

IN THE SUPREME COURT OF OHIO

State ex rel. Pre-term : Case No. 2022-0803  
Cleveland, *et al.* :  
 :  
Relators, :  
 :  
v. :  
 :  
David Yost, *et al.* :  
 :  
Respondents. :  
 :

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BRIEF *AMICUS CURIAE* OF THE CITY OF CINCINNATI,  
THE CITY OF COLUMBUS & THE CITY OF DAYTON  
IN SUPPORT OF RELATORS

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Andrew W. Garth (0088905)  
Cincinnati City Solicitor  
Emily Smart Woerner (0089349)  
Deputy City Solicitor  
Shannon Price (0100744)  
Assistant City Solicitor  
801 Plum Street, Room 214  
Cincinnati, Ohio 45202  
Phone: (513) 352-3307  
Fax: (513) 352-1515  
[emily.woerner@cincinnati-oh.gov](mailto:emily.woerner@cincinnati-oh.gov)  
[shannon.price@cincinnati-oh.gov](mailto:shannon.price@cincinnati-oh.gov)

Barbara J. Doseck (79159)  
City Attorney  
Elizabeth Hudson (101835)  
Assistant City Attorney  
City of Dayton  
Department of Law  
101 W. Third St.  
P.O. Box 22

Dale R. Emch  
Law Director  
City of Toledo  
One Government Center, Ste. 2250  
Toledo, OH 43604  
419-245-1020 Phone  
419-245-1090 Fax  
[Dale.emch@toledo.oh.gov](mailto:Dale.emch@toledo.oh.gov)

William R. Hanna  
Director of Law  
City of Cleveland Heights  
40 Severance Circle  
Cleveland Heights, OH 44118  
P: 216-291-4314 F: 216-291-3731  
[WHanna@clevelandheights.gov](mailto:WHanna@clevelandheights.gov)

Freda J. Leveson (0045916)  
ACLU of Ohio  
4506 Chester Avenue  
Cleveland, Ohio 44103

Dayton, OH 45402

Zachary M. Klein (0078222)  
Columbus City Attorney  
77 North Front Street, 4th Floor  
Columbus, Ohio 43215  
(614) 645-7385 Phone  
(614) 645-6949 Fax  
cityattorney@columbus.gov

Counsel for *Amici Cities of Cincinnati,  
Dayton, and Columbus*

Elena N. Boop (0072907)  
Chief Trial Counsel  
*Counsel of Record*  
Shirley Tomasello (0059593)  
Assistant Director of Law  
Austin Davis (0099185)  
Assistant Director of Law  
Department of Law  
City of Cleveland  
601 Lakeside Avenue, Room 106  
Cleveland, Ohio 44114  
Phone: (216) 664-2800  
Fax: (216) 664-2663  
[EBoop@clevelandohio.gov](mailto:EBoop@clevelandohio.gov)  
[STomasello@clevelandohio.gov](mailto:STomasello@clevelandohio.gov)  
[ADavis3@clevelandohio.gov](mailto:ADavis3@clevelandohio.gov)  
Counsel for *Amiscus Curiae*  
The City of Cleveland

B. Jessie Hill (0074770)  
*Counsel of Record*  
Rebecca Kendis (0099129)  
Case Western Reserve Univ.  
School of Law  
11075 East Blvd  
Cleveland, Ohio 44106  
[bjh11@cwru.edu](mailto:bjh11@cwru.edu)  
[rebecca.kendis@case.edu](mailto:rebecca.kendis@case.edu)

Joseph T. Deters, Hamilton County  
Prosecutor

Phone: (614) 586-1972  
[flevenson@acluohio.org](mailto:flevenson@acluohio.org)

Megan Burrows (Pro Hac Vice Pending)  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
Phone: (212) 549-2601  
[mburrows@aclu.org](mailto:mburrows@aclu.org)

Melissa Cohen (Pro Hac Vice Pending)  
Planned Parenthood Federation  
123 William Street, Floor 9  
New York, NY 10038  
Phone: (212) 541-7800  
[Melissa.cohen@ppfa.org](mailto:Melissa.cohen@ppfa.org)

David Yost (0056290)  
Ohio Attorney General  
Benjamin M. Flowers (00056290)  
Solicitor General  
*Counsel of Record*  
Stephen P. Carney (0063460)  
Deputy Solicitor General Counsel  
Amanda Narog (0099853)  
Andrew McCartney (0099853)  
Assistant Attorney General  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
Phone: (614) 466-8980  
Fax: (614) 466-5087  
[bflowers@OhioAGO.gov](mailto:bflowers@OhioAGO.gov)

Counsel for Respondents, Bruce R.  
Safgerin, DPM., Bruce T. Vanderhoff,  
M.D., Kim G. Rothermel, M.D.  
Benjamin M. Flowers (00056290)  
*Counsel of Record*  
Stephen P. Carney (0063460)  
Deputy Solicitor General Counsel  
Amanda Narog (0099853)  
Andrew McCartney (0099853)  
Assistant Attorney General  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215

230 E. Ninth Street, Suite 4000  
Cincinnati, Ohio 45202

Kevin A. Pituch (0040167)  
*Counsel of Record*

John A. Borell (0016461)  
Evy Jarrett (0062485)  
700 Adams Street, Suite 250  
Toledo, Ohio 43624  
Phone: (419) 213-2001  
Fax: (419) 213-2011

[kpituch@co.lucas.oh.us](mailto:kpituch@co.lucas.oh.us)  
[jaborell@co.lucas.oh.us](mailto:jaborell@co.lucas.oh.us)  
[ejarrett@co.lucas.oh.us](mailto:ejarrett@co.lucas.oh.us)

Counsel for Respondent Julia R. Bates

Ward C. Barrentine (0074366)  
301 West Third Street  
P.O. Box 972  
Dayton, Ohio 45422

Phone: (937) 225-5601  
Fax: (937) 225-4822

[barrentinew@mcoho.org](mailto:barrentinew@mcoho.org)

Counsel for Respondent Mathias Heck  
Jr.

Amy L. Hiers (0065028)  
*Counsel for Record*

Jeanine A. Hummer (0030565)  
G. Gary Tyack, Franklin County  
Prosecutor  
373 S. High Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215  
Phone: (614) 525-3520

[ahiers@franklincountyohio.gov](mailto:ahiers@franklincountyohio.gov)  
[jhummer@franklincountyohio.gov](mailto:jhummer@franklincountyohio.gov)

Counsel for Respondent G. Gary Tyack

Michelle Nicole Diamond  
(Pro Hac Vice Pending)

Alan E. Schoenfeld  
(Pro Hac Vice Pending)  
Wilmer Culter Pickering Hale & Dorr  
LLP

Phone: (614) 466-8980

Fax: (614) 466-5087

[bflowers@OhioAGO.gov](mailto:bflowers@OhioAGO.gov)

Counsel for Respondent David Yost

Michael C. O'Malley  
Cuyahoga County Prosecuting Attorney  
Matthew Fitzsimmons (0093787)

*Counsel of Record*  
Kelli Perk (0068411)  
8<sup>th</sup> Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113  
Phone: (216) 443-8071

Fax: (216) 443-4602  
[mfitzsimmons@prosecutor.cuyahogacounty.us](mailto:mfitzsimmons@prosecutor.cuyahogacounty.us)  
[kperk@prosecutor.cuyahogacounty.us](mailto:kperk@prosecutor.cuyahogacounty.us)

Allyson Slater (Pro Hac Vice Pending)  
Wilmer Cutler Pickering Hale & Dorr  
LLP

60 State Street  
Boston, MA 02109  
Phone: (617) 526-6000  
[Allyson.slater@wilmerhale.com](mailto:Allyson.slater@wilmerhale.com)

Counsel for Relators

Chris A. Rheinheimer  
(Pro Hac Vice Pending)  
Davina Pujari  
(Pro Hac Vice Pending)  
Wilmer Cutler Pickering Hale & Dorr  
LLP

One Front Street  
San Francisco, CA 94111  
Phone: (628) 235-1000  
[Chris.rheinheimer@wilmerhale.com](mailto:Chris.rheinheimer@wilmerhale.com)  
[Davina.pujari@wilmerhale.com](mailto:Davina.pujari@wilmerhale.com)

7 World Trade Center  
New York, NY 10007  
Phone: (212) 230-8800  
[Michelle.diamond@wilmerhale.com](mailto:Michelle.diamond@wilmerhale.com)  
[Alan.schoenfeld@wilmerhale.com](mailto:Alan.schoenfeld@wilmerhale.com)

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## INTRODUCTION

A young woman in an abusive relationship misses her period—but thinks little of it for the first three days. Periods can be fickle things, especially under stress: normal menstrual cycles range from 21 to 35 days.<sup>1</sup> By the fourth day after she expected her cycle to begin, this young woman starts to get worried. On day five, her pregnancy test turns up positive.

The young woman frantically calls her local Planned Parenthood, where the next open appointment is three days away. By then, under SB 23, it may already be too late to seek an abortion. Heaven forbid the young woman face complications with her pregnancy. Should the treating physician determine that the situation probably won't result in “substantial and irreversible impairment of a major bodily function,” the woman can—and likely will—be denied medical care. *See* R.C. 2919.195.

The draconian restrictions in SB 23 impose the will of 74 legislators in the Ohio General Assembly upon the private medical decisions of millions of Ohioans.<sup>2</sup> Relators' Complaint and Motion for Emergency Stay eloquently articulate the devastating and irreparable impact of SB 23 on Ohio families. This amicus highlights some of the additional harms that SB 23 imposes on Ohio municipalities and urges the Court to deny Defendants' motion to dismiss.

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<sup>1</sup> Mayo Clinic, *Menstrual Cycle: What's Normal, What's Not*, <https://www.mayoclinic.org/healthy-lifestyle/womens-health/in-depth/menstrual-cycle/art-20047186> (accessed July 28, 2022).

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## INTEREST OF AMICUS CURIAE

Ohio municipalities are empowered with constitutional home rule authority to “exercise all powers of local self-government” and adopt and enforce “police, sanitary and other similar regulations” to promote the health and safety of their residents. *See* Ohio Const. Art. XVIII § 3. This authority rings hollow when the General Assembly hijacks Ohioans’ ability make their own health care choices.

The City of Cincinnati, Ohio is a charter municipality with 308,935 residents, the third-largest city in the State of Ohio and largest city in Hamilton County.<sup>3</sup> Its Charter endows it with “all powers of local self-government and home rule,” including the power to legislate for the health and well-being of Cincinnati residents and communities.<sup>4</sup> Cincinnati exercises this power through a wide variety of avenues ranging from legislation, to administrative enforcement of local building and health codes, to provision of primary medical care clinics through its Department of Health.

The City of Dayton, Ohio is a charter municipality with 140,444 residents,<sup>5</sup> the sixth-largest city in the State of Ohio and the largest city in Montgomery County. Dayton has a strong and undeniable interest in protecting the safety and wellbeing of its citizens. In fact, the Dayton City Charter gives it power to “define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of [its] inhabitants.”<sup>6</sup>

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<sup>3</sup> United States Census Bureau, *QuickFacts: Cincinnati, Ohio*, <https://www.census.gov/quickfacts/cincinnatiyohio> (accessed July 28, 2022).

<sup>4</sup> City of Cincinnati Charter, Article I.

<sup>5</sup> United States Census Bureau, *American Community Survey: Age and Sex*, <https://data.census.gov/cedsci/table?g=1600000US3921000&tid=ACSST5Y2020.S0101> (accessed July 27, 2022).

I. <sup>6</sup> City of Dayton Charter, Section 1.

The City of Columbus is a charter municipality with 906,528 residents, the largest city in the State of Ohio and the largest city in Franklin County.<sup>7</sup> The City of Columbus also has a strong, Charter-based interest in protecting the rights of its residents. The Columbus City Charter provides that “[n]o officer, employee, or agent of the city shall deny equal access to city services, or equal opportunity in employment and promotion, or the benefits thereof, to any person on the basis of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, family or military status, or any other status that is protected by federal, state, or local law or ordinance.”<sup>8</sup> SB 23’s open discrimination against Ohioans who can become pregnant<sup>9</sup> directly contravenes this mandate.

Cincinnati, Columbus, and Dayton are all economic powerhouses within the state of Ohio, yet many of our residents still face enduring poverty and racial and socioeconomic disparities. Despite years of hard-won improvement, Cincinnati’s poverty rate remains one of the worst in the United States.<sup>10</sup> Pre-term and low weight births are highest among Black residents, contributing to unacceptably high rates of infant mortality.<sup>11</sup> Dayton has likewise made economic strides in employment and

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<sup>7</sup> United States Census Bureau, *QuickFacts: Columbus, Ohio*, <https://www.census.gov/quickfacts/columbuscityohio> (Accessed July 28, 2022).

<sup>8</sup> Columbus City Charter Sec. 238.

<sup>9</sup> Amici Ohio Cities use the words “women” and “girls” throughout this brief to reflect the fact that, statistically, most individuals who can become pregnant identify as women. However, we acknowledge and affirm that non-binary individuals and transgender men can also become pregnant. These Ohioans face equal if not greater harm from SB 23’s unconscionable denial of medical care.

<sup>10</sup> Dan Horn, Cincinnati Enquirer, *Cincinnati’s Poverty Rate Dips but Stays Among Worst in U.S. Big Cities*, <https://www.cincinnati.com/story/news/2019/09/26/cincinnati-poverty-rate-dips/2443553001/> (accessed July 28, 2022).

<sup>11</sup> Cincinnati Health Department, *2020 Demographic and Social Determinants of Health Report*, [https://www.cincinnati-oh.gov/sites/health/assets/File/Cincinnati%20Health%20Department%202020%20Community%20Health%20Assessment%20\(CHA\)%20October%202020%20FINAL\(1\).pdf](https://www.cincinnati-oh.gov/sites/health/assets/File/Cincinnati%20Health%20Department%202020%20Community%20Health%20Assessment%20(CHA)%20October%202020%20FINAL(1).pdf) (accessed July 28, 2022).

development—but approximately 30% of the Dayton population still lives below the federal poverty level,<sup>12</sup> with 55% of the population living below 200% of the federal poverty level.<sup>13</sup> Approximately 26% of Dayton households receive food stamps/SNAP benefits.<sup>14</sup> In Columbus, “Celebrate One” zip codes identify neighborhoods “where higher unemployment, lower graduation rates, homelessness, lack of access to nutritious food, higher instances of crime and lower access to health coverage and timely access to pre-natal care contribute to babies being born too small or too soon, and not thriving during their first year of life.”<sup>15</sup> Babies born in Celebrate One zip codes have a much higher incidence of infant mortality and premature birth than areas outside these zip codes.<sup>16</sup>

Across Ohio, SB 23 will harm poor, rural, Black, and Hispanic communities the most.<sup>17</sup> No matter its specific demographics, every Ohio municipality has a duty to advocate for the health and safety of these residents. Additional signatories to this amicus brief include the cities of Toledo and Cleveland Heights (together with

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<sup>12</sup> United States Census Bureau, *American Community Survey: Poverty Status in the Past 12 Months*, <https://data.census.gov/cedsci/table?q=poverty&g=1600000US3921000&tid=ACSST5Y2020.S1701> (accessed July 27, 2022).

<sup>13</sup> United States Census Bureau, *American Community Survey: Poverty Status in the Past 12 Months*, <https://data.census.gov/cedsci/table?q=poverty&g=1600000US3921000&tid=ACSST5Y2020.S1701> (accessed July 27, 2022).

<sup>14</sup> United States Census Bureau, *American Community Survey: Food Stamps/Supplemental Nutrition Assistance Program (SNAP)*, <https://data.census.gov/cedsci/table?q=food%20stamps&g=1600000US3921000> (accessed July 27, 2022).

<sup>15</sup> City of Columbus, *CelebrateOne*, <https://www.columbus.gov/celebrate-one/Neighborhoods/> (reviewed July 28, 2022).

<sup>16</sup> City of Columbus, *Celebrate One January –March 2022 Data Dashboard*, <https://www.columbus.gov/Celebrate-One/Infant-Mortality-Data> (reviewed July 28, 2022).

<sup>17</sup> See Brief of Amici Curiae American College of Obstetricians and Gynecologists, American Medical Association, and Society for Maternal-Fetal Medicine in Support of Relators, at 21-22.

Cincinnati, Columbus, and Dayton, “Amici Ohio Cities”). Collectively, Amici Ohio Cities represent more than 1.6 million Ohioans.

SB 23 strikes at the core of Ohioans’ freedom to raise and protect their families, to manage their careers and dreams, and to seek emergency medical care. It impedes operation of the municipal police, emergency, and social services that our residents dedicate millions of taxpayer dollars to support. Worse yet, it unwillingly associates Amici Ohio Cities with the despicable opinion that women are *less*—that their lives, health, and personal aspirations are subordinate to their ability to reproduce. We have a legal and moral obligation to protect our residents from such gross overreach by the state.

### **STATEMENT OF THE CASE AND FACTS**

The procedural history and operation of SB 23 is well-explained in Relator’s Complaint and Motion for Emergency Relief. To avoid redundancy, we draw the Court’s attention to another set of uncontested facts essential to the disposition of this case:

- ❖ The United States has one of the worst maternal death rates among developed countries in the world.<sup>18</sup> The risk of dying in childbirth in the United States is 14 times higher than the risk from induced abortion.<sup>19</sup>

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<sup>18</sup> Gianna Melillo, American Journal of Managed Care, *US Ranks Worst in Maternal Care, Mortality Compared With 10 Other Developed Nations*, <https://www.ajmc.com/view/us-ranks-worst-in-maternal-care-mortality-compared-with-10-other-developed-nations> (accessed July 28, 2022).

<sup>19</sup> Raymond & Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics & Gynecology* 215, 216 (2012).

- ❖ Abortion—whether legal or not—is an incredibly common medical procedure. Across the world, 3 out of 10 pregnancies end in induced abortion.<sup>20</sup> In the United States, approximately 1 in 4 women have an abortion before age 45.<sup>21</sup>
- ❖ Roughly 1 in 4 pregnant individuals experience pregnancy or childbirth complications.<sup>22</sup> Severe and potentially deadly complications include gestational diabetes, preeclampsia, cardiomyopathy, and sepsis.<sup>23</sup>
- ❖ Roughly 1 in 10 known pregnancies ends in a miscarriage, or ‘spontaneous abortion.’ For unknown pregnancies, the rate is much higher. The medical treatment for an incomplete miscarriage is abortion. Any delay in providing this treatment increases the risks of hemorrhaging, infections, and life-threatening sepsis.<sup>24</sup>
- ❖ The majority of women who seek abortions already have at least one child.<sup>25</sup> These women know exactly the effort, risk, and pain associated with carrying a child to term. They are also familiar with the cost of childbirth. In Ohio, the average cost of a vaginal birth with insurance is \$6,138.46. Without insurance, this cost rises to \$10,629.46.<sup>26</sup>

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<sup>20</sup> World Health Organization, *Abortion*, <https://www.who.int/news-room/fact-sheets/detail/abortion> (accessed July 28, 2022).

<sup>21</sup> Jones & Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 *Am. J. Pub. Health* 1904, 1908 (2017).

<sup>22</sup> BlueCross BlueShield, *Trends in Pregnancy and Childbirth Complications in the U.S.*, <https://www.bcbs.com/the-health-of-america/reports/trends-in-pregnancy-and-childbirth-complications-in-the-us#:~:text=Between%202014%2D2018%2C%20the%20rates,nearly%2031%25%20increase%20since%202014> (accessed July 28, 2022).

<sup>23</sup> *Id.*

<sup>24</sup> Pam Belluck, *The New York Times*, *They Had Miscarriages, and New Abortion Laws Obstructed Treatment*, <https://www.nytimes.com/2022/07/17/health/abortion-miscarriage-treatment.html> (accessed July 28, 2022).

<sup>25</sup> Jeff Diamant and Besheer Mohamed, *Pew Research Center*, *What the Data Says About Abortion in the U.S.*, <https://www.pewresearch.org/fact-tank/2022/06/24/what-the-data-says-about-abortion-in-the-u-s-2/>

<sup>26</sup> Hillary Hoffower and Taylor Borden, *Business Insider*, *How Much it Costs to have a Baby in Every State, Whether you have Health Insurance or Don't*, <https://www.businessinsider.com/how-much-does-it-cost-to-have-a-baby-2018-4#ohio-35> (accessed July 28, 2022).



## ARGUMENT

### **I. The harm imposed by SB 23 is exponential and ongoing. Mandamus is the only complete, beneficial, and speedy remedy.**

It is well-settled that “a mandamus action may test the constitutionality of a statute.” *State ex rel. Zupancic v. Limbach*, 58 Ohio St.3d 130, 133, 568 N.E.2d 1206 (1991). Defendants do not contest Relators’ standing, essentially conceding that this matter is “of such a high order of public concern as to justify allowing this action as a public action.” *State ex rel. Academy of Trial Lawyers v. Sheward*, 86 Ohio St. 3d 451, 474, 715 N.E.2d 1062 (1999). See Defendants’ Motion to Dismiss at 11. Nonetheless, Defendants challenge this Court’s jurisdiction, contending that SB 23 imposes only “future” injuries that can be remedied in the Ohio Courts of Common Pleas. See Defendants’ Motion to Dismiss at 6.

This characterization of SB 23 is patently incorrect. The harms imposed by SB 23 are *past, present, and ongoing*—and will grow exponentially each day the law remains in force. The precedent cited by Defendants stands for the simple proposition that where a prohibitory injunction or declaratory judgment would provide adequate remedy for a relator’s claim, mandamus is not appropriate. See *State ex rel. United Auto., Aerospace & Agric. Implement Workers of Am. v. Ohio Bureau of Workers’ Comp.*, 108 Ohio St. 3d 432, 2006-Ohio-1327, ¶ 55 (denying mandamus because plaintiff “has an adequate remedy by a common pleas court action for declaratory judgment and prohibitory injunction”). But to preclude mandamus, an adequate remedy “must be complete, beneficial, and speedy.” *Id.* at ¶ 54. The mere possibility of prohibitory injunctive or declaratory relief “‘does not bar the issuance of a writ of

mandamus if the relator demonstrates a clear legal right thereto.’” *Zupancic*, 58 Ohio St.3d at 133, quoting *State, ex rel. Fenske, v. McGovern*, 11 Ohio St. 3d 129, 464 N.E. 2d 525 (1984). See *United Auto.* at ¶ 44 (this Court has “permitted mandamus actions to test the constitutionality of legislation” where “an action for a declaratory judgment and prohibitory injunction would not be sufficiently speedy”).

Prohibitory injunctions and declaratory judgment in the Ohio Courts of Common Pleas cannot provide adequate remedy in this case. The scope and immediacy of injuries caused by SB 23 demands a faster and more complete remedy than such litigation could ever provide. In a new study by professors from Ohio State and the University of Cincinnati, scholars examined abortions performed at 7 clinics in Ohio from April 2020 until April 2021.<sup>27</sup> They found that 25% of the pregnant individuals who had an abortion discovered their pregnancy *after* six weeks gestation.<sup>28</sup> Data revealed that pregnant individuals who discovered their pregnancies after the six-week time period had significantly lower income and educational attainment than those who discovered their pregnancies before the six-week period. Moreover, the median time from discovery of a pregnancy to its termination was 22 days, bringing the median gestational age at termination to 57 days: roughly 8 weeks. This means that by the time abortions actually took place, **89% of the terminations that occurred from April 2020 to April 2021 would**

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<sup>27</sup> See Abigail Norris Turner, Ph.D., et al., America Journal of Obstetrics & Gynecology, *Who Loses Access to Abortion with a Six Week Ban?* <https://www.ajog.org/action/showPdf?pii=S0002-9378%2822%2900486-0> (accessed July 28, 2022).

<sup>28</sup> *Id.* at 1.

**now be illegal under Ohio law.**<sup>29</sup> One healthcare provider in Southwest Ohio informed Amici that it has already seen “hundreds” of women seek out-of-state treatment in the weeks since SB 23 took effect.

Piecemeal litigation in the Ohio Courts of Common Pleas is no solution. A Hamilton County injunction entered in three months means nothing to a Cincinnati resident who is pregnant now. Declaratory judgment entered *today* in Franklin County Common Pleas would be worthless to a Dayton resident seeking emergency care for pregnancy complications tomorrow. Without doubt, “this case involves a public right that of necessity requires this court to exercise its original jurisdiction and address the extensive and broad issues presented without waiting for piecemeal appeals winding their way through the lower courts.” *Sheward*, 86 Ohio St.3d at 501. In the following sections, Amici Ohio Cities outline just a few of the ongoing and anticipated harms of SB 23, all of which weigh strongly against dismissal.

- II. SB 23 willfully jeopardizes the health and safety of millions of Ohioans. When death and injury result, municipal police, social, and emergency services will bear the burden of response.**
  - a. SB 23 hamstring Ohio municipalities’ home rule authority to legislate for the health and safety of residents who will—inevitably—seek abortions.**

Whether the state approves or not, Ohioans will seek abortions. This fact is undeniable: it was apparent long before *Roe* was decided.<sup>30</sup> Instead of preventing

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<sup>29</sup> *Id.* at 1.

<sup>30</sup> See Rachel Benson Gold, Guttmacher Institute, *Lessons from Before Roe: Will Past be Prologue?* <https://www.guttmacher.org/gpr/2003/03/lessons-roe-will-past-be-prologue> (accessed July 28, 2022).

abortions, SB 23 will result in an inevitable surge of self-induced abortions—with concurrent risks of death and serious injury.

It is municipal EMS staff who must respond when a self-induced abortion goes awry, and municipal resources that will be spent trying to keep women alive. Amici must emphasize that safe and effective self-managed abortion is now available through the FDA-approved combination of mifepristone and misoprostol.<sup>31</sup> However, recent surveys show that women without access to these drugs often turn to drastic and lethal alternatives.<sup>32</sup> Women desperate to end their pregnancies drink turpentine; insert sharp objects or chemicals into the cervix or vagina; self-inflict traumatic blows to the abdomen; and worse.<sup>33</sup> Even those who attempt the safer route of medication abortion can be hoodwinked by illegal sellers who provide corrupted or lethal versions of the drugs.

Ohio municipalities are tasked to protect the health and safety of our residents. But beyond pouring resources into our EMS programs, SB 23 leaves us little room to combat a wave of dangerous self-induced abortions. Decades of evidence is clear: the best way to prevent death and injury through abortion is to provide safe and legal

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<sup>31</sup> We emphasize this point because public misinformation about the safety and effectiveness medication abortion can lead pregnant individuals to attempt more dangerous alternatives. Accurate information about the use of mifepristone and misoprostol to induce abortion is available at <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information>.

<sup>32</sup> Molly Redden, The Guardian, *‘Please, I am Out of Options’: Inside the Murky World of DIY Abortions*, <https://www.theguardian.com/us-news/2016/nov/21/home-abortions-emails-secret-world> (accessed July 27, 2022).

<sup>33</sup> *Id.* See Lisa H. Harris, M.D., Ph.D., *Navigating Loss of Abortion Services — A Large Academic Medical Center Prepares for the Overturn of Roe v. Wade* <https://www.nejm.org/doi/pdf/10.1056/NEJMp2206246> (accessed July 27, 2022).

access.<sup>34</sup> By taking this option off the table, SB 23 places the lives of our residents in jeopardy—and condemns Ohio municipalities to look on as the tragedy unfolds.

**b. SB 23 enables and exacerbates domestic violence and sexual abuse, while simultaneously undermining the ability of municipal police officers to respond.**

There is no gentle way to say it: through SB 23, the state of Ohio directly empowers perpetrators of domestic violence and sexual assault. It does so by rewarding reproductive coercion, disincentivizing reporting, and interfering with police investigations of rapists.

Women in abusive relationships often become pregnant through reproductive coercion and birth control sabotage.<sup>35</sup> The logic of the abuser is disgustingly simple: the pregnancy can be used as a form of control. During the pregnancy, the woman faces heightened healthcare needs, expenses, and potential inability to work.<sup>36</sup> After the forced birth occurs, the mother is forever tied to her abuser.<sup>37</sup> SB 23 forecloses what may be a victim’s only way out of an abusive relationship. In doing so, it effectively endows abusers with the backing of the state.

Municipal police are regularly called to respond to incidents of domestic violence and sexual abuse. In Cincinnati alone, officers fielded nearly 3,000 domestic

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<sup>34</sup> Jeff Diamant and Besheer Mohamed, Pew Research Center, *What the Data Says about Abortion in the U.S.*, <https://www.pewresearch.org/fact-tank/2022/06/24/what-the-data-says-about-abortion-in-the-u-s-2/> (accessed July 28, 2022).

<sup>35</sup> See Brief of Amicus Curiae the City of Cleveland at 10 to 11; Elizabeth Miller, et al., *Pregnancy coercion, intimate partner violence and unintended pregnancy*, 81 *PubMed* 316 (Apr. 2010).

<sup>36</sup> Hillary Hoffower and Taylor Borden, *Business Insider*, *How Much it Costs to have a Baby in Every State, Whether you have Health Insurance or Don't*, <https://www.businessinsider.com/how-much-does-it-cost-to-have-a-baby-2018-4#ohio-35> (accessed July 28, 2022).

<sup>37</sup> See Redden, *Out of Options* (“Now he is threatening me, saying I can never leave.”)

violence calls last year.<sup>38</sup> When officers arrive on scene, they already contend with serious disincentives to reporting, including intense social stigma and the threat of additional abuse. SB 23 adds another layer: if a woman or girl discloses that she has been raped, she risks creating an official record of possible pregnancy. Weeks later, if no pregnancy manifests, she and her physician can be accused of an illegal abortion.

Finally, by forcing rape victims to undergo abortions out-of-state or in secret, SB 23 cuts off a crucial avenue of police investigation. Sometimes, a fetus is the only evidence of a sexual assault. When an individual who becomes pregnant as the result of rape decides not to carry the child to term, DNA testing of the aborted fetus may offer the only identifying evidence of the perpetrator. The recent, tragic story of pregnant 10- and 13-year-old sisters in Cleveland provides an example.<sup>39</sup> Police originally arrested the girls' biological father, but DNA testing of the aborted fetuses revealed the true perpetrator to be the mother's boyfriend.<sup>40</sup> Access to the DNA tests not only helped police to identify and arrest a rapist, but saved an innocent individual from prosecution and potential imprisonment.

With legal access to abortion foreclosed in Ohio, victims of rape will be forced to travel out of state or self-manage their abortions in secret. In rare cases, an out-of-state clinician may arrange for DNA testing to be sent back to Ohio municipal police.

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<sup>38</sup> City of Cincinnati, *Police Data Initiative: Police Calls for Service*, <https://data.cincinnati-oh.gov/safety/PDI-Police-Data-Initiative-Police-Calls-for-Service/gexm-h6bt/data> (reviewed July 28, 2022).

<sup>39</sup> See Adam Ferrise, Cleveland.com, *Rapes of sisters, 10 and 13, in Cleveland mirror Columbus case that sparked national debate over Ohio's abortion law*, <https://www.cleveland.com/court-justice/2022/07/rapes-of-sisters-10-and-13-in-cleveland-mirror-columbus-case-that-sparked-national-debate-over-ohios-abortion-law.html> (accessed July 23, 2022).

<sup>40</sup> *Id.*

Far more often, this crucial piece of evidence will simply be lost, making it even harder for municipal police to solve and prevent sexual crimes.

**c. SB 23 will result in denial of medical care, injury, and death.**

SB 23 exposes Ohio doctors to an exorbitant risk of civil and criminal liability. Its draconian penalties produce a predictable result: some pregnant women experiencing medical emergencies will be denied care. These women will be irreversibly injured, or they will die. Their families and communities will have no say in the matter.

This statement is not hyperbole: it is already reality. Examples abound, in Ohio and elsewhere, of women denied essential medical treatment as a result of abortion bans:

- ❖ In Texas, a young woman experiencing her second first-trimester miscarriage was denied medical treatment from her local hospital and sent home with instructions to return only after “her blood filled a diaper more than once an hour.”<sup>41</sup>
- ❖ A study of similarly situated women in Dallas examined outcomes for women forced to treat their miscarriages-in-progress with “expectant management” (where doctors do not intervene until presented with an “immediate threat to maternal life”).<sup>42</sup> Unsurprisingly, 43% of patients experienced maternal morbidity, including serious conditions such as chorioamnionitis and hemorrhage. 32% required intensive care admission, dilation and curettage, or readmission. One patient required a hysterectomy: as a result of the delayed treatment, she will no longer be able to bear children.<sup>43</sup>

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<sup>41</sup> Pam Belluck, The New York Times, *They Had Miscarriages, and New Abortion Laws Obstructed Treatment*, <https://www.nytimes.com/2022/07/17/health/abortion-miscarriage-treatment.html> (accessed July 28, 2022).

<sup>42</sup> Anjali Nambiar, et. al, American Journal of Obstetrics and Gynecology, *Maternal Morbidity and fetal outcomes among pregnant women at 22 weeks’ gestation or less with complications in 2 Texas hospitals after legislation on abortion*, [https://www.ajog.org/article/S0002-9378\(22\)00536-1/fulltext](https://www.ajog.org/article/S0002-9378(22)00536-1/fulltext) (accessed July 28, 2022).

<sup>43</sup> *Id.*

- ❖ Pharmacies across the nation are refusing or delaying disbursement of medications associated with abortion, including common treatments for miscarriage and wholly unrelated conditions like arthritis.<sup>44</sup> Each moment that women experiencing miscarriages cannot obtain prescribed drugs, they face increased risk of hemorrhage, infection, and sepsis.
- ❖ Here in Ohio, a 10-year-old rape victim from Columbus was forced to cross state lines to have an abortion.<sup>45</sup> Lawmakers appalled by the consequences of their legislation were quick to argue that pregnancy at such a young age is a threat to the mothers' life such that abortion would be permitted—but Ohio doctors are not so sure.<sup>46</sup>

These examples are merely a glimpse of the horror and confusion to come. Doctors practicing in the shadow of abortion bans are already grappling with the devastating hypotheticals: Can they provide cancer treatment to a pregnant patient, or terminate a pregnancy that is escalating cancer progression?<sup>47</sup> Must they force a patient whose condition is worsening by the day to give birth to a stillborn child? “That fear of punishment aligned with the lack of clarity can lead to devastating consequences.”<sup>48</sup>

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<sup>44</sup> Laura Weiss, *The New Republic*, *After Roe’s Repeal, CVS Told Pharmacists to Withhold Certain Prescriptions*, <https://newrepublic.com/article/167087/roe-cvs-methotrexate-abortion-pills> (accessed July 20, 2022).

<sup>45</sup> The Columbus Dispatch, *10-Year-Old Rape Victim Forced to Travel from Ohio to Indiana for Abortion*, <https://www.theguardian.com/us-news/2022/jul/03/ohio-indiana-abortion-rape-victim> (accessed July 28, 2022).

<sup>46</sup> Anna Straver and Haley BeMiller, *The Columbus Dispatch*, *Do 10-year-olds meet ‘life of mother’ abortion exemptions? Ohio lawmakers, doctors divided*, <https://www.dispatch.com/restricted/?return=https%3A%2F%2Fwww.dispatch.com%2Fstory%2Fnews%2F2022%2F07%2F15%2Fohio-10-year-old-abortion-do-children-meet-life-mother-exemption%2F10057873002%2F> (accessed July 28, 2022).

<sup>47</sup> See Lisa H. Harris, M.D., Ph.D., *Navigating Loss of Abortion Services — A Large Academic Medical Center Prepares for the Overturn of Roe v. Wade* <https://www.nejm.org/doi/pdf/10.1056/NEJMp2206246> (accessed July 27, 2022) (“When we diagnose a new cancer during pregnancy, some patients decide to end their pregnancy to permit immediate surgery, radiation, or chemotherapy, treatments that can cause significant fetal injury. Will abortion be permissible in these cases, or will patients have to delay treatment until after delivery? These patients’ increased risk of death may not manifest for years, when they have a recurrence that would have been averted by immediate cancer treatment.”).

<sup>48</sup> Bloomberg Law, *Doctors Fearing Legal Blowback Are Denying Life-Saving Abortions*, <https://news.bloomberglaw.com/health-law-and-business/doctors-fearing-legal-blowback-are-denying-life-saving-abortions> (accessed July 28, 2022).



When doctors err (understandably) on the side of avoiding prosecution and protecting their careers, their patients are the ones who risk long-term injury and death.

The catastrophic impacts of SB 23 are compounded by pre-existing racial disparities and poor maternal health outcomes in this state. Montgomery County, home to the City of Dayton, has the highest ratio of maternal deaths in Ohio: 78.7 maternal deaths per 100,000 live births, far higher than Ohio's ratio of 48.2.<sup>49</sup> African American women comprise 62% of the County's maternal deaths, but are a mere 21.7% of the County population.<sup>50</sup> In other words, Black women are already facing a maternal health crisis, and SB 23 needlessly complicates local healthcare professionals' ability to support their patients. At best, SB 23 adds confusion for patients and healthcare providers when determining most effective care. At worst, SB 23 risks the lives of Ohio municipalities' most vulnerable women.

### **III. The vague and unconstitutional terms of SB 23 expose Ohio municipalities to intolerable levels of liability and potential loss of federal funds.**

Should this court decline to exercise its jurisdiction, the constitutional crisis posed by SB 23 will remain unabated. It could be months or years before Ohio courts conclusively rule on the constitutionality of the law. Amici Ohio Cities have no doubt that Relators' position is correct: SB 23 is a blatant violation of Ohioans'

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<sup>49</sup> Ohio Department of Health, *Pregnancy-Associated Deaths in Montgomery County 2008-2016*, <https://autodealers.ohio.gov/wps/wcm/connect/gov/36d5898b-5942-424b-ab4b-790290fc641e/Pregnancy-Associated+Deaths+in+Montgomery+County+2018-16.pdf?MOD=AJPERES#:~:text=ODH%20identified%2048%20deaths%20to%20female%20residents%20of,deaths%20were%20temporally%20related%20to%20pregnancy%20%28Table%201%29>, (accessed July 27, 2022).

<sup>50</sup> U.S. Census Bureau, *QuickFacts: Montgomery County, Ohio*, [U.S. Census Bureau QuickFacts: Montgomery County, Ohio](https://www.census.gov/quickfacts/montgomery-county-ohio) (accessed July 27, 2022).

constitutional rights. But so long as the law remains in force, we will face an intolerable risk of liability, stemming both from SB 23 itself and from our own efforts to avoid complicity in its enforcement.

When municipalities violate the constitutional or statutory rights of our residents, we are sued—and rightfully so. A classic example is when municipal police officers violate constitutional rights during the course of an arrest. Municipal attorneys are called upon to defend against claims like unconstitutional seizure, false arrest, or failure to provide medical treatment.

Enforcement of SB 23 creates myriad new situations where Ohio municipalities can be sued for violations of our residents' rights. Municipal EMS staff treating a patient with a septic uterus might conclude that they are unable to refer her for abortion: the municipality and staff could then be sued for her wrongful death. Municipal police officers investigating an SB 23 violation might improperly seize a clinician's medical records: the municipality and officers could then be sued for violations of the clinician and patients' constitutional rights and HIPAA. Regardless of the outcome, defending these suits will cost taxpayer money, impair public relations with citizens, and undermine basic efforts to promote community health and safety.

Federal funds are also at risk. The full federal response to *Dobbs* is as-yet unsettled, but already, SB 23 places Ohio municipalities at risk of losing badly needed Title X funds. The Cincinnati Health Department, for example, relies on a roughly \$700,000 Title X grant to fund its Reproductive Health and Wellness Program, which

serves 6,000 to 8,000 residents per year.<sup>51</sup> The Health Department’s direct service clinics do not provide miscarriage or emergency care, but are required by the federal government to accurately counsel patients about abortion and provide abortion referrals upon request.<sup>52</sup> For the many patients who do not discover their pregnancies until after six weeks, SB 23 makes a referral in Ohio impossible. And should the federal government withdraw the Cincinnati Health Department’s Title X funding on this basis, all services the Reproductive Health and Wellness Program provides will be in jeopardy. Low-income and uninsured Cincinnatians who rely on the Program will lose access to critical services such as cervical cancer screenings, gynecological care, STD testing, and more.

In light of these risks—and the sheer moral repugnancy of policing pregnancy—Amici Ohio Cities have already announced measures to protect their citizens and avoid complicity in the State’s enforcement of SB 23. The City of Dayton, for example, passed an Informal Resolution on June 29, 2022, deprioritizing enforcement of Ohio laws “criminalizing women’s reproductive rights” in order to “protect Dayton residents from specious overreaches of state power.”<sup>53</sup> The City of Columbus has committed to limit storage, gathering, or sharing of information on

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<sup>51</sup> See City of Cincinnati Health Department, *Reproductive Health & Wellness*, <https://www.cincinnati-oh.gov/health/cincinnati-health-department-programs/thebodyshop/> (accessed July 28, 2022).

<sup>52</sup> Congressional Research Service, Title X Family Planning Program: 2021 Final Rule, <https://crsreports.congress.gov/product/pdf/IF/IF11986#:~:text=The%202021%20rule%20adds%20a,requirements%20on%20services%20to%20minors>. (accessed July 28, 2022).

<sup>53</sup> City of Dayton Informal Res. 997-22, June 29, 2022.

residents' pregnancy outcomes or reproductive healthcare procedures.<sup>54</sup> The City of Cincinnati plans to reimburse city employees who must travel hundreds of miles to obtain abortion care.<sup>55</sup> But these measures too are guaranteed to spur litigation, either from the state or other groups.<sup>56</sup>

Amici Ohio Cities find ourselves between a rock and a hard place: asked to enforce an unconstitutional ban, sure to be penalized for our refusal to do so. Should the constitutionality of SB 23 be decided through piecemeal litigation, Ohio municipalities will spend millions of taxpayer dollars defending ourselves and our residents from the General Assembly's overreach. Such litigation will be a senseless waste of municipal resources, which could otherwise be directed to measures actually supportive of Ohio women and families.

**IV. SB 23 undermines decades of Ohio municipalities' economic development efforts and will result in an exodus of medical resources and talent from the state.**

This year, the cities of Cincinnati, Columbus, and Dayton are poised to invest millions of dollars in economic development efforts. One factor Ohio cities have always touted to attract young professionals and families is the availability of world-class medical care through facilities like Cincinnati Children's Hospital and the Ohio State University Medical Center. The Dayton region alone has 29 hospitals serving

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<sup>54</sup> Zaria Johnson, The Columbus Dispatch, *City Council Women's Caucus Plan includes \$1 million to Air Reproductive Healthcare Access*, <https://www.dispatch.com/story/news/2022/07/22/columbus-city-council-caucus-proposes-abortion-access-legislation/10126798002/> (accessed July 28, 2022).

<sup>55</sup> Becca Costello, WVXU, *Cincinnati to Reimburse City Workers for the Cost of Traveling to Get an Abortion*, <https://www.wvxu.org/local-news/2022-06-27/cincinnati-reimburse-city-workers-cost-traveling-abortion> (accessed July 28, 2022).

<sup>56</sup> *Id.* ("Cincinnati Right to Life Executive Director Laura Strietmann said Monday their lawyers will review the policies as they consider legal action.")

the City's residents, including three downtown hospitals.<sup>57</sup> The healthcare industry is a top employer and foundational sector for the local economy.<sup>58</sup>

But no matter how much Ohio cities invest, the General Assembly's assault upon the rights and reproductive health of Ohio residents will discourage new talent and development in this state. Young adults and families will not choose to relocate to a city where they cannot decide for themselves when they will have children. Pregnant women and their partners will be rightfully terrified that—should complications with their pregnancies arise—Ohio law will place their lives in jeopardy.<sup>59</sup> Ohio cities can continue to pour money into our neighborhoods and public services, but we cannot obscure the dismal reality that women in our state are treated as less than free and equal citizens.

Our medical partners face a similar dilemma. Doctor shortages are a nationwide problem, and local hospitals have strict competition for an already small pool of skilled employees.<sup>60</sup> Increased regulation and risk for exercising professional judgment among these professionals will only make competition fiercer and decrease healthcare access in Ohio in the long term.<sup>61</sup> Medical students studying obstetrics

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<sup>57</sup> *Id.*

<sup>58</sup> Greater Dayton Area Hospital Association, *Our Economic & Employment Impact*, [gdaha-ei-report-31010.pdf](#) (accessed July 27, 2022).

<sup>59</sup> Pam Belluck, The New York Times, *They Had Miscarriages, and New Abortion Laws Obstructed Treatment*, <https://www.nytimes.com/2022/07/17/health/abortion-miscarriage-treatment.html> (accessed July 28, 2022).

<sup>60</sup> Elaine K. Howley, The U.S. Physician Shortage is Only Going to Get Worse. Here are Potential Solutions, [There's a Physician Shortage In the U.S. Here's Why | Time, July 25, 2022](#) (accessed July 27, 2022).

<sup>61</sup> Greater Dayton Area Hospital Association, *Community Health Needs Assessment (CHNA) 2021 Report*, at p. 64, <https://gdaha.org/wp-content/uploads/2022/07/2021-Regional-Community-Health-Needs-Assessment-cobranded.pdf> (accessed July 27, 2022).

and gynecology can hardly complete their residencies in a state where major components of their education are illegal. Instead of risking criminal prosecution, doctors who believe in the right to choose will simply leave the state. SB 23 directly threatens the continued excellence of Ohio cities' medical facilities and, in doing so, imperils one of the greatest assets of our communities.

### CONCLUSION

If SB 23 is upheld, innocent Ohioans will die. Many others will be denied the basic freedom to live their lives and raise their families as they choose. We, Ohio municipalities, refuse to be complicit in the General Assembly's wanton attack on the lives and well-being of Ohio women and families. We will not accept this blood on our hands.

Collectively, we urge this court to elevate the health, safety, and welfare of millions of Ohioans over the political interests of 74 members of the Ohio General Assembly. We implore the court to reject Defendants' motion to dismiss, adjudicate this case on the merits, and strike down SB 23.

Respectfully submitted,

ANDREW W. GARTH (0088905)  
CINCINNATI CITY SOLICITOR

*/s/ Shannon Price*  
Shannon Price (0100744)  
Assistant City Solicitor  
Emily Smart Woerner (0089349)  
Deputy City Solicitor  
801 Plum Street, Room 214  
Cincinnati, Ohio 45202  
Phone: (513) 352-3307  
Fax: (513) 352-1515

[emily.woerner@cincinnati-oh.gov](mailto:emily.woerner@cincinnati-oh.gov)  
[shannon.price@cincinnati-oh.gov](mailto:shannon.price@cincinnati-oh.gov)  
*Counsel for Amicus Curiae City  
of Cincinnati*

/s/ Barbara J. Doseck  
BARBARA J. DOSECK (79159)  
City Attorney  
Elizabeth Hudson (101835)  
Assistant City Attorney  
City of Dayton  
Department of Law  
101 W. Third St.  
P.O. Box 22  
Dayton, OH 45402  
*Counsel for Amicus Curiae City  
of Dayton*

/s/ Zachary M. Klein  
ZACHARY M. KLEIN (0078222)  
Columbus City Attorney  
77 North Front Street, 4th Floor  
Columbus, Ohio 43215  
(614) 645-7385 Phone  
(614) 645-6949 Fax  
cityattorney@columbus.gov  
*Counsel for Amicus Curiae City  
of Columbus*

/s/ Dale R. Emch  
DALE R. EMCH  
Law Director  
City of Toledo  
One Government Center, Ste. 2250  
Toledo, OH 43604  
419-245-1020 Phone  
419-245-1090 Fax  
[Dale.emch@toledo.oh.gov](mailto:Dale.emch@toledo.oh.gov)  
*Counsel for the City of Toledo*

/s/ William R. Hanna  
WILLIAM R. HANNA  
Director of Law  
City of Cleveland Heights

40 Severance Circle  
Cleveland Heights, OH 44118  
P: 216-291-4314 F: 216-291-3731  
[WHanna@clevelandheights.gov](mailto:WHanna@clevelandheights.gov)  
*Counsel for the City of Cleveland Heights*



**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing has been served upon the following by electronic mail on this 29th day of July 2022:

Andrew W. Garth (0088905)  
Cincinnati City Solicitor  
Emily Smart Woerner (0089349)  
Deputy City Solicitor  
Shannon Price (0100744)  
Assistant City Solicitor  
801 Plum Street, Room 214  
Cincinnati, Ohio 45202  
Phone: (513) 352-3307  
Fax: (513) 352-1515  
[emily.woerner@cincinnati-oh.gov](mailto:emily.woerner@cincinnati-oh.gov)  
[shannon.price@cincinnati-oh.gov](mailto:shannon.price@cincinnati-oh.gov)

Barbara J. Doseck (79159)  
City Attorney  
Elizabeth Hudson (101835)  
Assistant City Attorney  
City of Dayton  
Department of Law  
101 W. Third St.  
P.O. Box 22  
Dayton, OH 45402

Zachary M. Klein (0078222)  
Columbus City Attorney  
77 North Front Street, 4th Floor  
Columbus, Ohio 43215  
(614) 645-7385 Phone  
(614) 645-6949 Fax  
[cityattorney@columbus.gov](mailto:cityattorney@columbus.gov)

Counsel for *Amici Cities of Cincinnati, Dayton, and Columbus*

Elena N. Boop (0072907)  
Chief Trial Counsel  
*Counsel of Record*  
Shirley Tomasello (0059593)

Dale R. Emch  
Law Director  
City of Toledo  
One Government Center, Ste. 2250  
Toledo, OH 43604  
419-245-1020 Phone  
419-245-1090 Fax  
[Dale.emch@toledo.oh.gov](mailto:Dale.emch@toledo.oh.gov)

William R. Hanna  
Director of Law  
City of Cleveland Heights  
40 Severance Circle  
Cleveland Heights, OH 44118  
P: 216-291-4314 F: 216-291-3731  
[WHanna@clevelandheights.gov](mailto:WHanna@clevelandheights.gov)

Freda J. Leveson (0045916)  
ACLU of Ohio  
4506 Chester Avenue  
Cleveland, Ohio 44103  
Phone: (614) 586-1972  
[fleveson@acluohio.org](mailto:fleveson@acluohio.org)

Megan Burrows (Pro Hac Vice Pending)  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
Phone: (212) 549-2601  
[mburrows@aclu.org](mailto:mburrows@aclu.org)

Melissa Cohen (Pro Hac Vice Pending)  
Planned Parenthood Federation  
123 William Street, Floor 9  
New York, NY 10038  
Phone: (212) 541-7800  
[Melissa.cohen@ppfa.org](mailto:Melissa.cohen@ppfa.org)

Assistant Director of Law  
Austin Davis (0099185)  
Assistant Director of Law  
Department of Law  
City of Cleveland  
601 Lakeside Avenue, Room 106  
Cleveland, Ohio 44114  
Phone: (216) 664-2800  
Fax: (216) 664-2663  
[EBoop@clevelandohio.gov](mailto:EBoop@clevelandohio.gov)  
[STomasello@clevelandohio.gov](mailto:STomasello@clevelandohio.gov)  
[ADavis3@clevelandohio.gov](mailto:ADavis3@clevelandohio.gov)  
Counsel for *Amiscus Curiae*  
The City of Cleveland

B. Jessie Hill (0074770)  
*Counsel of Record*  
Rebecca Kendis (0099129)  
Case Western Reserve Univ.  
School of Law  
11075 East Blvd  
Cleveland, Ohio 44106  
[bjh11@cwru.edu](mailto:bjh11@cwru.edu)  
[rebecca.kendis@case.edu](mailto:rebecca.kendis@case.edu)

Joseph T. Deters, Hamilton County  
Prosecutor  
230 E. Ninth Street, Suite 4000  
Cincinnati, Ohio 45202

Kevin A. Pituch (0040167)  
*Counsel of Record*  
John A. Borell (0016461)  
Evy Jarrett (0062485)  
700 Adams Street, Suite 250  
Toledo, Ohio 43624  
Phone: (419) 213-2001  
Fax: (419) 213-2011  
[kpituch@co.lucas.oh.us](mailto:kpituch@co.lucas.oh.us)  
[jaborell@co.lucas.oh.us](mailto:jaborell@co.lucas.oh.us)  
[ejarrett@co.lucas.oh.us](mailto:ejarrett@co.lucas.oh.us)  
Counsel for Respondent Julia R. Bates

Ward C. Barrentine (0074366)

David Yost (0056290)  
Ohio Attorney General  
Benjamin M. Flowers (00056290)  
Solicitor General

*Counsel of Record*  
Stephen P. Carney (0063460)  
Deputy Solicitor General Counsel  
Amanda Narog (0099853)  
Andrew McCartney (0099853)  
Assistant Attorney General  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
Phone: (614) 466-8980  
Fax: (614) 466-5087

[bflowers@OhioAGO.gov](mailto:bflowers@OhioAGO.gov)  
Counsel for Respondents, Bruce R.  
Safgerin, DPM., Bruce T. Vanderhoff,  
M.D., Kim G. Rothermel, M.D.  
Benjamin M. Flowers (00056290)

*Counsel of Record*  
Stephen P. Carney (0063460)  
Deputy Solicitor General Counsel  
Amanda Narog (0099853)  
Andrew McCartney (0099853)  
Assistant Attorney General  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
Phone: (614) 466-8980  
Fax: (614) 466-5087

[bflowers@OhioAGO.gov](mailto:bflowers@OhioAGO.gov)  
Counsel for Respondent David Yost

Michael C. O'Malley  
Cuyahoga County Prosecuting Attorney  
Matthew Fitzsimmons (0093787)

*Counsel of Record*  
Kelli Perk (0068411)  
8<sup>th</sup> Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113  
Phone: (216) 443-8071  
Fax: (216) 443-4602  
[mfitzsimmons@prosecutor.cuyahogacounty.us](mailto:mfitzsimmons@prosecutor.cuyahogacounty.us)

301 West Third Street  
P.O. Box 972  
Dayton, Ohio 45422  
Phone: (937) 225-5601  
Fax: (937)2254822  
[barrentinew@mcohio.org](mailto:barrentinew@mcohio.org)  
Counsel for Respondent Mathias Heck  
Jr.

Amy L. Hiers (0065028)  
*Counsel for Record*  
Jeanine A. Hummer (0030565)  
G. Gary Tyack, Franklin County  
Prosecutor  
373 S. High Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215  
Phone: (614) 525-3520  
[ahiers@franklincountyohio.gov](mailto:ahiers@franklincountyohio.gov)  
[jhummer@franklincountyohio.gov](mailto:jhummer@franklincountyohio.gov)  
Counsel for Respondent G. Gary Tyack

Michelle Nicole Diamond  
(Pro Hac Vice Pending)  
Alan E. Schoenfeld  
(Pro Hac Vice Pending)  
Wilmer Culter Pickering Hale & Dorr  
LLP  
7 World Trade Center  
New York, NY 10007  
Phone: (212) 230-8800  
[Michelle.diamond@wilmerhale.com](mailto:Michelle.diamond@wilmerhale.com)  
[Alan.schoenfeld@wilmerhale.com](mailto:Alan.schoenfeld@wilmerhale.com)

[kperk@prosecutor.cuyahogacounty.us](mailto:kperk@prosecutor.cuyahogacounty.us)

Allyson Slater (Pro Hac Vice Pending)  
Wilmer Cutler Pickering Hale & Dorr  
LLP  
60 State Street  
Boston, MA 02109  
Phone: (617) 526-6000  
[Allyson.slater@wilmerhale.com](mailto:Allyson.slater@wilmerhale.com)  
Counsel for Relators

Chris A. Rheinheimer  
(Pro Hac Vice Pending)  
Davina Pujari  
(Pro Hac Vice Pending)  
Wilmer Cutler Pickering Hale & Dorr  
LLP  
One Front Street  
San Francisco, CA 94111  
Phone: (628) 235-1000  
[Chris.rheinheimer@wilmerhale.com](mailto:Chris.rheinheimer@wilmerhale.com)  
[Davina.pujari@wilmerhale.com](mailto:Davina.pujari@wilmerhale.com)