The Network for Public Health Law

Reproductive Health Care: Anticipated Changes and Potential Impacts Under the New Administration

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Federal Funding and Legal Issues Surrounding Abortion Medication

Kathleen Hoke, J.D.

Federal Funding of Reproductive Health Care

- Hyde Amendment
- Title X
- Medicaid

Regulation of Abortion Medication

- Litigation by States Against FDA
- Potential Federal Action

Federal: Hyde Amendment (Congress 1977)*

Prohibits the use of federal funds to pay for abortion care, with exceptions for rape, incest, or to save the life of the pregnant person (REQUIRED coverage for these circumstances).

Medicaid; Medicare; Indian Health Service; Children's Health Insurance Program; TRICARE; Peace Corps; Federal Employee; Affordable Care Act

Of States that Permit Abortion (36ish)

18 states and DC prohibit state funding of abortion care, with same exceptions as Hyde Amendment (a few expand to risk to health of pp)

18** states permit state funding of abortion care for pregnant people covered by Medicaid (with varying coverage limitations)(by statute or court order)

Title X Family Planning Program (Congress 1970)

Provides federal funding through grants to more than 3,000 clinics nationwide for:

- Birth control counseling and services;
- Some infertility counseling and treatment;
- Wellness visits;
- Breast and cervical cancer screenings;
- Testing and treatment for STIs;
- Pregnancy diagnosis and counseling.

Available to people with low income on a sliding scale; public insurance or uninsured; free to those below the FPL.

Title X Family Planning Program (Congress 1970)

2.8 million people received Title X care in 2023:

- 23% of recipients identify as Black;
- 35% of recipients identify as Latino or Hispanic;
- 15% of recipients identify as men;
- Most patients are under 30;
- 60% of recipients were below FPL (received free care).

Reminder: 0% of Title X funds paid for abortion care.

Congress funded Title X at $286 million in FY25

What HAS happened to Title X under the Trump Administration?

Title X Family Planning Program (Congress 1970)

The Trump Freeze (April 2025)

- Grantees in 23 states received notice of partial or full funding freeze for year four of a five-year project period (why?);
- Freeze includes local health departments, FQHCs, school-based centers, and Planned Parenthood clinics;
- Risks reproductive and sexual health care for more than 800,000.

What might happen next to Title X under the Trump Administration?

Title X Family Planning Program (Congress 1970)

Trump's proposed FY26 budget includes $0 for Title X.

Administration could promulgate regulations that would:

- revive the gag rule that prohibited Title X funding to clinics that also provide abortion care or that counsel pregnant patients about abortion care options;
- prohibit services for minors;
- and who knows what else.

Federal: Medicaid Funding for Reproductive Health Care

Big (Ugly) Bill (Section 71113) prohibits Medicaid funding for 1 year to any provider that is:

- A non-profit entity that primarily provides family planning services;
- Provides abortion care outside of Hyde;
- Received $800k or more in Medicaid reimbursement in 2023.

This would eliminate funding to Planned Parenthood and the majority of other family planning clinics nationwide.

NOTE: Other Medicaid cuts and Medicaid work requirements will reduce access to reproductive and sexual health care for millions.

Federal: Medicaid Funding for Reproductive Health Care

Legal Challenges to Section 71113 have been filed!

Planned Parenthood, et al. v. Kennedy, et al. (D. MA/1st Cir.) (and others)

Plaintiffs allege violations of:

- First Amendment
- Equal Protection Clause
- Bill of Attainder Clause

Status as of October 13, 2025:

- District Court (MA) **enjoined enforcement** while case proceeds but . . .
- Circuit Court (1st) **reversed and issued a stay of the injunction pending appeal;** oral arguments scheduled for November 12

Medication Abortion: Litigation

Alliance for Hippocratic Medicine v. FDA (N.D. Texas)

Attorneys General in abortion restrictive states (KS, MO, ID) sued the FDA seeking changes to FDA's approved uses and protocols for Mifepristone—filed in TEXAS, arguing for:

- Prohibition on **access for minors** (<18), alleging use of mifepristone significantly impacts girls' developing reproductive systems;
- Prohibition on **mailing mifepristone** under Comstock Act (150-year old obscenity law still on the books!) and because shipping to pregnant people presents great risk;
- Return of **2016 FDA REMS**, which would allow use only up to 7 weeks (rather than 10), require in-person distribution; limit prescribers to MDs.

Medication Abortion: Litigation

May 2025: Trump DOJ moved to have the case dismissed—not on substance, but because Texas is not the right venue for the filing.

Yay (we'll take it.)

August 2025: Texas and Florida filed to join the litigation.

Womp. Womp.

September 2025: Judge Kacsmaryk denied intervention and transferred case to Missouri.

Color me shocked.

THIS JUST IN: October 2025: Louisiana sued FDA in federal district court in La, with a twist on standing

Medication Abortion: Administration

May 2025:

Secretary Kennedy testified to Senate Committee that:

- He directed FDA to review its regulations on mifepristone as part of a gold-standard treatment regimen for miscarriage; and
- Policy changes will ultimately go “through the White House, through President Trump.”

September 19, 2025:

- Letter to AGs: FDA is reviewing the evidence supporting the current rules for mifepristone. Changes subject to the standards for regulatory change under the APA.

THESE JUST IN:

- ***September 30***: FDA approved a second generic mifepristone.
- ***October 9***: 51 GOP Senators wrote to FDA Comm’r to stop telemedicine for mife and demand removal from market as imminent threat to health

The Changing Legal Landscape of Reproductive Health Privacy

Emma Kaeser, J.D.

Reproductive Health Privacy – Why does it matter?

Information related to reproductive health and the provision of reproductive health care must be kept confidential and protected from misuse and punitive disclosure to prevent:

- Stigma
- Harassment
- Criminalization, especially post-*Dobbs*
- Barriers to vital care

Harms are disproportionately borne by systemically marginalized groups, including people of color, people with disabilities, people who use drugs, people with low or no income, and trans people, among others.

HIPAA Rule to Support Reproductive Health Care Privacy (2024-2025)

Arose out of increased concern about the privacy and sensitivity of reproductive health information in the post-*Dobbs* legal environment.

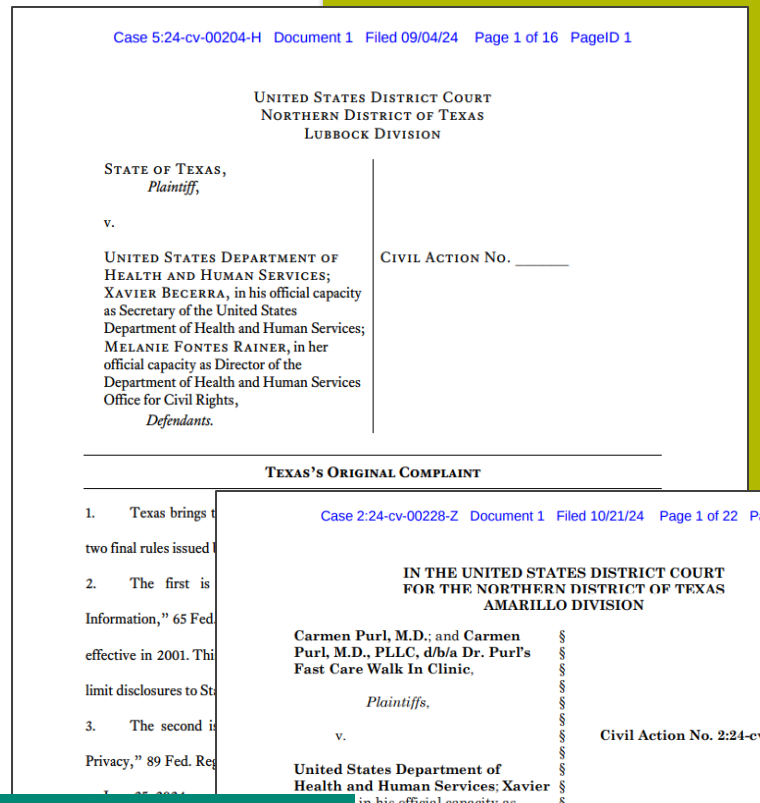
What did the Rule do?

- Prohibited use or disclosure of PHI for certain non-health care purposes, including conducting investigations or imposing liability on a person merely for seeking, obtaining, providing, or facilitating reproductive health care that was lawful under the circumstances in which it was provided.

Legal Challenges to HIPAA Rule to Support Reproductive Health Care Privacy

Since the Rule went into effect in June 2024, four lawsuits have challenged its validity:

- *Texas v. Department of Health & Human Services (N.D. Tex. filed Sept. 4, 2024)*
- *Purl v. Department of Health & Human Services (N.D. Tex. filed Oct. 21, 2024)*
- *Missouri v. Department of Health & Human Services (E.D. Mo. filed Jan. 17, 2025)*
- *Tennessee, et al. v. Department of Health & Human Services (E.D. Tenn. filed Jan. 17, 2025)*



Case 5:24-cv-00204-H Document 1 Filed 09/04/24 Page 1 of 16 PageID 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

STATE OF TEXAS,
Plaintiff,

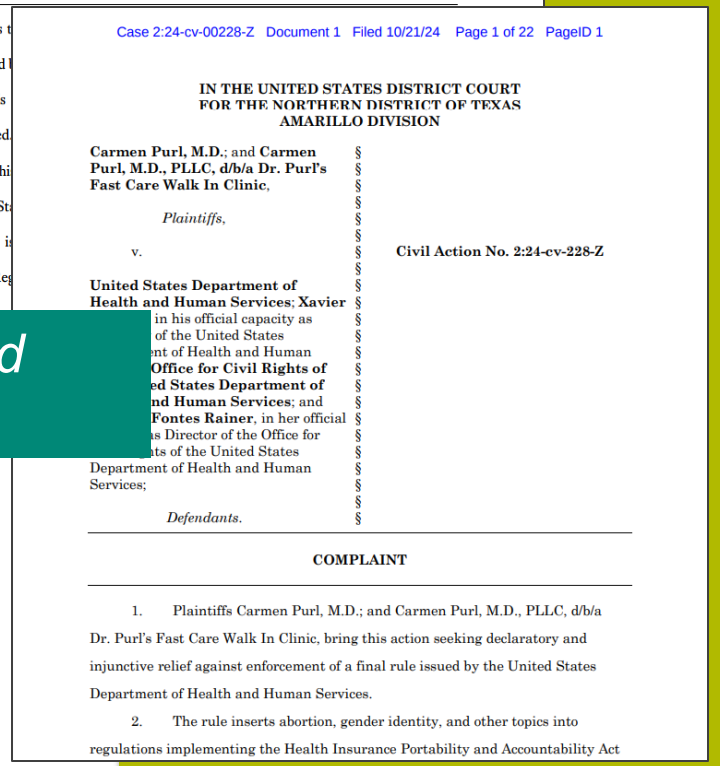
v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; XAVIER BECERRA, in his official capacity as Secretary of the United States Department of Health and Human Services; MELANIE FONTES RAINER, in her official capacity as Director of the Department of Health and Human Services Office for Civil Rights,
Defendants.

CIVIL ACTION NO. _____

TEXAS'S ORIGINAL COMPLAINT

1. Texas brings t
two final rules issued
2. The first is
Information," 65 Fed.
effective in 2001. Thi
limit disclosures to St
3. The second i
Privacy," 89 Fed. Re



Case 2:24-cv-00228-Z Document 1 Filed 10/21/24 Page 1 of 22 PageID 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

Carmen Purl, M.D.; and **Carmen Purl, M.D., PLLC, d/b/a Dr. Purl's Fast Care Walk In Clinic**,

Plaintiffs,

v.

Civil Action No. 2:24-cv-228-Z

United States Department of Health and Human Services; **Xavier** in his official capacity as of the United States nt of Health and Human **Office for Civil Rights of ed States Department of nd Human Services**; and **Fontes Rainer**, in her official s Director of the Office for ts of the United States Department of Health and Human Services;

Defendants.

COMPLAINT

1. Plaintiffs Carmen Purl, M.D.; and Carmen Purl, M.D., PLLC, d/b/a Dr. Purl's Fast Care Walk In Clinic, bring this action seeking declaratory and injunctive relief against enforcement of a final rule issued by the United States Department of Health and Human Services.

2. The rule inserts abortion, gender identity, and other topics into regulations implementing the Health Insurance Portability and Accountability Act

Purl v. Department of Health & Human Services

Defense of the Rule Post-Biden Administration

- **January 2025 -** After the change in administration, HHS argued that the case should be dismissed on procedural grounds and expressly refrained from addressing the merits.

- **January 2025 -** The City of Columbus, Ohio; the City of Madison, Wisconsin; and Doctors for America sought to intervene as defendants.

- **April 2025 -** The court denied the motion to intervene.

Purl v. Department of Health & Human Services

Recent Litigation Developments

- On June 18, 2025, the court granted the plaintiffs' motion for summary judgment and **vacated the Rule**, finding:
  - The Rule impermissibly limited state mandated reporting of child abuse
  - Applying the major questions doctrine, HHS lacked authority to create protections for reproductive health information

Despite HHS' arguments for a narrow remedy, the court invoked a broad remedy – universal vacatur of the entire Rule.

Where do things stand now?

The Trump Administration's HHS chose not to appeal the vacatur to the Fifth Circuit. The three proposed intervenor-defendants preserved their right to appeal but then sought voluntary dismissal. So, the Rule is no longer in effect.

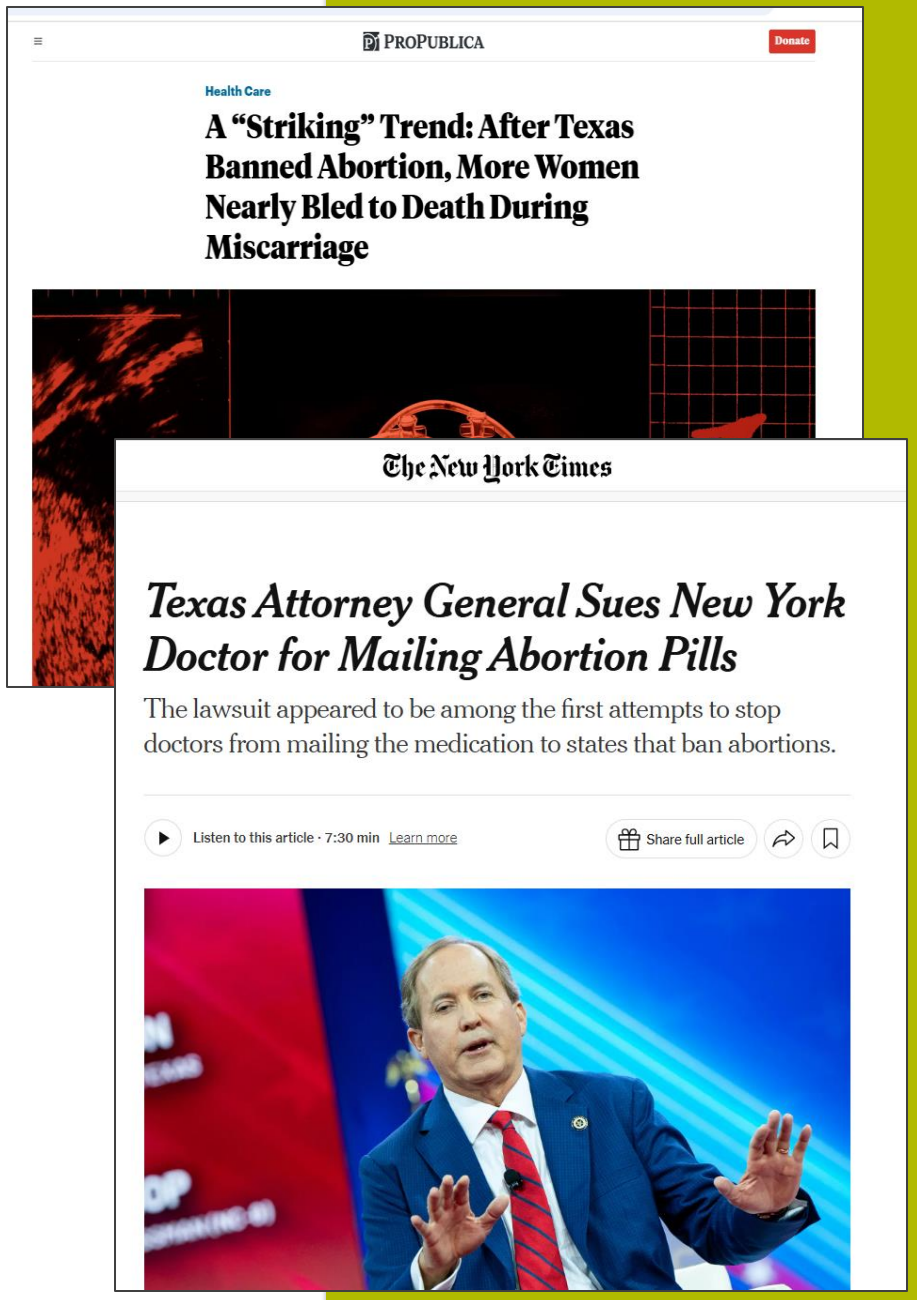
What is the impact of vacating the Rule?

Heightened risk of reproductive health information being used to punish patients, providers, parents, partners, advocacy organizations, and others – creating barriers to vital, potentially life-saving, care.

Impact of Vacating the Rule

- Fewer protections against demands from states with abortion bans for information related to reproductive health care provided in other states

- Fewer protections in connection with legal reproductive health care provided in states with abortion bans



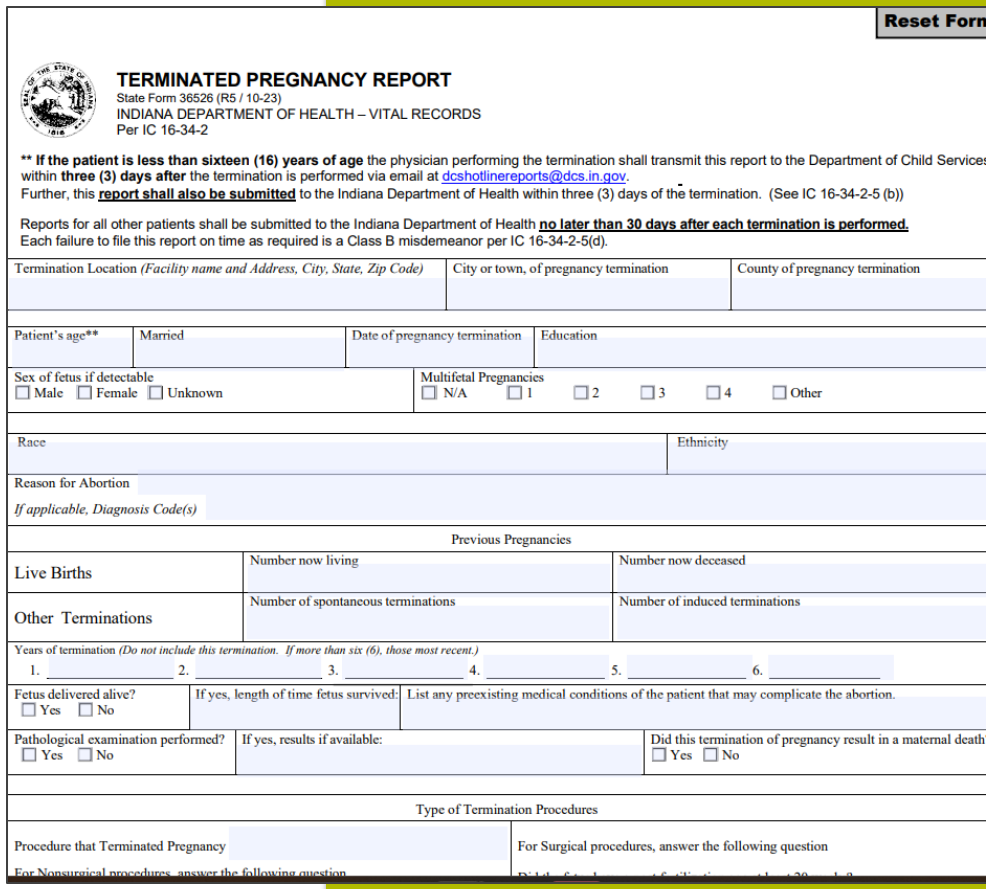
Co-opting Abortion Reporting Requirements for Punitive Surveillance

Recent Developments:

Some states are expanding reporting requirements for criminalization purposes

Example: Indiana requires physicians to prepare and submit terminated pregnancy reports (TPRs) that the state uses to investigate whether abortion care violates Indiana's strict ban

- Indiana AG pressuring state health department to make these reports public
- TPR requirement was challenged as preempted by HIPAA Rule (now moot)



Reset Form

TERMINATED PREGNANCY REPORT
State Form 36526 (R5 / 10-23)
INDIANA DEPARTMENT OF HEALTH – VITAL RECORDS
Per IC 16-34-2

** **If the patient is less than sixteen (16) years of age** the physician performing the termination shall transmit this report to the Department of Child Services within **three (3) days after** the termination is performed via email at dcshotlinereports@dcs.in.gov.
Further, this **report shall also be submitted** to the Indiana Department of Health within three (3) days of the termination. (See IC 16-34-2-5 (b))

Reports for all other patients shall be submitted to the Indiana Department of Health **no later than 30 days after each termination is performed.**
Each failure to file this report on time as required is a Class B misdemeanor per IC 16-34-2-5(d).

Termination Location *(Facility name and Address, City, State, Zip Code)* | City or town, of pregnancy termination | County of pregnancy termination

Patient's age** | Married | Date of pregnancy termination | Education

Sex of fetus if detectable ☐ Male ☐ Female ☐ Unknown | Multifetal Pregnancies ☐ N/A ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ Other

Race | Ethnicity

Reason for Abortion
If applicable, Diagnosis Code(s)

Previous Pregnancies

Live Births	Number now living	Number now deceased
Other Terminations	Number of spontaneous terminations	Number of induced terminations

Years of termination *(Do not include this termination. If more than six (6), those most recent.)*
1. 2. 3. 4. 5. 6.

Fetus delivered alive? ☐ Yes ☐ No | If yes, length of time fetus survived: | List any preexisting medical conditions of the patient that may complicate the abortion.

Pathological examination performed? ☐ Yes ☐ No | If yes, results if available: | Did this termination of pregnancy result in a maternal death ☐ Yes ☐ No

Type of Termination Procedures

Procedure that Terminated Pregnancy | For Surgical procedures, answer the following question

For Nonsurgical procedures, answer the following question

Criminalization of Miscarriage & Threats to Privacy of Pregnancy Loss

After *Dobbs*, states are increasingly punishing people who experience a loss of pregnancy, raising concerns about the privacy of related data.

- All states require reporting of certain fetal deaths for vital records purposes.
- Confidentiality protections for fetal death data vary by state.
- While not currently exploited, fetal death reporting laws warrant monitoring as potential tool of punitive surveillance.

Criminalization of Miscarriages

Naisha Mercury, J.D.

Abortion Bans are Endangering Miscarriage Care

- 10 to 20% of known pregnancies end in miscarriage
- Abortion bans can limit care for those who are experiencing miscarriage and stillbirth

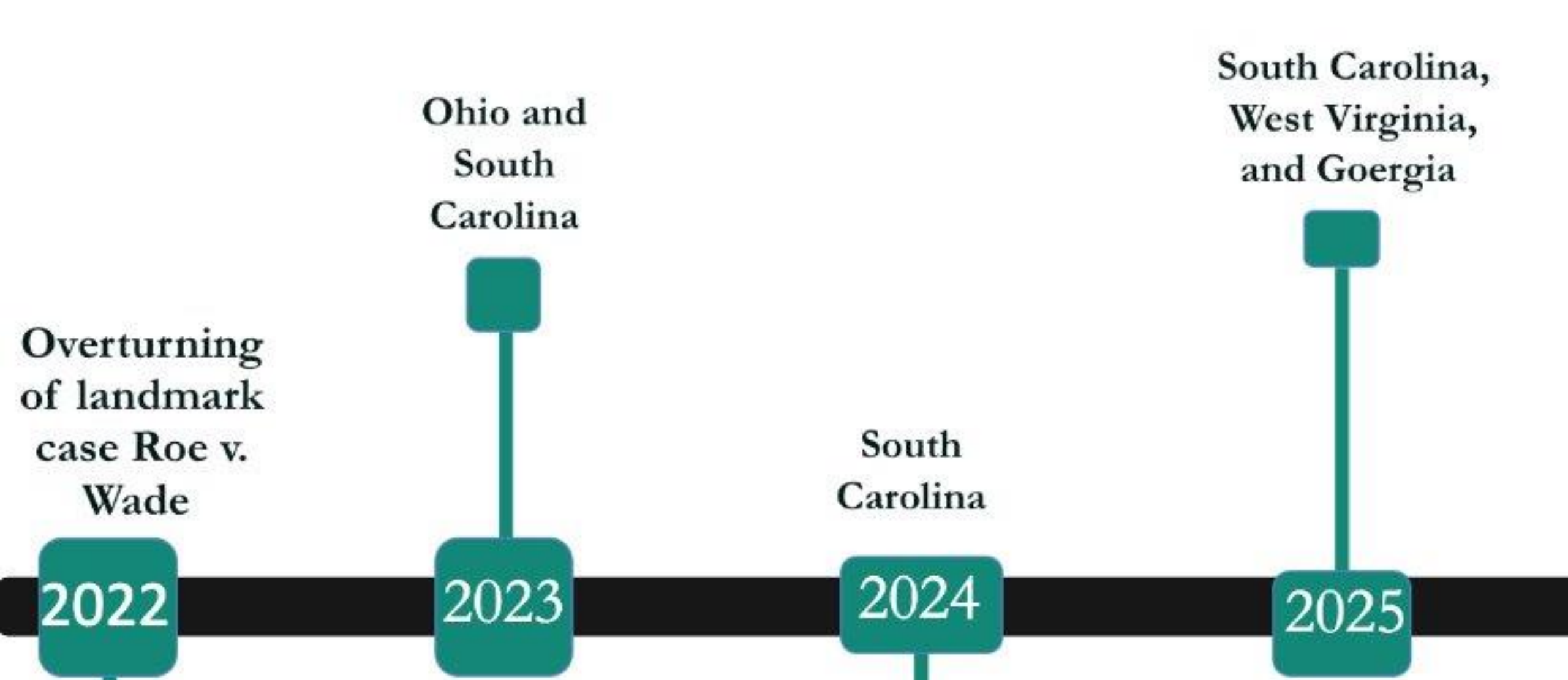
The Term “Fetal Personhood”

Abortion

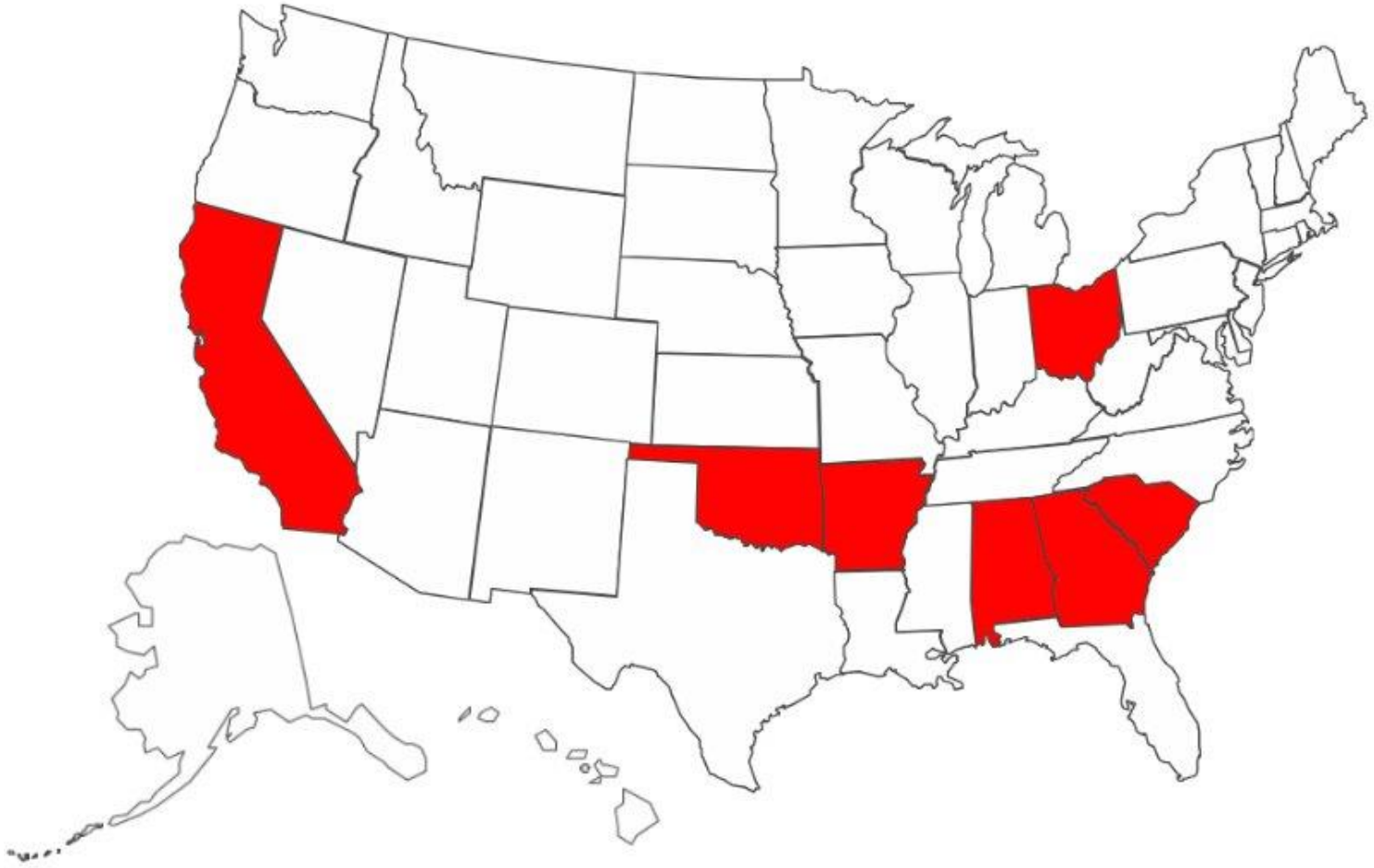
- An intentional termination of pregnancy, either through medical process or by medication.
- Can be stigmatized or politicalized depending on cultural and political context.
- Tightly regulated in many states, with laws controlling when, how, and under what circumstances care can be provided.

Miscarriage

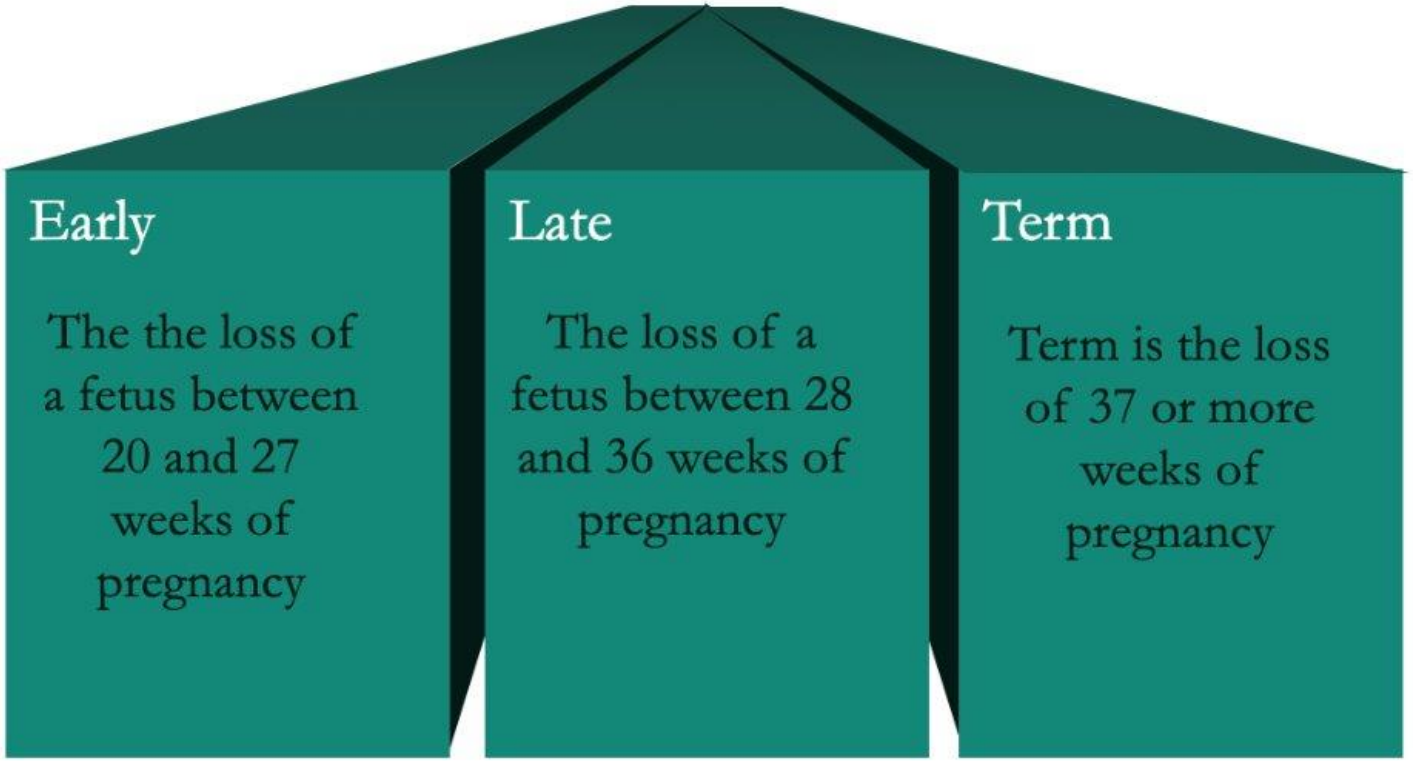
- An unintentional/involuntary loss often caused by natural, uncontrollable factors.
- Require timely medical care to address potential health risks
- Not generally regulated but can be subject to investigation in certain legal environments.


Overturning of landmark case Roe v. Wade
2022
Ohio and South Carolina
2023
South Carolina
2024
South Carolina, West Virginia, and Goergia
2025

There have been at least 210 pregnancy-related cases documented in the year after Dobbs decision including 22 cases involving miscarriages or stillbirths. 104 of those came from Alabama.

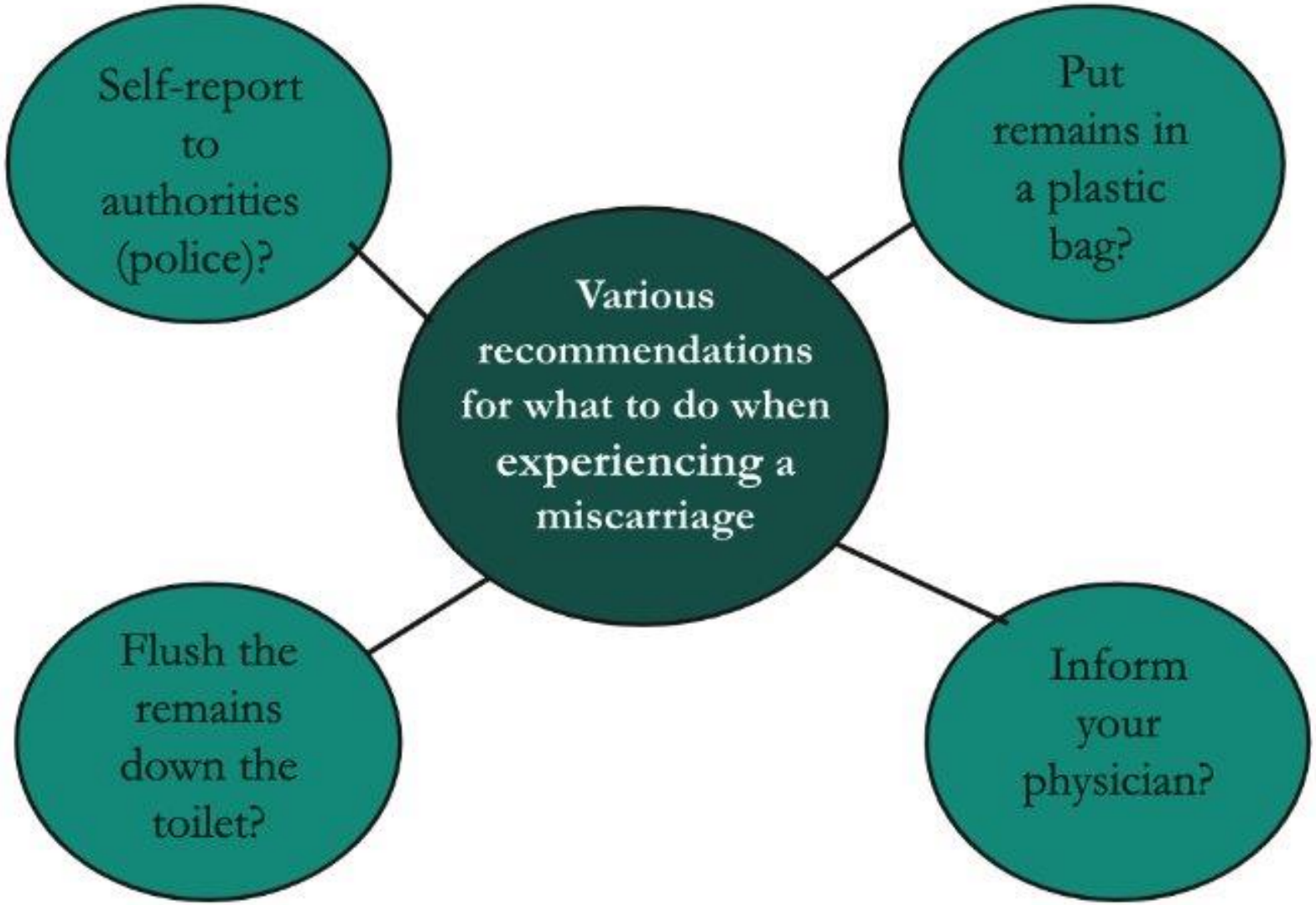


Most pregnancy losses (miscarriage) occur in the first trimester before 13 weeks gestation. According to CDC, a stillbirth is when a fetus dies in the uterus after 20 weeks of pregnancy and is classified as early, late or term.



“I thought about fishing it out of the bloody water.”

Abuse of the Corpse


Self-report to authorities (police)?
Put remains in a plastic bag?
Various recommendations for what to do when experiencing a miscarriage
Flush the remains down the toilet?
Inform your physician?

Ending with emotional impacts, traumatic experiences and mental health

- An intentional termination of pregnancy, either through medical process or by medication.
- Can be stigmatized or politicalized depending on cultural and political context.
- Tightly regulated in many states, with laws controlling when, how, and under what circumstances care can be provided.

- An unintentional/involuntary loss often caused by natural, uncontrollable factors.
- Require timely medical care to address potential health risks
- Not generally regulated but can be subject to investigation in certain legal environments.

Ending off with emotional impacts, traumatic experiences and mental health

- In 2023, a South Carolina college student named Amari Marsh is dealing with the trauma of losing a child while also being a high-achieving college student who was labelled in the news reports as a murderer.
- While processing an often unexpected and tragic outcome in their reproductive journeys, patients bear the additional trauma of not accessing, and sometimes being actively denied, evidenced based and sometimes medically necessary intervention.
- Many miscarrying patients are no longer showing up at hospitals anymore, instead they are making decisions about fetal remains at home alone.

The Network
for Public Health Law

The Network advances health equity and improves health outcomes by providing guidance on the effective use of laws and policies.

Network attorneys can provide consultation and guidance to:

- Identify the ways in which laws and policies may or may not impact a particular project or community; or the potential impact on different populations within a community.
- Provide examples of and compare public health laws or policy strategies from other jurisdictions.
- Analyze the legal authority to implement a policy or law, or reforms.
- Apply equity tools to laws and policies.

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