



TO: House Policy and Legislative Oversight Committee

FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio

DATE: November 20, 2014

RE: House Bill 248

To Chairman Wachtmann, Vice Chair Gonzales, Ranking Minority Member Antonio and members of the House Health & Aging Committee, my name is Gary Daniels, Chief Lobbyist for the American Civil Liberties Union of Ohio (“ACLU of Ohio”) and I welcome this opportunity to present opponent testimony on House Bill 248.

AMERICAN CIVIL  
LIBERTIES UNION  
OF OHIO  
4506 CHESTER AVENUE  
CLEVELAND, OH 44103-3621  
T/216.472.2220  
F/216.472.2210  
WWW.ACLUOHIO.ORG  
contact@acluohio.org

As you might expect, the ACLU of Ohio is opposed to H. B. 248 for a variety of reasons committee members already know about and will be informed about further as a result of today’s testimony from other organizations and individuals so I choose not to address those reasons in great detail. Suffice to say, H. B. 248 is a radical departure from restrictions courts have upheld with regard to families’ individual and private medical decisions. The extremely limited amount of time available under the bill to make a decision whether to terminate a pregnancy or not (assuming awareness of the pregnancy in the first place), the lack of additional exceptions concerning health, and the absence of language regarding pregnancies resulting from rape or incest find H. B. 248 on thin ice with regard to sound public policy and constitutional rights.

Proponents of H.B. 248 are quite transparent their ultimate goal is to put a law with such restrictive language before the Supreme Court of the United States. Indeed, their hopes are pinned on a lawsuit reaching the U.S. Supreme Court sooner rather than later, where they believe Justice Kennedy might provide a swing vote to overturn *Roe v. Wade*.

If and when H.B. 248 is passed into law, the ACLU of Ohio will file a lawsuit challenging it. This will result in years of litigation and cost taxpayers hundreds of thousands of dollars in legal fees. Perhaps H.B. 248 supporters see this as an additional step towards achieving their ultimate goal. However, their hopes for a case to quickly find its way to the U.S. Supreme Court and engage Justice Kennedy are misguided at best and otherwise extremely ill-advised as I will briefly explain.

The U.S. Supreme Court is under no obligation to accept a case for consideration; as such decisions are left entirely to the Court’s discretion. Best estimates indicate 98-99% of the cases the justices are formally asked to consider are denied. It is also believed the Court will more readily accept cases when there are splits

in the lower courts regarding rulings on the same or similar issues the Court is being asked to consider.

In other words, proponents of H.B. 248 hope it will be passed into law, and the State of Ohio will be sued as a result. They then wish that lawsuit will proceed through the trial court and the appellate court after which the non-prevailing party will choose to appeal it to the U.S. Supreme Court in a condensed enough time frame that they can, if they are gambling correctly, get before a U.S. Supreme Court whose bench currently includes Justice Kennedy.

But, such sincere wishes ignore the reality. Litigation over this bill will most likely take years to wind through the lower courts. In the unlikely event the U.S. Supreme Court does agree to consider it, it is possible that we will have different justices than we do currently, including the replacement of Justice Kennedy.

In addition, I am confident this path through the lower courts would include the rejection of what would be the most restrictive anti-choice law in the country. A federal court in Arkansas has already thrown out a similar bill, and another copycat bill is pending in federal court in North Dakota. Passage of these laws in Ohio and elsewhere will result only in additional case law affirming the seminal language and ideas of *Roe vs. Wade*. Clearly, proponents' plan is not to make matters worse for their own side but that is the path they continue to recklessly rush down.

Members of the committee, if you feel this bill is immune enough to legal challenge you will surely vote for its passage. On the other hand, if you see this bill for what it is—a risky roll of the dice more likely to create case law damaging to the anti-choice movement with little hope of ever reaching the U.S. Supreme Court and resulting in years of litigation and hundreds of thousands of dollars of legal fees - then you should reject House Bill 248 and leave these intensely personal decisions where they belong—with Ohio's families.