In the
Supreme Court of Ohio

STATE ex rel., DAVE YOST, STATE MEDICAL BOARD OF OHIO, STATE OF OHIO 30 East Broad Street, 17th Floor Columbus, Ohio 43215 Relators, v. JUDGE MICHAEL J. HOLBROOK, 345 S High Street 5th Floor, Courtroom 5B Columbus, OH 43215 Respondent.	:	Case No. _____ On Complaint for Writs of Mandamus and Prohibition

EMERGENCY MOTION FOR WRIT OF PROHIBITION OR MANDAMUS

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EMERGENCY MOTION FOR WRIT OF PROHIBITION OR MANDAMUS

Relators, Ohio Attorney General Dave Yost, the Medical Board of Ohio, and the State of Ohio, move for an emergency writ of prohibition or mandamus to confine a common-pleas injunction to the limits of judicial power. Relators move, first, for a peremptory writ granting such relief based on the Complaint, the attached memorandum, and any response the Court may order. The Court should order such a response and enter such a writ immediately, before the overbroad injunction expires, unless the common-pleas court modifies the injunction to be limited to the parties. (The State already asked for that relief, but the common-pleas court said no.) In the alternative, Relators move for an alternative writ, effective by midnight on **April 23** or as soon as practicable, to allow enforcement of Ohio's Law against nonparties to this suit, with a final writ to follow whatever process the Court requests in any alternative writ.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

INTRODUCTION

Although this Court "reserve[s] the use of extraordinary writs for rare cases," *Ohio High Sch. Athletic Ass'n v. Ruehlman*, 157 Ohio St. 3d 296, 2019-Ohio-2845 ¶6, this is that rare case. A trial court has gone far beyond its power to enter a so-called "universal injunction" against an entire new law, in all applications, as to all the parts of the law—despite the fact that only two named plaintiffs have alleged narrow harms from only one part of the law. And that new law is an important one, designed to protect Ohio's children, parents, and students from urgent harms that arise from the way that many medical professionals, courts, and educational institutions have addressed the growing trend of children identified as transgender. It protects children from experimental surgery or medications. It protects parents from losing custody of their children because those parents do not support "transitioning." And it protects female students, in both K-12 schools and colleges, from facing biological males as competitors or teammates, with the risks that entails to fairness, safety, and privacy.

But all those protections are being blocked from going into effect, thanks to an overbroad court order. The court could have granted preliminary relief to two plaintiffs who alleged only a potential desire for medication, under the principle that injunctions should be no broader than needed to protect plaintiffs. Instead, despite the lack of any allegation—let alone a showing—of harms from the rest of the law to Plaintiffs or other

Ohioans, the court pronounced that none of the law can go into effect—leaving Ohio families open to all the harms that their elected representatives voted to avert.

The harms here are not abstract. Start with the athletic protections. In just one sport on just one day, there will be 20 high-school track meets in the 24 hours after the law is scheduled to take effect. *See Ohio 2024 Outdoor Track & Field Meets*, Ohio Mile Split, https://perma.cc/YG44-KGRV. But after the trial court's injunction, Ohio law offers no protection for female athletes. Or to parents in custody disputes.

Of course, how Ohio's sports fields and locker rooms should accommodate transgender Ohioans is a difficult subject. And the People, though a supermajority of the General Assembly, have enacted one solution for now. A single trial judge in Columbus does not get to veto that enactment by operating beyond the power conferred by the Civil Rule for issuing injunctions. It cannot be the law that a Governor's veto pen is more accountable than a trial judge's gavel.

And it is not. The Ohio Rules of Civil Procedure, Ohio statute, and fundamental principles of equity preclude such usurpation of the democratic process. They do so by cabining the judicial power to issue injunctions against enforcement of laws adopted by the democratic process. Specifically, temporary injunctions remedy an immediate harm to a plaintiff in front of a court. Indeed, one week ago, on April 15, the U.S. Supreme Court followed these same principles of equity to stay a federal trial court's preliminary injunction against enforcement of the Idaho analogue to Ohio's law—which prohibits

performing gender transition services on minors—except as to the parties before that Court. *Labrador v. Poe*, 601 U. S. ____, 2024 WL 1625724 (S. Ct. April 15, 2024). Because a Franklin County judge issued an injunction unbounded by the clear limits on its power, the Relators seek an emergency writ to conform the injunction to Ohio law.

There may be no better guide to the need for emergency relief than the Court's own history, in two senses. First, the Court has repeatedly and properly granted writs to prevent similar abuses of judicial power, because "even if a common pleas court has general jurisdiction over a case, a writ of prohibition will issue when the court seeks to take an action or provide a remedy that exceeds its statutory authority." *State ex rel. Ford v. Ruehlman*, 149 Ohio St. 3d 34, 2016-Ohio-3529 ¶69; *see also* below at 17–19 (collecting cases). Second, twenty-five years ago, this Court improperly issued a writ that effectively enjoined all the State's common-pleas judges from following a set of tort-reform laws even though no plaintiff could show immediate harm from those laws. S*tate ex rel. Ohio Acad. of Trial Laws. v. Sheward*, 86 Ohio St. 3d 451 (1999). That was a mistake. *See id.* at 516 (Moyer, C.J., dissenting); *see also Whole Woman's Health v. Jackson*, 595 U.S. 30, 39 (2021) ("an injunction against a … court or its machinery would be a violation of the whole scheme of our Government") (internal punctuation omitted). But it did have the imprimatur of four Justices. This case is *Sheward* squared: a single judge has effectively told every other judge in the State that he or she cannot follow the will of the People as expressed through a legislative supermajority.

STATEMENT

The facts here are brief and can be told in three parts. A supermajority of the General Assembly passed a law governing three contexts in which transgender issues arise; two families with children affected by one part of the law sued to enjoin the entire law; a Franklin County judge issued a TRO against the entire law for all people.

A. Ohio enacted a law to advance its interest in protecting all children, whether or not they identify as transgender, through regulations of medicine, school sports, and courts.

In January 2024, Ohio adopted a law establishing basic guardrails for several aspects of a relatively new social issue: how medical professionals, courts, and educational institutions have addressed a growing number of children and youth who seek to transition from one gender identity to another. Overcoming the Governor's veto, the Ohio General Assembly enacted H.B. 68 to codify several statutory provisions related to the three primary contexts in which this issue intersects with the State's interest in protecting children and families.

First, the Law addresses the rights of parents in the judicial system. R.C. 3109.054. This custody-adjudication provision ensures that courts adjudicating disputes over parental rights and responsibilities for children who identify as transgender do not penalize a parent who refers to a child consistent with the child's biological sex, declines to consent to the child undergoing a medical transition to the opposite gender, or declines to consent to certain mental health services intended to affirm the child's perception of

gender that is inconsistent with the child's biological sex. *Id*. This provision is a rule of decision enforced by the courts hearing such parental rights and custody disputes. *Id*.

Second, several provisions aim, in the Assembly's words, at "Saving Ohio Adolescents from Experimentation," by regulating different aspects of the medical and mental-health professions. Specifically, these provisions prohibit the medical profession from performing various forms of medical "gender transition services" upon minors. R.C. 3129.01(F) (defining such services); *see* R.C. 3129.02(A) (barring action). The prohibited services include "gender reassignment surgery," R.C. 3129.02(A)(1), "[p]rescrib[ing] a cross-sex hormone," R.C. 3129.02(A)(2), or prescribing "puberty-blocking drug[s]," *id.* Other provisions govern mental-health professionals in counseling regarding gender dysphoria or transition, R.C. 3129.03, and bar Ohio's Medicaid program from paying for minors to transition, R.C. 3129.06. Notably, those currently taking medication are "grandfathered in," and may indefinitely continue any medication that began by the law's effective date. R.C. 3129.02(B). The General Assembly's factfinding accompanying these provisions noted the increased risk of, among other things, heart disease and cancer, from taking cross-sex hormones. *See* Sub. H.B. 68 §2(H)(1). The General Assembly also noted the "complications" and "risks" that accompany such body-altering surgery. *See* Sub. H.B. 68 §2(K). These medical provisions are enforced by the Attorney General and the Medical Board. R.C. 3129.05.

Third, several more provisions are designed to, in the Assembly's words, "Save Women's Sports," by regulating the institutions that hold student sporting events—including schools and colleges. Those provisions require schools and colleges to preserve girls' and women's sports teams for those born female. Among other things, those provisions require schools and colleges that participate in interscholastic sports, and any interscholastic associations that organize sports, to designate separate male and female teams (allowing for co-ed teams, too). R.C. 3313.5320(A). With those designations in place, biological males may not play in female sports: "No school, interscholastic conference, or organization that regulates interscholastic athletics shall knowingly permit individuals of the male sex to participate on athletic teams or in athletic competitions designated only for participants of the female sex." R.C. 3313.5320(B). These sports-competition provisions are primarily enforced through private causes of action. R.C. 3313.5320(E); 3345.562(F).

The law was scheduled to take effect April 24, 2024.

B. Two families sued to challenge the law and seek immediate relief.

Two families sued to challenge the law on March 26, 2024, and their suit is the underlying case leading to this writ case. *See* Complaint in Franklin County Case No. 24 CV 002481 (March 26, 2024). The two families use the pseudonyms "Goe" and "Moe." The Goes use the pseudonyms "Gina" and "Garrett" as the "Parent Plaintiffs" in the underlying case, and "Grace" for their 12-year-old child. The Moes use the names

"Michael" and "Michelle" as the "Parent Plaintiffs," and "Madeline" for their 12-year-old child. The Parent Plaintiffs identify both Minor Plaintiffs as "transgender," with each a "girl with a female gender identity" who was "designated as male" at birth. Compl. at ¶¶96, 108 (references to the Complaint are to the underlying case, not the Complaint in this original action). (The State has not opposed Plaintiffs' motion to proceed under pseudonyms and is negotiating an agreed protective order with them, too.)

Plaintiffs brought four counts under the Ohio Constitution. Count One alleges that the bill's enactment violated Ohio's "Single-Subject Clause." Ohio Const. art. II, §15(D). Count Two alleges a violation of Ohio's Health Care Freedom Amendment, art., I, §21. Count Three is based on the Equal Protection Clause, art. I, §2. Count Four rests on the Due Course of Law Clause, art. I, §16.

The named defendants (together, "State Defendants" or the "State") are the "State of Ohio" and State officials with roles regarding some provisions of the Law: Ohio Attorney General Dave Yost and the State Medical Board.

Plaintiffs filed, along with their Complaint, a "Motion for Preliminary Injunction Preceded By Temporary Restraining Order If Necessary" ("TRO Motion," or "Motion"). While the Motion sought a TRO "if necessary" before a preliminary injunction, the Court instructed the State to immediately respond only to the TRO request.

Both Plaintiff families allege that the medical provisions could harm the Minor Plaintiffs by interfering with future medical services. The Goes allege that their child is

not yet on any medication, but they might wish to begin "puberty blockers," depending on the outcome of a July 2024 medical appointment or later, future appointments. Specifically, they allege:

> Grace is now 12, and her doctors are monitoring her for the first signs of puberty to identify the right time to begin medication that will temporarily pause puberty. She is being seen every six months; her next appointment is in July 2024.

Compl. at ¶110. The Moes allege that their child is currently taking "puberty blockers," and that doctors are monitoring for a potential change in medication to a cross-sex hormone, estrogen, at some unidentified point. Specifically, they allege:

> Madeline is now 12, and her doctors have said that she is a good candidate for hormone therapy in the form of estrogen, if that is what she wants and her parents agree. Madeline and her parents would like Madeline to be able to start hormones at the right time so that she can go through female puberty alongside her peers. Madeline's physicians are monitoring her physical and mental health, and have told her that they will prescribe an appropriate hormone therapy if H.B. 68 does not go into effect.

Id. at ¶103.

Both families allege various long-term harms if their respective children are not able to pursue future medication in Ohio, including "debilitating stress and anxiety," *id.* ¶105 (Moe), a "serious negative effect on Grace's mental health," *id.* at ¶112 (Goe), and pressure on both families to consider leaving Ohio to obtain treatment, *id.* at ¶¶106, 113.

Neither family alleges that either child is involved in school or college sports or will be affected in any way by the custody provision.

Based on those allegations, the State proposed proceeding to trial by June for final resolution, without any preliminary injunction hearing along the way, for a simple reason: the alleged harms to these two children would start in July at the earliest, and no need for relief was alleged as to anyone else. The State's brief regarding the TRO stressed that no urgent relief was needed, and that even if relief were somehow warranted for the two children, the court should not address people or provisions not at issue.

C. A Franklin County Common Pleas Court issued a TRO enjoining all aspects of the law as to all people.

In response to the Complaint and the motion for temporary relief, the trial court sought briefing and oral argument limited to the question whether the court should grant a TRO. On April 12, the court held oral argument on the TRO Motion.

On Tuesday, April 16, the trial court enjoined the whole of the Law for 14 days. He rested that injunction on the legal conclusion that Plaintiffs would likely prevail on the Single-Subject-Clause challenge. Drawing on "the substance of the Act in combination with the legislative history," the court reasoned that regulating healthcare, athletics, and parental rights could not be done in a single act and that the Law passed "only upon logrolling." Trial Op. at 11-12. The court did not cite or discuss this Court's precedent or the legal standard for such challenges. That standard looks not at the process, but at the resulting law, and says that "embrac[ing] more than one topic is not fatal, as long as a common purpose or relationship exists between the topics." *State ex rel. Ohio Civ. Serv. Emps. Ass'n v. State*, 146 Ohio St. 3d 315, 2016-Ohio-478 ¶17.

Styled as a TRO, the trial court issued a sweeping injunction even though Defendants stressed the limits of Rule 65 and principles of equity in opposing Plaintiff's TRO application. Defendants explained that if a TRO were appropriate in this case at all (which it is not), any preliminary relief must be limited to "only the offending provisions" and only for "the parties before the court." TRO Opp. at 14–15. And after the court issued the injunction, Relators returned to the court the very next day, asking the judge to conform the injunction to restraints on judicial power in the Rules, the statutes, and the principles of equity. Defendants moved to modify the injunction so that it reached no further than the Plaintiffs before the court and the issues that they faced under the Law. Mot. to Clarify TRO. The court denied that motion on the afternoon of April 19, specifically rejecting the argument that the injunction "has enjoined individuals and actions beyond what is necessary." Order Denying Mot. to Clarify TRO at 1.

ARGUMENT

I. An extraordinary writ is needed on an emergency basis because a single common-pleas judge enjoined a state law in its entirety even though no plaintiff before the judge has alleged harm from several parts of the Law.

Statewide injunctions were once rare. Now, they are increasingly sought, and even granted, as a weapon against democratically-enacted laws. A judge who represents one county may not extend preliminary relief governing the whole state by issuing a temporary restraining order. A single judge, that is, cannot wield more power than a Governor's veto.

That extraordinary abuse of judicial power is paired here with an extraordinary need for speed. Starting April 24, the Law would have protected female athletes from the risk to their safety, the affront to their privacy, and the sting to their dignity that the legislature believed would flow from allowing male athletes to annex their playing fields and locker rooms. Also starting April 24, parents whose consciences would not allow them to participate in transitioning their children to the opposite gender would have been protected from discrimination in judicial proceedings to adjudicate custody. Finally, starting April 24, children whose lives may have been forever altered by surgery or cross-hormone drugs would have been shielded from those forever decisions until they reach adulthood, when the Law determines they are capable enough to decide for themselves.

These are not abstract harms. The custody-adjudication provision addresses a problem that was already making news two years ago. *See, e.g.*, Abigail Shrier, *How a dad lost custody of son after questioning his transgender identity*, New York Post (Feb. 26, 2022), https://perma.cc/5VZ8-JCPW. The medical-intervention provisions aim to prevent harms demonstrated in medical literature. *See, e.g.*, Julia Landwehr, *What Trans People Need to Know About Breast Cancer Risk and Screening*, Health (June 16, 2023), https://perma.cc/RP2U-F6NB; American Heart Association, *Transgender men and women may have higher heart attack risk*, American Heart Association News (April 5, 2019), https://perma.cc/SDS3-LK3Z. And the sports-competition provisions are designed to avoid the acknowledged harms to female athletes forced to compete with biological

males. Those harms are both psychological and physical. *See, e.g.*, Independent Women's Forum, *Competition*: *Title IX, Male-Bodied Athletes, and the Threat to Women's Sports*, at 43, 57-58 (2d ed.), https://perma.cc/F44L-LM92. Indeed, one review of the many physical advantages biological males possess over females concluded that allowing biological males to compete in female sports inevitably sacrifices "fairness and safety for biological women." Gregory A. Brown, Ph.D., *White Paper Concerning Male Physiological and Performance Advantages in Athletic Competition and The Effect of Testosterone Suppression on Male Athletic Advantage* (December 14, 2021), https://perma.cc/66KX-DJYJ.

But all those considered legislative judgments about protecting the vulnerable are on hold because a lone trial judge in Franklin County stripped away all those protections. He did so after two plaintiffs appeared before him seeking relief from the Law for medical decisions that were contingent and at least months away. Those plaintiffs, though, presented no evidence that they faced any harm from the protections for female athletes and conscience-following parents. Nor did the plaintiffs offer evidence about any other person facing a medical decision that the Law might govern.

In the face of the injunction, Relators have no other options to vindicate the democratic process. When a trial court preliminarily enjoins enforcement of a law statewide and fails to tailor relief in accord with Rule 65 and the principles of equity, Ohio law provides no effective remedy. Indeed, when a state law is temporarily enjoined, the State faces a serious dilemma.

On the one hand, the State can try to appeal. But Ohio law offers the State at best a dice-roll as to whether that injunction will be held appealable. If the State does appeal, it could take a year or more for the court of appeals to conclude that the multi-factor balancing test for finality is not ultimately satisfied. Then, appealing to this Court may also take well over a year. So even if the State persuades this Court that it was denied an effective remedy in the trial court, and this Court rules in favor of appealability, the State will have irreparably lost perhaps *years* to be vindicated. Worse yet, even under those circumstances, the Court would likely return the case to the appeals court to then resolve the propriety of the preliminary injunction, taking up even more time. Facing that problem, the State may accept its fate and return to the trial court.

But on the other hand, forgoing appeal and awaiting final judgment is no better. Trial courts have no obligation to proceed at the State's preferred pace, and the party who received unlimited statewide, temporary relief will have every incentive to drag their feet. This is especially true for ideologically motivated litigation. And all the while, the People of Ohio have had the judgment of one person as a substitute for their preferred laws. Worse yet, the Ohioans whom the law would protect are left unprotected.

With no good options now, unless this Court issuing an emergency writ, one judge will have ravaged these many protections that the legislature enacted as Ohio public policy. What began as 14 days of irreparable injury is almost certain to become years. As in other cases of extreme urgency, Relators request that the Court issue a writ to cabin the

ultra-vires injunction unless the trial court allows the TRO to expire without renewal, or modifies it to apply only to the parties before the Court. *See, e.g.*, *State ex rel. Dir., Ohio Dep't of Agric. v. Forchione*, 148 Ohio St. 3d 105, 2016-Ohio-3049 ¶30; *State ex rel. Taft-O'Connor '98 v. Franklin Cty. Ct. of Common Pleas*, 83 Ohio St. 3d 487, 488 (1998).

II. A writ of prohibition or mandamus is appropriate to vacate ultra-vires exercises of judicial power.

The usual standards for each writ are familiar. To secure a writ of mandamus, the State relators must "establish a clear legal right to the requested relief, a clear legal duty … to provide it, and the lack of an adequate remedy in the ordinary course of the law." *E.g.*, *State ex rel. Eshleman v. Fornshell*, 125 Ohio St. 3d 1, 2010-Ohio-1175 ¶20. As for the writ of prohibition, a relator "ordinarily must establish that the respondent is about to exercise judicial power without authority and that there is no adequate remedy in the ordinary course of the law." *E.g.*, *State ex rel. Mather v. Oda*, ___ Ohio St. 3d ___, 2023-Ohio-3907 ¶15. For either writ, though, a court acting under a "patent and unambiguous" lack of jurisdiction dispenses with the need to show lack of an alternate remedy. *See, e.g.*, *State ex rel. Davis v. Janas*, 160 Ohio St. 3d 187, 2020-Ohio-1462 ¶10 (mandamus); *Oda*, 2023-Ohio-3907 ¶15 (prohibition).

Combining these two standards, this Court has consistently held that, when "a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition and mandamus will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions." *State*

ex rel. Sapp v. Franklin Cty. Ct. of Appeals, 118 Ohio St. 3d 368, 2008-Ohio-2637 ¶15; *see also, e.g., State ex rel. Mayer v. Henson*, 97 Ohio St. 3d 276, 2002-Ohio-6323 ¶12; *State ex rel. Powell v. Markus,* 115 Ohio St. 3d 219, 2007-Ohio-4793 ¶7.

Across a range of topics, this Court has used the prohibition and mandamus writs to correct lower courts' illegal exercises of judicial power. And those cases demonstrate the term of art "patently and unambiguously lacks jurisdiction" is best read as meaning that a lower court is exceeding its judicial authority. The phrase is not the equivalent of lacking subject-matter jurisdiction.

For example, in at least two cases, the Court has issued a writ to prevent a court from wrongly exercising personal jurisdiction. *State ex rel. Connor v. McGough*, 46 Ohio St.3d 188 (1989); *State ex rel. Stone v. Court*, 14 Ohio St. 3d 32 (1984). The court has also issued writs in many other circumstances when a judge exceeded his or her power to enter certain relief or certain orders. *See, e.g., State ex rel. Reynolds v. Kirby*, 172 Ohio St. 3d 273, 2023-Ohio-782 ¶17 (no jurisdiction to grant witness immunity); *State ex rel. Moir v. Kovack*, 145 Ohio St. 3d 175, 2016-Ohio-158 ¶25 (no jurisdiction to act after recusal); *State ex rel. Stern v. Mascio*, 81 Ohio St. 3d 297, 300 (1998) (same); *State ex rel. Lee v. Trumbull Cnty. Probate Ct.*, 83 Ohio St. 3d 369, 374 (1998) (jurisdictional priority rule); *State ex rel. Triplett v. Ross*, 111 Ohio St. 3d 231, 2006-Ohio-4705 ¶50 (no jurisdiction to impose oath as a precondition for court appointments); *State ex rel. Mason v. Griffin*, 104 Ohio St. 3d 279, 2004-Ohio-6384 ¶¶12–16 (no jurisdiction to hold jury sentencing hearing); *State ex rel.*

Adams v. Gusweiler, 30 Ohio St. 2d 326, 328-329 (1972) (no jurisdiction to appoint a second arbitrator).

None of these cases demanded a lack of subject-matter jurisdiction as a condition of a writ from this Court to correct illegal judicial power exercised by an inferior court. Indeed, in 2016, the Court specifically held that "even if a common pleas court has general jurisdiction over a case, a writ of prohibition will issue when the court seeks to take an action or provide a remedy that exceeds its statutory authority." *State ex rel. Ford v. Ruehlman*, 149 Ohio St. 3d 34, 2016-Ohio-3529 ¶69.

This Court's use of writs to correct lower courts' illegal use of judicial power includes issuing writs when the lower courts exceed the power they exercise under court rules. For example, this Court has repeatedly issued a writ of mandamus when a lower court refuses to follow Civil Rule 62, which requires that a court stay a judgment against the State or a political subdivision pending appeal. *See, e.g.*, *State ex rel. Elec. Classroom of Tomorrow v. Cuyahoga Cty. Ct. of Common Pleas*, 129 Ohio St. 3d 30, 2011-Ohio-626 ¶29; *State ex rel. Geauga Cty. Bd. of Comm'rs. v. Milligan*, 100 Ohio St. 3d 366, 2003-Ohio-6608 ¶19; *State ex rel. State Fire Marshall v. Curl*, 87 Ohio St. 3d 568, 572 (2000); *State ex rel. Ocasek v. Riley*, 54 Ohio St. 2d 488, 490 (1978). The Court has also used writs to rein in other excesses of judicial power under court rules. *See, e.g.*, *Janas*, 160 Ohio St. 3d 187 at ¶¶12, 15 (judge's order exceeded scope of Criminal Rule 36); *see also State ex rel. Fogle v. Steiner*, 74 Ohio St. 3d 158, 164 (1995) (similar); *cf. State ex rel. Ware v. Kurt*, 169 Ohio St. 3d 223,

2022-Ohio-1627 ¶43 (Kennedy, J., concurring in part and dissenting in part) (writ to compel records production appropriate because court rule cannot confer judicial power to restrict public access).

III. The universal injunction issued by the Franklin County Court of Common Pleas exceeds the power granted to a common-pleas judge to award temporary or preliminary relief to protect *plaintiffs*.

The lower court's injunction is a "patent and unambiguous … exercise [of] judicial power without authority." *Oda*, ___ Ohio St. 3d ___, 2023-Ohio-3907 ¶15. The Ohio Rules of Civil Procedure, Ohio statutes, and background equity principles on which they rest all reveal that the trial court lacked authority to issue an injunction with such sweeping breadth.

A. Start with the Ohio Rules of Civil Procedure. Under the Civil Rules, temporary restraining orders may only provide relief to redress the injuries proven by the parties before the court: "a temporary restraining order may be granted … only if … immediate and irreparable injury, loss or damage will result *to the applicant*." Oh. R. Civ. Pro. 65(A) (emphasis added). This Rule means a TRO is "intended to prevent the *applicant* from suffering *immediate* and irreparable harm." *Coleman v. Wilkinson*, 147 Ohio App. 3d 357, 2002-Ohio-2021 ¶2 (10th Dist) (emphases added); *see also Garb-Ko, Inc. v. Benderson*, 2013-Ohio-1249 ¶32 (10th Dist.). It thus codifies the fundamental axiom that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Sharpe v. Cureton*, 319 F.3d 259, 273 (6th Cir. 2003). These

principles protect both the individual rights of litigants and the foundations of democracy. They allow a court to protect constitutional rights and the status quo as necessary to maintain its jurisdiction, but do not allow a single judge to transform into an unaccountable ruler over the whole State.

Next consider Ohio statutory law that defines courts' injunctive power. Revised Code 2727.02 is the statute that "grants courts of common pleas the authority" to issue preliminary injunctive relief. *Ameigh v. Baycliffs Corp.*, 81 Ohio St. 3d 247, 251 (1998). It authorizes courts to "restrain[] an act" when a plaintiff's petition shows that, absent an injunction, "*the plaintiff*" will suffer "great or irreparable injury." R.C. 2727.02. In other words, a court may act through an injunction only to avoid actual impending harm to the party before it, not to avoid hypothetical harm or harm to third parties. The neighboring statute, which defines the courts and judges authorized to issue injunctions, reiterates that injunctions are limited to "the plaintiff," and not others. R.C. 2727.03.

Finally, consider the basic principles of equity upon which Rule 65 and the procedural statutes are built. In Ohio, "'the usual rule'" is "'that litigation is conducted by and on behalf of the individual named parties only.'" *Cullen v. State Farm Mut. Auto. Ins. Co.*, 137 Ohio St. 3d 373, 2013-Ohio-4733 ¶11 (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). It follows from that rule that relief "must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006) (quoting *Lewis v. Casey*, 518 U.S.

343, 357 (1996)). This means that a "court may not issue an equitable remedy 'more burdensome to the defendant than necessary to [redress]' the plaintiff's injuries." *Labrador*, 601 U. S. ____, 2024 WL 1625724 (Gorsuch, J., concurring) (Slip Op. at 4) (quoting *Califano*, 442 U.S. at 702) (alteration in original). That is because "the judicial power is, fundamentally, the power to render judgments in individual cases." *Murphy v. NCAA*, 584 U.S. 453, 488 (2018) (Thomas, J., concurring).

These foundational principles of equity were vindicated by the Nation's highest court just days ago. On April 15, the U.S. Supreme Court stayed a federal trial court's preliminary injunction against enforcement of Idaho's Vulnerable Child Protection Act—which prohibits performing gender transition services on minors—except as to the parties before that Court. *Labrador*, 601 U. S. ____, 2024 WL 1625724. Five justices wrote or joined separate writings concurring in the stay to pare back the injunction to protect only the parties before the Court. Justice Gorsuch, joined by Justice Thomas and Justice Alito, explained that the statewide preliminary injunction against Idaho's law "defied" principles of equity because it "did not just vindicate the plaintiffs' access to the drug treatments they sought," but "purported to bar the enforcement of any provision of the law against anyone," despite the fact that "the plaintiffs had failed to engage with other provisions of Idaho's law that don't presently affect them—including the law's provisions prohibiting the surgical removal of children's genitals." *Id*. (Gorsuch, J., concurring) (Slip Op. at 5) (internal quotation marks omitted). Justice Kavanaugh, joined

by Justice Barret, also opined that "prohibiting" "statewide injunctions may turn out to be the right rule as a matter of law." *See id.* (Kavanaugh, J., concurring) (Slip Op. at 7–8).

These limits on statewide injunctions—by Rule, by statute, and by bedrock principle—enforce a foundational principle of our republican democracy by separating the legislative and judicial powers. A statewide, universal injunction violates democratic first principles. It displaces the legislative process with the actions of a single judge. The legislature's "lawmaking prerogative cannot be … encroached upon by the other branches of government." *City of Toledo v. State*, 154 Ohio St. 3d 41, 2018-Ohio-2358 ¶26. Courts avoid such encroachment by exercising only the "equitable powers" they possess to enjoin laws. *See id*. at ¶20. And "as a general rule, American courts of equity did not provide relief beyond the parties to the case." *Trump v. Hawaii*, 585 U.S. 667, 717 (2018) (Thomas, J., concurring). Instead, "ordering the government to take (or not take) some action with respect to those who are strangers to the suit" offers plaintiffs "exceeds the "judicial role of resolving cases and controversies." *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in the grant of a stay). When a judge grants relief to the parties only, however, it reinforces the separation of powers and democratic accountability.

B. The trial court transgressed Rule 65, Revised Code 2727.02, and the equity principles they embody. It issued a statewide injunction against any enforcement of Ohio's Law. The trial court did so even though neither Plaintiff even asserted that they

were imminently seeking any of the services regulated by the Law or affected at all by the sports or custody provisions. And while the Plaintiffs here are four parents and two minors, the trial court extended its jurisdiction to over 11 million people. "[A]bsent a properly certified class action, why would [six] residents represent [eleven] million?" *L. W. by & through Williams v. Skrmetti*, 73 F.4th 408, 415 (6th Cir. 2023).

The trial court's justification for such broad relief does not withstand scrutiny. The trial court framed Plaintiffs' injury as "the enactment of the legislation," not from any of the individual provisions of Ohio's Law. It then concluded that the bill enacting the law likely violated the Single-Subject Clause, and that such violations require invalidating all provisions in the bill. Trial Op. at 11. To be sure, the trial court was sincere in believing that a Single-Subject-Clause violation somehow uniquely calls for such whole-bill invalidation—but that does not change the fact that that view is grievously mistaken.

No merits theories, including Single-Subject-Clause claims, overcome the fundamental limits on a court's equity jurisdiction, including standing and scope of relief—not for final judgment, not for preliminary relief. Put aside that the "violation" here is mistaken, as of course "a common purpose or relationship exists between the topics" of medically transitioning children's genders, whether parents should lose custody because of disputes over such transitioning, or whether males can "transition" into girls' sports. *See State ex rel. Ohio Civ. Serv. Emps. Ass'n v. State*, 146 Ohio St. 3d 315, 2016-Ohio-478 ¶17. And further put aside that the "whole-bill invalidation" theory is

wrong. Even if whole-bill invalidation is correct in the "merits" sense, such that the reasoning in a case might imply that no part of a challenged bill can survive, a court is still obliged to limit its remedy to address the harms alleged by the plaintiffs before it. That is true both as a matter of scope of relief and of standing, as a party has no standing to seek relief that will not redress *its* harms. Single-subject claims are not uniquely exempt from these fundamentals.

As important as those ultimate limits are, this issue is even easier at *this preliminary stage*. That is, even if, somehow, a plaintiff harmed by one provision could obtain whole-bill relief against other provisions at final judgment, that cannot happen as a preliminary remedy. That is so because nothing about single-subject doctrine overcomes the plain text of Rule 65 and R.C. 2727.02 and the duty to limit temporary, equitable relief to a case's plaintiffs.

Importantly, the U.S. Supreme Court narrowed the universal preliminary injunction against enforcement of Idaho's law on the basis of these principles even though plaintiffs in that case advanced an alternative merits justification that universal relief was warranted: "absent an injunction that enjoins Defendants from generally enforcing the law against doctors and pharmacists," "it is unlikely that providers would feel willing or able to provide care to Plaintiffs." Opp. to Stay App. 4, *Labrador v. Poe*, No. 23A763.

All of this shows that the trial court's universal injunction far outpaced the power conferred on the judge by Civil Rule 65, the Revised Code, and the background principles of equity that the Rule and the statute codified.

When a court transgresses its power, the solution is to pare back the relief within its jurisdictional limits. Indeed, the U.S. Supreme Court recently did as much in *Labrador*, following its own longstanding precedents. *See, e.g.*, *Scott v. Donald*, 165 U.S. 107 (1897). Thus, "[t]he decree of the court below should therefore be amended by being restricted to the parties named as plaintiff and defendants." *Id.* at 117. This Court should do likewise and issue an appropriate writ to pare back the overboard injunction issued in the Franklin County Court of Common Pleas.

Relators thus ask this Court to issue a writ of mandamus or a writ of prohibition to restore the balance of power between a judiciary bound by the Civil Rules, Ohio statutory law, and equitable principles and a legislature who is entitled to make policy unhindered by illegal judicial power. Take mandamus and prohibition in turn.

A writ of mandamus is proper because Relators have a clear legal right to an injunction that complies with the Rule, and the trial court had a clear legal duty to conform his injunction to the Rule. The trial court's breach of the duty to follow the Rule, the statute and equity means that Relators need not show that they lack an alternate remedy.

A writ of prohibition is also proper because the trial court's injunction represents continuing judicial power over a valid legislative act that the judge had no authority to issue. And, as with the writ of mandamus, the trial court's lack of jurisdiction to issue such an injunction disposes of the requirement to show that Relators lack an alternate remedy.

A writ from this Court is the only mechanism left to preserve the separation of powers. Relators have already alerted the trial court to the U.S. Supreme Court's decision that arose from nearly identical circumstances. Mot. to Clarify TRO at 2. Without so much as a mention, the trial court "enjoin[ed] defendants from enforcing the Act" "for fourteen days or until the hearing of plaintiffs' Motion for Preliminary Injunction, whichever is sooner." Trial Op. at 14. A day after the injunction, Relators moved the trial court to modify its injunction to apply only to the plaintiffs, Mot. to Clarify TRO, but that motion too was denied. Order Denying Mot. to Clarify TRO. Now, not only has the trial court thwarted the will of the People of Ohio, expressed in a veto-proof legislative majority, but it has patently and unambiguously exceeded its authority. The writ of prohibition or mandamus should be granted.

Whether through mandamus or prohibition, this Court should restore the balance inherent in the separation of powers and confine the injunction (1) to the two plaintiffs named in the underlying lawsuit and (2) to the precise relief needed to redress the injuries they alleged. Any broader reach for the injunction is not only unneeded, it is illegal.

* * *

At bottom, this Court should issue a writ to protect the separation of powers. If a writ is appropriate to stop an injunction that interfered with executive power, *see State ex rel. Gilligan v. Hoddinott*, 36 Ohio St. 2d 127, 131 (1973), it is equally appropriate to stop an injunction that interferes with legislative power. If "[o]ur democracy is not designed to permit four justices to heedlessly override" the General Assembly's "studied policy judgment," *Schussheim v. Schussheim*, 137 Ohio St. 3d 133, 2013-Ohio-4529 ¶61 (O'Connor, C.J., dissenting), it is certainly not designed to allow one judge from one of Ohio's 88 counties to usurp the Assembly's policy judgment by issuing an injunction that the Rules of Civil Procedure and statutory law do not permit.

CONCLUSION

For these reasons, the Court should grant the Relators the requested writs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Memorandum was served this 22d day of April, 2024, by U.S. mail and e-mail on the following:

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