Beyond Abortion: The Consequences of Overturning Roe

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We recognize that not all people with the capacity for pregnancy identify as women and that the gender binary itself contributes to systems of discrimination and control. We use the terms “women” and “pregnant people/persons” in recognition of the fact that all people are entitled to dignity, equality and fairness regardless of gender identity, capacity for pregnancy, or stage of pregnancy.

Shall we join the men?
Racist and Eugenic Origins

- Horatio Storer, MD
- 1857 Physician’s Crusade Against Abortion
- 1860 Ghostwritten letter from AMA President to all governors
- The child is alive at the moment of conception (rather than quickening)
- 1865 AMA essay: upon [white women’s] loins depends the future of the nation
- AMA Committee on Criminal Abortion: sterilization of undesirables
White Supremacy and the Antiabortion Movement

“Lots of our people join [the anti-abortion movement]….It’s part of our Holy War for the pure Aryan race” (Tim Bishop, Aryan Nations representative)

“More than ten million white babies have been murdered through Jewish-engineered legalized abortion since 1973 here in America and more than a million per year are being slaughtered this way… abortion makes money for Jews” (Tom Metzger, founder White Aryan Resistance).

Beyond Roe: Central Thesis

Not just about pregnant persons or those seeking to end their pregnancy

- Nearly all women
- Anyone who becomes pregnant
- Those who have healthy newborns
- Those with pregnancy complications or adverse pregnancy outcomes
- Their families
- The healthcare professionals who care for them
Background Conditions

• The majority of women of reproductive capacity (58%) live in states that are hostile, or extremely hostile to abortion rights (Guttmacher Institute, 2022)

• Legislators signed 108 abortion restrictions into law in 2021

• This will bring suffering in numerous forms, including:
  • Short and long term economic insecurity, including food and housing insecurity
  • Loss of employment and bankruptcy
Background Conditions

• People with the fewest resources seek abortion care at the highest rates
• Half of abortions in the US are sought by those living below the federal poverty level
• ¾ of people seeking abortion care report the inability to afford basic living expenses
Background Conditions

- Structural racism: disproportionate impacts on people of color
- It may perpetuate physical violence from men involved in the pregnancies
- It will cause suffering for those with pregnancies that are initially desired but become undesired for various reasons, as it the case when families learn that the baby they hoped to have has severe anomalies, including those incompatible with life
- *Roe* made treatment available for those needing swift, lifesaving treatment in cases of pregnancy complications such as ectopic pregnancy, hemorrhage in the setting of miscarriage, and severe uterine infection or sepsis in the setting of pre-viability rupture of membranes
Background Conditions

• More than 4 in 5 US pregnancy related deaths are preventable
• Almost 1 in 4 of these deaths were related to a mental health condition including suicide or overdose related to a substance use disorder
• Of 1018 pregnancy-related deaths there were 82 suicides and 29 homicides
• Almost half of maternal deaths were among White persons; but 31% occurred among Black persons, who represent 14% of the US population

• BM Kuehn, Detailed maternal mortality data duggest more than 4 in 5 pregnancy-related deaths in US are preventable (November 15, 2022. JAMA 328(19):1893-1895.)
The Scope of Criminalization pre-Dobbs

- Pregnancy criminalization has more than tripled across the country in recent years to include more than 1,300 cases from 2006 through 2020.
- This is in addition to 413 cases NAPW documented from the 1973 *Roe v. Wade* ruling through 2005 (Paltrow & Flavin, 2013).
- Altogether, this represents more than 1,700 cases of arrests, prosecutions, detentions, or forced medical interventions like cesarean surgeries carried out against pregnant people.
The Scope of Criminalization pre-Dobbs

These cases include actions taken against women who have experienced stillbirths or miscarriages, had abortions, have given birth to healthy babies, or who have substance use disorder.
The Scope of Criminalization pre-Dobbs

These cases include actions taken against women who have fallen down stairs, who have self-managed abortions, have attempted to have an abortion, delayed cesarean section, eaten a poppy seed bagel and failed a drug test, or have not gotten to the hospital quickly enough on the day of delivery.
Carceral Pregnancy

One in 25 women in state prisons and 1 in 33 in federal prisons are pregnant when admitted to prison, according to the Sentencing Project. And once they have their babies? There are very few institutions that offer nursing programs, and not all women maintain custody of their children after birth, even ones who were charged with nonviolent crimes.
Carceral Pregnancy

- There are an estimated 58,000 admissions of pregnant women into jails and prisons every year, and thousands give birth or have other outcomes while still incarcerated. Pregnancy rates among confined youth were similar to those among adults.
- In some state prison systems, miscarriage, premature birth, and cesarean section rates were higher than national rates among the general population.
- Only one-third of prisons and jails had any written policy about breastfeeding or lactation, and even where policies supporting lactation did exist, relatively few women were actually breastfeeding or pumping.
- There are an estimated 8,000 admissions of pregnant women with opioid use disorder (OUD) into prisons and jails each year, but long-term treatment using medication is the exception, not the rule.
- A related (non-PIPS Project) study finds paternal incarceration is also linked to adverse birth outcomes like low birth weight, which are widely known to impact long-term health.
The Color of Justice: Racial and Ethnic Disparity in State Prisons (The Sentencing Project)

- Black Americans are incarcerated in state prisons at nearly 5 times the rate of white Americans.

- Nationally, one in 81 Black adults in the U.S. is serving time in state prison. Wisconsin leads the nation in Black imprisonment rates; one of every 36 Black Wisconsinites is in prison.

- In 12 states, more than half the prison population is Black: Alabama, Delaware, Georgia, Illinois, Louisiana, Maryland, Michigan, Mississippi, New Jersey, North Carolina, South Carolina, and Virginia.

- Seven states maintain a Black/white disparity larger than 9 to 1: California, Connecticut, Iowa, Maine, Minnesota, New Jersey, and Wisconsin.

- Latinx individuals are incarcerated in state prisons at a rate that is 1.3 times the incarceration rate of whites. Ethnic disparities are highest in Massachusetts, which reports an ethnic differential of 4.1:1.
Substance Use Disorder While Pregnant

- Ferguson v The City of Charleston et al
- Angelia Kennedy suffered a stillbirth in South Carolina; charged with homicide by child abuse
- “Did you do everything in your power to ensure that you’d have a healthy baby?”
- 5 year prison sentence
AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

The release and/or subscription of this form in the event of my death or incapacity as a result of any cause, including but not limited to disease, injury, accident, or any other cause, to the following individuals or organizations:

[Space for details]...

I authorize the release of my medical information to the following individuals or organizations for the purpose of my treatment and care:

[Space for details]...

I understand that the information I have provided is true and complete. I understand that the release of this information may be used for my treatment and care. I further understand that I have the right to refuse to sign this form and that my refusal will not affect my treatment or care.

[Signature]

[Date]

[Name]

[Address]

[City, State, Zip]

[Phone]

[Email]

I have read and understand this form and agree to the terms of release as stated.

[Date]

[Name]

[Address]

[City, State, Zip]

[Phone]

[Email]

I have read and understand this form and agree to the terms of release as stated.

[Date]

[Name]

[Address]

[City, State, Zip]

[Phone]

[Email]
Crystal Ferguson v the City of Charleston et al

Five sentence paragraph “Consent for Medical Therapy”: I further consent to the testing for infectious diseases, such as but limited to, syphilis, hepatitis and AIDS, and I further consent to the testing of drugs if deemed advisable by my physician.
BBC video excerpt: Everyman
Substance Use Disorder While Pregnant

The majority of states have punitive rather than supportive legislative environments regarding substance use in pregnancy.

There are at least 40 cases of pregnant women charged in Alabama under a “chemical endangerment” statute originally intended to protect children from the fumes of illicit methamphetamine run by their parents.
ALABAMA WOMEN ARRESTED FOR DOING DRUGS WHILE PREGNANT
The results showed that racial and ethnic disparities in buprenorphine treatment duration increased between 2006 and 2020, particularly during more recent years.

The observed heterogeneity in buprenorphine treatment duration among racial and ethnic groups may reflect disproportionate structural barriers in treatment retention for OUD. Racial and ethnic inequities in social determinants of health, such as access to education, employment, and medical care, could affect substance use treatment initiation, engagement, and outcomes. In addition, drug overdose mortality has recently increased, especially among racial and ethnic minority populations. Closing the racial and ethnic gaps in buprenorphine treatment duration could be a potential approach to reducing opioid overdoses.
Substance Use Disorder While Pregnant

Brooke Shoemaker is among at least 20 women in Alabama since 2006 who suffered miscarriage or stillbirth — then faced the harshest possible criminal charges, with consequences as severe as those for murder, rape or kidnapping.
Substance Use Disorder While Pregnant

Ms. Shoemaker suffered a stillbirth while she had meth in her system and is serving 18 years in an Alabama prison (2020). Shoemaker, a college graduate and mother of four, said she now regrets not taking the stand at her trial.

COURTESY OF THE SHOEMAKER FAMILY
Twenty-three year old Ashley Banks, was arrested in May, 2022 for admitting that she had smoked marijuana on the day that she determined that she was pregnant. She was incarcerated for three months even though she had a high-risk pregnancy with a family history of miscarriage, and was diagnosed with subchorionic hematoma when she began bleeding six weeks after her incarceration began. The state of Alabama did not accept her $10,000 cash bail and two substance use disorder specialists determined that she did not qualify for state addiction services.
Substance Use Disorder While Pregnant

2014-2016 TN Fetal Assault Law (particular focus on pregnancy and substance use) criminalized intentionally, knowingly, or recklessly (no intent needed) caused bodily injury to eggs, embryos, or fetuses as a result of an "unlawful act" or an "unlawful omission"; endorsed by TN Medical Association

Assault charges were brought against at least 124 women under this law. All women were low income. Most were rural, White women who lived in East TN, although the area with the next greatest number of cases was the majority African American, urban city of Memphis in West TN.
Substance Use Disorder While Pregnant

Several women prosecuted under this law had attempted to enroll multiple times in a treatment program but were unable to access treatment centers open to pregnant/postpartum patients. Women were rarely offered treatment when prosecuted; if offered, it frequently came with heavy court fines and punitive stipulations which most women were unable to meet.

Rather than facilitating treatment access, this law resulted in women avoiding medical care for fear of prosecution, disproportionately impacting rural and low-income women who already faced barriers to care.
The First War on Drugs

You want to know what this was really all about. ... The Nixon campaign in 1968, the Nixon White House after that, had two enemies: the antiwar left and black people. ... We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities.

We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.

John Erlichman

Baum J. Legalize it all: How to win the war on drugs. *Harper’s Magazine* April, 2016.
"You can’t win an unwinnable war. DEA knows this, and the agents know this. There’s so much dope leaving Colombia, and there’s so much money. We know we’re not making a difference. The Drug War is a game.... It was a very fun game that we were playing."

José Irizarry

Alternet 11/14/2022
The way Irizarry tells it, dozens of other federal agents, prosecutors, informants and in some cases cartel smugglers themselves were all in on the three-continent joyride known as “Team America” that chose cities for money laundering pick-ups mostly for party purposes or to coincide with Real Madrid soccer or Rafael Nadal tennis matches. That included stops along the way in VIP rooms of Caribbean strip joints, Amsterdam’s red-light district and aboard a Colombian yacht that launched with plenty of booze and more than a dozen prostitutes.

Associated Press 11/14/2022
Deaths of Pregnant Women by Homicide or Suicide: Retrospective Cohort Study

- 2008-2019 CDC National Violent Death Reporting System
- Females 15-44 yo
- 38,417 victims of homicide or suicide
- 10,411 with known pregnancy status
- Homicide Deaths = 3,203 (30.8%)
- Suicide Deaths = 7,208 (69.2%)

Deaths of Pregnant Women by Homicide or Suicide: Retrospective Cohort Study

- Between 2008-2019 68% of pregnant women killed by their partners were murdered with a firearm
- 37.7% Black; 13.4% Hispanic; 56.0% White
- Rates of homicides are associated with state level rates of gun ownership and firearms legislation
- Of 7,208 deaths by suicide:
  - 6.9% Black; 8.0% Hispanic; 85.0% White
  - Having a mental health problem and any substance use significantly more often associated with suicide deaths than homicide deaths
- Intimate partner violence prevalent in both groups: 57.3% homicide deaths vs 37.1% suicide deaths
Attepted Suicide: Bei Bei Shuai

- March 2011: jained 435 days for murder and feticide after a suicide attempt; jained 435 days
- May 2021: released on bail
- The feticide statute under which she was also prosecuted was intended, when enacted in 1979, to cover acts by violent third parties such as abusive boyfriends and drunk drivers.
- 2013: Ms. Shuai pleaded guilty to a misdemeanor charge of reckless endangerment and was released having been sentenced to time served
Attemped Suicide

- 80 groups (ACOG, NAMI, ANA, National Perinatal Assn) filed amicus briefs.
- Fueled by “unborn victims of violence” laws (38 states)
- May 2012 Court of appeals refused to dismiss the case, Ms. Shuai remained in jail
- 2013 Ms. Shuai pleaded guilty to a misdemeanor charge of reckless endangerment and was released having been sentenced to time served
Jessica Marie Clyburn

- Hospitalized 13 times starting at age 10
- DSS custody allowed to live at home
- Special ed/failed 3rd, 6th, 10th grades
- January 2005: contemplated cutting self, jumping off a roof, walking into traffic
- Major depression, organic mental disorder, dysthymia, possible personality disorder
- July 2005: overdose 150 trazedone, 50 Seroquel
- Living in a tent and homeless
Jessica Marie Clyburn

- August 17, 2008 – attempted suicide
- February 19, 2009 – arrest for homicide by child abuse
- September 9, 2009 - plea bargain for involuntary manslaughter
- 8 months jail, 18 months probation
March 2009, the State succeeded in completely depriving Samantha Burton, a mother of two who was suffering pregnancy complications in her 25th week of pregnancy, of her physical liberty and medical decision-making authority for the remainder of her pregnancy.
At the State’s request, the Circuit Court, Leon County, ordered Ms. Burton to be indefinitely confined, which had her pregnancy gone to term would have been up to fifteen weeks, to Tallahassee Memorial Hospital and to submit, against her will, to any and all medical treatments, restrictions to bed rest, and other interventions, including cesarean section delivery, that in the words of the court, “the unborn child’s attending physician,” deemed necessary to “preserve the life and health of Samantha Burton’s unborn child.”
Laura Pemberton

Pemberton v. Tallahassee Memorial Regional Center (U.S. District Court, N.D. Florida, Tallahassee Division., October 13, 1999)
Pemberton had a previous c-section (vertical incision), and with her second child attempted to have a VBAC (vaginal birth after c-section). However, since she could not find any doctor to assist her in this endeavor, she labored at home, with a midwife.
Pregnancy is not an exception to the principle that a decisionally capable patient has the right to refuse treatment, even treatment needed to maintain life. Therefore a decisionally capable pregnant woman’s decision to refuse medically recommended medical or surgical interventions should be respected.
The use of coercion is not only ethically impermissible but also medically inadvisable because of the realities of prognostic uncertainty and the limitations of medical knowledge. As such it is never acceptable for ob/gyns to attempt to influence patients toward a clinical decision using coercion.
ACOG Ethics Committee Opinion No. 664: Refusal of Medically Recommended Treatment During Pregnancy

OB/GYNs are discouraged in the strongest possible terms from the use of duress, manipulation, coercion, physical force, or threats, including threats to involve the courts or child protective services, to motivate women toward a specific clinical decision.
The College strongly discourages medical institutions from pursuing court-ordered interventions or taking action against obstetrician-gynecologists who refuse to perform them.

Principles of medical ethics support ob/gyns refusal to participate in court-ordered interventions that violate their professional norms or their consciences.
The Dangerous Future of Abortion Bans

A recent New England Journal of Medicine article, “A preview of the dangerous future of abortion bans — Texas Senate Bill 8,” reports the results of surveys of Texas obstetricians, and relates that some Texas hospitals no longer offer treatment for ectopic pregnancies, or send pregnant people home with threatened miscarriage, resulting in some patients returning to the hospital with signs of sepsis.

The Dangerous Future of Abortion Bans

Obstetricians are advising patients with fetal diagnoses of anencephaly or bilateral renal agenesis (both life-limiting diagnoses) to continue their pregnancies until term. Multifetal reductions for pregnant patients with higher-order multifetal pregnancies (three or more fetuses) are not options nor is fetal reduction available in cases such as monochorionic twins where failure to reduce the pregnancy would result in the death of both fetuses.

The Dangerous Future of Abortion Bans

One patient with rupture of membranes prior to fetal viability flew out of state to be treated. She stated that her obstetrician cautioned her, “If you labor on the plane, leave the placenta inside of you. You’re going to have to deal with a 19-week fetus outside of your body until you land.”
The Dangerous Future of Abortion Bans

A maternal/fetal medicine specialist who was surveyed reported that the only abortion that was provided recently in their hospital occurred after a patient was admitted to the intensive care unit for a severe cardiac condition; they stated: “People have to be on death’s door to qualify for maternal exemptions to SB8”

The Dangerous Future of Abortion Bans

A more recent research report on experiences in two Texas healthcare systems (both level IV-designated maternal care facilities with approximately 14,000 annual deliveries) determined that maternal morbidity at 22-weeks’ gestation nearly doubled with state-mandated expectant management of miscarriage (in which signs of placental separation are awaited and the placenta is delivered spontaneously). Patients’ data were included if their pregnancies were <22 weeks gestation, they had not experienced preterm labor, and they had a medical reason for delivery such as premature rupture of membranes, severe preeclampsia (manifesting in severe hypertension and/or signs or symptoms of end-organ dysfunction), and/or vaginal bleeding and a fetus with cardiac motion.

Abortion Rights Won the Midterm: Now What?  ACLU 11/10/2022