

## Review Article

# Parallel Crisis by State Lines: The Unintended Consequences of Dobbs in Health Care

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## Abstract

In June 2022, the Supreme Court issued its landmark Dobbs decision which upended the constitutional right to abortion and left states to decide whether women would have access to reproductive health. This has led to a complicated legal landscape with effectively 50 reproductive rights policies operating across the country, some of which are outdated, being litigated, or conflict with other laws. This legal uncertainty has dangerous implications on health care practice and has resulted in a parallel crisis for women's health care. In addition to losing access to reproductive health care, many women are being denied access to otherwise available medications and treatments, such as methotrexate, out of fear that the drugs' off-label abortifacient purposes will subject health care providers to legal consequences. This fear has led organizations to adopt risk-averse policies which restrict access to other health care needs and halted comprehensive women's health care training for medical students and trainees. States, professional organizations, providers, and health care systems must advocate for and take action to prevent this parallel crisis in access.

## Introduction

In the aftermath of this summer's U.S. Supreme Court reproductive rights decision in *Dobbs vs. Jackson Women's Health Organization*, a perfect storm of legal uncertainty in many states, confusion, misinformation and fear has created upstream barriers to a host of unrelated and medically necessary health care services for women [1]. As the decision largely left the authority to make specific abortion laws up to each of the 50 states, we are effectively left with 50 different reproductive rights policies, some of which are vague or conflict with other existing state laws. This unexpected phenomenon has resulted in a parallel crisis for women's health care nationally. A crisis where the extent or existence of reproductive rights depends on the laws of the state in which a woman resides, and one where women are being denied otherwise available medications and treatments in an often-misguided attempt by risk averse health professionals or organizations to avoid legal or professional consequences.

While the results of the 2022 midterm elections served to protect reproductive rights in some states, those with the most restrictive abortion laws remain battlegrounds not just for a women's right to choose, but also for a women's ability to access basic health care needs. This further exacerbates the divide in health care access by state lines that were prompted by the Dobbs decision.

Health services most often being denied include medication or treatments for which abortive reactions are a potential side effect or complication; these medications can serve as abortifacients when

used off-label. Examples of treatments that have been denied include front line medication for conditions such as arthritis, osteoporosis and lupus that are also used to terminate intrauterine pregnancies [2]. The American Medical Association warned that certain state laws and resulting confusion has put patients' access to medically necessary medication or treatments at risk and can impede the professional judgment of physicians and pharmacists [2]. These presumably unintended consequences are rooted in confusion related to vague or conflicting state abortion law that, in some cases, criminalize health professionals for inadvertently providing abortion services.

Arizona serves as an example of a state with pending litigation whose legal uncertainty has had unintended health care consequences. In Arizona, a standing 19<sup>th</sup> century pre-statehood law nearly bans all abortions from the time of conception and includes prison sentences for abortion providers. This archaic law conflicts with a 2021 state law that permits abortion until 15 weeks of pregnancy. While this state law conflict is currently being litigated in the courts, the legal machinations and nuances are largely lost on already intimidated health professionals who have become unwitting gatekeepers to accessing legal, necessary, and recommended care for conditions that often have nothing to do with reproduction.

Legal ambiguity has led to practice-based ambiguity in some physician's offices, hospitals, and pharmacies, resulting in a chilling effect on necessary and lifesaving health care. These state laws can also impact comprehensive women's health training for medical students and trainees, thereby impacting the delivery of care [3]. It is estimated that over two-thirds of U.S. medical students will have their medical training disrupted by state laws restricting education on abortion techniques. These unintended consequences leave women in impacted states living through a parallel crisis limiting their access to health care, reproductive and otherwise.

## Brief Legal Overview

In June 2022, the United States Supreme Court issued a 6 to 3 decision in the *Dobbs vs. Jackson Women's Health Organization* case holding that the United States Constitution does not confer a

**Citation:** Reddy S, Saxon M, Verdecias N, Biviji R, Don R, Kizer E, et al. Parallel Crisis by State Lines: The Unintended Consequences of Dobbs in Health Care. *Clin Med.* 2023; 5(1): 1051.

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**Publisher Name:** Medtext Publications LLC

**Manuscript compiled:** Mar 01<sup>st</sup>, 2023

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constitutional right to abortion [1]. This landmark decision reversed *Roe vs. Wade* and over 50 years of precedent by returning the authority to regulate abortions to the states. As a result, states have been equipped with the power to ban abortion care in their state, often leaving women without reproductive care.

State efforts to chip away at reproductive health are not new. Well before the *Dobbs* decision, several states enacted “trigger laws” expressing their readiness to ban abortion in the event that the Supreme Court overturned *Roe vs. Wade* [4]. Trigger laws are laws which are unenforceable at the time they are passed but are “triggered” when a specific event or condition occurs, in this case a court decision.

In the aftermath of *Dobbs*, there has been considerable legal uncertainty regarding current state law and its implications on the health care delivery system. As both trigger laws as well as new laws took effect, litigation has erupted across the country [5]. In at least 14 states, the validity of state bans has been challenged [5]. The majority of these lawsuits center on the vagueness of the laws which creates ambiguity surrounding the potential prosecution of providers. Table 1 demonstrates the legal landscape of several states where litigation has halted health care services. This list is not exhaustive and merely demonstrates how widespread the issue is.

In addition to restrictive state laws, pharmacies have been warned by the Health and Human Services Office of Human Rights that they may violate federal discrimination laws if they refuse to dispense medications used in abortions under certain circumstances [14].

The American legal system is not designed to rapidly respond to urgent health care matters. Lawsuits are time-consuming and resource-intensive even when considered on emergency bases. As injunctions are imposed and lifted, the health care delivery system has to respond overnight with changing policies to protect providers and patients. This confusion about the current abortion laws in each state may lead health care providers to take risk-adverse actions to protect their licenses and freedom and prevent patients from getting the health services they need.

### Impact on Access to Care

In some cases, the uncertainty of the legal landscape has effectively halted most abortion care and placed our country’s most vulnerable women at risk. With the possibility of extreme criminal and civil penalties, provider fear and confusion can divert attention from patient care.

Ambiguous anti-abortion laws in some states are putting patients at risk by delaying access or denying medically necessary medications [2]. Five drugs which may be used to terminate a pregnancy have come

**Table 1:** Legal landscape of abortion laws.

State	Description of Law	Status of Litigation
Arizona	Two conflicting laws are in effect. One law from 1864 bans all abortions with exceptions for the mother’s health and the other law bans abortion after 15-weeks.	The Court of Appeals blocked enforcement of the 1864 law pending appeal and the 15-week ban is currently in effect. A separate lawsuit has been filed to block the 1864 law [6,7].
Georgia	Bans abortion after six weeks of pregnancy.	In November, a lower court judge found the law unconstitutional. However, the Supreme Court reinstated the law temporarily while the appeal is considered [8,9].
Indiana	The law allows abortions until 22 weeks.	The law is blocked temporarily as a lawsuit progresses with the Indiana Supreme Court hearing oral arguments in January [10].
Ohio	Two conflicting laws are on the books. One bans abortions after 6 weeks and the other bans abortions after 22 weeks.	A court granted a preliminary injunction against the 6-week ban as litigation progresses [11].
South Carolina	Two conflicting laws are on the books. One bans abortions after 6 weeks and the other bans abortions after 22 weeks.	The South Carolina Supreme Court temporarily blocked the 6-week ban [12].
Wisconsin	Bans abortions with no exceptions for rape or incest and criminalizes providers who perform the procedure.	A lawsuit has been filed by the Governor and Attorney General to block the law [13].

under scrutiny, including: methotrexate, mifepristone, misoprostol, anticonvulsants, and Accutane [15].

Examples of this fear and confusion leading to the refusal of medication and care include:

- In Louisiana, Walgreens denied misoprostol to a patient even after calling the physician to verify that the misoprostol was prescribed for an IUD insertion [16].
- A patient in Texas who takes methotrexate for her severe Crohn’s disease was switched to an immunosuppressant with more side effects out of fear that she would experience delays and complications at the pharmacy when attempting to refill her methotrexate prescription due to its abortion-inducing effect [17].
- A patient in Illinois who takes methotrexate to treat her psoriasis tried three times and jumped through several administrative hoops before she was able to pick up her prescription [17].
- A pediatric patient in Arizona who was denied the drug methotrexate, which is critical in managing her debilitating rheumatoid arthritis and osteoporosis [18].
- A 55-year-old patient in Texas was denied misoprostol by her pharmacy for an upcoming surgery to treat her menopausal bleeding because the pharmacists could not verify that she was not having an abortion [19].

As cases are litigated, risk-averse providers may limit access to medically necessary medications. In addition to the aforementioned examples, barriers in accessing medications for conditions ranging from arthritis to acne are in place where patients are now required to provide extra documentation to pharmacies to prove their intent of use [20]. For example, large pharmacy chains in the United States have employed practices to protect the providers from prosecution [21].

Examples of defensive practices impacting the delivery and practice of care:

- Requiring diagnosis verification and directing pharmacists to use their professional judgment about legality when dispensing a prescription in any state where abortion is illegal [21]. However, even if prescribers and patients verify that the prescription is for another purpose, pharmacists may still use their professional judgment and refuse to dispense the drug [21].

- Hospitals are taking steps and convening committees to try to put safeguards in place. An Arizona hospital has altered their electronic health records to collect information that could act as support that an abortion was necessary to prevent a patient's death. Similarly, some hospitals are also considering having a lawyer on call to aid doctors in making this case-by-case determination [22,23].
- Physicians in Wisconsin declined to treat a woman who arrived at the hospital with a stillborn fetus that required a procedure to induce delivery, not abortion, out of fear of Wisconsin's 1849 abortion ban [22].

With confusion surrounding the parameters of various state abortion laws, the grey areas have become a priority topic in some healthcare settings. Healthcare team members, providers, and hospital leadership are being forced to think like lawyers instead of providers of care. Hospitals are obligated to devise new protocols that define the specifics of what constitutes every type of emergency or condition that would not subject them to legal repercussion for providing a potentially life-saving abortion or treatment resulting in an unrelated abortive outcome. The American College of Obstetricians and Gynecologists warned that it is "impossible" and "dangerous" to attempt to create a finite list of conditions that are legally eligible for an abortion to guide physicians [22]. This warning is largely due to the wide variety and complexity in medicine, differences in patient's symptoms or conditions, and the fact that patients can deteriorate rapidly which can potentially lead to higher mortality rates [22]. In fact, in some states like Florida and Georgia, maternal mortality is estimated to increase by 29% following abortion bans [24].

## Impact on Training

The ban also has implications for medical education and training and will affect the knowledge, skills, and quality of care for women provided by future physicians [3]. It is estimated that 70.77% of US medical students will have their training restricted by state laws [3]. Among the nearly 130,000 medical students, 51.11% attend universities in states with highly restrictive abortion law, 19.25% attend universities in states with mixed restrictions, and only 29.3% attend universities in states with no or few restrictions to train within the full array of gynecological procedures that are essential components of women's health care [3]. The same restrictions impact continuing medical education meant to advance training and clinical practice for over 57,000 physicians practicing Obstetrics and Gynecology. Women rely on trained physicians to provide safe reproductive and maternal health options [25]. Denying otherwise standard reproductive health training to physicians can impact a vast array of physical health issues (e.g., hypertension, maternal mortality), mental health issues (e.g., anxiety, depression, PTSD), infant/child health outcomes, and increased poverty and delays in prenatal care for those with limited resources [26]. Without adequately trained health professionals, impact on reproductive health will be felt for years to come.

## Conclusion

The downstream effects of restrictive state abortion laws have led to dangerous and unnecessary consequences in how health care is delivered and accessed. This unintended ripple effect through the health care delivery system unfairly disadvantages women living in these states in ways the original state laws may have never intended and as such, can result in long term and even deadly health outcomes based purely on geography. While the legal wrangling over many of these laws continues, it is the duty of states, professional organizations,

providers, and health care systems to advocate for and take action to prevent this parallel crisis in access, protect patients, provide evidence-based care, and prevent more women from becoming political fodder in the war over their bodies.

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