

Who Not When

Banning Abortion at Potential “Viability” Is Not Good Policy

Once someone has decided to end their pregnancy, they deserve safe and 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 efforts to protect abortion must not include abortion bans of any kind. **Policies must make care accessible and ensure bodily autonomy without exceptions, for everyone.**



Abortion bans harm people.

In 1973, *Roe v. Wade* created a **limited right** to abortion:

- Established a government interest in pregnancy, increasing as a pregnancy progresses.
- Allowed states to ban abortions after “**potential fetal viability**.”
- 43 states banned abortion at some point in pregnancy (before *Roe* was overturned).

The **injustices** experienced since *Roe* was overturned are **not new**: delays and denials of care, long distance travel, and legal risks for providers have been happening for decades.



What the Doctors Say:

“One of the most concerning medical concepts that is being misrepresented and unscientifically redefined is viability. The word viability is used in the political arena and defined in proposed legislation without regard to medical evidence or the facts of a particular case. Questions about whether and when to access abortion care should be removed from the political context and returned to the patient and their trusted health care professional.”

**The American College of Obstetrics and Gynecology,
Abortion Policy**

Viability: Medical concept adopted as a legal term

Laws define viability as a point when a fetus may be able to survive on its own, if birth occurs.

Doctors know that it is **not possible** to determine viability with any certainty.

- A vague and subjective guess based on **complex factors** unique to each pregnancy.
- Viability is **misused** and unscientifically redefined in abortion laws.
- In a medical sense, viability is a **gray area**. But laws are black and white.

This makes viability **flawed** as a legal standard. It has no place in laws that result in harsh penalties.

People may consider fetal development when making pregnancy decisions. But it is not the only factor they consider. Their own health, and the well-being of their family, are often important concerns.

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Viability Bans Cause Harm

Abortion bans based on viability are still abortion bans. They override a person's right to bodily autonomy, self-determination, and consent. They do not ensure health and safety, which is why they are opposed by professional medical organizations. Doctors and public health experts know that bans harm people.

Policymakers should not work to "codify Roe v. Wade" if it means adopting viability bans.

Delays & Denials

Abortion bans delay or deny abortion care. Even those who can raise the money, take time off work, arrange childcare, and travel long distances experience delays and stigma. Others are unable to overcome the many obstacles, and denied care altogether.

States with abortion bans tend to have less access to maternity care. They also have higher rates of pregnancy-related death and child poverty.

Research shows that people who cannot access an abortion are more likely to:

- Live or remain below the poverty line
- Stay with an abusive partner
- Suffer adverse health outcomes
- Be unable to realize life plans

Abortion bans threaten healthcare providers with punishment.

Providers often stop offering care before a ban might apply. This "chilling effect" makes abortion care even more difficult to find, particularly after the first trimester.



Punishment

Viability bans are based on the idea that the state has an interest in pregnancy. And that the state should take action to protect that interest. **States protect their interests through surveillance, policing, prosecution and punishment.** These interventions harm people and their families. We must not accept that policing has a place in pregnancy outcomes.

While abortion bans mostly target providers, pregnancy itself carries legal risk. Behavior while pregnant and adverse pregnancy outcomes are criminalized.

Since 1973, 44 states have sought to prosecute pregnant people. Existing laws such as child abuse, chemical endangerment, and murder are misapplied by prosecutors.

Enshrining viability bans means pregnancy remains a path to punishment. This is especially true for people already over-policed: Black women, young, disabled and low-income people.

Bodily Autonomy

States have used the viability standard to override the rights and bodily integrity of pregnant people.

Americans generally have a right to refuse unwanted medical treatment. But in New York, a woman was forced to undergo cesarean surgery that resulted in bladder damage and lasting trauma. A judge relied on Roe's viability standard in their ruling.

Advanced directives allow people to refuse life-sustaining treatment. But in half of US states, exclusions invalidate a patient's wishes if they are pregnant.

In Texas, a woman was pronounced brain-dead when she was 14 weeks pregnant. Her body was kept on life support for months to incubate her pregnancy. This went against her family's wishes and her own living will.

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Similar to the way that the Court seemingly pulled from thin air viability as the point at which the state's interest becomes compelling, it seemingly pulled from thin air the supposition that the state has an "important and legitimate interest" in protecting fetal life.

**Dr. Khiara M. Bridges,
Life in the Balance**

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