

**Case No. 2018-3329**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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**PRETERM-CLEVELAND; PLANNED PARENTHOOD OF SOUTHWEST  
OHIO REGION; WOMEN'S MEDICAL PROFESSIONAL CORPORATION;  
DOCTOR ROSLYN KADE; PLANNED PARENTHOOD OF GREATER  
OHIO,**  
*Plaintiffs-Appellees,*

v.

**LANCE HIMES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, KIM G.  
ROTHERMEL, SECRETARY, STATE MEDICAL BOARD OF OHIO,  
BRUCE R. SAFERIN, SUPERVISING MEMBER, STATE MEDICAL BOARD  
OF OHIO,**  
*Defendants-Appellants,*

**JOSEPH T. DETERS, HAMILTON COUNTY PROSECUTOR; MICHAEL C.  
O'MALLEY, CUYAHOGA COUNTY PROSECUTOR; MATT HECK, JR.,  
MONTGOMERY COUNTY PROSECUTOR; RON O'BRIEN, FRANKLIN  
COUNTY PROSECUTOR,**  
*Defendants*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF OHIO, CASE NO. 1:18-CV-00109

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**BRIEF OF OHIO STATE REPRESENTATIVES KRISTIN BOGGS,  
JANINE BOYD, NICK CELEBREZZE, KATHLEEN CLYDE,  
HERCEL CRAIG, TERESA FEDOR, TAVIA GALONSKI,  
STEPHANIE HOWSE, CATHERINE INGRAM, BRIGID KELLY,  
DAVID LELAND, DAN RAMOS, KENT SMITH, FRED  
STRAHORN, EMILIA SYKES, THOMAS WEST, AND OHIO  
STATE SENATORS JOE SCHIAVONI, VERNON SYKES,  
CHARLETA TAVARES, CECIL THOMAS, AND SANDRA  
WILLIAMS AS *AMICI CURIAE* URGING AFFIRMANCE IN  
SUPPORT OF APPELLEES PRETERM CLEVELAND, ET AL.**

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**DISCLOSURE OF CORPORATE AFFILIATIONS  
AND FINANCIAL INTERESTS**

Pursuant to Sixth Circuit Rule 26.1, *Amici Curiae* make the following disclosures:

1. They are not a subsidiary or affiliate of a publicly owned corporation.
2. No publicly held corporation that is not a party to the appeal has a financial interest in the outcome by way of any alignment or affiliation with them.

/s/ Elise Porter

Elise Porter

Date: August 28, 2018

## TABLE OF CONTENTS

	<b>Page</b>
INTERESTS.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES .....	iv
STATEMENT OF INTEREST OF AMICUS CURIAE .....	v
AUTHORSHIP STATEMENT .....	vi
SUMMARY .....	1
ARGUMENT .....	2
I.    Ohio’s purported “compelling state interest” in enforcing House Bill 214 is belied by the voting records of the legislators who voted for the bill.....	2
A.    At almost every opportunity, the 84 legislators who voted for H.B. 214 voted for <i>any</i> legislation restricting a woman’s fundamental constitutional right to an abortion.....	4
1.    Six-week (“fetal heartbeat”) ban—House Bill 69 (131st GA).....	5
2.    Down syndrome—House Bill 135 (131st GA).....	5
3.    Withholding state funds from abortion providers—House Bill 294 (131st GA).....	5
4.    Disposal of fetal remains—House Bill 417 (131st GA).....	6
5.    Disposal of fetal remains—House Bill 419 (131st GA).....	7
6.    Twenty-week ban—Senate Bill 127 (131st GA).....	7
7.    Withholding state funds from abortion providers—Senate	

Bill 214 (131st GA).....	8
8.    Disposal of fetal remains—Senate Bill 254 (131st GA).....	8
9.    Six-week (“fetal heartbeat”) ban—House Bill 258 (132nd GA).....	9
10.   Disposal of fetal remains—Senate Bill 28 (132nd GA).....	9
11.   Abortion procedure ban—Senate Bill 145 (132nd GA).....	9
12.   Down syndrome—Senate Bill 164 (132nd GA).....	10
13.   Exceptions.....	10
II.   A significant number of the legislators who voted for House Bill 214 were also primary sponsors of bills that curtail abortion rights.....	11
III.  If support for individuals with Down syndrome is a “compelling state interest,” it would be served by providing for the <i>real</i> needs of this community-affordable health care and support services-not abortion legislation.....	12
CONCLUSION .....	15
ADDENDUM .....	16
CERTIFICATE OF SERVICE .....	19

**TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Page</b>
<i>Roe v. Wade</i> , 410 U.S. 113 (1973).....	1, 3
<i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i> , 505 U.S. 833 (1992).....	1, 3

**Statutes**

Ohio Revised Code § 2919.10.....	1, 2, 3
Ohio Revised Code § 2919.101.....	2, 3
Ohio Revised Code § 2929.14(A)(4).....	3
Ohio Revised Code § 3701.79.....	2

**Other Authorities**

Bills in the 131st General Assembly:

House Bill 69.....	5
House Bill 135.....	5
House Bill 294.....	5
House Bill 417.....	6
House Bill 419.....	7
Senate Bill 127.....	7
Senate Bill 214.....	8
Senate Bill 254.....	8

Bills in the 132nd General Assembly:

House Bill 214.....	<i>passim</i>
House Bill 258 .....	9
Senate Bill 28 .....	9
Senate Bill 145.....	9
Senate Bill 164.....	10

**STATEMENT OF INTEREST OF *AMICI CURIAE***

Amici Curiae Representatives Kristin Boggs, Janine Boyd, Nick Celebrezze (Assistant Minority Leader), Kathleen Clyde, Hercel Craig, Teresa Fedor, Tavia Galonski, Stephanie Howse, Catherine Ingram, Brigid Kelly (Assistant Minority Whip), David Leland, Dan Ramos, Kent Smith, Fred Strahorn (Minority Leader), Emilia Sykes (Minority Whip), Thomas West, and Senators Joe Schiavoni, Vernon Sykes, Charleta Tavares (Assistant Minority Leader), Cecil Thomas (Assistant Minority Whip), and Sandra Williams, are elected officials who are currently serving in the Ohio General Assembly. Each has taken an oath of office promising to uphold the Constitution of the United States. Each feels a duty to inform the court that the abortion ban challenged in this lawsuit is an intrusion on the constitutionally-protected reproductive rights of the female citizens of the State of Ohio.

Amici submit this brief to urge affirmance of the District Court's decision below, which found the challenged ban unconstitutional.

All parties have given consent to the filing of this brief.

## **AUTHORSHIP STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *Amici Curiae* declare:

1. No party's counsel authored this brief in whole or in part;
2. No party or party's counsel contributed money intended to fund the preparation or submission of the brief; and
3. No person, other than Amici or their counsel, contributed money intended to fund the preparation or submission of the brief.



## SUMMARY

H.B. 214 is in violation of the fundamental right to privacy guaranteed by the Fourteenth Amendment, which includes a woman's right to decide whether to terminate her pregnancy pre-viability. *Roe v. Wade*, 410 U.S. 113, 153-54 (1973); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 846 (1992). House Bill 214 criminalizes the performance of any abortion if the woman is seeking the abortion, *even in part*, because of *any* reason to believe that the embryo or fetus is carrying Down syndrome. Ohio Rev. Code § 2919.10(B).

Appellants disingenuously claim that the State of Ohio's "compelling" interest in enacting this ban is to protect and prevent discrimination against individuals with Down syndrome. However, analysis of the voting records of the legislators who enacted H.B. 214 reveals, not a concern for individuals with Down syndrome, but a clear and unequivocal hostility to a woman's right to choose.

In the last two legislative sessions, with very few exceptions, every one of the 84 legislators who voted for H.B. 214, when they had the opportunity, also voted in favor of every other abortion restriction bill. In several cases, the other abortion restriction bills were also sponsored by one or more of the 84 legislators responsible for H.B. 214.

In contrast, individuals with Down syndrome and their advocates call for adequate and affordable health care, help with physical and occupational therapy, as well as educational and employment training and opportunities. Ohio legislators would better serve this community (and Ohio's asserted "compelling" interest) by creating and adequately funding such programs, rather than restricting abortion.

In short, Ohio's stated "compelling" interest in passing H.B. 214 rings hollow; the real interest of the legislators who supported this bill is in placing yet one more hurdle in the way of a woman wishing to exercise the fundamental right to terminate a pre-viability pregnancy, not in helping individuals with Down syndrome.

## ARGUMENT

### **I. Ohio's purported "compelling state interest" in enforcing House Bill 214 is belied by the voting records of the legislators who voted for the bill.**

House Bill 214 criminalizes any abortion performed if the woman is seeking it, *even in part*, because of *any* indication that the embryo may have Down syndrome.<sup>1</sup> Ohio justifies this violation of a woman's fundamental

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<sup>1</sup> H.B. 214 amends § 3701.79 of the Ohio Revised Code and enacts §§ 2919.10 and 2919.101. (Doc. 3 at 7). Section 2919.10 prohibits any person from purposely performing or inducing or attempting to perform or induce an abortion if the person has knowledge that the pregnant woman is seeking the abortion, in whole or in part, because of any of the following: (1) a test result indicating Down syndrome in an

constitutional right by claiming a “compelling state interest” in protecting individuals with Down syndrome. *Roe*, 410 U.S. 113, 153-54 (1973); *Casey*, 505 U.S. 833, 846 (1992). This supposed “compelling” interest is belied by the voting records of the legislators who voted for H.B. 214.<sup>2</sup>

Ohio contends that it has three “compelling” interests that override a woman’s fundamental constitutional right. First, Ohio claims to have a strong interest in preventing discrimination against individuals with Down syndrome. Second, it claims an interest in safeguarding the ethics of the medical profession in not allowing doctors to discriminate against embryos with Down syndrome. And third, it claims an interest in protecting “the Down syndrome community and its civic voice.” All three supposed interests are contradicted by the voting records of those legislators who voted for H.B. 214.

As will be demonstrated below, the 84 legislators who voted for H.B.

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unborn child; (2) a prenatal diagnosis of Down syndrome in an unborn child; or (3) “any other reason to believe” that an unborn child has Down syndrome. Ohio Rev. Code § 2919.10(B). Violation of this section constitutes a fourth-degree felony, punishable by up to 18 months in prison. Ohio Rev. Code §§ 2919.10(C) and 2929.14(A)(4). The law further requires the state medical board to revoke the license of a physician who violates it and makes that physician liable in a civil action for compensatory and exemplary damages. H.B. 214 also requires a performing physician to attest in writing that he or she is not aware that fetal Down syndrome is a reason for the woman’s decision to terminate her pregnancy. Ohio Rev. Code § 2919.101(A).

<sup>2</sup> Amici incorporate the Statement of Facts from Plaintiff-Appellee’s brief filed in this case.

214, with minor exceptions, consistently vote for abortion restrictions of all kinds, not just those involving Down syndrome. At the same time, the undisputed evidence on the record shows that individuals with Down syndrome in Ohio remain vastly underserved. Their real needs would be met, not by an abortion ban, but with legislation that provides affordable and adequate medical insurance, and legislation that provides therapeutic and job-training services for individuals with Down syndrome.

**A. At almost every opportunity, the 84 legislators who voted for H.B. 214 voted for *any* legislation restricting a woman's fundamental constitutional right to an abortion.**

This brief considers the voting records of the 84 legislators who voted for H.B. 214, specifically regarding the twelve other Ohio bills from the last two legislative sessions that restrict abortion rights.<sup>3</sup> The records show that, with very few exceptions, every one of these legislators who had the opportunity to vote for any abortion restriction bill voted in favor of restriction. For the eight bills that reached the Senate, every senator on the list who voted cast a vote in favor of restricting abortion. In the House, of the representatives who voted, nearly all voted in favor of every abortion restriction. A table of the results is found in the addendum.

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<sup>3</sup> The analysis was performed using voting data from the Ohio General Assembly website legislation search: <https://www.legislature.ohio.gov/legislation/search-legislation?0> (last visited August 26, 2018)

**1. Six-week (“fetal heartbeat”) ban—House Bill 69 (131st GA)**

House Bill 69, introduced on February 17, 2015, is perhaps the most draconian of all the bills in the analysis. It would prohibit a person from knowingly and purposefully performing or inducing an abortion on a pregnant woman if a fetal heartbeat has been detected. Fetal heartbeat can be detected at around 6 weeks, before many women even know they are pregnant. The bill passed the House but was not voted on by the Senate. Forty of the representatives who voted on H.B. 214 also voted on this bill, and thirty-five of them voted in favor.

**2. Down syndrome abortion ban—House Bill 135 (131st GA)**

House Bill 135, introduced on March 25, 2015, would prohibit any person from purposefully performing or inducing, or attempting to perform or induce, an abortion on a pregnant woman, if the person has knowledge that the pregnant woman is seeking the abortion because the unborn child was found or believed to have Down syndrome. The bill passed the House Community and Family Advancement Committee but has not been voted on by the full House or the Senate. Every single representative who voted for H.B. 214 and who had the opportunity, also voted in favor of H.B. 135.

**3. Withholding state funds from abortion providers—  
House Bill 294 (131st GA)**

House Bill 294, introduced on July 30, 2015, requires the Ohio

Department of Health (ODH) to ensure that funding and materials that are received or used in certain programs or initiatives are not used to (1) perform nontherapeutic abortions; (2) promote nontherapeutic abortions; (3) contract with an entity that performs or promotes nontherapeutic abortions; or (4) become or continue to be an affiliate of any entity that performs or promotes nontherapeutic abortions. This bill had the practical effect of defunding Planned Parenthood.

The bill passed both the House and the Senate. Forty-six of the representatives who voted for H.B. 214 also voted on this bill, and forty-four of them voted “yes” while two of them voted “no”. Fifteen of the senators who voted for H.B. 214 also voted on this bill, and they all voted “yes.”

#### **4. Disposal of fetal remains—House Bill 417 (131st GA)**

House Bill 417, introduced on December 17, 2015, would require that an abortion facility possessing fetal remains must either (1) dispose or arrange for the disposal of the remains through interment, cremation, or humane individual incineration, or (2) provide the remains to the woman who had the abortion and who made a disposition determination for the woman to dispose of the fetal remains by interment, cremation, or humane individual incineration. This bill would impose enormous expense on abortion facilities. The bill passed the House Health & Aging Committee, but it has had no floor vote at the House

or the Senate. All of the representatives who voted for H.B. 214 and who also had the opportunity to vote for H.B. 417, voted “yes.”

**5. Disposal of fetal remains—House Bill 419 (131st GA)**

House Bill 419, introduced on December 23, 2015, would require the Director of Health to adopt rules that (1) require facilities authorized to perform abortions and any persons or entities that contract with those facilities to dispose of fetal remains by interment, cremation, or incineration; (2) establish guidelines for the incineration of fetal remains; and (3) create a detachable, supplemental form to the abortion informed consent form under existing law that indicates the pregnant woman's selected method of disposition, and other information. This bill would impose enormous expense on abortion facilities. The bill passed the House Health and Aging Committee but has not yet been voted on by the full House or the Senate. Seven of the representatives who voted for H.B. 214 also voted on this bill, and they all voted “yes.”

**6. Twenty-week ban—Senate Bill 127 (131st GA)**

Senate Bill 127, introduced on March 16, 2015, prohibits a person from purposely performing or inducing, or purposely attempting to perform or induce, an abortion on a pregnant woman when the probable post-fertilization age of the unborn child is twenty weeks or greater. The bill passed both the

House and the Senate. Forty-nine of the representatives who voted for H.B. 214 also voted on this bill, and forty-eight of them voted “yes” while one of them voted “no.” Sixteen of the senators who voted for H.B. 214 also voted on this bill, and they all voted “yes.”

**7. Withholding state funds from abortion providers—  
Senate Bill 214 (131st GA)**

Senate Bill 214, introduced on September 23, 2015, would require the Ohio Department of Health (ODH) to ensure that funding and materials that are received or used in certain programs or initiatives are not used to (1) perform nontherapeutic abortions; (2) promote nontherapeutic abortions; (3) contract with an entity that performs or promotes nontherapeutic abortions; or (4) become or continue to be an affiliate of any entity that performs or promotes nontherapeutic abortions. This bill would have had the practical effect of defunding Planned Parenthood. The bill was passed by the Senate but not the House. Ten of the Senators that voted for H.B. 214 also voted on this bill, and all ten voted “yes.”

**8. Disposal of fetal remains—Senate Bill 254 (131st GA)**

Senate Bill 254, introduced on December 14, 2015, would require that the final disposition of fetal remains from a surgical abortion at an abortion facility be by cremation or interment. This bill would impose enormous expense on abortion facilities. This bill passed the Senate but has not been



voted on in the House. Fifteen of the senators who voted for H.B. 214 also voted on this bill, and they all voted “yes.”

**9. Six-week (“fetal heartbeat”) ban—House Bill 258 (132nd GA)**

House Bill 258, introduced on July 6, 2017, would prohibit a person from knowingly and purposefully performing or inducing an abortion on a pregnant woman if a fetal heartbeat has been. Fetal heartbeat can be detected at around 6 weeks, before many women even know they are pregnant. The bill has passed the House Health Committee but has not yet been voted on by the full House or the Senate. Eleven of the representatives who voted for H.B. 214 also voted on this bill, and they all voted in favor of the bill.

**10. Disposal of fetal remains—Senate Bill 28 (132nd GA)**

Senate Bill 28, introduced on January 31, 2017, would require that the final disposition of fetal remains from a surgical abortion at an abortion facility be by cremation or interment. The bill passed the Senate and passed the House Health Committee, but it has not yet been voted on by the full House. Nineteen of the senators who voted for H.B. 214 also voted on this bill, and they all voted “yes.” Thirteen of the representatives who voted for H.B. 214 also voted on this bill, and twelve of them voted “yes” while one of them voted “no.”

**11. Abortion procedure ban—Senate Bill 145 (132nd GA)**

Senate Bill 145, introduced on May 4, 2017, would prohibit a person from

knowingly performing or attempting to perform the safest and most common second-trimester abortion procedure. The bill provides that a person who violates the prohibition is guilty of a fourth-degree felony. The bill passed the Senate but has not been voted on in the House. Nineteen of the senators who voted for H.B. 214 also voted on this bill, and they all voted “yes.”

### **12. Down syndrome—Senate Bill 164 (132nd GA)**

Senate Bill 164, introduced on June 13, 2017, would prohibit any person from purposefully performing or inducing, or attempting to perform or induce, an abortion on a pregnant woman, if the person has knowledge that the pregnant woman is seeking the abortion because the unborn child was found or believed to have Down syndrome. The bill passed the Senate and House Health Committee but has not been voted on by the full House. Unsurprisingly, 19 of the senators who voted for H.B. 214 also voted on this bill, and they all voted “yes.” Twelve of the representatives who voted for H.B. 214 also voted on this bill, and they all voted “yes.”

### **13. Exceptions**

The data overwhelmingly show that every house representative and senator who supported H.B. 214, given the opportunity, also voted for almost every abortion-related bill during the two most recent sessions. There are only a few exceptions.

Representatives Duffey and O'Brien are the only legislators who voted for H.B. 214 who voted "no" on more than one of the twelve other abortion-related bills considered. Duffey voted against H.B. 69, S.B. 28, and S.B. 127; O'Brien voted against H.B. 69 and H.B. 294.

House Bills 294 and 69, and Senate Bills 28 and 127 were the only bills of the twelve analyzed that received a "no" vote from any of the 84 legislators who voted for H.B. 214. Representative Duffey voted "no" on S.B. 28 and 127. Representatives Anielski, Duffey, Gonzales, O'Brien, and Ryan voted against House Bill 69. Representatives Rezabek and O'Brien voted against House Bill 294.

**B. A significant number of the legislators who voted for House Bill 214 were also primary sponsors of bills that curtail abortion rights.**

Not only did these legislators vote for almost any abortion restriction, 13 of the 84 legislators who voted for H.B. 214 were primary sponsors of at least one of the other abortion-related bills:

- Representative Ginter: H.B. 419;
- Representatives Hagan and Hood: H.B. 69 and H.B. 258;
- Representative LaTourette: H.B. 135;
- Representatives McColley and Koehler: H.B. 417;
- Representative Patmon: H.B. 294;

- Senators Bacon, Balderson, Beagle, LaRose, Lehner, Hottinger, Obohof, and Oelslager: S.B. 214;
- Senators Huffman and Wilson: S.B. 145;
- Senator LaRose: S.B. 164;
- Senators Lehner and Hottinger: S.B.127; and
- Senator Uecker: S.B. 28, S.B. 241, and S.B. 254.

In short, these 84 legislators have (almost) never seen an abortion restriction they didn't like. Ohio's real interest in H.B. 214, as reflected in its supporters' voting records, is clear: restricting a woman's constitutional right to choose a pre-viability abortion.

**II. If support for individuals with Down syndrome is a “compelling state interest,” it would be served by providing for the *real* needs of this community—affordable health care and support services—not abortion legislation.**

If the State of Ohio wants to help individuals with Down syndrome and their families, it should increase the availability of services, rather than pass another abortion restriction. Indeed, as represented by the declarations of Leesha Thrower and Emily Chesnut, parents of children with Down syndrome, the needs of individuals with Down syndrome are “unmet on a vast scale” in Ohio. (Declaration of Leesha Thrower, R.Doc. 26-3, Page ID # 535 ¶ 6).

The declarations identify several areas of unmet and urgent need for individuals with Down syndrome and their families. First, individuals with

Down syndrome often have a wide variety of medical problems, including congenital heart defects requiring open-heart surgery, eye, gastrointestinal, thyroid, orthopedic and sleep problems, as well as hearing loss. (Declaration of Emily Chesnut, R.Doc 26-2, Page ID # 531 ¶¶ 6-8; R.Doc 26-3, Page ID # 536 ¶ 11). These myriad health problems are often not adequately covered by medical insurance and can be prohibitively expensive for the families of individuals with Down syndrome. (R.Doc 26-2, Page ID # 531 ¶¶ 5-9; R.Doc 26-3, Page ID # 536 ¶¶ 10-11). Individuals with Down syndrome and their families need more comprehensive and affordable health care. (R.Doc 26-2, Page ID # 531 ¶¶ 6-8; R.Doc 26-3, Page ID # 536 ¶ 11).

Second, children with Down syndrome suffer from developmental delays that benefit from extended school year services, summer programs, and classroom aides, as well as improvements in Ohio's developmental disabilities waiver program. (R.Doc 26-2, Page ID ## 531-532 ¶¶ 10-13; R.Doc. 26-3, Page ID ## 535-536 ¶¶ 7, 12). If Ohio truly wants to help children with Down syndrome, it would improve and adequately fund such programs through both the public schools and in the private sector. (R.Doc 26-2, Page ID ## 531-532 ¶¶ 10-13; R.Doc. 26-3, Page ID ## 535-536 ¶¶ 7, 12).

Third, individuals with Down syndrome often need physical, occupational and speech therapies. (R.Doc 26-2, Page ID ## 531-532 ¶¶ 10-

13; RDoc. 26-3, Page ID ## 535-536 ¶¶ 8-11). Physical aids, such as glasses, hearing aids, and walkers are also often needed. Such therapies and aids are often prohibitively expensive or not covered by insurance. (R.Doc 26-2, Page ID # 531 ¶ 9; R.Doc. 26-3, Page ID # 535 ¶¶ 8-9). If Ohio wants to help individuals with Down syndrome, it would make sure that these therapies and aids are adequately funded. (R.Doc 26-2, Page ID # 531 ¶ 9; R.Doc. 26-3, Page ID # 535 ¶¶ 8-9).

Fourth, individuals with Down syndrome have few opportunities for employment or job training. (R.Doc. 26-3, Page ID # 536 ¶ 13). If Ohio truly wants to help, it would create and adequately fund job programs “so that [individuals with Down syndrome] are paid a fair, living wage and can contribute . . . to their own lives [and] to society.” (R.Doc. 26-3, Page ID # 536 ¶ 13).

In short, Ohio’s stated interest of helping “the Down syndrome community” is not advanced by enacting one more unconstitutional abortion restriction. Rather, the legislators who claim to want to help this community should create and adequately fund programs that meet the real needs of individuals with Down syndrome.

## CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

/s/Elise Porter

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## ADDENDUM

<b>Bill</b>	<b>HB 258</b>	<b>SB 28</b>	<b>SB 145</b>	<b>SB 164</b>	<b>HB 69</b>	<b>HB 135</b>	<b>HB 294</b>	<b>HB 417</b>	<b>HB 419</b>	<b>SB 127</b>	<b>SB 214</b>	<b>SB 254</b>
<b>General Assembly</b>	132	132	132	132	131	131	131	131	131	131	131	131
<b>Voted for HB 214</b>	<b>Y = Voted yes; N = Voted no; PS = primary sponsor; No letter = No vote</b>											
<b>House</b>												
Anielski					N		Y			Y		
Antani	Y	Y		Y	Y	Y	Y			Y		
Becker					Y		Y			Y		
Blessing					Y		Y			Y		
Brenner					Y		Y			Y		
Brinkman					Y		Y			Y		
Butler	Y	Y		Y	Y		Y	Y	Y	Y		
Carfagna												
Cupp					Y		Y			Y		
Dean										Y		
Dever					Y	Y	Y			Y		
DeVitis					Y		Y			Y		
Duffey		N		Y	N		Y			N		
Edwards	Y	Y		Y								
Faber												
Gavarone		Y		Y						Y		
Ginter	Y	Y		Y	Y	Y	Y	Y	Y, PS	Y		
Gonzales					N		Y	Y	Y	Y		
Goodman										Y		
Green					Y		Y			Y		
Greenspan												
Hagan	PS				Y, PS	Y	Y			Y		



Hambley					Y		Y			Y		
Henne					Y		Y			Y		
Hill					Y, PS		Y			Y		
Hood	PS				Y	Y	Y			Y		
Householder												
Huffman	Y	Y		Y	Y		Y	Y	Y	Y		
Hughes										Y		
Johnson	Y	Y		Y	Y		Y	Y	Y			
Keller	Y	Y		Y						Y		
Kick	Y	Y		Y								
Koehler					Y		Y	PS		Y		
Landis					Y		Y			Y		
Lanese												
Lang												
LaTourette	Y	Y			Y	PS	Y			Y		
Lipps												
McColley					Y		Y	PS		Y		
Merrin	Y	Y		Y						Y		
O'Brien					N		N			Y		
Patmon						Y	Y, PS			Y		
Patton												
Pelanda					Y		Y			Y		
Perales					Y		Y			Y		
Reineke					Y		Y			Y		
Retherford					Y		Y			Y		
Rezabek					Y		N			Y		
Riedel												
Roegner							Y			Y		
Romanchuk	Y	Y		Y	Y		Y			Y		
Ryan					N		Y					
Schaffer					Y		Y			Y		
Scherer					Y		Y			Y		
Schuring					Y		Y	Y	Y	Y		

Seitz												
Slaby					Y		Y					
Smith					Y		Y			Y		
Sprague					Y		Y	Y	Y	Y		
Stein												
Thompson					Y		Y			Y		
Vitale					Y		Y			Y		
Wiggam												
Young					Y	Y	Y			Y		
<b>Senate</b>												
Bacon		Y	Y	Y			Y			Y	Y	Y
Balderson		Y	Y	Y			Y			Y	Y	Y
Beagle		Y	Y	Y			Y			Y	Y	
Eklund		Y	Y	Y			Y			Y	Y	Y
Hoagland		Y	Y	Y								
Hottinger		Y	Y	Y			Y			Y, PS	Y	Y
Huffman		Y	Y, PS	Y								
Larose		Y	Y	Y, PS			Y			Y	Y	Y
Lehner		Y	Y	Y			Y			Y, PS	Y	Y
Obhof		Y	Y	Y			Y			Y	Y	Y
Oelslager		Y	Y	Y			Y			Y	Y	Y
Terhar			Y	Y								
Uecker		Y, PS	Y	Y			Y			Y	Y	Y, PS
Wilson		Y	Y, PS	Y								

### **CERTIFICATE OF SERVICE**

I certify that on August 28, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ Elise Porter

Elise Porter

**CERTIFICATE OF COMPLIANCE WITH RULE 32(a)**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4116 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and type style requirements of Fed. R. App. P. 32(a)(6). Specifically, it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

/s/Elise Porter

Elise Porter