Fanon A. Rucker (#0066880)

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

PLANNED PARENTHOOD SOUTHWEST OHIO REGION, on behalf of itself, its physicians, and patients,
c/o Fanon A. Rucker
The Cochran Firm
119 E. Court Street
Cincinnati, Ohio 45202

SHARON LINER, M.D., on behalf of herself and her patients,
c/o Fanon A. Rucker
The Cochran Firm
119 E. Court Street
Cincinnati, Ohio 45202

PLANNED PARENTHOOD OF GREATER OHIO, on behalf of itself, its physicians, and patients,
c/o Fanon A. Rucker
The Cochran Firm
119 E. Court Street
Cincinnati, Ohio 45202

***Plaintiffs*,**

v.

OHIO DEPARTMENT OF HEALTH
246 N. High Street
Columbus, OH 43215

SERVE:
Stephanie McCloud, Director
246 N. High Street
Columbus, OH 43215

SERVE ALSO:
Attorney General Dave Yost
30 E. Broad Street, 17th Floor
Columbus, OH 43215

Case No. _____

Judge: _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

STEPHANIE McCLOUD
Director, ODH
246 N. High Street
Columbus, OH 43215

STATE MEDICAL BOARD OF OHIO
30 E. Broad Street, 3rd Floor
Columbus, OH 43215

SERVE:
Kim G. Rothermel, M.D., Secretary
30 E. Broad Street, 3rd Floor
Columbus, OH 43215

JOSEPH T. DETERS
Hamilton County Prosecutor
230 E. Ninth Street, Suite 4000
Cincinnati, OH 45202

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

MICHAEL C. O'MALLEY
Cuyahoga County Prosecutor
Justice Center, Courts Tower
1200 Ontario Street, 9th Floor
Cleveland, OH 44113

Defendants.

INTRODUCTION

1. This is a state constitutional challenge to Senate Bill No. 260, 2020 Ohio Laws File 113 ("SB 260" or "the Act"), which irrationally prohibits abortion providers from using telemedicine to provide medication abortion to Ohioans. SB 260 carries felony criminal penalties and draconian civil and professional sanctions for abortion providers who violate it. A copy of SB 260 is attached hereto.

2. Plaintiffs, who are health care providers in Ohio, seek declaratory and injunctive relief to prevent local prosecutors and state agencies and officials from enforcing the Act, which blatantly violates the Ohio Constitution's guarantees of substantive due process, equal protection, and free choice in health care.

3. If permitted to take effect, SB 260 will substantially increase the distances that many patients have to travel to obtain medication abortion, cut off abortion access altogether in Butler, Mahoning, and Richland Counties, lead to delays in abortion services, and impose other financial, emotional, and physical costs on patients.

4. And SB 260 will do this for absolutely *no* reason other than a desire to make abortion less accessible. Telemedicine medication abortion ("TMAB") has been studied extensively. It is safe and effective, well-liked by patients, and successful at expanding abortion access to underserved areas and reducing travel and related burdens on patients.

5. Absent an injunction, SB 260 will impose grave and irreparable harm on Plaintiffs and their patients and violate their rights to equal protection, substantive due process, and free choice in health care under the Ohio Constitution.[1]

PARTIES

6. Plaintiff Planned Parenthood Southwest Ohio Region ("PPSWO") is a nonprofit corporation organized under the laws of the State of Ohio and headquartered in Cincinnati, Ohio. PPSWO and its predecessor organizations have provided a broad range of high-quality reproductive health care to patients in southwest Ohio since 1929. PPSWO and its physicians offer TMAB barred by SB 260. The physicians at PPSWO who perform TMAB do so from PPSWO's

[1] Plaintiffs expressly disclaim raising a federal cause of action in this complaint. *See Ohio ex rel. Skaggs v. Brunner*, 629 F.3d 527, 533 (6th Cir.2010); *Warthman v. Genoa Twp. Bd. of Trustees*, 549 F.3d 1055, 1063 (6th Cir.2008).

Cincinnati Surgical Center in Hamilton County. They risk loss of their medical licenses, civil penalties, and civil suits if they violate SB 260, as well as criminal penalties. PPSWO faces the loss of its ambulatory surgical facility ("ASF") license, civil penalties, and civil suits for violations of SB 260, as well as criminal penalties for physicians. PPSWO sues on behalf of itself; its current and future physicians, staff, officers, and agents; and its patients.

7. Plaintiff Sharon Liner, M.D., is a physician licensed to practice medicine in Ohio. Dr. Liner is the Medical Director at PPSWO, and she provides abortion, including TMAB, from PPSWO's Cincinnati Surgical Center in Hamilton County. Dr. Liner faces criminal penalties, loss of her medical license, civil penalties, and civil suits if she violates SB 260. She sues on her own behalf and on behalf of her patients.

8. Plaintiff Planned Parenthood of Greater Ohio ("PPGOH") is a nonprofit corporation organized under the laws of the State of Ohio. PPGOH was formed in 2012 through a merger of several local and regional Planned Parenthood affiliates that had served patients in Ohio for decades. PPGOH serves patients in northern, eastern, and central Ohio. PPGOH offers TMAB barred by SB 260. The physicians at PPGOH who provide TMAB risk loss of their medical licenses, civil penalties, and civil suits if they violate SB 260, as well as criminal penalties. PPGOH faces the loss of its ambulatory surgical facility ("ASF") licenses, civil penalties, and civil suits for violations of SB 260, as well as criminal penalties for physicians. PPGOH sues on behalf of itself; its current and future physicians, staff, officers, and agents; and its patients.

9. Defendant Ohio Department of Health ("ODH") is the state agency charged with licensing and overseeing the operation of ASFs in the state, including Plaintiffs' ASFs. ODH can suspend, revoke, or decline to renew Plaintiffs' ASF licenses, order Plaintiffs' ASFs to cease

operations, and/or impose civil penalties on Plaintiffs' ASFs for violations of SB 260. *See* Ohio Adm.Code 3701-83-05, -05.1, -.05.2, -09(A), -03(D).

10. Defendant Stephanie McCloud is the Director of ODH. She can suspend, revoke, or decline to renew Plaintiffs' ASF licenses, order Plaintiffs' ASFs to cease operations, and/or impose civil penalties on Plaintiffs' ASFs for violations of SB 260. *See* Ohio Adm.Code 3701-83-05, -05.1, -09(A), -03(D). She is sued in her official capacity.

11. Defendant State Medical Board of Ohio ("Medical Board") is charged with enforcing physician licensing. The Medical Board has authority to act against a physician's license based on a commission of an unlawful act, including a violation of SB 260, through license suspension or revocation. *See* R.C. 4731.22. The Medical Board may also impose civil penalties for violations. R.C. 4731.225(B).

12. Defendant Joseph T. Deters is the Hamilton County Prosecutor. He is responsible for the enforcement of all criminal laws in Hamilton County, where PPSWO's Cincinnati Surgical Center is located and where Dr. Liner and other PPSWO physicians provide abortions, including TMAB. He is sued in his official capacity.

13. Defendant G. Gary Tyack is the Franklin County Prosecutor. He is responsible for the enforcement of all criminal laws in Franklin County, where PPGOH's East Columbus Surgical Center is located and where PPGOH physicians provide abortions, including TMAB. He is sued in his official capacity.

14. Defendant Michael C. O'Malley is the Cuyahoga County Prosecutor. He is responsible for the enforcement of all criminal laws in Cuyahoga County, where PPGOH's Bedford Heights Surgical Center is located and where PPGOH physicians provide abortion, including TMAB. He is sued in his official capacity.

JURISDICTION AND VENUE

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

16. Venue is proper in this Court pursuant to Civ.R. 3(C)(4) because Defendant Deters maintains his principal office in Hamilton County.

17. Venue is further proper in this Court pursuant to Civ.R 3(C)(3) because Defendant Deters initiates prosecutions in Hamilton County.

18. Venue is further proper in this Court pursuant to Civ.R. 3(C)(6) because Plaintiffs PPSWO and Dr. Liner provide TMAB in Hamilton County, so the business, professional and other injuries caused by SB 260 with respect to them would occur in Hamilton County, and Defendant Deters would bring any resulting prosecutions against Dr. Liner or other PPSWO physicians in Hamilton County. Judicial proceedings to adjudicate ODH enforcement action over violations of SB 260 would also occur in Hamilton County. *See* R.C. 119.12(A)(1).

ALLEGATIONS

A. Plaintiffs and Their Services

19. PPSWO and PPGOH provide a broad range of sexual and reproductive health services throughout Ohio.

20. PPSWO operates five health centers in southwest Ohio, and PPGOH operates another 17 centers throughout the rest of the state.

21. Because three of these health centers—a Cincinnati center operated by PPSWO, and East Columbus and Bedford Heights centers run by PPGOH—offer procedural abortion (sometimes called surgical abortion), Ohio law requires that they be ambulatory surgical facilities ("ASFs"). Each of the ASFs has one or more physicians at the facility each day it offers services.

22. The remaining health centers operated by PPSWO and PPGOH (i.e., the non-ASF centers) have a nurse practitioner, midwife, or advanced practice registered nurse on site.

23. Other medical professionals, such as registered nurses, licensed practical nurses, and medical assistants, help staff each center.

24. PPSWO and PPGOH strive to make their services as accessible as possible, particularly for patients in underserved communities. Consistent with this mission, PPSWO and PPGOH offer many services via telemedicine.

B. Trends in and Benefits of Telemedicine Use

25. Telemedicine refers to traditional clinical diagnosis and monitoring that a health care provider delivers live to patients via audio and/or video. Telemedicine allows patients to interact in real-time with specialists and other health care providers who are physically distant.

26. Today telemedicine is used for a wide range of services, from emergency care to psychotherapy, and in many different settings, including in general medical practices, urgent cares, hospitals, and specialists' offices. The need for telemedicine in reproductive and sexual health care is particularly acute.

27. Although some obstetric and gynecological care can only be done in person, telemedicine can be used to provide a range of services in the field. Those services include preoperative counseling in advance of hysterectomy and tubal ligation; screenings for sexually transmitted infections and postpartum depression; prescriptions for certain types of birth control; site-to-site virtual visits to connect patients with maternal-fetal medicine specialists, including to allow the specialist to review the patient's ultrasound in real-time; emergency obstetrical consultations; visits to assess and medically manage some abnormal uterine bleeding; and visits to prescribe hormonal therapy or certain forms of pain management.

28. Ohio officials and the federal government have recognized telemedicine's benefits. For example, Governor DeWine recently touted a directive to invest "$15 million in telehealth mental health services to students, so no matter where a child lives, they have access to high-quality mental health care."[2] In 2017, as Attorney General, he criticized "bureaucracy" standing in the "way of innovative programs like telemedicine and remote prescribing."[3]

29. Similarly, the federal Centers for Medicare and Medicaid Services acknowledge telemedicine "as a cost-effective alternative" to traditional medical care.[4] The U.S. Department of Health and Human Services recognizes that virtual visits can reduce "commuting, travel in bad weather, time off from work," and the "need for child care"; "shorten wait times to see a provider"; and expand a patient's "range of access to specialists who live" farther away.[5]

30. In recent years, Ohio has taken steps to reduce legal and regulatory barriers to telemedicine. These aspects of Ohio law are consistent with efforts in many other states to reduce impediments to telemedicine and thereby increase availability of health care.

31. Ohio requires private health insurance plans to provide telemedicine coverage on the same basis and to the same extent that the plans provide coverage for in-person health care services. R.C. 3902.30(A)(5), 3902.30(B)(1).

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[2] Eric Wucklund, *Ohio Governor Pitches $15 Million to Improve Telehealth in Schools*, mHealth Intelligence (Aug. 14, 2019), https://mhealthintelligence.com/news/ohio-governor-pitches-15-million-to-improve-telehealth-in-schools.

[3] Press Release, Mike DeWine, former Atty. Gen. of Ohio, Statement from Ohio Attorney General Mike DeWine Following the President's Declaration of National Public Health Emergency on Opioids (Oct. 2017), https://www.ohioattorneygeneral.gov/Media/News-Releases/October-2017/Statement-from-Ohio-Attorney-General-Mike-DeWine-F.

[4] Centers for Medicare and Medicaid Services, *Telemedicine*, https://www.medicaid.gov/medicaid/benefits/telemedicine/index.html (accessed Mar. 26, 2021).

[5] Health Resources & Servs. Administration, *What Is Telehealth?* (updated Feb. 25, 2021), https://telehealth.hhs.gov/patients/understanding-telehealth/.

32. Ohio requires parity in reimbursement for telemedicine through Medicaid. *See, e.g.*, Ohio Dept. of Medicaid, *Telehealth Billing Guidelines* 1, 3 (updated Feb. 8, 2021), *available at* https://medicaid.ohio.gov/Portals/0/Providers/COVID19/Telehealth-Billing-Guidelines-on-or-after-11-15-2020.pdf. Under the Medicaid program, a health professional also need not have an initial in-person visit with a patient before providing telemedicine services, Ohio Adm.Code 5160-1-18(C)(4), and retains significant discretion as to how telemedicine services are offered. *See, e.g.*, Ohio Adm.Code 5160-1-18(C)(1)–(2).

33. Ohio has adopted flexible licensing rules to facilitate telemedicine. State law permits the creation of a physician-patient relationship without an in-person medical evaluation, provided the standard of care is met. Ohio Adm.Code 4731-11-09(C); R.C. 4731.74(B)(1). Physicians may prescribe non-controlled substances on that basis. R.C. 4731.74(B)(1). They can also decide whether prescription of a *controlled* substance is appropriate for a patient via telehealth under some circumstances.

34. Similarly, Ohio law addresses the use of telemedicine by individuals certified to provide behavioral health services. *See* Ohio Adm.Code 5122-29-31(E). In this context, too, Ohio does not require an "initial in person visit" before providing telemedicine services; instead, the determination whether to have initial or occasional in-person visits should be based on "client choice, appropriate clinical decision-making, and professional responsibility, including the requirements of professional licensing, registration or credentialing boards." Ohio Adm.Code 5122-29-31(D).

35. Ohio has further relaxed its standards with respect to telemedicine during the COVID-19 pandemic. Since March 2020, the State Medical Board of Ohio has suspended enforcement of in-person visit requirements for prescribing controlled substances, prescribing for

subacute and chronic pain, prescribing to patients not seen by the provider, medical marijuana recommendations and renewals, and office-based treatment for opioid addiction. *See, e.g.*, State Med. Bd. of Ohio, *Telemedicine Guidance*, https://med.ohio.gov/Telemedicine-Guidance (accessed Mar. 31, 2021).

C. The Providers' Abortion Services

36. Among other services, PPSWO and PPGOH provide the two primary abortion methods currently in use—medication abortion and procedural abortion.

37. The regimen that the Providers use for medication abortion involves a combination of two medications: mifepristone and misoprostol. The Providers' patients take the first medication, mifepristone, in a health center. Mifepristone works by blocking the hormone progesterone, which is necessary to maintain pregnancy. Then, 24–48 hours after taking the mifepristone orally, patients take the misoprostol buccally (by placing the medication in the cheek pouch of their mouths) at a location of their choosing, most often at home. Misoprostol causes the cervix to open and the uterus to contract and expel its contents, generally within hours of misoprostol administration, thereby completing the abortion. One to two weeks after taking misoprostol, the patient follows up with a healthcare provider to confirm that the pregnancy has been terminated.

38. Medication abortion is one of the safest procedures in contemporary medical practice. It does not require anesthesia or sedation. Major complications following medication abortion are very rare, and far rarer than those associated with pregnancy and childbirth.

39. Procedural abortion, sometimes referred to as "surgical abortion," is not what is commonly understood to be "surgery" as it does not involve an incision. Rather, a physician

accesses the uterus through the patient's vagina and empties the uterine contents by using suction aspiration alone or in conjunction with instruments.

40. The window during which a patient can obtain an abortion in Ohio is limited. Pregnancy is generally 40 weeks in duration, but Ohio prohibits abortion beginning at 22 weeks after the first day of the patient's last menstrual period ("LMP").

41. PPSWO performs procedural abortion through 21 weeks, 6 days LMP, and PPGOH does the same through 19 weeks, 6 days LMP in Bedford Heights, and 17 weeks, 6 days in East Columbus.

42. Given the gestational age of their pregnancies, some patients are only eligible for procedural abortion. Although medical evidence demonstrates that medication abortion is safe and effective through at least 11 weeks LMP, Ohio law restricts the use of mifepristone to the first 10 weeks of pregnancy (through 70 days). R.C. 2919.123. Accordingly, after 10 weeks LMP, patients can no longer have a medication abortion in Ohio.

43. For those patients whose pregnancies are under 10 weeks LMP, the method of abortion they select depends on a range of factors. For some patients, medication abortion may be safer than procedural abortion due to anomalies of the patient's reproductive and genital tract. Many patients also prefer medication abortion because they can end their pregnancy at home at a time more convenient for them, and because it allows them more privacy. Victims of rape, or women who have experienced sexual abuse or molestation, may choose medication abortion to feel more in control of the experience and to avoid trauma from having instruments placed in their vaginas. Most women who choose medication abortion have a strong preference for this method.

44. Patients generally seek abortion as soon as they are able, but many face logistical obstacles that can delay access to abortion services. Patients need to schedule an appointment,

gather the resources to pay for the abortion and related costs, and arrange transportation to a clinic, time off work (often unpaid, due to a lack of paid time off or sick leave), and possibly childcare during appointments. The delay caused by these barriers and others explained below results in higher financial, physical, and emotional costs to the patient. These burdens fall most heavily on patients with low incomes, patients of color, patients who live far from health centers, patients with children, minor patients, and patients experiencing interpersonal violence.

45. Regardless of the method of abortion, a patient in Ohio is required by law to visit a health center at least twice, the first time for a state-mandated ultrasound and in-person visit with a physician (the "Day 1" visit) to discuss the abortion procedure and its risks, and the second time at least 24 hours later to obtain the abortion (the "Day 2" visit). *See* R.C. 2317.56(B)(1), 2919.193–.194.

46. Because of restrictive state laws, the Providers can offer Day 1 visits only at their three ASFs (i.e., surgical centers in Cincinnati, East Columbus, and Bedford Heights). These centers are the only ones with physicians regularly on site, and Ohio law provides that only a physician can do the mandatory, in-person session with a patient at least 24 hours before the abortion. R.C. 2317.56(B).

47. Staff trained to perform and interpret ultrasounds in pregnancy are only available in the Providers' three ASFs, and Ohio law requires an ultrasound, generally at least 24 hours before the abortion.

48. It would not be economically or operationally feasible for the Providers to place physicians in non-ASFs to provide Day 1 visits.

49. At the Day 1 visit, all abortion patients receive—in addition to an ultrasound and an informed consent session—standard lab work, a medical history assessment, and further patient

education. During the consent session, the physician answers any questions the patient may have about the abortion process, birth control, and any other medical concerns. A patient interested in medication abortion is screened for contraindications during the Day 1 visit.

50. Before the introduction of TMAB, all Day 2 visits also occurred at the Providers' ASFs in Cincinnati, East Columbus, and Bedford Heights. As explained above, the Providers cannot legally perform procedural abortions anywhere other than those ASFs. *See* R.C. 3702.30(A)(1), (E)(1). And although state law does not expressly bar the performance of medication abortion at non-ASFs, it provides that only doctors may perform these abortions. R.C. 2919.123; *see also* R.C. 2919.11, 4731.41. Because the Providers' physicians are based at ASFs, and they cannot feasibly be distributed to other health centers, patients obtaining medication abortion from the Providers traditionally had to complete their Day 2 visit at one of the three ASFs as well.

51. Starting in 2018 and 2019 respectively, PPGOH and PPSWO began offering interested patients the option of TMAB for their medication abortions. The key difference with TMAB is that the patient's Day 2 visit need not occur at one of the Providers' three ASFs. Instead, after visiting an ASF for the Day 1 visit, PPSWO's TMAB patients can visit either its Hamilton or Dayton health centers for the Day 2 visit, and PPGOH's TMAB patients can visit its Youngstown or Mansfield health centers for the Day 2 visit. These other health centers may be significantly closer to the patient's home or workplace, or—due to operational considerations—they may have more appointment availability on their schedule and thus provide access to a Day 2 appointment more quickly than an ASF could.

52. Once at a health center serving as a TMAB site, a patient is connected by videoconference with a physician located in Cincinnati (for PPSWO), or in East Columbus or Bedford Heights (for PPGOH).

53. That physician confirms that the patient is firm in her desire to have an abortion and answers any additional questions that the patient may have. The physician then presses a button in the ASF that remotely opens a cabinet in the other health center from which the patient obtains mifepristone. The patient ingests the mifepristone under observation by the physician on the video conference in the health center. Throughout this process, a member of the health center staff physically accompanies the patient to provide in-person assistance if needed. As with the traditional Day 2 visit at an ASF, a TMAB patient visiting a TMAB site takes the misoprostol 24–48 hours after the mifepristone at a location of her choosing, not in the health center.

54. The Providers' experiences with TMAB have been overwhelmingly positive. TMAB services are equivalent in quality to those provided in-person on Day 2 at the Providers' ASFs, and for some patients, the TMAB option is superior in meeting their preferences and needs. The TMAB process helps reduce patients' travel burden and related delays, and patients may be able to get a TMAB appointment sooner than an appointment for a medication abortion at an ASF.

55. Moreover, TMAB is as safe and effective as fully in-person treatment. The rate of clinically significant complications for medication abortion is exceedingly low whether it is provided in-person or by telemedicine. Indeed, the reported low risks of medication abortion are similar in magnitude to the adverse effects of common prescriptions and over-the-counter medications.

56. Although rare, the most common adverse events from medication abortion are incomplete abortion, which involves retained tissue in the uterus, and continuing pregnancy, in

which the medications are not effective at ending the pregnancy. These adverse events can almost always be handled in an outpatient setting on a non-emergency basis. And when they or rare complications from medication abortion arise, it would not matter whether the patient obtained a medication abortion in person or through telemedicine because such events would occur only after the patient has left the clinic.

D. The Challenged Act

57. The Ohio General Assembly passed SB 260 on December 17, 2020, and Governor DeWine signed it on January 9, 2021. SB 260 is slated to take effect on April 12, 2021.

58. Under SB 260, new R.C. 2919.124(B) will bar a physician from providing an "abortion-inducing drug" to a "pregnant woman," unless the doctor is "physically present at the location where the initial dose of the drug or regimen of drugs is consumed at the time" the patient consumes that dose. SB 260, § 1 (adding R.C. 2919.124(A)(1), (B)).

59. The next subsection of R.C. 2919.124, division (C), makes it illegal for a physician to "knowingly fail to comply with division (B) of this section" when the physician provides "an abortion-inducing drug to another" for "the purpose of inducing an abortion." *Id.* (adding R.C. 2919.124(C)).

60. The Act defines "abortion-inducing drug" to include mifepristone, the first medication in the regimen that Plaintiffs use to perform medication abortion. *Id.* (adding R.C. 2919.124(A)(1)). However, it also sweeps in any other "drug or regimen of drugs that causes the termination of a clinically diagnosable pregnancy." *Id.* (adding R.C. 2919.124(A)(1)).

61. A violation of SB 260 is a fourth-degree felony, which carries a potential prison term of between six and eighteen months in Ohio. *Id.* (adding R.C. 2919.124(E)); *see* R.C. 2929.14(4)). SB 260 likewise provides that licensed physicians are "subject to sanctioning" by the

state medical board for violations of the Act. SB 260, § 1 (adding R.C. 2919.124(E), which cross-references R.C. 4731.22); *see also* R.C. 2925.01(W)(17).

62. For a second or subsequent violation of SB 260, a physician is subject to mandatory and automatic medical license suspension for at least one year. SB 260, § 1 (amending R.C. 4731.22(I)). That is so even though Ohio law otherwise reserves this automatic suspension penalty to under a dozen far more serious crimes, such as aggravated murder, felonious assault, kidnapping, and rape.

63. SB 260 does not affect the provision by telemedicine of medication used to manage miscarriage, even though such medication may be identical to that used for medication abortion.

E. SB 260's Irreparable Harm to Plaintiffs and Their Patients

64. In light of the severe penalties and consequences attached to SB 260, Plaintiffs and their physicians will be forced to stop offering TMAB.

65. Despite the dearth of abortion providers in Ohio, and the rapidly expanding use of telemedicine for comparable care, SB 260 will completely eliminate access to Day 2 medication abortion visits in three Ohio counties: Butler County (Hamilton), Mahoning County (Youngstown), and Richland County (Mansfield), and it will foreclose PPSWO's plans to provide TMAB services within the next year in Clark County (Springfield).

66. Many patients will have to travel significantly farther to obtain an abortion. PPSWO patients in the Hamilton area would need to travel an additional 24 miles each way to reach PPSWO's Cincinnati Surgical Center, and PPSWO's Dayton-area patients would have to travel roughly 51 miles each way to do the same. PPGOH's patients in Mansfield would have to travel roughly 75 miles to either of PPGOH's ASFs, and patients in Youngstown would have to travel roughly 60 miles to PPGOH's Bedford Heights ASF.

67. High-quality evidence from other states experiencing a sudden reduction in abortion access demonstrates that increased travel distances of these magnitudes will reduce abortion use among those patients experiencing a travel increase.

68. Increased travel distances will carry other financial, physical, and emotional costs for the Providers' patients. Patients will need to pay more for gas and transportation, schedule longer periods of child care, and—for lengthier delays—potentially pay more for their abortions (which itself can cause more delay).

69. Patients whose access to abortion is delayed by the law may also suffer increased risks of incomplete abortion or continuing pregnancy, or a loss of access to medication abortion altogether once they reach 10 weeks of pregnancy.

70. SB 260 may create barriers that, for some patients, will so delay their access that they cannot have an abortion at all. If an individual is forced to continue a pregnancy against their will, it can pose a risk to their physical, mental, and emotional health, as well as to the stability and wellbeing of their family, including existing children.

71. SB 260 will also cause irreparable harm to Plaintiffs, who will be forced to stop providing constitutionally protected health care to their patients and threatened with criminal and civil penalties should the Act take effect.

CLAIMS FOR RELIEF

COUNT I
(Substantive Due Process — Ohio Constitution, Article I, Sections 1, 2, 16, and 20)

72. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 71.

73. By prohibiting access to safe and effective TMAB, SB 260 infringes on the right to previability abortion, privacy, bodily autonomy, and free choice of health care guaranteed by the Ohio Constitution, without adequate justification.

74. If SB 260 is allowed to take effect, Plaintiffs and their patients will be unable to offer and use TMAB in Ohio, thereby causing them to suffer significant constitutional, medical, emotional, financial, and other harm. Plaintiffs have no adequate remedy at law to address these harms.

COUNT II
(Patients' Equal Protection — Ohio Constitution, Article I, Section 2)

75. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 71.

76. SB 260 denies Plaintiffs' patients their right to the enjoyment of equal protection and benefit under the Ohio Constitution, Article I, Section 2, by singling out medication abortion for worse treatment than comparable types of health care freely offered via telemedicine, including forms of health care sought by men, without adequate justification.

77. If SB 260 is allowed to take effect, Plaintiffs' patients will be deprived of equal protection of the laws under the Ohio Constitution, thereby causing them to suffer significant constitutional, medical, emotional, financial, and other harm. Plaintiffs have no adequate remedy at law to address these harms.

COUNT III
(Abortion Providers' Equal Protection — Ohio Constitution, Article I, Section 2)

78. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 71.

79. SB 260 denies Plaintiffs their right to the enjoyment of equal protection and benefit under the Ohio Constitution, Article I, Section 2, by targeting abortion providers with felony criminal penalties and professional sanctions for providing medication abortion using telemedicine, while leaving unrestricted other medical providers, including those who treat miscarriage using the exact same medications as in medication abortion, without adequate justification.

80. If SB 260 is allowed to take effect, Plaintiffs will be subject to irreparable harm for which no adequate remedy at law exists by depriving them of equal protection of the laws under the Ohio Constitution, thereby causing them to suffer significant constitutional, business, and professional harm and threatening them with civil and criminal penalties. Plaintiffs have no adequate remedy at law to address these harms.

COUNT IV
(Patients' And Abortion Providers' Free Choice in Health Care — Ohio Constitution, Article I, Section 21)

81. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 71.

82. By banning TMAB services, SB 260 imposes a penalty and fine for the sale or purchase of health care or health insurance without adequate justification and therefore violates the Health Care Freedom Amendment to the Ohio Constitution, Article I, Section 21.

83. If SB 260 is allowed to take effect, Plaintiffs and their patients will be deprived of free choice in matters of health care under the Ohio Constitution, thereby causing them to suffer significant constitutional, medical, financial, professional, and emotional harm.

COUNT V
(Declaratory Judgment)

84. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 71.

85. A real controversy exists between the parties, the controversy is justiciable, and speedy relief is necessary to preserve the rights of the parties. Plaintiffs and their patients are adversely affected by SB 260, as set forth herein. In addition, Plaintiffs and their patients are unconstitutionally deprived of their rights to substantive due process, equal protection, and free choice in health care under the Ohio Constitution.

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

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

a. SB 260 violates Article I, Sections 1, 2, 16, and 20 of the Ohio Constitution by denying Plaintiffs and their patients substantive-due-process rights to previability abortion, privacy, bodily autonomy, and free choice in health care;

b. SB 260 violates Article I, Section 2 of the Ohio Constitution by denying Plaintiffs' patients the equal protection and benefit of the law, in that it singles out medication abortion via telemedicine from all other comparable forms of care, including care obtained by men and miscarriage management, without adequate justification;

c. SB 260 violates Article I, Section 2 of the Ohio Constitution by denying Plaintiffs the equal protection and benefit of the law, in that it singles out abortion providers for criminal and civil sanctions while leaving unregulated other health care providers offering comparable services without adequate justification; and

d. SB 260 violates Article I, Section 21 of the Ohio Constitution by imposing a penalty and fine on the receipt and provision of safe, effective medical care, without adequate justification, and thereby denies Plaintiffs and their patients the right of free choice in health care.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A. To immediately issue a temporary restraining order and/or preliminary injunction, and later a permanent injunction, restraining Defendants, their employees, agents, and successors in office from enforcing SB 260;

B. To enter a judgment declaring that SB 260 violates the Ohio Constitution, Article I, Sections 1, 2, 16, 20, and 21, by infringing on the rights of Plaintiffs and their patients to equal protection and benefit; substantive due process; and free choice in health care;

C. To award Plaintiffs their fees and costs; and

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

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*Application for *pro hac vice* admission in this Court forthcoming

Dated: April 1, 2021

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2021, a copy of the foregoing was served via electronic mail upon counsel for the following parties:

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