IN THE FRANKLIN COUNTY, OHIO COURT OF COMMON PLEAS
CIVIL DIVISION

MADELINE MOE, et al.,	:	
Plaintiffs,	:	Case No. 24CVH03-2481
v.	:	JUDGE HOLBROOK
DAVID YOST, et al.,	:	
Defendants.	:	

FINDINGS AND JUDGMENT ENTRY

On July 15, 2024, this matter came before the Court for a combined hearing on plaintiffs' motion for preliminary injunction and a trial on the merits on plaintiffs' claims for a declaration that Sections 3109.054, 3129.01, 3129.02, 3129.03, 3129.04, 3129.05, 3129.06, 3313.5319 and 3345.562 of the Ohio Revised Code, enacted within Sub. H.B. No. 68, (the "Act") are unconstitutional. Specifically, plaintiffs claim that the Act violates four separate clauses of the Ohio Constitution: (1) Article II, Section 15(D) (the "Single Subject Rule"); (2) Article I, Section 21 (the "Health Care Freedom Amendment"); (3) Article I, Section 2 (the "Equal Protection Clause"); and (4) Article I, Section 16 (the "Due Course of Law Clause" or "Due Process Clause").

Following the trial, the parties submitted written closing arguments.

After considering the evidence presented, the arguments of counsel, and the relevant law, the Court makes the following findings of fact, and draws the following conclusions of law:

1. Plaintiffs' constitutional challenges grounded in the Health Care Freedom Amendment, Equal Protection Clause, and Due Process Clause are limited to the provisions of R.C. Chapter 3129 (the "Health Care Ban").

2. Plaintiffs are not challenging the constitutionality of R.C. 3129.02(A)(1); the ban on the performance of gender reassignment surgery on a minor individual.

Standing

3. "The Ohio Constitution expressly requires standing for cases filed in common pleas courts." *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St. 3d 520, 2014-Ohio-2382, ¶ 11. "Article IV, Section 4(B) provides that the courts of common pleas 'shall have such original jurisdiction over all justiciable matters.' A matter is justiciable only if the complaining party has standing to sue." Id.

To have standing to challenge the constitutionality of a legislative enactment, as is the case here, a litigant must have a direct interest in the legislation of such a nature that the party's rights will be adversely affected by its enforcement. *N. Canton v. Canton*, 114 Ohio St.3d 253, 2007-Ohio-4005, at P11. The litigant must generally show it has "suffered or is threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general, that the law in question has caused the injury, and that the relief requested will redress the injury." S*tate ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 469-470, 1999-Ohio-123. Notwithstanding the general requirement for injury, standing is a self-imposed judicial rule of restraint, and courts "are free to dispense with the requirement for injury where the public interest so demands." *Sheward*, at 470. Whether established facts confer standing to assert a claim is a question of law. *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, at P90.

4. Plaintiffs are transgender adolescents and their parents.

5. Plaintiffs will have to leave the State of Ohio to seek gender affirming care if the Act is enforced, and therefore will be adversely affected by its enforcement.

6. The public interest in the subject of this case demands judicial review of the Act.

7. Upon the forgoing, the Court finds Plaintiffs have standing to bring their claims.

Standard

8. "The question of the constitutionality of every law being first determined by the General Assembly, every presumption is in favor of its constitutionality, and it must clearly appear that the law is in direct conflict with inhibitions of the Constitution before a court will declare it unconstitutional." *State ex rel. Yost v. Holbrook*, 174 Ohio St.3d 1476, 2024-Ohio-1936, ¶ 14, quoting *Ohio Pub. Interest Action Group, Inc. v. Pub. Util. Comm.*, 43 Ohio St.2d 175, 331 N.E.2d 730 (1975), paragraph four of the syllabus.

Single Subject Rule

9. With respect to Plaintiffs' claim that the Act violates the Single Subject Rule, the parties have briefed the issue as a motion for summary judgment. Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the nonmoving party. *Phillips v. Wilkinson*, 10th Dist. No. 17AP-231, 2017-Ohio-8505, ¶ 11, citing *Byrd v. Arbors E. Subacute & Rehab. Ctr.*, 2014-Ohio-3935 at ¶ 6 (10th Dist.), citing *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978).

"'[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim.'" *Byrd* at ¶ 7, quoting *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). "Once the moving party meets its initial burden, the nonmovant must set forth specific facts demonstrating a genuine issue for trial." *Phillips* at ¶ 12, citing *Byrd* at ¶ 7, citing *Dresher* at 293.

10. Article II, Section 15 of the Ohio Constitution is entitled "How bills shall be passed." It regulates the procedures used by the legislature in adopting or amending laws, rather than authorizing or restricting legislative action on any particular subject matter.

Section 15(D) provides in relevant part: "No bill shall contain more than one subject, which shall be clearly expressed in its title." This Constitutional provision was first adopted in 1851. The history of this provision, which is similar to those in some 41 other states, is detailed in scholarly work. *E.g.,* Hoffer, *Symposium: The Ohio Constitution - Then and Now: An Examination of the Law and History of the Ohio Constitution *** Ohio's One-Subject Rule and the Very Evils it was Designed to* Prevent, 51 Cleve. St. L. Rev. 557 (2004); Schuck, *Comment: Returning the "One" to Ohio's "One-Subject" Rule,* 28 Cap. L. Rev. 899 (2000); Kulewicz, *The History of the One-Subject Rule of the Ohio Constitution,* 45 Cleve. St. L. Rev. 591 (1997).

State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St.3d 451, 465 (1999) reviewed the history of the provision and concluded that "[j]ust as the Constitution of 1802 had reflected an aversion to an all-powerful executive, so the Constitution of 1851 was inspired by an antipathy toward an all-powerful legislature and a desire for more independence of each branch of our tripartite system of government." Among the

"concrete limits on the power of the General Assembly to proceed however it saw fit in the enactment of legislation" adopted with the 1851 Constitution was the one-subject rule. Id. at 495. *Sheward* then applied the provision to invalidate a massive tort reform bill, finding that even a liberal view of the term "subject" could not be extended to cover all of the act in question because it included "blatantly unrelated matters." In so holding, the Court recognized that "we are not obliged to accept that any ingenious comprehensive form of expression constitutes a legitimate subject for the purposes of the one-subject rule." Id. at 498.

> These [one-subject] cases can be perceived as points along a spectrum. At one end, closely related topics unite under a narrowly denominated subject. As the topics embraced in a single act become more diverse, and as their connection to each other becomes more attenuated, so the statement of subject necessary to comprehend them broadens and expands. There comes a point past which a denominated subject becomes so strained in its effort to cohere diverse matter as to lose its legitimacy as such. It becomes a ruse by which to connect blatantly unrelated topics. At the farthest end of this spectrum lies the single enactment which endeavors to legislate on all matters under the heading of "law."

In its consideration of the Single Subject Rule, the Supreme Court of Ohio in *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 145 (1984), described the purpose of this provision:

> . . . When there is an absence of common purpose or relationship between specific topics in an act and when there are no discernible practical, rational or legitimate reasons for combining the provisions in one act, there is a strong suggestion that the provisions were combined for tactical reasons, i.e., logrolling. Inasmuch as this was the very evil the one-subject rule was designed to prevent, an act which contains such unrelated provisions must necessarily be held to be invalid in order to effectuate the purposes of the rule.

The Single Subject Rule is mandatory. *In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, P54. That said, the judiciary's role in the enforcement of the Single Subject Rule must be limited. *State ex rel. Ohio Civil Serv. Employees Assn, Local 11 v. State*

Empl. Rels. Bd., 104 Ohio St. 3d 122, 2004-Ohio-6363, P27 ("SERB"). In order to avoid interference with the legislative process, courts are to afford the General Assembly great latitude in enacting comprehensive legislation and are to proceed with a presumption in favor of constitutionality. Id.

To that end, the Supreme Court of Ohio has recognized that "[t]he mere fact that a bill embraces more than one topic is not fatal, as long as a common purpose or relationship exists between the topics." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St. 3d 451, 496, 1999-Ohio-123. The question then becomes whether the various topics unite to form a single subject for purposes of Section 15(D), Article II, of the Ohio Constitution. Id. at 497. A Court's decision that they are not so united is to conclude that there is "no discernable practical, rational or legitimate reason for combining the provisions in one Act." *SERB* at P28, quoting *Beagle v. Walden*, 78 Ohio St.3d 59, 62, 1997-Ohio-234.

11. It is undisputed that the title to the Act is "[t]o enact sections 3109.054, 3129.01, 3129.02, 3129.03, 3129.04, 3129.05, 3129.06, 3313.5319, and 3345.562 of the Revised Code to enact the Saving Ohio Adolescents from Experimentation (SAFE) Act regarding gender transition services for minors, and to enact the Save Women's Sports Act to require schools, state institutions of high education, and private colleges to designate separate single-sex teams and sports for each sex."

12. At first glance, there appears to be a disunity of subject matter in the Act. Indeed, the substance of the Act relates to parental rights with respect their transgender children as well as transgender adolescents' access to gender affirming care and transgender females' access to interscholastic sports according to the gender or sex to which they identify.

13. However, the law compels this Court to conclude that the Act contains a common purpose or relationship; namely, the General Assembly's regulation of transgender individuals. No matter how abhorrent that may be to some, it is a "legitimate subject" for purposes of the Single Subject Rule under the laws of the State of Ohio at this time. The recourse for those who object is not within the Court but is instead with their vote.

14. Based on the forgoing, the Court finds that there is no genuine issue of material fact, and concludes that the Act does not violate the Single Subject Rule as a matter of law.

Health Care Freedom Amendment

15. On December 9, 2011, the Ohio General Assembly enacted Section 1.21 of the Ohio Constitution. Section 1.21, "preservation of the freedom to choose health care and health care coverage," states:

> * * * (B) No federal, state, or local law or rule shall prohibit the purchase or sale of health care or health insurance. (C) No federal, state, or local law or rule shall impose a penalty or fine for the sale or purchase of health care or health insurance. (D) This section does not affect laws or rules in effect as of March 19, 2010; affect which services a health care provider or hospital is required to perform or provide; affect terms and conditions of government employment; or affect any laws calculated to deter fraud or punish wrongdoing in the health care industry.

16. The Health Care Ban imposes a penalty upon medical providers who provide gender transition services to minors.

17. Gender transition services constitute "health care."

18. Notwithstanding the forgoing, the Health Care Freedom Amendment unequivocally provides that its provisions do not affect laws calculated to punish wrongdoing in the health care industry. Art. 1, §21(D).

19. The State of Ohio has legislated that a medical provider's provision of gender affirming care constitutes "wrongdoing." Again, the remedy for those who object to the

State of Ohio's determination of wrongdoing cannot be found within the judicial system but is instead with their vote.

20. Based on the forgoing, the Court finds that Health Care Ban does not violate the Health Care Freedom Amendment.

Equal Protection Clause

21. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution declares that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Ohio's Equal Protection Clause states that all political power is inherent to the people. Art I, §2. The federal and Ohio equal protection provisions are to be construed and analyzed identically. *Am. Assn. of Univ. Professors, Cent. State Univ Chapter v. Cent. State Univ.*, 87 Ohio St.3d 55 (1999).

The first step in an equal-protection analysis is determining the proper standard of review. "When legislation infringes upon a fundamental constitutional right or the rights of a suspect class, strict scrutiny applies." *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 64. "If neither a fundamental right nor a suspect class is involved, a rational-basis test is used." Id.

22. A "suspect class" is defined as "one 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.'" *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 313 (1976), quoting *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Specifically, protected classifications including sex or race, receive heightened review. See *United States v. Virginia*, 518 U.S. 515, 531-33 (1996); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 222 (1995).

23. The Act does not infringe upon the rights of a suspect class. *See L.W. v. Skrmetti*, 83 F.4th 460, 479-81 (6th Cir.2023) (holding transgender health care bans treat similarly situated individuals evenhandedly). Accordingly, the Court undertakes a rational basis review of the Health Care Ban.

24. Under rational-basis review, a statute will be upheld if it is rationally related to a legitimate government purpose. *Arbino*, 116 Ohio St.3d 468, 2007-Ohio-6948, at ¶ 66. "Under such a review, a statute will not be invalidated if it is grounded on a reasonable justification, even if its classifications are not precise." Id. In order to fail the rational-basis test, a classification adopted by the General Assembly must be "clearly arbitrary and unreasonable." *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, ¶ 9.

Whether a law is rationally related to a legitimate government interest depends on whether there is "'a plausible policy reason for the classification.'" *State v. Noling*, 149 Ohio St. 3d 327, 2016-Ohio-8252 ¶ 20, quoting *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992).

25. The State of Ohio has a legitimate government interest in protecting the health and safety of its citizens.

26. The Court finds that upon weighing the evidence received at trial, the Health Care Ban is rationally related to this interest. It is limited to minors. Moreover, the medical care banned carries with it undeniable risk and permanent outcomes. Indeed, countries once confident in the administration of gender affirming care to minors are now reversing their position as a result of the significant inconsistencies in results and potential side effects of the care. Thus, there can be no doubt that the Health Care Ban is neither arbitrary nor unreasonable.

27. Accordingly, the Court concludes that the Health Care Ban is not in violation of the Equal Protection Clause.

Due Course of Law Clause

28.The Fourteenth Amendment to the United States Constitution declares that no state shall "deprive any person of life, liberty, or property, without due process of law." Article I, Section 16 of the Ohio Constitution states that "every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law."

When reviewing a statute on substantive due-process grounds, courts apply a rational-basis test unless the statute interferes with certain fundamental rights or liberty interests. *Morris v. Savoy*, 61 Ohio St.3d 684, 688-689 (1991); *Sorrell v. Thevenir*, 69 Ohio St.3d 415, 423, 1994-Ohio-38. The United States Supreme Court stated in *Troxel* that "it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." Id., 530 U.S. at 66. Likewise, the Ohio Supreme Court has recognized that parents have a fundamental liberty interest in the care, custody, and management of their children. *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St. 3d 367, 372, 1998-Ohio-389.

This Court, however, cannot overlook the competing critical role State and federal governments have long played in regulating health and welfare, which explains why their efforts receive "a strong presumption of validity." *Heller v. Doe*, 509 U.S. 312, 319 (1993); see *Kottmyer v. Maas*, 436 F.3d 684, 690 (6th Cir. 2006). State governments have an abiding interest "in protecting the integrity and ethics of the medical profession," *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997), and "preserving and promoting the welfare of the child," *Schall v. Martin*, 467 U.S. 253, 265 (1984) (quotation omitted). These interests give States broad power, even broad power to "limit[] parental freedom," *Prince v. Massachusetts*, 321 U.S. 158, 167 (1944); see *Parham v. J.R.*, 442 U.S. 584, 605-

06 (1979), when it comes to medical treatment, cf. *Watson v. Maryland*, 218 U.S. 173, 176 (1910).

In *Glucksberg*, the plaintiff claimed that Washington State's ban on physician-assisted suicide violated his patients' due process rights. *Glucksberg,* 521 U.S. at 702, 707-08. The Supreme Court disagreed. It allowed the State to prohibit individuals from receiving the drugs they wanted, and their physicians wished to provide, all despite the "personal and profound" liberty interests at stake and all despite the reality that the drugs at issue often could be used for other purposes. Id. at 725-26. The Court reasoned that there was no "deeply rooted" tradition of permitting individuals or their doctors to override contrary state medical laws. Id. at 727. The right to refuse medical treatment in some settings, it reasoned, cannot be "transmuted" into a right to obtain treatment, even if both involved "personal and profound" decisions. Id. at 725-26. To be sure, the *Glucksberg* decision did not curtail the "earnest and profound debate about the morality, legality, and practicality of physician-assisted suicide." Id. at 735. Instead, the decision "permit[ted] this debate to continue, as it should in a democratic society." Id.

29. Guided by the forgoing legal framework, the Court reviews the Health Care Ban under the rational basis standard. Under rational-basis review, the Court will uphold the statute as long as it is rationally related to a legitimate government interest. *Arbino*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 66. In doing so, the Court grants "substantial deference" to the General Assembly's predictive judgment in making that determination. *State v. Williams*, 88 Ohio St.3d 513, 531, 2000-Ohio-428.

30. Upon careful review and consideration of the evidence, the Court finds the Health Care Ban reasonably limits parents' rights to make decisions about their children's medical care consistent with the State’s deeply rooted legitimate interest in the regulation

of medical profession and medical treatments. This limitation is especially appropriate when the General Assembly has determined the care regulated is experimental and its risks "far outweigh any benefit at this stage of clinical study * * *." Sub. H. B. No. 68, Sec. 2(O). As was the case with the Court's analysis of the Single Subject Rule and the Health Care Freedom Amendment claims, recourse for those who are dissatisfied with the General Assembly's determinations must be exercised through their vote as opposed to the judicial system.

31. Having found that the Health Care Ban is rationally related to a legitimate state interest, the Court concludes that the Health Care Ban does not violate the Due Course of Law Clause.

CONCLUSION

Based on the forgoing, this Court hereby enters JUDGMENT in favor of Defendants on Plaintiffs' claims for declaratory judgment. The Court hereby DECLARES:

1. The Act does not violate the Single Subject Rule.
2. The Health Care Ban does not violate the Health Care Freedom Amendment.
3. The Health Care Ban does not violate the Equal Protection Clause.
4. The Health Care Ban does not violate the Due Course of Law Clause.

It is further ORDERED that the temporary restraining order, as extended, is hereby VACATED.

Pursuant to Civil Rule 58(B), the Clerk of Courts is directed to serve upon all parties notice and the date of this judgment. **This is a final appealable order; there is no just reason for delay.**

IT IS SO ORDERED.

Electronic notification to counsel of record

Franklin County Court of Common Pleas

Date: 08-06-2024

Case Title: MADELINE MOE ET AL -VS- DAVID YOST ET AL

Case Number: 24CV002481

Type: JUDGMENT ENTRY

It Is So Ordered.

/s/ Judge Michael J. Holbrook