

February 26, 2018

**VIA ELECTRONIC MAIL**

Chairman Huffman  
House Health Committee  
77 S. High St, 12th Floor  
Columbus, OH 43215

Ranking Member Antonio  
House Health Committee  
77 S. High St, 14th Floor  
Columbus, OH 43215

**RE: Senate Bill 28**

Dear Chairman Huffman and Ranking Member Antonio:

The Center for Reproductive Rights urges you to reject Senate Bill 28 (“SB 28”), which contains unconstitutional provisions and will unduly burden patients seeking abortion care.

The Center for Reproductive Rights (“Center”) is a legal advocacy organization dedicated to protecting the rights of women to access safe and legal abortion and other reproductive health care. For nearly 25 years, we have successfully challenged restrictions on abortion throughout the United States. In 2016, we won the landmark case *Whole Woman’s Health v. Hellerstedt*, in which the U.S. Supreme Court struck down two Texas laws burdening access to abortion and reaffirmed the Constitution’s robust protections for a woman’s decision to have an abortion.<sup>1</sup>

SB 28 requires tissue resulting from a surgical abortion, at any stage of the pregnancy, to be interred or cremated.<sup>2</sup> The Center successfully challenged a similar requirement to SB 28 in Texas last year, which is successfully preliminarily enjoined by a federal court.<sup>3</sup> Similarly, an Indiana federal court blocked a fetal disposal law from taking effect, and Louisiana’s funeral-like requirement never took effect due to litigation.<sup>4</sup>

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<sup>1</sup> 136 S. Ct. 2292, 2324 (2016).

<sup>2</sup> Ohio SB 28 (As Passed by the Senate) (last visited Feb. 26, 2018) <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-28>.

<sup>3</sup> *Whole Woman’s Health v. Hellerstedt*, No. A-16-CA-1300-SS (W.D. Tex. Jan. 29, 2018) (last visited Feb. 26, 2018) [https://static.texastribune.org/media/documents/Fetal\\_remains\\_ruling\\_1-29-18.pdf?\\_ga=2.68918805.589300638.1519673185-1887310734.1519673185](https://static.texastribune.org/media/documents/Fetal_remains_ruling_1-29-18.pdf?_ga=2.68918805.589300638.1519673185-1887310734.1519673185).

<sup>4</sup> *PPINK v. Commissioner*, 194 F. Supp. 3d 818 (S.D. Ind. June 30, 2016). Abortion providers challenged a similar law in Louisiana; the defendants agreed not to enforce the law against licensed abortion clinics or their physicians while the litigation proceeds. See also *Margaret S. v. Edwards*, 488 F. Supp. 181, 221-22 (E.D. La. 1980) (“[T]his Court holds that [the challenged statute] is an unconstitutional exercise of the State’s police power because it requires that fetal remains be treated with the same dignity as the remains of a person and, thereby, unduly burdens the right of a woman to obtain an abortion.”).

Much like similar laws blocked by federal courts, SB 28 is also unconstitutional. This letter sets forth the constitutional flaws in SB 28.

SB 28 unconstitutionally burdens women seeking pregnancy-related medical care by imposing a funeral ritual on women who have an abortion. The U.S. Supreme Court has long held that, to pass constitutional muster, an abortion restriction must further a valid state interest *and* cannot amount to an undue burden.<sup>5</sup> In *Whole Woman's Health*, the Court made clear that the undue burden standard requires courts to weigh an abortion restriction's burdens against its benefits; if the burdens outweigh the benefits, the law is unconstitutional.<sup>6</sup>

SB 28 is plainly in violation of these constitutional principles. First, the bill sponsor's stated interest is to "honor the unborn" and protect "the dignity of human life."<sup>7</sup> In *Whole Woman's Health II*, a Texas federal court rejected this interest in the context of tissue disposal, noting that rules similar to SB 28, "regulate activities after a miscarriage, ectopic pregnancy, or abortion—activities that occur where there is no potential life to protect."<sup>8</sup> Further, the court expressed skepticism that the state's proffered interest was genuine, finding that the state interest likely "is a pretext for . . . restricting abortion [access]."<sup>9</sup> SB 28 would likely fail constitutional scrutiny based on an invalid state interest alone.<sup>10</sup>

Secondly, as was found in *Whole Woman's Health II*, if there were a legitimate interest underlying the law, the burdens imposed by the proposed requirements "substantially outweigh the benefits"—in violation of *Whole Woman's Health*.<sup>11</sup> Laws like SB 28 can increase costs for healthcare providers, enhance the stigma on women associated with miscarriage and abortion care, and create potentially devastating logistical challenges for abortion providers.<sup>12</sup>

A court would almost certainly conclude again that "the burdens likely substantially outweigh any claimed benefit."<sup>13</sup> SB 28 clearly falls short of the robust constitutional standard set forth by the U.S. Supreme Court in *Whole Woman's Health*.

We urge you to reject SB 28 as an unnecessary, unconstitutional burden on women's access to reproductive health care.

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<sup>5</sup> *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 877; accord *Whole Woman's Health*, 136 S.Ct. at 2309.

<sup>6</sup> 136 S.Ct. at 2300.

<sup>7</sup> SB 28 Hearing Before *House Health Committee* (last visited Feb. 26 2017) (statement of State Senator Joseph Uecker, Feb. 14, 2018) [http://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/ready\\_for\\_publication/cmte\\_h\\_health\\_1/testimony/cmte\\_h\\_health\\_1\\_2018-01-31-0900\\_1090/ueckersponsor.pdf](http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/ready_for_publication/cmte_h_health_1/testimony/cmte_h_health_1_2018-01-31-0900_1090/ueckersponsor.pdf).

<sup>8</sup> *Whole Woman's Health II*, 2017 WL 462400 at \*7 (preliminary injunction order).

<sup>9</sup> *Id.* at \*8.

<sup>10</sup> See *id.* ("On [the state interest] ground alone, the Court could find Plaintiffs meet their burden of likely success on the merits.").

<sup>11</sup> *Id.* ("even assuming [the health department] is acting upon a legitimate interest, the record contains evidence the burdens on abortion access substantially outweigh the benefits.").

<sup>12</sup> *Id.* at \*10.

<sup>13</sup> *Id.*

Sincerely,



Shivana Jorawar \*  
State Legislative Counsel  
Center for Reproductive Rights  
199 Water Street, 22nd Floor  
New York, NY 10038  
[sjorawar@reprorights.org](mailto:sjorawar@reprorights.org)

*\*admitted in New York*



Nimra Chowdhry\*  
State Legislative Fellow  
Center for Reproductive Rights  
199 Water Street, 22nd Floor  
New York, NY 10038  
[nchowdhry@reprorights.org](mailto:nchowdhry@reprorights.org)

*\*admitted in Texas*