

The Challenge of the Pro-Abortion Initiative

MISSOURI RIGHT TO LIFE
Summer, 2023

TEXT OF THE INITIATIVE BY SUBSECTION

Structure of the versions of the Initiative

The proponents have filed eleven version of the Initiative, nos. 2024-077 through 2024-087 on the Secretary of State's web site. When the "ballot title" (i.e., the ballot summary) is finally approved, it will be up to the proponents to decide which version to put out for petition signatures.

The eleven versions differ significantly in only three subjects: regulation of late-term abortions, notice to parents of minors' abortions, and whether state and local governments must pay for abortion. Each version contains a combination of 1, 2, or 3 of these subjects, or none of them. There are additional minor variations of language here and there.

The most complete versions, in which there are provisions for all three subjects, are found in nos. 2024-081 and 2024-085.

References to versions below will be made by the last three digits of each one (e.g., "077"). 3

Heading and title of the Initiative:

"NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.

"Be it resolved by the people of the state of Missouri that the Constitution be amended:

"Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:

"Section 36. 1. This Section shall be known as 'The Right to Reproductive Freedom Initiative.' "

COMMENT: Each numbered paragraph from here forward represents a "subsection" of proposed section 36, article I of the Constitution of Missouri.

"2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions." (Underlining added.)

COMMENTS: The Initiative is not just about abortion; it is about all the underlined subjects. Some are thrown in to insinuate there is now a problem that will be fixed by the Initiative, when actually there is no problem in Missouri, for example, "miscarriage care." (The difference between miscarriage, which does not occur by human choice, and abortion, which does, is known by most and is already preserved in the legal definition of abortion in Missouri.)

The term, "Government," is defined in the last subsection below.

"3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making." (Underlining added.)

Comment:

The underlined portion is a loophole that swallows the rest of the definition of "compelling governmental interest." "Autonomous decision-making" of its very nature means no law shall be allowed to restrain or control it, no matter how compelling the need for the law, because a person's "autonomous decision-making" will overrule the law every time. This loophole makes the rest of this subsection useless.

There is no recognition of providing for the health of the baby. The baby will not be the one "seeking care" that this subsection protects.

"4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after 24 weeks of gestation, as measured from the first day of the patient's last menstrual period consistent with accepted clinical standards, provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that, in the good faith judgment of a treating health care professional, is needed to protect the life or physical or mental health of the pregnant person or is of a nonviable pregnancy."
(Underlining added.)

Comment:

Protecting the "mental health" of the patient will probably be construed very broadly by abortionists so that it encompasses treating or reducing emotional distress. Seeking an abortion probably indicates emotional distress exists already from becoming pregnant, so reducing that distress by an abortion will be seen as protecting "mental health." The purported 24-week restriction will be useless, an empty show.

Used in version nos. 080, 081, 082, & 084, with variations on the phrase, "deny, burden, or otherwise restrict." See next slide for the "Fetal Viability" approach. The subject is absent from versions 077, 078, and 079.

"4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, burden, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person." (Underlining added.)

Comment:

The worthlessness of the purported exception allowing an abortion for "mental health" is the same as in the previous version of a late abortion regulation. It is an empty show.

See also the comments on the definition of "Fetal Viability" in the "Definitions" section at the end of the Initiative.

Used in versions 083, 085, 086, 087, with variations on the phrase, "deny, burden, or otherwise restrict." See previous slide for the "after 24 weeks" approach.

"X. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, otherwise subjected to adverse action for doing so."

Comment: The first sentence of this subsection establishes rules of conduct not just for the Government but also for private parties who are deemed to have "subjected" other people to "adverse action." For example, if a college student with a "potential" for abortion complains that she is "threatened" by a pro-life presentation on campus, this section might authorize a lawsuit against the college and maybe the speaker.

The second sentence of this subsection may create immunity from lawsuits ("adverse action") for malpractice by those who assist in "reproductive health care," including abortion but also all the other kinds of such care.

Nowhere in this subsection or any other do we find a protection of an individual's conscience rights *not* to assist in other individuals' exercises of "reproductive freedom." Discrimination only flows in one direction in the so-called "pro-choice" world.

"X. Notwithstanding this Section, the general assembly may enact laws that require a health care professional, before providing an abortion to a minor, obtain consent from a parent or guardian of the minor, provided that such law shall permit the health care professional to provide the abortion without such consent if, in the good faith judgment of a health care professional:

"(1) obtaining consent may lead to physical or emotional harm to the minor;

"(2) the minor is mature and capable of consenting to an abortion; or

"(3) obtaining consent would not be in the best interest of the minor."
(All underlining added.)

Comments: (1) It is quite likely that conferring with a parent will be emotionally difficult, so the "health care professional" will almost always find this condition has been satisfied.

(2) By what measure is "maturity" to be measured, especially when the abortionists' "health care professional" is doing the measuring?

(3) The "health care professional" who decides what the minor's best interest is, is quite likely to be biased in favor of abortion almost every time; they are abortionists' employees or contractors, after all. The three exceptions show that the parental consent language is a sham.

X. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

COMMENT: Nowhere in this section or any other do we find a protection of an individual's conscience rights *not* to assist in another individual's exercise of "reproductive freedom."

"X. Nothing in this Section requires government funding of abortion procedures."

"X. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby."

COMMENT: This is a "severability" clause that is common in legislation.

First subsection above is used in versions 079, 081, 084, 085, & 087, and also with variant language in 077. Second is found in all versions of Initiative.

"X. For purposes of this Section, the following terms mean:

"(1) 'Fetal viability', the point in pregnancy when, in the good faith judgment of a treating 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. (Underlining added.)

Comment:

"Fetal Viability" is defined such that it is determined by "a treating health professional," not necessarily a physician, and not a provider that has necessarily examined the patient and the unborn baby.

Furthermore, "Fetal Viability" is defined to require the baby's "sustained survival outside the uterus without the application of extraordinary medical measures." What is "sustained survival"? 1 hour? 24 hours? 24 days? Who says? (Answer: the *abortionist* says.) How about the other interventions that keep a preemie alive with greater and greater percentages of survival with every passing week? Are they "extraordinary"?

"(2) 'Government',
a. the state of Missouri; or
b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri."

EFFECTS OF THE INITIATIVE

Under all versions of the Initiative, the proposed new Article I, sec. 36 would--

- allow anyone to perform abortions without a health care license. Abortions would not even require a nurse or midwife.
- forbid the state from requiring abortionists to offer mothers ultrasounds of their unborn babies.
- forbid the state from requiring dissemination to anyone seeking an abortion of evidence-based information about the life and growth of the unborn child at each stage of development.
- forbid the state from enacting informed consent requirements and from enacting a reflection period before an abortion.
- forbid fathers of unborn children to have any right to advance notice of a proposed abortion or to have any legal standing to prevent it.

Effects of Initiative, continued:

Under all versions of the Initiative, the proposed amendment would--

- forbid the state from enforcing health care regulations like those that apply to other health care providers.
- forbid the state from requiring health care professionals to take steps to save the life of a baby born alive after an abortion, because it would interfere with a chosen "pregnancy outcome" under the Initiative.
- forbid the state from regulating surrogate pregnancy arrangements that relegate women to the status of rented wombs.
- allow abortions of babies of up to 24 weeks gestational age or up to "Fetal Viability" (as defined) for any reason or no reason. Some versions would allow abortions up to the point of birth.

Effects of Initiative, continued:

The Initiative is so broadly worded that courts might interpret it to allow the following:

- Pregnancy Resource Centers might be forced to be licensed by the authorities and to refer for abortions.
- It very probably forbids conscience clauses that protect medical and related professionals from retaliation for refusing to perform abortions and other procedures connected with “reproductive freedom.”
- It could prohibit malpractice suits by negligent health care professionals who assist a person to exercise “their right to reproductive freedom.” Even such things as performing reassignment gender surgery could be deemed the exercise of “reproductive freedom” and become immune from malpractice suits.
- Cloning for reproduction could become constitutionally protected. Even the weak restriction against cloning for reproduction in the cloning amendment adopted in 2006 could be rendered a nullity.

REQUIREMENTS FOR PETITIONS

Number of Petition Signatures Required To Put the Initiative on the 2024 Ballot

To put the Initiative on the ballot in 2024, the petitions must contain signatures in at least 6 of the 8 U. S. Congressional Districts in Missouri equal to at least 8% of the number of voters who voted for Governor in the last election.

<u>Congressional District</u>	<u>Votes Cast for Governor 2020</u>	<u>8% for Constitutional Amendment Initiative</u>
1st	320,388	25,632
2nd	451,233	36,099
3rd	416,231	33,299
4th	368,104	29,449
5th	355,720	28,458
6th	390,227	31,219
7th	375,158	30,013
8th	335,262	26,821

Source: Missouri Secretary of State, Make Your Voice Heard: Missouri's Initiative Petition Process, link available at <https://www.sos.mo.gov/elections/petitions>

**PUBLIC PERSUASION ABOUT THE PETITION:
FIRST AMENDMENT RIGHTS AND STATE LAW**

The First Amendment guarantees that government may not forbid speeches, leafletting, demonstrating, marching, picketing on or in "public forums." Public forums are places that in American tradition are available for public statements, e.g., speeches, demonstrations, marches, sharing literature, and so forth.

Not all public property is a "public forum." Governmental office buildings, for example, are often off-limits to the public so that governmental business may be accomplished.

The First Amendment allows local and state governments to regulate the time, place, and manner of exercising the rights to free speech and assembly.

The First Amendment does not allow restrictions on speech based on the content of what is being communicated.

The First Amendment regulates only governmental powers over speech and assembly; it does not control what private persons and organizations may do to thwart speech.

Ordinary state laws and municipal ordinances govern private parties. Laws against trespass, nuisance, threats, assaults, and so forth come into play for all concerned.

The best advice for conducting oneself during a "Decline to Sign" or similar activity is to follow the same rules as we have followed for witnessing at abortion facilities. Be courteous and respectful when speaking with people; do not become contentious if and when goaded; do not block access by the public to streets and sidewalks.

Check with local authorities before planning a march or demonstration to make sure all necessary permits are obtained. Even if no permits are necessary, it may a good idea (depending on the locality) to call local law enforcement to advise of a planned activity.

This is a video and Internet age, so we can expect our opponents to attempt to goad us into argumentative conduct or even a physical altercation that can be filmed and disseminated world-wide to defame us. Don't get drawn into this trap.