

Yost takes unusual step of issuing ‘legal analyses’ of abortion, marijuana issues on November ballot

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COLUMBUS, Ohio – Republican Ohio Attorney General Dave Yost has taken the unprecedented step of offering his office’s thoughts on what the legal ramifications would be if voters approved a pair of high-profile, controversial ballot measures in November.

Yost released a pair of documents on Thursday, one offering a legal analysis of State Issue 1, which would enshrine abortion rights in the state constitution, and another offering a similar analysis of State Issue 2, which would change Ohio law to legalize recreational marijuana for adults 21 years old and over.

[The analysis of Issue 1](#) is particularly detailed, because the proposal is a concise but sweeping statement of rights for abortion and other reproductive-related issues. That has left how courts may interpret the measure, if voters approve it, open to interpretation when [considering potential future challenges to the state’s various abortion-related laws](#). Amendment backers say the measure’s effects are clear, while abortion opponents at times have sought to shift the ground of debate by arguing the language could arguably apply to controversial, non-abortion related issues. Any ambiguous issues likely would ultimately land before the Ohio Supreme Court, where Republicans hold a majority.

In contrast, [Issue 2 lays out a specific regulatory scheme](#) for how marijuana could be produced, sold and consumed, and since it’s what’s called an “initiated statute,” state lawmakers could change or repeal it completely if they want. The abortion amendment, however, could only be changed by another statewide vote. Yost’s move is likely to draw criticism, given that he opposes abortion.

“It is not surprising a politician like Attorney General David Yost would want to insert government into our most personal decisions,” said Gabriel Mann, a spokesperson for Ohioans United for Reproductive Rights, the campaign backing Issue 1.

Amy Natoce, a spokesperson for the anti-Issue 1 Protect Women Ohio, praised Yost’s opinion for “setting the record straight.”

“Ohio’s chief law officer confirmed what we have known all along: Issue 1 goes further than Roe, turning Ohio into the most radical abortion regime in the country,” Natoce said.

But Yost said he decided to chime in on the two ballot issues because of what he views as public misunderstanding of what the measures would do.

“This is not an exercise in advocacy,” Yost wrote Thursday. “Rather, it is an effort to help Ohioans understand the legal impacts that Issue 1 and Issue 2 generate. As you’ll see, most of the legal ramifications of Issue 1 and Issue 2, if approved, are clear. Other aspects, however, are not clear and will most certainly end up in court. We have noted which is which.”

Yost says he plans to produce similar analyses on future ballot issues through 2026, when he will leave office due to term limits. Yost is expected to run for governor the same year.

Issue 1

Yost contends that Issue 1 would create stronger protections for abortion than those that existed nationwide until last year, when the U.S. Supreme Court overturned legal protections for abortion nationwide by striking down Roe v. Wade and another landmark decision from 1992, Casey v. Planned Parenthood. The distinction has to do with the legal standard any abortion regulation would have to meet under the language in Issue 1, versus the standard that the previous two U.S. Supreme Court decisions established.

“The proposed Amendment appears to borrow some concepts from the Roe era, but also creates a new, legal standard that goes beyond what Roe and Casey said,” Yost wrote in the analysis.

Yost went on to suggest that Issue 1, if passed, could be cited in overturning a number of the abortion bans and abortion restrictions that Republican lawmakers have passed in recent years. The general finding meshes with one vein of criticism from abortion opponents, who have said that the measure goes too far while extending abortion rights.

Per the analysis, Ohio laws that most clearly would be invalidated, pending a successful legal challenge, include:

- The state’s “heartbeat” law, which would ban abortion as early as six weeks into pregnancy, with no exemptions for rape or incest,
- Another law that bans abortion 20 weeks into pregnancy,
- A law that bars doctors from performing an abortion after a prenatal screening detects fetal Down syndrome,

- A law that requires someone seeking an abortion to wait for 24 hours first
- Laws restricting the dilation and extraction and dilation and evacuation abortion methods, which are performed later in pregnancy

Issue 1 would allow the state to prohibit abortion after fetal viability, which can vary but generally is around 22 weeks into pregnancy, with an exemption to protect a patient's health in the judgment of that patient's doctor. Yost's office wrote that the language "likely protects post-viability abortions under certain exemptions," a view that meshes with opponents' argument that the exemption would allow for abortions later in pregnancy than what most Ohioans would support.

However, Yost's analysis also throws some cold water on one of abortion opponents' most visible arguments: that it would create a right for minors to undergo gender reassignment surgeries even without their parents' permission. He also left it open to interpretation whether the measure would definitely invalidate "parental consent" laws that require minors to get permission from their parents or guardians before getting an abortion, something abortion opponents have said is in jeopardy.

Protect Women Ohio has adopted these arguments in ads to try to find more politically favorable ground to oppose the measure, given that polls show a solid majority of Ohioans support abortion rights. Legal experts previously have dismissed the gender-related claims in particular, calling them misleading.

The analysis states that under Issue 1, it will be up to a court to determine if and how the protections in Issue 1 apply to minors. It concludes there's "no guarantee" that parental consent laws would survive a court challenge – although this is not the same thing as saying they would definitely be nullified.

But as for the gender-related issues, it states: "It would certainly be too much to say that under Issue 1 all treatments for gender dysphoria would be mandated at the minor individual's discretion and without parental involvement."

Issue 2

Yost's four-page analysis of Issue 2 summarizes how the initiated statute, if passed, would allow adults 21 years and older in Ohio to use, possess, and transport legally obtained marijuana within a number of limits.

The state would issue licenses to cultivate, process, test and dispense marijuana commercially within certain rules, including limits on how much THC (the active ingredient in marijuana) can be in marijuana products sold. Individuals could grow up to six cannabis plants each, with a total limit of 12 plants per residence; they would be allowed to give it to others but not sell it without a license.

Even though Issue 2 would allow limited marijuana legalization, “Because Issue 2 creates limitations on certain aspects of marijuana, the proposal is not expected to eliminate the black market for marijuana products,” Yost’s analysis stated.

Issue 2 wouldn’t repeal Ohio’s existing criminal prohibition against growing and using marijuana, but it would protect people who grow or use it if they follow the new rules it would create.

The proposed law would allow employers to ban employees from using marijuana, as well as permit them to fire or refuse to hire people who use or possess marijuana. Landlords could also include lease clauses that forbid tenants from growing or smoking marijuana.

A 10% sales tax would be imposed on marijuana purchases, on top of any existing sales taxes, under the proposal.

Part of that money would go toward a new “cannabis social equity and jobs program,” which would provide money and help with the marijuana license application process to “individuals most directly and adversely impacted by the enforcement of marijuana-related laws who are interested in starting or working in cannabis business enterprises,” Yost’s analysis stated. Consideration would be given to factors such as applicants’ personal wealth, “social disadvantage” based on things like race, gender, physical disability or long-term residence in a high-unemployment area.

Ohio’s existing medical marijuana program, which allows people with at least one of [26 qualifying conditions](#) to obtain it from dispensaries and use it, would remain in place even if Issue 2 passes.

Local governments couldn’t prevent an existing medical marijuana cultivator or processor from producing marijuana, but they could ban adult use dispensaries from selling it. However, a dispensary operator could put the issue before local voters, and if it passes, the local government would be required to allow that operator to sell marijuana.