

10-29-2024

## When “The Right to Life” Forgoes Quality of Life: Examining the Public Policy Impacts of Mississippi’s Abortion Ban on Women Post-Dobbs

Eleanor Condelles

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/bhrlr>



Part of the [Health Law and Policy Commons](#), [Human Rights Law Commons](#), [Law and Gender Commons](#), [Law and Race Commons](#), and the [Privacy Law Commons](#)

---

### Recommended Citation

Eleanor Condelles, *When “The Right to Life” Forgoes Quality of Life: Examining the Public Policy Impacts of Mississippi’s Abortion Ban on Women Post-Dobbs*, 30 Buff. Hum. Rts. L. Rev. 207 (2024).

Available at: <https://digitalcommons.law.buffalo.edu/bhrlr/vol30/iss1/4>

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Human Rights Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact [lawscholar@buffalo.edu](mailto:lawscholar@buffalo.edu).

**WHEN “THE RIGHT TO LIFE” FORGOES  
QUALITY OF LIFE: EXAMINING THE PUBLIC  
POLICY IMPACTS OF MISSISSIPPI’S ABORTION  
BAN ON WOMEN POST-DOBBS.**

*Eleanor Condelles*<sup>†</sup>

*Abstract*

*On June 24, 2022, the Supreme Court eliminated the right to abortion. Its ruling in Dobbs v. Jackson Women’s Health Org. overturned Roe v. Wade and was the culmination of a decades-long attack on abortion rights and accessibility. Without a federal abortion standard, it is now up to each state to determine women’s access to abortion. This system will produce a tiered structure of abortion access, causing significant health and socioeconomic burdens for women generally and reinforcing fundamental social inequities. Women of means will find ways around the Dobbs decision; others, who lack finances, childcare, or the ability to travel for services, will not be so fortunate. In this new reality, low-income women and women of color will suffer the most.*

*This article begins by offering contextual backgrounds to three seminal cases in the abortion rights movement. Part II examines how Mississippi’s near total abortion ban will cause unique and painful harm to its marginalized women and will have negative public policy outcomes generally. Finally, Part III discusses beneficial policy initiatives in the post-Roe landscape.*

---

<sup>†</sup> B.A. State University of New York at New Paltz; J.D. Albany Law School of Union University. I am thankful for the members of the Albany Law School faculty and the Albany Government Law Review who supported my work on this article.

## INTRODUCTION

On June 24, 2022, the trajectory of American women's<sup>1</sup> progress was permanently altered: the right to abortion was abolished by the Supreme Court. The Court's ruling in *Dobbs v. Jackson Women's Health Org.* overturned *Roe v. Wade* and dismantled nearly fifty years of judicial precedent regarding rights grounded in personal liberty.<sup>2</sup> In an instant, millions of American women were robbed of their right to bodily autonomy, to determine their life course, and to participate as equals in American society.<sup>3</sup>

In the absence of a federal abortion standard, it is now up to each state to determine women's access to abortion.<sup>4</sup> State laws now range from outright prohibitions of abortion with criminal penalties to comprehensive protections for abortion that include funding for facilities and patients as well as legal protections for clinicians.<sup>5</sup> This system will undoubtedly produce a two-tier structure of abortion access, causing significant health and socioeconomic burdens for women generally and reinforcing fundamental inequities in society.<sup>6</sup> In this new reality, low-income women and women of color will suffer the most.<sup>7</sup> Abortion rates are nearly four times higher among black women when

---

1. Anyone who can get pregnant may need an abortion, including people who do not identify as women. For the purposes of this article, I will use the term "women."

2. See generally *Dobbs v. Jackson Women's Health Org.*, 142 S.Ct. 2228 (2022).

3. See *id.* (Breyer, Sotomayor & Kagan, JJ., dissenting).

4. Samantha Artiga et. al., *What are the Implications of Overturning Roe v. Wade for Racial Disparities?* KAISER FAMILY FOUND (July 15, 2022), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/what-are-the-implications-of-the-overturning-of-roe-v-wade-for-racial-disparities>.

5. *Interactive Map: US Abortion Policies and Access After Roe*, GUTTMACHER INST. (2023), <https://states.guttmacher.org/policies/>.

6. Erwin Chemerinsky & Michele Goodwin, *Abortion: A Woman's Private Choice*, 95 TEX. L. REV. 1189, 1190 (2017).

7. *Id.*

2024]

*The Right to Life*

209

compared to white women.<sup>8</sup> In Mississippi, the state of *Dobbs*' inception, seventy-four percent of all abortions in 2019 were obtained by black women.<sup>9</sup> This disparity can be explained by a variety of factors, including unequal access to quality family planning services, lack of quality medical care, and economic disadvantage.<sup>10</sup> Further, women who are denied abortions—the majority of whom are already mothers—are far more likely to experience economic insecurity and poverty.<sup>11</sup>

Pregnancy and childbirth involve significantly greater risks than abortion.<sup>12</sup> Childbirth is fourteen times more likely to result in death than abortion in the United States, and is considerably more dangerous in certain states.<sup>13</sup> Indeed, the United States has one of the highest maternal mortality rates in the world, a crisis that disproportionately impacts Black and low-income communities.<sup>14</sup> The risk of maternal mortality for Black women is four times greater than that of white women, and rates are even worse in states like Mississippi, where abortions are now criminalized.<sup>15</sup> A recent study found that banning abortions

---

8. Nandita Bose, *Roe v. Wade ruling disproportionately hurts Black women, experts say*, REUTERS (June 27, 2022, 2:53 PM), <https://www.reuters.com/world/us/roe-v-wade-ruling-disproportionately-hurts-black-women-experts-say-2022-06-27>

9. *See id.*

10. *See id.*

11. *Id.*

12. *Abortion Access Fact Sheet*, AM. COLL. OF OBSTET. AND GYNECOL. (2023), <https://www.acog.org/advocacy/abortion-is-essential/come-prepared/abortion-access-fact-sheet>.

13. *See id.*

14. *See* NAT'L. BLACK WOMEN'S REPRODUCTIVE JUSTICE AGENDA: OUR BODIES, OUR LIVES, OUR VOICES THE STATE OF BLACK WOMEN & REPRODUCTIVE JUSTICE 51 (June 2017) (hereinafter "Black Women & Reproductive Justice").

15. *Id.*; Emily Wagster Pettus, *Maternal mortality rate is much higher for Black women than White women in Mississippi, study says*, AP (December 7, 2023 at 6:27 PM), <https://apnews.com/article/mississippi-maternal-mortality-health-department-296067d522b89951280be2cd6f05c180> (stating that Black women were four times more likely to die of pregnancy-related causes than white women in the state in 2020).

nationwide would result in a twenty-one percent increase in the number of pregnancy-related deaths overall and a thirty-three percent increase among black women.<sup>16</sup> Due to this high risk of pregnancy-related death, receiving an abortion can be a much safer option than carrying a pregnancy to term, especially among women who already have medical issues or those who lack access to healthcare.<sup>17</sup>

This Note begins in Part I by offering brief introductions and contextual backgrounds to three seminal cases in the abortion rights movement: *Roe v. Wade*, *Planned Parenthood v. Casey*, and *Dobbs v. Jackson Women's Health Org.* Part II will examine how Mississippi's near total abortion ban will cause unique and painful harm to its low-income and marginalized women. Elimination of abortion access in the state will have negative public policy outcomes. Mississippi claims that because "policy advances now promote women's full pursuit of both career and family," the need for abortion has been eliminated.<sup>18</sup> Yet, this suggestion is completely unsupported as the state has consistently rejected policy measures that have demonstrably advanced women's social equality.<sup>19</sup> Moreover, the state's implicit assumption that abortion access has no meaningful impact on women's lives is simply false.<sup>20</sup> A substantial body of research shows that abortion access—or lack thereof—has significant effects on the health and socio-economic well-being of women, and particularly on low-income women and women of color.<sup>21</sup> Finally, Part III of this Note will discuss

---

16. Amanda Jean Stevenson, *The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant*, 58 DEMOGRAPHY J. 6, 6 (Dec. 2021)

<https://pubmed.ncbi.nlm.nih.gov/34693444/>.

17. See Chemerinsky & Goodwin, *supra* note 6, at 1189.

18. Brief of Amici Curiae Economists in Support of Respondents at 19, *Dobbs v. Jackson Women's Health Org.* (2021) (No. 19-1392), [https://www.supremecourt.gov/DocketPDF/19/19-1392/193084/20210920175559884\\_19-1392bsacEconomists.pdf](https://www.supremecourt.gov/DocketPDF/19/19-1392/193084/20210920175559884_19-1392bsacEconomists.pdf). (hereinafter "Dobbs Economists' Amicus Brief")

19. See *id.* at 19-23.

20. *Id.* at 23.

21. See *id.* at 34.; see also Caitlin Myers, *Measuring the Burden: The Effect of Travel Distance on Abortions and Births* 11-12 (IZA Inst. Of Lab. Econ., Discussion Paper Series No. 14556, 2021), <https://ftp.iza.org/dp14556.pdf>.

social-policy initiatives that will benefit women in the post-*Roe* landscape. These initiatives include developing state and federal frameworks modeled after pro-choice policies currently in effect in certain states and adopting a more intersectional approach to reform within the reproductive rights movement.

## I. POLITICIZING PRECEDENT: THE PATH TO OVERTURNING ROE

### A. *Roe v. Wade*

*Roe v. Wade*, the seminal case of the abortion-rights movement, was decided in 1973.<sup>22</sup> The decision rested on the shoulders of earlier Supreme Court rulings that recognized a right to privacy through the Fourteenth Amendment,<sup>23</sup> despite not being explicitly enumerated in the Constitution.<sup>24</sup> The Court found the ability to exercise control over one's pregnancy to be central to "personal liberty," and recognized the "detriment that the State would impose upon the pregnant woman by denying this choice," including the health and economic risks associated with forced pregnancy.<sup>25</sup> *Roe* conferred the highest degree of constitutional protection to abortion rights—strict scrutiny—and effectively placed reproductive decision-making alongside other fundamental rights, including freedom of speech and religion.<sup>26</sup> However, the Court limited abortion by finding that a state's interest in protecting both the health of the mother and "the potentiality of human life" becomes a "compelling state interest" at a certain point in pregnancy.<sup>27</sup> The Court adopted a trimester framework in which more regulation of abortion became permissible as a pregnancy progressed.<sup>28</sup> During the first trimester, the decision to terminate pregnancy was

---

22. See *Roe v. Wade*, 410 U.S. 113 (1973).

23. See *id.* at 154, 164; *Griswold v. Connecticut*, 381 U.S. 479 (1965).

24. See *Griswold*, 381 U.S. at 492.

25. *Roe*, 410 U.S. at 153.

26. See *id.*

27. *Id.* at 162-63.

28. *Id.* at 164-65.

solely at the woman's discretion.<sup>29</sup> The Court found the state's interest in the health of the mother became "compelling" at the second trimester of pregnancy; thus, the Court reasoned that states could regulate (but not ban) abortion during this trimester.<sup>30</sup> After the second trimester, the fetus becomes viable and presumably capable of "meaningful life outside the mother's womb."<sup>31</sup> At this point, the state was permitted to regulate or outlaw abortions in the interest of the potential life, except when necessary to preserve the life or health of the mother.<sup>32</sup>

### B. *Planned Parenthood v. Casey*

No sooner had the Court established the fundamental right to abortion did state legislatures, Congress, and the Supreme Court itself begin to restrict this liberty interest.<sup>33</sup> The decades after *Roe* saw a national political realignment surrounding abortion.<sup>34</sup> Religious influence helped make "pro-life" politics a fixture of the Republican platform by the 1990s, and Republican led states began enacting laws to restrict abortion.<sup>35</sup>

In its 1992 decision, *Planned Parenthood v. Casey*, the Court reaffirmed the "fundamental right" established in *Roe* but directly overruled both its trimester framework and the use of strict scrutiny for evaluating government regulation of abortions.<sup>36</sup> The trimester system

---

29. *Id.* at 164.

30. *Id.* at 165-66.

31. *Id.* at 163.

32. *Id.* at 163-64.

33. Julia Lichtman, *Restrictive State Abortion Laws: Today's Most Powerful Conscience Clause*, 10 GEO. J. POVERTY L. & POL'Y. 345, 345 (2003).

34. See Michael Vitiello, *Trump's Legacy: The Long-Term Risks to American Democracy*, 26 LEWIS & CLARK L. REV. 467, 499, 502, 503 (2022).

35. See Deepa Shivaram, *The movement against abortion rights is nearing its apex. But it began way before Roe*, NPR (May 4, 2022), <https://www.npr.org/2022/05/04/1096154028/the-movement-against-abortion-rights-is-nearing-its-apex-but-it-began-way-before>

36. See *Planned Parenthood v. Casey*, 505 U.S. 833, 954 (1992) (Rehnquist, J., concurring).

was replaced with a viability line, and strict scrutiny was replaced with an amorphous “undue burden” standard.<sup>37</sup> The Court explained that an undue burden arose if the purpose or effect of the state restriction on abortion placed a “substantial obstacle” in the way of a woman seeking an abortion of a non-viable fetus.<sup>38</sup> The Court continued, however, that in order “to promote the State’s profound interest in potential life, throughout pregnancy[,] the state may take measures to ensure that the woman’s choice is informed.”<sup>39</sup> Such measures would not be invalidated, so long as “their purpose [was] to persuade the woman to choose childbirth over abortion.”<sup>40</sup>

This narrowing of the scope of review changed the way courts reviewed abortion regulations, essentially leaving it up to individual judges to determine what constituted an undue burden.<sup>41</sup> *Casey* indicated that if a regulation imposed a significant burden on a woman’s right to choose, it would be held unconstitutional, regardless of the state’s compelling interests in protecting the potentiality of life and maternal health.<sup>42</sup> But if the regulation merely made it more *difficult* for a woman to exercise her right to abortion, then the regulation would be upheld.<sup>43</sup> The Court thus opened the door for states to enforce abortion regulations for the sake of advancing a pregnant woman’s “informed” decision.<sup>44</sup> As a result, multiple states promptly enacted laws that made it virtually impossible for a woman to obtain an abortion.<sup>45</sup>

---

37. *See id.* at 872.

38. *See id.*

39. *Id.* at 878.

40. *Id.*

41. *See id.*; Chemerinsky & Goodwin, *supra* note 6, at 1216.

42. Colleen Reider, *June Medical Services L.L.C v. Russo: Analyzing the Negative Impact of Maintaining the Status Quo on Abortion*, 55 UIC L. REV. 120, 120 (2022).

43. *Id.*

44. *Id.* at 1216.

45. *Id.*



*C. Dobbs v. Jackson Women's Health Org.*

The abortion debate grew more polarizing after *Casey* paved the way for more restrictions.<sup>46</sup> In the judicial realm, a changing and increasingly conservative Supreme Court<sup>47</sup> issued a series of decisions weakening *Roe*, ultimately culminating in *Dobbs v. Jackson Women's Health Org.* in 2022.<sup>48</sup> *Dobbs* concerned House Bill 1510, the Gestational Age Act, a Mississippi statute that prohibited abortions after the fifteenth week of pregnancy.<sup>49</sup> The District Court immediately blocked the ban from taking effect in 2018, citing its blatant unconstitutionality after fifty years of precedent.<sup>50</sup> The Fifth Circuit affirmed.<sup>51</sup> In his ruling, District Judge Carlton W. Reeves called the law “a facially unconstitutional ban on abortions prior to viability” and wrote that it “disregard[ed] the Fourteenth Amendment guarantee of autonomy for women desiring to control their own reproductive health.”<sup>52</sup>

Mississippi appealed the District Court's decision on the grounds that *Roe* and *Casey* were wrongly decided.<sup>53</sup> On May 17, 2021, the United States Supreme Court agreed to hear the case,<sup>54</sup> marking the first time the Court considered the constitutionality of a pre-viability

---

46. Deepa Shivaram, *Roe established abortion rights. 20 years later, Casey paved the way for restrictions*, NPR (May 6, 2022, 5:00AM), <https://www.npr.org/2022/05/06/1096885897/roe-established-abortion-rights-20-years-later-casey-paved-the-way-for-restrictions>.

47. Amelia Thomson-DeVeaux & Laura Bronner, *The Supreme Court's Partisan Divide Hasn't Been This Sharp in Generations*, FIVETHIRTYEIGHT (July 5, 2022, 1:08 PM), <https://fivethirtyeight.com/features/the-supreme-courts-partisan-divide-hasnt-been-this-sharp-in-generations>.

48. *See Dobbs*, 142 S. Ct. at 2228.

49. *Id.* at 2234.

50. *See Id.*

51. *Id.*

52. Chenelle Hammonds, *Dobbs v. Jackson Women's Health Organization: Analysis of a Post-Roe America*, CONG. PROGRESSIVE CAUCUS CTR. (July 22, 2022), <https://www.progressivecaucuscenter.org/post-roe>.

53. *See Dobbs*, 142 S. Ct. at 2245.

54. *Id.* at 2244.

abortion ban since *Roe*.<sup>55</sup> Mississippi asked the Court not only to uphold its abortion ban, but to overrule *Roe* in its entirety.<sup>56</sup> Writing for the majority, Justice Alito maintained that *Roe* and *Casey* must be overturned because the Constitution does not explicitly confer a right to abortion.<sup>57</sup> He further rejected the argument that abortion was safeguarded by the right to privacy.<sup>58</sup> Alito contended that this type of implicit protection is available only if there is evidence that the right at issue is “deeply rooted in [the] Nation’s history and tradition.”<sup>59</sup> To determine whether abortion qualified as a “deeply rooted” right, Alito analyzed reproductive rights from the lens of the colonial period to mid-nineteenth century America.<sup>60</sup> At common law, abortion was criminalized in at least some stages of pregnancy and was regarded as unlawful in all stages.<sup>61</sup> According to Alito, by the time the Fourteenth Amendment was adopted, three-quarters of the states had made abortion a crime at any stage of pregnancy.<sup>62</sup> In Alito’s view, *Roe* ignored this history and *Casey* declined to reconsider *Roe*’s “faulty” historical analysis.<sup>63</sup> Alito further determined that the right to obtain an abortion is not part of a broader entrenched right that is supported by other precedents.<sup>64</sup> He argued that the decisions on which *Roe* and *Casey* relied did not involve sufficiently similar precedents, that is, they did not explicitly concern what constitutes an “unborn human being.”<sup>65</sup>

---

55. *Dobbs v. Jackson Women’s Health Organization: U.S. Supreme Court Overturns Roe v. Wade*, CTR. FOR REPRODUCTIVE RIGHTS (2022), <https://reproductiverights.org/case/scotus-mississippi-abortion-ban/>.

56. *See Dobbs*, 142 S. Ct. at 2228.

57. *See id.*

58. *See id.*

59. *Id.* at 2246.

60. *See id.*

61. *Id.*

62. *Id.*; *Legal Analysis: What Dobbs Got Wrong, Ctr.*, REPRODUCTIVE RIGHTS (2023), <https://reproductiverights.org/case/scotus-mississippi-abortion-ban> (noting that this statistic is highly disputed by scholars and historians).

63. *Dobbs*, 142 S.Ct. at 2236.

64. *Id.* at 2237.

65. *Id.*

Accordingly, those cases did not support the right to obtain an abortion and, thus, rendered *Roe*'s foundation moot.<sup>66</sup> *Roe* and *Casey* were effectively overruled, and the authority to regulate abortion was relegated to each state.<sup>67</sup>

The dissent emphasized the factual inaccuracies of Alito's method, noting that "early law in fact does provide some support for abortion rights."<sup>68</sup> In addition, the dissent argued that the Court's method of identifying implicit fundamental rights—the so-called "history and tradition"—is highly problematic.<sup>69</sup> By disregarding history after the ratification of the Fourteenth Amendment, the Court limited constitutional protection to only those rights that were recognized at the birth of the nation—rights which did not extend to women or people of color.<sup>70</sup> Finally, the dissent noted that rejecting *Roe*'s precedential cases as too dissimilar was illogical.<sup>71</sup> Were this rationale to be applied to future cases, they argued, it would be nearly impossible to recognize unenumerated rights because they would essentially need to be based on an identical, already-recognized right.<sup>72</sup> According to this logic, many of the Court's unenumerated rights cases could be overruled, as a large number are based on dissimilar precedents.<sup>73</sup> Rather than an exercise in judicial prudence and adherence to *stare decisis*, the *Dobbs* ruling was likely motivated by political conservatives' goal of eliminating federal abortion rights.<sup>74</sup>

---

66. *Id.*

67. *Id.* at 2285.

68. *Id.* at 2318 (Kagan, J., dissenting).

69. *See id.* at 2318.

70. *See id.* at 2325.

71. *See id.* at 2331.

72. *Id.*

73. *Id.* at 2330-31. According to this logic, cases that established the rights to interracial marriage, same-sex marriage, and contraception-use, could all be overturned.

74. *See generally* Jennifer L. Holland, *Abolishing Abortion: The History of the Pro-Life Movement in America*, ORG. OF AM. HISTORIANS (2023), <https://www.oah.org/tah/issues/2016/november/abolishing-abortion-the-history-of-the-pro-life-movement-in-america/>.

### III. THE IMPACTS OF MISSISSIPPI'S ABORTION BAN ON MARGINALIZED WOMEN

Mississippi enacted a trigger ban<sup>75</sup> in 2007.<sup>76</sup> Following the *Dobbs* decision in June 2022, the ban was promptly certified by the state's Attorney General.<sup>77</sup> The state now bans all abortions except to save the life of the pregnant woman, or in cases of rape or incest that have been reported to law enforcement.<sup>78</sup> Providers who violate Mississippi's abortion restrictions may face both civil and criminal penalties, including being charged with a felony, which carries a maximum fine of \$100,000, a maximum prison sentence of ten years, or both.<sup>79</sup> The ban will ultimately exacerbate existing societal inequities for the state's low-income women and women of color, and contribute to negative public policy consequences for the state as a whole.<sup>80</sup>

#### A. *Lack of Social Safety Net*

Mississippi is the poorest state in the nation, yet its lawmakers have consistently rejected reforms to improve the quality of life of its residents.<sup>81</sup> Marginalized groups there are disproportionately likely to

---

75. See Amanda Robert, *What are abortion trigger laws, and where do they stand?* ABA J. (June 30, 2022), <https://www.abajournal.com/web/article/what-are-abortion-trigger-laws-and-where-do-they-stand> (explaining that a trigger law is an abortion ban that was designed to be "triggered" immediately if *Roe* was overturned).

76. See CTR. FOR REPRODUCTIVE RIGHTS: ABORTION IN MISSISSIPPI (2022) <https://reproductiverights.org/case/scotus-mississippi-abortion-ban/abortion-in%20mississippi/>.

77. *Id.*

78. Miss. Code Ann. §41.

79. See Orlando Flores Jr., *What to know about Mississippi abortion rights after SCOTUS overturns Roe v. Wade*, MISS. PUB. BROAD. (June 24, 2022), <https://www.mpbonline.org/blogs/news/what-to-know-about-mississippi-abortion-rights-after-scotus-overturns-roe-v-wade/>).

80. *Id.*

81. See Sarah Fowler, *Mississippi banned most abortions to be the 'safest state' for the unborn. Meanwhile, one in three Mississippi kids lives in poverty*,

live in poverty,<sup>82</sup> where deep-seated institutional racism and sexism contribute to lower wages and educational disparities.<sup>83</sup> To illustrate, twenty-one percent of all Mississippi women live below the federal poverty level, and thirty-two percent of the state's new mothers are impoverished.<sup>84</sup> The median income of a black woman in Mississippi is just \$25,000 annually, the lowest in the nation.<sup>85</sup> Further, Mississippi has among the nation's weakest social services for women and mothers.<sup>86</sup> Paid family leave, which has been shown to benefit infant health and improve mothers' physical health, mental health, and economic outcomes, does not exist in Mississippi.<sup>87</sup> Nor is there guaranteed child care for children until they enter kindergarten.<sup>88</sup> Subsidies available to low-income families may cover a small segment of child-care costs, but they present a cruel conundrum: parents must work to get them, yet they cannot find or start work without child care.<sup>89</sup> Mississippi also requires that single mothers file for child support before

---

INSIDER (Nov. 26, 2021, 9:23 AM), <https://www.businessinsider.com/mississippi-defends-abortion-ban-one-in-three-kids-in-poverty-2021-11>.

82. KAISER FAMILY FOUND STATE PROFILES FOR WOMEN'S HEALTH [MISS.], (Jan. 15, 2021).

83. Jocelyn Frye, *Racism and Sexism Combine to Shortchange Working Black Women*, CTR FOR AM. PROGRESS (Aug. 22, 2019), <https://www.american-progress.org/article/racism-sexism-combine-shortchange-working-black-women/>.

84. Elliot Ramos, *Maternal Poverty Levels are higher in 'trigger law' states*, NBC NEWS (July 1, 2022, 12:25 pm), <https://www.nbcnews.com/data-graphics/maternal-poverty-levels-higher-abortion-trigger-law-states-rna35788>.

85. *The Status of Black Women in the United States*, INST. FOR WOMEN'S POL'Y RSCH. (2017), <https://iwpr.org/wp-content/uploads/2020/08/The-Status-of-Black-Women-6.26.17.pdf>.

86. Emily Badger et al., *States with Abortion Bans Are Among Least Supportive for Mothers and Children*, N.Y. TIMES (July 28, 2022), <https://www.nytimes.com/2022/07/28/upshot/abortion-bans-states-social-services.html>.

87. *State Paid Family Leave Laws Across the U.S.*, BIPARTISAN POL'Y. CTR. (Jan. 20, 2023), <https://bipartisanpolicy.org/explainer/state-paid-family-leave-laws-across-the-u-s/>.

88. Badger et al., *supra* note 86.

89. *Id.*

2024]

*The Right to Life*

219

they can receive subsidies.<sup>90</sup> In addition, a job paying minimum wage—which does not surpass the federal floor of \$7.25 in Mississippi—may not even cover subsidized care.<sup>91</sup>

Women may turn to the state government for financial assistance in light of these demonstrated obstacles.<sup>92</sup> Yet, because funding allocation and eligibility for cash assistance is left largely up to states to decide,<sup>93</sup> aid has been rendered nearly obsolete in Republican-controlled Mississippi.<sup>94</sup> The state's welfare program is among the least generous in the country.<sup>95</sup> A mother of two living at or below the poverty level receives just \$260 a month in benefits, if she can access benefits at all; a mere four out of every one hundred impoverished families in Mississippi have access to the service.<sup>96</sup> Further, the Mississippi legislature has refused to adopt the Affordable Care Act's Medicaid expansion which would extend coverage to nearly all adults in the state with incomes below 138 percent of the Federal Poverty Level.<sup>97</sup> This has grave implications for women in Mississippi where one in six women of reproductive age is uninsured.<sup>98</sup> Access to routine care prior to conception and pregnancy lowers pregnancy-related risks and increases the chance of a healthy delivery.<sup>99</sup> Under the state's current Medicaid eligibility policy, however, adult women can get coverage

---

90. *Id.*

91. *Id.*

92. *See id.*

93. *Id.*

94. *See* Badger et al., *supra* note 86.

95. *Id.*

96. *Id.*; Rachel Treisman, *States with the Toughest Abortion Laws Have the Weakest Maternal Supports, Data Shows*, NPR (Aug. 18, 2022, 6:00 AM), <https://www.npr.org/2022/08/18/1111344810/abortion-ban-states-social-safety-net-health-outcomes>.

97. *See* Isabelle Taft, *Mississippi Moms and Babies Suffer Disproportionately; Medicaid Expansion Could Help*, ARK. ADVOCATE (Nov. 22, 2022, 6:00 AM), <https://arkansasadvocate.com/2022/11/22/mississippi-moms-and-babies-suffer-disproportionately-medicaid-expansion-could-help/>.

98. *Id.*

99. *Id.*

only when they are pregnant, or have children in the home and a very low household income.<sup>100</sup>

Although expanding Medicaid would not on its own solve Mississippi's maternal health crisis, as health insurance does not automatically equate to *access* to health care, expanding eligibility would provide more consistent coverage for more than 10,000 Mississippi women who currently have health insurance only during and in the months following their pregnancies.<sup>101</sup> Mississippi has recently opted to expand postpartum Medicaid access up to one year after birth,<sup>102</sup> but postpartum Medicaid does nothing to improve access to health care before conception.<sup>103</sup> The conversation surrounding postpartum Medicaid expansions could effectively distract from the need to address Mississippi's healthcare crisis more broadly.<sup>104</sup> State leaders are staunchly opposed to Medicaid expansion, citing state budget concerns and a belief that "all able-bodied folks ought to get off the couch and go to work."<sup>105</sup> Yet, by extending coverage to those who earn up to 138 percent of the poverty level income, Medicaid expansion is in fact designed for the *working* poor who cannot access health insurance through their employers.<sup>106</sup> A recent analysis has indicated that Mississippi can not only afford to expand Medicaid, but that doing so would significantly boost the state economy.<sup>107</sup>

---

100. *Who Qualifies for Coverage?*, MISS. DIV. OF MEDICAID (2019), <https://medicaid.ms.gov/medicaid-coverage/who-qualifies-for-coverage>.

101. *Id.*

102. Michael Goldberg, *Mississippi backs 1 year of postpartum Medicaid for new moms*, AP NEWS (Mar. 7, 2023, 6:01 PM), <https://apnews.com/article/mississippi-postpartum-medicaid-extension-abortion-eca500811ec20ca70000af605d2be85c>.

103. Taft, *supra* note 97.

104. *Id.*

105. Geoff Pender, *Who's opposed to Mississippi Medicaid expansion and why?*, MISS. TODAY (Nov. 15, 2022), <https://mississippitoday.org/2022/11/15/medicaid-expansion-opposition-why/>.

106. *Id.*

107. See Adam Ganucheau, *State economist refutes politicians' claim that Mississippi cannot afford Medicaid expansion*, MISS. TODAY (Sept. 14, 2021), <https://mississippitoday.org/2021/09/14/mississippi-medicaid-expansion-costs>;

Researchers and historians note that institutional racism has played a role in weakening states' social safety nets across the country.<sup>108</sup> States with larger black populations tend to spend the least on cash assistance, widening the racial poverty gap in America.<sup>109</sup> An analysis by the New York Times similarly found that states with abortion bans allocate a smaller share of welfare funds to basic assistance.<sup>110</sup> In 2020, Mississippi spent only five percent of its welfare funds on assistance to eligible residents.<sup>111</sup> Instead, the state often spends its grants on a wide range of other programs including abstinence-only sex education.<sup>112</sup> The state began mandating sex education in 2011, but only allows school districts to adopt abstinence-only curriculum; more than half of the state's districts exercise this option.<sup>113</sup> Mississippi has evidently done little to support basic sexual education because sixty-two percent of all pregnancies in the state are unintended.<sup>114</sup> It is probable that on the whole, Mississippian students never learn about reproductive health in an accurate and informed way.<sup>115</sup>

Additionally, Mississippi incorrectly argues that access to contraception obviates the need for abortion.<sup>116</sup> While the majority of privately insured women in Mississippi have no out-of-pocket contraception costs, large numbers of women encounter steep barriers to

---

*see also* J. Corey Miller & Sandra Collins, Ph.D., *A Fiscal and Economic Analysis of Medicaid Expansion in Mississippi under The Affordable Care Act*, MISS. INST. OF HIGHER LEARNING (Sept. 2021), <https://www.mississippi.edu/urc>.

108. Badger et al., *supra* note 86.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. SIECUS: SEXUALITY EDUCATION IN MISSISSIPPI (Feb. 2014).

114. Kathryn Kost, *Unintended Pregnancy Rates at the State Level: Estimates for 2010 and Trends Since 2002*, GUTTMACHER INST. (2015), <https://www.guttmacher.org/sites/default/files/pdfs/pubs/StateUP10.pdf>.

115. *See* Sexuality Education in Mississippi, *supra* note 113.

116. Dobbs Economists' Amicus Brief *supra* note at 17.



contraceptive accessibility.<sup>117</sup> For instance, the average annual cost for birth control pills for the uninsured is \$268 (not including \$87 in related doctors' visits).<sup>118</sup> Intrauterine Devices (IUDs) cost approximately \$1,000 for the uninsured.<sup>119</sup> As a result, fewer than thirty percent of women in need of publicly funded contraception can obtain it.<sup>120</sup> These educational and systemic failings leave the state's low-income populations, and particularly their youth, vulnerable to unintended pregnancies.<sup>121</sup>

B. *Restricted Social Mobility*<sup>122</sup>

Without sufficient systems in place to support pregnant women and mothers, women in Mississippi who are subject to forced birth will likely struggle to break free of cyclical poverty.<sup>123</sup> Policymaking rarely considers the complicated intersections of race, gender,

---

117. *Id.*

118. *Id.*

119. *Intrauterine Devices (IUDs): Access for Women in the U.S.*, KFF (Sept. 9, 2020), <https://www.kff.org/womens-health-policy/fact-sheet/intrauterine-devices-iuds-access-for-women-in-the-u-s/>.

120. Jennifer J. Frost et al., *Contraceptive Needs and Services, 2014 Update*, GUTTMACHER INST. (2016), <https://www.guttmacher.org/report/contraceptive-needs-and-services-2014-update>; Brittani Frederiksen et. al., *Women's Sexual and Reproductive Health Services: Key Findings from the 2020 KFF Women's Health Survey*, KFF (Apr. 21, 2021), <https://www.kff.org/womens-health-policy/issue-brief/womens-sexual-and-reproductive-health-services-key-findings-from-the-2020-kff-womens-health-survey/#:~:text=Contraceptive%20Coverage,they%20can't%20afford%20it>.

121. *See id.*

122. *Social Mobility*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/social-mobility> (last updated Aug. 15, 2023) (explaining that social mobility refers to "the movement of individuals, families, or groups through a system of social hierarchy or stratification").

123. *See generally* Brandi Leigh Jones, *Whose Choice? Exploring the Need for Greater Class-Consciousness Within the Reproductive Rights Movement*, 32 HAMLINE J. PUB. L. & POL'Y 1 (2011).

economic status, and reproductive rights: legislation is no exception.<sup>124</sup> Social and economic mobility are not easily addressed with a single policy or program, but the link between abortion bans and financial hardship has been thoroughly documented.<sup>125</sup> When abortion access is restricted, marginalized women are barred from educational and economic progress that would otherwise advance their social mobility.<sup>126</sup>

The Turnaway Study is notable for its particularly rigorous examination of the socioeconomic outcomes for women who were denied wanted abortions.<sup>127</sup> The longitudinal study compared women who obtained abortions just prior to a gestational age cut-off (the “near-limit group”) to women who were past this cut-off and were subsequently turned away (the “turnaway group”).<sup>128</sup> The researchers demonstrated that financial outcomes were relatively similar for both groups up until the point that they sought abortions.<sup>129</sup> The turnaway group began to experience considerable financial distress compared to the near-limit group as soon as they were denied abortions.<sup>130</sup> Over the subsequent five years, the average woman in the turnaway group experienced a “78% increase in past-due debt and an 81% increase in public records related to bankruptcies, evictions, and court judgments.”<sup>131</sup> Moreover, women in the turnaway group had almost four times greater odds of a household income below the federal poverty level and three times

---

124. See Diana Elliot & Fay Walker, *Centering Black Women in Income and Wealth Policymaking*, URBAN INST. (Nov. 2022), <https://www.urban.org/sites/default/files/2023-01/Centering%20Black%20Women%20in%20Income%20and%20Wealth%20Policymaking.pdf>.

125. *Id.*; See generally Caitlin Knowles Myers and Morgan Welch, *What can economic research tell us about the effect of abortion access on women’s lives?* BROOKINGS INST. (Nov. 30, 2021) <https://www.brookings.edu/articles/what-can-economic-research-tell-us-about-the-effect-of-abortion-access-on-womens-lives/>.

126. See generally Jones, *supra* note 123.

127. See Dobbs Economists’ Amicus Brief at 24.

128. *Id.*

129. *Id.* at 25.

130. *Id.*

131. *Id.*

greater odds of being unemployed.<sup>132</sup> There was also an increased likelihood that women were unable to afford basic necessities like food, housing, and transportation if they were denied an abortion.<sup>133</sup> The study concluded that abortion denial leads to pronounced and ongoing economic hardships for women.<sup>134</sup>

In addition to financial outcomes, women's education rates are also closely linked to abortion accessibility.<sup>135</sup> Research indicates that being denied an abortion limits women's education, whereas receiving an abortion yields educational and, ultimately, economic benefits.<sup>136</sup> For instance, one study found that abortion access increased the probability that young women finished college by nearly twenty percentage points, and the likelihood that they entered a professional occupation by nearly forty percentage points.<sup>137</sup> Another showed that young women who delayed an unplanned start to motherhood by having an abortion achieved an eleven percent increase in wages later in their careers.<sup>138</sup> These effects tended to be greater among black women.<sup>139</sup>

Black women in Mississippi who work full-time are typically paid just fifty-six cents for every dollar paid to a white, non-Hispanic man.<sup>140</sup> This wage gap exists across occupations and education levels, and cannot be discounted by women's educational or occupational

---

132. *Id.*

133. *See* Dobbs Economists' Amicus Brief at 24.

134. *Id.*

135. *See* Myers & Morgan, *supra* note 125.

136. *The Economic Effects of Abortion Access: A Review of the Evidence*, INST. FOR WOMEN'S POL'Y RSCH. (2022), <https://iwpr.org/iwpr-issues/reproductive-health/the-economic-effects-of-abortion-access-a-review-of-the-evidence>.

137. *Abortion and Gender Equality: Spotlight on Dobbs v. Jackson Women's Health*, CTR. FOR REPRODUCTIVE RIGHTS (Nov. 9, 2021), <https://reproductiverights.org/supreme-court-case-mississippi-abortion-ban-gender-equality/>.

138. *See id.*; *see also* Dobbs Economists' Amicus Brief at 13.

139. *Id.*

140. NAT'L WOMEN'S L. CTR.: WOMEN DRIVING CHANGE: A PATHWAY TO A BETTER MISSISSIPPI at 11 (2014) (hereinafter "Women Driving Change").

“choices.”<sup>141</sup> In fact, black women in Mississippi generally have to earn a professional degree beyond a bachelor’s degree to make even slightly more than white men with an associate’s degree.<sup>142</sup> Yet, Mississippi has low rates of high school and college graduation among women generally and particularly among women of color<sup>143</sup>; less than twenty percent of black women in Mississippi have a bachelor’s degree or higher.<sup>144</sup> Mississippi women, especially mothers, face unique challenges in obtaining education or training that may lead to higher paying opportunities.<sup>145</sup> Nearly forty-two percent of black Mississippi women working in the low-wage workforce are supporting children under the age of eighteen.<sup>146</sup> The limited availability of child-care assistance for low-to-moderate income earners can render it nearly impossible for these women to find the time to pursue further education.<sup>147</sup> It is likely that the ability of Mississippi women to pursue education will be further hindered by the effects of forced pregnancy.<sup>148</sup> When abortion access is restricted, marginalized women are barred from educational and economic progress and, in turn, are prevented from advancing their social mobility.<sup>149</sup>

---

141. *Id.*

142. *Id.*

143. Treisman, *supra* note 96.

144. *Id.*

145. Women Driving Change, *supra* note 140.

146. *Id.* at 17.

147. *Id.*

148. See Myers & Welch, *supra* note 125.

149. See *id.*

### C. Health and Safety Risks

#### 1. Mental Health

The denial and violation of bodily autonomy for women of color is as old as the Nation itself.<sup>150</sup> Enslaved black women were routinely subject to rape and forced pregnancy, while their descendants “faced involuntary sterilization throughout the twentieth century.”<sup>151</sup> The revocation of the abortion right—which remained out of reach for many women of color even when *Roe* was good law—can feel especially devaluing for women of color and make restricted access particularly distressing.<sup>152</sup> While having an abortion does not increase one’s risk of developing mental health issues, being *denied* an abortion can lead to psychological distress, especially for women of color.<sup>153</sup> Pregnancy, childbirth, and post-partum are already “psychologically high-risk” times, and racial discrimination endured on a daily basis can contribute to negative mental health outcomes.<sup>154</sup>

#### 2. Maternal Mortality

It is well-documented that communities of color experience markedly worse health outcomes in the United States, likely as a result of entrenched racism in the medical field.<sup>155</sup> Research has indicated that medical providers frequently fail to take black patients’ pain seriously—a bias that has significant implications for reproductive health care.<sup>156</sup> Black women who report pregnancy-related issues are less

---

150. See generally Jill C. Morrison, *Resuscitating the Black Body: Reproductive Justice as Resistance to the State’s Property Interest in Black Women’s Reproductive Capacity*, 31 YALE J.L. & FEMINISM 35 (2019).

151. Zara Abrams, *Abortion bans cause outsized harm for people of color*, AM. PSYCH. ASSOC. (June 2023), <https://www.apa.org/monitor/2023/06/abortion-bans-harm-people-of-color>.

152. *Id.*

153. *Id.*

154. *Id.*

155. See Yael Cannon, *Unmet Legal Needs as Health Injustice*, 56 U. RICH. L. REV. 801, 811 (2022).

156. See Abrams, *supra* note 151.

likely to be believed than white women, causing black women to be significantly less likely to receive “prompt, informed, non-stigmatizing, and consistent” prenatal care.<sup>157</sup> This leaves black women more vulnerable to pregnancy-related injury or death.<sup>158</sup> Moreover, a growing body of research has highlighted the clear connection between restrictive abortion laws and high maternal mortality rates.<sup>159</sup> For instance, a 2020 study found that a year after a total abortion ban was implemented, the maternal mortality rate was estimated to rise by twenty-four percent.<sup>160</sup>

Mississippi has nearly the highest maternal mortality rate in the Nation, second only to Louisiana.<sup>161</sup> Black women in the state are nearly three times more likely to die in childbirth than white women.<sup>162</sup> Yet, accessing quality reproductive healthcare is persistently difficult for the state’s marginalized women.<sup>163</sup> More than half of the counties in Mississippi are considered maternal care deserts, meaning there are no hospitals providing obstetric care, no OB-GYNs and no certified nurse midwives.<sup>164</sup> Access to care has continued to rapidly decline since the *Dobbs* ruling.<sup>165</sup> For example, the only neonatal intensive

---

157. *Dobbs Economists’ Amicus Brief* at 26.

158. *Black Women & Reproductive Justice*, *supra* note 14 at 51 (2017).

159. See Elyssa Spitzer et al., *Abortion Bans Will Result in More Women Dying*, CTR. FOR AM. PROGRESS (Nov. 2, 2022), <https://www.americanprogress.org/article/abortion-bans-will-result-in-more-women-dying/>.

160. See Amanda J. Stevenson et al., *The maternal mortality consequences of losing abortion access*, UNIV. COL. BOULDER (June 29, 2022) <https://osf.io/preprints/socarxiv/7g29k>.

161. *See id.*

162. *See generally* MISS. STATE DEP’T. OF HEALTH: MISSISSIPPI MATERNAL MORTALITY REPORT 2013-2016 (2019).

163. *Id.*

164. Kate Royals, ‘*Death at your toes*’: *A look inside a Mississippi maternity care desert*, MISS. TODAY (Jan. 9, 2023), <https://mississippitoday.org/2022/11/03/mississippi-maternity-care-desert/>.

165. Michael Goldberg, *Abortion ruling means more and riskier births in Mississippi*, AP NEWS (Oct. 24, 2022, 1:44 PM), <https://apnews.com/article/abortion-health-tate-reeves-greenwood-mississippi-92e59302abe30a8afd74ee5d80b94b3f>.

care unit in the state's impoverished Delta region closed under financial pressures in the months following the Court's ruling.<sup>166</sup> Additionally, one of the only public hospitals closed its labor and delivery unit.<sup>167</sup> Women in the area will now need to travel upwards of two hours to receive treatment or give birth at a hospital.<sup>168</sup>

Lack of medical treatment centers hinders women's access to meaningful reproductive care.<sup>169</sup> Mississippi has far less public transportation than other states,<sup>170</sup> meaning that even if patients can afford to see a doctor, those without a car may be unable to physically access care.<sup>171</sup> Notably, people of color are less likely to have a car than white residents in Mississippi.<sup>172</sup> Even if traveling to a medical center is feasible for women in the state, they will have to account for the financial implications of making the trip.<sup>173</sup> Missing work is simply not an option for many marginalized women in Mississippi who often do not

---

166. Michael Goldberg, *Abortion ruling means more and riskier births in Mississippi*, AP NEWS (Oct. 24, 2022) <https://apnews.com/article/abortion-health-tate-reeves-greenwood-mississippi-92e59302abe30a8afd74ee5d80b94b3f>

167. *Id.*

168. *Id.*: Maya Miller, *In rural Mississippi, E.R. staff are being trained to care for moms and deliver babies*, MISS. PUBLIC BROADCASTING, (Mar. 13, 2023), <https://www.mpbonline.org/blogs/news/in-rural-mississippi-er-staff-are-being-trained-to-care-for-moms-and-deliver-babies/>; Michael Goldberg, *In the U.S., Mississippi has highest fetal, infant and maternal mortality rates. Why?* THE BUFFALO NEWS (Oct. 25, 2022), [https://buffalonews.com/in-the-u-s-mississippi-has-highest-fetal-infant-and-maternal-mortality-rates-why/article\\_71263e71-9703-5b1a-ac17-c421236011dc.html](https://buffalonews.com/in-the-u-s-mississippi-has-highest-fetal-infant-and-maternal-mortality-rates-why/article_71263e71-9703-5b1a-ac17-c421236011dc.html).

169. *See id.*

170. *See Car Access: Everyone needs reliable transportation access and in most American communities that means a car*, NAT'L EQUITY ATLAS (2022), [https://nationalequityatlas.org/indicators/Car\\_access?geo\\_compa+re=.02000000000028000&geo\\_compare=02000000000028000](https://nationalequityatlas.org/indicators/Car_access?geo_compa+re=.02000000000028000&geo_compare=02000000000028000).

171. *See generally id.*

172. *Id.*

173. Goldberg, *supra* note 101.

have access to paid time off.<sup>174</sup> Those without paid sick days are three times more likely to delay or forgo medical care, including reproductive care.<sup>175</sup> This inability to miss work, combined with the need to plan travel and the time needed for travel itself, may delay care and subsequently pose huge health risks.<sup>176</sup> Women who do not receive routine prenatal care are five times more likely to die of pregnancy-related causes than those who do.<sup>177</sup> Due to this high risk of pregnancy-related death, receiving an abortion can be a much safer option than carrying a pregnancy to term, especially among women who already have medical issues or those who lack access to healthcare.<sup>178</sup>

Moreover, fear of criminal prosecution may have a chilling effect on health workers, leading them to deny abortion even where it is legal under Mississippi law.<sup>179</sup> Healthcare service providers may feel compelled to wait until a life-threatening situation develops so that an abortion can be provided under the legal exceptions.<sup>180</sup> In addition, deep-rooted stereotypes that associate black women with poor sexual decisions mean that black women who need abortions for medical reasons are less likely to be taken seriously, even when their lives are at risk.<sup>181</sup> At best, women will suffer needlessly; at worst, women will

---

174. See Amanda Novello, *For Women and Workers of Color in Every State, Paid Leave is a Lifeline*, NAT'L. P'SHIP FOR WOMEN & FAMILIES (Oct. 2021), <https://www.nationalpartnership.org>.

175. NAT'L. P'SHIP. FOR WOMEN & FAMILIES: PAID SICK DAYS ENHANCE WOMEN'S ABORTION ACCESS AND ECONOMIC SECURITY (May 2019).

176. *Id.*

177. Treisman, *supra* note 96.

178. See Chemerinsky & Goodwin, *supra* note 6 at 1189.

179. See Jessica Glenza, '*A severe chilling effect*': abortion bans will inhibit doctors' advice to patients, experts fear, THE GUARDIAN (May 6, 2022), <https://www.theguardian.com/world/2022/may/06/abortion-bans-patient-doctor-medical-advice>.

180. See Mary Kekatos, *Why doctors say the 'save the mother's life' exception of abortion bans is medically risky*, ABC NEWS (June 13, 2022, 6:03 AM), <https://abcnews.go.com/Health/doctors-save-mothers-life-exception-abortion-bans-medically/story?id=84668658>.

181. See Abrams, *supra* note 151.



die while waiting to receive a life-saving abortion.<sup>182</sup> In the face of this reality, Mississippi has repeatedly failed to provide the resources necessary to protect women's health and has instead erected barriers that prevent women from accessing essential medical care.<sup>183</sup>

### 3. Perpetuating Intergenerational Trauma

It perhaps goes without saying that abortion access shapes the circumstances into which children are born.<sup>184</sup> One study found that access to abortion reduced the number of children “who lived in single-parent households, who lived in poverty, and who received social services.”<sup>185</sup> Another study found that legal abortion reduced cases of neglect and abuse.<sup>186</sup> Under Mississippi's abortion ban, the negative consequences of forced pregnancy and birth will be felt for generations to come.<sup>187</sup>

Nationally, black women face high rates of domestic violence and abuse,<sup>188</sup> including sexual and reproductive coercion.<sup>189</sup> A recent study found that twenty percent of black women reported they were forced to have sex without a condom; for black mothers, the figure rose to

---

182. See Treisman, *supra* note 96; See also Mary Kekatos, *Why doctors say the 'save the mother's life' exception of abortion bans is medically risky*, ABC NEWS, (June 13, 2022, 6:03 AM), <https://abcnews.go.com/Health/doctors-save-mothers-life-exception-abortion-bans-medically/story?id=84668658>.

183. See Badger et al., *supra* note 86.

184. See Christine Dehlendorf et al., *Disparities in Family Planning*, 202 AM. J. OBSTET. GYNECOL. 1, 1-12 (2010).

185. See Isabel V. Sawhill & Morgan Welch, *The end of Roe will create more inequality of opportunity for children*, BROOKINGS INST. (June 30, 2022), <https://www.brookings.edu/blog/up-front/2022/06/30/the-end-of-roe-will-create-more-inequality-of-opportunity-for-children/>.

186. *Id.*

187. See Dehlendorf et al., *supra* note 184.

188. Sharon G. Smith et al., *The National Intimate Partner and Sexual Violence Survey (NISVS)*, CTR. FOR DISEASE CONTROL (Apr. 2017), <https://www.cdc.gov/violenceprevention/>.

189. Laura Tarzia & Kelsey Hegarty, *A conceptual re-evaluation of reproductive coercion: centering intent, fear and control*, REPROD. HEALTH (2021), <https://www.biomedcentral.com/>.

twenty six percent.<sup>190</sup> It follows that when women are forced to carry unwanted pregnancies to term, they are more likely to experience continued domestic violence.<sup>191</sup> Women denied abortions are more likely to remain in contact with violent intimate partners, putting these women and their children at risk of mental, emotional, and physical trauma.<sup>192</sup> Children born after their mothers were denied abortions have lower child development scores and enjoy poorer maternal bonding.<sup>193</sup> Moreover, children of women who were denied abortions are exponentially more likely to live below the poverty line.<sup>194</sup> In Mississippi, where one out of every four children are impoverished, the statistical likelihood of childhood poverty will undoubtedly increase.<sup>195</sup> Mississippi's abortion policy ultimately means that more children will be born to women uncertain of their ability to take care of them, in a state that refuses to provide them even the most basic forms of assistance.<sup>196</sup> Unless Mississippi begins to support children both before and after birth, the state's youth will be subjected to more unequal childhoods and lifetime opportunities than currently exist.<sup>197</sup>

---

190. See Abrams, *supra* note 151.

191. *Id.*

192. Sarah C.M. Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 12 BMC MED. 1, 7 (2014).

193. Diana Greene Foster et.al., *Comparison of Health, Development, Maternal Bonding, and Poverty Among Children Born After Denial of Abortion vs After Pregnancies Subsequent to an Abortion*, NAT'L. LIBRARY OF MEDICINE (Nov. 2018) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6248140/>.

194. Jenna Jerman & Rachel K. Jones, *Secondary Measures of Access to Abortion Services in the United States, 2011 and 2012: Gestational Age Limits, Cost, and Harassment*, NAT'L. LIBR. OF MED. (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4946165/>.

195. Fowler, *supra* note 81.

196. See Jerman & Jones, *supra* note 194.

197. *Id.*

*D. Criminalizing Misfortune*

Absent any other option, women in Mississippi may attempt to terminate their pregnancies outside the medical system.<sup>198</sup> Before *Roe*, it is estimated that about one million illegal abortions took place annually.<sup>199</sup> Hundreds ended in death, countless others required emergency medical services, and many women were left infertile as a result of illegal procedures.<sup>200</sup> Death caused by illegal abortion accounted for approximately one-third of all maternal deaths in the United States and was particularly acute among those living in poverty and women of color.<sup>201</sup> In fact, illegal abortions caused half of all maternal deaths among black women in the 1960s.<sup>202</sup> These deaths were entirely preventable because legal abortion is demonstrably safer than childbirth.<sup>203</sup>

Historical methods of unsafe abortion do not differ from those used today.<sup>204</sup> Some women drink toxic fluids such as “turpentine, bleach, or drinkable concoctions mixed with livestock manure;”<sup>205</sup> others may inflict direct injury to the vagina or elsewhere, perhaps “inserting herbal preparations into the vagina or cervix...placing a foreign body such as a twig, coat hanger, or chicken bone into the uterus...or placing inappropriate medication into the vagina or rectum”<sup>206</sup> to induce miscarriage. Methods of external injury are also used, such as jumping from a flight of stairs or a roof, or inflicting

---

198. Yvonne Lindgren, *When Patients are Their Own Doctors: Roe v. Wade in an Era of Self-Managed Care*, 107 CORNELL L. REV. 151, 169 (2021).

199. *Id.* at 156-57.

200. *See id.* at 169.

201. *Id.*

202. Chemerinsky & Goodwin, *supra*, note 6, at 1191.

203. Lindgren, *supra*, note 198, at 209.

204. *See generally* Jill E. Adams & Melissa Mikesell, *And Damned if They Don't: Prototype Theories to End Punitive Policies Against Pregnant People Living in Poverty*, 18 GEO. J. GENDER & L. 283 (2017).

205. Lisa B. Haddad & Nawal M. Nour, *Unsafe Abortion: Unnecessary Maternal Mortality*, 2 REV. OBSTET. GYNECOL. 122, 123 (2009).

206. *Id.*

“blunt trauma to the abdomen.”<sup>207</sup> Further, access to Mifepristone, an abortion pill that is the most common and safest method of abortion in the country,<sup>208</sup> will likely be called into question within the coming months as mounting legal challenges find their way to the Supreme Court.<sup>209</sup> If the pill is outlawed, women may begin consuming dangerous, unregulated medications to terminate their pregnancies.<sup>210</sup>

In addition to the psychological and physical trauma that inevitably accompanies self-induced abortion, women in Mississippi, who are forced to resort to these means, may face criminal investigation or arrest.<sup>211</sup> Certainly, there is not always a consensus among medical providers about whether and when one should report a suspected self-induced abortion.<sup>212</sup> While some may never report, others will report to protect themselves from any legal repercussions.<sup>213</sup> Indeed, evidence from eight global human-rights studies indicates that many healthcare providers do report, or would report, a woman suspected of an induced abortion because they consider themselves bound to do

---

207. *Id.*

208. *The Facts of Mifepristone*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/abortion/the-abortion-pill> (last visited Oct. 25, 2023).

209. *The Availability and Use of Medication Abortion*, KAISER FAMILY FOUND (June 1, 2023), <https://www.kff.org/womens-health-policy/fact-sheet/the-availability-and-use-of-medication-abortion/#:~:text=Mifepristone%20works%20by%20blocking%20progesterone,similar%20to%20an%20early%20miscarriage>.

210. Mary Kekatos, *Spike in Google searches for abortion pills may lead to rise in unsafe abortions: Study*, ABC NEWS (June 29, 2022, 11:25 AM), <https://abcnews.go.com/Health/spike-google-searches-abortion-pills-lead-rise-unsafe/story?id=85854789>.

211. See Fionda de Loundras et al., *The impact of criminalization on abortion-related outcomes: a synthesis of legal and health evidence*, BMJ GLOBAL HEALTH (Dec. 29, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9806079/#:~:text=Criminalisation%20is%20associated%20with%20access,with%20negative%20implications%20for%20rights.&text=Over-all%2C%20evidence%20from%20four%20studies,contributes%20to%20self%2Dmanaged%20abortion>.

212. *Id.*

213. *Id.*

so.<sup>214</sup> Such practice imposes a substantial burden on the rights of women and girls, often leading to undue arrest or incarceration.<sup>215</sup>

To imagine that states like Mississippi may eventually adopt the same practice is not far-fetched, because it is already happening in countries with extreme abortion bans.<sup>216</sup> El Salvador, for instance, criminalizes abortion under all circumstances.<sup>217</sup> Under this law, medical professionals who treat women having obstetric emergencies or complications stemming from abortions feel compelled to report their patients to the police to avoid criminal prosecution.<sup>218</sup> Reports are frequently made solely based on suspicion because doctors are often unable to distinguish a natural miscarriage from a self-induced abortion.<sup>219</sup> In effect, women and girls are routinely prosecuted for suffering a medical emergency.<sup>220</sup> Notably, class biases appear to play a significant role in these prosecutions.<sup>221</sup> A comprehensive study tracing abortion-related investigations in El Salvador, from 2000 to 2011 found that while doctors may have suspected wealthier women of inducing an abortion, they only consistently reported poor patients.<sup>222</sup> In countless Salvadorian cases, judges have wrongly convicted poor women of crimes when the only actual evidence against them was that they had a miscarriage.<sup>223</sup>

---

214. *Id.*

215. *Id.*

216. *See id.*; *See e.g.*, Adams & Mikesell, *supra* note 204.

217. *See* Michelle Oberman, *Motherhood, Abortion, and the Medicalization of Poverty*, 46 J.L. MED. & ETHICS 665-71 (2018); *see also* Alyson Zureick et. al., *Physicians' challenges under El Salvador's criminal abortion prohibition*, 143 J. OF GYNECOLOGY & OBSTET. 121, 121-60 (July 10, 2018), <https://obgyn.onlinelibrary.wiley.com/doi/10.1002/ijgo.12596>; CENTER FOR REPRODUCTIVE RIGHTS: FROM HOSPITAL TO JAIL: THE IMPACT ON WOMEN OF EL SALVADOR'S TOTAL CRIMINALIZATION OF ABORTION 52-60 (Dec. 30, 2014).

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

223. Oberman, *supra* note 217, at 665-71.

Existing healthcare disparities in Mississippi already contribute to pregnancy complications for poor women and women of color, and with the new ban in place, it is likely that some women will turn to self-induced abortion.<sup>224</sup> Fearing the fine or imprisonment compelled by Mississippi law, providers may begin reporting women who seek medical care.<sup>225</sup> Further, anti-abortion lawmakers in a myriad of states are now pushing to “impose civil or criminal liability on those who travel out of state for abortion care or on those who provide such care or facilitate its access.”<sup>226</sup> In the coming months, women who are able to travel to more abortion-friendly states may be rejected by providers fearing legal repercussions or may face criminal charges for traveling out of state for the procedure.<sup>227</sup> Such an outcome would likely exacerbate already heightened mass incarceration rates in Mississippi, where women are currently incarcerated at a rate nearly two times greater than the national average.<sup>228</sup> In fact, the number of women in Mississippi prisons has increased 1,081 percent since 1980.<sup>229</sup> This upsurge is aligned with national trends in mass incarceration; the US prison population has leapt from roughly 350,000 to 2.3 million in a twenty-five year period as a result of sentencing-policy changes.<sup>230</sup>

---

224. See Kenichi Serino, *As states ban abortions, more people may turn to self-managed abortion care—with more legal challenges to come*, PBS (Oct. 13, 2022, 8:30 AM), <https://www.pbs.org/newshour/politics/as-states-ban-abortions-more-people-turn-to-self-managed-abortion-care-with-more-legal-challenges-to-come>.

225. See MISS. CODE REGS. ANN. tit. 41, §41-41.79 (2023); see generally Marissa Kreutzfeld, *An Unduly Burdensome Reality: The Unconstitutionality of State Feticide Laws that Criminalize Self Induced Abortion in the Age of Extreme Abortion Restrictions*, 38 WOMEN’S RIGHTS L. REP. 55 (2016).

226. Serino, *supra* note 224.

227. See *id.*

228. Michelle Liu, *‘That’s not winning’: Report sheds light on sky-rocketing female imprisonment*, MISS. TODAY (June 21, 2018), <https://mississippitoday.org/2018/06/21/thats-not-winning-report-sheds-light-on-skyrocketing-female-imprisonment/>

229. *Incarceration trends in Mississippi*, VERA INST. OF JUSTICE (Dec. 2019) <https://www.vera.org/publications/state-incarceration-trends/mississippi>.

230. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 93 (2012).

Exposing marginalized women to arrest and incarceration for self-managed abortions or genuine medical complications will further devastate their communities as “rules and regulations operate to discriminate against ex-offenders and . . . prevent their reintegration into the mainstream society and economy.”<sup>231</sup> Although not considered punishment by the courts, these sanctions can be the most damaging and painful aspect of a criminal conviction.<sup>232</sup> Women who are imprisoned for violating Mississippi’s abortion ban may find themselves “unable to drive, get a job, find housing, or even qualify for public benefits” upon release, in addition to possibly losing custody of their children.<sup>233</sup> Even if investigations of women suspected of abortion do not lead to convictions, the fear of prosecution may deter pregnant women from seeking the care they need, leading to worse health outcomes.<sup>234</sup>

#### *E. Beyond Mississippi*

Unfortunately, the negative public policy outcomes described thus far are not confined to Mississippi.<sup>235</sup> *Dobbs* triggered a cascade of legislation, beginning with the automatic banning of abortion in thirteen “trigger-law” states, and followed by more states in subsequent months.<sup>236</sup> At the time of this writing, seventeen states have banned or heavily restricted abortion: this number is expected to grow to at least twenty-four.<sup>237</sup> For example, Florida governor Ron Desantis

---

231. *Id.* at 142.; *See generally* Adams & Mikesell, *supra* note 204.

232. *See* ALEXANDER, *supra* note 230.

233. *Id.*

234. *See* Lindgren, *supra* note 198.

235. *See* Risa Kaufman et al., *Global impacts of Dobbs v. Jackson Women’s Health Organization and abortion regression in the United States*, NAT’L LIBR. OF MED. (Nov. 16, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9673802/#:~:text=In%20overruling%20Roe%20and%20eliminating,may%2C%20in%20fact%20do%20so>.

236. Oriana Gonzalez & Jacob Knutson, *Where abortion has been banned now that Roe v. Wade is overturned*, AXIOS (Jan. 6, 2023), <https://www.axios.com/2022/06/25/abortion-illegal-7-states-more-bans-coming>.

237. *Id.*

2024]

*The Right to Life*

237

approved a six-week abortion ban in April 2023.<sup>238</sup> The law effectively bans abortion at all stages of pregnancy; most women are unaware they are even pregnant at the six-week mark.<sup>239</sup> The law will only take effect if the state's current fifteen-week ban is upheld in an ongoing legal challenge that is currently before the state Supreme Court. Given the conservative leanings of Florida's Court, the ban seems likely to be upheld.<sup>240</sup> The policy will have wider implications for abortion access in the American South, as over fifteen million women who live in abortion-banning states have previously relied on travel to Florida as an option for reproductive care.<sup>241</sup> As a result, thousands more women will carry unwanted pregnancies to term with subsequent harm to their health, socioeconomic status, and overall quality of life.<sup>242</sup>

#### IV. THE "ROE'D" FORWARD

##### *A. Pro-Choice States as Policy Models for State and Federal Reform*

While states like Mississippi were preoccupied with eliminating women's fundamental rights in the wake of *Roe's* upheaval, Oregon Governor Kate Brown made a promise: "Oregon doesn't turn anyone away seeking healthcare. Period."<sup>243</sup> The state has since honored this commitment to abortion rights by making Oregon the most protective state in the country in terms of ensuring reproductive services and access to abortion.<sup>244</sup>

---

238. Anthony Izaguirre, *DeSantis signs Florida GOP's 6-week abortion ban into law*, AP NEWS (Apr. 14, 2023), <https://apnews.com/article/florida-abortion-ban-approved-c9c53311a0b2426adc4b8d0b463edad1>.

239. *Id.*

240. *Id.*

241. *See id.*

242. *Id.*

243. Tara Kroft, *Abortion Rights in Oregon*, MY ORE. NEWS (July 21, 2022), <https://www.myoregon.gov/2022/07/21/abortion-rights-in-oregon>.

244. *See id.*



In 2017, the Oregon Legislature passed House Bill 3391 (H.B. 3391).<sup>245</sup> The bill enshrined into state law “an individual’s right to receive an abortion, as well as a health care provider’s right to provide an abortion,”<sup>246</sup> and established Oregon as a leader in reproductive healthcare access.<sup>247</sup> Oregon became the first state to require insurance companies to cover “the full spectrum of reproductive health care for all of its citizens, including expanded postpartum care coverage . . . and FDA-approved contraception.”<sup>248</sup> Today, Oregon ensures the right to an abortion without any restrictions or state interference.<sup>249</sup> Oregon is one of only seven states that funds abortions using state general funds under the Oregon Health Plan (OHP), the state’s Medicaid program, without any limits.<sup>250</sup> Individuals can access free or low-cost reproductive health services at local health departments, Planned Parenthood clinics, federally qualified health centers, and rural health clinics across the state.<sup>251</sup> Further, Oregon is in the process of instituting a Basic Health Program<sup>252</sup> that would provide more affordable coverage and continuity of care for low-income residents whose income fluctuates above and below Medicaid eligibility.<sup>253</sup>

---

245. *Id.*

246. *Id.*

247. *See* Kroft, *supra* note 243.

248. *Id.*

249. *See* Jonathon Modie, *Abortion remains legal, accessible in Oregon in wake of Supreme Court ruling*, ORE. HEALTH AUTH. (June 24, 2022), <https://content.govdelivery.com/accounts/ORDHS/bulletins/31d97e7>.

250. *Id.*

251. *Id.*

252. *Basic Health Program*, MEDICAID.GOV (2022), <https://www.medicaid.gov/basic-health-program/index.html> (explaining that section 1331 of the Affordable Care Act allows states to create Basic Health Programs which are coverage programs for low-income residents who would otherwise be eligible to purchase coverage through the Health Insurance Marketplace).

253. *Id.*; Sydney Wyatt, *Oregon gears up to become the third state to establish a Basic Health Plan*, STATESMAN J. (Apr. 4, 2023), <https://www.statesmanjournal.com/story/news/health/2023/04/04/oregon-health-plan-insurance-medicaid-eligibility-enrollment-coverage-pandemic/70069958007/>.

The legal right to abortion in Oregon extends to anyone who comes to the state for the procedure, not just Oregon residents.<sup>254</sup> Immediately following the Court’s decision to overturn *Roe*, Oregon joined California and Washington to launch a multi-state commitment to defend access to reproductive health care, protect patients and doctors, and “ensure the West Coast remains a safe haven for [women] seeking this care.”<sup>255</sup> For Oregon providers, this means anticipating a rapid increase of patients from border states where abortion is banned.<sup>256</sup> In neighboring Idaho, for example, a near-total abortion ban saw an almost fifty-percent decrease in abortions in the state in the months following *Dobbs*; Oregon, in turn, saw an eighteen-percent increase in abortions as women crossed the state border for care.<sup>257</sup> While many women still lack the resources to travel to Oregon for reproductive care, the state has taken action to mitigate any financial and logistical difficulties out-of-state women seeking abortion may encounter.<sup>258</sup> For instance, House Bill 5202 allocates fifteen million in state funds to advancing reproductive health equity.<sup>259</sup> This includes funds to cover travel and lodging for out-of-state patients seeking abortions in Oregon.<sup>260</sup> Further, the Oregon Health and Science University has “expanded its telehealth abortion options, [and] increased the number of spots available in its clinic . . . to help manage the surge

---

254. Kroft, *supra* note 243.

255. *West Coast States Launch New Multi-State Commitment to Reproductive Freedom, Standing United on Protecting Abortion Access*, OFF. OF GOV. GAVIN NEWSOM (June 24, 2022), <https://www.gov.ca.gov/2022/06/24/west-coast-states-launch-new-multi-state-commitment-to-reproductive-freedom-standing-united-on-protecting-abortion-access/>.

256. *Id.*

257. Amelia Templeton, *Oregon abortions up 18% after Roe v. Wade overturned, according to new data*, OR. PUB. BROAD (Oct. 31, 2022, 8:18 PM), <https://www.opb.org/article/2022/10/31/oregon-abortions-increase-18-percent-after-roe-v-wade>.

258. See Kierra B. Jones, *Expanding Access and Protections in States where Abortion is Legal*, CTR. FOR AM. PROGRESS (July 25, 2022), <https://www.americanprogress.org/article/expanding-access-and-protections-in-states-where-abortion-is-legal>.

259. *Id.*

260. *Id.*

in demand.”<sup>261</sup> The hospital also provides rural health care providers with new training on “contraception, abortion, and miscarriage management, to reduce disparities in access to family planning within the state.”<sup>262</sup> Oregon has also launched an informational hotline modeled after those developed by New York and Delaware, two states that have also seen an increase in the number of patients traveling from states with harsh anti-abortion policies.<sup>263</sup> Individuals may call the anonymous hotline from any state for free legal advice and will receive a call back from an attorney within forty-eight hours.<sup>264</sup> The program fills an important need for women and those who support them to understand the status of reproductive health laws, including availability of abortion access.<sup>265</sup>

There is a growing momentum of states following in Oregon’s footsteps.<sup>266</sup> California, which already requires state health plans to include abortion coverage if they cover pregnancy related care, recently passed a new law that prohibits health insurance plans from imposing any cost-sharing for abortion services.<sup>267</sup> In addition, California uses state revenues to pay for the full costs of abortion services for Medicaid enrollees.<sup>268</sup> Moreover, California is also considering a package of bills related to abortion access, including one bill focused on providing funding to out-of-state women seeking abortion services in

---

261. Templeton, *supra* note 257.

262. *Id.*

263. Claire Rush, *Oregon launches abortion hotline offering free legal advice*, AP NEWS (Jan. 23, 2023), <https://apnews.com/article/abortion-us-supreme-court-health-idaho-oregon-aedc0ea76822432976d69bb96f7510f8>.

264. *Id.*

265. *See id.*

266. *Abortion Policy in the Absence of Roe*, GUTTMACHER INST. (Mar. 1, 2023), <https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe>.

267. *New Protections for People Who Need Abortion Care and Birth Control*, OFF. OF GOV. GAVIN NEWSOM (Sept. 27, 2022), <https://www.gov.ca.gov/2022/09/27/new-protections-for-people-who-need-abortion-care-and-birth-control/>.

268. *See id.*

2024]

*The Right to Life*

241

California.<sup>269</sup> Similarly, Maryland has passed a new law requiring most insurance providers to cover the cost of an abortion with no cost-sharing.<sup>270</sup> Maryland has also created a pilot program designed to cover the premium cost associated with abortion coverage for young adults enrolled in ACA Marketplace plans.<sup>271</sup> Two other states, Illinois and New York, passed laws before 2022 requiring health plans regulated by the state to include abortion coverage without cost-sharing.<sup>272</sup> Finally, New York legislative leaders have introduced a state program that would provide financial resources to: clinicians who provide abortion care, nonprofit organizations helping to increase access to care, and women seeking abortion care.<sup>273</sup>

Notably, these states have established or are currently developing crucial social safety net measures that provide women with a high quality of life and true reproductive choice.<sup>274</sup> The pro-abortion policies adopted by these states can serve as part of a framework that

---

269. See Alexei Koseff, 'When you don't know where to go, come here:' California preps to be a haven for abortion rights, CAL. MATTERS (May 2, 2022), <https://calmatters.org/politics/2022/04/california-abortion-rights/>.

270. See Brian Witte, *Maryland lawmakers pass bill to expand access to abortion*, AP NEWS (Mar. 29, 2022, 8:19 PM), <https://apnews.com/article/abortion-business-health-larry-hogan-maryland-cc9888a4de2dab23602d8592c12e797e>.

271. See Laurie Sobel & Alina Salganicoff, *State Actions to Protect and Expand Access to Abortion Services*, KAISER FAMILY FOUND. (May 16, 2022), <https://www.kff.org/womens-health-policy/issue-brief/state-actions-to-protect-and-expand-access-to-abortion-services/>.

272. See *id.*

273. *Id.*

274. See generally *State Paid Family Leave Laws Across the U.S.*, BIPARTISAN POL'Y. CTR. (Jan. 13, 2022), <https://bipartisanpolicy.org/explainer/state-paid-family-leave-laws-across-the-u-s/>; Isaac Shapiro, *The Safety Net's Impact: A State-by-State Look*, Ctr. on Budget and Pol'y. Priorities (2016), <https://www.cbpp.org/blog/the-safety-nets-impact-a-state-by-state-look>.

values abortion as one piece in a greater landscape of health equity and reproductive autonomy.<sup>275</sup>

B. *The Future is Intersectional*<sup>276</sup>

Though it is crucial that abortion access be protected and strengthened nationwide, this goal cannot be achieved without addressing the underlying issues that make safe abortion a necessity in the United States.<sup>277</sup> That is, women's ability to control their bodily autonomy in Mississippi and elsewhere continue to be determined by their race and class.<sup>278</sup> Even when *Roe* was good law, low-income women and women of color were denied reproductive rights by obstacles instantiated by the courts.<sup>279</sup> Middle- and upper-class members, particularly white women, enjoyed a wide range of reproductive choices under *Roe*, because they had the means to access them.<sup>280</sup>

The pervasive message among the reproductive rights movement stresses a woman's right to choose abortion.<sup>281</sup> Yet, this message is coded to upper and upper-middle class women who can access health care services, and who experience reproductive choice free from financial limitations, even in states where abortion access is restricted.<sup>282</sup> Because our socially stratified system limits contact between classes, middle- and upper-class advocates and policymakers

---

275. See Jamille Allsbrook & Nora Ellman, *A Proactive Abortion Agenda*, CT'R. FOR AM. PROGRESS (Mar. 17, 2021), <https://www.americanprogress.org/article/proactive-abortion-agenda/>.

276. See generally Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 167 (1989) (phrase coined by Kimberle Crenshaw, where intersectionality is a framework for understanding how one's various social and political identities "intersect").

277. See Jones, *supra* note 123, at 34.

278. See generally *id.* (arguing that women's ability to control their bodily autonomy continues to be determined by their race and class).

279. See Chemerinsky & Goodwin, *supra* note 6 at 1207-12.

280. See Jones, *supra* note 123, at 10.

281. See *id.* at 9.

282. *Id.* at 10.

may have had very little contact with women living in poverty.<sup>283</sup> As a result, the needs and priorities of marginalized women often go unnoticed.<sup>284</sup>

In order to accurately represent the women most affected by abortion bans, the right to abortion must be viewed from a holistic perspective.<sup>285</sup> The reproductive rights movement must commit to bringing low-income women and women of color to the table so as to gain a comprehensive understanding of the intersecting forces in these women's lives that contribute to the necessity of reproductive choice.<sup>286</sup> Advocates and lawmakers must address the legal and systemic barriers that have for decades put abortion rights out of reach for so many American women, and must openly acknowledge the need for an increase in basic social safety net measures that make true reproductive choice possible.<sup>287</sup> These measures include livable wages, expanded access to health care and contraceptives, a reformed welfare system, and government-subsidized child-care.<sup>288</sup> While the ultimate goal must be decriminalizing and funding abortion on a federal level, the movement must also push for fundamental social changes to provide adequate quality of life for all American women.<sup>289</sup>

## V. CONCLUSION

The impacts of Mississippi's abortion ban will be all-consuming in the lives of low-income women and women of color.<sup>290</sup> The state mandates forced-birth but provides almost no viable means of support for mothers, pregnant women, and the children born to them.<sup>291</sup> Women in the state carrying unwanted pregnancies will face negative

---

283. *See id.* at 14-15.

284. *See id.*

285. *See id.* at 33.

286. *Id.*

287. Allsbrook & Ellman, *supra* note 275.

288. Jones, *supra* note 123.

289. Allsbrook & Ellman, *supra* note 275.

290. *See generally* Chemerinsky & Goodwin, *supra* note 6.

291. Badger et al., *supra* note 86.

outcomes, regardless of how they decided to deal with the pregnancy.<sup>292</sup> If they travel to seek obstetric services, they face increased costs and delayed care;<sup>293</sup> if they decide to end their pregnancies themselves, they face significant medical and safety risks,<sup>294</sup> risk of incarceration,<sup>295</sup> and may not seek needed medical care out of fear of criminal penalty.<sup>296</sup> If they continue their pregnancies, they face health risks and increased financial burden on themselves and their families.<sup>297</sup> Mississippi's abortion ban ultimately means that more children will be born to women uncertain of their ability to take care of them in a state that refuses to provide them even the most basic forms of assistance.<sup>298</sup>

On a national scale, draconian trends in abortion policy will burden marginalized women across the country and place social equality even more firmly out of reach.<sup>299</sup> Federal and state lawmakers have the ability and obligation to implement systemic changes that remove barriers to abortion access in the post-*Dobbs* landscape.<sup>300</sup> Without robust federal and state action to strengthen the nation's social safety net and advance policies to help pregnant women and mothers, women facing unintended parenthood are likely to experience insurmountable challenges that will have lasting effects on their children and communities.<sup>301</sup>

---

292. See Chemerinsky & Goodwin, *supra* note 6 at 1237-45.

293. Lindgren, *supra* note 198.

294. See *id.*

295. Adams & Mikesell, *supra* note 204, at 318.

296. Lindgren, *supra* note 198, at 189.

297. Dobbs Economists' Amicus Brief at 24-25.

298. Jerman & Jones, *supra* note 194, at 423.

299. See *id.*

300. Allsbrook & Ellman, *supra* note 275, at 3.

301. Artiga et. al., *supra* note 4, at 15.