

# NJWLA REPRODUCTIVE RIGHTS COMMITTEE NEWSLETTER

ISSUE NO.1

October 29, 2024

---

*This newsletter is being provided for informational purposes only and is not intended to serve as legal advice or to be relied upon for any other purpose.*

The purpose and mission of the New Jersey Women Lawyers Association (NJWLA) includes educating its members about issues of importance to all women, promoting a diverse, equitable, and inclusive bar for all women, and advocating for policy initiatives that foster gender equity and reduce persistent barriers to equality, advancement, and personal autonomy. The U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* abolished the national right to reproductive freedom, leaving in its wake a patchwork of state laws that have eliminated, compromised, and/or criminalized reproductive health care in a growing number of states. The adverse consequences of these laws have already been realized by women, their families, and their health care providers throughout the country.

NJWLA passionately believes that all women should be treated equally under the law and should have the fundamental right to reproductive self-determination. This includes the freedom to privately decide whether or when to bear a child, to have guaranteed access to quality, safe reproductive health care, and to make these decisions free from intrusion, coercion, threats of violence or criminal prosecution, or discrimination.

With this goal in mind, the purpose of this newsletter is to educate our members about this rapidly fluctuating area of law, as well as the growing chorus of human rights and civil rights initiatives that are aligned with our commitment to support, promote, and advocate for reproductive justice.

---

**SAVE THE DATE FOR OUR  
2025 RRC PANEL!**

**FEBRUARY 2025**

## How Abortion Bans are Impacting Women's Health ... and Other Unintended Consequences

### ➤ [Abortion Bans Have Led to the Deaths of Pregnant Women.](#)

- It was recently reported that two women have died as a result of post-*Dobbs* abortion bans in their home state of Georgia. The first woman was a 28-year-old medical assistant and mother of a 6-year-old boy, [Amber Thurman](#), who died from an infection that could have been prevented by a routine dilation and curettage procedure (“D+C”). Amber suffered a rare complication after taking an abortifacient in a neighboring state, which then required removal of the remaining fetal tissue in her uterus to prevent infection. Instead of immediately performing the procedure, doctors waited over 20 hours to operate due to a reported fear of “violating” Georgia’s restrictive abortion ban. Due to this delay in care, an infection spread through Amber’s body, her blood pressure sank, and her organs began to fail. By the time doctors finally made the decision to operate, it was too late.
- The second woman, [Candi Miller](#), was a 41-year-old mother of three who died after attempting an abortion at home. Candi had a variety of pre-existing conditions and was warned by her doctors that having another baby could kill her. When she unintentionally became pregnant, Candi had no options under Georgia’s abortion ban, which contained exceptions for life-threatening emergencies, but not for chronic conditions -- including those known to present lethal risks as a pregnancy progresses. Candi told her family that due to current legislation that prevented her from accessing the care that she required, she would navigate her abortion independently. She ordered an abortifacient online, but much like Amber Thurman, it did not expel all of the fetal tissue. Consequently, Candi also required an emergency D+C to prevent sepsis, but because Georgia’s restrictive statute made the procedure a felony in Georgia, with few exceptions, Candi made the decision to stay home. Her teenage son reported that she suffered for days after the infection worsened, moaning and bedridden, until her husband found her unresponsive in bed with her 3-year-old daughter by her side. An autopsy attributed her death to the unexpelled fetal tissue.
- Both of these deaths were entirely preventable, and are a chilling, devastating reminder of how restrictive abortion laws are already threatening, harming, and killing women, with similar results all but certain to be repeated for untold others in Georgia and elsewhere. The Georgia Maternal Mortality Review Committee, tasked with examining pregnancy-related deaths, has only reviewed cases through fall 2022. This type of lag is common in these committees, which are set up in each state, and most others have not even gotten that far.
- Following the 1973 decision in *Roe v. Wade*, which legalized abortion in all states, [maternal mortality rates in women of color were reduced by 30-40% in the first year after Roe](#). Post-*Dobbs*, maternal mortality rates have already increased in states that have passed abortion bans. In Texas, for example, where the Legislature banned abortion care as early as five weeks into pregnancy in September 2021, the overall rate of maternal deaths [increased 56% from 2019 to 2022](#), compared with the 11% nationwide increase during the same time period.
- [It is estimated that](#) worldwide, unsafe abortion results in the loss of the lives of **68,000 women** annually. Also, since safe [abortion care is up to 14 times safer than childbirth](#), forcing women to endure childbirth, particularly for unwanted, high-risk pregnancies, puts them at severe risk.

➤ [Doctors are Performing Unnecessary Medical Procedures in Lieu of Proper Abortion Care.](#)

- Facing extreme abortion bans, physicians and other health care providers have reported that they and their colleagues have resorted to performing (unnecessary) C-sections or hysterectomies on women whose fetuses are stillborn or not viable to protect themselves from civil and criminal allegations that the medically recommended procedures they would otherwise perform were actually “an abortion.” At least one doctor reported being “advised to try multiple interventions to avoid a procedural abortion,” despite those procedural interventions being recognized to constitute “substandard” methods of care, given that it is significantly safer to end a pregnancy by abortion than by C-section or hysterotomy.
- Maternal mortality and medical problems after a C-section are nearly **5 times** that of vaginal births, especially the risks of hemorrhage and sepsis. In addition to carrying a much higher risk for health complications, C-sections can also jeopardize subsequent pregnancies.
- C-sections are not necessary for any sort of abortion management, and yet they are being forced on women to protect doctors and hospitals from genuine threats of legal exposure.
- In sum, pregnant people in states with abortion bans are receiving substandard reproductive healthcare due to their doctors’ fear of legal ramifications. Doctors and other healthcare providers who have taken the Hippocratic Oath to do no harm are now being placed in the untenable situation where they are forced to do just that.

➤ [Access to ALL Women’s Healthcare is Declining in States with Abortion Bans.](#)

- There are reports of [practicing doctors moving out of states with abortion bans](#), reducing access to women’s healthcare for all women in those states.
- One study estimated that between May 2022 and May 2023, [the average distance to the nearest abortion facility increased by nearly 7 times](#) – to 298.9 miles – for 24.3% of American women between the ages of 15 to 44. Outcomes indicate that for many women, driving distances of even 50 or 100 miles can be an insurmountable obstacle to reproductive healthcare.
- The [2024 State Scorecard on Women’s Health and Reproductive Care](#), which is based on 32 measures of healthcare access, quality, and health outcomes, uses the most recent data to assess how well the health care system is working for women in every U.S. state. Eight of the 10 states with the lowest overall health outcomes, and 11 of the 13 states with the highest all-cause mortality rates for women of reproductive age, are states which ban or severely restrict abortion access.
- [The Commonwealth Fund](#) found that of the 24 states where abortion is banned or restricted, 21 have the fewest number of maternity care providers relative to the number of women who might need them. Additionally, the number of applicants to medical residency programs in states with near-total abortion bans declined by [4.2% between 2023 and 2024 \(compared with a 0.6% drop in states where abortion is still protected\)](#). For OB-GYN residency programs, specifically, there was a **6.7% decline in applications for abortion-ban states** versus a **0.4% increase in states where abortion is protected**. This is an ominous development for the women in these states, where providers are already scarce.

➤ **States with Abortion Bans are the *Least* Likely to Offer Support for Financially Struggling Families.**

- “We found that in the states that most severely restrict abortion, the women, children and families that abortion proponents seek to ‘protect’ are the populations that are left behind -- with less access to health care and family social services -- when pregnancy is continued,” said lead researcher [Dr. Nigel Madden](#), a doctor at Beth Israel Deaconess Medical Center in Boston.
- A new study by the *American Journal of Public Health* found that states with the most severe abortion restrictions are also the least likely to support struggling families. Researchers categorized states based on the severity of abortion restrictions passed after the U.S. Supreme Court overturned *Roe v. Wade* in 2022. The team identified 21 states that are the most restrictive in the United States. Of those states, 14 have complete abortion bans with extremely limited exceptions, and 7 ban abortion after 6-18 weeks of gestation.
- The study revealed the following findings about states with the most restrictive abortion bans:
  - None of these states have a mandatory paid family leave policy.
  - These states have lower enrollment in programs like Women, Infants and Children nutrition assistance or Temporary Assistance for Needy Families, because they make it extremely difficult to qualify for assistance. In the most restrictive states, on average, families of 3 need to make less than \$673 per month to qualify for aid, while families in the least restrictive states can make almost twice as much and still qualify – and they receive twice the benefit.
  - These states are less likely to have policies to aid in family planning and avoiding unwanted pregnancies.
  - Only 43% of these states have policies in place that allow pharmacists to prescribe birth control (compared with 82% of states with the least abortion restrictions).

➤ **Criminal Action is Being Taken Against Women Who Have Miscarriages & Abortions.**

- In the year following *Dobbs*, at least 210 women across the U.S. were charged with crimes related to their pregnancies, according to a [report released by the advocacy organization Pregnancy Justice](#). That is the highest number the group – which has been conducting pregnancy-related research since 1973 – has identified over any 12-month period.
- The majority of the cases of criminal charges being brought against women reported in the study came from two states: 104 in Alabama and 68 in Oklahoma, with South Carolina ranking third with 10 reported cases. A common thread in those three states? Since *Dobbs*, they have [all banned or severely restricted abortion](#), and their respective State Supreme Courts have issued opinions recognizing fetuses, embryos, or fertilized eggs as having all rights attendant to personhood that may be construed to subjugate the rights of a pregnant woman.
- The other key finding from the report is that, of the 210 cases, 22 involved women being subjected to criminal prosecution following a pregnancy loss. Post-*Dobbs*, pregnancy loss is viewed with suspicion as the possible result of criminal activity. [Wendy Bach](#), one of the lead researchers on the Pregnancy Justice study, shared that one reported case involved a woman who delivered a stillborn baby at her home about six or seven months into her pregnancy. When the woman went to make funeral arrangements, the funeral home alerted authorities and she was charged with homicide.

➤ [\*\*Dobbs Puts the Right to Contraception and IVF at Risk.\*\*](#)

- The definitions that abortion bans in some states employ, coupled with the claims that certain contraceptives are abortifacients, [are expected to be used to extend the reasoning in Dobbs to restrict access to contraceptives as well.](#) A number of abortion bans define pregnancy as beginning at fertilization, and then go on to define “fetus” and “unborn children” as living persons from the moment of fertilization. If abortion bans establish that personhood exists from the moment of fertilization, preventing a fertilized egg from being implanted could be (and has been) construed as terminating a pregnancy. Consequently, it is reasonable to expect that such definitions will be imported into new legislation that restricts certain contraceptive methods.
- In February 2024, [Alabama’s Supreme Court recognized that frozen embryos have the same legal protections as children.](#) This ruling brought in vitro fertilization (IVF) treatment in Alabama to a screeching halt until the Governor signed legislation in March that attempted to create civil and criminal immunity for IVF providers.
- Eliminating federal abortion protections has real implications for assisted reproductive technology, and especially IVF, in [large part because IVF often requires eliminating \(and terminating\) excess embryos.](#) To enhance the success of IVF, a number of fertilized embryos are often implanted simultaneously with the hope that at least one of them will remain viable. But sometimes, more than one will prove to be viable, and there is a decision to make. If a healthy pregnancy cannot be sustained with multiple embryos, then the selective reduction of embryos may be advisable—which would be considered an “abortion” under these laws.
- The U.S. Supreme Court decision to overturn the right to an abortion without specifying a viability standard opens the door for States to interpret and define when 'life' begins. [Laws that do not specifically exempt IVF, or that include language suggesting that 'life begins at fertilization' pose a real threat to IVF.](#) The potential for personhood laws poses a threat to embryo freezing and disposition, preimplantation genetic testing, and culpability, among other concerns.

➤ [\*\*At Least One Anti-Abortion State Just Classified an Anti-Hemorrhaging Medication for Pregnant Women as a “Controlled Substance”.\*\*](#)

- As of October 1, 2024, Louisiana has classified two drugs used for medical abortions – misoprostol and mifepristone – as *controlled substances*. This is causing panic because one of these drugs, misoprostol, is routinely used to prevent women from bleeding out after giving birth or miscarrying.
- Dr. Jennifer Avegno, Director of the New Orleans Health Department, told NPR that misoprostol is often the first-line medication administered when a woman is either hemorrhaging or at risk of having a severe hemorrhage. It is safe and easy to administer, so most OBs and hospitals have some version of a hemorrhage cart that can be quickly wheeled into the room, ready to go, with easily accessible medications - misoprostol often being the first line.
- According to Dr. Avegno, classifying misoprostol as a controlled substance will have chilling impacts on the safe and evidence-based management of miscarriage, childbirth, and postpartum hemorrhage and the decision to ban these medications lacks scientific and medical merit. Dr. Avegno fears that this will be just another burden on providers, who are already facing restrictive laws in Louisiana that include criminal penalties for doctors found to have provided abortions.
- Limiting access to a drug like misoprostol will surely lead to a rise in deaths from maternal morbidity and mortality from hemorrhage. [The U.S. has the highest rate of maternal mortality of any developed country in the world.](#) How much lower do we want to go?

## Where is Abortion “On the Ballot” in November?

As of October 4, 2024, ten (10) states have confirmed abortion-related state constitutional amendment measures for the 2024 ballot:

State	Current Abortion Limit	Summary of Ballot Measure	Type of Measure	% Vote Needed to Pass
<u>Arizona</u>	15 weeks from LMP (last menstrual period)	<a href="#">Protect abortion</a> up to viability and to protect the life or health of the pregnant person	Citizen Initiated	>50%
<u>Colorado</u>	No gestational limit	<a href="#">Recognize right to abortion</a> and repeal a previous constitutional amendment that prohibited the use of state funds to provide abortion coverage	Citizen Initiated	55%
<u>Florida</u>	6 weeks from LMP	<a href="#">Protect the right to abortion</a> up to viability and when necessary to safeguard a pregnant person's health	Citizen Initiated	60%
<u>Maryland</u>	Fetal viability	<a href="#">Guarantee the right to reproductive freedom</a> , including the ability to prevent, continue, or end one's own pregnancy	Legislatively Referred	>50%
<u>Missouri</u>	Abortion banned	<a href="#">Protect reproductive freedom</a> and ability to make and effectuate decisions around reproductive health, including abortion up to viability	Citizen Initiated	>50%
<u>Montana</u>	Fetal viability	<a href="#">Protect the right to abortion</a> up to viability	Citizen Initiated	>50%
<u>Nebraska</u> <sup>1</sup>	12 weeks LMP	1) <a href="#">Establish a fundamental right to abortion</a> until fetal viability or when needed to protect the life and health of the pregnant person. 2) <a href="#">Amend the constitution</a> to ban abortion in the 2 <sup>nd</sup> and 3 <sup>rd</sup> trimesters, except in medical emergencies or when the pregnancy is a result of rape or incest.	Both Citizen Initiated	Both >50%
<u>Nevada</u> <sup>2</sup>	24 weeks LMP	<a href="#">Establish a fundamental right to abortion</a> until fetal viability or when needed to protect the life and health of the pregnant person.	Citizen Initiated	>50%
<u>New York</u>	Fetal Viability	<a href="#">Amend the constitution's equal rights amendment</a> to include anti-discrimination protections for pregnancy, pregnancy outcomes, as well as reproductive healthcare and autonomy. Amendment backers contend the anti-discrimination protections would bar NY Legislature from enacting abortion restrictions.	Legislatively Referred	>50%
<u>South Dakota</u>	Abortion banned except to "preserve the life of the pregnant female"	<a href="#">Amend the constitution</a> to set the following standards for when the state may regulate abortion: the state may not regulate abortion in the first trimester; in the second trimester, the state may regulate a pregnant woman's decision to have an abortion only in ways reasonably related to the physical health of the pregnant woman; in the third trimester, the state may regulate or prohibit abortion except when abortion is necessary to preserve the life or health of the pregnant woman.	Citizen Initiated	>50%

<sup>1</sup> Because there are two initiatives in Nebraska, the winning initiative must pass 3 bars: 1) greater than 50% of voters on that initiative must vote in favor of that initiative; 2) at least 35% of the total voters in the election must vote in favor of that initiative; and 3) the initiative must receive a greater number of votes than the competing initiative.

<sup>2</sup> Ballot measures must pass in two successive general elections in Nevada. If this measure makes it to the ballot and passes, it will have to appear again in the next general election before the proposed amendment is added to the Nevada constitution.

Legislatively-referred measures protecting reproductive freedom in [Hawaii](#) and [Washington](#), and measures curtailing the right to abortion in [Missouri](#) and [Oklahoma](#) did not receive a vote before the states' regular legislative sessions ended. However, these measures may be legislatively approved to appear on the ballot during a special session.

Legislatively-referred measures protecting reproductive freedom failed in the [Maine](#) and [New Hampshire](#) legislatures. Legislatively-referred ballot measures that would establish a constitutional right to reproductive freedom have also been introduced in [Iowa](#) and [Virginia](#), but in these states, legislatively-referred measures must be approved in two separate legislative sessions before they can appear on the ballot. Therefore, these measures would not be on the November 2024 ballot even if they were approved during this legislative session.

---

## Helpful Resources ...

- [Updated ballot tracker](#)
- [Interactive Map: US Abortion Policies and Access After Roe](#)
- [Center for Reproductive Rights](#)
- [More information on Arizona and Montana's November ballots](#)
- <https://jessica.substack.com/>