

# Are Safe Haven Laws an Adequate Replacement for Abortion Rights?

By: Sophia Foster



The United States Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* had a devastating impact on an individual's right to choose. By holding that there is no constitutional right to abortion, the Court overturned decades of precedent that had protected a person's bodily autonomy, resulting in negative effects on a pregnant person's rights. But there were other, less obvious, effects of the decision as well. One of these results is a renewed attention on a minimally discussed law – a law that all fifty states have some version of. This law, commonly known as a safe haven law, was referred to directly by Justice Alito in the majority opinion in *Dobbs v. Jackson Women's Health Organization*. Alito noted that pro-life proponents emphasize that in light of new, modern developments, the right to an abortion is no longer necessary.[1] One of these modern developments, he states, are safe haven laws, laws that allow women to drop off their babies anonymously.[2] Justice Amy Coney Barrett also invoked the idea of safe haven laws as an alternative to abortion during the oral arguments in *Dobbs v. Jackson Women's Health Organization*, suggesting that safe haven laws allowed women to “avoid the burdens of parenting.”[3] But, it is not clear that safe haven laws replace the need for abortion rights.

Safe haven laws are not a modern development. It is believed that in 1198 in Rome, Pope Innocent III became so distressed by the number of newborns found by fishermen on the Tiber River, that he created the foundling wheel.[4] These foundling wheels were large cylinders set into the walls of churches or convents.[5] The infant could be placed into the cylinder from the outside, and then rotated inwards where the child could be reached by a member of the church.[6] In Italy, foundling wheels began to fall out of use by the late nineteenth century.[7]

In the United States, safe haven laws began in Texas in 1999, with the enactment of HB 3423[8] commonly known as the Baby Moses Law.[9] The law provided that a parent who leaves a baby that is less than 60 days old, unharmed, at a designated Safe Haven with a designated individual, will not be prosecuted for abandonment or neglect.[10] Texas's law was soon followed by the rest of the states, each state enacting slightly different laws.[11] Indiana's safe haven law is reminiscent of the solution proposed by Pope Innocent III in medieval Italy and allows for parents to anonymously surrender their child into a baby box, a temperature-controlled device installed into the side of a fire station or hospital.[12] A common, important, question from critics is whether safe haven laws actually result in fewer infants being found dead and abandoned. But Justice Alito raises a separate question, which is whether safe haven laws have rendered abortion rights obsolete. New York provides a useful example.

New York's safe haven law, titled the Abandoned Infant Protection Act, was enacted in July 2000 and allows for a parent to anonymously abandon a baby up to thirty days old without fear of prosecution, as long as the child is left unharmed with an appropriate person or in a suitable location.[13] Statistics show there has been a decrease in abortions in New York State. In 2000 there was 129, 678 legal abortions[14], and in 2019 there was 78, 587.[15] Although there have been fewer abortions in the wake of the safe haven law enactment, at least 78, 587 individuals in New York in 2019 did not feel that a safe haven better suited their needs than an abortion. Further, research shows these declines are due to an overall decline in unintended pregnancies due to increases in contraceptive availability and use[16] and not from the enactment of safe haven laws.

Another question is that even if safe haven laws have rendered abortion rights obsolete, are they really the best solution? The UN Committee on the Rights of the Child argues no and believes that baby boxes violate parts of the Convention on the Rights of the Child. They point specifically to the right that “[C]hildren must be able to identify their parents and even if separated from them the state has a ‘duty to respect the child's right to maintain personal relations with his or her parent.’”[17] Possibly following the lead of the UN Committee on the Rights of the Child, England has refrained from enacting a safe haven law. Police in England usually view child abandonment as a welfare issue, instead of a criminal issue. [18] In England, the main priority is to reunify the abandoning parent and child, while providing the parent with proper social services and counseling support.[19] Also relevant is the fact that abortion is legal in England, providing pregnant individual's an option to choose what best suits their needs when faced with an unintended pregnancy.[20]

In light of the high need for abortions even in a state with a safe haven law, and the warnings posited by the UN Committee on the Rights of the Child, it appears that the majority opinion's reliance in *Dobbs* on safe haven laws rendering

abortion rights obsolete was misplaced. The U.S. might be better served by following the lead set in England, where an individual's right to choose is prioritized, as well as a dedication to providing an individual in crisis with the proper support and resources that they need.

**Sophia Foster is a Staff Editor at CICLR.**

[1] *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct 2228, 2337 (2022).

[2] *Id.* at 2259.

[3] Dana Goldstein, *Drop Box for Babies: Conservatives Promote a Way to Give Up Newborns Anonymously*, N.Y. Times (Aug. 6, 2022, 5:15 PM), <https://www.nytimes.com/2022/08/06/us/roe-safe-haven-laws-newborns.html?searchResultPosition=1> [<https://perma.cc/PYU9-5BXW>].

[4] Sylvia Poggioli, *Italy Takes High-Tech Tactic for Abandoned Babies*, NPR (March 7, 2007, 12:34 PM), <https://www.npr.org/2007/03/07/7730566/italy-takes-high-tech-tactics-for-abandoned-babies> [<https://perma.cc/N2B7-CUYS>].

[5] *Id.*

[6] Philip Pullella, *Italy Reinvents Wheel to Save Abandoned Babies*, Reuters, (Feb 26, 2007, 12:50 PM), <https://www.reuters.com/article/us-abandoned-babies/italy-reinvents-wheel-to-save-abandoned-babies-idUSCOL66386120070226> [<https://perma.cc/5FV9-SD9P>].

[7] David I. Kertzer, *The Lives of Foundlings in Nineteenth-Century Italy*, in *Abandoned Children* 41, 42 (Catherine Panter-Brick & Malcolm T. Smith eds., 2000).

[8] Debbe Magnusen, *From Dumpster to Delivery Room: Does Legalizing Baby Abandonment Really Solve the Problem?*, 22 J. JUV. L. 1, 6 (2001-2002).

[9] Carol Sanger, *Infant Safe Haven Laws: Legislating in the Culture of Life*, 106 Colum. L. Rev. 753, 756 (2006).

[10] Tex. Dep't of Fam. & Protective Servs., *Baby Moses Law or Safe Haven*, [https://www.dfps.state.tx.us/Child\\_Protection/Child\\_Safety/Resources/baby\\_moses.asp](https://www.dfps.state.tx.us/Child_Protection/Child_Safety/Resources/baby_moses.asp) [<https://perma.cc/LN5F-754K>] (last visited Oct. 03, 2022).

[11] *Safe Haven Laws*, U.S. Legal, <https://safehavenlaws.uslegal.com> [<https://perma.cc/67AJ-62AZ>] (last visited Oct. 04, 2022).

[12] Goldstein, *supra* note 3.

[13] N.Y. Off. of Child. & Fam. Servs., *Abandoned Infant Protection Act*, <https://ocfs.ny.gov/programs/safe/> [<https://perma.cc/Q9ZZ-PEBU>] (last visited Oct. 03, 2022).

[14] Laurie D. Elam-Evans, Lilo T. Strauss, Joy Herndon, Wilda Y. Parker, Sonya V. Bowens, Suzanne Zane & Cynthia J. Berg, *Abortion Surveillance --- United States, 2000*, CDC (Nov. 28, 2003), <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss5212a1.htm> [<https://perma.cc/ZA77-VL8Z>].

[15] Katherine Kortsmitt, Michele G. Mandel, Jennifer A. Reeves, Elizabeth Clark, H. Pamela Pagano, Antionette Nguyen, Emily E. Petersen & Maura K. Whiteman, *Abortion Surveillance – United States, 2019*, CDC (Nov. 26, 2021) <https://www.cdc.gov/mmwr/volumes/70/ss/ss7009a1.htm> [<https://perma.cc/DQA7-RAEM>].

[16] Laurie D. Elam-Evans, Lilo T. Strauss, Joy Herndon, Wilda Y. Parker, Sonya V. Bowens, Suzanne Zane & Cynthia J. Berg, *supra* note 13.

[17] Randeep Ramesh, *Spread of 'baby boxes' in Europe alarms United Nations*, Guardian (June 10, 2012, 2:13 PM), <http://www.nidaa.nl/images/stories/guardian-20120610.pdf> [<https://perma.cc/QU6S-TY6F>].

[18] Katherine O'Donovan, *"Real" Mothers for Abandoned Children*, 36 Law & Soc'y Rev. 347, 357 (2002).

[19] *Id.* at 358.

[20] *What are the UK's laws on abortion?* BBC (Oct. 22, 2019), <https://www.bbc.com/news/health-19856314> [<https://perma.cc/W2LD-L4FC>].

