

- 1 By using the word “individual” and not limiting it to adults, this fundamental right to abortion, sterilization, contraception and more would apply to children.
- 2 This proposal is a constitutional amendment, making it more difficult to change or overturn in the future.
- 3 Children would also have a right to seek sterilization and contraceptives.
- 4 The right to reproductive freedom would be nearly impossible to restrict or regulate.
- 5 Under Michigan law, a “health care professional” includes dentists, acupuncturists, massage therapists, counselors and more. In the amendment, health care professionals are given the ability to approve a late-term abortion.
- 6 This section appears to restrict late-term abortion, but it includes a mental health exception, so that a mother could cite anxiety on her due date as a reason for getting an abortion and a “health care professional” could agree. This would allow for abortions to happen at any point and for any reason.



Where Does It Say That?

AN EXPLAINER ON THE DANGERS OF PROPOSAL 3

Article 1, Section 28 Right to Reproductive Freedom

- (1) Every individual 1 has a fundamental right 2 to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including but not limited to prenatal care, childbirth, postpartum care, contraception, sterilization, 3 abortion care, miscarriage management, and infertility care.

An individual's right to reproductive freedom shall not be denied, burdened, nor infringed 4 upon unless justified by a compelling state interest achieved by the least restrictive means.

Notwithstanding the above, the state may regulate the provision of abortion care after fetal viability, provided that in no circumstance shall the state prohibit an abortion that, in the professional judgment of an attending health care professional, 5 is medically indicated to protect the life or physical or mental health 6 of the pregnant individual.

- (2) The state shall not discriminate in the protection or enforcement of this fundamental right. 7
- (3) The state shall not penalize, prosecute, or otherwise take adverse action against an individual based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall the state penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent. 8

- (4) For the purposes of this section:

A state interest is “compelling” only if it is for the limited purpose of protecting the health of an individual seeking care, consistent with accepted clinical standards of practice and evidence-based medicine, and does not infringe on that individual's autonomous decision-making. 9

“Fetal viability” means: the point in pregnancy when, in the professional judgment of an attending 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. 10

- (5) This section shall be self-executing. Any provision of this section held invalid shall be severable from the remaining portions of this section.

- 7 This would end the state ban on using taxpayer dollars to fund abortions, because that would be seen as the state discriminating against the fundamental right to abortion.
- 8 The vague term “someone” means anyone, including someone who is not a doctor, could perform an abortion and this section bars the state from prosecuting if that someone hurts the woman in the abortion.
- 9 Any abortion restriction would need to pass three tests: It must protect the health of the person seeking care, be consistent with accepted clinical standards of practice and not infringe on the person's autonomous decision-making. The last part is key – most laws infringe on a person's autonomous decision-making, meaning any law restricting abortion would not be allowed.
- 10 Fetal viability is the point when a baby could survive outside the womb. This amendment instead makes it based on the professional judgement of the “health care professional,” the particular facts of the case, and whether there is “significant likelihood” the baby would survive without “extraordinary medical measures.” Any premature baby needing attention in the NICU after birth would not meet this standard, and if a health care professional agreed and the mother consented, a NICU premature baby could be denied life-saving care under this proposal.