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IN THE COURT OF COMMON PLEAS
FOR FRANKLIN COUNTY, OHIO

PRETERM-CLEVELAND, *et al.*,	:	
	:	**Case No. 24 CV 002634**
Plaintiffs,	:	
	:	**Judge David C. Young**
v.	:	
	:	
DAVE YOST, *et al.*,	:	
	:	
Defendants.	:	
	:	
	:	

THE STATE'S MOTION TO DISMISS

Pursuant to Civ.R. 12(B)(6), Defendants Attorney General Dave Yost, Director Bruce Vanderhoff, Kim Rothermel, and Harish Kakarala (collectively "the State") respectfully move this Court to dismiss this case for failure to state a claim for which relief can be granted. For the reasons set forth in the accompanying memorandum, the State asks this Court to grant the instant motion.

Respectfully Submitted,

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Counsel for Defendants Attorney General Dave Yost, Director Bruce Vanderhoff, Kim Rothermel, and Harish Kakarala

MEMORANDUM IN SUPPORT

Plaintiffs initiated this case, alleging that R.C. 2317.56, R.C. 2919.192, R.C. 2919.193, and R.C. 2919.194 "impose an onerous and medically unnecessary process that delays, impedes, and prevents access to abortion, creates financial and logistical obstacles to obtaining an abortion, undermines patient self-determination in direct contradiction to the principle of informed consent, and stigmatizes . . . providers, singling them out for differential and unfavorable treatment." Comp. ¶ 108. Plaintiffs seek a declaratory judgment that these laws violate the Amendment, and a permanent injunction preventing the State from enforcing these laws. But they cannot succeed on their claims here, because no Plaintiff has standing to sue: the Clinics are barred from challenging them as a matter of law, *see Preterm-Cleveland v. Kasich*, 2018-Ohio-441, and the Plaintiff Physician, Dr. Romanos, fails to allege an actual injury caused by the challenged statutes. Accordingly, the State respectfully requests that the Court dismiss Plaintiffs' claims.

FACTUAL AND PROCEDURAL BACKGROUND

In 1991, the Ohio General Assembly passed, among other laws, an informed consent requirement and a waiting period, which together required that a woman seeking an abortion be given specific information at least 24 hours before her abortion. R.C. 2317.56. The law contained an exception from that requirement for medical emergencies, R.C. 2317.56(E), and created civil and disciplinary action for violations of the law's requirements and affirmative defenses in a civil action. R.C. 2317.56(H). Then, in 1998, the General Assembly amended R.C. 2317.56 to require that a physician provide the informed consent information to the pregnant woman seeking an abortion "in person." *See* R.C. 2317.56(B)(1) (2005) ("in person requirement"). "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." *Id.*

In 2013, the General Assembly passed the Heartbeat Act, which required that, before an abortion, the "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," record certain findings in the woman's medical record, and give her opportunity to view or hear the heartbeat. R.C. 2919.191; R.C. 2919.192. The law also provided an exception in the event of a medical emergency, R.C. 2919.191(B)(1), and created both civil and disciplinary actions for failure to comply with the requirements of the section.

Then in 2019, the General Assembly made changes to these existing statutes. R.C. 2919.191, R.C. 2919.192, and R.C. 2919.193 were renumbered to R.C. 2919.192, R.C. 2919.194, and R.C. 2919.198, respectively. Several parts of newly renumbered R.C. 2919.192 were deleted, including (B)(1), (E)–(H), and reorganized that stricken language to create R.C. 2919.193. The only addition to the prior scheme was to make the failure to check for a fetal heartbeat before performing an abortion a crime—a felony in the fifth degree. R.C. 2919.193(A). The 17 statutes altered or enacted went into effect on July 11, 2019, but enforcement of the laws was preliminary enjoined in federal court as conflicting with the then-existing *Roe* and *Casey* abortion regime. *See Preterm-Cleveland v. Yost*, 394 F. Supp. 3d 796 (S.D. Ohio 2019). Then on June 24, 2022, the United States Supreme Court issued its opinion in *Dobbs*, holding that the United States Constitution confers no right to abortion. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2243 (2022). Ohio Attorney General Dave Yost filed an emergency motion to dissolve the federal court's preliminary injunction, which was granted that same day.

In reaction to *Dobbs* and the Heartbeat law, a proposed Amendment to the Ohio

Constitution aimed at restoring *Roe* was placed on the November 2023 ballot. Proponents claimed it would restore *Roe* and the legal status quo that existed before the Supreme Court's decision in *Dobbs*. The Amendment passed, enshrining a right to previability abortion in the state constitution. *See* Ohio Const. art. I, §22. Plaintiffs filed this lawsuit almost five months later and simultaneously moved to preliminarily enjoin the law.

LEGAL STANDARD

"The standard for determining whether to grant a Civ.R. 12(B)(6) motion is straightforward." *City of Cincinnati v. Beretta U.S.A. Corp.*, 2002-Ohio-2480, ¶5. "In order for a complaint to be dismissed under Civ.R. 12(B)(6) for failure to state a claim, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to relief." *Id.*, citing *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 71 Ohio Op. 2d 223, 327 N.E.2d 753 (1975), syllabus. When "construing a complaint upon a motion to dismiss for failure to state a claim, [the court] must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party." *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988).

"It is well established that prior to an Ohio court's considering the merits of a legal claim, 'the person or entity seeking relief must establish standing to sue.'" *Ohioans for Concealed Carry, Inc v. City of Columbus*, 2020-Ohio-6724, ¶¶12-13, quoting *Ohio Pyro, Inc. v. Ohio Dep't of Commerce,* 2007-Ohio-5024, ¶ 27. "At a minimum, common-law standing requires the litigant to demonstrate that he or she has suffered (1) an injury (2) that is fairly traceable to the defendant's allegedly unlawful conduct and (3) is likely to be redressed by the requested relief." *Id.,* citing *Moore v. City of Middletown*, 2012-Ohio-3897, ¶ 22, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). These three factors—injury, causation, and redressability—constitute "the

irreducible constitutional minimum of standing." *Lujan* at 560. In addition, a plaintiff must establish standing "as to each claim presented." *Preterm-Cleveland, Inc. v. Kasich*, 153 Ohio St. 3d 157, 165, 2018-Ohio-441, 102 N.E.3d 461, 468, 2018 Ohio LEXIS 310. "Standing is not dispensed in gross." *Ohioans for Concealed Carry,* at 294 (internal quotations omitted), quoting *Preterm-Cleveland, Inc. v. Kasich,* at 166. "It must be demonstrated for each claim and each form of relief." *Id.* (same).

ARGUMENT

I. The Clinics lack standing to challenge these laws as a matter of law.

Six of the plaintiffs in this case are organizations that operate abortion clinics in Ohio, and the only other plaintiff is a physician who manages one of those clinics and performs abortions. The Amendment provides that "the State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against" a person or entity assisting an individual seeking an abortion. Ohio Const. art. I, §22(B). But only the physician Plaintiff must comply with the challenged statutes, and only she can be penalized for the violations of those laws. The Clinics, then, lack standing to challenge any of the specified statutes.

To have this Court hear their claims, the Clinics must show that they have "suffered or [are] threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general, that the law in question has caused the injury, and that the relief requested will redress the injury." *Preterm-Cleveland, Inc. v. Kasich*, 2018-Ohio-441, ¶21 (internal citations removed). But standing "is not dispensed in gross . . . [r]ather, a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Id.* at ¶30. Even in cases with more than one plaintiff, each plaintiff must prove individual standing as to each of their claims.

Estate of Mikulski v. Centerior Energy Corp., 2019-Ohio-983, ¶60 (8th Dist.) ("Individual standing is a threshold to all actions, including class actions.")

In *Preterm-Cleveland v. Kasich,* Preterm, a plaintiff clinic (also a plaintiff in this case) filed a lawsuit challenging 2013 H.B. No. 59 on the grounds that "the Written Transfer Agreement Provisions (R.C. 3702.30, 3702.302 through 3702.308, and 3727.60), the Heartbeat Provisions (R.C. *2317.56, 2919.19 through 2919.193*, and 4731.22), and the Parenting and Pregnancy Provisions (R.C. 5101.80, 5101.801, and 5101.804) violate the Ohio Constitution's single-subject clause." *Id.* ¶4 (emphasis added). The court held that Preterm could not be injured by the Heartbeat provisions because R.C. 2919.192 only applies to a person who performs or induces abortions, and "Preterm does not actually perform or induce abortions, so it cannot violate this statute." *Id.* at ¶26. The Court also found that R.C. 2919.191 could not injure Preterm "because it provides a possible civil action for the failure to satisfy its requirements, R.C. 2919.191(E), and it imposes duties only on persons who determine the presence or absence of a fetal heartbeat and who intend to and do perform or induce abortions, R.C. 2919.191(A) and (B)." *Id.* at ¶27. The Court concluded that Preterm lacked standing to challenge any of these statutes.

The original statutes considered in *Kasich* and R.C. 2919.192, R.C. 2919.193, and R.C. 2919.194 are substantially the same today. The only differences are the additions of a criminal penalty for performing or inducing an abortion before checking for a fetal heartbeat and a requirement that the pregnant woman sign a form that she was provided the information required in R.C. 2919.194(A)(2). These amendments to the original law do not change the outcome here. *Kasich* is controlling. The Clinics lack standing to challenge the Heartbeat provisions. That analysis is equally conclusive as to R.C. 2317.56, which imposes certain informed consent requirements on the

physician or the physician's agent, allowing civil and disciplinary actions only against the physician that performed or induced the abortion. R.C. 2317.56(G).

Because courts have no jurisdiction to enter relief for parties that lack standing to sue, *see Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 918 n.6 (9th Cir. 2004), *Kasich*'s holding prevents this Court from awarding any relief to the Plaintiff Clinics. Therefore, this Court should dismiss all the Clinic's claims.

II. The only remaining Plaintiff, Dr. Romanos, also lacks standing.

The remaining Plaintiff, Dr. Romanos, fails to allege that she has been harmed by these laws, so she also lacks standing. Further, she nowhere asserts third-party standing to bring the claims of her patients. Even if she did, she fails to meet the legal requirements for third-party standing.

Critically, only the legal claims and purported harms asserted by Dr. Romanos are properly before this Court and relevant for any decision on the sufficiency of her purported injuries to demonstrate standing here. No party in this case has asserted a claim based on the individual right to obtain an abortion created by the Amendment. Though the Amendment does create rights for both the individual woman and a person or entity that assists her in exercising her right, the Amendment does not address who can assert a violation of a right, so traditional standing principles apply. The general rule in Ohio is that "a litigant must assert its own rights, not the claims of third parties." *Util. Serv. Partners v. PUC*, 124 Ohio St. 3d 284, 2009-Ohio-6764, ¶49. "Third-party standing is not looked favorably upon, but it may be granted when a claimant (i) suffers its own injury in fact, (ii) possesses a sufficiently close relationship with the person who possesses the right, and (iii) shows some hindrance that stands in the way of the claimant seeking relief." *Id.* (cleaned up). Plaintiffs have not even attempted to make the required showing here. In any event, because

Dr. Romanos cannot demonstrate that she has been harmed by any of the challenged laws, she lacks standing to bring her own claims. Having failed the first prong of the third-party standing test, she lacks standing to assert the rights of her third-party patients.

A. Dr. Romanos has failed to show that she has been harmed by any of the challenged laws.

The State has already explained that the Amendment, properly interpreted, restored the legal regime of *Roe* and *Casey*. *See* State's Opposition to Preliminary Injunction, at 8-14 (incorporated herein). Each of these statutes were upheld when challenged under *Roe/Casey*. Since the Amendment was enacted to restore *Roe/Casey's* protections as the governing law in Ohio, these laws remain valid under the Amendment.

But under any standard, Dr. Romanos, having always complied with these laws as a licensed physician in Ohio, is not harmed by them. While the harms of her patients cannot serve as a proxy for her own harm, she asserts the hypothetical or speculative claims of harms to her patients yet fails to provide any specific instance where these laws prevented a woman from having an abortion. These laws, being applicable only to physicians, are an important and valid exercise of the General Assembly's authority to both regulate the medical profession and to protect the health and safety of all Ohioans, including those seeking an abortion. Because Dr. Romanos has not shown that she is harmed by any of the challenged laws, this Court should dismiss this case.

1. Dr. Romanos has failed to show that she has suffered any legally cognizable harm by the waiting period requirement in R.C. 2317.56.

The original enactment of R.C. 2317.56's waiting period requirement has already survived constitutional scrutiny under the *Roe/Casey* regime. The law was challenged as violating both the Ohio and U.S. Constitutions. *Cleveland v. Voinovich*, Franklin C.P. No. 92CVH01-528, 1992 Ohio Misc. LEXIS 1 (May 27, 1992). The trial court agreed and permanently enjoined the law. *Id.* The

State appealed, and while the case was pending in the 10th District Court, the U.S. Supreme Court announced its decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). The appellate court reversed the decision of the trial court because it was "unable to distinguish the Ohio statutes from the Pennsylvania statutes" that were upheld in *Casey*. *Preterm Cleveland v. Voinovich*, 89 Ohio App.3d 684, 696 (10th Dist. 1993). The court held that R.C. 2317.56(B) "does not directly regulate the right of a woman to have an abortion but, instead, places certain duties upon a physician and prohibits the physician from performing an abortion" unless certain information is provided to the pregnant woman at least 24 hours prior to the abortion. *Id.* at 695. Those duties do not prevent doctors from performing or inducing abortions but ensure that the woman seeking an abortion is acting voluntarily having received all information the State deems necessary for informed consent for abortion.

Dr. Romanos says that "[w]hile, on paper, the waiting period requirement imposes a 24-hour delay between a patient's receipt of state-mandated information at their first appointment and their abortion, R.C. 2317.56, in practice, patients are often forced to wait much longer." But any delay longer than 24 hours is *not* because of the law, but rather is attributable to several factors outside of the State's control. Some of the delays are related to business decisions made by the Plaintiff Clinics. They admit as much in the example they provide in their Motion:

> For instance, WMCD and Preterm only provide certain procedural abortions in the morning due to the need for fasting with sedation and anesthesia and the need to monitor the patient after the procedure. Thus, if a patient presents for their first informed consent visit in the afternoon, they cannot return until at least two days later because the next available morning abortion appointment would be less than 24 hours later.

PI Mot. at 11, fn5. Nothing in the law limits Dr. Romanos' ability to provide procedural abortions in the afternoon, so any additional delay is attributable to Plaintiffs. Dr. Romanos also says that

"almost every patient faces some compounding of scheduling, personal, logistical, and/or financial barriers to making it back to the clinic for a second appointment." Romanos Aff. ¶ 52. This is not caused by the statute either. Indeed, this curated list of speculative reasons ignores another possible reason why a patient might not come back: the patient's own prerogative to take some time to think it over, and even to ultimately decide not to have an abortion. In any event, a clinics inability to schedule an abortion in 24 hours is a delay of the Clinic's own making, further complicated by the fact that women from other states seeking abortions at their clinic make it far more difficult for Ohioans to schedule appointments for abortions. Romanos Aff. §41. These business decisions are self-imposed and have nothing to do with the waiting period requirement.

Many of these same arguments were made against the waiting period law upheld in *Casey*:

> [T]he findings of fact . . . indicate that because of the distances many women must travel to reach an abortion provider, the practical effect will often be a delay of much more than a day because the waiting period requires that a woman seeking an abortion make at least two visits to the doctor. [I]n many instances this will increase the exposure of women seeking abortions to "the harassment and hostility of anti-abortion protestors demonstrating outside a clinic." As a result, . . . for those women who have the fewest financial resources, those who must travel long distances, and those who have difficulty explaining their whereabouts to husbands, employers, or others, the 24-hour waiting period will be "particularly burdensome."

505 U.S. at 885–886. Those arguments were unpersuasive in *Casey* and are equally unavailing here.

Similarly, the in-person requirement also survived a constitutional challenge under the *Roe/Casey* regime. *See Cincinnati Women's Servs. v. Taft*, 468 F.3d 361, 372 (6th Cir. 2006). In that case, plaintiffs attempted to show the Ohio's in-person informed consent requirement burdened abortion rights by collecting what the court deemed "an impressive amount of data, akin to the data available in *Casey* on the issue of spousal notification." *Id.* Despite that substantial evidence, the court held that the in-person requirement did not create a substantial burden on an abused woman's

ability to obtain an abortion. *Id.* at 373 (citing *A Woman's Choice—East Side Women's Clinic v. Newman*, 305 F.3d 684, 699 (7th Cir. 2002) (Coffey, J. concurring) ("[I]t is clear [from *Casey*] that a law which incidentally prevents 'some' [of the] women [for whom the abortion restriction will actually be a burden] from obtaining abortion passes constitutional muster.")). That determination was made considering the entire legal scheme at issue here (waiting period, informed consent, and in person requirements), and was nonetheless held to be valid and constitutional.

The in-person requirement ensures that the physician performing the abortion examines the woman to confirm her pregnancy and that the patient receives all the required information necessary to give informed consent to the abortion procedure. This requirement cannot injure Dr. Romanos because, even without it, Dr. Romanos would still have to "meet" with her patient, which would require the same time and effort on her part regardless of the method used to facilitate that meeting. Without any harm, this Court should dismiss this case.

As for informed consent, Ohio women now have a constitutional right to make the decision to have an abortion, and "the State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against . . . [a]n individual's *voluntary* exercise of this right." Art. I, § 22. But Ohio's informed consent requirement comports, rather than conflicts, with the Amendment because it ensures that every woman exercising her right to abortion does so voluntarily.

The Ohio Supreme Court has said that "voluntarily" means "[d]one by design or intention, intentional, proposed, intended, or not accidental. Intentionally and without coercion." *Rock v. Cabral*, 67 Ohio St. 3d 108, 111 n.2 (1993), quoting *Black's Law Dictionary* 1575 (6th ed.1990). The purpose of fully informing a woman seeking an abortion of all the required information is to ensure

that she makes her choice voluntarily. No one in Ohio, of sound mind and of the age of majority, can undergo any medical procedure without having first been provided certain information: "[t]he doctrine of informed consent is based on the theory that every competent human being has a right to determine what shall be done with his or her own body." *Ullmann v. Duffus*, 2005-Ohio-6060 ¶27 (10th Dist.), citing *Siegel v. Mt. Sinai Hospital*, 62 Ohio App.2d 12 (1978).

Dr. Romanos asserts that the required information "is not only irrelevant to [patients] provision of informed consent, but also may be distressing, stigmatizing, or even misleading." Romanos Aff. ¶13. She says the information is "biased, and even potentially harmful, distressing, and/or misleading," and the existence of fetal heart tones is medically irrelevant for patients choosing abortion. *Id.* ¶ 70. Dr. Romanos also says that the required information "presents information to patients in a misleading manner that is at best irrelevant, or worse potentially painful or traumatic information solely meant to shame them into not obtaining an abortion." Romanos Aff. ¶72.

For instance, Dr. Romanos asserts that R.C. 2919.194(A)(2) requires that she provide "the "statistical probability of bringing the pregnancy to term based solely on the gestational age of the embryo or fetus." Romanos Aff. ¶ 71. She says that this "is not a calculation that is routinely made by medical professionals who care for pregnant patients, and there is no standard for such a calculation in existing medical literature." That is not true. This area of medicine has been the subject of many studies and academic papers. *See, e.g.,* Boklage CE. *Survival probability of human conceptions from fertilization to term.* Int J Fertil. 1990 Mar-Apr;35(2):75, 79-80, 81-94. PMID: 1970983. Several readily available sources report statistics gathered from medical literature. *See, e.g.*, Morales-Brown, Peter, *What are the average miscarriage rates by week?*

https://www.medicalnewstoday.com/articles/322634; Goldman, Rena, *A Breakdown of Miscarriage Rates by Week*, https://www.healthline.com/health/pregnancy/miscarriage-rates-by-week. An online tool, the Miscarriage Probability Chart, provides both the overall probability of miscarrying and the probability of carrying the pregnancy to term based on the gestational age of the pregnancy. https://datayze.com/miscarriage-chart. While the chart cautions that it does not give medical advice, it nonetheless can provide statistical probabilities down to the day of gestation and can account for added risk factors like maternal age, the number of previous miscarriages and the number of previous births. *Id.* The model is based on several peer reviewed papers which studied and collected data on miscarriages from the combined results of over 50,000 participants. *Id.*

Moreover, Dr. Romanos asserts that such information is imperfect because it does not take into account the specific circumstances of an individual pregnancy. But that is simply the nature of generalized information. To the extent the information is correct, even if generalized, it is far from "misleading." In any event, the statute does not prevent a physician from including additional information and statistics more tailored to the patient's specific circumstances.

Dr. Romanos claims that the heartbeat requirements serve no medical purpose, PI Mot. at 20–21, but that is also not true. For example, the American College of Surgeon states that informed consent for surgical procedures should include discussion of "[t]he nature of the illness and the natural consequences of no treatment[,] the nature of the proposed operation,' and "alternative forms of treatment, including nonoperative ones." *Statements on Principles*, American College of Surgeons, (Apr. 12, 2016), https://perma.cc/JMG9-PXTM. While the "surgeon should listen carefully to understand the patient's feelings and wishes," those feelings and wishes do not excuse

the surgeon from the requirement to "fully inform the patient about his or her illness and the proposed treatment." *Id.*

Equally untrue is her contention that these requirements are "discriminatory, as no other provider of medical care is subject to state-imposed penalties for failing to provide [required information]." First, Ohio common law has long had a cause of action for lack of informed consent in tort. *White v. Leimbach*, 2011-Ohio-6238 ¶46. Second, the Ohio Medical Board may take disciplinary action against a physician for failing to obtain informed consent. *See* R.C. 4731.22(B)(6)*; see also Parks v. Ohio State Med. Bd.,* 2008-Ohio-3304 ¶3 (10th Dist.) (suspending a physician's license to practice medicine for six months). Dr. Romanos implies that these laws discriminate against doctors who provide abortions by requiring them to provide more information for consent than other doctors. But Ohio's regulation of the medical profession may treat doctors providing different kinds of care differently. For example, a far higher requirement for informed consent is placed on the chief medical officer of an institution for persons with intellectual disabilities. *See* R.C. 5123.86 ("the chief medical officer shall provide all information, including expected physical and medical consequences, necessary to enable any resident of an institution for persons with intellectual disabilities to give a fully informed, intelligent, and knowing consent"). *See also, e.g.*, Ohio Evid. R. 601(B)(5)(c) (A physician can only give expert testimony in a particular case if that "person practices in the same or a substantially similar specialty as the defendant."). In any event, even if abortion doctors are subject to requirements that other doctors are not, this is because "[a]bortion is inherently different from other medical procedures," as "no other procedure involves the purposeful termination of a potential life." *Harris v. McRae*, 448 U.S. 297, 325 (1980).

As the *Casey* decision explained, "at stake is the woman's right to make the ultimate decision, not a right to be insulated from all others in doing so." *Casey,* 505 U.S. at 877. Informed consent provides no obstacle at all to a woman seeking an abortion, or to a doctor performing one. Dr. Romanos admits that "the overwhelming majority of [her] patients arrive at the clinic already firm in their decision to end their pregnancy," PI Mot. at 10, and despite her claims, she readily states that "none of the Challenged Requirements make any difference for patients and their decision-making process." Romanos Aff. ¶ 36.

Finally, the requirement to check for a fetal heartbeat before an abortion in no way acts to prevent any abortion, and indeed, Plaintiffs have long admitted that they easily complied with that law for years. The General Assembly's decision to include this as part of the informed consent requirements for an abortion procedure is a sound one: "the Supreme Court has explained that the effect of an abortion procedure on unborn life is relevant, if not *dispositive*" information for the patient's decision. *EMW Women's Surgical Ctr., P.S.C. v. Beshear*, 920 F.3d 421, 430 (emphasis added) (quoting *Casey,* 505 U.S. at 882). Checking for a fetal heartbeat not only confirms the pregnancy but also aids the woman seeking an abortion in fully understanding her condition as well as that of the unborn life she carries. "So '[t]o belabor the obvious and conceded point,' the disclosures of the heartbeat, sonogram, and its description "are the epitome of truthful, non-misleading information." *Id.* (quoting *Texas Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570 (5th Cir. 2012)).

B. Dr. Romanos failed to establish that she is irreparably harmed by these laws.

Dr. Romanos seeks a permanent injunction of the challenged statutes, which requires a showing of irreparable harm. *P&G v. Stoneham*, 140 Ohio App.3d 260, 267, 747 N.E.2d 268 (1st

Dist.2000). But she cannot use claims of patient injuries as a substitute for her own. She claims she has "suffered and will continue to suffer the emotional and moral distress that arises from being forced to act contrary to the standard of care, evidence-based medical practice, and [her] ethical duties, and the ensuing loss of patient trust." Dr. Romanos says she is harmed in variety of ways: "it can be deeply upsetting [] to force my patient to remain pregnant" and being unable "to use my best medical judgment," ¶77; delayed care and the required information "prevents me from providing the best care possible," prevents development of "a trusting relationship and rapport," and "forces me to act as a mouthpiece for the state," ¶78; and "creates obstacles to establishing trust with my patients and is devastating for me as a physician," ¶79. She nowhere asserts that these "harms" meet the legal standard of irreparable harm. Dr. Romanos cannot show that these statutes do anything more than regulate the practice of medicine in Ohio.

None of these claims demonstrate irreparable harm, and, in a very similar case, *EMW Women's Surgical Ctr., P.S.C. v Beshear*, 920 F.3d 421, the Sixth Circuit rejected similar allegations of harm related to: interferences with the Doctor-Patient relationship (436-40), ideological speech (434-36); providing information regarding pregnancy and the fetus and the standard of care (429-432); and emotional effects on patients (440-44). Dr. Romanos has failed to show that the information required for informed consent under Ohio's laws is misleading, or that she is harmed by it, nor has she proven she is irreparably harmed by any of these statutes. Because both the Plaintiff Clinics and Dr. Romanos lack standing to sue, this Court should dismiss this case.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court dismiss this case.

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CERTIFICATE OF SERVICE

I certify the foregoing was submitted for filing on May 7, 2024, via the Court's electronic filing system, which will cause the following to be served:

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