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The Impact of Abortion Bans on Low-Income Women¹

Jeni Siegel

DOBBS V. JACKSON WOMEN'S HEALTH DECISION

On June 24, 2022, the Supreme Court's decision in *Dobbs v. Jackson Women's Health* overturned almost 50 years of precedent by holding that the Constitution does not grant the right to have an abortion.² The case started in 2018, when an abortion clinic and one of its doctors challenged the constitutionality of Mississippi's Gestational Age Act ("the Act").³ The Act bans abortion after 15 weeks of pregnancy, which violated the decisions in *Roe v. Wade* (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992).⁴ In those cases, the Supreme Court held that abortion was a fundamental right that states could not regulate or prohibit until "viability" of the fetus.⁵

In *Dobbs*, Justice Alito wrote for the majority and held that abortion could no longer be considered a fundamental right as it was not "deeply rooted in the Nation's history and traditions" or "implicit in the concept of ordered liberty."⁶ The Court declared that the issue of abortion was now returned to the people's elected representatives of their own states to decide how it should be regulated.⁷

HOW STATES HAVE RESPONDED

As soon as the *Dobbs* decision was published, access to abortion changed across the country.⁸ The legality of abortion now presents a complex landscape

¹ This article will refer to the affected population as "women" because much of the research focused on cis-gender women, but abortion access affects anyone capable of becoming pregnant, and conversations on abortion rights should include transgender, intersex, non-binary, and gender expansive people; See Kim Wong-Shing, *Abortion Access Doesn't Only Affect Women*, CNET (July 2, 2022, 1:00 PM), <https://www.cnet.com/health/parenting/abortion-access-doesnt-only-affect-women/> [https://perma.cc/2QUL-T3UZ].

² *Dobbs v. Jackson Women's Health*, 142 S. Ct. 2228, 2242–2243 (2022); David S. Cohen et al., *The New Abortion Battleground*, 123 COLUM. L. REV. (forthcoming 2023).

³ *Dobbs*, 142 S. Ct. 2228 at 2241–2243.

⁴ *Id.* at 2242, 2246.

⁵ *Id.* at 2241–2243.

⁶ *Id.* at 2242.

⁷ *Id.* at 2257.

⁸ Caroline Kitchener et al., *Abortion Is Now Banned in These States. See Where Laws Have Changed.*, THE WASHINGTON POST, <https://www.washingtonpost.com/politics/2022/06/24/>

where laws are being enacted, amended, and challenged rapidly.⁹ Some states had been anticipating *Roe*'s reversal and had trigger laws in place to allow them to ban abortion as soon as *Roe* was overturned.¹⁰ Now, 13 states have almost full bans on abortions: Idaho, South Dakota, Wisconsin, Missouri, Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Alabama, Tennessee, Kentucky, and West Virginia.¹¹ Most of these states make an exception to the abortion ban to save the mother's life but do not afford a similar exception in cases of rape or incest.¹² A few other states have added restrictions to abortion laws by banning abortion at an earlier gestational age: North Carolina, Georgia, and Florida.¹³ Additionally, 10 other states have bans that have been blocked by judges and are currently being litigated: Arizona, Utah, Wyoming, Montana, North Dakota, Iowa, Michigan, Indiana, Ohio, and South Carolina.¹⁴ Depending on how the challenges to abortion bans proceed, 26 states could have near total bans on abortion in place, which would eliminate or severely restrict reproductive health care access for more than 36 million women of reproductive age.¹⁵

POST-ROE REALITY & ITS EFFECTS ON LOW-INCOME WOMEN

Reproductive rights advocates have long been contemplating and fearing what abortion access would look like if *Roe* was overturned.¹⁶ Over the last 20 years, abortion access has dwindled.¹⁷ Providers have become more concentrated to urban areas, and states have enacted more laws that confined abortion

abortion-state-laws-criminalization-roe/ (Updated Oct. 10, 2022, 10:22 AM) [<https://perma.cc/VG9K-WVMA>].

⁹ Cohen et al., *supra* note 2, at 2.

¹⁰ Elizabeth Nash & Isabel Guarnieri, *13 States Have Abortion Trigger Bans – Here's What Happens When Roe is Overturned*, GUTTMACHER INSTITUTE (June 6, 2022), <https://www.guttmacher.org/article/2022/06/13-states-have-abortion-trigger-bans-heres-what-happens-when-roe-overturned> [<https://perma.cc/P39Q-WJ7R>].

¹¹ *Tracking the States Where Abortion Is Now Banned*, THE NEW YORK TIMES, <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html> (Updated Oct. 13, 2022, 11:00 AM) [<https://perma.cc/A665-QE48>].

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*; *New Research from Planned Parenthood and In Our Own Voice Shows that Half of Women of Reproductive Age Could Lose Access to Legal Abortion*, PLANNED PARENTHOOD (Oct. 1, 2021), <https://www.plannedparenthood.org/about-us/newsroom/press-releases/new-research-from-planned-parenthood-and-in-our-own-voice-shows-that-half-of-women-of-reproductive-age-could-lose-access-to-legal-abortion> [<https://perma.cc/VE48-XB5P>].

¹⁶ Cohen et al., *supra* note 2, at 1.

¹⁷ *Id.*

within constitutionally permissible limits.¹⁸ This created “abortion deserts” across Midwestern and Southern states where residents would have to travel over 100 miles away to reach the closest abortion provider.¹⁹ However, overturning *Roe* has the potential to increase the average resident’s travel distance by an additional 249 miles.²⁰ This increase will not only exacerbate the existing barriers that make obtaining an abortion difficult, but it will also dramatically increase the inequalities of abortion access.²¹

A variety of cost factors have been found to create the barriers to accessing abortion, including the costs of travel, transportation, accommodation, the procedure itself, and wages that are lost because of time taken off to get the procedure.²² These financial burdens are magnified by the demographics of who seeks abortions in America.²³ Low-income women comprise 75 percent of abortion patients and a majority of the women who seek abortions.²⁴ Additionally, abortion patients are predominately unmarried, women of color in their twenties.²⁵ The demographics of women who seek abortions in their second trimester have also been disproportionately Black women and women living in poverty.²⁶

Low-income women can find themselves in a “vicious cycle,” where the difficulty of securing money for the procedure will lead to a delay in when they

¹⁸ *Id.* at 8.

¹⁹ *Id.*

²⁰ Caitlin Myers et al., *Predicted Changes in Abortion Access and Incidence in a Post-Roe World*, 100 *CONTRACEPTION* 367, 372 (Nov. 2019).

²¹ Ushma D. Upadhyay et al., *Denial of Abortion Because of Provider Gestational Age Limits in the United States*, 104(9) *AM. J. PUB. HEALTH* 1687; Jennifer Ludden, *Women Who Are Denied Abortions Risk Falling Deeper into Poverty. So Do Their Kids.*, NPR (May 26, 2022), <https://www.npr.org/2022/05/26/1100587366/banning-abortion-roe-economic-consequences> [<https://perma.cc/9DJP-RSPS>].

²² *Id.*

²³ *Id.*

²⁴ Jenna Jerman et al., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, GUTTMACHER INSTITUTE (May 2016), <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014> [<https://perma.cc/5WAD-FDGS>]; Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 *AM. J. PUB. HEALTH* 407 (2018).

²⁵ Katherine Kortsmit et al., *Abortion Surveillance – United States, 2018*, 69 *CENTERS FOR DISEASE CONTROL AND PREVENTION: MORBIDITY AND MORTALITY WEEKLY REPORT*, 1, 6 (Nov. 27, 2020) (in the study of those who obtained an abortion in 2018, 33.6% were non-Hispanic Black, 20% were Hispanic and 7% were in the other race category [not white, non-Hispanic Black, or Hispanic]).

²⁶ Rachel K. Jones & Lawrence B. Finer, *Who Has Second-Trimester Abortions in the United States?*, 85 *CONTRACEPTION* 544, 549 (Oct. 21, 2011).

seek the procedure.²⁷ These delays can result in women seeking the procedure at a gestational age that is past the provider's age limit—which then results in denial of the procedure.²⁸ Denials can result in women having unintended childbirths.²⁹ The states passing abortion bans and restrictions in response to *Dobbs* already have higher incidents of unplanned pregnancy.³⁰ As these restrictions lead to more women being denied an abortion, or the cost factors and increased travel distance make abortion not an option, more women will have to carry unintended pregnancies to term.³¹ Research indicates that roughly 75,000 women who would have received an abortion will give birth in the first year following *Roe* being overturned.³²

The impact of this reality has far-reaching negative socioeconomic and health-related consequences.³³ Studies have shown that giving birth to a child after being denied an abortion reinforces the cycle of poverty, which most women seeking an abortion are already subject to.³⁴ Women who were denied an abortion and then gave birth are more likely to be living below the Federal Poverty Level and less likely to have full-time employment than their counterparts who received an abortion.³⁵ These women also have higher debt and are more likely to experience bankruptcy or eviction.³⁶ These negative consequences remained true for the women who were denied an abortion and gave birth even four years after the denial when compared to those who received an abortion.³⁷ Even though the majority of women in the study were already

²⁷ Bonnie Scott Jones & Tracy A. Weitz, *Legal Barriers to Second-Trimester Abortion Provision and Public Health Consequences*, 99 AM. J. PUB. HEALTH 623, 624 (April 2009).

²⁸ Upadhyay et al., *supra* note 21; Rachel Treisman, *States with the Toughest Abortion Laws Have the Weakest Maternal Supports, Data Shows*, NPR (Aug. 18, 2022), <https://www.npr.org/2022/08/18/1111344810/abortion-ban-states-social-safety-net-health-outcomes> [https://perma.cc/T3H5-KSTL].

²⁹ Christine Dehlendorf et al., *Disparities in Abortion Rates: A Public Health Approach*, 103 AM. J. PUB. HEALTH 1772, 1777 (Oct. 2013); Upadhyay et al., *supra* note 21.

³⁰ Isabel V. Sawhill & Morgan Welch, *The End of Roe Will Create More Inequality of Opportunity for Children*, BROOKINGS (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/> [https://perma.cc/GZ63-7E68].

³¹ Treisman, *supra* note 28.

³² Sawhill & Welch, *supra* note 30.

³³ Treisman, *supra* note 28.

³⁴ Foster et al., *supra* note 24.

³⁵ Foster et al., *supra* note 24.

³⁶ Miller et al., *The Economic Consequences of Being Denied an Abortion*, NATIONAL BUREAU OF ECONOMIC RESEARCH, https://www.nber.org/system/files/working_papers/w26662/w26662.pdf (Revised Jan. 2022), [https://perma.cc/CH3R-AP2K].

³⁷ Foster et al., *supra* note 24.

living in poverty prior to their pregnancy, carrying the unwanted pregnancy to term contributed to a fourfold increase in the likelihood that the women lived in households with income levels below the Federal Poverty Level and relied on public assistance.³⁸ Being denied an abortion has also been linked to widening the gender-pay gap as women's education, time in the workforce, and wages are more limited.³⁹

These economic consequences extend into the lives of the children born from the denials.⁴⁰ The children are less likely to attain higher education and are more likely to be involved in crime and have lower earnings.⁴¹ Women's existing children are also negatively impacted when their mothers are denied an abortion.⁴² One study found that the existing children of mothers who were denied abortion had lower mean child development scores compared to the children of mothers who received the abortion they wanted.⁴³ These children are also more likely to live in poverty, which is only worsened by the fact that states that restrict abortion make it more difficult for families to get governmental assistance and earn a livable wage.⁴⁴

In addition to reinforcing the cycle of poverty, restricting and banning abortion will also lead to detrimental health outcomes for women.⁴⁵ Across America, there is already an existing maternal health crisis, with maternal mortality rates in the United States increasing 16.7 percent over the last 25 years while global rates have fallen 44 percent.⁴⁶ This puts America next to Afghanistan and Sudan as the only countries with rising maternal mortality rates.⁴⁷ Additionally, America has birth outcomes that are "markedly inferior" to other industrialized nations.⁴⁸

³⁸ *Id.*

³⁹ Lauren Hoffman et al., *State Abortion Bans Will Harm Women and Families' Economic Security Across the US*, CENTER FOR AMERICAN PROGRESS (Aug. 25, 2022), <https://www.americanprogress.org/article/state-abortion-bans-will-harm-women-and-families-economic-security-across-the-us/> [<https://perma.cc/4HGA-FRPV>].

⁴⁰ Treisman, *supra* note 28.

⁴¹ Ludden, *supra* note 21; Hoffman et al., *supra* note 39.

⁴² Diana Greene Foster et al., *Effects of Carrying an Unwanted Pregnancy to Term on Women's Existing Children*, 205 J. OF PEDIATRICS 183 (Feb. 2019).

⁴³ *Id.*

⁴⁴ *Id.*; Treisman, *supra* note 28.

⁴⁵ Treisman, *supra* note 28.

⁴⁶ Melia Thompson-Dudiak, *The Black Maternal Health Crisis: How to Right a Harrowing History Through Judicial and Legislative Reform*, 14 DEPAUL J. FOR SOC. JUST. 1, 11 (Jan. 2021).

⁴⁷ *Id.*

⁴⁸ *Id.*

In America, the maternal health crisis predominately affects Black women: “Black mothers are 243 percent more likely to die from pregnancy or child-birth related causes than white women.”⁴⁹ Research has found that this disparity spans across varying income levels and socioeconomic status, but a large part the inequity can be attributed to poverty, location, and lack of access to health care.⁵⁰ Many of the states enacting abortion bans have been found to have the most people living in maternity care deserts, where there are no hospitals with obstetric care, birth centers, or obstetric providers.⁵¹ As a result, these states have higher rates of maternal mortality, infant mortality, and low infant birth weight.⁵² Increasing abortion restrictions worsens each of these rates, especially maternal mortality rates which were found to increase by 38 percent from 2007 to 2015 as states enacted more gestational age restrictions.⁵³ Melia Thompson-Dudiak, an attorney, activist for people of color and women, and researcher of the Black maternal health crisis, believes that losing the federal protection to abortion will “not only affect women of color and low-income women, but will also perpetuate generational cycles and further entrench us into the existing disparities.”⁵⁴ In effect, the *Dobbs* decision creates a feedback loop that will perpetuate the cycle of poverty, racial inequalities, gender-pay gap, and worsen health outcomes in America.⁵⁵

There remains hope that the *Dobbs* decision will direct our nation to focus on these issues with resolution to change the consequences created by it. But improving these dire circumstances will require creative, holistic solutions that look outside of the traditional legal, educational, and healthcare systems because the effects of these systems cannot be “dismantled or reversed with the same tools that created them.”⁵⁶ Coming up with new, realistic answers to

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 13.

⁵¹ Treisman, *supra* note 28.

⁵² *Id.*

⁵³ Treisman, *supra* note 28; Hawkins et al., *Impact of State-Level Changes on Maternal Mortality: A Population-Based, Quasi-Experimental Study*, 58 AM. J. OF PREVENTIVE MEDICINE 165 (Feb. 2020).

⁵⁴ Telephone Interview with Melia Thompson-Dudiak, Founder of Law Office of Melia Thompson-Dudiak (Nov. 6, 2022).

⁵⁵ Treisman, *supra* note 28; Michael W. Berger, *Overturing Roe Disproportionately Burdens Marginalized Groups*, PENN TODAY (June 30, 2022), <https://penntoday.upenn.edu/news/overturing-roe-abortion-bans-disproportionately-burden-traditionally-marginalized-groups> [<https://perma.cc/5ML9-TBRE>].

⁵⁶ Thompson-Dudiak, *supra* note 54.

these problems is not easy, but it is imperative to protect the future for all American women.