IN THE COURT OF COMMON PLEAS
FOR FRANKLIN COUNTY, OHIO

MADELINE MOE, et al. Plaintiffs, v. DAVID YOST, et al. Defendants.	Case No. 24-cv-002481 Judge Holbrook

PLAINTIFFS' MOTION TO EXTEND TEMPORARY RESTRAINING ORDER

Pursuant to Civ. R. 65, Plaintiffs Madeline, Michael, and Michelle Moe, and Grace, Garrett, and Gina Goe (collectively "Plaintiffs"), move this Court for an extension of the April 16, 2024 Order and Entry Granting Plaintiffs' Motion for Temporary Restraining Order ("TRO") to prevent the TRO from lapsing before this Court can rule on Plaintiffs' Motion for Preliminary Injunction, currently set for hearing on May 16-17, 2024.

Procedural History: On March 26, 2024, Plaintiffs filed a Complaint and Motion for Preliminary Injunction Preceded by Temporary Restraining Order If Necessary in the Franklin Court of Common Pleas. Defendants filed their response to the motion for temporary restraining order on April 9, 2024. Plaintiffs replied on April 11, 2024. On April 12, 2024, this Court held a hearing on the motion for temporary restraining order. On April 16, 2024, Defendants filed a Notice of Supplemental Authority, to which Plaintiffs responded.

On April 16, 2024, the Court issued an Order and Entry Granting Plaintiffs' Motion for Temporary Restraining Order. On April 17, 2024, Plaintiffs filed a Motion to Clarify Temporary Restraining Order, which Defendants opposed on April 18, 2024. On April 19, 2024, this Court

denied Relators' Motion to Clarify. On April 22, 2024, this Court set a consolidated preliminary injunction hearing and trial on the merits for May 16-17, 2024. On April 23, 2024, Plaintiffs filed proof of surety for bond in the amount of $50,000.

Legal Standard: This Court may extend the TRO for more than fourteen days. *See Citicasters Co. v. Stop 26-Riverbend, Inc.*, 7th Dist. Mahoning No. 01 CA 99, 2002-Ohio-5197, ¶ 55; *Atwood v. Judge, Dir.*, 63 Ohio App. 2d 94, 102, 409 N.E.2d 1022 (7th Dist. 1977). Specifically, Civ. R. 65(A) provides that a temporary restraining order granted without notice to the adverse party "shall expire by its terms within such time after entry, not to exceed fourteen days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for one like period or unless the party against whom the order is directed consents that it may be extended for a longer period." Because a temporary restraining order can only be extended within the original time fixed, *M.R. v. Niesen*, 167 Ohio St. 3d 404, 406, 2022-Ohio-1130, 193 N.E.3d 548, such an extension must issue on or before its expiration. While Defendants had notice of the TRO, filed a written opposition, and were heard at the April 12, 2024 hearing—meaning the limitations set forth in Civ. R. 65(A) do not apply—Plaintiffs follow the requirements of Civ. R. 65(A) out of an abundance of caution. *See W. Watersheds Project v. Bernhardt*, 391 F. Supp. 3d 1002, 1008 n.5 (D. Ore. 2019) (explaining that the 14-day limit for TROs "issued without notice does not apply" when "a TRO is issued with notice and after a hearing," but recognizing that a TRO may nevertheless not be extended indefinitely).

Good Cause to Extend TRO: For the same reasons that Plaintiffs were entitled to the TRO, there is good cause to extend the TRO through the May 16-17, 2024 hearing and until this Court issues a further ruling on Plaintiffs' motion for preliminary injunction or otherwise. *See Flying Cross Check, LLC v. Central Hockey League, Inc.*, 153 F. Supp. 2d 1253, 1260 (D. Kan.

2001) (good cause existed where "the court's calendar cannot reasonably accommodate an earlier setting for the preliminary injunction hearing"). The circumstances that obtained at the April 12, 2024 hearing have not changed. *See Dakotans for Health v. Anderson*, 675 F. Supp. 3d 919, 933 (D.S.D. 2023) (good cause found where "the grounds for originally granting the temporary restraining order continue to exist"). First, Plaintiffs have demonstrated a substantial likelihood of success on the merits for at least one of their claims. *See* TRO at 11-12. Second, Plaintiffs have demonstrated a likelihood of immediate and irreparable harm. *See* TRO at 12-13. Third, third parties and the public interests are served by an injunction maintaining the status quo. *See* TRO at 13-14.

H.B. 68 and the Health Care Ban contained therein have an effective date of April 24, 2024. Plaintiffs will be immediately and irreparably harmed by the enforcement of a likely unconstitutional statute and by the interruption of their access to their Ohio physicians. Absent relief from this Court, the Health Care Ban will be in full force and effect, and Defendants have expressed every intent to enforce the law. At a meet-and-confer held on April 25, 2024, counsel for Defendants indicated that they did not consent to an extension of the TRO.

For the reasons set forth above, in Plaintiffs' Motion for Preliminary Injunction and all subsequent briefing, and at the April 12, 2024 hearing, Plaintiffs respectfully request that this Court extend the TRO to prevent a lapse in the relief contained therein between its expiration and the Court's ruling following the May 16-17, 2024 hearing.

Plaintiffs request a ruling on or before April 30, 2024.[1]

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[1] As this Court is aware, Defendants have brought a Complaint for Writs of Prohibition and Mandamus in the Ohio Supreme Court, seeking to narrow the TRO. *See State ex rel. Yost v. Holbrook*, Case No. 2024-0551. As of the time of this filing, no writ has issued. There is therefore no impediment to this Court extending the TRO on its same terms. Moreover, Plaintiffs note that there was a representation in those proceedings that the current TRO expires on April

Respectfully submitted,

/s/ Freda J. Levenson

Freda J. Levenson (45916)
Trial Attorney
Amy Gilbert (100887)
ACLU OF OHIO FOUNDATION, INC.
4506 Chester Avenue
Cleveland, Ohio 44103
Levenson: (216) 541-1376
Office: (614) 586-1972
flevenson@acluohio.org
agilbert@acluohio.org

David J. Carey (88787)
ACLU OF OHIO FOUNDATION, INC.
1108 City Park Ave., Ste. 203
Columbus, Ohio 43206
(614) 586-1972
dcarey@acluohio.org

Chase Strangio*
Harper Seldin*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, Floor 18
New York, NY 10004
(212) 549-2500
cstrangio@aclu.org
hseldin@aclu.org

Miranda Hooker*
Kathleen McGuinness*
Jordan Bock*
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
(617) 570-1000
mhooker@goodwinlaw.com
kmcguinness@goodwinlaw.com
jbock@goodwinlaw.com

Allison DeLaurentis*
GOODWIN PROCTER LLP
One Commerce Square
2005 Market Street, 32nd Floor
Philadelphia, PA 19103
(445) 207-7800
adelaurentis@goodwinlaw.com

Lora Krsulich (PHV 27558-2024)
GOODWIN PROCTER LLP
601 S Figueroa St., 41st Floor
Los Angeles, CA 90017
(213) 426-2500
lkrsulich@goodwinlaw.com

**PHV motion forthcoming*
***PHV motion pending*

Counsel for Plaintiffs Madeline Moe, by and through her parents and next friends, Michael Moe and Michelle Moe; Michael Moe; Michelle Moe; Grace Goe, by and through her parents and next friends, Garrett Goe and Gina Goe; Garrett Goe; and Gina Goe

30, 2024. Plaintiffs did not post their bond until April 23, 2024, and H.B. 68 was not set to take effect until April 24, 2024. Out of an abundance of caution, and to prevent any ambiguity as to the status of relief, Plaintiffs request that the TRO be extended on or before April 30, 2024.

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2024, the foregoing was electronically filed via the Court's e-filing system Notice of this filing will be sent to counsel for all parties via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Freda J. Levenson
Trial Attorney for Plaintiffs