



STATEMENT OF

**CAROL V. ROSE**  
**EXECUTIVE DIRECTOR, ACLU OF MASSACHUSETTS**

FOR A HEARING ON

**THE ECONOMIC AND HEALTH IMPACTS OF THREATS TO REPRODUCTIVE  
RIGHTS**

BEFORE

**SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS**  
**SUBCOMMITTEE ON ECONOMIC POLICY**

MAY 29, 2024

Chair Warren, Ranking Member Kennedy, and Members of the Committee,

Thank you for holding this hearing and inviting me to testify. My name is Carol V. Rose, and I am the Executive Director of the American Civil Liberties Union of Massachusetts.

In post-*Dobbs* America, authoritarian politicians and civil litigators in search of private bounties<sup>1</sup> seek to control – and plainly deny – reproductive health care and personal bodily autonomy by expanding and misusing criminal and civil laws.<sup>2</sup> At the same time, the U.S. Supreme Court is considering two cases brought by extremists seeking to restrict or even eliminate access to medication abortion and to abortion care during medical emergencies. Massachusetts lawmakers are working to shore up protections for reproductive freedom in our state, but aggressive anti-abortion advocacy at the federal level nonetheless threatens the rights of all residents of the Commonwealth.

Just one month after the Supreme Court overturned *Roe v. Wade*, Massachusetts lawmakers passed a “shield law” to offer legal protections to abortion providers, patients, and helpers in our state.<sup>3</sup> *An Act Expanding Protections for Reproductive and Gender-Affirming Care* takes steps to protect providers’ professional licenses and malpractice insurance, while also prohibiting extradition to other states for those who provide lawful care in Massachusetts and ensuring our state courts do not become a venue for hostile-state claims.<sup>4</sup>

To help people understand their rights under the new state law, Massachusetts Attorney General Andrea Campbell – together with the ACLU of Massachusetts, Reproductive Equity Now, Women’s Bar Foundation, and several law firms – launched the Abortion Legal Hotline in January 2023.<sup>5</sup> This is a free and confidential resource that connects Massachusetts-based health care providers, helpers, and patients obtaining care in the state with legal advice and resources about access to abortion and other forms of reproductive health care.

Two months later, in response to a federal court ruling out of Texas in a case challenging mifepristone access nationwide, Massachusetts Governor Healey announced several steps to

---

<sup>1</sup> Erin Coulehan, Abortion “Bounty” Laws in States Like Texas and Oklahoma: How They Work, *Teen Vogue* (July 7, 2022), <https://www.teenvogue.com/story/abortion-bounty-laws>.

<sup>2</sup> Interactive Map: US Abortion Policies and Access After Roe, Guttmacher Institute (May 15, 2024), [https://states.guttmacher.org/policies/\\_gl=1\\*1osd3uo\\*\\_ga\\*MTEzNDIIMTE2Ni4xNjgwMTAzNjY5\\*\\_ga\\_PYBTC04SP5\\*MTY4NjkyNzg4OC41NS4xLjE2ODY5Mjc4OTEuMC4wLjA](https://states.guttmacher.org/policies/_gl=1*1osd3uo*_ga*MTEzNDIIMTE2Ni4xNjgwMTAzNjY5*_ga_PYBTC04SP5*MTY4NjkyNzg4OC41NS4xLjE2ODY5Mjc4OTEuMC4wLjA).

<sup>3</sup> Alison Kuznitz, Massachusetts abortion protections bill, shielding providers and patients, signed into law by Gov. Charlie Baker, *MassLive* (July 29, 2022), <https://www.masslive.com/politics/2022/07/massachusetts-abortion-protections-bill-shielding-providers-and-patients-signed-into-law-by-gov-charlie-baker.html>.

<sup>4</sup> An Act Expanding Protections for Reproductive and Gender-Affirming Care, Chapter 127 of the Acts of 2022 (July 29, 2022), <https://malegislature.gov/Laws/SessionLaws/Acts/2022/Chapter127>.

<sup>5</sup> Abby Patkin, With new Mass. hotline, free abortion legal advice is just a call away, *Boston.com* (January 30, 2023), <https://www.boston.com/news/health/2023/01/30/massachusetts-abortion-legal-hotline-launch-reproductive-rights-access/>.

protect access to medication abortion in the Commonwealth. She directed the University of Massachusetts and health care providers to purchase and stockpile approximately 15,000 doses of mifepristone. Governor Healey also issued an Executive Order confirming that the 2022 shield law applies to medication abortion, including mifepristone,<sup>6</sup> and the Department of Public Health and Board of Registration in Medicine quickly issued implementing guidance.<sup>7</sup> Collectively, these actions help to ensure that providers can continue to prescribe and dispense mifepristone in Massachusetts.

Since the Supreme Court overturned *Roe*, Massachusetts lawmakers at every level of government have taken bold, timely steps to protect access to reproductive health care in our Commonwealth. However, anti-abortion judges and politicians have made clear that they do not intend to stop at ending federal constitutional protections for abortion care. Their goal is to eliminate access to abortion and other forms of reproductive health care in all 50 states, including in the Commonwealth. This anti-democratic cadre remains intent on banning abortion and other essential health care nationwide, threatening core Massachusetts values, as well as state laws and policies that have been carefully considered and adopted by our state's elected leaders, and – most importantly – fundamental access to reproductive health care and bodily integrity for the people of the Commonwealth.

We are alarmed by authoritarian politicians in Congress who are pushing federal policies to restrict the reproductive freedoms we have fought so hard to protect here in the Commonwealth. Anti-abortion politicians at the federal level have not been covert about their plans to ban abortion nationwide. A national abortion ban would pose a direct and dire threat to reproductive freedom in Massachusetts, and anti-abortion politicians in Congress have deployed a variety of tactics in service of their campaign to ban abortion nationwide.

One key tactic proposed by anti-abortion extremists in Congress is a proposed national 15-week abortion ban. If enacted, a nationwide abortion ban like the one proposed in Congress<sup>8</sup> would make all abortions in every state, including Massachusetts, illegal after 15 weeks with only limited exceptions. This extreme bill goes even further by subjecting doctors and health care providers to criminal penalties for failure to comply with the ban.

---

<sup>6</sup> Executive Order 609, “Protecting Access to Medication Abortion Services in the Commonwealth,” (April 10, 2023), <https://www.mass.gov/doc/protecting-access-to-medicated-abortion/download>.

<sup>7</sup> Board of Registration in Medicine, Guidance Implementing Executive Order 609 Regarding Reproductive Health Medications, (April 10, 2023), <https://www.mass.gov/news/guidance-implementing-executive-order-609-regarding-reproductive-health-medications>.

<sup>8</sup> Graham Introduces Legislation to Protect Unborn Children, Bring U.S. Abortion Policy in Line with Other Developed Nations, U.S. Senator Lindsey Graham (September 13, 2022), <https://www.lgraham.senate.gov/public/index.cfm/2022/9/graham-introduces-legislation-to-protect-unborn-children-bring-u-s-abortion-policy-in-line-with-other-developed-nations>.

It is important to highlight the harms of an enacted national abortion ban on the people of Massachusetts. In the nearly two years since *Roe* was overturned, abortion bans in dozens of states across the country have created chaos and suffering for patients and providers. In states with abortion bans, clinics providing essential health care have been forced to close, leaving millions of people without access to abortion care as well as other reproductive health care.<sup>9</sup> Patients have been denied critically needed emergency abortion care, creating serious risks to their health and against their doctors' medical judgment.<sup>10</sup> Under a national ban, people in Massachusetts would be forced to carry pregnancies against their will, and doctors and health care providers would have to choose between providing essential health care and potentially facing criminal charges and even jail time.

Forcing someone to carry a pregnancy against their will has life-altering consequences, from enduring the health risks of continuing a pregnancy and childbirth, to making it harder to escape poverty, achieve education or career goals, and making it more difficult to leave an abusive partner. These consequences fall disproportionately on communities of color, people living on low incomes, undocumented immigrants, young people, LGBTQ people, and people with disabilities. These harms, especially the serious health risks of being forced to give birth, fall hardest on Black women, who are already three times more likely than white women to die during childbirth or shortly after.<sup>11</sup>

And while the current proposed bill for a national abortion ban includes very narrow exceptions for rape or incest, or for the life and health of the pregnant person, we've seen already in states with abortion bans how little these exceptions do to ensure that people can get essential health care. We've heard heartbreaking stories of women who were denied medically necessary abortion care and faced life-threatening consequences, despite their state bans having narrow life

---

<sup>9</sup> See Marielle Kirstein et al., 100 Days Post-Roe: At Least 66 Clinics Across 15 US States Have Stopped Offering Abortion Care, Guttmacher Inst. (October 6, 2022), <https://www.guttmacher.org/2022/10/100-days-post-roe-least-66-clinics-across-15-us-states-have-stopped-offering-abortion-care>.

<sup>10</sup> See, e.g., NWLC Files EMTALA and Sex Discrimination Complaints on Behalf of Mylissa Farmer, Nat'l Women's L. Ctr. (November 8, 2022), <https://nwlc.org/resource/nwlc-files-emtala-and-sex-discrimination-complaints-on-behalf-of-mylissa-farmer/>; Caroline Kitchener, Two friends were denied care after Florida banned abortion. One almost died., Wash. Post (April 10, 2023, 6:00 AM), <https://www.washingtonpost.com/politics/2023/04/10/pprom-florida-abortion-ban/>; Sam Karlin, Louisiana woman who was denied an abortion for a fetus without a skull gets procedure in New York, The Advocate (September 14, 2022), [https://www.theadvocate.com/baton\\_rouge/news/louisiana-woman-who-was-denied-an-abortion-for-a-fetus-without-a-skull-gets-procedure/article\\_b23b2b48-3458-11ed-bd50-27875e9118ec.html](https://www.theadvocate.com/baton_rouge/news/louisiana-woman-who-was-denied-an-abortion-for-a-fetus-without-a-skull-gets-procedure/article_b23b2b48-3458-11ed-bd50-27875e9118ec.html).

<sup>11</sup> See Priya Krishnakumar & Daniel Wolfe, How outlawing abortion could worsen America's maternal mortality crisis, CNN (June 24, 2022), <https://www.cnn.com/2022/05/10/us/maternal-mortality-roe-wade-abortion-access/index.html>.

and health exceptions.<sup>12</sup> It is cruel and unfair to expect survivors of sexual assault or incest, or someone in the middle of a medical emergency, to plead for permission to access the care they need and their doctors authorize. Everyone should be able to get the abortion and reproductive health care they need, when they need it.

Not content with a national abortion ban at 15 weeks, extremists in Congress are also pushing radical federal legislation that would give legal rights to embryos and fetuses. These efforts are just the latest in a long history of anti-abortion extremists attempting to strip people of their reproductive rights by expanding legal rights for embryos and fetuses. For decades, anti-abortion politicians have incorporated this so-called “personhood” language into state laws.<sup>13</sup> Extremists in Congress have expanded the reach of this threat to states with protections for abortion and other forms of reproductive health by pushing federal legislation, including the Life at Conception Act.<sup>14</sup> This extreme piece of federal legislation would extend rights to embryos and fetuses with the intent to make all abortion illegal nationwide, including in Massachusetts where such care is protected.

But that is not all. As is often true of policies that ban or restrict abortion care, so-called “personhood” laws also threaten to impact the ability to access other forms of reproductive health care, including contraception, infertility treatment, and miscarriage care. Purporting that embryos and fertilized eggs are “people” under the law would cause chaos and confusion that would disrupt access to many kinds of essential health care in the Commonwealth and nationwide.

The strategy to ban abortion in all 50 states doesn’t end with federal legislation. Extremist politicians and their supporters have even threatened to attempt a back-door national abortion ban, circumventing Congress, by misusing a 150-year-old law known as the Comstock Act.

The Comstock Act, named after “a prominent anti-vice crusader who believed that anything remotely touching upon sex was . . . obscene,”<sup>15</sup> was passed in 1873 – less than a decade after the end of the Civil War and nearly 50 years before the ratification of the 19th Amendment. The

---

<sup>12</sup> See e.g., *Cox v. Texas*, Center for Reproductive Rights (December 12, 2023), <https://reproductiverights.org/case/cox-v-texas/>; *Zurawski v. State of Texas*, Center for Reproductive Rights (March 6, 2023), <https://reproductiverights.org/case/zurawski-v-texas-abortion-emergency-exceptions/>; Medical Emergency Exceptions to State Abortion Bans: Idaho, Tennessee and Oklahoma, Center for Reproductive Rights (September 12, 2023), <https://reproductiverights.org/case/emergency-exceptions-abortion-bans-idaho-tennessee-oklahoma/>.

<sup>13</sup> See Megan Messerly, ‘Scratching their heads’: State lawmakers take a closer look at personhood laws in wake of Alabama ruling, Politico (February 29, 2024), <https://www.politico.com/news/2024/02/29/states-fetus-personhood-alabama-ivf-00143973#:~:text=Nineteen%20states%20have%20either%20broad%20personhood%20provisions,report%20from%20the%20left%20cleaning%20organization%20Pregnancy%20Justice>.

<sup>14</sup> H.R.431 - 118th Congress (2023-2024): Life at Conception Act, (January 20, 2023), <https://www.congress.gov/bill/118th-congress/house-bill/431>.

<sup>15</sup> *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 70 n.19 (1983).

Comstock Act restricts using the mail and common carriers to send and receive certain "obscene" items. Anti-abortion extremists claim that it is a national abortion ban already on the books, just waiting to be enforced by a radical anti-abortion President. This view of the Comstock Act is wrong. For decades, the Department of Justice and every court of appeals to consider the issue have held that the Comstock Act only applies in the context of unlawful abortions. The only court to ever conclude differently is the district court in *Alliance for Hippocratic Medicine v. FDA*, the anti-abortion plaintiffs' hand-selected jurist – chosen for the purpose of obtaining rulings that advance their radical agenda.

Threatening to misuse the Comstock Act is thus another effort by anti-abortion extremists to manipulate the law in service of their goal of banning abortion in all 50 states. If anti-abortion extremists get their way, the Comstock Act could be misused to ban the shipping of any medicines and medical supplies used for abortion, contraception, IVF, and miscarriage care, threatening access to reproductive health care nationwide – even in Massachusetts and other states where reproductive rights are protected.

By pushing policies to override state protections for abortion and other reproductive health care, authoritarian forces clearly seek to ban access to contraception and abortion care nationwide. Massachusetts elected leaders have, time and again, upheld the will of the voters by taking bold action to protect the bodily integrity of our people, including access to abortion care, contraception, miscarriage care, and IVF. We applaud tireless efforts by Massachusetts elected officials to defend and preserve the right to body integrity free from government interference, and to ensure a future where every person in every state can access the reproductive health care they need.