

H.B. 59 Lawsuit

A civil liberties briefing



Recently, the ACLU of Ohio challenged H.B. 59, the massive state budget bill, by exposing three provisions that violated the Ohio Constitution's "One-Subject Rule," which requires that all legislation contain only one subject. As H.B. 59 is a budget bill, all provisions must relate to the state's budget and the appropriation of state funding; however, the three provisions that the ACLU of Ohio opposes concern neither. A lawsuit was filed on behalf of Preterm.

If the Court abides by the language of the Ohio Constitution, Article II, Section 15(D)—“No bill shall contain more than one subject, which shall be clearly expressed in its title . . . ,” it should declare H.B. 59 unconstitutional and prohibit the enforcement and implementation of the three illegitimate provisions.

The Parties

- Plaintiff: **Preterm**, an independently run nonprofit organization that has provided safe, accessible abortion care through its licensed surgical facility since 1974.
- ACLU of Ohio Legal Team: A team of staff attorneys and lawyers volunteering their time.
- Defendants:
 - o **The State of Ohio;**
 - o **John R. Kasich**, Governor of Ohio;
 - o **Timothy J. McGinty**, Cuyahoga County Prosecutor;
 - o **The Ohio Department of Health;**
 - o Board members of the **State Medical Board of Ohio;**
 - o **The Ohio Department of Job & Family Services;** and
 - o **Michael B. Colbert**, Director, Ohio Department of Job & Family Services.



The Three Amendments

- **Heartbeat and Informed Consent Provisions**
(2013 Am.Sub.H.B. No. 59, pp. 864-67, 2061)
 - o H.B. 59 forces doctors to perform an ultrasound at least 24 hours before performing an abortion for the sole purpose of detecting a fetal heartbeat.
 - o If the doctor does detect a heartbeat, he must present that evidence to the patient who seeks an abortion as well as the statistical probability of carrying the pregnancy to term.
 - o If the doctor fails to provide this information to a patient and performs the abortion regardless, the doctor is criminally liable.
 - o If a doctor performs the abortion without a prior ultrasound, he can be sued by the patient, be disciplined by the State Medical Board, and face criminal penalties.
- **Written Transfer Agreement Provisions**
(2013 Am.Sub.H.B. No. 59, pp. 1549-51, 1625-26)
 - o H.B. 59 requires all ambulatory surgical facilities (i.e., surgical facilities that operate outside hospitals)

to make written agreements with local hospitals that dictate the procedure for when that hospital would need to receive patients from the surgical facility.

- o However, the amendment forbids public hospitals from entering into these agreements with facilities that perform “nontherapeutic abortions,” a term that encompasses abortions performed neither to save the life of the mother nor in the circumstances of a rape or incest reported to a law enforcement agency.
- o Public hospitals are prohibited from permitting doctors who have privileges to work at the chosen hospital to use those privileges to circumvent this requirement.
- **Parenting and Pregnancy Program Provisions**
(2013 Am.Sub.H.B. No. 59, pp. 2161-62)
 - o H.B. 59 creates a new program that siphons federal funding from the Temporary Assistance for Needy Families block grant to private, nonprofit organizations.
 - o The purpose of the program is to promote childbirth, parenting, and alternatives to abortion. However, the private entities to be funded by this program may not be involved in, or associated with, abortion-related activities, including abortion counseling or referrals, performing abortion-related medical procedures, or engaging in supposed “pro-abortion” advertising.

Why did legislators include these provisions?

- The ideas behind each of these pieces were carved out of controversial stand-alone bills (either proposed or introduced) that faced significant opposition.
- In order to make sure the proposals passed, lawmakers practiced “logrolling,” the maneuver of including numerous and varied legislative provisions—each of which would normally not pass as stand-alone legislation—into a single piece of legislation to increase the chances of the provisions’ passing.
- Ultimately, these provisions were included as a move to stop abortion by putting abortion providers out of business by any means necessary. Even unconstitutional means. But preventing access to safe and legal abortions does not prevent abortions. All it does is make things harder on families who are already facing an important, deeply personal life decision.

Status

The case was filed on October 9, 2013 in the Cuyahoga County Court of Common Pleas, and Judge Michael J. Russo was assigned to it. As of the date of publication, the ACLU of Ohio is awaiting the State’s answer. Opposing counsel has requested an extension and now must file its answer by December 18.”

For the latest updates on the ACLU of Ohio’s H.B. 59 lawsuit, visit <http://www.acluohio.org/archives/issue/reproductive-freedom>.