16-4027

IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

PLANNED PARENTHOOD OF GREATER OHIO;
PLANNED PARENTHOOD OF SOUTHWEST OHIO REGION,

Plaintiffs-Appellees,

—v.—

RICHARD HODGES, in his official capacity
as Director of the Ohio Department of Health,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

BRIEF FOR *AMICUS CURIAE* AMERICAN PUBLIC HEALTH ASSOCIATION IN SUPPORT OF PLAINTIFFS-APPELLEES, IN SUPPORT OF AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT
PURSUANT TO FRAP 26.1

Amicus curiae, the American Public Health Association, is a nonprofit organization, with no parent corporations or publicly traded stock.

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The American Public Health Association ("APHA") submits this brief as *amicus curiae* in support of affirming the opinion of the United States District Court for the Southern District of Ohio, Western Division and in support of the opposition brief filed by Planned Parenthood of Greater Ohio ("PPGOH") and Planned Parenthood Southwest Ohio Region ("PPSWO," together with PPGOH, "Plaintiffs-Appellees").[1]

APHA's mission is to champion the health of all people and all communities, strengthen the profession of public health, share the latest research and information, promote best practices, and advocate for public health issues and policies grounded in research. APHA is the only organization that combines a 140-plus-year perspective, a broad-based member community, and the ability to influence federal policy to improve the public's health.

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[1] Pursuant to Federal Rule of Appellate Procedure 29, the parties have consented to the filing of this *amicus* brief. Also pursuant to Rule 29, undersigned counsel for *amicus curiae* certify that: (1) no counsel for a party authored this brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief; and (3) no person or entity—other than *amicus curiae*, its members, and its counsel—contributed money intended to fund the preparation or submission of this brief.

It has been the longstanding position of APHA that access to a full range of health services is a fundamental right integral both to the health and well-being of individuals and to the broader public health. The six programs discussed in the underlying briefs provide fundamental public health services to women, men, and youth in need. The Ohio Department of Health ("ODH"), through Ohio Revised Code Section 3701.034, would force Plaintiffs-Appellees to curtail these vital services and educational programs, directly and negatively impacting Ohioans, especially those of low-income and minority status who otherwise might not be able to receive such services.

APHA has over 21,000 members nationwide, 552 of whom reside in Ohio, and maintains a connection to the public health community in Ohio through its affiliate, the Ohio Public Health Association ("OPHA"), which has provided over 90 years of public health service and has about 550 members.

APHA has previously been granted leave to appear as *amicus curiae* in various courts throughout the country on matters relating to women's health, including in the Fifth Circuit Court of Appeals and in the United States Supreme Court.

SUMMARY OF ARGUMENT

It is critical to the public health interests of the United States that all women, their partners, and their children have meaningful access to quality health services, including comprehensive sexual and women's health services. The six programs supported by Planned Parenthood and described below—the (i) Infertility Prevention Project/STD Prevention Program, (ii) Minority HIV/AIDS Initiative and HIV Prevention Program, (iii) Personal Responsibility Education Program, (iv) Breast and Cervical Cancer Prevention Program, (v) Ohio Infant Mortality Reduction Initiative, and (vi) Violence Against Women Act Sexual Violence Prevention Program—each provide fundamental and life-saving public health services. In excluding Plaintiffs-Appellees from these programs, Section 3701.034 poses a grave risk to public health.

ARGUMENT

As discussed further below, six programs are directly and negatively affected by Section 3701.034, and Plaintiffs-Appellees' provision of services through these programs cannot be replaced if they are not permitted to participate. These programs play a vital role in the lives of Ohioans, who will suffer if Plaintiffs-Appellees are excluded from the programs. The

negative public health effects of Section 3701.034 are described below in reference to each of the six affected programs.

I. Infertility Prevention Project/STD Prevention Program

The STD Prevention Program is a federal program that subsidizes diagnostic tests and treatments for certain sexually transmitted diseases ("STDs") by providing testing kits, diagnostic testing, and medications to providers based on the need for resources in the providers' service areas.[2] Testing and treatment provided free of charge through this program ensure that contagious infections are detected early and managed as effectively as possible, thereby reducing health care costs and debilitating complications caused by STDs, such as ectopic pregnancies, infertility, and death.[3] PPGOH and PPSWO have served the Ohio community through the STD Prevention Program for more than 15 years and today provide over 70,000[4] free sexually transmitted infections ("STI") tests to low-income Ohioans

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[2] Ohio Dep't. of Health, *STD Prevention Program*, OHIO.GOV, https://www.odh.ohio.gov/odhprograms/bid/stdprev/stdprev.aspx (last updated Aug. 18, 2015).

[3] *See id*.

[4] Harvey Decl. ¶ 24, R.7-1, PageID#89; Lawson Decl. ¶ 22, R.7-2, PageID#130.

annually—more than half of the tests administered in Ohio under the program.[5]

Nationwide, the number of individuals infected with the three most commonly reported STDs is at an all-time high.[6] Ohio ranks 12th and 16th in the number of gonorrhea[7] and chlamydia[8] diagnoses in the country, respectively, and the prevalence of STDs among Ohioans continues to rise.[9] The impact of these diseases (especially when left untreated) is not uniform;

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5 Harvey 2d Decl. ¶ 2, R.18-1, PageID#297-98; Lawson 2d Decl. ¶ 2, R.18-2, PageID#301-02.

6 *2015 STD Surveillance Report Press Release*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Oct. 19, 2016), https://www.cdc.gov/nchhstp/newsroom/2016/std-surveillance-report-2015-press-release.html. The three most commonly reported STDs are chlamydia and gonorrhea which the STD Prevention Program covers, and syphilis. *Id.*

7 *2015 Sexually Transmitted Diseases Surveillance*, CENTERS FOR DISEASE CONTROL AND PREVENTION, tbl. 13, https://www.cdc.gov/std/stats15/tables/13.htm (last updated Sept. 26, 2016).

8 *Id.* at tbl. 2, https://www.cdc.gov/std/stats15/tables/2.htm (last updated Sept. 28, 2016).

9 Ohio Dep't. of Health, *Quarterly Ohio Infectious Disease Status Report: Ghonorrea/Chlamydia*, OHIO.GOV (Dec. 25, 2016), https://www.odh.ohio.gov/healthstats/disease/std/std1.aspx.

they disproportionately affect vulnerable populations, including adolescents and pregnant women.[10]

Adolescents and young adults 15 to 25 years old account for approximately half of all new STD diagnoses nationwide.[11] The health impact of STDs in this age group is starker in Ohio: "Even though 15–24 year olds made up 14% of the total Ohio population in 2012, 74% of chlamydia infections and 62% of gonorrhea infections in the state were diagnosed in this group."[12] Primary prevention and early detection and treatment of STDs in young women are critical for preventing potential long-term complications, including pelvic diseases, infertility, ectopic

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[10] *See CDC Fact Sheet: Information for Teens and Young Adults: Staying Healthy and Preventing STDs*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/std/life-stages-populations/stdfact-teens.htm (last updated Aug. 4, 2016); *STDs during Pregnancy—CDC Fact Sheet (Detailed)*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/std/pregnancy/stdfact-pregnancy-detailed.htm (last updated Feb. 11, 2016).

[11] Kendra M. Cuffe, et al., *Sexually Transmitted Infection Testing Among Adolescents and Young Adults in the United States*, 58 J. OF ADOLESCENT HEALTH 512, 512 (2016).

[12] Ohio Dep't. of Health, *Chlamydia and Gonorrhea Infections Among 15–24 Year Olds*, OHIO.GOV (2013), https://www.odh.ohio.gov/healthstats/disease/std/std1.aspx.

pregnancy, and cervical cancer.[13] The Ohio Adolescent Health Partnership ("OAHP"), in its Strategic Plan for 2013–2020, highlighted the importance of "improving the implementation of recommended preventive STI/HIV counseling and screening in adolescents by increasing partnerships to address these services in this age group."[14] Section 3701.034 would exclude key partners, PPGOH and PPSWO from providing these critical services, and would exacerbate both the financial and confidentiality barriers faced by young Ohioans.[15] For example, OAHP recognizes that "barriers such as explanation of benefit statements from health insurers and bills for laboratory services create obstacles to ensuring confidential services for many teens."[16] These concerns are obviated by the provision of free services under the STD Prevention Program.

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[13] *Strategic Plan 2013–2020*, OHIO ADOLESCENT HEALTH PARTNERSHIP, 29 http://www.ohioadolescenthealth.org/strategic-plan.html (last visited Mar. 28, 2017) [hereinafter "OAHP Strategic Plan"]. Founding members of the Ohio Adolescent Health Partnership include professionals from the Ohio Department of Education, the Ohio Department of Health, and the Ohio Public Health Association, among others. *Id.* at 1.

[14] *Id*. at 30.

[15] Cuffe, et al., *supra* note 11, at 519.

[16] OAHP Strategic Plan, *supra* note 13, at 30.

STDs can also have severely debilitating effects for pregnant women and their partners. The effect of the failure to treat infected pregnant women has been felt most severely by racial minorities.[17] Additional access to STD screening and treatment for low-income pregnant women, especially women of color, is needed to ensure improved health of Ohioans.

In the face of the needs of vulnerable populations, ODH admits that Section 3701.034 would reduce critical health services and their availability to Ohioans. ODH has conceded that "defunding Planned Parenthood would create service gaps" because other existing program providers in the areas served by Plaintiffs-Appellees do not have the capacity to provide 70,000 additional free tests annually.[18] Leaving thousands of Ohioans without vital STD testing and treatment poses a significant and serious threat to the public health in Ohio. Unable to offer free STD testing and treatment, PPGOH and PPSWO centers would be forced to begin charging patients for those

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[17] Virginia Bowen, et al., *Increase in Incidence of Congenital Syphilis — United States, 2012–2014*, 64 MORBIDITY AND MORTALITY WEEKLY REPORT 1241, 1242 (Nov. 13, 2015).

[18] Pls.' Mem. Law Supp. Mot. J. on Merits and Perm. Inj. [hereinafter "Plaintiffs' Memorandum"], R.39, PageID#835.

services.[19] Because patients who access free testing and STD treatment often cannot afford the associated costs of these services, infected women, men, and youth will go undiagnosed and untreated, escalating the spread of these preventable diseases within the population. Further, the economic cost of these infections in the United States is substantial, and the burden will be even higher if identification and treatment efforts are reduced.[20]

Without PPGOH and PPSWO's free services, ODH further admits that "at least three counties in Ohio will be without *any* qualified provider under the STD Prevention Program."[21] In order to receive testing and treatment free of charge, Ohioans in these counties would have no alternative but to travel for these services. Identifying and traveling to a testing facility would be challenging for the low-income clients that PPGOH

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[19] *See* Marlene Harris-Taylor, *Ohio Law Strips Funds Used for Free STD Tests*, THE BLADE (May 21, 2016), http://www.toledoblade.com/Medical/2016/05/21/Law-strips-funds-used-for-free-STD-tests.html.

[20] Kwame Owusu-Edusei Jr., *The Estimated Direct Medical Cost of Selected Sexually Transmitted Infections in the United States, 2008*, 40 SEXUALLY TRANSMITTED DISEASES 197, 197.

[21] Plaintiffs' Memorandum, R.39, PageID#835-36 (emphasis in original).

and PPSWO primarily serve.[22] Even if patients had an alternative free provider to turn to, some patients may forgo testing altogether given the stigma associated with STDs, if that provider (i) did not have short wait times, (ii) was not open for testing every day, and (iii) did not accept walk-in services—all of which are possible at PPGOH and PPSWO.[23] Planned Parenthood is a trusted health care provider for many Ohioans and has cultivated a reputation for providing STD testing and treatment to patients in a discreet, confidential, and nonjudgmental environment.[24] Few other health care providers are prepared to provide comparable testing and treatment services.

At a time when more people than ever before—in Ohio and nationwide—are diagnosed with STDs and are likely to spread them without proper identification or treatment, ensuring access to vital testing and

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[22] Kabir Bhatia, *Ohio Ends Planned Parenthood Funding Effective Today*, WKSU (May 23, 2016), http://wksu.org/post/ohio-ends-planned-parenthood-funding-effective-today#stream/0.

[23] Sabrina Eaton, *The Facts on Defunding Planned Parenthood in Ohio*, ADVANCE OHIO (Nov. 16, 2015), http://www.cleveland.com/open/index.ssf/2015/11/the_impact_if_ohios_legislatur.html; *see also* Plaintiffs' Memorandum, R.39, PageID#831.

[24] *See* Eaton, *supra* note 23.

treatment services for underserved, vulnerable populations is critical to Ohio's public health.

II. Minority HIV/AIDS Initiative and HIV Prevention Program

The Department of Health and Human Services administers the Minority HIV/AIDS Initiative (in which PPGOH participates) and the HIV Prevention Program (in which PPSWO participated until the passage of Section 3701.034, and in which it wishes to continue to participate). These federal programs are designed to provide HIV testing and education for communities disproportionately affected by HIV to reduce new infections, increase access to care, improve health outcomes for people living with HIV, and promote health equality.[25]

Through these programs, PPGOH and PPSWO have provided free, confidential HIV tests and referrals for treatment to low-income and minority Ohioans. PPGOH is the largest provider of HIV testing and treatment in the cities of Cleveland, Akron, and Canton.[26] PPGOH and PPSWO provide these life-saving services to Ohioans who might otherwise

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[25] *See Secretary's Minority AIDS Initiative Fund Background*, AIDS.GOV, https://www.aids.gov/federal-resources/smaif/background/index.html (last updated Sept. 15, 2016).

[26] Harvey Decl. ¶ 38, R.7-1, PageID#92.

not receive testing or treatment. For example, Plaintiffs-Appellees' popular events offering mobile HIV testing and other services have reached people who might not otherwise have walked into a clinic.[27] Minority HIV/AIDS Initiative funds and HIV Prevention Program funds have been crucial to the Plaintiffs-Appellees' provision of services: in 2015, PPGOH and PPSWO used the grants at issue in this case to provide approximately 5,200 HIV tests to Ohioans.[28]

According to the Centers for Disease Control and Prevention, in 2014 African Americans were diagnosed with HIV at a rate 8.1 times that of white Americans and AIDS at a rate 9.4 times that of white Americans.[29] The consequences of the disease are also disproportionately felt, as African

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[27] *See* PPGOH Dep., R.40-15, PageID#1293-94 (describing "very popular" initiative in Canton in which PPGOH offers HIV testing in bars); PPSWO Dep., R.40-16, PageID#1575 (describing PPSWO testing staff "going to neighborhoods where the target populations might be found" to perform outreach and testing); *see also Outreach Testing*, PLANNED PARENTHOOD OF GREATER OHIO, https://www.plannedparenthood.org/planned-parenthood-greater-ohio/education-training/education-programs/outreach-testing (last visited Mar. 21, 2017).

[28] *See* Harvey Decl. ¶ 34, R.7-1, PageID#91; Lawson Decl. ¶ 31, R.7-2, PageID#132.

[29] U.S. Dep't of Health Hum. Servs., Office of Minority Health, *HIV/AIDS and African Americans*, https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=21 (last modified Mar. 17, 2016).

Americans are far more likely to die as a result of HIV and AIDS than white Americans.[30]

Excluding Plaintiffs-Appellees from program funding would undercut a primary provider of vital HIV prevention, screening, and care resources in Ohio. Without the funds at issue, PPSWO and PPGOH will no longer be able to provide confidential, free HIV testing and treatment referrals to low-income Ohioans through the programs. Indeed, due to the cuts in funding PPSWO has already been forced to stop providing these services.[31] PPGOH will also have to stop providing community HIV testing,[32] and they will be forced to terminate employment of staff members.[33]

Delay in diagnosis or treatment of HIV is dangerous. The Centers for Disease Control and Prevention estimate that one fourth of HIV-positive individuals in the United States are unaware that they have the virus.[34] It is

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30 *Id.*

31 Plaintiffs' Memorandum, R.39, PageID#836.

32 *Id.*

33 *Id.* at PageID#837.

34 *The Importance of HIV Testing*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/healthcommunication/toolstemplates/entertainmented/tips/hivtesting.html (last updated June 23, 2015).

clear that "HIV transmission cannot be eliminated if individuals do not know their HIV status," and given the latent nature of an HIV infection, "[a]n HIV test is the only way to determine if a person is living with the virus."[35] This has two critical implications. First, HIV testing allows HIV-positive individuals to begin treatment, which can reduce their viral load and afford them the opportunity to live nearly as long as people without the disease.[36] Second, HIV treatment is critical for preventing new cases, as reductions in viral load decrease the probability of transmission, even if individuals continue to engage in unprotected sex.[37] Each month that these services are curtailed jeopardizes the lives of individual Ohioans and the public health of their communities.

The dangers are evident in the experiences of other states. When Texas ended its HIV-prevention contract with Planned Parenthood's

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35 *Id.*

36 *See generally* Hasina Samji et al., *Closing the Gap: Increases in Life Expectancy among Treated HIV-Positive Individuals in the United States and Canada*, 8 PLOS ONE (December 2013), http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0081355.

37 *See generally* Myron S. Cohen, M.D. et al., *Prevention of HIV-1 Infection with Early Antiretroviral Therapy*, 365 NEW ENGLAND J. MED. 493 (2011).

Houston affiliate in late December 2015, county health departments did not initiate their HIV testing programs until nearly six months after the Department of State Health Services redistributed funds. Indiana fared worse. Opponents to Planned Parenthood forced the defunding and closure of five Planned Parenthood-supported clinics, including its Scott County location, which was the county's only HIV testing center.[38] Scott County subsequently experienced an HIV outbreak that was "unprecedented in Indiana and rare in the United States."[39]

Section 3701.034 creates unacceptable risks for Ohio. While Plaintiffs-Appellees could continue to offer more limited testing on a sliding fee scale, PPGOH will no longer be able to offer free HIV Prevention Program testing at its health centers.[40] Furthermore, Plaintiffs-Appellees

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[38] Laura Bassett, *Indiana Shut Down its Rural Planned Parenthood Clinics and Got an HIV Outbreak*, HUFFINGTON POST (Mar. 31, 2015), http://www.huffingtonpost.com/2015/03/31/indiana-planned-parenthood_n_6977232.html.

[39] Megan Twohey, *Mike Pence's Response to H.I.V. Outbreak: Prayer, Then a Change of Heart*, N.Y.TIMES (Aug. 7, 2016), https://www.nytimes.com/2016/08/08/us/politics/mike-pence-needle-exchanges-indiana.html?_r=0.

[40] PPGOH Dep., R. 40-15, PageID#1297-99.

would no longer be able to provide testing in a variety of venues outside the health centers.[41]

In 2013, Ohio ranked twelfth out of all states in the incidence of new HIV cases.[42] Canton has seen an increase in HIV diagnoses among particularly hard-to-reach populations such as young African American men, and has not found "a suitable provider" to replace Planned Parenthood.[43] Given the prevalence of other risk factors—like Indiana, for example, Ohio is experiencing a surge in drug use and has the nation's fourth-highest rate of death linked to overdose[44]—it is essential that these public health programs

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41 *See id.* PageID#1292-95 (identifying some venues, including bars and others identified by social service agencies or the City of Canton, where PPGOH would no longer provide testing); PPSWO Dep., R.40-16, PageID#1575 (would no longer provide testing at outside locations including gay bars).

42 *Ohio – 2015 State Health Profile*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/nchhstp/stateprofiles/pdf/ohio_profile.pdf.

43 Ann Sanner, *Canton among Ohio cities grappling with Planned Parenthood restrictions*, CANTON REPOSITORY (May 19, 2016), http://www.cantonrep.com/article/20160519/NEWS/160519130.

44 Kimiko de Freytas-Tamura, *Amid Opioid Overdoses, Ohio Coroner's Office Runs Out of Room for Bodies*, N.Y.TIMES (Feb. 2, 2017), https://www.nytimes.com/2017/02/02/us/ohio-overdose-deaths-coroners-office.html?_r=1&mtrref=undefined.

be maintained to diagnose and prevent HIV and provide quality treatment and care to affected Ohioans.

III. Personal Responsibility Education Program ("PREP")

PREP is a federal program designed to educate young people from ages 14 to 19 in foster care and juvenile justice institutions about abstinence and contraception, with the goal of reducing teenage pregnancy and STD rates.[45] PREP includes an evidence-based pregnancy and STD prevention curriculum called "Reducing the Risk" that covers topics related to health and adulthood, including healthy relationships, financial literacy, and preparing for careers.[46] Plaintiffs-Appellees hold three of the nine regional grants provided by the State of Ohio to implement PREP and receive sub-grants from the Summit County Board of Health and the Cuyahoga County Board of Health.[47] Utilizing these funds, Plaintiffs-Appellees provide vital education programs to the state's most vulnerable youth in 34 of Ohio's 88

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[45] Ohio Dep't. of Health, *Personal Responsibility Education Program (PREP)*, https://www.odh.ohio.gov/odhprograms/chss/ad_hlth/Personal%20 Responsibility%20Education%20Program%20for%20Foster%20Care%20and%20Adjudicated%20Youth.aspx (last updated Feb. 26, 2014) [hereinafter "ODH PREP"].

[46] *Id.*

[47] Plaintiffs' Memorandum, R.39, PageID#838.

counties in the South, Southwest, and West Central Regions.[48] Plaintiffs-Appellees prepare staff of juvenile justice and foster care systems so that they may educate young people about STD and teenage pregnancy prevention in a manner sensitive to their environment.[49]

The importance of PREP to public health in Ohio cannot be overstated. Special attention to the social, physical, emotional, and developmental challenges of adolescence[50] is direly needed for youth in foster care and juvenile justice institutions. At the national level, the Centers for Disease Control and Prevention have recognized that adolescents in child welfare systems face a higher-than-average risk of teenage pregnancy and birth, with adolescent girls in foster care more than twice as likely to become pregnant by age 19 than their non-foster care peers.[51] Similarly, recently

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48 *Id.*; ODH PREP, *supra* note 45.

49 *Id.*

50 OAHP Strategic Plan, *supra* note 13, at 5.

51 *Social Determinants and Eliminating Disparities in Teen Pregnancy*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Aug. 8, 2016), https://www.cdc.gov/teenpregnancy/ about/social-determinants-disparities-teen-pregnancy.htm; *see also* Heather D. Boonstra, *Teen Pregnancy Among Young Women in Foster Care: A Primer*, 14 GUTTMACHER POLICY REV. 8, 8 (2011); David C. R. Kerr et al., *Pregnancy Rates Among Juvenile Justice Girls in Two RCTs of*

arrested youth and detained adolescent girls experience STDs and teenage pregnancies at higher rates than their non-arrested and non-detained counterparts.[52] In Ohio, the rate of births to young mothers is above the national average at 25.1 births per 1,000 women ages 15 to 19.[53] Youth in detention and foster care experience higher-than-normal rates of chlamydia, gonorrhea, HIV, and other STDs.[54] Further, foster children's increased

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Multidimensional Treatment Foster Care, 77 J. CONSULT. CLIN. PSYCHOL. 588, 589 (2009).

[52] Emily E. Johnston et. al., *In Their Own Voices: The Reproductive Health Care Experiences of Detained Adolescent Girls*, 26 WOMEN'S HEALTH ISSUES 1, 1 (2015); Steven Belenko et al., *Recently Arrested Adolescents Are at High Risk for Sexually Transmitted Diseases*, 35 SEXUALLY TRANSMITTED DISEASES 758, 762 (2008).

[53] *Women's Health Statistics: Ohio*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/reproductivehealth/data_stats/pdfs/ohio.pdf (last visited Mar. 30, 2017) (rate reported as of 2014); *see also About Teen Pregnancy*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/teenpregnancy/about/ (last updated Apr. 26, 2016).

[54] *See* Belenko et al., *supra* note 52; Johnston et al., *supra* note 52. *Health Care for Incarcerated Women and Adolescent Females*, Committee Opinion No. 535, AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, 1 (2012).

mobility, which often results in interrupted schooling, makes providing sexual health information outside of traditional education settings essential.[55]

The types of healthy relationships and career goals promoted by PREP are also of great importance to youth in the foster care and juvenile justice systems. For example, adolescents in foster care report they experience substantial pressure from their peers and communities to engage in sexual intercourse, believing that being sexually active is a norm and expectation among their age group.[56] Moreover, adolescents often do not receive timely information regarding contraception.[57] PREP continues to serve as a key preventive intervention in Ohio through instruction in line with the sexual health education approach recommended by the Centers for Disease Control and Prevention and the Ohio Adolescent Health Partnership, which includes ongoing education regarding health care providers, contraception, and

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[55] *See* ODH PREP, *supra* note 45; OAHP Strategic Plan, *supra* note 13, at 31.

[56] Lois Thiessen Love et. al., *The Nat'l Campaign to Prevent Teen Pregnancy, Fostering Hope: Preventing Teen Pregnancy Among Youth in Foster Care*, at 14 (2005), https://thenationalcampaign.org/resource/fostering-hope.

[57] *Id*. at 15.

abstinence as well as healthy relationships.[58] PREP also provides career guidance and financial literacy to youth in the juvenile justice system to help them reintegrate into society after their detention ends.

If Section 3701.034 goes into effect, PREP education provided by Plaintiffs-Appellees will be terminated, as Plaintiffs-Appellees will be excluded from the program, which provides their only access to provide education in the foster care and juvenile justice systems.[59] This consequence would directly and negatively impact the health of young Ohioans. Defendants have offered no details regarding how Plaintiffs-Appellees' PREP grants would be reallocated[60] and alternative sources of support are not evident. Section 3701.034 would therefore leave hundreds of Ohio youth in foster and juvenile justice systems without critical information regarding pregnancy and STD (including HIV) prevention, in situations in which they are already at higher than average risk. This lack of access to information about prevention would escalate the likelihood of increased transmission. Since PREP's inception in 2010, Plaintiffs-Appellees have

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[58] *See* OAHP Strategic Plan, *supra* note 13 at 30.

[59] *See* Dist. Ct. Op., R.60, at PageID#2144.

[60] *See* Harvey 2d Decl. ¶ 4, R.18-1, PageID#298.

served a total of 1,876 young Ohioans through training of 479 juvenile and foster agency staff.[61] Eliminating these essential services would cause gaps in the continued delivery of educational services to at-risk youth, given the extensive experience, training and certification needed for PREP instructors to become effective.[62]

Depriving high-risk youth of quality sexual health education will compound the public health crisis that Section 3701.034 would cause through its impacts on other affected programs.

IV. Breast and Cervical Cancer Prevention Program ("BCCP")

BCCP is a federal program that was implemented in 1990 with the goal of reducing barriers for low-income uninsured women over the age of 40 to access preventive breast and cervical cancer screenings.[63] PPGOH and

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[61] *See* Lawson Decl. ¶ 37, R.7-2, PageID#134; Harvey Decl. ¶ 49, R.7-1, PageID#95.

[62] *See* Plaintiffs' Memorandum, R.39, PageID#839; Harvey 2d Decl. ¶ 4, R.18-1, PageID#298.

[63] *National Breast and Cervical Cancer Early Detection Program (NBCCEDP), About the Program*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/cancer/nbccedp/about.htm (last updated Sept. 9, 2016). In Ohio, women are eligible for screening and diagnostic services if they meet the following requirements: "(1) live in households with incomes less than 200% of the poverty level; (2) have no insurance; (3) are 40 years of age or older for pap tests, pelvic exams,

PPSWO have been BCCP service providers for more than two decades. Through this program, PPGOH and PPSWO provide life-saving pap tests, breast exams, and colposcopies with BBCP funds; PPSWO also provides loop electrosurgical excision procedures, and PPGOH provides cervical biopsies.[64] These are all performed free of charge to eligible patients.

From 1994 to 2014, BCCP served over 86,000 Ohio women and diagnosed close to 2,900 breast cancer cases and 1,900 cervical cancer and dysplasia cases.[65] From 2008 to 2012, BCCP detected 649 breast cancers and 603 cervical cancers,[66] with the help of PPGOH and PPSWO's 28 health center locations in Ohio.

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and clinical breast exams; and (4) are 50 years of age or older for mammograms." Ohio Dep't. of Health, *Breast and Cervical Cancer Project*, OHIO.GOV (Aug. 2007), http://www.medinahealth.org/images/company_assets/D98A6E31-3E37-43FF-BC1A-ECC84E8F1117/BCCPFAQ_daf5.PDF.

64 Harvey Decl. ¶ 28, R.7-1, PageID#90; Lawson Decl. ¶ 26, R.7-2, PageID#131.

65 Ohio Dep't. of Health, *BCCP data on number of Ohio women served per county since 1994*, OHIO.GOV (Sept. 2014), https://www.odh.ohio.gov/-/media/ODH/ASSETS/Files/health/bccp/Copy-of-BCCPDATA_SEPT_2014_WEB.pdf?la=en.

66 Ohio Affiliates of Susan G. Komen, *Ohio BCCP Fact Sheet 2016*, SUSAN G. KOMEN NORTHEAST OHIO (Apr. 2016), http://komenneohio.org/wp-content/uploads/2015/02/Ohio-BCCP-Fact-Sheet-2016.pdf.

Access to screenings is a major public health concern, since all women are at some risk of breast and cervical cancers; if found early, nearly all such cancers can be treated successfully.[67] The American College of Obstetricians and Gynecologists recommends that women ages 30 to 65 be co-tested with pap and HPV testing every five years.[68]

Ohio women are particularly vulnerable to restrictions on access to preventive breast and cervical cancer screening. Women in Ohio are more likely to *die* from breast cancer, ranking fourth in the overall breast cancer death rate in the nation.[69] Last year, 9,390 Ohio women were expected to be diagnosed with breast cancer; it is estimated that nearly 1,700 these women will eventually die from the disease.[70] Accessibility to preventive screening is in Ohio's interest from an economic perspective as well, since early

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[67] Ohio Dep't. of Health, *Breast and Cervical Cancer Project, Breast Cancer FAQs and Cervical Cancer FAQs*, OHIO.GOV, https://www.odh.ohio.gov/health/cancer/bccp/bc_faq1.aspx (last reviewed Mar. 2, 2017).

[68] *ACOG Statement on Cervical Cancer Screening and Prevention*, AM. COLL. OBSTETRICIANS & GYNECOLOGISTS (Nov. 5, 2014), http://www.acog.org/About-ACOG/News-Room/Statements/2014/ACOG-Statement-on-Cervical-Cancer-Screening.

[69] Ohio Affiliates of Susan G. Komen, *supra* note 66.

[70] *Id.*

detection through cancer screening ultimately saves Ohio money. Treatment of breast cancer detected at later stages is up to *three times more expensive* than when detected early.[71]

Eliminating PPGOH and PPSWO's funding for BCCP will prevent them from offering screenings free of charge to qualifying women.[72] Existing patients of PPGOH and PPSWO will be required to visit other facilities to receive their annual free cancer screenings. Those facilities are unlikely to be able to offer the comprehensive services that PPGOH and PPSWO provide,[73] and the patients' continuity of care with a trusted, long-time provider will be disrupted—making it less likely that those women will seek and obtain vital health care services.[74] Section 3701.034 would

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[71] Ohio Affiliates of Susan G. Komen, *supra* note 66.

[72] Plaintiffs' Memorandum, R.39, PageID#840.

[73] Health care services cannot be deferred until other organizations develop the capacity to absorb patients whose services from Plaintiffs-Appellees have been lost. In the short term, it is highly unlikely that "other providers could step up in a timely way to absorb the . . . women suddenly left without their preferred source of care . . . ." Jennifer Frost & Kinsey Hasstedt, *Quantifying Planned Parenthood's Critical Role in Meeting the Need for Publicly Supported Contraceptive Care*, HEALTH AFFAIRS BLOG (Sept. 8, 2015).

[74] Plaintiffs' Memorandum, R.39, PageID#840.

increase barriers for low-income Ohio women to access potentially life-saving preventive cancer screenings.

V. Ohio Infant Mortality Reduction Initiative ("OIMRI")

Section 3701.034 addresses "funding for infant mortality reduction or infant vitality initiatives." The Ohio Infant Mortality Reduction Initiative is a federally funded program that provides community-based outreach and care coordination services to at-risk low-income African American women.

PPGOH receives funds under this program and relies on them to support its "Healthy Moms Healthy Babies" program, a neighborhood outreach program that helps pregnant, high-risk African American women during pregnancy and up to two years after birth.[75] PPGOH has received OIMRI grants for more than 20 years. Care provided as part of the program includes visiting pregnant women and mothers at home, facilitating transportation to prenatal appointments, helping families learn about health insurance options, providing goods like diapers and clothes, and offering education and support to pregnant women and mothers who may be at risk

[75] *Healthy Moms, Healthy Babies*, PLANNED PARENTHOOD OF GREATER OHIO, https://www.plannedparenthood.org/planned-parenthood-greater-ohio/education-training/education-programs/healthy-moms-healthy-babies (last visited Mar. 22, 2017).

of engaging in high-risk activities like smoking cigarettes, taking drugs, or drinking alcohol.[76] PPGOH also connects families with services like education and assistance in the areas of health, housing, nutrition, and employment.[77]

Such services, especially for low-income women of color, are vital. Ohio's infant mortality rate ("IMR") of 7.2 deaths per 1,000 live births is considerably higher than the national rate of 6.08, and African American infants die at nearly three times the rate of white infants.[78] Ohio's IMR for white infants is 5.5, and its IMR for black infants is 15.1.[79]

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[76] *Id.*

[77] *Id.*

[78] *Our Babies Count Fact Sheet*, OUR BABIES COUNT, http://ourbabies count.org/Toolkit/170216_OBC_FactCard.pdf (last visited Mar. 20, 2017); *see also* Ohio Dep't. of Health, *2015 Ohio Infant Mortality Data: General Findings*, OHIO.GOV (Nov. 16, 2016), at 1, https://www.odh. ohio.gov/-/media/ODH/ASSETS/Files/cfhs/OEI/2015-Ohio-Infant-Mortality-Report-FINAL.pdf?la=en.

[79] Dr. Lydia Furman, MD, *Ohio's Infant Mortality Problem*, AM. ACAD. OF PEDIATRICS JS. BLOG (Dec. 14, 2016), http://www.aappublications.org /news/2016/12/14/infant-mortality-rate-and-associated-racial-inequities-pediatrics-1216.

The Ohio Commission on Minority Health identifies key "interventions" necessary to eliminate infant mortality disparities.[80] These include "[b]uilding and sustaining capacity within communities and institutions to proactively overcome health inequities" and "[e]stablishing and sustaining care coordination protocols to link women and families to comprehensive health and community services."[81] PPGOH's program includes these interventions.

Section 3701.034 would disrupt the continuity of this care, which is vital for low-income, minority pregnant women and mothers, as well as their infants. PPGOH's program cannot continue without funding. If Section 3701.034 takes effect, PPGOH will be forced to terminate the "Healthy Moms Healthy Babies" program, will become unable to provide expectant women and new mothers access to critical education and support, and will be forced to lay off six staff members dedicated to the program.[82] There is no indication that ODH could replace PPGOH as an OIMRI service

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[80] *See* Ohio Comm'n on Minority Health, *White Paper: Achieving Equity and Eliminating Infant Mortality Disparities Within Racial and Ethnic Populations: From Data to Action* (Sept. 18, 2015).

[81] *Id.* at iii.

[82] *See* Plaintiffs' Memorandum, R.39, PageID#841.

provider, particularly in view of PPGOH's unique expertise delivering these services.

VI. Violence Against Women Act ("VAWA") Sexual Violence Prevention Program

The VAWA Sexual Violence Prevention Program is a federally funded program aimed at reducing sexual violence by means of education and primary prevention.[83] PPSWO has been an ODH VAWA fund recipient for 10 years.[84] For the fiscal year ending in January 31, 2017, PPSWO received a $65,000 grant to provide training across four counties to 700 middle and high school students annually about healthy relationships, bullying and sexual assault recognition, as well as bystander intervention skills.[85] PPSWO also offers complementary programs for parents.[86]

The VAWA Sexual Violence Prevention Program provides essential life skills to youth at a time when they are at risk of being sexually victimized. At least 1.8 million U.S. adolescents have been sexual assault

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[83] *See* Lawson Decl. ¶¶ 40-43, R.7-2, PageID#134-35.

[84] *Id.*

[85] *Id.*

[86] *Id.*

victims.[87] While underreporting limits the available data, research suggests that 1 in 4 girls and 1 in 6 boys have suffered sexual abuse by age 18.[88] Although the percentage of adolescents between 9th and 12th grade reporting they were forced to have sex decreased somewhat between 2001 and 2015 at the national level from 7.7% to 6.7%,[89] the percentage of Ohio's youth who were sexually victimized between 2003 and 2013 decline only slightly, from 8.1% to 7.5%,[90] and Ohio's rate remains above the national average.[91] Minorities and rural communities in Ohio are particularly

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87 U.S. Dep't of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, *Raising Awareness About Sexual Abuse: Facts and Statistics*, NATIONAL SEX OFFENDER PUBLIC WEBSITE, https://www.nsopw.gov/en-US/Education/FactsStatistics?AspxAutoDetectCookieSupport=1 (last visited on Mar. 28, 2017).

88 *Understanding Child Sexual Abuse*, AMERICAN PSYCHOLOGICAL ASSOCIATION (Dec. 2011), http://www.apa.org/pi/about/newsletter/2011/12/sexual-abuse.aspx.

89 *Trends in the Prevalence of Behaviors that Contribute to Violence National YRBS: 1991-2015*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/healthyyouth/data/yrbs/pdf/trends/2015_us_violence_trend_yrbs.pdf (2016).

90 Ohio Dep't of Health, *2013 Youth Risk Behavior Survey Results: Ohio High School Survey Trend Analysis Report*, OHIO.GOV at 2, https://www.odh.ohio.gov/odhprograms/chss/ad_hlth/youthrsk/youthrsk1.aspx (last updated Feb. 12, 2016).

91 *See id.*

underserved in sexual violence prevention education,[92] a gap that PPSWO helps fill in rural Greene, Clark, and Preble counties.[93]

Section 3701.034 would have a detrimental impact on middle and high school students across the counties currently benefiting from PPSWO's VAWA Sexual Violence Prevention Program. PPSWO will have to end its participation in the program entirely if Section 3701.034 goes into effect.[94] The state has not put forth any potential replacement for PPSWO's educational services.[95]

Without PPSWO's program, many young Ohio students would have no reliable source of comprehensive and evidence-based education regarding the nature and characteristics of healthy and respectful sexual relationships,

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92 Ohio Dep't of Health, *Competitive Grant Applications for State Fiscal Year 2010: Violence Against Women Act (VAWA) Sexual Violence Prevention*, OHIO.GOV (2009), www.odh.ohio.gov/pdf/ requests forproposal/vw10vawa2.pdf.

93 *Quick Facts: Greene County, Ohio; Clark County Ohio; Preble County, Ohio*, UNITED STATES CENSUS BUREAU (2015), https://www.census.gov/quickfacts/table/.

94 *See* Plaintiffs' Memorandum, R.39, PageID#842.

95 *See id.*

as Ohio has no state-wide health education standards.[96] Although Section 3313.60 of the Ohio Code requires school boards to include in their curriculum "age appropriate instruction in dating violence prevention," local school boards retain wide discretion in how to define this subject.[97] In addition, PPSWO's program encourages proactive involvement of parents in sexual violence prevention through a complementary course,[98] which can benefit families as well as teens.[99]

Adolescents are the most common age group to be sexually victimized, in part due to their vulnerability and naiveté.[100] If Section

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96 Ohio Dep't of Education, *Health Education*, http://education.ohio.gov/Topics/Learning-in-Ohio/Health-Education (last visited Mar. 24, 2017); OAHP Strategic Plan, *supra* note 13, at 30.

97 *See* Ohio Rev. Code Sec. 3313.60(A)(5)(e); Ohio Dep't of Education, *supra* note 96.

98 *See* Lawson Decl. ¶ 43, R.7-2, PageID#135.

99 *See Sexual Violence: Risk and Protective Factors*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Mar. 22, 2017), https://www.cdc.gov/violenceprevention/sexualviolence/riskprotectivefactors.html (noting negative family environments are key predictors of sexual violence perpetration).

100 *See generally* Richard B. Felson & Patrick R. Cundiff, *Sexual Assault as a Crime Against Young People*, 43 ARCH. SEX. BEHAV. 2 (2013).

3701.034 were to go into effect, the well-being and health of Ohio's adolescents and communities would suffer.

CONCLUSION

For the foregoing reasons, *amicus curiae* APHA joins Plaintiffs-Appellees in urging the Court to affirm the district court's decision.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because this brief contains 5,864 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

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UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PLANNED PARENTHOOD OF GREATER OHIO; PLANNED PARENTHOOD OF SOURTHWEST OHIO REGION, Plaintiffs-Appellees, vs. RICHARD HODGES, in his official capacity as Director of the Ohio Department of Health, Defendant-Appellant.	Case No. 16-4027 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April 2017, this *amicus* brief for *amicus curiae* American Public Health Association was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered

an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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