

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

PRETERM-CLEVELAND, *et al.*,

Plaintiffs,

v.

DAVID YOST, *et al.*,

Defendants.

Case No. A 2203203

Judge Christian A. Jenkins

**PLAINTIFFS' UNOPPOSED  
MOTION TO FILE SECOND  
AMENDED COMPLAINT**

---

Pursuant to Ohio Civil Rule 15(A), Plaintiffs Preterm-Cleveland; Planned Parenthood Southwest Ohio Region; Sharon Liner, M.D.; Planned Parenthood of Greater Ohio; Women's Med Group Professional Corporation; Northeast Ohio Women's Center, LLC; and Toledo Women's Center (collectively "Plaintiffs"), by and through their undersigned counsel, hereby move to file a Second Amended Complaint (attached hereto as Exhibit A) to assert an additional claim under the newly enacted Article I, Section 22 of the Ohio Constitution. Ohio voters' recent approval of "The Right to Reproductive Freedom with Protections for Health and Safety" amendment, effective as of December 7, 2023, as Article I, Section 22 of the Ohio Constitution (attached hereto as Exhibit B), establishes the "right to make and carry out one's own reproductive decisions," including the decision to have an abortion.

On December 13, 2023, Defendants provided written consent via electronic mail to Plaintiffs' filing of their Second Amended Complaint. *See* Civ.R. 15(A) (parties may file an amended pleading at this stage of litigation with "with the opposing party's written consent or the court's leave").

Dated: December 14, 2023

Alan E. Schoenfeld (Pro Hac Vice)  
Michelle Nicole Diamond (Pro Hac Vice)  
Peter Neiman (Pro Hac Vice)  
WILMER CUTLER PICKERING HALE  
AND DORR LLP  
7 World Trade Center  
New York, NY 10007  
Telephone: (212) 230-8800  
alan.schoenfeld@wilmerhale.com  
michelle.diamond@wilmerhale.com  
peter.neiman@wilmerhale.com

Davina Pujari (Pro Hac Vice)  
Christopher A. Rheinheimer (Pro Hac Vice)  
WILMER CUTLER PICKERING HALE  
AND DORR LLP  
One Front Street  
San Francisco, CA 94111  
Telephone: (628) 235-1000  
davina.pujari@wilmerhale.com  
chris.rheinheimer@wilmerhale.com

Allyson Slater (Pro Hac Vice)  
WILMER CUTLER PICKERING HALE  
AND DORR LLP  
60 State Street  
Boston, MA 02109  
Telephone: (617) 526-6000  
allyson.slater@wilmerhale.com

Respectfully submitted,

/s/ B. Jessie Hill

B. Jessie Hill (0074770)  
Freda J. Levenson (0045916)  
Rebecca Kendis (0099129)  
ACLU of Ohio Foundation  
4506 Chester Ave.  
Cleveland, OH 44103  
Telephone: (216) 368-0553 (Hill)  
(614) 586-1972 (Levenson)  
Fax: (614) 586-1974  
bjh11@cwru.edu  
flevenson@acluohio.org  
rebecca.kendis@case.edu

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

Vanessa Pai-Thompson  
(\*Pro Hac Vice application forthcoming)  
Planned Parenthood Federation of America  
123 William Street, Floor 9  
New York, NY 10038  
Telephone: (212) 541-7800  
Fax: (212) 247-6811  
vanessa.pai-thompson@ppfa.org

*Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2023, the foregoing was electronically filed via the Court's e-filing system. I further certify that a copy of the foregoing was served via electronic mail upon counsel for the following parties:

David Yost  
Attorney General of Ohio  
30 E. Broad Street, 14th Floor  
Columbus, OH 43215  
Email: dave.yost@ohioattorneygeneral.gov

Bruce T. Vanderhoff, M.D., MBA  
Director, Ohio Department of Health  
246 N. High Street  
Columbus, OH 43215  
Email: Amanda.Narog@OhioAGO.gov  
Email: Andrew.McCartney@OhioAGO.gov  
Email: Stephen.Carney@OhioAGO.gov

Bruce R. Saferin, D.P.M.  
Supervising Member, State Medical Board of Ohio  
30 East Broad Street, 3rd Floor  
Columbus, OH 43215  
Email: Amanda.Narog@OhioAGO.gov  
Email: Andrew.McCartney@OhioAGO.gov  
Email: Stephen.Carney@OhioAGO.gov

Kim G. Rothermel, M.D.  
Secretary, State Medical Board of Ohio  
30 East Broad Street, 3rd Floor  
Columbus, OH 43215  
Email: Amanda.Narog@OhioAGO.gov  
Email: Andrew.McCartney@OhioAGO.gov  
Email: Stephen.Carney@OhioAGO.gov

Matthew T. Fitzsimmons  
Kelli K. Perk  
Assistant Prosecuting Attorney  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113  
Email: mfitzsimmons@prosecutor.cuyahogacounty.us

Email: kperk@prosecutor.cuyahogacounty.us  
*Counsel for Michael C. O'Malley, Cuyahoga County Prosecutor*

John A. Borell  
Kevin A. Pituch  
Evy M. Jarrett  
Assistant Prosecuting Attorney  
Lucas County Courthouse, Suite 250  
Toledo, OH 43624  
Email: jaborell@co.lucas.oh.us  
Email: kpituch@co.lucas.oh.us  
Email: ejarrett@co.lucas.oh.us  
*Counsel for Julia R. Bates, Lucas County Prosecutor*

Melissa Powers  
Hamilton County Prosecutor  
230 E. Ninth Street, Suite 4000  
Cincinnati, OH 45202  
Email: Melissa.Powers@Hcpros.org  
*Counsel for Hamilton County Prosecutor*

Ward C. Barrentine  
Assistant Prosecuting Attorney  
301 West Third Street  
PO Box 972  
Dayton, OH 45422  
Email: barrentinw@mcoho.org  
*Counsel for Mat Heck, Jr., Montgomery County Prosecutor*

Jeanine A. Hummer  
Amy L. Hiers  
Assistant Prosecuting Attorneys  
373 S. High Street, 14th Floor  
Columbus, OH 43215  
Email: jhummer@franklincountyohio.gov  
Email: ahiers@franklincountyohio.gov  
*Counsel for G. Gary Tyack, Franklin County Prosecutor*

Carrie Hill  
Assistant Prosecuting Attorney  
53 University Ave., 7th Floor  
Akron, OH 44308-1680  
Email: chill@prosecutor.summitoh.net  
*Counsel for Sherri Bevan Walsh, Summit County Prosecutor*

/s/ B. Jessie Hill  
B. Jessie Hill (0074770)

# **Exhibit A**

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

**PRETERM-CLEVELAND**

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

**PLANNED PARENTHOOD  
SOUTHWEST OHIO REGION**

C/O WilmerHale LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007

**SHARON LINER, M.D.**

C/O WilmerHale LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007

**PLANNED PARENTHOOD GREATER  
OHIO**

C/O WilmerHale LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007

**WOMEN'S MED GROUP  
PROFESSIONAL CORPORATION**

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

**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,**

Case No. A 2203203

Judge Christian A. Jenkins

**[PROPOSED] SECOND AMENDED  
VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

v.

**DAVID YOST**

**Attorney General of Ohio**

30 E. Broad Street, 14th Floor

Columbus, OH 43215

**BRUCE T. VANDERHOFF, M.D., MBA**

**Director, Ohio Department of Health**

246 N. High Street

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

**MICHAEL C. O'MALLEY**

**Cuyahoga County Prosecutor**

Justice Center Bld. Floor 8th and 9th

1200 Ontario Street

Cleveland, OH 44113

**MELISSA A. POWERS**

**Hamilton County Prosecutor**

230 E. Ninth Street, Suite 4000

Cincinnati, OH 45202

**G. GARY TYACK**

**Franklin County Prosecutor**

373 S. High Street, 14th Floor

Columbus, OH 43215

**MATHIAS HECK, JR.**

**Montgomery County Prosecutor**

301 W. Third St., 5th Floor

P.O. Box 972

Dayton, OH 45402

**JULIA R. BATES**

**Lucas County Prosecutor**



induced abortion outside of the medical system. It deprived Ohioans of their fundamental rights under the Ohio Constitution and inflicted serious, irreparable harm to their physical, psychological, and emotional well-being, as well as that of their families. A copy of S.B. 23 is attached hereto as Exhibit A.

4. S.B. 23 violates fundamental rights guaranteed by the Ohio Constitution, including the right to reproductive freedom under Article I, Section 22. S.B. 23 also violates the fundamental right to abortion provided by the Ohio Constitution's broad protections for individual liberty under Article I, Sections 1, 16, and 21, and the equal protection guarantee under Article I, Section 2. S.B. 23 also violates Article I, Section 16 of the Ohio Constitution because it is unconstitutionally vague. Moreover, because S.B. 23 violated federal law at the time of its enactment, it is void *ab initio* and unenforceable.

5. Plaintiffs, who are reproductive health care providers in Ohio, obtained a temporary restraining order followed by a preliminary injunction to block enforcement of S.B. 23 while this case proceeds. Plaintiffs seek final declaratory and injunctive relief to prevent S.B. 23's enforcement because it violates constitutional protections guaranteed to all Ohioans.

### **BACKGROUND**

6. On April 10, 2019, the Ohio General Assembly passed S.B. 23. S.B. 23 bans abortion after detection of embryonic cardiac activity, which occurs at approximately six weeks into pregnancy (as measured from the first day of a patient's last menstrual period, or "LMP"), and can occur as early as five weeks LMP. S.B. 23 carries significant criminal penalties and also subjects providers to the risk of state-assessed civil forfeitures, license revocation, and civil suits. At the time of its passage, Ohio Governor Mike DeWine acknowledged that one of the purposes of enacting S.B. 23 was to challenge existing precedent that clearly made S.B. 23 illegal:

“Taking this action really is the time-honored tradition, the constitutional tradition of making a good-faith argument for modification, reversal of existing legal precedent.” He added, “[s]o this is exactly what this is, and the United States Supreme Court will ultimately make a decision.”

See Laura Hancock, *Gov. Mike DeWine signs ‘heartbeat’ abortion bill*,

<https://www.cleveland.com/open/2019/04/gov-mike-dewine-signs-heartbeat-abortion-bill.html>  
(accessed Dec. 8, 2023).

7. In 2019, Plaintiffs challenged S.B. 23 in federal court. See *Preterm-Cleveland v. Yost*, No. 1:19-cv-00360, Dkt #1. On July 3, 2019, a federal district court preliminarily enjoined S.B. 23 before it went into effect, finding that the ban would pose an “insurmountable” obstacle to abortion access and “prohibit almost all abortion care in Ohio,” violating Ohioans’ rights under the Fourteenth Amendment of the United States Constitution. *Preterm-Cleveland v. Yost*, 394 F.Supp.3d 796, 800-801 (S.D. Ohio 2019). The injunction remained in place until it was vacated by the same court on June 24, 2022, hours after the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*. *Preterm-Cleveland v. Yost*, No. 1:19-cv-00360, Dkt. #100.

8. On September 2, 2022, Plaintiffs brought an action in this Court seeking a temporary restraining order followed by a preliminary injunction, as well as a declaratory judgment and permanent injunctive relief, against S.B. 23. At the time, Plaintiffs’ Verified Complaint asserted claims for violations of the Ohio Constitution’s protections for individual liberty under Article 1, Sections 1, 16, and 21, and the Ohio Constitution’s equal protection and benefit guarantee under Article 1, Section 2, as well as a claim that S.B. 23 is void for vagueness,

in violation of Article 1, Section 16 of the Ohio Constitution.<sup>1</sup> Plaintiffs moved for emergency relief on the individual liberty and equal protection claims only.

9. On September 14, 2022, the Court entered a 14-day temporary restraining order, which was later extended to October 12, 2022. Following limited, expedited discovery and an evidentiary hearing on Plaintiffs' preliminary injunction motion, the Court issued a preliminary injunction enjoining enforcement of S.B. 23.

10. As Plaintiffs alleged in September 2022, S.B. 23 had a devastating impact on Plaintiffs and their patients.

11. When S.B. 23 went into effect, patients in Ohio were left without access to abortion starting at a point so early that many of them did not even know that they were pregnant. Some were forced to travel long distances across state lines to obtain an abortion, even as abortion access became further restricted in neighboring states. Many others simply did not have the means or ability to do so. These women were forced to choose between carrying their pregnancies to term and giving birth against their will, or resorting to potentially unsafe methods to self-induce abortion outside of the medical system.<sup>2</sup> Each day that S.B. 23 was in effect, Ohioans were seriously and irreparably harmed and denied their ability to exercise fundamental rights guaranteed by the Ohio Constitution.

12. Absent immediate action from this Court, Ohioans would have continued to suffer the irreparable deprivation of their fundamental rights and serious, irreparable harm to their

---

<sup>1</sup> Additionally, on January 31, 2023, Plaintiffs filed an Amended Verified Complaint, adding a claim that S.B. 23 is void *ab initio*.

<sup>2</sup> Plaintiffs sometimes use "woman" or "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.

physical, psychological, and emotional well-being. Moreover, if S.B. 23 had remained in effect and Indiana's total ban on abortion took effect as scheduled, Plaintiff Women's Med Group Professional Corporation, which operates the only abortion facility in the Dayton, Ohio area, would have had no choice but to close its Dayton clinic as well as its clinic in Indiana on September 15, 2022.

13. That preliminary injunction is still in effect today. Plaintiffs request that the preliminary injunction remain in place, particularly given that the Ohio Constitution now explicitly protects abortion, and that any permanent injunctive relief take into account Article I, Section 22 of the Ohio Constitution.

## **PARTIES**

### **A. Plaintiffs**

14. 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 wide range of reproductive and sexual health care services, including abortion. Under the protection of the preliminary injunction, Preterm provides procedural abortions (also known as surgical abortions) through 21 weeks 6 days LMP and medication abortions through 10 weeks LMP. Providers at Preterm are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if S.B. 23 goes into effect and they provide care in violation of S.B. 23. Preterm sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

15. 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 abortion at its surgery center, located in Cincinnati. Under the protection of the preliminary injunction, PPSWO provides procedural abortions through 21 weeks 6 days LMP and medication abortions through 10 weeks LMP. Providers at PPSWO are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if S.B. 23 goes into effect and they provide care in violation of S.B. 23. PPSWO sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

16. Plaintiff Sharon Liner, M.D., is a physician licensed to practice medicine in Ohio with nineteen years of experience in women's healthcare. Dr. Liner is PPSWO's Medical Director, and in that role, she supervises physicians providing abortions, develops PPSWO's policies and procedures, and provides health care services including abortion. Dr. Liner has been providing abortions since 2002. As a provider at PPSWO, Dr. Liner is threatened with criminal penalties, loss of her medical license, civil forfeiture, and civil suits if S.B. 23 goes into effect and she provides care in violation of S.B. 23. Dr. Liner sues on behalf of herself and her patients.

17. Plaintiff Planned Parenthood of Greater Ohio ("PPGOH") is a nonprofit corporation organized under the laws of the State of Ohio. PPGOH was formed in 2012 through a merger of several local and regional Planned Parenthood affiliates that had served patients in Ohio for decades. PPGOH serves patients in northern, eastern, and central Ohio. PPGOH provides abortions at health centers located in East Columbus and Bedford Heights. Under the protections of the preliminary injunction, PPGOH provides procedural abortions through 19 weeks 6 days LMP and medication abortion through 10 weeks LMP. Providers at PPGOH are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if S.B. 23 goes into effect and they provide care in violation of S.B. 23. PPGOH sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

18. Plaintiff Women’s Med Group Professional Corporation (“WMGPC”) owns and operates Women’s Med Center of Dayton (“WMCD”) in Kettering, Ohio. WMGPC and its predecessors have been providing abortions in the Dayton area since 1975. Under the protections of the preliminary injunction, WMCD provides procedural abortions through 21 weeks 6 days LMP, and medication abortions through 10 weeks LMP. Providers at WMCD are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if S.B. 23 goes into effect and they provide care in violation of S.B. 23. WMGPC sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

19. Plaintiff Northeast Ohio Women’s Center, LLC (“NEOWC”), a corporation organized under the laws of the State of Ohio, operates a health care clinic and provides abortion care in Shaker Heights, Ohio and in Cuyahoga Falls, Ohio. NEOWC also owns and operates Toledo Women’s Center (“TWC”) in Toledo, Ohio. Under the protections of the preliminary injunction, NEOWC provided procedural abortions through 16 weeks 6 days LMP at its Cuyahoga Falls location, and medication abortions through 10 weeks LMP at all three locations. Providers at NEOWC are threatened with criminal penalties, loss of their medical licenses, civil forfeiture, and civil suits if S.B. 23 goes into effect and they provide care in violation of S.B. 23. NEOWC sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

**B. Defendants**

20. Defendant David Yost is the Attorney General of the State of Ohio. He is responsible for the enforcement of all Ohio laws, including S.B. 23. Under S.B. 23, he is also charged with commencing and prosecuting civil forfeiture when directed to do so by the State Medical Board. S.B. 23, Section 1, amending R.C. 2919.1912(B). He is sued in his official capacity.

21. Defendant Bruce T. Vanderhoff, M.D., M.B.A., is the Director of the Ohio Department of Health (“ODH”), which is responsible for promulgating rules to assist in compliance with S.B. 23, including rules governing the process for determining whether embryonic cardiac activity exists and rules dictating reporting requirements. He is charged with administering ODH. He is sued in his official capacity.

22. 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 S.B. 23. She is sued in her official capacity.

23. 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 S.B. 23. He is sued in his official capacity.

24. Defendant Michael C. O’Malley is the Cuyahoga County Prosecutor. He is responsible for the enforcement of the criminal laws in Cuyahoga County, where Preterm’s clinic, NEOWC’s Shaker Heights clinic, and PPGOH’s Bedford Heights health center are located, including the criminal provisions contained in S.B. 23. He is sued in his official capacity.

25. Defendant Melissa A. Powers is the Hamilton County Prosecutor. She is responsible for the enforcement of the criminal laws in Hamilton County, where PPSWO’s Cincinnati surgery center is located, including the criminal provisions contained in S.B. 23. She is sued in her official capacity.

26. Defendant G. Gary Tyack is the Franklin County Prosecutor. He is responsible for the enforcement of the criminal laws in Franklin County, where PPGOH’s East Columbus

health center is located, including the criminal provisions contained in S.B. 23. He is sued in his official capacity.

27. Defendant Mathias H. Heck, Jr. is the Montgomery County Prosecutor. He is responsible for the enforcement of the criminal laws in Montgomery County, where WMGPC's facility is located, including the criminal provisions contained in S.B. 23. He is sued in his official capacity.

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

29. Defendant Sherri Bevan Walsh is the Summit County Prosecutor. She is responsible for the enforcement of the criminal laws in Summit County, where NEOWC's Cuyahoga Falls facility is located, including the criminal provisions contained in S.B. 23. She is sued in her official capacity.

#### **JURISDICTION AND VENUE**

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

31. Venue is proper in this Court pursuant to Civ.R. 3(C)(6), because Plaintiffs PPSWO and Dr. Liner provide abortions in Hamilton County and thus the claims for relief arise in part in Hamilton County. Venue is also proper in this Court under Civ.R. 3(C)(4), because Defendant Powers maintains her principal office in Hamilton County.

## FACTUAL ALLEGATIONS

### A. Abortion Is Extremely Common and Safe Medical Care

32. Legal 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. Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008 - 2014*, 107 Am.J.Pub.Health 1904, 1907 (2017).

33. The decision to terminate a pregnancy is informed by a combination of diverse, complex, and interrelated factors that are intimately related to an individual's values, beliefs, culture, religion, health status, reproductive history, familial situation, resources, and economic stability.

34. Some people have abortions because they decide it is not the right time to have a child or to add to their existing families. Most patients who seek abortion already have at least one child, so many pregnant women and families must consider how another child will impact their ability to care for the children they already have.<sup>3</sup> For some, an additional child can place economic and emotional strain on a family that they are simply unable to bear.

35. For some women, having a child will make it too difficult for them to pursue educational or career goals and support themselves and their families going forward. Indeed, nationwide, new mothers' earnings drop after they give birth, and they do not fully return to their pre-pregnancy earnings path. See Danielle H. Sandler & Nicole Szembrot, *New Mothers Experience Temporary Drop in Earnings*, U.S. Census Bur. (June 16, 2020),

---

<sup>3</sup> See, e.g., Katherine Kortzmit et al., *Abortion Surveillance - United States, 2019*, Morbidity & Mortality Weekly Report (Nov. 26, 2021), <https://www.cdc.gov/mmwr/volumes/70/ss/ss7009a1.htm> (accessed Dec. 8, 2023) (almost 60 percent of women who obtained an abortion in 2019 already had at least one child).

<https://www.census.gov/library/stories/2020/06/cost-of-motherhood-on-womens-employment-and-earnings.html> (accessed Dec. 8, 2023).

36. Others seek an abortion because continuing their pregnancies would threaten their health or life, because of a diagnosed fetal medical condition, or because they conclude that pregnancy, childbirth, and an additional child may exacerbate an already difficult and dangerous situation with an abusive partner. See Diana Green Foster, Ph.D, *The Turnaway Study: The Cost of Denying Women Access to Abortion* (2020) (detailing the physical risks of carrying an unwanted pregnancy to term); see also *id.* (finding that patients denied abortions are more likely to stay tethered to abusive partners).

37. Legal abortion is extremely safe. In fact, it is one of the safest medical procedures in the United States and is substantially safer than continuing a pregnancy through childbirth. The risk of death associated with childbirth is approximately thirteen times higher than that associated with abortion, and every pregnancy-related complication is more common among women giving birth than among those having abortions. See Natl. Academies of Sciences, Eng. & Medicine, *The Safety and Quality of Abortion Care in the United States*, 74 (2018).

38. Complications from both medication and procedural abortions are extremely rare. In the rare cases where complications occur, they usually can be managed in an outpatient clinic setting, either at the time of the abortion or at a follow-up visit.

39. In contrast, forcing someone to continue a pregnancy against their will poses risks to their physical, mental, and emotional health, as well as to the stability and well-being of their family, including their existing children.

40. Serious long-term medical and physical consequences may arise from carrying a pregnancy to term and giving birth, even for those who are healthy and have uncomplicated pregnancies. Pregnancy involves profound and long-lasting physiological changes, including on a woman's health and her ability to have children in the future.

41. Pregnancy stresses most major organs. By mid-pregnancy, a pregnant woman needs to pump 50 percent more blood than usual, resulting in an increased heart rate. The increased blood flow, in turn, enlarges the kidneys, and the liver must produce more clotting factors to prevent hemorrhage when the placenta separates from the uterus. These changes increase the chances of blood clots or thrombosis. Pregnancy also deeply affects a woman's lungs: they must work harder to clear not only the carbon dioxide created by her own body, but also the carbon dioxide produced by the fetus. As the pregnancy progresses, the lungs are compressed by the growing fetus, leaving most pregnant women feeling chronically short of breath. Indeed, every organ in the abdomen—*e.g.*, intestines, liver, spleen—is increasingly compressed throughout pregnancy by the expanding uterus.

42. For someone with a medical condition caused or exacerbated by pregnancy, such as diabetes, hypertension, asthma, heart disease, an autoimmune disorder, or renal disease, or for someone who learns that their fetus has been diagnosed with a severe or lethal anomaly, risks of medical complications are increased.

43. The starkest risk of carrying a pregnancy to term is death. In Ohio, women died from pregnancy-related causes at a ratio of 14.7 per 100,000 live births from 2008 through 2016. See Ohio Dept. of Health, *A Report on Pregnancy-Associated Deaths in Ohio 2008 - 2016*, <https://odh.ohio.gov/know-our-programs/pregnancy-associated-mortality-review/reports/pregnancy-associated-deaths-ohio-2008-2016> (accessed Dec. 8, 2023). In 2018,

the maternal mortality rate was 14.1 per 100,000 live births. *See* Centers for Disease Control & Prevention, *Maternal Mortality by State, 2018*, <https://www.cdc.gov/nchs/maternal-mortality/MMR-2018-State-Data-508.pdf> (accessed Dec. 8, 2023).

44. The maternal mortality rate in Ohio is significantly higher for Black women. In Ohio, Black women are two-and-a-half times more likely to die from a cause related to pregnancy than white women. Ohio Dept. of Health, *A Report on Pregnancy-Associated Deaths in Ohio 2008 - 2016*, <https://odh.ohio.gov/know-our-programs/pregnancy-associated-mortality-review/reports/pregnancy-associated-deaths-ohio-2008-2016> (accessed Dec. 8, 2023) (Black women in Ohio have a maternal mortality rate of 29.5 deaths per 100,000 compared to 11.5 deaths per 100,000 births for white women.).

**B. S.B. 23’s Statutory Framework and Guidance**

45. For the five decades before S.B. 23 went into effect, abortion was legal and available in Ohio prior to 20 weeks post-fertilization, which is 22 weeks LMP. R.C. 2919.201.

46. While it was in effect from June through September of 2022, S.B. 23 effectuated a stark change in the status quo of abortion access in Ohio. Under S.B. 23, if a pregnancy is located in the uterus, the provider who intends to perform an abortion is required to determine whether there is cardiac activity. If there is cardiac activity, S.B. 23 makes it a crime to “caus[e] or abet[] the termination of” the pregnancy. S.B. 23, Section 1, amending R.C. 2919.192(A), 2919.192(B), and 2919.195(A). Cardiac activity typically occurs at approximately six weeks LMP but can occur as early as five weeks LMP.

47. S.B. 23 has only two very limited exceptions: abortion after cardiac activity is detected is permitted only if the abortion is necessary (1) to prevent the woman’s death, or (2) to prevent a “serious risk of the substantial and irreversible impairment of a major bodily function.”

S.B. 23, Section 1, amending R.C. 2919.195(B). The statute defines “[s]erious risk of the substantial and irreversible impairment of a major bodily function’ [to mean] any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function.” R.C. 2919.16(K). A “medically diagnosed condition that constitutes a ‘serious risk of the substantial and irreversible impairment of a major bodily function’ includes pre-eclampsia, inevitable abortion, and premature rupture of the membranes,” and “may include, but is not limited to, diabetes and multiple sclerosis,” but “does not include a condition related to the woman’s mental health.” *Id.*

48. The vague language of these exceptions offers providers no clarity as to which medical situations—other than those specifically enumerated—qualify as those creating a “serious risk of the substantial and irreversible impairment of a major bodily function.” As a result, clinicians were forced to turn away patients experiencing significant health issues due to uncertainty as to whether the statutory definition applies to their circumstances. *See Jo Ingles, Confusion Over Ohio’s Abortion Law Has Some Doctors Hesitant to Provide Legal Care, WXVU* (July 18, 2022 4:23 P.M.), <https://www.wvxu.org/politics/2022-07-18/ohio-law-allow-doctors-deny-abortions-patient-qualifies-exception> (accessed Dec. 8, 2023).

49. These decisions are further complicated by the severe criminal and civil penalties that could be imposed on providers who incorrectly interpret S.B. 23’s exceptions. S.B. 23’s muddled definitions and lack of binding guidance delayed and prevented needed care, forcing providers to watch their patients grow dangerously ill before they could determine whether to treat pregnancy complications and provide other necessary medical care.<sup>4</sup>

---

<sup>4</sup> On July 14, 2022, Attorney General Yost’s office published an “[e]xplainer” offering a “legal analysis” of S.B. 23’s exceptions. Ohio Atty Gen., *Explainer Regarding Ohio’s Heartbeat Law Exceptions* (July 14, 2022), <https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News->

50. A violation of S.B. 23 is a fifth-degree felony, punishable by up to one year in prison and a fine of \$2,500. S.B. 23, Section 1, amending R.C. 2919.195(A); R.C. 2929.14(A)(5) and 2929.18(A)(3)(e).

51. In addition to criminal penalties, the state medical board may assess a forfeiture of up to \$20,000 for each violation, S.B. 23, Section 1, amending R.C. 2919.1912(A), and limit, revoke, or suspend a physician's medical license based on a violation of S.B. 23, *see* R.C. 4371.22(B)(10).

52. Plaintiffs' clinics could also face civil penalties and revocation of their ambulatory surgical center licenses for a violation of S.B. 23. R.C. 3702.32; R.C. 3702.30(A)(2)(a).

53. A patient may also bring a civil action against a provider who violates S.B. 23 and recover damages in the amount of \$10,000 or more. S.B. 23, Section 1, amending R.C. 2919.199(B)(1).

**C. S.B. 23 Is A Near-Total Ban on Abortion in Ohio**

54. S.B. 23's ban on abortion at an extremely early point in pregnancy all but eliminated access to abortion in Ohio while it was in effect, and would do so again if it were permitted to be enforced. Pregnancy is commonly measured from the first day of the patient's last menstrual period, or LMP. A full-term pregnancy is approximately forty weeks LMP. In a normally developing embryo, cells that form the basis for the development of the heart later in

---

Releases/Heartbeat-Law-Explainer.aspx (accessed Dec. 8, 2023). This purported guidance offers providers no further clarity as to which medical situations may qualify under S.B. 23's exceptions. Moreover, it is not a formal written opinion and cannot be relied upon by providers who face criminal and civil penalties for violating S.B. 23.

gestation produce activity that can generally be detected with an ultrasound starting at approximately six weeks LMP, and sometimes even as early as five weeks LMP.

55. At six weeks LMP, a pregnancy is still at the embryonic stage. The embryonic stage of pregnancy lasts from fertilization until approximately eight to ten weeks LMP. At six weeks of pregnancy, an embryo (not yet a fetus) is wholly dependent on the pregnant woman, and indeed will be entirely dependent on her body for another four months (or more) to follow. The embryo is months away from having the physiological and functional structures necessary for sustained survival apart from the pregnant person's body. Beginning at about eleven weeks LMP, the embryo becomes a fetus.

56. Six weeks LMP is a pre-viability point in pregnancy; at six weeks LMP, no embryo is capable of surviving outside the womb. S.B. 23 thus prohibits abortion well before viability. At the time S.B. 23 was enacted in April 2019, pre-viability abortion bans were clearly prohibited by federal constitutional law. *See Roe v. Wade*, 410 U.S. 113, 153, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); *Planned Parenthood v. Casey*, 505 U.S. 833, 846, 879, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992); *see also Preterm-Cleveland v. Yost*, 394 F.Supp.3d 796, 800-801 (S.D. Ohio 2019) (enjoining S.B. 23 on the grounds that it was unconstitutional under the Fourteenth Amendment of the United States Constitution). In fact, as noted above, Governor Mike DeWine acknowledged that one of the purposes of enacting S.B. 23 was an effort to change the law and repeal the controlling precedent. *See supra* ¶ 4.

57. Many patients are not even aware they are pregnant by six weeks LMP. Prior to that time, many women have none of the physical indicators of pregnancy. The menstrual cycle is usually four weeks long, but varies depending on the individual. Even someone with highly regular periods would be four weeks pregnant as measured from her last menstrual period when

their first missed period occurs. Those who have certain common medical conditions, such as obesity; those who are breastfeeding; or those who use hormonal contraceptives may experience irregular periods and may not recognize a missed period before six weeks LMP. Indeed, many people do not menstruate at regular intervals, or they go long stretches without experiencing a menstrual period. Menstrual patterns also vary with age. Additionally, patients commonly have bleeding in early pregnancy that can be mistaken for a period.

58. For those who do know they are pregnant by, at the earliest, four weeks LMP, two weeks often is not sufficient time to decide to end a pregnancy and make necessary arrangements to receive abortion care. More time is often needed to obtain leave from work, arrange for childcare (since the majority of women who obtain abortions already have at least one child), find transportation to a provider, secure funds for the abortion and/or travel, and actually travel to a provider.

59. The delay these obstacles may cause is compounded by Ohio's other abortion restrictions. For example, Ohio law mandates that patients make an in-person trip to a clinic at least 24 hours before obtaining an abortion for mandated counseling and consent procedures. R.C. 2317.56.

60. In addition, Ohio law prohibits the use of public funds to cover abortion services in nearly all circumstances, making it more difficult for women—particularly those who are poor or low-income—to obtain the money necessary to promptly access abortion care. *See* R.C. 9.04; R.C. 3901.87; R.C. 5101.56.

61. For all of these reasons, it is extremely difficult to obtain an abortion before six weeks LMP. Indeed, before S.B. 23 went into effect, 89 percent of abortions in Ohio took place after six weeks LMP. Abigail Norris Turner et al., *Who Loses Access to Legal Abortion With a*

*6-Week Ban?*, Am. J. of Obstetrics & Gynecology (June 25, 2022),

[https://www.ajog.org/article/S0002-9378\(22\)00486-0/fulltext](https://www.ajog.org/article/S0002-9378(22)00486-0/fulltext) (accessed Dec. 8, 2023).

**D. S.B. 23 Irreparably Harmed Patients When It Was In Effect**

62. When S.B. 23 took effect on June 24, 2022, it drastically restricted Ohioans' access to abortion and imposed significant and irreparable harm on numerous pregnant women in Ohio. Were it to go into effect again, further devastating consequences would ensue.

63. When S.B. 23 went into effect, women with appointments already scheduled, or who had already had their first of two mandated appointments, were forced to cancel their appointments because they were suddenly past S.B. 23's six-week limit. In the nearly three-month period when S.B. 23 was in effect, Plaintiffs had to continue turning away other patients seeking care. Some of those patients tried to travel out of state to obtain an abortion. For example, shortly after S.B. 23 went into effect, a ten-year-old rape victim in Ohio was forced to travel to Indiana to seek an abortion rather than obtaining care in her own home state. *See* Edward Helmore, *10-year-old rape victim forced to travel from Ohio to Indiana for abortion*, The Guardian, (July 3, 2022), <https://www.theguardian.com/us-news/2022/jul/03/ohio-indiana-abortion-rape-victim> (accessed Dec 8, 2022). The victim sought help from a doctor, who had to assist her in finding care out of state because she was six weeks and three days pregnant. *See* Caroline Vakil, *10-year-old girl denied abortion in Ohio*, The Hill (July 2, 2022, 9:30 A.M.), <https://thehill.com/policy/healthcare/3544588-10-year-old-girl-denied-abortion-in-ohio/> (accessed Dec. 8, 2022); *see also* Bethany Bruner et al., *Arrest made in rape of Ohio girl that led to Indiana abortion drawing international attention*, The Columbus Dispatch (July 13, 2022, updated July 21, 2022, 1:25 P.M.), <https://www.dispatch.com/story/news/2022/07/13/columbus-man-charged-rape-10-year-old-led-abortion-in-indiana/10046625002/> (accessed Dec. 8, 2022)

(the victim’s accused rapist confessed to raping the 10-year-old and was arrested on July 12, 2022).

64. This influx of Ohioans traveling long distances for abortion care put increased pressure on facilities in other states. See Lindsey Tanner & Patrick Orsagos, *Some women cross state lines for abortions before bans take effect*, PBS NewsHour (Aug. 30, 2022, 12:36 P.M.), <https://www.pbs.org/newshour/politics/some-women-cross-state-lines-for-abortions-before-bans-take-effect> (accessed Dec. 8, 2023) (an Ohio clinic had referred “hundreds of patients” to an Indiana facility for abortion care); Cassie Miller, *Western Pa. abortion providers say they are seeing an increase in out-of-state patients post-Dobbs*, Pennsylvania Capital-Star (Aug. 11, 2022, 5:30 P.M.), <https://www.penncapital-star.com/health-care/western-pa-abortion-providers-say-they-are-seeing-an-increase-in-out-of-state-patients-post-dobbs/> (accessed Dec. 8, 2023) (Pennsylvania abortion care providers attribute the influx in out-of-state patients to bans imposed in Ohio, Indiana, and West Virginia); Angie Leventis Lourgos, *Abortions in Illinois for out-of-state patients have skyrocketed; And some wait times are exceeding three weeks*, Chicago Tribune (Aug. 2, 2022, 1:02 P.M.), <https://www.chicagotribune.com/news/breaking/ct-illinois-abortion-increase-post-roe-20220802-eottdwcfnjfxdvbfgd4kwefwu-story.html> (accessed Dec. 8, 2023) (Planned Parenthood of Illinois provided care to 800 out-of-state patients in July 2022, up from 100 the preceding month, due to an increase in patients from surrounding states, including Ohio).

65. Traveling out of state imposes significant—sometimes insurmountable—logistical obstacles that make it more difficult to obtain an abortion, including requiring more time away from work, arranging childcare, finding transportation to an out-of-state provider, and securing the funds for the abortion and required travel.

66. Obtaining out-of-state care has only become more difficult as abortion bans take effect in neighboring states. *See* Payal Chakraborty et al., *How Ohio's Proposed Abortion Bans Would Impact Travel Distance to Access Abortion Care*, 54 *Perspect. Sex. Reprod. Health* 2022, 1-10 (Apr. 20, 2022) (estimating that after *Roe* is overruled, the average driving distance from an Ohio county to the nearest abortion facility would eventually increase from 26 miles to 157 miles (best case) or 269 miles (worst case) given abortion restrictions in Ohio and neighboring states).

67. As of December 11, 2023, fourteen states nationwide have completely banned abortion. *See Tracking Abortion Bans Across the Country*, N.Y. Times (updated Nov. 7, 2023 9:15 P.M.), <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html> (accessed Dec. 1, 2023). In Indiana, where many patients in Ohio sought abortion care while S.B. 23 was into effect, a near-total ban on abortion went into effect on August 21, 2023. Ind. Code § 16-34-1-10. Abortion is also banned in Kentucky and West Virginia, which both had limited abortion access during part of the time S.B. 23 was in effect. *See* Ky. Rev. Stat. § 311.772; W. Va. Code § 16-2R-1 *et seq.*

68. If S.B. 23 goes into effect again, access to abortion in Ohio will be further decimated as some Plaintiffs will be forced to close their clinics. During the time S.B. 23 was in effect, Plaintiff WMGPC, which operates the only abortion facility in Dayton, Ohio, was set to close its Dayton clinic on September 15, 2022. *See* Jessie Balmert, *Abortion in Ohio: Dayton-area clinic plans to close in mid-September* (Aug. 30, 2022, 12:41 P.M.), *Cincinnati Enquirer*, <https://www.cincinnati.com/story/news/politics/elections/2022/08/30/ohio-abortion-clinic-plans-to-close-mid-september/65463597007/> (accessed Dec. 8, 2023).

69. If S.B. 23 were to go back into effect, some women would be unable to obtain an abortion in either Ohio or another state. These patients would be forced either to carry their

pregnancy to term and give birth against their will—incurring irreparable physical, economic, emotional, and psychological harms—or seek abortion without medical assistance at potential risk to their health. See Green Foster, *The Turnaway Study: The Cost of Denying Women Access to Abortion* (examining the physical, mental, and socioeconomic consequences of receiving an abortion compared to carrying an unwanted pregnancy to term); Natl. Inst. of Child Health & Human Dev., *What Are Some Common Complications of Pregnancy?* (last reviewed Apr. 20, 2021), <https://www.nichd.nih.gov/health/topics/pregnancy/conditioninfo/complications> (accessed Dec. 8, 2023) (identifying as “common complications of pregnancy” high blood pressure, gestational diabetes, infections, preeclampsia, preterm labor, depression and anxiety, pregnancy loss or miscarriage, and stillbirth).

70. While S.B. 23 was in effect, some patients were even denied abortion care when their lives were at risk because doctors were afraid to treat them due to the threat of S.B. 23’s severe criminal and civil penalties. Despite S.B. 23’s narrow exceptions, its severe sanctions nevertheless deprived some patients of critically important care. Other patients had to delay vital medical treatment because they were unable to obtain abortion care in Ohio.

71. These consequences of S.B. 23 are disproportionately felt by communities of color and low-income communities. The majority of patients seeking abortions in Ohio are from communities of color. In 2020, 48.1 percent of Ohioans who obtained abortions were Black, while the Black community represented only 13.2 percent of Ohio’s population; 12.1 percent of Ohioans who obtained abortions were from other communities of color (Indigenous (American Indian), Asian/Pacific Islander, Multiracial, and Hispanic Ohioans<sup>5</sup>) while those communities

---

<sup>5</sup> The terms listed here are the race descriptors used by the Ohio Department of Health to describe people of color in its report.

made up only 10 percent of Ohio’s population. Ohio Dept. of Health, *Induced Abortions in Ohio*, Figure 2, Table 1 <https://odh.ohio.gov/know-our-programs/vital-statistics/resources/vs-abortionreport2020> (accessed Dec. 8, 2023); U.S. Census Bureau, *Quick Facts: Ohio*, <https://www.census.gov/quickfacts/OH> (accessed Dec. 8, 2023).

72. Additionally, a large majority of patients who have abortions are low-income. See Natl. Academies of Sciences, Eng. & Medicine, *The Safety and Quality of Abortion Care in the United States*, 6 (2018). These patients are more likely to be subjected to delays in seeking medical care because of associated costs, and thus, are at a high risk of losing access to abortion under severe abortion restrictions like S.B. 23. See Turner et al., *Who Loses Access to Legal Abortion With a 6-Week Ban?* (finding six-week abortion bans “would disproportionately affect people with fewer economic and educational resources.”); see also Bd. of Governors of the Fed. Res. Sys., *Report on Economic Well-Being of U.S. Households in 2021* (updated May 27, 2022), <https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm> (accessed Dec. 8, 2023).

73. If allowed to take effect again, S.B. 23 would have a devastating impact on the lives of women who need abortion care in Ohio.

**E. The Right to Abortion Is Now Explicitly Protected in the Ohio Constitution**

74. On November 7, 2023, Ohioans voted in favor of the Amendment.<sup>6</sup>

75. The election results were certified on December 7, 2023, and the Amendment took effect on that same day.

---

<sup>6</sup> 56.62% of Ohioans voted in favor of Issue 1. See Ohio Secretary of State, *Ohio Decides 2023*, <https://liveresults.ohiosos.gov/> (last accessed Nov. 13, 2023).

76. The Amendment provides that “[e]very individual has a right to make and carry out one’s own reproductive decisions, including but not limited to decisions on contraception, fertility treatment, continuing one’s own pregnancy, miscarriage care, and abortion.” Ohio Const. Art. I § 22(A).

77. The Amendment further provides that “[t]he State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either an individual’s voluntary exercise of this right 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.” *Id.* § 22(B).

78. The Amendment also states that “abortion may be prohibited after fetal viability. But in no case may such an abortion be prohibited if in the professional judgment of the pregnant patient’s treating physician it is necessary to protect the pregnant patient’s life or health.” *Id.* § 22(B).

79. On October 5, 2023, Defendant Ohio Attorney General David Yost published a “legal analysis” of the effects of the Amendment. Ohio Atty Gen., *Issue 1 on the November 2023 Ballot: A legal analysis by the Ohio Attorney General* (Oct 5, 2023), <https://www.ohioattorneygeneral.gov/SpecialPages/FINAL-ISSUE-1-ANALYSIS.aspx> (accessed Dec. 4, 2023). Attorney General Yost described the “legal effects of” the Amendment, explaining that the amendment “creates a new, legal standard” that provides greater protection to reproductive freedom than federal precedent predating the *Dobbs* decision. In his analysis, Yost unequivocally acknowledged that S.B. 23 “would not exist if Issue 1 passes.”

80. The Attorney General put it plainly: “Passage of Issue 1 would invalidate” S.B. 23. Ohio Atty Gen., *Issue 1 on the November 2023 Ballot: A legal analysis by the Ohio Attorney*

*General* (Oct 5, 2023), <https://www.ohioattorneygeneral.gov/SpecialPages/FINAL-ISSUE-1-ANALYSIS.aspx> (accessed Dec. 4, 2023); *see also* Suppl. Br. of Appellees, *Preterm-Cleveland, et al. v. Yost, et al.*, Case No. 2023-0004 (Ohio S.Ct. Dec. 7, 2023).

## **CLAIMS FOR RELIEF**

### **COUNT I – Right to Reproductive Freedom**

81. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 32 through 80.

82. 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.” Ohio Const. Art. I § 22(A); *Id.* § 22(A)(5).

83. The State may not “burden, penalize, prohibit, interfere with, or discriminate against either: (1) an individual’s exercise of their right to an abortion or (2) 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(B).

84. Moreover, the state may only prohibit abortion “after fetal viability[,] ... [b]ut in no case may such an abortion be prohibited if in the professional judgment of the pregnant patient’s treating physician it is necessary to protect the pregnant patient’s life or health.” Ohio Const. Art. I § 22(B).

85. By prohibiting abortion starting as early as five or six weeks LMP, well before the point of fetal viability, and imposing severe criminal and other penalties on those who provide abortion care after that point, S.B. 23 “burden[s], penalize[s], prohibit[s], [and] discriminate[s]

against” both an individual’s exercise of their right to abortion and a person or entity that assists an individual in exercising this right.

86. S.B. 23’s near-total ban on abortion beginning as early as five or six weeks LMP is not “the least restrictive means to advance the individual’s health in accordance with widely accepted and evidence-based standards of care.”

87. Accordingly, S.B. 23 violates Article I, Section 22 of the Ohio Constitution by both prohibiting Plaintiffs from assisting their patients in exercising their fundamental right to abortion and (in so doing) depriving Plaintiffs’ patients of this fundamental right, causing them to suffer significant constitutional, medical, emotional, and other harms.

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

#### **COUNT II—Due Course of Law**

89. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 32 through 80.

90. By banning abortion from the earliest weeks of pregnancy and thus forcing continued pregnancy and childbirth upon countless Ohioans, S.B. 23 prohibits Plaintiffs’ patients from exercising their fundamental rights in violation of the Ohio Constitution’s broad protections for individual liberties under Article I, Sections 1, 16, and 21.

91. Strict scrutiny applies to laws that infringe fundamental rights under the Ohio Constitution. Under this analysis, the State cannot meet its heavy burden to show that S.B. 23 is narrowly tailored to serve any purported compelling state interest. Neither of the purported interests asserted in the text of the legislation—an “interest in protecting the health of the woman” and an interest in protecting potential life—is sufficiently compelling to justify banning

Ohioans from exercising their fundamental right to abortion starting as early as five or six weeks LMP.

92. Even if the State’s asserted interests were compelling, a near-total ban on abortion beginning at six weeks LMP is not narrowly tailored; there are numerous less restrictive means to advance the State’s asserted interests.

93. S.B. 23 thus fails strict scrutiny, and would deprive Plaintiffs’ patients of their fundamental rights under the Ohio Constitution, causing them to suffer significant constitutional, medical, emotional, and other harms.

94. Plaintiffs’ patients have no adequate remedy at law to address these harms.

### **COUNT III—Equal Protection and Benefit**

95. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 32 through 80.

96. S.B. 23 discriminates against women, a suspect class, by expressly singling out “pregnant wom[e]n” in Ohio, and restricting their bodily autonomy and health care choices. S.B. 23 also discriminates against women by subordinating them to men based on antiquated notions and stereotypes regarding women’s roles as child-bearers and caregivers.

97. The Ohio Constitution subjects laws that discriminate against suspect classes to strict scrutiny. The State cannot meet this heavy burden.

98. Even if this Court were to apply intermediate scrutiny, S.B. 23 fails. S.B. 23 is not “substantially related” to any important government objective.

99. S.B. 23 fails strict scrutiny and intermediate scrutiny and therefore violates Plaintiffs’ patients’ rights to equal protection under Article I, Section 2 of the Ohio Constitution.

S.B. 23 would deprive of equal protection of the laws under the Ohio Constitution, thereby causing them to suffer significant constitutional, medical, emotional, and other harms.

100. Plaintiffs' patients have no adequate remedy at law to address these harms.

#### **COUNT IV—Void for Vagueness**

101. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 32 through 80.

102. S.B. 23 fails to give providers adequate notice of the circumstances under which they can perform abortions after six weeks LMP, because the exceptions to S.B. 23's near-total ban on abortion are unclear and fail to provide adequate guidance. Providers lack clear guidelines as to when they are permitted to perform abortions after six weeks LMP without incurring criminal penalties.

103. S.B. 23 is unconstitutionally vague, in violation of Article I, Section 16 of the Ohio Constitution, because it does not provide fair warning to either providers or ordinary citizens as to what conduct is proscribed and does not preclude arbitrary, capricious, or discriminatory enforcement.

#### **COUNT V—Void *Ab Initio***

104. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 32 through 80.

105. At the time S.B. 23 was enacted in April 2019, federal constitutional law was clear that "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." *Casey*, 505 U.S. at 879, 112 S.Ct. 2791, 120 L.Ed.2d 674.

106. Because S.B. 23 prohibits abortion starting as early as six weeks LMP, far before the point of viability, it was unconstitutional at the time of its passage, and is thus void ab initio and unenforceable.

### **COUNT VI—Declaratory Judgment**

107. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 32 through 80.

108. A real controversy exists between the parties, the controversy is justiciable, and speedy relief is necessary to preserve the rights of the parties. Plaintiffs and their patients are harmed by S.B. 23's ban on abortion starting as early as six weeks. In addition, Plaintiffs' patients are unconstitutionally deprived of their fundamental right to abortion, as well as their rights to due process and equal protection.

109. The rights, status, and other legal relations of Plaintiffs and their patients 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.

110. Pursuant to R.C. 2721.01, et seq., Plaintiffs request that the Court find and issue a declaration that:

- a. S.B. 23 violates Article I, Section 22 of the Ohio Constitution because it violates an individual's right to make and carry out one's own reproductive decisions, including the decision to have an abortion, and prevents persons or entities from assisting individuals in exercising that right.
- b. S.B. 23 violates Article I, Sections 1, 16, and 21 of the Ohio Constitution because it violates the Ohio Constitution's broad protections for individual

liberties by prohibiting abortion starting as early as six weeks into pregnancy.

- c. S.B. 23 violates Article I, Section 2 of the Ohio Constitution because it discriminates against women, a suspect class.
- d. S.B. 23 violates Article I, Section 16 of the Ohio Constitution because it is void for vagueness.
- e. S.B. 23 is void *ab initio* because it violated federal law at the time of its enactment.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask this Court:

- A. To keep in place its preliminary injunction, and later issue a permanent injunction, restraining Defendants, their employees, agents, and successors in office from enforcing S.B. 23.
- B. To enter a judgment declaring that S.B. 23 violates the Ohio Constitution and is void *ab initio*.
- C. To award Plaintiffs their fees and costs.
- D. To grant further relief as the Court deems just and proper.

Dated: December 14, 2023

Alan E. Schoenfeld (Pro Hac Vice)  
Michelle Nicole Diamond (Pro Hac Vice)  
Peter Neiman (Pro Hac Vice)  
WILMER CUTLER PICKERING HALE  
AND DORR LLP  
7 World Trade Center  
New York, NY 10007  
Telephone: (212) 230-8800  
alan.schoenfeld@wilmerhale.com  
michelle.diamond@wilmerhale.com  
peter.neiman@wilmerhale.com

Davina Pujari (Pro Hac Vice)  
Christopher A. Rheinheimer (Pro Hac Vice)  
WILMER CUTLER PICKERING HALE  
AND DORR LLP  
One Front Street  
San Francisco, CA 94111  
Telephone: (628) 235-1000  
davina.pujari@wilmerhale.com  
chris.rheinheimer@wilmerhale.com

Allyson Slater (Pro Hac Vice)  
WILMER CUTLER PICKERING HALE  
AND DORR LLP  
60 State Street  
Boston, MA 02109  
Telephone: (617) 526-6000  
allyson.slater@wilmerhale.com

Respectfully submitted,

/s/ B. Jessie Hill  
B. Jessie Hill (0074770)  
Freda J. Levenson (0045916)  
Rebecca Kendis (0099129)  
ACLU of Ohio Foundation  
4506 Chester Ave.  
Cleveland, OH 44103  
Telephone: (216) 368-0553 (Hill)  
(614) 586-1972 (Levenson)  
Fax: (614) 586-1974  
bjh11@cwru.edu  
flevenson@acluohio.org  
rebecca.kendis@case.edu

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

Vanessa Pai-Thompson  
(\*Pro Hac Vice application forthcoming)  
Planned Parenthood Federation of America  
123 William Street, Floor 9  
New York, NY 10038  
Telephone: (212) 541-7800  
Fax: (212) 247-6811  
vanessa.pai-thompson@ppfa.org

*Counsel for Plaintiffs*

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

PRETERM-CLEVELAND, *et al.*,

*Plaintiffs,*

v.

DAVID YOST, *et al.*,

*Defendants.*

Case No. A 2203203

Judge Christian A. Jenkins

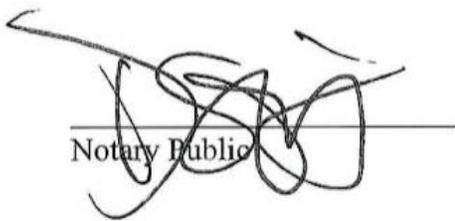
**AFFIDAVIT OF DR. SHARON LINER IN SUPPORT OF  
PLAINTIFFS' SECOND AMENDED VERIFIED COMPLAINT**

I, Dr. Sharon Liner, a plaintiff in this action, being first 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 doctor, licensed in the state of Ohio and specializing in family medicine. I am employed by Planned Parenthood Southwest Ohio Region.
2. I have read the foregoing Second Amended Complaint and have knowledge of the allegations and facts within it. To the best of my knowledge, information, and/or belief, the facts contained in the Second Amended Complaint are true and correct.

  
\_\_\_\_\_  
Dr. Sharon Liner

Sworn to me this 11 day of Dec, 2023

  
\_\_\_\_\_  
Notary Public



# **Exhibit A**

# AN ACT

To amend sections 2317.56, 2919.171, 2919.19, 2919.191, 2919.192, 2919.193, and 4731.22; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 2919.191 (2919.192), 2919.192 (2919.194), and 2919.193 (2919.198); and to enact new sections 2919.191 and 2919.193 and sections 2919.195, 2919.196, 2919.197, 2919.199, 2919.1910, 2919.1912, 2919.1913, and 5103.11 of the Revised Code to enact the Human Rights and Heartbeat Protection Act.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 2317.56, 2919.171, 2919.19, 2919.191, 2919.192, 2919.193, and 4731.22 be amended; sections 2919.191 (2919.192), 2919.192 (2919.194), and 2919.193 (2919.198) be amended for the purpose of adopting new section numbers as shown in parentheses; and new sections 2919.191 and 2919.193 and sections 2919.195, 2919.196, 2919.197, 2919.199, 2919.1910, 2919.1912, 2919.1913, and 5103.11 of the Revised Code be enacted to read as follows:

Sec. 2317.56. (A) As used in this section:

(1) "Medical emergency" has the same meaning as in section 2919.16 of the Revised Code.

(2) "Medical necessity" means 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.

(3) "Probable gestational age of the embryo or fetus" means the gestational age that, in the judgment of a physician, is, with reasonable probability, the gestational age of the embryo or fetus at the time that the physician informs a pregnant woman pursuant to division (B)(1)(b) of this section.

(B) Except when there is a medical emergency or medical necessity, an abortion shall be performed or induced only if all of the following conditions are satisfied:

(1) At least twenty-four hours prior to the performance or inducement of the abortion, a physician meets with the pregnant woman in person in an individual, private setting and gives her an adequate opportunity to ask questions about the abortion that will be performed or induced. At this meeting, the physician shall inform the pregnant woman, verbally or, if she is hearing impaired, by other means of communication, of all of the following:

(a) The nature and purpose of the particular abortion procedure to be used and the medical risks associated with that procedure;

(b) The probable gestational age of the embryo or fetus;

(c) The medical risks associated with the pregnant woman carrying the pregnancy to term.

The meeting need not occur at the facility where the abortion is to be performed or induced, and the physician involved in the meeting need not be affiliated with that facility or with the

physician who is scheduled to perform or induce the abortion.

(2) At least twenty-four hours prior to the performance or inducement of the abortion, the physician who is to perform or induce the abortion or the physician's agent does each of the following in person, by telephone, by certified mail, return receipt requested, or by regular mail evidenced by a certificate of mailing:

(a) Inform the pregnant woman of the name of the physician who is scheduled to perform or induce the abortion;

(b) Give the pregnant woman copies of the published materials described in division (C) of this section;

(c) Inform the pregnant woman that the materials given pursuant to division (B)(2)(b) of this section are published by the state and that they describe the embryo or fetus and list agencies that offer alternatives to abortion. The pregnant woman may choose to examine or not to examine the materials. A physician or an agent of a physician may choose to be disassociated from the materials and may choose to comment or not comment on the materials.

(3) If it has been determined that the unborn human individual the pregnant woman is carrying has a detectable fetal heartbeat, the physician who is to perform or induce the abortion shall comply with the informed consent requirements in section ~~2919.192~~-2919.194 of the Revised Code in addition to complying with the informed consent requirements in divisions (B)(1), (2), (4), and (5) of this section.

(4) Prior to the performance or inducement of the abortion, the pregnant woman signs a form consenting to the abortion and certifies both of the following on that form:

(a) She has received the information and materials described in divisions (B)(1) and (2) of this section, and her questions about the abortion that will be performed or induced have been answered in a satisfactory manner.

(b) She consents to the particular abortion voluntarily, knowingly, intelligently, and without coercion by any person, and she is not under the influence of any drug of abuse or alcohol.

The form shall contain the name and contact information of the physician who provided to the pregnant woman the information described in division (B)(1) of this section.

(5) Prior to the performance or inducement of the abortion, the physician who is scheduled to perform or induce the abortion or the physician's agent receives a copy of the pregnant woman's signed form on which she consents to the abortion and that includes the certification required by division (B)(4) of this section.

(C) The department of health shall publish in English and in Spanish, in a typeface large enough to be clearly legible, and in an easily comprehensible format, the following materials on the department's web site:

(1) Materials that inform the pregnant woman about family planning information, of publicly funded agencies that are available to assist in family planning, and of public and private agencies and services that are available to assist her through the pregnancy, upon childbirth, and while the child is dependent, including, but not limited to, adoption agencies. The materials shall be geographically indexed; include a comprehensive list of the available agencies, a description of the services offered by the agencies, and the telephone numbers and addresses of the agencies; and inform the pregnant woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care

and about the support obligations of the father of a child who is born alive. The department shall ensure that the materials described in division (C)(1) of this section are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this division.

(2) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two-week gestational increments for the first sixteen weeks of pregnancy and at four-week gestational increments from the seventeenth week of pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The department shall cause these materials to be published ~~only~~ after it consults with ~~the Ohio state medical association and the Ohio section of the American college of obstetricians and gynecologists~~ independent health care experts relative to the probable anatomical and physiological characteristics of a zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. If the materials use a pictorial, photographic, or other depiction to provide information regarding the zygote, blastocyte, embryo, or fetus, the materials shall include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment.

(D) Upon the submission of a request to the department of health by any person, hospital, physician, or medical facility for one copy of the materials published in accordance with division (C) of this section, the department shall make the requested copy of the materials available to the person, hospital, physician, or medical facility that requested the copy.

(E) If a medical emergency or medical necessity compels the performance or inducement of an abortion, the physician who will perform or induce the abortion, prior to its performance or inducement if possible, shall inform the pregnant woman of the medical indications supporting the physician's judgment that an immediate abortion is necessary. Any physician who performs or induces an abortion without the prior satisfaction of the conditions specified in division (B) of this section because of a medical emergency or medical necessity shall enter the reasons for the conclusion that a medical emergency or medical necessity exists in the medical record of the pregnant woman.

(F) If the conditions specified in division (B) of this section are satisfied, consent to an abortion shall be presumed to be valid and effective.

(G) The performance or inducement of an abortion without the prior satisfaction of the conditions specified in division (B) of this section does not constitute, and shall not be construed as constituting, a violation of division (A) of section 2919.12 of the Revised Code. The failure of a physician to satisfy the conditions of division (B) of this section prior to performing or inducing an abortion upon a pregnant woman may be the basis of both of the following:

(1) A civil action for compensatory and exemplary damages as described in division (H) of this section;

(2) Disciplinary action under section 4731.22 of the Revised Code.

(H)(1) Subject to divisions (H)(2) and (3) of this section, any physician who performs or induces an abortion with actual knowledge that the conditions specified in division (B) of this section have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied is liable in compensatory and exemplary damages in a civil action to 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 the failure to satisfy those conditions. In the civil action, the court additionally may enter any injunctive or other equitable relief that it considers appropriate.

(2) The following shall be affirmative defenses in a civil action authorized by division (H)(1) of this section:

(a) The physician performed or induced the abortion under the circumstances described in division (E) of this section.

(b) The physician made a good faith effort to satisfy the conditions specified in division (B) of this section.

(3) An employer or other principal is not liable in damages in a civil action authorized by division (H)(1) of this section on the basis of the doctrine of respondeat superior unless either of the following applies:

(a) The employer or other principal had actual knowledge or, by the exercise of reasonable diligence, should have known that an employee or agent performed or induced an abortion with actual knowledge that the conditions specified in division (B) of this section had not been satisfied or with a heedless indifference as to whether those conditions had been satisfied.

(b) The employer or other principal negligently failed to secure the compliance of an employee or agent with division (B) of this section.

(4) Notwithstanding division (E) of section 2919.12 of the Revised Code, the civil action authorized by division (H)(1) of this section shall be the exclusive civil remedy for persons, or the representatives of estates of persons, who allegedly sustain injury, death, or loss to person or property as a result of a failure to satisfy the conditions specified in division (B) of this section.

(I) The department of job and family services shall prepare and conduct a public information program to inform women of all available governmental programs and agencies that provide services or assistance for family planning, prenatal care, child care, or alternatives to abortion.

Sec. 2919.171. (A)(1) A physician who performs or induces or attempts to perform or induce an abortion on a pregnant woman shall submit a report to the department of health in accordance with the forms, rules, and regulations adopted by the department that includes all of the information the physician is required to certify in writing or determine under ~~sections section 2919.17 and section 2919.18, divisions (A) and (C) of section 2919.192, division (C) of section 2919.193, division (B) of section 2919.195, or division (A) of section 2919.196 of the Revised Code.~~

(2) If a person other than the physician described in division (A)(1) of this section makes or maintains a record required by sections 2919.192 to 2919.196 of the Revised Code on the physician's behalf or at the physician's direction, that person shall comply with the reporting requirement described in division (A)(1) of this section as if the person were the physician described in that division.

(B) By September 30 of each year, the department of health shall issue a public report that

provides statistics for the previous calendar year compiled from all of the reports covering that calendar year submitted to the department in accordance with this section for each of the items listed in division (A) of this section. The report shall also provide the statistics for each previous calendar year in which a report was filed with the department pursuant to this section, adjusted to reflect any additional information that a physician provides to the department in a late or corrected report. The department shall ensure that none of the information included in the report could reasonably lead to the identification of any pregnant woman upon whom an abortion is performed.

(C)(1) The physician shall submit the report described in division (A) of this section to the department of health within fifteen days after the woman is discharged. If the physician fails to submit the report more than thirty days after that fifteen-day deadline, the physician shall be subject to a late fee of five hundred dollars for each additional thirty-day period or portion of a thirty-day period the report is overdue. A physician who is required to submit to the department of health a report under division (A) of this section and who has not submitted a report or has submitted an incomplete report more than one year following the fifteen-day deadline may, in an action brought by the department of health, be directed by a court of competent jurisdiction to submit a complete report to the department of health within a period of time stated in a court order or be subject to contempt of court.

(2) If a physician fails to comply with the requirements of this section, other than filing a late report with the department of health, or fails to submit a complete report to the department of health in accordance with a court order, the physician is subject to division (B)(44) of section 4731.22 of the Revised Code.

(3) No person shall falsify any report required under this section. Whoever violates this division is guilty of abortion report falsification, a misdemeanor of the first degree.

~~(D) Within ninety days of October 20, 2011, the~~ The department of health shall adopt rules pursuant to section 111.15 of the Revised Code to assist in compliance with this section.

Sec. 2919.19. (A) As used in this section and sections 2919.191 to 2919.193-2919.1910 of the Revised Code:

~~(A)-(1)~~ "Conception" means fertilization.

~~(2)~~ "Contraceptive" means a drug, device, or chemical that prevents conception.

~~(3)~~ "DNA" means deoxyribonucleic acid.

~~(4)~~ "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

~~(B)-(5)~~ "Fetus" means the human offspring developing during pregnancy from the moment of conception and includes the embryonic stage of development.

~~(C)-(6)~~ "Gestational age" means the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.

~~(D)-(7)~~ "Gestational sac" means the structure that comprises the extraembryonic membranes that envelop the fetus and that is typically visible by ultrasound after the fourth week of pregnancy.

~~(E)-(8)~~ "Intrauterine pregnancy" means a pregnancy in which the fetus is attached to the placenta within the uterus of the pregnant woman.

~~(9)~~ "Medical emergency" has the same meaning as in section 2919.16 of the Revised Code.

~~(F)-(10)~~ "Physician" has the same meaning as in section 2305.113 of the Revised Code.

~~(G)-(11)~~ "Pregnancy" means the human female reproductive condition that begins with fertilization, when the woman is carrying the developing human offspring, and that is calculated from the first day of the last menstrual period of the woman.

~~(H)-(12)~~ "Serious risk of the substantial and irreversible impairment of a major bodily function" has the same meaning as in section 2919.16 of the Revised Code.

~~(I)-(13)~~ "Spontaneous miscarriage" means the natural or accidental termination of a pregnancy and the expulsion of the fetus, typically caused by genetic defects in the fetus or physical abnormalities in the pregnant woman.

(14) "Standard medical practice" means the degree of skill, care, and diligence that a physician of the same medical specialty would employ in like circumstances. As applied to the method used to determine the presence of a fetal heartbeat for purposes of section ~~2919.191~~ 2919.192 of the Revised Code, "standard medical practice" includes employing the appropriate means of detection depending on the estimated gestational age of the fetus and the condition of the woman and her pregnancy.

~~(J)-(15)~~ "Unborn human individual" means an individual organism of the species homo sapiens from fertilization until live birth.

(B)(1) It is the intent of the general assembly that a court judgment or order suspending enforcement of any provision of this section or sections 2919.171 or 2919.191 to 2919.1913 of the Revised Code is not to be regarded as tantamount to repeal of that provision.

(2) Upon the issuance of any court order or judgment restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, or the effective date of an amendment to the United States Constitution restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, the attorney general may apply to the pertinent state or federal court for either or both of the following:

(a) A declaration that any one or more sections specified in division (B)(1) of this section are constitutional;

(b) A judgment or order lifting an injunction against the enforcement of any one or more sections specified in division (B)(1) of this section.

(3) If the attorney general fails to apply for the relief described in division (B)(2) of this section within the thirty-day period after an event described in that division occurs, any county prosecutor, with standing, may apply to the appropriate state or federal court for such relief.

(4) If any provision of this section or sections 2919.171 or 2919.191 to 2919.1913 of the Revised Code is held invalid, or if the application of such provision to any person or circumstance is held invalid, the invalidity of that provision does not affect any other provisions or applications of this section and sections 2919.171 and 2919.191 to 2919.1913 of the Revised Code that can be given effect without the invalid provision or application, and to this end the provisions of this section and sections 2919.171 and 2919.191 to 2919.1913 of the Revised Code are severable as provided in section 1.50 of the Revised Code. In particular, it is the intent of the general assembly that any invalidity or potential invalidity of a provision of this section or sections 2919.171 or 2919.191 to 2919.1913 of the Revised Code is not to impair the immediate and continuing enforceability of the remaining provisions. It is furthermore the intent of the general assembly that the provisions of this section and sections 2919.171 or 2919.191 to 2919.1913 of the Revised Code are not to have the

effect of repealing or limiting any other laws of this state, except as specified by this section and sections 2919.171 and 2919.191 to 2919.193 of the Revised Code.

Sec. 2919.191. Sections 2919.192 to 2919.195 of the Revised Code apply only to intrauterine pregnancies.

Sec. ~~2919.191~~ 2919.192. (A) A person who intends to perform or induce an abortion on a pregnant woman shall determine whether there is a detectable fetal heartbeat of the unborn human individual the pregnant woman is carrying. The method of determining the presence of a fetal heartbeat shall be consistent with the person's good faith understanding of standard medical practice, provided that if rules have been adopted under division ~~(C)~~ (B) of this section, the method chosen shall be one that is consistent with the rules. The person who determines the presence or absence of a fetal heartbeat shall record in the pregnant woman's medical record the estimated gestational age of the unborn human individual, the method used to test for a fetal heartbeat, the date and time of the test, and the results of the test.

~~(B)(1) Except when a medical emergency exists that prevents compliance with this division, no person shall perform or induce an abortion on a pregnant woman prior to determining if the unborn human individual the pregnant woman is carrying has a detectable fetal heartbeat. Any person who performs or induces an abortion on a pregnant woman based on the exception in this division shall note in the pregnant woman's medical records that a medical emergency necessitating the abortion existed and shall also note the medical condition of the pregnant woman that prevented compliance with this division. The person shall maintain a copy of the notes described in this division in the person's own records for at least seven years after the notes are entered into the medical records.~~

~~(2) The person who performs the examination for the presence of a fetal heartbeat shall give the pregnant woman the option to view or hear the fetal heartbeat.~~

~~(C) The (B) Not later than one hundred twenty days of the effective date of S.B. 23 of the 133rd general assembly, the director of health may promulgate shall adopt rules pursuant to section 111.15 of the Revised Code specifying the appropriate methods of performing an examination for the purpose of determining the presence of a fetal heartbeat of an unborn individual based on standard medical practice. The rules shall require only that an examination shall be performed externally.~~

~~(D)~~ (C) A person is not in violation of division (A) ~~or (B)~~ of this section if that person has performed an examination for the purpose of determining the presence of a fetal heartbeat in the fetus of an unborn human individual utilizing standard medical practice in accordance with rules adopted under division (B) of this section, that examination does not reveal a fetal heartbeat or the person has been informed by a physician who has performed the examination for a fetal heartbeat that the examination did not reveal a fetal heartbeat, and the person notes in the pregnant woman's medical records the procedure utilized to detect the presence of a fetal heartbeat.

~~(E) Except as provided in division (F) of this section, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman before determining in accordance with division (A) of this section whether the unborn human individual the pregnant woman is carrying has a detectable heartbeat. The failure of a person to satisfy the requirements of this section prior to performing or inducing an abortion on a pregnant woman may be the basis for either of the following:~~

- (1) ~~A civil action for compensatory and exemplary damages;~~
- (2) ~~Disciplinary action under section 4731.22 of the Revised Code.~~

~~(F) Division (E) of this section does not apply to a physician who performs or induces the abortion if the physician believes that a medical emergency exists that prevents compliance with that division.~~

~~(G) The director of health may determine and specify in rules adopted pursuant to section 111.15 of the Revised Code and based upon available medical evidence the statistical probability of bringing an unborn human individual to term based on the gestational age of an unborn human individual who possesses a detectable fetal heartbeat.~~

~~(H) A woman on whom an abortion is performed in violation of division (B) of this section or division (B)(3) of section 2317.56 of the Revised Code may file a civil action for the wrongful death of the woman's unborn child and may receive at the mother's election at any time prior to final judgment damages in an amount equal to ten thousand dollars or an amount determined by the trier of fact after consideration of the evidence subject to the same defenses and requirements of proof, except any requirement of live birth, as would apply to a suit for the wrongful death of a child who had been born alive.~~

Sec. 2919.193. (A) Except as provided in division (B) of this section, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman before determining in accordance with division (A) of section 2919.192 of the Revised Code whether the unborn human individual the pregnant woman is carrying has a detectable heartbeat.

Whoever violates this division is guilty of performing or inducing an abortion before determining whether there is a detectable fetal heartbeat, a felony of the fifth degree. A violation of this division may also be the basis of either of the following:

- (1) A civil action for compensatory and exemplary damages;
- (2) Disciplinary action under section 4731.22 of the Revised Code.

(B) Division (A) of this section does not apply to a physician who performs or induces the abortion if the physician believes that a medical emergency, as defined in section 2919.16 of the Revised Code, exists that prevents compliance with that division.

(C) A physician who performs or induces an abortion on a pregnant woman based on the exception in division (B) of this section shall make written notations in the pregnant woman's medical records of both of the following:

- (1) The physician's belief that a medical emergency necessitating the abortion existed;
- (2) The medical condition of the pregnant woman that assertedly prevented compliance with

division (A) of this section.

For at least seven years from the date the notations are made, the physician shall maintain in the physician's own records a copy of the notations.

(D) A person is not in violation of division (A) of this section if the person acts in accordance with division (A) of section 2919.192 of the Revised Code and the method used to determine the presence of a fetal heartbeat does not reveal a fetal heartbeat.

Sec. ~~2919.192~~ 2919.194. (A) ~~If~~ Notwithstanding division (A)(3) of this section, if a person who intends to perform or induce an abortion on a pregnant woman has determined, under section ~~2919.191~~ 2919.192 of the Revised Code, that the unborn human individual the pregnant woman is

carrying has a detectable heartbeat, the person shall not, except as provided in division (B) of this section, perform or induce the abortion ~~until~~ without meeting all of the following requirements ~~have been met and~~ without at least twenty-four hours ~~have elapsed~~ elapsing after the last of the requirements is met:

(1) The person intending to perform or induce the abortion shall inform the pregnant woman in writing that the unborn human individual the pregnant woman is carrying has a fetal heartbeat.

(2) The person intending to perform or induce the abortion shall inform the pregnant woman, to the best of the person's knowledge, of the statistical probability of bringing the unborn human individual possessing a detectable fetal heartbeat to term based on the gestational age of the unborn human individual the pregnant woman is carrying or, if the director of health has specified statistical probability information pursuant to rules adopted under division (C) of this section, shall provide to the pregnant woman that information.

(3) The pregnant woman shall sign a form acknowledging that the pregnant woman has received information from the person intending to perform or induce the abortion that the unborn human individual the pregnant woman is carrying has a fetal heartbeat and that the pregnant woman is aware of the statistical probability of bringing the unborn human individual the pregnant woman is carrying to term.

(B) Division (A) of this section does not apply if the person who intends to perform or induce the abortion believes that a medical emergency exists that prevents compliance with that division.

(C) The director of health may adopt rules that specify information regarding the statistical probability of bringing an unborn human individual possessing a detectable heartbeat to term based on the gestational age of the unborn human individual. The rules shall be based on available medical evidence and shall be adopted in accordance with section 111.15 of the Revised Code.

(D) This section does not have the effect of repealing or limiting any other provision of the Revised Code relating to informed consent for an abortion, including the provisions in section 2317.56 of the Revised Code.

(E) Whoever violates division (A) of this section is guilty of performing or inducing an abortion without informed consent when there is a detectable fetal heartbeat, a misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense.

Sec. 2919.195. (A) Except as provided in division (B) of this section, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual the pregnant woman is carrying and whose fetal heartbeat has been detected in accordance with division (A) of section 2919.192 of the Revised Code.

Whoever violates this division is guilty of performing or inducing an abortion after the detection of a fetal heartbeat, a felony of the fifth degree.

(B) Division (A) of this section does not apply to a physician who performs a medical procedure that, in the physician's reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

A physician who performs a medical procedure as described in this division shall declare, in a written document, that the medical procedure is necessary, to the best of the physician's reasonable

medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. In the document, the physician shall specify the pregnant woman's medical condition that the medical procedure is asserted to address and the medical rationale for the physician's conclusion that the medical procedure is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

A physician who performs a medical procedure as described in this division shall place the written document required by this division in the pregnant woman's medical records. The physician shall maintain a copy of the document in the physician's own records for at least seven years from the date the document is created.

(C) A person is not in violation of division (A) of this section if the person acts in accordance with division (A) of section 2919.192 of the Revised Code and the method used to determine the presence of a fetal heartbeat does not reveal a fetal heartbeat.

(D) Division (A) of this section does not have the effect of repealing or limiting any other provision of the Revised Code that restricts or regulates the performance or inducement of an abortion by a particular method or during a particular stage of a pregnancy.

Sec. 2919.196. The provisions of this section are wholly independent of the requirements of sections 2919.192 to 2919.195 of the Revised Code.

(A) A person who performs or induces an abortion on a pregnant woman shall do whichever of the following is applicable:

(1) If a purported reason for the abortion is to preserve the health of the pregnant woman, the person shall specify in a written document the medical condition that the abortion is asserted to address and the medical rationale for the person's conclusion that the abortion is necessary to address that condition.

(2) If division (A)(1) of this section does not apply, the person shall specify in a written document that maternal health is not a reason of the abortion.

(B) The person who specifies the information in the document described in division (A) of this section shall place the document in the pregnant woman's medical records. The person who specifies the information shall maintain a copy of the document in the person's own records for at least seven years from the date the document is created.

Sec. 2919.197. Nothing in sections 2919.19 to 2919.196 of the Revised Code prohibits the sale, use, prescription, or administration of a drug, device, or chemical for contraceptive purposes.

Sec. ~~2919.193~~ 2919.198. A pregnant woman on whom an abortion is performed or induced in violation of section ~~2919.191 or 2919.192~~ 2919.193, 2919.194, or 2919.195 of the Revised Code is not guilty of violating any of those sections; is not guilty of attempting to commit, conspiring to commit, or complicity in committing a violation of any of those sections; and is not subject to a civil penalty based on the abortion being performed or induced in violation of any of those sections.

Sec. 2919.199. (A) A woman who meets either or both of the following criteria may file a civil action for the wrongful death of her unborn child:

(1) A woman on whom an abortion was performed or induced in violation of division (A) of section 2919.193 or division (A) of section 2919.195 of the Revised Code;

(2) A woman on whom an abortion was performed or induced who was not given the

information described in divisions (A)(1) and (2) of section 2919.194 of the Revised Code or who did not sign a form described in division (A)(3) of section 2919.194 of the Revised code.

(B) A woman who prevails in an action filed under division (A) of this section shall receive both of the following from the person who committed the one or more acts described in division (A) (1) or (2) of this section:

(1) Damages in an amount equal to ten thousand dollars or an amount determined by the trier of fact after consideration of the evidence at the mother's election at any time prior to final judgment subject to the same defenses and requirements of proof, except any requirement of live birth, as would apply to a suit for the wrongful death of a child who had been born alive;

(2) Court costs and reasonable attorney's fees.

(C) A determination by a court of record that division (A) of section 2919.193 of the Revised Code, division (A)(1), (2), or (3) of section 2919.194 of the Revised Code, or division (A) of section 2919.195 of the Revised Code is unconstitutional shall be a defense to an action filed under division (A) of this section alleging that the defendant violated the division that was determined to be unconstitutional.

(D) If the defendant in an action filed under division (A) of this section prevails and all of the following apply the court shall award reasonable attorney's fees to the defendant in accordance with section 2323.51 of the Revised Code:

(1) The court finds that the commencement of the action constitutes frivolous conduct, as defined in section 2323.51 of the Revised Code.

(2) The court's finding in division (D)(1) of this section is not based on that court or another court determining that division (A) of section 2919.193 of the Revised Code, division (A)(1), (2), or (3) of section 2919.194 of the Revised Code, or division (A) of section 2919.195 of the Revised Code is unconstitutional.

(3) The court finds that the defendant was adversely affected by the frivolous conduct.

Sec. 2919.1910. (A) To ensure that citizens are informed of available options in this state, there is hereby created the joint legislative committee on adoption promotion and support. The committee may review or study any matter that it considers relevant to the adoption process in this state, with priority given to the study or review of mechanisms intended to increase awareness of the process, increase its effectiveness, or both.

(B) The committee shall consist of three members of the house of representatives appointed by the speaker of the house of representatives and three members of the senate appointed by the president of the senate. Not more than two members appointed by the speaker of the house of representatives and not more than two members appointed by the president of the senate may be of the same political party.

Each member of the committee shall hold office during the general assembly in which the member is appointed and until a successor has been appointed, notwithstanding the adjournment sine die of the general assembly in which the member was appointed or the expiration of the member's term as a member of the general assembly. Any vacancies occurring among the members of the committee shall be filled in the manner of the original appointment.

(C) The committee has the same powers as other standing or select committees of the general assembly.

Sec. 2919.1912. (A) The state medical board may assess against a person a forfeiture of not more than twenty thousand dollars for each separate violation or failure of the person to comply with any of the requirements of sections 2919.171, 2919.192, 2919.193, 2919.194, 2919.195, or 2919.196 of the Revised Code. The board shall comply with the adjudication requirements of Chapter 119. of the Revised Code when assessing the forfeiture. The forfeiture may be in addition to criminal penalties that are imposed under other sections of the Revised Code.

(B) An action to recover a forfeiture shall be prosecuted in the name of the state and shall be brought in the court of common pleas of Franklin county. The action shall be commenced and prosecuted by the attorney general when directed by the board.

(C) Moneys collected under division (A) of this section or recovered by an action under division (B) of this section shall be paid to the treasurer of state for deposit into the foster care and adoption initiatives fund created under section 5103.11 of the Revised Code.

Sec. 2919.1913. Sections 2919.171, 2919.19 to 2919.1913, and 4731.22 of the Revised Code, as amended or enacted by this act, shall be known as the "Human Rights and Heartbeat Protection Act."

Sec. 4731.22. (A) The state medical board, by an affirmative vote of not fewer than six of its members, may limit, revoke, or suspend a license or certificate to practice or certificate to recommend, refuse to grant a license or certificate, refuse to renew a license or certificate, refuse to reinstate a license or certificate, or reprimand or place on probation the holder of a license or certificate if the individual applying for or holding the license or certificate is found by the board to have committed fraud during the administration of the examination for a license or certificate to practice or to have committed fraud, misrepresentation, or deception in applying for, renewing, or securing any license or certificate to practice or certificate to recommend issued by the board.

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend a license or certificate to practice or certificate to recommend, refuse to issue a license or certificate, refuse to renew a license or certificate, refuse to reinstate a license or certificate, or reprimand or place on probation the holder of a license or certificate for one or more of the following reasons:

(1) Permitting one's name or one's license or certificate to practice to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;

(2) Failure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;

(3) Except as provided in section 4731.97 of the Revised Code, selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug;

(4) Willfully betraying a professional confidence.

For purposes of this division, "willfully betraying a professional confidence" does not include providing any information, documents, or reports under sections 307.621 to 307.629 of the Revised Code to a child fatality review board; does not include providing any information, documents, or

reports to the director of health pursuant to guidelines established under section 3701.70 of the Revised Code; does not include written notice to a mental health professional under section 4731.62 of the Revised Code; and does not include the making of a report of an employee's use of a drug of abuse, or a report of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by section 2305.33 or 4731.62 of the Revised Code upon a physician who makes a report in accordance with section 2305.33 or notifies a mental health professional in accordance with section 4731.62 of the Revised Code. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any license or certificate to practice issued by the board.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(7) Representing, with the purpose of obtaining compensation or other advantage as personal gain or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured;

(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;

(9) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;

(10) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;

(11) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(12) Commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(13) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude;

(14) Commission of an act involving moral turpitude that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(15) Violation of the conditions of limitation placed by the board upon a license or certificate to practice;

(16) Failure to pay license renewal fees specified in this chapter;

(17) Except as authorized in section 4731.31 of the Revised Code, engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business;

(18) Subject to section 4731.226 of the Revised Code, violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The individual whose license or certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to the individual's profession.

For purposes of this division, a "provision of a code of ethics of a national professional organization" does not include any provision that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(19) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.

In enforcing this division, the board, upon a showing of a possible violation, may compel any individual authorized to practice by this chapter or who has submitted an application pursuant to this chapter to submit to a mental examination, physical examination, including an HIV test, or both a mental and a physical examination. The expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination or consent to an HIV test ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board finds an individual unable to practice because of the reasons set forth in this division, the board shall require the individual to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for initial, continued, reinstated, or renewed authority to practice. An individual affected under this division shall be afforded an opportunity to demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards under the provisions of the individual's license or certificate. For the purpose of this division, any individual who applies for or receives a license or certificate to practice under this chapter accepts the privilege of practicing in this state and, by so doing, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(20) Except as provided in division (F)(1)(b) of section 4731.282 of the Revised Code or when civil penalties are imposed under section 4731.225 of the Revised Code, and subject to section

4731.226 of the Revised Code, violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board.

This division does not apply to a violation or attempted violation of, assisting in or abetting the violation of, or a conspiracy to violate, any provision of this chapter or any rule adopted by the board that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(21) The violation of section 3701.79 of the Revised Code or of any abortion rule adopted by the director of health pursuant to section 3701.341 of the Revised Code;

(22) Any of the following actions taken by an agency responsible for authorizing, certifying, or regulating an individual to practice a health care occupation or provide health care services in this state or another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand;

(23) The violation of section 2919.12 of the Revised Code or the performance or inducement of an abortion upon a pregnant woman with actual knowledge that the conditions specified in division (B) of section 2317.56 of the Revised Code have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied, unless an affirmative defense as specified in division (H)(2) of that section would apply in a civil action authorized by division (H)(1) of that section;

(24) The revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice;

(25) Termination or suspension from participation in the medicare or medicaid programs by the department of health and human services or other responsible agency;

(26) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.

For the purposes of this division, any individual authorized to practice by this chapter accepts the privilege of practicing in this state subject to supervision by the board. By filing an application for or holding a license or certificate to practice under this chapter, an individual shall be deemed to have given consent to submit to a mental or physical examination when ordered to do so by the board in writing, and to have waived all objections to the admissibility of testimony or examination reports that constitute privileged communications.

If it has reason to believe that any individual authorized to practice by this chapter or any

applicant for licensure or certification to practice suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. The expense of the examination is the responsibility of the individual compelled to be examined. Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician who is qualified to conduct the examination and who is chosen by the board.

Failure to submit to a mental or physical examination ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board determines that the individual's ability to practice is impaired, the board shall suspend the individual's license or certificate or deny the individual's application and shall require the individual, as a condition for initial, continued, reinstated, or renewed licensure or certification to practice, to submit to treatment.

Before being eligible to apply for reinstatement of a license or certificate suspended under this division, the impaired practitioner shall demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards of care under the provisions of the practitioner's license or certificate. The demonstration shall include, but shall not be limited to, the following:

(a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed any required inpatient treatment;

(b) Evidence of continuing full compliance with an aftercare contract or consent agreement;

(c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making the assessments and shall describe the basis for their determination.

The board may reinstate a license or certificate suspended under this division after that demonstration and after the individual has entered into a written consent agreement.

When the impaired practitioner resumes practice, the board shall require continued monitoring of the individual. The monitoring shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by board order after a hearing, and, upon termination of the consent agreement, submission to the board for at least two years of annual written progress reports made under penalty of perjury stating whether the individual has maintained sobriety.

(27) A second or subsequent violation of section 4731.66 or 4731.69 of the Revised Code;

(28) Except as provided in division (N) of this section:

(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that individual;

(b) Advertising that the individual will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay.

(29) Failure to use universal blood and body fluid precautions established by rules adopted under section 4731.051 of the Revised Code;

(30) Failure to provide notice to, and receive acknowledgment of the notice from, a patient when required by section 4731.143 of the Revised Code prior to providing nonemergency professional services, or failure to maintain that notice in the patient's medical record;

(31) Failure of a physician supervising a physician assistant to maintain supervision in accordance with the requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter;

(32) Failure of a physician or podiatrist to enter into a standard care arrangement with a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner with whom the physician or podiatrist is in collaboration pursuant to section 4731.27 of the Revised Code or failure to fulfill the responsibilities of collaboration after entering into a standard care arrangement;

(33) Failure to comply with the terms of a consult agreement entered into with a pharmacist pursuant to section 4729.39 of the Revised Code;

(34) Failure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board in an investigative interview, an investigative office conference, at a deposition, or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue;

(35) Failure to supervise an oriental medicine practitioner or acupuncturist in accordance with Chapter 4762. of the Revised Code and the board's rules for providing that supervision;

(36) Failure to supervise an anesthesiologist assistant in accordance with Chapter 4760. of the Revised Code and the board's rules for supervision of an anesthesiologist assistant;

(37) Assisting suicide, as defined in section 3795.01 of the Revised Code;

(38) Failure to comply with the requirements of section 2317.561 of the Revised Code;

(39) Failure to supervise a radiologist assistant in accordance with Chapter 4774. of the Revised Code and the board's rules for supervision of radiologist assistants;

(40) Performing or inducing an abortion at an office or facility with knowledge that the office or facility fails to post the notice required under section 3701.791 of the Revised Code;

(41) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for the operation of or the provision of care at a pain management clinic;

(42) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for providing supervision, direction, and control of individuals at a pain management clinic;

(43) Failure to comply with the requirements of section 4729.79 or 4731.055 of the Revised Code, unless the state board of pharmacy no longer maintains a drug database pursuant to section 4729.75 of the Revised Code;

(44) Failure to comply with the requirements of section 2919.171, 2919.202, or 2919.203 of the Revised Code or failure to submit to the department of health in accordance with a court order a complete report as described in section 2919.171 or 2919.202 of the Revised Code;

(45) Practicing at a facility that is subject to licensure as a category III terminal distributor of

dangerous drugs with a pain management clinic classification unless the person operating the facility has obtained and maintains the license with the classification;

(46) Owning a facility that is subject to licensure as a category III terminal distributor of dangerous drugs with a pain management clinic classification unless the facility is licensed with the classification;

(47) Failure to comply with any of the requirement requirements regarding making or maintaining notes medical records or documents described in division (B)-(A) of section 2919.191-2919.192, division (C) of section 2919.193, division (B) of section 2919.195, or division (A) of section 2919.196 of the Revised Code or failure to satisfy the requirements of section 2919.191 of the Revised Code prior to performing or inducing an abortion upon a pregnant woman;

(48) Failure to comply with the requirements in section 3719.061 of the Revised Code before issuing for a minor a prescription for an opioid analgesic, as defined in section 3719.01 of the Revised Code;

(49) Failure to comply with the requirements of section 4731.30 of the Revised Code or rules adopted under section 4731.301 of the Revised Code when recommending treatment with medical marijuana;

(50) Practicing at a facility, clinic, or other location that is subject to licensure as a category III terminal distributor of dangerous drugs with an office-based opioid treatment classification unless the person operating that place has obtained and maintains the license with the classification;

(51) Owning a facility, clinic, or other location that is subject to licensure as a category III terminal distributor of dangerous drugs with an office-based opioid treatment classification unless that place is licensed with the classification;

(52) A pattern of continuous or repeated violations of division (E)(2) or (3) of section 3963.02 of the Revised Code.

(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall be taken pursuant to an adjudication under Chapter 119. of the Revised Code, except that in lieu of an adjudication, the board may enter into a consent agreement with an individual to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than six members of the board, shall constitute the findings and order of the board with respect to the matter addressed in the agreement. If the board refuses to ratify a consent agreement, the admissions and findings contained in the consent agreement shall be of no force or effect.

A telephone conference call may be utilized for ratification of a consent agreement that revokes or suspends an individual's license or certificate to practice or certificate to recommend. The telephone conference call shall be considered a special meeting under division (F) of section 121.22 of the Revised Code.

If the board takes disciplinary action against an individual under division (B) of this section for a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 of the Revised Code, the disciplinary action shall consist of a suspension of the individual's license or certificate to practice for a period of at least one year or, if determined appropriate by the board, a more serious sanction involving the individual's license or certificate to practice. Any consent agreement entered into under this division with an individual that pertains to a second or

subsequent plea of guilty to, or judicial finding of guilt of, a violation of that section shall provide for a suspension of the individual's license or certificate to practice for a period of at least one year or, if determined appropriate by the board, a more serious sanction involving the individual's license or certificate to practice.

(D) For purposes of divisions (B)(10), (12), and (14) of this section, the commission of the act may be established by a finding by the board, pursuant to an adjudication under Chapter 119. of the Revised Code, that the individual committed the act. The board does not have jurisdiction under those divisions if the trial court renders a final judgment in the individual's favor and that judgment is based upon an adjudication on the merits. The board has jurisdiction under those divisions if the trial court issues an order of dismissal upon technical or procedural grounds.

(E) The sealing of conviction records by any court shall have no effect upon a prior board order entered under this section or upon the board's jurisdiction to take action under this section if, based upon a plea of guilty, a judicial finding of guilt, or a judicial finding of eligibility for intervention in lieu of conviction, the board issued a notice of opportunity for a hearing prior to the court's order to seal the records. The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

(F)(1) The board shall investigate evidence that appears to show that a person has violated any provision of this chapter or any rule adopted under it. Any person may report to the board in a signed writing any information that the person may have that appears to show a violation of any provision of this chapter or any rule adopted under it. In the absence of bad faith, any person who reports information of that nature or who testifies before the board in any adjudication conducted under Chapter 119. of the Revised Code shall not be liable in damages in a civil action as a result of the report or testimony. Each complaint or allegation of a violation received by the board shall be assigned a case number and shall be recorded by the board.

(2) Investigations of alleged violations of this chapter or any rule adopted under it shall be supervised by the supervising member elected by the board in accordance with section 4731.02 of the Revised Code and by the secretary as provided in section 4731.39 of the Revised Code. The president may designate another member of the board to supervise the investigation in place of the supervising member. No member of the board who supervises the investigation of a case shall participate in further adjudication of the case.

(3) In investigating a possible violation of this chapter or any rule adopted under this chapter, or in conducting an inspection under division (E) of section 4731.054 of the Revised Code, the board may question witnesses, conduct interviews, administer oaths, order the taking of depositions, inspect and copy any books, accounts, papers, records, or documents, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony, except that a subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary and supervising member of the board.

(a) Before issuance of a subpoena for patient record information, the secretary and supervising member shall determine whether there is probable cause to believe that the complaint filed alleges a violation of this chapter or any rule adopted under it and that the records sought are relevant to the alleged violation and material to the investigation. The subpoena may apply only to

records that cover a reasonable period of time surrounding the alleged violation.

(b) On failure to comply with any subpoena issued by the board and after reasonable notice to the person being subpoenaed, the board may move for an order compelling the production of persons or records pursuant to the Rules of Civil Procedure.

(c) A subpoena issued by the board may be served by a sheriff, the sheriff's deputy, or a board employee or agent designated by the board. Service of a subpoena issued by the board may be made by delivering a copy of the subpoena to the person named therein, reading it to the person, or leaving it at the person's usual place of residence, usual place of business, or address on file with the board. When serving a subpoena to an applicant for or the holder of a license or certificate issued under this chapter, service of the subpoena may be made by certified mail, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the person refuses to accept delivery. If the person being served refuses to accept the subpoena or is not located, service may be made to an attorney who notifies the board that the attorney is representing the person.

(d) A sheriff's deputy who serves a subpoena shall receive the same fees as a sheriff. Each witness who appears before the board in obedience to a subpoena shall receive the fees and mileage provided for under section 119.094 of the Revised Code.

(4) All hearings, investigations, and inspections of the board shall be considered civil actions for the purposes of section 2305.252 of the Revised Code.

(5) A report required to be submitted to the board under this chapter, a complaint, or information received by the board pursuant to an investigation or pursuant to an inspection under division (E) of section 4731.054 of the Revised Code is confidential and not subject to discovery in any civil action.

The board shall conduct all investigations or inspections and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the board. The board shall not make public the names or any other identifying information about patients or complainants unless proper consent is given or, in the case of a patient, a waiver of the patient privilege exists under division (B) of section 2317.02 of the Revised Code, except that consent or a waiver of that nature is not required if the board possesses reliable and substantial evidence that no bona fide physician-patient relationship exists.

The board may share any information it receives pursuant to an investigation or inspection, including patient records and patient record information, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating alleged violations of statutes or administrative rules. An agency or board that receives the information shall comply with the same requirements regarding confidentiality as those with which the state medical board must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the agency or board that applies when it is dealing with other information in its possession. In a judicial proceeding, the information may be admitted into evidence only in accordance with the Rules of Evidence, but the court shall require that appropriate measures are taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients or complainants whose confidentiality was protected by the state medical board when the information was in the board's possession. Measures to ensure confidentiality that may be taken by the court include sealing its records or

deleting specific information from its records.

(6) On a quarterly basis, the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

- (a) The case number assigned to the complaint or alleged violation;
- (b) The type of license or certificate to practice, if any, held by the individual against whom the complaint is directed;
- (c) A description of the allegations contained in the complaint;
- (d) The disposition of the case.

The report shall state how many cases are still pending and shall be prepared in a manner that protects the identity of each person involved in each case. The report shall be a public record under section 149.43 of the Revised Code.

(G) If the secretary and supervising member determine both of the following, they may recommend that the board suspend an individual's license or certificate to practice or certificate to recommend without a prior hearing:

- (1) That there is clear and convincing evidence that an individual has violated division (B) of this section;
- (2) That the individual's continued practice presents a danger of immediate and serious harm to the public.

Written allegations shall be prepared for consideration by the board. The board, upon review of those allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a license or certificate without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking the vote on the summary suspension.

The board shall issue a written order of suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code. If the individual subject to the summary suspension requests an adjudicatory hearing by the board, the date set for the hearing shall be within fifteen days, but not earlier than seven days, after the individual requests the hearing, unless otherwise agreed to by both the board and the individual.

Any summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudicative order within seventy-five days after completion of its hearing. A failure to issue the order within seventy-five days shall result in dissolution of the summary suspension order but shall not invalidate any subsequent, final adjudicative order.

(H) If the board takes action under division (B)(9), (11), or (13) of this section and the judicial finding of guilt, guilty plea, or judicial finding of eligibility for intervention in lieu of conviction is overturned on appeal, upon exhaustion of the criminal appeal, a petition for reconsideration of the order may be filed with the board along with appropriate court documents. Upon receipt of a petition of that nature and supporting court documents, the board shall reinstate the individual's license or certificate to practice. The board may then hold an adjudication under Chapter

119. of the Revised Code to determine whether the individual committed the act in question. Notice of an opportunity for a hearing shall be given in accordance with Chapter 119. of the Revised Code. If the board finds, pursuant to an adjudication held under this division, that the individual committed the act or if no hearing is requested, the board may order any of the sanctions identified under division (B) of this section.

(I) The license or certificate to practice issued to an individual under this chapter and the individual's practice in this state are automatically suspended as of the date of the individual's second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 of the Revised Code. In addition, the license or certificate to practice or certificate to recommend issued to an individual under this chapter and the individual's practice in this state are automatically suspended as of the date the individual pleads guilty to, is found by a judge or jury to be guilty of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state or treatment or intervention in lieu of conviction in another jurisdiction for any of the following criminal offenses in this state or a substantially equivalent criminal offense in another jurisdiction: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. Continued practice after suspension shall be considered practicing without a license or certificate.

The board shall notify the individual subject to the suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. If an individual whose license or certificate is automatically suspended under this division fails to make a timely request for an adjudication under Chapter 119. of the Revised Code, the board shall do whichever of the following is applicable:

(1) If the automatic suspension under this division is for a second or subsequent plea of guilty to, or judicial finding of guilt of, a violation of section 2919.123 of the Revised Code, the board shall enter an order suspending the individual's license or certificate to practice for a period of at least one year or, if determined appropriate by the board, imposing a more serious sanction involving the individual's license or certificate to practice.

(2) In all circumstances in which division (I)(1) of this section does not apply, enter a final order permanently revoking the individual's license or certificate to practice.

(J) If the board is required by Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and if the individual subject to the notice does not timely request a hearing in accordance with section 119.07 of the Revised Code, the board is not required to hold a hearing, but may adopt, by an affirmative vote of not fewer than six of its members, a final order that contains the board's findings. In that final order, the board may order any of the sanctions identified under division (A) or (B) of this section.

(K) Any action taken by the board under division (B) of this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the individual's license or certificate to practice may be reinstated. The board shall adopt rules governing conditions to be imposed for reinstatement. Reinstatement of a license or certificate suspended pursuant to division (B) of this section requires an affirmative vote of not fewer than six members of the board.

(L) When the board refuses to grant or issue a license or certificate to practice to an applicant, revokes an individual's license or certificate to practice, refuses to renew an individual's license or

certificate to practice, or refuses to reinstate an individual's license or certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a license or certificate to practice and the board shall not accept an application for reinstatement of the license or certificate or for issuance of a new license or certificate.

(M) Notwithstanding any other provision of the Revised Code, all of the following apply:

(1) The surrender of a license or certificate issued under this chapter shall not be effective unless or until accepted by the board. A telephone conference call may be utilized for acceptance of the surrender of an individual's license or certificate to practice. The telephone conference call shall be considered a special meeting under division (F) of section 121.22 of the Revised Code. Reinstatement of a license or certificate surrendered to the board requires an affirmative vote of not fewer than six members of the board.

(2) An application for a license or certificate made under the provisions of this chapter may not be withdrawn without approval of the board.

(3) Failure by an individual to renew a license or certificate to practice in accordance with this chapter or a certificate to recommend in accordance with rules adopted under section 4731.301 of the Revised Code shall not remove or limit the board's jurisdiction to take any disciplinary action under this section against the individual.

(4) At the request of the board, a license or certificate holder shall immediately surrender to the board a license or certificate that the board has suspended, revoked, or permanently revoked.

(N) Sanctions shall not be imposed under division (B)(28) of this section against any person who waives deductibles and copayments as follows:

(1) In compliance with the health benefit plan that expressly allows such a practice. Waiver of the deductibles or copayments shall be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator. Documentation of the consent shall be made available to the board upon request.

(2) For professional services rendered to any other person authorized to practice pursuant to this chapter, to the extent allowed by this chapter and rules adopted by the board.

(O) Under the board's investigative duties described in this section and subject to division (F) of this section, the board shall develop and implement a quality intervention program designed to improve through remedial education the clinical and communication skills of individuals authorized under this chapter to practice medicine and surgery, osteopathic medicine and surgery, and podiatric medicine and surgery. In developing and implementing the quality intervention program, the board may do all of the following:

(1) Offer in appropriate cases as determined by the board an educational and assessment program pursuant to an investigation the board conducts under this section;

(2) Select providers of educational and assessment services, including a quality intervention program panel of case reviewers;

(3) Make referrals to educational and assessment service providers and approve individual educational programs recommended by those providers. The board shall monitor the progress of each individual undertaking a recommended individual educational program.

(4) Determine what constitutes successful completion of an individual educational program

and require further monitoring of the individual who completed the program or other action that the board determines to be appropriate;

(5) Adopt rules in accordance with Chapter 119. of the Revised Code to further implement the quality intervention program.

An individual who participates in an individual educational program pursuant to this division shall pay the financial obligations arising from that educational program.

Sec. 5103.11. There is hereby created the foster care and adoption initiatives fund. The fund shall be in the custody of the treasurer of state, but shall not be part of the state treasury. The fund shall consist of moneys collected under section 2919.1912 of the Revised Code. All interest earned on the fund shall be credited to the fund. The purpose of the fund is to provide funding for foster care and adoption services and initiatives. The department of job and family services shall allocate moneys from the fund according to the following distribution:

(A) Fifty per cent of the moneys in the fund shall be used for foster care services and initiatives.

(B) Fifty per cent of the moneys in the fund shall be used for adoption services and initiatives.

SECTION 2. That existing sections 2317.56, 2919.171, 2919.19, 2919.191, 2919.192, 2919.193, and 4731.22 of the Revised Code are hereby repealed.

SECTION 3. The General Assembly hereby declares that it finds, according to contemporary medical research, all of the following:

(A) As many as thirty per cent of natural pregnancies end in spontaneous miscarriage.

(B) Less than five per cent of all natural pregnancies end in spontaneous miscarriage after detection of fetal cardiac activity.

(C) Over ninety per cent of in vitro pregnancies survive the first trimester if cardiac activity is detected in the gestational sac.

(D) Nearly ninety per cent of in vitro pregnancies do not survive the first trimester where cardiac activity is not detected in the gestational sac.

(E) Fetal heartbeat, therefore, has become a key medical predictor that an unborn human individual will reach live birth.

(F) Cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac.

(G) The State of Ohio has a valid interest in protecting the health of the woman. The State of Ohio has a compelling interest in protecting the life of an unborn human individual who may be born.

(H) In order to make an informed choice about whether to continue her pregnancy, the pregnant woman has a valid interest in knowing the likelihood of the fetus surviving to full-term birth based upon the presence of cardiac activity.

(I) The State of Ohio finds that the detection of a fetal heartbeat can be accomplished through standard medical practices.

(J) At fertilization, a human being emerges as a whole, genetically distinct, living human organism and needs only the proper environment to fully develop into a human.

(K) Cardiac activity shows that tissues have come together to form organs and the developing central nervous system signals the heart to autonomically beat.

(L) When a heartbeat is visualized at seven weeks or less, ninety-one and one-half per cent will survive the first trimester and ninety-five per cent of those will deliver live- born infants.

(M) After the detection of a fetal heartbeat there is a ninety-five to ninety-eight per cent certainty that the new life will develop full term.

(N) A human being at an embryonic age and a human being at an adult age are naturally the same, with the only biological differences being due to the differences in maturity.

SECTION 4. If any provisions of a section as amended or enacted by this act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.

SECTION 5. Section 4731.22 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 111 and Sub. H.B. 156 of the 132nd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

---

*Speaker* \_\_\_\_\_ *of the House of Representatives.*

---

*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

---

*Governor.*

Sub. S. B. No. 23

133rd G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

---

*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

---

*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_

# **Exhibit B**

## Article I, Section 22 | The Right to Reproductive Freedom with Protections for Health and Safety

Ohio Constitution / Article I Bill of Rights

*Effective: 2023*

---

A. Every individual has a right to make and carry out one's own reproductive decisions, including but not limited to decisions on:

1. contraception;
2. fertility treatment;
3. continuing one's own pregnancy;
4. miscarriage care; and
5. abortion.

B. The State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either:

1. An individual's voluntary exercise of this right or
2. 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.

However, abortion may be prohibited after fetal viability. But in no case may such an abortion be prohibited if in the professional judgment of the pregnant patient's treating physician it is necessary to protect the pregnant patient's life or health.

C. As used in this Section:

1. "Fetal viability" means "the point in a pregnancy when, in the professional judgment of the pregnant patient's treating physician, the fetus has a significant likelihood of survival outside the uterus with reasonable measures. This is determined on a case-by-case basis."
2. "State" includes any governmental entity and any political subdivision.

D. This Section is self-executing.

---

---

