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Online ISSN: 2643-7759

Recommended Citation
DOI: https://dx.doi.org/10.25148/lawrev.18.3.11

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THE ABORTION ARCHIPELAGO: A POTENTIAL RETURN TO SAN JUAN POST DOBBS

Grant Albert*

ABSTRACT

On June 24, 2022, the Supreme Court of the United States held in Dobbs v. Jackson Women’s Health Organization that there is no constitutional right to abortion. In one swoop, the Court overturned Roe v. Wade and its progeny, Planned Parenthood v. Casey. Writing for the majority, Justice Samuel Alito reasoned that the appropriate stage for abortion issues is at the state level, with legislatures and its constituents to decide. This new delegation of authority has left an ample amount of gray area—chiefly among them where, when, and how a woman would procure an abortion in the post-Roe United States.

While states like California, New York, and Illinois aim to provide ample access for a woman to terminate a pregnancy, states like Texas, Oklahoma, and Mississippi have restricted abortion to an absolute minimum. This paper will discuss whether the U.S. territory of Puerto Rico could be another option for women, albeit likely affluent, to travel to and from to terminate their pregnancy.

Additionally, this paper will compare Puerto Rico’s abortion law—where some legislators attempted to put into place a twenty-four-week ban—to southeastern states’ laws as well as some neighboring nations in the Caribbean. This will require a comparison of statutes, cases—federal, state, and territorial—and statistics.

The Supreme Court of Puerto Rico held long ago in People v. Duarte Mendoza that Roe applies to the U.S. territory, and this Paper predicts that women, who can travel from Florida to Puerto Rico, for example, can procure an abortion. For the reasons mentioned below, it appears likely, or at least feasible, that women living in states with restricted abortion access will travel to the archipelago to terminate their pregnancies.

* Juris Doctor, 2023. Thank you, Elena, Larry, Francisco, and Professor Phyllis Kotev.
I. INTRODUCTION

As clear as the *Dobbs*¹ Court was when it overturned *Roe*² and *Casey*³ and left matters of abortion to the states,⁴ its dissenters questioned the long-term effects and lambasted the majority’s belief that those “heady days”⁵ of federal oversight in this area had ended.⁶ But would traveling to Toronto, as the dissenting justices wrote, be necessary for those who could take a flight to Puerto Rico’s capital, San Juan, instead?⁷ In the commonwealth’s watershed case, *People v. Duarte Mendoza*,⁸ the Puerto Rican Supreme Court held that *Roe* applied to the commonwealth just as much as it applied to the states and is armored by “a clause in the island’s Constitution that guaranteed

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⁴ See *Dobbs*, 597 U.S. at 300.
⁶ *Dobbs*, 597 U.S. at 361–62 (Breyer, Sotomayor & Kagan, JJ., dissenting) (“After this decision, some States may block women from traveling out of State to obtain abortions, or even from receiving abortion medications from out of State. Some may criminalize efforts, including the provision of information or funding, to help women gain access to other States’ abortion services. Most threatening of all, no language in today’s decision stops the Federal Government from prohibiting abortions nationwide, once again from the moment of conception and without exceptions for rape or incest. If that happens, ‘the views of [an individual State’s] citizens’ will not matter. The challenge for a woman will be to finance a trip not to ‘New York [or] California’ but to Toronto.”).
⁷ See *id.* at 362.
⁸ *Pueblo v. Duarte Mendoza*, 9 P.R. Offic. Trans. 797 (1980). “The basis for this right is the concept of personal freedom protected by the clauses on due process of law of the Fifth and Fourteenth Amendments of the U.S. Constitution and it has been classified as fundamental by the U.S. Supreme Court. As such, it is applicable to Puerto Rico.” *Id.* at 802 (internal citations omitted).
the right to intimacy.”10 In People v. Najul Bez, the archipelago’s supreme court affirmed a woman’s right to have an abortion performed during the first trimester of pregnancy and recognized the “most ample notions of physical, mental or socio-emotional well-being” in the health exception to the criminal prohibition of abortion.10 Both cases are still good law, and a woman can secure an abortion without the hand of the government pushing them back.11

Nonetheless, Puerto Rico may no longer have “one of the most liberal abortion laws in the world.”12 Currently, five bills introduced in the Puerto Rican Senate—one Senate bill and four bills before the House of Representatives—aim to curb abortion. One such bill is Proyecto del Senado 693 (P.S. 693),13 which would make “everything conceived [within] . . . twenty-two . . . weeks [of] . . . gestation . . . viable.” At an April 2022 press gathering in South Florida, Puerto Rico’s Lieutenant Governor, Jeanette Núñez, told reporters, “Governor DeSantis and I remain steadfast in our commitment to defending the sanctity of innocent human life and protecting the unborn.”14

Regardless, this Paper will address whether women could travel from a restrictive state to Puerto Rico and procure an abortion. Despite the possible amendments to Puerto Rico’s abortion laws—as well as the prevailing infrastructure, security, and medical expertise—it is still at least theoretically sound and could remain a plausible avenue for a woman of means to purchase an airline ticket to Puerto Rico, have an abortion, and travel home. It is undoubtedly a circuitous route, but state legislatures in the South and Midwest have remained firm on enacting near-total bans to save the life of the fetus.

The second section of this Paper will be devoted to the tragicomedy of Puerto Rico’s history with reproductive health. In the pre-Roe era, it was not unusual for a woman to travel from the States to Puerto Rico to procure an

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abortion, known colloquially as the “San Juan Weekend.” Moreover, the “Plan B” pill or modern-day birth control would not have been possible without the trials conducted in Puerto Rico during the mid-nineteenth century, which led to the forced sterilizations of countless women on the archipelago.

The third section will compare Puerto Rico’s current and possible future legislation to that of the continental United States and Puerto Rico’s neighboring countries. For example, Florida’s First District Court of Appeal recently held that a parentless sixteen-year-old was not “mature enough” to terminate her pregnancy. Additionally, Florida’s legislature enacted a new law that bans most abortions after fifteen weeks.

Similarly, Ohio would not permit a ten-year-old rape victim to seek an abortion, and she had to travel to Indiana to terminate her pregnancy. Arizona had taken to the news when a judge ruled to resurrect a 158-year-old total abortion restriction that lay dormant when Roe was still good law. In Arizona, “abortions . . . performed must submit to the department of health services on a form prescribed by the department a report of each abortion performed in the hospital or facility.” Likewise, Texas’s Senate Bill 8 made national news with its aim to criminalize any person who “aids or abets” in the procurement of an abortion and permits a private citizen to file a lawsuit for damages against such persons. Lastly, Georgia’s Supreme Court temporarily reinstated its near-total abortion ban after staying a lower court order that blocked the law.

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15 See Reichard, supra note 12.
22 S.B. 8, 87th Leg., Reg. Sess. (Tex. 2021); see also Whole Woman’s Health v. Jackson, 595 U.S. 30, 44 (2021) (“Supposing the attorney general did have some enforcement authority under S. B. 8, the petitioners have identified nothing that might allow a federal court to parlay that authority, or any defendant’s enforcement authority, into an injunction against any and all unnamed private persons who might seek to bring their own S. B. 8 suits.”).
Finally, section four will ultimately posit that while the law on the archipelago is shifting toward a more conservative paradigm, Puerto Rico could remain a hub that allows women to travel to and stay in Puerto Rico to terminate their pregnancy. Post-Roe is leading to litigation between abortion pills\(^{24}\) and different states’ constitutional rights to privacy; the ability to travel to an archipelago could traverse these thorny, lengthy new legal issues.

II. THE COMMONWEALTH’S SORDID HISTORY WITH REPRODUCTIVE HEALTH

Just four years after the United States’ invasion of Puerto Rico in 1902, the archipelago, via its new leaders, banned abortion entirely via Puerto Rico’s penal code,\(^{25}\) which punished those who performed abortions. By 1937, the legislature kept the prohibition but carved out an exception: protecting the woman’s life or health.\(^{26}\)

With abortion laws stagnating for much of the nineteenth century, the eugenics movement provided fodder. Along with the other legislation, laws were enacted to enable the systemic use of mass sterilization as birth control as part of control trials for the modern-day Plan-B Pill.\(^{27}\) U.S. researcher Gregory Pincus landed in Puerto Rico in 1955.\(^{28}\) Pincus, and his colleague John Rock, had recently found tremendous success with their pill trials back in Boston, “[b]ut without large-scale human trials, the drug would never receive the FDA approval necessary to bring the drug to market.”\(^{29}\) Pincus soon flocked to Puerto Rico to escape Massachusetts’s moral and legal condemnation of birth control.\(^{30}\) Rock and Pincus chose Puerto Rico because the archipelago had no laws regarding birth control, and Pincus “was impressed with the extensive network of birth control clinics already in place on the island.”\(^{31}\)

Long before Roe, Puerto Rico was already hailed as a haven for women in the continental United States to terminate their pregnancies. From the


\(^{25}\) See Ortiz-Blanes, supra note 18.

\(^{26}\) Id.

\(^{27}\) Id.


\(^{29}\) Id.

\(^{30}\) Id.

1950s to 1970s, women stateside chose Puerto Rico to procure an abortion, so much so that it became known as the “San Juan weekend.”\(^{32}\) Despite the 1937 law that outlawed abortion, women, usually wealthy and white, found medical doctors to terminate their pregnancies once in Puerto Rico.\(^{33}\) The tragic irony was that, while those who traveled to San Juan ended their pregnancies without much fuss, locals often died or suffered severe complications from unsafe “back alley” abortions.\(^{34}\) Further, those clandestine doctors who performed “San Juan Weekends” became the first to open abortion clinics once Roe was issued.\(^{35}\)

### III. A WEB OF LAWS FROM ALL OVER

While Puerto Rico’s jurisprudence has fully embraced Roe’s core holding, Dobbs’s grasp still hovers over the commonwealth. The precedent of the United States Supreme Court and the United States First Circuit of Appeals governs Puerto Rico.\(^{36}\) The latest case in the First Circuit to mention the Dobbs holding was Efreom v. McKee,\(^{37}\) which mildly stated, “Appellants’ attempted reliance on cases such as Skinner v. Switzer and Whole Woman’s Health v. Hellerstedt, abrogated on other grounds by Dobbs v. Jackson Women’s Health Organization, is thus misplaced.”\(^{38}\) With little on the matter from the First Circuit, the commonwealth’s laws remain largely intact, but the tides are shifting.\(^{39}\)

Abortion is legal in Puerto Rico\(^{40}\) if performed by a physician to protect the pregnant woman’s life or health.\(^{41}\) “Health,” in this context, is not restricted to physical health but “also mental health, and socio-emotional

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\(^{32}\) See Ortiz-Blanes, supra note 18.

\(^{33}\) Id.

\(^{34}\) Id.

\(^{35}\) Id.

\(^{36}\) See United States v. Cotto-Flores, 970 F.3d 17, 30 (1st Cir. 2020) (“Under the U.S. Constitution, Puerto Rico is still a ‘Territory,’ meaning that Congress (acting under its power to ‘make all needful Rules and Regulations respecting the Territory . . . belonging to the United States,’ U.S. CONST. art. IV, § 3, cl. 2), ‘may treat Puerto Rico differently from the States so long as there is a rational basis for its actions.’”) (quoting United States v. Vaello-Madero, 956 F.3d 12, 20 (1st Cir. 2020))).

\(^{37}\) See Efreom v. McKee, 46 F.4th 9, 18 (1st Cir. 2022).

\(^{38}\) Id. at 18 (citations omitted).

\(^{39}\) See United States v. Gutiérrez-Moreno, No. 21-245, 2022 U.S. Dist. LEXIS 186229, at *6–7 (D.P.R. Oct. 11, 2022) (“This Court is bound by precedent and operates within the confines of the common law. The doctrine of ‘stare decisis precludes the relitigation [sic] of legal issues that have previously been heard and authoritatively determined.’”).

\(^{40}\) See The Legal Right to Abortion in Puerto Rico, supra note 10.

\(^{41}\) See P.R. LAWS ANN. tit. 33, §§ 4739, 4740 (2005).
well-being.” The commonwealth’s laws have stated abortion can be performed by a physician who is authorized to practice medicine in Puerto Rico. The Department of Health also enforces that abortion providers comply with a number of Department of Health requirements. For example, abortion providers must complete a residency in obstetrics and gynecology. Additionally, abortion providers must take annual cardiopulmonary resuscitation courses, have a valid state and federal narcotics license, and register with the Department of Health Registry of Health Professionals.

A. The Laws of the States

There is a striking contrast between the restrictive laws of certain states and that of Puerto Rico. In contrast to southern states, Puerto Rico does not require parental consent or notice before an abortion. But, as discussed below, those states provide a blueprint for Puerto Rican legislature to restrict abortion access.

Under the Hyde Amendment—a law enacted in 1977 that blocks federal Medicaid funding for abortion services—Medicaid “will not pay for an abortion unless the woman’s life is in danger or the pregnancy resulted from rape or incest.” The reasoning, amongst others, is that “[i]f it’s not

42 See The Legal Right to Abortion in Puerto Rico, supra note 10; People v. Duarte Mendoza, 9 P.R. Offic. Trans. 797, 811 (P.R. 1980).
44 The Legal Right to Abortion in Puerto Rico, supra note 10.
45 Id. (“DOH officials have stated that this residency requirement will be waived for any licensed physician who requests such a waiver until the DOH adopts new regulations.”).
47 See FLA. STAT. § 390.01114 (2022) (Florida requires notice and permission to parents within 48-hours before abortion; a judge may waive this requirement); GA. CODE ANN. § 15-11-682 (2014) (Georgia requires that at least one parent is told twenty-four hours before an abortion; a judge may waive this requirement); MISS. CODE ANN. § 97-3-37 (2010) (providing that “human being” includes an unborn child at every stage of gestation from conception until live birth . . . for purposes of offenses of assault and homicide); ALA. CODE § 26-21-3 (2013) (a “written statement [is required in Alabama] where abortion to be performed [is on emancipated minor”); Bellotti v. Baird, 443 U.S. 622, 640 (1979) (“[P]arental notice and consent are qualifications that typically may be imposed by the state on a minor’s right to make important decisions. As immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences, a state reasonably may determine that parental consultation often is desirable and in the best interest of the minor.”).
48 See Barreto v. Woman’s Med. Pavilion, No. FDP98-0166 (404), 2003 WL 21047741, at *18 (P.R. Cir. 2003) (a parent’s contentions to their minor child having an abortion is not accepted); Duarte Mendoza, 9 P.R. Offic. Trans. at 815 (holding that Puerto Rico’s legislature cannot give parents veto power denying their minor child to have an abortion).
49 See, e.g., What They Are Saying, supra note 14.
government’s business, then you have to accept the whole of that concept, which means you don’t proscribe your right to have an abortion and you don’t take your money to assist someone else to have an abortion.”\textsuperscript{51} As a result, insurance companies do not provide funds for the procedure.\textsuperscript{52}

\textit{B. The Laws Abroad}

Likewise, various countries in the Caribbean provide an ecosystem where abortion access may be a quick walk to the other side of an island. For example, when the Guyana Responsible Parenthood Association began offering abortions in 2014, women from Brazil, where abortion is restricted, traveled to Guyana in such high numbers that the medical group considered opening a clinic closer to the border.\textsuperscript{53}

Guyana, Cuba, Barbados, and the Caribbean Netherlands permit abortion; but, it is illegal or highly restricted in other areas of the Caribbean.\textsuperscript{54} Saint Martin is made up of two countries with different abortion laws, for example.\textsuperscript{55} A woman in St. Maarten, where abortion is illegal, can take a quick walk to its connected country, Saint Martin, where abortion is legal.\textsuperscript{56} The same is said for inhabitants of the British Virgin Islands, where abortion is illegal; instead, they may travel to St. Thomas in the U.S. Virgin Islands to have an abortion.\textsuperscript{57}

Of course, a country’s geography and economics also factor into a woman trying to terminate her pregnancy. The island of Sint Eustatius, for example, located in the Caribbean Netherlands, has over 3,000 people and no abortion clinics.\textsuperscript{58} Nonetheless, women from Sint Eustatius go to Saint Martin, about seventy miles away, per a deal with France.\textsuperscript{59}

In other islands like Costa Rica and the Dominican Republic, abortion laws are loosening with the more youthful voters and progressive politicians. “The Costa Rican Penal Code only permits an abortion to be performed to prevent danger to the life or health of the pregnant woman when this danger

\textsuperscript{51} Id. (quoting then-Senator Joseph R. Biden, Jr.).
\textsuperscript{52} See Ortiz-Blanes, supra note 18.
\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{56} See id.
\textsuperscript{57} Id.
\textsuperscript{58} Id.
\textsuperscript{59} Id.
cannot be averted by any other means.”  

But, in 2019, Costa Rica’s president Carlos Alvaro Quesada “issued a technical decree that will allow for therapeutic abortions in the Central American nation, despite opposition from religious and conservative political groups.” This decision will save the lives of women and protect their health,” Quesada said at a press conference.  

President Quesada’s executive decisions echo Costa Rica’s polling, which shows that some fifty-eight percent of Costa Ricans favor implementing legal changes that will allow therapeutic abortions. On the one hand, the Costa Rican penal code provides for judicial pardons whenever a woman procures an abortion to save their own honor or has produced it for that purpose to an ascendant or descendant. The code defines such a permissible abortion as:

[an] abortion performed by a doctor or by an authorized obstetrician with the woman’s consent . . . when there is no other possible primary intervention, if it is performed with the goal of avoiding a danger to the life or health of the woman and it could not have been avoided by other means.

While on the other hand, section 118 of the Costa Rican Penal Code makes it a crime whenever one causes the death of a fetus if “he acts without the consent of the woman or if she is under fifteen years of age, or if the fetus has reached six months of intrauterine life.”

Despite the seemingly progressive sway in Costa Rica, the Dominican Republic has a near-total ban on abortion. In 2015, the Dominican Republican Constitutional Court struck down a reformation to its penal

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62 Id.
63 Id.
65 Id. art. 118.
code that would have decriminalized abortion in certain cases. “Its impact will be catastrophic for women and girls in the Dominican Republic who will continue to be criminalized, stigmatized and forced to seek out unsafe abortions because they are denied access to safe and legal medical treatment,” says Erika Guevara Rosas, Americas Director at Amnesty International.

That decision is at odds with approval from the Dominican Congress and its country’s president, Danilo Medina. Nonetheless, the Constitutional Court ruled against the reformations after “three religious and conservative pressure groups earlier this year alleg[ed] procedural errors, amongst other things, [and] the Court deemed the reforms unconstitutional.”

President Medina’s ambitions to decriminalize abortion have been a frustrating effort on the island. A year before the Constitutional Court’s decision, President Medina vetoed a total abortion ban that congress enacted. After that, President Medina and congress met somewhere in the middle—allowing for the decriminalization of abortion in limited circumstances. Congress then amended the penal code to reflect the ongoing discussions in December 2014.

“Where access to safe and legal abortion services are unreasonably restricted, as in the Dominican Republic, the government has an obligation to respect, protect, and fulfill human rights related to sexual and reproductive health and autonomy, and these rights should not be subject to a referendum,” stated a Human Rights Watch representative. Since then, the Dominican Republic has had a new president, Luis Abinader, who raised a national referendum where the people would decide to loosen some of the nation’s austere abortion laws. Yet, the country’s Chamber of Deputies, a branch of the legislature, never adopted the bill and effectively ended any hope of a referendum making it on the ballot.

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67 See id.
69 Id.
70 Id.
72 Id.
73 Id.
75 Id.
76 See id.
Currently, article 317 of the Dominican Republic’s Model Penal Code, which was enacted in the late nineteenth century, states that “[w]hoever, by means of food, drink, concoctions, medicines, probes, treatments or in any other way, causes or directly cooperates in causing the abortion of a pregnant woman, even when she consents to it, will be punished with the penalty of lesser imprisonment.”77 The legislature has made it clear that the same punishment imposed on others will also be imposed on the pregnant woman.78

There, if a woman procures an abortion, and “causes or directly contributes to causing the termination of a pregnancy, even with the pregnant woman’s consent, [she] shall be sentenced to medium-term imprisonment.”79 A sentence of imprisonment from six months to two years will be imposed on persons who have put a pregnant woman in contact or communication with another person in order to have an abortion, provided that the abortion has been carried out.80 Likewise, “[p]hysicians, surgeons, midwives, nurses, pharmacists and other medical professionals who, abusing their profession, cause an abortion or cooperate with it, will incur the penalty of five to twenty years of imprisonment, if the abortion is performed.”81

C. The Shifting Tide to Access in Puerto Rico

The Caribbean continues to be a pivotal debate ground concerning social issues like same-sex marriage, abortion, prostitution, and contraceptives.82 Gender and race equality amongst the islands “straddle [a] social morality spectrum . . . [where] if one is to judge by the formal recognition of the law, the region is well behind many of its counterparts, nor is there consensus on these matters.”83 Furthermore, with new social issues highlighted more frequently than in past decades, courts in the Caribbean often look to the

80 Código Penal [CÓD. PEN.][PENAL CODE] no. 12-07, art. 317 (Dom. Rep.).
81 Id.
82 See ROSE-MARIE BELLE ANTOINE, COMMONWEALTH CARIBBEAN LAW AND LEGAL SYSTEMS 31 (2d ed. 2008).
83 Id.
Supreme Court of the United States to serve as a signpost of how a commonwealth should rule.\textsuperscript{84}

Puerto Rico’s secretary of justice, Domingo Emanuelli, stated that the \textit{Dobbs} decision will not affect the island’s laws and that women and doctors will not be prosecuted for seeking or providing abortions.\textsuperscript{85} Moreover, Puerto Rico has an explicit right to privacy in its constitution\textsuperscript{86} — a conduit the Supreme Court of the United States has used to recognize substantive due process right.\textsuperscript{87}

The pro-life reform movement plans to chip away at Puerto Rico’s right to abortion can be felt and heard across the archipelago. Nearly seventy-seven percent of Puerto Ricans favor some abortion restrictions.\textsuperscript{88} In 2019, the Puerto Rico House of Representatives passed Proyecto del Senado 950, a measure that would have required pregnant minors under the age of eighteen to receive consent from their parents or legal guardians before obtaining an abortion.\textsuperscript{89} Governor Ricardo Rosselló vetoed the bill before his term ended.\textsuperscript{90} In 2021, however, Puerto Rico’s conservative, Christian-led political party, Proyecto Dignidad (“Project Dignity”), led by Senator Joanne Rodriguez Veve, introduced twelve bills meant to restrict health access.\textsuperscript{91}

\textsuperscript{84} \textit{See id.} at 137 (“In \textit{Planned Parenthood}, the well-known abortion case, the court complained that ‘no judicial system could do society’s work if it eyed every issue afresh in every case that raised it.’”).

\textsuperscript{85} \textit{See Ortiz-Blanes, supra} note 18.

\textsuperscript{86} \textit{See P.R. Const. art. II, § 7; Arroyo v. Rattan Specialties, Inc., 17 P.R. Offic. Trans. 43, 72–73 (P.R. 1986) (restriction of fundamental right to privacy is justified only when State can demonstrate an overriding interest such as the existence of special circumstances presenting genuine threat to national security or grave danger to social order).}

\textsuperscript{87} \textit{See Griswold v. Connecticut, 381 U.S. 479, 485–86 (1965) (the very idea of allowing the police “to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives[] . . . is repulsive to the notions of privacy surrounding the marriage relationship.”). } \textit{But see Dobbs v. Jackson Women’s Health Org., 597 U.S. 215, 332–33 (2022) (Thomas, J., concurring) (“[W]e should reconsider all of this Court’s substantive due process precedents, including \textit{Griswold} . . . , Because any substantive due process decision is ‘demonstrably erroneous’ . . . ,” (citing Ramos v. Louisiana, 140 S. Ct. 1390 (2020))).}

\textsuperscript{88} \textit{See Mazzei, supra} note 9; Jens Manuel Krogstad et al., \textit{Key Findings About Puerto Rico, Pew Rsch. Ctr.} (Mar. 29, 2017), https://www.pewresearch.org/fact-tank/2017/03/29/key-findings-about-puerto-rico/ (finding fifty-six percent of Puerto Ricans are catholic).


\textsuperscript{90} \textit{See Reichard, supra} note 12.

\textsuperscript{91} \textit{Id.}
Their bills included introducing a twenty-week ban, restricting access to minors, and implementing fetal personhood. Puerto Rico currently has four abortion clinics—all within San Juan’s metropolitan area. Of the four, three clinics perform abortions up to fourteen weeks of pregnancy. Dr. Yari Vale Moreno, a gynecologist-obstetrician, is the only OB/GYN on the archipelago permitted to perform abortions up to twenty-four weeks. If an abortion is past the twenty-four-week limit, the woman must go to a main public hospital.

There are currently five bills introduced in the Puerto Rican legislature that all propose limiting abortions after twenty-two weeks. These bills will affect Puerto Rico’s four abortion clinics. The influx likely stems from the Dobbs decision, which has provided fodder for Puerto Rico’s conservative moment. In addition, cultural dogmas, shifting religious ideology, and disinformation fuel the abortion debate. Two new legislators, Sen. Rodriguez Veve and Rep. Lisie Burgos, from the Proyecto Dignidad Party, introduced some of these bills.

Senator Veve found success in one of her sponsored bills passed in Puerto Rico’s Senate that restricts abortions after twenty-two weeks; after that point, a fetus is presumed viable. Similar to some states in the contiguous U.S., the law does not provide an exception for rape or incest. Representative Burgos introduced, and later withdrew after harsh criticism, a bill that would have “punish[ed] women who get abortions with a fixed prison term of 99 years.”

Opponents of the bill believe restrictions will only further underground networks of ad hoc abortion providers, which will put a woman’s life at

92 Id.
93 Id.
94 Id.; see also Dobbs v. Jackson Women’s Health Org., 597 U.S. 215, 276 (2022) (“But even if one takes the view that ‘personhood’ begins when a certain attribute or combination of attributes is acquired, it is very hard to see why viability should mark the point where ‘personhood’ begins.”).
95 See Ortiz-Blanes, supra note 18.
96 Id.
97 Id.
98 Id.
99 See id.
100 See id.
101 See id.
102 Id.
104 See Ortiz-Blanes, supra note 18.
105 See id.
substantial risk. On the other end of the political spectrum, on the day Dobbs was released, Senator Rivera Lassén introduced two bills that “recognize abortion as an essential public health service and bar the state from punishing someone for exercising their sexual and reproductive rights.” To oppose the bills, House Bill 1403 was introduced to the Puerto Rican House by Representatives Nogales Molinelli, Márquez Reyes, and Márquez Lebrón as a “[l]aw for the Protection of the Reproductive Rights of Women and Pregnant Persons.”

If passed, the bill would “codify the doctrine related to abortion under the protection of the right to privacy contained in the Constitution of the Commonwealth of Puerto Rico.” House Bill 1403 would make abortion an “essential health service that is part of the human right to health.” House Bill 1410, filed by Representative Torres Cruz, calls onto the citizens through their electorates to make into law the “right to life of the conceived child.” If this bill passes, the rights of a fetus would be on par, if not greater, than the rights of the mother. This would mean that the fetus’s rights “must be guaranteed, defended, and vindicated in laws that must prohibit abortion unless the salvation of both lives cannot be provided otherwise . . . .”

D. Medical Tourism

Considering today’s technological advancements, abortion in the United States will likely be less about back-alley abortions and more about medical tourism — pills being sent across the world, like to India, China, and Mexico.

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106 See Migdalia I. González Arroyo, Oficina de la Procuradora de las Mujeres propone proyecto sustitutivo para seguridad de la mujer durante terminación de embarazo [Office of the Women’s Attorney’s Office Proposes a Substitute Project For Women’s Safety During Termination of Pregnancy], SENADO (Nov. 4, 2021), https://web.archive.org/web/20220520163117/https://senado.pr.gov/article.cfm?nwsid=295 (“We respectfully understand that P. del S. 591, as drafted, will not be able to satisfy those purposes and, on the contrary, it would have the effect of promoting clandestine, unhealthy and dangerous abortions for women, especially for emancipated minors’. . . . In addition, the project fails to demonstrate its necessity, is based on non-existent public health problems and violates the right to health and privacy of young people. Therefore, we reaffirm our opposition to this project and to any public policy that seeks to regulate the bodies of women and pregnant people; and limit their autonomy,” said Tania Rosario, executive director.”).

107 Ortiz-Blanes, supra note 18 (quoting P. del S. 929).


109 Id.

110 Id.

111 Id.

112 Id.

113 Id.
“Medical Tourism is currently used to circumvent domestic criminal prohibitions on abortion in countries such as Ireland, Portugal, and Poland.”\(^{114}\) “Major destinations for these services include Australia, Canada, Germany, India, Israel, South Africa, and the United States.”\(^{115}\)

Moreover, “with the increasing number of Medicare/Medicaid applicants, federal health programs are left with the unique task of controlling the potential outbound patient flood.”\(^{116}\) A seismic shock of unplanned medical tourism services could be a disastrous result to the United States healthcare system.\(^{117}\) This leaves states that want to restrict access to abortion medication with a moral reason backed by a cost-analysis justification.\(^{118}\)

Additionally, insurance companies will only continue to decline the rising costs of abortion procedures both in-state and out-of-state because “the feasibility of adopting medical tourism . . . in the absence of government sanction[s], further stem[] patient volume from the incentivized insured.”\(^{119}\)

As it stands, abortion coverage varies widely on a non-exhaustive list of factors such as the state where one lives, the kind of insurance, the belief system of the company one works for,\(^ {120}\) and the reasons needed to have an abortion.\(^ {121}\)

While private health insurance companies do, on their face, cover abortions and abortion-related medicine, the insurance companies are not bound by any federal law, and are, instead, beholden to each state’s law.\(^ {122}\) If a state bans health insurance companies from covering abortions, the insurance company must abide by the decision.\(^{123}\) Currently, the cost of abortion pills can be as high as $800 but averages closer to $600.\(^{124}\) An in-clinic abortion can also be as high as $800, with an average of about $600 if


\(^{115}\) Id. at 1323–24.


\(^{117}\) Id.

\(^{118}\) See id.

\(^{119}\) Id.

\(^{120}\) See Burwell v. Hobby Lobby Stores, 573 U.S. 682, 690–91 (2014) (“We hold that the regulations that impose this obligation violate [the Religious Freedom Restoration Act of 1993], which prohibits the Federal Government from taking any action that substantially burdens the exercise of religion unless that action constitutes the least restrictive means of serving a compelling government interest.”).


\(^{122}\) See id.

\(^{123}\) Id.

conducted during a woman’s first trimester. If a woman has an in-clinic abortion during her second trimester, she may have to pay as much as $2,000.

Medical tourism is not specific to only abortion or to United States citizens. Denmark allows anonymous sperm donation, which “attracts patients from nearby Sweden, Norway, and the Netherlands, which prohibit the practice.” Likewise, Spain and Romania permit payment for sperm and egg donors, leading patients from Western European countries, where the practice is restricted, to donate. Finally, India and California have more liberal surrogacy laws “because they permit commercial surrogacy and enforce surrogacy contracts,” which is yet another destination on the medical tourism map. And while surrogacy was once a hot-button debate, abortion pills are in an entirely new realm of moral discussion, and some states are eager to quash the flow of abortion medication from crossing into its borders.

One of the most popular brands of abortion medication is mifepristone, commercially sold as “Mifeprex,” which has seen an increase in demand following the Dobbs decision. Alliance Defending Freedom, a conservative Christian legal advocacy group, brought a lawsuit against the Food and Drug Administration in the Northern District of Texas in 2022. The crux of the suit is whether the FDA approved the popular abortion pill mifepristone too hastily back in 2000 and without proper procedures—and, therefore, its sale should be void. If the Alliance Defending Freedom is successful, it would be yet another blow to the pro-choice movement and would only increase the likelihood of a woman

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125 Id.
126 Id.
127 Cohen, supra note 114, at 1324.
128 Id.
129 Id.
131 See FDA v. All. for Hippocratic Med., 2023 U.S. LEXIS 1504 (2023) (“[U]pon consideration] of the application of counsel for the applicants, [it is ordered] that the April 7, 2023, order of the United States District Court for the Northern District of Texas [blocking the Food and Drug Administration’s mifepristone approval] is hereby administratively stayed until 11:59 p.m. . . . on Wednesday, April 19, 2023.”) (alteration in original) (citation omitted).
traveling to Puerto Rico to procure an abortion instead of ordering mifepristone.

Nonetheless, finding mifepristone is already risky for pregnant women, who, depending on their state, may have to go underground, across state lines, and avoid law enforcement. Exchanging abortion pills across state lines is a punishable offense, including hefty fines and lengthy prison sentences. These laws have been in place since at least the 1970s where “seven women belonging to a group known as the Jane Collective were arrested in Chicago.” The Jane Collective evolved from the efforts of University of Chicago students who assisted a friend’s sister in securing an underground abortion. The students taught themselves how to perform abortions with the “hope . . . to improve the odds of pregnant women surviving what the historian Alicia Gutierrez-Romine calls ‘abortion roulette.’”

The Jane Collective, known simply as “The Janes,” performed thousands of abortions before being caught by Chicago police and were “charged with performing and conspiring to perform abortions, each of them faced a sentence of more than a hundred years in prison.” The charges were soon dropped when the Roe opinion was released early that next year. One such network from those early days is an extension of the group known only as the “Old Hippies.”

Little is known of the group, but it appears to be a rough collective of older women who live in border states, travel to Mexico to purchase over-the-counter abortion pills, and give them to pregnant women in their home states at no charge who could not receive an abortion otherwise. One clandestine leader of the Old Hippies told a journalist that “she was now getting fifty requests a day from the United States for abortion pills. Some women created fake profiles on Instagram to get in touch with her, or sent messages on WhatsApp or Signal, or called her in the middle of the night.”

This is the state of medical tourism just six months after the Dobbs opinion was released. Some women will be able to secure abortion pills through their doctors as simply as getting a prescription for antibiotics.

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136 Id.
137 Id.
138 Id.
139 Id.
140 Id.
141 Id.
142 Id.
143 Id.
144 See Belluck, supra note 132.
Others will have to rely on getting smuggled pills from different continents prescribed by doctors they have met online. The others will have to rely on underground networks like the Old Hippies—or carry their pregnancies to term, of course.

But when pills like mifepristone are, theoretically, obtainable, this will likely lessen the need for a woman to travel to San Juan to procure an abortion. An undeniable wrinkle in this alternative avenue is the state of mifepristone as the FDA’s case works its way up the federal courts. If pills like mifepristone are limited or restricted, this will make women travel to San Juan—just as they had done six decades ago.145

IV. CONCLUSION: IS PUERTO RICO AN OPTION FOR WOMEN IN THE CONTINENTAL U.S. TO SECURE AN ABORTION?

It would be a fantasy to state that no woman from the continental United States will travel to Puerto Rico to terminate a pregnancy. Yet, it would also be erroneous to state that Puerto Rico’s abortion laws will remain as loose as they have been for the last couple of decades. It is also uncertain how states with stringent abortion laws will try to restrict a woman from traveling to the archipelago. This is only added to what abortion cases will eventually land on the United States Supreme Court docket post-Dobbs.

The lines between permissible and illegal continue to be blurred even after the overturning of Roe and Casey, and the results are just as impactful. This prediction is only further compounded by what the lower federal and state courts will decide in the next few years. The courts are only bound to hear cases on access to abortion medication, interstate commerce considering abortions across state lines, and due process concerns with women being prosecuted for procuring an abortion.

Nonetheless, it is still likely that pregnant women will eventually make their way to Puerto Rico. What the Puerto Rican legislature allows or permits will undoubtedly affect not just the little island of roughly three million nestled in the Caribbean but also the entire United States. It will affect women, old and young, rich and poor, educated and uneducated. The next battleground for abortion access may not be in snowy Toronto, but in humid San Juan.

145 See Reichard, supra note 12.