

An Unused Law Could Threaten Women's Healthcare in Alabama

By Lauren Nutall

Since the reversal of *Roe v. Wade*, southern states have become a battleground for reproductive rights. Caught in the middle are women and their health care providers, who have been forced to choose between denying their patients life-saving medical care or jail time.

Now, Alabama Attorney General Steve Marshall has pledged to prosecute doctors that help women get an abortion in states where it is legal. It's a move that lawyers are calling unconstitutional and claim will interfere with how healthcare is administered in the state.

The crux of Attorney General Marshall's argument is a previously unused clause under Alabama's conspiracy law called the 1896 provision, which makes it a crime to plan to commit an offense in another state while still located in Alabama. Marshall would use this clause to prosecute any doctor that helps a woman travel to get a legal abortion on the grounds of conspiracy.

"Alabama has no authority to apply its laws outside of the state," said Professor Bryan Fair at the University of Alabama School of Law. Fair states that the attorney general's mission infringes upon a person's right to travel, which is enshrined in the U.S. Constitution.

"If someone travels from Alabama to seek medical care, including relating to abortion, one state can't control the legality of abortion services in another state, or punish a person for seeking medical care in another state," he said. "So my best guess is that Marshall may very well try to do something to punish. But when you say healthcare providers, what you would have is someone presumably assisting someone with identifying a clinic elsewhere and either helping them travel there or again providing information about that clinic. I don't know the details of what Marshall thinks he can do but all of us have the right to travel from one state to another state. A constitutional right to travel."

Alabama currently has one of the most restrictive abortion bans in the country with the sole exception being to save the mother's life. Doctors in the state can face up to 99 years in prison for performing the procedure. Marshall's proposed measure is expected to erode what is already considered a failing medical framework with existent glaring racial disparities and a high maternal mortality crisis. Its confusing language has also caused concern.

"Some physicians are likely to have difficulty in interpreting the anti-abortion law," said Beth Crutchfield in an email. Crutchfield is Professor of Clinical Legal Instruction at the University of Alabama School of Law and serves as interim director of the school's domestic violence clinic.

"Even more likely, hospital administrations are likely to question the true meaning of the language contained in the law as they develop hospital policy meant to adhere to the law. It is possible that physicians and hospitals alike will err on the side of caution regarding the risk of criminal prosecution and neglect to provide services in situations where they are warranted by law," she said.

Though lawyers state that the attorney general's threat is empty in nature and largely unenforceable, it will still manage to undercut how women in the state seek healthcare.

Meagan Burrows is an attorney at the ACLU's Reproductive Freedom Project and is one of the lawyers representing the West Alabama Women's Center, a former abortion clinic that has filed a lawsuit against Attorney General Marshall, challenging his use of the clause.

The clinic now only practices prenatal care, birth support and postpartum care. According to Burrows, Marshall has already incited fear among the doctors, who worry that they will face prosecution if they assist their clients in getting an abortion out of state in any way.

"Since abortion was banned in Alabama and the attorney general issued these threats, they have unsurprisingly had a lot of their patients come to them as a trusted community providers of healthcare, someone they rely on and hope and expect to be able to support them in accessing their legal medical care options," she said.

Burrows says that the doctors are now straying from the usual *modus operandi*, however, unable to inform their patients of their options to terminate a pregnancy. She claims patients that do seek out their professional help regarding abortion are now being turned away.

"They come to them asking, 'I'm pregnant, I don't want to continue my pregnancy. I want an abortion. Where can I go to get an abortion? How can I do that? You know, I don't have the money to be able to afford the travel or the care. How can I access that,'" said Burrows.

"And under the attorney general's threat of prosecution, our clients have been unable to provide their patients and other pregnant Alabamians with the information that they're asking of them. The information that our clients as former abortion providers and those who work in reproductive health care have at their fingertips and would otherwise very easily be able to provide to their patients. And they feel quite strongly that this violates or forces them to violate their own ethical obligations to their patients by providing their patients with information and support and accessing their legal health care options, so they feel very devastated and upset by being able to provide this information, and they also know that."

Attorney General Marshall is not the first person to attempt to implement a ban on travel to get an abortion but he is the first person to try to do it on such a large scale. [In Texas, four major counties have passed ordinances with similar missions - Cochran, Goliad, Lubbock, and Mitchell.](#) Unlike Marshall, however, these counties claim that women cannot use their roads to travel to other states and get an abortion because they are government property. The ordinance relies on citizen reporting, allowing people to sue other private citizens they believe are traveling out-of-state to get an abortion.

"I don't know how they're gonna enforce this," said John Hodges, a resident of Lubbock County and a medical practitioner in rural Ralls, TX. Hodges is one of the few doctors located in the small town. However, he doesn't believe that these ordinances will significantly impact how healthcare is administered in the region because of how relatively private his community is about reproductive care..

“My area for the most part is considered pretty conservative and people really don't share their experiences with people as far as if someone needs an abortion or wants to go get an abortion,” he said. “It's not typically something that they're gonna broadcast because `uge how impactful something is, when everybody is so private about their healthcare.”

Until speaking to Howard University News Service, Hodges had never heard of the counties' abortion travel bans.

“I've never heard of this. I guess that would be an issue within itself,” he said. “I've never heard any of this. That's why I'm a little shocked that that's something that someone actually would try to pass into law and enforce because it just seems like just another example of just gross misuse of resources or just a whole lot of something for nothing.”