# ESSAY

# THE STATE VISIBILITY OF MATERNAL DEATH

*Arti Walker-Peddakotla* & Dr. Theresa Chapple-McGruder***

*The state's ability to prevent maternal death is under attack due to continued right-wing pressure on state governments. In particular, the ability for Maternal Mortality Review Committees (MMRCs) to abstract, report on, and recommend policies that prevent maternal death has come under increasing scrutiny by state legislators in abortion-hostile states. This Essay makes two primary contributions. First, this Essay situates the work of MMRCs and of maternal death surveillance in the current federal and state political conjuncture. This conjunctural analysis is important given that MMRCs operate within the political and legal milieu of the state and federal governments that they coordinate with. Second, this Essay uses critical feminist and transparency law theory to situate anti-abortion laws and the right wing-capture of the federal administrative state as forms of state violence.*

*This Essay argues that critical feminist and transparency law theory makes visible MMRC's maternal death surveillance as an illumination of the state's complicity in maternal death—a visibility that right-wing states are attempting to obscure. The dialectic tension between the visibility of MMRC's maternal death surveillance and the obscuring of that surveillance by abortion-hostile states presents a critical question: given the current political conjuncture, can MMRCs conduct their critical maternal death surveillance work and ensure the confidentiality of reproductive healthcare providers who may be called on to provide information on maternal deaths? Put simply, as maternal death becomes more visible to the state, so too, does the possibility of criminalization of reproductive healthcare providers working to provide care in abortion-hostile states. It is therefore*

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* J.D., M.S., William H. Hastie Fellow, University of Wisconsin Law School.

** PhD, MPH, Associate Professor, Director of the Center for Health Equity, University of Pittsburgh School of Public Health.

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*imperative that MMRCs consider this tension as they work within the current political conjuncture to conduct maternal death surveillance within the carceral state.*



*"I feel like it was medical malpractice, and I say that because [her death] was preventable."*

— Andrika Thurman speaking about her sister, Amber Thurman's death.[1]

## INTRODUCTION

Amber Thurman was a little more than six weeks pregnant with twins when Georgia enacted a six-week abortion ban in July 2022.[2] Worried about caring for her twins and 6-year-old child as single mother, Thurman decided to get an elective abortion.[3] Thurman drove four hours to the neighboring state of North Carolina where abortion healthcare

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[1] Jericka Duncan & Deanna Fry, *Family of Georgia mother who died after delayed abortion care says Amber Thurman should still be alive: "It was preventable"*, CBS News, (Nov. 1, 2024), https://www.cbsnews.com/news/amber-thurman-delayed-abortion-georgia.

[2] *See* Kavitha Surana, *Abortion Bans Have Delayed Emergency Medical Care. In Georgia, Experts Say This Mother's Death Was Preventable*, ProPublica, (Sept. 16, 2024), https://www.propublica.org/article/georgia-abortion-ban-amber-thurman-death; H.B. 481, 155th Gen. Assemb., Reg. Sess. (Ga. 2019), https://www.billtrack50.com/billdetail/1081731 (Jan. 1, 2020) (Georgia's six-week abortion ban, the "Living Infants Fairness and Equality (LIFE) Act," was enacted in 2019, but it did not take effect until July 2022 when *Dobbs* was decided by the U.S. Supreme Court).

[3] *Id.*

was still available, and received an elective abortion when she was nine weeks pregnant.[4] After Thurman drove back Georgia, she started vomiting blood and experiencing severe cramping.[5] Thurman was taken to the local hospital where doctors waited nineteen hours before performing a dilation and curettage surgery, also known as a D&C, which is commonly used to "remove remaining fetal tissue from the uterus."[6] By then, Thurman had already developed sepsis, and her heart stopped during the D&C surgery.[7] Amber Thurman died on August 19, 2022, during her D&C surgery, leaving behind Messiah, her six-year-old son.[8]

After Thurman's death, the Georgia Maternal Mortality Review Committee (MMRC) which was established in 2013,[9] investigated the circumstances behind Thurman's death.[10] Georgia's MMRC law mandates that the review committee function to identify maternal deaths and "make determinations regarding the preventability of maternal deaths."[11] Georgia MMRC's determined that Thurman's death was preventable, and that the delay in performing the D&C played a significant role in Thurman's death.[12] In November 2024, shortly after the Georgia MMRC report on Thurman's death became public, and with significant public outcry against Thurman's preventable death, Georgia state officials dismissed all of its MMRC members.[13] Georgia Public Health Commissioner and State Health Officer Dr. Kathleen Toomey stated in a letter announcing the disbanding of the MMRC, that the MMRC was disbanded due to confidential information being "inappropriately shared with outside individual(s)," and that new MMRC members would be identified once new confidentiality

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4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 Duncan & Fry, *supra* note 1.

9 *Id.*; *see also Maternal Mortality*, Ga Dept. of Pub. Health, https://dph.georgia.gov/maternal-mortality (Mar. 5, 2025).

10 We use the word "maternal" in this Essay to describe all people who are able to give birth, regardless of gender identity or sexual orientation. This may conflict with how "maternal" is defined by some Maternal Mortality Review Committees (MMRCs), given that in some states, "maternal" may only refer to birthing women. From a public health and gender justice perspective, it is important to include the experience and health of all people who are pregnant and able to give birth, regardless of their gender identity or sexual orientation. Thus, while we use the nomenclature of MMRCs as defined in state law, this Essay equates the words "maternal" and "birthing peoples" as interchangeable. *See* KR MacKinnon et al., *Recognizing and renaming in obstetrics: How do we take better care with language?* Obstetric Med. 14(4), 201-203 (2021).

11 O.C.G.A § 31-2A-16 (2024).

12 Surana, *supra* note 2.

13 Amy Yurkanin, *Georgia Dismissed All Members of Maternal Mortality Committee After ProPublica Obtained Internal Details of Two Deaths*, ProPublica (Nov. 21, 2024), https://www.propublica.org/article/georgia-dismisses-maternal-mortality-committee-amber-thurman-candi-miller.

and committee oversight procedures were enacted.[14] In early 2025, Georgia relaunched its MMRC but has yet to make public who is serving on the committee.[15]

From a first principles perspective, the U.S. has a severe maternal mortality crisis, having the highest maternal mortality rate of all high-income nations of 19.2 deaths per 100,000 live births[16] In particular, Black mothers face the highest maternal death rate in America, with over fifty deaths per 100,000 live births in 2023.[17] In comparison, other high-income nations record between zero and fifteen maternal deaths per 100,000 live births.[18] The state of maternal mortality in the U.S. has been dire even prior to the *Dobbs v. Jackson Women's Health Organization (Dobbs)* decision, which overturned *Roe v. Wade (Roe)* and the federal right to an abortion.[19] MMRCs have been instrumental in tracking and reporting maternal deaths in U.S. and across the world. The history of MMRCs stretches as far back as the late 1920s when the first maternal mortality review was conducted in Philadelphia by the Committee on Maternal Welfare.[20]

Since the 1920s, MMRCs have been established in every state, and even in a few municipalities, to review maternal deaths by accessing personal, clinical, and nonclinical information to understand the circumstances surrounding a maternal death and provide recommendations for how to prevent future maternal deaths.[21] MMRCs are designed to be review committees, that review and document maternal deaths, and make

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[14] *See id.*; *see also Letter Written by Kathleen E. Toomey, M.D., M.P.H.*, GA. DEPT. OF PUB. HEALTH (Nov. 8, 2024), https://www.documentcloud.org/documents/25362301-mmrc-member-letter-11-8-2024-1.

[15] Amy Yurkanin, *Georgia Won't Say Who's Now Serving on Its Maternal Mortality Committee After Dismissing All Members Last Year*, PROPUBLICA (Mar. 4, 2025), https://www.propublica.org/article/georgia-maternal-mortality-committee-members-names-not-released.

[16] *See* FB Ahmad et al., *Provisional Maternal Mortality Rates*, CTRS. FOR DISEASE CONTROL & PREVENTION; NAT'L CTR. FOR HEALTH STATS., (2025), https://dx.doi.org/10.15620/cdc/20250305011; Donna L. Hoyert, *Maternal Mortality Rates in the United States, 2023*, CTRS. FOR DISEASE CONTROL & PREVENTION; NAT'L CTR. FOR HEALTH STATS., (Feb. 2025), https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2023/maternal-mortality-rates-2023.html; Susanna Trost et. al., *Pregnancy-Related Deaths: Data from Maternal Mortality Review Committees in 36 U.S. States, 2017-2019*, CTRS. FOR DISEASE CONTROL & PREVENTION (2022), https://www.cdc.gov/maternal-mortality/php/data-research/mmrc; Munira Z. Gunja et. al., *Insights into the U.S. Maternal Mortality Crisis: An International Comparison*, THE COMMONWEALTH FUND, (June 4, 2024), https://www.commonwealthfund.org/publications/issue-briefs/2024/jun/insights-us-maternal-mortality-crisis-international-comparison.

[17] *Id.*

[18] *Id.*

[19] *Id.*; *See* Dobbs v. Jakson Women's Health Organization, 142 S. Ct. 2228 (2022).

[20] *See infra* Part I.B.

[21] *Circumstances Contributing to Pregnancy-Related Deaths: Data from Maternal Mortality Review Committees in 38 U.S. States, 2020*, CTRS. FOR DISEASE CTR. (May 28, 2024), https://www.cdc.gov/maternal-mortality/php/report/index.html.

determinations of whether those deaths were preventable.[22] MMRCs are not designed to be regulatory agencies created by the government whose output "has the same weight as a matter of law."[23] MMRCs research maternal deaths, but it is under the state's purview to act on the MMRCs findings.[24] State and local lawmakers must make the political and legislative decision to enact the MMRCs recommendations. Thus, the goal of MMRCs is to make maternal death more visible to the state—so that the state can act on the MMRCs findings and improve systems of care to prevent future maternal deaths.[25]

That MMRCs are present in every state is due to tireless advocacy on the part of public health experts, reproductive health care providers, politicians, and others who advocated for a state focus on maternal death and raised awareness of the country's growing maternal mortality crisis. The 2020 election of President Biden and Vice President Harris saw a renewed focus on improving maternal health outcomes, with the Biden Administration creating a "Blueprint For Addressing the Maternal Health Crisis," that outlined the steps the administration would take to improve maternal health outcomes.[26] In 2018, Congress enacted the Preventing Maternal Deaths Act, representing a major step forward in federal support for MMRCs.[27] The PMDA purported to improve the effectiveness of state MMRCs, and "establish or continue a Federal initiative to support State and tribal maternal mortality review committees."[28] Yet, as Professor Khiara Bridges and others have argued, the PMDA falls short in several areas such as failing to address racial disparities in maternal deaths and failing to require that impacted people be part of the MMRC review process.[29] Additionally, some scholars have questioned whether maternal

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22 Melissa Bright et al., *Maternal Mortality Review Committees should take a closer look at homicide deaths*, Am. J. Obstetrics & Gynecology, 231(2) (Aug. 2024), https://www.ajog.org/article/S0002-9378(24)00377-6/fulltext.

23 Bridget C.E. Dooling, *Bespoke Regulatory Review*, 81 Ohio St. L.J. 673, 683 (2020).

24 William M. Callaghan, *State-based maternal death reviews: assessing opportunities to alter outcomes*, Am. J. Obstetrics & Gynecology 211(6), 581-582 (Nov. 25, 2014).

25 *Id.*

26 *White House Blueprint For Addressing The Maternal Health Crisis*, White House (June 2022), https://web.archive.org/web/20250117183942/https://www.whitehouse.gov/wp-content/uploads/2022/06/Maternal-Health-Blueprint.pdf.

27 Preventing Maternal Deaths Act of 2018, H.R. 1318, 115th Cong. (Dec. 21, 2018), https://www.congress.gov/bill/115th-congress/house-bill/1318/text.

28 *Id.*

29 *See* Khiara M. Bridges, *Racial Disparities in Maternal Mortality*, 95 N.Y.U. L. Rev., 1229, 1234-1237 (Nov. 2020), https://nyulawreview.org/wp-content/uploads/2020/11/NYULawReview-Volume-95-Issue-5-Bridges.pdf; Katy Backes Kozhimannil et al,, *Beyond The Preventing Maternal Deaths Act: Implementation and Further Policy Change*, Health Affairs Blog, (Feb. 4, 2019), https://www.healthaffairs.org/content/forefront/beyond-preventing-maternal-deaths-act-implementation-and-further-policy-change; Jemalyn A. Harvey, *Preventing Maternal Deaths: A Critical Feminist Approach to Maternal Mortality in the United States*, 16 St. Louis, U. J. Health L. & Pol'y 111 (2022).

death surveillance work should be expanded.[30] As Professor Bridges argues, "we *already* know why women are dying, and we already know how to save them."[31] However, even with the deficiencies in the PMDA and the continued debate of whether maternal death surveillance work is still needed, one thing is clear: this political conjuncture represents the most blatant attack on reproductive rights seen in modern history and warrants a renewed evaluation of the work of MMRCs.

The *Dobbs* decision created a political and legal landscape in which each state now has its own reproductive rights framework, with some states enacting criminal penalties for violating state bans on abortion care.[32] In addition to criminalizing those seeking abortion care, some states are also criminalizing reproductive healthcare providers. In March 2025, a Texas midwife was arrested and charged with "illegal performance of an abortion, a second-degree felony, as well as practicing medicine without a license" by the Texas Attorney General.[33] Not only does the post-*Dobbs* abortion landscape impact people seeking reproductive healthcare and reproductive healthcare providers, but it also impacts the general work of MMRCs. For example, after the Texas abortion trigger law went into effect post-*Dobbs*, the Texas MMRC made the decision to not review any maternal deaths that occurred in the two-year period following *Dobbs*.[34]

Additionally, it is paramount to consider the current erosion of the federal administrative state given that many state MMRCs work closely with the federal administrative state to report state maternal mortality statistics and research findings and to support federal maternal mortality reporting efforts. The SCOTUS holdings in *Loper Bright*, *Corner Post*, and *SEC v. Jarkesy* have resulted in much scholarly debate about how these holdings impact the work of federal administrative agencies.[35] While it remains unclear the long-term impact of these holdings on the ability of federal administrative agencies to conduct their Congressionally mandated work,

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[30] Bridges, *supra* note 29 at 1237.

[31] *Id.*; *See also* Bridges *supra* note 29 at 1314-5 ("In the face of all that we already know about why pregnant and recently postpartum women are dying—and in the face of all of the knowledge that we already have accumulated about the concrete practices and policies that help women survive pregnancy and childbirth. . .[the PDMA] may be read as pretending that the causes of maternal deaths are an utter mystery.").

[32] *After Roe Fell: Abortion Laws by State*, CTR. FOR REPRODUCTIVE RIGHTS, https://reproductiverights.org/maps/abortion-laws-by-state.

[33] Ken Paxton, Att'y Gen. of Tex., *Attorney General Ken Paxton Announces Arrest of Houston Abortionist and Crackdown of Clinics Providing Illegal Abortions*, (Mar. 17, 2025), https://www.oag.state.tx.us/news/releases/attorney-general-ken-paxton-announces-arrest-houston-area-abortionist-and-crackdown-clinics.

[34] Eleanor Klibanoff, *Texas' maternal mortality committee face backlash for not reviewing deaths from first two years post-Dobbs*, TEX. TRIB., (Dec. 6, 2024), https://www.texastribune.org/2024/12/06/texas-maternal-mortality-committee-deaths.

[35] *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024); Corner Post, Inc. v. Board of Governors of the Federal Reserve System, 603 U.S. 799 (2024); Securities and Exchange Commission v. Jarkesy et. al., 603 U.S. 109 (2024); *See also infra* Part II.B.

the current collapse of the federal administrative state under the Trump administration makes the concerns for the federal administrative state more prescient. After taking office in January 2025, the Trump Administration has enacted mass firings across multiple administrative health agencies, along with mandating erasure of historical health and other governmental data.[36] Thus, the erosion of both the federal administrative state and the constitutional protections for abortion care leaves MMRCs as potentially the last line of defense to research, report on, and make visible to the state the maternal deaths that are occurring under this current political conjuncture.

The authors of this Essay started our research on MMRCs from a public health and legal perspective and set out to conduct an empirical and comparative study of state MMRC law.[37] Our public health study uses the empirical and qualitative methodology of scientific legal mapping to compare each state's MMRC legal framework across several variables, measuring the structural mandates and legal strength, the operational functionality and inclusivity, and the policy impact, transparency and accountability of MMRC state law. Our public health article proposes several recommendations that would strengthen MMRC law to ensure that MMRCs remain effective in this political conjuncture.[38] This Essay intervenes in existing scholarship by evaluating a dialectic tension we observed while conducting our scientific legal mapping study of state MMRC law. This Essay makes two primary contributions.

First, this Essay situates the work of MMRCs and of maternal death surveillance within the current political conjuncture. We noticed a political undercurrent surrounding MMRCs during our empirical study of state MMRC laws that is best described using a conjunctural approach[39] A closer look at the current political, legal, and sociological conditions is warranted, given that MMRCs are not isolated entities that operate in a vacuum independent of federal, state, and local political conditions.

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[36] *See* Harvard Law School, *When a president takes on the administrative state*, Harvard Law Today, (Mar. 12, 2025), https://hls.harvard.edu/today/when-a-president-takes-on-the-administrative-state; Karen Feldscher, *As health data disappear from government websites, experts push back*, Harvard T.H. Chan Sch. of Pub. Health, (Feb. 5, 2025), https://hsph.harvard.edu/news/as-health-data-disappear-from-government-websites-experts-push-back; Leah Douglas et. al., *Trump begins mass layoffs at FDA, CDC, other US health agencies*, Reuters (Apr. 1, 2025), https://www.reuters.com/business/healthcare-pharmaceuticals/trump-administration-begins-mass-layoffs-health-agencies-sources-say-2025-04-01.

[37] Theresa Chapple-McGruder, Arti Walker-Peddakotla, Haliyat Oshodi, Jacqueline Ellison, and Brittany Brown-Podgorski, *Legal Protections for Maternal Mortality Review Committees Across the 50 States and the District of Columbia in a Post-Dobbs Era: A Comprehensive Legal Mapping Analysis* (working paper) (on file with the author).

[38] *Id.*

[39] Tony Jefferson, *Conjunctural Analysis Part One: From Early Political Writings to Resistance Through Rituals*, Stuart Hall, Conjunctural Analysis and Cultural Criminology 23-38, 26 https://doi.org/10.1007/978-3-030-74731-2_2 ("In sum, then, conjuncture refers to what is happening—politically, economically, ideologically, culturally—at any given historical moment.").

Instead, MMRCs operate within the political, legal and social milieu that our local, state, and federal governments create. This Essay maps this current conjuncture by evaluating the impacts of current federal and state policy towards abortion and reproductive rights, and towards administrative policy more generally, to understand how, if at all, MMRCs are impacted under this current political conjuncture.

Second, this Essay uses critical feminist theory and transparency law theory to explore the state visibility of maternal death and of reproductive health providers. MMRCs conduct maternal death surveillance by accessing personal, clinical, and nonclinical information to understand the circumstances surrounding a maternal death and provide recommendations for how to prevent future maternal deaths.[40] Given that MMRCs are tasked with evaluating cases of maternal death, a process which involves the collection of sensitive patient and medical information, MMRCs are uniquely positioned to make visible what some states would rather want to obscure. The increased state visibility of maternal death creates conditions where state governments hostile to reproductive care are not only implicated in perpetuating maternal death but also are becoming hostile towards maternal care providers and public health experts who conduct maternal death surveillance work.

Given the current political conjuncture, where some states have severely restricted or criminalized abortions, and reproductive health care providers face increased risks and criminalization, this creates the conditions where Professor Khiara Bridges argues that MMRCs in abortion-hostile states can "simply blame the dead for dying."[41] This warning resonates given one unexpected finding of our research: the recent and dangerous shift in MMRC state law, where some states—particularly those where the right to an abortion is restricted or illegal—are eroding the hard-fought gains in maternal death surveillance. This Essay locates the dialectic tension that MMRCs currently operate within and argues that as maternal death becomes more visible to the state, so too, does the possibility of criminalization of reproductive healthcare providers. Therefore, it is imperative that MMRCs consider this dialectic tension and the current political conjuncture that they are operating within, which is to conduct maternal death surveillance within the ever-expanding carceral and authoritarian state.

The analysis proceeds in three parts. Part I explores the public health praxis of maternal death surveillance and locates the work of state MMRCs. Part II situates MMRCs in the current federal political conjuncture, exploring how MMRCs and maternal healthcare have been impacted by the collapse of the federal administrative state, due in part to both Supreme

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40 *See infra* Part I.

41 Bridges *supra* note 29, at 1230.

Court jurisprudence and a new federal political landscape. The erosion of the federal administrative state in combination with the reversal of a federal right to an abortion places MMRCs in the middle of a dialectic between the urgent need to conduct maternal death surveillance, and the state's growing carceral and authoritarian apparatus. Part III uses critical feminist and transparency law theory to locate the tension that MMRCs face when operating in states hostile to abortion. Using this dialectic approach allows us to explore how the critical work of MMRCs makes visible that which anti-abortion states want to obscure—the state's complicity in maternal death. This Essay argues that MMRC's maternal death surveillance is an illumination of the anti-abortion state's complicity in maternal death. As such, state legislators must work to protect and support MMRCs maternal death surveillance work so that MMRCs can continue to research maternal deaths and provide recommendations for how to prevent future maternal deaths. Part IV provides a brief synopsis on the need to protect reproductive healthcare providers and public health professionals in abortion-hostile states. This Essay ends with a brief conclusion.

## I. The Public Health Praxis of Surveillance

Public health surveillance isn't a modern practice. The history of public health surveillance "dates back to the time of Pharaoh Mempses in the First Dynasty, when an epidemic was first recorded in human history" in 3180 B.C.[42] Death surveillance was first recorded in 1532 in London, England, "to keep a count of the number of persons dying from the plague."[43] This section explores the history of the public health praxis of surveillance and locates the maternal death surveillance work of MMRCs.

### *A. Understanding Maternal Death Surveillance*

Public health surveillance is seen as part of an effective public health system, and "central to the practice of modern public health."[44] The process of public health surveillance includes "data collection, data quality monitoring, data management, data analysis, interpretation of analytical results, information dissemination, and application of the information to public health programs."[45] In the context of maternal mortality, maternal death surveillance includes measuring the number of maternal deaths that occur within one year of childbirth, reviewing maternal deaths by accessing personal, clinical, and nonclinical information to document

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[42] Bernard C. K. Choi, *The Past, Present, and Future of Public Health Surveillance*, Scientifica Vol. 2012, Issue 1, 2 (2012).

[43] *Id*. at 2.

[44] Samuel L. Groseclose & David L. Buckeridge, 38:57-79 *Public Health Surveillance Systems: Recent Advances in Their Use and Evaluation*, Ann. Rev. Pub. Health 57, 58 (2017).

[45] *Id*.

and report the circumstances surrounding a maternal death and provide recommendations for how to prevent future maternal deaths.[46] As part of their mandate, MMRCs collect and handle incredibly sensitive patient and medical information as they conduct their evaluations of maternal death.[47] As such, both states and the federal government have recognized the importance of maintaining the confidentiality of patient and medical information as a core component of effective MMRCs.[48]

The 2018 Preventing Maternal Deaths Act (PMDA) established into federal law processes for the confidential reporting and data collection of MMRC information.[49] The PMDA amended Section 317K of the Public Health Service Act to include provisions mandating processes for confidential reporting of "pregnancy-associated and pregnancy-related deaths" including reporting by "(i) health care professionals; (ii) health care facilities; (iii) any individual responsible for completing death records, including medical examiners and medical coroners; and (iv) other appropriate individuals or entities."[50] The PMDA, federal agencies, and state MMRCs see maternal death surveillance as a critical part of ensuring the health and wellbeing of birthing peoples. As one public health expert states, "Understanding why a woman died during or immediately after pregnancy and childbirth is a crucial first step toward(s) preventing other women from dying in the same way."[51]

### *B. The Role of Maternal Mortality Review Committees (MMRCs)*

The first maternal mortality review was conducted in Philadelphia in the late 1920s by the Committee on Maternal Welfare.[52] The Committee's first report was released in 1934, setting the stage for an ongoing Committee to establish a yearly review of maternal morbidity and mortality.[53] Since the 1920s, MMRCs have been established in all 50 U.S. states, and several

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46 CTRS. FOR DISEASE CTR., *supra* note 21.

47 *Pregnancy-Related Deaths: Data from Maternal Mortality Review Committees,* CTRS. FOR DISEASE CTR. DIV. OF REPRODUCTIVE HEALTH (Aug. 22, 2025), https://www.cdc.gov/maternal-mortality/php/data-research/mmrc/index.html.

48 *Authorities and Protections to Support Maternal Mortality Review*, CTRS. FOR DISEASE CTR. DIV. OF REPRODUCTIVE HEALTH (May 15, 2024), https://www.cdc.gov/maternal-mortality/php/mmrc/key-components.html#cdc_generic_section_3-confidentiality-and-protection-of-collected-data-proceedings-and-activities.

49 Preventing Maternal Deaths Act of 2018, Pub. L. No. 115-344, 132 Stat. 5047, https://www.congress.gov/bill/115th-congress/house-bill/1318/text.

50 *Id.* § 2.

51 Matthews Mathai, *Maternal Death Surveillance and Response: Looking Backward, Going Forward*, 11 Global Health: Science & Practice (Apr. 2023).

52 PHILADELPHIA DEP'T. OF PUB. HEALTH, MED. EXAM'R OFF., *Maternal Mortality in Philadelphia 2010-2012* 3, CITY OF PHILADELPHIA (May 2015), https://www.phila.gov/media/20180418095805/MMR-2010-12-Report-final-060115.pdf.

53 *Id.*

municipalities.[54] Given that MMRCs are often established by either state regulatory agencies or enacted by state legislatures, each state can take its own approach on how it governs its MMRCs, and the MMRCs designated functions. Generally speaking, states enact MMRCs to review maternal deaths by accessing personal, clinical, and nonclinical information to understand the circumstances surrounding a maternal death and provide recommendations for how to prevent future maternal deaths.[55] But states vary in whether their MMRCs are established into state law, or simply enacted by state public health agencies, and the mandates of MMRC duties can vary by state.[56]

The 2020 election of President Biden and Vice President Harris saw a renewed focus on improving maternal health outcomes, with the Biden Administration creating a "Blueprint For Addressing the Maternal Health Crisis," that outlined the steps the administration would take to improve maternal health outcomes.[57] However, even with this renewed focus, which included more financial support and data sharing with state and municipal MMRCs,[58] there is still a lack of comparative review as to the governing of and the responsibilities that MMRCs are entrusted with. To combat this 50-state and individualistic approach to MMRCs, the CDC created the Maternal Mortality Review Information App (MMRIA), a "CDC data system that provides a common data language for MMRCs, facilitating their functions and promoting a national approach."[59] In addition to the CDC's attempts to create a national approach and common data language among state MMRCs, public health and legal scholars have attempted to map the varying approaches of state MMRCs to particular populations and areas of maternal health. These unifying efforts have been undoubtedly important to create cohesive and comprehensive maternal death data sets. But the current political conjuncture has the potential to upend this federal-state cohesion of MMRCs, due in large part to right-wing actions

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54 Laura Ungar, *Maternal Mortality Review Panels are in the Spotlight. Here's What They Do*, Associated Press (Dec. 5, 2024), https://apnews.com/article/maternal-mortality-cdc-abortion-georgia-texas-idaho-10dae96d52503709f4beb698a3f12db5.

55 *Circumstances Contributing to Pregnancy-Related Deaths: Data from Maternal Mortality Review Committees in 38 U.S. States, 2020*, Ctrs. for Disease Ctr. (May 28, 2024), https://www.cdc.gov/maternal-mortality/php/report/index.html.

56 *See Authorities and Protections to Support Maternal Mortality Review*, Ctrs. for Disease Ctr., (May 15, 2024), https://www.cdc.gov/maternal-mortality/php/mmrc/key-components.html.

57 White House, *White House Blueprint For Addressing The Maternal Health Crisis*, (June 2022), https://web.archive.org/web/20250117183942/https://www.whitehouse.gov/wp-content/uploads/2022/06/Maternal-Health-Blueprint.pdf.

58 *Id.* at 5.

59 Julie Zaharatos, *Enhancing Reviews and Surveillance to Eliminate Maternal Mortality*, Ctrs. for Disease Ctr. Div. of Reproductive Health, https://www.hrsa.gov/sites/default/files/hrsa/advisory-committees/infant-mortality/meetings/enhancing-reviews-eliminate-maternal-mortality.pdf.

to restrict abortions, penalize reproductive healthcare providers and those working to improve maternal health outcomes. Part II explores the current political conjuncture.

## II. EXPLORING THE CURRENT POLITICAL CONJUNCTURE

State Maternal Mortality Review Committees (MMRCs) sit within a complex federal, state, and local milieu that has rapidly changed over the past decade. It is critical then, especially given the current political conjuncture, to map out the nascent federal landscape that both directly and indirectly impacts the work of MMRCs. Part II analyzes the current political conjuncture and explores: 1) the post-*Dobbs* reproductive healthcare landscape, and 2) the attacks on the federal administrative state.

### *A. The Post-Dobbs Reproductive Healthcare Landscape*

*Dobbs v. Jackson Women's Health Organization (Dobbs)* greatly impacted reproductive healthcare in the U.S. by eliminating a decades long constitutional right to an abortion granted in *Roe v. Wade (Roe)* and *Planned Parenthood v. Casey*.[60] Although reproductive justice was under attack well before the *Dobbs* decision,[61] the post-*Dobbs* landscape has created a chilling landscape where both people seeking reproductive healthcare and reproductive healthcare providers themselves are under threat of criminalization. According to a study done by the Guttmacher Institute, within 100 days after the *Dobbs* decision, sixty-six reproductive health clinics in fifteen states stopped providing abortion care, leaving some states with abortion deserts and without in-state abortion care.[62] The closure of reproductive health care clinics is predicted to increase due to the Court's recent holding in *Medina v. Planned Parenthood South Atlantic*.[63] But the enactment of *Dobbs* has not reduced the number of abortions in the United States—the predicted effect by many right-wing legislators. In fact, the opposite has occurred. In 2023, the year immediately following the *Dobbs* ruling, the number of abortions nationwide *increased* by

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[60] *Dobbs*, supra note 19.

[61] Elizabeth Nash & Peter Ephross, *State Policy Trends at Midyear 2022: With Roe About to Be Overturned, Some States Double Down on Abortion Restrictions*, GUTTMACHER INST. (June 2022), https://www.guttmacher.org/article/2022/06/state-policy-trends-midyear-2022-roe-about-be-overturned-some-states-double-down.

[62] Marielle Kirstein et al., *100 Days Post-Roe: At Least 66 Clinics Across 15 US States Have Stopped Offering Abortion Care*, GUTTMACHER INST. (Oct. 2022), https://www.guttmacher.org/2022/10/100-days-post-roe-least-66-clinics-across-15-us-states-have-stopped-offering-abortion-care.

[63] *See Medina v. Planned Parenthood S. Atl.*, 145 S. Ct. 2219 (2025); Carter Sherman, *Supreme court paves way for South Carolina and other states to defund Planned Parenthood*, THE GUARDIAN (June 26, 2025), https://www.theguardian.com/us-news/2025/jun/26/supreme-court-planned-parenthood-decision.

11 percent.[64] States where abortion care remained available saw a 26 percent increase in abortions in 2023.[65] Furthermore, as the Guttmacher Institute report shows, "almost every state without a total ban saw an increase in the number of abortions provided, as compared to 2020."[66]

The increase in abortions in states without total abortion bans indicates that people who live in abortion-hostile states are seeking reproductive healthcare wherever it may still be available—recall Amber Thurman's story and how Thurman had to travel out of state to receive abortion care because of Georgia's near-total ban on abortion care.[67] In addition to restricting reproductive healthcare, some states have introduced legislation criminalizing people seeking abortion care.[68] While this criminalization occurred pre-*Roe*, states have much more carceral surveillance power now than in the pre-*Roe* era, increasing the chances of tracking and surveilling birthing people seeking abortion care outside their home states.[69] In addition to the criminalization and surveillance of people seeking abortion care, states are also moving to penalize and criminalize reproductive healthcare providers.[70] The move to criminalize both providers and those needing reproductive healthcare has led to healthcare providers either leaving abortion-hostile states altogether or growing increasingly cautious about their legal risks when engaging in reproductive patient care.[71]

Thus, the current state of reproductive health care post-*Dobbs* and the growing fear among reproductive health providers have increased the health risks for birthing peoples in the U.S, as well as increased the likelihood of criminalization for both birthing people and reproductive healthcare providers.

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64 Isaac Maddow-Zimet & Candace Gibson, *Despite Bans, Number of Abortions in the United States Increased in 2023*, Guttmacher Inst. (Mar. 2024), https://www.guttmacher.org/2024/03/despite-bans-number-abortions-united-states-increased-2023.

65 *Id*.

66 *Id*.

67 *See* Duncan & Fry, *supra* note 1.

68 *See* Jolynn Dellinger & Stephanie Pell, *Bodies of Evidence: The Criminalization of Abortion and Surveillance of Women in a Post-Dobbs World*, 19 Duke J. of Const. L. & Pub. Pol'y 1, 13 (2024), https://scholarship.law.duke.edu/djclpp/vol19/iss1/1.

69 *Id*. at 4-5.

70 *See* Mable Felix et al., *Criminal Penalties for Physicians in State Abortion Bans*, KFF (Mar. 4, 2025), https://www.kff.org/womens-health-policy/issue-brief/criminal-penalties-for-physicians-in-state-abortion-bans; Patrick Boyle & Stacy Weiner, *Bans on abortion and transgender care have criminalized medicine, putting patients and doctors at risk*, Ass'n of Am. Medical Colls. (Nov. 11, 2024), https://www.aamc.org/news/bans-abortion-and-transgender-care-have-criminalized-medicine-putting-patients-and-doctors-risk.

71 Boyle & Weiner, *supra* note 70.

### *B. Attacks on the Federal Administrative State*

There are many different systems of maternal death surveillance across various levels of the U.S. government.[72] Each of these systems have been created over time to track maternal health outcomes from the time a birthing person becomes pregnant to within one year after giving birth. For example, the National Vital Statistics System, housed within the Centers for Disease Control (CDC), is one of the oldest intergovernmental systems of data sharing within the public health space. They collect and disseminate mortality statistics, including maternal mortality statistics—defined as maternal deaths that occur from pregnancy to forty-eight days postpartum.[73] The Pregnancy Mortality Surveillance System, also housed within the CDC, conducts "national surveillance to better understand the causes of pregnancy-related deaths," defining a pregnancy-related death as a "death during or within 1 year of the end of pregnancy from any cause related to or aggravated by the pregnancy."[74] Finally, MMRCs are committees created and enacted by U.S. state, county, and local governments to review and document maternal deaths within their jurisdictions, and determine whether those deaths were preventable.[75] All of these systems have historically worked in concert with the goal of decreasing maternal mortality and improving maternal health outcomes across the U.S.

However, the recent spate of Supreme Court administrative law decisions may impact the ability of MMRCs to coordinate state maternal death surveillance efforts with the federal government, and they have left legal scholars along with federal agency workers debating about the current state of administrative law and agency powers. As some scholars have argued, and indeed as Justice Kagan argued in her dissenting opinion, the SCOTUS holding in *Loper Bright* can be seen as a judicial power grab, given that "in one fell swoop, the [Court] gives itself exclusive power over every open issue–no matter how expertise-driven or policy laden–involving the meaning of regulatory law."[76] On the other hand, some scholars see the *Loper Bright, Corner Post*, *SEC v. Jarkesy* and other recent administrative

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[72] *See* Amy St. Pierre et al., *Challenges and Opportunities in Identifying, Reviewing, and Preventing Maternal Deaths*, AM. J. OBSTETRICS & GYNECOLOGY 138, 138 (Jan. 2018), https://journals.lww.com/greenjournal/fulltext/2018/01000/challenges_and_opportunities_in_identifying,.20.aspx.

[73] *Id.* at 139; *About the National Vital Statistics System*, CTRS. FOR DISEASE CTR., https://www.cdc.gov/nchs/nvss/about_nvss.htm.

[74] *Data from the Pregnancy Mortality Surveillance System*, CTRS. FOR DISEASE CTR., https://www.cdc.gov/maternal-mortality/php/pregnancy-mortality-surveillance-data/?CDC_AAref_Val=https://www.cdc.gov/maternal-mortality/php/pregnancy-mortality-surveillance/index.html.

[75] Bright, *supra* note 22.

[76] *See Loper Bright*, 22-451, slip op. at 3 (2024) (Kagan, J., dissenting).; Thomas W. Merrill, *The Demise of Deference – And the Rise of Delegation to Interpret?*, 138 HARV. L. REV.

law decisions as a much-needed rebalancing of the power currently held by the federal administrative state and "unelected bureaucrats."[77]

Even with the ongoing debate, it is clear that the landscape of administrative law is shifting after many decades of stable ground underfoot. As some public health and legal experts have argued, the SCOTUS holdings "make it far more difficult for agencies to protect the nation's health."[78] This uncertainty is critical to consider given the CDC's named role in the PMDA as the main federal agency in charge of ensuring data and report collection by state MMRCs.[79] The CDC houses the Pregnancy Mortality Surveillance System and also the Division of Reproductive Health, responsible for training state MMRCs.[80] Although there remains a debate about how the Court's decisions will impact administrative agencies in the long-term, recent political developments have raised further alarm about the ability of federal administrative agencies to be a steward of the nation's public health.

The Trump administration's recent attacks on federal administrative agencies have resulted in further alarm by public health experts. In a slew of confusing decisions, the Trump administration has enacted mass layoffs at multiple federal administrative agencies, including the Department of Health and Human Services, the CDC, and the National Institutes of Health.[81] In the reproductive health space, the CDC team that

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227, 231 (Nov. 2024); Elena Kagan, *Presidential Administration*, 114 Harv. L. Rev., 2245, 2374 (June 2001).

77 *See* Jill E. Fish, *Overseeing the Administrative State*, 47 Seattle U. L. Rev., 899, 906 (2024); Hon. Caleb Stegall, *Something There is That Doesn't Love a Wall*, 46 Harv. J.L. & Pub. Pol'y, 361, 362 (Jan. 9, 2023).

78 Wendy E. Parmet, *Loper Bright And The Death Of Deference In the Administration of Health Policy*, Health Affairs (July 18, 2024); see also Jennifer Andrus & Kerianne Morrissey, *The Aftermath of the U.S. Supreme Court's Loper Bright on Health Care Practice*, N.Y. State Bar Ass'n (Jan. 29, 2025), https://nysba.org/the-aftermath-of-the-u-s-supreme-courts-loper-bright-on-health-care-practice (quoting Brian Marc Feldman of Aurelian Law who states, "The [Loper Bright] decision is leveling the playing field. Regulations are now up to the court to interpret, and from a defense perspective you can put the government regulations on trial now."; *The U.S. Supreme Court Trifecta: How Loper Bright, Corner Post, and Jarkesy Are Redefining Administrative Law Post Chevron*, Publ. Health Law Ctr., https://www.publichealthlawcenter.org/resources/us-supreme-court-trifecta-how-loper-bright-corner-post-and-jarkesy-are-redefining (arguing that the "increased vulnerability to litigation could lead to heightened caution when agencies implement new rules or actions. It may mean that agency regulations could be issued through more informal methods that could reduce the strength of any agency rule."); Allison K. Hoffman *et al.*, *Drilling Down on Loper Bright and Health Care Regulation*, The Regul. Rev. (Nov. 4, 2024), https://www.theregreview.org/2024/11/04/hoffman-hallice-stein-basila-drilling-down-on-loper-bright-and-health-care-regulation (arguing that although the final impacts of Loper Bright won't be known for some time, the work performed by health agencies will likely become more difficult under this new post-Loper Bright framework).

79 Preventing Maternal Deaths Act of 2018, H.R. 1318, 115 Cong. (2018).

80 Ctrs. for Disease Ctr. (CDC) Div. of Reproductive Health, https://www.cdc.gov/reproductive-health/about/index.htm.

81 Douglas, *supra* note 36; *Here's where jobs and programs are being cut at the nation's top health agencies*, Associated Press (Apr. 1, 2025), https://apnews.com/article/trump-hhs-cdc-fda-nih-cms-layoffs-5aba829b829d9e1a0167c4a0d968aadb.

was considered the "bible of contraceptive care" was fired, along with the Women's Health and Fertility Branch of the Division of Reproductive Health.[82] The Division of Reproductive Health was responsible for training and supporting state MMRCs. But days after announcing the layoff of over 10,000 public health and administrative workers, Health Secretary Robert F. Kennedy Jr. admitted that some of the layoffs were mistakes, stating, "personnel that should not have been cut, were cut. We're reinstating them."[83] To date, it is unclear which programs and staff are being reinstated, and how the federal health agencies will function under the Trump administration. Additionally, the mass layoffs at many federal agencies, as well as the ending of research grant funding has resulted in numerous lawsuits against the Trump administration, many of which are still pending resolution.[84]

Even with the legal uncertainty surrounding mass layoffs, what is certain is the impact on the nation's public health, and more specifically, the impact on maternal health outcomes. A former CDC employee who received the Trump administration's reduction in force notice argues that the elimination of CDC programs like the Pregnancy Risk Assessment Monitoring System will mean that "U.S. maternal morbidity and mortality will continue to worsen. This means more women will die."[85]

### *C. Erosion of State Support for MMRCs*

Although there was significant bipartisan consensus that led to the successful 50-state implementation of MMRCs and raised awareness of the maternal mortality crisis, the consensus is now eroding, with current federal and some state administrations reversing course on their support for MMRCs. Following decades of attacks on reproductive healthcare, there has also been a recent erosion of state support for MMRCs and related maternal mortality prevention measures. Prior to the *Dobbs* decision, even right-leaning states were more supportive of these measures,[86] but as the attacks on reproductive healthcare have grown, so too have the attacks on MMRCs and maternal mortality prevention efforts. Of note

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[82] Meredith Wadman, *CDC team that updated go-to physician reference on contraceptive science is fired*, SCIENCE (Apr. 15, 2025), https://www.science.org/content/article/cdc-team-updated-go-physician-reference-contraceptive-science-fired.

[83] Alexander Tin, *RFK Jr. says 20% of health agency layoffs could be mistakes*, CBS NEWS (Apr. 3, 2025), https://www.cbsnews.com/news/rfk-jr-hhs-job-cuts-doge-mistakes.

[84] Alex Lemonides et al., *Tracking the Lawsuits Against Trump's Agenda*, N.Y. TIMES (Apr. 18, 2025), https://www.nytimes.com/interactive/2025/us/trump-administration-lawsuits.html.

[85] Lorena O'Neil, *How Trump's CDC Purge Will Affect Reproductive Health: 'Women Will Die'*, ROLLING STONE (Apr. 5, 2025), https://www.rollingstone.com/politics/politics-features/cdc-hhs-layoffs-impact-women-1235310574/.

[86] Nina Martin & Robin Fields, *Here's One Issue Blue and Red States Agree On: Preventing Deaths of Expectant and New Mothers*, PROPUBLICA (Mar. 26, 2018), https://www.propublica.org/article/lost-mothers-series-impact-maternal-mortality-legislation.

are three recent instances where states have either failed to adopt MMRC recommendations, or partially or fully restricted the ability of state MMRCs to conduct maternal death surveillance.[87]

First, in November 2024, Georgia dismissed all its MMRC members after public reporting on Georgia MMRC's findings of two Black maternal deaths that the Georgia MMRC determined were preventable in both cases.[88] The deaths of Amber Thurman and Candi Miller "were the first reported cases of women who died without access to care restricted by a state abortion ban."[89] While Georgia's MMRC has now been fully reinstated, the state refuses to release the names of the MMRC members, citing confidentiality concerns.[90]

Second, the state of Texas announced in late 2024 that the Texas MMRC would not review maternal deaths that occurred between 2021 and 2024.[91] Texas first announced a partial abortion ban in 2021, followed by a complete abortion ban post-*Dobbs* in 2022 (enacted via a post-*Dobbs* "trigger law" passed in a separate 2021 law), with exceptions only in cases where the life of the pregnant patient was at risk.[92] The Texas abortion "trigger law" went into effect on August 25, 2022, and included civil, criminal, and professional penalties for abortion providers who continued to provide abortion care after the trigger law went into effect.[93] Texas MMRC's decision to not review maternal deaths from the time period immediately following the state's abortion restrictions and complete abortion bans, is, according to a former Texas MMRC committee member, restricting the ability to conduct maternal death surveillance in "the most crucial years of reproductive health in this country's history."[94] In defending the Texas MMRC's decision skip maternal death surveillance for the 2021-2024, the current MMRC Chair rejected any political influence on the decision, and argued that the decision was made so that the MMRC could "become more contemporary" in its review procedures.[95]

Third, Idaho has one of the most restrictive abortion bans in the country and has also started attacking its MMRC.[96] Idaho effectively disbanded its

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87 Anna Claire Vollers, *Maternal Death Reviews Get Political as State Officials Intrude*, STATELINE (Jan. 15, 2025), https://stateline.org/2025/01/15/maternal-death-reviews-get-political-as-state-officials-intrude.

88 *See supra* Introduction at 2-3.

89 Yurkanin, *supra* note 15.

90 *See supra* Introduction at 2-3; Yurkanin, *supra* note 15.

91 *See supra* Introduction at 2-3; Klibanoff, *supra* note 34.

92 *Id.*; *see also Texas Heartbeat Act, Senate Bill 8*, May 19, 2021, https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=SB8; Texas, Human Life Protection Act, *HB 1280*, (2021), https://capitol.texas.gov/tlodocs/87R/billtext/html/HB01280F.htm.

93 *Id.*

94 Klibanoff, *supra* note 34.

95 *Id.*

96 Idaho Code § 18-622 (2024), https://legislature.idaho.gov/statutesrules/idstat/title18/t18ch6/sect18-622.

MMRC in 2023 when anti-abortion and conservative advocates attacked the MMRC's recommended extension of postpartum Medicaid coverage.[97] Idaho's current Medicaid coverage provides the minimum amount of postpartum coverage as mandated by federal law, which only provides postpartum healthcare for two months after birth. While some may argue that Idaho's MMRC disbanded for apolitical reasons, as the previously enacted MMRC law contained a June 30, 2023 sunset provision, it is the Idaho State Legislature's decision not to extend the MMRC law that resulted in disbanding of the MMRC.[98]

Furthermore, when the Idaho State Legislature enacted a new MMRC law in 2024, the Legislature considered two MMRC bills, both of which contained questionable MMRC provisions. HB 423, introduced by Rep. Dori Healey contained another MMRC sunset clause for a MMRC sunset date of July 1, 2030.[99] HB423 would have restored the MMRC within the Idaho Department of Health and Welfare.[100] The second bill, HB 399, was introduced by House Majority Leader Megan Blanksma, and enacted into law on March 18, 2024.[101] While this bill did not contain a sunset provision, the bill moved the MMRC out of Department of Health and Welfare and into Board of Medicine.[102] When asked about her bill in committee, and why the MMRC was moved out of the Department of Health and Welfare and placed in the Board of Medicine, House Leader Blanksma stated that moving the MMRC into the Board of Medicine would remove the committee's reliance on federal funds—an issue that had not been brought up in previous discussions of the state's MMRC.[103]

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97 Natalie Schachar, *As US maternal mortality rates surge, Idaho abandons panel investigating pregnancy-related deaths*, IDAHO CAP. SUN (June 30, 2023), https://idahocapitalsun.com/2023/06/30/as-us-maternal-mortality-rates-surge-idaho-abandons-panel-investigating-pregnancy-related-deaths/.

98 Rachel Cohen, *The future of a committee to study maternal deaths is uncertain*, BOISE STATE PUB. RADIO NEWS (Feb. 17, 2023), https://www.boisestatepublicradio.org/news/2023-02-17/the-future-of-a-committee-to-study-idahos-maternal-deaths-is-uncertain.

99 H.B. 423, 67th Leg., 2d Reg. Sess. (Idaho 2024), https://legislature.idaho.gov/sessioninfo/2024/legislation/H0423/.

100 *Id.*

101 H.B. 399, 67th Leg., 2d Reg. Sess. (Idaho 2024), https://legislature.idaho.gov/sessioninfo/billbookmark/?yr=2024&bn=H0399.

102 Kyle Pfannenstiel, *For a year, Idaho pregnant moms' deaths weren't analyzed by this panel. But new report is coming,* IDAHO CAP. SUN (Nov. 27, 2024), https://idahocapitalsun.com/2024/11/27/for-a-year-idaho-pregnant-moms-deaths-werent-analyzed-by-this-panel-but-new-report-is-coming/.

103 *Id.*; s*ee also* Kyle Pfannenstiel, *Idaho bill to re-establish maternal death review panel advances to the House Floor*, IDAHO CAP. SUN (Feb. 5, 2024), https://idahocapitalsun.com/2024/02/05/idaho-bill-to-re-establish-maternal-death-review-panel-advances-to-house-floor/.

### *D. Criminalizing Reproductive Healthcare Providers*

There is a growing fear among medical providers working in abortion-hostile states, with some providers deciding to leave their state to escape threats of criminalization and loss of medical licensure. Amid growing fears of state repression and the increased legal risk of practicing in abortion-hostile states, at least sixty-six reproductive healthcare clinics shut down in the one hundred days following the *Dobbs* decision.[104] In March 2025, the Texas Attorney General announced the first criminal charges under Texas's abortion ban. Texas charged Maria Margarita Rojas, a licensed midwife who served a primarily low-income Spanish speaking community, with "illegal performance of an abortion, a second-degree felony, as well as practicing medicine without a license."[105] The state recommended that Rojas be held on a million-dollar bond.[106]

The threat of reproductive healthcare provider criminalization is an issue that made its way to the Supreme Court in the 2024 *Moyle v. United States* case.[107] In *Moyle*, the Supreme Court considered whether Idaho's near-total abortion ban—that makes no exceptions in cases where the pregnant woman's health is in danger—conflicts with the federal Emergency Medical Treatment and Labor Act (EMTALA.)[108] EMTALA requires Medicare-funded hospitals to provide emergency care to patients "if any individual. . .comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition."[109] The federal government (the Biden Administration) alleged that EMTALA preempted the Idaho abortion law in the narrow instances when "state law bars a hospital from performing an abortion needed to prevent serious health harms."[110] The Idaho District Court entered a preliminary injunction, which the en banc Court of Appeals for the Ninth Circuit declined to stay, under which Idaho pregnant people were able to obtain abortions in the narrow cases where the mother's life was at risk.[111] Idaho filed an emergency application which the Court

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104 Marielle Kirstein *et. al.*, *supra* note 62; *see also* Mabel Felix *et. al.*, *Criminal Penalties for Physicians in State Abortion Bans*, Women's Health Pol'y, (Mar. 4, 2025), https://www.kff.org/womens-health-policy/issue-brief/criminal-penalties-for-physicians-in-state-abortion-bans.

105 Ken Paxton, *Att'y Gen. of Tex., Press Release: Attorney General Ken Paxton Announces Arrest of Houston Abortionist and Crackdown of Clinics Providing Illegal Abortions* (Mar. 17, 2025), https://www.oag.state.tx.us/news/releases/attorney-general-ken-paxton-announces-arrest-houston-area-abortionist-and-crackdown-clinics.

106 Eleanor Klibanoff, *Texas' first abortion arrests stem from monthlong attorney general investigation*, The Tex. Trib. (Mar. 17, 2025), https://www.texastribune.org/2025/03/17/texas-abortion-midwife-arrested.

107 *See generally* Moyle v. United States, 603 U.S. 324 (2024).

108 *Id.* at 327.

109 Emergency Medical Treatment and Labor Act (EMTALA), 42 U.S.C. § 1395dd(a).

110 *Moyle, supra* note 107, at 327.

111 *Id.*

dismissed on procedural grounds. The Court's decision to dismiss the writ of certiorari and send the case back to the lower court reinstated the preliminary injunction, preventing Idaho "from enforcing its abortion ban when the termination of a pregnancy is needed to prevent serious harms to a woman's health."[112]

The Idaho abortion law and the ongoing litigation related to *Moyle* directly impact professional reproductive healthcare providers who are caught between medical responsibilities to their patients and Idaho's violent anti-abortion regime. Many Idahoan doctors are leaving or considering leaving the state given the chilling effects of the Idaho abortion law which includes civil and criminal penalties for doctors found in violation of the law.[113] Idaho already ranks last in the U.S. in the number of physicians per capita, with less than 10 OB/GYNs per 100,000 patients.[114] Before the injunction went into effect, doctors were counseling their pregnant patients in case they needed emergency medical care in less abortion restrictive or non-restricted states to "purchase memberships with [medical airlift] companies. . .to avoid potentially significant costs if they need air transport in an emergency."[115] Even with health insurance, 20% of the cost of an airlift would be an out-of-pocket expense for the patient; without insurance, the cost of an airlift—between $12,000-$25,000—is borne entirely by the patient.[116]

These attacks on MMRCs, pregnant patients, and reproductive healthcare providers, especially given the current federal and state political conjuncture, raise critical questions. The first of which is why, after years of a tenuous but still bipartisan consensus on the need to decrease maternal mortality, have MMRCs now come under attack? Next, given the current political conjuncture, can MMRCs conduct their critical maternal death surveillance work and ensure the confidentiality and protection of reproductive healthcare providers who may be asked to provide information on maternal deaths? These questions are explored in the sections that follow.

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112 *Id.*

113 Kelcie Moseley-Morris, *New court order shields certain Idaho doctors from prosecution for emergency abortion care*, IDAHO CAP. SUN (Mar. 21, 2025), https://idahocapitalsun.com/2025/03/21/new-court-order-shields-certain-idaho-doctors-from-prosecution-for-emergency-abortion-care.

114 Arati Dahal & Susan M. Skillman, *Idaho's Physician Workforce in 2021*, CENTER FOR HEALTH WORKFORCE STUDIES, UNIV. OF WASH., 3 (July 2022), https://familymedicine.uw.edu/chws/wp-content/uploads/sites/5/2022/08/Idaho_Physicians_FR_July_2022.pdf.

115 Kelcie Moseley-Morris, *Loss of Federal Protection in Idaho Spurs Pregnant Patients to Plan for Emergency Air Transport*, IDAHO CAP. SUN (Apr. 23, 2024), https://idahocapitalsun.com/2024/04/23/loss-of-federal-protection-in-idaho-spurs-pregnant-patients-to-plan-for-emergency-air-transport.

116 *Id.*

## III. Implicating the State in Perpetuating Maternal Death

State MMRCs, especially those in states hostile to abortion care, not only have to bear the erosion of the federal administrative state but are now also encountering attacks from state lawmakers in states hostile to abortion and reproductive healthcare. To understand the recent attacks on state MMRCs and reproductive healthcare providers in right-wing states, it is important to remember the core role of MMRCs, which is to conduct maternal death surveillance. Recalling Part I, death surveillance in public health is a centuries-long practice with the goal to count the number of people dying from specific causes.[117] MMRCs conduct maternal death surveillance, which is the review of maternal deaths to understand the circumstances surrounding a maternal death, and provide recommendations for how to prevent future maternal deaths.[118] To understand why MMRCs' critical work has come under attack, this section uses a critical feminist and transparency law theory frame to situate the state's attack of MMRCs.

### *A. Anti-abortion Laws as State Violence*

Critical feminist theory instructs us to examine the manifestations of how gender and power are constructed in our political, social, and cultural lives, and is premised on the notion that laws based on gender differences should be repealed.[119] Critical feminist scholarship has long focused on the oppression and regulation of Black women by the state.[120] As Professor Dorothy Roberts argues, "regulating Black women's reproductive decisions has been a central aspect of racial oppression in America."[121] It is therefore not surprising that from a critical feminist perspective, anti-abortion legislation is seen as an act of state violence and oppression against birthing peoples.[122] This is especially true given the assessment of public health

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117 *See supra* Part I.A.

118 Ctrs. for Disease Ctr. (CDC), *supra* note 21.

119 Gianna Katsiampoura, *From Critical Feminist Theory to Critical Feminist Revolutionary Pedagogy*, 14 Advances in Applied Sociology 175, 175–78 (2024), https://www.scirp.org/journal/aasoci; Alex M. Johnson, Jr., *The New Voice of Color*, 100 Yale L. J., 2007, 2021–23 (1991).

120 See Hope Lewis, *Global Intersections: Critical Race Feminist Human Rights and Inter/National Black Women*, 50 Me. L. Rev. 309, 311 (1998); Penelope E. Andrews, *Globalization, Human Rights and Critical Race Feminism: Voices from the Margins*, 3 J. Gender Race & Just. 373, 375, 379 (2000).

121 Dorothy E. Roberts, Killing the Black Body: Race, Reproduction and the Meaning of Liberty 6 (Vintage Books 1st ed. 1997); *see also* Micki Burdick, *"Let's Make the Womb Safe Again": Ethnographic Explorations of White Evangelical Women's Language of Reproductive Injustice*, Cultural Studies Critical Methodologies 24(1) (2024).

122 *See Why Roe v. Wade must be defended*, The Lancet, May 14, 2022, at 1845 (The right to an abortion is "central to any conception of a woman's wellbeing and gender equality."); *See also* Adebayo Adesomo, *Pregnancy Is Far More Dangerous Than Abortion*, Scientific American (May 30, 2022), https://www.scientificamerican.com/article/pregnancy-

and medical providers assessment that abortions are a safe form of reproductive healthcare that saves maternal lives.[123]

From a critical feminist approach, a female body, or, in our parlance, a birthing person, has personhood.[124] Any attack on that personhood is a form of oppression. In particular, from a reproductive justice perspective, birthing people deserve the "right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities."[125] Given that anti-abortion laws interfere with the right of a birthing person to make autonomous healthcare decisions that are in their best interests, anti-abortion laws are therefore a form of state violence.[126] Thus, in states where birthing peoples are dying as a result of the state's abortion bans—it is in the state's interest to render invisible the presence of maternal deaths—especially those deemed preventable and linked to the lack abortion healthcare in the state. The next section explores transparency law theory to fully understand how and why MMRCs are being attacked in abortion hostile-states.

### *B. State ~~Visibility~~ (Obscurity) of Maternal Death*

Transparency, when applied to governmental institutions, is the act of illuminating the gap between the state and the public. Professor Fenster argues the underlying logic of transparency law is that "Government institutions operate at a distance from those they serve. To be held accountable and to perform well, the institutions must be visible to the public. But in the normal course of their bureaucratic operation, public organizations sometimes inadvertently, sometimes willfully; sometimes with good intent, sometimes with unethical or illegal intent create institutional impediments that obstruct external observation."[127]

It is within this light that we evaluate the state's reaction to the work of MMRCs in the post-*Dobbs* era. As noted above, when evaluated from a critical feminist lens, anti-abortion laws are a form of state violence against birthing peoples. How then does the maternal death surveillance work of MMRCs intersect with this state violence? To situate the work of MMRCs

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is-far-more-dangerous-to-women-than-abortion ("forcing people to undertake these risks [of pregnancy] against their will is a fundamental violation of bodily autonomy and human rights.").

123 *See* Enze Xing et al., *Abortion rights are health care rights*, JCI INSIGHT, 8(11), (2023); *see also* Jeremy Faust, *Four Key Facts that Show Legalized Abortion Saves and Improves Maternal Lives,* INSIDE MED. (May 2, 2022), https://insidemedicine.substack.com/p/four-key-facts-that-show-legalized-22-05-03.

124 Elizabeth Beck et al., *Reproductive Justice, Bodily Autonomy, and State Violence*, FEMINIST INQUIRY IN SOCIAL WORK 39(3) (February 7, 2024).

125 SisterSong: Women of Color Reproductive Justice Collective, *Reproductive Justice*, https://www.sistersong.net/reproductive-justice.

126 Beck, *supra* note 124.

127 Mark Fenster, *Seeing the State: Transparency as Metaphor*, ADMIN. L. REV., 62(3), 617, 619, (2010), https://www.jstor.org/stable/25758547.

within the state violence present in abortion-hostile states, we evaluate the work of maternal death surveillance—but more specifically surveillance itself—from a first principles perspective to understand what maternal death surveillance illuminates within this current political conjuncture. If we look to surveillance literature, the etymology of the word "surveillance" comes from the French word, "surveiller."[128] According to Professor Steve Mann, surveiller contains a two part definition: 1) the prefix: "sur" meaning "over" or "from above," and 2) "veiller"–a verb meaning "to watch."[129] Surveillance is thus "observation or recording by an entity in a position of power or authority over the subject of the veillance."[130] Where surveillance is the observation by people in power over the subjects of the veillance,[131] *sousveillance* is the "observation or recording by an entity **not** in a position of power or authority over the subject of the veillance."[132] In other words, sousveillance is the practice of "citizens observing or recording activities from their own perspective."[133]

A common and oft-cited example of sousveillance is the practice of people recording instances of police violence on their cell phone cameras—a practice commonly known as "copwatching." As Professor Jocelyn Simonson notes, copwatching "uses group observation backed up by cameras to transfer power from the police to the people."[134] Organized copwatching efforts, which "combine public participation and accountability" have the power to demonstrate "the potential of politically powerless populations to contribute to *constitutional* norms governing police conduct."[135] In this way, sousveillance such as copwatching implicates the state in the police violence enacted on community members—it is why police officers often resist copwatching and even arrest copwatchers.[136] The sousveillance of copwatching is especially prescient today given that we are in an era of federal law immigration enforcement masking, covering badges, and enacting immigration detention in plain clothes to avoid being identified by those conducting community immigration watch.[137]

Taking the definition of sousveillance and the example of copwatching into account, when the maternal death surveillance work of MMRC's

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128 Steve Mann, *Veillance and Reciprocal Transparency: Surveillance versus Sousveillance, AR Glass, Lifeglogging, and Wearable Computing*, IEEE Int'l Symp. on Tech. & Soc'y (ISTAS), 3, (2013), https://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=6613094.

129 *Id.*

130 *Id*.

131 *Id*.

132 *Id*.

133 *Id*.

134 Jocelyn Simonson, *Copwatching*, 104 Calif. L. Rev., 391, 415, (2016).

135 *Id*. at 397, 398.

136 *Id*. at 429.

137 Ray Sanchez & Alisha Ebrahimji, *Masked ICE officers: The new calling card of the Trump administration's immigration crackdown*, CNN (June 21, 2025), https://www.cnn.com/us/ice-immigration-officers-face-masks.

is viewed from a maternal death *sous*veillance perspective, MMRCs preventability assessments and recommendations may implicate the state making visible the state's role in a maternal death. This is true especially if an MMRC concludes that a maternal death was preventable and that the state's abortion policies played a role in the maternal death. Recalling the Georgia MMRCs assessment of Amber Thurman's death, the state's MMRC concluded Thurman's death was preventable, with the delay in D&C procedure playing a significant role in Thurman's death.[138] The Georgia MMRC preventability assessment implicated the state's own anti-abortion policies—an assessment that resulted in the complete disbanding of the Georgia MMRC.[139] In this way, the maternal death surveillance work of MMRCs cannot be divorced from the debates around the right to an abortion, given that the overwhelming medical consensus is that abortions are a way to save maternal lives.[140]

Rending the visible invisible is a core technique of state power. This is why democratic societies have government transparency laws to shine light on the state's activities. Using critical feminist and transparency law theories situates how MMRCs maternal death surveillance is a public health transparency tool that disrupts the state's attempts at obscuring the state's complicity in maternal death. To put it another way, when MMRCs conduct maternal death surveillance, especially within the post-*Dobbs* era, MMRCs make visible the anti-abortion state complicity in maternal death.

## IV. Protecting Reproductive Healthcare Providers

Given the current political conjuncture, where right-wing states are now considering or are actively pursuing criminal charges against reproductive healthcare providers, it is critical that MMRCs consider how to protect reproductive healthcare providers who may be required to provide information during the MMRC maternal death surveillance process. As explored in this Essay, MMRCs currently sit within a dialectic tension: as maternal death becomes more visible to the state, so too, does the possibility of criminalization of reproductive healthcare providers. One example where an MMRC may be used to facilitate state repression against reproductive healthcare providers is a recent change enacted in Idaho's MMRC law. Idaho's 2024 MMRC law includes a provision that grants the MMRC power to "seek injunctive relief prohibiting the unlawful practice of medicine."[141] Given the broad terminology, it is unclear what "practices" are at issue in the new provision of the state's MMRC law. In addition to the injunctive relief provision, Idaho's legislature also refused to include

138 *See* Surana, *supra* note 2.
139 Yurkanin, *supra* note 13.
140 *See supra* Part III.A.
141 Idaho Leg., *HB 399*, *supra* note 101.

immunity provisions for MMRC members and healthcare providers within the 2024 MMRC law, even after some legislators, community and public health advocates advocated for immunity provisions to be included.[142]

During the discussions to reenact Idaho's MMRC, the legislature considered two MMRC bills. HB399 which was enacted by the legislature in 2024 contains no immunity or confidentiality provisions to protect the proceedings of the MMRC, or the people conducting the maternal death surveillance.[143] HB423, the other MMRC bill considered by the state legislature contained confidentiality and immunity provisions similar other state MMRCs confidentiality clauses.[144] When asked why the HB399 did not include immunity provisions in her Bill, Rep. Blanksma stated, "When you talk about providing blanket immunity for anyone, we start to get really sketchy."[145]

Given that anti-abortion laws and the right wing-capture of the federal administrative state are forms of state violence towards both birthing people and reproductive healthcare providers, it is clear why right-wing or anti-abortion states are attacking and obscuring the maternal death surveillance work of MMRCs. Abortion-hostile states are attempting to obscure the visibility into maternal death that MMRCs provide and obfuscate the state's complicity in maternal death. As such, legislators in abortion-hostile states, and even those in non-abortion hostile states, should work to enact protections for MMRCs to ensure that MMRCs maternal death surveillance work is not used to enact greater state violence on reproductive healthcare providers who may be called on to provide information to MMRCs. Such measures could include laws that would protect reproductive clinicians from malpractice or immunity provisions that would protect clinicians from criminal or civil penalties.[146] Future research could identify new ways to protect clinicians in abortion hostile states, as well as research data privacy, confidentiality, and immunity laws which could ensure that MMRCs maternal death surveillance data is not used to enact state violence.

## Conclusion

It is in a state's interest to render invisible the presence of maternal deaths—especially when those maternal deaths have been deemed preventable by a state's MMRCs. This Essay uses a critical feminist and

142 Pfannenstiel, *supra* note 103.

143 Idaho Legislature, *HB 399, supra* note 101.

144 Idaho Legislature, *HB 423*, *supra* note 99.

145 Pfannenstiel, *supra* note 103.

146 *See* Yvonne Lindgren & Michelle Oberman, *Recalibrating Risk Under Dobbs,* forthcoming 94 Fordham L. Rev. (2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5003888; Angela Christina Couch, *Wanted: Privacy Protections for Doctors Who Perform Abortions*, 4 Am. Univ. J. of Gender, Soc. Pol'y. & L. 361, (1996).

transparency law frame to situate anti-abortion laws and the right wing-capture of the federal administrative state as forms of state violence. This Essay argues that critical feminist and transparency law theories make visible that MMRC's maternal death surveillance in abortion-hostile states illuminates the state's complicity in maternal death—a visibility that abortion-hostile states are attempting to obscure. This dialectic tension between the visibility of MMRC's maternal death surveillance and the obscuring of that surveillance by abortion-hostile states raises serious concerns about the confidentiality and immunity of reproductive health care providers in abortion-hostile states. Put simply, as maternal death becomes more visible to the state, so too, does the possibility of criminalization of reproductive healthcare providers working to provide care in abortion-hostile states. It is therefore imperative that MMRCs consider this tension as they work within the current political conjuncture to conduct maternal death surveillance within abortion-hostile states.