

Restoring Reproductive Rights

January 14, 2024



Top Line

1. In 2022, The US Supreme Court overturned the federal right to an abortion previously established by *Roe v. Wade* in 1973. This shifted the responsibility for abortion legislation to the states.
2. In response, **Texas has banned abortion without exceptions for rape, incest, or lethal fetal abnormalities.** This is one of the **most restrictive abortion laws in the US**, and is extremely unpopular, among Texans, the medical community, and even most people of faith.
3. The decision to eliminate abortion rights harms patients and communities in many ways:
 - a. It places women's health at risk.
 - b. It economically harms women and their families.
 - c. It especially hurts people of color, of limited economic means, and people in rural areas.
4. Banning abortions is not the most effective way to reduce abortions. Access to sex education, contraception, and family planning services are more effective.
5. Policymakers must improve access to reproductive healthcare and restore abortion rights.
 - **At the National level**, support federal legislation that would create new, nationwide legal protection to re-establish the right to abortion.
 - **At the State level**,
 1. Restore abortion rights.
 2. Protect patients and providers from legal risk.
 3. To reduce the need for abortions, support medically accurate sex education, contraception, and family planning services.

To restore these rights (and protect other rights now at risk), it is essential that we elect legislators at the state and federal level who will respect reproductive rights, including the right to choose an abortion.

(CPP Intern Alexandra did most of the research and writing of this paper)

Backup

1. In June 2022, the US Supreme Court overturned the abortion rights protections established by *Roe v Wade* and placed responsibility for regulating abortion with the states.

- a. *Roe v. Wade* was a landmark legal decision issued on January 22, 1973, in which the U.S. Supreme Court struck down a Texas statute banning abortion, effectively legalizing the procedure across the United States. The court held that the right to an abortion was implicit in the **right to privacy** protected by the 14th Amendment to the Constitution. (1)
 - Prior to *Roe v. Wade*, abortion was illegal in most cases in the US, but women with financial means could get abortions by traveling to other countries or paying a large fee to a doctor willing to perform the procedure.
 - However, many poor women could not afford those options. Some resorted to illegal, dangerous, “back-alley” abortions or self-induced abortions.
 - In the *Roe v. Wade* decision, the court declared that the choice to end a pregnancy in the first trimester was solely up to the woman. In the second trimester, the government could regulate abortion, although not ban it.
 - Since *Roe v. Wade*, the Supreme Court has upheld abortion rights generally, but allowed states to pass abortion restrictions as long as they did not pose an “undue burden”. (The “undue burden” standard was established by the Supreme Court in *Planned Parenthood vs. Casey* (2)).
- b. In June 2022, the Supreme Court ruled on *Dobbs v. Jackson Women’s Health Organization*, which regarded the constitutionality of a Mississippi law banning most abortions after 15 weeks of pregnancy. (3)
 - Lower courts had ruled the Mississippi law was unconstitutional under *Roe v. Wade*. States had been prohibited from banning abortions before around 23 weeks—when a fetus is considered able to survive outside the womb.
 - In its decision, the Supreme Court ruled 6-3 in favor of Mississippi's law—and overturned *Roe* after its nearly 50 years as precedent.
 - The conservative justices held that the Constitution does not guarantee the right to an abortion. **As a result of *Dobbs*, there is no longer federal protection of the right to choose an abortion, and instead that right will be determined state by state.**

2. In reaction to *Dobbs v Jackson*, Texas has drastically reduced abortion rights, an action that is unpopular with most Texans, the medical community and even most people of faith.

- a. **As of August 25, 2022, abortion is completely banned.** There is no exception for rape, incest, or in the case of severe or potentially lethal fetal abnormalities. A very narrow exception only applies under the risk of life and death circumstances for the mother. (4)
- Doctors who perform illegal abortions could be sentenced to life in prison or fined up to \$100,000. (5)
 - State laws do not criminalize the person who has an abortion. Some Texans have found ways to get abortions by traveling to other states or Mexico, or self-managing abortions at home by getting medications through international nonprofits, such as Aid Access, or online stores. (5)
 - State law says treatments for miscarriages, known as “spontaneous abortions”, and ectopic pregnancies, in which a fertilized egg grows outside of the uterus and becomes unviable, do not count as illegal abortions. However, there were several reports of medical providers delaying medical care for these conditions due to confusion or the threat of jail time and six-figure fines for medical professionals. (5)
 - As shown in the recent case involving Kate Cox, the exception for protecting the life of the mother is interpreted very narrowly in Texas (**see Attachment 1 for stories about how the Texas law is already producing tragic effects**).
- b. **The decision to eliminate abortion rights is extremely unpopular among Texans.**
- A 2023 poll by the Hobby School at University of Houston, Stanford University and Arizona State University found that most Texans support abortion rights. (6)
 - The survey found that 54% of Texans believe abortion should be legal “always with no restrictions” or “legal with some minor restrictions”. 33% believe abortion should be legal only in special circumstances such as to save the mother’s life. Only 13% believe abortion should always be illegal. (6)
 - By party identification, the percentage who believe that abortion should always be legal or legal with minor restrictions are: (6)

Democrats	74%
Independents	54%
Republicans	38%
 - A separate 2022 survey found similar results – **60% of Texas voters said that abortion should be available in all or most cases** (7)

- **The medical community strongly opposes the Texas ban on abortions.**
 - The AMA issued a statement in September 2021 when Texas adopted SB 8, a law which severely limited abortion access. They said: “This new law is a direct attack on the practice of medicine and patient reproductive health outcomes.” (8)
 - The Texas Medical Association issued a statement saying “TMA is unwavering in its stance against intrusions by government or other third parties that impede the patient-physician relationship, and any criminalization of acceptable and appropriate medical practices that may jeopardize that relationship or patients’ safety. (9)
 - A group of leading medical organizations, including the American Medical Association, the American College of Obstetricians and Gynecologists, the American Academy of Family Physicians, and the American Academy of Pediatricians filed an Amicus Brief in the Dobbs case, strongly opposing the Mississippi law restricting abortions, which was the subject of Dobbs vs. Jackson. (note that the Mississippi law was far less restrictive than current laws in Texas, which effectively ban all abortions).

The brief states “Mississippi’s attempt to ban nearly all abortions after fifteen weeks of pregnancy is fundamentally at odds with the provision of safe and essential health care, scientific evidence, and medical ethics. Contrary to the assertions made by the Mississippi legislature and the State below, there is no medical or scientific justification for House Bill 1510 (the “fifteen-week ban” or “Ban”). Instead, the Ban threatens the health of pregnant patients by arbitrarily barring their access to a safe and essential component of health care. In particular, patients of color, those with limited socioeconomic means, and those in rural communities would be most severely harmed should the Ban be allowed to go into effect.” (21)

- d. Even most **people who identify as religious disagree with overturning Roe v. Wade**, and most believe abortion should be legal in “all or most cases.” (10)
 - White **evangelical Protestants are the outlier** – only 30% say abortion should be legal in all or most cases. And they represent only 14% of the US population.
 - In contrast, in all other religious groups, a solid majority oppose overturning Roe v. Wade, and believe abortion should be legal in all or most cases.

Opinions on Abortion by Religious Affiliation

Religious Affiliation	Oppose Overturning Roe v. Wade	Believe abortion should be legal in all or most cases	Percent of US Population
Total	61%	64%	
White Evangelical Protestant	46%	30%	14%
White Mainline Protestant	62%	70%	16%
Black Protestant	63%	73%	7%
White Catholic	60%	59%	12%
Hispanic Catholic	58%	57%	8%
Other Religion	70%	80%	20%
Unaffiliated	74%	85%	23%

Source: Public Religion Research Institute, May 3, 2022, <https://www.prrri.org/spotlight/most-oppose-overturning-roe-v-wade-widespread-confusion-over-a-post-roe-world/>.
Percent of Americans in each religious group is from PRRI's 2020 Census of American Religion, at <https://www.prrri.org/research/2020-census-of-american-religion/>

3. Reducing abortion rights harms patients and our communities.

- a. **Banning abortion poses several risks to the health of women**
 - When abortion is banned or restricted, women are **forced to resort to unsafe procedures**, resulting in life threatening complications or even death.
 - According to Ana Langer, a professor of Public Health at Harvard, “back alley” abortions will be the last resource for women with no access to safe and legal services, and the horrific consequences of such abortions will become a major cause of death and severe health complications for some of the most vulnerable women in this country.” (11)

- b. **Restrictions on abortion have been linked to higher rates of maternal mortality**, as women may face increased risks during childbirth and complications due to unwanted pregnancies.
 - A study by the Commonwealth Fund found that in 2020, before the Dobbs decision, **states that restricted abortion access had maternal mortality rates 62% higher** than states with less restrictions. (28.8 vs. 17.8 per 100,000 births) (12)
 - In 2021, Texas had the 14th highest maternal mortality rate in the US, at 28.1 per 100,000 live births. (13) This was before the ban took effect.
 - The ban on abortions is expected to increase maternal mortality further, by delaying pregnancy care and prolonging unviable pregnancies which

can lead to maternal deaths.

c. Banning abortion can prevent or delay necessary medical interventions.

- The Texas abortion ban is impeding treatment for dangerous conditions such as ectopic pregnancies, excessive bleeding, and other risk conditions. (14)
- A survey of Texas clinicians found that many of them “believe they are not even allowed to counsel patients regarding the availability of abortion in cases of increased maternal risks or poor fetal prognosis, although before SB8 they would have done so.” These fears have disrupted continuity of care and left patients to find services on their own. (15)
- Abortion bans generate confusion for patients and health care professionals and are resulting in delays to treatment.

Attachment 1 provides examples of situations in which the Texas abortion ban has put women at risk.

d. The impact of abortion restrictions is not felt equally, with many systematically marginalized groups facing disproportionate burdens and challenges to accessing abortion.

- Many people of color already have limited access to abortion and other reproductive health services because of being more likely to be uninsured or underinsured, lower employment, or living long distances from a health center. [16]
- Lower income people and people in rural communities also have less access to health services and health insurance.
- These communities also face more barriers to access abortion such as transportation costs, childcare costs, and unpaid time off work because of the long distances to access care.

e. Banning abortion access hurts women economically.

- Secretary of the Treasury Janet Yellen points out that “Roe v. Wade and access to reproductive health care, including abortion, helped lead to increased labor force participation. It enabled many women to finish school. That increased their earning potential. It allowed women to plan and balance their families and careers.” (17)
- Women without access to abortion “are likely to fall even further through the cracks—with downstream effects on their children, communities, and local and state economies.” (17)

4. Banning abortions is not the most effective way to reduce abortions. Access to sex education, contraception and family planning services are more effective.

a. Banning abortion does not significantly reduce abortion rates.

- Texas had 55,000 abortions in 2020, the last year before SB 8 banned abortions after 6 weeks. (18)
- The Texas Tribune reported that in a 9-month period after the ban took effect, 10,000 more babies were born in Texas than would have been expected if the ban had not gone into effect. (19)
- Annualized, this suggests that the ban is reducing abortions by about 14,000 per year, and that therefore **the ban is reducing abortions by only about 25%**. Most abortions are still happening, despite the ban.
- Some Texas women are working around the ban by getting abortion-inducing drugs on-line or traveling to other states. Some may also access illegal, unsafe abortions.
- However, many pregnant women are not able to travel because they already have children, don't have the money, or can't get time off from work. So, the women most affected by the ban tend to be lower income.
- **We are now back to the situation before Roe v. Wade, where affluent women have access to abortion, but lower income women often do not.**
- According to researchers at the Guttmacher Institute, which studies reproductive health policies globally, "Laws that seek to limit abortions around the world may not lower the rate of abortions but could make them less safe". (20)

b. Sex education, access to contraception, and family planning services are more effective ways to reduce abortion and give women greater control over their reproductive health.

i. Sex education –

- **Texas has one of the highest rates of teen pregnancy in the US** (see Exhibit 2 for sources and data by state).
- In general, red states have the highest rates of teen pregnancy – the top 5 states are Mississippi, Arkansas, Louisiana, Oklahoma, and Alabama.
- According to an assessment reported in the Christian Science Monitor, "In the United States, states that emphasize abstinence-only education, limit public subsidies of contraception, restrict access to abortion – and, yes, oppose gay marriage – have higher teen birth and divorce rates." (22)
- Until 2020, Texas state law stressed an abstinence-based sex education curriculum. In 2020, The Texas Board of Regents, however, made major changes to the state's curriculum, expanding to an abstinence-plus model

which includes contraception education. Still, both the middle school and high school curriculum stress abstinence. (23)

- Sex education is not a partisan issue – 75% of Texas voters, including 68% of Republicans, support medically accurate, age-appropriate, “abstinence-plus” sex education, which includes information about contraception. (24)
- **To reduce abortions, Texas should provide complete, medically accurate sex education, to help reduce our high level of unintended youth pregnancies.**

ii. Access to Contraception

- Contraception is basic preventive health care and should be affordable and available for everyone. The benefits of contraception are widely recognized and include reduced maternal mortality, unintended pregnancy, and lower abortion rates.
- Power to Decide reports **that 54% of all pregnancies in Texas are unplanned.** (25) These are the pregnancies that often result in abortions.
- That study identified one of the main factors causing unintended pregnancy is lack of access to contraception: *“the costs of the most effective forms of contraception are sometimes prohibitive and/or access to them is limited. Some highly effective and long-acting reversible contraceptive methods (such as intrauterine devices) are comparatively expensive and can only be used if a young woman has access to a health care provider.”* (26)
- Recent data from Power to Decide reveals that more than 1.7 million Texas women live in “contraceptive deserts”, which lack reasonable access to a full range of contraceptives. (27) In addition, many don’t have access to health insurance, so cost can be prohibitive even where contraceptives are available.
- **The most effective way to reduce abortion rates is to prevent unintended pregnancy by improving access to effective and affordable contraception.**

iii. Family Planning Services

- Despite the advantages of providing family planning services, underfunding remains the greatest challenge to reproductive healthcare in Texas.
- Starting in 2011, Texas began a yearslong effort to “defund” Planned Parenthood, in part by slashing the budget for women’s health care and family planning. (29)
- To reduce spending, in 2012 Texas reduced the number of funded family planning organizations from 76 to 41, and some of the largest

organizations that continue to receive funding lost up to 75% of their budgets. (28)

- By 2014, more than a quarter of family planning clinics in Texas had closed, most of which were not affiliated with Planned Parenthood. (29)
- As of 2017, more than a quarter of women of childbearing age had no health insurance, the highest rate in the nation. (29)
- One reproductive justice activist describes the situation in Texas this way: *“We can’t get birth control. We can’t get adequate health care. We’re not given comprehensive sex education, so we’re not being educated on birth control or naturally preventing pregnancy, and now you can’t get an abortion.”* (29)
- **Expanding funding for family planning services will improve women’s health and reduce abortions.**

5. Policymakers must improve access to healthcare and restore abortion rights.

- a. **At the National Level, promote the Woman’s Health Protection Act (WHPA),** federal legislation that would create new, nationwide legal protection to re-establish the right to abortion. The WHPA was introduced in the US House of Representatives in 2023 with 208 co-sponsors. More information can be found at <https://reproductiverights.org/the-womens-health-protection-act-federal-legislation-to-protect-the-right-to-access-abortion-care/>.
- b. **At the State level, policymakers need to restore abortion rights and expand legal protections** to treat abortion as the essential health care service it is.
 - **Advance State Constitutional Protections** - Independent of federal law, protections need to be established under state law to restore abortion rights.
 - **Shield Abortion Providers, Helpers, and Patients Across the State** - It is essential to establish shield laws that protect providers and assistants from prosecution and prevent invasions of privacy for patients.
- c. **To reduce the need for abortions, Texas legislators should address the shortfalls in women’s reproductive health:**
 - Access to medically accurate sex education
 - Affordable and accessible contraception
 - Access to family planning services.

Access to safe and legal abortions are an essential aspect of reproductive health care for women in Texas. By upholding these rights, we promote women’s health, reduce maternal mortality, and improve economic outcomes for women and their families. And there are better ways to reduce abortions than banning them.

It is more important than ever for Texans to vote for policymakers who will improve access to reproductive health and restore abortion rights.

More Information

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3. New England Journal of Medicine, “A Preview of the Dangerous Future of Abortion Bans – Texas Senate Bill 8”, June 22, 2022, <https://www.nejm.org/doi/full/10.1056/NEJMp2207423>. Provides explanation and case studies of how the Texas abortion bill puts women’s lives at risk.
4. Brief filed with the Supreme Court by 25 medical associations, <https://www.acog.org/-/media/project/acog/acogorg/files/advocacy/amicus-briefs/2021/20210920-dobbs-v-jwho-amicus-brief.pdf?la=en&hash=717DFDD07A03B93A04490E66835BB8C5>. This document outlines the importance of abortion rights as a component of effective health care.

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Exhibit 1 – Personal Stories

These real-life stories can help to illustrate the harm caused by the abortion ban in Texas

1. In June 2022 it was reported that “a 10-year-old girl was denied an abortion in her home state of Ohio and had to travel to Indiana to have the procedure performed... The young rape victim was six weeks and three days pregnant but was not allowed to have an abortion in Ohio because the state bans the procedure after six weeks when fetal cardiac activity may be detected”.

Multiple sources, including Fox News, <https://www.fox6now.com/news/10-year-old-rape-victim-ohio-denied-abortion-report> and MSNBC, <https://www.msnbc.com/rachel-maddow-show/maddowblog/10-year-old-girl-reportedly-forced-leave-ohio-legal-abortion-rcna36660>

1. A Texas doctor described a patient who was seven weeks pregnant and experiencing kidney failure. Because Texas law at that time banned abortion after six weeks unless there was a “medical emergency”, the doctor could not legally perform an abortion. She instructed her staff “Get her out of the state. Get on the phone with someone in another clinic and make sure she can get an abortion because I will not be able to do it here. **I’m going to have to wait till she’s actually dying.**”

NBC News, “How life-threatening must a pregnancy be to end it legally?”, June 30, 2022, <https://www.nbcnews.com/health/health-news/abortion-ban-exceptions-life-threatening-pregnancy-rcna36026>

3. In 2021 an obstetrician in Texas reported that one of his patient’s fetuses “had a condition called anencephaly, “where, essentially, the baby doesn't have a brain. It's always fatal — often during the pregnancy or else soon after birth.” In the past the doctor would induce labor when this was determined, but Texas’ strict abortion rules prevented this. The mother had the choice of carrying the baby to term, when it would be delivered and would die, or to go out of state for an abortion.

NPR, “Doctors say the Texas abortion ban is complicating other types of medical decisions”, October 1, 2021, <https://www.npr.org/2021/10/01/1042209230/federal-judge-weighs-in-on-biden-administrations-attempt-to-block-texas-abortion>

4. Kate Cox - In December 2023, the Texas Supreme Court confirmed that there is no longer a right to abortion in Texas.

- In November, Cox’s fetus was diagnosed with trisomy 18, a genetic abnormality that usually results in miscarriage, stillbirth or death soon after birth.
- Cox’s doctor determined that an abortion was medically necessary. Continuing the pregnancy was likely to result in a third Caesarian section which could jeopardize her ability to have more children, which she and her husband wanted.
- Although Cox’s doctors believed that an abortion was medically necessary, “they were unwilling to perform one without a court order in the face of a lack of clarity in how the exception would be interpreted and potential penalties including life in prison and loss of their licenses for violating the state's abortion laws.”
- A lower court issued a ruling that would have allowed the abortion. But the Texas Supreme Court overruled the lower court, said that a "good faith belief" by Cox’s doctor that the procedure was medically necessary was not enough to qualify for the state's exception. Instead, the doctor would need to determine in her "reasonable medical judgment" that Cox had a "life-threatening condition" and that an abortion was necessary to prevent her death or impairment of a major bodily function.
- Cox went to another state to obtain an abortion.

Reuters, “Texas top court rules against woman who sought medical abortion for medical emergency, 12/12/23,
<https://www.reuters.com/world/us/texas-woman-who-sought-emergency-abortion-court-will-leave-state-care-2023-12-11/>

The Supreme Court ruling in Cox, and these other cases, affirm the GOP controlled legislature’s intent: to make it virtually impossible for a woman in Texas to receive an abortion, even when her pregnancy is not viable, continuation puts her health at risk, and continuing the pregnancy could prevent her from having children in the future.

Exhibit 2 – Teen Pregnancy and Abortion Rates by State

Abortion and Teen Pregnancy Rates by State, 2020

(sorted on teen pregnancy rate)

State	Teen Pregnancy Rate	Abortions	
	Per 1,000 females aged 15–19	Number	Per 1,000 women aged 15–44 years
Mississippi	27.9	3,559	6.1
Arkansas	27.8	3,154	5.4
Louisiana	25.7	7,473	8.1
Oklahoma	25.0	3,797	4.9
Alabama	24.8	5,713	6.0
Kentucky	23.8	4,104	4.8
Tennessee	23.3	11,243	8.4
West Virginia	22.5	1,001	3.2
Texas	22.4	55,132	9.0
New Mexico	21.9	4,293	10.7
South Carolina	19.3	5,468	5.5
Missouri	18.8	167	0.1
Indiana	18.7	7,756	5.9
South Dakota	18.7	125	0.8
Georgia	18.2	37,533	17.1
Kansas	18.1	7,526	13.4
Wyoming	18.1	91	0.8
Alaska	17.7	1,206	8.4
Ohio	17.6	20,605	9.3
North Carolina	17.3	30,004	14.4
Nevada	16.8	8,633	14.1
Arizona	16.6	13,273	9.3
Florida	15.2	74,868	19.1
Nebraska	15.1	2,378	6.3
Delaware	14.6	2,281	12.5
Idaho	14.6	1,680	4.8
North Dakota	13.7	1,174	7.9
Illinois	13.6	46,243	18.7
Michigan	13.5	29,669	15.8
Iowa	13.3	4,058	6.8
Montana	13.2	1,675	8.4
Maryland	13.1	n/a	n/a
Virginia	13.1	15,604	9.2
Hawaii	13.0	1,809	7.0
Pennsylvania	12.6	32,123	13.5
Colorado	12.5	9,869	8.3
Wisconsin	11.5	6,430	5.9
Washington	11.3	16,909	11.0
California	11.0	n/a	n/a
Utah	10.8	2,362	3.3
Maine	10.6	2,064	8.8
Oregon	10.1	6,991	8.4
New York	10.0	63,142	16.5
Rhode Island	9.4	2,611	12.6
New Jersey	9.2	22,972	13.7
Minnesota	9.1	10,349	9.5
Connecticut	7.6	9,115	13.6
Vermont	7.0	1,227	10.7
New Hampshire	6.6	n/a	n/a
Massachusetts	6.1	16,452	11.8
Total/Average	15.6	620,327	9.1

Sources:

Abortion rates - CDC, <https://www.cdc.gov/mmwr/volumes/71/ss/ss7110a1.htm>

Teen Pregnancy Rates - CDC,

<https://www.cdc.gov/nchs/pressroom/sosmap/teen-births/teenbirths.htm>

Exhibit 3 - Organizations involved in protecting abortion rights in Texas:

1. [Need an Abortion](#) – provides information about abortion access.
2. [National Network of Abortion Funds](#) - The National Network of Abortion Funds is a network of 100 independent abortion funds. These member funds work to remove financial and logistical barriers to abortion access.
3. [National Abortion Federation Hotline](#) - provides callers with accurate information, confidential consultation, options counseling, and information on providers of quality abortion care.
4. [Exhale Pro-Voice](#) - a community providing after-abortion support and counseling.
5. [Jane's Due Process](#) - Jane's Due Process is funding abortion and practical support for Texas teens traveling for abortion care.
6. [Pregnancy Justice](#) - We use legal defense, public education, advocacy, and research and documentation to challenge state harm.
7. [Texas Equal Access Fund](#) - The TEA Fund is a nonprofit that helps low-income households in the northern, eastern, and Panhandle regions of Texas pay for an abortion.
7. [Fund Texas Choice](#) - Fund Texas Choice is a Dallas-based nonprofit and affiliate of the National Network of Abortion Funds. It helps people seeking an abortion in or out of state with lodging and transportation costs.
8. [Frontera Fund](#) - The Frontera Fund provides financial assistance for abortion to Texans living in the Rio Grande Valley region, regardless of immigration status or gender identity.
9. [Lilith Fund](#) - The Lilith Fund is a nonprofit that provides direct financial assistance for abortion care to those residing in the central and southern regions of Texas.
10. [West Fund](#) - The West Fund is an organization that works with clinics in El Paso and helps people with funding for abortion care. It also has a dedicated hotline for Spanish speakers.
11. [The Bridge Collective](#) - Offers rides to the Austin Women's Health Center in Austin, TX. This clinic offers ultrasounds, pregnancy confirmation and options counseling, post-abortion care, and more.