IN THE SUPREME COURT OF OHIO

CASE NO. 2025-0472

MADELINE MOE, ET AL.,
Plaintiff-Appellees,

-vs-

DAVE YOST, ET AL.,
Defendant-Appellants.

ON APPEAL FROM THE TENTH DISTRICT COURT OF APPEALS
CASE NO. 24AP-483

BRIEF OF *AMICI CURIAE*, TRANSOHIO, INC., BCC FULL SPECTRUM COMMUNITY OUTREACH, BLACK TRANSMEN OF OHIO, COLUMBUS TRANS PRIDE, MARGIE'S HOPE, RAINBOW SOCIAL COMMUNITY GROUP, POSITIVE PROGRESSIONS, TRANSGENDER ADVOCACY COUNCIL, TRANSALIVE, TRANSCEND CANTON, TRANSFAMILY CLEVELAND, TRANS MASC CINCY, TRANSHUMANITY, AND TRANS TALKS (T TALKS), IN SUPPORT OF THE APPELLEES AND AFFIRMATION OF THE TENTH DISTRICT'S DECISION

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INTRODUCTION

> [W]ere Substitute House Bill 68 to become law, Ohio would be saying that the State, that the government, knows what is best medically for a child rather than the two people who love that child the most, the parents. While there are rare times in the law, in other circumstances, where the State overrules the medical decisions made by the parents, I can think of no example where this is done not only against the decision of the parents, but also against the medical judgement of the treating physician and the treating team of medical experts

Mike DeWine, Governor of Ohio, *Statement of the Reasons for the Veto of Substitute House Bill 68* (Dec. 9, 2023).[1]

> [S]ome public ends are less essential than others, and some individual sacrifices are greater than others. That is why, for some deprivations of liberty and property, the traditional gauge of public utility—democratic support—will not alone sustain the policies in a system of limited and divided government power.

Hon. Jeffrey S. Sutton, *51 Imperfect Solutions*, at 84 (2018).

> State Constitutions are primarily limitations upon political power, and secondarily delegations of political power.

In re Hawke, 107 Ohio St. 341 (1923), syllabus.

STATEMENT OF INTEREST OF *AMICI CURIAE*

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TransOhio, Inc. ("TransOhio") is Ohio's first and largest transgender-equality organization. Founded in 2005, TransOhio is dedicated to providing education, advocacy, support, and community to the Ohio transgender and ally communities. TransOhio's vision is to serve as a bridge to other lesbian, gay, bisexual, trans, queer, related ("LGBTQ+"), and ally communities; to provide a focus for matters of concern to the Ohio

[1] Available at: https://content.govdelivery.com/attachments/OHIOGOVERNOR/2023/12/29/file_attachments/2731770/Signed%20Veto%20Message%20HB%2068.pdf (accessed Dec. 7, 2025).

transgender community and their allies by providing open, affirming, visible, and tangible support; to promote opportunities and networking that increase awareness about the transgender and gender-nonconforming community's needs and concerns, such as discrimination and violence; to increase understanding and cultural awareness of the Ohio transgender community among the state's lesbian, gay, bisexual, heterosexual, and ally communities; to help ensure that Ohio educational programs and services are inclusive and supportive of transgender issues, perspectives, and concerns; to provide social activities that are inclusive of all LGBTQ+ and ally communities, access to safe-spaces, people, forums for confidential discussion, support, and local and national resource information; and to foster Ohio transgender community pride.

As Ohio's primary state-wide transgender equality organization, TransOhio has an interest in the health, safety, and life experiences of transgender Ohioans as well as the overall community. TransOhio receives messages regularly from community members and their parents asking for help with gaining access to gender affirming care. The organization provides informational resources that connect community members to medical professionals who are familiar with transgender patients with issues involving gender expression and gender identity. It also provides extensive resources to providers and officials who wish to educate themselves about these issues.

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Full Spectrum Community Outreach Center was created with the focus of providing mental health services, support groups, community involvement, and eventually housing for the LGBTQIA+ community to ensure their health and standing in Youngstown and the surrounding area.

Black Transmen of Ohio is a group dedicated to providing mentorship, community service, resources and assisting the fight for equal rights for the Black Trans community,

especially the Black Trans Masculine communities of Ohio.

Columbus Trans Pride is a community group comprised of transgender individuals living in Columbus, focused on creating safe, affirming transgender pride events in Central Ohio.

Margie's Hope is a transgender-led group with the mission to provide resources and services to enrich the lives of transgender, non-binary, and gender expansive people in Northeast Ohio.

Rainbow Social provides a way to socialize and meet up with friends in a comfortable, safe space in the Cleveland area to share interest or new interest together in a community.

Positive Progressions is a transgender peer support group in Mansfield, Ohio.

The Transgender Advocacy Council was formed to act as an umbrella organization supporting both individuals and new and long-existing grassroots transgender support organizations in the greater Cincinnati area in the areas of policy advocacy, direct services, outreach to encourage culture change, community organizing, and other key strategies.

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TransAlive is a facilitated peer support group for transgender individuals and their families, friends, and allies that meets monthly in Akron, Ohio.

TransCend Canton is a facilitated peer support group for transgender individuals and their families, friends, and allies that meets monthly in Canton, Ohio.

TransFamily is a facilitated peer support group for transgender individuals and their families, friends, and allies that meets monthly in Cleveland, Ohio.

Trans Masc Cincy is a support group with events for trans-masculine folks and transgender men based out of Cincinnati, Ohio.

TransHumanity is an advocacy group with the mission to promote understanding, support, and resources for transgender and non-binary gender variant individuals and their families, fostering unity and equality for all genders.

Trans Talks, or T Talks, is an inclusive, intersectional, free monthly storytelling event organized for and by the transgender community in Columbus, Ohio.

Consistent with those interests, the foregoing Amici submit this Brief to urge this Court to rule in favor of Plaintiff-Appellees, Madeline Moe, Michael Moe, Michelle Moe, Grace Goe, Garret Goe, and Gina Goe (collectively "Appellees"), and affirm the decision below.

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STATEMENT OF THE CASE AND FACTS

TransOhio adopts and incorporates the statement of the case and facts offered by Appellees in their Merit Brief filed December 9, 2025.

ARGUMENT

On July 22, 2025, this Court accepted two propositions of law for review:

> **Proposition of Law No. 1: The Due Course of Law Clause does not create a parental right to obtain drug-based "gender transitions" for a child.**
>
> **Proposition of Law No. 2: The Health Care Freedom Amendment does not create a parental right to obtain drug-based "gender transitions" for a child.**

Memorandum in Support of Jurisdiction of State Defendants filed p. 14-15; *07/22/2025 Case Announcements*, 2025-Ohio-*2537, p. 2*. The Amici respectfully request that this Court reject these propositions of law.

I. THE IMPORTANCE OF GENDER AFFIRMING CARE TO EVERYDAY OHIOIANS.

The phrase 'Nothing About Us Without Us' has long been a rallying cry for marginalized communities. In the United States, it was first brought to mainstream use by disability-rights advocates. It has since been adopted by a variety of other communities as a shorthand for the notion that community members—not government officials—know what is best for them. In other words, the phrase stands for this: when you are making an important decision about a group, you ought to include individuals from that group in the conversation and heed their words.

Through this brief, the Amici seek to embody that sentiment. This Court should not decide this case without first considering the lived experiences of those it will impact. Trans voices must be heard. TransOhio supports the Appellees, but their compelling

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stories are their own to tell.

Through the following narrative statements, this Brief allows transgender and gender-nonconforming individuals from throughout Ohio to tell their own stories in their own words. They reflect on what gender affirming care means to them, how it can save lives, and how the State should not be allowed to make health care choices for them.

A. Their own experiences, in their own words.[2]

Jesse Doe of Cincinnati, Ohio, 20 years old, says:

> Testosterone was necessary to my survival in my teenage years. Growing up as a queer youth on the outskirts of a major city in Texas presented too many challenges to count. From the moment I realized my identity, to coming out I was met with resistance from my peers, community leaders, teachers, family, and more. Especially coming out at such a young age (I was 11), I had to mature quickly and become someone that my fellow closeted lgbtq+ peers looked up to. There were many times where the only person who seemed to take my identity seriously was myself. Because of this, I experienced debilitating social dysphoria. I knew who I was, but was met with verbal and physical harassment telling me otherwise throughout middle and high school. At this time, my only hope for feeling comfortable in my body was hormone replacement therapy. It allowed me to present how I felt on the inside as well as greatly reduced the harassment I experience as I "passed" more.
>
> I was only able to go onto HRT after 5 inpatient hospitalizations–all of which followed an attempt at taking my life. The previously mentioned harassment and dysphoria, along with an unsafe home life all led me to constantly be on the brink of attempting suicide by the time I was 13 years old. The only reason I stopped attempting and self harming was due to my being able to take testosterone at 15. I genuinely would not be here today without it. For two years, I could breathe. I felt at ease with myself, and more importantly I was safer in my environment. I no longer had adults prying about

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[2] The individuals listed in this subsection are members of the TransOhio community. They have consented to the use of their statements in this Brief on condition of anonymity. Their statements were transmitted to undersigned counsel and have not been altered. To maintain anonymity, counsel has given them gender-neutral "Doe" names.

what genitalia I had, I no longer had to look over my shoulder wondering if I would become another victim of hate violence.

However, all good things must come to an end, and end they did. When I was 17, Texas legislature banned HRT for minors. I was devastated, and I knew many others who were directly impacted by this as well. Being the president of my schools Gay-Straight Alliance, I had several of my peers asking me what they were going to do now. Several individuals living in the very hardship I was able to escape because the government decided to strip the basic right of safety and comfortability in oneself from the youth of an already oppressed minority. The impact was immediate as I and my peers feared what this meant for our futures.

I wasn't able to get back onto testosterone until just a few weeks ago, mainly due to the fear of it being taken away again. Now that I am an adult, I am enraged at the circumstances surrounding me stopping hormones to begin with. I had both parents sign off agreeing to it, years of me identifying as transmasculine, years of being seen by psychiatrists, therapists, even endocrinologists, all of which who cleared me as medically and mentally fit to take testosterone. However, because of a ruling by the Texas legislature all of these doctors and licensed professionals opinions meant nothing.

I urge that the youth of Ohio are saved from the same nightmare I experienced at their age. Nobody deserves to be told that they aren't who they are, especially when the evidence suggests that they are at a much higher risk to die because of it.

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Jamie Doe of Cincinnati, Ohio, 45 years old, says:

The first thing I ever wanted to be was a cardiologist. I was 6. The second was a quantum physicist. I was 11. I competed in regional academic competitions in English and Science. And then I dropped out of school at 16. I am transgender, and I didn't have gender affirming care, protections from bullying and harassment from students or teachers and administrators. Because I couldn't be authentically me, because of the lack of gender affirming care, I withdrew from society and nearly died. I was out of school for 11 years. Once I was able to be authentically me, I got my GED, went to college, and am now a nurse working on a Master's degree. Let families work with healthcare professionals to determine what is right for their children.

Jay Doe of Butler County, Ohio, 42 years old, says:

> In the late 80s and early 90s it was not possible to access GAC; at least it was unheard of in my corner of the world. Because of this, I had to go through puberty that causes changes to my body that were so distressing I became suicidal. Despite therapy and antidepressants, I remained distressed by my changing body and the experience of menstruation. I unsuccessfully attempted to end my suffering twice and was hospitalized 3x. It was not until I gained access to GAC as an adult, and my body began to take the shape that felt "correct" in my brain that these feelings began to subside. I would not want any youth to experience the pain I had to experience.

Jaden Doe of Springfield, Ohio, 30 years old, says:

> I was not able to receive gender affirming care as a minor. Instead, like in a horror film, I watched my body change in ways that felt unnatural to me, I was trapped in my skin as these unasked for changes warped my body. I felt like a stranger in my own skin. I didn't recognize myself. Looking in the mirror I would see a stranger looking back at me. I was forced to live with these changes for years until I was able to access gender affirming care as an adult. If I had been able to access puberty blockers when I was younger, these changes could have been forestalled until I could decide what kind of puberty I wanted. As things went, it has taken years to overcome the unwanted changes I was forced to go through when I was younger.

Jasper Doe of Columbus, Ohio, 19 years old, says:

> When I was fifteen, I had a unilateral orchiectomy after being diagnosed with mixed germ cell carcinoma. At the time, I didn't realize that this lifesaving cancer treatment would also become one of the most profoundly affirming experiences of my life as a trans woman. Losing one testicle didn't change who I was, and it instead gave me a better sense of alignment between my body and my identity. In that moment, I learned that gender-affirming care isn't something that exists only for people who already understand their identity; it's sometimes about finding meaning in circumstances beyond our control and embracing joy where others might see pain. It's a part of medicine that helps everyone live more comfortably in their own bodies. Cis boys who undergo breast reduction for gynecomastia, for instance, are also receiving care that helps

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them feel at ease in who they are. When laws try to ban certain procedures for some people but not others, they don't just deny autonomy—they corrode the trust between a doctor and a patient that makes healing possible.

Jack Doe of Hamilton County, Ohio, 25 years old, says:

> Starting my social transition while in college was a bit rough. I'm a proud transman now, but before I was 19 and felt very lost in terms of both my career path and intuition with my body. I was often met with the difficulty to picture what I would physically look like when I was 60 even though I was discussing social resources for older adults in class. Growing older is something that I have struggled with envisioning since I was 15, when I first began treatment for depression and anxiety after a suicide attempt. I feel my ability to physically transition has seriously connected that misalignment I felt, that affected both my mental and physical health.
>
> Through a series of friendships I developed and individualized counseling, I became more comfortable with the idea that a physical transition could create a better alignment with how my brain felt and what my body reflected. I started testosterone at age 20, accessed top surgery at 21, and a hysterectomy at 25. As I continued therapy and began to see the changes physically I felt more energized, just excited for what I could contribute to my community which is a feeling that I am so grateful for. Access to gender-affirming care has made a drastic difference on the energy that I have to give back to my community through the volunteer and paid work that I do. I could not leave the house while in college at one point because I was so embarrassed and confused about why I felt lost. Through the better alignment I felt with myself I was able to go out and make more solid connections with the people around me, and actually be a productive member to the community around me.

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Julie Doe of Cleveland, Ohio, 39 years old, says:

> I speak to you today as someone with a rare lived experience: I transitioned and lived openly as a transgender woman for ten years, was pressured into detransitioning, and later—through factual evidence, medical truth, and personal clarity—re-transitioned. On February 26, 2026, I will be receiving Gender-affirming Surgery after years of working towards this decision, a decision grounded in certainty, not confusion.

> My detransition was not caused by regret. It was caused by fear, pressure, stigma, and misinformation. When I detransitioned, society celebrated me, but inside I was collapsing. My health declined, my identity was fragmented, and I felt erased. What saved my life was returning to the truth of who I am.
>
> This is the reality I need you to understand: Detransition is not an argument against transgender care.
>
> Most detransitions are temporary and occur because the person is unsafe, unsupported, or pressured—not because their identity was wrong. When transgender people receive consistent, evidence-based care, they thrive. When care is restricted, people suffer. I hope no one else will ever endure the fear and pressure that forced me into detransitioning.

B. Conversations about gender affirming care.

Two members of the TransOhio community agreed to provide extended statements and to have their names included in this Brief.[3]

i. Interview with Jonah Yokoyama.

Jonah Yokoyama lives in Ohio and works as a registered nurse. He is a transgender man. Jonah grew up in a small town in Texas, moved to California when he was sixteen, and then came to Ohio in his twenties. Even as a young child, Jonah did not conform to gender norms. He was "diggin' in the mud and catching frogs and playing with micro machines," or as he put it, "stereotypical masculine kinds of things." He observed that "gender did not exist for a lot of my childhood." He was free "to be me and to just express who I was."

But when puberty hit, Jonah began to feel that "this is not right." The feeling was

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[3] Counsel conducted and audio-recorded one-on-one interviews with both individuals and has reproduced relevant portions of their statements in this section. The interview with James Yokoyama was conducted on December 4, 2025. The interview with Daniel Hardy was conducted on December 5, 2025. Both are TransOhio community members.

like “pins and needles” or “like phantom limb syndrome.” He felt as if “there’s stuff there that’s not supposed to be there. I feel my chest underneath it, and this is not right. And then everyone else is reacting to my outward appearance too and treating me different than who I knew myself to be, assigning me a role because of that.” Those reactions were like “sandpaper.” As he put it:

> If you take a piece of sandpaper, and you swipe it on your arm once, that might be annoying. It’s not terrible, but when it happens over and over and over again, pretty soon you have a very raw and painful weight. And that’s what these little experiences are like. That funny, funny look that someone gives you, like what are you? That misgendering, that having to show your I.D., and it’s not correct. All of those little things add up to a very painful wound that people are navigating in everyday life.

Jonah first came out as trans when he was sixteen. It was hard. He lost friendships, saw a strain on his family relationship, and experienced an onslaught of harassment. He eventually dropped out of school. He felt dysphoric, as if he was not at home in his own body. This was a dark period in his life—he survived suicide attempts and severe depression.

Things got better once Jonah was able to access gender affirming care. In his late twenties, he was able to receive hormone therapy. It changed his life; it affirmed who he was. While he had known about these treatments for a long time, he was unable to access them because of insurance difficulties and state law. But once he was able to live in affirmation, his life improved. He now pithily describes himself as “the most boring stereotypical midwestern dad with the cargo shorts” who “mows his lawn and takes out the trash and no one in day-to-day life knows my medical history.” While he emphasized that living as a trans person is not easy—discrimination makes it exceedingly difficult to find jobs, housing, and spaces of acceptance—access to gender affirming care makes it

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better. He can now "envision a future" for himself.

When asked whether he thought having access to gender affirming care during his adolescence would have made a difference, Jonah responded "One hundred percent." Upon reflection, Jonah knows now that he started to experience gender dysphoria when he was very young. "The last time I wore a dress was in kindergarten. I absolutely refused to after that. . . . 100 percent, I was dysphoric from a very young age." Jonah feels that, if at sixteen years old he had access to the care he receives now, he could have avoided years of suffering.

Jonah then reflected on some common misconceptions about his identity and on gender affirming care. When asked whether there is any truth to the claim that gender dysphoria is rising because of a 'social contagion' or 'social media,' he replied simply, "No." He elaborated, stating the following:

> [W]e have a whole lot more left-handed people now than we used to in the past. We used to think it was pretty evil to write with your left hand. In Catholic schools, if you started writing with your left hand, they'd slap your hand with a ruler until you were using your right hand. It is, while still quite difficult to be a trans person, much easier now than it has been in the past. It was almost an automatic death sentence. So you have more people coming out rather than hiding. You have more people who are able to be who they are, who are able to access care rather than to hide who they are. It is not that there are so many more people, there are more people coming out. Trans people have always existed.
>
> . . .
>
> We have words now, and we have more people who are not as isolated as they were in the past. We have ways to gather. We have ways to connect to each other. So, it can seem like there's so many more trans people. That's not the truth.

When asked whether the provider he worked with to receive gender affirming care acted in bad faith or engaged in a type of wrongdoing, he again replied, "No." He

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continued:

> I will say too that I had to search for a long time to even access that care. More than a decade, a decade that was very detrimental to my health, to my career, to like every avenue of life. And I had to educate myself greatly. Almost every trans person has to educate themselves about their health care, and their health providers to some degree. That is just now starting to change. And throughout most of the country that is still the truth is that people have to educate their providers. So, no. You know, this is something that doesn't happen overnight. There are not instant transitions. There are protocols for how to get this care, and it is not something that is so easily accessed as many politicians seem to think.

Counsel followed up, asking, "So you didn't walk into a doctor's office, say I want to transition, and then get signed up for treatment in a month?" He replied, "Absolutely not."

When asked whether the benefits he has experienced from gender affirming care outweigh any risk, Jonah had the following to say:

> The benefits I experienced are 100 percent worth this care. I probably would not be alive if I had not been able to get this care, and I certainly wouldn't be a participating member of society.
>
> . . . .
>
> So, if someone was, like me, assigned female at birth, and I take testosterone, on paper it looks scary because my cardiovascular risk rises, but it rises to a cisgender male level. It is not extra risk on top, and when you look at the side effects of any medication on paper, generally they're terrifying. You know, even if you look at like an asthma medication, it might say, death is a possibility, and all these sorts of things. And if you look at the risks of hormones, they say much the same thing. Estrogen will say you have a risk of death from VTE. You might get a clot and die. Well, that's true for cisgender women who are taking it for post-menopausal reasons as well. Every medication has a risk, and they often look terrifying. It is not an extra and additional gigantic risk for trans people.

Counsel asked, "Do you think your opinions would have changed if you were, say, 13 or 14 and you found a doctor who was willing to work with you? Do you think you would

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have wanted in that situation somebody to say 'stop, pause, think about this more'?" Jonah replied, emphasizing how trans youth do not make their decisions rashly, or on their own:

> Well, the way the care has been done for youth is, first of all, you know, there's assessments by multiple professionals generally, and social transition is usually the first thing that happens, which is completely reversible. Social transition is using a different name, pronoun, changing maybe hair style, how someone dresses, it's things like that that are completely reversible, and usually that's done for a while, and then the person may or may not go on puberty blocker. Right? And really all that is hitting the pause button on puberty where someone is. That is not changing someone's gender.

Counsel then asked, "What does the term 'liberty' mean to you?" Jonah viewed the concept expansively, as "the freedom to be who you are and to live your life as you're not harming anyone else."

Finally, Jonah wanted to ensure that the Court received the following statement:

> Transition is not done recklessly. It is not a light decision made for an individual. It often comes at high personal cost, and there's no need for the State to cause more trauma and difficulty in an individual's life as they seek healthcare. That should be between them and their healthcare providers.

ii. Interview with Daniel Hardy

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Daniel Hardy lives in Ohio and works as a psychiatric nurse practitioner. He is a transgender man. He was born in Ohio but spent much of his childhood in rural Indiana. Growing up as the middle child, Daniel enjoyed a close relationship with his three siblings. He moved back to Ohio to finish high school.

Daniel remembers feeling from a young age that society had assigned him the wrong gender. In preschool, he recalls "making a friend and telling my mom that I wanted to be this friend's boyfriend." But his mom told him that it was impossible. "[Y]ou would

never be a boyfriend; you could be a girlfriend." This misalignment between Daniel's feelings and the world's treatment of those feelings continued for some time:

> [T]he thing that I heard over and over again as I was growing up was, this was supposed to be really empowering phase: "You're a girl and girls can do anything." And what it meant was like girls can be doctors and girls can fly airplanes, and girls can be the President if they wanna be. Don't let that stop you. But what I heard and internalized was, regardless of how you're feeling, you need to remember that you're a girl. And so that really shaped my growing up. It wasn't intentional or trying to be harmful or just shut my, shut down my identity, but it was something that I experienced as like regardless of what you think, I need you to make sure you know you're a girl.

Ultimately, he felt that "it would have been better if I had been born a guy, but everyone's telling me I'm not, so I guess I just have to suck it up and deal with the hand I've been dealt." But Daniel knew that "things aren't right."

In junior high, Daniel was able to more concretely articulate his feelings. They "weren't the same as what other people my age [were] expressing." His life changed when he met an openly transgender man. He "was just living a normal boring life, not a Jerry Springer 1990s life." This was a revelation. "I realized that you can be trans and just be normal. You can just be yourself, you're not a freak." He further explained, "[K]nowing that person, and like within a week we had talked about all the ins and outs of what he was experiencing, I was like, oh . . . this is what's going on."

But Daniel could not access the care he needed to live as his true self. He experienced severe gender dysphoria, which he described as follows:

> It was really painful. It hurt my heart to be naked, to wipe myself after using the restroom, especially when I was on my period. It felt like grief. I used to put masking tape over the mirror so I wouldn't have to see my face. It felt like I was looking at the face of a stranger. I often slept in a chest binder to help prevent the feeling of my chest shifting when I was

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> laying in bed and, you know, providers really don't encourage that 'cause that can cause long-term injury, but if I tried to sleep without it, I would often have panic attacks because I could feel the weight of things shifting.

He was "passively or actively suicidal from the ages of 13 to about 30."

Thankfully, Daniel was eventually able to access care. He started on Depo-Provera when he was twenty-seven years old to stop his menstrual cycles, which were "the most distressing thing at that time," and then he started testosterone. Within three years, his suicidal ideation abated and has been gone for more than a decade.

The positive effects were profound and immediate. "Within the first few doses . . . the anxiety had decreased significantly." He used to need Klonopin and other medications such as SSRIs to address his anxiety and agoraphobia, but transition allowed him to reduce those prescriptions. "I could feel the mental changes that helped me feel more stable, more comfortable." While he lacks the crystal ball needed to say for certain how gaining access to gender affirming care during his adolescence would have changed his life, he suspects that, "if I had access earlier, that feeling would have been able to dissipate earlier."

Daniel emphasized the importance of the doctor-patient relationship. It should be one of "frank and matter-of-fact" discussion:

> The day that I came out to my primary care doctor, he was already managing testosterone therapy for cis guys and he's like, "oh, okay, well, do you wanna start that," and I wasn't ready and I knew that, and so I'm like, "no, not yet, but I'll tell you," and he's like, "that's fine, just let me know." It was very matter-of-fact like care should be. Hey, you have a problem, we can treat that, but there was no pressure there at all.
>
> . . .
>
> I make sure that I can ask direct questions. I can be very frank and matter-of-fact. They can be very matter-of-fact right back

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> and be, you know, open and honest. 'Cause if I feel like they're doubting me or they're not able to answer questions that I have, and also not willing to look them up, then it's not gonna be a successful relationship.

Daniel made the decision to receive care gradually and carefully, after consultation with expert care providers and much self-reflection. He said:

> I was really cautious. I don't do changes well and so every single time that I had another step that I thought might be appropriate for me, I took a long time and considered it and I thought like okay, well, what if I feel differently in the future? Would I be comfortable being a woman who has this trait or that trait, like a woman who grows facial hair. Well, some women do, you know, some cis women, or, you know, a woman who has no breasts. Well, cancer survivors are often like that, and so I was able to frame it as like this feels like this is what I need now, but if I'm changing my mind in the future or I need something different, would I be okay returning to this identity with all the changes and so I think framing it that way, I was able to make a decision that felt right, and I didn't take it fast.

Daniel does not regret his decision. When asked whether he had ever considered 'detransitioning,' he replied, "I haven't ever desired to untransition or detransition or to . . . go back to living as a woman."

Counsel followed up, asking "Would you have trusted yourself at 16, 17, to go to a physician and have those conversations and receive care?" Daniel emphatically responded:

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> I think that I could have gone to a provider and received care if I had access to an affirming provider . . . . I was able to make the decision to attend college and accrue like tens of thousands of dollars in debt before I was 18. I knew myself in kindergarten I was gonna grow up and be a nurse and I never changed my mind. I think that if I had access to the vocabulary and understanding that like an average teen does, in 2025, I would have definitely been able to make an informed and voluntary decision.

Daniel also addressed some common misconceptions about his identity and about

gender affirming care. When asked whether the increase in gender dysphoria is due to a 'social contagion' or 'social media,' Daniel said:

> I don't believe that it is. I believe that the truth is that as we gain access to greater information then we're able to identify, oh, this feeling is not how the average person feels, this feeling is how I feel and it's how, you know, what would be appropriate would be to follow that feeling and explore, not necessarily transition but, you know, look more into it, why do I feel differently?
>
> From my own personal experience, I definitely knew that I felt wrong, but I didn't have a label for it until I met that trans guy. From the outside it probably would have seemed very sudden and even contagion-like, but what I was feeling on the inside was just peace and understanding that I'm not broken, and that there's a word for it, and there's a treatment to help.

When asked whether the care providers he worked with had acted in bad faith or engaged in any wrongdoing, Daniel said:

> The only time that I felt like I was being treated in bad faith was people who could see that my name is Daniel and my legal gender is male, and then decided to call me she/her because of my birth assignment. The providers who offered me care definitely didn't act in bad faith or any wrongdoing.

When asked whether it is possible to make the decision to receive gender affirming care on a whim, Daniel said:

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> Absolutely not. . . [b]ecause what you have to do first is you have to identify that you are very different and that is a big thing to come to terms with, like when you first notice it, you may be in denial or like, oh, that's not right for me, that's not, you know, whatever. Then you have to come to terms with the idea of like, I have to tell somebody. That's terrifying, like you don't get there accidentally, you don't get there without fully considering, you know, what this means. I don't think I've ever met a person who did.

Daniel articulated his conception of 'liberty' as "the guarantee of freedom that the government is not gonna restrict me from engaging in the things that I know are best. I

can worship as I please, I can go protest, I can own my own property, and I can marry."

Finally, Daniel wanted the Court to take the following message from his story:

> I'm a normal guy. My process of getting here is different than other men . . . but that doesn't change who I am. I know that gender affirming care saved my life and I feel really fearful about today's youth and young adults who may not be able to access the care and see 18 as such a distant deadline that they don't feel like they can hang on that long.

II. OHIOANS ADOPTED THE HEALTH CARE FREEDOM AMENDMENT TO SUBSTANTIALLY LIMIT THE STATE'S POWER TO RESTRICT HEALTH CARE FREEDOM.

On November 8, 2011, Ohio voters overwhelmingly adopted Article I, § 21, of the Ohio Constitution "to preserve the freedom of Ohioans to choose their health care." Ohio Secretary of State, *State Issue 3: November 8, 2011, Official Results*.[4] Referred to as the 'Health Care Freedom Amendment,' Article I, § 21, provides that "[n]o federal, state, or local law or rule shall prohibit the purchase or sale of health care or health insurance." Ohio Const., art. I, § 21(B). The People spoke with a clear voice, declaring that the General Assembly shall not interfere in their health care decisions. *Id.*

The Amendment set out the following four narrow exceptions to that general rule, all of which are found in Subsection (D). *Id.* at § 21(D). First, the Amendment "does not affect laws or rules in effect as of March 19, 2010." *Id.* Second, it does not "affect which services a health care provider or hospital is required to perform or provide." *Id.* Third, it does not "affect terms and conditions of government employment." *Id.* Finally, and of most relevance to this case, the Amendment allows the General Assembly to "deter fraud or punish wrongdoing in the health care industry." *Id.*

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[4] Available at: https://www.ohiosos.gov/elections/election-results-and-data/2011-elections-results/state-issue-3-november-8-2011/ (accessed Dec. 7, 2025).

Despite the Health Care Freedom Amendment's clear, rights-creating language and narrow exceptions, the General Assembly enacted 2023 Sub.H.B. No. 68 ("H.B. 68"). The act "banned gender-affirming pharmaceutical medical care for transgender adolescents diagnosed with gender dysphoria." *Moe v. Yost*, 2025-Ohio-914, ¶ 1 (10th Dist.). In H.B. 68's language, "[a] physician shall not . . . . [p]rescribe a cross-sex hormone or puberty-blocking drug for a minor individual for the purpose of assisting the minor individual with gender transition." 2023 Sub.H.B. No. 68, Section 1, codified at R.C. 3129.02(A)(2). In other words, H.B 68 does exactly what the Health Care Freedom Amendment forbids: it "prohibit[s] the purchase or sale of health care" by or to adolescent transgender Ohioans. Ohio Const. art. I, § 21(B).

But the State thinks that the Amendment's rights-creating language is narrow and that its "wrongdoing" exception grants the legislature unabated power to decide what types of health care a provider may offer to individuals and their families. It argues that "[t]he Amendment concerns only the purchase or sale of services that the State chooses to recognize as valid health care." *Merit Brief of the State Appellants filed October 20, 2025 ("State's Brief"), p. 35*. The State is wrong. It is wrong on the text, wrong on the history, and as demonstrated above, badly wrong on the policy. H.B. 68 runs roughshod over the Health Care Freedom Amendment. This Court should confirm the well-reasoned decision below holding that the General Assembly violated the Ohio Constitution by enacting it.

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A. The Amendment's text contains broad protections for individual rights with limited exceptions.

"Start with the text." *State v. Smith*, 2020-Ohio-4441, ¶ 29. It will be easy to end there, too. The Amendment's text scribes out a general rule and then a specific exception

to that rule. It forbids the General Assembly from passing laws that "prohibit the purchase or sale of health care or health insurance" except when those laws are "calculated to . . . punish wrongdoing in the health care industry." Ohio Const. art. I, § 21(B), (D).

The Amendment leaves the operative terms "health care" and "wrongdoing" undefined, so those terms "must be taken in their usual, normal, or customary meaning" at the time the Amendment was adopted. *Toledo City Sch. Dist. Bd. of Edn. v. State Bd. of Edn.*, 2016-Ohio-2806, ¶ 16; *De Camp v. Archibald*, 50 Ohio St. 618, 625 (1893); *see also* 16 Ohio Jur.3d, Constitutional Law, § 56 (3d Ed. 2025). "And one tool courts may use to help them discern the common and ordinary meaning of words is dictionaries." *Corder v. Ohio Edison Co.*, 2024-Ohio-5432, ¶ 25.

The dictionary definitions available when Ohioans adopted the Amendment are clear. "[H]ealth care" broadly encompasses "efforts made to maintain or restore health esp. by trained and licensed professionals." *Merriam-Webster's Collegiate Dictionary,* at 574 (11th Ed. 2003). And "wrongdoing" meant the same thing in 2011 as it did in the 14th century when the word first entered the English language: "evil or improper behavior or action." *Merriam-Webster's Collegiate Dictionary* at 1447 (11th Ed. 2003).

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As those definitions bear out, the Amendment protects health care—all types, without qualification—and grants the General Assembly the limited power to protect Ohioans against only "evil" practices "in the health care industry." *Id.*; Ohio Const. art. I, § 21(D). The text does *not* say that the General Assembly may ban care it simply 'disagrees with,' 'disapproves of,' or 'deems invalid.' The Amendment decidedly lacks a protect-them-from-themselves clause. It does not, as the State claims, "concern[] only the purchase or sale of services that the State chooses to recognize as valid health care." *State's Brief, p. 35.* No, by definition, the practices the State may constitutionally target

for regulation must be "evil." *Webster's* at 1447. Granting the State any more power than that would impermissibly add text to the Amendment that is simply not there.

The "wrongdoing" exception must be read narrowly, to allow only those laws that are calculated to address undeniably harmful medical practices; practices that have no discernable benefit or that come with irreducible, unjustifiable risk. *E.g.,* R.C. Ch. 2108 (regulating the donation and transplantation of human body parts); R.C. 4731.41 (forbidding the practice of medicine without a license); R.C. 2305.113 (providing the judiciary jurisdiction over medical malpractice actions). To read the Amendment any other way—and especially to read it as the State does—would do violence to the general rule guaranteeing freedom of health care choice.

Interpreting the Amendment to provide that freedom does not require this Court to adopt the "no-limits Wild West of medical (non-)regulation" position that the State tries to foist upon Appellees as a not-so-convincing strawman. *State's Brief, p. 42*. The Amendment leaves room for regulation, just not to the extent that the State of Ohio claims. If the State is allowed to sidestep the Amendment by arguing that certain kinds of healthcare are different than others, and thus subject to regulation, this Court will have written the fundamental protection over healthcare decisions right out of the Ohio Constitution.

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This reading also does not require some trick of linguistic prestidigitation. This Court has long construed exceptions to constitutional provisions narrowly, with a critical eye. "Exceptions to the operation of laws, whether statutory or constitutional, should receive strict, but reasonable, construction." *State ex rel. Keller v. Forney*, 108 Ohio St. 463 (1923), syllabus. The rationale for this interpretive rule is a good one: to prevent the constitutional exception from swallowing the constitutional rule. The Court's obligation

is, after all, "to carry out the intention and objectives of the people in making the Constitution, both as it was adopted and as it has been amended." *E.g., Beaver Excavating Co. v. Testa*, 2012-Ohio-5776, ¶ 30; *see also* 16 Ohio Jur.3d, Constitutional Law, § 56 (3d Ed. 2025). To carry out that obligation, "[t]he fundamental law of the State is to be construed in no narrow and illiberal spirit." *Kraus v. City of Cleveland*, 94 N.E.2d 814, 818 (C.P. 1950), *aff'd by*, 89 Ohio App. 504 (8th Dist. 1950), *jurisdiction declined,* 115 Ohio St. 98 (Mar. 14, 1951).

Another textual hint about Amendment's breadth is its use of the phrase "health care or health insurance." (Emphasis added.) Ohio Const. art. I, § 21(B). The inclusion of "or" in the prohibition subsection suggests that "health care" is something different from "health insurance" and that the Amendment's protections apply to *both*. As this Court has observed in the past, "The word 'or' is primarily used as a disjunctive, and "[c]anons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings . . . .'" *O'Toole v. Denihan*, 2008-Ohio-2574, ¶ 51, citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, at 116-125 (1st Ed. 2012) (discussing the conjunctive/disjunctive canon of construction).

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In addition to reading 'or' disjunctively, this Court has long insisted on giving every word in a constitutional provision independent meaning. *President, etc., of Medical Coll. of Ohio v, Zeigler*, 17 Ohio St. 52, 68 (1866) ("The rules of construction favor an interpretation which will give effect to every part of the enactment."); *State ex rel. Mitman v. Bd. of Commrs. of Greene Cty.*, 94 Ohio St. 296, 307-308 (1916); *State ex rel. Carna v. Teays Valley Local Sch. Dist. Bd. of Edn.*, 2012-Ohio-1484, ¶ 18; *see also* Scalia & Garner at 174 ("If possible, every word and every provision is to be given effect . . . . None should

be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.").

Using these basic interpretive tools, one Ohio judge has already rejected the State's assertion that the Amendment protects only the right choose health insurance coverage. "The [Amendment] does not define 'health care,' but the use of the disjunctive 'or' renders the term separate and distinct from the purported target of the amendment – health insurance." *Preterm-Cleveland v. Yost*, 2022 WL 4283155, *8 (C.P. Sept. 14, 2022). Instead, "The [Amendment] represents an express constitutional acknowledgement of the fundamental nature of the right to freedom and privacy in health care decision making. Read together with other applicable sections of the Ohio Constitution, a clear and consistent recognition [of] the fundamental nature of this right under Ohio law emerges." *Id.* at *9; *see also Preterm-Cleveland v. Yost*, 2022 WL 16137799, *16 (C.P. Oct. 12, 2022).

Now apply the above principles and the Amendment's plain text to this case. Nobody disputes that the gender affirming care banned by H.B. 68 is "health care" that falls within the Amendment's protections. Ohio Const., art. I, § 21(B). The State could have challenged that factual finding earlier in the dispute but apparently did not. Gender affirming care is safe, effective, and in many cases, outright lifesaving. It is also widely accepted by experts in multiple fields. *See generally Brief of* Amici Curiae *American Academy of Pediatrics and Additional National and State Medical and Mental Health Organizations in Support of Appellees' Memorandum in Response to Memorandum in Support of Jurisdiction, filed May 29, 2025, p. 1.* Simply put, providing this important care is not "evil." *Merriam-Webster's Collegiate Dictionary* at 1447. Thus, the General Assembly may not "prohibit" its "sale or purchase." Ohio Const. art. I, § 21.

The State cannot convincingly argue that the medical community's ability to

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influence what does and does not constitute fundamentally protected healthcare presents a problem. It tries, urging that "it is dangerous to bake so-called expert standards into the Constitution" and permitting one "will be hard to undo." *State's Brief, p. 2*. But neither this Court, nor any of the lower ones, *undoes* parts of the Ohio Constitution once they have been adopted. This Court reads and understands that document, possessing no power to change it when its text goes too far for the liking of those currently holding political office. The People said "health care" would be protected by fundamental law, and the chips must fall where they already have in the lower courts. The State's whole argument suffers from this inherent, albeit subtle, request for judicial activism, which this Court should reject.

This Court can disagree with the Appellees' expert-supported factual assertions and still hold that H.B. 68 violates the Health Care Freedom Amendment. As the voluminous record shows, there is arguably room in the medical discourse for some to disagree. But even Chief Judge Sutton—oft cited by the State and its *amici*—recognized that, if access to gender affirming care comes down to a debate of fact, it is at most a debate in equipoise. *L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 491 (6th Cir. 2023).

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The tiebreaker that was missing in *Skrmetti* is present here. In 2011, Ohioans amended the Constitution to protect the individual right to make health care choices and to constrain the General Assembly's power to interfere with those choices. The Health Care Freedom Amendment's broad, rights-protecting language, the textual narrowness of its exceptions, and the Ohio case law favoring the liberal construction of constitutional provisions, all suggest that factual doubts about whether prescribing gender affirming care is "wrongdoing" should be resolved in favor of Appellees, not the State. In this domain, ties in the fact-finding contest must go to the People.

B. The public knew that the Amendment would generally preserve the individual's right to access their care of choice.

This Court should stop its analysis at the Amendment's plain text. But, if it sees any ambiguity, the next step is to delve into the context surrounding the Amendment's adoption. Here, history confirms the text's plain meaning. Ohioans knew that they were voting to protect the individual right to access health care. They knew that the Amendment would constrain state power. They may have been worried about a different or broader kind of interference with the healthcare purchasing decisions given the timing, but broad language was proposed to and adopted by the voters. The original public meaning of the Amendment is no less protective of certain kinds of healthcare than others, as the fear it precipitated from was that an imperious government would start deciding what kind of medical services a person could and could not have.

Consider the remarks made during a public debate at the City Club of Cleveland just days before Ohioans went to the polls to vote on the Amendment. The City Club of Cleveland, *Issue 3 Debate* (Oct. 26, 2011).[5] Chris Littleton, one of the Amendment's primary architects, and Dale Butland, one of its lead opponents, engaged in an hour-long public discourse. Littleton opened by introducing the Amendment and describing "[a] couple things that it does: at the state-level it's going to prohibit the State of Ohio from limiting your health care freedom." *Id.* at 4:55 (statement of Chris Littleton). Though he stated that the Amendment process "[i]nitially . . . started in response to the federal mandate that came down from Washington, D.C., after the federal health care bill passed," *id.* at 5:11-5:21, he later clarified that that inspiration did not limit the

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[5] Available at: https://www.cityclub.org/forums/2011/10/26/issue-3-debate (accessed Dec. 7, 2025).

Amendment's scope, stating: "What we're doing has absolutely nothing to do with the remainder of the federal health care bill. We don't seek to affect it. We're not trying to say anything about it." *Issue 3 Debate*, at 20:46-20:53.

The voters were warned that the Amendment cut broadly, but they passed it anyway. Butland opened his remarks by emphasizing how broad the Amendment's language is: "So, if Issue 3 isn't about Obamacare, what is it about? It's about extremists like Mr. Littleton and his organization who want to insert a Trojan horse into the Ohio Constitution. A Trojan horse that would jeopardize literally dozens of already existing Ohio laws and regulations that we all rely on to keep us safe and healthy." *Id.* at 8:01-8:23 (statement of Dale Butland). Later, he continued: "There's an old adage . . . you should be careful what you wish for. Because, if people really look at this and really understand what it's going to do, they're going to reach the same position as every major newspaper in Ohio," they would realize "the incredibly negative effects this would have on the Ohio constitution." *Id.* at 46:42-47:15. He concluded: "The tsunami of litigation that would occur as a result of this [Amendment] is going to be wonderful for lawyers because this is going to be the 'Lawyer's Full Employment Act of 2011.' But for the rest of us that are going to be on the hook to pay for these costs, it's going to be horrible." *Id.* at 49:23-49:36. Finally, Butland made a specific observation about how he viewed the "wrongdoing" exception to the Amendment as toothless: "It's true that the Amendment has the word 'wrongdoing' in it. What the hell does that mean? It's not a legal term of art. Nor is 'wrongdoing' defined anywhere in the Amendment. So, it's whatever courts decide what that might be. This is the problem with this Amendment. It is sloppy. It is ambiguous. And it is going to lead to an incredible tsunami if lawsuits." *Id.* at 53-36-54:01.

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C. The official arguments made prior to the Amendment's adoption demonstrate its broad scope.

TransOhio agrees that the "official ballot arguments" and the observations made by those in power before the Health Care Freedom Amendment was adopted are fruitful sources of constitutional meaning. *State's Brief, p. 37-38*; *Testa,* 2012-Ohio-5776, at ¶ 19-21. Because the Amendment was adopted in the digital age, there are plenty of well-documented official arguments and statements available for analysis. One does not need to dust off a copy of the Magna Carta or peruse Blackstone's *Commentaries* to divine the Amendment's meaning.

i. The Amendment's proponents and opponents made legal arguments that emphasized a broad purpose.

Start near the beginning of the Amendment's history, when the initiative petition that predated the Amendment had just been submitted to the Ohio Attorney General for approval. Surprisingly, an early dispute about the meaning of the then-petition, now-Amendment, arose and made its way before this Court. *State ex. rel. Ohio Liberty Council v. Brunner*, 2010-Ohio-1845. In *Ohio Liberty Council*, the Amendment's proponents challenged the Ohio Ballot Board's decision to divide the proposed language into two parts. *Id.* at ¶ 20. In the Board's opinion, the initiative petition contained "two proposed constitutional amendments," one that "deals with the freedom to choose health care" and another that "deals with the governance and oversight of the health care and health insurance industries." *Id.*

This Court disagreed with the Board's analysis. It held that the Amendment has the "single general object or purpose of preserving freedom of choice in health care." (Emphasis added.) *Id.* at ¶ 57. While this Court cautioned that the case was "not about the relative merits of [the] proposed constitutional amendment" or "whether its passage

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would actually result in the specified purpose," its broad statement of the Amendment's unifying purpose is a helpful historical clue about the Amendment's meaning. *Id.* at ¶ 24. This Court saw an expansive, rights-protecting purpose that belonged in one ballot measure, not a series of less impactful changes that could be split up.

The arguments made by the parties to the case are even more instructive. The *Ohio Liberty Council* briefs directly contradict two of the State's historical assertions. First, it argues that the Amendment's proponents thought it would apply only to insurance choice, not to health care choice generally. *State's Brief, p. 36.* Second, it argues that the Amendment was adopted for the limited purpose of providing "a barrier against the federal Affordable Care Act." *Id., p. 38.* Neither claim finds support in the historical record.

To the first claim, the interested parties were clear that the Amendment preserved the right to access health care generally, not just health insurance. As the proponents stated, "all divisions of the Amendment are interrelated to the overall purpose of preserving Ohioans' freedom to choose health care." *Reply Brief of Relators, State ex. rel. Ohio Liberty Council*, 2010-Ohio-1845*, p. 15.*[6] The Ohio Secretary of State was even clearer: the Amendment "is not even limited to the topic of health *insurance*. It also prohibits any new laws or regulations governing the sale or purchase of 'health care.'" *Merit Brief of Respondents, State ex. rel. Ohio Liberty Council, p. 7.*[7]

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[6] Available at: https://www.supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=664479.pdf&subdirectory=2010-0643\DocketItems&source=DL_Clerk (accessed Dec. 6, 2025).

[7] Available at: https://www.supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=664391.pdf&subdirectory=2010-0643\DocketItems&source=DL_Clerk (accessed Dec. 6, 2025). While the Secretary of State referred to Subsection (C) of the Amendment, not Subsection (B), this Court observed that two are essentially indistinguishable in language and close in scope. *See Ohio Liberty Council* at ¶ 48.

The Secretary of State then asked the Court to consider the parade of horribles that would march forth from the Amendment's broad language. *Id.* The horribles included the following: the Amendment would prevent the legislature from mandating infectious disease screenings, requiring vaccines, regulating midwifery, penalizing sub-standard assisted-living facilities, or banning "storefront barium enema treatments." *Id.* The proponents did not dispute that the Amendment would prohibit the General Assembly from taking *some* of the actions that the Secretary described. *Reply Brief of Relators, State ex. rel. Ohio Liberty Council, p. 11-13.* They admitted, of course, that the Amendment allowed for modest regulations, but maintained that it was ultimately designed to "[tie] the hands of the legislature." *Id., p. 15.* This back-and-forth demonstrates that the proponents and opponents both understood that the Amendment, if adopted, would substantially constrain the General Assembly's power to enact sweeping bans on the types of health care available to Ohioans.

To the second claim, while the State argues that the Amendment's focus was on countering developments in federal law, the Amendment's proponents vehemently disagreed with that characterization. In their own words, "federal debates . . . sparked their interest in the subject," but there was "no evidence" that the Amendment's "sole intention [was] to nullify federal health care." *Reply Brief of Relators, State ex. rel. Ohio Liberty Council, p. 13.* To the contrary, there was "very little overlap between the voluminous federal health care overhaul and the Health Care Freedom Amendment: the Amendment does not address 99 percent of what is in the Patient Protection and Affordable Care Act, and the Amendment addresses freedom and choice in a way that is broader than the single concern over the individual mandate contained in the aforesaid Act." *Id.*

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ii. The ballot language and official arguments presented to Ohio voters emphasized a broad purpose.

To the State, the fact that the Amendment's language references federal regulations is sufficient to demonstrate a purpose focused exclusively on the Affordable Care Act, not on the general freedom to access health care. *State's Brief, p. 36.* However, the official documents presented to Ohioans lacked *any* reference to the federal government or a limited insurance-focused purpose. Instead, they emphasized breadth and covered multiple different arguments, some insurance-based, many not. While the State blusters about the "official ballot arguments for and against" and the "ballot language," it is surprising that those documents show up nowhere in its brief. *State's Brief., p. 37-38* (citing only an "independent analysis" from the Ohio Leage of Women Voters). The official ballot language and other helpful documents can be found on the Ohio Secretary of State's website under the "Issue 3" header. *See* Ohio Secretary of State, *Ballot Board: 2011*.[8]

The official ballot language stated only that each provision would apply "In Ohio," and then asked, "Shall the Amendment be approved?" Ohio Secretary of State, *Ballot Language*.[9] The same goes for the Certified Summary of the Amendment's language. Ohio Secretary of State, *Initiative Petition Summary*.[10] The official argument for the Amendment itself omits any reference to the federal government and clothes itself in the

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[8] Available at: https://www.ohiosos.gov/legislation-and-ballot-issues/ballot-board/ballot-board-2011/ (accessed Dec. 6, 2025).
[9] Available at: https://www.ohiosos.gov/globalassets/ballotboard/2011/3-language.pdf (accessed Dec. 6, 2025).
[10] Available at: https://www.ohiosos.gov/globalassets/ballotboard/2011/2010-05-03initpetition.pdf (accessed Dec. 6, 2025).

language of individual liberty. *Official Argument For, p. 1.*[11] It states that the Amendment would "keep government out of your personal medical decisions," "[p]rotect your health care freedom in Ohio's Bill of Rights," and "[r]educe government regulations." *Id.* Without the Amendment, it argued, the government could "[p]rohibit you from obtaining private medical treatment." *Id.*

So, actually looking at the official documents available to Ohio voters, the State bats 0 for 3 on its claims. First, the actual ballot said nothing about federal law, second, the argument for the Amendment was not focused solely on insurance, and third, the argument in favor of it did, in fact, have many things to say about the "State's power to regulate medicine." *State's Brief., p. 38*. These pieces of historical evidence are important. They allow this Court to see the decision through the eyes of the average voter on election day. Issue 3 was focused on Ohio and reasonable voters can and did choose to cast their ballot for it because they thought it would protect their right to make their own health care decisions free from unwarranted government intrusion.

Any analysis of the original public meaning of the Amendment that goes beyond the broad but clear text—"health care"—should take account of these contemporaneous understandings of what exactly it would accomplish. They are at stark odds with the State's attempt to put the genie back in the bottle. An overwhelming majority of Ohioans voted to require precisely what the lower courts have done in this dispute, and that should end the case.

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[11] Available at: https://www.ohiosos.gov/globalassets/ballotboard/2011/3-argument-for.pdf (accessed Dec. 6, 2025).

D. Concluding observations on the Amendment's decidedly broad Original Public Meaning.

Given the historical evidence above, the State's claim that "the Amendment was taken to affect very little" is too absurd to be taken seriously. *State's Brief, p. 39*. Ohioans knew that what they were voting for was significant. They knew it would expand individual rights. And they knew that it would constrain the General Assembly's power to legislate in certain spheres. The Court need ask itself only this: Can a recent alteration to the fundamental law of our state, adopted against the backdrop of a national debate about health care freedom and individual liberty, reasonably be "taken to affect very little?" *See id*. To ask the question is to answer it in the negative.

The Amici's constitutional analysis ends where it began, with the State's bold claim that "[t]he Amendment concerns only the purchase or sale of services that the State chooses to recognize as valid health care." *State's Brief, p. 35*. The State's argument boils down to this: Ohioans may access only the care that the State stamps as 'approved.' But the Health Care Freedom Amendment was expressly written, marketed, and adopted to protect the *individual's* right to choose their own health care, not the government's power to choose it for them and their children. This Court should not read a decidedly anti-paternalistic Amendment to allow such rank paternalism. The State's arguments about Article I, § 21, of the Ohio Constitution blink history, text, and reality. They are unconvincing and this Court should reject them.

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CONCLUSION

The Ohio Constitution protects the right of transgender Ohioans to make their own health care choices. Apart from nullifying the Health Care Freedom Amendment, H.B. 68 will have a devastating practical effect if upheld. As the stories described above show, access to gender affirming care is often the difference between life and death for young people; the difference between actualization and agony. Gender affirming care is safe, effective, and deeply meaningful to those who receive it. The decision to access it is not taken lightly—individuals make their decision in the context of the doctor-patient relationship and, for transgender adolescents, in the context of the parent-child relationship. Absent a profoundly persuasive justification, the Ohio Constitution forbids the General Assembly from trampling on either relationship or on the individual's right to choose for themself.

If the concept of liberty means anything, it must mean that individuals are free to decide when and in what ways they receive forms of medical care that, like gender affirming care, are overwhelmingly accepted by the medical community. H.B. 68 is caustic to that concept and cannot withstand constitutional scrutiny.

This Court should decide in favor of Appellees and affirm the holding below.

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