Exploring the Impact of a Viability Limit on Support for Ballot Measures

RESULTS FROM AN EXPERIMENT
BY PERRYUNDEM

July 12, 2023
Introduction.

In the post-Roe landscape, voters in several states have seen or will see state ballot measures on abortion rights and access.

We were curious about the extent to which a fetal viability limit in these measures affects support for abortion-related ballot measures. Does a viability limit increase support from voters? Among whom? Does it not have an effect either way?

To explore these questions, PerryUndem conducted an experiment via a survey among \( n = 4,037 \) registered voters nationwide, including an oversample of \( n = 912 \) Arizona voters. The survey was conducted June 6 to June 20, 2023, using YouGov’s online panel.
We used the 2022 Michigan ballot language as the basis for the experiment.

Half of the sample received the exact MI ballot language, which explicitly allows the state to regulate abortion after fetal viability (the “viability ballot”).

The other half of the sample got the MI ballot language without a specific reference to state regulation after viability (the “expansive ballot”).

See the next page for text.

We then analyzed levels of support and concern about each measure.
BALLOT LANGUAGE PRESENTED TO PARTICIPANTS

Here’s a proposed amendment to your state constitution that you could see on the ballot in a future election. Please read it carefully as if you were voting on it today. It can get a little technical, but we want to give you all of the info.

The proposal

A proposal to amend the state constitution to establish a new individual right to reproductive freedom, including the right to make all decisions about pregnancy and abortion; **allow the state to regulate abortion in some cases**; and forbid the prosecution of individuals exercising the established right.

This proposed constitutional amendment would:

- Establish new individual right to reproductive freedom, including right to make and carry out all decisions about pregnancy, such as prenatal care, childbirth, postpartum care, contraception, sterilization, abortion, miscarriage management, and infertility;
- Allow state to regulate abortion after fetal viability, but not prohibit if medically needed to protect a patient’s life or physical or mental health;
- Forbid state discrimination in enforcement of this right; prohibit prosecution of an individual, or a person helping a pregnant individual, for exercising rights established by this amendment;
- Invalidate state laws conflicting with this amendment.

Half the sample got the “viability ballot,” which includes the entirety of this proposal at left.

The two parts highlighted in green were **removed** for those who got the “expansive ballot” treatment. Everything else remained verbatim.
What we found surprised us.

We expected to see no difference between support for the viability v. expansive ballot. If anything, conventional wisdom suggests the viability limit would attract more support.

But, that’s not what we found.

In fact, the viability ballot performed worse than the expansive ballot – garnering significantly fewer definite yes votes. (We double, triple, and quadruple checked the data.)

Why? Because a portion of voters do not want the government controlling any decisions about abortion – including after viability. We think is a relatively new trend among some pro-choice voters, reflecting a shift away from wanting any regulatory restrictions on abortion.

Here are more details.
Data suggest that a viability limit may dampen strong support for amendments.

- There is a -15 point “drop” in definite yes votes for a MI-type amendment that specifies viability v. one that does not.
- This difference cuts across demographic segments, but is particularly wide among Democrats, pro-choice voters, and independents.
- Open-ended responses confirm that some voters dislike the inclusion of a viability limit, primarily because they don’t want the state “controlling” or involved in any decisions about abortion.
- The viability explainer that was presented in MI’s supplemental info / full petition wording drops strong support even more (-25 pts in definite yes votes v. the expansive ballot).

See the next few pages.
Let’s say you were voting on this today in your state. Would you vote yes or no on this proposal?

- Definitely vote yes
- Probably vote yes
- Lean yes

<table>
<thead>
<tr>
<th></th>
<th>Viability ballot</th>
<th>Expansive ballot</th>
<th>After viability explainer (viab. ballot)</th>
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<tbody>
<tr>
<td>Def. yes</td>
<td>30</td>
<td>45</td>
<td>14</td>
</tr>
<tr>
<td>+15 v. viability</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>+25 after viability explainer</td>
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</table>
The expansive ballot elicits stronger support across every segment.

This gap is widest among:

- Voters who want abortion legal in all cases
- Democrats
- Independents
- Women of reproductive age (18 to 44)
% Definitely yes

<table>
<thead>
<tr>
<th></th>
<th>Viability language (n = 2,004)</th>
<th>No viability language (n = 2,033)</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; College</td>
<td>27</td>
<td>40</td>
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<tr>
<td>College +</td>
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<tr>
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<tr>
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<td>17</td>
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<tr>
<td>Republican men</td>
<td>7</td>
<td>14</td>
</tr>
<tr>
<td>Want abortion legal in all cases</td>
<td>52</td>
<td>89</td>
</tr>
<tr>
<td>Want abortion legal in most cases</td>
<td>38</td>
<td>52</td>
</tr>
<tr>
<td>Want abortion illegal in most cases</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>Want abortion illegal in all cases</td>
<td>6</td>
<td>7</td>
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</table>
When collapsing all categories of “yes” votes, the expansive ballot edges out among several segments.

The exceptions are Republicans and respondents who want abortion illegal.
<table>
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<td>&lt; College</td>
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<tr>
<td>College +</td>
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<tr>
<td>Republicans</td>
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</tr>
<tr>
<td>Want abortion illegal in all cases</td>
<td>13</td>
<td>15</td>
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</table>
After the initial vote, respondents who got the viability ballot were presented with this information about fetal viability – taken directly from Michigan’s supplemental info.

Here’s more info about fetal viability:

The proposal would allow the state to regulate the provision of abortion care after fetal viability—but in no case could the state prohibit an abortion that, in the professional judgment of an attending health care professional, is medically indicated to protect the life or physical or mental health of the pregnant individual.

Fetal viability would mean the point in pregnancy when, in the professional judgment of an attending health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus’s sustained survival outside the uterus without the application of extraordinary medical measures.
We then asked how they would vote on the ballot. Post-info, we see a drop across pro-choice segments.
<table>
<thead>
<tr>
<th>Category</th>
<th>Definitely / Probably / Lean Yes</th>
<th>Difference</th>
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</thead>
<tbody>
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<tr>
<td>Republican men</td>
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<td>Want abortion legal in all cases</td>
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<td>Want abortion legal in most cases</td>
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<tr>
<td>Want abortion illegal in most cases</td>
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<td>3</td>
</tr>
<tr>
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<td>4</td>
</tr>
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PERRY UNDEM
Respondents’ concerns about the viability ballot are suggestive of a shift among some pro-choice voters away from any restrictions on abortion.

After respondents told us how they’d vote on the ballot language, we followed up with an open-ended question to explore any concerns they had about measure. The most common concern among respondents who received the viability ballot and weren’t fully committed to voting yes or no was the idea that the government could regulate abortion at all – including after viability.

While we’ve been hearing the sentiment of no regulation on abortion pop up here and there since 2015, we’ve never seen it as pervasive as in these data. The sheer number and intensity of respondents’ comments against the viability limit (and against any regulatory restriction) is new and remarkable. See the next few pages.

FiveThirtyEight  
June 22, 2023

One of the most surprising post-Dobbs trends is the speed with which some Americans have embraced the view that abortion should be legal with no restrictions at all times, including the late second trimester and early third trimester. Under Roe and the precedents that followed, states were free to enact restrictions on abortion after a fetus could potentially live outside a woman’s body — which meant, in practice, that some states were allowed to ban abortion after about 20 weeks of pregnancy, although medical experts say that viability usually happens between 23 and 26 weeks. That dividing line wasn’t especially controversial. Many blue states, including major Democratic strongholds like California, restricted abortion after viability, and the vast majority of Americans believed that abortion should be mostly illegal in the third trimester of pregnancy.

That’s changing — and fast. Third-trimester abortion is still unpopular overall, but in Gallup’s polling, it has close to majority support among some subgroups, which would have been unthinkable just a few years ago. For example, the share of women who think abortion should be legal in the last trimester of pregnancy jumped from 11 percent in 2018 to 25 percent in 2023. One-third (33 percent) of people ages 18-34 think abortion should be legal in the last trimester, up from 14 percent in 2018. And a stunning 43 percent of Democrats think abortion should be legal in the third trimester, up from 18 percent in 2018. “I’ve become more solidified in the belief that there should be very little law around any abortion,” said Meredith MacVittie, 41, who lives in the suburbs of Philadelphia. “If there were some regulations on abortion after 30 weeks, something like a second opinion, maybe that would be okay.” She paused and added, “It’s very hard for me to give up the sense that politicians just shouldn’t be having a say in this decision at all.”
What concerns, if any, do you have about this amendment?
(Selected verbatims – emphasis added)

- The second bullet point about the state getting involved when the fetus is viable - the **state should never be involved**.
- **I do not want the state to have any say in denying an abortion, including after viability.** That leaves too much of a gray area for religious zealots in office to mess with the right to an abortion.
- I like everything about this amendment, except allowing the state to have any say in whether a woman gets an abortion or not. The woman and her family should have that right, and not the state.
- The **state's ability to limit abortion at any time after fetal viability.** This ability neuters the amendment's purpose: allow individuals to make decisions regarding pregnancy.
- I am totally against ANY KIND OF STATE INTERFERENCE to our bodies!
- The state's ability to restrict abortions and if there are too many hoops to jump through in the case of a medically necessary abortion (unfair requirements or proof of health problem, etc.).
- I don’t want the legislature in this state **having any role** in my health care.
- The state should **have no say** in anything regarding my health choices.
- State regulation seems to encroach upon the doctor/patient decisions.
- I think it is a woman's decision. No right for the state to decide.
- I am 100% pro-choice and this amendment is combining conflicting choices under one umbrella. **State government should not be involved in this decision period.**
- The fact that states can limit some access. This is a medical decision that should be left between the patient and the doctor, not the states.
- That the state would overstep their boundaries and make a decision that does not align with what the woman wants.
- States monitoring a woman's health decision. They **can keep their noses out of** women's vagina and womb.
- That the government, local or national, keeps trying to tell women what they can do with their bodies.
- I feel the woman has the right to make decisions regarding her body. The state **should not have any control.**
- I don’t like the idea of the state regulating these decisions, it **should all be up to the individual.**
- **I don't believe there should be any restrictions** to abortion, ideally, and don't trust the state to always act in woman's best interest.
What concerns, if any, do you have about this amendment?
(Selected verbatims – emphasis added)

• The ability of the government to regulate a pregnancy after viability. Define viability. Should still be a choice for the woman, family and doctor.
• It states that the state will regulate, or some other equally controlling and concerning verb, abortions. There should be no one involved in the decision to abort other than the pregnant woman and her doctor.
• Medical decisions on pregnancy and abortion should be left up to a woman and her doctors.
• It should be the person’s right not to have the child and the state should stay out of it.
• The middle part where it says the state can regulate it.
• The fact that they still mention viability being regulated.
• That the state still has some decision-making power over individual reproductive rights.
• The line where they still have control over whether or not someone wants to abort.
• Wary of any abortion regulations, even after viability, due to religious freedom.
• State government [and] federal government should never have a say in an individual’s reproductive rights, regardless of fetus viability. It should always be the individual’s choice.
• Abortion regulated by the state – again this should be a patient-doctor situation and nothing more.
• The contradictory clauses that still give the state a say in the individual’s choices.
• That it is double speak for letting states decide what rights an individual has, trying to pass as if it is extending individual’s freedom.
• Well for one, the whole “individual right to do their own thing” is a little vague and seems to be in direct opposition to the next part which says “the state will decide matters of abortion after XYZ”. So which is it? Do we have individual freedoms or is the state controlling us?
• The rights of other people’s choices about abortion should not be controlled.
• Allowing the state control over abortion contradicts the individual rights.
• Potential for the state to repress citizens’ rights through “regulation.”
• I think a woman should have the right to make decisions on her own body.
• This amendment doesn't give women complete control over their bodies.
What concerns, if any, do you have about this amendment?
(Selected verbatims – emphasis added)

• The state being able to regulate it in certain cases. I’m worried what “certain cases” would be.
• The state could still step in after a certain point and interfere with a woman’s choice.
• That the regulations will start to constrict the freedoms of abortion.
• About the state still having the right to step in under certain circumstances.
• That there are enough exceptions that the government could use to restrict rights.
• Might not go far enough with ensuring that if someone wants an abortion, they can get it. Many states allow exceptions for life of mother but then the mother literally has to be on the death bed until they’ll actually do something.
• Does it give a woman the right to choose to get an abortion. It needs to clarify a woman’s right.
• Individual rights are usurped by the state taking the upper hand.
• I am concerned that the state is still able to stop some abortions if they are past a certain term.
• The state’s right to choose the timeline for abortions. During pregnancy women have anatomy scans around 20 weeks. A woman shouldn’t be forced to carry a nonviable pregnancy.
• The mention about fetal viability, which could be morphed to take the rights of a woman away from making her own decisions.
• That states will regulate “fetal viability” too heavily (heartbeat laws).
• I have concerns about the state stepping in past the point of viability, but it is not something that needs to be addressed very often.
• The state is still able to control women after the point of viability. I am concerned they would make a law that I don’t agree with.
• That little bit about the state will step in once the fetus is viable.
• I have concerns about the fetus "viability" being abused to prevent many abortions.
• There is still some language that allows the state to decide what viability might be.
• I don’t like the verbiage "the state will regulate." This gives me pause.
What concerns, if any, do you have about this amendment?
(Selected verbatims – emphasis added)

- It allows the state to regulate abortion after “fetal viability,” without defining what “fetal viability” means.
- Who gets to define viability to get to control it? Is it an age or the individual development, and either way, who makes that call?
- Does not specify or define fetus viability and could give state too much authority.
- The state can regulate abortion after viability? Who decides when that occurs?
- Leaving it up to the state on viability, want to know more about that.
- At what point does it limit the woman’s right to choose.
- Politicians could outlaw most abortions by redefining viability.
- The state would make the decision about when a fetus is viable.
- The amendment is vague. The state should not be involved.
- The state being able to check on fetus viability.
- The definition of viability and how that affects the pregnant person’s rights.
These data suggest that conventional wisdom about abortion attitudes on ballot measures may be incomplete, wrong, or no longer relevant.

The opinion landscape is shifting post-Roe, particularly around abortion as a voting issue. These and other data suggest that a new trend may be emerging within pro-choice voters toward wanting the government to stay out – entirely – of the business of restricting abortion. If true, this would likely be a remarkable and unprecedented shift.

Some poll questions in the past have picked up on the sentiment of wanting the government out of these decisions. More and better questions need to be developed to measure these sentiments accurately and track change in the future.