

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

PLANNED PARENTHOOD OF	:	Case No. 2:15-cv-
OHIO SOUTHWEST REGION,	:	
et al.,	:	Judge
	:	
Plaintiffs,	:	<u>DECLARATION OF JENNIFER</u>
	:	<u>BRANCH IN SUPPORT OF</u>
vs.	:	<u>PLAINTIFFS' MOTION FOR</u>
	:	<u>TEMPORARY RESTRAINING</u>
RICHARD HODGES,	:	<u>ORDER AND PRELIMINARY</u>
	:	<u>INJUNCTION</u>
Defendant.	:	

I, Jennifer L. Branch, pursuant to 28 U.S.C. §1746, declare under penalty of perjury that the following is true and correct:

1. I have watched the video recording of Attorney General DeWine's press conference: <http://www.ohiochannel.org/MediaLibrary/Media.aspx?fileId=147843&returnTo=Collection>.
2. I have compared the uncertified transcript of the recording, attached here as Exhibit A, to the video recording.
3. I believe, to the best of my knowledge, that the uncertified transcript is an accurate summary of the video.

/s/ Jennifer L. Branch  
Jennifer L. Branch

Date Signed: December 13, 2015

[Press conference held 12/11/15, Attorney General DeWine]

Our charitable law section in the attorney general's office has completed its investigation of Planned Parenthood in regard to the question as to whether or not they were selling fetuses or parts of fetuses. Our investigation found no evidence of that in the state of Ohio.

There are three facilities, Planned Parenthood facilities in Ohio, that do abortions. One in Cincinnati, one in Columbus, one in Bedford Heights. The investigation also found the following: Columbus and Cincinnati Planned Parenthood facilities dispose of fetuses through Accu-Medical Waste, Inc. which is based in Marietta. We found that these fetuses were steam cooked and then were taken to a Kentucky landfill. So for Columbus Planned Parenthood, Cincinnati Planned Parenthood, the fetuses for both of these facilities are taken, first are steam cooked, then are taken to a Kentucky landfill.

In regard to the Bedford Heights facility, SteriCycle out of Illinois is the company that they give the fetuses to, transport the fetuses. There is a portion of the contract that the Bedford Heights Planned Parenthood has with SteriCycle that says SteriCycle will not accept fetuses. However, fetuses, we are told by Planned Parenthood's attorney, that fetuses are going to SteriCycle. We do not know where they end up. We do know that SteriCycle does, has two different processes, and what we don't know is whether, what processes are used in regard to the fetuses. SteriCycle's two processes are the steam cooking, and another process is incineration.

Let me talk for a moment about Ohio law. Section 3701.34(1) of the Ohio Revised Code provides that the Director of Health shall adopt rules relating to abortion, specifically the humane disposition of the product of human conception. The department, in the administrative code, in 1975, provided as follows: a fetus shall be disposed of in a humane manner.

This morning I sent a letter to the Health Department, with a summary of our findings. The director of health called me about 2 hours ago and asked us as the attorneys for the department of health to apply for an injunction against the three Planned Parenthood facilities. Our lawyers are now in the process of preparing a legal action to do this, and when those papers are completed, that legal work is completed, we will be filing in a court of common pleas to seek this injunction.

I am more than happy to answer any questions.

[inaudible question]

It's not been determined

[inaudible question]

Well, there is no criminal penalty, nor is there a civil penalty. The remedy under current Ohio law is to seek an injunction and we would seek the injunction against the facility that performs the abortion, the buck stops with them.

[inaudible question]

We did not investigate any other hospital, any hospital in the state of Ohio so I do not know the answer to that question.

[inaudible question]

We did not check that. We did, we did not check that. Look we did an investigation, and as a result of that investigation, this information was disclosed. That was not the initial purpose but once you get involved with an investigation you, you have to call what you see and make that known. Look, disposing of fetuses, first cooking fetuses, and then disposing of them in a landfill is not humane. It is, I think it will come as a shock to Ohioans to find out that fetuses are being cooked and then they're being put in a landfill and they're going to be mixed in with your day's, yesterday's garbage and whatever else goes into a landfill.

[inaudible question]

Look, everyone can come up with their own answer to that and I'm not going to list the exclusive areas that would be possible. You know, I believe that the legislature, after having talking to the leaders of the legislature, I think they're going to take some action to prescribe specifically how fetuses should be disposed of so I will let them do that. That's not my job to do that.

[Question] is there any form of fetus disposal that would be humane in your eyes or is this just an attempt to stop abortions in the state.

No no no look. That was not the purpose. You know, burial, you know, I would think that the you know cremation process would be considered humane. I would think that in addition to that burial would be humane. I'm not going to go through a laundry list of what I think is humane or not. I just tell you that I don't think very many Ohioans would think that cooking a fetus, fetuses, and putting them in a landfill with your garbage is exactly the right thing to be doing.

[partially inaudible question] That phrase you're using, steam cooking, is this the liquification...

The autoclave is the term.

[partially inaudible question] some funeral homes want to or have used that kind of a liquification process.

No, I'm getting no from the team back there. They're telling me no.

[partially inaudible question] Can you describe the process...

Well, let me ask Joe Schmansky to come up here. Joe can you come up? That way, just to my right.

[Joe takes the microphone]

My name is Joseph Shmamsky, I'm one of the associate attorney generals, charitable law section, attorney general's office. I think I hear the question is, of course I'm not the health expert, but autoclaving is basically as the general referred to as a steaming procedure. What we

know is that it's essentially a long cylinder, I'm not sure how long it is, it basically essentially steams at very high temperatures to kill off infectious waste. Whether it liquefies it, I don't believe that is the case. That's about all I know about the autoclave procedure.

[inaudible question] ... infectious waste disposal process?

That I don't know the answer to.

[inaudible question]

[DeWine resumes the microphone]

Look, we're going to take one thing at a time. And what I anticipate is going to happen is the legislature is going to specify specifically the proper disposal process of an aborted fetus.

[inaudible question]

You might tell 'em that the scope of our investigation, because that's all we were looking at, is a certain period of time

[Joe resumes the microphone]

Right, the scope of our investigation was just simply whether or not this charitable organization breached its fiduciary duty by perhaps violating the abortion trafficking statute. We only looked at records from, I believe, January 2014 forward. Anything outside of that scope we cannot answer.

[inaudible question]

Generally weekly, weekly records.

[inaudible question]

No we do not.

[inaudible question]

To answer your question, we only know the records that were publically disclosed by the department of health because they have to keep track of all records and that's on, you can get that from the department of health. Beyond that, we don't know.

[inaudible question]

Correct, at least on up until we began to conclude our investigation, yes, roughly a month ago before we started collecting everything and summarizing things.

[partially inaudible question] You said this is a violation of state law. [inaudible]

[DeWine resumes the microphone]

I did not say that, I did not say that. No, very simply we are asking for an injunction to prohibit this disposal, and that's it. It is -- We're going into court and we're specifically asking the three Planned Parenthood facilities, they're performing the abortions, and the aborted fetuses being disposed in this manner, that they stop doing that. It's a very narrow focus to do specifically that. Nothing more. When our lawyers get it done, we'll get you a copy. In essence, we do not believe, and I do not think most Ohioans would believe, that this is a proper disposal, or this is a humane disposal.

[inaudible question]

No, you go back. You go back, you go back to the original authority that comes to the head of the health department. And the action, the administrative code that was promulgated, comes under his authority. So it is the law. I was playing lawyer to try to separate the administrative versus the statutory, but he has the authority based on the statutory authority that he has to do that and that has been the state of Ohio law since 1975.

[inaudible question]

I did not say that, no, that's not what I'm saying.

[inaudible question]

I don't have an opinion, that's not what we're seeking. We're not seeking that.

[inaudible question]

The law in Ohio... the director of health has the authority to promulgate. I mean if you go back and look directly at [reading] the director of health shall adopt rules relating to abortion. Then it specifically says the humane disposition of human conception. So in a law that dates back to 1975 I believe, he was given that authority. Whoever the director was at that time wrote that, it has been in the administrative code since then, so it has been the law to follow in the state since 1975. So we will be seeking an injunction based upon that and our argument will be that this is not a humane practice. The court will ultimately decide whether or not that is humane or whether that is not humane. The court will make its own decision. Simultaneously with this discovery, I informed the state legislatures, legislative leaders, I believe that they will, they've told me that they are planning on taking some action, fairly quickly, to spell out in more detail specifically what is an acceptable disposal of aborted fetuses. I think that's, so we're on to two tracks, but that's ...

[inaudible question]

OK well let me refer to several lawyers who are standing back there and we'll see if any of our lawyers want to take a stab at it... Pete, you want to take a stab at this, or not?

[Pete Thomas takes the microphone]

I'm Pete Thomas, Chief of the Charitable Law section for Attorney General DeWine. Mr. Johnson, what was the question?

[partially inaudible question, summarized] Well, is it a violation of the law that you're pursuing, or is it violation of code and not law.

I mean, I agree with the Attorney General that the rules can only clarify the power given under the Revised Code. The Revised Code says he "shall" promulgate rules regarding humane disposal. That he has done and says it must be done humanely. Whether that is illegal, in my mind, which is just my opinion, something that violates the Revised Code section breaks the law.

[DeWine resumes the microphone] Also I think we need to understand there's no criminal penalties here. There's no civil penalty. So the only remedy we can seek is what we are seeking. Which is an injunction. I think in the common vernacular when people say "broke the law" most people think "oh, there's a penalty connected with that." So that may not be the most artful way of saying it, and if I said that I apologize.

[inaudible question]

No, no, not what we're asking for. No, this is a very narrowly crafted – it will be, when our lawyers craft it – very narrowly crafted, asking for an injunction preventing them from disposing of aborted fetuses in this manner and that's all it will be doing.

[inaudible question]

That's my understanding. Joe? You want to take that?

[Joe takes the microphone.]

I can't answer the question as to what the attorneys for planned parenthood knew but whether or not it ends up in a landfill we don't know. However they did indicate to us through their counsel that they give the aborted fetuses of the Planned Parenthood facilities the aborted fetuses to the Accu-Waste company which is ultimately the company that ends up in a landfill. I can't speak to what their knowledge was as far as the ultimate disposition but again, as the General said, it is the onus is on the rule, the rule was if you're going to dispose of a fetus it must be done in a humane manner.

[inaudible question]

Well, I, I only apply it based on what I know. So this is a very narrow focus. It's a narrow focus. We came up with information that we did not expect in an investigation. We had an obligation, I felt, to do something with that information. We have done two things: we informed the Director of Health and we informed the State Legislature. In regard to what other hospitals are doing, I do not know that, it was not part of the investigation. What I think is going to happen is the legislature is going to step in and this matter is going to get resolved I think very quickly in regard to how in the state of Ohio fetuses should be disposed of. So what I would hope is your question is somewhat academic in the sense that the legislature will take care of this issue.

[inaudible question]

Our job was to find the facts, those are the facts, and we have made those facts public today

[inaudible question]

I'm not aware of anything but, we haven't done research on that, I'm not aware of anything that could get in the way of the legislature deciding that. This law has been on the books since 1975, the Administrative Code, I believe, has been in effect since 1975, so this is not exactly a new administrative code or new Ohio revised code section. Now. What the court does with this is obviously up to the court. Again, what I think is going to happen is whatever the court does, the legislature is, I think, going to take some fairly quick action on this. I just do not think Ohioans thought fetuses were being disposed of in landfills. I just don't think that's what the average Ohioan thinks, I don't think the average Ohioan wants that. We're not seeking anything other than an injunction to stop them from doing this.

[inaudible question]

Well it came from a combination, and joe can be specific if you want that, but it is different in each of the cases where the information came from

[Joe takes the microphone]

It came from both Planned Parenthood and Accu-Waste. In requesting documents from Planned Parenthood, specifically ,where do they dispose of their aborted fetuses, they provided to us both Accu-Waste and SteriCycle. One of our investigators spoke with the VP of Accu-Waste to confirm -- Accu-Waste of course services Central Ohio and Cincinnati and Columbus Central Ohio -- confirmed to us that after the autoclaving process, the fetuses do end up in landfills, so it was confirmed through a company official

[inaudible question – DeWine resumes the microphone]

Wow, I mean, I think the evidence is pretty strong, and part of it came from Planned Parenthood that this is how they're being disposed of. I mean, people shouldn't read any more into this than exactly what we're saying. I think Ohioans will be shocked when they find out tonight that fetuses from abortions are being cooked and put into landfills and mixed with all of the other garbage that's out there. I just think that's wrong. I might be old fashioned, but i just think it's dead wrong.

[inaudible question]

I don't know that

[inaudible question]

I would anticipate the paperwork will be done by Monday

[inaudible question]

Well, look, we call it like we find it, you know. This is what we found. We found no evidence that Planned Parenthood, any of the three sites in the state of Ohio that provide abortions, that any of them are selling fetal tissue or parts of a fetus. That's what we found. We also found out that these fetuses are being disposed of in landfills. We're just saying what happened, what the investigation found. We do investigations in this office every day and I'm proud of the team we have. This Charitable Law team which doesn't usually stand up here with me, they're usually doing some other section of the office, they did a good job in the investigation.

[inaudible question]

I would have no idea

[inaudible question]

Let me make it real clear. If 49 other states planned parenthood is doing this in, I still think it's wrong and offensive. And I think most Ohioans will think it's wrong. And I think the representatives of Ohio, through the legislature, will take action so this no longer continues.

[inaudible question]

[Joe takes the microphone]

The investigation began in late July, early August, roughly 4 months. Basically it relied on what we'd asked from Planned Parenthood and what Planned Parenthood supplied to us, the records I referenced earlier, the disposal companies and so forth on this issue. Two officials, one official from each.

[inaudible question]

Just examining the records that Planned Parenthood provided to us. We relied on what they gave to us. If they're telling us something different from what they provided to us. Based on what we saw in the records, and talking to the officials, about where the fetuses, are ultimately disposed of. The basic question we wanted to answer is what happens to the aborted fetuses, where do they go. The question was are they sold, so we could answer the question what happens to them, and that's when we learned that some of them are being disposed in landfills.

[inaudible question]

And with the communication with the AccuMedical Waste.

[inaudible question]

Again, as the General stated, the rule is "humane disposition" of aborted fetuses. The responsibility is on Planned Parenthood to ensure that there is a humane disposition. Whether Planned Parenthood knew what Accu-Waste and SteriCycle knew what they were doing with the fetuses...

[DeWine takes the microphone]

You also have the strange thing if you look at Cleveland and you look at SteriCycle, the contract they signed says no fetuses, and yet we know there are fetuses... that's my understanding. But the contract said no fetuses. There were, yes, they were disposed of somewhere. We know the two ways the prepare for disposal but we don't know where that disposal is.

[inaudible question]

I don't think we checked that. You did? Did not. Ok. Did not. OK, thank you all very much.