

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

<b>Preterm-Cleveland, et al.,</b>	:	
	:	<b>Case No. 24 CV 2634</b>
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	<b>Judge David C. Young</b>
	:	
<b>Dave Yost, et al.,</b>	:	
	:	
<b>Defendants.</b>	:	

**Decision & Entry**

This case is before the Court on Defendants Ohio Attorney General Dave Yost, Dr. Bruce T. Vanderhoff, Dr. Kim G. Rothermel, and Dr. Harish Kakarala (collectively “the State”)’s Motion to Dismiss filed May 7, 2024. Plaintiffs filed a Response in Opposition to Defendants’ Motion to Dismiss on May 21, 2024. The State then filed a Reply in Support on May 28, 2024.

The case was initiated on March 29, 2024. Plaintiffs are five reproductive health care clinics (collectively “the clinic Plaintiffs”) and Dr. Catherine Romanos, a doctor who provides reproductive care. Plaintiffs challenge Ohio’s waiting period, the in-person visit requirement, and the state-mandated information requirements for abortion care under the Ohio Constitution Art. I, § 22 (“the Amendment”). See R.C. 2317.56; 2919.192; 2919.193; and 2919.194. The Amendment provides, in part, as follows:

- 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.

*Id.*

The State moves to dismiss pursuant to Civ.R. 12(B)(6). A motion to dismiss for failure to state a claim, under Civ.R. 12(B)(6), is a procedural device designed to test the sufficiency of a complaint or cause of action. *State Auto. Mut. Ins. Co. v. Titanium Metals Corp.*, 108 Ohio St.3d 540, 2006-Ohio-1713, 844 N.E.2d 1199, ¶ 8, citing *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992). In making this evaluation, the court “must accept the material allegations of the complaint as true and make all reasonable inferences in favor of the plaintiffs.” *Hamilton v. Ohio Dep’t of Health*, 2015-Ohio-4041, 42 N.E.3d 1261, ¶ 15 (10th Dist.), citing *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 2004-Ohio-5717, ¶ 11, 816 N.E.2d 1061. “When reviewing a Civ.R. 12(B)(6) motion to dismiss, the court may consider only the statements and facts considered in the pleadings and may not consider or rely on evidence outside of the complaint.” *Id.*, citing *Brown v. Columbus City Schools Bd. of Edn.*, 10th Dist. No. 08AP-1067, 2009-Ohio-3230, ¶ 4. Ultimately, “[f]or the moving defendant to prevail, it must appear from the face of the complaint that the plaintiffs can prove no set of facts that would entitle them to relief.” *Id.*, citing *Maitland* at ¶ 11.

The State moves to dismiss arguing that the Plaintiffs lack standing to bring this action. Before a court can consider the merits of a claim, the party seeking relief must establish standing. *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 27. Standing is defined as “[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.” *Id.*, quoting Black’s Law Dictionary (8th Ed.2004) 1442. To establish traditional standing, a party must show that they have suffered “(1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief.” *Ohio Democratic Party v. LaRose*, 2020-Ohio-4778, 159 N.E.3d 1241, ¶ 14 (10th Dist.), quoting *ProgressOhio.org., Inc. v. JobsOhio*, 139 Ohio St.3d 520, 2014-Ohio-2382, ¶ 7, 13 N.E.3d 1101, quoting *Moore v. City of Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 22.

The issue is whether Plaintiffs have standing to challenge the statutes under the Amendment. Upon review, the Court finds that the Plaintiffs’ arguments are persuasive. The allegations in the Amended Complaint are sufficient to show that the Plaintiffs, both Dr. Romanos and the clinic Plaintiffs<sup>1</sup>, have standing.

The Amendment provides that the State may not “directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against \* \* \* [a] person or entity that assists an individual exercising [their] right.” Oh. Const. Art. I, § 22(B). Standing is conferred to persons or entities assisting individuals exercising their reproductive rights by the plain language of the Amendment. *See State v. Beach*, 10th Dist. Franklin No. 20AP-589, 2021-Ohio-4497, ¶ 13 (finding that Marsy’s Law, a newly enacted constitutional amendment, conferred standing “where no such right existed

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<sup>1</sup>Even assuming *arguendo* that the Clinic Plaintiffs do not have standing, the presence of one party with standing assures that a controversy before the court is justiciable. *Ohio Democratic Party v. LaRose*, 2020-Ohio-4778, 159 N.E.3d 1241, ¶ 15 (10th Dist.).

before”). Dr. Romanos and the Clinic Plaintiffs are a person and entities who assist individuals exercising their reproductive rights and, thus, have standing.

The Plaintiffs also meet the requirements for traditional standing. First, they have sufficiently alleged injury. Dr. Romanos is subject to the threat of civil and criminal penalties for violating the challenged statutes, and that threat, alone, constitutes a sufficiently concrete injury. *See FEC v. Ted Cruz for Senate*, 596 U.S. 289, 297, 142 S.Ct. 1638, 212 L.Ed.2d 654 (2022); *Klein v. Leis*, 146 Ohio App.3d 526, 2002-Ohio-1634, 767 N.E.2d 286, ¶ 13 (1st Dist.), *rev'd on other grounds*, 2003-Ohio-1634, 4779. In addition, Dr. Romanos alleged that the challenged statutes interfere with the ability to provide high quality, trauma informed abortion care, they negatively impact Dr. Romanos’s relationship with pregnant patients, and cause emotional distress. (Am. Comp. at ¶ 85-87, 99, 103, 106, 110-113.)

The clinic Plaintiffs also alleged injury. Staff and providers with the clinics are subject to the same injuries listed above. (*Id.*) The clinic providers are also subject to the same criminal and civil penalties as Dr. Romanos. (*See id.* at ¶ 10-15.) The clinic Plaintiffs are subject to negative impacts in their patient relationships such as loss of trust. (*Id.* at ¶ 87.)

These injuries are traceable to the challenged statutes and can be redressed by the relief sought. (*Id.* at ¶ 10-15, 71-113.) Therefore, the Plaintiffs have traditional standing.

Citations to *Preterm-Cleveland, Inc. v. Kasich* are unpersuasive. In *Kasich*, the Ohio Supreme Court found that Preterm-Cleveland, Inc. lacked “standing to challenge the bill as violating the Single Subject Clause[.]” *Preterm-Cleveland, Inc. v. Kasich*, 153 Ohio St.3d 157, 2018-Ohio-441, 102 N.E.3d 461, paragraph one of the syllabus. The *Kasich* Court’s discussion was limited to party’s alleging violations of the Single Subject Clause. *Id.* at ¶ 30. The Single

Subject Clause is not implicated in this case. Further, *Kasich* was decided before the Amendment was passed.

Moreover, in addition to traditional standing, Plaintiffs also have third-party standing. The Plaintiffs brought suit on behalf of themselves and their patients. (Am. Comp. at ¶ 10-15.) Third-party standing is proper where a party: “(1) suffers [their] own injury in fact, (2) possesses a sufficiently close relationship with the person who possesses the right, and (3) shows a hindrance to the possessor's ability to protect the right.” *Burden v. Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 11AP-832, 2012-Ohio-1552, ¶ 25.

As previously discussed, the Plaintiffs have suffered their own injuries. The Plaintiffs also have sufficiently close relationships with their patients, whose rights they are asserting, as their health care providers. *See Singleton v. Wulff*, 428 U.S. 106, 117, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976); *Griswold v. Connecticut*, 381 U.S. 479, 481, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). Finally, the barriers hindering patients seeking an abortion from obtaining judicial relief are numerous and include distress caused by delay in healthcare and the lengthy timeframe of litigation combined with the short time period of pregnancy. *See id.* at 117-118.

In conclusion, the State’s Motion to Dismiss is hereby **DENIED**. The State shall answer or otherwise plead within twenty-eight days from the date of this Decision & Entry.

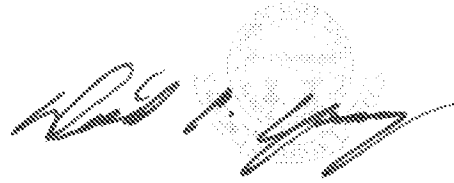
**IT IS SO ORDERED.**

Copies electronically to counsel of record for the parties.

Franklin County Court of Common Pleas

**Date:** 10-29-2024  
**Case Title:** PRETERM-CLEVELAND ET AL -VS- DAVE YOST ET AL  
**Case Number:** 24CV002634  
**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "D. C. Young", written over a circular embossed seal. The seal is partially obscured by the signature and has a textured, dotted appearance.

/s/ Judge David C. Young

Court Disposition

Case Number: 24CV002634

Case Style: PRETERM-CLEVELAND ET AL -VS- DAVE YOST ET  
AL

Motion Tie Off Information:

1. Motion CMS Document Id: 24CV0026342024-05-0799980000  
Document Title: 05-07-2024-MOTION TO DISMISS -  
DEFENDANT: DAVE YOST  
Disposition: MOTION DENIED