

IN THE SUPREME COURT OF OHIO

STATE EX REL.

PRETERM-CLEVELAND

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STATE EX REL. TOLEDO WOMEN'S

Case No. _____

Original Action in Mandamus

Peremptory and Alternative Writs Requested

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v.

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I. INTRODUCTION

As of Friday, June 24, 2022, nearly all abortion is banned in Ohio. S.B. 23 bans abortion starting after the detection of cardiac activity, which occurs approximately six weeks from the first day of the patient's last menstrual period ("LMP")—a point at which many women do not even know they are pregnant. Providers in Ohio—Relators in this action—challenged the law in the United States District Court for the Southern District of Ohio shortly after its passage, and were granted a preliminary injunction on July 3, 2019. *See Preterm-Cleveland v. Yost*, 394 F.Supp.3d 796, 804 (S.D. Ohio 2019). But mere hours after the United States Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* ("*Jackson Women's Health Organization*"), No. 19-1392, 2022 WL 2276808 (June 24, 2022), which reversed nearly 50 years of federal abortion precedent and held there is no federal constitutional right to abortion, the district court dissolved the injunction blocking S.B. 23's enforcement. *Preterm-Cleveland*, No. 1:19-cv-00360, Dkt. #100. S.B. 23 is now in effect and has decimated abortion access in Ohio.

As detailed in the Verified Complaint and Brief in Support of the Verified Complaint ("Relators' Brief"), Section II.D, S.B. 23 violates the Ohio Constitution by depriving Ohioans of their fundamental rights, including their right to an abortion as guaranteed by the Ohio Constitution's broad protections for individual liberties under Article I, Sections 1, 2, 16, and 21. Absent immediate action from this Court, S.B. 23 will continue to deprive Ohioans of their constitutional rights and subject them to irreparable physical, psychological, and emotional harm.

Relators therefore respectfully request that this Court issue an order staying enforcement of S.B. 23 while the Court considers Relators' Verified Complaint. As explained below, emergency relief is warranted because (1) S.B. 23 violates the Ohio Constitution by depriving

Ohioans of their fundamental constitutional rights, and (2) the enforcement of S.B. 23 is causing and will continue to cause irreparable harm to those seeking abortion in Ohio.¹

II. FACTUAL BACKGROUND

S.B. 23 bans abortion beginning at approximately six weeks of pregnancy. S.B. 23, amending R.C. 2919.195(A). It requires an abortion provider to determine whether there is detectable cardiac activity, which typically occurs around six weeks LMP, but can occur as early as five weeks. *See id.*; Verified Complaint ¶ 52. If such activity is detected, S.B. 23 makes it a crime for providers to perform an abortion. S.B. 23, amending R.C. 2919.195(A).

A violation of S.B. 23 by a physician is a fifth-degree felony, punishable by up to one year in prison and a fine of \$2,500. *See* 2019 Am.Sub.S.B. No. 23, Section 1, amending R.C. 2919.195(A); R.C. 2929.14(A)(5) and 2929.18(A)(3)(e). In addition to criminal penalties, the state medical board may assess a forfeiture of up to \$20,000 for each violation, and limit, revoke, or suspend a physician's medical license. *See* 2019 Am.Sub.S.B. No. 23, Section 1, amending R.C. 2919.1912(A); R.C. 4371.22(B)(10). Relator clinics are subject to criminal penalties and revocation of their ambulatory surgical facility license for a violation of S.B. 23 at their facilities. Relator Sharon Liner, M.D. and other individual healthcare providers are also subject to criminal penalties—including prison—and a revocation of their medical licenses.

On July 3, 2019—before the law was scheduled to take effect—the United States District Court for the South District of Ohio preliminarily enjoined S.B. 23. *Preterm-Cleveland*, 394

¹ As indicated in Relators' Verified Complaint, Relators request that the Court issue a Peremptory Writ of Mandamus. In the alternative, the Court should issue an Alternative Writ, with an expedited schedule if the Court denies this motion. By this motion, Relators request an emergency order staying enforcement of S.B. 23 while the Court considers the merits of Relators' Verified Complaint.

F.Supp.3d at 804.² That injunction was dissolved on the afternoon of Friday, June 24, 2022. *See Preterm-Cleveland*, No. 1:19-cv-00360, Dkt. #100.

The effects of S.B. 23 are catastrophic for women in Ohio.³ At such an early stage of pregnancy, many women are not even aware they are pregnant. *See Verified Complaint* ¶¶ 54-57. A ban on abortion at six weeks allows only two weeks, *at most*, for a woman to learn that she is pregnant, decide whether to have an abortion, and seek and obtain abortion care. *See id.* ¶ 54. Even if a woman knows she is pregnant, obtaining an abortion in this limited window is not feasible for many Ohioans for several reasons, including, but not limited to, the potential need to travel long distances, the State’s mandated waiting period, the financial cost of abortion, and associated costs (e.g., transportation, childcare, lost wages, etc.). *See id.* ¶¶ 58-60. Indeed, the vast majority of women who obtain abortions in Ohio do so after six weeks LMP. *See id.* ¶ 61. Examining this reality, the district court in *Preterm-Cleveland* concluded in stark terms: “S.B. 23 [] will prohibit almost all abortion care in Ohio.” *Preterm-Cleveland*, 394 F.Supp.3d at 800.

III. LEGAL ARGUMENT⁴

This Court should issue an emergency stay of enforcement of S.B. 23 pending resolution of Relators’ Verified Complaint. This Court grants emergency stays when (1) relators are likely to succeed on the merits of the claims in the Verified Complaint and (2) there is an imminent risk of interrupting the status quo or causing irreparable harm. *See, e.g., Ohio High School Athletic*

² The full set of factual circumstances of S.B. 23 are described in Relators’ Verified Complaint, but Relators incorporate by reference and otherwise summarize the facts here for the Court’s reference.

³ Relators use “women” herein to describe people who are or may become pregnant, but people of other gender identities, including transgender men and gender-diverse individuals, may also become pregnant, seek abortion services, and be harmed by S.B. 23.

⁴ Relators incorporate by reference the arguments detailed in their Verified Complaint and Brief.

Assn. v. Ruehlman, 153 Ohio St.3d 1465, 2018-Ohio-3407, 106 N.E.3d 63 (granting emergency stay of enforcement of temporary restraining order); *State ex rel. Clough v. Franklin Cty. Children’s Servs.*, 142 Ohio St.3d 1435, 2015-Ohio-1566, 29 N.E.3d 992 (Table) (granting emergency stay of destruction of documents in mandamus action). Relators satisfy both of these requirements.

A. Relators Are Likely to Succeed on the Merits of Their Verified Complaint.

Relators are entitled to a writ of mandamus commanding Respondents to uphold the Ohio Constitution and, in so doing, abide by Ohio’s preexisting gestational age limit of 22 weeks LMP, R.C. 2919.201, and not enforce S.B. 23. As an initial matter, a writ of mandamus is an appropriate mechanism for Relators to challenge the constitutionality of S.B. 23. *See* Verified Complaint ¶¶ 21-26; *see also State ex rel. Ethics First-You Decide Ohio Political Action Commt. v. DeWine*, 147 Ohio St.3d 373, 2016-Ohio-3144, 66 N.E.3d 689, ¶ 11 (“When confronted with complaints that challenge the constitutionality of a statute, we have consistently construed them as...squarely within our original mandamus jurisdiction.”); *State ex rel. Zupancic v. Limbach*, 58 Ohio St.3d 130, 133, 568 N.E.2d 1206 (1991) (“[A] mandamus action may test the constitutionality of a statute.”).

As explained in the Verified Complaint, the required elements of a mandamus claim are met here: (1) “a clear legal right to the relief requested,” (2) “a clear legal duty to perform the requested act on the part of the respondent,” and (3) “the relator has no plain and adequate remedy at law.” *State ex rel. Parker v. Lucas Cty. Job & Fam. Servs.*, 176 Ohio App.3d 715, 2008-Ohio-3274, 893 N.E.2d 558, ¶ 9 (6th Dist.), *cause dismissed*, 120 Ohio St.3d 1529, 2009-Ohio-717, 901 N.E.2d 247 (Table).

First, Relators have a “clear legal right” to the requested relief because S.B. 23 violates the Ohio Constitution’s due process and equal protection guarantees. As detailed in Relators’

Verified Complaint and Brief, the Ohio Constitution’s substantive due process protections include a right to privacy that, in the context of “sexual and reproductive matters,” is “fundamental.” *State v. Boeddeker*, 1st Dist. Hamilton No. C-970471, 1998 WL 57234, *2 (Feb. 13, 1998); *see* Relators’ Brief, Section II.C.2.a. As lower courts in Ohio have already recognized, the substantive due process rights guaranteed by the Ohio Constitution encompass the fundamental right to abortion. *See, e.g., Planned Parenthood Southwest Ohio Region v. Ohio Dept. of Health*, Hamilton C.P. No. A 2100870, at 6, 9 (Jan. 31, 2022) (“Deprivation of reproductive autonomy falls squarely within the meaning of an injury done to one’s person under the Ohio Constitution.”). In the words of one Ohio court: “In light of the broad scope of ‘liberty’ as used in the Ohio Constitution, it would seem almost axiomatic that the right of a woman to choose whether to bear a child is a liberty within the constitutional protection. This necessarily includes the right of a woman to choose to have an abortion.” *Preterm Cleveland v. Voinovich*, 89 Ohio App.3d 684, 691, 627 N.E.2d 570 (10th Dist.1993); *Planned Parenthood Southwest Ohio Region. v. Ohio Dept. of Health*, Hamilton C.P. No. A 2101148, at 10 (Apr. 19, 2021); *see also* Verified Complaint ¶¶ 98-100.

S.B. 23 also infringes on Ohioans’ right to equal protection under the law. Relators’ Brief, Section II.E. S.B. 23 discriminates against women, a suspect class, *see* Verified Complaint ¶¶ 122-25, by expressly singling out “pregnant wom[e]n” in Ohio, and restricting their bodily autonomy and health care choices. *See, e.g.,* 2019 Am.Sub.S.B. No. 23, Section 1, amending R.C. 2919.192(A). Moreover, S.B. 23 discriminates against women by subordinating them to men based on antiquated notions and stereotypes regarding women’s roles as child-bearers and caregivers. *See* Relators’ Brief, Section II.E.2.b.

Courts in Ohio apply strict scrutiny where laws infringe on fundamental rights or discriminate against suspect classes. S.B. 23 does both, and the State cannot meet its heavy burden to show that the law is narrowly tailored to serve any purported compelling state interest. *See id.*, Section II.D.2. Even if the Court were to apply intermediate scrutiny, S.B. 23 cannot survive because it is not substantially related to any important government objective. *See id.*, Section II.E.4. As such, S.B. 23 is unconstitutional.

Second, as explained in the Verified Complaint ¶ 20, Respondents have a clear duty to uphold the Ohio Constitution. Each Respondent took an oath of office to uphold the Ohio Constitution in discharging their duties, and enforcing an unconstitutional law is a clear violation of that oath. *See id.* Because S.B. 23 is unconstitutional, in order to uphold their respective oaths, Respondents must abide by Ohio's prior gestational age restriction law and not enforce S.B. 23. *See* Relators' Brief, Section II.B; *Zupancic*, 58 Ohio St.3d at 133, 568 N.E.2d 1206 (noting that the court "will necessarily have to address the constitutionality" of the challenged statute to determine the merits of relators' request for "respondent to abide by a former statute"); *see also Ethics First*, 147 Ohio St.3d at 376, 2016-Ohio-3144, 66 N.E.3d 689, ¶ 11 ("The fact that adjudicating the case requires the court also to prohibit the official from acting under the current version of the statute is 'only ancillary' and does not alter the fundamental nature of the relief sought.").

Finally, Relators do not have any other plain and adequate remedy at law because there are no other practicable means of ensuring that the fundamental rights of all persons affected by S.B. 23 are protected. Without a clear, binding, state-wide ruling from this Court, patients and providers throughout Ohio might be forced to pursue piecemeal and duplicative litigation to avoid the far-reaching consequences that would come with S.B. 23's enforcement, which could

result in merely temporary remedies or inconsistent rulings. *See* Verified Complaint ¶ 26; *see also Zupancic*, 58 Ohio St.3d at 134, 568 N.E.2d 1206 (“[T]he alternative remedy would not be as complete as a writ of mandamus.”). As a result, some healthcare providers could be shielded from S.B. 23’s enforcement, while others may face devastating consequences, including criminal fines, revocation of their medical license, and prison. *See* Verified Complaint ¶¶ 26, 48. Only through this Court’s intervention will all Ohioans’ fundamental rights be secure.

Therefore, Relators are likely to succeed on the merits of their Verified Complaint.

B. Enforcement of S.B. 23 Is Causing And Will Continue To Cause Devastating Irreparable Harm Absent Emergency Relief.

This Court has long held that emergency relief is warranted when there is an imminent risk of irreparable harm. *See, e.g., Ruehlman*, 153 Ohio St.3d 1465, 2018-Ohio-3407, 106 N.E.3d 63 (granting emergency stay of enforcement of temporary restraining order); *Franklin Cty. Children’s Servs.*, 142 Ohio St.3d 1435, 2015-Ohio-1566, 29 N.E.3d 992 (Table) (granting emergency stay of destruction of documents in mandamus action); *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, 126 Ohio St.3d 1536, 2010-Ohio-3840, 931 N.E.2d 1099 (Table) (granting motion for emergency stay of execution of monetary judgment against relators); *see also State ex rel. Stewart v. Ohio Local Govt. Innovation Council*, 142 Ohio St.3d 1420, 2015-Ohio-1353, 28 N.E.3d 120 (Table) (ordering *sua sponte* a stay that prohibits respondents from “taking any action to award or disburse money” at issue until the resolution of mandamus claim); *State ex rel. Gaylor, Inc. v. Goodenow*, 124 Ohio St.3d 1511, 2010-Ohio-919, 923 N.E.2d 154 (ordering *sua sponte* that respondents are “stayed from enforcing or proceeding” on awarding a contract pending the resolution of mandamus claim). Here, the irreparable harm is not imminent or conjectural: S.B. 23 is currently in effect and is causing devastating harm to Ohioans.

Enforcement of S.B. 23 must be stayed during the Court’s consideration of the Verified Complaint and issuance of its ruling; if it is not, numerous women who are currently pregnant and need abortion care, including women who had already scheduled that care, will permanently lose the ability to exercise their fundamental right to abortion. Indeed, this is already happening. Since S.B. 23 took effect, Relators have been forced to cancel appointments for women who had scheduled abortion appointments and turn away others seeking care. *See* Affidavit of Dr. Sharon Liner in Support of Relators’ Motion for an Emergency Stay (“Liner Aff.”) ¶ 6 (“Since S.B. 23 took effect, we have had to cancel over 600 patient appointments . . . patients have still been arriving at our health center, only to be told that we cannot take care of them. Many of these patients have broken down in tears in our office.”); Affidavit of Dr. Adarsh E. Krishen in Support of Relators’ Motion for an Emergency Stay (“Krishen Aff.”) ¶ 4 (“[W]e have had to cancel the previously schedule appointments of 86 patients.”); Affidavit of Krista Mills in Support of Relators’ Motion for an Emergency Stay (“Mills Aff.”) ¶¶5-6 (“One patient, whom we had been unable to reach by phone, arrived on Saturday for an appointment to receive a medication abortion after having traveled from Columbus—approximately a two-hour drive each way. But she was 7 weeks LMP, and we detected fetal cardiac activity on the ultrasound, so she was turned away.”); Affidavit of Aeran Trick (“Trick Aff.”) ¶ 7 (“On Friday, June 24, a sixteen-year-old patient came to [Relator] WMCD for her statutorily-mandated pre-procedure appointment, accompanied by her mother. . . . During her appointment, our medical staff determined that she was 5 weeks and 5 days LMP with fetal heart tones. The patient was scheduled to return for a medication abortion on Tuesday, June 28. However, hours after she left the clinic, SB 23 went into effect. I had to call this patient to explain that she can no longer legally obtain an abortion in Ohio. She was devastated by this news.”).

At several Relator facilities, women have “threaten[ed] to commit suicide” after being denied abortion care. Liner Aff. ¶ 10; Mills Aff. ¶ 9 (“Numerous people, after being told that we couldn’t help them, have mentioned considering suicide; one young patient, who was turned away at 14 weeks LMP, is even on a 24 hour watch in the hospital because she tried to end her own life.”). Several women have even indicated that they would attempt dangerous methods for self-inducing abortions after being denied one by a health center. Liner Aff. ¶ 10 (“[A] patient stated that she would attempt to terminate her pregnancy by drinking bleach. Another asked how much Vitamin C she would need to take to terminate her pregnancy.”). One woman with stage III melanoma was denied cancer treatment by her physicians until she receives an abortion—which she cannot do in Ohio now that S.B. 23 is in effect. Trick Aff. ¶ 6. When the patient learned she could not receive an abortion in Ohio, she “broke down and cried while multiple staff members...attempted to console her.” *Id.* For many of these women, leaving the state to get an abortion poses substantial—if not insurmountable—obstacles. *See* Liner Aff. ¶ 12 (one woman stated that “the only time she can go to a medical appointment is when her children are in day care, and she needs to pick them up by 3:00 pm. She asked, ‘How am I supposed to get out of the state?’”); Trick Aff. ¶ 3 (“However, some patients have reported that they are unable to travel out of state for abortion care. Moreover, about ten of our previously scheduled patients are already too far along in their pregnancy even to obtain an abortion in Indiana, where abortion is available only up to 13 weeks and 6 days LMP.”); Krishen Aff. ¶¶ 5-6 (“[O]ne patient who was experiencing homelessness and between shelters...began to experience panic and stress and was so overwhelmed that crisis intervention was required because she did not see how she would be able to travel out of state.”).

It is well-established that violations of constitutional rights are in and of themselves an irreparable harm. *See Magda v. Ohio Elections Comm.*, 2016-Ohio-5043, 58 N.E.3d 1188, ¶ 38 (10th Dist.), citing *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir.2001) (“A finding that a constitutional right has been threatened or impaired mandates a finding of irreparable injury.”); *see also Lamar Advantage GP Co., LLC v. City of Cincinnati*, 114 N.E.3d 805, 829 (C.P. 2018), quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) (“[T]he loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury.”); *United Auto Workers, Local Union 1112 v. Philomena*, 121 Ohio App.3d 760, 781, 700 N.E.2d 936 (10th Dist.1998) (“Loss of the constitutional rights of speech and assembly for a minimal time results in irreparable harm.”).

In addition to denying Relators’ patients their fundamental rights, S.B. 23 gives rise to numerous other material harms. *See Verified Complaint* ¶¶ 62-84. Being forced to carry a pregnancy to term carries significant risks to a woman’s physical health. *See id.* ¶¶ 67, 69-73. The limited exceptions to S.B. 23, which allow an abortion only to prevent the “death of the pregnant woman” or the “serious risk of the substantial and irreversible impairment of a major bodily function,” do not adequately address these concerns. *See* 2019 Am.Sub.S.B. No. 23, Section 1, amending R.C. 2919.195(A). In addition to these physical harms, denying women the right to abortion can result in irreparable economic, emotional, and psychological harms. *See id.* ¶¶ 74-84. Courts in other states have recognized the imminent and irreparable harms that women will suffer absent emergency relief and have issued emergency relief similar to that requested here. *See June Medical Services, LLC v. Landry*, Civ. Dist. Ct. Parish of Orleans, La. No. 22-5633 (June 27, 2022); Martin Pengelly and Samira Asma-Sadeque, *Louisiana judge blocks abortion ban amid uproar after Roe v Wade ruling*, *The Guardian*, June 27, 2022,

<https://www.theguardian.com/us-news/2022/jun/27/louisiana-judge-abortion-ban-roe-v-wade-supreme-court> (stating that courts in Louisiana and Utah have blocked their states' abortion bans from going into effect to allow time for the courts to hear challenges to the laws).

Absent action from this Court, the near total ban on abortion imposed by S.B. 23 will continue to have a devastating impact on the lives of women who seek abortions in Ohio. A stay of S.B. 23 from this Court while the merits of Relators' Verified Complaint are pending is necessary to prevent the grave, irreparable harms that will result from S.B. 23's enforcement.

IV. CONCLUSION

For all of the reasons stated above, an emergency stay is essential to preserve the constitutional rights and health of Ohioans. Relators respectfully ask this Court to return to the status quo that has been in place for decades in Ohio, permitting Ohioans to access safe, legal abortion care until 22 weeks LMP, and stay enforcement of S.B. 23 while it considers the Verified Complaint. Additionally, in light of the imminent, irreparable harms to women in Ohio, Relators respectfully ask this Court to order that Respondents file any response to this emergency motion by no later than 3 p.m. Eastern Standard Time June 29, 2022.

Date: June 29, 2022

Respectfully submitted,

/s/ Freda J. Levenson

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Counsel for Relators

IN THE SUPREME COURT OF OHIO

STATE ex rel. :
PRETERM-CLEVELAND, *et al.*, :
 :
 Relators, :
 : Case No. _____
v. :
 : Original Action in Mandamus
DAVID YOST, :
Ohio Attorney General, *et al.*, :
 :
 Respondents. :
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 :

AFFIDAVIT OF DR. SHARON LINER IN SUPPORT OF RELATORS'
MOTION FOR AN EMERGENCY STAY

I, Dr. Sharon Liner, a relator in this action, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge:

1. I am a board-certified family physician with 19 years of experience in women's health. I am licensed to practice medicine in the State of Ohio.
2. I am the Medical Director of Planned Parenthood Southwest Ohio Region ("PPSWO"), also a Relator in this case. I am also PPSWO's Director of Surgical Services, a position I have held for nearly 17 years. I have worked as a physician for PPSWO since 2004. Throughout that time, I have provided sexual and reproductive health care, including abortion, to our patients.
3. Until Friday June 24, 2022, when S.B. 23 took effect, PPSWO provided procedural abortions through 21 weeks 6 days from the first day of a patient's last menstrual period

("LMP") and medication abortion through 10 weeks LMP. PPSWO is now able to provide abortion only to approximately 6 weeks LMP, when embryonic cardiac activity is generally detectable. For some patients, embryonic cardiac activity is detectable even earlier.

4. In my role at PPSWO, I am familiar with the operational and schedule changes we have had to make over the past few days since S.B. 23 took effect, and the impacts of S.B. 23 on our patients.
5. S.B. 23 taking effect has caused mass confusion and panic. On Friday June 24, 2022, the day S.B. 23 took effect, PPSWO received more than double the number of phone calls we receive on a typical Friday. On Friday June 17, 2022 we received 229 calls. On Friday June 24, 2022 we received 509 calls.
6. Since S.B. 23 took effect, we have had to cancel over 600 patient appointments. We have tried our best to reach each patient via phone or via our patient portal, but we have not been able to contact everyone, and patients have still been arriving at our health center, only to be told that we cannot take care of them. Many of these patients have broken down in tears in our office.
7. Our patients are attempting to find providers out of state with appointment availability, but with the number abortion patients in Ohio who now need to travel, out-of-state providers are quickly becoming backed up. I am concerned that our patients will be delayed in getting care out of state and, while it is still very safe, the risk of complications of abortion does increase as gestational age increases. Other patients may be pushed so late in pregnancy that they are not able to obtain an abortion at all and will be forced to carry unwanted pregnancies to term.

8. Our patients have been devastated when we have informed them that S.B. 23 has taken effect and that we cannot provide them with the care they need. Patients who thought they were early enough in pregnancy to get care in state have sobbed uncontrollably when we have detected embryonic cardiac activity.
9. Other patients have been extremely angry. One was slamming tables and doors in our office.
10. We have had at least 3 patients threaten to commit suicide. Another patient stated that she would attempt to terminate her pregnancy by drinking bleach. Another asked how much Vitamin C she would need to take to terminate her pregnancy.
11. One 20-year-old student stated that she lives with her parents and she did not have a way to get out of town for care without her parents knowing. She was terrified her parents would cut her off financially, she would have nowhere to live, and she would not be able to continue her education.
12. Another patient was very upset and explained that she could not travel for care because of her children. She stated the only time she can go to a medical appointment is when her children are in day care, and she needs to pick them up by 3:00 pm. She asked, "How am I supposed to get out of the state?"
13. These are only some examples of our patients' experiences. The past few days have been horrendous for our patients, and this will continue to be the case as long as S.B. 23 remains in effect. We will continue to have to turn away patients, who will have their care delayed by the need to travel, or who will not be able to access abortion at all and will be

forced to carry pregnancies to term against their will with devastating consequences for their lives.

The undersigned hereby affirms that the statements made in the foregoing affidavit are true, under penalty of perjury.



Sharon Liner, M.D.
Planned Parenthood of Southwest Ohio

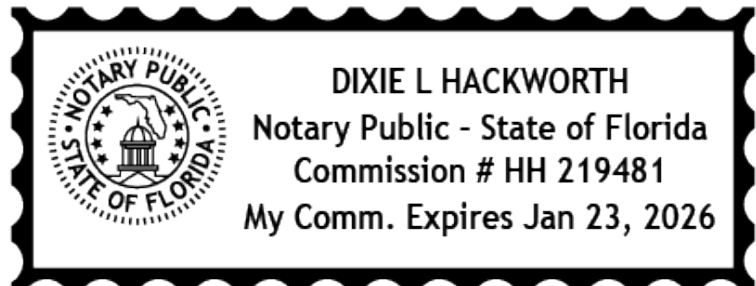
State of Florida
County of Lee

Sworn to and subscribed before me this 28th day of June, 2022.



Notary Public
Dixie L. Hackworth, Remote Online Notary

Signer(s) Sharon Liner, produced, Ohio DL, as identification, along with multi-factor KBA authentication and was notarized online using audio/video recording.



IN THE SUPREME COURT OF OHIO

STATE ex rel.	:	:
PRETERM-CLEVELAND, <i>et al.</i> ,	:	
	:	
<i>Relators,</i>	:	
	:	Case No. _____
v.	:	
	:	Original Action in Mandamus
DAVID YOST,	:	
Ohio Attorney General, <i>et al.</i> ,	:	
	:	
<i>Respondents.</i>	:	
	:	
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**AFFIDAVIT OF DR. ADARSH E. KRISHEN IN SUPPORT OF RELATORS’
MOTION FOR AN EMERGENCY STAY**

I, Dr. Adarsh E. Krishen, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge:

1. I am a board-certified physician with over 30 years of experience in family medicine. I am licensed to practice medicine in the state of Ohio. Since 2017, I have been the Chief Medical Officer of Planned Parenthood of Greater Ohio (“PPGOH”), a Relator in this case.
2. Before S.B. 23 took effect on Friday, June 24, 2022, PPGOH provided both procedural and medication abortions at our ambulatory surgical facilities (“ASF”) in East Columbus and Bedford Heights. We provided procedural abortions at both locations up to 19 weeks 6 days from the first day of a patient’s last menstrual period (“LMP”), and we provided medication abortions through 10 weeks LMP. Since S.B. 23 took effect, we are able to provide abortions to only approximately 6 weeks LMP.

3. As PPGOH's Chief Medical Officer, I am familiar with the impacts S.B. 23 has had on our operations and our patients.
4. From the time S.B. 23 took effect to Monday June 27, 2022, we have had to cancel the previously scheduled appointments of 86 patients, and we will continue to have to turn patients away as long as the law remains in force. We have attempted to contact all patients, but we have not been able to reach some of them before they arrive at the health center. This means that we have then had to have very painful conversations when they arrived, letting them know that we cannot provide the care they need.
5. Most of these patients are attempting to access care in Michigan or Pennsylvania. Others are considering trying to access care in Illinois, Indiana, New York, or even Washington, D.C. However, out-of-state providers are experiencing extremely high demand and long wait times. For example, providers in the Pittsburgh area had waiting lists of over 300 patients by Saturday. One patient who called a Pittsburgh clinic was told they are full and no longer accepting patients. Even if patients are able to access an appointment, many are having difficulty scheduling to allow time to arrange for travel, child care, and time off work, as well as to accommodate a support person's schedule.
6. S.B. 23's impact on our patients has been horrific. We had one patient who was experiencing homelessness and between shelters. When we informed her of the change in the law, she began to experience panic and stress and was so overwhelmed that crisis intervention was required because she did not see how she would be able to travel out of state given the barriers she is experiencing in her life and the distance she would have to travel.

7. Another patient had traveled to Ohio from Texas, where abortion has been banned after approximately 6 weeks LMP since September. She had already had her initial pre-abortion appointment here at PPGOH on June 22, and on June 24, before she was able to return for her abortion, S.B. 23 went into effect. We had to inform her that she would no longer be able to access care here. This patient is experiencing extreme stress, frustration, and concern that if she seeks care in yet another state this could happen again.
8. These are only two examples of the devastating circumstances our patients are in. I know that S.B. 23 is already harming, and will continue to harm, PPGOH's patients by delaying their access to care, if they are fortunate enough to find an appointment out of state, or by forcing them to carry unwanted pregnancies to term.

The undersigned hereby affirms that the statements made in the foregoing affidavit are true, under penalty of perjury.

Adarsh E. Krishen

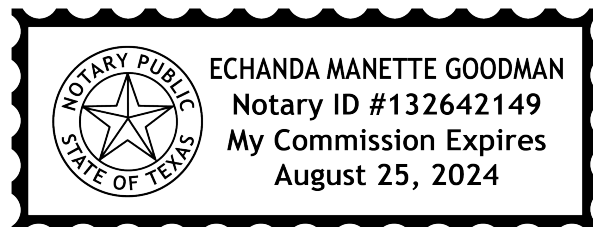
Adarsh E. Krishen, M.D.

Adarsh E. Krishen who produced Ohio drivers license as identification

Sworn to and subscribed before me this 28th day of June, 2022.

E'Chanda Manette Goodman

Notary Public
Remote Online Notary Public
State of Texas, Jefferson County



KBA online using audio video communication



K. Mills Affidavit.pdf

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E-Signature Summary

E-Signature 1: Krista Leighanne Mills (KLM)

June 28, 2022 16:50:21 -8:00 [DAB01E97DFEB] [75.44.94.184]
nellibears@gmail.com (Principal)

E-Signature Notary: Theresa M Sabo (TMS)

June 28, 2022 16:50:21 -8:00 [B7A3820C7490] [65.60.211.87]
tess.sabo@gmail.com

I, Theresa M Sabo, did witness the participants named above electronically sign this document.



IN THE SUPREME COURT OF OHIO

STATE ex. rel. PRETERM-CLEVELAND, :
et al., :

Relators, :

v. :

DAVID YOST, :
Ohio Attorney General, *et al.*, :

Respondents. :

Case No. _____

Original Action in Mandamus

AFFIDAVIT OF KRISTA MILLS IN SUPPORT OF RELATORS’ MOTION FOR AN EMERGENCY STAY

I, Krista Mills, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge:

1. I am a Medical Assistant employed by Northeast Ohio Women’s Center (“NEOWC”), a Relator in the above-captioned case. Until June 24, 2022, NEOWC provided medication abortion through 70 days (or 10 weeks) of pregnancy, as measured from the first day of a patient’s last menstrual period (“LMP”), and procedural abortion through 16 weeks and 6 days LMP.
2. I submit this affidavit in support of Relators’ Motion for an Emergency Stay. I am over the age of eighteen, I am competent to testify, and I make this affidavit based on personal knowledge.
3. I am aware that NEOWC is a plaintiff in a federal lawsuit challenging Ohio’s S.B. 23, which bans abortion after cardiac activity is detected—typically around six weeks after a

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patient's last menstrual period ("LMP"), and sometimes as early as five weeks LMP. Because that law was blocked by a federal court in 2019 after its passage, before it was able to take effect, it did not affect NEOWC's patients until last Friday.

4. I and other members of the NEOWC staff were informed on the early evening of Friday, June 24, 2022 that the judge in our federal lawsuit had lifted the injunction that had been in place since 2019 and allowed S.B. 23 to go into effect. We immediately began calling patients who had been scheduled for abortion procedures on Saturday, telling them about the law and letting them know that they should not come in if they were later than 6 weeks LMP.

5. The impact of S.B. 23 on our patients has been devastating. For example, on Friday we had seen a fifteen-year-old patient, accompanied by a parent, who was approximately fourteen weeks LMP for her first appointment, at which she received an ultrasound and went through the informed-consent process, as required by Ohio law. She had planned to come back for her abortion, but, because of S.B. 23, we had to inform her that we could no longer help her and that if she still wanted an abortion she would have to travel out of state.

6. Many of our patients broke down in tears, and even sobbed, when they learned that they could no longer receive an abortion. One patient, whom we had been unable to reach by phone, arrived on Saturday for an appointment to receive a medication abortion after having traveled from Columbus—approximately a two-hour drive each way. But she was 7 weeks LMP, and we detected fetal cardiac activity on the ultrasound, so she was turned away. This patient, too, was extremely upset and began crying before she left the clinic.

7. We have started telling patients who call for an appointment that they shouldn't even come in for an initial appointment if their last period was more than six weeks ago. Many patients who are past six weeks LMP have still been insisting on making appointments, because



they hope that there will be no cardiac activity on the ultrasound. Heartbreakingly, we almost always have to send those patients away.

8. One patient even expressed feeling extremely rushed in the decision-making process and said that wished she had more time to reflect, but that she was concerned that she would not be able to have the choice whether to terminate her pregnancy if she waited any longer to make an appointment.

9. Numerous people, after being told that we couldn't help them, have mentioned considering suicide; one young patient, who was turned away at 14 weeks LMP, is even on a 24 hour watch in the hospital because she tried to end her own life.

10. In all, we had to turn away approximately 27 patients who had already scheduled appointments. I am not sure whether these patients that we have turned away will be able to ultimately access the care that they seek. Some have indicated that they intend to travel to other states for abortion care. However, many of our patients are low-income, and it is extremely difficult for them to arrange child care, time off work, transportation, and payment, even to attend a medical appointment near where they live. I can only imagine how difficult it will be for those patients to make the necessary arrangements to travel out of state for abortion care. Moreover, I understand that many clinics in nearby states are already facing difficulty accommodating all the patients seeking care from Ohio and other states that have banned or severely restricted abortion. Thus, based on my experience and my knowledge of our patient population – I believe many of them will be unable to travel out of state to access timely care, and either be forced to carry to term against their will or attempt to end their own pregnancies outside the medical system.

FURTHER AFFIANT SAYETH NAUGHT.



Krista Leighanne Mills
Signed on 2022/06/28 16:50:21 -8:00

Krista Mills

State of Ohio

County of Franklin

06/28/2022

Sworn to and subscribed before me this _____ day of June, 2022.

(Seal)

Theresa M Sabo
Signed on 2022/06/28 16:50:21 -8:00

Notary Public



Notarial act performed by audio-visual communication





A. Trick Affidavit.pdf

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E-Signature Summary

E-Signature 1: Aeran M. Trick (AMT)

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 aerant@gmail.com (Principal) (ID Verified)

E-Signature Notary: Theresa M Sabo (TMS)

June 28, 2022 13:51:14 -8:00 [CEC39904BF6B] [65.60.211.87]
 tess.sabo@gmail.com

I, Theresa M Sabo, did witness the participants named above electronically sign this document.



IN THE SUPREME COURT OF OHIO

PRETERM-CLEVELAND, <i>et al.</i> ,	:	
	:	
<i>Relators,</i>	:	
	:	Case No. _____
v.	:	
	:	Original Action in Mandamus
DAVID YOST,	:	
Ohio Attorney General, <i>et al.</i> ,	:	
	:	
<i>Respondents.</i>	:	
	:	

AFFIDAVIT OF AERAN TRICK

I, Aeran Trick, LPN, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge:

1. I am the Operations Manager for Women’s Med Center Dayton (“WMCD”) as well as our sister clinic, Women’s Med Indianapolis. I have been employed by WMCD for 20 years. As Operations Manager at WMCD, I oversee clinic operations, training and supervision of clinic personnel, clinic security, and patient relationship management.
2. Before Senate Bill 23 (“SB 23”) went into effect on Friday, June 24, 2022, WMCD provided medication abortions up to 10 weeks from the first day of a person’s last menstrual period (“LMP”), and procedural abortions up to 21 weeks and 6 days LMP.
3. At the time that SB 23 went into effect on Friday, June 24, WMCD had 74 patients who had already come in for their statutorily-mandated pre-procedure appointment and were scheduled to return for their abortion procedure over the next two weeks. My staff and I have had to call most of these patients to tell them that we are no longer able to perform their abortion at our Dayton clinic because embryonic cardiac activity was detected

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during their first appointment. Some of these patients may be able to seek care in Indiana, at our clinic or another clinic. However, a number of patients have told us that they are unable to travel out of state for abortion care. Moreover, about ten of our previously scheduled patients are already too far along in their pregnancy to obtain an abortion in Indiana, where our Indianapolis clinic only provides up to 13 weeks and 6 days LMP, so we provided them with information regarding clinics in Illinois.

4. In addition to these patients, when SB 23 took effect on Friday evening, WMCD had 200 patients scheduled for their first statutorily-mandated pre-procedure appointment. Given the extremely limited time period during which abortions can now be performed in Ohio under SB 23, we rescheduled most of these initial appointments for Monday, June 27 through Wednesday June 29. We anticipate, however, that the majority of the rescheduled patients will not be able to receive abortion care in Ohio. The patients who were already past 14 weeks LMP were informed that we were canceling their appointments and were given information regarding clinics in Illinois.
5. We have continued to receive calls from pregnant people seeking abortions at our Dayton clinic, but because we are only accepting patient appointments up to 6 weeks LMP we have had to turn most of them away or advise them to seek care out of state.
6. I have personally witnessed the devastating harms that SB 23 is causing our patients and pregnant Ohioans desperately seeking abortion care. For example, on Monday, June 27, WMD saw a 37-year-old woman for her statutorily-mandated pre-procedure appointment. This patient has stage III melanoma and was told by her doctors that they cannot provide the treatment she needs until her pregnancy is terminated. Because our medical staff detected embryonic cardiac activity during her examination, she will have to go to



Indiana for her procedure. Upon learning that she would need to travel out of state to have her abortion, the patient broke down and cried inconsolably despite the attempts of multiple staff members, including myself, to comfort her.

7. On Friday, June 24, a sixteen-year-old patient came to WMCD for her statutorily-mandated pre-procedure appointment, accompanied by her mother. This patient has a history of anxiety, depression, and drug addiction. She said that she was working hard to move forward with her life, and felt that having an abortion was critical to doing so. During her appointment, our medical staff determined that she was 5 weeks and 5 days LMP with fetal heart tones. The patient was scheduled to return for a medication abortion on Tuesday, June 28. However, hours after she left the clinic, SB 23 went into effect. I had to call this patient to explain that she can no longer legally obtain an abortion in Ohio. She was devastated by this news. Although she is now planning to travel to our clinic in Indianapolis for her procedure, she is required by Indiana law to make two separate trips to the health center.
8. On Monday, June 27, I spoke with an Ohio woman who had been calling clinics all weekend, attempting without success to find abortion care in a location that she could afford to travel to. She is 18 weeks pregnant and recently learned that her fetus has genetic abnormalities. We had to turn the woman away because she is too far along in her pregnancy to have an abortion in Ohio under SB 23, and our Indianapolis clinic only provides up to 13 weeks and 6 days LMP.
9. On Sunday, June 26, our office manager spoke with the mother of a sixteen-year-old patient who had completed her statutorily-mandated pre-procedure appointment at our clinic on Wednesday, June 22, and was scheduled to return for a medication abortion on



Wednesday, June 29. The girl has been experiencing severe vomiting and has lost more than 20 pounds. We had to call and cancel her procedure at WMCD because it was too late for her to receive an abortion in Ohio. The mother was distraught over what would happen to her daughter if she was unable to obtain an abortion. As a result of car problems, the mother was forced to rent a car to transport her daughter to Indianapolis for her procedure, because she was scared her car would break down during the trip. They will need to make two separate trips to the Indianapolis health center as required by Indiana law.

10. The above-described experiences are just a few examples of the devastating consequences that SB 23 has already had on our patients. Patients have reported barriers to seeking an abortion out of state, such as transportation issues or needing to obtain additional funds to cover the additional cost of travel. I fear that the many pregnant people in need of our services who we are required to turn away under SB 23 will not be able to access abortion care out of state, and will be forced to continue their pregnancies.

The undersigned hereby affirms that the statements made in the foregoing affidavit are true, under penalty of perjury.

Aeran M. Trick

Signed on 2022/06/28 13:51:14 -0500

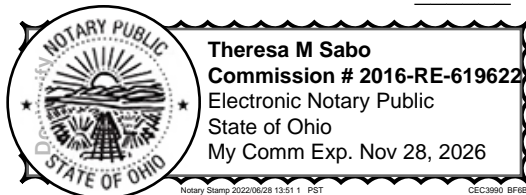
Aeran Trick, LPN
Women's Med Dayton

State of Ohio

County of Franklin

Sworn to and subscribed before me this 06/28/2022 day of June, 2022.

(Seal)



Theresa M Sabo

Signed on 2022/06/28 13:51:14 -0500

Notary Public

Notarial act performed by audio-visual communication

