

FACT SHEET
2013 ACLU of Ohio Reproductive Rights Litigation
10-9-2013

Who is the plaintiff?

- **Preterm** is an independently run nonprofit organization and Ohio licensed ambulatory surgical facility. Since 1974, its main mission has been to advance women's health and reproductive justice by providing safe, respectful and accessible abortion care.

Who are the lawyers for Plaintiff?

- **Susan O. Scheutzow**, Partner, Kohrman Jackson & Krantz PLL; ACLU of Ohio Board Member
- **Jessie Hill**, Professor of Law, Case Western Reserve University School of Law
- **James Hardiman**, Legal Director, ACLU of Ohio Foundation
- **Renée Paradis**, Senior Staff Attorney, ACLU Foundation Reproductive Freedom Project
- **Justine Lara Konicki**, Associate, Kohrman Jackson & Krantz PLL

Who are we suing?

- **The State of Ohio**
- **John R. Kasich**, Governor of Ohio
- **Timothy J. McGinty**, Cuyahoga County Prosecutor
- **The Ohio Department of Health**
- **Theodore E. Wymslo, M.D.**, Director, Ohio Department of Health
- **State Medical Board of Ohio**
 - Anita M. Steinbergh, D.O., President
 - Kris Ramprasad, M.D., Vice President
 - J. Craig Strafford, M.D., M.P.H., F.A.C.O.G., Secretary
 - Mark A. Bechtel, M.D., Supervising Member
 - Michael L. Gonidakis, Member
 - Donald R. Kenney, Sr., Member
 - Bruce R. Saferin, D.P.M., Member
 - Sushil M. Sethi, M.D., M.P.H., F.A.C.S., Member
 - Amol Soin, M.D., M.B.A., Member
 - Lance A. Talmage, M.D., Member
- **The Ohio Department of Job & Family Services**
- **Michael B. Colbert**, Director, Ohio Department of Job & Family Services

What is H.B. 59?

- House Bill 59 (known as H.B. 59) is the State of Ohio's 2014-2015 biennium budget. The Ohio House of Representatives introduced H.B. 59 on February 12, 2013. Governor Kasich signed the bill into law on June 30, 2013. In total, H.B. 59 is 3747 pages long and contains 551 sections. Combined, the Act amends 2106, enacts 345, and repeals 174 sections of the Ohio Revised Code.

What is the formal name of the piece of legislation we are challenging?

- 2014-2015 Ohio Budget Bill, 2013 Am.Sub.H.B. No. 59.

What are we asking the Court to do?

- Because H.B. 59 violates the One-Subject Rule, we are asking the Court to declare that H.B. 59 is unconstitutional. In addition, we are asking the Court to declare unconstitutional and prohibit the implementation and enforcement of three provisions. These provisions are:
 - **Heartbeat and Informed Consent Provisions** (2013 Am.Sub.H.B. No. 59, pp. 864-67, 2061)
 - H.B. 59 forces doctors to perform ultrasounds at least 24 hours before performing an abortion to detect the presence of a heartbeat. If a doctor fails to perform the ultrasound and performs the abortion anyway, the patient may sue the doctor, and the doctor can be disciplined by the State Medical Board.
 - If the doctor detects a heartbeat, she or he must provide specific information to a patient including the fact that a heartbeat was detected and the statistical probability of carrying the pregnancy to term. If the doctor fails to provide this information to a patient and performs the abortion, the doctor is criminally liable.
 - **Written Transfer Agreement Provisions** (2013 Am.Sub.H.B. No. 59, pp. 1549-51, 1625-26)
 - H.B. 59 requires all surgical facilities operating outside hospitals (known as ambulatory surgical facilities) to make written agreements with local hospitals. These agreements would lay out the procedure for when the hospital would need to take on patients from the outside facility. However, the amendment forbids public hospitals from entering into these agreements with facilities that perform nontherapeutic abortions (This term refers to abortions other than those performed to save the life of the mother or when the pregnancy was not the result of rape or incest reported to a law enforcement agency.)

- In addition, public hospitals are prohibited from permitting doctors that have privileges to work at the hospital to use their privileges to get around this requirement.
- **Parenting and Pregnancy Program Provisions** (2013 Am.Sub.H.B. No. 59, pp. 2161-62)
 - H.B. 59 created a new significant and substantive program that would channel federal funding from the Temporary Assistance for Needy Families block grant to private, nonprofit organizations. The purpose of the program is to promote childbirth, parenting and alternatives to abortion. 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 “pro-abortion” advertising.

Why are we suing?

- H.B. 59 violates the One-Subject Rule under the Ohio Constitution, which requires that all legislation contain only one subject. Because H.B. 59 is a budget bill, all provisions of H.B. 59 must relate to the State’s budget and the appropriation of state funding.
- The three parts we are challenging, the Heartbeat and Informed Consent Provisions, the Written Transfer Agreement Provisions and the Pregnancy and Parenting Program Provisions, are not related to the budget and do not involve the appropriation of state funds.

What is the One-Subject Rule?

- It is a provision in the Ohio Constitution that forbids legislation to pertain to more than one subject.
- Ohio Constitution, Article II, Section 15(D) – “No bill shall contain more than one subject, which shall be clearly expressed in its title . . . ”

Why are we suing the governor?

- Because as the state’s chief executive, Governor Kasich has oversight of executive agencies and can order the Attorney General to prosecute an individual indicted of a crime.

Why are we suing the Cuyahoga County Prosecutor?

- Because under H.B. 59’s Heartbeat and Informed Consent Provisions, county prosecutors are given the authority to pursue criminal charges against doctors that perform an abortion on a patient but have not provided the patient with the required information. Prosecutor McGinty is being sued in his official capacity

because the plaintiff, Preterm, is located in Cuyahoga County and Prosecutor McGinty would be the official to formally press charges under this law.

Why are we suing the Ohio Department of Health and its Director?

- Because H.B. 59 provides the Ohio Department of Health with the authority to draft rules and govern how doctors must comply with the Heartbeat and Informed Consent Provisions. Also, the Ohio Department of Health is responsible for licensing surgical facilities, such as Preterm. The Director is being sued because he has oversight of the agency and can approve of agreements between surgical facilities and hospitals.

Why are we suing the State Medical Board and its members?

- Because H.B. 59 provides the board with the authority to discipline doctors who fail to comply with the requirements of the Heartbeat and Informed Consent Provisions, including those who do not perform an ultrasound to detect a heartbeat.

Why are we suing the Ohio Department of Job and Family Services and its Director?

- Because the Ohio Department of Job and Family Services is the state agency responsible for administering the Ohio Parenting and Pregnancy Program. The Director is being sued because he has oversight of the Program and is tasked with adopting rules to implement the Program.

Why did we file in the Cuyahoga County Court of Common Pleas?

- We filed the lawsuit in Cuyahoga County because the plaintiff, Preterm, resides in and performs its functions within Cuyahoga County.
- In addition, Cuyahoga County is the place where the plaintiff or its employees could be criminally charged under the Heartbeat and Informed Consent Provisions of H.B. 59.

Why now?

- H.B. 59 very recently went into effect. The Heartbeat and Informed Consent Provisions, Written Transfer Agreement Provisions, and Parenting and Pregnancy Program Provisions of H.B. 59 are now placing detrimental burdens on women's access to safe health care.

When did the provisions of H.B. 59 go into effect?

- H.B. 59 went into effect on September 29, 2013.

What is “logrolling”?

- Logrolling is the practice 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 bill passing.

What is a “rider”?

- A rider is the term for a provision in legislation that is unrelated to the subject matter of the bill. Legislators sometimes add controversial riders that would not pass as separate bills into larger, usually important, bills, such as an appropriations bill.

How long will the case go on?

- At this time, we are unsure of how long the case will last.

What’s next?

- The State must file its answer to our Complaint, which could take about a month. However, the State could prolong this period by asking the Court for a thirty-day extension.