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Abortion Bans as Reproductive Governance and the Harms they Produce

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Rebecca Kate Willeford

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Abstract

In the United States, there was a major shift in abortion law after the United States Supreme Court overruled the landmark case of Roe v. Wade no longer protecting the right to abortion at the federal level. This thesis is examining abortion laws in the United States as practices of reproductive governance and the harms that they produce. In this study, the theoretical framework used comes from the concept of reproductive governance established by Morgan and Roberts as the different mechanisms that are used by various actors, including state governments to control reproductive behavior. This is combined with the idea of harm being a multidimensional concept that goes beyond the physical and is connected to John Stuart Mill's definition of a setback to a person's interests. This analysis focuses on three states; Idaho, Florida and Texas, which will do a content analysis of the laws that are currently in effect in the corresponding state. The analysis showed that even though the states vary in the law itself they each still control reproductive behavior through legislative controls, moral injunctions and many other aspects. The second part of the analysis discussed the harms that came from these abortion bans and how through the governance they were produced. It was shown that through delay of care and restrictions of abortions that there are physical, psychological, economic, social and structural harms taking place and these harms are targeted towards women.

Das Aufheben des wegweisenden Urteils „Roe v. Wade" durch den Obersten Gerichtshof/Supreme Court der Vereinigten Staaten von Amerika, führte zu einer einschneidenden Veränderung im Abtreibungsgesetz: das Recht auf Abtreibung war damit auf Bundesebene nicht mehr länger geschützt. Diese Arbeit untersucht das Recht auf Abtreibung in den USA als Praxis der reproduktiven Governance und damit verbundene Schäden. Dabei dient als theoretischer Rahmen das Konzept von Morgan und Roberts, die reproduktive Governance als Mechanismus beschreiben, der von verschiedenen Akteuren zur Kontrolle des reproduktiven Verhaltens genutzt wird. Dieser Ansatz wird mit dem Konzept der Multidimensionalität von Schaden kombiniert, das über physischen Schaden hinausgeht und nach der Definition von John Stuart Mill mit dem Rückschlag für persönliche Interessen verbunden ist. Der Fokus dieser Arbeit liegt dabei auf der inhaltlichen Analyse der Gesetzeslage in den drei US-Bundesstaaten Idaho, Florida und Texas. Trotz ihrer Unterschiede wird aufgezeigt, dass die Gesetze das reproduktive Verhalten durch gesetzliche Kontrolle, moralischen Druck und weitere Aspekte kontrollieren. Darüber hinaus befasst sich die Analyse mit den Schäden, die aufgrund der Abtreibungsverbote und Regulierungen entstehen. Dabei wurde festgestellt, dass die Verzögerung der Versorgung und die Einschränkung von Abtreibungen zu physischen, psychologischen, wirtschaftlichen, sozialen und strukturellen Schaden führen und dass Frauen davon überproportional betroffen sind.

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Finally, I want to acknowledge the personal importance of this research. This research topic was not chosen on a whim but reflects my dedication and passion for women's reproductive rights. I believe that the harm women are facing every day goes overlooked, and I hope that even my small contribution will be used for future change.

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Chapter 1: Introduction

1.1 Context and Background

In 2022, there was a global shift in attitudes towards abortion. This was due to the United States Supreme Court overturning the landmark case of Jane Roe, et al. v Henry Wade, District Attorney of Dallas County, more famously known as Roe v. Wade. The court case of Roe v. Wade occurred in 1973, and was a ruling from the Courts that protected the right to an abortion at the federal level by creating an inherent privacy right.[1] Roe v. Wade was a step in the direction of expanding and solidifying women's rights because it created a constitutional protection that prevented states from restricting abortion during the first trimester, leaving it up to the person who was pregnant to make that decision.[2] However, this all changed in 2022 with the case of Dobbs v. Jackson Women's Health Organization. The U.S. Supreme Court reversed Roe, no longer protecting the federal right to abortion but rather shifting abortion regulation to the state level, which decentralized abortion regulation. This caused major spillover effects throughout the United States and the rest of the world.[3]

While many countries and international human rights groups strengthened their stance on abortion as a fundamental human right that women should have access to, it also caused a ripple effect, emboldening anti-abortion groups and certain governments.[4] Since the United States has been a global leader, other countries tend to follow suit in certain regards. For instance, when the United States ruled in favor of the protection of abortion with Roe v. Wade, this paved the way for many other countries to follow suit. Now, the effects of the reversal can be seen. Kenya, for example, cited Roe v. Wade as a reason for keeping the right to abortion, but not even a month later, when Dobbs v. Jackson was ruled in favor, the Kenyan Court of Appeals changed its mind as well.[5] Roe v. Wade for them was considered

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[1] Risa Kaufman, Rebecca Brown, Catalina Martínez Coral, Jihan Jacob, Martin Onyango, and Katrine Thomasen, "Global Impacts of *Dobbs v. Jackson Women's Health Organization* and Abortion Regression in the United States," *Sexual and Reproductive Health Matters* 30, no. 1 (2022): 22, https://doi.org/10.1080/26410397.2022.2135574.

[2] "Roe v. Wade," Center for Reproductive Rights, accessed June 3, 2026, https://reproductiverights.org/resources/roe-v-wade/.

[3] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022).

[4] Kaufman et al., "Global Impacts of *Dobbs v. Jackson Women's Health Organization*," 24.

[5] Mariel Ferragamo, "Roe's Repeal Inspires Abortion Rollbacks in Other Countries," *Think Global Health*, February 5, 2024, https://www.thinkglobalhealth.org/article/roes-repeal-inspires-abortion-rollbacks-other-countries.

"bad law" because it was no longer used as precedent in the States.[6] Similar effects were occurring in other nations as well, like India and Nigeria. "Like *Roe*, *Dobbs* has served as the guidepost for governments and anti-abortion advocates."[7]

This is what was occurring outside the borders of the United States; within the borders was even more harmful. Throughout the country, many states were preparing for the opportunity if Roe v. Wade were to be overturned; they did this through what is known as "trigger bans". These bans were made and voted on in advance and immediately went into effect when federal protection went away. 13 U.S. states expanded reproductive authority by illegalizing abortion, and several other states are considered hostile with a 6-to-12-week gestational ban.[8] Now abortion access is dependent on geography, with some states allowing it and others completely banning abortion. Even across states that did ban abortion, they created a variety of mechanisms of reproductive control, which in turn produced uneven reproductive rights across the country. The different mechanisms that states have diverged from beyond criminalizing abortion, but also utilizing civil enforcement, allowing private citizens the option to sue healthcare providers who are suspected of performing abortion procedures.[9]

Tensions are boiling over, and these new abortion bans are causing harm that continues to increase. Women are experiencing significant physical, psychological, and social harm as a result of recent abortion bans enacted at the state level in the United States. However, these harms are not always recognized as such by legal institutions and actors, because harm is often understood only in direct or immediate terms rather than as structural or institutional processes. In this context, harm extends beyond individual experiences to include broader social, economic, and psychological consequences that affect women's health and wellbeing. Such examples included a delay in emergency care, physician fear, and reproductive care deserts, to name a few real-world consequences that are taking place.

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[6] Ferragamo, "Roe's Repeal Inspires Abortion Rollbacks in Other Countries," para. 6.
[7] Ferragamo, "Roe's Repeal Inspires Abortion Rollbacks in Other Countries," para. 6.
[8] Guttmacher Institute, "State Bans on Abortion Throughout Pregnancy," *State Laws and Policies* (as of April 2026), 2026, https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans.
[9] Texas Heartbeat Act, S.B. 8, § 3, Tex. Health & Safety Code § 171.208(a), 87th Leg., Reg. Sess. (Tex. 2021).

Being forced into an unwanted pregnancy is a violation of one's bodily autonomy, and it allows the state to have control over women's reproductive systems. It is this shift in decision-making power from individuals to the state and the harms produced out of it that this research paper looks to analyze. Abortion bans matter beyond the procedural aspect; they set a precedent in regulating healthcare decisions and in managing the personal decision of whether or not to reproduce.

1.2 Research Problem and Puzzle

As shown, abortion is a debated topic globally, particularly when the United States makes changes within its own system. This was seen in 1973 with Roe v. Wade as well as in 2022 with the reversal of Dobbs v. Jackson Women's Health Organization. While some of the debate is centered on the legality of abortion and women's rights, it is clear that limiting abortion access is not just a legal issue but rather a process that produces significant and multi-faceted forms of harm.

However, within the United States, abortion bans are rarely analyzed as practices of reproductive governance. As a result, the laws and the mechanisms that are used to enforce these forms of control do not examine the gendered harm that they create.

Going deeper, a lot of the existing scholarship does not use the concept of reproductive governance when analyzing abortion bans in the United States. Reproductive governance as a concept explains how states regulate reproduction and shift decision-making away from individuals. While this concept is used more often in Latin America, China, and parts of Europe, it has barely been applied to abortion bans in the United States. That is why the United States is an important case study to test this framework, because it shows a critical gap in the understanding of these laws.

Without the perspective of analysis of abortion bans in the context of the United States, there cannot be a clear picture of what effect these practices of reproductive governance have. Similarly, when the harms resulting from these laws are not examined in a systematic way, their broader social, economic, and psychological effects remain underdeveloped, especially in the literature. There is therefore a need for an approach that connects governance and harm in order to better understand how abortion bans function and what impacts they have on society as a whole.

This thesis intends to address this gap by bringing together the concepts of reproductive governance and harm into a single framework. It examines how abortion bans in the United States function as mechanisms of reproductive control and analyzes the forms of harm that they produce. In doing so, it provides a more comprehensive understanding of how these laws operate and their broader implications.

1.3 Research Question and Sub-Questions

The main research question, with two sub-questions, helps guide the thesis as follows:

How do abortion bans in the United States function as practices of reproductive governance, and what forms of harm do they produce?

- How do abortion bans shift reproductive choice away from women to the state?
- What forms of harm are produced by abortion bans, and how can these harms be conceptualized as structural?

This thesis argues that abortion bans in the United States function as practices of reproductive governance by shifting reproductive authority away from individuals and healthcare providers toward state control. Through mechanisms such as criminalization, healthcare restrictions, legal ambiguity and institutional enforcement, these forms of governance restructure reproductive decision-making and produce multidimensional harms, including psychological, economic, social, and structural consequences. These forms of governance remove decision-making abilities from women and give control to the state.

1.4 Contribution and Significance

This research question is significant for several reasons. First, how timely it is in the current landscape of the United States. After the overturn of Roe v. Wade, this changed the legal precedent that had been intact for nearly 50 years, providing people who are capable of becoming pregnant with options for their own personal bodily autonomy. Since then, new abortion restrictions have been enacted frequently. This research is also crucial for understanding the impact of abortion bans and the harm they can produce. It is important to identify and analyze these harms. Leaving them unexamined can risk them becoming more dangerous when they go ignored.

The contribution that this study will provide is to bring together the concept of reproductive governance with a systemic analysis of harm to examine states' control over reproduction. By doing so, it moves beyond viewing abortion bans solely as legal or political developments and instead analyzes how they function as mechanisms of reproductive control and what effects they generate. As for the reasoning behind using the United States, it has one of the biggest influences in the international theater.

1.5 Roadmap

This thesis is divided into several chapters. The first chapter introduces the research topic, presents the research puzzle, and outlines the research question and its significance. The second chapter reviews the existing literature on abortion bans, highlights the main debates, and identifies the gap that this study addresses. The third chapter presents the theoretical framework, focusing on biopower as the lens and the concepts of reproductive governance, as well as the concept of harm. It further explains how these frameworks will be used in the analysis. The fourth chapter describes the methodology, including the research design, sources, case selection, and analytical strategy. Then will come the analysis, which will be broken down into two main sections. Section one will analyze state bans to see how they are practices of reproductive governance. It will show the mechanisms and the shift of power from individuals to the state. Section two analyzes the forms of harm produced by these laws and what this means in a broader context. Lastly, the final chapter concludes the thesis by summarizing the findings.

Chapter 2: Literature Review

This literature review's purpose is to show where this thesis is situated in regard to the existing scholarship on abortion laws, reproductive governance and harm. The goal of this chapter is to identify the gaps that this thesis aims to address. In particular, this thesis focuses on abortion bans enacted in the United States after the overturning of Roe v. Wade or in anticipation of it and how they can be analyzed as reproductive governance. Additionally, it examines the harms produced by these restrictions and what this harm means. This chapter first examines scholarship on abortion bans and reproductive rights, then reviews literature on reproductive governance and biopolitics, followed by literature on harm and the consequences of abortion restrictions. The chapter concludes by identifying the gap this thesis addresses.

2.1 Scholarship on Abortion Bans and Reproductive Rights

Abortion bans and reproductive rights in the United States have been governed by two court decisions that are considered landmarks in the field of women's rights. The first is Roe v. Wade. This case in 1973 had the United States Supreme Court ruling that the Fourteenth Amendment, "The right to privacy," was a broad enough wording that it could and would encompass a woman's decision to have an abortion.[10] Then, in 1992, another case tested the Supreme Court's decision in Planned Parenthood v. Casey. This case held firm with the court's decision but shifted the legal grounding from privacy to what is considered the "undue burden," which prohibits states from creating obstacles for women seeking an abortion.[11] Meaning states technically could regulate abortion as long as it did not create a burden on women having access to the abortion. With Dobbs v. Jackson Women's Health Organization, this entire framework was fundamentally changed. The U.S. Supreme Court stated that the U.S. "constitution does not confer a right to abortion," which explicitly overturned the precedent of Roe v. Wade and Planned Parenthood v. Casey.[12] The reasoning behind the court's decision was that the Fourteenth Amendment was only for rights that are "deeply rooted in this Nation's history and tradition," which, in 1868, when the Fourteenth Amendment was ratified, abortion was a crime, so it could not be considered a right under

[10] *Roe v. Wade*, 410 U.S. 113, 153 (1973).
[11] *Planned Parenthood v. Casey*, 505 U.S. 833, 877 (1992).
[12] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 231 (2022)

this amendment.[13] The impact that occurred after Dobbs v. Jackson resulted in what Rebouché and Ziegler consider a fracture across the country.[14] The effects were felt immediately after the court made its decision in 2022 because thirteen states had implemented "trigger laws," which were near-total bans against the right to terminate a pregnancy.[15] However, several states also had trigger laws that were put into effect to codify abortion rights and were used to protect providers and patients from litigation from outside of the state.[16]

This background gives a foundational understanding of how many scholars view abortion and the different themes that are seen in abortion scholarship. In the case of rights, Catharine MacKinnon critiques the aspect of privacy and argues that it is actually a sex equality issue instead.[17] She notes that reproductive control is a necessity for individuals to have themselves so they can participate as equal citizens.[18] Luna, in her paper, "Reproductive Rights as Human Rights," goes even further, stating that reproductive rights are not just about the right to choose whether or not to have an abortion, but rather focus on positive rights.[19] These positive rights are the right to have children and to parent them in safe environments rather than just free from government interference.[20] Also seen from Rebouché and Ziegler is that fetal rights are central to anti-abortion movements and that there should be protection for the unborn, giving them the right to life.[21] Autonomy is another major factor in abortion because it regards a woman's power over her own biological processes. First is bodily self-determination, where Freedman and Isaacs discuss that abortion and bodily autonomy coexist and that the human body is inviolable and individuals have the right to determine what happens to their own bodies.[22] This was seconded by a research article,

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[13] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 231 (2022)
[14] Rachel Rebouché and Mary Ziegler, "Fracture: Abortion Law and Politics After Dobbs," *SMU Law Review* 76, no. 1 (2023): 28.
[15] Rebouché and Ziegler, "Fracture." 29.
[16] Rebouché and Ziegler, "Fracture." 29.
[17]Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989), 216..
[18] MacKinnon, *Toward a Feminist Theory of the State*, 246.
[19]Zakiya Luna, *Reproductive Rights as Human Rights: Women of Color and the Fight for Reproductive Justice* (New York: New York University Press, 2020)
[20] Luna, *Reproductive Rights as Human Rights*.
[21] Rebouché and Ziegler, "Fracture." 51-52.
[22] Lynn P. Freedman and Stephen L. Isaacs, "Human Rights and Reproductive Choice," *Studies in Family Planning* 24, no. 1 (1993): 23.

"Without bodily autonomy we are not free: exploring women's concerns about future access to contraception following the 2016 US presidential election," where the authors say that a necessity to be free is control over when and if one has children.[23] Freedman and Isaacs also mention the "women-centered" approach of trusting women to make their own reproductive decisions based on the information and services they have access to.[24] Nikita McDavid critiques the choice and autonomy frameworks because when abortion is framed as an individual choice, it veils systemic inequalities and places the burden on women to self-discipline their reproduction.[25] One of the last themes that abortion scholarship is centered on is legality. Legality is seen through the evolution of abortion, which was first seen through the right to privacy, then to liberty, and now no federal protection at all.[26] Another major part of the legality is through reproductive governance, which is how institutions control reproductive behavior.[27] This will be touched upon later in the literature review and again in the theoretical framework. There is also a scholarship, "Framing morality policy issues: state legislative debates on abortion restrictions," that views the legality as two-sides between the right to life versus a woman's choice.[28]

With abortion restrictions (not full-on bans), there are still a variety of impacts that affect women, including logistical challenges, economic burdens, and institutions that make it more difficult for those seeking an abortion. One of these barriers is the creation of "reproductive care deserts," which are areas where abortion access is hard to come by in a geographical sense, making people having to travel further.[29] This has created the "dual

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[23] Colleen P. Judge, Tierney E. Wolgemuth, Megan E. Hamm, and Sonya Borrero, "'Without Bodily Autonomy We Are Not Free': Exploring Women's Concerns about Future Access to Contraception Following the 2016 US Presidential Election," *Contraception* 96, no. 5 (2017): 374.
[24] Freedman and Isaacs, "Human Rights and Reproductive Choice," 19.
[25] Nikita McDavid, *Freedom of Choice or Reproductive Responsibility? Neoliberal Feminism and the Biopolitics of Abortion Rights Narratives in American Mainstream Media* (MA thesis, Carleton University, 2025), 7–8.
[26] Gordon et al., "Undue Burdens Created by the Texas Abortion Law for Vulnerable Pregnant Women," 529
[27] Lynn M. Morgan and Elizabeth F.S. Roberts, "Reproductive Governance in Latin America," *Anthropology & Medicine* 19, no. 2 (2012): 241.
[28] Gary Mucciaroni, Kathleen Ferraiolo, and Meghan E. Rubado, "Framing Morality Policy Issues: State Legislative Debates on Abortion Restrictions," *Policy Sciences* 52, no. 2 (2019): 171.
[29] Terry McGovern, Ira Memaj, and Samantha Garbers, "US Abortion Restrictions Are Causing Widespread Harm," *BMJ* 386 (2024): 1, https://doi.org/10.1136/bmj.q1729.

loyalty conflicts" where the law and medical ethics are in combat with each other.[30] Along with this dual loyalty, there has been a culture of fear created because the laws have vague language, and physicians will wait longer than necessary to treat patients before determining if it meets the criteria set out by the abortion laws.[31] And with most anything in the 21st Century, there are the digital barriers that have emerged with surveillance and search data used by law enforcement.[32] There are also now mandatory waiting periods, which create further obstacles for those who work or have other children. With these restrictions, the procedure can now take up to four times longer than before.[33] Then comes the next barrier, which is the geographical one. Those who want to receive an abortion have to travel across state lines, which for some is an impossible task because they are either minors, undocumented, or do not have a driver's license.[34] Lastly, among the barriers is the financial burden that it creates. The direct cost of abortion for a first-trimester abortion is roughly $560 USD.[35] Madden mentions how this is about half of the monthly income for a single person who is at the federal poverty line.[36] Also, since Medicaid is prohibited from covering most abortions, over half of people have to pay for it out of pocket.[37] This does not even cover the costs of traveling and paying for hotels, gas, and even lost wages from having to take off work.[38] There is also the long-term economic harm, but this is seen through the denial of having an abortion, and the odds of living below the poverty line are much higher.[39]

Finally, in this section of the literature, the broad consequences that come from abortion restrictions will be discussed. One of the most devastating impacts is the mortality

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[30] W. Arey, M. Heisler, T. McHale, H. Miller, L. Green, and P. Shah. "Dual Loyalty, Medical Ethics, and Abortion Bans." *Contraception* 151 (November 2025): 111106. https://doi.org/10.1016/j.contraception.2025.111106.

[31] Abby Schultz et al., "Impact of Post-Dobbs Abortion Restrictions on Maternal-Fetal Medicine Physicians in the Southeast: A Qualitative Study," *American Journal of Obstetrics & Gynecology MFM* 6, no. 7 (2024): 101387, 4–5.

[32] Rajat Khosla, Vidisha Mishra, and Sagri Singh. "Sexual and Reproductive Health and Rights and Bodily Autonomy in a Digital World." *Sexual and Reproductive Health Matters* 31, no. 4 (2023): 2269003, 2. https://doi.org/10.1080/26410397.2023.2269003.

[33] Schultz et al., "Impact of Post-Dobbs Abortion Restrictions," 101387, 4.

[34] Schultz et al., "Impact of Post-Dobbs Abortion Restrictions," 101387, 5–6.

[35] Nigel Madden, Emma Trawick, Katie Watson, and Lynn M. Yee. "Post-Dobbs Abortion Restrictions and the Families They Leave Behind." *American Journal of Public Health* 114, no. 10 (October 2024): 1043. https://doi.org/10.2105/AJPH.2024.307792.

[36] Madden et al., "Post-Dobbs Abortion Restrictions and the Families They Leave Behind," 1043.

[37] Madden et al., "Post-Dobbs Abortion Restrictions and the Families They Leave Behind," 1043.

[38] Madden et al., "Post-Dobbs Abortion Restrictions and the Families They Leave Behind," 1043.

[39] McDavid, *Freedom of Choice or Reproductive Responsibility?*, 104.

issue. Verma talks about in the paper, “Access to Abortion and International Humanitarian Law,” that due to legal barriers, there are many who choose to have an unsafe abortion; those who make this choice are more likely, according to the WHO, to develop serious complications and disabilities.[40] Another paper, “Trauma of abortion restrictions and forced pregnancy: urgent implications for acute care surgeons,” also highlights this issue, stating that “Restricting a woman’s access to abortion does not prevent abortion but simply leads to more unsafe abortions.” [41]Another consequence is the human rights violation; many international human rights bodies have found and established that the denial of abortion is considered “torture or cruel, inhuman, or degrading treatment.”[42]

2.2 Reproductive Governance and Biopolitical Power

Now, moving on to the next section of the literature review, which is focused on reproductive governance and biopolitics. Biopolitics is the political shift from having the right to take a life to now having power over life through control of biological processes. The human body has become central to state governance. Timothy Campbell, in his book, “Biopolitics: A Reader,” focuses on Foucault and the emergence of biopower.[43] Biopower, according to Foucault, was a concept that occurred primarily in the 18th century and moved away from sovereign power toward a regulatory power.[44] He formed this notion through two axes that were used to describe the human body in political ways. The first is the Anatomo-politics of the human body, which is focused on the individual. The second is the biopolitics of the population, which is focused on the species as a whole and the management of reproduction in all means.[45] This means that biopower was regulating life through governance. How governments managed to do this was through a variety of means. They used statistical knowledge as governments would generate data to monitor populations, such

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[40] Ajal Verma. "Access to Abortion and International Humanitarian Law." *Indian Journal of Integrated Research in Law* II, no. V (n.d.): 8.
[41] Grace Keegan et al. "Trauma of Abortion Restrictions and Forced Pregnancy: Urgent Implications for Acute Care Surgeons." *Trauma Surgery & Acute Care Open* 8, no. 1 (2023): e001067, 1. https://doi.org/10.1136/tsaco-2022-001067.
[42] Committee on Economic, Social and Cultural Rights. *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*. UN Doc. E/C.12/GC/22. Geneva: United Nations, 2016, para. 49(e).
[43] Timothy C. Campbell and Adam Sitze, eds. *Biopolitics: A Reader*. Durham: Duke University Press, 2013.
[44] Michel Foucault. *The History of Sexuality, Volume 1: An Introduction*. Translated by Robert Hurley. New York: Pantheon Books, 1978, 139.
[45]Foucault, *The History of Sexuality*, 139.

as birth and death rates.[46] From this concept of biopower and biopolitics, Morgan & Roberts developed their concept of reproductive governance. This is when institutions use a variety of mechanisms to control reproductive behaviors.[47] Even McDavid makes note that reproduction has become extremely political and defines the agendas that they set.[48]

Another scholar also further shows this by explaining how states showcase women as "nation-builders." This demonstrates that women are used through reproductive means to achieve national goals.[49] This statement goes along with many others, like Lawley and Deveaux, who see this type of governance as one that is gendered. It is the way that states utilize laws to create the dichotomy of masculinity and femininity.[50] Gendered governance is used to construct identities, mostly for women. Lawley demonstrates how states, in order to maintain control, will try to create what they believe is the proper woman, limiting her to being a mother.[51] Delanerolle reaffirms this gendered construction by the instrumentalization of women's bodies for states to use at their will.[52] While Foucault does not use gender in his framework, it still falls into his idea of docile bodies and that subjects are separated based on their usefulness and conformity.[53] Sandra Bartky has modified this framework from Foucault by showing how these practices are directed toward women through practices like diet, cosmetics, etc.[54] All of this goes through the process of normalization from institutions. What this means is that by making all of these practices from all different forms of institutions normal, then individuals become their own overseers.[55] Normalization creates a clear

[46] Sarah Smith and Christine Agius, "Bodies/Biopolitics/Identity: Feminist Perspectives," in *Handbook on Gender and Violence*, ed. Laura J. Shepherd (Cheltenham: Edward Elgar Publishing, 2019), 276.
[47] Morgan and Roberts, "Reproductive Governance in Latin America." 243
[48] McDavid, *Freedom of Choice or Reproductive Responsibility?*, 45.
[49] Gayathri Delanerolle, Sohier Elneil, Abirame Sivakumar et al. "Reproductive Politics and Women's Empowerment; How Does Geopolitics Control Women?" *Frontiers in Global Women's Health* 6 (October 2025): 1666773, 2. https://doi.org/10.3389/fgwh.2025.1666773.
[50] Amelia Lawley. "Women Behaving Badly: Problematisation and Biopolitical Governance of Gender in the New Zealand Abortion Debate." *New Zealand Sociology* 37, no. 2 (2022): 82.
[51] Lawley, "Women Behaving Badly," 84.
[52] Delanerolle et al., "Reproductive Politics and Women's Empowerment," 2.
[53]McDavid, *Freedom of Choice or Reproductive Responsibility?*, 42..
[54] Sandra Lee Bartky. "Foucault, Femininity, and the Modernization of Patriarchal Power." In *Feminist Theory Reader*, 5th ed., edited by Carole McCann, Seung-kyung Kim, and Emek Ergun. New York: Routledge, 2020. https://doi.org/10.4324/9781003001201-41.
[55] McDavid, *Freedom of Choice or Reproductive Responsibility?*, 83–84.

division between good and bad decisions and is seen mostly with women and reproduction; it villainizes those from marginalized groups.[56]

How this governance operates is through a variety of means: Law, healthcare, morality, surveillance, economics, and social norms. The first is governance through law. This is a central mechanism used when focusing on the management of biological life. Then there is governance through discourse or morality. This is when phenomena are made to be seen as problems, which creates the space for states to intervene, and it has been seen as justified.[57] One of the ways that these phenomena are turned into so-called problems is through the media and their creation of narratives that are widespread.[58] Looking at governance through morality is when institutions feed into this dichotomy of rational vs irrational choices and only applaud the choices that institutions agree with.[59] It is also done by merely using terms like "saving babies"; it creates a fear that if you choose to have an abortion, you are murdering a child. It makes it an ethical dilemma for some.[60] Which, as McDavid puts it, is an illusion of choice.[61]

2.3 Scholarship on the concept of Harm

The last section of the literature review is focused on harm and how it has been developed over time. Starting with John Stuart Mill's harm principle, it is used as an explanation as the only possible reason for exercising power over an individual against their will to prevent harm to others.[62] This principle goes beyond the physical aspect and suggests that harm is far more than that.[63] Melina Constantine Bell, who expands on Mill's harm principle, defines harm as a "setback to a person's interests."[64] What this means is a setback of interest is when things like career, property, or the well-being of self-and/or loved ones are damaged. One way to determine if there is a setback is, "If they pass and leave a person as

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[56] McDavid, *Freedom of Choice or Reproductive Responsibility?*, 83.
[57] Lawley, "Women Behaving Badly," 82.
[58] McDavid, *Freedom of Choice or Reproductive Responsibility?*, 9.
[59] Morgan and Roberts, "Reproductive Governance in Latin America." 244
[60] Dána-Ain Davis, *Reproductive Injustice: Racism, Pregnancy, and Premature Birth* (New York: NYU Press, 2019), 7–8.
[61] McDavid, *Freedom of Choice or Reproductive Responsibility?*, 72.
[62] Melina Constantine Bell, "John Stuart Mill's Harm Principle and Free Speech: Expanding the Notion of Harm," *Utilitas* 33 (2021): 164.
[63] Bell, "John Stuart Mill's Harm Principle and Free Speech," 164.
[64] Bell, "John Stuart Mill's Harm Principle and Free Speech," 165.

they were, whole and undamaged, their interests were not set back."[65] This is how Mill determines the difference between what is counted as Harm and what is counted as offense. Offense is explained as temporary. Another way that there is a distinction between the two is that harm is verifiable, and offense is subjective.[66]

Another scholar who helped develop the classical understanding of harm was Max Weber. While Weber did not directly define harm in his work "Politics as a Vocation", he was rather more focused on states using legitimate physical force on their citizens; a state enforces violence on its citizens.[67] Since he does not broaden this statement by saying that there are non-physical forces that also create violence or harm, in this case, then it can be seen as a narrow definition that only covers bodily harm.[68] Robert Cover, who argues about legal interpretations and the deeds that are carried out by them, in "Violence and the Word," opens up a broader aspect of harm. The deeds are not just the actual harm taking place, but also the interpretation of laws is a violent act itself. He talks about how, when a judge is understanding a piece of literature, depending on how they view it, could set in motion a violent mechanism that forces compliance.[69] This shows how the laws that are written can become a vessel in which harm is carried out.

Under the Millian framework that Melina Constantine Bell discusses in the paper, "John Stuart Mill's Harm Principle and Free Speech: Expanding the Notion of Harm," it is mentioned that there are several non-physical effects that should be counted as harm. Psychological and emotional trauma can be considered harm if they are extreme or not temporary.[70] One aspect that this paper also covers when expanding the definition of harm is that it shows that stressors in outside life can impact physical factors. The paper mentions that hate speech can lead to stress, which causes an increased risk of physical health issues, such as heart disease and stroke, for example.[71]

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[65] Bell, "John Stuart Mill's Harm Principle and Free Speech," 165.
[66] Bell, "John Stuart Mill's Harm Principle and Free Speech," 165–166.
[67] Max Weber, "Politics as a Vocation," in *Max Weber: Essays in Sociology*, trans. and ed. H. H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946), 3.
[68] Weber, "Politics as a Vocation," 3.
[69] Robert M. Cover, "Violence and the Word," *Yale Law Journal* 95, no. 8 (1986): 1601.
[70] Bell, "John Stuart Mill's Harm Principle and Free Speech" 165–166.
[71] Bell, "John Stuart Mill's Harm Principle and Free Speech" 163.

From other scholars, like Maria Borges, she considers the loss of agency and autonomy as an injury because it is the loss of being able to make a decision about one's own life and body.[72] There are also Economic and socioeconomic hardships that can be seen in the *Turnaway Study*, which is considered harmful to people as well.[73] This is shown through persistent poverty, child welfare, and financial destabilization. Both of these scholars expand upon harm and specifically discuss it in the setting of abortion bans and the harms that come from them.

Borges agrees with the psychological and emotional trauma, saying that forced procedures like performing an unnecessary cesarean procedure can have lasting effects and trauma on the person.[74] This goes hand in hand with the loss of agency, because that person had all decision-making power taken away about something that has serious consequences on their life. With Foster in *the Turnaway Study,* she breaks down the outcomes of abortion bans in multiple categories. Physical Health, which has already been discussed, but broadening about the actualities of it are eclampsia, higher mortality, and other chronic headaches for those who were refused an abortion.[75] Also included is relationship harm, meaning women were more likely to stay with violent partners if they were denied an abortion, and they were less likely, as single parents, to find support within others.[76] Another side of harm that can also be seen, as Schultz mentions, is that there is a moral injury to physicians because they are forced into making impossible decisions about protecting themselves or facing criminal charges by choosing the well-being of their patient.[77] This causes another type of harm, which is created from delayed treatment. When patients have to wait until they are considered a medical emergency, this sometimes comes too late and comes with a cost.[78] Physicians have even left their restrictive states to avoid this moral dilemma, which in turn causes a lack of physicians in places where they are needed.[79] When viewing harm with

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[72] Maria T.R. Borges, "A Violent Birth: Reframing Coerced Procedures During Childbirth as Obstetric Violence," *Duke Law Journal* 67, no. 4 (2018): 7–8.
[73] Diana Greene Foster, *The Turnaway Study: Ten Years, a Thousand Women, and the Consequences of Having or Being Denied an Abortion* (New York: Scribner, 2020), chap. 6.
[74] Borges, *A Violent Birth*, 11–12.
[75] Foster, *The Turnaway Study*, chap. 5.
[76]Foster, *The Turnaway Study*, chap. 8.
[77] Schultz et al., "Impact of Post-Dobbs Abortion Restrictions," 101387, 5–6.
[78] Schultz et al., "Impact of Post-Dobbs Abortion Restrictions," 101387, 5–6.
[79] Schultz et al., "Impact of Post-Dobbs Abortion Restrictions," 101387, 6.

abortion bans, *the Turnaway Study* also expands upon the economic burden by talking about how women in this case are more likely to become unemployed or that their children they already have will suffer as well.[80]

While there are a multitude of factors outside the physical realm, there is another one that needs to be addressed, and that is structural harm. This is an outcome of when there are power imbalances that are built into the foundations of society through various institutions.[81] If one looks at Galtung's work, "Violence, Peace and Peace Research", Galtung also states that there is a more comprehensive understanding, saying that harm has a structural dimension to it as well,[82] There are two ways that Galtung describes structural violence, and those are through unequal power and unequal life chances. The first is unequal power, meaning that whoever is making decisions has a monopoly on control. This type of imbalance is viewed as silent because it is so deeply rooted in the system that there is not really a direct actor.[83] Melina Constantine Bell uses a metaphor to explain systemic harm as a birdcage of oppression. It states, "the wires in a birdcage that cut off movement in every direction, pressing the groups it contains between inescapable barriers. Looking at a single wire, one might wonder why the bird does not simply fly around it to escape. One must see the system as a whole before one can grasp that it is oppression."[84]

Two of the ways that Galtung describes this concept of structural violence are that there are unequal life chances. Meaning that some are offered services and others are not, based on the system that society has created. This is further perpetuated by normalizing this behavior.[85] This creates an unequal distribution of harm. Davis also communicates this in the study and shows it through medical racism. This is when Black women have worse experiences when it comes to medical practices. She states that Black and indigenous people are 75% more likely to face maternal mortality than a White woman. Medical professionals do not take women's health as seriously as men's, but Black women are even more exposed

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[80] Foster, *The Turnaway Study*, chap. 6.
[81] Galtung, "Violence, Peace, and Peace Research," 171.
[82] Johan Galtung, "Violence, Peace, and Peace Research," *Journal of Peace Research* 6, no. 3 (1969): 168.
[83]Galtung, "Violence, Peace, and Peace Research," 171.
[84] Bell, "John Stuart Mill's Harm Principle and Free Speech," 172, citing Marilyn Frye, *The Politics of Reality* (New York: The Crossing Press, 1983), 4–5.
[85] Galtung, "Violence, Peace, and Peace Research," 171.

to this reproductive injustice.[86] Davis further states that this is not dependent on Black women's socioeconomic status either.[87] However, socioeconomic status does play a huge role. McGovern expresses that with abortion restrictions, there is a privilege that comes with living above the poverty line specifically. This is due to the fact that if one lives below the poverty line, they are more likely to have an unintended pregnancy and have to resort to unsafe methods.[88] Another marginalized group is members of the LGBTQIA+ community when it comes to harm, specifically with a lack of inclusive guidelines and major barriers to reproductive services.[89]

2.4 Gaps in the Literature

While there is a substantial body of feminist, legal, and human rights scholarship on reproductive rights and violence, several important gaps remain. Feminist scholars have expanded the understanding of violence beyond direct physical acts to include structural, institutional, and state-enabled forms of harm. At the same time, scholarship on reproductive governance has shown how states regulate reproduction through legal, moral, and institutional mechanisms that can limit individual autonomy. However, these strands of literature are often developed separately, and the relationship between reproductive governance and the harms they create has not been fully explored. This separation is particularly visible in the context of the United States, where abortion bans are most often analyzed as legal or political developments rather than as practices of reproductive governance that may produce gendered harm. These frameworks are rarely applied to recent abortion bans in the United States.

2.5 Conclusion

This literature review established what abortion scholarship says and how different scholars focus on different themes, whether it's the legality, the autonomy, or the rights aspect, and also the consequences and impacts that occur through abortion regulation. The second section of the literature review is focused on reproductive governance and how it has evolved from biopolitics. It goes through the different mechanisms used in governance and

[86] Davis, *Reproductive Injustice: Racism, Pregnancy, and Premature Birth*, 7.
[87] Davis, *Reproductive Injustice: Racism, Pregnancy, and Premature Birth*, 7, 9, 44, 78.
[88] McGovern, Memaj, and Garbers, "US Abortion Restrictions Are Causing Widespread Harm," 1.
[89] Delanerolle et al., "Reproductive Politics and Women's Empowerment," 2, 5.

how it is gendered in nature. The third section was about harm and how there are different understandings of what harm is, as well as understanding structural harm and how harm discriminates in unequal manners through marginalized communities. The following chapter is focused on developing the theoretical framework that is used to analyze abortion bans as practices of reproductive governance and then to evaluate the harms that are produced through those practices.

Chapter 3: Theoretical Framework

The theoretical framework for this thesis functions in two interconnected parts. These parts are the concepts of reproductive governance and the concept of harm. These frameworks together will provide the analytical lens for examining how abortion bans in the United States function as mechanisms of reproductive governance and what forms of harm the abortion bans produce. Reproductive governance is used to analyze how states regulate reproduction through laws, while the framework of harm is used to examine the multidimensional consequences that come from these regulations, including physical, psychological, economic, social, and structural harms. Combined, these frameworks allow the thesis to evaluate how abortion bans shift reproductive decision-making away from individuals while producing structural consequences.

3.1 Reproductive Governance

Reproductive matters are often considered a private issue specifically revolving around the idea of bodily autonomy and the ability to make choices on an individual level. However, even though it is thought of as private, that does not necessarily make it true. Reproduction is and has been for a long time a deeply political concept. Governments, religious institutions, and society have played a vital role in shaping the idea of how reproduction happens, how it is carried through, and even after the birth of the child. These institutions do this through legal and social mechanisms. In this thesis, abortion bans are more than regulations on the medical procedure. These are the ways that a state intervenes in reproductive decision-making, which takes the authority away from individuals and gives it to the state. This process shows who actually has control over reproduction. That is why it is necessary to view abortion bans as practices of governance rather than just policy. In this theoretical framework, the concept of reproductive governance is critical because the study is

utilizing this framework to analyze abortion bans, and without it, the research question cannot be answered properly.

The concept of reproductive governance is a way that certain bodies, like state institutions, are able to manage acts of reproduction. The main functions of reproductive governance can be seen through a variety of means of control. Morgan and Roberts' definition of reproductive governance is what this thesis will take as the theoretical framework. The reason for using their concept of reproductive governance is that it provides a lens to view abortion bans beyond legality. It explains how abortion bans function in reality by explaining how states regulate reproduction through many mechanisms.

While this thesis is centered around the concept of reproductive governance, it is based on the framework of biopower. Biopower helped to provide better insight into how states and institutions govern the biological aspect of populations.[90] He theorizes that this power over life stems from two separate but intertwined poles. The first pole is the Anatomo-politics of the human body. This means that the focus is on the individual body as a machine. The second focus is on biopolitics, and this is about the biological processes of the whole population and how it should be managed through political and economic means.[91] Birthrates, mortality, life expectancy, and state of health are all areas that biopolitics is designed to have control over. Foucault also mentions that biopower is reliant on normalization and continuous regulatory mechanisms.

Though biopolitics and biopower are powerful frameworks, there are certain aspects of Foucault's theory that he has not addressed. One of the main critiques of Foucault is that he has gender-blindness and erases the experience of women. Gender-blindness refers to how Foucault treats the body as generic and ignores the differences between the male and female body and how they are disproportionately governed.[92] This is seen through several scholars, Sandra Bartky, who argues that diet, exercise, and cosmetics for women are subject to more intense surveillance than men.[93] Biddy Martin critiques Foucault for the failure to

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[90] Foucault, *The History of Sexuality*, 139.
[91] Foucault, *The History of Sexuality*, 139.
[92] Monique Deveaux, "Feminism and Empowerment: A Critical Reading of Foucault," *Feminist Studies* 20, no. 2 (1994): 223–224, 228.
[93] Bartky, "Foucault, Femininity, and the Modernization of Patriarchal Power."

acknowledge "specificity of women's situations," saying that "woman" is considered the issue that male experts must solve.[94] In specific cases of reproduction, Amelia Lawley notes that Foucault barely mentions abortion even though his work centralizes female reproductivity and states it as a cause of "biopolitical anxiety."[95] After gender-blindness, another frequent critique is that he does not manage to distinguish female agency. Monique Deveaux, at the forefront of this, states that Foucault, by treating bodies as passive subjects, disregards women's active experiences that should be integrated within the framework.[96] Biddy Martin also challenges the necessity of not being gender-neutral because this neutrality can erase and make obsolete women's oppression, and this would lose its impact because this entire narrative lost means the theory is inadequate to tell what is going on in the world.[97] Deveaux continues to critique Foucault on his definition of Power and Violence. Foucault creates a distinct separation between the two, failing to acknowledge a relationship. When women are experiencing abuse in partnerships with men, there is an undeniable link between power and violence.[98]

Lastly, there is Dána-Ain Davis and the added criticism of Medical Racism. While this is not directed towards Foucault, it is an addition to his work. It is important to acknowledge that biopolitical management affects Black women more than White women.[99] Although this thesis is not directed at looking at the racial factors of reproductive governance, it is important because it shows that Foucault's idea of biopolitics is not neutral, and it does not affect everyone in the same capacity. With these critiques and additions, biopower and biopolitics become even more specified and directed towards women and women's reproduction.

Now, to connect biopower to reproductive governance, it can be shown by viewing biopower as the theoretical explanation and reproductive governance as the application. It is the narrowed down form of biopower focusing solely on reproduction. In Morgan and Roberts' work, "Reproductive Governance in Latin America," they describe reproductive

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[94] Biddy Martin, "Feminism, Criticism, and Foucault," *New German Critique*, no. 27 (1982): 13.
[95] Lawley, "Women Behaving Badly," 83.
[96] Deveaux, "Feminism and Empowerment," 235.
[97] Martin, "Feminism, Criticism, and Foucault," 17.
[98] Deveaux, "Feminism and Empowerment," 228.
[99] Davis, *Reproductive Injustice: Racism, Pregnancy, and Premature Birth*, 7–8.

governance as a tool used to observe and regulate reproductive behaviors and population practices. Specifically, Morgan and Roberts' definition is, "Reproductive governance refers to the mechanisms through which different historical configuration of actors – such as state institutions, churches, donor agencies, and non-governmental organisations (NGOs) – use legislative controls, economic inducements, moral injunctions, direct coercion, and ethical incitements to produce, monitor and control reproductive behaviors and practices."[100]

Even though this is the main definition there are some additional points from another author, Borges, that this thesis will also include. The reason it is important to include Borges is that this thesis is specifically focusing on state institutions rather than any of the other actors who make use of these practices. States that utilize reproductive governance do so to control and have power over bodies for the agendas they have set in place.[101] Ultimately, reproductive governance treats reproduction not as a matter of private choice, but as a central site of political and economic regulation.[102] It is also necessary to make the distinction between regulation and governance. Governance becomes indoctrinated inside one's thoughts and behaviors for people to believe in what is normal, while regulation is the act of forbidding something without the moral argument behind it. So, it restructures the decision-making possibilities that individuals could make. Utilizing this perspective for analyzing abortion bans is useful to see the shift from individuals to the entire system at work to prohibit reproductive behavior.

With this definition from Morgan and Roberts on reproductive governance being utilized, it is important to go through and examine each part and explain what everything means. Starting with the actors involved, as noted above, this thesis is specifically focused on state institutions, and that equates to the United States government and the examples within Texas, Idaho, and Florida governments that have employed abortion bans within their state borders. Now to the mechanisms that are used. Legislative controls are the main instrument of reproductive governance, and they are the most commonly seen. What can be seen through this mechanism is what is known as the judicialization of reproduction, which is the movement of reproduction from the individual or private sphere to the courts and

[100] Morgan and Roberts, "Reproductive Governance in Latin America." 243
[101] Borges, *A Violent Birth*, 7–8.
[102] Morgan and Roberts, "Reproductive Governance in Latin America." 244

legislatures. Ways that this is done are through legislation, moving the rights of a citizen no longer from the moment of birth but to the moment of conception. This is what's called the "fetal citizen," which causes a direct fight over rights and usually gives privilege to the fetus over the woman. This is the most used form of the concept "rivalry over rights" in which different groups are pitted against one another to determine who gets the claim over the rights.[103] Another way that legislative controls are used is through the outright restriction and/or ban on reproductive choices. The next mechanism is economic inducements. Economic inducements are tools to influence reproductive choices through financial incentives and even the marketization of reproduction.[104] Reproduction in this case has been turned into a commodity for consumers. Moving on to the third mechanism of direct coercion, which is the explicit use of force or the mandatory state requirements to control reproductive bodies.[105] An example that Morgan and Roberts use in their paper on reproductive governance in Latin America is the forced sterilization of indigenous women in Peru in the 1990s.[106] The last mechanism that Morgan and Roberts mention in their definition is the ethical incitements. These are arguments or campaigns framed around moral values to mobilize citizens and to change their behavior. One thing to note here is that these mechanisms are not specific to the actors. Meaning, state institutions can utilize each one of these just as NGOs could as well.

In this thesis, reproductive governance will be applied as the reallocation of reproductive decision-making away from individuals who are capable of pregnancy through different mechanisms. Even though it can be seen how reproduction governance functions as a framework and how states employ these practices, it cannot be said the same for what the actual consequences are that come out of the practices of reproductive governance. That is why it is absolutely crucial to examine harm and what exactly is harm, especially in this context, and why it is needed for the purposes of this thesis.

[103] Morgan and Roberts, "Reproductive Governance in Latin America." 243-244
[104] Morgan and Roberts, "Reproductive Governance in Latin America." 243
[105] Morgan and Roberts, "Reproductive Governance in Latin America." 243
[106] Morgan and Roberts, "Reproductive Governance in Latin America." 246

3.2 Harm in Reproductive Governance

This thesis has to take a look at what harm means, how it occurs, and what it actually does in terms of reproductive governance. Harm is not just a physical aspect that happens to individuals in singular settings. It includes much more than that. While one looks up the definition of harm, it states, "Physical injury or damage to health," but this thesis expands on the basic Oxford dictionary definition.[107] The way harm will be used for the purposes of this study will be derived from three specific sources. The first is John Stuart Mill, who established the "harm principle". This thesis is only taking Mill's foundational definition of what harm is as the starting point. It matters for this thesis because he establishes that harm is more than just an offense, but something that causes serious injury. Melina Constantine Bell, in her paper, "John Stuart Mill's Harm Principle and Free Speech: Expanding the Notion of Harm" she states that harm, "constitutes a tangible, objectively verifiable injury to a person's stake in matters such as their personal safety, bodily and mental health, property, or legal rights."[108] Using this notion of a setback of interests creates a baseline to understand what can be determined as harm versus what can be determined as what Mill refers to as an offense. An offense means something that is considered temporary, either discomfort or disappointment.[109] While Stuart Mill established this understanding of harm, Melina Constantine Bell helped to shape it and expand it into what this thesis is using today.

One of the next sources that will be used for this framework is from Johan Galtung. Galtung expands beyond the norm of physicality as well, but what is important for this framework is how he goes past the individual and discusses the structural harm. This is where harm is built into the foundation of society, and as seen in the literature review, Galtung refers to it as the "unequal power and unequal life chances".[110] How to view this exactly can be seen in one of the examples that Galtung uses. Life expectancy is higher in the upper class. This shows that there is an advantage given to the upper class when it comes to medicine and health factors. Whether it is because medicine has become too expensive for

[107] "Harm Noun - Definition, Pictures, Pronunciation and Usage Notes | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.Com," accessed May 1, 2026, https://www.oxfordlearnersdictionaries.com/definition/english/harm_1.
[108] Bell, "John Stuart Mill's Harm Principle and Free Speech" 166.
[109] Bell, "John Stuart Mill's Harm Principle and Free Speech" 165.
[110] Galtung, "Violence, Peace, and Peace Research," 171.

the lower class to pay, or healthier foods are not as accessible for the lower class. This has become a problem that is structural in nature because it is an issue that is perpetuated by institutions to raise the prices of medical treatments and has no way for those to pay without going into debt. This viewpoint on harm shows that it can be born from systems like the law. Another aspect of structural harm that is crucial to remember is that it is further embedded in society by normalization.[111] When something is normalized, especially by law, it makes it harder to change because the roots run deep with it. So, sometimes it is hard to recognize structural harm because it could be that it is a part of everyday life or something that is to be expected, which makes unequal conditions seem more legitimate. When it comes to abortion restrictions, this understanding of structural harm is relevant because institutions have made reproduction a priority that laws regarding such are normal and they unevenly affect different groups of people. This uneven application demonstrates particularly well how structural harm is, in fact, also gendered harm. By processing that harm can impact an entire group of people from systemic practices, this demonstrates that some forms of harm are tied to women. What matters for this thesis is to see the correlation that reproductive regulation is gendered in nature. There is an unequal burden on women in health, economic means, and much more. Having this factor that harm can and is gendered is an important distinction that needs to be made for this thesis. Harm is not a neutral feature, but it is something, especially in the case of reproductive control, disproportionately affecting women and those capable of becoming pregnant.

By having this concrete idea that harm is more than just physical injury, and also something that is deeply integrated into society by institutions with a gendered lens, it leads to one of the final sources needed for this theoretical framework, which is *The Turnaway Study* by Diana Greene Foster. She does not define harm as a singular concept but rather multiple measurable consequences when people have restrictions on their bodily and reproductive autonomy. *The Turnaway Study* challenges the notion that those who have abortions do harm to themselves and instead showcases, through documented negative outcomes, what harm actually occurs when denied access to abortion happens.[112] This thesis uses *The Turnaway Study* because of its broad inclusion of what harm can be. It is also

[111]Galtung, "Violence, Peace, and Peace Research," 171–173.
[112] Foster, *The Turnaway Study*, Introduction.

important because Diana Greene Foster, through her research, demonstrates what harm can actually look like in reality, specifically in abortion restrictions, which is a necessity for this thesis. While Galtung and Mill provide the foundational framework as well as establish the structural aspect of harm, Foster shows empirical abortion harms. There are several categories that Foster places harm: Physical Health Risks/Mortality, Economic and Socioeconomic Deprivation, Interpersonal and Safety Harms, Harms to Children, and Philosophical Harms (Loss of Autonomy). It can be seen that harm is multidimensional and not limited to the physical field.[113] With all of this said, the working framework of harm that this thesis is based on is that harm is a multidimensional, structural, and gendered concept incorporating physical, psychological, economic, and social aspects that are not only on an individual level but are also embedded in the structure of society.

This framework of harm is principal for this thesis, because it provides a way to understand the consequences that reproductive governance produces. Instead of seeing reproductive governance as only a system of regulation, this framework recognizes that governance mechanisms impact detrimentally bodily autonomy, access to healthcare, financial stability, and social relationships. Harm and reproductive governance do not have an incidental relationship. Harm is not separate from governance; on the contrary, harm is a byproduct of the governance that decides to regulate reproductive behavior, and harm is an embedded aspect that emerges from it. This relationship is what is central to this thesis. Breaking it down, reproductive governance in the simplest of terms is control through law; in this case, the mechanisms that it uses create real change, and in turn, that change affects people. When it results in negative consequences, that defines it as harm. Understanding harm as an outcome of reproductive governance allows this thesis to move beyond narrow understandings of injury limited to direct physical violence. Instead, it provides a framework for examining how laws and institutions shape unequal life conditions and reproductive experiences through broader systems of power and regulation.

[113] *The Turnaway Study*, Introduction and chap. 9.

Chapter 4: Methodology

This study uses a qualitative content analysis, which will be helpful in identifying patterns in texts. This allows for an interpretation of how abortion bans operate in practice. This approach is well suited for this study because the research focuses on understanding how abortion bans function as mechanisms of reproductive governance and the harm, they produce rather than measuring their frequency. Examining these laws through their enforcement mechanisms and the implications of the legal texts will provide insight into how reproduction is governed and what harm is produced through this lens.

This study adopts a single case study design, with the United States as the case. The study will narrow in on three states' abortion policies to see how reproductive governance is produced through different laws within the United States, and not just a singular law, since states have the authority to decide on their own restrictions and not at the federal level.

The research is guided by the theoretical frameworks of biopower, reproductive governance, and harm. These concepts are used to interpret the meaning and effects of abortion bans. This research design is appropriate for the research question because it allows for an in-depth examination of how abortion bans function as mechanisms of reproductive governance and how their effects can be interpreted through a theoretical framework focused on harm. A qualitative content analysis is particularly suited to this study, as it enables the analysis of legal texts beyond their formal provisions by examining their effects and implications. This approach makes it possible to identify how power is exercised through law, how reproductive decision-making is reallocated, and how such processes generate forms of harm. By combining a theory-driven analysis with a single case study design, this method provides the necessary depth and flexibility to evaluate not only how abortion bans operate but also the conditions that they produce.

4.1 Case Selection

The case selection for this thesis is a single case study of the United States of America. While seeing the ongoing situation in the United States has created a prime case study, there is also the question of why there is only a single case study for this thesis. This thesis has chosen not to compare different countries but rather to focus solely on one government's decisions. The reasoning for this is that a single case study allows for deeper

analysis of how governance operates rather than a broader generalization across multiple countries. The internal variation from differing state abortion laws allows for this single case study to analyze a diverse range of governance within a single country. However, the purpose of this thesis is to analyze how reproductive governance operates and what harms are produced by it. This is important because reproductive governance does not automatically equal a production of harm, specifically systemic or structural.

When deciding on the United States as the case study for this thesis, one had to look at the global influence that the U.S. has. The decisions that they make can guide international discussion on reproductive rights. This was seen after Roe v. Wade occurred in 1973. There was a massive worldwide ripple effect, and many nations saw progressive change when it came to reproductive rights. So, now that the opposite has occurred, this too has an impact on what happens around the world.

The current landscape of the United States is that it has recently gone through a drastic change that has created a unique situation after the Supreme Court overturned Roe v. Wade in 2022. This was coming from almost 50 years of legal precedent gone. There is no longer federal protection of abortion because it has been handed over to state governments to make decisions on abortion and reproductive rights. Roe v. Wade was monumental for its time and left this choice up to those who it affected directly, those capable of becoming pregnant. As of March 9, 2026, thirteen states have abortion completely banned, with another seven states having gestational limits between six weeks and twelve weeks.[114] This created a clear shift in reproductive governance in the United States. Dobbs v. Jackson Women's Health Organization ruling was a major turning point that allows for this analysis of state control and whether or not it leads to harm that in turn leads to violence. This state control can now be observed to understand how they use the law to control reproductive decisions. Another point to add on here is that states having this direct authority create a variety of laws being introduced. Even within states that have a total ban on abortion, there are differing mechanisms used, and some have even introduced criminal penalties. This variation provides a keen opportunity for analysis and viewing the harm that is produced.

[114] KFF, "Abortion in the United States Dashboard," last modified May 11, 2026, https://www.kff.org/womens-health-policy/abortion-in-the-u-s-dashboard/.

4.2 Sources

In this thesis, there are a multitude of sources used, ranging from legal texts, human rights documents, and academic scholarship. Each type of source has a different role throughout the thesis and is not all used in the same way. The main source that is used for the analysis is the legal texts, which include several state abortion laws that have been passed after the overturning of Roe v. Wade. All of the sources used in this thesis are to help situate how reproductive governance focuses on how states regulate reproduction through law and policy, and the legal documents can show how authority over reproduction is defined and enforced. There are two contextual legal texts that are used in this thesis. They are needed and used to provide background on state abortion laws. The two texts in this case are the court decisions from Roe v. Wade and Dobbs v. Jackson Women's Health Organization. The Supreme Court decisions are not necessarily used in the analysis of the thesis, but it is crucial to have them for the background and context they provide so that it can be understood where this thesis is situated in time and history. Specifically, one of the court decisions, Dobbs v. Jackson Women's Health Organization, is used to mark the significant turning point in United States history, when the long-standing precedent of Roe v. Wade was overturned, marking the point at which federal protection of the right to abortion no longer exists. It is not used in the analysis because the decision itself is not an abortion ban, but paved the way for the abortion bans that will be analyzed.

The primary focus of state abortion bans that will be used in this thesis is the Texas Heartbeat Act, more formally known as Texas Senate Bill 8. The Idaho Defense of Life Act and the Florida Heartbeat Act. It is important to make the distinction that these sources are not case selections because this study uses a single case study, and these laws are examples within this case study and are not used as a comparison between themselves. The reasoning for the specific cases of Texas, Idaho, and Florida is not random either. Texas abortion law is used as an example because it is the most restrictive abortion law in the United States at this time, when the thesis is being written. Florida is a representation of a more "moderate" restriction, even though it is still a six-week ban, and Idaho is used for more variation to show that these are not isolated laws but rather more widespread.

Each of these states uses different mechanisms for the enforcement and regulation of reproductive control. It will show how the states exercise their power. The enforcement mechanisms range from civil enforcement to criminal penalties and gestational limits. These state laws are a good representation of the moderate to severe abortion bans in the United States, and they show how the restrictions are implemented in practice. They will be analyzed through the wording, themes, and practices to showcase similar effects of reproductive governance. The point of these three sources in particular is vital for the thesis because they show how abortion bans are practices of reproductive governance through different means. It is a way to highlight how the United States government is regulating bodies. The variation between the state's legislation is important for the analysis to see if the differing regulations, whether more extreme or not, still have an outcome of similar harm. There needs to be several sources to provide variation, so that the thesis is not only looking at the most extreme case of abortion restriction but instead proving that it is a broader phenomenon taking place throughout the United States. It shows that even though they are all widely differing bans and restrictions, they could produce similar harm. This thesis uses different laws to show the same process of reproductive governance working in a variety of ways.

First, the Defense of Life Act, an abortion law that bans abortions in the state of Idaho under code Section 18-622, was passed by legislation in 2020 but went into effect in 2022. This is what is known as a trigger ban. Idaho officials were awaiting the downfall of Roe v. Wade so that this law would immediately go into effect. Idaho, one of the strictest examples of abortion restrictions, states that performing or attempting to perform an abortion is a felony. If one is found to be doing either of these, this could lead to imprisonment of no less than two years and no more than five years in prison.[115] Healthcare professionals would face a license suspension of at least six years for a first offense, and a second offense would mean permanent revocation of their medical license. In the state of Idaho, there are only two possibilities where there is an exception and abortion is allowed. First, a physician may perform an abortion if they use "good faith medical judgment" to determine that the abortion is necessary to prevent the death of the pregnant woman. This does not include if the

[115] Idaho Defense of Life Act, Idaho Code § 18-622(1) (2020).

pregnant woman threatens suicide.[116] Even in the case where the physician does make this determination, they must provide the best chance for the unborn child to survive, unless this proves a greater risk to the pregnant woman. The only other exception to this law is if a pregnant woman during the first trimester of her pregnancy has reported an act of rape or incest to law enforcement and provides a copy of the report to the physician. The last part of this law is that pregnant women are not subjected to any penalties or criminal convictions if they perform the abortion on themselves, and healthcare professionals are not liable if treatment to the pregnant woman results in accidental death to the unborn child.[117]

Second, the Florida abortion law that went into effect in 2024 prohibits a physician from performing an abortion if the gestational age of the fetus is more than six weeks. There are some exceptions to the six-week gestational age rule, and those include that if two physicians certify in writing that an abortion is necessary to save the pregnant woman's life or to prevent irreversible physical impairment, excluding psychological reasons.[118] The second reason is that, before the third trimester, an abortion is permitted if two physicians determine that the fetus has a fatal abnormality, and the last reason is that, in the case of rape, incest, or human trafficking, an abortion is permitted up to fifteen weeks. For a woman to qualify, as in the case of Idaho, they must provide documentation. However, for Florida, there is more leeway that the documentation can be a restraining order, police report, or medical record. Now, even though Florida law permits abortions before six weeks, there are still several requirements that have to occur before a pregnant woman can get the procedure.[119] The process starts with an in-person consultation with a physically present physician who must orally tell the pregnant woman of the risks, as well as the estimated gestational age of the fetus. An ultrasound must be performed, and the pregnant woman must be offered the opportunity to view the live images as well as hear an explanation. If the woman is to decline viewing, she must sign a form. This must all occur at least 24 hours before the procedure is scheduled to occur.[120] In the case of minors (women who have not yet reached 18 years of age), parental consent is required unless they are already married or if the

[116] Idaho Defense of Life Act, Idaho Code § 18-622(2)(a)(i) (2020).
[117] Idaho Defense of Life Act, Idaho Code § 18-622(4)–(5) (2020).
[118] Florida Heartbeat Protection Act, S.B. 300, § 4, amending Fla. Stat. § 390.0111(1)(a) (2023).
[119] Florida Heartbeat Protection Act, S.B. 300, § 4, amending Fla. Stat. § 390.0111(2) (2023).
[120]Florida Heartbeat Protection Act, S.B. 300, § 4, amending Fla. Stat. § 390.0111 (2023)..

minor has another child. Even with all of this, the law still sets strict standards for how and where abortions are performed. Penalties for any violation of this law fall under three categories: criminal consequences, administrative consequences, and civil consequences.[121] The criminal penalties include: second- and third-degree felonies* (second-degree felonies are considered more serious) for any person who intentionally performs or participates in the termination of a pregnancy. If the attempted abortion results in the death of the woman, then the punishment is the worst of the two. The law also has a First-Degree Misdemeanor for failure to dispose of fetal remains in the proper way. The administrative penalties are generally imposed by the Agency for Health Care Administration (AHCA), which are mostly fines for violations. The AHCA can impose fines of up to $1000 USD for each violation of any provision. If a medical professional knowingly fails to file a report, they are subject to a $200 fine for each violation.[122] If any of these actions occur, the physician is subject to possible revocation or suspension of their license, as well as for the clinic where the said violation occurred. The last type of consequences is specifically in the cases involving partial-birth abortions.* The father of the fetus, only if married to the mother at the time of the procedure or the maternal grandparents in the case of a minor, may sue for civil relief, including monetary compensation for all psychological and physical injuries, as well as compensation that is equal to three times the cost of the partial-birth abortion.[123]

Lastly, Texas abortion bans were enacted prior to the overturning of Roe v. Wade, with what is known as Texas Senate Bill 8, "The Heartbeat Act," enacted in 2021, which prevented abortions after six weeks, with no exceptions except to save the mother's life.[124] This rules out rape and incest, as this has since been expanded upon in the Texas Health and Safety Code 170a by banning abortion altogether, still with only the exception of "life-threatening conditions that places the patient at risk of death" or "substantial impairment of a major bodily function".[125] It is not defined in Texas statutes what this exactly means. They not only have to document every single aspect of decision-making leading up to the abortion. For the now increasingly rare cases of abortion in Texas, the steps that need to be taken are

[121] Florida Heartbeat Protection Act, S.B. 300, § 4, amending Fla. Stat. § 390.0111(10) (2023).
[122]Florida Heartbeat Protection Act, S.B. 300, § 4, amending Fla. Stat. § 390.0111(13) (2023).
[123] Florida Heartbeat Protection Act, S.B. 300, § 4, amending Fla. Stat. § 390.0111(10)(b) (2023).
[124] Texas Heartbeat Act, S.B. 8, § 1, 87th Leg., Reg. Sess. (Tex. 2021).
[125] Texas Health and Safety Code § 170A.002(a)–(b), H.B. 1280, 87th Leg., Reg. Sess. (Tex. 2021).

extensive. For starters, the physician must have extensive documentation throughout the whole process. Twenty-Four hours before the procedure takes place, the pregnant woman must have a sonogram, and the physician must display the image, make the fetal heartbeat audible, and provide a verbal explanation of the results. Then the physician has to inform patients of specific medical risks, the gestational age of the fetus, and the availability of medical assistance for prenatal and neonatal care.[126] Lastly, the law states that if any of the following applications are found unconstitutional by a court, the remaining parts of the law are intended to stay in effect. What this means is that Texas lawmakers are committed to ensuring that the bans on abortion stay in place in totality, even if one part of the law is seen as void. This procedure, in simple terms, keeps the law from being completely scrapped.[127]

4.3 Analytical Strategy

The analytical strategy that this thesis follows is a qualitative content analysis. The analysis is a three-step process that examines the mechanisms and implications found in state abortion laws.

In the first stage, abortion bans that are chosen from specific states in the United States will be looked at through the lens of biopower/reproductive governance. This will show how states regulate reproduction through legal mechanisms. Using biopower as the tool provides an understanding of how reproductive decision-making is shifted away from individuals and towards the state, and how it is a practice of control.

The second step starts by identifying the forms of harm that are produced by abortion bans. How harm will be identified is through the physical, psychological, economic, and even social repercussions that are generated from the laws that are in place. The purpose is to show how this regulation can produce different forms of harm.

Lastly, the analysis will combine the previous stages and compare and interpret the results together to answer the research question of "How do abortion bans in the United States function as practices of reproductive governance, and what forms of harm do they produce?" This approach is appropriate for the research question because the study seeks to

[126] Texas Health and Safety Code § 170A.0021(a), H.B. 1280, 87th Leg., Reg. Sess. (Tex. 2021).
[127] Texas Health and Safety Code § 170A.003, H.B. 1280, 87th Leg., Reg. Sess. (Tex. 2021).

determine both how abortion bans function as practices of reproductive governance and the different outcomes that come from the laws that are considered harmful. By first identifying the mechanisms of control and then seeing the harms that can be produced by them, the analysis avoids assuming that abortion bans automatically create harm against women and instead provides a systematic assessment based on the theoretical tools outlined in the framework.

4.4 Limitations

The limitations of this study in relation to the methodology are that it is a study that is looking at in partiality what harm is brought by abortion bans. Harm is also a personal feature, and this analysis does not include an individual focal point, like first-hand accounts, but instead draws from legal documents as well as literature on the subject. While this thesis does not look at lived experience, it is still important and fits with the research question at hand because it is asking about the structure of the bans and how states regulate reproduction.

Another limitation is that the research is limited to the United States as a single case study. While it uses several state laws as examples, it does not do a comparative analysis of multiple countries. This limitation could cause dysfunction because it could mean that the findings cannot be applied automatically everywhere. However, one of the goals of this thesis will be to be able to take the study and apply it to other countries as well. The United States, as the single case study, makes sense because it allows for a deeper analysis of how important the U.S. is in the global context.

4.5 Choice of Terminology

This study engages with sources that use differing terminology to describe people who can become pregnant. The terms include “women”, “pregnant people”, “people who are capable of becoming pregnant”, etc. When referring to the source, this study will use the terminology that the source uses, but when I am referencing pregnant people outside of the specific sources, I will be using the term women. The reason for not using the more inclusive terminology is to make sure that the gender disparity is highlighted more strongly. However, it is still important to note that nonbinary people and those who are assigned female at birth and later identify as male are also capable of becoming pregnant.

Chapter 5: Reproductive Governance Analysis

Abortion bans cause great harm to women. These bans are enforced in several different outlets. This first section will cover reproductive governance and how the abortion bans from three states, Texas, Idaho, and Florida, function. The mechanisms that are used in the law will be identified, as well as what that means for power relations, who holds control, and who the governance actually affects.

5.1 Mechanisms used in Idaho

In Idaho's Defense of Life Act, there are many mechanisms being used to regulate reproductive behaviors. The backbone of the law, however, is the criminalization aspect of it. The Idaho law states, "every person who performs or attempts to perform an abortion as defined in this chapter commits the crime of criminal abortion."[128] By opening the law with a statement that abortion is a criminal act, it showcases that the state of Idaho defines reproductive behavior through criminal law-making decisions about reproduction as a matter of legality. A medical procedure has now turned into a criminal offense. This establishes the state as the ultimate authority over reproductive decision-making. Taking away autonomy from pregnant women to decide their own course of action. Here, a major shift in power and control is seen. In this case, women and physicians are those who lose control and power because their authority is valued lower than that of those who are in control, which is the court and state government of Idaho. We not only see government control being gained, but also a control that is gendered because it affects a vast majority of women. While just the criminalization act is a mechanism of reproductive governance, they further extend control and power through the punishments that are written in the law. Section 18-622 states that "criminal abortion shall be a felony punishable by a sentence of imprisonment of no less than two (2) years and no more than (5) years in prison."[129] This shows a coercive power, and it deters medical professionals from providing abortions for those in need because of the threat of imprisonment. This threat governs physicians before an abortion even occurs because physicians may decide that the risk is too great for their own safety. Criminalization and legislative control as a form of reproductive governance is seen through the outlawing of

[128] Idaho Defense of Life Act, Idaho Code § 18-622(1) (2020).
[129] Idaho Defense of Life Act, Idaho Code § 18-622(1) (2020).

abortion, but also the repercussions of those who would still choose to perform the medical procedure. This reflects what Morgan and Roberts' concept of reproductive governance is because reproduction is now regulated through legal mechanisms.

Because the term "legislative control" is so broad, it means the Defense of Life Act has many opportunities to provide differing ways for this mechanism to operate. As seen already, criminalization is one of the main efforts of the law, but there are secondary means under this mechanism as well, and this comes in the form of restriction of medical authority. The state has made it a priority to make decisions regarding medicine and medical necessity. From this provision in the law, "the physician determined, in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman."[130] This provision sees the state creating the acceptable conditions for when an abortion is allowed. They have taken medical decisions away from those physicians who have been trained to make these choices and are now given to legislators who did not go to medical school and have no training whatsoever for this. Even though this section of the statute mentions that the physician can determine in his good faith, this narrow definition provides insecurity to doctors because it is up to the court whether it was in fact "in good faith". There is also one more aspect that needs attention drawn to it, and that is the Idaho law automatically uses male pronouns for the physician. While this is a common technique used in lawmaking to use masculine pronouns, it not only falls under sexist stereotypes but also perpetuates that reproductive regulation is centralized around male authority, even though reproduction, especially in the case of abortion, affects primarily women.

Besides criminal offense, physicians are also controlled through the possibility of revocation of their medical license. In the case they attempt or perform an abortion, their license can be suspended and then permanently revoked if they have a repeat offense. [131]Another instance where coercion is being used on physicians. In this case, they are not threatened with imprisonment, but instead their livelihood is being taken away. What this

[130] Idaho Defense of Life Act, Idaho Code § 18-622(2)(a)(i) (2020).
[131] Idaho Defense of Life Act, Idaho Code § 18-622(1) (2020).

demonstrates is that there is a hierarchy where the law is above medicine, and that medical expertise is no longer an authority but instead the legal institutions.

The next mechanism that is widely used in the Idaho abortion law is that of moral injunctions. This form of mechanism is when the governance can determine what an acceptable reason for having an abortion through morality is. This is first seen in the provision that if an abortion is to take place, the unborn child needs to be given the best opportunity to survive. The phrasing they use is crucial for this part. By calling the fetus an unborn child, this creates an emotional attachment and implies that they now have the same rights as the person who is pregnant. And not only are they given the same rights, but they have a priority. Morgan and Roberts demonstrated this concept as the "rivalry over rights". Two entities are now fighting over the right of survival, as seen by the law. When a law is phrased in this way, it sometimes establishes guilt in women that they are murdering a child if they go through an abortion. It is also seen societally, and women are looked down upon if they make these choices. This is further perpetuated by this statement: "No abortion shall be deemed necessary to prevent the death of the pregnant woman because the physician believes that the woman may or will take action to harm herself".[132] By the exclusion of suicide, the law does not determine psychological suffering to be a legitimate reason. A woman's mental health is not a priority in any manner, and instead that priority is handed to the fetus. This falls under the moral injunction mechanism because the state is determining what suffering is acceptable and provides a valid reason.

Another key mechanism that Morgan and Roberts discuss is the monitoring and state surveillance; this one can be seen through the mandatory reporting that the law requires to qualify for the rape or incest exception.[133] By having mandatory reporting, a medical procedure now has a prerequisite of monitoring from law enforcement to determine reproductive behaviors. Rather than allowing women and physicians to determine the appropriate action for their bodies and their pregnancies, the authority is now transferred and becomes dependent on the circumstances of how the pregnancy occurred. The mandatory reporting creates a system where reproductive decisions are documented and reviewed

[132] Idaho Defense of Life Act, Idaho Code § 18-622(2)(a)(i) (2020).
[133] Idaho Defense of Life Act, Idaho Code § 18-622(2)(b)(i)–(ii) (2020).

beyond the medical field. This surveillance is more than observation, but a way to regulate access to reproductive care.

After seeing what abortion bans look like in one state, it is time to move towards a state that has a less restrictive abortion law. This is considered less restrictive because Florida does not have a complete ban on abortion, but they do have a gestational age limit and other requirements. The use of Florida's statutes is to use an example of a "moderate" law to see if it still counts as reproductive governance and if this governance still causes harm like the more restrictive bans.

5.2 Mechanisms used in Florida

The use of Florida's Heartbeat Protection Act is vital for seeing reproductive governance in all aspects. While Idaho has a complete outright ban with limited exceptions, Florida regulates abortion with a six-week gestational limit. This section of reproductive governance from Florida law will also start with legislative controls, as they are the most visible mechanism used. Under Section 4, subsection 1, the law states that "A physician may not knowingly perform or induce a termination of pregnancy if the physician determines the gestational age of the fetus is more than six weeks unless one of the following conditions is met".[134] With this gestational age, the state of Florida does not put a full-on prohibition on abortion, but rather it expresses what needs to be the appropriate timeline for when an abortion is permissible. The state regulated the timeline by putting a restriction on anything past six weeks. What this does is remove authority again from women and from physicians and transfer it to state institutions. However, since it only restricts abortion to a six-week limit, one could see that this is misplaced; on the contrary, a six-week ban is an illusion of choice. At six weeks, many women are just then finding out that they are pregnant, effectively closing their window in what Florida considers an appropriate timeline to have an abortion. In the same way, Idaho threatened physicians with imprisonment, and Florida law also uses the threat of imprisonment. This is seen in Section 4, subsection 10 of the Florida Heartbeat Act.[135] With this, once again, can be seen coercion and deterrence against those who would help facilitate an abortion, with a few variants on the exact punishments.

[134] Florida Heartbeat Protection Act, S.B. 300, § 4, amending Fla. Stat. § 390.0111(1) (2023).
[135] Florida Heartbeat Protection Act, S.B. 300, § 4, amending Fla. Stat. § 390.0111(10) (2023).

One of the strongest mechanisms Florida uses, though, is moral injunctions through self-governance. Starting with the name of the bill itself, "Heartbeat Protection Act", this is not a neutral title. It is creating a discourse for its citizens without even having to read the law. Florida lawmakers could have named this law "Six-week gestational ban," but instead they chose to use a title that evokes emotion and morals. By calling it the "Heartbeat Protection Act," it is demonstrating which lives are important and need to be saved. Using the word " protection " means there is a threat, and in this case, the threat is abortion. Florida is not alone in using this type of language framing in the title. Idaho and Texas both do it as well.

Another aspect of Florida law that fits under moral injunctions and measures up to the framework of reproductive governance is that Florida law is not strictly about regulating abortion but also promoting pregnancy. This is where Florida diverges from Idaho law. With statements like "promote and encourage childbirth," the state shows that it is not neutral but rather shows what should be the norm.[136] As Morgan and Roberts framed it, it is the state institution shaping reproductive behavior through moral norms. Because this law is explicitly funding and encouraging only one type of reproductive outcome, and that is childbirth. The other part of the law is criminalizing abortion.

Monitoring and surveillance are also prominent features of the Heartbeat Protection Act. It can be seen through section 6, subsection b, "When performing a license inspection of a clinic, the agency shall inspect at least 50 percent of patient records generated since the clinic's last license inspection." This provision and the following all show very strong surveillance language.[137] The state is reviewing medical records, monitoring compliance, and inspecting the clinic to ensure that no abortions are being performed. It even states that there will be investigations if there are allegations of abortions being performed.[138] This is classic monitoring; they are demonstrating that the state will be keeping track of all clinics in the maternal health sector to make sure that there are no violations being made. So, as can be seen, while this is written into the law, which is a legislative control, they are controlling

[136] Florida Heartbeat Protection Act, S.B. 300, § 3, amending Fla. Stat. § 381.96(1)(d) (2023).
[137] Florida Heartbeat Protection Act, S.B. 300, § 6, amending Fla. Stat. § 390.012(1)(c)2 (2023).
[138] Florida Heartbeat Protection Act, S.B. 300, § 6, amending Fla. Stat. § 390.012(1)(c)4 (2023).

reproductive behavior through more methods, including monitoring sites where abortions could take place.

To go alongside both the promotion of childbirth and the monitoring of clinics is another mechanism that Morgan and Roberts introduce in their framing of reproductive governance, and that is through economic inducements.[139] This can be seen in provisions like "Any person, governmental entity, or educational institution may not expend state funds… for a person to travel to another state to receive services that are intended to support an abortion." This framing is spread throughout the act as well, making sure any funding is going towards the promotion of pregnancy.[140] This demonstrates a financial aspect of acknowledging the acceptance of only one reproductive outcome. So, rather than simply restricting access to abortion and criminalizing it, Florida is actively pushing towards what they consider the acceptable reproductive choice.

5.3 Mechanisms used in Texas

Finally, coming to the last state abortion laws that this thesis is analyzing is Texas. Texas is known to have the most restrictive abortion law in the United States. This comes from Senate Bill 8, introduced in 2021 as a trigger ban law, as well as from the Texas Health and Safety Code 170a. These two laws function in different ways, while they overlap as well, the best way to look at it is that Senate Bill 8's strongest mechanism is through monitoring and surveillance. As for Texas Health and Safety Code 170a, the strongest mechanisms are through legislative controls. That is why it is crucial to analyze both texts.

Starting with the Texas Health and Safety Code 170a, as with both Florida and Idaho, it uses legislative controls through outlawing abortion, and it is considered a felony with a punishment of imprisonment. One major difference in the legislative controls is that Idaho allows for the exception of Rape and Incest, but Texas does not. There is also a civil penalty of 100,000 USD or more for those who commit the action of providing an abortion.[141] This shifts authority from women to the lawmakers of Texas, who decide what constitutes acceptable reproductive practices. Furthermore, within the legislation, there is restriction of

[139] Florida Heartbeat Protection Act, S.B. 300, § 3, amending Fla. Stat. § 381.96 (2023).
[140] Florida Heartbeat Protection Act, S.B. 300, § 2, creating Fla. Stat. § 286.31(2) (2023).
[141] Texas Health and Safety Code § 170A.005, H.B. 1280, 87th Leg., Reg. Sess. (Tex. 2021).

medical authority through several provisions like, “Reasonable medical judgment means a medical judgment made by a reasonably prudent physician” or “A physician who treats a condition…shall do so in a manner that… provides the best opportunity for survival of an unborn child” these two extracts hide the true intentions because on the surface level, one would think that it is just for the physician to practice medicine in the best way possible.[142] However, once you dive a little deeper, it reveals that Texas is defining what counts as a reasonable medical decision. It is also telling physicians not just how to treat patients, but if the patients should even be treated at all, because they must fit under their account of when an abortion should occur. As seen in the Methodology and in the Appendices, Texas has one exception, to save the pregnant woman's life.

One of the most unique aspects of Texas abortion law is its Senate Bill 8, The Heartbeat Act, through the privatized surveillance and enforcement of the law. “Any person, other than an officer or employee of a state or local governmental entity in this state, may bring civil action against any person who… performs an abortion… knowingly engages in conduct that aids or abets the performance or inducement of an abortion”.[143] Texas state officials have made it so that private citizens are now delegated the task of monitoring and enforcement through civil action. This means that if a father takes his daughter to a clinic to receive abortion care, anyone can sue him for his part in aiding and abetting.[144] This act of monitorization also coincides with moral injunctions, because it is creating normalcy behind citizens conducting their own form of governance externally, rather than relying on state agencies or law enforcement. This type of governance expands upon utilizing one mechanism and one institution to control reproductive behavior. It enforces moral behavior through the judgment of actions from one's own neighbors, as well as institutionalizing private citizens.

The last mechanism to discuss within the context of Texas abortion law is the moral injunctions. Texas abortion law frames abortion very specifically as an ethical issue and one where there is a clear right and wrong answer. Several ways that Texas law does this are, firstly, through the reference of the fetus as a “living unborn child”. This one simple action

[142] Texas Health and Safety Code § 170A.001(4) and § 170A.0021(a), H.B. 1280, 87th Leg., Reg. Sess. (Tex. 2021).
[143] Texas Heartbeat Act, S.B. 8, § 3, Tex. Health & Safety Code § 171.208(a) (2021).
[144] Texas Heartbeat Act, S.B. 8, § 3, Tex. Health & Safety Code § 171.208(a)(2) (2021).

that seems harmless frames the procedure of having an abortion as the killing or, in harsher terms, the murdering of this child. If the law were to state instead, "fetus in the embryonic stage," there is more neutrality in this tone and less moral governance pressure. This repetition of the term "unborn child" makes the fetus a "fetal citizen" according to Morgan and Roberts and creates the conditions for "rivalry over rights". This term that Morgan and Roberts established is when the fetus and the pregnant woman are in a fight over whose survival is more important, and in the case of the Texas abortion law, the fetus is winning this fight.[145]

Specifically in Senate Bill 8, the Texas Heartbeat Act, there is a section entitled "Abortion and Sonogram Election". In this section of the bill, it is required by law to be explained all aspects of abortion, be provided a sonogram, be told and repeated back, "I understand that I have the option to hear the heartbeat," and "I understand that I am required by law to hear an explanation of the sonogram images".[146] These phrases explicitly show the moral pressure the state of Texas is putting pregnant women through. They are not merely procedural processes needed for an abortion to happen, but they are making pregnant women face what the law deems as the only permissible outcome of pregnancy. With these requirements in place, the state is controlling or trying to control how pregnant women view and evaluate their pregnancy and the choices that they can make whilst limited. This removal of neutral information sharing is another step that takes this governance mechanism to another level of control. Lastly, a small point that deserves attention is the use of gender throughout the law. In sections like "fertilization means the point in time when a male human sperm penetrates… a female human ovum" and "pregnant means the female human reproductive condition".[147] This consistent use of gendered language shows that this governance is directed and mostly impacts women.

Throughout Texas abortion law, there are many factors where the distribution of power away from pregnant women and even physicians is now directed through the state government. This gives the control to the state and allows them to monitor and produce reproductive behavior that is considered good while punishing reproductive behavior that is

[145] Morgan and Roberts, "Reproductive Governance in Latin America." 243-244
[146] Texas Heartbeat Act, S.B. 8, § 8, amending Tex. Health & Safety Code § 171.012(a)(5) (2021).
[147] Texas Heartbeat Act, S.B. 8, § 3, Tex. Health & Safety Code § 171.201(5)–(7) (2021).

deemed as bad. While each of the abortion laws varies in function, with Idaho relying on criminalization, Florida on moral injunctions through self-governance, and Texas on monitoring through private citizens, they each determine that reproductive governance can and does occur in multiple capacities.

5.4 Synthesis of Chapter 5 Reproductive Governance Analysis

After analyzing three U.S. states, Idaho, Florida, and Texas, it can be concluded that each state has variations of laws that ban abortion and not just one singular mechanism. Idaho governs largely through legislative controls of criminalization and punishment. Florida governs through moral injunctions in ways of promoting childbirth, and lastly, Texas governs strongly through monitoring by private citizens. Throughout this chapter, by analyzing the different mechanisms, abortion bans function as practices of reproductive governance by shifting reproductive authority to state institutions. These actors now exercise all the power when it comes to decisions made about reproductive behaviors. Reproduction is being regulated through coercion, moral dilemmas, and even economic factors, as seen with the case of Florida. With power now in the hands of legislators, courts, and other private citizens in Texas, this is a direct result of pregnant women losing control and power over their own bodies and the decisions they make.

Despite these states utilizing different methods of reproductive governance, all three states shift reproductive choice away from women to the state. They do this by criminalizing abortion, regulating and taking away physicians' own medical judgments, and creating a rivalry over whose rights are more important, the woman or the fetus. So, if coming to the conclusion that abortion bans function as reproductive governance through these means, what harms are then produced by this governance?

Chapter 6: Harm Analysis

In this chapter, harm will be identified from the outcomes of the abortion bans that are occurring in the United States. As shown in Chapter 5 on Reproductive Governance, there are many ways that abortion laws can control reproductive behavior, and this demonstrates that abortion bans are acts of reproductive governance. Chapter 6 examines the consequences that are a result of that governance. Looking back at the theoretical framework, Mill, Galtung, and *the Turnaway Study* by Diana Foster Greene were used to understand harm as a multifaceted concept that is a setback that focuses on more than just physical injury. It looks at psychological, economic, social, structural, and gendered harm as well. That is what this chapter will focus on. The first section will be on individual harm that is experienced, followed by the economic and social harm, then transition away from individual to the structural harm, and lastly, how the harm that is produced is also gendered, showing who experiences this harm from reproductive governance. This thesis now answers the question of when reproductive governance is in operation, what happens to those affected, and what harms are produced.

6.1 Physical and Psychological Harms

Harm that is individualized and that is easiest to visualize would be physical harm. This does not make it the most important by this means, but it is essential to the overall effects. In this section, physical and psychological harms will be discussed as the outcomes of abortion bans that are forms of reproductive governance. First is the question of how and why these harms occur. The question of how is seen throughout Chapter 5, but the question of why is a bit more complex, because in simple terms these harms occur through women's loss of autonomy for themselves. They lose altogether the ability to make decisions about their life that affect their future, and according to Mills and the theoretical framework, this is absolutely a setback to one's own interests.

The physical harms that occur from reproductive governance range from a wide spectrum, including life-threatening complications, to chronic health impacts. Specifically

seen in Texas after the abortion bans went in place, there was a sepsis surge.[148] Meaning the rate of women hospitalized during pregnancy went up over 50%.[149] This happened due to a delay in care. Many physicians had to wait until the fetus no longer had a heartbeat or the mother was in critical danger of death, so they could avoid felony charges. The physician's fear of abortion laws has created a significant lowering of the standard of care. Obstetric emergencies now pose a risk to pregnant women's lives more because of the denial of abortion. This can lead to fatal complications like eclampsia. Other factors to consider are that physicians who work in areas outside of the reproduction sector, for instance, oncologists (specializing in cancer), have also reported delaying cancer treatment because doing so would mean the patient, if pregnant, would have to have an abortion.[150] This is in relation to what is known as the "chilling effect" because doctors are fearful of prescribing medicine that could cause potential birth defects if a person were to become pregnant and then not have access to abortion. Maternal and Infant Mortality shown from a study that states that states with abortion bans are twice as likely to die during pregnancy or childbirth. This fact is stressed even further when it is seen that infant mortality rose as well by 13%.[151] This study also specifically looks at what has happened in Texas, with the most restrictive abortion ban in the United States. After life-threatening conditions, there are chronic health impacts that affect everyday life in those who were denied an abortion. Those who denied and carried the pregnancy to term are more likely to experience long-term pain from headaches to gestational hypertension.[152] These are the physical harms that are occurring from the abortion bans in place. It is happening through reproductive governance from the delay of care and physicians' fear. Because the laws create punishments for physicians, and in turn that makes them afraid to treat their patients to the best of their ability, it has them wait until the only

[148] Andrea Suozzo, Sophie Chou, and Lizzie Pressler, "Rates of Pregnancy-Related Sepsis and Deaths Grow in Texas after Abortion Ban," *Texas Tribune*, February 20, 2025, https://www.texastribune.org/2025/02/20/texas-abortion-ban-impact-death-hospitalization/.
[149]Suozzo, Chou, and Pressler, "Rates of Pregnancy-Related Sepsis and Deaths Grow in Texas.".
[150] Michele Heisler, Whitney Arey, Lindsey Green, Payal Shah, and Hana Klempnauer Miller, "Cascading Harms: How Abortion Bans Lead to Discriminatory Care Across Medical Specialties," Physicians for Human Rights, September 30, 2025, https://phr.org/our-work/resources/cascading-harms-how-abortion-bans-lead-to-discriminatory-care-across-medical-specialties/.
[151] McGovern, Memaj, and Garbers, "US Abortion Restrictions Are Causing Widespread Harm," 1.
[152] Foster, *The Turnaway Study*.

other option is the pregnant woman's death. Now, to further dive into bodily harm by identifying what is happening at a psychological level.

Psychological harm is categorized through increases in mental health challenges. Research has shown through various studies that when pregnant women are denied abortion, there is a drastic decline in the mental health and well-being of these women. This includes more anxiety, stress, and even lowered self-esteem.[153] In severe cases, individuals have suicidal thoughts and ideation. Other challenges that arise in regard to psychological harm are fear and uncertainty.[154] These psychological challenges are directly resulting from the abortion ban. First, with delay of care and physician fear, this creates the feeling of uncertainty and distress about what is happening to one's own body. The pregnant woman is unsure if they will receive the care they need for their own survival. Then there is the guilt and shame from the requirements in the law to hear the sonogram and to receive verbal information about the fetus. This creates a moral pressure that is even stigmatized by society. Lastly, the absolute denial of an abortion creates the long-term mental health effects of higher anxiety, depression, and suicidal thoughts because it is a loss of freedom and bodily autonomy.[155] Pregnant women are no longer able to make decisions about their own lives but are forced to live out what the state determines as the appropriate reproductive behaviors. This inability to control your own future is detrimental to one's psyche.

These two factors show that there is substantial harm in the individual sphere related to the body occurring in relation to abortion bans and restrictions. It is happening because abortion bans are causing a delay in care through physicians' fear as well as procedural waiting periods. It also causes psychological damage in the way the law targets one's morals, making guilt and shame byproducts of an abortion, even though this is not the case. By removing autonomy and the ability to make choices about the present and future self, this poses great risks for many pregnant women, as seen through the various physical and psychological consequences. As the framework for harm goes beyond temporary offense,

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[153] Foster, *The Turnaway Study*, chap. 4.
[154] Foster, *The Turnaway Study*, chap. 4.
[155] Mina Manchester, "People Are Paying for State Abortion Bans with Their Lives," *Prism*, February 11, 2025, https://prismreports.org/2025/02/11/abortion-bans-deaths-health-care/.

these two qualities clearly fit within the framework of harm that this thesis established because they include major setbacks to one's interests.

6.2 Economic and Social Harms

Now, after covering both physical and psychological harm, which both occur towards the body, this section will move outward and focus on life conditions. This is both economic and social harm. Economic harm is about poverty, debt, financial instability, and even a reduction in opportunities like jobs or education. For social harms, one of the major examples is dependence on abusive partners and childcare burdens. Harm here extends beyond healthcare and can affect long-term life chances. This is connected to Galtung's framework on unequal life chances, as well, which was seen in the theoretical framework.

One of the biggest contributors to research on economic harm from abortion denial is *the Turnaway Study* by Diana Greene Foster. Abortion bans create long-lasting economic consequences for not only the pregnant woman but also the family. However, starting at the Individual level, those who are denied an abortion immediately face economic hardship. There is an increased risk of poverty, and the chance of being below the national poverty line increases.[156] Another consequence is that those denied abortion are more likely to be unemployed. These economic harms are rooted in financial instability and poverty. How abortion bans cause this is quite simple. They deny access to receiving medical care, which leads to a financial burden that they were not ready to handle. This type of harm goes beyond current financial factors. It also includes opportunity loss that pregnant women experience. Without an abortion, the ability to complete education or attain more opportunities in their job is significantly reduced.[157] This is due to having to take care of a child and not being given the adequate help they need to succeed after being denied an abortion. On the other side of this, *the Turnaway Study* shows that those who do receive the wanted abortion are six times more likely to achieve their one-year plans.[158] Lastly, in this section on economic harms, are the impacts on the families of the pregnant woman who was denied an abortion. They are negatively impacted and more likely to live below the poverty line as well. All of these examples are a direct result of the abortion bans in place. They produce an inescapable

[156] Foster, *The Turnaway Study*, chap. 6.
[157] Foster, *The Turnaway Study*, chap. 6.
[158] Foster, *The Turnaway Study*, chap. 6.

atmosphere by restricting access to abortion through legislative controls. Economic harm is more than just the costs of pregnancy and raising a child; it stems from the loss of choosing one's own future path- whether that be future education or jobs- it is a bereavement of the life one chooses for themselves.[159] These are not incidental but rather predictable outcomes of the laws states put in place to control reproductive behavior.

This leads to the next part of this section, which is social harms. Social harms are the impacts on relationships and communities around. Some of the most jarring effects that abortion bans have on pregnant women are that when denied abortions, they are more likely to stay with violent and abusive partners.[160] This is due to the fact that many abusers can use what is called reproductive coercion, essentially forcing their partner to become pregnant as a way to maintain the power imbalance, making them dependent on their abusive partner. Having no access to a safe abortion keeps survivors trapped in this horrific environment. Abortion bans can also affect the opportunities for the pregnant woman to have quality relationships in the long term compared to those who were able to have an abortion.[161] Both of these were direct results of the abortion laws that are in effect. It comes from the legislative controls of banning or restricting abortion, as well as creating a fear in physicians that takes away all reproductive choice.

Another social harm that is a direct consequence of abortion denial is that if the pregnant woman already has children of their own, it greatly worsens the existing child's life outcome. It also creates poor maternal bonding for the child, which is a result of the unwanted pregnancy.[162] These children often feel isolated from their parents. This demonstrates that abortion denial extends beyond the pregnant woman individually, but also into the family. Social harm is spread across generations, affecting more than the pregnant woman.

[159] Foster, *The Turnaway Study*, chap. 6.
[160] Foster, *The Turnaway Study*, chap. 8.
[161] Foster, *The Turnaway Study*, chap. 8.
[162] Foster, *The Turnaway Study*, chap. 7.

One of the last social harms comes from the social stigma around abortions. This is where societies shame people for wanting an abortion, and the community that should be there to help and support them is now harming them.[163] When abortion bans use moral language, like the "Defense of Life Act," it perpetuates this idea that abortion is the cruel murder of a child. From all the abortion bans seen in Chapter 5, there were many instances of these moral injunctions that can result in social harm. These instances can isolate individuals as they feel they cannot seek support due to their shame from the community around them. Moral injunctions are not just about regulating reproductive behavior through the law but also through society's attitudes and people's relationships.

Both economic and social harm are demonstrated through the abortion bans discussed in Chapter 5. They also fit perfectly under the framework of harm from Galtung that was established in the theoretical framework; they clearly give unequal life chances by limiting opportunities for education or employment, as well as financial stability and secure relationships. This is an immediate result of the legislative controls and moral injunctions.

6.3 From Individual to Structural Harm

Currently, this thesis has shown what occurrences are happening to the body and to individual life conditions, but the purpose of this next section is to show that they are not isolated instances but rather a systemic issue. They are produced and built into institutions that in turn continue to reproduce harms. They keep happening because the laws that are being introduced create barriers, these barriers create a delay in care, and that in turn creates a structural harm that is born within the system.

Structural harm is produced through the system's creation of unequal life chances, specifically towards disadvantaged groups. How this exacerbates already existing structural inequalities is that it furthers the burdens of marginalized communities. For example, the Black maternal mortality rate after abortion bans were made into law was 3 times as likely to die as the White maternal mortality rate.[164] While both skyrocketed, it is clear that an even further marginalized group was affected more. There is also a massive impact on the

[163] Manchester, "People Are Paying for State Abortion Bans with Their Lives."
[164] Gender Equity Policy Institute, "Maternal Mortality in the United States After Abortion Bans: Mothers Living in Abortion Ban States at Significantly Higher Risk of Death During Pregnancy and Childbirth," April 2025, https://thegepi.org/maternal-mortality-abortion-bans/.

healthcare system. Physicians are fleeing their states that have introduced bans. In Idaho alone, 22% of the OB-GYNs in the state left after the ban went into place.[165] This loss is devastating to those who live in Idaho. The abortion ban is furthering the gap in care that people are seeing because qualified medical professionals no longer feel safe or willing to practice the medicine, they have trained for in a state that would prosecute them. Effectively creating what is known as reproductive care deserts, where people have to travel further than normal to receive care. Also exacerbating the economic inequalities, since many cannot afford to travel further. This has destabilized the healthcare system. One can see the destabilization through the interference with medical decisions in standards of care. Due to the laws creating obstacles for physicians to treat patients the way they need, from fear of felony charges, there is a compromised standard of care.

Abortion bans, while affecting individuals, are more than that; they are structural. Because the harm is not from one bad doctor. The harm is coming from the state institution through delaying necessary abortion care, creating physician fear, and pushing financial instability and layers of poverty. The government, by introducing these laws and bringing them about, is controlling reproductive behavior systemically. Why is this the case? Why are abortion bans doing this?

The answer to this was established in the theoretical framework. It's the normalization of such an act. Structural harm continues because it has been normalized and is deeply rooted in the institutions at play. Delay in care becomes normal, physicians fleeing becomes normal, women traveling across state boundaries becomes normal, unequal access and opportunities become normal. Nobody has to actively partake in harming another individual; the system that has been implemented is already doing that. When these restrictions become normalized through law, the harms become less visible to the public.

What makes them considered structural harms is their predictability. It has been shown through research that restricting abortion access heightens health risks, including mortality; it deepens economic instability; it isolates individuals from social stigma; and it further strains the mental health of those who were denied an abortion. These consequences

[165] McGovern, Memaj, and Garbers, "US Abortion Restrictions Are Causing Widespread Harm," 1.

are occurring time and time again, varying across states that have decided to introduce regulations and bans on abortion. This shows that they are not isolated incidents, but a prediction of what happens when institutions decide to govern reproduction.

As identified in chapter 5, the structural harms occur when the mechanisms that are used to facilitate reproductive governance, which are legislative controls, moral injunctions, and monitoring and surveillance. While they regulate reproductive behavior, they also are creating institutional structures that shape access to healthcare, the well-being of individuals and their families, and economic and educational opportunities. Harm is therefore embedded in the process of governance; removing it means fundamentally changing the system. After seeing what the structural harms are and how and why they happen, it is easy to see how it ties to Galtung's unequal life chances framework. These laws are continuously reducing opportunities and autonomy for some while actively preserving autonomy for others to make their own decisions.

6.4 Synthesis of Chapter 6 Harm Analysis

The purpose of this chapter was to showcase the harms that were produced as a byproduct of reproductive governance. These harms varied from higher mortality rates to economic burdens on pregnant women. They span across multiple dimensions of physical, psychological, economic, social, and structural harms. All of these harms, however, are not separate phenomena. While they were discussed separately for ease of analysis, they are truly connected to one another. They are all interacting with other types of harm constantly. For example, the physical harm that comes from the delay of care, sepsis, also in turn causes anxiety and stress. This can lead to the potential of economic burdens through the inability to work, meaning no income. Having no income creates dependency on other relationships, possibly abusive ones, creating social harm as well. Established here is a chain effect. Seeing that the harms that are identified in chapter 6 are in constant motion with one another demonstrates how there is a disproportionate effect on those who are impacted most by abortion bans.

It is important to remember that their harms did not appear randomly, though. They emerged from the mechanisms used in reproductive governance that were established in Chapter 5. These mechanisms are legislative controls, moral injunctions, and monitoring.

Showing the direct correlation between governance and the harms that are produced from it. As seen throughout Chapter 6, the same mechanisms that are used to control reproductive behavior are the exact same mechanisms that produce the harm.

Furthermore, these harms are structural because they are recurrent factors stemming from state institutions that in turn create predictable outcomes. The predictability comes from the fact that the structural harms have become normalized in society and within people's behaviors. This chapter has answered the questions of what harm exists and how it is structural, but now a crucial question arises: who experiences this harm? As seen in the section on structural harm, abortion laws do not affect everyone equally. This is a disproportionate effect targeting women directly. Women are the primary target for abortion bans because they are the ones who experience pregnancy most often. This brings the thesis back to gendered governance. The law that governs abortion is not neutral because reproduction is gendered.

To conclude this chapter, the analysis demonstrated that abortion bans do produce multidimensional harms that are interconnected, embedded in the structure of society, and disproportionately affecting women. They are not unintentional consequences but rather predictable outcomes as they emerge from the same mechanisms used to regulate and control reproductive behavior. Harm, therefore, is central to reproductive governance, showing that it is more than just the regulation of reproduction; it encompasses aspects of one's autonomy, health, opportunities in life, and social injustices.

Chapter 7: Conclusion

Abortion rights in the United States were once federally protected, and every woman had the choice to decide her future reproductive decisions. This was all fundamentally changed when Dobbs v. Jackson Women's Health Organization overturned Roe v. Wade in the United States. This decision has impacted so many people now that states have the power to restrict and ban abortion access. This thesis addressed the gap between the examination of abortion bans as practices of reproductive governance and, as a result, what harms are produced.

The main research question was how abortion bans in the United States function as practices of reproductive governance. The theoretical framework used Morgan and Roberts' concept of what reproductive governance is and what mechanisms it operates through. The analysis in turn looked at three states: Idaho, Florida, and Texas, and the laws they have enacted after the landscape of the United States has changed. In the analysis, it was shown that each state utilizes different mechanisms to regulate reproductive behavior; however, they still showed that while differing, they all function as acts of reproductive governance.

In Idaho, reproductive governance was carried out through the main tactic of criminalization by imposing penalties, financial and imprisonment, on physicians who performed abortions. Florida relied heavily on moral injunctions like the promotion of childbirth. This was seen through the gestational limits and even mandatory procedures, showing that Florida accepted and encouraged only one particular reproductive outcome. Lastly, Texas had a more unique approach to monitoring and surveillance. The state enabled private citizens to have the responsibility to take civil action against those who had performed an abortion.

While all having a heavier focus on a different mechanism, each law still shifted reproductive authority away from women and towards the state institution. Therefore, abortion bans function as reproductive governance because they take the various mechanisms and implement them in ways that regulate reproduction, determining which outcome is acceptable. The laws do more than restrict access to a certain medical procedure; they are actively governing reproduction through power and control.

The first sub-question was to determine what harms are produced by abortion bans. It was established in the theoretical framework that harm is identified as more than physical injury, but it encompasses psychological, economic, social, and structural negative effects. The analysis showed how physical harm included a greater risk of maternal mortality and health complications. Psychological harm manifested through high levels of anxiety and fear. Economic harms were seen through poverty challenges and opportunity loss. Social harms contributed to women staying with abusive partners and having a worse relationship with other family members. One important finding from these harms is that they are not isolated but interconnected. They each contribute to another type of harm. Thus, the analysis demonstrated that abortion bans produce multidimensional harms.

However, there is a more important finding from the second part of the analysis, and it is that more than harm simply exists. It is that these harms are structural in nature and not based just on an individual level. Drawing from Galtung's concept of what structural harm is and the unequal life chances, this thesis displays this inequality in how the laws restrict access. By showing that the harms produced are neither coincidental nor singular acts, but instead a predictable aftermath from the system in place, from physicians leaving and a compromised standard of care, to economic barriers, these all demonstrated structural harm as they constantly appeared over the different states with differing laws in place.

A main factor of structural harm is the normalization of it. Consequences such as delays in medical care have become widely accepted as the norm. The more normalized they become, the less visible the harms are, even though they continue to damage individual and community lives, directly resulting from the unequal life chances that are produced by the laws themselves. It is not simply that abortion bans cause harm but that that harm has become embedded within the governance process. The same mechanisms that are used to regulate reproductive behavior are also used to produce the harms themselves. Structural harm is therefore not a side effect of reproductive governance but one of its most significant consequences.

One of the last findings from the analysis of this thesis is that the harms that are produced by abortion bans are gendered in nature. The effects of these laws are not equally distributed across society, but rather the burden falls disproportionately upon women. This is

due to the regulation of pregnancy and reproduction, which is an issue that is most frequently associated with women. This evidence of the impact of gendered harms was showcased through every form of harm discussed. Women are at the forefront of the physical risks that come with delayed medical care and complications regarding pregnancy. They are the ones experiencing the psychological consequences of the loss of autonomy. With a reduction in life outcomes in both economic and social harms, women are facing the backlash.

The harms produced by abortion bans are therefore not only structural but also gendered. Reproductive governance regulates reproduction, which is an inherently gendered concept that produces consequences that fall disproportionately on women. When abortion bans are understood through this capacity, it shows how gender is central to reproductive governance and the harms that were identified throughout this thesis.

The contribution that this thesis made to existing literature was through first applying Morgan and Roberts' framework of reproductive governance and using it to analyze abortion bans in the United States. While they used it in a Latin American context, applying it to the post-Dobbs context was less frequent. Another contribution is that this thesis establishes a link between governance and harm, showing how the two concepts are interconnected. The last contribution is in terms of the structural harm that was exposed, seeing how they are embedded within the legal system, and they perpetuate inequalities constantly.

The limitations of the study were the reliance on primarily legal texts for a qualitative content analysis. The absence of interviews with those who have the lived experience of abortion bans to see, on the individual level, how these policies affect people in their everyday lives. As well as having the analysis focus only on three states. However, these limitations were a deliberate choice to allow for a more in-depth focus on the abortion bans and the mechanisms of reproductive governance from the legal avenue.

This paper will hopefully allow for future research to continue on this topic. One of the ways that this research paper leaves open is the important relationship between reproductive governance and gender-based violence. While this thesis establishes that abortion bans function as reproductive governance and, from this, multidimensional harm emerges, including gendered harms, future research should build upon this. The harms established here should be put against the existing frameworks of gender-based violence

within international human rights groups to determine if they are considered gender-based violence under these criteria.

Ultimately, this thesis has demonstrated that abortion bans are more than legal restrictions on medical procedures. They are practices of reproductive governance that regulate reproductive behavior through mechanisms of legislative controls, moral injunctions, and monitoring and surveillance. By doing this, authority and decision-making are redistributed, taking them away from women. Understanding abortion bans through the lens of reproductive governance reveals that the regulation of reproduction is ultimately a question of power: who has the authority to make reproductive decisions, whose interests are prioritized, and who bears the consequences when that authority is removed.

Bibliography

Arey, W., M. Heisler, T. McHale, H. Miller, L. Green, and P. Shah. "Dual Loyalty, Medical Ethics, and Abortion Bans." *Contraception* 151 (November 2025): 111106. https://doi.org/10.1016/j.contraception.2025.111106.

Bartky, Sandra Lee. "Foucault, Femininity, and the Modernization of Patriarchal Power." In *Feminist Theory Reader*, 5th ed., edited by Carole McCann, Seung-kyung Kim, and Emek Ergun. New York: Routledge, 2020. https://doi.org/10.4324/9781003001201-41.

Bell, Melina Constantine. "John Stuart Mill's Harm Principle and Free Speech: Expanding the Notion of Harm." *Utilitas* 33 (2021): 162–179. https://doi.org/10.1017/S0953820820000229.

Borges, Maria T.R. "A Violent Birth: Reframing Coerced Procedures During Childbirth as Obstetric Violence." *Duke Law Journal* 67, no. 4 (2018): 827–868.

Campbell, Timothy C., and Adam Sitze, eds. *Biopolitics: A Reader*. Durham: Duke University Press, 2013.

Center for Reproductive Rights. "Roe v. Wade." Accessed June 3, 2026. https://reproductiverights.org/resources/roe-v-wade/.

Committee on Economic, Social and Cultural Rights. *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*. UN Doc. E/C.12/GC/22. Geneva: United Nations, 2016.

Cover, Robert M. "Violence and the Word." *Yale Law Journal* 95, no. 8 (1986): 1601–29.

Davis, Dána-Ain. *Reproductive Injustice: Racism, Pregnancy, and Premature Birth*. New York: NYU Press, 2019.

Delanerolle, Gayathri, Sohier Elneil, Abirame Sivakumar, Om Kurmi, Vindya Pathiraja, David Ikwuka, Nhan Thi Nguyen, Nirmala Rathnayake, Peter Phiri, and George Uchenna Eleje. "Reproductive Politics and Women's Empowerment; How Does Geopolitics Control Women?" *Frontiers in Global Women's Health* 6 (October 2025): 1666773. https://doi.org/10.3389/fgwh.2025.1666773.

Deveaux, Monique. "Feminism and Empowerment: A Critical Reading of Foucault." *Feminist Studies* 20, no. 2 (1994): 223–247.

Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022).

Ferragamo, Mariel. "Roe's Repeal Inspires Abortion Rollbacks in Other Countries." *Think Global Health*, February 5, 2024. https://www.thinkglobalhealth.org/article/roes-repeal-inspires-abortion-rollbacks-other-countries.

Florida Heartbeat Protection Act. Senate Bill 300. 2023 Legislature, Regular Session. Tallahassee: Florida Legislature, 2023.

Foster, Diana Greene. *The Turnaway Study: Ten Years, a Thousand Women, and the Consequences of Having or Being Denied an Abortion.* New York: Scribner, 2020.

Foucault, Michel. *The History of Sexuality, Volume 1: An Introduction*. Translated by Robert Hurley. New York: Pantheon Books, 1978.

Freedman, Lynn P., and Stephen L. Isaacs. "Human Rights and Reproductive Choice." *Studies in Family Planning* 24, no. 1 (1993): 18–30. https://doi.org/10.2307/2939211.

Galtung, Johan. "Violence, Peace, and Peace Research." *Journal of Peace Research* 6, no. 3 (1969): 167–191. https://www.jstor.org/stable/422690.

Gordon, Mollie R., John Coverdale, Frank A. Chervenak, and Laurence B. McCullough. "Undue Burdens Created by the Texas Abortion Law for Vulnerable Pregnant Women." *American Journal of Obstetrics and Gynecology* 226, no. 4 (2022): 529–34. https://doi.org/10.1016/j.ajog.2021.12.033.

Guttmacher Institute. "State Bans on Abortion Throughout Pregnancy." *State Laws and Policies* (as of April 2026). 2026. https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans.

Idaho Defense of Life Act. Idaho Code § 18-622. 2020.

Judge, Colleen P., Tierney E. Wolgemuth, Megan E. Hamm, and Sonya Borrero. "'Without Bodily Autonomy We Are Not Free': Exploring Women's Concerns about Future Access to Contraception Following the 2016 US Presidential Election." *Contraception* 96, no. 5 (2017): 370–77. https://doi.org/10.1016/j.contraception.2017.07.169.

Kaufman, Risa, Rebecca Brown, Catalina Martínez Coral, Jihan Jacob, Martin Onyango, and Katrine Thomasen. "Global Impacts of *Dobbs v. Jackson Women's Health Organization* and Abortion Regression in the United States." *Sexual and Reproductive Health Matters* 30, no. 1 (2022): 22–31. https://doi.org/10.1080/26410397.2022.2135574.

Keegan, Grace, Myles Francis, Kristen Chalmers, Mark Hoofnagle, Mary Noory, Rachael Essig, Lea Hoefer, Neha Bhardwaj, Elinore Kaufman, Marie L. Crandall, Mohammad Zaidi, Valerie Koch, Hillary McLaren, Marion Henry, Chelsea Dorsey, Tanya Zakrison, and Julie Chor. "Trauma of Abortion Restrictions and Forced Pregnancy: Urgent Implications for Acute Care Surgeons." *Trauma Surgery & Acute Care Open* 8, no. 1 (2023): e001067. https://doi.org/10.1136/tsaco-2022-001067.

Khosla, Rajat, Vidisha Mishra, and Sagri Singh. "Sexual and Reproductive Health and Rights and Bodily Autonomy in a Digital World." *Sexual and Reproductive Health Matters* 31, no. 4 (2023): 2269003. https://doi.org/10.1080/26410397.2023.2269003.

Lawley, Amelia. "Women Behaving Badly: Problematisation and Biopolitical Governance of Gender in the New Zealand Abortion Debate." *New Zealand Sociology* 37, no. 2 (2022): 81–93.

Luna, Zakiya. *Reproductive Rights as Human Rights: Women of Color and the Fight for Reproductive Justice*. New York: New York University Press, 2020.

MacKinnon, Catharine A. *Toward a Feminist Theory of the State*. Cambridge, MA: Harvard University Press, 1989.

Madden, Nigel, Emma Trawick, Katie Watson, and Lynn M. Yee. "Post-Dobbs Abortion Restrictions and the Families They Leave Behind." *American Journal of Public Health* 114, no. 10 (October 2024): 1043–1050. https://doi.org/10.2105/AJPH.2024.307792.

Martin, Biddy. "Feminism, Criticism, and Foucault." *New German Critique*, no. 27 (1982): 3–30.

McDavid, Nikita. *Freedom of Choice or Reproductive Responsibility? Neoliberal Feminism and the Biopolitics of Abortion Rights Narratives in American Mainstream Media*. MA thesis, Carleton University, 2025.

McGovern, Terry, Ira Memaj, and Samantha Garbers. "US Abortion Restrictions Are Causing Widespread Harm." *BMJ* 386 (2024): q1729. https://doi.org/10.1136/bmj.q1729.

Morgan, Lynn M., and Elizabeth F.S. Roberts. "Reproductive Governance in Latin America." *Anthropology & Medicine* 19, no. 2 (2012): 241–254.

Mucciaroni, Gary, Kathleen Ferraiolo, and Meghan E. Rubado. "Framing Morality Policy Issues: State Legislative Debates on Abortion Restrictions." *Policy Sciences* 52, no. 2 (2019): 171–89. https://doi.org/10.1007/s11077-018-9336-2.

Planned Parenthood v. Casey, 505 U.S. 833 (1992).

Roe v. Wade, 410 U.S. 113 (1973).

Rebouché, Rachel, and Mary Ziegler. "Fracture: Abortion Law and Politics After Dobbs." *SMU Law Review* 76, no. 1 (2023): 27–76.

Schultz, Abby, Cambray Smith, Madelyn Johnson, Amy Bryant, and Mara Buchbinder. "Impact of Post-Dobbs Abortion Restrictions on Maternal-Fetal Medicine Physicians in the Southeast: A Qualitative Study." *American Journal of Obstetrics & Gynecology MFM* 6, no. 7 (2024): 101387.

Smith, Sarah, and Christine Agius. "Bodies/Biopolitics/Identity: Feminist Perspectives." In *Handbook on Gender and Violence*, edited by Laura J. Shepherd. Cheltenham: Edward Elgar Publishing, 2019.

Texas Health and Safety Code § 170A. House Bill 1280. 87th Legislative Session. Austin: Texas Legislature, 2021.

Texas Heartbeat Act. Senate Bill 8. 87th Legislative Session. Austin: Texas Legislature, 2021.

Verma, Ajal. "Access to Abortion and International Humanitarian Law." *Indian Journal of Integrated Research in Law* II, no. V (n.d.): 1–8.

Weber, Max. "Politics as a Vocation." In *Max Weber: Essays in Sociology*, translated and edited by H. H. Gerth and C. Wright Mills. New York: Oxford University Press, 1946.

Appendices

Appendix A: Idaho Defense of Life Act, Idaho Code § 18-622 (2020)

TITLE 18

CRIMES AND PUNISHMENTS

CHAPTER 6

ABORTION AND CONTRACEPTIVES

18-622. DEFENSE OF LIFE ACT. (1) Except as provided in subsection (2) of this section, every person who performs or attempts to perform an abortion as defined in this chapter commits the crime of criminal abortion. Criminal abortion shall be a felony punishable by a sentence of imprisonment of no less than two (2) years and no more than five (5) years in prison. The professional license of any health care professional who performs or attempts to perform an abortion or who assists in performing or attempting to perform an abortion in violation of this subsection shall be suspended by the appropriate licensing board for a minimum of six (6) months upon a first offense and shall be permanently revoked upon a subsequent offense.

(2) The following shall not be considered criminal abortions for purposes of subsection (1) of this section:

(a) The abortion was performed or attempted by a physician as defined in this chapter and:

(i) The physician determined, in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman. No abortion shall be deemed necessary to prevent the death of the pregnant woman because the physician believes that the woman may or will take action to harm herself; and

(ii) The physician performed or attempted to perform the abortion in the manner that, in his good faith medical judgment

and based on the facts known to the physician at the time, provided the best opportunity for the unborn child to survive, unless, in his good faith medical judgment, termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman. No such greater risk shall be deemed to exist because the physician believes that the woman may or will take action to harm herself; or

(b) The abortion was performed or attempted by a physician as defined in this chapter during the first trimester of pregnancy and:

(i) If the woman is not a minor or subject to a guardianship, then, prior to the performance of the abortion, the woman has reported to a law enforcement agency that she is the victim of an act of rape or incest and provided a copy of such report to the physician who is to perform the abortion. The copy of the report shall remain a confidential part of the woman's medical record subject to applicable privacy laws; or

(ii) If the woman is a minor or subject to a guardianship, then, prior to the performance of the abortion, the woman or her parent or guardian has reported to a law enforcement agency or child protective services that she is the victim of an act of rape or incest and a copy of such report has been provided to the physician who is to perform the abortion. The copy of

the report shall remain a confidential part of the woman's medical record subject to applicable privacy laws.

(3) If a report concerning an act of rape or incest is made to a law enforcement agency or child protective services pursuant to subsection (2)(b) of this section, then the person who made the report shall, upon request, be entitled to receive a copy of such report within seventy-two (72) hours of the report being made, provided that the

report may be redacted as necessary to avoid interference with an investigation.

(4) Medical treatment provided to a pregnant woman by a health care professional as defined in this chapter that results in the accidental death of, or unintentional injury to, the unborn child shall not be a violation of this section.

(5) Nothing in this section shall be construed to subject a pregnant woman on whom any abortion is performed or attempted to any criminal conviction and penalty.

History:

[18-622, added 2020, ch. 284, sec. 1, p. 827, effective August 25, 2022; am. 2023, ch. 298, sec. 2, p. 907.]

Appendix B: Florida Heartbeat Protection Act, Senate Bill 300, 2023 Legislature, Regular Session (Fla. 2023)

ENROLLED

2023 Legislature SB 300, 1st Engrossed

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Page 1 of 11

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1

2 An act relating to pregnancy and parenting support;

3 providing a short title; creating s. 286.31, F.S.;

4 defining the terms “educational institution” and

5 “governmental entity”; prohibiting any person,

6 governmental entity, or educational institution from

7 expending state funds for a specified purpose;

8 providing exceptions; amending s. 381.96, F.S.;

9 revising the definitions of the terms “eligible

10 client” and “pregnancy and parenting support

11 services”; requiring the Department of Health to

12 contract for the management and delivery of parenting

13 support services, in addition to pregnancy support

14 services; revising the contract requirements to

15 conform to changes made by the act; requiring the

16 department to report specified information to the

17 Governor and the Legislature by a specified date each

18 year; amending s. 390.0111, F.S.; prohibiting

19 physicians from knowingly performing or inducing a

20 termination of pregnancy after the gestational age of

the fetus is determined to be more than 6 weeks, rather than 15 weeks, with exceptions; providing an exception if the woman obtaining the abortion is doing so because she is a victim of rape, incest, or human trafficking, subject to certain conditions; requiring physicians to report known or suspected human trafficking of adults to local law enforcement; requiring physicians to report incidents of rape, incest, or human trafficking of minors to the central

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abuse hotline; prohibiting any person other than a physician from inducing a termination of pregnancy; prohibiting physicians from using telehealth to perform abortions; requiring that medications intended for use in a medical abortion be dispensed in person by a physician; prohibiting the dispensing of such medication through the United States Postal Service or any other courier or shipping service; conforming provisions to changes made by the act; repealing s. 390.01112, F.S., relating to termination of pregnancies during viability; amending s. 390.012, F.S.; revising rules the Agency for Health Care Administration may develop and enforce to regulate

43 abortion clinics; amending s. 456.47, F.S.;

44 prohibiting telehealth providers from using telehealth

45 to provide abortions; providing appropriations;

46 providing effective dates.

47

48 Be It Enacted by the Legislature of the State of Florida:

49

50 Section 1. This act may be cited as the “Heartbeat

51 Protection Act.”

52 Section 2. Section 286.31, Florida Statutes, is created to

53 read:

54 286.31 Prohibited use of state funds.—

55 (1) As used in this section, the term:

56 (a) “Educational institution” means public institutions

57 under the control of a district school board, a charter school,

58 a state university, a developmental research school, a Florida

59 College System institution, the Florida School for the Deaf and

60 the Blind, the Florida Virtual School, private school readiness

61 programs, voluntary prekindergarten programs, private K-12

62 schools, and private colleges and universities.

63 (b) “Governmental entity” means the state or any political

64 subdivision thereof, including the executive, legislative, and

65 judicial branches of government; the independent establishments

66 of the state, counties, municipalities, districts, authorities,

67 boards, or commissions; and any agencies that are subject to

68 chapter 286.

69 (2) Any person, governmental entity, or educational

70 institution may not expend state funds as defined in s. 215.31

71 in any manner for a person to travel to another state to receive

72 services that are intended to support an abortion as defined in

73 s. 390.011, unless:

74 (a) The person, governmental entity, or educational

75 institution is required by federal law to expend state funds for

76 such a purpose; or

77 (b) There is a medical necessity for legitimate emergency

78 medical procedures for termination of the pregnancy to save the

79 pregnant woman’s life or to avert a serious risk of imminent

80 substantial and irreversible physical impairment of a major

81 bodily function of the pregnant woman other than a psychological

condition.

Section 3. Effective upon this act becoming a law, section 381.96, Florida Statutes, is amended to read:

381.96 Pregnancy support and wellness services.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Department" means the Department of Health.

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(b) "Eligible client" means any of the following:

1. A pregnant woman or a woman who suspects she is pregnant, and the family of such woman, who voluntarily seeks pregnancy support services and any woman who voluntarily seeks wellness services.

2. A woman who has given birth in the previous 12 months and her family.

3. A parent or parents or a legal guardian or legal guardians, and the families of such parents and legal guardians, for up to 12 months after the birth of a child or the adoption of a child younger than 3 years of age.

(c) "Florida Pregnancy Care Network, Inc.," or "network"

100 means the not-for-profit statewide alliance of pregnancy support

101 organizations that provide pregnancy support and wellness

102 services through a comprehensive system of care to women and

103 their families.

104 (d) “Pregnancy and parenting support services” means

105 services that promote and encourage childbirth, including, but

106 not limited to:

107 1. Direct client services, such as pregnancy testing,

108 counseling, referral, training, and education for pregnant women

109 and their families. A woman and her family shall continue to be

110 eligible to receive direct client services for up to 12 months

111 after the birth of the child.

112 2. Nonmedical material assistance that improves the

113 pregnancy or parenting situation of families, including, but not

114 limited to, clothing, car seats, cribs, formula, and diapers.

115 3. Counseling or mentoring, education materials, and

116 classes regarding pregnancy, parenting, adoption, life skills,

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117 and employment readiness.

118 4. Network Program awareness activities, including a

119 promotional campaign to educate the public about the pregnancy

120 support services offered by the network and a website that

121 provides information on the location of providers in the user’s

122 area and other available community resources.

123 5.3. Communication activities, including the operation and

124 maintenance of a hotline or call center with a single statewide

125 toll-free number that is available 24 hours a day for an

126 eligible client to obtain the location and contact information

127 for a pregnancy center located in the client’s area.

128 (e) “Wellness services” means services or activities

129 intended to maintain and improve health or prevent illness and

130 injury, including, but not limited to, high blood pressure

131 screening, anemia testing, thyroid screening, cholesterol

132 screening, diabetes screening, and assistance with smoking

133 cessation.

134 (2) DEPARTMENT DUTIES.—The department shall contract with

135 the network for the management and delivery of pregnancy and

136 parenting support services and wellness services to eligible

137 clients.

138 (3) CONTRACT REQUIREMENTS.—The department contract shall

139 specify the contract deliverables, including financial reports

140 and other reports due to the department, timeframes for

141 achieving contractual obligations, and any other requirements

142 the department determines are necessary, such as staffing and

143 location requirements. The contract shall require the network

144 to:

145 (a) Establish, implement, and monitor a comprehensive

146 system of care through subcontractors to meet the pregnancy and

147 parenting support and wellness needs of eligible clients.

148 (b) Establish and manage subcontracts with a sufficient

149 number of providers to ensure the availability of pregnancy and

150 parenting support services and wellness services for eligible

151 clients, and maintain and manage the delivery of such services

152 throughout the contract period.

153 (c) Spend at least 85 90 percent of the contract funds on

pregnancy and parenting support services, excluding services specified in subparagraph (1)(d)4., and wellness services.

(d) Offer wellness services through vouchers or other appropriate arrangements that allow the purchase of services from qualified health care providers.

(e) Require a background screening under s. 943.0542 for all paid staff and volunteers of a subcontractor if such staff or volunteers provide direct client services to an eligible client who is a minor or an elderly person or who has a disability.

(f) Annually monitor its subcontractors and specify the sanctions that shall be imposed for noncompliance with the terms of a subcontract.

(g) Subcontract only with providers that exclusively promote and support childbirth.

(h) Ensure that informational materials provided to an eligible client by a provider are current and accurate and cite the reference source of any medical statement included in such materials.

(i) Ensure that the department is provided with all information necessary for the report required under subsection

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(5).

(4) SERVICES.—Services provided pursuant to this section must be provided in a noncoercive manner and may not include any religious content.

(5) REPORT.—By July 1, 2024, and each year thereafter, the department shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the amount and types of services provided by the network; the expenditures for such services; and the number of, and demographic information for, women, parents, and families served by the network.

Section 4. Subsections (1), (2), (10), and (13) of section 390.0111, Florida Statutes, are amended to read:

390.0111 Termination of pregnancies.—

(1) TERMINATION AFTER GESTATIONAL AGE OF 6 15 WEEKS; WHEN ALLOWED.—A physician may not knowingly perform or induce a termination of pregnancy if the physician determines the gestational age of the fetus is more than 6 15 weeks unless one of the following conditions is met:

194 (a) Two physicians certify in writing that, in reasonable

195 medical judgment, the termination of the pregnancy is necessary

196 to save the pregnant woman’s life or avert a serious risk of

197 substantial and irreversible physical impairment of a major

198 bodily function of the pregnant woman other than a psychological

199 condition.

200 (b) The physician certifies in writing that, in reasonable

201 medical judgment, there is a medical necessity for legitimate

202 emergency medical procedures for termination of the pregnancy to

203 save the pregnant woman’s life or avert a serious risk of

204 imminent substantial and irreversible physical impairment of a

205 major bodily function of the pregnant woman other than a

206 psychological condition, and another physician is not available

207 for consultation.

208 (c) The pregnancy has not progressed to the third trimester

209 fetus has not achieved viability under s. 390.01112 and two

210 physicians certify in writing that, in reasonable medical

211 judgment, the fetus has a fatal fetal abnormality.

212 (d) The pregnancy is the result of rape, incest, or human

213 trafficking and the gestational age of the fetus is not more

214 than 15 weeks as determined by the physician. At the time the

215 woman schedules or arrives for her appointment to obtain the

216 abortion, she must provide a copy of a restraining order, police

217 report, medical record, or other court order or documentation

218 providing evidence that she is obtaining the termination of

219 pregnancy because she is a victim of rape, incest, or human

220 trafficking. If the woman is 18 years of age or older, the

221 physician must report any known or suspected human trafficking

222 to a local law enforcement agency. If the woman is a minor, the

223 physician must report the incident of rape, incest, or human

224 trafficking to the central abuse hotline as required by s.

225 39.201.

226 (2) IN-PERSON PERFORMANCE BY PHYSICIAN REQUIRED.—Only a

227 physician may perform or induce a No termination of pregnancy

228 shall be performed at any time except by a physician as defined

229 in s. 390.011. A physician may not use telehealth as defined in

230 s. 456.47 to perform an abortion, including, but not limited to,

231 medical abortions. Any medications intended for use in a medical

232 abortion must be dispensed in person by a physician and may not

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233 be dispensed through the United States Postal Service or by any

234 other courier or shipping service.

235 (10) PENALTIES FOR VIOLATION.—Except as provided in

236 subsections (3), (7), and (12):

237 (a) Any person who willfully performs, or actively

238 participates in, a termination of pregnancy in violation of the

239 requirements of this section or s. 390.01112 commits a felony of

240 the third degree, punishable as provided in s. 775.082, s.

241 775.083, or s. 775.084.

242 (b) Any person who performs, or actively participates in, a

termination of pregnancy in violation of this section or s.

390.01112 which results in the death of the woman commits a

felony of the second degree, punishable as provided in s.

775.082, s. 775.083, or s. 775.084.

(13) FAILURE TO COMPLY.—Failure to comply with the

requirements of this section or s. 390.01112 constitutes grounds

for disciplinary action under each respective practice act and

under s. 456.072.

Section 5. Section 390.01112, Florida Statutes, is

repealed.

Section 6. Subsection (1) of section 390.012, Florida

Statutes, is amended to read:

390.012 Powers of agency; rules; disposal of fetal

remains.—

(1) The agency may develop and enforce rules pursuant to

ss. 390.011-390.018 and part II of chapter 408 for the health,

care, and treatment of persons in abortion clinics and for the

safe operation of such clinics.

(a) The rules must shall be reasonably related to the

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262 preservation of maternal health of the clients and must.

263 (b) The rules shall be in accordance with s. 797.03 and may

264 not impose an unconstitutional burden on a woman’s freedom to

265 decide whether to terminate her pregnancy.

266 (c) The rules shall provide for:

267 (a)1. The performance of pregnancy termination procedures

268 only by a licensed physician.

269 (b)2. The making, protection, and preservation of patient

270 records, which must shall be treated as medical records under

271 chapter 458. When performing a license inspection of a clinic,

272 the agency shall inspect at least 50 percent of patient records

273 generated since the clinic’s last license inspection.

274 (c)3. Annual inspections by the agency of all clinics

275 licensed under this chapter to ensure that such clinics are in

276 compliance with this chapter and agency rules.

277 (d)4. The prompt investigation of credible allegations of

278 abortions being performed at a clinic that is not licensed to

279 perform such procedures.

280 Section 7. Paragraph (f) is added to subsection (2) of

281 section 456.47, Florida Statutes, to read:

282 456.47 Use of telehealth to provide services.—

283 (2) PRACTICE STANDARDS.—

284 (f) A telehealth provider may not use telehealth to perform

285 an abortion, including, but not limited to, medical abortions as

286 defined in s. 390.011.

287 Section 8. (1) For the 2023-2024 fiscal year:

288 (a) In addition to any funds appropriated in the General

289 Appropriations Act, the sum of $5 million in recurring funds

290 from the General Revenue Fund is appropriated to the Department

291 of Health for the purpose of implementing s. 381.0051(3), (4),

292 and (6), Florida Statutes.

293 (b) The sum of $25 million in recurring funds from the

294 General Revenue Fund is appropriated to the Department of Health

295 for the purpose of implementing s. 381.96, Florida Statutes.

296 (2) This section takes effect upon this act becoming a law.

297 Section 9. Except as otherwise expressly provided in this

298 act and except for this section, which shall take effect upon

299 this act becoming a law, this act shall take effect 30 days

300 after any of the following occurs: a decision by the Florida

301 Supreme Court holding that the right to privacy enshrined in s.

302 23, Article I of the State Constitution does not include a right

303 to abortion; a decision by the Florida Supreme Court in Planned

304 Parenthood v. State, SC2022-1050, that allows the prohibition on

305 abortions after 15 weeks in s. 390.0111(1), Florida Statutes, to

306 remain in effect, including a decision approving, in whole or in

307 part, the First District Court of Appeal’s decision under review

308 or a decision discharging jurisdiction; an amendment to the

309 State Constitution clarifying that s. 23, Article I of the State

310 Constitution does not include a right to abortion; or a decision

311 from the Florida Supreme Court after March 7, 2023, receding, in

312 whole or in part, from In re T.W., 551 So. 2d 1186 (Fla. 1989),

313 North Fla. Women’s Health v. State, 866 So. 2d 612 (Fla. 2003),

314 or Gainesville Woman Care, LLC v. State, 210 So. 3d 1243 (Fla.

315 2017).

Appendix C: Texas Heartbeat Act, Senate Bill 8, 87th Legislative Session (Tex. 2021)

AN ACT

relating to abortion, including abortions after detection of an unborn child's heartbeat; authorizing a private civil right of action.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act shall be known as the Texas Heartbeat Act.

SECTION 2. The legislature finds that the State of Texas never repealed, either expressly or by implication, the state statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion unless the mother's life is in danger.

SECTION 3. Chapter 171, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

Sec. 171.201. DEFINITIONS. In this subchapter:

(1) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(2) "Gestational age" means the amount of time that has elapsed from the first day of a woman's last menstrual period.

(3) "Gestational sac" means the structure comprising the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy.

(4) "Physician" means an individual licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

(5) "Pregnancy" means the human female reproductive condition that:

(A) begins with fertilization;

(B) occurs when the woman is carrying the developing human offspring; and

(C) is calculated from the first day of the woman's last menstrual period.

(6) "Standard medical practice" means the degree of skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances.

(7) "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth.

Sec. 171.202. LEGISLATIVE FINDINGS. The legislature finds, according to contemporary medical research, that:

(1) fetal heartbeat has become a key medical predictor that an unborn child will reach live birth;

(2) cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;

(3) Texas has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child; and

(4) to make an informed choice about whether to continue her pregnancy, the pregnant woman has a compelling interest in knowing the likelihood of her unborn child surviving to full-term birth based on the presence of cardiac activity.

Sec. 171.203. DETERMINATION OF PRESENCE OF FETAL HEARTBEAT REQUIRED; RECORD. (a) For the purposes of determining the presence of a fetal heartbeat under this section, "standard medical practice" includes employing the appropriate means of detecting the heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

(b) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman unless the physician has determined, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat.

(c) In making a determination under Subsection (b), the physician must use a test that is:

(1) consistent with the physician's good faith and reasonable understanding of standard medical practice; and

(2) appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy.

(d) A physician making a determination under Subsection (b) shall record in the pregnant woman's medical record:

(1) the estimated gestational age of the unborn child;

(2) the method used to estimate the gestational age; and

(3) the test used for detecting a fetal heartbeat, including the date, time, and results of the test.

Sec. 171.204. PROHIBITED ABORTION OF UNBORN CHILD WITH DETECTABLE FETAL HEARTBEAT; EFFECT. (a) Except as provided by Section 171.205, a physician may not knowingly perform or induce an

abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required by Section 171.203 or failed to perform a test to detect a fetal heartbeat.

(b) A physician does not violate this section if the physician performed a test for a fetal heartbeat as required by Section 171.203 and did not detect a fetal heartbeat.

(c) This section does not affect:

(1) the provisions of this chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy; or

(2) any other provision of state law that regulates or prohibits abortion.

Sec. 171.205. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS. (a) Sections 171.203 and 171.204 do not apply if a physician believes a medical emergency exists that prevents compliance with this subchapter.

(b) A physician who performs or induces an abortion under circumstances described by Subsection (a) shall make written notations in the pregnant woman's medical record of:

(1) the physician's belief that a medical emergency necessitated the abortion; and

(2) the medical condition of the pregnant woman that prevented compliance with this subchapter.

(c) A physician performing or inducing an abortion under this section shall maintain in the physician's practice records a copy of the notations made under Subsection (b).

Sec. 171.206. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not create or recognize a right to abortion before a fetal heartbeat is detected.

(b) This subchapter may not be construed to:

(1) authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter;

(2) wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion, including Chapter 6-1/2, Title 71, Revised Statutes; or

(3) restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

Sec. 171.207. LIMITATIONS ON PUBLIC ENFORCEMENT. (a) Notwithstanding Section 171.005 or any other law, the requirements of this subchapter shall be enforced exclusively through the private civil actions described in Section 171.208. No enforcement of this subchapter, and no enforcement of Chapters 19 and 22, Penal Code, in response to violations of this subchapter, may be taken or threatened by this state, a political subdivision, a district or county attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person, except as provided in Section 171.208.

(b) Subsection (a) may not be construed to:

(1) legalize the conduct prohibited by this subchapter or by Chapter 6-1/2, Title 71, Revised Statutes;

(2) limit in any way or affect the availability of a remedy established by Section 171.208; or

(3) limit the enforceability of any other laws that regulate or prohibit abortion.

Sec. 171.208. CIVIL LIABILITY FOR VIOLATION OR AIDING OR ABETTING VIOLATION. (a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who:

(1) performs or induces an abortion in violation of this subchapter;

(2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this subchapter; or

(3) intends to engage in the conduct described by Subdivision (1) or (2).

(b) If a claimant prevails in an action brought under this section, the court shall award:

(1) injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of this subchapter;

(2) statutory damages in an amount of not less than $10,000 for each abortion that the defendant performed or induced in violation of this subchapter, and for each abortion performed or induced in violation of this subchapter that the defendant aided or abetted; and

(3) costs and attorney's fees.

(c) Notwithstanding Subsection (b), a court may not award relief under this section in response to a violation of Subsection (a)(1) or (2) if the defendant demonstrates that the defendant

previously paid the full amount of statutory damages under Subsection (b)(2) in a previous action for that particular abortion performed or induced in violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.

(d) Notwithstanding Chapter 16, Civil Practice and Remedies Code, or any other law, a person may bring an action under this section not later than the fourth anniversary of the date the cause of action accrues.

(e) Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1) ignorance or mistake of law;

(2) a defendant's belief that the requirements of this subchapter are unconstitutional or were unconstitutional;

(3) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this subchapter;

(4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5) non-mutual issue preclusion or non-mutual claim preclusion;

(6) the consent of the unborn child's mother to the abortion; or

(7) any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as

provided by Section 171.209.

(f) It is an affirmative defense if:

(1) a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would comply with this subchapter; or

(2) a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion will comply with this subchapter.

(f-1) The defendant has the burden of proving an affirmative defense under Subsection (f)(1) or (2) by a preponderance of the evidence.

(g) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Section 8, Article I, Texas Constitution.

(h) Notwithstanding any other law, this state, a state official, or a district or county attorney may not intervene in an action brought under this section. This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.

(i) Notwithstanding any other law, a court may not award costs or attorney's fees under the Texas Rules of Civil Procedure or any other rule adopted by the supreme court under Section 22.004, Government Code, to a defendant in an action brought under this section.

(j) Notwithstanding any other law, a civil action under this section may not be brought by a person who impregnated the abortion patient through an act of rape, sexual assault, incest, or any other act prohibited by Sections 22.011, 22.021, or 25.02, Penal Code.

Sec. 171.209. CIVIL LIABILITY: UNDUE BURDEN DEFENSE LIMITATIONS. (a) A defendant against whom an action is brought under Section 171.208 does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:

(1) the United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or

(2) the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court.

(b) A defendant in an action brought under Section 171.208 may assert an affirmative defense to liability under this section if:

(1) the defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with Subsection (a); and

(2) the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion.

(c) A court may not find an undue burden under Subsection (b) unless the defendant introduces evidence proving that:

(1) an award of relief will prevent a woman or a group

of women from obtaining an abortion; or

(2) an award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

(d) A defendant may not establish an undue burden under this section by:

(1) merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or

(2) arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

(e) The affirmative defense under Subsection (b) is not available if the United States Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973) or Planned Parenthood v. Casey, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under Section 171.208 occurred before the Supreme Court overruled either of those decisions.

(f) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 171.208, and a court may not award relief under Section 171.208 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

Sec. 171.210. CIVIL LIABILITY: VENUE.

(a) Notwithstanding any other law, including Section 15.002, Civil Practice and Remedies Code, a civil action brought under Section 171.208 shall be brought in:

(1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) the county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3) the county of the principal office in this state of any one of the defendants that is not a natural person; or

(4) the county of residence for the claimant if the claimant is a natural person residing in this state.

(b) If a civil action is brought under Section 171.208 in any one of the venues described by Subsection (a), the action may not be transferred to a different venue without the written consent of all parties.

Sec. 171.211. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY PRESERVED. (a) This section prevails over any conflicting law, including:

(1) the Uniform Declaratory Judgments Act; and

(2) Chapter 37, Civil Practice and Remedies Code.

(b) This state has sovereign immunity, a political subdivision has governmental immunity, and each officer and employee of this state or a political subdivision has official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise.

(c) A provision of state law may not be construed to waive or abrogate an immunity described by Subsection (b) unless it expressly waives immunity under this section.

Sec. 171.212. SEVERABILITY. (a) Mindful of *Leavitt v.*

the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter, are severable from each other.

(b) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this chapter to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden.

(b-1) If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and Texas Constitution, those applications shall be severed from all remaining applications of the provision, and the provision

shall be interpreted as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and Texas Constitution.

(c) The legislature further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter, were to be declared unconstitutional or to represent an undue burden.

(d) If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(e) No court may decline to enforce the severability requirements of Subsections (a), (b), (b-1), (c), and (d) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

(1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Texas Constitution or United States Constitution;

(2) is not a formal amendment of the language in a

statute; and

(3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

SECTION 4. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.022 to read as follows:

Sec. 30.022. AWARD OF ATTORNEY'S FEES IN ACTIONS CHALLENGING ABORTION LAWS. (a) Notwithstanding any other law, any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, any governmental entity or public official in this state, or any person in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and attorney's fees of the prevailing party.

(b) For purposes of this section, a party is considered a prevailing party if a state or federal court:

(1) dismisses any claim or cause of action brought against the party that seeks the declaratory or injunctive relief described by Subsection (a), regardless of the reason for the dismissal; or

(2) enters judgment in the party's favor on any such claim or cause of action.

(c) Regardless of whether a prevailing party sought to recover costs or attorney's fees in the underlying action, a prevailing party under this section may bring a civil action to

recover costs and attorney's fees against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by Subsection (a) not later than the third anniversary of the date on which, as applicable:

(1) the dismissal or judgment described by Subsection (b) becomes final on the conclusion of appellate review; or

(2) the time for seeking appellate review expires.

(d) It is not a defense to an action brought under Subsection (c) that:

(1) a prevailing party under this section failed to seek recovery of costs or attorney's fees in the underlying action;

(2) the court in the underlying action declined to recognize or enforce the requirements of this section; or

(3) the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

SECTION 5. Subchapter C, Chapter 311, Government Code, is amended by adding Section 311.036 to read as follows:

Sec. 311.036. CONSTRUCTION OF ABORTION STATUTES. (a) A statute that regulates or prohibits abortion may not be construed to repeal any other statute that regulates or prohibits abortion, either wholly or partly, unless the repealing statute explicitly states that it is repealing the other statute.

(b) A statute may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state unless the statute explicitly states that political subdivisions are

prohibited from regulating or prohibiting abortion in the manner described by the statute.

(c) Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the United States Constitution and Texas Constitution shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and Texas Constitution.

SECTION 6. Section 171.005, Health and Safety Code, is amended to read as follows:

Sec. 171.005. COMMISSION [~~DEPARTMENT~~] TO ENFORCE; EXCEPTION. The commission [~~department~~] shall enforce this chapter except for Subchapter H, which shall be enforced exclusively through the private civil enforcement actions described by Section 171.208 and may not be enforced by the commission.

SECTION 7. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.008 to read as follows:

Sec. 171.008. REQUIRED DOCUMENTATION. (a) If an abortion is performed or induced on a pregnant woman because of a medical emergency, the physician who performs or induces the abortion shall execute a written document that certifies the abortion is necessary due to a medical emergency and specifies the woman's medical condition requiring the abortion.

(b) A physician shall:

(1) place the document described by Subsection (a) in the pregnant woman's medical record; and

(2) maintain a copy of the document described by Subsection (a) in the physician's practice records.

(c) A physician who performs or induces an abortion on a pregnant woman shall:

(1) if the abortion is performed or induced to preserve the health of the pregnant woman, execute a written document that:

(A) specifies the medical condition the abortion is asserted to address; and

(B) provides the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition; or

(2) for an abortion other than an abortion described by Subdivision (1), specify in a written document that maternal health is not a purpose of the abortion.

(d) The physician shall maintain a copy of a document described by Subsection (c) in the physician's practice records.

SECTION 8. Section 171.012(a), Health and Safety Code, is amended to read as follows:

(a) Consent to an abortion is voluntary and informed only if:

(1) the physician who is to perform or induce the abortion informs the pregnant woman on whom the abortion is to be performed or induced of:

(A) the physician's name;

(B) the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate:

(i) the risks of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy and of infertility; and

(iii) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;

(C) the probable gestational age of the unborn child at the time the abortion is to be performed or induced; and

(D) the medical risks associated with carrying the child to term;

(2) the physician who is to perform or induce the abortion or the physician's agent informs the pregnant woman that:

(A) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and

(C) public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest;

(3) the physician who is to perform or induce the abortion or the physician's agent:

(A) provides the pregnant woman with the printed materials described by Section 171.014; and

(B) informs the pregnant woman that those materials:

(i) have been provided by the commission [~~Department of State Health Services~~];

(ii) are accessible on an Internet website sponsored by the commission [~~department~~];

(iii) describe the unborn child and list agencies that offer alternatives to abortion; and

(iv) include a list of agencies that offer sonogram services at no cost to the pregnant woman;

(4) before any sedative or anesthesia is administered to the pregnant woman and at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period:

(A) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers performs a sonogram on the pregnant woman on whom the abortion is to be performed or induced;

(B) the physician who is to perform or induce the abortion displays the sonogram images in a quality consistent with current medical practice in a manner that the pregnant woman may view them;

(C) the physician who is to perform or induce the abortion provides, in a manner understandable to a layperson, a

verbal explanation of the results of the sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs; and

(D) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers makes audible the heart auscultation for the pregnant woman to hear, if present, in a quality consistent with current medical practice and provides, in a manner understandable to a layperson, a simultaneous verbal explanation of the heart auscultation;

(5) before receiving a sonogram under Subdivision (4)(A) and before the abortion is performed or induced and before any sedative or anesthesia is administered, the pregnant woman completes and certifies with her signature an election form that states as follows:

"ABORTION AND SONOGRAM ELECTION

(1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO ME.

(2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN ABORTION.

(3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO RECEIVING AN ABORTION.

(4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM IMAGES.

(5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE HEARTBEAT.

(6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN

EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

___ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

___ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.

___ MY UNBORN CHILD [~~FETUS~~] HAS AN IRREVERSIBLE MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

(7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND WITHOUT COERCION.

(8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY PLACE OF RESIDENCE IS:_____.

_____

SIGNATURE DATE";

(6) before the abortion is performed or induced, the

physician who is to perform or induce the abortion receives a copy of the signed, written certification required by Subdivision (5); and

(7) the pregnant woman is provided the name of each person who provides or explains the information required under this subsection.

SECTION 9. Section 245.011(c), Health and Safety Code, is amended to read as follows:

(c) The report must include:

(1) whether the abortion facility at which the abortion is performed is licensed under this chapter;

(2) the patient's year of birth, race, marital status, and state and county of residence;

(3) the type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient; [~~and~~]

(9) the number of previous induced abortions of the patient;

(10) whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion; and

(11) the information required under Sections 171.008(a) and (c).

SECTION 10. Every provision in this Act and every application of the provision in this Act are severable from each other. If any provision or application of any provision in this Act to any person, group of persons, or circumstance is held by a court to be invalid, the invalidity does not affect the other provisions or applications of this Act.

SECTION 11. The change in law made by this Act applies only to an abortion performed or induced on or after the effective date of this Act.

SECTION 12. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 8 passed the Senate on March 30, 2021, by the following vote: Yeas 19, Nays 12; and that the Senate concurred in House amendments on May 13, 2021, by the following vote: Yeas 18, Nays 12.

Secretary of the Senate

I hereby certify that S.B. No. 8 passed the House, with

amendments, on May 6, 2021, by the following vote: Yeas 83, Nays 64, one present not voting.

_____

Chief Clerk of the House

Approved:

_____

Date

_____

Governor

Appendix D: Texas Health and Safety Code § 170A, House Bill 1280, 87th Legislative Session (Tex. 2021)

HEALTH AND SAFETY CODE

TITLE 2. HEALTH

SUBTITLE H. PUBLIC HEALTH PROVISIONS

CHAPTER 170A. PERFORMANCE OF ABORTION

Sec. 170A.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Fertilization" means the point in time when a male human sperm penetrates the zona pellucida of a female human ovum.

(3) "Pregnant" means the female human reproductive condition of having a living unborn child within the female's body during the entire embryonic and fetal stages of the unborn child's development from fertilization until birth.

(4) "Reasonable medical judgment" means a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved.

(5) "Unborn child" means an individual living member of the homo sapiens species from fertilization until birth, including the entire embryonic and fetal stages of development.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.002. PROHIBITED ABORTION; EXCEPTIONS. (a) A person may not knowingly perform, induce, or attempt an abortion.

(b) It is an exception to the application of Subsection (a) that:

(1) the person performing, inducing, or attempting the abortion is a licensed physician; and

(2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced.

(c) A physician may not take an action authorized under Subsection (b) if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function described by Subsection (b)(2) arose from a claim or diagnosis that the female would engage in conduct that might result in the female's death or in substantial impairment of a major bodily function.

(c-1) For purposes of Subsection (b)(2), if a pregnant woman has a life-threatening physical condition described by Subsection (b)(2), a physician may address a risk described by Subsection (b)(2) before the pregnant female suffers any effects of the risk. Subsection (b)(2) does not require that, before the physician may act:

(1) a risk described by Subsection (b)(2) be imminent;

(2) the pregnant female first suffer physical impairment; or

(3) the physical condition has caused damage to the pregnant female.

(c-2) For the purposes of Subsection (b)(2), "life-threatening" means capable of causing death or potentially fatal. A life-threatening physical condition is not necessarily one actively injuring the patient.

(d) Repealed by Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 17(2), eff. June 20, 2025.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 3, eff. June 20, 2025.

Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 17(2), eff. June 20, 2025.

Sec. 170A.0021. TREATMENT AFFECTING UNBORN CHILD; EXCEPTION. (a) Notwithstanding any other law, a physician who treats a condition described by Subsection 170A.002(b)(2) shall do so in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for survival of an unborn child.

(b) It is an exception to the application of Subsection (a) that, in a physician's reasonable medical judgment, the manner of treatment required by that subsection would create a greater risk of:

(1) the pregnant female's death; or

(2) substantial impairment of a major bodily function of the pregnant female.

(c) This chapter does not require a physician to delay, alter, or withhold medical treatment provided to a pregnant female if doing so would create a greater risk of:

(1) the pregnant female's death; or

(2) substantial impairment of a major bodily function of the pregnant female.

(d) Nothing in Subsection (c) authorizes the performance of an abortion that is prohibited by law.

Added by Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 4, eff. June 20, 2025.

Sec. 170A.0022. REASONABLE MEDICAL JUDGMENT. Reasonable medical judgment in providing medical treatment to a pregnant female includes removing:

(1) an ectopic pregnancy as defined by Section 245.002(4-a); and

(2) a dead, unborn child whose death was caused by spontaneous abortion.

Added by Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 4, eff. June 20, 2025.

Sec. 170A.0023. ACCIDENTAL OR UNINTENTIONAL DEATH. (a) This section applies to any law that provides an exception to an otherwise prohibited abortion based on a condition described by Section 170A.002(b)(2).

(b) It is an exception to the application of each law described by Subsection (a) that the death or injury of an unborn child resulted from treatment provided to a pregnant female based on a physician's reasonable medical judgment if the death of or injury to the unborn child was accidental or unintentional.

Added by Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 4, eff. June 20, 2025.

Sec. 170A.003. CONSTRUCTION OF CHAPTER. This chapter may not be construed to authorize the imposition of criminal, civil, or administrative liability or penalties on a pregnant female on whom an abortion is performed, induced, or attempted.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.004. CRIMINAL OFFENSE. (a) A person who violates Section 170A.002 commits an offense.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if an unborn child dies as a result of the offense.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.005. CIVIL PENALTY. A person who violates Section 170A.002 is subject to a civil penalty of not less than $100,000 for each violation. The attorney general shall file an action to recover a civil penalty assessed under this section and may recover attorney's fees and costs incurred in bringing the action.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.006. CIVIL REMEDIES UNAFFECTED. The fact that conduct is subject to a civil or criminal penalty under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.007. DISCIPLINARY ACTION. In addition to any other penalty that may be imposed under this chapter, the appropriate licensing authority shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation of Section 170A.002.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.