



NOVEMBER  
2022  
BALLOT PROPOSAL  
22-1

An Overview

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On November 8, 2022, Michigan voters will decide whether to adopt an amendment to the State Constitution to require the Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, and each member of the Legislature to file an annual financial disclosure, and to modify the term limits for a member of the Legislature. Proposal 22-1 is the result of House Joint Resolution (HJR) R of 2022, which passed the Michigan Senate and the Michigan House of Representatives with more than a two-thirds vote in each chamber. Proposal 22-1 will appear on the ballot at follows:

### **Proposal 22-1**

#### **A proposal to amend the state constitution to require annual public financial disclosure reports by legislators and other state officers and change state legislator term limit to 12 total years in legislature**

This proposed constitutional amendment would:

- Require members of legislature, governor, lieutenant governor, secretary of state, and attorney general file annual public financial disclosure reports after 2023, including assets, liabilities, income sources, future employment agreements, gifts, travel reimbursements, and positions held in organizations except religious, social, and political organizations.
- Require legislature implement but not limit or restrict reporting requirements.
- Replace current term limits for state representatives and state senators with a 12-year total limit in any combination between house and senate, except a person elected to senate in 2022 may be elected the number of times allowed when that person became a candidate.

Should this proposal be adopted?

YES

NO

If a majority of the electors vote "yes" on Proposal 22-1, Article IV, Sections 10 and 54 of the State Constitution will be amended to include the proposed language.

#### **BACKGROUND**

##### Financial Disclosure

In June 2021, the House passed House Bills 4680-4692, which, taken together, would enact various lobbying, financial disclosure, and ethics reforms. The bills have been referred to the Senate Committee on Government Operations.

In March 2022, the Board of State Canvassers approved the form and summary of an initiative petition sponsored by a group called Voters for Transparency and Term Limits. Generally, the initiative petition seeks to amend the Michigan Constitution to require members of the Legislature, the Governor, the Secretary of State, and the Attorney General to file annual public financial disclosure reports and modify Michigan's term limits requirement to allow an individual to serve a total of 12 years in any combination between the Senate and the House. The organization would have had to collect over 425,000 signatures by July 11, 2022, to have the initiation petition placed on the November ballot. However, that threshold was not reached; instead, the House and Senate adopted HJR R which placed the initiative on the ballot.

## Term Limits

In 1992, Michigan voters approved Proposal B, which amended the Michigan Constitution to prescribe term limits for an individual elected to State Executive and Legislative offices in Michigan. Proposal B imposed the following term limits:

- State Representative: three two-year terms.
- State Senator: two four-year terms.
- Governor: two four-year terms.
- Secretary of State: two four-year terms.
- Attorney General: two four-year terms.

Proposal B also prescribed three two-year terms in 12 years for an individual elected as United States Representative and two six-year terms in 24 years for an individual elected as US Senator. (However, these term limits were found to be unconstitutional due to an earlier US Supreme Court case).<sup>1</sup>

After Proposal B took effect, some Michigan voters sued, alleging that the term limits violated their rights under the First and Fourteenth Amendments to the US Constitution.<sup>2</sup> The US Court of Appeals for the Sixth Circuit disagreed and upheld Michigan's term limits for State legislators.<sup>3</sup>

In 2019, a group of bipartisan former Michigan legislators filed a Federal lawsuit against Secretary of State Benson seeking to invalidate term limits, arguing that term limits violate their ballot-access and freedom of association rights under the First and Fourteenth Amendments to the US Constitution. A US District judge granted the State's motion for summary judgment and the legislators appealed.

In November 2021, the US Court of Appeals for the Sixth Circuit, relying on *Miller*, affirmed the District Court's decision regarding the Federal claims.<sup>4</sup> The legislators also challenged the term limits under two procedural provisions of the Michigan Constitution. The Sixth Circuit opined that the State claims were better left for a State court to decide, vacated the district court's decision, and remanded for the district court to dismiss those claims without prejudice.<sup>5</sup> The plaintiffs appealed to the US Supreme Court.

## Legal Challenge to Proposal 22-1

In 2022, a group of plaintiffs filed a lawsuit with the Michigan Supreme Court after the Board of State Canvassers approved HJR R as Proposal 22-1, arguing that the proposal should be kept off the ballot because it did not comply with requirements that a proposal be limited to one purpose or subject. In an unsigned order, the Court denied the plaintiffs' request to compel the Board to decertify the initiative.<sup>6</sup>

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<sup>1</sup> In *US Term Limits, Inc. v. Thornton*, 514 US 779 (1995), the US Supreme Court ruled that states may not impose qualifications, including term limits, for prospective members of Congress that are stricter than those prescribed in the US Constitution.

<sup>2</sup> See *Citizens for Legislative Choice v. Miller*, 144 F3d 916, 918 (US Court of Appeals for the Sixth Circuit) (1998).

<sup>3</sup> *Id.* at 925.

<sup>4</sup> *Kowall v. Benson*, 18 F4th 542, 546 (US Court of Appeals for the Sixth Circuit) (2021).

<sup>5</sup> *Id.* at 549.

<sup>6</sup> *Anderson v. Board of State Canvassers*, order of the Michigan Supreme Court, Docket No. 164747 (2022). In a concurring opinion, Justice Viviano wrote that the State Constitution does not establish a single-purpose test. He went on to state, "Plaintiffs might have presented a better argument if the amendment here was being proposed via an initiative petition. Those amendments are governed by Const 1963, art XII, § 2. In *Citizens Protecting Michigan's Constitution v Secretary of State*, we noted the possibility that § 2 prohibited amendments containing multiple purposes, but we did not decide the issue because the plaintiffs there had not made the argument."

## **DISCUSSION**

According to the Center for Public Integrity, Michigan is one of two states that do not require lawmakers to disclose their personal financial interests and is ranked 50th in the nation in transparency. Proponents of Proposal 22-1 argue that the financial disclosure requirements would align Michigan with the 48 other states that require their elected officials to disclose their finances. Also, they believe it would enhance public confidence in government and would enact conflict of interest standards by requiring State officials to publicly disclose all relevant financial information.

Regarding the modifications to term limits, proponents believe that allowing lawmakers to serve a total of 12 years combined in either the House or Senate would have a long-term positive impact on public policy by allowing lawmakers to gain additional experience before they are termed out, to build better relationships with other lawmakers, and to campaign for election or reelection to the same office instead of seeking other opportunities. Proponents also argue that the current term limit rules encourage lawmakers to focus more on movement from office to office and ensure that lobbyists or career civil servants within the executive branch have more institutional knowledge than lawmakers.

Some opponents believe that the term limit aspect of the proposal should have originated through the initiative process instead of through the Legislature, arguing that the legislative approach lacked transparency and input from Michigan residents. Also, they argue that the proposal would increase the number of terms a lawmaker could serve, even doubling the number of terms a lawmaker could serve in the House, which is counter to the impetus for prescribing term limits when Proposal B passed in 1992.

## **FISCAL IMPACT**

Proposal 22-1 could result in increased costs for the Department of State because of the requirements to receive the required financial disclosure statements and to make them publicly available on its website. Any additional programming or staffing costs likely would be minimal and would be absorbed within the Department's annual appropriations.



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BALLOT PROPOSAL  
22-2

An Overview

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On November 8, 2022, Michigan voters will decide whether to adopt a constitutional amendment granting Michigan voters certain rights related to voting in-person and by absentee ballot and requiring certain duties of election officials. Proposal 22-2 will appear on the ballot as follows:

### **Proposal 22-2**

#### **A proposal to amend the state constitution to add provisions regarding elections**

This proposed constitutional amendment would:

- Recognize fundamental right to vote without harassing conduct;
- Require military or overseas ballots be counted if postmarked by election day;
- Provide voter right to verify identity with photo ID or signed statement;
- Provide voter right to single application to vote absentee in all elections;
- Require state-funded absentee-ballot drop boxes, and postage for absentee applications and ballots;
- Provide that only election officials may conduct post-election audits;
- Require nine days of early in-person voting;
- Allow donations to fund elections, which must be disclosed;
- Require canvass boards certify election results based only on the official records of votes cast.

Should this proposal be adopted?

YES

NO

If a majority of the electors vote "yes" on Proposal 22-2, the following articles and sections of the State Constitution will be amended to include the proposed language: Article II, Sections 4, 6, and 7; Article IV, Sections 1 and 16; Article V, Sections 1 and 13; Article VI, Sections 1, 2, 8, 23, and 26; Article VII, Sections 3, 10, 18, 22, and 28; Article VIII, Sections 3 and 5; and Article IX, Section 6.

#### **BACKGROUND**

In 2018, Promote the Vote, a coalition of organizations and individuals in Michigan, wrote (and acquired sufficient signatures for) a ballot initiative that became Proposal 18-3. That proposal, which 66.91% of Michigan voters approved in the November 2018 general election, amended the State Constitution to allow qualified voters in Michigan to do the following: 1) register to vote automatically during the process for renewing or updating their licenses or identification cards; 2) register to vote and obtain a ballot during the two-week period before an election, up to and including Election Day; 3) obtain an absentee ballot without providing a reason; and 4) cast a straight-ticket vote for all candidates of a particular political party.<sup>1</sup>

Promote the Vote acquired sufficient signatures during the 2022 election cycle for the ballot initiative that became Proposal 22-2. The Board originally refused to certify the petition after Promote the Vote acquired sufficient signatures because of a challenge to the initiative claiming that the petition failed to include all constitutional provisions that would be abrogated (nullified) by the petition's proposed amendments. Promote the Vote appealed to the Michigan

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<sup>1</sup> "2018 Michigan Election Results", [www.mielections.us/election/results/2018GEN\\_CENR.html](http://www.mielections.us/election/results/2018GEN_CENR.html). Retrieved 9-20-22.

Supreme Court requesting that the Court order the certification of the petition for placement on the November 2022 general election ballot. In its order, the Court disagreed with the claim that the petition failed to include all the constitutional provisions that would be abrogated and specified that the Board had a "clear legal duty to certify the petition".<sup>2</sup>

### **Impact on Election Funding**

Under Proposal 22-2, a county, city, or township could accept and use publicly disclosed charitable donations and in-kind contributions to conduct and administer elections. The local government could accept or refuse any donations or contributions offered, except for offers from foreign funds or from foreign source, which Proposal 22-2 would prohibit.

### **Impact on Military and Overseas Ballots**

In 2018, Proposal 18-2 amended Article II, Section 4 of the State Constitution to establish the right of military or overseas voters to have an absentee ballot sent to them at least 45 days before an election. Michigan Election Law specifies that a clerk must receive an absentee ballot by the close of polls (8 PM) on election day for the absentee ballot to count; however, Michigan Election Law provides an exception to this requirement for military and overseas ballots if a county, city, township, or village clerk does not meet the requirement to send out absentee ballots no later than 45 days before an election. In this case, the deadline for these ballots is extended by the number of days that the clerk fails to send out the ballots after the 45-day deadline.

Regardless of the circumstance described above, Proposal 22-2 would require a clerk to count a military or overseas ballot if the clerk received it within six days of the election and it was postmarked on or before election day. "Postmark" would mean any type of mark applied by the United States Postal Service or any delivery service to the return envelope, including a bar code or any tracking marks, which indicates when a ballot was mailed.

### **Impact on General Absentee Voting**

#### *Absentee Ballot Application*

Under Michigan Election Law, a registered voter must apply for an absentee ballot for each election, but for an exception that allows an absentee ballot application received for a primary election either to be for that primary only or for the primary and the election that follows. Under Proposal 22-2, a registered voter would have the right to have an absentee ballot sent to him or her before each election after submitting one absentee ballot application that would cover all future elections. The proposal specifies that this right would be rescinded only if any of the following applied: 1) the voter requested the rescindment; 2) the voter was no longer qualified to vote; 3) the Secretary of State (SOS) or the applicable election official received reliable information that the voter had moved; or 4) the voter did not vote for six consecutive years. The right would remain if the voter moved within the State and updated his or her registration address.

#### *Voter's Signature Verification*

Michigan Election Law requires a city or township clerk that receives a registered Michigan voter's application for an absentee ballot to send out the ballot after the clerk determines the

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<sup>2</sup> *Promote the Vote 2022 v. Board of State Canvassers*, order of the Michigan Supreme Court, Docket No. 164755 (2022).

genuineness of the signature on the application by comparing it to the signature maintained in the SOS's qualified voter file or on the master card. Proposal 22-2 would establish a voter's right to prove his or her identity when applying for or voting an absentee ballot by providing his or her signature and having an election official verify the signature's authenticity by comparing it to the signature maintained in the voter's registration record. The proposal also would establish the right of a voter to be informed immediately and afforded due process if his or her signature did not sufficiently agree or if the absentee ballot application or ballot were missing a signature.

### *Postage & Tracking*

Proposal 22-2 would establish a voter's right to State-funded prepaid postage to return an absentee voter application and ballot.

Michigan Election Law currently requires a city or township, if it has access, to use the State's ballot tracker program that provides the following information: 1) whether the voter's absentee ballot application was received; 2) whether the clerk sent the voter's ballot out; and 3) whether the clerk received the voter's absentee ballot. Under Proposal 22-2, a voter would have the right to a State-funded system for tracking submitted absentee voter applications and ballots that he or she could opt into and receive electronic notifications concerning the status of his or her application or ballot and any deficiency in the submission.

### *Drop-Boxes*

In 2020, the Michigan Legislature amended the Michigan Election Law to establish certain requirements for the accessibility, uniformity, and security of absentee ballot drop-boxes in the State. However, there is no requirement in the Law concerning the number of drop boxes that must be made available in a city or township. Under Proposal 22-2, every Michigan qualified elector would have the right to at least one State-funded drop box for every municipality. In larger municipalities, an elector would have the right to at least one drop box per every 15,000 registered voters. The proposal would require the drop boxes to be distributed equitably throughout the municipality and to be accessible 24 hours a day during the 40 days before an election, until 8 PM on election day.

### **Impact on Voter ID Laws**

Before receiving a ballot at a polling location, Michigan Election Law requires each registered Michigan voter to identify himself or herself by presenting identification, including a State driver license or a State identification card or either of those issued from another state, a United States passport or Federal identification, a military photo identification, a tribal photo identification, or a current student photo identification from any State educational institution. If a registered voter does not have identification, the Law requires the voter to sign an affidavit as a substitute.

Proposal 22-2 would establish the right of a registered voter to prove his or her identity when voting or applying for an absentee ballot in person by presenting his or her photo identification issued by a Federal, State, local, or tribal government or an educational institution, and the right to execute an affidavit verifying his or her identity if he or she did not have photo identification at the polling location. The proposal also specifies that a voter would not have to vote a provisional ballot solely because he or she executed an affidavit.



## **Impact on Early Voting**

Currently, casting an absentee ballot is the only method by which a registered voter in Michigan can vote early. Proposal 22-2 would establish a registered voter's right to vote in statewide and Federal elections in-person at an early voting site. The site would have to be open for at least nine consecutive days for at least eight hours a day, beginning on the second Saturday before the election and ending on the Sunday before the election. The proposal specifies that early voting sites would be governed in the same manner as election-day polling places, except that an early voting site could serve voters from more than six precincts and from more than one municipality within a county. The proposal also would prohibit early voting results from being generated or reported until after 8 PM on election day.

## **Impact on Post-Election Audits and Certification**

### *Election Audits*

The Michigan Constitution provides every qualified elector in Michigan the right to have the results of statewide elections audited to ensure the accuracy and integrity of elections. The Michigan Election Law requires the SOS to prescribe the procedures for election audits that include reviewing the documents, ballots, and procedures used during an election, and to supervise county clerks in the performance of election audits. Proposal 22-2 would establish these requirements as rights of qualified electors in Michigan. The proposal also would prohibit an officer or member of the governing board of a national, State, or local political party, and a political party precinct delegate, from having any role in an election audit.

### *Election Certifications*

The Constitution establishes the Board of State Canvassers, and the Michigan Election Law requires it to canvass the returns and determine the result of all elections for Federal and State elected officers, proposed amendments to the Constitution, or any other ballot question submitted to Michigan voters. Proposal 22-2 specifies that the "ministerial, clerical, nondiscretionary duty of the Board...would be to certify election results based solely on the certified statements of votes from counties or, in the case of boards of county canvassers, statements of returns from the precincts and absent voter counting boards in the county and any corrected returns". The proposal also would grant the Board the sole authority in the State to certify the results of an election for statewide or Federal office and specifies the certification would be final subject only to a post-certification recount of the votes supervised by the Board or a post-certification court order.

Michigan Election Law also establishes a county board of canvassers in each county of the State and prescribes these boards with similar duties to the Board. Proposal 22-2 would grant the Legislature the power to establish boards of county canvassers.

In addition, Proposal 22-2 would require certified results for any office that showed a tie among two or more persons to be resolved by the drawing of lots under rules promulgated by the Board.

## **DISCUSSION**

According to the SOS's Audit of the November 3, 2020, General Election, of the 5.5 million ballots cast in the November 2020, 3.3 million (60%) of those were absentee ballots. The total turnout and the number of absentee ballots cast set new State records. Proponents of Proposal 22-2 believe that the unprecedented number of absentee ballots cast demonstrates

that Michigan voters appreciate more flexibility within the voting system. They suggest that the one-time absentee ballot application, required return postage for absentee ballots, and the establishment of absentee ballot drop-boxes would offer further flexibility and continue to increase the total number of voters.

Proponents also contend that recent initiatives from other entities in the State to require identification at the polls without an affidavit option and to prohibit absentee ballot application mass mailings would make voting less accessible for voters. They believe that the identification requirements and absentee requirements in current law should remain, if not expand. Therefore, proponents see the inclusion of these rights in the Constitution, which is more difficult to amend than State statute, as a means to ensure this accessibility for future elections.

Opponents believe that many of the proposal's provisions would burden the voting system. For example, they contend that the introduction of a minimum nine-day early voting period would prove very costly for local governments that would have to bear the staffing and additional voting site costs associated with facilitating it. These costs likely would come out of local governments' general funds.

In addition, opponents believe that the proposal would harm election security and integrity in the State. They see the expansion of access to absentee ballots as a potential for more voter fraud, as the State does not require any proof of identification during the absentee ballot application process, only a clerk's comparison of the signatures on the application and in a voter's registration file. They also contend that allowing local governments to accept charitable donations to conduct and administer elections could invite outside political influence.

### **FISCAL IMPACT**

The adoption of Proposal 22-2 would have cost implications for the State, specifically for the Department of State and local units of government. The exact amount of these costs is indeterminate and would depend on factors such as the number of absentee ballot applications requested, the number of polling places made available for early voting, the number of absentee-ballot drop boxes installed, and the amount of donations counties, cities, or townships received.

The largest cost for the Department of State likely would result from postage costs that the proposal would require the State to pay. Based on mailing costs for the Department of Technology, Management and Budget, the average cost for a 1 oz to 3.5 oz parcel is \$0.66, including a return envelope. The cost for prepaid return postage averages \$0.70. There are approximately 8.2 million registered voters in Michigan.<sup>3</sup> Assuming a cost of \$0.66 per mailing, the estimated cost of sending an initial application to all 8.2 million registered voters with return prepaid postage would be an estimated \$11.2 million. There also would be costs to mail ballots with return postage for each subsequent election. That cost would depend on the number of voters who applied for an absentee ballot. Based on 2020 election data, an estimated 3.3 million absentee ballots were cast in that general election. Assuming another 3.3 million voters use absentee ballots, the estimated cost for a general election would be \$4.5 million for mailing the ballots and their return.

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<sup>3</sup> Number is based on Department of State data and represents 95% of all eligible voters, leaving an estimated 432,000 eligible voters who are not registered. The number of those who would become registered voters going forward is unknown.  
<https://mvlc.sos.state.mi.us/VoterCount/Index>

Additionally, the Department could incur costs to provide a State-funded tracking system for absentee ballots. Although a ballot tracking system is currently available on the Department's website, additional programming costs could be incurred to update the system to comply with the proposal's requirements. Those costs would depend on the level of programming required.

The Department also would incur costs for the installation, security, and maintenance of absentee ballot drop-boxes. Currently, the Michigan Election Law does not prescribe how many drop-boxes must be made available in a city or township. The proposal would require a minimum of one drop-box per municipality with one per 15,000 registered voters in larger municipalities. The cost would depend on the number of drop-boxes to be installed at an average cost of \$900 per drop-box, excluding installation, security, and maintenance. Based on population data, approximately 2,000 drop-boxes could need to be disbursed throughout the State.<sup>4</sup> The Department has indicated that it installed 666 drop-boxes across municipalities around the State for the 2020 general election; thus, the total estimate of 2,000 may be reduced by 666 if those boxes meet the proposal's criteria.

Local units of government could incur costs to make in-person early voting sites available. Current costs for local units of government to hold an election average \$2,100 per voting precinct, and there are an estimated 5,200 precincts in Michigan. The cost to provide an early voting site for nine consecutive days could exceed the current estimated cost of \$2,100 per precinct but would vary across municipalities. Costs would depend on how many sites would be provided in a municipality.

Lastly, any costs for local units of government could be reduced or eliminated by charitable donations, which would be allowed by the adoption of the proposal. Publicly disclosed charitable donations and in-kind contributions could be used to conduct and administer elections, reducing the estimated \$2,100 per precinct cost.

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<sup>4</sup> US Bureau of Labor Statistics, Summer 2022.





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22-3

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On November 8, 2022, Michigan voters will decide whether to adopt an amendment to the State Constitution to establish an individual right to reproductive freedom, including the right to make and carry out all decisions about pregnancy, such as prenatal care, childbirth, postpartum care, contraception, sterilization, abortion, miscarriage management, and infertility; allow the State to prohibit abortion after fetal viability unless needed to protect a patient's life or physical or mental health; prohibit state discrimination in enforcement of the right; prohibit the prosecution of an individual, or a person helping a pregnant individual, for exercising rights established by the proposed amendment; and invalidate State laws that conflict with the proposed amendment.

Proposal 22-3 is the result of an initiative petition circulated among electors for qualifying signatures, and will appear on the ballot as follows:

### **Proposal 22-3**

**A proposal to amend the state constitution to establish new individual right to reproductive freedom, including right to make all decisions about pregnancy and abortion; allow state to regulate abortion in some cases; and forbid prosecution of individuals exercising established right**

This proposed constitutional amendment would:

- Establish new individual right to reproductive freedom, including right to make and carry out all decisions about pregnancy, such as prenatal care, childbirth, postpartum care, contraception, sterilization, abortion, miscarriage management, and infertility;
- Allow state to regulate abortion after fetal viability, but not prohibit if medically needed to protect a patient's life or physical or mental health;
- Forbid state discrimination in enforcement of this right; prohibit prosecution of an individual, or a person helping a pregnant individual, for exercising rights established by this amendment;
- Invalidate state laws conflicting with this amendment.

Should this proposal be adopted?

- YES  
 NO

If a majority of electors vote "yes" on Proposal 22-3, the State Constitution will be amended to include the proposed language.

### **BACKGROUND**

Section 14 of the Michigan Penal Code, enacted in 1931, prohibits a person from willfully administering to any pregnant woman any medicine, drug, substance or thing whatever, or employing any instrument or other means, with intent to procure the miscarriage of any such woman, unless it is necessary to preserve the life of such woman.<sup>1</sup> A person who violates Section 14 is guilty of a felony (punishable by up to four years' imprisonment or a maximum fine of \$5,000, or both) or, in case the death of the pregnant woman, of manslaughter.

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<sup>1</sup> Section 14 was held unconstitutional regarding abortions in the first trimester of a pregnancy as authorized by the pregnant woman's attending physician in the exercise of his medical judgment. *People v Bricker*, 389 Mich 524 (1973).

In 1972, a group called the Michigan Coordinating Committee for Abortion Law Reform led a ballot initiative to legalize abortion before 20 weeks. Specifically, Proposal B would have allowed a licensed medical or osteopathic physician to perform an abortion at the request of the patient if the gestational period had not exceeded 20 weeks and if the procedure were performed in a licensed hospital or other facility approved by the Department of Public Health. Michigan voters did not approve Proposal B.

The following year, the United States Supreme Court issued its decision in *Roe v. Wade*, in which the Court struck down a Texas law making abortion illegal except when necessary to save the mother's life.<sup>2</sup> In striking down the Texas law, the Court found that inherent in the Due Process Clause of the Fourteenth Amendment is a fundamental "right to privacy", which protects a pregnant woman's choice whether to have an abortion. The Court pointed out, however, that the right is not absolute and must be balanced with the government's interest in protecting women's health and the life of the fetus. The Court resolved these competing interests by establishing a pregnancy trimester framework to govern abortion regulations in the US. Following the *Roe* decision, Michigan's 1931 abortion ban went dormant. In 1992, the Court abandoned the trimester framework in favor of a new "undue burden" standard, in which state statutes were found unconstitutional when they were enacted for "the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus".<sup>3</sup>

In June 2022, the US Supreme Court issued its opinion in *Dobbs v. Jackson Women's Health Organization*, which overruled *Roe* and *Casey* on the grounds that the US Constitution makes no reference to abortion, and the right is not implicitly protected by any constitutional provision, including the Fourteenth Amendment.<sup>4</sup> The Court noted that the Fourteenth Amendment has been held to guarantee some rights not expressly mentioned in the Constitution but those rights must be "deeply rooted in this Nation's history or tradition" and "implicit in the concept of ordered liberty", and the Court deemed abortion was not. Following the *Dobbs* decision, Michigan's 1931 law went back in effect.

In anticipation of the US Supreme Court's overturning *Roe*, Planned Parenthood of Michigan filed a lawsuit in April 2022 seeking to block enforcement of the 1931 law. In May 2022, a Michigan Court of Claims judge blocked enforcement of the 1931 law. County prosecutors in Jackson and Kent Counties appealed, and a Michigan Court of Appeals panel ruled that the injunction blocking enforcement of the law applied only to the Attorney General's office and not to county prosecutors. However, the Court of Appeals' ruling was in effect for only a few hours. In a separate case, an Oakland County Judge granted an emergency temporary restraining order against county prosecutors. The judge later granted a preliminary injunction that temporarily barred county prosecutors from enforcing the 1931 law.

In September 2022, the Court of Claims judge ruled that the State's 1931 abortion ban is unconstitutional because it "would deprive pregnant women of their right to bodily integrity and autonomy, and the equal protection of the law".<sup>5</sup> The decision was appealed to the Michigan Supreme Court.

During the 2022 election cycle, a group called Reproductive Freedom for All circulated petitions and collected a sufficient number of signatures for a proposed constitutional

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<sup>2</sup> 410 US 113 (1973).

<sup>3</sup> *Planned Parenthood v. Casey*, 505 US 833 at 877.

<sup>4</sup> 597 US \_\_\_\_.

<sup>5</sup> *Planned Parenthood of Michigan v. Attorney General*, opinion and order of the Michigan Court of Claims, Case No. 22-00044-MM (2022).

amendment to be placed on the 2022 November general election ballot. Opponents challenged the initiative petition claiming there was insufficient space between certain words of the text of the proposed amendment. The State Board of Canvassers deadlocked on whether to certify the initiative for placement on the November election ballot. Reproductive Freedom for All appealed to the Michigan Supreme Court, which ordered the Board to certify the petition as sufficient for placement on the November election ballot.<sup>6</sup>

## **DISCUSSION**

Following the US Supreme Court's overturning of *Roe* in its *Dobbs* decision, state legislatures have become the authority in abortion rights and regulations. In Michigan, the 1931 law prohibits a person from administering an abortion and prescribes a felony for a violation unless the procedure is necessary to preserve the life of the mother. Proponents of Proposal 3 contend that this prohibition does not align with the values of voters. According to the Pew Research Center, 62% of US adults say that abortion should be legal in all or most cases.<sup>7</sup> Proponents believe that Michigan voters concur with these national survey statistics and that the Michigan Legislature should repeal the State's abortion ban because its membership is elected to represent the will of the voters. However, the Michigan Legislature has not repealed the 1931 law. Accordingly, proponents believe that enshrining an individual's right to an abortion in the Michigan Constitution by approving Proposal 3 is the appropriate course of action.

Proponents also suggest that the lack of abortion rights has negative impacts on women's social position. Amicus briefs in the *Dobbs* case cited studies demonstrating that *Roe* reduced birth rates by a significant margin, which causally increased the likelihood of women graduating high school and attending college.<sup>8</sup> The brief cited below noted that this level of educational attainment improves women's financial attainment, as well. Proponents believe that a return to the lack of lawful abortion access would negatively affect the educational and financial attainment that women in the State have achieved over the past 50 years.

In general, some opponents of Proposal 3 disagree with the proposition that an individual has a fundamental right to an abortion. The Pew Research Center reports that 13% of US adults say that abortion is morally wrong in all cases and 33% say that its morally wrong in most cases.<sup>9</sup>

Opponents of Proposal 3 also contend that the proposal's language is too ambiguous and broad in scope. Some believe that it could allow any health professional, not only a physician (as currently regulated), to administer an abortion, and that it could allow abortions after fetal viability for insignificant health concerns, among other examples. Conversely, proponents see breadth as an advantage, allowing physicians administering (and individuals seeking) an abortion to act with discretion based upon the facts of each individual's circumstance.

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<sup>6</sup> *Reproductive Freedom for All v. Board of State Canvassers*, order of the Michigan Supreme Court, Docket No. 164760 (2022).

<sup>7</sup> Pew Research Center, [www.pewresearch.org/politics/2022/07/06/majority-of-public-disapproves-of-supreme-courts-decision-to-overturn-roe-v-wade/#americans-views-of-abortion](https://www.pewresearch.org/politics/2022/07/06/majority-of-public-disapproves-of-supreme-courts-decision-to-overturn-roe-v-wade/#americans-views-of-abortion). Retrieved 9-30-22.

<sup>8</sup> Brief for Economists as Amicus Curiae, p. 26, *Dobbs v. Jackson Women's Health Organization*, 597 US \_\_\_\_ (2022).

<sup>9</sup> Pew Research Center, [www.pewresearch.org/fact-tank/2022/07/15/key-facts-about-the-abortion-debate-in-america](https://www.pewresearch.org/fact-tank/2022/07/15/key-facts-about-the-abortion-debate-in-america). Retrieved 9-30-22.



In addition, opponents point to the ballot proposal's language with the contention that it could have wide-ranging effects on indirectly-related State laws. They suggest that the proposal could negate the current requirement that a minor obtain parental consent to receive an abortion and the current prohibition on partial-birth abortions. Moreover, they contend that approval of Proposal 3 could eliminate the State's ability to regulate abortions that occurred before fetal viability, among other things. They believe that any ambiguity regarding the proposal's provisions would have too many wide-ranging effects for voters to make an informed decision or for proponents to understand the outcomes if the proposal were approved. Moreover, opponents and proponents alike note that, regardless of one's opinions on the various reproductive rights issues, it could take years and many court cases to determine the extent of the rights listed in the proposal.

### **FISCAL IMPACT**

Approval of the proposal would have no fiscal impact on State or local units of government. As noted, the 1931 ban has been dormant since the 1973 *Roe* decision; thus, no incarceration costs have been incurred nor fines imposed. If the proposal were not adopted, and absent a final judicial decision nullifying it, the 1931 law essentially would be reimplemented, which would impose costs for the State, particularly the Department of Corrections, and local jails.

Based on the most recent report to the Michigan Legislature, incarceration costs in State correctional facilities currently average \$125.20 per day, ranging from a low of \$105.26 per day to a high of \$136.69, based on the security level of the correctional facility.<sup>10</sup> Additionally, new felony arrests and convictions would increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. However, it is unknown how many people would be prosecuted, which makes the actual cost indeterminate. Any additional revenue from imposed fines would go to local libraries.

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<sup>10</sup> "Report to the Legislature pursuant to Article 2, PA 87 of 2021, Section 904", Michigan Department of Corrections, [www.michigan.gov/corrections](http://www.michigan.gov/corrections). Retrieved 10-11-22.