

Recent Legal and Policy Developments in Young People’s Reproductive Health Care Rights

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Last month, the [Montana Supreme Court](#) made headlines by striking down the state’s law that required parental consent for minors to obtain abortion. In so ruling, the court reaffirmed that minors in the state have a fundamental constitutional right to bodily autonomy that includes abortion access, a powerful ruling that could be a model to challenge parental involvement laws, which exist in [35 other states](#). However, the court’s ruling represents a bright spot amongst an otherwise concerning trend of the anti-abortion movement targeting and restricting young people’s health care access and bodily autonomy rights.

Even before the *Dobbs* decision, it was difficult for many minors to access reproductive health care. Now, [more than half of U.S. adolescents ages 13-19](#) live in a state that has banned or severely restricts abortion. Legislators and activists who oppose access to reproductive health care have continued to target not only abortion, but also birth control, STI testing and treatment, mental health care, and other preventative services. They have also gone so far to introduce and pass laws that label helping young people get abortion care as “trafficking.”

While these attacks have started by targeting care for minors, [we know from the history of anti-abortion activism](#) that restrictions targeted at young people never end there, but rather are the first step before expanding restrictions to us all. (We’re also currently seeing the same playbook play out with bans on [gender-affirming care](#), where legislators first [started by banning care for minors](#) and are now seeking to ban care for adults.)

Here we take a look at what’s new in policy around minors’ rights and reproductive health care.

Helping Minors Access Abortion Criminalized and Labeled as “Trafficking” by New Laws

Two states, [Idaho](#) (in 2023) and [Tennessee](#) (in 2024), have created the crime of so-called “abortion trafficking,” defined as procuring an abortion or abortion-inducing drugs for a pregnant minor by “recruiting, harboring, or transporting the minor” to obtain the abortion. Both laws create private rights of action for certain family members to sue medical providers or others who violate the law. These are the first two state-wide laws of this kind, although some [localities in Texas](#) similarly endorsed policies to prohibit the use of highways to travel for abortion care. In addition, legislators in [Alabama](#), [Mississippi](#), and [Oklahoma](#) introduced similar bills that failed to pass this session.

Though the laws use the language of “trafficking,” they are more concerned with stopping abortions than empowering minors; the Tennessee law specifically states that consent of the minor is not a defense to prosecution, while the Idaho law provides that consent of the minor’s parents *is* a defense. (Actual [anti-trafficking organizations](#) have expressed that the conflation of comprehensive reproductive health care with trafficking is concerning and actually harmful to survivors by further restricting [bodily autonomy](#).)

These laws will make it even harder for minors to obtain abortion care, which they already struggle with due to parental involvement laws, cost barriers, and transportation challenges. Laws that make it a crime to assist a minor navigate this landscape will have a chilling effect, as loved ones fear that they could be prosecuted for helping out. Such policies also put a target on abortion funds and support networks, which are already overextended post-*Dobbs*.

Represented by the Lawyering Project and Legal Voice, the Northwest Abortion Access Fund, Indigenous Idaho Alliance, and Lourdes Matsumoto (a lawyer and advocate for survivors of sexual and gender violence and abuse) have sued to challenge Idaho's law in [Matsumoto v. Labrador](#). They argue that the law is unconstitutionally void for vagueness, infringes on the fundamental rights to inter- and intrastate travel, and violates free speech rights under the First Amendment. In November 2023, [a district court](#) enjoined the Idaho law, finding that plaintiffs were likely to succeed on their claims about unconstitutional vagueness, interstate travel, and free speech, but denying their claim that the law violates a fundamental right to intrastate travel. The case is currently on appeal: the Ninth Circuit heard oral arguments in May, and we are still waiting for a ruling.

The Lawyering Project also represents Midwest Access Coalition and SisterReach in [SisterReach v. Skremetti](#), which challenges the Tennessee law, arguing unconstitutional vagueness and violations of First Amendment rights to free expression and expressive association. Abortion activists represented by a Horwitz Law, a Nashville-based firm, are also challenging the law in [Welty v. Dunaway](#), arguing that vagueness, content- and viewpoint-based restrictions on free speech, and unconstitutional overbreadth. Both cases are still in early stages of litigation and no rulings have yet been made on the merits.

In addition to challenges to these enacted laws, another case was brought by the Yellowhammer Fund (also represented by the Lawyering Project) against the Alabama Attorney General, who in August 2022 went on a radio program and threatened criminal prosecution of abortion funds if they offered support for individuals leaving the state for abortion care. In [Yellowhammer Fund v. Attorney General of Alabama](#), plaintiffs are asking the court to prevent the Attorney General from making good on these threats, arguing that such prosecution would violate the First Amendment by constituting an overbroad and content- and view-point based restrictions on speech; would violate the constitutional rights to association and travel; and that extraterritorial application of state law violates the due process clause. In [May 2024](#), the District Court for the Middle District of Alabama granted the Alabama Attorney General's motion to dismiss on the overbreadth and due process claims, but permitted the right to travel, freedom of speech, freedom of association, and extraterritoriality claims to continue.

Radical New Efforts to Require Parental Consent for Minors to Access Contraception

While parents typically are given broad legal authority to consent to medical care for their minor children, there are commonly exceptions in state law for forms of care that are sensitive, crucial, and time-sensitive, like contraception, pregnancy care, STI testing and treatment, and mental health care. [For decades](#), minors have been allowed to confidentially consent on their own to these services [in recognition](#) that if they were required to involve their parents, many young people would simply [not seek treatment](#) and that would have long-term effects for the health of the minors and the community.

[As of 2023](#), all U.S. states and DC had laws explicitly allowing young people to consent to STI services and 27 states and DC allow either all ages, or those above age 12 or 14 to consent to contraceptive care. The remaining states were silent on the issue, but before this year, no policies blanketly required parental consent to provide minors with contraception. This is likely due in part to the fact that the Supreme Court affirmed that the federal constitution protects a minor's right to obtain contraception in all states in the 1977 case *Carey v. Population Services*.

However, new laws and policies targeting minors' access to confidential care seek to overturn this longstanding status quo. Earlier this year [Tennessee](#) and [Idaho](#) both enacted laws declaring the fundamental right for parents to make health care decisions for their minor children and requiring that providers obtain parental consent before minors can access all or most medical care. Both laws also give parents broad authority to access their children's medical records. The [Tennessee Department of Health](#) has interpreted the new law to mean that minors can no longer access birth control, STI treatment, and pregnancy testing without parental consent. As the Idaho law requires parental consent for *all* medical services provided to minors, it will also apply to contraception.

Another program anti-abortion activists have targeted is the Title X Family Planning Program, which since 1978 has provided free and low-cost services to adolescents to prevent unintended pregnancies. Since the program was established, Title X-funded clinics [have never](#) been required to obtain parental consent prior to providing minors with contraception. Title X [regulations](#) encourage but do not require parental involvement when a minor seeks contraceptive services from a federally funded Title X provider. Under the general rules of federalism in our country, it has been understood that the federal rule prohibiting parental consent would trump any state laws that might be more restrictive.

That is, until the case of *Deanda v. Becerra*, in which a parent from Texas challenged the Title X regulation allowing minors to consent on their own to contraceptive services. In December 2022, the [district court](#) ruled that the regulation violated parental rights under Texas state law, and this March, [the Fifth Circuit](#) largely agreed. Since December 2022 all [Title X clinics operating in Texas](#) have been required to obtain parental consent before providing contraception to minor patients.

However, the state of Texas was not content leaving it at that. At the end of July, they [sued](#) the U.S. Department of Health and Human Services, asking for the regulation to be permanently set aside as unlawful and beyond the agency's authority. The complaint was filed in the North District Court, Amarillo District, which means it has been assigned to Judge Matthew Kacsmark, the same district court judge who ruled in *Deanda*.

If the court agrees with Texas' arguments—which seems likely given Judge Kacsmark's prior ruling—the implications could be widespread. The state of Texas is arguing that the Title X statute should be read to permit parental involvement requirements for minors to access contraception and asks the court to prohibit HHS from funding any Title X project that fails to comply with a state's parental involvement laws. If this reasoning is adopted by the court, either states or Title X-funded clinics across the country could choose to require parental consent—which could impact access for hundreds of thousands of young people. [According to HHS](#), in 2022 the Title X program served 2.6 million patients, 8% (200,000) of whom were minors.

Montana Supreme Court Affirms Minors' Constitutional Right to Abortion

But it's not all doom and gloom! As noted above, in August the Montana Supreme Court unanimously [struck down](#) a state law requiring either parental consent or judicial waiver for a minor to obtain an abortion, ruling that the law violated “the fundamental right of a minor to control her body and destiny,” which includes abortion. The court recognized that minors have a fundamental right to abortion guaranteed by state constitutional rights to privacy and equal protection and also relied on its 1999 ruling in *Armstrong v. State*, which similarly recognized a right to abortion but did not explicitly deal with the rights of minors.

The court's opinion also took on judicial bypass, the practice of allowing minors to “bypass” parental consent laws by going to court and asking a judge to authorize their abortion that is currently in practice in [35 states](#). In theory, this provides an alternative to involving parents for young people who cannot. But in practice, judicial bypass has been shown to [delay access to care](#), which especially post-*Dobbs* could mean the difference between an abortion being legal or not. The Montana Supreme Court found that judicial bypass procedures were not a constitutionally permissible alternative to allowing minors to consent to their own care, stating that “forcing minors to go to court to access abortion care compromises a minor’s fundamental right to privacy—which includes the right to make medical judgments in partnership with a chosen health care professional free from governmental interference.” *Id.* at 33.

Looking Forward

We have no doubt that anti-abortion activists and legislators will continue to attack the rights of minors. The Alliance Defense Fund, the group that authored the Tennessee parental consent bill, is [reportedly](#) advocating for a similar bill to be enacted at the federal level. Similarly, the Tennessee and Idaho “trafficking” laws mirror [model legislation](#) from the National Right to Life. has proposed legislation which, among other things, includes [Project 2025](#) calls for parental involvement to be a part of any federally funded teen pregnancy prevention programs and for funds to be diverted to so-called “sexual risk avoidance” (aka abstinence only) programs; it also calls for Title X-funded clinics to require education “about the importance of marriage to family and personal well-being[.]”

These positions demonstrate that efforts to limit minors' access to abortion and contraception are simply the first step in furtherance of the right's ultimate goal of restricting reproductive freedom in general. CRHLP will continue to monitor legal and policy advancements and report on them to our readers and supporters.