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## **BRIEF19**

*A daily review of covid-19 research and policy*

### **BREAKING NEWS RESEARCH BRIEFING**

#### **Abortions plummeted during Texas' policy to postpone most surgeries and medical procedures during March and April, 2020.**

Early in the covid-19 pandemic, many states recommended halting procedures that were not deemed to be medical emergencies. The reason for this was simple: hospitals were overwhelmed with patients sick with covid-19, and surgical floors and post-anesthesia care units needed to be converted to covid-19 care areas. Additionally, decreasing surgeries meant more availability of PPE for providers taking care of hospitalized covid-19 patients.

Many procedures, surgical removal of cancerous tumors for example, do not fall under the definition of “emergent,” and yet are often urgent in nature. Another procedure widely regarded as urgent—and depending on the gestational age might be considered emergent—is the surgical termination of early pregnancy, often simply referred to as an ‘abortion’.

In a [new paper](#) published in *JAMA*, researchers assessed the changes in abortions following an executive order by Texas Governor Greg Abbott on March 22, 2020 that required postponing surgeries and procedures not deemed medically necessary. Controversially, the order included abortion.

To determine changes in the number of abortions that occurred during the pandemic in Texas, researchers analyzed monthly data from 18 of 24 abortion facilities in Texas which account for 93 percent of abortions performed in Texas. Data also included Texas residents obtaining abortions at 30 of 37 “open facilities” in nearby states, including Arkansas, Colorado, Kansas, Louisiana, Oklahoma, and New Mexico from February 2020 through May 2020. These data were compared to rates recorded during previous years.

When compared to the previous year, the researchers found a 38 percent reduction in abortions in Texas during the time that executive order issued by Texas Governor Greg Abbott was active. Additionally, there was a 17 percent increase in medication-induced abortions and a concomitant decrease in procedural abortions during this time period. When the executive order was lifted, there was an 83 percent increase in procedural abortions among pregnancies that were 12 weeks or higher when compared to May 2019. This means that some women waited weeks longer than they wished to in order to receive an abortion and that many more second trimester abortions occurred than usual. Finally, Texas residents receiving care at out-of-state facilities substantially increased (by *785 percent*) during the month of April, meaning that women who normally would not have to travel (and incur expenses) had no option but to do so in order to obtain their usual legal access to medical care.

—Joshua Niforatos, MD, MTS

### **BREAKING NEWS POLICY BRIEFING**

#### **Abortion and other care in the time of covid-19. What's the legal status?**

As states experience surges in cases and hospitalizations, many states are again delaying nonessential, or “elective” medical procedures. Such delays became commonplace in the spring during the initial covid-19 outbreak in the United States. But exactly what constitutes nonessential medical care? Some states have sought to treat abortion as such.

In *Planned Parenthood v. Casey* (1992), the US Supreme Court affirmed a woman's right to terminate a pregnancy before “viability,” while also allowing for states to impose limits on

abortion access so long as the burden imposed is not “undue.” The question, then, is whether executive orders designating abortion as a nonessential or “elective” medical care subject to delay constitutes an undue burden in violation of *Casey*.

To help determine this, one must consider the burden faced by the women seeking to obtain abortions who have been barred from doing so during the time that the order is in effect. While some unusual deference may be afforded state executives in light of the public health crisis posed by covid-19, forcing interstate travel to obtain abortion is certainly burdensome, especially for women without the financial means to do so. Given the difficulty of interstate travel during a pandemic, one must also consider whether the pregnant individual could still obtain an abortion *at all* upon cessation of the emergency executive order, with some states restricting abortion access after a certain number of weeks of pregnancy. Indeed, the new *JAMA* study found that abortions after 11 weeks’ gestation *increased* after the expiration of the order, reflecting delays in care among those seeking abortions.

The irony of such short-term orders is that while they ostensibly were aimed at conserving healthcare resources including PPE, as found by the District Court for the Western District of Oklahoma, delaying abortions through such legal means may have resulted both in fewer abortions, but [more invasive ones](#) when they did occur. Therefore, “supplying prenatal care for these patients in the meantime would indisputably require interpersonal contact and the use of PPE and other hospital supplies.”

Thus, pandemic-related policies that limited abortion during the stay-at-home periods in states like Texas not only imposed the burdens of requiring interstate travel among women who sought access to abortion care guaranteed to them under the US Constitution, but they also necessitated the utilization of otherwise unnecessary prenatal care related to more invasive abortion methods that were needed as a result of delays, thereby contributing the very strain on healthcare systems that these executive orders purportedly aimed to avoid amidst the covid-19 pandemic.

—Miranda Yaver, PhD

### **Stay-at-home orders saved lives and changed many others.**

Broadly speaking there are two types of people: those who think that stay-at-home orders early in the covid-19 pandemic saved lives and those who despite all available evidence think that the “cure” was somehow literally deadlier than a disease which has claimed nearly 2 million lives worldwide. While the emerging data points towards the fact that stay-at-home policies have not led to any measurable increases in mortality and clearly saved countless numbers in our communities, let’s put that debate aside and focus momentarily on what experts call “secondary effects” of stay-at-home policies. One such effect now relates to measurable decreases in abortion care, as covered by Dr. Joshua Niforatos and Dr. Miranda Yaver in today’s *Brief19*.

If one carries the belief, as many in the “pro-life” movement do, that life begins at conception, then for such people it is now inarguable that the *response* to the covid-19 public health emergency itself saved the lives of many thousands of fetuses. That is because, as Dr. Yaver notes, the temporary policies that denied women access to an elective termination of pregnancy during the initial pandemic period in the United States would only be legally permissible within the context of a national emergency such as the covid-19 pandemic. Otherwise, such a policy would fly against decades of legal precedent and not survive a legal challenge, whether in Texas or Vermont. Thus, from the “pro-life” perspective, the Texas policy temporarily banning what the state considered to be elective surgeries and medical procedures—one that was only legally possible under a public health emergency so great that stay-at-home

policies had to be enacted—saved far more lives than were lost to covid-19 in that state during that time period, as coronavirus case counts at that time were still rather low in that state.

The overlap between people who opposed stay-at-home policies (inaccurately called “lockdowns” by many) for any number of reasons and those who self-identify as “pro-life” is not 100 percent. But support for lockdowns in so-called “Red” states (Republican strong-holds) is [far lower](#) than in “Blue” states (Democrat strong-holds); the former are also largely the same areas where pro-life stances are [most commonly held](#). So, to those people who both oppose lockdowns *and* are pro-life, one might ask: if stay-at-home policies designed to stop covid-19 had the unintended side effect of legally decreasing by many thousands the number of abortions performed in Texas and elsewhere this spring, would that alone have made the price of such policies worth the costs?

—Jeremy Samuel Faust MD MS

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