

Terminating Democracy: The Antiabortion Movement's Attempted Subversion of Direct Democracy Since *Dobbs*.

DEBORAH MACHALOW*

INTRODUCTION

In *Dobbs v. Jackson Women's Health Organization*, the Supreme Court's conservative majority proclaimed that it was returning authority to regulate or prohibit abortion "to the people and their elected representatives."¹ The Court, and its supporters, painted *Dobbs* as a "win for democracy" because "the American people g[ot] their voice back."² Since *Dobbs*, support for legal abortion has increased,³ yet elected officials continue supporting draconian abortion restrictions, forcing Americans to turn to ballot measures⁴ to express their policy preferences.⁵ In the first two years after *Dobbs*, reproductive rights achieved universal success at the ballot box in citizen-initiated and legislative-referred measures, but that streak ended in November 2024 after the antiabortion movement redoubled efforts at every stage of the initiative process to silence and mislead voters

* Assistant Professor of Law, University of Toledo College of Law. Thank you to Meghan Boone, Greg Gilchrist, Evan Zoldan, and participants of the Democracy Works-in-Progress Conference, University of Toledo College of Law Faculty Roundtable, the Detroit Mercy College of Law Junior Scholar Exchange, and the Reproductive Rights and Justice Roundtable who provided insightful feedback and helpful suggestions on earlier versions of this Article, as well as to the University of Toledo College of Law for its support of this project. Many thanks also to the *Connecticut Public Interest Law Journal* and its editors.

¹ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 302 (2022).

² See David Landau & Rosalind Dixon, *Dobbs, Democracy, and Dysfunction*, 2023 WIS. L. REV. 1569, 1574–75 (2023) (identifying examples from *Dobbs* that "are heavily laden with references to democracy"); *Id.* at 1576–77 (describing "discourse among commentators who have justified" *Dobbs* in terms of democracy and quoting Professor Helen Alvaré and Senator Mitch McConnell); see also *infra* nn.14–16 and surrounding text.

³ See e.g., Christine Fernando & Amelia Thomson-Deveaux, *Support for Legal Abortion Has Risen Since Supreme Court Eliminated Protections*, *AP-NORC Poll Finds*, ASSOCIATED PRESS (July 9, 2024, 10:21 EDT), <https://apnews.com/article/abortion-trump-biden-election-2024-dobbs-498d14f6e2bbfe1f313f006ad089de4e> ("Seven in 10 Americans think abortion should be legal in all or most cases, a slight increase from last year[.]"); PEW RSCH. CTR., *BROAD PUBLIC SUPPORT FOR LEGAL ABORTION PERSISTS 2 YEARS AFTER DOBBS 3* (May 13, 2024), https://www.pewresearch.org/wp-content/uploads/sites/20/2024/05/PP_2024.5.13_abortion_REPORT.pdf ("63%[] say abortion should be legal in all or most cases. This share has grown 4 percentage points since 2021").

⁴ As a note on terminology: "initiative" or "ballot measure" refers to a process of citizen lawmaking, in which citizens propose a law or constitutional amendment, obtain the signatures necessary to put that proposal on the ballot, before voters approve or disapprove it on election day. "Referendum," on the other hand, refers to "citizens gather[ing] signatures to place a disputed law . . . on the ballot for voters to consider. Unfortunately, the popular press often refers to initiatives as referendums." DANIEL A. SMITH & CAROLINE J. TOLBERT, *EDUCATED BY INITIATIVE: THE EFFECTS OF DIRECT DEMOCRACY ON CITIZENS AND POLITICAL ORGANIZATIONS IN THE AMERICAN STATES* x–xii (2007). This article will focus only on citizen-initiated constitutional amendments.

⁵ See e.g., Kate Zemike, *Missouri and South Dakota Move Toward Abortion Rights Ballot Questions*, N.Y. TIMES (May 3, 2024), <https://www.nytimes.com/2024/05/03/us/abortion-rights-missouri-south-dakota.html>.

to prevent them from enacting their pro-choice preferences.⁶ These antidemocratic efforts—which succeeded in Arkansas, Florida, Nebraska, and South Dakota—provide further evidence that restrictions on reproductive freedom “go[] hand in hand with creeping authoritarianism.”⁷

This Article will begin with the democratic rationale purportedly underlying *Dobbs* before describing the importance of voting and direct democracy. Then, it will catalog the efforts of the antiabortion movement to stymie direct democracy in Michigan, Ohio, Arizona, Arkansas, Florida, Missouri, Montana, Nebraska, Nevada, and South Dakota.⁸ These efforts included: (1) attempts to dissuade voters from signing petitions to get proposals on the ballot; (2) attempts to encourage people to withdraw their signatures; (3) intimidation of canvassers and petition-signers; (4) dissemination of misinformation about the scope and impact of the proposals if enacted; (5) use of public offices to oppose, delay, publicly mischaracterize, or thwart proposals; (6) attempts to restrict the initiative process; (7) litigation to remove proposals from the ballot or to invalidate measures; (8) contemplation or actually placing competing abortion-related proposals on the ballot; and (9) obstruction or attempted invalidation of approved amendments. Finally, this Article ties these efforts to prevent, stifle, and overturn pro-choice votes to backsliding democracy.

I. *DOBBS* AND DEMOCRACY: THE EMPTY PROMISE OF ALLOWING EACH STATE TO REGULATE ABORTION “AS ITS CITIZENS WISH.”

In 1973, the Supreme Court concluded that the Constitution protected “a woman’s decision whether or not to terminate her pregnancy” in certain circumstances.⁹ While laypeople can easily name *Roe*, since 1992, *Planned Parenthood of Southeastern Pennsylvania v. Casey* provided the governing standard of review while “retain[ing]” and “reaffirm[ing]” “the essential holding of *Roe*.”¹⁰ The result in *Casey* was “roughly in line with national

⁶ *Id.*; Allison McCann & Amy Schoenfeld Walker, *How Ballot Measures Will Change Abortion Access*, N.Y. TIMES (Nov. 6, 2024), <https://www.nytimes.com/interactive/2024/11/06/us/elections/abortion-ballot-results-laws-election.html>; see also Molly E. Carter, *Regulating Abortion Through Direct Democracy: The Liberty of All Versus the Moral Code of a Majority*, 91 B. U. L. REV. 305, 312–15 (2011) (showing the 2024 election results are more in line with historical norms: before *Dobbs*, abortion ballot measures achieved inconsistent success).

⁷ See Katherine Tangalakis-Lippert, *Undermining of Abortion Rights Is Extremely Rare and ‘Goes Hand in Hand with Creeping Authoritarianism’ Experts Warn*, BUS. INSIDER (May 2, 2022, 23:37 ET), <https://www.businessinsider.com/backsliding-democracy-abortion-rights-hand-in-hand-with-creeping-authoritarianism-2022-5>.

⁸ Coloradoans also approved a citizen-initiated constitutional amendment protecting abortion access and removing a ban on using government funds to pay for abortions in 2024. See Jennifer Brown, *Amendment 79 Passes: Colorado Will Protect Abortion in State Constitution, Allow Public Spending on Procedure*, COLO. SUN (Nov. 5, 2024, 20:30 ET), <https://coloradosun.com/2024/11/05/colorado-amendment-79-results/>. However, unlike the initiative battles discussed herein, the opposition was anemic and appears not to have engaged in the same antidemocratic attacks seen in other states.

⁹ *Roe v. Wade*, 410 U.S. 113, 152–53 (1973).

¹⁰ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 845–46 (1992).

democratic opinion on the question of access to abortion.”¹¹ Even so, beginning in the 1980s, “anti-abortion activists agitating for the end of *Roe* demanded the [C]ourt return the issue of abortion ‘to the people.’”¹²

Dobbs delivered.¹³ The Court described *Roe* and *Casey* as “short-circuit[ing] the democratic process by closing it to the large number of Americans who dissented in any respect from *Roe*” before overruling both decisions to “allow each State to regulate abortion as its citizens wish.”¹⁴ As the Court put it, “[t]he permissibility of abortion, and the limitations upon it, are to be resolved like most important questions in our democracy: by citizens trying to persuade one another and then voting.”¹⁵ In short, “the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.”¹⁶ As such, the majority indicated, “the political process was the proper venue for resolving the competing interests at stake in the abortion debate.”¹⁷

Yet, “*Dobbs* cannot be genuinely understood to rest on or to further democratic engagement, as the majority insists. Instead, the majority’s invocation of democracy is yet another discursive move that deploys the vernacular and values of democracy for other ends.”¹⁸ “[T]he Court’s appeal to democracy [in *Dobbs* was] shallow, underdeveloped, and profoundly cynical” for a number of discrete reasons: (1) the overemphasis on state legislatures, which “are often the least representative institutions in state government,” (2) minimizing the role of state courts, state and officials, and direct democracy in state-level democracy; (3) ignoring the prospect of federal legislation on abortion; (4) a “fixat[ion] on deploying democracy in one direction—limiting, rather than expanding, access to abortion”; (5) a simplistic equation of voting to political power, ignoring women’s underrepresentation in elected office, as lobbyists, and as contributors to

¹¹ Landau & Dixon, *supra* note 2, at 1608; see also Mary Ziegler, *The End of Roe v. Wade*, 22 AM. J. BIOETHICS 16, 16 (2022) (explaining that nationwide, “more Americans support than oppose the right to an abortion in most scenarios—including cases in which the life or health of the mother is at stake, the fetus could be born with severe health problems, the pregnancy resulted from rape or the woman does not want to be pregnant,” but that support drops after fetal viability).

¹² Melissa Murray & Katherine Shaw, *Dobbs and Democracy*, 137 HARV. L. REV. 729, 739–42 (2024); Tessa Stuart, *Republicans Are Torching Democracy to Deny Women Abortions*, ROLLING STONE (June 22, 2023), <https://www.rollingstone.com/politics/politics-features/abortion-rights-roe-dobbs-ohio-democracy-1234775783/>.

¹³ See Mary Ziegler, *Should Constitutional Rights Reflect Popular Opinion? Interpreting Dobbs v. Jackson Women’s Health Organization*, 6 MODERN AM. HIST. 88, 91 (2023) (“The *Dobbs* decision came after decades of rights-focused organizing. *Dobbs* vindicated antiabortion activists and conservative lawyers who had hoped to create a Court that would care more about interpretive method and political ideology than about popular opinion.”).

¹⁴ See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 230–31, 269 (2022); *Id.* at 302 (“The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.”).

¹⁵ *Id.* at 232 (internal citation omitted).

¹⁶ *Id.* at 292.

¹⁷ Murray & Shaw, *supra* note 12, at 731.

¹⁸ *Id.* at 734.

political campaigns; (6) relying on a history and tradition analysis premised on laws enacted while women were not “full and equal members of the polity”; and (7) a complete failure “to grapple with the ways in which withdrawing the abortion right would restrict the full democratic participation and equal citizenship of women.”¹⁹ Looking to the future, “despite its broad endorsement of democratic deliberation, the Supreme Court has not spoken its final word on [abortion].”²⁰

In *Dobbs*, the Court “rejected a right that it ha[d] recognized for [nearly] fifty years, thereby leaving the issue to the mercy of deeply dysfunctional state legislative processes,” leading to “strange, countermajoritarian results out of step with public opinion.”²¹ A clear majority of Americans did not want *Roe* overturned²² and *Dobbs* “widened the gap between public preferences and public policy, both nationwide and within many states.”²³ Dissatisfied with restrictive abortion laws and recognizing the low chances of ousting elected officials who disagreed with them on abortion, Americans have turned to the initiative process (where available) seeking to protect or restore abortion access within their states.²⁴ In response, the antiabortion movement attempted to stymie these efforts at every turn—elevating policy over democracy.

II. VOTING AND DIRECT DEMOCRACY.

Voting is fundamental to both our national identity and our government’s functioning: it “shapes citizens’ attitudes towards and interactions with democracy, and how [citizens] see [their] place within it.”²⁵

¹⁹ *Id.* at 763–66, 768–73.

²⁰ *Id.* at 807.

²¹ Landau & Dixon, *supra* note 2, at 1609. Instead, the Court could—should?—have promoted democracy in *Dobbs* by: (1) delaying implementation “to allow for legislative changes, citizens’ initiatives, and other democratic forms of response”; or (2) invalidating “legislation on the books that was inconsistent with the prior *Casey* framework,” requiring legislatures to “pass new laws regulating abortion and reflecting democratic deliberation in the changed legal environment.” *Id.* at 1610–12.

²² Ziegler, *supra* note 11, at 16; see also Gary Langer, *More Say Politics, Not the Law, Drive Supreme Court Decisions: POLL*, ABC NEWS (May 9, 2023, 06:01 ET.), <https://abcnews.go.com/Politics/politics-law-drive-supreme-court-decisions-poll/story?id=99168846> (by mid-2023, “66% of Americans opposed *Dobbs*, including 54% who strongly opposed it”).

²³ Matthew A. Baum, Alauna Safarpour, & Kristin Lunz Trujillo, *Kansas Vote for Abortion Rights Highlights Disconnect between Majority Opinion on Abortion Laws and Restrictive State Laws Being Passed after Supreme Court Decision*, THE CONVERSATION (Aug. 3, 2022, 13:06 ET), <https://theconversation.com/kansas-vote-for-abortion-rights-highlights-disconnect-between-majority-opinion-on-abortion-laws-and-restrictive-state-laws-being-passed-after-supreme-court-decision-187138>.

²⁴ See Landau & Dixon, *supra* note 2, at 1580 (“Empirically, high levels of partisan gerrymandering are often correlated with draconian—and anti-majoritarian—restrictions on access to abortion.”); Sara Carter, Alice Clapman, & Alexi Comella, *Politicians Take Aim at Ballot Initiatives*, BRENNAN CTR. FOR JUST. (Jan. 16, 2024), <https://www.brennancenter.org/our-work/research-reports/politicians-take-aim-ballot-initiatives> (explaining that approximately half of states permit citizens to directly propose laws or constitutional amendments). To be clear, direct democracy is not the only possible way to protect abortion access. Instead, this article focuses on citizen-initiated ballot measures because that is a method that has largely proven successful post-*Dobbs* in securing abortion access, even where legislators are hostile to abortion rights.

²⁵ EMILEE BOOTH CHAPMAN ELECTION DAY: HOW WE VOTE AND WHAT IT MEANS FOR DEMOCRACY xi (2022).

Voting has been widely accepted and celebrated—even “by citizens who in other respects disagree so deeply”—such that voting “occupies a central place in the democratic imagination, the focal point of democratic hopes,” and “has become recognized as a central pillar of democratic citizenship; so much so that the struggle for democracy and equal citizenship is often equated with the expansion of voting rights and opportunities.”²⁶ Voting not only provides “a uniquely easy and egalitarian way for citizens to access political influence,” but also “combines an ambition toward universal participation, a concrete and transparent application of equality, and a rhythm of decisive, consequential, participatory moments to create a singular experience of democratic citizenship.”²⁷ “[V]oting represents an important moment in democratic life because it is an occasion when the ultimate decision-making procedure includes *each and every* member of the polity on manifestly equal terms”; it reminds us that democracy is “a collective activity of self-rule undertaken by a community of equals.”²⁸ Disappointed voters accept election results because they respect the process and understand that the outcome resulted from shared activity.²⁹ “Even though citizens may have different political preferences or policy goals, decision-making in a democracy is something that we are committed to doing together,” with “*each* citizen . . . an equal agent in democratic self-rule.”³⁰ For these reasons, “[p]opular voting is *the* central practice of modern democracies.”³¹

Similarly, “ballot measures are an essential part of American democracy in many states and give voters an important tool to enact needed (and popular) policy changes,” thereby “bypass[ing] unresponsive legislatures that ignore or defy their constituents.”³² “Fundamentally, the

²⁶ *Id.* at 11, 21. “The practice of popular voting instantiates democratic values” while “perform[ing] functions that support a healthy democratic system” since “[t]he practice of popular voting in contemporary democracies is constituted not only by formal equality and widespread opportunities for participation; it is also constituted by a standard of approximately universal participation and by the creation of participatory moments able to command widespread attention.” *Id.* at 22; see also Gary Fields & Amelia Thomson-Deveaux, *Yes, We’re Divided. But New AP-NORC Poll Shows Americans Still Agree on Most Core American Values*, ASSOCIATED PRESS (Apr. 3, 2024, 06:46 ET), <https://apnews.com/article/ap-poll-democracy-rights-freedoms-election-b1047da72551e13554a3959487e5181a> (reporting that 91% of Americans consider the rights to vote and equal protection to be either extremely or very important to our national identity, but that “only approximately 3 in 10 Americans believe the nation’s democracy is functioning well”).

²⁷ CHAPMAN, *supra* note 25, at 4, 6. Of course, voting is not the only way in which citizens participate in democracy: “Citizens also influence public life through protest, petition, campaigning, and adding their voice to public deliberation.” *Id.* at xii–xiii. However, voting “is more tightly linked to models of good citizenship than other participatory acts” and “is the only participatory act widely thought to be a *necessary* component of good citizenship.” *Id.* at 25–26 (emphasis in original).

²⁸ *Id.* at 37–38, 40.

²⁹ *Id.* at 11, 85–86.

³⁰ *Id.* at 163.

³¹ *Id.* at 214.

³² Mac Brower, *Republicans Hint at Why They Are Restricting Ballot Measures in These States*, DEMOCRACY DOCKET, (Feb. 27, 2023), <https://www.democracydocket.com/analysis/republicans-hint-at-why-they-are-restricting-ballot-measures-in-these-states/>; Jeff Milchen, *After Progressive Ballot Victories*,

philosophical underpinnings of direct democracy sprung from the Populist faith that government should be founded on the acquiescence of the governed,” with ballot measures “symboliz[ing] the return of government to the people.”³³ Ballot measures are becoming more important given that “Americans are increasingly dissatisfied with . . . representative democracy.”³⁴

The initiative process permits citizens to draft legislation or state constitutional amendments, and, if enough signatures are collected, to place their proposal before voters.³⁵ Proponents of ballot initiatives contend that they: (1) “most accurately measure public opinion on a given issue”; (2) produce “more democratic legitimacy and strengthen democratic government generally by allowing the people to speak directly”; (3) “are less susceptible to the influences of special interest groups than are representative politics”; and (4) “produce ‘open, educational debate,’ leading citizens to develop civic virtue and inducing them to participate in politics.”³⁶ Political science research “suggests that citizen lawmaking may [itself] indirectly strengthen American democracy.”³⁷ As to amending state constitutions, specifically, “amendment is itself an important state constitutional right,” which “recognizes the people’s sovereignty as an

GOP Wages War on Citizen Lawmaking, COMMON DREAMS (Feb. 19, 2023), <https://www.commondreams.org/opinion/ballot-initiatives-republicans> This is especially true given “Republican attempts to limit voting and gerrymander electoral districts,” which create and perpetuate minority rule. *Ibid*. Historically, direct democracy has “disproportionately been used to promote conservative policies over progressive ones.” Thom Reilly, *Legislative Inaction and Dissatisfaction with One-Party Control Lead to More Issues Going Directly to Voters in Ballot Initiatives, with 60% of Them in Six States*, THE CONVERSATION (Mar. 21, 2024, 08:23 EDT), <https://theconversation.com/legislative-inaction-and-dissatisfaction-with-one-party-control-lead-to-more-issues-going-directly-to-voters-in-ballot-initiatives-with-60-of-them-in-six-states-222129>.

³³ SMITH & TOLBERT, *supra* note 4, at 19–20.

³⁴ Reilly, *supra* note 32.

³⁵ Carter, *supra* note 6, at 308. This is distinguishable from legislatively-referred proposals, which begin in the legislature before being submitted to the voters for approval. *Id.*; see also *Maryland Question 1, Right to Reproductive Freedom Amendment (2024)*, BALLOTPEdia, [https://ballotpedia.org/Maryland_Question_1_Right_to_Reproductive_Freedom_Amendment_\(2024\)](https://ballotpedia.org/Maryland_Question_1_Right_to_Reproductive_Freedom_Amendment_(2024)) (last visited Mar. 18, 2026); *New York Proposal 1, Equal Protection of Law Amendment (2024)*, BALLOTPEdia, [https://ballotpedia.org/New_York_Proposal_1_Equal_Protection_of_Law_Amendment_\(2024\)](https://ballotpedia.org/New_York_Proposal_1_Equal_Protection_of_Law_Amendment_(2024)) (last visited Mar. 18, 2026); *California Proposition 1, Right to Reproductive Freedom Amendment (2022)*, BALLOTPEdia, [https://ballotpedia.org/California_Proposition_1_Right_to_Reproductive_Freedom_Amendment_\(2022\)](https://ballotpedia.org/California_Proposition_1_Right_to_Reproductive_Freedom_Amendment_(2022)) (last visited Mar. 18, 2025); *Vermont Proposal 5, Right to Personal Reproductive Autonomy Amendment (2022)*, BALLOTPEdia, [https://ballotpedia.org/Vermont_Proposal_5_Right_to_Personal_Reproductive_Autonomy_Amendment_\(2022\)](https://ballotpedia.org/Vermont_Proposal_5_Right_to_Personal_Reproductive_Autonomy_Amendment_(2022)) (last visited Mar. 18, 2026).

³⁶ Carter, *supra* note 6, at 315–17. There is some support for this: Empirically, “with respect to voter turnout, civic engagement, and political efficacy, direct democracy does indeed have positive effects on citizens”; “[c]itizens given more opportunities to directly make policy decisions are more likely to perceive that ‘people like me have a say about what the government does’ and are more likely to claim that ‘public officials care about what people like me think.’” SMITH & TOLBERT, *supra* note 4, at 84, 137.

³⁷ SMITH & TOLBERT, *supra* note 4, at 143.

active, ongoing commitment.”³⁸ Additionally, “highly salient, constitutional [ballot measures] can garner unusually high turnout.”³⁹

“Historically, because of gerrymandering and other structural distortions . . . , the legislative process often has not accurately reflected voters’ will, particularly when it comes to abortion.”⁴⁰ “Citizen-initiated ballot measures provide a direct pathway for the electorate to decide whether or not abortion should be legal in their state, regardless of how their elected representatives have decided to approach abortion policy.”⁴¹ Interestingly, a majority of Americans believe that abortion regulations *should* be determined via public “referendum”—including 59% of Republicans.⁴² Some scholars have argued that any abortion right is best secured “through political and legislative victories” as stemming “from contemporary understandings of equality and citizenship.”⁴³ While statutes can change with the composition of the legislature, constitutional amendments “provid[e] stronger, more stable protections and chang[e] the judicial review of abortion laws,” while also “plac[ing] issues directly in front of voters.”⁴⁴ In states whose laws are more restrictive than citizens want, “a citizen-initiated ballot measure is a way to enact constitutional protections for abortion without directly involving the legislature or Governor,” that, once adopted, cannot be repealed by state officials.⁴⁵

In order for voting—including on ballot measures—“to effectively perform its role in democracy, its procedures must produce outcomes that exhibit a general tendency of positive responsiveness to citizens’

³⁸ Jessica Bulman-Pozen & Miriam Seifter, *The Right to Amend State Constitutions*, 133 YALE L. J. F. 191, 192 (2023); *Id.* at 195 (“Amendment is itself a core democratic right underlying the project of constitutional self-determination.”). Unlike the federal Constitution, state constitutions “have been regularly transformed since the eighteenth century,” with over 7,000 amendments adopted. *Id.* at 192, 194.

³⁹ CHAPMAN, *supra* note 25, at 110.

⁴⁰ Alice Clapman, *Arizona Legislators Maneuvering to Take Abortion Decision Away from Voters*, BRENAN CTR. FOR JUST. (Apr. 30, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/arizona-legislators-maneuvering-take-abortion-decision-away-voters>.

⁴¹ Mabel Felix, Laurie Sobel, & Alina Salganicoff, *Addressing Abortion Access through State Ballot Initiatives*, KAISER FAM. FOUND. (Feb. 9, 2024), <https://www.kff.org/womens-health-policy/issue-brief/addressing-abortion-access-through-state-ballot-initiatives>. There is, of course, a risk that some voters may not recognize the complexity of abortion policy or the implications of their vote. While this is especially true when misinformation runs rampant, this risk may be countered by the ascendancy of abortion policy since *Dobbs*. See Carter, *supra* note 6, at 326.

⁴² Stephanie Perry, Marc Trussler, Josh Clinton, & John Lapinski, *Vast Majority of Republicans Support Abortion Exceptions for Rape, Incest and Mother’s Health*, NBC NEWS (Oct. 17, 2022 08:52 EDT), <https://www.nbcnews.com/politics/2022-election/vast-majority-republicans-support-abortion-exceptions-rape-incest-moth-rcna52237>. Interestingly, “[t]hree-quarters of reproductive age women in the United States oppose letting states decide whether abortion is legal,” including over “two-thirds of those who live in states with abortion bans and gestational limits” on abortion.” See Nathaniel Weixel, *Most Women Oppose Leaving Abortion Laws to the States, Across Party Lines: Poll*, THE HILL (Aug. 14, 2024, 05:00 ET), <https://thehill.com/policy/healthcare/4826547-most-women-oppose-leaving-abortion-laws-to-the-states-across-party-lines-poll/>.

⁴³ Robin West, *From Choice to Reproductive Justice: De-Constitutionalizing Abortion Rights*, 118 YALE L. J. 1394, 1404 (2009). Politics is better than relying on judicial decree because “[r]ights found by courts can also be abandoned by courts” making the “hostage to the whims of the people on the [court].” *Id.* at 1414.

⁴⁴ Felix, Sobel, & Salganicoff, *supra* note 41.

⁴⁵ *Id.*

preferences” in ways that “substantially affect the character of a community’s political life.”⁴⁶ However, voting’s efficacy is threatened in multiple ways: (1) voter suppression tactics that prevent votes from being cast and weighed equally;⁴⁷ (2) misalignment between voters’ ballots and their stated values, such as “when citizens’ voting decisions are based on irrelevant or false information, or when significant cognitive biases affect their interpretation of the information they do have”;⁴⁸ and (3) politicians who treat election results as advisory, opting “to disregard, revise, or filter electoral results.”⁴⁹ In recent years, Republicans have attempted to rely on these tactics,⁵⁰ as prominently seen in their efforts to impede direct democracy vis-à-vis abortion, interfering with “the ability of a sufficiently unified and motivated public to do as it pleases, without externally imposed constraints.”⁵¹

III. THE ANTIABORTION MOVEMENT’S EFFORTS TO SUBVERT DIRECT DEMOCRACY.

Recognizing that Americans have become more supportive of abortion rights, the antiabortion movement—aided by likeminded public officials—have tried to prevent voters from supporting abortion at the ballot box through any available means.⁵² This Section will examine the efforts of the antiabortion movement in states with abortion-related citizen-initiated ballot measures in 2022, 2023, and 2024, organized chronologically and then

⁴⁶ CHAPMAN, *supra* note 25 at 102, 114.

⁴⁷ *See id.* at 118.

⁴⁸ *See id.* at 68.

⁴⁹ *See id.* at 113.

⁵⁰ *See* Milchen, *supra* note 32 (“Republican politicians increasingly deem [ballot initiatives] an unacceptable intrusion into their powers and push bills to undermine ballot initiatives on three different fronts: erecting barriers to initiatives reaching the ballot, making passage more difficult and corrupting voters’ intent post-passage.”); *see also* Bulman-Pozen & Seifter, *supra* note 38, at 206 (“In more than half the states with a popular-initiative process, state legislatures have attempted to make the amendment process harder to use or to change the rules to thwart amendments they disfavor. . . . Rather than oppose policies that the people might pursue through state constitutional amendment, some state legislatures are trying to subvert the right to amend itself.” Voters in some states have spurned these efforts *See, e.g., id.* at 221).

⁵¹ CHAPMAN, *supra* note 25, at 101. Unfortunately, this connection between the antiabortion movement and voting restrictions goes beyond the movement’s efforts to stymie direct democracy: “Antiabortion groups like Susan B. Anthony List have become more involved in advocating for voting restrictions and the White Christian nationalist movement.” Saskia Brechenmacher & Erin Jones, *Beyond the Women’s March: Women’s Rights and Mobilization in the U.S. Democracy Movement*, in *ON THE FRONT LINES: WOMEN’S MOBILIZATION FOR DEMOCRACY IN AN ERA OF BACKSLIDING* 17 (Saskia Brechenbacher, Erin Jones, and Özge Zihnioglu, eds., 2024).

⁵² *See* Stuart, *supra* note 12 (“Republicans across the country—including in many reliably conservative states—are confronting the fact that majorities of voters are not backing their extreme anti-abortion agenda. Instead of changing their policies to better reflect their constituents['] views, they’re working to make it harder for voters to express them.”). Notably, “Republican efforts to restrict the ballot measure process” are not limited to abortion, but rather are a broader response to voters approving “policies via ballot measures that Republican lawmakers would not have supported.” *See* Brower, *supra* note 32; Carter, Clapman, & Comella, *supra* note 24.

alphabetically. Only in 2024 did the antiabortion movement defeat abortion-protection efforts in Arkansas, Florida, Nebraska, and South Dakota.⁵³

A. Michigan

With *Dobbs* pending, in early 2022, the ACLU of Michigan, Michigan Voices, and Planned Parenthood Advocates of Michigan formed Reproductive Freedom for All (“RFFA”), an organization to spearhead efforts to place a proposed state constitutional amendment on the November 2022 ballot.⁵⁴ The proposal sought to protect “a fundamental right to reproductive freedom,” allowing individuals “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.”⁵⁵ This right could not be “infringed upon unless justified by a compelling state interest achieved by the least restrictive means”—yet, “the state may regulate the provision of abortion care after fetal viability” except for abortions “that, in the professional judgment of an attending health care professional, [are] medically indicated to protect the life or physical or mental health of the pregnant individual.”⁵⁶

After *Dobbs*, the status of abortion in Michigan was unclear due to a 1931 law banning abortion except to preserve the life of the pregnant person and litigation by Governor Whitmer and Planned Parenthood seeking to

⁵³ Additional citizen-initiated ballot measures to expand abortion rights may be forthcoming. See e.g., Andru Zodrow, *Idaho Reproductive Rights Group Files Draft Petitions to Restore Abortion Rights*, NON-STOP LOCAL (Aug. 17, 2024), https://www.khq.com/news/idaho-reproductive-rights-group-files-draft-petitions-to-restore-abortion-rights/article_27bb9c4e-5cc1-11ef-84ef-b3bb411045cb.html (identifying Idaho proposals that could appear on ballots in 2026). The antiabortion movement is already on the attack. See Kelcie Moseley-Morris, *Group Organizing Idaho Abortion-Rights Initiative Files Lawsuit Over Ballot Language*, IDAHO SUN (Jan. 31, 2025), <https://idahocapitalsun.com/2025/01/31/group-organizing-idaho-abortion-rights-initiative-files-lawsuit-over-ballot-language/> (discussing lawsuit challenging: (1) Idaho Attorney General’s ballot title for proposed legislation to protect contraception, fertility treatment, pregnancy-related decision-making, and abortion in certain circumstances and (2) the Idaho Division of Financial Management’s fiscal impact statement); Susan Rinkunas, *Republicans Prove There Was a Big Catch about ‘Leaving Abortion to the States’*, DEMOCRACY DKT. (Feb. 25, 2025), <https://www.democracymocket.com/opinion/republicans-prove-there-was-a-big-catch-about-leaving-abortion-to-the-states/> (discussing Idaho Republicans’ proposal to raise the vote threshold necessary to amend the state constitution, which is seen as an effort to prevent liberalization of the state’s abortion ban).

⁵⁴ See Brad Dress, *Michigan Group Launches Petition for Ballot Initiative to ‘Explicitly Affirm’ Abortion Rights*, THE HILL (Jan. 7, 2022, 10:46 ET), <https://thehill.com/policy/healthcare/588731-michigan-group-launches-petition-for-ballot-initiative-to-explicitly-affirm/>.

⁵⁵ STATE OF MICH., HOUSE FISCAL AGENCY, “REPRODUCTIVE FREEDOM FOR ALL” PETITION, BALLOT PROPOSAL 22-3 (2022).

⁵⁶ *Id.* A “compelling” state interest was limited to “protecting the health of an individual seeking care, consistent with accepted clinical standards of practice and evidence-based medicine” without “infring[ing] on that individual’s autonomous decision-making.” *Id.* “Fetal viability” meant “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.”

invalidate that law.⁵⁷ Despite Citizens to Support MI Women and Children's efforts to discourage people from signing petitions,⁵⁸ RFFA collected more signatures than any other ballot measure in the state's history—753,759—far surpassing the 425,000 required.⁵⁹

Undeterred by public support for the initiative, opponents challenged the petitions, arguing that the spacing between words was insufficient,⁶⁰ “turn[ing] out in force for a meeting of the Board of State Canvassers” to protest, leading “the board [to] split along party lines, with two Republicans voting no and two Democrats voting yes,” preventing the measure from appearing on ballots.⁶¹ RFFA appealed to the Michigan Supreme Court, which directed the Board of State Canvassers “to certify the [RFFA] petition as sufficient for placement on the November 8 general election ballot” because the proposed amendment’s “full text” appeared—“regardless of the existence or extent of the spacing”—in 8-point type and “there [we]re sufficient signatures to warrant certification.”⁶²

On November 8, 2022, Michigan voters approved Proposal 3, enshrining reproductive freedom in the state constitution.⁶³

⁵⁷ See e.g., Kate Wells, *Confusion Roiled Michigan for Days as Abortion Rights Changed Hour to Hour*, NPR (Aug. 5, 2022, 12:12 ET), <https://www.npr.org/2022/08/05/1115666725/confusion-roiled-michigan-for-days-as-abortion-rights-changed-hour-to-hour> (“When Dr. Audrey Lance, an OB-GYN at Northland Family Planning Centers in Metro Detroit, got to work Monday morning, abortion was legal in the state of Michigan. By noon, it wasn’t. Then by 5 p.m., it was legal again, with at least some certainty it would probably stay that way, at least until a hearing Wednesday.”); see also *Planned Parenthood of Mich. v. Attorney General of State of Mich.*, No. 22-000044-MM, 2022 WL 2103141 (Mich. Ingham Cnty. Ct. Cl. May 17, 2022); *Complaint, Whitmer v. Linderman*, No. 22-193498-CZ (Mich. Oakland Cnty. Cir. Ct. Apr. 7, 2022).

⁵⁸ See Alice Miranda Ollstein, *The Supreme Court Could End Abortion in Michigan. The Race Is on to Let Voters Have Their Say*, POLITICO (June 9, 2022, 04:30 ET), <https://www.politico.com/news/2022/06/09/the-supreme-court-could-end-abortion-in-michigan-00038259> (reporting that Citizens to Support MI Women and Children confronted canvassers and created a “tip line” to report where petitioners had been spotted); Yue Stella Yu, *Abortion Foes Launch Campaign Against ‘Anything Goes’ Michigan Ballot Measure*, BRIDGE MICH. (May 24, 2022), <https://www.bridgemi.com/michigan-government/abortion-foes-launch-campaign-against-anything-goes-michigan-ballot-measure> (describing misleading statements opposing the proposed amendment).

⁵⁹ Jake Johnson, *Rebuking GOP Officials, Michigan Supreme Court Puts Abortion Rights Initiative on Ballot*, COMMON DREAMS (Sept. 9, 2022), <https://www.commondreams.org/news/2022/09/09/rebuking-gop-officials-michigan-supreme-court-puts-abortion-rights-initiative-ballot>.

⁶⁰ See *Reproductive Freedom for All v. Bd. of State Canvassers*, 978 N.W.2d 854, 854 (Mich. 2022); see also Dave Boucher & Clara Hendrickson, *Michigan Abortion Rights Advocates Ask State Supreme Court to Put Amendment on Ballot*, DETROIT FREE PRESS (Sept. 1, 2022, 19:08 ET), <https://www.freep.com/story/news/politics/elections/2022/09/01/abortion-rights-group-supreme-court-amendment-on-ballot/65467606007/> (reporting that opponents argued “that the proposed amendment appears to smooch multiple words together, creating one long list of letters they deem indecipherable”).

⁶¹ Sara Burnett, *Michigan Women Fight to Preserve Abortion, 1 Chat at a Time*, ASSOCIATED PRESS (Oct. 1, 2022, 00:48 EDT), <https://apnews.com/article/abortion-2022-midterm-elections-us-supreme-court-health-government-and-politics-3433fb0f0b2fe1d00e0ed86d642a49d0>.

⁶² *Reproductive Freedom for All*, 978 N.W.2d at 854–55.

⁶³ Alice Miranda Ollstein, *Michigan Votes to Put Abortion Rights into State Constitution*, POLITICO (Nov. 9, 2022, 03:43 EST), <https://www.politico.com/news/2022/11/09/michigan-abortion-amendment-results-2022-00064778>.

That was not the end. After floating the idea of a counter-ballot initiative,⁶⁴ in November 2023, antiabortion politicians, Right to Life of Michigan, and others sued Governor Whitmer, Attorney General Nessel, and Secretary of State Benson, alleging that Proposal 3 created a unique, “super-right, immune from all legislative action,” which: (1) “causes great harm to women by exempting them from the legal protections afforded . . . [by] the Fourteenth Amendment”; (2) “deprives parents of the right to direct the upbringing and education of their minor children” regarding “reproduction”; (3) “overrides” objections to “procedures involving ‘reproduction’” in violation of the First Amendment; and (4) “violates the Guarantee Clause of the United States Constitution by nullifying the legitimate authority of a co-equal branch of government.”⁶⁵ The lawsuit further alleges that “Proposal 3 is contrary to the strong public policy to protect innocent human life that prevailed in Michigan for many decades,” “turn[ing] a blind eye to the existence of . . . innocent human life” and “deny[ing] it the legal protection every human life deserves,” thereby defying “irrefutable biological facts, logic, and commonsense,” which made Proposal 3 “nothing short of evil” in violation of the Fourteenth Amendment.⁶⁶ In late September 2025, the district court dismissed the lawsuit, but plaintiffs filed an appeal, which remains pending at the time of this writing.

B. Ohio

Within a week of *Dobbs*, abortion-rights supporters in Ohio began contemplating a ballot measure to amend the state constitution to restore abortion access after the state’s heartbeat law went into effect,⁶⁷ recognizing that the earliest that proposal could appear on ballots was November 2023.⁶⁸ This proposal sought to add Article I, Section 22 to the state constitution to protect a “right to make and carry out one’s own reproductive decisions, including” decisions about abortion.⁶⁹ It would not create an unrestricted right to abortion, instead the state could regulate “using the least restrictive means to advance the individual’s health in accordance with widely accepted

⁶⁴ Allison R. Donahue, *Anti-Abortion Coalition Forms Against Michigan Reproductive Rights Ballot Measure*, MICH. ADVANCE (May 24, 2022, 04:25 ET), <https://michiganadvance.com/2022/05/24/anti-abortion-coalition-forms-against-michigan-reproductive-rights-ballot-measure/>.

⁶⁵ See Complaint at 2-3, *Right to Life of Mich. v. Whitmer*, No. 1:23-cv-01189 (W.D. Mich. filed Nov. 8, 2023).

⁶⁶ *Id.* at 16, 19.

⁶⁷ *Preterm-Cleveland v. Yost*, No. 1:19-cv-00360, 2022 WL 2290526 (S.D. Ohio W.D. June 24, 2022). The heartbeat law was in effect for eighty-two days before being enjoined under the state constitution’s Health Care Freedom Amendment. See generally *Preterm-Cleveland v. Yost*, No. A2203203, 2022 WL 4283155 (Ohio Ct. C.P. Hamilton Cnty. Sept. 14, 2022); Jessie Balmert, *Ohio Judge Extends Order Blocking Six-Week Abortion Ban Through Oct. 12*, CIN. ENQUIRER (Sept. 27, 2022 16:17 ET), <https://www.cincinnati.com/story/news/politics/2022/09/27/ohio-abortion-ban-on-hold-for-14-days-judge-orders/69521885007/>.

⁶⁸ Nick Evans, *Whaley Calls for Amendment Codifying Roe While State Lawmakers Plan Sweeping Restrictions*, OHIO CAP. J. (June 30, 2022, 03:50 ET), <https://ohiocapitaljournal.com/2022/06/30/whaley-calls-for-amendment-codifying-roe-while-state-lawmakers-plan-sweeping-restrictions/>.

⁶⁹ See OHIO CONST. art. 1, § 22

and evidence-based standards of care,” as well as prohibit abortion after fetal viability (“determined on a case-by-case basis”)—except “if in the professional judgment of the pregnant patient’s treating physician [abortion] is necessary to protect the pregnant patient’s life or health.”⁷⁰

Antiabortion politicians repeatedly tried to derail the proposal. First, after *Dobbs*-inspired anger impacted the 2022 midterm elections,⁷¹ Ohio Republicans proposed amending the state constitution to make ballot initiatives harder to pass “to block voters from enshrining a right to reproductive care into the state constitution.”⁷² This proposal would have required: (1) signatures from at least 5% of electors in each of Ohio’s eighty-eight counties; and (2) at least 60% of voters approving the proposal.⁷³ The 60%-threshold seems to have been based on public opinion polling and the results of abortion-related ballot measures in other states.⁷⁴

Republicans scheduled a special election in August 2023 for voters to consider the proposed changes to the initiative process, “Issue 1”—even though the state legislature had previously banned August special elections as too expensive.⁷⁵ For some antiabortion politicians, the costs were irrelevant: “If we save 30,000 lives as a result of spending \$20 million, I think that’s a great thing,” said Ohio Senate President Matt Huffman, tying the estimated costs of the August 2023 election to the estimated number of abortions in Ohio annually.⁷⁶ Secretary of State Frank LaRose, who initially proposed raising the approval standard for constitutional amendments, acknowledged that August’s Issue 1 was “100% about keeping a radical pro-abortion amendment out of our constitution.”⁷⁷ If this proposal passed, the reproductive freedom ballot initiative would have needed to start over to

⁷⁰ *Id.*

⁷¹ See, e.g., Deborah Machalow, *Screwed But Not Even Kissed: The Parade of Reproductive and Economic Horribles Likely to Follow Dobbs*, 26 J. GENDER, RACE & JUST. 81, 131 n.273 (2023).

⁷² Brower, *supra* note 32; see also Poppy Noor, *How Republicans Are Trying to Block Voters from Having a Say on Abortion*, THE GUARDIAN (Dec. 19, 2022, 05:00 ET), <https://www.theguardian.com/world/2022/dec/19/abortion-rights-votes-ballot-initiatives-republican-stop-referendum>.

⁷³ See S.J. Res. 2, 135th Gen. Assemb., (Ohio 2023) (as enrolled).

⁷⁴ See Jason Lange, Gabriella Borter & Joseph Ax, *Ohio Abortion Rights Fight Highlights Republican Electoral Vulnerabilities*, REUTERS (May 10, 2023, 17:28 ET), <https://www.reuters.com/world/us/ohio-abortion-rights-fight-highlights-republican-electoral-vulnerabilities-2023-05-10/>.

⁷⁵ See Adam Edelman, *Ohio Banned August Elections. Then the GOP Planned One that Could Help Preserve an Abortion Ban*, NBC NEWS (May 27, 2023, 05:00 ET), <https://www.nbcnews.com/politics/elections/ohio-banned-august-elections-gop-planned-one-help-preserve-abortion-ba-rcna85635>.

⁷⁶ See Lange, Borter & Ax, *supra* note 74.

⁷⁷ See Morgan Trau, *Ohio Sec. of State LaRose Admits Move to Make Constitution Harder to Amend is ‘100% About... Abortion,’* NEWS 5 CLEVELAND (June 2, 2023, 18:34 ET), <https://www.news5cleveland.com/news/politics/ohio-politics/ohio-sec-of-state-larose-admits-move-to-make-constitution-harder-to-amend-is-100-about-abortion> (quoting LaRose as saying “It’s 100% about keeping a radical pro-abortion amendment out of our constitution the left wants to jam it in there this coming November” and that his proposal was “one of the ways we can make sure they aren’t successful”); see also Letter from Brian Stewart, Rep., Ohio H.R., to All House GOP Members (Dec. 14, 2022), <https://x.com/AndrewJTobias/status/1603130384744534016> (tying the “Ohio Constitutional Protection Amendment” to preventing liberals from “do[ing] an end run around [the legislature],” starting with abortion).

comply with the new requirements. Voters resoundingly rejected August's Issue 1.⁷⁸

Second, the antiabortion movement sought to mislead or confuse voters into voting against the reproductive freedom initiative, which appeared on November 2023 ballots as "Issue 1."⁷⁹ Proponents were concerned about "widespread misinformation peddled by antiabortion groups and Republicans about what the amendment would do as well as misleading ballot language."⁸⁰ The League of Women Voters of Ohio noted voters' concerns about "false claims that the amendment [would] allow[] for unmitigated access to abortion" and the proposal's impact on parental rights; "largely echo[ing] the rhetoric coloring ads from Protect Women Ohio," an organization opposed to November's Issue 1 and which "produced a slew of clips warning that, if successful, the amendment w[ould] eliminate the requirement for a parent's consent in making decisions on whether their child can obtain an abortion, remove health and safety protections for birthing people, and open the floodgates on late-term abortions."⁸¹ As the election drew near, Ohio voters were bombarded with "an array of misleading claims over how [Issue 1] could influence abortion care, gender-related health care, parental consent and more."⁸² Opposition advertisements complained "about the legal ramifications of the measure's health exception, its open-ended definition of reproductive healthcare, and how it protects the rights of 'individuals,' rather than 'women' or 'adults,'" creating a "gateway[]" to children getting abortions and gender-related surgeries without their parents' consent," permitting access "to a federally

⁷⁸ See Julie Carr Smyth & Samantha Hendrickson, *Voters in Ohio Reject GOP-Backed Proposal that Would Have Made it Tougher to Protect Abortion Rights*, ASSOCIATED PRESS (Aug. 9, 2023, 09:26 ET), <https://apnews.com/article/ohio-abortion-rights-constitutional-amendment-special-election-227cde039f8d51723612878525164f1a>.

⁷⁹ Ohio law requires consecutive numbering of ballot questions per election, hence voters being presented with two different Issue 1s in 2023. See OHIO REV. CODE § 3505.06(F). During the campaign, many believed that the confusing nomenclature surrounding the related ballot questions was intentionally caused by LaRose. See Adam Edelman, *Ohio Abortion-Rights Supporters Worry About Ballot Confusion in November*, NBC NEWS (Oct. 7, 2023, 12:00 ET), <https://www.nbcnews.com/politics/elections/ohio-abortion-rights-supporters-ballot-confusion-november-issue-1-rcna118397>. Recognizing this confusion, Republicans proposed a bill that would have provided a unique number for each question. See H.B. 271, 135th Gen. Assemb., Reg. Sess. (Ohio 2023); see also Andrew J. Tobias, *Which Issue 1? Ohio House Bill Would Resolve Confusion over Numbering Future State Issues*, CLEVELAND.COM (Sept. 20, 2023, 14:39 ET), <https://www.cleveland.com/news/2023/09/which-issue-1-ohio-house-bill-would-resolve-confusion-over-numbering-future-state-issues.html> ("One of the bill's sponsors, state Rep. Adam Mathews, said the proposal is meant to avoid repeat Issue 1s" since "he's heard from voters, reporters and activists who have described tripping over which Issue 1 is which, and/or described the challenges of explaining and promoting the difference to others.").

⁸⁰ Tatyana Tandanpolie, *Ohio Republicans Use Taxpayer Funds to Boost "Absolutely False" Anti-Abortion Claims Ahead of Vote*, SALON (Nov. 6, 2023, 05:30 ET), <https://www.salon.com/2023/11/06/ohio-use-taxpayer-funds-to-boost-absolutely-false-anti-abortion-claims-ahead-of-vote/>.

⁸¹ *Id.*

⁸² Christine Fernando & Ali Swenson, *Ohio Is About to Vote on Abortion Rights. Misinformation About the Proposal Is Rampant*, ASSOCIATED PRESS (Nov. 2, 2023, 12:40 ET), <https://apnews.com/article/abortion-ohio-constitutional-amendment-election-misinformation-d7b3d8273389a432b011964c14959789>.

banned abortion procedure” (“partial-birth abortion”), as well as legalizing infanticide, child sex trafficking, and pedophilia.⁸³

Likewise, Ohio’s antiabortion politicians interjected themselves into the fray with more misinformation. In September 2023, the Ohio Senate launched the *On the Record* blog, which it described as an “online newsroom,” promising “to deliver the real story directly to the people.”⁸⁴ Issue 1 featured prominently—including “articles from state senators that repeat[ed] the claims” of Protect Women Ohio, as well as “claims [that] the amendment would allow for ‘the dismemberment of fully conscious children.’”⁸⁵ In October, Ohio’s governor and first lady starred in a video repeating the inaccurate claims of Protect Women Ohio and encouraging Ohioans to vote against Issue 1 because it “just goes too far” and was “not right for Ohioans.”⁸⁶ Around the same time, Ohio Attorney General Dave Yost issued a “legal analysis to make [Issue 1’s] impacts on Ohio law more understandable.”⁸⁷ While he claimed that the memo was “designed only to describe what the legal effects of Issue 1 will be,”⁸⁸ his analysis was a parade of presumed horrors that was “nothing more or less than a biased political hit piece that [wa]s intended to confuse the voters and weaken support for the amendment.”⁸⁹ Yost’s analysis tracked the hyperbolic claims of others opposing the initiative, premised on his “exclusive scrutiny test,” while ignoring the fact that many existing abortion restrictions would survive the Amendment’s passage.⁹⁰

Despite the rampant misinformation, in November 2023, Ohioans voted to add Article I, Section 22 to the Ohio Constitution, effective on December 7, 2023.⁹¹

Antiabortion politicians did not gracefully accept defeat. Immediately after Issue 1 passed, twenty-seven Ohio House Republicans stated their plan to obstruct the amendment.⁹² House Speaker Jason Stephens issued a statement: “The legislature has multiple paths that we will explore to

⁸³ *Id.*

⁸⁴ Tandanpolie, *supra* note 80. As the executive director of Harvard’s Shorenstein Center on Media, Politics and Public Policy noted, the blog presented misinformation that was “explicitly masquerading as fact,” which would “likely cause constituents’ overall trust in state institutions and their representatives to further decline.” *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*; Fernando & Swenson, *supra* note 82.

⁸⁷ Dave Yost, *Issue 1 on the November 2023 Ballot: A Legal Analysis by the Ohio Attorney General*, OHIO ATT’Y GEN., at 1 (Oct. 5, 2023), <https://www.ohioattorneygeneral.gov/SpecialPages/FINAL-IS-SUE-1-ANALYSIS.aspx>.

⁸⁸ *Id.* at 1.

⁸⁹ Marc Dann & Jeffrey A. Crossman, *Former Ohio AG and AG Candidate Issue Rebuttal to Issue 1 Legal Analysis Put Out by Current AG*, OHIO CAP. J. (Oct. 23, 2023, 04:30 ET), <https://ohiocapitaljournal.com/2023/10/23/former-ohio-ag-and-ag-candidate-issue-rebuttal-to-issue-1-legal-analysis-put-out-by-current-ag/>.

⁹⁰ See Dann & Crossman, *supra* note 89.

⁹¹ See OHIO CONST. art. I, § 22.

⁹² See Morgan Trau (@MorganTrau), X (Nov. 8, 2023), <https://twitter.com/MorganTrau/status/1722398058833457566> (sharing press release from Ohio Representatives).

continue to protect innocent life. This is not the end of the conversation.”⁹³ Even Ohio Governor Mike DeWine, who claimed that he accepted the will of the people, left open the door to change, stating that the “[p]eople will decide if they are comfortable with what we voted on, or they will decide that it maybe needs to be changed or tweaked.”⁹⁴ A week after the election, Senate President Huffman, suggested a 15-week abortion ban—after stating that Issue 1 “isn’t the end” but rather “really just the beginning of a revolving door of ballot campaigns to repeal or replace Issue 1.”⁹⁵ Some “far-right representatives” went so far as to propose stripping the judiciary of power to interpret or enforce Issue 1, such that “[t]he Ohio General Assembly shall have the *exclusive* authority over implementing Ohio Issue 1,” thereby withdrawing “[a]ll jurisdiction” from the “courts of the State of Ohio” and requiring the “immediate dismiss[al]” of all lawsuits and the vacatur of prior decisions—threatening criminal conviction and impeachment for judges who failed to comply.⁹⁶

Finally, AG Yost continues seeking to preserve medically unnecessary restrictions on abortion access, forcing the courts to weigh in on Issue 1’s meaning and import.⁹⁷ This strategy may yet prove fruitful, given the Ohio Supreme Court’s new Republican supermajority.⁹⁸

⁹³ Lynna Lai, *Ohio GOP Lawmakers Considering Options to Combat Issue 1*, 3NEWS INVESTIGATES (Nov. 9, 2023, 01:40 ET), <https://www.wky.com/article/news/investigations/3news-investigates-ohio-gop-lawmakers-making-plans-lesser-undo-issue-1/95-b17cbbf-2b0e-4bb5-a79c-11b905ace05f>.

⁹⁴ See Morgan Trau, *Ohio Gov. DeWine ‘Accepts’ Will of the People on Abortion, Marijuana, but Hold on*, NEWS 5 CLEVELAND (Nov. 10, 2023, 12:38 ET), <https://www.news5cleveland.com/news/politics/ohio-politics/ohio-gov-dewine-accepts-will-of-the-people-on-abortion-marijuana-but-hold-on>.

⁹⁵ Morgan Trau, *Abortion Access Is Protected in Ohio. Now What?*, NEWS 5 CLEVELAND (Dec. 9, 2023, 10:54 ET), <https://www.news5cleveland.com/news/local-news/we-follow-through/abortion-access-is-protected-in-ohio-now-what> [hereinafter *Now What?*] (quoting Huffman’s November 7, 2023 statement); Morgan Trau, *Ohio Senate GOP Floats Idea of 15-Week Abortion Ban Despite Voters Saying No*, NEWS 5 CLEVELAND (Nov. 15, 2023, 19:21 ET), <https://www.news5cleveland.com/news/politics/ohio-politics/ohio-senate-gop-floats-idea-of-15-week-abortion-ban-despite-voters-saying-no> (reporting Huffman saying that “clearly there is a majority of people in Ohio” that support a fifteen-week ban, despite “no statistics to prove this, and based on the language of Issue 1, the voters chose not to have any restrictions before viability.”).

⁹⁶ See Morgan Trau, *Some Ohio GOP Lawmakers Attempting to Undermine Democratic Process After Voters Protect Abortion*, NEWS 5 CLEVELAND (Nov. 13, 2023, 17:17 ET), <https://www.news5cleveland.com/news/politics/ohio-politics/some-ohio-gop-lawmakers-attempting-to-undermine-democratic-process-after-voters-protect-abortion> (reporting on Representatives Jennifer Gross, Bill Dean, Melanie Miller, and Beth Lear’s proposal). This proposal appears dead. See *id.* (according to Case Western law professor Jonathan Entin: “Whatever authority the legislature might have to tinker with the jurisdiction of the state courts, it cannot eviscerate a rights-granting provision of the state constitution.”); see also *Now What?*, *supra* note 95 (reporting Ohio House Speaker saying this proposal was “dead on arrival”).

⁹⁷ See *e.g.*, Brief Of State Defendants-Appellants, *Preterm-Cleveland v. Yost*, No. C 2400668 (Ohio Ct. App. 1st App. Dist. Hamilton Cnty. Mar. 19, 2025); State Defendants’ Response to Plaintiffs’ Motion for Judgment on the Pleadings, *Preterm Cleveland v. Yost*, No. A 2203203 (Ohio Ct. C.P. Hamilton Cnty. Mar. 29, 2024); see also Brendan Pierson, *Ohio Seeks to Revive Parts of Abortion Law Despite Amendment*, REUTERS (Nov. 26, 2024, 17:01 ET), <https://www.reuters.com/legal/government/ohio-seeks-revive-parts-abortion-law-despite-amendment-2024-11-26/>.

⁹⁸ Megan Henry, *Republicans Win All Three Ohio Supreme Court Races, Increasing Hold over Court to 6–1*, OHIO CAP. J. (Nov. 5, 2024, 23:12 ET), <https://ohiocapitaljournal.com/2024/11/05/republicans-win-all-three-ohio-supreme-court-races-increasing-hold-over-court-to-6-1-ap-projects/>.

C. Arizona

In Arizona post-*Dobbs*, abortion's legality was largely in flux. When *Dobbs* was decided, "almost every clinic in Arizona immediately stopped providing abortions, worried that a ban passed in 1864 might now outlaw the procedure entirely," as argued by the then-state attorney general, even though the legislature had approved a fifteen-week abortion ban months earlier.⁹⁹ "Over the next three and a half months, the laws would bounce from court to court as different judges offered different interpretations of the right to abortion in Arizona[.]"¹⁰⁰ Finally, in April 2024, the Supreme Court of Arizona determined that the pre-statehood abortion ban (permitting abortion only to save the pregnant person's life) was enforceable and did not need to be "harmonize[d]" with the 15-week restriction.¹⁰¹ The next month, the legislature repealed the 1864 law, but that repeal only took effect in mid-September 2024.¹⁰²

Meanwhile, in August 2023, the ACLU of Arizona, Affirm Sexual and Reproductive Health, Arizona List, Healthcare Rising, NARAL Arizona, and Planned Parenthood Advocates of Arizona began the initiative process, resulting in Arizona for Abortion Access's September 12, 2023 application to amend the state constitution.¹⁰³ The Arizona Abortion Access Act ("AAA") proposed adding a section to the state constitution, declaring "a fundamental right to abortion," which the state could only interfere with before fetal viability if "justified by a compelling state interest," which is "achieved through the least restrictive means"; likewise the state could not interfere with abortion after fetal viability if the procedure "in the good faith judgment of a treating health care professional, is necessary to protect the life or physical or mental health of the pregnant individual."¹⁰⁴

The antiabortion movement sought to block the AAA from reaching the ballot. Opponents, including the It Goes Too Far campaign, misled voters about the proposal's potential impact, contending it "would permit abortions up to birth for effectively any reason" and obviate "critical and common

⁹⁹ Shefali Luthra, *An 'Insane Roller Coaster': In Arizona, Abortion Is Legal One Day and Outlawed the Next*, THE 19TH (Oct. 20, 2022, 06:00 ET), <https://19thnews.org/2022/10/arizona-abortion-bans-laws-decisions-uncertainty/>.

¹⁰⁰ *Id.*

¹⁰¹ See *Planned Parenthood Ariz., Inc. v. Mayes*, 545 P.3d 892, at ¶¶ 2, 42–3 (Ariz. 2024).

¹⁰² See Sejal Govindarao, *Arizona's 1864 Abortion Ban Is Officially off the Books*, ASSOCIATED PRESS (Sept. 14, 2024, 00:02 EDT), <https://apnews.com/article/arizona-abortion-ban-repeal-ac4a1eb97efcd3c506aeaac8f8152127>; Melissa Quinn, *Arizona Abortion Rights Advocates Submit Double the Signatures Needed to Put Constitutional Amendment on Ballot*, CBS NEWS (July 3, 2024, 15:19 EDT), <https://www.cbsnews.com/news/arizona-abortion-rights-constitutional-amendment-ballot/>.

¹⁰³ Jonathan J. Cooper, *Abortion Rights Advocates Push for 2024 Ballot Initiative in Arizona*, ASSOCIATED PRESS (Aug. 8, 2023, 21:52 EDT), <https://apnews.com/article/abortion-arizona-ballot-voters-2024-a7ea711840cbe2103a9c75c4c4dd4ef3>; *A Constitutional Amendment Amending Article II, Constitution of Arizona, by Adding Section 8.1; Relating to the Fundamental Right to Abortion Petition* (Sept. 12, 2023), <https://apps.arizona.vote/electioninfo/assets/47/0/BallotMeasures/1-05-2024%20Arizona%20for%20Abortion%20Access.pdf> [hereinafter "AAA"].

¹⁰⁴ AAA, *supra* note 103 (capitalization changed). The AAA's definitions of "compelling state interest" and "fetal viability" largely track those found in Michigan's Proposal 3. *Id.*

sense safety standards” including parental notification.¹⁰⁵ The antiabortion movement discouraged people from signing the petitions “everywhere signatures [we]re gathered—making their case at festivals, libraries, big box parking lots and coffee shops across Arizona,”¹⁰⁶ as well as in the Legislature where Republicans signed a Declaration in Support of the Sanctity of Human Life urging voters to reject the AAA.¹⁰⁷ While some initiative opponents merely sought to reach voters before they signed petitions, others took a different approach: “tracking the location of signature-gatherers on a private Telegram channel, filming them, interrupting their work, and calling security to get them removed from high-traffic spots.”¹⁰⁸ Opponents also encouraged people to contact the Secretary of State to remove their signatures, pushed “religious leaders to denounce the ballot initiative from the pulpit and counsel parishioners against signing,” and planned “‘pep rallies’” and a “‘dorm storm.’”¹⁰⁹ Some “quiz[ed] signature-gatherers about the amendment and tap[ed] their answers,” so that inaccuracies “c[ould] be presented as evidence that all the signatures that volunteer gathered [we]re tainted by misinformation and invalid.”¹¹⁰

During the petitioning phase, Republican legislators floated a potential “ballot-flooding strategy”—having the legislature place multiple abortion-related proposals on the ballot—to confuse voters out of approving the AAA.¹¹¹ Specifically, this plan required the legislature to refer three

¹⁰⁵ See Jeremy Duda, *Advocates Say Criticism of Abortion Ballot Measure is Misleading*, AXIOS PHX (May 13, 2024), <https://www.axios.com/local/phoenix/2024/05/13/abortion-ballot-viability-exemptions-debate-arizona>; Alex Tabet, *Arizona Abortion Rights Amendment Backers Say[] They've Gathered Signatures Needed for 2024 Ballot*, NBC NEWS (Apr. 2, 2024, 10:00 ET), <https://www.nbcnews.com/politics/2024-election/arizona-abortion-rights-amendment-backers-says-gathered-signatures-need-rcna145922>; see also Alice Miranda Ollstein, *'Our Prayer is That it Doesn't Even Reach the Ballot': Inside Arizona's Abortion Battle*, POLITICO (Mar. 6, 2024, 09:40 ET), <https://www.politico.com/news/2024/03/06/arizona-abortion-referendum-battle-00145089/> (“Abortion opponents’ talking points in Arizona are nearly identical to those deployed in past state initiative fights—with a focus on abortion later in pregnancy and parental consent for minors seeking abortion.”).

¹⁰⁶ Ollstein, *supra* note 105 (The antiabortion movement “lean[ed] particularly hard on the ‘decline to sign’ strategy in Arizona because there they lack[ed] the policies and levers of power conservatives [we]re using in other states—from a Republican attorney general willing to challenge the ballot measure in court to a legislative supermajority eager to change the rules—to make it harder for proposed amendments to qualify for the ballot.”).

¹⁰⁷ See *Complaint Arizona for Abortion Access v. Toma*, at 22, No. CV2024-017968 (Ariz. Super. Ct. Maricopa Cnty., July 10, 2024).

¹⁰⁸ Ollstein, *supra* note 105.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* Canvassers for AAA were encouraged “to offer the text of the amendment to” the person recording and “thank them for their time.” *Id.* The opposition had lawyers ready to scrutinize collected signatures). Tabet, *supra* note 105.

¹¹¹ See Kevin Stone, *Arizona Republican Lawmakers Consider Ballot Strategy to Counter Abortion Rights Initiative*, KTAR NEWS (Apr. 16, 2024, 13:03 ET), <https://ktar.com/story/5570365/arizona-republican-lawmakers-consider-ballot-strategy-to-counter-abortion-rights-initiative/> This is categorically different than the dueling ballot measures proposed in Colorado, where the Colorado Life Initiative began collecting signatures *before* Coloradans for Protecting Reproductive Freedom. See *Proposed Initiative 81* (Colo. 2023),

<https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2023-2024/81Final.pdf>; Proposed Initiative 89 (Colo. 2023),

<https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2023-2024/89Final.pdf>. Only the latter proposal appeared on November 2024 ballots.

different ballot measures to voters: (1) a proposal deceptively called the “Arizona Abortion Protection Act” or “Protecting Pregnant Women and Safe Abortions Act,” which would “protect[the] Legislature’s authority to ‘enact laws’” and codify “widely supported protections/restrictions on abortion,” including bans on “partial-birth abortions,” “[d]iscriminatory [a]bortions,” the sale of aborted fetuses, and abortions performed on minors without parental consent or court order”; (2) the “Reproductive Care and Abortion Act,” which would “only allow abortion until the beginning of the 15th week” of pregnancy—a deceptively-named fourteen-week ban; and (3) the “Heartbeat Protection Act,” which would permit abortion until the start of the sixth week of pregnancy—a deceptively-named five-week ban.¹¹² The goal: “pull votes from AAA.”¹¹³ Republicans also considered a conditional enactment referral, titled the “Reasonable Limits on Arizona Abortion Access Act,” which would take effect *only* if the AAA passed, and would declare that the right to abortion “is not absolute and shall not be interpreted to prevent the Legislature from reasonably regulating abortion consistent with binding authority from the Supreme Court of the United States.”¹¹⁴ As the Brennan Center explained, this strategy “isn’t only deceptive—it perverts the political process to thwart the will of the people and defy the preferences of the majority of voters. It’s antidemocratic.”¹¹⁵ Ultimately, Republicans did not pursue this strategy.

Despite the antiabortion decline-to-sign efforts, Arizona for Abortion Access turned in over 823,000 signatures on the July 3, 2024 deadline—significantly more than the ~384,000 required.¹¹⁶ On August 12, 2024, the Arizona Secretary of State’s office certified 577,971 signatures, qualifying the AAA to appear on the ballot.¹¹⁷

The antiabortion movement then sought to prevent voters from approving the AAA. First, the GOP-led Arizona Legislative Council used the term “unborn human being” instead of “fetus” in its proposed voter-information pamphlet over Arizona for Abortion Access’s objection, prompting Arizona for Abortion Access to sue.¹¹⁸ While the Maricopa County Superior Court concluded that the use of “unborn human being”

¹¹² See Linley Wilson, *Legislative Strategies for Regulating Abortion*, at 14–20, <https://www.documentcloud.org/documents/24548815-abortionpp>.

¹¹³ *Id.* at 23.

¹¹⁴ *Id.* at 22.

¹¹⁵ Alice Clapman, *Arizona Legislators Maneuvering to Take Abortion Decision Away from Voters*, BRENNAN CTR. FOR JUST. (Apr. 30, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/arizona-legislators-maneuvering-take-abortion-decision-away-voters-0>.

¹¹⁶ See Quinn, *supra* note 102.

¹¹⁷ Rio Yamat, *With Over 577,000 Signatures Verified, Arizona Will Put Abortion Rights on the Ballot*, ASSOCIATED PRESS (Aug. 12, 2024, 22:18 ET), <https://apnews.com/article/arizona-abortion-ballot-petitions-ff88d989019a1e4bf10fabd5d7acc801>.

¹¹⁸ See Compl., *Arizona for Abortion Access v. Toma*, at 2, 4, 10 (Ariz. Super. Ct. Maricopa Cnty. July 10, 2024).

was “packed with emotional and partisan meaning,”¹¹⁹ the Arizona Supreme Court allowed the language to be used and “sent to all voters in the state.”¹²⁰

Second, Arizona Right to Life (“ARL”) sued seeking to remove the AAA from ballots, contending that the proposal was misleading and too confusing for voters to comprehend.¹²¹ Specifically, ARL contended that the AAA was too permissive regarding post-viability abortions and gave abortion providers too much power to determine when an abortion was warranted.¹²² Further, ARL complained that the definition of “compelling governmental interest” “erase[d] all other compelling governmental interests except making the abortion safer for women.”¹²³ According to ARL, the only appropriate remedy was to keep the AAA off the November ballot.¹²⁴ The Maricopa County Superior Court rejected these claims and, in a brief opinion, the Arizona Supreme Court unanimously affirmed.¹²⁵

These efforts to derail the AAA were unsuccessful. As Election Day drew near, support for the proposal grew.¹²⁶ Ultimately, voters approved the AAA.¹²⁷ Weeks later, healthcare providers sued to invalidate the state’s 15-week abortion ban.¹²⁸ The fifteen-week law was permanently enjoined in

¹¹⁹ Aabshar Ghassi, *Arizona Court Bars Wording of Abortion-Related Ballot Initiative Pamphlet in Constitutional Amendment Case*, JURISTNEWS (July 29, 2024, 10:13 ET), <https://www.jurist.org/news/2024/07/arizona-court-bars-wording-of-abortion-related-ballot-initiative-pamphlet-in-constitutional-amendment-case/>.

¹²⁰ Sejal Govindarao, *Ruling: Fetus Can Be Referred to as ‘Unborn Human Being’ in Arizona Abortion Measure Voter Pamphlet*, ASSOCIATED PRESS (Aug. 14, 2024, 20:26 ET), <https://apnews.com/article/arizona-abortion-rights-ballot-measure-b0ea37c92692533da109fd74a07b25f7>; *Arizona for Abortion Access v. Toma*, No. CV-24-0167-AP/EL, 2024 WL 3905591, at 3–4 (Ariz. Aug., 14 2024). Similarly, in 2023, the Ohio Supreme Court permitted the phrase “an unborn child” to be used instead of “fetus” on ballot language. See *State ex rel. Ohioans United for Reproductive Rights v. Ohio Ballot Bd*, 174 Ohio St. 3d 285 (2023), at ¶ 44.

¹²¹ Gloria Rebecca Gomez, *In Lawsuit to Block Abortion Rights Ballot Measure, Foes Claim It Is ‘Too Confusing’ for Voters*, ARIZ. MIRROR (July 26, 2024, 09:22 AM), <https://azmirror.com/2024/07/26/in-lawsuit-to-block-abortion-rights-ballot-measure-abortion-foes-claim-it-is-too-confusing-for-voters/>.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* Originally, ARL alleged improprieties in the petitioning process, but later dropped those allegations. See Howard Fischer, *Right-to-Life Group Drops Part of Lawsuit to Challenge Abortion Measure*, ARIZ. CAP. TIMES (July 30, 2024), <https://azcapitoltimes.com/news/2024/07/30/right-to-life-groups-drops-part-of-lawsuit-to-challenge-abortion-measure/>.

¹²⁵ Howard Fischer, *Judge Rejects Bid to Knock Abortion Measure off Arizona Ballot*, TUCSON.COM (Aug. 5, 2024), https://tucson.com/news/local/government-politics/elections/justice-william-montgomery/article_0a242952-533a-11ef-aa94-c7532b0cfd1df.html; *Ariz. Right to Life v. Fontes*, No. CV-24-0180-AP/EL, 2024 WL 3887061 (Ariz. Aug. 20, 2024).

¹²⁶ Kate Scanlon, *Poll Shows Majority of Voters in Arizona, Nevada Favor Abortion Referendums*, NAT’L CATH. REP. (Aug. 30, 2024), <https://www.ncronline.org/news/poll-shows-majority-voters-arizona-nevada-favor-abortion-referendums> (reporting late August Fox News poll finding 73% of Arizonans supported the AAA); Irena Li, *Abortion-Rights Ballot Measures Are Leading in the Polls*, ABC NEWS (June 7, 2024, 13:42 ET), <https://abcnews.go.com/538/abortion-rights-ballot-measures-leading-polls/story?id=110877241> (reporting the average of four polls found “58 percent of voters said they would support such an amendment”).

¹²⁷ Katherine Davis-Young, *Arizona Voters Pass Constitutional Amendment Guaranteeing Abortion Access*, NPR (Nov. 6, 2024, 04:20 ET), <https://www.npr.org/2024/11/06/g-s1-32937/arizona-abortion-amendment-results>.

¹²⁸ *Compl., Reuss v. Arizona* (Dec. 3, 2024), <https://www.documentcloud.org/documents/25431552-reuss-v-arizona-15-week-abortion-ban-challenge/>.

early March 2025.¹²⁹ Yet, Arizona Republicans have proposed new restrictions on abortion, including a proposed ballot measure to overturn the AAA and allow the legislature to protect “prenatal life at all stages of development.”¹³⁰

D. Arkansas

When *Roe* fell, Arkansas’s trigger law became effective, banning abortion except to save the life of the pregnant person in the case of a medical emergency. In 2023, Arkansas reported zero abortions within its borders, earning Americans United for Life’s designation as the most “pro-life” state in the country.¹³¹ Yet, that policy does not appear representative of Arkansans’ preferences: a 2022 University of Arkansas public opinion poll concluded that “only about 14% of voters support a total ban on abortion, while 21% said it should be legal under any circumstances. The vast majority, 58%, said it depends.”¹³² In November 2023, For AR People, through its ballot question committee, Arkansans for Limited Government (“AFLG”), announced that it would seek to amend the state constitution in 2024 to liberalize the abortion regime.

On January 23, 2024, Attorney General Tim Griffin certified the ballot title and name for the Arkansas Abortion Amendment of 2024—on AFLG’s third request.¹³³ The proposal did not seek to approximate *Roe* or *Casey*; instead, it would amend the state constitution to provide that the state

shall not prohibit, penalize, delay, or restrict abortion services (1) in cases of rape, (2) in cases of incest, (3) in cases of a fatal fetal anomaly, or (4) when, in a physician’s good-faith medical judgment, abortion services are needed to protect a pregnant female’s life or to protect a

¹²⁹ See *Reuss v. Arizona*, No. CV2024-034624, at 1-2 (Ariz. Super. Ct. Maricopa Cnty., Mar. 4, 2025).

¹³⁰ Rinkunas, *supra* note 53; Adam Edelman, *Republicans Plow Ahead with Anti-Abortion Agenda in States Where Voters Approved Constitutional Amendments*, NBC NEWS (Apr. 12, 2025, 06:00 ET), <https://www.nbcnews.com/politics/politics-news/republicans-anti-abortion-agenda-states-constitutional-amendments-rcna200606>.

¹³¹ George Fabe Russell & Todd A. Price, *A Fight for Abortion Rights in America’s Most Pro-Life State Could Ripple Across the South*, USA TODAY (June 24, 2024, 06:03 ET), <https://www.usatoday.com/story/news/politics/elections/2024/06/24/arkansas-abortion-ballot-measure-lacks-national-support-heres-why/74072900007/>.

¹³² Austin Gelder, Benjamin Hardy, Matt Campbell & David Ramsey, *Labor and Delivery: How a Volunteer-Powered Group Gathered 102K Signatures for the Arkansas Abortion Amendment*, ARK. TIMES (July 30, 2024, 13:21 ET), <https://arktimes.com/arkansas-blog/2024/07/30/labor-and-delivery-how-a-volunteer-powered-group-gathered-102k-signatures-for-the-arkansas-abortion-amendment>.

¹³³ Ka’Tani Gouch & Adam Roberts, *Arkansas Attorney General Certifies Ballot Language on Abortion Referendum*, 4029 NEWS (Jan. 24, 2024, 06:51 ET), <https://www.4029tv.com/article/arkansas-abortion-referendum/46510237>; Letter from Tim Griffin, Ark. Att’y Gen., to Steven Nichols (Jan. 23, 2024), <https://ag-opinions.s3.amazonaws.com/uploads/2024-004.pdf>.

pregnant female from a physical disorder,
physical illness, or physical injury,

or in any case “within 18 weeks of fertilization.”¹³⁴ Planned Parenthood and the ACLU of Arkansas did not support the proposal due to concerns that the limited proposal would squander the one and only opportunity to revise the state constitution.¹³⁵ AFLG, with the support of over six-hundred healthcare professionals, believed its proposal was more likely to succeed than a broader proposal.¹³⁶

Despite the narrowness of the proposal, the antiabortion movement attacked it and ultimately prevented it from going before voters.

Opponents described the proposal as permitting abortion “until birth” and lodged a decline to sign campaign.¹³⁷ They tried to intimidate petitioners: “Organizers and volunteer signature-gatherers regularly deal[t] with harassment and intimidation in the field.”¹³⁸ “[A] conservative group posted online the names of nearly 80 paid signature gatherers that it obtained through a public records request,” while individual petitioners reported being called a “murderer,” being threatened (“I’m going to find you and kill you”), and being followed.¹³⁹ The legislature also adopted a resolution opposing the proposal and encouraging voters to reject the amendment.¹⁴⁰

AFLG sought to gather 150,000 signatures—significantly more than ‘the required 90,704 (in 50/75 counties) to qualify for the November 2024

¹³⁴ Griffin Letter, *supra* note 133, at 4.

¹³⁵ See Susan Rinkunas, *When the Road to Bad Abortion Laws is Paved with Good Intentions*, SLATE (Jan. 3, 2024, 05:45 ET), <https://slate.com/news-and-politics/2024/01/abortion-arkansas-ballot-roe-limited-government.html>. The proposal would have covered 99% of Arkansas’ pre-*Dobbs* abortions. See Russell & Price, *supra* note 131.

¹³⁶ Rinkunas, *supra* note 135; Letter from More than 600 Arkansas Healthcare Professionals, *Arkansas Medical Professionals Support the Arkansas Abortion Amendment; Call for Voters to Put Healthcare Decisions Back to Patients and Their Providers*, <https://arliberty.org/open-letter/>.

¹³⁷ See e.g., Rose Mimms, *Decline to Sign the Arkansas Abortion-until-Birth Mandate*, NAT’L REV. (Mar. 20, 2024, 06:30 ET), <https://www.nationalreview.com/2024/03/decline-to-sign-the-arkansas-abortion-until-birth-mandate/> (claiming that “the amendment’s broad language would force no-limit abortions on the people of our state and mandate the removal of even the most basic limits on the profit-driven abortion industry,” while permitting “birthday abortions” since “no law will be able to police them” making this proposal “worse than *Roe v. Wade*”).

¹³⁸ Barbara Rodriguez & Grace Panetta, *‘They Want Us to Be Scared’: Protesters Target Organizers for Abortion Ballot Measure in Arkansas*, THE 19TH (June 14, 2024, 05:00 ET), <https://19thnews.org/2024/06/arkansas-abortion-ballot-measure-harassment/>.

¹³⁹ *Id.*; see also Knez Walker, Marjorie McAfee & Aria Young, *Arkansas Residents Petition to Vote on Abortion Rights Amendment*, ABC NEWS (July 10, 2024, 08:56 ET), <https://abcnews.go.com/Politics/arkansas-residents-petition-vote-abortion-rights-amendment/story?id=111772472> (describing negative experiences of canvassers). One canvasser reported police informing her that “both Gov. Sarah Huckabee Sanders and the Arkansas Martin Luther King Jr. Commission did not want her and others canvassing” at her sidewalk location and threatened to arrest her for obstructing traffic. Tess Vrbin, *Publication of Abortion Amendment Canvasser List Is Intimidation, Ballot Question Committee Says*, ARK. ADVOCATE (June 7, 2024, 15:40 ET), <https://arkansasadvocate.com/2024/06/07/publication-of-abortion-amendment-canvasser-list-is-intimidation-ballot-question-committee-says/>.

¹⁴⁰ H.R. 1003, 94th Gen. Assemb., 2d Extraordinary Sess. (Ark. 2024).

ballot.¹⁴¹ AFLG submitted approximately 101,000 signatures on July 5, 2024, falling short of its goal.¹⁴² Five days later, Secretary of State John Thurston rejected the petitions, claiming that AFLG failed to submit required paid-canvasser statements and only 87,382 signatures were collected by unpaid volunteers.¹⁴³ For initiative petitions supported by signatures obtained by paid canvassers, state law required the submission of “[a] statement identifying the paid canvassers by name” and “[a] statement signed by the sponsor indicating that [“before each paid canvasser solicited signatures”] the sponsor: (i) [p]rovided a copy of . . . the Secretary of State’s initiatives and referenda handbook . . . ; and (ii) [e]xplained the requirements under Arkansas law for obtaining signatures.”¹⁴⁴ On July 11, AFLG responded that it *had* submitted the required statements—even though Thurston’s office had discouraged it from doing so.¹⁴⁵ Results from a Freedom of Information Act request suggested the accuracy of AFLG’s contentions.¹⁴⁶

AFLG sued, seeking to force Thurston to count the submitted signatures.¹⁴⁷ The Arkansas Supreme Court required the state to conduct an initial count of signatures collected by *unpaid* volunteers, the results of which found that AFLG fell short of the required signatures through unpaid volunteers alone.¹⁴⁸ On August 22, 2024, the Arkansas Supreme Court affirmed its order requiring Thurston’s office to count the signatures

¹⁴¹ Jacqueline Froelich, *Statewide Ballot Petition Initiative Launched to Overturn Arkansas’ Abortion Ban*, KUAF (Feb. 21, 2024, 13:08 CST), <https://www.kuaf.com/show/ozarks-at-large/2024-02-21/statewide-ballot-petition-initiative-launched-to-overturn-arkansas-abortion-ban>. In 2023, voters rejected a constitutional amendment that would have required signatures be collected from fifty counties instead of fifteen, but then the legislature changed the initiative requirements anyway. Stephanie Kirchgassner, *How a Rightwing Machine Stopped Arkansas’s Ballot Initiative to Roll Back One of the Strictest Abortion Bans*, THE GUARDIAN (Apr. 29, 2025, 07:03 ET), <https://www.theguardian.com/us-news/2024/oct/29/arkansas-abortion-ban-ballot>.

¹⁴² Andrew DeMillo, *Arkansas Election Officials Reject Petitions Submitted for an Abortion-Rights Ballot Measure*, ASSOCIATED PRESS (July 10, 2024, 22:06 ET), <https://apnews.com/article/abortion-arkansas-ballot-measure-9375891a74f6eeeb13110ac07eb8c529>.

¹⁴³ *Id.*

¹⁴⁴ ARK. CODE ANN. § 7-9-111(f) (West 2024).

¹⁴⁵ Adam Roberts, *Arkansas Group Behind Abortion Initiative Says it Followed All the Rules*, 4029 TV (July 11, 2024, 17:03 ET), <https://www.4029tv.com/article/arkansas-abortion-signatures-response/61573905>. See also Letter from Lauren Cowles, Exec. Dir. of AFLG, to John Thurston, Ark. Sec’y of State, (July 10, 2024), <https://www.documentcloud.org/documents/24804078-2024-07-11-response-to-secretary-thurston-with-enclosure-1-1>.

¹⁴⁶ See Gelder, *supra* note 132.

¹⁴⁷ See Andrew DeMillo, *Arkansas Is Sued for Rejecting Petitions on an Abortion-Rights Ballot Measure*, ASSOC. PRESS NEWS (July 16, 2024, 16:59 ET), <https://apnews.com/article/arkansas-abortion-ban-law-suit-ballot-measure-f5b8125263212437e9b5b2afd80906bc>.

¹⁴⁸ George Fabe Russell, *Legal Battle Continues over Arkansas Abortion Amendment*, SW TIMES RECORD (July 30, 2024, 14:28 ET), <https://www.swtimes.com/story/news/politics/elections/2024/07/30/arkansas-abortion-measure-legal-wrangling-continues-over-signatures/74591601007/>; Tess Vrbin, *Arkansas Secretary of State Defends Rejection of Proposed Abortion Amendment*, ARK. ADVOC. (July 29, 2024, 12:30 ET), <https://arkansasadvocate.com/2024/07/29/arkansas-secretary-of-state-defends-rejection-of-proposed-abortion-amendment/>; Andrew DeMillo, *Arkansas Court Orders State to Count Signatures Collected by Volunteers for Abortion-Rights Measure*, ASSOCIATED PRESS (July 24, 2024, 11:03 ET), <https://apnews.com/article/abortion-petitions-arkansas-court-a789b60496e9103800ac890c4e2eb229>.

collected by volunteers, denying all further relief.¹⁴⁹ According to the majority, AFLG’s submission of certifications *before* the July 5, 2024, deadline were insufficient since everything needed to be submitted together, “[a] statement’ is not multiple statements,” and the statements submitted covered only “some of the paid canvassers.”¹⁵⁰ “AFLG needed 90,704 signatures to complete the first stage of the initial facial count to proceed to the verification stage. As it failed to obtain this number of signatures, AFLG is not entitled to any further relief”—so ended the fight to restore some abortion access in 2024.¹⁵¹

Two of the three dissenting justices saw the situation quite differently. As Justice Baker explained, the majority repeatedly rewrote the statute outlining the required submissions for paid-canvasser-supported initiative petitions since the statute itself “demonstrates that there is no contemporaneous filing requirement.”¹⁵² Instead, the contemporaneous-filing requirement “was made up out of whole cloth by the [Secretary of State] and inexplicably ratified by the majority of this court” contradicting “the rules of statutory construction [which] do not permit [the court] to read into a statute words that are not there.”¹⁵³ Justice Baker added that AFLG’s affiliate “submitted multiple paid canvasser training certifications,” including one on June 27, 2024, that listed “all paid canvassers that had been hired by that date”—which was sufficient because it “was not a ‘partial attempt’ to comply” with the statute.¹⁵⁴ She added, “[i]t is absurd to hold that a certification cannot be submitted early, and by concluding otherwise, the majority has added yet another obstacle that prevents Arkansans from exercising their constitutional rights.”¹⁵⁵ The dissent would have ordered Thurston “to conduct an initial count of all signatures, including those gathered by paid canvassers, and a verification analysis . . . , grant a thirty-day provisional cure period, and order conditional certification of the proposed amendment.”¹⁵⁶

¹⁴⁹ *Cowles v. Thurston*, 695 S.W.3d 60, 62 (Ark. 2024).

¹⁵⁰ *Id.* at 64.

¹⁵¹ *Id.* at 67. Interestingly, the Arkansas Supreme Court also nixed a ballot initiative seeking to expand medical marijuana—but did so approximately two weeks before Election Day and after ballots had already been printed. See *Paschall v. Thurston*, 699 S.W.3d 352, 355 (2024).

¹⁵² *Cowles*, 695 S.W.3d at 69 (Baker, J., dissenting).

¹⁵³ *Id.* at 69–70.

¹⁵⁴ See *id.* at 70.

¹⁵⁵ *Id.* at 70.

¹⁵⁶ *Id.* at 71. The remaining dissenting justice likewise would have “order[ed] the Secretary to complete a statutorily mandated initial count of signatures, including those signatures obtained by the paid canvassers; continue with the intake process; grant a provisional cure period,” and “order a conditional certification of the proposed amendment,” but also to submit the findings to the court. *Id.* at 68 (Kemp, C.J., dissenting).

AFLG vowed to continue fighting,¹⁵⁷ but the fight may be more difficult given legislation making signature-collection more difficult.¹⁵⁸

E. Florida

In 1989, the Supreme Court of Florida held that the state constitution's privacy clause protected a pregnant person's ability to decide whether to continue a pregnancy.¹⁵⁹ The court explained that "prior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state"; after that, "the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother."¹⁶⁰ Viability marked the point at which the state's interest became compelling since that was the point at which the fetus would "become[] capable of meaningful life outside the womb through standard medical measures"—as long as "the mother's health is not jeopardized."¹⁶¹ This holding was reaffirmed in 2003.¹⁶² Even so, in 2022, Florida enacted a 15-week abortion ban,¹⁶³ which was quickly challenged and enjoined, but due to a quirk of state law, the injunction was stayed when the state appealed.¹⁶⁴ While that litigation was pending, the state approved a six-week abortion ban.¹⁶⁵ On April 1, 2024, the Florida Supreme Court concluded that the state constitution's privacy clause did *not* protect abortion, triggering the six-week ban's effectiveness thirty days later.¹⁶⁶

Anticipating the Florida Supreme Court's likely reversal, Floridians Protecting Freedom, Inc. ("FPF") proposed an Amendment to Limit Government Interference with Abortion (later, "Amendment 4"), which would add a new section to the state constitution: "Limiting government interference with abortion.—Except as provided in Article X, Section 22, no law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient's health, as determined by the patient's healthcare provider."¹⁶⁷ To get on the ballot, supporters needed signatures

¹⁵⁷ Daniel Breen & Josie Lenora, *Arkansas Supreme Court Effectively Rejects Abortion Amendment*, LITTLE ROCK PUB. RADIO (Aug. 22, 2024, 11:46 ET), <https://www.ualpublicradio.org/local-regional-news/2024-08-22/arkansas-supreme-court-effectively-rejects-abortion-amendment>.

¹⁵⁸ Tess Vrbin, *Federal Lawsuit Challenges Arkansas' Restrictions on Citizen-Led Ballot Initiatives*, NEWS FROM THE STATES (Apr. 21, 2025, 18:42 ET), <https://www.newsfromthestates.com/article/federal-lawsuit-challenges-arkansas-restrictions-citizen-led-ballot-initiatives> (identifying changes to the initiative process adopted in 2025).

¹⁵⁹ See generally *In re T.W.*, 551 So. 2d 1186 (Fla. 1989).

¹⁶⁰ *Id.* at 1193.

¹⁶¹ *Id.* at 1194.

¹⁶² See generally *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612 (Fla. 2003).

¹⁶³ H.B. 5, 122nd Leg., 2d Reg., Sess. (Fla. 2022).

¹⁶⁴ *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67, 73 (Fla. 2024).

¹⁶⁵ See FLA. STAT. § 390.0111 (2024).

¹⁶⁶ *Planned Parenthood of Sw. & Cent. Fla.*, 384 So. 3d at 71; FLA. STAT. § 390.0111 (2024).

¹⁶⁷ Amendment 4 (Fla. 2024).

https://initiativepetitions.elections.myflorida.com/InitiativeForms/Fulltext/Fulltext_2307_EN.pdf; Kimberly Leonard & Arek Sarkissian, *Abortion-Rights Groups Have Never Faced a State Like Florida*, POLITICO (May 1, 2024, 05:00 ET), <https://www.politico.com/news/2024/05/01/florida-abortion-rights-ballot-measure-00154944>.

of 25% of voters in half of the state’s congressional districts—891,523 signatures in total.¹⁶⁸ FPF submitted 997,035 valid signatures over a month before the February 1, 2024 deadline.¹⁶⁹

Under Florida law, the state supreme court reviews proposed constitutional amendments before they can appear on the ballot.¹⁷⁰ This review is meant to be “deferential,” and limited to: “(1) ‘the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution’; (2) ‘the compliance of the proposed ballot title and substance with s. 101.161’; and (3) ‘whether the proposed amendment is facially invalid under the United States Constitution,’” such that a proposed amendment will be invalidated “‘only if it is shown to be clearly and conclusively defective.’”¹⁷¹

Opponents—including then-Attorney General Ashley Moody¹⁷²—raised a number of challenges to the amendment, seeking to keep it off ballots: (1) Amendment 4 violated the single-subject requirement because it addressed pre- and post-viability abortions;¹⁷³ (2) its “ballot title and summary fail[ed] to fairly inform voters of the chief purpose of the amendment,” namely “to effectively provide for abortion on demand, up until the moment of birth”;¹⁷⁴ (3) its title was “misleading” because the proposal “d[id] more than ‘limit’ government interference with abortion,” which was “improper inflammatory political rhetoric,” and failed to define key terms: “viability,” “health,” and “healthcare provider”;¹⁷⁵ and (4) it suffered from facial invalidity due to the federal ban on “partial-birth abortions.”¹⁷⁶ During oral argument, some justices “echo[ed] the talking points of anti-abortion groups . . . claiming the measure would greenlight abortions ‘through all nine months’ of pregnancy, and warning that it could allow tattoo artists and other non-physicians to perform the procedure.”¹⁷⁷

Despite the court’s rightward shift, on the same day that the Florida Supreme Court erased the state constitutional right to access abortion, it

¹⁶⁸ See *Amendment to Limit Government Interference with Abortion*, FLA. DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=83927&seqnum=1>.

¹⁶⁹ See *Id.*; Arek Sarkissian & Alice Miranda Ollstein, *‘People of Florida Aren’t Stupid’: State High Court Grapples with Abortion Measure*, POLITICO (Feb. 7, 2024, 12:54 ET), <https://www.politico.com/news/2024/02/07/florida-abortion-ballot-initiative-00140141>.

¹⁷⁰ FLA. CONST. art. IV, § 10.

¹⁷¹ Advisory Opinion to the Attorney General re: Limiting Government Interference with Abortion, 384 So. 3d 122, 127–28 (Fla. 2024) (internal citations omitted).

¹⁷² See Brendan Farrington, *Florida Attorney General, Against Criticism, Seeks to Keep Abortion Rights Amendment off 2024 Ballot*, ASSOCIATED PRESS (Nov. 1, 2023, 17:46 ET), <https://apnews.com/article/abortion-ashley-moody-florida-politics-0db0a1a4deb47fa1b82410b7670b16e3>.

¹⁷³ Advisory Opinion, 384 So. 3d at 129. A similar argument had been made and rejected in Ohio. See *State ex rel. DeBlase v. Ohio Ballot Bd.*, 229 N.E.3d 13 (Ohio 2023).

¹⁷⁴ Advisory Opinion, 384 So. 3d at 133.

¹⁷⁵ *Id.* at 133–34. Attorney General Moody contended that the proposal’s vagueness was intentional: it was designed “to lay ticking time bombs that will enable abortion proponents later to argue that the amendment has a much broader meaning than voters would ever have thought.” Farrington, *supra* note 172.

¹⁷⁶ Advisory Opinion, 384 So. 3d at 138.

¹⁷⁷ Sarkissian & Ollstein, *supra* note 169.

cleared the way for the proposed constitutional amendment to appear on the November 2024 ballot.¹⁷⁸

After qualifying for the ballot, Amendment 4 faced a state-led opposition campaign¹⁷⁹—in addition to the standard misleading opposition of purported overbreadth, deception, and danger.¹⁸⁰

First, the Financial Impact Estimating Conference (“FIEC”) proposed—and the Supreme Court approved—biased language in the financial impact statement accompanying Amendment 4 on the ballot. FIEC’s initial statement predated the Florida Supreme Court’s April 1, 2024 decisions and, initially, the FIEC declined to amend it. FPF sued and a state trial court found the original statement to be “inaccurate and now misleading,” ordering the FIEC to revise it “consistent with the circumstances on the ground today.”¹⁸¹ This decision was appealed, staying the trial court’s decision.¹⁸² Even so, the FIEC—at the urging of legislative leaders and with new, antiabortion representatives from the governor’s office and the legislature as members—met on July 1, 2024, to listen to

¹⁷⁸ Advisory Opinion, 384 So. 3d at 139. Two justices concurred, specifically explaining that the outcome was animated by “the constitutional principle that ‘[a]ll political power is inherent in the people,’” adding that “questions of justice are appropriately at the heart of the voters’ assessment of a proposed amendment like the one under review.” *Id.* at 139 (Muñiz, C.J., concurring).

¹⁷⁹ In addition to using their official duties to oppose Amendment 4, the state’s attorney general, chief financial officer, and agriculture commissioner pledged \$600,000 to the campaign to defeat Amendment 4. Yacob Reyes, *DeSantis Goes All-In against Florida’s Abortion Rights Amendment*, AXIOS (Sept. 9, 2024), <https://www.axios.com/local/tampa-bay/2024/09/09/ron-desantis-amendment-4-abortion-rights-floridain>. In fact, DeSantis demanded his fellow elected Republicans oppose Amendment 4. See Anthony Man, *DeSantis Demands Republicans Publicly Oppose Amendment to Add Abortion Rights to Florida Constitution*, S. FLA. SUN SENTINEL (Sept. 9, 2024, 16:10 ET), <https://www.sun-sentinel.com/2024/09/09/desantis-demands-republicans-publicly-oppose-amendment-to-add-abortion-rights-to-florida-constitution/>.

¹⁸⁰ Max Greenwood, *The Entire Country Is Getting Involved in the Campaign in Florida over Abortion*, MIAMI HERALD (July 10, 2024, 10:42 ET), <https://www.miamiherald.com/news/politics-government/article289548412.html>; Romy Ellenbogen, *Florida Abortion Amendment Raises \$12 Million in 2 Months Since Making Ballot*, TAMPA BAY TIMES (June 11, 2024), <https://www.tampabay.com/news/florida-politics/elections/2024/06/10/florida-abortion-amendment-ban-pregnancy-marijuana-desantis/>; Brendan Farrington, *Florida Asks State Supreme Court to Keep Abortion Rights Amendment off the November Ballot*, ASSOCIATED PRESS (Feb. 7, 2024, 13:07 ET), <https://apnews.com/article/florida-abortion-election-2024-17540f14ed2880f03a2bb14274b03ed3>; Anna Claire Vollers, *Despite GOP Headwinds, Citizen-Led Abortion Measures Could Be on the Ballot in 9 States*, MO. INDEP. (June 21, 2024, 12:00 ET), <https://missouriindependent.com/2024/06/21/despite-gop-headwinds-citizen-led-abortion-measures-could-be-on-the-ballot-in-9-states/>; Maria Briceno & Samantha Putterman, *Florida Abortion Amendment Wouldn’t Let Tattoo Artists, Receptionists Decide Health Risk Exception*, POLITIFACT (May 10, 2024), <https://www.politifact.com/factchecks/2024/may/10/paul-renner/florida-abortion-amendment-wouldnt-let-tattoo-arti/>; Politifact, *No, a Florida Ballot Measure Wouldn’t ‘Mandate Abortion up to Birth,’ as Gov. Ron DeSantis Says*, NBC MIAMI (May 3, 2024, 19:29 ET), <https://www.nbcmiami.com/news/politics/politifact-abortion-amendment-4-florida-ron-desantis/3302340/>.

¹⁸¹ Dara Kam, *Judge Orders a Revised ‘Financial Impact Statement’ for a Florida Abortion Amendment*, WLRN (June 6, 2024, 15:32 EDT), <https://www.wln.org/health/2024-06-06/judge-orders-a-revised-financial-impact-statement-for-a-florida-abortion-amendment>.

¹⁸² See Jim Saunders, *Florida Urges an Appeals Court to Reject the Ruling on the Abortion Impact Statement*, HEALTH NEWS FLA. (June 23, 2024, 16:00 ET), <https://health.wusf.usf.edu/health-news-florida/2024-06-23/florida-urges-an-appeals-court-to-reject-the-ruling-on-the-abortion-impact-statement>.

public testimony and begin rewriting the financial impact statement.¹⁸³ The FIEC met again the following week and Chris Spencer, the governor’s FIEC representative, “pushed the panel to include potential litigation costs if the amendment is passed” even though such costs are not usually included.¹⁸⁴ The resulting rewritten statement predicted that Amendment 4’s approval would decrease “live births” and increase abortions within the state, including an “even greater” increase “if the amendment invalidate[d] laws requiring parental consent before minors undergo abortions and those ensuring only licensed physicians perform abortions.”¹⁸⁵ In a six-to-one decision, the Florida Supreme Court rejected FPF’s challenge to the rewritten statement because FPF had “actively participated in the Estimating Conference process” so it had “waived or forfeited any reasonable claim to extraordinary relief” since their petition only “challenge[d] the Estimating Conference’s authority to issue th[e] statement.”¹⁸⁶

Second, in September 2024, multiple media outlets reported “a broad—and unusual—effort by Gov. Ron DeSantis’ administration to inspect thousands of *already verified and validated* petitions for Amendment 4 in

¹⁸³ Chirstine Jordan Sexton, *Economists Review Impact of Abortion Rights Amendment ... Again*, FLA. POLITICS (July 1, 2024), <https://floridapolitics.com/archives/682389-economists-review-impact-of-abortion-rights-amendment-again/>; Arek Sarkissian, *Abortion Rights Groups Argue Florida Is Trying to Throw up Barriers to Amendment*, POLITICO (June 30, 2024, 07:00 ET), <https://www.politico.com/news/2024/06/30/florida-abortion-ballot-measure-cost-00165803>.

¹⁸⁴ Ana Goni-Lessan, *DeSantis, Florida House Pay Outsiders to Influence Financial Statement on Abortion Measure*, TALLAHASSEE DEMOCRAT (July 8, 2024, 17:09 ET), <https://www.tallahassee.com/story/news/politics/2024/07/08/desantis-pays-outsider-to-speak-at-abortion-financial-impact-panel/74328375007/>.

¹⁸⁵ Arek Sarkissian, *Florida Abortion Rights Brawl Transforms Normally Boring Budget Committee into a Battleground*, POLITICO (July 17, 2024, 15:34 EDT), <https://www.politico.com/news/2024/07/16/florida-abortion-ballot-measure-cost-00168799>. By its express terms, Amendment 4 would have preserved the legislature’s right to require parental notification. *See* FLA. CONST. art. X, § 22.

¹⁸⁶ *Floridians Protecting Freedom, Inc. v. Passidomo*, 392 So. 3d 777, 778 (Fla. 2024). Accordingly, the financial impact statement that appeared with Amendment 4 on the ballot read:

The proposed amendment would result in significantly more abortions and fewer live births per year in Florida. The increase in abortions could be even greater if the amendment invalidates laws requiring parental consent before minors undergo abortions and those ensuring only licensed physicians perform abortions. There is also uncertainty about whether the amendment will require the state to subsidize abortions with public funds. Litigation to resolve those and other uncertainties will result in additional costs to the state government and state courts that will negatively impact the state budget. An increase in abortions may negatively affect the growth of state and local revenues over time. Because the fiscal impact of increased abortions on state and local revenues and costs cannot be estimated with precision, the total impact of the proposed amendment is indeterminate.

See id. at 780 (emphasis added).

the final two months before Election Day.”¹⁸⁷ The secretary of state “ordered elections supervisors in at least [six] counties to send to Tallahassee at least 36,000 petition forms already deemed to have been signed by real people”¹⁸⁸ due to concerns about allegedly “fraudulent signatures.”¹⁸⁹ Multiple people reported being visited by police inquiring about petitions to get Amendment 4 on the ballot.¹⁹⁰ As the ACLU of Florida stated: “[t]his is what state-authorized election interference looks like.”¹⁹¹ These efforts culminated in a 348-page report alleging fraudulent acts and an October lawsuit seeking to remove Amendment 4 from ballots and invalidate it if it passes.¹⁹² The lawsuit relied on the report’s conclusion that 16.4% of petitions were invalid, meaning that “the amendment only got 833,521 valid petitions statewide, falling short of the 891,523 requirement.”¹⁹³ Yet, independent review of the Office of Election Crimes and Security’s report found that the report “include[d] apparent factual misstatements, questionable methodology and inaccurate numbers.”¹⁹⁴ This suit was dropped after Election Day.¹⁹⁵ FPF dropped its challenge to the fine and disbanded in December 2024.¹⁹⁶

Third, in September, the Florida Agency for Health Care Administration launched a website opposing Amendment 4 purporting to

¹⁸⁷ See, e.g., Romy Ellenbogen, Justin Garcia & Lawrence Mower, *DeSantis’ Election Police Questioned People Who Signed Abortion Petitions*, TAMPA BAY TIMES (Sept. 6, 2024), <https://www.tampabay.com/news/florida-politics/elections/2024/09/06/florida-abortion-amendment-petition-signature-fraud-voters/> (emphasis added).

¹⁸⁸ *Id.*

¹⁸⁹ Kathryn Varn, *DeSantis Administration Cites Rejected Signatures to Justify Abortion Amendment Probe*, AXIOS (Sept. 11, 2024), <https://www.axios.com/local/tampa-bay/2024/09/11/desantis-abortion-amendment-investigation-petitions>.

¹⁹⁰ See Ellenbogen, Garcia & Mower, *supra* note 187.

¹⁹¹ Jessica Corbett, *‘Unhinged and Undemocratic’: Florida Cops Question Abortion Petition Signers*, COMMON DREAMS (Sept. 6, 2024), <https://www.commondreams.org/news/florida-amendment-4>.

¹⁹² See Romy Ellenbogen, *Lawsuit Filed to Try to Remove Florida Abortion Amendment from Ballot*, TAMPA BAY TIMES (Oct. 16, 2024), <https://www.tampabay.com/news/florida-politics/elections/2024/10/16/florida-abortion-amendment-4-desantis-fraud-2024-election/>; FLA. DEPT. OF STATE OFFICE OF ELECTION CRIMES & SEC., *Interim Report to Legislature on Initiative Petition Fraud Related to the Abortion Initiative (23-07)* (Oct. 11, 2024), <https://files.floridados.gov/media/708442/oecs-interim-report-10-11-2024.pdf>; Ashleigh Fields, *DeSantis Admin Claims Abortion Rights Groups Committed Petition Fraud: Report*, THE HILL (Oct. 12, 2024, 23:08 ET), <https://thehill.com/homenews/state-watch/4930650-desantis-admin-claims-abortion-rights-groups-committed-petition-fraud-report/>.

¹⁹³ Ellenbogen, *supra* note 192. Of course, the statutory deadline for challenging the validity of signatures elapsed before the suit was filed—to say nothing of the hundreds of thousands of votes already cast. See *Id.*

¹⁹⁴ Tony Pipitone, *Lawsuit to Invalidate Abortion Rights Amendment Relies on Flawed State Report*, NBC MIAMI (Oct. 25, 2024, 7:32 PM), <https://www.nbcmiami.com/investigations/lawsuit-to-invalidate-abortion-rights-amendment-relies-on-flawed-state-report/3455308/>.

¹⁹⁵ See Jackie Llanos, *Abortion Amendment Legal Disputes Winding Down after Loss at Polls*, NEWS FROM THE STATES (Nov. 15, 2024, 12:34 ET), <https://www.newsfromthestates.com/article/abortion-amendment-legal-disputes-winding-down-after-loss-polls>.

¹⁹⁶ Christine Sexton, *Political Group Behind Abortion Rights Campaign Disbands*, KIOWA CNTY. PRESS (Dec. 31, 2024, 5:23 AM), <https://kiowacountypress.net/content/political-group-behind-abortion-rights-campaign-disbands>.

promote “transparency” and the “Truth” while spreading misinformation.¹⁹⁷ As the executive director of the ACLU of Florida noted, “[t]his kind of propaganda issued by the state, using taxpayer money and operating outside of the political process sets a dangerous precedent” and “is irresponsible and an attempt to sabotage the vote.”¹⁹⁸ On September 12, 2024, FPF sued the state over the website’s misinformation—and related television and radio advertisements—alleging a misuse of taxpayer funds and asking the court to stop the messaging immediately.¹⁹⁹ A state trial court tossed FPF’s suit citing the upcoming election as a basis for why FPF lacked standing.²⁰⁰

Fourth, in October, the Florida Department of Health threatened to sue multiple local television stations that aired an ad supporting Amendment 4, claiming that the advertisement violated state law as a “nuisance” to people’s health.²⁰¹ Specifically, the letter contended that the advertisement was “false” and “if believed, would likely have a detrimental effect on the lives and health of pregnant women in Florida.”²⁰² Days later, the purported author of the letter was no longer with the Department of Health, having resigned from his position.²⁰³ FPF sued Joseph Ladapo, the Florida Surgeon General, and John Wilson, the purported author of the threatening letters, alleging political censorship.²⁰⁴ In that lawsuit, John Wilson attested that he

¹⁹⁷ See *Florida Is Protecting Life: Don’t Let the Fearmongers Lie to You*, FLA. AGENCY FOR HEALTH CARE ADMIN., <https://floridahealthfinder.com/FloridaCares>; see also Nathaniel Weixel, *Florida State Health Agency Comes Out Against Abortion Ballot Amendment*, THE HILL (Sept. 6, 2024, 17:23ET), <https://thehill.com/policy/healthcare/4866611-florida-state-health-agency-abortion-rights-ballot-amendment/>.

¹⁹⁸ Weixel, *supra* note 197.

¹⁹⁹ Kate Payne, *Florida Sued for Using Taxpayer Money on Website Promoting GOP Spin on Abortion Initiative*, ASSOCIATED PRESS (Sept. 13, 2024, 12:24 ET), <https://apnews.com/article/florida-abortion-amendment-4-website-lawsuit-de510053ee9799d6d6da3d4b203052f3>. Two other lawsuits were filed alleging that state officials—namely, the governor, attorney general, and secretary of AHCA—were “unlawfully us[ing] their offices and agencies to interfere with” voting on Amendment 4. See *Time-Sensitive Petition for Writs of Quo Warranto, Writs of Mandamus, and All Writs Relief at 10 and 18, Richardson v. Sec’y, Florida Agency for Health Care Admin.*, 395 So.3d 500 (2024) (No. SC2024-1314), available at <https://www.documentcloud.org/documents/25116616-58cd2b59-e06b-4fae-ab40-90e5bf3d4b28>; Jackie Llanos, *Florida Dems File Complaint against State Agency Webpage Opposing Abortion Amendment*, FLA. PHOENIX (Sept. 13, 2024, 6:40 PM), <https://floridaphoenix.com/2024/09/13/florida-dems-file-complaint-against-state-agency-webpage-opposing-abortion-amendment/>; Jim Rosica, *Florida Supreme Court Fast-Tracks Case over DeSantis’ Interference’ in Abortion Amendment*, TALLAHASSEE DEMOCRAT (Sept. 11, 2024, 13:25 ET), <https://www.palmbeachpost.com/story/news/politics/elections/2024/09/11/gov-desantis-sued-for-abuse-of-power-in-abortion-amendment-opposition/75172184007/>.

²⁰⁰ See Christine Sexton, *Tallahassee Trial Judge Tosses Challenge to State Abortion Webpage*, NEWS FROM THE STATES (Sept. 30, 2024, 18:36 ET), <https://www.newsfromthestates.com/article/tallahassee-trial-judge-tosses-challenge-state-abortion-webpage>.

²⁰¹ See Alanna Vagianos, *DeSantis Was Directly Behind Ominous Threats to TV Channels over Pro-Choice Ads, Former Official Says*, HUFFPOST (Oct. 21, 2024), https://www.huffpost.com/entry/ron-desantis-threats-tv-channels-pro-choice-abortion-ads_n_67169d54e4b011ffe5177377; Rhian Lubin, *DeSantis Administration Threatens Local TV Station for Airing Abortion Rights Campaign Ads*, INDEP. (Oct. 7, 2024, 23:06 ET), <https://www.independent.co.uk/news/world/americas/us-politics/desantis-threatens-tv-station-abortion-advert-b2624767.html>.

²⁰² Vagianos, *supra* note 201.

²⁰³ Nikki McCann Ramirez, *Florida Official Throws DeSantis Under Bus for Bid to Block Pro-Abortion Ads*, ROLLING STONE (Oct. 21, 2024), <https://www.rollingstone.com/politics/politics-news/desantis-blame-bid-block-anti-abortion-ads-1235139153/>.

²⁰⁴ See *Floridians Protecting Freedom, Inc. v. Ladapo*, 754 F. Supp. 3d 1165 (N.D. Fla. Oct. 17, 2024).

“did not draft the letters or participate in any discussions about [them]” before they were sent; instead, “Ryan Newman, General Counsel for the Executive Office of the Governor, and Jed Doty, Deputy General Counsel for the Executive Office of the Governor, directed [him] to send them under [his] name and on the behalf of the Florida Department of Health.”²⁰⁵ FPF obtained a temporary restraining order preventing “further actions to coerce, threaten, or intimate repercussions directly or indirectly to television stations, broadcasters, or other parties for airing Plaintiff’s speech, or undertaking enforcement action against Plaintiff for running political advertisements or engaging in other speech protected under the First Amendment.”²⁰⁶

As Election Day approached, these efforts had their intended effect: Polls in June and July 2024 found that 69% of registered voters supported Amendment 4, but an August 2024 poll found a significant drop in support.²⁰⁷ Ultimately, DeSantis’s weaponization of the state paid off: Amendment 4 obtained support from only 57.2% of voters—falling short of the 60% supermajority required.²⁰⁸ Victory was not enough for DeSantis; in 2025, he signed legislation making citizen-initiated constitutional amendments significantly more difficult to enact.²⁰⁹

F. Missouri

Missouri banned abortion the day that the Supreme Court announced *Dobbs*, except “in cases of medical emergency”—which was “an affirmative defense.”²¹⁰ Resulting uncertainty led doctors to tell pregnant people that “they ha[d] to wait until their lives [we]re in more immediate danger to get an abortion.”²¹¹ Missourians largely disagreed with the state’s strict abortion

²⁰⁵ Aff. of John Wilson, *Floridians Protecting Freedom, Inc. v. Ladapo*, No. 4:24-CV-00419-MW-MAF (N.D. Fla. Oct. 21), <https://docs.google.com/viewerng/viewer?url=https://big.assets.huffingtonpost.com/athena/files/2024/10/21/6716a034e4b019cef4eb3ef8.pdf>.

²⁰⁶ *Floridians Protecting Freedom*, 754 F. Supp. 3d at 1178. As the court succinctly put it, “To keep it simple for the State of Florida: it’s the First Amendment, stupid.” *Id.* at 117.

²⁰⁷ Miranda Nazzaro, *Florida Polls Show Abortion Measure Falling Short*, THE HILL (Aug. 15, 2024, 12:42 ET), <https://thehill.com/policy/healthcare/4829471-florida-abortion-poll-amendment/>; Nathaniel Weixel, *New Poll Shows Florida Abortion Amendment Winning, Outperforming Democrats*, THE HILL (July 30, 2024, 17:10 ET), <https://thehill.com/policy/healthcare/4801375-florida-abortion-ballot-initiative/>; Mitch Perry, *Shock Poll? New Fox News Survey Has Trump over Biden by Just 4 Points in Florida*, FLA. PHOENIX (June 7, 2024, 09:41 ET), <https://floridaphoenix.com/2024/06/07/shock-poll-new-fox-news-survey-has-trump-over-biden-by-just-4-points-in-florida/>.

²⁰⁸ *Florida Amendment 4 Election Results: Right to Abortion*, N.Y. TIMES (Nov. 6, 2024), <https://www.nytimes.com/interactive/2024/11/05/us/elections/results-florida-amendment-4-right-to-abortion.html>.

²⁰⁹ See Kathryn Varn, *DeSantis Takes Aim at Citizen Initiatives, Citing Abortion Amendment*, AXIOS TAMPA BAY (Jan. 14, 2025), <https://www.axios.com/local/tampa-bay/2025/01/14/desantis-special-session-amendment-ballot-measures>; Mitch Perry, *Restrictions on Constitutional Amendment Process Clears the Florida Legislature*, NEWS FROM THE STATES (May 2, 2025, 15:15 ET), <https://www.news-from-the-states.com/article/restrictions-constitutional-amendment-process-clears-florida-legislature>.

²¹⁰ See MO. REV. STAT. §§ 188.017(2)–(4).

²¹¹ See MO. REV. STAT. § 188.015(8); Chris Walker, *Treatments for Ectopic Pregnancies in Missouri Are Delayed Due to “Trigger Law,”* TRUTHOUT (June 29, 2022), <https://truthout.org/articles/treatments-for-ectopic-pregnancies-in-missouri-are-delayed-due-to-trigger-law/>.

law. A 2022 public opinion poll found that a majority of likely voters (58%) believed that pregnant people should be able to legally obtain an abortion during the first eight weeks of pregnancy, while larger majorities believed abortion should be legal when the pregnant person's life was in danger (87%) or in cases of rape (75%) or incest (79%).²¹² In a 2023 poll, 55% of Missourians stated that abortion should be legal in all or most cases compared to the 11% who said it should be illegal in all cases.²¹³

Despite repeated efforts by antiabortion politicians to keep the Right to Reproductive Freedom Initiative off the ballot, Missourians approved it in November 2024, becoming the first state to overturn a near-total abortion ban via citizen-led ballot measure.²¹⁴ The proposed constitutional amendment would protect individuals' rights to make 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."²¹⁵ Specifically, it would prevent the state from "restricting" reproductive freedom—such actions would be "presumed invalid," "unless the Government demonstrate[d] that such action [wa]s justified by a compelling governmental interest achieved by the least restrictive means."²¹⁶ The proposal would permit the state to "regulate . . . abortion after Fetal Viability"—so long as the state did not "restrict an abortion that in the good faith judgment of a treating health care professional [wa]s needed to protect the life or physical or mental health of the pregnant person."²¹⁷ This language resulted from public negotiation over competing initiative proposals.²¹⁸

²¹² Galen Bacharier, *Abortions, Now Illegal in Missouri, Rose Last Year for the First Time in More than a Decade*, SPRINGFIELD NEWS-LEADER (Sept. 12, 2022), <https://www.news-leader.com/story/news/local/missouri/2022/09/12/missouri-abortion-increases-2021-before-ban-procedure-illegal-roe-v-wade/8062187001/>.

²¹³ ABORTION VIEWS IN ALL 50 STATES: FINDINGS FROM PRRI'S 2023 AMERICAN VALUES ATLAS 12–13 (2023), <https://www.prii.org/research/abortion-views-in-all-50-states-findings-from-prri-2023-american-values-atlas/> [hereinafter "PRRI 2023"]. More recent polling found that "only 10 percent of respondents said abortion should be completely banned—with close to 45 percent saying it should be allowed as a matter of personal choice" in Missouri. Jason Rosenbaum, *Missouri Advocates Gather Signatures for Abortion Legalization, but GOP Hurdle Looms*, NPR (Feb. 28, 2024, 11:55 ET), <https://www.npr.org/2024/02/28/1234278254/missouri-advocates-gather-signatures-for-abortion-legalization-but-gop-hurdle-lo>.

²¹⁴ See Kate Zernike, *Missouri Voters Pass Measure to Protect Abortion rights and End Ban*, N.Y. TIMES (Nov. 5, 2024), <https://www.nytimes.com/2024/11/05/us/missouri-abortion-measure.html>; PROPOSED MO. ART. I, § 36 (2024), <https://moconstitutionalfreedom.org/wp-content/uploads/2024/01/Missourians-for-Constitutional-Freedom-Amendment.pdf> [hereinafter "MO. REPROD. FREEDOM INITIATIVE"].

²¹⁵ MO. REPROD. FREEDOM INITIATIVE, Art. I, § 36.2.

²¹⁶ *Id.* § 36.3. The proposal defines a compelling governmental interest as being "for the limited purpose and ha[ving] the limited effect of improving or maintaining the health of a person seeking care," while "consistent with widely accepted clinical standards of practice and evidence-based medicine," without "infring[ing] on that person's autonomous decision-making." *Id.*

²¹⁷ *Id.* § 36.4. The definition of "fetal viability," mirrors that found in Michigan's Proposal 3. *Id.* § 36.8(1).

²¹⁸ See Daniel Desrochers, Jonathan Shorman, & Kacen Bayless, *In Abortion Rights Vote, Missouri Could Do Something No State Has Before*, KANSAS CITY STAR (July 10, 2024, 07:00 ET), <https://www.kansas-city.com/news/politics-government/article289577256.html>.

Antiabortion politicians and their supporters tried repeatedly to derail the proposed amendment.²¹⁹

First, Attorney General Andrew Bailey temporarily halted progress on a proposed reproductive rights amendment because he disagreed with the state auditor's estimate of costs.²²⁰ Auditor Scott Fitzpatrick, who is responsible for determining the cost of implementing ballot measures, estimated that approving the constitutional amendment would cost the state approximately \$51,000 in reduced local tax revenues.²²¹ Bailey disagreed, estimating "that the cost would be closer to between \$12.5 billion and \$51 billion because of potential violations of federal Medicaid laws and lost tax revenue from fewer citizens—people who would be born if abortion weren't an option."²²² A state court concluded that Bailey lacked "authority to substitute his own judgment for that of the Auditor," ending the standoff and allowing initiative supporters to begin collecting signatures.²²³ On appeal, the Missouri Supreme Court agreed:

Nothing in section 116.175 gives the Attorney General authority to question the Auditor's assessment of the fiscal impact of a proposed petition. . . . Because the circuit court in this case did not err in finding there was no defect in the 'legal form and content' of the fiscal note summaries prepared by the Auditor concerning [the] proposed initiative petitions, the Attorney General's refusal to perform the plain, unequivocal, and ministerial duty of approving those

²¹⁹ See Zernike, *supra* note 5 ("The state's Republican leaders have attempted to keep the measure from going before voters for more than a year."); Jason Rosenbaum, *Missouri's Strict Abortion Ban Could Change. Even a GOP-Led Group Thinks It Should*, NPR (Oct. 9, 2023, 05:00 ET), <https://www.npr.org/2023/10/09/1203643423/missouris-strict-abortion-ban-could-change-even-a-gop-led-group-thinks-it-should> (reporting one antiabortion state senator saying: "I do not want any measure going to the vote of the people specifically when it comes to abortion, because that life has an interest in being protected in this state.").

²²⁰ Summer Ballentine, *Missouri Judge Orders End to GOP Officials' Standoff over Proposed Abortion Rights Ballot Measure*, ASSOCIATED PRESS (June 20, 2023), <https://apnews.com/article/missouri-abortion-ballot-measure-b3275e82ae6ea06336795902a7c19736>. The language for the November 2024 ballot was finalized in January 2024; before that, Missourians for Constitutional Freedom had submitted almost a dozen proposed ballot initiatives (and a conservative organization, Missouri Women and Family Research Fund, had submitted six others) to expand abortion access in the state. See Rosenbaum, *supra* note 219.

²²¹ Ballentine, *supra* note 220; See also MO. REV. STAT. § 116.175.3 (auditor's task was, in fifty words or less, to "state the measure's estimated cost or savings, if any, to state or local entities . . . in language neither argumentative nor likely to create prejudice either for or against the proposed measure").

²²² Summer Ballentine, *Judge Weighs Missouri GOP Dispute over Estimated Cost of Allowing Abortions*, ASSOCIATED PRESS (June 7, 2023, 17:04 ET), <https://apnews.com/article/missouri-abortion-ballot-measure-trial-983ee235dbba4184f2140fe45fc14624>.

²²³ Ballentine, *supra* note 220.

summaries (and informing the Auditor he has done so) cannot be justified.²²⁴

Because of the dispute, the Secretary of State could not “complete his duty by certifying the official ballot titles for the proposed petitions,” which had delayed the start of signature collection to qualify the proposal for the ballot.²²⁵ Put another way, the certification of the ballot title was “held up solely by the Attorney General’s unjustified refusal to act,” so the court ordered Bailey “forthwith to comply with the circuit court’s permanent writ of mandamus.”²²⁶

Second, Secretary of State John Ashcroft prepared summary statements for the proposed amendments, using language “that could have inflamed fears that [approval] would lead to dangerous and unregulated abortions,” prompting the measure’s supporters to sue to block the language.²²⁷ The Missouri Court of Appeals unanimously concluded that: (1) “the summary statements [we]re insufficient and unfair for mentioning only abortion” since the proposed amendments addressed other aspects of reproductive care; (2) “the Secretary’s description of the initiatives as allowing ‘dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice’ [wa]s inaccurate and d[id] not give voters ‘a sufficient idea of what the proposed amendment[s] would accomplish’”; (3) use of the term “right to life” made the statement “partisan and objectionable”; (4) use of “the phrase ‘nullify longstanding Missouri law’ was “unduly vague, if not misleading” given *Roe*’s forty-nine-year reign; (5) the phrase “partial birth abortion” was “argumentative, prejudicial, and misleading,” as well as “politically charged,” and its use failed to identify a probable effect of the proposals given federal law; (6) the phrasing “guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time” was not an accurate description of the viability provisions, nor did that language “accurately reflect the legal and probable effects” of the proposals; and (7) the language “prohibit any municipality, city, town, village, district, authority, public subdivision, or public corporation having the power to tax

²²⁴ State ex rel. Fitz-James v. Bailey, 670 S.W.3d 1, 4 (Mo. 2023).

²²⁵ *Id.* at 5, 11.

²²⁶ *Id.* at 11, 13 n.10. Thereafter, opponents of the reproductive freedom initiative sued “challenging the sufficiency and fairness of the Auditor’s fiscal notes and fiscal note summaries,” raising similar arguments as the AG, and asking for the fiscal note summary to be amended to account for the “millions of dollars annually” in “reduced tax revenues” and possible “billions of dollars annually” in increased “health care costs to the State.” See Kelly v. Fitzpatrick, 677 S.W.3d 622, 626, 629 (Mo. Ct. App. 2023). The court of appeals affirmed the trial court’s decision that the Auditor’s notes and summaries were “fair and sufficient.” *Id.* at 626.

²²⁷ Zernike, *supra* note 5. Ashcroft has a history of stymying popular participation in revising Missouri’s abortion laws. See Summer Ballentine, *Missouri Abortion Law Critics Won’t Seek Signatures for Vote*, ASSOCIATED PRESS (Aug. 15, 2019, 17:29 ET), <https://apnews.com/article/a7232cb029634a3a96e8a96946d7ba25> (reporting complaints about Ashcroft “dragging his feet to process the [referendum] petition” to overturn an eight-week abortion ban, leaving petitioners “only two weeks to gather the more than 100,000 voter signatures required to put it on the 2020 ballot”).

or regulate or the state of Missouri from regulating abortion procedures” did not “accurately reflect the legal and probable effects” of the proposals.²²⁸ The Court of Appeals then bypassed Ashcroft’s office and directly certified revised summary statements to the Secretary of State.²²⁹ Even so, Ashcroft continued to portray the initiative as extreme, claiming it would allow “abortion from conception until the very last second that the last toenail leaves the birth canal.”²³⁰

Third, the Republican-controlled legislature—like in Ohio a year before—sought to legislatively refer a constitutional amendment making it harder for citizens to approve the reproductive freedom measure.²³¹ Most notably, instead of requiring a simple majority vote across the state, under the legislature’s proposal, citizen initiatives would only be approved “if a majority of the votes cast thereon statewide and also a majority of the votes cast thereon in each of more than half of the congressional districts in the state are in favor.”²³² This “change would [have] hand[ed] rural residents more power,” since “[a] coalition of rural congressional districts would have effective veto control over amendments, no matter how popular a measure might [be] in Kansas City or St. Louis.”²³³ The plan was if the legislature referred the proposed initiative process changes, then the governor would have placed that proposal on the August 2024 primary ballot before voters could vote on the Reproductive Freedom Initiative in November.²³⁴ However, infighting among the state Senate’s Republican supermajority—which held twenty-four out of thirty-four seats—prevented it from ending a

²²⁸ Fitz-James v. Ashcroft, 678 S.W.3d 194, 204, 208–10, 213 (Mo. Ct. App. 2023).

²²⁹ *Id.* at 216–18.

²³⁰ Anna Spoerre, *Anti-Abortion Groups Say More Aggressive Approach Necessary to Stop Missouri Amendment*, MO. INDEP. (May 2, 2024, 05:55 ET), <https://missouriindependent.com/2024/05/02/missouri-abortion-amendment-march-life/>.

²³¹ S.J.R. 74, 48, 59, 61 & 83, 102d Gen. Assemb. (Mo. 2024), <https://www.senate.mo.gov/24info/pdf-bill/perf/SJR74.pdf>; Anna Spoerre, *Democrats Pull All-Night Filibuster of Bill Making it Harder to Amend Missouri Constitution*, MO. INDEP. (May 14, 2024), <https://missouriindependent.com/2024/05/14/democrats-filibuster-bill-amend-missouri-constitution/>; see also Bulman-Pozen & Seifter, *supra* note 38, at 222 (quoting Missouri House Speaker as arguing that the reproductive freedom amendment would “[a]bsolutely” pass without revisions to the initiative process and that “[i]f the Senate fails to take action on [initiative petition] reform, . . . the Senate should be held accountable for allowing abortion to return to Missouri”) (internal citations omitted); Summer Ballentine, *GOP Fighting, 50-Hour Democratic Filibuster Kill Push to Make Amending Missouri Constitution Harder*, ASSOCIATED PRESS (May 17, 2024), <https://apnews.com/article/missouri-constitution-amendment-democracy-democrat-voters-filibuster-7996412ccfdb5b8ee4aa28d77c34610> (reporting Senator Rick Brattin saying: “That’s what this fight has been about all along: protecting life.”).

²³² S.J.R. 74, 48, 59, 61 & 83, 102d Gen. Assemb. (Mo. 2024).

²³³ Kacen Bayless, *Missouri Senate Debates Curbing Direct Democracy Amid Campaign for Abortion Rights Vote*, KAN. CITY STAR (Feb. 13, 2024), <https://www.kansascity.com/news/politics-government/article285429772.html>. While Republicans claimed “that the state constitution [was] too easy to change,” of the sixty-nine citizen-led initiative petitions voted on between 1910 and 2022, only twenty-eight passed. *Id.* According to an analysis conducted by the *Missouri Independent*, the “concurrent majority standard” proposed would mean that “as few as 23% of voters could defeat a ballot measure.” See Spoerre, *supra* note 231.

²³⁴ Bayless, *supra* note 233.

fifty-hour filibuster by Democrats²³⁵ of the proposed changes to the initiative process.²³⁶ Accordingly, that proposal, “a top GOP priority, seen as a method to undercut a likely November ballot measure enshrining abortion rights in the Constitution,” did not move forward.²³⁷

Fourth, the antiabortion movement launched a “Decline to Sign” campaign to convince voters not to sign petitions to put the reproductive freedom measure on ballots.²³⁸ As part of this campaign, as in other states, opponents made false claims about the proposal that it: “goes farther than Roe,” “would harm health and safety protections for mothers,” and “will eliminate parental consent laws.”²³⁹ Antiabortion activists “set up a hotline to report the location of signature gatherers so volunteers could show up and hand out ‘Decline to Sign’ materials” and used “texts, phone calls and videos” to “fram[e] the petition’s sponsors as out-of-state extremists with designs to steal people’s personal data.”²⁴⁰ The “Decline to Sign” campaign also “encouraged [supporters] to stall signature gatherers” to delay the collection of additional signatures.²⁴¹ Despite these efforts, over 380,000 Missourians signed petitions.²⁴² The antiabortion movement tried to find those “who regret[ted] signing—or who mistakenly signed,” to ensure those signatures did not count towards the required signature amount.²⁴³ As of May, “the Secretary of State’s office ha[d] received about 140 requests for signature withdrawals.”²⁴⁴

Despite these efforts, on August 13, 2024, the Missouri Secretary of State’s office certified the initiative to appear on the November 2024 ballot as “Amendment 3.”²⁴⁵

²³⁵ Ballentine, *supra* note 231. Technically, the filibuster “focused on GOP efforts to include ‘ballot candy’ that would add unrelated issues about immigrants voting and foreign fundraising to the question.” See Spoerre, *supra* note 231.

²³⁶ Jason Hancock, ‘A Bizarre Session’: Missouri Lawmakers Head Home After Year Defined by Gridlock, *Infighting*, MO. INDEP. (May 17, 2024), <https://missouriindependent.com/2024/05/17/a-bizarre-session-missouri-lawmakers-head-home-after-year-defined-by-gridlock-infighting/>.

²³⁷ *Id.*; see also Spoerre, *supra* note 231 (“Republicans have pushed to change the initiative petition process for years, but the effort picked up steam more recently as a campaign to restore abortion access in Missouri advanced closer to appearing on the ballot.”).

²³⁸ Elly Laliberte, ‘Decline to Sign’ Campaign Discourages Voters from Signing Abortion Amendment Petition, KOMU (Apr. 29, 2024), https://www.komu.com/news/state/decline-to-sign-campaign-discourages-voters-from-signing-abortion-amendment-petition/article_1efc53bc-0656-11ef-a03c-7b1c166a69ce.html.

²³⁹ Spoerre, *supra* note 230.

²⁴⁰ *Id.*; Laliberte, *supra* note 238.

²⁴¹ See Spoerre, *supra* note 230.

²⁴² See Zernike, *supra* note 5.

²⁴³ Spoerre, *supra* note 230.

²⁴⁴ *Id.*

²⁴⁵ David A. Lieb, *Initiative to Enshrine Abortion Rights in Missouri Constitution Qualifies for November Ballot*, ABC 27 (Aug. 13, 2024, 16:20 EDT), <https://www.abc27.com/news/us-world/ap-initiative-to-enshrine-abortion-rights-in-missouri-constitution-qualifies-for-november-ballot/>; Ellie Compton & John Murphy, *Abortion, Sports Betting Petitions Will Appear on November Ballot After Certification*, KOMU (Aug. 13, 2024), https://www.komu.com/news/state/abortion-sports-betting-petitions-will-appear-on-november-ballot-after-certification/article_99c9ace2-5989-11ef-b50b-0faa851d9be5.html.

Sixth, that same day, Secretary Ashcroft's office published the "fair ballot language statement," intended to be posted next to the sample ballot at every polling place.²⁴⁶ The proposed language read:

A "yes" vote will enshrine the right to abortion at any time of pregnancy in the Missouri Constitution. Additionally, it will prohibit any regulation of abortion, including regulations designed to protect women undergoing abortions and prohibit any civil or criminal recourse against anyone who performs an abortion and hurts or kills the pregnant women.

A "no" vote will continue the statutory prohibition of abortion in Missouri.

If passed, this measure may reduce local taxes while the impact to state taxes is unknown.²⁴⁷

Dr. Anna Fitz-James, on behalf of Missourians for Constitutional Freedom sued seeking new language, contending that the proposed language was "unfair, insufficient, inaccurate, misleading, argumentative, prejudicial and blatantly contradicts the Court of Appeals' decision invalidating the Secretary of State's official ballot title for the same measure."²⁴⁸ Instead of providing "a true and impartial statement of the effect of a vote for and against the measure," she argued, the ballot language statement "echoe[d] the Secretary of State's original, misleading summary statement that was rejected by the Court of Appeals" and, as "fundamentally inconsistent with the official ballot title," would lead to voter confusion.²⁴⁹

After a September 4, 2024, bench trial, the court agreed with Fitz-James: "Intentional or not, the secretary's language sows voter confusion about the effects of the measure" and was "unfair, inaccurate, insufficient and misleading."²⁵⁰ First, the statement that a vote in favor would "enshrine the right to abortion *at any time of pregnancy*" contradicted the proposed amendment's language, "giv[ing] voters the wrong idea" and misleading them "into believing that no regulation of abortion will be allowed[.]"²⁵¹

²⁴⁶ Anna Sporre, *Abortion-Rights Proponents Sue Missouri Secretary of State Over Fair Ballot Language*, MO. INDEP. (Aug. 20, 2024, 16:32 ET), <https://missouriindependent.com/2024/08/20/missouri-secretary-state-ashcroft-lawsuit-abortion/>.

²⁴⁷ Petition by Petitioner at ¶17, *Fitz-James v. Ashcroft*, No. 24AC-CC06970 (Mo. Cole Cnty. Cir. Ct. Aug. 16, 2024).

²⁴⁸ *Id.* at 1–3.

²⁴⁹ *Id.* at ¶¶ 21–22, 26.

²⁵⁰ *Fitz-James v. Ashcroft*, No. 24AC-CC06970, at 6, 8 (Mo. Cole Cnty. Cir. Ct. Sept. 5, 2024).

²⁵¹ *Id.* at 6–7.

Second, the statement that voting in favor would “prohibit any regulation of abortion” likewise contradicted the proposed amendment’s language “and state[d] the opposite of the effect of the Amendment[,]” thereby “mislead[ing] voters into thinking that the Amendment w[ould] not permit any regulation, [which wa]s inaccurate.”²⁵² Third, the language about how “the Amendment w[ould] ‘prohibit any civil or criminal recourse’ was “contrary to the language of the Amendment and w[ould] give voters the mistaken impression that the Amendment w[ould] allow physicians to perform abortions negligently or criminally[,]” suggesting that “the Amendment w[ould] shield abortion providers from liability for medical malpractice” and “permit[] a doctor to murder a pregnant person on the operating table without any risk of prosecution, when the Amendment has no such effect.”²⁵³ Fourth, “[t]he singular focus of the fair ballot language on abortion misleads voters into believing that abortion is the only topic of the measure, when it is not.”²⁵⁴ Ultimately, the court rewrote the fair ballot language, modeled off the summary statement for the Amendment approved by the court of appeals.²⁵⁵

That was not the only attempt to derail Amendment 3 between certification and Election Day. Days after Ashcroft certified the measure for the ballot, Republican legislators (joined by an anti-abortion activist) sued, seeking to reverse the certification.²⁵⁶ Specifically, plaintiffs argued that the certification was improper because: (1) the petitions “fail[ed] to specify” the “laws and constitutional provisions that would be repealed, directly or by implication”; (2) the proposed amendment “illegally include[d] more than one subject”; and (3) the signatures needed to put Amendment 3 on the ballot

²⁵² *Id.* at 7.

²⁵³ *Id.* at 7–8.

²⁵⁴ *Id.* at 8.

²⁵⁵ *Fitz-James*, No. 24AC-CC06970, at 10. The court certified the following language:

A “**yes**” vote establishes a constitutional right to make decisions about reproductive health care, including abortion and contraceptives, with any governmental interference of that right presumed invalid; removes Missouri’s ban on abortion; allows regulation of reproductive health care to improve or maintain the health of the patient; requires the government not to discriminate, in government programs, funding, and other activities, against persons providing or obtaining reproductive health care; and allows abortion to be restricted or banned after Fetal Viability except to protect the life or health of the woman.

A “**no**” vote will continue the statutory prohibition of abortion in Missouri. If passed, this measure may reduce local taxes while the impact to state taxes is unknown.

²⁵⁶ *See generally* Petition by Petitioner, *Coleman v. Ashcroft*, No. 24AC-CC07285 (Mo. Cole Cnty. Cir. Ct. Aug. 22, 2024).

were obtained through misleading petitions.²⁵⁷ According to plaintiffs, Amendment 3 would create an “unlimited in scope” “fundamental right to reproductive freedom[,]” which would lead to “a campaign of ‘judicial sterilization,’ systematically neutralizing all laws, existing or future, that attempt to limit this new, limitless ‘right[.]’”²⁵⁸ Missourians for Constitutional Freedom was permitted to intervene.²⁵⁹

After bemoaning “the profound effect of pre-election review of an initiative petition[,]”²⁶⁰ the court agreed with plaintiffs, concluding that the petitions improperly failed to include a “disclaimer” identifying the “sections of existing law or of the constitution which would be repealed by the measure.”²⁶¹ The court proceeded to identify “several examples” of Missouri statutes that would be repealed, acknowledging that “some attenuated and not directly related statutes and provisions” could not be identified without litigation.²⁶² Thus, the initiative petition was “insufficient,” requiring the court to “enjoin the secretary of state from certifying the measure and all other officials from printing the measure on the ballot.”²⁶³ Yet, the court stayed execution of the injunction due to “the gravity of the unique issues involved . . . and the lack of direct precedent on point” until September 10, 2024, the ballot certification deadline.²⁶⁴

Secretary of State Ashcroft then purported to decertify Amendment 3, removing it from the November election ballot before the Missouri Supreme Court could hear oral argument: “On further review in light of the circuit court’s judgment, I have determined the petition is deficient[,]” purporting to undo the “administrative[] certifi[ca]tion[]” from August.²⁶⁵

On September 10, the Missouri Supreme Court heard oral argument and, mere hours before the deadline for printing absentee ballots, issued a one-page ruling requiring Ashcroft to “certify to local election authorities that Amendment 3 be placed on the November 5, 2024, general election ballot” and to “take all steps necessary to ensure that it is on said ballot.”²⁶⁶ In the brief order, the court explained that pursuant to state law, Ashcroft

²⁵⁷ *Id.* at ¶¶ 2–3. The plaintiffs also asked the court to declare unconstitutional the statute limiting the time to appeal the legal sufficiency of initiative petitions after certification for the ballot under the Missouri Constitution’s reservation “to the people the power to enact or reject amendments to the Constitution by initiative petition.” *Id.* at ¶ 5.

²⁵⁸ *Id.* at ¶¶ 30, 32. Plaintiffs then described a presumed parade of horrors flowing from Amendment 3. *See Id.* at ¶¶ 31–50.

²⁵⁹ *See* Motion to Intervene, *Coleman v. Ashcroft*, No. 24AC-CC07285 (Mo. Cole Cnty. Cir. Ct. Aug. 27, 2024); Judgment, *Coleman v. Ashcroft*, No. 24AC-CC07285, at 1 (Mo. Cole Cnty. Cir. Ct. Sept. 6, 2024) [hereinafter “*Coleman Judgment*”].

²⁶⁰ *Coleman Judgment*, *supra* note 259, at 2–3.

²⁶¹ *Id.* at 5–6.

²⁶² *Id.* at 8–9. In short, “the defendant-intervenor Fitz-James’ failure to include any statute or provision that will be repealed, especially when many of these statutes are apparent, is in blatant violation of the sufficiency requirements under 116.050.2(2) RSMo.” *Id.* at 9.

²⁶³ *Id.* at 9.

²⁶⁴ *Coleman*, No. 24AC-CC07285, at 10.

²⁶⁵ *See* Letter from John R. Ashcroft, Mo. Sec’y of State, to Tori Schafer (Sept. 9, 2024), RE: INITIATIVE PETITION CIRCULATED BY ANNA FITZ-JAMES (2024-086), <https://www.courts.mo.gov/fv/c/Exhibit%20A.PDF?courtCode=SC&di=201731>.

²⁶⁶ *Coleman v. Ashcroft*, No. SC100742, at 1 (Mo. Sept. 10, 2024) (en banc).

had certified Amendment 3 “as sufficient prior to th[e] deadline, and any action taken to change that decision weeks after the statutory deadline expired is a nullity and of no effect.”²⁶⁷ Ten days later, the court released three opinions, showing a 4-3 split.²⁶⁸

During the general election campaign, opponents focused on tying Amendment 3 to gender-affirming care for transgender youth, which is already illegal in Missouri.²⁶⁹

On Election Day, a majority of voters approved Amendment 3 and hours later, Planned Parenthood challenged Missouri’s abortion restrictions.²⁷⁰ In late December 2024, a state trial court preliminarily enjoined the abortion ban and some other restrictions.²⁷¹ In mid-February 2025, that same court, on a motion for reconsideration, preliminarily enjoined other restrictions.²⁷²

That is not the end of the story.²⁷³ In late May, the state Supreme Court directed the trial court to vacate the preliminary injunctions and “reevaluate . . . [the] request for preliminary injunctive relief in light of [the correct] standard.”²⁷⁴ The trial court vacated the injunctions, reimposing the state’s abortion ban, and the litigation continues.

Further, Missouri has a history of legislative action to undo successful ballot measures.²⁷⁵ Before and after Election Day, opponents suggested changing or repealing Amendment 3.²⁷⁶ At the end of the next legislative

²⁶⁷ *Id.*

²⁶⁸ See Coleman v. Ashcroft, 696 S.W.3d 347 (Mo. 2024) (en banc).

²⁶⁹ See Jeremy Kohler, *Opponents of Missouri Abortion Rights Amendment Turn to Anti-Trans Messaging and Misinformation*, PROPUBLICA (Oct. 18, 2024, 05:00 ET), <https://www.propublica.org/article/missouri-abortion-rights-amendment-anti-transgender-campaign-messaging>. This messaging was seen nationwide in states considering abortion ballot measures.

²⁷⁰ See Zernike, *supra* note 214; see generally Petition by Plaintiff, Comprehensive Health of Planned Parenthood Great Plains v. Missouri, No. 2416-CV31931 (Mo. Jackson Cnty. Cir. Ct. Nov. 6, 2024).

²⁷¹ See generally Order, Comprehensive Health of Planned Parenthood Great Plains v. State, No. 2416-CV31931 (Mo. Jackson Cnty. Cir. Ct. Dec. 20, 2024).

²⁷² Order, Comprehensive Health of Planned Parenthood Great Plains v. State, No. 2416-CV31931, at 3 (Mo. Jackson Cnty. Cir. Ct. Feb. 14, 2025).

²⁷³ See Anna Spoerre, *Failed GOP Attempt to Keep Abortion off Missouri Ballot Could Foreshadow Fight to Come*, MO. INDEP. (Sept. 25, 2024, 05:55 ET), <https://missouriindependent.com/2024/09/25/amendment-3-challenges-abortion-missouri-legislation/> (quoting Senator Coleman, “‘This is not the end all be all, . . . [a]nd I think you will see efforts, win or lose, for Missourians to get another say in this.’”).

²⁷⁴ Peremptory Writ at 2, State ex rel. Kehoe v. Zhang, No. SC101026 (Mo. May 27, 2025).

²⁷⁵ Spoerre, *supra* note 273 (citing instances in 1940, 2010, and 2018 when the legislature counteracted voter-approved legislation or constitutional amendment).

²⁷⁶ See Anna Spoerre, *Republican Lawmakers Propose Constitutional Amendments to Overturn Amendment 3*, NEWS TRIBUNE (Dec. 22, 2024, 04:00 ET), <https://www.newstribune.com/news/2024/dec/22/republican-lawmakers-propose-constitutional/>; Hannah Falcon, *Missouri Lawmakers Pre-File Over a Dozen Bills, Resolutions on Abortion in Response to Amendment Three Passing*, KY3 (Dec. 6, 2024, 18:32 ET), <https://www.ky3.com/2024/12/06/missouri-lawmakers-pre-file-over-dozen-bills-resolutions-abortion-response-amendment-three-passing/>; Kacen Bayless, *Top MO Republican Said He’d Respect Voters’ Will. Now He’s Open to Changing Abortion Law*, KAN. CITY STAR (Nov. 20, 2024, 4:50 PM), <https://www.kansascity.com/news/politics-government/article295879274.html>; John Murphy, *Lawmakers and Lawyers Have Some Paths to Restricting Abortion After Amendment 3 Passage*, KOMU (Nov. 10, 2024), https://www.komu.com/news/elections/election_report/lawmakers-and-lawyers-have-some-paths-to-restricting-abortion-after-amendment-3-passage/article_43eb2af8-9e23-11ef-abab-

session, the state Senate approved a joint resolution (previously passed by the House) to put a new proposed constitutional amendment before voters in or before November 2026 that would repeal the Reproductive Freedom Initiative and only allow abortion “in cases of medical emergency, fetal anomaly, rape, or incest”—and only in the first trimester for the last two circumstances—as well as reserve legislative power to “regulate the provision of abortions, abortion facilities, and abortion providers.”²⁷⁷ The proposal would also ban “[f]etal organ harvesting” and gender-affirming care for minors.²⁷⁸ While time will tell what will happen with the new “Amendment 3,”²⁷⁹ some Missourians seem to have had enough and are organizing for a 2026 constitutional amendment to limit the Legislature’s power to modify citizen initiatives.²⁸⁰

G. Montana

In 1999, the Montana Supreme Court concluded that the state constitution’s right to individual privacy protected “procreative autonomy,” including “the right to seek and to obtain . . . a pre-viability abortion, from a health care provider of [one’s] choice.”²⁸¹ Even so, the Republican-controlled legislature repeatedly sought to restrict abortion access.²⁸² In November 2023, Montanans Securing Reproductive Rights (“MSRR”) proposed an amendment to explicitly protect abortion in the state constitution.²⁸³ The proposed constitutional amendment, later known as

0ba7763d369a.html ; Anna Claire Vollers, *Conservatives Push to Declare Fetuses as People, with Far-Reaching Consequences*, MO. INDEP., (Aug. 5, 2024, 12:00 ET), <https://missouriindependent.com/2024/08/05/conservatives-push-to-declare-fetuses-as-people-with-far-reaching-consequences/>.

²⁷⁷ H.R.J. Res. 73, 103d Gen. Assemb., Reg. Sess. (2025), MO. CONST. art. I, § 36(a).

²⁷⁸ *Id.* at 9.

²⁷⁹ See Jacob Richey, *Missouri Appeals Court Rewrites Ballot Language for Amendment to Ban Most Abortions Again*, KOMU (Dec. 4, 2025), https://www.komu.com/news/state/missouri-appeals-court-rewrites-ballot-language-for-amendment-to-ban-most-abortions-again/article_fcfc8dce-4416-46cb-823c-1d50cbbe362d.html.

²⁸⁰ See *Some Voters Are Pushing Back on Lawmakers’ Efforts to Overturn Citizen Ballot Initiatives*, SPECTRUM NEWS (Mar. 21, 2025, 07:28 ET), <https://spectrumlocalnews.com/mo/st-louis/news/2025/03/21/voters-pushing-back-on-efforts-to-overturn-ballot-initiative> [hereinafter “*Voter Pushback*”].

²⁸¹ *Armstrong v. State*, 989 P.2d 364, 370 (Mont. 1999).

²⁸² See, e.g., S.B. 154, 68th Leg., Reg. Sess. (Mont. 2023) (“The right of individual privacy as referenced in the Montana constitution . . . does not create, and may not be construed as creating or recognizing, a right to abortion or to governmental funding of abortion.”); see also *Weems v. State*, 529 P.3d 798 (Mont. 2023) (relying on *Armstrong* to invalidate law limiting provision of abortion care to licensed physicians and physician assistants); Order Granting Summary Judgment, *Planned Parenthood of Mont. v. State*, No. DV-21-999 (Mont. Yellowstone Cnty. Dist. Ct. Feb. 29, 2024) (striking down 20-week abortion ban, telehealth abortion ban, 24-hour waiting period, mandated consent form, and required offer of ultrasound/fetal heart tone); John Riley, *MT Supreme Court Rules Three Abortion Laws from 2021 Are Unconstitutional*, KTVH (June 9, 2025, 19:52 ET), <https://www.ktvh.com/news/montana-news/mt-supreme-court-rules-three-abortion-laws-from-2021-are-unconstitutional>; Matt Volz, *Montana Designs New Hurdles for Abortion Clinics Ahead of Vote to Protect Access*, KFF HEALTH NEWS (Aug. 1, 2024), <https://kffhealthnews.org/news/article/montana-abortion-clinics-hurdles-oversight-november-ballot-access/>.

²⁸³ See Austin Amestoy & Mara Silvers, *Abortion Initiative Reignites Republicans’ Frustrations with Montana Supreme Court*, MONT. PUB. RADIO (Apr. 10, 2024, 09:54 ET), <https://www.mtpr.org/montana-news/2024-04-10/abortion-initiative-reignites-republicans-frustrations-with-montana-supreme-court>.

“CI-128,” would protect “a right to make and carry out decisions about one’s own pregnancy, including the right to abortion,” which “shall not be denied or burdened unless justified by a compelling government interest achieved by the least restrictive means.”²⁸⁴ Yet, it would allow the state to regulate abortion “after fetal viability” except that it could not “deny or burden access to an abortion that, in the good faith judgment of a treating health care professional, is medically indicated to protect the life or health of the pregnant patient.”²⁸⁵

The antiabortion movement, again aided by antiabortion politicians, attempted to derail the proposal, most notably, by trying to keep it off the ballot entirely.

First, Montana Attorney General Austin Knudsen halted the initiative process by concluding that the proposal was “legally insufficient” because it “logroll[ed] multiple distinct political choices into a single initiative.”²⁸⁶ The Montana Supreme Court disagreed, concluding that the amendment proposed “a single change to the Montana Constitution on a single subject: the right to make decisions about one’s own pregnancy, including the right to abortion.”²⁸⁷ The court rejected Knudsen’s other arguments and directed him to “prepare a ballot statement consistent with the applicable statutory requirements and forward the statement to the Montana Secretary of State within five days.”²⁸⁸

Second, Knudsen then rejected MSRR’s proposed ballot statement and drafted his own, which stated that the amendment: (1) would “allow post-viability abortions up to birth”; (2) left “to the subjective judgment of an abortion provider” the meaning of “fetal viability” and “extraordinary medical measures”; (3) “prohibit[ed] any State requirement for parental notice”; (4) obviated most “health and safety regulations”; (5) prevented enforcement of “medical malpractice standards against providers for harms caused in providing pregnancy/abortion care”; and (6) could “increase the number of taxpayer-funded abortions.”²⁸⁹ MSRR challenged this statement in court, too.²⁹⁰ The Montana Supreme Court, again, agreed with MSRR that the ballot language failed to “fairly state to the voters what is proposed within the Initiative”; instead the language “would prevent a voter from casting an intelligent and informed ballot” because the language “focuse[d]

²⁸⁴ Constitutional Initiative No. 128 (Mont. 2024) [hereinafter *CI-128*]. “A government interest is compelling only if it clearly and convincingly addresses a medically acknowledged, bona fide health risk to a pregnant patient and does not infringe on the patient’s autonomous decision making.” *Id.*

²⁸⁵ *Id.* “Fetal viability” was defined as “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.” *Id.*

²⁸⁶ Brent Mead, *Memorandum Re: Legal Sufficiency Review of Proposed Ballot Measure No. 14*, DAILY MONTANAN (Jan. 16, 2024), <https://dailymontan.com/wp-content/uploads/2024/01/2024.01.15-Bal- lot-Measure-14-Legal-Sufficiency-Final.pdf>.

²⁸⁷ *Montanans Securing Reproductive Rights v. Knudsen*, 545 P.3d 45, 51 (Mont. 2024).

²⁸⁸ *See id.* at 52-53.

²⁸⁹ *See Montanans Securing Reproductive Rights v. Knudsen*, 546 P.3d 183, 186 (Mont. 2024).

²⁹⁰ *Id.*

on topics, such as parental notice and medical malpractice, that [CI-128] d[id] not discuss.”²⁹¹ Instead of returning the task of drafting to Knudsen, the court prepared its own ballot statement, which it directly certified to the secretary of state to move the initiative process along²⁹²—this dispute had delayed “signature gathering by several weeks.”²⁹³

Third, days after MSRR launched its efforts in April 2024 to collect the approximately 60,000 signatures (from 10% of voters in forty different state House districts) by June 21, 2024, Republican Senators on the Law and Justice Interim Committee opposed the constitutional amendment.²⁹⁴ Yet, the legislative hearing was unnecessary: the Montana Supreme Court explained that “[t]he interim committee review process ha[d] thus not been triggered as the condition precedent—a finding of legal sufficiency by the Attorney General—was not met.”²⁹⁵ The secretary-of-state-supplied petition forms drew attention to this procedural quirk, discouraging people from signing:

Voters are advised that unlike the other 2024 ballot issues, the Montana Supreme Court ordered that the ordinary process which authorizes the Legislature to have either an interim committee or an administrative committee of the legislature review the content of this initiative prior to circulation does not apply to this petition.²⁹⁶

Fourth, the Montana Life Defense Fund (“MLDF”) spread misinformation about CI-128, “claiming it would usher in an era of limitless abortion and lead to a series of negative consequences,” while also “training its own volunteers to deter petitioners and, when sheets of signatures [we]re submitted, to weed out ineligible names.”²⁹⁷ Opponents cast CI-128 as unreasonably overbroad, including by claiming that it “would allow any medical provider, such as dental hygienists, to provide abortions without

²⁹¹ *Id.* at 188.

²⁹² *Id.* at 190.

²⁹³ Mara Silvers, *Montana’s Abortion Rights Campaign Seeking Signatures while Dodging Opposition*, KPAX (June 3, 2024, 10:33 AM), <https://www.kpax.com/news/montana-news/montanas-abortion-rights-campaign-seeking-signatures-while-dodging-opposition>.

²⁹⁴ See Blair Miller, *Group Kicks off Signature Gathering Efforts for Montana Abortion Access Ballot Petition*, IDAHO CAPITAL SUN (Apr. 18, 2024, 10:33 ET), <https://idahocapitalsun.com/2024/04/18/group-kicks-off-signature-gathering-efforts-for-montana-abortion-access-ballot-petition/>; Mara Silvers, *Republicans Vote to Oppose Constitutional Abortion Rights Measure*, MONT. FREE PRESS (Apr. 18, 2024), <https://montanafreepress.org/2024/04/18/montana-republicans-vote-to-oppose-constitutional-abortion-rights-measure/>.

²⁹⁵ *Montanans Securing Reproductive Rights*, 546 P.3d 183, 186 n.2 (Mont. 2024).

²⁹⁶ Jonathan Ambarian, *Montana Abortion Measure a Step Closer to Signature Gathering after Legal Back-and-Forth*, KTVH (Apr. 5, 2024, 20:42 ET), <https://www.ktvh.com/news/montana-abortion-measure-a-step-closer-to-signature-gathering-after-legal-back-and-forth>.

²⁹⁷ Silvers, *supra* note 293.

government regulation”—even though the proposal permitted government regulation to address “medically acknowledged, bona fide health risk[s] to a pregnant patient.”²⁹⁸

Fifth, MLDF volunteers videotaped CI-128 supporters trying to collect signatures in public places, thereby discouraging people from signing petitions.²⁹⁹ These and other opponents filed complaints with the Commissioner of Political Practices, alleging signature-gathering violations.³⁰⁰ Due to concerns about violence and harassment from the antiabortion movement, MSRR did not hold large public events.³⁰¹

Despite the antiabortion movement’s opposition, MSRR turned in over 117,000 signatures—nearly double the amount required to get on the ballot—on the June 21, 2024 deadline.³⁰² According to the ACLU, this set a record.³⁰³

Yet, despite the record number of signatures, Secretary of State Christi Jacobsen used her office in another attempt to keep CI-128 off the ballot. According to MSRR, historically “the Secretary has correctly and lawfully directed county election administrators to ‘accept the signatures of’ electors who appear on the ‘inactive’ voter list,” but on June 28, 2024, “the Secretary abruptly reversed course [to] effectively forc[e] election administrators to reject signatures from [these] qualified electors” by “unilaterally reprogram[ing] the State’s software program used by county election administrators to process petitions to reject signatures from these voters automatically.”³⁰⁴ MSRR sought a temporary restraining order and preliminary injunction requiring “the counting of signatures of qualified electors . . . and the restoration of any unlawfully rejected signatures.”³⁰⁵ The Secretary of State claimed that “[i]t was imperative that the incorrect

²⁹⁸ *Id.* This misinformation continued in the lead-up to the general election. See Darrell Ehrlick, *Gianforte Revives Debunked Abortion Claim for Ballot Initiative*, DAILY MONTANAN (Aug. 2, 2024, 17:39 ET), <https://dailymontanain.com/2024/08/02/gianforte-revives-debunked-abortion-claim-for-ballot-initiative/>.

²⁹⁹ Silvers, *supra* note 293; see also Denali Sagner, *Abortion Rights Advocates Report Intimidation During Signature Collection Effort*, FLATHEAD BEACON (June 12, 2024), <https://flatheadbeacon.com/2024/06/12/montana-abortion-constitutional-amendment-signature-128/> (“As opposition to CI 128 has mounted, signature gatherers have been filmed and followed across the state, including in Helena, Butte, Billings, Bozeman and Stevensville[.]”).

³⁰⁰ Silvers, *supra* note 293.

³⁰¹ *Id.*

³⁰² See Julia Mueller, *Montana Organizers Submit Signatures to Add Abortion-Rights Measure to the Ballot*, THE HILL (June 21, 2024, 18:09 ET), <https://thehill.com/homenews/campaign/4734258-montana-organizers-submit-signatures-add-abortion-rights-measure-ballot/>.

³⁰³ Adam Edelman & Lindsey Pipia, *Montana Organizers Collect Enough Signatures to Advance Abortion Rights Ballot Measure*, NBC NEWS (June 21, 2024, 16:06 ET), <https://www.nbcnews.com/politics/2024-election/montana-abortion-ballot-measure-signatures-rcna158016>.

³⁰⁴ Complaint for Declaratory and Injunctive Relief at 2, *Montanans Securing Reproductive Rights v. State*, No. C DV-25-2024-0000463-DK, (Mont. 1st Judicial Dist. Ct. Lewis & Clark Cnty. July 10, 2024).

³⁰⁵ Plaintiffs’ Brief In Support of Motion for Temporary Restraining Order & Preliminary Injunction at 17, *Montanans Securing Reproductive Rights v. State*, No. C DV-25-2024-0000463-DK (Mont. 1st Judicial Dist. Ct. Lewis & Clark Cnty. July 10, 2024).

guidance provided by previous administrations be corrected.”³⁰⁶ A state court required counting the signatures of inactive-but-registered voters and the state supreme court denied Jacobsen and Knudsen’s request to revise that ruling.³⁰⁷

On the July 19, 2024, deadline, “[c]ounty election officials . . . verified 74,186 voter signatures, more than the 60,359 needed for the constitutional initiative to go before voters” and “also met the threshold of 10% of voters in 51 House Districts—more than the required 40 districts.”³⁰⁸ The secretary of state’s office certified the measure for the November ballot.³⁰⁹

In the lead-up to the election, “pastors, priests, faith-based anti-abortion advocates and conservative Christian policy groups” actively opposed CI-128.³¹⁰ The Montana Catholic Conference encouraged bishops to voice their opposition publicly, while the Montana Family Foundation circulated a letter seeking pledges from pastors to “prepare [their] congregations to vote against this ballot initiative.”³¹¹ Other opponents “suggest[ed] a [signature-gathering] campaign motivated by the clipboard wielders’ hourly wages” and “derid[ing] the out-of-state funders and political action committees financially fueling” CI-128’s sponsor.³¹²

Despite these efforts, a majority of voters approved CI-128 on Election Day, with an effective date of July 1, 2025.³¹³ In the interim, the Montana legislature considered a proposed constitutional amendment to confer “personhood” rights on embryos and a statute creating the crime of “abortion trafficking,” to penalize leaving the state for an abortion unavailable in Montana.³¹⁴ Montana also made changes to the petitioning process for ballot

³⁰⁶ Blair Miller, *Montana Abortion Petition Group Alleges Secretary of State Wrongfully Tossing Signatures*, DAILY MONTANAN (July 9, 2024, 15:46 ET), <https://dailymontan.com/2024/07/09/montana-abortion-petition-group-alleges-secretary-of-state-wrongfully-tossing-signatures/>.

³⁰⁷ See Order, *State v. Montana First Judicial Dist. Ct., Lewis & Clark Cnty.*, No. OP. 24-0431 (Mont. July 23, 2024); Bowen West, *Montana Supreme Court Denies Petition to Take Case on Ballot Measure Signatures*, NBC MONT. (July 24, 2024, 10:16 ET), <https://nbcmontana.com/news/local/montana-supreme-court-denies-petition-to-take-case-on-ballot-measure-signatures>.

³⁰⁸ Amy Beth Hanson, *Abortion Rights Supporters Report Having Enough Signatures to Qualify for Montana Ballot*, ASSOCIATED PRESS (July 19, 2024, 19:20 ET), <https://apnews.com/article/montana-abortion-ballot-measure-0fc3226216500b4f385db7313ed1947f>.

³⁰⁹ *Id.*; Amy Beth Hanson, *Montana Becomes Eighth State with Ballot Measure Seeking to Protect Abortion Rights*, ASSOCIATED PRESS (Aug. 20, 2024, 23:21 EDT), <https://apnews.com/article/montana-abortion-rights-constitutional-amendment-177266d09ce91e073407276e588868df>.

³¹⁰ Mara Silvers, *From the Pulpit, Abortion Initiative Opponents Urge Congregations to Vote Against CI-128*, MONT. FREE PRESS (Oct. 25, 2024), <https://montanafreepress.org/2024/10/25/montana-abortion-initiative-opponents-urge-christian-congregants-to-vote-against-ci-128/>. However, this activity was not unanimous: “Many churches in Montana [did] not [participate] in organizing for or against CI-128” and “[o]ther congregation leaders have endorsed the initiative’s stated intent and criticized recent laws seeking to curb or regulate abortion access.” *Id.*

³¹¹ *Id.*

³¹² *Id.*

³¹³ Daniel Arkin, *Montana Voters Approve Constitutional Right to Abortion*, NBC NEWS (Nov. 6, 2024, 04:35 ET), <https://www.nbcnews.com/politics/2024-election/montana-abortion-rights-amendment-ballot-measure-pass-rcna177397>; MONT. CODE ANN. § 13-27-105(2) (2023).

³¹⁴ See H.B. 316, 69th Leg., Reg. Sess. (Mont. 2025); H.B. 609, 69th Leg., Reg. Sess. (Mont. 2025).

measures.³¹⁵ However, CI-128 took effect on July 1st as anticipated, after the Montana Supreme Court rejected a last-minute legal challenge.³¹⁶

H. Nebraska

At the end of the 2023 legislative session, Nebraska's unicameral legislature shortened the window for abortion from twenty to twelve weeks, except in cases of rape, incest, or medical emergency.³¹⁷ A week after Ohio enshrined the right to make reproductive healthcare decisions in its state constitution, Protect Our Rights—a coalition including the ACLU of Nebraska, I Be Black Girl, Planned Parenthood North Central States, and the Women's Fund of Omaha—launched its campaign to protect abortion until fetal viability (and thereafter where the pregnant person's health or life is in danger) in Nebraska.³¹⁸ The proposal provided that:

All persons shall have a fundamental right to abortion until fetal viability, or when needed to protect the life or health of the pregnant patient, without interference from the state or its political subdivisions. Fetal viability means the point in pregnancy when, in the professional judgment of the patient's treating health care practitioner, there is a significant likelihood of the fetus' sustained survival outside the uterus without the application of extraordinary medical measures.³¹⁹

Protect Our Rights chose this language through efforts of activists, attorneys, community members, and doctors, following multiple rounds of

³¹⁵ Tom Lutey, *Changes Coming to Montana Elections*, MONT. FREE PRESS (May 16, 2025), <https://montanafreepress.org/2025/05/16/how-lawmakers-are-changing-montana-election-laws/>.

³¹⁶ Darrell Ehrlick, *Groups File Suit to Declare Montana's Right to Abortion Is Unconstitutional*, DAILY MONTANAN (Aug. 6, 2025, 12:53 ET), <https://dailymontan.com/2025/08/06/groups-file-suit-to-declare-montanas-right-to-abortion-is-unconstitutional/>. After the state supreme court unanimously rejected the effort to prevent CI-128 from being added to the constitution, the Montana Family Foundation and Montana Life Defense Fund filed another lawsuit seeking to invalidate it. *Id.*

³¹⁷ *Cf.* NEB. REV. STAT. § 28-3106 (2023); with S. 574, 2023 Leg., 82nd Sess. (Neb 2023), <https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB574.pdf>. In July 2024, the Nebraska Supreme Court rejected a challenge to this restriction under the state constitution's single-subject provision since it had been combined with a ban on gender affirming care for minors. *See* Planned Parenthood of the Heartland, Inc. v. Hilgers, 317 Neb. 217 (2024).

³¹⁸ Nathaniel Weixel, *Advocates Launch Ballot Measure to Protect Abortion in Nebraska*, THE HILL (Nov. 15, 2023, 15:15 ET), <https://thehill.com/policy/healthcare/4311517-ballot-abortion-nebraska-2024/>.

³¹⁹ PROTECT THE RIGHT TO ABORTION—CONSTITUTIONAL INITIATIVE, 5 (2023), <https://sos.nebraska.gov/sites/default/files/doc/elections/Petitions/2024/Protect%20the%20Right%20to%20Abortion%20Constitutional%20Amendment.pdf>.

polling.³²⁰ Even so, the antiabortion movement painted the proposal as “extreme” and “very vague.”³²¹ Opponents claimed “that the measure would allow abortions literally until the end of pregnancy,” “eliminate health and safety standards, and allow minors to obtain abortions without parental notification.”³²²

After initially rejecting the idea of a competing ballot initiative,³²³ the antiabortion movement reversed course, circulating three competing abortion-related initiative petitions. First, Protect Women and Children proposed: “Except when a woman seeks an abortion necessitated by a medical emergency or when the pregnancy results from sexual assault or incest, unborn children shall be protected from abortion in the second and third trimesters.”³²⁴ Second, Now Choose Life proposed: “A preborn child at every stage of development is a person. Wherever under Nebraska law the term ‘person’ is used or implied, it shall include such a child.”³²⁵ Finally, the Human Life Protection Initiative would ban abortion, but carve out an “affirmative defense” for “licensed physician[s],” when the pregnant person’s life was at risk.³²⁶

To get on the ballot in Nebraska, a proposed constitutional amendment needed approximately 123,000 signatures (10% of registered voters, including 5% of registered voters in 38/93 counties) by July 3, 2024.³²⁷ Protect Our Rights and Protect Women and Children were the only abortion-related initiative campaigns to succeed, each turning in over 200,000 signatures.³²⁸ By early July, the secretary of state’s office received 304 affidavits from voters asking to have their names removed from the Protect Women and Children petition, likely due to misleading statements by

³²⁰ Elizabeth Rembert, *Group Looks to Enshrine Abortion Access until Fetal Viability in Nebraska*, NEB. PUB. RADIO (Nov. 15, 2023, 07:00 AM), <https://nebraskapublicmedia.org/en/news/news-articles/group-looks-to-enshrine-abortion-access-until-fetal-viability-in-nebraska/>.

³²¹ Andrew Wegley, *Petition Seeks to Enshrine Abortion Rights in Nebraska Constitution*, OMAHA WORLD-HERALD (Nov. 16, 2023), https://omaha.com/news/state-regional/nebraska-abortion-rights-petition-language/article_e203168b-c7b3-559e-8a8c-73f969255fe5.html.

³²² Weixel, *supra* note 318; *Nebraska Abortion Rights Advocates Release Petition Language to Get Issue on November 2024 Ballot*, 10/11 NOW (Nov. 15, 2023), <https://www.1011now.com/2023/11/15/abortion-rights-advocates-release-petition-language-get-issue-nov-ballot/>.

³²³ Margery A. Beck, *Emboldened by Success in Other Red States, Effort Launched to Protect Abortion Rights in Nebraska*, ASSOCIATED PRESS (Nov. 15, 2023), <https://apnews.com/article/abortion-ballot-measure-nebraska-0ccae759148162706ab1e2006ecb936e>.

³²⁴ Petition: Protect Women and Children—Constitutional Amendment, 5 (Neb. 2024), <https://sos.nebraska.gov/sites/default/files/doc/Protect%20Women%20and%20Children%20Constitutional%20Amendment.pdf>.

³²⁵ Petition: NOW CHOOSE LIFE, 5 (Neb. 2024), <https://sos.nebraska.gov/sites/default/files/doc/elections/Petitions/2024/Now%20Choose%20Life%20Constitutional%20Amendment.pdf>.

³²⁶ Petition: NEBRASKA HUMAN LIFE PROTECTION, 6 (Neb. 2023), <https://sos.nebraska.gov/sites/default/files/doc/elections/Petitions/2024/Nebraska%20Human%20Life%20Protection%20Initiative.pdf>; Philip Catalfamo, *Four Ballot Initiatives in Nebraska Tackle Abortion in Their Own Way*, NEB. NOW (June 14, 2024, 12:08 AM), <https://www.klknv.com/four-ballot-initiatives-in-nebraska-tackle-abortion-in-their-own-way/>.

³²⁷ Weixel, *supra* note 318.

³²⁸ See Aaron Sanderford, *Nebraska Abortion Fight Fuels Record Filings to Remove Signatures from Petitions*, NEB. EXAM’R (July 8, 2024, 04:00 ET), <https://nebraskaexaminer.com/2024/07/08/nebraska-abortion-fight-fuels-record-filings-to-remove-signatures-from-petitions/>.

canvassers.³²⁹ On August 23, 2024, Bob Evnen, the Secretary of State, announced that both proposals had qualified for the November ballot with over 136,000 verified signatures.³³⁰ The proposals were then named Initiative 439 (Protect Our Rights) and Initiative 434 (Prohibit Abortions After the First Trimester Amendment).

The antiabortion movement then filed two lawsuits seeking to prevent Initiative 439 from appearing on the ballot, contending that it was confusing and violated the state constitution's single-subject requirement.³³¹ Twenty-nine doctors supporting abortion rights filed their own suit—arguing that Initiative 434 was confusing and violated the single-subject requirement—asking the Nebraska Supreme Court to treat the competing ballot initiatives alike: either pull them both or let them both go before voters.³³² The court unanimously decided to keep both initiatives on the ballot.³³³

In the lead up to the election, the antiabortion movement sought to defeat Initiative 439 through confusion and misinformation. An antiabortion doctor who had sought to prevent the initiative from appearing on ballots starred in a television ad, portraying herself as a reproductive rights advocate: “As a doctor, I want compassionate, clear, scientific standards of care” and “Initiative 439 pretends to protect our rights but it does the opposite. It lets government officials interfere in medical decisions and takes care out of the hands of licensed physicians, when women in crisis need them most.”³³⁴ The week before the election, state officials warned about misinformation in television advertisements involving the competing abortion ballot measures.³³⁵

On Election Day, Nebraska became the first state to enshrine pre-viability abortion restrictions in its state constitution since *Dobbs*, with citizens opting to pass Initiative 434 and reject Initiative 439.³³⁶ The antiabortion movement's strategy of “using the language of reproductive freedom to advance seemingly moderate measures that obscure long-term

³²⁹ *Id.* In contrast, only twelve affidavits requested signature removal from the Protect Our Rights petition. The proponents of the Protect Our Rights measure encouraged voters to remove their signatures if they were worried about signing the wrong petition. *Id.*

³³⁰ See Press Release, Secretary of State Certifies Two Abortion-Related Petitions for General Election Ballot, State of Neb. Sec'y of State (Aug. 23, 2024), <https://sos.nebraska.gov/sites/default/files/doc/news-releases/Secretary%20of%20State%20certifies%20two%20abortion-related%20petitions.pdf>.

³³¹ See Aaron Sanderford, *Three's a Crowd in Nebraska Abortion Amendment Lawsuits*, NEWS FROM THE STATES (Aug. 30, 2024, 20:17 ET), <https://www.newsfromthestates.com/article/threes-crowd-nebraska-abortion-amendment-lawsuits>; see also *State ex rel. Brooks v. Evnen*, 317 Neb. 581, 585–88 (2024).

³³² *State ex rel. Constance v. Evnen*, 317 Neb. 600, 601–03 (2024).

³³³ See *Brooks*, 317 Neb. at 583, 597–98; *Constance*, 317 Neb. at 600, 607.

³³⁴ Rachel Cohen Booth, *Nebraska Is the Only State with Two Abortion Measures on the Ballot. Confusion Is the Point.*, VOX (Oct. 15, 2024, 07:00 EDT), <https://www.vox.com/2024-elections/377639/nebraska-abortion-ballot-measure-trimester-ban-election-reproductive-freedom>.

³³⁵ See Jake Anderson, *Nebraska DHHS Issues Health Alert for Ads with 'Incorrect and Misleading Information' about Abortion Law*, KETV (Oct. 28, 2024, 11:36 ET), <https://www.ketv.com/article/nebraska-dhhs-health-alert-abortion-law-ads/62737065>.

³³⁶ See Elizabeth Rembert, *Nebraska Voters Opt to Keep 12-Week Abortion Ban in Place*, NAT'L PUB. RADIO (Nov. 6, 2024, 04:09 ET), <https://www.npr.org/2024/11/06/g-s1-32935/abortion-ban-nebraska-vote>.

goals of deeper bans” will likely be “export[ed]” elsewhere given the success in Nebraska.³³⁷ If abortion-rights supporters want to try again in Nebraska—either to amend Initiative 434 or repeal it via a new proposal—they will have to wait at least two years under state law.³³⁸ Abortion opponents are seeking to put their own proposal—an outright abortion ban without exceptions—on the ballot in 2026.³³⁹

I. Nevada

Following a 1990 referendum (approved by nearly two-thirds of voters), Nevada law codifies *Roe*, permitting abortion until twenty-four weeks gestation, and also prevents the legislature from restricting abortion without having the people directly approve the change.³⁴⁰ Even so, in August 2023, Planned Parenthood created Nevadans for Reproductive Freedom PAC (“NRF”), which in September 2023 filed a petition for a November 2024 ballot initiative that would add reproductive freedom protections to the state constitution.³⁴¹

The Coalition for Parents and Children, an organization opposing NRF’s efforts, sued seeking to enjoin the secretary of state from placing the initiative on the ballot, contending that the proposal “violated the single-subject requirement because it considered multiple medical procedures, instead of being limited to only pregnancy or abortion” since it covered abortion, birth control, infertility, and post-partum care.³⁴² The trial court agreed, granting the injunction “for three reasons: (1) [the initiative petition] does not contain [only] a single subject, (2) its description of effect is misleading, and (3) it requires an expenditure of money without raising the necessary revenue.”³⁴³ On NRF’s appeal, the state supreme court “conclude[d] that] the district court erred”: (1) “all medical procedures considered in the initiative petition concern[ed] reproduction,” making them “germane to each other,” such that “the initiative’s single subject [was] establishing a right to reproductive freedom”; (2) “the description of effect was legally sufficient” because it “addresse[d] the initiative’s goals: to

³³⁷ Booth, *supra* note 334; but see Shefali Luthra, *How Abortion Rights Groups Are Preparing for the Next Trump Administration* (Nov. 21, 2024, 13:57 ET), <https://19thnews.org/2024/11/abortion-rights-second-trump-administration/> (reporting that the citizen-initiated ballot measure strategy “is hitting its endpoint” because “[t]here are only four states left that allow the direct democracy approach—Arkansas, Idaho, North Dakota, and Oklahoma—where voters have not yet weighed in on state abortion rights”).

³³⁸ NEB. REV. STAT. § 18-259.

³³⁹ Juan Salinas II, *Nebraska Group Seeks to Turn State’s 12-Week Abortion Ban into Total One*, NEWS FROM THE STATES (June 11, 2025, 06:00 ET), <https://www.newsfromthestates.com/article/nebraska-group-seeks-turn-states-12-week-abortion-ban-total-one>.

³⁴⁰ See Nevada *Question 7, Abortion Legal to 24 Weeks Statute Referendum (1990)*, BALLOTEDIA, [https://ballotpedia.org/Nevada_Question_7_Abortion_Legal_to_24_Weeks_Statute_Referendum_\(1990\)](https://ballotpedia.org/Nevada_Question_7_Abortion_Legal_to_24_Weeks_Statute_Referendum_(1990)).

³⁴¹ Megan Barth, *Planned Parenthood Officers File Petition to Add Abortion to Nevada Constitution*, NEV. GLOBE (Sept. 15, 2023, 07:00 ET), <https://thenevadaglobe.com/articles/planned-parenthood-officers-file-petition-to-add-abortion-to-nevada-constitution/>.

³⁴² *Nevadans for Reproductive Freedom v. Washington*, 546 P.3d 801, 804 (Nev. 2024).

³⁴³ *Id.*

recognize and protect a fundamental right to reproductive freedom” and “how the initiative intend[ed] to reach those goals: by defining what is included in the right to reproductive freedom and limiting the State’s regulation and prosecution of reproductive decisions”; and (3) “the initiative petition d[id] not require an expenditure of funds” since it did not, contrary to the trial court’s reasoning, “contemplate a new State entity to determine the standard of care or to evaluate whether a provider performed within the standard of care.”³⁴⁴

In December 2023, while that appeal was pending, NRF proposed a revised petition, focused only on the “fundamental right” to abortion before fetal viability or when necessary to protect the health or life of the pregnant person. This right could be infringed only by a compelling state interest, which would be limited to “the state’s interest in protecting, maintaining, or improving the health of an individual who is seeking abortion care that is consistent with accepted clinical standards of practice.” The same trial court that rejected the reproductive freedom proposal approved this one.³⁴⁵

In February 2024, NRF launched its signature-collection efforts on its abortion-only proposal, choosing to concentrate on this proposal due to time constraints.³⁴⁶ As in other states, the antiabortion movement catastrophized what would happen if the amendment was added to the state constitution,³⁴⁷ but NRF ultimately turned in 200,000 signatures—nearly double the 102,362 required (with at least 25,591 from each congressional district)—of which, nearly 128,000 were deemed valid, securing a spot on the November 2024 ballot.³⁴⁸

While a majority of Nevadans supported the proposal on Election Day 2024,³⁴⁹ the proposal must be approved by a simple majority vote in two separate elections—meaning that the initiative will go before voters again in 2026.³⁵⁰

³⁴⁴ *Id.* at 804, 807–09.

³⁴⁵ News 4 & Fox 11 Digital Staff, *Nevada Judge Greenlights Abortion Rights Petition, Could Be Headed for 2024 Ballot*, NEWS 4 (Jan. 24, 2024, 15:26), <https://mynews4.com/newsletter-daily/carson-city-judge-greenlights-abortion-reproductive-rights-petition-for-2024-nevada-ballot>.

³⁴⁶ Jannelle Calderón, *More than 200,000 Nevadans Support Effort to Put Abortion Rights on November Ballot*, THE NEVADAN (May 21, 2024), <https://thenevadannews.com/2024/05/21/nevadans-support-abortion-ballot/>; Adam Edelman, *Nevada Abortion-Rights Group Officially Kicks off 2024 Ballot Measure Effort—With a Focus on IVF Concerns*, NBC NEWS (Feb. 24, 2024, 06:00 ET), <https://www.nbcnews.com/politics/2024-election/nevada-abortion-ballot-measure-ivf-rcna139061>.

³⁴⁷ Barth, *supra* note 341 (“the proposed constitutional amendment . . . wants to give constitutional immunity to amateur abortionists to operate up until the moment of birth on any woman or girl, no matter how young.”).

³⁴⁸ Gabe Stern, *Nevada Verifies Enough Signatures to Put Constitutional Amendment for Abortion Rights on Ballot*, ASSOCIATED PRESS (June 28, 2024, 19:32 EDT), <https://apnews.com/article/abortion-nevada-constitutional-amendment-c85970d01e74a79cc34d8e094075c9f7>; Calderón, *supra* note 346.

³⁴⁹ Eric Neugeboren, *Nevadans Vote to Enshrine Abortion Rights in Constitution, but it Needs Approval in 2026*, NEV. INDEP. (Nov. 5, 2024, 22:02 ET), <https://thenevadaindependent.com/article/nevadans-vote-to-enshrine-abortion-rights-in-constitution-but-it-needs-approval-in-2026>.

³⁵⁰ See *Filing a Constitutional Initiative*, NEV. SEC’y OF STATE, <https://www.nvsos.gov/sos/elections/initiatives-referenda/filing-a-constitutional-initiative>.

J. South Dakota

After *Dobbs*, South Dakota's trigger law became effective, banning abortion except if "appropriate and reasonable medical judgment [finds] that performance of an abortion is necessary to preserve the life of the pregnant female."³⁵¹ To liberalize the abortion regime, Dakotans for Health sponsored a ballot initiative that would amend the state constitution to: (1) prevent the state from restricting first-trimester abortions; (2) permit the state to regulate second-trimester abortions only if "reasonably related to the physical health of the pregnant woman"; and (3) permit the state to regulate or ban third-trimester abortions "except when abortion is necessary, in the medical judgment of the woman's physician, to preserve the life or health of the pregnant woman."³⁵² The organization modeled its proposal off *Roe*'s trimester framework and rushed to submit the proposed amendment to the Secretary of State's office before Monae Johnson took office.³⁵³ Planned Parenthood, the ACLU, and other abortion-rights groups "declined to support the effort" because they considered the proposal to protect "abortion in name only."³⁵⁴

At each stage of the initiative process, the antiabortion movement tried to derail Dakotans for Health's efforts, seeking to prevent South Dakotans from voting on the proposal—even though 65% of registered voters "support[ed] having a statewide referendum to determine South Dakota's laws regarding reproductive rights."³⁵⁵ Ultimately, the antiabortion movement got its way, defeating the proposal on Election Day.³⁵⁶

First, opponents made signature collection more difficult. County governments in Minnehaha and Lawrence Counties adopted new restrictions on petitioning on public property, making it harder for canvassers to obtain signatures.³⁵⁷ The counties then revised their policies after a federal district

³⁵¹ S.D. CODIFIED LAWS § 22-17-5.1 (2025).

³⁵² Jack Dura, *GOP Lawmakers Try to Thwart Abortion Rights Ballot Initiative in South Dakota*, ASSO-CIATED PRESS (Feb. 22, 2024, 16:08 ET), <https://apnews.com/article/south-dakota-abortion-ballot-initiative-dd0da89de4fd6d1ef133a57d697e3faf>.

³⁵³ See Joshua Haiar, *Some South Dakota Abortion Rights Groups Don't Back Ballot Measure to Restore Access*, STATELINE (Dec. 11, 2023, 10:05 ET), <https://stateline.org/2023/12/11/some-south-dakota-abortion-rights-groups-dont-back-ballot-measure-to-restore-access/> (noting that Johnson was endorsed by South Dakota Right to Life).

³⁵⁴ Zernike, *supra* note 5.

³⁵⁵ Stu Whitney, *New Poll: Majority of South Dakotans Oppose Total Ban on Abortion and Want Voters, Not Lawmakers, to Make the Rules*, S.D. NEWS WATCH (Aug. 16, 2022), <https://www.sdnews-watch.org/new-poll-majority-of-south-dakotans-oppose-total-ban-on-abortion-and-want-voters-not-lawmakers-to-make-the-rules/>.

³⁵⁶ Seth Tupper, Joshua Haiar, Makenzie Huber & John Hult, *Abortion-Rights Measure Loses in South Dakota*, S.D. SEARCHLIGHT (Nov. 6, 2024, 02:03 ET), <https://southdakotasearchlight.com/2024/11/06/abortion-rights-measure-loses-in-south-dakota/>.

³⁵⁷ See Cory Allen Heidelberger, *Minnehaha County Petition Restrictions: Restraining Order Expires, Judge Hears Evidence, Auditor Anderson Gave Money to Anti-Abortion Petition Blockers*, DAKOTA FREE PRESS (May 27, 2023), <https://dakotafreepress.com/2023/05/27/minnehaha-county-petition-restrictions-restraining-order-expires-judge-hears-evidence-auditor-anderson-gave-money-to-anti-abortion-petition-blockers/>; John Hult, *State, Minnehaha County Agree to Pay Legal Fees After Separate*

court enjoined the challenged restrictions.³⁵⁸ The leaders of the opposition campaign “vow[ed] to wage war against petition circulators,” including by putting “blockers on the street to stop circulators from collecting signatures.”³⁵⁹ As part of these efforts, the Life Defense Fund sought to discourage people from signing by arguing that the proposal was “radical.”³⁶⁰ The most prominent initiative opponent, Representative Jon Hansen (R-Dell Rapids), falsely claimed the proposal was “far more extreme than *Roe v. Wade* itself.”³⁶¹

Second, as the petitioning process unfolded, the Republican-controlled legislature adopted a resolution opposing the initiative.³⁶² The resolution concluded that the proposed amendment “would fail to protect human life, would fail to protect a pregnant woman, and would fail to protect the child she bears” because it “would severely restrict any future enactments of protections for a pregnant woman, her child, and her healthcare providers.”³⁶³ The Republican House Majority Leader justified the resolution as highlighting “some of the unintended or intended, maybe, consequences of the measure so that the public could see what it does in practical effect.”³⁶⁴ Yet, the proposed amendment expressly left the legislature leeway to regulate—or ban—abortion later in pregnancy.

Third, Representative Hansen, a fervent abortion opponent and the leader of a group dedicated to defeating the abortion ballot initiative, sponsored House Bill 1244, which created a process by which “[a]n individual who has signed a petition to initiate a constitutional amendment . . . may submit a written notification to the secretary of state stating that the individual’s name be withdrawn from the petition.”³⁶⁵ Curiously, the law took effect upon the governor’s signature as “necessary for the immediate preservation of the public peace, health, or safety” due to the “emergency” then “declared to exist.”³⁶⁶

Thereafter, South Dakota Right to Life undertook “a deliberate and organized campaign . . . to coerce signers into withdrawing their support

First Amendment Lawsuit Losses, DAKOTA NEWS NOW (Dec. 27, 2023, 13:52 ET), <https://www.dakotanewsnow.com/2023/12/27/state-minnehaha-county-agree-pay-legal-fees-after-separate-first-amendment-lawsuit-losses/>.

³⁵⁸ See Heidelberg, *supra* note 357; Hult, *supra* note 357; see *Dakotans for Health v. Anderson*, 677 F. Supp. 3d 977 (D. S.D. 2023); *Dakotans for Health v. Anderson*, 675 F. Supp. 3d 919 (D. S.D. 2023); *Dakotans for Health v. Ewing*, No. 5:23-CV-05042-RAL, 2023 WL 4118599 (D. S.D. June 22, 2023).

³⁵⁹ Cory Allen Heidelberg, *Hansen Vows to Shout Down Women and Voters Seeking Vote on Roe v. Wade Amendment*, DAKOTA FREE PRESS (Sept. 14, 2022), <https://dakotafreepress.com/2022/09/14/hansen-vows-to-shout-down-women-and-voters-seeking-vote-on-roe-v-wade-amendment/>.

³⁶⁰ *See id.*

³⁶¹ Stu Whitney, *Is Proposed Abortion Amendment ‘Far More Extreme’ than Roe v. Wade?*, S.D. NEWS WATCH (June 8, 2023), <https://www.sdnewswatch.org/south-dakota-abortion-measure-roe-wade/>.

³⁶² Dura, *supra* note 352.

³⁶³ H.R. Con. Res. 6008, 2024 Gen. Assemb., 99th Leg. Sess. (S.D. 2024).

³⁶⁴ Dura, *supra* note 352.

³⁶⁵ H.B. 1244, 2024 Gen. Assemb., 99th Leg. Sess. (S.D. 2024).

³⁶⁶ *Id.*

from the petition [to put abortion on the ballot].”³⁶⁷ This campaign distributed “misleading materials, including a ‘Liar Flyer,’ and formal legal forms urging the removal of [signers’] names from the petition”—both online and in person.³⁶⁸ In mid-May 2024, hundreds of petition signers received calls “from someone claiming to be a volunteer with the Secretary of State’s Office,” inquiring in a “judgmental tone” about their decision to sign the petition and encouraging them to withdraw their support—but the calls were not from the Secretary’s office; instead, they were made on behalf of the South Dakota Petition Integrity Committee.³⁶⁹ The Petition Integrity Committee, founded by Hansen, contended that signers were asked “whether petition circulators followed applicable laws and whether signers were misled into signing the petition.”³⁷⁰ While these efforts “smell[] of voter intimidation and harassment,”³⁷¹ the state attorney general’s office found “no indication of criminal activity.”³⁷² Even so, the secretary of state issued a public warning about the phone calls.³⁷³

Despite these efforts, Dakotans for Health submitted over 55,000 signatures—approximately 20,000 more than required—by the May 2024 deadline.³⁷⁴ Thereafter, Secretary of State Johnson certified “Amendment G” for the November 2024 ballot, after “conduct[ing] a random sample of the petition signatures and f[i]nd[ing that] 84.92 percent [were] valid,” such that “46,098 signatures were deemed valid.”³⁷⁵

However, as expected, before the June 17, 2024, deadline, an opposition group filed a lawsuit seeking to invalidate 148 additional signatures to prevent the initiative from appearing on ballots.³⁷⁶ In addition

³⁶⁷ John Tsitrian & Tom Lawrence, *Dakotans for Health Warns Freedom Amendment Petition Signers of Effort by Right to Life Organization*, S.D. STANDARD (May 13, 2024), <https://www.sdstandard-now.com/home/dakotans-for-health-warns-55000-freedom-amendment-petition-signers-of-coordinated-effort-by-right-to-life-organization>.

³⁶⁸ *Id.*

³⁶⁹ Jacob Newton, *Law Enforcement Investigates Abortion Petition Callers*, KELOLAND (May 14, 2024, 10:30 ET), <https://www.keloland.com/keloland-com-original/law-enforcement-investigates-abortion-petition-callers/>; Makenzie Huber, *Anti-Abortion Group Is behind Calls Labeled a ‘Scam’ by State Election Official*, S.D. SEARCHLIGHT (May 14, 2024, 16:17 ET), <https://southdakotasearchlight.com/2024/05/14/anti-abortion-group-behind-calls-labeled-scam-sd-secretary-state-abortion/>.

³⁷⁰ Huber, *supra* note 369.

³⁷¹ *Id.* (quoting Rick Weiland, leader of Dakotans for Health).

³⁷² Josh Chilson, *AG Finds No Evidence of Wrongdoing by Callers Opposing Abortion Petition*, S.D. PUB. BROAD. (May 14, 2024, 17:54 ET), <https://listen.sdpb.org/healthcare/2024-05-14/ag-finds-no-evidence-of-wrongdoing-by-callers-opposing-abortion-petition>.

³⁷³ See Press Release, S.D. Sec’y of State, Telephone Scam—Secretary Johnson Warns Citizens of Fake Groups Claiming to Be Making Calls on Behalf of SOS Office (May 13, 2024), <https://sdsos.gov/about-the-office/assets/Press%20Releases/SOSWarnsCitizensToRemainVigilantOnElectionCalls.pdf>.

³⁷⁴ See Jack Dura, *Abortion Rights Initiatives Make the Ballot in South Dakota and Colorado*, ASSOCIATED PRESS (May 17, 2024, 17:43 ET), <https://apnews.com/article/abortion-south-dakota-voter-ballot-amendment-ed7f558d0cfeabd944cef6ba4aa33cdc>; Zernike, *supra* note 5.

³⁷⁵ Press Release, S.D. Sec’y of State, Second Ballot Question Validated for 2024 General Election (May 16, 2024), <https://sdsos.gov/about-the-office/assets/Press%20Releases/AbortionValidationPressRelease.pdf>.

³⁷⁶ Lee Strubinger, *Anti-Abortion Group Files Lawsuit Against Abortion Rights Ballot Question*, S.D. PUB. BROAD. (June 17, 2024, 14:40 ET), <https://listen.sdpb.org/politics/2024-06-17/anti-abortion-group->

to challenging the validity of signatures, the Life Defense Fund alleged petition process failures by Dakotans for Health and asked the court to prevent involvement from “Dakotans for Health and those who worked with or for it” in ballot measure campaigns for four years.³⁷⁷ A state trial court dismissed the suit, but the state supreme court reversed.³⁷⁸ The Life Defense Fund then added Secretary Johnson as a defendant and argued that “unlawful actions during the petition-gathering process should nullify a vote to pass the amendment.”³⁷⁹ A seven-day trial was scheduled to begin on September 23, 2024—three days *after* the start of early voting, which created the specter of election interference—but the trial was cancelled due to judicial reassignments and the case’s dismissal after Election Day.³⁸⁰

All of these efforts paid dividends. While summer polling suggested Amendment G would pass,³⁸¹ by the end of the campaign, opposition groups outraised Dakotans for Health by almost a 2-1 margin and outspent Dakotans for Health more than ten times over.³⁸² Unlike in 2006 and 2008 when South Dakotans rejected strict abortion restrictions, in 2024 voters rejected

files-lawsuit-against-abortion-rights-ballot-question; Jack Dura, *An Anti-Abortion Group in South Dakota Sues to Take an Abortion Rights Initiative off the Ballot*, ASSOCIATED PRESS (June 17, 2024), <https://apnews.com/article/south-dakota-abortion-rights-ballot-initiative-94ceb056ed97b40ea76730a9c3e662a6>; Stu Whitney, *Poll: Amendment to Expand South Dakota Abortion Rights Has Nearly 20-Point Lead*, S.D. NEWS WATCH (June 3, 2024), <https://www.sdnews-watch.org/poll-amendment-to-expand-south-dakota-abortion-rights-has-nearly-20-point-lead/>.

³⁷⁷ Dura, *supra* note 376; Stu Whitney, *Lawsuit over Abortion Amendment Challenged in Federal Court*, MITCHELL REP. (June 18, 2024, 14:13 ET), <https://www.mitchellrepublic.com/news/south-dakota/lawsuit-over-abortion-amendment-challenged-in-federal-court/>; The allegations mirror South Dakota Right to Life’s complaint to the state attorney general during the petitioning process. See Letter from Marty J. Jackley, Att’y Gen. of S.D. to Richard P. Weiland, Dakotans for Health (Oct. 31, 2023); Letter from Richard P. Weiland, Dakotans for Health, to Marty J. Jackley, Attorney General, South Dakota (Nov. 2, 2023).

³⁷⁸ Jack Dura, *South Dakota Court Decision Threatens Abortion Rights Measure on November Ballot*, ABC NEWS (Aug. 5, 2024, 10:48 ET), <https://abcnews.go.com/US/wireStory/south-dakota-supreme-court-reverses-judges-dismissal-lawsuit-112579152>; *South Dakota Anti-Abortion Group Appeals Ruling that Dismissed its Lawsuit over Ballot Initiative*, ASSOCIATED PRESS (July 19, 2024, 13:36 ET), <https://apnews.com/article/south-dakota-abortion-ballot-initiative-66a6895262c4dda90eedf0e05ff85dee>.

³⁷⁹ Jackson Dircks, *Amendment G Court Case Being Expedited*, S.D. PUB. BROAD. (Aug. 12, 2024, 13:54 ET), <https://www.sdpb.org/politics/2024-08-12/amendment-g-court-case-being-expedited>; Makenzie Huber, *Abortion Rights Measure Likely to Appear on Ballot, but Lawsuit Could Affect Election Results*, MITCHELL REP. (Aug. 7, 2024, 14:12 ET), <https://www.mitchellrepublic.com/news/south-dakota/abortion-rights-measure-likely-to-appear-on-ballot-but-lawsuit-could-affect-election-results>.

³⁸⁰ John Hult, *Abortion Measure Lawsuit Dismissed in Minnehaha County*, NEWS FROM THE STATES (Nov. 18, 2024, 14:57 EDT), <https://www.newsfromthestates.com/article/abortion-measure-lawsuit-dismissed-minnehaha-county>; Joshua Haiar, *Court Explains Abortion Ballot Measure Trial Mix-Up but Doesn’t Schedule New Date*, S.D. SEARCHLIGHT (Sept. 19, 2024, 17:49 ET), <https://southdakotasearchlight.com/2024/09/19/court-explains-abortion-ballot-measure-trial-mix-up-but-doesnt-schedule-new-date>; John Hult, *Abortion Ballot Measure Challenge on Course for Late September Trial*, S.D. SEARCHLIGHT (Sept. 3, 2024, 15:28 ET), <https://southdakotasearchlight.com/2024/09/03/abortion-ballot-measure-challenge-on-course-for-late-september-trial/>.

³⁸¹ Whitney, *supra* note 355 (reporting on a May 2024 poll which found a majority (53%) of South Dakotans supported Amendment G and a July 2022 “poll of 500 registered voters [in South Dakota, which] showed that a majority (57%) of respondents support allowing legal access to abortion medications in the state, including 42% who “strongly support” such access”).

³⁸² See Makenzie Huber, *\$500K Contribution Helps Abortion-Rights Group Narrow Fundraising Gap*, S.D. SEARCHLIGHT (Oct. 24, 2024, 18:34 ET), <https://southdakotasearchlight.com/2024/10/24/anti-abortion-groups-campaign-finance-fundraise-spending-amendment-g-ahead-of-election/>.

Amendment G.³⁸³ Thereafter, Dakotan’s for Health’s co-founder urged the legislature to add exemptions to the state’s restrictive abortion law for pregnancies resulting from rape and incest and for nonviable pregnancies consistent with the opposition’s promises during the campaign.³⁸⁴ Should Dakotans for Health or anyone else seek to bring another ballot measure forward, the process will be more onerous.³⁸⁵

CONCLUSION: THE ANTIABORTION MOVEMENT THREATENS AMERICAN DEMOCRACY.

By removing the constitutional floor mandated by *Roe* and *Casey*, the Supreme Court painted *Dobbs* as a win for democracy because the American people would gain control over abortion policy in their states. Since *Dobbs*, support for abortion has increased.³⁸⁶ As of 2023, in forty-five states, at least 50% of residents believed that abortion should be legal in all or most cases, while only “[r]oughly one in ten residents in most states sa[id that] abortion should be illegal in all cases.”³⁸⁷ Majorities of Americans oppose: “heartbeat bills” (63%); bans only permitting abortion to save the life of the mother (72%); laws making it illegal to cross state lines to obtain a legal abortion (77%); and bans at fifteen weeks’ gestation (52%).³⁸⁸ Polling suggests that 80% of Americans do not want the government involved in abortion at all.³⁸⁹ Yet, the antiabortion movement—aided by likeminded politicians—repeatedly sought to deny voters the ability to enact their pro-choice policy preferences at the ballot box. Despite these actions, across all abortion-related ballot measures—both citizen-initiated and legislatively-referred—“the pro-choice side has garnered 60.4% of the 56.6M votes cast.”³⁹⁰

³⁸³ Tupper, *supra* note 356; Whitney, *supra* note 376 (discussing 2006 and 2008 referenda in which South Dakotans rejected abortion bans with limited exceptions (to preserve the life of the mother and life of the mother, rape, and incest, respectively)).

³⁸⁴ *Amendment G Sponsor Calls on Legislature to Pass Abortion Exemptions Bill*, DAKOTA NEWS NOW (Dec. 8, 2024, 12:14 ET), <https://www.dakotaneWSnow.com/2024/12/08/amendment-g-sponsor-calls-legislature-pass-abortion-exemptions-bill/>.

³⁸⁵ See Joshua Haiar, *Legislature Approves Several New Restrictions on Citizen Ballot Measures*, S.D. SEARCHLIGHT (Mar. 17, 2025, 18:11 ET), <https://southdakotasearchlight.com/2025/03/17/legislature-approves-several-new-restrictions-on-citizen-ballot-measures/> (reporting on legislative approval of shortened signature collection period, geographic requirements for signatures, and increased voter threshold for approval. This restriction on citizen-initiated ballot measures is an about-face from South Dakota’s history as the first state to allow initiatives).

³⁸⁶ See Fernando & Thomson-Deveaux, *supra* note 3; PEW RSCH. CTR., *supra* note 3.

³⁸⁷ PRRI 2023, *supra* note 213, at 12–13 (identifying only Arkansas, Idaho, North Dakota, South Dakota, and Utah as states in which “a minority of residents support abortion”). A year before, forty-three states had at least 50% of residents supporting legal abortion in all or most circumstances. See ABORTION ATTITUDES IN A POST-ROE WORLD: FINDINGS FROM THE 50-STATE 2022 AMERICAN VALUES ATLAS 10 (Feb. 2023), <https://www.prrri.org/wp-content/uploads/2023/02/PRRI-Feb-2023-Abortion-D-1.pdf> [hereinafter “PRRI 2022”] (identifying Arkansas, Idaho, Mississippi, Oklahoma, South Dakota, Tennessee, and Utah as states with less than 50% of residents who say abortion should be legal in all or most cases).

³⁸⁸ PRRI 2022, *supra* note 387, at 22–23.

³⁸⁹ Adriel Bettelheim, *Exclusive Poll: Americans Strongly Back Abortion Pill Access, FDA Drug Powers*, AXIOS (Mar. 29, 2024), <https://www.axios.com/2024/03/29/abortion-pill-supreme-court-case-poll>.

³⁹⁰ David S. Cohen (@dsc250.bsky.social), Bluesky (Nov. 22, 2024, 11:02 ET), <https://bsky.app/profile/did:plc:depcs5sr3mflnnhtxcpxnbzd/post/3lbke2iviks2f>.

These efforts, which seek to impose the will of an antiabortion minority on the pro-choice majority, represent a significant threat to a fundamental tenet of our democracy: that government power stems from the will of the people.³⁹¹ As Kelly Hall, executive director of the Fairness Project, said antiabortion politicians

are saying: “We know that voters disagree with us on this issue, and rather than us changing how we govern to be more in line with the people who we are elected to represent, we are going to change the rules of governance itself to make sure that we don’t have to listen to our constituents.” That is new, that is wild, [and] that should freak everyone out—regardless of how you feel about abortion—because it means that we have let our elected representatives get completely untethered from the fundamental role that they are elected to fulfill, which is to represent our views. They are saying in black and white in print, in no uncertain terms: “We are not going to listen to you.”³⁹²

Put simply: Antiabortion attacks on direct democracy are attacks on the democratic ideals—popular sovereignty, majority rule—on which our nation was built.

This is not surprising: “women’s civil rights and democracy go hand in hand.”³⁹³ In fact, “the absence of democracy—or even a decline in the quality of democracy—leads to fewer protections for women and more impunity for those who violate women’s human rights.”³⁹⁴ This connection between women’s rights and democracy makes sense: democracy is “based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all

³⁹¹ See Erica Chenoweth & Zoe Marks, *Revenge of the Patriarchs: Why Autocrats Fear Women*, 101 FOREIGN AFFAIRS 103, 103 (2022) (“[I]n recent years, authoritarian leaders have launched a simultaneous assault on women’s rights and democracy that threatens to roll back decades of progress on both fronts.”); see also SMITH & TOLBERT, *supra* note 4, at 141 (the initiative process “is one of the most pristine forms of governance that exists in the states, as power surges directly from the only legitimate fountain of authority—the people”).

³⁹² Stuart, *supra* note 12; Cf. RUTH BEN-GHIAT, STRONGMEN: MUSSOLINI TO THE PRESENT 49 (2020) (“Elections had long been a mark of an open society and their absence a criterion of autocracy, but new authoritarians use elections to keep themselves in office, deploying antidemocratic tactics like fraud or voter suppression to get the results they need.”).

³⁹³ Chenoweth & Marks, *supra* note 391, at 105.

³⁹⁴ Marisa von Bülow, *Women’s Activism: Resistance and Democracy in Brazil*, in ON THE FRONT LINES: WOMEN’S MOBILIZATION FOR DEMOCRACY IN AN ERA OF BACKSLIDING, *supra* note 51, at 5.

aspects of their lives.”³⁹⁵ A person cannot fully participate politically or socially if she lacks control over her body.³⁹⁶ Accordingly, autocrats begin by targeting sexual and reproductive health and rights in order to “pav[e] the way for repealing other rights, such as voting rights.”³⁹⁷ These strongmen often explicitly oppose the progress of women’s rights “under the guise of a return to ‘traditional values,’ while the women’s movement itself is subverted, ignored, or smeared as an alien ‘gender ideology.’”³⁹⁸

But, why? “Aspiring autocrats and patriarchal authoritarians have good reason to fear women’s political participation: when women participate in mass movements, those movements are both more likely to succeed and more likely to lead to more egalitarian democracy.”³⁹⁹ Autocrats often come to power following “periods of economic and political gain for women,” so they “seek[] to reverse shifts in social norms that threaten patriarchy and the satisfaction of ‘natural’ male desires.”⁴⁰⁰ Unfortunately and importantly, this connection goes both ways: “anti-democratic efforts lead to further erosion of reproductive rights, and regression on abortion rights results in further democratic backsliding,”⁴⁰¹ as seen by the correlation between states—both domestic and international—that restrict both voting and abortion.⁴⁰²

These dynamics have played out elsewhere. For example, in Fascist Italy, the state “banned abortion and contraception,” restricted “anything

³⁹⁵ SAMIRA DAMAVANDI, COERCION AND CONTROL: SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS, DECLINE OF DEMOCRACY AND RISE IN AUTHORITARIANISM 2 (2023), <https://www.icrw.org/wp-content/uploads/2023/06/SRHR-and-the-Divide-of-Democracy.pdf>; see also *id.* at 3 (“Reproductive rights have been inextricably linked to democratic institutions.”); see also Zillah Eisenstein, *Privatizing the State: Reproductive Rights, Affirmative Action, and the Problem of Democracy*, 12 FRONTIERS: A J. OF WOMEN STUDIES 98, 117 (1991) (“If democracy is, in part, based on human rights and the individual freedom of choice to determine the decisions that affect one’s life, then abortion and the broader concern of reproductive rights are crucial to the practice of democracy.”).

³⁹⁶ Martha F. Davis & Risa E. Kaufman, *A Global View of U.S. Backsliding on Democracy and Reproductive Rights*, AM. CONST. SOC’Y (Nov. 13, 2023), <https://www.acslaw.org/expertforum/a-global-view-of-u-s-backsliding-on-democracy-and-reproductive-rights/>.

³⁹⁷ DAMAVANDI, *supra* note 395, at 3; see also Anna Gustafson, *Why Experts Say the Fall of Abortion Rights Is a Key Sign of a Troubled Democracy*, MICH. ADVANCE (Sept. 25, 2022, 04:10 ET), <https://michiganadvance.com/2022/09/25/why-experts-say-the-fall-of-abortion-rights-is-a-key-sign-of-a-troubled-democracy/> (“[P]olitical scientists noted, authoritarian, or authoritarian-friendly, leaders often set their sights on annihilating reproductive rights, including access to abortion.”).

³⁹⁸ Colleen Scribner, *Why Strongmen Attack Women’s Rights*, FREEDOM HOUSE (June 18, 2019), <https://freedomhouse.org/article/why-strongmen-attack-womens-rights>. In response, some “women have refused to become the tools of state demographic agendas. They have declined to procreate for the state, instead risking prison to obtain birth control and have abortions.” BEN-GHIAT, *supra* note 392, at 196.

³⁹⁹ Chenoweth & Marks, *supra* note 391, at 105.

⁴⁰⁰ BEN-GHIAT, *supra* note 392, at 121.

⁴⁰¹ Davis & Kaufman, *supra* note 396.

⁴⁰² See Hanna Kozłowska, *Where Democracy Falts, So Do Reproductive Rights*, FOREIGN POLICY (Mar. 16, 2022, 08:34 ET), <https://foreignpolicy.com/2022/03/16/where-democracy-falts-so-do-reproductive-rights/>; Dylan C. Naughton, *What Influences Reproductive Rights Policy? State Abortion Restrictions and the Level of State Democracy* 11 (Univ. of Minn. Morris Undergraduate J., Manuscript 1133, <https://digitalcommons.morris.umn.edu/cgi/viewcontent.cgi?article=1133&context=horizons> (“states with lower levels of democracy will appear to enact more restrictive reproductive policies”); see also Jessica GlENZA & Same Levine, *US Anti-Abortion Groups Shift Focus to Voting Restrictions*, GUARDIAN (Apr. 9, 2021, 06:00 ET), <https://www.theguardian.com/us-news/2021/apr/09/us-voting-restrictions-conservative-groups-lobbying-against-abortion>.

publicizing the means of preventing or interrupting pregnancy,” and considered registering all pregnancies in the 1920s and 1930s.⁴⁰³ More recently, “[a]utocrats in Russia, Poland, and Nicaragua have attacked women’s reproductive rights.”⁴⁰⁴ Putin’s Russia restricted abortion in 2003.⁴⁰⁵ In Poland and Hungary, twenty-first century abortion restrictions took effect because the countries’ strongmen leaders had eroded the rule of law.⁴⁰⁶ “A lack of guarantees for the rule of law has created a context in which the executives can use their discretionary power to limit reproductive rights and academic freedom without having to justify their actions to independent courts.”⁴⁰⁷

“The evidence is clear: When abortion is legal, democracy thrives. And when reproductive rights are restricted, democracy withers.”⁴⁰⁸ While the antiabortion movement in the United States met universal defeat in 2022 and 2023, it succeeded in defeating four citizen-initiated constitutional amendments in 2024. The antiabortion movement will seek to replicate its efforts in future battles over abortion ballot measures and continue to threaten direct democracy and our constitutional order.⁴⁰⁹ Americans must prioritize democracy—regardless of their opinions on abortion.⁴¹⁰

⁴⁰³ BEN-GHIAT, *supra* note 392, at 71, 84; VICTORIA DE GRAZIA, HOW FASCISM RULED WOMEN: ITALY, 1922–1945, 55, 58 (1993).

⁴⁰⁴ Sarah Sunn Bush & Pär Zetterberg, *Gender Equality and Authoritarian Regimes: New Directions for Research*, 2023 POL. & GENDER 1, 1 (2023).

⁴⁰⁵ BEN-GHIAT, *supra* note 392, at 84.

⁴⁰⁶ Paweł Marczewski, *Mobilizing for Reproductive Rights: Women’s Activism and the Crisis of Democracy in Poland and Hungary*, in ON THE FRONT LINES: WOMEN’S MOBILIZATION FOR DEMOCRACY IN AN ERA OF BACKSLIDING, *supra* note 51, at 21.

⁴⁰⁷ *Id.* at 22.

⁴⁰⁸ Alison Brysk, *Expanding Abortion Access Strengthens Democracy, While Abortion Bans Signal Broader Repression—Worldwide Study*, THE CONVERSATION (Oct. 24, 2024, 14:26 ET), <https://theconversation.com/expanding-abortion-access-strengthens-democracy-while-abortion-bans-signal-broader-repression-worldwide-study-240278>.

⁴⁰⁹ These antidemocratic efforts extend beyond abortion: according to the Ballot Initiative Strategy Center, there are approximately one-hundred bills in eighteen states to “make it more difficult for citizen-led initiatives to succeed.” See *Voter Pushback*, *supra* note 280; see also Anna Kaminski, *Kansas Abortion Rights Advocacy Group Sues State Officials over Law Banning Foreign Contributions*, KAN. REFLECTOR (May 19, 2025, 4:00 PM), <https://kansasreflector.com/2025/05/19/kansas-abortion-advocacy-group-sues-state-officials-over-law-banning-foreign-contributions/>.

⁴¹⁰ See Martin Skladany, *How the Anti-Abortion Movement Undermines Democracy*, NEW REP. (Sept. 24, 2024), <https://newrepublic.com/article/186246/abortion-rights-democracy-dobbs-authoritarianism>. Democratic backsliding has a wide range of negative consequences, which are outside the scope of this Article.; See e.g., Layna Mosley, *The Financial and Economic Dangers of Democratic Backsliding*, HARV. L. SCH. FORUM ON CORPORATE GOVERNANCE (July 31, 2023), <https://corpgov.law.harvard.edu/2023/07/31/the-financial-and-economic-dangers-of-democratic-backsliding/>.