered nurse other than a certified registered nurse anesthetist, failure to maintain a standard care arrangement in accordance with section 4723.431 of the Revised Code or to practice in accordance with the standard care arrangement;"), *see also* R.C. 4723. 28(B)(24), R.C. 4723. 28(B)(27), R.C. 4723. 28(B)(29), and R.C. 4723. 28(B)(37).

Moreover, this statute is not merely limited to controlling the conduct of nurses—it also regulates dialysis technicians as well. *See* R.C. 4723. 28(B)(2) ("Engaging in the practice of nursing ***or engaging in practice as a dialysis technician***, having failed to renew a nursing license or dialysis technician certificate issued under this chapter, or while a nursing license or dialysis technician certificate is under suspension;"). Because R.C. 4723. 28(B)(30) does not say the type of provider that is penalized for performing an abortion, any such injunction could be read to allow all registered nurses *and* dialysis technicians to perform abortions too.

Finally, the requested order would insulate these practitioners from discipline for the prescription of "*any* drug or device" so long as it is prescribed to perform or induce an abortion.

Again, this goes beyond prescription of mifepristone—it would allow the prescription of other potentially untested or proven and potentially dangerous drugs for medication abortion. And so long those drugs or devices are prescribed for the purpose of abortion, the State would be unable to impose any disciplinary action for such conduct, even if the patient is harmed in the process. Indeed, such an order would also allow the prescription of devices as well, with similar effect. That lack of professional oversight in this area alone is cause for serious concern, but when coupled with the fact that these practitioners are now empowered to decide when and how to prescribe such drugs, the risk of harm to abortion patients is enormous and cannot justify the injunction requested. And because the Court has already effectively remedied Plaintiffs' stated concerns in its prior orders, it need not attempt to do more here.

C. A preliminary injunction of these laws will harm the public.

Before entering a TRO or preliminary injunction, a court must assess two other factors: "what injury to others will be caused by the granting of the motion, and whether the public interest will be served by the granting of the motion." *Coleman*, 2002-Ohio-2021, ¶ 2. Any time a court enjoins the enforcement of State laws, however, those two factors coalesce into one: harm to the State *is* harm to the public interest, because the General Assembly is democratically elected to represent the public interest of the State as a whole. As the State explained above, the risk of harm to Ohioans is significant.

Courts have often noted that injunctions against duly enacted laws are harm to the government and thus to the public interest. *Abbott v. Perez*, 585 U.S. 579, 602 & n.17 (2018); *see Maryland v. King*, 567 U.S. 1301, 1303 (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.,* 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)); *Thompson v. DeWine*, 976 F.3d 610, 619 (6th Cir. 2020) (per curiam). Whenever a state is "enjoined by a court

from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *King*, 567 U.S. at 1303 (Roberts, C.J., in chambers).

That is specifically true when, as here, the requested relief would go far beyond what has been asserted by Plaintiffs and already ordered by this Court. Preventing any professional penalties even for clinicians who lack any advanced education and training represents a clear and obvious danger to the public and weighs heavily in the State's favor here.

CONCLUSION

For all these reasons, the State respectfully requests that the Court deny Plaintiffs' Third Motion for Preliminary Injunction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically and served upon the following via electronic mail this 12th day of March, 2025:

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**Motion for pro hac vice forthcoming*

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