“Reproductive Freedom for All” Proposed Amendment Text Breakdown

“Every individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including but not limited to prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.”

- Because this amendment fails to define the word “individual,” a fundamental right to reproductive freedom (defined as the right to make and effectuate decisions about all matters relating to pregnancy, including but not limited to prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care) applies to all people, children included. Therefore, this amendment not only allows all adults to make decisions about all matters relating to pregnancy, but children are allowed to make decisions about all matters relating to pregnancy as well. The most notable “matters relating to pregnancy” that children can make decisions about are: contraception, sterilization, abortion care, and infertility care. Children would be permitted to make decisions for themselves on issues like sterilization, abortion, and more.
- If this amendment were to be adopted into our state’s constitution, all decisions regarding prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care would be defined as a fundamental right of individuals. It is important to emphasize that sterilization and abortion would be constitutionally defined as an individual’s fundamental right.

“An individual’s right to reproductive freedom shall not be denied, burdened, nor infringed upon unless justified by a compelling state interest achieved by the least restrictive means."

- Here we see the word “individual” again, meaning, this applies to children.
- This amendment would make it incredibly difficult for laws or regulations to be made or enforced in all things pertaining to “reproductive freedom.” This is because of how they have defined "compelling state interest." You will find this definition and a greater explanation below.

"Notwithstanding the above, the state may regulate the provision of abortion care after fetal viability, provided that in no circumstance shall the state prohibit an abortion that, in the professional judgement of an attending health care professional, is medically indicated to protect the life or physical or mental health of the pregnant individual.”

- The amendment text makes it seem as if the state can regulate late-term abortions. But the state would actually have a very hard time doing so. There are two reasons for this.
  - First, this amendment defines fetal viability in such a way that a baby could be determined to be non-viable up until and potentially after the moment of birth. And according to the amendment, the state cannot regulate an abortion if the baby is considered to be non-viable. More on this below.
  - Second, if an “attending health care professional” made a “professional judgment” that an abortion was medically necessary to protect the mental health of a woman at any stage during the pregnancy, the state could do nothing. By allowing a mental health exception, late-term abortions could be approved for almost any reason.
    - Notice here that the term “doctor” is never used. The amendment uses the language “health care professional.” There is no definition for this term within the amendment, and so, according to Article 15 of the Public Health Code, 1978 PA 368, MCL 333.16101 to 333.18838, a “health care professional” includes: chiropractors, acupuncturists, dentists, audiologists, therapists (specifically of marriage and family), physician’s assistants, surgeons, nurses, midwifes, nursing home administrators, optometrists, osteopaths,

speech language pathologists, pharmacists, physical therapists, athletic trainers, massage therapists, podiatrists, counselors, psychologists, behavioral analysts, occupational therapists, dietitians and nutritionists, a sanitarian (an individual who has specialized education and experience in the physical, biological, and sanitary sciences as applied to the educational, investigational, and technical duties in the field of environmental health), social workers, respiratory therapists, and veterinarians.

    - This means that veterinarians, dietitians, respiratory therapists, counselors, message therapists, podiatrists and more could approve a late-term abortion and the state could do nothing to stop it.

“The state shall not discriminate in the protection or enforcement of this fundamental right.”

- The language used here is very vague. What does it mean for the state to discriminate in protecting or enforcing this fundamental right? Could this be referring to age, therefore referring to not discriminating towards children?
- This gives the state power and authority to protect AND enforce the “fundamental right” to reproductive freedom. It is unclear as to what this enforcement would look like. This is an unknown and undefined amount of power taken away from the people and given to the government.

“The state shall not penalize, prosecute, or otherwise take adverse action against an individual based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall the state penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent.”

- This would bar the state from the ability to investigate cases of infanticide. If a mother was to leave her baby to die after giving birth, nothing could be done by the state. This is because the state would be unable to penalize, prosecute, or otherwise take adverse action against an individual based on their “perceived” or

"actual pregnancy outcome." Leaving a baby to die could easily fall under one of these broad terms.

- The state would also be barred from "penalizing, prosecuting, or taking adverse action against someone who assisted a pregnant individual in exercising their right to reproductive freedom with their voluntary consent"
  - For instance, if a school teacher was to take a child to be sterilized or to get an abortion, the state could do nothing to investigate or prosecute the teacher who did this.
  - As long as the "pregnant individual," who happens to be a child, gives voluntary consent, parents do not and cannot have a say in what happens. That is, if the parents were to ever be aware of what happened. Consent from the individual is all that is needed.
  - If an untrained employee at an abortion facility were to perform an abortion, the state would be unable to do anything about it because they are unable to "...penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent."

"For the purposes of this section: A state interest is "compelling" only if it is for the limited purpose of protecting the health of an individual seeking care, consistent with accepted clinical standards of practice and evidence based medicine, and does not infringe on that individual's autonomous decision-making."

- This means that many existing laws regarding pregnancy, sex, abortion and more will be invalidated if they do not meet three requirements:
  - A law must be for the purpose of protecting the health of an individual. There is no definition as to what the health of an individual is. If a law is not for the protection of the health of an individual, it could be repealed. For example, this means that laws that prohibit taxpayer dollars from being used to fund abortions could be repealed because the purpose is to protect one's conscience, not to protect the health of the one seeking care.
  - A law must be "consistent with accepted clinical standards of practice and evidence based medicine." Who sets these "accepted clinical standards of practice" for abortion facilities? They set them for themselves. Therefore, laws that do not match with these clinical standards could be repealed. For example, laws that require things like screening for forced abortions would be repealed because the abortion facilities do not see this as "evidence based."

        - Screening for forced abortions currently stand as a safeguard to protect women from sex traffickers, rapists, sexually abusive family members and more. These could quickly be repealed.
        - Health and safety standards for abortion facilities could also be repealed. Again, if the law does not match the "accepted clinical standards of practice" that abortion clinics have determined, laws regarding health and safety regulations could be repealed.
        - This would give abortion clinics more power than the state. The abortion clinics would essentially be self-regulated.
    - A law regarding pregnancy (which, according to this amendment, includes sterilization, abortion, and other things) could not infringe on one's "autonomous decision-making."
        - This means that if there is a law that prevents someone from having an abortion, it would be repealed. If there is a law that prevents people from being sterilized, it would be repealed. Any law on these topics that would keep someone from doing something, or, "infringe on one's autonomous decision making," would be repealed.
            - Laws against statutory rape and incest could be repealed, human cloning bans could be repealed. Many other laws could be repealed as well.

"'Fetal viability' means: 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."

- According to this amendment, fetal viability is something that is determined by a "health care professional." It is a sliding scale. Because of this, abortion could easily happen at any point during the pregnancy. If it is determined by a "health care professional" that your baby had an illness or disability, or another condition that would cause them to be unable to sustain survival outside the uterus without extraordinary medical measures, that baby could be aborted. Remember the list of those who qualify as a "health care professionals." Your veterinarian or massage therapist would be able to make this call.

"This section shall be self-executing. Any provision of this section held invalid shall be severable from the remaining portions of this section. "