

# Who Not When

## The Facts: Abortion Bans with Exceptions

Once someone has decided to end their pregnancy, they deserve safe, affordable abortion care—as early as possible and as late as necessary. This has never been the experience of abortion seekers in America.

There must be a bold response to *Roe v. Wade* being overturned. **But legal efforts to protect abortion must not include abortion bans of any kind, even so-called “reasonable” ones.**

Policies must make care accessible and ensure bodily autonomy without exceptions, for everyone, no matter their reasons for seeking care.



### What are abortion bans with exceptions?

Abortion bans are laws that create criminal and civil penalties for having or providing abortions. Abortion bans, like all criminal and civil laws, subject people to punishment by the state.

Many abortion bans have “exceptions,” sold as carve-outs for “acceptable” abortions.

### Exceptions: PR for abortion bans

Both abortion supporters and opponents include exception language in legislation to serve political ends. Extreme bans are made to feel less extreme. Abortion protections that allow later abortion to be prohibited similarly exempt some circumstances. **Exceptions are intended to make abortion bans, at any point, seem reasonable.**

But exceptions are not intended to ensure people can obtain care. Even those who qualify under exemptions are routinely denied abortions.

“

*Having the legal right on the books to get an abortion and getting one in practice are two distinctly different things.*

**Laurie Bertram Roberts**  
**Mississippi Reproductive Freedom Fund**

”

### Exceptions create a “hierarchy of deservedness,” with consequences

Abortion policies with exceptions rely on the notion that there are “good” and “bad” abortions. They override bodily autonomy completely, replacing individual decision making with a State’s value judgment.

While individuals may believe certain people deserve abortion care over others, bans with exceptions codify this hierarchy into law. And **laws are not just value judgments, they have real consequences:**

- **Bans with exceptions are harmful.** They invite anti-abortion stigma and violence, denials of care, and punishment for people obtaining or providing care.
- **Bans allow the State to police the line that is drawn.** This results in the surveillance, prosecution, and punishment of not just abortion, but all pregnancy outcomes.
- **Bans allow the State to override bodily autonomy.** The State is invited to deprive someone of their rights based on the circumstances of their pregnancy.
- **Bans with exceptions create a “chilling effect.”** Exceptions are intentionally vague, and well-meaning clinicians often stop short of a limit to avoid harsh penalties.

# Abortion Bans with Exceptions

## Common exceptions and why they don't work in practice

Abortion bans with exceptions are common. **44 states ban abortion at some point in pregnancy**, but allow abortions to be provided after the cut-off in certain exceptional circumstances.

**Threats to Health or Life/Provider Discretion:** These exceptions are meant to allow an abortion if there is evidence of a threat to the life or health of the pregnant person, or broadly at the discretion of a clinician.

### Some reasons why they are problematic:

- Vague, non-medical language makes the laws hard to follow or apply.
- Subject to overly narrow interpretation by an institution or clinician, or their lawyers, to avoid legal liability.
- Reinforce the role of a clinician as a gatekeeper and agent of the State. Medical judgment on behalf of a patient is balanced against State interests, or wholly subverted to comply.
- Subject to a host of biases and competing concerns, exposing patients to unequal access to the right based on their race and ethnicity, income, education, age, etc.
- Endanger patients by delaying care. Requiring a medical threat to become severe enough to meet a legal threshold is bad medicine.

*We can't imagine every single circumstance that's going to happen out there. That's the problem with exceptions.*

**State Senator Tom Davis  
of South Carolina,  
anti-abortion Republican**

**Fetal Diagnosis:** These exceptions allow an abortion when there is evidence of a severe or life-limiting fetal condition. These exemptions suffer from many of the same flaws as threats to health or life.

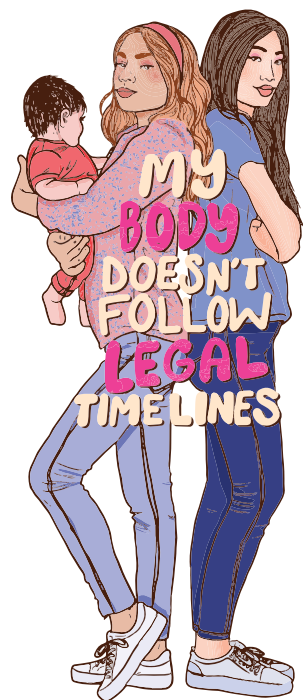
### Reasons they're uniquely problematic:

- Ableism is pervasive, especially in conversations about fetal impairments. Laws that require clinicians and patients to characterize fetal impairments as sufficiently disastrous to deserve abortion care make this worse.
- Diagnosis of fetal conditions is imperfect, and often gray. Clinicians may be reluctant or unable to make a diagnosis with enough certainty to meet a vague legal threshold. Many would rather err on the side of not going to jail or losing their medical license.
- Many patients lack access to prenatal screening and diagnostic testing. Obtaining abortion care for fetal indications relies on clinicians making the case. Bans with exceptions often hinge on race and class privilege.

**Rape or Incest:** These exceptions are designed to allow an abortion if the pregnancy is the result of a sexual assault.

### These policies fail survivors in a number of ways:

- The overwhelming majority of sexual assaults are not reported to police. Reporting can be traumatizing, invite retaliation, and many distrust law enforcement and their ability to respond to harm.
- Survivors may not feel comfortable or safe disclosing a sexual assault to a health care professional, or having it documented. They may know they won't be trusted or believed. Disclosure can expose people to systems of immigration enforcement, law enforcement, and/or family regulation.



**More on Exceptions:**  
[Focusing on Exceptions  
Misses the True Harm  
of Abortion Bans](#)  
Elizabeth Nash,  
Guttmacher

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