



# Constitutional Peril in Nevada: The Legal and Policy Implications of Enshrining a Right to Abortion in Nevada’s Constitution

By Bradley N. Kehr, J.D.<sup>1</sup> and Kaia Holmquist<sup>2</sup>

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<sup>1</sup> Government Affairs Director, Americans United for Life.

<sup>2</sup> Rising 2L at University of Toledo College of Law.

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## Introduction

The pro-life movement has accomplished many victories in the wake of the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*,<sup>3</sup> while also facing new challenges. Now that the Supreme Court has overturned *Roe v. Wade*<sup>4</sup> and returned the abortion issue to the democratic process, abortion activists have sought to enshrine a “right” to abortion in state constitutions across the country. These efforts pose a serious threat to pro-life laws and the protection of preborn human beings, women, and young girls. Michigan is a harrowing example of the impact of abortion ballot measures on life-affirming policies. Last year, Michigan residents voted to enshrine a “right” to abortion in their state constitution. Since then, the legislature has sought to repeal numerous protections for women and preborn children, including the state’s ban on partial-birth abortions, informed consent safeguards, and provisions requiring abortion facilities to be licensed and operated under necessary health and safety standards.

This November, Nevadans will face a similar ballot initiative entitled, the “The Nevada Reproductive Rights Amendment.” If passed, the ballot initiative would amend the Nevada constitution to state, “[a]ll individuals shall have a fundamental right to abortion performed or administered by a qualified health care practitioner 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.”<sup>5</sup> Further, the Amendment prohibits the state from enacting laws that protect women by directing that Nevada may not deny, burden, or infringe upon this right unless justified by a compelling state interest achieved by the least restrictive means.<sup>6</sup>

Although the Amendment seemingly allows for Nevada to regulate abortion after viability, it includes a broad exception for instances in which the abortionist determines an abortion is “needed to protect the life or health of the pregnant patient.”<sup>7</sup> Lastly, the Amendment defines fetal viability, which is an arbitrary and vague standard, as “the point in pregnancy when, in the professional judgment of the patient’s treating health

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<sup>3</sup> *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

<sup>4</sup> 410 U.S. 113 (1973).

<sup>5</sup> The Nevada Reproductive Rights Amendment (Nevada 2024).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

care practitioner, there is a significant likelihood of the fetus' sustained survival outside the uterus without the application of extraordinary medical measures.”<sup>8</sup>

The Amendment's language is deceptive. First, the misleading phrasing of this Amendment makes it appear as though Nevada currently restricts or is attempting to restrict individuals from making decisions about contraception, fertility treatment, miscarriage treatment, or “continuing one's own pregnancy.” This is not true, as Nevadans can freely obtain fertility and miscarriage treatments, or contraception. Current law also permits elective abortions up to 24 weeks' gestation. In other words, even if voters reject this Amendment, Nevada residents can still obtain contraception, fertility and miscarriage treatment, continue their pregnancies, and have an abortion.

Furthermore, the misleading language of the Amendment attempts to disguise abortion as healthcare. As discussed below in Section V, abortion is not healthcare. It is the intentional destruction of innocent preborn human life. Additionally, as the Supreme Court acknowledges in *Dobbs v. Jackson Women's Health Organization*, states have a legitimate interest in preserving prenatal life, mitigating fetal pain, and protecting maternal health.<sup>9</sup> Thus, Nevada can regulate abortion in furtherance of these important interests. However, if the Nevada Reproductive Rights Amendment passes the fallout will be devastating, especially for the welfare of Nevada women and their preborn children. The Amendment authorizes abortion-on-demand in every month of pregnancy, threatens to eliminate protections for women's welfare and parental involvement laws, gives abortionists free rein to operate clinics without health and safety regulations, increases the number of coerced abortions in Nevada, furthers the harmful and false narrative that abortion is necessary for women to have equality and success in America, and attempts to silence the voices of women harmed by abortion. The Amendment allows abortion activists to further turn Nevada into an abortion destination that endangers the health and safety of its residents both inside and outside the womb.

### I. The Nevada Reproductive Rights Amendment Authorizes Abortion-on-Demand Throughout Pregnancy.

The Amendment being passed will effectuate abortion-on-demand including in the seventh, eighth, and ninth month of pregnancy. Although the proposed Amendment includes language that seemingly allows Nevada to prohibit abortion after fetal viability, it allows for a broad “health” exception. The proposed Amendment states there is a right to abortion “until fetal viability, or when needed to protect the life or health of the pregnant patient.”<sup>10</sup> Courts, including the U.S. Supreme Court, have broadly interpreted this health exception. In *Doe v. Bolton*<sup>11</sup>, which was the companion case to *Roe*, the Supreme Court defined “health” in abortion laws as “*all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient.*”

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<sup>8</sup> *Id.*

<sup>9</sup> *Dobbs*, 142 S. Ct. at 2284.

<sup>10</sup> The Nevada Reproductive Rights Amendment (Nevada 2024) (emphasis added).

<sup>11</sup> Although *Doe v. Bolton* was the companion case for *Roe*, the Supreme Court did not overturn *Doe* in the *Dobbs* decision.

*All these factors may relate to health.*<sup>12</sup> Since then, “whenever and wherever used in abortion law, ‘health’ means ‘emotional well-being,’ and it’s a trap door for any state regulation. A state regulation cannot be applied if ‘emotional well-being of the patient—including any minor—might be affected by the regulation.”<sup>13</sup> This could be any foreseeable social reason such as the woman’s age, the ending of the relationship between the mother and the father of the baby, financial concerns, etc.

Although it is a common misconception that abortions performed under a health exception, or late-term abortions, are only performed in rare circumstances for medically necessary reasons, as the American Association of Pro-Life Obstetricians and Gynecologists (“AAPLOG”) states, “most abortions are done for social reasons.”<sup>14</sup> “Overall, common exceptions to abortion restrictions are estimated to account for less than five percent of all abortions meaning that 95 percent of abortions are for elective or unspecified reasons.”<sup>15</sup> Dr. James Studnicki published a similar outcome in *Health Services Research and Managerial Epidemiology* regarding late-term abortions. As he says, “[t]he Guttmacher Institute has provided a number of reports over 2 decades which have identified the reasons why women choose abortion, and they have consistently reported that childbearing would interfere with their education, work, and ability to care for existing dependents; would be a financial burden; and would disrupt partner relationships.”<sup>16</sup> Accordingly, most abortions occur for elective reasons of the mother, not because of the either the baby’s or the mother’s medical condition.

Furthermore, it is estimated that abortionists perform around 10,000 abortions at 21 weeks’ gestation or later each year.<sup>17</sup> Although, the number of late-term abortion is likely significantly higher given that the Centers for Disease Control and Prevention’s (“CDC”) data is limited by voluntary state reporting and abortion destination states, such as California and Maryland, refuse to provide any data to the CDC. The Amendment will only increase the number of late-term abortions due to its shift from a statutory protection to a constitutional protect, putting more women at risk of suffering severe and life-threatening complications, as well as subjecting her preborn child to painful abortion procedures. Passing this Amendment is not in the best interest of women and only deepens the abortion industry’s pockets while subjecting women to dangerous late-term abortions that threaten their physical and emotional well-being.

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<sup>12</sup> Doe v. Bolton, 410 U.S. 179, 192 (1973).

<sup>13</sup> Clarke D. Forsythe, *Feingold and Kagan on the Doe ‘Health’ Exception*, NAT’L REV. (June 29, 2010), <https://www.nationalreview.com/bench-memos/feingold-and-kagan-doe-health-exception-clarke-d-forsythe/>.

<sup>14</sup> AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, STATE RESTRICTIONS ON ABORTION: EVIDENCE-BASED GUIDANCE FOR POLICYMAKERS, Comm. Op. 10, at 10 (updated Sept. 2022).

<sup>15</sup> *The Assault on Reproductive Rights in a Post-Dobbs America: Hearing before the S. Comm. on the Jud.*, 118th Cong. 15 (2023) (written testimony of Monique Chireau Wubbenhorst, MD, MPH).

<sup>16</sup> James Studnicki, *Late-Term Abortion and Medical Necessity: A Failure of Science*, HEALTH SERVS. RSCH. & MANAGERIAL EPIDEMIOLOGY, Apr. 9, 2019, at 1, 1.

<sup>17</sup> Guttmacher Institute, *Induced Abortion in the United States*, GUTTMACHER (2019), <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>.

a. *The Nevada Reproductive Rights Amendment Increases the Number of Late-Term Abortions, Which Carry Higher Risks of Health Complications.*

By opening the door for late-term abortions in the state, The Amendment puts more women at risk of suffering severe and life-threatening complications. Abortions carry a higher medical risk when done later in pregnancy. Even Planned Parenthood, the largest abortion business in the United States, agrees that abortion becomes riskier later in pregnancy. On its national website, Planned Parenthood states: “The chances of problems gets higher the later you get the abortion, and if you have sedation or general anesthesia,” which would be necessary for an abortion at or after 20 weeks of gestation.<sup>18</sup> To put this in context, a 2019 study indicates “[i]t is estimated that about 1% of all abortions in the United States are performed after 20 weeks, or approximately 10,000 to 15,000 annually.”<sup>19</sup>

Gestational age is the strongest risk factor for abortion-related mortality, and the incidence of major complications is significantly higher after 20 weeks’ gestation.<sup>20</sup> For example, compared to an abortion at 8 weeks’ gestation, the relative risk of mortality increases exponentially (by 38 percent for each additional week) at higher gestational ages.<sup>21</sup> Further, researchers have concluded that it may not be possible to reduce the risk of death in later-term abortions because of the “inherently greater technical complexity of later abortions.”<sup>22</sup> This is because later-term abortions need to dilate the cervix to a greater degree, and the increased blood flow predisposes women to hemorrhage, and the myometrium relaxes and is more subject to perforation.<sup>23</sup>

Later-term abortions also pose an increased risk to the woman’s physical and mental health. Some immediate complications from abortion include blood clots, hemorrhaging, incomplete abortions, infection, and injury to the cervix and other organs.<sup>24</sup> Immediate complications affect approximately 10% of women undergoing abortion, and approximately one-fifth of these complications are life-threatening.<sup>25</sup> If Nevadans pass the Amendment and authorize abortion-on-demand, more women will experience life-threatening complications from late-term abortions.

b. *The Nevada Reproductive Rights Amendment Furthers the Psychological Harm of Abortion on Women.*

Amending Nevada’s constitution to enshrine a “right” to abortion will result in more women suffering post-abortive psychological harms. “[P]regnancy loss (natural or

<sup>18</sup> See Planned Parenthood, *How Safe Is an In-Clinic Abortion?*, <https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures/how-safe-is-an-in-clinic-abortion> (last visited Oct. 20, 2023).

<sup>19</sup> Studnicki, *supra* note 16, at 1.

<sup>20</sup> Linda A. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 OBSTETRICS & GYNECOLOGY 729, 731 (2004).

<sup>21</sup> *Id.* at 731; PRO. ETHICS COMM. OF AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, *Induced Abortion & the Increased Risk of Maternal Mortality*, Comm. Op. 6 (Aug. 13, 2019).

<sup>22</sup> Bartlett, *supra* note 20, at 735.

<sup>23</sup> *Id.*

<sup>24</sup> See Planned Parenthood, *supra* note 18.

<sup>25</sup> REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION 48 (2005).



induced) is associated with an increased risk of mental health problems.”<sup>26</sup> “Research on mental health subsequent to early pregnancy loss as a result of elective induced abortions has historically been polarized, but recent research indicates an increased correlation to the genesis or exacerbation of substance abuse and affective disorders including suicidal ideation.”<sup>27</sup>

Scholarship shows “that the emotional reaction or grief experience related to miscarriage and abortion can be prolonged, afflict mental health, and/or impact intimate or parental relationships.”<sup>28</sup> In fact, a recent 2023 study found that American “women whose first pregnancy ends in induced abortion are significantly more likely than women whose first pregnancy ends in a live birth to experience mental health problems throughout their reproductive years.”<sup>29</sup> Similarly, “[s]everal recent international studies have demonstrated that repetitive early pregnancy loss, including both miscarriage and induced abortions, is associated with increased levels of distress, depression, anxiety, and reduced quality of life scores in social and mental health categories.”<sup>30</sup>

The Amendment authorizes dangerous abortion procedures on women and young girls that negatively impact their mental and emotional well-being. By authorizing abortion-on-demand, the rates of mental health issues—such as depression, anxiety, and suicidal ideation—will increase and diminish their overall quality of life.

*c. The Nevada Reproductive Rights Amendment Subjects Preborn Children to Painful Abortion Procedures.*

In addition to harming women’s physical and mental health, abortion also subjects preborn children to fetal pain. There is ample research on fetal pain in the 50 years after *Roe*. As one example, in 2019, scientists found evidence of fetal pain as early as 12 weeks’ gestation.<sup>31</sup> A 2010 study found that “the earlier infants are delivered, the stronger their response to pain”<sup>32</sup> because the “neural mechanisms that inhibit pain sensations do not begin to develop until 34–36 weeks[] and are not complete until a significant time after birth.”<sup>33</sup> As a result, preborn children display a

<sup>26</sup> David C. Reardon & Christopher Craver, *Effects of Pregnancy Loss on Subsequent Postpartum Mental Health: A Prospective Longitudinal Cohort Study*, 18 INT’L J. ENV’T RSCH. & PUB. HEALTH 1, 1 (2021).

<sup>27</sup> Kathryn R. Grauerholz et al. *Uncovering Prolonged Grief Reactions Subsequent to a Reproductive Loss: Implications for the Primary Care Provider*, 12 FRONTIERS IN PSYCH. 1, 2 (2021).

<sup>28</sup> *Id.*

<sup>29</sup> James Studnicki et al., *A Cohort Study of Mental Health Services Utilization Following a First Pregnancy Abortion or Birth*, 15 INT’L J. WOMEN’S HEALTH 955, 959 (2023).

<sup>30</sup> Grauerholz, *supra* note 21; see, e.g., Louis Jacob et al., *Association Between Induced Abortion, Spontaneous Abortion, and Infertility Respectively and the Risk of Psychiatric Disorders in 57,770 Women Followed in Gynecological Practices in Germany*, 251 J. AFFECTIVE DISORDERS 107, 111 (2019) (finding “[a] positive relationship between induced abortion . . . and psychiatric disorders”).

<sup>31</sup> Stuart W.G. Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain*, 46 J. MED. ETHICS 3 (2020).

<sup>32</sup> Lina K. Badr et al., *Determinants of Premature Infant Pain Responses to Heel Sticks*, 36 PEDIATRIC NURSING 129 (2010).

<sup>33</sup> *Fact Sheet: Science of Fetal Pain*, CHARLOTTE LOZIER INST. (Sept. 2022), [https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#\\_ednref14](https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#_ednref14).

“hyperresponsiveness” to pain.<sup>34</sup> According to one group of fetal surgery experts, “[t]he administration of anesthesia directly to the fetus is critical in open fetal surgery procedures.”<sup>35</sup>

Given the medical advancements in fetal medicine and the evidence of fetal pain early in a pregnancy, it is well within the state’s legitimate interests to enact laws that preserve prenatal life as well as minimize fetal pain as much as possible.<sup>36</sup> The word choice in the Amendment makes it difficult for Nevada to enact or maintain any gestational limit on abortion whatsoever. Abortion activists may argue that such laws interfere with a women’s “right” to abortion under the state constitution, even though the laws further the state’s legitimate interest to preserve prenatal life and mitigate fetal pain. This rhetoric disregards the humanity of preborn children and subjects them to painful abortion procedures.

*d. The Nevada Reproductive Rights Amendment’s Viability Definition Imposes a Vague Standard that Will Shift in Favor of Abortion.*

The definition of viability in the Amendment imposes a vague, arbitrary standard for determining if a preborn child can survive outside the womb. The Amendment purports to give Nevada authority to regulate abortion after viability, yet the Amendment leaves the question of viability in the hands of the abortionist. For example, the Amendment defines viability as “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.”<sup>37</sup> Nevada’s current law uses a hard line of allowing abortion up to 24 weeks after commencement of the pregnancy.<sup>38</sup> Current Nevada law allows for a health exception to the 24 weeks. However, if an abortion for health reasons is being performed the attending physician must “enter in the permanent records of the patient the facts on which the physician based” their decision that continuance of the “pregnancy would endanger the life of the patient or would gravely impair the physical or mental health of the patient.”<sup>39</sup> The Amendment’s definition of “fetal viability” will expand Nevada’s current law to allow abortion in any circumstance the “patient’s treating health care practitioner” feels the fetus could not survive outside the uterus without “extraordinary medical measures.”<sup>40</sup> This broad language leaves lots of room for interpretation. Likewise, under the definition of “fetal viability” in the Amendment the abortionist—the one intending to receive payment to kill the preborn child—decides whether the baby is viable according to their “professional judgment.” The abortionist

<sup>34</sup> Christine Greco & Soorena Khojasteh, *Pediatric, Infant, and Fetal Pain*, CASE STUDIES PAIN MGMT. 379 (2014).

<sup>35</sup> Maria J. Mayorga-Buiza et al., *Management of Fetal Pain During Invasive Fetal Procedures. Lessons Learned from a Sentinel Event*, 31 EUROPEAN J. ANAESTHESIOLOGY 188 (2014).

<sup>36</sup> See *Dobbs*, 142 S. Ct. at 2284.

<sup>37</sup> The Nevada Reproductive Rights Amendment Safety (Nevada 2024) (emphasis added).

<sup>38</sup> Nev. Rev. Stat. § 442.250 (2023).

<sup>39</sup> *Id.*

<sup>40</sup> The Nevada Reproductive Rights Amendment (Nevada 2024).

does not have to consider the facts of a woman's pregnancy, or the medical technology that allows a baby to survive outside the womb when determining viability.

Additionally, under the definition of viability the Amendment, the preborn baby must have a "significant likelihood" of survival outside the womb rather than just a hard cut-off at 24 weeks pursuant to Nevada's current law, which shifts the viability line to a more ambiguous area. Abortion activists often use the viability standard to expand the window for access to abortion, just as Supreme Court Justices Powell and Marshall did in *Roe*.<sup>41</sup> Prior to *Roe v. Wade*, a viable pregnancy simply "meant a pregnancy that was progressing."<sup>42</sup> However, the Supreme Court justices in *Roe* "defined 'viability,' for the purposes of abortion law, as the ability of the unborn child to survive outside the mother's womb. In that sense, viability in 1973 was thought to generally occur at twenty-eight weeks of pregnancy."<sup>43</sup> Today, given the advancements in medical technology, viability is generally understood to be around 22–23 weeks gestation.<sup>44</sup> The world's youngest premature child to survive, Curtis Means, was born even earlier at 21 weeks and one day.<sup>45</sup> A recent study of premature babies in the United States shows that "[s]urvival among actively treated infants [is] 30.0% . . . at 22 weeks and 55.8% . . . at 23 weeks."<sup>46</sup> As medical technology advances, it is likely preborn babies will survive at even earlier gestations with medical intervention.

Despite advancements in medical technology that allow for preborn children to survive outside the womb as early as 21 weeks gestation, the definition of viability in the Amendment shifts the viability line to more uncertain grounds. In fact, under The Amendment, abortionists may disregard current medical interventions that ensure survival of 94.0% of babies born prematurely at 28 weeks<sup>47</sup> because in their subjective "professional judgment," the baby is not viable. Contrary to established modern medical principles, abortionists do not consider a preborn child as a second patient. Further, the abortionist's direct intent in the abortion is not to keep the preborn child alive with medical intervention, but it is to end the preborn child's life. Naturally, these beliefs inform an abortionist's "professional judgment" when it comes to determining viability and will most likely always end in an abortion.

Ultimately, the new definition of viability in the Amendment gives abortionists a trump card. It allows abortionists to entirely usurp Nevada's ability to regulate abortion after viability because 1) the question of whether a baby is viable is left up to the abortionist's subjective opinion, and 2) even if a preborn baby is viable, as long as the abortionist deems the abortion is "necessary" for the woman's "health," the state cannot prohibit it. This viability standard is a vague and unworkable measure that abortionists will use to continuously shift the line of viability in favor of abortion rather than the

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<sup>41</sup> Clarke Forsythe, *ABUSE OF DISCRETION: THE INSIDE STORY OF ROE V. WADE* 137 (2013).

<sup>42</sup> *Id.* at 8.

<sup>43</sup> *Id.*

<sup>44</sup> Noelle Younge, et al., *Survival and Neurodevelopmental Outcomes among Periviable Infants*, 7 *NEW ENG. J. MED.* 617, 617-28 (2017).

<sup>45</sup> *Alabama Boy Certified as World's Most Premature Baby*, BBC (Nov. 11, 2021), <https://www.bbc.com/news/world-us-canada-59243796>.

<sup>46</sup> Edward F. Bell et al., *Mortality, In-Hospital Morbidity, Care Practices, and 2-Year Outcomes for Extremely Preterm Infants in the US, 2013–2018*, 327 *JAMA* 248, 248 (Jan. 18, 2022).

<sup>47</sup> *See id.*



health and safety of women and their preborn children. Furthermore, since viability is left up to the abortionist’s subjective opinion and “determined on a case-by case basis,” Nevada will have extreme difficulty enacting or maintaining any laws that regulate abortion after viability.

## II. The Nevada Reproductive Rights Amendment Leads to the Elimination of Protections for Women, Minor Girls, and Preborn Children, and Makes it Difficult for the State to Enact Future Safeguards.

The Amendment’s passage places protections for women, young girls, and their preborn child at risk of being challenged in court, as shown by current activist litigation against pro-life laws, or being removed by the legislature. Nevada has several life-affirming laws, including the following:

- a comprehensive informed consent process that ensures abortionists inform women of the risks of abortion in a manner she is certainly able to understand;<sup>48</sup>
- protections against coerced abortions;<sup>49</sup>
- parental consent laws;<sup>50</sup>
- abortion reporting laws that require abortionists to report necessary data, such as the number of abortion complications;<sup>51</sup> and
- protections for infants born alive after an attempted abortion.<sup>52</sup>

These laws serve to protect women and girls from the inherent harms of abortion, as well as protect preborn children. However, each of these laws are subject to attack if The Amendment passes. Abortion activists may argue these safeguards “burden” or “interfere with” a woman’s “right” to abortion pursuant to the constitutional Amendment, leading to legislative repeal or judicial injunction.

In addition to the elimination of current protections, Nevada will face difficulty in passing any future protections for women, girls, and preborn children if voters approve the Amendment. The Amendment appears to impose a strict scrutiny standard on abortion regulations, similar to the Supreme Court in *Roe*. Specifically, The Amendment prohibits the state from regulating abortion unless the state demonstrates “a compelling state interest that is achieved by the least restrictive means.”<sup>53</sup> Strict scrutiny is the highest and strictest standard a court uses when reviewing the constitutionality of a challenged law. Courts apply strict scrutiny when analyzing laws that restrict constitutionally guaranteed rights. Under this standard, courts require states to demonstrate that they have a compelling governmental interest to restrict the constitutional right and did so through the least restrictive means possible. In *Roe*, the

<sup>48</sup> Nev. Rev. Stat. § 442.253 (2023).

<sup>49</sup> *Id.* at § 442.252.

<sup>50</sup> *Id.* at § 442.255.

<sup>51</sup> *Id.* at §442.260, .265.

<sup>52</sup> *Id.* at § 442.270.

<sup>53</sup> The Nevada Reproductive Rights Amendment (Nevada 2024) (emphasis added).

Supreme Court found that restrictions on abortion require strict scrutiny review because abortion was a purported fundamental right.<sup>54</sup> The Supreme Court quickly found strict scrutiny was unworkable in the abortion context, and discarded this litigation in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, although it implemented the equally unworkable undue burden standard.<sup>55</sup> Later, the Supreme Court in *Dobbs* overturned *Roe* entirely, holding that there is no right to abortion in the U.S. Constitution.<sup>56</sup>

Accordingly, the *Dobbs* Court applied the lowest standard of review, known as “rational basis review.” Under this standard, if the law is rationally related to a legitimate governmental interest, the law is permissible. *Dobbs* acknowledges that states have legitimate governmental interests in regulating abortion in order to protect maternal health and safety, to preserve prenatal life, to mitigate fetal pain, to prohibit barbaric medical procedures, to preserve the integrity of the medical profession, and prevent discrimination on the basis of race, sex, or disability.<sup>57</sup> However, despite the Supreme Court overturn of *Roe*, Issue 1’s use of the phrase, “least restrictive means,” implicates strict scrutiny review. In doing so, The Amendment imposes the highest standard of review on laws regulating abortion in Nevada that the Supreme Court has disavowed twice—first in *Casey*, then in *Dobbs*. This makes it difficult for Nevada to pass any protections for women and preborn children even though these laws further the state’s legitimate interests to do so.

Michigan residents are currently facing a similar challenge. Only one year after the residents voted to amend their constitution to enshrine a right to abortion, the legislature is seeking to repeal virtually all pro-life policies in the state, such as their informed consent process, licensing requirements for abortion clinics, abortion reporting requirements, prohibitions on gruesome partial-birth abortions, etc. Some of the language in Michigan’s abortion amendment is similar to the language in the Nevada Amendment. Michigan’s abortion amendment allows for a broad exception for late-term abortions to protect the woman’s “physical or mental health,” and prohibits the state from regulating abortion unless “justified by a compelling state interest achieved by the least restrictive means.”<sup>58</sup> Yet, the exception is even broader the Amendment because it uses the word, “health,” rather than qualifying it to just the physical or mental health of the woman. Thus, the ramifications of Nevada passing the Amendment may be even more devastating than those seen in Michigan.

### III. The Nevada Reproductive Rights Amendment Threatens Nevada’s Parental Involvement Laws.

The elimination of Nevada’s protective policies is particularly hazardous for minor girls. The passage of the Amendment may lead to the elimination of Nevada’s

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<sup>54</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>55</sup> 505 U.S. 833 (1992).

<sup>56</sup> *Dobbs*, 142 S. Ct. at 2284.

<sup>57</sup> *Id.*

<sup>58</sup> MICH. CONST. art. I, § 28.

parental consent law, which requires abortionists to notify one of the minor's parents prior to the abortion.<sup>59</sup> Parental involvement laws recognize the fundamental rights of parents to make healthcare decisions for and with their children. These laws also protect children's physiological and emotional wellbeing who, with developing decision-making capabilities and facing the stress and uncertainty of an unexpected pregnancy, need love and guidance from the people who care about them most, not the "quick fix" of a secret or coerced abortion.

Parents can help their daughters understand the physical and psychological risks of undergoing an abortion, and they usually possess information essential to a physician's exercise of his or best medical judgement concerning the minor. Additionally, if parents are aware that their daughter has obtained an abortion, they may better ensure she receives the best post-abortion medical attention, especially if the minor suffers post-abortive complications. Due to their developing bodies, minor girls have a "biological predisposition for high-risk pregnancies."<sup>60</sup> The high-risk nature of adolescent pregnancy is compounded by the fact that pregnant adolescent patients often delay care.<sup>61</sup> Pregnant adolescent girls delay care for multiple reasons, such as "lack of knowledge about the importance of prenatal care and lack of understanding of the consequences of its absence; history as a victim of violence, desire to hide pregnancy, fear of potential apprehension of the baby, contemplation of abortion services . . .".<sup>62</sup> Delay of care may also lead minors to seek an abortion when they are farther along in their pregnancies, which subjects them to increased risks of health complications.

Nevada's current parental notification laws respond to the need to protect the welfare and safety of minors by ensuring that abortionists notify parents of a minor daughter's desire to obtain an abortion. This ensures pregnant minors receive proper and prompt care. If Nevada voters approve the Amendment, such laws will be at risk of challenges by abortion activists seeking to eliminate them.

#### IV. The Nevada Reproductive Rights Amendment Gives Abortionists Free Rein to Operate Without Any Health and Safety Restrictions.

Passing the Amendment opens the door for the elimination of important laws regulating abortion clinics. Just like in Michigan, abortion activists may seek to challenge Nevada's laws regulating abortion clinics. Currently, Nevada has a regulatory framework

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<sup>59</sup> Nev. Rev. Stat. § 442.255 (2023).

<sup>60</sup> Nadia Akseer et al., *Characteristics and Birth Outcomes of Pregnant Adolescents Compared to Older Women: An Analysis of Individual Level Data from 140,000 Mothers from 20 RCTs*, ECLINICALMED., Feb. 26, 2022, at 1, 3.

<sup>61</sup> Nathalie Fleming et al., *Adolescent Pregnancy Guidelines*, 37 J. OBSTETRICS & GYNAECOLOGY CAN. 740, 743 (2015).

<sup>62</sup> *Id.*

in place for the inspection and monitoring of abortion businesses.<sup>63</sup> However, even with these safeguards, the state has cited several abortion facilities for unsanitary conditions, including multiple locations with using transvaginal ultra sound probes without changing the filters between uses.<sup>64</sup> Several facilities were failing to contact patients after their procedure to ensure there were no complications.<sup>65</sup> There were also no established guidelines to uphold the health and safety of the patients at the facilities.<sup>66</sup> Further, Nevada’s abortion facilities failed to sterilize instruments and properly handle medications.<sup>67</sup>

These abortion clinics compromise women’s health and safety. In fact, at one abortion facility, staff failed to ensure the patient’s medical record accompanied her to the hospital.<sup>68</sup> Another hospitalized patient’s medical record was missing key information including the reason for sending the patient to the hospital, method of transportation, and whether her medical record went to the hospital with her.<sup>69</sup> At Capital Care Network, a patient was driven to the hospital by a staff member in lieu of an ambulance after a suction abortion failed to empty her uterus.<sup>70</sup>

Unfortunately, if Nevadans pass the Amendment, these occurrences will happen more frequently, endangering more women and girls. It is evident from the numerous health and safety citations that abortion facilities do not have women’s best interest in mind. Abortion already subjects women to physical and psychological harm. Unregulated abortion clinics will only exacerbate these harms. Women deserve dignified treatment and quality care, not forced abortions in a facility that will subject them to additional health risks and emotional trauma.

#### V. The Nevada Reproductive Rights Amendment uses Vague Language which could lead to Dangerous Outcomes

The language of the Amendment starts with “all individuals shall have a fundamental right to abortion performed or administered by a qualified health care practitioner until fetal viability, or when needed to protect the life or health of the pregnant patient, without interference from the state.”<sup>71</sup> The Amendment does not further define what is meant by the term “all individuals.” Given the lack of definition and the clear distinction between “all individuals” and “pregnant patient”, this clearly expands who has a “fundamental right to abortion” well beyond the pregnant patient. In fact, “all individuals” is not limited in any way, and arguments could be made that the fundamental right of men or fathers involved shall not be interfered with regardless

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<sup>63</sup> Nev. Rev. Stat. § 439A.220, 439A.230, 439A.240, 439A.250 (2023).

<sup>64</sup> *Unsafe: America’s Abortion Industry Endangers Women*, AMS. UNITED FOR LIFE, 2021, at 70.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> The Nevada Reproductive Rights Amendment (Nevada 2024).

of the desires of the mother. This language creates a direct avenue for men to force abortion on women.

Over “60% of women who had abortions report high levels of pressure to abort from one or more sources.”<sup>72</sup> Coerced abortions are common and a really issue. If “all individuals” have a right to abortion that may be distorted to show that men have authority to have their child aborted. Through more detailed surveys there is data indicating that only 33% of women actually wanted to abort their babies.<sup>73</sup> Under current law women already feel significant pressure to abort, this Amendment will only increase that pressure and very well may protect it.

## VI. The Nevada Reproductive Rights Amendment Enables Sex-traffickers and Abusers to Coerce Victims into Having Unwanted Abortions.

The Amendment subjects women to coerced abortions while protecting their abusers. It states that the state shall not deny, burden, or infringe upon a person exercising or assisting their fundamental right.<sup>74</sup> Therefore, under The Nevada Reproductive Rights Amendment, Nevada cannot “infringe upon” or prohibit a sex trafficker or abusive partner from bringing their victim to an abortion clinic to have an abortion. Further, The Amendment may lead to abortion activists challenging and eliminating Nevada’s current laws against forced abortions, which require abortionists to obtain a woman’s written confirmation that no one is coercing her to have an abortion,<sup>75</sup> and require abortion facilities to have notices that inform women of their legal protections against forced abortions.<sup>76</sup> As a result, The Amendment strips Ohio women of necessary safeguards for authentic choice and increases the number of coerced abortions.

Sadly, many women have coerced abortions. For example, a woman seeking an abortion may be facing intimate partner violence (IPV). There are “[h]igh rates of physical, sexual, and emotional IPV . . . among women seeking a[n abortion].”<sup>77</sup> For women seeking abortion, the prevalence of IPV is nearly three times greater than women continuing a pregnancy.<sup>78</sup> Post-abortive IPV victims also have a “significant association” with “psychosocial problems including depression, suicidal ideation, stress, and disturbing thoughts.”<sup>79</sup>

<sup>72</sup> David Reardon, Katherine Rafferty & Tessa Cox, *Hidden Epidemic: Nearly 70% of Abortions are Coerced, Unwanted or Inconsistent with Women’s Preferences*, CHARLOTTE LOZIER INST. (May 15, 2023), <https://lozierinstitute.org/hidden-epidemic-nearly-70-of-abortions-are-coerced-unwanted-or-inconsistent-with-womens-preferences/>.

<sup>73</sup> *Id.*

<sup>74</sup> The Nevada Reproductive Rights Amendment (Nevada 2024).

<sup>75</sup> Nev. Rev. Stat. § 442.252 (2023).

<sup>76</sup> *Id.* at § 442.253.

<sup>77</sup> Megan Hall et al., *Associations Between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11 PLOS MED. 1, 15 (Jan. 2014).

<sup>78</sup> COMM. ON HEALTH CARE FOR UNDERSERVED WOMEN, *Reproductive and Sexual Coercion*, Comm. Op. No. 554, at 2 (Feb. 2013).

<sup>79</sup> Hall, *supra* note 71, at 11.



Similarly, intimate partners, family members, and sex traffickers may be asserting reproductive control over the woman, which are “actions that interfere with a woman’s reproductive intentions.”<sup>80</sup> In the context of abortion, reproductive control not only produces coerced abortions or continued pregnancies, but it also affects whether the pregnancy was intended in the first place.<sup>81</sup> Reproductive control is a prevalent issue for women. “As many as one-quarter of women of reproductive age attending for sexual and reproductive health services give a history of ever having suffered [reproductive control].”<sup>82</sup>

There are several studies that highlight the prevalence of coerced abortions. A recent peer-reviewed study showed that 43% of post-abortive women described their abortion as “accepted but inconsistent with their values and preferences,” while 24% indicated their abortion was “unwanted or coerced.”<sup>83</sup> Similarly, another study found that 61% of women reported experiencing “high levels of pressure” to abort from “male partners, family members, other persons, financial concerns, and other circumstances.”<sup>84</sup> This study found that:

These pressures [to abort] . . . are strongly associated with more negative emotions about [a woman’s] abortion; more disruptions of their daily life, work, or relationships; more frequent . . . intrusive thoughts about their abortions; more frequent feelings of loss, grief, or sadness about their abortion; . . . [and] a perceived decline in their overall mental health that they attribute to their abortions . . . .<sup>85</sup>

Furthermore, victims of sex-trafficking are among the number of women who experience reproductive control. A 2014 study on the health consequences for sex-trafficking victims found that 66 sex-trafficking victims had a total of 114 abortions, “[w]ithout accounting for possible underreporting.”<sup>86</sup> “The [sex-trafficking] survivors in this study [] reported that they often did not freely choose the abortions they had while being trafficked.”<sup>87</sup> A majority of the 66 sex-trafficking victims “indicated that one or more of their abortions was at least partly forced upon them.”<sup>88</sup> Given the prevalence of coerced abortions among sex-trafficking victims, the authors of the study note how “[h]ealthcare providers can play a crucial role in the trafficking rescue process by identifying possible victims and following up on those suspicions with careful, strategic questions, and actions that catalyze rescue or help create exist strategies.”<sup>89</sup>

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<sup>80</sup> Sam Rowlands & Susan Walker, *Reproductive Control by Others: Means, Perpetrators and Effects*, 45 *BMJ SEXUAL & REPROD. HEALTH* 61, 62, 65 (2019).

<sup>81</sup> *Id.* at 62–63.

<sup>82</sup> *Id.* at 62.

<sup>83</sup> David C. Reardon et al., *The Effects of Abortion Decision Rightness and Decision Type on Women’s Satisfaction and Mental Health*, *CUREUS*, May 11, 2023, at 1.

<sup>84</sup> David C. Reardon & Tessa Longbons, *Effects of Pressure to Abort on Women’s Emotional Responses and Mental Health*, *CUREUS*, Jan. 31, 2023, at 1.

<sup>85</sup> *Id.* at 1.

<sup>86</sup> Laura J. Lederer & Christopher A. Wetzel, *The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities*, 23 *ANNALS HEALTH L.* 61, 73 (2014).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 84.

Despite the prevalence of coercive abuse among women seeking abortions, the Amendment prohibits Nevada from penalizing, prohibiting, or interfering with abusers or sex traffickers who are “assisting” a woman seeking an abortion. If the state wants to enact additional laws to protect women against coerced abortions, it can only do so by demonstrating that it is “by the least restrictive means” and in no way denies, burdens, or infringes the fundamental right to abortion.<sup>90</sup> Nevada will have a hard time meeting this standard, especially with the use of vague terms like “consistent with accepted clinical standards of practice.”<sup>91</sup> Abortion activists often use these phrases in favor of abortion. For example, the American College of Obstetricians and Gynecologists’ (ACOG) abortion policy states, “[a]ll people should have access to the full spectrum of comprehensive, *evidence-based health care*. Abortion is an essential component of comprehensive, *evidence-based health care*.”<sup>92</sup> Given that abortion activists purport that abortion is “evidenced-based” care, they may argue that any limitation on abortion, even coerced abortions, fails to “advance the individual’s health in accordance with widely accepted and evidence-based standards of care.”

Currently, Michigan’s legislature is seeking to repeal a Michigan law that requires doctors to screen for coercion and provide victims of coercive abuse with helpful resources. Proponents of the repeal argue that the law creates barriers to women’s access to abortion. Thus, because abortion activists consider abortion as evidence-based care and see any law that limits abortions as a burden on women, Nevada will likely not meet the Amendment’s standard to enact laws that would protect against coercive abuse.

If the Amendment is passed, abortion activists may seek to challenge and eliminate critical protections for women experiencing IPV or reproductive control. They may also challenge any attempt to enact new laws to protect against coercive abuse, arguing that such laws create “barriers” to abortion. Removing protections against coerced abortions incentivizes abusers to continue forcing women to obtain abortions in order to cover up their violent acts, leaving women unprotected, victimized, and silenced.

## VII. The Nevada Reproductive Rights Amendment Furthers the False Narrative that Abortion is Necessary for Women’s Equality in American Society.

By purporting that there should be and is a “right” to abortion on demand, the Amendment furthers the narrative that women need abortion in order to obtain socioeconomic success and equality in American society. This belief is unfounded and harms women.

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<sup>90</sup> The Nevada Reproductive Rights Amendment (Nevada 2024).

<sup>91</sup> *Id.*

<sup>92</sup> *Abortion Policy*, ACOG, <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2022/abortion-policy> (last updated May 2022) (emphasis added).

First, as stated above, the language used in the Amendment is deceptive and does not describe the reality of what abortion is. Abortion is not healthcare. It is the intentional destruction of innocent preborn human life. According to the American Association of Pro-life Obstetricians and Gynecologists (“AAPLOG”), “elective abortion is defined as those drugs or procedures used with the primary intent to end the life of the human being in the womb.”<sup>93</sup> Elective abortions are not medically required, as AAPLOG explains, “[e]lective’ . . . refers to inductions done in the absence of some condition of the mother or the fetus which requires separation of the two in order to protect the life of one or the other (or both).”<sup>94</sup> Indeed, “there is no medical indication for elective induced abortion, since it cures no medical disease.”<sup>95</sup>

Additionally, abortion activists often imply that pregnancy is some sort of illness or disability, rather than a natural process that many women experience. As AAPLOG notes, “[p]regnancy is not a disease, and the killing of human beings in utero is not medical care.”<sup>96</sup> Further, “[t]o date, the medical literature offers no support for the claim that abortion improves mental health or offers protection to mental health. In fact, there is evidence to the contrary.”<sup>97</sup> Despite these evident truths, abortion activists continue to push forth false narratives about pregnancy and women’s alleged “need” for abortion. However, the evidence abortion activists rely upon, which “claim[s] to show that abortion has facilitated women’s health and equality is feeble and/or scientifically invalid.”<sup>98</sup> Indeed, women are harmed by “the repetition and acceptance of the ‘equality’ argument for favoring legal abortion,” because it “easily communicates that women’s pregnancy and parenting is a disability most females suffer. It explicitly or implicitly assumes that the male body and reproductive model is the norm, to which women should conform in order to achieve ‘agreed’ measures of success—good, well-paying employment outside of the home.”<sup>99</sup> Yet, converse to the cultural narrative, a 2005 national study shows that 93% of mothers felt “overwhelming love for [their] children unlike anything [they’ve felt] for anyone else,” and 81% said that “being a mother[] is the most important thing [they] do.”<sup>100</sup> Notably, only 3% of mothers expressed dissatisfaction with motherhood.

Pregnancy is neither an illness nor a disability and to imply that it is such results in discriminatory treatment towards women. “A system that undervalues both mothering and fathering severely disadvantages women as well as men and children, and

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<sup>93</sup> AAPLOG *Statement: Clarification of Abortion Restrictions*, AM. ASS’N PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS (July 14, 2022), <https://aaplog.org/aaplog-statement-clarification-of-abortion-restrictions/>.

<sup>94</sup> Rsch. Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *Concluding Pregnancy Ethically*, Prac. Guideline No. 10, at 5 (Aug. 2022).

<sup>95</sup> Pro. Ethics Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *Hippocratic Objection to Killing Human Beings in Medical Practice*, Comm. Op. No. 1, at 8 (May 8, 2017).

<sup>96</sup> *Id.*

<sup>97</sup> Rsch. Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *supra* note 87, at 5.

<sup>98</sup> Helen M. Alvarez, *Nearly 50 Years Post-Roe v. Wade and Nearing its End: What is the Evidence that Abortion Advances Women’s Health and Equality*, 35 Regent L. R. 165, 216 (Feb. 2022).

<sup>99</sup> *Id.* at 213.

<sup>100</sup> *Id.* at 213-14.

interferes with children receiving the care they require.”<sup>101</sup> Additionally, this leads to both a public and private resistance to accommodating motherhood in employment, which “leads to additional disadvantages for women. For example, discrimination on the basis of pregnancy and motherhood has succeeded outright discrimination on the basis of sex.”<sup>102</sup> Women deserve better than to have the abortion industry subject them to deceptive language surrounding abortion, which is a life-altering—and at times, life-threatening—decision. The Amendment furthers the abortion industry’s lies and efforts to mask the realities of abortion, which is to the detriment of women’s health, safety, and socioeconomic success and equality in America.

## Conclusion

Enshrining a “right” to abortion in Nevada’s constitution will negatively impact the welfare of women and preborn children in Nevada. The Nevada Reproductive Rights Amendment goes well beyond Nevada’s current laws and strips any ability to protect women and girls through the constitution. Nevada’s few remaining pro-life policies will be at risk of being replaced with an anti-life culture that threatens the health and safety of Nevada residents both inside and outside the womb. Further, having a constitutionally protected “right” to abortion will make it difficult for Nevada to enact any future protections for women and girls seeking abortion, which subjects women to an unregulated, dangerous abortion industry. This Amendment does not give “freedom” to women but hands control to self-interested abortionists who financially benefit from abortion-on-demand as well as to sex-traffickers and abusers who seek to cover up their crimes by forcing their victims to obtain abortions. This Amendment grants nothing new to the citizens of Nevada. It only makes it impossible to protect women and girls. Abortion is not healthcare, and contriving a state constitutional right to abortion will be disastrous for Nevada.

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<sup>101</sup> *Id.* at 214.

<sup>102</sup> *Id.* at 216.