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HEALTH, EDUCATION, LABOR, AND PENSIONS COMMITTEE

Patty Murray, Chair

Impacts of a Post-*Roe* America

The state of abortion policy after Dobbs



Committee on Health, Education, Labor, & Pensions
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Introduction

The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* found that there was no constitutionally protected right to abortion, explicitly overturned both *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* and, for the first time in the Court's history, eliminated a previously held fundamental right.¹ The decision undoes nearly fifty years of jurisprudence, and the consequences of the *Dobbs* decision for women facing personal medical decisions and the providers who seek to provide them care are severe.

On June 24, 2022, the day the *Dobbs* decision was announced, women across the country entered reproductive health clinics planning to access abortion services. Some had traveled across state lines to seek care because their home states had already restricted clinics' operations or because clinics close to home did not have appointments available for weeks.² But when the Supreme Court announced its decision that morning, many of those women sitting in clinic waiting rooms were told they could no longer have the abortion they sought as clinics closed their doors and turned away patients.³ Many more were told they had to cancel upcoming appointments and find transportation, lodging, and child care if they wanted to travel to a state that still allowed abortion care.⁴

The impact of the *Dobbs* decision is felt even more widely by the millions of women across the United States currently unable to get abortions in their home states. Many more face repeated, confusing changes in their ability to access a medical procedure that was constitutionally protected just a month ago. State abortion policy varies widely, with some states protecting abortion, some effectively banning abortion, and many states falling somewhere in between. In just one example of the confusion facing women right now, Kentucky has three separate statutes with three separate timelines for when abortion is legal: one law has gone into effect, while two others are blocked by a court and await further judicial review.⁵ In states where abortion remains legal, clinics report significant influxes of patients from neighboring states.⁶

¹ *Dobbs v. Jackson Women's Health Org.*, No. 19-1392 597 U.S. __ (2022) (slip op., at 5).

² See e.g., Caroline Kitchener, 'We're done': Chaos and Tears as an Abortion Clinic Abruptly Shuts Down, WASH. POST (June 24, 2022, 8:03 PM), <https://www.washingtonpost.com/politics/2022/06/24/abortion-clinic-dobbs-supreme-court-roe/>; Amelia Thomson-DeVeaux, *It Can Already Take Weeks to Get an Abortion*, FIVETHIRTYEIGHT (Apr. 18, 2022), [https://fivethirtyeight.com/features/it-can-already-take-weeks-to-get-an-abortion_](https://fivethirtyeight.com/features/it-can-already-take-weeks-to-get-an-abortion/)

³ See e.g., Kitchener, *supra* note 2.

⁴ *Id.*

⁵ See e.g., Deborah Yetter, *Judge Allows 15-Week Abortion Ban to Go into Effect*, LOUISVILLE COURIER-JOURNAL (July 14, 2022, 5:33pm), <https://www.courier-journal.com/story/news/local/2022/07/14/abortions-now-banned-at-15-weeks-in-kentucky/65373869007/>; Rebekah Riess & Veronica Stracqualursi, *Kentucky State Court Blocks Two State Laws That Stopped Abortion Services After Roe Ruling*, CNN (June 30, 2022, 3:38 PM), <https://www.cnn.com/2022/06/30/politics/kentucky-abortion-bans-blocked/index.html>.

⁶ See e.g., Thomson-DeVeaux, *supra* note 2; Jolie McCullough, *At A New Mexico Abortion Clinic, Calls Flood in From Texas and Wait Times for Appointments Grow*, THE TEX. TRIB. (July 1, 2022, 12:00 PM), <https://www.texastribune.org/2022/07/01/new-mexico-texas-abortion/>; Eilis O'Neill, *Longer Wait Times, Discouraged Patients: What Abortion Rights Advocates in Washington Expect Post-Roe*, KUOW (July 1, 2022, 9:14 AM), <https://www.kuow.org/stories/longer-wait-times-discouraged-patients-what-abortion-rights-advocates-in-washington-expect-post-roe>.

Senator Patty Murray, Chair of the U.S. Senate Committee on Health, Education, Labor, and Pensions (HELP Committee), directed her HELP Committee staff to draft an overview of the consequences of ending the constitutional right to abortion. This report describes the current state of the country's patchwork abortion laws and proposed policy changes, and the impact on women, their families, reproductive health care providers, and others. Throughout the report, there are also stories of women, family members, and abortion providers who speak to the real-life consequences of restrictive abortion bans. These are personal stories, and Committee staff have changed the names of the people who shared those stories to protect their anonymity. They also reflect only a fraction of the stories from across the country describing the harm wrought by the Supreme Court's decision and state-level policies that are creating a health care crisis for women.

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Abortion Bans Post-*Dobbs*

For the first time since the Supreme Court’s 1973 decision in *Roe v. Wade*, neither Congress nor the states are prohibited from restricting or banning abortions. In the absence of a federal abortion policy, the elimination of the constitutional right to abortion means that each state now determines the extent to which patients can access abortion services. This has resulted in myriad different abortion laws and restrictions across the country. For example, some states have laws that expressly protect patients’ right to have an abortion at various points during pregnancy, some have constitutional protections for abortion with little clarity about the extent of that protection, some have laws banning abortions that are currently blocked by federal judges, some states have laws in effect or about to go into effect blocking most or all abortions, and some states have no statewide abortion laws at all. As states pursue new abortion restrictions, and courts clarify what is permitted under state constitutions, the landscape of abortion rights across the country is expected to shift. The *New York Times* has a helpful guide explaining the current status of each state’s abortion laws.⁷

This section of the report describes the status of abortion restrictions across the country. It focuses primarily on abortion bans, or laws that restrict all abortion at a certain point in pregnancy with minimal exceptions. There are numerous other types of abortion restrictions, which are often so burdensome as to make it difficult or impossible for patients to get abortion care. These include notification and testing requirements, provider and health care facility requirements, laws permitting withholding of information about abortion, and other similar efforts.⁸

Federal Abortion Policy

After the Supreme Court’s decision in *Dobbs* overturning the constitutional right to abortion, policymakers are now working to pass a national abortion policy that would apply across the United States. Democratic leadership in Congress has tried to pass national protections for abortion several times; those efforts have not passed the Senate to date given opposition from the Republican caucus.⁹ At the same time, anti-abortion policymakers are actively pursuing efforts to pass restrictive abortion policies that would apply to all women, regardless of the state in which they live.¹⁰ If legislation restricting abortion before viability were to become law, it would roll

⁷ *Tracking the States Where Abortion is Now Banned*, N.Y. TIMES, <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html> (last accessed July 30, 2022).

⁸ The Guttmacher Institute has a thorough tracker of state efforts to enact abortion restrictions. *State Legislation Tracker, Major Developments in Sexual & Reproductive Health*, GUTTMACHER INST., <https://www.guttmacher.org/state-policy> (last accessed July 30, 2022).

⁹ See Deepa Shivaram, *A Bill to Codify Abortion Protections Fails in the Senate*, NPR (May 11, 2022, 4:54 PM), <https://www.npr.org/2022/05/11/1097980529/senate-to-vote-on-a-bill-that-codifies-abortion-protections-but-it-will-likely-f>; 117 Cong. Rec. S826 (2022) (failed cloture vote on H.R. 3755, the Women’s Health Protection Act); 117 Cong. Rec. H5139-59 (2021) (debate and vote on H.R. 3755 along party lines).

¹⁰ Melanie Zanona & Manu Raju, *House Republicans Eye 15-Week Abortion Ban After Roe Ruling*, CNN (June 24, 2022, 4:27 PM), <https://www.cnn.com/2022/06/24/politics/republican-reaction-abortion-congress/index.html>; Caroline Kitchener, *The Next Frontier for the Antiabortion Movement: A Nationwide ban*, WASH. POST (May 2, 2022, 10:54 PM), <https://www.washingtonpost.com/nation/2022/05/02/abortion-ban-roe-supreme-court-mississippi/>; *see, e.g.*, Heartbeat Protection Act of 2021, H.R. 705, 117th Cong. (2021); Pain-Capable Unborn Child Protection

back the right to an abortion even for patients who live in states where abortions are currently accessible.¹¹

National Republican political figures and prominent advocacy groups have been clear they are working to enact national legislation restricting abortion in every state. The morning the Supreme Court announced its decision in *Dobbs*, Former Vice President Mike Pence called for a national abortion ban:

Now that *Roe v. Wade* has been consigned to the ash heap of history, a new arena in the cause of life has emerged and it is incumbent on all who cherish the sanctity of life to resolve that we will take the defense of the unborn and support for women in crisis pregnancies to every state Capitol in America. Having been given this second chance for Life, we must not rest and must not relent until the sanctity of life is restored to the center of American law in every state in the land.¹²

Former Vice President Pence is not the only prominent Republican politician calling for efforts to restrict access to abortions across the country, even in states where it is now legal. Dozens of anti-abortion groups are also urging lawmakers to pass a full federal abortion ban.¹³ And according to the president of a prominent anti-abortion group, about ten potential Republican presidential candidates have privately discussed support for a national ban on abortion.¹⁴

Federal legislators in Congress are already working to enact federal abortion restrictions that would prevent or limit abortions even in states that wish to protect abortion access. Senator Lindsey Graham (R-SC) and Representative Chris Smith (R-NJ) have introduced the *Pain Capable Unborn Child Protection Act*, which criminalizes abortions after 20 weeks across the United States.¹⁵ This national ban has broad support across the Republican caucus, including 45 Senate Republican co-sponsors.¹⁶ There are reports that Representative Smith is seeking to modify his legislation to ban abortion even earlier in pregnancy, and there are additional efforts to pass even more extreme bans.¹⁷ Senator Joni Ernst (R-IA) is expected to introduce legislation banning abortion in every state at six weeks.¹⁸ Representative Mike Kelly (R-PA) has introduced the *Heartbeat Protection Act*, which prohibits abortions nationwide once cardiac activity is detected. It has more than 100 co-sponsors in the House.¹⁹

Act, S. 61, 117th Cong. (2021); Pain-Capable Unborn Child Protection Act, H.R. 1080, 117th Cong. (2021); Life at Conception Act, H.R. 1011, 117th Cong. (2021).

¹¹ See *Tracking the States Where Abortion is Now Banned*, *supra* note 7; *State Legislation Tracker, Major Developments in Sexual & Reproductive Health*, *supra* note 8.

¹² Mike Pence (@Mike_Pence), TWITTER (June 24, 2022, 10:15 AM), https://twitter.com/Mike_Pence/status/1540337831297654784?ref_src=twsrc%5Etfw.

¹³ Letter from Heritage Action for Am. et al., to Kevin McCarthy, Minority Leader, U.S. House of Representatives, & Steve Scalise, Minority Whip, U.S. House of Representatives (June. 28, 2022), https://hafa.nyc3.cdn.digitaloceanspaces.com/assets/2022-06-28_ProLife_CoalitionLetter_v3.pdf.

¹⁴ See Kitchener, *The Next Frontier for the Antiabortion Movement*, *supra* note 10.

¹⁵ Pain-Capable Unborn Child Protection Act, S. 61, 117th Cong. (2021) (providing for exceptions for rape, incest, and the life of the mother).

¹⁶ Pain-Capable Unborn Child Protection Act, S. 61, 117th Cong. (2021).

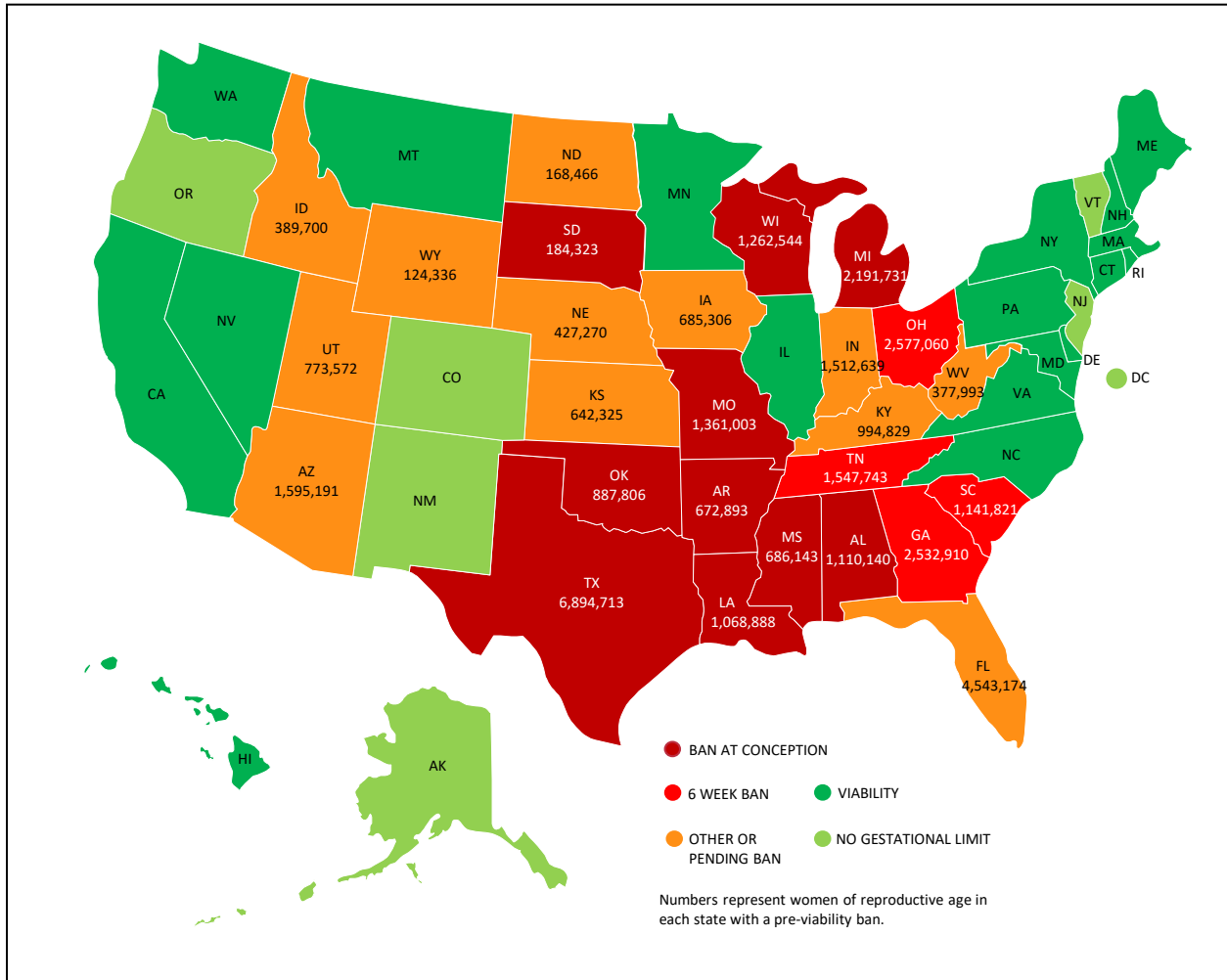
¹⁷ Zanona & Raju, *supra* note 10.

¹⁸ Kitchener, *The Next Frontier for the Antiabortion Movement*, *supra* note 10.

¹⁹ Press Release, U.S. Representative Mike Kelly, Republican Study Committee Endorses Rep. Kelly's 'Heartbeat Protection Act'; Bill Reaches 100+ Co-Sponsors (June 15, 2022).

State Abortion Bans

Current status of state abortion policy



Currently, decisions about access to abortion services rest with each state. Prior to *Dobbs*, states could enact restrictive abortion policies making it difficult for women to obtain the procedure, but they were prohibited from passing outright bans on abortion before viability. Now, states are permitted to ban abortion pre-viability, and since the decision, new abortion bans have gone into effect in states across the country.²⁰ As of August 1, 2022, 26 states have banned or restricted abortion or are on the cusp of doing so. Twenty-two states have banned abortion before 23 weeks, including 14 states that effectively ban all abortion (with some exceptions for the life of the mother, rape, and incest depending on the state). Those 14 states all-but banning abortion include ten states (Alabama, Arkansas, Louisiana, Michigan, Mississippi, Missouri, Oklahoma, South Dakota,

²⁰ *Tracking the States Where Abortion is Now Banned*, *supra* note 7; *13 States Have Abortion Trigger Bans – Here’s What Happens When Rose is Overturned*, GUTTMACHER INST. (June 6, 2022), <https://www.guttmacher.org/article/2022/06/13-states-have-abortion-trigger-bans-heres-what-happens-when-roe-overturned>.

Texas, and Wisconsin) that ban abortion at conception and four states (Georgia, Tennessee, Ohio, and South Carolina) that prohibit the practice at six weeks, when many women do not yet realize they are pregnant.²¹ Michigan's 1931 statute banning nearly all abortions is partially enforceable. On August 1, a court allowed county prosecutors to begin enforcing the law but the state's Attorney General's office is still enjoined from enforcement.²² Idaho's law banning abortions is expected to take effect on August 25th, which will bring the total number of states with total bans to 15.²³ Eight additional states have bans in place prior to fetal viability: Florida (15 weeks), Kentucky (15 weeks), Utah (18 weeks), Iowa (22 weeks), Indiana (22 weeks), Kansas (22 weeks), West Virginia (22 weeks), and Nebraska (22 weeks).²⁴

A number of states have ongoing litigation preventing restrictive laws from going into effect; as those cases resolve, it is possible the number of states with bans will increase. Arizona is awaiting a court decision on whether it can implement its pre-*Roe* ban on all abortions and also has a 15-week pre-viability ban set to go into effect in September.²⁵ A judge in North Dakota found the state's Attorney General moved too quickly to begin the process of implementing the state's abortion ban and issued a temporary injunction stopping the closure of the only clinic in the state.²⁶ A Wyoming judge similarly blocked implementation of the state's ban on the day it was scheduled to go into effect pending further litigation on whether the state's constitutional provisions protecting individuals' rights to make their own medical decisions protects abortion rights.²⁷ A Utah law that goes further than its current 18-week restriction and bans abortion in nearly all cases is also enjoined by a judge while litigation proceeds on that law's constitutionality.²⁸

²¹ *Tracking the States Where Abortion is Now Banned*, *supra* note 7; *13 States Have Abortion Trigger Bans*, *supra* note 20.

²² Dave Boucher, *Michigan Court Ruling Lets Prosecutors File Charges Under 1931 Abortion Law*, DETROIT FREE PRESS (Aug. 1, 2022, 11:51 am), <https://www.freep.com/story/news/politics/2022/08/01/michigan-abortion-injunction-court-appeals/7744390001>.

²³ Kelcie Mosely-Morris, *Idaho's Abortion Trigger Ban Clock Starts Now – Ban Will Take Effect Aug. 25*, IDAHO CAPITAL SUN (July 26, 2022, 3:48 pm), <https://idahocapitalsun.com/briefs/idahos-abortion-trigger-ban-clock-starts-now-ban-will-take-effect-aug-25>. See also *Tracking the States Where Abortion is Now Banned*, *supra* note 7; *13 States Have Abortion Trigger Bans*, *supra* note 20.

²⁴ *Tracking the States Where Abortion is Now Banned*, *supra* note 7; *13 States Have Abortion Trigger Bans*, *supra* note 20.

²⁵ Nick Sanchez, *Arizona Has Multiple Abortion Bans. Which Law Will Take Effect is Confusing*, KJZZ (July 1, 2022 5:39pm), <https://kjzz.org/content/1792242/arizona-has-multiple-abortion-bans-which-law-will-take-effect-confusing>. See also *Tracking the States Where Abortion is Now Banned*, *supra* note 7; *13 States Have Abortion Trigger Bans*, *supra* note 20.

²⁶ *Judge Temporarily Blocks North Dakota, Wyoming 'Trigger' Bans on Abortions*, REUTERS (July 28, 2022 4:57 pm), <https://www.reuters.com/world/us/judge-temporarily-blocks-north-dakotas-trigger-ban-abortions-2022-07-27/>; Dave Kolpack, *ND Abortion Clinic Says Minnesota Move Won't Delay Services*, ASSOCIATED PRESS (July 28, 2022), <https://apnews.com/article/abortion-us-supreme-court-health-north-dakota-west-virginia-ddc85a15a3c57de9f00ca76314790ed4>.

²⁷ Mead Gruver and Leah Willingham, *Courts Block Abortion Bans in Wyoming, North Dakota*, ASSOCIATED PRESS (July 27, 2022), <https://apnews.com/article/abortion-health-mark-gordon-womens-government-and-politics-6a273a78879391a79d6d9f54ae7f6197>.

²⁸ Becky Jacobs, *Abortion Remains Legal In Utah, After a Judge Decided Monday to Continue Blocking Trigger Law*, Salt Lake Tribune (July 11, 2022 12:55 pm), <https://www.sltrib.com/news/2022/07/11/these-utahns-plan-get-abortions>.

More than 24.1 million women of reproductive age live in the 14 states that effectively outlaw abortion as of August 1, and more than 12.2 million women live in the 12 additional states that currently ban abortion prior to fetal viability or that have pending litigation concerning their abortion bans.²⁹ Across all 26 of these states, over 36.3 million (48.8 percent) women of reproductive age are impacted, including about 6.5 million Latinas, 5.9 million Black women, 1.3 million Asian women, 283,000 Native Americans, 39,000 Pacific Islanders, and 1.7 million multiracial women.³⁰ Black and Native American women are disproportionately affected by the *Dobbs* decision and the ensuing state restrictions on abortion, with 56 percent of Black women and 55 percent of Native American women currently residing in states that have pre-viability bans.³¹

The future of state abortion policy

Republican lawmakers are working to pass additional pre-viability bans and expand restrictions in additional states. In May, Nebraska Governor Pete Ricketts said that he would call a special session of the state's legislature to pass a total ban on abortion, without exceptions for rape or incest.³² While Iowa currently allows abortions up to 20 weeks, Governor Kim Reynolds is taking legal action to end most abortions in the state.³³ In South Carolina, House Majority Leader David Hiott told the *Associated Press* he wanted to ban abortion altogether,³⁴ and while the state already bans abortion at six weeks, state legislators have put forth new legislation that would ban abortion at conception.³⁵

Some lawmakers are specifically targeting access to medication abortion (mifepristone), which is one of the most accessible ways for patients to obtain abortions early in their pregnancies and now accounts for more than half of the total abortions performed in the United States.³⁶ In Arizona, Republican gubernatorial candidate Kari Lake said that, if elected, she would support banning

²⁹ See *2016-2020 American Community Survey 5-Year Estimates*, IPUMS, <https://www.ipums.org/> (last visited July 19, 2022).

³⁰ *Id.*

³¹ *Id.*

³² Devan Cole, *Nebraska GOP Governor Says He Will Call a Special Session to Pass Total Abortion Ban if Roe is Overturned*, CNN (May 15, 2022, 1:26 PM), <https://www.cnn.com/2022/05/15/politics/nebraska-abortion-ban-roe-v-wade-cnntv/index.html>.

³³ Press Release, Office of The Governor of Iowa Kim Reynolds, Gov. Reynolds and Legislative Leaders Announce Legal Action to Protect Life (June 28, 2022), <https://governor.iowa.gov/press-release/gov-reynolds-and-legislative-leaders-announce-legal-action-to-protect-life%C2%A0>; David Pitt, *Iowa Governor to Pursue Abortion Restrictions in Courts*, AP NEWS (June 28, 2022), <https://apnews.com/article/abortion-us-supreme-court-politics-kim-reynolds-state-courts-8d0cbd587fa8cfec5310d9bd18dd6329>.

³⁴ James Pollard, *SC Republicans Are Set to Further Restrict Abortion Post Roe*, AP NEWS (June 24, 2022), <https://apnews.com/article/abortion-legislature-south-carolina-henry-mcmaster-state-ef475b7b9a4cd841543229500f9780b5>.

³⁵ S. 1373, 124th Leg. (S.C. 2022); See Richard Fausset & Ava Sasani, *After Roe, South Carolina Considers More Restrictions on Abortion*, N.Y. TIMES (July 7, 2022), <https://www.nytimes.com/2022/07/07/us/south-carolina-abortion.html>.

³⁶ Rachel K. Jones, et al., *Medication Abortion Now Accounts for More than Half of All U.S. Abortions*, GUTTMACHER INST. (Feb. 2, 2022), <https://www.guttmacher.org/article/2022/02/medication-abortion-now-accounts-more-half-all-us-abortions>.

Sarah's Story

Sarah is a health care provider in a university town. She typically sees patients in their late teens or early 20s. Her patients used to ask about contraception every couple of months, in the past few weeks, these conversations are occurring about three times a day. Sarah has started birth control for a number of patients who are not at risk of pregnancy, but who are worried they could not terminate a pregnancy if they were sexually assaulted at school. She says it is awful to have to address both the very real statistical probability of sexual assault at universities and the hopelessness of the lack of choice all at once. Her neighboring state's ban will allow for abortion in cases of assault, but only if a case is filed, and many of her patients believe reporting is not always a safe option.

Republican Governor Mike Dunleavy stated he would introduce a resolution during the next legislative session which proposes a constitutional amendment.⁴³ A similar effort was attempted during the 2021 legislative session when state senator Shell Hughes sponsored a joint resolution which proposed amending the state constitution to reflect the lack of protections relating to abortion.⁴⁴

medication abortion.³⁷ In Virginia, state senator Steve Newman, who has been asked by Republican Governor Glenn Youngkin to draft a new abortion bill, expressed his support for a law that would prohibit medicated abortions.³⁸ South Dakota passed a law requiring women to make three trips to a medical provider to receive medication abortion pills.³⁹

Lawmakers are even working to amend state constitutions to remove abortion protections or to add bans on abortions. In July, the Republican-controlled Pennsylvania General Assembly approved a constitutional amendment that would clear the way for a state-wide ban on abortion, if approved by voters.⁴⁰ In 2019, the Kansas Supreme Court ruled that the state's constitution implies a right to abortion that cannot be overruled by state lawmakers,⁴¹ but the new "Kansas No State Constitutional Right to Abortion and Legislative Power to Regulation Abortion Amendment" is on the ballot in Kansas on August 2.⁴² In Alaska, the state's Supreme Court has recognized a right to "reproductive choice" under its constitution.

³⁷ Nick Mordowanec, *Arizona Republican Eyes Ban on Abortion Pills Over Lack of Supervision*, NEWSWEEK (June 28, 2022, 4:54 PM), <https://www.newsweek.com/arizona-republican-eyes-ban-abortion-pills-over-lack-supervision-1720055>.

³⁸ The Morningline, *State Senator Steve Newman Talks Virginia Abortion Law*, WLNI, at 07:15, <https://wlni.com/state-senator-steve-newman-talks-virginia-abortion-law> (last visited July 28, 2022).

³⁹ Stephen Groves, *Noem Signs Bill Aiming to Restrict Abortion Pill Access*, ABC NEWS (Mar. 23, 2022, 6:12 PM), <https://abcnews.go.com/Health/wireStory/noem-signs-bill-aiming-restrict-abortion-pill-access-83632138>.

⁴⁰ S. 956, Gen. Assemb., Reg. Sess. (Pa. 2021); Katie Shepherd, *Pennsylvania GOP Aims to Bypass Governor's Veto on Abortion Restrictions*, WASH. POST (July 12, 2022, 2:39 PM), <https://www.washingtonpost.com/nation/2022/07/12/pennsylvania-republicans-abortion-constitutional-amendment/>.

⁴¹ Hodes & Nauser, MDS, P.A. v. Schmidt, 440 P.3d 461, 466 (Kan. 2019).

⁴² Adam Kemp, *Kansas Will be the First States to Vote on Abortion Rights After Roe Ruling*, PBS (July 1, 2022, 5:38 PM), <https://www.pbs.org/newshour/politics/kansas-will-be-the-first-state-to-vote-on-abortion-rights-after-roe-ruling-heres-what-that-means>.

⁴³ Press Release, Office of Governor Mike Dunleavy, Governor Dunleavy Reacts to The U.S. Supreme Court Decision Overturning Roe v. Wade (June 24, 2022).

⁴⁴ S.J. Res 4, 32nd Leg., 1st Sess. (Alaska 2021).

Consequences for Women’s Health

Lack of abortion access has severe consequences for patients’ health. Prior to the Supreme Court’s decision in *Roe v. Wade*, women faced significant physical and emotional consequences when unable to access abortion services, and occasionally even disability and death. Similar trends are evident in countries where abortion access is limited. Unfortunately, women are already experiencing a resurgence in medical complications and severe outcomes in states with strict abortion bans. This section provides an overview of some likely impacts of state decisions to deny patients access to abortion services based on health outcomes data from before and after *Roe*, as well as research about the consequences of abortion restrictions in other countries.

Unsafe Abortions

As state restrictions on abortions begin to take effect, experts predict that women will continue to pursue ways to end their pregnancies even if they are not legally available or medically safe.⁴⁵ Research from before *Roe*, when abortion was illegal in much of the United States, and from countries where abortions are limited or banned shows self-supervised abortions, or abortions provided outside the care of a medical provider, are likely to be unsafe, resulting in high rates of maternal death.⁴⁶ Prior to 1973, access to abortion was challenging or nearly impossible in most of the United States. Because providers in most states could not openly provide abortions without the threat of legal action, many pregnant women resorted to attempting abortions themselves or turned to unlicensed providers who operated in secret, were often not sufficiently trained to deal with potential complications, and did not have access to the facilities or equipment needed to keep their patients healthy.⁴⁷ These abortions were extremely risky, causing shocking rates of maternal injury and death.⁴⁸ The lack of access to safe abortions was particularly deadly for women of color, who made up seventy percent of the women who died from abortions conducted without physician supervision.⁴⁹

As states provided paths to legal abortions, medical professionals began providing abortion services, and rates of maternal mortality plummeted. New York legalized abortions in 1970 and saw nearly a 50 percent decline in abortion-related mortality in the first year following

⁴⁵ See e.g., *Abortion Before and After Legalization*, GUTTMACHER INST. (July 24, 2022, 8:24 PM), <https://www.guttmacher.org/perspectives50/abortion-and-after-legalization>; see also Amanda Jean Stevenson, *The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant*, DEMOGRAPHY (2021), <https://read.dukeupress.edu/demography/article/58/6/2019/265968/The-Pregnancy-Related-Mortality-Impact-of-a-Total>.

⁴⁶ Lisa B. Haddad & Nawal M. Nour, *Unsafe Abortion: Unnecessary Maternal Mortality*, 2 REVIEWS IN OBSTETRICS & GYNECOLOGY 122, 124 (2009); Yank D. Coble Jr. et al., *Induced Termination of Pregnancy Before and After Roe v Wade*, 268 JAMA 3231, 3238 (1992).

⁴⁷ Coble, et al., *supra* note 46 at 3233.

⁴⁸ *Id.* at 3234; Rachel Benson Gold, *Lessons from Before Roe: Will Past be Prologue?*, 6 Guttmacher Pol’y Rev. 8, 8 (2003).

⁴⁹ Willard Cates Jr. and Robert Roach, *Illegal Abortions in the United States, 1972-1974*, 8 FAM. PLAN. PERSPECTIVES 86, 87 (1976).

legalization.⁵⁰ National data demonstrated the same trend: data collected by the Centers for Disease Control and Prevention (CDC) before and after the *Roe* decision indicated a similar 45 percent decrease in maternal mortality from 1972 to 1974.⁵¹ The CDC data showed that almost the entire decline was due to a decrease in the number of abortions that were self-induced or conducted without the supervision of a medical professional.⁵²

The enormous decrease in maternal mortality experienced in the United States after women were able to access legal abortion services has been replicated internationally. For example, according to Drs. Davida Becker and Claudia Díaz Olavarrieta, nearly 150,000 Mexican women were hospitalized from complications related to unsafe abortions in 2006, before Mexico decriminalized abortions.⁵³ In the first four years after Mexico legalized abortion in 2007, almost 90,000 abortions were performed under medical supervision in Mexico City.⁵⁴ The change quickly resulted in safer abortions, with maternal mortality dropping by somewhere between 11 and 20 percent and maternal mortality for teenage patients falling by as much as 30 percent.⁵⁵ Other complications from illegal abortions also plunged. Reports of hemorrhaging and other complications of illegal abortions dropped in the years following the Mexico City reform by as much as 35 percent.⁵⁶

Unfortunately, these trends suggest that states that ban access to abortion services for patients in the wake of *Dobbs* are likely to see increases in maternal death rates and significant injury among pregnant women.

Sybile's Story

Sybile is a healthcare provider in a West Coast state where abortion is currently legal. After Texas banned abortions at around six weeks, she noticed many of her out-of-state patients were seeking abortions early in their pregnancy – often the same week they learned they were pregnant. This can require multiple blood tests, and potentially require repeated follow up. Many of Sybile's patients have had to cross state lines for abortion services and are then tasked with having to travel long distances for tests and follow-up care. This has huge ramifications for patients' ability to obtain timely health care.

⁵⁰ Jean Pakter et al., *Impact of The Liberalized Abortion Law In New York City on Deaths Associated with Pregnancy: A Two-Year Experience*, 49 N.Y. ACAD. OF MED. 804, 807 (1973).

⁵¹ Cates, *supra* note 49.

⁵² *Id.*

⁵³ Fatima Juarez et al., *Estimates of Induced Abortion in Mexico: What's Changed Between 1990 And 2006?*, 34 INT'L FAM. PLAN. PERSPECTIVES 158, 166 (2008).

⁵⁴ Damian Clarke & Hanna Muhlrard, *The Impact of Abortion Legalization on Fertility and Maternal Mortality: New Evidence from Mexico* 3 (Univ. of Gothenburg, Working Paper No. 661, 2016); Davida Becker & Claudia Diaz Olavarrieta, *Decriminalization of Abortion in Mexico City: The Effects on Women's Reproductive Rights*, 103 AM. J. OF PUB. HEALTH 590, 590 (2013).

⁵⁵ Clarke & Muhlrard, *supra* note 54 at 4.

⁵⁶ Damian Clarke & Hanna Muhlrard, *Abortion Laws and Women's Health*, 76 J. OF HEALTH ECON. 2, 10 (2021).

Complications from Pregnancy

In addition to unsafe, self-managed abortions, patient health and safety is also at risk when medical providers are unable to provide abortions as part of treating complications from pregnancy. States that ban abortions at fertilization have exceptions for the life of the mother, but hospitals, doctors, and their attorneys are struggling to determine how to treat cases that are not certain to cause death within the confines of the patchwork of laws that now govern abortion.⁵⁷ As University of Michigan's Dr. Lisa Harris wrote in the *New England Journal of Medicine*, health care providers are wondering: "[w]hat does the risk of death have to be, and how imminent must it be? Might abortion be permissible in a patient with pulmonary hypertension, for whom we cite a 30-to-50% chance of dying with ongoing pregnancy? Or must it be 100%?"⁵⁸

This uncertainty about the legality of abortion care is preventing doctors from performing abortions they believe their patients need.

Elizabeth's Story

Elizabeth was rushed to the emergency room in 2015 only to discover that she was pregnant despite having an IUD. When the doctors conducted an ultrasound, she discovered that the pregnancy was ectopic and causing internal bleeding. The doctor had to remove the ectopic pregnancy in an emergency surgery. Elizabeth describes the experience as terrifying and emotional. Without the ability for doctors to do this surgery, Elizabeth fears that she would have bled to death – leaving behind her husband and two children.

The *Washington Post* reported interviews with numerous doctors who expressed concern about providing care due to their legal concerns.⁵⁹ And a study published in the *New England Journal of Medicine* found that Texas Senate Bill 8 (SB8) fostered a culture of fear among clinicians who were uncertain about whether they could continue to advise patients as they had before the law.⁶⁰ For example, medical professionals can sometimes take steps to help women manage miscarriages in order to avoid complications like severe bleeding and infection. The medical procedures performed and drugs prescribed to respond to miscarriages are

often virtually identical to those performed or prescribed for abortion, creating fear doctors will face prosecution for helping patients avoid severe consequences from a miscarriage.⁶¹ As a result, women are being forced to carry pregnancies that are no longer viable.⁶²

⁵⁷ Frances Stead Sellers & Fenit Nirappil, *Confusion Post-Roe Spurs Delays, Denials for Some Lifesaving Pregnancy Care*, WASH. POST (July 16, 2022, 9:09 AM), <https://www.washingtonpost.com/health/2022/07/16/abortion-miscarriage-ectopic-pregnancy-care>.

⁵⁸ Lisa H. Harris, *Navigating Loss of Abortion Services – A Large Academic Medical Center Prepares for the Overturn of Roe v. Wade*, 386 THE NEW ENGLAND J. OF MED. 2061, 2061 (2022).

⁵⁹ Ariana Eunjung Cha, *Physicians Face Confusion and Fear in Post-Roe World*, WASH. POST (June 28, 2022, 11:06 AM), <https://www.washingtonpost.com/health/2022/06/28/abortion-ban-ro-Doctors-confusion>.

⁶⁰ Whitney Arey et al., *A Preview of the Dangerous Future of Abortion Bans – Texas Senate Bill 8*, THE NEW ENGLAND J. OF MED. (June 22, 2022), <https://www.nejm.org/doi/full/10.1056/NEJMp2207423>.

⁶¹ Sellers & Nirappil, *supra* note 57.

⁶² Pam Belluck, *They Had Miscarriages, and New Abortion Laws Obstructed Treatment*, N.Y. TIMES (July 17, 2022), <https://www.nytimes.com/2022/07/17/health/abortion-miscarriage-treatment.html>.

Jose's Mother's Story

Since the passage of SB8 and the *Dobbs* decision, a woman who could not receive appropriate, timely care to remove a fetus after it had died was forced to carry the dead fetus for ten days while three ultrasounds were performed to confirm the miscarriage.⁶³ A doctor in Alabama wrote in May about seeing multiple patients who needed medical attention following miscarriages or medication abortions but were denied care because it was “not an emergency,” forced to drive for hours to a provider willing to help, or told to wait days, while bleeding and in pain, for bloodwork to come back confirming the miscarriage.⁶⁴ A woman whose doctors refused to help her remove the embryo during a miscarriage was forced to bleed in the bathtub at home.⁶⁵ One woman with an ectopic pregnancy had to travel to Michigan to get care after doctors in her home state worried treating her could subject them to prosecution.⁶⁶ In other cases of ectopic pregnancies, doctors have delayed treatment or used invasive procedures to prove the pregnancy was not viable.⁶⁷

In 1971, after suffering two previous miscarriages, Jose's mother discovered she was pregnant again. At around 22 weeks, the doctors were no longer able to detect the fetus' cardiac activity. A week later, Jose's mother went into labor, during which she experienced hemorrhaging. Because of existing abortion laws, doctors were forced to petition a judge for permission to perform an abortion to stop the bleeding and protect her reproductive health. A judge initially ruled that the scenario was not severe enough because Jose's mother was not close enough to death, and denied doctors the ability to provide an abortion. After she suffered in pain for an agonizing 18 hours, doctors began to prepare her family for her death. Luckily, doctors were able to assemble enough evidence to show the fetus had died and were able to eventually provide care. Jose's mother thankfully survived, but was rendered infertile, and any attempts to carry another child could kill her.

Delays in treatment while women fight to get the care they need increases the likelihood of serious medical consequences.⁶⁸ A recently released study of the impact of Texas's new abortion ban demonstrates this negative impact on women's health. In Texas, two major hospitals waited an average of nine days after women initially presented with pregnancy complications to ensure that the conditions met the standard for “threatening the life of the mother.”⁶⁹ Those delays resulted in double-digit increases in a range of maternal health complications compared to other states with

⁶³ *Texas Women Speaks Out After Being Forced to Carry Her Dead Fetus for 2 Weeks*, CNN, <https://www.cnn.com/videos/health/2022/07/18/woman-carried-dead-fetus-texas-anti-abortion-ban-cohen-new-day-dnt-vpx.cnn> (last visited July 28, 2022).

⁶⁴ Leah Torres, *Doctors in Alabama Already Turn Away Miscarrying Patients. This Will Be America's New Normal*, SLATE (May 17, 2022, 3:12 PM), <https://slate.com/news-and-politics/2022/05/roe-dobbs-abortion-ban-reproductive-medicine-alabama.html>.

⁶⁵ Belluck, *supra* note 62.

⁶⁶ Sellers & Nirappil, *supra* note 57.

⁶⁷ *Id.*

⁶⁸ Robert Langreth & Ike Swetlitz, *Abortion Bans Will Impact Doctors' Treatment of Cancer, Miscarriage*, BLOOMBERG (June 24, 2022, 5:42 PM), <https://www.bloomberg.com/news/articles/2022-06-24/overturning-roe-can-impact-therapy-for-cancer-miscarriage>.

⁶⁹ Anjali Nambiar, et al., *Maternal Morbidity and Fetal Outcomes Among Pregnant Women at 22 Week's Gestation or Less with Complications in Two Texas Hospitals After Legislation on Abortion*, AM. J. FOR OBSTETRICS & GYNECOLOGY (Forthcoming, 2022).

less restrictive abortion laws where many of these conditions would have resulted in more immediate medical action.⁷⁰

Similar impacts on women's health are evident in countries with restrictive abortion laws. In 2012, Dr. Savita Halappanavar died in a hospital in Galway, Ireland, after experiencing complications from a miscarriage.⁷¹ The doctors said that they could not conduct an abortion because, though they knew the fetus would not survive, they could still detect fetal cardiac activity, and abortions were illegal under those circumstances.⁷² Dr. Halappanavar developed an infection while waiting for fetal cardiac activity to stop and died as a result of that infection.⁷³ Izabela Sajbor died in September 2021 because of a similarly restrictive law in Poland made even harsher by a 2021 decision by the Constitutional Tribunal – the country's highest court.⁷⁴ Sajbor had already been informed by her doctor that her fetus had severe abnormalities and would likely die before birth before she was admitted to the hospital for emergency care when her water broke at 22 weeks.⁷⁵ The doctors told Sajbor that they could not perform an abortion until the fetus' cardiac activity stopped, at which point she had developed an infection that proved fatal.⁷⁶

In addition to unsafe abortions and pregnancy complications, abortion bans can directly impact women's health by preventing or delaying treatment women need for conditions unrelated to pregnancy. For example, some women who are pregnant and have cancer need to receive care that is likely to cause an abortion or must receive an abortion in order to receive proper cancer care.⁷⁷ Some procedures, like pelvic radiation for rectal cancer, cannot be performed on women who are pregnant because of the damage to the fetus – meaning women must decide either to abort the fetus or fail to receive the care they need.⁷⁸ Other oncology treatments have high rates of causing miscarriages, potentially implicating restrictive abortion bans.⁷⁹ In the *Harvard Law & Policy Review*, Dr. Grace Howard described the case of Angela Carder as an example of a pregnant woman losing the right to refuse treatment. Carder, who was 26 weeks pregnant and dying from cancer, was denied cancer treatment in the interest of the fetus and forced by hospital administrators to undergo a cesarean section against her wishes and against the advice of her doctors. Ultimately, both Carder and the baby died shortly after birth.⁸⁰

⁷⁰ *Id.*

⁷¹ Megan Specia, *How Savita Halappanavar's Death Spurred Ireland's Abortion Rights Campaign*, N.Y. TIMES (May 27, 2018), <https://www.nytimes.com/2018/05/27/world/europe/savita-halappanavar-ireland-abortion.html>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Katrin Bennhold & Monika Pronczuk, *Poland Shows the Risks for Women When Abortion is Banned*, N.Y. TIMES, <https://www.nytimes.com/2022/06/12/world/europe/poland-abortion-ban.html> (June 26, 2022); Isabella Kwai, Monika Pronczuk & Anatol Magdziarz, *Near Total Abortion Ban Takes Effect in Poland, and Thousands Protest*, N.Y. TIMES (Jan. 27, 2021), <https://www.nytimes.com/2021/01/27/world/europe/poland-abortion-law.html>.

⁷⁵ Bennhold & Pronczuk, *supra* note 74.

⁷⁶ *Id.*

⁷⁷ Langreth & Swetlitz, *supra* note 68; Jordyn Silverstein et al., *Multidisciplinary Management of Cancer During Pregnancy*, 16 AN AM. SOC'Y OF CLINICAL ONCOLOGY J. 545, 547 (2022).

⁷⁸ Langreth & Swetlitz, *supra* note 68.

⁷⁹ Silverstein et al., *supra* note 77 at 553.

⁸⁰ Grace Howard, *The Pregnancy Police: Surveillance, Regulation, and Control*, 14 HARV. L. & POL'Y REV. 347, 360 (2020).

Impact on Health Care Access

Abortion restrictions in some states may have spillover effects that impact the health and safety of women seeking abortions in states where the procedures are legal. As more states pass laws to prohibit abortion earlier in pregnancy or altogether, clinics providing abortion services are expected to close across the country. A 2021 report from the Abortion Facility Database Project, Advancing New Standards in Reproductive Health (ANSIRH) at the University of California San Francisco predicted the *Dobbs* decision could result in the closure of more than 200 abortion facilities.⁸¹ Most of these closures would occur in the South and Midwest.⁸²

Clinic closures will have the most direct impact on women in states where there are no legal abortion services offered. One in three low-income women relies on a health center, Planned Parenthood, or other publicly-funded clinic to receive contraception.⁸³ These providers often provide a variety of other preventative care services and are the sole source of medical care for some women, meaning patients with low incomes will be uniquely impacted by clinic closures.⁸⁴ A study in the *American Economic Journal* by Drs. Yao Lu and David J. G. Slusky found that increasing the distance to the nearest clinic by 100 miles results in an 11 percent decrease in clinical breast exams, an 18 percent decrease in mammograms, and a 14 percent decrease in Pap tests, with even larger decreases in preventative care for women of lower educational attainment.⁸⁵ Access to care can also increase women's likelihood of experiencing poverty. A study in the *American Journal of Public Health* found that women who were denied abortions and gave birth were more likely to experience poverty in the short-term (six months later) and long-term (four years later) compared to women who received abortions.⁸⁶

Women with access to resources to travel may be able to go out of state to receive the abortion care they need. New clinics are opening in states bordering those with abortion bans and extreme restrictions.⁸⁷ The influx of out-of-state patients into states where abortions are legal may impact the quality of care women receive. Even before the *Dobbs* decision, nearly ten percent of abortions involved travel across state lines – and the bans discussed above will lead to significant increases in those numbers.⁸⁸ A research team from the University of Texas at Austin contacted more than

⁸¹ Rosalyn Schroeder et al., Trends in Abortion Care in the United States, 2017-2021 3 (Univ. of Cal. S.F. Abortion Facility Database Project ed., 2022); Usha Ranji et al., *Financing Family Planning Services for Low-Income Women: The Role of Public Programs*, KAISER FAM. FOUND. (Oct. 25, 2019), <https://www.kff.org/womens-health-policy/issue-brief/financing-family-planning-services-for-low-income-women-the-role-of-public-programs>.

⁸² Schroeder, et al., *supra* note 81 at 3.

⁸³ Ranji et al., *supra* note 81.

⁸⁴ *Id.*

⁸⁵ Yao Lu & David J. G. Slusky, *The Impact of Women's Health Clinic Closures on Preventive Care*, 8 AM. ECON. J.: APPLIED ECON. 100, 100 (2016).

⁸⁶ Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who are Denied Wanted Abortions in the United States*, 108 AM. J. OF PUB. HEALTH 407, 412 (2018).

⁸⁷ Shefali Luthra, *Abortion Providers Flock to New Mexico – and 'Crisis Pregnancy Centers' Follow*, THE 19TH (July 21, 2022 6:00 PM), <https://www.theguardian.com/world/2022/jul/21/new-mexico-abortion-clinics-crisis-pregnancy-centers>.

⁸⁸ Isaac Maddow-Zimet & Kathryn Kost, *Even Before Roe Was Overturned, Nearly One in 10 People Obtaining an Abortion Traveled Across State Lines for Care*, GUTTMACHER INST. (July 21, 2022), <https://www.guttmacher.org/article/2022/07/even-roe-was-overturned-nearly-one-10-people-obtaining-abortion->

730 abortion facilities in more than 40 states posing as potential patients to gather data about wait times for abortions.⁸⁹ An analysis of the data by *FiveThirtyEight* found that only 19 percent of providers could see patients on the same day or next week day.⁹⁰ About four in ten (42 percent) providers could offer an appointment between two and five weekdays.⁹¹ And about one-third (32 percent) had wait times of a week or more.⁹² Many of the clinics with the longest wait times are in states with the most restrictions, and states with fewer clinics also had longer wait times.⁹³

Legal Consequences

In addition to the impact on women's lives and health, the increasing number of state laws banning abortions after the *Dobbs* decision is likely to have significant legal consequences for women seeking abortion services and their families, as well as for providers and potentially even private corporations that choose to assist their workers in obtaining reproductive healthcare. There are also questions about legal liability in relation to fertility treatments as abortion bans across the nation attempt to define personhood. This section of the report provides an overview of the expected increase in criminal and civil liability for women, providers, and other clinic staff as states become increasingly aggressive in passing new laws or prosecuting women under existing statutes.

Women's Legal Liability

In states across the country, women have been investigated, prosecuted, and jailed for pursuing abortions. Prior to *Roe*, states primarily targeted health care providers who performed abortions rather than women and their families.⁹⁴ However, although prosecutions of women were unusual, they did occur in some circumstances. For example, in 1971, Shirley Wheeler was arrested and prosecuted for manslaughter after she was hospitalized following an abortion.⁹⁵ She was found guilty, and was sentenced to two years of probation on the condition that she either marry the man she lived with or returned home to live with her parents (though the Florida Supreme Court eventually overturned her conviction).⁹⁶

Even when women were not prosecuted themselves, they were frequently caught up in traumatizing investigations of abortion providers and raids resulting in their arrest and/or exposure

traveled-across; Alison Saldanha, *With Roe Overturned, More Will Travel for Abortions. How Many Could Come to WA?*, THE SEATTLE TIMES (June 24, 2022, 10:59 PM), <https://www.seattletimes.com/seattle-news/data/how-did-washington-state-become-a-haven-for-abortion-care> (citing a Guttmacher report indicating that Washington state is likely to see a 385% increase in patients traveling from out of state for abortion care).

⁸⁹ Thomson-DeVeaux, *supra* note 2.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Melissa Jeltsen, *The Coming Rise of Abortion as a Crime*, THE ATLANTIC (July 1, 2022), <https://www.theatlantic.com/family/archive/2022/07/roe-illegal-abortion-pregnancy-termination-state-crime/661420>.

⁹⁵ Jon Nordheimer, *She's Fighting Conviction for Aborting Her Child*, N.Y. TIMES (Dec. 4, 1971), <https://www.nytimes.com/1971/12/04/archives/shes-fighting-conviction-for-aborting-her-child.html>.

⁹⁶ Lynn Paltrow, *Roe v Wade and the New Jane Crow: Reproductive Rights in the Age of Mass Incarceration*, 103 AM. J. OF PUB. HEALTH 17 (2013).

of their abortion in the media. As just a few examples, the Los Angeles Police Department had a unit assigned to exclusively raid clinics, which often arrested women who had just received an abortion or were in the midst of a procedure.⁹⁷ Other police departments reported observing abortion provider offices for months and collecting photographs of the women going in and out as part of their investigations.⁹⁸ Those investigations were often turned over to ambitious prosecutors looking for salacious cases and media attention.

In more recent years, there have been increasing reports of women being arrested, prosecuted, or subjected to other penalties as states seek to impose harsher disincentives and penalties for abortions.⁹⁹ Women have been found guilty of violating laws which make self-induced abortions a crime, punishable by up to 20 years in jail and with heavy fines, in Oklahoma, Nevada, and South Carolina and in other states prohibiting specific forms of abortions.¹⁰⁰ As just a few examples of women who have faced jail time or prosecution for having or attempting an abortion:

- In 2022, Lizelle Herrera was arrested and jailed after allegedly performing a self-induced abortion in Texas.¹⁰¹ Herrera was forced to spend three days in jail before she obtained bail.¹⁰²
- In 2017, Lattice Fisher was criminally prosecuted in Mississippi after investigators searched her cell phone and found she had looked for information online about how to obtain a medication abortion, despite no direct evidence Fisher had actually taken abortion medication.¹⁰³
- In 2015, Kenlissa Jones was charged with murder after allegedly taking pills that terminated her pregnancy. Her murder charge was dismissed, but she still faced a charge of possession of a dangerous drug.¹⁰⁴
- In 2013, Purvi Patel was arrested in Indiana for feticide after purchasing medication abortion pills over the internet and using them to terminate her pregnancy.¹⁰⁵ Prosecutors

⁹⁷ LESLIE J. REAGAN, *WHEN ABORTION WAS A CRIME* 242 (1996).

⁹⁸ RICKIE SOLINGER, *THE ABORTIONIST: A WOMAN AGAINST THE LAW* 162-64 (1996).

⁹⁹ See Andrea Rowan, *Prosecuting Women for Self-Inducing Abortion: Counterproductive and Lacking Compassion*, 18 *GUTTMACHER INST.* 70, 71-74 (2015).

¹⁰⁰ Patricia Hurtado & Francesca Maglione, *In a Post-Roe World, More Miscarriage and Stillbirth Prosecutions Await Women*, *BLOOMBERG* (July 5, 2022, 11:30 AM), <https://www.bloomberg.com/news/articles/2022-07-05/miscarriage-stillbirth-prosecutions-await-women-post-roe>.

¹⁰¹ Francisco Jimenez, *Woman Arrested in Starr County on Murder Charge for 'Illegal Abortion'*, *THE MONITOR* (Apr. 8, 2022), <https://myrgv.com/free/2022/04/08/woman-arrested-in-starr-county-for-illegal-abortion>.

¹⁰² *Id.*

¹⁰³ Cat Zakrzewski, Pranshu Verma & Claire Parker, *Texts, Web Searches About Abortion Have Been Used to Prosecute Women*, *WASH. POST* (July 3, 2022), <https://www.washingtonpost.com/technology/2022/07/03/abortion-data-privacy-prosecution>.

¹⁰⁴ Lauren Gambino, *Georgia Woman Who Took Abortion Pill has Murder Charges Dismissed*, *THE GUARDIAN* (June 10, 2015 2:47 PM), <https://www.theguardian.com/us-news/2015/jun/10/georgia-woman-abortion-pill-murder-charge-dismissed>.

¹⁰⁵ *Purvi Patel is Released After Feticide Conviction Overturned*, *ASSOCIATED PRESS* (Sept. 2, 2016, 11:03 AM), <https://www.indystar.com/story/news/crime/2016/09/01/purvi-patel-releases-feticide-conviction-overturned/89707582>.

used private text messages between Patel and a friend about purchasing medication abortion as evidence against her.¹⁰⁶ Patel was convicted in 2015 and sentenced to 20 years in prison.¹⁰⁷ Her conviction for feticide was overturned on appeal in 2016, but she was re-sentenced for a separate charge of child neglect before being released from state prison.¹⁰⁸

- In 2010, Jennie McCormack needed an abortion, but the trip from her small town in Idaho to Salt Lake City – the closest city with an abortion clinic – would cost more than her monthly income. McCormack asked her sister to purchase medication abortion pills over the internet and mail them so she could afford to have an abortion in her own state.¹⁰⁹ McCormack was later arrested pursuant to a 1972 law making it illegal for a woman to induce her own abortion.¹¹⁰

States with aggressive anti-abortion laws have not only prosecuted women who sought to end their pregnancies, but have also pursued cases against women the state believes are at fault for causing unwanted miscarriages. In these cases, states have used child endangerment and child abuse laws, as well as laws defining life at conception, to pursue cases against women for their behaviors while pregnant.¹¹¹ For example, according to *NPR*, states have pursued cases against women who have experienced pregnancy loss after falling down the stairs, taking prescription drugs or painkillers, and in one case, for failing to get out of the way when someone shot at them.¹¹²

Prosecutors are particularly likely to pursue cases against women who experience substance use disorders, including methamphetamine use, despite there being little evidence that drug use induces miscarriages.¹¹³ As just a few examples, in 2021 a woman was convicted in Oklahoma of first-degree manslaughter and sentenced to four years in prison for having a miscarriage prosecutors blamed on methamphetamines use, despite a medical examiner’s autopsy report that did not find drug use was the cause of the miscarriage.¹¹⁴ In 2006, a 15 year-old was charged with murder in Mississippi after a stillbirth due to her use of cocaine, despite no evidence the drug use

¹⁰⁶ Safia Samee Ali, *Prosecutors in States Where Abortion is Now Legal Could Begin Building Criminal Case Against Providers*, NBC NEWS (June 24, 2022), <https://www.nbcnews.com/news/us-news/prosecutors-states-abortion-now-illegal-begin-prosecute-abortion-provi-rcna35268>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Jessica Robinson, *Idaho Woman Arrested for Abortion is Uneasy Case For Both Sides*, NPR (Apr. 9, 2012, 1:46 PM), <https://www.npr.org/templates/story/story.php?storyId=150312812>; Nancy Hass, *The Next Roe v. Wade?: Jenni McCormack’s Abortion Battle*, NEWSWEEK (Dec. 12, 2011 12:00 AM), <https://www.newsweek.com/next-roe-v-wade-jennie-mccormacks-abortion-battle-65831>.

¹¹⁰ Robinson, *supra* note 110; Hass, *supra* note 110.

¹¹¹ Robert Baldwin III, *Losing a Pregnancy Could Land You in Jail in Post-Roe America*, NPR (July 3, 2022, 5:27 AM), <https://www.npr.org/2022/07/03/1109015302/abortion-prosecuting-pregnancy-loss>; Paltrow, *supra* note 96.

¹¹² Baldwin, *supra* note 112.

¹¹³ *See id.* (“‘There is no biological basis for that opinion, specifically with methamphetamine,’ says Dr. Harvey Kliman, the director of the Reproductive and Placental Research Unit at Yale School of Medicine”).

¹¹⁴ Li Cohen, *Manslaughter Conviction of 21-Year-Old Oklahoma Woman who Suffered Miscarriage Sparks Outcry*, CBS NEWS (Oct. 20, 2021, 7:37 AM), <https://www.cbsnews.com/news/brittany-poolaw-manslaughter-miscarriage-pregnancy/>; Sean Murphy, *Group Decries Sentencing of Oklahoma Woman for Miscarriage*, ASSOCIATED PRESS (Oct. 18, 2021), <https://apnews.com/article/health-oklahoma-sentencing-3f6317fecc27d5c5081cb011b202745c>.

caused her miscarriage.¹¹⁵ In Alabama, more than 500 people who tested positive for controlled substances during pregnancy have been prosecuted.¹¹⁶

According to the National Advocates for Pregnant Women, which tracks legal action against pregnant women, between 1973 and 2020 more than 1,700 women were pursued by the criminal justice system as a consequence of being pregnant, including women who sought abortions and women who were blamed for miscarriages.¹¹⁷ About 1,300 of the 1,700 cases occurred between 2006 and 2020, demonstrating increasing willingness by prosecutors to pursue these types of cases in recent decades.¹¹⁸ These prosecutions have been particularly targeted at women of color and low-income women. A study of more than 400 prosecutions found nearly 60 percent were of women of color and more than 70 percent were of women who could not afford a lawyer.¹¹⁹

Now that *Roe* has been overturned and states are passing more restrictive laws, even greater numbers of women are likely to be prosecuted and face potential prison sentences for seeking or obtaining abortions or for having miscarriages. As states' laws banning abortions come into effect, the number of women who reside in states where they can be prosecuted for abortions is rapidly expanding. Other laws meant to protect the fetus by defining life at conception, many of which were prohibited before the *Dobbs* decision, are likely to result in increased investigations of women.¹²⁰ A number of states have so-called "personhood" laws that recognize life as beginning at conception, making those who harm a fetus liable under criminal statutes.¹²¹ Other states go much farther and include fetal personhood language in their entire code. As just one example, the Georgia LIFE Act, which is now in effect, defines the word "person" in the state's code to include unborn children.¹²² Laws like these have prompted significant concern among experts about the

¹¹⁵ Ed Pilkington, *Outcry in America as Pregnant Women Who Lost Babies Face Murder Charges*, THE GUARDIAN (June 24, 2011, 1:30 PM), <https://www.theguardian.com/world/2011/jun/24/america-pregnant-women-murder-charges>.

¹¹⁶ Howard, *supra* note 80 at 354; Adam Nossiter, *In Alabama, A Crackdown on Pregnant Drug Users*, N.Y. TIMES (Mar. 15, 2008), <https://www.nytimes.com/2008/03/15/us/15mothers.html>.

¹¹⁷ *Arrests and Prosecutions of Pregnant Women*, NAT'L ADVOCATES FOR PREGNANT WOMEN (Sept. 18, 2021), <https://www.nationaladvocatesforpregnantwomen.org/arrests-and-prosecutions-of-pregnant-women-1973-2020>.

¹¹⁸ *Id.*

¹¹⁹ Lynn M. Paltrow & Jeanne Flavin, *Arrests of an Forced Interventions on Pregnant Women in the United States, 1973-2005: Implications for Women's Legal Status and Public Health*, 38 J. OF HEALTH POLITICS, POL'Y & L. 299, 311 (2013). *See also* Vanessa Williamson & John Hudak, *The War on Abortion Drugs Will be Just as Racist and Classist*, BROOKINGS (May 9, 2022), <https://www.brookings.edu/blog/fixgov/2022/05/09/the-war-on-abortion-drugs-will-be-just-as-racist-and-classist>.

¹²⁰ Christine Vestal, *More States Shield Against Rogue Abortion Prosecutions*, PEW CHARITABLE TRUSTS STATELINE (May 4, 2022). *See also* Chabeli Carranza & Jennifer Gerson, *IVF May Be in Jeopardy in States Where Embryos are Granted Personhood*, THE GUARDIAN (July 16, 2022, 8:00 PM), <https://www.theguardian.com/society/2022/jul/16/ivf-anti-abortion-states-embryos-personhood>; Aria Bendix, *States Say Abortion Bans Don't Affect IVF. Providers and Lawyers are Worried Anyway*, NBC (June 29, 2022, 12:56 PM), <https://www.nbcnews.com/health/health-news/states-say-abortion-bans-dont-affect-ivf-providers-lawyers-worry-rcna35556>.

¹²¹ Vestal, *supra* note 121; *State Laws on Fetal Homicide and Penalty-Enhancement for Crimes Against Pregnant Women*, NATIONAL CONFERENCE ON STATE LEGISLATURES (May 1, 2018), <https://www.ncsl.org/research/health/fetal-homicide-state-laws.aspx>.

¹²² Bill Rankin, *NEW: Who Could Be Prosecuted Under Georgia's 'Heartbeat' Law?*, THE ATLANTA J.-CONST. (May 16, 2019), <https://www.ajc.com/news/local/who-could-prosecuted-under-georgia-heartbeat-law/sjmrBSuG3ZT4eM9kkAKPuL>; Kathryn Hayes Tucker, *DA Warns Women They Can Be Charged with Murder*

number of women likely to face criminal consequences for miscarriages.¹²³ After studying the experience of women in countries like El Salvador, where abortion is banned, Harvard University sociologist Jocelyn Viterna predicts that “women who have naturally occurring miscarriages may much more frequently be under suspicion for abortion.”¹²⁴

Finally, states’ use of increasingly sophisticated tools to pursue investigations of pregnant women is also expected to contribute to a rise in prosecutions. Experts predict states will use internet search histories, emails, text messages, testimony of providers, GPS data, and other “dragnet criminal surveillance tools” that will cause “the number of prosecutions [to] just rise very dramatically.”¹²⁵ And, similarly to the pre-*Roe* era, even when these prosecutions do not end in convictions, women could be subject to invasive investigations that cause embarrassment, financial burden, trauma, and other negative consequences.¹²⁶

Liability for Providers and Others

In addition to state efforts to prosecute women, providers have long faced legal consequences for performing abortions that states suspect are illegal. Prior to *Roe*, states took aggressive action against health care providers suspected of providing abortion services. As many as 100 investigations and 50 arrests of health care providers related to potentially illegal abortions occurred annually between 1900 and 1930 in Chicago alone.¹²⁷ The number of providers pursued for illegal activity related to abortions was particularly acute around 1912 when the U.S. Postal Service conducted nationwide raids on individuals who used the mail to sell contraceptives.¹²⁸

In the decades that followed, police across the country conducted periodic raids of illegal abortion clinics, resulting in numerous arrests and providers serving sentences in prison.¹²⁹ In 1951, Portland, Oregon assigned more than 30 of its officers to raid eight abortion providers’ offices.¹³⁰ A number of the providers ended up serving sentences resulting from the raid, but the publicity also served to warn other providers about their vulnerability to potential criminal consequences.¹³¹

Under New Abortion Law, LAW.COM (May 22, 2019, 7:39 PM), <https://www.law.com/dailyreportonline/2019/05/22/da-warns-women-they-can-be-charged-with-murder-under-new-abortion-law>; Ross Williams & Jill Nolin, *Georgia’s Strict Abortion Law Could Take Effect Soon*, GA. RECORDER (June 27, 2022, 1:00 AM), <https://georgiarecorder.com/2022/06/27/georgias-strict-abortion-law-could-take-effect-soon-heres-what-the-law-does>.

¹²³ See, e.g., Jeltsen, *supra* note 94; Ali, *supra* note 107.

¹²⁴ Luis Andres Henao & Jessie Wardarski, *Salvadoran Women Jailed for Abortion Warn US of Total ban*, AP NEWS (June 11, 2022), <https://apnews.com/article/abortion-politics-health-caribbean-religion-8dcebe19ea1d3f20ef288463f4392da4>.

¹²⁵ Ali, *supra* note 107.

¹²⁶ Jeltsen, *supra* note 94.

¹²⁷ REAGAN, *supra* note 97 at 174.

¹²⁸ *Id.* at 173.

¹²⁹ *Id.* at 242.

¹³⁰ SOLINGER, *supra* note 98 at 164-165.

¹³¹ *Id.* at 177-178.

Similar raids occurred as late as 1972, when police arrested seven members of an underground network of Chicago women who helped women obtain abortion services (the Jane Collective.)¹³²

Medical professionals were investigated not only for performing abortions, but also for simply sharing information about abortions. A New York law created an equivalence between the act of providing an abortion and referring a patient to a provider who would perform one and resulted in the arrest of numerous providers who merely provided information to patients.¹³³ Police and prosecutors used other intimidation tactics to scare providers as well, including calling a doctor before a grand jury after he gave a speech at a Planned Parenthood event citing the number of women who had appeared at his hospital following illegal abortions.¹³⁴

The risk of jail time for aiding women seeking abortions was significant, but even when investigations did not result in arrest or jail time, investigations could carry significant burdens including loss of reputation, financial cost of legal representation, loss of medical license, and more. These consequences had a real impact on the willingness of providers to conduct abortions, resulting in limited medical providers of abortions and price increases for women that more than tripled between 1940 and 1955.¹³⁵ Providers who were willing to provide services began to go to greater lengths to hide their practices – in many cases, going so far as to blindfold women and take them to a second location before performing the procedure.¹³⁶

Now, given the rise in state abortion bans after *Dobbs*, providers once again face significant legal liability, including the types of investigations, arrests, and jail sentences that characterized the pre-*Roe* era. Even when health care providers believe that an abortion is permissible, providers must ensure they can prove the abortion they provide is legal or risk consequences if a judge or prosecutor disagrees with their assessment.¹³⁷

The likelihood of arrest and severe legal consequences is clear from prosecutors' eagerness to go after abortion providers. After the reversal of *Roe*, several attorneys general in states with laws punishing abortion providers with criminal and civil penalties issued statements pushing for enforcement of these laws – with some even threatening to step in and prosecute if local district

¹³² Dylon Jones, *Inside the 1970s Abortion Underground*, POLITICO (May 6, 2022, 8:44 AM), <https://www.politico.com/news/magazine/2022/05/06/jane-abortion-network-chicago-00030433>. The charges were dropped the following year after the decision in *Roe*.

¹³³ REAGAN, *supra* note 97 at 252.

¹³⁴ *Id.* at 254 (the prosecutors noted that the doctor's hospital had only reported 30 suspected illegal abortions, not the 600 he stated at the event, and questioned him about the discrepancy).

¹³⁵ *Id.* at 288.

¹³⁶ *Id.* at 289; Candice Pires & Clare Considine, *Five Women on Abortions Before Roe*, THE GUARDIAN (June 16, 2022, 1:00 PM), <https://www.theguardian.com/us-news/2022/jun/16/five-women-on-abortions-before-roe-v-wade>; Libby Denkmann et al., *'I was Blindfolded. No one Spoke a Word.'* Seattle-area Women Talk About Abortion Before *Roe*, KUOW (May 4, 2022, 9:18 PM), <https://www.kuow.org/stories/seattle-area-women-on-what-it-was-like-to-get-an-abortion-before-roe-v-wade>.

¹³⁷ Arey, *supra* note 60; Michael Ollove, *Critics Fear Abortion Bans Could Jeopardize Health of Pregnant Women*, PEW CHARITABLE TRUSTS STATELINE (June 22, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/06/22/critics-fear-abortion-bans-could-jeopardize-health-of-pregnant-women> (quoting an OB-GYN in Milwaukee, Wisconsin, saying: "We are already telling pregnant patients who are suffering a miscarriage: 'You can't have the best level of care because of the politics around abortion.'").

attorneys refuse to do so.¹³⁸ In some cases, prominent state officials are already making unfounded accusations against providers, like Indiana Attorney General Todd Rokita, who made unfounded accusations against Dr. Caitlin Bernard for providing an abortion to a ten year-old rape victim, despite no evidence Dr. Bernard broke any law.¹³⁹ And as more states follow Texas and pass bills that mirror Texas SB8, abortion providers could face legal attacks from third parties.¹⁴⁰

In addition to the likely increase in investigations and prosecutions of health care providers, groups that provide financial support or otherwise assist in abortion services are also deeply concerned about being targeted for assisting women with travel, financial funding, counseling, and other aid. Abortion funds, which provide resources and information to women seeking abortion care, have stopped operating in Texas and other states with abortion bans out of fear of prosecution.¹⁴¹ Investigations and prosecutions are likely to further increase as states pursue new policies that will punish even those who help women obtain *legal* abortion services. SB8 in Texas created hesitancy among groups even to provide counseling or referrals for abortions in other states because of the risk of litigation now associated with doing so.¹⁴² Other states are pursuing efforts ranging from proposals to criminalize efforts to help women seeking abortions in other states, to targeting private corporations who choose to use their own resources to assist women in obtaining reproductive health care. Some examples include:

- In Missouri, a state representative introduced an amendment that would allow private citizens to sue any individual who helps a Missouri resident obtain an abortion out of state. Under this proposal, civil liability would extend to anyone providing transportation to an abortion provider, assisting a Missouri resident by scheduling an appointment over the phone, or hosting a website that allows Missouri residents to obtain abortion-related information.¹⁴³
- In Alabama, legislators are working on a bill that would provide a private cause of action against anyone who performs or induces an abortion or who assists in the performance or of an abortion, including paying for or reimbursing costs.¹⁴⁴

¹³⁸ Texas, Alabama, and Georgia are among the states with laws that jail providers; Press Release, Att’y Gen. of Tex., Advisory on Texas Law Upon Reversal of Roe v. Wade (July 27, 2022); Letter from Jeff Landry, La. State Att’y Gen., to John M. Schroder, La. State Treasurer (July 19, 2022).

¹³⁹ See Timothy Bella, *Doctor in 10-year-old’s Abortion Case Takes Legal Step Against Indiana AG*, WASH. POST (July 19, 2022, 6:26 PM), <https://www.washingtonpost.com/politics/2022/07/19/abortion-doctor-lawsuit-bernard-rokita-indiana/>.

¹⁴⁰ *A Doctor Who Defied Texas’ Abortion Law is Sued, Launching a Legality Test of the Ban*, THE ASSOCIATED PRESS, <https://www.npr.org/2021/09/20/1039122713/doctor-texas-abortion-sued> (Sept. 20, 2021, 7:59 PM).

¹⁴¹ Christopher Rowland, *Groups that aid Abortion Patients Pull Back, Fearing Legal Liability*, WASH. POST (July 15, 2022 6:00 AM), <https://www.washingtonpost.com/business/2022/07/15/abortion-aid-drying-up/>.

¹⁴² Arey, *supra* note 60.

¹⁴³ H.B. 1854, 101st Gen. Assemb., Reg. Sess. (Mo. 2022); Caroline Kitchener, *Missouri Lawmaker Seeks to Stop Residents from Obtaining Abortions Out of State*, WASH. POST (Mar. 8, 2022, 2:21 PM), <https://www.washingtonpost.com/politics/2022/03/08/missouri-abortion-ban-texas-supreme-court/>; Sarah Fentem, *Missouri Lawmaker Wants to Make it a Crime to Help People Get Abortions Out of State*, KCUR (Mar. 14, 2022, 8:35 AM), <https://www.kcur.org/politics-elections-and-government/2022-03-14/missouri-lawmaker-wants-to-make-it-a-crime-to-help-people-get-abortions-out-of-state>.

¹⁴⁴ H.B. 23, 2022 Leg. Reg. Sess. (Ala. 2022).

- In June, a Michigan state legislator introduced legislation that would make manufacturing, distributing, prescribing, selling, or transferring medication abortion drugs a felony punishable by up to 20 years in prison. It would also make purposely performing an abortion on a pregnant woman whose life is not at risk a felony punishable by up to ten years in prison and a \$100,000 fine.¹⁴⁵
- Texas and Tennessee have already made it a felony to provide abortion pills or any other pill that could be used to end a pregnancy through the mail.¹⁴⁶
- In Texas, a group of Republican state representatives issued a joint letter to Sidley Austin, one of the largest law firms in the country, warning the company that paying for their employees' abortion costs or aiding abortions in any capacity could lead to felony criminal prosecution and disbarment.¹⁴⁷ Sidley Austin is not the only employer being targeted. The letter warns of new legislation that is set to be proposed during the upcoming session which would prohibit any employer in Texas from paying for abortions or reimbursing abortion-related expenses – even if the abortion takes place across state lines.¹⁴⁸
- In South Dakota, the speaker pro tempore of the state's House of Representatives stated, if *Roe v. Wade* were to be overturned, he would advocate for legislation that bans corporations like Amazon and Citibank from paying for their employees' abortion-related expenses.¹⁴⁹ He also supports legislation that would prohibit South Dakota from doing business with any corporation that funds abortion expenses.¹⁵⁰

Assisted Reproductive Technology and In-Vitro Fertilization

The *Dobbs* decision has also raised uncertainty over the future of fertility treatments, including in-vitro fertilization (IVF) for patients trying to start families. Assisted reproductive technology

¹⁴⁵ H.B. 6270, 2022 Leg. Reg. Sess. (Mich. 2022); Christa Ferguson, *Whitmer: House Abortion Punishment Bill 'Disturbing'*, WOODTV (June 23, 2022 11:10 AM), <https://www.woodtv.com/news/michigan/whitmer-house-abortion-punishment-bill-disturbing>.

¹⁴⁶ Abigail Abrams, *Republican States Crack Down on Access to Abortion Pills as Supreme Court Decision Looms*, TIME (Apr. 12, 2022, 8:00 AM), <https://time.com/6165848/abortion-pills-republican-states-roe-wade/>; Kevin Reynolds, *Texas Law Restriction Access to Abortion Medications Goes Into Effect Dec. 2 After Governor Signs Bill*, THE TEX. TRIB. (Sept. 24, 2021, 4:00 PM), <https://www.texastribune.org/2021/09/24/texas-abortion-medication-law-abbott/>; Adam Friedman, *Tennessee Gov. Bill Lee Signs Law Adding Criminal Penalties to Abortion Pill Distribution Via Mail*, THE TENNESSEAN (May 6, 2022, 11:49 AM), <https://www.tennessean.com/story/news/politics/2022/05/06/tennessee-gov-bill-lee-signs-bill-criminalizing-abortion-pill-distribution-via-mail/9673406002>.

¹⁴⁷ Letter from Rep. Mayes Middleton et al., Texas Freedom Caucus, to Sidley Austin, (July 7, 2022); Hudak Mitchell, *Texas Freedom Caucus Warns Law Firm of Criminal Liability for Covering Employees' Abortion Costs*, THE TEXAN (July 11, 2022), <https://thetexan.news/texas-freedom-caucus-warns-law-firm-of-criminal-liability-for-covering-employees-abortion-costs>.

¹⁴⁸ *Id.*

¹⁴⁹ Jon Hansen (@RepJonHansen), TWITTER (May 16, 2022, 11:17 AM), <https://twitter.com/RepJonHansen/status/1526220412044156931>.

¹⁵⁰ *Id.*

(ART) like IVF is widely used; in 2019 alone, there were an estimated 330,773 ART cycles in the United States and more than 83,900 babies born from ART procedures.¹⁵¹ IVF involves fertilizing multiple eggs, and the fertilized eggs are ultimately destroyed if not used.¹⁵²

There are serious questions about whether the destruction of fertilized eggs as part of IVF could subject women and their health care providers to legal liability. A number of existing and proposed “state personhood” laws establish criminal penalties for harming unborn children starting at fertilization.¹⁵³ Although some states with laws defining “personhood” as beginning at conception have specifically exempted IVF and other fertility treatments, other states have yet to resolve the question.¹⁵⁴ In Arkansas and Oklahoma, the state attorneys general have clarified they do not intend to prosecute IVF patients, but they may not be able to stop local prosecutors from pursuing women and providers.¹⁵⁵ In Idaho, the attorney general’s office refused to give a clear answer about whether IVF would subject women and providers to legal liability, saying the office “will defer questions on potential enforcement to prosecutors.”¹⁵⁶ IVF clinics and legal scholars report they are concerned the uncertainty and lack of clarity may result in women or providers being prosecuted for undergoing IVF treatments.¹⁵⁷

Conclusion

The Supreme Court’s decision in *Dobbs* upended fifty years of settled precedent and allowed states to enact abortion bans that will prevent nearly all abortion care. Research makes clear women who live in states with these restrictive bans are likely to face significant health consequences. Self-managed abortions, health care providers who are hesitant to provide care for pregnancy complications, lack of access to other reproductive health services, and delays in care for cancer and other serious illness are all likely to contribute to rising rates of maternal death and serious illness. These health impacts will extend to women across the country if Republican legislators are successful in enacting a national abortion ban and as more states seek to prohibit or severely restrict abortion access.

Women, their providers, and others who assist them in obtaining abortion care in states with abortion bans are also increasingly likely to face prosecutions, arrests, and potential prison time or other legal consequences. This is true both for women who seek abortions that are not legal in their state, and for women who experience unintended miscarriages but fall under suspicion of having caused their pregnancy to end – even if that is not the case. And legal scholars have raised serious

¹⁵¹ 2019 National ART Summary, CTR. FOR DISEASE CONTROL, <https://www.cdc.gov/art/reports/2019/national-ART-summary.html>.

¹⁵² Jan Hoffman, *Infertility Patients and Doctors Fear Abortion Bans Could Restrict I.V.F.*, N.Y. TIMES (July 5, 2022), <https://www.nytimes.com/2022/07/05/health/ivf-embryos-roe-dobbs.html>; Amy Klein, *What to Know About I.V.F.*, N.Y. TIMES (Apr. 18, 2020), <https://www.nytimes.com/article/ivf-treatment.html>.

¹⁵³ Carranza & Gerson, *supra* note 121.

¹⁵⁴ Leah Shepherd, *State Abortion Bans Raise Questions About Fertility Treatments*, SOC’Y FOR HUM. RES. MGMT. (July 11, 2022), <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/state-abortion-laws-ivf.aspx>.

¹⁵⁵ Bendix, *supra* note 121.

¹⁵⁶ Bendix, *supra* note 121.

¹⁵⁷ Bendix, *supra* note 121.

concerns that the same logic that led the Supreme Court to revoke the right to abortion could lead the Court to threaten the right to contraception, gay marriage, and numerous other fundamental aspects of how Americans create and celebrate private family life.¹⁵⁸

The HELP Committee joins the chorus of scholars, policymakers, and women raising the alarm about the consequences of the *Dobbs* decision and the significant harms to health and liberty from the new abortion bans and other restrictive state abortion laws now in effect. The Committee urges policymakers to enact protections for women seeking abortion care, for providers of abortion care, and for those who assist them in order to mitigate some of the worst health and legal consequences.

¹⁵⁸ *Dobbs*, 597 U.S. at ___ (Thomas, J., concurring) (slip op., at 3).