LEGAL REPRESENTATION DESERTS COMPOUND A POST-*DOBBS* STANDARD OF CARE CRISIS

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ABSTRACT

*Personal injury firms systematically exclude pregnant people from web content describing birth injury legal representation, creating legal gaps that compound a post-*Dobbs *standard of care crisis. The tort system plays a powerful role in ensuring the delivery of quality healthcare, educating the public, and enforcing and elevating standards of care, even absent litigation. Yet pregnant people who suffer preventable injuries struggle to find a lawyer to represent them or educate them about cognizable claims.*

This article reveals the results of online searches for personal injury firms across all fifty states, as prospective clients seeking representation for a preventable pregnancy/birthing harm might do. It concludes that these sites, in the aggregate, erase or obscure the tort claims of pregnant people. Instead, they implicitly (and sometimes explicitly) reduce "birth injury" to only fetal or infant harms without an analogous maternal harm category.

*This erasure of pregnant people as potential plaintiffs escalates the standard of care crisis already facing pregnant people in medical settings post-*Dobbs*.* Dobbs *compels more people to birth riskier pregnancies within an escalating maternity care crisis. This means more pregnant people will find fewer providers, particularly in restrictive abortion states, which will necessarily increase rates of preventable harms. The tort system cannot play its protective function if litigants do not know they have claims and lawyers do not seek their cases for representation. Thus, "legal representation deserts" exacerbate an already acute standard of care crisis.*

Plaintiff-side personal injury firms can center, strengthen, and standardize the placement of pregnant people within a uniform and inclusive definition of "birth injury." By deploying best practices when describing "birth injury" cases, law firm can educate the public and support strategic litigation strengthening the standards of care applied to all pregnant people.

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INTRODUCTION

When pregnant people suffer preventable injuries during childbirth, they face an invisible barrier to recovery: personal injury lawyers do not seek their business or inform them of their potential cases. This article reveals the resulting peculiarity within tort law of "birth injury" claims without birthing people.[1] Rather, plaintiff-side personal injury lawyers are largely seeking cases arising from fetal or infant harms only, likely due to the economics of contingent fees and the relatively large recoveries for fetal harms. This leaves pregnant people almost entirely erased as potential plaintiffs from law firm websites seeking potential malpractice clients arising from childbirth. To remedy this erasure, tort lawyers can center pregnant people as potential plaintiffs to counter an escalating standard of care crisis.

Section I reveals how delivery rooms and courtrooms alike were already displacing pregnant patients long before *Dobbs* in ways that merited interventions and compromised standards of care. Birthing people were diminished in medical providers' tort liability calculus because healthy babies could negate even the possibility of maternal harms.[2] Further, the tort standard could be inverted when it came to birth claims, as damages for harms to the fetus drove duties of care instead of duties of care driving damages considerations.[3] Long before *Dobbs*, these distortions problematically weakened the deterrent role of the tort system in fortifying standards of care applied to pregnant people.

The Supreme Court's decision in *Dobbs v. Jackson Women's Health Org.,* in which the Court held that there was no right to abortion under the federal constitution,[4] has further compromised the standards of care applied to all pregnant people. A flurry of legal activity followed *Dobbs*. Some states shored up legal and medical protections for pregnant patients and their providers, while other states pursued

1. For a discussion of gender diverse pregnancy frameworks, see Gemma Donofrio, *Gender During Pregnancy, and Abortion as Gender-Affirming Care*, 111 VA. L. REV. ONLINE 38, 41 (2025) ("When discussing pregnancy, courts have largely ignored the existence of transgender men, gender nonconforming people, nonbinary people, and other non-cisgender women who can become pregnant. In doing so, courts both fail to accurately describe pregnancy and pregnancy-related discrimination when crafting case law—harming all pregnant people in the process—and they ignore the specific ways in which gender diverse pregnant people can experience harm from healthcare and legal systems that often operate as though gender diverse people do not exist.").

2. *See generally* Jamie R. Abrams, *Distorted and Diminished Tort Claims for Women*, 34 CARDOZO L. REV. 1955 (2013) (studying published tort opinions and concluding that case law distorted the tort framework and diminished the harms of birthing people) [hereinafter Abrams, *Distorted and Diminished Tort Claims*].

3. *Id.*

4. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 292 (2022).

expansive restrictions and punitive regimes.[5] While legislative and judicial activity has largely been about abortion access directly, its effects holistically disrupt the rights, autonomy, and healthcare delivery of all people who can become pregnant and all providers caring for pregnant people.

Section II accordingly situates tort lawyers as essential players in fortifying standards of care post-*Dobbs*. It examines the online content that pregnant people would encounter when exploring possible legal representation for their own injuries. It surveys websites of law firms advertising for malpractice clients arising from childbirth. This survey replicates one major way individuals would interface with the tort system if they suffered a preventable harm in childbirth. It concludes that the descriptions of such malpractice claims, often described as "birth injury" cases, largely erase pregnant people as putative plaintiffs. When not erased wholesale, the pregnant people's claims are obscured—merely footnoted or sandwiched around text primarily seeking and describing fetal or infant harm cases. These websites also visually present birth injuries myopically by depicting largely white infants only, sparingly pregnant people, and rarely, if ever, pregnant people of color.

Section III then describes why this erasure is problematic. Erasing pregnant people as potential plaintiffs escalates the already acute health crisis facing pregnant people in medical settings, particularly in restrictive abortion states. It reveals how "legal representation deserts" layer onto already bleak maternity care deserts. Just as the medical profession faces a dearth of OBGYN providers and an exodus in restrictive abortion states, finding legal counsel for harms may not be possible either.

This compounds an existing standard of care crisis. Now, especially where abortion bans are in effect, disruptions and distortions govern medical decision-making

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5. *See, e.g., State Bans on Abortion Throughout Pregnancy*, GUTTMACHER INST. (July 7, 2025), https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans [https://perma.cc/TZ9V-8YH9] (compiling state laws regulating access to abortion, many created or newly enforced since *Dobbs*); *State and Federal Reproductive Rights and Abortion Litigation Tracker*, KAISER FAM. FOUND. (June 6, 2025), https://www.kff.org/womens-health-policy/report/state-and-federal-reproductive-rights-and-abortion-litigation-tracker/ [https://perma.cc/9GCB-MKJ4] (tracking ongoing litigation related to state abortion policies); Kimya Forouzan & Isabel Guarnieri, *State Policy Trends 2023: In the First Full Year Since Roe Fell, a Tumultuous Year for Abortion and Other Reproductive Health Care*, GUTTMACHER INST. (Dec. 19, 2023), https://www.guttmacher.org/2023/12/state-policy-trends-2023-first-full-year-roe-fell-tumultuous-year-abortion-and-other [https://perma.cc/M3T4-34Z8] (reporting that 22 states and the District of Columbia had enacted 129 measures to protect abortion access in 2023 alone); Irene Kim, Divya Vatsa & Jake Lapperuque, *Two Years After* Dobbs*: Analysis of State Laws to Protect Reproductive Healthcare Info from Interstate Investigations and Prosecutions*, CTR. FOR DEMOCRACY & TECH. (June 2024), https://cdt.org/wp-content/uploads/2024/06/2024-06-26-CDT-SS-Two-Years-After-Dobbs-Analysis-of-State-Laws-rep.pdf [https://perma.cc/9TV3-GBTJ] (analyzing state "shield laws" created to "protect providers and recipients of reproductive health services from out-of-state investigations"); *see also Interactive Map: US Abortion Policies and Access After Roe*, GUTTMACHER INST. (July 31, 2025), https://states.guttmacher.org/policies/ [https://perma.cc/UN86-QW4F] [hereinafter *Interactive Map*] (providing an up-to-date interactive map of state abortion policies, and assigning each state, territory, and the District of Columbia to one of seven categories: most protective, very protective, protective, some restrictions/protections, restrictive, very restrictive, and most restrictive).

for pregnant people.[6] A web of punitive regimes surveilling the medical care of pregnant people further threatens standards of care.[7] Many legal and medical actors alike have weaponized the rhetoric of "standards of care" by disguising fetal rights agendas as protections for pregnant people while overtly harming pregnant people.[8]

Erasing pregnant people from potential tort claims is problematic because it undermines the tort system's ability to counter substandard healthcare delivery. Indeed, this healthcare crisis could benefit from strategic tort claims to spark change in recruiting, hiring, staffing, training, and delivering care. Such claims could advance the goals of the tort system, which seeks to deter wrongdoing, standardize quality care, and compensate harms.

Section IV then issues a call to action to the plaintiff-side personal injury bar to center pregnant people in "birth injury" representations. Lawyers can standardize the definition of "birth injury" to include pregnant people systemically and not focus solely on fetal or infant harms. Law firms can strengthen client acquisition practices describing available potential claims comprehensively. Strategic litigation and mobilization can deploy a purposeful strategy to advance standards of care for pregnant people. The plaintiff-side torts bar is agile and politically active enough to play this vital role in the compounding standard of care crisis. These interventions would strengthen the tort system overall.

I.
TORT LAW'S TENUOUS—YET ESSENTIAL—ROLE ENFORCING STANDARDS OF CARE IN PREGNANCY AND CHILDBIRTH

Understanding how tort law failed pregnant people before *Dobbs* reveals why personal injury lawyers today might exclude or de-emphasize the claims of pregnant people: The legal and economic structures that already marginalized pregnant plaintiffs in favor of higher-damage fetal cases have now calcified into complete representational erasure.

The tort system should play a critical backstop role monitoring, fortifying, and strengthening the standards of care applied in medical settings. The flurry of state law reforms that *Dobbs* ignited prompts the question of whether the tort system is equipped to address the increase of pregnancies, particularly high-risk pregnancies, and the related preventable, yet inevitable, harms.[9] Tort scholars have long warned

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6. *See infra* Section III.b.

7. *See infra* Section III.b.

8. *See infra* Section III.b.

9. *See, e.g.*, Robyn M. Powell, *Disabling Abortion Bans*, 58 U.C. DAVIS L. REV. 1091, 1104 (2024) (concluding that vague legal standards will cause pregnant people to "be denied necessary procedures and forced to needlessly suffer preventable health consequences"); Greer Donley & Caroline M. Kelly, *Abortion Disorientation*, 74 DUKE L.J. 1, 29–30 (2024) (documenting a "steady flow of tragedy" arising from abortion bans including denied care and delayed care risking "long-term health consequences").

of the system's inadequacies in redressing pregnant people's harms.[10] These existing deficiencies will be further exposed and inflict more harm post-*Dobbs*.

Tort law is nuanced in the context of pregnancy and childbirth because there can be multiple potential plaintiffs. Providers navigate duties to the fetus(es) and to the pregnant person.[11] Vitally, as the American College of Obstetricians and Gynecologists (ACOG) advises, however, "[p]regnancy is not an exception to the principle that a decisionally capable patient has the right to refuse treatment, even treatment needed to maintain life."[12]

The healthcare infrastructure for childbirth is systemically flawed at the outset. Well before *Dobbs*, Professor Elizabeth Kukura had categorized and identified the types of obstetric violence inflicted on birthing people[13] and documented systemic concerns facing birthing people within our troubled U.S. maternity healthcare system.[14] The Harvard Law Review's *The Legal Infrastructure of Childbirth* also captured the problematic model of "fetal primacy" in tort law that "encourages physicians to prioritize the fetus at all costs."[15]

My scholarship previously concluded that these flaws distorted and diminished the standards of care applied to pregnant people. A hyper-focus on fetal protectionism in medical care, combined with the economics of the tort system (leaving attorneys more incentivized to take higher dollar fetal harm cases), skewed and distorted the standards of care owed to pregnant patients.[16] The dominant focus on fetal harms in modern birth injury lawsuits risked overshadowing the birthing person in tort.[17] It distorted the duties that healthcare providers owe to the pregnant person and undermined the decision-making autonomy of pregnant people.[18]

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10. *See, e.g.*, Abrams, *Distorted and Diminished Tort Claims*, *supra* note 2; Jamie R. Abrams, *The Illusion of Autonomy in Women's Medical Decision-Making*, 42 FLA. ST. U. L. REV. 17 (2014) [hereinafter Abrams, *The Illusion of Autonomy*]; Elise Ashley, *Ignoring the Cries of Black Mamas: Looking Beyond Tort Law to Ensure that Black Mothers are Heard During Childbirth,* 2021 WIS. L. REV. 1511, 1514 (2021) (identifying tort law's deficiencies "in making harmed birthing women whole again").

11. *See* Jamie R. Abrams, *Liability in Reproduction and Birth*, *in* LAWS OF MEDICINE—CORE LEGAL ASPECTS FOR THE HEALTHCARE PROFESSIONAL 151, 153 (Amirala S. Pasha ed., 2022).

12. Am. Coll. of Obstetricians & Gynecologists, *Committee Opinion 664: Refusal of Medically Recommended Treatment During Pregnancy*, 127 OBSTETRICS & GYNECOLOGY 175 (2016), https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2016/06/refusal-of-medically-recommended-treatment-during-pregnancy [https://perma.cc/YG8D-6NMZ].

13. *See* Elizabeth Kukura, *Obstetric Violence,* 106 GEO. L.J. 721 (2018).

14. *See* Elizabeth Kukura, *Better Birth*, 93 TEMP. L. REV. 243 (2021).

15. *Developments in the Law–The Legal Infrastructure of Childbirth*, 134 HARV. L. REV. 2209, 2210 (2021) [hereinafter *The Legal Infrastructure of Childbirth*].

16. *See generally* Abrams, *Liability in Reproduction and Birth*, *supra* note 11; *see also* Abrams, *Distorted and Diminished Tort Claims*, *supra* note 2, at 1956.

17. Abrams, *Distorted and Diminished Tort Claims*, *supra* note 2, at 1958.

18. *Id.*

Before *Dobbs*, pregnant patients already rarely sued for their own physical harms resulting from malpractice in childbirth, while claims arising from fetal harms were frequent and proved emotional and costly for physicians.[19] The higher frequency and costs of fetal tort claims diminished and subordinated the rights and remedies of birthing people as patients and plaintiffs.[20] Focusing on fetal harms skewed the duties of care toward the fetus and valorized medical judgments when faced with uncertainty while villainizing any decision-making by pregnant people that was not self-sacrificial.[21] Finally, the fetal-harms focus of childbirth revealed "consequentialist decision-making" such that the birthing person's rights to tort claims were effectively subsumed by a positive birth outcome.[22]

Fetal-centered frames for childbirth were already uniquely problematic because they distorted decision-making frameworks in healthcare. Because the tort system considers what reasonable people would do, absent vigilance, a fetal-centered focus can easily be applied to all. In *The Illusion of Autonomy in Women's Medical Decision-Making*, I concluded that "many, if not most," pregnant people deploy a "shared decision-making framework that presumptively elects the outcome that minimizes any, even minor, risks to the fetus."[23] This decision-making becomes problematic in tort law where the decisions of "most" women and "most" doctors could be imputed to all women and could become the standard of care *itself* in ways that undermine patient autonomy. Framing childbirth decision-making as sacrificial and fetal-focused can be uniquely problematic in the abortion context because it sets up a false frame of birthing and parental decision-making as sacrificial and selfless relative to abortion decision-making as myopic and individualistic.[24]

Tort law's connection to pregnancy and birth is further unique because dominant birth models reflect socially and politically constructed hierarchies and norms. Professor Elizabeth Kukura explains in *Better Birth* how traditional labor and delivery care in institutional settings is undermined by high costs, poor outcomes (e.g., the highest rates of maternal deaths in high-income countries), regular deviations from evidence-based medical standards, and poor patient experiences (e.g., many pregnant people report feeling devalued and silenced).[25] These negative encounters may yield lawsuits or cause women to exit medicalized approaches entirely.[26] These marginalizing experiences can also include bias and stereotyping, and they can map

19. *Id.* at 1960.
20. *Id.*
21. *Id.*
22. *Id*.
23. *See* Abrams, *The Illusion of Autonomy*, *supra* note 10, at 17.
24. *See* Jamie R. Abrams, *The Polarization of Reproductive and Parental Decision-Making*, 44 FLA. ST. U. L. REV. 1281, 1283 (2017).
25. Kukura, *Better Birth, supra* note 14, at 250.
26. *See id.* at 259–61, 265, 268–69, 271–72, 275–76, 279.

on to legacies of medical bias and racism.[27] This context is deeply relevant to understanding who sues for tort harms, and why, because to sue one must first recognize that their care deviated from acceptable standards.

Scholars have sought new tort liabilities, strategies, and frameworks to address the system's inadequacies in anticipation of the fall of *Roe* and in its immediate aftermath. For example, Professors Yvonne Lindgren and Nancy Levit championed a framework to reclaim tort law's function on behalf of individuals and providers in *Reclaiming Tort Law to Protect Reproductive Rights*.[28] Professor Dov Fox advocated for a tort claim for "Reproductive Negligence."[29] Professor Jill Lens pursued stronger liability mechanisms in tort, among other responses, to address preventable stillbirths.[30]

Collectively, scholarship before *Dobbs* and in its immediate aftermath has revealed that tort law was ill-equipped to wield its essential role as applied to pregnancy and childbirth.[31] The post-*Dobbs* world and its punitive regimes shaping medical care, its stark fetal focus, and its staggering gaps in care exacerbate this already tenuous legal framework.[32] To add a new dimension to this scholarship, Section II surveys plaintiff-side personal injury firm websites assessing the legal representation landscape. It reveals how legal representation deserts further undermine the system's likely effectiveness, absent reforms.

II.
LEGAL REPRESENTATION DESERTS ERASE PREGNANT PEOPLE AS PUTATIVE PLAINTIFFS

This survey reveals that personal injury lawyers are systemically erasing pregnant people from online "birth injury" malpractice content, creating legal

27. *See, e.g.*, *id.* at 248; *see generally* Colleen Campbell, *Medical Violence, Obstetric Racism, and the Limits of Informed Consent for Black Women*, 26 MICH. J. RACE & L. 47 (2021) (tracing "a direct line from early gynecology's reliance on the bodies of unconsenting Black women to how medicine and the law's failure to reckon with this history continues to harm Black women now").

28. Yvonne Lindgren & Nancy Levit, *Reclaiming Tort Law to Protect Reproductive Rights*, 75 ALA. L. REV. 355, 422 (2023) ("In the legal vacuum left by *Dobbs*, it is a critical moment to reclaim private law's compensatory and protective deterrent function.").

29. Dov Fox, *Reproductive Negligence*, 117 COLUM. L. REV. 149 (2017).

30. JILL WIEBER LENS, STILLBIRTH AND THE LAW (2025); Jill Wieber Lens, *Tort Law's Devaluation of Stillbirth*, 19 NEV. L. J. 955 (2019).

31. Martha Chamallas, *Social Justice Tort Theory,* 14 J. TORT L. 309, 325 (2021).

32. *See generally* PREGNANCY JUSTICE, UNPACKING FETAL PERSONHOOD: THE RADICAL TOOL THAT UNDERMINES REPRODUCTIVE JUSTICE 4 (2024) [hereinafter PREGNANCY JUSTICE, UNPACKING FETAL PERSONHOOD] (documenting "legal and policy frameworks informed by fetal personhood principles to impose government surveillance over women's bodies for the purpose of social and political control"); *see generally* Yvonne Lindgren & Michelle Oberman, *Recalibrating Risk Under* Dobbs, 94 FORDHAM L. REV. 627 (2025) (proposing ways to strengthen evidence-based care to address slippages in the standards of care).

representation deserts that compound existing healthcare crises. This erasure obscures pregnant people's knowledge of and access to legal relief.

This survey was framed by the question: "When a pregnant person conducts web-based searches seeking a lawyer for their preventable pregnancy or birthing harms, would they find information about their potential claims, and would they find counsel to bring the claims?" The survey thus explored what potential tort lawyers tell potential clients about their legal rights in childbirth and the medical standards of care that apply to them. It considered whether the results differed in ways that were politically aligned with the geographies of state abortion laws.

To examine these questions, I surveyed the websites of malpractice lawyers to examine how they depict and describe the availability of legal claims arising from childbirth. I hypothesized that these websites would consistently solicit business for fetal harms more dominantly than maternal harms because the economics of tort law litigation are driven heavily by contingent fees and fetal harms generally yield higher verdicts. I also hypothesized that these results would be dramatically sharper in restrictive abortion states. Section A explains the survey search techniques. Section B reveals examples of isolated strong websites as a baseline assessment. Sections C, D, and E expose key critiques emerging pervasively across the websites.

A. Survey Techniques

This survey examined whether pregnant people are erased from birth injury legal framing in online content. I searched websites while roleplaying as a pregnant person or their loved one seeking counsel after suffering harm in pregnancy, labor, or delivery. I conducted Google searches using these terms plus state names to find lawyers: labor and delivery, obstetric, birth injury, maternal injury, birth trauma, childbirth, and malpractice. I ran permutations of these words with "lawyer" and "attorney."

Using these search terms, I identified responsive law firms (excluding sponsored advertisements) in each state, replicating a prospective client researching possible lawyers. I compiled these firms' sites in a spreadsheet and visited each of the websites individually to make qualitative observations. Notably, these queries—while not explicitly limited to plaintiff-side work—only yielded one defense-side firm representing medical providers.[33]

The qualitative reviews of each website looked at the text's substance and structure along with the website's imagery. I looked at how the sites emphasized or deemphasized the potential claims of pregnant people, of fetuses and infants, and the relationships between the two types of claims. I examined the aesthetics to see what images depicted birth harms. Pregnant people? Babies? Medical settings? What other characteristics stood out (e.g., expressions, body language, race, gender)? I recorded observations qualitatively in a spreadsheet.

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33. *Medical Malpractice Defense*, KEAN MILLER LLP, https://www.keanmiller.com/medical-malpractice-defense.html [https://perma.cc/2HBN-KSPY] (last visited Aug. 6, 2024).

The survey initially set out qualitatively to examine websites in all fifty states. The searches revealed, however, that my search criteria yielded a shocking number of states with no results at all for lawyers representing pregnant people. Section C below explores these findings in more depth. I conclude accordingly that these states appear—at least via this one online entry point—to be "legal representation deserts" for pregnant people. These states include Connecticut, Delaware, Idaho, Louisiana, Maine, Michigan, Minnesota, Mississippi, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, Washington, West Virginia, and Wyoming. For all other states, I continued deeper into qualitative analysis, because these states presented more hopeful legal landscapes that might describe potential claims for pregnant people. These states included:

Alabama	Hawaii	Missouri	Pennsylvania
Alaska	Illinois	Montana	Rhode Island
Arizona	Indiana	Nebraska	Tennessee
Arkansas	Iowa	Nevada	Texas
California	Kansas	New Jersey	Vermont
Colorado	Kentucky	New York	Virginia
Florida	Maryland	Ohio	Washington, D.C.
Georgia	Massachusetts	Oregon	Wisconsin

The states that I sampled qualitatively offered a robustly balanced representation of the legal status of abortion at the time of the survey, including abortion ban states (e.g., AL, AR, IN, KY, TX), abortion access states (AK, CO, MD, NJ, OR), and states with limited access (e.g., CA, HI, IL, IA, NY, OH, RI).[34] The states also presented a range of geographic diversity, including the Northeast (e.g., MA, MD, NJ), South/Southeast (e.g., AL, AR, FL, VA, TX), Midwest (IA, IN, OH), and Mountain West/West (e.g., CA, CO, OR).

Finally, the surveyed states included a range of states with varying perceived reputations as friendly or hostile to civil litigation. The survey included states reputed to be plaintiff-friendly (e.g., AL, IL, NY), in which lawyers presumably might advertise more robustly for tort clients; states reputed to be more hostile to tort litigation (e.g., AR, CO, IA, IN), in which presumably lawyers might be more

34. *State Bans on Abortion Throughout Pregnancy*, *supra* note 5.

limited in seeking clients; and states somewhere in the middle (e.g., FL, KY, NJ, OR, TX, VA).[35]

Section B next introduces the handful of websites that stood out as positive exemplars describing the legal claims available to pregnant people to establish a baseline for assessment. These websites accurately described the standards of care and potential claims for both pregnant people and fetuses and infants. These sites help contextualize the systemic critiques of web content lacking these qualities.

B. Isolated Websites Center Pregnant People as Potential Plaintiffs

The few notable exemplar websites are summarized here to establish a metric of what a balanced and informative website contains. Shockingly, this survey only located *one* law firm that *primarily* marketed to represent pregnant and birthing people directly.[36] An additional handful of websites stood out favorably because they marketed to pregnant or birthing patients alongside claims for fetal and infant harms with consistency, specificity, and accuracy.[37] The scarcity of these strong examples previews this article's overarching thesis: that prospective clients might mistakenly conclude that they do not have a claim based on the dearth of lawyers using their websites to represent pregnant people or to educate them about the standards owed to them in their medical care.

The survey revealed one website primarily seeking pregnant clients as its dominant area of expertise.[38] This firm states that it represents claims involving "birth injuries to the mother," which notably acknowledges the possibility of birth injuries to fetuses and infants too, instead of allowing birth injury to implicitly mean one or the other.[39] It defines the claims its lawyers represent as follows: "Birth-related medical negligence happens when a doctor or other healthcare provider acts negligently during any stage of the prospective mother's pregnancy or

35. Without endorsing its validity, methodology, or conclusions, I relied here on the CATO Institute's "Lawsuit Freedom" map, which purports to measure "how plaintiff-friendly each state's civil liability system is." *Lawsuit Freedom*, CATO INST., https://www.freedominthe50states.org/lawsuit (last visited August 14, 2025). The CATO Institute assesses states using factors such as the business ratings of the lawsuit climate, a lawyer concentration index, blanket punitive or economic damages, the burden to prove punitive damages, and the existence of joint and several liability. States in the bottom of the CATO Institute's rating are plaintiff-friendly and states that scored high are not perceived as plaintiff-friendly.

36. *Fayetteville, AR Attorney for Birth Injuries to the Mother*, GUNN KIEKLAK & DENNIS LLP, https://www.kieklaklawfirm.com/fayetteville/medical-malpractice/birth-injury/injuries-mother/ [https://perma.cc/X7WQ-GHQK] (last visited July 29, 2024).

37. *See, e.g.*, *Miami Birth Mother Injury Attorney*, ALAN GOLDFARB, P.A., https://www.goldfarbpa.com/miami-medical-malpractice-attorney/injuries-to-birthmothers/ [https://perma.cc/JD4M-6SK6] (last visited May 30, 2024).

38. *Fayetteville, AR Attorney for Birth Injuries to the Mother, supra* note 36.

39. *Id.*

birth."[40] It plainly describes the duties that medical professionals owe to patients and notes that this duty owed is "especially true for women expecting a child."[41] The site acknowledges that medical complications can arise from childbirth in ways that are not legally actionable, but it does not do so in a way that is wholly fatalistic about the legal claims of pregnant people. Rather, it states that "advances in medicine have made it possible for doctors, nurses, and other medical staff to anticipate and prevent most complications related to childbirth."[42] It then provides concrete and detailed examples of the types of malpractice that can occur, including anesthesia misuse, c-section injuries, and misdiagnosis of complications (e.g., preeclampsia).[43] Finally, the website teaches its visitors that tort claims require the plaintiff to prove that a doctor owed the patient a duty to follow standards of care and that the healthcare provider's failure to follow that standard led to plaintiff's injuries.[44]

Other niche regional law firms serve as further exemplars.[45] One Oregon firm stands out distinctly for its careful terminology usage. It shifts from the more common—yet conflated and unclear—claim description of "Birth Injury" to "Personal Injury Lawyers for Birth-Related Injuries."[46] The website carefully explains that injuries to the mother, child, or both can yield liability, and it provides balanced examples of each.[47] Likewise, a personal injury firm in Kentucky describes its attorneys as "Labor and Delivery Negligence Lawyers," which is more inclusive

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *See, e.g.*, *Omaha Birth Injury Lawyers*, DOMINA L. GRP., https://www.dominalaw.com/medical-malpractice/birth-injuries/ [https://perma.cc/WD7H-JQGP] (last visited Aug. 6, 2024); *Los Angeles Birth Injury Medical Malpractice Lawyer*, HAFFNER L., https://www.haffnerlawyers.com/los-angeles-birth-injury-medical-malpractice-lawyer/ [https://perma.cc/C8NC-YNVK] (last visited Aug. 6, 2024); *Maternal and Birth Injuries*, HUMPHREY L. FIRM, P.C., https://humphreylaw.com/maternal-birth-injuries/ [https://perma.cc/3HJH-VDM2] (last visited Aug. 6, 2024); *Medical Malpractice Involving Prenatal Care*, PHELAN PETTY INJ. LAWS., https://phelanpetty.com/practice-areas/medical-malpractice/prenatal-care/ [https://perma.cc/VZ9K-3D8D] (last visited Aug. 6, 2024).

46. *Personal Injury Lawyers for Birth-Related Injuries*, VERALRUD & FOWLER, https://eugene-attorney.com/eugene-oregon-personal-injury-attorneys/medical-malpractice-lawyers/birth-related-injuries/ [https://perma.cc/778C-AM3K] (last visited May 30, 2024).

47. *Id.* ("The most common type of birth-related medical malpractice claim is birth injuries to mother or child. Injuries that might occur during birth can effect [sic] the mother, the child, or both. Proving negligence in these cases boils down to a failure to provide a standard of care on the part of a medical professional. Examples of these sort of injuries include excessive blood loss during birth, medication errors, or physical trauma to the infant due to unnecessary interventions in the birth process.").

and clear than the vague "birth injury."[48] The firm's website likewise describes "maternal birth injuries," which it distinguishes from the unmodified "birth injuries," implicitly therein defined as injuries to infants.[49] Maternal birth injuries, the firm notes, are "far more common than they should be," a claim that invites clients for consultation and contextualizes these lawsuits.[50]

A Boston firm also has robust content educating its web visitors.[51] Its website lists many of the most common reasons for pregnancy-related deaths in the United States, and it explicitly notes that many of these are preventable.[52] It acknowledges the maternal mortality rate in the United States and in Massachusetts.[53] Finally, the site recognizes that "American perceptions of infant healthcare means that many women do not receive the same level of care during labor and delivery as their babies."[54]

Some sites break away from the more common terminology of "birth injury" and advertise that their attorneys handle "pregnancy complications."[55] These include detailed lists of pregnancy, delivery, and postpartum pregnancy injuries.[56]

48. *Labor & Delivery Negligence Lawyers in Louisville, KY*, WILT INJ. LAWS., https://www.wiltinjurylaw.com/medical-malpractice/labor-and-delivery-negligence/ [https://perma.cc/FH9E-H6M5] (last visited May 30, 2024).

49. *Id.* (listing uterine ruptures, epidural errors, uterine prolapse, postnatal traumatic stress disorder, postpartum depression, tearing, infections, postpartum hemorrhage, infections, and fissures as examples of maternal birth injuries).

50. *Id.*

51. *Boston Labor and Delivery Injury Attorney,* SWEENEY MERRIGAN L. LLP, https://www.sweeneymerrigan.com/boston-medical-malpractice-lawyer/birth-injuries/labor-and-delivery/ [https://perma.cc/42CM-UCHF] (last visited May 30, 2024).

52. *Id.*

53. *Id.*

54. *Id.*

55. *See, e.g., Alabama Pregnancy Complications Attorney*, CALDWELL WENZEL & ASTHANA, PC, https://cwalawfirm.com/personal-injury/birth-injury/pregnancy-complications/ [https://perma.cc/D3UB-P97S] (last visited May 30, 2024).

56. *Id.*

Some sites separate "maternal birth injury" claims as a distinct category.[57] One New York City firm focuses exclusively on maternal *death* cases.[58]

In conclusion, only a small subset of sites contained balanced, informative, inviting, and clear depictions of pregnant people's putative tort claims.[59] These sites had no clear geographic or political clustering (spanning, for example, Arkansas, Kentucky, Massachusetts, Nebraska, and Oregon). The following sections outline—in stark contrast—the dominant findings observed in personal injury firm websites. Notably, these findings are not restricted to so-called red states or blue states or differentiated by the legal status of abortion in the state.

C. Pervasive Websites Erase Pregnant Patients as Potential Plaintiffs

Pregnant patients are largely erased from personal injury firm websites. As noted in Section A, many states have no law firms with online content seeking clients with potential claims arising from childbirth at all.[60] The first

57. *Washington, D.C. Labor & Delivery Lawyer*, TROMBLY & SINGLER PLLC, https://www.tromblylaw.com/birth-injury-lawyer-washington-dc/injured-mothers/ [https://perma.cc/UAK2-2XU8] (last visited May 30, 2024); *see also Fayetteville, AR Attorney for Birth Injuries to the Mother*, GUNN KIEKLAK & DENNIS LLP, https://www.kieklaklaw-firm.com/fayetteville/medical-malpractice/birth-injury/injuries-mother/ [https://perma.cc/X7WQ-GHQK] (last visited July 29, 2024); *Dallas Attorney for Birth Injuries to the Mother*, THE QUEENAN L. FIRM, P.C., https://www.queenanlaw.com/dallas-attorney-birth-injuries-mother/ [https://perma.cc/GMA8-9V6P] (last visited May 30, 2024).

58. *Maternal Death Lawyer in New York City*, JACOB D. FUCHSBERG L. FIRM, https://www.fuchsberg.com/birth-injuries/maternal-death-lawyer [https://perma.cc/MR2Z-Y25P] (last visited May 31, 2024).

59. *See, e.g., Birth Injuries to Mothers Attorneys*, COHEN, FEELEY, ALTEMOSE & RAMBO, https://www.cohenfeeley.com/cases-we-handle/personal-injury-attorneys/birth-injuries-to-mothers-attorneys/ [https://perma.cc/89T7-H5S8] (last visited May 31, 2024); *Recovering Compensation for Childbirth Injuries to Mothers*, BIRD L. GRP., https://www.birdlawgroup.com/medical-malpractice/birth-injuries/injuries-to-mother/ [https://perma.cc/BES9-KBF7] (last visited May 31, 2024); *Labor and Delivery Malpractice Attorneys,* THE MED. INJ. L. FIRM, https://www.lawrence-firm.com/birth-injuries/labor-and-delivery-malpractice-cases/ [https://perma.cc/5SS2-8682] (last visited May 31, 2024); *Maternal Injuries During Childbirth*, BIRTH INJ. L. ALL., LTD., https://www.birthinjurylawalliance.com/maternal-birth-pregnacy-injury-to-mother [https://perma.cc/TL8C-VWXM] (last visited May 31, 2024); *Pregnancy and Medical Malpractice*, PETER ANGELOS L. BLOG, https://angeloslaw.com/legal-blog/2022/04/pregnancy-and-medical-malpractice/ [https://perma.cc/J34B-R796] (last visited May 31, 2024).

60. *See, e.g., Connecticut Birth Injury Lawyer*, BERKOWITZ & HANNA LLC, https://berkowitz-lawfirm.com/connecticut-birth-injury-lawyer/ [https://perma.cc/5BGS-9NUS] (last visited June 2, 2025).

methodological layer of review (searching online for potential lawyers) revealed no results whatsoever in many states.[61]

The scope of legal representation deserts does not stop there, however. For many additional states, once I qualitatively reviewed a sampling of websites, legal representation deserts appeared even more expansive. Many additional law firm websites do not advertise at all regarding the rights of pregnant patients and the possible claims they might have arising from childbirth,[62] even in states that at first seemed more hopeful based on initial web queries alone. Even more anomalous, some of the websites that are largely silent regarding possible claims on behalf of pregnant people nonetheless feature maternal health information or

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61. *See, e.g.*, *Michigan Birth Injury Lawyers*, FIEGER L., https://www.fiegerlaw.com/case-types/birth-injury/ [https://perma.cc/4XLW-4ZAU] (last visited June 2, 2025); *Michigan Birth Injury Lawyers with a History of Results*, MCKEEN & ASSOCS., P.C., https://www.mckeenassociates.com/birth-injuries-overview/ [https://perma.cc/4DXQ-SNSV] (last visited June 2, 2025); *Idaho Birth Injury*, GILMAN & BEDIGAN, LLC, https://www.gilmanbedigian.com/idaho-birth-injuries/ [https://perma.cc/7U8T-NX2U] (last visited Oct. 3, 2025).

62. *See, e.g.*, *Florida Birth Injury Lawyer*, RAFFERTY DOMNICK CUNNINGHAM & YAFFA, https://www.pbglaw.com/florida-birth-injury-lawyer/ [https://perma.cc/8BEN-363F] (last visited June 2, 2025) (referring only to "family" generically); *Florida Birth Injury Attorneys*, FREEDLAND, HARWIN, GANDER, VALORI (Oct. 14, 2025), https://www.fhvlegal.com/medical-malpractice-attorney/birth-injury/ [https://perma.cc/H7ZD-NN9F] (despite including case profiles involving pregnant and birthing people); *Florida Birth Injury Attorneys*, CLARK, FOUNTAIN, LITTKY-RUBIN & WHITMAN, https://www.clarkfountain.com/practices/medical-malpractice/birth-injuries/ [https://perma.cc/ER7M-QV7G] (last visited June 2, 2025); *Birth Injury Lawyers*, AUSMAN L. FIRM, P.C., L.L.O., https://www.injurylawyersinomaha.com/medical-malpractice/birth-injuries/ [https://perma.cc/JDE4-T9S6] (last visited June 2, 2025); *Birth Injury*, FLICKINGER, BOULTON, ROBSON, WEEKS (June 9, 2019, 3:03 AM), https://utahinjurylawyers.com/birth-injury/ [https://perma.cc/ZN3Y-5YEP]; *California Labor and Delivery Lawyer*, BOSTWICK & PETERSON, LLP, https://www.californiabirthinjurylawfirm.com/birth-injury/labor-delivery-problems/ [https://perma.cc/G5MC-P83C] (last visited June 2, 2025); *Birth Injuries*, HAYES, LORENZEN, BIDERMAN, LAWS., PLC, https://www.hlplc.com/Practice-Areas/Birth-Injuries [https://perma.cc/QA9S-GWVP] (last visited June 2, 2025); *Des Moines Birth Injury Attorney*, ROXANNE CONLIN & ASSOCS., P.C., https://www.roxanneconlinlaw.com/medical-malpractice/birth-injuries/ [https://perma.cc/KKU3-MJFM] (last visited June 2, 2025); *Virginia Birth Injury Lawyer*, PRICE BENOWITZ, https://pricebenowitz.com/virginia-injury/medical-malpractice-lawyer/birth-injury/ [https://perma.cc/4TQS-KZ6J] (last visited June 2, 2025); *Birth Injury Attorneys Fighting for Justice for You and Your Family*, SHEVLIN SMITH, P.C. (June 5, 2024), https://www.shevlin-smith.com/medical-malpractice/birth-injuries/ [https://perma.cc/UPA5-T569]; *Birth Injury*, DENVER TRIAL LAWS., https://www.denvertriallawyers.com/birth-injury/ [https://perma.cc/G8AT-JK6B] (last visited June 2, 2025); *Denver: Birth Injury Attorney*, BACHUS & SCHANKER, https://www.coloradolaw.net/practice-area/medical-malpractice/birth-injury-attorney/ [https://perma.cc/WD3N-T6LD] (last visited June 2, 2025); *Birth Injury Lawyer*, RAMOS L., https://www.ramoslaw.com/medical-malpractice/birth-injury/ [https://perma.cc/Y2D8-264R] (last visited June 2, 2025); *Talk to Our Attorney About Your Denver Birth Injury Case*, VIORST L. OFFS., P.C., https://www.viorstlaw.com/medical-malpractice/birth-injuries/ [https://perma.cc/7VTJ-P8DF] (last visited June 2, 2025); *Birth Injuries*, MCGINN, MONTOYA, LOVE, CURRY, & SIEVERS https://www.mcginnlaw.com/birth-injuries/ [https://perma.cc/C2GE-G3E4] (last visited June 2, 2025).

highlight prior cases litigated by the firm on behalf of pregnant people.[63] This oddly suggests that the firms do see the existence of potential clients, and have even represented prior clients arising from pregnancy or birth previously, but do not actively seek their business. While this is likely economically motivated, when scaled systemically, it undermines the tort bar's role in shaping standards of care, and it risks confusing or deterring potential clients.

Some firms explicitly or implicitly define "birth injuries" to mean only fetal injuries.[64] One Tennessee firm explicitly defines "birth injury" as limited to fetal harms: "Birth Injury is defined as harm and/or damage to a newborn's bodily function and/or structure due to a medical professional's mistake, negligence, malpractice, inefficiency, or flawed hospital policy during the birthing process."[65] This is a particularly unusual definition for web viewers because the site continues to list maternal bleeding and "other maternal related health complications,"[66] which could lead to a pregnant person's claim despite the firm's narrower definition.[67] This slippage is problematic because it erases the claims of pregnant people and collaterally confuses the definition that many other law firms apply to "birth injuries," which do include harms to the pregnant person as well as fetal and infant harms.

In some cases, the omission of pregnant and birthing people is simply staggering. One Maryland law firm, for example, exclusively advertises for fetal harm claims. It lists a dozen or more possible examples of birth injuries, which include preeclampsia and uterine rupture, luring the web viewer to think there might be claims for pregnant people.[68] Even as the overview of preeclampsia notes its prevalence and also its leading role in maternal mortality, it still concludes "if *your child* has suffered an injury from failure to treat or misdiagnosis of preeclampsia,

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63. *See, e.g.*, *Florida Birth Injury Attorneys*, *supra* note 62 (including case profiles involving pregnant and birthing people); *Des Moines Birth Injury Attorney*, *supra* note 62 (linking the reader to information about pregnant patients' safety); *Michigan Birth Injury Lawyers*, *supra* note 61 (providing statistics on maternal death).

64. *See, e.g.*, *Denver Birth Injury Lawyers*, BURG SIMPSON, https://www.burgsimpson.com/colorado/medical-malpractice-lawyer/birth-injury/ [https://perma.cc/E8BH-QT86] (last visited June 2, 2025) ("A birth injury is defined as any type of trauma suffered by the baby during the birthing process."); *Birth Injury Lawyers*, SHAPIRO & STERNLIEB, LLC, https://www.shapirosternlieb.com/new-jersey-birth-injury-lawyers [https://perma.cc/V6U4-DBC7] (last visited Oct. 4, 2025) ("If your son or daughter suffered a birth injury, it's crucial to fight for the future of your child and hold the people who caused harm accountable.").

65. *Birth Injury Law*, BUTLER, VINES & BABB L., https://butlervinesbabblaw.com/birth-injury-law.php [https://perma.cc/U35D-KBWK] (last visited June 2, 2025).

66. *Id.*

67. *Id.*

68. *Baltimore, Maryland Birth Injury Lawyer,* MILLER & ZOIS, https://www.millerandzois.com/medical-malpractice/birth-injuries/ [https://perma.cc/FN3N-96HY] (last visited June 2, 2025).

talk to one of our lawyers and get some free legal advice."[69] In contrast, the firm notes that uterine rupture might cause "long-lasting complications for mother and child" and encourages "parents" to consider a legal consult for uterine rupture.[70]

Consider further a Boston law firm with a self-described "birth injury" practice. The site explicitly says it handles cases "after your child was injured during birth," providing examples of Cerebral Palsy, Erb's Palsy, Shaken Baby Syndrome, traumatic deliveries, and failures to perform prenatal testing or cesarean deliveries.[71] The site emphasizes that "traumatic deliveries" happen when "innocent babies are injured during delivery because of a traumatic delivery process."[72] The pregnant person is only mentioned here as having a derivative connection to an infant's birth.[73]

One website's home screen banner announced a "birth injury" verdict in which a young boy suffered a loss of oxygen during "*his* labor."[74] The pregnant woman is entirely erased. Surprisingly, after advertising exclusively for fetal-centered "birth injuries," the same firm's rotating banners celebrating recent verdicts did, however, highlight a $3M settlement for a "disabled woman and her family" because the woman "suffered a hemorrhagic stroke during the delivery of her first child."[75] If the firm is winning banner-worthy cases on behalf of pregnant people, it is bewildering that its web content would not seek additional, similar clients.

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69. *Preeclampsia Medical Malpractice Claims,* MILLER & ZOIS, https://www.millerandzois.com/medical-malpractice/birth-injuries/maryland-preeclampsia-attorney/#verdicts [https://perma.cc/584A-PRAT] (last visited June 1, 2025) (emphasis added).

70. *Uterine Rupture Birth Injury Lawsuits*, MILLER & ZOIS, https://www.millerandzois.com/medical-malpractice/maryland-misdiagnosis-attorney/uterine-rupture-malpractice-maryland/#3 [https://perma.cc/USS8-JGN4] (last visited June 1, 2025).

71. *Boston Birth Injury Attorneys*, CROWE & HARRIS, LLP, https://www.croweandharris.com/medical-malpractice/birth-injury/ [https://perma.cc/7JMB-YJ52] (last visited June 1, 2025). Shaken Baby Syndrome, of course, is not a *birth* injury at all, nor does intentional conduct fit in the classifications of otherwise malpractice cases. Rather, it shifts parents from putative plaintiffs to possible tortfeasors. *See Shaken Baby Syndrome*, JOHNS HOPKINS MED., https://www.hopkinsmedicine.org/health/conditions-and-diseases/shaken-baby-syndrome#:~:text=Health,Symptoms [https://perma.cc/K2UC-BB3N] (last visited June 1, 2025) (defining shaken baby syndrome as an inflicted brain injury resulting from violently shaking a baby); *see also Shaken Baby Syndrome Cases*, WILSON KEHOE WININGHAM LLC (Sept. 11, 2024), https://www.wkw.com/birth-injuries/blog/shaken-baby-syndrome-cases/#:~:text=Although%20shaken%20baby%20syndrome%20is,Winingham%20to%20discuss%20your%20case [https://perma.cc/9262-5UQ3] ("Although shaken baby syndrome is a common cause of brain injuries in children, it is not considered a birth injury.").

72. *Boston Birth Injury Attorneys*, *supra* note 71.

73. *Id.*

74. *$39.7 Million: Birth Injury*, CROWE & HARRIS, LLP: CASE RESULTS (emphasis added), https://www.croweandharris.com/case-results/ [https://perma.cc/W8Z5-84C4] (last visited Oct. 12, 2025) (As of Mar. 23, 2026 the banner is no longer displayed on the website).

75. *Id.* (As of Mar. 23, 2026, the rotating banner is no longer displayed on the website).

These types of websites—ones that erase pregnant people from view—are prolific and have the effect of explicitly or implicitly converting the definition of "birth injury" to fetal injury, thus obscuring the standards of care owed to pregnant people from the legal and social frame.[76]

Further, the sites overwhelmingly leave pregnant or birthing people out of the images too.[77] If they are shown, it is as parents of their born children.[78] It is not imagery of them while pregnant or laboring. Websites that textually and visually erase the pregnant person are frequent, geographically and politically varied, and worrisome.

D. Pregnant People Sandwiched, Footnoted, or Decoyed as Litigants in Birth Injury Claims

The firms that do affirmatively seek to represent pregnant people often do so sandwiched or footnoted amidst fetal claims or as a decoy for them. These approaches all have the same effect of obscuring the claims that pregnant people have and the duties of care their providers owe them.

1. Sandwiched Claims

Sandwiched claims describe the frequent phenomenon wherein law firms first and last advertise fetal claims, tucking in a scant mention of claims on behalf of

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76. *See, e.g., Baltimore, Maryland Birth Injury Lawyer,* MILLER & ZOIS, https://www.millerandzois.com/medical-malpractice/birth-injuries/ [https://perma.cc/VG3D-QC33] (last visited Nov. 18, 2025); *Maryland Birth Injury Attorneys: Fighting for Birth Injury Victims in Maryland*, POTTER BURNETT L., https://www.potter.law/medical-malpractice/birth-injury-and-birth-trauma/ [https://perma.cc/LMF2-V6AW] (last visited Nov. 18, 2025); *Statute of Limitations in Birth Injury Cases*, ARFAA L. GRP., https://www.arfaalawgroup.com/statute-of-limitations-in-birth-injury-cases.html [https://perma.cc/XX5H-RMHZ] (last visited Nov. 18, 2025); *Philadelphia & New Jersey Birth Injury Attorney*, WEISS & PAARZ, https://www.weisspaarz.com/birth-injury/ [https://perma.cc/B7UJ-HHQP] (last visited Nov. 18, 2025); *Houston, Dallas, and Austin Birth Injury Lawyers*, SNEED & MITCHELL LLP, https://www.sneedmitchell.com/birth-injury-lawyers [https://perma.cc/Y9XB-PBEE] (last visited Nov. 18, 2025); *Idaho Birth Injury Lawyers*, LITSER FROST INJ. LAWS., https://litsterfrost.com/serious-injury-negligence-death/birth-injury/ [https://perma.cc/WR37-X55V] (last visited Nov. 18, 2025).

77. *See, e.g.*, *Vermont Birth Injury Lawyer,* BIRTH INJ. L. GRP., https://birthinjurylawyer.com/vermont/ [https://perma.cc/M8V6-P9A6] (last visited Nov. 18, 2025) (depicting a white baby in a medical setting); *Boise Birth Injury Lawyer,* GOLDBERG & LOREN, https://goldbergloren.com/locations/boise/birth-injury-attorneys/ (last visited Nov. 18, 2024) (featuring three pictures of white children); *Experienced Birth Injury Lawyers,* JANET, JANET & SUGGS, LLC, https://www.jjsjustice.com/national/birth-injury-lawyer/ [https://perma.cc/9KQM-F366] (last visited Nov. 18, 2025) (showing a white baby hooked up to medical equipment).

78. *See, e.g., Portland Birth Injury Lawyer,* ANGEL L., P.C., https://www.angellawpc.com/birth-injury/ [https://perma.cc/ZVP9-WL6U] (last visited Nov. 18, 2025) (depicting a white mother kissing a smiling baby and a father smiling at it); *Houston, Dallas, and Austin Birth Injury Lawyers,* SNEED & MITCHELL LLP, https://www.sneedmitchell.com/birth-injury-lawyers [https://perma.cc/6A5Z-YJCJ] (last visited Nov. 18, 2025) (showing a white baby resting soundly skin-to-skin on its mother).

pregnant people.[79] Below are some representative examples depicting how firms sandwich the claims of pregnant and birthing people. To visualize the sandwiching, the underlining denotes text referring to children and the bolding depicts where the pregnant person comes into focus.

> **Vermont:** "If your child was injured during pregnancy or birth in Vermont and that injury was caused by the medical malpractice of a doctor or other medical professional, you have rights to financial compensation. Medical negligence, called malpractice, can occur at any point **during your pregnancy** or childbirth. In both cases, the injuries your child may suffer can be catastrophic, affecting your newborn for his or her entire life. The high costs of medical treatment, as well as the pain and suffering you both suffer, is compensable with money damages."[80]

> **Colorado:** "Other common birth injuries that we assist clients with include:
>
> - Facial Paralysis
> - Preventable birth defect cases
> - Shoulder dystocia
> - **Injuries to the mother**
> - Vision loss / blindness
> - Nerve injuries
> - Failure or delay in performing C-section delivery

79. *See, e.g.*, *Monroe Birth Injury Lawyer*, PARKER ALEXANDER, https://www.parkeralexander.com/monroe-medical-malpractice-attorney/birth-injuries/ [https://perma.cc/E2JT-WJ74] (last visited June 1, 2025); *Florida Birth Injury Attorneys*, PAUL KNOPF BIGGER, https://www.pkblawfirm.com/birth-injuries/ [https://perma.cc/M8UD-NCGH] (last visited June 1, 2025); *Omaha Birth Injury Lawyers*, CULLAN & CULLAN, https://www.cullanlaw.com/birth-injury/ [https://perma.cc/SS56-QEAV] (last visited Oct. 12, 2025) ("Lastly, the claim should show that the negligence or mistake harmed the baby, or mother."); *Omaha Birth Injury Lawyer*, BOTTLINGER LAW L.L.C., https://www.bottlingerlaw.com/medical-malpractice/birth-injury.html [https://perma.cc/N579-JPEJ] (last visited June 1, 2025); *California Birth Injury Lawyers*, HODES MILMAN, https://verdictvictory.com/medical-malpractice/california-birth-injury-lawyer/ [https://perma.cc/5MK9-4JSB] (last visited June 1, 2025); *Labor & Delivery Negligence*, NEUMANN L. GRP., https://www.neumannlawgroup.com/practice-areas/personal-injury/medical-malpractice/labor-delivery-negligence/ [https://perma.cc/Q8RQ-TDZD] (last visited June 1, 2025).

80. *Vermont Birth Injury,* GILMAN & BEDIGAN, LLC (emphasis added), https://www.gilmanbedigian.com/vermont-birth-injuries/ [https://perma.cc/MU9G-LCAZ] (last visited Nov. 18, 2025).

- Misdiagnosis or failure to diagnose (preeclampsia)"[81]

These representative examples show that there *are* standards of care owed to pregnant patients, which may yield liability, but they are sandwiched within fetal and infant claims. This has the effect of obscuring the claims of pregnant people.

2. Footnoted Claims

Other websites obscure the claims of pregnant patients by "footnoting" their claims.[82] Here the pregnant patient is passively snuck into the language as an ancillary notation, but such claims are not intended to be the primary focus of the site.[83] Such references are confusing to the potential client. They generally lack specificity, context, or clarity.

One Alabama firm, for example, initially requires the site visitor to read an astonishing 19 separate boxes of text, including headings like "Common Causes of Newborn Baby Birth Injuries" and "How Do I Know if My Newborn Baby Was Injured Due to Medical Malpractice?" before finally landing on a definition of birth injury, which included the following excerpt when visited in 2024: "In mothers, birth injuries include injury to the perineal area (tears, nerve damage, hemorrhoids) or the pelvic floor (muscle damage or pelvic organ prolapse). Emotional or psychological trauma may accompany physical injuries."[84] The site, however, offered no clarity about how to pursue these claims or whether the firm handled these claims. By 2025, the firm had even scrubbed those footnoted references to pregnant people.[85]

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81. *Denver Birth Injury Lawyer*, BENDINELLI L. FIRM (emphasis added), https://www.colawfirm.com/practice-areas/birth-injury-attorney/ [https://perma.cc/37FX-7NYE] (last visited Nov. 18, 2025).

82. *See, e.g., Alabama Pregnancy Complications Attorney*, CALDWELL, WENZEL & ASTHANA, https://cwalawfirm.com/personal-injury/birth-injury/pregnancy-complications/ [https://perma.cc/9NKR-VGN8] (last visited Nov. 18, 2025); *Birth Injury Lawyers*, TOWNSLEY L. FIRM, https://www.townsleylawfirm.com/medical-malpractice/birth-injury/ [https://perma.cc/TW5Y-28TM] (last visited Nov. 18, 2025).

83. *See, e.g., Caring Guidance for Your Family After a Birth Injury*, NELSON & HAMMONS, ATT'YS AT LAW, https://www.nelsonhammons.com/medical-malpractice/birth-injuries/ [https://perma.cc/XC6J-R785] (last visited June 1, 2025) (after over a dozen paragraphs, the text notes, "compensation may also help support mothers who are physically injured by a birth injury, as many of these injuries also impact the mother in serious ways"); *Michigan Birth Injury Lawyers*, MICH. INJ. LAWS, https://www.michiganinjurylawyers.com/michigan-birth-injury-attorney/ [https://perma.cc/F9Z2-4MZM] (last visited June 1, 2025).

84. *Birth Injury Lawyers,* MIKE HOSTILO L. FIRM, https://mikehostilolawfirm.com/birth-injury-lawyers/ [https://perma.cc/C6KD-VEJB] (last visited Nov. 18, 2025).

85. *Id.*

Likewise, an Indiana firm's website contains the heading "Causes of Birth Injuries: When to Consult a Birth Injury Attorney."[86] It then describes how there are risks that are part of the birthing process and there are also instances of malpractice. At the end of the birth injury section, the firm simply notes that "medical malpractice during the birthing process can harm the mother as well."[87] Truly a footnote substantively and linguistically, and a non-responsive one at that, as it sits under the heading "causes of birth injuries."[88]

Consider further these representative examples of footnoted harms. These passages emphasize references to the fetus or infant with underlining and to pregnant people with bolding:

> **Kentucky:** "A birth injury is one suffered by a child during labor or delivery, or soon after birth. Birth injuries may range from minor problems such as lacerations or bruising to severe injuries that could prove fatal, such as a spinal cord injury. In some cases, **the mother** may be injured during birth, as well."[89]
>
> **Oregon:** "While birth injuries can definitely **affect a mother**, as well, the following are some common birth injuries in children that result from malpractice."[90]
>
> **Alabama:** "Healthcare professionals are responsible for ensuring that **an expectant mother** and her baby receive the proper medical treatment and support throughout the entire labor and delivery process. However, in cases where birth complications arise, and medical providers fail to be vigilant and proactive in addressing potential risks, it can result in devastating birth injuries that have long-term effects on a newborn's health and well-being. In such cases, the negligent doctor, nurse, hospital, or other healthcare provider should be held accountable for their actions. A birth

86. *Birth Injury Lawyers: We Fight for Injured Children and Their Families*, GARAU GERMANO, P.C., https://www.indianapolis-medical-malpractice-lawyer.com/birth-injuries/ [https://perma.cc/CB3F-57SM] (last visited Oct. 12, 2025).

87. *Id.*

88. *Id.*

89. *Kentucky Birth Injury Lawyer*, BECKER L. OFF. (emphasis added), https://becker-law.com/kentucky-birth-injury-lawyer [https://perma.cc/S6R7-XJ75] (last visited Nov. 18, 2025).

90. *Portland Birth Injury Attorney*, JOHNSTON L. FIRM, P.C. (emphasis added), https://johnston-lawfirm.com/portland/medical-malpractice/birth-injuries [https://perma.cc/AWK3-9SH7] (last visited Nov. 18, 2025) (citing all fetal harms and no maternal harms).

> injury occurs when a newborn suffers harm or trauma before, during, or after delivery."[91]
>
> **Arkansas:** "Unfortunately, the medical staff's negligence during childbirth can leave your infant with lifelong debilitating injuries or even result in death. . . . Health care providers have a legal duty to provide competent care **to mothers** and children. If they fail to meet this duty and cause harm to your child, you can seek justice and financial compensation by filing a birth injury lawsuit against them."[92]

These critiques span diverse geographies and politics. The result is to obscure the tort claims that pregnant people might have.

3. Decoyed Claims

Finally, some websites situate pregnant patients as a decoy framing the firm's work while ultimately only soliciting fetal harm claims.[93] For example, consider this excerpt: "If **you** were injured **while pregnant** or your baby suffered an injury during the pregnancy or the birth, **you** are entitled to recover damages and compensation for your child's pain and suffering."[94] It only considers injuries to the pregnant person while pregnant, not during birth, while considering possible

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91. *Alabama Birth Injury Lawyers*, MILLER WEISBROAD OLESKY (emphasis added), https://www.nationalbirthinjurylaw.com/alabama-birth-injury-lawyers [https://perma.cc/SU4H-6FKG] (last visited Nov. 18, 2025).

92. *Little Rock Birth Injury Lawyer*, NAHON, SAHAROVICH, & TROTZ (emphasis added), https://www.nstlaw.com/little-rock/birth-injury-lawyers [https://perma.cc/VDM4-N3R3] (last visited Mar. 4, 2026).

93. *See, e.g.*, *Birth Injury Lawyer*, GALLOWAY JEFCOAT, https://www.gallowayjefcoat.com/areas/birth-injury-lawyers [https://perma.cc/XXZ3-MESS] (last visited June 1, 2025) (defining a "birth injury" prominently to include "any harm or damage that affects a newborn or mother during childbirth," but then only discussing injuries to children); *Birth Injuries*, SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, https://www.searcylaw.com/medical-malpractice/birth-injuries [https://perma.cc/5WRR-WQRJ] (last visited June 1, 2025); *Layton Birth Injury Lawyer*, FELLER & WENDT, LLC, https://www.fellerwendt.com/layton/birth-injury-lawyer [https://perma.cc/A56K-AAQJ] (last visited June 1, 2025); *Labor & Delivery Room Negligence*, MCGUIRE LAW, PLC, https://www.mcguirelawplc.com/personal-injury/medical-malpractice/labor-delivery-room-negligence [https://perma.cc/S3UF-HY4H] (last visited June 1, 2025); *Iowa Birth Injury Lawyers*, LEVENTHAL PUGA BRALEY P.C., https://www.leventhal-law.com/iowa-medical-malpractice/birth-injury.html [https://perma.cc/S3UF-HY4H] (last visited June 1, 2025); *Iowa Birth Injury Attorney*, BROWN TRIAL FIRM, https://browntrialfirm.com/birth-injury-attorney-iowa [https://perma.cc/WN5R-QC73] (last visited June 1, 2025).

94. *Maryland Birth Injury Lawyer,* PETER ANGELOS L. (emphasis added), https://angeloslaw.com/personal-injury/maryland-birth-injury-lawyer [https://perma.cc/TM96-C5CQ] (last visited Nov. 18, 2025).

injuries to the child during pregnancy or birth.[95] It then only mentions an actual right to compensation for the child's harms, erasing the mother as a putative plaintiff entirely.[96]

Another representative website leads with a large photo of a female patient lying horizontally with what appears to be a mask delivering anesthesia covering her face.[97] The website then frames all legal representation around this introductory text: "If your baby has suffered a terrible injury, cerebral palsy, or other devastating injuries during birth, the future **for you** and your baby is going to be hard."[98] The website risks inviting potentials plaintiffs to the page with imagery of a seemingly ill, immobilized mother, but then it only solicits business relating to the child's injuries. The pregnant person is then erased textually as a potential plaintiff, leaving the entire medical intervention as one involving only the newborn child and the medical staff: "Your doctor and the nurses involved in delivering your child will never, ever, tell you that they were sloppy or made a mistake."[99]

Other representative sites do the same. One Arkansas firm's website opens with "Doctors, nurses, and other medical providers play a crucial role in ensuring that **expectant mothers** and their children receive the quality care and support they need throughout the entire pregnancy journey," which suggests two categories of possible plaintiffs.[100] It then pitches the business to only one: "If your child has suffered a birth injury as the result of the negligent actions of a doctor, nurse, or other medical professional, filing a birth injury lawsuit can help you obtain the financial compensation you need."[101] A Miami-based firm's website similarly opens with a prompt suggesting the law firm represents "you or your child," but then shifts to only describing the causes of "baby birth complications" and soliciting business relating only to "your baby."[102] When headings and text suggest that both mothers and infants have claims, but the business pitches only actively seek to represent the fetus or infant, this leaves pregnant people as mere decoys.

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95. *Id.*

96. *Id.*

97. *Birth Injury Attorney*, POLEWSKI & ASSOCS. L. FIRM, https://www.medicalmalpracticelawyerlittlerock.com/birth-injuries [https://perma.cc/5VBN-AJZ6] (last visited Nov. 18, 2025).

98. *Id.* (emphasis added).

99. *Id.*

100. *Birth Injury Lawyers in Little Rock*, MILLER WEISBROD OLESKY, https://www.nationalbirthinjurylaw.com/little-rock-birth-injury-lawyers [https://perma.cc/5BQ7-HXEY] (last visited Nov. 18, 2025).

101. *Id.*

102. *Miami Labor & Delivery Complication Attorney*, FREIDIN BROWN, P.A., https://www.yourfloridatrialteam.com/miami/medical-malpractice-lawyer/birth-injury/labor-delivery-complications [https://perma.cc/9TSC-UFX6] (last visited Nov. 19, 2025).

These examples reveal the interconnected ways that law firms inadvertently obscure the claims that pregnant people have while dominantly emphasizing the firm's willingness to represent fetal and infant harms.

E. Myopic Depictions of "Birth Injury" Claims

Overall, the website images also collectively depict birthing harms myopically by showing almost exclusively white babies and occasionally white parents or caregivers' hands. While admittedly hard to quantify, these observations nonetheless reveal an additional racialized dimension to these legal representation deserts that merits further research. An Arkansas birth injury website reflects these norms. It depicts a large photo of white (seemingly) male hands with a wedding ring holding an (also) white baby in a large, central, dominant frame.[103] This lack of representation, when scaled across the websites in bulk, risks further deterring potential plaintiffs of color. This is distinctly short-sighted and flawed as a client acquisition strategy because prevalence data suggest the starkly increased likelihood for preventable pregnancy and birthing harms among communities of color.[104]

Overwhelmingly, these websites systemically tend to feature images depicting white babies and their white parents.[105] One particularly surprising website in Alabama includes three separate stock pictures of white babies receiving medical interventions on the same page as two testimonials from an actual former client

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103. *Arkansas Birth Injury Lawyers: Legal Help in Alabama [sic.] for Medical Negligence at Birth*, AM. BABY & CHILD L. CTRS., https://www.abclawcenters.com/birth-injury-attorneys/arkansas/ [https://perma.cc/5KSD-8L3S] (last visited Nov. 19, 2025).

104. *See infra* notes 110–115.

105. *See, e.g.*, *Vermont Birth Injury Lawyer*, BIRTH INJ. L. GRP., https://birthinjurylawyer.com/vermont/ [https://perma.cc/62KT-QAK9] (last visited May 31, 2024) (depicting a white baby in a medical setting); *Portland Birth Injury Lawyer,* ANGEL L., P.C., https://www.angellawpc.com/birth-injury/ [https://perma.cc/SB6F-ESKQ] (last visited May 31, 2024) (depicting a white mother kissing a smiling white baby and a white father smiling at it); *Boise Birth Injury Lawyer*, GOLDBERG & LOREN, https://goldbergloren.com/locations/boise/birth-injury-attorneys/ [https://perma.cc/GA2U-P2P7] (last visited May 31, 2024) (featuring three pictures of white children); *Experienced Birth Injury Lawyers*, JANET, JANET & SUGGS, LLC, https://www.jjsjustice.com/national/birth-injury-lawyer/ [https://perma.cc/9VYR-RKBT] (last visited May 31, 2024) (showing a white baby hooked up to medical equipment); *Houston, Dallas, and Austin Birth Injury Lawyers,* SNEED & MITCHELL LLP, https://www.sneedmitchell.com/birth-injury-lawyers [https://perma.cc/6A5Z-YJCJ] (last visited Nov. 18, 2025) (showing a white baby resting soundly skin-to-skin on its mother); *New Jersey Birth Injury Lawyers*, FRONZUTO L. GRP., https://www.fronzutolaw.com/medical-malpractice/birth-injuries/ [https://perma.cc/TPA8-4TGJ] (last visited on May 31, 2024) (showing two sets of white adult hands cupping their infant child's feet); *Indianapolis Birth Injury Lawyer*, L. OFF. OF KELLEY JOHNSON, https://www.medmalpractice.law/medical-malpractice-lawyer/birth-injury/ [https://perma.cc/NWM9-CR5Q] (last visited June 16, 2025) (depicting only white babies).

who is a Black mother.[106] This is a staggering disconnect between *marketing* for prospective clients and *actual* client representations.

These findings suggest the need to examine bias further. One Florida website likewise features imagery of all white people on its main page,[107] but then offers a secondary page simply labeled "Español," which includes imagery of people of color at a conference table, but still no imagery depicting *pregnant* people of color.[108]

Only rarely do websites depict people of color and, if so, not *parents* of color. For example, one Alabama firm's page does feature a prominent picture of a happy Black child with her smiling sibling looking upon her adoringly, but there are no parents in the frame.[109] No sites in the survey whatsoever appear to depict individuals who are Asian or Indigenous in prominent placements.

These depictions are plainly out of sync with prevalence data regarding preventable harms. Myopic imagery of birth injury claims is in tension with well-documented health disparities in maternal health outcomes. The Centers for Disease Control and Prevention reports that Black women are three times more likely to die from pregnancy-related causes,[110] which also suggests a greater correlating likelihood to have a cognizable legal claim. Mortality rates for American Indian and Alaska Native women are disparate relative to white women (63.4 vs. 18.1 per 100,000) and Hispanic women's mortality rates are also higher than white women (22.6 vs. 18.1 per 100,000).[111]

Obscuring pregnant people of color ignores the troubled legacy of systemic racism and discrimination in medical systems through provider bias minimizing and dismissing the concerns of patients of color.[112] A shocking 21% of Black

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106. *Alabama Birth Injury Lawyer*, MILLER WEISBROD OLESKY, https://www.nationalbirthinjurylaw.com/alabama-birth-injury-lawyers [https://perma.cc/NP4F-L36R] (last visited May 31, 2024).

107. *Birth Injury Lawyer*, ALVAREZ L. FIRM, https://www.integrityforjustice.com/practice-areas/birth-injuries/ [https://perma.cc/BC8L-RQND] (last visited Aug. 6, 2024).

108. *Español*, ALVAREZ L. FIRM, https://www.integrityforjustice.com/espanol/ [https://perma.cc/N6B7-ECH6] (last visited Aug. 5, 2024).

109. *Alabama Birth Injury Lawyers: Legal Help in Alabama for Medical Negligence at Birth*, AMERICAN BABY & CHILD L. CTR., https://www.abclawcenters.com/birth-injury-attorneys/alabama/ [https://perma.cc/Z27H-7WP8] (last visited May 31, 2024).

110. *Working Together to Reduce Black Maternal Mortality*, CDC: MATERNAL HEALTH (Apr. 8, 2024), https://www.cdc.gov/womens-health/features/maternal-mortality.html?CDC_AAref_Val=https://www.cdc.gov/healthequity/features/maternal-mortality/index.html [https://perma.cc/CV4N-LGDH].

111. Latoya Hill, Alisha Rao, Samantha Artiga & Usha Ranji, *Racial Disparities in Maternal and Infant Health: Current Status and Efforts to Address Them*, KAISER FAM. FOUND. (Oct. 25, 2024), https://www.kff.org/racial-equity-and-health-policy/issue-brief/racial-disparities-in-maternal-and-infant-health-current-status-and-efforts-to-address-them/ [https://perma.cc/5NBJ-9KAY] (noting that differences in insurance coverage play a major role).

112. *Id.*

women report having been treated unfairly by a provider and 22% say they were refused pain medication in childbirth.[113] Anecdotal accounts include "shouting and scolding, ignoring or refusing requests for help during the course of their pregnancy."[114] Erasing pregnant people of color misses a vital chance to improve maternal health outcomes and to counter lasting legacies of discrimination.[115] It neglects the tort system's vital role in strengthening standards of care and remedying preventable harms.

The tort bar can play a vital role shaping, strengthening, and standardizing the medical standards of care that are applied to all pregnant and birthing patients. But Section II showed that personal injury lawyers obscure pregnant persons as prospective clients. Even the tort bar is systemically delivering fetal-focused messaging, erasing the pregnant patient from the caregiving model and echoing the flawed medical and legal model described in Section I.

III.
THE ADDED PERILS OF LEGAL REPRESENTATION DESERTS

Erasing and obscuring pregnant people as potential tort clients exacerbates a standard of care crisis. Section II revealed that pregnant people may not know they have potential malpractice claims and lawyers are not systemically poised to bring suits clarifying and strengthening the standards of care healthcare providers owe them. While those findings have likely persisted for some time, their implications are acutely important now.

This section explores how legal representation deserts exacerbate an escalating standard of care crisis. They thwart the tort system from playing its vital backstop role in healthcare. Section A reveals that fewer providers are available to deliver care, particularly in restrictive abortion states, creating delays and gaps that are acutely felt by the most vulnerable pregnancies. Section B explores how the standards of care applied to pregnant people have been disrupted and even weaponized post-*Dobbs*. Section C concludes that legal representation deserts are compounding the healthcare access crisis to create a deeper standard of care crisis. Absent the backdrop of a functioning tort system, these fetal-centered standards that erase pregnant people risk becoming entrenched and calcified.

A. Maternity Care Deserts Harm Pregnant People

The erasure of pregnant people as putative plaintiffs thwarts the role of the tort system in addressing the health crisis in maternity care. The system is strained by longstanding maternal care deserts, provider departures, the migration of

113. *Id.*

114. *Id.*

115. *See generally* DOROTHY ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION AND THE MEANING OF LIBERTY (1997); KHIARA BRIDGES, REPRODUCING RACE: AN ETHNOGRAPHY OF PREGNANCY AS A SITE OF RACIALIZATION (2011); Ashley, *supra* note 10.

pregnant patients for care, increased pregnancy complications, and a looming birth rate spike poised to further strain precarious systems gaps.

Well before *Dobbs*, the United States faced a steep maternity care crisis in many geographies due to the absence of providers. An astonishing 35% of counties are "maternity care deserts," locations with neither a birthing facility nor an obstetric clinician, leaving more than 2.3 million women of reproductive age and 150,000 babies residents of counties without proper facilities to care for them.[116] Over one in three counties in the U.S. does not have a single practicing obstetric clinician.[117] In maternity care deserts, there are over 10,000 excess preterm births, revealing maternal health risks needing high quality care and reflecting a 13% increase over geographies with access to maternity care.[118] Six in ten of these maternity care deserts are in rural geographies.[119]

This situation is worsening. The U.S. Department of Health and Human Services had projected in 2018 a national OBGYN decline of 7% by 2030 before *Dobbs*,[120] but *Dobbs* has greatly accelerated and exacerbated this crisis. At least 107 obstetric units closed their doors between 2021 and 2022.[121] Over one hundred rural hospitals closed their labor and delivery units between 2020 and 2025, with 120 additional hospitals operating at a loss and in danger of closing.[122]

116. MARCH OF DIMES, NOWHERE TO GO: MATERNITY CARE DESERTS ACROSS THE US 3 (2024), https://www.marchofdimes.org/sites/default/files/2024-09/2024_MoD_MCD_Report.pdf [https://perma.cc/4YD9-6QKQ].

117. *Id.*

118. *Id.* at 11.

119. *Id.* at 8, 12.

120. U.S. DEP'T OF HEALTH & HUM. SERVS., HEALTH RES. & SERVS. ADMIN. & NAT'L CTR. FOR HEALTH WORKFORCE ANALYSIS, PROJECTIONS OF SUPPLY AND DEMAND FOR WOMEN'S HEALTH SERVICE PROVIDERS: 2018–2030 11–12 Ex. 1 (2021), https://bhw.hrsa.gov/sites/default/files/bureau-health-workforce/data-research/projections-supply-demand-2018-2030.pdf [https://perma.cc/862W-CNBK].

121. *See* MARCH OF DIMES, *supra* note 116, at 17 (finding at least one-hundred and seven obstetric unit closures nationwide in 2021 and 2022, approximately one in twenty-five).

122. CENTERS FOR HEALTHCARE QUALITY & PAYMENT REFORM, STOPPING THE LOSS OF RURAL MATERNITY CARE (2025), https://chqpr.org/downloads/Rural_Maternity_Care_Crisis.pdf [https://perma.cc/P85J-MW2X].

There is also qualitative evidence of OBGYNs relocating from restrictive states.[123] The Association of American Medical Colleges reported that the number of applicants for OBGYN placements in states with abortion bans declined by 10.5% for the 2022–2023 cycle.[124] Provider departures will continue to worsen as medical residents actively avoid the OBGYN specialty, physicians avoid restrictive abortion states, and already insufficient training vanishes further.[125]

Physician shortages have dire health consequences. Babies of pregnant persons who do not get prenatal care are five times more likely to die than babies of those who do.[126] A survey of OBGYNs revealed that 68% believed that *Dobbs* has undermined their medical management of pregnancy care.[127]

There are fewer physicians and more births. Achieving clarity about *Dobbs'* effects on birth rates and maternal care is complicated by the divergent political divides between states. Nationally, abortion rates have increased from 2020 to

123. *See, e.g.*, Erika L. Sabbath, Samantha M. McKetchnie, Kavita S. Arora & Mara Buchbinder, *US Obstetrician-Gynecologists' Perceived Impacts of Post*-Dobbs v Jackson *State Abortion Bans*, 7 JAMA NETWORK OPEN, no. 1, Jan. 17, 2024, at 5–6, https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2814017 [https://perma.cc/P8AM-77LH] (finding sixty percent of surveyed OBGYNs considered moving their practice to a less restrictive state and eleven percent actually did so); *cf.* Julia Strasser, Ellen Schenk, Qian Luo & Candice Chen, *Lower Obstetrician and Gynecologist (OBGYN) Supply in Abortion-Ban States, Despite Minimal State-Level Changes in the 2 Years Post*-Dobbs, 2 HEALTH AFFS. SCHOLAR, no. 12, Nov. 27, 2024, at 3–4, https://academic.oup.com/healthaffairsscholar/article/2/12/qxae162/7909263 [https://perma.cc/Q29Q-KNM9] (finding no measurable data of a significant exodus of OBGYNs from restrictive states in two years post-*Dobbs* but emphasizing that workforce patterns take years to fully develop so the full effects are impossible to know yet).

124. Lucy Tu, *One Year After* Dobbs*, Abortion Bans are Harming Reproductive Care, Ob-Gyns Say*, SCIENTIFIC AM. (June 23, 2023), https://www.scientificamerican.com/article/one-year-after-dobbs-abortion-bans-are-harming-reproductive-care-ob-gyns-say1/ [https://perma.cc/W7BJ-MPTW].

125. *See* Kendal Orgera & Atul Grover, *States with Abortion Bans See Continued Decrease in U.S. MD Senior Residency Applicants*, AAMC RSCH. & ACTION INST. (May 9, 2024), https://www.aamcresearchinstitute.org/our-work/data-snapshot/post-dobbs-2024 [https://perma.cc/5K8R-BSTM]. The Accreditation Council for Graduate Medical Education (ACGME) mandates that OBGYN residency programs provide abortion training to be accredited, which is a difficult requirement to fulfill in restrictive states for programs and residents alike. *See* Position Statement, *Abortion Training and Education in a Post*-Dobbs *Landscape*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS (Feb. 6, 2025), https://www.acog.org/clinical-information/policy-and-position-statements/position-statements/2025/abortion-training-and-education-in-a-post-dobbs-landscape [https://perma.cc/VV8X-4UG5].

126. John W. Schmitt, *Prenatal Care*, U.S. DEP'T OF HEALTH & HUM. SERVS., OFF. ON WOMEN'S HEALTH (Feb. 22, 2021), https://womenshealth.gov/a-z-topics/prenatal-care [https://perma.cc/K5MK-2KD3].

127. Tu, *supra* note 124.

2023, including after *Dobbs*,[128] due to telehealth abortions provided by states with "shield laws"[129] and increased interstate travel.[130] As Professors David Cohen and Carole Joffe framed it in their book title, "the Supreme Court ended *Roe* but not abortion."[131] Birth rates have also increased in restrictive states, particularly among vulnerable populations,[132] because not all patients are able to access out-of-state care and distance is consistently a barrier.[133] Political calls to increase the birth rate and escalating legal attacks on medication abortion foretell a steepening crisis.

The proliferation of maternity care deserts tells a cautionary tale about the delivery of medical care post-*Dobbs* within a bleak legal and medical landscape. The tort system is not currently equipped to counter this trajectory.

B. Disrupted and Disingenuous Standards of Care

Section II revealed that pregnant people are unlikely to find lawyers or know that they have potential claims. Section III.A revealed an acute maternity care crisis. This section explores how medical standards of care have been disrupted and maternal health has been weaponized disingenuously since *Dobbs*. This suggests that the findings in Section II are more than just abstract considerations. Lawyers

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128. *See, e.g.*, *Monthly Abortion Provision Study*, GUTTMACHER INST., https://www.guttmacher.org/monthly-abortion-provision-study [https://perma.cc/XPY4-92C6] (last visited Oct. 5, 2025) (reporting an 11.1% increase in abortions in states without a total ban since 2020).

129. *See, e.g.*, #WECOUNT REPORT: APRIL 2022 TO JUNE 2024, SOC'Y FAM. PLAN. 4–5 (2024), https://societyfp.org/wp-content/uploads/2024/10/WeCount-Report-8-June-2024-data.pdf [https://perma.cc/49U5-ZN55] (finding an average of over 7,700 monthly telehealth abortions were provided under shield laws to people in states with abortion bans in April-June 2024 alone) [hereinafter #WECOUNT REPORT].

130. *See, e.g.*, Karen Diep, Bryana Castillo Sanchez, Usha Ranji & Alina Salganicoff, *Abortion Trends Before and After* Dobbs, KAISER FAM. FOUND. (Jul. 15, 2025), https://www.kff.org/womens-health-policy/issue-brief/abortion-trends-before-and-after-dobbs/ [https://perma.cc/SLA6-SZJC] (reporting that "the travel rate for abortion care across state lines nearly doubled from 2020 to 2024, with Illinois, North Carolina, New Mexico, and Kansas experiencing the highest volume of out-of-state abortion patients last year").

131. DAVID S. COHEN & CAROLE JOFFE, AFTER *DOBBS*: HOW THE SUPREME COURT ENDED *ROE* BUT NOT ABORTION (2025) (cleaned up).

132. *See, e.g.*, #WECOUNT REPORT, *supra* note 129, at 2 (estimating that approximately 144,690 abortions would have occurred in the 18 months after *Dobbs* in the 14 states that implemented abortion bans in that time); Caitlin K. Myers, Daniel L. Dench & Mayra Pineda-Torres, *The Road Not Taken: How Driving Distance and Appointment Availability Shape The Effects of Abortion Bans* 22 (Nat'l Bureau of Econ. Rsch., Working Paper No. 33548, 2025), https://www.nber.org/system/files/working_papers/w33548/w33548.pdf [https://perma.cc/MHC3-DEZB] (finding that birth rates in restrictive states increased most significantly for women living farther from facilities, Black and Hispanic women, unmarried women, and women without a college degree).

133. *See* Myers, Dench & Pineda-Torres, *supra* note 132, at 17–18 (finding increased travel distance to the nearest abortion facility post-*Dobbs* resulted in an estimated 2.8% increase in births).

are not yet poised to represent injured pregnant people receiving healthcare in a strained system with inadequate standards governing their care.

Post-*Dobbs,* the standards of care owed to pregnant people have been disrupted in problematic ways.[134] There is confusion in restrictive abortion states about what the standards of care are when treating pregnant people.[135] Professors Lindgren and Oberman conclude powerfully and unequivocally that "[p]atients are being subjected to substandard care, and they are being injured" post-*Dobbs*.[136] There are also disingenuous political efforts to invoke standards of care on behalf of pregnant people that are instead undermining those standards. Further, there are surveillance, retribution, and criminalization concerns blockading documentation of these regressions in medical standards of care.[137] These threats compound the existing standard of care crisis.

Particularly in restrictive abortion states, there is confusion about what standards of care govern the treatment of pregnant people facing complications.[138] Immediately after *Dobbs*, the American Medical Association issued a statement cautioning that physicians and pharmacists would "face a confusing legal landscape due to state laws' lack of clarity, confusing language, and unknown implementation by regulatory and enforcement bodies."[139] It urged state boards to ensure that patients received continuity of care and that medical providers understood their "legal and licensing obligations."[140]

Over time, those concerns have manifested, the confusion has deepened, and the threats have escalated. Abortion bans have created a legal and medical

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134. *See generally* Lindgren & Oberman, *supra* note 32.

135. *See, e.g.*, *id.* at 631 ("The more uncertain the law's applicability, the wider the margin needed by doctors hoping to avoid legal risks completely."); Powell, *supra* note 9, at 1103 ("[T]ypical health exceptions utilize vague, subjective language prone to inconsistent interpretations and application."); Maxine Eichner, Mara Buchbinder, Abby Schultz, Cambray Smith & Amy Bryant, *The Inevitable Vagueness of Medical Exceptions to Abortion Bans*, UC IRVINE L. REV. (forthcoming) (identifying gaps in how providers make abortion decisions compared to the legislative language of medical exceptions).

136. *See* Lindgren & Oberman, *supra* note 32, at 639.

137. *See, e.g.,* Jolynn Dellinger & Stephanie Pell, *Bodies of Evidence: The Criminalization of Abortion and Surveillance of Women in a Post*-Dobbs *World,* 19 DUKE J. CONST. L. & PUB. POL'Y (2024).

138. *See, e.g.*, CTR. FOR REPROD. RTS., CRIMINALIZED CARE: HOW LOUISIANA'S ABORTION BANS ENDANGER PATIENTS AND CLINICIANS 6 (2024) [hereinafter CRIMINALIZED CARE], https://reproductiverights.org/louisiana-abortion-bans-criminalized-care-report/ [https://perma.cc/34G2-XHK4] (concluding that abortion bans "cause confusion about what reproductive health-related information clinicians can provide pregnant patients, exacerbating mistrust of the health system and harming the patient-provider relationship").

139. Press Release, Am. Med. Ass'n, Statement on State Laws Impacting Patient Access to Necessary Medicine (Sep. 8, 2022), https://www.ama-assn.org/press-center/press-releases/statement-state-laws-impacting-patient-access-necessary-medicine [https://perma.cc/6RGJ-HXFG].

140. *Id.*

landscape whereby the medical care provided to pregnant people "disregard[s] evidence-based public health guidance, degrade[s] long-standing medical ethical standards, and, worst of all, deni[es] basic human rights to [patients] seeking reproductive health care in their state."[141] Professors Lindgren and Oberman capture these complexities comprehensively in their work *Recalibrating Risk Under* Dobbs. They conclude that:

> where abortion is banned, there is no formal body of evidence-based best practices to guide the care of even the most commonly reported pregnancy complications, let alone to direct clinicians on how to handle less common but equally serious complications, such as treating breast cancer, lupus, or severe depression in patients forced to continue pregnancies.[142]

Advancing New Standards in Reproductive Health documented poor quality care after *Dobbs* in its *Care Post-Roe Study.*[143] From September 2022 through March 2023, 50 health care providers reported care concerns anonymously and confidentially, offering an early glimpse into the standard of care problems where abortion had been banned since *Dobbs*.[144] This report documented the following concerns regarding medical care for pregnant patients:

1. Obstetric complications in the second trimester prior to fetal viability, including preterm pre-labor rupture of membranes, hemorrhage, cervical dilation, and hypertension;
2. Ectopic pregnancy, including cesarean scar ectopic;
3. Underlying medical conditions that made continuing a pregnancy dangerous;
4. Severe fetal anomalies;
5. Early miscarriage;
6. Extreme delays in obtaining abortion care; and
7. Delays obtaining medical care unrelated to abortion.[145]

The authors concluded that "post-*Dobbs* laws and their interpretations altered the standard of care across these scenarios in ways that contributed to delays,

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141. CRIMINALIZED CARE, *supra* note 138, at 4.

142. Lindgren & Oberman, *supra* note 32, at 638.

143. *See generally* DANIEL GROSSMAN, CAROLE JOFFE, SHELLY KALLER, KATRINA KIMPORT, ELIZABETH KINSEY, KLAIRA LERMA, NATALIE MORRIS & KARI WHITE, CARE POST-ROE: DOCUMENTING CASES OF POOR-QUALITY CARE SINCE THE *DOBBS* DECISION, ADVANCING NEW STANDARDS IN REPROD. HEALTH (2023), https://www.ansirh.org/sites/default/files/2023-05/Care%20Post-Roe%20Preliminary%20Findings.pdf [https://perma.cc/436N-JVMS].

144. *Id.* at 6.

145. *Id.* at 4.

worsened health outcomes, and increased the cost and logistic complexity of care" for pregnant patients.[146] For example, instead of offering patients who suffered a preterm, pre-labor rupture of membranes in the second trimester the option of a D&E, these patients were sent home to wait until either labor began or infection set in, in some cases developing infections so severe as to require ICU care.[147] Others reported that their medical teams advised them to get abortion care out of state, which they went to extraordinary lengths to obtain.[148] One narrative described "[t]he paralysis that the overnight team exhibited" while trying to figure out if they could "legally provide standard-of-care medical treatment."[149] Another described how care providers refused to be on care teams and concluded it was "[b]est not to so much as touch the patient who is miscarrying."[150] These reports documented how delays caused by the need to pursue care out-of-state exacerbated the underlying medical "near-miss" situations,[151] such as an ectopic pregnancy that led to a rupture and required fallopian removal.[152] Other accounts documented extended time lost to consulting with multiple physicians.[153] These reports also captured other hardships, such as financial burdens, travel complexities (e.g., caregiving for children), and recovering in a hotel without support.[154]

Each of these documented accounts pushed providers and patients to deviate from the standards of care that recommended abortive care "to avoid serious complications and risk of death."[155] The health costs were searing but so too were the emotional, financial, and logistical costs.[156] While this report was qualitative, the study authors conclude that these are not "one-off" situations, and there are more incidences of these deviations.[157]

Surveys of practicing OBGYNs post-*Dobbs* are also worrisome.[158] Half of all OBGYNs practicing in states with near-total abortion bans report that, since

146. *Id.*
147. *Id.* at 7.
148. *See id.* at 7–8.
149. *Id.* at 8.
150. *Id.*
151. *Id.* at 9.
152. *Id.* at 10.
153. *Id.*
154. *Id.* at 6–12.
155. *Id.* at 17.
156. *Id.*
157. *Id.*
158. BRITTNI FREDERIKSEN, USHA RANJI, IVETTE GOMEZ & ALINA SALGANICOFF, A NATIONAL SURVEY OF OBGYNS' EXPERIENCES AFTER *DOBBS*, KAISER FAM. FOUND. 3 (2023) https://files.kff.org/attachment/Report-A-National-Survey-of-OBGYNs-Experiences-After-Dobbs.pdf [https://perma.cc/FN2M-X64C] (surveying U.S. OBGYNs from March to May 2023 who provide at least 60% of their care in sexual and reproductive health care to 10% of their patients).

*Dobb*s they have had patients seeking to terminate a pregnancy but unable to do so.[159] The implications affect the medical care provided to all pregnant people. Forty percent of OBGYNs in states with abortion bans reported that they were constrained in their miscarriage care and pregnancy emergency care after *Dobbs*.[160] The vast majority of OBGYNs in all states further report that *Dobbs* has had disproportional racial and ethnic impacts on maternal health (70%), had detrimental effects on pregnancy-related medical emergencies (68%), increased pregnancy-related deaths (64%), and compromised OBGYN recruitment (55%).[161] A 2025 study of 21 OBGYNs concluded that Wisconsin pregnancy law was "vague" and "uninterpretable."[162]

This type of uncertainty means that providers rely on institutional administrators and legal teams which allows institutional risk mitigation to drive decisions rather than individualized patient considerations or clinical standards of care.[163] Professors Lindgren and Oberman document categories of cases—denoted as "yellow zone cases"—"where the law's latent ambiguity causes doctors to pull back from the standard of car because they cannot be sure the care in question is permissible and they do not want to test the limits of their state bans."[164] Professor Nadia Sawicki's research on the *Management of Obstetric Emergencies* captures how physicians struggle to get adequate legal guidance from counsel and administrators.[165]

Inadequate medical training further threatens standards of care.[166] In states with abortion bans this training is compromised or outright unavailable.[167]

Standards of care for pregnant people are also being deployed disingenuously to advance a fetal personhood agenda. The Northern District of Texas's opinion in *Alliance for Hippocratic Medicine* is one example of this phenomenon. The court issued injunctive relief relying on sources concluding that the "unusual approval"

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159. *Id.*

160. *Id.*

161. *Id.* at 15.

162. Abigail S. Cutler, Corinne M. Hale, Eliza Bennett, Laura Jacques & Jenny Higgins, *Experiences of Obstetrician-Gynecologists Providing Pregnancy Care After* Dobbs*,* 8 JAMA NETWORK, no. 3, Mar. 31, 2025, at 4, https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2831948 [https://perma.cc/9MA9-9N3U].

163. *Id.*; *see also* Dov Fox, *What Will Happen if Doctors Defy the Law to Provide Abortions*, N.Y TIMES (July 17, 2022), https://www.nytimes.com/2022/07/17/opinion/dobbs-abortion-providers-conscience-protections.html (arguing that "Congress or the courts should recognize a partial defense of medical disobedience" to protect clinicians claiming medical conscience drove their decision-making).

164. Lindgren & Oberman, *supra* note 32, at 645.

165. *See* Nadia N. Sawicki, *Management of Obstetric Emergencies: Hospital Best Practices for Protecting Patients and Physicians*, AM. J. LAW & MED. 2 (forthcoming).

166. Tu, *supra* note 124.

167. *Id.*

process governing Mifepristone demonstrated a "lower standard of care for women."[168] The opinion explained that Mifepristone regulations "prevent[ed] Plaintiff doctors from practicing evidence-based medicine" and "harm[ed] the doctor-patient relationship."[169] It said that the Risk Evaluation and Mitigation Strategy (REMS) protocol (an FDA program for products that the agency has concluded pose serious safety concerns) caused the plaintiffs to face increased exposure to malpractice allegations and potential liability, along with higher insurance costs.[170] These torts terms and rationales masqueraded as legal reasoning, but they were unsupported by either law or fact. Rather, the court cited a nine-page article from a journal analyzing women's blog posts to conclude that 14% of patients had received insufficient information about the side effects, intensity, reactions, and next steps after receiving medication abortion from their doctors.[171] Here, the court disingenuously concluded, relying on a communications study, that "Plaintiff physicians' lack of pertinent information on [medication] abortion harms their physician-patient relationships because they *cannot* receive informed consent from the women and girls they treat in their clinics."[172] "Plaintiffs allege[d] these actions have 'radically altered the standard of care.'"[173] This is just one example of the political weaponization of standards of care.

Standards of care for medical providers should emerge from the peer medical community, institutional protocols, and expert bodies, such as the American College of Obstetricians and Gynecologists (ACOG).[174] Peer expert testimony must support malpractice claims, entrusting professional management of legal liability within the profession itself.[175] Weaponizing standards of care is harmful in tort

168. All. for Hippocratic Med. v. U.S. FDA, 668 F. Supp. 3d 507, 522 (N.D. Tex. 2023).

169. *Id.* at 524.

170. *Id.*

171. Katherine A. Rafferty & Tessa Longbons, *#AbortionChangesYou: A Case Study to Understand the Communicative Tensions in Women's Medication Abortion Narratives*, 36 HEALTH COMMC'N 1485, 1489 (2021), https://www.tandfonline.com/doi/epdf/10.1080/10410236.2020.1770507?needAccess=true [https://perma.cc/VSY2-JZLT]; *All. for Hippocratic Med.*, 668 F. Supp. 3d at 524.

172. *Id.*

173. *Id.*

174. Abrams, *supra* note 11, at 152.

175. *See, e.g.,* 1 N.J. R. EVID. COURTROOM MANUAL, Testimony by Experts, Ch. 702 (2025) ("In some cases, expert testimony is essential to establish a claim or defense. Thus, in malpractice actions, the plaintiff generally requires expert testimony to establish the standard of care in the relevant community, deviation from that standard of care by the defendant, and causation.")

law because it upends evidence-based medical standards and replaces it with politics.[176]

Finally, the punitive backdrop framing obstetric care further distorts standards of care. Responses to the *Care Post-Roe Study* specifically documented how liability fears are shaping the delivery and receipt of obstetric care and its related decision-making.[177] Surveyed doctors revealed that the personal risk of criminal prosecution pitted their own well-being and safety against the care obligations they have for their patients.[178] One study concluded that the threat of criminalization caused "substandard, delayed, and fragmented care[.]"[179] These fears have led physicians in the restrictive abortion state of Texas to "talk[] in code"[180] to their patients out of concerns arising from "aiding and abetting" laws.[181]

This punitive backdrop prevents doctors from delivering information clearly to their patients.[182] Clinicians must be able to use their medical judgment to provide evidence-based care for their patients and prevent medical emergencies without risk of criminal prosecution. The possibility of punitive consequences exacerbates standard of care issues and prevents accurate monitoring of the crisis itself.

Collectively, standards of care in medical settings post-*Dobbs* need more clarity, vigilance, and interventions to center pregnant patients. This is unlikely to occur absent legal and political pressure. This is the core work of plaintiff-side personal injury lawyers.[183]

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176. *See, e.g.*, Claudia E. Haupt, *Pseudoprofessional Advice,* 103 B.U. L. REV. 775, 786–87 (2023) (describing how professional licensure "ties the individual professional to the knowledge community by requiring a link between the ability to speak as a professional and the communication of knowledge as defined by the profession" and noting that the "shared notions of validity to which knowledge communities subscribe limit the spectrum of opinions that constitute acceptable expertise").

177. *See generally* GROSSMAN, JOFFE, KALLER, KIMPORT, KINSEY, LERMA, MORRIS & WHITE, *supra* note 143.

178. Cutler, Hale, Bennett, Jacques & Higgins, *supra* note 162, at 4–5.

179. *Id.* at 5.

180. *Morning Edition: 3 abortion bans in Texas leave doctors 'talking in code' to pregnant patients* (NPR March 1, 2023), https://www.npr.org/sections/health-shots/2023/03/01/1158364163/3-abortion-bans-in-texas-leave-doctors-talking-in-code-to-pregnant-patients

181. *Id.*

182. *Id.*

183. *See, e.g., About Us*, AM. ASS'N FOR JUST., http://www.justice.org/about-us [https://perma.cc/UGC2-K6BY] (last visited Mar. 4, 2026) (describing the organization's mission to "promote[] justice and fairness for injured persons").

C. A Compounding Standard of Care Crisis

The legal representation deserts revealed in Section II prevent the tort system from countering the post-*Dobbs* standard of care deterioration documented in Section III.[184] This entrenches the fetal-centered medical practices that harm pregnant people without challenge.[185] Tort cases refine standards of care and shape policies and practices.[186] Erasing pregnant people as putative plaintiffs reduces the likelihood they will sue, exacerbating and entrenching the standard of care crisis.[187]

Section I revealed how tort law has a vital role to play addressing the standard of care crisis described in III.B, but it is not presently actualizing that role. Tort lawyers are vital partners necessary to the post-*Dobbs* legal landscape. Medical malpractice claims, the most common type of tort suit in health care settings, allege that providers breached specific standards of care and, had the provider not breached the standard of care, the resulting harm to the patient would not have occurred.[188]

Tort law plays a safeguarding role regulating medical care, even without an active malpractice lawsuit. Robust literature debates the prevalence of defensive medicine and the best approaches to respond to it.[189] When potential costs are high, though, physicians *do* have an incentive to be vigilant about liability risks when making care decisions.[190] If potentially injurious physicians expect that they will pay less in liability than the actual costs of harms imposed, then tort law does not provide a strong incentive to change harmful practices.[191] Researchers have found "strong evidence that a reduction in liability risk leads to a reduction in safety," yielding a 15% rise in adverse events.[192] Because "lower liability risk leads providers to invest less in safety and to be less careful in general,"[193] it would be problematic to patients if physicians concluded they would not face liability for breaches in the standards of care that caused harm to pregnant and birthing people. This is exactly the risk revealed by the findings presented in Section II.

Tort law's looming presence is especially influential in pregnancy and birth-related medical care.[194] Tort law shapes pregnancy and delivery care through the

184. *See, e.g.,* David S. Cohen & Greer Donley, *From Medical Exceptions to Reproductive Freedom,* 124 MICH. L. REV. 391, 444 (2025) (concluding that "[d]riven by individual or hospital physician risk aversion, . . . patient care is now perilously inconsistent").

185. *See, e.g.,* Lindgren & Oberman, *supra* note 32, at 638 ("If a handful of local doctors refuse to terminate tubal pregnancies, or send miscarrying patients with ruptured membranes home to wait to become septic before performing an abortion, does that make such care reasonable?"); Morgan Jane Preston, *Pregnancy and Personhood: A Thirteenth Amendment Challenge to Dehumanizing Abortion Restrictions*, 86 OHIO STATE L.J. 627, 641–42 (2025) (encouraging "reproductive rights advocates to anticipate and challenge the judiciary's missteps when reasoning about pregnant people instead of participating in this dangerous feedback loop").

186. *See generally* Abrams, *supra* note 2.

187. *Id.*

types and frequency of claims and the amount of potential liability. One study concluded, for example, that 74% of OBGYNs will be sued for malpractice by the age of 45 as compared to just 55% of other types of physicians.[195] Increased tort liability risk, in turn, causes medical premiums to rise,[196] and accordingly

188. *See generally,* 5 MEDICAL MALPRACTICE GUIDE: MEDICAL ISSUES, MALPRACTICE IN OBSTETRICS AND GYNECOLOGY, Ch. 87 (2025) (describing how to build a case for obstetric malpractice).

189. *See, e.g.,* Lisa Dubay, Robert Kaestner & Timothy Waidmann, *Medical Malpractice Liability and Its Effect on Prenatal Care Utilization and Infant Health*, 20 J. HEALTH ECON. 591 (2001), https://www.sciencedirect.com/science/article/abs/pii/S0167629601000820?via%3Dihub [https://perma.cc/F5U2-M4H8]; ERIC D. KATZ, 3 DEFENSIVE MEDICINE: A CASE AND REVIEW OF ITS STATUS AND POSSIBLE SOLUTIONS 329, at 331 (2019) (discussing caps on non-economic damages, caps on attorneys, attorneys fees, safe harbors, apology laws, and more); DIANE E. HOFFMANN & BRADLEY HERRING, REPORT TO THE MARYLAND HEALTH SERVICES COST REVIEW COMMISSION ON DEFENSIVE MEDICINE (2015), https://hscrc.maryland.gov/Documents/commission-meeting/2015/03-11/Defensive-Medicine-Final-Report-3-16-15.pdf [https://perma.cc/GY78-ETVX]; Emily R. Carrier, James D. Reschovsky, Michelle M. Mello, Ralph C. Mayrell & David Katz, *Physicians' Fears of Malpractice Lawsuits Are Not Assuaged By Tort Reforms*, 29 HEALTH AFFS. 1585 (2010), https://www.healthaffairs.org/doi/10.1377/hlthaff.2010.0135; Lisa Dubay, Robert Kaestner & Timothy Waidmann, *The Impact of Malpractice Fears on Cesarean Section Rates*, 18 J. HEALTH ECON. 491, 496, 509 (1999), https://www.sciencedirect.com/science/article/abs/pii/S0167629699000041 ("Physician surveys consistently indicate that physicians reduce their caseload of Medicaid-covered and other low-income women in order to minimize malpractice claims" . . . "[P]hysicians respond to malpractice claims risk by performing more caesarean sections and that this response is greater for mothers of low-socioeconomic status"); Louise M. Roth, *What's the Rush? Tort Laws and Elective Early-Term Induction of Labor*, 57 J. HEALTH & SOC. BEHAV. 486 (2016), https://journals.sagepub.com/doi/full/10.1177/0022146516669971.

190. *See The Efficiency of the Tort System as a Mechanism for Deterrence*, JUSTIA (Oct. 2025), https://www.justia.com/injury/docs/us-tort-liability-primer/tort-system-as-mechanism-for-deterrence/ [https://perma.cc/FPF9-MTG9] ("In a situation in which potential injurers anticipate paying an extra dollar for every additional dollar of injuries or transaction costs they cause, they have the right incentive to take cost-effective steps to reduce future costs.").

191. *Id.* ("[I]f potential injurers expect to pay less than one dollar in liability costs per dollar of additional social costs—or, more to the point, expect to save less than one dollar per dollar of reduced social costs—they will have too little incentive to take preventive action.").

192. Zenon Zabinski & Bernard S. Black, *The Deterrent Effect of Tort Law: Evidence from Medical Malpractice Reform*, 84 J. HEALTH ECON., July 2022, at 1–2.

193. *See id.*

194. *See* Abrams, *supra* note 11, at 152.

195. *See, e.g.*, Michael Frakes & Jonathon Gruber, *Defensive Medicine and Obstetric Practices: Evidence from the Military Health System*, 17 J. EMPIRICAL LEGAL STUD. 4, 5 (2020).

196. *Surge in Medical Liability Premiums Increases Reaches Fourth Year*, AM. MED. ASS'N (Apr. 19, 2023), https://www.ama-assn.org/press-center/press-releases/surge-medical-liability-premiums-increases-reaches-fourth-year [https://perma.cc/SDP5-7T65] (finding that medical premiums are rising at a rate not experienced in over 2 decades and at an average increase of 8.1% in 2022, and that "in 2022 some obstetricians and gynecologists faced base premiums ranging from $49,804 in Los Angeles County, California to $226,224 in Miami-Dade County, Florida").

OBGYNs are estimated to pay four times more than general practitioners in insurance premiums.[197]

While pregnancy and childbirth can yield substantial civil liability, claims are most often brought for fetal harm, not maternal harm.[198] This risks a sub-genre of defensive medicine concerns through which providers might act to reduce fetal harms at the expense of the pregnant person's health outcomes and decisional autonomy.[199] Notably, it may not be *more* medical interventions on pregnant people that are needed to lessen liability, and certainly not more fetal focus. Rather, the likelihood of suit arising from childbirth is influenced more by factors such as poor communication, lack of physician-patient trust, patient frustration, and patronizing treatment.[200]

The post-*Dobbs* landscape threatens to sideline tort law absent strategic intervention. Particularly in states with abortion bans, strong fetal personhood legal frameworks dominate and may subordinate the pregnant person to the fetus in the standards of care.[201] Medical malpractice standards of care are set within professional communities in ways that should be evidence-based and not politically motivated.

Section II revealed a vital new aspect of the already deficient tort landscape facing pregnant people—the inability to find counsel. Legal representation deserts reinforce the status quo for standards of care, enabling more fetal-focused standards. This compounds the standard of care crisis and requires timely and swift legal mobilization, as discussed in Section IV.

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197. "While an OBGYN's med mal premiums are venue-driven and vary wildly, they pay 'probably four times as much, on average, as a regular family practice, general practitioner physician would pay[.]'" David Agnew & R&I Ed. Team, *High Medical Malpractice Premiums are Driving OBGYNs Out of Business. Why That is Detrimental to Women Everywhere*, RISK & INS. (Dec. 4, 2022), https://riskandinsurance.com/high-medical-malpractice-premiums-are-driving-ob-gyns-out-of-the-business-how-will-women-cope/ [https://perma.cc/QXP3-HHTJ].

198. *See* Abrams, *supra* note 2, at 1977–78.

199. *Id.* at 1983.

200. Kukura, *Obstetric Violence*, *supra* note 13, at 771–72.

201. *See generally*, MARY ZIEGLER, PERSONHOOD: THE NEW CIVIL WAR OVER REPRODUCTION (2025) (concluding that the battle for legal personhood of fetuses is also about regulating the behavior of pregnant people); PREGNANCY UNPACKING FETAL PERSONHOOD, PREGNANCY JUSTICE (2024), https://www.pregnancyjusticeus.org/wp-content/uploads/2024/09/Fetal-personhood.pdf [https://perma.cc/S8F6-FKSD] (explaining the legal basis of fetal personhood and how it broadly prioritizes the fetus in medical treatment of pregnant people); Meghan M. Boone & Benjamin J. McMichael, *Reproductive Objectification*, 108 MINN. L. REV. 2493, 2501 (2024) (concluding that "endowing the fetus with personhood, the personhood of potentially pregnant people is necessarily (and perhaps completely) undermined"); Greer Donley & Jill Wieber Lens, *Abortion, Pregnancy Loss, & Subjective Fetal Personhood*, 75 VAND. L. REV. 1649 (2022).

IV.
CENTERING PREGNANT PEOPLE AS PUTATIVE PLAINTIFFS

Scholars are already looking robustly to catalyze the tort system effectively as a tool in a post-*Dobbs* era.[202] Plaintiff-side lawyers can strategically intervene as a counter pressure to the existing medical landscape. This community of lawyers is well-positioned to adapt to the escalating political landscape consistent with their professional norms and objectives. The work of plaintiff-side personal injury lawyers can be distinctly nimble, strategic, and responsive to changing political, economic, and social conditions. Tort litigation has transformed entire industries through a sole case or strategy, such as litigation dramatically shaping the marketing and regulation of opioids,[203] firearm safety and gun control,[204] the tobacco industry,[205] and other environmental, health, and safety standards.[206]

Unlike legislation, individual lawyers or small groups of lawyers can have an enormous impact through tort law, even absent unanimity or even consensus. Personal injury lawyers have a strong affiliation with Democratic politicians which in

202. *See, e.g.*, Lindgren & Levit, *supra* note 28; Aviva K. Diamond, Note, *The Impact of Post-*Dobbs *Abortion Bans on Prenatal Tort Claims*, 122 MICH. L. REV. 377, 382 (2023) (proposing a "constitutional right to interstate travel, access to medication abortion, and a reframing of the injury at issue, all of which would strengthen prenatal tort claims brought in states with near-total or early-gestational-age abortion bans").

203. Margaret Wilson, *Litigating the U.S. Opioid Epidemic: Public Torts, Public Health, and the Legacy of Big Tobacco,* HARV. UNDERGRADUATE L. REV. (2019), https://hulr.org/spring-2019/litigating-the-us-opioid-epidemic-public-torts-public-health-and-the-legacy-of-big-tobacco [https://perma.cc/EZR4-23X8] ("[L]itigation thus far has begun to effect change in policy and marketing practices employed by pharmaceutical companies, a wealth of documents detailing illegal or objectionable industry practices and communications has been made public, and public opinion and media coverage around implicated pharmaceutical companies have shifted dramatically in recent years.").

204. *See, e.g.*, KRISTEN RAND, VIOLENCE POL'Y CTR., LAWYERS, GUNS, AND MONEY: THE IMPACT OF TORT RESTRICTIONS ON FIREARMS SAFETY AND GUN CONTROL 2–3, 6–11 (1996).

205. *See, e.g.*, Patrick A. Luff, *Regulating Tobacco Through Litigation*, 47 ARIZ. ST. L.J. 2, 22–45 (2015).

206. *See, e.g.*, Mark Latham, Victor E. Schwartz & Christopher E. Appel, *The Intersection of Tort and Environmental Law: Where the Twains Should Meet and Depart*, 80 FORDHAM L. REV. 737, 749–54 (2011).

turn tend to support reproductive rights.[207] Plaintiff-side tort lawyers are also heavily organized and mobilized through large, powerful, politically active organizations, such as the American Trial Lawyers Association (now known as the American Association for Justice)[208] and their state-specific affiliates.[209] These organizations work to promote justice and fairness for individuals who are injured, and they work to safeguard victims' rights.[210]

The remaining sections spotlight how the plaintiff-side tort bar can engage by unifying a more expansive definition of birth injury, improving client acquisition messaging, and engaging in strategic litigation.

A. Standardizing an Inclusive Definition of "Birth Injury"

A vital first step to center pregnant people as putative plaintiffs is to unify the definition of "birth injury" inclusively. The term "birth injury," as explored above, is far too often defined—explicitly or implicitly—to mean exclusively fetal or

207. *See* Adam Bonica, Adam S. Chilton & Maya Sen, *The Political Ideologies of American Lawyers,* 8 J. LEGAL ANALYSIS 277 (2016) (charting the ideology of lawyers by sector and revealing that the personal injury and medical malpractices fields lean considerably left); *Lawyers & Lobbyists Sector Summary,* OPEN SECRETS, http://www.opensecrets.org/industries/indus?ind=k [https://perma.cc/XT8D-ESWE] (last visited Aug. 14, 2025) (concluding that the industries of "Lawyers & Lobbyists" "leans heavily liberal, typically giving at least two-thirds of the contributions it sends to parties and candidates to Democrats" and particularly flagging the powerful American Association for Justice as a notable organization in this grouping); *Effects of Politics on Personal Injury Claims*, PARANJPE MAHADASS RUEMKE, LLP, https://www.pandmllp.com/effects-of-politics-on-personal-injury-claims/#:~:text=Trial%20lawyers%20who%20represent%20personal,many%20Republicans%20have%20supported%20limits [https://perma.cc/AC8J-3XDQ] (last visited Aug. 5, 2024) ("Trial lawyers who represent personal injury lawsuits have generally supported Democratic politicians[.]"). The linkage between personal injury lawyers and Democratic politics has its origins in the so-called "tort reform" legal movements as Democratic legislators tended to oppose damage caps while Republicans preferred them. *Id.* (explaining how Republicans advanced bills seeking significant changes to the civil justice system).

208. *About Us*, AM. ASS'N JUST., https://www.justice.org/about-us [https://perma.cc/Y5LS-THFJ] (last visited Aug. 5, 2024).

209. *See, e.g.*, *Who We Are*, KY. JUST. ASS'N, https://www.kentuckyjusticeassociation.org/?pg=WhoWeAre [https://perma.cc/W93S-XJJ3] (last visited Aug. 5, 2024) (describing the Kentucky Justice Association as a group of attorneys "committed to improving the quality of legal representation for Kentucky families by providing superior legal education and by keeping abreast of legislative and judicial proceedings . . . [and] protect[ing] the 7th Amendment right to a trial by jury so any person or business can seek justice and hold wrongdoers accountable in the courtroom").

210. *About Us*, AM. ASS'N JUST., https://www.justice.org/about-us [https://perma.cc/Y5LS-THFJ] (last visited Aug. 5, 2024) (focusing particularly on the right to a jury trial).

infant injuries.[211] This term is used differently across various firms in ways that are confusing for prospective clients and distortive of the medical-legal system. Imagine you are a potential plaintiff in Indiana, for example, seeking to understand what claims you may have for injuries suffered during childbirth. If you went online to search for counsel and to evaluate your likelihood of having a claim, you would find websites across the following spectrum of birth injury definitions:

Fetal-Only Definition of "Birth Injury"	"A birth injury is considered any type of physical harm that impacts an infant during the birthing process or near the time of birth."[212]
Dual Definition of "Birth Injury"	"Birth injuries can cause long-lasting or permanent damage to **you** or your child."[213]
Dueling Definition of "Birth Injury"	"If your child suffered a serious injury, such as shoulder dystocia or hypoxia, or they were diagnosed with a condition like cerebral palsy or Erb's palsy after a **difficult pregnancy, labor, or delivery**, he or she may have suffered what is known as a birth injury." [The site later lists "Common Birth Injuries Affecting **Mothers**" after previously defining them out].[214]
Subject-Less Definition of "Birth Injury"	"Birth injuries are, in most cases, caused by the failure of a doctor, nurse, or other healthcare professional to provide an acceptable standard of care."[215]

211. *See, e.g., Birth Injury Lawyer Omaha*, WELSH & WELSH, https://welsh-law.com/practice-areas/medical-malpractice/birth-injuries/ [https://perma.cc/B5WA-Z4Z3] (last visited Aug. 5, 2024) ("A birth injury is defined as the harm that occurs to an infant during the labor and delivery process."); *Types of Medical Malpractice Cases*, COPPLE ROCKEY ATTY'S, https://greatadvocates.com/practice-areas/medical-malpractice-lawyers/ [https://perma.cc/EAZ8-7X8Z] (last visited Aug. 5, 2024) ("Birth injuries: When your child suffers significant trauma during pregnancy, labor, delivery, or post-childbirth, lifetime injuries can result. When a child suffers from cerebral palsy, Erb's palsy, or another birth injury, our attorneys help families find answers. Factors such as a delayed cesarean section, a doctor's failure to recognize signs of fetal distress, or evidence of any other negligence may be reason for a medical malpractice lawsuit.").

212. *Indianapolis Birth Injury Lawyer*, L. OFF. KELLEY J. JOHNSON, https://www.medmalpractice.law/medical-malpractice-lawyer/birth-injury/ [https://perma.cc/2P9G-DJQC] (last visited Aug. 5, 2024) (emphasis added).

213. *How to File a Birth Injury Lawsuit,* GOLITKO & DALY, https://indymalpractice.com/blog/how-to-file-a-birth-injury-lawsuit/?utm_source=hootsuite&utm_medium=facebook&utm_term=indy+malpractice&utm_content=post2&utm_campaign=ee25ffdf-1821-4b14-8b6b-98d14fa910c8 (last visited Jan. 14, 2026) (emphasis added).

214. *Indianapolis Birth Injury Lawyer*, WAGNER REESE, LLP, https://www.wagnerreese.com/practice-areas/birth-injury/ [https://perma.cc/9W5V-EHT7] (last visited Aug. 5, 2024) (emphasis added).

215. *Indianapolis Birth Injury Lawyer*, STEPHENSON RIFE LLP, https://www.indianapilaw.com/medical-malpractice/birth-injuries/ [https://perma.cc/4Z84-WY7J] (last visited Aug. 5, 2024).

The first definition is exclusively fetal-focused with no mention of pregnant people's claims. The second has an inclusive definition incorporating both pregnant patients and children. The third is in tension with itself defining birth injury as harms to the child and then noting that mothers also have birth injuries. The final example has no subjects of birth injuries at all.

Another Indiana law firm addressed the skew toward "birth injury" being limited to fetal injury directly with the following language: "When people hear 'birth injury,' their first thought is often of the health of the newborn. However, the law also protects the mother's rights to a safe childbirth process. If a mother is injured in childbirth due to a medical professional's negligence, she should consider seeking justice."[216] These Indiana examples are reflective of more systemic issues.[217] Collectively, ambiguities and distortions like this leave putative plaintiffs erased from the legal frame at worst or confused at best.

The narrow definition of fetal injuries as "birth injuries" can only work if there is an analogous claim describing harms suffered by pregnant people. This survey only revealed one isolated example of a website wholly devoted to maternal birth injuries, defined as "[b]irth-related medical negligence" that "happens when a doctor or other healthcare provider acts negligently during any stage of the prospective mother's pregnancy or birth."[218] As described in Section II.D., some firms gesture to a corollary claim for maternal harms but then obscure these claims.[219]

Law firms advertising to the public should not distort or obscure the legal rights of prospective clients. Legal codes of ethics explicitly acknowledge attorneys' educational role, such as the District of Columbia Bar Association's comment that "[i]t is especially important that statements about a lawyer or the lawyer's services be accurate, since many members of the public lack detailed knowledge of legal matters."[220] Statements suggesting that *only* harms to fetuses or infants are viable or that doctors only owe duties to the children fundamentally distort the law.

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216. *Birth Injury*, HENSLEY LEGAL GRP., https://hensleylegal.com/practice-areas/birth-injury-and-childbirth-injury-lawyers/ [https://perma.cc/2VLP-DCHA] (last visited Aug. 5, 2024).

217. *See, e.g., Birth Injury Lawyer in Shreveport/Bossier City – Louisiana*, GREENWALD L. FIRM, https://www.shreveportlawyer.com/birth-injury/ [https://perma.cc/8HRF-7GA9] (last visited Aug. 5, 2024) (defining "birth injury" as "any form of harm sustained by a newborn prior to, during, or immediately after birth" in Louisiana).

218. *Fayetteville, AR Attorney for Birth Injuries to the Mother*, GUNN KIEKLAK & DENNIS LLP, https://www.kieklaklawfirm.com/fayetteville/medical-malpractice/birth-injury/injuries-mother/ [https://perma.cc/X7WQ-GHQK] (last visited July 29, 2024).

219. *See, e.g.*, *Little Rock Birth Injury Lawyers,* BAILEY & GREER PLLC, https://www.baileygreer.com/little-rock/birth-injury/ [https://perma.cc/9XUK-6M8T] (last visited Aug. 5, 2024).

220. D.C. RULES OF PRO. CONDUCT R. 7.1 cmt.1 (2015).

Framing birth injuries ambiguously or myopically risks messaging to pregnant people that they do not have any potential claims arising from medical care. Websites that are internally inconsistent as to whether they have claims also can confuse putative clients.[221] An inclusive definition that incorporates potential harm to both the pregnant person and the fetus or infant is the most accurate approach. While birth injury defined as fetal or infant injury dominates all studied states, there are law firms that do define "birth injury" as harm to both mothers and children,[222] which serve as useful models.

B. Improving Online Client Acquisition Best Practices

Law firms can also benefit from re-examining all related web content surrounding birth claims consistent with the findings in Section II. There are likely two reasons why firms might revisit their web content. First, law firms and individual lawyers might be part of the reproductive justice movement and therein see an impactful role for themselves as agents of change. Thus, they might be personally motivated to revamp their websites and even to proactively take cases that pre-*Dobbs* might not have seemed strategically or economically wise. Cases seeking to reinforce the standards of care applied to pregnant people may further be both more economically viable and more impactful than ever.

Alternatively, lawyers might be professionally motivated to revise web content to provide accurate legal information to the public. Lawyers play a role educating and informing the public.[223] The public uses web searches to learn about their rights and to find lawyers. Through websites we learn about the work of lawyers, their expertise, the kinds of claims they handle, and the successes they have had in the past. Lawyers generally advertise for clients online and optimize search results to drive traffic to their pages. Accordingly, lawyers might follow suggested guidelines to strengthen their web presence accurately. The chart below proposes an assessment metric to center the presence of pregnant and birthing people in online content.

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221. *See, e.g., Utah Birth Injury Lawyer*, SIEGFRIED & JENSEN, https://siegfriedandjensen.com/services/birth-injuries/ [https://perma.cc/8JEJ-YZT3] (last visited Nov. 29, 2025) (defining "birth injury" as "a physical injury that an infant sustains during the labor and delivery process" while also providing "Birth Injury Facts," including how 45% of women report experiencing trauma in the birthing process).

222. *See, e.g.*, *Indianapolis Birth Injury Lawyer*, CHRISTIE BELL & MARSHALL, https://cflblaw.com/indianapolis/medical-malpractice-lawyer/birth-injury/ [https://perma.cc/LA94-8W63] (last visited Aug. 5, 2024) (describing the team as "birth injury lawyers" and expressing commitment to "Defending the Rights of Mothers & Children").

223. *See supra* note 221.

Webpage Content Assessment Metrics
Does the website explain the standards of care owed to the pregnant person and the fetus by medical professionals, careful to avoid any insinuation that the provider's duty is only to the fetus?
Does the website define "birth injury" to include harms suffered by pregnant people and their fetuses and infants?
If the term "birth injury" exclusively or dominantly centers fetal or infant harms, is there an equally well-defined category of harms suffered by pregnant people?
For all categories of potential tort claims, does it provide concrete examples of each type of claim by each plaintiff to educate prospective clients?
Does the website disentangle harms suffered by pregnant people from harms suffered by an infant or fetus to help readers apply the concepts fully to their birth experiences?
Does the website educate readers about the preventable harms suffered by birthing people to reinforce the viability of claims?
Does the website feature a range of images of pregnant people and children to depict potential plaintiffs inclusively?

C. Strategic Litigation Engagement and Political Mobilization

Finally, there is room for more strategic litigation and political mobilization to strengthen tort law protections for pregnant people. Foundational tort norms are threatened when political and religious ideologies replace evidence-based medical practices as standards of care.

In criminal law, scholars and activists have long identified the harms of politicized prosecutions, questionable forensics, and targeted surveillance weaponizing the criminal law against pregnant people.[224] Strategic criminal law litigation

224. *See, e.g.*, MICHELE GOODWIN, POLICING THE WOMB (2020); GRACE E. HOWARD, THE PREGNANCY POLICE (2024); Valena E. Beety & Jennifer D. Oliva, *Policing Pregnancy "Crimes,"* 98 N.Y.U. L. REV. ONLINE 29, 53 (2023); Aziza Ahmed, *Floating Lungs: Forensic Science in Self-Induced Abortion Prosecutions*, 100 BOS. UNIV. L. REV. 1111 (2020); Aziz Z. Huq & Rebecca Wexler, *Digital Privacy for Reproductive Choice in the Post-*Roe *Era,* 98 N.Y.U. L. REV. 555 (2023); Dellinger & Pell, *supra* note 137; Danielle Keats Citron, *Intimate Privacy in Post-*Roe *World*, 75 FLA. L. REV. 1033 (2023).

interventions, such as amici activity,[225] case monitoring,[226] and client representations,[227] are tools that lawyers, scholars, and activists have deployed to mitigate these harms. For example, in *Akers v. Maryland*, the prosecution convicted a defendant of second-degree murder and child abuse after relying in part on a motive theory alleging that the defendant had conducted internet searches of pregnancy termination in the early weeks of her pregnancy and not accessed prenatal care.[228] In response, a coalition of pregnancy justice organizations contributed amicus briefs to the case, yielding a strong appellate decision holding that such evidence was irrelevant and a legal error.[229] This precedent clarified and strengthened Maryland law, but it also might deter future prosecutions of pregnant people nationwide. This is an example of strategic engagement to shape professional practices in the criminal legal system. The work of criminal law lawyers, scholars, and activists coordinating strategic litigation provides a parallel model for tort law.

Likewise, there is more room for tort bar associations, scholars, and activists to strategize litigation interventions.[230] Strategic litigation readiness might begin with a quantitative geographic census capturing the number of lawyers who would represent pregnant people in medical malpractice cases. This research would help quantify the problem to supplement the qualitative critique presented in this article. It would help precisely map legal representation deserts. The first step might be to look for lawyers in known maternity care deserts and compile a national spreadsheet of willing prospective counsel. This would both help identify shortages and amplify the lawyers who are present doing this work, especially if they lack an online presence but are known in their community.

Next, there is need for judicial monitoring. Just as organizations like Pregnancy Justice (formerly National Advocates for Pregnant Women) have been

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225. *See, e.g.,* Brief Instanter of Amici Curiae Medical and Public Health Experts in Support of Appellant, Ohio v. Hollingshead, No. CR2021-0494 (Ohio Ct. App. Sept. 21, 2022), https://searchltf.ama-assn.org/case/documentDownload?uri=%2Funstructured%2Fbinary%2Fcasebriefs%2FOhio_v__Hollingshead_Ohio_Court_of_Appeals_Brief.pdf [https://perma.cc/5L9A-3MXT].

226. *See, e.g.,* WENDY A. BACH & MADALYN K. WASILCZUK, PREGNANCY JUST., PREGNANCY AS A CRIME: A PRELIMINARY REPORT ON THE FIRST YEAR AFTER *DOBBS* (2024), https://www.pregnancyjusticeus.org/wp-content/uploads/2024/09/Pregnancy-as-a-Crime.pdf [https://perma.cc/92EB-6BQS] (concluding that pregnant people were increasingly surveilled, arrested, and incarcerated after *Dobbs,* particularly in states with fetal personhood laws, such as Alabama, Oklahoma, and South Carolina).

227. *See, e.g.*, *Legal Advocacy*, PREGNANCY JUST., https://www.pregnancyjusticeus.org/our-approach/legal-advocacy/ [https://perma.cc/937Y-AANE] (last visited Nov. 29, 2025) (providing free criminal defense to clients charged with crimes).

228. Akers v. Maryland, 490 Md. 1 (2025).

229. *Id.*

230. *But see* Lindgren & Oberman, *supra* note 32, at 666–67 (cautioning that malpractice litigation risks "downgrading the standards of care" and "might actually build a body of case law that *permits*, if not *demands*, a broad retreat from care in ban states[,]" which poses an "almost existential threat to the medical profession" and fuels provider shortages and burnout).

monitoring the prosecution of pregnant people for decades, such monitoring could be equally impactful in tort law. Scholars, lawyers, and activists could begin a coordinated effort systemically monitoring malpractice cases brought on behalf of pregnant people. They could monitor the frequency of suits, the geographies of suits, trends in abortion ban states versus abortion access states, relative success rates, demographic disparities, and institutional trends (e.g., comparing religious, private, university, and public hospital settings). Organizations like the National Counsel for Jewish Women have done vital court monitoring work in the dependency context, which could provide a model.[231]

This tracking could yield a compilation of key characteristics of cases that would be effective in strategic litigation, modeling the work of projects like DV LEAP.[232] This could include identifying cases to bring proactively and identifying cases to amplify through amicus activity.[233] Where are cases faltering or facing obstacles in malpractice litigation on behalf of pregnant people? Is it in the evidentiary standards, pre-trial dismissals, or jury deliberations? Are there any other recognizable trends? Non-profits and scholars could also support the trial lawyers representing pregnant people in malpractice cases by compiling a toolkit of materials that have helped successful cases. Organizations like the Birth Justice Bar Association and the Sexual Health and Reproductive Rights Bar Association are well-situated for clearinghouse projects like this.[234] This strategic litigation work could also fuel more CLE training about the clients, claims, and challenges in "birth injury" cases involving pregnant people.

Through a unified "birth injury" definition, enhanced website content, and strategic litigation interventions, the tort bar could facilitate the centering of pregnant people in healthcare systems.

CONCLUSION

Surveying the websites of plaintiff-side personal injury firms comprehensively reveals that pregnant people are functionally erased or obscured as putative plaintiffs in medical malpractice cases. These practices harm pregnant people because they escalate the existing standard of care crisis, undermine the already

231. *Our Work*, NAT'L COUNCIL FOR JEWISH WOMEN, https://ncjwlou.org/home/ourwork/ [https://perma.cc/3J2K-FF24] (last visited Aug. 28, 2025) (describing its Court Watch program).

232. *George Washington University School of Law Domestic Violence Legal Empowerment and Appeals Project*, BARBARA MCDOWELL SOC. JUST. CTR., https://www.mcdowellsocialjustice-center.org/grantees/george-washington-university-domestic-violence-project [https://perma.cc/KC7N-BGUD] (last visited Sept. 30, 2025).

233. *See, e.g.*, Brief of Birth Rights Bar Ass'n as *Amicus Curiae* in Support of Appellants Jane Doe and John Doe, Doe v. Kachru, 115 Cal. App. 5th 175 (Sept. 3, 2024) (No. A168669).

234. BIRTH JUSTICE BAR, https://birthjusticebar.org/ [https://perma.cc/Y73J-KRYH] (last visited Mar. 6, 2026). THE SEXUAL HEALTH AND REPRODUCTIVE RIGHTS BAR ASSOCIATION, https://www.shrrba.org/ [https://perma.cc/67ZW-VA9W](last visited Mar. 6, 2026).

fragile autonomy that pregnant people have in pregnancy and delivery, and foster "legal representation deserts" on top of already bleak maternity care deserts.

This article proposes unifying the definition of "birth injury" to inclusively capture harms to pregnant people and to fetal and infant clients. It further proposes metrics to assess web content and strategic litigation. The tort system has a powerful role to play safeguarding the delivery of healthcare, enforcing and elevating standards of care, even absent litigation, and educating the public. This article invites plaintiff-side personal injury firms to center, strengthen, and standardize the care of pregnant people.