

IN THE SUPREME COURT OF OHIO

Case No. 2023-0004

State ex rel. Preterm-Cleveland, et al.,
Appellees,

vs.

David Yost, Attorney General of Ohio, et al.,
Appellants.

On appeal from the Hamilton County
Court of Appeals,
First Appellate District
Court of Appeals
Case No. C-220504

AMICUS CURIAE BRIEF OF COREY SHANKLETON

Pastor Corey Shankleton

/s Corey Shankleton

pro se in support of Appellant

Faith2Action Michigan

P.O. Box 91

Caspain, MI 49915

419-980-3182

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On November 16, 2023, this Court requested new briefing by the parties on the effect, if any, of Issue 1 on the Heartbeat Law. Amici curiae respectfully submits his interests and the following arguments against applying Issue 1 here.

INTEREST OF AMICUS CURIAE

Pastor Corey Shankleton, President of Faith2Action Michigan, testified for and was instrumental in helping to pass the Ohio Heartbeat Law. He was engaged throughout the near decade it took to realize its passage, before moving to Michigan, where he became President of the Michigan Heartbeat Coalition. Corey and his wife Hannah are the parents to seven children (ages 2-32) four girls and three boys (one of whom is adopted), and the grandfather of two—one born and one unborn.

After fighting Proposition 3, the abortion-until-birth ballot initiative similar to Ohio's Issue 1, Shankleton stated in a November 10, 2023, press release, “Michigan, once a pro-life leader, now has abortion until birth and Partial Birth Abortion (without parental consent) because of a similar unconstitutional amendment. I want to encourage every person...to stand against this foreign-funded assault.”

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Issue 1 violates Article 1, Section 18 of Ohio's Constitution which directly declares the “general assembly” is the only body able to suspend laws. “**No power** of suspending laws shall ever be

exercised” by any other way. Issue 1 also violates the Ohio Constitution Article XVI, Section 2 because **it bypasses the convention requirements necessary for revising the Constitution.**

Issue 1 violates Article 1 Section 7 by removing the protection of “every religious denomination.” It would discriminate against those who follow the Bible, Torah, and Quran, as well as pro-life pregnancy centers who would be silenced or defunded, interfering with their “rights of conscience,” and causing many to close their doors. Issue 1 also violates Article 1, Section 11 of the Ohio Constitution and the First Amendment to the United States Constitution. It would discriminate against pro-life individuals and groups, abridging their freedom of speech, forbidding them from peaceably assembling on state or municipal facilities, and prohibiting access to state funding. It is unconstitutional and should be rendered by the court as such.

Those promoting Issue 1 violated the Ohio Deceptive Trade Practices Act, Sec. 4165.02(A)(7) as this petition was based on a vaguely worded amendment sold to the voters with a series of lies, misinformation, and deception. Issue 1's ambiguous text (void of definitions) neither mentions nor repeals a single specific Ohio law, nor should it be interpreted to do so.

Issue 1 violates Article 1, Section 6 of the Ohio Constitution, which states, “There shall be no slavery in this state; nor involuntary servitude.” Issue 1 is more accurately called the “Child Trafficking Enabling Act” because, if upheld, it would enable human slavery by holding child traffickers immune as long as the minor victim can be convinced, forced, or threatened into saying this formerly illegal practice was “their choice.”

Issue 1 violates Article IV, Section 4 of the U.S. Constitution which guarantees each state a “Republican form of Government,” replacing it with a pure democracy, where mob rule can

trample on the rights of the minority. Issue 1 improperly removes authority from Ohio legislators—who voted to pass the laws on the books for the last half century. It removes our representative government – the General Assembly – in violation of U.S. Supreme Court holdings and the Ohio Constitution.

Issue 1 does not define “reproductive decisions,” but, rather, seeks to include decisions regarding abortion, “gender-reassignment” surgery, sterilization, and abortion until birth—all without parental notice or consent—unlike any other such operation or treatment in the state--in violation of the Fourteenth Amendment's Equal Protection Clause.

If upheld, Issue 1 would put women at risk by removing the same standard of care provided for all other surgeries in the state and deny women legal protections from harm and injuries caused by abortion and other “reproductive” decisions including gender “re-assignment” surgeries. This Amendment specifically harms women without any legitimate state interest, in violation of the Equal Protection guarantee of the Fourteenth Amendment. Issue 1 would also lethally target the disabled including those diagnosed with Down's Syndrome by striking Ohio Revised Code § 29.19.10 which protects babies that test positive for it.

For these reasons, I petition the court to find Issue 1 unconstitutional and uphold and enact Ohio's duly passed Heartbeat Law, a version of which was already found Constitutional by the United States Supreme Court.

ARGUMENT

- 1. Issue 1 violates Article 1, Section 18 of the Ohio Constitution** [without stating the direct intent to do so] and **Article XVI, Section 2 of the Ohio Constitution.**

- **Article 1, Section 18 of the Ohio Constitution** states: “No power of suspending laws shall ever be exercised, except by the general assembly.” [Emphasis added] The intention to suspend Ohio laws outside of the general assembly is precisely what Issue 1 attempts to do—something Ohio's Constitution directly prohibits.
- **Article XVI, Section 2 of the Ohio Constitution** states: “Whenever two-thirds of the members elected to each branch of the General Assembly shall think it necessary to call a convention, to revise, amend, or change this constitution...” [Emphasis added]

The co-author of Issue 1 stated their intent to overturn “over 30 different restrictions [currently] in place.”¹ While this is *their* goal, that is not what the amendment says nor what voters were told. This is a radical departure from the Democrat Republican form of government that instituted Ohio laws after fully vetting them in the open and transparent legislative process.

Issue 1 flies in the face of Article 1, Section 18 of Ohio's Constitution which directly declares No power of suspending laws shall ever be exercised, except by the general assembly. The “general assembly” is the *only* body able to suspend laws. “No power of suspending laws shall ever be exercised” by any other way. It could not be more clearly stated that Issue 1, not the general assembly, attempts to suspend Ohio laws in direct violation of Ohio's Constitution.

Article XVI, Section 2 of the Ohio Constitution makes it clear that *Constitutional Conventions* are how amendments are to be made to the Ohio Constitution, not a simple majority of a popular vote as Issue 1 was conducted. That’s what it takes to **revise, amend, or change** the constitution, something Issue 1 attempts to do without it. If a ballot amendment can wipe out half a century of pro-life laws and a host of Constitutional Amendments, what is to say it couldn't wipe out the rest of our laws or the entire legislature, for that matter? Legally, it cannot.

Issue 1 attempts to “revise,” “amend,” and “change” the Ohio Constitution without the process of a convention in direct violation of Article XVI, Section 2 of the Ohio Constitution. Issue 1 is invalid because it bypasses the convention requirements necessary for doing so. Likewise, Issue 1 violates Article 1, Section 18 of Ohio's Constitution which directly declares the “general assembly” is the only body able to suspend laws. “**No power of suspending laws shall ever be exercised except by the general assembly.**” [Emphasis added] Issue 1 attempts to invalidate multiple Articles of the Ohio Constitution, something it lacks the legal authority to do.

- 2. Issue 1 violates Article 1, Section 7 of the Ohio Constitution** “no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted.”

Issue 1 violates Article 1, Section 11 of the Ohio Constitution: “Every citizen may freely speak, write, and publish his sentiments on all subjects...and no law shall be passed to restrain or abridge the liberty of speech, or of the press.” [without stating the direct intent to do so] **and the First Amendment to the U.S. Constitution.**

Not only would Issue 1 attempt to invalidate the work of the duly elected legislators like Ron Hood and Candice Keller, joint sponsors of the Ohio Heartbeat Law, it would harm pregnancy centers like the Community Pregnancy Center which Keller directs and would prohibit them from receiving state money in their effort to provide women beneficial and life-affirming services. Keller's pregnancy center has as its mission statement: to share the gospel of Jesus Christ and uphold the sanctity of human life...”

Issue 1 is written to prohibit the “State” from “directly or indirectly” interfering with a woman's abortion. Since the Community Pregnancy Center in Middletown, Ohio, and others like it received state money, if Issue 1 is upheld, they could find themselves either silenced or defunded, interfering with their “rights of conscience and “giving “preference” to pro-abortion agencies in direct violation of Article 1, Section 7 of the Ohio Constitution.

That's because Issue 1 reads, “The State (and thus, State money) shall not directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against” “an individual's voluntary exercise of this right.” This would prohibit such pregnancy centers from receiving state funding, essentially shutting down or silencing their message of the truth regarding life, fetal development, and abortion.

As Article 1, Section 7 states, “Religion, morality, and knowledge, however, being essential to good government, it shall be the **duty of the general assembly to pass suitable laws to protect every religious denomination.**” Issue 1 violates Article 1 Section 7 by removing the protection of “every religious denomination” from them, allowing them to be silenced, defunded, denied future state funds, and even closing them down, interfering with their “rights of conscience.” It is unconstitutional and should be rendered by the court as such.

Issue 1 would also violate the rights of doctors, nurses, and the medical community who work at any hospital or medical facility that receives state money. Their right of conscience would also be violated as Issue 1 would prohibit them from expressing their deeply held moral beliefs or beliefs against abortion based upon a sincerely held religious view. Issue 1 would violate Article 1, Section 7 of the Ohio Constitution by silencing not only Christians, but Jewish and Muslim beliefs, as well, giving preference to those who do not hold to pro-life beliefs based in the Bible,

Torah, or the Koran in direct violation of the Ohio Constitution. These religions, and their associated denominations, would not be protected in violation of Article 1, Section 7.

It would also violate the free speech rights of those like Sheila Bright Stanifer, RN. Sheila is an adjunct faculty nursing lab instructor at Write State University (which accepts state money).

Issue 1 would violate Sheila's First Amendment Rights, abridging her freedom of speech, prohibiting her from speaking the truth about the biological development of the child, her personal abortion experience (as she testified before the Ohio General Assembly), and deeply held convictions concerning abortion.

Issue 1 also violates Article 1, Section 11 of the Ohio Constitution: “Every citizen may freely speak, write, and publish his sentiments on all subjects...and no law shall be passed to restrain or abridge the liberty of speech, or of the press.” [without stating the direct intent to do so] and the **First Amendment to the U.S. Constitution:** Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Issue 1 would Violate Article 1, Section 11 by prohibiting pregnancy centers to “freely speak” in public schools on subjects including fetal development and purity, restraining and abridging their liberty of speech, and ability to distribute what they “write, and publish.” Issue 1 also violates the First Amendment to the U.S. Constitution because of broadly worded undefined terms, it could be interpreted to prohibit “the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.” In the near decade Faith2Action Ministries (the parent organization of Faith2Action Michigan) worked to pass the Ohio Heartbeat Bill, there were

many peaceable assemblies held at the Ohio Statehouse. Various rooms and areas were rented by Faith2Action from the Ohio Statehouse for press conferences, rallies, prayer meetings, and demonstrations to rally support for the Ohio Heartbeat Bill. Because Issue 1 prohibits the State from “directly or *indirectly*” burdening, prohibiting, interfering with an “individual's” right to abortion, such participation would be prohibited, thus violating Faith2Action Ministries and other pro-life groups and individuals from assembling peaceably on state or municipal facilities, where most of the decisions are made.

It would discriminate against pro-life individuals and groups, sending them “to the back of the bus,” far away from the Statehouse (and other municipal) grounds and state funding. It would also prevent the First Amendment guarantee to “petition the Government for a redress of grievances.” That's because any laws groups or individuals attempt to pass through their representatives to correct the damages waged by a ruling in favor of Issue 1 would be prohibited.

Issue 1 must be struck down because it violates Article 1, Section 11 and Article 1, Section 7 of the Ohio Constitution and the First Amendment to the U.S. Constitution.

3. Issue 1 violates Article 1, Section 6 of the Ohio Constitution [without stating the direct intent to do so] which states, “There shall be **no slavery in this state; nor involuntary servitude**, unless for the punishment of crime.”

Issue 1 deliberately used the word “individual” to include children of any age who are now given the “right to make and carry out their own reproductive decisions.” Something a minor child is incapable of doing. In addition, “The state shall not directly or indirectly, burden, penalize,

prohibit, interfere with, or discriminate against the “individual’s” “exercise of this right,” *and* “A person or entity that assists an individual exercising this right.”

That would mean that if an adult were to convince or coerce a child to exercise their “own reproductive decisions,” not only would a parent or law enforcement agent be forbidden from preventing the statutory rape and molestation, the adult pedophile or trafficker would be completely immune from the law. They would be enabled to engage women and underage children in human trafficking—a form of human slavery and a direct violation of Article 1, Section 6 which states: “There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.”

The Ohio Department of Health points to Human Trafficking as the fastest growing criminal industries in the world, an estimated \$35 billion business, stating, “U.S. Human Traffickers use violence, threats, deception, debt bondage, and other manipulative tactics to force people to engage in commercial sex or to provide labor or services against their will.” They also state, **“Human trafficking is a modern-day slavery where people profit from the control and exploitation of others.”**² [Emphasis added]

The Ohio Governor’s Human Trafficking Task Force released the following statement: “[N]ine out of 10 children who run away from home end up in the child sex trafficking business. The most common age in Ohio for youths to become child sex trafficking victims is 13 years old.” Their fact sheet reported, **“The average entry age into the commercial sex market is 12-14,** although it is not unusual for the age to be younger.” [Emphasis added]

Human Trafficking is already a major problem in Ohio. Attorney General Dave Yost’s office launched a Human Trafficking Initiative to address it, stating that Ohio ranks among the top 10

states for number of calls made to the National Human Trafficking Hotline. If Ohio is already one of the top 10 states reporting human trafficking, how much more will it happen if Issue 1 is allowed to enable this form of human slavery by holding child traffickers to be immune, as long as the victim can be forced or threatened into saying this formerly illegal sex trade was “their choice?”

Issue 1 would enable:

- Human traffickers and pimps forcing abortion upon the women and teens they exploit
- Sexual predators using abortion to cover up evidence of their misdeeds
- Abusive boyfriends using violence or threats to push women to abort
- Employers leaning on pregnant staff to abort so childbearing won’t interfere with their work⁶

Issue 1 ensures that all of it can take place without the knowledge, support, and guidance of parents. Under Section A of Issue 1:

A. Every individual "**CHILD**" has the right to make and carry out:" (their) "own reproductive decisions" and "The **State shall not** directly or indirectly, burden, **penalize, prohibit, interfere with,** or discriminate against either:

1. An individual's voluntary exercise of this right or
2. A person (**ADULT**, Planned Parenthood etc.) or entity **that assists an individual exercising this right.**" [Emphasis added]⁷

That makes it clear if the adult can convince or coerce the child that having sex with them was "their choice" than the state cannot “**penalize, prohibit, interfere with**” them.⁸

This is not a stretch. This is deliberate. It is a stated goal of the ACLU, one of the architects of Issue 1.² Their website clearly states their public goals: “Decriminalize all consensual sex work, including prostitution, among adults. Fully decriminalize by eliminating all criminal penalties for sellers and buyers. Also remove all criminal penalties for **YOUTH** who participate in sex work”¹⁰
[Emphasis added]

In addition to violating the Ohio Constitution, Issue 1 also violates federal (and state) law that prohibits an adult from coercing a child to engage in sexual activity. 18 U.S. Code § 2251 which states "(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such (see 18 U.S.C. § 2241– Aggravated sexual abuse, 18 U.S.C. § 2242– Sexual abuse, 18 U.S.C. § 2243– Sexual abuse of a minor or ward, 18 U.S.C. § 2244– Abusive sexual contact) If the sexual abuse of a child occurred on federal lands, the offense may be prosecuted under federal law. Federal lands include areas such as military bases, Indian territories, and other government– owned lands or properties (See 18 U.S.C. §7).¹¹

Issue 1 is more accurately called the “Child Trafficking Enabling Act.” While the real legal ramification of Issue 1 was withheld from voters, any court that upholds this assault on children would do so knowingly. Issue 1 must be struck down because our children are not for sale.

4. Issue 1 violates Article IV, Section 4 of the U.S. Constitution which guarantees each state a “Republican form of Government” (Guarantee Clause): “The United States shall guarantee to every State in this Union a Republican Form of Government...”

Issue 1 attempts, with a simple majority vote, to strike down multiple laws at once which were passed over a period of half a century thorough transparent, hearings and debate, through two bodies of the legislature, affirmed by the executive branch, and upheld by multiple courts. With more than \$58 million dollars of deceptive ads, and ballot language that doesn't mention a single law (nor repeal one), it attempts to create a “super right” that is *immune from all legislative action and oversight*, separate from all the checks and balances of a Republican form of government.

Issue 1 prohibits the people within our Constitutional Republic from using the process our founders enumerated in the U.S. Constitution. It not only attempts to strike 50 years of laws we passed, but it also prohibits the people (through their representatives) from passing any future laws to protect life. Citizens must maintain their ability to petition their government.

If upheld, Issue 1 would not only nullify decades of work by Faith2Action Ministries and numerous other groups, but it would also stand as a barrier to passing future legislation designed to protect women and unborn children, thereby rendering pro-life organizations, individuals, and Faith2Action's mission to protect life null and void. We have a Democratic Republic--not direct Democracy where the mob with the most money makes the laws or repeals them. It flies in the face of why our U.S. Constitution was written: to prevent tyranny and protect liberty.

The Ohio legislators and judges on our courts swore to uphold the Ohio Constitution and are bound by their oath to strike anything to the contrary.

Thomas Jefferson, pivotal in the foundation of American government, stated, “The **care of human life** and not its destruction is the **first and only legitimate object of good government.**”

The care of human life is the *purpose* of government. Issue 1 negates that purpose and takes from Ohio citizens their right to petition our elected representatives to do what they were elected to do: protect human life.

Former Justice Antonin Scalia said: You want a right to abortion? There's nothing in the Constitution about that. But that doesn't mean you cannot prohibit it. Persuade your fellow citizens it's a good idea and pass a law. That's what democracy is all about. It's not about nine superannuated judges who have been there too long, imposing these demands on society."¹²

Dobbs concluded; "*Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have inflamed debate and deepened division. It is time to heed the Constitution and return the issue of abortion **to the people's elected representatives.**" *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2243 (2022)
[Emphasis added]

Twenty-six Ohio Legislators voiced their opinion about Issue 1 with the following statement on November 8th, the day after the Issue 1 election:

“Unlike the language of this proposal, we want to be very clear. The vague, intentionally deceptive language of Issue 1 does not clarify the issues of life, parental consent, informed consent, or viability including Partial Birth Abortion, but rather **introduces more confusion.** This initiative failed to mention a single, specific law. We will do everything in our power to prevent our laws from being removed based upon **perception**

of intent. We were elected to protect the most vulnerable in our state, and we will continue that work.” [Emphasis added]

Issue 1 improperly removes authority from Ohio legislators—who voted to pass the laws on the books. It removes our representative government – the General Assembly – in violation of U.S. Supreme Court holdings and the Ohio Constitution.

It's been rightly said Direct Democracy is “two wolves and a lamb voting on what to have for lunch.” Yet, that is exactly what Issue 1 seeks to do, only the “lamb” in this instance is an innocent human life. These sentiments and understandings are why our founders gave us a Constitutional Democratic Republic so the rights of the weak and less powerful would not be undermined and repealed. This includes those with no voice or less money, who can't have their rights denied by tyrannical mob rule.

The United States Constitution guarantees a Republican form of government not only for our federal government, but to each state, as well, so that every government would follow the rule of law rather than the whim and intimidating voice of majority opinion. Our Founding Fathers knew well the threat of a pure democracy; where a simple majority to rule inevitably leads to a tyranny of the majority, leaving the rights of the minority largely unprotected. Ballot initiatives are almost always won by the one with the most money, trampling over the rights of those with less funds.

If a basic majority vote is allowed to amend a state constitution, then by definition, that is no longer a republic governed by the rule of law, but a pure democracy that brings with it the threat of a majority faction¹³. Such a form of government directly conflicts with the Guarantee Clause of

the Constitution and is, therefore, unconstitutional. That is why Issue one cannot be allowed to stand.

5. Issue 1 violates Parental Rights and violates the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

If issue 1 is upheld, a parent's right to be notified and give consent prior to their child undergoing an abortion (or gender “re-assignment”) surgery would be denied—thus creating an unequal standard compared to every other type of surgery performed in the state.

Despite parents never receiving information nor giving consent, they carry complete financial responsibility for all medical expenses including any complications that may arise, as Issue 1 permits a child to enter into a contract on behalf of the parents without their parent's knowledge.

However, while Issue 1 opens parents to liability, it grants complete immunity to any person taking their child to have the surgery. They cannot be sued or held liable for their actions. In other words, the parents have no legal redress. They didn't enter into the contract for their child's surgery, they are responsible for paying for what they didn't agree to, and they have no legal redress against those that brought their child to harm. Issue 1 also violates the First Amendment's guarantee to “petition the Government for a redress of grievances.”

While children's decision-making is regulated in nearly every other circumstance, for example they cannot vote, drive, testify, or obtain any other medical procedure without parental consent, Issue 1 allows a minor to enter into life altering decisions while removing from them the protection of their parents.

This constitutional amendment will remove parental rights because the Amendment language clearly states "Every individual (including a child of any age) has the right to make and carry out one's own reproductive decisions" "not limited to" abortion. This removes parents out of the decision making for all decisions relating to sex and sex organs including transgender mutilation surgeries, dangerous transgender hormones, and abortion until birth. Issue 1 goes *even further* than states like New York, where the ACLU claims that there is no New York law that removes parental consent requirements for trans-related health services, like hormone replacement therapy, or "gender affirming surgery."¹⁴

Issue 1 opens a Pandora's box beyond abortion on demand until birth. By cutting parents out of all decisions concerning "reproductive decisions" "not limited to" abortion, the door is opened wide for Planned Parenthood and others who would profit from children and teens who've become confused about their gender. Issue 1 enables these groups to profit from a child's mental disorder--something still listed in the American Psychiatric Association's list of "mental disorders" as "Gender Dysphoria."¹⁵

Not wasting any time, Planned Parenthood of Greater Ohio, just days after the Issue 1 election, announced “Gender affirming care will “officially be available” at “all 15 of our health centers **starting December 4!**” They listed this offering in: Akron, Athens, Bedford Heights, Canton, Cleveland, Franklinton, Kent, Lorain, Mansfield, North Columbus, Old Brooklyn, Rocky River, Toledo and Warren. While the real ramifications of Issue 1 were intentionally concealed from voters, Planned Parenthood fully understood what Issue 1 will do for their business by completely cutting parents out the decision making—consent or notification—for issues relating to sex or sex organs.



Planned Parenth... · 18 Nov
 Gender-affirming care will officially be available at all 15 of our health centers starting December 4!

Check the list above to see where services are offered closest to you and schedule an appointment for the compassionate care you deserve: bit.ly/3DhpXSN



Washington v. Glucksberg, 521 U.S. 702 (1997), declared that the Due Process Clause of the Fourteenth Amendment, protects the fundamental right of parents to direct the care, upbringing, and education of their children. And in *Troxel v. Granville*, 530 U.S. 57 (2000), the Supreme Court again unequivocally affirmed the fundamental right of parents to direct the care, custody, and control of their children.

Issue 1 deprives parents of the right to direct the upbringing of their minor children by excluding the parents from decisions regarding the education (since state money is involved), protection, and medical treatment of their children involving “reproduction.” “Reproductive decisions” is so broad (and undefined in Issue 1) but intended to include decisions regarding abortion, gender-

mutilation surgery, and sterilization—all without parental consent--unlike any other such operation or treatment in the state--in violation of the Fourteenth Amendment's Equal Protection Clause.

6. Those promoting Issue 1 violated the Ohio Deceptive Trade Practices Act, Sec. 4165.02(A)(7) as this petition was based on an arbitrary and vaguely worded amendment sold to the voters as consumers with a series of lies, misinformation, and deception.

Section 4165.02 Deceptive trade practice actions. States that:

(A) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person does any of the following:

(7) **Represents that** goods or **services have** sponsorship, approval, **characteristics**, ingredients, uses, benefits, or quantities **that they do not have** or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have.

The promoters of Issue 1 represented that abortion and reproductive services had the characteristic of a right, which they do not have. The U.S. Supreme Court in *Dobbs* confirmed that abortion was neither a fundamental right nor a constitutional right and yet the language in this initiative called it a right. More than \$58 million dollars was spent on a massive false, misleading, and deceptive advertising campaign to convince a simple majority to vote yes in an attempt to repeal 50 years of Ohio's protective laws and Constitutional Amendments.¹⁶

As former Representative Ron Hood, joint sponsor of the Ohio Heartbeat Law, in a public statement, said, “Why would we allow deceptive foreign money to use vague and obscure inference to dismantle 50 years of open, transparent, and Constitutional legislation?” Ron also helped lead the charge to pass Ohio’s Parental Consent and the Partial-Birth Abortion Ban, all of which would be nullified if Issue 1 is allowed to stand. Issue 1 invalidates the work of the legislature and prohibits them from carrying out future Constitutionally granted duties concerning the protection of children and women in the future.

Of forty-eight ads transcribed from the OURR2023: Ohioans United for Reproductive Rights, Ohio Citizen Action, and "Red Wine Blue USA" not one of them mentioned the unborn child, that child's heartbeat, or what issue 1 attempts to do: bring abortion until birth and partial birth abortion without parental notification or consent to Ohio.¹⁷

The following excerpts are taken directly from OURR2023: Ohioans United for Reproductive Rights, Ohio Citizen Action, and "Red Wine Blue USA" campaign ads. Rather than describe what voters were getting with issue 1, the campaign, instead, focused on non-issues unaffected by issue 1 such as “miscarriage care,” “birth control,” and “emergency care.”

- “...it also protects the essential reproductive medical care like the miscarriage care that saved my own life and access to birth control.”
- “It protects birth control, emergency miscarriage treatment,”
- “Issue 1 even protects birth control and emergency care for miscarriages.”
- “Yes protects birth control, and emergency care for miscarriages.”
- “It protects birth control, emergency miscarriage treatment”
- “...women who miscarry could be denied emergency care.”

They also tried to scare women, telling them there was “danger to women if they didn't vote yes.”

- “Ohio's extreme abortion ban is putting women's lives at risk...And if Issue 1 fails, there will be no abortions. No exceptions. (Showing as Headline quotes in background "A woman denied emergency care filled diapers with blood - almost died". "Anguish", "Agony for couple". "Extremely dangerous")”
- “THOSE TRYING TO DENY OHIOANS REPRODUCTIVE RIGHTS HAVE CREATED A MONSTER All right, Ohioan’s Frankenstein’s scary but what’s even scarier is losing our reproductive rights for women everywhere in the state. So, make sure you get out and vote yes on Issue 1 in this election.”¹⁸
- “...government took away their freedom to make their own decisions with Ohio’s life-threatening abortion ban.”
- “Stopping Ohio's life-threatening abortion ban, an extreme ban”

This often-repeated lie was admitted by none other than former abortionist and founder of the National Abortion Rights Action League, Dr. Bernard Nathanson, who oversaw more than 60,000 abortions.¹⁹ He said,

“We spoke of 5,000-10,000 deaths a year...I confess that I knew the figures were totally false...It was a useful figure, widely accepted, so why go out of our way to correct it with honest statistics?”²⁰

The National Centers for Disease Control in Atlanta, Georgia, revealed that the last full year that abortion was illegal there were only 39 documented cases in the entire United States of women

who died from illegal abortions.²¹ The *American Journal of Obstetrics and Gynecology* issued their study results which showed over 90 percent of all illegal abortions were actually performed by licensed physicians. They concluded that the legalization of abortion “has had no major impact on the number of women dying from abortion.”²²

In addition to propagating the lie that protecting babies endangers women, Issue 1's advertising never communicated their true intent of aborting babies until birth without parental consent. They, instead, focused on sweeping generalities such as “reproductive rights,” “freedom,” and “women's rights.” From their ads:

- “I’m voting yes on issue 1 to protect reproductive health care”
- “I’m voting yes to protect personal freedom and choice.”
- “Protect reproductive rights, let’s do it.”
- “Cheddar & I are voting yes on Issue 1 this election to protect women’s reproductive freedoms.”
- “...access to reproductive healthcare is a deeply personal issue for me & our family that’s why I’m asking all Ohioans to vote yes on Issue 1 by Nov 7th.”
- “I’m voting yes for Reproductive Rights & for my 2 wonderful children.”
- “I’m voting yes on Nov 7th for Issue 1 because I support women’s rights.”
- “Vote yes on Issue 1 your daughter’s lives may depend on it.”
- “Let’s keep women alive & support the reproductive rights.”
- “I’m voting yes because I don’t think reproductive rights are the government’s business.”
- “And encourage everyone to support this issue, it’s a very important issue on reproductive rights.”

- “I’m going to be voting yes this November because I care about giving women the ability to make their own choices when it comes to their reproductive health.”
- “I’m going to be voting yes this November because I care about giving women the ability to make their own choices when it comes to their reproductive health.”
- “I will be voting yes on Issue 1 on Nov 7th because I want to be able to control the choices around my body and my reproductive system, and you should too.”
- “You don't need me to tell you that the fight for women's reproductive rights, access to health care are on the line.”²³

Issue 1 was not about “miscarriage care,” “birth control,” “danger to women” or “freedom.” It was about taking the life of another human being, even babies who could survive, if born. It was about the removal of parental rights. It was about circumventing our Republican form of government and bringing back Partial Birth Abortion into our state.

Issue 1 spent \$58 million on deceptive ads, with no spending restrictions, no truth restrictions, and no foreign interference restrictions. If this assault is permitted, the new national strategy will be using ballot initiatives funded by foreign and out of state billionaires to not only steamroll over Ohio, but every other state to implement their radical agenda. **Killing until birth is just the beginning.**

While Issue 1 doesn't mention or repeal any Ohio law, it does violate them including: Ohio Revised Code Ann. § 3715.68 (A) regarding false advertisement: "if it is false or misleading in any particular.”²⁴

Campaign ads stated Issue 1 "would protect parental rights." The exact opposite is true. As *Williams v. State*, 77 Ohio St. 468,83 N.E. 802 (1908) made clear: "A statement of opinion is not a statement of fact and therefore not indictable, unless expressed as a fact."

Ohio voters did not understand Issue 1 to violate inalienable Constitutional Rights and reasonable restrictions and regulations to the surgery of abortion. A 2023 Michigan poll conducted by the Marketing Resource Group clearly shows those who supported Proposal 3, the deceptive Michigan amendment similar to Ohio's Issue 1, also left voters in the dark. Like with our Issue 1, Michigan Prop 3 voters didn't know what they were voting for.

- It revealed 60 percent of voters who said they voted "yes" on their amendment last fall, support Parental Consent despite voting for the amendment that stripped parents of it.
- The poll also showed 65 percent of Proposal 3 supporters agree with the 24-hour waiting period to provide women with informed consent, something the amendment for which they voted repealed.
- In addition, the poll revealed 97 percent of Proposal 3 supporters want abortion facilities to be licensed and inspected by the state to ensure basic public health and sanitation standards, despite voting for the amendment to repeal them.²⁵

Why would people vote for an amendment diametrically opposed to their beliefs? **They were deceived, just like in Ohio, where confusing ads intentionally hid and deliberately lied about what the amendment would do.**

As Pastor Corey Shankleton said in a public statement, "These proposals are so vaguely written in order to deceive the public into passing them, that to enact them into law requires deciphering

ambiguous intent. That's not how Constitutional law is created!" Those promoting Issue 1 violated the Ohio Deceptive Trade Practices Act, Sec. 4165.02(A)(7) and it should be declared invalid.

7. Issue 1 hurts Women and violates the Equal Protection Clause of the 14th Amendment of the U.S. Constitution which states, "nor deny to any person within its jurisdiction the equal protection of the laws."

With its vague and overly broad wording (void of definitions and any references to specific Ohio laws), Issue 1 threatens Ohio laws that protect women. It says, "The State shall not directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against" "an individual's" "exercise of this right" to take the life of their child.

During the passage of Ohio's Woman's Right to Know law, the most repeated argument was this would "interfere" and "burden" women seeking abortion. Yet, as was argued and proven since 1989, women are *empowered* by informed consent, since all of the information must be granted in order to make an informed decision. Since then, women have been told not only the biological facts regarding their developing unborn child, the complications of abortion, and the help (both financial and free resources) available to her.

Shiela (Bright) Stanifer, testified in favor of the Woman's Right to Know Law and Ohio's ban on Partial Birth Abortion. She told the committee of her abortion at the Cincinnati Margaret Sanger Center, which later became known as Planned Parenthood Cincinnati. She explained how she was told her 13-week baby was a "blob the consistency of a blood clot." She then played the tape recording of the heartbeat of her nine-week unborn son, a subsequent pregnancy. As the

committee listened to her child's heartbeat she ended her testimony with the words, "I never knew a 'blood clot' had a heartbeat."

With the Heartbeat Bill, hearing rooms were filled with too many women hurt by abortion to testify. It was the only group who had to testify by a show of hands. "How many here regret their abortion?" Hands went up throughout the hearing room. "How many would not have had their abortion if they knew their baby had a beating heart?" The room was filled with raised hands and tears from women who were denied vital information, and whose children were denied legal protection and life, as a result.

Rachelle Heidlebaugh was one of those women. She asked members of the Ohio legislature: "Would we hand a gun to a suicidal person and say 'here, 'Choose Life or Death?' Absolutely not, that would be cruel. Yet that is what we are doing with desperate women in crisis who need our love and compassion to be talked down from the ledge."²⁶

Additional evidence of how Issue 1 would hurt women can be found at the cemetery where Ohio women were buried directly following their abortion. One such victim was Lakisha Wilson, who died in 2014 after having an abortion reported to be at 19.4 weeks (five months) at the Preterm Abortion facility in Cleveland.²⁷ Ohio's abortion laws were inadequate to save Wilson's life; if upheld, Issue 1 will leave even *more* injured and dead Ohio women in its wake.²⁸ If women die from abortion with the abortion facilities subject to basic health and sanitation standards, how many more will die without it?²⁹ Sadly, there was no one to speak for Lakisha and others who were harmed by abortion in the Issue 1 election.³⁰

Others who died as a result of their Ohio abortions include Tiffany Minor³¹ whose parents sued Planned Parenthood of Summit, Portage and Medina Counties for her wrongful death, ³² stating their agents provided “negligent medical care and treatment to deceased, Tiffany Minor.” Kathy Davis, of Cleveland, was also killed by an Ohio Abortion.³³

Also killed by an Ohio abortion was Melanie Hausfeld, who died following an outpatient abortion in 1989 in Cincinnati when they missed her ectopic pregnancy.³⁴ Still another was Melanie Hausfeld, who left a son and daughter, husband and parents behind following her abortion. She suffered a ruptured, undiagnosed, ectopic pregnancy following a D & C abortion in Hamilton County. The wrongful death claim against the abortionist stated, “With proper diagnosis, care and treatment, Melanie Housfeld would have survived,” stating the abortionist “fell below the minimum standards of obstetrical and gynecological care.”³⁵

Another was Terri L. Tidmore, whose father sued Founder's Clinic in Columbus, Ohio following her abortion death, claiming Founder's Clinic was “negligent and below a reasonable standard of care.”³⁶ Another woman killed by an Ohio abortion was Robin Renee Wells, of Akron.³⁷

According to the Wrongful death legal complaint against Akron Center for Reproductive Health, “brought for the benefit of Robin's three minor children, Levon A Wells, then age 6; Russell L. Wells, then age 4; and Darrell W. Wells, then age 2,” Robin went into cardiac arrest following her abortion. The court ruled against Akron Center for Reproductive Health and awarded her beneficiaries \$1,363,000.

Yet another Ohio woman who wasn't able to tell her story to Ohio voters was Sandra Milton, whose body was placed in the Oakwood Cemetery in Fremont, Ohio following her Toledo

abortion.³⁸ Her death certificate states “internal hemorrhage with major blood loss,” “Laceration of uterus,” as a consequence of a “Uterine abortion.”³⁹

The real danger to women and their children is abortion and **more danger will come if Issue 1 is allowed to remove all protective laws and repeal Ohio's Woman's Right to Know Law, informed consent, parental consent, abortion clinic standards, state licensing and inspection of these surgical facilities, unlike any other surgeries performed in the state.** It would also open wide the door to very dangerous late term abortions, bringing more death to women and their children.

Issue 1 reads, “The State shall not directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against...a person or entity that assists an individual exercising this right.” If the State is not able to “penalize” those who “assist” in this abortion or gender mutilation surgery, then families like those left behind from the negligent abortion death of Robin Renee Wells, would be denied the settlement that is due them. All laws protecting women from sub-standard care and negligence would be removed, leaving women at even greater risk.

If upheld, Issue 1 would put women at risk by removing the same standard of care required for all other surgeries in the state. It would deprive women of Equal Protection by denying them specific legal prevention and remedy from harm and injuries caused by abortion and other “reproductive” decisions including surgeries which cut off healthy body parts from children suffering with a mental disorder. This Amendment specifically harms women without any legitimate state interest, in violation of the Equal Protection guarantee of the Fourteenth Amendment.

8. Issue 1 also discriminates against Disabled by violating State law and the Equal Protection Clause of the 14th Amendment of the U.S. Constitution which states, “nor deny to any person within its jurisdiction the equal protection of the laws.”

Issue 1 seeks to further violate the Equal Protection Clause of the 14th Amendment of the U.S. Constitution by targeting the disabled. Issue 1 also discriminates against the disabled by striking Ohio Revised Code § 29.19.10 which protects babies that test positive for Downs Syndrome.

Ohio Revised Code § 29.19.10 makes it a fourth-degree felony to knowingly induce or perform an abortion on a pregnant woman “if the person has knowledge that the pregnant woman is seeking the abortion, in whole or in part, because of:

- (1) A test result indicating Down syndrome in an unborn child;
- (2) A prenatal diagnosis of Down syndrome in an unborn child;
- (3) Any other reason to believe that an unborn child has Down syndrome.”⁴⁰

Because prenatal testing and abortions that target the disabled based on that test, the Charlotte Lozier Institute reported that abortion after prenatal diagnosis has reduced the population of individuals living with Downs Syndrome in the U.S. by approximately 30%.⁴¹ They further reported:

“...[U]sing information gathered from all member registries, from 2008 to 2012, there were 4,288 live births of children with Downs Syndrome, 231 natural fetal deaths, and 5,215 terminations. Downs Syndrome live births as a percentage of total diagnosed

pregnancies was 44%. **Fifty-three percent of all pregnancies were aborted following prenatal diagnosis.**⁴²

To suggest that children should be killed by abortion because of their disability is no different than what we've seen in not so distant history. In October, 1939 Adolf Hitler signed a document which authorized the killing of selected disabled people. Killing children who aren't perfect isn't a new idea, but it's one that history has summarily rejected.

We can't pretend Issue 1 is any different. We, as a civilized society, have rejected the of killing of the disabled, we must likewise reject Issue 1. Issue 1 lethally targets the disabled including those diagnosed with Down's Syndrome by striking Ohio Revised Code § 29.19.10 which protects babies who test positive for it. It denies the disabled Equal Protection guaranteed in the 14th Amendment of the U.S. Constitution and should be found to be unconstitutional in its entirety.

CONCLUSION

Issue 1 directly violates Article 1, Section 18 of the Ohio Constitution, which states “No power of suspending laws shall ever be exercised, except by the general assembly.” Issue 1 also violates the Ohio Constitution Article XVI, Section 2 because in order to “revise, amend, or change this constitution,” a convention is required.

Issue 1 violates Article 1 Section 7 by removing the protection of “every religious denomination” and discriminating against those who follow the Bible, Torah, and Quran, as well as pro-life pregnancy centers who would have their “rights of conscience” violated, forbidden to speak their pro-life views, and scientifically accurate information concerning abortion for fear that it would

be interpreted as violating the ambiguous amendment which forbids them from “directly or indirectly,” interfering with abortion.

Issue 1 also violates Article 1, Section 11 of the Ohio Constitution and the First Amendment to the U.S. Constitution, discriminating against pro-life individuals and groups, abridging their freedom of speech, forbidding them from peaceably assembling on state or municipal facilities, and prohibiting access to state funding. It is blatantly unconstitutional.

Issue 1 also violated the Ohio Deceptive Trade Practices Act, Sec. 4165.02(A)(7) as it was based on a vaguely worded amendment sold to the voters with a series of lies, misinformation, and deception. Issue 1's ambiguous text, which is void of definitions, neither mentions nor repeals a single specific Ohio law, nor should it be interpreted to do so.

Issue 1 violates Article 1, Section 6 of the Ohio Constitution, which states, “There shall be no slavery in this state; nor involuntary servitude.” Issue 1 is more accurately called the “Child Trafficking Enabling Act” because, if upheld, it would enable human slavery by holding child traffickers immune as long as the minor victim can be convinced, forced, or threatened into saying this formerly illegal practice was “their choice.”

Issue 1 violates Article IV, Section 4 of the U.S. Constitution which guarantees each state a “Republican form of Government,” replacing it with a pure democracy, where mob rule leaves the rights of the minority unprotected. Issue 1 improperly removes authority from Ohio legislators—who voted to pass the laws on the books for the last half century. It removes our representative government – the General Assembly of their Constitutionally granted Republican form of government – in violation of U.S. Supreme Court holdings.

Issue 1 does not define “reproductive decisions,” but, rather, seeks to include decisions regarding “gender-reassignment” surgery, sterilization, and abortion until birth—all without parental notice or consent—unlike any other such operation or treatment in the state--in violation of the Fourteenth Amendment's Equal Protection Clause.

If upheld, Issue 1 would put women at risk by removing the same standard of care provided for all other surgeries in the state and deny women legal protections from harm and injuries caused by abortion and other “reproductive” decisions including gender mutilation surgeries on confused children suffering from what the American Psychiatric Association calls a “mental disorder.” This Amendment specifically harms women without any legitimate state interest, in violation of the Equal Protection guarantee of the Fourteenth Amendment. Issue 1 would also lethally target the disabled including those diagnosed with Down's Syndrome by striking Ohio Revised Code § 29.19.10 which protects babies who test positive for it.

With more than \$58 million dollars in false and misleading advertising paid for by out of state and foreign billionaires, proponents of Issue 1 seek to strike Ohio's laws despite the fact that Issue 1 neither mentions nor repeals a single specific law. If enacted, the ambiguous language of Issue 1 would erroneously be used to violate the Constitution, human rights, parental rights, women's rights, and the rights of the disabled and should be declared invalid in its entirety.

Beyond violating the Ohio and United States Constitution, Issue 1 attacks parents, women, babies and children in an unprecedented way. Issue 1 also violates a Constitutionally granted Republican form of government, For these reasons, I petition the court to find Issue 1 unconstitutional and strike it down in its entirety while upholding Ohio's duly passed Heartbeat Law, which has already been upheld by the United States Supreme Court.

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- 22 Dr. and Mrs. J.C. Willke, *Abortion: Questions and Answers* (Cincinnati: Hayes Publishing Company, 1985), 104.
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Respectfully submitted,

Corey Shankleton

/s Corey Shankleton

pro se in support of Appellant

Faith2Action Michigan

P.O. Box 91

Caspain, MI 49915

419-980-3182

CERTIFICATE OF SERVICE

I, Corey Shankleton, hereby certify that on this 7th day of December, 2023, I caused a true and correct copy of the foregoing brief of *Amici Curiae* to be served by e-mail.

/s Corey Shankleton

ALAN E. SCHOENFELD

MICHELLE NICOLE DIAMOND

PETER NEIMAN

Wilmer Cutler Pickering Hale

and Dorr LLP

7 World Trade Center

New York, NY 10007

Alan.Schoenfeld@wilmerhale.com

Michelle.Diamond@wilmerhale.com

Peter.Neiman@wilmerhale.com

DAVINA PUJARI

CHRISTOPHER A. RHEINHEIMER

Wilmer Cutler Pickering Hale

and Dorr LLP

One Front Street

San Francisco, CA 94111

davina.pujari@wilmerhale.com

chris.rheinheimer@wilmerhale.com

ALLYSON SLATER

Wilmer Cutler Pickering Hale

and Dorr LLP

60 State Street

Boston, MA 02109

MATTHEW T. FITZSIMMONS

KELLI K. PERK

Assistant Prosecuting Attorney

8th Floor Justice Center

1200 Ontario Street

Cleveland, OH 44113

mfitzsimmons@prosecutor.cuyahogacounty.us

kperk@prosecutor.cuyahogacounty.us

*Counsel for Defendant-Appellee Michael C.
O'Malley, Cuyahoga County Prosecutor*

MELISSA A. POWERS

Hamilton County Prosecutor

230 E. Ninth Street, Suite 4000

Cincinnati, OH 45202

JEANINE A. HUMMER

AMY L. HIERS

Assistant Prosecuting Attorneys

373 S. High Street, 14th Floor

Columbus, OH 43215

jhummer@franklincountyohio.gov

ahiers@franklincountyohio.gov

allyson.slater@wilmerhale.com

Counsel for Defendant-Appellee G. Gary

Tyack, Franklin County Prosecutor

B. JESSIE HILL

FREDA J. LEVENSON

WARD C. BARRENTINE

REBECCA KENDIS

Assistant Prosecuting Attorney

RYAN MENDIAS

301 West Third Street

ACLU of Ohio Foundation

PO Box 972 Dayton, OH 45422

4506 Chester Ave.

wardb@mcohio.org

Cleveland, OH 44103

bjh11@cwru.edu

Counsel for Defendant-Appellee

flevenson@acluohio.org

Mat Heck, Jr., Montgomery County Prosecutor

rebecca.kendis@case.edu

rmendias@aclu.org

MEGAN BURROWS

JOHN A. BORELL

American Civil Liberties Union

KEVIN A. PITUCH

125 Broad St., 18th Fl.

EVY M. JARRETT

New York, NY 10004

Assistant Prosecuting Attorney

mburrows@aclu.org

Lucas County Courthouse, Suite 250

Toledo, OH 43624

Counsel for Plaintiffs-Appellees Preterm-Cleveland, et al.

jaborell@co.lucas.oh.us

DAVE YOST

kpituch@co.lucas.oh.us

Ohio Attorney General

Counsel for Defendant-Appellee Julia R.

BENJAMIN M. FLOWERS

Bates, Lucas County Prosecutor

Solicitor General

CARRIE HILL

STEPHEN P. CARNEY

Attorney for Summit County Prosecutor

MATHURA J. SRIDHARAN

Assistant Prosecuting Attorney

Deputy Solicitors General

53 University Ave., 7th Floor

Akron, OH 44308-1680

AMANDA L. NAROG

chill@prosecutor.summitoh.net

ANDREW D. MCCARTNEY

Assistant Attorneys General

*Counsel for Defendant-Appellee Sherri Bevan
Walsh, Summit County Prosecutor*

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

Amanda.Narog@OhioAGO.gov

Andrew.McCartney@OhioAGO.gov

Benjamin.Flowers@OhioAGO.gov

Stephen.Carney@OhioAGO.gov

Mathura.Sridharan@ohioago.gov

Counsel for Defendants-Appellants

*Attorney General Dave Yost, Director Bruce
Vanderhoff, Kim Rothermel, and Bruce
Saferin*

Dated: December 7, 2023 /s/ Corey Shankleton