

Abortion on the Ballot in 10 States in November

August 28, 2024 **by Dan McCue**



Samantha Hope Herring, chair of the Walton County, Florida, Democratic Party, and her daughter Savannah display their support for Florida's ballot initiative 4 at the Democratic National Convention in Chicago. (Photo by Dan McCue)

WASHINGTON — It was — despite a rare leak of a pending decision — a bombshell ruling by the U.S. Supreme Court.

Writing for the conservative majority on the bench, Justice Samuel Alito Jr. held in *Dobbs v. Jackson Women's Health Organization* that the U.S. Constitution does not confer a right to abortion.

The ruling's 116-pages (leaving aside concurrences and dissents) swept away 50 years of precedent while overturning the court's

previous decisions in both *Roe v. Wade* and the later *Planned Parenthood v. Casey*.

In practice, it returned to the individual states the power to regulate any aspect of abortion not protected by federal statutory law.

Since then, 22 states have banned abortion or restricted the procedure to earlier in a pregnancy than had been set by *Roe v. Wade*.

In 14 of these states, abortion is banned in almost all circumstances, with 10 not making an exception for rape or incest.

But the ruling also set off a flurry of political activity — both of the grassroots variety and inside various statehouses — the likes of which has rarely been seen.

Within weeks of the *Dobbs* decision, three states — Kansas, Ohio and Michigan — all weighed in on the issue, with abortion-rights advocates receiving crucial and, in some cases, overwhelming wins.

In early August 2022, voters in Kansas handily rejected a proposed amendment to the state constitution that would have added language to its text specifying the state does not guarantee a right to abortion.

Momentum behind the abortion-rights movement continued to grow after voters in Ohio voted down a ballot question that would have raised the approval threshold to 60% for any proposed state constitutional amendment.

Though the question presented to Ohio voters was not directly related to abortion rights, had it passed, it would have imposed

the higher threshold on an abortion-rights measure voters were set to consider the following November.

Then in Michigan, the passage of citizen-initiated Proposal 3, as the ballot measure was called, codified abortion rights into the state constitution.

And perhaps most miraculously of all, the controversy over *Dobbs* propelled Democrats to an unexpectedly strong showing in the 2022 midterms, enabling the party to retain control of the Senate, while ceding only a razor thin majority to Republicans in the House.

Since then, voters in three other states have weighed in on state constitutional amendments.

Vermont, California and Montana continued the trend of the side seeking to preserve access to abortion proving victorious.

In four of these states — California, Michigan, Ohio and Vermont — measures amending the state constitution to protect the right to abortion were approved by voters and in the other two states — Kentucky and Kansas — measures seeking to limit the right to abortion failed.

In 2024, voters in 10 states will be asked to make similar choices to either affirm that their state constitution protects a woman's right to have an abortion and receive related health services, or to decide that it does not.

In fact, one state, Nebraska, which certified its ballot last week, will actually have two measures for voters to consider, one supported by abortion-rights advocates, the other, placing limits on abortion rights, preferred by abortion opponents.

But as in most things in life, past performance is no guarantee of future results.

Whether citizen-initiated or legislatively referred, this year's crop of ballot initiatives face daunting challenges: they'll be the first initiatives since *Dobbs* to be considered against the backdrop and distractions of a presidential election year and they'll be the first to face a prepared conservative opposition previously caught flat-footed by the vehemence of the anti-*Dobbs* vote.

In Arizona, Montana and Nevada, the measures are also likely to be somewhat overshadowed by key races likely to determine control of the House and Senate.

And in at least one state, Florida, the bar for success is especially high. It is the only state with an abortion ballot referendum this year that requires 60% of voters to approve before its constitution is amended.

What follows is a summary of this year's abortion-related ballot initiatives.

Arizona

Proposition 129, the Arizona Abortion Access Act, is a citizen-initiated measure that would, in the words of its promoters, "restore and protect the right to access abortion care" by amending the state constitution to protect the right to abortion up to viability.

Fetal viability is defined in the measure as the point of pregnancy when there is a significant chance of the survival of the fetus outside of the uterus without the application of extraordinary medical measures.

This right would not be interfered with unless justified by a compelling state interest.

In the measure, a compelling state interest is defined as a law or regulation enacted for the limited purpose of improving or maintaining the health of the individual seeking abortion care that does not infringe on her autonomous decision making.

Colorado

Another citizen-initiated measure, this one would amend the state constitution to recognize the right to abortion and repeal Section 50 of Article V of the Colorado Constitution, adopted in 1984, which prohibited the use of public funds for abortion.

In practice, it would prohibit the state or local governments from denying or impeding the right to an abortion and allow abortion to be a covered service under health insurance plans.

Florida

This citizen-initiated measure was inspired by the one-two punch of the state imposing an abortion ban at six weeks, and a Florida Supreme Court ruling in April that allowed the ban to go into effect.

The initiative would enshrine a constitutional right to abortion before viability or when “necessary to protect the patient’s health, as determined by the patient’s health care provider.”

The ballot language asks voters to approve an amendment “to limit government interference with abortion.” It goes on to state that “no law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient’s health, as determined by the patient’s health care provider.”

However, the amendment does not change the Legislature’s constitutional authority to require notification to a parent or

guardian before a minor has an abortion.

Maryland

This one is a legislatively referred measure that would amend the Declaration of Rights in the Maryland Constitution to add a new section that guarantees a right to reproductive freedom, defined to include “the ability to make and effectuate decisions to prevent, continue, or end one’s own pregnancy.”

The ballot measure is designed to prohibit the constitutional right from being denied or infringed unless there is a compelling state interest, which would need to be achieved using the least restrictive means.

Currently, abortion is legal in Maryland until viability. Abortion is legal after viability if the woman’s life or health is endangered or there is a fetal anomaly.

Missouri

Missouri voters will consider a citizen-initiated measure that would amend the Missouri Constitution to provide the right for reproductive freedom, which is defined as “the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care and respectful birthing conditions.”

The amendment provides that the state Legislature may enact laws that regulate abortion after fetal viability.

The measure defines fetal viability as when there is “a significant likelihood of the fetus’s sustained survival outside the uterus without the application of extraordinary medical measures.”

Montana

This citizen-initiated measure that would amend the state constitution to state that “there is a right to make and carry out decisions about one’s own pregnancy, including the right to abortion.”

The government would not be permitted to regulate abortion after fetal viability, except “to protect the life or health of the pregnant patient.”

This right could not be denied or burdened unless justified by a compelling government interest achieved by the least restrictive means.

A compelling interest would mean a government interest to address a medically acknowledged health risk to the mother and does not infringe on her own decision making.

Significantly, the amendment would also specifically prohibit the government from penalizing, prosecuting or taking any adverse action against any person who aids or assists a woman in obtaining an abortion.

Nebraska

Two very different citizen-initiated constitutional measures in Nebraska will be on the November ballot.

One would amend the state constitution to recognize a fundamental right to abortion up to viability and the other would amend the constitution to ban abortion in the second and third trimesters.

Nevada

This citizen-initiated measure would establish the right to an abortion in the Nevada Constitution until fetal viability, or when necessary to protect the life or health of the pregnant patient.

The amendment would establish that this right will not be “denied, burdened, or infringed upon by a compelling state interest,” which is defined as “an interest which is limited exclusively to the state’s interest in protecting, maintaining, or improving the health of an individual who is seeking abortion care that is consistent with accepted clinical standards of practice.”

Under this measure, fetal viability is defined as the point of pregnancy when “there is a significant likelihood of the fetus’ sustained survival outside the uterus without the application of extraordinary medical measures.”

New York

This legislatively referred measure would amend the equal protection clause of the New York Constitution to prohibit a person’s rights from being denied based on the person’s “ethnicity, national origin, age, and disability,” and goes on to extend these protections to a person’s “sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive health care and autonomy.”

South Dakota

Another citizen-initiated measure, this one would amend the state constitution to prevent the government from regulating abortion before the end of the first trimester.

During the second trimester of pregnancy, the state may regulate abortion, but “only in ways that are reasonably related to the physical health of the pregnant woman.”

During the third trimester of pregnancy, the state may regulate or prohibit abortion, except “when abortion is necessary, in the

medical judgment of the woman's physician, to preserve the life and health of the pregnant woman.”

With the exception of the measure in Florida, all of the ballot initiatives require just 50% of the vote plus one to win.

In the case of the first six states that considered such initiatives, abortion-rights advocates have prevailed with percentages in the mid-to-high 50s.

Dan can be reached at dan@thewellnews.com and at <https://twitter.com/DanMcCue>

