

**Miranda Almy**

## **Landscapes of Conception**

Over recent decades, ideas of motherhood have transformed alongside the proliferation of reproductive and fetal technologies that have expanded our understanding of and access to parenthood. From the first theory of biological conception to the advancement of Artificial Reproductive Technologies (ART), human reproduction and our understanding of it have continued to evolve, generating and regenerating questions about the legality and morality of different medical acts. We have seen through recent legal developments the ways in which legal landscapes shape our access to forms of reproduction. Thus, from June to August 2023, I have compiled legislation on both federal and state levels regarding the current landscape of reproduction within the US. The research I have undertaken presents a snapshot of a cultural moment in which fertility, pregnancy, and parenthood exist in a state of flux as our culture assigns medical, political, and ethical meaning to the rapid changes of both the biological state of childbearing and the technological means by which we understand and enact control over it.

For the sake of this research, I have compiled legislation on both federal and state levels regarding the regulation of (a) abortion, (b) contraception, (c) surrogacy, and (d) IVF/ART. Though there are many other legal factors regulating parenthood within the US (e.g. adoption), the four issues I have chosen to examine are largely dependent on the development of medical technologies through which we are able to regulate fetal and maternal life. These technologies have drastically changed our understanding of pregnancy and conception, raising legislative debates regarding the biological and moral considerations of “personhood.” My survey looks at these various domains through different lenses depending on their social and political relevance. Abortion and surrogacy examine laws around legality, while contraception and IVF/ART are understood through laws regarding mandated coverage of service. While the chart outlines legislation in broad strokes for the sake of comprehension, the aim of this paper is to expand upon the specific language and narratives used in the legislation.

On June 24, 2022, the Supreme Court of the United States released its ruling on the case [\*Dobbs vs. Jackson Women’s Health Organization \(2022\)\*](#). This decision held that the US Constitution “does not confer a right to abortion,” overturning the precedent of *Casey* and *Roe*, and returning

the “authority to regulate abortion...to the people and their elected representatives.” This decision, which nullified federal protection of abortion access, permitted the immediate restriction of abortion in multiple US states, leaving [millions of pregnant people](#) without access to care. Underlying this decision was a web of ideologies surrounding the concept of life, exemplified by Amendment 68 in the Arkansas’ Constitution, which states that “The policy of Arkansas is to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution.” This understanding of life (which is held by the Catholic Church) is used in multiple states as the moral basis by which abortion is heavily restricted or banned under the stated governmental mandate to protect the life “of all citizens.”

I feel it is important here to point out how the overturning of [Roe v. Wade \(1973\)](#) has inspired a rhetorical shift under which legislators communicate the regulation of the reproductive lives of their constituents. Pointing to the wide-ranging religious and secular views about the beginning of life, the Court ruled in *Roe* that “[it is not up to the states to decide when life begins.](#)” As an alternative, *Roe* outlined terms through which lawmakers were able to balance the interest of the State with the privacy of its citizens. By overturning this framework, the Supreme Court has reframed reproduction as an issue of morality rather than one of privacy. In this way, the main tension that now underscores the legality of reproductive technology stems from the inconsistency with which humans are able to determine the ethics by which they might regulate biological processes. David Magnus, the director of the Stanford Center for Biomedical Ethics, points out this issue in an [article](#) written for Kaiser Health News: "Medicine can answer the question 'When does a biological organism cease to exist?' But they can't answer the question 'When does a person begin or end?' because those are metaphysical issues."

By transitioning the framing of reproductive technology from a matter of privacy to a matter of the determination of life, legislators have complicated the ways in which medical practitioners are able to navigate the ambiguity of medicine. Since *Dobbs*, [stories](#) about the dire situations in which this ambiguity puts women and their care providers have made clear the high human stakes of this rhetorical shift.

While abortion remains the most prominent legal issue regarding human reproduction, *Dobbs* has [wide-ranging implications](#) for the state of reproductive technology. Neither surrogacy nor ART/IVF technologies are expressly protected under the US Constitution, and the [case](#) that determined the legality of contraception relies on a right to privacy similar to the one found in the overturned *Roe v. Wade*. The regulation of these technologies relies on the states, which may use privacy, morality, or economics to expand or restrict access to reproductive care. Though legislation around the use of reproductive technology within the US is changing every day, the survey provided can help us see the ways in which questions of ethics and privacy are playing out in the public sphere in the wake of the *Dobbs* decision.