

2023

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Recommended Citation

Amy P. Lyons (2023) "How the Overturning of Roe v. Wade Disproportionately Affects the Immigrant Asian American Population in the United States," *Human Rights Brief*. Vol. 26: Iss. 2, Article 7.
Available at: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss2/7>

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HOW THE OVERTURNING OF *ROE V. WADE* DISPROPORTIONATELY AFFECTS THE IMMIGRANT ASIAN AMERICAN POPULATION IN THE UNITED STATES

by Amy P. Lyons*

I. Introduction

On June 24, 2022, the Supreme Court overturned the historic case *Roe v. Wade*¹, ending the right to abortion across the United States.² The overturning of *Roe v. Wade* and the responsive state statutes that criminalize abortion³ are yet further barriers to health access

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

2 Nina Totenberg & Sarah McCammon, *Supreme Court Overturns Roe v. Wade, Ending Right to Abortion Upheld for Decades*, NAT'L PUBLIC RADIO (June 24, 2022, 10:43 AM), <https://www.npr.org/2022/06/24/1102305878/supreme-court-abortion-roe-v-wade-decision-overturn>; see also *Roe*, 410 U.S. 113; *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

3 *Tracking the States Where Abortion is Now Banned*, N.Y. TIMES, <https://www.nytimes.com/interactive/2022/us-abortion-laws-roe-v-wade.html> (last visited Feb. 17, 2023) [hereinafter *Tracking Where Abortion is Banned*]; see also *After Roe Fell: Abortion Laws by State*, CTR. FOR REPRODUCTIVE RTS., [for Asian Americans, especially those who experience domestic violence, and are a violation of the universal Right to Health.⁴](https://reproduc-</p>
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II. Background

Asian Pacific Islander women in the United States are uniquely impacted by the *Dobbs* decision.⁵ Almost a quarter of Asian Pacific Islander women in the United States have reported sexual violence at home; another survey found that 60 percent of immigrant Korean women had been battered by their husbands.⁶ These experiences may lead to unwanted pregnancies and the need for abortions.⁷ With the overturning of *Roe v. Wade*, safe abortions have become increasingly inaccessible across the United States.⁸ Survivors within this community face further challenges, such as limited English proficiency, and other cultural stigmas and norms within their groups.⁹ While addressing these

[tiverights.org/maps-abortion-laws-by-state/](https://www.tiverights.org/maps-abortion-laws-by-state/) (last visited Feb. 17, 2023) [hereinafter *After Roe Fell*]; *Roe*, 410 U.S. 113 at 733 (1973); *Dobbs*, 142 S. Ct. at 2284 (2022).

4 U.N. HUM. RTS. OFF. HIGH COMM'R, THE RIGHT TO HEALTH (June 2008), <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf> [hereinafter *Right to Health*]; see also, U.N. HUM. RTS. OFF. HIGH COMM'R, SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS, <https://www.ohchr.org/en/node/3447/sexual-and-reproductive-health-and-rights> (last visited Sept. 25, 2022) [hereinafter *Sexual and Reproductive Health and Rights*].

5 *Dobbs*, 142 S. Ct. 2228 (2022).

6 *Statistics on Violence Against API Women*, ASIAN PAC. INST. ON GENDER-BASED VIOLENCE, <https://www.api-gbv.org/about-gbv/statistics-violence-against-api-women/> (last visited Oct. 25, 2022) [hereinafter *Statistics on Violence*]; see also *The Facts on Immigrant Women and Domestic Violence*, TARRANT CARES, <https://tarrant.tx.networkofcare.org/dv/library/article.aspx?id=1042> (last visited Feb. 17, 2023).

7 *Statistics on Violence*, *supra* note 6.

8 *Tracking Where Abortion is Banned*, *supra* note 3; *After Roe Fell*, *supra* note 3 (this interactive map allows users to see how many states have made abortion inaccessible. If users click on "Abortion Bans in Effect" on the left-hand side of the screen, and click on all of the boxes, the map shows that every state has some form of abortion ban).

9 *State of Asian Americans, Native Hawaiians, and Pacific Islanders in the United States*, AAPI DATA (June 2022), <https://aapidata.com/wp-content/uploads/2022/06/State-AANHPIs-National-June2022.pdf> [hereinafter *State of Asian Americans*]; see also Frances Kai-Hwa Wang, *Despite State Efforts to Protect Abortion Access, Asian Americans in Michigan Still See Obstacles*, PBS NEWS HOUR (Aug. 12, 2022), <https://www.pbs.org/newshour/nation/despite-state-efforts-to-protect-abortion-access-asian-americans-in->

challenges, survivors are facing not only unwanted pregnancies, but also the fear of homicide during those pregnancies by their partner.¹⁰

A. What Right to Health Standards the United States Should be Following

Currently, there are two international declarations that encompass the Right to Health. The United States has signed, but has never been ratified, the International Covenant on Economic, Social, and Cultural Rights.¹¹ The United States has also signed the Universal Declaration of Human Rights, but it is not considered legally binding, and many provisions are considered part of customary international law, and therefore universally obligatory.¹² To make something legally binding, the United States must sign and ratify an agreement. Ratification occurs when, after consideration by the Committee on Foreign Relations, the Senate approves or rejects a resolution of ratification.¹³ Even though the

michigan-still-see-obstacles; Katherine Gallagher Robbins & Vanisha Kudumuri, *State Abortion Bans Could Harm More than 1.3 Million Asian American and Pacific Islander Women*, NAT'L P'SHIP FOR WOMEN & FAMS. (Aug. 30, 2022), <https://www.nationalpartnership.org/our-impact/blog/general/aapi-women-state-abortion-bans.html>; Sakshi Venkatraman, *Nearly One-Third of Low-Income Asian Women Now Live in States with Limited Abortion Access*, NBC NEWS (Aug. 30, 2022), [https://www.nbcnews.com/news/asia-america/nearly-one-third-low-income-asian-women-now-live-states-limited-aborti-rcna43194](https://www.nbcnews.com/news/asia/asia-america/nearly-one-third-low-income-asian-women-now-live-states-limited-aborti-rcna43194).

10 Tiffany Diane Tso, *Pregnant Asians at Unique Risk in a Post-'Roe' World*, REWIRE NEWS GRP. (Sept. 21, 2022), <https://rewirenewsgroup.com/2022/09/21/abortion-bans-and-anti-asian-violence-how-aapi-women-like-me-are-in-the-crosshairs/>; see also Maeve Wallace et al., *Homicide During Pregnancy and the Postpartum Period in the United States, 2018-2019*, NAT'L LIBR. OF MED. (Nov. 1, 2021), <https://pubmed.ncbi.nlm.nih.gov/34619735/>; Anita Raj & Jay Silverman, *Immigrant South Asian Women at Greater Risk for Injury from Intimate Partner Violence*, NAT'L LIBR. OF MED. (Mar. 2003), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447758/>.

11 *Six US-Signed Treaties and Declarations Recognizing a Right to Health Care*, PROCON (Sept. 17, 2014), <https://healthcare.procon.org/six-us-signed-treaties-and-declarations-recognizing-a-right-to-health-care/#un-declaration-of-human-rights>.

12 *Id.*; see also Ionel Zamfir, *The Universal Declaration of Human Rights and its Relevance for the European Union*, EUROPEAN PARLIAMENTARY RSCH. SERV. (Nov. 2018), [https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628295/EPRS_ATA\(2018\)628295_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628295/EPRS_ATA(2018)628295_EN.pdf).

13 *About Treaties*, U.S. SENATE, <https://www.senate.gov/about/powers-procedures/treaties.htm> (last accessed Nov. 6, 2022).

United States has not ratified these declarations, they should still be legally bound to them because of their status as not only a Member State of the United Nations, but as one of the five permanent members of the United Nations Security Council.¹⁴

III. Legal Analysis of the Right to Health

The overturning of *Roe v. Wade* and the subsequent state statutes prohibiting abortion both fail to acknowledge and provide exceptions for women who experience domestic violence, including rape. Very few states have a rape exception for abortion, and if they do, even fewer comply with these exceptions.¹⁵ The United States must comply with the United Nations' Right to Health standards, as included in the International Covenant on Civil & Political Rights (ICCPR), because the United States ratified it in 1992, and, upon ratification, the ICCPR became the "supreme law of the land," under the Supremacy Clause of the United States Constitution.¹⁶ Complying with these standards will help to better support these more vulnerable populations, such as the Asian American community, and provide for safeguards against further harm.

A. Right to Health

The overturning of *Roe v. Wade* and subsequent state statutes violate many key aspects of the United Nations' Right to Health standards.¹⁷ Under these health standards, the Right to Health: (1) is inclusive, (2) contains entitlements, (3) is provided without any discrimination, and (4) is available, accessible, acceptable and

14 *Current Members*, U.N. SEC. COUNCIL, <https://www.un.org/securitycouncil/content/current-members> (last accessed Nov. 6, 2022).

15 Tracking Where Abortion Is Banned, *supra* note 3; After *Roe* Fell, *supra* note 3; see also, Amy Schoenfeld Walker, *Most Abortion Bans Include Exceptions. In Practice, Few Are Granted*, N.Y. TIMES (Jan. 21, 2023), <https://www.nytimes.com/interactive/2023/01/21/us/abortion-ban-exceptions.html>.

16 International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, arts. 18, 21; see also FAQ: *The Covenant on Civil & Political Rights (ICCPR)*, ACLU, <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr#:~:text=The%20U.S.%20must%20comply%20with,when%20it%20ratified%20the%20treaty> (last visited Feb. 17, 2023).

17 *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705 (1973); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

of good quality.¹⁸

First, the Right to Health as an inclusive right means access to health care and other tools that support healthy lifestyles, and also encompasses gender equality.¹⁹ As evidenced in the United States, there is a disproportionate effect of abortion access and discrimination on the female-identifying population.²⁰ For example, studies have found that immigrant women tend to suffer higher rates of battering than United States citizens because their cultures accept domestic violence or because they have less access to legal and social services than U.S. citizens.²¹ The Right to Health is also inclusive because it includes “health-related education and information.”²² It is clear that the states that have shut down access to abortion rights do not provide accurate information for those seeking that form of assistance.²³ Many women receive misleading information in state-issued brochures when seeking abortions, including misinformation about embryonic development; thirty-one states require that health care providers give women informational packets before an abortion and in twenty-three of those thirty-one states, researchers found that nearly a third of the

information was medically inaccurate.²⁴ Further, the Right to Health includes entitlements, which include “maternal, child and reproductive health” as well as “participation of the population in health-related decisionmaking at the national and community levels.”²⁵ The overturning of *Roe v. Wade* and state statutes that prohibit abortions do not account for maternal and reproductive health and do not allow for participation of all women in this health-related decisionmaking at both the national and community levels. State statutes have taken away a woman’s right to choose an abortion by making it illegal, meaning that a woman who chooses to have an abortion may be punished with life imprisonment, felony titles, and/or hefty fines as high as \$10,000.²⁶ Asian American communities, who are particularly hard hit, have spoken out, but to no avail.²⁷

Perhaps most importantly for this topic, the Right to Health is “provided to all without any discrimination.”²⁸ It is abundantly clear that the ban on abortions not only affects more than half of the United States population, but also places an undue health barrier on the Asian American community.²⁹ This is especially

24 Sebastian Malo, *One-third of U.S. Women Seeking Abortions Get Misleading Information: Study*, REUTERS (Jan. 21, 2023), <https://www.reuters.com/article/us-usa-abortion-study/one-third-of-u-s-women-seeking-abortions-get-misleading-information-study-idUSKCN0W22T6>.

25 Right to Health, *supra* note 4 at 3–4; Sexual and Reproductive Health and Rights, *supra* note 4.

26 Oriana Gonzalez, *How States Enforce Anti-abortion Laws* AXIOS (June 24, 2022), [axios.com/2022/06/08/abortion-bans-penalty-fines-prison-us-states](https://www.axios.com/2022/06/08/abortion-bans-penalty-fines-prison-us-states).

27 As SCOTUS Overturns Roe v. Wade, *Asian Americans Demand Action*, NAT’L COUNCIL OF ASIAN PACIFIC AMS. (June 24, 2022), <https://www.ncapaonline.org/as-scotus-overturns-roe-v-wade-asian-americans-demand-action/>; see also *Asian Americans Sound Off on Overturning of Roe v. Wade*, NW ASIAN WKLY. (June 30, 2022), <https://nwasianweekly.com/2022/06/asian-americans-sound-off-on-overturning-of-roe-v-wade/>; *Asian American and Pacific Islander Groups File Amicus Brief In U.S. Supreme Court in Support of Roe v. Wade*, ASIAN AMS. ADVANCING JUST. (Sept. 20, 2021), <https://www.advancingjustice-aajc.org/press-release/asian-american-and-pacific-islander-groups-file-amicus-brief-us-supreme-court-support>; Kavya Srikanth, *Why South Asian Americans Overwhelmingly Support Abortion*, THE JUGGERNAUT (July 1, 2022), <https://www.thejuggernaut.com/south-asian-americans-abortion-rights-roe-v-wade-overturn>.

28 Right to Health, *supra* note 4 at 3–4; Sexual and Reproductive Health and Rights, *supra* note 4

29 Liza Fuentes, *Inequality in US Abortion Rights and Access: The End of Roe is Deepening Existing Divides* GUTTMACHER INST. (Jan.

18 Right to Health, *supra* note 4, at 3–4; Sexual and Reproductive Health and Rights, *supra* note 4.

19 Right to Health, *supra* note 4, at 3.

20 Roe vs. Wade and its impact on the AAPI Community, CLEAN CIRCLE (May 4, 2022), <https://clean-circle.com/blogs/our-blogs/roe-vs-wade-and-its-impact-on-the-aapi-community>; Statistics on Violence, *supra* note 6; see also State of Asian Americans, *supra* note 9; Samantha Artiga et al., *What are the Implications of the Overturning of Roe v. Wade for Racial Disparities?*, KAISER FAM. FOUND. (July 15, 2022), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/what-are-the-implications-of-the-overturning-of-roe-v-wade-for-racial-disparities/>.

21 Statistics on Violence, *supra* note 6; see also, *The Facts on Immigrant Women and Domestic Violence*, TARRANT CARES, <https://tarrant.tx.networkofcare.org/dv/library/article.aspx?id=1042> (last visited Feb. 17, 2023).

22 Right to Health, *supra* note 4, at 3–4; Sexual and Reproductive Health and Rights, *supra* note 4.

23 Julia Rollison, *Combating Abortion Misinformation in the Post-Roe Environment*, RAND CORP. (July 6, 2022), <https://www.rand.org/blog/2022/07/combating-abortion-misinformation-in-the-post-roe-environment.html>.

true for those who experience domestic violence, as they have nowhere safe to turn when seeking an abortion for health reasons or otherwise.³⁰

Finally, the Right to Health demands that “all services, goods and facilities must be available, accessible, acceptable, and of good quality.”³¹ As of February 2023, at least thirteen states have outright banned abortions, and ten states have abortion “legal for now,” but that status could change at any moment.³² Combined, these abortion-banning statutes account for thirty-three states, equating to more than fifty percent of states placing a restriction on abortion access. With more than fifty percent of states placing some form of restriction on abortion, this precludes a significant portion of the United States population from seeking an abortion, and an even greater weight on Asian American women who are more likely to seek that right to health. These statistics demonstrate how the United States is not meeting the requirement to provide available, accessible, and acceptable abortion facilities under the Right to Health.

IV. Recommendations & Conclusion

The United States must adjust its abortion policies so that it meets the United Nations’ standards of the Right to Health. Specifically, the United States must codify abortion rights and create legislation that should address these areas of concern. The Asian American immigrant community already faces many obstacles, such as English proficiency and unsafe home environments; their ability to accessible abortion care should not be another barrier to their health and well-being. The United States must create legislation that protects

17, 2023), <https://www.gutmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-roe-deepening-existing-divides>.

30 Sakshi Venkatraman, *Asian Domestic Violence Survivors are in More Danger After Roe Ruling, Experts Fear*, NBC NEWS (July 7, 2022), <https://www.nbcnews.com/news/asian-america/asian-domestic-violence-survivors-are-danger-roe-ruling-experts-fear-rcna35992>; see also Sakshi Venkatraman, *Asians born in U.S. Have Higher Rate of Abortions than Asian Immigrants. What that Means*, NBC NEWS (May 11, 2022), <https://www.nbcnews.com/news/asian-america/asians-born-us-higher-rate-abortions-asian-immigrants-means-rcna27930>.

31 Right to Health, *supra* note 4 at 3–4; Sexual and Reproductive Health and Rights, *supra* note 4.

32 Tracking the States Where Abortion is Now Banned, *supra* note 3; see also, After Roe Fell, *supra* note 3.

more vulnerable populations so that they can receive the healthcare they deserve and need. Furthermore, the United States must sign and ratify the United Nation’s Right to Health and Universal Declaration of Human Rights so that it will be legally bound to follow those standards and would therefore be more accountable for its actions.