

An Analysis of Proposal 3's Extreme Constitutional Amendment

PROPOSED CONSTITUTIONAL TEXT

"Every individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including but not limited to prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care."

"An individual's right to reproductive freedom shall not be denied, burdened, nor infringed upon unless justified by a compelling state interest achieved by the least restrictive means."

"Notwithstanding the above, the state may regulate the provision of abortion care after fetal viability, provided that in no circumstance shall the state prohibit an abortion that, in the professional judgment of an attending health care professional is medically indicated to protect the life or physical or mental health of the pregnant individual."

"The state shall not discriminate in the protection or enforcement of this fundamental right."

ANALYSIS

The amendment specifically says it will impact **ALL** matters relating to pregnancy and lists several examples. These words have extremely far-reaching consequences. The word individual is not defined as to age, meaning the provisions in this amendment will apply to children as well as adults.

This amendment specifically defines a compelling state interest, which would severely restrict any possible abortion law or regulation.

This confusing language appears to allow late-term abortion bans, but by introducing a "mental health" exception, it would allow late-term abortions for practically any reason.

Notice that it does not mention doctors, but "health care professional" which under Michigan law, covers more than just physicians. For example, a dentist could approve a late-term abortion on mental health grounds—and even perform one with no consequence.

If this were to be added to the constitution, the state would likely be seen as singling out abortion with its ban on taxpayer funded abortions through the Medicaid program. With this provision, the state would be required to fund abortion, sterilization, and unethical infertility measures as any other medical procedure. **CONTINUED →**

PROPOSED CONSTITUTIONAL TEXT

“The state shall not penalize, prosecute, or otherwise take adverse action against an individual based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion.”

“Nor shall the state penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent.”

“For the purposes of this section:

A state interest is “compelling” only if it is for the limited purpose of protecting the health of an individual seeking care, consistent with accepted clinical standards of practice and evidence-based medicine, and does not infringe on that individual’s autonomous decision-making.”

“Fetal viability” means: the point in pregnancy when, in the professional judgment of an attending health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus’s sustained survival outside the uterus without the application of extraordinary medical measures. This section shall be self-executing. Any provision of this section held invalid shall be severable from the remaining portions of this section.

ANALYSIS

This section could stop investigations of infanticides. For example, if someone gives birth and then abandons the baby in the trash, the state cannot investigate the situation because investigation is an “adverse action” against a “perceived pregnancy outcome.”

People do not have a right to kill a newborn baby, but this amendment could give them one, and make the state enforce it.

This could stop the state from investigating someone who assists with any abortion as long as consent is given. A school counselor could take a 13-year-old girl to get an abortion without telling her parents, and there is nothing her parents could legally do when or if they find out. An untrained employee at an abortion facility could perform an abortion, and health and safety regulators could be powerless to address it.

This section is likely intended to invalidate the state’s pro-life laws. Any existing law related to pregnancy, sex, abortion, sterilization, etc. must overcome three separate obstacles:

- First, the law can only be for the purpose of protecting “health,” which is not defined.
- Second, the law must agree with “accepted clinical standards of practice,” which are written by the abortion industry itself.
- Third, no law on anything related to pregnancy can infringe on a person’s “autonomous decision making.”

This means that the amendment makes a female’s consent the only legal limit on abortion.

Fetal viability is usually defined as the point a child can survive outside the womb. The amendment changes this definition so that any newborn with a significant illness could be defined as a non-viable child. ■