

In the
Supreme Court of Ohio

PRETERM-CLEVELAND, INC.,	:	Case No. _____
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eighth Appellate District
GOVERNOR JOHN R. KASICH, <i>et al.</i> ,	:	
	:	Court of Appeals
Defendants-Appellants	:	Case No. CA-15-103103

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF STATE APPELLANTS**

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INTRODUCTION

The Eighth District Court of Appeals' decision below warrants review because its novel view of standing has sweeping constitutional and practical implications. This case arose when Preterm-Cleveland, an abortion clinic, challenged provisions in Ohio's 2013-2014 budget bill under the Ohio Constitution's one-subject clause. Preterm challenged four provisions: (1) those providing funding to assist pregnant women and new parents (even though Preterm has no desire to participate in that program); (2) those requiring all "ambulatory surgical facilities" (clinics that do outpatient surgeries) to have written transfer agreements with local hospitals (even though Preterm has long had such an agreement); (3) those barring public hospitals from entering into written transfer agreements with abortion clinics (even though Preterm's agreement is with a *private* hospital); and (4) those amending Ohio's informed-consent laws to require abortion doctors to inform a woman about a detectable heartbeat (even though this provision regulates doctors, not clinics). Because none of these provisions has injured Preterm, the trial court granted summary judgment to the State based on its lack of standing. But the appellate court reversed in a fractured 2-1 decision. *Preterm-Cleveland, Inc. v. Kasich*, 2016-Ohio-4859 (8th Dist.) ("App. Op."), App'x 1. The appellate court's decision warrants review.

First, the Eighth District adopted a novel rule for standing. It conceded that Preterm suffered no injury from the provisions assisting pregnant women and new parents. Yet it held that a plaintiff has standing to bring a one-subject challenge to any law that does not cause it injury if the plaintiff challenges other laws in the same bill. Because a one-subject challenge is about the bill, the court reasoned, a plaintiff with standing to challenge one provision may challenge *other* provisions as well. The court found that a plaintiff could bring such a claim even without challenging the entire bill; the plaintiff could cherry-pick the select provisions that it wished. The Eighth District's approach violates the rule that standing is claim-specific. And it

has broad implications because any plaintiff wishing to challenge myriad provisions now needs to find only one provision that affects it, and use that as a hook for multiple distinct claims.

Second, this Court should review each of the separate standing holdings here, as each represents an unwarranted relaxation of standing rules. Preterm has no standing to attack the limit on public hospitals signing transfer agreements, because it has had an agreement with a *private* hospital for over a decade, and the possibility that it will ever ask a public hospital for a transfer agreement is pure speculation. Preterm has no standing to challenge the other transfer-agreement rules because it has met them for decades under the previous requirements, and the minor changes, such as having to send a copy of a document, do not amount to an “injury.” It likewise has no standing to challenge provisions governing informed consent, because those laws regulate *doctors* (who can sue in their own right). Clinics cannot raise third-party standing for doctors in the same way that doctors can sometimes raise patients’ rights.

Third, and more generally, the Court should grant review because the Eighth District’s attacks on standing—and its pejorative statement that standing “blocks” review—further shows the need for this Court’s guidance on standing’s constitutional roots. *See* App. Op. ¶¶ 29-33. Standing is not a “gotcha” game; it is the most important check on the judiciary under the Constitution’s separation of powers. Nor was the Eighth District’s relaxation of basic standing rules even necessary in this case, as other abortion clinics or doctors with standing can and have raised similar claims. Even on such controversial issues as same-sex marriage, the U.S. Supreme Court has explained, standing rules matter. They “ensure[] that [courts] act as *judges*, and do not engage in policymaking properly left to elected representatives.” *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2659 (2013). The Eighth District exceeded these limits here. This Court should correct the mistaken view that there is a special abortion “exception” to normal rules of standing.

STATEMENT OF THE CASE AND FACTS

A. Preterm challenged several provisions enacted in the 2013-2014 biennial budget bill, alleging that they violate the Ohio Constitution’s one-subject rule.

Ohio passed its 2013-2014 biennial budget bill, H.B. 59, on June 30, 2013. Plaintiff Preterm-Cleveland, Inc. (“Preterm”), an abortion clinic, sued many state entities and officials in the Cuyahoga County Common Pleas Court, seeking to invalidate several provisions in that bill. It named as Defendants Governor John Kasich, the State of Ohio, the Ohio Department of Health and its director, the Ohio Department of Job and Family Services and its director, and the Ohio Medical Board and its members (together, “the State”), along with the Cuyahoga County Prosecutor. Preterm alleged that the challenged provisions violate Ohio’s one-subject rule, Article II, Section 15(D) of the Ohio Constitution. It challenged four general provisions: (1) the Parenting and Pregnancy Provisions; (2) the Written Transfer Agreement Provisions; (3) the Public Hospital Provision; and (4) the Heartbeat Provisions.

Parenting and Pregnancy Provisions. The budget bill amended R.C. 5101.80 and 5101.801 and enacted R.C. 5101.804. These provisions authorized the Ohio Department of Job and Family Services to use funds received from the federal program “Temporary Assistance for Needy Families” to partner with non-profit entities not engaged in abortion services to provide services to pregnant women, parents, or other relatives caring for children under 12 months of age under the “Ohio Parenting and Pregnancy Program.” Compl. ¶¶ 40-47; *see* App. Op. ¶ 21.

Written Transfer Agreement Provisions. The budget bill amended R.C. 3702.30 and enacted R.C. 3702.302, 3702.303, 3702.304, 3702.305, 3702.306, 3702.307, and 3702.308. These provisions update Ohio laws governing “ambulatory surgical facilities,” which are entities performing outpatient surgeries. For the most part, these provisions codified into statutes the requirements that Ohio has long imposed by administrative regulation: All ambulatory surgical

facilities (not just abortion clinics) must have written transfer agreements with local hospitals, to provide for transferring patients to a hospital for a medical emergency or other need. *See* O.A.C. 3701-83-19(E). The provisions also authorize the Director of the Department of Health to grant and rescind variances from these requirements. And they clarify and update the administrative filing requirements for submitting written transfer agreements to the Department. Under the previous regulations, a facility could have an ongoing agreement with a hospital, and the facility needed only to certify to the Department that it had one, and show it upon inspection. Under the new statutes, the facility must renew any agreement with a hospital every two years, and include a copy with its annual application to renew its license. Compl. ¶¶ 35-39; *see* App. Op. ¶ 19.

Public Hospital Provision. Another provision of the budget bill governing the State's public hospitals prohibits them from entering into written transfer agreements with ambulatory surgical centers that provide abortion services. R.C. 3727.60(B). This is the only provision relating to transfer agreements that is abortion-specific. Compl. ¶ 38; *see* App. Op. ¶ 19.

Heartbeat Provisions. The budget bill amended R.C. 2317.56 and 4731.22 and enacted 2919.19, 2919.191, 2919.192, 2919.193. These laws amend the informed-consent laws that apply to abortion. They require doctors who perform abortions to try to detect a fetal heartbeat at least 24 hours before performing an abortion, and, if a heartbeat is detected, the doctors must inform the woman of that fact, offer the option of listening to the heartbeat, and advise her of the statistical probability of carrying her pregnancy to term. Compl. ¶¶ 29-34; *see* App. Op. ¶ 17.

Preterm alleged that these specific provisions violate the one-subject rule, and sought a declaratory judgment to that effect and an injunction against them. Compl. ¶ 58 and Prayer for Relief.

B. Preterm admitted that it had not been injured by all of the provisions it challenged, but argued it could challenge the entire bill if it was injured by any provision.

The State initially moved to dismiss the complaint for lack of standing, but the trial court denied the motion. The court instead allowed a brief discovery period, authorizing discovery aimed at the standing question as well as any that might affect the one-subject issue.

The parties cross-moved for summary judgment on the merits of the one-subject issue, and the State renewed its standing challenge, arguing that the discovery had confirmed that Preterm was not injured by any of the challenged provisions. Preterm expressly admitted that it was not “personally injured” by “all of the provisions of the Act it challenges in this case.” Preterm Response Brief at 16. In particular, it did not allege injury as a result of the Pregnancy and Parenting Provisions, as it had never applied for any of the funding at issue. *See App. Op.* ¶ 21. Preterm argued, however, that it could challenge any provisions within the bill on the theory that “[i]f it is injured by one provision, it has standing to challenge the entire enactment and need not show that it is injured by every provision.” Preterm Response Brief at 11.

C. The trial court concluded that Preterm lacked standing as to all its challenges, and granted summary judgment to the State.

Granting summary judgment to the State, the trial court agreed that Preterm had not established standing with respect to any of the challenged provisions. Opinion and Order (May 18, 2015) (“Com. Pl. Op.”), App’x. 2, at 7. The court noted that Preterm did not allege any injury related to the Parenting and Pregnancy Provisions. That was conclusive, as standing is claim-specific. The court next held that Preterm faced no “direct or concrete injury” from the Public Hospital Provision or any Written Transfer Agreement Provisions. Preterm has had an agreement with a private hospital since 2005, and provided no evidence that the agreement would be canceled. That meant that the limits on public hospitals did not affect it, nor did the requirement to have an agreement.

Finally, the court held that Preterm faced no injury from the Heartbeat Provisions. *Id.* at 4-5. The court found that the affidavit of Heather Harrington, Preterm’s Director of Clinic Operations, was “generally conclusory and fail[ed] to demonstrate an injury suffered by Preterm that [was] monetarily quantifiable or concrete and particularized.” *Id.* at 5-6. The court further found that the Heartbeat Provisions were directed toward *doctors*, and that Preterm had not sued on behalf of any doctors. *Id.* at 6. The court determined that Preterm was “not currently subject to criminal prosecution, and there [was] nothing before the court indicating that Preterm would be subject to any future prosecution, or even that prosecution is likely to happen at any indeterminate point in the future.” *Id.* at 7.

D. The Eighth District Court of Appeals reversed.

The Eighth District Court of Appeals reversed the trial court’s standing decision in a fractured opinion. App. Op. ¶ 1. The majority acknowledged that “Preterm apparently concedes that it has not been injured by the [Pregnancy and Parenting] provisions.” App. Op. ¶ 21. But, in its view, the Harrington affidavit showed Preterm had suffered injury from “at least one of the provisions of HB 59.” *Id.* ¶ 28. That sufficed to authorize Preterm to challenge any provision: “Because Preterm has established an injury in at least one of the provisions of HB 59, and it is the direct target of such legislation, we find that Preterm has established standing to challenge the legislation as a violation of the one-subject rule.” *Id.* The majority also criticized the State for even asserting the standing challenge, suggesting that the laws’ controversial “subject matter” made it wrong to “block[.]” Preterm from its “day in court.” *Id.* ¶ 29.

Judge Stewart dissented. Like the trial court, the dissent concluded that Preterm lacked standing “because it has not shown that it suffered any concrete or direct injury from the legislation.” *Id.* ¶ 35. The dissent reasoned that “[m]ost of what Preterm claims as injuries could only be suffered by potential patients and medical providers who perform abortions—persons

who could have standing if they were parties to this action.” *Id.* Further, “[t]o the extent that Preterm does allege that it has suffered an injury, the record is clear that those injuries have yet to occur and, even if they did occur, would not be direct or concrete.” *Id.*

**THIS CASE RAISES SUBSTANTIAL CONSTITUTIONAL QUESTIONS
AND IS OF PUBLIC AND GREAT GENERAL INTEREST**

The Court should grant review for several reasons. Review is needed to reiterate the importance of standing in our constitutional framework. Review is needed because the Eighth District’s approach (that standing for one claim establishes standing for all) improperly expands the judicial power in a way that conflicts with settled law and is a roadmap for advisory litigation by those who face no injury. And review is needed because the Eighth District’s expansive view of standing as to each of the specific claims at issue in this case overrides the normal standing requirements that injuries be concrete and particularized, not speculative or de minimis.

A. The Eighth District’s ambivalence towards the standing doctrine illustrates the need for this Court’s guidance on its important separation-of-powers roots.

Throughout its opinion, the Eighth District treated standing as a rule of convenience for the courts that can be trumped when they believe the circumstances dictate it. The court, for example, characterized standing as merely “a self-imposed judicial rule of restraint,” noting that “courts are free to dispense with the requirement for injury where the public interest so demands.” App. Op. ¶ 11 (quoting *Akron Metro. Hous. Auth. Bd. of Trs. v. State*, 2008-Ohio-2836 ¶ 11 (10th Dist.)). It added that standing should not “block[] parties” from “having their day in court” where the subject matter is “inherently divisive, volatile, repulsive, or just plain difficult.” *Id.* ¶ 29. This fundamentally misconceives the nature of standing. The Court should grant review to clarify that standing remains a critical part of the constitutional design.

Article IV § 1 of the Ohio Constitution vests the “judicial power”—and *only* the judicial power—in this Court and in the lower courts. Ohio Const. art. IV § 1. This “judicial power” has

always included the “jurisdictional requirement” that a “party must have standing to raise an issue,” a requirement that flows out of the “historical connotations of the adversary process.” *See State ex rel. Dallman v. Franklin Cty. Court of Common Pleas*, 35 Ohio St. 2d 176, 178-79 (1973); *cf. Putnam v. Valentine*, 5 Ohio 187, 189-90 (1831) (“The individual complainant has no such interest in or connection with the subject of this bill as to entitle him, as such, to the relief prayed for.”). The judicial power does “not include every sort of dispute, but only those ‘historically viewed as capable of resolution through the judicial process.’” *Hollingsworth*, 133 S. Ct. at 2659 (citation omitted). To properly invoke the judicial power, in other words, the dispute must “be justiciable,” and “justiciability requires standing.” *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St. 3d 520, 2014-Ohio-2382 ¶ 11.

In this way, the doctrine of standing serves important separation-of-powers purposes designed to protect the liberty of all. *Cf. Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-60 (1992). It ensures “that the Judicial Branch neither be assigned nor allowed ‘tasks that are more properly accomplished by [other] branches.’” *State v. Bodyke*, 126 Ohio St. 3d 266, 2010-Ohio-2424 ¶ 53 (citation omitted). As Chief Justice Jay long ago explained to President Washington when declining the President’s request for an advisory opinion, “the lines of separation drawn by the Constitution between the three departments of the government” prohibit the federal courts from issuing such advisory opinions outside of a real dispute. 3 Correspondence and Public Papers of John Jay 486-89 (H. Johnston ed. 1890-1893). The same lines exist under the Ohio Constitution. In sum, “[r]elaxation of standing requirements is directly related to the expansion of judicial power”—an expansion that would go well beyond the ordinary meaning of the phrase “judicial power” when it was placed into the Ohio Constitution in 1851. *United States v. Richardson*, 418 U.S. 166, 188 (1974) (Powell, J., concurring).

The Eighth District failed to recognize the critical role that standing plays in the constitutional design. This case provides this Court with an opportunity to do so.

B. The Court should review whether a plaintiff can challenge provisions in a bill that cause it no injury merely because it challenges other provisions in that bill.

The decision below adopts a novel rule for standing that warrants this Court's review. Preterm candidly admitted that it was not injured by the Parenting and Pregnancy Provisions because it never applied for funding under those provisions, and did not intend to in the future. App. Op. ¶ 21. But the Eighth District held that Preterm's standing to attack *other* provisions entitled it to attack this one, too, simply because it was a one-subject challenge. *Id.* ¶¶ 21-23. This Court should grant review of that holding for two reasons: (1) it rests on dubious legal foundations, and (2) it has far-reaching implications.

1. The Eighth District's expansive view conflicts with the rule that standing is claim-specific. "[A] plaintiff must demonstrate standing for each claim he seeks to press." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). This Court has not said so directly, but it has applied the rule by examining standing on a claim-by-claim basis. *See, e.g., State ex rel. Walgate v. Kasich*, ___ Ohio St. 3d ___, 2016-Ohio-1176 ¶¶ 20-50 (analyzing separately each claim and finding that one plaintiff had standing for one claim); *Moore v. Middletown*, 133 Ohio St. 3d 55, 2012-Ohio-3987, ¶¶ 24-32 (analyzing separately each claim); *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468, 2007-Ohio-6948 ¶¶ 83-84 (refusing to consider one claim based on plaintiff's lack of standing with respect to that claim). This Court has never discussed or applied any exception for provisions in the same bill, whether in one-subject cases or any other context. This case allows it to say expressly what it has already held impliedly.

The Eighth District offered two justifications for its rule, but neither withstands scrutiny and both warrant review. The court initially suggested that it was following the Tenth District's

approach in an earlier case allowing plaintiffs to attack an entire bill on one-subject grounds: “A party in a one-subject rule challenge, who alleges injury from a particular provision of the legislation, has standing where it challenges the enactment of the legislation in its entirety.” App. Op. ¶ 13 (citing *Akron Metro. Hous. Auth.*, 2008-Ohio-2836 ¶ 14). But *Akron Metro* was limited to cases “where” a plaintiff challenges the bill “in its entirety.” *Id.* In the one-subject context, such full-bill challenges are possible to attempt, but rare in succeeding. See *State ex rel. Ohio Civ. Serv. Emps. Ass’n v. State*, ___ Ohio St. 3d ___, 2016-Ohio-478 ¶ 22 (“*OCSEA*”) (noting that invalidation of entire bill is reserved for “the rare instance when we have been unable to discern a primary subject” at all). Unlike in *OCSEA*, where the plaintiff alleged an entire-bill claim, Preterm here does *not* challenge the whole bill, but attacks only the several provisions identified. Thus, the Eighth District, by allowing a plaintiff to cherry-pick multiple provisions in a bill, creates a broad new rule not justified by *Akron Metro*’s whole-bill approach.

In addition, the Eighth District broke new ground in saying that relaxed standing was justified because “Preterm has been the intended target of certain regulatory provisions.” App. Op. ¶ 23. That is wrong factually and legally. Factually, the challenged provisions do not “target” Preterm. Preterm never sought funding under the Parenting or Pregnancy Provisions or any predecessor program. Similarly, the Written Transfer Agreement Provisions apply to *all* ambulatory surgical facilities, not merely abortion clinics, which are fewer than ten of the approximately 267 ambulatory surgical facilities in Ohio. The Public Hospital Provision likewise does not “target” Preterm, whose agreement is with a private hospital. Finally, the Heartbeat Provisions, which admittedly concern abortion, do not “target” clinics, and are directed at doctors. Legally, the court’s novel “targeting” theory of standing—which seems to relax standing rules when courts find that “inherently divisive” matters are at issue, App. Op.

¶ 29—has no basis in case law. The court’s suggestion conflicts with the established rule that “ideological opposition to a program or legislative enactment is not enough” to confer standing. *Walgate*, 2016-Ohio-1176 ¶ 18 (quoting *JobsOhio*, 2014-Ohio-2382 ¶ 1).

2. The Eighth District’s view also has expansive practical implications. Here, for example, Preterm could have challenged any of hundreds of more provisions in the 2013-2014 budget bill, including other funding provisions, revenue provisions, or operational provisions. But this rule could not legitimately be limited to abortion. A nurse with standing to challenge nursing regulations could attack an agriculture provision. A school district could challenge spending restrictions on the Department of Veterans Services. This is precisely the scenario the standing rules are designed to prevent. *Tate v. Garfield Heights*, 8th Dist. Cuyahoga No. 99099, 2013-Ohio-2204 ¶ 12 (noting that “a general interest in the subject matter of the action” does not suffice to confer standing). Indeed, if a party ended up invalidating a provision that did not affect it, the redressability element of standing (i.e., that the party must show that the requested relief would remedy the party’s injury) would be eliminated. *Cf. Walgate*, 2016-Ohio-1176 ¶¶ 27-28 (finding that alleged injuries would not be redressed by invalidating state law).

Further, the Tenth District applied a similar, mistaken approach, and that shows the need for further guidance. *See State ex rel. Ohio Civ. Serv. Emps. Ass’n v. State*, 2013-Ohio-4505 ¶ 24. That court found that a plaintiff had standing to challenge some provisions on one-subject grounds, and remanded for the trial court to comb through the bill and find other possible candidates for selective invalidation, even if those provisions did not affect the plaintiff. *Id.* This Court reversed that decision, but it did so by finding no one-subject violation, and did not need to reach the question of remanding to find “other” violations as a result. 2016-Ohio-478 ¶¶ 33-34. In *Village of Linndale v. State*, 2014-Ohio-4024 ¶ 19, the Tenth District invalidated,

on one-subject grounds, a provision in a budget bill banning texting while driving. But the plaintiff there, a village, not only had no standing as to that provision, but it did not even challenge it in its complaint. While this Court denied review of the State's appeal there (and of the village's appeal on other issues), this repetition shows the need for review.

C. The Court should review the appellate court's relaxation of the standing requirements that an injury be impending and not speculative, that an injury be concrete and not de minimis, and that an injury affect the plaintiff and not others.

The Court should grant review because the Eighth District's standing analysis for the other challenged provisions represents, on each count, a serious misunderstanding of standing's "injury" requirement. *Walgate*, 2016-Ohio-1176 ¶ 18. The decision below eliminates the requirement that the alleged injury be concrete and not speculative, that it be real and not de minimis, and that it involve an injury to the plaintiff, not to somebody else.

First, the Eighth District's finding of standing as to the Public Hospital Provision violates the rule that an injury must be real, not speculative. *Ohio Contrs. Ass'n v. Bicking*, 71 Ohio St. 3d 318, 320 (1994). Preterm admits that it has had a transfer agreement with a private hospital for a decade. App. Op. ¶ 53 (Stewart, J., dissenting). It offered no evidence showing any likelihood that it would lose that relationship any time soon. Thus, it offers only speculation that it will ever be affected by a limit on a public hospital's power to enter such agreements.

Second, the court's standing finding as to the remaining Written Transfer Agreement Provisions is based on an "injury" so minimal as to be nonexistent. The core requirement to have a transfer agreement has been on the books as an administrative regulation for 20 years, so Preterm has long had one, and invalidating those provisions of the budget bill does not relieve Preterm of that obligation. The court instead relied on two minor changes. Before, an agreement could stay in effect indefinitely. Now, the clinic must contact the hospital and have them sign it again every two years. Before, the clinic merely had to certify that it had an agreement, and

show it upon inspection by the Department of Health. Now, when it sends in its annual license renewal—something it still has to do—it must include a copy. The Eighth District admitted that these were “minimal” effects, but compared it to other cases involving fees or administrative burdens. App. Op. ¶ 26. Those cases, however, involved at least *some* freestanding burden. Here, including a document with others that one must already send is not an adequate “injury.” *Cf. Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1550 (2016) (noting that a plaintiff could not assert claim under the Fair Credit Reporting Act for inaccurate identification of plaintiff’s zip code).

Third, the standing holding regarding Preterm’s challenge to the informed-consent obligations for *doctors* also dramatically expands standing. The court found that the clinic changed operations to adjust to the doctors’ obligations. But that theory would mean that any business that employs licensees could sue on that basis—e.g., pizza shops could challenge changes to drivers’ licenses. Most important, the court said that Preterm had to change operations “out of fear of sanctions, or in order to avoid liability,” App. Op. ¶ 27, but only *doctors* could face sanctions or liability, *id.* ¶ 42 (Stewart, J., dissenting). Indeed, Preterm sued the Medical Board and its members because the Board sanctions *doctors*, but the Board has no power over clinics. The clinic’s present changes based on its unfounded fear that the clinic will be prosecuted provides no basis for standing. *Cf. Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1151 (2013) (holding that plaintiffs “cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending”).

* * *

This Court recently clarified that the “public rights” exception to standing’s injury requirement exists in narrow circumstances inapplicable here. *JobsOhio*, 2014-Ohio-2382 ¶¶ 9-13. But the Court has had relatively little opportunity to interpret what standing’s injury

requirement means under state law. This case offers it a good opportunity to do so. If lower courts are allowed to water down the injury requirement to make it effectively meaningless, it will all but overrule the Court’s holding that the public-rights doctrine should exist only in narrow settings. The public-rights doctrine will simply return under the nomenclature of an “injury.” The Court should not permit that result.

ARGUMENT

Appellant State’s Proposition of Law:

The Ohio Constitution requires plaintiffs to establish standing for each claim, so a plaintiff challenging several provisions in a bill on one-subject grounds must prove standing for each provision. To do so, a plaintiff must identify an injury that is both concrete and particularized and actual and imminent. A plaintiff therefore lacks standing to challenge laws that may never harm it, that it may satisfy merely by sending a document, or that apply only to different persons.

Article IV § 1 of the Ohio Constitution grants only the “judicial power” to the courts. The doctrine of standing has always been one of the most important requirements for the proper exercise of that power. *See JobsOhio*, 2014-Ohio-2382 ¶ 11; *see also Lujan*, 504 U.S. at 560. Under well-established doctrine, this standing requirement must be proved separately for each claim that a plaintiff seeks to advance. *Cuno*, 547 U.S. at 352; *Walgate*, 2016-Ohio-1176 ¶¶ 20-50; *Moore*, 2012-Ohio-3897 ¶¶ 24-32. That principle remains true when a plaintiff challenges multiple provisions in a bill as alleged violations of the one-subject clause. No exception allows a plaintiff to use its standing to challenge one provision as the basis for challenging all other provisions that it wishes to, if it is unaffected by those other provisions.

“Under traditional standing principles,” moreover, plaintiffs must prove that they have “suffered ‘(1) an injury that is (2) fairly traceable to the defendant’s allegedly unlawful conduct, and (3) likely to be redressed by the requested relief.’” *Walgate*, 2016-Ohio-1176 ¶ 18 (citation omitted). To meet the actual-injury requirement, plaintiffs must show that they have “suffered

‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo*, 136 S. Ct. at 1548 (citation omitted). To qualify as “particularized,” the alleged injury must be “different in character from that sustained by the public generally.” *Walgate*, 2016-Ohio-1176 ¶ 19 (citation omitted). To qualify as “concrete,” the injury must be “‘real,’ and not ‘abstract.’” *Spokeo*, 136 S. Ct. at 1548 (citation omitted). And to qualify as “imminent,” the injury must be “‘certainly impending.’” *Clapper*, 133 S. Ct. at 1147 (citation omitted).

Applying these principles here, the court of common pleas properly determined that Preterm lacks standing. To begin with, Preterm admitted that it was not injured by the Pregnancy and Parenting Provisions, but sought standing solely through the mistaken theory that standing for one provision gives it standing for all. In addition, Preterm has no standing to challenge the Public Hospital Provision. Any injury from that provision is not “certainly impending” in that Preterm has long had a transfer agreement with a private hospital, and it does not even allege that it could lose that agreement. Similarly, Preterm cannot challenge the Written Transfer Agreement Provisions because any injury from them is not “real.” The “injury” of asking an ongoing contract partner to re-sign an agreement, or of sending that document to the State, is not a constitutionally sufficient one. Finally, Preterm has suffered no injury from the Heartbeat Provisions because those laws impose duties (and potential criminal liability) upon *doctors*. Preterm lacks standing to represent the interest of doctors (who can sue themselves).

CONCLUSION

For the above reasons, the Court should grant review and reverse the decision below.

Respectfully submitted,

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