

To: Florida, Nebraska, South Dakota, Missouri, Arizona, and Montana Pro-Life Campaigns and Public Officials Fighting “Right to Abortion” State Ballot Measures

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Subject: Closing Messaging for Ballot Measure Campaigns: Current Pro-Abortion Lawfare Proves State Abortion Ballot Measures Are Trojan Horses for Overturning Pro-Parent, Pro-Life Laws

In the months leading up to the passage of Issue 1 in Ohio, and Prop 3 in Michigan, pro-life advocates warned that the abortion amendments would nullify existing health and safety standards for women, and would even jeopardize parental consent laws. The media and pro-abortion advocates attacked these concerns – and often wouldn’t even report on them — as misinformation and fear mongering. They argued that the amendments would merely “restore *Roe*.”

Today, however, we see the concerns raised by pro-life advocates coming to fruition. The ACLU and the abortion industry circle like sharks around states with amendments that have enshrined the “right to abortion” into their constitutions, filing lawsuits challenging various health and safety laws almost as soon as these initiatives pass. Unfortunately, the broad, often undefined language in these amendments opens the door to judicial interpretation far different than what voters expected based on ballot summaries, media coverage, and even the text itself. This is on purpose; what voters are told *before Election Day* is vastly different from what pro-abortion organizations ask courts to impose once these amendments pass.

In the closing weeks before the election, the coalitions fighting abortion ballot campaigns across the country must raise awareness of pro-abortion gaslighting and lawfare and expose the truth that these amendments allow—and often *require*—far more than merely “restoring *Roe*.”

First, pro-life advocates must emphasize how these ballot initiatives undermine and threaten parental rights. When Michigan passed Prop 3, pro-life advocates warned that its deceptive language would pave the way for minors to receive abortion and other elective procedures without parental consent or even knowledge. Just this past March, the ACLU of Michigan – one of the leading organizations behind the amendment – issued a report saying that parental consent laws “harm young people and [should be repealed](#).” A few months prior, an ACLU of Ohio attorney implied that Issue 1 would invalidate Ohio’s parental consent law, claiming that “laws that conflict with it cannot be enforced, should [not be enforced](#).”

Second, campaigns should warn taxpayers that they could be forced to foot the bill should the amendments pass. Today, the ACLU and its affiliates are exploiting the amendments to attack longstanding state laws – allowed under *Roe* and *Casey* – which prevent the taxpayer funding of elective late-term abortions. In a June 2024 challenge to Michigan’s “no taxpayer funding” law, the [ACLU of Michigan Deputy Legal Director Bonsitu Kitaba](#) claimed that “the Michigan Constitution guarantees the fundamental right to reproductive freedom for everyone, but the coverage ban singles

out and excludes people who are Medicaid-eligible from this right...this is unacceptable...we will continue to fight to ensure that abortion care is available to all.”

Third, pro-life coalitions and campaigns must expose pro-abortion lawfare that uses the passage of these amendments to revoke basic health and safety standards for women.

Two separate cases in Michigan and Ohio are currently attacking women’s informed consent and safety standards, arguing that those states’ amendments render them “unconstitutional.” In [*Northland Family Planning Clinic v. Michigan*](#), pro-abortion advocates at the Center for Reproductive Rights challenged several Michigan laws that require that women give informed consent, have a 24-hour reflection period, and are seen by a licensed physician prior to obtaining an abortion. These laws are demonized as infringing on the new “right” to an individual’s decision making for abortion established by Michigan’s Prop 3. In June, the Court of Claims sided with the abortion industry and halted Michigan’s 24-hour waiting period law, the physician-only law, and the informed consent requirements. The Court’s decision explicitly stated that “Michigan voters dramatically changed the Michigan Constitution by adopting § 28 of Article 1.” The Court determined that basic informed consent laws for women infringe on Prop 3’s “decision-making rights” since they may “guide[] a patient away from the choice of having an abortion.” (*Northland* opinion page 41.)

In *Preterm-Cleveland v. Ohio*, a group of Ohio abortion businesses and a practitioner represented by the ACLU of Ohio and Planned Parenthood challenged several Ohio laws – laws that ensure reflection periods, informed consent, and in-person consultation with a licensed physician – because they allegedly infringe on the “right to abortion” created by Issue 1. The State argued that the laws in question are essential for informed consent and screening for coercion or abuse. Yet the Court ultimately enjoined the laws as hindering the right established by Issue 1, which the Judge stated goes further than “restoring *Roe*.”

Two additional cases in Ohio and Michigan seek to block critical safeguards on dangerous chemical abortion drugs, as well as to force taxpayers to fund elective-late-term abortions. Both rely on the states’ recently passed abortion amendments as ground for invalidating these state laws.

In *Planned Parenthood Southwest Ohio Region v. Ohio Department of Health*, a group of abortion businesses and practitioners are suing to revoke a law that prevents sending dangerous chemical abortion drugs through the mail and which requires that women receive in-person counseling and screening by a licensed physician prior to obtaining the drugs. These laws are essential for screening for ectopic pregnancies or other life-threatening complications. However, pro-abortion advocates argued that Issue 1 invalidates these essential protections for women. The Court sided with the abortion advocates and enjoined the laws while the case proceeds. The deciding Judge admitted in his opinion that Issue 1 “immediately nullified the status quo,” and that the amendment goes further than *Roe*.

Similarly, In the *Young Women’s Christian Association of Kalamazoo, Michigan v. State of Michigan*, the YWCA of Kalamazoo is challenging Michigan laws which protect taxpayers from having to fund elective late-term abortions. The YWCA argues that these laws are now unconstitutional under Prop 3.

In closing, the ACLU and abortion advocates use abortion amendments to challenge parental rights and force taxpayer-funded, all-trimester abortion through litigation. They are quickly building legal precedent through such lawfare that will allow them to use state constitutional amendments to do away with commonsense state laws and enact policies that go well beyond “restoring *Roe*.”

Now more than ever, pro-life advocates and coalitions must use the examples of lawsuits in Ohio and Michigan to educate voters that the amendments will allow the abortion radicalism we warned of, and which most Americans oppose. As Ohio and Michigan prove, passing “right to abortion” constitutional amendments have allowed new judicial interpretations that overrule decades-long policies protecting women, minors, and conscientious taxpayers, leaving states exposed to the full radicalism of the pro-abortion Left.