

PREGNANCY

How Overturning Roe v. Wade Will Affect Fertility Treatment and Trying to Conceive

Following the Dobbs decision, some states are considering restrictive abortion bans that would define life as beginning at fertilization, potentially complicating or limiting access to reproductive medicine like IVF and other fertility treatments.

By [Maressa Brown](#) | Published on August 11, 2022



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Since June 24, when the Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, a case related to a Mississippi law that banned nearly all abortions after 15 weeks of pregnancy, panic has spread among people in the midst of or planning to undergo fertility treatments like in vitro fertilization (IVF). The reason: Various states are considering—or have already passed—extremely restrictive abortion legislation as well as personhood statutes, which would give embryos constitutional rights and wreak

havoc on reproductive medicine.

"The biggest concern that most people have right now are in the states that have personhood laws or states where life is defined at starting at fertilization, because in vitro fertilization starts at that point," explains [Jessica Ryniec, M.D.](#), an OB-GYN and reproductive endocrinology and infertility specialist at [CCRM Fertility](#) in Boston. "So if there are restrictions and [legal] language about life beginning that early, then that is when it potentially becomes a problem for people seeking fertility treatment and doing in vitro fertilization (IVF)."

Here's what you need to know about how the Dobbs decision could affect fertility treatment and IVF and how people will be able to conceive.

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How Restrictive State Laws Could Curb Fertility Treatment

Although the situation is changing rapidly by the day, to date, at press time, at least six states—Iowa, Ohio, Oklahoma, South Carolina, Vermont, and West Virginia—have introduced legislation to ban abortion by establishing fetal personhood, [according to the Guttmacher Institute](#), a research group that supports abortion rights.

The problem is that if embryos are given legal standing and are protected under state law, it may be far more difficult for people in those states to take advantage of fertility treatments like IVF.

"The objective of IVF is to get you as many embryos as possible to build the family you're looking to build," explains Hunter Stitzer, RN, BSN, head of clinical ops at [Conceive](#). "For many, it's a necessary procedure to undergo to get pregnant. If an embryo is considered a person at fertilization, it may limit what you're able to do with that embryo."

Right now, without these laws in effect, people trying to conceive have three options for embryos they create: implant, dispose, or donate—either for research or to another intended parent, says Stitzer. "In this new world, there's a possibility that in states where abortion is illegal, they could be forced to carry that embryo to term or pay for the storage of embryos in perpetuity," she says. "It then follows that those who discard embryos could be convicted of manslaughter for doing so."

Aside from legal implications that could stem from discarding

risks from legal implications that could stem from discarding embryos, there are also the risks of embryo loss that come with moving through a regular IVF cycle. For instance, say a patient is planning on undergoing an embryo freezing cycle, which involves retrieving eggs, fertilizing them in a lab, and then freezing them for future use. Or perhaps they're ready to get pregnant and want to do a full IVF cycle that involves going through the egg retrieval process and creating fresh embryos, one (or more) of which will be transferred into the uterus. Either way, there are risks involved that might lead to loss of an embryo.

"We know from the moment of fertilization, embryonic loss is actually very common," says Dr. Ryniec. "The majority of eggs that fertilize never make it to a live birth, so the benefit of IVF is numbers."

In other words, the more embryos you're able to produce, the greater a person's chance of achieving a live birth. Of course not every embryo will be required to achieve one pregnancy, so they're often frozen. That way, you can transfer again if you're not successful with one transfer—or use them in the future for additional pregnancies.

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The concern is that personhood laws could prevent practitioners from freezing embryos, limit how many eggs can be fertilized and therefore how many embryos can be produced, or even require that multiple embryos are transferred, as opposed to one, in order to avoid the risks associated with freezing. That, in turn, severely limits options for people who want to or have been left with no choice but to expand their family through assisted reproductive technology (ART) procedures.

"Workarounds, like fresh transfer or transferring more than one embryo to avoid risks associated with freezing are going to lead to decreased safety and increased costs," says Dr. Ryniec.

Stitzer agrees, adding, "Unfortunately [restrictive state laws] could mean prolonging the IVF process if doctors are required to transfer every embryo they create into the body. And if the average cycle of IVF can cost upwards of \$12,000, this could start adding up really quickly. It could also mean paying to store embryos in perpetuity, which could have huge financial implications."

And these downstream effects aren't exactly hypothetical. In other countries, like Italy, that have laws limiting the number of eggs you can fertilize, patients have experienced increased costs, decreased access to care, an increase in multiple pregnancies, as well as a higher risk of preterm delivery and pregnancy loss, says Dr. Ryniec.

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All of that said, the threats Dobbs poses to reproductive medicine only adds to an already exhausting and difficult experience. "The mental and physical toll for those trying to get pregnant is already quite vast without this daunting prospect," points out Stitzer. "At best, these new laws could limit the access and ability to get pregnant for people in those states; at worst, it introduces the unnecessary and traumatic process of carrying non-viable embryos to term. It may come down to suggesting members move their embryos to states where they have more rights, but it's not always easy as clinics have different methods for thawing and freezing."

The Health of the Pregnant Person and Baby May Be Affected

If personhood laws lead to a ban on embryo freezing, people who undergo IVF might be required to do fresh transfers of more than one embryo at a time, leading to a higher chance of multiples. While some couples might welcome the idea of having twins or even triplets, there are higher risks associated with multiple gestation, Dr. Ryniec says. And those risks could lead to a higher need for selective reduction, a procedure in which a practitioner will select one embryo or fetus to terminate the pregnancy down to a lower number—one baby, aka "a singleton," or twins—to decrease pregnancy risks.

"And you won't really probably have the ability to do that, given the inability to do an abortion in many states," she notes. "Certain states [might prioritize] the health of the mother, but that might become complicated on its own, because at what point are we able to say, 'This is medically necessary'?"

Additionally, access to genetic testing (aka preimplantation genetic testing or PGT) on embryos, which has become more common in the last five years, according to Dr. Ryniec, and is to thank for a bolstered chance of successful pregnancy, could be put at risk, because biopsying embryos for genetic testing comes with a small risk of embryo loss.

This would especially affect people who have inheritable genetic mutations in their family, Dr. Ryniec notes. Currently, it's possible to test for cystic fibrosis (CF), spinal muscular atrophy, or Huntington's disease, and then not transfer affected embryos, she explains. But if personhood laws prevent PGT, it might not be possible for a pregnant person and their doctor to take that preemptive measure.

Uncertainty for Many Fertility

Uncertainty for Many Fertility Patients

The fact of the matter is that reproductive health care providers and their patients are in "wait and see" territory right now. "This is all murky right now, and we will be watching closely and updating our community as it unfolds," says Stitzer.

Even people who've already gone through the egg or embryo freezing process are anxious and concerned about what could be coming down the pike and affect their family plans, acknowledges Dr. Ryniec.

Megan Yocum, a 33-year-old mom-to-be and IVF patient from King of Prussia, Pennsylvania, is one of those people. She and her fellow Pennsylvanians are faced with an upcoming gubernatorial election in which the Republican candidate has made it clear that he'd like to define life beginning at conception—with no exception for abortion even in the cases of rape, incest, or if the pregnant person's life is at risk.

"We still have one other embryo frozen," she notes. "And right now, it's a lot of speculation, worrying about what could happen, and if the fate of that embryo is still going to remain in our hands when and if we're ready to transfer it. If it didn't make it, are there any repercussions for the embryo not surviving?"

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Because of questions like this, Yocum and her husband are considering transferring their frozen embryo out of state to Hawaii, where her sister-in-law is a physician's assistant in a fertility clinic. She knows she's fortunate to have a backup plan if faced with the worst case scenario and acknowledges that not everyone has the ability to travel or move out of state.

While grappling with so much uncertainty, Dr. Ryniec is encouraging her patients to keep their fingers on the pulse of what is changing, what's happening in their state as well as others, and speaking to state representatives and advocates for reproductive rights.

She recalls speaking to a reproductive lawyer, even before *Roe v. Wade* was overturned. "He said that, oftentimes, people who are experiencing fertility issues and need access to IVF are the ones that ultimately prevent these more strict languages from going into effect," notes Dr. Ryniec. "Even though everybody knows someone who's had an abortion, whether they know it or not, more people are aware of their family and friends who've needed to do fertility treatment. And so this population has a huge power in speaking to their representatives,

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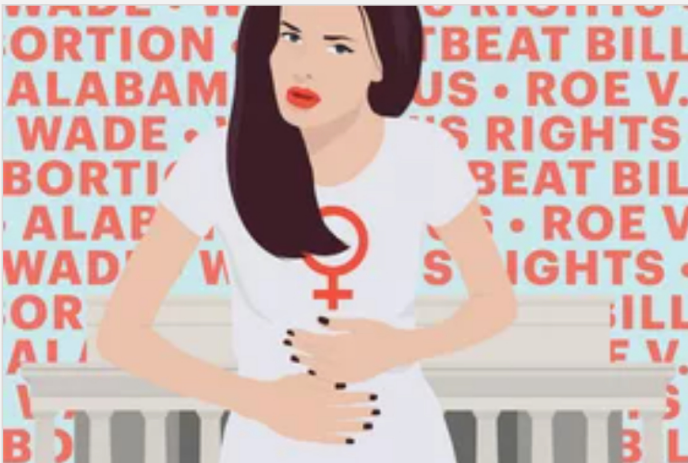
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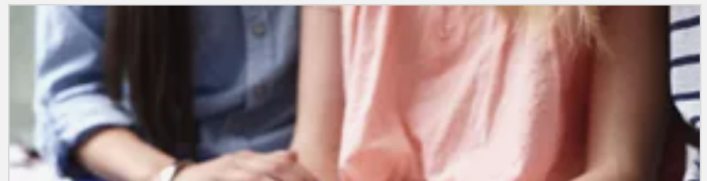
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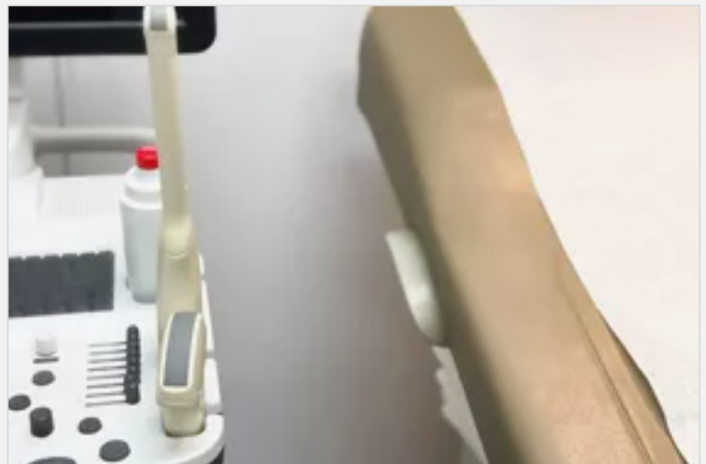
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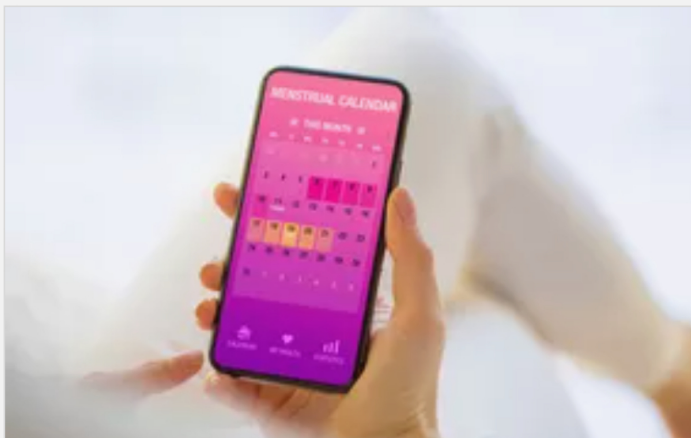
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