



Statement for the Record
American College of Physicians
To the United States Senate Committee on Health, Education, Labor and Pensions On
“Reproductive Care in a Post-Roe America: Barriers, Challenges, and Threats to Women’s
Health”
July 13, 2022

The American College of Physicians (ACP) welcomes the opportunity to submit this statement and offer our views regarding the overturning of *Roe v. Wade* by the *Dobbs v. Jackson Women’s Health Organization* decision issued by the U.S. Supreme Court on June 24, 2022. The *Dobbs* decision eliminated the constitutional right for millions of Americans to make their own decisions about their health care. [ACP](#), along with other [physician organizations](#), strongly condemned the Supreme Court’s decision, its potentially harmful impact on patients, and the interference of the confidential relationship between a patient and their physician. ACP therefore greatly appreciates that Chair Murray and the Health, Education, Labor and Pensions (HELP) Committee have convened this hearing, “Reproductive Care in a Post-Roe America: Barriers, Challenges, and Threats to Women’s Health,” held on July 13, 2022. ACP firmly [supports](#) patient autonomy and ensuring access for all patients to the full range of reproductive health care services, including abortion. ACP [believes](#) that such reproductive health care decisions are foundational to the patient-physician relationship. A patient’s decision about whether to continue a pregnancy should be a private decision made in consultation with a physician or other health care professional, without interference from the government. We therefore strongly [oppose](#) medically unnecessary government restrictions on health care services stemming from the *Dobbs* decision.

The American College of Physicians is the largest medical specialty organization and the second largest physician membership society in the United States. ACP members include 161,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness. Internal medicine specialists treat many of the patients at greatest risk from COVID-19, including the elderly and patients with pre-existing conditions like diabetes, heart disease and asthma.

Access to Comprehensive Health Care Services Free from Interference

ACP has long advocated for increasing access to health care services and believes that abortion services are an important component of comprehensive reproductive health care services. In its 2018 position paper, “[Women’s Health Policy in the United States](#)”, ACP adopted policy in

support of an individual’s right to choose whether or not to continue a pregnancy “as defined by existing constitutional law.” In this position paper, ACP also recognizes that access to reproductive health care and health insurance has been and continues to be a barrier for women. The College also notes that funding for family planning services and access to comprehensive reproductive health care are regularly disputed by state and federal legislatures, creating uncertainties and potential disparities around access to reproductive care. The *Dobbs* decision will only worsen these disparities.

In light of the *Dobbs* decision, ACP made modest refinements to our policy on access to comprehensive reproductive health care, including abortion, to ensure that it would be relevant in a post-*Roe* world.

ACP [believes](#) in respect for the principle of patient autonomy on matters affecting individual health and reproductive decision-making rights, including those about the types of contraceptive methods they use and whether to continue a pregnancy. ACP believes that individuals have the right to make their own decisions, in partnership with their physician or health care professional, on matters affecting their individual reproductive health and opposes government restrictions that would erode or abrogate one’s right to continue or discontinue a pregnancy that may result from the Supreme Court ruling in *Dobbs*. Individuals should have sufficient access to evidence-based family planning and sexual health information and the full range of medically accepted forms of contraception.

ACP also supports legal protections for those traveling across state lines to access abortion care and for clinicians providing telehealth consultations on abortion medications to patients in another state if licensed to provide other telehealth services. ACP also opposes legislation or regulations that limit access to comprehensive reproductive health care by putting medically unnecessary restrictions on health care professionals or facilities.

The Consequences of Overturning *Roe*

Access has already disappeared in the states with automatic bans on abortion. As a result of the decision, [abortion access will be severely curtailed or entirely banned in 26 states](#) and other states are likely to pass similarly restrictive policies now that federal protections have been eliminated. The *Dobbs* decision is particularly concerning because it has the potential to be applied much more broadly than just to abortion services. Although the majority opinion in *Dobbs* states that the decision applies only to abortion, ACP is deeply concerned that by eroding the constitutional right to privacy, the decision has the potential to restrict the ability of patients to access certain forms of contraception or fertility treatments in some states, or to threaten other rights derived from constitutional privacy protections.

In addition to curtailing or eliminating access to abortion services, there are other serious consequences of the *Dobbs* decision [as outlined by ACP](#), including, but not limited to:

- Criminalization of reproductive health care for both patients and physicians.** In many states, [abortion bans include severe criminal penalties for patients and/or health care professionals who perform or assist in the performing of abortion](#). In Texas, for example, the state’s [trigger law](#) makes providing an abortion a first-degree felony, with physicians subject to punishments of life in prison and a \$10,000 fine. Investigations threaten the patient-physician relationship as patients can be compelled to testify against physicians and vice versa and physicians will face criminal, civil, and/or professional penalties for providing evidence-based care. A 2021 [report](#) from the National Association of Criminal Defense Lawyers predicted that, “a Supreme Court decision overturning *Roe v. Wade* will lead to rampant overcriminalization through regulatory enforcement and to mass incarceration on an unprecedented scale,” as states dramatically expand the scope of criminal liability to cover patients, health care personnel, and others. With *Dobbs*, criminalization of furnishing and/or receiving reproductive services could increase substantially in several states.
- Restricting reproductive health care beyond abortion.** Broad definitions in some states’ abortion bans could lead to certain methods of contraception, such as IUDs and Plan B, being [restricted](#). Many fertility-related services could also face legal challenges. The American Society for Reproductive Medicine has [warned](#) that, “there is a clear and present danger that measures designed to restrict abortion could end up also curtailing access to the family building treatments upon which our infertility patients rely to build their families.” Beyond these immediate impacts, the decision could open the door to the erosion of the right to contraception as well as other privacy-related rights, such as marriage equality and LGBTQ+ rights.
- Even in states with statutory protections, access to abortion could be diminished.** While geography and multiple states banning abortion make it difficult, patients with the resources to do so will travel to access abortion services. A Middlebury College analysis [found](#) that average travel distance to the nearest clinic will increase from 33 to 282 miles for patients living in states that will ban abortion. However, states where abortion is legal have health clinician workforce shortages and would not have the capacity to furnish care both to patients who travel as well as patients already residing in that state. For example, in Oklahoma, before its own abortion ban, abortion provider organizations [reported](#) a 2500 percent increase in patients following Texas banning the procedure in 2021.
- Abortion bans could exacerbate the maternal mortality crisis.** The United States has the [highest maternal mortality rate](#) in the developed world, with stark racial inequities as Black, Indigenous, and other women of color face maternal mortality rates multiple times those of White women. With abortion access curtailed following the Court’s ruling, the maternal mortality crisis can be expected to worsen. States with more abortion restrictions have a [higher incidence of maternal mortality](#). With abortion banned in some states—especially if there are no exceptions—pregnancy outcomes

such as ectopic pregnancy, sepsis of the uterus, or miscarriages could become fatal when there may be no time to travel to another jurisdiction.

- **Medication abortion and self-managed abortion may continue to increase.** Medication abortion has become the [preferred method](#) of abortion in recent years, comprising 54 percent of all abortions in 2020, a 10 percent increase from 2019. In 2021, the FDA [lifted](#) the in-person dispensing requirement for mifepristone. As a result, an increase in medication abortion by telehealth is anticipated. In addition, as abortion pills have become [increasingly available online](#), a rise in self-managed abortion using both medication and other methods, can be expected for individuals who cannot travel. While only [three states](#) – South Carolina, Oklahoma, and Nevada – explicitly criminalize self-managed abortion, other laws could be applied for prosecution.

Administrative Action

ACP strongly supported the Biden administration’s July 8, 2022, Executive Order on Protecting Access to Reproductive Health Care Services. The College was encouraged that the order seeks to expand access to abortion services, including medication abortion and other reproductive health services. ACP was also reassured that the order affirms the right to emergency care for those individuals who are pregnant or experiencing pregnancy loss.

ACP also commends the Office of Civil Rights (OCR) of the U.S. Department of Health and Human Services (HHS) for its June 29, 2022, [guidance](#) for Disclosures of Information Relating to Reproductive Health Care in the context of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. In a 2021 position paper entitled, “[Health Information Privacy, Protection, and Use in the Expanding Digital Health Ecosystem](#)”, ACP stated that protecting the privacy and security of personal health information collected both within and outside the health care system is essential and that comprehensive federal privacy and security legislation should protect personal health information from unauthorized, discriminatory, deceptive, or harmful uses, and must apply to all entities not covered under existing legislation and regulation that collect, store, use, or exchange personal health information. ACP is greatly concerned that once information is disclosed to a health app or other digital health tool or other third-party applications or entities, it loses its HIPAA privacy protections, and that data could be used against patients and/or clinicians when searching for and/or furnishing reproductive health services. Accordingly, ACP supports OCR’s June 29, 2022, guidance which helps safeguard privacy for an individual’s personal health information relating to abortion care, pregnancy, and other reproductive health services as well as clarify the protection of personal health data on apps, digital health tools, and other connected health tools.

Lastly, ACP applauds the Centers for Medicare and Medicaid Services’ (CMS) July 11, 2002, [memorandum](#) entitled “Reinforcement of Emergency Medical Treatment and Labor Act (EMTALA) Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss.” This memorandum clarifies that existing EMTALA requirements protect physicians if a patient’s pregnancy is terminated due to emergency situations.

Congressional Action

ACP also strongly supports congressional efforts to statutorily codify the privacy right for women to have reproductive autonomy. Previously, ACP [supported](#) H.R. 3755 and S. 1975, the Women's Health Protection Act of 2021, which would protect a person's ability to determine whether to continue or end a pregnancy and to protect the health care clinician's ability to provide abortion services. The bill also seeks to protect physicians' and other health care clinicians' ability to deliver abortion services free from medically unnecessary restrictions such as waiting periods, biased counselling, and admitting privilege requirements for clinicians. ACP also [supported](#) a subsequently modified version, S. 4132. While H.R. 3755 passed the U.S. House of Representatives, both S. 1975 and S. 4132 have failed to pass the U.S. Senate.

Most recently, ACP strongly [supported](#) H.R. 8296, the Women's Health Protection Act of 2022, which would protect access to abortion across the country, despite the Supreme Court's decision to overturn *Roe*. As with previous versions of the bill, it would ensure equal access to abortion care and protect physicians' and other health care clinicians' ability to deliver abortion services free from medically unnecessary restrictions as stated above. The legislation also prohibits compelling patients to make medically unnecessary in-person visits before receiving abortion services, disclosing the reasons for obtaining abortion services, and prevents prohibition of abortion services before fetal viability or after fetal viability when a clinician determines that the pregnancy is a risk to the patient's life or health. ACP supports passage of H.R. 8296 in the U.S. House of Representatives and urges the U.S. Senate to follow suit.

Regarding the data privacy protections for patients (as discussed above), ACP believes that Congress should take action to broaden the guardrails for a national privacy framework to hold accountable entities not subject to HIPAA for maintaining confidentiality, privacy, and security of that information. The bipartisan American Data Privacy and Protection Act, H.R. 8152, would help to establish this national privacy framework, help protect against discriminatory uses of data, and expand the definition what is considered sensitive covered data. The Health and Location Data Protection Act, S. 4408, would ban data brokers from selling or transferring location and health data. ACP strongly encourages Congress to pass expanded privacy protections that include patients' personal health data and information, especially including non-HIPAA entities, so that this data cannot be used against patients if they seek or access reproductive health services.

Conclusion

We commend you and your colleagues for holding this hearing about the barriers, challenges, and threats to reproductive health in a post-*Roe* world. We appreciate this opportunity to offer our views about the overturning of *Roe* and its consequences. ACP will continue to work to restore access to reproductive services, protect the patient-physician relationship from interference, fight legislative restrictions of evidence-based health care, and oppose the criminalization of physicians and other health care clinicians furnishing care for their patients. We will continue to work with the administration, federal and state policymakers, physician organizations, and other stakeholders to restore federal protections to all Americans. Please

contact Jared Frost, Senior Associate, Legislative Affairs, by phone at (202) 261-4526 or via email at jfrost@acponline.org with any questions or if you need additional information.