Arizona AG wants to reinstate abortion law criminalizing medicine

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Just five years after the discovery of the X-ray, Arizona enacted a law that said those who provide abortions would face criminal penalties “unless it is necessary to save” a mother’s life. The 1901 law, which can be traced back to 1864, provided no exceptions for major fetal abnormalities or when there are threats to a pregnant patient’s health, or for cases when a pregnancy is the result of rape or incest.

Arizona Attorney General Mark Brnovich now seeks to make that statute the governing law of the Grand Canyon state. In light of this summer’s Dobbs v. Jackson Women’s Health Organization decision in which the U.S. Supreme Court said the Constitution doesn’t guarantee a federal right to an abortion, Brnovich is asking an Arizona court to dissolve an injunction put in place after the 1973 Roe v. Wade decision.

The Litigation Center of the American Medical Association and State Medical Societies, the Arizona Medical Association (ArMA), the American College of Obstetricians and Gynecologists (ACOG) and the Society for Maternal-Fetal Medicine urge the Arizona Superior Court in Pima County to leave the injunction in place.

The 1901 law, as interpreted by the attorney general, “jeopardizes the health and safety of pregnant people in Arizona and places extreme burdens and risks on providers of essential reproductive health care, without a valid medical justification,” says the amicus brief the physician organizations filed in the case, Planned Parenthood Center of Tucson Inc. et al. v. Brnovich.

The brief notes that after 1973, the Arizona Legislature enacted several laws regulating abortion as a lawful medical procedure. That includes one passed in 1984 and amended in 2017 that allows abortion up the point of fetal viability—about 24 weeks—with limited exceptions to “preserve the life or health of the woman.”
In 2022, the Arizona legislature enacted a law set to take effect Sept. 24 that prohibits abortion after 15 weeks “except in a medical emergency.”

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center’s case-selection criteria.

Essential, safe health care

The brief makes four arguments to the court as to why it should not lift the injunction on the law under which physicians and other health care professionals who provide abortions could face criminal penalties.

First, it says, abortion is a safe, common and essential part of health care.

The brief cites data that shows nearly 25% of American women have an abortion before age 45, that there are no significant risks to a patient’s mental health resulting from abortion care and that complication rates from abortions are extremely low. About 2% of the procedures experience a complication, which are usually minor and easily treatable.

The brief then states that laws banning abortions have the predictable consequences outlined below.

They harm pregnant patients’ health. Only allowing an abortion when it’s “necessary to save” the patient’s life, doesn’t allow “abortion care in circumstances that present a risk of substantial harm to patients, including circumstances related to the pregnant patient’s mental health.”

They hurt patients from economically marginalized, rural, and historically marginalized racial and ethnic groups the most. Patients in rural areas and patients who have been economically or socially marginalized will have to travel longer distances to seek safe, legal abortions. Forcing patients to continue pregnancies also increases their risk of complications, including death. The death rate associated with childbirth is 14 times higher than that associated with abortion. Nationally, Black patients’ pregnancy-related mortality rate is at least 3.2 times greater than white patients.

They force physicians and other clinicians to make an impossible choice between upholding their ethical obligations and following the law. These laws undermine the patient-physician relationship by substituting a flawed legislative judgment for a physician’s individualized counseling centered on the patient.
The 1901 law “pits physicians’ interest against those of their patients,” the brief says. It “places physicians at the ethical impasse of choosing between providing the best available medical care and risking substantial penalties or protecting themselves personally. This dilemma challenges the very core of the Hippocratic Oath: ‘Do no harm.’”

Access to emergency care

Since the Dobbs ruling, the AMA Litigation Center also has joined ACOG, the American College of Emergency Physicians and other physician organizations in filing amicus briefs in Idaho and Texas that argue, among other things, that the states’ abortion bans conflict with the Emergency Medical Treatment and Labor Act (EMTALA), which enshrines physicians’ commitment to treating and stabilizing patients.

In Texas v. Becerra, involving Texas’ anti-abortion laws, U.S. District Judge James Wesley Hendrix ruled Aug. 23 that the state laws were not preempted by EMTALA. The following day, in United States v. Idaho, U.S. District Judge B. Lynn Winmill granted the federal government’s request for a preliminary injunction against enforcing Idaho’s anti-abortion law as it relates to EMTALA care.

Other post-Dobbs litigation

Separately, the AMA has joined ACOG and other organizations in amicus briefs in cases challenging abortion bans in West Virginia, where a pre-Roe law from the 1800s bans nearly all abortions, and in Georgia, Kentucky, Ohio and South Carolina where state laws prohibit abortion after approximately six weeks. Similarly, in Utah, the AMA joined an amicus brief opposing a law banning and criminalizing nearly all abortions in the state, at any point in the pregnancy.

Since the U.S. Supreme Court’s decision in Dobbs, the AMA’s briefs have consistently told courts around the country that these highly restrictive laws banning abortion are not based on scientific evidence, threaten pregnant people’s health, interfere with the patient-physician relationship and disproportionately hurt those from rural and historically marginalized racial and ethnic groups.

Learn how physicians are backing continued access to medication abortion nationwide, and read about AMA reproductive health testimony before Congress.