



Proposition 1

Amends the Constitution to Provide an Express Right to Reproductive Freedom

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Purpose

Prop. 1 would amend California's Constitution to prohibit the state from denying or interfering with an individual's reproductive rights, including the right to choose to have an abortion or to choose or refuse contraceptives.¹

Background

The legal history of abortion in California started in 1850 with the Crimes and Punishment Act, which banned abortions except when necessary to save the mother's life. In 1967, California became one of the most progressive states regarding abortion with the passage of the California Therapeutic Abortion Act. Signed by Governor Ronald Reagan, the Act permitted abortion to protect the mother's physical and mental health and in circumstances of rape or incest.² In 1969, the California Supreme Court expanded abortion rights further by holding in *People v. Belous* that women had a fundamental right to choose whether to bear children, grounded in the right to privacy and liberty.³ In 2002, the legislature passed the Reproductive Privacy Act, which amended state law to protect every individual's right to choose to take contraceptives or have an abortion. The Act prohibits the state from restricting abortions in cases prior to viability, where the fetus would not be able to survive outside the uterus. In circumstances after viability, abortion is only allowed when necessary to protect the life and health of the mother.⁴

¹ Text of Senate Constitutional Amendment No. 10 (SCA 10) (2022), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SCA10.

² Kristen Hwang, "How California created the nation's easiest abortion access — and why it's poised to go further," *CalMatters*, Updated June 28, 2022, <https://calmatters.org/explainers/abortion-in-california-laws/>.

³ *People v. Belous*, 71 Cal.2d 954 (1969), available from SCOCAL, Stanford Law School, <https://scocal.stanford.edu/opinion/people-v-belous-22692>.

⁴ State of California Department of Consumer Affairs, "Reproductive Privacy Act," Health and Safety Code 123460 Effective January 1, 2003, <https://www.rn.ca.gov/pdfs/regulations/npr-b-46.pdf>.

On June 24, 2022, the Supreme Court of the United States held in *Dobbs v. Jackson Women's Health Organization* that the US Constitution does not establish the right to abortion, expressly overruling its prior decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*. *Dobbs* does not make abortions illegal or overturn state laws permitting abortions like California's; however, the opinion permits elected officials to pass laws that more strictly regulate abortion, including laws to ban abortion before a fetus is viable, which would have been deemed unconstitutional under *Roe* and *Casey*.⁵

In response to this decision, states started introducing and passing laws either restricting or expanding abortion access. Some states banned abortions completely, while others strengthened existing legal protections for abortions.⁶ As of August 26, 2022, thirteen states have abortion bans (with some exceptions for rape or incest), five states have abortion restrictions that begin in the sixth week to twentieth week of pregnancy, nine states have abortion bans which have been blocked in the courts, and twenty-three states allow abortion up until the twenty-second week of pregnancy or later.⁷ A proposed constitutional amendment to ban abortion was recently defeated by voters in Kansas. In addition, abortion-related measures will be on the ballot for the upcoming November 2022 elections in Kentucky, Michigan, Montana, Vermont, and California.⁸

In California, the legislature responded to the *Dobbs* opinion by introducing and passing multiple bills to strengthen abortion access.⁹ The legislature also passed Senate Constitutional Amendment No. 10 (SCA 10), a proposed constitutional amendment which, if approved by the voters, would explicitly write the right to abortion and contraceptives into the California Constitution. The Amendment was proposed by Senate President pro Tempore Toni Atkins and Assembly Speaker Anthony Rendon in May shortly after a draft of the *Dobbs* opinion was leaked, and was placed on the November 2022 ballot by votes of more than two-thirds of both legislative houses.¹⁰

Proposal

⁵ *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 1, 1-17 (2022), available at https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf.

⁶ Office of Governor Gavin Newsom, "Press Release: In Response to Supreme Court Decision, Governor Newsom Signs Legislation to Protect Women and Providers in California from Abortion Bans by Other States," June 24, 2022, <https://www.gov.ca.gov/2022/06/24/in-response-to-supreme-court-decision-governor-newsom-signs-legislation-to-protect-women-and-providers-in-california-from-abortion-bans-by-other-states/>.

⁷ Allison McCann, et al., "Tracking the States Where Abortion Is Now Banned," *The New York Times*, Updated August 26, 2022, <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>.

⁸ Veronica Stracqualursi, "These states will have abortion on the ballot in November," *CNN*, September 5, 2022, <https://www.cnn.com/2022/09/05/politics/2022-midterm-elections-abortion-ballot-measures/index.html>.

⁹ Alexei Koseff and Kristen Hwang, "After Roe: What happens to abortion in California?," *CalMatters*, Updated June 27, 2022, <https://calmatters.org/abortion-rights/2022/06/california-abortion-roe-ruling/>.

¹⁰ Office of Senator Toni G. Atkins, "Press Release: Legislative Leaders Applaud Historic Passage of Constitutional Amendment to Explicitly Protect the Right to Abortion, Contraceptives," June 27, 2022, <https://sd39.senate.ca.gov/news/20220627-legislative-leaders-applaud-historic-passage-constitutional-amendment-explicitly>.

SCA 10, which was numbered Prop. 1 on the ballot, would add Section 1.1 to Article I of the California Constitution, stating that the “state shall not deny or interfere with an individual’s reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives.” The amendment provides that it furthers the state constitutional “right to privacy ... and the constitutional right to not be denied equal protection,” which are already guaranteed by other sections of the State Constitution, and does not “narrow or limit” these rights.¹¹ If a majority of voters approve of Prop. 1, the amendment will be adopted.

Legal experts as well as proponents and opponents disagree on whether Prop. 1 would only provide express constitutional protections for existing abortion rights in California, or if the measure could significantly expand abortion rights beyond the status quo. The language of the amendment is broad and unclear. Some law professors argue that constitutional rights are not guaranteed absolute rights, and existing laws prohibiting abortion after fetal viability will remain in effect. However, opponents of Prop. 1 argue that the amendment’s broad language would allow late-term abortions.¹²

Fiscal Impact

According to the Legislative Analyst’s Office, the passage of Prop. 1 would not have a direct fiscal impact on state or local government, because reproductive rights are already protected by state law.¹³ However, it is unclear if a court will interpret Prop. 1 to expand individuals’ reproductive rights beyond current law. If so, there could be additional fiscal impacts to the state.¹⁴

Supporters

Prominent supporters include:

- Governor Gavin Newsom¹⁵
- California Democratic Party¹⁶

¹¹ Text of SCA 10.

¹² Skelton, George. “Column: Would California’s Abortion Ballot Measure Allow Late-Term Abortions? Its Author Says No.” *Los Angeles Times*, July 14, 2022, <https://www.latimes.com/california/story/2022-07-14/skelton-california-abortion-ballot-measure-constitutional-amendment>.

¹³ Legislative Analyst’s Office, “Proposition 1 Constitutional Right to Reproductive Freedom. Legislative Constitutional Amendment. Background” printed in the Official Voter Information Guide for November 8, 2022 General Election (California Secretary of State, August 15, 2022), <https://voterguide.sos.ca.gov/>.

¹⁴ California Legislative Analyst’s Office, “Proposition 1: Analysis of Measure (November 8, 2022 Election),” accessed August 22, 2022, <https://voterguide.sos.ca.gov/>.

¹⁵ Office of Governor Gavin Newsom, “Press Release: Governor Newsom Statement on Introduction of Constitutional Amendment to Enshrine the Right to Abortion in California,” June 8, 2022, <https://www.gov.ca.gov/2022/06/08/governor-newsom-statement-on-introduction-of-constitutional-amendment-to-enshrine-the-right-to-abortion-in-california/>.

¹⁶ California Democratic Party, “Endorsements,” accessed September 25, 2022, <https://cadem.org/endorsements/>.

- 30 Senators and 52 Assembly members (Co-authors)¹⁷
- Planned Parenthood Affiliates of California (Co-sponsors)¹⁸
- National Abortion Rights Action League (NARAL) Pro-Choice California (Co-sponsor)¹⁹
- California Medical Association²⁰
- ACLU California Action²¹

A longer list of supporters for Prop. 1 can be found on the official campaign website, www.YESon1CA.com.

As of September 25, 2022, supporters raised \$9.9 million from 78 contributors.²² The largest contributors are the Federated Indians of Graton Rancheria (\$5 million) and California Medical Association (\$1 million).²³

Arguments of Supporters

Supporters of Prop. 1 argue that:

- Prop. 1 provides stronger protection for reproductive rights by directly and explicitly spelling out the rights to abortion and contraceptives, which would protect against future attempts to restrict or ban this right.²⁴
- The California Medical Association, along with many doctors, nurses, and health providers, support access to abortions because they argue that an abortion is a medical decision that should be made based on individual needs and scientific facts, not political agendas.²⁵
- People have the right to choose what to do with their bodies in regard to their physical and mental health.²⁶

Opponents

Prominent opponents include:

¹⁷ Office of Senator Toni G. Atkins, “Legislative Leaders Applaud Historic Passage of Constitutional Amendment to Explicitly Protect the Right to Abortion, Contraceptives.”

¹⁸ California State Legislature, State Assembly, Judiciary Committee, Analysis of SCA 10, June 22, 2022, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SCA10.

¹⁹ Judiciary Committee, Analysis of SCA 10.

²⁰ Judiciary Committee, Analysis of SCA 10.

²¹ Judiciary Committee, Analysis of SCA 10.

²² California Secretary of State, “Quick Search: Amount Raised for Ballot Measures,” accessed September 15, 2022, <https://powersearch.sos.ca.gov/quick-search.php>.

²³ California Fair Political Practices Commission, “November 2022 General Election: Top Contributors,” accessed September 25, 2022, <https://www.fppc.ca.gov/transparency/top-contributors/nov-22-gen.html>.

²⁴ California State Legislature, State Assembly, Floor Analysis of SCA 10, June 24, 2022, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SCA10.

²⁵ Shannon Udovic-Constant, Jodi Hicks, and Carol Goldberg, “Argument in Favor of Proposition 1 (November 8, 2022 Election),” California Official Voter Information Guide, accessed September 15, 2022, <https://voterguide.sos.ca.gov/>.

²⁶ Sandy Reding, Kelly McCue, and Cary Franklin Franklin, “Rebuttal to Argument Against Proposition 1 (November 8, 2022 Election),” California Official Voter Information Guide, accessed September 15, 2022, <https://voterguide.sos.ca.gov/>.

- Assembly members Jim Patterson²⁷ and James Gallagher²⁸
- California Republican Party²⁹
- Right to Life League³⁰
- California Catholic Conference³¹
- California Family Council³²
- Traditional Values for Next Generations³³
- International Faith Based Coalition³⁴

There is no official campaign website opposing Proposition 1.

As of September 25, 2022, opponents had raised \$66,200, all but \$1,000 from the East Valley Republican Women and Patriot Store.³⁵

Arguments of Opponents

Opponents of Prop. 1 argue, variously, that:

- Abortion is already legal in California. Consequently, this constitutional amendment is unnecessary to protect women's reproductive rights.³⁶
- Prop. 1 goes far beyond existing law in California and would extend the right to abortion past the point a fetus becomes viable.³⁷
- Life starts at conception, and therefore abortion should be banned to protect the rights of the unborn child.³⁸

Conclusion

A YES vote on Prop. 1 would amend the California Constitution to expressly prohibit the state from denying or interfering with an individual's rights to reproductive freedom, including an individual's right to use or refuse contraceptives and to have an abortion.

²⁷ Anne Marie Adams, Tak Allen, and Jim Patterson, "Argument Against Proposition 1 (November 8, 2022 Election)," California Official Voter Information Guide, accessed September 15, 2022, <https://voterinfo.sos.ca.gov/>.

²⁸ Shawn Hubler, "California Lawmakers Place a Constitutional Amendment Protecting Abortion Rights on the Fall Ballot," *New York Times*, June 27, 2022, <https://www.nytimes.com/2022/06/27/us/california-abortion-protection.html>.

²⁹ California Republican Party, "Meet the CAGOP Endorsed Candidates," accessed September 25, 2022, <https://www.cagop.org/s/endorsements>.

³⁰ Theresa Brennan and Susan S. Arnall, "Why We Oppose SCA-10, the Abortion Amendment to the California State Constitution," Right to Life League, June 11, 2022, <https://righttolifeleague.org/why-we-oppose-sca-10-the-abortion-amendment-to-the-california-state-constitution/#:~:text=On%20behalf%20of%20pro%20life,expressed%20in%20our%20state%20Constitution>.

³¹ Judiciary Committee, Analysis of SCA 10.

³² Judiciary Committee, Analysis of SCA 10.

³³ Judiciary Committee, Analysis of SCA 10.

³⁴ Anne Marie Adams, Tak Allen, and Jim Patterson, "Argument Against Proposition 1."

³⁵ "Advanced Search," California Secretary of State, Updated September 1, 2022, <https://powersearch.sos.ca.gov/advanced.php>.

³⁶ "Advanced Search," California Secretary of State.

³⁷ Anne Marie Adams, Tak Allen, and Jim Patterson, "Argument Against Proposition 1."

³⁸ Judiciary Committee, Analysis of SCA 10.

A NO vote on Prop. 1 would maintain current California law. As currently interpreted by the California Supreme Court, the right to have an abortion is protected through the rights to privacy and equal protection in the State Constitution.

Date: October 4, 2022