FROM PUBLIC HEALTH TO PUNISHMENT: ABORTION CRIMINALIZATION UNDERMINES MEDICAL JUDGMENT

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INTRODUCTION

Amanda Zurawski was pregnant and excited to start her journey of becoming a new mother. After 17 weeks of the pregnancy, however, her doctors diagnosed her with an incompetent cervix, a condition where weak cervical tissue causes the cervix to dilate prematurely, causing her fetus to be medically unviable.[1] Even though she did not yet have signs of

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[1] Plaintiffs' Original Petition for Declaratory Judgment and Application for Permanent Injunction at 4–5, Texas v. Zurawski, 690 S.W.3d 644 (Tex. 2024) (No. 23-000968).

infection, future harm was imminent—sepsis would develop and she faced a real risk of permanent damage to her reproductive organs—but avoidable if she terminated the pregnancy.[2] The only problem was, she lived in Texas.

Texas law makes abortion a first-degree felony unless a physician determines that the pregnancy poses a life-threatening condition or a "serious risk of substantial impairment of a major bodily function."[3] The legislature left these terms undefined, offering no clinical guidance for physicians making emergency decisions.[4] As such, it was unclear whether Ms. Zurawski's position warranted coverage by the exception. Her doctors refused to act, fearing that, if her condition was not covered, they would be subject to fines of at least $100,000, prison sentences of up to ninety-nine years, and revocations of their medical licenses. Ms. Zurawski soon became septic with a peak temperature of 103.2 degrees Fahrenheit.[5] At that point, the hospital finally decided that she was sick enough to initiate an abortion without violating Texas's abortion bans.[6] After the abortion, she spent three days in the intensive care unit, fighting for her life.[7] The septic infection, that would not have occurred if she were given an earlier abortion, caused one of her fallopian tubes to close permanently, requiring that she turn to in vitro fertilization in any future attempts to have a child.[8]

In an attempt to prevent other pregnant people from going through a similar traumatic situation, Ms. Zurawski sued the state seeking declaratory judgment and a permanent injunction demanding clarification from Texas on the scope of the exception to its abortion bans, as well as any relief "necessary to protect the health and lives of pregnant Texans with emergent medical conditions."[9] Texas argued that any harm alleged in the suit does not stem from the abortion statute itself, but rather from

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[2] *Id.* at 5.

[3] TEX. HEALTH & SAFETY CODE ANN. § 170A.002.

[4] *Id.* at §§ 170A.002–004 (allowing a person to perform an abortion when "in the exercise of reasonable medical judgment, the pregnant female . . . has a life-threatening physical condition . . . arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced.").

[5] Plaintiffs' Original Petition for Declaratory Judgment and Application for Permanent Injunction, *supra* note 1, at 6.

[6] *Id.*; Stephanie Emma Pfeffer, *Texas Woman Nearly Loses Her Life After Doctors Can't Legally Perform an Abortion: 'Their Hands Were Tied',* PEOPLE (Oct. 18, 2022, 11:59AM), https://people.com/health/texas-woman-nearly-loses-her-life-after-doctors-cannot-legally-perform-abortion/ [https://perma.cc/6SV2-HF42].

[7] CTR. FOR REPRODUCTIVE RTS., *The Plaintiffs and Their Stories*: Zurawski v. State of Texas (Nov. 14, 2023), https://reproductiverights.org/news/zurawski-v-texas-plaintiffs-stories-remarks/ [https://perma.cc/DDJ4-UUFS].

[8] *Id.*

[9] Plaintiffs' Original Petition for Declaratory Judgment and Application for Permanent Injunction, *supra* note 1, at 4.

physicians' failure to act—framing the issue as one of medical malpractice and contending that patients should sue their doctors, not the State.[10] The court sided with the state and declined to make Texas provide guidance on its interpretation, saying that the standard was clear enough for physicians to understand and implement with their medical expertise,.[11]

Unfortunately, Ms. Zurawski's medical experience is not unique. In many states across the nation, restrictive abortion laws force patients to face irreversible physical damage while being turned away from essential abortion care. Patients in these situations suffer profound emotional distress, but the threat of criminal prosecution imposed on physicians further compounds that harm by discouraging timely intervention, leading to preventable physical injury and, in some cases, death.[12]

Abortion criminalization not only impacts the lives of patients and physicians, but it is also strongly correlated with numerous systemic negative health effects.[13] For instance, abortion criminalization decreases access to sexual and reproductive goods, abortion services, and sexual and reproductive information, disproportionately affecting women and girls.[14] Criminalization often results in delayed or self-managed abortions, which produces more health harms—such as uterine perforation, sepsis, or overdosing on herbal medications—than normal, supervised abortions.[15] Moreover, it imposes unnecessary travel and costs on abortion seekers and delayed or eliminated access to post-abortion care.[16]

In contrast, legalized abortion has been associated with an increase in health outcomes and a drop in crime because legalization alters the demographic and socioeconomic composition of people who would partake in crime in ways that later reduced their tendency towards crime when reaching peak offending ages.[17] The decrease in crime proposition

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[10] Mabel Felix, Laurie Sobel & Alina Salganicoff, *Criminal Penalties for Physicians in State Abortion Bans*, KAISER FAM. FOUND. (Mar. 4, 2025), https://www.kff.org/womens-health-policy/criminal-penalties-for-physicians-in-state-abortion-bans/ [https://perma.cc/CAC8-QP34].

[11] Texas v. Zurawski, 690 S.W.3d 644, 656, 664–66 (Tex. 2024).

[12] *See* Plaintiffs' Original Petition for Declaratory Judgment and Application for Permanent Injunction, *supra* note 1, at 4–19 (noting Ms. Zurawski's co-plaintiffs' stories and their similar traumatizing experiences after being denied an abortion).

[13] Fiona de Londras, Amanda Cleeve, Maria Isabel Rodriguez, Alana Farrell, Magdalena Furgalska & Antonella Lavelanet, *The impact of criminalization on abortion-related outcomes: a synthesis of legal and health evidence*, 7 BMJ GLOB. HEALTH 1, 1–2 (2022).

[14] Interim Rep. of the S.R., at 5–6, U.N. Doc. A/66/254 1, 5–6 (Aug. 3, 2011) (explaining that by constraining autonomous decision-making in bodily integrity, such laws undermine human dignity and human rights).

[15] Nisha Verma, Diane Horvath & Keith Reisinger-Kindle, *Self-Managed Abortion*, 144 OBSTETRICS & GYNECOLOGY e152, e157 (Dec. 2024).

[16] Sanhita Ambast, Hazal Atay & Antonella Lavelanet, *A global review of penalties for abortion-related offences in 182 countries*, 8 BJM GLOB. HEALTH 1, 6 (2022).

[17] John J. Donohue III & Steven D. Levitt, *The Impact of Legalized Abortion on Crime*,

is based on the observation that abortion access disproportionately reduces births among populations more at risk of engaging in criminal behavior—such as individuals born into environments characterized by poverty, instability, and limited parental resources.[18] Additionally, abortions allow pregnant individuals to delay childbearing until conditions are more favorable for raising children.[19] Legalized abortion can have positive results, and many countries are moving toward that direction.

Out of the 60 countries that have changed their abortion laws in the past 30 years, 56 of them have expanded access to abortions, however, the United States has taken the opposite path.[20] Despite an array of evidence that criminalization of abortion breeds irreversible harm to pregnant people and society, the United States has re-embraced punitive abortion laws in the wake of *Dobbs v. Jackson Women's Health Organization*. Post-*Dobbs,* many states have implemented or revived abortion bans with criminal penalties for providers.[21] In these states, doctors risk heavy personal costs for exercising clinical judgment, and patients bear the consequences of legal ambiguity.

This Note argues that abortion criminalization in the United States is ineffective at reducing abortion rates, directly harms pregnant people's health, and should be replaced with public-health regulatory frameworks modeled on international systems that improve safety without criminal penalties. Part I will describe the historical and legal evolution of abortion criminalization in the United States. Part II will present evidence that criminalization fails to deter abortion and worsens health outcomes. Part III will compare international models that regulate abortion as healthcare, not crime. Part IV will argue prescriptively for legislative reform and propose a model statute focused on health and safety instead of criminalization.

I. LEGAL DEVELOPMENT OF ABORTION IN THE UNITED STATES

The three phases of abortion law in the United States are as follows: pre-*Roe*, post-*Roe*, and post-*Dobbs*. These phases reflect the shifting legal, constitutional, and political landscape of reproductive rights in the United States. The quintessential 1973 abortion rights case, *Roe v. Wade*,

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Crime, 116 Q. J. ECONOMICS 379, 379 (2001); Willard Cates, Jr., David A. Grimes & Kenneth F. Schulz, *The Public Health Impact of Legal Abortion: 30 Years Later,* 35 PERSPS. ON SEXUAL & REPRODUCTIVE HEALTH 25, 26 (2003).

[18] Donohue & Levitt, *supra* note 17, at 387–89.

[19] *Id.* at 386.

[20] Noël James, Haydn Welch & Antonio Barreras Lozano, *Women and Foreign Policy Program Staff, Abortion Law: Global Comparisons*, COUNCIL ON FOREIGN RELS. (Mar. 7, 2024, at 14:30), https://www.cfr.org/articles/abortion-law-global-comparisons [perma.cc/35MG-P46M].

[21] Felix et al., *supra* note 10.

established that abortion was covered by the fundamental right to privacy implicitly under the 14th Amendment's Due Process Clause.[22] Prior to this case, abortion rights were characterized by common law and traditionalist thinking. These thoughts invaded the post-*Roe* period by state governments finding roundabout ways to more closely regulate abortions. Nearly fifty years later, *Dobbs* overturned *Roe*, ruling that abortion is not constitutionally protected and granted states full authority to regulate the procedure. This current period has left abortion regulation up to the states with minimal federal intervention.

A. Abortion Pre-Roe.

Before the early 1800s, abortion was practiced widely in the United States and was not criminal at common law prior to "quickening"—the first perceived fetal movement, typically around four months of pregnancy.[23] Abortions were a common, often unspoken part of reproductive life, practiced openly by midwives and healers.[24] Criminalization emerged from the professionalization of medicine and broader social anxieties about women's sexuality, reproduction, and social order.[25] In 1847, doctors formed the American Medical Association, through which leaders like Dr. Horatio Storer waged a campaign rooted in racism, misogyny, and xenophobia, arguing that white Protestant women had a civic duty to reproduce and portraying abortion as a threat to national vitality.[26] These efforts inspired the criminalization of abortion while

[22] Roe v. Wade, 410 U.S. 705 (1973).
[23] Samuel W. Buell, *Criminal abortion revisited*, 66 NYU L. REV. 1774, 1780–81 (1991); Alejandra Caraballo, Cynthia Conti-Cook, Yveka Pierre, Michelle McGrath & Hillary Aarons, *Extradition in Post-*Roe *America,* 26 CUNY L. REV. 1, 5–6 (2023); *Abortion is Central to the History of Reproductive Health Care in America*, PLANNED PARENTHOOD, https://www.plannedparenthoodaction.org/issues/abortion/abortion-central-history-reproductive-health-care-america [https://perma.cc/3MVU-BGNF] (last visited Nov. 14, 2025).
[24] Buell*, supra* note 23, at 1780; *Abortion is Central to the History of Reproductive Health Care in America*, *supra* note 23.
[25] Caraballo et al., *supra* note 23, at 6; Rund Abdelfatah, Ramtin Arablouei, Julie Caine, Laine Kaplan-Levenson, Lawrence Wu, Casey Miner, Anya Steinberg, Victor Yvellez & Deborah George, *Before Roe: The Physicians' Crusade,* NPR, at 12:10 (May 19, 2022), https://www.npr.org/2022/05/18/1099795225/before-roe-the-physicians-crusade [https://perma.cc/LTA6-P7ZW].
[26] *Historical Abortion Law Timeline: 1850 to Today*, PLANNED PARENTHOOD, https://www.plannedparenthoodaction.org/issues/abortion/abortion-central-history-reproductive-health-care-america/historical-abortion-law-timeline-1850-today [https://perma.cc/23DG-RPDX] (last visited Nov. 14, 2025); Caraballo et al., *supra* note 23, at 6; Michele Goodwin & Meigan Thompson, *In the Shadow of the Court: Strategic Federalism and Reproductive Rights*, 18 GEO. J. GENDER & L. 333, 344–45 (2017).

changing the legal landscape for abortion seekers and providers.[27]

Although abortion had long posed medical risks, nineteenth-century reformers increasingly invoked women's safety as the principal legislative justification, reframing the issue around medical concerns where abortion oftentimes resulted in death.[28] Therefore, states understood it as a crime victimizing the pregnant person, despite her consent to the procedure; and by the nineteenth century, abortion was criminalized in nearly all states, particularly punishing the providers.[29] This transition to women's health exasperated the assumptions that women were not fully autonomous when it came to decisions about their health.[30] Another manifestation of this paternalism was that nineteenth and twentieth century courts consistently viewed the pregnant woman as a victim who was incapable of making proper decisions, refusing to consider her as culpable in the crime of abortion.[31] Pre-*Roe* courts upheld this theme throughout the country, interpreting criminal abortion statutes broadly and upholding convictions of abortion providers, often relaxing evidentiary requirements and allowing prosecutors to rely on related criminal doctrines such as homicide, conspiracy, or professional misconduct to sustain liability.[32]

In sum, nineteenth century abortion criminalization was not the product of a singular moral judgment about fetal life, but rather the result of medical professionalization, paternalistic conceptions of women's decision-making capacity, and state efforts to regulate reproduction through criminal law. In effect, while criminalizing abortion, this period of regulation impacted not only women's autonomous control over their bodies, but also fueled the rhetoric of paternalistic thought and governmental control over women and their decisions.

B. Abortion Post-Roe.

In 1973, the Supreme Court in *Roe v. Wade* enshrined a limited constitutional abortion right nationwide. The Court recognized two competing and compelling interests: first, the individual's right to decide whether to continue or end a pregnancy, free from governmental intrusion

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[27] Buell*, supra* note 23, at 1786.
[28] Buell, *supra* note 23, at 1785–86.
[29] Caraballo et al., *supra* note 23, at 6, 8.
[30] Buell, *supra* note 23, at 1787; Caraballo et al., *supra* note 23, at 7–8.
[31] Buell, *supra* note 23, at 1795, 1799.
[32] People v. Heidman*,* 144 N.E.2d 580, 583–86 (Ill. 1957) (allowing evidence of a previously attempted abortion to be admitted to establish defendant's criminal intent and holding that Heidman could be convicted of abortion based on her active participation in the procedure, like arranging the abortion, preparing the patient and room, and assisting the physician, despite not personally performing the operative act); People v. Tideman, 370 P.2d 1007, 1008, 1013 (Cal. 1962) (holding that defendant may be convicted of both abortion and murder arising from the same act in a single prosecution and double jeopardy does not bar such convictions).

and subject to their own autonomy, and second, the state's interest in protecting maternal health and potential fetal life through regulation.[33] The Court, as such, decided to create a novel constitutional test for abortion based on the trimesters of pregnancy where the pregnant individual's autonomy over their body decreases per trimester: in the first trimester, the decision to abort is made entirely by the individual and their doctor; in the second the trimester, states could regulate abortion only if necessary to protect patient health; and finally, in the third trimester, the government could regulate and ban abortion if doing so furthered state interests.[34]

Though *Roe v. Wade* prevented categorical abortion bans, the federal government and many states found other ways to restrict access to abortion care. Congress passed the Hyde Amendment in 1976, which specifically prevented people from using federal funds to pay for their abortions.[35] In addition to this federal limitation, states were able to implement numerous barriers to limit access to abortions. States' prosecutors used adjacent laws such as feticide, child endangerment, or drug distribution statutes to punish self-managed abortions, disproportionately affecting people of color and low-income individuals who could not afford supervised abortion care.[36] Legislatures also adopted Targeted Regulation of Abortion Providers (TRAP) laws as a strategic way to oppose pregnant people's reproductive autonomy through means other than criminally punishing abortion providers.[37] TRAP laws imposed a wide range of abortion requirements, including mandated counseling, a waiting period between counseling and abortion, reporting requirements for abortion providers, increased license requirements for abortion providers, increased inspections of abortion clinics, maintenance of certain written policies, and, in extreme cases, requiring governor approval for abortions.[38]

By imposing these requirements, states significantly limited abortion. Waiting periods meant that women had to go to the clinic more than once, which could mean traveling long distances, securing childcare on multiple occasions, or needing to tell employers why they were taking time off

[33] Roe v. Wade, 410 U.S. 705, 732 (1973) (7–2 decision).
[34] *Id.*; Roe v. Wade *And The Right To Abortion,* NAT. WOMEN'S L. CTR. (Jan. 24, 2022), https://nwlc.org/resource/roe-v-wade-and-the-right-to-abortion/ [https://perma.cc/NFF7-5CWY]; Rebecca J. Mercier, Mara Buchbinder & Amy Bryant, *TRAP Laws and the Invisible Labor of US Abortion Providers*, 26 CRIT. PUB. HEALTH 77, 79 (2016).
[35] Hyde Amendment Codification Act, S. 142, 113th Cong. (2013).
[36] Caraballo et al., *supra* note 23, at 10–12.
[37] Goodwin & Thompson, *supra* note 26, at 339; Mercier et al.*, supra* note 34, at 77–78; Teneille R. Brown, *We Have All Lost Our Minds*, 45 PACE L. REV. 103, 111 (2024).
[38] Mercier et al.*, supra* note 34, at 77–78; Ian Vandewalker, *Abortion and Informed Consent: How Biased Counseling Laws Mandate Violations of Medical Ethics*, 19 MICH. J. GENDER & L. 2, 14, 34 (2012); Goodwin & Thompson, *supra* note 26, at 337–39.

work.[39] Additionally, TRAP laws created significant geographic barriers to abortion access by prompting clinic closures.[40] Requirements such as costly facility standards and admitting-privileges mandates forced many providers to exit the market, concentrating remaining services in urban centers.[41] The result was longer travelling distances, delays in care, and disproportionate burdens on low-income patients and women of color.[42] Though nominally civil, these laws carried quasi-criminal consequences: clinic closures, loss of medical licenses, and heightened fear of prosecution.[43]

These mechanisms illustrate how the post-*Roe* era transformed abortion from a criminal offense into a heavily surveilled, quasi-criminalized medical procedure.[44] By focusing on deterring abortion through legal and financial coercion rather than prosecution, these laws achieved what post-*Roe* criminal bans could not: an attack on abortion access. In 1992, *Planned Parenthood v. Casey* imposed a new standard that could be used to evaluate such TRAP measures – the undue burden standard.[45] The Court would assess whether a certain law, such as a TRAP law, imposed an undue burden on the woman's right, via her liberty right of the Due Process Clause, to terminate her pregnancy.[46] When the Supreme Court invalidated a Texas law requiring abortion providers to have an active license in a separate hospital located at least 30 miles away from the place they are providing the abortion, *Whole Woman's Health v. Hellerstedt* utilized *Casey's* standard deeming the law unconstitutional because it didn't advance legitimate medical interests without posing an undue burden.[47] Yet, many TRAP provisions remained on the books and laid the groundwork for the post-*Dobbs* resurgence of direct criminal penalties, illustrating how civil regulations can evolve into criminal enforcement when constitutional constraints are removed.[48]

C. Abortion Post-Dobbs.

In 2022, the Court held that abortion was not a constitutional right in

[39] Vandewalker, *supra* note 38, at 32–33.
[40] Mercier et al., *supra* note 34, at 78.
[41] *Id.*
[42] *Id.*
[43] Goodwin & Thompson, *supra* note 26, at 376–77; Vandewalker, *supra* note 38, at 7.
[44] People v. Franklin, 683 P.2d 775, 778–80 (Colo. 1984) (upholding Colorado's criminal abortion statute emphasizing that abortion remained lawful only when performed by a licensed physician using "accepted medical procedures," thereby placing the burden on physicians to determine legality and exposing them to criminal liability for noncompliance).
[45] Planned Parenthood v. Casey, 505 U.S. 833, 874 (1992).
[46] *Id*.
[47] Whole Woman's Health v. Hellerstedt, 579 U.S. 582, 590, 607–08 (2016).
[48] Goodwin & Thompson, *supra* note 26, at 342.

Dobbs v. Jackson Women's Health Organization, and abortion care became even more contentious.[49] In *Dobbs*, the majority opinion asserted that "attempts to justify abortion through appeals to a broader right to autonomy . . . prove too much . . . [because autonomy] could license fundamental rights to illicit drug use, prostitution, and the like."[50] Essentially, the Court side-stepped the autonomy argument by invoking the parade of horribles that it claimed could also be justified on the same grounds, ignoring the ways the other situations differ from abortion.

After the Supreme Court's decision in *Dobbs*, several states enacted legislation criminalizing abortion. In addition to directly prohibiting certain types of abortion care, these statutes also contain ambiguous language, causing physicians, such as those in Ms. Zurawski's case, to limit their autonomous medical thinking out of fear for felony prosecution. This has led clinicians to delay or deny miscarriage management and lifesaving obstetric care, undermining medical ethics and patient trust.[51]

Because *Dobbs* "trigger[ed] half the United States to criminalize abortion and the other half to embed abortion protections in state constitutions and statutes," the ruling not only emboldened criminal prosecutions, but also raised unprecedented interstate conflicts, especially where anti-abortion states seek to extradite physicians or patients who travel to states where abortion remains legal to receive abortion care.[52] Within the United States, states with the highest number of abortion patients border at least one state where abortion is banned.[53] This is, in part, because abortion patients who live in a state where abortion is banned will travel to the closest state that offers abortions.[54] One example of interstate conflict is when the Louisiana governor learned of a New York abortion provider mailing abortion pills to a Louisiana resident, he signed an extradition warrant for the physician to stand trial in Louisiana where the provider could receive a possible 5-year prison sentence.[55] In a related case where Louisiana reinstated a requirement that mifepristone only be dispensed in person, Justice Alito temporarily stayed lower-court restrictions on mailed mifepristone while the Court considers the

[49] Dobbs v. Jackson Women's Health Organization*,* 597 U.S. 215, 219 (2022).
[50] *Id.* at 246; Brown, *supra* note 37, at 115.
[51] Dov Fox, *The Abortion Double Bind*, 113 AM J PUB. HEALTH 1068, 1070 (2023); Anna-Grace Lilly, Isabelle P. Newman & Sophie Bjork-James, *Our hands are tied: abortion bans and hesitant medicine*, 350 SOC. SCI. & MED. (2024).
[52] Caraballo et al. *supra* note 23, at 2, 18–19.
[53] Karen Diep, Bryana Castillo Sanchez, Usha Ranji & Alina Salganicoff, *Abortion Trends Before and After Dobbs*, KAISER FAM. FOUND. (July 15, 2025).
[54] *Id.*
[55] Rosemary Westwood, *After historic indictment, doctors will keep mailing abortion pills over state lines,* GBH (Mar. 19, 2025), https://www.wgbh.org/news/2025-03-19/after-historic-indictment-doctors-will-keep-mailing-abortion-pills-over-state-lines [https://perma.cc/2CPT-4RUD].

mifepristone manufacturers challenge against the in person requirement for providing mifepristone.[56] These parallel disputes demonstrate that post-*Dobbs* abortion criminalization extends beyond formal abortion bans and increasingly operates through interstate enforcement conflicts and legal uncertainty surrounding physicians' clinical decision-making.

This overt criminalization marks a regression to nineteenth-century moral policing and state-driven criminal control of reproductive autonomy. Some state constitutions, including Louisiana, Texas, Idaho, Oklahoma, and Alabama, have even affirmatively made abortion a felony punishable by prison sentences.[57] These statutes specifically target the physicians for providing abortions rather than the women for receiving abortions. This structure is an extension of the legal paternalism seen in the Pre-*Roe* era as legislators and people in power still frame women as vulnerable and in need of protection, while physicians are the morally culpable characters.[58]

II. CRIMINALIZATION FAILS TO DETER ABORTION AND WORSENS HEALTH OUTCOMES

Studies have shown that criminalization does not reduce abortion rates.[59] There is a similar incidence of abortions in countries with restrictive laws as those without restrictive laws.[60] In the United States, the total number of abortions has increased in the two years after the *Dobbs* ruling.[61]

Beyond failing to reduce abortion incidence, these restrictions worsen patient health outcomes. Criminalization of abortion often leads to pregnant people resorting to self-managed abortions, which are usually unsafe and result in further harm and serious side effects including

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[56] GenBioPro, Inc. v. Louisiana et al., No. 25A1208, 2026 WL 1280170 (May 11, 2026) (Alito, J., in chambers).

[57] LA. STAT. ANN. § 14:87.7 (2023); TEX. HEALTH & SAFETY CODE ANN. §§ 170A.002–.004 (2023); IDAHO CODE § 18-622 (2023); OKLA. STAT. tit. 21, § 861 (2023); ALA. CODE §§ 26-23H-4, -6 (2023).

[58] Buell, *supra* note 23, at 1778. For a specific instance of this framing in action, *Minor Child v. State* involved a pregnant woman who ingested abortion medication, effectively aborting the baby, and the court ruled that the legislature specifically outlined that a mother cannot be criminally charged for the death of her unborn child. 701 S.W.3d 751, 763–64 (2024).

[59] de Londras et al., *supra* note 13; Diep et al., *supra* note 53.

[60] SUSHEELA SINGH, LISA REMEZ, GILDA SEDGH, LORRAINE KWOK & TSUYOSHI ONDA, ABORTION WORLDWIDE 2017: UNEVEN PROGRESS AND UNEQUAL ACCESS GUTTMACHER INSTITUTE 4 (2017), https://www.guttmacher.org/sites/default/files/report_pdf/abortion-worldwide-2017.pdf [perma.cc/QE8A-R7ZC].

[61] Diep et al., *supra* note 52 (showing that two years after the *Dobbs* decision, the national number of abortions increased from 78,000 to 96,000).

bleeding, incomplete/missed abortion, and ectopic pregnancy.[62] In Texas, for example, the rate of sepsis increased by more than fifty percent after the implementation of an abortion ban; before the ban, the rate was steady.[63]

Self-managed abortions can not only be deadly but can also result in a criminal conviction. Some people who performed self-managed abortions have faced criminal penalties themselves. Despite Texas law exempting a pregnant person from being charged with homicide for an abortion,[64] Lizelle Herrera was arrested, charged with murder, and put in jail on a $500,000 bond for taking misoprostol to end her pregnancy.[65] Charges against Herrera were ultimately dropped.[66] In Nebraska, however, prosecutors successfully pursued criminal convictions against both a teenager who self-managed an abortion and her mother, who assisted her. Both were convicted of concealing or abandoning a dead body, while the mother also pleaded guilty to performing an illegal abortion and false reporting.[67] In a series of facts like Ms. Zurawski's, Brittany Watts was a mother who had an unviable fetus and went home against medical advice, suffered a miscarriage, and then was charged with abuse of a corpse.[68] By charging the abortion recipient under a statute unrelated to abortion itself, prosecutors were able to extend criminal liability to all participants.

Reputable medical associations agree that the vague language in state statutes and constitutions banning abortions will inevitably deter timely

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[62] Caraballo et al., *supra* note 24, at 11–12; SINGH ET AL., *supra* note 60, at 2, 10, 28, 41; Sudhansu Rath, Shilpa Mishra, Ratikanta Tripathy, Sudarshan Dash & Bandita Panda, *Analysis of Complications and Management After Self-Administration of Medical Termination of Pregnancy Pills,* CUREUS J. MEDICINE (2021).

[63] Lizzie Presser, Andrea Suozzo, Sophie Chou & Kavitha Surana, *Texas Banned Abortion. Then Sepsis Rates Soared*, PROPUBLICA (Feb. 20, 2025, at 5:00), https://www.propublica.org/article/texas-abortion-ban-sepsis-maternal-mortality-analysis [https://perma.cc/2HXK-UX2D].

[64] TEX. PENAL CODE ANN. § 19.06 ("This chapter does not apply to the death of an unborn child if the conduct charged is conduct committed by the mother of the unborn child.").

[65] Madaleine Rubin, *Texas prosecutor disciplined for allowing murder charge against woman who self-managed an abortion,* THE TEXAS TRIBUNE (Mar. 1, 2024, at 12:27 CT), https://www.texastribune.org/2024/03/01/starr-county-district-attorney-abortion-murder-charges/ [https://perma.cc/797H-BPAH].

[66] *Id.*

[67] Carter Sherman, *US mother sentences to two years in prison for giving daughter abortion pills*, THE GUARDIAN (Sep. 22, 2023), https://www.theguardian.com/us-news/2023/sep/22/burgess-abortion-pill-nebraska-mother-daughter [https://perma.cc/89HU-RYEY].

[68] Jericka Duncan, Rachel Bailey & Hilary Cook, *Brittany Watts, Ohio woman charged with felony after miscarriage at home, describes shock of her arrest,* CBS NEWS, (Oct. 21, 2024, 1:05 PM), https://www.cbsnews.com/news/brittany-watts-the-ohio-woman-charged-with-a-felony-after-a-miscarriage-talks-shock-of-her-arrest/ [https://perma.cc/S9F7-A3J6].

care. The American College of Obstetricians and Gynecologists, for example, submitted an amicus brief for *Dobbs* asserting that overturning *Roe v. Wade* is fundamentally inconsistent with the provision of safe and essential healthcare.[69]

After *Dobbs,* North Dakota's supreme court upheld the state's abortion ban when it was arguably unconstitutionally vague.[70] Medical Students for Choice ("MSFC"), a non-profit organization dedicated to ensuring that medical students have access to evidence-based reproductive healthcare education, submitted an amicus brief alleging that North Dakota's restrictive legislation negatively affects patients and undermines medical students' ability to succeed by preventing their programs from being based on science.[71] In their brief, MSFC argued that the legislation contained "vague, non-medical phrases that physicians must attempt to interpret before performing any abortion."[72] Even when legislatures attempt to rely on ostensible medical terms, pregnancy complications unfold dynamically and resist precise, ex ante legal definition. Because criminal liability is assessed retrospectively, physicians must anticipate how prosecutors or courts might later second-guess their clinical judgment, even when acting in good faith. As a result, abortion restrictions necessarily displace medical expertise with legal uncertainty, to the detriment of both patients and providers.

Not only do physicians face significant criminal penalties including prison sentences for providing abortions, but they also face consequences for delay or nonintervention. Texas has repeatedly argued that physicians who decline to act in medically emergent situations may be subject to civil malpractice liability, even as the same physicians risk felony prosecution if prosecutors later conclude that an abortion did not fall within a statutory exception. The conflicting exposure of civil liability for waiting and criminal liability for acting forces physicians to delay care until harm is undeniable transforms statutory "exceptions" into de facto prohibitions. Moreover, threat of criminal prosecution remains a real possibility. As described earlier, one provider in New York, an abortion-legal state, mailed abortion pills to a Louisiana resident, an abortion-illegal state, and the Louisiana governor then signed an extradition warrant for the prescribing physician to stand trial in Louisiana with a possible prison

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[69] *Leading medical groups file amicus brief in* Dobbs v. Jackson, AM. MED. ASSOC. (Sep. 21, 2021), https://www.ama-assn.org/press-center/ama-press-releases/leading-medical-groups-file-amicus-brief-dobbs-v-jackson [perma.cc/ESW9-LVV9].

[70] Access Independent Health Services, Inc. v. Wrigley, 16 N.W.3d 902, 907, 910 (N.D. 2025).

[71] Brief of Medical Students for Choice as Amicus Curiae in Support of Plaintiffs-Appellees at 5, Access Independent Health Services, Inc. v. Wrigley, 16 N.W.3d 902 (N.D. 2025) (No. 20240291).

[72] Plaintiffs' Original Petition for Declaratory Judgment and Application for Permanent Injunction, *supra* note 1, at 6.

sentence.[73] If the court rules that Louisiana can convict a New York physician under its own state statute, then abortion prescriptions and abortion access will decline even more as an attempt for physicians to limit their criminal liability.

Even beyond the risk of prosecution, physicians who provide abortion care may face legal investigation and regulatory scrutiny. In Indiana, the state's attorney general announced an investigation into Dr. Bernard, an abortion provider who treated a 10-year-old rape victim, alleging that she failed to report suspected child abuse, despite evidence indicating she reported the child abuse within the required reporting window.[74] Nevertheless, the investigation proceeded, involving scrutiny of patient records.[75] This action by the state's attorney general illustrates how the prospect of legal investigation may deter both physicians from providing care, due to the possibility of in depth investigation, and patients from seeking abortion care due to privacy concerns.

As demonstrated in Ms. Zurawski's case, physicians' fear of harsh criminal penalties has led pregnant people to face avoidable illness, permanent injury, and in some cases, death.[76] In a similar case, Josseli Barnica, a 28-year-old mother, suffered an inevitable miscarriage, but her doctors did not speed up the delivery or abort the fetus to prevent infection because of the risk of criminal liability.[77] As a result, Barnica died of sepsis two days after delivering the miscarried baby.[78] This experience is common in states with strict abortion bans.

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[73] Westwood, *supra* note 55.

[74] Kiely Westhoff, *Indiana's attorney general wants a state board to discipline a doctor who provided abortion services to a 10-year-old. Her attorney says it's to 'intimidate' providers*, CNN (Dec. 8, 2022, at 20:34), https://www.cnn.com/2022/12/01/us/indiana-abortion-doctor-attorney-general/index.html [https://perma.cc/J87D-7S29]; Stacy Weiner, *In 2022, Caitlin Bernard, MD, became a lightning rod in the abortion debate. Here's why she keeps fighting,* ASSOC. OF AM. MED. COLLEGES (July 3, 2024), https://www.aamc.org/news/2022-caitlin-bernard-md-became-lightning-rod-abortion-debate-heres-why-she-keeps-fighting [https://perma.cc/4GY2-EPE3].

[75] Kiely Westhoff, *Indiana's attorney general wants a state board to discipline a doctor who provided abortion services to a 10-year-old. Her attorney says it's to 'intimidate' providers*, CNN (Dec. 8, 2022, at 20:34), https://www.cnn.com/2022/12/01/us/indiana-abortion-doctor-attorney-general/index.html [https://perma.cc/J87D-7S29].

[76] *See* Plaintiffs' Original Petition for Declaratory Judgment and Application for Permanent Injunction, *supra* note 1, at 4–19.

[77] Rachel Yavinsky & Mark Mather, *Abortion Bans Linked to Sharp Rise in Sepsis, Infant Death, and Pregnancy-Associated Death, New Research Shows,* PRB (Aug. 7, 2025), https://www.prb.org/news/abortion-bans-linked-to-sharp-rise-in-sepsis-infant-death-and-maternal-mortality-new-research-shows/ [https://perma.cc/7AA8-YKDN]; Cassandra Jaramillo & Kavitha Surana, *A Woman Died After Being Told It Would Be a "Crime" to Intervene in Her Miscarriage at a Texas Hospital,* PROPUBLICA (Oct. 30, 2024, at 5:00), https://www.propublica.org/article/josseli-barnica-death-miscarriage-texas-abortion-ban [https://perma.cc/QG74-WT2Y].

[78] Yavinsky & Mather, *supra* note 77.

Criminalization also disproportionately harms and kills vulnerable populations in the United States including Black and Indigenous people and people of lower socio-economic status.[79] Black women are more likely to live in states with abortion bans or restrictions; because these women tend to have more limited financial resources and transportation options, they are less able to travel out of state for an abortion.[80] Black women are less likely to experience timely prenatal care, which is critical for people with higher risk pregnancies like themselves, and abortion restrictive states furthers this risk because strict policies may cause people to start prenatal care later in pregnancy.[81] Additionally, Black women face a disproportionate risk of severe morbidity and mortality from postpartum hemorrhage and other pregnancy-related mortality.[82] Similarly, infant mortality rates increased by 5.6% after the abortion ban, with Black infants suffering mortality rates as high as 11% compared to 5% for white infants.[83] Additionally, state-level abortion restrictions were associated with disproportionately higher rates of adverse birth outcomes for Black individuals.[84] Even after being forced to carry a pregnancy to term, Black women face harsh stereotypes either labeling them as bad mothers who do not take care of their children or not spending enough time with them.[85] Women criminalized for their own miscarriages, stillbirths, or infant death disproportionately includes women with lower incomes, Black women, and women living in southern states that have subsequently banned or greatly restricted abortion access.[86] In states where abortion is banned, maternal mortality for Black women is 234% higher than white maternal mortality.[87]

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[79] Brief of Experts, Researchers, & Advocates Opposing the Criminalization of People Who Have Abortions as Amici Curiae in Support of Respondents at 35–36, Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022) (No. 19-1392); HUM. RTS. & GENDER JUST. CLINIC, *Criminalization and Punishment for Abortion, Stillbirth, Miscarriage, and Adverse Pregnancy Outcomes,* CUNY SCH. OF LAW (Sep. 12, 2023), https://www.law.cuny.edu/academics/clinical-programs/hrgj/projects/report-u-s-criminalization-of-abortion-and-pregnancy-outcomes [https://perma.cc/NUH9-ZP4H].

[80] Latoya Hill, Samantha Artiga, Usha Ranji, Ivette Gomez & Nambi Ndugga, *What are the Implications of the Dobbs Ruling for Racial Disparities?*, KFF (Apr. 24, 2024), https://www.kff.org/womens-health-policy/what-are-the-implications-of-the-dobbs-ruling-for-racial-disparities/ [https://perma.cc/LF4X-CGXA].

[81] Hill et al., *supra* note 80.

[82] *Id.*; Cynthia Gyami-Bannerman, Sindhu K. Srinivas, Jason D. Wright, Dena Goffman, Zainab Siddiq, Mary E. D'Alton & Alexander M. Friedman, *Postpartum hemorrhage outcomes and race*, 219 AM. J. OF OBSTETRICS & GYNECOLOGY (2018).

[83] Yavinsky & Mather, *supra* note 77.

[84] *Id.*

[85] Kaeli C. Johnson, Sarah A. Alkhatib, Nolan Kline & Stacey B. Griner, *The Criminalization of Abortion in America: The Insidious Effect on Black Women,* BCPHR https://bcphr.org/82-article-johnson/ [https://perma.cc/QD4F-8BLA].

[86] Johnson et al., *supra* note 85.

[87] *Maternal Mortality in the United States After Abortion Bans*, GENDER EQUITY POL'Y

III. INTERNATIONAL MODELS

If the United States abandons the policy of criminalizing abortions, then, as seen in other countries, health outcomes may improve. Because of increasing recognition of abortion as a public health issue instead of as a criminal offense, several countries have started the path towards decriminalizing abortion in different ways including full decriminalization or using gestational limits rather than penal codes.[88] These frameworks underscore a fundamental principle absent from the United States' post-*Dobbs* landscape: physicians can ensure patient safety and compliance more effectively under medical governance than under threat of prosecution.[89]

A. The United Kingdom

The United Kingdom implemented the Abortion Act of 1967 ("the Act"), which did not decriminalize abortion outright but instead established statutory defenses allowing physicians to perform abortions under specified medical conditions.[90] Prior to enactment of the Act,

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INST. 3 (Apr. 2025), https://thegepi.org/maternal-mortality-abortion-bans/ [perma.cc/E2TY-YKGT].

[88] *See* James et al., *supra* note 20.

[89] SINGH ET AL., *supra* note 60. The report by SINGH ET AL. found:

> The more restrictive the legal setting, the higher the proportion of abortions that are least safe— ranging from less than 1% in the least-restrictive countries to 31% in the most-restrictive countries. Unsafe abortions occur overwhelmingly in developing regions, where countries that highly restrict abortion are concentrated. But even where abortion is broadly legal, inadequate provision of affordable services can limit access to safe services . . . In legally restrictive settings, by comparison, seeking either an induced abortion or care afterward can mean running the risk of arrest. Indeed, the available data show that the majority of women prosecuted for the crime of abortion are brought to the attention of authorities by the health facility personnel they turned to for care.

Id. at 5, 30.

[90] Abortion Act 1967, 1967 c. 87 (U.K.). The Act asserts: "Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith—

> (a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or
> (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
> (c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or

abortion in the United Kingdom was largely governed by the Offences Against the Person Act which criminally penalized those receiving and those providing abortions.[91] The Act was enacted to carve out defined medical exceptions within this criminal framework. Compared to the United States' broad exceptions, like "in a physician's reasonable medical judgment, the manner of treatment required by that subsection would create a greater risk of . . . substantial impairment of a major bodily function of the pregnant female," the Act's language is less ambiguous.[92] The Act provides that "a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners" form a good faith opinion that the pregnancy meets one of the enumerated statutory criteria.[93] Rather than establishing an exception, the language in the United Kingdom provides scenarios in which an abortion is allowed, making it clearer for physicians to interpret and obey, allowing them more discretion when two physicians are implicated. Thus, physicians who perform abortions after following the statutory procedures can be confident that they will face no criminal penalty. By having a better statutory guidance, physicians will feel less fearful of providing abortions in the United Kingdom than in the United States.[94]

The Act had positive health outcomes for English women as well. In the first decade after enactment, maternal deaths due to abortion dropped from 25% to 7% while the number of recorded deaths due to abortion declined from 160 to 9.[95] In the United States, there was an 8% increase, 59 total, in pregnancy-associated deaths after *Dobbs.*[96] Comparing an abortion supportive state (California) to an anti-abortion state (Texas), a disproportionate share of maternal deaths take place in Texas—Texas's maternal mortality rate was 155% higher than California's in 2023.[97] Infant mortality in states where abortion is banned showed an increase in 5.6%, resulting in an estimated 478 additional deaths, with 384 of them occurring in Texas.[98] Thus, a less vaguely written statute which provides

> (d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Id.

[91] Offences against the Person Act, 1861 c. 100 (U.K.).

[92] TEX. HEALTH & SAFETY CODE ANN. §§ 170A.002–.004.

[93] Abortion Act 1967, 1967 c. 87 (U.K.).

[94] Lilly et al., *supra* note 51 (describing *hesitant medicine* where providers feel a tension between their own legal protection and the well-being of their patients, making them hesitant to provide necessary abortion care).

[95] Diane Munday, Colin Francome & Wendy Savage, *Twenty one years of legal abortion*, 298 BR. MED. J. 1231, 1232 (1989).

[96] Yavinsky & Mather, *supra* note 77.

[97] *Maternal Mortality in the United States After Abortion Bans, supra* note 87.

[98] *Two New Studies Provide Broadest Evidence to Date of Unequal Impacts of Abortion*

clearer guidance on situations where there is permissible abortions can improve health outcomes, especially if implemented federally.

B. Canada

Canada provides full decriminalization of abortion. In *R v. Morgentaler* (1988), the Supreme Court of Canada ruled that the abortion provision in the Criminal Code, which had previously criminalized abortion under certain circumstances, was unconstitutional because it violated women's rights to liberty and security of the person.[99] Parliament retained the authority to enact a new abortion law but chose not to do so, resulting in the complete removal of abortion from the Criminal Code.[100] Chief Justice Brian Dickson wrote that the provision was unconstitutional because "forcing a woman by threat of criminal sanction, to carry a fetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body and thus a violation of security of the person."[101] In an attempt to re-criminalize abortion, a bill that put the criminal penalty on the physician was introduced, but the Senate narrowly voted against it reasoning that the legislation would deter physicians from performing these procedures and therefore would be an impediment to timely access to safe abortion.[102] As a result, abortion in Canada has since been regulated exclusively as a matter of healthcare rather than criminal law.[103] Decriminalization of abortion in Canada means that abortion services are not subject to the changing political and societal climates.[104]

Maternal mortality rates dropped from 8.2 to 4.4 out of 100,000 live births just five years after *R v. Morgentaler*.[105] Canada has one of the

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Bans, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH (Feb. 13, 2025), https://publichealth.jhu.edu/2025/two-new-studies-provide-broadest-evidence-to-date-of-unequal-impacts-of-abortion-bans [https://perma.cc/VLL5-N6ZU].

[99] R v. Morgentaler, [1988] 1 SCR 30, 32–34.

[100] Joanna N. Erdman, *Constitutionalizing Abortion Rights in Canada,* 49 OTTAWA L. REV. 225, 247 (2018).

[101] Margaret Burnett, *A History of Abortion in Canada: The Quest for Women's Reproductive Rights,* 41 J. OF OBSTETRICS & GYNAECOLOGY CANADA S293, S294 (2019).

[102] *Id.*

[103] *Abortion in Canada*, GOV. OF CANADA (Oct. 11, 2024), https://www.canada.ca/en/public-health/services/sexual-health/abortion-canada.html [https://perma.cc/4KER-3A5M].

[104] Clare Szalay Timbo & Andrea Rodriguez, *Decriminalizing Abortion: A Journey Towards Access and Equity,* ACTION CANADA FOR SEXUAL HEALTH & RTS. (Dec. 6, 2023), https://canwach.ca/article/decriminalizing-abortion-a-journey-towards-access-and-equity/ [https://perma.cc/Q93Y-STVF].

[105] Beverley Chalmers & Shi Wu Wen, *Perinatal Care in Canada,* 4 BMC WOMEN'S HEALTH (2004).

lowest rates of maternal mortality rate in the world.[106] Full decriminalization of abortion can similarly lead to increased health outcomes in the United States if it were to be implemented.

C. France

In 2024, France took an unprecedented step of enshrining abortion access in its Constitution. Abortion had been decriminalized since 1975 and subsequent legislation increasingly expanded abortion rights until adding it to its constitution.[107] Further, abortion service expenses, like other medical procedures, are reimbursed by the national health care system.[108] By reimbursing abortions, France decreases access issues and inequitable effects that the United States face. Black women in the United States are more likely to be covered by Medicaid, the U.S.'s public insurance for lower income individuals or people with disabilities.[109] However, because of the Hyde Amendment, abortion services are not covered by Medicaid and public insurance, which means Black women will be more likely to resort to unsafe abortion practices or be forced to carry their pregnancies to term.[110] When placing abortion rights into the constitution, France "made a commitment to make women's freedom to have an abortion irreversible," insulating the right from ordinary legislative reversal, shifting political majorities, and changes to the country's judicial makeup.[111] France's approach is similar to the United States' post-*Roe* and pre-*Dobbs*, but France's approach made the right more explicit.

The primary advantages of liberalizing abortion in 1975 were the

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[106] *Id.*; *Canada Leads the Way: Fewer Abortions, Reduced Maternal Mortality*, MED. UNIV. VIENNA, https://muvs.org/en/topics/termination-of-pregnancy/canada-leads-the-way-fewer-abortions-reduced-maternal-mortality-en/ [https://perma.cc/6M3P-F82Y] (last visited Mar. 27, 2026).

[107] James et al., *supra* note 20.

[108] Eleanor Beardsley, *France makes history by enshrining abortion rights in its constitution,* NPR (Mar. 4, 2024, at 5:06 ET), https://www.npr.org/2024/03/04/1235217454/france-abortion-rights-constitution [https://perma.cc/V8BN-5RCW]; Amélie Beauchemin & Louise Boulet, *Impact of a Constitutionally Recognized Right to Abortion Analysis of the French Case,* VÖLKERRECHTBLOG (Feb. 4, 2024), https://voelkerrechtsblog.org/impact-of-a-constitutionally-recognized-right-to-abortion/ [https://perma.cc/K6BJ-ESYS] (discussing the amendment to France's Constitution which now states "[t]he law determines the conditions under which the freedom guaranteed to women to have recourse to a voluntary interruption of pregnancy is exercised").

[109] Liza Fuentes, *Inequity in US Abortion Rights and Access: The End of Roe is Deepening Existing Divides,* GUTTMACHER (Jan. 17, 2023), https://www.guttmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-roe-deepening-existing-divides [https://perma.cc/33NJ-ZEA5].

[110] *Id.*

[111] Beardsley, *supra* note 108.

reduction of homemade abortions, decrease in the resulting infections and renal complications that followed, and decrease in trips to foreign countries.[112] In the United States, as access to legal abortion increased after *Roe,* morbidity and mortality from illegal abortions similarly declined by a factor of 8.[113] Just like the other countries, more liberal abortion policies that expanded access to abortion care while limiting criminal punishment have shown that health outcomes can increase.

IV. RECOMMENDATIONS.

This Note finds five potential ways in which the United States could reform its federal legislative framework governing abortion. These tools can be used in combination or individually to reduce provider hesitation due to criminalization and increase equitable abortion access. Each tool generally falls into one of two categories: (1) clarifications for physicians to reduce physician hesitation in borderline cases, and (2) substantive changes to abortion law itself. Nationwide reform would require Congressional action and would likely face significant resistance from states through legislative opposition and judicial challenges asserting states' rights. Nonetheless, these obstacles demonstrate the need for long-term federal solutions to ensure consistent, evidence-based standards of reproductive healthcare across the country.

A. Clarification for Physicians.

One way to regulate abortion that would reduce hesitant medicine and lead to better patient outcomes would be to provide clearer legal standards to abortion-providing physicians. One way to achieve this would be to have physician-lawyers exclusively draft abortion legislation. Another way to provide clarity would be to have healthcare agencies oversee abortion-related activities instead of criminal prosecutors. Approaches focused on clarifying statutory language and shifting enforcement toward healthcare regulators may also be the most politically feasible. Unlike proposals that require sweeping constitutional change or nationwide legislative reform, these measures could be implemented incrementally at the state level while still reducing some of the uncertainty that currently discourages physicians from providing necessary care.

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[112] J.H. Soutoul & M.A. Lagroua-Weill-Hallé, *Problems of Implementation and Consequences of the 1975 Provisional Law to Liberalize Abortion in France,* 16 INT. J GYNECOLOGY & OBSTETRICS 505, 506–07 (1979).
[113] Lisa H. Harris & Daniel Grossman, *Complications of Unsafe and Self-Managed Abortion*, 382 THE NEW ENGLAND J. MEDICINE 1029, 1030 (2020).

1. Physician-lawyers exclusively draft abortion legislation.

One tool would be for physician-lawyers to exclusively draft abortion legislation.[114] By grounding statutory language in established clinical standards rather than indeterminate legal phrases, physician-lawyer–drafted legislation could narrow the uncertainty clinicians face when determining whether a pregnancy complication falls within a statutory exception, reducing the interpretive guesswork at the margins and mitigating some physician hesitation. This tool requires the assumption that physician-lawyers would be able to draft legislation that could reduce not only physician hesitation when providing abortions, but also the harmful effects of such hesitation.

This approach therefore suffers potential interpretation issues. No matter who drafts the legislation, the law is open to interpretation and risk-averse physicians may not be willing to take the chance of a criminal penalty when they instead could be sued for malpractice or a civil penalty. Moreover, because criminal liability would still attach to retrospective assessments of clinical judgment, this approach does not fully resolve all the issues affecting more equitable and safe access to abortion care nationwide. The door is left open to TRAP law enactment, state-law legislative drafting, and administrative enforcement variation. Despite this drawback, such a solution potentially could have helped Ms. Zurawski, and those like her, access the abortions they need.

2. Healthcare agencies oversee abortion-related actions.

Another approach would be to have healthcare agencies, rather than prosecutors, oversee all abortion-related actions. This approach is modeled after how the government enforces HIPAA violations: healthcare agencies would oversee these actions by investigating complaints, conducting compliance reviews, and performing education and outreach.[115] Shifting oversight of abortion care from prosecutors to

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[114] *See* Allison Grady, *Assessing Physician Legislators,* 7 AM. MED. ASSOC. J. ETHICS 828, 829–31 (2005) (sharing how physician-congressmen have used their unique skillset and background to introduce and support legislation); Neda Ashtari, Justin Abbasi & Elizabeth Barnert, *Perspectives of California Legislators on Institutional Barriers and Facilitators to Non-Partisan Research Evidence Use in State Health Policymaking,* 39 J. GENERAL INTERNAL MED. 1704, 1709–11 (2023) (supporting the idea of legislators having access to more evidence to inform their decisions); Lars Noah, *Medicine's Epistemology: Mapping the Haphazard Diffusion of Knowledge in the Biomedical Community,* 44 ARIZ. L. REV. 373, 465 (2002) ("[E]vidence-based medicine has gone largely unnoticed outside of the health care community, even though it may offer important insights for other decisionmakers.").

[115] *See HIPAA violations & enforcement,* AM. MED. ASSOC., https://www.ama-assn.org/practice-management/hipaa/hipaa-violations-enforcement [https://perma.cc/J7DQ-S5GD] (last visited May 14, 2026).

healthcare agencies would fundamentally reorient abortion regulation away from punishment and toward professional accountability. These agencies would mainly civilize all penalties resulting in fines on a tiered basis of severity of the violation.[116] Although states could still retain criminal penalties for egregious violations, the primary regulatory authority would rest with healthcare agencies rather than criminal prosecutors.

This method could lead to a less politicized version of abortion law wherein health care professionals use their medical expertise to assess each situation in terms of the applicable health care standards. For instance, under this approach, physicians might evaluate whether a pregnancy complication constitutes a "medical emergency" through established clinical guidelines rather than through criminal statutes enforced by non-medical actors. Furthermore, healthcare agencies could investigate complaints, conduct audits, and impose proportionate civil penalties where appropriate, while also providing guidance and education to clinicians. By anchoring such determinations in professional standards of care, this model shifts decision-making from the political sphere to the medical one to better reflect the clinical nature of abortion-related care.

B. Substantively Changing Abortion Law.

The next suggestion to regulate abortion in the United States is to substantively change the law. This approach could include lightening criminal penalties for providing an abortion, returning to the law as it was under *Roe* and before *Dobbs,* or completely decriminalizing abortion in the United States.

1. Lighten criminal penalties related to abortion.

Another tool that could serve as a response to the clarification tools and combat physicians' disincentive to avoid providing abortions in ambiguous legislation, would be for the United States to lighten the criminal penalties related to abortion.[117] Because the threat of severe criminal liability can deter physicians from exercising medical judgment in time-sensitive situations, reducing or eliminating criminal sanctions could help ensure that clinical decisions are guided by patient health rather than fear of prosecution. While such reforms would not resolve all legal ambiguities, they could mitigate the chilling effect that criminal penalties

[116] *See id.*

[117] SINGH ET AL., *supra* note 60, at 17 ("Rather than decriminalize abortion in cases of rape, some countries lighten the penalties involved. . . . Bolivia, Ecuador, Iraq and Jordan consider it an 'extenuating' or 'mitigating' circumstance (*i.e.*, still illegal, but subject to reduced sentences or fines) if an abortion is needed to protect a woman's or her family's honor.").

impose on medical practice and promote more timely and medically appropriate care.[118]

2. Return to a post-*Roe*, pre-*Dobbs* framework.

The next possibility would be to return to a post-*Roe*, pre-*Dobbs* world. Returning to the pre-*Dobbs* framework would likely reinstate a uniform baseline of abortion access nationwide, reducing interstate disparities, and eliminating the patchwork of criminal bans that currently drive physician hesitation.[119] By restoring constitutional protection for pre-viability abortion, this framework would also limit states' ability to impose criminal penalties that deter clinicians from exercising medical judgment in emergent cases. However, this approach would not fully resolve access barriers, as states could continue to deploy civil and administrative regulations, like TRAP laws.[120] These regulatory strategies often survived judicial review under *Casey's* "undue burden" standard and allowed states to restrict access without formally banning abortion.[121] As a result, restoring the pre-Dobbs framework would likely resolve the most severe criminalization concerns while leaving substantial barriers to access intact.

While it does not solve all problems, returning to pre-*Dobbs* is a good start in a politically divided nation. Anti-abortion activists would get to limit abortion access through civil and administrative penalties, while abortion rights activists would be able to get abortion access, at least for a limited time within the pregnancy, in any state. Considering that the *Dobbs*

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[118] Lilly et al., *supra* note 51; Brief of Amici Curiae Am. College of Obstetricians and Gynecologists, Am. Med. Assoc., Am. Acad. of Family Physicians, Am. Acad. of Nursing, Am. Acad. of Pediatrics, Am. Assoc. of Public Health Physicians, et al. in Support of Respondents at 16–17, Dobbs v. Jackson Women's. Health Organization, 597 U.S. 215 (2022) (No. 19-1392) (asserting that 19.9% of delayed abortions are due to not knowing where to find abortion services); Brief of Abortion Care Network Bixby Center for Global Reproductive Health, Med. Students for Choice, Nat. Abortion Federation, Physicians for Reproductive Health & Planned Parenthood Federation of America Inc. as Amici Curiae in Support of Respondents at 21–33, Dobbs v. Jackson Women's. Health Organization, 597 U.S. 215 (2022) (No. 19-1392) (including physician testimonials describing how patients would have to travel hours to get to an abortion clinic which is impractical and hazardous to health); Brief of Experts, Researchers, and Advocates Opposing the Criminalization of People who have Abortions as Amici Curiae in Support of Respondents at 29, Dobbs v. Jackson Women's. Health Organization, 597 U.S. 215 (2022) (No. 19-1392) (describing how the fear of prosecution leads to people avoiding seeking prenatal care).

[119] *See* briefs cited *supra* note 118.

[120] Fuentes, *supra* note 109; Kelly Jones & Anna Bernstein, *The Economic Effects of Abortion Access: A Review of the Evidence,* INST. FOR WOMEN'S POL'Y RSCH., 1, 3 (Jul. 2019).

[121] Caitlin E. Borgmann, *Abortion Exceptionalism and Undue Burden Preemption*, 71 WASH. & LEE L. REV. 1047, 1063–64 (2014).

decision is relatively recent, and it went through a stare decisis analysis to overturn *Roe,* the likelihood of the same Court overturning *Dobbs* is extremely low. Achieving a return to the *Roe* framework would likely require either a change in Supreme Court jurisprudence or the enactment of federal legislation establishing a similar national standard.

Despite its limitations, restoring the pre-*Dobbs* framework could serve as an important interim step toward stabilizing abortion policy nationwide. While it would not eliminate all access barriers, it would reduce legal uncertainty for physicians and patients by reestablishing a constitutional baseline for abortion access. This stability could also create a clearer foundation for future reforms aimed at improving access.

3. Completely decriminalize abortion.

Finally, a more comprehensive approach would remove criminal law from abortion regulation altogether—as seen in Canada's model. This option would be the most progressive, especially as the United States has been moving away from this solution over time. Legislators in the United States could ground reform in substantive due-process and equal-protection rationales, similar to Canada's reasoning that abortion prohibitions violated women's life, liberty, and security.[122] While a substantive due process argument wouldn't be the most convincing in a post-*Lochner* era to the current Court, equal protection and equal citizenship would likely form the strongest arguments for the Court. Mirroring Ginsberg's argument in her response to the *Roe v. Wade* decision, by restricting abortion, women's rights to equal workplace opportunities get severely limited.[123] This system would also require that states can only regulate medical care in ways that are necessary, evidence-based, apolitical, and least restrictive of patient autonomy. The current political landscape shows harsh opposition to abortions and therefore this option is likely not politically feasible. From the Hyde Amendment prohibiting people using federal money for abortion coverage, to the long electoral history of using your abortion stance as a way to secure votes, abortion rights are deeply contested and controversial in the United States. Decriminalizing an action with such a deep history will likely not be politically feasible anytime soon; however, the potential for increased positive health outcomes makes this option worth advocating for in the long run.

[122] R v. Morgentaler, [1988] 1 SCR 30, 32–34.
[123] Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to* Roe v. Wade*,* 63 N. CAROLINA L. REV. 375, 383 (1985).

CONCLUSION

Since *Dobbs* removed *Roe's* guarantee of the right to an abortion, numerous states have made it a felony to provide an abortion except for certain exceptions. As a result, physicians have become fearful of providing an abortion in cases where the exceptions are not clearly met. As depicted in Ms. Zurawski and Ms. Barnica's cases, this physician hesitation can result in permanent damage and even death.

Abortion criminalization in the United States is ineffective at reducing abortion rates and directly harms pregnant people's health. Lawmakers should replace punitive models with public-health regulatory frameworks modeled after international systems that improve safety without criminal penalties. Several possible models could be utilized for the United States, but the models that decriminalize abortion would likely lead to the most positive health outcomes and safe administration of abortion. Together, these realities underscore that reform is not merely a matter of political preference but a public health imperative. Structural change that limits criminalization of abortion is a way to increase health outcomes, protect bodily integrity, and ensure equal citizenship of pregnant individuals.