



**NAILAH K. BYRD**  
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Cleveland, Ohio 44113

**Court of Common Pleas**

**BRIEF Electronically Filed:**  
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By: BEATRICE JESSIE HILL 0074770

Confirmation Nbr. 827495

PRETERM-CLEVELAND INC

CV 13 815214

vs.

JOHN R KASICH ET AL

**Judge:**

MICHAEL J. RUSSO

**Pages Filed: 5**

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

<b>PRETERM-CLEVELAND, INC.,</b>	)	
	)	CASE NO. CV 13-815214
Plaintiff,	)	
	)	JUDGE MICHAEL J. RUSSO
v.	)	
	)	
<b>JOHN R. KASICH, ET AL.,</b>	)	
	)	
Defendants.	)	
	)	

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**PLAINTIFF’S RESPONSE TO DEFENDANTS’ MOTION TO STAY  
FURTHER BRIEFING ON PLAINTIFF’S RENEWED MOTION FOR  
SUMMARY JUDGMENT PENDING TIME FOR SUPREME COURT  
APPEAL**

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In the wake of Plaintiff Preterm’s<sup>1</sup> successful appeal on the issue of standing and its renewed summary judgment motion seeking a ruling on the merits, State Defendants have moved to further delay proceedings in this case until at least August 22, 2016, and longer if they choose to appeal to the Ohio Supreme Court. Preterm opposes this motion.

There is no question that this Court has jurisdiction while the time for appeal to the Ohio Supreme Court runs. *In re Kurtzhalz*, 141 Ohio St. 432, 434-35, 48 N.E.2d 657 (1943); *Buckles v. Buckles*, 46 Ohio App. 3d 118, 120, 546 N.E.2d 965 (1988) (“[D]uring the pendency of an appeal a trial court continues to have jurisdiction to exercise so long as the exercise of that jurisdiction does not interfere with the power of th[e] appellate court to review the judgment under

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<sup>1</sup> Capitalized terms not otherwise defined have the same meaning as set forth in Preterm’s Motion for Summary Judgment.

appeal and affirm, modify, or reverse that judgment.”); *Roberts v. Roberts*, 113 Ohio App. 42, 44, 177 N.E.2d 287 (6th Dist. 1961).

This case has been pending for nearly three years and has been fully briefed on the merits, with no need for further discovery or for a trial, since March 16, 2015. A decision on the merits by this Court will not prevent the State Defendants from pursuing their right to appeal, either on standing or on the merits. However, while this case remains on hold, Preterm, which has been found to have standing, continues to suffer harm from the violation of its constitutional rights.<sup>2</sup>

Delaying these proceedings, pending a decision from the Ohio Supreme Court, only further prejudices Preterm. This is not a case in which the Ohio Supreme Court has mandatory appellate jurisdiction, as the question of Preterm’s standing in the Ohio courts does not involve questions of constitutional law. *See, e.g., State ex rel. Jones v. Suster*, 84 Ohio St. 3d 70, 77-78, 701 N.E.2d 1002 (1998) (stating that under Ohio law, “standing challenges the capacity of a party to bring an action, not the subject matter jurisdiction of the court”); Ohio Constitution, Article IV, Section 2(B)(2)(a)(ii). Nor does the fact-specific decision on the question of Preterm’s standing involve issues of great public interest or create a conflict with a decision of another court of appeals. Ohio Constitution, Article IV, Section 2(B)(2)(e). To put this case on hold,

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<sup>2</sup> Indeed, the Sixth District Court of Appeals recently held that the challenged legislation, HB 59, violates the Ohio and federal Constitutions in several respects, including that it contravenes the One-Subject Rule, the very argument that Preterm has advanced. *Capital Care Network of Toledo v. State of Ohio Dep’t of Health*, 6th Dist. Lucas No. L-15-1186, 2016-Ohio-5168, ¶ 42.

possibly for several more months, based on a slim likelihood of Ohio Supreme Court review would impose continuing harm on Preterm; whereas moving forward to reach a decision on the merits would in no way impose upon the Defendants, since the case is already fully briefed.

As the appellate court noted, “Preterm found the statehouse doors closed to them, thereby providing no opportunity for public deliberation and debate on these provisions. Now it finds the courthouse door shut, thus denying it access to the court relief.” *Preterm-Cleveland, Inc. v. Kasich*, 8th Dist. Cuyahoga No. 103103, 2016-Ohio-4859, ¶ 29. The time has come to grant Preterm the review to which it is entitled and to cut off the harm occasioned by Defendants’ unconstitutional conduct.

Plaintiff Preterm therefore respectfully requests this Court deny the State Defendants’ motion to stay further proceedings in this case.

Respectfully submitted,

*/s/ B. Jessie Hill*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was sent via this Court's electronic docketing system this 12th day of August, 2016, to the following:

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