

The California Reproductive Freedom Amendment: A New Constitutional Standard

EXECUTIVE SUMMARY

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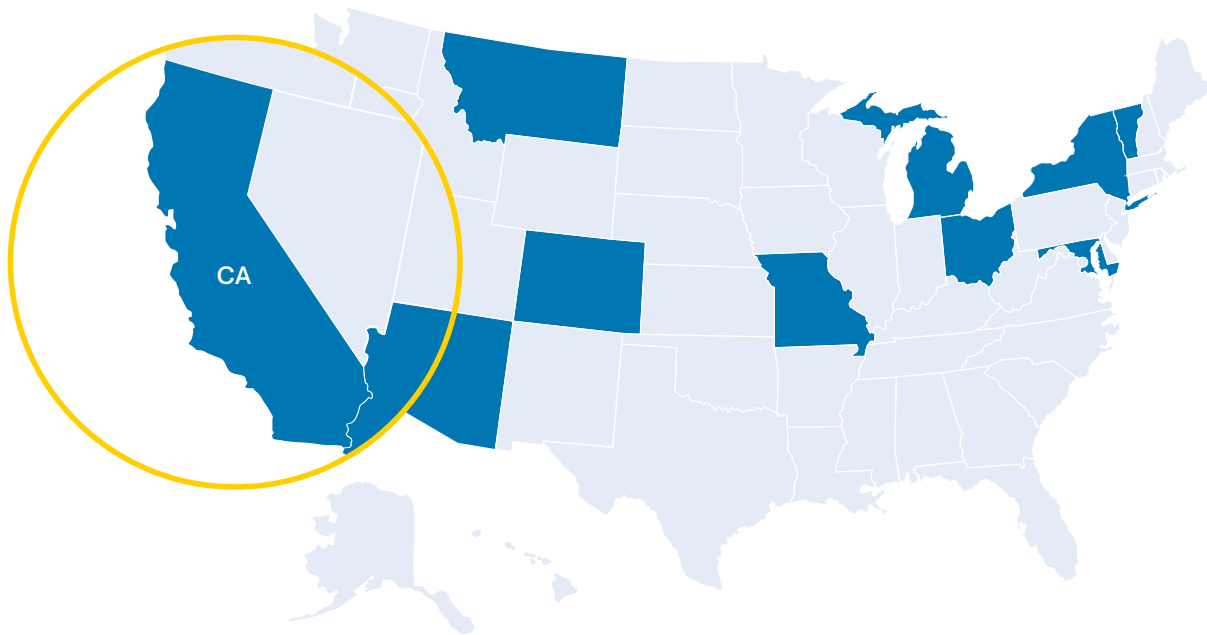
A Right to Equality and Reproductive Justice Waiting to be Realized

In 2022, California voters overwhelmingly ratified one of the first state reproductive freedom amendments in the U.S. after *Roe* was overruled. California's Reproductive Freedom Amendment (RFA) offers a new vision of reproductive equality and justice and a new tool to protect it, but there are virtually no court decisions interpreting or enforcing this new constitutional guarantee. [This report](#) sets out the constitutional framework for realizing the promise of the RFA. It offers both a resource for California-based advocacy and a foundational model for interpreting similar state constitutional amendments ratified since *Dobbs*.

Background

California's RFA, codified in Article I, Section 1, guarantees an expansive fundamental right that protects the full range of intimate decisions and care related to reproductive health. This includes not only abortion and contraception, but also sterilization, assisted reproduction, and maternal health and birth care. Despite this expansive constitutional guarantee, and related statutory protections, today in California rights violations continue. For example, state law limits provision of abortion in connection with fetal viability and choice of provider; local prosecutors have pursued criminal charges for pregnancy loss; and pregnant and birthing people are subject to discriminatory surveillance, interventions, and family regulation. This report provides the first comprehensive legal analysis of California's new constitutional framework for addressing these, and other, legal and systemic barriers to reproductive justice.

A New State Constitutional Standard for Reproductive Freedom After *Dobbs*



■ State with newly ratified reproductive freedom amendment

Making [post-*Dobbs* state constitutional amendments](#) a reality in people's lives requires fresh interpretation and ongoing enforcement and implementation.

Grounded in California's RFA, this report proposes:

- A constitutional principle that recognizes equality and reproductive freedom as interdependent to ensure broader and stronger protection for reproductive freedom than past federal or state protections. Reproductive rights are necessary for true equality. California's RFA, and [other similar state amendments](#), should be interpreted to ensure access to care and decision-making power is a right in reality, not only on paper. This includes providing the resources and support necessary to remedy violations and make reproductive freedom a reality for everyone.
- A new constitutional "RFA Review" standard, with the strictest possible judicial scrutiny for enforcing reproductive rights and remedying violations. Under this approach, interference with reproductive freedom is presumptively unconstitutional. To survive RFA Review, an infringement must be absolutely necessary to advance a compelling interest that is consistent with equality and reproductive justice. Outdated gender stereotypes or "protective" justifications that disable full equality and participation in society are not compelling.



Key Takeaways for California Legal and Policy Advocacy

The state has a constitutional obligation to live up to its reproductive justice vision and public policy.

[This report](#) identifies laws and practices in California that are ripe for legal challenge or in need of policy reform to satisfy the RFA:

- **Eliminating Abortion Limits Tied to Fetal Viability:** The RFA protects reproductive autonomy and freedom without a fetal viability limit. Current statutory restrictions on post-viability abortion care are unconstitutional because they strip people of autonomy and give physicians a third-party veto over intimate medical decisions—a practice the RFA was specifically intended to move beyond.
- **Expanding Care Providers:** Restrictions that prevent Advanced Practice Clinicians from providing care within their scope of practice unnecessarily limit access and may deny people their provider of choice. These restrictions do not satisfy RFA Review in the absence of a showing that they are compelling, necessary to advance a proven safety benefit, and consistent with the RFA's equality guarantees.
- **Stopping Pregnancy Policing:** The RFA's interlocking autonomy, equality, and privacy mandate prohibits monitoring, surveilling, and imposing criminal or civil penalties based on pregnancy conduct or outcomes. Through policies and practices of hospital-based drug testing without informed consent and reporting prenatal drug use to family services, both state and private actors interfere with bodily autonomy and privacy. These interventions, which disparately harm Black, brown, and low-income families, are presumptively unconstitutional and subject to RFA Review.

Conclusion

Whether through the courts, administrative engagement, or legislative reform, RFA enforcement requires protecting the procreative choices and equality of all people. This report does not prescribe a single path forward in California or nationally; rather, it provides legal teeth for multiple strategies. While our analysis focuses on abortion access and pregnancy policing as urgent areas for reform in California, the RFA applies with equal rigor to the full range of reproductive health decisions and care—from assisted reproduction to birth care choices. This report offers a new legal framework that can enforce constitutional rights in practice, protect those most vulnerable to state control, and move the law closer to realizing reproductive justice.