

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

PLANNED PARENTHOOD
SOUTHWEST OHIO REGION, *et al.*,

Plaintiffs,

v.

OHIO DEPARTMENT OF HEALTH, *et al.*,

Defendants.

Case No. A 2100870

Judge Alison Hatheway

**PLAINTIFFS' MEMORANDUM
IN SUPPORT OF MOTION FOR
JUDGMENT ON THE
PLEADINGS**

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The law at issue in this case, S.B. 27,¹ discriminates against abortion patients, providers, and facilities by singling out tissue from procedural abortion for restrictive disposal requirements that do not apply to any other tissue, including identical tissue from other medical procedures, such as miscarriage management, where the provider often utilizes a procedure identical to procedural abortion, and in vitro fertilization (“IVF”). S.B. 27, which requires that embryonic and fetal tissue from a procedural abortion be cremated or interred, was unconstitutional in 2021 when it was passed (as this Court recognized was likely the case in preliminarily enjoining it), and it is most assuredly unconstitutional now under the Reproductive Freedom Amendment. That provision expressly protects the “right to make and carry out one’s own reproductive decisions,” including decisions about abortion, and prohibits the State from discriminating against Ohioans’ reproductive decision-making unless it can show that doing so is “the least restrictive means” to

¹ 2020 Am.S.B. No. 27 (“S.B. 27”) (amending R.C. 2317.56, 3701.341, and 3701.79 and enacting R.C. 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).

advance the pregnant person’s health, “in accordance with widely accepted and evidence-based standards of care.” Ohio Const., art. I, § 22. S.B. 27 flouts this constitutional guarantee on its face.² Because no material factual disputes require resolution, Plaintiffs respectfully request that this Court enter judgment on the pleadings and declare S.B. 27’s embryonic and fetal tissue disposal requirements unconstitutional as a matter of law.

II. BACKGROUND AND PROCEDURAL HISTORY

A. S.B. 27

There are two main methods of abortion: medication abortion and procedural abortion. In Ohio, medication abortion is available only up to 10 weeks, as measured from the first day of a patient’s last menstrual period (“LMP”).³ Accordingly, procedural abortion is the only method of abortion available to patients after 10 weeks LMP, and for some patients, such as those who have contraindications for medication abortion, it is the only method of abortion available at any gestational age.

Before the passage of S.B. 27, Ohio law treated embryonic and fetal tissue resulting from procedural abortion in exactly the same way that it treated the tissue retrieved from any other medical procedure. Under Ohio law, all tissue obtained during medical procedures may generally be treated by incineration, autoclaving, or chemical treatment—standard methods for disposing of

² Plaintiffs’ complaint also alleges, and Plaintiffs continue to maintain, that S.B. 27 directly and indirectly burdens, penalizes, prohibits, and interferes with access to abortion without any health benefit, but Plaintiffs focus solely on facial discrimination for the purposes of this 12(c) motion.

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). However, medical evidence supports using mifepristone later in pregnancy. This law is being challenged in a separate lawsuit. *See* Compl. for Declaratory & Injunctive Relief, *Planned Parenthood Southwest Ohio Region, et al. v. Ohio Dept of Health, et al.*, No. A2101148 (Apr. 1, 2021, Hamilton C.P.).

biological material. *See* R.C. 3734.01(R); Adm.Code 3745-27-01(I)(6)(c), 3745-27-32(A) and (I)(18). These laws apply to the disposition of tissue from all other reproductive health care, including embryonic and fetal tissue from miscarriage management and embryos resulting from IVF, both of which are identical to the embryonic and fetal tissue from a procedural abortion. *Id.*; Second Am. Compl. for Declaratory & Injunctive Relief (“SAC”) ¶ 4, 56.

But if allowed to go into effect, S.B. 27 would change the disposition method only for embryonic and fetal tissue from a procedural abortion. Passed by the Ohio General Assembly in 2021, S.B. 27 requires that the “fetal remains” from an abortion—specifically, “a surgical abortion at an abortion facility”⁴—must be disposed of “by cremation or interment,” rather than the methods applicable to every other form of biological material. R.C. 3726.02(A). It defines “fetal remains” as “the product of human conception that has been aborted,” i.e., a “zygote, blastocyte, embryo, or fetus.”⁵ R.C. 3726.01(C). As this Court recognized in granting a preliminary injunction against S.B. 27, “Plaintiffs’ current method of disposing of [embryonic and fetal tissue from a procedural abortion]—incineration—is generally the same process as cremation, and infectious waste requirements that applied to this tissue before [S.B. 27] still apply to disposal of tissue removed from a patient’s body after a medical procedure, including tissue from the identical procedure providers utilize to aid patients after a miscarriage.” Entry Granting Pls.’ Second Mot. for Prelim. Inj. at 7.

⁴ S.B. 27 uses the term “surgical abortion” to refer to procedural abortion.

⁵ “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), 4717.01(M), and must take place in a crematory facility, R.C. 3726.02(B); “interment” means “the burial or entombment of fetal remains,” R.C. 3726.01(D). Cremation is nearly identical to incineration, which is how tissue is currently disposed, except that cremation must take place in a crematory. *See* R.C. 4717.01(K).

Unlike patients who receive treatment for miscarriage or who dispose of embryos after IVF, S.B. 27 forces procedural abortion patients to have the tissue from their procedure disposed of by cremation or interment and deprives them of the ability to dispose of it in any other manner. Before the procedural abortion occurs, patients must be furnished with a “notification form” listing their disposition options—i.e. only cremation or interment; the patients must then certify in writing that they have received the notification form; and, if they choose to elect one of these disposition options, they must document their selection in a “consent form.” R.C. 2317.56(B)(4)(d), 3726.03(B), 2317.56(B)(4)(c), 3726.03(A), 3726.04(A)(1), and 3726.14. If the patient is a minor, S.B. 27 requires either parental consent to the disposition determination or a judicial bypass order. R.C. 3726.04(B)(2).

Under S.B. 27, procedural abortion providers must facilitate the tissue’s cremation or interment, including by paying for it. Their obligations include identifying and maintaining a list of in-state vendors who would be willing to cremate or inter procedural abortion tissue, R.C. 3726.13, R.C. 3726.02(B), Adm.Code 3701-46-01(B)(I)(b), which is made even more onerous by the fact that S.B. 27 is silent as to whether this tissue can be cremated simultaneously, SAC ¶ 66; *see also generally* S.B. 27. They must also store the fetal tissue until the patient decides whether to make a disposition determination, without any time limits. R.C. 3726.05. And if the patient declines to determine whether the fetal tissue should be cremated or interred under S.B. 27, the abortion facility must determine the disposition, but it is still limited to these two options. R.C. 3726.04(A)(2). Even worse, S.B. 27 requires that abortion facilities bear the costs for the State’s preferred methods of disposal and pay for cremation or interment of the embryonic and fetal tissue from a procedural abortion. R.C. 3726.09.⁶

⁶ S.B. 27 also compels abortion facilities to develop written policies and procedures addressing the cremation or interment of fetal tissue; document patients’ disposition determinations and, as

The penalties for failure to comply with S.B. 27 are severe. A violation is a first-degree misdemeanor, and physicians who are found in violation are also subject to disciplinary action, including the revocation of their medical license. R.C. 3726.99, 2317.56(G)(2), 4731.22(B)(21) and (23). They are also liable for compensatory and exemplary damages. R.C. 2317.56(G)(1). Facilities found to be in violation of the law can have their license revoked, suspended, or not renewed, Adm.Code 3701-83-05(C) and 3701-83-05.1(C)(2), and are subject to up to \$250,000 in fines, Adm.Code 3701-83-05.1(C)(4) and 3701-83-05.2(B); *see also* R.C. 3702.32(D), and up to \$50,000 per patient in civil penalties, Adm. Code 3701-83-05.1(F) and 3701-83-05.2(F). If reported to the Medical Board they are subject to an additional \$20,000 in civil penalties, R.C. 3702.30(E)(2) and 4731.225(B), and can be ordered to stop providing services, Adm.Code 3701-83-05.1(B); *see also* R.C. 3702.32(D)(3) and (E), 3701.79(J), and 3701.341, as well as be held civilly liable as the employer of their physicians, R.C. 2317.56(H)(3).

S.B. 27 and its web of burdensome requirements applies only to embryonic or fetal tissue from a procedural abortion and regulates only providers who perform procedural abortions and facilities where procedural abortions are performed. It does not apply to the disposition of tissue from any other type of medical procedure, including identical tissue from other types of reproductive health care expressly listed in the Reproductive Freedom Amendment, such as miscarriage management and IVF. Indeed, S.B. 27’s disposition requirements for embryonic and fetal tissue appear to be more onerous than even the disposition requirements for dead human bodies. *Compare* R.C. 3726.02(B) (requiring that cremation of tissue from a procedural abortion be at an Ohio-licensed crematory) and Adm.Code 3701-46-01(B)(1)(b) (requiring that locations

relevant, their consent; “maintain evidentiary documentation demonstrating the date and method of the disposition”; and routinely report the method of disposition, along with other data regarding procedural abortion patients, to the Ohio Department of Health (“ODH”). R.C. 3701.79(C), 3726.10, 3726.11, and 3726.12.

for interring tissue provided by the abortion provider be at Ohio-registered cemeteries) *with* R.C. 3705.01(J) (defining “final disposition” as applicable to dead human bodies to mean “interment, cremation, *removal from the state, donation, or other authorized disposition*” (Emphasis added.)).

B. Procedural History

Plaintiffs are health care organizations and a physician who provide procedural abortions in Ohio and therefore help patients exercise their right to abortion. They sued the State in March 2021 and sought injunctive relief to prevent S.B. 27 from taking effect. *See* Compl. for Declaratory & Injunctive Relief. Plaintiffs first moved for and were granted a preliminary injunction on the basis that ODH had not begun the rulemaking process in time to ensure that there would be finalized rules to implement the bill before it went into effect, including rules prescribing the required notification, consent, and supplemental forms. *See* Pls.’ Mot. for TRO Followed by Prelim. Inj.; Entry Granting Prelim. Inj.

After ODH adopted rules, Plaintiffs amended their complaint and moved for a second preliminary injunction, arguing that S.B. 27 would delay and otherwise burden patients seeking procedural abortions, including by effectively banning abortion for patients at certain gestational ages. *See* First Amended Compl. for Declaratory & Injunctive Relief; Pls.’ Second Mot. for Prelim. Inj. This Court granted a preliminary injunction on January 31, 2022, holding in part that Plaintiffs were likely to succeed on their substantive due process, equal protection, and vagueness claims under the Ohio Constitution. *See* Entry Granting Pls.’ Second Mot. for Prelim. Inj. The Court noted that “[S.B. 27] imposes substantial burdens on patients seeking procedural abortion,” and that “Plaintiffs present[ed] convincing evidence that” under S.B. 27 “patients will be forced to delay their procedures until later in pregnancy, when abortion carries greater risk and is more expensive; and that the law will otherwise substantially increase the cost of obtaining an abortion,” among

other burdens. *Id.* at 8. It further noted that “[t]here is no compelling state interest in applying [S.B. 27’s] requirements only to tissue from procedural abortion and not to identical tissue resulting from physician management of miscarriage” and that “[e]ven if th[e] Court were to hold that strict scrutiny did not apply here, it would nevertheless enjoin [S.B. 27] because the law could not satisfy even rational-basis review” *Id.* at 10–11.

The case was subsequently stayed following the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), which overturned *Roe v. Wade*, 410 U.S. 113 (1973), and its progeny, and subsequent litigation regarding whether the Ohio Constitution protects an independent right to abortion. *See State ex rel. Preterm-Cleveland v. Yost*, No. 2022-0803 (Ohio filed June 29, 2022); *Preterm-Cleveland v. Yost*, No. A 2203203 (Hamilton C.P. filed Sept. 2, 2022).

On November 7, 2023, Ohioans voted to amend the Ohio Constitution to explicitly enshrine within it their right to reproductive freedom. *See* Ohio Const., art. I, § 22. The Reproductive Freedom Amendment went into effect on December 7, 2023, and the Ohio Supreme Court dismissed *Preterm*, after which the stay in this case was lifted.

On April 15, 2024, Plaintiffs filed an unopposed motion to amend their complaint a second time, adding claims under the new Reproductive Freedom Amendment. *See* Pls.’ Unopposed Second Mot. for Leave to Amend Compl.; SAC ¶¶ 105–11. The State filed its Answer on June 12, 2024, closing the pleadings. *See* The State’s Answer to Pls.’ Second Am. Compl. (“Answer to Second Am. Compl.”).

III. LAW AND ARGUMENT

Motions for judgment on the pleadings pursuant to Rule 12(c) may be brought by either party when the pleadings have closed and there exist no material factual disputes such that the

court need only resolve questions of law to grant relief. *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570 (1996); *Trinity Health Sys. v. MDX Corp.*, 2009-Ohio-417, ¶ 17 (7th Dist.). A motion for judgment on the pleadings filed by plaintiffs should be granted if, construing the material allegations in the complaint and the answer in favor of the nonmoving party, the court finds beyond doubt that the defendants could prove no set of facts on which they could prevail. *Trinity Health* at ¶ 18.

The pleadings in this case closed on June 12, 2024. *See* Answer to Second Am. Compl. Plaintiffs' Second Amended Complaint asserts, in part, that S.B. 27 is facially discriminatory and is not the least restrictive means of advancing patient health, rendering it unconstitutional as a matter of law. SAC ¶ 105–11. In response, the State's Answer offers no facts creating a dispute that would entitle it to judgment in its favor. This matter is therefore ripe for adjudication under Rule 12(c). Plaintiffs are entitled to judgment as a matter of law because there is no factual dispute that could alter the inevitable legal conclusion that S.B. 27 is unconstitutional because it violates the plain language of the Reproductive Freedom Amendment.

The Reproductive Freedom Amendment provides that “[e]very individual has a right to make and carry out one’s own reproductive decisions,” including decisions regarding “fertility treatment,” “miscarriage care,” and “abortion.” Further, the “State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against” an “individual’s voluntary exercise of this right,” or against those assisting individuals who exercise that 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.” (Emphasis added.) Ohio Const., art. I, § 22. The “normal definition” of the term “discrimination” is “differential treatment,” *Babb v. Wilkie*, 589 U.S. 399, 405 (2020) (quoting *Jackson v. Birmingham Bd. of Edn.*, 544 U.S.

167, 174 (2005)), or “less favorable” treatment. *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669, 682, fn. 22 (1983).⁷ See also *Cortner v. Natl. Cash Register Co.*, 25 Ohio Misc. 156, 159 (C.P. 1970) (“‘Discrimination’ means the act of making a distinction in favor of or against a person or thing based on the group, class or category to which that person or thing belongs, rather than on individual merit.”).

Patients exercising their constitutional right to make and carry out decisions regarding abortion, as well as individuals and facilities who assist these patients, are protected by the plain text of Article I, Section 22. As detailed below, S.B. 27 facially discriminates both against patients seeking to exercise their right to obtain an abortion and against the providers who help them exercise this right. By its very terms, it singles out these groups and treats them differently from—and less favorably than—patients seeking any other type of health care, including other types of reproductive health care, and their health care providers. There is no permissible justification for this discriminatory treatment—and the State has not asserted one. S.B. 27’s requirements are wholly unrelated to patient health and therefore cannot possibly satisfy the constitutional mandate that laws regulating abortion reflect “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).

A. S.B. 27 Facially Discriminates Against Plaintiffs’ Abortion Patients

S.B. 27 infringes on Ohioans’ constitutional right to reproductive freedom by singling out abortion from other health care—including other reproductive health care expressly enumerated

⁷ Even cases interpreting Article I, Section 2’s equal protection guarantee, which allows a more permissive standard of review, recognize that statutory classifications targeting a protected class constitute facial discrimination triggering heightened scrutiny. See, e.g., *Adamsky v. Buckeye Local School Dist.*, 73 Ohio St.3d 360, 362 (1995); *Roseman v. Firemen & Policemen’s Death Benefit Fund*, 66 Ohio St.3d 443, 447 (1993).

in the text of the amendment, such as miscarriage management and IVF—in a way that treats patients who choose abortion differently from all other patients. Accordingly, S.B. 27 runs afoul of the Amendment’s explicit prohibition on “discriminat[ing] against” individuals’ right to carry out their decisions regarding abortion. Ohio Const., art. I, § 22(B).

Specifically, S.B. 27 discriminates against abortion by restricting the embryonic and fetal tissue disposition options available to procedural abortion patients, but not to patients seeking other forms of health care, including reproductive health care that requires the disposal of identical tissue. This discrimination appears on the very face of S.B. 27. S.B. 27 facially classifies procedural abortion patients as distinct from all other patients. Revised Code Section 3726.02(A) provides that “[f]inal disposition of fetal remains *from a surgical abortion at an abortion facility shall* be by cremation or interment.” (Emphasis added.) Tissue from other procedures, including identical embryonic and fetal tissue from miscarriage and IVF, are expressly excluded by the clause limiting application of this disposition requirement to “remains from a surgical abortion at an abortion facility.” *Id.*

This classification removes procedural abortion patients’ ability to decide to have the embryonic or fetal tissue disposed of as it is in all other circumstances. The only tissue disposition options for patients who obtain a procedural abortion are cremation or interment. R.C. 3726.02(A). Procedural abortion patients cannot request the tissue be disposed of by other means. R.C. 3726.03(A). By contrast, patients who obtain other health care are not forced to bury or cremate their tissue—including *identical tissue from identical procedures* performed for the purpose of miscarriage management and identical tissue from IVF. *See* R.C. 3734.01(R); Adm.Code 3745-27-01(I)(6)(c), 3745-27-32(A) and (I)(18); *see also, e.g., Reeder v. Reeder*, 2023-Ohio-2678, ¶ 39 (1st Dist.) (interpreting private contract to determine disposition of embryos resulting from in vitro

fertilization, with “the default disposition” being that the fertility care provider would “destroy the embryo should the parties’ choice become unavailable”); *Kotkowski-Paul v. Paul*, 2022-Ohio-4567, ¶ 32 (11th Dist.) (reproducing sample IVF consent form listing embryo disposition options, including that the donor “may dispose of them as she/he sees fit”). The State’s preferred methods for disposing of embryonic or fetal tissue from an abortion, as distinct from tissue resulting from other procedures, are imposed on abortion patients alone.

Singling out abortion for more restrictive treatment relative to other health care, including reproductive health care, contravenes Ohio’s Reproductive Freedom Amendment. By mandating these disposition methods and foreclosing any other disposition method only for procedural abortion patients, S.B. 27 plainly discriminates against patients seeking abortion and shifts the burden to the State to justify the law as advancing patient health. As detailed below, the State cannot possibly meet that burden here.

B. S.B. 27 Facially Discriminates Against Plaintiffs as Individuals and Entities that Assist Patients Exercising their Right to Abortion

In addition to protecting individuals’ exercise of their right to make and carry out decisions regarding reproductive health care, Ohio’s Reproductive Freedom Amendment prohibits the State from “directly or indirectly . . . discriminat[ing] against . . . [a] person or entity that assists an individual exercising [their right to carry out reproductive decisions, including abortion].” Ohio Const., art. I, § 22. As a matter of law, S.B. 27 does just that by regulating and imposing severe penalties for noncompliance *only* on abortion providers and facilities, in blatant violation of the Amendment. As the State indicated several times in its Answer, “S.B. 27 speaks for itself.” *See* Answer to Second Am. Compl. ¶ 1, 3, 4, 6, 7, 9, 11–14, 16–18, 56, 57, 65, 68, 69, 83, 96, 97, 100. Plaintiffs agree. On its face, S.B. 27 requires providers who perform procedural abortions to take on numerous additional obligations—including paying for the cremation or interment of

embryonic and fetal tissue from procedural abortions—upon pain of loss of licensure, civil penalties, civil suits, and criminal penalties for themselves and their staff. R.C. 3726.99, 2317.56(G)(2), 4731.22(B)(21) and (23), 3702.30(E)(2), and 4731.225(B); Adm.Code 3701-83-05(C), 3701-83-05.1(C)(2), 3701-83-05.1(C)(4) and 3701-83-05.2(B); R.C. 3702.32(D); Adm.Code 3701-83-05.1(B); R.C. 3702.32(D)(3) and (E); Adm.Code 3701-83-05.1(F) and 3701-83-05.2(F); R.C. 3701.79(J), 3701.341, 2317.56(G)(1), and 2317.56(H)(3). This differential treatment, like S.B. 27’s differential treatment of abortion patients, triggers the most exacting form of scrutiny. See Ohio Attorney General, *Issue 1 on the November 2023 Ballot: A Legal Analysis by the Ohio Attorney General*, 5–7 (Oct. 5, 2023) <https://www.ohioattorneygeneral.gov/SpecialPages/FINAL-ISSUE-1-ANALYSIS.aspx> (accessed Aug. 2, 2024).

S.B. 27 facially discriminates against procedural abortion providers by requiring them to jump through hoops and bear expenses that do not exist for other health care providers that routinely dispose of tissue, including identical tissue resulting from miscarriage management or IVF. First, S.B. 27 requires abortion facilities to facilitate the cremation or burial of embryonic and fetal tissue from a procedural abortion. This requires identifying and maintaining contracts with crematories and cemeteries willing to dispose of all embryonic and fetal tissue from procedural abortions in accordance with S.B. 27, which is silent as to whether it requires *individual* burial and cremation. SAC ¶ 66; see also generally S.B. 27. It also requires storing fetal tissue until patients have decided whether to make a disposition determination, without any time limits on that decision. R.C. 3726.05. Furthermore, S.B. 27 even requires that abortion facilities take on the costs for this interment or cremation in almost all circumstances.⁸ R.C. 3726.09. S.B. 27 also

⁸ If there were any doubt that this constituted facial discrimination and unfavorable treatment, an analogy to the Assembly’s tax powers is illustrative. If this extra cost were considered akin to a tax on procedural abortion providers that does not apply to any other health care provider, it would be patently unconstitutional. “States have broad leeway in making classifications and drawing lines

imposes additional administrative burdens on abortion facilities, such as requiring them to develop specific policies and procedures regarding disposition of fetal tissue from procedural abortions, R.C. 3726.05, and to maintain records regarding disposition determinations, R.C. 3726.11.

The imposition of these extra conditions and costs only on those who perform procedural abortions automatically triggers the most intense form of judicial scrutiny after the passage of Ohio’s Reproductive Freedom Amendment, which S.B. 27 cannot survive. *See, e.g., State v. Gravett*, 65 Ohio St. 289, 309–12 (1901) (holding that licensing requirements that were more stringent for osteopaths than for other medical professionals were discriminatory).

C. The State Cannot Assert that S.B. 27 Furthers Individual Health

Article I, Section 22 of Ohio’s Constitution provides only one circumstance in which the State may discriminate against either those seeking an abortion or those seeking to help individuals access abortion: when “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).

But the State has never articulated that S.B. 27 furthers patient health. *See generally* Answer to Second Am. Compl. Nor could it. S.B. 27’s regulations are targeted exclusively at the disposition of embryonic and fetal tissue. In other words, they relate to what happens *after* a procedural abortion. Nothing about S.B. 27 concerns the health care the patient receives in connection with a procedural abortion, or any aspect of the patient’s health. That S.B. 27’s disposition requirements apply only to tissue from procedural abortions—not to identical tissue from miscarriage management or to embryos from IVF—further demonstrates that this disposition

that in their judgment produce reasonable systems of taxation,” *Ohio Apt. Assn. v. Levin*, 2010-Ohio-4414, ¶ 35, but “tax classifications must not have the effect of ‘treating differently persons who are in all relevant respects alike.’” *GTE N., Inc. v. Zaino*, 2002-Ohio-2984, ¶ 22 (quoting *MCI Telecommunications Corp. v. Limbach*, 68 Ohio St.3d 195, 199 (1994)).

requirement is not necessary to ensure the health of procedural abortion patients. The State cannot meet its high burden of showing that the disposal requirements further individual patient health. And absent such a connection, S.B. 27 is unconstitutional under the Reproductive Freedom Amendment as a matter of law.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for judgment on the pleadings pursuant to Rule of Civil Procedure 12(c), declare that S.B. 27 violates the Ohio Constitution, and enter a permanent injunction restraining Defendants, their employees, agents, and successors in office from enforcing S.B. 27.

Dated: August 12, 2024

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*

*Application for *pro hac vice* granted

Respectfully submitted,

/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.*

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2024, the foregoing was electronically filed via the Court's e-filing system and served on counsel for all Defendants via email.

/s/ Camila Vega
Camila Vega