

# Ohio Supreme Court partially sides with abortion amendment backers on ballot language

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COLUMBUS, Ohio – The Ohio Supreme Court ordered the Ohio Ballot Board, which writes the wording for initiatives on state ballots, to reconvene and fix part of how it describes the abortion rights constitutional amendment on the Nov. 7 ballot.

The Tuesday night judgement is a limited win for the backers of the abortion rights amendment.

The court ruled the phrase “citizens of the State,” [which appears twice in the Ballot Board’s language](#), is misleading and must be changed.

However, the Republican-controlled court didn’t take issue with the words “unborn child,” used instead of “fetus” in three places on the ballot. The court also didn’t rule for changes to references to “medical treatment” instead of the phrase “reproductive decisions,” a term that amendment backers said could be refer [to a talking point from anti-abortion groups that proposal would allow youth to obtain sex changes](#). The court is also allowing the phrase “pregnant woman,” instead of “pregnant patient,” the more generalized term for gender-fluid Ohioans seeking reproductive care that backers included in the amendment’s language.

The ballot board, lead by Republican Secretary of State Frank LaRose, now must reconvene to make changes consistent with the court’s order, but much of its original language will remain. The decision comes just days ahead of the start of voting in Ohio, [as military and overseas voting is scheduled to begin Friday](#).

[The amendment that would appear](#) in the Ohio Constitution if passed – regardless of what the ballot says – doesn’t use the words “citizens of the State” but just the “State” when describing what state government can and cannot allow. The court agreed with the amendment’s backers in their challenge of the ballot language, saying the ballot board’s use of “citizens of the state” was misleading.

The proposed amendment would allow Ohioans the right to make their own reproductive decisions for contraception, fertility treatment, continuing one’s own pregnancy, miscarriage care and abortion, generally until fetal viability.

“The State shall not, directly or indirectly, burden, penalize, prohibit, interfere with, or discriminate against either an individual’s voluntary exercise of this right or 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,” the amendment states.

The Supreme Court opinion was unsigned. The court has seven justices -- four Republicans and two Democrats. Some of the justices wrote concurring opinions, arriving at their own legal reasoning for the judgement. Others wrote partial dissents.

In the judgement, the court notes that the Ohio Constitution describes the requirements of ballot language, saying it must “properly identify the substance of the proposal to be voted upon.”

The justices note that in the proposed amendment, there is a definition of “State.” It includes “any governmental entity and any political subdivision.”

Backers of the amendment, in its request before the Supreme Court to invalidate the phrase “citizens of the State,” argued that it raises questions for the average voter about how the amendment would affect their rights.

Ohio Attorney General Dave Yost, in representing the Ballot Board, argued that “citizens of the State” is the same as the “State” since the Ohio Constitution says, “All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary.”

The justices agreed with the amendment’s backers.

“Because of the way the word ‘citizens’ is used, the average voter might interpret the ballot language to mean that the proposed amendment would prohibit individual citizens—i.e., private actors—from taking actions to burden, penalize, or prohibit abortion,” the judgement says.

Furthermore, Yost didn’t provide any examples in the Ohio Constitution or state law where “citizens of the State” is used interchangeably with “the State,” the judgement states.

“Accordingly, the ballot language approved by the ballot board would not accurately tell the voters what they are being asked to vote on,” the judgment says. “Instead of describing a proposed amendment that would establish a right to carry out reproductive decisions free from government intrusion, the ballot language’s use of the term ‘citizens of the State’ would mislead voters by suggesting that the amendment would limit the rights of individual citizens to oppose abortion.”

Ohio Justice Patrick Fisher, a Republican, concurred with the opinion. Michael P. Donnelly, a Democrat, concurred with a separate opinion.

Justices Melody Stewart, a Democrat, Jennifer Brunner, a Democrat, Joe Deters, a Republican, all concurred in part and dissented in part, each with their own opinions.

Deters' opinion was joined by Chief Justice Sharon Kennedy, a Republican, and Pat DeWine, a Republican.