

# Now that Issue 1 has passed, which of Ohio's dozens of abortion laws will be challenged first?

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COLUMBUS, Ohio – Now that Issue 1 has passed and will soon be added to the Ohio Constitution, courts will likely review many of the three dozen anti-abortion laws the General Assembly has passed over the years to determine whether they hold up to the new amendment.

While all eyes will be on the state's "heartbeat" abortion bill that bans abortion when a fetal heart tone can be detected, as early as six weeks or before many women know they're pregnant, gears already are turning in another legal case where the amendment could prove significant.

On Wednesday morning, a federal judge in one of the six pending lawsuits challenging Ohio's abortion laws instructed the parties to submit supplemental briefs describing how the state's newly passed abortion rights amendment will affect the case. The case began in 2015 and involves the written transfer agreements abortion clinics must get from nearby hospitals in case of an emergency.

U.S. District Court of Southern Ohio Judge Michael Barrett gave the parties a deadline of Dec. 8 to submit the briefs.

Almost 2.2 million Ohio voters, or 56.6% of the people who voted, supported the amendment Tuesday night.

The amendment protects people's decisions about abortion, pregnancy, contraception, miscarriage care and fertility treatment until fetal viability, around 22 to 24 weeks. Then the General Assembly would be allowed to regulate these reproductive decisions. But women would still be allowed to get an abortion after viability if in the professional judgement of her physician it's needed to protect her life or health.

During a call with the media on Wednesday morning, leaders of Ohioans United for Reproductive Rights, the campaign backing the amendment, were circumspect about legal challenges.

"We are not sharing our legal strategy right now," said Lauren Blauvelt, a co-chair of Ohioans United for Reproductive Rights and executive director of Planned Parenthood Advocates of Ohio. "But all medically unnecessary restrictions should be removed. We know that Ohio voters spoke loud and clear that abortion is a medical decision that should be up to the patient and their family and not the government. So we will work really hard to ensure that these restrictions go away. Once we start that process, we'll be able to talk more about it."

Jonathan Entin, an emeritus law professor at Case Western Reserve University, said that the Issue 1 backers have a couple options before them.

“They could go straight to court and assert that the restriction is inconsistent to Issue 1. Or they could wait for somebody to come after them – maybe the local prosecutor or the state medical board – and assert the invalidity of the law in the proceeding,” he said. “There are advantages and disadvantages to each approach.”

The most-discussed abortion law in Ohio is the “heartbeat” law. The law took effect after the U.S. Supreme Court overturned *Roe v. Wade* last summer, but a Hamilton County judge put it on hold again after abortion-rights groups challenged the law in court.

The new amendment could come up in that case, said Jessie Hill, an attorney who represents abortion clinics and is a law professor at Case Western Reserve University who works separately from Entin and hasn’t shared strategy with him.

“That is the one that is moving, it’s the furthest along,” Hill said. “That’s the thing everyone has been talking about and it has the biggest impact on abortion access. That’s the priority – it’s obviously not a surprise.”

Hill didn’t want to discuss more about abortion strategy, except to describe the six laws being challenged in outstanding cases in state and federal courts:

- The “heartbeat” ban: Polling showed most Ohioans disagreed with the 2019 law because of how soon abortions were banned and because it lacks exceptions for rape and incest. It was the law of Ohio for 82 days last summer, but was put on an indefinite hold as a state court in Cincinnati weighs the overall constitutionality of the law. Meantime, a portion of that case was argued on Sept. 27 before the Ohio Supreme Court, which hasn’t released a decision. Since the new amendment explicitly states that abortions would be allowed until viability, the six-week ban is almost guaranteed to be struck down, according to legal experts.

- The case in Barrett’s courtroom that started in 2015 over written transfer agreements.

- Senate Bill 157, passed in 2021: A portion of this bill is being argued in state court also in Cincinnati over variances that the Ohio Department of Health can grant if an abortion clinic cannot find a local hospital to enter into a transfer agreement. Under SB 157, the clinics can only get variances with local consulting physicians to provide help in an emergency if they don’t work for medical schools, public hospitals, universities or other public institutions. This requirement would result in the closure of the last two abortion clinics in Southwest Ohio: Women’s Med Center in the Dayton area and Planned Parenthood of Southwest Ohio’s clinic in Cincinnati.

- Senate Bill 27, passed in 2020: This law, which is currently on hold and before a state court in Cincinnati, requires abortion clinics to bury or cremate fetal remains after a surgical abortion. Clinics would have to ask women whether they wanted to determine final disposition of fetal remains.

-Senate Bill 260, passed in 2020, which bans medication abortions provided via telemedicine. Planned Parenthood said it offers some abortions via telemedicine in Ohio. Women who live in rural areas have their initial visit with a Planned Parenthood clinic in Cleveland, Columbus or Cincinnati, where they get an exam, have an ultrasound and get counseling as ordered by state law. If a woman proceeds with a medication abortion, she must wait 24 hours under the law. Her second visit can be closer to home at a local clinic, where there is a video consultation with the physician from the initial visit. Then she can receive medication for the abortion. A state judge in Cincinnati put the law on hold.

-The Down syndrome abortion ban case. In 2020, the Sixth Circuit Court of Appeals, a federal appellate court, allowed the state to begin enforcing the ban. The law prohibits women who have learned through medical testing that their fetus could have Down syndrome to get an abortion. A question about whether the law needs to have an exception to protect a woman's health still needs to be decided by the court.