# WHAT'S NEXT: THE THREAT TO INDIVIDUAL FREEDOMS IN A POST-*ROE* WORLD

## **HEARING**

BEFORE THE

# COMMITTEE ON THE JUDICIARY U.S. HOUSE OF REPRESENTATIVES

### ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

THURSDAY, JULY 14, 2022

Serial No. 117-73

Printed for the use of the Committee on the Judiciary



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### WHAT'S NEXT: THE THREAT TO INDIVIDUAL FREEDOMS IN A POST-ROE WORLD

### Thursday, July 14, 2022

U.S. House of Representatives

COMMITTEE ON THE JUDICIARY Washington, DC

The Committee met, pursuant to call, at 9:04 a.m., in Room 2141, Rayburn House Office Building, Hon. Jerrold Nadler [Chair of the Committee] presiding.

Members present: Representatives Nadler, Jackson Lee, Cohen, Johnson of Georgia, Jeffries, Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Scanlon, Garcia, Neguse, McBath, Dean, Escobar, Jones, Ross, Bush, Jordan, Chabot, Gohmert, Issa, Buck, Gaetz, Johnson of Louisiana, Biggs, McClintock, Steube, Tiffany,

Massie, Bishop, Fischbach, Bentz, and Owens.

Staff present: Aaron Hiller, Chief Counsel and Deputy Staff Director; John Doty, Senior Advisor and Deputy Staff Director; Arya Hariharan, Chief Oversight Counsel; David Greengrass, Senior Counsel; Moh Sharma, Director of Member Services and Outreach & Policy Advisor; Cierra Fontenot, Chief Clerk; Gabriel Barnett, Professional Staff Member; Casey Lee, Staff Assistant; Merrick Nelson, Digital Director; James Park, Chief Counsel for Constitution; Matt Morgan, Counsel for Constitution; Agbeko Petty, Counsel for Constitution; Will Emmons, Professional Staff Member/Legislative Aide for Constitution; Ella Yates, Minority Member Services Director; Betsy Ferguson, Minority Senior Counsel; Caroline Nabity, Minority Senior Counsel; Andrea Woodard, Minority Professional Staff Member; and Kiley Bidelman, Minority Clerk.

Chair Nadler. The House Committee on the Judiciary will come to order. Without objection, the Chair is authorized to declare recesses of the Committee at any time. We welcome everyone to this morning's hearing on, "What's Next: The Threat to Individual Freedoms in a Post-Roe World."

Before we begin, I would like to remind Members that we have established an email address and distribution list dedicated to circulating exhibits, motions, or other written materials that Members might want to offer as part of today's hearing. If you would like to submit materials, please send them to the email address that has been previously distributed to your offices, and we will circulate the material to Members and staff as quickly as we can.

Before we start, I would like to warn the Members that because we have votes at 12:30. I am going to have a very tight gavel. Five minutes will mean five minutes on the dot.

I will now recognize myself in opening statement.

What is the meaning of freedom in America in 2022? This is the question that we as a society must confront today in the wake of the Supreme Court's appalling decision in *Dobbs* v. *Jackson Women's Health Organization*, which eviscerated the constitutional right to abortion and laid the groundwork for a radical reshaping of our fundamental liberties.

As we reckon with the consequences of this decision for women's health and individual liberty, we must also consider which other constitutional protections, such as the right to contraception, the right to marry whomever we choose, and the fundamental right to privacy, may also fall by the wayside if the current Supreme Court

majority continues down this dangerous path.

By overturning 50 years of precedent in *Roe* v. *Wade* and *Planned Parenthood* v. *Casey*, the Court denied the right of women to equality, bodily autonomy, and essential healthcare, rights that they have justly relied on to order their lives for almost a half century. In doing so, the Court removed from individuals the power to decide the fundamental question of whether to carry or terminate a pregnancy and, instead, gave that power to the government.

Making decisions about when and how to start a family is central to women's lives. It is the very essence of what it means to be secure in one's bodily autonomy and basic human dignity, which are prerequisites for freedom. In *Dobbs*, the Court's majority ignored these fundamental principles and, instead, turned back the clock

50 years.

Make no mistake. Overturning *Roe* was just the start. Republicans and anti-abortion forces are determined to enact a nation-wide ban on abortion the next time they control the political branches of the Federal government. You don't have to take my word for it. Senate Minority Leader Mitch McConnell made it clear that "it's possible" that a Republican-controlled Congress would enact such a ban. The *Washington Post* reported that "leading anti-abortion groups and their allies in Congress have been meeting behind the scenes to plan a national strategy, including a push for a strict nationwide ban if Republicans retake power in Washington"

The impact of *Dobbs* may be even broader than undermining abortion access. For much of the last two generations, Congress, the Supreme Court, and the Executive Branch have acted, even if with some considerable backsliding at times, to protect and, in some cases, to expand guarantees for personal liberty and autonomy against government interference. These constitutional and legal guarantees of personal liberty, in turn, reflected American society's move toward an ever more expansive view of individual free-

dom.

Today, however, a radical right-wing majority on the Supreme Court seeks to challenge the broad arc of our nation's history, an arc that had been bending towards greater freedom and justice for all. This majority made up of conservative judicial activists has barely tried to hide its aim of eviscerating many of the protections

for personal liberty that we as a society had come to believe would remain in place.

Indeed, on the right to abortion, a decisive majority of Americans believe that the Court was wrong to overturn *Roe*'s constitutional guarantee for abortion access. The Court has defied the will of the American majority and in doing so has undermined its own legit-

imacy in their eyes.

While Justice Alito specifically claimed that *Dobbs* was limited to abortion and had no effect on other fundamental rights, I find that assurance cold comfort. The Court's reasoning in *Dobbs*, if taken to its logical extent, could serve as a roadmap for this conservative majority to eviscerate in future cases other fundamental rights premised on the right to privacy and the doctrine of substantive due process more generally.

According to this Supreme Court majority's limited conception of ordered liberty, our understanding of the fundamental freedoms guaranteed by the Constitution should be frozen in amber at the time the Constitution and the 14th Amendment were ratified, periods in history when women and minorities were largely locked out

of public life and American democracy.

Moreover, Justice Thomas' concurrence is the proverbial canary in the coal mine. There, Justice Thomas said out loud what the rest of the Court's majority sought to keep quiet, that under the reasoning of the *Dobbs* decision, other fundamental rights should be vulnerable to future attack. By calling on the Court to reconsider and overturn all its substantive due process jurisprudence, including specifically precedents recognizing constitutional protections for contraception, intimate relations, and marriage equality, Justice Thomas practically invited legal challenges to these and other rights.

That said, these other fundamental rights premised on the right to privacy, the doctrinal foundation for *Roe* and *Casey*, remain the law of the land. This includes the landmark decisions that Justice

Thomas explicitly targeted.

What the example of the *Dobbs* decision teaches us is that we cannot be complacent or allow ourselves to be left scrambling to respond after worst-case scenarios have come to fruition if we want to secure fundamental rights for all Americans. This is true especially in the face of a determined onslaught by the conservative legal movement and its allies on the Court.

To secure the blessings of liberty to ourselves and our posterity, as our Constitution's preamble States, we must remain vigilant against forces hostile to that liberty, including, unfortunately, the current majority on the Supreme Court. We should also consider legislative measures that will secure rights that the Constitution currently guarantees, no matter what may happen in the future.

I thank our witnesses for their participation in today's hearing. I look forward to their testimony. I now recognize the Ranking Member of the Judiciary Committee, the gentleman from Ohio, Mr. Jordan, for his opening statement.

Mr. JORDAN. Thank you, Mr. Chair. Here is what the Court said:

To ensure that our decision is not misunderstood or mischaracterized, we emphasize, we emphasize that our decision concerns the constitutional right to abortion and no other right.

Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion. The Court also said this, and this is critical:

We hold that *Roe* and *Casey* must be overruled. The Constitution makes no reference to abortion and no such right is implicitly protected by any constitutional provision. It is time to heed the Constitution and return the issue to the people's elected representatives.

Those statements are what bother the left. Their beef is with the Constitution. The Court was really clear. The Constitution means what it says.

The left and Democratic Party are so pro-abortion that tomorrow they are going to pass legislation here in the House of Representatives that will allow the taking of an unborn child's life right up until their birthday. They are so pro-abortion that they are willing to engage in all kinds of efforts to intimidate the highest court in our land.

It started a while back when the Senate Majority Leader said this on the steps of the United States Supreme Court:

I want to tell, Gorsuch, I want to tell you, Kavanaugh, you have released the whirlwind and you will pay the price. You won't know what hit you if you go forward with these decisions.

The intimidation of the Court continued when the Chair of this Committee 15 months ago introduced legislation to add not one, not two, not three, but four Associate Justices to the United States Supreme Court. The intimidation continued when this Committee and the left in a concerted effort targeted Justice Thomas and his wife, went after them—we had a hearing on it here in this Committee.

Then, of course, the intimidation—something we have never seen, something that has never happened before, leak of a draft opinion by the Court. It never happened in the history of the country, so focused are they on going against the Constitution and having their pro-abortion agenda happen. Of course, after the leak, after their leak, there were protests at a justice's home in direct violation of a statute, 18 U.S.C. 1507.

Of course, during, after the leak while the case is pending in front of the Court, this Committee, in a further effort to intimidate the Court, held a hearing on this subject matter pending before our highest court.

During that time right after the leak, when all this protesting was going on at justices' homes, when Justice Barrett had her children's school put online, when the left put online where her family attends church on Sunday morning, the United States Senate passed legislation to give protection to justices' families. The Speaker of the House of Representatives held up that—they passed it unanimously. The Speaker of the House held up that legislation for four weeks, for four weeks.

Guess what happened during that time? Guess what happened during that four weeks? We had something else that has never happened in the history of this country. We had an assassination attempt on a sitting justice of the United States Supreme Court. Stop and think about it for a second.

We have a Justice Department that has failed to prosecute anyone with the statute that is directly on point when people are protesting at a justice's home trying to intimate, influence a decision pending before the Court, a Justice Department that refuses to do anything, a Justice Department that is now complicit in this attack by the left to intimidate the Court, complicit in going after a separate and equal branch of our government.

I want to read something to you. It might take a while, but I want to read this. I think this is important, because this, these are attacks that have happened on crisis pregnancy centers and churches over the last ten weeks, ten weeks' time.

On May 3, 2022, individuals vandalized the Care Net Pregnancy Center in Frederick, Maryland.

On May 5th, in Portland, Oregon, vandals smashed numerous windows, spray-painted graffiti on the Southeast Portland Regional Resource Center.

On May 7th, activists vandalized a crisis pregnancy center in Denton, Texas.

On May 7th, Fort Collins, Colorado, activists painted on the doors of a Catholic par-

On May 8th, Mother's Day, individuals attempted to break into the Oregon Right to Life office in Keizer, Oregon.

On May 8th, vandals spray-painted pro-abortion messages on the side of a pro-life

pregnancy center in Manassas, Virginia.

On May 8th, a pro-life non-profit center in Madison, Wisconsin was set on fire and vandalized, and the words if abortions aren't safe, then you aren't either were on the side of the building.

On May 13th, activists threatening, left threatening messages on the front of the Alpha Pregnancy Center in Reistertown, Maryland.

On May 18th, vandals targeted a women's faith-based medical clinic in Auburn, Ala-

On May 25th, Lynnwood, Washington, pro-abortion activists smashed windows, vandalized the Next Step Pregnancy Center, left a threat on the outside of the building and graffiti if abortion isn't safe, you aren't either.

On June 2nd, Anchorage, Alaska, a staff member at the Community Pregnancy Center found nails placed facing upwards in cracks of the parking lot and graffiti all over the building.

On June 2nd, Jane's Revenge claimed credit for an attack in which its members broke windows and scrawled messages, including God loves abortion, this is not safe, at the Agape Pregnancy Resource Center in Des Moines, Iowa.

On June 3rd, the Capitol Hill Crisis Pregnancy Center was the target of left-wing activists who threw red paint on the door, threw eggs at the window, and spraypainted the building with Jane Says Revenge. On June 6th, Asheville, North Carolina, vandals broke windows, left graffiti on the

Mountain Area Pregnancy Services building.

On June 7th, reports indicate that the group, Jane's Revenge, firebombed a Compassionate Care Pro-Life Pregnancy Center in Amherst, New York.

On June 10th, there was a fire at the Gresham Pregnancy Resource Center in Gresham, Oregon.

On June 10th, Philadelphia, Pennsylvania, vandals smashed windows and put graffiti on the Hope Pregnancy Center. On June 15th, Minneapolis, Minnesota, activists smashed the windows of Minnesota

Citizens Concerned for Life's office. On June 19th, Redford Township, Michigan, windows smashed at the Pregnancy

Counseling Center. On June 22nd, Jackson, Michigan, vandals graffitied then smashed the windows of

the office of the Jackson Right to Life. On June 24th, Pregnancy Resource Center of Salt Lake City was vandalized within

hours of the release of the Dobbs decision. On June 24th, North Carolina, the GOP headquarters was spray-painted with

Jane's Revenge threat "if abortion isn't safe, neither are you."

On June 24th, St. Anthony's Catholic Church in Renton, Seattle was vandalized with authorities saying the suspect spray-painted messages saying things that I can't say here in the Committee.

On June 25th, Lynchburg, Virginia, pro-abortion activists vandalized the Blue Ridge Pregnancy Center.

On June 25th, St. Patrick's Catholic Church, Philadelphia was defaced with abort the church spray-painted on the outside of the church.

On June 25th, Paso Robles, California, vandals broke the windows, spray painted the walls of the Tree of Life Pregnancy Support Center.
On June 25th, rioters breached the Arizona Capitol writing against the *Dobbs* deci-

sion overturning Roe. On June 25th, Vermont State Capitol building was vandalized by protestors who painted if abortions aren't safe, neither are you. On June 25th, Cortez, Colorado, Heart to Heart Pregnancy Center was defaced with

pro-abortion graffiti.

On June 25th, Longmont, Colorado, vandals put graffiti and set fire to the Life

Choices Free Pregnancy Services. On June 25th, Portland, Oregon, rioters vandalized Mother and Child Education

Center for the second time since the leaked *Dobbs* decision.

On June 25th, Portland, Oregon, All Saints Catholic Church had graffiti put on it.

On June 26th, Winter Haven, Florida, pro-abortion activists destroyed security cameras, spray-painted the Life Choice Pregnancy Center with all kinds of threat-

ening messages. On June 26th, Tallahassee, Florida, St. Phillips AME Church was targeted.

On June 27th, Upper-West Side of New York, a militant pro-choice network put graffiti, "if abortions aren't safe, neither are you," on the Ascension Roman Catholic Church.

On June 27th, Portland, Oregon, protestors and rioters targeted Hinson Baptist Church

On June 27th in Everett, Oregon—I am at 37.

We have still have more. We have have 50 of these. Everett, Washington, attempted arson attack on the Two Hearts Pregnancy

On June 27th, Bellevue, Washington, man caught on video smashing glass windows, spray-painting messages all over St. Louise Catholic Church.

On June 27th, Lynchburg, Virginia, pregnancy center was vandalized with graffiti that included the phrase, "if abortion ain't safe, you ain't safe," I guess proving that people who do this aren't just criminals. They have also failed English class. On June 27th, A Woman's Friend Pregnancy Resource Clinic in Yuba City, Cali-

fornia had windows smashed.

On June 30th in Nashville, Tennessee, Molotov cocktail thrown through the first-

floor window of Hope Clinic for Women, a pregnancy resource center. On July 1st, St. Bernard Catholic Church, Madison, Wisconsin was vandalized, mes-

sages put on the outside of the church that we can't read here. On July 5th, Kenmore, Washington Care Net of Puget Sound Center was vandalized and burned. St. Paul, Minnesota,

On July 5th, Crisis Pregnancy Center was vandalized.

On July 5th, Hialeah, Florida, the Heartbeat of Miami Center was vandalized with hate messages

On July 8th, Worcester, Massachusetts, Clearway Clinic, a pro-life pregnancy cen-

I have got three more, Mr. Chair—pregnancy center sustained smashed windows and two doors and three windows.

On July 8th, Worcester, Massachusetts, Problem Pregnancy, a crisis pregnancy center, across the street from [inaudible] was hit with paint.

On July 10th, Bethesda, Maryland, a pro-abortionist set fire to the North Bethesda United Methodist Church.

In Bethesda, Maryland, rioters destroyed the headstones of Wildwood Baptist Church on July 10th.

Finally, on July 10th, Bethesda, Maryland, St. Jane Frances de Chantal Parish was broken into, set on fire. The pastor spoke about the attack saying, last night our church was vandalized. People broke in. They overturned statues. They tore down the Stations of the Cross. They desecrated the tabernacle. They set the church on

The whirlwind that the Majority Leader talked about on the steps of the Supreme Court, the whirlwind he talked about, that he called for, this is that whirlwind. This is just in ten weeks, May 3rd through this past weekend. There are more that have happened since, in the last few days. Just in 10 weeks that all happened.

We should be talking about that. We should be asking the Justice Department in front of the Judiciary Committee what are you doing about this sustained effort. It looks to me like domestic terrorist effort coordinated. It seems in so many ways because the message was so often the same on so many of these crisis pregnancy centers. That to me seems what we should be focused on. No, no, the Democrats want to talk about their radical pro-abortion agenda. With that, Mr. Chair, I yield back.

Chair Nadler. Let me just say that no one condones arson or threats. There is a long history from extremists on both sides. Planned Parenthood centers for many years have been the subject of attacks. Abortion clinics have been the subject of attacks and even murder. The name of Dr. Barnett Slepian of Buffalo, New York, who was murdered because he was an abortion provider, comes to mind. So, these long lists, both sides can have these long

lists. No one responsible condones any of it. I will now introduce today's Witnesses.

Melissa Murray is the Frederick I. and Grace Stokes Professor of Law at New York University School of Law. Prior to joining the NYU faculty, she was on the faculty of the University of California Berkeley School of Law where she also served as interim dean. Previously, she clerked for Sonia Sotomayor, then of the U.S. Court of Appeals for the Second Circuit, and Stefan Underhill of the U.S. Circuit Court for the District of Connecticut. Professor Murray re-

ceived a B.A. from the University of Virginia and her J.D. from Yale Law School.

Sarah Warbelow is the Legal Director for the Human Rights Campaign where she has served in a variety of roles since 2008. Before joining HRC, Ms. Warbelow served as the Program Manager for the American Association of University Women Foundation Legal Advocacy Fund. She is also an affiliated Professor at George Washington University and George Mason Law School. She received Bachelor's degrees from Michigan State University and both a Master's degree and a law degree from the University of Michigan.

Catherine Glenn Foster is President and CEO of Americans United for Life. Previously, she spent seven years as litigation counsel with Alliance Defending Freedom. She then founded and managed a law practice and led Euthanasia Prevention Coalition USA as the Executive Director. Ms. Foster earned her B.A. from Berry College, a Master's degree from the University of South Flor-

ida, and a J.D. from Georgetown University Law Center.

Jim Obergefell was the named plaintiff in the landmark marriage equality case *Obergefell* v. *Hodges* and is a public speaker and author on LGBTQ equality and civil rights issues. Previous careers include being a high school German teacher, corporate training, relationship manager, software education consultant, and real estate agent. He earned an undergraduate degree from the University of Cincinnati and attended graduate school at Bowling Green University.

We welcome our distinguished Witnesses. We thank them for

participating today.

I will begin by swearing in our Witnesses. I ask that our Witnesses in person please rise and raise your right hand. I ask that

our remote Witnesses please turn on your audio and make sure I can see your face and your raised right hand while I administer the oath.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God? Let the record show that the witnesses have answered in the affirmative. Thank

you, and please be seated.

Please note that each of your written statements will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in five minutes. To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you have one minute to conclude your testimony. When the light turns red, it signals your five minutes have expired. For Witnesses appearing virtually, there is a timer on your screen to help you keep track of time.

Professor Murray, you may begin.

### STATEMENT OF MELISSA MURRAY

Ms. Murray. Chair Nadler, Ranking Member Jordan, thank you very much for this opportunity to appear before you in this hearing on the imminent threat to individual freedoms in a post-*Roe* world.

My name is Melissa Murray. I am the Frederick I. and Grace Stokes Professor of Law at New York University School of Law where I teach constitutional law, family law, and reproductive rights and justice and serve as the faculty Director of the Birnbaum Women's Leadership Network. Prior to my appointment at NYU, I was a faculty member at the University of California, Berkeley, where I served for 12 years and was also the interim dean of the law school.

The 14th Amendment guarantees all of us liberty and equality. To understand the full extent of the amendment's protections, it is necessary to appreciate the concerns that animated its drafting and ratification. Proposed in the wake of the Civil War, the reconstruction amendments were consciously drafted and ratified for the express purpose of abolishing and repudiating slavery and its indicia. Accordingly, the 13th Amendment abolished slavery. The 15th Amendment enfranchised Black men and introduced them to the political community as equals.

Fourteenth Amendment was intended to repudiate the legal and cultural conditions that distinguished slavery from freedom, including the absence of bodily autonomy and control over procreation, the absence of family integrity and parental rights over children, and the ineligibility for civil marriage. Accordingly, the 14th Amendment did more than insist on the equality and citizenship of the formerly enslaved. Implicit in its understanding of liberty was the repudiation and eradication of these hallmark conditions of slavery. The right to abortion recognized in 1973's *Roe* v. *Wade* proceeds from this understanding of liberty and protects the decision whether to bear or beget a child.

For nearly 50 years, the Supreme Court consistently affirmed the right to abortion as an essential aspect of the Constitution guarantees of liberty and equality. Yet, despite these longstanding precedents, on June 24th, the Supreme Court announced its decision in

Dobbs v. Jackson Women's Health Organization upholding Mississippi's 15-week ban on abortion and overruling Roe v. Wade and

Planned Parenthood v. Casey.

In the *Dobbs* decision, the Court declared that the Constitution no longer protects the right to abortion, marking the first time the Supreme Court has withdrawn a fundamental right. Critically, the Constitution's protection of liberty and privacy is not confined to abortion, but also underlies the Supreme Court's recognition of various fundamental rights, including rights to contraception and procreation, marriage, family relations, childrearing, and sexual intimacy. Despite the majority's assurances that the *Dobbs* opinion implicates only the right to choose an abortion and does not cast doubt on these other precedents, its analytical framework clearly implicates these other liberty rights.

According to the majority, *Roe* v. *Wade* was egregiously wrong because the Constitution does not explicitly identify a right to abortion and such a right is not deeply rooted in the history or traditions of this nation. Although this account is inattentive to the history of the reconstruction amendments, the logic that the opinion applies could easily be translated to a range of other rights that the Court has recognized, including the right to contraception, the right to same-sex marriage, and the right to sexual intimacy.

Accordingly, the *Dobbs* decision invites reconsideration of *Griswold* v. *Connecticut*, which protects the right to contraception; *Obergefell* v. *Hodges*, which secures the right to same-sex marriage; *Lawrence* v. *Texas*, which protects the right to private, consensual sexual relations; and many other decisions in the Court's long line

of substantive due process cases.

In a separate concurrence, Justice Thomas made clear his position on the scope of the *Dobbs* opinion. There, he calls for the Court to reconsider all the Court's precedents recognizing fundamental rights under the 14th Amendment's liberty guarantee. Although no other justice joined his concurrence, it would be a mistake to dismiss Justice Thomas' objections to these substantive due process rights as an irrelevant aside. Like many of his past opinions advocating for the destruction of fundamental liberty and privacy rights, Justice Thomas is signaling that the goal posts have moved. Extremist litigators, judges, and lawmakers are sure to respond in kind.

As the dissent in *Dobbs* states, the majority promises that the decision to overrule *Roe* does not undermine any associated right to marriage, procreation, contraception, and family relationships. These promises cannot be trusted. Communities affected by these decisions should not be satisfied with these baseless claims. I, for one, am not satisfied with the majority's hollow assurances. I call on this Committee to protect these associated rights in a manner that is swift and absolute. Thank you.

[The statement of Ms. Murray follows:]

### TESTIMONY OF MELISSA MURRAY FREDERICK I. AND GRACE STOKES PROFESSOR OF LAW, NEW YORK UNIVERSITY SCHOOL OF LAW

## BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY

## HEARING ON WHAT'S NEXT: THE THREAT TO INDIVIDUAL FREEDOMS IN A POST-ROE WORLD JULY 14, 2022

Thank you very much for the opportunity to appear before you in these hearings on the implications of *Dobbs v. Jackson Women's Health Organization*. I am here today to explain how a line of precedents concerning privacy rights is imperiled as a result of this decision, and why there has never been a more urgent need to protect access to these rights.

My name is Melissa Murray. I am the Frederick I. and Grace Stokes Professor of Law at New York University School of Law, where I teach constitutional law, family law, and reproductive rights and justice and serve as a faculty director of the Birnbaum Women's Leadership Network. Prior to my appointment at New York University, I was the Alexander F. and May T. Morrison Professor of Law at the University of California, Berkeley, where I taught for twelve years and served as Faculty Director of the Berkeley Center on Reproductive Rights and Justice and as the Interim Dean of the law school

In 1973's Roe v. Wade, the United States Supreme Court recognized that the Fourteenth Amendment's guarantee of liberty protects an individual's right to determine whether to bear or beget a child.\(^1\) Since 1973, the Supreme Court has consistently affirmed the right to abortion as an essential aspect of the Constitution's guarantees of liberty and equality, including in 1992's Planned Parenthood v. Casey, which reaffirmed a woman's right to abortion. Despite these long-standing precedents, on June 24, 2022, the United States Supreme Court announced its decision in Dobbs v. Jackson Women's Health Organization, upholding Mississippi's 15-week abortion ban and overruling Roe v. Wade and Planned Parenthood v. Casey.\(^2\) In the Dobbs decision, the Court declared that the U.S. Constitution no longer protects the right to abortion, marking the first time that the Supreme Court has withdrawn a fundamental constitutional right—a right that has been relied on for nearly 50 years.

The impact of the Court's decision in Dabbs has been immediate—and has disproportionately affected individuals who already face barriers to health care and economic security, including communities of color, rural families, and LGBTQ individuals. I urge this Committee to keep these communities in mind as you consider ways to restore the right to abortion and support those seeking abortion care now that Roe has been overturned.

The *Dobbs* decision has fundamentally disrupted access to abortion in this country—but its impact will extend beyond abortion. *Roe v. Wade* did far more than establish the constitutionally protected right to abortion; it solidified and expanded the constitutional "right to privacy," as part of the liberty interests protected under the Fifth and Fourteenth Amendments, which state that no person shall be deprived of "life, liberty or property, without due process of law." Accordingly, the

Constitution's protection of liberty and privacy is not confined to abortion, but also underlies the Supreme Court's recognition of various fundamental rights, including the rights to contraception and procreation, marriage, family relations, child rearing, and sexual intimacy.<sup>4</sup> Although the Supreme Court's recognition of the right to privacy predates *Roe*, *Roe* was an important affirmation of, and foundation for, a broad array of privacy and liberty rights.<sup>5</sup>

To be sure, the Supreme Court understood the links between Roe and the other rights that proceed from the Constitution's grant of liberty. Indeed, in the majority opinion, Justice Alito attempted to distinguish the abortion right from these other rights by explaining that, unlike these other rights, "[a]bortion destroys...' potential life." But despite Justice Alito's insistence that overruling Roe "does not undermine [these other rights] in any way," the majority opinion's logic applies with equal force to these other rights. Justice Clarence Thomas said as much in his concurring opinion. There, he argued that "the Due Process Clause does not secure any substantive rights," and, on that ground, encouraged his colleagues to "reconsider all of this Court's substantive due process precedents," including those that recognize a right to contraception, sexual intimacy, and same-sex marriage.

The writing is on the wall. Because the Supreme Court has overturned Roe, these other rights of heart and home are now in jeopardy. I am here today to explain the imminent risk to these fundamental rights and to advocate for the protection of the right to abortion and all of these fundamental rights.

 The Constitution's Protection of Personal Liberty, Including Access to Contraception and the Right to Abortion, is Central to Individual Dignity and Equality and to Other Important Rights.

The Fourteenth Amendment guarantees all of us liberty and equality. To understand the full extent of the Amendment's protections, it is necessary to appreciate the concerns that animated its drafting and ratification. Proposed in the wake of the Civil War, the Reconstruction Amendments were consciously drafted and ratified for the express purpose of abolishing and repudiating slavery and its indicia. Accordingly, the Thirteenth Amendment formally abolished slavery, while the Fifteenth Amendment enfranchised Black men, introducing them into the political community as equals. In keeping with this abolitionist ethic, the Fourteenth Amendment was intended to repudiate the legal and cultural conditions that distinguished slavery from freedom. These conditions of enslavement were manifold, but they included a lack of bodily autonomy and control over procreation, the absence of family integrity and parental rights over children, ineligibility for civil marriage, and inability to contract. In drafting the Reconstruction Amendments, the framers were intent on eradicating both slavery and these repugnant features of that "peculiar institution." On this account, the Fourteenth Amendment did more than insist on the equality and citizenship of the formerly enslaved; implicit in its understanding of "liberty" was the repudiation and eradication of these hallmark conditions of slavery.

As such, the Due Process Clause's vision of liberty necessarily protected as fundamental rights of bodily autonomy, rights of family integrity, marriage rights, and parental rights. Indeed, as early as 1923, the Court acknowledged this aspect of the Due Process Clause's grant of liberty, concluding in *Meyer v. Nebraska* that the Fourteenth Amendment protects "the right of the individual to contract; to engage in any of the common occupations of life; to acquire useful knowledge; to marry, establish a

home and bring up children; to worship God according to the dictates of his own conscience; and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

The Supreme Court's recognition of a right to privacy proceeds from this understanding of the Fourteenth Amendment's guarantee of liberty. In 1965's *Griswold v. Connecticut*, the Court announced a right to privacy that emanated from the penumbras of various guarantees of the Bill of Rights. In doing so, the *Griswold* Court reiterated that the Constitution protects an individual's right to make certain personal decisions about intimacy, marriage, and procreation.

The Court's recognition of a right to choose an abortion proceeds from this tradition of liberty and autonomy in intimate life. Indeed, according to the Court, "[f]ew decisions are more personal and intimate, more properly private, or more basic to individual dignity and autonomy than a woman's decision . . . whether to end her pregnancy." The exercise of this right without undue hindrance from the State is essential to dignity as an individual and status as an equal citizen.

Reproductive autonomy is rooted in the deeply personal nature of decisions about bearing children and expanding a family. However, the decision of "whether to bear or beget a child" has ramifications beyond the home and family. As the Court has recognized, women's ability "to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." <sup>10</sup>

The Supreme Court's decision in *Roe v. Wade* recognizing the right to abortion, does not stand on its own; reflecting the anti-slavery origins of the Fourteenth Amendment, it is part of a long line of cases that recognize the constitutional right to privacy and liberty, including personal decisions essential to an individual's autonomy. These decisions include the right to contraception—first recognized in *Griswold v. Connecticut* (1965)<sup>11</sup>—and the right to procreate—first recognized in *Skinner v. Oklaboma* (1942).<sup>12</sup> The Court relied on these core precedents in deciding *Roe v. Wade* (1973), and in *Carey v. Population Serices* (1977),<sup>13</sup> it relied on *Roe* in turn for its central holding that "the Constitution protects individual decisions in matters of childbearing from unjustified intrusion by the State." <sup>14</sup>

Critically, the right to personal liberty is not limited to reproductive rights. It includes the right to marry, first recognized in *Skinner v. Oklahoma* (1942), <sup>15</sup> and reaffirmed in 1967's *Loving v. Virginia* (1967) <sup>16</sup> and 2015's *Obergefell v. Hodges* (2015). <sup>17</sup> It includes the right of parents to direct the upbringing of their children, first recognized in the 1920s in *Meyer v. Nebraska* (1923). <sup>18</sup> and *Pierce v. Society of Sisters* (1925). <sup>19</sup> It includes the right to maintain family relationships, including relationships that go beyond the traditional nuclear family. <sup>20</sup> And *Roe* has also influenced the Supreme Court's decision to recognize the right to form intimate relationships, <sup>21</sup> and the right to personal control of medical treatment. <sup>22</sup>

 $R\omega$  is inextricably bound to this constellation of privacy and personal liberty rights. Now that  $R\omega$  has been overturned, these other rights are similarly threatened.

### II. The analytical framework used by the majority in *Dobbs* lays out a roadmap for revisiting and taking away other fundamental privacy and liberty rights.

The majority opinion lays out a roadmap for eviscerating other important rights—including the rights to contraception and same-sex marriage. According to the *Dobbs* majority, *Roe* was "egregiously wrong" because the right to choose an abortion is not explicit in the text of the Constitution and is not "deeply rooted" in the traditions and history of this country. As the foregoing sections make clear, this account fundamentally misunderstands the Fourteenth Amendment's anti-slavery origins and the Framers' understanding of "liberty." But assuming *arguendo* that the majority's assessment is correct, its logic cannot be confined to the abortion right. Despite the majority's assurances that the *Dobbs* opinion implicates only the right to choose an abortion and does not cast doubt on other precedents, its analytical framework clearly implicates the other liberty rights that the Court has recognized in its substantive due process jurisprudence. As the dissent points out, "[t]he lone rationale for what the majority does today is that the right to elect an abortion is not 'deeply rooted in history." But "[t]he same could be said, though, of most of the rights the majority claims it is not tampering with." This means that "[e]ither the mass of the majority's opinion is hypocrisy," or "all rights that have no history stretching back to the mid-19th century are insecure."

Just as "the Constitution makes no reference to abortion," it similarly does not make reference to contraception, marriage, parental rights, or LGBTQ rights. Accordingly, the Dobbs decision invites reconsideration of Griswold v. Connecticut (right to contraception), Obergefell v. Hodges (right to same-sex marriage), Lawrence v. Texas (right to private, consensual sexual relations), and many other decisions in the Court's long line of substantive due process cases. The right to contraception is exemplary of this concern. Nowhere does the Constitution speak of a right to contraception in fact, the Constitution does not even explicitly mention women. And as many conservatives have noted, the American legal landscape was littered with prohibitions on contraception right up until the court invalidated Connecticut's ban on contraception in 1965's Griswold v. Connecticut. Despite these obvious similarities, the majority insists that its decision in Dobbs has no bearing on the future of contraceptive access.

And yet, it is impossible to "neatly extract" the right to abortion from the "constitutional edifice without affecting any associated rights." For this reason, the dissent likens the majority's assurances to "someone telling you that the Jenga tower simply will not collapse." 27

And in a post-Roe America, it is easy to see how the right to contraception could be gutted. It has already begun, with abortion opponents recasting some forms of contraception as abortifacients. For the last 10 years, this has been a standard move among abortion opponents. To be clear, contraception prevents pregnancy, but this has not stopped anti-abortion groups and lawmakers from attempting to recast emergency contraception and intrauterine devices (IUDs) as abortions.

In 2021, Idaho banned emergency contraception at public school health centers, including public universities, as part of a bill banning abortion. Also in 2021, Missouri nearly failed to pass a critical funding bill for its state Medicaid program over an amendment claiming emergency contraceptives and IUDs should not be covered. After the draft *Dobbs* opinion was leaked, the Louisiana legislature flirted with a bill that would classify abortion as a homicide, prompting concern that the legislation could have criminalized IUDs and emergency contraception.

Even members of this chamber have promoted this falsehood. In debate last June over the Equal Access to Contraception for Veterans Act, a bill that would allow veterans access to no-cost contraception, members made statements to this effect on the House floor. In September 2021, when the House Armed Services Committee considered the National Defense Authorization Act (NDAA), Representative Jackie Speier introduced an amendment that would provide no-cost access to birth control for military servicemembers and military families. In opposition to this amendment, some members of Congress claimed that emergency contraception caused an abortion. This happened just a few weeks ago when Representative Speier offered her amendment again in the House Armed Services Committee.

### III. Justice Thomas's concurrence makes clear that these associated privacy rights are not safe, despite the majority's efforts to cordon off abortion from other privacy rights.

It is not just that the logic of the majority's analysis easily applies to other privacy rights. In a separate concurrence, Justice Thomas makes clear the imminent threat to these other rights, encouraging the Court to reconsider *all* of the Court's precedents recognizing fundamental rights under the Fourteenth Amendments' right to liberty, including substantive due process rights established in *Griswold, Lawrence*, and *Obergefell.*<sup>28</sup> As he explains, every one of these decisions is "demonstrably erroneous," and the newly constituted Court has not only the power but a "duty" to overturn them.

Justice Thomas goes on to state that the entire idea of substantive due process rights is a "demonstrably incorrect reading of the Due Process Clause, [and] the 'legal fiction' of substantive due process is 'particularly dangerous." Justice Thomas offers three reasons for his objections to substantive due process rights. First, he claims that substantive due process rights give judges too much power in identifying what rights are fundamental, and that this power constitutes policy-making rather than neutral legal analysis. Second, Justice Thomas argues that substantive due process rights "distort" other areas of constitutional law" and have become the "core inspiration for many of the Court's constitutionally unmoored policy judgments." Third, Justice Thomas argues that substantive due process analysis is "often wielded to 'disastrous ends." As evidence of these "disastrous ends," he cites the Court's infamous decision in *Dred Scatt v. Sanford*. Justice Thomas's invocation of a decision holding that those of "African descent" were ineligible for citizenship in an opinion that calls into question a line of jurisprudence that reflects and embodies the Fourteenth Amendment's aspirations for abolishing slavery and eradicating the residue of enslavement in the United States is profoundly disturbing. It is doubly offensive—and morbidly uncanny—in the historical context of racial reproductive coercion of Black women.

a. Thomas is directing his words at the extremist federal judges, right-wing political candidates, and anti-abortion legislators looking to him for how to eliminate the right to contraception moving forward.

Although no other justice joined his concurrence, it would be a mistake to dismiss Justice Thomas's rant against substantive due process rights as an irrelevant aside. Thomas's concurrence furnishes a blueprint to extremist federal judges, hostile congressional candidates, and anti-abortion legislators seeking a rationale for challenging the right to contraception and other fundamental rights going forward. Like many of his past opinions advocating for the destruction of fundamental liberty and

privacy rights, Justice Thomas is signaling that the goal posts have moved, and extremist litigators, judges, and lawmakers are sure to adjust their game plan in response.

The prospect of assaults on the right to contraception is hardly hyperbolic or hypothetical. In March, Tennessee Senator Marsha Blackburn dismissed *Griswold v. Connecticut*, the longstanding Supreme Court decision legalizing contraceptive use by married couples, as "constitutionally unsound." This past February in Michigan, two Republican candidates for attorney general criticized *Griswold* during a public debate. In May 2022, Blake Masters, an Arizona Republican candidate for U.S. Senate, declared on his website that he will only vote to confirm federal judges who "understand that... *Griswold...* was wrongly decided." Justice Thomas's declaration of war against substantive due process rights, including the right to contraception established in *Griswold*, not only greenlights extremist state legislators and politicians, but makes clear that such measures will have his support—and his vote—if these questions come before the Court.

In the few weeks since *Roe* was overturned, those of us who have maintained that the decision imperils other fundamental rights have been accused of hyperbolic "catastrophizing" and baseless fearmongering. For instance, the Wall Street Journal's editorial page insisted that our fears about overruling rights to contraception and same-sex marriage are little more than an "implausible parade of horribles." Such high-level minimizing is not surprising considering that only a few years ago, many of us were dismissed when we insisted that *Roe* was at risk of being overturned. To be clear, I take no joy in correctly predicting what has come to pass. I only ask that this committee heed these new warnings and take swift action to protect our most basic privacy and liberty rights that are now clearly threatened.

b. The *Dobbs* majority has signaled endorsement of Justice Thomas's harmfully inaccurate depiction of the modern birth control movement as progeny of the anti-Black eugenics movement.

To understand whether and how the right to contraception, like the right to abortion, could be overturned, one need only read the tea leaves of the *Dobbs* decision. In footnote 41, Justice Alito highlights an argument linking abortion with eugenics, referencing Justice Thomas's 2019 concurrence in *Box v. Planned Parenthood of Indiana and Kentucky*. In that concurrence, Justice Thomas argued that abortion restrictions were the state's attempt to prevent abortion from becoming "a tool of eugenic manipulation." Justice Thomas's argument hinged, in part, on the relationship between Margaret Sanger, the founder of Planned Parenthood and the modern birth control movement, and the eugenics movement. The provided that the superior of the superior

Justice Alito's decision to include the footnote in the majority opinion<sup>39</sup> is puzzling—by the opinion's logic, overruling Roe is a function of textualism and originalism, not eugenics. It might be explained as a gesture of collegiality to Justice Thomas, who has diligently husbanded the eugenics argument and seen it flourish in lower court rulings on abortion. Or, more ominously, the footnote may be an effort to preserve — in the most important Supreme Court decision in a generation—the view that the modern birth control movement is irrevocably tainted by its past associations with eugenics and racial injustice.

Linking the right to contraception to racism and the prospect of racial genocide may have profound consequences. After all, the court has overruled past precedents in order to remedy racial injustice. As the *Dobbs* opinion acknowledges, the court in *Brown v. Board of Education* overruled *Plessy v. Ferguson* in

order to correct the injustices of Jim Crow. What better way to destabilize, and lay a foundation for overruling the right to contraception than to foster and cultivate the notion that it originated in a racist effort to stamp out Black reproduction? Never mind the 400-year long history of federal and state regulations that have controlled, exploited, criminalized, brutalized, and surveilled the reproductive autonomy of Black people, people of color, and Black women in particular. These assertions, and the effort to destabilize reproductive rights that they underwrite, are not only egregious, but make clear that racial justice is secondary to those who parrot these narratives. Instead, their invocation of eugenics underwrites a deep-seated effort to undercut reproductive health services and freedom for our most marginalized communities.

As the dissent states, "the majority promises that the decision to overturn *Roe* does not undermine any associated rights (i.e., rights to "marriage, procreation, contraception, [and] family relationships"), but these promises cannot be trusted and communities affected by these decisions should not be satisfied with these baseless claims. <sup>41</sup> I, for one, am not satisfied with the majority's hollow assurances, and call on this committee to protect these associated rights in a manner that is swift and absolute.

### Thank you.

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<sup>1</sup> Roe v. Wade, 410 U.S. 113, 169–70 (1973)

<sup>2</sup> Dobbs v. Jackson Women's Health Org., No. 19-1392, slip op. at 1 (June 24, 2022) (hereafter "Dobbs Majority"), https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf.

<sup>3</sup> U.S. Const., amend. V; Id. at amend. XIV, § 1.

<sup>4</sup> See, e.g., Lawrence v. Texas, 539 U.S. 558, 573-74 (2003); George Blum et al., Right to Privacy, 16B Am. Jur. 2d Constitutional Law § 652 (2012).

<sup>5</sup> While not originally understood as arising primarily from the Due Process Clause, the right to privacy has been recognized
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- <sup>5</sup> While not originally understood as arising primarily from the Due Process Clause, the right to privacy has been recognized since at least 1891, when the Supreme Court proclaimed "[n]o right is held more sacred . . . than the right of individual to the possession and control of his own person, free from all restraint or interference of others." *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 251 (1891); *see Roe v. Wade*, 410 U.S. 113, 153 (1973) (citing *Botsford* as recognizing right to privacy rooted in the Constitution).
- 6 262 U.S. 390, 399 (1923).
- <sup>7</sup> 381 U.S. 479, 484 (1965).
- 8 See Roe v. Wade, 410 U.S. 113 (1973).
- <sup>9</sup> Thornburgh v. Am. College Obstetricians & Gynecologists, 476 U.S. 747, 772 (1986).
- <sup>10</sup> Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 556 (1992).
- 11 381 U.S. 479 (1965).
- <sup>12</sup> 316 U.S. 535 (1942). <sup>13</sup> 431 U.S. 678 (1977).
- <sup>13</sup> 431 U.S. 678 (1977). <sup>14</sup> 431 U.S. 678, 687 (1977).
- 15 316 U.S. 535 (1942).
- 16 388 U.S. 1, 12 (1967).
- <sup>17</sup> 135 S. Ct. 2584, 2604–05 (2015).
- 18 262 U.S. 390 (1923).
- 19 268 U.S. 510 (1925).
- <sup>20</sup> See, e.g., Moore v. East Cleveland, 431 U.S. 494, 500–06 (1977).
- <sup>21</sup> See, e.g., Lawrence v. Texas, 539 U.S. 558, 564 (2003).
- <sup>22</sup> See, e.g., Gruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 342 (1990) (Stevens, J., dissenting); Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 71 (1976) (invalidating a requirement that a married woman obtain her husband's consent for an abortion).
- consent for an abortion).

  <sup>23</sup> Dobbs v. Jackson Women's Health Org., No. 19-1392, slip op. at 5 (June 24, 2022) (Breyer, Sotomayor, and Kagan, J., dissenting) (hereafter "Dobbs Dissent").

<sup>33</sup> Dean Obeidallah, Wy Republicans, want to rull back Americans' right to privacy', MSNBC (March 23, 2022), https://www.msnbc.com/opinion/msnbc-opinion/senator-blackburn-used-scotus-birth-control-case-make-alarming-

point-n1292771.

34 Craig Mauger, Republican AG candidates criticize 1965 ruling against contraceptive ban, THE DETROIT NEWS (Feb. 21, 2022), https://www.detroitnews.com/story/news/politics/2022/02/21/michigan-gop-ag-candidates-criticize-1965-ruling-against-criticize-1965-rul

ontraceptive-ban/6879175001/

35 Dillon Rosenblatt, GOP Senate candidate Blake Masters wants to allow states to ban contraception use, AZ MIRROR (May 6, 2022), https://www.azmirror.com/blog/gop-senate-candidate-blake-masters-wants-to-allow-states-to-ban-contraception-use/.

36 139 S. Ct. 1780, 1782–93 (2019) (Thomas, J., concurring).

37 Box, 139 S. Ct. 1780, 1784.

<sup>&</sup>lt;sup>24</sup> *Dobbs* Dissent, slip op. at 5. <sup>25</sup> *Dobbs* Dissent, slip op. at 5.

<sup>&</sup>lt;sup>26</sup> Dobbs Dissent, slip op. at 25.

<sup>&</sup>lt;sup>23</sup> Dobbis Dissent, sup op. at 25.
<sup>24</sup> Dobbis Dissent, slip op. at 25.
<sup>25</sup> Dobbis Dissent, slip op. at 25.
<sup>28</sup> Dobbis Dissent, Silp op. at 25.
<sup>28</sup> Dobbis Dissent, Silp op. at 25.
<sup>29</sup> Dobbis Dissent, Silp op. at 26.
<sup>20</sup> Dobbis Dissent, Silp op. at 4.

<sup>30</sup> Dobbs Justice Thomas Concurrence, slip op. at 4.

<sup>31</sup> Dobbs Justice Thomas Concurrence, slip op. at 5.

<sup>32</sup> Dobbs Justice Thomas Concurrence, slip op. at 5.

Box, 137 S. Ct. 1780, 1783.
 Box, 138 S. Ct. 1780, 1783.
 Box 138 Box, 139 S. Ct. 1780, 1783.
 Pobbs Majority, slip op. at 30, n. 41 (citing Box concurrence and referencing "arguments about the motives of proponents of liberal access to abortion...[to include] a desire to suppress the size of the African American population").

<sup>40</sup> Dobbs Majority, slip op. at 40.

<sup>41</sup> Dobbs Dissent, slip op. at 25.

Chair NADLER. Thank you, Professor.
Ms. Warbelow, you are now recognized for five minutes.

### STATEMENT OF SARAH WARBELOW

Ms. Warbelow. Thank you. Thank you, Chair Nadler, Ranking Member Jordan, and Members of the Committee for the opportunity to testify today. My name is Sarah Warbelow. I am the Legal Director for the Human Rights Campaign, the nation's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer equality.

It is an honor to testify here today on behalf of more than our three million Members and supporters nationwide regarding the

potential impact of the *Dobbs* decision on LGBTQ rights.

I was born in a post-Roe world to a mother who fought for her five daughters' reproductive rights and loved us all the more for being able to choose us. I am shaken to my core by the end of Roe. Loss of abortion access is devastating, including to LGBTQ people who need access to safe and compassionate healthcare, including access to abortion, contraception, fertility services, so they can decide if they wish to become parents and when to do so.

Dobbs is a radical rejection of 50 years of precedent of ending a settled body of case law upon which millions of Americans, including LGBTQ people, rely. The majority in Dobbs emphasized that it did not view the decision to overturn Roe as impacting the results in other substantive due process cases. Even saying, it is hard to see how we could be clearer. Its cursory analysis fails to meaningfully distinguish Dobbs from other substantive due process cases, except to point to fetal life.

Frustratingly, the *Dobbs* opinion obliquely references *Lawrence* and *Obergefell* as examples the Court regards as correctly decided to reject stare decisis and overturn prior precedent. Both *Lawrence* and *Obergefell* expanded the realm of individual rights and recognized that prior decisions reflected animus to and exclusion of

LGBTQ people.

By contrast, the Court in *Dobbs* stripped away the rights of women and LGBTQ people to have control over when and whether to bear a child. Distinguishing *Dobbs* in this way provides cold comfort that the Court might not be willing to reconsider the outcomes of *Obergefell*, *Lawrence*, and potentially even *Loving* if presented with the opportunity to do so down the line. In fact, Justice Thomas' extraordinarily and alarming concurrence disavowing substantive due process entirely invites it.

However, should the Court choose to do so, these precedents have deep, double-stranded constitutional roots. Not only substantive due process, but also equal protection case law. Moreover, LGBTQ people have robust reliance interests that impact their relationship to the government and that carry financial, familial, and other obli-

gations.

To put it squarely, if *Lawrence* were overturned, a marriage certificate could be evidence of a crime. Today, nearly a dozen States retain laws criminalizing same sex sexual relationships and 35 States still have laws or constitutional amendments on the books that bar same sex couples from marrying. Despite growing accept-

ance for LGBTQ people, coming out still comes at a cost. Anti-LGBTQ hate crimes and violence are at historically high levels.

State legislatures have been particularly hostile to LGBTQ people since the Obergefell decision. Since 2015, 1,200 anti-LGBTQ bills have been filed in State legislatures. With Lawrence or Obergefell perceived at risk, State legislatures are likely to redouble their efforts to recriminalize intimacy between consenting adults and undermine marriage of same sex couples, just as Thomas' concurrence may inspire legislators to pass laws in conflict with existing precedent in the hopes that will result in that precedent

being overturned.

State employees emboldened by Dobbs may engage in rogue discriminatory behavior for purposes of setting up a test case. Additionally, laws abrogated by *Lawrence* and *Obergefell* could be enforced anew. No single action can repair the constitutional crisis inflicted by *Dobbs*' radical rejection of precedent, but, in addition, to the Women's Health Protection Act, there are important steps Congress can take to stymie the damage. The Respect for Marriage Act, the John Lewis Voting Rights Enhance Act, and the Equality Act would all provide important protections as we fight to restore the right to abortion and to our other rights protected by substantive due process. This list is not exhaustive, but a starting point.

There is no question that stemming the effects of *Dobbs* will require careful and concerted action at the Federal and State levels. Moreover, there is no question that organizations like HRC will vigorously defend precedents that protect the right to marriage, to Federal equality, and to loving who you love without fear of criminalization. Ultimately, it is the Dobbs dissent stressed. The new majority of the Supreme Court may not be done with its work, but

neither are we.

[The statement of Ms. Warbelow follows:]

United States House of Representatives
Committee on the Judiciary
What's Next: The Threat to Individual Freedoms in a Post-Roe World
July 14, 2022
Testimony of Sarah Warbelow, Legal Director of the Human Rights Campaign

# United States House of Representatives Committee on the Judiciary What's Next: The Threat to Individual Freedoms in a Post-Roe World July 14, 2022

Testimony of Sarah Warbelow, Legal Director of the Human Rights Campaign

Thank you for the opportunity to submit testimony to the Committee on the Judiciary regarding the threat to individual freedoms in a post-Roe world. My name is Sarah Warbelow, and I am the legal director at the Human Rights Campaign, America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ+) equality. It is both an honor and a privilege to submit this testimony on behalf of our over 3 million members and supporters nationwide regarding the potential impact of the Dobbs decision on LGBTQ+ rights. I was born in a post-Roe world to a mother who fought for her five daughters' reproductive rights and loved us all the more for being able to choose us. I am shaken to my core by the end of Roe.

Dobbs v. Jackson was primed from the start to result in the overturning of Roe v. Wade and Planned Parenthood v. Casey while throwing into tumult substantive due process jurisprudence more generally. This decision is a radical rejection of fifty years of precedent, upending a settled body of case law upon which millions of Americans rely. Losing Dobbs is a tremendous loss for the LGBTQ+ community, who need abortions and equal access to safe and compassionate healthcare. It is also an alarming development with potential consequences for other cases establishing constitutional protections for LGBTQ+ people. Dobbs represents one of the most significant blows to civil rights in a generation.

Immediate Impact of Dobbs on the LGBTQ+ Community

Loss of abortion access is devastating to women, including lesbian and bisexual women, transgender men, and nonbinary people. Contrary to popular belief, many members of the LGBTQ+ community need access to abortion care. Data derived from the National Survey of Family Growth shows that LGBTQ+ women who have been pregnant are more likely to have had unwanted or mistimed pregnancies than heterosexual women and are more likely to need abortion services as well. Lesbian (22.8%) and bisexual (27.2%) women who have been pregnant are more likely than heterosexual women (15.4%) who have been pregnant to have had an abortion. Furthermore, their pregnancies are more likely to be the result of violence. Reproductive rights are LGBTQ+ rights. LGBTQ+ people need and deserve access to the full

<sup>2</sup> *Id*.

<sup>&</sup>lt;sup>1</sup> Human Rights Campaign, *LGBTQ+ People & Roe v Wade* (2022), <a href="https://hrc-prod-requests.s3-us-west-2.amazonaws.com/FACT-SHEET\_-LGBTO-PEOPLE-ROE-V-WADE.pdf">https://hrc-prod-requests.s3-us-west-2.amazonaws.com/FACT-SHEET\_-LGBTO-PEOPLE-ROE-V-WADE.pdf</a>.

range of family planning and reproductive health services – including access to abortion, contraception, and fertility services – so they can decide if they wish to become parents and when to do so. All told, it will take years to fight through, untangle, and unwind the damage that this decision is causing across numerous states.

Dobbs Majority Opinion Implications for Lawrence and Obergefell

The majority in *Dobbs* emphasized that it did not view the decision to overturn *Roe* as impacting the rationale or result in other substantive due process cases. In the leaked draft, Alito wrote that

"to ensure that our decision is not misunderstood or mischaracterized, we emphasize that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion."

The final opinion builds upon that language by declaring

"we have stated unequivocally that '[n]othing in this opinion should be understood to cast doubt on precedents that do not concern abortion."... It is hard to see how we could be clearer. Moreover, even putting aside that these cases are distinguishable, there is a further point that the dissent ignores: Each precedent is subject to its own stare decisis analysis...."<sup>4</sup>

The majority responds to the concerns voiced by the dissent and presumably the American public. However, it is important to note that while the majority criticizes the dissent for a perceived failure to distinguish the state interest in *Roe* from the state interest in other cases, the majority itself fails to engage in a meaningful analysis of what now distinguishes *Dobbs* from other substantive due process cases except to point to 'fetal life.'5

Frustratingly, the *Dobbs* opinion obliquely references *Lawrence v. Texas* and *Obergefell v. Hodges* as examples of the Court correctly rejecting *stare decisis* to overturn prior precedent. <sup>6</sup> While it is true that *Lawrence* overturned *Bowers v. Hardwick*<sup>7</sup> and *Obergefell* overturned *Baker v. Nelson*, <sup>8</sup> those decisions are not meaningfully comparable to the Court's action in *Dobbs*. Both

<sup>&</sup>lt;sup>3</sup> Politico, Leaked Draft of Dobbs v. Jackson Women's Health Org. at 62 (May 5, 2022), https://www.politico.com/news/2022/05/02/read-justice-alito-initial-abortion-opinion-overturn-roe-v-wade-pdf-00029504.

<sup>&</sup>lt;sup>4</sup> Dobbs v. Jackson Women's Health Org., 579 U.S. \_\_\_\_, 71 (2022).

<sup>&</sup>lt;sup>5</sup> Dobbs, 597 U.S. at 37.

<sup>6</sup> Dobbs, 597 U.S. at 41.

<sup>&</sup>lt;sup>7</sup> Lawrence v. Texas, 539 U.S. 558, 578 (2003).

<sup>&</sup>lt;sup>8</sup> Obergefell v. Hodges, 576 U.S. 644, 675 (2015).

Lawrence and Obergefell expanded the realm of individual rights and recognized that prior decisions reflected animus to and exclusion of LGBTQ+ people. By contrast, the Court in Dobbs stripped away the rights of women and LGBTQ+ people to have control over when and whether to bear a child by overturning Roe.

Moreover, *Obergefell* is situated within a different vein of substantive due process. It most closely ties back to *Loving v. Virginia* and its progeny including *Zablocki v. Redhail*<sup>9</sup> and *Turner v. Safley*. <sup>10</sup> In *Loving*, the Court determined that restricting the ability of interracial couples to marry violated both the equal protection clause and the due process clause of the Fourteenth Amendment. <sup>11</sup> Notably, Chief Justice Warren wrote in *Loving* that "[u]nder our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State." <sup>12</sup> Nearly fifty years after *Loving*, the Supreme Court in *Obergefell* held that state statutes that prohibited same-sex couples from marrying and denied recognition of the legal marriages of same-sex couples from another jurisdiction violated the Fourteenth Amendment's equal protection and due process clauses. <sup>13</sup> Similarly, the Court in *Lawrence* relied upon both the equal protection and due process clauses of the Fourteenth Amendment in finding that laws criminalizing same-sex sexual intimacy are unconstitutional. <sup>14</sup>

In each of these cases, the Court advanced individual liberty by rejecting the barriers that prevented people from living a life with dignity and autonomy.

By comparison, the cursory treatment of these decisions by the *Dobbs* majority provides cold comfort that the Court might not reconsider the outcomes of *Obergefell*, *Lawrence*, and potentially even *Loving* if presented with the opportunity down the line. Indeed the dissent in *Dobbs* warns that "no one should be confident that this majority is done with its work." <sup>15</sup> However, even if the Court were someday to revisit cases like *Loving*, *Lawrence*, or *Obergefell*, these precedents have deep, double-stranded constitutional roots in not only substantive due process, but also equal protection case law. <sup>16</sup> Moreover, same-sex couples and intimate partners

<sup>&</sup>lt;sup>9</sup> Zablocki v. Redhail, 434 U.S. 374 (1978) (finding that a state statute that prohibited individuals that owed child support from marry ing violated the Fourteenth Amendment and reaffirming that marriage is a fundamental right).
<sup>10</sup> Turner v. Safley, 482 U.S. 78 (1987) (finding that a state regulation limiting incarcerated people's ability to marry violated their Fourteenth Amendment fundamental right to marriage).

 $<sup>^{11}</sup>$  Loving v. Virginia, 388 U.S. 1 (1967).

<sup>&</sup>lt;sup>12</sup> Loving, 388 U.S. at 12.

<sup>13</sup> Obergefell, 576 U.S. at 675.

<sup>&</sup>lt;sup>14</sup> Lawrence, 539 U.S. at 565.

<sup>&</sup>lt;sup>15</sup> Dobbs, 597 U.S. at 72.

<sup>&</sup>lt;sup>16</sup> See e.g., Georgia Crimes and Offenses, 16 Ga. St. sec. 6-2(a); Kansas Crimes and Punishments, 21 Ka.St. sec. 5504(a); Kentucky Penal Code, L Ky. St. sec. 510.100; Massachusetts Punishments and Proceedings in Crim inal Cases, 272 Ma.St. sec. 34; Michigan Penal Code, 750 Mi.St. sec. 338; Minnesota Crimes, Expungement, Victims, 609 Mn.St. 293; Mississippi Crimes, 97 Ms.St. 29-59; North Carolina General Statutes, Crim inal Law, 14 NCSt. 177; Okla homa Statutes Crimes and Punishments, 21 Ok.St. 886; South Carolina Code of Laws Crimes and Offenses, 16 SCSt. 15-120; 21 Tx. Penal, sec. 06.

have robust reliance interests in *Obergefell* and *Lawrence*. They have made enduring decisions that impact their relationship to the government, and that carry financial, familial, and other obligations, and they have outed themselves to the public. During the *Dobbs* oral arguments, the Mississippi Solicitor General conceded a reliance interest on this point. <sup>17</sup> Indeed, to consider going back to a scenario where these rights could no longer be relied upon is horrific to even imagine. To put it squarely, were *Lawrence* to be overturned, a marriage certificate could be evidence of a crime. Today, nearly a dozen states retain laws criminalizing sexual relationships between same-sex partners <sup>18</sup> and thirty-five states still have laws or constitutional amendments on the books that bar same-sex couples from marrying. <sup>19</sup>

### Concurrence of Justice Thomas

In his freestanding concurrence, Justice Thomas refers to substantive due process as an "oxymoron", arguing that "the Due Process Clause at most guarantees *process*. It does not, as the Court's substantive due process cases suppose, 'forbi[d] the government to infringe certain "fundamental" liberty interests at all, no matter what process is provided."<sup>20</sup> He communicates that substantive due process cannot stand. By declaring that the Court should reevaluate all cases that rely upon a substantive due process rationale, Justice Thomas invites legal challenges from every corner. A domino effect could occur imperiling numerous rights that Americans take for granted if a majority of the Court were to be swayed by his analysis. It is no conjecture to suggest that *Dobbs* will be used to argue for reversing well-established fundamental rights beyond abortion; it is already happening. A recent filing in federal court argues that *Dobbs* limits the century old right to parental autonomy.<sup>21</sup>

The dissent found Justice Thomas's rationale to be extraordinary and alarming. In response to the majority opinion in *Dobbs* regarding the decision's impact on other substantive due process precedents, the dissent opined that "the Court's precedents about bodily autonomy, sexual and familial relations, and procreation are all interwoven—all part of the fabric of our constitutional

 <sup>17</sup> Transcript of Oral Argument at 25, Dobbs v. Jackson Women's Health Org., 597 U.S. \_\_\_\_ (2022) (No. 19-1392).
 18 See e/g., Kansas Crimes and Punishments, 21 Ka.St. sec. 5504(a); Kentucky Penal Code, L Ky.St. sec. 510.100; Massachusetts Punishments and Proceedings in Criminal Cases, 272 Ma.St. sec. 34; Michigan Penal Code, 750 Mi.St. sec. 338: 21 Tx. Penal. sec. 06.

<sup>&</sup>lt;sup>19</sup> Elaine S. Povich, Without Obergefell, Most States Would Have Same-Sex Marriage Bans, Pew Stateline (July 7, 2022), <a href="https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/07/07/without-obergefell-most-states-would-have-same-sex-marriage-bans">https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/07/07/without-obergefell-most-states-would-have-same-sex-marriage-bans</a>.

<sup>&</sup>lt;sup>20</sup> Dobbs, 597 U.S. at 2 (6-3 decision) (Thomas, J. concurring) ("the Due Process Clause at most guarantees process. It does not, as the Court's substantive due process cases suppose, 'forbi[d] the government to infringe certain "fundamental" liberty interests at all, no matter what process is provided").

 $<sup>^{21}</sup>$  Eknes-Tucker v. Attorney General of Alabama, 2:22-cv-184-LCB (M.D. Ala . 2022), appeal docketed, No. 22-11707 (11th Cir. May 18, 2022).

law, and because that is so, of our lives."22 The comment most certainly also comes in response to Justice Thomas's concurrence. By challenging the constitutional existence of substantive due process, Justice Thomas issued a clarion call to the disaffected.

This is not the first time that Justice Thomas has called to overturn the Court's decisions protecting LGBTQ+ people. In 2020, both Justice Alito and Justice Thomas critiqued the *Obergefell* decision in their dissent to the denial of certiorari in *Davis v. Ermold*, <sup>23</sup> a case about the ability of clerks to refuse to issue marriage licenses to same-sex couples. And in 2019, Justice Thomas challenged the doctrine of stare decisis in *Gamble v. United States* citing *Obergefell* as an example of "applying demonstrably erroneous precedent instead of the relevant law's text." <sup>24</sup> However, his most recent rhetoric in *Dobbs* represents a turning point, particularly when coupled with the Court's decision to strip away a basic and longstanding constitutional right.

### State Legislatures and Rogue Actors

In light of Dobbs, we are already witnessing many state legislatures enact abortion bans that are both emboldening increasingly extreme restrictions (e.g., upon the constitutional rights to interstate travel or to speech) and also having chilling effects on medicines and procedures that are not even used to conduct an abortion.

In tandem, we have experienced several waves of ominous state legislation against the LGBTQ+ community and corresponding high water marks in hate crimes and violence. The fight for equality has come at a deadly cost as anti-LGBTQ+ violence and rhetoric have reached record highs. Hate crimes targeting the LGBTQ+ community have occurred with alarming frequency over the last several years, with nearly 1 in 5 of any type of hate crime now being motivated by anti-LGBTQ+ bias. <sup>25</sup> Additionally, 2021 shattered the record for fatal violence against transgender and gender non-conforming people. <sup>26</sup> These already-troubling statistics are likely even worse than they appear, due to incomplete data collection and underreporting.

<sup>&</sup>lt;sup>22</sup> Dobbs, 597 U.S. at 20 (6-3 decision) (Breyer, Sotomayor, and Kagan JJ., dissenting) ("The Court's precedents about bodily autonomy, sexual and familial relations, and procreation are all interwoven—all part of the fabric of our constitutional law, and because that is so, of our lives.").

<sup>&</sup>lt;sup>23</sup> Davis v. Ermold, et al., 936 F.3d 429 (6th Cir. 2019), cert. denied, 141 S. Ct. 3 (Mem) (U.S. Oct. 5, 2020) (No. 19-926)

<sup>&</sup>lt;sup>24</sup> Gamble v. United States, 587 U.S \_\_\_\_, 2 (2019) (Thomas, J., concurring).

<sup>&</sup>lt;sup>25</sup> Federal Bureau of Investigation Crim inal Justice Information Services Division, 2020 Crime Data-Hate Crime, Crime Data Explorer (Aug. 30, 2021), <a href="https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/hate-crime">https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/hate-crime</a>.

<sup>&</sup>lt;sup>26</sup>Laurel Powell, 2021 Becomes Deadliest Year on Record for Transgender and Non-Binary People, Human Rights Campaign (Nov. 9, 2021), https://www.hrc.org/press-releases/2021-becomes-deadliest-year-on-record-for-transgender-and-non-binary-people.

An increasingly hostile climate has deeply affected the most vulnerable members of the LGBTQ+ community, and especially LGBTQ+ youth, transgender women, and LGBTQ+ people of color. The data is clear. Public opinions and attitudes about LGBTQ+ people still have a direct effect on rates of violence against members of the community. 27 The consequences of cultural marginalization and stigmatization persist, even as we make continued progress toward equality.

Unsurprisingly, more than half of all LGBTQ+ people are battling mental health challenges, largely due to the discrimination and stigma they face at home and in their communities. <sup>28</sup> The rising tide of anti-LGBTQ+ legislation across the country has also had a serious impact on the well-being of LGBTQ+ people and notably in young people, who are losing access to key support systems in schools. A startling 85% of surveyed transgender and gender non-conforming youth have stated that their mental health has been negatively affected by the ongoing legislative attacks against the LGBTQ+ community. 29

State legislatures have been particularly hostile to LGBTQ+ people in recent years, as the increasing polarization of politics and heavily gerrymandered state districts have put state legislatures further and further out of step with the views of their constituents. Since 2015, about 1,200 anti-LGBTQ+ bills have been filed in state legislatures, and 2022 saw more anti-LGBTQ+ legislation filed in state legislatures than ever before, with 38 states filing approximately 350 anti-LGBTO+ bills this year alone. 30 Nearly all of these bills would have a negative impact on transgender people, but about 440 bills filed since 2015 would perpetrate particular harm upon transgender people. Some locales are even more prolific than others, for example 32 states in 2022 that introduced a historic 140 pieces of anti-transgender legislation. Many of these bills are directed specifically to limit the rights of transgender children.

Should the constitutional imperatives reflected in Lawrence or Obergefell be abandoned or undercut by the Supreme Court, state legislatures will be sure to redouble their anti-LGBTQ+ attacks to include efforts to recriminalize intimacy between consenting adults and undermine or undo marriages of same-sex couple. Additionally, laws that were abrogated by these decisions could, if these precedents were overruled, be enforced anew.

<sup>&</sup>lt;sup>27</sup> Human Rights Campaign Foundation, Dismantling a Culture of Violence-Understanding Anti-Transgender Violence and Ending the Violence (Dec. 2020), https://hrc-prod-requests.s3-us-west-2.a mazonaws.com/files/assets/resources/Dismantling-a-Culture-of-Violence-010721.pdf

<sup>&</sup>lt;sup>28</sup>Hum an Rights Campaign Foundation, The State of Mental Health in LGBTQ Communities, https://hrc-prodrequests.s3-us-west-2.amazonaws.com/files/documents/LGBTO-MentalHealth-brief-022221.pdf.

29 Moming Consult & The Trevor Project, Issues Impacting LGBTQ Youth-Polling Analysis (Jan. 2022),

https://www.thetrevorproject.org/wp-content/uploads/2022/01/TrevorProject\_Public1.pdf

<sup>30</sup> The Human Rights Campaign Foundation publishes an annual report, The State Equality Index, which tracks the LGBTQ-related legislation introduced and passed each year. The most recent report was released in January and it, as well as previous editions, are a vailable at www.hrc.org/sei. (Fina lized 2022 data will be released in the upcoming 2023 State Equality Index. 2022 data provided in this testimony are HRC's working numbers based on our tracking at this time.)

In 2015, as *Obergefell* was pending in the United States Supreme Court, a backlash against LGBTQ+ people was unfolding in state legislatures across the country. While a super majority of the American public supported marriage equality, <sup>31</sup> state legislatures applied themselves to finding ways to limit, undermine, and prevent marriage for same-sex couples in their states. In 2015, 36 such bills were introduced in fifteen states, and to date nearly 100 such bills have been introduced. Some proposed to eliminate marriage entirely while others defied *Obergefell* explicitly or implicitly, or claimed the decision is null. Still others attempted to peel away rights attendant to marriage, including benefits and parentage. These bills are unconstitutional, but the legislative efforts demonstrate that, given the opportunity, state legislatures will continue to attempt to roll back marriage rights. Many state legislators may be inspired by Justice Thomas's concurrence to prioritize and double down on their efforts to pass a law in conflict with existing Supreme Court precedent in the hopes that it will result in those precedents being overturned.

Recent legislative efforts also demonstrate that states are willing to permit government actors to discriminate. Mississippi's HB 1523, which became law in 2016, allows government actors to invoke disapproval of LGBTQ+ people as a justification to refuse to provide taxpayer-funded services.<sup>32</sup> Other states considered but ultimately did not pass similar legislation.<sup>33</sup> Additionally, several states considered legislation that would allow government employees, such as clerks, to refuse to issue a marriage license to a same-sex couple or refuse to solemnize the marriages of same-sex couples.<sup>34</sup>

Even without legislative permission, state governments may find themselves facing litigation as a result of a government actor who is emboldened by the *Dobbs* decision, particularly Justice Thomas's concurrence, to engage in behavior for the purpose of setting up a test case. A local police officer might take it upon themself to engage in a raid on a gay bar in an attempt to enforce the state's sodomy ban (that is still on the books). A state administrator might refuse a claim for spousal benefits because the spouse is married to someone of the same sex. A county clerk might deny a same-sex couple a marriage license. These rogue government actors may have the opportunity to create the legal challenges to *Lawrence* and *Obergefell* which potentially would rise to the Supreme Court. While the Court may ultimately decline certiorari in such cases or reaffirm precedent, real people will be hurt by having their rights infringed upon and denied and by experiencing material fears that their lives will be upended.

<sup>&</sup>lt;sup>31</sup> Justin McCarthy, Same-SexMarriage Support Inches Up to New High of 71%, Politics (June 1, 2022), https://news.gallup.com/poll/393197/same-sex-marriage-support-inches-new-high aspx.

<sup>&</sup>lt;sup>32</sup> H.B. 1523, 2016 Leg., Reg. Sess. (Miss. 2016).

<sup>&</sup>lt;sup>33</sup> States that have considered such bills include Texas, Iowa, Oklahoma, Tennessee, Virginia, Missouri, Colorado, Georgia, Hawaii, Kentucky, Massachusetts, Mississippi, Wyoming, Arkansas, Illinois, and Washington. See footnote 30 regarding HRC's tracking of state legislation.

<sup>34</sup> States that have considered such bills include Kentucky, Missouri, Texas, Mississippi, and Virginia. See footnote 30 regarding HRC's tracking of state legislation.

### Congressional Action

No single action can repair the constitutional crisis inflicted by *Dobbs*' radical rejection of fifty years of precedent, but in addition to the Women's Health Protection Act there are important steps Congress can take to stymie the damage. Several of those actions have already been introduced as legislation. This list is not exhaustive but rather a starting point.

### Respect for Marriage Act

Section 3 of the Defense of Marriage Act (DOMA) was struck down by the United States Supreme Court in 2013 in *Windsor v. United States*, which found that provision of the statute to be a violation of both the Fifth Amendment's guarantee of equal protection under federal law. Section 3 essentially excluded legally married same-sex couples from federal statutes, regulations, and rulings applicable to all other married people. Section 2, which was not addressed by the *Windsor* case, purported to allow states to refuse the valid legal marriages of same-sex couples entered into in other states.

The Respect for Marriage Act (RMA) would fully remove DOMA from the books by repealing both sections 2 and 3, and goes further, establishing a clear rule for the federal government that all married same-sex couples have access to equal rights, benefits, and obligations under federal law. It would ensure that every legally married couple has the certainty that every federal benefit and protection will flow from a marriage that was valid where it was originally performed.

Given the uncertainty that many face around the future of marriage equality, passing the Respect for Marriage Act would have two important impacts: First it would ensure that people will not be subjected to losing federal recognition of their marriage, regardless of what might otherwise happen in their particular state. Second, it would repeal the provision of federal law that purports to allow states to refuse to recognize valid marriages entered into in other states. While the legality of that provision is and always has been suspect, removing it from the books is a necessary precaution and signal, particularly in light of recent developments.

### Voting Rights

Access to the ballot has served as an indicator of the health of our democracy for generations. In the last decade, a tide of restrictive voting laws have disproportionately affected traditionally marginalized communities, including communities of color, those who are economically disadvantaged, and LGBTQ+ people. In the aftermath of *Shelby County v. Holder*, which invalidated a key provision of the Voting Rights Act, states have brazenly enacted discriminatory voting measures to make it more difficult to vote, including by instituting more onerous voter identification laws and imposing obstacles to voting by mail.

The road to fairer access to the ballot will require a federal solution that includes the passage of the John Lewis Voting Rights Advancement Act (VRAA) and the key provisions of the Freedom to Vote Act. The VRAA would restore the protections of the Voting Rights Act with modern provisions that would expand and strengthen the government's ability to respond to voting discrimination.

With abortion rights and potentially other rights imperiled and subject to increasing restrictions and novel legislation, it is vital that all Americans are afforded the ability to fully and equally participate in democracy and have their voice heard on the issues that affect them most.

### Equality Act

In this time of tremendous uncertainty and significant concern about the future of equality, LGBTQ+ Americans continue to experience a patchwork of state-level non-discrimination laws and a lack of express, permanent, comprehensive federal civil rights protections. The Supreme Court's June 2020 decision in *Bostock v. Clayton County* held that Title VII of the Civil Rights Act prohibits employment discrimination on the basis of sexual orientation and gender identity because they are types of sex discrimination. This was a huge step forward, but the fate of *Roe* only underscores the need for these protections to be explicitly codified in federal law. The Equality Act would provide consistent and explicit non-discrimination protections for LGBTQ+ people across key areas of life, including employment, housing, credit, education, public spaces and services, federally funded programs, and jury service. Further, the Equality Act would amend the Civil Rights Act of 1964 to include important new protections on the basis of sex, and would update the scope of current law to include retail stores, services such as banks and legal services, and transportation services - strengthening existing protections for everyone. In these uncertain times, every American should know that discrimination is intolerable. The Equality Act would afford needed security to many Americans.

### Conclusion

There is little doubt that the *Dobbs* decision constitutes one of the most significant reversals of a civil rights in a generation. It will do immense and concrete harm to women, the LGBTQ+ community, to individual rights, and the ability to engage in sensible family planning and to make private medical decisions. But the road to overturning *Roe* was not an accident or a sudden surprise. It was part of a long-term concerted strategy to focus on the judiciary as a means of achieving results that the vast majority of American people reject. Warning signs were there

along the way, sometimes all too plain to see. <sup>35</sup> Today, questions remain about what precisely Dobbs will mean for other substantive due process precedents and foundational rights that are deeply important to the LGBTQ+ community and beyond. But there is no question that stemming the effects of Dobbs will require careful and concerted action at the federal, state, and Congressional levels -- and the Human Rights Campaign stands ready to work closely with our allies in the reproductive justice movement to do so. Moreover, there is no question that organizations like the Human Rights Campaign will vigorously defend precedents that protect the right to marriage (Obergefell), to federal equality (Windsor, Bostock), and to loving who you love, without fear or punishment or criminalization (Lawrence). Ultimately, as the Dobbs dissent stressed, the new majority of the Supreme Court may not be "done with its work" -- but neither are we.

<sup>35</sup> HRC, Brett M. Kavanaugh: Wrong For LQBTQ People. Wrong For The Supreme Court at 5 (2018), https://assets2.hrc.org/files/assets/resources/KavaughReport-080318.pdf (detailing then-Judge Kavanaugh's views on Roe and "unenumented rights"); see also HRC, Amy Coney Barrett and the Reprise of Justice Scalia's Philosophyat 7 (2020), https://hrc-prod-requests.s3-us-west-2.amazonaws.com/AmyConey Barret-Report-100920.pdf/mtime=20201009143457&focal=none.

Chair NADLER. Thank you. Ms. Foster, you are now recognized for five minutes.

### STATEMENT OF CATHERINE GLENN FOSTER

Ms. Foster. I come before you honored to speak for all Americans who value human life, for every mom and dad, every family, every young person, every person who has fought to advance the human right to life. We survived Roe v. Wade, but Roe did not survive us. We are now living in a post-Roe America.

So, what comes next? The twilight of *Roe* tragically does not yet mean the dawn of a pro-life America truly. The greatest threat to individual freedoms in a post-Roe world remains the reality that some would elevate their desire to kill over and against the natural

right of each and every one of us to live.

In a post-Roe world, all of us have incredible opportunities to proclaim that there is no liberty without life, without the freedom simply to be. Roe was extreme, but the pro-abortion law makers who called today's hearing and the pro-abortion witnesses want a future more extreme than even *Roe* made possible. Abortion money and abortion special interests continue to wield deadly power in Washington.

Today's hearing is a testament to the menace of abortion's power brokers. Worse, abortion activists post-Roe are telling us that now, now in this incredible moment when lawmakers can finally uphold the human right to life, now that we might finally have the freedom to live, that it is now that all our other freedoms are somehow at risk. It is hysteria. It is nonsense, just not true. Anyone who has

read the *Dobbs* decision can tell you that.

There is good news. We can do better. It is in our nature as Americans to do better. Elizabeth Bruenig writing in the Atlantic just a few days ago, challenges us to make birth free for all Americans and I agree with her. Pregnancy, childbirth, post-partum care, they should all be free for all mothers. That is what today's hearing should be about, how to serve American mothers, fathers, and families. Let's having a hearing about that.

Republicans boldly and courageously led the expansion of maternal and prenatal care during the Reagan era. There is truly no reason why making birth free for Americans can't be the bipartisan work of our time, the defining work of a Congress or a presidency. Instead, even in this post-*Roe* world, some in Congress see fit to focus our attention on how to expand the killing power of the State.

I know from my own experience of forced abortion, the traumatic consequences of abortion violence. I was hurt by abortion. My first child never lived to take her first breath because of abortion. It remains a scandal that any American State remains neutral on abortion, that any American State condones or celebrates abortion violence. I was failed by America's experiment with abortion during the Roe era, but out of that trauma eventually came clarity, my vocation, my life's work as a constitutional attorney and as a human rights advocate.

As President and CEO of Americans United for Life, I have been so honored to travel the States and meet people of all ages, backgrounds, and beliefs, Americans who are united by their commitment to protecting our first and most intimate individual freedom

to live. We know what pro-abortion activists want, unrestricted abortion available always and everywhere. Every individual freedom we hear about today starts in their minds with a freedom to kill, but there is no such freedom.

Abortion activism requires first dehumanizing our most vulnerable brothers and sisters and then hardening our hearts to the holistic challenges of living and thriving together. Contrary to what you may have heard, this life of ours is not a zero-sum game. No one needs to lose for others to win. We can only enjoy our authentic freedoms by living with the spirit of love, with solidarity, and with hospitality. The truth is living and thriving together is hard. Killing is easy. As the most prosperous, most powerful, most free nation in history, it is our responsibility to do the right thing with the gifts we have. Not because it is easy, but because it is hard.

The common good of this American republic depends on rediscovering what we once knew that America will be greater if America is good. If not, her greatness will vanish away like a morning cloud. Let's be good to one another. Let's be better. Let's heal. Let's

grow. Thank you.

[The statement of Ms. Foster follows:]



# **CATHERINE GLENN FOSTER, M.A., J.D.**President and CEO, Americans United for Life

Hearing of the House Committee on the Judiciary "What's Next: The Threat to Individual Freedoms in a Post-Roe World"

July 14, 2022, 9:00 AM Rayburn House Office Building, Room 2141

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Dear Chair Nadler, Ranking Member Jordan, and Members of the Committee:

I am privileged to testify before this Committee on Dobbs v. Jackson Women's Health Organization and how the case does not impact substantive due process doctrine. I serve as President & CEO of Americans United for Life (AUI), America's original and most active prolife legal advocacy organization. Founded in 1971, two years before the Supreme Court's decision in *Rov v. Wade*, AUI. has dedicated over 50 years to advocating for comprehensive legal protections for human life from fertilization to natural death. AUI. attorneys are highly regarded experts on the Constitution and legal issues touching on abortion and are often consulted on various bills, amendments, and ongoing litigation across the country. For five decades, Americans United for Life's staff, supporters, and partners have worked tirelessly to advance the human right to life in culture, law, and policy.

Thank you for the opportunity to refute the fallacy that *Dobbs* threatens substantive due process rights. Abortion is intrinsically different from recognized privacy rights. The practice ends the life of a separate, unique human being. For this reason, as *Roe* itself recognized, "Illn situation therefore is inherently different from [cases involving] marital intimacy . . . or marriage, or procreation, or education." *Planned Parentbood of Southeastern Pennsylvania v*. Casey affirmed that "[a]bortion is a unique act" because of its repercussions upon the woman, her family, and her preborn child. Recognizing abortion's uniqueness, the Dobbs majority explicitly limited its holding to abortion, confirming the decision had no impact upon existing privacy rights protected by substantive due process

Dobbs does not threaten individual freedoms in the United States. Rather, constitutional interpretation that is unmoored from our nation's legal history, tradition, and constitutional text threatens liberty, sullies judicial integrity, and wounds our democratic process. The Supreme Court correctly overruled Roe and cast it into the graveyard of pernicious decisions that include Lochner v. New York<sup>3</sup> and Dred Scott v. Sandford.<sup>4</sup>

### The Constitution Protects Unenumerated Fundamental Rights That Have Passed the

America is the land of the free. For 234 years, "[w]e the People . . . [have] secure[d] the Blessings of Liberty to ourselves and our Posterity" through the United States Constitution. 5 Yet, "liberty" is an undefined term and has invoked vigorous debate. As Lincoln once said: 'We all declare for Liberty; but in using the same word we do not all mean the same thing.""

Under the Due Process Clause of the 14th Amendment, "nor shall any State deprive any person of life, liberty, or property, without due process of law." The Supreme Court has interpreted a substantive component to this provision, recognizing:

<sup>&</sup>lt;sup>1</sup> Roe v. Wade, 410 U.S. 113, 159 (1973), overruled by Dobbs v. Jackson Women's Health Org., 597 U.S. \_\_\_

<sup>&</sup>lt;sup>2</sup> Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 852 (1992), overruled by Dobbs, 597 U.S. 3 198 U.S. 45 (1905) (invalidating basic legal protections for workers' rights under a substantive right to

 <sup>&</sup>lt;sup>6</sup> 198 U.S. 45 (1905) (Invalidating basic regal projections for workers rights under a substantive right to contract theory).
 <sup>6</sup> 60 U.S. 393 (1856) (holding that people of African descent were not citizens of the United States and had no constitutional protection).
 <sup>6</sup> U.S. Const. pmbl.
 <sup>6</sup> Dobbs, slip op. at 13 (citing Address at Sanitary Fair at Baltimore, Md. (Apr. 18, 1864), reprinted in 7 The Collected Works of Abraham Lincoln 301 (R. Basler ed. 1953)).

Without doubt, Ithe Due Process Clausel denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

These "fundamental rights and liberty interests" receive "heightened protection against

To receive protection under substantive due process, fundamental rights and liberties must pass the *Glucksberg* test, which analyzes whether the right is "deeply rooted in this Nation's history and tradition'... and implicit in the concept of ordered liberty, such that rieither liberty nor justice would exist if they were sacrificed'..." As part of this nalysis, there must be a "careful description' of the asserted fundamental liberty interest" and "[o]ur Nation's history, legal traditions, and practices thus provide crucial 'guideposts for responsible decisionmaking.

## Roe and Casey Were Egregiously Wrong and Devalued Congress and the States' Interests in Prenatal Life

Roe and Casey failed the Supreme Court's five-factored stare decisis analysis. (1) Comparing abortion jurisprudence to *Plessy v. Ferguson*, <sup>11</sup> in which the Supreme Court instituted the racist "separate but equal" doctrine," the *Dobbs* Court found "*Roe* was also egregiously wrong and deeply damaging... Roe's constitutional analysis was far outside the bounds of any reasonable interpretation of the various constitutional provisions to which it vaguely pointed."<sup>12</sup> (2) As the Court recognized, "[Roe] was more than just wrong. It stood on exceptionally weak grounds [in its legal reasoning]."<sup>15</sup> (3) Abortion jurisprudence was unworkable and led to conflict in the Supreme Court and Federal Courts of Appeals in how to interpret Casey's undue burden standard. (4) The cases created an "abortion distortion," in that "Roe and Casey have led to the distortion of many important but unrelated legal doctrines." 14 (5) Abortion does not implicate traditional reliance interests which "arise planning of great precision is most obviously a necessity.

According to the Court, "[o]rdered liberty sets limits and defines the boundary between competing interests."16 Roe and Casey had arbitrarily drawn a line between the interests of a competing interests. Roe and casey had arbitrary drawn a mile between the interests of woman seeking an abortion and the interests in prenatal human life. States may seek to draw different lines between these interests. Accordingly, *Dobbs* returned the abortion issue to the

<sup>7</sup> Meyer v. Nebraska, 262 U.S. 390, 399 (1923).
8 Wasbington v. Glucksberg, 521 U.S. 702, 720 (1997) (citations omitted).
9 Id.
10 Id. (citations omitted).
11 163 U.S. 537 (1896).
12 Dobbs, slip op. at 44.
13 Id. at 45.

Dobbs, slip op. at 44.
 Id. at 45.
 Id. at 62.
 Id. at 64 (citing Casey, 505 U.S. at 856 (joint opinion)).
 Id. at 64 (citing Casey, 505 U.S. at 856 (joint opinion)).

democratic process, but particularly noted that Congress and the States have a legitimate interest that "include[s] respect for and preservation of prenatal life at all stages of development." <sup>17</sup>

Although the *Dobbs* dissent urged the Court to affirm *Roe* and *Casey*, it superficially glanced at how abortion ends the lives of preborn children. As the *Dobbs* majority recognized, "[t]the most striking feature of the dissent is the absence of any serious discussion of the legitimacy of the States' interest in protecting fetal life." According to the majority, "[t]the dissent . . . would impose on the people a particular theory about when the rights of personhood begin" without a reasoned view of the abortion issue. 19

## <u>Dobbs Explicitly Held the Decision Does Not Impact Non-Abortion Rights Protected Under Substantive Due Process Doctrine</u>

In overruling *Roe*, the Court stated, "[n]or does the right to obtain an abortion have a sound basis in precedent." <sup>20</sup> Cases involving marriage, contraception, and child-rearing are inherently different from abortion. "Abortion destroys what [*Roe* and *Casey*] call 'potential life' and what the law at issue in this case regards as the life of an 'unborn human being." <sup>21</sup> Although "[b]oth sides make important policy arguments," abortion proponents have failed to show how the Supreme Court has authority to weigh those arguments. <sup>22</sup> In response to the dissent's concern, the Court repeated that *Dobbs* does not call *Griswold v. Connecticut*, <sup>23</sup> *Eisenstadt v. Baird*, <sup>24</sup> *Lawrence v. Texas*, <sup>25</sup> or *Obergefell v. Hodges*\* into question.

## <u>Justice Thomas Would Reexamine Substantive Due Process Doctrine, But Also Analyze Whether the Privileges and Immunities Clause Protects Privacy Rights</u>

Concurring in the opinion, Justice Thomas agreed with the majority that "there is no constitutional right to abortion," but wrote separately to highlight the flaws of substantive due process." The Justice described substantive due process as "an oxymoron that 'lackle) any basis in the Constitution." \*\* As he explained, "the Due Process Clause at most guarantees process... The resolution of this case is thus straightforward. Because the Due Process Clause does not secure any substantive rights, it does not secure a right to abortion." \*\* 29

Justice Thomas agrees that abortion is unique and does not implicate other substantive due process jurisprudence, 30 such as Griswold, 31 Lawrence, 32 and Obergefell. 33 Accordingly,

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17 Id. at 78 (citing Gonzales v. Carbart, 550 U.S. 124, 157–158 (2007)).
18 Id. at 37.
19 Id. at 38.
29 Id. at 31.
21 Id. at 32.
21 Id. at 33.
22 Id. at 35.
23 Stl U.S. 479 (1965) (recognizing a right of married persons to obtain contraception).
24 405 U.S. 438 (1972) (recognizing a right of unmarried persons to access contraception).
25 539 U.S. 558 (2003) (recognizing a right to engage in private, consensual sexual acts).
26 576 U.S. 644 (2015) (recognizing a right to same-sex marriage).
27 Dobbs, slip op. at 1 (Thomas, J., concurring).
28 Id. at 2 (citations omitted) (alteration in original).
29 Id. (emphasis in original).
30 Id. at 3 (citing majority opinion at 31–32, 66, 71–72).
31 381 U.S. 479.
32 539 U.S. 558.
35 576 U.S. 644.
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"inJothing in [the Court's] opinion should be understood to cast doubt on precedents that do not concern abortion." However, the Justice urges the Court "in future cases [to] reconsider all of this Court's substantive due process precedents, including *Griswold*, *Laurence*, and *Obergefell*." Sustice Thomas notes the Court should consider whether those rights have textual support elsewhere in the Constitution, such as in the Privileges or Immunities Clause, but the Court would also need to establish "whether the Privileges or Immunities Clause potted any rights that are not enumerated in the Constitution and, if so, how to identify those rights." Regardless, "abortion is not [a right] under any plausible interpretive approach [of the Constitution.]" Support of the Constitution.

Substantive due process has "[a]t least three dangers [that] favor jettisoning the doctrine entirely." \*\*B First, the doctrine involves policymaking and "exalts judges at the expense of the People from whom they derive their authority." \*\*B Abortion jurisprudence highlights this issue as "50 years have passed since \*Roe\* and abortion advocates still cannot coherently articulate the right (or rights) at stake proves the obvious: The right to abortion is ultimately a policy goal in desperate search of a constitutional justification." \*\*D Second, "substantive due process distorts other areas of constitutional law," such as the Equal Protection Clause, vagueness, and overbreadth doctrines." As the Justice decried, "[s]ubstantive due process is the core inspiration for many of the Court's constitutionally unmoored policy judgments." \*\*2 Third, the doctrine "is often wielded to 'disastrous ends," \*\*" such as in \*Dred Secott.\*\* Justice Thomas concluded, "the Court rightly overrules \*Roe\* and \*Casey\*—two of this Court's 'most notoriously incorrect' substantive due process decisions . . . after more than 63 million abortions have been performed . . . . The harm caused by this Court's forays into substantive due process remains immeasurable."\*\*5

#### Substantive Due Process Has Had a Conflicting History

Under substantive due process theory, the Supreme Court has handed down egregiously wrong decisions that have damaged American democracy and freedom. In *Locbner*, the Supreme Court held unconstitutional New York's labor law that protected bakery workers from working more than sixty hours per week. The Court found the labor law infringed on a substantive right to contract, and "[t]here is no reasonable ground, on the score of health, for interfering with the liberty of the person or the right of free contract, by determining the hours of labor, in the occupation of a baker. "17 Dissenting, Justices Harlan, White, and Day detailed the dangers of prolonged bakery work:

The constant inhaling of flour dust causes inflammation of the lungs and of the bronchial tubes. The eyes also suffer through this dust, which is responsible for

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34 Dobbs, slip op. at 3 (Thomas, J., concurring) (citing majority opinion at 66) (alterations in original).
35 Id. at 3–4 (emphasis in original).
37 Id. at 4.
38 Id.
39 Id. (citation omitted).
40 Id. at 5.
41 Id. at 5–6.
42 Id. at 5–6.
43 Id. (citation omitted).
46 OU.S. 393.
45 Id. at 6–7.
46 198 U.S. 45.
47 Id. at 45.
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the many cases of running eves among the bakers. The long hours of toil to which all bakers are subjected produce rheumatism, cramps and swollen legs. . . . The average age of a baker is below that of other workmen; they seldom live over their fiftieth year; most of them dying between the ages of forty and

The Supreme also failed Black Americans in *Dred Scott*, holding they were not citizens and not entitled to constitutional protections.<sup>69</sup> In the case, Dred and Harriet Scott sued for their freedom after residing as enslaved persons in free territory. Under a substantive due process theory, the Supreme Court handed down its egregiously wrong decision that denied constitutional protection and the humanity of a class of Americans. As Justice Thomas wrote in Dobbs, "[w]hile Dred Scott 'was overruled on the battlefields of the Civil War and by constitutional amendment after Appomattox,' . . . that overruling was '[p]urchased at the price of immeasurable human suffering

#### Even if the Supreme Court Reexamines Substantive Due Process, the Court May Uphold Recognized Privacy Rights Under Alternative Constitutional Theories

Abortion has remained radically unsettled for the past half century, unaccepted by the American people. Yet unlike abortion, substantive due process rights relating to marriage, family, and contraception have not "enflamed debate and deepened division." As Justice Thomas recognized in his *Dobbs* concurrence, even if the Supreme Court overruled *Griswold*, Laurence, and Obergefell, it would need to examine "whether other constitutional provisions guarantee the myriad rights that our substantive due process cases have generated." <sup>52</sup> Justice Thomas particularly is interested in exploring whether the Privileges or Immunities Clause protects these substantive due process rights. Under the Privileges or Immunities Clause, "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."5

Even if the Supreme Court reexamines substantive due process, it is unlikely the Court will uniformly reject familial and marital privacy rights. Substantive due process has protected traditional American liberties, such as parental rights. In Meyer v. Nebraska, the Supreme Court held unconstitutional a state law that forbid teaching school children in a foreign language because substantive due process protects the "power of parents to control the education of their own [children]."54 In Pierce v. Society of Sisters, the Court held unconstitutional a state compulsory education law that mandated students solely attend public school as a substantive due process violation that "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."

 <sup>&</sup>lt;sup>49</sup> M. at 70-71(Harlan, J., dissenting) (quotation marks omitted).
 <sup>40</sup> 60 U.S. 393.
 <sup>40</sup> Dobbs, slip op. at 6 (Thomas, J., concurring) (brackets in original).
 <sup>51</sup> G. id. at 6 (majority opinion) (discussing the "damaging consequences" abortion jurisprudence has brought upon our country for half a century).
 <sup>52</sup> M. at 3 (Thomass, J., concurring).
 <sup>53</sup> U.S. Const. amend. XIV.
 <sup>53</sup> U.S. 209, 401 (1923).
 <sup>53</sup> 262 U.S. 390, 401 (1923).
 <sup>54</sup> 262 U.S. 390, 401 (1923).
 <sup>55</sup> 268 U.S. 510, 534-535 (1925).

The Supreme Court may uphold substantive due process cases on alternative grounds. The Supreme Court may uphold substantive due process cases on alternative grounds. In Obergefell, for example, the Supreme Court held that "same-sex couples may exercise the fundamental right to marry in all States... land] there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character." In reaching this conclusion, the Supreme Court rested not only on a substantive due process analysis, but also on equal protection grounds. "The Due Process Clause and the Equal Protection Clause are connected in a profound way, though they set forth independent principles." As the Court held:

Here the marriage laws enforced by the respondents are in essence unequal: same-sex couples are denied all the benefits afforded to opposite-sex couples and are barred from exercising a fundamental right. . . . And the Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry.58

Again, Justice Thomas recommended the Court revisit substantive due process, not equal protection doctrine. Even without its substantive due process reasoning, the *Obergefell* decision would remain binding law under the Equal Protection Clause.

If you recognize the most fundamental human right—the right to life—then Dobbs poses no threat to American freedom. Abortion is unique because it takes the life of an unborn child. No other recognized privacy right implicates a State's legitimate interest in protecting an unborn child. *Dobbs* correctly overturned *Roe* and returned the abortion issue to the democratic process. The abortion issue now is in the hands of Congress and the States, and legislators should boldly move forward to protect all human life, from conception until natural death.

Sincerely,

Catherine Glenn Foster President and CEO Americans United for Life

<sup>&</sup>lt;sup>56</sup> Obergefell, 576 U.S. at 681. <sup>57</sup> Id. at 672. <sup>58</sup> Id. at 675.

Chair NADLER. Thank you.

Mr. Obergefell, you are now recognized for five minutes.

#### STATEMENT OF JIM OBERGEFELL

Mr. OBERGEFELL. I am endowed with the rights to life, liberty, and the pursuit of happiness. I am part of We the People. All peo-

ple in this nation, including LGBTQ+ people, are.

My name is Jim Obergefell, and I am the named plaintiff from Obergefell v. Hodges, the case that made marriage equality the law of the land. I felt joy as a lawfully-wedded man. Nine years after my husband's death, I still find comfort as his widower. Everything changed when John and I said I do. We felt different. We felt better. We felt more complete. The State we called home, Ohio, ignored our lawful Maryland marriage. Make no mistake, Ohio harmed us. John was dying with ALS, Lou Gehrig's Disease. Even with our marriage license in hand, doctors, hospitals, and others could refuse to serve us. They could bar me from John's room, from making decisions on his behalf. John was nearing the end of his life and they had the right to ignore a dying man's most important relationship, to ignore any requests or decision John and I made as husbands. Is that moral? Is that just? Is that right? We were not equal in life, even when most vulnerable, dealing with a terminal illness.

After death, we would still not be equal. John's death certificate, his last official record as a person, would be wrong because Ohio would say he was unmarried, and my name would not be listed as his surviving spouse. In the future, we would not be memorialized or interred together in John's family cemetery plot because the deed states that only direct descendants of his grandparents and their spouses were allowed. The cemetery and Ohio would not allow us to be together in death because they considered me a stranger. I was no stranger.

John and I had been a couple for more than 20 years. We shared everything with each other. We laughed, loved, and disagreed. We dreamed together. We struggled together. We built a world together. I became his full-time caregiver as John lost every ability due to ALS. Nothing was easy about that. When you love someone, you care for them no matter what. If that was not marriage, I have no idea what is.

We shared our vows and commitments in a lawful marriage ceremony, yet to Ohio, our marriage did not exist. We were treated as less than full American citizens. We were considered separate. Yes, we could secure every legal document and solution available to us, but that is a burden unfairly placed on same-sex couples when opposite sex couples receive those rights, responsibilities, and protections by simply saying I do. It could never provide John the dignity of dying a married man with an accurate death certificate.

Families are harmed when States ignore their marriages. Birth certificates would not have both parents' names. What happens to a child if the parent listed on the birth certificate dies? Will that child end up in the child welfare system instead of at home with the only other parent they have known? Will a parent be able to see their child in a hospital and make decisions for them? Hold their child's hand through the pain? Or worst of all, as their child takes their last breath? How is any of this pro-family or in the best interest of a child?

No couple, no family should be forced to go to great financial expense and legal effort to gain a pale approximation of the rights and protections that come automatically with marriage. Yet, those who are uncomfortable with our marriages and our families say that is the solution. That is not marriage. It sets our relationships and families apart as something less worthy. Discomfort or distaste is not a justifiable reason to deny another person their human and civil rights or to harm our families. If you do not protect our marriage equality, you are saying that we do not belong in We the People. You are telling us that we do not deserve life, liberty, and the pursuit of happiness, the happiness we find in love and family. It is shameful for any Member of Congress to believe that.

No relationship or person has been harmed because two men, two women, or two nonbinary people got married. Those couples gained so much, rights, protection, dignity, and respect. We are one United States and States should not be allowed to deny or ignore our marriages. To argue that it is okay for our marriages, our families to vanish by crossing a State border, a border within our very own nation is appalling. It is harmful. It is un-American. Will you tell our LGBTQ+ military Members that their families no longer exist when they are deployed to a different State? Is that how you

thank them for their service, how you show them respect?

People's futures became bright with *Obergefell* v. *Hodges* because they were no longer excluded from marriage and families. Parents felt joy and hope for their children. That day, many of us felt like an equal American for the first time our lives. A young woman told me that if not for marriage equality, she would have killed herself. Let that sink in. How many other lives were saved that day? How many will be lost? What damage will be done to our families if our

right to marriage is taken away?

Our understanding of humanity and society should not be stuck more than 200 years in the past as of the writing of Constitution, nor should our rights. That will not make the United States a more perfect union. What it will do is deny many of us our rights to life, liberty, and the pursuit of happiness. It will deny us our rightful place in We the People.

Do the right thing and protect the right to marry. Protect and respect our families, protect our rights to privacy and intimate relations. Thank you for this time.

[The statement of Mr. Obergefell follows:]

Thank you for allowing me to speak today. My name is Jim Obergefell, and I am the named plaintiff from Obergefell v. Hodges, the case that made marriage equality the law of the land.

The Declaration of Independence declared that all are created equal, endowed with the rights to life, liberty, and the pursuit of happiness. Our nation's guiding document, the Constitution, begins with the words "We the People."

I am part of We the People, and I am endowed with those rights to life, liberty, and the pursuit of happiness. All people are, and that includes LGBTQ+ people.

I felt joy as a lawfully wedded man. Nine years after my husband's death, I still find comfort as his widower.

Marriage changes you. When John and I said "I do", everything changed. We felt different. We felt better. We felt more complete.

But the state we called home – Ohio – ignored our lawful Maryland marriage. And make no mistake, Ohio harmed us.

John was dying of ALS, Lou Gehrig's Disease. Even with our marriage license in hand, doctors, hospitals, hospice providers, paramedics, and others could refuse to serve us. They could bar me from John's room, from making decisions on his behalf.

They had the right to ignore a dying man's most fundamental and important relationship, to ignore any request or decision John and I made as lawfully wedded husbands.

Is that moral? Is that just? Is that right?

We were not equal in life, even at the most vulnerable time imaginable - dealing with a terminal illness.

And after death we would still not be equal.

John's death certificate – his last official record as a person – would be wrong because Ohio would say he was unmarried, and my name would not be listed as his surviving spouse.

In the future, we could not be memorialized or interred together in John's family cemetery plot because the deed

states that only direct descendants of John's grandparents, and their spouses, were allowed.

The cemetery would not allow us to be together in death because, in their eyes, as well as Ohio's, I did not exist as John's spouse. I was a stranger.

But I was no stranger.

John and I had been a couple for more than 20 years. We shared everything with each other.

We had laughed, loved, and disagreed.

We dreamed together, we struggled together, we built a world together.

I became his full-time caregiver as John lost every bit of physical ability due to ALS. Nothing was easy about that, but when you love someone, you care for them no matter what.

If that was not marriage, I have no idea what is.

We shared our vows and commitments in a lawful marriage ceremony.

Yet none of that mattered to Ohio. Our marriage did not exist. We were treated as less than full American citizens.

In Ohio, we were still considered separate. Yes, we could go to the expense of securing every legal document and solution available to us, but that is a burden unfairly placed on same-sex couples when opposite-sex couples immediately receive those rights, responsibilities, and protections by simply saying "I do."

And it could never provide John the dignity of dying a married man with an accurate death certificate.

And families are harmed when states ignore their marriages.

Birth certificates would not have both parents' names. What happens to a child if the parent listed on the birth certificate dies?

Will that child end up in the child welfare system instead of at home with the only other parent they have known?

Will a parent be able to see their child in a hospital, be in the room with them, and make decisions for them? Hold their child's hand through the pain, or worst of all, as their child takes their last breath?

How is any of this pro-family or in the best interests of a child?

No couple, no family, should be forced to go to great financial expense and legal effort to gain a pale approximation of the rights and protections that come automatically with marriage.

That is not marriage, and it sets our relationships and families apart as something less worthy.

That solution is suggested by others who are uncomfortable with our relationships, our marriages, our families.

Discomfort or distaste is not a justifiable reason to deny another person their human and civil rights, or to harm our families.

If you do not protect marriage equality, you are saying that we, and our families, do not belong in We the People. You are telling us that we do not deserve life,

liberty, and the pursuit of happiness – the happiness we find in love and family.

It is shameful for any member of Congress to believe that.

No person or relationship has been harmed because two men, two women, or two non-binary people committed to each other as spouses.

But those couples gain so much – rights, protections, dignity, and respect.

We are one United States, and states should not be allowed to deny or ignore our marriages.

To argue that it is ok for our marriages – our families – to vanish by crossing a state border – a border within our very own nation – is appalling. It is harmful. It is un-American.

Will you tell our nation's LGBTQ+ military members that their marriages, their families, should cease to exist when they are deployed to a different state?

Is that how you thank them for their service? How you show them respect?

People's futures became brighter with Obergefell v. Hodges because they were no longer excluded from marriage and family.

Parents felt joy and hope for their children's futures.

That day, many of us felt like an equal American for the first time in our lives.

A young woman in Tennessee told me that if not for Obergefell v. Hodges, she would not be here today.

Because of marriage equality, and the hope it gave her, she did not kill herself.

Let that sink in.

How many other lives were saved that day?

How many will be lost, what damage will be done to our families, if our right to marriage is taken away?

We are a better nation because of marriage equality.

Our understanding of humanity and society should not be stuck more than 200 years in the past as of the writing of the Constitution, nor should our rights. That will not make the United States a more perfect union.

What it will do is deny many of us our rights to life, liberty, and the pursuit of happiness. It will deny us our rightful place in We the People.

Do the right thing and protect the right to marry. Protect and respect our families.

Thank you.

Chair Nadler. I thank all the Witnesses for their testimony. We will now proceed under the five-minute rule with questions. I want to note that we expect a very long series of votes this afternoon and I will have to be very strict with the gavel to ensure that all Members have an opportunity to ask questions before votes are called. With that, I will now recognize myself for five minutes.

Professor Murray, does the Dobbs ruling open the door for an anti-abortion majority in a future Congress to pass a nationwide

ban on abortion?

Ms. Murray. It does, Representative Nadler.

Chair NADLER. Thank you. Ms. Warbelow, in Dobbs, the dissent warns that a broader retraction of other rights is possible, comparing the majority's decision to take away the constitutional right to abortion to pulling a stick out of a Jenga tower. Notably, Justice Thomas also wrote in a separate concurring opinion that the Court should eliminate the doctrine of substantive due process "at the earliest opportunity and call for the Court to overturn Griswold v. Connecticut, Lawrence v. Texas, and Obergefell v. Hodges." For some reason he left out *Loving*.

Can you discuss how the majority opinion in *Dobbs* could be used

to challenge other cases involving individual freedoms?

Ms. WARBELOW. The Court's profound rejection of long-standing precedent over 50 years regarding substantive due process is terrifying. It suggests that the Court does not have respect for the decisions that it has made, nor for advancing the rights of the people of the United States. Instead, it will callously strip away necessary and needed medical care for millions of people.

What is important is that in the future the Court is situated in such a way that it is not willing to apply the *Dobbs* precedent to other cases. It should not do so. However, the Court has not given

us a profound belief that it will do so.

Chair NADLER. Do you agree that Congress should fix its earlier mistake by repealing the Defense of Marriage Act and would you support some level of statutory protection for marriage equality?

Ms. Warbelow. The Defense of Marriage Act is a stain on this nation. It represents a time in which there was incredible hostility to LGBTQ people. I have a deep fear that hostility remains and is bubbling once again. It is important for Congress to take critical steps to ensure that marriage equality remains the law of the land.

Chair NADLER. I will note that the Respect for Marriage Act re-

pealing DOMA was introduced by me many years.

Ms. WARBELOW. Thank you.

Chair NADLER. Mr. Obergefell, thank you for your moving testimony. Because of your bravery, millions of people in the United States now have their marriage recognized as legally valid. Will you share with us more about what it was like for you and your husband before the Supreme Court recognized same-sex marriage as a constitutional right?

Mr. Obergefell. Thank you, Representative Nadler. It was harmful. It was hurtful to have committed lawfully to the person you love, that most important person in your world to make those promises, those vows, and commitments to each other in a lawful ceremony and to have the State we call home ignore that, to say that we do not exist.

From the simple fact that as John was dying of ALS, as I mentioned in my remarks, the fact that Ohio did not recognize our marriage gave every and any medical professional, paramedic, you name it, the ability to deny me access to John's room, to be with John. That could have prevented me from being with John as he took his last breath. To know that we were just being ignored and the State of Ohio, as well as other States in this nation, would simply ignore our marriage and say we don't care. You do not matter. You do not exist. That is incredibly harmful.

For the sheer fact that we were denied the ability to be memorialized or interred together in John's family cemetery plot which is where he wanted to be. So, the harm we faced was pervasive. It was terrible and as American, we are supposed to be part of We the People and that Defense of Marriage Act at the State level and throughout the nation, that clearly told us we did not belong, we were not part of We the People, and our existence, our marriages

were not important.

Chair NADLER. Thank you. Professor Murray, would you wish to clarify anything that has been said for the record?

Ms. Murray. I didn't hear your question, Chair Nadler.

Chair NADLER. Would you like to clarify anything that has been said for the record?

Ms. Murray. I just want to emphasize that the point that Representative Jordan made that this opinion was confined to the right of abortion is absolutely nonsensical. I made it very clear from the logic of his opinion that despite the majority's assurances that this logic could be extended very easily to other rights. Justice Thomas' concurrence makes that very clear. It is an open invitation to more litigation, and we are already seeing challenges to contraception throughout the States, States that are proposing limiting access to long-acting contraception and even certain individuals like pharmacists refusing to dispense certain forms of drugs because they may be, in addition to, dealing with other health conditions providing—

Chair NADLER. Thank you, my time has expired.

Mr. Chabot.

Mr. Chabot. Thank you, Mr. Chair. As hard-working families continue to struggle to make ends meet in the face of soaring inflation, now a staggering 9.1 percent, the highest in 41 years, we are holding yet another hearing designed to divide the American people and distract them from the failed policies of the Biden Administration. It is unfortunate that this is how the majority is choosing to use our limited time, but it does present an opportunity to dispel a number of misconceptions that have been disseminated by proabortion radicals and their allies in the media.

The first and probably most widely spread misconception is that by overturning *Roe*, the Supreme Court outlawed abortion. This is simply not true. Instead, the *Dobbs* decision returns the power to regulate abortion to the States where it always should have been and was prior to *Roe*. As a matter of public health, safety, and welfare, abortion regulation is properly delegated to the States by the 10th Amendment.

What the question in *Dobbs* really boils down to is whether you think abortion is better addressed by the people's elected represent-

atives and State legislatures or by nine unelected, unaccountable judges who serve on the Court for life. The irony, of course, is that the pro-abortion forces who desperately want nine unelected judges to continue to control abortion decisions are upset by the very decision those nine unelected judges just rendered on abortion. Of course, they only want their preferred nine unelected, unaccountable judges to make these decisions.

The second misconception is that *Dobbs* overturned some sort of sacred, legal doctrine enshrined in the history of constitutional law. The truth is the legal doctrine in question, substantive due process, is a much more checkered and murky past that abortion advocates

would have you believe.

In one of its earliest applications, substantive due process was used by Chief Justice Roger Taney, appointed by Democrat Andrew Jackson, by the way, to the Court, to uphold the right of slave owners to own slaves in the *Dred Scott* decision. That reprehensible decision led in many ways to the birth of the Republican Party, the election of Abraham Lincoln, and the Emancipation Proclamation.

election of Abraham Lincoln, and the Emancipation Proclamation. A few decades later, the Court used the doctrine to overturn State efforts to implement more stringent labor regulations, arguing that the proposed rules interfered with the fundamental right to contract. When the version of substantive due process threatened to derail the New Deal in the mid-1930s, FDR threatened to pack the Supreme Court. Where have we heard before? Not surprisingly, while the Court's liberal wing was opposed to substantive due process when it imperiled the New Deal, they were more than happy to utilize the theory when it met their needs, especially in *Roe* v. *Wade*.

Ultimately, for over 150 years, substantive due process has been employed by liberal and conservative justices alike to find rights and liberties where other legal theories wouldn't adequately support the position that they wanted to adopt. In some ways, substantive due process helps justices fit square pegs into round holes and that isn't likely to change. Any argument to the contrary is speculative fear mongering and that is an issue that ought to be addressed today. The dangerously inflammatory rhetoric that is being employed by pro-abortion radicals, the Democrats have been single mindedly focused on the rhetoric that led up to tragic events of January 6th, and yet for the most part they have been silent when similar language and tactics are used by their supporters.

We all know about the attempt on Justice Kavanaugh's life, as well as the harassment that he faced just a week ago. Less widely known are the threats that we have seemed aimed at pregnancy

care centers across the country as Mr. Jordan referred to.

Now, following the leak of the Supreme Court's draft decision in *Dobbs*, violent abortion groups have targeted these facilities and on Tuesday, Senator Elizabeth Warren even demanded that crisis pregnancy centers be shut down all across the country. Over the years, I visited a number of those facilities. They do great work for women and their unborn children and then when the children are born.

Ms. Foster, let me ask you, because I think you are probably most familiar with these facilities. Could you discuss what actually

takes place in those facilities and the assault, the attacks that they have been under recently?

Ms. Foster. Absolutely. The pro-life movement stands behind and supports women, including with a network of 3,000 plus pregnancy resource centers. We support women at any cost with a range of services, including pregnancy tests, counseling, diapers, and material resources like baby formula, all kinds of different material resources, baby clothing, training, and relationship counseling. Whatever a woman needs, frequently housing even, whatever a woman needs, the center is there to either give her that resource, give her that care and supporting counsel—

Chair NADLER. The time of the gentleman has expired. Mr. John-

son of Georgia.

Mr. Johnson of Georgia. Thank you, Mr. Chair. Professor Murray, I will say that the United States Supreme Court's drastic and draconian edict to overturn *Roe* betrayed its guiding principles and exacted a terrible price on its legitimacy. Only 25 percent of Americans say that they have confidence in this Supreme Court. That was before the Court overturned *Roe*. So, to put it simply, this Court is in a major crisis.

Professor Murray, isn't it true that the *Dobbs* decision which snuffed out the reproductive freedom of women and put politicians and State legislatures in control of women's bodily autonomy operates to relegate those women to second class status? If you believe that, why?

Ms. Murray. Thank you, Representative Johnson. It is true that the *Dobbs* opinion in withdrawing the fundamental right from women reduces them to second class citizenship. The court acknowledged in *Planned Parenthood* v. *Casey*, the 1992 decision that reaffirmed the right to abortion recognized in *Roe*, that the right to control one's reproductive capacity is essential to women's equality as equal citizens. Again, taking this right away limits the ability of women to control their destinies. It is a right that was recognized in the 14th Amendment, the control over procreation which had been denied enslaved women. It was recognized in the 14th Amendment, and it has now been withdrawn by this court.

Mr. Johnson of Georgia. Thank you. It is a fact, isn't it, that the majority's reasoning in *Dobbs* really the dissent or the concurring opinion of Justice Thomas implicates a plethora of other rights recognized under the 14th Amendment, liberty and privacy guarantees. It implicates—or it indicates or it tells us that the Court, that those rights are in jeopardy, that Justice Thomas cited in his concurring opinion. Even the right against forced sterilization is found in *Skinner* v. *Oklahoma*. Would you agree?

Ms. Murray. Yes, that is exactly right. Justice Thomas' concurrence invites challenges to the long line of substantive due process cases which begins in 1923 with *Meyer* v. *Nebraska*'s recognition of the right of parental autonomy and go all the way forward to 2015 *Obergefell* v. *Hodges* which recognizes same-sex marriage.

Mr. JOHNSON of Georgia. Those rights include—those 14th Amendment due process privacy and liberty guarantees implicate the decision in *Loving* v. *Virginia*. Would you explain that, and would you give me some explanation of why Justice Thomas would

exclude court review of that due process right in his concurring

opinion?

Ms. Murray. I agree it is a curious omission. The right to marry the person of one's choice as the Court recognized in 1967 *Loving* v. *Virginia* is part of the essential civil rights of man. The Court said that in its decision. It also decides the decision on a quality ground noting that Virginia's Racial Integrity Act of 1927 proceeded from an interest in enshrining White supremacy, so it struck it down on both equal protection grounds, but also noted that there were significant due process concerns because marriage is a fundamental right. So, I am confused as to why it was not included in Justice Thomas' long laundry list of rights to be overturned, but it surely would be there.

Mr. JOHNSON of Georgia. Well, could it be that he himself enjoys

that right conferred under *Loving*?

Ms. Murray. Well, it would not be the first time that someone offered freedom for me, but not for thee.

Mr. JOHNSON of Georgia. That is pretty hypocritical. Professor Murray, what threat does the *Dobbs* decision pose to access to con-

traception and other reproductive healthcare?

Ms. Murray. I think the right to contraception is quite imminent. In footnote 41 of the *Dobbs* opinion, the Court attempts to link the right to contraception to eugenics and racial genocide. I think there is no reason to include that in this opinion given the other reasons the Court has for overruling *Roe* v. *Wade*, so I speculate that the reason that very curious footnote is included is to seed the ground for associating the right to contraception with racial injustice so that it may be struck down in the future.

Mr. JOHNSON of Georgia. Well, I thank you and I thank the Witnesses for their testimony and their time today and with that I

yield back.

Chair NADLER. The gentleman yields back. I just want to mention to the Members and Witnesses that I said I am going to have a very strict gavel. A light tap will be a 15-second warning.

Ms. Fischbach.

Ms. FISCHBACH. Thank you, Mr. Chair.

For nearly five decades, the American people were stripped of their ability to decide on the issue of abortion through elections and elected officials, and over 60 million unborn babies paid the price. *Roe* v. *Wade* unconstitutionally imposed abortion policy on the American people, legislated by unelected judges that left Americans with no voice.

Now, this Supreme Court gave the decision back to the States and the American citizens. In case we have forgotten, this is what democracy looks like: Elected leaders accountable to the people they represent, they propose, debate, and pass laws that people support.

Justice Alito explicitly stated in the majority opinion that the opinion only impacts abortion, arguing that abortion is fundamentally different from the other privacy issues like contraceptives and

marriage because it destroys the life of a human being.

The left wants you to believe that Republicans are extremists, when the fact is the majority of Americans agree there should be some restrictions on abortion. Americans do not support abortion on demand through all nine months of pregnancy. This is especially true when they learn all the scientific facts that have come out

since the *Roe* decision was put down.

My colleagues seem to be conveniently ignoring this information. Thanks to advances in science and modern medicine, the humanity of the unborn child is undeniable. At six weeks, an unborn child has a beating heart and facial features that begin to form. By 15 weeks, unborn children's major organs are functioning; they can suck their thumb; they have fully-formed noses, lips, eyes, and eyebrows, and they have facial expressions, and they are capable of feeling pain. Upon knowing this, it makes sense that the majority of Americans support some sorts of limits.

Despite these facts, the left is proposing legislation that goes even further than *Roe* did. They want abortion on demand up until birth with no exceptions, no regulations, and no limits. This is ex-

treme.

The left also wants to paint the pro-lifers as people who do not care about the health of the mother. This is fundamentally untrue. Pro-lifers care about the mother and the child, the unborn child, and the mother. For decades, we have cared about the mothers, providing them with resources necessary for them to choose life, caring for the mother and the child. There are over 27—and maybe I should be corrected—over 3,000 pro-life pregnancy centers across the country that stand ready to be there for the expectant mother, regardless of their circumstances.

My colleagues on the left are full of scare tactics about what this country will look like now that *Dobbs* has been decided and that *Roe* is no longer the law of the land. We cannot let their fearmongering and their inflammatory language pull us away from reality. The reality is *Roe* has been overturned and the abortion policy has been put back in the hands of States' elected officials, where it

should be.

I would like to yield the rest of my time to Ms. Foster. I believe there was a question that you wanted to answer that you were cut off.

Ms. Foster. Yes. The pro-life movement supports women at all costs. We support them with this network of thousands of pregnancy care centers that outnumber abortion facilities 5–1 in our nation. They are in communities throughout our nation, not just in the big cities, where the abortion businesses seem to target, but we are throughout our nation. We are providing women with all kinds of resources—the financial resources, the housing resources, material resources, needs for their babies; the needs for postpartum care, and the needs for relationship and job training going forward, so that they can live a full and fulfilling life and they can thrive in whatever they choose to do.

So, I am just so incredibly proud to serve on the board of a pregnancy center, to support pregnancy centers with my time, talent, and treasure. Women deserve better than abortion. We deserve care. We deserve support. That is exactly what pregnancy centers

offer.

Ms. FISCHBACH. Thank you very much.

I would just like to add that, while the pregnancy care centers are doing their work with volunteers and raising money to do that,

the abortion industry is a \$1.6 billion industry, and that is what the Democrats are protecting.

Thank you very much. I yield back my time. Chair NADLER. The gentlelady yields back.

Mr. Cohen?

Mr. Cohen. Thank you, Mr. Chair.

First, I would like to ask Ms. Murray a few questions. It has been gone over pretty much, but I would like to get into the legal distinctions of *Griswold* and *Roe* versus *Obergefell* and *Loving*.

Were two of those cases decided only on substantive due process, and the other two both substantive due process and equal protection?

Ms. Murray. That is correct, Representative Cohen.

Mr. COHEN. So, if that is correct—and I thought it was, and I appreciate your clarifying for me—how could one distinguish this case on gay marriage from the case on interracial marriage? Is there any way to distinguish it at all legally?

Ms. Murray. To my mind, there is no way to distinguish the two. Both of them acknowledge that there is a right to marry or not, and implicit in that right is the right to marry a person of one's choice.

Mr. COHEN. It was interesting to me when I saw Clarence Thomas not mention *Loving*, which, of course, ended what was an archaic and abhorrent policy of telling people you couldn't marry somebody of a different race. It certainly affected Senator McConnell. It certainly affected Justice Thomas; my good friend back in Memphis, the late Judge Sugarmon, and so many others.

The lady from the minority side, is it Ms. Foster or Ms. Fletcher?

Ms. Foster. Foster, uh-hum.

Mr. COHEN. Thank you, Ms. Foster.

You are a constitutional expert, as I understand it. Do you agree that *Loving* v. *Virginia* is indistinguishable from *Obergefell*, if taken up and discussed, as Clarence Thomas suggested; that it could be, and probably would be, struck down by this Court?

Ms. Foster. I am a constitutional attorney specializing in bioethics, not in marriage. I would point out that, in *Loving*, that decision was based on equal protection with about two paragraphs on substantive due process. *Obergefell* was based on both equal protection and substantive due process woven together in Justice Kennedy's opinion.

I would simply say that, when it comes to those cases, unlike *Roe* and *Casey*, we haven't seen a court challenge since those cases, as opposed to *Roe* and *Casey*, where we saw a Supreme Court case on abortion, on average, every  $2-2\frac{1}{2}$  years or so, ever since those cases came down.

ases came down.

Mr. COHEN. Ms. Foster, thank you.

I just do want to say this: That even though there were just two paragraphs, they are the same; they are similar. I would suggest in your expertise, if you specialize in ethics, I think that when the right to marry the person of your choice is at risk, and is only held up by a thin thread between two paragraphs and a few more paragraphs, that should include your subject matter of ethics and the law and the Court, because there is nothing more unethical than

the Court and the United States saying you cannot marry the per-

son you want to because of race or because of gender.

Ms. Fischbach had a nice argument about the child at six weeks and the child at 15 weeks. She sounded much like Justice Roberts, who kind of said the same thing and said we should not repeal *Roe* v. *Wade*, but we should uphold the Mississippi law, which was the 15-week ban. Justice Roberts was outvoted by his five more radical Members of the Court who took the Federalist Society's pledge to go to the Court and get rid of *Roe* v. *Wade*, and they did their instructions. They were Pavlovian and they responded, and that has hurt American women.

Someone earlier said—and I hate to think this because I love America; I am an American and love America and love this country, and I think it is a great country—but they said we are the freest country in the world. I think it was Ms. Foster. Well, right now, Canada is the freest country in the world, and there are a few other countries along with Canada that are freer than America, when we have cut women away from having the opportunity to get their families and their bodies to be their choices. The whole idea about just not outlawed, but going back to the States is a red herring.

The fact is, in the hardcore red States of the Southeast, one time known as the Confederacy, there is but one or two States that would not ban abortion entirely. Those States did not offer many votes for the civil rights laws. They were passed by Congress without many votes from those red States, and even the red States out-

side of the Confederacy.

So, we have to be concerned. The idea of the States having power was not because the States were concerned about oppressive government or because of abortion. It was because of slavery, and slavery was wrong, and outlawing abortion is wrong and outlawing gay marriage is wrong.

I yield back the balance of my time.

Chair NADLER. The gentleman yields back.

Mr. Johnson of Louisiana?

Mr. JOHNSON of Louisiana. Mr. Cohen is wrong; Canada is not the freest country in the world, young people.

[Laughter.]

America is the greatest nation in the world. We are the freest, most successful, most powerful nation because, finally, now, we have tried to live up to the ideals articulated in the Declaration of Independence. Finally now, the Supreme Court, after 50 years, nearly 50 years of an atrocity—

Mr. COHEN. Will you yield?

Mr. Johnson of Louisiana. —has brought us back to that truth—brought us back to that truth.

Mr. COHEN. Would you yield to-

Mr. Johnson of Louisiana. It is my time, and I will not yield, Mr. Cohen, because your comments are absurd. This hearing is absurd.

Mr. Cohen. Your comments are absurd. You're absurd.

Mr. JOHNSON of Louisiana. This hearing is—

Chair Nadler. It is Mr. Johnson's time, Mr. Cohen.

Mr. JOHNSON of Louisiana. Thank you.

This hearing is absurd. The Democrat majority has called us here for this hearing entitled, "The Threat to Individual Freedoms in a Post-Roe World." Come on.

The first inalienable individual freedom is the right to be born; it is the right to life. We boldly declared that in our nation's birth certificate. America should continue to uphold the sanctity of human life. State and local and Federal government officials have a duty, a constitutional responsibility, to protect that fundamental right. All life is precious, and there is an inherent, compelling interest in protecting unborn children because they are unable to protect themselves.

The radical advocates of abortion are now completely unhinged, and they are seeking to trample on the individual freedoms of all those who disagree with them. Over the weekend, the left-wing activist group ShutDownDC offered \$200 bounties for public sightings of Supreme Court Justices they disagree with. It is obvious the point of their tweet, and all the attention they were trying to gather there, is to get people to harass conservative justices when they are out in public. They don't have any individual freedoms. "Hey, man, they're fair game."

Then, Senator Elizabeth Warren, I mean she is completely un-

hinged now. She said pro-life pregnancy centers should be shut down all around the country. It is appalling for her to say that.

There are 2,700 pregnancy centers all around this country, all 50 States. They are supported by over 10,000 licensed medical professionals. They annually serve approximately two million women and men. I was legal counsel for many of these pregnancy centers. I can tell you from my own experience they do exceptional, critical work.

Why would anybody want to shut down pregnancy centers that exist to provide counseling, care, aid, and comfort to struggling mothers who just want to have their babies? It defies logic. The an-

swer is simple. Their extreme agenda demands it.

Speaking of extreme agendas, let me tell you what my friends on the other side of the aisle are for. Okay? They filed H.R. 8296 in this Congress. They call it the Women's Health Protection Act of 2022. We call it the "Abortion on Demand Until Birth Act." You don't know why? Because it is extreme. It would create a national standard to allow for abortions for unborn children for any reason at any stage of pregnancy up until birth. Read the bill. That is not a talking point.

It allows for discriminatory abortions on the basis of the baby's sex, race, and disability. It would override pro-life laws and prohibit States from enacting legislation that protects unborn children, such as protections for babies with Down's syndrome and other disabilities. It removes common-sense protections for women and chil-

dren.

For example, the Abortion on Demand Until Birth Act, the Democrats' bill, would not allow States to enact laws to ensure parental involvement for minors, laws to protect women from coercion. They don't care. The agenda demands, the zeal for this demands that they override all that. Their bill includes the vague language that could also weaken conscience protections for medical professionals and limit their right to refuse to participate in an abortion.

Do you think that they are not all onboard for this? Guess what? On September 24th of last year, all but one Democrat in the House of Representatives voted on an almost identical bill. Go look it up, H.R. 3755. Abortion on demand until birth, that is what this agenda demands.

Ms. Foster said it so well earlier. You mentioned this agenda begins with dehumanizing the unborn child. I just have a minute left, but in my experience, my colleagues here are not able to acknowledge that what is inside the mother's womb is actually a child. In your work, in your experience, has that been yours as well?

Ms. Foster. It has been.

Mr. JOHNSON of Louisiana. There is a reason that they won't acknowledge that it is a child, because, then, it allows them to pursue this radical abortion on demand until birth.

I believe—and this is for all the young people here and those watching—I believe that you can end this debate; if you can take people to the medical reality of the humanity of the unborn child, we win. This is a pro-life country, increasingly so, because we have medical technology. We have 4D ultrasounds. No one can lie to us anymore and tell us it is a blob of tissue; that it is just a clump of cells. This is a baby. At six weeks, it has a heartbeat. At 15 weeks, it can feel pain, suck its thumb; it has eyebrows, lips, nose, and the whole thing.

Look at the reality, folks. Do not let them obscure the facts. We are a pro-life country, and we should be.

I am out of time. I yield back.

Chair NADLER. The gentleman yields back.

Ms. Jackson Lee?

Ms. Jackson Lee. I thank the gentleman very much.

Since we are in the middle of a tutorial, let me speak from the heart—speak from the years of service on this Committee, years of knowledge of ruined lives with criminal approaches to trying to, before *Roe*, to help persons, women, make their determination on their reproductive freedom.

This is an absurd posture that is being taken here. I respect the religious beliefs of all, and I respect that there are differences in this nation. It is an outrage what is going on here in the United States because it is clearly evidence that we are in trouble.

The Nineth Amendment is clear, along with the other protections, that if it is not enumerated, it still does not deny me my right to privacy; my right to marry who I want to marry; my right for once in life to be able to assure that I can marry someone of a different race.

You know what States' rights are? Hanging Black people. You know what States' rights are? The denial of civil rights. That is what States' rights can be. Leave it to the elected persons of the State? If they had done that, I would still be a second-class citizen. It took the 13th Amendment to say that slavery was illegal.

So, let me, first, say we know that, in Ohio, a 10-year-old rape victim was denied an abortion and forced to travel across State lines to access care. We know that a package was left at a women's health clinic in Austin, Texas, and an explosive device went off. We know that a Planned Parenthood Clinic in Columbus was vandalized, "Satan den of baby killers." We know that, in Baltimore, an

abortion provider, health provider, healthcare clinic, with anti-abortion graffiti was attacked. A Planned Parenthood clinic at Claremont, New York, was vandalized by a juvenile. An unidentified person deliberately set fire to a Planned Parenthood clinic. We can go on and on and on. Is that America? I don't think so.

Professor Murray, help me understand because I have always had the greatest admiration for the legal prominence of the Supreme Court. I want to have you expand on these words very

quickly as my time runs out.

Justice Gorsuch said in confirmation hearings, "It has been reaffirmed. A good judge will consider it as precedent"—this is reference to Roe v. Wade—"of the U.S. Supreme Court worthy as treatment of precedent like any other."

Brett Kavanaugh, regarding Roe v. Wade, "It is settled as a precedent of the Supreme Court, entitled to respect under principles of stare decisis.

Then, Amy Coney Barrett,

I will obey all the rules of stare decisis.

If a question comes up before me about whether Casey or any other case should be overruled, that I will follow the law of stare decisis, applying it as the Court is articulating it, applying all the factors ....

Professor Murray, I am trying to see where you are. There you

are. Good to see you.

What does that do in imploding the American concept of justice and the role of the Supreme Court that has now caused the clashes of American people, one at each other, because the refuse that we look for in civil rights, in marriage, and who to marry, and the de-

fense of marriage, is no longer there? Professor Murray?

Ms. Murray. You're exactly right, Representative Lee. This principle of stare decisis, that the Court follows settled precedent—and indeed, Roe is a settled precedent; it has repeatedly been reaffirmed until it was overruled on June 24th—that provides predictability for individuals, the assurance that they know that their rights are protected.

I think part of the outrage that you are describing is because people in this country recognize that this decision was upheld for almost 50 years, and the only thing that has changed since those 50 years has been the composition of this Court and the installa-

tion of a 6-3 conservative supermajority.

Ms. Jackson Lee. What does it say about confirmation hearings

when judges are under oath?

Ms. Murray. I mean, again, these judges promised to follow a precedent, and it is clear that they did not. If the confirmation hearings are to assure the American people about a judicial philosophy, I think the American people have been hoodwinked.

Ms. Jackson Lee. Thank you. We need to expand the Court. With that, Mr. Chair, I yield back. Chair NADLER. The gentlelady yields back. Mr. Gaetz? I'm sorry. Mr. Issa?

Mr. Issa. Thank you.

Ms. Foster, are you familiar with the proposal by the majority to pack the Supreme Court with additional justices to get the outcome they want?

Ms. Foster. I am.

Mr. ISSA. Are you familiar with, a little more esoteric, H.R. 4886, the Circuit Court Judgeship Act?

Ms. Foster. Yes.

Mr. Issa. Which would add 203 additional Federal judges selected by the President and the Democratic majority in the Senate at this time.

So, it is interesting to me that everyone seems to be so interested in this Court making a decision, that it looks like they are ready to simply choose some additional people to make the opposite decision. Is that the politicization of the Court in a way that we have never seen it before?

Ms. FOSTER. It certainly is, and that is exactly what Justice Alito repudiated for the Court in his majority opinion in *Dobbs*.

Mr. Issa. Looking at *Dobbs* for a moment, it certainly does undo previous decisions of the Court. Is that unheard of, for the Court, decades later, to reconsider decisions in light of some change, not

just in the Court, but in the times?

Ms. Foster. It certainly is not unheard of. In fact, just two days ago, there was a hearing in the Senate in which one of the Senators was talking about the *Janus* case just a couple of years ago. There have been numerous other cases that follow those, those same lines.

Mr. ISSA. Well, let's, since Ms. Sheila Jackson Lee was up before us and seemed to be so certain that you should never, never overturn precedent and that these people lied. What would happen if *Dred Scott* were still in place today?

No, I will go there because freedom is what we are discussing—in this case, freedom to live for the unborn. What would happen, what would happen if we simply said, once the Court makes a decision it can never change its mind?

Ms. JACKSON LEE. Would the gentleman yield? Would the gentleman yield?

Mr. Išsa. Of course not.

Ms. Foster. There's a reason why there are certain factors that the Justices examine when going through stare decisis analysis. If those factors are met, then a case may be right for a reconsideration. Obviously, we do have stare decisis for a reason, but we follow precedent because it's correct and right and constitutional, not just because a few robed men wrote some words down on paper a few decades ago.

Mr. ISSA. Well, let's go into the decision that was overturned. Is it fair to say that the previous decisions, including *Roe*, basically, said that the unborn child had no rights, that all the rights up until—in the case of California and many other States—birth belong to the mother, and the mother exclusively? That was, essentially, the law of the land federally guaranteed?

Ms. Foster. Yes.

Mr. Issa. By overturning it, does that inherently give any rights to the unborn child?

Ms. Foster. It does not.

Mr. Issa. So, as we speak here today, we've simply taken away the denial of all rights of a child and left to the States the oppor-

tunity to balance the rights of an unborn child, viable and able to feel pain, viable and able to be born alive, is that right?

Ms. Foster. That's right, and that's the balance that the Court attempted to and failed to strike in both *Roe* and *Casey*. This Court has achieved it.

Mr. Issa. Now, isn't one of the inherent flaws in *Roe* and *Casey* that what they did was they were only giving rights to the mother and they never recognized the right of the living child inside the womb?

Ms. Foster. Correct.

Mr. ISSA. Now, I'm a Californian. So, I know that my Speaker, Speaker Pelosi, and that my State, considers that a child already outside the womb still doesn't have rights in my State because we still are effectively a partial birth abortion State.

So, the question I think for all of us here today is, do we trust the legislatures of the State to give rights to the unborn child or the nearly born child or the just born child? Or should we, in fact, be sitting here, instead of discussing how to codify abortion up to the date of birth, should we be talking about the rights, respect for life, the respect for that child? Is that what you would prefer we do here today?

Ms. FOSTER. It certainly is. We should be talking about protection, respect, dignity, and equal rights for all human beings.

Mr. ISSA. I will close by simply saying the Chair of this Committee when I first came to Congress, Chair Hyde, would be having that discussion, if he were here alive today. He would be talking about respect for life.

I yield back.

Chair NADLER. The gentleman yields back.

Mr. Cicilline?

Mr. CICILLINE. Thank you, Mr. Chair.

On June 24th, the Supreme Court's radical, conservative majority made clear that they were not only gutting 50 years of women's established constitutional rights to make their own reproductive decisions, but that abortion was just the first on a laundry list of rights that they were prepared to eviscerate—the right to privacy in intimate relations; the right to raise your children how you see fit; the right to contraception; the right to same-sex marriage.

When people talk about the radical advocates, as my colleagues on the other side of the aisle have described, I am a radical advocate for personal freedom and individual liberty. Our democracy is premised on a notion of basic individual autonomy. We don't let States, or even the Federal government, take away rights that the Constitution establishes.

So, it's not should we trust States to do it; it's do we trust the individual—and in this case it is women—to make their own healthcare decisions. It is astonishing to me that anyone who has read this decision is not worried about many other rights that are at issue and that are in danger, regardless of what your political party is, regardless of what your views on abortion. There are lots and lots of rights that are also at risk. So, I hope all of America is paying attention to this decision because your rights, well-established freedoms, are hanging in the balance.

That brings me to my first question. Ms. Warbelow, thank you for your incredible work, for your testimony.

for your incredible work, for your testimony.

Thank you, Mr. Obergefell, for your really compelling testimony, for your courage and bravery in helping to bring marriage equality

to millions and millions of people in this country.

If you look at Justice Alito's adherence to a legal philosophy known as original intent, which involves examining the founding documents' language to derive meaning on the contemporary issues, can you explain why this method of legal reasoning is outdated and antithetical to a modern society, particularly to Members of the LGBTQ community who have historically been discriminated against, and if you follow that reasoning, may never live in a country where they can live lives free of discrimination? Finally, would the Equality Act address that?

Ms. Warbelow. First, it's important to note that it's very difficult to discern original intent. We cannot always know what is in the mind of a legislator when they pass a law. In fact, people may have conflicting reasons for passing a law. That's why, basing on original intent, whether it's a piece of legislation or a constitutional

amendment, is a flawed approach to legal analysis.

Beyond that, taking that approach continues to privilege those with power, and individuals, LGBTQ people; people of color, particularly Black and Brown people; people with disabilities, and women will continue to be disadvantaged if we are always taking into account what was written more than two centuries ago by White men who were interested in maintaining control of society, rather than sharing equality with all.

Mr. CICILLINE. Which, as Dahlia Lithwick I think so eloquently said, "This move cynically weaponizes a deeply rooted history and tradition of little protective liberty and vast inequality to eradicate the modern jurisprudence of American liberty and equality," which

is exactly what you just said.

Professor Murray, under *Roe* and *Casey*, the right to abortion was implicitly read into the 14th Amendment due process clause, and obviously, was deemed a fundamental right. In *Dobbs*, Justice Alito rejects this approach, reasoning again that only rights that are "deeply rooted in the nation's history and tradition" and "implicit in the concept of ordered liberty" are fundamental rights.

Again, what are the implications of adhering to this logic for other rights, and specifically, what would the impact be, in addition to that on in vitro fertilization, if State abortion laws are interpreted as granting fertilized human eggs legal rights and protections?

Ms. Murray. Thank you for the question.

Let me reiterate, the right to choose your procreative future is not just implicit in the guarantee of liberty. It was actually explicit in the 14th Amendment's ratifiers' views of this anti-slavery amendment. So, it proceeds from that ethic, and it does have important repercussions, overruling the right contained in *Roe* does have important repercussions for in vitro fertilization.

As you know, part of the in vitro process often requires the selective elimination of embryos. So, there are lots of questions about whether or not this limitation on the right to procreate could have

broad repercussions for assisted reproductive technology, including  $\ensuremath{\mathrm{ART}}$  and IVF.

Mr. CICILLINE. Thank you.

Mr. Chair, I ask unanimous consent to introduce into the record the "United States: Freedom in the World 2022 Country Report" because, sadly, America is less free than it was just a few years ago. So, this isn't a question about what we think. This is a report that shows we have slipped. America is less free. The Supreme Court is attacking our freedoms. We need to stand up and codify everything we can to protect all Americans, so they can be free from discrimination of any kind and recognize the autonomy of every single-

Chair NADLER. Without objection.

[The information follows:]



United States: Freedom in the World 2022 Country Report | Freedom House

#### **UPDATES: THE INVASION OF UKRAINE**





#### FREEDOM IN THE WORLD 2022

### **United States**

FREE

83

Political Rights	<b>32</b> /40
Civil Liberties	<b>51</b> /60

#### LAST YEAR'S SCORE & STATUS 83/100 Free

Global freedom statuses are calculated on a weighted scale. See the methodology.



## **Overview**

The United States is a federal republic whose people benefit from a vibrant political system, a strong rule-of-law tradition, robust freedoms of expression and religious belief, and a wide array of other civil liberties. However, in recent years its democratic institutions have suffered erosion, as reflected in rising political polarization and extremism, partisan pressure on the electoral process, bias and dysfunction in the criminal justice system, harmful policies on immigration and asylum seekers, and growing disparities in wealth, economic opportunity, and political influence.

## **Key Developments in 2021**

- The transfer of power from the administration of President Donald Trump to that of President Joseph Biden in January was seriously threatened by a series of antidemocratic actions intended to thwart it. Although Trump's claims of fraud in the November 2020 presidential election had been consistently rejected by electoral officials from both parties and by the courts, he and some of his political allies in the administration, in Congress, and at the state and local levels sought to misuse various authorities and procedural tools to overturn the election results. They also attempted to apply pressure by mobilizing Trump's supporters, and on January 6, the final step in the confirmation of the results by Congress was violently disrupted when a mob marched from a rally outside the White House and broke into the US Capitol building. Congress reconvened hours later and completed its count of the Electoral College ballots, and Biden's inauguration proceeded without incident on January 20. However, Trump's false assertions about large-scale fraud continued to pervade Republican Party discourse throughout the year, leading to intraparty tensions and the threat of political marginalization for Republicans who vocally rejected the claims.
- A number of state laws on this and other topics sparked controversy during the
  year. At least 19 states, nearly all controlled by Republicans, passed problematic
  electoral laws that made voting more difficult, in some cases raising the risk of
  greater partisan interference in election management, vote counting, and

certification. Separately, at least a dozen Republican-led states imposed binding restrictions on content related to race or gender in public school or university settings, and a Texas law banning most abortions after six weeks of pregnancy took effect in September. Unlike with similar restrictions in other states, the Supreme Court allowed the Texas law to enter into force while challenges to its unusual citizen-enforcement mechanism proceeded through the lower courts.

- Criminal cases stemming from widely publicized police killings of Black civilians
  continued to make their way through the courts in 2021. In April, former officer
  Derek Chauvin was convicted on several counts including second-degree
  murder for the May 2020 killing of George Floyd in Minnesota, which had
  galvanized nationwide protests against racial injustice that year. Chauvin was
  sentenced in June to 22 years and six months in prison.
- The COVID-19 pandemic continued to sweep the country, causing a two-year total of more than 825,000 deaths and 55 million confirmed cases. A significant level of public resistance to vaccination—encouraged by misinformation from some influential political and cultural figures—contributed to persistently high numbers of infections and deaths overall. The Biden administration promoted accurate information and voluntary vaccination throughout the year, but in September it also announced a rule requiring vaccinations for employees at large businesses across the country; a legal challenge of the mandate was pending at year's end.

### **Political Rights**

### **A. Electoral Process**

1	<b>A1</b> 0-4 pts	
	Was the current head of government or other chief national authority elected through free and fair elections?	3/4

The president, who serves as both head of state and head of government, is elected for up to two four-year terms. Presidential elections are decided by an Electoral

College, with electors apportioned to each state based on the size of its congressional representation. In most cases, all of the electors in a particular state cast their ballots for the candidate who won the statewide popular vote, regardless of the margin. Two states, Maine and Nebraska, have chosen to divide their electoral votes between the candidates based on their popular-vote performance in each congressional district. The Electoral College makes it possible for a candidate to win the presidency while losing the national popular vote, an outcome that took place in the presidential elections of 2000 and 2016.

In the 2020 election, Biden won 306 Electoral College votes, leaving Trump with 232, and Biden defeated Trump by more than seven million votes, or approximately 4.4 percentage points, in the national popular balloting. Turnout was the highest recorded in more than a century, with roughly two-thirds of the eligible population casting a ballot.

The COVID-19 pandemic compelled many states to increase access to early and mailin voting, partly to help prevent dangerous crowding at polling sites. This led to a series of legal battles, with the Trump campaign and other Republican litigants generally arguing against the changes and claiming that they would open the door to fraud. The balloting itself unfolded with few significant disruptions, though existing obstacles to voting—such as strict voter-identification requirements and inadequate numbers of polling sites—remained a factor, with long lines exacerbated by both the high turnout and pandemic-related shortages of poll workers.

The federal government assisted states in their efforts to safeguard ballots and computer networks against foreign and other illegal interference, while social media companies, which had been criticized for failing to prevent foreign actors from using their platforms to fraudulently influence the political process in the past, made greater efforts to thwart disinformation campaigns. These measures were deemed successful in many respects: despite some reported attempts by foreign actors to hack voting infrastructure and spread disinformation on social media, there was little evidence that they had a meaningful impact.

Rejecting a vote-tabulation process that was lauded by observers as transparent and professional, Trump refused to concede defeat and demanded a halt to the count in states where the late tally favored Biden. In the weeks after the election, Trump continued to allege fraud and openly pressured election officials, particularly Republicans, in pivotal states to make decisions that would support his claims regardless of the facts and the law. During the counting and certification process, state election workers reported intimidation and death threats. A raft of lawsuits by the Trump campaign and its allies—alleging wide-ranging misconduct, challenging the legality of various electoral rules, and seeking to block states from certifying Biden's victory—were almost universally dismissed by state and federal courts. Evidence of large-scale fraud was nonexistent, but the Trump camp's disinformation, complemented by the reluctance of leading Republicans to explicitly acknowledge Biden as the president-elect, helped to convince many Trump supporters that voter fraud was widespread and Biden was not the rightful winner.

New revelations later emerged regarding last-ditch efforts to overturn the results, including machinations by the outgoing president and allied officials or lawyers to involve the Justice Department and other government agencies in supporting Trump's fraud claims, a memorandum by a Trump lawyer arguing that then vice president Mike Pence had the authority to stop Congress from completing the Electoral College vote count, and related attempts by the Trump campaign and Republican Party activists to put forward illegitimate pro-Trump slates of electors in states that Biden won.

Trump administration officials and allies also encouraged resistance to Biden's victory from voters and citizen groups, coordinating with a range of supporters to disseminate disinformation and promote "Stop the Steal" rallies. This activity peaked on January 6, 2021, when several thousand Trump supporters assembled near the White House for a "Save America" rally. Following incitement by Trump and other speakers, the crowd converged on the US Capitol as the counting of the Electoral College ballots proceeded. Upon encountering an inadequate deployment of police, the group turned violent, using both concealed and improvised weapons to break through barricades, assault police officers, and forcibly enter the Capitol, where scores of intruders searched for lawmakers, vandalized offices, and occupied the

Senate chamber as members were evacuated. The group was dispersed after several hours, following the delayed arrival of the National Guard. In all, seven people died in connection with the attack, including a policeman who suffered strokes after clashing with the mob and a rioter who was shot by police near the House chamber. Nearly 140 police officers were injured, as were scores of civilians. By year's end, approximately 700 people had been arrested on a range of charges, though no trials had been completed, and it remained unclear whether charges would eventually extend to Trump or his more prominent allies.

Among Republicans, a divide emerged in the weeks after the election between state officials involved in administering the balloting, who generally defended the fairness of the process and the accuracy of the results, and many members of Congress, who gave credence to Trump's claims and cast doubt on Biden's victory. When Congress reconvened to complete the Electoral College count on the night of January 6–7, just eight senators lodged objections to state results, but 139 of the 211 Republicans in the House of Representatives at the time supported baseless objections to the count in at least one state.

The events of January 6 prompted several institutional responses. The following week, the House voted to impeach Trump on the charge of incitement of insurrection, with 10 Republicans joining all Democrats to approve the measure. The Senate trial concluded in February with Trump's acquittal, as only 57 of the required 67 senators, including seven Republicans, voted to convict. In July, a House select committee was formed to investigate the January 6 attack; Democrats had initially sought to form an independent commission of outside experts, but most Senate Republicans voted to block that effort. The select committee, which only two Republican House members agreed to join, defined its mandate broadly, aiming to clarify both the events of January 6 and the wider efforts to overturn the election results. By year's end, the committee had interviewed scores of witnesses and issued an array of subpoenas for documents and testimony by Trump administration officials and allies. Republican critics derided the investigation as a partisan smear campaign, and Trump instructed his allies to refuse cooperation on the basis of executive privilege, leading to court challenges that remained underway at year's end.

#### **A2** 0-4 pts

Were the current national legislative representatives elected through free and fair elections?

4/4

Elections for the bicameral Congress are generally free and competitive. The House of Representatives consists of 435 members serving two-year terms. The Senate consists of 100 members—two from each of the 50 states—serving six-year terms, with one-third coming up for election every two years. All national legislators are elected directly by voters in the districts or states that they represent.

The capital district, Puerto Rico, and four overseas US territories are each represented by an elected delegate in the House who can perform most legislative functions but cannot participate in floor votes.

Following the 2020 elections, the Republican Party retained control of 50 Senate seats, a loss of one. After winning two Senate seats in runoff elections in Georgia in January 2021, Democrats held 48 Senate seats, and there were two independent senators who generally vote with the Democrats, giving Democrats control of the chamber via the tie-breaking vote of Vice President Kamala Harris. In the House, the Democratic majority was reduced to 223, while the number of Republicans rose to 212.

Unlike in 2018, when the election in a North Carolina House district was nullified on grounds of fraud committed by the Republican side, there were no serious accusations of result-altering fraud in any race in 2020. Republican lawmakers who supported Trump's objections to the presidential results did not question the validity of the concurrent congressional elections.

### **A3** 0-4 pts

Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies?

3/4

The electoral framework is generally fair, though it is subject to partisan manipulation. The borders of House districts, which must remain roughly equal in population, are redrawn regularly—typically after each decennial census. In the practice known as partisan gerrymandering, House districts, and those for state legislatures, are crafted to maximize the advantage of the party in power in a given state. The redistricting system varies by state, but in most cases it is overseen by elected officials, and observers have expressed alarm at the growing strategic and technical sophistication of partisan efforts to control redistricting processes and redraw maps. Historically, gerrymandering has also been used as a tool of racial disenfranchisement, specifically targeting Black voters, as well as Hispanic and Native American populations. The Voting Rights Act (VRA) of 1965 generally prohibits racially discriminatory voting rules, and racial gerrymandering is subject to reversal by federal courts, but it remains a problem in practice, in large part because partisan gerrymandering efforts tend to identify Black voters and other members of racial and ethnic minority groups as likely supporters of the Democratic Party.

In 2019 the Supreme Court ruled that the federal judiciary has no authority to prevent politicians from drawing districts to preserve or expand their party's power. However, some state courts have struck down partisan-gerrymandered maps based on their own constitutions, and state-level reforms have begun to address the issue, with a handful of states establishing independent bodies to manage redistricting in recent years. Following the finalization of the 2020 census results and corresponding reapportionment, states began redistricting efforts in 2021, setting the stage for legal disputes over gerrymandered maps ahead of the 2022 midterm elections. Although both major parties continued to engage in partisan gerrymandering, Republicans had greater opportunity to redraw state-level maps because they controlled more state legislatures. Democrats in Congress proposed legislation aimed at ending the practice for House districts.

Some states have adopted strict voter-identification laws. These documentation requirements can disproportionately limit participation by poor, elderly, or racial minority voters; people with disabilities; and university students. Proponents of such laws argue that they prevent voter fraud, despite research showing that fraud is extremely rare. Separately, reductions in the number of polling places in several

states in recent years are thought to have suppressed turnout by groups such as low-income hourly workers, who are less able to travel to distant polling locations or wait in long lines. Restrictions on voter identification and access to polling places tend to affect demographic groups that are seen as likely to support Democratic candidates, and they are typically adopted by Republican state lawmakers. Some of these obstacles may have had less effect in 2020, in part because the requirements for voting by mail were eased in most states and localities. At the same time, COVID-19 contributed to shortages of poll workers and changes to polling locations, and long lines remained a problem.

Trump's refusal to acknowledge the legitimacy of his defeat and his promotion of false fraud claims spurred a new wave of state electoral legislation during 2021, with sponsors arguing that the changes were needed to prevent any repetition of the supposed malfeasance in 2020. By December, 19 states—nearly all with Republicancontrolled legislatures—had passed 34 new laws that restricted access to voting, with provisions including stricter voter-identification requirements; reduced eligibility for mail-in ballots; and limits on interactions at polling places, such as a ban on offering water to voters waiting in line. Some Republican state legislatures also introduced bills that, according to their opponents, could be used to facilitate the partisan subversion of legitimate electoral outcomes in the future, for instance by concentrating election management authority in the hands of state lawmakers or their appointees rather than local officials, or by empowering partisan poll watchers in ways that could disrupt the ballot-counting process. At the same time, prominent Trump allies encouraged vote-fraud conspiracists to run for local-level posts involved with election administration. Separately, many federal lawmakers, including Democrats and some leading Republicans, emphasized the need to reform the Electoral Count Act, an 1887 law governing congressional validation of the Electoral College votes from the states. The act's ambiguous language was widely criticized for allowing spurious objections to the 2020 results and creating opportunities for a much worse constitutional crisis than ultimately occurred.

Critics have argued that some components of the US constitution are undemocratic because they violate the principle that each citizen's vote should carry equal weight. For example, the allocation of two Senate seats to each state regardless of size has

meant that senators representing a minority of the population are often able to control the chamber. Because the Electoral College allocates votes to the states based on the size of their congressional delegations, it too is affected by the makeup of the Senate. Defenders of these systems argue that they are fundamental to the United States' constitutional tradition and federal structure, in which the states enjoy a substantial degree of autonomy.

The six-member Federal Election Commission (FEC) is tasked with enforcing federal campaign finance laws, but vacancies on the panel meant that it lacked a quorum during nearly the entirety of the 2020 campaign. While a quorum was restored in December 2020, partisan deadlock impeded the commission's work throughout 2021. Also during the year, Democratic lawmakers advanced but were unable to pass an electoral reform package that included a restructuring of the FEC and measures to strengthen enforcement of campaign finance rules.

## B. Political Pluralism and Participation

**B1** 0-4 pts

Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings?

**4**/4

The intensely competitive US political environment is dominated by two major parties: the Republicans on the right and the left-leaning Democrats. The country's prevailing "first past the post" or majoritarian electoral system discourages the emergence of additional parties, as do a number of specific legal and practical hurdles. The two parties' primary elections allow for a broad array of views and candidates to enter the political system, although those in many states exclude unaffiliated voters from this important stage of the electoral process. The 2020 primaries and general elections featured participation by ideologically diverse

candidates across the country; a similar pattern characterized balloting in the set of states and localities that held elections during 2021.

For the many seats at all levels that are regarded as "safely" Democratic or Republican, due to a combination of partisan gerrymandering and geographical sorting, primaries often represent the main battleground for opposing views. Republican incumbents, especially in the House, have faced sharp competition from more right-wing, sometimes Trump-backed challengers in recent voting cycles, and left-wing Democrats—many of them aligned with or endorsed by the Democratic Socialists of America—challenged a number of moderate, party-backed candidates in 2020. In 2021, early primary challenges were announced against the handful of House Republicans who voted for Trump's impeachment in January; these and other Republican officeholders who vocally criticized Trump's election-fraud claims or his role in the events of January 6 also faced threats and intimidation and were marginalized within the party, as illustrated by the May ouster of Representative Liz Cheney from her position in the House Republican leadership.

Independent or third-party candidates have sometimes influenced presidential races or won statewide office, and small parties and ideological factions—such as the Libertarian Party, the Green Party, and the Democratic Socialists of America—have also modestly affected state and local politics in recent years. Several jurisdictions, including Maine and New York City, have adopted ranked-choice voting systems for some posts, which could prove more hospitable to third parties than the majoritarian system, though in practice the results matched those of the traditional plurality system in key races in 2020 and 2021.

#### **B2** 0-4 pts

Is there a realistic opportunity for the opposition to increase its support or gain power through elections?

4/4

Power changes hands regularly at the federal level, and while certain states and localities are seen as strongholds of one party or the other, even they are subject to intraparty competition and interparty power transfers over time. Gubernatorial

elections held in November 2021 in Virginia and New Jersey featured a strong shift toward Republicans relative to the 2020 presidential tally in each state, leading to a victory for the Republican candidate in previously Democrat-led Virginia. The elections left Democrats with 22 state governorships, while Republicans held 28; Republicans maintained control over a majority of state legislatures. In several states, including North Carolina in 2016 and Wisconsin in 2018, outgoing Republican-led legislatures have stripped powers from executive offices that had just been captured by Democrats.

President Trump's efforts to overturn his loss to Biden in 2020 and early 2021 put extreme pressure on the political and electoral systems, eroding the long-standing tradition of respect for official results and highlighting potential structural weaknesses that could be exploited by future candidates. These efforts were ultimately unsuccessful, with Republican officials in the targeted states generally adhering to their legal duties, and transfers of power below the presidential level proceeded without similar contestation. However, some of the legal changes in Republican-controlled states in 2021—and the lack of reform at the federal level during the year—raised concern that transfers of power after the 2022 or 2024 elections could be disrupted.

#### **B3** 0-4 pts

Are the people's political choices free from domination by forces that are external to the political sphere, or by political forces that employ extrapolitical means?

**2**/4

Various interest groups have come to play a potent role in the nominating process for president and members of Congress, partly because the expense and length of political campaigns place a premium on candidates' ability to raise large amounts of funds from major donors, especially at the early stages of a race. While there have been a number of attempts to restrict the role of money in political campaigning, most have been thwarted or watered down as a result of political opposition, lobbying by interest groups, and court decisions that equate political donations with free speech.

The 2020 election campaigns were by far the most expensive ever. As with other recent campaigns, much of the spending was routed through various types of "super PACs" (political action committees), nonprofit organizations, and other legal entities that tend to protect donor anonymity and carry few restrictions on the size and source of donations. Small donations made up an important share of candidates' fundraising, but extremely wealthy contributors played an outsized role in overall spending. Expenditures did not always correlate with electoral success: Democratic Senate candidates challenging Republican incumbents in states such as Kentucky, lowa, Maine, and South Carolina were defeated despite far outspending their opponents.

Concerns about undue influence have also focused on lobbyists and other figures working for foreign governments who associate themselves with political campaigns. A Justice Department probe into foreign interference with the 2016 presidential election uncovered a number of cases of undisclosed consultant work for foreign powers and led to increased enforcement of the Foreign Agents Registration Act (FARA). Proposals to strengthen the law were introduced in Congress in 2021 and remained pending at year's end.

The January 6 attack on Congress underscored a broader rise in violence and intimidation as a tool of political influence in the United States. Numerous known affiliates of right-wing extremist groups participated in the attack, and many Republicans and far-right media figures later sought to recast it as a patriotic protest or a defense of election integrity. The documented participation of military veterans in the violence prompted the Defense Department to order a broad review of measures necessary to minimize extremist behavior among active-duty troops. Meanwhile, reports of threats against elected officials proliferated during the year, continuing a pattern from 2020 and contributing to a related increase in local election administrators who stated that they were considering resigning.

Score Change: The score declined from 3 to 2 due to the January 6 assault on the Capitol, in which Trump supporters violently attempted to prevent Congress's formal confirmation of the presidential election results, as well as a broader increase in threats and intimidation aimed at politicians and election officials across the country.

#### **B4** 0-4 pts

Do various segments of the population (including ethnic, racial, religious, gender, LGBT+, and other relevant groups) have full political rights and electoral opportunities?

3/4

A number of important laws are designed to ensure the political rights of members of racial and ethnic minority groups, and the 2020 elections featured increased participation as candidates by women and representatives of such groups. The Congress elected in 2020 included the first openly gay Black House members and record or near-record numbers of Black, Hispanic, Native American, Asian American and Pacific Islander, LGBT+, and women lawmakers. Kamala Harris, whose mother and father were Indian and Jamaican immigrants, respectively, became the first Black American, the first Asian American, and the first woman to win election as vice president. Nevertheless, White Americans and men have remained highly overrepresented in Congress, in state legislatures, and in senior policymaking positions.

Racial and ethnic minority communities are disproportionately affected by laws and policies that create obstacles to voting and winning elected office. In 2013 the Supreme Court invalidated portions of the VRA of 1965, allowing certain states that previously had to submit legal changes for preclearance by federal authorities to adopt election laws without prior review. In the years since, in addition to adopting voter-identification requirements and limiting polling locations, a number of states—including some that were never subject to the preclearance rule—have partially rolled back innovations like early voting that contributed to higher rates of participation among minority groups. In June 2021, the Supreme Court upheld restrictive Arizona rules against a VRA challenge, signaling a further weakening of the VRA as a safeguard against discriminatory state laws. Throughout 2021, Democrats in Congress advanced proposals intended to address both the Supreme Court decisions and the raft of voting restrictions passed in recent years at the state level, but Senate Republicans used procedural tactics to block the legislation. Separately, the Justice Department filed lawsuits challenging the laws passed in some states.

Various other state election-management policies have been criticized for having a disparate impact on racial and ethnic minority communities, including voter-roll purges and arbitrary bureaucratic hurdles to registration. Partisan state-level redistricting processes in 2021 also prompted complaints in North Carolina, Georgia, Ohio, and other states that the power of Black voters and elected officials was being diluted.

State laws that deny voting rights to citizens with felony convictions continue to disproportionately disenfranchise Black Americans, who are incarcerated at significantly higher rates than other populations. All but two states suspend voting rights during incarceration for felonies; a growing number of states have eased restrictions on voting rights after incarceration or during probation and parole, but the issue remains controversial. Overall, researchers estimated that more than five million people remained disenfranchised for the 2020 elections due to felony convictions.

### C. Functioning of Government

**C1** 0-4 pts

Do the freely elected head of government and national legislative representatives determine the policies of the government?

3/4

The president and Congress are generally empowered to determine government policies and craft legislation. However, partisan polarization and obstruction in Congress has repeatedly delayed appropriations bills in recent years, resulting in a series of partial shutdowns of federal government operations, most recently in 2018–19. While no such shutdowns occurred in 2021, the country narrowly avoided a spending and debt crisis in December when some Senate Republicans agreed to a short-term spending bill and allowed a party-line vote to lift the cap on federal debt.

Congress's ability to serve as a check on potential abuses by the executive was challenged during the Trump administration. After Democrats gained a majority in the House of Representatives in the 2018 elections, the administration frequently

clashed with Congress in ways that undermined the legislature's constitutional authority. For example, in 2019 Trump's irregular obstruction of appropriated military aid to Ukraine and his orders to defy congressional subpoenas led to an impeachment process that ultimately failed to remove the president in early 2020. For the remainder of that year, the administration continued its refusal to comply with a host of congressional reporting requirements, information requests, and subpoenas on various oversight matters. Proposed reforms meant to address these problems by strengthening Congress's oversight powers had yet to win passage in 2021.

The Trump administration consistently left large numbers of vacant positions across the higher levels of government departments and agencies, undercutting Congress's authority to confirm such appointees and making it difficult or impossible for the agencies to operate as intended by law. Following the November 2020 elections, executive branch functions and continuity were hindered when the outgoing administration—as part of its groundless contestation of the election results—broke precedent by hampering cooperation with incoming Biden administration officials. Throughout 2021, Republicans in the Senate effectively slowed the confirmation of Biden's executive branch nominees, leaving the pace of appointments slightly ahead of the Trump administration's in its first year but far behind the previous two administrations.



The United States benefits from strong safeguards against official corruption, including a traditionally independent law enforcement system, a free and vigorous press, and an active civil society sector. A variety of regulations and oversight institutions within government are designed to curb conflicts of interest and prevent other situations that could lead to malfeasance.

Beginning in 2017, however, the Trump administration presented a number of challenges to existing norms of government ethics and probity. Anticorruption watchdogs criticized President Trump for shifting management of his real-estate development empire to his children rather than divesting ownership or establishing a stronger structural barrier between himself and his businesses. The president, his staff, and special interest groups of foreign and domestic origin all frequently visited and held events at Trump-branded properties in the United States throughout his term in office, generating publicity and millions of dollars in revenue. The Trump administration also notably undercut conflict-of-interest restrictions for other White House and executive branch appointees. Although the president issued an executive order in 2017 that limited appointees' ability to shift to lobbying work after leaving government, many Trump nominees received waivers, and journalistic and congressional investigations routinely found conflicts of interest and other ethical violations among nominees and appointees.

Whistleblowers faced extreme pressure during the Trump administration. The Central Intelligence Agency official who filed a complaint that touched off the Ukraine-related impeachment inquiry in 2019 was forced into protective surveillance amid threats of violence. Following his February 2020 acquittal in the Senate, President Trump fired or forced the resignation of several officials who offered inculpatory testimony during the House impeachment process.

In 2021, lawmakers advanced a number of bills meant to address the gaps in ethics rules that were exploited by members of the Trump administration, but these legislative reforms had yet to pass at year's end. The Biden administration issued an executive order in January that strengthened some ethics rules in the executive branch, and watchdog groups described efforts to limit cabinet members' conflicts of interest as effective, though critics continued to highlight ethics questions involving Biden's son Hunter. Separately, the House ethics committee released a report in October that denounced campaign finance practices and stock trades by four members of Congress, and investigations continued through the end of the year.



3/4

The United States was the first country to adopt a Freedom of Information Act (FOIA) over 50 years ago, and the law is actively used by journalists, civil society groups, researchers, and members of the public. A 2016 reform law was designed to improve government agencies' responsiveness to FOIA requests, and reporters and activists were able to use FOIA filings to obtain important documents on the Trump administration that congressional investigators could not access through normal oversight requests or subpoenas. Nevertheless, government performance on FOIA requests declined during Trump's presidency, and in 2020 the coronavirus-induced transition to remote work by government employees produced a sharp drop in responsiveness to information requests at the federal, state, and local levels, though complaints about delays diminished somewhat in 2021.

Lack of transparency characterized multiple facets of the Trump administration. The president and his aides frequently made statements that were either misleading or untrue, and typically failed to correct the record when such statements were challenged by the press and others. The administration operated with greater opacity than its immediate predecessors, for example by making policy and other decisions without meaningful input from relevant agencies and their career civil servants, and removing information on certain issues—such as climate change—from government websites. It also intruded on technical matters like the decennial census for political reasons, threatening the accuracy of data used for a wide variety of governance purposes. Throughout 2020, Trump and a number of his aides consistently promoted false and misleading information about COVID-19, and political appointees in the administration interfered with the analysis and recommendations of federal public health professionals, seeking to control data collection and official guidance. Such practices were echoed by some likeminded governments at the state and local levels.

After taking office in 2021, the Biden administration sought to combat misinformation and provide accurate public health data, emphasizing the safety and efficacy of COVID-19 vaccines in particular. It also returned to the traditional practice of holding

formal daily press briefings, which the Trump administration had often dispensed with in favor of irregular, ad hoc appearances by the president.

The executive branch includes a substantial number of auditing and investigative agencies that are independent of political influence; such bodies are often spurred to action by the investigative work of journalists. In 2020, Trump arbitrarily fired or replaced a series of agency inspectors general who had documented or investigated malfeasance by administration officials. Legislative proposals to reinforce the authority and independence of inspectors general and ensure government transparency more broadly were under consideration in Congress during 2021.

Score Change: The score improved from 2 to 3 because the Biden administration did not repeat its predecessor's promotion of false and misleading information about COVID-19 or attempt to interfere with expert analysis and recommendations on health and other matters, though a number of deficiencies in transparency safeguards that were exposed by the Trump administration had not been remedied at year's end.

#### **Civil Liberties**

## D. Freedom of Expression and Belief



The United States has a free and diverse press, operating under some of the strongest constitutional protections in the world. The media environment retains a high degree of pluralism, with newspapers, newsmagazines, traditional broadcasters, cable television networks, and news websites competing for readers and audiences.

Internet access is widespread and unrestricted. While many larger outlets have prospered, however, independent local sources of news have struggled to keep up with technology-driven changes in news consumption and advertising, contributing to significant ownership consolidation in some sectors, and a number of communities with just one or no local news outlet.

News coverage has also grown more polarized, with certain outlets and their star commentators providing a consistently right- or left-leaning perspective. Although the mainstream media have continued to provide strong and independent coverage of national politics despite increased hostility from political figures in recent years, some outlets' editorial policies effectively shifted to the left as they were drawn into adversarial relationships with the Trump presidency. The highly influential cable network Fox News has been unique, however, in its close alignment with the Republican Party in general and former president Trump in particular; several prominent on-air personalities and executives migrated to government jobs under Trump's administration, and key hosts openly endorsed Republican candidates or participated in campaign rallies. Following the 2020 elections, Fox News joined other networks in calling the presidential race for Biden, prompting Trump to denigrate the outlet and direct his followers to smaller, more extreme alternatives. In 2021, Fox News returned to favorable coverage of Trump, his false claims about the fairness of the 2020 election, and various conspiracy theories about the January 6 riot.

Although the government's rhetorical hostility toward the press declined markedly under the new administration in 2021, the potential for government intrusion on the work of journalists remained a concern. In July, Attorney General Merrick Garland issued new rules barring the Justice Department—with narrow exceptions—from seizing the records of journalists or requiring their testimony in order to identify confidential sources as part of leak investigations. The move came in response to revelations that the department under Trump had secretly sought or obtained the records of journalists from multiple news outlets while investigating leaks. Separately, it was reported in December that, according to the Department of Homeland Security's inspector general, a Customs and Border Protection unit had freely used government databases in previous years to investigate journalists as well as politicians, congressional staff, and others. The unit was under review at year's end.

A growing number of Americans look to social media and other online sources for political news, increasing their exposure to disinformation and propagandistic content of both foreign and domestic origin. The larger platforms have struggled to control false or hateful material without harming freedom of expression or their own business interests, though they have engaged in mass removals of far-right and foreign accounts that are used to spread disinformation. Following the January 6 attack, the perceived risk of further incitement of violence by Trump prompted Twitter to ban his account, and Facebook and YouTube imposed indefinite suspensions; in July Trump filed a lawsuit against the three companies, alleging violations of his constitutional right to free speech. Facebook came under significant scrutiny in 2021 from members of both political parties, with Republicans alleging censorship of accounts featuring conservative perspectives and Democrats assailing executives over their reported reluctance to vigorously combat conspiracy theories about the 2020 election and the COVID-19 vaccines. The Republican-led states of Florida and Texas adopted laws that aimed to restrict social media platforms' ability to moderate content, though enforcement of both measures was blocked pending judicial review.

While violence against journalists in the United States has been rare in recent decades, media watchdog groups registered widespread press freedom violations—including police violence and arbitrary arrests targeting journalists—in the context of the nationwide protests sparked by the police killing of George Floyd, a Black civilian, in Minnesota in May 2020. According to the US Press Freedom Tracker, a joint project of multiple nongovernmental organizations (NGOs), the number of violations declined sharply in 2021, falling to 59 arrests or detentions of journalists and 142 assaults on journalists, from 123 arrests and 334 assaults recorded during 2020. The latest incidents occurred during political protests, rallies against vaccine mandates, and a variety of other reporting assignments. Despite the decline from 2020, the 2021 figures still represented a sharp uptick compared with the 9 arrests and roughly 40 assaults documented for 2019.

**D2** 0-4 pts

Are individuals free to practice and express their religious faith or nonbelief

**4**/4

#### in public and private?

The United States has a long tradition of religious freedom. The constitution protects the free exercise of religion while barring any official endorsement of a religious faith, and there are no direct government subsidies to houses of worship. The debate over the role of religion in public life is ongoing, however, and religious groups often mobilize to influence political discussions on the diverse issues in which they take an interest. The Supreme Court regularly adjudicates difficult cases involving the relationship between religion and the state.

In 2020, multiple state and local governments imposed restrictions on the size of religious gatherings to slow the spread of the coronavirus, prompting legal challenges. The Supreme Court, faced with differing details, issued somewhat conflicting rulings on the subject, but a series of rulings in 2021 confirmed a pattern in which the justices curbed state restrictions on religious assemblies.

Hate crimes based on religion are generally prosecuted vigorously by law enforcement authorities. Federal Bureau of Investigation (FBI) statistics for 2020, released in October 2021, showed a decrease of some 15 percent in such crimes from 2019; incidents involving Jewish targets constituted over 56 percent of the year's religion-based hate crimes. Anti-Muslim crimes were the next most common, and Christian churches with predominantly Black congregations have also experienced attacks in recent years.

# D3 0-4 pts Is there academic freedom, and is the educational system free from extensive political indoctrination? 3/4

The academic sphere has long featured a high level of intellectual freedom. While it remains quite robust by global standards, this liberty has come under pressure from both ends of the political spectrum. University faculty have reported instances of professional repercussions or harassment—including on social media—related to curriculum content, textbooks, or statements that some students strongly disagreed

with. As a consequence, some professors have engaged in self-censorship. Students on a number of campuses have obstructed guest speakers whose views they find objectionable. In the most highly publicized cases, students and nonstudent activists have physically prevented presentations by controversial speakers, especially those known for their views on race, gender, immigration, Middle East politics, and other sensitive issues.

On most university campuses and in some other educational settings, such pressures came largely from the progressive left, but social and political forces on the right have increasingly applied pressure of their own in recent years. The Trump administration in 2020 ordered recipients of federal funds, including universities, to avoid diversity training that includes "divisive concepts" related to racism and sexism, prompting expressions of concern regarding impingements on academic freedom from numerous university administrators. A federal judge blocked implementation of the order, but in 2021 state-level officials initiated a wave of similar legislation pertaining to both universities and public schools. These efforts were especially focused on restricting the teaching of "critical race theory" (CRT), an academic framework for examining a variety of issues including structural racism. According to PEN America, lawmakers in at least a dozen states had adopted "educational gag orders" restricting the forms and substance of classroom race discussions by year's end, and additional bills were under consideration in numerous other jurisdictions. Moreover, educators and administrators concerned about accreditation, legal liability, and parental anger were reportedly acting preemptively to eliminate or alter courses and remove previously well-regarded texts from school libraries.

These debates took place against the backdrop of a sharp rise in threats and intimidation aimed at school officials, as parents—and in some cases, members of far-right groups—voiced their anger at pandemic-related school closures, mask mandates, and the content of classroom lessons, leading the Justice Department to announce the formation of a task force to protect school personnel in October.

Score Change: The score declined from 4 to 3 due to a multiyear rise in pressure on educators and educational institutions, including the obstruction of on-campus speech that some find objectionable, attempts to dismiss or punish scholars for their

views or work, efforts to limit student access to certain books, and a series of government restrictions and citizen threats related to the classroom discussion of race and other controversial topics.



Americans are generally free to engage in private discussion and air their personal views in public settings, including on the internet, though there are a number of threats to this freedom.

Civil libertarians, many lawmakers, and other observers have pointed to the real and potential effects of the collection of communications data and other forms of intelligence-related monitoring on the rights of US residents, despite the adoption of significant reforms since such activities surged following the terrorist attacks of September 11, 2001. Separately, surveillance programs run by federal and local law enforcement agencies have long raised concerns among civil liberties groups, due in part to allegations of a disproportionate focus on religious, racial, and ethnic minority communities. A growing number of law enforcement and other government agencies are monitoring public social media content, with targets including applicants for US visas and participants in protests.

A public debate about law enforcement access to encrypted communication services continues, with some officials warning that their technical inability to break encryption even with a judicial warrant posed a threat to the rule of law, and opponents arguing that any weakening of encrypted services' security would expose all users to criminal hacking and other ill effects.

Aside from concerns about government surveillance, internet users in the United States have faced problems such as aggressive disinformation efforts, intimidation, and frequently sexualized harassment on social media that may deter them from engaging in online discussion and expressing their views freely.

## E. Associational and Organizational Rights

<b>E1</b> 0-4 pts	
Is there freedom of assembly?	4/4

In general, officials respect the constitutional right to public assembly. Demonstrations on political and other topics are common and typically proceed without incident, though local authorities often place restrictions on the location or duration of large protests. Since 2017, legislative initiatives aiming to criminalize or stiffen penalties for certain forms of protest, or to shield perpetrators of violence against protesters from legal liability, have been proposed in most states. Such legislation was adopted in at least nine states during 2021, including laws in Oklahoma and lowa that would partially shield drivers from liability for hitting protesters with their vehicles.

In recent years, large protests and aggressive law enforcement responses have been sparked by highly publicized police killings of Black civilians, many of which were recorded on video. In May 2020, outrage over the killing of George Floyd by police in Minneapolis inspired one of the largest waves of protests in US history. Under the banner of the decentralized Black Lives Matter (BLM) movement, marches occurred in hundreds of cities and smaller communities. Estimated participation in May and June of that year ranged from 15 to 26 million people. An overwhelming majority of the protests were peaceful, but in some settings they were accompanied by violence against police and significant damage to public and private property. Aggressive police tactics often contributed to violent episodes, and hundreds of instances of unprovoked or disproportionate police violence were documented on video.

The Trump administration and its political allies frequently denounced the BLM movement and offered unqualified support to police, downplaying the extent of police violence. The president threatened to deploy active-duty military units in cities

experiencing unrest, and federal law enforcement agents were accused of applying excessive force in June 2020 in Washington, DC, and using abusive and inflammatory tactics during a series of protests in Portland, Oregon.

Police violence against protesters rarely results in accountability, including in cases of apparent abuse caught on camera during the 2020 protests. Observers that year also noted that police often exercised greater restraint toward anti-BLM counterprotesters and participants in separate demonstrations against COVID-19-related restrictions, many of whom were armed and displayed far-right or White supremacist symbols.

With the exception of the January 6 attack, conditions surrounding mass assemblies were generally more peaceful in 2021. Unlike in 2020, there were few prominent examples of people being killed in confrontations involving armed protesters, counterprotesters, or vigilantes, though repercussions from events in 2020 continued: in November, a teenager who killed two people near an August 2020 protest in Wisconsin was acquitted on all charges after arguing self-defense.

Score Change: The score improved from 3 to 4 because the surge in civilian violence and police abuses that accompanied a subset of the protests against racial injustice in 2020 largely subsided during 2021, though accountability for the previous year's violations reportedly remained lacking.

# E2 0-4 pts Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights— and governance-related work? 4/4

US laws and practices give wide freedom to NGOs and activists to pursue their civic or policy agendas, including those that directly oppose government policies. Organizations committed to the protection of civil liberties, immigrants' rights, equality for women and minority groups, and freedom of speech became more active during the Trump administration and remained so in 2021, mounting campaigns and filing lawsuits to block government actions that they considered harmful. A number

of privately supported projects have also been established in recent years to address deficiencies in the electoral and criminal justice systems.



Federal law generally guarantees trade unions the right to organize and engage in collective bargaining. The right to strike is also protected, though many public employees are prohibited from striking. Over the years, the strength of organized labor has declined, and just 6.1 percent of the private-sector workforce belonged to unions in 2021. While public-sector unions had a higher rate of membership, with 33.9 percent, they have come under pressure from officials concerned about the cost of compensation and pensions to states and municipalities. The overall unionization rate in 2021 was 10.3 percent, the same as in 2019. The country's labor code and decisions by the National Labor Relations Board (NLRB) during Republican presidencies have been regarded as impediments to organizing efforts, but even Democratic administrations have largely failed to reverse the deterioration. Union organizing is also hampered by resistance from private employers. Among other tactics, many employers categorize workers as contractors or use rules pertaining to franchisees to prevent organizing.

A 2018 Supreme Court decision that government employees cannot be required to contribute to unions that represent them in collective bargaining has led to further losses in union membership, and 27 states have "right-to-work" legislation in place, allowing private-sector workers who benefit from union bargaining to similarly opt out of paying union dues or fees. In March 2021 the House of Representatives passed the Protecting the Right to Organize Act, which would strengthen organizing and bargaining capacity by overriding right-to-work laws and giving more categories of workers the right to unionize, among other changes; the bill remained stalled in the Senate at year's end.

A labor shortage that accompanied the economic recovery from the pandemic in 2021 emboldened workers to make demands in negotiations with employers, leading to a series of highly publicized strikes and increased media coverage of labor disputes, though the total number of strikers remained relatively small.

### F. Rule of Law

<b>F1</b> 0-4 pts	
Is there an independent judiciary?	3/4

The American judiciary is largely independent. The courts regularly demonstrated their autonomy during the Trump presidency by blocking or limiting executive actions, and the Biden administration also faced adverse rulings during 2021.

However, the pattern of judicial appointments in recent years has added to existing concerns about partisan distortion of the appointment and confirmation process. Republican leaders in the Senate had stalled many federal judicial nominations in the final years of Barack Obama's presidency, resulting in an unusually large number of vacancies at the beginning of 2017. The most prominent was a seat on the Supreme Court that the Senate had held open during 2016 by refusing to allow hearings on Obama's nominee. In 2017, the Senate confirmed Trump's nominee for the position, but only after the Republican leadership changed Senate rules that had required a supermajority to end debate on Supreme Court nominations, meaning the confirmation could proceed with a simple-majority vote. Democrats had enacted a similar rule change for lower court nominations in 2013.

President Trump filled two additional vacancies on the Supreme Court in 2018 and 2020 after deeply contentious Senate hearings and nearly party-line votes. These appointments cemented a conservative Supreme Court majority; many Democrats suggested that the Republicans' pattern of obstructing Democratic nominees and filling the resulting vacancies with their own nominees warranted the introduction of legislation to expand the size of the court and add new justices under a Democratic

president, but while President Biden created a commission to study various judicial reform options in 2021, no such changes were adopted during the year.

By the end of 2020, Trump had successfully appointed a record 234 federal judges in all, including 54 appellate court judges. In a break with precedent, a number of his nominees were confirmed by the Senate even after he lost the November election. President Biden made judicial appointments a priority in 2021, and during the year he made more nominations and achieved more confirmations than either Trump or Obama in the first year of their respective terms.

During his time in office, Trump repeatedly used his pardon power in an arbitrary or politicized fashion, bypassing Justice Department processes, overturning the convictions of several individuals whose cases were championed by his political allies, and publicly discussing possible pardons for himself or other individuals in a position to provide evidence against him in various investigations. Between his defeat in the November 2020 election and Biden's inauguration in January 2021, Trump pardoned multiple close associates who had been convicted or charged in connection with investigations into Russian interference in the 2016 election. These were among a larger raft of pardons issued to individuals with personal or political connections to Trump, including five former Republican congressmen convicted of fraud or misusing funds, four former military contractors convicted for their roles in a notorious 2007 massacre of civilians in Iraq, and former adviser Steve Bannon, who was awaiting trial on fraud charges.

In many states, judges are chosen through either partisan or nonpartisan elections, and a rise in campaign fundraising and party involvement in such elections over the last two decades has increased the threat of bias and favoritism in state courts. In addition, executive and legislative officials in an increasing number of states have attempted to increase their control over state courts; according to New York University's Brennan Center for Justice, 14 states passed legislation that narrowed judicial independence in 2021.

F2 0-4 pts

Does due process prevail in civil and criminal matters?

3/4

The United States has a deeply rooted rule-of-law tradition, and legal and constitutional protections for due process are widely observed. However, the criminal justice system suffers from a number of chronic weaknesses, many of which are tied to racial discrimination and contribute to disparities in outcomes that disadvantage people of color, particularly Black Americans. Media reports and analyses in recent years have drawn new attention to the extensive use of plea bargaining in criminal cases, with prosecutors employing the threat of harsh sentences to avoid trial and effectively reducing the role of the judiciary and juries; deficiencies in the parole system; long-standing funding shortages for public defenders, who represent low-income defendants in criminal cases; racial bias in risk-assessment tools for decisions on pretrial detention; and the practice of imposing court fees or fines for minor offenses as a means of raising local budget revenues, which can lead to jail terms for those who are unable to pay.

These problems and evolving enforcement and sentencing policies have contributed to major increases in incarceration over time. The population of sentenced state and federal prisoners soared from about 200,000 in 1970 to more than 1.6 million in 2009, then gradually decreased to roughly 1.2 million as of mid-2021. The incarceration rate based on such counts rose from around 100 per 100,000 US residents in 1970 to a peak of more than 500 in the late 2000s, then fell to 361 as of mid-2021. There are also hundreds of thousands of pretrial detainees and short-term jail inmates behind bars. Despite gradual declines in the number of Black prisoners, Black and Hispanic inmates continue to account for a majority of the prison population, whereas Black and Hispanic people account for roughly a third of the general US population. Lawmakers, elected state attorneys, researchers, activists, and criminal justice professionals have reached a broad consensus that the current level of incarceration is not needed to preserve public safety. Civil liberties organizations and other groups have also argued that prison sentences are often excessive and that too many people are incarcerated for nonviolent drug offenses.

In 2018, under pressure from a bipartisan coalition advocating for reforms to curb mass incarceration, Congress passed and the president signed a law that eased federal mandatory-minimum sentencing rules, among other modest changes. A majority of states have also passed laws in recent years to reduce sentences for certain crimes, decriminalize minor drug offenses, and combat recidivism; such gradual steps continued in 2021. Some states have restricted the use of cash bail, which can unfairly penalize defendants with fewer resources and enlarge pretrial jail populations. In 2020, voters in Oregon approved a ballot measure to decriminalize possession of all drugs, the first state to take such a step; several others have decriminalized or fully legalized the recreational use of marijuana.

F3 o-4 pts  $Is there protection from the illegitimate use of physical force and freedom from war and insurgencies?} \\ 3/4$ 

The US homicide rate—at 6.5 per 100,000 inhabitants as of 2020, according to FBI data—remains low by regional and historical standards, and overall crime rates have declined substantially since the 1990s. However, the figures are high when compared with other wealthy democracies, and the homicide rate rose by 30 percent between 2019 and 2020, with even higher spikes in a number of large cities, and continued to rise nationally at a slower pace in 2021.

The increased policy focus on reforming the criminal justice system in recent years has coincided with a series of widely publicized incidents in which police actions led to civilian deaths. Most of these prominent cases involved Black civilians, while Native Americans are reportedly killed by police at a higher rate per capita than any other group. Only a small fraction of police killings lead to criminal charges; when officers have been brought to trial, the cases have typically ended in acquittals or sentences on reduced charges. In many instances, long-standing and rigid labor protections prevent municipal governments and police departments from imposing significant administrative sanctions on allegedly abusive officers. Nevertheless, in April 2021, former officer Derek Chauvin was convicted on several counts including second-

degree murder for the May 2020 killing of George Floyd in Minnesota, and in June he was sentenced to 22 years and six months in prison.

Opinion polling suggested that the 2020 protests against police violence and racial injustice were initially successful in shifting White Americans' attitudes and raising their awareness of the problems. The protests also succeeded in drawing media and advocacy attention to many police departments' deep resistance to any reform or accountability mechanisms, and in putting a spotlight on the presence within law enforcement of some officers with direct links to far-right militias and White supremacist groups. A push by some reform advocates to cut police departments' funding and direct it to other public services faced criticism amid rising crime rates, however, and many such efforts were diluted or reversed in 2021.

Conditions in prisons, jails, and pretrial detention centers are often poor at the state and local levels, and the COVID-19 pandemic spread through facilities across the country, with more than a third of the incarcerated population having tested positive by April 2021. Many jurisdictions and the federal government took steps to ease crowding by releasing to home confinement those suspects and convicted inmates who were deemed less dangerous.

Use of the death penalty has declined significantly in recent years. There were 11 executions carried out by five states and the federal government in 2021—down from 17 in 2020 and a peak of 98 in 1999. The death penalty has been formally abolished by 23 states, with Virginia joining the list in 2021; in another 15 states where it remains on the books, executions have not been carried out for the past five years or more. In July 2020 the federal government resumed executions for the first time since 2003, and 13 federal executions were carried out before the Biden administration imposed a moratorium in June 2021. Factors encouraging the decline of the death penalty include clear racial disparities in its application, with death sentences far more likely in cases involving White murder victims than Black murder victims; a pattern of exonerations of death-row inmates, often based on new DNA testing; states' inability to obtain chemicals used in lethal injections due to objections from producers, as well as legal challenges to the constitutionality of the prevailing methods of lethal injection; and the high costs to state and federal authorities associated with death

penalty cases. The US Supreme Court has effectively ruled out the death penalty for crimes other than murder and in cases where the perpetrator is a juvenile or mentally disabled, among other restrictions.

<b>F4</b> 0-4 pts		
Do laws, policies, and practices guarantee equal treatment of various segments of the population?	<b>2</b> / <sub>4</sub>	

An array of policies and programs are designed to protect the rights of individuals against discrimination based on race, ethnicity, gender, and other categories, including in the workplace. However, women and some minority groups continue to suffer from disparities on various indicators, and a number of recent government policies have infringed on the fundamental rights of refugees, asylum seekers, and immigrants.

Although women constitute almost half of the US workforce and have increased their representation in many professions, the average compensation for female workers is roughly 82 percent of that for male workers, a gap that has remained relatively constant over the past several decades. Meanwhile, the wage gap between White and Black workers has grown in recent decades, meaning Black women, who are affected by both the gender and racial components of wage inequality, made about 69 cents for every dollar earned by White male workers as of 2020. Women are also most often affected by sexual harassment and assault in the workplace. A popular and ongoing social media campaign that began in late 2017, the #MeToo movement, has encouraged victims to speak out about their experiences, leading to accountability for some perpetrators and underscoring the scale of the problem in American society.

In addition to structural inequalities and discrimination in wages and employment, racial and ethnic minority groups face long-running and interrelated disparities in education and housing. De facto school segregation is a persistent problem, and the housing patterns that contribute to it are influenced by factors such as mortgage discrimination, which particularly affects Black and Hispanic homeowners. Black

homeownership has fallen steadily from a peak in 2004, despite gains for other groups in recent years. This in turn influences overall gaps in wealth and social mobility. For example, the median wealth of White families is 12 times the median wealth of Black families. Black people also face discrimination in health care and experience worse outcomes than their White counterparts, and during the COVID-19 pandemic, people of color experienced strikingly higher mortality from the virus. Asian Americans were the victims of a surge in discrimination and hate crimes in 2020 and 2021, attributed in part to President Trump's attempts to focus blame for the pandemic on China, where the initial outbreak occurred.

Although LGBT+ people remain subject to significant discrimination, they have made strides toward legal equality in recent years. In 2020, the Supreme Court ruled that federal civil rights legislation includes LGBT+ people as a class protected from workplace discrimination. In January 2021, the Biden administration lifted a Trumpera ban on transgender people serving in the military, and in June the government announced that a nonbinary gender option would be available on US passports. However, disputes over the rights of transgender people at the state level have resulted in a series of restrictive laws. In October, Texas became the ninth state that year to bar transgender girls from participating in women's scholastic sports.

The Trump administration worked to reduce the number of legal immigrants, refugees, asylum seekers, and undocumented immigrants entering and residing in the country. Many of its moves were hasty, uncoordinated, and underfunded, and they often conflicted with existing laws, constitutional protections, and international human rights standards. While the administration typically cited exaggerated security concerns as justification for its policies, in 2020 the COVID-19 pandemic provided a new rationale and helped the administration achieve large declines in the number of newly arriving immigrants and asylum claimants. Although the Biden administration attempted to reverse some Trump-era policies, court challenges complicated its efforts, and it chose to leave other policies in place.

The Biden administration immediately overturned its predecessor's executive orders that had barred most entries by citizens of a group of Muslim-majority countries on security grounds; the original order had been repeatedly revised amid criticism that

the bans were blatantly discriminatory. The new administration also sought to reverse President Trump's sharp and discriminatory reductions in the number of refugees admitted to the United States for resettlement, which had reached its lowest point since the program began in 1980; while the cap was raised to 62,500 people, fewer than 12,000 refugees were actually resettled by the end of the fiscal year in September 2021.

A number of controversial policies enacted by Trump administration that focused on blocking asylum seekers at the southern border were preserved under the Biden administration, and they continued to draw legal challenges on the grounds that they denied asylum seekers basic due process, violated statutory rules on asylum applications, and breached international prohibitions on returning asylum seekers to unsafe countries. Amid an increase in migration from Mexico, Central America, and Haiti, the Biden administration continued to use COVID-19-related public health restrictions to rapidly expel or deport most migrants throughout the year, including thousands of Haitians whose treatment was widely criticized as inhumane. Earlier, in January 2021, the administration ended the Trump administration's "Remain in Mexico" program, which allowed border authorities to force non-Mexican asylum seekers to wait in Mexico while their claims were adjudicated in the United States. Tens of thousands of people had been returned to Mexico under the program, with many living in difficult and dangerous conditions there. In August, however, the Supreme Court upheld a ruling that the program had been improperly rescinded, and it restarted in December.

The Biden administration signaled its commitment to reverse the Trump-era emphasis on maximizing arrests and deportations of undocumented immigrants, regardless of whether they had committed crimes, and of legal immigrants or refugees who committed crimes in the United States. In 2021, immigration authorities moved back toward the Obama-era policy of focusing deportation efforts on those individuals who pose the greatest threat to public safety. Nevertheless, immigration detentions rose during the administration's first year, and the backlog of cases in immigration courts continued to balloon; as of December 2021 there were some 1.6 million pending cases, with average wait times of more than two years for a case to be heard. Human rights and immigrant advocacy groups criticized the administration

for taking inadequate steps to address poor conditions in immigration detention facilities. In September, the Biden administration announced steps intended to strengthen the legal standing of the Deferred Action for Childhood Arrivals (DACA) program, which prevents the deportation of undocumented immigrants who were brought to the United States as children. The program had been the subject of court challenges since it was first implemented in 2012, and the Trump administration had tried unsuccessfully to end it.

## G. Personal Autonomy and Individual Rights



There are no significant undue restrictions on freedom of movement within the United States, and residents are generally free to travel abroad without improper obstacles. A patchwork of temporary movement restrictions were imposed across the country in response to the COVID-19 pandemic in 2020, with states acting independently based on local conditions and strategies, though the rules were loosely enforced and relied mainly on voluntary compliance. The remaining restrictions were mostly lifted as vaccination rates rose in 2021.



Property rights are widely respected in the United States. The legal and political environments are supportive of entrepreneurial activity and business ownership. There were concerns during the Trump administration that political favoritism was

distorting markets and government contracts, but these receded after the Biden administration took office. Coronavirus-related business restrictions at the state and local levels, which caused significant disruption and prompted civil disobedience and public protests by some private business owners in 2020, declined as vaccination rates rose and businesses reopened in 2021. In September the Biden administration issued a mandate requiring larger companies to ensure that their employees were either vaccinated or regularly tested, affecting an estimated 84 million workers. A business federation and many states challenged the authority of the federal Occupational Safety and Health Administration to impose such a mandate, and the matter was under judicial review at year's end.

#### **G3** 0-4 pts

Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance?

4/4

Men and women generally enjoy equal rights in divorce and custody proceedings, and there are no undue restrictions on choice of marriage partner, particularly after a 2015 Supreme Court ruling that all states must allow same-sex marriage. In recent years, a growing number of states have passed laws to eliminate exemptions that allowed marriages of people under age 18 in certain circumstances. Rape and domestic or intimate-partner violence remain serious problems. The applicable laws vary somewhat by state, though spousal rape is a crime nationwide. Numerous government and nongovernmental programs are designed to combat such violence and assist victims.

In the past several years, a series of new state laws have reduced access to abortion without overtly breaching prior Supreme Court decisions on the issue, and some have survived judicial scrutiny, adding to state-by-state variation in access. During 2021 alone, nearly two dozen states passed new abortion restrictions, and the Supreme Court's conservative majority—strengthened by Trump-era appointments—signaled a greater willingness to uphold such legislation. In several rulings starting in September, the court allowed the enforcement, pending a full judicial review, of a

new Texas law that banned most abortions after six weeks of pregnancy and empowered citizens rather than the state to file lawsuits against those who perform or "abet" illegal abortions; litigation over this and other restrictive laws continued at year's end.

<b>G4</b> 0-4 pts	
Do individuals enjoy equality of opportunity and freedom from economic exploitation?	3/4

The "American dream"—the notion of a fair society in which hard work will bring economic and social advancement, regardless of the circumstances of one's birth—is a core part of the country's identity. In recent decades, however, studies have shown a widening inequality in wealth and a narrowing of access to upward mobility. Inequality concerns mounted in 2020 as a recession linked to the COVID-19 pandemic caused a massive spike in unemployment, especially for Black and Hispanic workers. A series of economic stimulus and relief packages, including a spending bill passed by Congress in March 2021, mitigated the damage and successfully reduced overall poverty rates, in part by providing expanded unemployment benefits and other protections against severe income loss.

One key aspect of inequality in the United States is the growing income and wealth gap between Americans with university degrees and those with a high school degree or less; the number of well-compensated jobs for the less-educated has fallen over time as manufacturing and other positions are lost to automation and lower-cost foreign production. These jobs have generally been replaced by less remunerative or less stable employment in the service and retail sectors, where there is a weaker tradition of unionization. The coronavirus-related economic shock amplified that dynamic, disrupting employment and income for lower-earning, less-educated workers far more than for college-educated professionals. In 2021, a lockdown-induced spike in household savings, combined with fiscal and monetary stimulus policies, produced strong demand, greater bargaining power, and higher wages for such workers. However, the same factors, along with persistent supply-chain disruptions caused by the pandemic, also produced high levels of inflation that

tempered the effect of wage increases. As of October 2021, the employment-to-population ratio remained below pre-pandemic levels across racial and gender categories.

Although the country has legal safeguards against unsafe working conditions, workers in essential industries such as meat processing faced a high risk of contracting COVID-19, with inadequate protective equipment and hazard pay. Meanwhile, poorer children whose families lacked the resources to adapt to remote learning were most harmed by pandemic-linked school closures, which threatened to exacerbate educational inequality.

The inflation-adjusted national minimum wage has fallen substantially since the 1960s, with the last nominal increase in 2009, though many states and localities have enacted increases since then. An effort to include a federal minimum wage increase in the March 2021 relief legislation failed in the Senate. Other obstacles to gainful employment include inadequate public transportation and the high cost of living in economically dynamic cities and regions. The latter problem, which is exacerbated by exclusionary housing policies in many jurisdictions, has also contributed to an overall rise in homelessness in recent years.



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### **Country Facts**

Global Freedom Score

83/100 Free

Chair NADLER. The time of the gentleman has expired.

Mr. Gohmert?

Mr. GOHMERT. Thank you.

Ms. Foster, I am familiar with a lot of pregnancy centers in my district, in my State. Does your pregnancy center of care that you are involved with, does that care end when a child is born?

Ms. FOSTER. It does not.

Mr. GOHMERT. What happens after that?

Ms. Foster. After the child is born, the pregnancy center continues to be there for the woman, partner, family, providing material resources, such as baby clothes, baby formula, diapers, any other needs; providing training, parenting training, jobs skills training; a number of other resources. Whatever the young woman, the young family needs, the pregnancy center is there for them.

Mr. GOHMERT. Well, it is such a contrast that you would care for the mother, care for the life of the child, such a contrast to what I learned in multiple conversations with the former Director of

Planned Parenthood in Sherman, Texas, Ramona Trevino.

She was a bright, shining star in her high school; got pregnant, and then, resolved to have an abortion; didn't, but she didn't go to college. Then, years later, found that there was an opening for a Director of Planned Parenthood. She applied and was thrilled to

have gotten the position, and she was very, very smart.

During her time there, she said the emphasis was not, in the monthly director's meeting was not on the number of abortions, even though that is where the huge money came from, but it was on how many young girls did you get started on birth control. The younger, the better because they were taught through their directorship at Planned Parenthood that the younger you can get a girl started on birth control, the better the odds are that she will forget to take the pill; she will get pregnant, and then, she will have an abortion.

They are nurtured—I am using that very loosely—by people that worked at Planned Parenthood,

Look, your mother is not going to understand. You come to me. Don't come to your mother. I'll understand.

They got that relationship. What really ended up driving her away from all that was the thought that "they would come between

me and my daughter," and that was too much.

Now, we have been hearing "My body, my choice" from people for so long, and that is true. It is also true of the child. We had that fraud exposed when we heard from so many who had been screaming, "My body, my choice," as they screamed that everybody has to have an experimental drug which has caused great damage and death in people; alters the RNA, but you are going to have to have that injected into your body; I don't care what your biology is. So, that was exposed as not really being as consistent, actually coming into the fraud area.

Let me tell you, we sat here in this room and listened to an abortionist talk about how he did the late-term abortion. Our daughter was born 8-10 weeks prematurely. Back then, it was a big deal. We didn't know if she would live or not. My wife had to stay at the hospital in Tyler. She encouraged me to follow the ambulance going to the higher-level neonatal ICU.

The doctor there said,

She can't recognize your face because her eyes aren't working that well yet. She knows your voice. She's been listening to your voice for months. So, talk to her and touch her little face. You can be there for two hours, then take a break and come back.

They had her hooked up to all these things, and her breathing was very erratic, very shallow; her heart very erratic, very fast. Eventually, the doctor came over and said, "Have you noticed the monitors?" They had stabilized. He said, "She's drawing strength and life from you.'

The thought that anybody that cares about other people could want to have a child like that, have their arms and legs ripped off and their head crushed and pulled is just an abomination.

Chair NADLER. The time of the gentleman has expired. The time of the gentleman has expired.

Ms. Demings?

Mr. GOHMERT. I yield back.

Ms. Demings. Thank you so much, Mr. Chair.

It is disappointing that here we are today in 2022, with all the challenges that we are facing, still fighting the same old fight for individual rights, but here we are. That is a fight that we will continue to fight and should be fighting.

Why is it so easy to call the vicious rape of a 10-year-old girl a hoax, a lie, a political stunt? The police certainly didn't think so when they made their arrest. Why is it so easy for some to always

say, assault against women, it must be the woman's fault?

For decades, victims of rape were always questioned, viewed with suspicion—too frequently questioned and viewed with suspicion, or even questions that perhaps somehow, she brought the tragedy on herself. Why was she there? How was she dressed? Did she want

I have investigated cases of rape and sexual assault and incest. How can we sit here today—are we serious?—and say, regardless of the physical, emotional, and psychological trauma, the women and girls who survive these vicious attacks, that does not matter? That the only thing that matters is denying them their individual constitutional rights? Are we really serious?

The only thing that matters is treating them. With all the work that has been done in this country by people who paved the way, the efforts to continue to treat women and girls like property and like second-class citizens, to say that you have to go to your Member of Congress or your Governor or your Senator and ask for permission—come on, America.

Shirley Chisholm said, "The ... sexual and psychological stereo-

typing of females begins when the doctor says, 'It's a girl.'

My colleagues on the other side of the aisle have the audacity to say freedom is what we are discussing here. Well, you're damn right. That is exactly what we are discussing here-individual freedoms. Who do we think we are to tell people how to live their lives? To every family raising daughters, to my four granddaughters, we all have reason, regardless of your political—come on, America—regardless of your political standing, we all have reason to be very concerned.

What's next? We ought to be asking ourselves, okay, what's next? If you think it stops here—well, there has already been an indication that it does not stop here. With the call, the bold call, to look at *Griswold* and *Lawrence*, and even marrying the person that you love—I thought that was an American tradition, but I guess not in the minds of some.

Professor Murray, I just want to just, if you would, reiterate on not just the issue of *Roe*, because that is pretty doggone important to me—and I would think to every man and woman, it should be, raising a girl, a daughter. Would you just kind of go into why should we all be concerned about other constitutional individual rights, rights to privacy, being trampled upon?

Ms. Murray. Certainly. Thank you, Representative Demings.

I think we should all be concerned about the prospect of fundamental rights being overruled and returned to the States for democratic deliberation. To ask the States to decide our most essential freedoms is essentially to make all of us supplicants to the government. That cannot be what the Framers of the Constitution imagined.

These were gentlemen who were concerned about the prospect of government overreach into individual lives. These were people who wrote the Third Amendment, which protects against the quartering of soldiers in your home. I cannot imagine that the Framers would countenance allowing the government to make the most intimate decisions for individuals, rather than allowing individuals to make those decisions for themselves. That's exactly what this decision and its progeny will do.

Ms. Demings. Thank you so much.

Mr. Chair, I yield back.

Chair NADLER. The gentlelady yields back.

Mr. Gaetz?

Mr. GAETZ. Ms. Warbelow, what is the most likely circumstance when a same-sex couple would benefit from abortion access?

Ms. Warbelow. Unfortunately, we have women who experience sexual assault. In fact, lesbian and bisexual women are more likely to experience sexual assault than heterosexual women. Their pregnancies are often involuntary. So, these are individuals who would need access to abortion care.

Mr. GAETZ. We will shelve the bisexual women for a moment, since my question is about the same-sex couples. What is more likely, a lesbian woman having an unwanted pregnancy as the consequence of a sexual assault or a gay couple adopting in America?

Ms. Warbelow. These are both laudable goals.

Mr. GAETZ. No, I didn't ask—I know they are. Which is more likely?

Ms. Warbelow. I think that is impossible to know whether or not—

Mr. GAETZ. We have tens of thousands of same-sex couples that are raising families and raising children as a consequence of adoption—tens of thousands. We know that as a consequence of Census data

So, is there any data you are able to reference that it would be more likely for a lesbian woman to have an unwanted pregnancy as a consequence or rape than the formation of a family through a same-sex couple adopting?

Ms. Warbelow. It may not be more likely, but it's an important

interest that somebody who-

Mr. GAETZ. Is it less likely? No, I'm not asking about the importance of the interest-

Ms. Warbelow. —needs assisted abortion care be able to access it.

Mr. Gaetz. I am very limited on time. The question is—you would concede that it is certainly more likely in America that you have same-sex couples adopting than you do lesbians having unwanted pregnancies as a consequence of sexual assault, right?

Ms. WARBELOW. Well, there may also be a misunderstanding about how same-sex couples form families. I also think it's important to note that many bisexual women are, in fact, in relationships with other women.

Mr. Gaetz. Again, I said—

Ms. WARBELOW. So, maybe I'm misunderstanding that.

Mr. GAETZ. If a woman is with men and women, they are bisex-

ual, right?
Ms. Warbelow. That is not true, sir. An individual who is attracted to people of both sexes, both male and female, is one who is bisexual. They can be in long-term, monogamous relationships.

Mr. GAETZ. I don't ask this to be dismissive, but so are you say-

ing lesbian women are also capable being into men?

Ms. Warbelow. That is not what I said. I said bisexual.

Mr. Gaetz. Yes, but my question is about lesbians, same-sex couples, right? Because I care about this issue deeply. With the support of the Human Rights Campaign, I sponsored the legislation to get rid of the statutory prohibition on gay adoption in Florida. I felt that was very bigoted. I believe families are defined by love more than blood.

I worry that, if the LGBTQ community, and if the advocacy organizations for same-sex couples, somehow reorients to be a pro-abortion enterprise, that this could actually result in fewer same-sex couples having access to the family formation that gives them ful-

filled lives. Are you concerned about that?

Ms. WARBELOW. What I would be concerned about is forcing women to carry a pregnancy simply to satisfy another couple's desire to have a child. There are many methods of family formation. Many same-sex couples use fertility treatments, assisted reproductive technologies, in addition to adoption. In fact, LGBTQ people are more likely to adopt children who are most in need.

Mr. Gaetz. Three times more likely, yes.

Ms. Warbelow. There is more reaching out of foster care, abso-

lutely.

Mr. Gaetz. No, I have noted that actually same-sex couples are three times more likely than opposite-sex couples to adopt in America. That is why it is astonishing to me that people that would purport to advocate for gay Americans would say what we need is abortion on demand, because it is these very people who are engaging in these adoptions.

Maybe it is really not about the benefit of gay couples. Maybe it is about the money. Because, Ms. Foster, you made reference to

how much money is behind the pro-abortion effort in America. Do you worry that organizations like the Human Rights Campaign that, traditionally, have stood up for the interests and families of gay couples, same-sex couples, might be coopted by the coercive and dangerous money that is just for abortion at all cost?

Ms. FOSTER. Planned Parenthood receives half a billion taxpayer dollars every single year, and I think that a lot of that—maybe all

of it—should go towards actually planning parenthood.

Mr. GAETZ. Yes. Adoption is a beautiful thing. It really is a beautiful thing. This desire to have these reflexive, snap abortions seem

to stand in the way of that.

Another element of your testimony, Ms. Warbelow, you said that States were likely to redouble their efforts against marriage equality as a consequence of the *Dobbs* decision. There isn't a single State in America where there has been a single legislative Committee that had held a single vote on a single bill to attack marriage equality following *Dobbs*, has there?

Ms. WARBELOW. I'm sorry, sir, that is not—well, following Dobbs?

Dobbs just happened. Mr. GAETZ. Right.

Ms. Warbelow. Most State legislatures are not in session. How-

Mr. GAETZ. Since *Dobbs*, that has never happened. There is no real threat for marriage inequality.

Chair NADLER. The time of the gentleman—

Mr. GAETZ. That is an inventive threat.

Chair Nadler. The time of the gentleman has expired.

Mr. Jeffries?

Mr. JEFFRIES. I thank the Chair for convening this hearing and

our Witnesses for their presence.

We are in the midst of an extreme right-wing assault by an illegitimate Supreme Court majority on women's rights, reproductive rights, marital rights, family planning rights, civil rights, voting rights, labor rights, and the right to liberty and justice for all—an assault by an illegitimate Supreme Court majority and a right-wing movement here in this country determined to jam its values down the throats of the American people and strip away liberty.

It is interesting to me that, Ms. Foster, I think you made the statement earlier that the people who support abortion care are ex-

treme, is that correct?

Ms. Foster. Anyone who would support abortion up to the baby's birthday is extreme.

Mr. JEFFRIES. I think what you have heard people within the pro-choice movement articulate is that we support a woman's freedom to make her own reproductive healthcare decisions. That is not extreme. That is mainstream. It is mainstream if you support the fact that this decision, reproductive decisions, should be between a woman and her doctor.

We don't need Ted Cruz or anyone else involved in making that decision. That is extreme, what you want to bring about. It is extreme to criminalize abortion care throughout America. That is extreme. What is extreme is imposing government-mandated pregnancies, even, apparently, in some States in the case of a 10-year-old girl being raped. That is extreme. That is extreme. It is ex-

treme to unleash bounty hunters on the women and children of America. That is extreme. That is not pro-life.

What is interesting is that the pro-life movement, often so-called "movement," often says that they support the America family, so we support children. At the same time, these individuals vote against the Child Tax Credit that reduced child poverty by more than 40 percent in America. That is not pro-family. That is antichild. It is anti-child when you actually vote against a legislative effort to deal with the infant baby formula shortage in America. That is not pro-family. That is anti-child. It is anti-child when Republican Governor after Republican Governor in this country refused to expand access to Medicaid which supports women and

So, spare us the lectures and the phony rhetoric about being profamily, when in instance after instance after instance you behave

in an extreme way that is anti-child, that is anti-family.

Now, Professor Murray, you are familiar with the fact that several Supreme Court Justices during their Senate testimonies seemed to strongly suggest that they viewed Roe v. Wade as settled law, is that right.

Ms. Murray. That's correct, Representative Jeffries.

Mr. JEFFRIES. Several of those individuals who testified that Roe v. Wade was settled law, suggesting that they weren't going to touch it, for a variety of reasons—stare decisis, the principle of reliance interest that is a big part of Supreme Court jurisprudence then turned around the first chance they got and stripped away a woman's freedom to make her own reproductive healthcare decisions, is that true?

Ms. Murray. That's correct.

Mr. Jeffries. Now, these same Justices, some of them, are suggesting we don't have to worry about stripping away the freedom of Americans to make their own decisions as to who they want to marry or how they should plan a family, is that right?

Ms. Murray. That is also correct.

Mr. Jeffries. Is there any reason to believe that this illegitimate Supreme Court majority with Members who clearly misrepresented their views before the United States Senate during sworn testimony should now be believed that they are not going after the substantive due process rights that are the subject of this hearing?

Chair Nadler. The time of the gentleman has expired.

Mr. Jordan?

Mr. JORDAN. Thank you, Mr. Chair.

Ms. Foster, is it extreme, in an effort to intimidate the Court, when left-wing groups pay people who tell them where a Supreme Court Justice is having dinner with his family? Is that extreme?

Ms. Foster. Yes.

Mr. JORDAN. Is it extreme when the Court, for the first time in history, someone in the Court leaks a draft opinion? Is that extreme and an effort to intimidate the Court?

Ms. Foster. Yes.

Mr. JORDAN. Is it extreme when, in an effort to intimidate the Court, when the Speaker of the House holds up a bill for four weeks designed to protect, giving protection to a Supreme Court Justice's family who had their kids' school put online? Is that extreme?

Ms. Foster. Yes.

Mr. JORDAN. Is it extreme, is it extreme when the Justice Department, a key agency in the Executive Branch, fails to prosecute protestors, ignoring a statute that is directly on point when they are protesting at a Supreme Court Justice's home in an effort to intimidate them and influence a decision, a case pending in front of the Court? Is that extreme and an effort to intimidate the Court?

Ms. Foster. Yes.

Mr. JORDAN. How about the 50 incidents in 10 weeks of crisis pregnancy centers and churches being attacked by left-wing activists? Is that extreme and an effort to intimidate pro-life Americans around the country?

Ms. Foster. Yes.

Mr. JORDAN. Give us a lecture on extreme? You have got to be kidding me.

Let me ask you this. Let me ask you this: We noticed today that, when you came in, you had a security detail with you, is that true? Ms. FOSTER. Yes, that's correct.

Mr. JORDAN. This is the second time you have testified in front of our Committee?

Ms. Foster. It is.

Mr. JORDAN. You testified a few weeks ago. What day? Can you refresh my—I don't remember the date. It was May? Three weeks ago? Four weeks ago?

Ms. FOSTER. Something like that, yeah. Mr. JORDAN. Maybe I guess it was two—

Ms. FOSTER. Post-leak.

Mr. JORDAN. Post-leak. So, I think it was May, the middle of May, you testified. Did you have a security detail then?

Ms. Foster. I did not. I did not have a personal security detail at the time.

Mr. JORDAN. Is there a reason you have them now then?

Ms. FOSTER. There is. I've had to employ both personal and office security because of the threats that I and my colleagues have received, similar to the threats that have been received, and in fact carried out, all across the country with those 50 attacks.

Mr. JORDAN. Well, here is what I am going to do. Did you receive those threats after you testified?

Ms. Foster. Yes.

Mr. JORDAN. So, that is when they started? You testified as a Republican witness, pro-life Witness in front of this Committee, and then, you started getting threats. As a result, you now have to have a security detail? Is that right?

Ms. Foster. That's correct.

Mr. JORDAN. So, it is not just the pro-life clinics and churches. It is people who have the willingness to come forward and testify in a hearing in front of the United States Congress who also get it. We all know. The left always talks about the threats they get. We all get these threats. It is terrible. I wish no one did. I don't want anyone to have these things. It doesn't matter what side of the political aisle you are on; we shouldn't have it. All I know is,

in 10 weeks, we have had 50 happen to pro-life crisis pregnancy centers and to churches.

Ms. Warbelow, do you agree with the leaking of the *Dobbs* opinion?

Ms. Warbelow. I do not, but I do want to clarify that it's not first time that a Supreme Court opinion has been leaked. We don't know who leaked the opinion or for what purpose.

Mr. JORDAN. I don't know; I don't pretend to know who leaked it. I am just asking if you agree with the leak, because someone

on the left seemed to agree with that.

Ms. Foster, this concerted effort by the left to engage in an effort to intimidate the Court I think is dangerous, particularly when you have the Legislative Branch of government, as evidenced by the actions taken by Speaker Pelosi in holding up that legislation and the lack of efforts to enforce a statute, 18 U.S.C. 1507, by the Executive Branch, the Justice Department—when you have two branches of government looking to be a part of the left's effort to intimidate a separate and equal branch of government, I find that very troubling.

As someone who understands the Constitution, a constitutional

scholar, give me your thoughts on that.

Ms. FOSTER. I certainly agree that it's troubling. The legislation that would protect Supreme Court Justices should never be held up. No one should be subjected to violence, whether in their home, at their church, at their ministry, or in the womb.

Mr. JORDAN. Yes. Well said. Well said.

The idea that we had an assassination attempt on a sitting Justice in America, as my colleague Mr. Johnson said, "the freest, greatest country ever, is just so wrong." It is driven by the statements made by Senator Schumer on the steps of the Capitol when he talked about "unleashing the whirlwind." We have certainly seen that play out in the last 10 weeks here in our great country, and that is unfortunate, and I hope it changes.

With that, Mr. Chair, I would yield back. Chair NADLER. The gentleman yields back.

Mr. Lieu?

Mr. LIEU. Thank you, Chair Nadler.

You are going to hear a lot of words from my Republican colleagues today on this Committee, and all I have to do is give you one example that is devastating to their statements. That is this: A 10-year-old girl got raped in Ohio and got pregnant. She could not get an abortion because none of the exceptions in the Ohio law would have authorized it. What did MAGA Republicans do? They smeared her. They said she was lying. In fact, at least one Republican Member of this Committee publicly tweeted that she lied, and then, quietly deleted that tweet when—guess what? Her perpetrator was arrested. I call on any MAGA Republican who smeared this little girl to publicly apologize.

It gets worse than that, because this little girl had to go to Indiana to get an abortion or abortion care. Guess what MAGA Republicans are doing now? They are going after the doctor—that's right—the doctor who helped this little girl. Because the truth is MAGA and far-right Republicans want government-mandated preg-

nancies for everyone, including 10-year-old rape victims. That is extreme.

Now, let's go to the Supreme Court's radical *Dobbs* decision. When you read it, it is really clear that multiple Supreme Court Justices lied to get confirmed. You cannot square what the majority said in *Dobbs* with the statements by Justices Gorsuch and Kavanaugh.

Now, let's look what this opinion said, one of the reasons that they overturned *Roe* v. *Wade* is they said that the Constitution

makes no reference to abortion.

So, Professor Murray, let me ask you this question: Does the Constitution make any reference to birth control pills?

Ms. Murray. No, it does not.

Mr. LIEU. So, under the Supreme Court's radical far-right opinion, they could give politicians the power to decide who can get birth control pills, isn't that right?

Ms. Murray. That is correct.

Mr. LIEU. Yes. Professor Murray, does the Constitution make any reference to condoms?

Ms. Murray. No.

Mr. LIEU. So, under the Supreme Court's radical opinion, these Justices could give politicians the power to ban condoms, isn't that right?

Ms. Murray. It is possible, yes.

Mr. LIEU. Legal Director Warbelow, a question for you. Does the Constitution make any reference to gay marriage?

Ms. WARBELOW. It does not. My apologies. It does not.

Mr. LIEU. Under the Supreme Court's radical decision, they could give politicians the right to ban gay marriage, isn't that right?

Ms. Warbelow. Certainly, Justice Thomas invited those challenges and is welcoming the opportunity to revisit those questions by the Court.

Mr. LIEU. Thank you.

Does the Constitution make any reference to interracial marriage?

Ms. Warbelow. It does not.

Mr. LIEU. So, under the Supreme Court's radical decision, they could certainly give politicians the right to decide whether or not to ban interracial marriage, isn't that right?

Ms. WARBELOW. That is the invitation that has been made.

Mr. LIEU. You know what the Constitution does make reference to, by the way? A well-regulated militia. I hope the Supreme Court actually looks at that phrase and actually adheres to it. That is another matter.

So, let's return now to this issue. Under the *Dobbs* decision, the Supreme Court Justices said that *Roe* was egregiously wrong from the start. That means Justices Gorsuch and Kavanaugh had to have known that during their confirmation hearings because *Roe* v. *Wade* was decided 50 years ago.

Mr. JOHNSON of Louisiana. Will the gentleman yield for exactly what the Justices said—

Mr. LIEU. Nope.

Mr. JOHNSON of Louisiana. —in their confirmation hearing? Yes, I didn't think so.

Mr. Lieu. Did any of them say Roe v. Wade was egregiously wrong from the start? No, they didn't. In fact, they said the opposite.

They could have done what Justice Thomas did, which was really not talk about it. They could have said, "I'm not going to talk about *Roe* v. *Wade*." They could have said, "I'm not going to answer your

question.

That is not what Justice Kavanaugh did. He went above and beyond to intentionally mislead the American people. He even went and talked about *Casey*. Do you know what he said about *Casey*? He said, *Casey* is "precedent on top of precedent." He was trying to give assurances to the U.S. Senate and the American public that he was not going to overturn *Roe* v. *Wade*. The same with Justice Gorsuch.

They didn't have to do that, right? They could have done what other Justices did. They could have given themselves wiggle room; be silent; say, "I'm not going to answer your question." They didn't. They lied. They specifically lied to the American people and to the U.S. Senate. That is why Alexandria Ocasio-Cortez and I have written a letter to the U.S. Senate asking them to make a finding on whether Justices Gorsuch and Kavanaugh lied to the American people.

I yield back.

Mr. JOHNSON of Louisiana. Mr. Chair, those words should be struck.

Chair NADLER. The time—

Mr. Johnson of Louisiana. You cannot accuse a Supreme Court Justice of lying—

Chair NADLER. The time of the gentleman has expired.

Mr. Buck? Mr. Buck?

Mr. JOHNSON of Louisiana. Mr. Chair, I have a point of order. Chair NADLER. The gentleman will State his point of order.

Mr. Johnson of Louisiana. Can a Member of this Committee accuse a Supreme Court Justice of lying under oath without evidence?

Chair NADLER. Yes.

Mr. JOHNSON of Louisiana. That is acceptable under the rules? Okay.

Chair NADLER. Yes. The rules—

Mr. JOHNSON of Louisiana. Okay. All right.

Chair NADLER. Yes. The rules on personalities which apply to other Members, which apply to other Members of the House do not apply to anyone outside the House.

Mr. JOHNSON of Louisiana. How unfortunate for them.

I ask unanimous consent to enter into the record the exact quotations of what these Supreme Court Justices said—

Chair NADLER. Without objection.

Mr. JOHNSON of Louisiana. —thank you—in their confirmations. [The information follows:]

# MR. JOHNSON OF LOUISIANA FOR THE RECORD

### What conservative justices said about Roe at their confirmation hearings

Washington Post

Mariana Alfaro

6/24/22

 ${\color{blue} https://www.washingtonpost.com/politics/2022/06/24/justices-roe-confirmation-hearings/}$ 

The vote by the conservative justices in overturning Roe v. Wade forced a fresh look at what they told senators and the nation at their confirmation hearings about the landmark 1973 decision guaranteeing a right to abortion.

Neil M. Gorsuch, during his 2017 confirmation hearings, said Roe was a "a precedent of the U.S. Supreme Court. It was reaffirmed in Casey in 1992 and in several other cases." Gorsuch was referring to Planned Parenthood v. Casey, the 1992 decision that affirmed Roe.

"So a good judge will consider it as precedent of the U.S. Supreme Court worthy as treatment of precedent like any other," Gorsuch said.

He, however, refused to signal how he would rule in future cases on abortion.

"For a judge to start tipping his or her hand about whether they like or dislike this or that precedent would send the wrong signal," Gorsuch said. "It would send the signal to the American people that the judge's personal views have something to do with the judge's job."

Over the past 30 years, conservative Supreme Court nominees testified about abortion rights during their Senate confirmation hearings. (Video: JM Rieger/The Washington Post)

When Sen. Dianne Feinstein (D-Calif.) pressed him on whether Roe had achieved a status as a "super-precedent," Gorsuch just said that the ruling "has been reaffirmed many times, I can say that."

Over the years, Supreme Court nominees have gotten more circumspect about what they have said regarding issues they might have to rule on if confirmed, offering as few insights as possible and often frustrating members of the Senate. They often referred to settled law or precedent.

Brett M. Kavanaugh, during his 2018 confirmation hearings, echoed Gorsuch by saying that Roe was an "important precedent of the Supreme Court that has been reaffirmed many times."

But Kavanaugh indicated during his confirmation that he would be open to overturning "settled law," including Roe, citing a long list of past Supreme Court cases.

Lawmakers react to Supreme Court Roe v. Wade reversal

### 1:45

Congress members react to the Supreme Court's decision to strike down Roe v. Wade on June 24, eliminating the constitutional protection for abortion. (Video: Mahlia Posey/The Washington Post, Photo: Michael Robinson Chavez/The Washington Post)

When Feinstein asked him what he meant by "settled law" and whether he believed Roe to be correct law, Kavanaugh said he believed it was "settled as a precedent of the Supreme Court" and should be "entitled the respect under principles of stare decisis," the notion that precedents should not be overturned without strong reason.

Kavanaugh also said Casey was a "precedent on precedent."

"It is not as if [Roe] is just a run-of-the-mill case that was decided and never reconsidered, but Casey specifically reconsidered it, applied the stare decisis factors, and decided to reaffirm it," Kavanaugh said.

Amy Coney Barrett was decidedly more reserved on the Roe precedent during her confirmation hearings in 2020, weeks before the November elections. During that process, reports surfaced that Barrett had once openly advocated for overturning Roe in a 2006 ad published in the South Bend Tribune by the St. Joseph County Right to Life group, which she and her husband signed. Barrett was, at the time, a law professor at the University of Notre Dame.

The ad decried the "barbaric legacy" of Roe.

Barrett signed ad in 2006 decrying 'barbaric legacy' of Roe v. Wade, advocating overturning the law

But during her confirmation hearing, Barrett said she was committed to obeying "all the rules of stare decisis," promising that "if a question comes up before me about whether Casey or any other case should be overruled, that I will follow the law of stare decisis, applying it as the court is articulating it, applying all the factors, reliance, workability, being undermined by later facts in law, just all the standard factors."

"I promise to do that for any issue that comes up, abortion or anything else," she said.

Justice Samuel A. Alito Jr., who wrote the majority opinion that ended Roe on Friday, said during his 2006 confirmation hearing that Roe was an "important precedent of the Supreme Court."

"It was decided in 1973, so it has been on the books for a long time," Alito said. He, however, declined to call the ruling "settled law."

Alito's views on abortion weren't secret. In 1985, when applying for a new job in the Justice Department, he wrote in a cover letter that, as a "life-long registered Republican," he was "particularly proud" to have worked on cases arguing "that the Constitution does not protect a right to an abortion."

The letter became a focus of questioning during his confirmation hearings. Sen. Richard J. Durbin (D-Ill.) asked him: "John Roberts said that Roe v. Wade is the settled law of the land. Do you believe it is the settled law of the land?"

Roe was "an important precedent," Alito said, that had "been challenged on a number of occasions."

"The more often a decision is reaffirmed, the more people tend to rely on it," he said. "I think that's entitled to considerable respect, and of course, the more times that happens, the more respect the decision is entitled to, and that's my view of that. So it is a very important precedent that —"

Durbin interrupted, asking him once again if Roe was the settled law of the land

"If settled means that it can't be re-examined, then that's one thing," Alito responded. "If settled means that it is a precedent that is entitled to respect as stare decisis, and all of the factors that I've mentioned come into play, including the reaffirmation and all of that, then it is a precedent that is protected, entitled to respect under the doctrine of stare decisis in that way."

Justice Clarence Thomas, during his 1991 hearings, declined to comment on his views on Roe.

"I do not think that at this time that I could maintain my impartiality as a member of the judiciary and comment on that specific case," Thomas said.

Thomas also refused to say whether he thought Roe was correctly decided, saying he had no "personal opinion." Once he was seated on the court, however, Thomas made his views clear. By 2020, he wrote a dissenting opinion saying that the court's "abortion precedents are grievously wrong and should be overruled."

"The Constitution does not constrain the States' ability to regulate or even prohibit abortion," he added.

Chief Justice John G. Roberts Jr. on Friday was part of the 6-to-3 majority that voted to uphold the restrictive Mississippi antiabortion law, but he criticized his conservative colleagues for taking the additional step of overturning Roe.

During his 2005 confirmation hearings, Roberts said Roe was "settled as a precedent of the court." He told senators then that he believed strongly in the "vindication of the rule of law.

"Without it, any other rights that you may agree with as a matter of policy are meaningless," he said.

Roberts argued that it wasn't enough for justices to believe that a case had been wrongly decided to overturn a ruling. Speaking about stare decisis, Roberts said it was important for justices to consider elements including "settled expectations," "the legitimacy of the court" and "whether a particular precedent is workable or not" when considering overturning a precedent.

"I do think that it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness," he told the Senate.

Chair NADLER. Mr. Buck?

Mr. Buck. Thank you, Mr. Chair.

In the early morning of June 26th of this year, the Life Choices Center in my district was attacked and a fire was started inside. On the outside wall, the arsonist spray-painted "If abortions aren't safe, neither are you."

According to its website, Life Choices is a Christ-centered ministry that offers free services related to pregnancy and sexual health, information on reversing the effects of abortion pills, and post-abortion support for guilt, shame, anxiety, and depression.

The radical left today is more violent than ever—with more than 50 attacks on pro-life pregnancy centers and churches since May. Rather than putting a stop to the violence, the Biden Administration and its Department of Justice refused to condemn it and are even suggesting it is abortionists that are under attack and in need of protection.

This is far from the first time the left has used violence in their push to incite a progressive revolution in America. From the assassination attempt on Justice Brett Kavanaugh to growing attacks from Black Lives Matter and Antifa on the back of mass riots, vandalism, and arson in 2020, the left has all too often chosen violence—with elected Democrats and pundits all too happy to run for cover with the extremists in their own ranks.

As Jane's Revenge, a leftist group that took credit for fire-bombing pregnancy centers in Wisconsin, New York, and Oregon, said, "It's open season on America's pro-life institutions." Other groups even putting bounties on conservative Supreme Court Justices.

Meanwhile, DOJ continues to target conservatives, including nine pro-life activists in February for protesting in front of an abortion clinic, something normally treated as nuisance trespass, but which is being treated as a serious felony for those protestors.

My friends across the aisle seem to think they can bend reality to their own whims, if they only repeat the same radical talking points long enough.

In the meantime, the rule of law and pro-life Americans' constitutional rights to freedom of speech and religion are under attack. Americans deserve better. The progressives driving this violence, and the national politicians and media outlets egging it on, threaten all of us.

In 2020, rioters caused more than a billion dollars in damage and more than 20 people lost their lives. So far, we have been lucky, but if this keeps up, someone is going to lose their life, and God forbid, when that happens, the Democrats running for cover will have no one to blame but themselves.

Ms. Foster, I served on the board of the Northern Colorado Genesis Project. It is a nonprofit agency that provides care, counseling, financial support, housing for pregnant women.

How many women and children are served every year by pregnancy resource and crisis centers in this country?

Ms. Foster. Many millions.

Mr. Buck. What kind of care do they receive?

Ms. Foster. All kinds of care. Material support, resources, training, housing if needed, diapers, clothes, formula, you name it, if the woman is in need of it. Seventy-six percent of women say that they

would choose to parent if their circumstances were different. So, this hearing should be about making those circumstances different, helping them improve their circumstances and find a fulfilling life.

Mr. Buck. That same statistic, I would assume, includes adoption, the ability for a woman to make a choice about having a baby and then giving that baby to a family that cannot have children?

Ms. Foster. Actually, it doesn't. That would be above and be-

yond the 76 percent.

Mr. Buck. Great. So, some of these are religious institutions and some are not. Is that true?

Ms. Foster. That's true, yes.
Mr. Buck. The secular institutions, do they receive taxpayer funding at all for their services?

Ms. Foster. The vast majority of pregnancy centers are entirely

volunteer, are funded by donations.

Mr. Buck. How does the violence that we have seen recently in this country impact the services to women who—and some of them may still choose to have an abortion, but they are at least going to ask the question and try to gain information to make an informed decision. How does the violence impact the women and the

services that are being provided to those women?

Ms. FOSTER. Yes, at least they find out what resources are available for them. Actually, a couple of days ago I was privileged to go visit one of those pregnancy centers here in DC that was tragically vandalized and they were sharing that they had to hire security. They were spending donor funds on security instead of just being able to give all that money to the women who really need the care and the support.

Mr. Buck. How does the Biden Administration's lack of support

Ms. Foster. They need funding. They need more ability to get to those women.

Chair NADLER. The time of the gentleman is expired.

Ms. Jayapal?

Ms. JAYAPAL. Thank you, Mr. Chair. I find it stunning that we are being lectured on what violence is and what extremist by colleagues, some of whom have fueled that very violence by not condemning the January 6th insurrection, by defending and potentially even-according to the January 6th Committee hearings, potentially even being involved in that insurrection, that violent coup to overturn our democracy.

Let me go to the matter at hand, which is the horrendous revocation of human rights that have caused people in nine States across the country to lose access to abortion and with another 11 States that have restricted access or are expected to by the absolutely outrageous overturning of  $Roe\ v.\ Wade$  by this radical extremist Republican-controlled Supreme Court.

Justice Thomas laid out a blueprint to take away more rights from the American people so that this threat to our rights is no

longer hypothetical.

Now, I am a woman of color who has had an abortion, who is in a loving interracial marriage, and has an amazing trans daughter. This is a direct threat to me, my loved ones, and most importantly to millions of people across this country who face one or more of these many threats that have been unveiled by the Dobbs

decision and everything that could follow.

These rights could begin to fall as soon as this October, which is why I introduced the Protecting Access to Contraception Act with Representative Mike Thompson and working tirelessly with my Democratic colleagues to protect all the other rights that are en-

dangered by the Supreme Court's decision.

Americans' constitutional right to privacy was examined for the first time in the 1965 case of Griswold v. Connecticut which established the right to birth control and is the precedent upon which abortion and many LGBTQ rights have been based. The conservative opinion that overturned Roe has now suggested that somehow there were problems in the legal reasoning of that precedent.

Ms. Warbelow, what happens when the Supreme Court, a conservative Supreme Court, suddenly starts basing its jurisprudence on supposed procedurals of precedents that have been long-estab-

lished?

Ms. Warbelow. It very much encourages State legislators to try to pass laws to undermine and undo these precedents. This is not conjecture. This has already happened. We have seen States in the wake of *Obergefell* attempt to eliminate marriage for all couples as a right within their State. We have seen legislators try to reaffirm their bans on same-sex couples marrying. In the wake of the Dobbs decision, we saw a State in a filing to the 11th Circuit challenge the centuries—century-old right to parental autonomy. These are not conjecture. These are real examples that are happening and will continue to happen.

Ms. JAYAPAL. Thank you.

Professor Murray, antiabortion groups like Americans United for Life support revoking to in vitro fertilization and contraceptive measures like Plan B and IUDs. To make sure that the American people are aware of this radical Republican agenda can you expand on how the conservative right is trying to take away the right to contraception and other reproductive care?

Ms. Murray. Is that a question for me, Representative Jayapal?

Ms. Jayapal. Yes.

Ms. Murray. I'm sorry.

Ms. JAYAPAL. Yes.

Ms. Murray. I'm sorry. The internet is warbling a little.

Yes, the real question after *Dobbs* is what counts as an abortion? The pro-life movement has for years sought to characterize certain forms of long-acting contraceptives as abortifacient. So, Plan B for example, intrauterine devices, which are increasingly common among women in the United States. All of these have been classed as abortifacients and indeed the Supreme Court has blessed them as abortifacients in Justice Alito's opinion in Burwell v. Hobby Lobby from 2014. So, the real question is what is an abortion? They have said that these forms of contraception are, in fact, abortions. Ms. JAYAPAL. Thank you, Professor Murray.

Let me just say that the inaction of the Senate because of the Jim Crow filibuster has left this giant vacuum where an extremist radical Republican-controlled Supreme Court is set—not only have they overturned the precedent of 50 years for women and pregnant people across this country to have control over our own lives, to

keep people out of our bedrooms and our decisions, but now we are set to see a whole set of new rights taken away from Americans. That cannot proceed and we must make sure—

Chair Nadler. The time of the gentlelady is expired.

Mr. Biggs?

Mr. Biggs. Thank you, Mr. Chair. The Democrats have a radical view of abortion. Former Virginia Governor talking about third trimester—Northam, Ralph Northam talking about third trimester abortions said,

I can tell you exactly what would happen: The infant would be delivered, the infant would be kept comfortable, the infant would be resuscitated if that is what the mother and the family desired, and then a discussion would ensue between the physicians and the mother.

That is pretty extreme.

Yesterday, in the Oversight Committee, a Witness was asked about infanticide and the Witness said, "well, healthcare is a right." That is pretty radical.

The U.S. is radical on abortion led by the Democrats, the top within the top four percent of most permissive policies in the world. Same as China. China has no restrictions. North Korea has no re-

strictions. Vietnam has no restrictions in law.

What about the EU? We keep hearing about the EU and maybe we should follow their model. Well, let's go over what some of those countries have. France, only up to 14 weeks; Germany to 12 weeks; Greece, 12; Hungary, 12; Ireland, 12; Italy, 12; Latvia, Lithuania, and Luxembourg, all only up to 12 weeks. Malta, there is no abortion permissible. Spain, up to 14 weeks; Sweden up to 18 weeks. The U.S. is pretty doggone—an outlier in the world thanks to the leftist policies of the Democrat Party.

So, the Democrats have a real extreme radical view of abortion, and they use it and enforce it with fear. Here's one: New York Times op-ed tells the Democrats to embrace the politics of fear. When it comes to abortion rights, Democrats need to lean into the politics of fear. The party needs to scare voters and show that they too are scared, scared of the voters themselves. That's what Demo-

crats are writing.

Elizabeth Warren says to shut down all pregnancy centers. She said look, we need to shut them down here in Massachusetts and

we need to shut them down all around the country.

So, I know folks have been talking about—the Ranking Member talked about 50, but I get one of these trackers every day. It is 57, 57 crisis pregnancy centers that have been attacked. That doesn't even include the recent Bethesda church that was attacked last weekend. According to my close friend of mine who lives in Portland telling me about eight churches in the last few weeks that have been attacked. That doesn't include that. That is the politics

How about the reported ShutDownDC offering up to \$250 just to track and sight and harass Justices Kavanaugh, Alito, Thomas, Gorsuch, Amy Coney Barrett, and John Roberts?

How about this one? Yesterday one of our own colleagues who sits on this Committee, also sits on OGR, said asking of a Witness, I'm worried about this. It was the founder of the Republican Party President Lincoln who said a house divided against itself cannot stand. I believe this government cannot endure permanently half slave and half free.

### Then he asked,

Can we endure half-free choice States and half-fee theocratic compelled pregnancy States? Is that going to work for America?

I don't know. Was he likening the abortion issue to slavery or was he likening it to creating an insurrection in the country. I don't know. That is wild.

Ms. Foster, when I look at it, I see the radical, radical position of Democrats on abortion. Tomorrow the House will be voting on the Women's Health Reproduction Act of 2022 and supporters of the bill claim it will simply, simply codify *Roe*. That isn't true. Can

you explain what this bill actually does?

Ms. Foster. That bill would strip away every protection for children in the womb. It would strip away protections for their mothers and—and also for healthcare providers. It would strip away conscience protections. It would strip away informed consent. It would strip away any gestational age limitations allowing for abortion up to the baby's birthday. It would take away everything that we've built for 49 years, since *Roe*.

we've built for 49 years, since *Roe*.

Mr. BIGGS. We would then become the most radical abortion nation in the world, more radical than China, North Korea, or Viet-

nam, which have no limitations. Is that fair to say?

Ms. Foster. It is fair, yes.

Mr. Buck. Democrats are radical and extreme on abortion. This bill is just another attempt by Democrats to expand abortion, override State laws enacted to protect the unborn. Life is the most precious thing we are given and everyone especially the unborn deserves that right.

Chair Nadler. The time of the gentleman has expired.

Ms. Scanlon?

Ms. Scanlon. Thank you, Mr. Chair.

I do want to first challenge just one of the misleading talking points that our colleagues across the aisle and their Witness have been pushing today, that the existence of pregnancy crisis care centers are somehow evidence that the antiabortion movement actually cares about mothers and families. It is just not true.

In fact, these crisis pregnancy centers are a well-funded arm of the anti-abortion movement that advances their agenda by using deceptive and coercive tactics and medical disinformation to target low-income people facing unintended pregnancies to prevent them

from accessing abortion and contraception.

These crisis pregnancy centers, which actually outnumber abortion clinics, often misleadingly present themselves as providing medical services when they are not licensed to do so and therefore are not bound by the privacy laws that govern medical providers. In fact, these antiabortion facilities collect sensitive medical and personal information and then share it with antiabortion organizations.

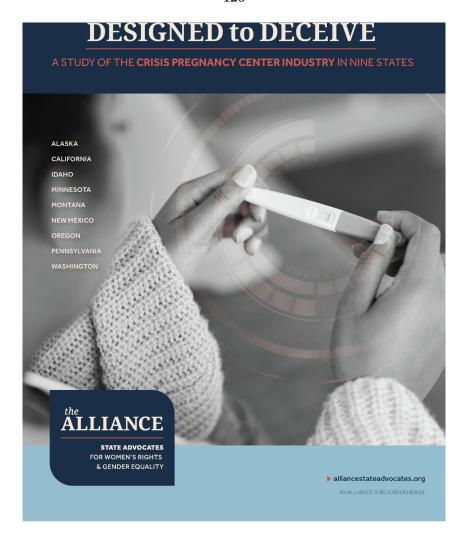
These crisis pregnancy centers face limited public accountability despite the fact that they are increasingly siphoning off public funds from the TANF welfare programs, which are supposed to serve low-income women and families.

Mr. Chair, I seek unanimous consent to introduce a study by the Alliance of State Advocates for Women's Rights and Gender Equality entitled, "Designed to Deceive: A Study of the Crisis Pregnancy Center Industry in Nine States," including Pennsylvania.

Chair Nadler. Without objection.

[The information follows:]

# MS. SCANLON FOR THE RECORD





### ABOUT THE ALLIANCE

The Alliance: State Advocates for Women's Rights and Gender Equality ("The Alliance") is a collaboration of state-based law and policy centers working across the country to advance gender equality at the intersection of reproductive rights, economic justice, LGBTQ+ equality, and gender-based violence:

### **GENDER JUSTICE** | Minnesota

LEGAL VOICE | Washington, Oregon, Montana, Idaho, Alaska

SOUTHWEST WOMEN'S LAW CENTER | New Mexico

WOMEN'S LAW PROJECT | Pennsylvania

The Alliance law centers advance proactive policies and litigation at the federal, state and local levels, leveraging state constitutions, opportunities, and causes of action. Our work is intersectional, and we are committed to explicitly and proactively grounding it in racial equity. We strive to center and amplify the voices of those most marginalized and work in and with diverse grassroots and client communities seeking equity and justice.

A centerpiece of the Alliance collaboration is our work to ensure equitable access to evidence-based reproductive health care and to secure transparency and accountability in government-funded programs for pregnant people. To that end, the Alliance has partnered with California Women's Law Center and researchers across the country to examine the expanding network of crisis pregnancy centers (CPCs), which are anti-abortion organizations that undermine the reproductive autonomy of vulnerable pregnant people while purporting to assist them.

### *ACKNOWLEDGMENTS*

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THIS REPORT MAY BE REPRODUCED IN WHOLE OR IN PART WITHOUT FEES OR PERMISSION, PROVIDED THAT ACKNOWLEDGMENT IS MADE TO THE ALLIANCE: STATE ADVOCATES FOR WOMEN'S RIGHTS & GENDER EQUALITY.

This report and additional online content are available at alliance state advocates.org

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- ▶ Alliance CPC Study: Operating Status of CPCs During the COVID-19 Pandemic
- ► Global, National & Regional Anti-Abortion Organizations Supporting CPCs

A NOTE ON LANGUAGE: The Alliance recognizes that people of all gender identities experience pregnancy and need access to comprehensive evidence-based reproductive health care. We use gender-inclusive language throughout this report except when referencing research and data that focuses on women exclusively, and laws that are written and interpreted based on binary gender concepts and use binary language.

# **Executive Summary**

CRISIS PREGNANCY CENTERS (CPCS) ARE ANTI-ABORTION ORGANIZATIONS THAT SEEK TO REACH LOW-INCOME PEOPLE FACING UNINTENDED PREGNANCIES TO PREVENT THEM FROM ACCESSING ABORTION AND CONTRACEPTION. CPCs advance this mission by using deceptive and coercive tactics and medical disinformation, and misleadingly presenting themselves as medical facilities. The modern CPC industry, a well-resourced arm of the global anti-abortion movement, is rapidly expanding while evading public accountability, despite increasing reliance on public funds.

### Context for this Study

We live in the most hostile era for reproductive freedom in decades. The anti-abortion movement's two primary strategies — passing abortion bans¹ and contraception restrictions and expanding crisis pregnancy center networks with taxpayer money² — are simultaneously reaching peak, unprecedented levels. As of this writing, the U.S. Supreme Court has allowed Texas Senate Bill 8 to become law in Texas, effectively undermining Roe by establishing a vigilante system wherein private individuals are deputized, and financially incentivized, to enforce the law by suing friends, neighbors, and strangers. This radical law positions Texas CPCs — supported by state funding that has increased twentyfold since 2006³ — to play a central role in the surveillance of pregnant people.

While severe legislative restrictions such as Senate Bill 8 make headlines, the modernized, proliferating, and mostly evangelical CPC industry's critical role in the anti-abortion, anti-LGBTQ+ movement — and effect on the health of pregnant people — is relatively obscured from public view. Modern CPCs are plugged into the global anti-abortion movement's sophisticated digital infrastructure, which facilitates expansion, client surveillance, and systemic, coordinated promotion of anti-abortion disinformation.

Investment of public money in CPCs is escalating, especially in the states, with virtually no government oversight, accountability, or transparency. Investigations into publicly-funded CPCs by advocates and watchdog groups have found evidence of misuse, waste, and potential skimming of funds in multiple states, including Florida, Michigan, Minnesota, North Carolina, Pennsylvania, and Texas. Yet CPCs continue to secure state contracts while the nature and quality of their services remains largely unexamined and unregulated by policymakers.

States are also enabling CPCs to siphon public funds from safety-net programs for low-income pregnant people and children. In so doing, CPCs exacerbate the very economic scarcity they use to justify their encroachment into under-resourced neighborhoods and communities of color: the modern CPC industry has revitalized strategies to target Black women, $^{\circ}$  who are more likely than white women to face barriers to medical care and pregnancy resources.

Today, crisis pregnancy centers outnumber abortion clinics nationwide by an average of 3 to  $1.^{10}$  The disparities are higher in states that fund CPCs: In Pennsylvania, the ratio of CPCs to abortion clinics is 9 to 1; in Minnesota, it is 11 to  $1.^{11}$  The maternal and public health consequences of this seismic shift in the reproductive health care landscape in the states are unknown.

theALLIANCE

### MAJOR STUDY FINDINGS AT A GLANCE

# ► CPCs PROVIDED VIRTUALLY NO MEDICAL CARE.

- Many CPC websites used language and imagery signifying they were providers of medical services but the services most commonly offered were not medical.
- The most common CPC service was a pregnancy test usually a self-administered urine-stick test.
- The second most common CPC offering was "free" goods, which pregnant people typically had to earn.
- More than ½ of CPCs offered "non-diagnostic" ultrasound as a tool to signal medical legitimacy and persuade people to carry their pregnancies to term.
- Many CPCs offered sexuality "education" as a vehicle for medical disinformation and ideological messaging.
- ► Almost none of the CPCs provided prenatal care.
- Only 1 of the 607 CPCs provided contraception care.

# ► STATE-FUNDED CPCs ARE MORE HARMFUL THAN PRIVATELY FUNDED CENTERS.

# ► CPCs ROUTINELY PROMOTED FALSE MEDICAL CLAIMS AND USED DECEPTIVE PRACTICES.

- Almost % of CPCs promoted patently false and/or biased medical claims about pregnancy, abortion, contraception, and reproductive health care providers.
- "Abortion Pill Reversal" an unethical practice and nonscientific claim — is a CPC priority. More than 1/3 of CPCs promoted APR; in some states more than 1/2 promoted APR.
- ► Fewer than ½ of CPCs indicated they had a licensed medical professional. None indicated whether medical professionals were employed or volunteers, or full- or part-time.
- Many CPCs deceptively claimed on their website to have no agenda and to provide full and unbiased information.
- ▶ CPCs seek to intercept people seeking health care 10% operated mobile units that can locate near abortion clinics to confuse their patients. Online, CPCs employ digital tactics to intercept people searching for abortion care.

# ► CPCs APPEAR TO BE LOCAL BUT ARE PART OF A GLOBAL ANTI-ABORTION NETWORK.

### The Alliance Crisis Pregnancy Center Study

Measuring the proliferating CPC industry's impact on public health must begin with a thorough assessment of the services CPCs offer pregnant people – and the services they do not. In the absence of government oversight, the Alliance conducted this Study to document and evaluate CPC services and practices in nine states in which we operate and partner with allies: Alaska, California, Idaho, Minnesota, Montana, New Mexico, Oregon, Pennsylvania, and Washington. We investigated 607 CPCs between March 2020 and February 2021 and collected over 50 categories of publicly available data through systematic review of CPC websites and social media. In addition, we conducted public records investigations and research into CPC operations in six states (AK, CA, MN, NM, PA, and WA) that further informed the Study. Our findings shine renewed light on the modern CPC industry and expose the particular harms of state-funded CPCs.

### ► CPCs PROVIDED VIRTUALLY NO MEDICAL CARE.

The three most common CPC services were pregnancy tests (88.5%), "free" material goods (88.1%), and "counseling" (78.6%). The fourth most common service was "non-diagnostic" ultrasound. While approximately one-quarter (28.4%) offered STI testing, most did not provide or refer for STI treatment and none offered barrier-method contraception, a standard of care for STI prevention. Only one CPC offered contraception.

### The most common CPC service was a pregnancy test.

Of the CPCs specifying type of test, 96% offered a urine test, the self-administered stick tests available at drugstores. Some CPCs claimed to provide "lab-quality" urine tests.

### Almost none of the CPCs in the Study provided prenatal care.

While most CPCs offered pregnancy tests, the majority (95%) offered no prenatal care and fewer than half made prenatal care referrals. CPCs affiliated with big anti-abortion networks (almost half of the CPCs in this Study) provided prenatal care less often than unaffiliated centers. Significantly, state-funded CPCs were less likely to offer or refer for prenatal care than CPCs without state funding.

### The second most common CPC offering was "free" goods, which pregnant people actually had to earn.

Most CPCs (88.1%) advertised free material goods, including maternity and baby supplies, but noted that provision of these goods was contingent on the pregnant person's participation in "earn while you learn" classes or counseling, Bible studies, abstinence seminars, video screenings, or other ideological CPC programming. While CPCs target people considering abortion, research shows most pregnant people who seek out a CPC do so because they cannot afford diapers and other infant and maternity goods CPCs claim to offer for free. 1213

### More than half of CPCs offered "non-diagnostic" ultrasound.

The fourth most common CPC service, offered by 56% of CPCs, was "non-diagnostic" ultrasound, which cannot study placenta or amniotic fluid, or detect fetal abnormality or fetal distress. Anti-abortion organizations steering the CPC movement promote the use of ultrasound technology as a tool to persuade clients to carry their pregnancies to term and falsely signal medical legitimacy. <sup>14</sup> <sup>15</sup> The American Institute of Ultrasound in Medicine condemns the use of ultrasounds for any non-medical purpose: "The use of ultrasound without a medical indication to view the fetus, obtain images of the fetus, or identify the fetal external genitalia is inappropriate and contrary to responsible medical practice." <sup>15</sup>

### CPCs offered sexuality "education" as a vehicle for medical disinformation and ideological messaging.

Almost 17% of CPCs claimed to offer sexuality-related programming, which typically focused on abstinence and also featured religious and shame-based messages and harmful stereotypes about LGBTQ+ youth and non-traditional families. Approximately 8% of CPCs overall indicated that they offer these services off-site, including in public schools; a full 20% of CPCs in Washington offered these programs off-site.

### ▶ CPCS ROUTINELY PROMOTED FALSE MEDICAL CLAIMS AND USED DECEPTIVE PRACTICES.

# Almost two-thirds (63%) of CPCs promoted patently false and/or biased medical claims, mostly centered on pregnancy, contraception, and abortion, especially medication abortion.

False claims typically included patently untrue information about reproductive health care and providers, false and misleading information regarding risks of abortion and contraception, and deceptive citing to make it seem such claims were supported by legitimate medical sources when they are not. Many CPC sites claimed people who have had abortions suffer from "post-abortion syndrome," a non-existent diagnosis that has been debunked by medical professionals. 17 18

While many CPCs claimed to be medical clinics, fewer than half (47%) indicated whether they had a licensed medical professional on staff. Only 16% indicated a physician and 25% indicated a registered nurse was affiliated with their staff; none indicated whether licensed medical professionals were employees or volunteers, nor whether they were engaged full- or part-time. Many CPCs falsely claimed to have no agenda and to provide full and unbiased information to support a pregnant person's choice. Many disguised the fact that they do not provide or refer for abortion. Among CPCs in this Study, 10% operated mobile units that can locate near abortion clinics to confuse and intercept their patients.

### "Abortion Pill Reversal" — an unethical practice and non-scientific claim — is a CPC priority.

6

"Abortion pill reversal" (APR) is an anti-abortion marketing term that refers to the experimental administration of high doses of progesterone to pregnant people who have taken the first, but not the second, of two medicines for a medication abortion. Anti-abortion advertising claims this can "reverse"

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an abortion, but medical experts say such claims "are not based on science and do not meet clinical standards." <sup>19</sup> Its health effects are unknown; the only credible clinical study was stopped after one-quarter of the participants went to the hospital with severe bleeding. <sup>20</sup>

More than one-third (35%) of CPCs in the Study promoted APR, with significant variation across states: More than half the CPCs in Idaho (57.1%) and Washington (50.9%) promoted APR. Overall, some 5% of CPCs said they provided APR, but none indicated who administered it, whether it was administered vaginally, orally, or by injection, or whether follow-up care was provided.

### ► STATE-FUNDED CPCS ARE MORE HARMFUL THAN PRIVATELY FUNDED CENTERS.

The Alliance Study found that taxpayers are unknowingly funding the most problematic practices of the CPC industry. State-funded CPCs promoted abortion pill reversal at significantly higher rates and offered prenatal care and referral less often than CPCs without state funding.

### ▶ CPCS APPEAR TO BE LOCAL BUT ARE PART OF A GLOBAL ANTI-ABORTION NETWORK.

Almost half (45.8%) of the CPCs in this Study were affiliated with one or more of the international, national, and regional right-wing organizations that steer the CPC industry, including Heartbeat International, Care Net, and National Institute of Family and Life Advocates. These groups provide digital strategy, infrastructure, and marketing tactics to help CPCs intercept people searching online for abortion care, signal that they are trusted sources of health care, and secure public funding. At least one of these groups collects and stores sensitive client data such as sexual history in "digital dossiers." <sup>21</sup>

### Conclusions

While CPCs misleadingly present themselves as medical facilities<sup>22 23</sup> to draw low-income people experiencing an unplanned pregnancy, the four services most often provided by CPCs served no medical purpose. Most CPCs disseminate medical disinformation focused on stigmatizing abortion and contraception and promote made-up, abortion-related mental health conditions not recognized by medical experts. The promotion of "abortion pill reversal," an unethical, non-scientific practice based on a fraudulent claim, is currently a top CPC priority.

While people considering abortion are main targets of CPC marketing efforts,  $^{24}$  research shows that, in fact, the majority of people who go to CPCs intend to carry their pregnancies to term and are primarily seeking the pregnancy tests and infant supplies, especially diapers, CPCs claim to offer for free.  $^{25\ 26\ 27}$ 

In short, it is widespread financial insecurity and inadequate support for pregnant people that makes people vulnerable to CPCs. CPCs use deceptive and misleading practices to exploit economic insecurity and gaps in access to health care to advance their anti-abortion, anti-contraception agenda. Robust research documents that being denied abortion care exposes both the pregnant person and their family to a range of potential harms. But we do not know the health consequences visiting a CPC has on the typical CPC client: a pregnant person needing prenatal care and parenting resources.

With CPCs outnumbering abortion clinics in almost every state, this unregulated network of ideological, deceptive, and manipulative providers of mostly non-medical services is increasingly more likely to be the most logistically accessible facility in the landscape of services for pregnant people with limited resources. The disparities detected in services between state-funded and other CPCs within the same state underscores the need for a coherent analysis of state-funded CPCs, and the consequences of government investment in CPCs on maternal and public health.

### Call to Action: Hold CPCs Accountable to Protect Reproductive & Maternal Health

The Alliance Study findings make clear that a thorough data-driven assessment of CPC services, funding streams, and accountability measures is needed in states across the country.

It is our hope that this Study spurs stakeholders to assess how CPCs are targeting and treating low-income pregnant people and how the seismic shift in the reproductive landscape — wherein CPCs have proliferated as access to evidence-based reproductive healthcare and abortion has diminished — affects maternal and public health. We already know delaying access to abortion care poses a range of potential harm to pregnant people; we call for future research to specifically investigate the impact of visiting a CPC on maternal health and birth outcomes.

The United States is in the throes of a maternal mortality and morbidity crisis marked by severe racial disparities, with Black, Latinx and Indigenous people and infants suffering disproportionate harms. And we are still in the midst of the COVID-19 pandemic, an unprecedented public health crisis that is exacerbating pregnancy-related mortality and racial disparities, especially worsening Black maternal health. <sup>28</sup> And, despite these interrelated public health crises, anti-abortion policymakers and bureaucrats are aggressively advancing an ideological agenda that further undermines maternal health and specifically targets Black women. <sup>29</sup>

In this context, we urgently call on state lawmakers to stop funding CPCs and to dramatically increase investment in equitable access to evidence-based reproductive health care, especially in underresourced communities.

We call on state policymakers nationwide to act on the detailed and state-specific policy recommendations in this report to: protect CPC clients and pregnant people seeking health care; promote transparency and best practices in publicly funded programs; address significant and deepening gaps in maternal and reproductive health care; and eliminate mounting obstacles to health care experienced by low-income pregnant and parenting people.

These findings reaffirm that the Alliance mission as state-based advocates is more pressing than ever: The fight for reproductive freedom is in the states.

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# Introduction

CRISIS PREGNANCY CENTERS (CPCS) ARE ANTI-ABORTION ORGANIZATIONS THAT SEEK TO REACH LOW-INCOME PEOPLE FACING UNINTENDED PREGNANCIES TO PREVENT THEM FROM ACCESSING ABORTION AND CONTRACEPTION. CPCs advance this mission by using deceptive and coercive tactics and medical disinformation, and misleadingly presenting themselves as medical facilities. The modern CPC industry, a well-resourced arm of the global anti-abortion movement, is rapidly expanding while evading public accountability, despite increasing reliance on public funds.

The first CPCs were established in the late 1960s. In recent years, a more powerful, thoroughly modernized, and proliferating CPC industry serves a pivotal role in the anti-abortion movement, itself part of broader evangelical, Catholic, 30 31 and Christian nationalist activism. 32 33 34 The contemporary CPC industry is plugged into those global movements and their sophisticated digital infrastructure through an affiliation model that facilitates CPC expansion, client surveillance, and coordinated dissemination of anti-abortion disinformation.

The contemporary CPC industry is also increasingly reliant on government support and public funds, though its dual missions of stopping people from accessing abortion and contraception and converting people to evangelical Christianity $^{35}$  have not changed.

Attracting and intercepting low-income pregnant people before they access medical care is still the primary CPC strategy.

While CPCs historically opened near reproductive health clinics and mimicked their names and signage, contemporary CPCs often claim to be medical clinics themselves, despite their clear ideological mission. Medical experts publishing in the AMA Journal of Ethics call CPCs "legal but unethical" because, despite "giv[ing] the impression that they are clinical centers, offering legitimate medical services and advice," CPCs are generally not subject to regulatory oversight that applies to health care facilities. 36

In fact, CPCs are not subject to much oversight at all — even when relying on public funds.

CPCs currently operate with taxpayer funding in 29 states; 14 of those states fund CPCs with direct contracts. <sup>37</sup> Additionally, CPCs in at least 10 states siphon safety-net funds meant for low-income pregnant people and children, helping to manufacture the very economic scarcity the CPC movement uses to justify its encroachment into under-resourced neighborhoods and communities of color. <sup>38</sup> The CPC industry, led by white evangelicals, promotes programs and marketing techniques to specifically target Black women, <sup>39</sup> who are more likely than white women to face barriers to medical care and pregnancy resources.

Research affirms that being denied abortion care exposes both the pregnant person and their family to a range of potential harms. <sup>40</sup> People seeking abortion care, as well as abortion providers, report anecdotal experiences of CPC tactics delaying access to medical care. But, without systemic analysis, the number of people whose access to abortion health care is delayed or prevented by visiting a CPC is unknown.

Although the CPC industry is designed to target and intercept people seeking abortion care, the surprising reality is that most people who visit a CPC — about 80%, according to CPC industry data — intend to carry their pregnancies to term. <sup>41</sup> Scholarly research finds the percentage to be even higher (96%). <sup>42</sup> Research also shows that most pregnant people who visit a CPC are searching for free maternity and infant goods. <sup>43</sup>

This revelation — that most people who go to a crisis pregnancy center are not considering abortion but seeking material pregnancy and parenting support — reveals that CPCs are generally failing at their purported mission to reach and dissuade "abortion-minded" people. Yet government has significantly increased investment in CPCs, despite their failure at their mission.<sup>44</sup>

This revelation also leads to a significant question: What are the health consequences for people intending to carry their pregnancy to term who visit a CPC before, or instead of, accessing medical care? The impacts of CPC practices and expansion on people intending to carry to term are also unknown.

Yet, policymakers who purport to care about maternal and infant health have diverted funds to CPCs while failing to assess their impact on public health, or to hold them accountable for how they spend public money, even in the wake of advocate-led CPC investigations that found misuse, waste, and potential skimming of funds, including in Florida, 45 Michigan, 46 Minnesota, 47 Pennsylvania, 48 and Texas. 49 50

To date, Michigan is the only state to defund its state-contracted CPC network  $^{51}$  in response to allegations of "inefficiency and self-enrichment."  $^{52}$  By contrast, Texas increased CPC funding in 2019 with an award of \$100 million — a twentyfold funding increase since 2006. When questioned about how the CPCs spent those funds, a Texas policymaker suggested the CPC subcontracting process was "a secret."  $^{55}$ 

This conspicuous lack of oversight of an industry purporting to provide medical services to pregnant people is of grave concern in light of the U.S. maternal mortality and morbidity crisis, an emergency defined by severe racial disparities causing Black, Latinx, and Indigenous people to suffer disproportionate harm and death. This lack of CPC oversight is of particular concern as the COVID-19 pandemic continues, exacerbating racial disparities in maternal morbidity and mortality, especially worsening Black maternal health and economic insecurity among women of color. <sup>24 55 36</sup>

Nonetheless, anti-abortion policymakers and bureaucrats remain focused on advancing an aggressive agenda that undermines maternal health and specifically harms Black people. The anti-abortion movement's two primary strategies — passing legislative abortion and contraception restrictions and expanding crisis pregnancy center networks with taxpayer money — are simultaneously reaching peak, unprecedented levels. 37 Harassment and violence against abortion providers and patients is also at an all-time high. 38 59

In September 2021, the U.S. Supreme Court allowed the most extreme abortion ban ever passed in the United States, Texas Senate Bill 8, to become law. Texas Senate Bill 8 effectively bans nearly all abortion and deputizes and financially incentivizes private individuals to enforce the ban via civil litigation. CPCs are positioned to play a central role in surveillance of pregnant people in such a vigilante system. They exist, after all, to reach people experiencing unintended pregnancies, and collect extensive digital data on their clients and their reproductive histories. <sup>50</sup>

On December 1, the U.S. Supreme Court will hear oral argument in *Dobbs v. Jackson Women's Health Organization*, a case anti-abortion advocates hope will overturn *Roe v. Wade*.

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The onslaught of legislative attacks has significantly reduced access to safe, legal abortion care in the United States, especially for people with limited resources. Fewer than 800 abortion clinics now serve patients in this country  $^{61}$  (95% of abortions take place in clinics),  $^{62}$  that number will diminish dramatically if the Texas ban and copycat laws in other states are permitted to stand.

Meanwhile, according to the most reliable estimate, more than 2,500 crisis pregnancy centers are currently operating in the United States. Some anti-abortion groups claim the number to be much higher, approaching 4,000.63

Today, CPCs outnumber abortion clinics nationwide by an average of more than 3 to 1. In many states that directly fund CPCs, the disparity is exponentially higher: in Pennsylvania, CPCs outnumber abortion clinics by 9 to 1; in Minnesota, by 11 to 1.64



- Guttmacher spreadsheet of Abortio Providers in Select States 1973-2017
   ANSIRH Map of Abortion Facilities per State, spring 2017, Guttmacher. Abortion Incidence and Service Availability in the United States, 2017. https://www.guttmacher.org/report/abortion-incidence-service-availability-us-2017
- Crisis Pregnancy Center Map: A web-Based Geolocated Directory of Crisis Pregnancy Centers (CPCs) in the United States, March 2020
- 4 Alliance database December 2020

In this new landscape, CPCs may be more accessible than legitimate health care. Yet policymakers have not conducted a nationwide assessment of services CPCs offer to pregnant people since 2006, when the U.S. House Oversight and Reform Committee, under former U.S. Rep. Henry Waxman, investigated false and misleading health information provided by federally funded CPCs. 65

In the absence of policymaker oversight, the Alliance conducted this nine-state Study to:

- Document the primary services and the services least commonly offered by CPCs
- Survey the prevalence and nature of false and biased medical claims promoted on CPC websites
- Assess the anti-abortion movement's claims that CPCs offer medical services
- Analyze the connections between local CPC storefronts and the national and international anti-abortion organizations supporting them and collecting client data

Our findings shine a renewed light on the modernized CPC industry and call for a thorough data-driven assessment of CPC services, funding streams, and accountability measures in states across the country.

Understanding and addressing CPC practices and their effect on maternal and infant health is a matter of public health, racial equity, and gender justice. It is our hope that this Alliance investigation spurs state policymakers nationwide to assess the quality and nature of CPC services, how CPCs are targeting and treating low-income pregnant people, and the consequences of government investment in the CPC industry for maternal and public health, especially among Black, Latinx, and Indigenous people and infants suffering disproportionate and enduring harm.

# The Alliance Crisis Pregnancy Center Study

In 2019, the Alliance launched a coordinated investigation to document CPC services and practices across nine states in which the Alliance law centers are based and partner with allies on CPC advocacy: Alaska, California, Idaho, Minnesota, Montana, New Mexico, Oregon, Pennsylvania, and Washington.

Alliance project staff collected over 50 categories of publicly available information on 607 CPCs operating in the nine Study states. The data discussed in this report were collected between March 2020 and February 2021 by systematic review of CPC websites and social media. We engaged a reproductive epidemiologist to advise this Study, guide its methodology, and provide technical support to build a central database and aggregate and analyze the data. Alliance staff worked with CPC research partner California Women's Law Center to maintain the database throughout the Study.

Alliance project organizations also conducted public records investigations and research into CPC operations in six states (Alaska, California, Minnesota, New Mexico, Pennsylvania, and Washington) between 2019 and 2021 that provided further data that informed the Study.

A note about defining crisis pregnancy centers: CPCs are largely unregulated; therefore, there is no governing body or certification to designate an entity that seeks to reach vulnerable pregnant people as a CPC. Further complicating the effort to define CPCs is the fact that the anti-abortion movement has rebranded crisis pregnancy centers as "pregnancy resource" or "pregnancy help" centers.

For the purposes of this study, the Alliance classified an organization as a CPC if it met two or more of the following criteria:

- Used keywords such as pregnancy "resource," "aid," "care," "alternatives," "options," or "support" in
- Affiliated with one or more national or regional anti-abortion umbrella organizations that identify
  as operating and/or providing services or technical support for crisis pregnancvy centers (e.g., Care Net,
  Heartbeat International, Birthright International, Obria)
- Did not provide or refer for abortion and/or dispensed medically misleading or biased information about abortion
- Accepted funding conditioned on advancing an anti-abortion mission, promoting childbirth instead of abortion, and/or agreement to not promote or refer for abortion and contraception

Data on crisis pregnancy centers are not static. Since individual CPCs open, close, relocate, and change names on a regular basis, some of the information in this Study will likely have changed as of publication of this report.

 $Detailed\ Study\ methods\ are\ available\ at\ alliance state advocates. or \textit{g/publications}$ 

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# Major Findings

# Primary Services Offered by CPCs

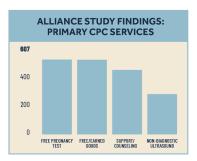
While CPCs increasingly present themselves as medical facilities  $^{66}$  most services provided by CPCs in this Study serve no medical purpose.

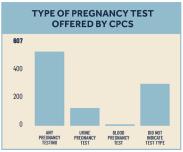
Across the 607 CPCs in the nine states surveyed, the Alliance found the three most common services offered by CPCs are pregnancy tests (88.5%), distribution of material goods such as diapers and maternity clothes (88.1%), and peer-to-peer conversation typically promoted as "counseling" (78.6%). "Non-diagnostic" or "limited medical" ultrasound was the fourth most common CPC service, offered by over half (56%) of the CPCs in the Study.

### **Pregnancy Tests**

Most CPCs that offered pregnancy tests did not indicate the type of test. Of the 184 CPCs that specified the type of test offered, 96% (177 of 184) indicated they offered a urine test, and 3.8% (7 of 184) indicated they offered a blood test. Urine pregnancy tests are self-administered and available at drugstores.

This finding is consistent with a strategic decision announced by the global CPC network Heartbeat International (HBI) in 1989 that most CPCs "should use the self-testing model for performing pregnancy tests" after a California CPC network using lab tests lost a lawsuit that accused them of practicing medicine without a license. 69





### Free/Earned Goods

Most CPCs advertised "free" maternity and baby supplies, but CPCs typically noted on their websites that provision of these goods was contingent on the client's participation in "earn while you learn" classes or counseling, Bible studies, abstinence seminars, video screenings, or other ideological CPC programming. This finding is consistent with scholarly research into client experiences at CPCs that has found CPCs often condition material assistance on participation in CPC activities through which they earn "mommy bucks" or "points" they can exchange for infant supplies or other goods. <sup>70 17 72</sup> In one study, a CPC client reported losing her job because when she missed work for one of the CPC appointments because she was "[d]esperate for the resources they offered and believ[ed] that attending all of the center's appointments was important for the health of her pregnancy...". She subsequently lost her home. <sup>73</sup>

### Support/Counseling

Among CPC websites surveyed, counseling typically focused on pregnancy decision-making. Scholarly research has found that most counseling at CPCs is provided not by licensed professionals but by volunteer lay counselors. Ye Evangelical anti-abortion organizations that support CPCs provide standardized counselor training used by their affiliates in states around the country. For example, Care Net requires affiliated CPCs to follow its "biblically-based curriculum" for training peer counselors. The "Serving with Care and Integrity" manual tells trainees that "[t]he goal of pregnancy center ministry is to reach out and offer hurting people the love of Christ."

### Most CPCs Offer Little to No Medical Care

The fifth and sixth most-commonly offered CPC services were sexually transmitted infection (STI) testing (28.1%) and "sex education" (16.6%). The services least often offered were prenatal care (5.1%), well-person care (4.8%), and contraceptive care (one CPC — 0.2% of the Study sample — provided all FDA-approved options and hormonal contraceptives). See Deceptive & Misleading Marketing below, for discussion of these findings about least commonly offered CPC services.

In sum, the Alliance found the primary services that surveyed CPCs provided were not medical, and that the majority of CPCs provided little or no medical care. The most common CPC service was a pregnancy test and the least common services were prenatal, wellness, and contraceptive care.

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# Study Spotlight

# "Non-Diagnostic" Ultrasound

Variously described on their websites as "non-diagnostic ultrasound," "limited obstetrical ultrasound," "option ultrasound," or simply "sonogram" (the technical term for the image produced by ultrasound), the CPC industry offers free ultrasound to lure clients through the door and coerce their pregnancy decision-making.

National Institute of Family and Life Advocates (NIFLA), an evangelical Christian law firm for the anti-abortion movement, has promoted the provision of ultrasound technology at CPCs for many years. NIFLA claims, "more than 80% of abortion-minded mothers choose life after they see their unborn baby via ultrasound" which gives clients "the opportunity to see the wonderful handiwork of the Creator." <sup>18</sup>

Research shows viewing an ultrasound does not typically change a person's mind about abortion or elicit a singular effect on the patient's emotions.<sup>79 80</sup> "When a physician begins caring for a new patient who is pregnant, it is common practice to obtain any prior ultrasound scans the patient received from outside health care facilities. The existence of crisis pregnancy centers has made it difficult for physicians to ascertain whether these prior ultrasounds are reliable. I have had patients who have obtained ultrasounds at CPCs who were unaware they were not receiving medical care from a real health care facility. I am not aware of any other area of medicine in which these problems exist. There are no 'crisis broken bone clinics' that take an X-ray and assure you that you'll be fine if you simply wear a sling. CPCs take advantage of that lack of knowledge to provide all of the form of a doctor's office, but none of the function'.

Glenna Martin, MD, Board-certified family medicine physician, Washington



The anti-abortion and anti-LGBTQ+ organization Focus on the Family has also steered the use of ultrasound technology by CPCs, and financially subsidizes equipment and training, as long as the CPC is "located in a community with a high abortion rate."  $^{81}$  Eligibility factors include that CPC locate near abortion providers.  $^{82}$ 

The American Institute of Ultrasound in Medicine (AIUM) condemns the use of ultrasounds for any non-medical purpose: "The use of ultrasound without a medical indication to view the fetus, obtain images of the fetus, or identify the fetal external genitalia is inappropriate and contrary to responsible medical practice." AIUM characterizes the use of ultrasound for "bonding" purposes as "keepsake imaging" and discourages the practice. $^{83}$ 

The CPC industry also relies on the provision of ultrasound to signal medical legitimacy.

According to the global CPC network, Heartbeat International: "In essence, there is no such thing as a non-diagnostic ultrasound. [Emphasis theirs.] Even if you are using an ultrasound machine for the singular purpose of showing the client her baby, you are likely conducting a diagnostic test that suggests a medical procedure. Because of this, you are functioning as a medical facility when you perform an ultrasound ... Does that mean you have to become a state licensed medical clinic? Not necessarily." 64

The anti-abortion industry's false claims regarding the effect of viewing an ultrasound on pregnancy decision-making have also been used as justification for legislation mandating patients undergo medically unnecessary forced ultrasound before an abortion procedure. Some of these laws require abortion providers to display the screen and describe the image in detail, regardless of the patient's preference. §5

▶ For more information see the Alliance Study companion resource, Global, National & Regional Anti-Abortion Organizations Supporting CPCs at alliancestateadvocates.org/publications

# False & Biased Medical Claims by CPCs

The Alliance Study surveyed CPC websites to document and calculate the percentage of CPCs promoting false and/or biased medical claims. We defined as false any medical claims that were demonstrably untrue or unsubstantiated, or that misleadingly cited factual information out of context. We defined as biased statements about medical issues, procedures, or providers presented in loaded or gratuitous language instead of clinical terms.

The Alliance found more than 63% of the CPCs in our Study states promoted false and/or biased medical claims on their websites, most often about pregnancy and abortion. Abortion does not increase a birthing person's risk of secondary infertility, pregnancy-related hypertensive disorders, breast cancer, or mental health disorders, 86 yet nearly one-third (31.8%) of CPCs in the Study claimed that abortion causes these conditions. Many CPC sites claimed that people who have had abortions suffer from "post-abortion syndrome," an "abortion-as-trauma" construct of the anti-abortion movement that has been roundly debunked by medical and mental health professionals.87

More than one-third (34.9%) of CPCs in this Study promoted "abortion pill reversal" (APR), the unproven and potentially dangerous claim that a medication abortion can be "reversed" with a high-progesterone intervention. We collected and reported APR data separately from other false medical claims because APR is both a fraudulent claim and an unethical practice. APR is a current priority of the anti-abortion movement. See the Spotlight below for more information and discussion of the Alliance Study's APR findings.



While we also observed other misleading claims to be common on CPC websites, including that CPC services are unbiased because they are free, this Study did not document the prevalence of false and misleading claims that were not medical in nature.

False and biased CPC claims about abortion contradict the reality that abortion is extremely safe. 88 Complications from abortion are rare, occurring less frequently than complications from wisdomtooth extraction.89

These examples of false claims promoted by CPCs are typical:

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# Surgical Abortion Risks:

- Perforation of the uterus
   Damage to the cervix
   Scar tissue on the uterine wall

- InfectionHeavy bleeding

# Medication Abortion Risks:

- An ongoing unwanted prepanary if the procedure doesn't work
   Heavy and prolonged bleeding
   Digestive system disconflort
   Incomplete abortion (which may need to be followed by surgical abortion)
   Infection
   Fever

Screenshots from Women's Pregnancy Options, Albuquerque, NM https://www. pregnantabq. com/abortion

Screenshot from Hope's Place Pregnancy Support Center, Salmon, ID https://www. hopesplacepsc. org/abortion. html

The American Psychological Association found no increased risk of adverse mental health outcomes for women having a legal, first-trimester abortion.90 The National Cancer Institute concluded that abortion does not increase one's risk of breast cancer.91

False information about miscarriage was also common. While the medical community agrees that 10%-15% of detectable pregnancies result in miscarriage,92 CPCs claimed that the likelihood of miscarriage is significantly higher.

This CPC in California shows a pop-up video on its homepage with a woman dressed in a white coat and stethoscope making a false claim about miscarriage and encouraging people considering abortion to come to the CPC for an ultrasound to determine if they are



ay not even need to make that decision. Schedule a pre

CPCs often used biased and gratuitous language about procedural abortion, under the guise of providing a clinical description, some of which were deceptively cited to legitimate medical sources.

These false and biased claims about abortion on CPC websites reflects medical disinformation promoted by the anti-abortion movement at large.



**WAITING** vs RUSHING

TO 24% OF PREGNANCIES END in a miscarriage, make sure this isn't you before paying \$500.

WAITING

In fact, large anti-abortion organizations use CPCs to spread standardized anti-abortion rhetoric via digital services and toolkits. For example, Heartbeat International offers website development services with customizable templates but limits the extent to which CPCs can adapt them, and conditions use of the templates on CPCs agreeing to post most of the talking points on medical pages verbatim.93

HBI also offers trainings for peer counselors that promote false and biased claims. One such claim is that a boyfriend who "experiences homosexuality" can be a consequence of abortion. 94 While not the focus of this Study, it should be clear that anti-abortion organizations often explicitly oppose LGBTQ+ rights. Queer, gender-expansive, and transgender people are more likely to experience the economic insecurity that drives people to CPCs than their cisgender straight counterparts; once at a CPC, they may face the acute, specific harm of encountering explicitly anti-LGBTQ+ "counseling" and messaging. Lesbian and bisexual young people are at greater risk of unwanted pregnancy than their heterosexual counterparts. 95

This Study also found CPCs were promoting unsubstantiated claims demonizing physicians and abortion providers, which serves to undermine pregnant people's trust in medical professionals in general and abortion providers in particular.96

Systematic use of broad, unsubstantiated claims demonizing medical professionals by CPCs is deeply concerning, especially given the historic and ongoing racism that has led to distrust of the medical system among

Screenshots from Confidence Pregnancy Center, Salinas, CA https://pregnancysalinas.com/faqs/



Black and brown people. Cultivating patient trust is particularly critical to improving the maternal health of Black and brown patients.  $^{97}$  This CPC practice is especially dangerous at a time when the politicization of public health recommendations and regulations during the pandemic is provoking new levels of mistrust of medicine and violence against abortion providers is at the highest level ever recorded.98

"Native Americans face increased barriers to reproductive services and information that is objective and based on science. Tribal health and human services programs should inform tribal citizens about the dangers of CPCs, including those that operate close to tribal lands that are targeting people of color and providing them with false information. Tribal citizens should be encouraged to work with medical providers in their health insurance networks, Veterans Administration, Indian Health Service, tribal 638 clinics, or Planned Parenthood to access comprehensive health care services and referrals."

—Terrelene Massey, Tribal citizen, Navajo Nation Executive Director, Southwest Women's Law Center, New Mexico



#### False Claims About Medication Abortion

While CPCs in this Study promoted disinformation about both procedural and medication abortion, we observed a particular focus on medication abortion. Some CPCs used the anti-abortion movement term "chemical abortion" to refer to medication abortion.

For example, one Oregon CPC chain compares the way the first pill in a medication abortion works to "cutting the oxygen supply to someone who is on a ventilator." <sup>99</sup> This Idaho CPC's website promotes both false claims about the medical risks and gratuitous claims about the process of a medication abortion:

A medication abortion includes two drugs taken orally: mifepristone, followed by misoprostol 24 to 48 hours later. If the two-drug protocol is completed, a medication abortion terminates the pregnancy in 96% of cases. Studies confirm the protocol is safe and

What type of medical supervision occurs during a medical abortion?

After taking the first pills (Mifeptistone/RU-486) in the clinic, she is sent home to complete the abortion. This means she must correctly follow the directions for taking the remaining set of drugs and is responsible for judging whether her body's reaction to the abortion is normal or not (such as a dangerous loss of blood). With this type of abortion, it is likely that she may not have a doctor to provide immediate help should a potentially life-threatening complication occur, so it is very important that she report any concerns to her doctor and seek emergency help if necessary.

The woman will also be responsible for disposing of her child's remains. While she could lose her baby anytime and anywhere during this process, the woman will often sit on a tollet as she prepares to expel the remains, which she will usually then flush—she may even see her dead baby within the pregnancy sac.

Screenshot from Lifeline Pregnancy Care Center in Nampa, ID

https://www.abortion.procedures.com/abortion-pii/#1463365763416-9210ca68-3f54

effective; it has been found to be safer than many commonly used over-the-counter medications in the U.S., including Tylenol.  $^{100}$ 

Medication abortion is an increasingly popular choice among people seeking abortion care. As of 2016, the latest data available, medication abortion makes up roughly 41% of abortions at 8 weeks gestation or less, <sup>101</sup> in part because it affords a convenient and private alternative to procedural abortion and can be completed at home.

CPCs promoted false claims about both the efficacy and safety of medication abortion. CPCs describing how medication abortion works often included no facts about its high rate of efficacy and safety and instead reported "heavy bleeding requiring surgery to stop the bleeding, and serious infection" as potential complications. <sup>102</sup> Some CPCs used false claims about the percentage of pregnancies that end in miscarriage to encourage pregnant people considering medication abortion to wait.



A particularly harmful false claim about medication abortion is called "abortion pill reversal." False claims that a medication abortion can be "reversed" — by the potentially dangerous administering a high dose of hormones before the second medication is taken — are gaining ground as a centerpiece of messaging and services listed on CPC websites.

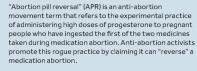


# Study Spotlight

# "Abortion Pill Reversal" (APR) An "Unmonitored Research Experiment" on Pregnant People

"What anti-abortion forces could not attain with fetal-focused religious arguments, they hope to accomplish with decentive pseudo-science" <sup>103</sup>

—KIMBERLY KELLY, Associate Professor and Gender Studies Program Director, Mississippi State University



Medication abortion requires that the patient first takes mifepristone, which stops the body from recognizing and activating progesterone in order to stop the pregnancy

from progressing, and then takes misoprostol, which causes uterine contractions. If a patient takes only the mifepristone and does not subsequently take the misoprostol, the pregnancy might continue. A review published in *The New England Journal of Medicine* found the proportion of pregnancies that continued after the first medication alone ranged from 8% to 46% in published studies. <sup>104</sup> Claims that administrating high doses of progesterone increases these odds are "not based on science and do not meet clinical standards." <sup>105</sup>

Medical professionals call APR "unproven and experimental."  $^{106}$  The FDA has not approved of dispensing the first medicine administered in medication abortion (mifepristone) without following up with the second (misoprostol), nor has it approved — or even reviewed — this use of progesterone.  $^{107}$ 

The Alliance found over one-third (34.9%) of CPCs promoted "abortion pill reversal."

We also observed significant variation across states: More than half of the CPCs in Idaho (57.1%) and Washington State (50.9%) promoted APR. Significantly, we found a higher prevalence of APR promotion among state-funded CPCs in Minnesota and Pennsylvania than among CPCs not receiving state funding (31.0% to 21.3% in MN and 40.7% to 30.2% in PA).

Close to 5% of CPCs in the Study claimed to directly provide "abortion pill reversal."

These CPCs did not indicate who administers the progesterone intervention; whether it is administered vaginally, or by injection; or what follow-up care is provided, if any.

The percentage of CPCs promoting APR in our Study states increased from 32% to almost 35% between the first Alliance Study review of CPC websites and social media for mention of APR in summer 2020 and a second review in early winter 2021.

The health effects of APR on the pregnant person and embryo are unknown. In 2019, a controlled clinical study of the efficacy and safety of APR was halted due to safety concerns, after three of the 12 women enrolled in the study had to be transported to the hospital for severe vaginal bleeding.  $^{108}$  The researchers concluded, "We could not estimate the efficacy of [APR] ... Patients in early pregnancy who use only mifepristone may be at high



# Study Spotlight



HBI claims to have a referral network of "over 1,000 healthcare professionals" who provide APR<sup>111</sup> and that they are expanding that network by "recruit[ing] more physicians, physician assistants and nurse practitioners" and advising them on how to administer APR. <sup>112</sup>

The HBI "helpline" is accessible via phone, live chat, email, and text, 24/7.11 CPCs in this Study encouraged people to call the APR hotline instead of taking the second dose of medication. Since not taking the second medicine in the protocol may allow the pregnancy to continue, and there is no evidence that intervening with progesterone increases those odds, it is worth examining the intense CPC effort to drive pregnant people who begin a medication abortion to this central online APR platform. Especially in light of concerns about CPCs surveilling pregnant people under Senate Bill 8 in Texas—and copycat laws should they be enacted in other states—it is notable that CPC messaging about APR does not simply encourage people to not take the second medication but rather directs people to a website where HBI can collect their data digitally.

The anti-abortion movement has also coordinated CPC promotion of APR with a legislation effort to mandate that all doctors promote APR to their patients. Eight states, including Alliance Study state Idaho, now compel abortion providers to tell patients that an abortion can be reversed. <sup>114</sup> Similar statutes are currently enjoined in four more states. <sup>115</sup> The American Medical Association joined a federal lawsuit against such a law in North Dakota, stating the provision "compel[s] physicians and

Dakota, stating the provision "compel[s] physicians and their agents to speak government-mandated messages that entail providing to their patients misleading or even patently false, nonmedical information." 116

For more information about HBI's role in mainstreaming APR through the CPC movement, see Global, National

& Regional Anti-Abortion Organizations Supporting CPCs at alliancestateadvocates.org/publications

risk of significant hemorrhage. 109 For now, such a treatment is experimental and should be offered only in institutional review board–approved human clinical trials to ensure proper oversight. \*\*110

Despite these warnings from medical professionals, the anti-abortion movement is promoting APR through a streamlined nationwide infrastructure, often with government support. Every CPC in this Study that made referrals for APR sent people to the same online portal: an "Abortion Pill Rescue" website and hotline sponsored by Heartbeat International.





"If there was a way to safely and effectively 'reverse' the effects of medication abortion, we would advocate for that procedure to be made available to people who want it. Pregnant people should have as much control as possible over the decision to terminate a pregnancy — or not. That's what it means to work within a framework that prioritizes the right to individual body autonomy. But so-called 'abortion pill reversal' has not been proven to be safe nor effective. In fact, experts have likened it to an 'unmonitored research experiment,' conducted by the anti-abortion movement through its sprawling national network of crisis pregnancy centers. This isn't the healthcare people need or want. It's just the latest chapter in this country's horrific history of experimental and coercive medical abuse perpetrated on people of color, and Black women in particular."

**—Erin Maye Quade,** Advocacy & Engagement Director, Gender Justice, Minnesota

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CPCs also use false claims about abortion to radicalize anti-abortion activists and justify legislative abortion restrictions. <sup>117</sup> CPCs sponsor "post-abortion recovery" groups for people they claim are suffering from "post-abortion syndrome"—this "syndrome" does not exist; it has been manufactured by the anti-abortion movement—that encourage participants to become activists and support political efforts to end legal abortion. <sup>118</sup> Researchers identify CPCs as "the dominant force in spreading [post-abortion] syndrome claims at the grassroots level and…translating these claims into federal and state policy." <sup>119</sup> Groundless "abortion regret" narratives have also infiltrated jurisprudence about abortion rights. In 2007, Justice Anthony Kennedy cited "post abortion regret" in the U.S. Supreme Court opinion upholding a ban on some later-term procedures—even while acknowledging a lack of evidence for this claim. <sup>120</sup>

# **POST ABORTION STRESS SYNDROME (PASS)**

# SYMPTOMS OF PASS MAY INCLUDE ANY OF THE FOLLOWING:



- 1. Guilt: Experiencing guilt does not imply that you made a mistake or "violated your own moral code," as some pro-lifers would imply. However, feelings around having an abortion may be complex and have to take into account fear of what others might think.
- 2. Anxiety: General anxiety is a common symptom of PTSD—in the case of PASS, there might be
- particular anxiety over fertility issues and the ability to get pregnant again.

  3. Numbness, Depression: Again, common symptoms of PTSD.
- 4. Flashbacks: Abortion is surgery, and in most cases, it's a surgery that happens while the patient
- is fully conscious. This can be a distressing experience.
- 5. Suicidal thoughts: In extreme cases, the PTSD that results from a controversial abortion could lead to suicidal thoughts or tendencies and would require immediate treatment. It's important to note that this is not a common or expected symptom of PASS, but as with any form of PTSD, it is possible.
- Screenshots from WISH Medical CPC, Moscow, ID https://wishmedical.com/post-abortion-stress-syndrome-pass-does-it-exist/

# Deceptive & Misleading Marketing: Most CPCs Do Not Provide Medical Care

"When I worked in Ohio, a mobile crisis pregnancy center would pull up in front of the abortion clinic at which I provided services. One of the [abortion clinic] staff members, who was most definitely not pregnant, presented I provided services. One of the Labortion citing stay in memors, who was most definitely not pregnant, presented to the CPC stating she was pregnant and needed advice. They did not do a pregnancy test to confirm that she was pregnant, but performed an ultrasound. They told her she had a very tiny baby with a heartbeat. They even provided an ultrasound picture of her non-pregnant uterus. These were non-medical professionals telling people who weren't even pregnant that they were "carrying life." These centers are practicing medicine without a license, and as a licensed medical professional, I find this appalling."

-LISA PERRIERA, MD, MPH, Professor, Department of Obstetrics & Gynecology,

Thomas Jefferson University, Pennsylvania



Contrary to CPC branding efforts and despite the industry's recent success in obtaining funds designated for the provision of medical care, the Alliance found medical services comprised the smallest percentage of services offered by CPCs, and that CPCs use some non-medical services to promote inaccurate and misleading information about reproductive health care.

#### Prenatal, Well-person, and Contraceptive Care

Of 607 CPCs surveyed, 5.1% offered prenatal care and fewer than half (40.2%) referred clients for prenatal care. In Pennsylvania, where one out of every six infants is born to a parent who received inadequate prenatal care, 121 state-funded CPCs offered no prenatal care.

CPCs affiliated with the big CPC networks — almost half (45.8%) of the CPCs in our Study states — offered prenatal care at a lower rate than CPCs overall:





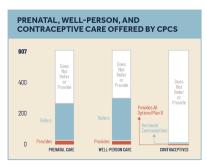






Few CPCs (4.8%) offered well-person care, which we defined as preventive reproductive health services such as breast exams and Pap tests, as well as overall preventive health services, such as physicals. Less than one-third (29.8%) made referrals for well-person care.

Only one of the 607 CPCs in the Study offered FDA-approved contraception, while 3% provided "fertility awareness" and 7.7% offered abstinence programming.



While most public discussion of CPCs focuses on their opposition to abortion, this Study's finding that virtually no CPCs provided contraceptive services is consistent with scholarly research that indicates that CPCs generally oppose the promotion or provision of contraception. A study of online contraceptive information provided by CPCs noted that CPC sites "appeared to discourage contraceptive use by minimizing benefits and emphasizing risks and barriers" and that "none of the sites discussed positive aspects of pregnancy prevention, and none mentioned other health benefits of contraception (e.g., relief from migraines, menstrual pain, and acne)." 122

#### Sexuality "Education"

Almost 17% of CPCs in the Study claimed to offer sexuality education. Online descriptions of these CPC services suggest that calling them sexuality "education" is misleading, as the content typically promoted abstinence-only programming regarding pregnancy avoidance and prevention of sexually transmitted infections; never included information about contraception; and often included medically inaccurate claims.

Sexuality-related content in CPC programs sometimes featured religious and shame-based messages, as well as harmful stereotypes about women, LGBTQ+ youth, and nontraditional families. <sup>123</sup> In one example, a Spokane, Washington, CPC promoted a form of LGBTQ+ conversion therapy on its website:

# Unwanted Same-Sex Attraction & Gender Identity

In today's post-modern world, many are often defined by gender identity and sexual orientation. And yet for those struggling with same-sex attraction or gender confusion, claiming these identities can create feelings of fear and uncertainty. In isolation, we may try to shove our desires under the rug, and hopelessly believe that we cannot and will never change or experience a joy filled life.

If you are 1) struggling with unwanted same-sex attraction, 2) in a same-sex relationship, or 3) feeling confused in your gender, you are not alone. Path of Life is a Christian organization, providing free and confidential mentoring and support to those struggling with gender identity and/or same sex attraction. You are not bound to a life of hopelessness, guilt and shame, but through the gospel of Jesus, your heart, mind and behaviors can be transformed and healing can be found

Screenshot from Path of Light CPC, Spokane, WA https://www. pathoflifespokane. org/services-1



Approximately 8% of the Alliance Study CPCs also indicated that they offer sexuality-related services off-site, including in public schools. In some study states, the percentage was much higher: Nearly 20% of CPCs in Washington claim to offer sexuality education off-site.

According to adolescent health professionals, "Young people require comprehensive, medically accurate sexual and reproductive health information and quality, evidence-based clinical services. Programs that exclusively promote sexual abstinence before marriage ... are ineffective, ethically problematic, and might be harmful." 124

The extent to which public schools and school districts are engaging CPCs to provide sexuality or abstinence-only programming is unknown, nor is it apparent when public education funds are being used to contract with CPCs. Reports of CPCs providing ideologically based, medically inaccurate presentations, classes, courses, and curricula in public schools abound,  $^{125}$  including in Alliance Study states.

A school district in New Mexico paid a CPC to provide abstinence-only education until Southwest Women's Law Center recommended that the governor terminate such contracts. <sup>126</sup> A Northern California CPC reported receiving a \$450,000 federal grant to continue providing sexuality education in Placer and Nevada county schools before school administrators determined they could no longer contract with the CPC under the state's Healthy Youth Act mandating comprehensive sexuality education. <sup>127</sup>

There are also indications that CPCs are currently providing these services in public schools in Alliance Study states. In Minnesota, Gender Justice has found evidence of county contracts with CPCs, and in Alaska and Washington, Legal Voice is investigating school districts where CPCs claim to be providing sexuality education.

In Pennsylvania, there is recent direct testimony about the presence of CPCs in public schools. At a hearing in the state legislature in spring 2021, a representative of the Women's Choice Network testified that her CPC used federal Title X funds and has seven "certified" CPC instructors providing sex education to 14 schools "on a daily basis" in the Pittsburgh area. <sup>128</sup> This revelation followed a 2018 report from a Pennsylvania-based high school student whistleblower that a representative from a local CPC was invited to speak at her health class.



Among other medically inaccurate claims, the speaker advised students to avoid holding hands because any touching would make it harder for them to find a life partner by depleting hormones needed to bond couples. They also gave a student a Bible. The school board said it had no knowledge of this programming. 129

### Sexually Transmitted Infection (STI) Services

Over one-quarter (28.4%) of CPC websites studied offer STI testing. Some CPCs that claimed to offer testing were found to offer STI "self-assessment" questions on their websites, not clinical tests. Just 7.1% referred clients for STI treatment.

The latest available data shows STIs are at an all-time high in the United States, and medical experts warn that some STIs can have serious health consequences including increased risk of HIV infection. <sup>150</sup> A recent report issued by an antiabortion organization highlighted the STI crisis while claiming CPCs "provide STI/STD testing and treatment to women,



and at some locations to men, in direct response to this public health crisis."<sup>131</sup> Despite such rhetoric about STI services, most CPCs in this Study did not provide or refer people for STI treatment. Moreover, CPCs consistently oppose contraception and do not offer barrier methods such as condoms, which are a standard of care in STI prevention.

# Licensed Medical Professionals on Staff

CPCs increasingly promote their affiliation with licensed medical professionals as part of their effort to present as medical clinics. The Alliance found 16% of CPCs in this Study indicated they had a physician on staff, and just over 25% indicated they had a registered nurse. The



majority surveyed (52.8%) did not provide any information on their websites about whether licensed medical professionals were associated with the CPC.

Scholarly research and the limited public reporting available on licensed professionals at CPCs both indicate that most medical professionals affiliated with CPCs are engaged on a part-time or volunteer basis. <sup>132</sup> Anecdotal reports also indicate some physicians working with CPCs are licensed in fields unrelated to reproductive health, including as optometrists and chiropractors. <sup>133</sup>

In sum, despite claims and efforts to present as medical facilities, the Alliance Study found that CPCs offered virtually none of the medical services needed by pregnant people; used some services to promote inaccurate and misleading medical information; and largely did not engage licensed medical professionals on their staff. In fact, by misleadingly presenting themselves as medical facilities, CPCs may systemically obstruct access to medical care.

"In 2002, I was seeking an abortion at age 28, living in Chicago and working as a paralegal. I made an appointment at what I thought was an abortion clinic, but instead of providing me an abortion, the clinic counselors lectured me about the joys of motherhood, made me watch graphic videos of abortion procedures, then presented me with a rattle and a onesie and referred me to another facility for a free ultrasound. At this second appointment, the technician told me, "If you have an abortion now, you'll perforate your uterus and won't be able to have children in the future."

Terrified by the prospect of infertility, I carried the pregnancy to term. Within a year of my son's birth, I lost my job and health care. The pregnancy clinic I visited never followed up, nor offered support beyond the set of baby toys they'd given me on my first visit. Years later, I realized what had happened to me: I was intentionally lured into a crists pregnancy center."

—Cherisse A. Scott, CEO & Founder, SisterReach, Tennessee

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# Study Spotlight

# CPCs & Access to Health Care

CPC tactics to expressly delay patient access to abortion care are well documented.  $^{134}$  An openDemocracy journalist who enrolled in online Heartbeat International trainings for CPC peer counselors recently reported, "They ... taught me how to discourage and delay women from accessing abortions and even emergency contraception."  $^{135}$ 



If you are considering visiting an abortion clinic, we want you to know what this choice could mean to your future. You don't need to make this decision right away. Slow down and allow time to think. Don't le anyone tell you that you have to have an abortion. Pregnancy care centers exist to offer you choices and information. There are risks to most abortion procedures. Be sure that you understand these risks because many abortion clinics are not required to inform you of this before performing an abortion.

Confidence Pregnancy Center, Salinas, CA; https://pregnancysalinas.com/faqs/

 $People seeking abortion \, care, as \, well \, as \, abortion \, providers, report \, experiences \, of CPC \, tactics \, delaying \, access \, to \, medical \, care.$ 

"[A CPC] lied to me, suggested I commit suicide, and threatened to call the police if I left their building. I can't believe they're allowed to interact with pregnant people, let allone receive money from the state government to do so. Going to a CPC endangered my left, and fundamentally affected the way I look at myself—and prevented me from seeking care from after provides."

—M. C., CPC client, Minnesota

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"Iwent to Care Net occause I was afraia that I was nabura another ectopic pregnancy and I wanted to find out about all of my options, including medication abortion, like the Care Net website says. A 'nurse' gave me a pregnancy test and then put me in a room by myself. A volunteer came in and 'counseled' me against having an abortion. She asked if I was religious and if I believed in God. She gave me information about Hell. And then she prayed for me. They refused to do an ultrasound exam on me that day but scheduled one in two weeks' time. Given my history, I could not delay for two weeks, so I went to a provider where I was given a thorough examination and it was determined that a medication abortion was the right choice for me."

—A.N.V., CPC client, New Mexico

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"I have had colleagues who report that patients who visited CPCs were specifically instructed by the CPC not to seek care from a provider until much later in their pregnancy. Put simply, far from enhancing patient care, CPCs create unnecessary risk."

— GLENNA MARTIN, MD, Board-certified family medicine physician, Washington

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# Study Spotlight

Research has also documented CPCs using ultrasounds to legitimize false information about the stage of fetal gestation  $^{136}$  and mislead clients into believing they are too far along to legally obtain an abortion.  $^{137}$  CPCs in the Alliance Study also posted obviously manipulated ultrasound imagery on their website.  $^{138}$ 

"I had one patient who reported an ultrasound result to me that did not match her actual gestational age. My patient was contemplating abortion and thought she had 'plenty of time' to make her decision based on the ultrasound, she had received at this CPC. But when we did an ultrasound, the patient was much closer to the pestational age limitation on abortion in our state than she had thought."

 ${\color{red}\textbf{—}}\, \textbf{GLENNA}\, \textbf{MARTIN, MD,} \, \textbf{Board-certified family medicine physician, Washington}$ 

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A robust body of research indicates that a person who seeks but cannot obtain abortion care may experience a range of harms including mental, physical, and socioeconomic consequences.  $^{139}$  Relatively little is known, however, about the health consequences of visiting a CPC on pregnant people who are not considering abortion.

While preventing access to abortion is the primary mission of CPCs and people considering abortion are the main targets of CPC marketing efforts.  $^{140}$  the surprising reality is that most people who go to CPCs intend to carry their pregnancies to term and are primarily searching for free pregnancy tests and infant supplies, especially diapers.  $^{141}$  In one study, 87% of CPC clients reported going to the center for diapers, and 44% for baby clothes/items.  $^{142}$ 

MOST CPC CLIENTS ARE SEARCHING FOR FREE GOODS:



87%
OF CPCS CLIENTS
GO FOR DIAPERS



44%
OF CPCS CLIENTS GO FOR
BABY CLOTHES/ITEMS

Do CPC delay tactics postpone access to prenatal care? If so, what are the health consequences for pregnant people visiting CPCs before or instead of accessing medical care?

CPCs specifically target people seeking abortion care, yet disproportionately affect people who intend to carry to term. The unknown consequences of this reality for maternal and public health is cause for national concern, especially in light of expansion of CPC networks across the country. Future research should specifically investigate the impact of visiting a CPC on maternal health and birth outcomes.

# Key Context & Additional Findings

# CPCs & Public Funding: Taxpayer Funds Increasingly Support CPC Deception & Expansion

(CPCs are) "unfortunately capitalizing on a gap that we have in our system in terms of responding to the actual real needs of pregnant folks and the actual real needs of families."

—NOURBESE FLINT, Policy Director/Program Manager, Black Women for Wellness, Californian Californi

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CPCs began to secure public funding in the 1990s. Initially, most taxpayer funding diverted to CPCs came from federal welfare reform and abstinence-only education programs (despite research that abstinence "education" does not delay sexual initiation or reduce sexual activity) $^{143}$  and through esoteric funding streams such as "marriage promotion" programs.

In 2019 CPCs obtained federal funds through the Teen Pregnancy Prevention and Title X Family Planning Programs.  $^{144}$  The Trump administration diverted \$1.7 million reserved for Title  $X^{145}$  — the only federal program devoted specifically to family planning and preventive reproductive health services for low-income patients — to Obria, a California-based crisis pregnancy network "led by God."  $^{146}$  By law, Title X funds are expressly intended to promote equitable access to contraception; Obria has privately committed to never dispense contraception.  $^{147}$ 

Additionally, at least ten states - including one Alliance state, Pennsylvania - have diverted welfare reform funds under the Temporary Assistance for Needy Families (TANF) program, which are intended to support low-income pregnant people and families with children to meet basic needs, into CPCs.  $^{148}$ 

In 2020, CPCs also obtained federal funding through the Coronavirus Aid, Relief, and Economic Security (CARES) Act. <sup>149</sup> The anti-abortion organizations steering the CPC movement continue to seek novel new sources of public funds. <sup>150</sup>

### States are Directly Funding

With federal funding fluctuating with each administration and a record number of state governments controlled by a single party,  $^{151}$  states are now the most significant and stable source of public funding of CPCs. CPCs obtain state funding in at least 29 states.  $^{152}$ 

In 2000, three states directly funded crisis pregnancy centers. Today, at least 14 states directly fund CPCs, including two Alliance states: Minnesota and Pennsylvania. While California does not directly contract with a CPC network, California-based CPCs have nonetheless secured federal and state funds through other means.

Through state grant programs with euphemistic names like "alternatives to abortion," and under-theradar mechanisms such as "choose life" license plate programs and tobacco settlements, state CPC contracts are being secured, and renewed, with little public attention — even in the wake of investigations of potential waste and misuse of public funds, such as in Florida, <sup>153</sup> Michigan, Minnesota, <sup>154</sup> North Carolina, <sup>155</sup> Pennsylvania, and Texas, <sup>156</sup>



"While the state sends millions of dollars to crisis pregnancy centers that deliberately lie to pregnant people and stop them from accessing abortion care, abortion funds and providers have to scramble to raise money to fund essential, life-affirming reproductive health care —often in situations where CPCs have delayed someone's access to abortion and made the procedure more expensive. When CPCs lie to pregnant people about their reproductive health care options, the effects fall disproportionately on people of color and people with low incomes —following a long history of reproductive oppression against people of color. It is absolutely unacceptable and unjust for the state to fund organizations that deliberately deny people their essential rights to bodily autonomy and self-determination."

- SHALYLA WALKER, Vision Realization Advisor, Our Justice, Minnesota

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## ► Alliance Study state: Minnesota

Minnesota allocates millions of dollars annually to CPCs through its state-funded CPC program Positive Abortion Alternatives (PAA), established in 2005. Of the 90 CPCs in Minnesota, 29 (32%) receive public funding through the PAA program.

 $\label{lem:model} Minnesota policy makers have awarded public funds to CPCs for more than 15 years but have never conducted a comprehensive assessment of their services, practices, or use of taxpayer dollars.$ 

An investigation by Minnesota-based Alliance member Gender Justice found egregious examples of overfunding and inefficiency in the PAA program. For example, Gender Justice found that Elizabeth House, a CPC based in a town of approximately 2,100 residents, was awarded a PAA grant of \$75,000 per year to serve an average of 57 clients per year, with only 7% of the budget funding client services; the balance went to salaries and administrative expenses. In another example, Gender Justice discovered that one rural Minnesota CPC (Choices Pregnancy Center in Redwood Falls) received approximately \$65,000 per year to serve 20 clients or fewer per year. The services the CPC provided to those clients were primarily parenting education classes,

with attendance at the classes incentivized by rewards of parenting supplies. The line item in the CPC budget for the actual parenting supplies was only \$1,200. The 2012 grant application for this CPC revealed that the area hospital serving the same population has only 100 births per year and that the hospital already provides its own parenting education classes.

These examples of over-funding and inefficiency in Minnesota's state-funded CPC program are based on partial data. Since 2018, Gender Justice has filed requests to review documents related to the PAA program, which is public information. The Minnesota Department of Health has neither promptly nor completely responded to these requests.<sup>157</sup>

#### ► Alliance Study state: Pennsylvania

Anti-abortion lawmakers in Pennsylvania have funneled more than \$100 million since the mid-1990s into Real Alternatives (RA), a regional umbrella organization that oversees a network including 27 CPCs, which constitute just 17.9% of all CPCs in the state, as well as other programs such as maternity homes.

In 2016, the Pennsylvania Department of Human Services could not account for how RA spent public funds. <sup>158</sup> The auditor general concluded Real Alternatives inappropriately used public money intended for direct services to promote themselves in other states, a maneuver he characterized as "illegal and secretive skimming of public tax dollars." <sup>159</sup>

Headquartered in Pennsylvania, Real Alternatives launched pilot programs in Michigan and Indiana, and claims to have advised and educated anti-abortion activists how to replicate its model in Texas, Florida, Wisconsin, North Dakota, South Dakota, Louisiana, Nebraska, Ohio, and Minnesota. <sup>160</sup> In 2019, Michigan defunded Real Alternatives in the wake of a public complaint filed by watchdog group Campaign for Accountability (CfA), which alleged Real Alternatives "appear[ed] to have both misused taxpayer dollars and failed to provide adequate health services." <sup>161</sup>

In 2020, CfA filed a 27-page public complaint outlining "the ways [Real Alternatives] has failed to fulfill its duty to Pennsylvania families to provide adequate pregnancy and parenting services, while simultaneously inappropriately skimming money intended for service providers, and misappropriating public funding..." The CfA complaint details a bloated advertising budget correlated with serving fewer clients; a budget that included almost \$25,000 annually to run a hotline that received an average of 156 calls a year; public money used to fund the organization's efforts to block right-to-know records requests; and exorbitant executive salaries, among other questionable expenditures.

Pennsylvania officials re-funded Real Alternatives for FY 2021-2022. Real Alternatives also continues to operate in Indiana.

# ► Alliance Study state: California

Though California does not permit state contracts with CPCs, the Alliance Study found that nine CPCs in California have billed Medi-Cal, the state's Medicaid program, for client services for which they were reimbursed by the state. <sup>163</sup>

In sum, this Study found that states that fund CPCs show a striking and consistent lack of accountability or transparency in this expenditure of taxpayer dollars. Moreover, while state policymakers continue to divert public funds into CPCs, their failure to assess the quality and content of services CPCs offer pregnant people or the consequences of those services for the public health is a serious concern, especially in the wake of multiple investigations finding evidence of extensive misuse and waste of public funds by CPCs.



# Study Spotlight

# State-funded Harm How State-Funded CPCs Compared to CPCs Without State Funding

With two of the nine states in this Study providing state funds to support CPCs, the Alliance was able to analyze disparities in services offered by state-funded CPCs in individual states. These findings should serve as a believe there for states nationwide that are funding CPCs.

 $The Alliance \, Study \, found \, two \, significant \, disparities \, in \, services \, offered \, by \, state-funded \, CPCs; \, disparent \, constant \, disparent \, disparent \, constant \, disparent \, dispare$ 

# State-funded CPCs promoted "abortion pill reversal" more often than CPCs without state funding.

- 40.7% of state-funded CPCs in Pennsylvania promote APR compared to 30.2% of the CPCs in PA without state funding
- 31.0% of state-funded CPCs in Minnesota promote APR compared to 21.3% of the CPCs in MN without state funding

# 41% PROMOTE APR WITH STATE FUNDS (PA) PROMOTE APR WITH STATE FUNDS (MN)

# Fewer state-funded CPCs claimed to provide and refer for prenatal care than other CPCs.

- In Pennsylvania, not a single state-funded CPC provides prenatal care, compared to 1.6% of CPCs without state funding
- In Minnesota, while two of the four CPCs that provide prenatal care are PAA grantees, fewer state-funded CPCs refer clients for prenatal care (41.4%) than CPCs without state funding (47.5%)

These disparities underscore the need for a comprehensive analysis of state-funded CPCs and assessment of the maternal and public health consequences of this government investment.

# Appearing Local, Acting Global: CPCs Are Key Players in the International Anti-Abortion Movement

While individual CPCs may appear to be small, local, and independent facilities, the crisis pregnancy center industry is a sophisticated global network led by international, national, and regional anti-abortion organizations. These organizations, most of which are part of broader evangelical, Catholic, <sup>164</sup> and Christian nationalist movements, <sup>165</sup> provide extensive technical support to CPCs across the country, including digital strategy, infrastructure, and content; marketing and public relations; training and technical support.

 For more information see the Alliance Study companion resource, Global, National & Regional Anti-Abortion Organizations Supporting CPCs, at alliancestateadvocates.org/publications.

Under the direction of the major umbrella groups, CPCs are using sophisticated digital tactics, targeting clients online and on mobile phones, directing prospective clients to centralized hotlines and online chat services, and collecting and storing massive amounts of data on the reproductive and sexual histories of people, including "digital dossiers" of clients that in some cases also track their religiosity.

Crisis pregnancy centers have also adapted well-established practices to the digital age.

For example, CPCs frequently open near reproductive health clinics and use names and logos similar to nearby clinics. <sup>166</sup> The Alliance found this practice remains common: 10% of CPCs in this Study were mobile clinics, which can be positioned near abortion clinics and can directly intercept people seeking their services. All but two Study states, Idaho and Alaska, had mobile CPCs; the states with the highest presence of mobile clinics were Washington (36.4% of CPCs were mobile), New Mexico (16.1%), California (15.1%), and Montana (15.0%).



The modern CPC industry has adapted this strategy of mimicking women's health clinics in online spaces by creating websites that imitate the language on abortion clinic sites. In a recent study examining CPC website messaging and visual cues, researchers found that CPCs mirror language signaling patient-centeredness, which may convince clients they are legitimate medical establishments. The study of CPC websites in nine Southeastern states found that websites explicitly communicate that CPCs are environments of non-judgement, choice, and freedom from coercion while obfuscating their services. In tandem, they did not always state their unwillingness to support or provide abortion but described a "free and open environment" and a "full range of choices.\(^{167}

"CPCs outnumber legitimate clinics in much of the South, often infiltrating networks of medical referral and social support, while delaying desired, necessary and timely care through deceptive tactics. In the online space, CPCs are sometimes indistinguishable from legitimate clinics. This speaks to how effectively CPCs have strategized to obfuscate their true motives and penetrated the health care arena and how they are exploiting the landscape of unmet needs, especially in rural and underserved communities."

—SUBASRI NARASIMHAN, PhD, Research Assistant Professor, Rollins School of Public Health & the Center for Reproductive Health Research in the Southeast, Emory University, Georgia

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Researchers in the Southeast also found 67% of CPCs used prominently placed photos of women of color on their website, most often on their homepage. <sup>188</sup> Website and marketing images featuring models of color act as visual cues signaling that CPCs are trusted sources of information for people of color, especially Black women, advancing a long-standing CPC strategy of racial targeting. The CPC movement stepped up its racial targeting in 2003 through a Care Net/Heartbeat International-led "Urban Initiative" program focused on Black women and on opening "urban" CPCs in majority Black and minority neighborhoods. <sup>169</sup> <sup>170</sup> CPC marketing strategies targeting people of color also lend "a veneer of inclusivity to a fundamentally white

These tactics effectively confuse target clients: A recently published study found only two out of five people were able to correctly identify that CPCs did not provide abortion services after looking at their websites.  $^{172}$  People with low health literacy and lack of previous knowledge about abortion care were the least likely to be able to recognize a CPC by its website.  $^{173}$ 

Moreover, many CPCs maintain dual websites: a secular site to appeal to pregnant people, and a religious one to appeal to donors and supporters. <sup>174</sup> Heartbeat International encourages affiliates to create two websites, one that describes the anti-

abortion mission to secure donors, and one designed for people seeking medical care. 175

The modern-day CPC industry has also embraced social media to target clients. More than 90% of the CPCs examined in this Study are active on social media, especially Facebook.

Though we did not analyze the presence of CPCs on social media



apps TikTok and Snapchat in this Study, digital marketing firms such as "Choose Life Marketing," which advertises as a Google Partner and Facebook Marketing Partner, show the CPC industry is promoting tactics to target millennials and Gen Z through apps that attract younger users (e.g., Snapchat, YouTube, TikTok) and using Facebook ads to target women who use the dating app Tinder. 176

As another firm specializing in targeting young women and teens deemed "at risk" for abortion noted, CPCs can use social media to "target individuals seeking pregnancy and abortion information online" to give them "the opportunity to ... contact you first" (emphasis in original quote). 177

#### CPCs Gaming Google

Research shows that people living in areas with multiple restrictions on abortion access, or where there are fewer abortion providers, are the most likely to use the internet to search for abortion information and providers.  $^{178}$ 

CPCs spend significant sums to advertise on internet search engines. To Digital marketing firms that cater to the CPC movement emphasize that the goal is to intercept people searching for abortion care online. As one anti-abortion marketing firm advised, "How do pregnancy centers reach the abortion-minded woman before these abortion pill providers do? ... Through marketing strategies like SEO and PPC, you can rank on top of Google and reach women before abortion providers do." 180

A 2018 study of the quality of information available for people searching online for abortion information and providers found Google ads were the least likely to facilitate and the most likely to hinder self-referral for abortion. This study found that search results often led to either crisis pregnancy centers or anti-

Get To The Top of Google With These 3 SEO Tips!

With abortion minded women searching for answers online every day, search engine optimization (SEO) is necessary for an effective marketing strategy. Stand out among your competition - your local abortion clinic - and connect with the abortion-minded woman by using SEO the right way.

From blogging to optimization, a great SEO strategy helps you rank on top of Google. The more strategy you put into SEO, the better chance women have coming to your website and ultimately coming into your center.

Screenshot from Choose Life Markethia

 Screenshot from Choose Life Marketing https://www.chooselifemarketing.com/ marketing\_category/client-strategy/



abortion websites regardless of search term or search engine, and that the information quality was lowest in areas with the least access to abortion providers.  $^{181}$ 

In 2019, in response to criticism, Google enacted a new ad policy designed to require crisis pregnancy centers to be transparent online about not providing abortion care or referrals. <sup>182</sup> But loopholes remain that allow CPCs to continue posting misleading digital ads. <sup>183</sup> For example, only users who search under the term "abortion" will see the tag "Does not provide abortion" that Google now requires on CPC ads. If a user searches under other terms, like "pregnancy test," the tag does not appear. Nor does the tag appear on ads placed by the big CPC networks.

# CPCs and Mobile Geofencing

Mobile geofencing is a digital marketing strategy that enables advertisers to target people within a specific physical location to receive ads on their phone, so long as they are within the digitally defined parameter. CPCs have set up geofences around abortion clinics to reach people in the waiting room, sending ads to their phones to try to get them to go to the CPC instead. "Be creative with your geofencing," advises a CPC marketing firm. "You can set it up around high schools, universities, shopping malls, movie theaters, and abortion clinics." <sup>184</sup>

In 2017, the Massachusetts attorney general concluded that this tactic violated consumer protection laws and forced one advertising firm to cease in that state, noting that the technology can be used to "digitally harass people" and that "consumers are entitled to privacy in their medical decisions and conditions." <sup>185</sup>

#### CPCs Collect Client Data

Anti-abortion umbrella organizations use CPCs to collect and store extensive personal client data. They have leveraged content management systems, centralized hotlines and website chat services, and fertility apps<sup>186</sup> to create "digital dossiers" on every person who interacts with a CPC. Data collected includes the purpose of the client's visit, demographic data, outcomes of the visit in terms of abortion decision, and status of potential conversion to evangelical Christianity. <sup>187</sup> As discussed below, most CPCs are not subject to federal privacy laws, so the confidentiality, uses, and potential sharing of massive amounts of data about people who visit, call, chat with, or otherwise have contact with a CPC remain unclear.



# Study Spotlight

# CPCs Feed Client Information to Big Data

"One huge threat that CPCs pose, about which most people are unaware, concerns patient privacy. CPCs may pose as legitimate reproductive health clinics, but the vast majority of them provide no health care services whatsoever. Consequently, many of the legal protections against disclosure of personal health information do not apply to these so-called clinics. This enables them to collect vast amounts of personal information, which they can use to build their movement or share with others— with almost no accountability or oversight"

— KIM CLARK, Senior Attorney, Legal Voice, Washington

An in-depth investigation of CPCs by Privacy International, a UK-based organization that defends and promotes the right to privacy across the world, found that Heartbeat International (HBI) is leading the anti-abortion movement's effort to collect and store client information. The report provides a glimpse into how the CPC movement is leveraging big data, the lack of transparency regarding how the data is used and where it is shared, and the potential for privacy violations. <sup>189</sup>

Health care providers in the U.S. are subject to the Health Insurance Portability and Accountability Act (HIPAA), which requires that patient information be kept private. Because CPCs typically do not provide health care, they are not subject to the law.

According to the Privacy International report, Heartbeat International is collecting client data through a content management system called Next Level, which collects "name, address, email address, ethnicity, marital status, living arrangement, education, income source, alcohol, cigarette, and drug intake, medications and medical history, sexual transmitted disease history, name of the referring person/organisation, pregnancy symptoms, pregnancy history, medical testing information, and eventually even ultrasound photos." <sup>189</sup>

Heartbeat International promotes Next Level by assuring CPC administrators, "You're part of a global mission and you know it."  $^{190}$  While HBI claims they employ "the necessary" HIPAA protections on their website, Privacy International notes "Next Level's privacy policy states that the company 'may share such information with Next Level affiliates, partners, vendors, or contract organizations."  $^{191}$ 

HBI also collects client data through the online chat service Option Line and its "abortion pill reversal" hotline. As Privacy International noted: "The Option Line chat interface requires visitors to enter their name, demographic information, location information, as well as if someone is considering an abortion. Only after submitting this personal information does the chat begin. It is unclear where the data submitted prior to the chat beginning, as well as the data generated during the chat, ends up, and who has access to it." 192

Privacy International notes that Option Line's terms of service state that client information can be used "for any and all purposes [believed to be] appropriate to the mission and vision of Option Line."



The CPC industry's extensive use of sophisticated digital strategies to collect and mine client data is deeply concerning, especially as the Texas six-week abortion ban that went into effect on September 1, 2021 allows private citizens to sue anyone who "aids or abets" a friend, family member, loved one, or stranger to obtain a banned abortion and receive at least \$10,000 in compensation. CPCs are now positioned to surveil pregnant people and feed their data to vigilante anti-abortion bounty hunters anywhere in the country.

# State Policy Recommendations

"Our policy recommendations include mechanisms to hold CPCs accountable for how they treat pregnant people and promote transparency regarding how they spend public money. But we also urgently need policies that promote equitable access to evidence-based reproductive health care and enable economic security. The scarcity of access to legitimate health care, combined with widespread financial insecurity, is the context that makes people vulnerable to CPCs."

—AMAL BASS, Director of Policy & Advocacy, Women's Law Project , Pennsylvania

Crisis pregnancy centers both exploit and perpetuate inequities in access to health care and safety-net systems. While the policy recommendations below are not comprehensive, they include ways to hold CPCs accountable for the quality of their services and their use of public funds. We also offer broader policy approaches to increase equitable access to evidence-based reproductive health care. The applicability of these recommendations will vary from state to state and locality to locality, depending on local circumstances, political landscape, existing law, demographics, and specific needs of people of reproductive age in each jurisdiction.

State policymaking will be informed by court rulings, including NIFLA v. Becerra,  $^{193}$  a First Amendment case in which the U.S. Supreme Court struck down a California law requiring facilities that provide pregnancy-related services to publicize certain notices about reproductive health services provided by the state.  $^{194}$  Since that ruling, local and state jurisdictions have passed laws prohibiting false or misleading advertising by CPCs that are designed to withstand a First Amendment challenge.  $^{195}$ 

 $\blacktriangleright \ \ {\sf See} \ the \ following \ {\sf State} \ {\sf Pages} \ for \ specific \ recommendations \ for \ Alliance \ {\sf Study} \ states.$ 

# **Protect Clients & Patients**

- Pass state and municipal laws, within constitutional limits, requiring CPCs to disclose which services they do and do not provide.
- Amend state consumer protection laws that apply only to for-profit and/or commercial transactions so they apply to providers of free pregnancyrelated services
- Repeal laws that mandate doctors give medically inaccurate and biased information to patients, including false claims of links between abortion and infertility and breast cancer.
- Encourage state attorneys general to investigate and hold accountable CPCs that use geofencing and other patient-targeting tactics.
- Ensure that state agencies publishing information for people seeking abortion, family planning, and other reproductive health services provide medically accurate information.
- CPCs often provide inaccurate health information and attempt to thwart the use of safe, acceptable, desired health care services, particularly contraception and abortion. CPC practices and services do not align with a public health approach and are inconsistent with recommendations of professional medical organizations and medical and ethical standards of care. Government-funded health programs have a responsibility to protect and promote health and provide accurate information. [We] support regulation and action to address CPCs' lack of adherence to medical and ethical practice standards and prevent potential harms caused by CPC services and practices.<sup>577</sup>
- JOINT POSITION STATEMENT from the Society for Adolescent Health and Medicine and the North American Society for Pediatric and Adolescent Gynecology, December 2019
- Ensure that public schools do not engage CPCs or other entities that fail to provide comprehensive, age-appropriate, evidence-based information to teach sexuality education, classes, or curricula.
- Prohibit administration of and referral for "abortion pill reversal" (APR), including through:
  - Professional licensing regulations;
  - Enforcement of laws prohibiting the practice of medicine without a license;
  - $\bullet \ \, {\sf State \, laws \, prohibiting \, the \, practice \, of \, APR, \, perhaps \, modeled \, on \, conversion \, the rapy \, bans;}$
  - $\bullet$  Barring APR provision, referral, or promotion by programs that receive public funds.
- To protect confidential client information, pass laws that:
  - Define what should be held confidential, e.g., name, address, phone, purpose of visit;
  - Extend HIPAA-like protections to people served by nonprofits providing pregnancy-related services;
  - Require providers of pregnancy-related services not covered by HIPAA or other privacy laws to inform clients of their privacy policy, whether and how they aggregate personal information, and how they use personal information.

# Promote Transparency, Best Practices Regarding Public Funding

- Do not fund CPCs with taxpayer dollars.
- Prohibit diversion of TANF and other social safety-net funds to CPCs.
- Require any program receiving taxpayer funds earmarked for pregnancy-related services to:
  - Provide or make referrals to providers of comprehensive reproductive health services;
  - Publish an annual public report on the use of public grants and contract funds.
- Institute oversight mechanisms, such as public audits, for publicly funded CPCs.
- Establish a CPC hotline, similar to fraud lines, for reporting:
  - Harassment of patients;
  - Dissemination of private information;
  - Personal experiences at CPCs;
  - Disinformation found on CPC websites;
  - Deceptive advertising about services offered;
  - CPCs that provide "abstinence" education in public schools.

From a public health standpoint, these centers endanger women by misinterpreting and misrepresenting medical evidence. States implicitly endorse these centers when they provide support for them ... Honest information about the perspective from which they dispense advice and support, in addition to forthright acknowledgement of their limitations, is essential for these centers to provide an ethical service to women. For no other medical procedure would someone who is not a health care professional seek to give detailed counseling on the risks of the procedure... Until Laxpayers can be assured that these centers conform to ethical standards of licensed medical facilities, offer sound medical advice, and do not lead to harm, states should refrain from directly or indirectly funding

—AMA Journal of Ethics, March 2018



# Address the Maternal & Reproductive Health Care Gaps Exploited by CPCs

Pregnancy centers are not isolated aberrations in a well-functioning health care system but expected outcomes of critical absences in reproductive health care and severe economic inequality in the United States. Most clients are low-income and under-insured ... Centers may entrench existing health inequalities by limiting the range of reproductive-health options available to marginalized women. In refusing to refer for contraception or abortion, pregnancy centers may delay clients in accessing desired services, ladening these actions with misinformation, morality, and trauma.<sup>198</sup>

**—KENDRA HUTCHENS,** University of Colorado-Boulder, April 2021



- $\bullet$  Establish and publicly fund diaper bank and diaper subsidy programs through legislation.
- $\bullet \ \, \text{Eliminate pregnancy test requirements of applicants for Medicaid or other state services}.$
- $\bullet \ \, \text{Encourage states to offer reliable, free pregnancy tests and pregnancy confirmation letters.} \\$
- Pass laws mandating evidence-based, age-appropriate K-12 sexuality education.
- $\bullet$  Pass contraceptive equity laws that require insurers to cover all methods of contraception without co-pays.

# Eliminate Obstacles to Health Care for Pregnant & Parenting People

These centers should not be seen as part of a reliable system of care and support. Health departments and social services programs are more appropriate sources of this care — and many already offer support for low-income pregnant women, through social workers, pregnancy classes, health care worker home visits, and in-patient therapy. [Research] findings, however, suggest that pregnant women's needs are not being met or, at the least, that some women lack awareness of these resources and how to access them. 150

—KATRINA KIMPORT, University of California, San Francisco, February 2020



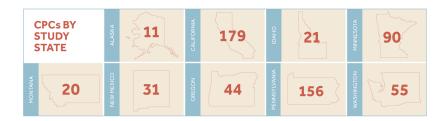
- $\bullet$  Extend postpartum coverage under Medicaid from 60 days to one year.
- $\, \bullet \,$  Expand insurance coverage for full-spectrum doula services.
- Allow birth centers to offer abortion care.
- Expand insurance coverage for pregnant and postpartum people with substance use disorders.
- Make health insurance enrollment and coverage more accessible and comprehensible; eliminate burdensome requirements.
- Measure maternal mortality and morbidity and racial disparities, enact state-specific recommendations
  to improve maternal health outcomes, and measure progress in a comprehensive, systematic fashion that
  can be measured across state lines.
- Incentivize medical and nursing schools to provide anti-racism and cultural competency training;
   provide Continuing Medical Education and Continuing Nursing Education credits for this training.
- Pass comprehensive health care reform or public option health insurance laws at the state level.

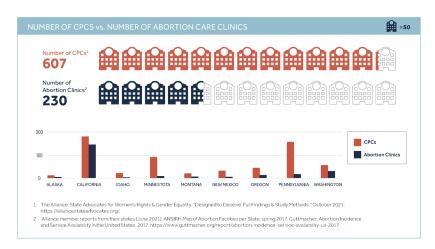
# State Findings

ALASKA
CALIFORNIA
IDAHO
MINNESOTA
MONTANA
NEW MEXICO
OREGON
PENNSYLVANIA
WASHINGTON

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# CPCs Outnumber Abortion Clinics in All Nine Study States





# Alaska

- ► The Alliance Study identified **11 crisis pregnancy centers** in Alaska.
- ➤ There are currently 4 abortion care clinics left in the state.

IN ALASKA, CPCs OUTNUMBER
ABORTION CARE CLINICS BY MORE THAN



Over half (54%) of CPCs in Alaska are affiliated with a U.S.-based evangelical anti-abortion organization called Care Net. Another 45% are affiliated with Heartbeat International, an anti-abortion organization with strong ties to members of the former Trump administration

#### Most Common Services Offered by CPCs in Alaska

The services Alaska CPCs provide pregnant people are similar to those that CPCs provide in other states. Their most common services are pregnancy testing (90.9%), "support" or "counseling" (90.9%), free/earned infant and maternity goods (81.8%), and "non-diagnostic" ultrasounds (36.4%).



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"NON-DIAGNOSTIC" ULTRASOUNDS OFFERED BY OVER 1/3 OF ALASKA CPCS ARE NOT RECOGNIZED BY MEDICAL PROFESSIONALS AS A MEDICAL SERVICE.

Also known as "keepsake" or "souvenir" ultrasounds, they cannot determine gestational age, study placenta or amniotic fluid, or detect fetal abnormality, ectopic pregnancy, or fetal distress. It is unclear whether those performing CPC ultrasounds are trained to do so or to recognize any issues with a pregnancy. This CPC practice offers no medical benefit to the pregnant person or fetus, but may give pregnant people a false sense of security, and delay their search for legitimate prenatal care.

# CPCs in Alaska Promote False & Biased Medical Claims

Almost all CPCs in Alaska (90.9%) promote false and/or biased medical claims. The Alliance Study defined as false or biased any medical claim that is untrue or unsubstantiated, that misstated or selectively cited factual information, or that used gratuitous or graphic language instead of clinical terms. Many CPCs falsely claim that abortions can lead to "increased promiscuity" and other psychological issues and that abortion increases the risk of breast cancer and infertility. Many make false claims about the safety and efficacy of medication abortion. Some provide false information about how late into a pregnancy medication abortion can be administered.

**CPCs in Alaska also make deceptive and misleading claims on their websites,** including that they have no agenda and provide full and unbiased information to support a pregnant person's choice:



If you're experiencing an unwanted pregnancy, we're here to help. Because we do not perform or refer for abortions or make money from any choice you make, there is no pressure - we inform. YOU decide.

Screenshots from The Water's Edge CPC, Homer, Alaska, http://the-waters-edge.org/pregnancy-and-beyond.html

The message on the homepage of the Water's Edge CPC in Homer, Alaska is directly contradicted by language throughout the website that clearly seeks to dissuade pregnant people from choosing abortion. This deceptive claim to be unbiased because their services are free, their appropriation of the language of choice, and their vilification of abortion providers as profit-driven exploiters of pregnant people are among the misleading messaging seen on many CPC websites.

# CPCs in Alaska Promote "Abortion Pill Reversal"

Over 9% of CPCs in Alaska promote a high-progesterone intervention the anti-abortion movement calls "abortion pill reversal" (APR). The claim behind APR is that a medication abortion can be reversed after the process has begun, junk science that is opposed by medical experts and harmful to the health of pregnant people. This roque practice has been called "unproven and experimental" in The New England Journal of Medicine because neither the safety nor effectiveness of APR has been proven in clinic trials. As the American College of Obstetricians and Gynecologists concluded, APR is "unethical" and "not based on science."

# Most CPCs in Alaska Do Not Provide Medical Services

No CPCs in Alaska offer contraception. Most Alaska CPCs offer no STI-related services (72.7%), no well-person care (100%) or referrals (90.9%), and no prenatal care (90.9%) or prenatal care referrals (63.6%). None of the CPCs affiliated with the antiabortion group Heartbeat International offers prenatal care.







# CPCs in Alaska Lack Licensed Medical Professionals

While many CPCs present as a medical office, only three of the 11 CPCs in Alaska (27%) indicate that they have a licensed medical professional affiliated with their staff.

That these so-called clinics offer no prenatal care to their pregnant clients is deeply concerning given the well-documented correlation between a lack of prenatal care and maternal mortality. Pregnant people who do not receive prenatal care are five times more likely to have a pregnancy-related death than those who do receive prenatal care.

#### CPCs & the Maternal Mortality Crisis in Alaska

Since most of the CPCs in Alaska offer free pregnancy confirmation services but no prenatal care, while promoting false and biased medical claims, they may actually obstruct pregnant people's timely access to health care at a time when the state and country are suffering a crisis of maternal mortality, driven by radical racial inequities in prenatal care, misdiagnosis, and missed warning signs.

The implications of these CPC practices are of particular concern for Native Americans and Alaska Natives, who make up just 2% of the total U.S. population but account for the second-highest number of maternal deaths in the country. Native Americans and Alaskan Natives are approximately 3.3 and 2.5 times more likely, respectively, to die while pregnant or as new mothers than white women are.

From 2009-2018, Alaska reported an overall maternal mortality rate of 8.3 per 10,000 live births, but the rate among Alaska Natives was much higher than any other population in the state. By race, the white (non-Hispanic) death rate was 3.7 per 10,000 live births, the Asian and Pacific Islander death rate was 8.0, while the Alaska Native maternal death rate soared to 19.2 per 10,000 (n= 55) live births.

# Recommendations

The Alaska Legislature should pass laws to ensure access to medically accurate, age-appropriate, comprehensive sexual health education for all public school students, and comprehensive reproductive health care, including a full range of contraceptive options, for all Alaskans.

# California

➤ The Alliance Study identified 179 crisis pregnancy centers in California. The number of CPCs in California is 20% higher than the number of abortion care clinics (179 to 144).

#### CPCs in California Get Public Funding

Unlike some other states in the Alliance Study, California does not permit state contracts with CPCs. But some CPCs in California still receive state funding, and some secured new federal funding during the Trump administration.

In 2019 the California-based Obria CPC network was awarded funding under Title X, a federal program to fund family planning services for low-income people, despite the fact that Obria clinics do not dispense contraception. Obria distributed Title X dollars to 15 CPCs in its California network before withdrawing from the Title X program in April 2021. In addition, nine CPCs in California are documented as billing California's Medicaid system, Medi-Cal, for services provided, and receiving reimbursement through the state.

#### Most Common Services Offered by CPCs in California

The services provided by California's CPCs align with data from other Study states. Most common services are pregnancy testing (90.5%), free/earned infant and maternity goods (83.2%), lay counseling (82.1%), and "non-diagnostic" ultrasounds (58.1%).



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"NON-DIAGNOSTIC" ULTRASOUNDS OFFERED BY OVER 1/2 OF CALIFORNIA CPCS ARE NOT RECOGNIZED BY MEDICAL PROFESSIONALS AS A MEDICAL SERVICE.

Also known as "keepsake" or "souvenir" ultrasounds, they cannot determine gestational age, study placenta or amniotic fluid, or detect fetal abnormality, ectopic pregnancy, or fetal distress. It is unclear whether those performing CPC ultrasounds are trained to do so or to recognize any issues with a pregnancy. This CPC practice offers no medical benefit to the pregnant person or fetus, but may give pregnant people a false sense of security, and delay their search for legitimate prenatal care.

#### CPCs in California Promote False & Biased Medical Claims

The majority of CPCs in California (65.9%) make false or biased medical claims, especially about pregnancy and abortion. The Alliance Study defined as false or biased any medical claim that is untrue or unsubstantiated, misstated or selectively cited to factual information, or used gratuitous or graphic language instead of clinical terms. The proportion of California

CPCs making false claims about abortion is higher (43.6%) than the average across all Study states (31.8%). Examples of false CPC claims include that abortion is associated with pre-term birth and can lead to "increased promiscuity," and that women suffer guilt, depression, and risk of substance abuse from "post abortion syndrome."

CPCs in California also make deceptive and misleading claims on their websites, including that abortion providers are profit-driven exploiters of pregnant people, that CPCs provide unbiased services because their services are free, and that CPCs provide full information to support a pregnant person's choice; some deceptively use "choice" or "options" in their names.

Post-Abortion syndrome (PAS) is what some women experience following an abortion. While some can experience relief right after their abortion, emotions can "tach by" with them months or even years later. Many express that they wish they could go back and "undo" the abortion. Some typical symptoms include guilt, enables, depression, broughts of suicide, re-experiencing the abortion, fear of not being able to get pregnant again, survival guilt, eating disorders, alcohol or drug abuse. Click here to read about her abortion experience. Abortion isn't an "easy" solution by any means. If you are considering an abortion, please take the time to research all your options, visiting the control of the properties.

Screenshot from Confidence Pregnancy Center in Salinas, California: https://pregnancysalinas.com/faqs

IN CALIFORNIA, CPCs (SHOWN ON THE MAP BELOW) OUTNUMBER ABORTION CARE CLINICS BY



#### CPCs in California Promote "Abortion Pill Reversal"

Close to 40% of CPCs in California promote "abortion pill reversal" (APR), the injecting or prescribing of high-dose progesterone for pregnant people who have taken the first medicine in the two-step protocol for medication abortion. The claim behind APR is that a medication abortion can be reversed—junk science that is opposed by medical experts and harmful to pregnant people. The American College of Obstetricians and Gynecologists calls APR "unethical" and "not based on science." This rogue practice has been called "unproven and experimental" in The New England Journal of Medicine because neither the safety nor effectiveness of APR has been proven in clinic trials.





CPCs that promote "abortion pill reversal" refer clients to this website run by global antiabortion group Heartbeat International (HBI). As you can see, CPCs advertise APR with marketing that suggests it is a legitimate medical service, though all recognized medical experts oppose the practice as untested and unethical. Almost 40% of California CPCs promote this unregulated experimentation on pregnant people.

#### Most CPCs in California Do Not Provide Medical Care

Only about 10% of California-based CPCs provide prenatal care, and only one of the 179 CPCs in California provides contraceptive care. Twenty CPCs (11.2%) promote "fertility awareness" or "abstinence only" programming. The majority of California CPCs offer no STI-related services (69.8%), no well-person care (89.9%), and no prenatal care (89.9%) or prenatal care referrals (52.5%).

IN CA:





# CPCs in California Lack Licensed Medical Professionals

While many CPCs present themselves as medical offices, only one-quarter (25.1%) of California CPCs indicate they have a physician and only one-third (32.4%) indicate they have a registered nurse affiliated with their staff.

# CPCs & the Maternal Mortality Crisis in California

Overall, California has been a leader in reducing maternal mortality. In 2018, California had one of the lowest maternal mortality rates in the country at 4 out of 100,000 live births, which was nearly half the 2013 rate of 7.3 per live births. However, maternal mortality continues to disproportionately affect Black mothers in California, who had a mortality rate of 26.4 out of 100,000 live births between 2011 and 2013—nearly four times the state's average. California must continue to address persistent racial disparities by investing in policy and programmatic solutions. CPC volunteers and staff without medical training who give pregnant people false and deceptive information directly undermine California's ability to reduce maternal mortality rates.

# Recommendations

The California Legislature and state agencies should seek to prohibit CPCs from stating or disseminating false or deceptive information about pregnancy-related services and prohibit the administration of, and referral for, "abortion pill reversal." The Legislature should also consider amending the state consumer protection statute to apply to providers of pregnancy-related services without regard to payment and explore the possibility of barring any state funding going to CPCs.

# Idaho

- ► The Alliance Study identified 21 crisis pregnancy centers in Idaho
- There are currently 3 abortion care clinics left in the state.







Almost one-third (29%) of Idaho-based CPCs are affiliated with Heartbeat International, a global anti-abortion organization with strong ties to members of the former Trump administration. Almost one-quarter (23%) of Idaho CPCs are affiliated with a U.S.-based evangelical anti-abortion organization called Care Net, and 14% are affiliated with a Canada-based anti-abortion network called Birthright International.

# Most Common Services Offered by CPCs in Idaho

The services Idaho CPCs provide are similar to those offered by CPCs in other Alliance Study states. The most common services are support or counseling (100%), pregnancy testing [95.2%), free/earned goods (85.7%), and "non-diagnostic" ultrasounds (71.4%).



"NON-DIAGNOSTIC" ULTRASOUNDS OFFERED BY ALMOST 3/4 OF IDAHO CPCS
ARE NOT RECOGNIZED BY MEDICAL PROFESSIONALS AS A MEDICAL SERVICE.

Also known as "keepsake" or "souvenir" ultrasounds, they cannot determine gestational age, study placenta or amniotic fluid, or detect fetal abnormality, ectopic pregnancy, or fetal distress. It is unclear whether those performing CPC ultrasounds are trained to do so or to recognize any issues with a pregnancy. This CPC practice offers no medical benefit to the pregnant person or fetus, but may give pregnant people a false sense of security, and delay their search for legitimate prenatal care.

#### CPCs in Idaho Promote False & Biased Medical Claims

The majority of CPCs in Idaho (76.2%) make false and/or biased claims about reproductive health care and abortion. The Alliance Study defined as false or biased any medical claim that is untrue or unsubstantiated, that misstated or selectively cited to factual information, or that used gratuitous or graphic language instead of clinical terms. For example, some CPCs falsely claim that abortions can lead to "increased promiscuity" and increase the risk of breast cancer and infertility.

CPCs in Idaho also make deceptive and misleading claims on their websites, including that they have no agenda because their services are free, and that they provide full and unbiased information to support a pregnant person's choice. Almost half (10) of the CPCs in Idaho deceptively use the word "choice" in their name. This CPC in Lewiston makes misleading claims that lead pregnant people repeatedly to provide their contact information.

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#### CPCs in Idaho Promote "Abortion Pill Reversal"

Over half (57%) of CPCs in Idaho promote "abortion pill reversal" (APR), the unrecognized practice of injecting or prescribing high-dose progesterone for pregnant people who have taken the first medicine in the two-step protocol for medication abortion in an attempt to stop ("reverse") the abortion. The American College of Obstetricians and Gynecologists calls APR "unethical" and "not based on science." This rogue practice has been called "unproven and experimental" in The New England Journal of Medicine. Neither the safety nor effectiveness of APR has been proven in clinic trials.



CPCs in Idaho promote unethical APR experimentation on vulnerable pregnant people in collusion with the Idaho state government. The Idaho Department of Health and Welfare promotes a list of CPCs that engage in APR and requires abortion providers to give materials to patients about "reversal of a chemical abortion." ("Chemical abortion" is what the anti-abortion movement calls medication abortion.)

#### Most CPCs in Idaho Do Not Provide Medical Services

No CPCs in Idaho offer information about contraception. Most Idaho CPCs offer no STI-related services (66.7%), no well-person care (90.5%) or referrals (85.7%), and no prenatal care (100%) or referrals (47.6%). None of the Idaho CPCs affiliated with the global anti-abortion group Heartbeat International provides prenatal care.

#### CPCs in Idaho Lack Licensed Medical Professionals

While many CPCs present as medical offices, fewer than one-quarter (23.8%) of Idaho CPCs indicate they have a registered nurse and only one-seventh (14.3%) say they have a licensed physician affiliated with the staff. This Boise CPC's mention of "lab-quality" tests signals that it is a medical facility, which it is not:

You will be offered a **FREE** lab-quality, urine pregnancy test with quick results.

Screenshot from Treasure Valley Path Pregnancy Clinic, Boise, Idaho https:// www.treasurevalleypath.org/new-page-1

# CPCs & Maternal Mortality in Idaho

Idaho's Department of Health and Welfare Maternal Mortality Review Committee reported 10 maternal mortality deaths (defined as death while pregnant or up to a year after pregnancy) in its 2018 annual report, and noted that all 10 deaths were preventable. Half of Idaho women who died did not enter prenatal care in the first trimester. When CPC volunteers and staff without medical training spread false and deceptive information that causes pregnant people to delay or forego seeking medical care, they directly undermine the state's efforts to reduce the rate of maternal mortality. The fact that the state of Idaho specifically refers pregnant people to organizations that offer no prenatal care is especially problematic given the well-documented correlation between a lack of prenatal care and maternal mortality. Women receiving no prenatal care are five times more likely to die of pregnancy-related causes.

#### Recommendations

Idaho policymakers should require all public schools to provide medically accurate, age-appropriate, comprehensive sexual health education; and expand access to comprehensive reproductive health care, including a full range of contraceptive options, for all Idahoans. Instead of referring pregnant people to CPCs, the state of Idaho should follow the recommendations of its own Maternal Mortality Review Committee to expand insurance coverage for pregnant and postpartum women with substance abuse disorders and to expand Medicaid coverage for pregnant people to 12 months postpartum, regardless of pregnancy outcome.

# Minnesota

- ► The Alliance Study identified
  90 crisis pregnancy centers
  in Minnesota
- ➤ There are currently 8 abortion care clinics left in the state. Five of the abortion clinics are in the Twin Cities metro; one mobile clinic serves most rural regions of the state.

IN MINNESOTA, CPCs
OUTNUMBER ABORTION
CARE CLINICS BY



# Minnesota Taxpayers are Funding Questionable Practices & Wasteful Spending by CPCs

The Minnesota Positive Abortion Alternatives (PAA) statute was passed in 2005. It claims to promote healthy pregnancy outcomes but expressly requires grantees to encourage women to carry their pregnancies to term. Grantees, many of which are CPCs, must not refer to, discuss, or offer abortion services. As of 2021, this state program awards \$3,357 million per year to anti-abortion groups.

A Gender Justice investigation of the PAA program found egregious examples of over-funding some CPCs, inefficient expenditure of public funds, an unclear selection process for grant distribution, and questionable utilization of public funds by some grantees. One approved applicant for a \$75,000 grant allocated only 7% of its budget to services for pregnant people and 93% for "salary, utilities, expenses, and office supplies."

Gender Justice found that Choices Pregnancy Center in Redwood Falls serves fewer than 20 clients per year and receives approximately \$65,000 per year under its state grant. The group's primary service is parenting classes, which are also offered by the local hospital. At a minimum cost to the taxpayer of \$3250 per client, why is such a large grant necessary for this CPC to offer parenting classes already available in the community?

# Most Common Services Offered by CPCs in Minnesota

The most common CPC services are free/earned maternity or baby goods (96%), support or counseling (90%), pregnancy testing (89%), and "non-diagnostic" ultrasounds (49%).



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"NON-DIAGNOSTIC" ULTRASOUNDS OFFERED BY ALMOST 1/2 OF MINNESOTA CPCS ARE NOT RECOGNIZED BY MEDICAL PROFESSIONALS AS A MEDICAL SERVICE.

Also known as "keepsake" or "souvenir" ultrasounds, they cannot determine gestational age, study placenta or amniotic fluid, or detect fetal abnormality, ectopic pregnancy, or fetal distress. It is unclear whether those performing CPC ultrasounds are trained to do so or to recognize any issues with a pregnancy. This CPC practice offers no medical benefit to the pregnant person or fetus, but may give pregnant people a false sense of security, and delay their search for legitimate prenatal care.

## CPCs in Minnesota Promote False & Biased Medical Claims

Over 63% of the CPCs in Minnesota make false and biased claims, and blatantly false statements about abortion at

almost double the rate of CPCs in other states in the Alliance Study. The Study defined as false or biased any medical claim that is untrue or unsubstantiated, misstated or selectively cited to factual information, or used gratuitous or graphic language instead of clinical terms. Nearly 57% of the Minnesota CPCs make false statements about abortion; 13 receive taxpayer funding through the PAA statute. Minnesota CPCs also make deceptive and misleading claims, including that they have no agenda because their services are free.

Screenshot from Cholces Pregnancy Center, Redwood Falls, Minnesota this Help: Manual Program of the Service of

Many Minnesota CPCs deceptively claim to provide full and unbiased information to support a pregnant person's choice. Such false claims are typical of the CPC industry's messaging, in which they appropriate the language of choice, claim to be unbiased because their services are free, and villify abortion providers as profit-driven exploiters of pregnant people. The state-funded CPC on the previous page uses website language that is doubly misleading; their state Positive Alternatives funding expressly prohibits this CPC from using grant funds "to encourage or affirmatively counsel a woman to have an abortion."

PAA statute

#### CPCs in Minnesota Promote "Abortion Pill Reversal"

Twenty-two CPCs in Minnesota (29%) promote "abortion pill reversal" (APR). APR is the unrecognized practice of injecting or prescribing high-dose progesterone for pregnant people who have taken the first medicine in the two-step protocol for medication a bortion in an attempt to stop ("reverse") the abortion. The American College of Obstetricians and Gynecologists calls APR "unethical" and "not based on science." This rogue practice has been called "unproven and experimental" in The New England Journal of Medicine because neither the safety nor effectiveness of APR has been proven in clinic trials.

Nine of the CPCs promoting this rogue high progesterone "abortion pill reversal" intervention receive state funding through the Minnesota PAA. Eight of these CPCs have a social media presence and disseminate this disinformation well beyond their physical location.

Pregnant people deserve real choices and access to real medical care. It is disappointing that Minnesota focuses its resources on patronizing and coercive options when we should be investing in families and working to address maternal mortality and rural health

- CHRISTY HALL, Senior Staff Attorney, Gender Justice

#### Most CPCs in Minnesota Do Not Provide Medical Services

None of the CPCs in Minnesota offer contraception. Most provide no STI-related services (54.4%), no well-person care (97.8%) or referrals (60.0%), and no prenatal care (95.6%) or prenatal care referrals (54.4%). State-funded CPCs offer prenatal or wellness care referrals at an even lower rate: 57% provide no prenatal care referrals; 62% provide no wellness care referrals.

#### CPCs in Minnesota Lack Licensed Medical Professionals

While many CPCs present as medical offices, only 9% of Minnesota CPCs claim to have a physician and only 20% indicate they have a registered nurse on staff. Research and reporting on licensed medical professionals at CPCs indicate that most are engaged part-time and/or as volunteers and are licensed, in some cases, in unrelated specialties. At least one Minnesota CPC's medical professional on staff is an optometrist.

#### CPCs & the Maternal Mortality Crisis in Minnesota

Preliminary data on maternal mortality in Minnesota (2011-2017) shows that non-Hispanic Black women suffer maternal mortality at a rate 2.3 times

higher than white mothers, and that the rate among Native Americans is approximately four times higher than that for white residents. The correlation between lack of prenatal care and maternal mortality is well documented, so the failure of Minnesota CPCs to provide prenatal or wellness care to pregnant clients, while offering non-diagnostic ultrasounds by staff or volunteers unqualified to identify medical conditions that could affect a pregnancy, is a grave concern, especially amid a maternal mortality crisis driven by radical racial inequities in prenatal care, misdiagnosis, and missed warning signs.

#### Recommendations

Minnesota policymakers should repeal the PAA statute and redistribute taxpayer-funded grant money to health care and direct service providers offering evidence-based health care and non-judgmental support for low-income pregnant people; repeal "informed consent" legislation that mandates doctors tell patients inaccurate medical claims linking abortion to infertility and breast cancer; and eliminate the 2-parent notification requirement for minors seeking abortion care.

#### Montana

### IN MONTANA, CPCs OUTNUMBER ABORTION CARE CLINICS BY

- ▶ The Alliance Study identified **20 crisis pregnancy centers** in Montana.
- ▶ There are currently 6 abortion care clinics left in the state.

A full 35% of Montana CPCs are affiliated with a U.S.-based evangelical, antiabortion organization called Care Net. Another 20% are affiliated with Heartbeat International, an international anti-abortion organization with strong ties to members of the former Trump administration.

#### Most Common Services Offered By CPCs In Montana

The services Montana CPCs most often provide, as in other Alliance Study states, are free/earned goods (95%), support or counseling (95%), pregnancy testing (85%), and "non-diagnostic" ultrasounds (60%).





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"NON-DIAGNOSTIC" ULTRASOUNDS OFFERED BY OVER 1/2 OF MONTANA CPCS ARE NOT RECOGNIZED BY MEDICAL PROFESSIONALS AS A MEDICAL SERVICE.

Also known as "keepsake" or "souvenir" ultrasounds, they cannot determine gestational age, study placenta or amniotic fluid, or detect fetal abnormality, ectopic pregnancy, or fetal distress. It is unclear whether those performing CPC ultrasounds are trained to do so or to recognize any issues with a pregnancy. This CPC practice offers no medical benefit to the pregnant person or fetus, but may give pregnant people a false sense of security, and delay their search for legitimate prenatal care.

#### CPCs in Montana Promote False & Biased Medical Claims

The majority of CPCs in Montana (75%) make false and/or biased claims about pregnancy and abortion on their websites and social media. The Alliance Study defined as false or biased any medical claim that is untrue or unsubstantiated, that misstated or selectively cited to factual information, or that used gratuitous or graphic language instead of clinical terms. This Care Net CPC in Missoula promotes many patently false and exaggerated claims about the risks of abortion commonly made by CPCs:



Montana CPCs also make deceptive and misleading claims on their websites, including that they have no agenda and provide full and unbiased information to support a pregnant person's choice. Some CPCs in Montana deceptively use the word "choice" or "options" in their name. This CPC in Billings claims to empower women with abortion information but the only abortion-related services it provides are "abortion recovery" and "abortion pill reversal."



#### CPCs in Montana Promote "Abortion Pill Reversal"

A full 40% of Montana CPCs promote "abortion pill reversal" (APR), the unrecognized practice of injecting or prescribing high-dose progesterone for pregnant people who have taken the first medicine in the two-step protocol for medication abortion in an attempt to stop ("reverse") the abortion. The American College of Obstetricians and Gynecologists calls APR "unethical" and "not based on science." This rogue practice has been called "unproven and experimental" in The New England Journal of Medicine because neither the safety nor effectiveness of APR has been proven in clinic trials.

Abortion pill reversal is listed atop the services offered by the La Vie CPC in Billings, whose website links directly to the APR website run by global anti-abortion group Heartbeat International:

#### Most CPCs in Montana Do Not Provide Medical Services

No CPCs in Montana offer contraception. Most Montana CPCs offer no prenatal care (90%) or referrals (80%), no STI-related services (55%), and no well-person care (80%) or referrals (60%). None of the Montana CPCs affiliated with the global anti-abortion group Heartbeat International provides prenatal care.







Abortion Pill

Reversal

#### CPCs in Montana Lack Licensed Medical Professionals

While many CPCs present as a medical office, only half (50%) of Montana CPCs say they have a registered nurse and less than one-third (30%) say they have a physician on staff.

#### CPCs & the Maternal Mortality Crisis in Montana

Over a 10-year period, Montana's maternal mortality ratio was similar to the national average, at 13.7 deaths per 100,000, and the federal Centers for Disease Control and Prevention reports that 60% of pregnancy-related deaths were preventable. The correlation between a lack of prenatal care and maternal mortality is well-documented. Women who do not receive prenatal care are five times more likely to have a pregnancy-related death than women who do and the CDC finds that 25% of women in the U.S. received fewer than the recommended number of prenatal visits.

When CPC volunteers and staff without medical training spread false and deceptive information that causes pregnant people to delay or forego seeking prenatal care from legitimate health care providers, they put the lives of pregnant people at risk. Moreover, the failure of most Montana CPCs to provide prenatal or wellness care to pregnant clients, while offering non-diagnostic ultrasounds by staff or volunteers unqualified to identify medical conditions that could affect a pregnancy, is a grave concern, especially amid a maternal mortality crisis in the U.S. driven by inadequate and unequal access to prenatal care; misdiagnosis; and missed warning signs.

#### Recommendations

Montana policymakers should require all public schools to provide medically accurate, age-appropriate, comprehensive sexual health education and pass policies to increase access to comprehensive reproductive health care, including a full range of contraceptive options, for all Montanans.

#### New Mexico

- ► The Alliance Study identified **31 crisis** pregnancy centers in New Mexico.
- ➤ There are currently 5 abortion care clinics left in the state.

IN NEW MEXICO, CPCs OUTNUMBER ABORTION CARE CLINICS BY

6.2:1



Over one-third (38%) of CPCs in New Mexico are run by a national evangelical Christian anti-abortion organization called Care Net and another third (38%) are run by the global anti-abortion network Heartbeat International.

#### Most Common Services Offered by CPCs in New Mexico

The most common services offered by CPCS in New Mexico are free/earned goods (87%), pregnancy testing (87.1%) and non-diagnostic ultrasounds (48.4%). Many CPCs providing pregnancy testing offer a urine test available over the counter to pregnant people at any drugstore. The provision of "non-diagnostic" ultrasounds, which is condemned by the American Institute of Ultrasound in Medicine, is especially concerning in CPC settings that are designed to look like medical clinics. The pretense of medical legitimacy at CPCs could be deadly.



"NON-DIAGNOSTIC" ULTRASOUNDS OFFERED BY ALMOST 1/2 OF NEW MEXICO CPCS ARE NOT RECOGNIZED BY MEDICAL PROFESSIONALS AS A MEDICAL SERVICE. Also known as "keepsake" or "souvenir" ultrasounds, they cannot determine gestational age, study placents or amniotic fluid, or detect fetal abnormality, ectopic pregnancy, or fetal distress. It is unclear whether those performing CPC ultrasounds are trained to do so or to recognize any issues with a pregnancy. This CPC practice offers no medical benefit to the pregnant person or fetus, but may give pregnant people a false sense of security, and delay their search for legitimate prenatal care.

#### CPCs in New Mexico Promote False & Biased Medical Claims

Almost one-half (48.4%) of the CPCs in New Mexico make false and/or biased medical claims, including about emergency contraception, feetal pain, and medication aboution. The Alliance Study defined as false or biased any medical claim that is untrue or unsubstantiated, misstated or selectively cited to factual information, or used gratuitous or graphic language instead of clinical terms. For example, a Care Net facility in Albuquerque gives clients a publication called "Before You Decide," which ignores scientific consensus that pregnancy begins when the fertilized egg implants in the uterus and promotes the false claim that pregnancy begins at conception as "scientific reality."

New Mexico CPCs also make deceptive and misleading claims on their websites, including that they have no agenda and provide full and unbiased information to support a pregnant person's choice. Some CPCs in New Mexico deceptively use the word "choice" or "options" in their names.

#### CPCs in New Mexico Promote "Abortion Pill Reversal"

Almost one-third (29%) of New Mexico CPCs promote the unrecognized practice of injecting or prescribing high-dose progesterone for pregnant people who have taken the first medicine (mifepristone) in the two-step protocol for medication abortion, in an attempt to stop ("reverse") the abortion. The American College of Obstetricians and Gynecologists calls APR "unethical" and "not based on science." This rogue practice has been called "unproven and experimental" in The New England Journal of Medicine because neither the safety nor effectiveness of APR has been proven in legitimate clinical trials.



Many CPCs that promote "abortion pill reversal" refer pregnant people to this "Abortion Pill Rescue" website run by the global anti-abortion organization, Heartbeat International.

As you can see, anti-abortion organizations advertise APR with marketing that suggests it is a legitimate medical service, though all recognized medica experts oppose the practice on the grounds it is untested and unethical. Nearly one third of CPCs in New Mexico either provide or refer for APR.

It is especially egregious that CPCs are promoting an experimental medical intervention in states like New Mexico, with numerous tribal communities and large Native American populations who, as recently as the 1970s, were targeted for experimental and coercive reproductive health interventions, including forced sterilizations and administration of the contraceptive Depo Provera long after it was found to be unsafe.

#### CPCs in New Mexico Do Not Provide Medical Services

While many CPCs present themselves as medical clinics, we found none of the CPCs in New Mexico provide prenatal, wellness, or contraceptive care. While marketing themselves as "pregnancy resource" and "pregnancy help" centers. New Mexico CPCs performed worse than any other Alliance Study state in the provision of the health care services pregnant people need. Instead. the Alliance Study found New



Mexico CPCs use manipulative messages to delay care and coerce people away from abortion and contraception, ranging from pro-choice rhetoric to evangelical 1950's messages: "Married women seeking contraceptive information should be urged to seek counsel, along with their husbands, from their pastor or physician." (https://www.legacyprc.com/about-us)

#### CPCs in New Mexico Lack Licensed Medical Professionals

While many CPCs present as a medical office, only one CPC in New Mexico has a physician on staff and two CPCs have a registered nurse.

#### CPCs & the Maternal Mortality Crisis in New Mexico

According to the New Mexico Department of Health and University of New Mexico Health Sciences, in 2015-2017 there were S8 maternal deaths in New Mexico, with people 20 and younger – the age group most likely to seek services at a CPC – accounting for 12% of those deaths. The correlation between lack of prenatal care and maternal mortality is well documented, so the failure of New Mexico CPCs to provide any prenatal or wellness care to pregnant clients, while offering non-diagnostic ultrasounds by staff or volunteers unqualified to identify medical conditions that could affect a pregnancy, is a grave concern. Amid a maternal mortality crisis driven by radical racial inequities in prenatal care, misdiagnosis, and missed warning signs, the implications for Native Americans, who are three times more likely than white women to die from a pregnancy-related cause, are particularly serious.

#### Recommendations

New Mexico policymakers should ban non-diagnostic aka "vanity" ultrasounds/sonography; create a mechanism to provide no or low-cost diapers to low-income New Mexicans; increase the number of months for post-partum Medicaid coverage from three to 12 months; include grief counseling as a mandatory mental health insurance benefit to any family that has lost a child, whether through stillbirth, SIDS, miscarriage; and make it easier to apply for health insurance through the Affordable Care Act by including a box to check on state tax forms giving permission to check financial eligibility.

### Oregon

- ▶ The Alliance Study identified 44 crisis pregnancy centers in Oregon.
- ▶ There are currently 13 abortion care clinics left in the state.

Almost one-half (48%) of CPCs in Oregon are affiliated with an evangelical, anti-abortion organization called Care Net. One-fifth (20%) of Oregon CPCs are affiliated with Heartbeat International, an international anti-abortion organization with strong ties to member of the former Trump administration.

That large evangelical anti-abortion groups like Care Net and Heartbeat International focus resources on progressive states like Oregon is no surprise. Oregon is a leader among states across the nation in advancing comprehensive sexual health education and reproductive health care, which enjoy strong public support. The challenge for the anti-choice movement in Oregon, therefore, is to sway public opinion in the other direction; that is what crisis pregnancy centers do best. While CPCs are not effective in meeting their "stated goals of preventing abortion, promoting traditional gender roles and families, and converting clients to evangelical Christianity," they are an effective tool for building the anti-choice movement by radicalizing donors and volunteers.

#### Most Common Services Offered by CPCs in Oregon

The most common Oregon CPC services are free/earned maternity and baby goods (95.5%), pregnancy testing (93.2%), and "non-diagnostic" ultrasounds (63.6%).

IN OREGON, CPCs
OUTNUMBER ABORTION
CARE CLINICS BY

3.4:1







"NON-DIAGNOSTIC" ULTRASOUNDS OFFERED BY MORE ALMOST 2/3 OF OREGON CPCS ARE NOT RECOGNIZED BY MEDICAL PROFESSIONALS AS A MEDICAL SERVICE. Also known as "keepsake" or "souvenir" ultrasounds, they cannot determine gestational age, study placed or ammiotic fluid, or detect fetal abnormality, ectopic pregnancy, or fetal distress. It is unclear whether those performing CPC ultrasounds are trained to do so or to recognize any issues with a pregnancy. This CPC practice offers no medical benefit to the pregnant person or fetus, but may give pregnant people a false sense of security, and delay their search for legitimate prenatal care.

#### CPCs in Oregon Promote False & Biased Medical Claims

Almost one-half of the CPCs in Oregon (45.5%) make false and biased claims about reproductive health care and abortion. The Alliance Study defined as false or biased any medical claim that is untrue or unsubstantiated, misstated or selectively cited to factual information, or used gratuitous or graphic language instead of clinical terms. For example, some CPCs falsely claim that abortions can lead to "increased promiscuity" and other psychological issues, or that abortion increases the risk of breast cancer and infertility. In one typical example, this Cave Junction, OR CPC promotes alarmist disinformation about asymptomatic STIs and abortion:



An obstetric ultrasound is needed to confirm that yours is a viable pregnancy before making the decision to get an abortion. You'll also need to get tested for sexually transmitted infections (STIs). STIs often go unnoticed since many infections have no obvious symptoms. Women who have an abortion with an untreated STI are at higher risk of developing Telvic Inflammatory Disease following the abortion procedure, which

▶ Pregnancy Center Of The Illinois Valley: https://www.pregnancycenteriv.org/abortion.htm

Oregon CPCs also make deceptive and misleading claims on their websites, including that they have no agenda and provide full and unbiased information to support a pregnant person's choice. Some CPCs in Oregon deceptively use the word "choice" or "options" in their names, and many falsely claim to be the only resource that will provide unbiased information to pregnant people about all their options. This Prineville, Oregon CPC, for example, claims to be an unbiased resource for pregnant people that provides information on all options including abortion, but directly discourages pregnant teens from speaking with their school or doctor and infers that those professionals and abortion providers will not support pregnant teens to make their own choices:



#### Your School May Not Be the Place to Ask Question:

Your school (High School, OSU or COCK) wornt have the resources or the training to help you. Unplanned pregnancy is all we do. Every day we talk with jirds who are in the midst of trying to figure out what to do nonce she thinks shes pregnant. Most likely your school will encurage you to go to your dorror or to an abortion indict to sole wo your problem. We do month than that. We care about you, about your future and believe you need to have enough information to make an informed choice.

Screenshot from Pregnancy Resource Centers Of Central Oregon: https://www.prcco.org/ for-students/.

#### CPCs in Oregon Promote "Abortion Pill Reversal"

Over one-quarter (27%) of CPCs in Oregon promote "abortion pill reversal" (APR), the unrecognized practice of injecting or prescribing high-dose progesterone for pregnant people who have taken the first medicine in the two-step protocol for medication abortion in an attempt to stop ("reverse") the abortion. The American College of Obstetricians and Gynecologists calls APR "unethical" and "not based on science." This rogue practice has been called "unproven and experimental" in The New England Journal of Medicine because neither the safety nor effectiveness of APR has been proven in clinic trials.

While there is no medical basis for the claim that the abortion pill can be reversed, the APR campaign does serve one goal that is critical to the anti-choice movement, which is to further stigmatize abortion care and send a message to pregnant people that if they have an abortion, they will (or should) regret it. From the perspective of the anti-choice movement, this  $message\ may\ be\ especially\ important\ in\ progressive\ states\ like\ Oregon\ where\ public\ opinion\ strongly\ favors\ access\ to\ progressive\ progressive\$ abortion and contraception.

#### Most CPCs in Oregon Do Not Provide Medical Services

CPCs in Oregon offer no information about contraception (100%), and most offer no STI-related services (72.7%), no well-person care (97.7%) or referrals (68.2%), and no prenatal care (97.7%) or prenatal care referrals (65.9%).

IN OR:





#### CPCs in Oregon Lack Licensed Medical Professionals

While many CPCs present as a medical office, only half (50.0%) of Oregon CPCs claim to have a registered nurse and only a third (31.8%) say they have a physician affiliated with their staff.

#### CPCs & the Maternal Mortality Crisis in Oregon

The rate of maternal mortality in Oregon is at or below the U.S. average, but the rate of pregnancy-related complications and deaths is disproportionately high among Black and Native American parents in the state. 16 When CPC volunteers and staff without medical training spread false and deceptive information that causes pregnant people to delay or forego seeking medical care from legitimate health care providers, they directly undermine the state's efforts to reduce the rate of maternal mortality and address this radical racial disparity.

#### Recommendations

Oregon policymakers should consider passing a bill that would prohibit crisis pregnancy centers from making or disseminating any statement concerning any pregnancy-related service or the provision of any pregnancy-related service or the pregnancservice that is deceptive.

### Pennsylvania

- ► The Alliance Study identified **156 crisis pregnancy centers** in Pennsylvania.
- ➤ There are currently 17 abortion care clinics left in the state; five provide only medication abortion.

#### Pennsylvania Directly Funds CPCs

Twenty-seven (17.3%) of the state's 156 crisis pregnancy centers are publicly funded through Real Alternatives, an organization plagued by allegations of misuse of public funds, waste, and lack of transparency. So far, Pennsylvania has diverted more than \$100 million into CPCs.

Pennsylvania is also one of a handful of states that double-funds CPCs by diverting Temporary Assistance for Needy Families (TANF), safety-net funds earmarked for pregnant people and children in poverty, to Real Alternatives. In 2021, Pennsylvania siphoned these funds away from children and gave it instead to anti-abortion activists, despite stashing away billions of dollars from relief funds related to the pandemic, which exacerbated children's poverty. Thanks in part to public funding, the disparity between the number of CPCs and abortion providers in Pennsylvania is significantly higher than the national average.

#### Most Common Services Offered by CPCs in Pennsylvania

The services provided by Pennsylvania CPCs align with data from other states. The most common services are free/earned goods (92.3%), pregnancy testing (88.5%), and "counseling" (82.1%). Among entities that receive public funding via Real Alternatives, 100% offer pregnancy testing, 96.3% offer free/earned goods, and 96.3% offer "counseling."

#### CPCs in Pennsylvania Promote False & Biased Medical Claims

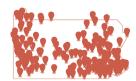
Most CPCs in Pennsylvania (64.7%) make false and biased claims, a rate that aligns with CPCs in other states examined in the Alliance Study. The Study defined as false or biased any medical claim that was untrue or unsubstantiated, misstated or selectively cited to factual information, or used gratuitous or graphic language instead of clinical terms. Most (65%) of CPCs in the Real Alternatives network make false and biased medical claims.

#### Pennsylvania CPCs make deceptive and misleading claims on their websites,

including that they have no agenda and provide full and unbiased information to support a pregnant person's choice. Some CPCs in Pennsylvania deceptively use the word "choice" or "options" in their name, and many falsely claim to be the only resource that will provide unbiased information to pregnant people about all

#### IN PENNSYLVANIA, CPCs OUTNUMBER ABORTION CARE CLINICS BY

9:1





"We are just beginning to reckon with our country's long, shameful history of racist and sexist medical abuse. And now we're seeing a coordinated effort to promote a new form of racist and sexist experimentation

- CHRISTINE CASTRO, Women's Law Project

#### CPCs in Pennsylvania Promote "Abortion Pill Reversal"

In Pennsylvania, 32.0% of CPCs provide, refer for, or promote "abortion pill reversal" (APR). APR is the unrecognized practice of injecting or prescribing high-dose progesterone for pregnant people who have taken the first medicine in the two-step protocol for medication abortion in an attempt to stop ("reverse") the abortion. The American College of Obstetricians and Gynecologists calls APR "unethical" and "not based on science." This rogue practice has been called "unproven and experimental" in *The New England Journal of Medicine* because neither the safety nor effectiveness of APR has been proven in clinical trials.

58 the Alliance



#### Publicly Funded CPCs in Pennsylvania Promote "Abortion Pill Reversal" at Higher Rates

Many CPCs in Pennsylvania promote unethical experimentation on vulnerable pregnant people in collusion with state government. Among CPCs supported with public funding via Real Alternatives, 40.7% refer for APR.

#### Most CPCs in Pennsylvania Do Not Provide Medical Care

The vast majority of CPCs in Pennsylvania (98.7%) provide no prenatal care; only 29% even make referrals for prenatal care. Most Pennsylvania CPCs provide no well-person care (99.4%) or referrals (87.2%). None of the CPCs in Pennsylvania provides contraception.

#### Publicly Funded CPCs in Pennsylvania Provide No Prenatal Care

None of the publicly funded CPCs in Pennsylvania provides prenatal care. Forty-eight percent of publicly funded CPCs refer for prenatal care.

IN PA:

INFANTS WERE BORN TO

0%

A PARENT WHO RECEIVED
INADEQUATE PRENATAL CARE

OF PUBLICLY FUNDED CPCS

PROVIDE PRENATAL CARE

#### CPCs & the Maternal Mortality Crisis in Pennsylvania

Pennsylvania's maternal mortality rate skyrocketed 21.4% between 2013 and 2018. Black people accounted for 126 (23%) of pregnancy-associated deaths in Pennsylvania from 2013 to 2018 while only accounting for 14% of births in Pennsylvania during this time period. Nearly half of the people that experienced a pregnancy-associated death from 2013–2018 did not receive adequate prenatal care.

In 2019, one in six infants born in Pennsylvania were born to a parent who received inadequate prenatal care.

#### Extensive Allegations of Misuse of Public Funds by CPCs

In 2017, a Pennsylvania official denounced Real Alternatives for

"skimming" public funds. In July 2020, a watchdog group called Campaign for Accountability filed a 27-page public complaint alleging widespread misuse of public funds, waste, and lack of transparency by Real Alternatives, the organization that has received over \$100 million in public funding to oversee a network of Pennsylvania-based CPCs since the 1990s.

In 2019, Real Alternatives was defunded in Michigan in the wake of a similar public complaint. They continue to operate in Indiana as well as Pennsylvania. Pennsylvania refunded Real Alternatives in FY 2020–2021.

#### Recommendations

- Stop funding crisis pregnancy centers with public dollars.
- $\bullet \ \ Investin \ evidence-based \ programs \ that \ promote \ healthy \ pregnancies, child births, and \ postpartum \ periods.$
- Pass the Patient Trust Act to prevent the Commonwealth from forcing health care practitioners to provide medically inaccurate and/or medically inappropriate information.
- Require all schools to provide inclusive, medically accurate, and evidence-based sex education.
- Pass legislation promoting equitable access to contraception.
- Pass legislation disallowing CPCs from teaching "sexuality education" in public schools.
- Amend the Pennsylvania Unfair Trade Practices and Consumer Protection Law to permit private enforcement even when no commercial transaction is involved.

### Washington

- ▶ The Alliance Study identified **55 crisis pregnancy centers** in Washington.
- ▶ There are currently 30 abortion care clinics left in the state.

Almost one-half (45%) of CPCs in Washington are affiliates of a U.S.-based, evangelical anti-abortion organization called Care Net and one-fifth (20%) of CPCs in Washington are affiliates of Heartbeat International, an international anti-abortion organization with strong ties to members of the former Trump administration.

That large evangelical anti-abortion groups focus resources on progressive states like Washington is no surprise. Washington is a leader among states across the nation in advancing comprehensive sexual health education and reproductive health care, which enjoy strong public support in the state. The challenge for the anti-choice movement in Washington, therefore, is to sway public opinion in the other direction; that is what crisis pregnancy centers do best. While CPCs are not effective in meeting their "stated goals of preventing abortion, promoting traditional gender roles and families, and converting clients to evangelical Christianity," they are an effective tool for building the anti-choice movement by radicalizing donors and volunteers.

#### Most Common Services Offered by CPCs in Washington

As in other Alliance Study states, the most common services Washington State CPC offer are pregnancy tests (89.3%), support or counseling (87.3%), free/earned goods (74.5%), and "non-diagnostic" ultrasounds (67.3%).

IN WASHINGTON, CPCs OUTNUMBER ABORTION CARE CLINICS BY ALMOST

2:1







60

"NON-DIAGNOSTIC" ULTRASOUNDS OFFERED BY MORE THAN 2/3 OF WASHINGTON CPCS ARE NOT RECOGNIZED BY MEDICAL PROFESSIONALS AS A MEDICAL SERVICE.

Also known as "keepsake" or "souvenir" ultrasounds, they cannot determine gestational age, study placenta or amniotic fluid, or detect fetal abnormality, ectopic pregnancy, or fetal distress. It is unclear whether those performing CPC ultrasounds are trained to do so or to recognize any issues with a pregnancy. This CPC practice offers no medical benefit to the pregnant person or fetus, but may give pregnant people a false sense of security, and delay their search for legitimate prenatal care.

#### CPCs in Washington Promote False & Biased Medical Claims

The majority of CPCs in Washington (60%) make false and/or biased claims on their websites. The Alliance Study defined as false or biased any medical claim that is untrue or unsubstantiated, misstated or selectively cited to factual information, or used gratuitous or graphic language instead of clinical terms. For example, some CPCs falsely claim that abortions can lead to "increased promiscuity" and increase the risk of breast cancer and infertility.

Washington CPCs also make deceptive and

misleading claims on their websites, including that they have no agenda and provide full and unbiased information to support a pregnant person's choice. Thirteen of the CPCs in Washington deceptively use the word "choice" or "options" in their name, and many falsely claim to be the only resource that will provide unbiased information to pregnant people about all their options.



AWARENESS

Fertility charting for birth control has numerous health benefits. Studies show it can be 98% effective in preventing

This crisis pregnancy center in Vancouver, Washington provides no contraceptive health care and promotes this false claim about the effectiveness of 'fertility awareness' on its website, which it seeks to legitimate by signaling it is a medical clinic staffed by licensed medical professionals.

 Screenshot from Options 360 Pregnancy Clinic - I-205: https://options360.org/patient-services/

#### CPCs in Washington Promote "Abortion Pill Reversal"

Over half (51%) of CPCs in Washington promote "abortion pill reversal" (APR), the unrecognized practice of injecting or prescribing high-dose progesterone for pregnant people who have taken the first medicine in the two-step protocol for medication abortion in an attempt to stop ("reverse") the abortion. The American College of Obstetricians and Gynecologists calls APR "unethical" and "not based on science." This rogue practice has been called "unproven and experimental" in The New England Journal of Medicine because neither the safety nor effectiveness of APR has been proven in clinic trials.

While there is no medical basis for the claim that the abortion pill can be reversed, the APR campaign does serve one goal that is critical to the anti-choice movement, which is to further stigmatize abortion care and send a message to pregnant people that if they have an abortion, they will (or should) regret it. Again, from the perspective of the anti-choice movement, this message may be especially important in progressive states like Washington where public opinion strongly favors access to abortion and contraception.

#### Most CPCs in Washington Do Not Provide Medical Services

CPCs in Washington provide no contraception (100%), and most provide no STI-related services (58.2%), and no well-person care (98.2%) or referrals (60%), Most Washington CPCs provide no prenatal care (94.5%) and almost half (49.1%) provide no prenatal care referrals. None of the Washington CPCs affiliated with the global anti-abortion group Heartbeat International provides prenatal care.







#### CPCs in Washington Lack Licensed Medical Professionals

While many CPCs present as a medical office, only one-third (32.7%) say they have a registered nurse and less than one-tenth (9.1%) say they have a physician on their staff.

#### CPCs & the Maternal Mortality Crisis in Washington

From 2014-2016, the overall rate of maternal mortality in Washington was 37.3 deaths per 100,000 live births, but the ratio was much higher within the Native American, Alaska Native and non-Hispanic Black populations. The rate of maternal mortality in the Native American or Alaska Native population was 290 deaths per 100,000 live births, and the rate in the non-Hispanic Black population was 67 deaths per 100,000 live births.

The correlation between lack of prenatal care and maternal mortality is well documented, so the failure of Washington CPCs to provide prenatal or wellness care to pregnant clients, while offering non-diagnostic ultrasounds by staff or volunteers unqualified to identify medical conditions that could affect a pregnancy, is a grave concern. Amid a maternal mortality crisis driven by radical racial inequities in prenatal care, misdiagnosis, and missed warning signs, the implications for American Indian, Alaska Native, and non-Hispanic Black populations are particularly grave. When CPCs volunteers and staff without medical training mislead pregnant people and cause them to delay or forego seeking medical care from legitimate health care providers, they directly undermine the state's efforts to reduce the rate of maternal mortality and address radical racial disparities.

#### Recommendations

The Washington Legislature should consider passing a bill that would prohibit crisis pregnancy centers from making or disseminating any statement concerning any pregnancy-related service or the provision of any pregnancy-related service that is deceptive.

# The Alliance Organizations

Gender Justice, genderjustice.us

Legal Voice, legalvoice.org

Southwest Women's Law Center, swwomenslaw.org

Women's Law Project, women slaw project.org



GENDER JUSTICE is a legal and policy advocacy organization dedicated to advancing gender equity through the law. We envision a world where all people can thrive regardless of their gender, gender expression, and sexual orientation. We strive to dismantle legal, structural, and cultural barriers to ensure people of all genders are safe, valued, and free. Founded in 2010, we pursue our mission through five core strategies: legal strategy thought leadership; impact litigation; policy and administrative advocacy; public education; and movement building and partnership. We provide legal representation to enforce and evolve the law. We develop and advocate for new policies to advance gender equality and engage cross-movement tables of allies in support in Minnesota and nationally, and educate people about their rights, changes in the law, and gender oppression. Current GJ programs focus on Economic Justice; Reproductive Freedom & Justice; Freedom from Gender-Based Violence; and Trans & LGBO Liberation.

LEGAL VOICE is a progressive feminist organization using the power of the law to make change for women and LGBTQ people in the five Northwest states: Alaska, Idaho, Montana, Oregon, and Washington. We use that power structure to dismantle sexism and oppression, specifically advocating for our region's most marginalized communities: women of color, lesbians, transgender and gender-nonconforming people, immigrants, people with disabilities, low-income women, and others affected by gender oppression and injustice. Current initiatives focus on: Ending Rape Myths in the Law; Advancing the Rights of Low-Wage Working Women & LGBTQ People to Economic Security and Freedom from Exploitation; Safeguarding Health Care as a Human Right; Honoring All Families; Eliminating Barriers to Safety for Survivors of Gender-Based Violence; Advancing the Civil Right to Freedom from Gender Discrimination; Honoring the Dignity and Autonomy of People Making Reproductive Decisions.

SOUTHWEST WOMEN'S LAW CENTER is a non-profit legal advocacy organization based in Albuquerque. The SWLC mission is to provide women in New Mexico with the opportunity to achieve their full economic and personal potential. Since our founding in 2005, SWLC has worked to eliminate gender bias, discrimination, and harassment; to lift women and their families out of poverty; and to ensure all women have full control over their reproductive lives through access to comprehensive reproductive health services, including abortion care. We work to advance the well-being, rights, and power of women in New Mexico through legal research, policy analysis, advocacy, community and stakeholder education, and coalition work at the local, state and national levels. Current priorities include eliminating old abortion restrictions and fighting new ones; securing paid family and medical leave; preserving the social safety net in Medicaid and other programs; and addressing the epidemic of sexual violence – and lack of adequate health services – in American Indian tribal communities.

WOMEN'S LAW PROJECT is a nonprofit public interest legal organization working to defend and advance the rights of women, girls, and LGBTQ+ people in Pennsylvania and beyond. We use an intersectional analysis to prioritize work on behalf of people facing multiple forms of oppression based on sex, gender, race, ethnicity, class, disability, incarceration, pregnancy, and immigration status. We leverage impact litigation, policy advocacy, public education, and direct assistance and representation to dismantle discriminatory laws, policies, and practices and eradicate institutional biases and unfair treatment based on sex or gender. We're proud to be a state-based organization with significant track record of national influence through our expertise in representing abortion providers, establishing legal precedents, enacting policy reforms, and leading innovative collaborations such as the Philadelphia Model, a nationally recognized initiative to hold police accountable for investigating sex crimes.



southwest women's law center



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#### End Notes & References

- 1 Elizabeth Nash and Sophia Naide, "State Policy Trends at Midyear 2021: Already the Worst Legislative Year Ever for U.S. Abortion Rights," Guttmacher Institute, July 1, 2021, https://www.guttmacher.org/article/2021/07/state-policy-trends-midyear-2021-already-worst-legislative-year-ever-us-abortion.
- 2 Rachel Wormer, "Mapping Deception: A Closer Look at How States' Anti-abortion Center Programs Operate," Equity Forward, June 4, 2021.
- 2 Natine Worling Implying December Donath own states and about Center Programs Operate (2021, https://equityfwd.org/research/mapping-deception-closer-look-how-states-anti-abortion-center-programs-operate (3 Shannon Najmabadi and Carla Astudillo, "An Anti-abortion Program Will Receive \$100 Million in the Next Texas Budget, but There's Little Data on What's Being Done with the Money," Texas Tribune, June 8, 2021, https://www.texastribune.org/2021/06/08/texas-abortion-budget/.
- 4 Wormer, "Mapping Deception."
- 5 "Florida Pregnancy Care Network Subcontractors," Floridians for Reproductive Freedom, accessed September 29, 2021, https://floridareprofreedom.org/subcontractors
- 6 For information, contact Gender Justice: info@genderjustice.org.
- 7 Julie von Haefen, "NC House Budget Would Fund Pro-life Counseling Centers that Provide No Actual Health Care," Charlotte Observer, August 31, 2021, https://www.charlotteobserver.com/opinion/article253854813.html.
- 8 Wormer, "Mapping Deception."
- 9 Kimberly Kelly and Amanda Gochanour, "Racial Reconciliation or Spiritual Smokescreens?: Blackwashing the Crisis Pregnancy Center Movement," Qualitative Sociology 41, no. 3 (July 2018): 424, https://doi.org/10.1007/s11133-018-9392-0.
- 10 Andrea Swartzendruber and Danielle N. Lambert, "A Web-Based Geolocated Directory of Crisis Pregnancy Centers (CPCs) in the United States: Description of CPC Map Methods and Design Features and Analysis of Baseline Data," JMIR Public Health and Surveillance, March 2020, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7148549/.
- $11\ \ The Alliance: State Advocates for Women's Rights \& Gender Equality, "Designed to Deceive: Full Findings \& Study Methods," October 2021, and the Alliance: State Advocates for Women's Rights \& Gender Equality, "Designed to Deceive: Full Findings \& Study Methods," October 2021, and the Alliance: State Advocates for Women's Rights \& Gender Equality, "Designed to Deceive: Full Findings \& Study Methods," October 2021, and the Alliance: State Advocates for Women's Rights & Gender Equality, "Designed to Deceive: Full Findings & Study Methods," October 2021, and the Alliance: State Advocates for Women's Rights & Gender Equality, "Designed to Deceive: Full Findings & Study Methods," October 2021, and the Alliance: State Advocates for Women's Rights & Gender Equality, "Designed to Deceive: Full Findings & Study Methods," October 2021, and the Alliance: State Advocates for Women's Rights & Gender Equality, "Designed to Deceive: Full Findings & Study Methods," October 2021, and the Alliance for Women's Rights & Gender Equality & Gender Equality$ https://alliancestateadvocates.org/.
- 12 Anna North, "What 'Crisis Pregnancy Centers' Really Do," Vox, March 2, 2020, https://www.vox.com/2020/3/2/21146011/crisis-pregnancycenter-resource-abortion-title-x
- 13 Kimport, Dockray, and Dodson, "What Women Seek," 170; Kimport, "Pregnant Women's Reasons," 51-52. "Officially, the movement claims 20 percent of the women who visit a CPC are considering abortion, indicating most visitors to a CPC are not the target client (Freeman 2008; Glessner 2002). A closer look at the data aggregated by the movement suggest even this low number is optimistic." Kelly, "Evangelical Underdogs," 423.
- $14\ "Medical Clinic Conversion," \textit{National Institute of Family and Life Advocates}, accessed September 29, 2021, https://nifla.org/medical-clinic-l$
- 15 "Are We a Medical Clinic?." Heartbeat International, accessed September 29, 2021, https://www.heartbeatinternational.org/are-we-a-
- 16 "Prudent Use and Safety of Diagnostic Ultrasound in Pregnancy," American Institute of Ultrasound in Medicine, May 19, 2020, https://www. aium.org/officialStatements/79
- As NARAL Pro-Choice Maryland explains: "The abortion reversal theory is grounded in... the idea that people regret their abortion. However, empirical data from the Turnaway Study, a longitudinal study comparing the outcomes of people who were able to get the abortion care they needed versus those who were denied care, shows this to be false. More than 95% of people standby their abortion are they needed versus those who were denied care, shows this to be false. More than 95% of people standby their abortion. decision. It is morally and medically unethical to tell people they'll be able to reverse a process that they cannot undo." "The Myth of Abortion Reversal," NARAL Pro-Choice Maryland, accessed September 29, 2021, https://prochoicemd.org/myth-abortion-reversal.
- 18 Katrina Kimport, "Pregnant Women's Experiences of Crisis Pregnancy Centers: When Abortion Stigmatization Succeeds and Falls," Symbolic Interaction 42, no. 4 (2019): 620, https://doi.org/10.1002/symb.418.
- 19 "Facts Are Important: Medication Abortion 'Reversal' Is Not Supported by Science," American College of Obstetricians and Gynecologists, accessed September 29, 2021, https://www.acog.org/advocacy/facts-are-important/medication-abortion-reversal-is-not-supported-page 1.
- 20 Mitchell D. Creinin et al., "Mifepristone Antagonization with Progesterone to Prevent Medical Abortion: A Randomized Controlled Trial,"  $Obstetrics \& Gynecology~135, no.~1~(January~2020): 162, https://journals.lww.com/greenjournal/fulltext/2020/01000/mifepristo antagonization\_with\_progesterone\_to.21.aspx.$
- 21 "A Documentation of Data Exploitation in Sexual and Reproductive Rights," Privacy International, April 21, 2020, https:// privacyinternational.org/long-read/3669/documentation-data-exploitation-sexual-and-reproductive-rights
- 22 Care Net indicates that "most pregnancy centers offer cost-free consultations with licensed medical professionals." Eve Gleason, "Pregnancy Centers Empower Texas Women and Families," Care Net, August 31, 2021, https://www.care-net.org/center-insights-blog/pregnancy-centersempower-texas-women.
- 23 The National Institute of Family and Life Advocates (NIFLA) states: "When pregnancy centers convert to medical clinic status, they experience many benefits including an increase in total number of patients seen, an increase in the number of abortion-minded patients seen, and a dramatic increase in the percentage of clients seen who choose life. Medical clinics report improved credibility within their community which results in an increase of donors." "The Life Choice Project (TLC)," National Institute of Family and Life Advocates, accessed September 29, 2021, https://membership.nifla.org/the-life-choice-project.asp."
- 24 Kimberly Kelly, "Evangelical Underdogs: Intrinsic Success, Organizational Solidarity, and Marginalized Identities as Religious Movement Resources," Journal of Contemporary Ethnography 43, no. 4 (2014): 421-422, doi:10.1177/0891241613516627.
- 25 Katrina Kimport, J. Parker Dockray, and Shelly Dodson, "What Women Seek from a Pregnancy Resource Center," Contraception 94, no. 2 (August 2016): https://www.contraceptionjournal.org/article/S0010-7824(16)30029-4/fulltext.
  26 Katrina Kimport, "Pregnant Women's Reasons for and Experiences of Visiting Antiabortion Pregnancy Resource Centers," Perspectives on
- Sexual and Reproductive Health 52, no. 1 (March 2020): 51-53, doi:10.1363/psrh.12131.

- 27 Kimberly Kelly states: "Officially, the movement claims 20 percent of the women who visit a CPC are considering abortion, indicating most visitors to a CPC are not the target client. A closer look at the data aggregated by the movement suggest even this low number i optimistic." Kelly, "Evangelical Underdogs," 423.
- 28 Michael Kenneth Lemke and Kyrah K. Brown, "Syndemic Perspectives to Guide Black Maternal Health Research and Prevention During the COVID-19 Pandemic," *Maternal and Child Health Journal* 24, no. 9 (2020): 1095-1096, https://pubmed.ncbi.nlm.nih.gov/32696248.
- 29 Kelly and Gochanour, "Racial Reconciliation," 424.
- 30 Kendra Hutchens, "Gummy Bears' and Teddy Grahams': Ultrasounds as Religious Biopower in Crisis Pregnancy Centers," Social Science & Medicine 277 (2021): 1, https://doi.org/10.1016/j.socscimed.2021.113925
- 31 Kelly and Gochanour, "Racial Reconciliation," 427-428; Kelly, "Evangelical Underdogs," 421-423.
- 32 Katherine Stewart, "How Fringe Christian Nationalists Made Abortion a Central Political Issue," Literary Hub, June 12, 2020, https://lithub.com/how-fringe-christian-nationalists-made-abortion-a-central-political-issue/?fbclid=lwAR25cM0xoQ-mj3Zecc1V038KDDadzlLcrlBv k6O7jb6Orw0dWIDfcX7vzZY.
- 33 Alex DiBranco, The Long History of the Anti-Abortion Movement's Links to White Supremacists," The Nation, February 3, 2020, https://
- www.thenation.com/article/politics/anti-abortion-white-supremacy.

  34 Claire Provost and Nandini Archer, "Exclusive: Trump-Linked Religious 'Extremists' Target Women with Disinformation Worldwide,"

  OpenDemocracy, February 10, 2020, https://www.opendemocracy.net/en/5050/trump-linked-religious-extremists-globaldisinformation-pregnant-women
- 35 Kelly, "Evangelical Underdogs," 421-422.
- 36 Amy G. Bryant and Jonas J. Swartz, "Why Crisis Pregnancy Centers Are Legal but Unethical," AMA Journal of Ethics 20, no. 3 (March 2018): 269, https://journalofethics.ama-assn.org/sites/journalofethics.ama-assn.org/files/2018-04/pfor1-1803.pdf.
  37 Carrie N. Baker, "New Research Shows States Diverting Federal Anti-poverty Funds to Deceptive Anti-abortion Centers," Ms. Magazine, June 15, 2021, https://msmagazine.com/2021/06/15/states-diverting-federal-anti-poverty-funds-anti-abortion-centers-crisis-pregnancy-centers/.
- 38 "Crisis Pregnancy Centers Are Targeting Women of Color, Endangering Their Health," National Women's Law Center, March 6, 2013, https://nwlc.org/resources/crisis-pregnancy-centers-are-targeting-women-color-endangering-their-health/.
- 39 Kelly and Gochanour, "Racial Reconciliation," 424.
- 40 Diana Greene Foster, The Turnaway Study: Ten Years, a Thousand Women, and the Consequences of Having—or Being Denied—an Abortion (New York: Scribner, 2020).
- 41 Kelly, "Evangelical Underdogs," 423. Katrina Kimport notes that "both scholarly investigation and analyses of data generated by the centers themselves find that most new clients at pregnancy resource centers are pregnant women who are not considering abortion—that is, these clients are not only or even mainly considering abortion....[I]n practice, these centers regularly provide services to pregnant women who plan to continue their pregnancies.
- 42 Kelly, "Evangelical Underdogs," 423. 43 Kimport, "Pregnant Women's Reasons," 52-54.
- 4 Kimberly Kelly explains that "[t]his evangelical movement is not particularly successful in meeting its stated goals of preventing abortion, promoting traditional gender roles and families, and converting clients to evangelical Christianity. Paradoxically, however, the movement experienced explosive growth in the last twenty years and increased from 600 to 2,300 or more evangelical centers, increased funding for local centers as well as national organizations, expanded services, and extensive media coverage from pro-life, Christian, and mainstream media and politicians." Kelly, "Evangelical Underdogs," 420.
- 45 Floridians for Reproductive Freedom, "Florida Pregnancy Care Network Subcontractors."
- 46 Wormer, "Mapping Deception."
- 47 For information, contact Gender Justice info@genderjustice.us.
- 48 "Real Alternatives Is a Real Waste of Pennsylvania Tax Dollars," Equity Forward, July 20, 2020, https://equityfwd.org/real-alternatives-real-waste-pennsylvania-tax-dollars.
- 49 Ed Kilgore, "Can Anti-abortion 'Crisis Pregnancy Centers' Snag Federal Family-Planning Funds?," New York Magazine, November 8, 2019, http://nymag.com/intelligencer/2019/11/can-crisis-pregnancy-centers-snag-federal-funds.html?utm\_source
- 50 Wormer, "Mapping Deception."
- 51 Cayley Winters, "Michigan Governor Says Noto More Taxpayer Funds for Anti-choice Clinics," Rewire News Group, October 9, 2019, https://rewire.news/article/2019/10/09/michigan-governor-says-no-to-more-taxpayer-funds-for-anti-choice-clinics.
- 52 Alice C. Huling to Gretchen Whitmer, Dana Nessel, and Doug Ringler, January 14, 2019, https://campaignforaccountability.org/wp-content/uploads/2019/01/CfA-MI-Real-Alternatives-Letter\_1\_14\_19.pdf.
- 53 Najmabadi and Astudillo, "An Anti-abortion Program Will Receive \$100 Million."
- 54 Lemke and Brown, "Syndemic Perspectives," 1095-1096.
  55 Raashmi Krishnasamy and Lisa Shapiro, "COVID-19 Deepens Maternal Health Disparities among Women of Color," *National Community*
- Reinvestment Coalition, May 3, 2021, https://ncrc.org/covid-19-deepens-maternal-health-disparties-among-women-of-color.

  56 TimSmart, "COVID-19 Job Market Wreaks Havoc on Black Women," U.S. News & World Report, April 15, 2021, https://www.usnews.com/news/economy/articles/2021-04-15/black-women-suffering-the-most-from-covid-19-job-market-disruption.
- 57 Elizabeth Nash and Lauren Cross, "2021 Is on Track to Become the Most Devastating Antiabortion State Legislative Session in Decades," Guttmacher Institute, last modified June 14, 2021, https://www.guttmacher.org/article/2021/04/2021-track-become-most-devastating antiabortion-state-legislative-session-decades.
- 58 Kate Smith, "Violence against Abortion Clinics Hit a Record High Last Year, Doctors Say It's Getting Worse.," CBS News, last modified September 17, 2019, https://www.cbsnewslast-year-doctors-say-its-getting-worse/.

- 59 Abortion-Related Violent Extremist Threats and Freedom of Access to Clinic Entrances Act Violations Increase, Likely in Reaction to Recent Legislative Activities (Washington, D.C.: Federal Bureau of Investigation, 2020), https://saa1b2xfmfh2e2mk03kk8rsx-wpengine.netdna-ssl. com/wp-content/uploads/200122-Abortion-Related-Violent-Extremist-Threats-FBI.pdf.
- 60 Privacy International, "A Documentation of Data Exploitation."
- Alice F. Cartwright et al., "Identifying National Availability of Abortion Care and Distance from Major US Cities: Systematic Online Search," Journal of Medical Internet Research 20, no. 5 (May 2018): https://www.jmir.org/2018/5/e186.
   Rachel K. Jones, Elizabeth Witwer, and Jenna Jerman, "Abortion Incidence and Service Availability in the United States, 2017," Guttmacher
- Institute, September 2019, https://www.guttmacher.org/report/abortion-incidence-service-availability-us-2017#
- 63 Swartzendruber and Lambert, "A Web-Based Geolocated Directory."
- $64\ \ The Alliance: State Advocates for Women's Rights \& Gender Equality, "Designed to Deceive: Full Findings \& Study Methods," October 2021, and the Alliance: State Advocates for Women's Rights & Gender Equality, "Designed to Deceive: Full Findings & Study Methods," October 2021, and the Alliance: State Advocates for Women's Rights & Gender Equality, "Designed to Deceive: Full Findings & Study Methods," October 2021, and the Alliance: State Advocates for Women's Rights & Gender Equality, "Designed to Deceive: Full Findings & Study Methods," October 2021, and the Alliance: State Advocates for Women's Rights & Gender Equality, "Designed to Deceive: Full Findings & Study Methods," October 2021, and the Alliance: State Advocates for Women's Rights & Gender Equality, "Designed to Deceive: Full Findings & Study Methods," October 2021, and the Alliance: State Advocates for Women's Rights & Gender Equality (No. 1997), and the Alliance Rights & Gender Equali$ https://alliancestateadvocates.org/.
- 65 False and Misleading Health Information Provided by Federally Funded Pregnancy Resource Centers (Washington, D.C.: U.S. House of Representatives Committee on Government Reform, 2006), https://motherjones.com/files/waxman2.pdf
- наризвытывательный поментивен и соментивент кетогти, 2006), https://motherjones.com/files/waxman2.pdf.
  66 Care Net indicates that "most pregnancy centers offer cost-free consultations with licensed medical professionals." Gleason, "Pregnancy Centers."
- 67 NIFLA states: "When pregnancy centers convert to medical clinic status, they experience many benefits including an increase in total number of patients seen, an increase in the number of abortion-minded patients seen, and a dramatic increase in the percentage of clients seen who choose life. Medical clinics report improved credibility within their community which results in an increase of donors." National Institute of Family and Life Advocates, "The Life Choice Project."
- 68 Heartbeat International, "Are We a Medical Clinic?"
- 69 McGraw, "Judge Bars Anti-abortion Centers."
- 70 Kimberly Kelly, "In the Name of the Mother: Renegotiating Conservative Women's Authority in the Crisis Pregnancy Center Movement," Signs 38, no. 1 (2012): 206, https://www.jstor.org/stable/10.1086/665807.
- 71 Kimport, "Pregnant Women's Reasons," 53-54.
- 72 Laura S. Hussey, "Crisis Pregnancy Centers, Poverty, and the Expanding Frontiers of American Abortion Politics," Politics & Policy 41, no. 6 (2013): 998-1000, https://doi.org/10.1111/polp.12054.
- 73 Kimport, "Pregnant Women's Reasons," 54. 74 Kelly, "Evangelical Underdogs," 422.
- 75 "Community Volunteer Opportunities," Care Net, accessed September 30, 2021, https://www.care-net.org/community-volunteer-opportunities.
- $76\ "Compassion Hope \ and \ Help\ Trainers\ Guide," \textit{CareSource}, accessed\ September\ 30, 2021, https://store.care-net.org/compassion-hope-net.or$ and-help-trainers-guide.
- 77 Hussey, "Crisis Pregnancy Centers," 996.
- 78 National Institute of Family and Life Advocates, "Medical Clinic Conversion."
- 79 "Ultrasound Viewing," Advancing New Standards in Reproductive Health, accessed September 30, 2021, https://www.ansirh.org/research/ ongoing/ultrasound-viewing.
- 80 Alissa Perrucci, Clinical Guidelines on Ultrasound Viewing (Oakland: Advancing New Standards in Reproductive Health, 2014), 2, https://www.ansirh.org/sites/default/files/publications/files/ultrasound\_guidelines9-14.pdf.
- 81 "Option Ultrasound Program," Focus on the Family, accessed September 30, 2021, https://www.focusonthefamily.com/pro-life/option-ultrasound-program-2/.
- 82 "Option Ultrasound Program: High Abortion Community Assessment Tool," Focus on the Family, accessed September 30, 2021, https://www.focusonthefamily.com/wp-content/uploads/2021/09/OUP-Assessment-Tool.pdf.
- 83 American Institute of Ultrasound in Medicine, "Prudent Use and Safety of Diagnostic Ultrasound," https://www.aium.org/ officialStatements/79.
- 84 Heartbeat International, "Are We a Medical Clinic?"
- 85 David K. Li, "Supreme Court Leaves in Place Kentucky Abortion Law Mandating Ultrasounds," NBC News, last modified December 9, 2019,
- 85 David K. Li, "Supreme Court Leaves in Place Nemtucky Abortion Law Mandating Ultrasounds," NBC. News, last modified December 9, 2 https://www.nbcnews.com/news/us-news/supreme-court-upholds-kentucky-abortion-law-mandating-ultrasounds-n1098181.
  86 "The Quality of Abortion Care Depends on Where a Woman Lives, Says One of Most Comprehensive Reviews of Research on Safety and Quality of Abortion Care in the U.S.," The National Academies of Sciences, Engineering, and Medicine, March 16, 2018, https://www.nationalacademies.org/mews/2018/03/the-quality-of-abortion-care-depends-on-where-a-woman-lives-says-one-of-most-comprehensive-reviews-of-research-on-safety-and-quality-of-abortion-care-in-the-us.
- 87 Kimberly Kelly, "The Spread of 'Post Abortion Syndrome' as Social Diagnosis," Social Science & Medicine 102 (2014): 19, https://doi. org/10.1016/j.socscimed.2013.11.030.
- 88 Elizabeth G. Raymond and David A. Grimes, "The Comparative Safety of Legal Induced Abortion and Childbirth in the United States,"

  Obstetrics & Gynecology 119, no. 2 (February 2012): 217, https://journals.lww.com/greenjournal/Fulltext/2012/02000/The\_Comparative\_Safety\_of\_Legal\_Induced\_Abortion.3.aspx.
- 89 "Groundbreaking Research Proves that Abortion Is an Extremely Safe Procedure," Bixby Center for Global Reproductive Health, accessed September 30, 2021, https://bixbycenter.ucsf.edu/news/groundbreaking-research-proves-abortion-extremely-safe-procedure.
  90 Susan A. Cohen, "Abortion and Mental Health: Myths and Realities," Guttmacher Policy Review 9, no. 3 (2006): 10, https://www.guttmacher.
- org/sites/default/files/article\_files/gpr090308.pdf.
- 91 "Abortion, Miscarriage, and Breast Cancer Risk: 2003 Workshop," National Cancer Institute, last modified January 12, 2010, https://www. cancer.gov/types/breast/abortion-miscarriage-risk.
- 92 Carla Dugas and Valori H. Slane, "Miscarriage," in StatPearls (Treasure Island: StatPearls, 2021), https://www.ncbi.nlm.nih.gov/books/ NBK532992; "Miscarriage," Mayo Clinic, accessed September 30, 2021, https://www.mayoclinic.org/diseases-conditions/pregnancy-loss-miscarriage/symptoms-causes/syc-20354298; Zawn Villines, "What Are the Average Miscarriage Rates by Week?," Medical News Today,

- last modified September 26, 2021, https://www.medicalnewstoday.com/articles/322634.
- 93 "How Anti-abortion Activism is Exploiting Data," *Privacy International*, July 22, 2019, https://privacyinternational.org/long-read/3096/how-anti-abortion-activism-exploiting-data.
- 94 Sian Norris, "You Could Die and Turn Your Husband Gay'. How I Learned to Talk Women Out of Legal Abortions," OpenDemocracy, February 17, 2020, https://www.opendemocracy.net/en/5050/you-could-die-and-turn-your-husband-gay-how-i-learned-to-talk-women-out-oflegal-abortions.
- $95\,$  K. Hodson, C. Meads, and S. Bewley, "Lesbian and Bisexual Women's Likelihood of Becoming Pregnant: A Systematic Review and Metaanalysis." BJOG 124, no. 3 (February 2017): 395, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5299536
- 96 Kelly and Gochanour, "Racial Reconciliation," 431-432.
- 97 Timothy Huzar, "Medical Mistrust Linked to Race/Ethnicity and Discrimination," Medical News Today, January 15, 2021, https://www. medicalnewstoday.com/articles/medical-mistrust-liniked-to-race-ethnicity-and-discrimination.

  98 2019 Violence and Disruption Statistics (Washington, D.C.: National Abortion Federation, 2019), https://5aa1b2xfmfh2e2mk03kk8rsx-
- wpenqine.netdna-ssl.com/wp-content/uploads/NAF-2019-Violence-and-Disruption-Stats-Final.pdf.
- Safety and Effectiveness of First-Trimester Medication Abortion in the United States (Oakland: Advancing Standards in Reproductive Health, 2016), 1, https://www.ansirh.org/sites/default/files/publications/files/medication-abortion-safety.pdf.
   "The Availability and Use of Medication Abortion," Kaiser Family Foundation, June 16, 2021, https://www.kff.org/womens-health-policy/
- fact-sheet/the-availability-and-use-of-medication-abortion
- 102 Life Choices Clinic, Idaho, "Abortion Procedures," https://lifechoicesclinic.info/services/health-information/abortion-idaho/abortionprocedures/.
- 103 Kimberly Kelly, "The spread of 'Post Abortion Syndrome' as social diagnosis," Social Science & Medicine, Volume 102 (2014) 18-25, ISSN 0277-9536: https://doi.org/10.1016/j.socscimed.2013.11.030.
- 104 Daniel Grossman and Kari White, "Abortion 'Reversal' Legislating without Evidence," New England Journal of Medicine 379, no. 16 (October 2018): 1491, https://www.nejm.org/doi/full/10.1056/nejmp1805927.
   105 American College of Obstetricians and Gynecologists, "Facts Are Important."
- 106 New England Journal of Medicine.
- 107 "Evidence You Can Use: Medication Abortion," Guttmacher Institute, last modified February 2021, https://www.guttmacher.org/evidencevou-can-use/medication-abortion
- 108 Creinin, "Mifepristone Antagonization," 158-165.
- 109 Ibid. 158.
- 110 Ibid. 164
- 111 "The Abortion Pill Reversal Team," Abortion Pill Reversal, accessed September 22, 2021, https://www.abortionpillreversal.com/about-us.
- $112 \ \ Mai \ Bean \ et \ al., "Pregnancy Centers \ Stand \ the \ Test \ of \ Time: A \ Legacy \ of \ Life \ \& \ Love \ Report \ Series," \ The \ Charlotte \ Lozier \ Institute \ (2020), \ Love \ Report \ Series, "The \ Charlotte \ Lozier \ Institute \ (2020), \ Love \ Report \ Series," \ The \ Charlotte \ Lozier \ Institute \ (2020), \ Love \ Report \ Series, "The \ Charlotte \ Lozier \ Institute \ (2020), \ Love \ Report \ Series, "The \ Charlotte \ Lozier \ Institute \ (2020), \ Love \ Report \ Series, "The \ Charlotte \ Lozier \ Institute \ (2020), \ Love \ Report \ Series, "The \ Charlotte \ Lozier \ Institute \ (2020), \ Love \ Report \ Series, "The \ Charlotte \ Lozier \ Institute \ (2020), \ Love \ Report \ Series, "The \ Charlotte \ Lozier \ Institute \ (2020), \ Love \ Report \ Series, "The \ Charlotte \ Lozier \ Institute \ Report \$ accessed September 29, 2021, https://lozierinstitute.org/wp-content/uploads/2020/10/Pregnancy-Center-Report-2020\_FINAL.pdf. 113 Abortion Pill Reversal. "The Abortion Pill Reversal Team."
- 114 "State Laws and Policies: Counseling and Waiting Periods for Abortion," Guttmacher Institute, last modified September 1, 2021, https://www.guttmacher.org/state-policy/explore/counseling-and-waiting-periods-abortion.
- 115 Ibid. 8 states (Arkansas, Idaho, Kentucky, Louisiana, Nebraska, South Dakota, Utah, and West Virginia) compel abortion providers to tell patients that a medication abortion can be reversed. Similar laws in Indiana, North Dakota, Oklahoma, and Tennessee are enjoined from enforcement, as of September 1, 2021.
- $116\ \ Kevin B.O' Reilly, "Doctors Battle State Law that Forces Them to Mislead Patients," \textit{American Medical Association (AMA), last modified June 25, and the following the properties of th$ 2019, https://www.ama-assn.org/delivering-care/patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support-advocacy/doctors-battle-state-law-forces-them-mislead-patient-support
- 117 Jonelle Husain and Kimberly Kelly, "Stigma Rituals as Pathways to Activism: Stigma Convergence in a Post Abortion Recovery Group," Deviant Behavior 38, no. 5 (2017): 576-77, doi:10.1080/01639625.2016.1197566.
- 118 Husain and Kelly, "Stigma Rituals," 575.
- 119 Kelly, "The spread of 'Post Abortion Syndrome'," 18-25.
- 120 Husain and Kelly, "Stigma Rituals," 578.
- 120 Honsylvania Quick Facts: Prenatal Care," March of Dimes, accessed September 29, 2021, https://www.marchofdimes.org/peristats/ ViewTopic.aspx?reg=42&top=5&lev=0&slev=4#:--:text=Quick%20Facts%3A%20Prenatal%20Care&text=In%20Pennsylvania%20in%20 2019%2C%2071.8.late%20or%20no%20prenatal%20Care.
  122 Andrea Swartzendruber, Riley J. Steiner, and Anna Newton-Levinson, "Contraceptive Information on Pregnancy Resource Center Websites: A Statewide Content Analysis," Contraception 98, no. 2 (August 2018): 161-169, https://doi.org/10.1016/j.contraception.2018.04.002.
- 123 Jaime Winfree and Andrea Swartzendruber, "Is a Crisis Pregnancy Center Teaching Sex Ed at Your Kid's School? The Faux Clinics Don't Just Set Up Shop Next to Abortion Clinics. They're also in Schools Teaching Abstinence-only Sex Ed.," The Huffington Post, April 24, 2018, https://www.huffpost.com/entry/opinion-winfree-swartzendruber-crisis-pregnancy-sex-ed\_n\_5ade8087e4b0b2e81132895d.
- 124 Andrea Swartzendruber et al., "Crisis Pregnancy Centers in the United States: Lack of Adherence to Medical and Ethical Practice Standards; A Joint Position Statement of the Society for Adolescent Health and Medicine and the North American Society for Pediatric and Adolescent Gynecology," 32, no. 6 [December, 2019]: 564, https://doi.org/10.1016/j.jpag.2019.10.008.
- 125 Ellen Friedrichs, "Parents, Take Heed: Fake Clinics Are Teaching Sex 'Education,' and You Can Help Stop Them," Rewire News Group, March 26, 2018, https://rewirenewsgroup.com/article/2018/03/26/parents-take-heed-fake-clinics-teaching-sex-education-can-help-stop/.
  126 For information contact Southwest Women's Law Center, info@swlc.org.

- $127\ "Sticking with staff members for sexeducation at Nevada Union school district," \textit{The Union, } October 2, 2019, https://www.theunion.com/school-schoo$ news/sticking-with-staff-members-for-sex-education-at-nevada-union-school-district/
- 128 Pa. House Video, "Health Committee 4-21-21," YouTube video, 24:30, April 21, 2021, https://www.youtube.com/watch?v=MHkaLJstX8Y.
- 129 Kathy Boccella, "Sex-ed Class Revelations Jolt Delco School Board," Philadelphia Inquirer, August 9, 2018, https://www.inquirer.com/philly/ education/sex-education-swarthmore-wallingford-amnion-20180809.html#loaded.
- 130 "Reported STDs Reach All-Time High for 6th Consecutive Year," CDC Newsroom, last modified April 13, 2021, https://www.cdc.gov/ media/releases/2021/p0413-stds.html.
- 131 Bean et al., "Pregnancy Centers Stand," 39.
- 132 As of the most recently-published information available online, 69 of the CPCs in California were licensed as "community clinics" or "free clinics" and required to submit reports to the state Department of Health Care Access and Information Intitps://heal.ca.gov/data-and-reports/healthcare-utilization/on the number of FTE physicians and registered nurses on their staff. Of the 69 CPCs submitting utilization reports, one had a physician on staff, 29 had one or more full-time registered nurses, 30 had a part-time registered nurse, and nine had no physician or registered nurse on staff. For more information, contact California Women's Law Center at info@cwlc.org.
- 133 For more information, contact Gender Justice, info@genderjustice.us and Women's Law Project, info@womenslawproject.org
- 134 Hutchens, "Gummy Bears," 6; Swartzendruber et al., "Crisis Pregnancy Centers," 565; Carly Polcy, net al., "Truth and Transparency in Crisis Pregnancy Centers," Women's Health Reports 1, no. 1 (July, 2020): 224, doi:10.1089/whr.2020.0057; Bryant and Swartz, "Legal but Unethical," 273; Amy 6, Bryant, Subarsi Ivarasimhan, Katelyn Bryant-Comstock, and Erika E. Levi, "Crisis Pregnancy Center Websites: Information, Misinformation and Disinformation," Contraception 90, no. 6 (December, 2014): 601-605, https://doi.org/10.1016/j. contraception.2014.07.003.
- 135 Norris, "You Could Die."
- 136 "The Truth about Crisis Pregnancy Centers," NARAL Pro-Choice America, January 1, 2017, https://www.prochoiceamerica.org/wp-content/uploads/2016/12/6.-The-Truth-About-Crisis-Pregnancy-Centers.pdf.
- 137 Swartzendruber et al., "Crisis Pregnancy Centers," 565; Bryant and Swartz, "Legal but Unethical," 273; Bryant and Levi. "Abortion Misinformation," 754.
- 138 "Ultrasound," Ojai Life Clinic, accessed September 30, 2021, https://www.ojailifechoices.org/our-services.
- 139 Foster, "The Turnaway Study."140 Kelly, "Evangelical Underdogs," 421-422.
- 141 Kimport, Dockray, and Dodson, "What Women Seek," 170; Kimport, "Pregnant Women's Reasons," 51-52, "Officially, the movemen claims 20 percent of the women who visit a CPC are considering abortion, indicating most visitors to a CPC are not the target client (Freeman 2008; Glessner 2002). A closer look at the data aggregated by the movement suggest even this low number is optimistic. Kelly, "Evangelical Underdogs," 423.
- 142 Kimport, Dockray, and Dodson, "What Women Seek," 170.
- 143 "Abstinence-Only Education Is a Failure," Columbia Mailman School of Public Health, August 22, 2017, https://www.publichealth.columbia edu/public-health-now/news/abstinence-only-education-failure
- 144 Swartzendruber and Lambert, "A Web-Based Geolocated Directory."
- 145 "HHS Awards Title X Family Planning Service Grants," Office of Population Affairs, March 29, 2019, https://opa.hhs.gov/about/news/grant-award-announcements/hhs-awards-title-x-family-planning-service-grants.
   146 Kenneth P. Vogel and Robert Pear, "Trump Administration Gives Family Planning Grant to Anti-Abortion Group," New York Times, March 29,
- 2019, https://www.nytimes.com/2019/03/29/us/politics/trump-grant-abortion-html.
  147 Stephania Mencimer, "The Trump Administration is Giving Family Planning Funds to a Network of Anti-Abortion Clinics," Mother Jones. accessed September 30, 2021, https://www.motherjones.com/politics/2019/11/the-trump-administration-is-giving-family-planning-funds-to-a-network-of-anti-abortion-clinics-obria/. The Alliance Study found 15 Obria-affiliated CPCs in California had obtained Title X funding. Obria has withdrawn from the Title X Program under the Biden Administration.
- 148 Emily Crockett, "States are Using Welfare Money to Fund Anti-Abortion Propaganda," Vox, October 3, 2016, https://www.vox.com/identities/2016/10/3/13147836/states-tanf-welfare-crisis-pregnancy-centers; Wormer, "Mapping Deception."

- Jessica Glenza, "Anti-Abortion Centers Receive at Least-\$4m from USC Coronavirus Bailout," The Quardian, August 3, 2020, https://www.theguardian.com/world/2020/aug/03/anti-abortion-centers-paycheck-protection-program?CMP=share\_btn\_link.
   Charlotte Lozier Institute, "Two Federal Grants Available for Pregnancy Help Organizations," Pregnancy Help News, May 3, 2021, https://pregnancyhelpnews.com/two-federal-grants-available-for-pregnancy-help-organizations.
   Nancy Martorano Miller, "One-party Rule in 49 State Legislatures Reflects Flaws in Democratic Process," The Conversation, February 20, 2019, https://theconversation.com/one-party-rule-in-49-state-legislatures-reflects-flaws-in-democratic-process-109395.
- 152 Kimport, Dockray, and Dodson, "What Women Seek," 168.
- 153 Floridians for Reproductive Freedom, "Florida Pregnancy Care Network Subcontractors."
- 154 For information, contact Gender Justice, info@genderjustice.org.
- 155 Julie von Haefen, "NC House budget would fund pro-life counseling centers that provide no actual health care," The Charlotte Observer (August 31, 2021), https://www.charlotteobserver.com/opinion/article253854813.html.
  156 Wormer, "Mapping Deception."
- 157 For more information, contact Gender Justice at info@genderjustice.us
- 137 For Intellimination, Colling Control and Contro
- 160 "History: History of Government-funded Pregnancy and Parenting Support Services," Real Alternatives, accessed September 30, 2021, https://www.realalternatives.org/https-wp-content-uploads-2019-06-history-2019-pdfhistory/.

- 161 "Press Releases, State Oversite, Themis Project: Watchdog Calls on Michigan to Terminate Contract with Anti-Abortion Nonprofit, Real Alternatives," Campaign for Accountability, January 14, 2019, https://campaignforaccountability.org/watchdog-calls-on-michigan-to-terminate-contract-with-anti-abortion-nonprofit-real-alternatives/.
- 162 "Press Releases, State Oversite, Themis Project: Watchdog Calls on Pennsylvania Officials to Terminate Contract with Anti-Abortion Group for Wasting Millions of Taxpayer Dollars, Violating Pennsylvania Law," Campaign for Accountability, July 14, 2020, https:// campaignforaccountability.org/watchdog-calls-on-pennsylvania-lawi.
  Gampaignforaccountability.org/watchdog-calls-on-pennsylvania-lawi.
- 163 For information contact California Women's Law Center, info@cwlc.org.
- 164 Hutchens, "Gummy Bears," 2; Kelly and Gochanour, "Racial Reconciliation," 423; Kelly, "Evangelical Underdogs," 420.
  165 Stewart, "Fringe Christian Nationalists"; DiBranco, "The Long History"; Provost and Archer, "Trump-Linked Religious 'Extremists."
- 166 Bryant and Swartz, "Legal but Unethical," 270.
- 167 Subasri Narasimhan, Elizabeth Pleasants, Contreras, A., Fuller, I. (publication forthcoming). An Assessment of Patient-Centered Language on Crisis Pregnancy Center Websites in 9 Southeastern States
- 168 Narasimhan and Pleasants.
- 169 Kelly and Gochanour, "Racial Reconciliation," 437.
- 170 Webinar, "Racism in Anti-Abortion Fake Clinics", Reproaction, November 9, 2020, https://reproaction.org/resource/racism-in-anti-abortion-fake-clinics/.
- 171 Kelly and Gochanour, "Racial Reconciliation," 437.
- 172 Jonas J. Swartz et al., "Comparing Website Identification for Crisis Pregnancy Centers," Women's Health Issues 31, no. 5 (September-October, 2021): 432, doi:10.1016/j.whi.2021.06.001.
- 173 Swartz et al., "Comparing Website Identification," 436
- 174 Daniel E. Stevens to Mike DeWine, June 5, 2018, https://campaignforaccountability.org/wp-content/uploads/2018/06/CfA-OH-AG-CPCs-Consumer-Protection-6-5-18.pdf.
- "Save the Mother, Save the Baby": An Inside Look at a Pregnancy Center Conference," Cosmopolitan, April 6, 2015, https://www.cosmopolitan.com/politics/a38642/heartbeat-international-conference-crisis-pregnancy-centers-abortion.
   "10 Key Takeaways about Pregnancy Center Marketing From 2018," Choose Life Marketing, January 10, 2019, https://www.chooselifemarketing.com/10-key-takeaways-about-pregnancy-center-marketing-from-2018/; "2021 Client Marketing Strategies for Pregnancy Centers," Stories Marketing, November 30, 2020.
- 177 Stories Marketing, "Client Marketing Strategies."
- 178 Laura E. Dodge et al., "Quality of Information Available Online for Abortion Self-Referral," Obstetrics Gynecology 132, no. 6 (December, 2018): 1447, doi:10.1097/AOG.0000000000002950.
- 179 Cartwright et al., "Identifying National Availability."
- 180 "Client Strategy: Reach Women Before They Reach Out for the Abortion Pill Online," Choose Life Marketing, accessed September 30, 2021, https://www.chooselifemarketing.com/marketing\_category/client-strategy/.
- 181 Dodge et al., "Quality of Information Available,"
- 182 "Advertising Policies: Update to Healthcare and Medicines Policy: Abortion (June 2019)," Google Support, accessed September 30, 2021, https://support.google.com/adspolicy/answer/9297839?hl=en.
- 183 Stephanie Kirchgaessner, "Google Loophole Allows Anti-Abortion Clinics to Post Deceptive Ads," The Guardian, August 19, 2019, https://www.theguardian.com/world/2019/aug/19/google-loophole-anti-abortion-clinics-deceptive-ads.
- 184 "All About Geofencing," Choose Life Marketing, October 22, 2019, https://www.chooselifemarketing.com/all-about-geofencing/
- 185 "Press Release: AG Reaches Settlement with Advertising Company Prohibiting 'Geofencing' Around Massachusetts Healthcare Facilities," Mass.gov, April 4, 2017, https://www.mass.gov/news/ag-reaches-settlement-with-advertising-company-prohibiting-geofencingaround-massachusetts.
- 186 Jessica Glenza, "Revealed: Women's Fertility App is Funded by Anti-Abortion Campaigners," The Guardian, May 30, 2019, https://www.theguardian.com/world/2019/may/30/revealed-womens-fertility-app-is-funded-by-anti-abortion-campaigners.
- 187 Kelly, "Evangelical Underdogs," 431 Privacy International "Exploiting Data."
- 188 Privacy International "Exploiting Data."
- 189 Privacy International "Exploiting Data."
  190 "Pooled Data Powerful Results," Next Level Center Management Solution, accessed September 30, 2021, https://www.nextlevelcms.com/.
- $191\ "Privacy Policy," \textit{Next Level Center Management Solution}, accessed September 30, 2021, https://www.nextlevelcms.com/privacy-policy.pdf.$
- 192 Privacy International "Exploiting Data."
- 193 National Institute of Family and Life Advocates v Becerra, Supreme Court of the United States, June 26, 2018: https://www.supremecourt.gov/opinions/17pdf/16-1140\_5368.pdf.
- $194. California Assembly Bill 775, Reproductive FACT Act, October 9, 2015: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_actions.pdf.$
- 195. Christopher Keating, "Connecticut House approves bill preventing deceptive advertising at crisis pregnancy centers", Hartford Courant, May approximate the properties of the propertieThe County Board of Health Code, Title 4A.10, "Information Disclosure for Care Other than Health Care, Limited Service Pregnancy Centers," https://kingcounty.gov/depts/health/board-of-health/-/media/depts/health/board-of-health/documents/code/BOH-Code-Title-4A.ashx
- 196 Bryant and Swartz, "Legal but Unethical,"
- 197 Swartzendruber et al., "Crisis Pregnancy Centers," 566
- 198 Hutchens, "Gummy Bears," 6.

70

199 Kimport, "Pregnant Women's Reasons," 54-55

Ms. Scanlon. Thank you.

Returning to the subject at hand, we are here in the wake of the deeply unpopular Supreme Court *Dobbs* decision to overturn *Roe* v. *Wade* and with it 50 years of settled law regarding the fundamental privacy right of women to make their own decisions regard-

ing their own healthcare.

I don't think we can underestimate the impact that the *Dobbs* decision will have upon the health and welfare of women and their families in this country, and upon the economic health and welfare of this country as a whole by giving the green light to States to ban abortion, as many have rushed to do in the wake of this decision. The suggestion that the decision has now been left to the people is fundamentally disingenuous given the fact that the Senate is blocking any such legislation with the filibuster.

The *Dobbs* decision goes against the values of a strong majority of Americans that a woman should have the essential freedom to decide when and if to bear children and how many and that politicians should not be in the business of mandating that women carry

dangerous or unintended pregnancies to term.

The vast majority of Americans understand that we don't need or want politicians invading our doctors' offices and that a woman's privacy—invading our doctors' offices or a woman's privacy to impose an extremist minority view when the reality is these decisions are complicated. They are complicated by the mental and financial health of a family. They are complicated by the physical health of both the woman and the fetus. They are complicated by whether or not the pregnancy was the result of abuse or criminal activity. They are complicated by the fact that our society for decades has prioritized the well-being of unborn fetuses over that of children and families, and even the health of pregnant women.

So, unfortunately, the ramifications of this extremist decision do not end there. In overturning *Roe* v. *Wade*, the Court has called into question a host of other privacy rights that Americans have relied on for more than half a century including the right to obtain contraception, the right to interracial and same-sex marriage.

Professor Murray, many of my constituents have questions about the ramifications of Justice Alito's decision and Justice Thomas' concurrence in *Dobbs* with respect to these fundamental privacy rights beyond a woman's freedom to make her own reproductive healthcare decisions. Can you help us explain, in plain English, why those opinions raise alarms about other fundamental rights of self-determination?

Ms. Murray. Happily. Those opinions all proceed from the same grant of liberty in the 14th Amendment. This grant of liberty, as I said before, comes from this reconstruction era, the reconstruction amendment's commitment to an antislavery epic including providing the formerly enslaved with rights of bodily autonomy, control over their own reproduction, and of course the ability to control

their family lives.

When *Roe* was overturned and the right to privacy was casually dismissed by this conservative 6–3 supermajority, it unsettled all of these precedents and the majority's efforts to confine its decision to just abortion is frankly gaslighting. There is no way to confine that logic to just abortion. If *Roe* is egregiously wrong because it

is not rooted in the traditions of this country and because it is not explicit in the text of the Constitution, all these other rights are equally in peril. All of them proceed from the same logic and they are all on the same path as *Roe* is.

Ms. Scanlon. Thank you.

I yield back.

Chair NADLER. The gentlelady yields back.

Mr. McClintock?

Mr. McClintock. Thank you, Mr. Chair.

Ms. Foster, does the *Dobbs* decision ban abortions?

Ms. Foster. It does not.

Mr. McClintock. Does it limit abortion?

Ms. Foster. It does not.

Mr. McClintock. Does it say anything about abortions beyond that it simply can't find such a right in the Constitution?

Ms. Foster. It does not.

Mr. McClintock. If a State chose to legalize unrestricted abortions on demand is there anything in *Dobbs* that would prevent it from doing so?

Ms. Foster. Clearly not. We've seen States doing that.

Mr. McClintock. I think the central question that both sides here are considering is whether Congress has the authority to adopt a Federal law concerning abortion, either restricting it, banning it, or allowing it. Is there anything in the *Dobbs* decision that would prevent Congress from doing so?

Ms. Foster. No.

Mr. McClintock. More difficult question that I am struggling with is whether the Congress has the constitutional authority to ban, or restrict, or allow abortion, or if that is a matter that it leaves to the States through their elected representatives. What is your opinion?

Ms. Foster. Yes, we in Americans United for Life take a perspective on that. We are looking for our elected representatives to lead and to take a strong position protecting life. We also expect our judges to follow the Constitution and protect all life in the law.

Mr. McClintock. If Congress is given enumerated powers, I don't find abortion one way or another among those enumerated powers. Is that not therefore left to the States to decide?

Ms. Foster. It's certainly not an enumerated power.

Mr. McClintock. The majority of Americans tell pollsters that they support *Roe* v. *Wade*, but at the same time they also tell those pollsters that abortion should be banned after 15 weeks. Does *Roe* allow restrictions on abortions after 15 weeks?

Ms. FOSTER. The current regime in our country prior to *Dobbs* was that, in fact, it was almost unrestricted abortion on demand.

Mr. McClintock. So, *Roe* would prevent restrictions on abortions after 15 weeks?

Ms. Foster. It had, yes.

Mr. McClintock. Yes. Okay. How about *Dobbs*? Does the *Dobbs* decision allow such restrictions?

Ms. Foster. The *Dobbs* decision says that you can, in fact, protect women and children after 15 weeks or before 15 weeks.

Mr. McCLINTOCK. Which is what a substantial majority of Americans, even though they say they oppose *Roe*, actually support. Am I right?

Ms. Foster. Supermajority, yes.

Mr. McClintock. Yes. I think laws have to be based on a broad consensus, otherwise they are ignored, or they have to become a precedent. I do think there is a clear consensus that if somebody is lying unconscious in a hospital bed and they have a heartbeat and a brain waive they are a human being. You are not allowed to kill them. Wouldn't that same principle apply to the beginning of life just logically?

Ms. Foster. You would think so, but some of your colleagues

seem to disagree.

Mr. McClintock. Isn't it also—that is what the Mississippi law says?

Ms. Foster. Yes.

Mr. McClintock. As I understand it the concept of substantive due process rests with the Fifth and 14th Amendments' right to not be deprived of life, liberty, or property without due process of law. Now, to my layman's eye that seems pretty clear. You cannot be executed or jailed or fined without your day in court.

Substantive due process imagines a whole range of other rights that are not enshrined explicitly in constitutional or statutory law, but rather are established by judicial decree. Do I understand that

correctly?

Ms. Foster. You do, yes.

Mr. McClintock. Now, I happen to believe there is a class of rights that exist in nature. These are rights that are not created by government; rather we create governments to protect these pre-existing rights, but to do so we still have to define them. We do that through our Constitution and through our legislatures.

Now, we just heard from one of the Democrats' Witnesses that defining such rights should not be left to the elected representatives of the people. So, what is the alternative? Isn't it having unelected judges define these rights instead? Somebody has to de-

fine them. Do I have that right?

Ms. Foster. Apparently so, yes.

Mr. McCLINTOCK. So, which do you think is a safer repository of these rights, the people or appointed judges?

Ms. FOSTER. I believe it's the people. It's the people who have the rights and the people we elect, our representatives to defend them.

Mr. McClintock. Shouldn't respect for democracy leave these issues to the people through their elected representatives? Isn't that what Justice Thomas is saying in his dissent?

Ms. Foster. That's exactly what he's saying.

Mr. McClintock. The left tells us that any restriction on abortion forces a woman to carry a baby against their will. How do you respond to this?

Ms. Foster. I believe, as I said a moment ago, that most women would choose to carry if we can improve their circumstances. That is exactly what this body should be doing.

Mr. McClintock. Thank you very much.

I yield back.

Chair Nadler. The gentleman yields back.

Mr. Swalwell?

Mr. SWALWELL. Thank you.

Ms. Foster, do you think a 10-year-old would choose to carry?

Ms. Foster. In a 10-year-old case, first the Ohio-

Mr. SWALWELL. No, my question is would a 10-year-old choose to carry a baby?

Ms. Foster. In the Ohio case the—

Mr. SWALWELL. I am asking you would a 10-year-old choose to—Ms. Foster. —Ohio Attorney General said that abortion would have been justified.

Mr. SWALWELL. No, no. ma'am. Ma'am, focus on the question, please. Would a 10-year-old choose to carry a baby?

Ms. Foster. I cannot—

Mr. SWALWELL. Do you think a 10-year-old should choose to carry a baby?

Ms. Foster. I believe it would probably impact her life, and so therefore it would fall under any exception and would not be an abortion.

Mr. SWALWELL. Wait. It would not be an abortion if a 10-yearold with her parents made a decision not to have a baby that was the result of a rape?

Ms. Foster. If a 10-year-old became pregnant as a result of rape and it was threatening her life, then that's not an abortion. So, it would not fall under any abortion restriction in our nation.

Mr. SWALWELL. Ms. Warbelow, are you familiar with disinformation?

Ms. Warbelow. Yes, I am.

Mr. SWALWELL. Did you just hear some disinformation?

Ms. Warbelow. Yes, I heard some very significant disinformation.

Mr. SWALWELL. Why don't you tell me about that?

Ms. Warbelow. Yes, an abortion is a procedure. It's a medical procedure that individuals undergo for a wide range of circumstances including because they have been sexually assaulted; raped in the case of the 10-year-old. It doesn't matter whether or not there is a statutory exemption. It is still a medical procedure that is understood to be an abortion.

Beyond that, I think it's also important to note that there is no exception for the life or the health of the mother in the Ohio law. That's why that 10-year-old had to cross State lines to receive an abortion

Mr. SWALWELL. Thank you, Ms. Warbelow.

Mr. Chair, yesterday Jim Jordan sent out a tweet that I would like to put into the record with unanimous consent, and I will read it in a moment.

Chair Nadler. Read it and then I will give unanimous—

Mr. SWALWELL. It is a *Washington Examiner* posting that Ohio AG Dave Yost said, "his office has not found any evidence of a 10-year-old rape victim in the State," who according to a report cited by President Joe Biden was six weeks pregnant and traveled to Indiana to receive an abortion. Mr. Jordan's statement was, "Another lie. Anyone surprised?"

Chair Nadler. Without objection.

Mr. SWALWELL. I would also like to put into the record from to-day's Wall Street Journal from the Editorial Board, "Correcting the Record on a Rape Case." It is the journal correcting its own misstatement the day before. Chair NADLER. Without objection. [The information follows:]





# Another lie. Anyone surprised?

washex.am/3ysuPng

4:40 PM · Jul 12, 2022 · Twitter for iPhone

8/16/22, 6:26 PM

Correcting the Record on a Rape Case - WSJ

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https://www.wsj.com/articles/a-politicized-rape-case-ends-in-arrest-indiana-ohio-ten-year-old-girl-caitlin-bernard-joe-biden-11657749610

#### OPINION | REVIEW & OUTLOOK

### Correcting the Record on a Rape Case

A man has confessed to a crime that got the President's attention.

The Editorial Board Follow

Βv

Updated July 14, 2022 9:47 am ET



President Joe Biden delivers remarks on reproductive rights on July 8. PHOTO: SAMUEL CORUM/AGENCE FRANCE-PRESSE/GETTY IMAGES

It appears President Biden was accurate when he related a story about a 10-year-old Ohio girl who was raped and traveled to Indiana for an abortion. We wondered Tuesday about the case, after no one had confirmed its accuracy or any public report of the crime, though the story had made the media rounds for nearly two weeks.

The Columbus Dispatch reported Wednesday afternoon that Columbus police arrested 27-year-old Gerson Fuentes, who has confessed to the sexual assault. Mr. Fuentes has been charged with rape in the first degree and is being held on \$2 million bond. The Dispatch story said police learned of the girl's pregnancy through a referral by Franklin County Children Services that was made by her mother on June 22.

The Dispatch is part of the USA Today network of papers that includes the Indianapolis Star, which reported on July 1 that the 10-year-old had traveled to Indiana. The Star's story

3/16/22, 6:26 PM

Correcting the Record on a Rape Case - WSJ

was based on a single source and provided no other confirmation.

Mr. Biden focused on the story last Friday as he announced a new executive order promoting abortion services. The White House also provided no backup details. Ohio Attorney General Dave Yost said publicly this week that he had heard "not a whisper" about such a case from local law enforcement.

It's unusual that no one in law enforcement stepped forward to confirm that the rape referral had been made, especially after the story had gone viral for days on the internet. But we appreciate our obligation to correct the record on the case, which is a terrible one. The best news is that an alleged rapist has been taken off the street.

These columns have long supported abortion rights, albeit far more limited than those allowed under *Roe v. Wade*. The country needs to find a rough consensus on abortion now that it has returned to the states and the political process. One way to help is to make sure that stories about abortion, from either side of the debate, can be readily confirmed. Passions are already heated enough.

Appeared in the July 14, 2022, print edition.

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Mr. SWALWELL. So yesterday, Ms. Warbelow, speaking of disinformation, Jim Jordan called a 10-year-old rape victim a liar. A 10-year-old rape victim was called a liar by the Ranking Member of this Committee. I know that he did that because he hates the President. It is clear every day from his statements and the statements from MAGA Republicans that they don't like Joe Biden, so

they are going to call him a liar. That is fine.

What is worse is the reason that he did it is because he doesn't like what that rape victim represents, which is that this law from the Supreme Court, *Dobbs*, and the laws that will follow in States like Ohio, Texas, Georgia, and other States will bring us government-mandated pregnancies for 10-year-olds, fourth graders, little girls. To deflect from that they choose to bully and beat up transgender individuals who represent fewer than one percent of Americans. They try and deflect that because they don't want anyone in America to realize that they don't just want to wage a war on women; they are now expanding it to a war on little girls.

So, Ms. Warbelow, let's go back to where we started here. Can a little girl, should a little girl make the decision to have a forced government pregnancy? Should she ever be put in that position?

Ms. WARBELOW. She should have the opportunity, in consultation with her parents and her medical providers, to make the decision that is in her best interest.

Mr. SWALWELL. Under this current law does she have the opportunity to make that decision?

Ms. Warbelow. She does not under Ohio law.

Mr. SWALWELL. Mr. Chair, again this is not about someone's ability to make a kitchen table decision with their family. It is about MAGA Republicans who want to control not just women, but little girls and to put us into an era of government-mandated pregnancies without the opportunity to make that important kitchen table decision that will affect them for the rest of their life. I yield back.

Chair Nadler. The gentleman yields back.

Mr. Steube?

Mr. STEUBE. Thank you, Mr. Chair.

The majority starts the hearing with the lie that there is a constitutional right to killing unborn children. There never has been that right and nowhere in our founding documents or the Constitution does a constitutional right exist to murder an unborn child. In fact, the opposite is present, and Mr. McClintock touched on it, but

I am going to elaborate.

In the Fifth and 14th Amendments to the Constitution there is a constitutional right for any person to not be deprived of life, liberty, or property without due process of law. In two different amendments. Certainly, an unborn child is a person; I'm not sure what else it would be, and I am tested to see if the other side is going to ignore the science that the child in the womb is not a person. Therefore, that person shall not be deprived of life pursuant to our Constitution and certainly not the opposite where they can be murdered. There has been a lot of talk today about freedom, and there is no freedom to murder an innocent life, a person that was duly recognized under our Constitution.

The majority of the Supreme Court made this clear in stating, and I quote, on page 25 of the opinion,

Its inescapable conclusion is that a right to abortion is not deeply rooted in the nation's history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973.

Then on page 69 of the opinion they hold,

We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled and the authority to regulate abortion must be returned to the people and their elected representatives.

Since *Roe* v. *Wade*, over 63 million children have been slaughtered in an incorrectly decided decision, but finally, the issue has been returned to the elected representatives where it belongs. To right this wrong and give back the right to life guaranteed to every person in our Constitution. We should be thankful today for the Supreme Court's decision in *Dobbs* and everyone who made it possible, and that includes our Witness today, Ms. Foster.

I want to thank you for your commitment to life and the work that led to the decision in *Dobbs* and I want to personally thank you for your courage for being here. I know it is tough up here, but know that hundreds of millions of Americans stand behind you, that we are praying for you, and that there is a large amount of

support out there for you.

I had a list of questions for you, but a couple of questions ago Ms. Scanlon leveled a host of inaccurate disinformation about pregnancy centers, and so I would like to give you the remaining time that I have left if you would like to respond to any of that or I can ask you the questions that I have for you, whichever direction you would like to go.

Ms. Foster. There's a lot I would like to respond to.

Mr. STEUBE. You have got two minutes and 16 seconds to re-

spond.

Ms. Foster. Great. Yes, first, Representative Scanlon seems to be almost talking about Planned Parenthood when she's talking about pregnancy centers. Deceptive, well-funded, coercive, that defines Planned Parenthood, and it defines big abortion. It seems to me that she's getting her information from the same place that a previous representative did on her info about my organization, because, in fact, we don't take a stance on contraception. So, that would be something that I would certainly recommend looking further into.

Then further than that, pre-teen pregnancies, they are high risk and they fit the life exception. So, that isn't actually an abortion because the primary intent is to save the girl's life. An abortion is the intentional ending of a human life in the womb prior to birth,

and that's not what would be going on there.

I ask, really, how do we know about this little girl? Instead of re-victimizing her in front of the nation here in Congress, on C-SPAN why aren't we talking about the real issue here? Why aren't we talking about rape? Why aren't we talking about holding her rapist accountable? Instead, abortion and rape are both symptoms of the same violent ideology that says that we can violate others to achieve our own goals and fulfill our own desires.

I work alongside people who've experienced the most horrific sexual violence imaginable and they understand that transcending these ills and overcoming them starts by refusing to perpetuate or to justify further violence. That is what this hearing should be about. We should be talking about that. We should be talking about helping women, giving women the resources that we need.

We need to be talking about how we can work together in a bipartisan way to help our nation's people, to help all Americans and make sure that we all have equal rights, equal human dignity. Instead, we're just casting stones and throwing spears and trying to intimidate the Supreme Court into regretting a decision that is completely constitutional and restores America's most fundamental human right to life.

Mr. STEUBE. Thank you for being here today.

I yield back.

Chair Nadler. The gentleman yields back.

Ms. Garcia?

Ms. GARCIA. Thank you, Mr. Chair and thank you for bringing us together for this very important, very critical hearing.

I want to thank all the Witnesses for being here today.

Justice Thomas has de facto given the green light for the conservative-controlled States in our nation to continue a crusade against the liberties and freedoms of every individual that is not male, White, and straight. They started with women, throwing us back to the Dark Ages, treating us as property and cattle, forcing us to give birth against our will, treating us as subjects and handmaids at the service of the government. Next, it will go against gays, lesbians, transgender individuals, and the LGBTQ community.

In Texas, the Republican Attorney General has already expressed no uncertain—in no uncertain terms that he has the full intention of litigating in favor of overturning *Lawrence* v. *Texas*.

Now, this case started in my district. Back then, it was in 1988, the arrest of—Mr. Lawrence was a resident of what is now my district, and it was all about keeping the government's reach outside of people's bedrooms and their intimate life—lives where it should stay. It is regrettable that our Attorney General is already, already thinking about doing something about that.

Republicans who claim to believe in small government, in their never-ending hypocrisy, are weaponizing the State to criminalize the most intimate aspects of our lives. What happens between two consenting adults in the privacy of their homes is no one's busi-

Religion is not a basis for public policy. I am a Catholic, but we must keep our rosaries for prayer and not to restrain from their liberties.

I thank the Witnesses for coming and I want to start with you, Professor Murray. Is it extreme that antiabortion activists have been responsible for at least 11 murders, 26 attempted murders, 42 bombings, 194 arsons, and thousands of incidents of criminal activities directed at abortion providers since 1977?

Ms. Murray. It is extreme. I find it really interesting that the Republicans in this hearing have emphasized the protests against the Supreme Court Justices and individuals exercising their First Amendment rights in a peaceful manner, when, in fact, we have since 1977 a long history of actual violence against those who provide abortions and those who seek abortion care.

I will also note that in 2014, the Supreme Court of the United States in *McCullen* v. *Coakley* invalidated a law that the people of Massachusetts enacted through their legislature to provide a 35-foot buffer zone between abortion clinics and protesters so that individuals could enter those clinics in a peaceful manner to make decisions about their healthcare. The Supreme Court invalidated that, subjecting those individuals to the protests and disagreements and, in often many cases, the intimidation of those who oppose abortion.

Ms. GARCIA. So, that is part of the hypocrisy? They don't want a buffer zone at abortion providers centers, but they want some type of buffer zone around their homes when they are eating? Should we just make them a little bubble boys and girls so that

they can just go and be protected in a bubble?

Ms. MURRAY. The Court emphasized that the protesters at abortion clinics were exercising their First Amendment rights in a peaceful manner. I do not condone violence in any way, but I agree with the Court that those who wish to exercise their First Amend-

ment right peaceably should be able to do so.

Ms. GARCIA. Well, I agree with you. I don't condone any violence. I, in fact, am a former judge and I have had death threats, but I just feel that I have always had law enforcement, I have always had people who can protect you. People have a right to protest. They have a right to be there, particularly if they are staying in public sidewalks. So, thank you for that.

Do you think that there is anything that would—I keep hearing this whole notion of it needs to go back to the elected representatives. Well last time I checked I was an elected representative.

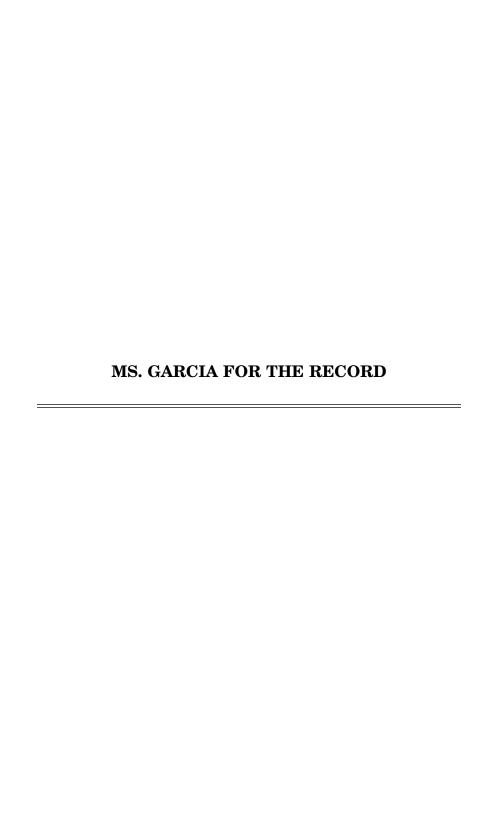
Ms. Murray. That is exactly right, Representative Garcia. I want to correct Representative McClintock's statement that this does not auger the prospect of a Federal ban on abortion. Justice Kavanaugh on pages 2 and 3 of this concurring opinion in *Dobbs* makes clear that this simply returns this issue to the prospect of democratic deliberation in the States and Congress. That those are the words of this opinion. This will surely come to Congress if there is a Republican majority.

Ms. GARCIA. Thank you for that.

Mr. Chair, I want to—for the record introduce the National Abortion Federation Centers' report dated May 19, 2022, listing all the violence against abortion providers since 1977.

Chair NADLER. Without objection.

[The information follows:]





# 2021 VIOLENCE & DISRUPTION STATISTICS

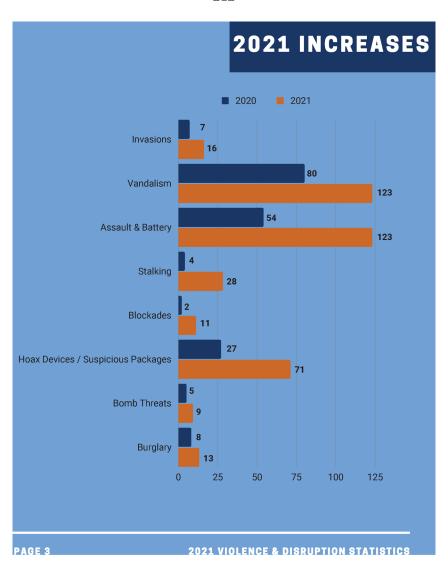
### **OVERVIEW**

The 2021 Violence & Disruption Statistics show a concerning, but sadly unsurprising, increase in intimidation tactics, vandalism, and other activities aimed at disrupting services, harassing providers, and blocking patients' access to abortion care. We saw the most significant increases in stalking (600%), blockades (450%), hoax devices/suspicious packages (163%), invasions (129%), and assault and battery (128%) compared to 2020.

As the COVID-19 pandemic stretched into a second year, abortion providers grappled with the ongoing challenges of providing health care during a public health crisis, including staff shortages due to illness, stress, or burnout. In some cases, these shortages caused clinics to close temporarily. Others remained open, but did not have staff available to monitor protesters or track anti-abortion incidents and activity. Additionally, COVID restrictions limited the presence of volunteer escorts who often witness and report trespassing and other incidents outside of some clinics. Several members moved locations in 2021, which required them to be closed for some period of time and led to a reduction in anti-abortion activity. In one case, the clinic's new location does not allow any protesters on the property so they experienced and ultimately reported less picketing and obstruction than they had in previous years. One of the clinics that previously reported hundred of incidents of obstruction in both 2019 and 2020 closed this year and thus did not report any incidents of obstruction. Had this clinic reported at the same rate as the previous two years, obstruction numbers would have increased this year. As a result of these challenges, we suspect underreporting in several categories, including picketing, hate mail/calls, hate email/internet harassment, obstruction, and trespassing.

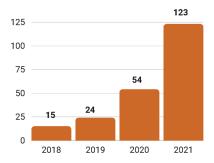
On January 6, 2021, the world watched as violent insurrectionists stormed the U.S. Capitol and tried to overthrow the government. Abortion providers recognized a number of the people at the Capitol as they are the same individuals who target abortion clinics and harass and terrorize clinic staff. This report includes additional information about the role of the anti-abortion movement in the insurrection and the relationship between white supremacy and anti-abortion ideology.

Although we saw a decrease in some activities, including clinic arsons—with two facilities targeted in 2021, compared to five in 2020—overall, harassment and violence have steadily increased in the last 45 years and remain a part of daily life for many abortion providers.



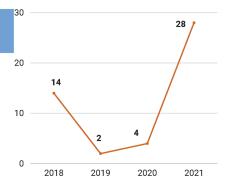
# ASSAULT & BATTERY

As in previous years, NAF members reported an increase in assault and battery outside of clinics, with the majority of incidents involving anti-abortion protesters having altercations with clinic escorts, clinic staff, patient companions, and patients. We received reports of anti-abortion individuals pushing, shoving, using pepper spray against, slapping, kicking, and physically fighting clinic escorts, staff, and others outside of clinics.



# **STALKING**

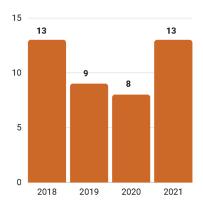
Our abortion-providing members in Colombia reported more than half (16 of 28 or 57%) of the 2021 reports of stalking. Clinic staff reported being followed en route to and from clinics. By comparison, 12 incidents of stalking were reported in the U.S., which alone represents a 200% increase over 2020 reports.



**2021 VIOLENCE & DISRUPTION STATISTICS** 

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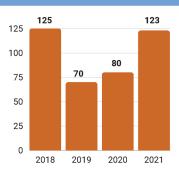
# BURGLARY



After a slight decline in 2020, burglaries increased by 63% in 2021. Burglary typically results in damage to property and carries a definite boldness to commit. One specific report from a member in Texas mentioned that file cabinet drawers were gone through as if the perpetrator was looking for patient charts but was unsuccessful, and ultimately very little of value was taken. This incident occurred shortly after an abortion ban (Senate Bill 8) went into effect in the state on September 1, 2021.

# **VANDALISM**

We saw a 54% increase in acts of vandalism targeting abortion providers in 2021. These acts included multiple incidents of bullets being fired through clinic windows, damage to HVAC equipment, cutting of power sources, bricks and rocks thrown through or at windows, and signs damaged.

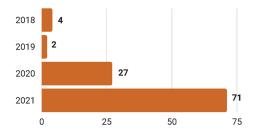


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2021 VIOLENCE & DISRUPTION STATISTICS

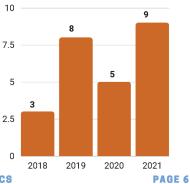
# HOAX DEVICES / SUSPICIOUS PACKAGES

We documented a 163% increase in hoax devices or suspicious packages at clinics. These include strange or unusual items that cause concern and usually result in law enforcement being called to investigate. Because of the history of attacks involving packages that contained dangerous materials, clinics have to treat these situations with maximum precaution and they can be very time-consuming to manage and disruptive to services.



# **BOMB THREATS**

Bomb threats can be communicated to clinics in a variety of ways and we saw an 80% increase in bomb threats this year. These incidents may require the clinic to evacuate or call law enforcement and can be very disruptive to patient care.

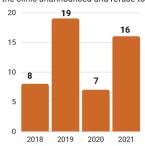


2021 VIOLENCE & DISRUPTION STATISTICS

In April, four anti-choice extremists entered a clinic in Long Island, NY, and remained inside for 1.5 hours before they were arrested. After they were removed, police conducted an hourlong room-by-room search of the rest of the building, including several other businesses, during which time clinic staff left the building. The invaders were arrested and charged with "Obstructing Government Administration".

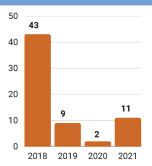
### **INVASIONS**

In recent years, we have documented a disturbing trend of clinic invasions. These invasions vary in length and can delay patient care. In some cases, the perpetrators make fake appointments to gain access to the clinic while posing as patients and they cause disruptions and refuse to leave until law enforcement is called. In others, they force their way into the clinic unannounced and refuse to leave.



#### **BLOCKADES**

The Freedom of Access to Clinic Entrances (FACE) Act has been particularly effective in reducing the incidence of clinic blockades since its enactment in 1994. Still, we see some blockade activity and in 2021, saw a 450% increase in blockades from 2020. In January 2021, seven extremists blocked the doors to an Arkansas clinic. In April, anti-abortion individuals blocked the entrances to a clinic in Michigan. One of the extremists chained herself to the door with a bike lock that had to be cut off by the police.



PAGE 7

2021 VIOLENCE & DISRUPTION STATISTICS

# THE JANUARY 6TH INSURRECTION

The people who threaten clinic workers and harass individuals seeking abortion care are often the same people who participate in other violent and extremist activities that are deeply harmful. The <u>overlap between white nationalists and the anti-abortion movement</u> has existed for many years. In 1985, the Ku Klux Klan (KKK) began creating wanted posters listing the personal information of <u>abortion providers</u>. The first murder of an abortion provider, Dr. David Gunn, was perpetrated by a white supremacist who was mentored by former Klansman John Burt. Burt once told *The New York Times*: "Fundamentalist Christians and those people [the Ku Klux Klan] are pretty close, scary close, fighting for God and country. Some day we may all be in the trenches together in the fight against the slaughter of unborn children."

This pattern of overlapping hate and violence has continued to this day. Some of the same antiabortion extremists who target clinics also participated in the January 6th insurrection at the U.S. Capitol. A few examples include:

- Convicted arsonist and anti-abortion extremist John Brockhoeft <u>live-streamed from outside the</u>
  Capitol.
- Derrick Evans, a member of the West Virginia House of Delegates and frequent protester at the state's sole abortion clinic <u>entered the Capitol and was later charged</u> with two federal misdemeanors and resigned his seat.
- Jason Storms, National Director of Operation Save America, Associate Pastor at Mercy Seat
   Christian Church, and Founder of Faithful Soldier Training Camp shared a video of himself on the
   scaffolding at the Capitol calling for revolution.
- There's video of Tayler Hansen, Founder of Baby Lives Matters, inside the Capitol next to the woman who was shot.
- Jeff Durbin, Founder of Apologia Studios and an associate of Operation Save America shared multiple videos of himself at the Capitol on January 6th.
- Oklahoma State Senator Warren Hamilton, an associate of Operation Save America, appeared outside the Capitol with other Senators.

#### **METHODOLOGY**

NAF has been tracking incidents of violence and disruption against reproductive health care providers since 1977. NAF asks our member facilities and allied organizations to submit monthly reports on the anti-abortion incidents that they experience. We conduct telephone and email follow up to our member clinics to acquire completed reports and to gather additional information about reported incidents as needed. If we are not able to validate an incident, it is not included in our statistics, which suggests that actual incidents are higher than reported. This year, 80% of our facility members reported data to us. In the 2021 statistics, we suspect underreporting in a number of categories, including picketing, hate mail/calls, hate email/internet harassment, obstruction, and trespassing.

NAF continues to work with an outside security firm to monitor threats and track scheduled antiabortion events. NAF collects and compiles this data to detect patterns in anti-abortion criminal activities and appropriately report these trends to law enforcement.

Numbers prior to 2013 represent the United States and Canada only. Numbers from 2013-2021 represent the United States, Canada, Mexico City, and Colombia.

The National Abortion Federation (NAF) is the professional association of abortion providers. We represent all types of abortion providers. Our members include private and non-profit clinics, Planned Parenthood affiliates, women's health centers, physicians' offices, hospitals, and virtual providers in the U.S. and Canada. Our members also include public hospitals and both public and private clinics in Mexico City and private clinics in Colombia.

20 of NATIONAL	NAF VIOLENCE AND DISRUPTION STATISTICS (2020 - 2021)								
nat abortion federation	INCIDENTS OF VIOLENCE	& DISRUPTION AGAINST	ABORTION PROVIDERS						
	2020	2021	Totals 2020 - 2021						
Violence									
Murder	0	0	0						
Attempted Murder	0	0	0						
Bombing	0	0	0						
Arson	5	2	7						
Attempted Bombing / Arson	4	1	5						
Invasion	7	16	23						
Vandalism	80	123	203						
Trespassing <sup>1</sup>	1,265	977	2,242						
Butyric Acid Attacks	0	0	0						
Anthrax / Bioterrorism Threats	0	0	0						
Assault & Battery	54	123	177						
Death Threats / Threats of Harm <sup>2</sup>	200	182	382						
Kidnapping	0	0	0						
Burglary <sup>3</sup>	8	13	21						
Stalking <sup>4</sup>	4	28	32						
Totals	1,627	1,465	3,092						
Disruption									
Hate Mail / Harassing Calls	3,413	2,999	6,412						
Hate Email / Internet Harassment <sup>5</sup>	24,646	25,026	49,672						
Hoax Devices / Suspicious Packages <sup>6</sup>	27	71	98						
Bomb Threats	5	9	14						
Picketing <sup>7</sup>	115,517	114,093	229,610						
Obstruction <sup>8</sup>	2,712	2,439	5,151						
Totals	146,320	144,637	290,957						
Clinic Blockades									
Number of Incidents	2	11	13						
Number of Arrests <sup>9</sup>	18	27	45						

<sup>&</sup>lt;sup>1</sup>Tabulation of trespassing began in 1999.

 $<sup>^{\</sup>rm 2}$  Death Threats, as of 2015, include any reported or discovered "Threats of Harm."

 $<sup>^3</sup>$  This category includes incidents of Burglary, Robbery, and Theft that occurred at a reproductive health facility.

<sup>&</sup>lt;sup>4</sup> Stalking is defined as the persistent following, threatening, and harassing of an abortion provider, staff member, or patient away from the clinic. Tabulation of stalking incidents began in 1993.

<sup>&</sup>lt;sup>5</sup> Tabulation of email harassment began in 2002. As of mid-November 2015, enhanced technology allowed for an increased ability to document internet harassment.

 $<sup>^{\</sup>rm 6}$  Tabulation of hoax devices began in 2002.

 $<sup>^{7}</sup>$  NAF changed its method of collecting picketing data in 2012. Obstruction was separated into its own category.

<sup>&</sup>lt;sup>8</sup> Tabulation of obstructions began in 2012. Obstruction is defined as the act of causing a delay or an attempt to cause a delay in the conduct of business or prevent persons from entering or exiting an area. This would apply to violations of the FACE Act.

 $<sup>^9</sup>$  The "number of arrests" represents the total number of arrests, not the total number of persons arrested. Many individuals were arrested multiple times.

10 of NATIONAL	NAF VIOLEN	NCE AND DIS	RUPTION S	TATISTICS (2	(010 - 2019)						
nat ABORTION	INCIDENTS	OF VIOLENC	E & DISRUP	TION AGAIN	IST ABORTIC	ON PROVIDE	RS				
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Totals 2010-2019
Violence											
Murder	0	0	0	0	0	3	0	0	0	0	3
Attempted Murder	0	0	0	0	0	9	0	0	0	0	9
Bombing	0	1	0	0	0	0	0	0	0	0	1
Arson	0	1	5	0	1	4	1	1	1	1	15
Attempted Bombing / Arson	1	1	0	0	0	0	0	1	1	0	4
Invasion	0	0	0	8	1	6	7	11	8	19	60
Vandalism	22	27	12	5	12	67	109	92	125	70	541
Trespassing <sup>1</sup>	45	69	47	264	78	118	247	823	1,135	1,507	4,333
Butyric Acid Attacks	0	0	0	0	0	0	0	0	0	0	0
Anthrax / Bioterrorism Threats	1	1	0	0	0	0	0	0	0	0	2
Assault & Battery	4	3	7	0	1	6	36	36	15	24	132
Death Threats / Threats of Harm <sup>2</sup>	2	2	6	2	1	94	33	62	57	92	351
Kidnapping	0	0	0	0	0	0	0	0	0	0	0
Burglary <sup>3</sup>	13	8	5	0	1	9	66	34	13	9	158
Stalking <sup>4</sup>	7	1	6	20	4	9	22	21	14	2	106
Totals	95	114	88	299	99	325	521	1,081	1,369	1,724	5,715
Disruption											
Hate Mail / Harassing Calls	404	365	452	420	367	373	869	1,156	1,388	3,123	8,917
Hate Email / Internet Harassment <sup>5</sup>	44	17	41	88	91	25,839	42,726	15,773	21,252	22,366	128,237
Hoax Devices / Suspicious Packages <sup>6</sup>	8	2	7	2	9	35	29	30	4	2	128
Bomb Threats	12	1	1	4	1	4	9	8	3	8	51
Picketing <sup>7</sup>	6,347	4,780	5,706	5,574	5,402	21,715	61,562	78,114	99,409	123,228	411,837
Obstruction <sup>8</sup>			79	396	251	242	580	1,704	3,038	3,387	9,677
Totals	6,815	5,165	6,286	6,484	6,121	48,208	105,775	96,785	125,094	152,114	558,847
Clinic Blockades											
Number of Incidents	1	5	6	3	23	45	51	104	43	9	290
Number of Arrests <sup>9</sup>	0	0	4	1	0	0	1	10	2	0	18

<sup>&</sup>lt;sup>1</sup>Tabulation of trespassing began in 1999.

<sup>&</sup>lt;sup>2</sup> Death Threats, as of 2015, include any reported or discovered "Threats of Harm."

<sup>&</sup>lt;sup>3</sup> This category includes incidents of Burglary, Robbery, and Theft that occurred at a reproductive health facility.

<sup>&</sup>lt;sup>4</sup> Stalking is defined as the persistent following, threatening, and harassing of an abortion provider, staff member, or patient away from the clinic. Tabulation of stalking incidents began in 1993.

<sup>&</sup>lt;sup>5</sup> Tabulation of email harassment began in 2002. As of mid-November 2015, enhanced technology allowed for an increased ability to document internet harassment.

<sup>&</sup>lt;sup>6</sup> Tabulation of hoax devices began in 2002.

<sup>&</sup>lt;sup>7</sup> NAF changed its method of collecting picketing data in 2012. Obstruction was separated into its own category.

<sup>&</sup>lt;sup>8</sup> Tabulation of obstructions began in 2012. Obstruction is defined as the act of causing a delay or an attempt to cause a delay in the conduct of

business or prevent persons from entering or exiting an area. This would apply to violations of the FACE Act.

<sup>9</sup> The "number of arrests" represents the total number of arrests, not the total number of persons arrested. Many individuals were arrested. multiple times.

naf NATIONAL ABORTION FEDERATION		NAF VIOLENCE AND DISRUPTION STATISTICS (2000 - 2009) INCIDENTS OF VIOLENCE & DISRUPTION AGAINST ABORTION PROVIDERS										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Totals 2000-09	
Violence												
Murder	0	0	0	0	0	0	0	0	0	1	1	
Attempted Murder	1	0	0	0	0	0	0	0	0	0	1	
Bombing	0	1	0	0	0	0	0	0	0	0	1	
Arson	2	2	1	3	2	2	0	2	0	0	14	
Attempted Bombing / Arson	3	2	0	0	1	6	4	2	1	1	20	
Invasion	4	2	1	0	0	0	4	7	6	1	25	
Vandalism	56	58	60	48	49	83	72	59	45	40	570	
Trespassing <sup>1</sup>	81	144	163	66	67	633	336	122	148	104	1,864	
Butyric Acid Attacks	0	0	0	0	0	0	0	0	0	0	0	
Anthrax / Bioterrorism Threats	30	554	23	0	1	0	0	1	3	2	614	
Assault & Battery	7	2	1	7	8	8	11	12	6	9	71	
Death Threats / Threats of Harm <sup>2</sup>	9	14	3	7	4	10	10	13	2	16	88	
Kidnapping	0	0	0	0	0	0	1	0	0	0	1	
Burglary <sup>3</sup>	5	6	1	9	5	11	30	12	7	12	98	
Stalking <sup>4</sup>	17	10	12	3	15	8	6	19	19	1	110	
Totals	215	795	265	143	152	761	474	249	237	187	3,478	
Disruption	223	733	203	143	132	701	4/4	243	237	107	3,470	
Hate Mail / Harassing Calls	1,011	404	230	432	453	515	548	522	396	1,699	6,210	
Hate Email / Internet Harassment <sup>5</sup>			24	70	51	77	25	38	44	16	345	
Hoax Devices / Suspicious Packages <sup>6</sup>			41	13	9	16	17	23	24	17	160	
Packages Bomb Threats	20	31	7	17	13	11	7	6	13	4	129	
Picketing <sup>7</sup>	8,478	9,969	10,241	11,348	11,640	13,415	13,505	11.113	12,503	8,388	110,600	
Obstruction <sup>8</sup>	5,470	3,303	20,272	22,540	22,040	10,410	20,000	22,113	12,303	5,500	220,000	
Totals	9,509	10,404	10.543	11.880	12,166	14.034	14,102	11.702	12.980	10.124	117,444	
Clinic Blockades	9,509	10,404	10,543	11,880	12,100	14,034	14,102	11,702	12,980	10,124	11/,444	
Number of Incidents	4	1	4	10	24	4	- 12	7		1	0.7	
	0	0	0	10	34	0	13		8	0	87	
Number of Arrests <sup>9</sup>	0	0	0	0	0	0	0	3	1	0	4	

<sup>&</sup>lt;sup>1</sup> Tabulation of trespassing began in 1999.

 $<sup>^{\</sup>rm 2}$  Death Threats, as of 2015, include any reported or discovered "Threats of Harm."

<sup>&</sup>lt;sup>3</sup> This category includes incidents of Burglary, Robbery, and Theft that occurred at a reproductive health facility.

<sup>&</sup>lt;sup>4</sup> Stalking is defined as the persistent following, threatening, and harassing of an abortion provider, staff member, or patient away from the clinic. Tabulation of stalking incidents began in 1993.

<sup>&</sup>lt;sup>5</sup> Tabulation of email harassment began in 2002. As of mid-November 2015, enhanced technology allowed for an increased ability to document internet harassment.

 $<sup>^{\</sup>rm 6}$  Tabulation of hoax devices began in 2002.

<sup>&</sup>lt;sup>8</sup> Tabulation of obstructions began in 2012. Obstruction was separated into its own category.

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2107	NAF VIOLENCE AND DISRUPTION STATISTICS (1990 - 1999) INCIDENTS OF VIOLENCE & DISRUPTION AGAINST ABORTION PROVIDERS										
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	Totals 1990-99
Violence											
Murder	0	0	0	1	4	0	0	0	2	0	7
Attempted Murder	0	2	0	1	8	1	1	2	1	0	16
Bombing	1	1	0	1	1	1	2	6	1	1	15
Arson	10	8	19	12	11	14	3	8	4	7	96
Attempted Bombing / Arson	3	1	13	7	3	1	4	2	5	0	39
Invasion	19	29	26	24	2	4	0	7	5	1	117
Vandalism	26	44	116	113	42	31	29	105	46	23	575
Trespassing <sup>1</sup>										193	193
Butyric Acid Attacks	0	0	57	15	8	0	1	0	19	0	100
Anthrax / Bioterrorism Threats	0	0	0	0	0	0	0	0	12	35	47
Assault & Battery	6	6	9	9	7	2	1	9	4	0	53
Death Threats / Threats of Harm <sup>2</sup>	7	3	8	78	59	41	13	11	25	2	247
Kidnapping	0	0	0	0	0	0	0	0	1	0	1
Burglary <sup>3</sup>	2	1	5	3	3	3	6	6	6	0	35
Stalking <sup>4</sup>				188	22	61	52	67	13	1	404
Totals	15	10	22	278	91	107	72	93	49	3	1,945
Disruption											
Hate Mail / Harassing Calls	21	142	469	628	381	255	605	2,829	915	82	6,327
Hate Email / Internet Harassment <sup>5</sup>											
Hoax Devices / Suspicious Packages <sup>6</sup>											
Bomb Threats	11	15	12	22	14	41	13	79	31	7	245
Picketing <sup>7</sup>	45	292	2,898	2,279	1,407	1,356	3,932	7,518	8,402	1,808	29,937
Obstruction <sup>8</sup>	,,,	-74	-,,,,,,	2,270	2,107	-,,,,,,	-,,,,,,	.,510	2,102	-,,,,,,,	
Totals	77	449	3,379	2,929	1.802	1.652	4,550	10,426	9,348	1.897	36,509
Clinic Blockades			,	,,,	,	,,,,,,	,,,,,,	,	,,,,,,	,	,,,,,,,
Number of Incidents	34	41	83	66	25	5	7	25	2	1	289
Number of Arrests <sup>9</sup>	1,363	3,885	2,580	1,236	217	54	65	29	16	2	9,447

<sup>&</sup>lt;sup>1</sup> Tabulation of trespassing began in 1999.

<sup>&</sup>lt;sup>2</sup> Death Threats, as of 2015, include any reported or discovered "Threats of Harm."

<sup>&</sup>lt;sup>3</sup> This category includes incidents of Burglary, Robbery, and Theft that occurred at a reproductive health facility.

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<sup>\*</sup> Tabulation of obstructions began in 2012. Obstruction is defined as the act of causing a delay or an attempt to cause a delay in the conduct of business or prevent persons from entering or exiting an area. This would apply to violations of the FACE Act.

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m of NATIONAL	NAF VIOLENCE AND DISRUPTION STATISTICS (Summary by Decade)										
naf abortion federation	INCIDENTS OF VIOL	ENCE & DISRUPTIO	N AGAINST ABORTIC	ON PROVIDERS							
	1977 to 89	1990 to 99	2000 to 09	2010 to 19	2020 to 21	Totals					
/iolence											
Murder	0	7	1	3	0	11					
Attempted Murder	0	16	1	9	0	26					
Bombing	25	15	1	1	0	42					
Arson	64	96	14	15	7	196					
Attempted Bombing / Arson	37	39	20	4	5	105					
nvasion	247	117	25	60	23	472					
/andalism	244	575	570	541	203	2,133					
Frespassing <sup>1</sup>		193	1,864	4,333	2,242	8,632					
Butyric Acid Attacks	0	100	0	0	0	100					
Anthrax / Bioterrorism Threats	0	47	614	2	0	663					
Assault & Battery	58	53	71	132	177	491					
Death Threats / Threats of Harm <sup>2</sup>	70	247	88	351	382	1,138					
Kidnapping	2	1	1	0	0	4					
Burglary <sup>3</sup>	20	35	98	158	21	332					
Stalking <sup>4</sup>		404	110	106	32	652					
Totals	767	1,945	3,478	5,715	3,092	14,997					
Disruption											
Hate Mail / Harassing Calls	192	6,327	6,210	8,917	6,412	28,058					
Hate Email / Internet Harassment <sup>5</sup>			345	128,237	49,672	178,254					
Hoax Devices / Suspicious Packages <sup>6</sup>			160	128	98	386					
Bomb Threats	237	245	129	51	14	676					
Picketing <sup>7</sup>	847	29,937	110,600	411,837	229,610	782,831					
Obstruction <sup>8</sup>				9,677	5,151	14,828					
Totals	1,276	36,509	117,444	558,847	290,957	1,005,033					
Clinic Blockades											
Number of Incidents	385	289	87	290	13	1,064					

 $<sup>^{1}\</sup>mbox{Tabulation}$  of trespassing began in 1999.

 $<sup>^{\</sup>rm 2}$  Death Threats, as of 2015, include any reported or discovered "Threats of Harm."

<sup>&</sup>lt;sup>3</sup> This category includes incidents of Burglary, Robbery, and Theft that occurred at a reproductive health facility.

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business or prevent persons from entering or exiting an area. This would apply to violations of the FACE Act.

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Ms. GARCIA. Thank you.

Chair NADLER. The gentlelady's time is expired.

Ms. GARCIA. I yield back. Chair NADLER. Mr. Tiffany?

Mr. TIFFANY. Thank you.

Ms. Warbelow, did you have personal security to attend here today?

Ms. Warbelow. I did not, but I do have security as part of my job.

Mr. TIFFANY. Okay. Thank you for that question or thank you for that answer.

Ms. Foster, we heard about targeting low-income people. Could you give us just a brief tutorial on Margaret Sanger and Planned Parenthood and their history?

Ms. Foster. Margaret Sanger is one of the most noted eugenicists in our nation's history, if not the world's history. She believed in targeting minority populations, believed in targeting populations with disabilities, all kinds of just backwards undemocratic thinking.

She also founded Planned Parenthood which today does the lion's share, performs the lion's share of all abortions in America.

Mr. TIFFANY. Isn't it true that Nazi Germany actually invited her ilk to their country pre-World War II?

Ms. Foster. They did.

Mr. TIFFANY. Yes. What effect would the—you talked earlier about the so-called Women's Health Protection Act of 2022 that failed in the United States Senate. Could you comment on the impact on State governments that this bill would have?

Ms. Foster. It would even go beyond *Roe*. *Roe* stripped away protections in all 50 States, even the States that had already moved to liberalize abortion law. It stripped away protections in every single State, predications like informed consent, protections like if—you name it. If it was on the books, it was gone.

This Women's Health Protection Act, which is incredibly deceptively named—they talk about disinformation. It's not about health or protection. It has nothing to do with the good of women. That bill would strip away every protection that's been put on the books in American history. It would strip away the ability to see our own ultrasounds. If we asked to see our own ultrasounds, that can be denied us.

Again, it would strip away informed consent, any kind of protection on late-term abortion, which of course as we know is far more dangerous for the woman, a much higher maternal mortality rate. It would strip away protections on chemical abortion, which is even more dangerous than a surgical abortion when it comes to hemorrhage and sepsis. You name it, it's on the chopping block.

Mr. TIFFANY. So, would it remove parental consent?

Ms. Foster. Yes.

Mr. TIFFANY. Okay. So, we heard some rhetoric earlier about protecting little girls. So, in other words, me as parents—my wife and I was parents—so, in other words, if we had an underage daughter, that would remove us from the picture. Is that correct?

Ms. Foster. It sure would, yes.

Mr. TIFFANY. Does it limit the healthcare information? Does this bill limit healthcare information that can be provided to pregnant women?

Ms. FOSTER. The Women's Health Protection Act does. When we're talking about informed consent, women don't even have the right to get the facts about the abortion, the procedure that they're about to undergo.

Mr. TIFFANY. Basically, what you were saying earlier?

Ms. Foster. Yes.

Mr. TIFFANY. Yes. So, I want to thank the Chair yesterday for clarifying the Democrat Party's position in regards to the Hyde Amendment.

For those of you not familiar, the Hyde Amendment—

Chair NADLER. You are welcome.

Mr. TIFFANY. —the Hyde Amendment prevents taxpayer dollars from being used for abortions. So, in other words, you should pay for it. If you have—let's say you have a conscience. Let's say for conscience reasons, you say that you do not want to pay for an abortion, that would all go away. It is terribly unfortunate because we saw many Democrats over the previous decades that did have strong conscience provisions, that believed in the Hyde Amendment, and our Chair has made it very clear that the Democrat Party's position is that you shall pay for abortions if they are going to set the law here in our country.

I just want to close with this, and I want to address the young people that are here today. Thank you so much for joining us for this hearing. I want to talk to you about the history of the Republican Party.

We were formed in 1954. We were the original single-issue party, and that was to end slavery. That was accomplished in our country. We did it over the—well, we ended up fighting a war over it. We are now here to protect life once again. It is now the Republican Party that stands for life in America.

I yield back, Mr. Chair.

Chair NADLER. The gentleman yields back.

Ms. McBath?

Ms. McBath. Thank you, Chair.

We have spent countless years listening to questions about women's personal freedoms from individuals with extreme views, questions from individuals in this body who have already expressed by their actions and their rhetoric that the will of the American people should just simply be ignored. After all the years of attacks on *Roe* v. *Wade*, after years of disingenuous questions and deceitful politics, I believe that it is time that those who have advocated for the overturning of a woman's right to choose to answer some questions of their own.

Does a 12-year-old girl, a middle schooler, who attends after school programs because her parents work late, who is viciously raped on her walk home from school—should she have access to an abortion? Or must she be forced to carry that fetus to term for nine months, to wake up every morning to bouts of morning sickness, to shake in fear every time she is touched, the growing bump in her belly a reminder each day of the unimaginable trauma she has

suffered, memories she cannot escape and a feeling she may never feel clean or whole again?

Does a mother who has struggled to get pregnant, who has just gone in for a prenatal checkup and has been told the heartbreaking truth that her child will be stillborn upon delivery, that no matter what she does or not matter how hard she prays, her desire for motherhood will once again be denied. Should her doctors be allowed to treat her miscarriage? Or must she be forced to carry her fetus to term, to grapple with the pain, the anguish, the devastation she feels being asked by passersby in public how far along she is, or enduring comments on how beautiful she looks as an expectant mother and how excited she must be for the arrival of her newborn child?

Does a sophomore who plays varsity soccer and hopes to play in college one day, who is excited to go to prom in a few months and just had sex for the first time, who can't seem to understand why her shirts keep getting tighter, she finds herself with her head in the toilet one night vomiting seemingly for no reason at all and as her father comes to check on her, he startles her, she looks into his eyes, which are filled with tears, they both recognize that she is pregnant and that she no more than a mere child herself will be forced to give birth to one. Does she have the right to an abortion? Or will she be forced to feel the guilt and shame she believes she has caused her parents and her loved ones for realizing that college may no longer be an option for her or that her future, her dreams are deferred?

In other words, I would like to ask my Republican colleagues, do you support abortion in the first trimester? Do you support abortion in the case of rape or incest? Do you support abortion if it risks the life of the mother? Do you support abortion in the case of fetal abnormalities? Do you believe all abortion is murder? If so, do you believe miscarriage is manslaughter? Do you believe women should face criminal penalties for seeking an abortion? Do you think doctors should be put in jail for providing them? Do you support a woman's right to make her own healthcare decisions?

The reason we will never hear a response to these simple questions is that they know the answers they give Americans will find extreme and disturbing. They know that forcing women to have children without their consent is not a position that the American people find palatable. They know that forcing women to carry a dead fetus to term will not win them the support that they desire because what this decision takes from us women is our freedom, the freedom to choose our own destinies, the freedom to pursue the happiness that we envision for ourselves.

There are legislators across America telling women that for nine months that they are mere subjects of the State, that their bodies belong to the whims of an all-mighty government, that the liberty our Creator endowed with us is no longer a self-evident truth, that the autonomy and independence God has given us has been stripped away by mere men. There is no freedom for a woman unless she has freedom over her own body.

Chair NADLER. The time of the gentlelady has expired.

Mr. Bishop?

Mr. BISHOP. Thank you, Mr. Chair.

Ms. Foster, do laws against abortion prohibit removing a dead fetus from the woman?

Ms. Foster. Absolutely not.

Mr. BISHOP. That is my understanding as well. I wanted to get that one out the way because that continues to be repeated by the other side.

Professor Murray, you concluded your testimony, both your written version and the oral form, by saying that you, "call on this Committee to protect these associated rights in a manner that is swift and absolute." That was your last word, absolute. Of course, these associated rights; you are speaking about several, but certainly the right to abortion. Do you mean by that there should be no limits on it whatsoever, that it should be available until birth?

Ms. Murray. What I meant in my written testimony, Representative, and many thanks for the question, is that fundamental rights should not be left to the democratic process. These are fundamental rights that each individual has, and they should be protected as they were under the Constitution.

Mr. BISHOP. Do you mean that they are absolute? My colleagues, when we were discussing the Second Amendment the other week, reminded me often that no constitutional right is absolute, a point that I readily concede. Do you concede that there can be limits on the right to abortion?

Mr. Murray. It is not a concession to say that there is no fundamental right that is unfettered. I teach that to my students every day in my constitutional law class. The Second Amendment rights are not unfettered. They can be subject to government regulation, or at least they could until quite recently. All fundamental rights are subject to some limitations.

When I asked for this Committee to respond in a manner that was swift and absolute, I meant in terms of their commitment to protecting the rights of every person in the United States to enjoy these fundamental freedoms and not have their most intimate decisions made by the government.

Mr. BISHOP. Do you support the Women's Health Protection Act that is pending; that is what it is called by its sponsors; you have heard it referred to today and I imagine you are familiar with it, that would allow abortion until the moment of birth?

Ms. Murray. Representative, I think that's a mischaracterization of the Women's Health Protective Act. I am supportive of any measure that this chamber takes to assure the rights of individuals to be free in this country and to enjoy the equality that is promised to us under the 14th Amendment to the Constitution, and I'm

happy to elaborate if you'd like.

Mr. BISHOP. Well, let me clear away the—you said it is a mischaracterization of the bill; I don't think it is, but let me just ask you more directly: Do you favor the Congress providing that

abortion shall be protected until the moment of birth?

Ms. Murray. I don't believe that abortion care allows for abortion until the moment of birth. That's not how this works. Individuals have the right to select an abortion and when individuals do choose a late-term abortion, it's usually because something tragic has happened in a pregnancy that was very much wanted.

My point that this is a mischaracterization is that you are using inflammatory language to essentially damn those who choose to have a late-term abortion, often because there are very few choices available to them because something tragic has happened in the course of a very much wanted pregnancy. That's my point.

Mr. BISHOP. Should the rights of the unborn be weighed in the

consideration of whether to allow a late-term abortion?

Ms. Murray. Well, I would respectfully note that in this Court's decision in *Planned Parenthood* v. *Casey* in 1992 the Court allowed the State—

Mr. BISHOP. Well, rather than go back into the Constitution, I

am really just getting your advice because you are advising—

Ms. Murray. I'm sorry, we're not talking about the Constitution. Mr. Bishop. No, I am interested in your advice to the Committee about—that you concluded your—that you urged the Committee to protect these rights. I am asking not so much for a history of what the Supreme Court has said, but do you contend that the child's rights, unborn child's rights, should be weighed in considered whether to limit late-term abortion?

Ms. Murray. As I was saying, in *Planned Parenthood* v. *Casey*, the Court allowed the States to regulate for the potentiality of life. That was the leavening of both the woman's right to choose an

abortion.

Mr. BISHOP. Do you believe it should be so limited?

Ms. Murray. It doesn't matter what I believe; it matters what the Constitution says and how the Constitution is interpreted.

Mr. BISHOP. All right. Thank you.

Ms. Warbelow, the Human Right Campaign also supports the Democrat's bill that I just made reference to that providing for abortion up until birth potentially. Isn't that correct?

Ms. WARBELOW. We support the bill, but again like Professor Murray said, your statements are a mischaracterization of what

the bill does.

Mr. BISHOP. You say that it could not protect the right to an abortion until the moment of birth? Is that what you are saying?

Ms. Warbelow. That isn't how abortion care works. In fact, to suggest that's how abortion care works is really troubling and dangerous for women.

Mr. BISHOP. Okay. So, only because you are saying that as a practical matter, that is not how abortions occur, therefore the bill does allow—by its terms, it allows that. Isn't that correct?

Ms. WARBELOW. It does not. It's a mischaracterization of how the bill operates. As Professor—

Chair NADLER. The time of the gentleman is expired.

Mr. Stanton?

Mr. STANTON. Thank you very much, Mr. Chair.

Nearly 50 years ago, the Supreme Court recognized the constitutional right to an abortion in *Roe* v. *Wade*. That ruling, anchored in our Constitution's right to privacy, was part of a litany of cases forming the doctrine of substantive due process guaranteeing constitutional protections for many of the freedoms that we embrace and rely upon in the modern United States.

Whether it be a parent's decision on how to raise their child, an adult's decision to marry the person they love, or the decision to

use contraception, these private intimate choices have long been left to the individual to make for themselves, not to politicians.

In the weeks since *Dobbs* was published, I can tell you that the people of my district in Arizona are angry. They are angry because the Supreme Court's decision to overturn *Roe* reverses years of hard-won progress and precedent. It threatens the lives, careers, and families they have built, and the plans they have made for their future. Simply put, it turns back the clock.

While Justice Alito attempted to distinguish the right to an abortion from other personal freedoms recognized by the Court in recent decades like access to contraception, like marriage equality, his distinguishing rationale was so weak that there is little hope

that other personal liberties will hold up to its scrutiny.

Make no mistake, the *Dobbs* decision is a clear invitation to State legislatures to pass more hostile laws that without a doubt will result in litigation before the Supreme Court and will result

in further fundamental rights being stripped away.

You don't have to be a close observer of the Court to know this: Today's Supreme Court majority will not stop at overturning the right to an abortion. Now, the Court feels empowered and emboldened to ignore stare decisis and rewrite settled law. From Meyer, the case protecting parental decision making, to Griswold protecting access to contraception, to Loving protecting interracial marriage, to Lawrence protecting privacy for intimate relationships, to Obergefell protecting marriage equality a century of stare decisis is at stake.

So, now it is up to us, Members of Congress, who are duty-bound to our voters to take immediate action to secure our fundamental liberties through Federal statute. That will require abolishing the filibuster, but protecting constitutional rights is more important than protecting our archaic rule of the Senate. Our Constitution, our country, and the American people demand it.

I have a question for Mr. Obergefell. You are a legend. You have changed America for the better, so thank you for your leadership. I want to acknowledge that first and foremost, your courageous ac-

tion.

Do you trust Justice Alito's assurance that rights of LGBTQ+

people will not be overturned? If so, why not?

Mr. OBERGEFELL. Not one bit. He clearly is opposed to marriage equality just based on his dissent in *Obergefell*. Regardless of what he puts in writing in this *Dobbs* decision he—this decision opens the door to attack marriage equality. Justice Thomas' concurring opinion gives additional language and groundwork to do that.

To be fair, several of these justices during the confirmation hearings were not completely truthful, in my opinion, in their responses to their opinion on precedent relating to *Roe* v. *Wade*. So, that piece of writing in that decision does not give me any comfort whatso-

ever. When one right is lost, all rights are at risk.

Mr. Stanton. Ms. Warbelow, essentially the same question. Justice Alito's pronouncement in *Dobbs* that, "Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion," does that offer you any reassurance that this Supreme Court majority will not roll back protections for LGBTQ+people?

Ms. WARBELOW. It's important to note that the majority opinion is a consensus document. It does not reflect what Justice Alito might have written had he chosen to write this decision alone. He and Justice Thomas have repeatedly said that they believe that the Obergefell decision was wrong. Not only did they say it in the dissent to that opinion, but they've said it subsequently including in subsequent court filings.

So, there is every reason to believe that they very much would invite and would like to see that precedent overturned along with

other precedents including Griswold and Lawrence.

Mr. STANTON. Thank you so much.

I yield back.

Chair Nadler. The time of the gentleman has expired.

Mr. Roy?

Mr. Roy. I thank the Chair.

I have got a couple of questions here for Professor Murray, first in terms of Room Raider. I appreciate the stuffed elephant in the background, Professor Murray, as I am looking at the backdrop there. As a dad, I am enjoying that in the background.
I would ask you a question: Who decides when life begins?
Ms. MURRAY. Well, thank you for the question, Representative

Roy. It's nice to see you. I'll remind you that we overlapped at the University of Virginia many years ago.

Mr. Roy. Yes, ma'am.

Ms. Murray. I'm actually in my friend's son's bedroom. I'm on

vacation with my family.

The question of when life begins is an essentially personal question. It is often informed by the individual religious beliefs and moral beliefs-

Mr. Roy. Sure. Well, no hold on. I have limited—

[Simultaneous speaking]

Mr. Roy. I am sorry. I have got limited time.

Ms. Murray. —values—

Mr. Roy. Hold on, Professor. Professor, I know we have got limited time. Who, as a matter of law, who decides when life begins and who decides when and how life is protected?

Ms. Murray. The Constitution does not speak to the question of when life begins, just as it doesn't speak to many other things including the right to an abortion and Executive privilege and qualified immunity.

Mr. Roy. So, in the absence-

Ms. Murray. It is a personal decision and our Constitution-

Mr. Roy. —in the absence of the Constitution specifically saying when life begins, then who best to decide when to protect life, the people, or courts?

Ms. Murray. Representative Roy, as you know, the question of when life begins is a personal question informed by religious beliefs. Our Constitution in the very First Amendment says emphatically that the government shall not endorse any particular religion. It shall not establish-

[Simultaneous speaking]

Mr. Roy. Professor, when we have life, when we make decisions about protecting life, which we do all the time—if a three-monthold infant is murdered, we protect that life. If a 50-year-old is murdered, we have laws across the country that protect that life. We make decisions about when life begins.

My simple question is, as a matter of law, who decides when we protect life and whether or not that is judges to decide that moment or whether that is elected representatives elected by the people?

Ms. Murray. Well, Representative Roy, as you say, we have laws. Those laws are written by our representatives. We also have fundamental rights. As you have noted, these fundamental rights are not unfettered, but they do allow individuals to possess certain freedoms.

For example, the Second Amendment right, despite the fact that we have prohibitions on murder, allow individuals to bear arms, indeed sometimes to effects that are incredibly deleterious to—

[Simultaneous speaking]

Mr. Roy. Professor, let me ask you this question: Do you think *Brown* is settled law, *Brown* v. *Board of Education*?

Ms. Murray. I do think *Brown* is settled law.

Mr. Roy. Do you think then *Plessy* was not settled law and *Brown* righted it?

Ms. MURRAY. I think that *Plessy* v. *Ferguson* espoused a doctrine of separate, but equal that was absolutely antithetical to the principles of the equal protection—

Mr. Roy. Right, but the question here is if you—do you agree when Justice Kagan—in her confirmation proceedings, she said there were two ways to amend the Constitution: Through article 5 or through the Judiciary, through the Courts. Do you agree with that statement?

Ms. Murray. That is typically how we have amended the Constitution in the past.

Mr. Roy. So, in other words, so that it can, in fact, be amended through judicial action? As Justice Marshall said, "do what you think is right and let the law catch up."

What I am trying to get at here is when we are talking about judicial activism, we are talking about the Court creating law, the Court making the decision. The whole question here is who gets to decide? I think that is what is fundamental.

Let me ask you a quick question, Professor Murray; I am going to run out of time: Do you think that the *Heller* decision, *District* of *Columbia* v. *Heller*, is settled law?

Ms. Murray. I think the *Heller* decision is one that was decided by this—

Mr. Roy. Yes or no, is it settled law?

Ms. Murray. It is settled law, but it seems to have been expanded in—

Mr. Roy. Is McDonald v. Chicago settled law?

Ms. Murray. *McDonald* v. *Chicago* merely incorporates the reminders of the Second Amendment to the States through the 14th Amendment.

Mr. Roy. The questions here are simple, Professor. Are they settled law? Is *Shelby County* v. *Holder* settled law?

Ms. Murray. Shelby County v. Holder simply eliminates the preclearance formulaMr. Roy. Yes, I know what the case does. Professor, I know what the case does. Is it settled law?

Ms. Murray. It is settled law. It can also be [inaudible]—

Mr. Roy. Thank you. Is Citizens United settled law?

Ms. Murray. Citizens United provides that corporations have a First Amendment right—

Mr. Roy. I know. Professor, I know you are a professor. I know you can recite what is in the cases. I am asking if these are settled law. I think my point here—

[Simultaneous speaking]

Ms. Murray. —this is a public forum and we are—

Mr. Roy. —my point here is simple. Ma'am, I know. My point here is simple.

Ms. Murray. Educating the public, Representative Roy. I'd like to provide—

Mr. Roy. Professor, my point here is simple. The question is who gets to decide? Who gets to decide these fundamental questions?

Ms. Murray. Well, it seems that your question—

Chair Nadler. The time of the gentleman has expired. Ms. Dean. Ms. Dean. Ms. Dean. Thank you, Mr. Chair. I want to say to women and girls in our country, do not give up hope because of the actions of a radical, extremist, corrupt Supreme Court. It is on all of us to be sure *Dobbs* is not our future, a future where women and girls are reduced to second class citizenship, a future where my daughters-in-law and my granddaughters have fewer rights than I had.

I wanted to talk to you, Ms. Warbelow and Professor Murray, about language. Language matters. I don't know if you're paying attention, but I have a feeling you are, to the veiled and sometimes not so veiled language of incredible disrespect for women and girls that we've heard thrown around here and we hear thrown around.

Representative Gohmert, speaking of Planned Parenthood, said something, I'll paraphrase, get a younger girl started on birth control to better the odds that she'll forget to take the pill, so she'll get pregnant and have an abortion. Representative Gaetz talking about snap abortions. Obviously, someone who's never been pregnant. There's nothing snap about an abortion.

The Witness, our expert here, fabricating that if a woman had a procedure to save her life, or a girl had a procedure to save her life, it is no longer an abortion. Of course, it is. It's a medical procedure.

Republicans think women are too stupid to make decisions for ourselves. Can you both briefly comment on this? Not shockingly, this language is all coming from White men of privilege and power. Can you speak to the language issue?

Ms. Warbelow. Language always matters. How our nation's elected officials speak about women, about LGBTQ people, about people of color has real ramifications. We know that it increases feelings of depression and isolation, particularly among young, to be suggested that they are less than fully human, less than fully wanted. So, the rhetoric that comes from our elected officials has real implications. I would encourage everyone to be thoughtful on how they speak about folks.

Ms. DEAN. Thank you for that. Professor Murray, could you say just briefly any observations you have on the language of disrespect

toward women and girls?

Ms. Murray. I think the entire *Dobbs* opinion is about the language of disrespect to women and girls. *Planned Parenthood* v. *Casey* made very clear that these rights are essential to women's equal citizenship. The Court did not even entertain the prospect of women's equality to say other than that they found that it was inconsistent with its precedent.

Ms. DEAN. Thank you very much. Mr. Obergefell, I am thrilled to meet you today. I hope next time it will be in person. I thank you for being here. I thank you for being the face of courage and the face of change, the face of expanding rights in this country, not

the shrinking of them.

Your description in your testimony of your marriage, of your 20 years together, your love, your dreams, and your disagreements sounds a lot like my marriage. Your description of your care for your husband as he suffered and struggled with ALS down to his last day, as you say, if that isn't a marriage, I don't know what is, again, reminding me of the power of marriage. I had the honor this summer to marry two of my friends in a same sex marriage.

I use the words, and I wonder if you love these words as much as I. Massachusetts Supreme Court Justice Margaret Marshall, in 2003, become the first State to recognize same sex marriage. I'm abbreviating what she said so eloquently. I commend it to every-

one.

Marriage is a vital social institution because it fulfills yearnings for security, safe haven, and connection that express our common humanity. Civil marriage is an esteemed institution and the decision whether and whom to marry is among life's most momentous acts of self-definition.

Do you agree with that description of marriage, same sex or other? Can you speak to your feelings when you read the Clarence Thomas clarion call when he says the Court today declines to disturb substantive due process in cases like *Obergefell*. For that reason, in future cases, we should consider all this Court's substantive including Object 11 Head in the Court's substantial in the court in t

stantive, including *Obergefell*. How did you feel?

Mr. OBERGEFELL. Thank you, Representative Dean. When I read those words in Thomas' opinion, they angered me. They upset me because here was a justice on our nation's highest court, whose marriage exists because of a Supreme Court decision, taking aim at our marriage to say he still believes we are less than. We are less worthy than. Our relationships, our families do not matter—

Chair NADLER. The time of the gentlelady has expired.

Ms. DEAN. Thank you.

Chair Nadler. Mr. Fitzgerald.

Mr. FITZGERALD. Thank you, Mr. Chair. I think one of the things we're hearing today is the complete disdain by Members of Congress for the 10th Amendment and the ability for the States to actually govern themselves or the idea that legislatures that are elected by people in South Dakota versus California or New York versus Wisconsin can actually have diverse opinions on something as controversial as abortion. So, there's a patchwork that exists because there's been many States that have been working on pro-life

legislation at the State level for literally since Roe v. Wade was put

in place.

In Wisconsin, my State falls into that category. I was in the State Senate for 27 years, worked on a number of different pro-life pieces of legislation, including constitutional amendments that pro-hibit partial birth abortion. As we continue to pass those bills, it was all done under the guise of we were walking the fine line right up to *Roe* v. *Wade*.

So, when I was majority leader in 2015, we passed a law prohibiting abortions after 20 weeks. Wisconsin also has a law in the books passed before *Roe* v. *Wade* that bans abortion in all cases except for the life of the mother subject to penalties under a different felony case in the 2015 law. It's my understanding it's common for criminal statutes to overlap.

The old law should in no way conflict with the 2015 law which also provides for civil claims for damages, for example, against any person who performs an abortion on a pregnant woman in violation of the Act. The only difference between the two statutes is one was written before *Roe* v. *Wade*, and the other was written after. The Supreme Court decision in the recent *Dobbs* case is binding on the States, and any Wisconsin statute that had conflicted with *Roe* should now have full legal force and effect.

However, I think what we're seeing is that Democrats who don't trust their legislatures or governors are trying to circumvent the law. They're trying to figure out a way of let's work around the local people, local yokels in State legislature because we know better in Congress. We always know better, which is always puzzling to me because there's such a high percentage of Members of the

Congress that served in the State legislatures.

In Wisconsin, our governor, Governor Evers, promised to provide clemency to any physician that is charged under Wisconsin abortion laws. Our attorney general brought a suit against the State legislature already which is legally questionable in its own right, asserting that the 2015 law supplants the earlier Wisconsin law because they are, "in direct conflict with each other." I believe the only difference between the two statutes is that one was written after *Roe* and one before again.

So, my question would be to Ms. Glenn Foster. What has been kind of the recent response and the knee jerk that you're seeing kind of from State to State as we look at this distrust for the State legislatures and what they may do or not do in light of the ruling?

Ms. FOSTER. Most States are moving to protect human life. They're moving to put those pre-Roe laws or those post-Roe laws into enforcement. That 2015 law was a temporary solution to the Roe problem, and it did not repeal Wisconsin's pre-Roe law.

So, that pre-*Roe* law sets the abortion policy of Wisconsin which is a State that I love. I'm a Packers fan, Bucks fan, love the cheese State. Wisconsin is also a pro-life State. It's going to be free from abortion businesses.

Mr. FITZGERALD. Do you think that as this "patchwork" exists that it will be an opportunity for the electorate to kind of revisit some of these issues and adjust compared to what the Supreme Court has done?

Ms. Foster. It is, yes. That's why we have elected representatives. The American people are going to make their will known.

We've seen that in the polling. We know that the American people support life. We expect to see that the American people and their elected representatives will pass laws that will protect life going forward.

Mr. FITZGERALD. Very good. Thank you, and I yield back. Chair NADLER. The gentleman yields back. Ms. Escobar.

Ms. ESCOBAR. Thank you, Mr. Chair, and many thanks to our Witnesses. Today's hearing is an opportunity for us to examine the kind of future that Republicans, including those on the Supreme Court, have shown that they want for us in America. In a nutshell, their future, the future that they are working on is rights for me, but not for thee.

It's about turning back the clock so that our country allows Republican controlled States to create second class citizenship for certain groups. I'd like to share a brief story. A constituent of mine, a mother who I admire tremendously, recently told me about her abortion.

She and her husband had two children when they learned about a new pregnancy. They were so excited about the news. They bought a crib. They were planning for their new baby. They looked forward this future.

In her final trimester, her doctor gave her the tragic news that her baby was not viable. If she carried the baby to term, she would most certainly die, leaving her two children motherless. She had to make the difficult decision to terminate her pregnancy. She went to a clinic and in addition to the devastation and sadness that she felt, she had to endure the chiding of protesters who were shouting at her as she walked in, people who thought they should have the last word over the decision she and her doctor made, people who thought they knew better.

In the Republican party's view and indeed in the laws they have written in States today, this mother would not have been able to terminate this pregnancy. She would've died and the baby would not have survived outside the womb. Her two children would be motherless, and her husband would be a widower.

So, when one of my colleagues claims that "all life is precious," there really should be an asterisk by his statement because there are many exceptions to that statement for them, one of them being women, because apparently women are expendable. This is the Republican party's vision for women and families and children in America where women and even a 10-year-old impregnated by rape will be forced to move forward with government mandated birth even as in the case of my constituent when she faced certain death.

The Republican Witness said, "we should have a hearing on helping American families." Ms. Foster, Democrats have indeed had hearings on helping American families. House Democrats passed a bill that would provide parents with paid family and medical leave so that they could be home with their newborn baby.

We passed a bill with access to childcare so that those parents could go to work and provide for their babies and universal pre-K for children so that those babies could get a good start on their education. Every Republican voted against that. We also had hear-

ings and passed bills to help keep children alive, to have the freedom to live free from the carnage that comes with gun violence.

Every Republican here voted against that as well.

Make no mistake about it. While Republicans may be pro-forced birth, they are anything but pro-life. In Republican controlled States with the harshest abortion laws like my own State of Texas, we have underfunded schools, failing foster care systems, lack of access to healthcare. I could go on and on and on.

This is what they call being pro-life. What else is in the future that Republicans are planning for Americans? Justice Thomas in his opinion has literally invited States to challenge marriage equal-

ity, access to birth control, and more is sure to come.

So, for Americans listening at home, you think you have a right for birth control? If you do, think again. You're on their list. You think you have a right to marry who you love? If you do, think

again. You're on their list.

As Republicans continue to try to strip women and children of their rights, creating a whole class of second-class citizens, my Democratic colleagues and I will continue to fight for you. We trust you. We believe in you. We believe in your right to life, liberty, and pursuit of happiness. Mr. Chair, I yield back.

Chair NADLER. The gentlelady yields back. Mr. Owens.

Mr. OWENS. Thank you, Mr. Chair. I appreciate the eloquent defense of life offered by many of Republican colleagues this morning. I add my voice to theirs and recognize the sanctity of all life. Having grown up in the Jim Crow South of segregation and KKK, I'm familiar with the true racism, intolerance, and hate, all due to the color of my skin. I see the same thing today in 2022 as the hard left, the so-called party of tolerance who banged the drum of racism, inequality, and equity do not practice what they preach.

The leaked opinion and reversal of *Roe* v. *Wade* unleashed carefully planned attacks on pro-life organizations, violent protests, an assassination attempt at the home of Supreme Court Justice and his family, and racially charged firestorm against the Supreme Court Justice Clarence Thomas. That's nothing new for Justice Thomas who has been the target of the elitist left for 40 years. Instead of celebrating the second Black American in our nation's history highest court, they declared open season with vicious and racist attacks.

This is because he's an articulate, confident Black American who loves the American tenets of God, country, and family. It's because he's a Black man who dares to think differently than they would love for him to think. I'd like to share some comments of their comments with this Committee.

Samuel L. Jackson called Justice Thomas "Uncle Clarence," and tweeted that a ban on interracial marriage is next. Representative Bennie Thompson called Justice Thomas "Uncle Tom," citing support for voter ID and opposition to affirmative action. He stated that Justice Thomas doesn't like Black people. He doesn't like being Black. I'm going to take a second and repeat that line. Justice Thomas doesn't like Black people. He doesn't like being Black.

Chicago Mayor Lightfoot attacked Justice Thomas in a profane rant, suggesting the decision would lead to overturning gay marriage. Hillary Clinton called Justice Thomas an angry person of

grievance. It's not just Justice Thomas they attack.

CNN suggested that Congresswoman Myra Flores wasn't the real deal. They believe, "she holds views outside Latino mainstream." Myra, too, dares to think differently than what the elitist left demands. A guest on MSNBC, host Joy Reid called Virginia Lieutenant Governor Winston Sears a Black mouth of White supremacy.

Twitter allowed Uncle Tim to trend for hours after Senator Tim Scott's State of the Union rebuttal before taking action. A White newspaper cartoonist for the Utah State Salt Lake City Tribune portrayed me as a White clansman. So, typical of the conde-

scending racism.

If these same attacks were aimed at Barack Obama and were called out by this Committee and the media for exactly what it is, pure racism, this Chair would probably hold a hearing on it. I'd like to tender some advice for those on the left who attempt to divide us with their hateful rhetoric.

First, I recommend a good book I read a couple of decades ago called, "How to Win Friends and Influence People." The hard left

is failing big time in this area.

Second, I suggest you totally missed the basic one on one of American spirit. We don't respond well to intimidation and bullies and cowards.

This pattern of intolerance is disgusting, unjustified, un-American. Most importantly, it shows how far we've come from MLK's dream where our children will one day live in a nation where they will not be judged by the color of their skin but by the character of their content. Instead of working to delegitimize our institutions, default into fear-mongering tactics and basic arguments that the Supreme Court wants to take away our rights.

We should be honest with the American people. Dishonesty is not appreciated by the American people, and you'll see that in Novem-

ber of this year. Check it out.

Roe v. Wade cost us 23 million innocent lives like the pro-slavery Democrat Dred Scott decision in 1857. It was a flawed decision. Overcoming Roe didn't outlaw abortion or take away the constitutional right of Americans. It put the decision in State hands, in the hands of we the people where it belongs.

To angry left, it's time to settle down, take off your masks, and show your cowardly faces. Put down your stones and firebombs and through civil debate convince us that you're right. My prediction is

you have no clue.

Meanwhile, a Black constitutionalist on the Supreme Court who stands with that decision should be revered, not ridiculed. Last thought, Justice Thomas is old school. I promise you he will not be intimidated. Thank you, and I yield back.

Ms. JACKSON LEE. Chair.

Mr. Jones. [Presiding.] For what purpose does Ms. Jackson Lee

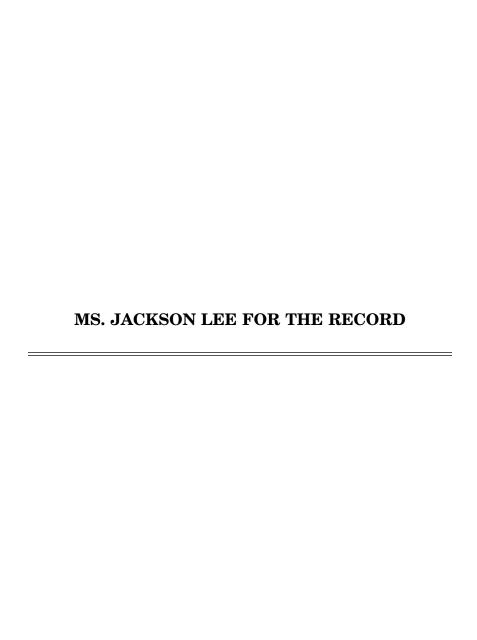
seek recognition?

Ms. Jackson Lee. Very quickly, Mr. Chair. I have unanimous consent to submit into the record the Senatorial Testimony of the Supreme Court judges of Kavanagh, Gorsuch, and Amy Barrett. Texas woman, 26, charged with murder over self-induced abortion.

Texas abortion law strains clinics according to doctors. Attacks against abortion providers by anti-abortion activists. Finally, doctors' worst fears about the Texas abortion law coming true. I ask unanimous consent to submit all these into the record.

Mr. Jones. Without objection.

[The information follows:]



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#### **JUDICIARY COMMITTEE**

# SUBMISSION FOR THE RECORD AT HEARING ON "THE THREAT TO INDIVIDUAL FREEDOMS IN A POST-ROE WORLD"

#### **JULY 14, 2022**

By embracing Alito's opinion and eschewing that of Roberts, the three junior Justices – Gorsuch, Kavanaugh, and Barrett – discarded *stare decisis* and settled law in contradiction to what they said under oath at their confirmation hearings.

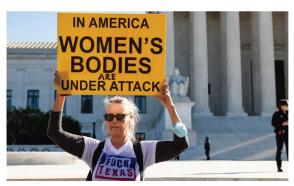
When asked about *Roe v. Wade*, Neil Gorsuch said, "It has been reaffirmed. A good judge will consider it as precedent of the U.S. Supreme Court worthy as treatment of precedent like any other."

Brett Kavanaugh spoke about *Roe*, saying, "It is settled as a precedent of the Supreme Court, entitled the respect under principles of stare decisis... Start with my record, my respect for precedent, my belief that it is rooted in the Constitution, and my commitment and its importance to the rule of law...I am a don't-rock-the-boat kind of judge."

When asked how she would handle cases that challenge *Roe*, Amy Coney Barrett said, "I will obey all the rules of stare decisis, that if a question comes up before me about whether Casey or any other case should be overruled, that I will follow the law of stare decisis, applying it as the court is articulating it, applying all the factors, reliance, workability, being undermined by later facts in law, just all the standard factors."

# Texas woman, 26, charged with murder over 'self-induced abortion'

Law enforcement official confirms arrest and charge but police do not say under which law Lizelle Herrera charged



A protester holds a sign in front of the supreme court in Washington. Photograph: Allison Bailey/Rex/Shutterstock

A 26-year-old woman has been charged with murder in  $\underline{\mathsf{Texas}}$  after authorities said she caused "the death of an individual by self-induced abortion", in a state that has the most restrictive abortion laws in the US.



Kentucky and Idaho measures severely restricting abortions are halted Read

It was unclear whether Lizelle Herrera was accused of having an abortion or whether she helped someone else get an abortion.

Texas woman, 26, charged with murder over 'self-induced abortion' - Reader Mode

Herrera was arrested on Thursday and remained jailed on Saturday on a \$500,000 bond in the Starr county jail in Rio Grande City, on the US-Mexico border, sheriff's major Carlos Delgado said.

"Herrera was arrested and served with an indictment on the charge of murder after Herrera did then and there intentionally and knowingly cause the death of an individual by self-induced abortion," Delgado said.

Delgado did not say under which law Herrera had been charged. He said no other information would be released until at least Monday because the case remained under investigation.

Texas law exempts Herrera from a criminal homicide charge for aborting her own pregnancy, University of Texas law professor Stephen Vladeck said.

Homicide "doesn't apply to the murder of an unborn child if the conduct charged is 'conduct committed by the mother of the unborn child'." Vladeck said.

A 2021 state law that bans abortions in Texas for women who are as early as six weeks pregnant has sharply curtailed the number of abortions in the state. The law leaves enforcement to private citizens who can sue doctors or anyone who helps a woman get an abortion. The woman receiving the abortion is exempted from the law.

Another Texas law prohibits doctors and clinics from prescribing abortion-inducing medications after the seventh week of pregnancy and prohibits delivery of the pills by mail.

However, some states still have laws that criminalize self-induced abortions "and there have been a handful of prosecutions here and there over the years", Vladeck said, adding: "It is murder in Texas to take steps that terminate a fetus, but when a medical provider does it, it can't be prosecuted" due to US supreme court rulings upholding the constitutionality of abortion.

Texas woman, 26, charged with murder over 'self-induced abortion' - Reader Mode

Lynn Paltrow, executive director of National Advocates for Pregnant Women also noted the state law exemption.

"What's a little mysterious in this case is, what crime has this woman been charged with?" Paltrow said. "There is no statute in Texas that, even on its face, authorizes the arrest of a woman for a self-managed abortion."

Another Texas law prohibits doctors and clinics from prescribing abortion-inducing medications after the seventh week of pregnancy and prohibits delivery of the pills by mail. Medication abortions are not considered self-induced under federal Food and Drug Administration regulations, Vladeck said.

"You can only receive the medication under medical supervision," according to Vladeck. "I realize this sounds weird because you are taking the pill yourself, but it is under a providers' at least theoretical care."

In Rio Grande City on Saturday, the abortion rights group Frontera Fund called for Herrera's release.

"We don't yet know all the details surrounding this tragic event," said Rockie Gonzales, founder and board chair of the organization.

"What we do know is that criminalizing pregnant people's choices or pregnancy outcomes, which the state of Texas has done, takes away people's autonomy over their own bodies, and leaves them with no safe options when they choose not to become a parent," Gonzalez said.

Nancy Cárdenas Peña, Texas state director for policy and advocacy for the National Latina Institute for Reproductive Justice, said in a statement that abortion should be available on the woman's own terms where she feels most comfortable.

"Allowing criminal law to be used against people who have ended their own pregnancies serves no reasonable state purpose, but may

Texas woman, 26, charged with murder over 'self-induced abortion' - Reader Mode

cause great harm to young people, people with lower incomes, and communities of color, who are most likely to encounter or be reported to law enforcement," Peña said.

The end of the right to abortion in the United States will have devastating consequences around the world. A half century ago, the Supreme Court's landmark Roe v Wade decision inspired a new era of reproductive freedom in dozens of countries. The court's reversal will empower anti-abortion voices everywhere, threatening reproductive freedom and the right to control one's destiny.

The Guardian views reproductive choice as a fundamental human right and will pursue this story even after it recedes from headlines, with a focus on the people most impacted by restrictions. But we need your help to do this work.

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## Texas abortion law strains clinics: 'Exactly what we feared'

#### Texas abortion law strains clinics: 'Exactly what we feared'

By PAUL J. WEBER September 15, 2021 GMT

AUSTIN, Texas (AP) — One Texas woman traveled nearly 1,000 miles to Colorado for an abortion. Others are driving four hours to New Mexico. And in Houston, clinics that typically perform more than 100 abortions in a week are down to a few a day.

Two weeks after the nation's strictest abortion law took effect in Texas, new court filings showed the deepening and swift impact of the state's near-total ban on abortion. A federal judge on Wednesday set an Oct. 1 hearing over the Biden administration's efforts to block the law known as Senate Bill 8. One network of clinics in Texas, which performed more than 9,000 abortions in 2020, said it has so far turned away more than 100 patients.

"Since S.B. 8 took effect on September 1, exactly what we feared would happen has come to pass," Melaney Linton, president of Planned Parenthood Gulf Coast, said in a court filing.

The law prohibits abortions once medical professionals can detect cardiac activity, which is usually around six weeks and before some women know they're pregnant. Enforcement is left up to private citizens who are deputized to file civil lawsuits against abortion providers, as well as others who help a woman obtain an abortion in Texas.

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In the 10 days after the law took effect, Linton said, Planned Parenthood clinics in Houston had 63 patients scheduled for an abortion, far fewer than the roughly 25 they would normally perform in a single day alone. Eleven of those patients wound up being unable to have abortions because cardiac activity was detected during their appointment.

One patient who was around five weeks pregnant had no cardiac activity but learned during her visit she had COVID-19, meaning that after a mandatory quarantine she would be too far along in her pregnancy to have an abortion in Texas, according to Linton.

In Dallas, Dr. Allison Gilbert said 13 of her colleagues were temporarily sent to a sister clinic in New Mexico to help serve an influx of Texas patients, and that her own clinic will "inevitably" close if the law is not struck down soon.

Providers in neighboring states described growing backlogs of patients that are becoming increasingly difficult to manage. At a Planned Parenthood clinic in Oklahoma City, more than 60% of the 219 appointments over the next two weeks are from Texas. Dr. Joshua Yap said one recent patient was a Texas minor who was raped by a family member and beyond six weeks pregnant; the new Texas law makes no exemptions in cases of rape or incest.

Fund Texas Choice, a nonprofit that for several years has paid transportation for Texas women unable to afford long travel costs for an abortion, told the court that the number of callers has shot up from about 10 per week to 10-15 daily. It estimates it will have spent at least \$10,000 more than usual by October, and that donors have expressed fear of running afoul of the law if they give money to help patients get an abortion.

Abortion providers say they are complying with the law. Texas Right to Life, the state's largest anti-abolition group and  $\underline{\text{operating a tip line}}$  to receive alleged violations, has said it has received no credible reports that the law is not being followed.

Texas abortion law strains clinics: 'Exactly what we feared' - Reader Mode

"Texas Right to Life is not surprised by the Biden administration's desperate move to stop the Texas Heartbeat Act from saving lives by any means necessary and as quickly as possible. We expect an impartial court to declare the DOJ's lawsuit invalid," said Elizabeth Graham, the group's vice president.

A full accounting of the decline in Texas abortions — and how many women are now seeking them elsewhere - is not known. More than 19,000 abortion were reported in Texas through April, according to the Texas Health and Human Services Commission.

Abortion providers in neighboring and nearby states worry that with the new surge of Texas patients at their own clinics there is not enough capacity, particularly in the South, to handle the normal volume of patients that would have abortions in Texas.

The law went into effect after the Supreme Court declined an emergency appeal from abortion providers asking that it be stayed.

The Justice Department's original lawsuit last week argued that the law is invalid because it unlawfully infringes on the constitutional rights of women and violates the Supremacy Clause of the Constitution, which says federal law supersedes state law. The department made a similar argument in seeking the restraining order or temporary injunction late Tuesday.

"All the while, clinics in neighboring states are receiving panicked calls from patients in Texas," the department said.

Texas has about two dozen abortion clinics, but Dr. Bhavik Kumar, a staff physician at a Planned Parenthood in Houston, said he worried those numbers could shrink if a court does not act soon. "This may mean that if this law stays in effect for too long, that clinics will shut down in Texas," he said.

On Wednesday, two dozen state attorneys general, all Democrats, told the court in a separate filing that a substantial reduction of abortion

Texas abortion law strains clinics: 'Exactly what we feared' - Reader Mode access in one state would result in health care systems being burdened elsewhere.

Under the Texas law, someone could bring a lawsuit — even if they have no connection to the woman getting an abortion — and could be entitled to at least \$10,000 in damages if they prevail in court. It is the nation's biggest curb to abortion since the Supreme Court affirmed in the landmark 1973 decision Roe v. Wade that women have a constitutional right to an abortion.

Renae Eze, a spokeswoman for Republican Gov. Greg Abbott, responded Wednesday to the emergency request by referring to her previous comments that they are confident courts would uphold the law.

## Doctors' worst fears about the Texas abortion law are coming true

March 1, 2022 7:43 PM

By:

Listen

07:58

It's been six months since the Texas law banning almost all abortions after about six weeks of pregnancy took effect. Doctors and patients feel frustrated as they navigate the new legal environment.

Transcript

ARI SHAPIRO, HOST:

Doctors in Texas have been warning that the state's abortion law known as SB 8 would make it harder for them to treat medical crises and would endanger their patients. The law has been in effect for nearly six months now, and as NPR's Sarah McCammon reports, those predictions are coming true. And we should warn you - this story contains frank discussions about miscarriage and sexual assault.

SARAH MCCAMMON, BYLINE: Anna and Scott were planning their wedding in Central Texas for this coming May when Ana realized her period was almost two weeks late.

ANA: And I just remember laughing to myself because I was like, wow. For as responsible as I think I am all the time, like, I had no idea that I  $\,$ was pregnant and that late.

MCCAMMON: We're just using Ana and Scott's first names because of the sensitivity of this story. It was September, and SB 8 had just taken effect. It bans most abortions in Texas as soon as any cardiac activity

Doctors' worst fears about the Texas abortion law are coming true - Reader Mode can be detected - usually around six weeks of pregnancy or about two weeks after a missed period. That didn't give Ana and Scott much time, but they were open to having a baby, so they moved up their

time, but they were open to having a baby, so they moved up their wedding plans to December. When that day arrived, Ana was 19 weeks pregnant, and she was in her wedding dress when she noticed something was wrong.

ANA: It felt like something was coming out of me, so I freaked out. Like, I literally wet my dress in the seat that I was in.

MCCAMMON: Ana's water had broken too early for the baby to survive. She and Scott spent the night of their wedding in the ER trying to take in heartbreaking news.

ANA: Basically, the doctor looked at me and was like, well, the baby's underdeveloped. Even with the best NICU care in the world, they're not going to survive.

MCCAMMON: And as painful as it was to hear that, the doctors told Ana there was another urgent concern.

ANA: You're at a high chance of going septic or bleeding out, and unfortunately, we recommend termination, but we cannot provide you one here in Texas because of this law.

MCCAMMON: In her situation, Ana's doctor says a patient would normally be offered a few options - wait and watch for signs of danger or terminate the pregnancy. She says termination would be safest and most likely to preserve Ana's future fertility. But under Texas law, abortions are only allowed at that stage for severe medical emergencies, defined as when a patient is, quote, "in danger of death or a serious risk of substantial impairment of a major bodily function." Ana's doctor asked us not to use her name because she worries about frivolous lawsuits in the current environment.

UNIDENTIFIED DOCTOR: If you were given this on a board exam, you would say, what would you tell this patient? And your answer would be

Doctors' worst fears about the Texas abortion law are coming true - Reader Mode expectant management or offer a termination. Those are essentially the two choices that is standard of care in the United States.

MCCAMMON: As long as fetal heart tones were detectable, doctors told Ana they couldn't offer her a termination unless her life was in imminent danger. It's impossible to know how many patients and doctors are facing similar conversations in Texas, but Ana's doctor says many of her colleagues are feeling frustration and disbelief as they navigate complex situations. The law contains no exception for pregnancies conceived through rape or incest, which can also create unexpected and wrenching decisions for patients and doctors. Doctor Andrea Palmer is an OB-GYN in Fort Worth. She recently took care of a woman who discovered she was pregnant after being drugged and raped at a party. Before the assault, she and her husband had been trying for a baby.

ANDREA PALMER: She was not able to discern whether the baby was the product of consensual sex with her husband or the product of her sexual assault.

MCCAMMON: Genetic testing could have answered that question, but not in time to legally get an abortion close to home. Palmer says her patient couldn't afford to travel out of state and didn't want to risk waiting and finding out the worst, so she got an early abortion in Texas while it was still legal.

PALMER: The thought of carrying something in your body and of raising a baby that could have been by a man who was sadistic and sick and awful enough to drug and rape a complete stranger, I just cannot imagine that somebody who claims to have love in their heart would ever wish that particular bit of hell on another human being.

MCCAMMON: Palmer says her patient gave permission to share her story anonymously so people could hear how complicated and difficult these decisions can be.

JOHN SEAGO: Yeah, I mean, it's absolutely horrific.

Doctors' worst fears about the Texas abortion law are coming true - Reader Mode

MCCAMMON: John Seago is legislative director with Texas Right to Life, which helped push SB 8 through the state legislature last year. He says the law's supporters believe abortion is an act of injustice no matter what.

SEAGO: Even in the worst circumstances, another act of violence on an innocent victim is not the best solution that we have.

MCCAMMON: Seago says when it comes to medical emergencies, medical associations should do more to help doctors understand what's allowed under the law. But groups like the American College of Obstetricians and Gynecologists say the law is vaguely worded and leaves providers of vulnerable to being sued. In the ER, on their wedding night, Ana and Scott say their doctors could do little to help them.

ANA: And I remember being like, why can't you just do this? You know, they couldn't even say the word abortion. Like, I could see the fear in these doctors' eyes that they were just so scared to even talk about it. Like...

SCOTT: They were typing stuff out on their phones and showing it to us.

MCCAMMON: Ana's doctor wasn't working that night in the ER, but one of her partners filled her in the next morning. The doctor says she called Ana right away.

ANA: She asked, so the state of Texas just wants me to get sick enough that I have to be admitted to the hospital? And I said, yes, that's essentially what's happening.

MCCAMMON: They needed a plan to get Ana to a place where she could get the procedure as quickly as possible. They ruled out some nearby states, including Oklahoma and Arkansas, with mandatory waiting periods as long as three days.

Doctors' worst fears about the Texas abortion law are coming true - Reader Mode

SCOTT: So there's two options. There's New Mexico, and there's Colorado. Would we rather have her go into labor on a plane or out by Midland?

ANA: Like, in a car.

SCOTT: In a car.

UNIDENTIFIED DOCTOR: And I said, absolutely not.

MCCAMMON: That's Ana's doctor again.

UNIDENTIFIED DOCTOR: Because West Texas is at least eight or nine hours of desert with hours with no cell phone reception or gas station in, you know, the middle of a medical crisis. So I requested she take a flight and make it a direct flight if possible.

MCCAMMON: But Ana says that plan came with its own set of risks.

ANA: Oh, God, when I talk about this, this is the hardest thing. I had to come up with the game plan with my OB in case I went into labor on the flight. And I made sure that I bought us front row seats so I could be close to the bathroom in case it happened. And - like, no one should ever have to do that.

MCCAMMON: But even through tears, Ana says she knows she was lucky to have several thousand dollars in savings to cover the cost and to get an appointment in Colorado at all. Clinics across the region say they're struggling to accommodate the surge in demand from Texas patients, and they're fearful that many more states could implement similar laws if the U.S. Supreme Court overturns decades of precedent guaranteeing abortion rights. Since her ordeal, Ana says she fears for the lives of other women.

ANA: I don't call any of these people pro-life because I've never felt like I didn't matter, that my life was expendable than I did in that moment. Somebody is going to die eventually.

Doctors' worst fears about the Texas abortion law are coming true - Reader Mode

MCCAMMON: Lawmakers in states including Oklahoma, Florida and Ohio are sponsoring bills modeled after the one in Texas. Meanwhile, some states like California and Vermont are taking steps to expand abortion access, hoping to increase their ability to take in patients like Ana from around the country. Sarah McCammon, NPR News, Central Texas.

(SOUNDBITE OF KENDRICK LAMAR SONG, "SING ABOUT ME, I'M DYING OF THIRST") Transcript provided by NPR, Copyright NPR.



June 15, 2022

Ву:

Sarah McCammon



May 08, 2022

Ву:

Doctors' worst fears about the Texas abortion law are coming true - Reader Mode

Sarah McCammon



January 20, 2022

Ву:

Sarah McCammon



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Ms. Jackson Lee. Thank you.
Mr. Jones. The Chair now recognizes himself for five minutes. I want to start by thanking Chair Nadler for holding this urgently needed hearing today. I offer my thanks to all the Witnesses for

their thoughtfulness and for their time.

As I read through Justice Thomas' concurring opinion in *Dobbs*, I think of the heads up he gave us about the far-right majority's plan to overturn other well established constitutional rights that Americans had just taken for granted in their daily lives. In particular, Justice Thomas calls on the Court to, "reconsider all of this Court's substantive due process precedents," including the Court's 1965 decision in *Griswold* as well as the Court's decisions in *Law*rence v. Texas and Obergefell. These are, of course, the three cases establishing the constitutional rights to contraception, non-procreative intimacy, and marriage equality.

In casting doubt on these decisions, Justice Thomas let us know that the far-right majority on the Court is not satisfied to have deprived millions of Americans of the right to an abortion. Rather the majority is on a rampage against other freedoms currently enjoyed by the American people. As someone who has repeatedly drawn attention to the partisanship of the far-right majority on the Court and the fact that these six justices are not people who can simply be reasoned with using sound legal arguments or even the Court's

own precedent.

I can't help but think of Justice Thomas' glaring omission of another case. This has been discussed to some extent today. That case is a 1967 decision called *Loving* v. Virginia which established the

constitutional right to interracial marriage.

It seems to me that following Justice Thomas' logic about reconsidering the Court's substantive due process precedent, the Loving decision would fall naturally on his list. In fact, the Supreme Court's 1973 decision in Roe v. Wade explicitly relied on the decision in Loving v. Virginia. Moreover, the case is cited multiple times in both Justice Alito's majority opinion and in the dissent in Dobbs.

Now, my Republican colleagues would say that Justice Thomas' omission of Loving v. Virginia has nothing at all to do with the fact that he's a Black man married to a White woman. Never mind that he tried to block the January 6th Committee from seeing documents that may have included evidence of his wife plotting the insurrection at the Capitol. He would never do something that is in his personal interest above that of what the law requires, or sound legal reasoning requires.

Professor Murray, what does it say to the reputation of the Supreme Court—or rather, what does it do to the reputation of the Supreme Court and to people's faith in the institution that justices like Clarence Thomas appear to be deciding cases based on their own personal preferences and political ideology rather than what

the law requires?

Ms. Murray. Thank you, Representative Jones. I will note that this idea that judges deciding cases based on their own predilections is the very essence of the judicial activism that your conservative colleagues have denounced. I also wanted do respond to Representative Owens' comments about condescending racism.

I would like to perhaps call attention to the condescending sexism of this decision which seems to view of the choices of women as somehow illegitimate when they make them. The Supreme Court has virtually ignored American women with this decision. The consequences will be startling and alarming.

Mr. Jones. Thank you, Professor. A Gallup poll released on the day before the *Dobbs* decision revealed that 75 percent of Americans do not view the Court as a legitimate nonpartisan institution.

Confidence in the Court is vanishingly low for good reason.

Question is, what the hell is Congress going to do about it? It turns out we are not powerless to stop this Court's rampage against our freedoms. Congress, in fact, has a breathtaking number of options to reign in the power of this rogue Supreme Court.

In the past, Congress has deprived the Court of appellate jurisdiction to issue certain decisions. It has expanded and contracted the number of justices. It has granted and withheld the Court's

power to issue injunctions and other writs.

It has immunized particular types of defendants and Executive actions from judicial review. It has suspended causes of action to bring certain challenges. Of course, it has taken other actions.

I have routinely urged this body to take action to reform the Supreme Court, action that is desperately needed to meet this moment in our history. It's why I introduced, along with Chair Johnson and Chair Nadler, the Judiciary Act to add four seats to the Supreme Court of the United States. Additionally, I recently proposed an amendment to the Women's Health Protection Act that would strip the Supreme Court of its jurisdiction to review that very legislation and channel all review of its constitutionality and legality to the D.C. Circuit Court of Appeals. Interestingly enough, the conservatives on the Court, specifically Justice Roberts and Justice Thomas, have long endorsed Congress' ability to do these things.

We are at an inflection point. Years from now, history will record this as the moment when we decided what we would do to defeat the threat of fascism in this country posed by the modern-day Republican party with the Supreme Court of the United States as an accomplice. I yield back, and the Chair now recognizes Mr. Bentz.

accomplice. I yield back, and the Chair now recognizes Mr. Bentz.
Mr. Bentz. Thank you, Mr. Chair. I yield my time to the gen-

tleman from Louisiana, Mr. Johnson.

Mr. JOHNSON of Louisiana. Thank you so much. I thank the gentleman for yielding. I'm going to bring this home. I think I'm the last one on the Republican side. Oh, and we have Mr. Raskin. Boy, I don't want to upstage him.

Let me say there's been a lot of alarmist rhetoric here today. There really has. I'm just going to ask Ms. Warbelow because

something you said earlier really struck me.

You lamented our dusty old founding documents, and you expressed your obvious disdain for the Founders who drafted them. That's how it was received here. I'm not sure if that's what you intended. Are you aware—or let me say, would you agree that America is indeed the most successful, most powerful, most free nation in the history of the world?

Ms. WARBELOW. I would agree that America is a critically important country, one that I love. It has made mistakes and continues

to make mistakes. As Americans, we need to come together to correct those mistakes. I apologize if what you took away was a critique of our Founders. My critique is that the Founders were not representative of the people of the United States—

Mr. JOHNSON of Louisiana. Sure. Well, let me-

Ms. Warbelow. —crafting our documents.

Mr. Johnson of Louisiana. —reclaim my time. They did acknowledge that we are in the process of making a more perfect union. The idea that we're not the most exceptional nation in the world I don't think is backed up by objective evidence. Let me just say that the great nation—I would assume you would agree that we are at least a great nation, a very important nation. I won't paraphrase what you said.

We are, and there's a reason for that. It's not by happenstance. It's because we are founded—as my dear friend and colleague, Burgess Owens, just noted—on the bold declaration that all men are

created equal and in the image of our creator.

Because of that, we believe that every single human life has an inestimable dignity and value. By the way, your values are not related in any way to the color of your skin or what neighborhood you grew up in or where you went to school. Your value is inherent because as the Founders noted, it is given to you by God. We believe every person should then be measured by the content of our character as Dr. Martin Luther King, Jr. said.

We also believe, and I think America was founded upon this premise, that a just government protects innocent life. It honors marriage and family as the primary institutions of a healthy society. It embraces the cultural influences of religion and morality.

We believe and we propose, and it should not be a controversial notion because it wasn't in previous generations, that we preserve these ideals, we maintain these, as Ms. Foster articulated earlier. When we do that, we maintain the goodness of America which really has been the secret of our genius and greatness.

I've got two minutes and 20 seconds left. I yield to Ms. Foster.

Is there anything you want to add as we wrap this up today?

Ms. Foster. I would. Justice Thomas, he's a philosopher. He's a textualist. We know that. So, he is not seeking to strip away rights. He is simply seeking to more firmly ground them in our nation's Constitution.

By doing that, they will be more secure, really even than before. We know that from *Obergefell* which had both equal protection and substantive due process woven throughout that decision. We know that from the *Loving* decision which was founded even more strongly on equal protection than substantive due process.

We know that from all the lines of decisions that we've talked about here today. We also know that substantive due process has a bit of a checkered past. It did not protect workers in *Lochner*. It did not protect Black Americans who were enslaved in *Dred Scott*. So, we're looking to redeem the foundation of our nation and to redeem these rights and make sure that they are grounded properly in our nation's Constitution so that they can be protect for a long time to come.

Mr. JOHNSON of Louisiana. On that process in making a more perfect union, look, I will just note because this is the last anyone

on our side will be able to say.

We just celebrated our 246th birthday as a nation on July 4th. We are still an experiment in self-governance. We are an experiment on the world stage. We have the greatest constitution ever written. It has endured for this long.

It won't endure if we abandon its principles and until ourselves from the mooring. That is what textualism, originalism is all about. We want to defend this matchless constitution. It is the model for everybody else around the world.

There is a reason, real reasons that we are the greatest nation

yet. By God's grace, we will continue to be.

There has been a lot said here today. At the end I hope that is what comes through, that we want to defend those fundamental freedoms. Again, as it said on the great birth certificate of the nation 246 years ago and a few days, that begins with the recognition you have an unalienable right to be born.

With that, I yield back. Mr. JONES. The gentleman yields.

The Chair now recognizes the gentlelady from North Carolina,

Ms. Ross, for five minutes.

Ms. Ross. Thank you, Mr. Chair. I want to thank all our Witnesses and panelists for joining us today, and the many people who came here in person to hear such important testimony about such

important issues.

The Supreme Court's decision in Dobbs v. Jackson Women's Health threatens some of our most fundamental American freedoms. This decision sets the groundwork for the Court to overturn past decisions concerning people's right to privacy far beyond abortion, as we have heard, including the right to obtain contraceptives, the right to marry a person of a different race, the right to decide how to raise our own children, the right to protection from the government for interference in our intimate lives, and the right to marry the person we love, regardless of their sex.

The vast majority of Americans support these rights. It is deeply concerning that this Court has acted against the will of the people to roll back freedoms, to roll back freedoms that so many of us have come to enjoy as we have grown up. We have taken them for grant-

Overturning the right to contraception, in particular, could be even more damaging to women and families than the reversal of Roe v. Wade. It would lead to far more unintended pregnancies and, therefore, more abortions.

If *Griswold* v. *Connecticut* were overturned as a result of *Dobbs*, married couples and others could be barred from making their own

decisions about whether or not to have a child.

We do not and should not look to the Supreme Court for advice on when and how to raise a family. This Court has inserted itself into the lives of millions of Americans, nonetheless. Both those in favor and opposed to abortion rights overwhelmingly support the right to contraception.

When I advocated for women's rights in North Carolina, I found unity on both sides of the political aisle working to expand access to contraception. I got bipartisan sponsors to support legislation requiring insurance to cover contraception, even before the Affordable

Care Act. Our lead sponsor, a Republican doctor.

A poll by Five30Eight last month found that over 91 percent of Americans believe contraception, like condoms and birth control pills, should be legal. In fact, slightly more Republicans were in favor than Democrats in that poll.

Similarly, the vast majority of Americans, 71 percent, support

marriage equality.

This Court, which Senator McConnell manipulated to create conservative—a conservative, activist majority, has corroded the very fabric of freedom in the United States, putting many of our most popular and fundamental rights in jeopardy.

My first question is for Professor Murray.

Justice Thomas in his concurring opinion took aim at these landmark cases. What effect would removing the right to contraception

have on women, men, and families in our country?

Ms. Murray. It would be absolutely devastating, Representative Ross. The right to contraception allows individuals to make decisions about the planning and timing of their families. It allows them to finish their education, to pursue employment opportunities.

Women have depended on this and have organized their lives around the availability of this right, in the same way that they organized their lives around the availability of the right to an abortion. So, it would be absolutely devastating.

Ms. Ross. As a follow-up to that, what effect would it have on public health, on sexually transmitted diseases if condoms were

outlawed?

Ms. Murray. All forms of contraception and the unavailability of then would have profound effects for public health. We are already seeing some anecdotal evidence around the country of certain forms of healthcare being denied to individuals on the ground that they may also cause abortions or miscarriages.

You could have the same kind of effects in terms of sexually transmitted diseases if condoms were not available, if certain forms of birth control were unavailable, because they have other indica-

tions and other uses for which they might be prohibited.

So, again, this would be absolutely devastating on a number of fronts.

Ms. Ross. Thank you, Mr. Chair. I yield back.

Mr. JONES. The gentlelady yields.

The Chair now recognizes the gentleman from Maryland, Mr. Raskin, for five minutes.

Mr. RASKIN. Mr. Chair, thank you very much.

When this hearing began, the gentleman from Ohio rattled off a list of incidents of vandalism, and graffiti, and break-ins at churches taking place. He mentioned several of them in my district.

I want to say that I denounce and I categorically reject these outrageous acts of vandalism, and graffiti, and break-ins against churches in my district. Regardless of who did them, left, right, or center, this must end, and this is not a proper way for anyone to treat other people's property, or churches, or to express political opposition.

Now, does the gentleman from Ohio, and do his colleagues on that side of the aisle reject the already proven acts of murder and violence that have been taking place against doctors, nurses, police officers, and healthcare providers, not over the last several weeks or months but over the last several decades?

Do they denounce, did they denounce the murder of OB/GYN doctor David Gunn of Pensacola, Florida, who had been the subject of wanted posters by Operation Rescue?

Do my colleagues denounce, did they denounce the murder of Dr. John Britton, a physician, and James Barrett, a clinic escort, also shot to death in Pensacola, Florida.

Do they denounce the murder of Shannon Lowney and Lee Ann Nichols, killed in clinic attacks in Brookline, Massachusetts?

How about Robert Sanderson, an off-duty police officer who worked as a security guard in an abortion clinic in Birmingham, Alabama, who was killed when his workplace was bombed?

So on. I could go on all day. I just have a couple minutes.

Murders, assaults, kidnapping, where do they stand on all these, hundreds and hundreds of acts of violence against abortion clinics? Or do they just oppose incidents that take place—we don't know who, by who, for example, in my district yet, but presumably they think by people on the other side.

I denounce it all. Do they denounce it all? I hope that they would

Now, I was hoping my friend from Louisiana would still be here. I am glad—I know he had to go vote. I wanted my colleague to know, I know that my colleague from Louisiana, the erudite Mr. Johnson, would certainly know this, that five of the justices, the majority of the Court, five of the justices in the *Roe* v. *Wade* majority were appointed by Republican Presidents. Wonder if they know that?

Justice Blackmun, who was named to the Court, nominated to the Court by Richard Nixon.

Chief Justice Burger, Nixon.

Justice Powell from Virginia, of course he was a Nixon appointee. Potter Stewart, Eisenhower.

William Brennan, Eisenhower.

There were two others in the majority who were Democratic appointees. LBJ had appointed Justice Marshall. FDR had appointed Justice Douglas, who was still on the Court at that point.

Of the two dissenters, one was a Democratic appointee, Byron

White, and one was a Republican appointee.

In fact, that was basic constitutional doctrine for more than a half century. Republican appointees kept reaffirming it, including Justice Stevens, the Ford appointee. Justice Souter, who was a very strong champion of *Roe* v. *Wade* and the constitutional right to privacy.

What happened was a transformation within the Republican party because they began to insist that opposition to *Roe* v. *Wade* be a litmus test issue, the central issue that judges would have to pass, or lawyers would have to pass before they got appointed to the bench. So, it became a decades-long campaign to overthrow *Roe* v. *Wade*, which had been principally the handiwork of Republican

appointees to the Court. It had built this wonderful line of prece-

dent about the constitutional right to privacy.

They were so emphatic about it that in 2006 they blocked President Obama's nominee Merrick Garland from even getting a hearing. The Chief Judge of the D.C. Circuit Court of Appeals did not even get a hearing because they said it was too close to the election, the year before the election.

What happened four years later with Amy Coney Barrett? They rammed through her nomination in the last several weeks of the Trump Administration, when voting had already begun across the country in early voting, in their madcap determination to create

this anti-*Roe* majority.

That is why we are where we are.

You know what I say? Okay, they played politics that way. I hope that every Republican in the country who is pro-choice decides to abandon their dangerous extremist party and come over to a party that stands up for the freedom of people.

I yield back, Mr. Cĥair.

Mr. Jones. The gentleman's time has expired.

The Chair now recognizes the gentlelady from Missouri, Ms. Bush, for five minutes.

Ms. Bush. Thank you. St. Louis and I thank you, Chair.

So, just a few weeks ago on Juneteenth I introduced into the Congressional Record a document to commemorate the unveiling of the Freedom Suits Memorial monument. The Freedom Suits Memorial pays tribute to the hundreds of cases in which enslaved Black people filed for their freedom from bondage in Federal courts in St. Louis.

The most famous case was that of *Dredd Scott*, in which the Court held that Black people had no rights which the White man was bound to respect.

Dredd Scott is buried in St. Louis in my district, and his legacy serves as a reminder of the dangers in believing that the Supreme Court has always been a just body. It has not. Substantive due process itself was birthed in the aftermath of the Civil War.

It was not legal doctrine that led to the Emancipation Proclamation, it was not the Courts, it was not the Constitution, which was written to guarantee the rights of landholding White men. It was not moral righteousness that led to the Emancipation Proclamation of Black people. It was violence. It was war. It was the resistance and the persistence of abolitionists that put an end to chattel slavery. It was because of our freedom dreams and the collective dreams of Black people, past and present, who demanded to live in a world free of bondage.

It is not lost on me as a descendant of enslaved people, and as the first Black congresswoman from the State of Missouri that my existence in this space alone is a testament to the freedoms denied the Supreme Court—by the Supreme Court of the United States in its *Dredd Scott* decision 165 years ago.

Professor Murray, footnote 41 of the majority opinion in *Dobbs* makes a eugenics argument on the impact of abortion in Black communities. Can you explain the significance of footnote 41 as it relates to contraception?

Ms. Murray. Sure. To claim a term used by Representative Owens, you might do this as a kind of condescending racism, the Court attempting to relate the history of the modern birth control movement and reproductive rights to the history of eugenics for the purpose of essentially arguing that reproductive rights are rooted

in a history of racial injustice.

I believe that the footnote doesn't really bear on the logic of the *Dobbs* opinion, but rather is there to seed an opening for eventually overruling the right to contraception on the ground that it is a racial injustice. The idea being that Margaret Singer, through her work with the eugenics movement, was essentially trafficking in racial injustice and, for that reason, the right to contraception should be overruled as a means of remedying that racial injustice.

It is the most craven form of racial condescension, in part because it is being parroted by those who do nothing to assist the Black community, whether in their judicial opinions or in their ac-

tions in other ways.

Ms. Bush. Thank you. Another question for you, Professor Mur-

The reconstruction amendments were drafted not only to eradicate slavery, but also to eradicate the vestiges of slavery and all forms of bondage. The drafters wanted to go farther than making Black people citizens and wanted to guarantee a sense of liberty.

Can you talk about how the drafters defined or understood lib-

erty when drafting the 13th and 14th Amendments?

Ms. Murray. Yes.

So, if the 13th Amendment abolished slavery and the 15th Amendment gave Black men the right to vote, the 14th Amendment was primarily concerned with eradicating all the indicia of slavery, the very things that distinguished slavery from freedom, among them the absence of bodily autonomy and control over procreation. This is very clear. They knew about forced birth as a means of expanding the slave population in the period before the Civil War, so they were responding to this.

They also wanted to correct the injustice of having no family integrity, of lacking control over your children, of being ineligible for

civil marriage.

So, in that grant of liberty in the 14th Amendment precedes all these rights that had been denied to the enslaved and were now given to them. They weren't explicit because they were viewed to be captured in that grant of liberty.

Justice Alito says nothing about this. It is a selective and itinerant commitment to originalism that his opinion evinces.

Ms. Bush. Thank you. Thank you, Professor Murray.

As has been noted, this is the first time the Court has taken away a fundamental right. It is important to note that our most fundamental rights have never been safe, and they never will be guaranteed so long as they depend on the ideological whim of nine unaccountable, unelected justices with lifetime appointments. It is why we need to limit the power of justices by expanding the Court, instituting term limits, enacting a code of ethics. It reinforces why Congress should strip the Court of the right to take away fundamental rights.

Thank you. I yield back.

Mr. Jones. The gentlelady's time has expired.
This concludes today's hearing. We thank all the Witnesses for participating.
Without objection, all Members will have five legislative days to submit additional written questions for the Witnesses or additional materials for the record.
Without objection, the hearing is adjourned.

Without objection, the hearing is adjourned.
[Whereupon, at 12:58 p.m., the Committee was adjourned.]

# **APPENDIX**



July 14, 2022

The Honorable Jerrold Nadler Chair Committee on the Judiciary United States House of Representatives Washington, D.C. 20515

The Honorable Jim Jordan Ranking Member Committee on the Judiciary United States House of Representatives Washington, D.C. 20515

Dear Chairman Nadler and Ranking Member Jordan:

On behalf of the American Academy of Family Physicians (AAFP) and the 127,600 family physicians and medical students we represent, I write in response to the hearing "Whats Next: The Individual Freedoms in a Post-Roe World" to share the family physician perspective on how the Supreme Court's decision on Dobbs v. Jackson Women's Health is impacting patient care and the practice of medicine.

Primary care physicians are often a patient's first point of contact with the health care system, with more than half of all office visits made to primary care physicians. Family physicians are integral to the reproductive health of adolescents, teens, and adults, providing preventive health, chronic disease management, family planning, preconception counseling, pregnancy, postpartum, and menopausal care for patients across the gender spectrum throughout their reproductive years. While some patients seek care from pediatricians or obstetrician-gynecologists (OB/GYNs), in rural and underserved areas, family physicians are often the primary or sole providers of reproductive health care.<sup>2</sup> The AAFP believes that pregnancy and reproductive health services are essential to general health care.3

The AAFP is concerned by the Supreme Court's ruling on *Dobbs v. Jackson Women's Health*. This consequential ruling struck down the longstanding protections afforded by *Roe v. Wade* and *Planned* Consequential ruling struck down the iongstanding protections alroaded by Rob V. Wade and Planner Parenthood v. Casey, jeopardizing the health and reproductive autonomy of patients across the country. The decision limits the ability of physicians in many states to provide safe, evidence-based medical care and erodes the patient-physician relationship. In response to the Dobbs ruling, the AAFP joined with the American College of Obstetricians (ACOG), the American Medical Association (AMA), and 75 other health care organizations in releasing a statement unequivocally opposing legislative interference in the patient-physician relationship.4

The AAFP's policy on reproductive and maternity health services states, "The AAFP supports access to comprehensive pregnancy and reproductive services, including but not limited to abortion, pregnancy termination, contraception, and surgical and non-surgical management of ectopic pregnancy, and opposes nonevidence-based restrictions on medical care and the provision of such services." In the case of Dobbs v. Jackson Women's Health Organization, the AAFP joined the AMA and other leading medical societies in filing an <u>amicus brief</u> articulating our position that "laws regulating abortion should be evidence-based, supported by valid medical or scientific justification, and designed to improve – not harm – women's health," and we maintain that position.

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Without the federal protections afforded by *Roe*, numerous states have already enacted laws banning or unduly restricting access to abortion, and more are considering similar measures. **These laws jeopardize the health of our nation and will surely worsen health disparities**. In addition to undermining patients' bodily autonomy and potentially endangering their health and wellbeing by precluding or delaying access to induced abortions, the *Dobbs* decision may also jeopardize access to certain forms of contraception and negatively affect medically necessary maternity care.

Violating the Patient-Physician Relationship and Interfering with the Practice of Medicine
Family physicians are trained to care for their patients throughout the life cycle and appreciate the
challenges that adolescence, sexuality, family planning, balance of family life and career, and aging
have on their patients, in addition to socioeconomic and community factors such as environmental
quality, income and education level, housing availability, neighborhood safety, and socialconnectedness health. Because of this, family physicians are able to provide evidence-based medical
care personalized to meet each patient's unique health needs. The AAFP maintains that physicians
should be free to have open and honest communication with patients about all aspects of health and
safety. The AAFP staunchly opposes legislation that infringes on the content or breadth of
information exchanged within the patient-physician relationship and legislation that interferes
with the provision of evidence-based medical care, either of which can harm the health of the
patient, the family, and the community.<sup>78</sup>

While only a minority of physicians — roughly 3% of family physicians and 24% of OB/GYNs — perform abortions, nearly every clinician who cares for patients of reproductive age and practices in a state where abortion is banned is affected by the *Dobbs* decision. <sup>910</sup> Since June 24, the AAFP and its state affiliates have received inquiries from members who are unclear about the definitions and requirements of their new or pending state laws. Below are some common topics of confusion and concern.

- Treatment of ectopic pregnancies, pregnancies of unknown location, and complicated spontaneous abortions (i.e., miscarriages). Many state laws create ambiguity about whether treatment for ectopic pregnancy is considered abortion, creating physician or hospital fears of violating laws and setting the stage for disagreements in clinical judgment, which can lead to delays in critical and medically necessary care.
- Molar pregnancy. This type of genetically abnormal pregnancy cannot end in fetal viability, but in some rare instances the abnormal fetus can have detectable cardiac activity, leading to confusion over whether "heartbeat laws" allow physicians to treat with a dilation and curettage (D&C).
- Preterm premature rupture of membranes. When membranes rupture prematurely prior to viability, the standard of care is to deliver the fetus with surgery or induce labor, which may be considered illegal in some states, even though the fetus cannot possibly survive. Failure to do so could lead to dire consequences for the patient such as intrauterine infections which could become life-threatening.
- Cancer treatment for patient with pre-viable pregnancies. Some cancer treatments require
  pregnancy termination before beginning, and others carry an increased risk of morbidity and
  mortality without immediate termination and surgical removal. Disagreements in clinical
  judgment or fears of violating laws can lead to delays in cancer care or incomplete counseling
  on treatment options. Abortion-ban laws and proposed bills in some states allow abortions
  only in severe, life-threatening emergencies. It is unclear if, under such laws, termination of a
  pregnancy is legal in these cases, delaying the pregnant patient's access to lifesaving
  treatment until after a pregnancy is carried to term.
- Use of emergency contraception and IUDs. Confusion over whether statutory definitions of "personhood" outlaw the use of emergency contraception, and if contraception methods which

interrupt the implantation of a fertilized egg will be considered an abortion under certain state laws, is fueling misinformation and fear and limiting access to contraception. Issues so far include pharmacists refusing to dispense prescriptions for ulipristal or stock/sell over-the-counter oral emergency contraception, hospitals discontinuing provision of emergency contraception to rape victims, and physicians being unsure about or unwilling to place copper IUDs as emergency contraception.

- Dispensing of medications to manage miscarriages or treat other conditions unrelated to pregnancy. Pharmacists refusing to dispense or delaying filling misoprostol prescriptions can lead to additional burden for the prescribing physician and delays in needed care for patients. In addition to inducing abortion, this drug is commonly used in the treatment of ulcers, miscarriages, and post-delivery bleeding. There have also been reports of pharmacists refusing to fill or physicians stopping prescribing methotrexate, which is commonly used to treat rheumatoid arthritis and psoriasis.<sup>11</sup>
- Treatment of infertility. Patients and physicians alike are confused over whether statutory
  definitions of "personhood" will impact infertility treatments and assisted reproductive
  technology such as in vitro fertilization (IVF). Regardless of whether state laws intend to
  interfere with infertility care, the lack of clarity is already hindering patients' reproductive
  decisions. In this instance, abortion bans may have the unintended consequence of
  preventing patients who want to become pregnant from being able to grow their families.

In 2018, the AAFP, the American Academy of Pediatrics (AAP), ACOG, and the American College of Physicians (ACP) adopted joint principles for protecting the patient-physician relationship in response to the growing number of policy proposals that inappropriately interfered in the practice of medicine. <sup>12</sup> Our organizations and the more than 400,000 physicians and medical students we represent call on policymakers to put patients first by taking these actions.

- 1. Support participation of any qualified provider in federally and state-funded programs. Medicaid's "any willing provider" and "freedom of choice" protections are enshrined into law to ensure that an adequate number of clinicians participate in the Medicaid program to care for beneficiaries. Evidence has demonstrated that restricting participation of qualified providers results in loss of access to critical care for our most vulnerable patients. 1314
- 2. Maintain coverage of evidence-based essential health benefits such as maternity coverage and women's preventive services without cost-sharing, including contraception. Preserving access to this existing coverage is critical to ensuring that American women and families have access to the care they need.
- 3. Ensure that evidence-based federal programs, including Title X and the Teen Pregnancy Prevention Program (TPPP), receive continued federal funding and preserve evidence-based program requirements. Title X is the only federal program exclusively dedicated to providing low-income and adolescent patients with essential family planning and preventive health services and information. Evidence-based sexuality education programs help young patients achieve their educational and professional goals by educating them about sexual health, including preventing unintended pregnancy and family planning. These and other federal programs must continue to provide non-directive, comprehensive, medically accurate information.
- 4. Reject government restrictions on the information our patients can receive from their doctors. Patients expect medically accurate, comprehensive information from their physicians. This dialogue is critical to ensuring the integrity of the patient-physician relationship. When outside entities restrict the information that can be given to patients of reproductive age or force physicians to provide them with medically inaccurate information, it can result in increased rates of unplanned pregnancy, pregnancy complications, and undiagnosed medical conditions.

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### Patient Safety Concerns

Family physicians are concerned about how overturning *Roe* will impact their practices. First and foremost, however, they are concerned about the health and safety of their patients and their patients' families. The AAFP <u>believes</u> that high-quality health care in family medicine is the achievement of optimal physical, mental, and behavioral health outcomes through accessible, safe, cost-effective, equitable care that is based on the best evidence; responsive to the needs and preferences of patients and populations; and respectful of patients' families, personal values, and beliefs. <sup>15</sup> Laws that unduly restrict, criminalize, or penalize the provision of safe, confidential, evidence-based medical care are a threat to patient safety. Such laws not only interfere with the prevention, diagnosis, and treatment of health conditions but also prevent family physicians and their staff from <u>adapting their care</u> to meet the unique needs of their patients and communities.

Anecdotes and research on the impacts of institutional abortion restrictions offer evidence for how such restrictions put patients' health and lives at risk. 1617 Physicians in these settings recount cases in which abortion was medically indicated according to their clinical judgment but, because of an ethics committee's ruling, care was delayed until fetal cardiac activity was no longer detectable or in some cases the patient had to be transported to another facility. What is clear is that the patient-physician relationship, patient safety, and patient comfort are compromised by arbitrary restrictions that force clinicians to act contrary to the medical standard of care.

As confusion over new state abortion laws and anxiety about legal liability grow, cases such as these, in which patients experience delay or denial as they seek critical and in some cases lifesaving care, will multiply. The result will be worse health outcomes and greater health disparities nationwide.

The AAFP <u>advocates</u> for the development and use of patient-centered, evidence-based clinical practice guidelines that adhere to principles based on the National Academy of Medicine Standards for Trustworthy Guidelines. <sup>18</sup> The AAFP opposes enshrining non-evidence based medical guidelines into federal or state law.

### Criminalization and Penalization of Medical Care

The AAFP takes all reasonable and necessary steps to ensure that evidence-based medical decision-making and treatment, exercised in accordance with evidence-based standards of care, does not become a violation of criminal law.<sup>19</sup>

Recently, the AAFP, AAP, ACOG, ACP, the American Osteopathic Association (AOA), and the American Psychiatric Association (APA) issued a <u>statement opposing the criminalization of health care</u>: "We are deeply concerned that legislation and legal opinions across the country will endanger patients and clinicians by allowing private citizens and policymakers to interfere in health care decision-making. The patient-physician relationship, not politics, is the backbone of medicine."<sup>20</sup>

In the wake of the Supreme Court's *Dobbs* ruling, physicians in states that restrict abortion face a perilous new legal reality. Physicians who perform abortions risk violating the law, being sued, losing their medical license, and going to jail. In some extreme instances, even counseling patients who want an abortion, including those facing pregnancy complications, could expose the physician to criminal charges.

The AAFP has heard from family physicians in states that have banned or restricted abortion, and in states that have not, that they are worried about their own legal safety. It is clear that the

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criminalization and penalization of patients and clinicians disrupts and detracts from medical care.

Physicians and hospital administrators worried about the threat of lawsuits or criminal charges for violating a state's abortion ban may be inclined to practice "defensive medicine," ordering unnecessary or excessive tests or procedures in order to thoroughly demonstrate that a patient meets the narrow definition for an allowable exception to an abortion ban. Evidence suggests that defensive medicine does not make patients any healthier but can lead to increased health care costs.<sup>21</sup> Family physicians have also shared concerns that having to wait on extraneous tests and second opinions can delay critical care in urgent and life-threatening situations.

Family physicians report that they have received mixed or incomplete legal guidance from their employers in the past several weeks, leading to confusion or even confrontation among clinicians who are unsure of their standing or disagree about the best way to treat a patient while complying with new legal requirements. Small and solo physician practices do not have the luxury of in-house or contracted legal support to help them navigate rapidly changing state laws. Many of them are turning to their state and national medical societies, such as the AAFP, which typically lack state-specific legal expertise or are prohibited from offering individual legal advice.

Legal threats to the practice of medicine are also increasing physicians' administrative burden and practice expenses. As a means of proactive legal defense, many hospitals, clinics, and health systems are advising or mandating that their clinicians enhance their medical documentation for reproductive health care and related services. This can mean changes to electronic medical records (EMR) systems and processes, which are costly, time-consuming, and add to physicians' administrative burden. Smaller practices rely on off-the-shelf EMR systems and cannot readily automate new documentation requirements, meaning they must spend additional time conducting manual data entry.

Additionally, physicians and hospital administrators are worried that if they opt not to provide specific care based on their understanding of state abortion restrictions, they could face liability and/or violate federal requirements under the Emergency Medical Treatment and Labor Act (EMTALA). State laws that allow only narrow abortion exceptions when the mother is at risk of dying are at odds with the EMTALA standard, which focuses on conditions that seriously jeopardize health, bodily, or organ function.<sup>23</sup>

The AAFP is concerned about high rates of professional burnout among physicians in the U.S., which negatively affects the quality of patient care and can result in physicians leaving practice. <sup>24</sup> The costs and anxiety associated with abortion-related legal issues are negatively impacting the well-being of family physicians and will only compound physician burnout. <sup>25</sup> If not addressed, this will ultimately lead to more physicians leaving the profession or moving into non-patient-facing roles, worsening health care workforce shortages and patients' access to care.

Disrupting Medical Education and Exacerbating Health Care Workforce Shortages
The AAFP recommends that all medical students and family medicine residents receive
comprehensive training in reproductive decision-making. <sup>26</sup> Family medicine residency programs
teach clinical skills to provide counseling, screening and diagnostic testing, treatment, and
appropriate referrals provided to patients during menarche, contraception, pregnancy, lactation, and
menopause. This includes performing routine gynecologic procedures, patient-centered contraceptive
counseling, placement of long-acting reversible contraception (LARC), preconception counseling,
diagnosis of pregnancy, counseling for unintended pregnancy, assessment and management of
complications and symptoms in the first trimester, pregnancy risk-factor screening, miscarriage

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management and referral for surgical intervention when indicated for complicated miscarriages, D&C procedures, and assessment and management of obstetrical and other medical complications during pregnancy including consultation with obstetricians/medical subspecialists.<sup>2728</sup>

Because family physicians are trained to provide such a wide range of reproductive health services, they are well positioned to provide early abortion care to their patients in the primary care setting, which can enhance continuity of care, offer increased access for patients, and reduce stigma. The AAFP recommends that family medicine residents have access to opt-out abortion training, to support widespread access to comprehensive training in reproductive decision-making while ensuring that no physician or health care professional is required to perform actions that violate personal beliefs. <sup>29</sup> In addition to providing physicians with the critical procedural and counseling skills to care for patients who have induced abortions, abortion training also helps prepare physicians to meet patients' other obstetric needs, such as direct counseling, uterine evacuation and miscarriage management. <sup>3031</sup>

The Society of Teachers of Family Medicine strongly opposes restrictions on educating family medicine trainees on the full scope of clinical care and advocates that Congress and federal agencies should not legislate or mandate restrictions on the educational content of training programs. Souch restrictions limit and adversely affect medical education. In a statement following the Supreme Court's decision to overturn Roe, the Association of American Medical Colleges asserts, "It is crucial that physicians have comprehensive training in the full spectrum of reproductive health care, since similar medical procedures address many health conditions." So

As states enact or contemplate laws banning or restricting abortion, medical schools, residency training programs, and educators are grappling with how to reconcile these laws with medical accreditation requirements. The Accreditation Council for Graduate Medical Education (ACGME) requires access to abortion training for all OB/GYN programs. While access to training is not required for Family Medicine programs, some offer integrated abortion training or local elective options, and ACGME does clearly require comprehensive reproductive health and contraception education as part of Family Medicine training. 343536 A recent paper analyzing current OB/GYN residency programs found that around 45% are in states that have banned or are likely to ban abortion, and at least three family medicine residency programs offering integrated abortion training are in states that have banned the procedure in the wake of the Supreme Court's *Dobbs* decision. 3738

In response, residency programs facing new state restrictions are considering providing their residents with access to clinical training in other jurisdictions without legal restrictions on abortion. However, requiring or facilitating travel rotations to receive abortion training is unlikely to be feasible on a widespread scale, given the resources required and the disruptions to clinical care that resident absences cause. Additionally, family planning clinics that often precept medical residents on rotation from other areas are already beginning to cut back on training because they are grappling with huge influxes of patients and lack the staff capacity to provide both patient care and medical education. 3940

In addition to disrupting training for current medical students and residents, state abortion restrictions are likely to have a significant impact on future trainees. Students intending to provide family planning as part of their medical practice who are applying to medical school and residency programs will have to decide whether they are willing to risk being trained in a state that does not provide abortion care. <sup>41</sup> Experts predict that medical schools and residency programs in those states will see fewer applicants, whereas programs located in states that still allow abortion care will be inundated. <sup>42</sup> In the short term, this will worsen the problem of unmatched medical

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students. Over time this will exacerbate maternity care shortages and intensify the maldistribution of physicians.

Experts also predict that physicians in states with abortion bans will begin to leave because they do not wish to practice in a place where they are not able to provide comprehensive, patient-centered care without government intrusion. Given the current geo-political divide in the U.S., this will worsen access to care for rural communities and increase rural health disparities.

### Jeopardizing Contraception Access

Health promotion – including screening, counseling, and vaccination – is a foundation of family medicine, and for much of their reproductive lives most women try to prevent pregnancy, which is why the AAFP believes physicians should counsel their patients to decrease the number of unwanted pregnancies, and why the AAFP advocates for public and private health plans to provide coverage and not impose cost-sharing for all Food and Drug Administration- (FDA) approved contraceptive methods, sterilization procedures, and patient education and counseling for all patients with reproductive capacity, including contraceptive methods for sale over the counter.43

Confusion over whether statutory definitions of "personhood" outlaw the use of emergency contraception, and if contraception methods that interrupt the implantation of a fertilized egg will be considered an abortion under certain state laws, is fueling misinformation and fear and limiting access to contraception. In one example, the AAFP heard from a family physician who, after their state enacted its trigger law banning abortion without exception for rape or incest, saw hospitals in their city temporarily stop offering emergency contraception to rape victims, despite the fact that clinical guidelines for treating sexual assault victims call for it to be provided.

The AAFP applauds recent actions by the Administration, including the July 8 Executive Order reaffirming the Affordable Care Act's guarantee of insurance coverage for women's preventive services, including birth control and contraceptive counseling, and directing the Centers for Medicare and Medicaid Services (CMS) to ensure patient access to family planning care and protect clinicians providing family planning services. 44

We urge Congress to pass legislation to protect and expand patients' access to FDA-approved contraception methods and comprehensive, evidence-based contraception counseling. The AAFP has endorsed the Affordability Is Access Act (S. 4347/H.R.7394) and the Access to Birth Control Act (S. 3223/H.R. 6005). The AAFP also urges Congress to ensure robust and sustained federal funding for Title X family planning programs.

<u>Potential for Abuse of Patient Data and Violation of Patient Confidentiality</u>
A confidential relationship between patient and physician is essential for the free exchange of information necessary for sound medical care. Only in a setting of trust can a patient share the private feelings and medical, social, and family histories that enable the physician to properly counsel, prevent, diagnose, and treat. The AAFP believes that patient confidentiality must be protected. 45

The AAFP's policy on data stewardship, which addresses how de-identified clinical and administrative data derived from physicians' EMRs are collected and used by third parties, states that submission of data from physician practice to third parties must be voluntary, third parties must provide written policies detailing the intended uses of such data, and data storage must adhere to industry and regulatory standards for confidentiality. 46

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The Supreme Court's *Dobbs* decision has raised questions about whether and how technology companies should protect their users' data, particularly when the user is seeking reproductive health care. Experts believe that the United States' lack of strong digital privacy protections is likely to have profound implications on how state laws that ban or restrict abortion are enforced. <sup>47</sup> While clinicians and health care organizations must follow the Health Insurance Portability and Accountability Act (HIPAA)'s Privacy Rule, which protects against disclosures of protected health information (PHI), other entities and data that do not qualify as PHI are not bound by the same rules. Police and prosecutors could potentially obtain extremely detailed information about individuals from technology companies, including internet search histories, communications, finances, and location information and use that information to surveil or charge them for violating state abortion law. In the case of laws such as Texas' S.B. 8, which allow private citizens to sue suspected abortion patients and providers, such data could also be used to enable vioilante interference.

The AAFP applauds HHS for issuing guidance clarifying how federal laws and regulations protect patients' PHI and the circumstances under which the HIPAA Privacy Rule permits disclosure of PHI without the patient's authorization. However, because HIPAA does not generally protect the privacy and security of individuals' personal information stored on cell phones or gathered by search engines and third-party applications, the AAFP calls on Congress to further examine the implications of overturning Roe on patient privacy and to enact laws to protect patients from inappropriate exploitation of their data, including criminal or civil punishments for seeking medically appropriate health care.

The AAFP has endorsed the Health and Location Data Protection Act (<u>S. 4408</u>), which prohibits data brokers from selling and transferring customers' health and location data and requires the Federal Trade Commission to promulgate rules to implement and enforce these protections.

### **Exacerbating Health Disparities Experienced by Marginalized Patients**

The Supreme Court's decision to overturn Roe will make it even more difficult for patients to access high-quality health care in the U.S. The risks will be felt most acutely by people of color, from low-income backgrounds, and who live in rural areas.<sup>4849</sup>

According to analysis by the Guttmacher Institute, nearly one in four women in the U.S. has an abortion by age 45.50 While the abortion rate has been declining over the past four decades, it remains a common procedure; however, abortion rates vary considerably by patient income and race and ethnicity.51

Nearly half of all patients who have an abortion have incomes below the federal poverty level, and Black and Hispanic patients have abortions at considerably higher rates than non-Hispanic white patients. <sup>52</sup> There are many reasons for these disparities, but studies show that Black and Hispanic patients are less likely to have access to health care – including access to high-quality contraceptive services – and are more likely to face racism and report negative experiences when they do seek health care. <sup>53</sup> People of color are also more likely to live in high-poverty neighborhoods and less likely to move out of poverty in adulthood than their white counterparts, due in large part to systemic racism and generational barriers. <sup>54</sup> Black women are three times as likely as white women to experience and unintended pregnancy, and Hispanic women are twice as likely. <sup>55</sup> Research has also found that low-income Black children are less likely to receive formal sex education, <sup>56</sup> and Black women also experience the highest rates of intimate partner and sexual violence, which can contribute to reproductive coercion. <sup>57</sup>

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Restricting abortion without addressing geographic, economic, and cultural barriers to comprehensive health care and family planning will worsen racial health disparities and perpetuate cycles of disadvantage for women of color.<sup>5859</sup>

The United States' maternal mortality rate is alarmingly high and reveals faults that exist within the current health care system. Approximately 700 women die from pregnancy-related complications annually in the United States. 60 There are numerous factors influencing pregnancy-related mortality and morbidities, such as advanced maternal age, education attainment, and underlying health status. 61 Large disparities in maternal health outcomes exist between women who belong to racial and ethnic minority groups and white women. The U.S. Centers for Disease Control and Prevention's (CDC) 2019 Morbidity and Mortality Weekly Report stated that non-Hispanic Black (Black) and non-Hispanic American Indian/Alaska Native (Al/AN) women experienced higher pregnancy-related morbidity ratios (40.8 and 29.7, respectively) than all other racial/ethnic populations. (White PRMR was 12.7, Asian/ Pacific Islander PRMR was 13.5, and Hispanic PRMR was 11.5.) 62 Disparities for pregnancy outcomes also exist when comparing women living in rural areas with those living in urban areas. 63

Black and low-income patients and patients from rural communities are more likely to live in states that have banned or are likely to ban abortion since the Supreme Court overturned *Roe.* A recent study estimating the mortality impact of a total abortion ban, due to increased deaths from unterminated pregnancies, would increase pregnancy-related deaths, most acutely for Black women <sup>64</sup>

According to the AAP, laws that restrict access to reproductive health care also have a disproportionate impact on adolescents and teenagers, who typically do not have the resources or freedom to travel to another state to receive safe, legal health care. <sup>55</sup> Family physicians are optimally trained, qualified, and experienced in evaluating and addressing the complex medical and behavioral health care needs of adolescents. The AAFP values the sexual health of adolescents and advocates for access to comprehensive medical and behavioral health care, evidence-based sex education, and increasing awareness of risks and signs of sexual abuse and trafficking, and supports a trauma-informed approach to health care. <sup>666768</sup> That is why the AAFP joins the AAP in affirming strong support for adolescents and teens to receive comprehensive evidence-based reproductive health care services, including abortion.

The AAFP <u>recognizes</u> sexual assault as a serious public health issue and <u>supports</u> the rights of survivors of sexual assault, sexual violence, and all sexual crimes. <sup>6970</sup> The AAFP <u>calls for</u> prioritization of the survivor's wellbeing, emphasizing the need for compassionate treatment, and supports a legal framework that codifies the rights of, and protections for, survivors of sexual assault. <sup>71</sup> Rape is a cause of many unwanted pregnancies, with an estimated one in 20 women between the ages of 12 and 45 becoming pregnant due to rape. <sup>72</sup> Rape is traumatic and often has long-lasting physical and psychological health consequences. Laws that ban abortions without exception for rape and incest contradict the AAFP's <u>policy on trauma-informed care</u> and place rape victims at higher risk for future medical, psychological, and socioeconomic challenges. <sup>73</sup>

Family physicians report that, in states with abortion bans that allow exceptions in cases of rape or incest, eligible patients still face barriers to timely access to care. In order to qualify for an exception, patients and/or their clinician usually must provide a police report documenting the offense. Surveys indicate that fewer than a quarter of rape survivors report assault, and experts estimate the percentage is much lower for children, adolescents, and youth in foster care and juvenile systems. <sup>74</sup> Family physicians who care for victims of rape cite family and domestic violence and economic insecurity as possible response for non-reporting. Requiring victims of rape and incest and their

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treating clinicians to jump through legal and administrative hurdles to document eligibility for a legal exception delays access to time-sensitive abortion care.

The AAFP acknowledges that LGBTQ+ individuals, youth in foster care or the juvenile justice system, and incarcerated individuals face exceptional hardships when attempting to access health care and are at greater risk for adverse medical and mental health outcomes and recognizes that state laws banning and restricting access to abortion will undoubtably exacerbate the health disparities experienced by these vulnerable populations. We urge policymakers to study the implications of federal and state policy changes on these unique populations in order to develop appropriate solutions to mitigate the serious challenges they encounter.

# <u>Underscoring the Need for Universal Access to Health Care and Addressing Social Determinants of Health</u>

The AAFP recognizes health as a basic human right for every person, regardless of social, economic or political status, race, religion, gender, or sexual orientation. The right to health includes universal access to timely, high-quality, and affordable health care services. The continue to call on Congress to pass legislation to expand access to comprehensive, affordable health care, including by expanding Medicaid and CHIP coverage to 12 months postpartum, ensuring 12 months of continuous eligibility for children enrolled in Medicaid and CHIP, closing the Medicaid expansion coverage gap, and making the American Rescue Plan's enhanced marketplace subsidies permanent. Family physicians understand that the health of their individual patients and communities is affected by social determinants of health, which is why the AAFP urges lawmakers to adopt a "health in all policies" approach that considers the broad health implications of policies not traditionally discussed as health care-related (such as housing and urban development, transportation, education, etc.). Expanding health coverage and addressing social determinants of health will undoubtably reduce unintended pregnancies, improve maternal and child health outcomes, and ultimately improve the health and productivity of our nation.

The AAFP has <u>called on HHS</u> and other federal agencies to use every available lever to protect patient safety, support family physicians and other clinicians, and strengthen timely access to reproductive health care, including medication abortion and contraception, in accordance with federal law.<sup>76</sup>

We now urge Congress to take swift legislative action and utilize its federal oversight authority to restore, protect, and improve patients' access to timely, comprehensive reproductive health care and clinicians' ability to provide evidence-based medical care.

The AAFP has <u>endorsed</u> the House-passed Women's Health Protection Act (<u>S. 4132</u>), and we continue to <u>urge</u> the Senate to pass this critical legislation to codify federal protections for reproductive health care. The AAFP also supports the Ensuring Access to Abortion Act (<u>H.R. 8297</u>) which protects patients' rights to travel across state lines to seek abortion services. Absent federal law guaranteeing all patients have the right to abortion, it is imperative that patients be able to travel to seek safe, quality medical care without threat of penalty of persecution.

The AAFP stands ready to partner with the Committee to protect the patient-physician relationship and reproductive health care. Should you have any questions, please contact Erica Cischke, Director of Legislative and Regulatory Affairs at <a href="mailto:ecischke@aafp.org">ecischke@aafp.org</a>.

Sincerely,

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Gda D. Stewart, MO

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<sup>1</sup> National Center for Health Statistics. National Ambulatory Medical Care Survey: 2018 National Summary Tables. https://www.cdc.gov/nchs/data/ahcd/namcs\_summary/2018-namcs-web-tables-508.pdf

<sup>3</sup> American Academy of Family Physicians. (2022). Reproductive and Maternity Health Services.

https://www.aafp.org/about/policies/all/reproductive-maternity-health-services.html

<sup>4</sup> American College of Obstetricians and Gynecologists. (2022). More Than 75 Health Care Organizations Release Joint Statement in Opposition to Legislative Interference. <a href="https://www.acog.org/news/news-releases/2022/07/more-than-75-health-care-organizations-release-joint-statement-in-opposition-to-legislative-interference?utm\_medium=social&utm\_source=twitter&utm\_campaign=acog2022-advocacy&utm\_content=joint-statement-legislative-interference</a>

<sup>5</sup> American Academy of Family Physicians. (2022). Reproductive and Maternity Health Services. https://www.aafp.org/about/policies/all/reproductive-maternity-health-services.html

<sup>6</sup> American Academy of Family Physicians, et al. (2021). Amicus Brief: Dobbs v. Jackson Womens Health Organization. https://www.aafp.org/dam/AAFP/documents/advocacy/amicus\_brief/AB-DobbsVJacksonWomensHealth-092021.pdf

<sup>7</sup> American Academy of Family Physicians. (2021). Infringement on Patient Physician Relationship. https://www.aafp.org/about/policies/all/infringement-patient-physician-relationship.html

<sup>8</sup> Group of Six. (2022). Legislation to Criminalize Physicians, Jeopardize Patient-Physician Relationship Have No Place in Health Care. http://www.groupof6.org/dam/AAFP/documents/advocacy/prevention/women/ST-G6-OpposingCriminalizationOfCare-040822.pdf

<sup>9</sup> Patel P, Narayana S, Summit A, et al. Abortion Provision Among Recently Graduated Family Physicians. Fam Med. 2020;52(10):724-729. https://doi.org/10.22454/FamMed.2020.300682.

<sup>10</sup> ANSIRH. (2019). More U.S. obstetrician-gynecologists are providing abortion now than in 2019.

https://www.ansirh.org/research/research/more-us-obstetrician-gynecologists-are-providing-abortion-now-2009

<sup>11</sup> Arthritis Foundation Statement on Methotrexate Access. (n.d.). Arthritis Foundation. Retrieved July 11, 2022, from <a href="https://www.arthritis.org/about-us/news-and-updates/statement-on-methotrexate-access">https://www.arthritis.org/about-us/news-and-updates/statement-on-methotrexate-access</a>

<sup>12</sup> Group of Six. (2018). Joint Principles for Protecting the Patient-Physician Relationship.

 $\underline{\text{http://www.groupof6.org/dam/AAFP/documents/advocacy/legal/ST-Group6-LegislativeInterference-052318.pdf}$ 

<sup>13</sup> Stevenson AJ, Flores-Vazquez IM, Allgeyer RL, Schenkkan P, Potter JE. Effect of Removal of Planned Parenthood from the Texas Women's Health Program. N Engl J Med. 2016 Mar 3;374(9):853-60. doi: 10.1056/NEJMsa1511902

<sup>14</sup> National Women's Law Center (2012). Turning to Fairness: Insurance Discrimination Against Women Today and the Affordable Care Act. <a href="http://www.nwlc.org/sites/default/files/pdfs/nwlc">http://www.nwlc.org/sites/default/files/pdfs/nwlc</a> 2012 turningtofairness report.pdf.

<sup>15</sup> American Academy of Family Physicians. (2020). Quality Health Care in Family Medicine.

 $\underline{https://www.aafp.org/about/policies/all/family-medicine-quality-health-care.html}$ 

<sup>16</sup> Redden M. (2016). Abortion ban linked to dangerous miscarriages at Catholic hospital, report claims. *The Guardian*. https://www.theguardian.com/us-news/2016/feb/18/michigan-catholic-hospital-women-miscarriage-abortion-mercy-health-partners

health-partners

17 Lori R. Freedman, Uta Landy, Jody Steinauer, "When There's a Heartbeat: Miscarriage Management in Catholic-Owned Hospitals", American Journal of Public Health 98, no. 10 (October 1, 2008): pp. 1774-1778.

<sup>18</sup> American Academy of Family Physicians. (2018). Clinical Practice Guidelines Policy.

https://www.aafp.org/about/policies/all/clinical-practice-guidelines-policy.html

<sup>&</sup>lt;sup>2</sup> Fryer GE, Green LA, Dovey SM, Phillips Jr RI. (2001). The United States Relies on Family Physicians Unlike Any Other Specialty. *Am Fam Physician*, 63(9): 1669. https://www.aafp.org/pubs/afp/issues/2001/0501/p1669.html

July 13, 2022 Page 12 of 14

- <sup>19</sup> American Academy of Family Physicians. (2022). Criminalization of the Medical Practice. https://www.aafp.org/about/policies/all/criminalization-medical-practice.html
- <sup>20</sup> Group of Six. (2022). Legislation to Criminalize Physicians, Jeopardize Patient-Physician Relationship Have No Place in Health Care. http://www.groupof6.org/dam/AAFP/documents/advocacy/prevention/women/ST-G6 OpposingCriminalizationOfCare-040822.pdf
- <sup>21</sup> Frakes MD, Gruber J. (2018). Defensive Medicine: Evidence from Military Immunity. *National Bureau of Economic* Research.
- <sup>22</sup> Casteel K. (2022). Fetal heartbeat law leaves South Carolina doctors in dangerous limbo. *Greenville News*. https://www.greenvilleonline.com/story/news/local/south-carolina/2022/07/07/fetal-heartbeat-law-leaves-sc-doctors-
- dangerous-limbo-abortion-roe/7759896001/

  <sup>23</sup> Cornell Law School Legal Information Institute. 42 U.S. Code § 1395dd Examination and treatment for emergency medical conditions and women in labor. https://www.law.cornell.edu/uscode/text/42/1395dd
- <sup>24</sup> American Academy of Family Physicians. (2017). Family Physician Burnout, Well-Being, and Professional Satisfaction (Position Paper). https://www.aafp.org/about/policies/all/family-physician-burnout.html
- <sup>25</sup> AHRQ. (2017). Physician Burnout. <a href="https://www.ahrq.gov/sites/default/files/wysiwyg/professionals/clinicians-">https://www.ahrq.gov/sites/default/files/wysiwyg/professionals/clinicians-</a> providers/ahrq-works/impact-burnout.pdf
- <sup>26</sup> American Academy of Family Physicians. (2022). Training in Reproductive Decisions.

https://www.aafp.org/about/policies/all/reproductive-decisions-training.html

- <sup>27</sup> American Academy of Family Physicians. (2018). Recommended Curriculum Guidelines for Family Medicine Residents: Women's Health and Gynecologic Care.
- https://www.aafp.org/dam/AAFP/documents/medical\_education\_residency/program\_directors/Reprint282\_Women.pdf <sup>28</sup> American Academy of Family Physicians. (2018). Recommended Curriculum Guidelines for Family Medicine Residents: Maternity Care
- https://www.aafp.org/dam/AAFP/documents/medical\_education\_residency/program\_directors/Reprint261\_Maternity.p
- $\underline{\text{https://www.aafp.org/about/policies/all/reproductive-decisions-training.html}}$
- <sup>30</sup> Dalton VK, Harris LH, Bell JD, Schulkin J, Steinauer J, Zochowski M, Fendrick AM. Treatment of early pregnancy failure: does induced abortion training affect later practices? Am J Obstet Gynecol, 2011 Jun; 204(6):493,e1-6, doi: 10.1016/j.ajog.2011.01.052.
- 31 Horvath S, Turk J, Steinauer J, Ogburn T, Zite N. Increase in Obstetrics and Gynecology Resident Self-Assessed Competence in Early Pregnancy Loss Management With Routine Abortion Care Training. Obstet Gynecol. 2022 Jan 1;139(1):116-119. doi: 10.1097/AOG.0000000000004628.
- <sup>32</sup> Society of Teachers of Family Medicine. (2022). Society of Teachers of Family Medicine Statement on the Physician-Patient Relationship and Reproductive Health Care. https://www.stfm.org/about/governance/statements/
- 33 American Association of Medical Colleges. (2022). AAMC Statement on Supreme Court Decision in Dobbs v. Jackson Women's Health Organization. https://www.aamc.org/news-insights/press-releases/aamc-statement-supreme-courtdecision-dobbs-v-jackson-women-s-health-organization
- 34 Accreditation Council for Graduate Medical Education. (2017). Clarification on Requirements Regarding Family Planning and Contraception: Review Committee for Obstetrics and Gynecology.
- https://www.acgme.org/globalassets/pfassets/programresources/220 obgyn abortion training clarification.pdf
- <sup>35</sup> ACGME Program Requirements for Graduate Medical Education in Family Medicine. (2022). ACGME. https://www.acgme.org/globalassets/pfassets/programrequirements/120 familymedicine 2022.pdf
- <sup>36</sup> Family Medicine Residencies with Abortion Training RHEDI. (n.d.). Retrieved July 10, 2022, from https://rhedi.org/resources/residency-training/

https://rhedi.org/resources/residency-training/

- <sup>37</sup> Vinekar, K., Karlapudi, A., Nathan, L., Turk, J. K., Rible, R., & Steinauer, J. (2022). Projected Implications of Overturning Roe v Wade on Abortion Training in U.S. Obstetrics and Gynecology Residency Programs. Obstetrics & Gynecology. doi: 10.1097/AOG.0000000000004832
- https://journals.lww.com/greenjournal/Fulltext/9900/Projected Implications of Overturning Roe v Wade.449.aspx 38 Family Medicine Residencies with Abortion Training – RHEDI. (n.d.). Retrieved July 10, 2022, from

July 13, 2022 Page 13 of 14

```
<sup>39</sup> Knox, L. (2022, July 7). Medical schools adapt to the Dobbs abortion decision. Inside Higher Ed.
https://www.insidehighered.com/news/2022/07/07/medical-schools-adapt-dobbs-abortion-decision
 10 Anderson, N. (2022, June 30). The fall of Roe scrambles abortion training for universities. The Washington Post.
https://www.washingtonpost.com/education/2022/06/30/abortion-training-upheaval-dobbs/

41 Chapman, G. (2022, July 8). 'It's incredibly far-reaching': medical students on the Roe reversal. The Guardian.
https://www.theguardian.com/us-news/2022/jul/08/roe-v-wade-reversal-medical-students
<sup>42</sup> Knox, L. (2022, July 7). Medical schools adapt to the Dobbs abortion decision. Inside Higher Ed.
https://www.insidehighered.com/news/2022/07/07/medical-schools-adapt-dobbs-abortion-decision
<sup>43</sup> Coverage, Patient Education, and Counseling for Family Planning, Contraceptive Methods, and Sterilization Procedures.
(2020). AAFP. https://www.aafp.org/about/policies/all/coverage-family-
planning.html#Coverage,%20Patient%20Education,%20and%20Counseling%20for%20Family%20Planning,%20Contracept
we%20Methods,%20and%20Sterilization%20Procedures

44 FACT SHEET: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services. (2022, July
8). The White House Briefing Room. https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/08/fact-
   neet-president-biden-to-sign-executive-order-protecting-access-to-reproductive-health-care-services/
<sup>45</sup> Confidentiality, Patient/Physician. (2022, July). AAFP. https://www.aafp.org/about/policies/all/confidentiality-patient-
physician.html#Confidentiality,%20Patient/%20Physician

46 Data Stewardship. (2019). AAFP. https://www.aafp.org/about/policies/all/data-stewardship.html
<sup>47</sup> Crockford, K., & Freed Wessler, N. (2022). Impending Threat of Abortion Criminalization Brings New Urgency to the
Fight for Digital Privacy. ACLU. https://www.aclu.org/news/privacy-technology/impending-threat-of-abortion-
<u>criminalization-brings-new-urgency-to-the-fight-for-digital-privacy</u>

48 Gilbert, K., Sanchez, G., & Busette, C. (2022, June 30). Dobbs, another frontline for health equity. Brookings.
\underline{https://www.brookings.edu/blog/how-we-rise/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for-health-equity/2022/06/30/dobbs-another-frontline-for
<sup>49</sup> Zephyrin, L., & Blumenthal, D. (2022, June 24). Loss of Abortion Rights Will Send Shockwaves Through US Health
System. Commonwealth Fund. https://www.commonwealthfund.org/blog/2022/loss-abortion-rights-will-send-

    shockwaves-through-us-health-care-system
    Wind, Rebecca. (Oct. 19, 2017). Abortion is Common Experience for U.S. Women, Despite Dramatic Declines in Rates.

Guttmacher Institute. https://www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-
despite-dramatic-declines-rates
<sup>51</sup> U.S. Abortion Patients. (2016).
https://www.guttmacher.org/sites/default/files/infographic attachment/aps demographics.pdf
52 Wind, Rebecca. (Oct. 19, 2017). Abortion is Common Experience for U.S. Women, Despite Dramatic Declines in Rates.
Guttmacher Institute. https://www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-
<u>despite-dramatic-declines-rates</u>
<sup>53</sup> Cohen, S. A. (2008, August 6). Abortion and Women of Color: The Bigger Picture . Guttmacher Institute.
https://www.guttmacher.org/gpr/2008/08/abortion-and-women-color-bigger-picture
<sup>54</sup> Butler, S. M., & Grabinsky, J. (2020, November 16). Tackling the legacy of persistent urban inequality and concentrated
poverty. Brookings. https://www.brookings.edu/blog/up-front/2020/11/16/tackling-the-legacy-of-persistent-urban-
inequality-and-concentrated-poverty/
<sup>55</sup> Cohen, S. A. (2008, August 6). Abortion and Women of Color: The Bigger Picture . Guttmacher Institute.
https://www.guttmacher.org/gpr/2008/08/abortion-and-women-color-bigger-picture
<sup>56</sup> Brinkman, B. G., Garth, J., Horowitz, K. R., Marino, S., & Lockwood, K. N. (n.d.). Black Girls and Sexuality Education:
Access. Equity. Justice. Retrieved July 10, 2022, from https://www.gwensgirls.org/wp-content/uploads/2019/10/BGEA-
Report2 v4.pdf

57 Jain, M. (2017). The National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report. CDC, 2010–2012.
\underline{https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf}
<sup>58</sup> Dehlendorf C, Rodriguez MI, Levy K, Borrero S, Steinauer J. Disparities in family planning. Am J Obstet Gynecol. 2010
Mar;202(3):214-20. doi: 10.1016/j.ajog.2009.08.022. PMID: 20207237; PMCID: PMC2835625
```

<sup>59</sup> Tarzia, L., & Hegarty, K. (2020). Causal mechanisms of postnatal depression among women in Gondar town, Ethiopia:

application of a stress-process model with generalized structural equation modeling. 18, 87.

https://doi.org/10.1186/s12978-021-01143-6

60 U.S. Centers for Disease Control and Prevention, May 2019 Vital Signs, Pregnancy Related Deaths Fact Sheet, accessed online:

July 13, 2022 Page 14 of 14

https://www.cdc.gov/vitalsigns/maternal-deaths/index.html 61 Vilda, Dovile et al. "Income inequality and racial disparities in pregnancy-related mortality in the US." SSM - population health vol. 9 100477. 28 Aug. 2019, doi:10.1016/j.ssmph.2019.100477 62 Petersen EE, Davis NL, Goodman D, et al. Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007–2016. MMWR Morb Mortal Wkly Rep 2019;68:762–765. DOI: http://dx.doi.org/10.15585/mmwr.mm6835a3 <sup>63</sup> American College of Obstetrics and Gynecology, 2014, https://www.acog.org/clinical/clinical-guidance/committeeopinion/articles/2014/02/health-disparities-in-rural-women

64 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. Demography 1 December 2021; 58 (6): 2019–2028. doi: https://doi.org/10.1215/00703370-9585908 <sup>65</sup> American Academy of Pediatrics. (2022). AAP Supports Adolescents' Right to Comprehensive, Confidential Reproductive Health Care. https://www.aap.org/en/news-room/news-releases/aap/2022/aap-supports-adolescentsright-to-comprehensive-confidential-reproductive-health-care/ <sup>66</sup> American Academy of Family Physicians. (2020). Adolescent Health Care, Sexuality and Contraception. https://www.aafp.org/about/policies/all/adolescent-sexuality.html <sup>67</sup> American Academy of Family Physicians. (2017). Children's Health. https://www.aafp.org/about/policies/all/childrens-68 American Academy of Family Physicians. (2021). Trauma-Informed Care. https://www.aafp.org/about/policies/all/trauma-informedcare.html#:~:text=Family%20physicians%20should%20approach%20TIC,incorporate%20TIC%20into%20clinical%20practic e.

9 American Academy of Family Physicians. (2020). Rights, Protections, and Support for Survivors of Sexual Assault. https://www.aafp.org/about/policies/all/rights-survivors-sexualassault.html#Rights,%20Protections,%20and%20Support%20for%20Survivors%20of%20Sexual%20Assault 
70 American Academy of Family Physicians. (2020). Sexual Assault as a Public Health Issue. https://www.aafp.org/about/policies/all/sexualconsentpublichealth.html#Sexual%20Consent%20as%20a%20Public%20Health%20Issue

71 American Academy of Family Physicians. (2020). Rights, Protections, and Support for Survivors of Sexual Assault. https://www.aafp.org/about/policies/all/rights-survivors-sexualassault.html#Rights,%20Protections,%20and%20Support%20for%20Survivors%20of%20Sexual%20Assault
72 Holmes MM, Resnick HS, Kilpatrick DG, Best CL. Rape-related pregnancy: estimates and descriptive characteristics from a national sample of women. Am J Obstet Gynecol. 1996 Aug;175(2):320-4; discussion 324-5. doi: 10.1016/s0002-9378(96)70141-2. PMID: 8765248. <sup>73</sup> American Academy of Family Physicians. (2021). Trauma-Informed Care. https://www.aafp.org/about/policies/all/trauma-informed- $\underline{\mathsf{care}.\mathsf{html}\#:``text=Family\%20physicians\%20should\%20approach\%20TlC, incorporate\%20TlC\%20into\%20clinical\%20practical\%20p$ 24 Kimble C. (2018). Sexual Assault Remains Dramatically Underreported. *Brennan Center for Justice*.  $\underline{https://www.brennancenter.org/our-work/analysis-opinion/sexual-assault-remains-dramatically-underreported}$ 75 American Academy of Family Physicians (2020). Health Care is a Right. https://www.aafp.org/about/policies/all/healthcare-right.html 76 American Academy of Family Physicians. (2022). AAFP Letter to HHS on Reproductive Health and the Patient-Physician

Relationship. https://www.aafp.org/dam/AAFP/documents/advocacy/prevention/women/LT-HHS-DobbsImpact

https://www.aafp.org/dam/AAFP/documents/advocacy/prevention/women/LT-Senate-WHPA-051022.pdf

070522.pdf 77 Joint Letter to Senate in Support of the Women's Health Protection Act. (2022). In *Letter*.



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The Honorable Jerry Nadler, Chair The Honorable Jim Jordan, Ranking Member Judiciary Committee, U.S. House of Representatives 2141 Rayburn House Office Building

Washington, D.C. 20515

Submitted via email: william.emmons@mail.house.gov

# RE: House Judiciary Committee Hearing, "What's Next: The Threat to Individual Freedoms in a Post Roe World"

Dear Chairman Nadler, Ranking Member Jordan, and Distinguished Members of the

With great concern for our nation and our fundamental freedoms, I offer the following statement ahead of the Committee's upcoming hearing entitled "What's Next: The Threat to Individual Freedoms in a Post Roe World." My name is Rev. Dr. Katharine Rhodes Henderson, interim president and CEO of Interfaith Alliance Foundation, a national nonpartisan organization that champions an inclusive vision of religious freedom, promotes policies that protect the integrity of both religion and democracy, and works to ensure that all Americans are treated equally under the law.

Last month, the Supreme Court left us reeling from a decision in *Dobbs v. Jackson Women's Health Organization* that unleashed untold pain upon individuals and families across the country. As a Christian minister, I draw strength from the courageous friends and partners who continue to care for, march beside, and demand justice for our communities. And as a woman who wrestled with and exercised my freedom of conscience and moral choice to have an abortion, my heart grieves the loss of a right not only protected by the Constitution but the ability for each person to live into our God-given capacity for self-determination.

Decisions about whether and when to become a parent are intensely personal and people of many faiths and none access abortion care every year. Various religious traditions approach these matters differently and these beliefs may – or may not – inform a patient's decision to end a pregnancy. The freedom to believe as we choose, and to exercise those beliefs without fear of criminalization, is a basic matter of religious freedom.

Yet the First Amendment does not simply protect the right to free exercise, but simultaneously guarantees that the government will not establish an official religion or favor religion over non-religion. We rely on policymakers to enact laws consistent with these fundamental dictates, rooted in our rich but imperfect history, and we count on judges to strike down laws that violate these principles. Our democratic tradition recognizes the harms of legislating based on an individual or group's religious convictions. But this will soon become the reality for millions of pregnant people living in states where lawmakers impose their own views on abortion upon their constituents, whether they share those beliefs or not.



This committee will no doubt receive thoughtful and incisive testimony regarding the impact of the *Dobbs* decision on a myriad of individual freedoms. I respectfully urge you to include in this endeavor the devastating blow to religious freedom experienced by the overwhelming majority of people of faith who support access to abortion care. Every pregnant person should be able to make decisions about their body and family as I was able to do, yet many have already or will soon lose the right to do so.

When I am brought low – in times of lament like this – these words from a Christian text come to mind, and I offer them to you now: "For God has not given us a spirit of fear but of power, and of love, and of sound mind." This is my hope for our nation, that those who hold power may choose to act with love for our most basic freedoms and restore our right to self-determination anew.

Sincerely,

Rev. Dr. Katharine Rhodes Henderson

Rev. Dr. Katharine Rhodes Henderson Interim President and CEO Interfaith Alliance Foundation "I'm worried about this. It was the founder of the Republican Party President Lincoln who said 'A House divided against itself cannot stand. I believe this government cannot endure permanently half slave and half free.' Can we endure half free choice states and half theocratic-compelled pregnancy states? Is that going to work for America?"

Rep. Jamie Raskin (MD-08) at Committee on Oversight and Reform hearing on July 13, 2022

Print Close



# Red states with abortion bans could 'lose economic edge,' warns New York Times

By Kristine Parks

Published July 12, 2022

Fox News

A New York Times article warned red states that banning abortion, following the Supreme Court's decision to overturn Roe y. Wade, could have the negative economic consequence of driving workers and businesses to blue states.

Politics writer Alexander Burns wrote, "[A] Supreme Court decision that abolished the right to an abortion is now threatening to reshape the lines of economic competition between conservative and liberal states."

He highlighted Democratic governors pushing forward the message that protecting abortion rights was essential to making their states appealing to workers, particularly younger workers who are more concerned about social issues.

But for companies in red states, the fallout from "the rollback of women's rights" could prove to be "dangerous" to their economies.



WASHINGTON, DC - DECEMBER 01: Abortion rights advocates and anti-abortion protesters demonstrate in front of the Supreme Court of the United States on Wednesday, Dec. 1, 2021 in Washington, DC. The Justices will weigh whether to uphold a Mississippi law that bans abortion after 15 weeks and overrule the 1973 Roe v. Wade decision. (Kent Nishimura / Los Angeles Times via Gettly Images)

NBC REPORTER SAYS 'ECONOMIC IMPACT' OF 'BIRTHING PEOPLE' NOT BEING ABLE TO HAVE ABORTIONS IS 'DEVASTATING'

"in states like Texas and Georgia, Republican lawmakers are effectively wagering that the local business environment will remain appealing enough to overcome concerns about women's rights. And to some conservative politicians, the risk of alienating business investment is a price worth paying to eradicate abortion. The fallout of the Supreme Courf's ruling could be more dangerous for states that share Texas' economic and social policies but tack its longstanding status as an economic powerhouse — states like Arkanass and Oklahoma, which have passed some of the most restrictive abortion bans in the country," he wrote.

The Times also cited several Democrats, such as U.S. Secretary of Commerce and former governor of Rhode Island Gina Raimondo, predicting that it was a foregone conclusion that states with abortion bans would suffer economically.

Democratic governors have been trying to use the recent Court ruling to their political advantage. For instance, California Gov. Gavin Newsom recently released an attack ad in Florida encouraging residents to move to his state, saying their freedom was "under attack."

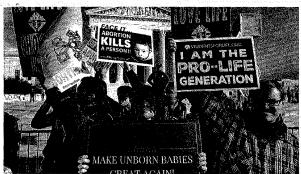


California Gov, Gavin Newsom speaks during a bill signing ceremony at Nido's Backyard Mexican Restaurant on February 09, 2022 in San Francisco, California, California Gov. Gavin Newsom signed legislation to extend COVID-19 supplemental paid sick leave for workers. (Getty)

STACEY ABRAMS WARNS BUSINESSES TO CONSIDER 'DANGER' GOV, BRIAN KEMP'S ABORTION LAWS POSE TO

Republicans and nonpartisan business groups told the Times reporter however, that they expected states like Texas to keep thriving despite abortion bans because of their pro-business policies such as lower taxes and less regulation. Still, the Times expressed

"There is no recent precedent, however, for a rightward lurch in state-level policy on the scale of the crackdown on abortion that is now underway across much of the United States. The full impact of new restrictions is still uncertain in many states, and some bans are riddled with questions about how they will be enforced. A few, like Oklahoma's total ban on abortion, appear to be so sweeping that they could imperii other kinds of reproductive care, including certain fertility treatments," Burns cautioned.



FILE - In fills Jan. 18, 2019, file photo, anti-abortion activists protest outside of the U.S. Supreme Court, during the March for Life in Washington. A committee in Texas considered a bill this week that would have opened the door to put women to death for their abortions. (AP Photo/Jose Luis Magana, File)

BIDEN SLAMMED FOR TWEET BLAMING REPUBLICANS FOR ECONOMIC PROBLEMS: 'I THOUGHT IT WAS RUSSIA'S FAULT'

The economy is a top issue for voters but not related to abortion. An Associated Press-NORC poll released last Friday confirmed voters feel inflation remains the number one concarn facing the country, followed by high gas prices.

Ever after the Supreme Court's Dobbs decision, abortion lags far behind general economic concerns, gun issues, immigration and education, according to the polt.

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Kristine Parks is an associate editor for Fox News Digital. Story tips can be sent to kristine parks@fox.com.

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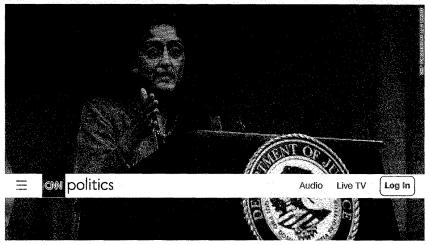
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### **Justice Department announces Reproductive Rights Task Force**





By Hannah Rabinowitz and Shawna Mizelle, CNN Updated 7:09 PM ET, Tue July 12, 2022



US Associate Attorney General Vanita Gupta delivers remarks at the Department of Justice Robert F. Kennedy Building on May 20, 2022, in Washington, DC.

(CNN) — The Justice Department on Tuesday announced a task force aimed at identifying ways to protect reproductive rights in the wake of the Supreme Court decision that struck down the federal right to abortion.

Called the Reproductive Rights Task Force and chaired by Associate Attorney General Vanita Gupta, the group will "monitor and evaluate" state and local legislation and enforcement that might infringe on a person's ability to seek reproductive care, ban abortion-inducing drugs or impose criminal or civil consequences on federal employees who provide reproductive health services that are legal under federal law.

"The Court abandoned 50 years of precedent and took away the constitutional right to abortion, preventing women all over the country from being able to make critical decisions about our bodies, our health, and our

https://www.cnn.com/2022/07/12/politics/department-of-justice-abortion-rights-task-force/index.html

Justice Department ennounces Reproductive Rights Task Force - CNNPolitics

7/13/22, 9:43 AM

futures. The Justice Department is committed to protecting access to reproductive services," Gupta said in a statement.



Related Article: Where state abortion bans stand amid legal challenges

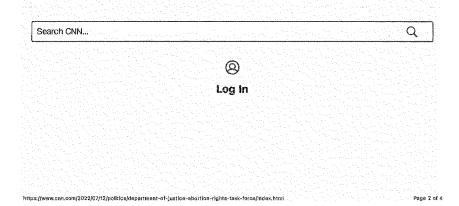
The announcement comes after Biden signed an executive order Friday aimed at protecting abortion rights and called on the the Justice Department, "much like they did in the civil rights era, to do something, to do everything in their power to protect these women seeking to invoke their rights." The DOJ announcement formalizes existing efforts by the department to support access to reproductive health care.

The Biden administration has worked across multiple federal agencies to respond to the Roe v. Wade reversal — the Department of Health and Human Services, for example, issued guidance Monday clarifying a health care provider's duty and protections when providing abortion care for life/health-saving measures. But the White House has so far dismissed several progressive ideas to protect abortion access, including using federal lands for abortion services and expanding the Supreme Court.

Biden's executive order attempts to safeguard access to medication abortion and emergency contraception, protect patient privacy, launch public education efforts as well as bolster the security of and the legal options available to those seeking and providing abortion services.

Still, there is no action the President can take to restore the nationwide right to an abortion in the wake of the high court's ruling, and Biden has acknowledged publicly his options to expand abortion access remain limited.

As Democrats and advocates pressure the White House to take a stronger stance to codify abortion access, Biden recently said he would support making an exception to the filibuster -- the 60-vote threshold in the Senate needed to pass most legislation -- in order to codify abortion rights, a position he had previously been reluctant to support.





American Reports Series Issue 6 | February 2014

> Gestational Limits on Abortion in the United States Compared to International Norms

> > Angelina Baglini, J.D.



Abstract: The United States is one of only seven countries in the world that permit elective abortion past 20 weeks. Upholding laws restricting abortion on demand after 20 weeks would situate the United States closer to the international mainstream, instead of leaving it as an outlying country with ultra-permissive abortion policies.

This report compares gestational limits in United States abortion law with gestational limits in the abortion law of the international community. The goal is to determine where the United States stands in comparison to international norms, with its federal policy enshrined in Roe v. Wade, which allows abortion past 20 weeks and without restriction until fetal viability.

The sample group for this project included a total of 198 countries, independent states, and semi-autonomous regions with populations exceeding 1 million. Of these 198 countries, independent states, and regions worldwide, 59 allow abortion without restriction as to reason, otherwise known as elective abortion or abortion on demand. The remaining 139 countries require some reason to obtain an abortion ranging from most restrictive (to save the life of the mother or completely prohibited) to least restrictive (socioeconomic grounds) with various reasons in between (e.g., physical health, mental health).

Currently, the United States permits abortion on demand through viability, which is usually marked around 24 weeks. For this report, it is appropriate to compare the United States with the other 58 countries that allow abortion on demand up to some point in pregnancy. The remaining 139 countries require some reason to obtain an abortion (that is to say, they do not permit abortion on demand) and are, by definition, more restrictive than the United States on the issue of gestational limits. To require some reason before obtaining an abortion is inherently more restrictive than not requiring any reason at all.

This report finds that the United States is one of only seven countries in the world that permit elective abortion past 20 weeks. This finding suggests that current proposals in the United States to restrict elective abortions past 20 weeks would move the United States from the fringe, ultra-permissive end of the spectrum to a position closer to international norms.

#### Terminology and Method of Comparison

Not all countries or statutes use the same terminology when drafting restrictions on late-term elective abortion. When drafting a restriction on elective abortion past 20 weeks of pregnancy, the most common measurement of "weeks of pregnancy" is gestational age, or in short form "gestation." Gestational age marks the duration of pregnancy, which is most commonly and medically measured from the date of the



The sample group of countries for this project included a total of 198 countries, independent states, and semi-autonomous regions with populations exceeding 1 million.1

Of these 198 countries, independent states, and regions worldwide, 59 allow abortion without restriction as to reason, otherwise known as elective abortion or abortion on demand,2 ii

The remaining 139 countries require some reason to obtain an abortion ranging from most restrictive (to save the life of the mother or completely prohibited) to least restrictive (socioeconomic grounds) with various reasons in between (e.g., physical health, mental health).iii iv v vi

Of the 59 countries permitting elective abortion vii:

- 9 countries limit elective abortion before the 12<sup>th</sup> week of gestation<sup>3</sup>,
- 36 countries limit elective abortion at 12 weeks gestation 4 5 6,

<sup>&</sup>lt;sup>1</sup> For purposes of this study, Puerto Rico is not included as a separate "country, independent state, or semi-autonomous region with population exceeding 1 million" as it follows the elective abortion policy of the United States and is subject to the constitutional determination of Roe v. Wade on elective abortion permissiveness. Center for Reproductive Rights, "The Legal Right to Abortion in Puerto Rico," July 2009

<sup>&</sup>lt;sup>2</sup> Other studies have counted 60 countries in the category of abortion without restriction as to reason. This study discovered that Bahrain could not be considered a country allowing elective abortion, as it permits abortion only to save the life of the mother in practice, although the country's statutory language is vague.

<sup>&</sup>lt;sup>3</sup> Three countries (Croatia, Macedonia, Montenegro) limit elective abortion past 10 weeks from conception. Converting this statutory language to gestational age, Croatia, Macedonia, and Montenegro limit elective abortion past 12 weeks gestational age. Using gestational age, Croatia, Macedonia, and Montenegro belong in the category of limiting abortion "at 12 weeks."

<sup>&</sup>lt;sup>4</sup> Two countries (Belgium, Germany) limit elective abortion past 12 weeks from conception. Converting this statutory language to gestational age, Belgium and Germany limit elective abortion past 14 weeks gestational age. Using gestational age, Belgium and Germany belong in the category of limiting abortion "between 12 and 20 weeks."

<sup>&</sup>lt;sup>5</sup> Two countries (Mongolia, Tunisia) limit elective abortion past 12 weeks of "pregnancy" without defining how pregnancy duration is measured. This study measures 12 weeks of "pregnancy" as 12 weeks gestational age, therefore Mongolia and Tunisia are included in the category limited "at 12 weeks." However, if Mongolia and Tunisia measure "pregnancy" from the date of conception or fertilization, then they would belong in the category "between 12 and 20 weeks."

<sup>&</sup>lt;sup>6</sup> Luxembourg recently broadened its abortion policy in 2013 to allow women to decide if they are "in distress" for purposes of obtaining an abortion within the first 12 weeks of pregnancy. This broadening of the law effectively allows elective abortion in the first 12 weeks of pregnancy. Luxembourg does not specify whether "weeks of pregnancy" are measured by gestational age or from conception or fertilization. "Restrictions on abortion in Luxembourg to be relaxed," November 2013, http://www.wort.lu/en/view/restrictions-on-abortion-in-luxembourg-to-be-relaxed-



#### American Report Series

- Canada (no restriction in law)xii
- China (no restriction in law)xiii
- Netherlands (24 weeks)
- North Korea (no restriction in law)
- Singapore (24 weeks)
- United States (viability)9
- Vietnam (no restriction in law)xiv

The United States is within the top 4% of most permissive abortion policies in the world (7 out of 198) when analyzing restrictions on elective abortion based on duration of pregnancy.

#### **Implications for Current Policy in the United States**

Under U.S. law, abortion on demand is permitted without restriction through viability. Viability can vary, and is decreasing in terms of weeks of gestation as perinatal medicine advances, but normally occurs no earlier than 24 weeks.

Recently, in the United States, there has been great interest in restricting abortion on demand after 20 weeks. \*\*x\*\* i\* Two states have had 20-week laws on the books since before \*Roe v. Wade\*. Eleven more states have enacted 20-week laws in recent years. \*10 A proposed 20-week law in Albuquerque, New Mexico failed to gain majority support in 2013 but was notable for the engaged citizen activism that resulted in the proposal being put on a municipal ballot for a direct vote. \*\*x\*\*vii

There is also interest at the federal level in restricting elective abortion after 20 weeks. In 2013, the U.S. House of Representatives passed a 20-week law. $^{xviii}$  A similar law has been introduced in the U.S. Senate. $^{11}$  xix

<sup>&</sup>lt;sup>9</sup> Puerto Rico is not considered a separate country for purposes of this study, as it follows U.S. elective abortion policy, permitting abortion on demand through fetal viability without restriction. Puerto Rico is included under the United States as a special jurisdiction that allows elective abortion past 20 weeks. Center for Reproductive Rights, "The Legal Right to Abortion in Puerto Rico," July 2009
<sup>10</sup> Twenty-week laws have been challenged in court. To date, Arizona, Georgia, and Idaho have been involved in litigation defending their 20-week restrictions on elective abortion. Although the U.S. Supreme Court recently declined to hear a case involving a 20-week law, it will likely consider the issue at some point.

<sup>&</sup>lt;sup>11</sup> Five states have enacted or attempted to enact 20-week laws using gestational age. Nine states have enacted or attempted to enact 20-week laws using conception or fertilization. One state has enacted a 20-week law using pregnancy. The federal House bill, the Pain-Capable Unborn Child Act, and the similar law introduced in the U.S. Senate, measure the 20-week restriction using fertilization.

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gestational-age/
sili Elina Hemminki, Zhuochun Wu, Guiyung Cao, and Kirsi Viisainen, "Illegal births and legal abortions the case of China," Reproductive Health, 2005; 2:5
silv Nguyen Thanh Binh, "Abortion in Present Day Vietnam," International Journal of Academic Research
in Business and Social Sciences, January 2012, Vol. 2, No. 1

xv Betsy Johnson, "Momentum for Late-Term Abortion Limits," Charlotte Lozier Institute, August 2013, http://www.lozierinstitute.org/momentum-for-late-term-abortion-limits/
xvi Guttmacher Institute, "State Legislation and Policies Enacted in 2013 Related to Reproductive Health,"

"An Overview of Abortion Laws," and "State Policies on Later Abortions," October 2013

xviii Juliet Lapidos, "Albuquerque Rejects 20-Week Abortion Ban," New York Times, November 2013 xviii House Bill H.R. 1797, Pain-Capable Unborn Child Protection Act, 113<sup>th</sup> Congress (2013-2014) xix Senator Graham Press Releases, "Graham Introduces Pain Capable Unborn Child Protection Act,"

November 2013

x International Planned Parenthood Federation, "Abortion Legislation in Europe," January 2009, Updated May 2012

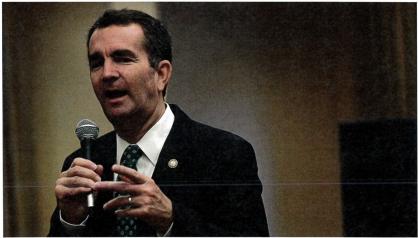
Americans United for Life, "United States Abortion Policy in the International Context," August 2012, http://www.aul.org/united-states-abortion-policy-in-the-international-context/
xii "Abortions by Gestational Age," Abortion in Canada, http://abortionincanada.ca/stats/abortions-by-



AudioLive TV

#### Virginia governor faces backlash over comments supporting late-term abortion bill

By <u>Devan Cole</u>, CNN Published 9:46 AM EST, Thu January 31, 2019



Alex Wong/Getty Images North America/Getty Images

Washington (CNN) — Virginia Democratic Gov. Ralph Northam is facing backlash after he voiced his support for a state measure that would significantly loosen restrictions on late-term abortions.

"[Third trimester abortions are] done in cases where there may be severe deformities. There may be a fetus that's nonviable. So in this particular example, if a mother is in labor, I can tell you exactly what would happen," Northam, a pediatric neurosurgeon, told Washington radio station <u>WTOP</u>. "The infant would be delivered, The infant would be kept comfortable. The infant would be resuscitated if that's what the mother and the family desired, And then a discussion would ensue between the physicians and the mother."

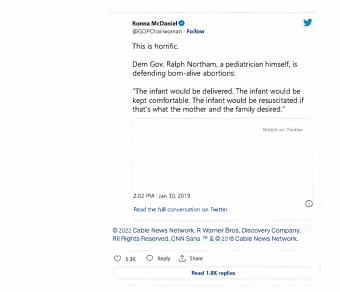
The bill - which among other things would end a state rule that requires at least three physicians confirm "that a third trimester abortion is necessary to prevent the woman's death or impairment of her mental or physical health" and ends "the need to find that any such impairment to the woman's health would be substantial and irremediable" - is currently tabled in Virginia's legislature.

Northam said he supports the bill's measures, telling WTOP that "we want the government not to be involved in these types of decisions.

We want the decision to be made by the mothers and their providers."

Shortly after Northam's interview, several prominent Republican leaders sharply criticized the governor's comments, accusing him of being in favor of infanticide.

"This is horrific," Republican National Committee chairwoman Ronna McDaniel wrote on Twitter, adding that Northam "is defending bornalive abortions."



Sen. Marco Rubio, R-Florida, also took to Twitter to address Northam's comments, writing that he "never thought I would see the day America had government officials who openly support legal infanticide."

Later Wednesday, President Donald Trump weighed in on Northam's comments in an interview with <u>The Daily Caller</u> when asked for comment by a reporter, though he said he hadn't heard the remarks himself.

"I'm surprised that he did that. I've met him a number of times," Trump said of the governor's comments.

"This is going to lift up the whole pro-life movement like maybe it's never been lifted up before," he told the outlet. "The pro-life movement is very much a 50-50, it's a very 50-50 issue, actually it's gained a point or two over the years."

"I think this will very much lift up the issue because people have never thought of it in those terms," Trump added.

Northam's office said in a statement on Wednesday that his comments were taken out of context and that Republicans "are trying to play politics with women's health."

"No woman seeks a third trimester abortion except in the case of tragic or difficult circumstances, such as a nonviable pregnancy or in the event of severe fetal abnormalities, and the governor's comments were limited to the actions physicians would take in the event that a woman in those circumstances went into labor," Ofirah Yheskel, Northam's spokesperson, wrote in the statement.

"Attempts to extrapolate these comments otherwise is in bad faith and underscores exactly why the governor believes physicians and women, not legislators, should make these difficult and deeply personal medical decisions," Yheskel said in the statement.

In a tweet posted later Wednesday, Northam wrote, "I have devoted my life to caring for children and any insinuation otherwise is shameful and disgusting."

CNN's Ryan Nobles contributed to this report.



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Effzabeth Warren Calls To 'Shut Down' Crisis Pregnancy Centers Amid Pro-Abortion Attacks | The Daily Caller

7/13/22, 9:44 AM

Daily Caller - https://dailycaller.com

### POLITICS

### Elizabeth Warren Calls To 'Shut Down' Crisis Pregnancy Centers Amid Pro-Abortion Attacks



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https://dailycaller.com/2022/07/12/elizabeth-warren-shut-down-crisis-pregnancy-centers

Page 1 of 11

Elizabeth Warren Calls To 'Shut Down' Crisis Pregnancy Centers Amid Pro-Abortion Attacks | The Daily Caller 7/13/22, 9:44 AM NICOLE SILVERIO MEDIA REPORTER FONT SIZE: 🕇 🔚 **D**emocratic Massachusetts Sen. Elizabeth Warren called on crisis pregnancy centers to be "shut down" across the country Tuesday as pro-abortion groups vandalize and commit arson on centers throughout the nation. The senator claimed the centers "fool" and "torture" women into carrying their pregnancies to term as they seek abortion access. She lamented that the centers outnumber abortion clinics in Massachusetts by 3 to 1. "In Massachusetts right now, those crisis pregnancy centers that are there to fool people who are looking for pregnancy termination help outnumber true abortion clinics by 3 to 1," she said. "We need to shut them down here in Massachusetts" and we need to shut them down all around the country," she told NBC 10 Boston. "You should not be able to torture a pregnant person like that."

https://dailycaller.com/2022/07/12/elizabeth-warren-shut-down-crisis-pregnancy-centers/



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Elizabe th Warren Calls To 'Shut Down' Crisis Pregnancy Centers Amid Pro-Abortion Attacks   The Deliy Caller	7/13/22, 9:44 AM
Warren's criticisms of crisis pregnancy centers follow multiple attacks on	the
centers facilitated by pro-abortion activists since the Supreme Court draft majority opinion leaked in May.	
Surveillance footage showed a suspect spray painted the words "If Abortic	ons
Aren't Safe, You Aren't Either" and broke the windows of the Next Step	
Pregnancy Center in Lynwood, Washington, in late May. An unknown pro	)-
abortion group splattered the Capitol Hill Crisis Pregnancy Center with re	
and marked the words "Jane Says Revenge" in graffiti.	
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Police arrested 10 pro-abortion protesters for allegedly throwing smoke be	ombs at
an Oregon pregnancy center on June 27. The activist group Jane's Revenge	3
allegedly firebombed crisis pregnancy center in Amherst, New York, over	night on
https://dailycaller.com/2022/07/12/elizabeth-warren-shut-down-crisis-pregnancy-centers/	Page 4 of 11

June 7, while arsonists attacked Wisconsin Family Action in Madison. The Oregon Right to Life offices in Keizer, Oregon, were also firebombed with Molotov cocktails.

The centers offer free or low-cost pregnancy testing, education on adoption services, ultrasounds, STD testing and treatment, prenatal and parenting lessons, after abortion recovery counseling and sexual risk avoidance education, according to the Charlotte Lozier Institute. (RELATED: NBC News Joins The Fight Against Crisis Pregnancy Centers)

The Massachusetts senator has repeatedly called for the construction of abortion clinics on federal lands and national parks since the Supreme Court overturned Roe v. Wade, handing states the right to regulate abortion. She suggested that tents and trained medical personnel be set up on federally funded property to allow women to access abortion.

Elizabeth Warren Calls To 'Shut Down' Crisis Pregnancy Centers Amid Pro-Abortion Attacks | The Daily Caller

7/13/22, 9:44 AN



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In a New York Times op-ed, she and Democratic Minnesota Sen. Tina Smith advocated the use of "federal property and resources to protect people seeking abortion services locally."

Warren and several prominent Democratic lawmakers signed a letter urging President Joe Biden increase access to medication abortion and establish a medical ombudsman at the Department of Human Health and Services and Department of Justice to analyze data on the types of reproductive services needed and provide that on federal lands.

"The Department of Justice and all relevant agencies could analyze the types of

reproductive health services that could be provided on federal property, especially in states where such services are limited by state law or regulation," the letter stated.

The senator's push for clinics on federal lands is currently prevented by the Hyde Amendment, which prohibits federal funding toward abortions except in cases endangering the mother's life. Many activists estimate that the Hyde Amendment prevents at least 60,000 abortion per year.

#### Around the Web



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THE NEW YORK TIMES Published July 12, 2022 5:56pm EDT

### NY Times op-ed tells Democrats to 'embrace the politics of fear' on abortion: 'Party needs to scare voters'

Writer Ana Marie Cox explained how using anger over the Supreme Court overturning Roe v. Wade could help Democrats in the midterms

By Lindsay Kornick | Fox News



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https://www.foxnews.com/media/ny-times-op-ed-tells-democrats-embrace-politics-fear-abortion-party-needs-scare-voters Page 1 of 11

NY Times op-ed tells Democrats to 'embrace the politics of fear' on abortion: 'Party needs to scare voters' | Fox News

7/13/22, 9:45 AM

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Ana Marie Cox wrote a guest essay in the <u>New York Times</u> suggesting that fear could be a winning strategy for Democrats in an op-ed on Friday.

In light of Republicans being favored to take back Congress in the 2022 midterm elections, Cox recognized the need to inspire both moderate and progressive Democrats. Using the Dobbs abortion decision from the Supreme Court as an example, she claimed "fear can drive them to the polls."

"When it comes to abortion rights, the Democrats need to lean into the politics of fear," Cox opened.

She explained that while America after <u>the overturning of Roe v. Wade</u> already feels like a "worst-case scenario," Republicans regaining power should cause further "panic."



Protesters shout as they join thousands marching around the Arizona Capitol after the Supreme Court decision to overturn the landmark Roe v. Wade abortion decision Friday, June 24, 2022, in Phoenix. (AP Photo/Ross D. Franklin)

### FEARING GOP MIDTERM GAINS, WAPO COLUMNIST WARNS: PARTY WILL ALLOW DISCRIMINATION, A 'GUN FOR EVERY POCKET'

She claimed, "[E]veryone should be [terrified], not just those who might want or need an abortion in the future," and went on to count gay marriage, sexual privacy, contraception and in vitro fertilization as items that could be threatened.

"To meet the urgency of the moment and save their razor-thin and often nonexistent hold on the Senate, Democrats must talk about that future, giving voters across the country, in every state, a reason to vote. Lives are on the line. At the same time, Democratic leaders have to understand that the politics of fear can run both ways," she urged.

"The party needs to scare voters and show that they, too, are scared: scared of the voters themselves," she continued. "Democratic politicians watched Republicans roll back abortion

rights for decades — and when Roe fell, they had no plan. Now, they need to demonstrate that they are willing to put themselves at the mercy of those they failed — making specific promises and letting the voters know that if they fail again, it will be more than a fund-raising opportunity. It will be a reckoning."



Rep. Alexandria Ocasio-Cortez, D-N.Y., speaks as she joins abortion-rights activists as they demonstrate following Supreme Court's decision to overturn Roe v. Wade in Washington, Friday, June 24, 2022. ((AP Photo/Jacquelyn Martin))

### RED STATES WITH ABORTION BANS COULD 'LOSE ECONOMIC EDGE,' WARNS NEW YORK TIMES

She called for an "Abortion Access Pledge" with action items for candidates to commit to.

"I am honestly unsure if it matters what those action items are; I do know Democrats will have to throw out any concern for the appearance of moderation. Right now, all the ideas about bridging the gap to abortion access sound extreme. But so did [Grover Norquist's] tax pledge at one point. So did overturning Roe v. Wade," Cox wrote.

Progressive politicians such as Rep. Alexandria Ocasio-Cortez, D-N.Y., have suggested that the government and President Biden <u>allow abortions on federal land</u> to circumvent state laws. Cox acknowledged these ideas and advocated for them despite any difficulties, saying, "Democrats who want to save the lives of those in need of an abortion can't fall back on 'it's complicated' as an excuse to not even try."

"Embracing a politics of fear on reproductive rights unites two of the constituencies the Democrats need to edge out the G.O.P. in key narrow races," she said, while pointing to contests in Wisconsin, Pennsylvania and Georgia. She hoped "hammering home the danger of a national ban may sufficiently alarm moderate voters in the suburbs" while "addressing the widespread sense of betrayal among progressive voters will help keep them activated."



Abortion-rights protesters gather outside the Supreme Court in Washington, Friday, June 24, 2022. The Supreme Court has ended constitutional protections for abortion that had been in place nearly 50 years, a decision by its conservative majority to overturn the court's landmark abortion cases. ((AP Photo/Jose Luis Magana))

While pushing for Democrats to "take real political risks," Cox claimed that "it's worth the gamble"

NY Times op-ed tells Democrats to 'embrace the politics of fear' on abortion: 'Party needs to scare voters' | Fox News

7/13/22, 9:45 AM

to take "bold action."

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She closed, "Fear often divides, but it can also unite. When you have a common threat, there is an opportunity for a common mission. This threat is no longer beyond the horizon — it's at the door. Now, Democrats, decide on a mission."

 $\label{limited-limit} Lindsay Kornick is an associate editor for Fox News Digital. Story tips can be sent to lindsay.kornick@fox.com and on Twitter: @lmkornick.$ 

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On Point Issue 63 | July 2021

Mississippi's 15-Week Gestational Limit on Abortion is Mainstream Compared to European Laws

Angelina B. Nguyen, J.D.



Abstract: In 2018, Mississippi passed the Gestational Age Act, limiting elective abortion to 15 weeks. Mississippi's 15-week law was invalidated by the lower federal courts and will be considered by the United States Supreme Court during their next term, which begins in October 2021. A comparative analysis between Mississippi and European abortion laws finds gestational limits on elective abortion—terminations performed without restriction as to reason—prior to 15 weeks, and more often at 12 weeks, are common and the norm for the majority of European countries. This comparison found 47 out of 50 European countries analyzed in this report either do not allow elective abortion (8) or limit elective abortion to 15 weeks or earlier (39), whereas, other than Texas, no state in the U.S. limits elective abortion to 15 weeks.

This report compares gestational limits in Mississippi's Gestational Age Act with gestational limits in the abortion laws of the European community. The goal is to determine how Mississippi's late-term abortion restriction stands in comparison to European norms.

The sample group for this project included a total of 50 European countries, independent states, and semi-autonomous regions with populations exceeding 1 million.<sup>1</sup>

Currently, United States Supreme Court precedent allows for elective abortions through all nine months of pregnancy, and only permits states to enact limitations on abortion on demand after viability, a legal definition which has not kept pace with science and is usually marked around 24 weeks. Various states have passed legislation seeking to place gestational limits on elective abortion, including Mississippi, where in 2018 the legislature passed the Gestational Age Act, which limited elective abortion to 15 weeks. Challengers to Mississippi's 15-week law were successful in invalidating the law at the district court and the Fifth Circuit Court of Appeals affirmed. The Supreme Court of the United States recently agreed to review the invalidation of Mississippi's 15-week law and more broadly will consider whether *all* pre-viability limitations on abortion are unconstitutional.

This report finds that Mississippi's law limiting elective abortion to 15 weeks is among the mainstream in comparison to European limitations on elective abortion. The majority of European countries that allow elective abortion limit it to 12 weeks. This finding demonstrates that Mississippi's law limiting elective abortion to 15 weeks is neither extreme nor outside the norm in comparison to European practice.

<sup>&</sup>lt;sup>1</sup> There are discrepancies among global governments and organizations on the exact number of European countries and the definition of a European country geographically, politically, and culturally. Various sources count between 44 and 51 European countries. This study analyzed 50 European countries, independent states, and regions and addressed the abortion policies of the United Kingdom separately, as Northern Ireland's abortion law differs from Great

<sup>&</sup>lt;sup>2</sup> The majority opinion of Justice Blackmun in Roe v. Wade stated, "Viability is usually placed at about seven months (28 weeks) but may occur earlier, even at 24 weeks." https://supreme.justia.com/cases/federal/us/410/113/#tab-opinion-1950137. Survival at 22 weeks, due to advanced standards and methods of care, is now recognized as achievable. See https://www.bbc.com/news/health-50144741.

<sup>&</sup>lt;sup>3</sup> Miss. Code Ann. § 41-41-191



- 5 European countries limit elective abortion to 14 weeks' gestation
  - Belgium, Germany, Luxembourg, Romania, Spain

Only 3 of the 42 European countries that allow elective abortion, permit elective abortion after 15 weeks' gestation. The three European countries that permit elective abortion past 15 weeks are:

- Iceland (22 weeks)
- Netherlands (24 weeks)
- Sweden (18 weeks)

#### Conclusion

No European country allows elective abortion through all nine months of pregnancy as is permitted in the United States, where Supreme Court precedent only allows states to regulate it after viability. In comparison, 47 out of 50 European countries analyzed in this report either do not allow elective abortion (8) or limit elective abortion to 15 weeks or earlier (39), whereas, other than Texas, no state in the U.S. has a currently enforceable law limiting elective abortion to 15 weeks. The Mississippi late-term abortion restriction at 15 weeks is not extreme by any measure when compared with European law.

Angelina B. Nguyen, J.D. is an associate scholar at the Charlotte Lozier Institute.

#### Last Updated March 4, 2022

#### Sources:

Center for Reproductive Rights, "The World's Abortion Laws," February 23, 2021, https://maps.reproductiverights.org/worldabortionlaws

Guttmacher Institute, "State Bans on Abortion Throughout Pregnancy," June 1, 2021, https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions

Harvard School of Public Health. Abortion Laws of the World. https://cyber.harvard.edu/population/abortion/abortionlaws.htm

Sam Rowlands, "Abortion Law of Jurisdictions Around the World," February 2021, https://fiapac.org/media/uploads/abortion\_laws\_around\_the\_world\_sam\_rowlands\_rev\_2021.pdf

World Health Organization. Global abortion policies database. 2018. https://abortion-policies.srhr.org/. Accessed June 11, 2021.



# What are the abortion time limits in EU countries?



A twelve-week gestational time limit would bring Britain in line with the majority of countries in the European Union where the median time limit for abortion on demand or on broad social grounds is 12 weeks' gestation.

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### 313

7/13/2	2, 8:51 AM	What a	are the abortion time limits in EU countries? – Right To Life UK	
	France	14	Code de la Santé Publique (Public Health Code) Article L2212 (2022)-1).	
	Germany	12	Strafgesetzbuch (German Criminal Code), Sections 218-218a (1992).	
	Greece	12	The Greek Criminal Code, Article 304 (No direct online access) (1986).	
	Hungary	12	Act LXXIX on the protection of fetal life, Section 6 (1992)	
	Ireland	12	Health (Regulation of Termination of Pregnancy) Act 2018, Section 12 (2018).	
	Italy	12	Law 194, Article 6 (1978).	
	Latvia	12	Sexual and Reproductive Health Law, Chapter VI, Section 25 (1) (2002).	
	Lithuania	12	Order No. 50, Section 1.1 (1994).	
	Luxembourg	12	Law of December 17, 2014 amending 1) the Penal Code and 2) the law of November 15, 1978, Article 12 (2014).	
	Malta	None: abortion is entirely prohibited.	Criminal Code, Articles 241-243. According to the Maltese Government: "Should the mother's life be in danger, all efforts are made to save both lives, and the double effect principle applies, such as in ectopic pregnancy."	
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#### 314

22, 8:51 AM	What are	e the abortion time limits in EU countries? – Right To Life UK
Spain	14	Organic Law 2/2010 on Sexual and Reproductive Health and the Voluntary Interruption of Pregnancy, Article 14 (2010) (Spanish with English translation).
Sweden	18	Lag om abort (Abortlagen), Section 1 (Abortion Law) (1974) (Swedish with English translation).



## Ask your local representatives to take the Both Lives Pledge

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7/13/22, 8:52 AM

What Are the Abortion Laws in Countries Around the World? - The New York Times

The New York Times https://www.nytimes.com/2022/07/03/world/abortion-laws-international.html

#### Abortion Laws Around the World

The U.S. Supreme Court's ruling on abortion quickly led to bans in at least eight states, a shift toward criminalization that runs counter to recent easings in countries that had longstanding bans.

#### By The New York Times

Published July 3, 2022 Updated July 4, 2022

The Supreme Court's elimination of the constitutional right to abortion, after nearly a half-century, has made the United States one of the few countries actively strengthening abortion restrictions.

Abortion is now banned in at least eight states, a shift toward criminalization that runs counter to the longstanding policies of some close allies, like Canada, and to recent easings in several nations that had long imposed bans, like Ireland, Mexico and South Korea.

But no nations share the same history regarding abortion, nor does any part of the world have uniform laws: Women seeking abortions everywhere must navigate distinct rules, in a variety of health care systems, if access is available at all. The following examples, while not comprehensive, illustrate the diversity of those laws — and how they're changing.

#### Canada

No laws restrict abortion in Canada, where it is covered by provincial and territorial public health care systems as an essential medical procedure within 20 weeks of conception and, under some circumstances, after that point, such as when a pregnancy threatens the mother's life. Access and exceptions vary by province, and sometimes by hospital.

Until 1988, criminal laws allowed abortions only if approved by committees of physicians. That year, the Supreme Court struck down the laws in a landmark case. Most legal scholars agree that if the issue were to reach the court again, it would make the right to abortion explicit.

— Ian Austen

#### Mexico



A march in Guadalajara, Mexico, that was part of a nationwide protest against the decriminalization of abortion in October. Ulises Ruiz/Agence France-Presse — Getty Images

Before a court ruling last year, abortion was largely restricted, with Mexico City and only three of 31 states permitting the procedure up to 12 weeks of fetal gestation. But the Supreme Court ruled unanimously in the fall that penalizing women who undergo abortions was "nconstitutional, and in the months since, five more states have moved to legalize abortions.

, ne justices did not specify how far into a pregnancy abortion was permitted, leaving the details to the states. For the states that still ban abortion, legislatures will need to change laws to permit the procedure.

— Maria Abi-Habib

https://www.nytimes.com/2022/07/03/world/abortion-laws-international.html

7/13/22, 8:52 AM

What Are the Abortion Laws in Countries Around the World? - The New York Times



Protesting Poland's abortion ban last November in Warsaw. Wojtek Radwanski/Agence

Soviet-era Poland offered some of Europe's broadest abortion access, and it became a destination for women seeking abortions. But after the Soviet Union's collapse, and under the influence of the Catholic Church, the Polish Parliament in 1993 passed one of Europe's strictest bans, asserting that "every human being shall have an inherent right to life from the moment of conception."

 $It allowed three \ categories \ of \ exception: \ danger \ to \ the \ mother's \ health \ or \ life; \ rape \ or \ incest; \ severe \ fetal \ abnormalities.$ 

Despite mass protests, the ban was tightened last year by the nationalist Law and Justice Party, eliminating the most-used exception — fetal abnormalities — which accounted for almost all of the roughly 1,000 legal abortions a year. An estimated 100,000 to 150,000 illegal abortions take place every year in the country, activists say.

The remaining exceptions are problematic for abortion seekers. Rape victims face a deadline of the 12th week of pregnancy, and they quire a certificate from a prosecutor, which takes a long time to acquire. And the definition of what constitutes a "serious" risk to a woman's health is too vague for doctors to always act decisively. In a small number of cases, women have died of sepsis after doctors refused to intervene while the fetus's heart was still beating.

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Women cannot be punished for taking an abortion pill or undergoing an abortion abroad.

Anyone deemed to have aided or abetted an illegal abortion faces up to eight years in prison.

— Katrin Bennhold

India

7/13/22, 8:52 AM

What Are the Abortion Laws in Countries Around the World? - The New York Times



A protest against an abortion agenda at the International Conference on Population and Development in 2019 in Nairobi, the Kenyan capital. Simon Maina/Agence France-Presse — Getty Images.

Under the 2010 Constitution, abortion is permitted if a trained health professional determines a need for emergency treatment, or if the pregnancy endangers the life or health of the mother. In other circumstances, abortion providers can face up to 14 years in prison under Kenya's penal code.

In practice, many women who could obtain a legal abortion cannot because of poverty, lack of access to health services or a lack of information about their rights.

— Matthew Mpoke Bigg

#### Benin

Last fall, Benin joined South Africa and Mozambique as one of the few African countries to broadly legalize abortion within 12 weeks.

Under the new law, abortion will be allowed "when the pregnancy is likely to aggravate or cause a situation of material, educational, professional or moral distress incompatible with the interest of the woman and/or the unborn child." In doing so, Benin became the third country in Africa, along with Ethiopia and Zambia, to allow abortion based on the social or economic needs of the woman.

The previous law authorized abortion only if the pregnancy endangered the woman's life or was the result of rape or incest, or if the fetus was malformed. The new law will take effect after the authorities detail how it will be applied, which could take months.

— Elian Peltier

#### Egypt

A strict anti-abortion law has been on the books for 85 years, derived from the French Penal Code of the colonial era that bans the procedure under nearly any circumstances. The woman and doctor face imprisonment if convicted.

It does have one loophole, which is based on the medical code of ethics: Doctors are allowed — but not legally obligated — to terminate a pregnancy if it puts the woman's life at risk and she signs a document saying the procedure was lifesaving.

Though convictions are uncommon, the law and social stigma have pushed abortion practices out of public sight, where the woman's safety cannot be protected and the procedure can be prohibitively expensive.

— Nada Rashwan

#### Turkey

Ohio Right to Life says offices targeted twice by pro-abortion vandals with rocks, spray paint

7/13/22, 9:46 AM

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### Ohio Right to Life says offices targeted twice by pro-abortion vandals with rocks, spray paint

By Emma Colton

Published July 13, 2022

Fox News

Dozens of pro-life centers have been targeted across the country since a leaked Supreme Court draft opinion signaled Roe V. Wade would be overturned in May, followed by the nation's highest court ultimately ruling as such in June.

For one pro-life organization in Ohio, it has been targeted twice since last month.

"As pro-lifers, we know that our work might cost us something and that very well could be our physical safety," the executive director of the Right to Life of Northeast Ohio Allie Frazier told Fox News Digital. "I think that it's important in moments like this for the pro-life movement to be really clear that we're not going to be intimidated. We will save babies. We will protect women. And we're not going to let threats of violence stop us from doing that."

Offices for the Right to Life of Northeast Ohio were most recently targeted on July 8, Frazier said, when at least one suspect was caught on camera lobbing rocks at the building, breaking windows and spray-painting menacing messages.

LETTER SIGNED BY RADICAL ABORTION GROUP JANE'S REVENGE DECLARES 'OPEN SEASON' ON PRO-LIFE PREGNANCY CENTERS

"If abortion isn't safe, neither are you," the suspect, who was seen wearing a face mask, scrawled on the sidewalk of the offices. The phrase has been spray-painted at similar offices across the country, often by members of pro-abortion extremist group Jane's

Frazier said it's likely that Jane's Revenge is behind this attack, noting that among other spray-painted messages, the name "Jane" was written on the ground.

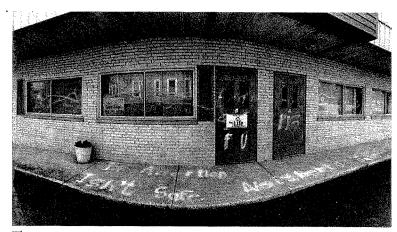
"I think it would be easy for a situation like this to be a copycat scenario. But as far as I'm concerned, if any pro-abortion individual decides to take that next step, to take that bad step, and use violence against pro-lifers, that is something that I am going to work hard to protect my staff against," she said.

PRO-LIFE PREGNANCY CENTER CEO SLAMS DEM SILENCE AFTER ALLEGED FIREBOMBING, CALLS IT A 'HATE CRIME'

The incident was reported to the Akron Police Department, Frazier said. The Akron Police Department has not responded to multiple Fox News inquiry requests on the matter.

Frazier said that the damage caused by the vandalism was "significant," but "undoable," noting that repairs were being made to the broken windows as she spoke to Fox News Digital.

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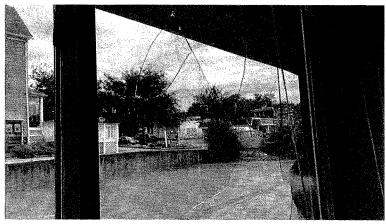


next Image 1 of 3
The Right to Life of Northeast Ohio was targeted by a vandal last week, leaving broken windows and graffiti with menacing messages. (Right to Life of Northeast Ohio)



prev next Image 2 of 3

The Right to Life of Northeast Ohio was targeted by a vandal last week, leaving broken windows and graffil with menacing messages. (Right to Life of Northeast Ohio)



prev Image 3 of 3

The Right to Life of Northeast Ohio was targeted by a vanidal last week, leaving broken windows and graffill with menacing messages. (Right to Life of Northeast Ohio)

"I know that the intention of this attack was to stop us, it was to stop our peaceful activism. It was to stop the ways that we are impacting women and bables in this community for a positive. And they didn't even stop that. I was already back to work in my office within a few hours," she said.

It was the second time the offices were targeted, Frazier said. Activists posted pro-abortion posters at the office on June 24, the day Roe was officially overturned, hung a coat hanger on an office door knob, and rang a Ring security camera before flashing a middle finger to the camera, according to Frazier.

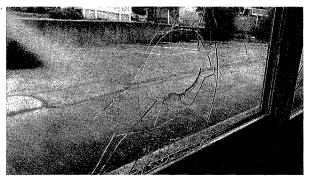
She said that the attacks pro-life centers have recently faced should "100%" be investigated as hate crimes.

"[Pro-abortion vandals] are not afraid of using violence to get what they want. This is absolutely a threat against the peaceful pro-life movement. And we do ask that law enforcement and local, state, and federal leaders continue to lead the way and say, 'Hey, violence is never okay,'" she said.

PRO-LIFE PREGNANCY CLINIC HIRED 24-HOUR SECURITY, SHUT DOWN MOBILE CLINIC, DIRECTOR SAYS IN SENATE

Pro-life activists have repeatedly called on President Biden to forcefully condemn the attacks on pregnancy centers and churches, including Frazier who called on the president to not "be complicit in this violence."

"Regardless of how people feel on the issue of abortion, everybody should be able to condemn acts of violence against peaceful nonproffs. Whether that's an advocacy organization like Right to Life of Northeast Ohlo, or a pro-life pregnancy center that are literally meeting the needs of women and bables in crisis," she tool if Fox News Option.



The Right to Life of Northeast Ohio was targeted by a vandal last week, leaving broken windows and graffiti with menacing messages. (Right to Life of Northeast Ohio)

The White House has previously condemned the violence at pro-life centers but has come under scrutiny for not doing more.

"Instead of supporting and defending more pro-life pregnancy centers that provide health care and support to women at every stage of life, President Joe Biden and the Left are working to dismantie the work of these amazing centers. They won't strongly condemn the vidence and threats pregnancy centers are facing," the Republican House Energy and Commerce Committee posted on Tuesday, demanding Biden "MUST condemn the violence and threats."

Dozens of pro-life centers have faced attack since May, including a pro-life Christian pregnancy center in Buffalo, New York, that was allegedly "firebombed," and a pregnancy center in Dearborn, Michigan, that saw every "window and door along the front face of our building" reashed.

Jane's Revenge has taken responsibility for a handful of the attacks and declared "open season" on pro-life pregnancy crisis centers in a letter published last month.

"We offered an honourable way out," the letter read. "You could have walked away. Now the leash is off. And we will make it as hard as possible for your campaign of oppression to continue."

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But to Frazier, the pro-life movement will remain unchanged and committed to protecting women and babies.

"We must be willing to do what it takes to protect women and bables and be ready to take any backlash from that. ... Don't be atraid. We got this," she said of her message to pro-life Americans, adding that pro-lifers can also reach out to their local pregnancy centers to check in or staff and see if they need any additional resources.

URL
https://www.foxnews.com/uss/ohio-right-life-offices-targeted-twice-pro-eborition-vanidals-rocks-apray-paint

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Democrats Launch Ads In Lifestyle Mags in All Out Push For Abortion | The Daily Caller

7/13/22, 9:45 AM

Daily Caller - https://dailycaller.com

# POLITICS

# Democrats Launch Ads In Lifestyle Mags In All Out Push For Abortion



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Page 1 of 10

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 ${f T}$ he Democratic National Committee (DNC) launched a digital ad campaign Tuesday in several lifestyle magazines telling readers that Republicans want to outlaw abortion nationwide.

The DNC purchased at least \$10,000 in digital ads in over 20 lifestyle publications to focus on abortion rights issues as the midterms approach, the Associated Press reported.

The Democrats   @TheDemocrats · Follow
We are launching a Defend Choice Week of Action that will run until July 19 to:
Mobilize supporters Engage voters to call out Republicans for opposing abortion rights Highlight what is at stake in November
Join us for the kickoff tonight!
events.democrats.org Defend Choice Week of Action Kickoff Event · The Democratic Nation Join DNC leadership and other special guests for a kickoff event to talk through what happens to abortion access in light of the D
4:00 PM · Jul 12, 2022
♡ 106 ♀ Reply ⚠ Share
Read 22 replies

Magazines like Teen Vogue, Elle, Refinery29, Essence, GQ, Esquire, Men's Health, Cosmopolitan and Glamour, hosted the DNC's ads, reported the AP.

The ad showed Republican Kentucky Sen. Mitch McConnell next to blue, pink, and white lettering that read: "Republicans are pushing to ban abortion nationally. Join us in fighting back," according to the report.

The DNC is looking to launch a separate abortion-centered ad campaign with plans to spend six figures, reported the AP. (RELATED: 'An Emergency For Women': Democrats Demand Biden Declare Public Health Emergency Over Abortion Ruling)

The DNC's ads promoting a "week of action" to defend abortion are in response to the U.S. Supreme Court's decision to overturn Roe v. Wade, sending abortion law-making back to the state legislatures.

"With this Defend Choice Week of Action, we're giving people across the country a chance to turn their anger into action by holding anti-choice Republicans accountable and helping to elect Democrats," DNC chair Jaime Harrison said, according to the AP.

The DNC held a virtual launch for its "all-hands-on-deck effort to defend choice" on Tuesday night, according to the DNC website.



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"This fight isn't over and we need all hands on deck. This event will serve as the kickoff for our Week of Action, which we'll highlight how to get involved with on the call," The DNC event description stated.

The latest Associated Press-NORC poll released Friday showed that only 16% of Americans feel abortion is the biggest issue facing the U.S. In comparison, 40% of U.S. adults said they were more worried about inflation and 33% said gas prices, according to the poll.

The survey polled 1,053 adults nationwide from June 23-27 with a margin of error of +/- 4.0%.



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CatholicVote on June 9, 2022

# Summer of Rage: Tracking Attacks on Pregnancy Centers & Pro-Life Groups

Last Updated July 12, 2022

### **Attacks Since Supreme Court Leak:**

56

CV NEWS FEED // More than 50 pregnancy resource centers and offices of pro-life groups have been attacked and vandalized since a draft Supreme Court opinion overturning *Roe v. Wade* was leaked in early May. Pro-abortion domestic terrorists have claimed responsibility — and are promising more attacks in a "suppose" of rate."

7/12/22, 7:16 PM

Summer of Rage: Tracking Attacks on Pregnancy Centers & Pro-Life Groups - CatholicVote org

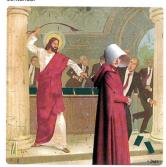


Replying to @trustanddare and @MaryMargOlohan

Stuff your rosaries and your weaponized prayer.

We will remain outraged after this weekend, so keep praying.

We'll be burning the Eucharist to show our disgust for the abuse Catholic Churches have condoned for centuries.



10:13 AM - May 7, 2022 - Twitter for iPhor

Pregnancy centers are bracing for more attacks and acts of vandalism after the Supreme Court issued its final ruling overturning *Roe v. Wade* on June 24, 2022. The Department of Homeland Security issued a memo the same day warning that "domestic violent extremists" would exploit the decision to commit acts of violence against various targets, specifically naming Jane's Revenge. Various terror groups have issued threats against them on social media since the decision was made, with one group urging its followers to "mask up, stay dangerous".

Some attacks are going unreported because pregnancy resource centers want to protect their clients. This post covers attacks which have been reported in the news media, sent as tips directly to CatholicVote, or uncovered from terrorist groups online. If you know of an attack which is not covered here, please email info@catholicvote.org. All tips are anonymous and your identity will not be revealed.

The map and this post will be updated as the news develops.

This list covers attacks on pregnancy centers and offices of pro-life organizations. Attacks on Catholic churches are **covered here**.

List of attacks:

- 1. Austin, Texas Trotter House (May 3, 2022)
- 2. Frederick, Maryland CareNet Frederick (May 4, 2022)
- ${\bf 3. \, Portland, \, Oregon Southeast \, Portland \, Pregnancy \, Resource \, Center \, (May \, 5, \, 2022)}$

## 330

/12/22, 7:16	PM Summer of Rage: Tracking Attacks on Pregnancy Centers & Pro-Life Groups - CatholicVote org
	39. Concord, California — Options Health (June 25, 2022)
	40. Iowa City, Iowa — Informed Choices Clinic (June 25, 2022)
	41. Portland, Oregon — First Image (June 26, 2022)
	42. Winter Haven, Florida — LifeChoice Pregnancy Center (June 26, 2022)
	43. Burlington, Vermont — BirthRight (June 26, 2022)
	44. Everett, Washington — Two Hearts Pregnancy Aid (June 27, 2022)
	45. Dayton, Ohio — Women's Centers of Ohio (June 27, 2022)
	46. Littleton, New Hampshire — Pathways Pregnancy Center (June 28, 2022)
	47. Nashville, Tennessee — Hope Clinic for Women (June 29, 2022)
	48. Yuba City, California — A Woman's Friend Pregnancy Resource Clinic (June 29, 2022)
	49. Hialeah, Florida — Pregnancy Help Medical Clinic (July 3, 2022)
	50. St. Paul, Minnesota — BirthRight of St. Paul (July 5, 2022)
	51. Kenmore, Washington — Care Net Pregnancy & Family Services of Puget Sound (July 5, 2022)
	52. Moab, Utah — Arches New Hope Pregnancy Center (July 5, 2022)
	53. Oreland, Pennsylvania — Pro-Life Union of Greater Philadelphia (July 6, 2022)
	54. Worcester, Massachusetts — Problem Pregnancy Resource Center (July 6, 2022)
	55. Worcester, Massachusetts — Clearway Clinic (July 6, 2022)
5	56. Akron, Ohio — Northeast Ohio Right to Life (July 8, 2022)

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Summer of Rage: Tracking Attacks on Pregnancy Centers & Pro-Life Groups - CatholicVote org

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stop this domestic terrorism!
11 ^ | Y · Reply · Share >
       Osumashi Kinyobe -> Jaime M Spicker • a month ago
       The pro-abortion cult doesn't recognise moderation, nuance or sanity.
       6 ^ | V - Reply - Share >
       jediliz → Jaime M Spicker • a month ago
        You do know that she made comments that sound like she supported eugenics? I don't know how much of an
       Orthodox Jew she was if she was orthodox Jews she never would've supported abortion at all in any case because
       orthodox Jews do not support abortion.
       3 ^ | V · Reply · Share ›
               That is also my understanding about Jewish orthodoxy. However, I've also heard that even among devout
               Jews there is some difference in opinion as to when 'quickening' and entrance of the soul to the body
               begins in utero.
                ^ | V · Reply · Share >
        Thomas Lorenz → Jaime M Spicker • a month ago
       Excellent point!
       2 ^ | V · Reply · Share >
Princess of Power • a month ago
Please add with another symbol, the churches that have been attacked.
5 ^ | V · Reply · Share ›
Isn't this disgusting? The government supports these groups who attack Catholics and where is Merrick Garland and
Nancy Pelosi (Catholic in name only)?
4 ^ | V + Reply + Share >
       Donald Hennen → Joyce Sellitti * 13 days ago
       Pelosi was asked if she condemns this violence and gave a nearly unrelated, canned pro-abortion speech.
       1 ^ | V · Reply · Share >
Truthseeker41 • a month ago • edited
I know Joan of Arc was burned at the stake. Who else? The number of people burned at the stake is minuscule compared
to the millions of tender, innocent babies stabbed to death inside the womb, just to satisfy the selfish desires of the
parents. How does that make us a more loving society? If you have suffered an abortion, remember God loves you and he
has provided numerous sources throughout the United States to help your healing. Just Google "pro-life help after an
4 ^ | V • Reply • Share
       Thomas Lorenz → Truthseeker41 • a month ago
       Actually the Roman Catholic Church has been responsible for many deaths (in the millions) of what they call
       pagans, witches, and anyone who expressed a religious opinion different than the corrupt pope. Just ask Martin Luther how the pope felt about his 99 Treatise that he nailed to the church door. The pope tried to have him whacked but the King of Austria saved Luther. This pope sums it up nicely, ™Anyone who attempts to construe a
       personal view of God which conflicts with Church dogma must be burned without pity."- Pope Innocent III. Read
       more at https://churchandstate.org....
        ^ | ∨ 8 • Reply • Share >
               Osumashi Kinyobe → Thomas Lorenz • a month ago
               Yes, about that:
               "In the last 20 years virtually all reputable secular historians have revised witch death rates to 40,000 -
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60,000, and that less than 500 of those deaths were caused directly by the Church through the Inquisition."

7/12/22, 7:16 PM

7/12/22, 7:16 PM

Summer of Rage: Tracking Attacks on Pregnancy Centers & Pro-Life Groups - CatholicVote org

In honesty, I don't spend too much time on here, but pop on now and again. When I do, I seek to ask questions and to offer slight correction. It has always been my hope that, by doing so, I might help some of these hardened hearts. The world in which we live is a complicated one that is seldom as easy as vitriolic "I told you so's" on the internet would have it. To truly love our neighbor, we need to embrace them where they are. We are all of us sinners, and we cannot heal the sin of others. But we can love others for the person that God made them to be, and work together. We can pray for them, most certainly, and we can engage in dialogue with them. I would rather live in that world of trying to construct a better world together than a world based on hate, anger, fear, and vitriol. There is too much of that these days.

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^ | ✓ • Reply • Share ›
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#### Donna Jorgenson Farrell · a month ago

If these groups were solely about protecting their rights to kill babies in the womb, the extraneous violence around the country wouldn't be happening. Obviously, they don't understand that overturning Roe and Casey won't result in a prohibition of their "right" to murder children in the womb. The "right" will just be coming from the states (or not) rather than some nebulous ruling by the Supreme Court in 1973. Supreme Court decisions have been overturned in the past even though they stood for decades (think Brown vs. Board of Education in 1954 overturning the 1896 decision in Plessy vs. Ferguson) because the original decision was deemed to be wrong. The difference is that Brown didn't turn the ruling over to the states to allow "separate but equal" segregation to be locally decided, making it illegal for anyone in the country to discriminate against another because of the color of their skin.

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3 ^ | V · Reply · Share ›
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Osumashi Kinyobe → Donna Jorgenson Farrell • a month ago
They are fanatics willing to die on the hill of genocide.
2 ^ | ∨ • Reply • Share ›
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#### CV . 40 days ---

Why aren't you tracking the attacks on Catholic churches?

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2 ^ | V · Reply · Share ›
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Barb Yagley → SK • 12 days ago
They are:
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https://catholicvote.org/tr...
2 ^ | Y • Reply • Share >
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SK → Barb Yagley • 12 days ago

Thank you!

^ | ✓ • Reply • Share ›

#### Jane • 13 days ago

These anti-life "humans" are untamed, violent, intolerant animals. They want us to accept their killing babies, yet are intolerant of those of us who want to help women and babies who want to LIVE. Totally Satan's work (and Soros) and they are the minions carrying out this evil.

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2 ^ | V · Reply · Share ›
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#### jediliz • a month ago

I'm glad that the women's care center (A Catholic-based pregnancy resource Center) in my city has escaped this violence so far, but I'm sure they are aware what's going on, so hopefully they have security cameras that are safe from vandals.

2 ^ | V Reply Share

#### PackerBackerable • a month ago

We need to pray for these disturbed and misguided people. Only with love can we hope to change their hearts. We cannot fight hate with hate. Pray also for pregnant women who are scared and do not know where to go. They need to know that they are very much loved and that there are many resources out there to help them with their pregnancy and birthing.

2 ^ | Y Reply \* Share >

#### Fred Bloggs • a month ago

The article states that it is unclear who is funding these groups. I think we can be fairly certain that the funding is coming

Attacks on Churches, Pro-Life Pregnancy Centers Continue| National Catholic Register



https://www.ncregister.com/cna/attacks-on-churches-pro-life-pregnancy-centers-continue

# Attacks on Churches, Pro-Life Pregnancy Centers Continue

A pro-life sign at St. Teresa of Avila Catholic Church in Hutchinson, Kansas, about 50 miles northwest of Wichita, was vandalized over the weekend.



Grafitti on a sign for All Saints Catholic Church in Portland, Oregon, June 25, 2022. (photo: Courtesy photo / All Saints Catholic Church)

Since the *Dobbs v. Jackson Women's Health Organization* decision on Friday, attacks on Catholic churches and pro-life pregnancy centers have been reported in West Virginia, Washington, Virginia, Louisiana, Colorado, California, Texas, Florida, New York, and Indiana.

Below are the latest recorded attacks since the decision.

7/12/22, 7:16 PM Attacks on Churches, Pro-Life Pregnancy Centers Continue! National Catholic Register Matt Vainer, a spokesperson for the Diocese of Wichita, said that the perpetrator was followed by a witness who called the police. The perpetrator was arrested, he said. The pastor of St. Teresa of Avila, Father Aaron Spexarth, placed the sign underneath a crucifix in the church, as he believed it was most appropriate to place it at Christ's feet, Vainer confirmed to CNA. All Saints Catholic Church in Portland, Oregon had its sign defaced with pro-abortion graffiti June 25. A photo of the vandalism shows the words "If abortions aren't safe, neither are you! -XOXO Jane." The FBI is investigating, Barbara Custer, a parish secretary at the church, told CNA. A Woman's Friend Pregnancy Resource Clinic in Yuba City, California was vandalized June 27. The clinic had one of its windows smashed by what seems to be one perpetrator according to video footage, the clinic's executive director Kristen Bird told CNA. Video shows the perpetrator throwing three rocks at the window until it broke. Repairs will cost anywhere between \$700 and \$900. The FBI is investigating, Bird said. Copyright© 2022 EWTN News, Inc. All rights reserved. EIN 27-4581132 Reproduction of material from this website without written permission, or unlicensed commercial use or monetization of National Catholic Register RSS feeds is strictly prohibited.

7/12/22, 7:18 PM

Pastor : Vandalism was in response to Roe v. Wade decision | News West Publishing

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Someone threw a rock through a front window at St. Brendan the Voyager Orthodox Church, in the 2000 block of Commercial Way. The church's priest-in-charge, Fr. Mark Hodges, said he believed the vandalism was in response to the recent U.S. Supreme Court decision overturning Roe v. Wade.









By BILL McMILLEN The Daily News

Jul 04, 2022 2:00 AM

BULLHEAD CITY — A Bullhead City church was vandalized last week, with the pastor claiming that the damage was in response to the U.S. Supreme Court decision overturning the Roe v. Wade abortion case.

Fr. Mark Hodges of St. Brendan the Voyager Orthodox Church called the incident "the wrath of 'Jane's Revenge'-type vandalism."

"St. Brendan the Voyager Orthodox Church had its window smashed by someone throwing a rock at the church this week " Hodges said https://mohavedailynews.com/news/141242/pastor-vandalism-was-in-response-to-roe-v-wade-decision/

1/9

#### 7/12/22, 7:18 PM

Pastor : Vandalism was in response to Roe v. Wade decision | News West Publishing

possible targets," the DHS said in a statement. "These targets could include public gatherings, faith-based institutions, schools, racial and religious minorities, government facilities and personnel, U.S. critical infrastructure, the media and perceived ideological opponents. Threat actors have recently mobilized to violence due to factors such as personal grievances, reactions to current events and adherence to violent extremist ideologies, including racially or ethnically motivated or anti-government/anti-authority violent extremism."

Hodges said the St. Brendan congregation gathered Thursday night "not only to thank God for his protection but to pray for those who hate us so much that they destroy our property."

"We also pray for the enlightenment of all Americans to the sanctity of innocent human life, for the healing of our nation and for those who have been involved in abortion to experience forgiveness and peace," he said. "For 2,000 years, the way of Orthodox Christianity is to love our enemy and pray for those who persecute us.

"It's tragic, but not surprising, that those who support the brutal violence of abortion seek to intimidate through violence," he added. "But violence isn't the answer; Jesus is."







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