Abortion Until Birth: Understanding Missouri's "Reproductive Freedom Initiative"

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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*,[4] while also facing new challenges. Now that the Supreme Court has overturned *Roe v. Wade*[5] 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. Voters in Michigan and Ohio recently passed amendments that contrive a "right" to elective abortion in their respective state constitutions. Both states are harrowing examples of the impact pro-abortion ballot measures have on life-affirming policies. In Michigan, 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, Missourians face a similar ballot initiative entitled "The Right to Reproductive Freedom Initiative" ("Initiative"). The Initiative amends the Missouri constitution to state, "The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to… abortion care."[6] Further, the Initiative prohibits the state from enacting laws that protect women by directing that:

> Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid [with narrow exceptions].[7]

Although the Initiative seemingly allows for Missouri to regulate abortion after viability, it includes a broad exception for abortions that are purportedly "necessary" to "protect the life or physical or mental health of the pregnant person."[8] Lastly, the Initiative defines fetal viability, which is an arbitrary and vague standard, 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."[9] Yet the Initiative allows the abortionist to determine fetal viability "on a case-by-case basis."[10]

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[4] Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).
[5] 410 U.S. 113 (1973).
[6] The Right to Reproductive Freedom Initiative (Missouri 2024).
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*

The Initiative's language is deceptive. First, the Initiative's misleading phrasing makes it appear as though Missouri currently restricts or is attempting to restrict individuals from making decisions about contraception, prenatal and postpartum care, childbirth, , miscarriage treatment, or "respectful birthing conditions." This is not true, as Missourians can freely obtain prenatal and postpartum care, childbirth services, miscarriage care and contraception.

Furthermore, the misleading language of the amendment attempts to disguise elective abortion as healthcare. As discussed below in Section V, elective 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.[11] Thus, Missouri can regulate elective abortion in furtherance of these important interests.

However, if Missourians pass the Initiative, the consequences will be devastating, especially for the welfare of Missouri women and their preborn children. The Initiative authorizes abortion-on-demand throughout 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 Missouri, and furthers the harmful and false narrative that abortion is necessary for women to have equality and success in America. The Initiative allows abortion activists to turn Missourians' life-affirming state into an abortion destination that endangers the health and safety of its residents both inside and outside the womb.

I. The Initiative Authorizes Abortion-on-Demand Throughout Pregnancy.

Passage of the Initiative will effectuate abortion-on-demand up until a preborn baby's birth date. Although the Initiative includes language that seemingly allows Missouri to prohibit abortion after "Fetal Viability," it allows for a broad "physical or mental health" exception. The Initiative states,

> Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an abortion that in the good faith judgment of a treating health care professional is needed to protect the life or *physical or mental health* of the pregnant person.[12]

Courts, including the U.S. Supreme Court, have broadly interpreted these types of health exceptions. In *Doe v. Bolton*[13], 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.*

[11] *Dobbs*, 142 S. Ct. at 2284.
[12] The Right to Reproductive Freedom Initiative (Missouri 2024) (emphasis added).
[13] *Doe v. Bolton* was the companion case for *Roe*.

All these factors may relate to health."[14] Thus, according to this definition, the word "health" in the abortion context "means emotional well-being without limits."[15]

"Any potential emotional reservation a woman has about being pregnant can be deemed, at the discretion of the abortion provider, a threat to her 'health,' and thus a reason to ignore any abortion prohibition after fetal viability.[16] Consequently, the "health" exception the Court contrived in *Doe* "swallowed the supposed ability of the states to prohibit abortion after fetal viability."[17]

Under the Initiative's broad health exception, if a pregnancy is affecting a woman's "mental health" for whatever reason, she can have an abortion up to the date of her unborn child's birth. By including this "health" exception, Missouri will be authorizing abortion-on-demand throughout all nine months of pregnancy. The abortionist simply has to deem the abortion "needed" to protect the patient's "health." 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. Naturally, the Initiative's all-encompassing health exception will lead to more elective late-term abortions.

Despite the common misconception that 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."[18] "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."[19] 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.[20]

Accordingly, most abortions occur for elective reasons of the mother, not because of the baby's or the mother's medical condition.

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[14] Doe v. Bolton, 410 U.S. 179, 192 (1973).
[15] Clarke D. Forsythe, ABUSE OF DISCRETION: THE INSIDE STORY OF ROE V. WADE 8 (2013).
[16] *Id.*
[17] *Id.*
[18] AM. ASSOC. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, STATE RESTRICTIONS ON ABORTION: EVIDENCE-BASED GUIDANCE FOR POLICYMAKERS, Comm. Op. 10, at 10 (updated Sept. 2022).
[19] *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).
[20] James Studnicki, *Late-Term Abortion and Medical Necessity: A Failure of Science*, HEALTH SERVS. RSCH. & MANAGERIAL EPIDEMIOLOGY, Apr. 9, 2019, at 1, 1.

Furthermore, it is estimated that abortionists perform around 10,000 abortions at 21 weeks' gestation or later each year.[21] However, the number of late-term abortions 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.[22] The Initiative will only increase the number of late-term abortions due to its broad health exception, 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 Initiative 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.

a. *The Initiative 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 Initiative 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.[23] Gestational age is the strongest risk factor for abortion-related mortality, and the incidence of major complications is significantly higher after 20 weeks' gestation.[24] 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.[25] 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."[26] 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.[27]

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

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[21] Guttmacher Institute, *Induced Abortion in the United States*, GUTTMACHER (2019), https://www.guttmacher.org/fact-sheet/induced-abortion-united-states.
[22] *See Questions and Answers on Late-Term Abortion*, CHARLOTTE LOZIER INST. (May 16, 2022), https://lozierinstitute.org/questions-and-answers-on-late-term-abortion/.
[23] *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 Sept. 30, 2024).
[24] Linda A. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 OBSTETRICS & GYNECOLOGY 729, 731 (2004).
[25] *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).
[26] Bartlett, *supra* note 24, at 735.
[27] *Id.*

organs.[28] Immediate complications affect approximately 10% of women undergoing abortion, and approximately one-fifth of these complications are life-threatening.[29] If Missourians pass the initiative and authorize abortion-on-demand, more women will experience life-threatening complications from late-term abortions.

b. The Initiative Furthers the Psychological Harm of Abortion on Women.

Amending Missouri's constitution to enshrine a "right" to elective abortion will result in more women suffering post-abortive psychological harms. "[P]regnancy loss (natural or induced) is associated with an increased risk of mental health problems."[30] "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."[31]

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."[32] 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."[33] 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."[34]

The Initiative authorizes dangerous abortion procedures on women and adolescents 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 Initiative 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

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[28] *See* Planned Parenthood, *supra* note 23.
[29] REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION 48 (2005).
[30] 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).
[31] 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).
[32] *Id.*
[33] 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).
[34] Grauerholz, *supra* note 31; *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").

as 12 weeks' gestation.[35] "Pain receptors (nociceptors) begin forming at seven weeks' gestational age, with the nerves linking pain receptors to the pain-sensing part of the brain, the thalamus, forming at 12 weeks."[36] Furthermore, by twelve weeks' gestation almost every organ and tissue has formed in a preborn baby[37] and the baby has arms, legs, fingers, toes, a face, and eyelids.[38]

A 2010 study found that "the earlier infants are delivered, the stronger their response to pain"[39] 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."[40] As a result, preborn children display a "hyperresponsiveness" to pain.[41] According to one group of fetal surgery experts, "[t]he administration of anesthesia directly to the fetus is critical in open fetal surgery procedures."[42]

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.[43] Accordingly, Missouri protects life from conception. However, the Initiative's passage impedes Missouri's ability to enact or maintain any developmental 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 leads to abortion activists challenging and seeking the removal of existing life-affirming protections for preborn children.

d. *The Initiative's Viability Definition Imposes a Vague Standard that Will Shift in Favor of Abortion.*

[35] Stuart W.G. Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain*, 46 J. MED. ETHICS 3 (2020).
[36] 12 Facts at 12 Weeks, CHARLOTTE LOZIER INST. (Apr. 25, 2023), https://lozierinstitute.org/12-facts-at-12-weeks/.
[37] Thomas Sadler, MEDICAL EMBRYOLOGY 14th ed. (2019).
[38] Carnegie Stage 23 Introduction, VIRTUAL HUM. EMBRYO: DIGITALLY REPRODUCED EMBRYONIC MORPHOLOGY, https://www.ehd.org/virtual-human-embryo/intro.php?stage=23 (last visited Apr. 25, 2024).
[39] Lina K. Badr et al., *Determinants of Premature Infant Pain Responses to Heel Sticks*, 36 PEDIATRIC NURSING 129 (2010).
[40] *Fact Sheet*: *Science of Fetal Pain*, CHARLOTTE LOZIER INST. (Sept. 2022), https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/#_ednref14.
[41] Christine Greco & Soorena Khojasteh, *Pediatric, Infant, and Fetal Pain*, CASE STUDIES PAIN MGMT. 379 (2014).
[42] 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).
[43] *See Dobbs*, 142 S. Ct. at 2284.

The Initiative's definition of "Fetal Viability" imposes a vague, arbitrary standard for determining if a preborn child can survive outside the womb. The Initiative purports to give Missouri authority to regulate abortion after viability, yet the initiative leaves the question of viability in the hands of the abortionist, which will increase the number of abortions. For example, the Initiative defines "Fetal Viability" 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."[44]

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*.[45] Prior to *Roe v. Wade*, a viable pregnancy simply "meant a pregnancy that was progressing."[46] 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."[47] Today, given the advancements in medical technology, viability is generally understood to be around 22–23 weeks gestation.[48] The world's youngest premature child to survive, Curtis Means, was born even earlier at 21 weeks and one day.[49] 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."[50] 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 Initiative's definition of "Fetal Viability" shifts the viability line to later gestations. In fact, under the Initiative, abortionists may disregard current medical interventions that ensure survival of 94.0% of babies born prematurely at 28 weeks[51] because in their subjective "good faith 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. Accordingly, these beliefs inform an abortionist's "good faith judgment" when it comes to determining viability and will most likely always end in an abortion.

Ultimately, the Initiative's new definition of "Fetal Viability" gives abortionists a trump card. It allows abortionists to entirely usurp Missouri'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

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[44] The Right to Reproductive Freedom Initiative (Missouri 2024).
[45] Forsythe, *supra* note 15, at 137.
[46] *Id.* at 8.
[47] *Id.*
[48] Noelle Younge, et al., *Survival and Neurodevelopmental Outcomes among Periviable Infants*, 7 NEW ENG. J. MED. 617, 617-28 (2017).
[49] *Alabama Boy Certified as World's Most Premature Baby*, BBC (Nov. 11, 2021), https://www.bbc.com/news/world-us-canada-59243796.
[50] 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).
[51] *See id.*

abortionist deems the abortion is "needed" for the woman's "physical or mental 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 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," Missouri will have extreme difficulty enacting or maintaining any laws that protect against abortion after viability.

II. The Initiative Leads to the Elimination of Protections for Women, Adolescent Girls, and Preborn Children, and Impedes the State from Enacting Future Safeguards.

The Initiative's passage places pro-life protections for women, adolescent 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. Missouri has several life-affirming laws, including the following:

- a comprehensive informed consent process that ensures abortionists inform women of the risks of abortion as well as available alternatives, and gives women a 72-hour reflection period;[52]
- protections against coerced abortions;[53]
- parental consent laws;[54]
- abortion reporting laws that require abortionists to report necessary data, such as the number of abortion complications;[55]
- a prohibition on discriminatory abortions based solely on a baby's Down syndrome diagnosis;[56] and
- protections for infants born alive after an attempted abortion.[57]

These laws serve to protect women and adolescents from the inherent harms of abortion, as well as protect preborn children. However, each of these laws are subject to attack if the Initiative passes. Abortion activists may argue these safeguards "interfere" a woman's "right to reproductive freedom" pursuant to the constitutional amendment, leading to legislative repeal or judicial injunction.

In addition to the elimination of current pro-life laws, the Initiative impedes Missouri's ability to pass any future protections for women, adolescent girls, and preborn children. The Initiative appears to impose a strict scrutiny standard on abortion regulations, similar to the Supreme Court in *Roe*. Specifically, the initiative prohibits the state from regulating abortion unless the state demonstrates that "such action is justified by a compelling governmental interest achieved by the least restrictive means."[58] Strict

[52] Revised Statutes of Missouri § 188.027.
[53] *Id.*
[54] *Id.* at § 188.028.
[55] *Id.* at § 188.030.
[56] *Id.* at § 188.035.
[57] *Id.* at § 188.038.
[58] The Right to Reproductive Freedom Initiative (Missouri 2024).

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 Supreme Court found that restrictions on abortion require strict scrutiny review because abortion was a purported fundamental right.[59] 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.[60] Later, the Supreme Court in *Dobbs* overturned *Roe* and *Casey* entirely, holding that there is no right to abortion in the U.S. Constitution.[61]

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.[62] However, despite the Supreme Court overturn of *Roe*, the Initiative's use of the phrase, "least restrictive means," implicates strict scrutiny review. In doing so, the Initiative imposes the highest standard of review on laws regulating abortion in Missouri that the Supreme Court has disavowed twice—first in *Casey*, then in *Dobbs*. This makes it difficult for Missouri 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 two years after the residents voted to amend their constitution to enshrine a right to abortion, the legislature sought 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 Initiative. 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.[63] Thus, the ramifications of Missouri passing the Initiative may be as devastating as those seen in Michigan.

III. The Initiative Threatens Missouri's Parental Involvement Laws.

[59] Roe v. Wade, 410 U.S. 113 (1973).
[60] 505 U.S. 833 (1992).
[61] *Dobbs*, 142 S. Ct. at 2284.
[62] *Id.*
[63] MICH. CONST. art. I, § 28.

The elimination of Missouri's pro-life policies is particularly hazardous for adolescents. The Initiative's passage may lead to the elimination of Missouri's parental consent law, which requires abortionists to obtain the consent of the minor's parents prior to the abortion.[64] 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, adolescent girls have a "biological predisposition for high-risk pregnancies."[65] The high-risk nature of adolescent pregnancy is compounded by the fact that pregnant adolescent patients often delay care.[66] 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 . . .".[67] 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.

Missouri's current parental consent laws respond to the need to protect the welfare and safety of pregnant adolescents by ensuring that abortionists obtain consent from the parents before performing an abortion. This ensures pregnant adolescents receive proper and prompt care. If Missouri voters approve the Initiative, such laws will be at risk of challenges by abortion activists seeking to eliminate them.

IV. The Initiative Gives Abortionists Free Rein to Operate Without Any Health and Safety Restrictions.

Passing the initiative opens the door for the elimination of important laws regulating abortion clinics. Just like in Michigan, abortion activists may seek to challenge

[64] Revised Statutes of Missouri § 188.028.
[65] 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.
[66] Nathalie Fleming et al., *Adolescent Pregnancy Guidelines*, 37 J. OBSTETRICS & GYNAECOLOGY CAN. 740, 743 (2015).
[67] *Id.*

Missouri's laws regulating abortion clinics. Currently, Missouri has a regulatory framework in place for the inspection and monitoring of abortion businesses.[68]

However, even in states with similar safeguards, many abortion facilities get cited for unsanitary conditions, including multiple locations with stained carpets, dusty and dirty air vents, wall smears and similar cleanliness issues that raise the risks of infection. Other clinics have been cited for having improperly labeled pre-drawn syringes and unsecured oxygen tanks.[69]

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.[70] 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.[71]

Unfortunately, if Missourians pass the Initiative, these occurrences will happen more frequently, endangering more women and adolescent 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 Initiative Enables Sex-traffickers and Abusers to Coerce Victims into Having Abortions Against their Will.

The Initiative subjects women to coerced abortions while protecting their abusers. The Initiative states that "any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid."[72] Furthermore, the Initiative prohibits the state from penalizing, prosecuting or "otherwise subject[ing] to adverse action" "any person assisting a person in exercising their right to reproductive freedom with that person's consent."[73] Therefore, under the Initiative, Missouri cannot "interfere" with or prohibit a sex trafficker or abusive partner from bringing their victim to an abortion clinic to have an abortion. Further, the Initiative may lead to abortion activists challenging and eliminating Missouri's current laws against forced abortions, which require abortionists to have notices that inform women of their legal protections against forced abortions.[74] As a result, the Initiative strips Missouri women of necessary safeguards for authentic choice and increases the number of coerced abortions.

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[68] Revised Statutes of Missouri § 197.205.
[69] *Unsafe: America's Abortion Industry Endangers Women*, AMS. UNITED FOR LIFE, 2021, at 73.
[70] *Id.*
[71] *Id.*
[72] The Right to Reproductive Freedom Initiative (Missouri 2024).
[73] *Id.*
[74] Revised Statutes of Missouri § 188.027.

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]."[75] For women seeking abortion, the prevalence of IPV is nearly three times greater than women continuing a pregnancy.[76] Post-abortive IPV victims also have a "significant association" with "psychosocial problems including depression, suicidal ideation, stress, and disturbing thoughts."[77]

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."[78] 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.[79] 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]."[80]

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."[81] 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."[82] 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 . . . .[83]

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,

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[75] 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).
[76] COMM. ON HEALTH CARE FOR UNDERSERVED WOMEN, *Reproductive and Sexual Coercion*, Comm. Op. No. 554, at 2 (Feb. 2013).
[77] Hall, *supra* note 75, at 11.
[78] Sam Rowlands & Susan Walker, *Reproductive Control by Others: Means, Perpetrators and Effects*, 45 BMJ SEXUAL & REPROD. HEALTH 61, 62, 65 (2019).
[79] *Id.* at 62–63.
[80] *Id.* at 62.
[81] 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.
[82] David C. Reardon & Tessa Longbons, *Effects of Pressure to Abort on Women's Emotional Responses and Mental Health*, CUREUS, Jan. 31, 2023, at 1.
[83] *Id.* at 1.

"[w]ithout accounting for possible underreporting."[84] "The [sex-trafficking] survivors in this study [] reported that they often did not freely choose the abortions they had while being trafficked."[85] A majority of the 66 sex-trafficking victims "indicated that one or more of their abortions was at least partly forced upon them."[86] 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."[87]

Despite the prevalence of coercive abuse among women seeking abortions, the initiative prohibits Missouri 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 "such action is justified by a compelling governmental interest achieved by the least restrictive means," where an "interest is compelling only if it… is consistent with widely accepted clinical standards of practice."[88] Missouri will have a hard time meeting this standard, especially with the use of vague terms like "widely accepted clinical standards of practice and evidence-based medicine." 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*."[89] 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."

In 2023, Michigan's legislature sought 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, Missouri will likely not meet the Initiative's standard to enact laws that would protect against coercive abuse.

If the Initiative 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

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[84] 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).
[85] *Id.*
[86] *Id.*
[87] *Id.* at 84.
[88] The Right to Reproductive Freedom Initiative (Missouri 2024).
[89] *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).

incentivizes abusers to continue forcing women to obtain abortions in order to cover up their violent acts, leaving women unprotected, victimized, and silenced.

VI. The Initiative 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 initiative 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.

First, as stated above, the language used in the initiative 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."[90] 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)."[91] Indeed, "there is no medical indication for elective induced abortion, since it cures no medical disease."[92]

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."[93] 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."[94] Despite these evident truths, abortion activists continue to push 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."[95] 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

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[90] *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/.
[91] Rsch. Comm., Am. Ass'n of Pro-Life Obstetricians & Gynecologists, *Concluding Pregnancy Ethically*, Prac. Guideline No. 10, at 5 (Aug. 2022).
[92] 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).
[93] *Id.*
[94] Rsch. Comm., Am. Ass'n of Pro-Life Obstetricians & Gynecologists, *supra* note 91, at 5.
[95] Helen M. Alvare, *Nearly 50 Years Post-*Roe v. Wade *and Nearing its End: What* is *the Evidence that Abortion Advances Women's Heath and Equality*, 35 Regent L. R. 165, 216 (Feb, 2022).

assumes that the male body and reproductive model is the norm, to which women should conform in order to achieve 'agreed' measures of success."[96]

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 interferes with children receiving the care they require."[97] 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."[98] 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 Initiative 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 Missouri's constitution will negatively impact the welfare of women and preborn children in Missouri. The Initiative targets and undermines the life-affirming policies Missourians fought so hard to implement, potentially leading to the elimination of such laws. Missouri's strong pro-life policies will be at risk of being replaced with an anti-life culture that threatens the health and safety of Missouri residents both inside and outside the womb. Further, having a constitutionally protected "right" to abortion will make it difficult for Missouri 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. Abortion is not healthcare, and contriving a state constitutional right to abortion will be disastrous for Missouri.

[96] *Id.* at 213.
[97] *Id.* at 214.
[98] *Id.* at 216.