



TO: Senate Health & Human Services Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: June 23, 2015
RE: Senate Bill 127

To Chairwoman Jones, Vice Chair Lehner, Ranking Minority Member Tavares, and members of the Senate Health & Human Services 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 127.

As this committee knows, SB 127 is legislation to ban abortions in Ohio at the 20th week of pregnancy. As currently written, this bill seeks to do so much more.

A PLAN TO END THE VIABILITY STANDARD

The most sweeping change SB 127 would impose is to require a brand new standard, contrary to U.S. Supreme Court precedent, for when abortions may occur in Ohio. In *Roe v. Wade* and, later, in *Planned Parenthood of Southeast Pennsylvania v. Casey*, the Supreme Court made clear that laws outlawing abortion before a fetus reaches viability will not win the Court's approval.

Two other states, Arizona and Idaho, have passed 20-week bans and seen those laws challenged in federal court. In January 2014, the Supreme Court declined Arizona's appeal of a federal appellate court ruling striking down its 20-week ban. In that case, the U.S. Court of Appeals for the Ninth Circuit reiterated:

"Since Roe v. Wade, the Supreme Court case law concerning the constitutional protection accorded women with respect to the decision whether to undergo an abortion has been unalterably clear regarding one basic point, although it has varied in other respects: a woman has a constitutional right to choose to terminate her pregnancy before the fetus is viable".

Last month, Idaho's law met a similar fate from the Ninth Circuit when it upheld a lower court's ruling against that state's law. To date, these are the only two federal lawsuits challenging 20-week bans.

Because SB 127 seeks to replace the viability standard the Supreme Court of the United States has declined to change for 42 years, it has much in common with House Bill 69, the so-called "Heartbeat Bill". While the ban dates differ between the two bills, the goal is identical.

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SCARING MEDICAL PROFESSIONALS

Legislation like SB 127 has another clear purpose. Like past and present legislation in Ohio, this bill introduces additional vague and unclear language to state law that will only cause unneeded confusion and criminalization of medical professionals.

Under SB 127, a violation of the 20-week ban can be a fourth degree felony and a mandatory license suspension for a doctor. If a doctor does think an abortion fits into one of the narrow exceptions, she must have a second doctor present for the procedure and yet another unknown physician, who is not required to be present at the procedure, sign off on the medical necessity of the abortion. She must also ensure the facility has "appropriate neonatal services for premature infants." How is it determined whether the neonatal services are "appropriate?" Who is responsible for finding the second doctor to sign-off on the abortion? Who decides whether that second doctor is an acceptable signer? What are the ramifications if someone somewhere deems one or any of these requirements insufficient?

The broad and uncertain language found in these restrictions is part of a deliberate trend in Ohio and elsewhere to drive medical professionals out of business, shut down clinics and make the process of obtaining a medically necessary abortion overly bureaucratic and exceedingly difficult.

THE EFFECT ON WOMEN

Every woman's circumstances are different. Even if we may disagree on abortion, we should agree that these decisions are best made by the woman, in consultation with her doctor and family. We know a significant number of abortions that occur 20 weeks or after are related to women's physical health. We also know some are related to serious and irreversible fetal anomalies, rape, incest and mental health concerns. SB 127 makes exceptions for none but the mother's physical health. Passage of SB 127 will ensure these abortions are complicated and performed under a cloud of uncertainty and intimidation.

Once again, SB 127 finds politicians and unelected bureaucrats with ever more control of intensely private and personal decisions, replacing their ideology with the care and advice of doctors, the counsel of clergy, and the determinations of women and their loved ones. We urge the members of this committee to reject this risky and unneeded bill.