

Case No. 2023-0388

**Supreme Court
of the State of Ohio**

STATE OF OHIO *ex rel.* MARGARET DEBLASE *et al.*,

Relators,

V.

OHIO BALLOT BOARD, *et al.*,

Respondents.

Original Action in Mandamus

Amici Curiae Brief Supporting the Relators filed on Behalf of:

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Right to Life of Shelby County
Right to Life Society of Greene County
Mercer County Right to Life

Tiffin Right to Life
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Pursuant to Ohio Supreme Court Rule 16.06, this *amici curiae* brief is respectfully submitted in support of the Verified Petition for Writ of Mandamus filed by Relators Margaret DeBlase and John Giroux.

STATEMENT OF INTEREST OF AMICI CURIAE¹

The “Right to Life” sponsoring *amici curiae* are independent but affiliated nonprofit organizations located in Ohio. Each organization’s mission is to promote and defend the right to life of all innocent human beings from fertilization until natural death. This mission is achieved by educating the community on public issues from a pro-life perspective; promoting candidates for office who support pro-life laws and policies; and advising lawmakers and policy makers on the impact of legislative proposals and laws from a pro-life perspective.

STATEMENT OF FACTS

On March 20, 2023, the Relators filed an original action asking this Court to issue a writ of mandamus to correct the error of the Ohio Ballot Board (“Ballot Board”), which failed to properly consider and recognize that a proposed amendment to the Ohio Constitution did not limit itself to a single subject as required by state law. The issue here concerns the inquiry conducted by the Ohio Ballot Board pursuant to R.C. 3505.062(A).

The proposed constitutional amendment at issue in this case (hereinafter “*Proposed Amendment*”) reads in its entirety as follows:

Article I, Section 22. The Right to Reproductive Freedom with Protections for Health and Safety

- A. Every individual has a right to make and carry out one’s own reproductive decisions, including but not limited to decisions on:
1. contraception;
 2. fertility treatment;

¹ No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Leave to file is not required. S.Ct.Prac.R. 16.06.

3. continuing one's own pregnancy;
4. miscarriage care; and
5. abortion.

B. 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 or entity that assists an individual exercising this right, unless the State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care. However, abortion may be prohibited after fetal viability. But in no case may such an abortion be prohibited if in the professional judgment of the pregnant patient's treating physician it is necessary to protect the pregnant patient's life or health.

C. As used in this Section:

1. "Fetal viability" means "the point in a pregnancy when, in the professional judgment of the pregnant patient's treating physician, the fetus has a significant likelihood of survival outside the uterus with reasonable measures. This is determined on a case-by-case basis.
2. "State" includes any governmental entity and any political subdivision.

D. This Section is self-executing.

Stipulation of Facts ¶¶6 and Exhibit A (StipExh 001 to 003).

In accordance with the standard procedures for citizen initiated constitutional amendments, on March 3, 2023, the Ohio Attorney General certified that the summary contained within the preliminary initiative was a fair and truthful statement of the Proposed Amendment.

Stipulation of Facts ¶¶7 & 8 and Exhibit B (StipExh 004 to 006). On March 13, 2023, the Ballot Board met pursuant to R.C. 3505.062(A) to consider whether the proposal contained a single proposed constitutional amendment. *Stipulation of Facts ¶9.* No member of the Ballot Board discussed the issue. *Stipulation of Facts ¶13 & Exhibit E, at StipExh 019 to 020.*

Thereafter, the Ballot Board unanimously determined that the proposal was limited to a single constitutional amendment. Filing of this petition by the Relators followed.

LAW AND ARGUMENT

Proposition of Law No. I:

The *Proposed Amendment* embodies impermissible “logrolling” by joining together for a single vote non-controversial subjects that voters may feel compelled to support with the controversial issue of abortion in effort by the Amendment’s proponents to generate a coalition of support and obfuscate the matters at issue.

Though the *Proposed Amendment* attempts to link all of the practices it lists under the capacious phrasing of “reproductive decisions,” the practices could not be more different. Even within the specific listed items there is much diversity. The list begins with “contraception,” a term that can be understood to include abstinence or natural family planning. *See, e.g.*, Natural family planning (fertility awareness) - Your contraception guide, Nat’l Health Serv., *available at* <https://www.nhs.uk/conditions/contraception/natural-family-planning/> (“Natural family planning . . . is a method of contraception where a woman monitors and records different fertility signals during her menstrual cycle to work out when she’s likely to get pregnant.”) (last visited Mar. 31, 2023). And in any event, the point of most contraceptive measures is to *prevent*, rather than *terminate*, a pregnancy.

The list in the *Proposed Amendment* also includes “continuing one’s own pregnancy”—a wholly unquestioned right—and then offers another protection that no reasonable person could deny: “miscarriage care.” Only in the fifth item does the *Proposed Amendment* get to its intended substance, namely protecting “abortion.” Thus, by cynically burying the lede, the *Proposed Amendment* groups under one category actions *that are literally opposites* (continuing a pregnancy versus terminating it). In so doing, it ties together steps aimed at saving a life, such as miscarriage care, with those that are taken to bring about its destruction through voluntary abortion. *Cf. Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2284 (2022)

("[L]egitimate interests [for a state] include respect for and preservation of prenatal life at all stages of development[.]") (citations omitted).

Not forcing the Ohio electorate to vote on legal protections for such disparate activities under the guise of one constitutional amendment is the point of the anti-logrolling protections enshrined in state law. *See* R.C. 3519.01(A) ("Only one proposal of law or constitutional amendment to be proposed by initiative petition shall be contained in an initiative petition to enable the voters to vote on that proposal separately."); *see also State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St. 3d 315, 928 N.E.2d 410, 2010-Ohio-1845 ¶41 (2010); *cf.* Ohio Const., art. XVI, § 1 ("When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately."). These requirements prevent "deceit of the public by the presentation of a proposal which is misleading or the effect of which is concealed or not readily understandable . . . [and] afford the voters freedom of choice and prevent 'logrolling' or the combining of unrelated proposals in order to secure approval by appealing to different groups which will support the entire proposal in order to secure some part of it although perhaps disapproving of other parts." *State ex rel. Willke v. Taft*, 107 Ohio St. 3d 1, 836 N.E.2d 536, 2005-Ohio-5303 ¶28 (2005).

Here, the Ballot Board failed to recognize (or even discuss) that the various activities sought to be protected under a single amendment do not bear a reasonable relationship to the single general object or purpose of the Proposed Amendment: abortion. If the Board's error is not corrected by this Court, an Ohio voter strongly supportive of "continuing one's own pregnancy" and "miscarriage care" (and who could fail to be?) might, as a result, be misled into voting to support abortion. The people of Ohio deserve the opportunity to have their voices heard discreetly on such a controversial topic as abortion—something that is truly, as Relators note, a "unique act"—and not have their decision on the matter marred by the political subterfuge Ohio law has wisely long disallowed.

Proposition of Law No. II:

The language of the *Proposed Amendment* is so broad as to potentially create a constitutional right to a varied array of questionable practices.

Aside from not considering the logrolling effect of the *Proposed Amendment's* language, the Ballot Board also failed to consider what other controversial or novel practices, besides abortion, might receive constitutional protection if the amendment were to be adopted. The primary text in Section A of the Proposed Amendment reads: "Every individual has a right to make and carry out one's own reproductive decisions, *including but not limited to* decisions on [the listed examples, that include abortion]," (emphasis added). Section B of the Proposed Amendment then prohibits discrimination against individuals for exercising those decisions, including those unspecified decisions falling within the vague "including but not limited to" language.

It is by no means clear that the *Proposed Amendment* excludes from its scope a right to engage in other activities that affect reproduction, such as gender transition treatment, gender reassignment surgery, sterilization, and genital mutilation. The Ballot Board did not even consider that question. One of the arguments against such practices is that they can have permanent consequences for one's future ability to reproduce. *See, e.g.,* Philip J. Cheng, Alexander W. Pastuszak, Jeremy B. Myers, Isak A. Goodwin, and James M. Hotaling, "Fertility concerns of the transgender patient," *Transl. Androl. & Urol.*, 2019 Jun. 8(3), 209-18, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6626312/#:~:text=Both%20transgender%20men%20and%20women,orchiectomy%20are%20rendered%20permanently%20sterile> ("Both transgender men and women are at risk of losing their reproductive potential during the process of medical or surgical transition with GAHT or gender-affirming bottom surgery. For instance, transmen who undergo hysterectomy and oophorectomy and transwomen who undergo orchiectomy are rendered permanently sterile.") (last visited Mar. 31, 2023).

Yet, if the State is denied the ability to legislate on such issues, especially in the interest of protecting minors or those suffering from a mental incapacity, due to the *Proposed Amendment's* broad language, the effects of its passage will have been far more consequential than the Ballot Board, and perhaps even the amendments' proponents, ever imagined. Stepping in to prevent these unintended consequences and to protect measured deliberation by both the legislature and citizens is the object of settled Ohio law, which this Court has full authority to enforce in this matter. To effectuate justice, it must do so.

CONCLUSION

For the above stated reasons, these *amici* respectfully supports the Relators' request for issuance of a writ of mandamus from this Court to rectify the failure of the members of the Ohio Ballot Board to ensure compliance with the legal requirements of Ohio state law that an initiative petition contain only one proposed constitutional amendment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing will be served upon the following via email on the 31st day of March 2023:

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