

Imprisonment of Oklahoma woman for miscarriage is tied to broader attack on abortion rights

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The National Association for Pregnant Women (NAPW) has denounced the prosecution of Brittney Poolaw, 21, who was sentenced to 4 years in prison this month following a miscarriage, with a statement from the organization titled “Oklahoma Prosecution and Conviction of a Woman for Experiencing a Miscarriage is Shameful and Dangerous.”

The statement notes, “Contrary to all medical science, the prosecutor blamed the miscarriage on Ms. Poolaw’s alleged use of controlled substances. Not even the medical examiner’s report identifies use of controlled substances as the cause of the miscarriage. Even with this lack of evidence, the prosecutor moved forward with the charge. On October 5, after just a one-day trial, Ms. Poolaw was convicted and sentenced to a four-year prison term.”

“Ms. Poolaw’s case is a tragedy. She has suffered the trauma of pregnancy loss, has been jailed for a year and half during a pandemic, and was charged and convicted of a crime without basis in law or science. We are supporting Ms. Poolaw as she explores her legal options, and we are working to ensure that this type of injustice does not happen again.”

Poolaw, whose trial lasted only a day, was convicted in less than an hour of first-degree manslaughter on October 5, for having a miscarriage of a non-viable fetus. Poolaw had been arrested after going to a hospital for medical assistance with the miscarriage. She was held in jail for the entire time before her trial because she was unable to afford the \$20,000 bail.

Abortions are allowed at up to 22 weeks of gestation in Oklahoma. Poolaw was only at 17 weeks when the miscarriage occurred. The NAPW stated that the conviction was “just one example of the troubling trend we are documenting in Oklahoma that replaces compassion and respect with criminal prosecution.”

Poolaw’s case follows an acceleration in the prosecution of miscarriages across the United States.

According to a study by the NAPW, from 1973 to 2005

there were 413 cases of women being prosecuted or deprived of liberty for miscarriages. Since then, the number has skyrocketed to 1,254 cases between 2006 and 2020.

In August the National Association of Criminal Defense Lawyers (NACDL) released a report entitled “Abortion in America: How Legislative Overreach Is Turning Reproductive Rights Into Criminal Wrongs.” The report reviews how the trend towards criminalization is bound up with the growing attack on abortion rights.

The NACDL pointed to the Texas abortion ban, which the US Supreme Court has allowed to remain in effect pending a court challenge, despite it directly contradicting the Court’s own precedent, set in the landmark 1973 case *Roe v Wade*.

Explaining why these abortion laws matter to the NACDL, the report states that “existing criminal laws, many of which include the redefinition of ‘person’ to include the ‘unborn,’ are already fueling arrests of pregnant women and new mothers.”

“President Nixon’s 1971 declaration of the war on drugs opened the door to a new era of mass incarceration, overcriminalization, and an expansion of federal and state law enforcement agencies’ powers of investigation and surveillance. This law enforcement apparatus did not exist in pre-*Roe* America, but it will most certainly be deployed in a post-*Roe* America to target both the abortion providers and the people seeking and having abortions.”

The war on drugs is a bipartisan policy continued by Republican and Democratic administrations alike, and continued under the Biden administration, with President Joe Biden himself having advocated for many of the bills which have facilitated a broad “law and order” crackdown. He infamously boasted, in a 1993 speech on the Senate floor, “Every major crime bill since 1976 that’s come out of this Congress, every minor crime bill, has had the name of the Democratic senator from the State of Delaware: Joe Biden.”

This is the repressive apparatus which is being used to prosecute women who have miscarriages.

The NACDL documented a plethora of laws that are on the books that could be used to prosecute those who carry out or have an abortion if the Constitutional rights established by *Roe v Wade* are struck down by the Supreme Court.

“According to this Report, there are now more than 4,450 crimes in the federal criminal code, tens of thousands of state criminal provisions — including criminal abortion laws — still on the books, as well as state conspiracy, attempt, and accomplice statutes that could subject a wide range of individuals to criminal penalties if *Roe* is overturned.”

The report continues, stating that state laws impose requirements that “dramatically decrease access to legally approved abortions,” and that “39 states have criminal laws giving fertilized eggs, embryos, and fetuses the status of separate crime victim. While these laws limit their punitive reach to third parties who attack pregnant women or perform illegal abortions on them, recent arrests of women in Alabama, Indiana, and California make clear that these limitations are easily ignored.”

As the NACDL report notes, prosecution of women suffering miscarriages is not limited to Republican-controlled states like Oklahoma.

In Democratic Party-dominated California, then 25-year-old Chelsea Cheyenne Becker was arrested in November 2019 after she delivered a stillborn baby with methamphetamine in its system, in a case strikingly similar to Poolaw’s. Bail was set at \$5 million. In late December 2020 a California court ruled that Becker could face murder charges, which have higher legal consequences than manslaughter charges. The case was subsequently dismissed in May 2021 by a California judge, but only after Becker spent over a year in jail.

Notably, the judge did not clearly rule that California’s homicide law does not apply to miscarriages. As Becker’s trial lawyer from the NAPW stated, “We are disappointed that a dismissal on these grounds does not foreclose the possibility that a misguided prosecutor may attempt a similar prosecution in the future.”

The NACDL noted that abortion opponents have called for its criminalization, including the recently deceased Texas Congressman Ron Wright, who stated he “absolutely” believes women should be punished for having abortions, and Catherine Davis, founder of the anti-abortion Restoration Project, who stated she “believes abortion should be treated exactly like murder—up to and including capital punishment.”

The NACDL states, ominously, “As this Report concludes, ‘the nation stands at the precipice of an extraordinary new wave of criminalization’ with states prepared to arrest and prosecute abortion providers, people who have abortions,

their family members, and all those who assist them.”

It is worth noting that the Supreme Court is set to hear multiple cases pertaining to abortion laws in Texas, as well as a Mississippi law banning all abortion after 15 weeks, directly challenging *Roe*, which establishes fetal viability at 24 weeks of gestation. There have been repeated warnings that the extreme-right majority on the Supreme Court could “end” *Roe* when it takes up the issue.

Mississippi has asked the US Supreme Court to overturn *Roe* altogether, with state attorney general Lynn Fitch urging justices not just to overturn lower court rulings which block the state law, but to use the case as an opportunity to strike down nearly 50 years of legal precedent. This could lead to abortion being banned altogether in half of the US, according to Nancy Northup, president and CEO of the Center for Reproductive Rights.

Those who will be affected most by such a decision will be overwhelmingly the working class and poor. This is not an issue that affects the ruling class, which benefits from the splitting workers along religious and sexual lines, nor does it affect the upper middle class, which, like the elite, is able to easily travel elsewhere to get abortions and avoid potential criminal proceedings for having a miscarriage or being suspected of attempting an abortion.

The *Washington Post*, one of the main mouthpieces for the Democratic Party, stated in a September 2 article that, “Since Wednesday morning, when the [Texas law banning abortion] went into effect, Democrats have made it a focus of their campaigns—and Republicans haven’t. Candidates for governor in deep blue California and purple Virginia have warned that Republican rule could end legal abortion, or at least allow laws like the one in Texas, which offers \$10,000 bounties to people who successfully sue over abortions performed after the sixth week.”

The reality explodes these illusions peddled by the Democrats. They are themselves deeply implicated in the attacks on abortion, allowing the appointments of extreme-right Supreme Court Justices, including the arch-reactionary Amy Coney Barrett. The Democrats have said very little about the prosecutions of women like Poolaw, despite controlling the House, Senate and White House. They have done even less, despite widespread support for abortion rights, to mobilize opposition to the far-right attacks, which, as the corporate media concedes, have a good chance of succeeding in the Supreme Court.



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