



**Comment on Proposed Ballot Initiatives 2024-077 through 2024-087 filed by Missourians for Constitutional Freedom, all titled “The Right to Reproductive Freedom Initiative”**

Date: 6 April 2023 [Submitted Via Email]

To: The Honorable John R. Ashcroft  
Secretary of State  
State of Missouri

Dear Secretary Ashcroft:

This comment is submitted in response to the Missouri Secretary of State’s receipt of a series of proposed ballot amendments which would significantly alter the way Missouri regulates abortion, permitting more abortions with less oversight than at any point in recent memory.

The Secretary of State’s summaries will provide Missourians with critical information about these proposals and must accurately address the extent to which, if adopted, any of the proposals would fundamentally change abortion and parental rights in Missouri. Although there is a separate fiscal statement, it is worth noting that passage of any of these proposals could expose the state to litigation expenses and potentially costly legal liability if healthcare professionals are forced to violate their federally-protected [conscience rights](#). The Secretary of State’s summaries will be the official statement of the government of Missouri and must accurately explain to voters the stakes of enacting the proposals, not just to mothers and their children, but to the state as a whole.

**The proposals would be a significant break from Missouri’s longstanding commitment to the life, health, and well-being of unborn children.**

Although there is some variation among the proposals, we write to highlight the similarities. Every proposal would create a fundamental right to abortion and immunize from liability anyone “assisting a person” in acting upon that right “with that person’s consent.” This would essentially invalidate Missouri’s [requirements](#) that abortions be performed by a [licensed physician](#) with [clinical privileges](#) at a local hospital. It would provide cover for a coercive parent, partner or abuser who obtained abortion drugs online if she later tells police that she consented to taking the medications.

Proposals 77, 78, 79, 82, 84, 86, and 87 would infringe on the parental rights of Missouri families by striking the [parental consent law](#) and allowing abortions to be done on girls of any age without their parents even knowing. Even those proposals that purport to permit a lesser version of parental consent or notice (Proposals 80, 81, 83, and 85) only authorize one-parent consent, even where there is shared custody. Moreover, the amendments gut parental consent authorization by allowing the abortionist to disregard the lack of consent where the abortionist “in good faith” believes *either* the minor is mature and capable of consenting, *or* consent is not in her best interests, *or* consent “may” lead to “physical or emotional harm to the minor.” There is no authorization of even judicial bypasses; the abortionist makes the call in-house, with no independent review even though he or she has a financial incentive to perform the abortion. In short, the supposed authorization of parental consent is a sham. This would place young Missourians at a heightened risk of making irreversible, damaging decisions at the behest of a partner or abuser without the counsel or support of the people who have the greatest interest in their wellbeing, their mom and dad.

Not one of these proposals considers the life, health, or future of the tiny human in the womb, except, quite weakly, after 24 weeks LMP or after viability, both measurements that fall many weeks after an unborn child [feels pain](#). Even

that authorization of limits on late-term abortions has no real teeth, as it imposes an exception for “good faith” abortionist procedures done to protect maternal “physical or *mental* health” or for a “nonviable pregnancy” (which presumably means serious prenatal maladies). In other words, the amendment requires the state to “trust the abortionist” even with late-term abortions. This change in policy, if adopted, would contradict two centuries of Missouri laws. Missouri [criminalized](#) “caus[ing] or procur[ing] a miscarriage” as early as 1825, and during the five decades of *Roe v. Wade*, Missouri repeatedly passed and defended pro-life laws and the cause of the unborn in federal courts as it pushed back against *Roe*.

For over three decades it has been the [policy](#) of the state of Missouri that:

- “(1) The life of each human being begins at conception;
- (2) Unborn children have protectable interests in life, health, and well-being;
- (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child.

...[T]he laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state.”

Missouri has enacted [dozens of laws](#) to this effect, nearly all of which would be invalidated by any of these proposals. The variations among these proposals—whether abortion funding is expressly disavowed, whether a weak parental consent regulation could remain in place, and whether any post-24 week or post-viability limits are allowed—which proponents falsely call “compromise”—are dwarfed by the huge concession handed to the abortion industry: the creation of a fundamental right to abortion.

Several of the proposals would invalidate Missouri’s [prohibition on taxpayer funding](#) for abortion, which has been in effect for decades. Proposals 78, 80, 82, 83, and 86 would likely *require* taxpayer funding, and the remainder could be used to chip away at or overturn the funding prohibition by leveraging the newly created fundamental right to abortion with alternative theories like equal protection, privacy, or due process. Creating a fundamental right to abortion arms pro-abortion attorneys with a potent weapon against all remaining limits on abortion, no matter how modest.

**The proposals would permit abortion for virtually any reason, even later in pregnancy when the unborn child can feel excruciating pain.**

Currently, abortion is [illegal](#) in Missouri except in the case of a medical emergency. Missouri voters have consistently elected pro-life lawmakers who passed the “trigger law,” which took effect on June 24, 2022, when the Supreme Court of the United States [returned](#) “the authority to prohibit abortion at all stages of pregnancy” to Congress and the states. The Amendment would set Missouri back decades, returning the state to a regime where abortion doctors are unaccountable for harm they cause to mothers and unborn children are unprotected.

Abortions in Missouri would be almost totally unregulated, and prosecutors would be unable to act if a woman or girl within their jurisdiction was harmed during an abortion. If notorious Philadelphia abortionist [Kermit Gosnell](#), currently serving a life sentence, were to set up shop in Missouri, there is little the state could do about it if he could prove that there were women who sought out his services—denying or revoking the license of a practitioner or business might “infringe on that person’s autonomous decision-making” in violation of the proposals.

Proposals 77, 78, and 79 do not identify any gestational limit whatsoever, meaning that children could be killed at any time in pregnancy. Proposals 80, 81, 82, and 84 weakly authorize some limits past 24 weeks’ gestation, but since this is past the point when children reach viability, which is now closer to [22 weeks’ gestation](#), these proposals would

allow for the killing of unborn children who could survive outside the womb. Similarly, Proposals 83, 85, 86, and 87, which weakly authorize some limits post-viability, leave the determination of viability to the abortionists' discretion even though he or she has a financial interest in ensuring that the procedure happens. By defining fetal viability as a point in pregnancy when a child can survive "without the application of extraordinary medical measures," the proposals would allow for the late-term abortion of a child who would survive if he or she were treated in the NICU simply because that child needed medical treatment early in life. Leaving ultimate discretion in the hands of the abortionist could be used to allow the killing (through direct or indirect action) of a child born alive after a botched abortion.

Missouri would be extremely limited in how it could restrict late-term abortions. In some proposals, the "health" exception is left undefined, leaving it to the courts to determine how broadly it might be interpreted. A court ideally would look to existing [Missouri law](#) and narrowly define it as "a serious risk of substantial and irreversible impairment of a major bodily function." But the proposals abrogate this definition by adding "mental" health and leaving it to the abortionist to make the judgment. In practical effect, these proposals would impose the wide-open definition from *Doe v. Bolton*, namely that "medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient. All these factors may relate to health." If health means anything and everything, there would be virtually no restriction on abortions throughout pregnancy in Missouri. Ironically, the proposals would prevent commonsense laws that require healthcare professionals to provide women with information about the well-documented negative effects abortion has on a woman's physical, mental, and emotional health.

Furthermore, the proposals would prevent the state from asserting any interests on behalf of the child and would likely be used to challenge laws protecting the conscience rights of healthcare professionals. Laws that help women make their decision such as informed consent, reflection periods, and counseling about resources and alternatives to abortion could all be struck down, even though serving otherwise legitimate state's interests, just because those interests arguably are not *directly* tied to the "health of a person seeking care." The proposals could have unforeseen consequences on child-welfare laws or other laws that govern the treatment of human remains, reporting deaths of human beings, or other laws adjacent to the abortion procedure.

The proposals do not recognize Missouri's interest in the unborn child. His or her health, wellbeing, or chance at life is never considered anywhere in the proposals as currently written. If added to the Missouri Constitution, the proposals would assert that Missouri has *no* interest in the child and could be used as a tool of future courts to invalidate any protections that remained.

Missouri would rival California, Colorado, and New Mexico in its extremism if these proposals were to pass. The state would become an abortion destination for the region.

**The Secretary's summaries must explain the stakes of these proposals, including the major changes each would make to the Missouri Constitution.**

The proposals would create a right to abortion in Missouri law which has never existed in the state's history by extending even further than the failed framework that the Supreme Court of the United States discarded in 2022. As the multitudinous decisions of the Supreme Court demonstrate, *Roe v. Wade*'s creation of a "[constitutional right](#)" to abortion did not resolve the issue. Instead, the Court faced decades of abortion-related litigation over the Court's invented "right" to abortion and efforts by legislatures to affirm the sanctity of unborn human life, protect women from abusive practices, and address the problem of unsafe abortion practices.

If Missouri were to pass such an amendment, the state's Supreme Court would have to grapple with a similar parade of questions, to be answered with only the aid of vague state constitutional text. These proposals would expose the state to vast liability and clog up state courts with decades of litigation and showdowns between the three branches of government.

The Secretary's summaries must not fall into the same dehumanizing pattern we've been subjected to since the imposition of *Roe v. Wade*, applying euphemisms like the "right to abortion" when the reality of each of these

proposals is clear. This would establish a legal right, greenlit by the state constitution, to kill tiny, innocent human beings. Even in *Roe*, the Court [acknowledged](#), citing to an American Medical Association report, that what was at stake was the “destruction of human life.”

In that report, published in 1871, the AMA doctors stated: “**We had to deal with human life.** In a matter of less importance we could entertain no compromise. **An honest judge on the bench would call things by their proper names. We could do no less**” [emphasis added].

150 years later, with extraordinary advances in medical technology that give us a window into the womb, we must be honest just as those doctors were. What’s at stake is the lives of unborn babies, the safety of their mothers, and the degradation of medical practice and the law in Missouri.

We oppose the proposed ballot amendments and encourage the Secretary of State to publish a final summary that accurately reflects the magnitude of this initiative’s change to Missouri’s law and culture.

Submitted on behalf of Susan B. Anthony Pro-Life America and ACLJ Action.

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*Susan B. Anthony Pro-Life America is a network of more than one million pro-life Americans nationwide, dedicated to ending abortion by electing national leaders and advocating for laws that save lives, with a special calling to promote pro-life women leaders.*

*ACLJ Action, Inc. is an organization dedicated to the defense of constitutional values, liberty, and religious freedom in the U.S. and abroad.*