Abortion after *Dobbs:* Defendants, denials, and delays

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The U.S. Supreme Court's *Dobbs* decision will lead to more criminalization of activities during pregnancy, more abortion denials, and more abortions after the first trimester.

In June 2022, the U.S. Supreme Court overturned the constitutional right to abortion in *Dobbs v. Jackson Women's Health Organization*. The majority ruling purported to return the decision about abortion rights to the states. In the few months since, laws banning abortion have gone into effect in nearly one-quarter of states, while abortion-supportive states have passed legislation to protect abortion rights. The upshot is that abortion is expected to become broadly illegal in about half of U.S. states (*1*).

Research to date points to three near certain effects of the *Dobbs* decision: (i) more people surveilled and criminalized for activities during pregnancy; (ii) more people denied abortion care; and (iii) more delays in obtaining abortion care.

SURVEILLING AND CRIMINALIZING ACTIVITY DURING PREGNANCY

Following *Dobbs*, we can expect a dramatic increase in the surveillance and criminalization of activities during pregnancy and inequality in how that happens. In states that ban abortion, people whose pregnancies do not end with a live birth (including miscarriages, stillbirths, and abortions) are potentially suspect and at risk of civil and/or criminal penalties. Laws banning abortion will not affect only people seeking abortion; the increase in surveillance and criminalization will affect all pregnant people.

In the years before *Roe*, abortion seekers had to rely on someone else to provide abortion care. Most often, it was trained physicians who provided safe, albeit illegal, abortion care (*2*). Contemporary abortion seekers, in contrast, can safely and privately use medications to end their pregnancy. The medications—identical to what the FDA has approved for clinician-supervised medication abortion—can be procured outside of the health care system, including through online advocacy groups like Aid Access. This is referred to as self-managed abortion. Evidence from its use in other countries demonstrates that the medications can safely end a pregnancy through the second trimester of pregnancy.

"These denials will disproportionately affect people in socially marginalized populations…"

In states that ban abortion, a person who self-manages an abortion becomes a lawbreaker. The case against someone suspected of self-managing an abortion, however, is difficult to prove. Spontaneous miscarriage and an abortion caused by pills look clinically the same, making it impossible to distinguish the two. Research findings from countries where abortion is broadly illegal offer insight into how we can expect authorities in the United States to respond to this ambiguity.

First, we can expect increasing suspicion and investigation of all kinds of pregnancy loss. Just as a self-managed abortion cannot be distinguished from a miscarriage, so too is miscarriage indistinguishable from a self-managed abortion. People who experience a miscarriage may be required to prove that they did not cause the pregnancy loss intentionally—the equivalent of proving a negative. Those with fewer resources are less likely to make this case successfully, and assumptions that people with fewer resources would want to end a pregnancy compounds the difficulty of defending themselves (*3*). People with fewer resources are thus at particular risk of being criminalized for spontaneous pregnancy loss (*4*).

Second, we can expect health care workers to be compelled to search for and report signs of illegal abortion in their patients (*5*). This practice will be layered on the U.S.'s history of health care workers disproportionately reporting poor women and women of color for signs of drug and alcohol use during pregnancy, despite actual drug and alcohol use not being patterned by race or class (*6*). Health care workers who attempt to distinguish between miscarriage and self-managed abortion are likely to draw on social assumptions and biases—including ideas about who would want an abortion—in deciding which pregnancy losses to report.

ABORTION DENIALS

A second effect of the *Dobbs* decision is an increase in the number of people denied abortion care. Even before *Dobbs*, when *Roe* was the law of the land, an estimated 4000 pregnant people annually were denied abortion care because of gestational limits (*7*). As *Dobbs* enables states to ban abortion at earlier gestations, including at the point of fertilization (i.e., banning all abortions), the number of people denied an abortion will increase.

These denials will disproportionately affect people in socially marginalized populations, including people living on low incomes and Black and brown people. Before the *Dobbs* decision, three-quarters of abortion patients were living within 200% of the federal poverty level (*8*). Black and Hispanic women were disproportionately represented among abortion patients (*8*).

The *Dobbs* decision also creates a new group of people denied abortion care. Before *Dobbs*, hospital-based physicians regularly offered third-trimester abortions to select patients. Typically, these abortions were

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performed for patients with fetal or maternal health diagnoses—even in highly restrictive legal settings. These abortions fell under the narrow exceptions in those laws.

In states that have banned abortion following *Dobbs*, most of those exceptions are gone—and those abortions are now prohibited. *Dobbs* will force those previously private procedures into more public notice. Because these will now be denials, researchers will gain new insight into how much privilege previously existed in these hospital-based abortions, shedding important light on likely historical inequalities (*9*).

Once denied, abortion seekers may opt to travel for abortion care. But this option is not available to everyone; not all abortion seekers are able to travel. Members of populations whose mobility is constricted, such as young people, incarcerated people, and undocumented people, will experience particular difficulty traveling for abortion care, so will people who cannot afford the added costs abortion travel entails. Indeed, many will be unable to travel and will have to continue their pregnancies.

Research on the effect of continuing an unwanted pregnancy to term offers insight into some of the impacts of this forced outcome. Compared to people able to obtain an abortion, people forced to continue an unwanted pregnancy have worse physical health, have greater economic insecurity, and are more likely to remain in contact with a violent partner (*10*). Most people forced to continue an unwanted pregnancy will parent the child (*10*).

DELAYS AND AN INCREASE IN SECOND- AND THIRD-TRIMESTER ABORTIONS

Last, the *Dobbs* decision will increase in the number of abortions that take place after the first trimester of pregnancy. While we can expect that most people will seek abortion care during the first trimester of pregnancy, a growing number will not be able to implement their decision until the second or third trimester.

There are several reasons for this delay. First, state-level bans on abortion mean that clinics will close, making more people seeking abortion care have to travel longer average distances to get to a facility (*1*). Travel for abortion care costs time and money, extending the time between when people first want an abortion and when they can get one.

Second, abortion facilities that remain open will have to serve more patients, including those traveling from states that have banned abortion. With the increased demand, appointment wait times will grow from days to weeks, delaying patients later into pregnancy by the time they can receive care.

Importantly, the increase in appointment wait times affects people in states that have banned abortion and people in abortion-supportive states. Put simply, state-level abortion bans affect abortion timing for everyone. The upshot of these state-level bans is that people who need abortions across the United States will have to remain pregnant that much longer than they want to be.

While future research will document and measure the specific effects of *Dobbs*, we already know that this decision will have far-reaching consequences that extend beyond the borders of states that ban abortion and into the lives of anyone who experiences pregnancy loss.

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