



TO: Interested Parties

FROM: Sarah Lipton-Lubet, Take Back the Court

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SUBJECT: Six Pending Reproductive Rights Cases We're Keeping an Eye On

This month will bring a juxtaposition many observers once considered unthinkable: Americans will mark the 50-year anniversary of *Roe v. Wade* without a constitutional right to abortion. Since the Supreme Court's right-wing supermajority overturned our abortion rights in *Dobbs v. Jackson* this summer, millions have faced enormous, often insurmountable barriers to accessing abortion care. But the fight for abortion rights in the courts is far from over — and so is the threat posed by the stolen Court's right-wing supermajority.

Dobbs was the Court's most recent strike at abortion rights, but with the current makeup of the bench and so many reproductive rights cases pending in lower courts, it certainly won't be the last. Below are six key upcoming legal battles that could offer the right-wing Supreme Court justices a chance to further chip away at our humanity and reproductive rights:

ACCESS TO MEDICATION ABORTION

- *Alliance for Hippocratic Medicine v. FDA* (N.D. Tex.): Anti-abortion groups, led by the radical conservative group Alliance Defending Freedom (ADF), have sued to revoke FDA approval for mifepristone. Mifepristone is used for medication abortions, which accounted for [53% of abortions](#) pre-*Dobbs* and have become more in demand since the Court eviscerated abortion rights. Revoking FDA approval would dramatically curb abortion access in all 50 states. The suit was filed in Amarillo, Texas in November 2022, and will be heard by radical Trump-appointed Judge Kacsmaryk.

ACCESS TO CONTRACEPTION

- *Deanda v. Becerra* (N.D. Tex.): Judge Kacsmaryk recently took one of the first post-*Dobbs* swings at contraception rights in his opinion in *Deanda v. Becerra*. In December, the rogue federal judge slashed privacy rights for young people and violated decades of precedent by setting aside a provision which guaranteed confidentiality for minors receiving family planning services at Title X clinics. Judge Kacsmaryk's attempt to [weaponize the Constitution](#) could create chaos for health clinics and deprive young people of their right to contraception, their right to confidential healthcare services, and their right to privacy nationwide.

ACCESS TO EMERGENCY CARE

- *Texas v. Becerra* (N.D. Tex.) and *United States v. Idaho* (D. Idaho): For 35 years, the Emergency Medical Treatment and Active Labor Act (EMTALA) has protected pregnant people and given them rights to stabilizing services (including abortion care) at emergency

rooms receiving federal funding. After the *Dobbs* decision, the Biden administration promulgated guidance regarding abortion care in medical emergencies, stating that the duty to provide stabilizing treatment under EMTALA includes abortion care and preempts state laws. The State of Texas sued the administration over the guidance in one federal case, and the Department of Justice brought a suit against the state of Idaho to strike down a state abortion ban that conflicted with EMTALA. In the Idaho case, a federal district court enjoined the state's abortion ban to the extent that it conflicts with EMTALA; litigation is proceeding in district court in that case. Meanwhile, a judge in the Northern District of Texas enjoined the Biden administration's guidance on EMTALA; the administration has sought clarification on the order in district court with an appeal pending in the Fifth Circuit.

ACCESS TO ABORTIONS OUTSIDE STATE LINES

- *Fund Texas Choice v. Paxton* (W.D. Tex.): Eight abortion funds and an abortion provider sued Texas Attorney General Ken Paxton, seeking to block criminal charges for abortion funds that provide assistance to Texans accessing out-of-state abortions, as well as their donors. Texas' abortion laws are among the most extreme in the country, and include a private enforcement "bounty law," SB 8, and a trigger ban. More people are relying on abortion funds post-*Dobbs*, but some funds, like Fund Texas Choice, have had to [suspend most operations](#) because of potential criminal charges. An adverse ruling in this case could make it even harder for people living in restrictive states to access care.

ABILITY TO EXERCISE FIRST AMENDMENT RIGHTS

- *Doe v. Attorney General of Indiana* (7th Cir.): Indiana's law requiring health care providers to bury or cremate the tissue from abortions and miscarriage management procedures has been challenged in federal court for years, and abortion patients and doctors have continued the fight after an adverse Supreme Court ruling in 2019. Most recently, plaintiffs have filed a lawsuit arguing that the law violates First Amendment protections of religious liberty and free speech. In late November 2022, a Seventh Circuit panel reversed the district court's preliminary injunction blocking the law, and remanded the case with instructions to dismiss it with prejudice. Plaintiffs filed a petition for an en banc panel in mid-December.

THE SUPREME COURT WILL CONTINUE TO SHRED OUR REPRODUCTIVE RIGHTS

Far from being the final word on the subject of abortion rights, the Supreme Court's decision in *Dobbs* this past summer unleashed a tidal wave of litigation, spurring radical conservatives wishing to further eviscerate human rights to file suits across the country — as well as reproductive rights advocates working to win back legal protections for Americans. These six cases certainly aren't a comprehensive survey of the threats to our right to access abortion, birth control, and other critical health care making their way through the courts, but they're some on which we're keeping a closer eye. In the past few months, one thing has become abundantly clear: the fight for abortion rights in our courts is far from over. We'll be tracking these developments — and we invite you to stay in touch as we do. As you continue to cover these important issues, please don't hesitate to reach out.