Fanon A. Rucker (#0066880)
B. Jessie Hill (#0074770)
Freda J. Levenson (#0045916)

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

PLANNED PARENTHOOD SOUTHWEST OHIO REGION c/o Fanon A. Rucker The Cochran Firm 119 E. Court St., Suite 102 Cincinnati, OH 45202	:	Case No. A21 00870 Judge Alison Hatheway
SHARON LINER, M.D. c/o Fanon A. Rucker The Cochran Firm 119 E. Court St., Suite 102 Cincinnati, OH 45202	:	**[PROPOSED] SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**
PLANNED PARENTHOOD OF GREATER OHIO c/o Fanon A. Rucker The Cochran Firm 119 E. Court St., Suite 102 Cincinnati, OH 45202	:	
PRETERM-CLEVELAND c/o B. Jessie Hill ACLU of Ohio 4506 Chester Ave. Cleveland, OH 44103	:	
WOMEN'S MED GROUP PROFESSIONAL CORPORATION c/o B. Jessie Hill ACLU of Ohio 4506 Chester Ave. Cleveland, OH 44103	:	
NORTHEAST OHIO WOMEN'S CENTER LLC c/o B. Jessie Hill ACLU of Ohio 4506 Chester Ave. Cleveland, OH 44103	:	

Plaintiffs,

vs.

OHIO DEPARTMENT OF HEALTH
246 N. High Street
Columbus, OH 43215

BRUCE VANDERHOFF
Director, ODH
246 N. High Street
Columbus, OH 43215

STATE MEDICAL BOARD OF OHIO
30 E. Broad Street, 3rd Floor
Columbus, OH 43215

MELISSA POWERS
Hamilton County Prosecutor
230 E. Ninth Street, Suite 4000 Cincinnati, OH 45202

EMILY SMART WOERNER
Cincinnati City Solicitor
801 Plum Street, Suite 214
Cincinnati, OH 45202

G. GARY TYACK
Franklin County Prosecutor
373 S. High Street, 14th Floor Columbus, OH 43215

ZACH KLEIN
Columbus City Attorney
77 N. Front Street
Columbus, OH 43215

MICHAEL C. O'MALLEY
Cuyahoga County Prosecutor
Justice Center, Courts Tower
1200 Ontario Street, 9th Floor
Cleveland, OH 44113

MARK GRIFFIN
Cleveland Law Director and Chief Legal Counsel

601 Lakeside Ave., Room 106 :
Cleveland, OH 44114 :
:
MARLENE J. RIDENOUR :
Bedford Heights Director of Law :
5661 Perkins Road :
Bedford Heights, OH 44146 :
:
MATHIAS HECK, JR. :
Montgomery County Prosecutor :
301 W. Third Street :
P.O. Box 972 :
Dayton, OH 45402 :
:
THEODORE A. HAMER :
Kettering Director of Law :
3600 Shroyer Road :
Kettering, OH 45429 :
:
ELLIOT KOLKOVICH :
Summit County Prosecutor :
53 University Ave. :
Akron, OH 44308 :
:
JANET CIOTOLA :
Cuyahoga Falls Director of Law :
2310 Second Street :
Cuyahoga Falls, OH 44221 :
:
Defendants. :

INTRODUCTION

1. This is a constitutional challenge to Am.S.B. No. 27, 2020 Ohio Laws File 77 ("SB27") (attached hereto as Exhibit A), seeking declaratory and injunctive relief. By effecting a sea-change in the management of tissue from a procedural abortion, SB27 will eliminate access to procedural abortion in the first 13 weeks of pregnancy and to abortion entirely at certain gestational ages. For abortions beyond 13 weeks of pregnancy, to the extent compliance is even possible, SB27 will result in significant harm to Plaintiffs and their patients. This violates

multiple provisions of the Ohio Constitution, including the explicit right to abortion that Ohio voters enshrined in November 2023. Ohio Const. Article I, Section 22 ("The Right to Reproductive Freedom with Protections for Health and Safety").

2. Article I, Section 22 commands that the State "shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against" an individual voluntarily exercising their right to reproductive freedom, or an individual or entity helping them do so, unless the State demonstrates "that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care."

3. SB27 violates Section 22's mandate by imposing requirements that directly and indirectly burden, penalize, prohibit, and interfere with access to abortion, and discriminate against abortion patients and abortion providers, without any health benefit.

4. SB27 singles out tissue from abortion—more specifically, tissue from procedural abortion—and requires it to be cremated or interred. Laws and regulations governing the disposal of infectious waste have always applied to such tissue and to all other tissue removed during medical procedures and surgeries, including identical tissue removed using an identical procedure after a miscarriage and preimplantation embryos created for the purpose of in vitro fertilization. Infectious waste generally must be treated by incineration, autoclaving, or chemical treatment.

5. If SB27's disposition requirements are enforced, Plaintiffs will be unable to provide procedural abortions during the first trimester of pregnancy, when the vast majority of patients obtain this care.[1] Even when Plaintiffs are able to provide procedural abortions, compliance with SB27's regulations will be extremely difficult, if not impossible. To the extent Plaintiffs are able to comply, patients will necessarily face steep cost increases. Indeed, because

[1] Ohio Dept. of Health, *Induced Abortions in Ohio, 2022 Report,* at 10–11 (2023), bit.ly/3J2TDrH (accessed Apr. 2, 2024) [hereinafter "*ODH 2022 Report*"].

of its interaction with other laws, SB27 will effectively result in a total ban on abortion from 10 weeks of pregnancy until about 13 weeks of pregnancy.

6. As a result, for many patients SB27 will significantly delay access to this vital and time-sensitive health care until later in pregnancy, when the procedure is more expensive and carries greater health risks. Some patients will end up seeking to terminate their pregnancies outside the medical system, or will be forced to travel out of state to obtain care, if they can afford to do so. Others will have to carry a pregnancy to term against their wishes.

7. SB27 provides no health benefit whatsoever to patients. To the contrary, unnecessarily delaying the receipt of time-sensitive abortion care is detrimental to patients' health and well-being and subjects them to increased medical risk.

8. Relief from this Court is necessary to prevent grievous harm to Plaintiffs and their patients, and to ensure patients are able to exercise their constitutionally protected rights to reproductive freedom, due process, and equal protection without burdensome and medically unjustified government interference.

PARTIES

A. Plaintiffs

9. Plaintiff Planned Parenthood Southwest Ohio Region ("PPSWO") is a nonprofit corporation organized under the laws of the State of Ohio. PPSWO and its predecessor organizations have provided a broad range of high-quality reproductive health care to patients in southwest Ohio since 1929. PPSWO's ambulatory surgical facility ("ASF"), located in Cincinnati, provides procedural abortions through 21 weeks, 6 days, as measured from the first day of a patient's last menstrual period ("LMP"). The physicians at PPSWO who provide procedural abortions risk criminal penalties, loss of their medical licenses, civil penalties, and

civil suits if they violate SB27. PPSWO faces the loss of its ASF license, civil penalties, and civil suits for violations of SB27, as well as criminal penalties for itself and its staff. If PPSWO has to comply with SB27, its providers will not be able to continue providing procedural abortions prior to around 13 weeks LMP. Even after that time, the law will impose significant monetary and other burdens, which will result in patients being delayed or prevented entirely from obtaining abortions, in violation of their constitutional rights. PPSWO sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

10. Plaintiff Sharon Liner, M.D., is a physician licensed to practice medicine in Ohio with over 20 years of experience in reproductive health care. Dr. Liner is PPSWO's Medical Director, and in that role, she supervises physicians providing abortions, develops PPSWO's policies and procedures, and provides comprehensive reproductive health care services including procedural abortion. Dr. Liner has been providing abortions since 2002. Dr. Liner faces criminal penalties, loss of her medical license, civil penalties, and civil suits if she violates SB27. If Dr. Liner has to comply with SB27, she will not be able to continue providing procedural abortions prior to around 13 weeks LMP. Even after that time, the law will impose significant monetary and other burdens, which will result in patients being delayed or prevented entirely from obtaining abortions, in violation of their constitutional rights. She sues on her own behalf and on behalf of her patients.

11. Plaintiff Planned Parenthood of Greater Ohio ("PPGOH") is a nonprofit corporation organized under the laws of the State of Ohio. PPGOH was formed in 2012 through a merger of several local and regional Planned Parenthood affiliates that had served patients in Ohio for decades. PPGOH serves patients in northern, eastern, and central Ohio. Two PPGOH ASFs, located in East Columbus and Bedford Heights, provide procedural abortions through 19

weeks, 6 days LMP. The physicians at PPGOH who provide procedural abortions risk criminal penalties, loss of their medical licenses, civil penalties, and civil suits if they violate SB27. PPGOH faces the loss of its ASF license, civil penalties, and civil suits for violations of SB27, as well as criminal penalties for itself and its staff. If PPGOH has to comply with SB27, its providers will not be able to continue providing procedural abortions prior to around 13 weeks LMP. Even after that time, the law will impose significant monetary and other burdens, which will result in patients being delayed or prevented entirely from obtaining abortions, in violation of their constitutional rights. PPGOH sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

12. Plaintiff Preterm-Cleveland ("Preterm"), a nonprofit corporation organized under the laws of the State of Ohio, has operated a reproductive health care clinic in Cleveland, Ohio, since 1974. Preterm provides reproductive and sexual health care services, including procedural abortions through 21 weeks, 6 days LMP. The physicians at Preterm who provide procedural abortions risk criminal penalties, loss of their medical licenses, civil penalties, and civil suits if they violate SB27. Preterm faces the loss of its ASF license, civil penalties, and civil suits for violations of SB27, as well as criminal penalties for itself and its staff. If Preterm has to comply with SB27, its providers will not be able to continue providing procedural abortions prior to around 13 weeks LMP. Even after around 13 weeks LMP, the law will impose significant monetary and other burdens, which will result in patients being delayed or prevented entirely from obtaining abortions, in violation of their constitutional rights. Preterm sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

13. Plaintiff Women's Med Group Professional Corporation ("WMGPC") owns and operates Women's Med Center of Dayton ("WMCD") in Kettering, Ohio. WMGPC and its

predecessors have been providing abortions in the Dayton area since 1975. WMCD provides procedural abortions through 21 weeks, 6 days LMP. The physicians at WMGPC who provide procedural abortions risk criminal penalties, loss of their medical licenses, civil penalties, and civil suits if they violate SB27. WMGPC faces the loss of its ASF license, civil penalties, and civil suits for violations of SB27, as well as criminal penalties for itself and its staff. If WMGPC has to comply with SB27, its providers will not be able to continue providing procedural abortions prior to around 13 weeks LMP. Even after that time, the law will impose significant monetary and other burdens, which will result in patients being delayed or prevented entirely from obtaining abortions, in violation of their constitutional rights. WMGPC sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

14. Plaintiff Northeast Ohio Women's Center, LLC ("NEOWC") is a corporation organized under the laws of the State of Ohio, which operates an ASF in Cuyahoga Falls, where it provides reproductive health care, including procedural abortions. NEOWC provides procedural abortions up to 17 weeks LMP at its Cuyahoga Falls location. The physicians at NEOWC who provide procedural abortions risk criminal penalties, loss of their medical licenses, civil penalties, and civil suits if they violate SB27. NEOWC faces the loss of its ASF license, civil penalties, and civil suits for violations of SB27, as well as criminal penalties for itself and its staff. If NEOWC has to comply with SB27, its providers will not be able to continue providing procedural abortions prior to around 13 weeks LMP. Even after that time, the law will impose significant monetary and other burdens, which will result in patients being delayed or prevented entirely from obtaining abortions, in violation of their constitutional rights. NEOWC sues on behalf of itself; its current and future staff, officers, and agents; and its patients.

15. Plaintiffs together represent all clinics providing procedural abortions in Ohio. As

abortion providers, Plaintiffs assist individuals in exercising their right to abortion.

B. Defendants

16. Defendant ODH can suspend or revoke Plaintiffs' ASF licenses, order Plaintiffs' ASFs to cease operations, and/or impose civil penalties on Plaintiffs' ASFs for violations of SB27.

17. Defendant Bruce Vanderhoff is the Director of ODH. As Director, he can suspend or revoke Plaintiffs' ASF licenses, order Plaintiffs' ASFs to cease operations, and/or impose civil penalties on Plaintiffs' ASFs for violations of SB27. He is sued in his official capacity.

18. Defendant State Medical Board of Ohio ("Medical Board") is charged with enforcing physician licensing. The Medical Board has authority to act against a physician's license based on a commission of an unlawful act, including by suspending or revoking the license. The Medical Board may also impose civil penalties for violations of SB27.

19. Defendant Melissa Powers is the Hamilton County Prosecutor. She is responsible for the enforcement of all of the criminal laws in Hamilton County, where PPSWO's ASF is located and where Dr. Liner provides abortions, including the criminal provisions contained in SB27. She is sued in her official capacity.

20. Defendant Emily Smart Woerner is the Cincinnati City Solicitor. She is responsible for the prosecution of all misdemeanor offenses occurring in the City of Cincinnati, where PPSWO's ASF is located and where Dr. Liner provides abortions, including the criminal provisions contained in SB27. She is sued in her official capacity.

21. Defendant G. Gary Tyack is the Franklin County Prosecutor. He is responsible for the enforcement of all of the criminal laws in Franklin County, where PPGOH's East Columbus health center is located, including the criminal provisions contained in SB27. He is sued in his

official capacity.

22. Defendant Zach Klein is the Columbus City Attorney. He is responsible for the prosecution of all misdemeanor offenses occurring in the City of Columbus, where PPGOH's East Columbus health center is located, including the criminal provisions contained in SB27. He is sued in his official capacity.

23. Defendant Michael C. O'Malley is the Cuyahoga County Prosecutor. He is responsible for the enforcement of all of the criminal laws in Cuyahoga County, where Preterm's clinic and PPGOH's Bedford Heights health center are located, including the criminal provisions contained in SB27. He is sued in his official capacity.

24. Defendant Mark Griffin is the Law Director and Chief Legal Counsel for the City of Cleveland. He is responsible for the prosecution of all misdemeanor offenses occurring in the City of Cleveland, where Preterm's clinic is located, including the criminal provisions contained in SB27. He is sued in his official capacity.

25. Defendant Marlene J. Ridenour is the Director of Law for the City of Bedford Heights. She is responsible for the prosecution of all misdemeanor offenses occurring in the City of Bedford Heights, where PPGOH's Bedford Heights health center is located, including the criminal provisions contained in SB27. She is sued in her official capacity.

26. Defendant Mathias H. Heck, Jr. is the Montgomery County Prosecutor. He is responsible for the enforcement of all of the criminal laws in Montgomery County, where WMGPC's WMCD facility is located, including the criminal provisions contained in SB27. He is sued in his official capacity.

27. Defendant Theodore A. Hamer is the Director of Law for the City of Kettering. He is responsible for the prosecution of all misdemeanor offenses occurring in the City of

Kettering, where WMGPC's WMCD facility is located, including the criminal provisions contained in SB27. He is sued in his official capacity.

28. Defendant Elliot Kolkovich is the Summit County Prosecutor. He is responsible for the enforcement of all of the criminal laws in Summit County, where NEOWC's Cuyahoga Falls health center is located, including the criminal provisions contained in SB27. He is sued in his official capacity.

29. Defendant Janet Ciotola is the Director of Law for the City of Cuyahoga Falls. She is responsible for the prosecution of all misdemeanor offenses occurring in the City of Cuyahoga Falls, where NEOWC's Cuyahoga Falls health center is located, including the criminal provisions contained in SB27. She is sued in her official capacity.

JURISDICTION AND VENUE

30. The Court has jurisdiction over this complaint pursuant to R.C. 2721.02, 2727.02, and 2727.03.

31. Venue is proper in this Court pursuant to Civ.R. 3(C)(6), because Plaintiffs PPSWO and Dr. Liner provide procedural abortions in Hamilton County and thus the claims for relief arise in part in Hamilton County. Venue is also proper in this Court under Civ.R. 3(C)(4), because Defendants Powers and Woerner maintain their principal offices in Hamilton County.

FACTUAL ALLEGATIONS

A. Abortion in Ohio

32. Legal abortion is one of the safest medical procedures in the United States.[2] It is explicitly protected by the Ohio Constitution.

[2] Natl. Academies of Sciences, Eng. & Medicine, *The Safety & Quality of Abortion Care in the United States*, at 77–78, 162–63 (2018), https://www.nap.edu/catalog/24950/the- safety-and-quality-of-abortion-care-in-the-united-states (accessed Apr. 2, 2024).

33. There are two main methods of abortion: medication abortion and procedural abortion. Both medication abortion and procedural abortion are effective in terminating a pregnancy.

34. Medication abortion typically involves a combination of two pills, mifepristone and misoprostol, which expel the contents of the uterus in a manner similar to a miscarriage after the patient has left the clinic and in a location of the patient's choosing, typically their own home. Plaintiffs provide medication abortion up to 10 weeks LMP.[3]

35. Despite sometimes being referred to as "surgical abortion," procedural abortion is not what is commonly understood to be "surgery," as it involves no incisions. In a procedural abortion, the clinician uses suction from a thin, flexible tube and, in some instances, other instruments, to empty the contents of the patient's uterus.

36. According to data from ODH, in 2022, approximately 50% of abortions in the state were procedural abortions.[4] More than 66% of all abortions in Ohio occurred within the first 8 weeks of pregnancy in 2022, and an additional 22.5% occurred between 9 and 12 weeks.[5] Procedural abortion is legal in Ohio up to 22 weeks LMP.[6]

37. Because Ohio law restricts medication abortion to the first 10 weeks of pregnancy,[7] procedural abortion is the only method of abortion available after 10 weeks LMP, and for some, it is the only method available at any gestational age. For example, a patient may

[3] R.C. 2919.123 restricts Ohio abortion providers to prescribing the first drug in the medication abortion regimen according to the federally approved label, which indicates use of mifepristone only through 70 days LMP. *See* U.S. Food & Drug Administration, *Mifeprex Label*, https://www.accessdata.fda.gov/drugsatfda_docs/label/2023/020687Orig1s025Lbl.pdf (last updated Jan. 2023). Accordingly, Plaintiffs provide medication abortion through 70 days LMP (up to 10 weeks). However, medical evidence supports using mifepristone later in pregnancy.

[4] *ODH 2022 Report*, *supra* note 1, at 23 Table 7.

[5] *Id.* at 10–11 Table 2.

[6] R.C. 2919.201. A full-term pregnancy is approximately 40 weeks LMP.

[7] *See* R.C. 2919.123.

be allergic to one of the medications used in medication abortion or may have medical conditions that make procedural abortion relatively safer. Some patients strongly prefer procedural abortion, including because they perceive it to be less painful or because it can be done quickly at the health center and generally allows them to return to work, childcare, or other responsibilities shortly afterward. Additionally, having a medication abortion may be an unsafe or less safe option, including for patients who are in abusive situations, where it could be dangerous for a partner or person in their home to know they are having an abortion.

B. Preexisting Laws Relating to Disposition of Human Tissue

38. After a procedural abortion, Plaintiffs safely dispose of embryonic and fetal tissue—along with other pregnancy tissue, such as placenta, gestational sac, and umbilical cord—in accordance with all laws and regulations in effect before SB27 was passed.

39. As part of ASF licensure, Plaintiffs' ASFs must establish and follow written infection control policies and procedures that address the "disposal of biological waste." Ohio Adm.Code 3701-83-09(D)(3).

40. The disposition of tissue following a procedural abortion is subject to regulation as infectious waste. *See* R.C. 3734.01(R); Ohio Adm.Code 3745-27-01(I)(6)(c). Infectious waste, which can include blood or tissue removed from a person during a medical procedure, must be treated by incineration, autoclaving, chemical treatment, or an alternative treatment technology approved by the director of the Ohio Environmental Protection Agency ("EPA") and then disposed of as solid waste. Ohio Adm.Code 3745-27-32(A) and (I)(18).

41. Upon information and belief, neither cremation nor interment, the methods of disposal required by SB27, have been approved as alternative treatment technologies.[8]

[8] *See* Ohio Environmental Protection Agency, *Currently Approved Infectious Waste Alternative Treatment Technologies*, https://epa.ohio.gov/divisions-and-offices/materials-and-

42. Separate from the laws that govern disposal of infectious waste, there are laws that govern disposition of dead human bodies and body parts. For instance, a crematory operator generally may not cremate a dead human body (or a dead fetus of at least 20 weeks gestation) unless it has obtained a death certificate, burial permit, and cremation authorization form. R.C. 4717.23(A) (dead body) and 3705.20(B) (fetal death). A crematory may not simultaneously cremate more than one decedent except in very limited circumstances. R.C. 4717.24(A)(7) and 4717.26(D). Tissue from more than one living individual that has been removed for medical purposes during biopsy, treatment, or surgery may be cremated simultaneously only if authorized on a cremation authorization form. R.C. 4717.20(C) and 4717.26(D). Similarly, a burial permit is required before a dead body (or a dead fetus of at least 20 weeks gestation) is interred, and a death certificate is needed to obtain a permit. R.C. 3705.17 (dead body) and 3705.20(B) (fetal death).

43. There is no medical or public health reason to dispose of embryonic or fetal tissue any differently from all of the other tissue that is disposed as described above. Embryonic and fetal tissues do not present a risk of infection greater than that of other forms of tissue removed from a patient's body. Incineration—the method currently used for disposal of embryonic and fetal tissue—is a safe method to dispose of tissue.

C. Senate Bill 27 and Its Implementing Rules

44. SB27 drastically alters the disposition requirements for "fetal remains," which SB27 defines as "the product of human conception that has been aborted," i.e., a "zygote, blastocyte, embryo, or fetus." R.C. 3726.01(C).

---

waste-management/reports-and-data/approved-iw-treatment-technologies (accessed Apr. 2, 2024). Although incineration is generally the same process as cremation, incineration is not allowed in a crematory facility, *see* R.C. 4717.01(K), and SB27 requires cremation in a licensed crematory facility, R.C. 3726.02(B).

45. Under SB27, embryonic and fetal tissue from a procedural abortion at an abortion facility must be disposed of by cremation or interment. R.C. 3726.02(A). "Cremation" means "the technical process of using heat and flame to reduce human or animal remains to bone fragments or ashes or any combination thereof," R.C. 3726.01(B) and 4717.01(M), and "interment" means "the burial or entombment of fetal remains," R.C. 3726.01(D).

46. SB27 requires that cremation of this tissue take place in a crematory facility in compliance with Chapter 4717 of the Revised Code. R.C. 3726.02(B).

47. Before a procedural abortion, the patient must be provided with an ODH-prescribed "notification form," listing the options for disposition of the tissue, limited to cremation or interment. R.C. 3726.03(B). Patients must certify in writing that they have received the notification form. R.C. 2317.56(B)(4)(c).

48. A patient who has a procedural abortion who wishes to specify how the tissue is disposed of must choose either cremation or interment, and is prohibited from directing that the tissue be disposed of by other means. R.C. 3726.03(A).

49. If the patient chooses to determine disposition under R.C. 3726.03, that decision must be documented on an ODH-prescribed "consent form." R.C. 3726.04(A)(1) and 3726.14.[9] As with the notification form, the consent form must be completed before the abortion. R.C. 2317.56(B)(4)(d).

50. If the patient does not choose to determine disposition under R.C. 3726.03, the abortion facility must determine the disposition, but that disposition must still be by cremation or interment. R.C. 3726.04(A)(2).

[9] If the patient is an unmarried, unemancipated minor, SB27 requires parental consent to the patient's disposition determination, unless the patient has obtained a judicial bypass order. R.C. 3726.04(B)(2).

51. SB27 requires routine reporting of the method of disposition, along with other detailed data regarding abortion patients, to ODH. R.C. 3701.79(C).

52. An abortion facility may not release the tissue or arrange for disposition until the patient has decided whether or not they want to direct whether the tissue is cremated or interred (and if they do, until after the patient has provided consent on the ODH form). R.C. 3726.05.

53. Abortion facilities must document the patient's disposition determination (and if applicable, consent) in the patient's medical record, R.C. 3726.10, and "maintain evidentiary documentation demonstrating the date and method of the disposition," R.C. 3726.11. An abortion facility must also establish and maintain written policies and procedures addressing cremation or interment. R.C. 3726.12.

54. A crematory operator may not cremate the embryonic or fetal tissue without first receiving a properly executed "detachable supplemental form." R.C. 4717.271(A)(1). SB27 expressly allows a cremation without a death certificate, cremation authorization form, or burial permit, R.C. 4717.271(B); it is silent as to whether a death certificate or burial permit is required for interment.

55. SB27 immunizes any person who inters or cremates fetal remains from criminal, civil, and professional liability if the person acts in good faith compliance with SB27, receives a properly executed detachable supplemental form, and "[a]cts in furtherance of the final disposition of the fetal remains." R.C. 3726.15. The law provides no similar protection for abortion providers attempting to comply with its provisions.

56. SB27's requirements do not apply to pregnancy tissue that must be disposed of after any other medical procedures—only procedural abortion. For example, SB27's requirements do not apply to tissue from miscarriage management, where the provider utilizes a

procedure identical to procedural abortion. Nor does SB27 apply to in vitro embryos.

D. Penalties for Noncompliance with SB27

57. Failure to comply with SB27 subjects Plaintiffs and their physicians to significant penalties.

58. A knowing violation of R.C. 3726.02, 3726.05, 3726.10, or 3726.11 is a first-degree misdemeanor. R.C. 3726.99.

59. A physician who provides an abortion in violation of SB27 is also subject to disciplinary action, including having their medical license limited, suspended, or revoked. R.C. 2317.56(G)(2), 4731.22(B)(21) and (23). If ODH finds that a physician in an ASF violated any law relating to informed consent, such as R.C. 2317.56, ODH must report that finding to the Medical Board. R.C. 3702.30(E)(2). The Medical Board may impose a civil penalty up to $20,000. R.C. 4731.225(B).

60. Plaintiffs also face revocation of, suspension of, or refusal to renew their ASF licenses for a violation of SB27. Ohio Adm.Code 3701-83-05(C) and 3701-83-05.1(C)(2). They also face civil penalties of up to $250,000. Ohio Adm.Code 3701-83-05.1(C)(4) and 3701-83-05.2(B); *see also* R.C. 3702.32(D).

61. In addition, ODH may order the ASF to cease operations and obtain an injunction enjoining the ASF from providing services. Ohio Adm.Code 3701-83-05.1(B); *see also* R.C. 3702.32(D)(3) and (E). The ASF is also subject to a civil penalty of up to $50,000 per patient for such violation. Ohio Adm.Code 3701-83-05.1(F) and 3701-83-05.2(F).

62. For any violation of SB27's reporting requirement, the director of ODH may "apply to the court of common pleas for temporary or permanent injunctions restraining a violation or threatened violation." R.C. 3701.79(J).

63. The director of ODH may also "apply to the court of common pleas for temporary or permanent injunctions restraining a violation or threatened violation of the [abortion] rules." R.C. 3701.341.

64. Finally, a physician who fails to obtain the tissue disposal consents required by SB27 is liable in a civil action for compensatory and exemplary damages. R.C. 2317.56(G)(1). Plaintiffs may also be civilly liable as the employer or other principal of their physicians. R.C. 2317.56(H)(3).

E. SB27's Significant Ambiguities and Onerous Requirements

65. SB27 burdens, penalizes, prohibits, interferes with, and discriminates against patients' decision to obtain an abortion, as well as Plaintiffs, who provide abortions. SB27 has numerous ambiguities that make it impossible for Plaintiffs to understand how and whether they can comply with the law in certain circumstances. These ambiguities will prevent Plaintiffs from providing procedural abortion through approximately the first 13 weeks of pregnancy, delaying Ohioans in accessing abortion. This delay will, in turn, increase the logistical and financial burdens on patients. Some people will be prohibited entirely from obtaining an abortion. Indeed, Plaintiffs will be prohibited from providing abortion at all between 10 weeks and 13 weeks, when medication abortion is no longer available and SB27's ambiguities prevent Plaintiffs from providing procedural abortion. And for patients who would prefer a procedural abortion but who opt for medication abortion rather than waiting until procedural abortion is available, SB27 interferes with their ability to obtain an abortion using the safe, effective method that they prefer. Finally, complying with SB27's many medically unnecessary requirements for patients beyond 13 weeks LMP will be extremely costly, to the extent it is even possible. This will also increase burdens on patients and may delay—or even prevent—their ability to access abortion.

66. First, SB27 does not address whether tissue from procedural abortions can be cremated simultaneously. On information and belief, no single vendor could individually cremate (separately cremate each embryo and fetus) all of the tissue from procedural abortions in the state. This is because it would take significant time for each cremation to safely occur.

67. The volume of tissue from an early abortion is also very small; attempting to cremate such a small volume would be exceedingly difficult. And because individual cremation is such a lengthy process no matter the size of the tissue, including because of the necessary time to heat up and cool down the cremation chamber, the cost of individual cremation is steep.

68. While simultaneous cremation may be more feasible, SB27 does not explicitly authorize this method of cremation for embryonic and fetal tissue. Violating statutes and rules regulating cremation can result in severe penalties for crematory operators, including criminal penalties and licensure revocation or suspension.

69. SB27 also does not address whether embryonic and fetal tissue subject to SB27's requirements can be sent to a crime lab on a patient's request or in response to a warrant or subpoena in a sexual assault investigation, or to a pathologist for testing, which may be needed to diagnose conditions such as cancer. Sending tissue to a crime lab or to a pathologist is important for patient health and safety, and is the standard of care in certain circumstances. But because providers cannot control how the crime lab or pathologist will dispose of this tissue, they risk violating SB27 by sending tissue there.

70. SB27 also conflicts with infectious waste requirements, with which abortion providers are required to comply. Infectious waste requirements mandate that pregnancy tissue, including uterine lining/decidua, umbilical cord, gestational sac, and placenta, be disposed of in certain specific ways, not including cremation and interment. If this tissue does not fall within

SB27's definition of "fetal remains," it cannot be cremated or interred under SB27. But it is not always possible to physically separate out this other pregnancy tissue from embryonic and fetal tissue, particularly at earlier gestational stages. If providers are not able to separate embryonic or fetal tissue from other pregnancy tissue, they risk running afoul either of SB27's mandate that "fetal remains" be cremated or interred or of the laws governing disposal of infectious waste. *See* Ohio Adm.Code 3745-27-32(A) and (I)(18). Because providers cannot know before beginning an abortion prior to around 13 weeks LMP whether they will be able to separate the tissue, they will be forced to stop providing procedural abortions prior to this point in pregnancy.

71. Plaintiffs raised these issues with ODH on at least three separate occasions, asking for clarity in the rules. But ODH refused to address any of these issues. Instead, the rules it proposed and then finalized only add to the confusion and add more unnecessary and burdensome requirements.

72. The rules seem to mandate that locations for interment provided by abortion providers be limited to Ohio-licensed cemeteries. Such a requirement is not present in SB27, and there is no such requirement in Ohio for interment of human remains.[10]

73. Additionally, SB27 requires that the director of ODH prescribe rules for three separate forms to implement the law: the notification form, which must be provided to the patient; the consent form, which patients must complete; and the detachable supplemental form, which must be provided to a crematory operator. *See* R.C. 3726.14(A)–(C). But the rules apparently conflate the consent form with the detachable supplemental form, seeming to require the patient complete the detachable supplemental form, which then must be provided to the

[10] Similarly, while SB27 seems to require embryonic and fetal tissue be cremated in an Ohio-licensed crematory, there is no similar requirement in Ohio for cremation of human remains. Human remains can be taken out of state for disposal, whether by interment, cremation, or otherwise. *See* R.C. 3705.01(J).

crematory operator. *See* Ohio Adm.Code 3701-46-01(B), attached as Exhibit B.[11] Requiring that the patient complete the detachable supplemental form risks the disclosure of identifying patient information to the crematory operator. This issue was also raised to ODH during the rulemaking process but went unaddressed.

74. Finally, while the rules "prescribe" the forms, they do not actually include any such forms, so that the providers or the crematories and funeral homes can review them. Plaintiffs, as well as crematories and funeral homes, are therefore unsure what, if any, additional requirements the forms may contain. Absent these forms, it is impossible for Plaintiffs to perform procedural abortions if SB27 goes into effect.

75. To the extent Plaintiffs can comply with SB27, such as for patients beyond 13 weeks LMP, its requirements impose severe burdens.

76. Plaintiffs' staff spent significant time attempting to contact crematories and funeral homes in Ohio, to explain SB27's requirements, and to determine whether they would be willing to work with providers to comply with the law. Plaintiffs learned that providers of cremation and burial services were reluctant to work with them for a variety of reasons. Some identified opposition to abortion or religious beliefs as the reasons they could not contract with Plaintiffs; others were already operating at capacity or could not accommodate the increase in volume; some expressed concern about attracting protestors or other harassment. Many crematories and funeral homes also indicated they could not work with Plaintiffs because of the numerous ambiguities in SB27 described above, which resulted in them being unable to determine if and how they could operationalize the law's requirements.

[11] The rules do prescribe a consent form, but only for non-married or non-emancipated minors. *See* Ohio Adm.Code 3701-46-02, attached as Exhibit C. There were no rules prescribing consent forms for non-minors or married or emancipated minors.

77. Plaintiffs were able to find only four vendors—three providing cremation services and one for interment—who were willing to work with them so they could comply with SB27. One vendor could not take much more than the embryonic and fetal tissue from procedural abortions from one of the providers for individual cremation, due to capacity constraints, and quoted a price of $95 per individual cremation. A second vendor only had capacity to take the embryonic and fetal tissue from one other provider, and estimated a price of $117 per individual cremation. The third crematory vendor had more capacity, indicating it could individually cremate the embryonic and fetal tissue from the other providers in the state, but was significantly more expensive, quoting $295 per individual cremation. The fourth vendor indicated it had capacity to inter tissue from procedural abortion, and quoted a price of $75 per embryo or fetus. These cost estimates demonstrate that complying with the law would be extremely burdensome for Plaintiffs and their patients.

78. Compliance with SB27 would therefore significantly increase the cost of an abortion and would have a devastating effect on patients' ability to access this care. Not only would the cost of the abortion procedure increase due to the cost of cremation or interment ($75–295), but patients would also face a price increase because SB27 would effectively eliminate the provision of procedural abortion until around 13 weeks LMP. *See* above at ¶ 70. The vast majority of Plaintiffs' patients obtain abortions prior to 13 weeks. A procedural abortion after 13 weeks is significantly more expensive than a procedural abortion before 13 weeks. Therefore, procedural abortion patients will face steep price increases because of this law, which many cannot afford, as well as the incremental health risks of delaying their abortion and of remaining pregnant longer than necessary. *See* below at Section F.

79. Being forced to dispose of fetal or embryonic tissue with very few vendors willing

to partner with them would also put Plaintiffs in a precarious position. Vendors expressed fear of harassment and negative consequences to their professional and personal lives if they are publicly associated with abortion providers. These fears are not unfounded, as anti-abortion activists have repeatedly targeted and harassed vendors, including waste disposal vendors, with whom Plaintiffs have previously contracted. The few vendors who were willing to work with Plaintiffs may foreseeably refuse to continue doing so if they become targets of harassment, which would result in Plaintiffs having to abruptly stop providing procedural abortions until they could secure another vendor—if that is even possible.

F. SB27 Irreparably Harms Plaintiffs and Their Patients.

80. Compliance with SB27 will have a devastating impact on Plaintiffs and their patients.

81. Many patients seeking procedural abortions (which include all patients seeking abortions after 10 weeks LMP) will be severely burdened in accessing that care, with no countervailing medical or public health benefit. As explained above, Plaintiffs will have to stop providing procedural abortions until around 13 weeks LMP due to SB27's ambiguities. The vast majority of procedural abortions are performed prior to 13 weeks LMP. All of these patients will be forced to delay their procedures until later in pregnancy, when abortion (while still very safe) carries greater risks–in addition to the inherent physical and mental health risks of staying pregnant longer than wanted–and is more expensive. Alternatively, patients may be forced by SB 27 to proceed with a different type of abortion that may not be best for them, if that is even an option. Patients between 10 weeks and 13 weeks LMP will not have access to abortion at all and will unnecessarily be delayed in their care. Additionally, because procedures later in pregnancy take longer to perform than procedural abortions in the first trimester, SB27 will likely

result in a backlog of patients, and abortion will be pushed even later in pregnancy, escalating patients' risks.

82. Moreover, by forcing patients to acknowledge that the tissue from their abortion will be cremated or interred, and by imposing the equivalent of a funeral ritual on every patient, SB27 significantly adds to the harmful stigma that unnecessarily surrounds abortion, resulting in harm to Plaintiffs' patients. Through SB27, the State inappropriately imposes one particular view of when life begins on all Ohioans, which likely conflicts with the deeply held religious and spiritual beliefs of some patients. This will result in grave moral injury and psychological harm. The law similarly conveys a moral and social disapproval of health care professionals who provide abortion, further perpetuating harmful stigma. And it forces providers to violate basic bioethical principles, by depriving patients of their constitutionally protected right to reproductive autonomy and by imposing severe burdens, including forced pregnancy and childbearing, without countervailing medical benefits.

83. Indeed, SB27 discriminates against abortion patients and providers by singling them out for these onerous and stigmatizing requirements despite there being no legitimate justification for treating embryonic and fetal tissue from procedural abortion differently than tissue from miscarriage management or in vitro fertilization.

84. Complying with SB27's requirement that all embryonic and fetal tissue from a procedural abortion be cremated or interred will also result in significant costs. Cremating or interring fetal or embryonic tissue from procedural abortions will significantly increase the cost of procedural abortions, *see* above at ¶¶ 77–78, economically foreclosing access to abortion for many. Approximately 50 percent of abortion patients have a household income at or below the federal poverty level (classified as "poor"), and another 25 percent have incomes from 100 to

199 percent of the federal poverty level (classified as "low income").[12] For patients who are poor or have low incomes, seemingly "minor" expenses or unexpected costs can be devastating. The enforcement of SB27 will delay access to care and will increase health risks, while patients struggle to raise the extra money needed for the procedure. This can create a vicious cycle: patients are delayed because they need to raise additional funds; the delay means that the procedure is even more expensive; so patients must then delay again to raise more money to pay for the more expensive procedure.

85. The law will result in patients having to make unnecessary sacrifices to procure funds on an expedited basis that negatively affect themselves and their families, such as forgoing other necessities, not paying for rent or utilities, turning to predatory lenders, or borrowing money from an abusive partner, further entrenching themselves in a dangerous situation. Others will be prevented from obtaining an abortion entirely, due to the increase in costs.

86. If patients are not able to obtain an abortion from a licensed medical provider, they may seek to terminate their pregnancies outside the medical system. Others who cannot afford the significant expense of traveling out of state to obtain an abortion will have to carry a pregnancy to term against their will.

87. Approximately one in four women in this country will have an abortion by age 45. A majority of those having abortions already have at least one child.[13]

88. Abortion is one of the safest medical procedures in the United States and is

[12] *See* Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 Am. Journal of Pub. Health 1904, 1907 (2017), https://doi.org/10.2105/AJPH.2017.304042. For a family of three, the federal poverty level is $25,820. *See* U.S. Dept. of Health & Human Servs., *Federal Poverty Level (FPL)*, https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines (last accessed Apr. 2, 2024).

[13] Jones & Jerman, *supra* note 12.

substantially safer than continuing a pregnancy through to childbirth. The risk of death associated with childbirth is approximately 12–14 times higher than that associated with abortion, and every pregnancy-related complication is more common among those giving birth than among those having abortions.[14]

89. Even for someone who is otherwise healthy and has an uncomplicated pregnancy, carrying that pregnancy to term and giving birth poses serious medical risks and can have long-term physical consequences. These risks are greater for individuals with medical conditions caused or exacerbated by pregnancy.

90. If an individual is forced to continue a pregnancy against their will, it can pose a risk to their physical and mental health, as well as to the stability and wellbeing of their family, including existing children.

91. Forcing a patient to carry a pregnancy to term can impose significant trauma on those who are pregnant as the result of sexual assault, survivors of intimate partner violence, or who learn that the fetus has been diagnosed with a severe or lethal anomaly.

92. A child can place economic and emotional strain on a family and may interfere with an individual's life goals. As most patients who seek abortion already have at least one child,[15] families must consider how an additional child will impact their ability to care for the children they already have.

93. Being prevented from having an abortion will have a disproportionate impact on the lives of Black people, other people of color, and people with low incomes in Ohio, as they are among the least able to readily access medical care and the most vulnerable to dying from pregnancy-related causes. ODH statistics show that Black women in Ohio are 1.5–2.5 times more

[14] Natl. Academies of Sciences, Eng. & Medicine, *supra* note 2, at 74–75.
[15] Natl. Academies of Sciences, Eng. & Medicine, *supra* note 2, at 31.

likely than white women to die of causes related to pregnancy.[16]

94. Forced delay in obtaining an abortion also results in significant harm. Although abortion is safe, and is significantly safer than continuing pregnancy through childbirth, the risks associated with abortion increase as pregnancy advances. Therefore, the later in pregnancy patients access abortion, the more likely they are to experience rare complications. Later procedural abortion procedures are also more complicated. In the interim, these patients may also suffer from heightened emotional distress or anxiety, or other medical complications, especially if they face health issues with their pregnancies.

95. The likely consequences of SB27's enforcement, including the elimination of procedural abortions before 13 weeks and compelled delays in patient care, coupled with increased costs, will also irreparably harm Plaintiffs. Many of Plaintiffs' physicians and staff have committed their professional careers to providing the full range of reproductive health care—of which abortion is an essential part. Having to stop providing this necessary health care, or significantly increasing the burdens on those obtaining it, will be extremely damaging to them.

[16] According to Ohio statistics from 2008-2016, non-Hispanic Black women were more than 2.5 times as likely to die from pregnancy-related causes than their white counterparts. Ohio Dept. of Health, *A Report on Pregnancy-Associated Deaths in Ohio 2008–2016*, at 19 (2019), https://bit.ly/3uZraej (accessed Apr. 2, 2024). However in 2017-2018, due to the adoption of new criteria employed by ODH "to determine the pregnancy-relatedness of unintentional overdose deaths, an increased number of unintentional overdose deaths were determined to be pregnancy related in 2017 and 2018," and the majority of those occurred among non-Hispanic white women. Ohio Dept. of Health, *A Report on Pregnancy-Related Deaths in Ohio 2017-2018*, at 4, 28 (2022), https://odh.ohio.gov/know-our-programs/pregnancy-associated-mortality-review/reports/pregnancy-related-deaths-ohio-2017-2018 (accessed Apr. 2, 2024). Nevertheless, in 2017 and 2018 ODH noted that "pregnancy-related deaths due to causes other than overdose still occurred disproportionately among non-Hispanic Black women," with the statistics showing that Black women are 1.5 times as likely to die from pregnancy-related causes other than overdose than their white counterparts. *Id*.

G. The Litigation

96. SB27 required ODH, within 90 days of its effective date (April 6, 2021), to adopt rules to carry out the bill, including rules that prescribe the notification, consent, and detachable supplemental forms. R.C. 3726.14.

97. Because ODH had not begun the rulemaking process by the time necessary to ensure that they would be finalized before SB27's effective date, Plaintiffs made multiple attempts to communicate the impossibility of compliance and to seek assurances that they would not be found in violation of the law prior to the rules and forms being issued. ODH refused to provide this assurance.

98. Plaintiffs sued ODH in March of 2021 to ensure that they would be able to continue providing procedural abortions. On April 5, 2021, this Court entered a preliminary injunction, finding that Plaintiffs were substantially likely to succeed on their claims that SB27 violated their due process rights, including their procedural due process rights, and enjoining Defendants from enforcing the law until 30 days after the rules and forms were adopted and became effective pursuant to the notice-and-comment rulemaking process. *See* Entry Granting Plaintiffs' Motion for Preliminary Injunction.

99. On October 25, 2021, ODH issued proposed rules. These proposed rules were adopted on December 30, 2021, and became effective on January 9, 2022. R.C. 119.04. Therefore, Plaintiffs had until February 8, 2022 to come into compliance with SB27.

100. During the rulemaking process, Plaintiffs and others repeatedly raised several significant issues that made compliance with SB27 extremely onerous or impossible, including by submitting comments. ODH did not address any of these issues, and the implementing rules instead introduced new burdens and ambiguities.

101. Plaintiffs therefore amended their complaint and moved for a second preliminary injunction on January 7, 2022, alleging that without injunctive relief, patients seeking procedural abortions in Ohio would either not be able to access that care at all or would be significantly delayed and otherwise severely burdened in doing so. The Court granted Plaintiffs' preliminary injunction on January 31, 2022. It held, in part, that Plaintiffs were likely to succeed on their claims that SB27 violated Ohio's substantive due process and equal protection guarantees, and that it was unconstitutionally vague. The Court thereafter issued a case scheduling order on February 15, 2022.

102. While discovery was underway, on June 24, 2022, the United States Supreme Court issued *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 142 S.Ct. 2228, 213 L.Ed.2d 545 (2022), in which it overturned *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), and its progeny. Shortly afterward, in a separate federal action, the court vacated its preliminary injunction against Ohio's ban on abortions after embryonic cardiac activity, which usually occurs around 6 weeks LMP. Order Dissolving July 3, 2019 Preliminary Injunction (Doc. 29), *Preterm-Cleveland v. Yost*, 2022 WL 2290526 (S.D. Ohio 2022), Doc. No. 100. After that ban went into effect, the *Preterm* plaintiffs filed an original action in mandamus with the Ohio Supreme Court, asking that Court to recognize that the Ohio Constitution protects an independent right to abortion.

103. On June 30, 2022, Plaintiffs in this case filed a motion asking the Court to stay the matter pending the Ohio Supreme Court's resolution of *Preterm*, which the Court granted on July 6, 2022. After the Ohio Supreme Court dismissed *Preterm* at the clinics' request and the case was re-filed in the Court of Common Pleas for Hamilton County, Plaintiffs moved to extend the stay. Subsequently, the court in *Preterm* entered a preliminary injunction against the six-

week ban. On November 16, 2022, this Court stayed this case pending the Ohio Supreme Court's resolution of the State's interlocutory appeal from the preliminary injunction against the six-week ban in *Preterm*.

104. On November 7, 2023, before *Preterm* was decided, Ohio voters passed a constitutional amendment enshrining their right to reproductive freedom in Article I, Section 22. That provision went into effect on December 7, 2023. The Ohio Supreme Court dismissed the *Preterm* interlocutory appeal shortly afterward. Accordingly, this case is no longer stayed.

CLAIMS FOR RELIEF

COUNT I — Right to Reproductive Freedom

105. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 104.

106. Under the Ohio Constitution, every individual has "a right to make and carry out one's own reproductive decisions" including the decision to obtain an abortion. Ohio Const. Art. I, § 22(A); *id.* § 22(A)(5).

107. The State may not directly or indirectly "burden, penalize, prohibit, interfere with, or discriminate against" either: (1) an individual's exercise of their right to an abortion or (2) a person or entity that assists an individual exercising this right, unless the State demonstrates that it is using "the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." Ohio Const. Art. I, § 22(B).

108. SB27 infringes on the right to reproductive freedom, as enshrined in Article I, Section 22 of Ohio's Constitution by:

a. burdening access to abortion and interfering with patients' decision to obtain an abortion, including by prohibiting procedural abortion in the first 13 weeks of

pregnancy as well as prohibiting abortion entirely for patients between 10 and 13 weeks of pregnancy, and by unnecessarily increasing the cost of procedural abortions after 13 weeks;

b. penalizing and discriminating against patients who choose abortion, including by regulating the disposition of pregnancy tissue from procedural abortion differently than the disposition of identical pregnancy tissue from other reproductive health care; and

c. burdening, penalizing, and discriminating against Plaintiffs, who assist patients in obtaining abortion.

109. SB27 is not "the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care." Ohio Const. Art. I, § 22(B). SB27 has no legitimate medical justification and does not further any health interest, but rather serves only to harm patients' health and wellbeing.

110. Accordingly, SB27 violates Article I, Section 22 of the Ohio Constitution.

111. Plaintiffs and their patients have no adequate remedy at law to address these harms.

COUNT II — Substantive Due Process

112. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 111.

113. By significantly burdening, delaying, or preventing entirely, patients from accessing procedural abortions, SB27 infringes on the right to abortion, privacy, bodily autonomy, and free choice of health care guaranteed by the Ohio Constitution, without adequate justification, in violation of Ohioans' rights under Article I, Sections 1, 16, and 20 of the Ohio

Constitution.

114. If SB27 is allowed to take effect, Plaintiffs' patients will be subject to irreparable harm for which no adequate remedy at law exists because they will be prevented entirely from obtaining an abortion in Ohio or be greatly delayed or otherwise burdened in doing so, resulting in significant constitutional, medical, emotional, financial, and other harm.

COUNT III — Equal Protection

115. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 114.

116. By arbitrarily and irrationally singling out providers providing and patients obtaining abortion on the basis of their exercise of a fundamental right, and by treating them differently from providers providing and patients obtaining other medical procedures, including miscarriage management and in vitro fertilization, as well as treating them differently from those interring or cremating human remains, with no adequate justification, SB27 violates Plaintiffs' and their patients' right to equal protection under Article I, Section 2 of the Ohio Constitution.

117. If SB27 is allowed to take effect, Plaintiffs and their patients will be subject to irreparable harm for which no adequate remedy at law exists by depriving them of equal protection of the laws, thereby causing them to suffer significant constitutional, medical, emotional, financial, and other harm.

COUNT IV — Vagueness

118. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 117.

119. SB27 fails to provide fair notice to enable Plaintiffs to determine how to comply with its mandates, encourages arbitrary enforcement, and forces Plaintiffs to steer wide of

potentially unlawful conduct, resulting in constitutionally-protected freedoms being impinged. It is therefore impermissibly vague, violating due process guarantees under Article I, Section 16 of the Ohio Constitution.

120. If SB27 is allowed to take effect, Plaintiffs and their patients will be subject to irreparable harm for which no adequate remedy at law exists because the law's vague mandates fail to provide fair notice, encourage arbitrary enforcement, and will force Plaintiffs to steer wide of potentially unlawful conduct to avoid risking harsh, including criminal, penalties, resulting in their patients facing severe burdens in accessing procedural abortion and thereby causing them to suffer significant constitutional, medical, emotional, financial, and other harm.

COUNT V — Declaratory Judgment

121. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 120.

122. A real controversy exists between the parties, the controversy is justiciable, and speedy relief is necessary to preserve the rights of the parties. SB27 will impose significant harm on Plaintiffs and their patients, as set forth herein. In addition, Plaintiffs and their patients will be unconstitutionally deprived of their rights to reproductive freedom, due process, and equal protection.

123. The rights, status, and other legal relations of Plaintiffs are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy that has given rise to the action.

124. Pursuant to R.C. 2721, *et seq.*, Plaintiffs request that the Court find and issue a declaration that:

a. SB27 violates Article I, Section 22 of the Ohio Constitution because it

directly and indirectly burdens, penalizes, prohibits, interferes with, and discriminates against patients seeking and health care professionals providing abortion in violation of the right to reproductive freedom.

b. SB27 violates Article I, Sections 1, 16, and 20 of the Ohio Constitution because it will have a devastating effect on Plaintiffs' patients' ability to access abortions in Ohio in violation of their due process rights.

c. SB27 violates Article I, Section 2 of the Ohio Constitution because it arbitrarily and irrationally singles out providers providing and patients obtaining procedural abortion and treats them differently from providers providing and patients obtaining other medical procedures, including miscarriage management and in vitro fertilization, as well those interring or cremating human remains with no adequate justification, in violation of their rights to equal protection.

d. SB27 violates Article I, Section 16 of the Ohio Constitution because it does not provide fair notice to enable Plaintiffs to determine how to comply with its mandates, encourages arbitrary enforcement, and forces Plaintiffs to steer wide of potentially unlawful conduct, resulting in constitutionally-protected freedoms being impinged, and is therefore impermissibly vague.

e. SB27 violates Article I, Section 21 of the Ohio Constitution by imposing a penalty and fine on the receipt and provision of safe, effective medical care, and thereby denies Plaintiffs and their patients the right of free choice in health care.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A. To maintain the existing preliminary injunction and enter a permanent injunction,

restraining Defendants, their employees, agents, and successors in office from enforcing SB27.

B. To enter a judgment declaring that SB27 violates the Ohio Constitution.

C. To award Plaintiffs their fees and costs.

D. To grant such other and further relief as the Court deems just and proper.

Dated: April 15, 2024

Respectfully submitted,

B. Jessie Hill #0074770
Freda J. Levenson #0045916
Rebecca Kendis #0099129
American Civil Liberties Union of Ohio Foundation, Inc.
4506 Chester Ave.
Cleveland, OH 44103
(216) 368-0553 (Hill)
(614) 586-1972 x125 (Levenson)
(614) 586-1974 (fax)
bjh11@cwru.edu
flevenson@acluohio.org
rebecca.kendis@case.edu
Counsel for Plaintiffs Preterm-Cleveland, Women's Med Group Professional Corporation, Northeast Ohio Women's Center LLC

Jennifer Dalven* PHV #23858
Chelsea Tejada* PHV#25608
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633
(212) 549-2650 (fax)
jdalven@aclu.org
ctejada@aclu.org
Counsel for Plaintiffs Preterm-Cleveland, Women's Med Group Professional Corporation Northeast Ohio Women's Center LLC

Rachel Reeves* PHV #23855
American Civil Liberties Union Foundation
915 15th St NW
Washington, DC 20005
(212) 549-2633
(212) 549-2650 (fax)
rreeves@aclu.org
Counsel for Plaintiffs Preterm-Cleveland, Women's Med Group Professional Corporation Northeast Ohio Women's Center LLC

/s/ Camila Vega
* PHV #25650
Planned Parenthood Federation of America
123 William Street, Floor 9
New York, NY 10038
(908) 370-7449
(212) 245-1845 (fax)
camila.vega@ppfa.org
Counsel for Plaintiffs Planned Parenthood Southwest Ohio Region, Planned Parenthood of Greater Ohio, and Sharon Liner, M.D.

*Hannah Swanson** PHV #25808
Planned Parenthood Federation of America
1110 Vermont Ave. NW, Suite 300
Washington, DC 20005
(202) 494-8764
(202) 296-3242 (fax)
hannah.swanson@ppfa.org
Counsel for Plaintiffs Planned Parenthood Southwest Ohio Region, Planned Parenthood of Greater Ohio, and Sharon Liner, M.D.

Fanon A. Rucker #0066880
The Cochran Firm
527 Linton Street
Cincinnati, OH 45219
(513) 381-4878
(513) 672-0814 (fax)
frucker@cochranohio.com
Counsel for Plaintiffs Planned Parenthood Southwest Ohio Region, Planned Parenthood of Greater Ohio, and Sharon Liner, M.D.

*Application for *pro hac vice* granted

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2024, the foregoing was electronically filed via the Court's e-filing system.

/s/ Camila Vega
Camila Vega

EXHIBIT A

(133rd General Assembly)
(Amended Senate Bill Number 27)

AN ACT

To amend sections 2317.56, 3701.341, and 3701.79 and to enact sections 3726.01, 3726.02, 3726.03, 3726.04, 3726.041, 3726.042, 3726.05, 3726.09, 3726.10, 3726.11, 3726.12, 3726.13, 3726.14, 3726.15, 3726.16, 3726.95, 3726.99, and 4717.271 of the Revised Code to impose requirements on the final disposition of fetal remains from surgical abortions.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2317.56, 3701.341, and 3701.79 be amended and sections 3726.01, 3726.02, 3726.03, 3726.04, 3726.041, 3726.042, 3726.05, 3726.09, 3726.10, 3726.11, 3726.12, 3726.13, 3726.14, 3726.15, 3726.16, 3726.95, 3726.99, and 4717.271 of the Revised Code be enacted to read as follows:

Sec. 2317.56. (A) As used in this section:

(1) "Medical emergency" has the same meaning as in section 2919.16 of the Revised Code.

(2) "Medical necessity" means a medical condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, so complicates the pregnancy that it necessitates the immediate performance or inducement of an abortion.

(3) "Probable gestational age of the zygote, blastocyte, embryo, or fetus" means the gestational age that, in the judgment of a physician, is, with reasonable probability, the gestational age of the zygote, blastocyte, embryo, or fetus at the time that the physician informs a pregnant woman pursuant to division (B)(1)(b) of this section.

(B) Except when there is a medical emergency or medical necessity, an abortion shall be performed or induced only if all of the following conditions are satisfied:

(1) At least twenty-four hours prior to the performance or inducement of the abortion, a physician meets with the pregnant woman in person in an individual, private setting and gives her an adequate opportunity to ask questions about the abortion that will be performed or induced. At this meeting, the physician shall inform the pregnant woman, verbally or, if she is hearing impaired, by other means of communication, of all of the following:

(a) The nature and purpose of the particular abortion procedure to be used and the medical risks associated with that procedure;

(b) The probable gestational age of the zygote, blastocyte, embryo, or fetus;

(c) The medical risks associated with the pregnant woman carrying the pregnancy to term.

The meeting need not occur at the facility where the abortion is to be performed or induced, and the physician involved in the meeting need not be affiliated with that facility or with the physician who is scheduled to perform or induce the abortion.

(2) At least twenty-four hours prior to the performance or inducement of the abortion, the

physician who is to perform or induce the abortion or the physician's agent does each of the following in person, by telephone, by certified mail, return receipt requested, or by regular mail evidenced by a certificate of mailing:

(a) Inform the pregnant woman of the name of the physician who is scheduled to perform or induce the abortion;

(b) Give the pregnant woman copies of the published materials described in division (C) of this section;

(c) Inform the pregnant woman that the materials given pursuant to division (B)(2)(b) of this section are published by the state and that they describe the zygote, blastocyte, embryo, or fetus and list agencies that offer alternatives to abortion. The pregnant woman may choose to examine or not to examine the materials. A physician or an agent of a physician may choose to be disassociated from the materials and may choose to comment or not comment on the materials.

(3) If it has been determined that the unborn human individual the pregnant woman is carrying has a detectable fetal heartbeat, the physician who is to perform or induce the abortion shall comply with the informed consent requirements in section 2919.194 of the Revised Code in addition to complying with the informed consent requirements in divisions (B)(1), (2), (4), and (5) of this section.

(4) Prior to the performance or inducement of the abortion, the pregnant woman signs a form consenting to the abortion and certifies ~~both~~ all of the following on that form:

(a) She has received the information and materials described in divisions (B)(1) and (2) of this section, and her questions about the abortion that will be performed or induced have been answered in a satisfactory manner.

(b) She consents to the particular abortion voluntarily, knowingly, intelligently, and without coercion by any person, and she is not under the influence of any drug of abuse or alcohol.

(c) If the abortion will be performed or induced surgically, she has been provided with the notification form described in division (A) of section 3726.14 of the Revised Code.

(d) If the abortion will be performed or induced surgically and she desires to exercise the rights under division (A) of section 3726.03 of the Revised Code, she has completed the disposition determination under section 3726.04 or 3726.041 of the Revised Code.

A form shall be completed for each zygote, blastocyte, embryo, or fetus to be aborted. If a pregnant woman is carrying more than one zygote, blastocyte, embryo, or fetus, she shall sign a form for each zygote, blastocyte, embryo, or fetus to be aborted.

The form shall contain the name and contact information of the physician who provided to the pregnant woman the information described in division (B)(1) of this section.

(5) Prior to the performance or inducement of the abortion, the physician who is scheduled to perform or induce the abortion or the physician's agent receives a copy of the pregnant woman's signed form on which she consents to the abortion and that includes the certification required by division (B)(4) of this section.

(C) The department of health shall publish in English and in Spanish, in a typeface large enough to be clearly legible, and in an easily comprehensible format, the following materials on the department's web site:

(1) Materials that inform the pregnant woman about family planning information, of publicly

funded agencies that are available to assist in family planning, and of public and private agencies and services that are available to assist her through the pregnancy, upon childbirth, and while the child is dependent, including, but not limited to, adoption agencies. The materials shall be geographically indexed; include a comprehensive list of the available agencies, a description of the services offered by the agencies, and the telephone numbers and addresses of the agencies; and inform the pregnant woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care and about the support obligations of the father of a child who is born alive. The department shall ensure that the materials described in division (C)(1) of this section are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this division.

(2) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two-week gestational increments for the first sixteen weeks of pregnancy and at four-week gestational increments from the seventeenth week of pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The department shall cause these materials to be published after it consults with independent health care experts relative to the probable anatomical and physiological characteristics of a zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. If the materials use a pictorial, photographic, or other depiction to provide information regarding the zygote, blastocyte, embryo, or fetus, the materials shall include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment.

(D) Upon the submission of a request to the department of health by any person, hospital, physician, or medical facility for one copy of the materials published in accordance with division (C) of this section, the department shall make the requested copy of the materials available to the person, hospital, physician, or medical facility that requested the copy.

(E) If a medical emergency or medical necessity compels the performance or inducement of an abortion, the physician who will perform or induce the abortion, prior to its performance or inducement if possible, shall inform the pregnant woman of the medical indications supporting the physician's judgment that an immediate abortion is necessary. Any physician who performs or induces an abortion without the prior satisfaction of the conditions specified in division (B) of this section because of a medical emergency or medical necessity shall enter the reasons for the conclusion that a medical emergency or medical necessity exists in the medical record of the pregnant woman.

(F) If the conditions specified in division (B) of this section are satisfied, consent to an abortion shall be presumed to be valid and effective.

(G) The performance or inducement of an abortion without the prior satisfaction of the conditions specified in division (B) of this section does not constitute, and shall not be construed as constituting, a violation of division (A) of section 2919.12 of the Revised Code. The failure of a

physician to satisfy the conditions of division (B) of this section prior to performing or inducing an abortion upon a pregnant woman may be the basis of both of the following:

(1) A civil action for compensatory and exemplary damages as described in division (H) of this section;

(2) Disciplinary action under section 4731.22 of the Revised Code.

(H)(1) Subject to divisions (H)(2) and (3) of this section, any physician who performs or induces an abortion with actual knowledge that the conditions specified in division (B) of this section have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied is liable in compensatory and exemplary damages in a civil action to any person, or the representative of the estate of any person, who sustains injury, death, or loss to person or property as a result of the failure to satisfy those conditions. In the civil action, the court additionally may enter any injunctive or other equitable relief that it considers appropriate.

(2) The following shall be affirmative defenses in a civil action authorized by division (H)(1) of this section:

(a) The physician performed or induced the abortion under the circumstances described in division (E) of this section.

(b) The physician made a good faith effort to satisfy the conditions specified in division (B) of this section.

(3) An employer or other principal is not liable in damages in a civil action authorized by division (H)(1) of this section on the basis of the doctrine of respondeat superior unless either of the following applies:

(a) The employer or other principal had actual knowledge or, by the exercise of reasonable diligence, should have known that an employee or agent performed or induced an abortion with actual knowledge that the conditions specified in division (B) of this section had not been satisfied or with a heedless indifference as to whether those conditions had been satisfied.

(b) The employer or other principal negligently failed to secure the compliance of an employee or agent with division (B) of this section.

(4) Notwithstanding division (E) of section 2919.12 of the Revised Code, the civil action authorized by division (H)(1) of this section shall be the exclusive civil remedy for persons, or the representatives of estates of persons, who allegedly sustain injury, death, or loss to person or property as a result of a failure to satisfy the conditions specified in division (B) of this section.

(I) The department of job and family services shall prepare and conduct a public information program to inform women of all available governmental programs and agencies that provide services or assistance for family planning, prenatal care, child care, or alternatives to abortion.

Sec. 3701.341. (A) The director of health, pursuant to Chapter 119. and consistent with Chapter 3726. and section 2317.56 of the Revised Code, shall adopt rules relating to abortions and the following subjects:

(1) Post-abortion procedures to protect the health of the pregnant woman;

(2) Pathological reports;

(3) Humane disposition of the product of human conception;

(4) Counseling.

(B) The director of health shall implement the rules and shall apply to the court of common

pleas for temporary or permanent injunctions restraining a violation or threatened violation of the rules. This action is an additional remedy not dependent on the adequacy of the remedy at law.

Sec. 3701.79. (A) As used in this section:

(1) "Abortion" has the same meaning as in section 2919.11 of the Revised Code.

(2) "Abortion report" means a form completed pursuant to division (C) of this section.

(3) "Ambulatory surgical facility" has the same meaning as in section 3702.30 of the Revised Code.

(4) "Department" means the department of health.

(5) "Hospital" means any building, structure, institution, or place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, and medical or surgical care for three or more unrelated individuals suffering from illness, disease, injury, or deformity, and regularly making available at least clinical laboratory services, diagnostic x-ray services, treatment facilities for surgery or obstetrical care, or other definitive medical treatment. "Hospital" does not include a "home" as defined in section 3721.01 of the Revised Code.

(6) "Physician's office" means an office or portion of an office that is used to provide medical or surgical services to the physician's patients. "Physician's office" does not mean an ambulatory surgical facility, a hospital, or a hospital emergency department.

(7) "Postabortion care" means care given after the uterus has been evacuated by abortion.

(B) The department shall be responsible for collecting and collating abortion data reported to the department as required by this section.

(C) The attending physician shall complete an individual abortion report for ~~each~~ the abortion of each zygote, blastocyte, embryo, or fetus the physician performs ~~upon a woman~~. The report shall be confidential and shall not contain the woman's name. The report shall include, but is not limited to, all of the following, insofar as the patient makes the data available that is not within the physician's knowledge:

(1) Patient number;

(2) The name and address of the facility in which the abortion was performed, and whether the facility is a hospital, ambulatory surgical facility, physician's office, or other facility;

(3) The date of the abortion;

(4) If a surgical abortion, the method of final disposition of the fetal remains under Chapter 3726. of the Revised Code;

(5) All of the following regarding the woman on whom the abortion was performed:

(a) Zip code of residence;

(b) Age;

(c) Race;

(d) Marital status;

(e) Number of previous pregnancies;

(f) Years of education;

(g) Number of living children;

(h) Number of zygotes, blastocytes, embryos, or fetuses previously ~~induced abortions~~ aborted;

(i) Date of last induced abortion;

(j) Date of last live birth;

(k) Method of contraception at the time of conception;

(l) Date of the first day of the last menstrual period;

(m) Medical condition at the time of the abortion;

(n) Rh-type;

(o) The number of weeks of gestation at the time of the abortion.

~~(5)~~ (6) The type of abortion procedure performed;

~~(6)~~ (7) Complications by type;

~~(7)~~ (8) Written acknowledgment by the attending physician that the pregnant woman is not seeking the abortion, in whole or in part, because of any of the following:

(a) A test result indicating Down syndrome in an unborn child;

(b) A prenatal diagnosis of Down syndrome in an unborn child;

(c) Any other reason to believe that an unborn child has Down syndrome.

~~(8)~~ (9) Type of procedure performed after the abortion;

~~(9)~~ (10) Type of family planning recommended;

~~(10)~~ (11) Type of additional counseling given;

~~(11)~~ (12) Signature of attending physician.

(D) The physician who completed the abortion report under division (C) of this section shall submit the abortion report to the department within fifteen days after the woman is discharged.

(E) The appropriate vital records report or certificate shall be made out after the twentieth week of gestation.

(F) A copy of the abortion report shall be made part of the medical record of the patient of the facility in which the abortion was performed.

(G) Each hospital shall file monthly and annual reports listing the total number of women who have undergone a post-twelve-week-gestation abortion and received postabortion care. The annual report shall be filed following the conclusion of the state's fiscal year. Each report shall be filed within thirty days after the end of the applicable reporting period.

(H) Each case in which a physician treats a post abortion complication shall be reported on a postabortion complication form. The report shall be made upon a form prescribed by the department, shall be signed by the attending physician, and shall be confidential.

(I)(1) Not later than the first day of October of each year, the department shall issue an annual report of the abortion data reported to the department for the previous calendar year as required by this section. The annual report shall include at least the following information:

(a) The total number of ~~induced abortions~~ zygotes, blastocytes, embryos, or fetuses that were aborted;

(b) The number of abortions performed on Ohio and out-of-state residents;

(c) The number of abortions performed, sorted by each of the following:

(i) The age of the woman on whom the abortion was performed, using the following categories: under fifteen years of age, fifteen to nineteen years of age, twenty to twenty-four years of age, twenty-five to twenty-nine years of age, thirty to thirty-four years of age, thirty-five to thirty-nine years of age, forty to forty-four years of age, forty-five years of age or older;

(ii) The race and Hispanic ethnicity of the woman on whom the abortion was performed;

(iii) The education level of the woman on whom the abortion was performed, using the following categories or their equivalents: less than ninth grade, ninth through twelfth grade, one or more years of college;

(iv) The marital status of the woman on whom the abortion was performed;

(v) The number of living children of the woman on whom the abortion was performed, using the following categories: none, one, or two or more;

(vi) The number of weeks of gestation of the woman at the time the abortion was performed, using the following categories: less than nine weeks, nine to twelve weeks, thirteen to nineteen weeks, or twenty weeks or more;

(vii) The county in which the abortion was performed;

(viii) The type of abortion procedure performed;

(ix) The number of ~~abortions~~ zygotes, blastocytes, embryos, or fetuses previously ~~performed on~~ aborted by the woman on whom the abortion was performed;

(x) The type of facility in which the abortion was performed;

(xi) For Ohio residents, the county of residence of the woman on whom the abortion was performed.

(2) The report also shall indicate the number and type of the abortion complications reported to the department either on the abortion report required under division (C) of this section or the postabortion complication report required under division (H) of this section.

(3) In addition to the annual report required under division (I)(1) of this section, the department shall make available, on request, the number of abortions performed by zip code of residence.

(J) The director of health shall implement this section and shall apply to the court of common pleas for temporary or permanent injunctions restraining a violation or threatened violation of its requirements. This action is an additional remedy not dependent on the adequacy of the remedy at law.

Sec. 3726.01. As used in this chapter:

(A) "Abortion facility" means any of the following in which abortions are induced or performed:

(1) Ambulatory surgical facility as defined in section 3702.30 of the Revised Code;

(2) Any other facility in which abortion is legally provided.

(B) "Cremation" has the same meaning as in section 4717.01 of the Revised Code.

(C) "Fetal remains" means the product of human conception that has been aborted. If a woman is carrying more than one zygote, blastocyte, embryo, or fetus, such as in the incidence of twins or triplets, each zygote, blastocyte, embryo, or fetus or any of its parts that is aborted is a separate product of human conception that has been aborted.

(D) "Interment" means the burial or entombment of fetal remains.

Sec. 3726.02. (A) Final disposition of fetal remains from a surgical abortion at an abortion facility shall be by cremation or interment.

(B) The cremation of fetal remains under division (A) of this section shall be in a crematory facility, in compliance with Chapter 4717. of the Revised Code.

(C) As used in this section, "crematory facility" has the same meaning as in section 4717.01

of the Revised Code.

Sec. 3726.03. (A) A pregnant woman who has a surgical abortion has the right to determine both of the following regarding the fetal remains:

(1) Whether the final disposition shall be by cremation or interment;

(2) The location for the final disposition.

(B) A pregnant woman who has a surgical abortion shall be provided with a notification form described in division (A) of section 3726.14 of the Revised Code.

Sec. 3726.04. (A)(1) If a pregnant woman desires to exercise the rights under division (A) of section 3726.03 of the Revised Code, she shall make the determination in writing using a form prescribed by the director of health under division (C) of section 3726.14 of the Revised Code. The determination must clearly indicate both of the following:

(a) Whether the final disposition will be by cremation or interment;

(b) Whether the final disposition will be at a location other than one provided by the abortion facility.

(2) If a pregnant woman does not desire to exercise the rights under division (A) of section 3726.03 of the Revised Code, the abortion facility shall determine whether final disposition shall be by cremation or interment.

(B)(1) A pregnant woman who is under eighteen years of age, unmarried, and unemancipated shall obtain parental consent from one of the person's parents, guardian, or custodian to the final disposition determination she makes under division (A)(1) of this section. The consent shall be made in writing using a form prescribed by the director under division (B) of section 3726.14 of the Revised Code.

(2) The consent under division (B)(1) of this section is not required for a pregnant woman exercising her rights under division (A) of section 3726.03 of the Revised Code if an order authorizing the minor to consent, or the court to consent on behalf of the minor, to the abortion was issued under section 2151.85 or division (C) of section 2919.121 of the Revised Code.

Sec. 3726.041. (A) A pregnant woman who is carrying more than one zygote, blastocyte, embryo, or fetus, who desires to exercise the rights under division (A) of section 3726.03 of the Revised Code, shall complete one form under division (A)(1) of section 3726.04 of the Revised Code for each zygote, blastocyte, embryo, or fetus that will be aborted.

(B) A pregnant woman who obtains parental consent under division (B)(1) of section 3726.04 of the Revised Code shall use one consent form for each zygote, blastocyte, embryo, or fetus that will be aborted.

Sec. 3726.042. A form used under section 3726.04 of the Revised Code that covers more than one zygote, blastocyte, embryo, or fetus that will be aborted is invalid.

Sec. 3726.05. An abortion facility may not release fetal remains from a surgical abortion, or arrange for the cremation or interment of such fetal remains, until it obtains a final disposition determination made, and if applicable, the consent made, under section 3726.04 or 3726.041 of the Revised Code.

Sec. 3726.09. (A) Except as provided in division (B) of this section, an abortion facility shall pay for and provide for the cremation or interment of the fetal remains from a surgical abortion performed at that facility.

(B) If the disposition determination made under division (A)(1) of section 3726.04 or 3726.041 of the Revised Code identifies a location for final disposition other than one provided by the abortion facility, the pregnant woman is responsible for the costs related to the final disposition of the fetal remains at the chosen location.

Sec. 3726.10. An abortion facility shall document in the pregnant woman's medical record the final disposition determination made, and if applicable, the consent made, under section 3726.04 or 3726.041 of the Revised Code.

Sec. 3726.11. An abortion facility shall maintain evidentiary documentation demonstrating the date and method of the disposition of fetal remains from surgical abortions performed or induced in the facility.

Sec. 3726.12. An abortion facility shall have written policies and procedures regarding cremation or interment of fetal remains from surgical abortions performed or induced in the facility.

Sec. 3726.13. An abortion facility shall develop and maintain a written list of locations at which it provides or arranges for the final disposition of fetal remains from surgical abortions.

Sec. 3726.14. Not later than ninety days after the effective date of this section, the director of health, in accordance with Chapter 119. of the Revised Code, shall adopt rules necessary to carry out sections 3726.01 to 3726.13 of the Revised Code, including rules that prescribe the following:

(A) The notification form informing pregnant women who seek surgical abortions of the following:

(1) The right to determine final disposition of fetal remains under division (A) of section 3726.03 of the Revised Code;

(2) The available options for locations and methods for the disposition of fetal remains.

(B) The consent form for purposes of section 3726.04 or 3726.041 of the Revised Code;

(C)(1) A detachable supplemental form to the form described in division (B)(4) of section 2317.56 of the Revised Code that meets the following requirements:

(a) Indicates whether the pregnant woman has indicated a preference as to the method of disposition of the fetal remains and the preferred method selected;

(b) Indicates whether the pregnant woman has indicated a preference as to the location of disposition of the fetal remains;

(c) Provides for the signature of the physician who is to perform or induce the abortion;

(d) Provides for a medical identification number for the pregnant woman but does not provide for the pregnant woman's printed name or signature.

(2) If a medical emergency or medical necessity prevents the pregnant woman from completing the detachable supplemental form, procedures to complete that form a reasonable time after the medical emergency or medical necessity has ended.

Sec. 3726.15. A person who buries or cremates fetal remains from a surgical abortion is not liable for or subject to damages in any civil action, prosecution in any criminal proceeding, or professional disciplinary action related to the disposal of fetal remains, if that person does all of the following:

(A) Acts in good faith compliance with this chapter and, if applicable, section 4717.271 of the Revised Code;

(B) Receives a copy of a properly executed detachable supplemental form described in

division (C)(1) of section 3726.14 of the Revised Code;

(C) Acts in furtherance of the final disposition of the fetal remains.

Sec. 3726.16. Except for the requirements of section 3705.20 of the Revised Code, no conflicting provision of the Revised Code or conflicting procedure of an agency or board shall apply regarding a person who buries or cremates fetal remains in accordance with section 3726.15 of the Revised Code.

Sec. 3726.95. A pregnant woman who has a surgical abortion, the fetal remains from which are not disposed of in compliance with this chapter, is not guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a violation of section 3726.99 of the Revised Code.

Sec. 3726.99. (A) No person shall fail to comply with section 3726.02, 3726.05, 3726.10, or 3726.11 of the Revised Code.

(B) Whoever knowingly violates division (A) of this section is guilty of failure to dispose of fetal remains humanely, a misdemeanor of the first degree.

Sec. 4717.271. The following applies to a crematory operator that cremates fetal remains for an abortion facility under Chapter 3726. of the Revised Code.

(A) A crematory operator shall not do any of the following:

(1) Cremate fetal remains without receiving a copy of a properly executed detachable supplemental form described in division (C)(1) of section 3726.14 of the Revised Code;

(2) Dispose of the cremated fetal remains by a means other than one of the following:

(a) Placing them in a grave, crypt, or niche;

(b) Scattering them in any dignified manner, including in a memorial garden, at sea, by air, or at a scattering ground described in section 1721.21 of the Revised Code;

(c) Any other lawful manner.

(3) Arrange for the disposal of the cremated fetal remains by a means other than one described in division (A)(2) of this section;

(4) Arrange for the transfer of the cremated fetal remains for disposal by a means other than one described in division (A)(2) of this section.

(B) A crematory operator is not required to secure a death certificate, a burial or burial-transit permit, or a cremation authorization form to cremate fetal remains.

SECTION 2. That existing sections 2317.56, 3701.341, and 3701.79 of the Revised Code are hereby repealed.

SECTION 3. Neither of the following shall apply until rules are adopted under section 3726.14 of the Revised Code:

(A) The prohibition under section 3726.99 of the Revised Code;

(B) The prohibitions under division (A) of section 4717.271 of the Revised Code.

_____

Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

_____

Secretary of State.

File No. _____ Effective Date _____

EXHIBIT B

3701-46-01 **Notification and Detachable Supplement.**

(A) The director will develop and make available a notification form that informs a pregnant woman of the right to determine whether final disposition will be by interment or cremation and the location of the final disposition in accordance with division (A) of section 3726.03 of the Revised Code.

(B) The director will develop and make available a detachable supplemental form to the form described in division (B)(4) of section 2317.56 of the Revised Code. The detachable supplemental form will be used by a pregnant woman to exercise her rights under division (A) of section 3726.03 of the Revised Code. The detachable supplemental form will provide for the following:

(1) Allow a pregnant woman to determine the following:

(a) Whether the disposition of fetal remains will be by interment or cremation;

(b) The location of the disposition of the fetal remains either at a location of the pregnant woman's choosing or a location provided by the abortion facility. Locations for interment provided by the abortion facility will be limited to cemeteries registered pursuant to Chapter 4767 of the Revised Code;

(2) An option allowing the pregnant woman to decline to make a determination on the disposition of the fetal remains;

(3) A place for the signature of the physician who is to perform or induce the abortion; and

(4) A place for a medical identification number for the pregnant woman. The form will not contain a place for the pregnant woman's name or signature.

(C) If a medical emergency or medical necessity prevents the pregnant woman from completing the detachable supplemental form in division (B) of this section prior to the abortion, the abortion facility will develop a procedure to have the pregnant woman complete it within a reasonable time after the medical emergency or medical necessity has ended.

(D) A detachable supplemental form will be completed for each zygote, blastocyte, embryo or fetus that will be aborted.

(E) An abortion facility will use the notification form and detachable supplemental form developed by the director.

Replaces:	3701-46-01
Effective:	1/9/2022
Five Year Review (FYR) Dates:	12/30/2026

CERTIFIED ELECTRONICALLY

Certification

12/30/2021

Date

Promulgated Under:	119.03
Statutory Authority:	3726.14
Rule Amplifies:	3726.03, 3726.042, 3726.14
Prior Effective Dates:	04/06/2021 (Emer.)

EXHIBIT C

3701-46-02 **Consent Form for Disposition of Fetal Remains.**

(A) The director will develop and make available a consent form as required in division (B)(1) of section 3726.04 of the Revised Code. This form will be used if the pregnant woman is under eighteen years of age, and will include a place for a parent, guardian, or custodian to consent, unless:

(1) The pregnant woman is married; or

(2) The pregnant woman is emancipated.

(B) The consent form is not needed if a pregnant woman who is a minor has an order authorizing her to consent under section 2151.85 of the Revised Code or a court has provided consent pursuant to division (C) of section 2919.121 of the Revised Code. A pregnant woman who is able to provide consent or has obtained consent by the court may exercise her rights under division (A) of section 3726.04 of the Revised Code using the detachable supplement form.

(C) A consent form is to be completed for each zygote, blastocyte, embryo and fetus that will be aborted. A consent form that is for more than one zygote, blastocyte, embryo and fetus is invalid.

(D) If a medical emergency or medical necessity prevents the completion of the form in division (A) prior to the abortion, the abortion facility will develop a procedure to have the form completed within a reasonable time after the medical emergency or medical necessity has ended.

Replaces:	3701-46-02
Effective:	1/9/2022
Five Year Review (FYR) Dates:	12/30/2026

CERTIFIED ELECTRONICALLY

Certification

12/30/2021

Date

Promulgated Under:	119.03
Statutory Authority:	3726.14
Rule Amplifies:	3726.04, 3726.041, 3726.042, 3726.14
Prior Effective Dates:	04/06/2021 (Emer.)