

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

PLANNED PARETHOOD SOUTHWEST	:	
OHIO REGION, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Case No. A21 00870
	:	
v.	:	Judge Alison Hatheway
	:	
OHIO DEPARTMENT OF HEALTH, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**ANSWER OF DEFENDANTS THE OHIO DEPARTMENT OF HEALTH, DIRECTOR
STEPHANIE MCCLOUD, AND THE STATE MEDICAL BOARD OF OHIO**

The Ohio Department of Health, Director Stephanie McCloud, and the State Medical Board of Ohio (“State Defendants”) answer the Complaint in this case as follows:

1. The State Defendants admit that a copy of Am. S.B. No. 27, 2020 Ohio Laws File 7 (“SB 27”) is attached as Exhibit A to the Complaint. The remaining allegations in paragraph 1 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.
2. The allegations in paragraph 2 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.
3. The allegations in paragraph 3 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.



4. The allegation in paragraph 4 is a legal conclusion and/or assertion to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

5. The State Defendants admit that SB 27 gives the Director of the Ohio Department of Health (“ODH”) 90 days from the statute’s effective date to adopt rules necessary to carry out various provisions of the statute, including rules prescribing various forms. By way of further response, SB 27 speaks for itself.

6. The State Defendants admit that as of March 9, 2021, the date the Complaint was filed, ODH had not prescribed any forms under SB 27. The remaining allegations in paragraph 6 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

7. The allegations in paragraph 7 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

8. The State Defendants deny for lack of knowledge the allegation contained in paragraph 8. By way of further response, SB 27 speaks for itself.

9. The State Defendants deny for lack of knowledge the allegations contained in paragraph 9. By way of further response, SB 27 speaks for itself.

10. The allegations in paragraph 10 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

11. The State Defendants deny for lack of knowledge the allegations contained in paragraph

12. The State Defendants deny the allegations in paragraph 12.

13. Defendants ODH and Director McCloud admit that Plaintiff Planned Parenthood Southwest Ohio Region (“PPSWO”) has an ambulatory surgical facility located in Cincinnati. The State Defendants deny that PPSWO will be deprived of protected property or liberty interests without due process. The State Defendants deny for lack of knowledge the remaining allegations in paragraph 13. By way of further response, SB 27 speaks for itself.

14. The State Defendants deny that Plaintiff Dr. Sharon Liner will be deprived of protected property or liberty interests without due process. The State Defendants deny for lack of knowledge the remaining allegations in paragraph 14. By way of further response, SB 27 speaks for itself.

15. The State Defendants deny that Plaintiff Planned Parenthood of Greater Ohio (“PPGOH”) will be deprived of protected property or liberty interests without due process. The State Defendants deny for lack of knowledge the remaining allegations in paragraph 15. By way of further response, SB 27 speaks for itself.

16. The State Defendants deny that Plaintiff Preterm-Cleveland (“Preterm”) will be deprived of protected property or liberty interests without due process. The State Defendants deny for lack of knowledge the remaining allegations in paragraph 16. By way of further response, SB 27 speaks for itself.

17. The State Defendants deny that Plaintiff Women’s Med Group Professional Corporation (“WMGPC”) will be deprived of protected property or liberty interests without

due process. The State Defendants deny for lack of knowledge the remaining allegations in paragraph 17. By way of further response, SB 27 speaks for itself.

18. The State Defendants deny that Plaintiff Northeast Ohio Women’s Center, LLC (“NEOWC”) will be deprived of protected property or liberty interests without due process. The State Defendants deny for lack of knowledge the remaining allegations in paragraph 18. By way of further response, SB 27 speaks for itself.

19. The State Defendants deny for lack knowledge the allegation in paragraph 19.

20. The allegations in paragraph 20 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

21. The State Defendants admit that Stephanie McCloud is the Director of ODH. The remaining allegations in paragraph 21 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

22. Defendants ODH and Director McCloud deny for lack of knowledge the allegations in paragraph 22. Defendant State Medical Board of Ohio (“Medical Board”) admits that it has authority to take a disciplinary action, including suspension or revocation, against a physician’s license based on a violation of R.C. 4731.22, and may also impose civil penalties pursuant to R.C. 4731.225. By way of further response, SB 27 speaks for itself.

23. The State Defendants deny for lack of knowledge the allegations in paragraph 23.

24. The State Defendants deny for lack of knowledge the allegations in paragraph 24.

25. The State Defendants deny for lack of knowledge the allegations in paragraph 25.

26. The State Defendants deny for lack of knowledge the allegations in paragraph 26.

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27. The State Defendants deny for lack of knowledge the allegations in paragraph 27.
 28. The State Defendants deny for lack of knowledge the allegations in paragraph 28.
 29. The State Defendants deny for lack of knowledge the allegations in paragraph 29.
 30. The State Defendants deny for lack of knowledge the allegations in paragraph 30.
 31. The State Defendants deny for lack of knowledge the allegations in paragraph 31.
 32. The State Defendants deny for lack of knowledge the allegations in paragraph 32.
 33. The State Defendants deny for lack of knowledge the allegations in paragraph 33.
 34. Paragraph 34 is a legal conclusion to which no response is required. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.
 35. The State Defendants deny that venue is proper in Hamilton County. The remainder of paragraph 35 contains legal conclusions to which no response is required. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.
 36. The State Defendants deny for lack of knowledge the allegation in paragraph 36.
 37. The State Defendants deny for lack of knowledge the allegations in paragraph 37.
 38. The State Defendants deny for lack of knowledge the allegations in paragraph 38.
 39. The State Defendants deny for lack of knowledge the allegations in paragraph 39.
 40. The State Defendants deny for lack of knowledge the allegations in paragraph 40.
 41. The State Defendants deny for lack of knowledge the allegations in paragraph 41. By way of further response, R.C. 2919.201 speaks for itself.
 42. The State Defendants deny for lack of knowledge the allegations in paragraph 42. By way of further response, the referenced ODH publication speaks for itself.
 43. The State Defendants deny for lack of knowledge the allegations in paragraph 43. By way of further response, R.C. 2919.123 speaks for itself.

44. The allegations in paragraph 44 are legal conclusions and/or assertions to which no response is required. By way of further response, Ohio Admin. Code 3701-83-09(D)(3) speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

45. The allegation in paragraph 45 is a legal conclusion and/or assertion to which no response is required. By way of further response, Ohio Admin. Code 3701-47-05(A) speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

46. The allegations in paragraph 46 are legal conclusions and/or assertions to which no response is required. By way of further response, R.C. 3734.01(R), Ohio Admin. Code 3745-27-01(I)(6)(c), and Ohio Admin. Code 3745-27-32(A) and (I)(18) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

47. The State Defendants deny for lack of knowledge the allegation in paragraph 47.

48. The allegations in paragraph 48 are legal conclusions and/or assertions to which no response is required. By way of further response, R.C. 4717.23(A), R.C. 4717.24(A)(7), R.C. 4717.26(D), R.C. 4717.20(C), R.C. 3705.17, and R.C. 3705.20(B) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

49. The allegations in paragraph 49 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 and R.C. 3726.01(C) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

50. The allegations in paragraph 50 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

51. The allegation in paragraph 51 is a legal conclusion and/or assertion to which no response is required. By way of further response, SB 27 and R.C. 3726.02(A) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

52. The allegation in paragraph 52 is a legal conclusion and/or assertion to which no response is required. By way of further response, SB 27, Ohio Revised Code Chapter 4717, and R.C. 3726.02(B) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

53. The allegations in paragraph 53 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 and R.C. 3726.03(A) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

54. The allegations in paragraph 54 are legal conclusions and/or assertions to which no response is required. By way of further response, R.C. 3726.03(B) and R.C. 2317.56(B)(4)(c) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

55. The allegations in paragraph 55 are legal conclusions and/or assertions to which no response is required. By way of further response, R.C. 3726.03, R.C. 3726.04(A)(1), and R.C. 2317.56(B)(4)(d) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

56. The allegations in paragraph 56 are legal conclusions and/or assertions to which no response is required. By way of further response, R.C. 3726.03 and R.C. 3726.04(A)(2) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

57. The allegations in paragraph 57 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 and R.C. 3701.79(C) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

58. The allegations in paragraph 58 are legal conclusions and/or assertions to which no response is required. By way of further response, R.C. 3726.05 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

59. The allegations in paragraph 59 are legal conclusions and/or assertions to which no response is required. By way of further response, R.C. 3726.10, R.C. 3726.11, and R.C. 3726.12 speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

60. The allegations in paragraph 60 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27, R.C. 4717.271(A)(1), and R.C. 4717.271(B) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

61. The allegations in paragraph 61 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 and R.C. 3726.15 speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

62. The allegations in paragraph 62 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 and R.C. 3726.14 speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

63. The State Defendants admit that SB 27 was signed into law on December 30, 2020. The State Defendants admit that ODH had not promulgated rules pursuant to SB 27 as of March 9, 2021, the date the Complaint was filed. The remaining allegations in paragraph 63 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

64. The State Defendants deny for lack of knowledge the allegations in paragraph 64. By way of further response, SB 27 speaks for itself.

65. The State Defendants deny for lack of knowledge the allegations in paragraph 65. By way of further response, SB 27 speaks for itself.

66. The State Defendants deny for lack of knowledge the allegations in paragraph 66. By way of further response, SB 27 speaks for itself.

67. The federal court order regarding ODH's order pertaining to non-essential surgeries and procedures speaks for itself and no answer regarding that allegation is required. Defendant Medical Board denies for lack of knowledge the remaining allegations in paragraph 67. Defendants ODH and Director McCloud admit that ODH inspectors went to PPSWO, Preterm, and WMGPC in March 2020. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

68. The referenced federal temporary restraining order and federal court determination speak for themselves. Defendant Medical Board denies for lack of knowledge the remaining allegations in paragraph 68. Defendants ODH and Director McCloud admit that ODH agreed not to enforce the Director's Order against PPSWO or PPGOH or any other provider in the State. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

69. The statement in paragraph 69 about Ohio requiring ambulatory surgical facilities to have a written transfer agreement with a local hospital is a legal conclusion and/or assertion to which no response is required. Defendant Medical Board denies for lack of knowledge the remaining allegations in paragraph 69. Defendants ODH and Director McCloud admit that there is a case pending in federal court but deny the remaining allegations in paragraph 69.

70. The State Defendants deny for lack of knowledge the allegations contained in paragraph 70.

71. The allegation in paragraph 71 is a legal conclusion and/or assertion to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

72. The allegation in paragraph 72 is a legal conclusion and/or assertion to which no response is required. By way of further response, R.C. 3726.02, R.C. 3726.05, R.C. 3626.10, R.C. 3726.11, and R.C. 3726.99 speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

73. The allegations in paragraph 73 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

74. The allegations in paragraph 74 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27, R.C. 2317.56(G)(2), R.C. 4731.22(B)(21) and (23), and R.C. 4731.225(B) speak for themselves. The State Defendants deny that Plaintiffs will be deprived of protected property or liberty interests without due process. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

75. The allegations in paragraph 75 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27, Ohio Admin. Code 3701-83-05(C), Ohio Admin. Code 3701-83-05.1(C)(2), Ohio Admin. Code 3701-83-05.1(C)(4), Ohio Admin. Code 3701-83-05.2(B), and R.C. 3702.32(D) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

76. The allegations in paragraph 76 are legal conclusions and/or assertions to which no response is required. By way of further response, SB 27, Ohio Admin. Code 3701-83-05.1, and R.C. 3702.32(D)(3) and (E) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

77. The allegations in paragraph 77 are legal conclusions and/or assertions to which no response is required. By way of further response, R.C. 2317.56, R.C.3702.30(E)(2), Ohio Admin. Code 3701-83-05.1(F), and Ohio Admin. Code 3701-83-05.2(F) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

78. The allegation in paragraph 78 is a legal conclusion and/or assertion to which no response is required. By way of further response, SB 27 and R.C. 3701.79(J) speak for

themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

79. The allegations in paragraph 79 are legal conclusions and/or assertions to which no response is required. By way of further response, R.C. 3701.341 speaks for itself. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

80. The allegations in paragraph 80 are legal conclusions and/or assertions to which no response is required. By way of further response, R.C. 2317.56(G)(1) and R.C. 2317.56(H)(3) speak for themselves. To the extent a further response is required, the State Defendants deny the allegations in this paragraph.

81. The State Defendants deny the allegations in paragraph 81.

82. The State Defendants deny the allegations in paragraph 82.

83. The State Defendants deny for lack of knowledge the allegations in paragraph 83.

84. The State Defendants deny for lack of knowledge the allegations in paragraph 84.

85. The State Defendants deny for lack of knowledge the allegations in paragraph 85.

86. The State Defendants deny for lack of knowledge the allegations in paragraph 86.

87. The State Defendants deny for lack of knowledge the allegations in paragraph 87.

88. The State Defendants deny for lack of knowledge the allegations in paragraph 88.

89. The State Defendants deny for lack of knowledge the allegations in paragraph 89.

90. The State Defendants deny for lack of knowledge the allegations in paragraph 90. By way of further response, the referenced report from ODH speaks for itself.

91. The State Defendants deny for lack of knowledge the allegations in paragraph 91.

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92. The State Defendants restate by reference all the answers to paragraphs 1 through 91 as if fully written herein.
93. The State Defendants deny the allegations in paragraph 93.
94. The State Defendants deny the allegations in paragraph 94.
95. The State Defendants restate by reference all the answers to paragraphs 1 through 91 as if fully written herein.
96. The State Defendants deny the allegations in paragraph 96.
97. The State Defendants deny the allegations in paragraph 97.
98. The State Defendants restate by reference all the answers to paragraphs 1 through 91 as if fully written herein.
99. The State Defendants deny the allegations of paragraph 99.
100. The State Defendants deny the allegations of paragraph 100.
101. The State Defendants restate by reference all the answers to paragraphs 1 through 91 as if fully written herein.
102. The State Defendants deny the allegations in paragraph 102.
103. The State Defendants deny the allegations in paragraph 103.
104. The State Defendants restate by reference all the answers to paragraphs 1 through 91 as if fully written herein.
105. The State Defendants deny the allegations of paragraph 105.
106. The State Defendants deny the allegations in paragraph 106.
107. No response to paragraph 107 is required because it is a request for relief and does not contain any allegations. The State Defendants specifically deny that Plaintiffs are entitled to

any relief. To the extent a further response is required, the State Defendants deny any allegations in this paragraph.

108. Any allegations not specifically answered herein, including but not limited to those contained in any titles or section headers, are hereby denied.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

109. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

110. Plaintiffs lack standing to bring some or all of their claims.

THIRD DEFENSE

111. Neither Plaintiffs nor the persons they claim to represent have been deprived of any state or federal constitutional or statutory rights.

FOURTH DEFENSE

112. The challenged law does not violate any provision of the Ohio Constitution or the United States Constitution.

FIFTH DEFENSE

113. The challenged law is supported by compelling state interests.

SIXTH DEFENSE

114. The challenged law is sufficiently tailored to meet constitutional scrutiny.

SEVENTH DEFENSE

115. Plaintiffs are unable to establish the elements required for injunctive relief.

EIGHTH DEFENSE

116. Some or all of Plaintiffs' claims are not ripe for adjudication.

NINTH DEFENSE

117. Some or all of Plaintiffs' claims are moot.

TENTH DEFENSE

118. To the extent that Plaintiffs' claims for relief could be construed as claims for legal relief (money damages), those must be dismissed because such claims cannot be asserted against the State of Ohio outside of the Ohio Court of Claims.

ELEVENTH DEFENSE

119. Plaintiffs are not entitled to declaratory relief and have failed to meet the necessary requirements for such relief.

RESERVATION OF ADDITIONAL DEFENSES

120. The State Defendants reserve the right to supplement their Answer with additional defenses, including affirmative defenses, as litigation in this matter proceeds.

Thus, having fully answered Plaintiffs' Complaint, the State Defendants request that the Court dismiss Plaintiffs' Complaint, with prejudice, and that the State Defendants receive reasonable costs and fees in defending this suit.

Respectfully submitted,

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Ohio Attorney General

/s/ Andrew D. McCartney

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *State Defendants' Answer* has been served upon the following by electronic mail this 10th day of May, 2021.

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/s/ Andrew D. McCartney

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