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2020 Legislative Wrap-up

State Policy Report:
An overview of the state landscape

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Current Context

In the past 12 months, political forces have strengthened and shifted in the United States' political arena, continuing to reshape the legal and legislative landscape of reproductive rights in the country and its territories.

In the first half of 2020, the country faced a global coronavirus pandemic, massive job loss, and a nationwide racial reckoning spurred by police brutality against and the racist murder of Black Americans, including George Floyd, Breonna Taylor, Ahmaud Arbery, and Rayshard Brooks. As state legislatures attempted to mitigate the economic impact of the pandemic and address racial disparities, reproductive health and rights were not on the forefront of legislative agendas as they had been in previous years.

While fewer reproductive rights measures were introduced in 2020 than in 2019, several states did pass both expansive and restrictive measures. Like in previous years, restrictive bills outnumbered legislation to increase access to abortion in 2020. This year has also been critical for reproductive rights in the courts. In June, the Supreme Court ruled in the Center's case, *June Medical Services v. Russo*, striking down a Louisiana abortion restriction virtually identical to a Texas law the Court had deemed unconstitutional in 2016.

The second half of 2020 brought the loss of Justice Ruth Bader Ginsberg, a firm champion of reproductive rights on the Court. The country subsequently witnessed the rushed confirmation of Justice Amy Coney Barrett. The straight party line vote of her confirmation emphasized the politicization of the judicial appointment process and the entrenched partisan divide in our government, as the Senate moved to firmly shift the political balance of our highest court. With Justice Barrett's confirmation, the specter of a potential overturn of *Roe v. Wade* grows ever clearer although Roe need not fall in order to be effectively gutted, and anti-abortion state legislatures have continued to attack abortion access.

> *All data within this report is valid as of December 10, 2020.*

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The election of Joseph Biden and Kamala Harris will bring a new administration that recognizes reproductive rights and health and should start to undo some of the damage done by the Trump-Pence administration's anti-reproductive rights policies. Additionally, elections brought some new state leadership, as voters elected increased numbers of women, people of color, and LGBTQ people to represent them. Some of these new representatives espouse platforms that celebrate reproductive health, rights, and justice. Control of the U.S. Senate will be determined by Georgia's runoff election in January. In the House of Representatives, Democrats and supporters of reproductive rights and health will continue to hold a majority.

As the year draws to a close, both supporters and opponents of reproductive rights are girding themselves for the uncertainty of 2021, when legislative sessions will continue to be marked by responses to the pandemic, the economic recession, and the struggle for racial justice. While federal legislative threats against the legal right to abortion may decrease, hostile state legislatures will continue their unceasing attacks on access to reproductive health services, underscoring the importance of safeguarding access to care at the state and local levels.

This report provides an overview of the most recent state legislative and policy efforts restricting access to abortion, the proactive approaches state policymakers are employing to strengthen access to reproductive health care, the impact of COVID-19 on access to abortion, and developments the Supreme Court of the United States.

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Legislative Sessions

By mid-November, seven states (MA, MI, NJ, NY, OH, PA, and RI) and the District of Columbia were actively in session this year. Thirty-nine legislatures (AK, AL, AR, AZ, CA, CO, CT, DE, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MN, MO, MS, NC, NE, NH, NM, OK, OR, SC, SD, TN, UT, VA, VT, WA, WI, WV, and WY) had adjourned their regular sessions. Four state legislatures (MT, NV, ND, and TX) did not meet in 2020.



Supporters at the rally for protecting abortion on March 4, 2020. The rally took place outside the U.S. Supreme Court during oral arguments in June Medical Services v. Russo. In June, the Court issued its ruling declaring a Louisiana abortion restriction unconstitutional.

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Restrictive Bills Enacted

These measures aim to impede access to abortion care. Some directly challenge *Roe v. Wade*, primarily to set the stage for a case to make its way to the Supreme Court to challenge existing precedent on abortion rights.

TRIGGER BANS

These legislative bans on abortion are not active while *Roe v. Wade* is in place, but are meant to be "triggered" and make abortion illegal if the decision is overturned. However, these laws have never been tested. These laws stigmatize abortion, contributing to a climate of confusion, fear, and shame around access to care.

In March, Idaho's Governor Brad Little signed a trigger ban that would make performing or participating in an abortion a felony if *Roe v. Wade* were overturned. SB 1385 makes exceptions only in cases of life endangerment.

In the same month, Utah's Governor Gary Herbert signed SB 174, which would prohibit abortion if *Roe v. Wade* were overturned, except in cases of rape or incest, when a pregnant person's life or physical health is severely threatened, or when the fetus has a lethal fetal anomaly.

REASON BANS

Reason bans prohibit abortion if sought for a particular reason, for example on account of the race, sex, or disability of the fetus. Reason bans inflict harm by promoting stigma around abortions and stereotypes of Black and brown communities, Asian Americans, and people with disabilities. They harm patient access to quality care by infringing on the doctor-patient relationship and entering a family's private decision-making, while also failing to support the populations such bans purport to protect.

In July, Mississippi's Governor Tate Reeves signed HB 1295, which prohibits abortion on the basis of the fetus's race, sex, or diagnosis (or potential diagnosis) of a fetal disability. The law includes exceptions only for the life or physical health of the pregnant person. It also requires providers to report whether the fetus's race or sex had been detected or a disability diagnosed before the abortion, and that the patient confirmed they were not having an abortion for the prohibited reasons. The measure took immediate effect.

METHOD BANS

When states ban a method of abortion care that is preferred by the medical community, pregnant people are forced to undergo additional, invasive, and unnecessary procedures to obtain abortion care. These measures harm patients and prevent doctors from exercising their best medical judgment.

In August, Nebraska's Governor Pete Rickets signed LB 814, which bans the use of dilation and evacuation (D&E), except in cases in which the pregnant person's life is endangered or the person is at risk of serious physical impairment. D&E procedures are the most common standard of care for abortion past fourteen weeks. The law took effect in November.

FETAL TISSUE INTERMENT OR CREMATION MANDATES

Regulations that require interment or cremation of fetal tissue further stigmatize abortion and pregnancy loss and may contradict the wishes of pregnant people. These requirements make it harder and more expensive for abortion providers, who already comply with standard protocols for handling and disposing of tissue, to provide care to their patients.

After the U.S. Supreme Court upheld Indiana's law relating to the disposal of fetal remains in 2019, Indiana's legislature used this session to make that law even more burdensome. In March, Indiana's Governor Eric Holcomb signed SB 299, which amends the requirements for disposing of fetal tissue,

adding a biased counseling requirement that forces health care providers to inform patients that tissue can be disposed of by the patient or the clinic. It also imposes other administrative requirements, including requiring that a contract between the facility and the funeral home be made available during state inspections. The law took effect in July.

In the same month, Utah's Governor Gary Herbert signed SB 67, requiring the interment or cremation of tissue from an abortion or miscarriage. The law requires providers to inform the patient that tissue can be disposed of by the patient or the clinic, and took effect in May.

SO-CALLED "BORN ALIVE" AND PERSONHOOD

"Born alive" measures are fetal rights laws that extend criminal laws to cover "unlawful death" or other harm done to a fetus in the uterus or to an infant that exists outside of the pregnant person. Laws that mandate care of a fetus "born alive" in the process of an abortion procedure are unnecessary, as doctors already have an obligation to provide appropriate medical care. They are designed to confuse and scare the public, and are part of anti-abortion politicians' strategy to ban all abortions.

In March, West Virginia's Governor Jim Justice signed HB 4007, requiring physicians to preserve the "life" of a fetus "delivered alive" after an abortion. The law took effect in May.

Personhood measures extend the legal definition of a human being to include a fetus. In June, Puerto Rico's Governor Wanda Vázquez signed a new civil code into law, recognizing a fetus's "condition as a person," and that it is "considered born for all the effects that are favorable to him or her." While the code also states "the rights recognized to the nasciturus [unborn child] are subject to it being born alive and in no way undermine the constitutional rights of the pregnant woman to make decisions about her pregnancy," the code could be interpreted to restrict abortion access.

WAITING PERIODS

These measures require that a specified amount of time, generally between 24 to 48 hours, lapse between pre-abortion counseling and the abortion itself. In states in which the counseling must be provided in person and the pregnant person must then wait a specified time period, the pregnant person is effectively required to make multiple trips to the health care provider in order to obtain an abortion. This constitutes a hardship for many pregnant people, particularly those who cannot arrange for repeated time off from work or caretaking duties, and for those who live far from an abortion provider.

In June, an Iowa state district court temporarily blocked a measure which would have imposed a 24-hour waiting period before a pregnant person can obtain an abortion, except in a severe or life-threatening medical emergency. Signed by Governor Kim Reynolds, HF 594 would require patients to make two trips for an abortion, one for in-person counseling and one for the abortion procedure. It would have taken effect in July, but remains blocked while litigation continues. In 2018, the Supreme Court of Iowa held that Iowa's 72-hour waiting period requirement was unconstitutional and struck it down.

HARASSMENT OF PROVIDERS

These measures impose unnecessary standards that are intended to be difficult, if not impossible, for providers to meet. They make it challenging for providers to remain in practice, making abortion services harder to obtain and therefore endangering patients.

In May, Oklahoma's Governor Kevin Stitt signed SB 1728, which discourages the provision of abortion care by allowing wrongful death claims to be filed against abortion providers. These providers can be sued for not complying with abortion counseling, informed consent, waiting period, and parental consent laws. SB 1728 also allows providers to be sued for "fraudulently" inducing a pregnant person to obtain an abortion, providing misleading information in response to a question, or violating any provision of the law.

The law took effect in November.

PARENTAL CONSENT FOR ABORTION

These measures require young people to disclose their pregnancy to and obtain consent for an abortion from parents or other adults, even if against their personal judgment and even if it puts them at risk. If a young person wants to pursue an alternative consent avenue such as a judicial bypass, they have to navigate administrative barriers which tremendously hinder access, causing unnecessary delays for time-sensitive procedures.

In June, Florida joined 21 other states in requiring young people under the age of 18 to obtain parental consent when seeking abortion care. Governor Ron DeSantis signed SB 404, which necessitates that a young person obtain notarized consent from a parent or guardian and a copy of government-issued identification before they can get an abortion. Alternatively, the young person can go through Florida's judicial bypass process, which entails going to the local county court and undergoing a hearing to convince a judge of the level of "maturity" deemed necessary to have an abortion without parental consent. The consent requirement is waived in the case of a medical emergency. This law took effect in July. Florida already has an existing parental notification requirement that requires that parents or guardians be notified before young people have abortions, and this consent requirement is even more restrictive.

MANDATORY REPORTING

Inaccurately framed as attempts to protect young people, mandatory reporting measures require reports to be made of suspected child abuse while, in fact, intruding on the provider-patient relationship and casting providers in a negative light by suggesting, without evidence, that they fail to ensure their patients' health and safety.

Signed into law in June by Louisiana's Governor John Bel Edwards, LA SB 433 provides that a mandatory reporter of child abuse has cause to suspect abuse if a young person under the age of thirteen is pregnant, with no provisions noting the young person's agency or consent to sex. This measure took effect in June.

SO-CALLED "CRISIS PREGNANCY CENTER" FUNDING

Federally funded "crisis pregnancy centers" (CPCs) are fake clinics that aim to deceive and dissuade pregnant people from obtaining abortions. Across the country, CPCs are working to build political support and obtain public funding through legislation introduced at the state level.

In March, Idaho's Governor Brad Little signed SB 1249, creating fundraising license plates for Choose Life Idaho, to be made available in January 2021. Proceeds from these purchases will be used to fund "alternative-to-abortion" programs, including CPCs.

"This law was one dangerous part of an abortion ban bill Tennessee politicians pushed through in the dead of night, as our state was grappling with the beginnings of a pandemic and a reckoning with racial injustice in our communities."

- Ashley Coffield, CEO of Planned Parenthood of Tennessee and North Mississippi

TENNESSEE PASSED THE MOST COMPREHENSIVE ATTACK ON ABORTION ACCESS IN 2020

In June, Tennessee passed HB 2263, this year's most comprehensive attack on abortion access, which includes gestational and reason bans, medically inaccurate biased counseling, and several other measures. It includes a series of gestational bans starting as early as six weeks of pregnancy, before many people know they are pregnant, and a so-called trigger provision meant to automatically enact bans against abortion at eight, 10, 12, 15, 18, 20, 21, 22, 23, and 24 weeks of gestation if the earlier gestational bans are struck down. The measure bans abortion for reasons of the fetus's race, sex, or diagnosis (or potential diagnosis) of Down syndrome, providing an exception in cases where the pregnant person's life or major bodily functions are endangered. It requires the physician or technician to display and describe fetal ultrasounds to the pregnant person, and to make any cardiac activity audible. It also eliminates a state requirement that legal counsel be appointed to minors utilizing judicial bypass of the state's parental involvement law.

The bill also requires both counseling on medication abortion "reversal" and that abortion "reversal" information be posted in patient rooms. Since 2015, politicians across the country have passed similar laws trying to force providers to promote the medically inaccurate idea that a medication abortion can be "reversed"—a discredited, unscientific claim promoted by anti-abortion advocates. Similar abortion "reversal" laws have been opposed by leading medical groups, including the American Medical Association and the American College of Obstetricians and Gynecologists (ACOG). In 2019, courts blocked similar laws in North Dakota and Oklahoma. No one benefits from forcing providers to share misinformation with patients, who rely on their providers to help them make informed medical decisions.

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"Our patients depend on us for honest, evidence-based care. We're glad we aren't forced to deceive them with quackery – at least not yet."

- Rebecca Terrell, Executive Director at Memphis Center for Reproductive Health (CHOICES)

According to the Tennessee bill, providers who do not comply could face criminal prosecution for a Class E felony, punishable by one to six years in prison. Facilities could also face a fine of $10,000 per day for providing abortions while failing to display the required misleading signage.

The Center, along with the American Civil Liberties Union (ACLU), Planned Parenthood Federation of America, and the ACLU of Tennessee, filed a lawsuit hours after the Tennessee bill was passed in late June, and were able to secure a temporary restraining order blocking the bans within an hour of the bill's signing. In July, a federal district court temporarily blocked the provisions that would have prohibited abortion at six weeks after a pregnant person's last menstrual period. In September, the court temporarily blocked enforcement of parts of the law that would have required both medication abortion "reversal" counseling by providers and that abortion "reversal" information be posted in patient rooms. All other provisions of the measure took effect in October.

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Proactive Bills Enacted

These policy efforts are changing the narrative around reproductive health, expanding access to abortion services, and providing open and honest reproductive health care services to communities.

RIGHT TO ABORTION

In March, the District of Columbia amended the District's Human Rights Act of 1977, recognizing the right to abortion and prohibiting prosecution for self-managed abortion, miscarriage, or adverse pregnancy outcomes. DC B 23-0434 also prohibits employment discrimination against health care professionals who participate in abortion or sterilization procedures. This measure went into effect in May.

TRAP LAWS REPEALED IN VIRGINIA

After years of tireless proactive legislative advocacy in Virginia by abortion providers and state advocates, Virginia's Governor Ralph Northam signed the Reproductive Health Protection Act (RHPA) into law in April. The RHPA (HB980/SB733) removed some of the most significant and onerous restrictions on abortion in the commonwealth. It rolled back medically unnecessary restrictions on



"Virginia women deserve access to health care free from interference from politicians. Simply, this bill rolls back restrictions that are not evidence-based and presume that women have an inability to make their own health care decisions. I'm glad to see this bill signed into law."

-House Majority Leader Charniele Herring, RHPA sponsor

"This is about protecting Virginians' health, rights, and basic dignity. Today, we have finally put an end to these medically unnecessary barriers to women's reproductive health care. Politicians should not interfere in women's personal medical decisions, period."

- Virginia State Senator Jennifer McClellan, RHPA sponsor

abortion such as the mandatory 24-hour waiting period, forced ultrasounds, mandatory biased counseling, and restrictions targeting abortion providers (TRAP laws), all aimed at limiting pregnant people's ability to access abortion care.

The law also expands access by allowing patients to receive abortion care from trained and qualified nurse practitioners (including Certified Nurse Midwives) during their first trimester of pregnancy. The RHPA took effect in July. This is a huge step forward for pregnant people in Virginia and the providers who care for them, who have long endured and persevered under the medically unnecessary restrictions this law has repealed.

COVID-19 Pandemic

In late 2019, a novel coronavirus that was eventually identified as SARS-CoV-2, the virus that causes the disease now known as COVID-19, emerged and began to spread around the world. On March 11, 2020, the World Health Organization declared the outbreak of COVID-19 a global pandemic.

In response to the pandemic, state governments around the country issued a variety of orders focused on containing the spread of the virus, protecting health care workers, and prioritizing the use of health care resources. While some state government officials worked to ensure continued, timely access to all essential health care, others instead exploited this crisis to advance a decades-old coordinated campaign to ban abortion and permanently shut down abortion care providers. These attacks came despite consensus among leading medical and health organizations, in the United States and globally, that abortion continues to be essential during the COVID-19 crisis and must therefore remain available.

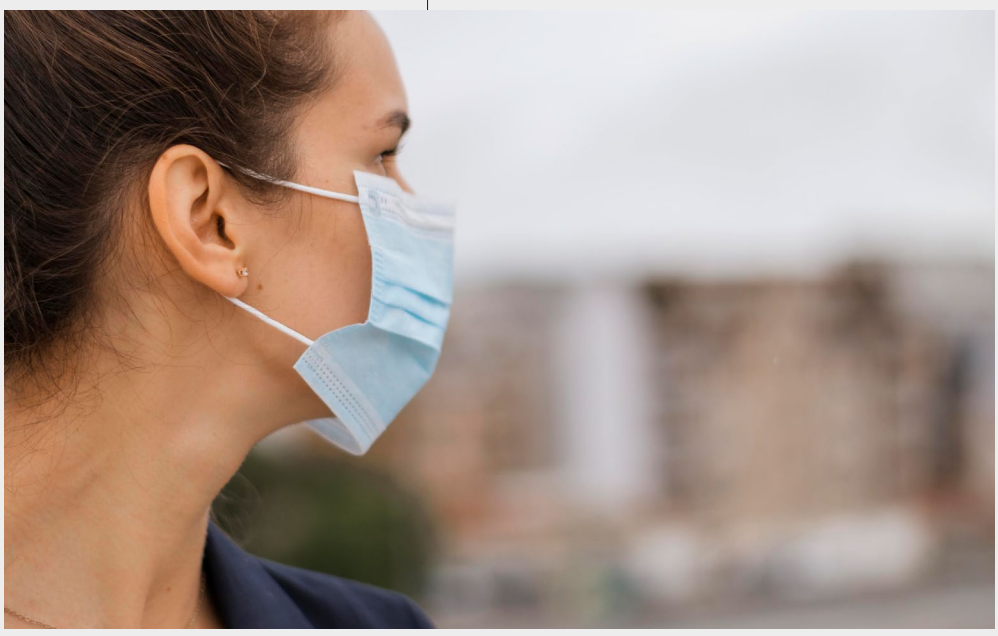
The Society for Maternal-Fetal Medicine, ACOG, and other prominent medical organizations asserted that, "to the extent that hospital systems or ambulatory surgical facilities are categorizing procedures that can be delayed during the COVID-19 pandemic, abortion should not be categorized as such a procedure."

The laws of each state determine which state officials can issue or enforce orders; depending on the state, COVID-19 orders were issued by state governors (i.e. executive orders), state attorneys general (i.e. interpretations of orders), or state departments of health (i.e. health directives, mandates, rules, regulations, and guidance). Written broadly or narrowly, some of these orders were restrictive while others eased restrictions on health care providers. Some restrictive orders, in particular those categorizing health care services as essential and non-essential, were used to single out abortion providers for differential treatment, and those orders were primarily litigated in states in the Southeast and Midwest.

Contrary to public health and medical consensus, some elected officials exploited the COVID-19 pandemic to deny fundamental rights and block access to essential abortion services. These officials attempted to define abortion as "elective," "non-emergency," "nonessential," or "non-urgent" for the purpose of prohibiting access to care. In response, the Center for Reproductive Rights, ACLU, and Planned Parenthood Federation of America filed lawsuits in multiple states to protect abortion access. To date, lawsuits have been filed in response to attempts to restrict abortion in Alabama, Arkansas, Iowa, Louisiana, Ohio, Oklahoma, Tennessee, Texas, and West Virginia.

Travel restrictions and quarantine mandates have further impeded access to abortion care for individuals living in American Samoa, Guam, and the Northern Mariana Islands, who would otherwise travel to seek abortion care elsewhere.

In contrast to the measures taken to restrict abortion, some states attempted to protect or expand access to care. California, Massachusetts, Michigan, Minnesota, Montana, New Mexico, and Washington explicitly allowed continued reproductive health care, including abortion care, in their COVID-19-related orders or in guidance clarifying the orders. Led by California's Attorney General Xavier Becerra, 21 state attorneys general from Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Virginia sent a letter to the U.S. Food & Drug Administration urging it to relax its enforcement of the Risk Evaluation and Mitigation Strategy (REMS) designation of abortion, which regulates access to Mifepristone, or medication abortion. The letter requested that pregnant people be able to access Mifepristone through telehealth, or the remote diagnosis and treatment of patients by means of telecommunications technology. Reduced in-person contact, they argued, would help prevent the spread of COVID-19.



The consensus among leading medical and health organizations in the United States and globally is that abortion continues to be essential during the COVID-19 crisis and must remain available.

Some states issued orders that eased specific health care practice requirements; these orders hold potential for allowing abortion care providers to practice more expansively. Telemedicine orders, for example, expanded access to telemedicine by suspending certain administrative or regulatory requirements. Their specific impact depends on a number of factors including if the state has a ban on telemedicine access for abortion care, requirements for in-person biased counseling or in-person follow up, or medication abortion restrictions. Eighteen states prohibit the use of telemedicine for medication abortion, requiring patients to visit the prescribing provider in person to obtain the pills.

In order to expand health care capacity, some states issued temporary scope of practice expansion orders, allowing health care providers licensed in other states to provide care in the state issuing the order. This means out-of-state health care providers with active, unencumbered licenses or certificates of qualifications are able to provide services across state lines. Related orders may also expand the ability of advanced practice clinicians (such as physician assistants or nurse practitioners) to provide services beyond their general scope of practice in the state. Some orders also suspend specific health care licensing requirements to increase the number of medical providers and health care workers available during the pandemic. These orders allow, for example, retired medical professionals to return to practice, or future providers who are still in training to provide care.

Where abortion care services are treated similarly to other health care services, each of these types of expansive orders can potentially increase access to abortion care.

Ballot Initiatives

Twenty-six states allow for statewide ballot initiatives, which can be initiated by the legislature or by the people through signature gathering. In Louisiana, voters approved a ballot measure adding anti-abortion language to the state constitution by a wide margin. While abortion is still legal in Louisiana, this amendment makes it easier for the state to defend abortion restrictions in state court.

In better news, Colorado voters rejected a ballot measure seeking to ban abortion after 22 weeks in almost all circumstances. Additionally, Washington state passed a proactive ballot measure to mandate comprehensive and inclusive sex education in public schools.

June Medical Services v. Russo

The U.S. Supreme Court decided *June Medical Services v. Russo* on June 29, 2020, invalidating a Louisiana abortion restriction that would have shuttered most of the state's remaining clinics. In doing so, it preserved its landmark opinion from four years earlier that struck down an identical Texas restriction. In the prior Texas case, *Whole Woman's Health v. Hellerstedt ("WWH")*, a five-justice majority emphatically rejected restrictions that impose burdens on access to abortion that outweigh their benefits. Five justices in *June Medical Services ("JMS")* agreed that *WWH* controlled and rendered the Louisiana law unconstitutional, while one of them, Chief Justice Roberts, disagreed about the application of the legal test that courts should use to evaluate abortion restrictions going forward.

In *JMS*, Justice Breyer wrote a four-justice plurality opinion striking down the Louisiana law while fully upholding *WWH* and its strong "undue burden" legal standard which considers a law's lack of benefits alongside the burdens it

> "This case is similar to, nearly identical with, *Whole Woman's Health*. And the law must consequently reach a similar conclusion. Act 620 is unconstitutional. The Court of Appeals' judgment is erroneous. It is Reversed."
>
> *- Justice Stephen Breyer*

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imposes on abortion access, as originally established in *Planned Parenthood v. Casey*. Chief Justice Roberts voted to strike down the law under stare decisis, or precedent, since *WWH* had rejected an identical Texas statute and he agreed it controlled the result. However, Roberts would have adopted an undue burden test that does not balance benefits against burdens and instead considers whether an abortion restriction has a legitimate purpose and is reasonably related to that goal as a threshold requirement, before consideration of the restriction's burdens.

Renee Bracey Sherman, Executive Director of We Testify, emcees the rally outside the U.S. Supreme Court and leads the crowd in chants and cheers of support for Hope Medical Group for Women, a plaintiff in June Medical Services.



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Our win was critical because it saves the few clinics remaining in Louisiana. ...Today, there are only three [abortion clinics] left to serve the roughly 1 million women of reproductive age in Louisiana. This is because of the seemingly endless laws designed to shut down clinics."

- Kathaleen Pittman, administrator of the Shreveport clinic Hope Medical Group for Women

In short:

- *WWH* requires a court to assess a law's benefits, if any, along with its burdens; when burdens outweigh benefits, the law is unconstitutional.
- In *JMS*, four justices voted to fully uphold *WWH* and its controlling undue burden legal standard that considers benefits alongside burdens.
- Chief Justice Roberts provided a fifth vote agreeing that *WWH* controls, but criticized the plurality's affirmation of the undue burden standard; he would not balance benefits against burdens.
- All five justices agreed that the law imposed unconstitutional burdens on abortion access in Louisiana.

At best, Chief Justice Roberts's concurrence is confusing; he maintains he adheres to the undue burden test, but also departs from the clear standard on how to apply the test outlined in *WWH*. Even though *WWH* and its legal standard are still binding law, there is currently a circuit split in how courts have treated Roberts' concurrence. States wanting to advance abortion restrictions have seized on Roberts' concurrence to claim that a law's lack of benefits cannot be weighed against its burdens. The United States Court of Appeals for the Eighth Circuit, for example, used Roberts's concurrence to reinstate all four of Arkansas's challenged anti-abortion laws that the federal district court had found unduly burdensome. The four laws include a D&E abortion ban, a requirement that doctors obtain the complete medical history of a patient's pregnancy before performing an abortion, a requirement that doctors inform local police if a patient under the age of 17 has an abortion, and a fetal tissue disposal mandate requiring both "parents" of an aborted embryo or fetus be notified of and consent to the method of disposing of the tissue. This last requirement of notification of a partner was explicitly invalidated by Casey, which found a requirement for married women to notify their husbands before obtaining an abortion unduly burdensome.

Meanwhile, the Fifth Circuit ruled in favor of the Center's clients, upholding a lower court's ruling striking down Texas's D&E abortion ban. The panel rejected Texas's argument that Roberts's concurrence controls, maintaining that because the concurrence cannot be reconciled with the plurality, *WWH*'s articulation of the undue burden test remains controlling and, therefore, a balancing of an abortion restriction's burdens and benefits is required.

Kathaleen Pittman, administrator of the Shreveport clinic Hope Medical Group for Women, the plaintiff in *JMS*, published an opinion piece in USA Today highlighting how dire the status quo remains for abortion access in Louisiana.

The Confirmation of Amy Coney Barrett

On September 18, 2020, the country lost a champion of equal justice under the law with the passing of Justice Ruth Bader Ginsburg. Justice Ginsburg understood the critical value of legal rights in uprooting oppressive structures that exacerbate societal inequalities and fought to dismantle sex discrimination. She understood that people must have control over their fertility and receive fair treatment during pregnancy if they are to achieve gender equality.



Justice Ginsburg's passing came on the cusp of a presidential election, in the middle of a pandemic and economic crisis, and amid a national moral reckoning over the nation's past and present manifestations of racial oppression. Just eight days after Justice Ginsburg's death, President Trump nominated Judge Amy Coney Barrett to fill the vacancy created and serve as

an Associate Justice to the U.S. Supreme Court. The Republican-controlled Senate confirmed her nomination in only a month.

The evidence in Judge Barrett's record suggests that she stands all too ready to undermine basic liberty rights. Her judicial opinions in two abortion rights cases suggest upending the Supreme Court's established law on both the substantive right to abortion and the procedural safeguards that allow the right to be protected. In one case, she suggests that the government may prohibit a pregnant person from having an abortion if it does not like their reasons for doing so. In another case, she suggests revisiting the long-standing ability of abortion providers to sue to block restrictions before they go into effect. Justice Barrett's hostility to the right to abortion revealed in these opinions is presaged in her writings, speeches, and statements, in which she unequivocally subscribes to a conservative judicial philosophy of originalism that rejects constitutional protections for abortion rights. She does not recognize *Roe v. Wade* and its extensive progeny over almost a half century as super precedents deserving of stare decisis.

Alarmingly, before she was on the bench, Justice Barrett advocated publicly for "the right to life from fertilization," which has legal implications for abortion care, contraception, and assisted reproduction. In 2006, she signed onto a newspaper advertisement that called to end *Roe v. Wade* and restore laws restricting abortion, and in 2012, she signed onto a letter that called contraception and sterilization "gravely immoral and unjust" and grossly mischaracterized emergency contraception as an "abortion-inducing drug." This public advocacy raises momentous doubt about her ability to fairly rule in cases involving reproductive health care and rights. Regardless, we will continue to fight to uphold Justice Ginsburg's legacy against the attempts to turn back five decades of advancement for reproductive rights.

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Statement from Nancy Northup, President and CEO of the Center for Reproductive Rights:

"We go to court because it matters to people's lives. We don't bring cases to vindicate abstract legal theories; we bring cases to ensure that the promise of the Constitution is realized for everyone. The Supreme Court has long recognized the fundamental truth that control over reproductive decisions critically impacts '[t]he ability of women to participate equally in the economic and social life of the Nation.' [W]hen access to reproductive health care is burdened, when clinics are closed, and when health care is unaffordable, the consequences fall hardest on Black, Indigenous and people of color, rural communities, and people living in poverty. This is why we go to court. Daunting challenges are ahead but we are undaunted. What we will not do is give up. Ever."

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From left to right, at the U.S. Supreme Court. Kathaleen Pittman, Administrator of Hope Medical Group for Women, and, from the Center for Reproductive Rights, Julie Rikelman, Litigation Director and lead counsel in June Medical, Nancy Northup, President and CEO, and T.J. Tu, Senior Counsel.

Looking Ahead

In reflecting on the tumultuous year we have all experienced and in the face of continuing uncertainty, we at the Center, along with our clients and partners, will work tirelessly until a pregnant person's bodily autonomy and agency over their reproductive life are guaranteed in law and protected from partisan politics. We will advocate for these principles in legislative bodies, articulate these values in the public sector, and go to court to strike down laws that limit our precious and bedrock freedoms.

This is our promise.

The Center is proud to support independent abortion providers and state advocates around the country.

For more information or technical assistance, or to sign up for our monthly e-newsletter on proactive policy developments and resources, please contact the Center's State Policy & Advocacy team at **statepolicy@reprorights.org**.

For all press inquiries, please contact **center.press@reprorights.org**.