

Local Control:

Fighting for abortion access in
the District of Columbia

Lindsey Wahowiak

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★ Statehood
= Research DC

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About the Author

Lindsey Wahowiak is director of Affiliate Affairs with the American Public Health Association and a freelance writer in Washington, DC. For nearly two decades, she's reported on health and government for newspapers, journals, magazines and the web, including award-winning coverage of reproductive rights, head injury, occupational health (The Nation's Health) and domestic violence (Big Rapids Pioneer). She's the former director of volunteer engagement with the DC Abortion Fund, and the current board chair for Girls Rock! DC.

Executive Summary

The fall of *Roe v. Wade* has reignited calls for statehood for the people of the District of Columbia. Under current law, Congress must approve the District's budget and legislation. For more than 30 years, Congress has barred the District from using its own locally raised tax revenue to cover abortion care for Medicaid recipients. And while the 2022 Supreme Court decision ostensibly put the fate of abortion access in states' hands, congressional control (and restrictions) over abortion funding remains for the District.

For now, abortion is legal and accessible in the District, thanks to its relatively high concentration of privately funded abortion providers, including those that serve patients in second and third trimesters. But an antichoice Congress could ban abortion in the District if it wanted.

At the same time, DC clinics are facing higher demands from patients traveling from states where abortion is restricted or outright banned. Because of this increased demand, DC residents are facing longer wait times and higher costs for their care. The burden falls disproportionately on Black and poor residents, who already face health disparities, including nearly all the pregnancy-related deaths in the District. Abortion can be lifesaving care, but it's being pushed further out of reach for Washingtonians, whose health suffers at the whim of Congress.

Introduction: Abortion today in the District

Public health experts have long known that access to abortion can be lifesaving. When people can access abortion, it leads to better economic, health and parenting outcomes for families. But when people are unable to afford access to abortion, it can compound economic hardship, health issues, housing instability and physical violence that lasts for years.

Abortion is common in the United States. In 2020, about 1 in 5 pregnancies ended in abortion. In the District, more than 4,400 abortions were provided in 2020 (though only 30 percent of 2022 abortions in the District were provided to DC residents, and some residents may have gone outside the District for their care).

Abortions are expensive, too. In 2022, the average cost of a first-trimester abortion (medical or surgical) at Planned Parenthood of Metropolitan Washington was about \$600. Abortion isn't like other medical procedures when it comes to pricing. Lasik surgery, for example, costs pretty much the same no matter where in the country you live, or how long you've worn glasses. The longer a person must wait to get an abortion, and the further into a pregnancy they go, the higher the price. That means for low-income patients, the cost snowballs: If a patient couldn't pay \$800 at 14 weeks into their pregnancy, they'll struggle even more at 15 weeks, when the cost for an appointment at the same clinic will be between \$1,100 and \$1,500. Not included in that price tag are hidden costs like time off work, childcare or travel costs.

Those snowballing costs disproportionately harm people of color, particularly Black women. Nearly half of the city's population is Black and 16 percent of the population, most of whom are Black

residents, live below the poverty line. Nationally, Black women have a higher maternal mortality rate than other racial groups across the country. In the District, it's stark: From 2014 to 2018, all but two of the people who died from pregnancy-related causes in the District were Black.

The District is, on first glance, a haven for abortion care. In 2022, the District was home to eight abortion providers. It has no gestational limits on abortion, and does not require parental notification or consent for patients under 18 years old.

By comparison, neighboring Virginia requires parental notification and consent for minors seeking abortion care, and bans abortion in the third trimester except in lifesaving instances. In Maryland, the laws regulating abortion require parental notification, but not consent, for patients under 18 (though health care providers can waive notification in some instances), and once a pregnancy is viable, abortion can only be performed to save the patient's life or in the case of a fetal anomaly. In West Virginia, abortion was outlawed in September 2022. In South Carolina, abortion is available until 20 weeks while the state's Supreme Court reviews a law that would set the limit at six weeks. Comparatively, the District may seem better poised to weather the changes in a post-Roe v. Wade world.

Abortion access in the District is precarious at best. Unable to control its own laws or budget, and without the baseline protection of Roe, the District's ability to provide care—especially for its most vulnerable populations—is held hostage by antichoice lawmakers in Congress. Washingtonians' health and lives hang in the balance.

Pre-Roe: DC trailblazer amid national restrictions

Before *Roe v. Wade* codified the legal right to abortion in 1973, abortion was banned in the District, except to save the life or health of the person who was pregnant. Preserving health included mental health, as ruled by the Supreme Court in *U.S. v. Vuitch* in 1971. That legal exception, coupled with the fact that the District had no residency requirement, made it one of the top destinations for out-of-state travelers seeking abortion care in the pre-Roe era (trailing only New York).

Post-Roe: DC leading region in providers and access

On January 22, 1973, the Supreme Court handed down its decision on *Roe v. Wade*, ruling that Texas' ban on abortion "except to save the life of the mother" violated the 14th Amendment of the Constitution. With that decision, abortion became legal across the country, although many states would enact gestational limits, parental notification, waiting periods, and other barriers in the coming years.

In the wake of the *Roe* decision, more independent clinics opened to serve DC residents and patients seeking care from states nearby and across the country. Abortion rates increased only slightly, but access to care increased dramatically; by 1977, *The Washington Post* reported that the DC region had 16 outpatient clinics, including 10 within DC limits, that performed the majority of the more than 40,000 abortion procedures in the area each year.

Also in 1973, President Richard Nixon signed the District of Columbia Home Rule Act, the law that allows the District to elect its own mayor and council to represent the will of its residents. Home rule, however, did not mean independence for Washingtonians. Unlike people living in states, DC residents and their elected officials do not have final say over the laws and budget for the District—and they have no vote in Congress to help to change their lack of legislative and budget autonomy.

Hyde Amendment: Restricting federal funding

Just three years after the right to abortion was affirmed by the Court, Congress struck down the ability for Medicaid to pay for abortion procedures. This barrier, enacted with the fiscal 1977 Medicaid appropriation, was known as the Hyde Amendment. Introduced by Rep. Henry J. Hyde (R-Ill.), the amendment barred the use of federal funds for abortion.

In theory, the amendment offers exceptions for cases of rape or incest, or if a person's life is endangered by carrying the pregnancy to term. In practice, the amendment restricts abortion coverage for Medicaid enrollees, as well as for people with disabilities who receive Medicare benefits. It also bars coverage for people serving in the US military and incarcerated women. Similar restrictions have been adopted into the budgets for the Indian Health Service and Children's Health Insurance Program and the Peace Corps program.

The results of the Hyde Amendment are, by design, discriminatory. Upon the passage of the amendment, Hyde himself commented, "I would certainly like to prevent, if I could legally, anybody having an abortion: a rich woman, a middle-class woman, or a poor woman. Unfortunately, the only vehicle available is the...Medicaid bill." By restricting abortion access for Medicaid recipients, the amendment disproportionately affects women of color. Black and Hispanic women are more likely to receive Medicaid benefits—and therefore be barred from coverage.

Advocates fought against the Hyde Amendment, but by 1980 it went into effect and remains in place to this day. Though its wording changes from year to year, the amendment still restricts federal dollars from funding abortion care. As of May 2021, only 16 states had elected to use their own state dollars to fund abortion care, and 34 have not. The District is in the unique position of wanting to use its own budget to cover abortion costs for its most vulnerable residents, but is prevented by Congress from doing so.

Dornan Amendment: Restricting District funding

The District's lack of statehood means its budget is subject to congressional approval. After the Mayor and DC Council agree on a budget, it is sent to the President to be submitted for congressional approval, usually attached to a federal appropriations bill. Congress can also overturn any laws passed by the DC Council. No other locality in the United States faces this kind of scrutiny, nor are they as beholden to the federal government on how they can spend their local tax dollars.

The Dornan Amendment is a prime example of how Congress controls local DC affairs. Proposed in 1987 by Rep. Robert Dornan (R-Calif.), the amendment prohibited the use of any funds in the District of Columbia Appropriations Bill to perform abortions. The amendment passed in 1988, and

the Dornan Amendment was born—barring DC residents from using locally funded Medicaid to cover the cost of their abortion care.

The Dornan Amendment stayed in effect from 1988 until 1993, when Congress lifted the restriction. However, only two years later in 1995, a congressional majority reinstated the ban on the use of locally raised funds in the District. Under President Barack Obama in 2009, Congress lifted the ban again, allowing DC Medicaid to cover abortion.

But again, only two years later in 2011, the ban on local abortion funding was reinstated. During contentious budget arguments, President Obama was quoted as telling then-House Speaker John Boehner (R-Ohio), “John, I’ll give you DC abortion,” in an effort to appease antichoice lawmakers to pass the budget. It worked. The budget passed, and the District once again lost its ability to spend its budget as its leaders and voters saw fit. *The Washington Post* described the move as “effectively trading away the city’s right to fund abortions for low-income women.” Since then, the Dornan Amendment has stayed in effect.

It exacerbates already high disparities within the District. Over one in five Black residents live below the poverty line, higher than any of the neighboring counties. Black families have the lowest median incomes of all racial groups in the District. East of the Anacostia River, in historically redlined neighborhoods, health disparities are even more stark: Between 2014-2018, roughly 70 percent of the pregnancy-related deaths in the District occurred in Wards 7 and 8. And while Black mothers comprise roughly half of all births in the District, they are 90 percent of all pregnancy-related deaths and 93 percent of pregnancy-associated, non-related deaths. In the District, more than 95 percent of non-elderly Medicaid recipients are people of color.

Post-Dobbs: The District’s position grows more precarious without statehood

In June 2022, the Supreme Court struck down *Roe* in its decision *Dobbs v. Jackson Women’s Health Organization*. In its decision, the court ruled that access to abortion is not a constitutional right, and that “the authority to regulate abortion is returned to the people and their elected representatives.” But for the District, that’s not the case.

Should antichoice lawmakers take control of Congress, the District’s abortion access, which does not include gestational limits, could be restricted—or destroyed entirely. In the same way that Congress can approve or deny the District’s budget, it could take away its ability to govern itself by the will of the people. So, while the *Dobbs* decision sent the fate of abortion access back to the states to decide, the District, since it is not a state, is still beholden to Congress.

The destruction of home rule would allow antichoice legislators in Congress to ban abortion in the District. Some Republicans have announced that as their intention: Rep. Andrew Clyde (R-Georgia) told news outlets that he’s introducing legislation to destroy home rule, specifically to restrict abortion, against the will of DC residents. “My forthcoming legislation to repeal DC’s Home Rule Act will follow and uphold the Constitution, period,” Clyde told *Politico*. “Despite the Left’s lie that women have a constitutional right to abortion, the Constitution clearly secures an unalienable right to live—but it does not provide a right to abortion.”

Abortion bans are not the will of DC residents: A 2014 Pew Research poll showed that 70 percent of Washingtonians support access to abortion in most or all cases. Restricting the ability to terminate pregnancy will lead to worse health and economic outcomes, particularly in the Black community. Lawmakers and doctors have called for statehood as the only way to protect abortion access and allow people to end a pregnancy safely. Black residents of Wards 7 and 8 have spoken out about the harm they are experiencing because of the fall of *Roe*. Delegate Eleanor Holmes Norton (D-DC) called for statehood to protect the District's abortion rights, both for its residents and for the people who travel here for care.

People travel from across the country to get an abortion in the District. Even before *Roe* fell, patients from states with more restrictive abortion laws traveled to the District for care. (In 2022, the city had several non-hospital clinics that provided care in late second and third trimesters. Two other clinics in nearby Montgomery County and Prince George's County also operated with later gestational limits.) Since the decision came down from the court, those numbers have climbed steadily.

The DC Abortion Fund (DCAF) is a nonprofit working to break down the barriers to abortion access. Since 1995, DCAF has filled the financial gaps for abortion care for people living in or traveling to the District, Maryland and Virginia. It is the only fund that covers appointments in the District. From January 2022 to May 2023, DCAF staff reports working with more than 1,120 Washingtonians seeking abortion care. Since the fall of *Roe*, the organization has seen an increase in costs for appointments, wait times at clinics and travelers coming to the District from states with harsher restrictions and outright bans.

Shannon Ens, caller services and engagement director with DCAF, noted that with the increase in out-of-District patients seeking care here, wait times, particularly for third-trimester appointments, are increasing—which can lead to higher costs for care. Post-*Dobbs*, the organization's average per-patient payment has increased by 173 percent to \$710. "Demand in DC is up. That means wait times are up, which is driving up costs for patients," Ens said. "People are coming at all gestational ages too (rather than for late second- or third-trimester care). We're not meeting the need right now in DC." The need will continue to climb without codifying abortion access and District Medicaid coverage, neither of which can be secured without statehood.

While the need is climbing, donor dollars are falling off. Ens said that DCAF saw a huge surge in donations post-*Dobbs*, but that donor fatigue has set in. The one-time donations that arrived in summer 2022 are not long-term security for the organization or its callers, and monthly recurring donations have also dropped. Private foundations are not filling the gap: Even before *Dobbs*, they pledged just 3 percent of their reproductive health donations to abortion funds. DCAF leadership says that private philanthropy has offered just a few one-time, emergency gifts. Ens said DCAF's grassroots fundraising efforts had only increased in the aftermath of *Dobbs*, and that local independent clinics were also fundraising on their own.

Should Congress restrict abortion access in the District, DC lawmakers have passed the Enhancing Reproductive Health Protections Amendment Act of 2022, which would protect those who support and assist individuals seeking to self-terminate a pregnancy and shields those who provide, dispense or transfer any product used for self-managed abortions from any penalties. (Self-managed abortion can be a safe and effective way to end a pregnancy.)

DC Councilmember Christina Henderson called the bill a protection for not just people seeking abortions, but for the people who help provide them. "We want to make it abundantly clear in our local laws that in the District of Columbia we are a safe haven for women seeking unrestricted access to reproductive health care," she said in a news release upon the introduction of the bill. "The use of FDA-approved medication provides a safe, effective and simple option to manage pregnancy with or without the supervision of a health care professional. The use of the medication is already protected under DC law. However, the law remains unclear for family, friends or health professionals assisting an individual with the process. This legislation would expressly protect those who support or assist individuals in need of such care."

Mayor Muriel Bowser signed the bill in November 2022. Congress let the bill languish for its 30-day review period, and the bill became permanent DC law on Feb. 23, 2023.

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info@statehoodresearchdc.org

1310 L Street, NW, Suite 325, Washington, DC 20005