

**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 MOTION FOR SUMMARY JUDGMENT  
(HEARING REQUESTED)**

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Pursuant to Civ.R. 56, Plaintiff Preterm-Cleveland, Inc. ("***Preterm***"), by and through its counsel, respectfully requests that this Court grant summary judgment against Defendants as to Count I of Plaintiff's Complaint. The bases for this filing are fully set forth in the attached Memorandum in Support, which is incorporated herein.

Respectfully submitted,

*/s/ B. Jessie Hill*

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**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

**I. INTRODUCTION**

Plaintiff Preterm challenges the 2014-2015 Ohio Budget Bill, 2013 Am. Sub. H.B. No. 59 (“*H.B. 59*” or the “*Budget Bill*”) on a singular basis: The Budget Bill violates the one-subject provision contained in Article II, Section 15(D) of the Ohio Constitution (“*The One-Subject Rule*”). The One-Subject Rule unambiguously requires every piece of legislation to address only a single subject and serve a single purpose. The Budget Bill, however, which establishes the State’s biennial budget, also contains provisions that are completely unrelated to the budget or to the appropriation of funds. In passing the Budget Bill, the legislature included controversial riders concerning consent to abortion, regulation of health care facilities, and parenting and pregnancy support. Because the Budget Bill clearly and flagrantly violates the One-Subject Rule and this case presents no genuine issue of material fact, this Court should rule upon Preterm’s instant motion as a matter of law and grant summary judgment on Preterm’s Complaint. The Court should find that the Budget Bill violates the One-Subject Rule, strike the offending provisions, declaring them void and unenforceable, and permanently enjoin their enforcement.

**II. STATEMENT OF FACTS**

The facts of this case are a matter of public record and are not subject to dispute. On June 30, 2013, Defendant Governor John R. Kasich (“*Governor*

*Kasich*) signed into law H.B. 59,<sup>1</sup> the state’s main operating budget for fiscal years 2014 and 2015. H.B. 59 is 3,747 pages long and contains 551 sections. The bill’s title states that its purpose is “[t]o amend sections ... ; to enact new sections ... and to repeal sections ... of the Revised Code; ... to make operating appropriations for the biennium beginning July 1, 2013, and ending June 30, 2015; [and] to provide authorization and conditions for the operation of state programs ....” 2013 Am.Sub.H.B. No. 59. In total, H.B. 59 amends 2,079, enacts 345, and repeals 171 sections of the Ohio Revised Code.

H.B. 59’s primary subject, as noted in its title, is appropriations. However, it also includes provisions that address the subjects of abortion and abortion provider regulation, R.C. 2317.56, 2919.19, 2919.191, 2919.192, 2919.193, 4731.22 (“*Heartbeat Provisions*”); health care facility regulation, R.C. 3702.30, 3702.302, 3702.303, 3702.304, 3702.305, 3702.306, 3702.307, 3702.308, 3727.60 (“*Written Transfer Agreement Provisions*”); and parenting and pregnancy support, R.C. 5101.80, 5101.801, 5101.804 (“*Parenting and Pregnancy Provisions*”). These provisions do not relate to the state budget or appropriations and have nothing to do with the purpose of the Budget Bill.

## A. The Offending Provisions

### 1. Heartbeat Provisions

The subject of the Heartbeat Provisions is the regulation of abortion and abortion providers. The Heartbeat Provisions require physicians who perform

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<sup>1</sup> All references to H.B. 59 herein are to 2013 Am.Sub.H.B. No. 59, available at <ftp://server6.sos.state.oh.us/free/publications/SessionLaws/130/130-HB-059.pdf> (accessed Sept. 5, 2014).

abortions, including physicians at Preterm, to determine whether there is a detectable fetal heartbeat at least twenty-four hours before performing an abortion. 2013 Am.Sub.H.B. No. 59 (codified at R.C. 2919.191(A), 2919.192(A)). If a detectable fetal heartbeat exists, the Heartbeat Provisions require that the pregnant woman be informed of the heartbeat in writing and given the option to view and/or listen to it. In addition, the woman must be told the statistical probability of carrying the pregnancy to term based on the gestational age of the fetus. *Id.* (codified at R.C. 2919.191(B)(2), 2919.192(A)). A person who fails to comply with the requirements of the Heartbeat Provisions is subject to a civil suit for compensatory and exemplary damages, disciplinary action by the State Medical Board, and/or criminal prosecution for the offense of “performing or inducing an abortion without informed consent when there is a detectable fetal heartbeat” – a first-degree misdemeanor for the first offense and a fourth-degree felony for each subsequent offense. *Id.* (codified at R.C. 2919.191(E), 2919.191(H), 2919.192(E), 4731.22(B)(47)). The Budget Bill does not appropriate any funds with respect to the Heartbeat Provisions. *Id.*

The Heartbeat Provisions borrow heavily from the language contained in 2011 Am.Sub.H.B. No. 125 (“**H.B. 125**”), which was introduced in the 129th General Assembly but did not pass. For example, both H.B. 59 and H.B. 125 prohibit any person from performing or inducing an abortion for a pregnant woman until the physician first determines whether the fetus has a detectable heartbeat. 2013 Am.Sub.H.B. No. 59 (codified at R.C. 2919.191(B)(1)); 2011 Am.Sub.H.B. No. 125. Both bills authorize the Director of Health to promulgate

rules governing the method of the heartbeat examination and subject a physician to disciplinary action by the State Medical Board for failure to perform a fetal heartbeat examination before performing an abortion. 2013 Am.Sub.H.B. No. 59 (codified at R.C. 2919.191(E)(2) and R.C. 2919.191(C)); 2011 Am.Sub.H.B. No. 125. Additionally, both require the person intending to perform the abortion to inform the patient of the results of the heartbeat test, in writing, at least twenty-four hours before the procedure, and, if a fetal heartbeat is detected, provide the pregnant woman with additional information. 2013 Am.Sub.H.B. No. 59 (codified at R.C. 2919.192(A)); 2011 Am.Sub.H.B. No. 125.

## 2. Written Transfer Agreement Provisions

The subject of the Written Transfer Agreement Provisions is the regulation of health care facilities. The Written Transfer Agreement Provisions require Ambulatory Surgical Facilities<sup>2</sup> (“ASFs”), including Preterm, to obtain a written transfer agreement with a local hospital specifying procedures for transfer of patients from the ASF to the hospital, if and when transfer is necessary. 2013 Am.Sub.H.B. No. 59 (codified at R.C. 3702.303(A)). H.B. 59 requires the ASF to update the written transfer agreement every two years and file a copy of the updated agreement with the Director of Health. *Id.* (codified at R.C. 3702.303(B)). Additionally, the Written Transfer Agreement Provisions authorize the Director of Health to grant and rescind variances from the requirement that an ASF have a written transfer agreement. *Id.* (codified at R.C. 3702.304 to 3702.306).

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<sup>2</sup> “Ambulatory Surgical Facility” is defined in R.C. 3702.30.

The Written Transfer Agreement Provisions also prohibit public hospitals from entering into written transfer agreements with ASFs that perform or induce nontherapeutic abortions and from authorizing physicians with privileges at such hospitals to use those privileges to create an alternative to the written transfer agreement for purposes of a variance application. *Id.* (codified at R.C. 3727.60). The Budget Bill does not appropriate any funds with respect to the Written Transfer Agreement Provisions. *Id.*

### 3. Parenting and Pregnancy Provisions

The Parenting and Pregnancy Provisions create a new substantive program called the “Ohio Parenting and Pregnancy Program.” The Parenting and Pregnancy Program’s stated purpose is to “[p]romote childbirth, parenting, and alternatives to abortion.” *Id.* (codified at R.C. 5101.804(A)(1)). The subject of the Parenting and Pregnancy Provisions is therefore parenting and pregnancy support.

The Budget Bill provides that the Parenting and Pregnancy Program will be funded by the federal Temporary Assistance for Needy Families (“*TANF*”) block grant established under Title IV-A of the Social Security Act, 42 U.S.C. 601-619. *Id.* (codified at R.C. 5101.80(A)(4)(f)). The Parenting and Pregnancy Provisions authorize the Ohio Department of Job and Family Services (“*ODJFS*”) to provide TANF funds to private, nonprofit organizations to advance the Parenting and Pregnancy Program’s stated purpose of promoting childbirth, parenting, and alternatives to abortion, provided that such organizations are not involved in or associated with any abortion-related activities. Forbidden

activities include providing abortion counseling or referrals, performing abortion-related medical procedures, and engaging in “pro-abortion” advertising. *Id.* (codified at R.C. 5101.804(B)). Under H.B. 59’s Parenting and Pregnancy Program, private, nonprofit organizations that have contracted with ODJFS can subcontract with another entity to provide these services; however, subcontractors are similarly restricted from engaging in any abortion-related activities. *Id.* (codified at R.C. 5101.804(C)). The Budget Bill further authorizes the Director of ODJFS to adopt rules, as necessary, to implement the Parenting and Pregnancy Program. *Id.* (codified at R.C. 5101.804(D)). The Budget Bill does not appropriate any state funds to the Parenting and Pregnancy Program it creates. *See Id.*, 301.10.

#### **B. H.B. 59’s Legislative History**

The General Assembly added the Heartbeat, Written Transfer Agreement, and Parenting and Pregnancy Provisions to its biennial budget bill at various points in the legislative process, with little to no opportunity for public hearings or debate. The Parenting and Pregnancy Provisions were not inserted until April 9, 2013, two months after the bill was first introduced. A version of the Written Transfer Agreement Provisions was first introduced two weeks later, on April 16, 2013, but only as part of an omnibus amendment. The Heartbeat Provisions were added to the bill at the last minute—on June 25, 2013—five days before Governor Kasich signed the Budget Bill into law.

1. H.B. 59 Is Introduced in the House.

H.B. 59 was introduced in the House of Representatives on February 12, 2013, and was assigned to the House Finance and Appropriations Committee (“**House Committee**”). All told, H.B. 59 was the subject of twelve House Committee hearings.<sup>3</sup> At the eighth hearing, on April 9, 2013, the House Committee accepted a substitute version of H.B. 59, which, for the first time, included the Parenting and Pregnancy Provisions.<sup>4</sup> During its twelfth and final hearing, and without providing an opportunity for public testimony, the House Committee adopted an omnibus amendment that added a version of the Written Transfer Agreement Provisions to the bill.<sup>5</sup> The House Committee then favorably reported Substitute H.B. No. 59 out of committee.<sup>6</sup> Two days later, again without further hearings or testimony, the House passed the amended bill.<sup>7</sup>

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<sup>3</sup> Ohio House Finance and Appropriations Committee, *Hearings*, available at <http://www.ohiohouse.gov/committee/finance-and-appropriations> (accessed Sept. 5, 2014) (see the following dates: Feb. 5, 2013; Feb. 12, 2013; Feb. 13, 2013; Feb. 14, 2013; Mar. 19, 2013; Mar. 20, 2013; Mar. 21, 2013; Apr. 9, 2013; Apr. 10, 2013; Apr. 11, 2013; Apr. 12, 2013; and Apr. 16, 2013).

<sup>4</sup> Ohio House Finance and Appropriations Committee, *Minutes*, (Apr. 9, 2013), available at [http://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/130th\\_ga/ready\\_for\\_publication/committee\\_docs/cmte\\_h\\_fin\\_app\\_1/submissions/0fbba66b-017c-49fa-992b-5ea846ed7dea/4.9.13\\_minutes.pdf](http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/130th_ga/ready_for_publication/committee_docs/cmte_h_fin_app_1/submissions/0fbba66b-017c-49fa-992b-5ea846ed7dea/4.9.13_minutes.pdf) (accessed Sept. 5, 2014).

<sup>5</sup> Ohio House of Representatives, *Sub.H.B. 59 Omnibus Amendment Components, HC1618* (2013), available at [http://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/130th\\_ga/bills/house/hb59/cm\\_amend\\_HC2065%20House%20Omnibus\\_Sub\\_HouseBill59\\_ominibus.pdf](http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/130th_ga/bills/house/hb59/cm_amend_HC2065%20House%20Omnibus_Sub_HouseBill59_ominibus.pdf) (accessed Sept. 5, 2014).

<sup>6</sup> Ohio House Finance and Appropriations Committee, *Minutes*, (Apr. 16, 2013), available at [http://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/130th\\_ga/ready\\_for\\_publication/committee\\_docs/cmte\\_h\\_fin\\_app\\_1/submissions/e504fd56-8e6d-4e17-9215-d9148e73c69a/4.16.13\\_minutes.pdf](http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/130th_ga/ready_for_publication/committee_docs/cmte_h_fin_app_1/submissions/e504fd56-8e6d-4e17-9215-d9148e73c69a/4.16.13_minutes.pdf) (accessed Sept. 5, 2014).

<sup>7</sup> 2013 Am.Sub.H.B. No. 59 (as passed by the House on Apr. 18, 2013), available at [http://www.legislature.state.oh.us/BillText130/130\\_HB\\_59\\_PH\\_Y.pdf](http://www.legislature.state.oh.us/BillText130/130_HB_59_PH_Y.pdf) (accessed Sept. 5, 2014).

## 2. H.B. 59 Is Introduced in the Senate.

H.B. 59, which now included the Parenting and Pregnancy Provisions and an early version of the Written Transfer Agreement Provisions, was introduced in the Ohio Senate on April 23, 2013, and assigned to the Senate Finance Committee (“*Senate Committee*”). The Senate Committee held hearings and accepted testimony on eleven separate occasions.<sup>8</sup> However, it was not until the final hearing, on June 5, 2013, that an omnibus amendment was introduced seeking, for the first time, to amend the Written Transfer Agreement Provisions to prohibit written transfer agreements between public hospitals and ASFs that perform abortions.<sup>9</sup> Without any opportunity for public testimony, the Committee adopted that controversial amendment and favorably reported Sub. H.B. No. 59 out of committee.<sup>10</sup> The next day, the Senate passed the amended bill.<sup>11</sup>

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<sup>8</sup> Ohio Senate Finance Committee, *Committee Documents*, <http://www.ohiosenate.gov/committee/finance#> (accessed Sept. 5, 2014) (see the following dates: Apr. 16, 2013; Apr. 17, 2013 ; Apr. 18, 2013; May 22, 2013; May 23, 2013; May 28, 2013; May 29, 2013; May 30, 2013; May 31, 2013; June 4, 2013; and June 5, 2013). The committee minutes describe the final hearing on June 5 as the eighth hearing, but the actual number of hearings equals eleven, because the first three were informal hearings.

<sup>9</sup> Ohio Senate, *Sub.H.B. No. 59 Omnibus Amendment Components, SC3543* (2013), [http://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/130th\\_ga/ready\\_for\\_publication/committee\\_docs/cmte\\_s\\_finance\\_1/testimony/0d91853e-15a9-4364-9f27-0d3b06e4777c/hb59scomnibus.pdf](http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/130th_ga/ready_for_publication/committee_docs/cmte_s_finance_1/testimony/0d91853e-15a9-4364-9f27-0d3b06e4777c/hb59scomnibus.pdf) (accessed Sept. 5, 2014).

<sup>10</sup> Ohio Senate Finance Committee, *Minutes* (June 5, 2013), [http://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/130th\\_ga/ready\\_for\\_publication/committee\\_docs/cmte\\_s\\_finance\\_1/submissions/0856939e-fc30-40ae-ada6-e752ff51d8cd/june5signed.pdf](http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/130th_ga/ready_for_publication/committee_docs/cmte_s_finance_1/submissions/0856939e-fc30-40ae-ada6-e752ff51d8cd/june5signed.pdf) (accessed Sept. 5, 2014).

<sup>11</sup> Am.Sub.H.B. 59, 130th Gen. Assemb. (as passed by the Senate, June 6, 2013), [http://www.legislature.state.oh.us/BillText130/130\\_HB\\_59\\_PS\\_Y.pdf](http://www.legislature.state.oh.us/BillText130/130_HB_59_PS_Y.pdf) (accessed Sept. 5, 2014).

### 3. H.B. 59 is Considered in Conference Committee.

On June 12, 2013, the House refused to concur in the Senate's amendments, and the bill was sent to a Conference Committee.<sup>12</sup> The Conference Committee held two public hearings.<sup>13</sup> During the final hearing, on June 25, 2013, the Conference Committee introduced amendments that revised the Written Transfer Agreement Provisions.<sup>14</sup> It was during this final Conference Committee hearing that the Heartbeat Provisions were first inserted into H.B. 59—only two days before the bill passed and five days before it was signed into law by the Governor.<sup>15</sup> During those five days, there was no opportunity for public testimony or debate on the new provisions.

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<sup>12</sup> Journals of the Senate and House of Representatives, *Ohio House of Representatives Journal: Wednesday, June 12, 2013* (June 12, 2013) <http://www.legislature.state.oh.us/JournalText130/HJ-06-12-13.pdf>, pp. 619, 678 (accessed Sept. 5, 2014).

<sup>13</sup> Ohio House of Representatives, *Conference Committee on Am. Sub. H.B. 59: Hearings*, <http://www.ohiohouse.gov/committee/conference-committee-on-am.-sub.-h.b.-59> (accessed Sept. 5, 2014). Senate leaders blocked the online broadcast of the Conference Committee hearings shortly before the hearings began. Jim Siegel, Columbus Dispatch, *Senate Pulls Plug on Online Broadcast of Budget Conference Committee* (June 20, 2013, 5:30 AM), <http://www.dispatch.com/content/stories/local/2013/06/20/senate-pulls-plug-on-online-broadcast.html> (accessed Sept. 5, 2014).

<sup>14</sup> The amendments prohibited public hospitals from entering into transfer agreements, or similar arrangements, with ASFs that perform abortions, rather than imposing the prohibition on ASFs as the prior provision had done. Ohio General Assembly, *Conference Committee on Am.Sub.H.B. No. 59, CC4165x2 Amendment* (2013), available at [http://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/130th\\_ga/bills/house/hb59/cm\\_amend\\_CC4165-2\\_CC4165-2.pdf](http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/130th_ga/bills/house/hb59/cm_amend_CC4165-2_CC4165-2.pdf) (accessed Sept. 5, 2014).

<sup>15</sup> 130th General Assembly, *Conference Committee on Am. Sub. H.B. 59, CC4363 Report with Changes*, at 354-55, 492-505 (2013), [http://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/130th\\_ga/ready\\_for\\_publication/committee\\_docs/cmte\\_h\\_conf\\_hb59/submissions/312d34d2-0c55-4da9-a5c1-0bfb72826a37/130hb59-ccreport.pdf](http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/130th_ga/ready_for_publication/committee_docs/cmte_h_conf_hb59/submissions/312d34d2-0c55-4da9-a5c1-0bfb72826a37/130hb59-ccreport.pdf) (accessed Sept. 5, 2014). See also, Ann Sanner, Business Week, *Panel Adds Abortion Regulations to Ohio Budget* (June 26, 2013), <http://www.businessweek.com/ap/2013-06-26/panel-adds-abortion-regulations-to-ohio-budget> (accessed Sept. 5, 2014); Chrissie Thompson, Cincinnati Enquirer, *Last-Minute Provision on Abortion Added to Budget*

4. H.B. 59 Is Signed into Law.

On June 26, 2013, the Conference Committee reported H.B. 59 to the House and the Senate with the amendments incorporated,<sup>16</sup> and on June 27, 2013 each chamber agreed to the Conference Committee Report.<sup>17</sup>

On June 30, 2013, Governor Kasich signed H.B. 59 into law, exercising his line-item veto authority to disapprove various budgetary items.<sup>18</sup> Governor Kasich did not veto any portion of the Heartbeat, Written Transfer Agreement, or Parenting and Pregnancy Provisions.<sup>19</sup>

Numerous provisions of H.B. 59 went into effect immediately upon becoming law. *See, e.g.,* 2013 Am.Sub.H.B. 59, 8121.30; *see also* Ohio Constitution, Article II, Section 1(d) (“Laws providing for . . . appropriations for the current expenses of the state government and state institutions . . . shall go into immediate effect.”). Other provisions, such as the provisions challenged in this action that did not appropriate funds for current state expenses, did not go

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(June 26, 2013), <http://news.cincinnati.com/article/20130625/NEWS010801/306250222/Last-minute-provision-abortion-added-budget> (accessed Sept. 5, 2014).

<sup>16</sup> 130th General Assembly, *2013 Am.Sub.H.B. 59: As Reported by Comm. of Conf.*, (June 26, 2013), [http://www.legislature.state.oh.us/BillText130/130\\_HB\\_59\\_CR\\_Y.pdf](http://www.legislature.state.oh.us/BillText130/130_HB_59_CR_Y.pdf) (accessed Sept. 5, 2014).

<sup>17</sup> Journals of the Senate and House of Representatives, *Ohio Senate Journal: Thursday June 27, 2013*, at 1062-63, <http://www.legislature.state.oh.us/JournalText130/SJ-06-27-13.pdf> (accessed Sept. 5, 2014); Journals of the Senate and House of Representatives, *Ohio House of Representatives Journal: Thursday June 27, 2013*, at 1146, <http://www.legislature.state.oh.us/JournalText130/HJ-06-27-13.pdf> (accessed Sept. 5, 2014).

<sup>18</sup> 2013 Am.Sub.H.B. No. 59, available at <ftp://server6.sos.state.oh.us/free/publications/SessionLaws/130/130-HB-059.pdf> (accessed Sept. 5, 2014).

<sup>19</sup> Office of the Governor, *Veto Messages: Statement of the Reasons for the Veto of Items in Amended Substitute House Bill 59*, (June 30, 2013), available at [http://www.legislature.state.oh.us/BillText130/130\\_HB\\_59\\_VM.pdf](http://www.legislature.state.oh.us/BillText130/130_HB_59_VM.pdf) (accessed Sept. 5, 2014).

into effect until September 29, 2013.<sup>20</sup> See Ohio Constitution, Article II, Section 1(c) (“No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided.”).

### **III. STATEMENT OF THE CASE**

On October 9, 2013, Preterm filed a one-count complaint asserting that H.B. 59 violates the One-Subject Rule of the Ohio Constitution. The Defendants moved to dismiss the complaint on December 12, 2013. Preterm filed a response to the motion to dismiss on January 24, 2014. Defendants filed a reply, unopposed by Preterm, on January 31, 2014. The motion remains pending.

### **IV. LAW AND ANALYSIS**

#### **A. Standard of Review**

Pursuant to Civ.R. 56(C), summary judgment is appropriate where: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion, and that conclusion is adverse to the nonmoving party. *Miller v. Bike Athletic Co.*, 80 Ohio St.3d 607, 617, 1998-Ohio-178, 687 N.E.2d 735; *Byrd v. Smith*, 110 Ohio St.3d 24, 2006-Ohio-3455, 850 N.E.2d 47, at ¶ 10.

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<sup>20</sup> Ohio Sec'y of State, *Historical Documents: Current Session: AmSub.H.B. No. 59*, <http://www.sos.state.oh.us/SOS/historicaldocuments/LawsOfOhio/Current.aspx> (accessed Sept. 5, 2014).

**B. Plaintiff Has Standing to Challenge the Constitutionality of H.B. 59.**

Defendants moved to dismiss Preterm’s claim arguing, in part, that Preterm lacked standing. Preterm has demonstrated its standing in its Brief in Opposition to Defendants’ Motions to Dismiss and repeats and fully re-incorporates those arguments herein.

**C. H.B. 59 Clearly Violates the One-Subject Rule.**

Preterm is entitled to summary judgment because H.B. 59 violates the Ohio Constitution’s One-Subject Rule. The One-Subject Rule provides: “No bill shall contain more than one subject, which shall be clearly expressed in its title.” Ohio Constitution, Article II, Section 15(D). Although the One-Subject Rule was once considered merely “directory,” the Ohio Supreme Court has since made clear that the Rule is “mandatory.” *See In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, 820 N.E.2d 335 at ¶¶ 38, 46, 52-54. Accordingly, a blatant violation of the One-Subject Rule will cause an enactment to be invalidated.<sup>21</sup> *Id.* The Court finds such violations where there is “an absence of common purpose or relationship between specific topics in an act.” *Id.* ¶ 44 (quoting *State ex rel. Dix v. Celeste* 11 Ohio St.3d 141, 145, 464 N.E.2d 153 (1984)). An act may involve multiple topics, so long as they share a common purpose or relationship. However, where there is a “disunity of subject matter such that there is no discernible practical, rational or legitimate reason for combining the provisions

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<sup>21</sup> In *Nowak* and other One-Subject Rule cases, the Supreme Court of Ohio refers to “blatant” and “manifestly gross and fraudulent” violations of the One-Subject Rule interchangeably; both result in invalidation of the enactment. *See, e.g., Nowak* at ¶¶ 38-54 (using the terms interchangeably); *Hoover v. Board of Cty. Comm'rs, Franklin Cty.*, 19 Ohio St.3d 1, 6, 482 N.E.2d 575 (1985) (same).

in one Act,” *State ex rel. Ohio Civ. Serv. Emps. Ass’n v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, at ¶ 28 (“*OCSEA v. SERB*”) (internal quotation marks omitted), the Court must invalidate the law “in order to effectuate the purpose of the rule.” *In re Nowak* at ¶ 44 (quoting *Dix* at 145); see also *State ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 497, 1999-Ohio-123, 715 N.E.2d 1062; *State ex rel. Hinkle v. Franklin Cty. Bd. of Elections*, 62 Ohio St.3d 145, 148, 580 N.E.2d 767 (1991).

The Budget Bill blatantly violates the One-Subject Rule for the following reasons: (1) the Budget Bill contains at least four distinct subjects, although the primary subject is appropriations; (2) the Heartbeat, Written Transfer Agreement, and Parenting and Pregnancy Provisions are unrelated to the Budget Bill’s primary purpose – appropriations, budgeting, or revenue generation or restriction; and (3) one of the offending sets of provisions—the Parenting and Pregnancy Provisions—creates a separate, substantive program. In addition, while a plaintiff in a One-Subject Rule case is not required to introduce evidence of fraud or logrolling in order to prevail, such evidence here bolsters the conclusion that the Budget Bill violates the One-Subject Rule. The challenged provisions are controversial riders that did not pass on their own, but were instead inserted into the state biennial budget bill.

1. H.B. 59 Impermissibly Addresses at Least Four Distinct Subjects.

There is blatant disunity among the Budget Bill’s topics. It is undisputed that the Budget Bill is a general appropriations bill—“a measure before a legislative body which authorizes the expenditure of public moneys and

stipulat[es] the amount, manner, and purpose of the various items of expenditure.” *LetOhioVote.org v. Brunner*, 123 Ohio St.3d 322, 2009-Ohio-4900, 916 N.E.2d 462, at ¶ 28 (internal quotation marks and citations omitted). Indeed, the Budget Bill’s title confirms that its purpose is “to make operating appropriations for the biennium beginning July 1, 2013, and ending June 30, 2015; [and] to provide authorization and conditions for the operation of state programs....” 2013 Am.Sub.H.B. 59. The overwhelming majority of its sections are devoted to these purposes. *See, e.g.*, 2013 Am.Sub.H.B. No. 59, 285.10 and 301.10 (appropriating funds to ODH and ODJFS, respectively). Simply put, the Budget Bill’s primary subject is appropriations.

However, an examination of the bill in its entirety reveals that H.B. 59 covers at least four distinct subjects: appropriations, abortion, regulation of health care facilities, and parenting and pregnancy support. The Heartbeat Provisions plainly concern abortion and abortion providers, requiring a physician who intends to perform an abortion for a pregnant woman to attempt to detect a fetal heartbeat at least twenty-four hours before performing the abortion and to inform the woman in writing of any detectable heartbeat. 2013 Am.Sub.H.B. No. 59 (codified at R.C. 2919.191(A), 2919.192(A)). The Written Transfer Agreement Provisions advance a regulatory scheme for ASFs, requiring ASFs to obtain a written transfer agreement with a local hospital that specifies procedures for the transfer of patients from the ASF to the hospital, if and when transfer is necessary. *Id.* (codified at R.C. 3702.303(A)). In addition to the subject of health care facility regulation, the Written Transfer Agreement Provisions also address

the subject of abortion by restricting contractual relationships between public hospitals and abortion providers. *Id.* (codified at R.C. 3727.60(B)). The purpose of the Budget Bill's Parenting and Pregnancy Provisions is to create a new program that "provide[s] services for pregnant women and parents or other relatives caring for" infants and "[p]romote[s] childbirth, parenting and alternatives to abortion." *Id.* (codified at R.C. 5101.804(A)). Thus, the Budget Bill violates the One-Subject Rule by impermissibly addressing multiple topics: primarily appropriations, but also abortion, health care facility regulation, and parenting and pregnancy support.

2. The Challenged Provisions are Unrelated to Appropriations.

The three provisions at issue do not relate to H.B. 59's primary subject—appropriations. Appropriations bills, like the Budget Bill, "present[] a special temptation" to attach unrelated provisions, but the One-Subject Rule still applies. *Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 16, 1999-Ohio-77, 711 N.E.2d 203 (citation omitted). Such bills appropriate funds for an array of programs touching on many topics, but the different provisions must nevertheless be "all bound by the thread of appropriations." *OCSEA v. SERB*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, at ¶ 30 (quoting *Simmons-Harris* at 16). It is not enough for provisions in an appropriations bill to simply have an impact on the state expenditures: they must be directly related to the state budget and appropriations. *Id.* at ¶ 33 (citing *Simmons-Harris* at 16); *Riverside v. State*, 190 Ohio App. 3d 765, 2010-Ohio-5868, 944 N.E.2d 281, at ¶ 44 (10th Dist.); *cf. Cleveland v. State*, 2013-Ohio-1186, 989 N.E.2d 1072, at ¶ 52 (8th Dist.).

The Heartbeat, Written Transfer Agreement and Parenting and Pregnancy Provisions do not authorize the expenditure of state dollars or stipulate the amount, manner, or purpose of an expenditure. *See Brunner*, 123 Ohio St.3d 322, 2009-Ohio-4900, 916 N.E.2d 462, at ¶ 28. Neither the obligations they create nor the mechanisms for their enforcement bear any tangible relationship to the appropriation of state funds.

The Heartbeat and Written Transfer Agreement Provisions advance regulatory schemes related to abortion and health care facility licensing that are wholly independent of, and entirely unrelated to, appropriations. They do not, for example, attempt to prevent the misappropriation of state funds, *see* R.C. 117.103, or proscribe the illegal use of public benefits, *see* R.C. 2913.46. Nor do their enforcement mechanisms involve state budgeting. The Heartbeat Provisions' requirements are enforced through a civil action for compensatory and exemplary damages, professional discipline by the State Medical Board, and a criminal offense created by the bill named "performing or inducing an abortion without informed consent when there is a detectable fetal heartbeat." 2013 Am.Sub.H.B. No. 59 (codified at R.C. 2919.191(E), 2919.191(H), 2919.192(E), 4731.22(B)(47)). The Written Transfer Agreement Provisions are enforced through existing rules. *See* R.C. 3702.30.

Nor do the Parenting and Pregnancy Provisions appropriate state funds. Instead, they create a new program to channel federal TANF funds to private, nonprofit organizations and do not impact the state budget. These offending

provisions simply are not “bound by the thread of appropriations.” *OCSEA v. SERB*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, at ¶ 30.

Even if the provisions at issue could be found to have a slight impact on the state budget, such impact would not be demonstrative of a common purpose or relationship with appropriations. The Ohio Supreme Court has rejected the argument that a slight, indirect impact on the state budget is enough to tie the challenged provisions to the subject of appropriations. Accepting such a theory would “stretch[] the one-subject concept to the point of breaking,” and “render the one-subject rule meaningless in the context of appropriations bills because virtually any statute arguably impacts the state budget, even if only tenuously.” *OCSEA v. SERB*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, at ¶ 33.

Indeed, in a case similar to the one before the Court, the Eighth District Court of Appeals struck down provisions relating to local governments’ authority to regulate food nutrition information and consumer incentive items at food service operations, that were “tucked away” inside a “massive” omnibus budget bill. *Cleveland v. State*, 2013-Ohio-1186, 989 N.E.2d 1072, at ¶¶ 42-44. Although the court “accepted, in theory,” that the challenged provisions “could *potentially* impact the budgets of municipalities,” it rejected the State’s argument that “such a tenuous, tangential link” between the provisions and the remainder of the appropriations bill was sufficient to save it. *Id.* at ¶ 52 (Emphasis sic.). Accordingly, any alleged impact of the Heartbeat, Written Transfer Agreement, or Parenting and Pregnancy Provisions on the state budget would fail to bring the provisions within the Act’s overall purpose.

Clearly, no “practical, rational or legitimate reason[] for combining the provisions in one act” can be discerned here. *In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, 820 N.E.2d 335 at ¶ 44. Indeed, the Legislative Service Commission’s final analysis of H.B. 59 offers no fiscal effect note for the Heartbeat Provisions or the public hospital exclusion in the Written Transfer Agreement Provisions.<sup>22</sup> In short, there is no common purpose or relationship among the Budget Bill’s various topics; its provisions are not all bound by the thread of appropriations. Thus, the Budget Bill violates the One-Subject Rule.

3. H.B. 59’s Parenting and Pregnancy Provisions Create a Substantive Program Within a General Appropriations Bill, Which is a Separate Violation of the One-Subject Rule.

Even if this Court were to find that the Parenting and Pregnancy Provisions shared in the Budget Bill’s primary purpose of appropriations, the provisions still violate the One-Subject Rule because they create a substantive program. The “creation of a substantive program in a general appropriations bill violates the one-subject rule,” regardless of whether the bill appropriates funds

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<sup>22</sup> Ohio Legislative Serv. Comm’n, *H.B. 59 Comparison Document: As Enacted—Department of Health*, at 3, 22, available at <http://www.lsc.state.oh.us/fiscal/comparedoc130/enacted/doh.pdf> (accessed Sept. 5, 2014). The Commission did note that, with regard to the other Written Transfer Agreement Provisions, the Department of Health (“*ODH*”) could experience a “[p]otential increase in inspection costs if ODH does not currently inspect an ASF when an ASF applies for license renewal” and a “[c]orresponding gain in revenue if the number of inspections are [*sic*] increased,” *H.B. 59 Comparison Document: As Enacted—Department of Health*, Ohio Legislative Serv. Comm’n, at 20, <http://www.lsc.state.oh.us/fiscal/comparedoc130/enacted/doh.pdf> (accessed Sept. 5, 2014) (Emphasis added). But this speculative link between the provisions and the budget is precisely the kind of connection that has been held to be too tenuous to bring offending provisions within the purpose of the budget bill. *Cleveland v. State*, 2013-Ohio-1186, 989 N.E.2d 1072, at ¶ 52.

for the program. *Simmons-Harris*, 86 Ohio St.3d at 17, 711 N.E.2d 203. The Ohio Parenting and Pregnancy Program is a new, significant, substantive program.

In *Simmons-Harris v. Goff*, the Supreme Court reviewed the constitutionality of a general appropriations bill, like H.B. 59, that created and funded the Pilot Project Scholarship Program, a school voucher program for students residing within the Cleveland City School District. *Id.* at 1. The voucher program required the state to provide scholarships directly to Cleveland students to attend a private school or a public school in a neighboring public school district. *Id.* The Supreme Court struck the program, despite its apparent relationship to state appropriations, because it was obviously a rider within an appropriations bill, creating a separate, controversial, and substantive program. *Id.* at 16-17.

Like the voucher program, the Ohio Parenting and Pregnancy Program functions as a pass-through program by which public funds are distributed to countless private entities for limited, statutorily prescribed purposes, and the amount of funds given each year is limited by appropriations. *See Id.* at 1; H.B. 59, 130th Gen. Assemb. (Ohio 2013) (codified at R.C. 5101.804)). But unlike the appropriations bill at issue in *Simmons-Harris*, H.B. 59 does not itself appropriate money to the Parenting and Pregnancy Program, which makes H.B. 59 even more problematic. *Simmons-Harris* at 1; 2013 Am.Sub.H.B. No. 59, 301.10. Instead, funding for the Program will likely be redirected from other programs funded with TANF dollars, in the discretion of the Director of ODJFS. Ohio Legislative Serv. Comm'n, *H.B. 59 Comparison Document: As Enacted—*

*Department of Job and Family Services*, at 8, <http://www.lsc.state.oh.us/fiscal/comparedoc130/enacted/jfs.pdf> (accessed July 23, 2014). Thus, the Parenting and Pregnancy Program is both unrelated to the budget and a significant, substantive program that was created in a general appropriations bill. For these reasons, the Budget Bill violates the One-Subject Rule.

4. The Challenged Provisions Result from Logrolling, Which the One-Subject Rule Is Intended to Prevent.

The challenged provisions were inserted in the Budget Bill as riders that undermine the One-Subject Rule’s purpose of promoting an “orderly and fair legislative process” by prohibiting “logrolling.” *Dix*, 11 Ohio St.3d at 142-143, 464 N.E.2d 153. Logrolling is defined as “the practice of combining and thereby obtaining passage for several distinct legislative proposals that would probably have failed to gain majority support if presented and voted on separately.” *See In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, 820 N.E.2d 335 at ¶ 31 (citing *Sheward*, 86 Ohio St.3d at 495-96, 1999-Ohio-123, 715 N.E.2d 1062). Such legislative proposals are also known as riders. *OCSEA v. SERB*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, at ¶ 31 (explaining that a rider is a “provision included in a bill that is so certain of adoption that the rider will secure adoption not on its own merits, but on the merits of the measure to which it is attached.”). As the Ohio Supreme Court has explained, the One-Subject Rule accomplishes its goal of promoting a fair legislative process by “disallowing unnatural combinations of provisions in acts, i.e., those dealing with more than one subject, on the theory that the best explanation for the unnatural combination is a tactical one—logrolling.” *Dix* at 143.

The Court has been emphatic that a violation of the One-Subject Rule “is readily ascertainable from an examination of the bill itself” and that a plaintiff need not introduce evidence of fraud or logrolling to prevail. *Dix* at 145; *see also In re Nowak* at ¶ 71 (“[T]he one-subject provision does not require evidence of fraud or logrolling beyond the unnatural combinations [of provisions] themselves.”). Any other approach would inappropriately entangle the court in the legislative process. *Id.* However, notwithstanding this fact, there is clear evidence that logrolling occurred when H.B. 59 was passed.

A review of the Budget Bill clearly evidences that the Heartbeat, Written Transfer Agreement, and Parenting and Pregnancy Provisions were impermissible riders because: (1) their passage was the product of an unfair legislative process; (2) the provisions comprise only a fraction of the overall bill; and (3) they are controversial provisions whose passage was assured by tucking them away in the must-pass appropriations bill.

First, the challenged provisions are clearly riders because they were inserted into the Budget Bill unfairly and without public input. For example, the Heartbeat and Written Transfer Agreement Provisions were not considered in the usual committee process. *Cf. Cleveland v. State*, 2013-Ohio-1186, 989 N.E.2d 1072, at ¶ 44. Instead, the Heartbeat Provisions were attached to H.B. 59 in the Conference Committee at the last minute, after the House and the Senate had each debated and approved of a version of the bill. Neither chamber nor any of their standing committees had an opportunity to vet the Heartbeat Provisions.

And the public was certainly not given an opportunity to voice its views on the provisions.

Additionally, the Written Transfer Agreement Provisions were initially added to H.B. 59 in the House Committee during its final hearing, despite numerous previous hearings on the bill. No opportunity for public testimony was given. The provisions were later amended to target abortion providers in the final hearing of the Senate Committee, again despite numerous prior hearings on the bill and again without an opportunity for public testimony. *See* 2013 Am.Sub.H.B. 59 (codified at R.C. 3727.60). In short, the Heartbeat and Written Transfer Agreement provisions, which are inherently controversial and of significant constitutional import, were not debated and approved during a fair and open legislative process. *Cf. Cleveland v. State* at ¶¶ 44-45 (noting that the lack of testimony and hearings on nutrition- and food-service-related provisions in a budget bill “create[d] a strong suggestion” of impermissible logrolling).

Second, the challenged provisions comprise only a minute fraction of the many thousands of provisions that make up the Budget Bill. Like *Simmons-Harris*, 86 Ohio St.3d at 17, 711 N.E.2d 203, in which the Ohio Supreme Court struck provisions that totaled only ten pages of a more than 1,000-page appropriations bill and *Cleveland v. State*, in which the Eighth District invalidated a two-page rider in a 3,000-page appropriations bill, the provisions here comprise only twenty-seven pages of an appropriations bill that exceeds 3,700 pages. These newly enacted provisions account for a mere five of the 2,079

sections of the Revised Code amended by H.B. 59 and only thirteen of the 345 new sections created by the bill.

Third, the challenged provisions were unlikely to pass independently from the Budget Bill and were clearly riders that were “tucked away” in the must-pass Budget Bill to assure their passage. *See Cleveland v. State* at ¶ 44. The temptation to include riders on bills is especially great when the bill is “as important and likely of passage as an appropriations bill.” *Simmons-Harris* at 16. The Heartbeat Provisions exemplify this problem. They borrow heavily from the language contained in an earlier bill that was unable to pass—2011 Am.Sub.H.B. No. 125. This prior bill “failed to gain majority support” in the 129th General Assembly, *In re Nowak*, 104 Ohio St. 3d at 472, 2004-Ohio-6777 at ¶ 31, but the Heartbeat Provisions nevertheless became law as a rider to the Budget Bill. Furthermore, as the Ohio Supreme Court has noted, the addition of riders is especially particularly troubling where the subjects sought to be regulated are “inherently controversial and of significant constitutional importance.” *Simmons-Harris* at 16. Like the school voucher program created in an appropriations bill in *Simmons-Harris v. Goff*, these abortion restrictions are “inherently controversial and of significant constitutional importance,” and there is “no rational reason” for their inclusion in the Budget Bill. *Id.* at 16-17.

In sum, the challenged provisions were buried in an omnibus appropriations bill instead of debated and passed on their own merits. Therefore, H.B. 59 frustrates the One-Subject Rule’s purpose of preventing logrolling and ensuring “a more orderly and fair legislative process.” *Dix*, 11 Ohio St. 3d at 142-

43; *In re Nowak* at ¶ 31. This Court may invalidate the Budget Bill without drawing any conclusions on logrolling; however, there is clear evidence that the challenged provisions, especially the Heartbeat Provisions, were added “for tactical reasons.” *Id.* Striking the offensive provisions will foster the constitutional purpose of prohibiting logrolling.

**D. H.B. 59’s Heartbeat, Written Transfer Agreement, and Parenting and Pregnancy Provisions Can Be Severed and Stricken.**

In a One-Subject Rule challenge, the plaintiff places the entire enactment at issue, as Preterm has done here. *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, at ¶ 79. This case, therefore, “is a challenge to the authority of the General Assembly to enact the bill, not a challenge to the underlying statutory provisions of the bill.” *Rumpke Sanitary Landfill, Inc., v. Colerain Twp.*, 128 Ohio St.3d 41, 2012-Ohio-3914, 941 N.E.2d 1161, at ¶ 20. Nonetheless, the “[C]ourt is permitted to ascertain which subject is primary and which subject is an unrelated add-on. The former is then saved by severing the latter.” *Sheward*, 86 Ohio St.3d, 500, 1999-Ohio-123, 715 N.E.2d 1062. Likewise, this Court can sever provisions creating a substantive program in an appropriations bill. *See Simmons-Harris* at 17. Thus, in cases like this, the Supreme Court of Ohio has “sever[ed] the offending portion of the bill to cure the defect and save the portions of [the bill] other than [the challenged provisions] which do relate to a single subject.” *Hinkle*, 62 Ohio St.3d at 149, 580 N.E.2d 767 (citations omitted).

Severance is the appropriate remedy here. H.B. 59’s primary subject is appropriations. Because all of the offending provisions are unrelated to

appropriations, and because the Parenting and Pregnancy Provisions impermissibly create a substantive program in a general appropriations bill, the provisions can be severed and stricken from H.B. 59 without compromising the bill's primary subject. Accordingly, the Court should sever the Heartbeat, Written Transfer Agreement, and Parenting and Pregnancy Provisions from H.B. 59.

## V. CONCLUSION

H.B. 59 violates the One-Subject Rule of the Ohio Constitution. Because there are no genuine issues of material fact and Plaintiff's motion can be decided as a matter of law, Plaintiff respectfully requests this Court enter summary judgment in favor of Preterm and against the Defendants on Preterm's claim. This Court should also sever the offending provisions, declare them void and unenforceable, and permanently enjoin their enforcement. In accordance with Loc.R. 11(I)(2) of the Cuyahoga County Court of Common Pleas, General Division, Preterm respectfully requests that this Court set oral argument on this motion.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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