

Beyond Borders: Global and Domestic Legal Innovations for Reproductive Health Post-*Dobbs*

Overview of Session

1. Introductions
2. Young People's Medical Decision-Making
3. Legal Fetal Personhood
4. State Constitutions

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State Constitutions and Public Health: State-Level Protections and Restrictions on Reproductive Health Care Access

Presented by:

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Overview of Presentation

State Constitutions and Public Health Generally

State Constitutions and Reproductive Health Care (Abortion) Access

Protective Constitutional Provisions

Restrictive Constitutional Provisions

Constitutional Amendments v. Statutory Provisions

Being Proactive: Using State Constitutions for NextGen Repro Issues

State Constitutions and Public Health

State constitutions:

- ✓ align with federal in many respects;
- ✓ may offer additional affirmative rights;
- ✓ are more susceptible to amendment.

State Constitutions and Public Health

❖ *Right to Health/Health Care/Health Care Freedom*

- At least 15 state constitutions contain explicit provisions related to health or health care;
- Some affirmative (progressive states); some limiting (conservative states); and
- Limited power in application by courts.

❖ *Right to Clean and Healthful Environment*

- *Held v. Montana* (MT Supreme Court, 2024)
- Montana Constitution protects the right to a stable climate system
- Struck down Montana Environmental Policy Act that restricted consideration of greenhouse gas emissions and corresponding climate change impacts in environmental reviews.

❖ *Right to Organize/Collective Bargaining*

❖ *Right to Free Public Education/Education Funding*

And more . . .

State Constitutions and Reproductive Health Care Access

The Bad News

Louisiana (2020; prepping for Dobbs); Tennessee (2024; overriding TN Supreme Court)

Nothing in this constitution shall be construed to secure or protect a right to abortion or require the funding of abortion.

West Virginia (2018; prepping for Dobbs)

Same as LA and TN but as a result, previous WV Supreme Court decision indicating right to state Medicaid funds for abortion was functionally overturned

State Constitutions and Reproductive Health Care Access

The Bad News, Part 2

Nebraska (2024, taking advantage of Dobbs)

Prohibits abortion after the first trimester with exceptions for “medical emergency” or rape/incest.

State Supreme Courts finding State Constitution does NOT confer a right to abortion:

- ✓ Florida (2024)
- ✓ South Carolina (2023; crazy ride)

State Constitutions and Reproductive Health Care Access

The Good News!

*Many states have adopted constitutional provisions that protect access to abortion
... and more!!!*

State Constitutions and Reproductive Health Care Access The Good News!

State Constitutional Protections: Abortion Only

- ✓ Vermont
- ✓ Colorado
- ✓ Montana
- ✓ Maryland
- ✓ Arizona
- ✓ Nevada (pending 2026 election)

State Constitutions and Reproductive Health Care Access **The Better News!**

State Constitutional Protections: Abortion and other Repro Care

✓ Michigan: **Guarantees:**

- Prenatal care, Childbirth, Postpartum Care, Contraception, Sterilization, Abortion Care, Miscarriage Management, and Infertility Care

✓ Ohio: **Protects:**

- Contraception; Fertility Treatments; Continuing a Pregnancy; Miscarriage Care; Abortion (until viability or to protect patient life or health)
- Pregnant person; health care providers

✓ California: **Protects:**

- Abortion and Contraception

State Statutory Protections

States vary tremendously in statutes regarding abortion care—from near total bans to liberal access.

Constitutional vs. Statutory Protections

- **Constitutional Amendments**
 - Carry the **highest legal authority** within a state
 - More difficult to overturn—require **voter approval or supermajority**
 - Courts must interpret laws in light of these rights → **stronger, long-lasting protections or restrictions**
 - Can override conflicting statutes
- **Statutes**
 - Passed by state legislatures, more easily **amended or repealed**
 - **Subject to judicial review** for constitutionality (especially if conflicting with state or federal constitutions)
 - Often reflect **current political majority**—vulnerable to shifts in legislative control
 - May be suspended during public health emergency
 - Can include more specific details (e.g., gestational limits, procedures, penalties)
- **Implications**
 - **Constitutional protections** offer **durable reproductive rights**, shielded from partisan change
 - **Constitutional bans** create **high legal barriers** to reinstating access
 - **Statutes alone** offer **flexibility**, but less stability—rights can expand or erode with political turnover

Being Proactive!

Advocates should seek to expand the number of states offering constitutional protection—start with states with statutes and turn them into constitutional amendments!

Consider expanding scope of existing protections to include:

- Miscarriage care
- Contraception
- Infertility Treatments
- Tubal Ligation
- Hormone Therapy

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**Thanks to my 2025 summer intern, Natalie O'Connor,
and current Clinic II student, Jackie Ellis!**

Coming Soon!

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