Who Makes the Call? Physician Fears and Abortion Access Post-Dobbs

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Abstract: Following the Supreme Court's *Dobbs v. Jackson Women's Health Organization* ruling in 2022, Texas was one of several states where previously passed abortion bans were triggered to become immediately enforceable. The restrictions placed on physicians were both vague and harsh, with the conditions for medical exceptions unclear and the potential punishments strict. Damla Karsan, a Houston-based obstetrician-gynecologist, sought to push back against the laws that restricted her ability to provide care and force the state to set legal precedent for medical exceptions to the bans. When Kate Cox, a woman facing severe pregnancy complications and desperately seeking an abortion, came to her, Karsan was faced with a question: with the risks so high for Karsan's freedom if she performed an abortion and so high for her patient's health if she didn't, where would she draw the line? What was she willing to risk to set precedents for her patients and colleagues?

Introduction

As an obstetrician-gynecologist (OB/GYN) in Houston, Dr. Damla Karsan always knew that aspects of her work—namely, providing abortions—were a topic of political discourse across the nation.[1] Even in Texas, a conservative-leaning state, she had always been able to provide abortions for her patients until they were 20 weeks pregnant. Until 2022, the Supreme Court *Roe v. Wade* ruling federally protected abortion access until viability, interpreted in the state of Texas as legal access to abortion until 20 weeks of pregnancy. When the Supreme Court released the *Dobbs v. Jackson Women's Health Organization* ruling in June of 2022, Texas began rolling out conservative abortion bans and everything changed (Tuma 2024).

In March 2024, Karsan found herself sitting in the United States Capitol, attending the State of the Union as the guest of a Texas senator (Fletcher 2024). The six months of her life leading up to that moment were different from anything that she had experienced before. She had spent her days not just in clinics and hospitals, but in courtrooms, depositions, and press conferences. Across the room was Kate Cox, a woman whose life had been changed forever by Dr. Damla Karsan.

Somehow, Kate Cox had gone from a lifetime of never voting to sitting with First Lady Jill Biden in her viewing box for the State of the Union as the president described the last few months of Kate Cox's life in the most high-profile political speech of the year (The White House 2024; Biden 2024). Cox worked for a non-profit, had two kids with an equally busy husband, and was too preoccupied with trying to stay afloat to be able to give much attention to politics. She had

[1] Reached through her practice and representatives at the Center for Reproductive Rights, Damla Karsan was not available for interview for this case study.

never spent much time thinking about abortion rights; after all, she had always wanted a large family and never thought that abortion politics would impact her life. Yet, on March 7, the nation's eyes panned to Cox, the newest face of the fight for abortion access and what happens when it is denied.

What an all-American face she made: 31 years old, happily married with two young children, a white southern mother dreaming of a large family, thrilled beyond belief to be pregnant with the third baby that she wanted so desperately. Thrilled, until she found out, in the same phone call where she learned the baby would be a girl, that her fetus was at risk for a genetic abnormality. Thrilled, until her doctor explained she would not give birth to a living baby. Thrilled, until she found out that if she did not terminate the pregnancy, she might never be able to get pregnant again. Thrilled, until complication after complication arose and she spent weeks in and out of the emergency room. Thrilled, until her doctors told her that they could not give her an abortion—because of the new laws in Texas, they were too afraid for their freedom and livelihoods to risk it.

It was Karsan's decisions, though, that led the two women to be present at the State of the Union. President Biden never mentioned her name, but it was her choices that created impacts reaching far beyond her and Cox. Months earlier, Cox had come to Karsan, after speaking with her original physicians, in a final, desperate attempt to legally terminate her pregnancy close to home, and Karsan faced a dilemma. Should she perform the abortion, standing firm that the danger to Cox and her fetus qualified as a medical emergency that allowed an exception under Texas law? Should she emulate her colleagues and refuse, knowing that the legal exceptions were vague and left her vulnerable to prosecution that could land her a lengthy prison sentence, major fines, and the permanent loss of her medical license? Or should challenge the boundaries of the Texas legislation with a legal petition, knowing that it would thrust both her and Cox into a national spotlight that could leave them vulnerable in entirely new ways, knowing that the petition might not even be successful?

Zurawski v. State of Texas: Challenging the Status Quo

Legal activism was not new to Karsan in the wake of the *Dobbs* decision *(Dobbs v. Jackson Women's Health Organization* 2022). The Center for Reproductive Rights brought the *Zurawski v. State of Texas* case to Texas courts in 2022. The initial filing centered eight initial plaintiffs, six women whose doctors denied them abortions because of the state's restrictions and two separate physicians (including Karsan) who argued that the Texas bans prevented them from providing medically comprehensive care *(Zurawski v. State of Texas* 2024). By the end of 2022, the case grew to include 22 plaintiffs, 20 of whom were women whose original physicians denied them abortions.

The abortion bans in Texas that affected these women's care and Dr. Karsan's ability to perform abortions were both numerous and strict. Prior to the activation of the state's trigger law upon the finalization of the *Dobbs* ruling in 2022, seven sections of the Texas Health and Safety Code and one section of the Texas Penal Code already independently restricted aspects of abortion care (Texas State Law Library 2024). One such law criminalized any physician who failed to provide detailed reports about any abortion that they performed. The trigger law, passed in 2021, made performing or attempting to perform an abortion a first- or second-degree felony in the state (Texas State Law Library 2024). The law was unenforceable in 2021 because of the federal protection of abortion access provided by the *Roe v. Wade* Supreme Court decision but was deemed

a trigger law because it was immediately enforceable upon the finalization of the *Dobbs* decision (Texas State Law Library 2024).

The physician plaintiffs asked Texas courts to clarify the "medical emergency" exceptions in the abortion bans, arguing that the lack of clarity in the laws had posed threats to the lives of the patients included as plaintiffs *(Zurawski v. State of Texas* 2024, 2). The trigger law, Section 170A.004 of the Texas Health and Safety Code, provided an exception upon the condition that the patient had a "life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced" (TX Health and Safety Code 2022, 1). The *Zurawski* plaintiffs argued that they suffered physical harm because the law provided such little clarification that their physicians would not perform their abortions until their conditions progressed dangerously far. The lead plaintiff, Amanda Zurawski, was forced to wait for an abortion until she became septic with an infection caused by her pregnancy that threatened her life and caused one of her fallopian tubes to close permanently, damaging her future fertility. In her deposition for the case, Karsan explained:

> There are lots of questions and anxiety about what can legally be performed in the state of Texas, a lot of fear about risk of losing my license, being imprisoned, facing tremendous fines; and it has also delayed care because it has required me to scramble to try to figure out how those patients can get the care they need elsewhere. (State of Texas 2023, App'x 70)

She was far from the only OB/GYN in Texas facing these fears. In a press conference, she pleaded to the public on behalf of herself and her colleagues, saying "I know most Texas doctors are scared to provide abortions in any circumstances or even say the word abortion. We need clarity on what kinds of patients we can help without losing our license or ending up in jail" (Center for Reproductive Rights 2023b, n.p.). She argued in the initial filing for the case that as a private practitioner she had a unique ability to speak out because her colleagues employed directly by hospitals feared that the state would threaten the hospitals' state funding if they provided abortion care to people with emergent medical conditions. The patients who came forward as plaintiffs in the case agreed with her assessment, alleging that their physicians denied them abortions out of fear of liability. Karsan also had an emotional stake in the case. Patient after patient came to her begging for help when they suffered dangerous complications with their pregnancies, and she had to explain to them that she could not terminate their pregnancies. Those that had to travel while dangerously sick were especially heartbreaking, and she described one such case in her deposition:

> I have a patient who was pregnant with her second child and at her first ultrasound beyond the initial confirmation that she was pregnant and that there was a heartbeat, the maternal-fetal medicine physician reading the ultrasound images described an anomaly called body-stalk anomaly, where many of the organs were outside the fetal body and the fetus was connected to the placenta by its liver.
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> This is, in my understanding, universally fatal; and the patient had to travel 14 hours by car with her partner and her toddler, all the while suffering a kidney stone attack, which also was dangerous, in order to get an abortion, 14 hours there and 14 hours back, because the abortion could not be performed here in Houston. (State of Texas 2023, App'x 72)

Karsan had more patients to describe in her deposition, each of which came to her with extreme complications of their pregnancies, and who she could not offer relief to. “I feel like my hands are tied,” she said, “I have the skill, training, and experience to provide care but I’m unable to do so—it’s so gut-wrenching. I am looking for clarity, a promise that I’m not going to be prosecuted for providing care” (Tuma 2023, n.p.).

Ultimately, Karsan joined the *Zurawski* case to fight against the fear and confusion incited by the Texas laws that plagued physicians. In her deposition, she described the hospital policies that regulated her practice of abortion. Another physician had to sign off on the patient’s chart, attaching their own name and testimony that the procedure was necessary for the encountered, though, was that none of her colleagues were willing to put their own names in writing and risk prosecution. Nobody would sign off. She could not recall hospital leadership ever putting the policy in writing—only expressed verbally at meetings—but the expectation and threat of persecution loomed large.

She understood her colleagues’ hesitancy. The laws were unclear, the stakes were high, and she believed in the importance of having a choice regarding whether her colleagues put themselves at risk. In a press conference after a court session, she explained that she "shouldn’t put them out there without their consent if they don’t want to be involved” (Center for Reproductive Rights 2023a, 13:20).

It was the vigilante aspect of the laws that made that threat so real, Karsan explained in her deposition. Any private citizen that learned of an abortion could bring a case against a physician, she reminded the lawyers, and the laws were so unclear that her colleagues were just not comfortable risking the backlash. Even in the court documents, she felt retaliation. Throughout the State’s Motion to Dismiss, the State referred to her not as Dr. Karsan, the accurate title for an OBGYN providing comprehensive care, but as “Abortionist Karsan” (*Zurawski v. State of Texas* 2023, 13).

Kate Cox: Grief, Fear, and Fight

Kate was in her car when she got the first phone call.[2] Pregnant with the third child that she and her husband Justin desperately wanted, she knew what to expect when she gave her obstetrician a blood sample: they would perform a noninvasive prenatal blood test (NIPT), a simple test on her blood between 10 and 13 weeks that could screen for some fetal conditions and tell them the sex of the baby. She had navigated the same procedure for each of her other children and was excited to receive the results that would tell her if she was having a boy or a girl. The results, though, had never come in a phone call, and she immediately knew that something was different.

She pulled over when her doctor asked if she was driving, and the doctor told her that her baby, now known to be a girl, was at high risk for trisomy 18, a genetic abnormality that is often life-threatening to the baby (Alter 2024). After the phone call, she cried until she was able to get back on the road. Kate and Justin were terrified, but hopeful—NIPT testing was not always accurate, and 10% of babies with trisomy 18 were known to live past the age of 1 (Cleveland Clinic 2021). There was still a chance that they would get to meet their baby girl.

Trisomy 18 is a genetic condition characterized by a third copy of chromosome 18, instead of the normal two, resulting in improper organ development, lack of cognitive development, congenital abnormalities, low muscle tone, and more (Cleveland Clinic 2021). While babies can

[2] Unless otherwise cited, information about Kate Cox’s pregnancy was obtained from the plaintiff’s initial petition in the *Cox v. State of Texas* Case.

be born with the condition, at least 95% of fetuses have complications severe enough that they do not survive full term, and most pregnancies diagnosed with trisomy 18 result in a miscarriage or stillbirth (Cleveland Clinic 2021). Of those born alive, around 30% live for a month, and fewer than 10% survive for more than a year. Surviving children usually have weak muscle tone, severe heart issues, small heads, developmental disorders, and additional complications (Cleveland Clinic 2021).

At a specialist appointment later that month, an ultrasound revealed spinal abnormalities. Over the next several weeks, Kate's doctors performed more ultrasounds, and each one showed more complications and further indicated trisomy 18. Several congenital abnormalities were clearly visible on the ultrasound, and Kate and Justin were devastated as the odds that they would get to meet their baby got smaller and smaller. Even before they could perform an amniocentesis to confirm a diagnosis, the Maternal and Fetal Medicine specialist told them that it was likely that the baby would die in utero or be stillborn.

The doctors performed an amniocentesis to confirm a diagnosis when Kate was 16 weeks pregnant at the beginning of November, but it would take time to receive the results. In the intervening weeks, she went to the emergency room several times with cramps and vaginal leakage, but since doctors at the hospital were unable to find the cause, they simply sent her home. On November 28, Kate and Justin received the results of the amniocentesis: their baby girl had trisomy 18. Heartbroken, weighing the extremity of their fetus's symptoms and the risks of complications associated with carrying the pregnancy to full term, the couple asked about ending the pregnancy, but the doctors told them that they could not perform an abortion as long as there was a heartbeat. They told Kate that there probably was not any physician in the state who would.

Because trisomy 18 is a condition that could result in a live birth, it is rarely codified as an exception to an abortion ban—but Kate's specialists told her that her baby's diagnosis was worse than most. Fetuses that would survive birth often presented with few complications visible on ultrasounds, but hers had been increasing with every appointment even before the diagnosis was official. The physicians' response was unanimous, though. They would not terminate the pregnancy. She would have to carry the pregnancy until the heartbeat stopped on its own, or if there were a more imminent threat to Kate's life.

Additional risks would be posed to Kate's health. She was already at high risk for uterine rupture from her previous C-sections, which meant that attempting to carry the pregnancy to term could threaten her life and her future fertility. At full-term she would have to deliver the baby, living or dead, either vaginally or through a C-section. If she gave birth vaginally, she would be at very high risk for uterine rupture and death. If she had a C-section, it would make any future pregnancies higher risk.

While weighing her options, Kate saw the *Zurawski* Case in the news and sent a cold email to the Center for Reproductive Rights asking for help. The center connected her to Karsan, who met with her and reviewed her case.

Facing a Choice: Risk, Refuse, or Revolutionize

Kate wanted an abortion. Karsan had to decide if she was able to perform it—and fast. The *Zurawski* case was still in the headlines and without a decision, she was getting recruitment calls and prestigious out-of-state job offers, and she still had a medical practice full of patients that needed her to provide care (Tuma 2024). When Kate came to her, Karsan had no doubt that Kate

needed an abortion.[3] The danger to Kate's life and health alone, along with the near certainty that the baby would not survive until full term, fit the qualifications for an abortion that Karsan had learned in her medical training. Before the *Dobbs* decision and subsequent Texas abortion ban in 2022, she would have performed it. With the petition for clarification on medical exceptions still pending before the Texas Supreme Court, though, the risks to her own practice and freedom were large.

Karsan's first option was to declare Kate medically in need of an abortion and to perform a dilation and evacuation (D&E) abortion, a type of abortion that did not require her to induce labor, but instead to dilate the cervix and manually remove the contents of the uterus, effectively terminating the pregnancy (Jones, Richard, and Lopez 2014). A D&E abortion is the standard method of abortion care in the second trimester (which Kate was in the middle of), and by performing it, Karsan would terminate the pregnancy in a 30-minute procedure and allow Kate to recover, both physically and emotionally, close to home and with her family (Jones, Richard, and Lopez 2014).

The first problem with this option, though, was logistics. The hospitals where Karsan held operating privileges required that two physicians signed off on any abortion procedure, and Karsan's colleagues were still afraid to document their names as endorsement for a procedure when they could be prosecuted for providing abortion care. With all requests for clarification about the definition of a medical still pending before the state, Karsan's colleagues were no more willing to sign off on a procedure than they would have been before the *Zurawski* case.

Karsan was not immune to the fears that plagued her colleagues. She too faced the very real risk that the state would prosecute her for terminating Kate's pregnancy. As a result of the state's various abortion bans, she could face fines of at least $100,000, the loss of her medical license, and up to a life sentence in prison (Texas State Law Library 2024).

Because of the strict penalties, doctors were yet to test the limits of what the state was willing to enforce when it came to the abortion bans that they had laid out. If Karsan agreed to terminate Kate's pregnancy, she would be one of the first in the state to do so. Not only would she be at risk of being prosecuted by the state, but there was no precedent for how strictly they might enforce the laws—if she gave the abortion and they decided to prosecute, her case would provide an opportunity for politicians to set a strong legal precedent for how strict the state would be on physicians to follow her. It was not just the state whose prosecution Karsan had to fear; under Texas's post-*Dobbs* abortion bans, any private citizen could bring a case against another private citizen found to perform or aid in the performance of an abortion (Texas State Law Library 2024). This vigilante aspect of the Texas laws meant that even if she declared the abortion medically necessary to protect Kate's health and life, any person who found out that Kate had had an abortion would be able to bring a private lawsuit against Karsan. Not only would she be facing a criminal trial, but she could be facing a lawsuit from any private citizen who caught wind of the procedure. Importantly, the laws also required physicians to report any abortion that they performed—there was no doing it in secret.

Karsan was not the only one that these laws would affect if she decided to provide Kate's abortion. While it was unlikely that Kate herself would face criminal charges for seeking an abortion, anybody who aided her in that process could be prosecuted. This meant that Kate's husband, Justin, could theoretically face prosecution under the vigilante aspect of the laws for

[3] Unless otherwise cited, Damla Karsan's commentary in this section was obtained from her affidavits in the *Cox v. State of Texas* Case.

helping his wife terminate her pregnancy by aiding her in seeking abortion care, driving her to and from the procedure, and providing emotional support (Texas State Law Library 2024). If Karsan performed the abortion, she could put Justin at risk as well.

So, Karsan could refuse to perform the abortion, as she had been forced to for many patients before. As she had described repeatedly to the state throughout the *Zurawski* case, it would be nearly impossible to convince another doctor to sign off to allow her to perform the procedure at one of the hospitals where she had privileges, and even more so to convince the hospitals to allow her to perform the procedure without a second doctor's endorsement—it was just too risky for any of them to agree. Refusing to perform the abortion and counseling Kate to seek care out-of-state was the least risky option for everyone involved—except, of course, for Kate, who was still bleeding and cramping and would have to make the long journey. The nearest states where she could get an abortion were Kansas or New Mexico, each at least a 10-hour drive away.

To provide the abortion or to refuse to: those were the two options that Karsan had been faced with time and time again as her patients came to her seeking care since the summer of 2022, and she was sick of it. She had decades worth of training and experience in providing care to her patients, and she was no longer able to. It was paralyzing and gut wrenching, and she was ready for a change (Tuma 2023).

The risks of either option were monumental, but a third option just might have been possible. What if there was a way to test the limits of the abortion bans without risking criminal charges and associated penalties? What if there was a third option: petitioning the state, while Kate was still pregnant, for an exception to the abortion laws, approved in advance, protected?

It had been a year and a half since the *Dobbs* decision and Texas's trigger bans on abortion took effect, and nobody had petitioned the state for permission to receive an abortion—yet. If any of her patients could, though, it was Kate Cox. She was straight, white, cis-gender, married, a mother, a non-profit worker, suburban, and desperately wanted more kids; she wanted an abortion so that she could be there for her children and preserve her fertility so that she could have another (Alter 2024). Her marriage and desire for children fit the profile of the *traditional family values* that many conservative politicians espoused, while her whiteness and socioeconomic status afforded her a level of class privilege. If anyone could convince the state of Texas to allow them to receive an abortion, it would be someone like her. She wanted an abortion, she wanted it close to home, and Karsan wanted to perform it. The Center for Reproductive Rights was already trying to push the boundaries of the Texas abortion bans. There just might be a third option—and it just might work.

A New Arena: Taking the Fight to the Courts

On December 5, 2023, seven days after Kate sent the cold email to the Center for Reproductive Rights that got her connected to Karsan, the Center for Reproductive Rights filed a complaint to the District Court of Travis County, Texas, on behalf of Damla Karsan, Kate Cox, and Justin Cox. The three plaintiffs requested a court authorization to protect Karsan and all staff that would be involved with the abortion procedure, as well as Justin Cox, from legal ramifications. The hospital where Karsan held privileges agreed to allow her to perform a D&E abortion for Kate if they could receive prior authorization from the court.

Karsan alleged in the original legal complaint that she believed "in good faith, exercising her best medical judgment, that a D&E abortion is medically recommended for Ms. Cox" (*Cox v.*

State of Texas Complaint 2023, 36). The phrasing mattered—the next day, the state submitted their response to the complaint and alleged, amongst other claims, that a "good faith belief" was a subjective standard, and that for her argument to suffice as a medical exception under the law, she had to instead allege that it was her "reasonable medical judgement" that Kate needed an abortion *(Cox v. State of Texas* State of Texas Response 2023, 2). Ultimately, it was a problem of semantics. The state also alleged that Kate Cox was living in Florida at the time that she submitted the court documents in Texas. The reality was, though, that she had used an online notary service based in Florida so that she could submit her petition and seek care as quickly as possible (*Cox v. State of Texas* State of Texas Response 2023, 1; **Klibanoff and Bohra 2023**).

At 10:21 a.m. on December 7, two days after the initial complaint was filed and the day after the state's response, Judge Maya Guerra Gamble issued a Temporary Restraining Order (TRO). The TRO alleged that while the State of Texas had the authority to enforce Texas's abortion bans, the bans did not provide adequate exceptions for cases like that of Kate, and judicial intervention was necessary to protect the Cox family and Damla Karsan.

Within hours of the TRO being filed, Ken Paxton, Attorney General for the state of Texas, published online, tweeted, and sent in an email to three Houston hospitals where Karsan held privileges a letter asserting that although the TRO had been signed, an abortion that Karsan performed would be unlawful. The letter informed the hospitals that the TRO would not protect them from civil and criminal liability, did not protect private citizens, or prevent district or county attorneys from prosecuting the hospitals under any of Texas's abortion laws. The threatening letter informed the hospitals that the TRO would expire before the statute of limitations of the abortion bans, insinuating that the hospitals could be prosecuted retroactively for allowing Karsan to perform Kate's abortion.

Karsan was terrified—after everything, it still was not clear whether she would be able to perform Kate's abortion. The TRO was still in effect, but Paxton's comments left everybody involved in legal limbo. She was afraid that, even with legal protection, performing the abortion would cost her her medical license.

She did not have to wait long for clarity. By 11:45 p.m., Paxton and his team had filed two petitions with the Supreme Court of Texas. One was an Emergency Motion for Temporary Relief, which requested the Supreme Court overrule the district judge's TRO no later than the next day. The second was a Writ of Mandamus, a legal document alleging that the district court abused its discretion by issuing the TRO. Both petitions sought for the Supreme Court to intervene and prevent Karsan from being able to perform Kate's abortion.

Even though the Center for Reproductive Rights filed a 36-page response to Paxton's petitions, on December 8, the Texas Supreme Court issued a stay on the TRO. This motion effectively removed the protection given to Karsan and the Cox family, pending a final decision by the Supreme Court. In less than two days, Karsan had received the protection necessary to provide Kate with her abortion and lost it before anything could be done.

On December 11, the American College of Obstetricians and Gynecologists and Society for Maternal-Fetal Medicine filed a brief on behalf of Karsan and the Cox family arguing that Karsan needed to be able to provide Kate's abortion in Texas, both for Kate's health and to set a precedent that would protect the women in the state who would follow her. The same day, the Supreme Court released an official decision and opinion declaring that Karsan and Kate's petition was not valid.

It was all too little too late. Kate was still facing the pregnancy complications that had been keeping her in and out of the emergency room for weeks, and as the battle was being fought in courts, she was hardly able to get out of bed (Smith 2024). On December 11, the Center for Reproductive Rights, Kate's legal representation, informed the courts that Kate was leaving the state. On December 12, she was able to get an abortion in New Mexico, far away from her children, her family, and her support system. Before the procedure, Kate and her husband named the baby Chloe James; the middle name was from Kate's grandfather, so that "she would know who to look for in heaven" (Alter 2024, n.p.).

Conclusion

This case followed Dr. Damla Karsan's decision about how to help Kate Cox attempt to terminate her pregnancy, and the risks that Karsan would be willing to take to do so. Karsan's experiences navigating the Texas legal system as an OBGYN raise questions about medical decision making. What role should the government have in decisions of medical care? What consequences are appropriate? What should physicians be willing to risk?

Karsan faced three options. First, to perform Kate Cox's abortion. She would have faced not only major personal risks (the loss of her medical license, major fines, and a long prison sentence), but also logistical problems (she would have to find another physician willing to take on the same risks and agree to sign off on the necessity of the abortion). Second, to refuse to perform Kate's abortion. To make this choice, Karsan would have to wrestle with her own morality and duty to her profession as a physician who was long outspoken about the importance of abortion access to protect the health of her patients. Third, she could take the choice to the courts. To do this would thrust both Kate and her firmly into the public eye while they handled an intimately personal and private health matter. It would also expose both of them to the risk that the courts would not grant the abortion, and they would be back at square one, or worse.

Karsan had to wrestle with this decision as a physician, as a woman, and as an activist. She had to weigh the reality of the government's involvement with her decisions about best medical care with the principles of best practice that she had been educated with. She had to decide for herself what risks she was willing to take on for her patients, and she had to understand what would happen if she didn't. If she didn't take up the mantle of challenging the abortion ban in court, who else might? How else might they know what constituted a medical emergency severe enough to qualify an abortion? Was it fair for her to take on that risk herself?

Questions remain, as well, of whether Kate Cox should be the face of the movement for access to reproductive rights. In a state where white women made up less than a third of the birthing population, Kate—as a white, married, 31-year-old—was far from fitting the profile of either the state's most common birthing person or most vulnerable (Texas Department of Health Services n.d.). Her privilege removed her from the experiences of many birthing people in the state, but it also gave her a voice with more potential to be heard by the courts and by the public. Arguably, her privilege could have made her a weaker representation of pregnant people in the state of Texas, or it could have made her one of few people with a chance of setting a favorable precedent. Karsan, the Center for Reproductive Rights, and everybody around the nation watching her case play out was left to wonder: if Kate Cox could not get an abortion in Texas, who could?

Epilogue

Karsan's decision had not let Kate get an abortion in-state, and it had not forced Texas to loosen their restrictions. If she had performed Kate's abortion, Kate could have recovered with her

family at home, but Karsan could have lost everything. If she had simply refused, Kate would still have had to flee the state and neither of them would be under national scrutiny. After everything, though, she made peace with her decision, if not with the court's.

She had watched Kate morph from a woman who had never been political into one who willingly became a face of the fight for abortion access. "She found it in herself to speak up," Karsan told reporters, "It's courageous, and I'm so proud of her" (Tuma 2024, n.p.). It was Karsan that gave Kate the platform to do so.

That experience led to the moment when Karsan sat in the Capitol, three months after Kate left the state to get an abortion, listening to the State of the Union (Fletcher 2024). She and Kate had petitioned the state, and while they were not successful in court, they had opened the nation's eyes towards just how far Texas would go to prevent abortion access. As she watched, President Biden used their story to invoke national awareness of the fight for reproductive freedom:

> What her family has gone through should never have happened as well. But it is happening to so many others.
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> There are state laws banning the right to choose, criminalizing doctors, and forcing survivors of rape and incest to leave their states as well to get the care they need. Many of you in this Chamber and my predecessor are promising to pass a national ban on reproductive freedom.
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> My God, what freedoms will you take away next? (Biden 2024, n.p.)

References

Alter, Charlotte. 2024. "How Kate Cox Became A Reluctant Face of Abortion Rights" *TIME*, March 27, 2024. https://time.com/6960387/kate-cox-abortion-rights-interview/?utm_source=facebook&utm_medium=social&utm_campaign=editorial&utm_term=_&linkId=375445166&fbclid=IwAR1NMs0_VSo4xdJnntYhuGyG1gR6VlYWjn9moXW4lJkMx6AVQuFkgQIdZSY_aem_AeZm2G9bIFbaEiM1dt3fL5a8ZKJLWkUPH4zne4j5y0Bioo_60aketIei-Mno0stJhjChVD1PBrRnahmZ_iQm_BOn (Accessed April 21, 2024).

Biden, Joe. "Remarks of President Joe Biden -- State of the Union Address As Prepared for Delivery." Speech presented at The United States Capitol, Washington D.C., March 7, 2024. https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/03/07/remarks-of-president-joe-biden-state-of-the-union-address-as-prepared-for-delivery-2/ (Accessed April 21, 2024).

Center for Reproductive Rights. 2023a."Center for Reproductive Rights's video" Facebook, July 20, 2023. https://www.facebook.com/watch/live/?ref=watch_permalink&v=1515069202659712 (Accessed April 21, 2024).

Center for Reproductive Rights. 2023b. "Center Sues Texas on Behalf of Women Denied Abortions After Facing Dangerous Pregnancy Complications." Center for Reproductive Rights. https://reproductiverights.org/texas-lawsuit-medical-emergency-exceptions-abortion/ (Accessed May 7, 2024).

Cleveland Clinic. 2021. "Edwards Syndrome (Trisomy 18): Genetic Condition, Symptoms & Outlook." *Cleveland Clinic,* December 13, 2021. https://my.clevelandclinic.org/health/diseases/22172-edwards-syndrome (Accessed April 21, 2024).

Dobbs v. Jackson Women's Health Organization, 597 S. Ct. 215 (2022).

Fletcher, Lizzie. 2024. "Congresswoman Lizzie Fletcher to Host Houston OB/GYN Fighting Texas Abortion Ban at State of the Union." February 29, 2024. *U.S. Congresswoman Lizzie Fletcher*. https://fletcher.house.gov/news/documentsingle.aspx?DocumentID=5142 (Accessed April 21, 2024).

Jones, Richard E., and Kristin H. Lopez. 2014. "Chapter 14 - Induced Abortion." In *Human Reproductive Biology (Fourth Edition)*, eds. Richard E. Jones and Kristin H. Lopez, 271–82. San Diego: Academic Press. doi:10.1016/B978-0-12-382184-3.00014-3.

Klibanoff, Eleanor and Bohra, Neelam. 2023. "Judge Says Texas Woman May Abort Fetus with Lethal Abnormality." The Texas Tribune. https://www.texastribune.org/2023/12/07/texas-emergency-abortion-lawsuit/ (May 10, 2025).

Smith, Tracy. 2024. "Texas Mother Kate Cox on the Outcome of Her Legal Fight for an Abortion: 'It Was Crushing'" *CBS News,* January 14, 2024. https://www.cbsnews.com/news/kate-cox-on-her-legal-fight-for-abortion-trisomy-18/ (Accessed April 21, 2024).

Texas Department of State Health Services. n.d. "Healthy Texas Mothers and Babies Data | Texas DSHS." https://www.dshs.texas.gov/maternal-child-health/texas-data (Accessed May 7, 2024).

Texas State Law Library. 2024. "Guides: Abortion Laws: Criminal Penalties." Texas State Law Library, February 27, 2024. https://guides.sll.texas.gov/abortion-laws/criminal-penalties (Accessed April 21, 2024).

The White House. 2024. "The White House Announces Guest List for the First Lady's Box for the 2024 State of the Union Address." *The White House*. https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/07/the-white-house-announces-guest-list-for-the-first-ladys-box-for-the-2024-state-of-the-union-address/ (Accessed April 21, 2024).

Tuma, Mary. 2024. "Kate Cox's Doctor Is Still Fighting to Provide Emergency Abortions." *Texas Monthly,* February 7, 2024. https://www.texasmonthly.com/news-politics/damla-karsan-kate-cox-abortion-ban-texas/ (Accessed April 21, 2024).

Tuma, Mary. 2023. "Testifying Against Texas, Women Denied Abortions Relive the Pregnancies That Almost Killed Them." *The Intercept* July 21, 2023. https://theinterceptd.com/2023/07/21/texas-abortion-zurawski-lawsuit/ (Accessed April 21, 2024).

TX Health & Safety Code § 170A.004 (2022).