

## Dissecting the “Right to Reproductive Freedom” Amendment (HJ 1/SJ 247)

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“every **individual**” – does not say “adult” or “woman” so it applies to both male and female at any age, including minor girls and boys. It will be used to override parental rights laws.

“has the fundamental right to **reproductive freedom**” – “reproductive freedom” will mean whatever a court interprets it to mean, foreseeably including abortion, contraception, sterilization and sex-change surgeries.

“shall not be, directly or indirectly, **denied, burdened, or infringed upon** unless justified by a compelling state interest achieved by the least restrictive means” – language similar to “denied, burdened, or infringed upon” has already been used to enjoin pro-life laws in other states (see footnote).<sup>1</sup>

“the Commonwealth may regulate the provision of abortion care in the third trimester, provided that in no circumstance shall the Commonwealth prohibit an abortion (i) that **in the professional judgment of a physician**” – leaves it up to the abortionist to decide.

“. . . is medically indicated to protect the life or physical or **mental health** of the pregnant individual” – “mental health” is a huge loophole that will encompass anything that an abortionist says it encompasses.

“The Commonwealth **shall not discriminate** in the protection or enforcement of this fundamental right” – will be used to attack Virginia’s restriction on taxpayer funded elective abortions. A lawsuit has already been brought under Michigan’s constitutional amendment alleging that Michigan’s statutory prohibition on Medicaid-funded abortions discriminates against women seeking abortions compared to women who choose to carry their unborn children to term.<sup>2</sup>

“The Commonwealth shall not penalize, prosecute, or otherwise take adverse action against any individual for **aiding or assisting** another individual in exercising such other individual’s right to reproductive freedom with such other individual’s voluntary consent” – this language could allow a school counselor or employee to take a minor child for an abortion, contraception, or to undergo sterilization, without her parents’ knowledge or consent.

“a state interest is compelling only if it is for the limited purpose of maintaining or improving the health of an individual seeking care . . . **and does not infringe on that individual’s autonomous decision making**” – abortion rights groups are using the “autonomous decision making” language in court to preemptively try to negate an assertion by the State that a challenged pro-life law protects the health of the woman. In a Missouri lawsuit,<sup>3</sup> the woman’s right to “autonomous decision making” was raised to challenge Missouri’s chemical abortion telemedicine ban; prohibition on abortions based on the race, sex, or Down Syndrome diagnosis of an unborn child; physician-only law; waiting period; certain informed consent requirements; criminal penalties for violations by abortion providers, laws prohibiting abortions based on gestational age, and other pro-life laws.

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<sup>1</sup> A June 2024 preliminary injunction blocked enforcement of Michigan’s 24-hour waiting period, many of the mandatory informed consent requirements, and the physician-only law on the grounds that the laws violate the 2022 Michigan constitutional amendment because they “burden and infringe upon” a woman’s decision to obtain an abortion. See *Northland Family Planning v. Att’y Gen. of Michigan*, No. 24-000011-MM (Mich. Ct. Cl, June 25, 2024). An August 2024 preliminary injunction blocked enforcement of Ohio’s statutory requirements for a 24-hour waiting period, in-person visit with a physician, and provision of certain informational materials to a woman prior to an abortion, because the statutes “directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against” an individual’s exercise of her reproductive rights as prohibited by the 2023 Ohio constitutional amendment. See *Preterm-Cleveland v. Yost*, No. 24 CV 2634 (Court of Common Pleas, Franklin County, Ohio Aug. 23, 2024). The decision can be found at the end of a press release here: <https://www.acluohio.org/en/press-releases/ohio-judge-blocks-laws-mandating-24-hour-waiting-period-abortions-violating>. See also the preliminary injunction issued in December 2024 enjoining numerous pro-life laws in Missouri, *Comprehensive Health of Planned Parenthood Great Plains v. State of Missouri*, No. 2416-CV31931 (Cir. Ct. of Jackson County, Missouri at Kansas City Dec. 20, 2024).

<sup>2</sup> Verified Complaint, *The Young Women’s Christian Association of Kalamazoo, Michigan v. State of Michigan and Dept. of Health and Human Services* (Michigan Court of Claims, No. 24-000093-MM) at [https://www.aclumich.org/sites/default/files/field\\_documents/2024-06-27\\_complaint\\_with\\_case\\_number.pdf](https://www.aclumich.org/sites/default/files/field_documents/2024-06-27_complaint_with_case_number.pdf).

<sup>3</sup> *Comprehensive Health of Planned Parenthood Great Plains v. State of Missouri* (Cir. Ct. of Jackson County, Missouri at Kansas City, filed Nov. 6, 2024). The petition for a preliminary injunction and/or temporary restraining order can be found at the end of a press release here: <https://www.plannedparenthood.org/about-us/newsroom/press-releases/planned-parenthood-files-lawsuit-to-restore-abortion-access-on-heels-of-voters-approving-right-to-reproductive-freedom-initiative-2>