

CRHLP Law Fellow Jaclyn Serpico responds to Ohio voters enshrining abortion rights in the state constitution

November 10, 2023- On Tuesday, Ohio voters approved Issue 1, enshrining abortion rights in the state constitution. As a proud Ohioan, I wanted to take a moment to lift up what this amendment means in practical terms to the people of Ohio.

The new state constitutional protection for abortion first and foremost blocks the elected branches in Ohio from enacting or enforcing any total ban on abortion. The amendment also provides a strong tool to eradicate or at least limit many of the substantial restrictions short of a total ban that stand between Ohioans and abortion access. And there are a lot of barriers to knock down. Perhaps most importantly, advocates now have a way to almost certainly get a court to strike down as unconstitutional the six-week abortion ban Governor Mike DeWine signed in 2019, which is currently enjoined (blocked from taking effect during litigation).

However, Ohio has numerous other abortion restrictions likely to be implicated by the establishment of a fundamental right to reproductive decision-making, such as: a ban on telemedicine provision of medication abortion—the most common form of early abortions (currently enjoined), a 22 week abortion ban, a ban on the abortion procedure most commonly used in the second trimester of pregnancy, a ban on abortion in cases with certain fetal health diagnoses, a medically unnecessary requirement that physicians check for the presence of a fetal heartbeat and provide information about the heartbeat to the patient who must then wait an additional 24 hours after that doctor’s visit before obtaining an abortion, a ban on public hospitals offering abortion care, a ban on insurance coverage for abortion for state employees and on the health care marketplace exchanges, and laws requiring parental consent for minors to obtain abortion. This long list doesn’t even include every TRAP law (Targeted Restrictions on Abortion Providers) that singles out abortion clinics for onerous regulation.

The new change to the constitution spells the potential dissolution of this web of restrictions that constrict Ohioans’ access to essential reproductive healthcare. It means greater dignity for Ohioans who are or can become pregnant; it grants us the freedom to control our own lives, futures, bodies, and highly personal decisions.

Issue 1 goes into effect in 30 days. Ohio’s abortion restrictions will not immediately dissolve, but rather will likely need to be challenged in court. While Democratic state legislators have already announced intentions to introduce legislation repealing the six-week ban and 24-hour waiting period, any such bills are unlikely to pass the Republican-controlled state legislature. Leadership in both houses of the state legislature has already indicated their intent to thwart the amendment, and some lawmakers have even called for stripping the Ohio Supreme Court of jurisdiction over Issue 1, meaning that they would not be able to hear cases challenging abortion restrictions under the amendment.

While ballot initiatives like Issue 1 provide the opportunity for huge shifts in abortion access, providers, patients, and advocates in my state will be working for years to fully implement the potential of Issue 1. Luckily, that’s something we have experience with—we’ve already been

working tirelessly for years before this vote to resist the state's attempts to limit our bodily autonomy. It's hard to overstate what this win means to Ohioans, after so many years of struggle against an anti-abortion, gerrymandered legislature. But on Tuesday night, Ohio voters proved what we've known all along: that when the question is put to the people, they will come out in support of bodily autonomy and reproductive freedom. This week, I couldn't be prouder of my state.