Physicians for Human Rights

THE OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE

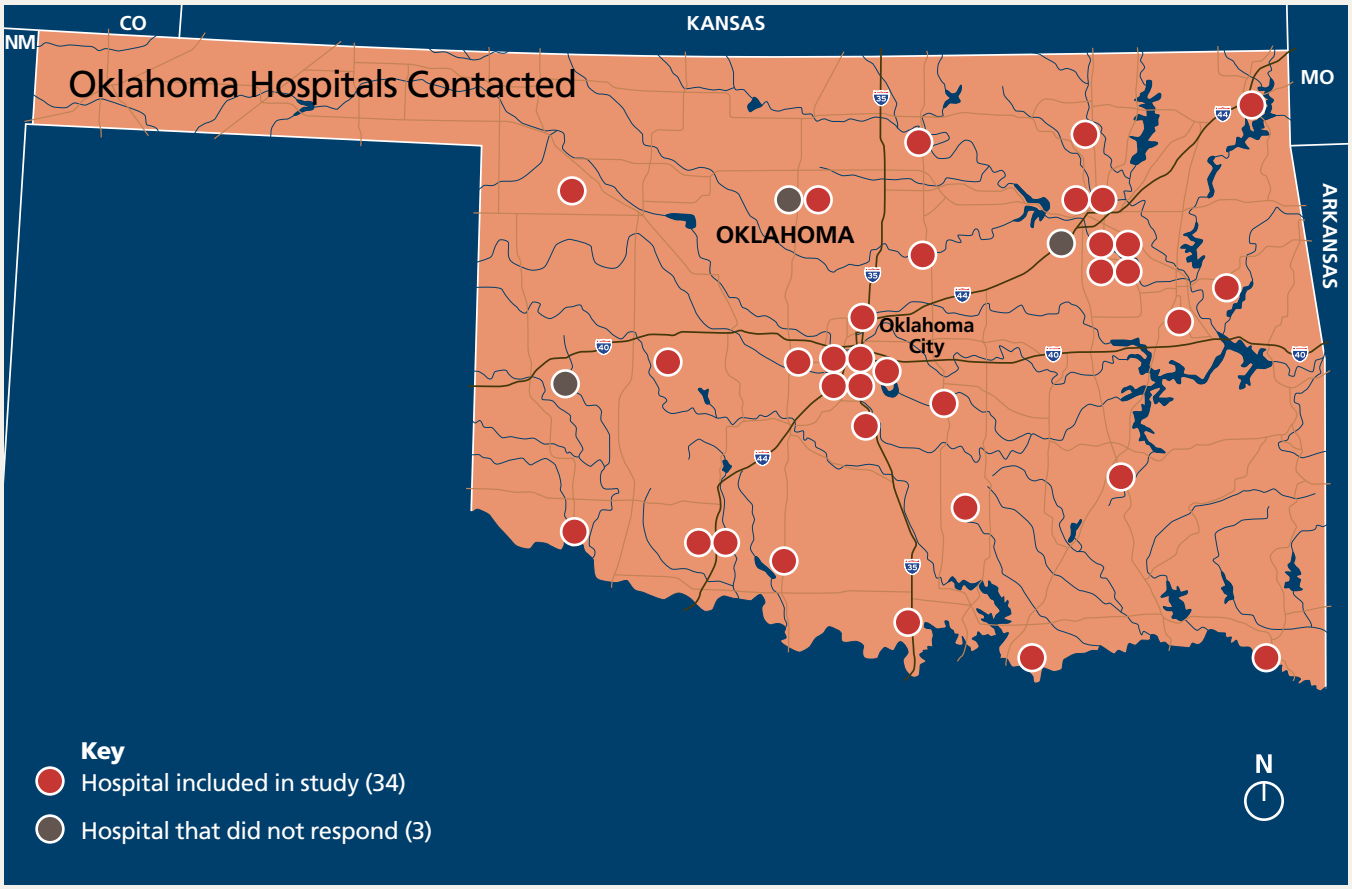
CENTER *for* REPRODUCTIVE RIGHTS

No One Could Say

Accessing Emergency Obstetrics Information as a Prospective Prenatal Patient in Post-*Roe* Oklahoma

Executive Summary April 2023

Oklahoma Hospitals Contacted



22/34

Hospitals that could not provide information about procedures, policies, or support for doctors when clinicians decide that an abortion is necessary to save the pregnant patient's life.

2/34

Hospitals that reported that legal support is provided to clinicians deciding whether to perform a lifesaving abortion.

7/34

Hospitals that stated that the safety of the pregnant person is of paramount importance/prioritized.

7/34

Hospitals that stated that the pregnant person would have a role in determining whether to end a pregnancy in an emergency where their life could be at risk.

Cover: Operating room in a hospital. Photo: Shutterstock Images

Oklahoma's multiple, overlapping, and punitive abortion laws cause confusion regarding clinicians' ability to provide health and life-saving care during obstetric emergencies without punishment.

Executive Summary

In the wake of the 2022 U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, **Oklahoma residents are currently living under three overlapping and inconsistent state abortion bans that, if violated, impose severe civil and criminal penalties on health care providers.** Exceptions to these new laws, enacted around the Supreme Court's overturning of its 1973 ruling in *Roe v. Wade*, are extremely limited and confusing to health professionals and potential patients alike. Because the exceptions drafted by legislators are often conflicting and use non-medical terminology, they sow confusion around what kinds of care and procedures health care providers can legally offer when a pregnancy threatens a person's health or life. These challenges, combined with the significant penalties under these bans, constitute a situation of "dual loyalty": **health professionals are forced to balance their obligation to provide ethical, high-quality medical care against the threat of legal and professional sanctions.** The decision to provide emergency medical care risks becoming a legal question – determined by lawyers – rather than a question of clinical judgment and the duty of care to the patient – determined by health care professionals.

In light of the extensive anti-abortion legal framework newly in place in the state, Oklahoma offers an important insight into the potential effects of near-total abortion bans on pregnant patients and the clinicians who care for them. While bans such as Oklahoma's have already severely limited access to abortion medication or procedures, reproductive justice advocates have raised concerns that it is especially unclear what care remains accessible in practice in cases of obstetric emergencies. Accordingly, Physicians for Human Rights (PHR), Oklahoma Call for Reproductive Justice (OCRJ), and the Center for Reproductive Rights (CRR) have examined Oklahoma as a case study to investigate two key questions:

- Do hospitals have policies and/or protocols that govern decision-making when pregnant people face medical emergencies, and are pregnant people in Oklahoma able to receive information on these policies, if they do exist?
- If information is provided to prospective patients on hospital policies and/or protocols related to obstetric emergency care, what is the content and quality of that information?

To study these questions, PHR, OCRJ, and CRR used a "simulated patient" research methodology, in which research assistants posed as prospective patients and called hospitals that provide prenatal and peripartum care across the state of Oklahoma to ask questions related to emergency pregnancy care.

The results of this research are alarming. Not a single hospital in Oklahoma appeared to be able to articulate clear, consistent policies for emergency obstetric care that supported their clinicians' ability to make decisions based solely on their clinical judgement and pregnant patients' stated preferences and needs. Of the 34 out of 37 hospitals offering obstetric care across the state of Oklahoma that were reached, 65 percent (22 hospitals) were unable to provide information about procedures, policies, or support provided to doctors when the clinical decision is that it is necessary to terminate a pregnancy to save the life of a pregnant patient; only two hospitals described providing legal support for clinicians in such situations. In 14 cases (41 percent), hospital representatives provided unclear and/or incomplete answers about whether doctors require approval to perform a medically necessary abortion. Three hospitals indicated that they have policies for these situations but refused to share any information about them; four stated they have approval processes that clinicians must go through if they deem it necessary to terminate a pregnancy; and three stated that their hospitals do not provide abortions at all. (Oklahoma hospitals that are affiliated with an Indigenous nation were excluded from the study; because they operate under federal oversight, it is unclear how the Oklahoma bans impact them.) Some examples of the information the simulated patients received include:

- **One hospital representative claimed: "If the situation is truly life-threatening, decisions will be made," without explaining how those decisions would be made or by whom.**
- Another hospital representative stated that, "[i]t is tricky because of state laws, but we will not let the mom die."
- In one circumstance, the caller was told that a pregnant patient's body would be used as an "incubator" to carry the baby as long as possible.
- At one hospital, a staff member put the simulated caller on hold and, after consulting with a hospital physician, told the caller, "Nowhere in the state of Oklahoma can you get an abortion for any reason," even though the bans have exceptions.

Hospitals provided opaque, contradictory, and incorrect information about when an abortion is available; lacked clarity on criteria and approval processes for abortions; and offered little reassurance to patients that their survival would be prioritized or that their perspectives would be considered.

The Oklahoma state flag flies over the State Capitol in Oklahoma City. At the time of this report's publication, Oklahoma has three overlapping abortion bans in place (two civil and one criminal), as well as a homicide statue that can be applied to the provision of abortions. Photo: Visions of America/Universal Images Group via Getty Images

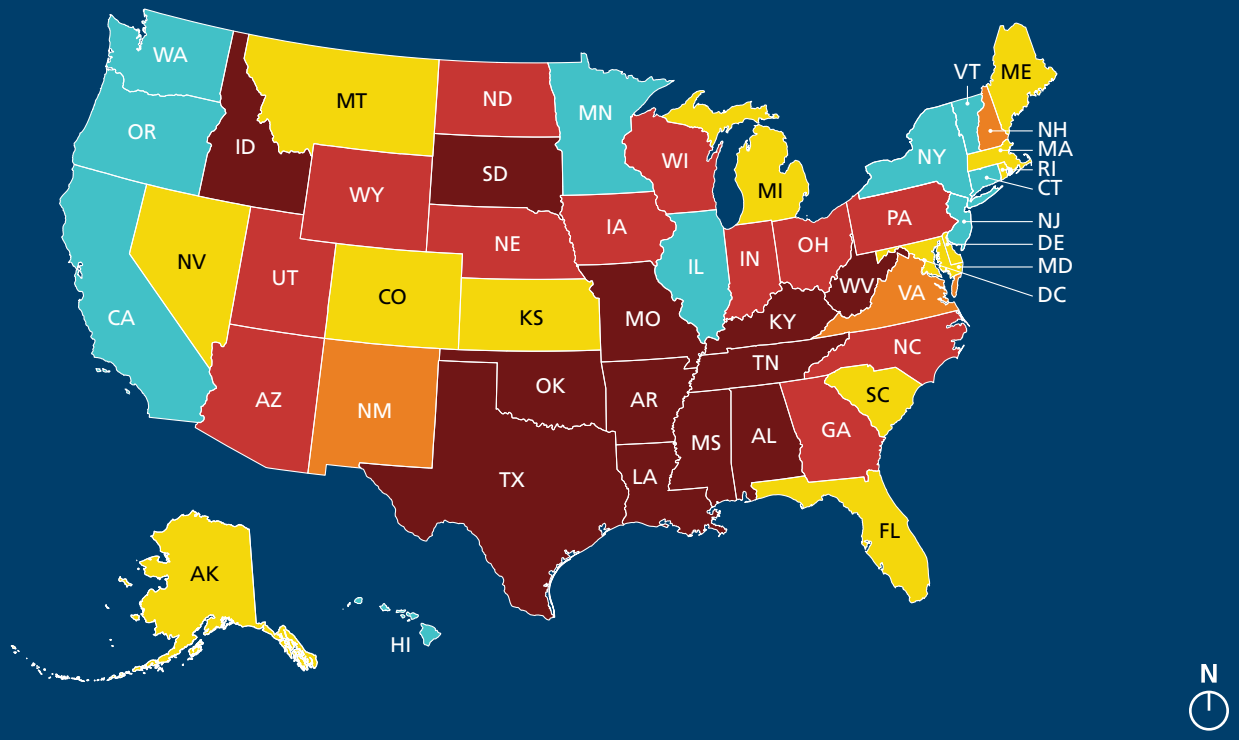
In sum, in response to questioning, hospitals provided opaque, contradictory, and incorrect information about when an abortion is available; lacked clarity on criteria and approval processes for abortions; and offered little reassurance to patients that their survival would be prioritized or that their perspectives would be considered.

The study's findings demonstrate that despite apparently good-faith efforts from most hospital representatives, callers could not access clear and accurate information about the care they would receive if facing a pregnancy-related medical emergency at any given institution. Moreover, the information they received was often confusing – at some hospitals, callers received conflicting information from separate staff within the same hospital. **These findings raise grave concerns about the ability of a pregnant person in Oklahoma – and the other 11 states with similar, near-total abortion bans – to receive clear, sufficient, and necessary information to make informed decisions about their medical care, as well as the ability of such patients to receive medically-necessary treatment.** Callers also found that some hospital administrations, in an effort to comply with state laws, imposed restrictive policies on medical personnel that would impede their ability to provide prompt and effective care for pregnant patients with medical emergencies, including in cases of miscarriage.

Health care providers face a similarly untenable situation under the current abortion bans. The criminalization of abortion denies access to abortion for pregnant people under most circumstances, and narrow exceptions such as "only to save the life" of the pregnant patient lead to confusion, uncertainty, and fear, both for pregnant people and for the hospitals and health care providers that care for them. **Clinicians face severe criminal and civil penalties, such as the loss of their medical licenses and long prison sentences,** if prosecutors and state legislators disagree with their medical decision-making. In light of these obstacles, pregnant people are faced with the frightening possibility that they will be unable to receive science-informed, patient-centered, and ethical medical care should they face an obstetric emergency.

These results reflect how **Oklahoma's abortion bans threaten the health and well-being of pregnant people and violate their human rights.** These violations include individuals' rights to life, health, equality, information, freedom from torture and ill-treatment, and to exercise reproductive autonomy. These findings further affirm what has been recognized by the World Health Organization: that the criminalization and penalization of abortion care – even with an exception for medical necessity – is fundamentally inconsistent with evidence-based, ethical, and patient-centered health care.

Abortion Laws by State



Expanded Access
The right to abortion is protected by state statutes or state constitutions, and other laws and policies have created additional access to abortion care.

Protected
The right to abortion is protected by state law but there are limitations on access to care.

Not Protected
Abortion may continue to be accessible in these states but would be unprotected by state law.

Hostile
States that have expressed a desire to prohibit abortion entirely, and are vulnerable to the revival of old abortion bans or the enactment of new ones. No legal protections for abortion.

Illegal
States that ban abortion entirely and enforce those bans through criminal penalties.

Source: Center for Reproductive Rights

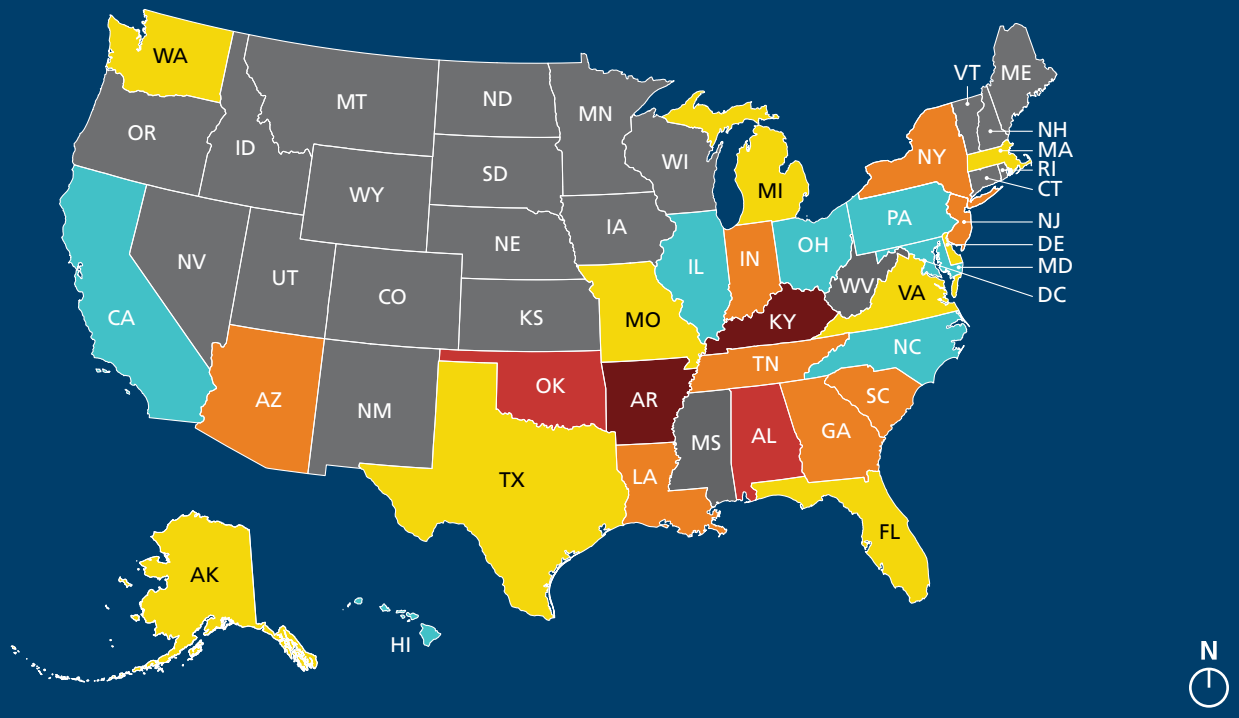
American Medical Association President Jack Resneck, Jr. has decried the "chaos" into which health care has been thrust since the *Dobbs* decision, describing physicians as "caught between good medicine and bad law."

One hospital representative claimed: "If the situation is truly life-threatening, decisions will be made," without explaining how those decisions would be made or by whom.

In one circumstance, the caller was told that a pregnant patient's body would be used as an "incubator" to carry the baby as long as possible.

U.S. Maternal Deaths per 100,000 Live Births by State, 2018

Pregnant people living in a state that banned abortion after *Dobbs* were up to **three times more likely to die** during pregnancy, childbirth, or soon after giving birth compared to pregnant people in states that did not ban abortion.



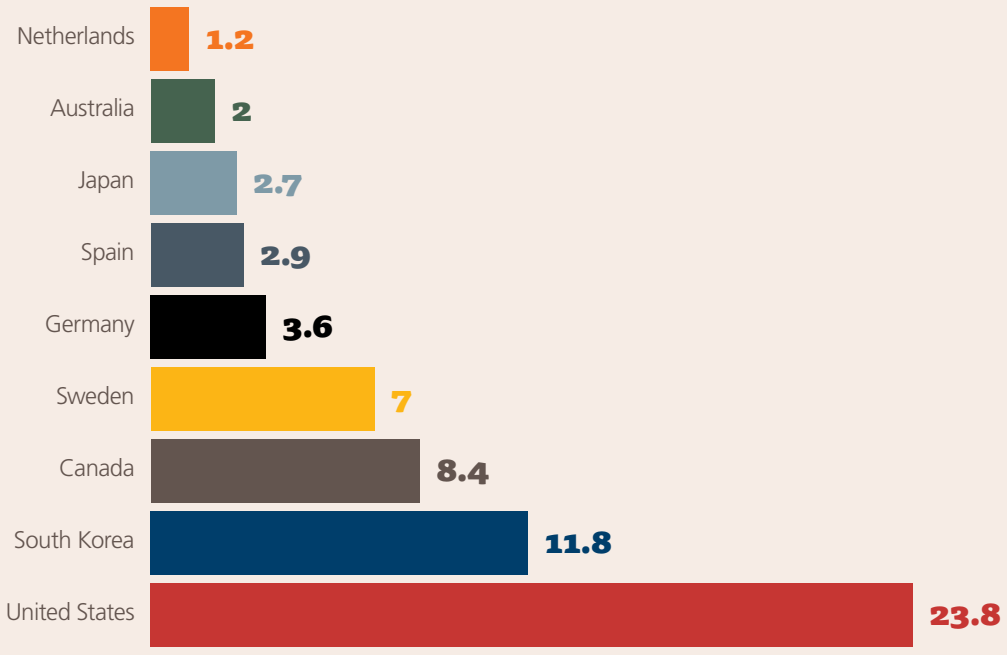
Source: National Center for Health Statistics, Gender Equity Policy Institute

Note: Maternal death is defined as a death during pregnancy or within 42 days after pregnancy due to any cause related to or aggravated by pregnancy or its management.

U.S. Maternal Mortality Rate Compared to Select High-Income Countries

In 2020, the U.S. had 23.8 maternal deaths per 100,000 live births, more than **double the rate** of other high-income countries

Source: Organisation for Economic Co-operation and Development



Conclusion and Recommendations

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Dr. Nisha Virma of Physicians for Reproductive Health speaks about reproductive rights outside the U.S. Capitol in August 2022, following the Supreme Court's June 2022 reversal of Roe v. Wade. *In the present study, researchers did not receive clear information about whether doctors in Oklahoma hospitals were free to make decisions in cases of obstetric emergencies, or whether they needed approval from administrative oversight bodies.*
Photo: Drew Angerer/Getty Images

Based on the findings of this report, not a single hospital in Oklahoma appeared to be able to articulate clear, consistent policies for emergency obstetric care or clearly explain how a prospective patient's life would be prioritized or protected if faced with an obstetrical emergency. Oklahoma's multiple, overlapping, and punitive abortion laws cause confusion regarding clinicians' ability to provide health and life-saving care during obstetric emergencies without punishment.

These findings also underscore how health care providers in Oklahoma are placed in a situation of dual loyalty, forcing them to balance their obligation to provide ethical, high-quality medical care against the threat of legal and professional sanctions. Health professionals are effectively prevented from providing patient-centered care consistent with established medical and ethical standards of care, while pregnant people seeking obstetric care in the state are unable to obtain the information necessary to make informed decisions about their own health care. These risks are further compounded for populations already facing significant challenges and barriers in accessing essential medical care, including bias and discrimination.

Oklahoma's abortion bans raise serious human rights concerns, including relating to violations of individuals' rights to life, health, equality, information, freedom from torture and ill-treatment, and freedom to exercise reproductive autonomy.

These findings raise grave concerns about the ability of a pregnant person in Oklahoma – and other states with similar abortion bans – to receive clear, sufficient, and necessary information to make informed decisions about their medical care, and the ability of such patients to receive medically-necessary treatment.

Read the full report at:
phr.org/oklahoma-abortion-rights

Conclusion and Recommendations

continued

Because the current legal status is untenable, Physicians for Human Rights, Oklahoma Call for Reproductive Justice, and the Center for Reproductive Rights make the following recommendations:

To the Oklahoma Legislature:

- **Repeal Oklahoma's abortion bans and decriminalize abortion.** Remove all civil and legal penalties for abortion, including against health care providers.

- **Ensure that health care services for pregnant people and all Oklahomans are accessible and of good quality.** Policies should facilitate and expand, not limit, access to health care for people in Oklahoma. They should also address Oklahoma's maternal mortality disparities and disparities in underlying social determinants of health that cause certain communities, including Black, Indigenous, and other Oklahomans of color, to experience adverse health outcomes.

To Oklahoma's Hospitals and Health Care Professionals:

- **Speak out against laws criminalizing abortion or otherwise restricting access to abortions, including during obstetric emergencies.** Health care professionals and institutions should speak out about how abortion bans harm patients, undermine the ability of health care providers to fulfill their professional and ethical obligations, and are inconsistent with evidence-based, patient-centered, and ethical medical care.

- **Build knowledge and awareness of professional recommendations and guidance for providing abortion services.** Oklahoma hospitals and other health care providers must better ensure that staff and clinicians in clinical settings are acting in accordance with the recommendations that the American Medical Association (AMA), the American College of Obstetricians and Gynecologists (ACOG), and other medical professional organizations have made affirming ethical and professional obligations to provide abortion services to patients.

To State and National Medical Associations:

- **Publicly condemn abortion bans and continue to speak out against the dual loyalty impacts of abortion bans, including citing evidence of how such laws undermine ethical obligations and professional duties of care.** Associations such as the AMA and ACOG, including their state chapters, should advocate against this undue interference in the practice of medicine and engage at the state and national level to remove civil and legal penalties for abortion and maternal health care, and to secure rights.

To the Federal Government:

- **Enact and implement national laws and policies that ensure rights and remove barriers to abortion care and maternal health care.** Ensure that all people can access comprehensive reproductive health care with dignity, free from discrimination and criminalization, regardless of where they live.

To Professionals Who Provide Social, Legal, and Related Services to Pregnant People in Oklahoma and Nationally:

- **Support pregnant people in navigating barriers to access the care they need.** Social workers, mental health counselors, domestic violence assistance organizations, legal services providers, and other professionals should advocate for their clients to receive medically appropriate care, including abortions when necessary to preserve their health or life.

- **Raise awareness of the discriminatory impacts and harms of laws criminalizing abortion.** Professionals who provide support services to pregnant people are uniquely positioned to understand and speak out against the practical impact of abortion bans on their clients, including pregnant people for whom abortion may be necessary to preserve their health or life.

To Social Justice Advocates in Oklahoma and Nationally:

- **Adopt an intersectional approach supporting solidarity in opposing abortion bans and supporting reproductive autonomy.** Advocates for racial and economic justice, for bodily autonomy, for patients and providers, and for families and children should join reproductive health, rights, and justice advocates in opposing abortion bans and supporting pregnant people's ability to access reproductive health care.

To Researchers and Research Institutes:

- **Continue to systematically monitor and evaluate the impact of abortion bans on patients and providers.** Build on existing research and share information to deepen awareness and understanding of the full scope of harms resulting from restrictive abortion laws and the criminalization of abortion services.

These findings affirm what has been recognized by the World Health Organization: that the criminalization and penalization of abortion care – even with an exception for medical necessity – is fundamentally inconsistent with evidence-based, ethical, and patient-centered health care, and with human rights.