Washington Insider

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US Supreme Court

Dobbs: On the Threshold of a Decisive Moment in Pro-Life History

On December 1, 2021, the US Supreme Court heard oral argument in Dobbs v. Jackson's Women's Health Organization, the most significant abortion case since Planned Parenthood v. Casey (1992). Since Roe v. Wade (1973), an estimated sixty-three million babies have been killed by abortion in the United States. Pro-life advocates look with anticipation to the *Dobbs* decision as the chance to overturn *Roe* and *Casey* and return the question of abortion to the states.

Dobbs originated in Mississippi with a law passed in 2018 that prohibits abortion after fifteen weeks' gestation with exceptions in a medical emergency or in the case of a severe fetal abnormality. This case threatens the holdings of *Roe* and *Casey* because it challenges their framework for abortion regulations, specifically, the arbitrary viability line and the undue burden standard. Indications during oral argument were positive, and there is reason to be cautiously optimistic that the Supreme Court will uphold the Mississippi law at issue in *Dobbs* and overrule *Roe* and *Casey*. While the Justices already voted on this case behind closed doors that week, anything can happen between now and when the official decision is expected to come out in June 2022.

The following are some highlights from the oral argument: Justice Samuel Alito indicated that the wrongness of a decision is enough to justify its overruling. He referenced Plessy v. Ferguson (1896), which upheld the "separate but equal" doctrine, asking "Would it not be sufficient to say that [*Plessy*] was an egregiously wrong decision on the day it was handed down and now it should be overruled?"[1]

1. Dobbs v. Jackson Women's Health Organization, no. 19-1392 (2022), oral argument at 92 (Alito, J.). The audio and transcript of the oral arguments can be found at https://www.supremecourt.gov/oral_arguments/audio/2021/19-1392.

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Alito also teased out the arbitrariness of *Casey*'s viability line. Justice Neil Gorsuch did not think it was a "workable standard" for the Court to "step past viability and apply … the undue burden test, to regulations prior to viability."[2]

Justice Amy Coney Barrett questioned whether there is a "different set of rules" when the Supreme Court decides a watershed case. She also questioned the argument that women rely on abortion to have "access to the workplace and to equal opportunities" and asked why the safe haven laws in all fifty states don't "take care of that problem." Barrett thinks that burden on women is defined too narrowly and that "it doesn't seem … to follow that pregnancy and then parenthood are all part of the same burden."[3]

Justice Brett Kavanaugh highlighted Mississippi's position that the Constitution is "silent and, therefore, neutral on the question of abortion" and presented common arguments against *Roe* and *Casey* such that the Supreme Court's constitutional role is to remain "scrupulously neutral" "because the Constitution is neutral." As a result, the issue should be left to "the people of the states or perhaps Congress to resolve in the democratic process."[4]

Chief Justice John Roberts was skeptical about the viability line and *Casey*'s reasoning in not overruling *Roe*. He brought up the point that "in his papers, Justice Blackmun said that the viability line … was dicta,"[5] namely, not part of the actual holding. Interestingly, he also brought up how the United States shares the viability standard with China and North Korea, a point that pro-life advocates usually bring up in the context of how extreme the United States is on its abortion limits. Justice Clarence Thomas asked what constitutional right protects access to abortion. Justice Stephen Breyer, Justice Elena Kagan, and Justice Sonia Sotomayor focused their remarks on how the decision would affect policy.

There are three potential outcomes in *Dobbs*. First, the status quo remains, the Mississippi law is struck down, and the current viability line and undue burden standard remain. In my view, this is an unlikely outcome. Second, Mississippi's law is upheld, but the Court comes up with a new (and arbitrary) abortion standard. Third, the law is upheld, *Roe* and *Casey* are overruled, and the question of the legality of abortion is returned to the individual states. This option seems the most promising as pro-life advocates are waiting with bated breath, hoping, and praying. If the third option happens, I outline a brief overview of what we might expect at the state level.

State Prohibitions on Abortion if Roe Is Overruled

Twenty-six states will ban or likely will ban abortions.[6] This may be the result of one or a combination of laws. In the group of twenty-one states with a total or near-total

2. *Dobbs*, oral argument at 61 (Gorsuch, J.).
3. *Dobbs*, oral argument at 45, 56–57 (Barrett, J.).
4. *Dobbs*, oral argument at 43, 44, 77 (Kavanaugh, J.).
5. *Dobbs*, oral argument at 19 (Roberts, J.).
6. Elizabeth Nash and Lauren Cross, "26 States Are Certain or Likely to Ban Abortion without *Roe*: Here's Which Ones and Why," Guttmacher Institute, October 28, 2021, https://www.guttmacher.org/article/2021/10/26-states-are-certain-or-likely-ban-abortion-without-roe-heres-which-ones-and-why. The states with a total or near-total

ban, eight states have a pre-*Roe* ban on abortion that has not been enforced since 1973. Twelve states have passed conditional laws post-*Roe* that would take effect automatically and prohibit abortion if *Roe* were overturned. Nine states have laws that prohibit abortion from six to eight weeks but are currently enjoined and would be enforceable if *Roe* were overturned. The only law of this type that is not enjoined is the Texas Heartbeat Law, which prohibits abortion after a heartbeat is detected, generally around five to six weeks' gestation. Seven states have laws that intend a maximum ban on abortion post-*Roe*. Four states have passed a constitutional amendment prohibiting abortion or the use of public funds for abortion: Alabama, Louisiana, Tennessee, and West Virginia.[7]

The Texas Heartbeat Law Beats the Odds

The Texas Heartbeat Law is a legal phenomenon. It was signed by Governor Greg Abbott on May 19, 2021, and it went into effect on September 1, 2021.[8] Texas Values, Texas Right to Life, and other Texas pro-life organizations worked tirelessly to get the bill passed and save lives. Like other heartbeat laws, it requires an abortionist to check for a baby's heartbeat. If one is detected, the abortionist is required to inform the mother and is prohibited from committing the abortion. Unlike other heartbeat laws in the nation that have been blocked, the Texas Heartbeat Law has remained in effect because it can be enforced only by private citizens and prohibits government enforcement, thus far avoiding the pre-enforcement constitutional challenges that other legislation has faced.

Pro-abortion groups challenged the law in court. But each of the three times it appeared before the US Supreme Court, it prevailed largely on procedural grounds, allowing it to remain in effect. To be clear, the Supreme Court did not rule on the law's constitutionality. Following the third Supreme Court ruling on December 10, 2021, the case was remanded to the Fifth Circuit Court of Appeals and then referred to the Texas Supreme Court to answer the narrow question of whether the Heartbeat Law can be enforced by a small number of state licensing officials. On February 24, 2022, the Texas Supreme Court heard oral argument on this narrow question and delivered its decision on March 11, 2022. The Court sided with a plain language understanding of the law, which requires civil enforcement and prohibits government enforcement, thus rejecting the abortion groups' interpretation and further confirming the law's effectiveness. This was a major win for the Texas Heartbeat Law. In its opinion, the Court concluded, "[The Texas Heartbeat Law] provides that its requirements may be enforced by a private civil action, that no state official may bring or participate as a party in any such action,

ban include Alabama, Arizona, Arkansas, Georgia, Idaho, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin. An additional five states are likely to ban abortion: Florida, Indiana, Montana, Nebraska, and Wyoming.

7. Guttmacher Institute, Public Policy Office, "Abortion Policy in the Absence of *Roe*," updated March 1, 2022, https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe.
8. Arina Grossu and Jonathan Saenz, "The Texas Heartbeat Act: Where Sound Science Meets Strong Strategy," *Journal of Bioethics in Law and Culture* 4.3 (Summer 2021).

that such an action is the exclusive means to enforce the requirements, and that these restrictions apply notwithstanding any other law."[9]

Although there is ongoing debate about the legal strategy of the Texas Heartbeat Law, Texas Values estimates that as many as twenty-nine thousand preborn babies were spared from abortion in Texas in the six months that it has been in effect.[10] Given its success, at least ten states are considering similar legislation, including Arkansas, Florida, Idaho, Kentucky, Louisiana, Ohio, Oklahoma, South Carolina, South Dakota, and Wisconsin.[11] On March 14, 2022, the Idaho legislature passed the first Texas-style heartbeat bill with a private enforcement mechanism, and it is now headed to Governor. Brad Little for his signature.[12]

Federal Regulatory Update

The unified agenda that was published in the Federal Register on January 31, 2022, lists the various regulatory actions that federal agencies have planned. Of specific interest, the Biden administration intends to change section 1557 of the Patient Affordable Care Act (ACA) to expand transgender services and restrict conscience and religious protections in health care. In addition, a proposed rule from the Centers for Medicare and Medicaid Services (CMS) and the US Department of Health and Human Services mandates insurance coverage for sex-change surgeries and other services. Finally, HHS already finalized a Title X rule to expand funding for family planning, including abortion.

More Sex-Change Services and Fewer Conscience Protections in the Name of Health Equity

This proposed rule, which the unified agenda called "Nondiscrimination in Health Programs and Activities," has not yet been published, but it is anticipated in April 2022 from the Office for Civil Rights (OCR). It would propose changes to the 2020 final rule implementing section 1557 that was issued during the Trump administration. As noted in the next section, on January 5, 2022, a proposed rule mandating insurance coverage for sex-change services was also published. A January 31, 2022, court filing

9. Whole Women's Health v. Jackson no. 22-0033, 23 (Tex. 2022).
10. Texas Values, "The Texas Heartbeat Law Beats Strong," accessed March 9, 2022, www.texasheartbeatlaw.com.
11. Arina O. Grossu, "Texas Heartbeat Law Beats Strongly, Inspires Other States to Follow Suit," *Daily Signal*, January 26, 2022, https://www.dailysignal.com/2022/01/26/texas-heartbeat-law-beats-strongly-inspires-other-states-to-follow-suit/; Todd Richmond, Associated Press, "Texas-Style GOP Abortion Ban Gets Hearing in Wisconsin," Madison.com, February 9, 2022, https://madison.com/news/local/govt-and-politics/texas-style-gop-abortion-ban-gets-hearing-in-wisconsin/article_3ae19402-b1da-5123-a7e4-119c67bfebfb.html; and Betsy Z. Russell, Idaho Press, "Texas-Style Anti-Abortion Bill Clears Senate Panel, Despite Legal Concerns," KTVB7, updated February 17, 2022, https://www.ktvb.com/article/news/local/idaho-press/far-reaching-anti-abortion-bill-clears-idaho-senate-panel-despite-legal-questions/277-67b3221a-598e-4ec3-947f-7a4a9d17a5f9.
12. News Staff, "Idaho House Passes Texas-Style Heartbeat Law," KMVT 11, March 14, 2022, https://www.kmvt.com/2022/03/14/idaho-house-passes-texas-style-heartbeat-law/.

in Washington, DC, states that if these proposed rules are finalized, they will adopt regulations similar to the ones promulgated under the Obama administration.[13]

Under the Obama administration, sex was redefined to include gender identity (and termination of pregnancy) but did not include sexual orientation. Under the Trump administration, discrimination based on sex in section 1557 was returned to the ordinary meaning of *sex*. The Biden administration has already signaled its plans to propose a rule that expands the meaning of sex discrimination to protect LGBTQ ideology, including gender identity and sexual orientation. This proposed regulation will present radical LGBTQ plans to expand access to transgender services such as sex-change surgeries and promoted as such using "health equity" and "nondiscrimination" language. The statement of need in the unified agenda says, "The Biden Administration has made advancing health equity a cornerstone of its policy agenda," including "preventing and combatting discrimination and ensuring the equitable administration of HHS programs" and ensuring "protection of health care as a right."[14]

What they do not state outright in the unified agenda's summary is that part of the definition of health care will include the so-called right to abortion, sterilization, and sex-change surgeries, including for minors. Unless stopped, this regulation will likely mandate that all health care entities and professionals that receive federal funding, including faith-based hospitals, provide abortions and sex-change services without any conscience or religious exemption.

The Catholic Benefits Association has included helpful links to legal summaries, analyses, and court filings that reveal the extreme LGBTQ agenda and actions that have already taken place and are likely to influence the changes to section 1557.[15] Among these resources is a seventy-four-page memo issued on June 8, 2021, by thirty activist groups, including Planned Parenthood Federation of America. This document is a blueprint for what the proposed rule may include.[16]

The stakes in this regulatory battle increased on February 22, 2022, when Abbott called on the Texas Department of Family and Protective Services "to conduct prompt and thorough investigations of any reported instances of Texas children being subjected to abusive gender-transitioning procedures. … The Office of the Attorney General confirmed that a number of so-called 'sex-change' procedures on minors already constitute child abuse under existing Texas law."[17]

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13. Whitman-Walker Clinic v. US Department of Health and Human Services, no. 1:20-cv-01630-JEB—Document 81 (D.D.C. 2022), https://catholicbenefitsassociation.org/wp-content/uploads/2022/02/Jan-31-2022-Status-Update.pdf.
14. Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2022, 87 Fed. Reg. 5002, 5056, 5060 (Jan. 31, 2022).
15. Catholic Benefits Association, "Imminent Religious Liberties Threat from HHS," accessed March 9, 2022, https://catholicbenefitsassociation.org/threattoreligiousliberty/.
16. June Zeitlin and Mara Youdelman, "Section 1557 of the Affordable Care Act" (memorandum, Leadership Conference Health Care Task Force, 2021), https://catholicbenefitsassociation.org/wp-content/uploads/2021/11/Leadership-Conference-Memo-ACA-1557.pdf.
17. Office of the Texas Governor, "Governor Abbott Directs DFPS to Investigate Gender-Transitioning Procedures as Child Abuse," press release, February 22, 2022, https://gov.texas.gov/news/post/governor-abbott-directs-dfps-to-investigate-gender-transitioning-procedures-as-child-abuse.

On March 2, 2022, HHS Secretary Xavier Becerra announced in a press release new actions in response to the Texas announcement.[18] The Administration for Children and Families released an information memorandum to child welfare agencies that would empower states to push the LGBTQ agenda and require any entity that receives federal funding, such as foster care and adoption agencies, to support LGBTQ children and youth in services such as accessing sex-change surgeries.[19]

For its part, OCR issued a notice stating that it will "ensure that transgender and gender nonconforming youth are able to access health care free from the burden of discrimination."[20] The guidance encourages parents or caregivers who believe their child has been denied health care, including so-called gender affirming care, on the basis of that child's gender identity, to file a complaint with OCR. It also encourages health care providers who believe that they are or have been unlawfully restricted from providing health care to a patient on the basis of that patient's gender identity to file a complaint. This means that entities that receive federal funding, such as hospitals, clinics, and individual doctors or health care professionals, that do not want to offer sex-change surgeries, for example, may be considered discriminatory and in violation of section 1557 and potentially lose their federal funding.

Here is an alarming excerpt from the new OCR guidance:

> Categorically refusing to provide treatment to an individual based on their gender identity is prohibited discrimination. Similarly, federally-funded covered entities restricting an individual's ability to receive medically necessary care, including gender-affirming care, from their health care provider solely on the basis of their sex assigned at birth or gender identity likely violates Section 1557. For example, if a parent and their child visit a doctor for a consultation regarding or to receive gender affirming care, and the doctor or other staff at the facility reports the parent to state authorities for seeking such care, that reporting may constitute violation of Section 1557 if the doctor or facility receives federal financial assistance. Restricting a health care provider's ability to provide or prescribe such care may also violate Section 1557.[21]

Pro-life organizations and faith-based groups must oppose this guidance and the upcoming proposed rule vigorously. Even now before its proposed April 2022 publication, they should request meetings with HHS leadership to voice their

18. US Department of Health and Human Services (HHS), "Statement by HHS Secretary Xavier Becerra Reaffirming HHS Support and Protection for LGBTQI+ Children and Youth," press release, March 2, 2022, https://www.hhs.gov/about/news/2022/03/02/statement-hhs-secretary-xavier-becerra-reaffirming-hhs-support-and-protection-for-lgbtqi-children-and-youth.html.
19. HHS, Administration for Children and Families, Information Memorandum, log no. ACYF-CB-IM-22-01, March 2, 2022, https://www.acf.hhs.gov/sites/default/files/documents/cb/im2201_1.pdf.
20. HHS, Office for Civil Rights (OCR), "HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy," March 2, 2022, https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf.
21. OCR, "Guidance on Gender Affirming Care."

opposition, sign onto coalition letters, and when the proposed rule is issued, make it a priority to file a public comment before the deadline.

Proposed Rule Mandates Insurance Coverage for Sex-Change Services

On January 5, 2022, CMS and HHS proposed a rule that would add provisions in the ACA to explicitly prohibit discrimination in insurance plans based on sexual orientation and gender identity, define transgender services as protected "essential health benefits," and establish a standard of care that includes "medically necessary gender-affirming care."[22] In short, it would require health insurers to cover various transgender procedures such as transgender puberty-blocking hormones, cross-sex hormones, and sex-change surgeries for adults and children. For group plans of over fifty employees, excluding coverage for such transgender services would be considered "presumptively discriminatory."[23]

The comment period for this proposed rule, which ended on January 27, 2022, was an unacceptably short twenty-two days. An agency should give the public between thirty and ninety days to comment on regulations, especially on ones of great import and consequence, such as this. The finalization date of this rule is anticipated in spring or summer 2022.

Title X Final Rule: Funding and Promoting Abortion as a Method of Family Planning

Congress enacted Title X of the Public Health Service Act in 1970 to provide financial support via grants and contracts for private and public health care entities offering voluntary family planning services. Section 1008 prohibits funded programs from using abortion as family planning in Title X.[24]

On October 7, 2021, HHS' Office of Population Affairs finalized a new rule that reinterpreted this prohibition as not speaking "directly to the issues of counseling, referral, advocacy, or program integrity."[25] In doing so, it allows entities that refer for abortion to receive Title X funding. The 2021 rule also requires that any recipient of Title X funds offer abortion counseling or referral, stating that "the Department will monitor and provide technical assistance to ensure that each grantee provides access to the broad range of acceptable and effective medically approved family planning methods and services to their clients." Further, "Title X service sites that are unable to provide clients with access to a broad range of acceptable and effective

22. Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023, 87 Fed. Reg. 584, 597 (Jan. 5, 2022).
23. 87 Fed. Reg. at 664. For more information on the dangers of this proposed rule, see the Ethics and Public Policy Center's comprehensive thirty-two-page public comment opposing this proposed rule and also outlining the harms of cross-sex transition treatments to minors: "EPPC Scholars Comment Opposing Proposed Rule," January 27, 2022, https://eppc.org/wp-content/uploads/2022/01/EPPC-Scholars-Comment-Opposing-SOGI-Insurance-Mandate.pdf.
24. 42 USC § 300a–6.
25. Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services, 86 Fed. Reg. 56144, 56149 (Oct. 7, 2021), citing Rust v. Sullivan 500 U.S. 173, 500 (1991).

medically approved family planning methods and services, must be able to provide a prescription to the client for their method of choice or referrals, as requested."[26]

The 2021 regulations include a footnote stating, "Providers may separately be covered by federal statutes protecting conscience and/or civil rights." Similarly, in the preamble to the regulations, HHS states, "objecting individuals and grantees will not be required to counsel or refer for abortions in the Title X program in accordance with applicable federal law."[27] It is unclear, however, if or how HHS will exempt those with conscience or religious objections from the abortion counseling and referral requirement.

The 2021 rule, which went into effect on November 8, 2021, revokes the 2019 rule in its totality, including the physical and financial separation requirements between Title X projects and abortion services and removing grantee and subgrantee compliance requirements.

Federal Bill Update

On February 28, 2022, the Women's Health Protection Act (H.R. 3755), also known as the Abortion on Demand until Birth Act, failed to pass the Senate by a procedural vote of forty-six to forty-eight, far from the sixty-vote threshold needed to move forward. This extreme abortion bill was a desperate attempt to codify *Roe*, legislate a federal right to abortion on demand, and undo all pro-life state laws. Further, it would have endangered the conscience rights of health care professionals by threatening long-standing bipartisan federal conscience laws. It also would have nullified the Religious Freedom Restoration Act, which provides a way for doctors, nurses, and other health care professionals to bring a cause of action against the government for infringing on their right to practice medicine according to their conscience and religious freedom rights, including their right not to be forced to participate in abortion.

Filing Conscience and Religious Freedom Complaints

Federal conscience protection laws and Title VII may provide additional protections for those who do not want to participate in abortion or other procedures.[28] If you believe that your conscience or religious freedom rights have been violated, please see the instructions below on how to file complaints with OCR or with the US Equal Employment Opportunity Commission.

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26. 86 Fed. Reg. at 56158.
27. 86 Fed. Reg. at 56153, 56180.
28. For more information on filing a religious freedom or religious nondiscrimination complaint, see Ethics and Public Policy Center, "How to File a Federal Conscience Complaint," accessed March 9, 2022, https://eppc.org/wp-content/uploads/2022/02/How-to-File-a-Federal-Conscience-Complaint.pdf; HHS, "Filing a Conscience or Religious Freedom Complaint," reviewed March 17, 2020, https://www.hhs.gov/conscience/complaints/index.html; and US Equal Employment Opportunity Commission, "Public Portal," accessed, March 16, 2022, https://publicportal.eeoc.gov/Portal/Login.aspx.

Other Considerations

Chemical Abortions in the United States

A February 2022 Guttmacher Institute report analyzing chemical abortion revealed that as of 2020, it now makes up 54 percent of all the abortions in the United States, a rise from 0 percent in 2000, 24 percent in 2011, and 39 percent in 2017.[29] It's a quick, dirty, and very profitable tactic. According to Planned Parenthood, chemical abortions can cost up to $750.[30]

In 2000 the US Food and Drug Administration approved the dangerous chemical abortion drug known as mifepristone (Mifeprex). From 2000 and 2019, the FDA received reports of over 3,800 adverse events, including at least twenty deaths, more than five hundred life-threatening complications, and over two thousand severe complications.[31] (Most adverse events are never reported.) In March 2016, the FDA amended the reporting requirement of the manufacturer to include only deaths from chemical abortions and not continuing to require reporting of the number of other adverse events.[32] Around the same time, the agency also extended the use of mifepristone from forty-nine days' gestation to seventy days' gestation (ten weeks), thus increasing the likelihood of complications and danger to women. On December 16, 2021, the FDA announced that it would remove the in-person dispensing requirement.[33]

The abortion industry, however, is fighting an uphill battle. First, an unprecedented number of pro-life laws were passed at the state level in 2021.[34] In December

29. Rachel K. Jones et al., "Medication Abortion Now Accounts for More Than Half of All US Abortions," Guttmacher Institute, updated March 2, 2022, https://www.guttmacher.org/article/2022/02/medication-abortion-now-accounts-more-half-all-us-abortions.
30. Planned Parenthood, "How Do I Get the Abortion Pill?" accessed March 9, 2022, https://www.plannedparenthood.org/learn/abortion/the-abortion-pill/how-do-i-get-the-abortion-pill/.
31. Tessa Longbons, "Analysis: FDA Decision Ignores Data on Complications, Puts Women at Risk," Charlotte Lozier Institute, December 16, 2021, https://lozierinstitute.org/analysis-fda-decision-ignores-data-on-complications-puts-women-at-risk/.
32. US Food and Drug Administration (FDA), Center for Drug Evaluation and Research, *Risk Evaluation and Mitigation Strategy (REMS): NDA 020687 MIFEPREX (mifepristone) Tablets, 200 mg*, modified March 2016, B.5, https://www.accessdata.fda.gov/drugsatfda_docs/nda/2016/020687Orig1s020RemsR.pdf.
33. FDA, "Question and Answers on Mifeprex," updated December 16, 2021, https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifeprex.; David C. Reardon et al., "Overlooked Dangers of Mifepristone, the FDA's Reduced REMS, and Self-Managed Abortion Policies: Unwanted Abortions, Unnecessary Abortions, Unsafe Abortions," Charlotte Lozier Institute, December 16, 2021, https://lozierinstitute.org/overlooked-dangers-of-mifepristone-the-fdas-reduced-rems-and-self-managed-abortion-policies-unwanted-abortions-unnecessary-abortions-unsafe-abortions/. See also Melissa J. Chen and Mitchell D. Creinin, "Mifepristone with Buccal Misoprostol for Medical Abortion: A Systematic Review, *Obstetrics and Gynecology* 126.1 (July 2015): 12–21, doi: 10.1097/AOG.0000000000000897.
34. Arina O. Grossu, "Overview of U.S. Pro-Life Bills and Provisions Advanced and Laws Enacted from January to May 2021: Pro-Life Banner Year as States Continue to

the Guttmacher Institute dubbed 2021 "the worst year for abortion rights in almost half a century."[35] Second, nearly 90 percent of US counties do not have an abortion facility.[36] The abortion industry pivoted to chemical abortion as a way to stay alive while circumventing the pro-life laws and trends clearly not in their favor, a last-gasp effort for the abortion facilities to stay in business.

Chemical abortions endanger women's health and safety in addition to their direct destruction of babies' lives. The abortion industry is more than happy to shortchange women on health and safety, oftentimes administering abortion pills without a physical examination or much oversight. Women are often left to deliver their dead babies in the toilet by themselves. Many women face complications such as infections or hemorrhaging from incomplete abortions, and they are instructed to go to the emergency room of their local hospital for someone else to clean up the work of the unscrupulous abortion industry. Published peer-reviewed data revealed that there was a 500 percent increase in the rate of chemical abortion–related emergency room visits between 2002 and 2015.[37] The abortion industry offloads the consequences of its unethical activity onto unassuming health care professionals. Through chemical abortion, the abortion industry abandons women in a particularly gory way.

As a result, many states have passed commonsense laws to protect the health and safety of women. For example, thirty-two states require that chemical abortions be administered by a licensed physician, nineteen states have telemedicine restrictions in place and require that the abortion provider be physically present when the chemical abortion is administered, and two states prohibit the use of chemical abortion after a specific gestational age (seven weeks in Tennessee and ten weeks in Indiana).[38]

Reject the Radical Abortion Agenda," Charlotte Lozier Institute, June 8, 2021, https://lozierinstitute.org/overview-of-u-s-pro-life-bills-and-provisions-advanced-and-laws-enacted-from-january-to-may-2021-pro-life-banner-year-as-states-continue-to-reject-the-radical-abortion-agenda/.

35. Elizabeth Nash, "State Policy Trends 2021: The Worst Year for Abortion Rights in Almost Half a Century," Guttmacher Institute, updated January 5, 2022, https://www.guttmacher.org/article/2021/12/state-policy-trends-2021-worst-year-abortion-rights-almost-half-century.
36. Rachel K. Jones et al., "Abortion Incidence and Services Availability in the United States, 2017," Guttmacher Institute, accessed March 9, 2022, https://www.guttmacher.org/report/abortion-incidence-service-availability-us-2017.
37. Charlotte Lozier Institute, "Chemical Abortion: FDA Ignores 'Inconvenient' Science and Data Confirming Public Health Threat," press release, December 16, 2021, https://lozierinstitute.org/chemical-abortion-fda-ignores-inconvenient-science-and-data-confirming-public-health-threat/.
38. Guttmacher Institute, Public Policy Office, "Medication Abortion," updated March 1, 2022, https://www.guttmacher.org/state-policy/explore/medication-abortion.

The Abortion Pill Reversal Update and Opportunity

According to the latest numbers from Heartbeat International, more than three thousand babies have been saved using the abortion pill reversal.[39] The rapid increase in chemical abortions also presents the pro-life community with a unique opportunity. Unlike with surgical abortion where the baby is killed immediately, with chemical abortion, a mom has about seventy-two hours from when she took mifepristone to change her mind and potentially save her child from the abortion.

In a chemical abortion, the first chemical used is mifepristone, which blocks the effects of progesterone. The second chemical is misoprostol, and its mechanism of action is to expel the baby. An abortion pill reversal may be possible if the woman took only mifepristone and contacts a health care professional trained in the abortion pill reversal protocol who can provide her with supplemental progesterone to counteract its effects. In an observational case series of 754 patients, there was "no apparent increased risk of birth defects," and it concluded that "the reversal of the effects of mifepristone using progesterone is safe and effective."[40]

New Catholic Alliance Protects Life and Conscience

In January 2022, five major Catholic organizations launched the Catholic Health Care Leadership Alliance (CHCLA). The allied founding organizations are the National Catholic Bioethics Center, Catholic Medical Association, Catholic Benefits Association, Catholic Bar Association, and Christ Medicus Foundation. In light of ongoing threats to Catholic health care and conscience rights, CHCLA was formed to be a clearinghouse and, through its combined areas of expertise, to provide medical, ethical, legal, and advocacy help to health care entities and professionals seeking to practice according to Catholic ethics and Christ's healing ministry. Franciscan Alliance, a Catholic health care system that employs over eighteen thousand staff and operates a twelve-hospital health system in Indiana and Illinois, joined CHCLA as its first hospital system member. CHCLA also has an episcopal advisory board chaired by Most Rev. James Conley, bishop of Lincoln, Nebraska. According to CHCLA, "The mission of the Catholic Health Care Leadership Alliance (CHCLA) as an alliance of faithful Catholic organizations is to support the rights of patients and professionals to receive and provide health care in accordance with the moral, ethical, and social teachings of Jesus Christ and His Church through ongoing evangelization, education, advocacy, and mutual support."[41]

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39. Heartbeat International, "Abortion Pill Rescue Network," accessed March 9, 2022, https://www.heartbeatinternational.org/our-work/apr.

40. George Delgado et al., "A Case Series Detailing the Successful Reversal of the Effects of Mifepristone Using Progesterone," *Issues in Law and Medicine* 33.1 (Spring 2018): 21–31.

41. "Catholic Health Care Leadership Alliance," accessed March 9, 2022, https://catholichealthalliance.org/.