



Is 'fetal personhood' coming to *your* state?

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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**.

(music)

This time on **Code WACK!** Where are we today when it comes to reproductive rights in America? And what does the latest IVF case in Alabama mean from reproductive justice? To find out, we spoke to **Vina Smith-Ramakrishnan**, a fellow at [The Century Foundation](#), where she works on issues related to maternal health and reproductive rights and justice. Vina's work supports The Century Foundation's efforts to eliminate racial and gender disparities in health outcomes. Vina has a master's of public health in global health policy from George Washington University's Milken Institute School of Public Health.

Welcome to Code WACK! Vina!

Smith-Ramakrishnan: Thank you. I'm happy to be here.

Q: So there's been a consistent, steady encroachment on reproductive rights in America for decades. One could argue that culminated with the Supreme Court's Dobbs decision in 2022 that overturned the constitutional right to abortion and left that up to the states. How would you describe where we're at today, specifically with abortion access?

Smith-Ramakrishnan: It's a patchwork right now in the country where we're seeing after the decision came down with the Dobbs case at the Supreme Court, we saw a lot of states that have been historically hostile to abortion access and reproductive rights more broadly were very quick to enforce laws about where someone could have an abortion, whether or not they could have an abortion at all, gestational limits, like at up until what point can someone have an abortion – that really became kind of the unfortunate reality for a lot of people who lived in those states that were already very hostile. On the other hand, you see some more progressive states have been really trying to shore up access and quickly get legislation passed that will protect access, not only for the people who are living in those states, but also they're seeing influx of folks coming from out of state, from those states that are more hostile.

And so now it's not only a matter of whether or not states are able to provide access to those that are residing in their states, but they also are feeling just kind of like the social obligation, honestly, to provide care to those who might live in neighboring states that don't have the same type of access and legality that they have in their own states.

Q: Wow. Do you know how many states now have protected access?

Smith-Ramakrishnan: I'm looking at the New York Times map right now, out of curiosity because I know that they do update it pretty frequently. Let's see, as of right now, it looks like 14 states have a full ban right now, and a handful more have six-week, 12-week, and 15 to eight-week bans. And it's like I said, almost entirely in the South and and Midwest as I'm just looking at the stark visual right

here on the map. So it's an unfortunate divide that we're seeing in the country. And then you have really progressive states that become these safe havens for care and that are more, you know, in the New England area, along the West Coast and a few states that are, you know, like Illinois, like I mentioned, Michigan more in that northern region.

Q: So how are women and people of color disproportionately impacted when it comes to abortion bans and other impediments to reproductive justice? And do you have any stories you can share?

Smith-Ramakrishnan: Yeah, so I think it goes back to the topic of geography. The South, you know, as I mentioned, is the region of the country where we're seeing the most states that have these abortion bans and the South is also the part of the country that has the highest concentration of Black population in the U.S. So that's a really stark, you know, racial divide that we're seeing. There's also, you know, layers of social stigma that go into that when it comes to, you know, people of color seeking abortion as opposed to, you know, wealthier white women seeking abortion.

There's also the issue of health coverage and insurance coverage and who has access to care even though in, you know, many of these states you're not able to access abortion through like Medicaid coverage or even like the Hyde eligible abortions, which the Hyde Amendment is what prevents federal funds from being used to provide abortion care except for these exceptions, which usually include rape, incest and the health and wellbeing of the mother.

But I think when it comes to equity, a lot of it comes down to geography and a lot of it comes down to social stigma and are providers going to be providing care? And then we also see the criminalization aspect, where Black and brown women in this country are much more likely to be involved in the criminal justice system and to be criminalized or seeking health care. So when it comes to stories that we're hearing out of states where healthcare providers are, you know, reporting people seeking abortion to like local police and things like that, you see these intersections of racial justice, health equity, the criminal justice system getting involved. And so these are a lot of the intersecting issues that we're worried about and trying to focus on.

Q: Oh my gosh. It sounds so Orwellian in some ways. Do you have any specific stories by any chance of a case that you read about or that you know about that really touched you?

Smith-Ramakrishnan: There's been so many stories, but I think the case that really comes to mind was, I believe it was out of Ohio, a young girl who I believe had been raped. I don't know if it was a rape or incest case, but, um, she was, you know, struggling to access care in her state and so I think hearing some of those stories, and I also want to acknowledge that like, usually it's the more like extreme stories like that that capture the news and capture the hearts and minds of people and there's of course, you know, everyday people that just are pregnant and don't want to be, who are out there trying to access care that also can't access it. But I think some of the stories that we hear about these cases where to the average American, it would be so obvious what the right decision in that situation and because of the laws in certain states, people are just unable to access care and I think when children are involved and when it's something that's really harming and impacting young girls, I think that makes it especially painful to read about.

Q: Right. Do you happen to know what happened to her?

Smith-Ramakrishnan: These are great questions. No, you're fine. I'm actually going to look it up. She traveled to Indiana to get an abortion because abortion law in Ohio wasn't providing any exemption for minor children who became pregnant because of rape. So even in examples of, you know, sometimes there's these very narrow exemptions, but she still did not fall into the correct exemption that would allow her to access an abortion. And that was one of those cases that drew so much national attention commentary because people were just outraged across the country. Even some people who might on, you know, any other day not necessarily be outright supportive of abortion care could acknowledge that this story just didn't really make sense at all. But she was able to access care in the state of Indiana and the physician who provided care actually ended up getting investigated. So you have now the criminalization of doctors who are doing their jobs and they took an oath to provide care to people, and you have families who

are enforce with these decisions to travel between state lines to get care. That is a case that was pretty early on that really struck a lot of people.

Q: Right. Was that the doctor in her home state or in Indiana that was investigated?

Smith-Ramakrishnan: The physician in Indiana was investigated. I was gonna say that I think this case also, like, grabbed people because it happened ... in 2022, so soon after the Supreme Court had made the decision. So I think a lot of people saw that as 'this is what is going to happen and these are the direct ramifications of what has happened at the Supreme Court level.'

Q: Okay. So thank you for sharing that. Let's talk about embryos. The Alabama Supreme Court ruled in February that frozen embryos created during fertility treatments such as IVF or in vitro fertilization are considered children under state law and that those who destroy them can be held liable. First of all, can you briefly explain how IVF works?

Smith-Ramakrishnan: Sure, and as a brief disclaimer, I will say that I'm a policy expert, not a doctor or a physician <laugh>, but I will kind of give a very high-level overview of what is entailed. So IVF stands for in vitro fertilization, and it's a form of what people call assisted reproductive technology, which is basically a way that can help people, whether they are infertile or they're trying to preserve future fertility options to be able to conceive and build their families on their own terms with the help of medical technology that has advanced so wonderfully in the past several decades. And so if you are undergoing IVF, it is a process that can take, you know, weeks to sometimes months to complete from start to finish, and a lot of folks on their first attempt of IVF will not be successful and so many people will have to try more than one time if they want to have a successful round of IVF.

It involves, you know, taking medication for a period of time, undergoing an egg retrieval, then the doctors have to combine that egg with a sperm. This is all happening outside of the uterus, which is why it's called in-vitro fertilization. And then they're gonna transfer that fertilized egg back into the uterus, with the hopes that, you know, it'll implant properly in the uterus and the person can, you know, officially be pregnant and carry the baby to term ideally.

And there's also a host of other reasons why people might want to freeze their embryos. If you're undergoing cancer treatment, when you're not sure whether or not your fertility is going to still be viable or if you're even gonna be able to produce eggs in the same way after you've complete your cancer treatment. Some people might freeze their embryos with the hopes that they might try to build a family after they're, you know, cancer free, for example.

Or if someone is undergoing any type of gender-related or hormonal related treatments and therapies like gender-affirming care, that can also impact fertility in different ways. And so your physician might recommend (that) if you know for a fact that you would like to have a family at some point, or build and continue a family, you might want to freeze embryos. And so beyond just, you know, people who are experiencing infertility and trying to get pregnant, immediately, there's, there's a bunch of different reasons why someone might freeze their embryos. And this case directly puts that into question because now the question is, if those frozen embryos are considered children – usually those embryos will either get destroyed or will go into other types of research facilities where, you know, they're not going to go into someone's uterus and allow someone to become pregnant – and so that would be considered by the Supreme Court of Alabama murder in that sense.

Q: Ok, so does this roll back reproductive rights in your opinion and is that what the plaintiffs intended?

Smith-Ramakrishnan: So when it comes to the plaintiffs, that's you know, a tricky question. As far as I'm aware of. But from reading the remarks in the case, it does seem like they kind of came to this case with a reasonable grievance that they had where their embryos had been accidentally destroyed due to, you know, the clinic where they were, the embryos either might not have been secured properly, someone was basically able to accidentally kind of knock over drop and, um, destroy the embryos. And so putting myself in, in the plaintiff's shoes just for a moment if you imagine that you're desperately trying to get pregnant, you have invested this time and money and energy, and now you have these embryos that have been destroyed, I do think that that grievance came from a point of they

probably were just seeking some type of justice from the situation that they had been put in.

Whether they had gone into that case intending to roll back reproductive rights for everyone in the state of Alabama, I'm unsure. That is a hard thing to just be able to determine based off of the case itself. But regardless of what the intent was behind the case, that is what ended up happening. And so I think the Supreme Court of Alabama is more so than the plaintiffs, you know, directly, we need to be directly focusing the energy into the Supreme Court of Alabama who took this case and decided to use their own, you know, religious and far-right ideology to turn the case into something that would be politically advantageous to them.

Q: Right. And so I guess providers stopped providing IVF treatments, is that right? Because they were afraid that they were going to get sued or what happened?

Smith-Ramakrishnan: Yeah, so there were a few clinics across Alabama that paused treatment. I know the University of Alabama at Birmingham, I think they paused, their fertility clinic paused almost immediately after the Supreme Court made that decision. And there was, you know, just a fear of the unknown. Like there wasn't really a clear sense of what that meant, what the real life implication of what was decided by the Supreme Court, how that was going to be enforced, who was gonna be implicated, whose fault, where the blame was going to lie. And so I think out of just precaution, a lot of clinics simply just paused their treatments. And I know many couples were interviewed, I saw a few interviews on the news of couples who were in Alabama who had been, you know, in the process of IVF and then now, it's paused.

Q: So thank you for sharing that. So what's the significance then of this ruling that frozen embryos created during IVF are considered children under state law?

Smith-Ramakrishnan: Yeah, I mean, I think what is worrying to advocates is in the opinion, there were a lot of references made to, you know, religion and Christianity specifically, and that seemed like – to advocates – like a clear violation of a) you know, church and state are supposed to be separate in an ideal world. And also really troubling that if that is the way that courts are thinking

about healthcare and rights, what does that mean for other states beyond Alabama? Are other states going to, you know, kind of take this as a playbook and, and try to do something similar with their own states and state constitutions? Is this going to make its way all the way up to the federal level? And so I think those are some of the worries and like alarm bells that started ringing off in people's heads once this happened.

Not to mention a lot of other states are also, you know, trying to declare that a fetus is a person and that fetal personhood argument has a lot of really scary implications, not just for abortion rights. I think abortion is the thing that comes first to mind. But going back to the criminalization piece again, as I mentioned, when you think about who is going to be most likely to get tied up in the criminal justice system because of things like this, it is women of color, it's immigrant women who their immigration status might be a concern for them or people who can't afford to get caught up in the system to begin with and therefore those people are now put in an extremely vulnerable place where even if you might be pregnant, if there's a chance that you're pregnant and any harm comes to what could be a potential fetus, what does that mean? So I think it just generated a lot more questions than it did answers and those questions were often worrying.

Q: Interesting. So what do you think the best case scenario would be and the worst case scenario? Like the New Republic in a recent article said that this could spell the beginning of the end of the third-party fertility industry. What are your thoughts on that?

Smith-Ramakrishnan: I think our best case scenario is that Republicans realize that this is a losing issue and that this is a fight that they do not want to pick. As I mentioned in the piece that I wrote the other week, a majority of Americans view IVF as just health care, just something that people should have access to. Even those who don't necessarily believe that or support abortion rights, they don't see the connection between abortion and IVF and even for abortion, a majority of Americans believe that abortion should be allowed. Obviously some people believe in restrictions, some people believe in different things happening, but there are very few people who believe that there should be an outright nationwide abortion ban. That's just not a politically popular stance. Neither is

banning IVF, for example. It's not a politically popular stance. Vice President Mike Pence and his wife used IVF to conceive their children.

So there's just a number of implications when you think about how politically popular an issue is and so I think the best case scenario is that, you know, Republicans realize this is not a battle that they want to pick and that will ideally lead to the shoring up of reproductive rights at the federal level. It is an election year and I think if we can lean into that and help people understand this is what's at stake when you go to the ballots, like that would be the best case scenario, I think saying that in the most "[501] C-3 way" <laugh> that I can <laugh>.

And then the worst case scenario is, like I mentioned, that other states are gonna use this as a playbook. We've already seen other states introducing bills in their legislature that are using this fetal personhood argument of like 'an embryo or a fetus has the same rights as a person.' And so if they're using those types of arguments in that type of language, that is a really worrying trend that we're seeing across the country.

Q: In late February, the Alabama House of Representatives passed a bill giving IVF service providers civil and criminal immunity from prosecution or legal action related to the services they provide. In your opinion, if passed by the Senate and signed into law, will this be sufficient to ensure IVF services continue?

Smith-Ramakrishnan: So I believe as of right now, the Senate in Alabama has passed the bill, although every day I feel like there is new information being released so I'm sure things have changed even since the last time I looked it up to when we're having this conversation right now. From what I've read and heard so far, it sounds like this offers at least a temporary solution, but the asterisk on that and lawmakers themselves who may be voted for to pass the bill, have suggested that this conversation isn't over yet, and they wanted this legislation to get through with the intent to have clinics be able to reopen and resume care. But I do think it has cracked open a can of worms that people want to have a little bit deeper discussion and have a longer conversation about, which is worrying. And what's also worrying is lawmakers aside, Chief Justice (Stephen) Parker on the Alabama Supreme Court already in his concurring opinion, stated that he felt that

the courts really should get a final say on this, not lawmakers. And to directly quote him, he said, 'any law that risks the death of these little people is constitutionally suspect.' And so that is kind of laying the groundwork for what might turn into future legal battles if the court decides that they don't like what the legislators have decided. It's a whole mess.

Thank you Vina Smith-Ramakrishnan from The Century Foundation. Stay tuned for next time when we continue our discussion with Vina about attacks on reproductive rights in America – and what's being done about it.

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