

Issue 1 made Ohio's abortion ban unconstitutional. Will Ohio AG defend it in court?

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Before Ohio voters approved Issue 1 earlier this month, Ohio Attorney General Dave Yost made clear that the state's ban on most abortions wouldn't survive under the new constitutional standard.

"Some of Ohio's laws may be defensible, but the Heartbeat Act would not exist if Issue 1 passes," Yost's office wrote in a legal analysis of the constitutional amendment. That law banned doctors from performing abortions after embryonic activity was detected – about 18 weeks earlier than viability, which is the new threshold for abortion restrictions.

So will the state drop its appeal before the Ohio Supreme Court? "We will be responding through our brief," Yost said Monday.

The Ohio Supreme Court, which includes four Republican and three Democratic justices, has asked attorneys disputing and defending the state's abortion ban to make their cases by Dec. 7.

Attorney Jessie Hill, who represents abortion clinics challenging the law, said she remains confident they will defeat the abortion ban.

"It's certainly feasible to end the case if the state wants to agree that the six-week ban is not enforceable," Hill said. "There's an easy way and a hard way to do this, and it's up to Dave Yost what we're going to pursue."

Ohio Democrats are working on legislation to repeal the ban on most abortions, saying Ohioans shouldn't have to sue to enforce what nearly 57% of voters approved. But that proposal has little hope of passing in the GOP-controlled Legislature.

Top Republicans in the Ohio Statehouse say they will let judges interpret what Issue 1 means for abortion access in the state. They don't plan to introduce a ballot initiative to upend it in 2024.