IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

PRETERM-CLEVELAND, *et al.*, *Plaintiffs*, v. David YOST, *et al.*, *Defendants.*	Case No. A 2203203 Judge Christian A. Jenkins **PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS**

Plaintiffs Preterm-Cleveland; Planned Parenthood Southwest Ohio Region; Sharon Liner, M.D.; Planned Parenthood of Greater Ohio; Women's Med Group Professional Corporation; Northeast Ohio Women's Center, LLC; and Toledo Women's Center (collectively "Plaintiffs"), by and through undersigned counsel, hereby respectfully submit this Motion for Judgment on the Pleadings pursuant to Civ.R. 12(C).

A Memorandum in Support of this request is attached to this motion and incorporated herein by reference.

DATED: March 1, 2024

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Ohio Constitution protects the fundamental right to reproductive freedom. In the November 2023 general election, Ohioans voted to approve Issue 1, amending the Ohio Constitution to include express protections for reproductive rights, including the decision to have an abortion. Article I, Section 22 of the Ohio Constitution now prohibits the State from interfering with an individual's exercise of the right to abortion—and with the provision of assistance to an individual in exercising that right—prior to the point of fetal viability, unless the State demonstrates that it is using "the least restrictive means" to advance pregnant persons' health "in accordance with widely accepted and evidence-based standards of care." Art. I, § 22(B).

The law at issue in this litigation, S.B. 23, bans nearly all abortions in blatant violation of Article I, Section 22. As all parties agree, it prohibits abortion care starting at approximately six weeks of pregnancy—*months* before the point of viability. Such a draconian restriction on Ohioans' reproductive freedom, and on those assisting Ohioans in exercising that freedom, is far from the least restrictive means to advance Ohioans' health. Indeed, Ohio Attorney General David Yost—who is the chief law officer of the State of Ohio, Rev. Code § 109.02, and a defendant in this case—has already publicly conceded that S.B. 23's six-week ban is unconstitutional under Article I, Section 22. There are thus no material factual disputes to be resolved. Plaintiffs are entitled to judgment on the pleadings because S.B. 23's six-week ban is unconstitutional as a matter of law.

II. BACKGROUND AND PROCEDURAL HISTORY

A. S.B. 23 Is a Near-Total Ban on Abortion.

On April 10, 2019, the Ohio General Assembly enacted S.B. 23, which bans abortion after the detection of embryonic or fetal cardiac activity. Second Amended Complaint ("SAC") ¶ 6. Under S.B. 23, if a pregnancy is located in the uterus, a provider who intends to perform an abortion must determine whether there is cardiac activity. If there is cardiac activity, S.B. 23 makes it a crime to "caus[e] or abet[] the termination of" the pregnancy. S.B. 23, § 1, amending R.C. 2919.192(A), 2919.192(B), and 2919.195(A). Cardiac activity can typically be detected starting at approximately six weeks following the first day of a patient's last menstrual period ("LMP"), but it may be detected as early as five weeks LMP. SAC ¶ 46. Six weeks LMP is indisputably a pre-viability stage of pregnancy, as no embryo is capable of surviving outside the uterus at this point. *Id.* ¶ 56.

S.B. 23 includes two narrow and vague exceptions to its prohibition on abortion. These exceptions permit abortion after cardiac activity is detected only if the abortion is necessary (1) to prevent the pregnant person's death, or (2) to prevent a "serious risk of the substantial and irreversible impairment of a major bodily function." S.B. 23, § 1, amending R.C. 2919.195(B). S.B. 23 carries significant criminal penalties and also subjects providers to the risk of state-assessed civil forfeitures, license revocation, and civil suits. *See* SAC ¶¶ 50-53.

B. S.B. 23 Litigation

In 2019, Plaintiffs—reproductive health care providers in Ohio that offer abortion care—challenged S.B. 23 in federal court. *See Preterm-Cleveland v. Yost*, No. 1:19-cv-00360-MRB (S.D.Ohio), Dkt. #1. On July 3, 2019, the federal district court preliminarily enjoined S.B. 23 before it went into effect, finding that the ban would pose an "insurmountable" obstacle to

abortion access and "prohibit almost all abortion care in Ohio," thereby violating Ohioans' rights under the Fourteenth Amendment to the United States Constitution. *Preterm-Cleveland v. Yost*, 394 F.Supp.3d 796, 800-801 (S.D.Ohio 2019); *Preterm-Cleveland v. Yost,* No. 1:19-cv-00360-MRB, Dkt. #29. The injunction remained in place until it was vacated by the same court on June 24, 2022, hours after the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization,* 597 U.S. 215, 142 S. Ct. 2228, 213 L.Ed.2d 545 (2022). *Preterm-Cleveland v. Yost,* No. 1:19-cv-00360-MRB, Dkt. #100.

Plaintiffs were then forced to comply with S.B. 23. On June 29, 2022, five days after the federal injunction was vacated, Plaintiffs filed a petition for a writ of mandamus with the Ohio Supreme Court, seeking an order declaring S.B. 23 unconstitutional. *See State ex rel. Preterm-Cleveland v. Yost*, Case No. 2022-0803. With at least one Plaintiff clinic on the brink of closure, Plaintiffs voluntarily dismissed their petition in September 2022, choosing instead to bring an action in this Court to address the ongoing irreparable harm caused by S.B. 23's enforcement and their and their patients' need for immediate relief. Ohio S.Ct. Case Announcement 2022-Ohio-3174. Plaintiffs sought a temporary restraining order followed by a preliminary injunction, as well as a declaratory judgment and permanent injunctive relief, against enforcement of S.B. 23. Plaintiffs' Complaint asserted claims for violations of the Ohio Constitution's protections for individual liberty under Article I, Sections 1, 16, and 21, and its equal protection and benefit guarantee under Article I, Section 2. Plaintiffs also asserted that S.B. 23 is unconstitutionally

vague, in violation of Article I, Section 16, but did not move for preliminary injunctive relief on that claim.[1]

On September 14, 2022, this Court entered a 14-day temporary restraining order ("TRO") enjoining enforcement of S.B. 23, which the Court later extended to October 12, 2022. Following expedited discovery and an evidentiary hearing on Plaintiffs' preliminary injunction motion, the Court issued a preliminary injunction prohibiting the State from enforcing S.B. 23 during the pendency of the case (the "PI Order"). Prelim. Inj. Order, *Preterm-Cleveland v. Yost*, Hamilton C.P. No. A 2203203 (Oct. 12, 2022).[2]

The State appealed the PI Order on October 12, 2022. The First District Court of Appeals dismissed the appeal, finding that the trial court's preliminary injunction did not "satisfy the requirements of a final appealable order." *Preterm-Cleveland v. Yost*, 1st Dist. Hamilton No. C–220504, 2022-Ohio-4540, ¶¶ 28-29.

On January 3, 2023, the State appealed the First District's decision to the Ohio Supreme Court. *See Preterm-Cleveland. v. Yost,* Case No. 2023-0004. The Ohio Supreme Court accepted the appeal on two propositions of law: (1) whether the PI Order was immediately appealable, and (2) whether Plaintiffs have standing to challenge S.B. 23. Ohio S.Ct. Case Announcement 2023-

[1] On January 31, 2023, Plaintiffs amended the complaint to add a claim that S.B. 23 is *void ab initio*, as it violated federal law at the time of its enactment. SAC ¶¶ 84-86.

[2] Specifically, the PI Order "enjoin[ed] the enforcement of S.B. 23 in its entirety except the provisions thereof relating only to adoption and foster care (R.C. 2919.1910 and R.C. 5103.11), section 2912.193 naming the Act, and R.C. 2317.56(C)(2) regarding the internal Ohio Department of Health process for producing informed consent materials for the Department of Health." PI Order ¶ 134. The exempted provisions of S.B. 23 remain outside the scope of this litigation.

758.[3] On September 27, 2023, the Ohio Supreme Court heard oral arguments on the two propositions.

C. Adoption of Article I, Section 22 and Subsequent Legal Proceedings

While the State's appeal was pending before the Ohio Supreme Court, a citizen-led effort to add express protections for reproductive freedom to the Ohio Constitution was underway. As a result of this initiative, "The Right to Reproductive Freedom with Protections for Health and Safety" (the "Amendment") appeared as Issue 1 on the November 2023 General Election ballot. On November 7, 2023, Ohioans voted to approve Issue 1, adopting the Amendment as Article I, Section 22 of the Ohio Constitution. SAC ¶ 74. The election results were certified—and the Amendment took effect—on December 7, 2023. *Id.* ¶ 75.

Article I, Section 22 provides that "[e]very individual has a right to make and carry out one's own reproductive decisions, including but not limited to decisions on . . . abortion." Art. I, § 22(A). The State may not "directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against" either (1) "[a]n individual's voluntary exercise of this right," or (2) "[a] person or entity that assists an individual exercising this right" prior to the point of fetal viability, unless the "State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." Art. I, § 22(B).[4]

[3] The Ohio Supreme Court declined to consider the third question presented by the State—whether the Ohio Constitution, as it existed at that time, protected the right to abortion.

[4] After the point of fetal viability, abortion may be prohibited, except in cases where, in the professional judgment of the pregnant patient's treating physician, an abortion is necessary to protect the pregnant patient's life or health. Art. I, § 22(B).

Prior to the November 2023 election, Defendant Ohio Attorney General David Yost published a "legal analysis" of the Amendment. SAC ¶¶ 79-80; *see also* Ohio Att'y Gen., *Issue 1 on the November 2023 Ballot: A legal analysis by the Ohio Attorney General* (Oct. 5, 2023), https://www.ohioattorneygeneral.gov/SpecialPages/FINAL-ISSUE-1-ANALYSIS.aspx (accessed Feb. 29, 2024) ("Att'y Gen. Issue 1 Analysis"). This analysis describes the "legal effects" of the Amendment passing, explaining that the Amendment "create[s] a new standard that goes further than *Casey*'s 'undue burden' test or *Roe*'s original 'strict scrutiny' test," provides "greater protection to abortion to be free from regulation," and "make[s] it harder for any law covering 'reproductive decisions' to survive" judicial review. *Id.* at 5-6. Significantly, Ohio Attorney General Yost unequivocally acknowledged that the "[p]assage of Issue 1 would invalidate" S.B. 23. *Id.* at 9.

Following Issue 1's passage, the Ohio Supreme Court asked the parties to brief the impact of Article I, Section 22 on Defendants' pending appeal. In their brief, Defendants conceded that S.B. 23's prohibition on abortions after the detection of embryonic cardiac activity is "overridden by" the Amendment. Supp. Br. of Appellants, *Preterm-Cleveland v. Yost*, Case No. 2023-0004, 1 (Ohio S.Ct. Dec. 7, 2023); *see also id.* at 3 (acknowledging that it is "obvious" that S.B. 23's "core prohibition . . . cannot survive the new Amendment"). Defendants concluded that "significant portions" of S.B. 23 "will not survive future scrutiny in an appropriate venue." *Id*. at 12. On December 15, 2023, the Ohio Supreme Court dismissed Defendants' appeal *sua sponte* "due to a change in the law." *Preterm-Cleveland v. Yost*, Slip Op. No. 2023-Ohio-4570, ¶ 1.

Shortly after Article I, Section 22 became effective, Plaintiffs filed a Second Amended Complaint alleging that S.B. 23 violates Article I, Section 22 on its face, as it prohibits Plaintiffs

from assisting their patients in exercising their fundamental right to abortion and deprives Plaintiffs' patients of this fundamental right. SAC ¶¶ 81-88. At a January 24, 2024 status conference with the Court, counsel for Defendants informed the Court that the parties were attempting to negotiate an agreed-upon order that would resolve the case in light of Article I, Section 22. In the event that the parties were not able to reach a resolution, the Court set a case schedule for further proceedings. Defendants filed their Answer to Plaintiffs' Second Amended Complaint on February 2.

III. LAW AND ARGUMENT

A. S.B. 23's Six-Week Ban Is Unconstitutional as a Matter of Law.

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Civ.R. 12(C). Ohio courts grant a party's motion for judgment on the pleadings when, having construed the material allegations of the pleadings and all reasonable inferences therefrom in favor of the non-moving party, the court "determines that 'no material factual issues exist and that the movant is entitled to judgment as a matter of law.'" *State ex rel. Fire Rock, Ltd. v. Ohio Dept. of Commerce*, 163 Ohio St.3d 277, 2021-Ohio-673, 169 N.E.3d 665, ¶ 6 (quoting *State ex rel. Midwest Pride IV v. Pontious*, 75 Ohio St.3d 565, 570, 664 N.E.2d 931 (1996)).

Plaintiffs are entitled to judgment as a matter of law because the pleadings in this case are closed and there is no factual dispute that could alter the inevitable legal conclusion that S.B. 23's six-week ban is unconstitutional as a matter of law because it violates the plain language of Article I, Section 22 of the Ohio Constitution. *See Russ v. City of Reynoldsburg*, 2017-Ohio-1471, 81 N.E.3d 493, ¶ 8 (5th Dist.) (determining "[t]he constitutionality of a statute or

ordinance" on a motion for judgment on the pleadings as it "presents a question of law").[5] The Ohio Constitution is clear: there is an express fundamental right to make and carry out one's own reproductive decisions, including the decision to have an abortion. Art. I, § 22(A). The State may not "directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either[] [a]n individual's voluntary exercise of this right or [a] person or entity that assists an individual exercising this right" prior to the point of fetal viability, unless the "State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." *Id.* § 22(B).

As detailed below, Plaintiffs are entitled to judgment as a matter of law and a permanent injunction because: (1) it is indisputable that S.B. 23 imposes a near-total ban on abortion starting well before the point of fetal viability, and (2) Defendants have admitted that that the ban is unconstitutional and cannot (and do not) claim that a near-total abortion ban is the least restrictive means to advance patient health.

1. S.B. 23 Bans Nearly All Abortions Prior to the Point of Viability and, in so Doing, Necessarily and Directly Violates Ohioans' Right to Reproductive Freedom.

As noted above, under Article I, Section 22, the State may not "directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against . . . [a] person or entity that assists an individual exercising [the right to reproductive freedom]" prior to fetal viability, except

[5] As Plaintiffs are clearly entitled to relief under Article I, Section 22, Plaintiffs are not moving on, and this Court need not address, Plaintiffs' other claims, since a favorable ruling on their claim under Article I, Section 22 provides Plaintiffs all the relief they seek. *See State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St.3d 322, 2009-Ohio-4900, 916 N.E.2d 462, ¶ 51, quoting *PDK Laboratories, Inc. v. United States Drug Enforcement Adm.*, 362 F.3d 786, 799 (D.C.Cir.2004) (Roberts, J., concurring in part and in judgment) (recognizing "the cardinal principle of judicial restraint—if it is not necessary to decide more, it is necessary not to decide more").

in limited circumstances. Art. I, § 22(B). The Amendment defines "fetal viability" as "the point in a pregnancy when, in the professional judgment of the pregnant patient's treating physician, the fetus has a significant likelihood of survival outside the uterus with reasonable measures." *Id.* § 22(C)(1).

It is undisputed that S.B. 23 is a pre-viability ban. S.B. 23 prohibits abortion after the detection of embryonic or fetal cardiac activity, which occurs starting at approximately six weeks LMP, and sometimes as early as five weeks LMP. SAC ¶ 54; Answer ¶ 6 ("The State further admits that embryonic cardiac activity occurs at approximately six weeks gestation."). Because six weeks LMP is indisputably a pre-viability point of pregnancy, S.B. 23 prohibits abortion starting at a time when the embryo is still months away from having the physiological and functional structures necessary for sustained survival apart from the pregnant person's body. SAC ¶¶ 55-56; Att'y Gen. Issue 1 Analysis at 9 (conceding that S.B. 23 prohibits abortion around six weeks and is thus a pre-viability ban);[6] *id.* (conceding that "[v]iability is generally thought to be around 21 or 22 weeks"); Answer ¶¶ 49, 79-80 (acknowledging that Defendant Yost's legal analysis "speaks for itself"); *see also Kotkowski-Paul v. Paul*, 2022-Ohio-4567, 204 N.E.3d 66, ¶ 19 (11th Dist.) (holding that an embryo is not "viable" as there is not a "realistic possibility of [an embryo] maintaining and nourishing of life outside the womb with or without temporary artificial life-sustaining support").

[6] The Court may consider Ohio Attorney General Yost's analysis on the instant motion, as it is incorporated by reference in Plaintiffs' Second Amended Complaint. *See* SAC ¶¶ 79-80; *McDonald v. Ault*, 4th Dist. Ross No. 97CA2291, 1998 WL 327692, *2 (June 17, 1998) ("When considering a Civ.R. 12(C) motion for judgment on the pleadings, the trial court may consider the pleadings, as well as any material incorporated by reference . . . to those pleadings.").

Banning abortion starting months before the point of fetal viability necessarily "prohibit[s]" countless Ohioans from exercising their right to have a pre-viability abortion. It also "burden[s]," "penalize[s]," "interfere[s] with," and "discriminate[s] against" Ohioans' ability to exercise their right to make and carry out their own reproductive decisions. In other words, S.B. 23's pre-viability ban starting at approximately six weeks LMP starkly and directly violates Ohioans' constitutional rights protected by Article I, Section 22. Moreover, in singling out abortion providers for significant criminal, civil, and professional penalties if they provide care in violation of the six-week ban, S.B. 23 also "burden[s]," "penalize[s],"and "discriminate[s] against" abortion providers like Plaintiffs, and "prohibit[s]," and "interfere[s] with" their provision of assistance to their patients in exercising their right to abortion, in further violation of Article I, Section 22. SAC ¶¶ 6, 50-53; Answer ¶¶ 6, 50-53 (conceding that S.B. 23's penalties "speak for themselves").

In short, there is no genuine dispute that S.B. 23 is a pre-viability abortion ban starting at approximately six weeks LMP. Such a stark prohibition on Ohioans' exercise of their right to abortion prior to the point of viability is clearly and unequivocally forbidden under Article I, Section 22, unless the State can show that it is the least restrictive means of advancing patient health, which, as detailed below, it cannot possibly do here.

2. Banning Abortion Starting at Approximately Six Weeks LMP is Not the Least Restrictive Means of Advancing Individuals' Health.

Article I, Section 22 contains only one limited exception to its prohibition against state interference with the right to abortion prior to fetal viability: where the State satisfies its heavy burden of demonstrating "that it is using the least restrictive means to advance the [pregnant] individual's health in accordance with widely accepted and evidence-based standards of care."

Art. I, § 22(B). In other words, there is only one state interest that could possibly justify state interference with the right to pre-viability abortion—an interest in advancing pregnant patients' health—and, even then, the State must prove that the interference in question is the "least restrictive means" of advancing that interest.

Defendants have already effectively admitted they cannot satisfy this burden here. *See, e.g.*, Att'y Gen. Issue 1 Analysis at 9 (concluding that S.B. 23 "would not exist if [the Amendment] passes"). Ohio Attorney General David Yost has publicly conceded that S.B. 23 is now unconstitutional under Article I, Section 22. *See id.* (asserting that passage of the Amendment would "invalidate [S.B. 23]"); *see also* SAC ¶¶ 79-80 (incorporating the legal analysis by reference); Answer ¶¶ 79-80 (acknowledging that Defendant Yost's legal analysis "speaks for itself."). As the Ohio Attorney General has conceded that S.B. 23 is invalid under Article I, Section 22, he has necessarily also conceded that the State cannot satisfy its burden of showing that S.B. 23 advances patient health using the least restrictive means, as it must in order to survive constitutional scrutiny. *See* Att'y Gen. Issue 1 Analysis at 9 (concluding that under the amended Constitution, "Ohio would no longer have the ability to limit abortions at any time before a fetus is viable"). This is consistent with Defendants' position that S.B. 23's "prohibition on performing an abortion after a fetal heartbeat is detected . . . is overridden by the new Amendment." Supp. Br. of Appellants, *Preterm-Cleveland v. Yost*, Case No. 2023-0004, 1 (Ohio S.Ct. Dec. 7, 2023); *see supra* Section II.C. Defendants' repeated and unequivocal public admissions that S.B. 23's ban is unconstitutional should foreclose any attempt to argue otherwise here.

However, even if Defendants were to attempt a defense of S.B. 23's ban, it would fail given the extremely heavy burden that Article I, Section 22 imposes upon them. Indeed, as

noted above, Ohio Attorney General Yost has himself conceded that the Amendment "creates a new[] legal standard" that provides greater protection for reproductive freedom than *Roe* and *Casey*. *See* Att'y Gen. Issue 1 Analysis at 3, 5-6.[7] Since S.B. 23's six-week ban could not survive scrutiny under the pre-*Dobbs* federal standard, *see Preterm-Cleveland v. Yost*, 394 F.Supp.3d 796, 800-801 (S.D.Ohio 2019), it necessarily fails to pass muster under the concededly higher bar set by Article I, Section 22 here.

This is especially true given that, unlike the federal standard under *Roe* and its progeny, Article I, Section 22 precludes Defendants from attempting to defend laws that burden, penalize, prohibit, interfere with, or discriminate against access to or provision of abortion by appealing to an interest in protecting fetal life. As Ohio Attorney General Yost has publicly acknowledged, under the Ohio Constitution, "the State can regulate [abortion] *only* for the purpose of 'advanc[ing] the [pregnant] individual's health'" which "means that the State cannot regulate [abortion] for any other purpose or interest at all[.]" Att'y Gen. Issue 1 Analysis at 6-7 (emphasis added). While the State has previously asserted a purported interest in protecting

[7] And, prior to U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 142 S.Ct. 2228, 213 L.Ed.2d 545 (2022), federal courts unanimously struck down pre-viability abortion bans as unconstitutional under either *Casey* or *Roe*. *See, e.g.*, *Guam Soc. of Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366 (9th Cir. 1992) (near-total abortion ban was unconstitutional under *Roe*); *Isaacson v. Horne*, 716 F.3d 1213, 1217 (9th Cir. 2013) (holding that Arizona's 20-week ban "deprives the women to whom it applies of the ultimate decision to terminate their pregnancies prior to fetal viability, [and] is unconstitutional under a long line of invariant Supreme Court precedents"); *MKB Mgt. Corp. v. Stenehjem*, 795 F.3d 768, 773 (8th Cir. 2015) (striking down North Dakota's 6-week ban under *Casey*); *Edwards v. Beck*, 786 F.3d 1113, 1117 (8th Cir. 2015) (striking down Arkansas's 12-week ban under *Casey*).

potential life in this case in an attempt to justify S.B. 23's ban,[8] that purported interest is foreclosed to it under Article I, Section 22.

In sum, because S.B. 23 indisputably bans nearly all pre-viability abortion in Ohio, and because Defendants have not asserted (and cannot assert) an acceptable justification for such a ban under Article I, Section 22, S.B. 23 is unconstitutional as a matter of law.

IV. CONCLUSION

Article I, Section 22 reshaped the constitutional calculus of abortion restrictions in Ohio. As Ohio Attorney General Yost has conceded, Article I, Section 22 renders S.B. 23 invalid and unconstitutional as a matter of law. For the foregoing reasons, this Court should grant Plaintiffs' Motion for Judgment on the Pleadings, declare S.B. 23's six-week ban unconstitutional, and permanently enjoin its enforcement.[9]

[8] *See, e.g.*, Defs.' Proposed Findings of Fact and Conclusions of Law ¶ 51 (arguing that S.B. 23 "logically relates to the State's interest in protecting innocent life").

[9] Plaintiffs do not seek to enjoin the enforcement of S.B. 23's provisions relating only to adoption and foster care (R.C. 2919.1910 and R.C. 5103.11), section 2912.193 naming S.B. 23, and R.C. 2317.56(C)(2) regarding the internal Ohio Department of Health process for producing informed consent materials for the Department of Health.

DATED: March 1, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2024, the foregoing was electronically filed via the Court's e-filing system. I further certify that a copy of the foregoing was served via electronic mail upon counsel for the following parties:

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