

preliminary injunction. “But instead of enjoining state officials from enforcing the law with respect to the plaintiffs and the drug treatments they sought, the district court entered a universal injunction.” 601 U. S. ____ (2024) (Gorsuch, J., concurring) (Slip Op. at 2). “That is, the court prohibited the defendants from enforcing ‘any provision’ of the law under any circumstances during the life of the parties’ litigation.” *Id.* As Justice Gorsuch explained, joined by Justices Thomas and Alito, this “meant Idaho could not enforce its prohibition against surgeries to remove or alter children’s genitals, even though no party before the court had sought access to those surgeries or demonstrated that Idaho’s prohibition of them offended federal law.” *Id.* The Ohio Plaintiffs here likewise, by asking to enjoin the entire law, aim at provisions that do not affect the named plaintiffs. Indeed, while Plaintiffs are unclear on the point, the Ohio Plaintiffs might be seeking global relief on behalf of non-parties.

Yesterday, the Supreme Court granted Idaho’s motion to stay that statewide injunction while the Court further considered Idaho’s interlocutory appeal. Five justices wrote or joined separate opinions concurring with the Order. The Supreme Court’s Order and the justices’ concurring opinions provide persuasive authority for Defendants’ position in this case in two respects.

First, the Order and writings support Defendants’ alternative position that, even 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. 14–15. As Justice Gorsuch explained, the statewide preliminary injunction against Idaho “defied” traditional 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 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); *see id.* (Kavanaugh, J., concurring) (Slip Op. at 7–8) (opining that “prohibiting” “statewide injunctions may turn out to be the right rule as a matter of law”). True, the Order involved statewide *federal* court equitable relief, but the principles of equity these justices relied upon also inform statewide *state* court equitable relief in Ohio—like the TRO request now pending.

Second, to the extent that Plaintiffs here rely on theories like those raised by the plaintiffs in Idaho (*e.g.*, equal protection), the Supreme Court’s Order allowing Idaho’s similar law to go into effect for everyone in Idaho except the specific plaintiffs necessarily involves the Supreme Court’s preliminary judgment about Idaho’s likelihood of success on the merits of those constitutional theories.

Meanwhile, nothing in the Order or writings lends any support to granting *any* injunction in this case, no matter how temporary or narrowly tailored to the specific relief Plaintiffs seek in this case. To be sure, the Supreme Court did not stay the entire preliminary injunction in the Idaho case, allowing the injunction to remain in place to the limited extent that it allows the specific plaintiffs in that case to pursue their specific desired treatments. But Idaho did not ask the Court to review the injunction to the extent that it granted narrow relief applicable only to the two plaintiff families. Idaho likely chose this path for a good reason—a reason having nothing to do with whether the trial court was right to grant even that narrow injunctive relief. Idaho must convince the Supreme Court to exercise its discretion to accept the appeal, which the Court is most likely to do if the appeal provides a straightforward opportunity for the Court to resolve an important and widely relevant legal question. By limiting its appeal to the question of whether the trial court erred in granting statewide and categorical injunctive relief, Idaho rendered irrelevant the specific circumstances of the individual plaintiffs and thus made it more likely that the Court would agree to

take the case. In other words, the Supreme Court yesterday did not reject any portion of Idaho's stay motion and did not consider at all the merits of a plaintiff-specific injunction.

Accordingly, Defendants give notice of the attached supplemental authority, which further supports denying Plaintiffs' TRO motion or, at the very least, limiting any injunctive relief to only the specific relief necessary to allow the minor Plaintiffs themselves to obtain the specific hormonal treatments they allegedly plan to pursue.

Respectfully submitted,

DAVE YOST (0056290)
ATTORNEY GENERAL OF OHIO

/s/ Erik J. Clark

ERIK J. CLARK (0078732)*

**Counsel of Record*

Deputy Attorney General

AMANDA L. NAROG (093954)

Assistant Attorney General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

Tel: (614) 995-0326 | Fax: (855) 669-2155

Amanda.Narog@OhioAGO.gov

Erik.Clark@OhioAGO.gov

*Counsel for Defendants Attorney General Dave Yost,
The State Medical Board of Ohio, and the State of Ohio*

CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically and served by e-mail on this 16th day of April, 2024, upon the following:

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

/s/ Erik Clark
ERIK CLARK (0078732)
Deputy Attorney General