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Issue 1 says nothing about parental control and will not override parental rights: Mark R. Brown

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COLUMBUS, Ohio -- *“Protect Parental Rights. Vote No on Issue 1.”* Yards signs are beginning to dot neighborhoods across Ohio with this misleading political message. The target, of course, is the “Right to Make Reproductive Decisions Including Abortion Initiative” which proposes to amend Ohio’s Constitution. On the Nov. 7 ballot, this initiative guarantees to “every individual” the “right to make and carry out one’s own reproductive decisions,

including but not limited to decisions on contraception, fertility treatment, continuing one's own pregnancy, miscarriage care, and abortion."

Notably, the proposal says nothing about parental rights. Nor does it speak to children. It instead basically restores fundamental rights that existed before the U.S. Supreme Court's overturning of Roe v. Wade last year in Dobbs v. Jackson Women's Health Organization. "Individuals" in Ohio, with Issue 1's passage, would once again be free to make reproductive decisions before viability without governmental interference.

What about minors? They are "individuals," too, of course. Doesn't Issue 1 thus grant them a constitutional right to veto their parents' guidance and wishes? Won't they be able to obtain abortions on demand without their parents' knowledge?

The answer is clearly no to both questions. Conventional understanding has it that, although fundamental constitutional protections, like freedom of speech, freedom of religion, and reproductive freedom, commonly extend to children, they do not override parental rights. The Supreme Court famous' statement in Tinker v. Des Moines Independent Community School District, for example, that children do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" has never been interpreted to override or replace parental rights. Even though kids have speech rights in school, they still must answer to their parents about what they say.

The same is true of religion. Kids most certainly enjoy religious freedoms, both in and outside of school. But this fundamental constitutional right does not supersede the rights of parents to

control their children's religious upbringing. The Supreme Court made this clear in [Wisconsin v. Yoder](#) when it ruled that Amish parents' decisions to withdraw their children from public schools were protected not only by their parental religious rights, but also their fundamental parental right to care for and control their children.

Ohio law could not change any of this even if it tried (which Issue 1 does not do). Simply put, parents have a [fundamental federal constitutional right](#) to care for and control the actions of their children. This parental right cannot be overridden by Ohio law, even Ohio constitutional law.

In the specific context of reproductive freedom, the Supreme Court following the 1973 *Roe v. Wade* decision recognized a constitutional presumption in favor of parental control by ruling that, in the absence of court orders, minors cannot obtain abortions without parental consent. Court orders, meanwhile, must be supported by judicial findings that minors are either mature or that abortions are in their best interests. Even under *Roe v. Wade*, reproductive rights did not replace parental control. Restoring the *Roe v. Wade* framework in Ohio, which is what Issue 1 proposes, would not displace parental rights, either.

The same goes for transgender care, which Issue 1 does not address. Critics claim that Issue 1 would somehow guarantee children a right to transgender care. But even if it did (which it does not), Issue 1 could not override parental rights. The federal Constitution prevents it. As with any medical procedure, in the absence of a court order or life-threatening emergency, parental consent would still be required. Ohio law could not displace fundamental parental rights in this context either.

There should be no disagreement over Issue 1's impact on parental rights. It doesn't have such an impact. Issue 1 says nothing about parental control, does not override parental rights, and could not, even if it tried.

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