BEYOND BORDERS

Bringing Abortion Law & Policy Experiences from Around the World to the United States

Executive Summary

This resource includes five topical reports, each of which synthesizes the global standards put forward by international organizations and law and policy approaches taken by select countries to:

1. **Counter the establishment of legal personhood for prenatal life.**
2. **Remove criminal law from the regulation of abortion.**
3. **Limit parental involvement in young people's abortion decision-making.**
4. **Regulate the exercise of religious refusals for abortion care.**
5. **Treat abortion as health care.**

Each report highlights global trends and situates the United States in the broader global context, summarizes global public health standards and international human rights norms, analyzes the jurisprudence and legislation of select countries, and briefly reflects on considerations for the U.S. context. While not intended to be comprehensive, the reports aim to increase visibility of approaches taken and arguments relied on in different parts of the world to expand access to abortion care. We hope that these reports serve as valuable resources for state decision-makers, advocates, researchers, affected communities, and other relevant stakeholders working to protect and advance abortion access.

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Legal Voice Toward Justice & Gender Liberation.

Abortion is health care, but it is regulated unlike any other essential health care service. Abortion scholars and advocates have characterized this phenomenon as "abortion exceptionalism," in which legislatures and courts subject abortion to uniquely burdensome rules, deeming it special, different, or wrongful.[1] While exceptionalism in abortion law and policymaking is prevalent in many countries, the United States presents an extreme example, both before and after *Dobbs v. Jackson Women's Health Organization*.[2]

United States

Even when the federal constitution protected the right to an abortion prior to the *Dobbs* decision, abortion was subject to much more stringent regulations and restrictions than equivalent and, in some cases, much riskier health care.

Regulations and restrictions have targeted abortion procedures and medications, health professionals and institutions, pregnant people's decision-making, and funding and insurance coverage for abortion.[3]

The politicization of abortion in the United States has only increased post-*Dobbs*. In the wake of the Supreme Court's decision to eliminate the federal right to abortion in 2022, the situation has worsened significantly with 12 states imposing total or near total abortion bans and seven states with gestational limits — severely undermining access to essential reproductive health services.[4] Other states have increased protections for abortion during that same time period - 21 states and D.C. currently protect abortion under state law.[5] The political divide among states is arguably wider than ever, resulting in a fractured legal landscape and extreme partisan polarization among state lawmakers.[6]

Global Trends

Conversely, other countries have successfully pushed back on abortion exceptionalism, even within restrictive legal environments. Countries around the world have adopted approaches and framed arguments in ways that have resonated with decision-makers across the political spectrum, generating sufficient political will from moderates and centrists to achieve dramatic change. For example, recent gains in abortion decriminalization in both Argentina and Colombia required public support from an openly anti-choice president and at least one moderate Constitutional Court Justice.

Some countries have challenged the most common justification for and means of regulating abortion differently from other forms of health care, namely the value of prenatal life and criminal law, respectively. Others have pushed back against specific requirements that impose unique burdens on access to abortion care, such as religious refusals and parental or other caregiver involvement in young people's decision-making. Finally, countries all over the world have adopted regulations that treat abortion as health care, thereby weakening abortion exceptionalism. In the process, many of these countries have embraced and relied upon standards established by international organizations and experts across a range of disciplines, including the World Health Organization and international human rights bodies.

1 Caitlin E. Borgmann, *Abortion Exceptionalism and Undue Burden Preemption*, 71 Wash. & Lee L. Rev. 1047 (2014), https://scholarlycommons.law.wlu.edu/wlulr/vol71/iss2/13.

2 Elizabeth Sepper, *Anti-Abortion Exceptionalism after Dobbs,* 51(3) Journal of Law, Medicine & Ethics 612 (2023), doi:10.1017/jme.2023.97.

3 Rebecca B Reingold and Lawrence O Gostin, *State Abortion Restrictions and the New Supreme Court: Women's Access to Reproductive Health Services,* 322(1) JAMA 21 (2019), doi:10.1001/jama.2019.8437.

4 Center for Reproductive Rights, After Roe Fell: Abortion Laws by State, https://reproductiverights.org/maps/abortion-laws-by-state/.

5 *Id.*

6 Martin K Mayer et al, *Dobbs, American Federalism, and State Abortion Policymaking: Restrictive Policies Alongside Expansion of Reproductive Rights,* 53(3) Journal of Federalism 378 (2023), https://doi.org/10.1093/publius/pjad012.