



TO: Senate Health, Human Services and Medicaid Committee

FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio

DATE: September 12, 2017

RE: Senate Bill 164

To Chairman Burke, Vice Chair Beagle, Ranking Member Tavares, and members of the Senate Health, Human Services and Medicaid Committee, my name is Gary Daniels, chief lobbyist for the American Civil Liberties Union of Ohio (“ACLU of Ohio”) and I appear to present opponent testimony on Senate Bill 164.

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Senate Bill 164 is not complicated legislation. If a doctor “has knowledge” a patient wants an abortion, in whole or in part, because of a positive test for, or diagnosis of, Down syndrome, and the doctor still performs that abortion, that doctor will be imprisoned and stripped of his or her medical license under this bill.

SB 164 is the latest in a long, and apparently unending, list of bills in Ohio and across the nation to criminalize abortion. It shares that distinction with a recent surge of so-called heartbeat bills, bills to outlaw widely-used medical procedures, and legislation to ban abortion for a multitude of fetal diagnoses and possibilities.

These various bills also share another important characteristic – they continue to be enjoined and struck down by courts as unconstitutional because they ignore fundamental directives and guidance from court rulings that continually affirm women’s rights to reproductive autonomy.

Indeed, the greatest irony in this area is the more laws like this that are passed then struck down, the stronger the case law gets for the central underpinnings of *Roe v. Wade* and related cases. This has either escaped the attention of proponents of these laws or they are ignoring how counterproductive they continue to be for their own cause.

Under the most literal interpretation of SB 164, a patient can have any reason whatsoever, no matter how irrational or scientifically impossible, to believe her fetus may have Down syndrome. That reasoning may constitute 1% of why she seeks an abortion. If a doctor still performs that abortion, despite any number of other reasons, diagnoses, or test results contributing to a decision to abort, that doctor will be thrown in prison and lose their job.

Given this extreme intrusiveness into the physician/patient relationship by government bureaucrats and politicians, it is easy to envision an end result of less communication between doctors and their patients. After all, prison awaits doctors who perform abortions where Down syndrome is a factor, no matter how big or small.

This is not a recipe for the honesty and candidness often needed between doctors and patients. Patients may not want to risk the freedom of their trusted physicians. Doctors may ask less questions instead of more. Neither scenario benefits anyone.

Senate Bill 164 is yet another attempt to substitute the judgment of government over their constituents and the medical profession. If passed, it will likely end up in court. Should that happen, it is hard to believe it will be upheld. Given the likelihood of that result, it is worth asking why this is even being pursued.

The ACLU of Ohio urges a "no" vote on Senate Bill 164.