

# **Menstrual and Fertility Tracking Applications and the Post Roe v. Wade Era**

Menstrual and Fertility Tracking Project

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## Introduction

Menstrual and fertility tracking applications (MFTAs) are becoming increasingly popular within the Femtech industry, a broad term coined by Ida Tin that is used to describe how data and technology can empower women and take control of their health (Girls in Tech, n.d.). However, the use of Femtech often capitalizes and medicalizes women's health conditions. In addition, MFTAs perpetuate social norms and assumptions surrounding gender identities, specifically heteronormativity, and assume concerns are related to whether MFTAs are safe for individuals living under strict abortion laws due to the potential of leaked user data. In particular, concerns are elevated towards whether personal user information can be appointed to authorities to be used against users for seeking an abortion. These concerns have elevated following the restrictions and criminalization of abortion in the United States (US) as *Roe v. Wade* was recently overturned on June 24, 2022 (Guttmacher, 2022). As a result, online writers and scholars are strongly urging MFTA users to delete these mobile applications (apps) and discuss how this overturning is linked to historical events (e.g., how broader socio-structural forces constrain and shape reproductive choice). For that reason, I will be exploring how the responses to the overturning of *Roe v. Wade* is historically significant.

This paper aims to summarize the range of concerns about the safety of MFTAs. More specifically, users are concerned that personal data within these applications may expose women who seek an illegal abortion and the range of these concerns are being identified within online forums, blogs, and websites. In the first section of the paper, I will place current conversations about the overturning of *Roe v. Wade* within the broader context of restrictions that have been placed on reproductive rights. Emphasis will be placed on the historical trajectory of how past policies and ideologies have worked against *Roe V. Wade*, and how this trajectory contributes to

a decrease in access to abortions. This section moves beyond a focus on laws that prohibit access to abortion to acknowledge how policies constrain reproductive choice and reproductive justice through impact on access rather than legal rights. In doing so, it is critical to understand how reproductive choice has been shaped by broader structural factors. In the second section of this paper, I will gather and summarize the range of concerns on data security and privacy in relation to the recent implementation of criminalized abortion laws in the US due to the overturning of *Roe v. Wade* in June 2022. For example, many menstrual and fertility self-trackers currently fear that their personal data within such apps can expose them to prosecution and reveal unlawful information (e.g., data that exposes women who have had illegal abortions). Finally, this paper consists of an overview of existing literature by conducting literature searches and exploring through grey literature. In doing so, I will explore additional concerns that MFTA users and scholars are sharing. For instance, how will this transition affect Canada? Will the criminalization of abortion lead to a decrease in access to contraceptives and impact health care services in Canada?

### [The Historical Context of How Past Policies Have Worked Against \*Roe v. Wade\*](#)

To begin, I will position current conversations about data privacy within the broader context of restrictions that have been placed on reproductive rights by examining historical trajectories. Recent news stories have documented the overturning of *Roe v. Wade* in several jurisdictions within the United States which confirms the criminalization of abortion. In light of this, experts have raised awareness about the risk of sharing personal data on MFTAs as these online apps can potentially release data that may expose women who seek to have an abortion

which would ultimately result in prosecution. It is important to address the concerns that rise due to the overturning of *Roe v. Wade*. First, I will explore the themes related to reproductive justice and broader factors that constrain reproductive ‘choice’. To begin, Dorothy E. Roberts critically examines reproductive choice, freedom and agency for poor women and women of colour and advocates for reproductive justice for minorities. Roberts (1990) studied the experiences of Black women during the time period of slavery and highlights the historical significance of reproductive choice throughout a time where female slaves were valuable not only for their labor but also for their capacity to produce more slaves (Roberts, 1990, pp. 283). Moreover, reproductive autonomy has been denied by restricting reproductive choice which points towards the connection between reproductive choice and equality. Consequently, it is important to understand that broader contexts shape and constrain “choice” and decision-making which often gets overlooked in current literature on women’s reproductive health. For example, scholars that acknowledge the importance of diversity within MFTAs strictly focus on creating inclusive app designs (Epstein et al., 2017) whereas conversation in relation to intersectional identities and reproductive “choice” is lacking in current literature.

It is important to also recognize how broader social, political, cultural, and economic forces constrain reproductive choice and access. For instance, *Roe V. Wade* (1973) “is worse than an abstract right; it is a cruel deception” (Roberts, 1990, pp. 285). Thus, we must recognize that reproductive choice and freedom is constrained by broader forces rather than focusing solely on the overturning of *Roe V. Wade* which takes away from women’s reproductive choice. Roberts makes an important distinction between one’s legal right to reproductive freedom (for example, the ability to terminate a pregnancy) and the ways in which legal contexts and social structures determine and shape reproductive decision-making. For clarification, “Reproductive

freedom means the ability to choose whether, when, how, and with whom one will have children” (Kolbert, as cited in Roberts, 1990, pp. 284). Broader contexts that shape and constrain the “ability to choose” are often overlooked in analyses of reproductive choice. Roberts explores legal events that signal towards constrictive reproductive freedom for poor women and women of colour :

A physician's tenuous predictions about the viability of an unborn fetus can outweigh a woman's right to bodily integrity and to decide for herself how she wants to give birth to her child.... sentencing that he wanted to make sure the baby was born in jail in order to protect her from her mother's drug abuse.... the United States Supreme Court's decision in *Webster v. Reproductive Health Services* confirmed the court's position that poor women have no right to effectively exercise their choice to terminate their pregnancy (Roberts, 1990, pp. 285).

In addition, Roberts (1990) draws attention to how reproductive “choice” overlooks broader problems of poverty, racism, and sexism. Roberts supports her thoughts through the following examples:

Banning the use of public employees or facilities for performing abortions not necessary to save the mother's life. Thus, the court further constricted the availability of abortions to poor women.... permitted states to deny welfare payments for nontherapeutic abortions even though the government pays for medical expenses related to childbirth.... withheld from states federal Medicaid funds used to reimburse the costs of abortions.... the government is not constitutionally required to commit any resources to facilitate abortions; its failure to fund abortions doesn't constitute active interference in a woman's choice.... the court has allowed states to make it impossible for an indigent woman to

obtain an abortion by foreclosing both government reimbursement for private abortions and the use of public hospitals.... approving a policy of “encouraging childbirth” by providing funds for that option alone, the court has permitted the government to use financial coercion to influence women’s reproductive decisions (Roberts, 1990, pp. 285-286).

Furthermore, race limits access to medical and reproductive health services thus, emphasis should be placed on reproductive justice as individual “choices” are embedded in and shaped by broader forces. To conclude, rights does not always equal freedom, the *Roe v. Wade* right is constrained by broader forces which refrain from protecting women.

Additionally, it is essential to acknowledge how policies have restricted access prior to the *Roe V. Wade* era. Policies have restricted access to abortion care by removing public money that has been allocated to abortion facilities and providers (Roberts, 1990). Moreover, there are broader contexts that constrain, enable and shape health care providers’ ability and willingness to provide reproductive and sexual health services. For example, conditions that limit “choice” includes sexual abuse, domestic abuse, drug and substance abuse, unemployment, lack of sexual education, lack of abortion education, low income, single parenthood, lack of prenatal clinics, etc. (USC Annenberg, 2019).

Racism and the control of marginalized women’s reproduction limits access to reproductive health services. Specifically, the story of reproductive rights in the US shows how poor women, women of colour, and disabled women are forced to undergo sterilization and use birth control contraceptives in order to lower the population of the “unfit” (Fusion, 2017).

Therefore, we must acknowledge that racist ideologies are deeply embedded within social and

health policies that discriminate between groups of people. Moreover, individual “choices” are embedded in and shaped by broader social (e.g., historical, cultural, political, economic) forces.

It is critical to shift the understanding from reproductive “choice” to maintaining greater access to reproductive health care. Many contemporary movements and conversations have focused on keeping abortion legal. However, it is clear that there is no choice where there is no access; abortion access is critical, and women of color and other marginalized women also often have difficulty accessing other health services and social supports. This includes: contraception, comprehensive sex education, STI prevention and care, alternative birth options, adequate prenatal and pregnancy care, domestic violence assistance, adequate wages to support our families, safe homes, etc. (USC Annenberg, 2019). Consequently, it is critical to note that the recent criminalization in several states within the United States is highly problematic and seeks to take away women’s reproductive agency.

## Methods

In this section, I present the results of a thematic analysis I conducted, which enabled me to generate themes by using the data of: one magazine article, three newspaper articles, one blog post, two web pages and one video (see Appendix A-H). The purpose of this analysis was to summarize the range of concerns and responses due to the overturning of *Roe v. Wade* and to explore how this overturning is linked to historical events. The themes that I generated are: surveillance and criminalization of women, to shift from reproductive rights to reproductive justice, to explore how the criminalization of abortion in the US will impact other countries and whether users’ private data can be shared with third parties and legal authorities for prosecution. The range of concerns that I analyzed in the literature occurred between May-July 2022.

## Privacy Concerns about MFTAs in a Post *Roe v. Wade* Era: A Thematic Analysis

As many states adopt the criminalization of abortion, many MFTA users fear that their personal data may be used against them. Consequently, I will gather and summarize the range of concerns on data security and privacy in relation to the recent implementation of criminalized abortion laws in the US due to the overturning of *Roe v. Wade* in June 2022. In doing so, the concerns revealed common themes in the literature, which include: whether users' private data can be shared with third parties and legal authorities for prosecution, surveillance and criminalization of women, shifting from reproductive rights to reproductive justice, and how the criminalization of abortion in the US will impact other countries.

### I. Data Privacy and Security Concerns in MFTAs

Increasing concerns regarding data security and privacy among MFTA users include whether their personal information can be leaked, hacked, or sold to third parties, whether their personal data can be shared with legal authorities to reveal a potential abortion, whether the usage of these apps can track your location, etc. As a result, several founders and Co-CEOs of MFTA apps have released statements to ease the concerns amongst their user population (e.g., popular MFTAs such as Flo and Clue). The founders released statements which claim that users' data will not be shared with third parties or legal authorities. However, many scholars and writers online have opposed these statements and remain to have concerns whether these apps must comply with legal authorities, upon a subpoena. For example, Co-CEOs from Clue released a statement regarding patient data privacy which suggests that "Clue will never turn users' private health data over to any authority that could use it against you in US court" (Walter &

Tsang, 2022). Moreover, Clue (2022) claims that “the European law protects their community’s sensitive health data”. In addition, Clue states that “they cannot be ordered to disclose data by US courts or other authorities, however, Clue uses software tools called data processors (companies that work with data on their behalf, like sub-contractors) and some of them are based in the US. Thus, Clue recognizes the many concerns that they could possibly be forced to disclose data” (Clue, 2022). Similarly, Flo released an anonymous mode which “excludes personally identifiable information such as names, email addresses, and technical identifiers that are associated with the account to protect reproductive health information as abortion becomes an illegal practice (Flo Health Inc, 2022).

As MFTAs such as Flo and Clue implement increased data privacy and security measures (e.g., Flo’s anonymous mode), many scholars and online writers urge users to delete these apps as an additional safety measure. For example, Tolentino (2022, para. 4) demonstrates how the use of MFTAs and beyond, can be used against women who seek an abortion:

In the United States where abortion has been or soon to be banned, any pregnancy loss past an early cutoff can now potentially be investigated as a crime. Search histories, browsing histories, text messages, location data, payment data, information from period-tracking apps—prosecutors can examine all of it if they believe that the loss of a pregnancy may have been deliberate. Even if prosecutors fail to prove that an abortion took place, those who are investigated will be punished by the process, liable for whatever might be found.

Moreover, Kaiser Health News (2022) states that “period-tracking apps are not covered under the Health Insurance Portability and Accountability Act. HIPAA doesn’t prevent the company from

sharing de-identified data and if the app is free and the company is monetizing the data, then "you are the product" and HIPAA does not apply". Conversations on data privacy and security conclude that there is a large risk that legal authorities can access information to prosecute women. For instance, "given the breadth of surveillance laws in the U.S., if a company collects and keeps information, such information is vulnerable to being compelled by law enforcement. MFTAs do not necessarily have the ability to legally keep that information from law enforcement once the proper process has been undertaken" (Kaiser health News, 2022). Therefore, the risk of impact on the lives of MFTA users is far too large. Thus, app users should refrain from using these apps.

## II. Widespread State Criminalization and Surveillance of Pregnant Women

The overturning of *Roe v. Wade* suggests a widespread state surveillance and criminalization of women which disproportionately affects brown and Black people, trans people and poor women. To begin, Tolentino (2022, para. 3) announces that "We have entered an era not of unsafe abortion but of widespread state surveillance and criminalization—of pregnant women.... state-level anti-abortion crusades have already turned pregnancy into punishment, and the ways in which the situation is poised to become much worse". As a result, the author states that a silent denial of care will lead to a significant number of deaths:

Their deaths will come not from back-alley procedures but from a silent denial of care: interventions delayed, desires disregarded. They will die of infections, of preëclampsia, of hemorrhage, as they are forced to submit their bodies to pregnancies that they never wanted to carry, and it will not be hard for the anti-abortion movement to accept these deaths as a tragic, even noble, consequence of womanhood itself (Tolentino, 2022, para. 17).

Next, Gollom (2022, para. 4) states that "it is crucial for people to understand that this is about the criminalization of pregnancy, and particularly for Black and brown people". The overturning of *Roe v. Wade* will disproportionately affect racial and gender minorities whom are already living under strict laws and environments. The Associated Press (2022, para. 1) shares that "the overturning of *Roe v. Wade* which restricts and bans abortions in certain states will have disproportionate effects. Specifically, minority women who already face limited access to health care will bear the burden". Additionally, in the wake of the overturning of *Roe v. Wade*, "poor women and women of colour will likely have the hardest time, whether traveling to distant parts of the country to terminate pregnancies or raising children without enough money. Importantly, these women are folks who are already marginalized" (The Associated Press, 2022, para. 3). The overturning of *Roe v. Wade* begins with "an erosion of rights and suggests that future rulings may seek to roll back affirmative action or access to contraception" (Gollom, 2022, para. 5). It is important to understand the relationship that exists here, where the criminalization of abortion places more risk on poor women and women of colour. Those who are already enduring the effects of systemic racism, sexism and oppression, which are deeply embedded in racist policies. Hence, it is important to strive for reproductive justice movements as opposed to reproductive rights movements, in the wake of a detrimental surveillance and criminalization era.

### III. Shifting the Demand From Reproductive Rights to Reproductive Justice

In this set of concerns, many scholars and online writers emphasize the need to shift from demanding reproductive rights to reproductive justice. In addition, it is crucial to understand how policies impact access to reproductive health care, especially for women of colour and minorities. Tolentino (2022, para. 16) suggests that the pro-choice movement has not gone far enough to put this shift into effect:

There has been so much squeamishness, even in the pro-choice camp: a tone that casts abortion as an unfortunate necessity; an approach to messaging which values choice but devalues abortion care itself, which emphasizes reproductive rights rather than reproductive justice. We should demand more, and we will have to. We will need to be full-throated and unconditional about abortion as a necessary precondition to justice and equal rights if we want even a chance of someday getting somewhere better (Tolentino, 2022, para. 22).

In addition, Tolentino (2022, para. 16) explores the deception of the *Roe v. Wade* right and how it disproportionately effects poor women and women of colour:

The mainstream pro-choice movement has largely ignored the growing criminalization of pregnancy, just as it has generally ignored the inadequacy of *Roe V. Wade*. Many of those who support the right to abortion have tacitly accepted that poor and minority women in conservative states lost access to abortion long before this Supreme Court decision, and have quietly hoped that the thousands of women facing arrest after pregnancy, miscarriage, stillbirth, or even healthy deliveries were unfortunate outliers. They were not outliers and the chasm between the impervious class and everyone else is growing every day.

Therefore, it is crucial to fight for reproductive justice and to protect *all* menstruating bodies. Also, it is essential to understand how policies have consistently targeted minorities by eliminating access to reproductive health care services, prior to *Roe v. Wade*. We must create a shift to enable reproductive justice and eliminate all forms of racism, sexism, and oppression for pregnant women.

#### IV. How the Overturning of *Roe v. Wade* May Impact Other Countries

The third set of concerns I identified includes commentary by scholars and online writers about the potential effects of the criminalization of abortion in the US on other countries, including Canada. More specifically, there are concerns about the legal ramifications if Canada becomes involved with the United States. Abortion procedures are increasingly using medication to terminate the fetus in the early weeks of pregnancy. Thus, abortion providers in the US are potentially interested in Canada for their medication supply. Panetta (2022, para. 1) suggests that “due to the overturning of *Roe v. Wade*, we should expect a multi-front fight over abortion pills; how they're prescribed, where they're prescribed, and how they're shipped”. If states are protected under certain bills that enables abortion providers to write prescriptions for out-of-state patients, Canada may become involved as they are a potential supplier. For example, “Groups advocating for access to abortion pills have been reaching out to Canadian pharmacies as potential partners.... however, we must determine how it is possible to do so in compliance with the regulations that are binding them” (Panetta, 2022, para 6). Consequently, it is possible that interstate conflict will occur and Dyer (2022, para. 7) believes that “the overturning of *Roe v. Wade* can open the door to changes at the federal level, which could be more far-reaching than any state trigger law”. Consequently, there may be significant legal ramifications for Canada with unknown consequences. In turn, I urge researchers to further explore how Canada may be impacted by the overturning of *Roe v. Wade*.

Dyer (2022, para. 2) furthers the conversation by providing a statement from Robert Currie who believes that “there is a possibility that people will cross the border into Canada, whether it is to avoid criminal prosecution for obtaining an abortion or to be able to obtain one. In either scenario, it is possible for it to create an international incident of some kind”. On this

note, many Americans use reproductive health care services in Canada such as abortion services which has implications for Canadians (CBC, 2022). Perhaps Canadian health care services receive an overabundance of American's seeking abortions which can lead to a burden on our health care system in Canada, an already burdened system. Thus, services available to Canadian women may be impacted or compromised.

## Conclusion and Future Research Implications

Overall, the findings of this thematic analysis of one magazine article, three newspaper articles, one blog post, two web pages and one video contribute to the discussion that past policies have aimed to overturn *Roe v. Wade* to ultimately, decrease access to reproductive health care services. There are two main purposes of this paper, first, to emphasize the need to shift our thinking from reproductive choice to reproductive justice and second, to highlight the themes emerging in contemporary discussions on MFTAs: surveillance and criminalization of women, shifting from reproductive rights to reproductive justice, how the criminalization of abortion in the US will impact other countries and whether users' private data can be shared with third parties and legal authorities for prosecution. Conducting several literature searches has enabled me to identify which populations are absent in current literature. More specifically, women are often acknowledged as the only menstruating bodies and literature tends to ignore other groups such as the LGBTQ+ population and minorities. This is highly problematic and requires further research to facilitate reproductive justice. Additionally, I believe that further research should explore how Canada may be affected by the overturning of *Roe v. Wade* and how this may affect the Canadian health care system for all populations. Such studies may focus on capitalist

agenda's, racist ideologies (contemporary and historical), broader structural and social forces, and perhaps how the effects of colonialism can impact reproductive health care in Canada.

I strongly urge the need for further research on improving access to reproductive health care, specifically for sexually and racially diverse minorities across the world. Finally, the overturning of *Roe v. Wade* suggests the extreme embodiments of systemic racism, sexism, and oppression which disproportionately affects people of colour and of lower-income, historically marginalized individuals, and is equipped to control and restrict bodily autonomy among people (Gharib, 2022). To conclude, technology for women's health care is tremendously influenced by a toxic political context, which decreases access to reproductive health care services for poor women and women of colour.

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**Appendix A**

Minority Women Have Most to Lose if U.S. Supreme Court Overturns Roe v. Wade, Analysis Shows

**Appendix B**

Roe v. Wade Is on the Brink — And Canada Could Be Pulled Into U.S. Brawls Over Abortion Law

**Appendix C**

Impact of changing U.S. abortion laws could ripple into Canada

**Appendix D**

The Future of the U.S. Abortion Battle: Think Pills, Not Clinics

**Appendix E**

Could Your Period-Tracking App Be Used Against You?

**Appendix F**

We're Not Going Back to the Time Before Roe. We're Going Somewhere Worse

**Appendix G**

Jubilation, Defiance Outside U.S. Supreme Court in Wake of Roe v. Wade Reversal

**Appendix H**

Global Reproductive and Women's Rights Groups React to Overturn of Roe v. Wade