



Protect Women Ohio

Where Does the Amendment Say That?

The proposed amendment will remove all protections for the unborn, allowing abortion on demand and all other procedures that touch on reproduction, for both adults and minors. It will cancel out not only parental consent laws, but also mere parental notification for minors' abortions or sex change surgeries; strike down health protections for people of all ages who undergo these procedures, including requirements that a qualified physician perform them; and erase any meaningful limits on late-term abortions.

When reading the proposed constitutional amendment, it must be understood from the authors' intent and design. The authors of the proposed amendment – the ACLU, Planned Parenthood, and Physicians for Reproductive Rights – were intentional in crafting this amendment's language both in their specificity and vagueness of terms. The analysis below was taken from constitutional scholars Carrie Campbell Severino and Frank J. Scaturro recent legal analysis on Ohio's amendment language and is accessible here:

<https://www.nationalreview.com/2023/03/ohios-disastrous-abortion-ballot-proposal/>

The bracketed red letters A – E collate with where in the amendment it says that.

FULL TEXT OF PROPOSED AMENDMENT

Be it Resolved by the People of the State of Ohio that Article I of the Ohio Constitution is amended to add the following Section:

Article I, Section 22. The Right to Reproductive Freedom with Protections for Health and Safety **[A]**

A. Every individual has a right to make and carry out one's own reproductive decisions, including but not limited to decisions on: **[B]**

1. contraception;
2. fertility treatment;
3. continuing one's own pregnancy;
4. miscarriage care; and
5. abortion.

B. The State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either: **[E] [E2]**

1. An individual's voluntary exercise of this right or
2. A person or entity that assists an individual exercising this right, **[C] [E3]**

unless the State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care.

However, abortion may be prohibited after fetal viability. But in no case may such an abortion be prohibited if in the professional judgment of the pregnant patient's treating physician it is necessary to protect the pregnant patient's life or health. **[D1] & [D2]**

C. As used in this Section:

1. "Fetal viability" means "the point in a pregnancy when, in the professional judgment of the pregnant patient's treating physician, the fetus has a significant likelihood of survival outside the uterus with reasonable measures. This is determined on a case-by-case basis." **[D1]**
2. "State" includes any governmental entity and any political subdivision.

D. This Section is self-executing.

[A] The amendment's very title is a lie.

1. "The Right to Reproductive Freedom with Protections for Health and Safety" contains no protections for health and safety.
2. In reality, the amendment will eliminate existing health and safety protections for women in Ohio law. It will invalidate current laws that ensure a woman is screened and counseled by a licensed doctor who can transfer her into a local hospital if something goes wrong during an abortion. It will put women at risk.

[B] The proposed amendment will wipe out protections for the unborn, allowing abortion on demand and all other procedures, including sex-change surgeries, that touch on reproduction, for both adults and minors.

1. "Reproductive decisions" is a very broad term. By explicitly defining such decisions as "not limited to" the enumerated categories, the proposal establishes its scope as sweeping.
2. Legislators in over two dozen states are currently debating measures that would impose limits on what procedures could be performed to alter the appearance and sexual characteristics of minors to align with their identified sex instead of their biological sex. If this amendment a part of Ohio's Constitution, the legislature will become powerless to address these vital concerns.

[C] The amendment blindfolds parents to their child's health needs.

1. A natural reading would extend to any medical procedure that involves the human reproductive system, including sex change surgery. The language also applies to individuals without any age qualification, so the proposal makes no distinction between adults and minors.
2. The amendment will eliminate the basic rights of parents. Parents will no longer need to be informed or provide consent for their underage daughter to undergo an abortion. The amendment language clearly prohibits any law that "directly or indirectly" would "burden" or "interfere" with any "reproductive decisions." Those are specific legal terms which have been interpreted by courts across the country to strike down parental notification and consent laws.
3. Complete strangers who assist children in obtaining life-altering procedures will find themselves on the right side of the law - "A person or entity that assists an individual exercising this right" - while parents who try to protect their children will be deemed to have run afoul of the law.
4. This has already occurred in deep blue states like California and Vermont, but even in Florida, a bad court case prevented parents from knowing if their minor daughter sought an abortion for three decades.

[D1] The amendment gives the abortionist sole discretion on the preborn baby's viability. It specifically omits any objective medical or scientific standards for viability.

1. This language poses additional problems, reinforced by the proposal's definition of "fetal viability" —"the point in a pregnancy when, in the professional judgment of the pregnant patient's treating physician (abortionist), the fetus has a significant likelihood of survival outside the uterus with reasonable measures." This post-viability determination is arguably the one context in which the proposed amendment limits authorization for doctors (abortionist) alone as opposed to whatever other "person or entity" might be performing an abortion. Yet far from adopting a meaningful limiting principle, this language, devoid of an objective benchmark to define fetal viability, gives carte blanche to doctors in their determinations. Its "standard" is whatever an abortionist subjectively decides.

[D2] Allow painful, late-term abortions, in fact right up until the moment of birth.

1. It also contains a massive loophole allowing abortion post-viability if "it is necessary to protect the pregnant patient's life or health." When the "health" is specifically left undefined, courts have always interpreted it to include mental health, "financial and social health, making it effectively impossible to enforce any protections at any time during a pregnancy.
2. The insertion of the word "health" in this provision without any qualification poses the added problem that arose under Roe, where the Supreme Court by judicial fiat also injected a "health" exception for any prohibition of post-viability abortion: Over the course of several abortion cases, the Court employed a notion of health so broad that, for many lower courts, including the U.S. Court of Appeals for the Sixth Circuit in an Ohio case in 1997, it was enough for a doctor to be willing to approve the procedure based on "emotional" and "familial" factors. This effectively permits abortion at any stage of pregnancy.

[E] This abortion-industry-led initiative would require taxpayer funding of abortions.

1. The amendment language clearly forbids any law that "directly or indirectly" would "burden" or "interfere" with any "reproductive decisions." Those are specific legal terms which have been interpreted by courts across the country to require states to fund abortions, especially Medicaid recipients.
2. Alaska taxpayers are forced to pay for elective abortions because the state Supreme Court found that a right to abortion in the state constitution created a mandate for taxpayer funding. If Ohio enshrines abortion into its Constitution, you can be sure the ACLU and Planned Parenthood will insist Ohioans pay for it.

[E2] The amendment protects abortion providers' financial interests over women's health.

1. It appears that the amendment, if approved, would even offer a level of protection to nonphysicians in their performance of covered procedures — whether abortion, sex-change surgery, or something else. After all, the language extends to any "person or entity" who provides assistance with the procedure at issue.

[E3] Obliterates protections for women who feel coerced to get an abortion. Protects rapists, traffickers, and abusers.

1. The amendment explicitly protects third parties who “assist” abortions for underage girls. “The State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against... A person or entity that assists an individual exercising this right.”

Summary Statement

This extreme amendment will enshrine a dangerous abortion regime in the Ohio Constitution and effectively obliterate most limits to abortion or sex change surgery, among its other far-reaching consequences and prevent common sense, common ground protections for women and children which are supported by large majorities in Ohio and across the country.

This ballot initiative is an extreme anti-parent amendment. The amendment was written by the ACLU, and is being bankrolled by out-of-state special interest group and for-profit abortion giants like Planned Parenthood.

The dangers of this anti-parent amendment cannot be overstated. If passed, the ACLU’s amendment will:

1. Wipe out parental notification and consent requirements for minors obtaining abortions and other life-altering reproductive procedures, including sex changes;
2. Eliminate current health and safety standards for women;
3. Remove all protections for the preborn, allowing taxpayer-funded painful, late-term abortions through all nine months.

This amendment will also prevent Ohio’s legislators from doing their jobs. It forbids any law that would “burden” or “interfere” with reproductive decisions,” rendering the legislature powerless to protect life and parental rights. We have already seen this play out in the Michigan legislature.

The amendment will also protect anyone who “assists” a minor” in obtaining an abortion. Abortion coercion, which already affects 60 percent of women who obtain abortions according to public polling, will skyrocket.