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

**PRETERM-CLEVELAND**
C/O B. Jessie Hill
ACLU of Ohio
4506 Chester Avenue
Cleveland, OH 44103

**WOMEN'S MED GROUP PROFESSIONAL CORPORATION**
C/O B. Jessie Hill
ACLU of Ohio
4506 Chester Avenue
Cleveland, OH 44103

**CATHERINE ROMANOS, M.D.**
C/O B. Jessie Hill
ACLU of Ohio
4506 Chester Avenue
Cleveland, OH 44103

**PLANNED PARENTHOOD SOUTHWEST OHIO REGION**
C/O Vanessa Pai-Thompson
123 William Street, 11th Floor
New York, NY 10038

**PLANNED PARENTHOOD GREATER OHIO**
C/O Vanessa Pai-Thompson
123 William Street, 11th Floor
New York, NY 10038

**NORTHEAST OHIO WOMEN'S CENTER, LLC, d/b/a TOLEDO WOMEN'S CENTER**
C/O B. Jessie Hill
ACLU of Ohio
4506 Chester Avenue
Cleveland, OH 44103

**Plaintiffs,**

v.

**Case No. _____**

**Judge _____**

**COMPLAINT**

**DAVE YOST**
**Attorney General of Ohio**
30 E. Broad Street, 14th Floor
Columbus, OH 43215

**KIM G. ROTHERMEL, M.D.**
**Secretary, State Medical Board of Ohio**
30 East Broad Street, 3rd Floor
Columbus, OH 43215

**HARISH KAKARALA, M.D.**
**Supervising Member, State Medical Board of Ohio**
30 East Broad Street, 3rd Floor
Columbus, OH 43215

**BRUCE T. VANDERHOFF, M.D., MBA**
**Director, Ohio Department of Health**
246 N. High Street
Columbus, OH 43215

**MICHAEL C. O'MALLEY**
**Cuyahoga County Prosecutor**
Justice Center Bld. Floor 8th and 9th
1200 Ontario Street
Cleveland, OH 44113

**G. GARY TYACK**
**Franklin County Prosecutor**
373 S. High Street, 14th Floor
Columbus, OH 43215

**MELISSA A. POWERS**
**Hamilton County Prosecutor**
230 E. Ninth Street, Suite 4000
Cincinnati, OH 45202

**JULIA R. BATES**
**Lucas County Prosecutor**
700 Adams Street, Suite 250
Toledo, OH 43604

**MATHIAS HECK, JR.**
**Montgomery County Prosecutor**
301 W. Third St., 5th Floor
P.O. Box 972

Dayton, OH 45402

**ELLIOT KOLKOVICH**
**Summit County Prosecutor**
53 University Ave., #6
Akron, OH 44308

**Defendants.**

## INTRODUCTION

1. In November 2023, Ohioans voted overwhelmingly to enshrine the right to abortion in the Ohio Constitution, which now directs that the State "shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against" a person voluntarily exercising this right or an individual or entity helping them do so. Ohio Const. Article I, Section 22 ("The Right to Reproductive Freedom with Protections for Health and Safety").

2. Plaintiffs bring this challenge to the Ohio Revised Code 2317.56 and 2919.192–2919.194 (collectively, the "Challenged Requirements" or the "Requirements") (attached hereto as Exhibit A), that do precisely what the Ohio Constitution forbids: burden, penalize, interfere with, and, in some cases, prohibit access to abortion, and discriminate against abortion patients and providers. The Requirements also undermine the provision of ethical medical care, the physician-patient relationship, and patient autonomy.

3. The Challenged Requirements can be distilled to three fundamental mandates. They impose a delay of at least 24 hours—which, in practice, is often much longer—on people seeking abortion care in Ohio (the "Waiting Period Requirement"). They also force abortion patients to attend an additional and unnecessary in-person appointment before receiving care (the "In-Person Requirement"). And they compel abortion providers to force upon their patients certain state-mandated information that is not only irrelevant to the patient's informed consent process but may

be harmful, distressing, stigmatizing, and, in some cases, even misleading (the "State Information Requirement").

4. The Challenged Requirements provide no health benefit whatsoever to patients and lack any medical justification. To the contrary, imposing an unnecessary delay on patients' receipt of time-sensitive abortion care risks harm to patients' health and well-being and subjects them to increased medical risk.

5. The Challenged Requirements also undermine patient autonomy; perpetuate harmful assumptions about women's ability to make reasoned, thoughtful decisions; and manipulate abortion patients in a manner intended to discourage them from terminating their pregnancies.

6. Additionally, the Challenged Requirements prevent clinicians from tailoring their provision of information and medical care to individual patients based on their specific circumstances and needs, in contravention of the dictates of medical ethics and best medical practice according to the standard of care.

7. Moreover, the Challenged Requirements discriminate against abortion providers and patients by singling out abortion as the only time-sensitive medical intervention subject to a waiting period under Ohio law; the only medical intervention that requires a separate, in-person visit for informed consent; and the only medical intervention for which providers are prohibited from using their best medical judgment as to which information to convey to a patient based on that individual patient's circumstances and needs.

8. The Requirements constitute blatant State interference with individuals' autonomous decision-making about abortion and medical providers' exercise of their best medical

judgment in providing abortion, in direct violation of Ohioans' constitutional right to make and carry out the decision to have an abortion.

9. Accordingly, Plaintiffs, who are abortion providers in Ohio, seek preliminary and permanent injunctive relief blocking enforcement of the Challenged Requirements, and a declaratory judgment that the Challenged Requirements violate Article I, Section 22 of the Ohio Constitution.

## PARTIES

### A. Plaintiffs

10. Plaintiff Preterm-Cleveland ("Preterm") is a nonprofit corporation organized under the laws of the State of Ohio that has operated a reproductive health care clinic in Cleveland, Ohio since 1974. Preterm provides a range of reproductive and sexual health care services, including abortion. Preterm provides medication abortions through 9 weeks, 6 days, as measured from the first day of a patient's last menstrual period ("LMP"), and procedural abortions through 21 weeks, 6 days LMP. Providers at Preterm are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they provide care in violation of the Challenged Requirements. Preterm sues on behalf of itself; its current and future physicians, staff, officers, and agents; and its patients.

11. Plaintiff Women's Med Group Professional Corporation ("WMGPC") is a corporation organized under the laws of the State of Ohio that owns and operates Women's Med Center Dayton ("WMCD") in Kettering, Ohio. WMGPC and its predecessor organizations have been providing abortions in the Dayton area since 1975. WMCD provides medication abortions up to 10 weeks LMP and procedural abortions through 21 weeks, 6 days LMP. Providers at WMCD are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits

if they provide care in violation of the Challenged Requirements. WMGPC sues on behalf of itself; its current and future physicians, staff, officers, and agents; and its patients.

12. Plaintiff Catherine Romanos, M.D., is a board-certified family medicine physician licensed to practice medicine in Ohio. Dr. Romanos is employed by WMCD, where she oversees the care of patients at the clinic and provides medication abortions up to 10 weeks LMP and procedural abortions through 21 weeks, 6 days LMP. As a provider at WMCD, Dr. Romanos is threatened with criminal penalties, loss of her medical license, civil forfeiture, and civil suits if she provides care in violation of the Challenged Requirements. Dr. Romanos sues on behalf of herself and her patients.

13. Plaintiff Planned Parenthood Southwest Ohio Region ("PPSWO") is a nonprofit corporation organized under the laws of the State of Ohio. PPSWO and its predecessor organizations have provided a broad range of high-quality reproductive health care to patients in southwest Ohio since 1929. PPSWO provides medication abortions up to 10 weeks LMP and procedural abortions through 21 weeks, 6 days LMP at its Cincinnati Surgical Center. Providers at PPSWO are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they provide care in violation of the Challenged Requirements. PPSWO sues on behalf of itself; its current and future physicians, staff, officers, and agents; and its patients.

14. Plaintiff Planned Parenthood of Greater Ohio ("PPGOH") is a nonprofit corporation organized under the laws of the State of Ohio. PPGOH and its predecessor organizations have provided a broad range of high-quality reproductive health care to patients in Ohio for decades. PPGOH serves patients in northern, eastern, and central Ohio. PPGOH provides medication abortion up to 10 weeks LMP and procedural abortions through 19 weeks, 6 days LMP at its East Columbus and Bedford Heights Surgical Centers. Providers at PPGOH are threatened

with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they provide care in violation of the Challenged Requirements. PPGOH sues on behalf of itself; its current and future physicians, staff, officers, and agents; and its patients.

15. Plaintiff Northeast Ohio Women's Center, LLC ("NEOWC") is a corporation organized under the laws of the State of Ohio that operates health care clinics and provides abortion care in Shaker Heights, Ohio and in Cuyahoga Falls, Ohio. NEOWC also owns and operates the Toledo Women's Center ("TWC") in Toledo, Ohio. NEOWC provides medication abortions through 9 weeks, 6 days LMP and procedural abortions up to 17 weeks LMP at its Cuyahoga Falls location at all three locations. Providers at NEOWC are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if they provide care in violation of the Challenged Requirements. NEOWC sues on behalf of itself; its current and future physicians, staff, officers, and agents; and its patients.

**B. Defendants**

16. Defendant Dave Yost is the Attorney General of the State of Ohio. As Attorney General, Defendant Yost is responsible for the enforcement of Ohio laws, including Ohio's Challenged Requirements, and is also charged with commencing and prosecuting civil forfeiture when directed to do so by the State Medical Board. He is sued in his official capacity.

17. Defendant Kim G. Rothermel, M.D., is the Secretary of the State Medical Board of Ohio, which is charged with enforcing the physician licensing and civil penalties contained in the Challenged Requirements. She is sued in her official capacity.

18. Defendant Harish Kakarala, M.D., is the Supervising Member of the State Medical Board of Ohio, which is charged with enforcing the physician licensing and civil penalties contained in the Challenged Requirements. He is sued in his official capacity.

19. Defendant Bruce T. Vanderhoff, M.D., M.B.A., is the Director of the Ohio Department of Health ("ODH"), which is responsible for, *inter alia*, promulgating materials that must be provided to each patient under the Challenged Requirements and reporting providers' non-compliance with the Challenged Requirements to the State Medical Board. He is sued in his official capacity.

20. Defendant Michael C. O'Malley is the Cuyahoga County Prosecutor. He is responsible for the enforcement of the criminal laws, including the criminal provisions contained in the Challenged Requirements, in Cuyahoga County, where Preterm's clinic, NEOWC's Shaker Heights clinic, and PPGOH's Bedford Heights clinic are located. He is sued in his official capacity.

21. Defendant G. Gary Tyack is the Franklin County Prosecutor. He is responsible for the enforcement of the criminal laws, including the criminal provisions contained in the Challenged Requirements, in Franklin County, where PPGOH's East Columbus clinic is located. He is sued in his official capacity.

22. Defendant Melissa A. Powers is the Hamilton County Prosecutor. She is responsible for the enforcement of the criminal laws, including the criminal provisions contained in the Challenged Requirements, in Hamilton County, where PPSWO's Cincinnati clinic is located and where WMGPC is headquartered. She is sued in her official capacity.

23. Defendant Julia R. Bates is the Lucas County Prosecutor. She is responsible for the enforcement of the criminal laws, including the criminal provisions contained in the Challenged Requirements, in Lucas County, where TWC is located. She is sued in her official capacity.

24. Defendant Mathias H. Heck, Jr. is the Montgomery County Prosecutor. He is responsible for the enforcement of the criminal laws, including the criminal provisions contained

in the Challenged Requirements, in Montgomery County, where WMGPC's facility is located. He is sued in his official capacity.

25. Defendant Elliot Kolkovich is the Summit County Prosecutor. He is responsible for the enforcement of the criminal laws, including the criminal provisions contained in the Challenged Requirements, in Summit County, where NEOWC's Cuyahoga Falls facility is located. He is sued in his official capacity.

## JURISDICTION AND VENUE

26. This Court has jurisdiction over this complaint pursuant to R.C. 2721.02, 2727.02 and 2727.03.

27. Venue is proper in this Court pursuant to Civ.R. 3(C)(4), because Defendants Yost, Rothermel, Kakarala, Vanderhoff, and Tyack each have their principal office in Franklin County.

## FACTUAL ALLEGATIONS

### A. Abortion Incidence, Safety, and Methods

28. Abortion is extremely common in the United States. Approximately one in four women in this country will have had an abortion by age forty-five.

29. Two types of abortion are available in Ohio: medication abortion and procedural abortion.

30. Medication abortion involves the use of medications to terminate a pregnancy. The most common regimen involves the use of two drugs taken 24 to 48 hours apart, the combined effect of which stops the pregnancy from progressing and causes uterine contractions, thereby allowing patients to pass the contents of the uterus in a process similar to a miscarriage. In Ohio, medication abortion is legal up to 10 weeks LMP.

31. Procedural abortion[1] involves the use of aspiration (gentle suction) and/or instruments to evacuate the uterus. In Ohio, procedural abortion is legal and available up to 22 weeks LMP.

32. Legal abortion is extremely safe. Complications from both medication and procedural abortion are exceedingly rare. In the rare cases where complications do occur, they can usually be managed safely and effectively in an outpatient clinic setting, either at the time of the abortion or at a follow-up visit.

33. Abortion is far safer than carrying a pregnancy to term. In the United States, the risk of maternal death associated with childbirth is approximately 12 to 14 times higher than the risk of death associated with legal abortion. In 2018, the maternal mortality rate in Ohio was 14.1 per 100,000 live births. The maternal mortality rate is significantly higher for Black women in Ohio, where they are two-and-a-half times more likely to die from a cause related to pregnancy than white women.

34. Even for the healthiest patients, pregnancy poses extraordinary physical challenges and significant health risks. Pregnancy places significant stress on most major organs and results in profound and long-lasting physiological changes.

35. Pregnancy complications are also extremely common. Some of the more common complications include preeclampsia, gestational diabetes, and maternal cardiac disease. All of these conditions can result in serious, permanent harm to an individual's health, up to and including death.

[1] While procedural abortion is sometimes referred to as "surgical" abortion, this is a misnomer because no incision is made.

36. Moreover, pregnancy may also cause or exacerbate certain health conditions—such as hypertension, heart disease, autoimmune disorders, renal disorders, diabetes, or asthma—and people with such conditions face an even greater risk of experiencing medical complications during pregnancy.

37. People seek abortion for a wide variety of reasons. A person's decision to terminate their pregnancy is informed by diverse and deeply personal factors, such as individual values and beliefs, culture and religion, family circumstances, economic circumstances, resource access, reproductive history, and physical and mental health considerations.

38. For some, having a child can place economic and emotional strain on an individual or family that they are simply unable to bear. Approximately 75% of people seeking abortions in the United States are either poor or low-income.

39. Many abortion patients are also already parents. Nearly two-thirds of women having abortions have already given birth at least once. Individuals who are already parenting may seek an abortion because they feel they cannot adequately care for another child or because they want to prioritize the needs of their existing children. Other patients decide to terminate a pregnancy due to caretaking responsibilities for other individuals, such as elderly parents.

40. Some abortion patients simply do not want to become a parent at that point in their lives, or ever. People may choose to have an abortion to pursue career advancement, educational opportunities, or other life goals that they feel are incompatible with the responsibilities of parenting.

41. People experiencing intimate partner violence may seek abortion to escape the dangers posed by their relationships, which can be amplified by pregnancy and parenting.

42. Survivors of sexual assault or incest may choose abortion to avoid the ongoing emotional distress and trauma associated with carrying a pregnancy resulting from their assault, regain control over their bodies and reproductive choices, facilitate their healing process, and/or prevent further ties to their assailant through parenthood.

43. Some patients seek an abortion because continuing their pregnancies would pose a threat to their health or life due to pre-existing medical conditions or complications that arise during pregnancy.

44. Other patients decide to terminate their pregnancy after receiving a diagnosis of a fetal medical condition that is fatal or would cause needless suffering to the child and family.

45. Individual circumstances vary greatly, and the reasons outlined above are not exhaustive but rather examples of the diverse factors that may influence someone's decision to seek abortion. Abortion patients often base their decision on multiple interconnected factors and considerations.

46. Whatever a patient's reasons, accessing abortion is essential to their autonomy, dignity, and ability to care for themselves and their families. Forcing a person to continue a pregnancy against their will jeopardizes their physical, mental, and emotional health, as well as the stability and well-being of their family and existing children.

**B. Principles of Informed Consent**

47. Informed consent is the process by which a health care provider educates a patient about the nature and purpose, risks and benefits of, and alternatives to, a medical procedure or intervention to ensure that the patient is able to make a fully informed and voluntary decision about whether to undergo the procedure or intervention.

48. Informed consent serves the important medical ethics principle of patient autonomy by ensuring that each patient's dignity and right to self-determination is respected. Obtaining

informed consent prior to providing medical treatment is the standard of care and an ethical imperative of medical practice generally, as well as a legal requirement for all physicians practicing medicine in Ohio.

49. Medical ethics require that, when obtaining informed consent, health care providers exercise their clinical judgment to provide medically relevant and accurate information about the nature and purpose of the proposed course of treatment, its risks and benefits, and its alternatives. Medical ethics further require that health care providers tailor this dialogue to the patient's unique values and preferences, while answering any questions the patient may have.

50. The American Medical Association's ("AMA") Code of Medical Ethics, which is widely recognized as the most comprehensive ethics guide for physicians, dictates that the informed consent process should take account of a patient's individual circumstances and physicians should tailor the information they provide to the patient's needs and expectations.[2]

51. Similarly, the American College of Obstetricians and Gynecologists ("ACOG"), the nation's leading professional association of obstetricians and gynecologists, opines that "[t]he highest ethical standard for adequacy of clinical information requires that the amount and complexity of information be tailored to the desires of the individual patient and to the patient's ability to understand this information."[3]

[2] Am. Med. Ass'n, Code of Medical Ethics, *Withholding Information from Patients*, Op. No. 2.1.3, https://code-medical-ethics.ama-assn.org/ethics-opinions/withholding-information-patients (last visited Mar. 28, 2024).
[3] Am. Coll. Of Obstetricians & Gynecologists, Committee on Ethics, Op. No. 819, (February 2021) https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/02/informed-consent-and-shared-decision-making-in-obstetrics-and-gynecology (last visited Mar. 28, 2024).

### C. Statutory Framework of the Challenged Requirements

#### i. Ohio Revised Code 2317.56

52. R.C. 2317.56(B)(1) states that, at least 24 hours prior to an abortion, a physician must meet with the patient in an individual and private setting, in person, and inform the patient verbally of the nature and purpose of the abortion as well as its medical risks, the probable gestational age of the embryo or fetus, and the medical risks associated with carrying the pregnancy to term.

53. R.C. 2317.56(B)(2) further requires that the physician or their agent give the patient copies of state-produced materials concerning gestational development, family planning information, and publicly-funded support options. R.C. 2317.56(B)(2)(b). The physician or their agent must also inform the patient that these written materials "are published by the state and * * * describe the zygote, blastocyte, embryo, or fetus and list agencies that offer alternatives to abortion." R.C. 2317.56(B)(2)(c).

54. Before a patient can receive abortion care, the state requires them to certify in writing that the provider has given them all of the required materials and that all of their questions have been answered. R.C. 2317.56(B)(4)(a). The patient has to further certify that they are consenting to the procedure "voluntarily, knowingly, intelligently, and without coercion by any person" and that they are "not under the influence of any drug of abuse or alcohol." R.C. 2317.56(B)(4)(b).[4]

[4] For procedural abortions, Ohio Revised Code section 2317.56(B)(4)(c)–(d) requires the patient to sign and certify additional forms addressing disposition of the uterine contents after the procedure. *See also* R.C. 3726.03, 3726.14. However, these provisions are currently enjoined by the preliminary injunction order in *Planned Parenthood Sw. Ohio Region v. Ohio Dept. Health*, Entry Granting Pls.' Second Mot. for Prelim. Inj., Hamilton C.P. No. A 2100870 (Jan. 31, 2022). Because this provision is the subject of another lawsuit, it is not included in this challenge.

55. There is only one narrow exception to the requirements of R.C. 2317.56 for cases of medical emergency or medical necessity. Medical emergency is defined as "a condition that in the physician's good faith medical judgment, based upon the facts known to the physician at that time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create." R.C. 2317.56(A)(1), 2919.16(F). Medical necessity is defined as "a medical condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, so complicates the pregnancy that it necessitates the immediate performance or inducement of an abortion." R.C. 2317.56(A)(2).

56. Failure to comply with the requirements under R.C. 2317.56 risks severe professional and civil penalties. The state medical board may limit, revoke, or suspend a physician's medical license based on a violation of R.C. 2317.56. R.C. 4731.22(B)(23). In addition, "any person, or the representative of the estate of any person, who sustains injury, death or loss to person or property" as a result of non-compliance with R.C. 2317.56 may bring a civil action for compensatory and exemplary damages against a provider who violates R.C. 2317.56. R.C. 2317.56(G)(1).

**ii. Ohio Revised Code 2919.192, 2919.193, and 2919.194**

57. R.C. 2919.192, 2919.193, and 2919.194 also require testing for fetal or embryonic cardiac activity prior to an abortion, and—if such activity is detected—require that the patient be provided with additional state-mandated information and be forced to delay their abortion for at least 24 hours.

58. Specifically, if fetal or embryonic cardiac activity is detected, the physician must give the patient written confirmation that embryonic or fetal cardiac activity is present and provide state-mandated information about the statistical probability of carrying the pregnancy to term based on gestational age, and the patient must sign and acknowledge receipt of this information. R.C. 2919.194(A)(1)–(3). The physician must then wait at least 24 hours before providing the patient with an abortion. R.C. 2919.194(A).

59. There is only one narrow exception to these requirements for cases of medical emergency. R.C. 2919.193(B)–(C). Medical emergency is defined as "a condition that in the physician's good faith medical judgment, based upon the facts known to the physician at that time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create." R.C. 2919.193(B), 2919.16(F).

60. Failure to test for fetal or embryonic cardiac activity prior to providing an abortion as required by R.C. 2919.192 is a fifth-degree felony, punishable by up to one year in prison and a fine of up to $2,500. R.C. 2919.193, 2919.139(A), 2929.14(A)(5), and 2929.18(A)(3)(e). Failure to provide the state-mandated information and obtain the written acknowledgment at least 24 hours before an abortion when fetal or embryonic cardiac activity is detected, as required by R.C. 2919.194, is a first-degree misdemeanor on the first offense, punishable by up to 180 days incarceration and a fine of up to $1,000, and a fourth-degree felony on each subsequent offense, punishable by up to eighteen months in prison and a fine of up to $5,000. R.C. 2919.194(E), 2929.24(A)(1), 2929.28(A)(2)(a)(i), 2929.14(A)(4), and 2929.18(A)(3)(d).

61. In addition to these criminal penalties, there are severe professional and civil penalties for violating these laws. The state medical board may assess a forfeiture of up to $20,000 for each violation of R.C. 2919.192, 2919.193, and 2919.194. *See* R.C. 2919.1912(A). The state medical board may also limit, revoke, or suspend a physician's medical license for failing to comply with requirements for making and keeping medical records outlined in R.C. 2919.192 and 2919.193. R.C. 4731.22(B)(46). In addition, a patient may bring a civil action for compensatory and exemplary damages against a provider who violates the testing requirements in R.C. 2919.192. R.C. 2919.193(A)(1). A patient may also bring a civil action against a provider who violates the state-mandated information and written acknowledgment requirements in R.C. 2919.194 and recover damages in the amount of $10,000 or more. R.C. 2919.199(A)(2), (B)(1).

### D. The Challenged Requirements Violate Article I, Section 22 of the Ohio Constitution.

62. The three core mandates of the Challenged Requirements—the Waiting Period Requirement, the In-Person Requirement, and the State Information Requirement—individually and collectively burden, penalize, discriminate against, interfere with, and sometimes prohibit patients' exercise of their right to abortion, and providers' actions to assist them in doing so, without doing anything to advance patient health in accordance with widely accepted and evidence-based standards of care.

#### i. Impact of the Waiting Period Requirement on Patients and Providers

63. The Waiting Period Requirement forces patients to receive state-mandated information in person, and then wait at least 24 hours before they can obtain an abortion. This required delay for receiving time-sensitive medical care, which often ends up being much longer than 24 hours in practice, has no medical benefit for patients and only serves to push them later

into their pregnancies, increasing the risk of harm to their health and well-being as well as the cost of obtaining care.

64. While the law mandates a minimum delay of 24 hours between the initial visit and the abortion, in reality the amount of time between visits is often much longer. Administrative limitations around scheduling and staffing may push the second appointment out by more than a day, and sometimes by up to a week or more. Other practical factors also impact the timing of a patient's second appointment, such as how far the patient's pregnancy has progressed, the method of abortion they are having, and whether the care they will receive involves sedation.

65. Patients' personal circumstances can delay care even further. It is often difficult to find an available time for a second appointment when the patient can secure time off from work or school and child care. Patients are frequently forced to delay abortion care in order to amass the financial resources needed to cover transportation, child care, and/or accommodation costs associated with attending a second appointment.

66. The cost of an abortion typically increases as pregnancy progresses and the procedure becomes more complex. As a result, unnecessary delays may lead to higher total costs, which in turn could lead to further delays as patients struggle to save additional money to cover their care.

67. These compounding barriers can result in lengthy delays, which can put a preferred abortion method out of reach for a patient or push them past the legal limit for obtaining an abortion in Ohio.

68. Medication abortion is legal in Ohio only up to 10 weeks LMP, and the Waiting Period Requirement can easily push a patient past this cut-off for medication abortion, despite patient preference or medical indication. Patients may prefer medication abortion to procedural

abortion for a variety of reasons, such as the comfort and privacy of ending their pregnancy at home, it feels natural, and/or it allows the patient to be more in control of the process. Survivors of sexual assault may find medication abortion to be less traumatic and invasive than procedural abortion. For some patients, medication abortion may be safer than procedural abortion due to medical contraindications.

69. Other patients may be delayed past Ohio's abortion limit of 22 weeks LMP as a result of the Waiting Period Requirement, forcing them to travel out of state for care if they are able or to carry their pregnancy to term. For example, a patient facing a fetal diagnosis around 20 weeks LMP—a common point at which certain fetal conditions are first diagnosed—can easily be pushed past this limit due to financial and logistical barriers created and compounded by the Waiting Period Requirement.

70. Even when patients are not delayed beyond the limit for their preferred abortion method or the legal limit for abortion in Ohio, unnecessary delays to abortion care can increase patient risks and further compound barriers to abortion.

71. While abortion is extremely safe at any point in pregnancy, there is an incremental but continuous increase in the risk level and complexity of the abortion as pregnancy progresses.

72. Remaining pregnant longer than necessary can also increase health risks for patients with underlying health problems. Pregnancy can exacerbate the symptoms of diabetes, hypertension, autoimmune disorders, cardiac disease, and mental health conditions. In the long term, patients with coexisting conditions who are denied timely abortion care risk outcomes including cardiac disease, renal failure, and even stroke.

73. Mainstream medical consensus dictates that the best medical practice is to provide patients with timely abortion care without any unnecessary delays and that mandatory waiting

periods for abortion do not improve patient health. According to the National Academies of Sciences, Engineering, and Medicine (the "National Academies"), a nonprofit organization established by Congress to provide independent, objective advice on policy relating to science, engineering, and medicine, "[t]he clinical evidence * * * on the provision of safe and high-quality abortion care stands in contrast to the extensive regulatory requirements that state laws impose on the provision of abortion services," including laws that impose "waiting periods" for receiving abortion care.[5]

74. The vast majority of abortion patients are certain of their decision to terminate their pregnancy during their initial visit to an abortion clinic.

75. Plaintiffs' staff are trained to assess patient certainty and recognize signs of patient hesitancy. If a patient seems uncertain about their decision to have an abortion, they are encouraged to reschedule the appointment for a later date and take more time to think about their decision.

76. Patients often experience a range of negative emotions from frustration to despair when they are informed that they cannot obtain abortion care during their initial appointment and may need to return to the clinic on another day, despite being certain about their decision.

77. Being forced to send away patients who are certain about their decision to have an abortion and make them come back on a separate day for no legitimate medical reason is also deeply distressing for Plaintiffs.

78. Physicians have an ethical duty to act in accordance with their patients' best interests and to respect their patients' autonomy. The Waiting Period Requirement puts providers in a position of having to depart from those duties and the standard of care by denying patients

[5] Natl. Academies of Science, Eng. & Medicine, *The Safety and Quality of Abortion Care in the United States* 77 (2018), available at https://nap.nationalacademies.org/read/24950/chapter/1 (accessed Mar. 26, 2024) [hereinafter "Natl. Academies Report"]

time-sensitive care for a specified minimum period of time, thereby risking harm to patient health and well-being.

79. Many patients also blame Plaintiff providers and clinic staff for being forced to delay their care and take their frustrations out on them. This takes a heavy emotional toll on Plaintiff providers and their staff and erodes the trust and rapport that is essential to the patient-provider relationship.

80. Under Ohio law, no other medical interventions or procedures that are similarly time-sensitive are subject to a statutorily-imposed waiting period.

81. Singling out abortion for this requirement perpetuates the discriminatory view that women are not competent to render thoughtful, appropriate, moral medical decisions for themselves and their families and must instead be forced by the state to reconsider their medical decisions. The Waiting Period Requirement also reflects the patronizing stereotype that women do not think carefully about their decisions and do not understand the nature of the abortion care.

**ii. Impact of the In-Person Requirement on Patients and Providers**

82. Ohio law also mandates that abortion patients attend an unnecessary in-person appointment before receiving care. Specifically, R.C. 2317.56 requires the patient to receive certain state-mandated information in person during their first visit to an abortion provider, and R.C. 2919.192, 2919.193, and 2919.194 require the provider to test for embryonic and fetal cardiac activity—something that can only be done in person—during that initial visit as well.

83. These two mandates—collectively the "In-Person Requirement"—have no medical justification or health benefit. Under Ohio law, there is no other medical intervention for which a patient must make and attend a separate, in-person appointment with their medical provider in order to provide informed consent.

84. The In-Person Requirement reinforces and compounds the harms created by the Waiting Period Requirement, as it forces most abortion patients in Ohio to make at least two trips to the clinic, if not more.[6] Forcing most abortion patients to make at least two separate visits to the clinic for care imposes tangible burdens and costs on them and creates significant logistical barriers to accessing time-sensitive abortion care.

85. As a result of the In-Person Requirement, abortion patients who could have otherwise obtained their abortion at their first appointment but now must wait and then attend a second appointment, are forced to take more time off from work or away from school, arrange and pay for additional child care, arrange and pay for additional transportation to and from the clinic on different days, and/or find and pay for overnight accommodations near the clinic, particularly for those traveling from further distances. In many cases, patients must overcome all of these obstacles to return to the clinic simply so that their physician can hand them medication, which could have easily been provided at the initial appointment.

86. For some patients, all of the costs associated with traveling to and attending their abortion appointments may not only be doubled but tripled. For example, a patient must make three separate visits to the clinic if the patient is at a point in their pregnancy where they require overnight cervical dilation prior to a procedural abortion, making it a two-day procedure. Additionally, if embryonic or fetal cardiac activity is detected for the first time during the patient's second visit, that triggers an additional delay of at least 24 hours.

[6] A small minority of medication abortion patients in Ohio are able to obtain a medication abortion with one in-person visit to a clinic followed by a virtual visit at least 24 hours later. However, the Challenged Requirements still require these patients to schedule two separate appointments—and to delay their care for at least 24 hours—for no legitimate medical reason.

87. These financial and logistical barriers are particularly burdensome and harmful for already vulnerable groups, including poor or low-income patients who constitute a majority of people seeking abortion. These patients often have particular difficulty getting time off work due to inflexible scheduling at low-wage jobs, and even if they are able to get days off, they often work in jobs that do not provide paid leave and forgo wages for time away from work. They are also less likely to have reliable access to transportation, either because they do not have a car or because of unreliable public transportation. Low-income patients may also need to delay their second appointment to save up enough money to afford the expense of additional child care and travel costs.

88. The In-Person Requirement, in combination with the Waiting Period Requirement, is also particularly burdensome for patients who are living in unsafe situations or abusive relationships. Coercion through sexual violence and reproductive control (such as birth control sabotage) are common tools of abusive partners that may account for the high incidence of unintended pregnancy among abuse victims. Some victims of intimate partner violence ("IPV") feel they need to end their pregnancy to leave the abusive relationship, as having the child will legally bind them to their abuser, and having a child to care for will make it much more difficult to escape. If the person inflicting abuse learns of their partner's pregnancy, they may try to force them to carry to term as a means of maintaining control. When patients in abusive relationships have to make two or more separate visits to a clinic, it increases the risk that the person inflicting abuse will find out about their pregnancy and/or abortion, thereby increasing the risk of violence and making it more difficult for the patient to escape the abuse. Together, the In-Person Requirement and the Waiting Period Requirement amplify these risks by forcing patients who are suffering from IPV to remain in dangerous living situations for longer than they otherwise would.

89. Even patients who are not victims of abuse often wish to keep the fact of their pregnancy and their abortion decision private from certain people in their lives for various reasons. Requiring abortion patients unnecessarily to delay their abortion care and/or to make an additional trip to a clinic forces patients who wish to keep their decision private to find a way to explain their additional physical absence and to secure additional transportation and funds needed for travel, time off work or school, and child care. This increases the risk that their partners, family members, employers, or others will learn that they are pregnant and/or having an abortion, thereby compromising their privacy.

90. Again, mainstream medical consensus, as reflected in the positions of leading medical authorities, instructs that laws imposing requirements such as multiple in-person visits and waiting periods only "delay abortion services, and by doing so may increase the clinical risks and cost of care," as well as "limit women's options for care and impact providers' ability to provide patient-centered care."[7] Authorities such as the National Academies have recognized that where, as here, a "waiting period is required after an in-person counseling appointment, the delay is exacerbated."[8]

91. It is deeply upsetting to Plaintiff providers to be forced to act contrary to the standard of care and their best medical judgment in sending patients away for no medical reason. Providers are well aware that doing so places their patients' health and well-being at risk, and they know that many of their patients will struggle to return or even forgo basic necessities in order to make a second, medically unnecessary trip to the clinic.

[7] *See, e.g.*, Natl. Academies Report 77–78.
[8] *Id.* at 78.

### iii. Impact of the State Information Requirement on Patients and Providers

92. The State Information Requirement forces physicians to provide abortion patients with irrelevant, potentially harmful, distressing, and/or misleading information.

93. The existence of embryonic or fetal cardiac activity is medically irrelevant for patients who have decided to terminate a pregnancy, as it does not change the nature of the treatment or procedure or impact the potential risks or benefits.

94. Moreover, R.C. 2919.194(A)(2) mandates that physicians tell patients the statistical probability of bringing the pregnancy to term based on the gestational age of the embryo or fetus. This, however, is not a calculation that is routinely made by medical professionals who care for pregnant patients, and there is no standard for such a calculation in existing medical literature. Nor did the Ohio Department of Health ever promulgate their own standards for this calculation, as R.C. 2919.194(C) contemplates. General estimates made pursuant to this statute are imperfect and potentially misleading because the statute does not appear to permit physicians to take into account factors other than the gestational age of the embryo or fetus, despite the fact that a patient's individual circumstances and medical history impact the likelihood of carrying a pregnancy to term. For example, a patient who has a history of multiple cesarean sections has a lower likelihood of carrying a subsequent pregnancy to term than an estimate of the statistical probability based only on the gestational age would indicate.

95. Even when the state-mandated information is medically accurate, it is not medically appropriate to force it on patients. The rigid standards prescribed by the State Information Requirement prevent physicians from tailoring information to their patients' needs and, as a result, often subject patients to trauma, harm, or distress.

96. For some patients, the state-mandated information only highlights and reinforces already deeply traumatic facets of their pregnancies. For example, for patients who are ending wanted pregnancies due to fetal conditions, forcing them to again experience the sight or sound of the embryonic or fetal cardiac activity, or emphasizing the statistical probability of carrying a pregnancy to term based solely upon gestational age and entirely divorced from a patient's specific circumstances, can deepen already unimaginable grief.

97. For patients who became pregnant as the result of sexual assault, the requirement to inform them of the probable gestational age of the embryo or fetus forces physicians to remind these patients of the date of their assault.

98. Far from helping patients, let alone doing anything to advance their health, these requirements undermine patients' trust in their doctors, which is key to the physician-patient relationship, and they distress, upset, and stigmatize patients who have already made the decision to have an abortion.

99. Plaintiffs already have independent systems and procedures in place that meet and exceed legal and ethical informed consent requirements. For each patient, Plaintiffs provide counseling about all of the patient's options; explain and answer questions about the medical care and treatments the patient is seeking, including information about the nature and purpose of the treatment, as well as the risks, benefits, and alternatives to that treatment; ensure that the patient receives any needed support and that all their questions are answered; confirm that the patient's decision to have an abortion is voluntary and free of coercion; and ensure that the patient has provided fully informed and voluntary consent before providing any care.

100. If a patient is uncertain about their decision even after receiving all of the information and counseling Plaintiffs provide, Plaintiffs advise them to take additional time with

the decision and assure them that they can make another appointment if they later decide to move ahead with an abortion.

101. Plaintiffs' robust informed consent practices, which are superior to the Challenged Requirements and better reflect best medical practice, are demonstrative of Plaintiffs' dedication to ensuring that each and every patient has made a fully informed and voluntary decision to consent to an abortion before proceeding with providing care. Plaintiffs would maintain these practices even in the absence of the State Information Requirement, and the other Challenged Requirements discussed *supra* at paragraphs 52–61.

102. The one-size-fits-all State Information Requirement only serves to inundate patients with unnecessary and potentially distressing and misleading information, and it deviates from professional standards of care, medical ethics, and best medical practice which, as discussed *supra* at paragraphs 47–51, necessitates providing individualized information and counseling to patients that is tailored to their informational desires and personal and medical circumstances.

103. ACOG opposes laws that require "state-mandated consent forms" or "require physicians to give, or withhold, specific information when counseling patients before undergoing an abortion," because these laws burden and impair physicians' ability to fulfill their "ethical obligation to provide each patient with information that is evidence-based, tailored to that patient, and comprehensive enough to allow that patient to make an informed decision about care and treatment."[9]

104. Likewise, National Academies has recognized that "the principal objective of the informed consent process is that patients understand the nature and risks of the procedure they are considering," and that the "[l]ong-established ethical and legal standards for informed consent in

[9] Am. Coll. of Obstetricians & Gynecologists, *supra* note 2.

health care appear to have been compromised" by abortion-specific regulations requiring patients to be given certain unnecessary state-mandated information, including information that may be misleading, before receiving an abortion.[10]

105. In sum, the State Information Requirement compels abortion providers to deliver state-mandated information designed to either dissuade people from choosing abortion or stigmatize them for deciding to do so. Forcing physicians to depart from evidence-based counseling, informed consent best practices, the dictates of medical ethics, and their own medical judgment to serve as mouthpieces for the State in this manner is deeply distressing for them as medical providers and does not serve or improve patient health in any way. To the contrary, it only risks harming Plaintiffs' patients by distressing or upsetting them and undermining their trust in their chosen provider.

## CLAIMS FOR RELIEF

### COUNT I—Right to Reproductive Freedom

106. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 105.

107. Under the Ohio Constitution, every individual has "a right to make and carry out one's own reproductive decisions" including the decision to obtain an abortion, and the State may not "directly or indirectly[] burden, penalize, prohibit, interfere with, or discriminate against" any "individual's voluntary exercise of" the right to abortion, or "a person or entity that assists an individual 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." Ohio Const. Art. I § 22(A)–(B).

[10] Natl. Academies Report 78.

108. The Challenged Requirements impose an onerous and medically unnecessary process that delays, impedes, and prevents access to abortion, creates financial and logistical obstacles to obtaining an abortion, compromises the physician-patient relationship, undermines patient self-determination in direct contradiction to the principle of informed consent, and stigmatizes abortion patients and providers, singling them out for differential and unfavorable treatment. In doing so, the Challenged Requirements—including the Waiting Period Requirement, the In-Person Requirement, and the State Information Requirement—each individually and in combination directly and indirectly burden, penalize, prohibit, interfere with, and discriminate against both Ohioans' right to make and carry out the decision to have an abortion and Plaintiffs' ability to assist their patients in exercising that right.

109. The Challenged Requirements are not "the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." Ohio Const. Art. I § 22(A)–(B). The Requirements have no legitimate medical justification; contradict evidence-based best medical practice, the standard of care, the dictates of medical ethics, and mainstream medical consensus; and serve only to harm patients' health and well-being.

110. Accordingly, the Challenged Requirements violate Article I, Section 22 of the Ohio Constitution.

111. Plaintiffs and their patients have no adequate remedy at law to address these harms.

**COUNT II—Declaratory Judgment**

112. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 111.

113. A real controversy exists between the parties, the controversy is justiciable, and speedy relief is necessary to preserve the rights of the parties. Plaintiffs are affected by the Challenged Requirements as set forth herein. In addition, Plaintiffs and their patients are unconstitutionally deprived of their rights under Article I, Section 22 of the Ohio Constitution.

114. The rights, status, and other legal relations of Plaintiffs are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy that has given rise to the action.

115. Pursuant to R.C. 2721.01, et seq., Plaintiffs request that the Court find and issue a declaration that the Challenged Requirements violate Article I, Section 22 of the Ohio Constitution because they burden, penalize, prohibit, interfere with, and discriminate against the constitutional right to abortion.

## REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A. To issue a preliminary injunction restraining Defendants, their agents, employees, servants, and successors, and any persons in active concert or participation with them, from enforcing R.C. 2317.56, 2919.192, 2919.193, and 2919.194, and any other Ohio statute or regulation that could be understood to give effect to these provisions;

B. To issue later a permanent injunction restraining Defendants, their agents, employees, servants, and successors, and any persons in active concert or participation with them, from enforcing R.C. 2317.56, 2919.192, 2919.193, and 2919.194, and any other Ohio statute or regulation that could be understood to give effect to these provisions, including through any future enforcement actions based on conduct that occurred during the pendency of an injunction;

C. To enter a judgment declaring that R.C. 2317.56, 2919.192, 2919.193, and 2919.194 violate the Ohio Constitution; and

D. To grant such other and further relief as the Court deems just and proper.

Dated: March 29, 2024

Respectfully submitted,

/s/ B. Jessie Hill

B. Jessie Hill (0074770)
*Lead Counsel*
Freda J. Levenson (0045916)
Rebecca Kendis (0099129)
Margaret Light-Scotece (0096030)
Amy Gilbert (0100887)
ACLU of Ohio Foundation
4506 Chester Ave.
Cleveland, OH 44103
Tel: (216) 368-0553 (Hill)
(216) 541-1376 (Levenson)
Fax: (614) 586-1974
bjh11@cwru.edu
flevenson@acluohio.org
rebecca.kendis@case.edu
margaret.light-scotece@case.edu
agilbert@acluohio.org

David J. Carey (0088787)
Carlen Zhang-D'Souza (0093079)
ACLU of Ohio Foundation
1108 City Park Ave., Ste. 203
Columbus, OH 43206
Telephone: (614) 586-1972
dcarey@acluohio.org
czhangdsouza@acluohio.org

*Counsel for Plaintiffs*

Meagan Burrows*
Johanna Zacarias*
Brigitte Amiri*
Vanessa Pai-Thompson*
Catherine Humphreville*
Planned Parenthood Federation of America
123 William Street, 11th Floor
New York, NY 10038
Tel: (212) 541-7800
vanessa.pai-thompson@ppfa.org
catherine.humphreville@ppfa.org

*Counsel for Plaintiffs Planned Parenthood Southwest Ohio Region and Planned Parenthood Greater Ohio*

Sarah Tremont*
Lauren Gerber*
Jessica Gerson*
Jess Davis*
Megan Howard*
Covington & Burling LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001
Tel: (202) 662-6000
Fax: (202) 662-6291
stremont@cov.com
lgerber@cov.com
jgerson@cov.com
jdavis@cov.com
mehoward@cov.com

*Counsel for Plaintiffs Preterm-Cleveland, Women's Med Group Professional*

American Civil Liberties Union
125 Broad St., 18th Fl.
New York, NY, 10004
Tel: 212-549-2601
mburrows@aclu.org
jzacarias@aclu.org
bamiri@aclu.org

*Counsel for Plaintiffs Preterm-Cleveland, Women's Med Group Professional Organization, Northeast Ohio Women's Center, LLC, and Catherine Romanos, M.D.*

*Organization, and Northeast Ohio Women's Center, LLC,*

**Motions for pro hac vice forthcoming*