

What the End of Roe Means Beyond the Right to Abortion

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N A P W

Land Acknowledgment

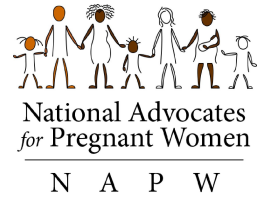


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Language Notice and Content Warning



- People of all gender identities may become pregnant and seek abortion care.

See Reprod. Health Servs. v. Strange, 3 F.4th 1240, 1246 n.2 (11th Cir. 2021).

- Content Warning: Pregnancy Loss, Forced Medical Interventions, Family Separation and death

Roe v. Wade (1973)



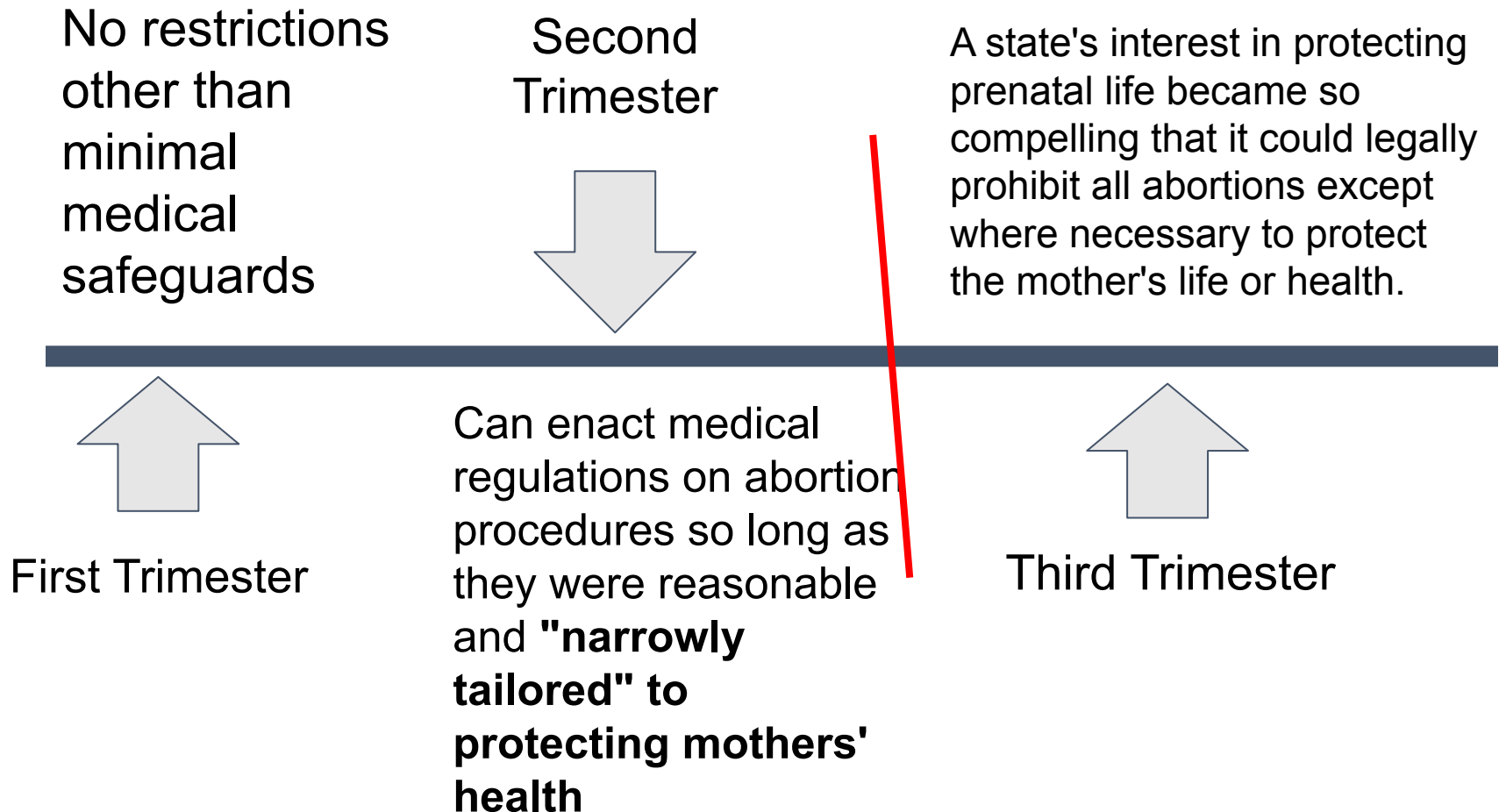
1. Right to privacy (grounded in 14th Amendment right to liberty) includes the right to abortion.
2. The state has an interest in protecting potential life.
3. But there are limits to state control.
4. Pregnant people are constitutional persons at all stages of pregnancy; fetuses are not.
5. Established trimester framework



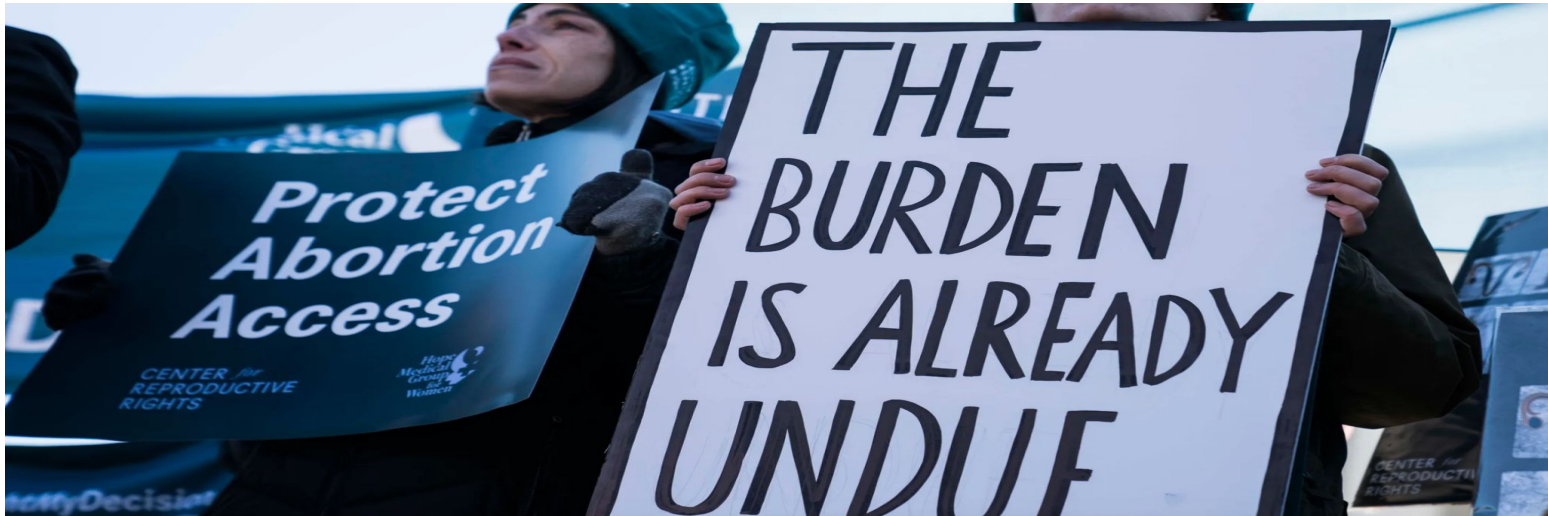
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Roe's Trimester Framework



Planned Parenthood v. Casey (1992)


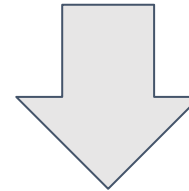


- Challenged the Pennsylvania Abortion Control Act of 1982
- Invalidated the spousal notification regulation
- Established the undue burden standard and viability framework

Casey's Viability Framework

The State can show concern for fetal development, but it cannot pose an undue burden on a woman's fundamental right to abortion

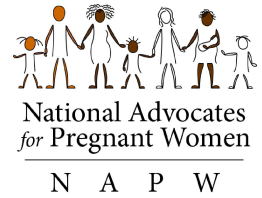
After viability



Before
viability

The state could promote its interest in the "potentiality of human life" by regulating, or possibly proscribing, abortion "except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."

Roe and Casey were never enough



Harris v. McCrae (1980): government does not need to ensure government funds cover abortion

The burdens of restrictions permissible under *Roe* and *Casey*, including waiting periods, parental consent, ultrasound requirements, fall most heavily on those already facing barriers to healthcare and who face racism and other forms of discrimination.

So...what is happening?!

What to Know About the Mississippi Abortion Law Challenging Roe v. Wade

A case before the Supreme Court is seen as potentially pivotal in establishing how aggressively the justices might move to place new constraints on abortion rights.

What will a post-*Roe* America look like?



The Criminalization of Pregnancy

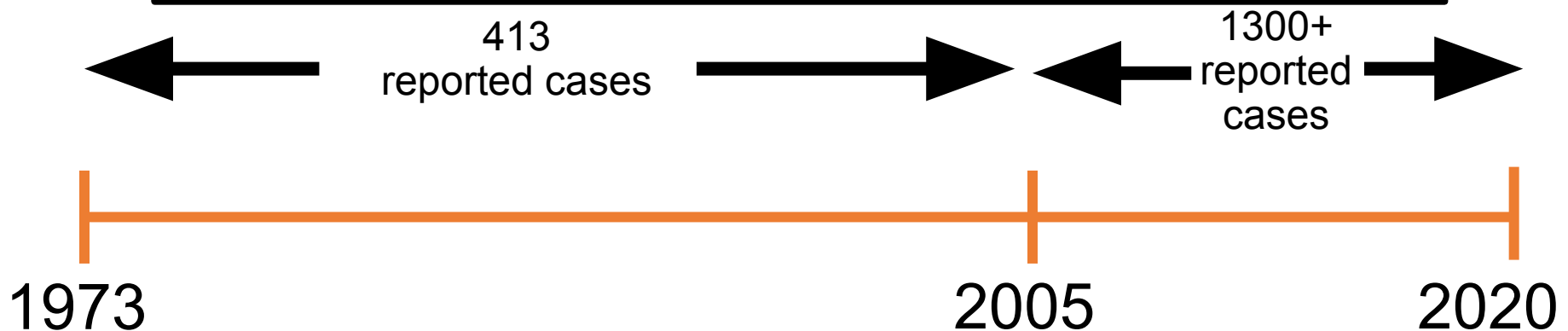
RESEARCH ARTICLE | APRIL 01 2013

Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health

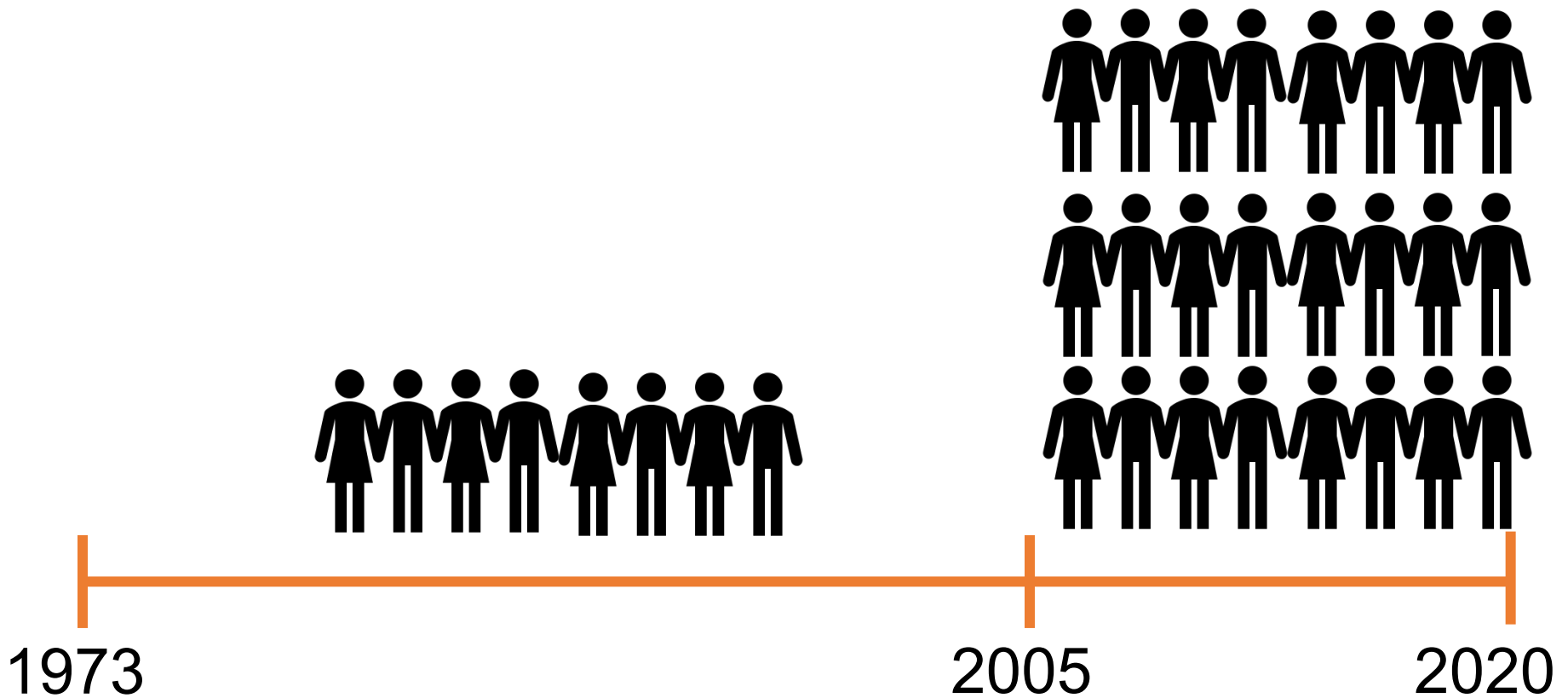
Lynn M. Paltrow; Jeanne Flavin

J Health Polit Policy Law (2013) 38 (2): 299–343.

<https://doi.org/10.1215/03616878-1966324>



Number of Arrests

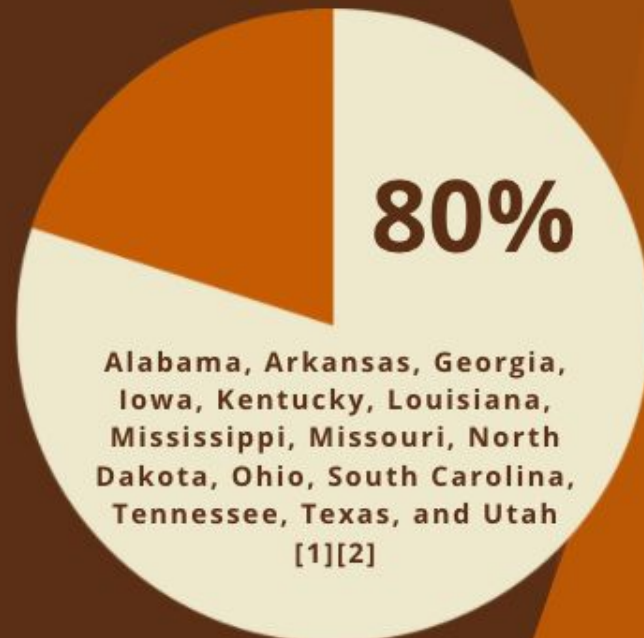




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BY THE NUMBERS

Currently, over 80% of the arrests and prosecutions of pregnant women NAPW is documenting come from states that have passed abortion bans like Mississippi's.



[1] State Bans on Abortion Throughout Pregnancy, Guttmacher Institute (May 1, 2021), <https://www.guttmacher.org/state-policy/explore/state-policies-later-abortion>; States with Gestational Limits for Abortion, Kaiser Family Foundation (Aug. 1, 2020), <https://www.kff.org/womens-health-policy/state-indicator/gestational-limit-abortion/>.

[2] Jason Breslow and Sarah McComman, The Governor Of Texas Has Signed A Law That Bans Abortion As Early As 6 Weeks, National Public Radio (May 19, 2021); Timothy Bella, Texas governor signs abortion bill banning procedure as early as six weeks into pregnancy, Wa. Po. (May 19, 2021).



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State actors forget that...

- *Roe v. Wade* rejects fetal personhood
- *Roe v. Wade* affirms that pregnant people with personhood rights
- Full constitutional persons have more protections than unborn persons/fetuses
- Such protections include protection from coercive state interference in their lives

These cases will help us predict the future

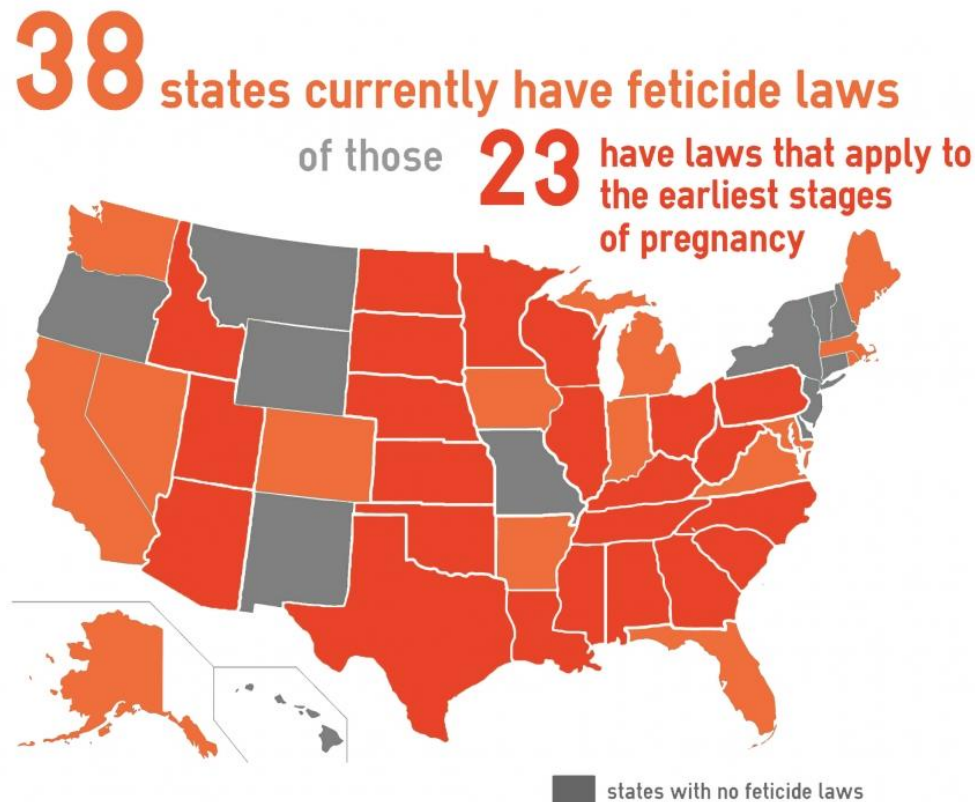
Prosecuting pregnant people under:

- Child neglect/abuse
- Manslaughter/murder/feticide
- “Chemical endangerment of a minor”
- Delivery of drugs to a minor

For:

- Self-managed abortion
- Drug use
- Putting themselves in a dangerous situation
- Not getting adequate prenatal care
- Having a home birth or refusing/delaying cesarean

Criminalizing pregnant people under laws meant to protect them



Multiple sites of criminalization



Police and prosecutors



Judges



Health care workers



Child-welfare workers

Kim Blalock, Alabama



Alabama is prosecuting a mom for taking
prescribed medication while pregnant
Moirá Donegan

At least 18 states require that doctors who know about
substance use during pregnancy turn their patients in. A
woman could be arrested just for being honest with her doctor



Adora Perez, California



She Used Drugs While Pregnant. Should She Be in Prison? After having a stillbirth, Adora Perez was charged with murder.

Brittney Poolaw, Oklahoma

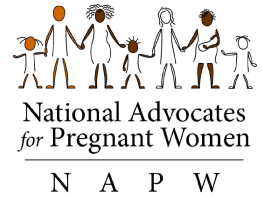
OPINION

MICHELLE GOLDBERG

When a Miscarriage Is Manslaughter

Oct. 18, 2021

Christine Taylor, Iowa



Did Christine Taylor Take Abortion into Her Own Hands?

Purvi Patel, Indiana



Purvi Patel Could Be Just the Beginning

Rights Deprivations in Medical Settings

Pregnant Woman Fights Court-Ordered Bed Rest

Pregnant Florida woman held as hospital prisoner against her will, loses baby.

By SUSAN DONALDSON JAMES

January 14, 2010, 11:24 AM • 6 min read



Jan. 14, 2010— -- For three days, a pregnant Samantha Burton was confined to Tallahassee Memorial Hospital against her will, ordered by a Florida court to bed rest and any medical care necessary to sustain her troubled pregnancy.

“yelled at and forcibly restrained, overpowered and sedated her.”

The case of Angela Carder



Jessica Valenti 
@JessicaValenti

Angela Carder was 27 years old, 26 weeks pregnant, and had cancer. She was forced to undergo a c-section to try to save the baby despite the risk to her health. They both died.

The good news

- On appeal, most (but not all) charges are dismissed or convictions are overturned
- On appeal, most results are consistent with *Roe* and *Casey*

Yet vast harms remain unremedied

- Appealing convictions is not an accessible route for everyone
- Appellate reversals cannot reverse time spent detained, incarcerated, or subjected to inhumane treatment
- Prosecutors continue to bring the same charges even after courts rule against them
- The potential for prosecution deters pregnant people from seeking care

Justice Thomas made it quite clear



"your argument is about abortion. I am trying to look at the issue of bodily autonomy and whether or not she has a right also to bodily autonomy in the case of ingesting an illegal substance and causing harm to a pre-viability fetus."

Banning abortion → criminalizing pregnant people

**Anti-Abortion Groups Once
Portrayed Women as Victims. That's
Changing.**

“If they want to strongly enforce criminal abortion bans, they will probably have to go after women.” Professor Mary Ziegler, *New York Times* March 19, 2022

Decisions subject to potential criminalization



Sites for Criminalization

...are also sites for potential allyship

What providers can do

NPA Position Statement 2017

Perinatal Substance Use



Treating this personal and public health issue as a criminal issue - or a deficiency in parenting that warrants child welfare intervention - results in pregnant and parenting people avoiding prenatal and obstetric care and putting the health of themselves and their infants at increased risk.¹² Parents are rightly and understandably fearful that seeking prenatal care, disclosing substance use, and initiating treatment for a Substance Use Disorder may result in harmful and punitive child welfare involvement.¹³ This, unfortunately, increases the risk of obstetrical complications, preterm birth, and delivery of low birth weight infants. It also contributes to higher rates of unmanaged Neonatal Abstinence Syndrome.⁸

What providers can do



- Require informed consent
- Document when informed consent is withheld
- Do not test
- Understand reporting requirements:
 - Many states do not require reporting for positive toxicology
- Pregnancy loss will become more suspect; proceed accordingly
 - Autopsies can lead to criminal proceedings
- Know that calls to child welfare can lead to criminal proceedings
- Adopt a harm reductionist approach (harm = state involvement)

You can make a difference.
Join our fight for health, rights, and justice.



www.advocatesforpregnantwomen.org