'Mass uncertainty:'
America's abortion landscape in the post-Dobbs era

“It's almost like an obstacle course trying to get an abortion for some folks and it's really, really fraught.” - Cat Duffy

Dispatcher: 911, what’s your emergency?

Caller: America’s healthcare system is broken and people are dying! (ambulance siren)

Welcome to **Code WACK!**, where we shine a light on America’s callous healthcare system, how it hurts us and what we can do about it. I'm your host, **Brenda Gazzar**.

This time on Code WACK! It’s been one year now since the landmark Roe vs. Wade Supreme Court ruling, which would have marked its 50th anniversary this year, was overturned in the **Dobbs. Vs. Jackson Supreme Court decision.** What has that meant for abortion access in America?

To find out, we spoke to **Cat Duffy**, a policy analyst in the **National Health Law Program’s** Washington, DC office. She holds a doctorate and works on reproductive and sexual healthcare access and services with a particular focus on abortion coverage and access.

Welcome back to Code WACK! Cat.

Duffy: Thank you for having me. I'm really excited to be back!

Q: Yes, thank you. June marks one year since the U.S. Supreme Court ended the constitutional right to abortion by reversing Roe vs. Wade in its landmark, Dobbs vs. Jackson Women's Health Organization ruling, basically returning the decision to restrict or protect abortion to the states. Since then, how has the legal landscape changed when it comes to abortion access across the country?

Duffy: Yes, as I am sure you expected, there's been a lot of change over the last year, both in like negative and positive ways. So the bad – 14 states have banned either all or nearly all abortion. The exact number sort of depends on the day and the status of ongoing litigation because many of the bans that have been enacted are being actively challenged. In the first hundred days after Dobbs, over 60 health centers in 15 different states had to shut down as a result of abortion bans going into effect. And these clinics just like literally could not afford to keep their doors open anymore – and that number is likely higher now, but I don't know for sure.

And the other thing that I would note is that we have seen a continuation in attacks in the 2023 legislative sessions – in particular the sort of marked interest on medication abortion, which is also sort of being replicated in litigation that I'm pretty sure we're going to talk about later.

Oh, no.

But it's not all bad.The back half of 2022 saw significant legislative activity in states that support reproductive freedom. Overall in 2022, 18 states adopted over 75 different proactive provisions, which is markedly more than the last couple years that we've seen in terms of proactive activity.

And I would be remiss if I didn't take a moment to mark the results of the midterm elections where we saw just like a resounding rejection of abortion restrictions in states that people would consider, like really red states like Montana and Kentucky and we saw states like Michigan and California and Vermont enshrine constitutional protections for abortion, which was really exciting. And I think we've seen a lot of positive proactive activity in the 2023 session and hope to see more before the year's done.

Q: Got it. So when you talk about proactive legislation or provisions, are you mostly talking about entwining abortion as a right, or what other examples could you give us?

Yeah, so proactive legislation generally refers to legislation that aims at expanding access and it's like a catch-all category. And so it can include things like establishing a constitutional right in the state constitution, but also things like

helping providers or funding abortion funds or expanding insurance coverage of abortion. It's a wide variety of different policies.

Q: Right. Since Dobbs vs. Jackson ended the constitutional right to abortion one year ago, what have been some of the most dire impacts on individuals seeking abortions in states that have since banned or limited them?

Duffy: Yeah, the bottom line is that fewer people are able to access the care that they need and for many accessing care if they're able to, is now sizeably more expensive and arduous than it was prior to Dobbs, largely due to like a massive increase in the distances that people have to travel. And there are a couple studies that I think sort of showcase these points. The Society of Family Planning has been conducting the “We Count” study over the last year, which is collecting monthly abortion volume data by state from participating health centers to sort of understand the impact of dobs on abortion access. And the most recent data that was released by them showed that from July through December of 2022, there were over 30,000 fewer abortions that occurred compared to the average monthly number of abortions observed in the pre-Dobbs period.

And there are, you know, caveats to this data because some people will have successfully self-managed their abortions and it's really hard to capture that data, but it does indicate that like there are just people who are not getting access to the care that they need. And then there's another study that I would highlight that was published in November of last year by answer, which is advancing new standards in reproductive health that showed that twice as many people must now travel more than an hour to reach an abortion provider. And that time is more than double the amount of time that the, it's like the US benchmark for reasonable access to primary care. And unsurprisingly, people in the South faced the biggest increase, which like maps, if you look at like a map of like where a lot of the worst abortion bans have gone into effect.

And then I think the last thing that I would highlight is that there are people who have experienced life-threatening conditions during pregnancy who are either being denied care or their ability to access care is being delayed because providers who are delivering care in states that have really draconian abortion bans are scared of being prosecuted under those bans and feel like they have to delay care until patients' condition like tangibly worsens. So it's clear that it falls under the state's life endangerment exception.

And recently (U.S. Health and Human Services) announced that there are two investigations of hospitals that didn't offer the necessary stabilizing care to a person who is experiencing an emergency medical condition during pregnancy,

which was a violation of the Emergency Medical Treatment and Labor Act, which requires providers to provide stabilizing care to folks when they have an emergency medical condition, and that stabilizing care includes pregnancy termination when it's needed.

Q: So this sounds quite dangerous because in some states abortion is banned. So is there a gray area on whether or not they are allowed to perform abortions in cases where the life of the mother is endangered?

Duffy: Well, abortion bans largely have life endangerment exceptions, which like even if the service is like completely banned in cases where the pregnant person's life is in danger, like if carrying the pregnancy to term will kill them or endanger their life then a provider is legally allowed to provide abortion care in that instance. But the, the sort of draconian nature of these abortion bans and how extreme a lot of the language around them has become, has created a culture of fear where providers believe understandably, that if it is not like very clear that a patient is like, you know, on death's door, they feel like they cannot provide that care and it's really dangerous to the patients.

Q: Right. Do you know of any patients that have died as a result?

Duffy: I don't know specifics offhand.

Q: Got it. Okay. And then you mentioned some I think pregnancy terminations were self-managed. What does that mean?

Duffy: Yeah, so a self-managed abortion is when a person takes materials, it's often pills, but there are herbal remedies, et cetera, ways of, you know, safely ending a pregnancy on their own, outside of, you know, the care of a provider. Aid Access is an international organization that ships abortion pills and that is like one mechanism that folks have for obtaining pills and will just self-manage their own abortion.

Q: Got it. Thank you. Yeah. Last time we spoke, you mentioned that even in states that still allow abortion like California, there were delays in accessing reproductive care care, including abortion because of the influx of those seeking abortions from states where it's now banned or limited. Is that still the case and what are the ramifications of that?

Duffy: Yeah, well to level set, like even in reproductive freedom states, there are access issues and that was true before Dobbs and that remains true today. And these access issues, like a lot of them have nothing to do with the influx of patients, although the increased demand worsens the impact of those issues. Like

in large states like California for example, there will be just like major swaths of the state that don't have a provider, which is a real access barrier for folks who are living in those areas who either have to use telehealth to access services or drive potentially vary long distances in order to get to their nearest provider. There's also things like gaps in insurance coverage that can create major barriers to access, especially for folks who have employer sponsored insurance from religiously affiliated employers or self-insured plans. Those aren't subject to the coverage mandates in states like California, so they essentially have to pay out of pocket.

But it is true that we have seen a large influx of patients traveling into states that support abortion access in California. I was reading about how there were some Planned Parenthood centers that reported that demand at some of their health centers had quadrupled. There was also reporting in Colorado that the volume of out-of-state patients had more than doubled between 2021 and 2022. And the increase in demand, just like necessarily does lead to increases in waiting periods, particularly for people who are seeking in-person care, which means that some people have had to opt for telehealth service delivery in order to obtain care sooner.

Q: Right. So we're talking about people that were seeking abortions that needed to go the telehealth route?

Duffy: Mm-Hmm. <affirmative>.

Q: Okay. And so then is that, is that when they would get a pill, there would be a pill shipped to them? Or how, how could they deal with that?

Duffy: Yeah, so there are sort of a couple different like service delivery formats for telehealth medication abortion. One is where is like a synchronous interaction with a provider where you would have like a video call with a provider. They would screen you, go through like your medical history, ascertain like the date of your last menstrual period, et cetera. And then assuming that you are a candidate for a medication abortion, the pills can be mailed to a patient.

There are also asynchronous telehealth providers where if you're seeking a medication abortion, you would fill out like a questionnaire that basically is all the information you would give a provider during a face-to-face interaction. A provider will review it and then assuming you're a candidate, the pills will be shipped to you and often those models have text messaging features built in, which are really great because in synchronous models, you have that like one interaction with a doctor to like ask all of your questions. But with these

asynchronous models, there's often like a chat line or a telephone line that if you have questions while you're like going through the abortion, there's someone there to answer your questions. And that might not necessarily be the case in a synchronous interaction or even when you go see a provider in person.

Q: ***Perfect. Thank you. What kind of emotional and financial toll has this ruling caused to those seeking abortions?***

Duffy: Yeah, I mean I can't personally speak to the emotional toll because I haven't tried to get an abortion in the past year, but I know how I felt when I realized that I was pregnant and I was panicked and I remember how grateful I was that I could get an appointment at my local Planned Parenthood center within a week of calling the clinic was a 15 minute drive away and I had insurance that paid for my care. And because of Dobbs, there are like thousands, if not millions more people who are now in a situation where like that's not their existence at all. They likely don't have insurance that will cover it.

They may have to drive really far distances and might have to wait significant periods of time. And just in general, Dobbs has really created a culture of like mass uncertainty because the landscape is constantly shifting in terms of whether or not bans are in effect in certain states or not. People have had to cancel their appointments as a result of that because one day a ban will be blocked by litigation and the next day, which is the day of their appointment, it'll go back into effect. And oftentimes people are have to travel long, long distances, which can be extremely expensive depending on how far they have to travel, whether or not they have to take time off work, if they have paid time off work. And so it's definitely increased the toll that it takes on people.

Q: Right. Did you want to say anything more about the financial toll?

Duffy: Oh yeah. Dobbs has forced people to travel further to access care, which necessarily increases the financial toll of seeking an abortion. And it's not just like the, the finances of like paying for the gas to drive two states away, but it's potentially lost wages if you have to take time off work, it's potential childcare if you have kids and need to, you know, someone to care for your children while you're going to get this needed care. And all of these factors sort of compound each other. Dobbs has just taken a landscape that was all already really restricted and filled with barriers to accessing care and just ratcheted it up and made it even harder for folks. It's almost like an obstacle course trying to get an abortion for some folks and it's really, really fraught.

That's such a great analogy. The obstacle course.

Yeah, it's depressing. <Laugh>.

It really is.

Thank you Cat Duffy of the National Health Law Program. We'll hear more from Cat later this month when she shares her take on the future of abortion access in America.

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