

With abortion amendment in effect, Supreme Court expected to take new look at ‘heartbeat’ appeal

By [Laura Hancock](#)
[cleveland.com](#)

COLUMBUS, Ohio – While Ohio Attorney General Dave Yost argues that the Ohio Supreme Court doesn’t need to consider the new abortion rights constitutional amendment in an appeal in the fetal “heartbeat” case, providers say the new provisions make the case moot.

Yost, representing the state in defending the law, and clinics, who are challenging the law in a state court in Cincinnati, submitted briefs Thursday night, one month after [57% of Ohioans voted in favor](#) of enshrining abortion rights in the Ohio Constitution. The amendment went into effect on Wednesday.

About a week after the Nov. 7 election, the court asked the state and the clinics to submit briefs describing if or how the amendment effects the appeal. The state supreme court had been weighing whether abortion clinics had standing to bring the case, which originated in a Hamilton County courtroom where the judge put the six-week abortion ban on hold more than a year ago.

Yost, representing the state, [argues in his brief](#) that the appeal is more about legal procedure than abortion rights, and asked the Republican-controlled Supreme Court to rule on legal questions raised during [oral arguments on Sept. 27](#).

The court at the time was looking at whether the clinics had standing, or permission to sue on behalf of patients, over the state’s abortion laws, or whether actual pregnant women needed to be plaintiffs in the lawsuits. Only Kentucky has ruled that abortion providers lack standing in challenges to laws, [according to Bloomberg Law](#).

Yost argued that the other legal question considered by the court is more important than standing: Whether the Hamilton County judge’s preliminary injunction, or an indefinite hold on the state from enforcing the fetal heartbeat law, can be appealed. Yost believes it can be appealed, however the Ohio 1st District Court of Appeals

declined to hear the appeal on the preliminary injunction, saying only final orders are appealable.

Yost provided the Ohio Supreme Court examples of three recent court cases across the state in which judges said preliminary orders can be appealed.

“Moreover, that issue inherently evades review, so the Court should use this rare opportunity to provide much-needed guidance,” Yost said in the brief. “And while the third-party standing issue is comparatively less pressing after the Amendment, the Court should nevertheless resolve it to guide non-abortion cases.”

Yost acknowledged that ultimately the heartbeat law, which prohibits abortion as soon as a fetal heart tone can be detected, at around six weeks, will most likely ultimately be declared unconstitutional, since the amendment generally allows abortion until viability.

The providers -- which include Preterm-Cleveland, Planned Parenthood and a physician who performs abortions -- had a different legal strategy, announcing [in their brief](#) that they intend to amend their original complaint in Hamilton County to include a claim that the heartbeat law violates the new amendment. The complaint hadn't yet been amended by Friday afternoon, according to Hamilton County court records.

The clinics expect to be successful at the trial court, they told the Supreme Court.

“This Court no longer needs to decide the issues before it since a final judgment on new constitutional grounds is highly likely,” their brief said. “A final judgment reflecting that (the heartbeat law) clearly violates the amendment will moot the State’s appeal of previously granted preliminary relief.”