

The Fightback on Reproductive Rights

July 31, 2024



Since *Roe v. Wade* was overturned, women's rights to abortion and, more broadly, to safe reproductive health care have been under attack. In response, women have organized at the grassroots to build local and state-wide coalitions to resist and defend their reproductive rights. Women's resistance has broad political implications. Reproductive freedom has become one of the central issues of the 2024 presidential campaign and could even decide it.

Recent conservative Court decisions, particularly the 2021 *Dobbs v. Jackson Women's Health Organization* case, have had a significant impact on the rights of pregnant people, the indigent, and broad health care access. In *Dobbs*, the Supreme Court ruled that the right to abortion is not protected by privacy under the 14th Amendment's Due Process Clause of the Constitution, effectively overturning *Roe v. Wade* and *Planned Parenthood v. Casey*. Because of *Dobbs'* preemption, many abortion-related lawsuits have been lost, new bans have been passed, and the criminalization of pregnancy is at an all-time high. All of which is causing uncertainty and barriers to care, thus exacerbating health care disparities.

Since the *Dobbs* ruling, numerous court cases have challenged existing abortion protections, leading to the prohibition of abortion services in many states, with 13 states having trigger laws to outlaw abortion as soon as *Roe* was overturned.¹

Many of these states, particularly in the South, have a large number of poor women, disproportionately Black and Latinx, who will likely have to travel outside of state to get abortion services. Those who cannot may seek telemedicine to get medicated abortions. However, medical abortions can be more painful, causing severe cramping over a longer period than surgical abortions. A number of states—Colorado, Massachusetts, New York, California, Vermont, and Washington—have shield laws that protect medical providers who may offer abortion services to people living in red states that ban or restrict abortion access in the wake of *Dobbs v. Jackson*. However, these laws may be challenged in court, but for the time being, from October to December 2023, an average of 8,000 people per month in red states received medical abortions from doctors protected by shield laws. Aid Access and the Massachusetts Medication Abortion Access Project operate nationally, while the groups Abuzz and Armadillo, ship to states with abortion bans, but not to every state.²

The bans on abortion not only block immediate pregnancy-related treatment but also exacerbate

existing health disparities. Abortion seekers are more often than not Black and indigent, and already have children. Because of the multiplicity of oppressions that pregnant people of color face, including racial oppression, it is more difficult for them to afford the transportation, social support, and childcare needed to go to a clinic for an abortion. Still, in the United States Black women account for the highest percentage of abortions.³

The impact of abortion bans on marginalized communities, particularly women of color, and the efforts of grassroots organizations to promote reproductive justice and equitable health care in a post-*Roe* world are deeply intertwined. These movements have sparked legal challenges, political action, and grassroots efforts to push back against the erosion of reproductive rights. Despite setbacks, the fight for reproductive freedom continues to gain momentum across the country.

Grassroots organizations are playing a crucial role in advocating for the rights and well-being of women of color and vulnerable populations in the post-*Roe* world. Many reproductive rights groups have long been fighting to increase access to abortion, including prominent ones like Planned Parenthood and NARAL; many more have emerged or are ramping up their efforts in the wake of *Dobbs*.⁴ Grassroots organizations like The Feminist Front and the National Latina Institute for Reproductive Justice are working to address these disparities and promote reproductive justice.⁵

In addition to working with other groups to provide assistance to reproductive justice groups in the Southwest, The Feminist Front also organizes seminars on reproductive justice and how abortion relates to white supremacy. In 2022, they protested Arizona's Senator Kyrsten Sinema for not defending abortion rights and staged a sit-in in her office.⁶

Issues of economic and racial justice, as well as the rights of immigrants, are central to the work of the National Latina Institute for Reproductive Justice, which has been concerned about the situation of migrants in detention facilities and fights for legislation that addresses immigration in its entirety. Because of the overturning of *Roe v. Wade* and multiple anti-immigration policies in Texas, it is very difficult for immigrants to go across state boundaries to have the procedure. Fears about deportation and run-ins with the authorities only make matters worse. By focusing on the rights and welfare of migrants in detention facilities and fighting for fair and inclusive immigration policies, the Latina Institute seeks to tackle these issues from an intersectional perspective.

In response to the increasing restrictions on abortion, grassroots abortion funding organizations have emerged to help individuals afford abortions and the associated costs, such as travel, lodging, and childcare. These funds have played a crucial role in assisting people seeking abortions, particularly in states where access has become more limited. For example, Michelle Colon, founder of Shero in Mississippi, organized volunteers to drive women to Illinois, a journey of at least 10 hours, to obtain abortions. Laurie Bertram Roberts heads the volunteer-run Mississippi Reproductive Freedom Fund, which helps individuals access abortion services in Mississippi. Another organization, the Yellowhammer Fund, operates in Tuscaloosa, Alabama. Both of these organizations are part of the National Network of Abortion Funds, a crucial network consisting of over 80 abortion funds across the country that help lower-income individuals access abortion services.⁷

The number of individuals providing such assistance is dwindling, however, leaving fewer options for those in need. Fundraising increased for many of these organizations following the *Dobbs* decision, but they are now sounding the alarm that support is weakening as media coverage fades. For instance, there was a danger that, without further funding, the resources of The New York Abortion Access Fund would be exhausted by October 2023. Thankfully, this did not come to pass.⁸

Private medication abortions, which are increasingly popular among abortion rights activists, now constitute over 50 percent of all abortions in the United States.⁹ Telehealth services like Hey Jane,

Choix, and Abortion on Demand have expanded in states where abortion remains legal.¹⁰ Since the *Dobbs* decision, virtual-only telehealth providers have facilitated 7,461 abortions per month in the first nine months, up from 4,025 per month before.¹¹

Additionally, underground networks run by groups like Las Libres and Red Necesito Arbortar have emerged to supply Americans with abortion pills from countries such as Mexico and India.¹² These networks provide an alternative for individuals who cannot or do not want to use official channels to access abortion care.

Grassroots formations can only do so much. Recent losses in the realm of reproductive rights beyond the scope of grassroots and underground networks include legal challenges like the outlawing of transporting a minor for an abortion in Tennessee, the imposition of legal penalties and fines for transporting individuals seeking abortions over state lines in Oklahoma and Idaho, and the enforcement of a six-week abortion ban in Florida, while in Alabama, in vitro fertilization has been prohibited.¹³ The recent ruling in Alabama classifies frozen embryos as “human” whether or not they are inside or outside of the womb, causing several fertility clinics to stop treatment. The Alabama Supreme Court ruled that frozen embryos can be treated as children under the Wrongful Death of a Minor Act of 1872, stating that they are persons from conception, regardless of being in or out of the womb.¹⁴ This judgment can be traced back to a recent wrongful death lawsuit involving a patient who accidentally destroyed frozen embryos at a clinic. While the right has been advocating for this prohibition privately, they are also cautious about discussing the issue publicly, as they fear it could alienate voters due to its severity.¹⁵ The backlash has been so bad, in fact, that lawmakers in the state are trying to walk back the Alabama Supreme Court’s ruling.¹⁶

Former President Donald Trump, who has taken credit for *Roe v. Wade* being overturned, recently said abortion laws should be left to states.¹⁷ Trump claimed falsely on Truth Social that the overturning of *Roe v. Wade* was universally desired (“we have abortion where everybody wanted it from a legal standpoint”).¹⁸ He’s now saying he believes “the states will determine by vote or legislation, or perhaps both, and whatever they decide must be the law of the land.”¹⁹ He’s also refusing to take a position on a national abortion ban wanted by members of his party.²⁰

However, there have been some legal victories in the fight against abortion restrictions. Since the *Dobbs* decision 23 states have raised legal challenges against abortion bans.²¹ Two red states, Kansas and Kentucky, had ballot amendments to end the right to abortion, but both failed. Kansas voters rejected a proposed constitutional amendment denying abortion rights, while Kentucky voters rejected a ballot measure denying constitutional protections for abortion, a fight that was led by Democratic Socialists of America and Kansans for Constitutional Freedom, among others.²² Kentucky, however, has since passed a law outlawing abortion with very few exceptions.²³ Both ballot initiatives were defeated, sending a message to the GOP that their stance on abortion is extreme and at odds with public opinion.

Religious freedom challenges in defense of abortion have also arisen in several states.²⁴ In Florida, Indiana, Missouri, Kentucky, Utah, and Wyoming, individuals from a variety of religious backgrounds have argued that abortion bans infringe on the free exercise of their religion or violate state constitutional protections against the establishment of religion. Indiana’s Court of Appeals has granted a minor victory to individuals challenging the state’s abortion ban, arguing it violates a 2015 religious freedom statute, and it upheld the appeal filed by four people and Hoosier Jews for Choice.²⁵ In Missouri, Christian, Jewish, and Unitarian Universalist leaders sought a permanent injunction against an abortion ban, arguing that state lawmakers who supported the ban were imposing their personal religious beliefs on everyone.²⁶

In some states, abortion will remain legal and available because the states have had policies in place prior to the *Dobbs* decision that protect access even in the absence of *Roe*. Since the *Dobbs* ruling, over forty lawsuits have been filed in multiple states, challenging abortion restrictions on the grounds that they infringe on various constitutional rights.²⁷ For instance, the right to privacy was cited as a basis for challenging Florida's 15-week abortion ban, using the state constitution's privacy clause as a legal argument. Similarly, in South Carolina, the right to privacy temporarily protected the right to abortion, blocking a six-week abortion ban. However, subsequent bans were later upheld after the state legislature passed new laws and new justices joined the court.

In Wyoming, a judge temporarily blocked a ban on the abortion pill, citing the right to privacy.²⁸ This case is still ongoing, and abortion pills remain legal. Wellspring Health Access (WHA), Wyoming's only full-service abortion clinic, one of the nonprofits that brought suit over the abortion pill, is also separately suing the state to block a law imposing a near-total ban on abortion. WHA sued the state to stop its abortion "trigger ban" and won a preliminary injunction. The judge ruled that the ban could harm the plaintiffs before their lawsuit was resolved.

In response to a lawsuit by the Center for Reproductive Rights, a federal district court in Arizona temporarily blocked a law that gave fetuses, embryos, and fertilized eggs the same rights as Arizona citizens, deeming it "unconstitutionally vague."²⁹ However, abortion remains illegal in Arizona due to an old law from the Civil War era.³⁰

The Supreme Court's decision in *Dobbs* has also had repercussions beyond abortion access. Organizations that assist pregnant individuals in Texas are now subject to civil and criminal liability. This has led to a chilling effect on reproductive health care providers in the state, with many hesitant to offer services for fear of legal repercussions. However, a U.S. District Judge issued an injunction to protect Fund Texas Choice from criminalization, ruling that the Texas attorney general cannot seek legal relief against providers or practitioners who help abortion seekers travel outside of Texas.³¹ This ruling is critical as it stops states from being able to overreach and expand past their boundaries, and it serves as a beacon of protection in the midst of ongoing legal battles surrounding reproductive rights in Texas.

The recent conservative judicial decisions, particularly the *Dobbs v. Jackson Women's Health Organization* case, have had a profound impact on women's rights and health care access. These decisions have resulted in defeats in abortion-related legal cases, increased uncertainty and more barriers to care, and exacerbated health care disparities. Since many states have enacted abortion bans or restrictions that disproportionately affect marginalized communities, these groups suffer the most from these decisions. This further exacerbates health care disparities, as marginalized communities already face challenges in accessing quality healthcare. Grassroots organizations and reproductive rights organizations are working tirelessly to address these challenges and promote reproductive justice. Despite setbacks, the fight for reproductive freedom continues, with individuals and organizations advocating for accessible and equitable healthcare for all.

Because of the centrality of abortion to both Biden's re-election campaign and the genocide in Gaza, it is possible that the abortion issue might rescue the Democrats from their current predicament related to the war in Gaza. There are new opportunities and challenges for organizations fighting for reproductive justice in the United States as reproductive justice issues seem to be swiftly becoming a cudgel for Democrats trying to convince an angry electorate to vote for them. How they will use this leverage is yet to be seen. Over 60 percent of adults in the United States think that abortion should be legal within certain limits. However, millions of women in this country still oppose abortion rights. Among those who defend abortion rights, a portion still vote for Trump or advocate not voting at all even though Biden is clearly in favor of reproductive rights.

Notes

1. Elizabeth Wolfe, "13 states have passed so-called 'trigger laws,' bans designed to go into effect if Roe v. Wade is overturned," *CNN*, May 3, 2022.
2. Nathaniel Weixel, "Red state abortion bans headed for clash with blue state shield laws," *The Hill*, May 20, 2024.
3. Latoya Hill et al., "What are the Implications of the Dobbs Ruling for Racial Disparities?," *KFF*, April 23, 2024.
4. Lornet Turnbull, "How grassroots funds are ensuring abortion access despite bans," *YES! Magazine*, May 16, 2019.
5. Cynthia Via, "Intersectional activism in a Post-Roe world," *YES! Magazine*, Oct. 13, 2022.
6. "The Feminist Front (@thefeministfront)," *Instagram*.
7. Zoë Beery, "What abortion access looks like in Mississippi: One person at a time," *New York Times*, June 13, 2019; Turnbull, "How grassroots funds...."
8. Maya Kaufman, "Officials tout New York's abortion access, but financial hurdles persist," *Politico*, June 26, 2023.
9. Rachel K. Jones et al., "Medication abortion now accounts for more than half of all US abortions," *Guttmacher Institute*, Sept. 12, 2023.
10. Pam Belluck, "Abortions by telemedicine and mailed pills are safe and effective, study finds," *New York Times*, Feb. 15, 2024.
11. Society of Family Planning, "#WeCount Report: April 2022 to March 2023."
12. Chloe Searchinger, "U.S. Supreme Court challenge to abortion pills could boost illegal imports | Think Global Health," *Council on Foreign Relations*, April 5, 2024.
13. Chris Davis, "Two bills that would ban unauthorized out of state abortions and gender affirming care for minors, advances," *News Channel 5 Nashville (WTVF)*, April 11, 2024; Mel Leonor Barclay, Shefali Luthra, and Mel Leonor, "Florida Supreme Court approves abortion restriction—and ballot measure that would overturn it," *The 19th*, April 1, 2024; Associated Press, "Facing backlash over IVF ruling, Alabama lawmakers look for a fix," *Sun Sentinel*, Feb. 23, 2024.
14. Steve Bonitatibus, "How the Alabama IVF Ruling Is Connected to Upcoming Supreme Court Cases on Abortion," *Center for American Progress*, May 3, 2024.
15. Guardian Staff Reporter, "John Oliver on Alabama's IVF ruling: 'It is chaos,'" *The Guardian*, Feb. 26, 2024.
16. Associated Press, "Facing backlash over IVF ruling, Alabama lawmakers look for a fix," *Sun Sentinel*, Feb. 23, 2024.
17. Natasha Korecki and Jonathan Allen, "Trump says states should decide on abortion restrictions," *NBC News*, April 8, 2024.
18. Daniel Dale, "Fact check: Trump makes wildly inaccurate claim that 'all legal scholars' on 'both

sides' wanted Roe overturned," *CNN*, April 8, 2024.

19. Lauren Irwin, "Schumer: 'American people will see right through' Trump's abortion stance," *Yahoo News*, April 9, 2024.

20. White House, "FACT SHEET: House Republicans Endorse a National Abortion Ban with Zero Exceptions in Latest Budget," *The White House*, March 22, 2024.

21. Mabel Felix, Laurie Sobel, and Alina Salganicoff, "Legal challenges to state abortion bans since the Dobbs decision," *KFF*, Jan. 30, 2023.

22. Sherman Smith and Lily O'Shea Becker, "Kansas voters defeat abortion amendment in unexpected landslide," *Kansas Reflector*, Aug. 3, 2022; "Where can I get an abortion? | U.S. Abortion Clinic Locator"; Democratic Socialists of America, "Going on the offensive—your National Political Committee newsletter," *Democratic Socialists of America (DSA)*, Aug. 22, 2022; Annie Gowen, "How abortion rights organizers won in Kansas: Horse parades and canvassing," *Washington Post*, Aug. 4, 2022.

23. "Where can I get an abortion? | U.S. Abortion Clinic Locator."

24. Felix, Sobel, and Salganicoff, "Legal challenges."

25. Isabella Volmert, "Lawsuit challenging Indiana abortion ban survives a state challenge," *AP News*, April 4, 2024.

26. Associated Press, "Lawyers for religious leaders challenging Missouri abortion ban say law imposes beliefs on everyone," *US News & World Report*, Nov. 16, 2023.

27. Lawrence O. Gostin, Sarah Wetter, and Rebecca B. Reingold, "One year after Dobbs—Vast changes to the abortion legal landscape," *JAMA Health Forum*, vol. 4, no. 8 (Aug. 3, 2023): e233091.

28. Mead Gruver, "Judge blocks Wyoming's 1st-in-the-nation abortion pill ban while court decides lawsuit," *AP News*, June 22, 2023.

29. Brendan Pierson, "Abortion providers urge judge to block Arizona 'personhood' law," *Reuters*, July 8, 2022.

30. Gloria Rebecca Gomez, "Abortions will be banned in Arizona after the Supreme Court upholds an 1864 law," *Arizona Mirror*, April 10, 2024.

31. Fund Texas Choice, "Fighting for Abortion Access—Fund Texas Choice," *Fund Texas Choice*, March 9, 2023.