

Surveillance and Reproductive Rights: How Abortion Laws are Compromising Medical Privacy

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Abstract

Following the overturn of *Roe v. Wade*, there has been widespread concern about the potential misuse of menstrual-tracking apps and other private health data in prosecuting abortion-related cases. This research explores whether fears about data privacy are justified by investigating how private information was utilized in these high-profile legal cases. By analyzing court documents, media coverage, and the application of legal and privacy standards, the paper reveals how restrictive abortion laws can lead to breaches of medical confidentiality and impact patient care. Findings indicate that both *Gonzalez's* and *Watts's* cases reflect a troubling trend where legal and ethical boundaries are compromised, highlighting significant concerns about the erosion of privacy protections. The study calls for stronger federal regulations to protect women's health data and ensure ethical treatment in abortion-related cases, emphasizing the broader implications for reproductive rights and privacy in the post-*Roe v. Wade* era.

Introduction

Many women and girls were encouraged on social media to delete their menstrual-tracking apps after the overturn of *Roe v. Wade* by the US Supreme Court in June 2022. The mass deletion of menstrual-tracking apps was in response to rampant fear that the data stored on these apps could be used to prosecute women in court cases where women could be tried for murder after receiving a medicalized abortion. Prior studies have revealed that sociodemographic factors are becoming less impactful on those who use mobile apps to access

health records; however, factors such as gender remain¹. This means a larger population of women can access health records via mobile apps but are less likely to do so. This reluctance to engage with health records via mobile apps can be attributed to fear of losing bodily autonomy and the criminalizing punishments for obtaining abortions developing in many states following the overturn of *Roe v. Wade*². This paper strives to evaluate whether this fear of new unregulated technology by women is valid by evaluating if data provided by menstrual-tracking apps could be used as evidence in prosecution against women obtaining medicalized, illegal abortions. This will be done by examining court cases where private data has been used against women, statistics of women deleting their menstrual cycle apps, and the direct methods by law enforcement to gain access to this data.

Methodology

This paper will examine the court case of Lizelle Gonzalez, who has been charged with murder for having a medicalized abortion in Texas. The focus will be on how ‘private data’ was used by the prosecution in this case, including an analysis of how police and prosecutors obtained this digital data. The reliability of private policies provided by technological corporations will also be scrutinized. Additionally, the paper will explore the impact of media coverage on the case and its potential influence on American women's decisions to delete

¹ Carroll, Jennifer K et al. “Who Uses Mobile Phone Health Apps and Does Use Matter? A Secondary Data Analytics Approach.” *Journal of medical Internet research* vol. 19,4 e125. 19 Apr. 2017, doi:10.2196/jmir.5604

² Conti-Cook, Cynthia. "Surveilling the Digital Abortion Diary." *University of Baltimore Law Review*, vol. 50, no. 1, 2020, article 2.

menstrual cycle apps. This case is particularly significant as it occurred after the overturning of *Roe v. Wade*, highlighting the effects of this legal shift on women's privacy and data.

The defendant, Lizelle Gonzalez has been charged with murder in Texas following an abortion. This case is notable due to the rare and contentious nature of applying murder charges in the context of abortion, which raises complex legal and ethical issues. The case is being adjudicated in Texas, a state known for its stringent abortion laws, particularly following the enactment of Senate Bill 8 (SB 8) and other restrictive measures. The charge of murder is defined under Texas Penal Code § 19.02, which criminalizes the unlawful killing of another person. Texas has some of the most restrictive abortion laws in the U.S., including provisions that criminalize abortion after a certain point in pregnancy. Under SB 8, private citizens are empowered to sue anyone who performs or aids in an abortion after around six weeks of pregnancy. The prosecution argues that Gonzalez's abortion constitutes the unlawful killing of a person, applying the murder statute in this context. The defense likely challenges the application of murder charges to an abortion, arguing that such charges are inappropriate given the legal and medical context of abortion rights. Court documents were obtained from the Legislative Reference Library of Texas and the American Civil Liberties Union of Texas.

To analyze the court documents in the Lizelle Gonzalez case, qualitative analytical framework centered on thematic analysis will be used. This approach will involve a detailed examination of the court records to identify and interpret key themes related to the use of 'private data' by the prosecution. The analysis will focus on how digital data was obtained and used to support the charge of murder for having a medicalized abortion. By coding relevant sections of the court documents, I will explore aspects such as data collection methods, legal arguments presented, and the judicial rationale behind the use of digital evidence in this case. This

framework will provide insights into the intersection of privacy concerns and legal proceedings, highlighting the implications of using private data in prosecuting reproductive health decisions. The goal is to understand how the legal system navigates the complexities of digital privacy in the context of abortion-related cases.

The analytical framework for examining the Lizelle Gonzalez case is reliable due to its structured approach and adherence to rigorous qualitative methods. Thematic analysis ensures a thorough and systematic identification of recurring themes and patterns within the court documents, allowing for a comprehensive understanding of how the prosecution utilized private data. By focusing on specific elements such as data collection methods and legal arguments, the framework minimizes subjective bias and provides a clear, objective interpretation of the evidence. Additionally, the use of coding and detailed examination of court records enhances the accuracy and credibility of the findings, ensuring that the analysis is grounded in the actual data presented in the case. This meticulous approach contributes to a reliable and valid exploration of the implications of digital privacy in legal contexts.

However, focusing on a single court case, such as the Lizelle Gonzalez case, presents certain limitations in this research. The findings may need to be more generalizable to other cases or jurisdictions, as the legal and factual context of Gonzalez's case might be unique. The analysis will be constrained by the specific circumstances and legal arguments pertinent to this case, potentially overlooking broader trends and variations in how private data is used in similar cases. Additionally, without comparative analysis, there is a risk of missing out on diverse perspectives and practices across different cases, which could provide a more comprehensive understanding of the issue. This limitation underscores the need for caution when extrapolating conclusions from a single case to broader legal or policy contexts.

Results

This section evaluates the likelihood of private data being obtained by law enforcement in abortion-ban states, using the case of Lizelle Gonzalez as a primary example. By examining the documents related to Gonzalez's case, we aim to understand how the prosecution substantiated the claim of her having had an abortion and assess the implications for data privacy in similar future cases. On March 30th, 2022, Lizelle Herrera, now known as Lizelle Gonzalez, was charged with murder by the Grand Jury of Starr County, Texas. Defendants Ramirez and Barrera presented this charge. However, the charges were dismissed shortly after that, as indicated in a press release by Defendant Ramirez, who stated that upon reviewing Texas law, it was evident that Ms. Gonzalez could not be prosecuted for the alleged crime³. Ramirez clarified that Ms. Gonzalez's actions did not constitute a criminal act under Texas law, referencing Section 19.06 of the Texas Penal Code.

Section 19.06 of the Texas Penal Code provides a significant legal context for this case. It specifically exempts the death of an unborn child from being classified as murder if the mother commits the act. This exemption underscores the legal boundaries related to abortion and influences how cases involving induced abortions are prosecuted. Additionally, the Privacy Rule, outlined in 45 CFR Part 160 and Subparts A and E of Part 164, is critical in safeguarding personal health information. This rule mandates stringent protections for individuals' medical records and health information, applying to health plans, healthcare providers, and

³ **Ramirez, Richard.** "In Reviewing the Applicable Texas Law, It Is Clear That Ms. Herrera Cannot and Should Not Be Prosecuted for the Allegation Against Her." *Facebook*, posted by **Richard Ramirez**, 30 Mar. 2022

clearinghouses that handle electronic health transactions. The rule establishes conditions on how such information can be used or disclosed without an individual's consent.

Information suggests that the District Attorney's Office and the Starr County Sheriff's Office may have had arrangements with Starr County Memorial Hospital to report cases involving potential abortions⁴. This arrangement implies that other women's protected health information could have been disclosed during investigations or potential indictments. Evidence indicates that during or following Gonzalez's hospitalization, employees or agents of Starr County Memorial Hospital shared her private health records with law enforcement without obtaining the necessary consent. This action constituted a breach of privacy laws, as outlined by the HIPAA Privacy Rule, which stipulates that protected health information cannot be disclosed without proper authorization.

The analysis reveals that in Lizelle Gonzalez's case, private health data was misused and disclosed to law enforcement without consent. This breach highlights significant concerns regarding the protection of sensitive health information, particularly in the context of investigations into abortion-related cases. The findings underscore the need for stricter adherence to privacy laws and enhanced safeguards to protect individual health information from unauthorized access and use.

⁴ "Plaintiff Amended Complaint." *Plaintiff Amended Complaint*, Section 4.3 and 4.6, Gonzalez v. Ramirez Et Al, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS MCALLEN DIVISION, 7:24-cv-00132, April 11th, 2024.

Discussion

The comparative analysis of the cases involving Lizelle Gonzalez and Brittney Watts underscores a troubling trend in the intersection of abortion laws and medical privacy. Both instances reveal how restrictive abortion laws can compromise patient care and confidentiality, reflecting a broader issue with the current legal landscape regarding reproductive health. In September 2023, Brittney Watts in Ohio faced a harrowing situation similar to that of Lizelle Gonzalez. According to a CBS News interview, Watts experienced a natural miscarriage at 22 weeks, a situation deemed nonviable by medical professionals, and despite seeking help at Mercy Health - St. Joseph Warren, Watts left the hospital against medical advice due to concerns about how Ohio's abortion bans would affect her care. This decision, influenced by hospital ethics and legal fears, resulted in a 19-hour delay before Watts miscarried alone at home. Following this, the fetus was discovered by police after Watts returned to the hospital, leading to her arrest on a felony charge of abuse of a corpse⁵.

Providers in abortion-ban states might report patients who have attempted self-medicated abortions based on their ethical and legal perception of a need to document abortion complications and fetal losses, especially at later stages of pregnancy, as well as other mandatory reporting requirements such as substance abuse, domestic violence, child maltreatment, and self-harm⁶. However, this impact of anti-abortion laws means the likelihood of similar data usage

⁵ "Brittany Watts: The Ohio Woman Charged with a Felony After a Miscarriage Talks Shock of Her Arrest." *CBS News*, 6 Aug. 2024, <https://www.cbsnews.com/news/brittany-watts-the-ohio-woman-charged-with-a-felony-after-a-miscarriage-talks-shock-of-her-arrest/>.

⁶ Roberts, Sarah C M et al. "Health care provider reporting practices related to self-managed abortion." *BMC women's health* vol. 23,1 136. 27 Mar. 2023, doi:10.1186/s12905-023-02266-7

in future cases appears significant. Gonzalez's and Watts's cases highlight how hospitals, motivated by legal fears, might compromise patient confidentiality. Watts's situation, in particular, illustrates that even without an induced abortion, a woman's private medical information can be exposed to law enforcement, leading to prosecution. This scenario paints a grim picture for women in the U.S., suggesting that HIPAA laws or medical professionals may not safeguard their private data. The potential for such breaches to extend beyond medical records to online data, such as search histories and app information, is alarming. The fear propagated by the post-Roe v. Wade environment is further validated by these cases, indicating a growing threat to privacy and rights.

The impact of abortion bans on data usage is profound. The compromise of private policies by hospitals, in their attempt to avoid legal repercussions, threatens women's health and safety. This undermines the integrity of privacy protections across various platforms, including search engines, phone records, and period tracking apps. The precedent set by hospitals like Starr County Memorial and Mercy Health St. Joseph Warren could lead other companies to disclose private information under similar circumstances. Such a trend would exacerbate the erosion of privacy rights, particularly for women seeking reproductive health services. To address these issues, there must be stronger federal protections for privacy. The sharing of medical information without patient consent, as seen in the cases of Watts and Gonzalez, undermines HIPAA and jeopardizes patient trust and care. Although state governments have the authority to regulate abortion, this does not extend to the violation of federal privacy laws. Therefore, additional federal regulations are necessary to ensure that natural and medical miscarriages are treated ethically and that women's private data is protected.

The legal impact of these cases could set significant precedents, influencing how abortion laws intersect with criminal statutes and shaping future legal interpretations and legislative actions. The contentious nature of abortion laws in states like Texas and Ohio raises critical questions about the broader implications for reproductive rights and privacy. The restriction of reproductive rights, as evidenced by these cases, also risks infringing on other fundamental rights, including the right to privacy. Addressing these concerns requires a comprehensive approach that balances legal regulations with protecting individual rights and health.

Conclusion

The analysis of the Lizelle Gonzalez and Brittney Watts cases highlights a disturbing intersection of abortion restrictions and medical privacy breaches. Both cases exemplify how stringent abortion laws can compromise patient care and privacy, illustrating a broader trend of increased surveillance and legal action against women seeking reproductive health services. The revelations from these cases, including the misuse of private medical data and the erosion of confidentiality protections, underscore the urgent need for more robust federal privacy safeguards.

As abortion bans continue to evolve, they not only endanger women's health but also jeopardize the integrity of private data protection. These cases serve as a critical reminder of the consequences of such legal restrictions and the necessity for comprehensive reforms to protect individual rights. To safeguard privacy and ensure proper medical care, it is essential to establish robust federal protections that uphold reproductive rights and data security. The implications of

these cases extend beyond the legal domain, affecting broader societal trust and the fundamental right to privacy.

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