The Loop
ECPR's Political Science Blog

Emergency room abortions in the US: doctors' objections trump patients' lives

It is now two years since the fall of Roe v. Wade. How has this affected healthcare for pregnant Americans? **Payton Gannon** and **Danielle Pullan** explain the most recent Supreme Court cases and contextualise them within the broader global discussion on conscientious objection and religion in healthcare

Regulation of abortion: Supreme Court ruling

In 2022, the US Supreme Court (SCOTUS) ended nearly 50 years of federal protection for abortion rights in the US. Since then, each state has been free to make its own rules on when or if to allow abortion. Fourteen states now have an outright ban on abortion. Only nine states and DC have no restrictions on abortion.

The conflicts begin

This year, SCOTUS heard arguments about two conflicts between state and federal powers on abortion regulation. The Emergency Medical Treatment and Active Labor Act (EMTALA) is a federal law that requires hospitals to stabilise anyone experiencing a medical emergency. If they do not, they risk losing federal funding. Requirements of the law include providing emergency abortions when a pregnancy threatens the life or long-term health of the pregnant person. Some states, including Idaho, have passed laws declaring that an abortion is not permissible under any circumstances. Federal authorities argue that this does not comply with EMTALA.

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With their ruling in June, SCOTUS dismissed the case as improvidently granted. It declined to rule on the underlying question of whether the repertoire of required emergency stabilising care should include abortion.

During oral arguments, Elizabeth Prelogar, Solicitor General of the United States, represented the government. She argued that a doctor was never required to perform an abortion if they had a conscientious objection (CO), even if it would result in the death of the pregnant person. Additionally, Prelogar recognised that entire facilities can refuse to perform abortions even when patients' lives are at risk. This is a concept known as institutional conscientious objection.

Conscientious objection around the world

Globally, many countries allow conscientious objection to abortion. The concept is rooted in the right to practice one's own religion and assert one's own moral beliefs about controversial topics. Of countries with explicit laws about conscientious objection, 97% recognise it in some form. Only three countries prohibit CO entirely. The US joins only eight other countries in recognising no explicit limitations on a healthcare provider's or institution's right to object.

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One way in which many countries limit CO is to allow individuals to object, but not entire institutions. Under such a system, a single doctor has the right to refuse to participate in abortions. The administrators of a hospital, however, cannot declare that the entire facility will not provide abortions. This is still potentially problematic, because hospitals with few providers may fail to provide abortions if all individuals register as objectors. It does, however, ensure that individual doctors who have a conscientious commitment to providing abortions are able to do so.

Extreme position of the US

In the Supreme Court case, the US federal government represented a more pro-abortion perspective than the anti-abortion position argued by the state of Idaho. Despite this, the US began by acknowledging that doctors and hospitals have the right to object to abortion no matter the circumstance.

Even under a Biden presidency, the federal government recognises a right to conscientious objection, including when patients' lives are at risk. This position is extreme in comparison with international policy standards. The right of a hospital or doctor to object to abortion overrides the right of pregnant people to live. From the beginning, there was no outcome to this case that truly would have satisfied pro-abortion advocates.

Why it matters

Scholars of reproductive rights around the world have observed that conscientious objection by healthcare professionals results in patients lacking practical access to abortion services. These patients live in places where abortion is legal, yet they still must travel to access it. Before 2022, this was already a reality in America.

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Travelling for medical treatment is never ideal. When care is time-sensitive, the costs can increase significantly, and delay may put patients at risk. But in some situations, travelling to access abortion is not even an option. Savita Halappanavar in Ireland, Valentina Milluzzo in Italy, and Izabela in Poland all died after being denied emergency abortions that could have saved their lives. In all three cases, doctors invoked religious-based conscientious objection.

With the proliferation of abortion bans in US states, American women also share these experiences. Nicole Miller had to be airlifted from Idaho to Utah while miscarrying, because an emergency room doctor in Idaho 'wasn't willing to risk his 20-year career'.

While the courts reviewed Idaho's lawsuit challenging EMTALA, SCOTUS allowed enforcement of the law, regardless of EMTALA. In the year prior to the decision, the state's largest emergency services provider airlifted only one patient to a neighbouring state for abortion. After this decision, they were forced to airlift patients every other week.

A moral dilemma

Doctors are trained to be risk-averse. Abortion bans with vaguely-defined 'exceptions' – or bans that allow a termination only in instances in which the procedure would save someone's life – are not clear enough to allow doctors to confidently provide abortion. It is one thing to acknowledge the role of a provider's personal convictions when providing care. It is wholly another when unclear policies make doctors fear for their ability to practice their profession.

These policies employ the individual sanctity of religious freedom in their rhetoric. But the result is that doctors must make urgent medical decisions while weighing up not just their medical advice, but their own career prospects.

The power of religion

Increasingly in the US, institutions with religious affiliations control healthcare. The consequences for anyone who becomes pregnant, even if they do not seek an abortion, could be dire.

Many people are not aware of the ways that religious affiliation can affect their medical care. With the state's concession to allow institutional CO without limitations, the power of religious institutions grows, even in Democratic states.

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