

OP-ED

Abortion ban 'exceptions' cannot protect life

States may try to write laws that selectively support the health of pregnant people, but they will fail

By Jocelyn Viterna

THE SUPREME COURT'S decision to overturn *Roe vs. Wade* has already set into motion legal processes to criminalize abortion in at least 15 states, with immediate and catastrophic health consequences for pregnant people.

Antiabortion lawmakers argue that the "exceptions" written into many of these laws — most commonly permitting abortion to save the life of the pregnant person or to prevent a severe health risk — will keep women safe. In reality, these exceptions fail to ensure access to necessary medical care, and the policies will ultimately increase pregnancy complications, illness and death.

This is not scaremongering. It's the hard reality I witnessed after 10 years of studying abortion law in El Salvador.

Since its strict ban took effect in 1998, El Salvador has headlined global news for criminalizing all abortions, without exception. As a result, when a pregnancy threatens a woman or girl's health, physicians in Salvadoran public hospitals are instructed to "save both lives" — the mother and the fetus.

Tragic attempts to preserve both lives under El Salvador's abortion ban give a glimpse into what the U.S. can expect. By overturning *Roe*, the Supreme Court opened the door for states to investigate and prosecute doctors who interrupt pregnancies, even in situations where abortion is the only available treatment for the patient. This creates a legal landscape that incentivizes healthcare providers to delay or

withhold needed medical care, in a way that exception carve-outs cannot prevent.

Salvadoran doctors I interviewed offered numerous examples of how it plays out when perceived fetal viability is prioritized over the mother's health.

There was one woman who, in the 20th week of her third pregnancy, developed a pregnancy-related heart condition. From the moment she arrived at the hospital, doctors feared that the young mother was on a path to full cardiac arrest. But they could not say whether cardiac arrest was imminent, showing how challenging it is to prove that the pregnant person's life is in immediate danger.

Facing the legal requirement to "save both" mother and fetus, the doctors opted to hospitalize the woman, planning to monitor her closely until the fetus reached viability. They monitored her for seven weeks. Then her heart gave out. She died, along with her prematurely delivered infant, and her two children were orphaned.

Cases of nonviable fetuses provide further examples of the challenges in proving that an abortion is medically necessary.

In El Salvador, women whose fetuses are diagnosed with "congenital malformations incompatible with life" are required to carry those pregnancies to term. Salvadoran antiabortion activists argue that no matter the prognosis, all fetuses deserve a full-term pregnancy, a birth and a "natural" death.

Such "natural" deaths, doctors tell me, can be excruciating. In many cases, infants born with

fatal anomalies slowly gasp for breath until they die of suffocation or starve to death because they are missing an intestinal system. In one particularly gruesome, painful-to-recount case, a doctor who was struggling to deliver a malformed, nonviable fetus accidentally decapitated the infant, leaving the mother with a severely disfigured vagina and the memory of her baby's bodiless head in her doctor's hands.

When I present data like these to American audiences, even people who support abortion restrictions are appalled by the results of El Salvador's draconian abortion law. Yet those results preview what the U.S. now faces.

The Salvadoran doctors I spoke with were haunted by their limitations in dire pregnancy situations. When I asked if a legal exception allowing for abortion in life-threatening conditions would have saved the woman with the heart condition, they were bemused. They reacted similarly when I proposed the exception option for cases of severe fetal anomaly.

Exceptions, they told me, are what American politicians promote to feel morally superior to their Salvadoran counterparts. What these politicians fail to acknowledge is that in practical terms, exceptions always fall short of allowing doctors to provide timely, needed medical care to their patients.

The truth is, there is no magical moment in which it becomes clear that a woman's life is imminently endangered by her pregnancy. Medical conditions can

change gradually over time, or rapidly within minutes. What might be a life-threatening condition in one patient might be survivable in another. Dozens of medical conditions can be created by pregnancies, and even healthy pregnancies can pose risks for the pregnant person, such as exacerbating lupus, making cancer grow faster or over-tasking a damaged heart.

Pinpointing "severe" anomaly for fetuses, or their viability, is also vexing. If a fetus survives to term and lives for five or six (often agonizing) days after birth, does that mean it was viable? What about 30 days? What about malformations that cause the vast majority of infants to die within days after birth, but a few could survive longer in extraordinary circumstances? Where do you draw the line?

And most important, how can you legislate that line in a way that considers the dozens of severe anomalies, the different ways they can develop in each fetus and the unique interactions they can have with the mother's health?

You can't.

There is simply no way to write one law that covers hundreds of different health scenarios. And if states that have banned or seek to ban abortion try to set a rule, patients will die while doctors withhold or delay treatment for fear of prosecution.

The cases from El Salvador are extreme, but they are medical reality. They demonstrate the absurdity of new antiabortion legislation in the U.S., where we are so caught up in the question of *when* abortion should be legal that we dodge the essential — and answerable — question of *whether* abortion should be legal.

If you think the Salvadoran women in the cases I studied should have had legal access to safe abortion, then you believe abortion should be legal. Even when abortion bans make exceptions, they inevitably fail to protect life.

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Don't give Trumpists another gift

The Jan. 6 committee referring him to DOJ would be legally pointless and politically dumb.

JONAH GOLDBERG

WILL THE JAN. 6 committee issue a "criminal referral" to the Justice Department for Donald Trump? Committee members can't give an interview without being asked that question. Pundits can't stop talking about it; cable TV anchors can't stop asking legal experts for their predictions. It's nothing less than a media obsession.

Trouble is, it's a silly question. Don't get me wrong. Whether or not Trump committed crimes — and what to do about it if he did — is profoundly serious stuff. And so is the committee's investigation. But rarely has so much passion and studied seriousness been devoted to the trivial issue of a congressional criminal referral.

You know what that is? A letter saying, in effect, "Please look into this." If it comes from the chair of a committee, the Department of Justice traditionally responds in writing or by phone. That response usually amounts to "Thanks, we'll look into it. Maybe."

If it comes from an ordinary member of Congress, the DOJ might not even do that much. Why? Because it's a classic congressional PR stunt. A former DOJ official tells me you could probably wallpaper the Hoover Building with Republican criminal referrals for Hillary Clinton alone.

You know who else can make a criminal referral? You! Just go to the FBI website or call the local office.

Apparently, there is only one U.S. statute that gives any special treatment to congressional criminal referrals: 2 U.S.C. § 194. This lays out the guidelines for contempt of Congress. But there's no special law covering anything else. As former federal prosecutor Andrew McCarthy writes, "it makes no material difference to the DOJ whether a committee transmits a formal referral ('we believe Andy robbed the bank') or instead issues a public report describing its conclusions ('An Investigation into the Awful Things Andy Did at the Bank'). It is just the communication of an accusation."

Now, as a political matter, a criminal referral about a former president is a big deal, particularly given the specific crimes Trump could be charged with.

But a criminal referral from the committee is at best unnecessary and at worst counterproductive.

Atty. Gen. Merrick Garland said last month that he's watching the hearings closely. More important, *he's already investigating*. Alleged Trump conspirator Jeffrey Clark, a former assistant attorney general, had his home raided by the FBI on June 22. In short, there's nothing additional the DOJ would do — or not do — if it received a referral from Congress.

Right now, everyone benefits from this widespread ignorance. The implication that there is some special weight to a criminal referral makes this all seem like more of a criminal proceeding than it actually is. That justifies breathless "Will they or won't they? Stay tuned to find out!" media speculation and coverage. Obviously, it's catnip for those who want Trump prosecuted.

But it also contributes to the martyr complex of Trump supporters who desperately — and relentlessly — try to paint this inquiry as a Stalinist show trial, Salem witch hunt or some other kangaroo court. This is all nonsense. Stalin's show trials involved manufactured evidence and confessions extracted from torture; the Jan. 6 committee struggles to get compliance with subpoenas.

But pretending a criminal referral is a big deal lends weight to the nonsense. If the committee were actually a criminal proceeding, it would be a grotesque violation of due process and a farce. But it's not. It's a poorly designed, but ultimately essential, fact-finding effort. And it's pretty obvious who doesn't want the facts to be found.

There's ample blame to go around for the one-sided nature of the committee. But as much as I agree with the committee's goals, there's no disputing that it's not giving the Trumpists anything like equal time. It's nothing like a Stalinist show trial, as critics bleat and moan, but neither is it an impartial inquiry of the sort required to determine criminal guilt — or even the sort required to launch a criminal investigation.

The Justice Department follows its own procedure, guidelines and counsel for such investigation. In this case, perhaps more than any other, it should stay that way.

A simple report laying out the already compelling evidence would have the same legal effect as a criminal referral. But unlike a simple report, the political effect of a criminal referral could be hugely negative — because the misperception that the Justice Department follows Congress' orders could turn into the misperception that the only reason the department prosecuted at all was because a one-sided, "partisan" committee made a criminal referral. That would be a political gift to Trump and a gigantic unforced error.

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FRANK AUGSTEIN Associated Press

TRAVELERS WAIT at the security checkpoint at Heathrow Airport in London on June 22.

How to survive the air travel boom

I'VE TRAVELED a lot in my life, and I thought I'd seen it all until this summer. Despite some logistical difficulties and restrictions during the pandemic over the past two years, it was still possible to have a smooth trip in the United States and internationally. Last summer, there were very few Americans abroad, particularly in Europe.

This year, it's a different game. Some 63% of Americans are planning to travel this summer, and the industry is experiencing a wave of "revenge travel" — the desire to travel more frequently and indulgently. According to TripAdvisor, the average spending per trip in 2022 is beyond that of 2019 (up 29% for Americans), as consumers look to "level up their travel experience."

Take it from a guy who travels and gives advice about travel for a living — everything you thought you knew about it has changed.

I recently spent time in Europe, and it's as wonderful as ever, once you get there. To get there, you can't set out naively, or even with previous travel knowledge — it will cost you. But there are ways to survive travel — or at least, reduce the pain — even as the airline industry is reeling from staffing shortages, COVID swings up and down, and the weather gets more unpredictable.

Here are some tips for flying this summer. **Track your bags.** When possible, take only carry-on luggage. If you have to check a bag, always attach a digital tracker. These devices allow you to monitor exactly where your bag is, even when an airline loses it, and can show workers where the baggage is if it's misplaced by the airline and can help them get it back to you more quickly. Nearly half a million bags were mishandled in January and February 2022 — that's roughly seven out of every 1,000 bags handled.

Fly nonstop or book flights with very long layovers. The more connections you have, the more you're asking for trouble. I suggest at least a two-hour layover domestically and a

The airline industry is reeling from staffing shortages, COVID upticks and unpredictable weather. Still, many are braving bumpy trips.

By Brian Kelly

four-hour layover internationally to avoid a missed connection. There are many horror stories of missed cruises and weddings because people did not plan enough time and missed a connecting flight. Assume that things will go wrong and that you'll be at the mercy of the airport agents on the day of travel. Try to reduce those odds.

Know your rights as a traveler. Airlines in the U.S. don't really owe you anything. But if you're traveling in Europe, make sure you know about EU261, a regulation that allows passengers to be compensated for delays and cancellations, and how to file claims. Also, file claims with your credit card companies — a lot of them offer coverage for travel interruptions and cancellations. This can save you when things go wrong.

Book directly with airlines, hotels and rental car companies. Overselling is a problem, and the first reservations to go are those through online travel agencies, especially for hotels and rental cars. Similarly, drivers are in such high demand that they'll cancel a ride if they get a more lucrative booking. I booked a Paris hotel room for this summer through an online travel agency, and it was canceled.

Get to the airport hours early. It's never too early. Use apps like FlightAware. There

are a ton of staffing problems at airlines, in addition to a huge increase in demand for flights.

Demand for travel rebounded faster than the airlines expected, and pandemic-induced shortages of pilots, flight attendants and Transportation Security Administration staff haven't been resolved.

Avoid large airports this summer. We have seen the worst travel disruptions in the bigger and more popular airports.

For example, Amsterdam's Schiphol and London's Heathrow have been notorious with huge crowds and canceled flights. In the U.S., more than 15,000 domestic flights were canceled or delayed over the long weekend of June 18-20 because of problems with air traffic control, bad weather and staffing shortages, according to FlightAware.

U.S. airports having the worst problems include Hartsfield-Jackson Atlanta International Airport, John F. Kennedy International Airport and LaGuardia Airport.

If traveling within Europe, try connecting through Edinburgh and other smaller cities to avoid the crowds. If traveling in the U.S., use the same approach: Consider flying to Fort Lauderdale or Palm Beach instead of Miami or to Oakland or Sacramento instead of San Francisco.

Travel is expected to continue to boom through the end of the year. But the same problems facing fliers now are unlikely to end by the fall and holiday season; the problems could continue well into next year. Demand is not going down, so don't expect higher fares — the result of fewer planes in the sky and fewer available seats — to dissuade travelers in the following months.

Some say it's not the destination that matters but the journey. That's particularly true this summer.

BRIAN KELLY is the founder of the Points Guy, a leading website on travel, airline loyalty programs and credit cards.