

STATEWIDE BALLOT PROPOSAL 22-3

Reproductive Freedom for All

September 2022

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Proposal 22-3 will appear on the ballot as follows:

Statewide Ballot Proposal 22-3

A proposal to amend the state constitution to establish new individual right to reproductive freedom, including the right to make all decisions about pregnancy and abortion; allow state to regulate abortion in some cases; and forbid prosecution of individuals exercising established right

This proposed constitutional amendment would:

- Establish new individual right to reproductive freedom, including right to make and carry out all decisions about pregnancy, such as prenatal care, childbirth, postpartum care, contraception, sterilization, abortion, miscarriage management, and infertility;
- Allow state to regulate abortion after fetal viability, but not prohibit if medically needed to protect a patient's life or physical or mental health;
- Forbid state discrimination in enforcement of this right; prohibit prosecution of an individual, or a person helping a pregnant individual, for exercising rights established by this amendment;
- Invalidate state laws conflicting with this amendment.

Should this proposal be adopted? Yes No

About the Proposal

Proposal 22-3 would add a 28th section to Article I of the Michigan Constitution, giving voters the chance to decide the future of abortion rights in Michigan. This proposal joins other ballot measures and legislative efforts in other states in the wake of the U.S. Supreme Court ruling that overturned *Roe v. Wade*.

If adopted, Proposal 22-3 would establish a new individual right to reproductive freedom in the state constitution,

including access to abortion care. The proposal would allow the state to regulate abortions after fetal viability, except if needed to protect a patient's life or physical or mental health.

This bulletin discusses the proposed changes in more detail and compares Proposal 22-3 to abortion laws in other states.

The full text of the proposal is available from the Elections section of the Michigan Secretary of State website at <https://www.michigan.gov/sos/elections/bsc>.

Background

A petition with 753,759 signatures, the most in state history for a ballot petition, was submitted to the Bureau of Elections to place this proposal on the ballot. State law specifies that for a constitutional amendment to appear on the ballot, at least 425,059 valid signatures are required. (This is 10% of the votes cast in the previous election for governor.)

The proposed amendment would establish several new constitutional protections for reproductive freedom in Michigan. Access to the types of care mentioned in the proposal would be protected, along with a person's right to make their own decisions about such care. The most prominent protection would be the right to seek abortion care (though state funding for abortion care would still be illegal).

The proposal also codifies the individual right to make decisions about the use of contraceptives, prenatal care, childbirth, and more. It does not require the state to take any steps related to access to these types of care (such as directing state funding toward increasing access to it).

Comparison to Current Law

Public Act 328 of 1931 states that anyone who performs an abortion in Michigan is guilty of a felony. The only exception the law allows is to preserve the life of the mother. Though still on the books, the law had not been enforced since the U.S. Supreme Court affirmed a constitutional right to abortion in *Roe v. Wade* in 1973. After the Court overturned *Roe* (in *Dobbs v. Jackson Women's Health Organization*) in June, several lawsuits were filed to overturn or prevent the enforcement of P.A. 328. In early September, a Michigan Court of Claims judge declared the law unconstitutional. (The judge's ruling is being appealed.)

Currently, abortion remains legal in Michigan under the same laws that governed the procedure under *Roe v. Wade*. They include:

- Prohibition against abortion past the point of fetal viability (Michigan Compiled Laws 750.323). (Note: Proposal 22-3 defines "fetal viability" as the point in a pregnancy when a health care professional determines that a fetus could likely survive outside the uterus.)
- Prohibition against partial birth abortions (also called dilation and extraction; MCL 750.90h).
- Requirement that those seeking abortion undergo a mandatory 24-hour waiting period and counseling (MCL 333.17015).

Michigan law also restricts public funding for abortion care (MCL 400.109a) and private insurance coverage of abortions (MCL 550.543 & MCL 550.542). The state also has specific regulations for abortion providers related to facilities (MCL 333.20115) and reporting (MCL 333.2835[2] & MCL 333.2837[1]).

The proposed amendment is not likely to invalidate existing abortion laws, except for the 1931 abortion ban.

The other types of care protected in the proposed amendment are governed by state and federal law. Passage of the proposed amendment would likely not affect existing reproductive freedom regulations but would protect the right to access reproductive care, meaning no future state law could make it illegal.

Abortion Laws in Other States

As noted in the table on page 3, abortion laws vary across the United States, and the overturning of *Roe v. Wade* has meant that many states' abortion laws are being reexamined, are being newly enforced, or—as in Michigan—are undecided and awaiting court decisions (New York Times, 2022).

Summary

If approved, this proposed constitutional amendment would protect the right to abortion and to make several other decisions related to reproductive health and pregnancy. Abortion in Michigan is currently legal up to the point of fetal viability, which would not change under Proposal 22-3. The proposal's most significant change would be that, as an amendment to the state constitution, it would prevent the state legislature from further restricting access to abortion before fetal viability.

If the amendment is rejected, the fate of abortion in Michigan would be left to pending legal decisions about the 1931 abortion law, and to future state legislatures, which could pass laws to make abortion either more accessible or more restricted.

Reference

New York Times (The). (2022, September 22). Tracking the states where abortion is now banned. *The New York Times*. <https://nyti.ms/3B4eRBh>

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Table: The status of abortion laws in the 50 United States and Washington, D.C., as of September 22, 2022.

Status	State
Banned, no exceptions for rape or incest	Alabama, Arkansas, Idaho, Kentucky, Louisiana, Missouri, South Dakota, Tennessee, Texas, Wisconsin
Banned, exceptions for rape or incest	Indiana ^a , Mississippi ^b , Oklahoma, West Virginia
Strict gestational ban (abortion banned at varying points early in pregnancy)	Ohio (6 weeks), South Carolina ^c , Georgia (6 weeks), Florida (15 weeks)
Gestational ban after 22 to 24 weeks	Iowa ^d , Nebraska, Pennsylvania, Kansas, Massachusetts, Nevada, New Hampshire, North Dakota ^e
Legal until fetal viability	Arizona ^f , California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan ^g , Minnesota, Montana, North Carolina (20 weeks), New York, Rhode Island, Virginia, Washington (state), Wyoming ^h
Legal, no gestational limit	Alaska, Colorado, Washington (D.C.), New Jersey, New Mexico, Oregon, Vermont

Note. The information in this table was current as of the time of publication. Adapted from “Tracking states where abortion is now banned,” by The New York Times, 2022, September 22, *The New York Times* (<https://nyti.ms/3B4eRBh>).

^a Indiana’s recent ban has “exceptions for some cases of rape, incest, or fatal fetal abnormality, or to preserve the life or health of the woman” (The New York Times, 2022). A judge has temporarily blocked this ban.

^b Mississippi’s ban has an exception for rape but not for incest.

^c South Carolina’s ban after 6 weeks is currently blocked by the courts; the state legislature is working on a total ban.

^d An Iowa “ban on abortion after six weeks has been blocked by a judge since 2019, but the governor is seeking its enforcement” (The New York Times, 2022). Existing Iowa law bans abortion after 22 weeks.

^e A judge has temporarily blocked North Dakota’s ban on nearly all abortions, pending the outcome of a lawsuit challenging the ban.

^f An Arizona state law banning abortion with no exception for rape or incest has been blocked by the courts since 1973, but the attorney general has asked the court to allow it to take effect. A ban on abortion after 15 weeks was scheduled to go into effect in late September.

^g If Michigan’s 1931 abortion law is eventually upheld, and Proposal 22-3 is rejected, abortion would be banned with the only exception to protect the life of the mother.

^h Wyoming’s ban on nearly all abortions was set to go into effect on July 27 but has been temporarily blocked in court.

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