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## Abortions at Sea: In Search of Creative Reproductive Healthcare Solutions Post-Dobbs

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# Abortions at Sea: In Search of Creative Reproductive Healthcare Solutions Post-Dobbs

Following the Supreme Court's decision in Dobbs, access to reproductive healthcare and the right to abortion have been severely restricted across the United States.[1] Indeed, within days of the decision, multiple states implemented trigger laws criminalizing abortion (in some cases without exceptions for instances of rape or incest) to the detriment of millions of women across the country.[2] This infringement on a woman's right to choose her own healthcare needs has profoundly impacted women living in conservative-led states, particularly minorities and those in the American South.[3]

Although a number of states have passed laws restricting access to abortion, it is not currently illegal on a federal level.[4] Therefore, to meet the growing healthcare needs of women in states with strict anti-abortion laws, some non-profit organizations have begun to provide services from federal waters, outside the jurisdictional boundaries of state law.[5] Under maritime law, a coastal state's border generally extends three nautical miles from their shoreline, after which point, federal law governs until international waters are reached.[6] By conducting abortion services from "floating clinics" in federal waters, medical providers are able to meet the urgent healthcare needs of women living in Gulf Coast states.[7]

One such organization, AbortOffshore, is operating in the Gulf of Mexico, providing surgical abortion procedures up to the twentieth week of pregnancy for women living in Texas, Louisiana, Mississippi, and Alabama.[8] In order to protect patient confidentiality, as well as limit liability for criminal charges relating to the aiding and abetting of abortion services, AbortOffshore rotates launch points and does not require identification from patients.[9] In total the voyage from shore to shore, including any medical procedures conducted, takes approximately five hours and costs \$1,500.[10] AbortOffshore also ensures aftercare services and provides patients with a one night hotel stay in order to monitor any post-op complications.[11]

Floating clinics, as a model of providing healthcare services to particularly vulnerable individuals in countries with restrictive or inadequate healthcare, have existed for many years.[12] Dutch NGO, Women on Waves, was founded in 1999 to provide access to reproductive healthcare services and to promote sexual health education.[13] Since its inception, Women on Waves has conducted offshore health campaigns for women in Mexico, Morocco, Guatemala, Portugal, Poland, and Ireland.[14] In addition to providing direct reproductive health services aboard floating clinics, Women on Waves has employed drones and robots to deliver abortion pills to women in countries where abortion is banned.[15] By operating these remote-controlled devices from the Netherlands, where abortion is legal, Women on Waves has so far been able to avoid criminal liability.[16]

Nonetheless, these innovative solutions to restrictive health laws have on occasion been met with fierce resistance.[17] In Guatemala, a Women on Waves ship was summarily expelled from harbor by the military under direct orders of the country's President on grounds that Women on Waves' services "violat[ed] public order, national interest and state security[.]"[18] Similarly, after Portuguese officials prevented a Women on Waves ship from entering their territorial waters, The European Court of Human Rights held that Portugal violated Article 10 of the European Convention of Human Rights which ensures freedom of expression and the dissemination of information relating to healthcare.[19]

As noted, restrictions on the right to abortion implicate the fundamental human rights of women. As a threshold matter, international human rights law establishes the universal right to the right to life, which includes the protection of bodily autonomy.[20] Moreover, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires state parties to "eliminate discrimination against women in the field of health care" including "appropriate services in connection with pregnancy[.]"[21] In the face of growing anti-abortion movements, the international community needs to do more to ensure their compliance with obligations to respect women's human rights in this context.

Carrying a child to term is a life-altering decision, and women who decide to terminate their pregnancy will go to great lengths to receive necessary treatment, including traveling across state lines, or evidently, into federal or international waters.[22] The very existence of floating abortion clinics indicates the inherent futility of attempting to enforce total bans on abortion. Patients and doctors should not be forced to take such drastic measures in order to receive and provide such vital services. Although the added costs and practical barriers imposed on women seeking reproductive healthcare offshore limits the feasibility of floating clinics as a universal solution to abortion bans, these creative and heroic solutions should be applauded.

[1] Risa Kaufman, Rebecca Brown, Catalina Martínez Coral, Jihan Jacob, Martin Onyango, & Katrine Thomasen, *Global impacts of Dobbs v. Jackson Women's Health Organization and abortion regression in the United States*, SEX REPROD HEALTH MATTERS (NOV. 16, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9673802/#:~:text=In%20overruling%20Roe%20and%20eliminating,may%2C%20in%20fact%20do%20so>.

[2] Amy Schoenfeld Walker, *Most Abortion Bans Include Exceptions. In Practice, Few Are Granted.*, N.Y. TIMES (Jan. 21, 2023), <https://www.nytimes.com/interactive/2023/01/21/us/abortion-ban-exceptions.html>; Press release, Abortion "Trigger Bans" Take Effect in Three States Tomorrow, Ctr for Reprod Rts, (Aug. 24, 2022) (<https://reproductiverights.org/abortion-trigger-bans-take-effect-in-three-states-tomorrow/>).

[3] *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228, 2339-40 (2022) (Breyer, Sotomayor, and Kagan, JJ., dissenting).

[4] *See generally*, CONG. RSCH. SERV., LSB10787, Congressional Authority to Regulate Abortion (July 7, 2022).

[5] *See generally*, ABORTOFFSHORE (2023), <https://abortoffshore.com/>; PRROWESS <https://www.prrowess.org/home>.

[6] Submerged Lands Act, 43 U.S.C. ch. 29 §1301 et seq.

[7] Brittany Shammass, *Doctor proposes floating abortion clinic in Gulf of Mexico to avoid bans*, WASH. POST (July 12, 2022), <https://www.washingtonpost.com/politics/2022/07/12/floating-abortion-clinic-gulf-mexico/>.

[8] ABORTOFFSHORE (2023), <https://abortoffshore.com/>.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *See generally*, WOMEN ON WAVES, <https://www.womenonwaves.org/en/>; MERCY SHIPS,

<https://www.mercyships.org/>.

[13] *Who are we*, WOMEN ON WAVES, <https://www.womenonwaves.org/en/page/650/who-are-we>.

[14] *Campaigns*, WOMEN ON WAVES, <https://www.womenonwaves.org/en/page/517/campaigns>.

[15] *Abortion Drones*, WOMEN ON WAVES, <https://www.womenonwaves.org/en/page/6402/abortion-drones>; *Abortion Robots*, WOMEN ON WAVES, <https://www.womenonwaves.org/en/page/7524/abortion-robots>.

[16] *Abortion Robots*, WOMEN ON WAVES, <https://www.womenonwaves.org/en/page/7524/abortion-robots>.

[17] *Abortion ship Guatemala, February 2017*, WOMEN ON WAVES,

<https://www.womenonwaves.org/en/page/6686/abortion-ship-guatemala--february-2017>

[18] *Id.*; See generally, Jennifer Bisgaier, *Navigating Rough Seas: Women on Waves' Legal Options for Overcoming Resistant States*, 20 CHI. J. INT'L L. 98 (2019).

[19] 78 Eur. Ct. H.R. (Feb. 2, 2009). Accessed from [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22002-1667%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22002-1667%22])}.}

[20] International Covenant on Civil and Political Rights, art. 6, Dec. 16, 1966, UN Doc. 14668.

[21] Convention on the Elimination of All Forms of Discrimination against Women, Sept. 3, 1981, UN Doc. I-20378.

[22] See generally, *The negative health implications of restricting abortion access*, HARV. T.H. CHAN SCH. OF PUB. HEALTH (Dec. 13, 2021), <https://www.hsph.harvard.edu/news/features/abortion-restrictions-health-implications/>.