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The Ripple Effects of Dobbs on Health Care Beyond Wanted Abortion

Maya Manian

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THE RIPPLE EFFECTS OF DOBBS ON HEALTH CARE BEYOND WANTED ABORTION

Maya Manian*

ABSTRACT

The Supreme Court's momentous decision in Dobbs v. Jackson Women's Health Organization to overturn fifty years of precedent on the constitutional right to abortion represents a sea of change, not only in constitutional law, but also in the public health landscape. Although state laws on abortion are still evolving after Dobbs, the decision almost immediately wreaked havoc on the delivery of medical care for both patients seeking abortion care and those not actively seeking to terminate a pregnancy.

This Article also argues that focusing the public's attention on the deleterious consequences of abortion bans for health care beyond wanted abortion care could help fend off further restrictions on abortion. Post-Dobbs, abortion policy is largely in the hands of voters, as state legislation and ballot initiatives now dictate the fate of abortion rights. Exposing Dobbs's ripple effects on forms of health care that are less stigmatized than wanted abortion care could help educate the public on the links between abortion and a wide array of health care issues. Informing the public about the wide-ranging health care consequences of overturning Roe could help reframe abortion bans as government mandates that interfere with the physician-patient relationship and harm women's health. Reframing abortion as a core health care concern for the public—as opposed to a debate about a constitutional right to privacy—is a potentially powerful strategy for resisting anti-abortion legislation post-Dobbs.

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* Maya Manian, Professor of Law, Faculty Director, Health Law and Policy Program, American University Washington College of Law. The author thanks Joanna Grossman and Seema Mohapatra for inclusion in this volume. Thanks also to Aziza Ahmed, David Cohen, Greer Donley, Nicole Huberfeld, Jill Wieber Lens, Yvette Lindgren, Linda McClain, and Rachel Rebouché for thoughtful feedback on earlier drafts. The author extends special thanks to Patrick Crowley and Rolanda Donelson for research assistance. This Article is adapted from *The Impact of Dobbs on Health Care Beyond Wanted Abortion Care*, J.L. Med. & Ethics (forthcoming 2023).

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I. INTRODUCTION

THE Supreme Court's momentous decision in *Dobbs v. Jackson Women's Health Organization*¹ to overturn fifty years of precedent on the constitutional right to abortion represents a sea of change, not only in constitutional law, but also in the public health landscape. Although state laws on abortion are still evolving after *Dobbs*, the decision almost immediately wreaked havoc on the delivery of medical care for both patients seeking abortion care and those not actively seeking to terminate a pregnancy.²

A growing body of public health research has revealed the damaging consequences of being denied a wanted abortion.³ For example, the Turnaway Study, a nationwide study conducted by researchers at the University of California San Francisco (UCSF), provides evidence of these harms.⁴ The Turnaway Study demonstrates that denying women wanted abortion care threatens their physical health, economic security, and aspirations for themselves and their families.⁵ Study participants who were denied abortions experienced long-lasting harm to their physical health from carrying their pregnancies to term; two women in the study were denied abortion care and died following childbirth.⁶ Public health research also shows that low-income individuals and people of color dispropor-

1. 142 S. Ct. 2228, 2242 (2022).

2. See Yvonne Lindgren, *Dobbs v. Jackson Women's Health and the Post-Roe Landscape*, 35 J. AM. ACAD. MATRIM. LAWS. 235, 256–57, 267–71, 275–78 (2022).

3. See generally, Rachel Rebouché, *The Public Health Turn in Reproductive Rights*, 78 WASH. & LEE L. REV. 1355 (2021) (summarizing public health research on the impact of abortion restrictions).

4. See *The Turnaway Study*, ANSIRH: ADVANCING NEW STANDARDS IN REPROD. HEALTH, <https://www.ansirh.org/research/ongoing/turnaway-study> [<https://perma.cc/PN86-DQCC>]; see generally DIANA GREENE FOSTER, *THE TURNAWAY STUDY: THE COST OF DENYING WOMEN ACCESS TO ABORTION* (2021).

5. See *The Turnaway Study*, *supra* note 4.

6. Lauren J. Ralph, Eleanor Bimla Schwarz, Daniel Grossman & Diana Greene Foster, *Self-Reported Physical Health of Women Who Did and Did Not Terminate Pregnancy*

portionately feel the negative impacts of abortion restrictions.⁷

While empirical evidence has exposed the harms and health disparities that flow from denying people wanted abortions, we know less about how anti-abortion laws and policies impact health care more broadly. In the post-*Dobbs* world, the links between abortion care and a wide range of other health care issues have become much more apparent. The effect of overturning *Roe v. Wade* extends beyond wanted abortion care itself; as mainstream media has reported, it impacts access to contraception, fertility treatment, and treatment for pregnancy-related complications as well.⁸

This Article surveys *Dobbs*'s public health impacts on health care issues beyond wanted abortion care. In surveying the post-*Dobbs* health care landscape, this Article has two goals. First, it aims to catalog the ways in which abortion bans obstruct access to medical care more broadly. This catalog of health care concerns summarizes the evidence we currently have on how post-*Dobbs* bans hinder access to medical care beyond a wanted abortion, including anecdotal evidence and preliminary research studies. Second, this Article seeks to provide a roadmap for future empirical research on the health care ripple effects of the *Dobbs* decision. It does so by identifying the areas where further public health research is most needed to ensure that the public understands the full breadth of health care consequences of the post-*Roe* policy landscape.

This Article also argues that focusing the public's attention on the deleterious consequences of abortion bans for health care beyond wanted abortion care could help fend off further restrictions on abortion. Post-*Dobbs*, abortion policy is largely in the hands of voters, as state legislation and ballot initiatives now dictate the fate of abortion rights. Exposing *Dobbs*'s ripple effects on forms of health care that are less stigmatized than wanted abortion care could help educate the public on the links between abortion and a wide array of health care issues. Informing the public about the wide-ranging health care consequences of overturning *Roe* could help reframe abortion bans as government mandates that interfere with the physician-patient relationship and harm women's health. Reframing abortion as a core health care concern for the public—as opposed to a debate about a constitutional right to privacy—is a potentially powerful strategy for resisting anti-abortion legislation post-*Dobbs*.

After Seeking Abortion Services: A Cohort Study, 171 ANNALS INTERNAL MED. 238, 245 (2019).

7. See Michelle Oberman, *What Will and Won't Happen When Abortion Is Banned*, 9 J.L. & BIOSCIENCES, June 9, 2022, at 1, 3, 10, 20.

8. See, e.g., Kate Zernike, *Medical Impact of Roe Reversal Goes Well Beyond Abortion Clinics, Doctors Say*, N.Y. TIMES (Sept. 10, 2022), <https://www.nytimes.com/2022/09/10/us/abortion-bans-medical-care-women.html> [<https://perma.cc/R2MJ-4Y2A>]; Aria Bendix, *States Say Abortion Bans Don't Affect IVF. Providers and Lawyers Are Worried Anyway.*, NBC NEWS (June 29, 2022 11:56 AM), <https://www.nbcnews.com/health/health-news/states-say-abortion-bans-dont-affect-ivf-providers-lawyers-worry-rcna35556> [<https://perma.cc/KZ52-VCL8>].

II. POST-*DOBBS* RIPPLE EFFECTS OF ABORTION BANS FROM PRE-CONCEPTION TO POST-BIRTH

Both legal scholars and mainstream news media have been reporting on how the *Dobbs* decision obstructs access to health care for women and pregnant people even when they are not actively seeking abortion care.⁹ While more thorough empirical data on the ripple effects of post-*Dobbs* abortion bans are not yet available,¹⁰ anecdotal evidence is growing. Health care providers and patients have publicly shared stories about the increasing impediments women and pregnant people face in accessing medical care in jurisdictions hostile to abortion.¹¹ This Part provides an overview of *Dobbs*'s consequences on the health care landscape beyond wanted abortion care—from pre-conception care such as sterilization and fertility treatment, to prenatal care and childbirth, and even to medical care entirely unrelated to pregnancy. It catalogs the existing evidence on the downstream health care consequences of *Dobbs* beyond a wanted abortion and identifies areas where public health researchers need to gather more empirical data going forward so that the public can fully grasp the breadth of *Dobbs*'s impact on access to health care.

A. CONTRACEPTION AND STERILIZATION

Attempts to restrict access to contraception have already arisen post-*Dobbs*, even without a direct challenge to the constitutional right to contraception.¹² Future restrictions on contraception will likely draw on religious objections to insurance coverage for contraceptives and false assertions about contraception operating as an abortion.¹³ Even before *Dobbs*, conservative activists incorrectly claimed that some forms of contraception act as abortifacients.¹⁴ In its *Dobbs* brief, Mississippi argued

9. See, e.g., Sonia M. Suter, *All the Ways Dobbs Will Harm Pregnant Women, Whether or Not They Want an Abortion*, SLATE (June 29, 2022, 4:35 PM), <https://slate.com/news-and-politics/2022/06/dobbs-pregnant-women-surveillance-ivf-bans-abortion.html> [<https://perma.cc/4BYB-XNK8>].

10. However, there is preliminary data on the impact of *Dobbs* on people seeking abortion care. See SOC'Y OF FAM. PLAN., #WECOUNT REPORT 2–5 (2022), https://www.societyfp.org/wp-content/uploads/2022/10/SFPWeCountReport_AprtoAug2022_ReleaseOct2022-1.pdf [<https://perma.cc/S7N7-UMHZ>].

11. See, e.g., Tiffany Stanley, *After Abortion Protections Fell, Their Lives Were Upended*, WASH. POST (Nov. 30, 2022, 5:46 PM), <https://www.washingtonpost.com/magazine/interactive/2022/abortion-laws-patient-stories> [<https://perma.cc/83B6-DFDF?type=image>].

12. See Michael Ollove, *Some States Already Are Targeting Birth Control*, PEW CHARITABLE TRS.: STATELINE (May 19, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/05/19/some-states-already-are-targeting-birth-control> [<https://perma.cc/LF2L-8AZE>] (reporting on a failed Missouri proposal targeting intrauterine devices and emergency contraception, often called the “morning-after pill”).

13. See Julie Rovner, *A GOP Talking Point Suggests Birth Control Is Not at Risk. Evidence Suggests Otherwise.*, KAISER HEALTH NEWS (Aug. 5, 2022), <https://khn.org/news/article/republican-talking-point-birth-control-risk-abortion-false-claim> [<https://perma.cc/VM5F-ZAH6>].

14. Betsy Reed, *Contraception Could Come Under Fire Next If Roe v Wade Is Overturned*, GUARDIAN (May 4, 2022), <https://www.theguardian.com/us-news/2022/may/03/roe-v-wade-birth-control> [<https://perma.cc/5ZMR-A8L3>]; see also David S. Cohen, Greer Donley & Rachel Rebouché, *The Harshest Abortion Restrictions Are Yet to Come*, ATLANTIC

that contraception reduces the need for access to abortion care.¹⁵ Yet the Supreme Court has undermined efforts to reduce health disparities in access to contraception, which disproportionately impacts low-income populations and people of color.¹⁶ Greater public awareness about how *Dobbs* could be used to block access to contraception may help increase the public's disfavor of abortion bans.

Even prior to *Dobbs*, Missouri legislators attempted to ban Medicaid funding for emergency contraception and IUDs, two forms of birth control that anti-abortion groups falsely claim are abortifacients.¹⁷ Post-*Dobbs*, when Idaho's trigger ban on abortion took effect in August 2022, the University of Idaho's general counsel issued new guidance that included limits on information about abortion and also told faculty and staff that the school should no longer offer contraception to students.¹⁸ The University later clarified its position and noted that condoms would still be provided through the school, but only "for the purpose of not transmitting disease," not for the purpose of preventing contraception¹⁹

In Missouri, St. Luke's Health System declared that it would stop providing emergency contraception due to the state's abortion ban; eventually, the Missouri Attorney General clarified that the ban would not apply to contraception.²⁰ Still, St. Luke's expressed continued concern about potential liability for providing emergency contraception: "However, the ambiguity of the law, and the uncertainty even among state officials about what this law prohibits, continues to cause grave concern and will require careful monitoring."²¹

Additionally, a leaked audio recording of an anti-abortion group's meeting with Tennessee lawmakers exposed anti-abortion activists' plan to temporarily hold off on attacking contraception but seek restrictions

(July 11, 2022), <https://www.theatlantic.com/ideas/archive/2022/07/pro-life-legal-strategies-abortion/661517> [<https://perma.cc/E6UF-66DR>] (explaining that more draconian state laws will be forthcoming after *Dobbs* and that these laws could lead to a ban, not only on abortion but also on certain forms of birth control, fertility services, and drugs with the potential to cause miscarriages).

15. See Brief for Petitioners at 4, 29–30, 34, *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022) (No. 19-1392).

16. See Maya Manian, *Winning by Losing: Chief Justice Roberts's Strategy to Eviscerate Reproductive Rights and Justice*, HARV. L. & POL'Y REV. BLOG (Aug. 10, 2020), <https://harvardlpr.com/2020/08/10/winning-by-losing-chief-justice-robertss-strategy-to-eviscerate-reproductive-rights-and-justice> [<https://perma.cc/6HGY-FT6E>].

17. See Ollove, *supra* note 12.

18. See Alison Durkee, *University of Idaho Says New Abortion Guidance Isn't That Different From Before—But Faculty Could Still Face Criminal Prosecution*, FORBES (Oct. 6, 2022, 11:40 AM), <https://www.forbes.com/sites/alisondurkee/2022/10/06/university-of-idaho-says-new-abortion-guidance-isnt-that-different-from-before—but-faculty-could-still-face-criminal-prosecution/?sh=7c22647b3b04> [<https://perma.cc/75B3-ZWM2>].

19. See *id.*

20. See *Is Plan B Still Legal? In Some States, Confusion Abounds.*, ADVISORY BD.: DAILY BRIEFING (June 17, 2022), <https://www.advisory.com/daily-briefing/2022/07/05/emergency-contraceptives> [<https://perma.cc/3W8E-3RHL>].

21. *Id.*

on certain contraceptives in the coming years.²² In December 2022, a district court judge granted summary judgment in favor of a plaintiff challenging Title X, a federal law that supports provision of contraceptive services for low-income adults and adolescents—the first blow to contraception in the federal courts.²³

Due to the confusion around what *Dobbs* means for access to contraception and the fact that more states are enacting flat bans on abortion, reproductive health advocates fear that more women will be implicitly or explicitly coerced into sterilization—particularly those from historically marginalized populations.²⁴ For example, one media story reported on a physician who revealed that her patients were asking whether contraception was still legal after *Dobbs*, and some were even seeking sterilization due to fears that they would not be able to control their fertility:

We've had record numbers of people asking for their tubes to be tied—people with multiple kids and people with no kids. Some are saying, "My husband has a vasectomy, but I still need to make sure I'm protected." We are going to be doing a lot more surgeries to sterilize women.²⁵

Given the long history of eugenic sterilization in the United States,²⁶ increased sterilization rates post-*Dobbs* could indicate a disturbing trend toward a new form of coercive sterilization—namely, coerced sterilization through the use of abortion bans, compounded by restricted access to contraception. In the early twentieth century, eugenic sterilization laws

22. Molly Sprayregen, *Anti-Abortion Activists Busted Saying They're Going After IVF & Contraception Rights in a Few Years*, LGBTQ NATION (Nov. 16, 2022), <https://www.lgbtqnation.com/2022/11/anti-abortion-activists-busted-saying-theyre-going-ivf-contraception-rights-years> [<https://perma.cc/WMX3-E8KT>].

23. See *Deanda v. Becerra*, No. 2:20-CV-092-Z, 2022 WL 17572093, at *1 (N.D. Tex. Dec. 8, 2022); Ian Millhiser, *A Notorious Trump Judge Just Fired the First Shot Against Birth Control*, VOX (Dec. 13, 2022, 8:00 AM), <https://www.vox.com/policy-and-politics/2022/12/13/23505459/supreme-court-birth-control-contraception-constitution-matthew-kacsmaryk-deanda-becerra> [<https://perma.cc/NYR8-SNY2>].

24. See Grace Browne, *Permanent Birth Control Is in Demand in the US—But Hard to Get*, WIRED (July 6, 2022, 7:00 AM), <https://www.wired.com/story/permanent-birth-control-iuds-post-roe> [<https://perma.cc/38VH-7QUC>].

25. Jessica Winter, *The Dobbs Decision Has Unleashed Legal Chaos for Doctors and Patients*, NEW YORKER (July 2, 2022), <https://www.newyorker.com/news/news-desk/the-dobbs-decision-has-unleashed-legal-chaos-for-doctors-and-patients> [<https://perma.cc/GC26-KQ33>]; see also Jesus Rodriguez, *How Dobbs Triggered a Vasectomy Revolution*, POLITICO (Dec. 2, 2022, 4:30 AM), <https://www.politico.com/news/magazine/2022/12/02/how-dobbs-triggered-a-vasectomy-revolution-00070461> [<https://perma.cc/8ULP-Z456>] (detailing the experience of a doctor in Missouri who provides mobile vasectomies); Melissa Gomez, *More Women are Seeking Sterilization Since Roe v. Wade Was Overturned*, L.A. TIMES (July 19, 2022, 5:00 AM) <https://www.latimes.com/world-nation/story/2022-07-19/women-sterilization-roe-vs-wade> [<https://perma.cc/JY2P-BAWY>] (reporting on anecdotal evidence from ob-gyns across the country who have seen more women coming in for consultations related to sterilization procedures since the release of the *Dobbs* opinion).

26. See Lisa C. Ikemoto, *Infertile by Force and Federal Complicity: The Story of Relf v. Weinberger*, in *WOMEN AND THE LAW STORIES* 179, 179–89 (Elizabeth M. Schneider & Stephanie M. Wildman eds., 2011); Maya Manian, *Coerced Sterilization of Mexican-American Women: The Story of Madrigal v. Quilligan*, in *REPRODUCTIVE RIGHTS AND JUSTICE STORIES* 97, 98–99 (Melissa Murray, Katherine Shaw & Reva B. Siegel eds., 2019).

authorized the forced sterilization of 60,000 people throughout the United States.²⁷ Following World War II, fears about immigration, welfare costs, and population control fueled the population control movement.²⁸ Federal funding for family planning and sterilization expanded, creating a new era of eugenics.²⁹ In the 1960s and 1970s, roughly 100,000–150,000 low-income women were sterilized each year, funded by the U.S. Department of Health, Education, and Welfare.³⁰ Justice Thomas has attempted to manipulate concerns about eugenic sterilization as an argument against abortion rights.³¹ However, during the 1960s and 1970s, women of color argued that abortion restrictions like the Hyde Amendment—which restricts federal Medicaid funding for abortions—combined with cuts in social welfare programs to operate as a new form of eugenic sterilization, because sterilization was the only means of fertility control accessible to low-income families.³² Similarly today, after *Dobbs*, sterilization may be the only reliable and affordable form of fertility control available in some states.

Abortion bans in conjunction with limited access to effective contraception functions as implicit coercion, but many advocates are also concerned about *explicitly* coerced sterilization of marginalized persons—especially people with disabilities.³³ The United States has a long history of forcibly sterilizing disabled people, which still lingers today since courts continue to make determinations about whether the authorize sterilization of people with disabilities.³⁴ Thirty-one states currently allow compulsory sterilization of people with disabilities.³⁵ The *Washington*

27. See generally ALEXANDRA MINNA STERN, EUGENIC NATION: FAULTS AND FRONTIERS OF BETTER BREEDING IN MODERN AMERICA 99–110 (2005); PAUL A. LOMBARDO, THREE GENERATIONS, NO IMBECILES: EUGENICS, THE SUPREME COURT, AND *Buck v. Bell* (2008).

28. Maya Manian, *Commentary on Dandridge v. Williams*, in FEMINIST JUDGMENTS: FAMILY LAW OPINIONS REWRITTEN 62, 69 (Rachel Rebouché ed., 2020); Manian, *supra* note 26, at 98.

29. Manian, *supra* note 28, at 69; Manian, *supra* note 26, at 98.

30. Manian, *supra* note 28, at 69–70; Relf v. Weinberger, 372 F. Supp. 1196, 1199 (D.D.C. 1974). “Women of color were particularly at risk for sterilization abuse.” Manian, *supra* note 28, at 70; see also Ikemoto, *supra* note 26, at 188, 196.

31. See Melissa Murray, *Race-ing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade*, 134 HARV. L. REV. 2025, 2028 (2021).

32. Manian, *supra* note 28, at 70; see JENNIFER NELSON, WOMEN OF COLOR AND THE REPRODUCTIVE RIGHTS MOVEMENT 133–35, 150–59 (2003) (describing anti-sterilization abuse activism of the Committee for Abortion Rights and Against Sterilization Abuse (CARASA) in the context of legal challenges to the Hyde Amendment); see generally, Khiara M. Bridges, *Elision and Erasure: Race, Class, and Gender in Harris v. McRae*, in REPRODUCTIVE RIGHTS AND JUSTICE STORIES, *supra* note 26, at 117, 120.

33. See, e.g., Robyn M. Powell, *Confronting Eugenics Means Finally Confronting Its Ableist Roots*, 27 WM. & MARY J. RACE, GENDER & SOC. JUST. 607, 610–11 (2021).

34. See *id.* at 612–16; Jasmine E. Harris, *Why Buck v. Bell Still Matters*, PETRIE-FLOM CTR.: BILL OF HEALTH (Oct. 14, 2020), <https://blog.petrieflom.law.harvard.edu/2020/10/14/why-buck-v-bell-still-matters> [<https://perma.cc/95X5-8Y58>].

35. Press Release, Ma’ayan Anafi, Nat’l Women’s L. Ctr., New NWLC Report Finds Over 30 States Legally Allow Forced Sterilization (Jan. 25, 2022), <https://nwlc.org/press-release/new-nwlc-report-finds-over-30-states-legally-allow-forced-sterilization> [<https://perma.cc/3RTJ-MW94>].

Post recently reported on concerns raised by disability rights advocates that judges could rely on the *Dobbs* decision to authorize forced sterilization in some cases:

A lot of judges have said that disabled people have a lot of trouble getting nonpermanent birth control,” Anafi [author of a report on forced sterilization laws] said. “They assume the person won’t be able to use it properly, and so because of that, they conclude that sterilization is the best and sometimes only option.³⁶

Public health researchers need to gather data in the coming years on trends in access to contraception and uptake of sterilization across states with differing abortion policies, particularly among marginalized populations who have historically been targeted for eugenic sterilization. Linking *Dobbs* to attacks on contraception and to the dark history of coerced sterilization could help sway public opinion against abortion bans.³⁷

B. INFERTILITY TREATMENT

A number of scholars have noted that *Dobbs* threatens access to fertility treatment, including in vitro fertilization (IVF).³⁸ Not only is there no established constitutional protection for access to IVF, but IVF practices may also violate abortion bans because embryo destruction commonly occurs during the IVF process.³⁹

After *Dobbs*, health care providers and patients have expressed concerns about legal liability related to IVF services and fears about state seizure of patients’ frozen embryos.⁴⁰ Some multistate fertility companies began to seek workarounds almost immediately post-*Dobbs*, such as by moving cryo-preserved embryos out of anti-abortion states and into more favorable jurisdictions.⁴¹ Furthermore, the practice of selective reduc-

36. Meena Venkataramanan, *She Survived a Forced Sterilization. Activists Fear More Could Occur Post-Roe.*, WASH. POST (July 24, 2022, 7:00 AM), <https://www.washingtonpost.com/history/2022/07/24/forced-sterilization-dobbs-roe/> [https://perma.cc/A8R4-ZL3U].

37. See Khiara M. Bridges, *The Dysgenic State: Environmental Injustice and Disability-Selective Abortion Bans*, 110 CAL. L. REV. 297 (2022).

38. See, e.g., Sean Tipton & Jared Robins, *Not Just Abortion: How the Demise of Roe v Wade May Impact Fertility Care*, 67 CONTEMP. OB/GYN J. 9, 10 (2022).

39. See I. Glenn Cohen, Judith Daar & Eli Y. Adashi, *What Overturning Roe v Wade May Mean for Assisted Reproductive Technologies in the US*, 328 JAMA 15, 15–16 (2022); see also Eve C. Feinberg, Jennifer F. Kawwass & Marcelle I. Cedars, *Roe v. Wade and the Threat to Fertility Treatment*, 140 OBSTETRICS & GYNECOLOGY, 557, 559 (2022).

40. See Jan Hoffman, *Infertility Patients and Doctors Fear Abortion Bans Could Restrict I.V.F.*, N.Y. TIMES (July 6, 2022), <https://www.nytimes.com/2022/07/05/health/ivf-embryos-roe-dobbs.html?smid=nytcore-ios-share> [https://perma.cc/32LR-7X6N]; Emma McDonald, *How Will the Dobbs Decision Affect Assisted Reproduction?*, CTR. FOR GENETICS & SOC’Y: BIOPOLITICAL TIMES (July 15, 2022), <https://www.geneticsandsociety.org/biopolitical-times/how-will-dobbs-decision-affect-assisted-reproduction> [https://perma.cc/4QEN-SHBE]; Bendix, *supra* note 8.

41. Kimberly Mutcherson, *Regulating Reproductive Medicine in a World Without Roe*, 388 NEW ENGLAND J. MED. 289 (2023); Lisa C. Ikemoto, *Op-Ed: How IVF Could Be Derailed by Abortion Restrictions*, L.A. TIMES (July 7, 2022, 3:01 AM), <https://www.latimes.com/opinion/story/2022-07-07/ivf-roe-vs-wade-abortion> [https://perma.cc/W99P-HGZ5].

tion—terminating one or more embryos in multifetal pregnancies that can result from IVF—could also violate criminal bans on abortion and may be restricted in some states.⁴²

Evidence on whether *Dobbs* has instigated changes to fertility clinic practices is still anecdotal at this point, but the leading organization of fertility specialists, the American Society for Reproductive Medicine (ASRM), has expressed grave concerns.⁴³ In a July 2022 report, the ASRM Center for Policy and Leadership reviewed the potential implications of state abortion bans on reproductive medicine and emphasized:

While the overturn of *Roe v. Wade* does not necessarily restrict access to assisted reproductive technology (ART) procedures, including in vitro fertilization (IVF), the details of state law are critical to understand, as overly broad statutory language and definitions *could*, intentionally or not, implicate and even ban such procedures. This decision and related state actions in its wake have the potential to severely limit the ability to provide high-quality, patient-centered maternal health care.⁴⁴

The ASRM report also noted that “IVF may put patients at increased risk for ectopic and heterotopic pregnancy, and trigger laws may have consequences on the management of these and other pregnancy complications.”⁴⁵

Although fertility treatment does not yet appear to be a direct target of state legislation, a zealous prosecutor or legislators could restrict certain aspects of IVF in the future. Some scholars believe there is not the same political will to ban IVF as there is to ban abortion.⁴⁶ If states decide to legally distinguish IVF from abortion, such an approach will have a discriminatory impact because the majority of IVF patients are wealthy and White, while the majority of abortion patients are people of color and people who are low-income.⁴⁷ On the other hand, educating the public on how abortion bans also threaten access to fertility treatment could help create political will to resist abortion restrictions—a strategy that was suc-

42. See *id.*; Radhika Rao, *Selective Reduction: “A Soft Cover for Hard Choices” or Another Name for Abortion?*, 43 J.L. MED. & ETHICS 196, 196, 202–03 (2015) (describing selective reduction practices and efforts by fertility specialists to distinguish selective reduction from abortion).

43. See Susan Crokin, Katie Gottschalk & Francesca Nardi, *The Supreme Court Overturns Right to Abortion, Raising Questions and Uncertainties for ART Patients and Providers*, AM. SOC’Y FOR REPROD. MED.: LEGALLY SPEAKING (July 21, 2022), <https://www.asrm.org/news-and-publications/news-and-research/legally-speaking/the-supreme-court-overturns-right-to-abortion-raising-questions-and-uncertainties-for-art-patients-and-providers> [<https://perma.cc/R4SV-N4J6>].

44. ASRM CTR. FOR POL’Y & LEADERSHIP, STATE ABORTION TRIGGER LAWS: POTENTIAL IMPLICATIONS FOR REPRODUCTIVE MEDICINE 3 (2022), https://www.asrm.org/globalassets/asrm/asrm-content/news-and-publications/dobbs/cpl-report_impact-of-state-trigger-laws-on-reproductive-medicine_final.pdf [<https://perma.cc/3952-R8NN>].

45. *Id.* at 4.

46. See Cohen, Daar & Adashi, *supra* note 39, at 16.

47. Hoffman, *supra* note 40.

cessful in resisting “personhood” laws in the pre-*Dobbs* era.⁴⁸

C. PREGNANCY-RELATED COMPLICATIONS

In the aftermath of *Dobbs*, patients and providers have been publicly sharing their stories of obstacles to care for pregnancy-related complications in states with abortion bans.⁴⁹ Public health researchers are also developing studies to gather empirical data on pregnant patients who have received substandard medical care due to states’ abortion restrictions. Even prior to the Supreme Court overruling *Roe*, abortion restrictions impeded access to a range of health care services other than abortion care in ways that were largely invisible to the public.⁵⁰ The ripple effects of anti-abortion laws and policies pre-*Dobbs* consisted of hindered access to miscarriage management and treatment for ectopic pregnancies (particularly in sectarian hospitals), limits on information during prenatal care, and even changes to treatment during end-of-life care.⁵¹ The Food and Drug Administration’s (FDA) restrictions on mifepristone—one of two drugs used in the FDA’s approved regimen for medication abortion—have also hindered the use of the drug in treatment for miscarriages, despite studies showing that mifepristone can improve miscarriage care.⁵² The Supreme Court’s pending decisions on continued access to mifepristone will thus impact not only access to medication abortion but also access to the drug for miscarriage management.⁵³ Although laws targeting abortion interfered with a broad array of health care services before *Dobbs*, the decision rapidly magnified the problem and obstructed access to care in a wider range of clinical settings across the country.

The first indications of how overturning *Roe* would impact the delivery of medical care more broadly came from the Texas civil liability “bounty hunter” abortion bill known as Senate Bill 8 (SB8), which the Supreme

48. See Maya Manian, *Lessons from Personhood’s Defeat: Abortion Restrictions and Side Effects on Women’s Health*, 74 OHIO ST. L.J. 75, 77, 99–101 (2013).

49. See, e.g., J. David Goodman & Azeen Ghorayshi, *Women Face Risks as Doctors Struggle with Medical Exceptions on Abortion*, N.Y. TIMES (July 20, 2022), <https://www.nytimes.com/2022/07/20/us/abortion-save-mothers-life.html> [<https://perma.cc/C6RZ-EZ3V>].

50. See Maya Manian, *Side Effects of the Abortion Wars*, 38 WOMEN’S RTS. L. REP. 362, 362–68 (2017).

51. See Maya Manian, *The Consequences of Abortion Restrictions for Women’s Healthcare*, 71 WASH. & LEE L. REV. 1317, 1322–35 (2014); Maya Manian, *Commentary on Means v. United States Conference of Catholic Bishops*, in FEMINIST JUDGMENTS: HEALTH LAW REWRITTEN 330, 330–32, 342 (Seema Mohapatra & Lindsay F. Wiley eds., 2022) [hereinafter Manian, *Commentary*]; Manian, *supra* note 50, at 363–69; see also Julia Strasser, Candice Chen, Sara Rosenbaum, Ellen Schenk & Emma Dewhurst, *Penalizing Abortion Providers Will Have Ripple Effects Across Pregnancy Care*, HEALTH AFFS.: FOREFRONT (May 3, 2022), <https://www.healthaffairs.org/doi/10.1377/forefront.20220503.129912> [<https://perma.cc/3QW2-FU3Z>].

52. See Greer Donley, *Medication Abortion Exceptionalism*, 107 CORNELL L. REV. 627, 633–34, 662 (2022).

53. See *FDA v. All. For Hippocratic Med.*, 598 U.S. __ (2023).

Court allowed to go into effect in 2021.⁵⁴ SB8 effectively bans abortion after six weeks of pregnancy, before many people even realize they are pregnant.⁵⁵ After SB8 went into effect, anecdotal evidence provided firsthand accounts of the ways in which abortion bans hinder access to medical care beyond simply abortion care.⁵⁶ One woman, Anna, shared her harrowing story after doctors at a Texas hospital refused to perform a life-saving abortion after a pregnancy complication.⁵⁷ Anna had to fly out of state for a medically necessary abortion, unsure whether she would go into labor with a preivable fetus during the flight.⁵⁸ Other Texans described being forced to travel outside the state to obtain abortion care for ectopic pregnancies, which are nonviable and life-threatening.⁵⁹

One study on the aftermath of SB8 found that the six-week abortion ban had a wide range of medical consequences, many of which stem from the fact that abortion is the standard of care for many pregnancy-related complications.⁶⁰ The Texas physicians in the study reported delayed or denied care for everything from fetal anomalies incompatible with life to membrane ruptures before fetal viability.⁶¹ A maternal–fetal medicine specialist summarized the hospital climate after SB8: “People have to be on death’s door to qualify for maternal exemptions to SB8.”⁶² Other abortion procedures like selective reduction were also prohibited by hospitals, “even though in some cases . . . failure to perform the procedure could result in the loss of both twins.”⁶³

Even in cases that fell within the medical exemption, doctors still reported using riskier or more difficult procedures—including induction (forcing the patient through labor and delivery of a nonviable fetus) and hysterotomy (a surgical incision into the uterus)—rather than the standard method of dilation and evacuation (D&E) out of fear that the D&E

54. See Tex. S.B. 8, 87th Leg., R.S., ch. 62, § 3 (2021) (codified at TEX. HEALTH & SAFETY CODE ANN. §§ 171.201–171.212); Chelsea Tejada, *Texas’ Bounty Hunter Abortion Ban Is a Dire Warning of What Lays Ahead for Our Reproductive Rights*, ACLU: NEWS & COMMENT (Mar. 17, 2022), <https://www.aclu.org/news/reproductive-freedom/texas-bounty-hunter-abortion-ban-is-a-dire-warning-of-what-lays-ahead-for-our-reproductive-rights> [<https://perma.cc/LW4M-7V9A>]; Ian Millhiser, *Texas’s Anti-Abortion Law Is Back at SCOTUS. Here’s What’s Different This Time Around.*, VOX (Oct. 19, 2021, 8:30 AM), <https://www.vox.com/2021/10/19/22728389/supreme-court-doj-texas-sb8-abortion-jackson> [<https://perma.cc/7CUL-AYUG>].

55. Charles W. “Rocky” Rhodes & Howard M. Wasserman, *Solving the Procedural Puzzles of the Texas Heartbeat Act and Its Imitators: The Potential for Defensive Litigation*, 75 SMU L. REV. 187, 189 (2022); see TEX. HEALTH & SAFETY CODE ANN. § 171.204(a).

56. See, e.g., Sarah McCammon & Lauren Hodges, *Doctors’ Worst Fears About the Texas Abortion Law Are Coming True*, NPR (Mar. 1, 2022, 7:37 AM), <https://www.npr.org/2022/02/28/1083536401/texas-abortion-law-6-months> [<https://perma.cc/2PRN-THPN>].

57. See *id.*

58. *Id.*

59. Greer Donley & Jill Wieber Lens, *Abortion, Pregnancy Loss, & Subjective Fetal Personhood*, 75 VAND. L. REV. 1649, 1713 (2022).

60. See Whitney Arey et al., *A Preview of the Dangerous Future of Abortion Bans—Texas Senate Bill 8*, 387 NEW ENG. J. MED. 388, 388–90 (2022).

61. See *id.* at 389.

62. *Id.*

63. *Id.*

procedure would appear to be an illegal abortion.⁶⁴ A hysterotomy has a higher rate of complications than D&E and can impair fertility.⁶⁵ In sum, the study found that “[p]atients with pregnancy complications or preexisting medical conditions that may be exacerbated by pregnancy are being forced to delay an abortion until their conditions become life-threatening and qualify as medical emergencies, or until fetal cardiac activity is no longer detectable.”⁶⁶

After the *Dobbs* decision, researchers published a study examining the public health impact of Texas’s post-*Dobbs* criminal abortion bans on treatments for pregnancy-related complications.⁶⁷ The study found higher rates of maternal morbidity due to the state’s abortion laws.⁶⁸ Among other concerns, the study found that delayed care “resulted in 57% of patients having a serious maternal morbidity compared with 33% who elected immediate pregnancy interruption under similar clinical circumstances reported in states without such legislation.”⁶⁹ Given this preliminary data from Texas, researchers at UCSF launched a nationwide study aimed at collecting data about how abortion restrictions enacted after *Dobbs* are changing the standards of medical care for pregnancy-related complications.⁷⁰

Anecdotal evidence of substandard care for pregnancy-related complications due to abortion bans has been flooding the media.⁷¹ Patients and physicians have been speaking to the media about how abortion bans obstruct appropriate standards of medical care in treating pregnancy complications.⁷² A handful of lawsuits have now been filed seeking to

64. *See id.* at 389–90.

65. *See id.* at 390.

66. *Id.* at 389.

67. See Anjali Nambiar, Shivani Patel, Patricia Santiago-Munoz, Catherine Y. Spong & David B. Nelson, *Maternal Morbidity and Fetal Outcomes Among Pregnant Women at 22 Weeks’ Gestation or Less with Complications in 2 Texas Hospitals After Legislation on Abortion*, 227 AM. J. OBSTETRICS & GYNECOLOGY 648, 648–49 (2022), [https://www.ajog.org/article/S0002-9378\(22\)00536-1/fulltext](https://www.ajog.org/article/S0002-9378(22)00536-1/fulltext) [<https://perma.cc/3LLM-JXYZ>] (analyzing SB8, enforced through private civil lawsuits, and Senate Bill 4, enforced through felony criminal penalties).

68. *See id.* at 649.

69. *Id.*

70. See CARE POST-ROE STUDY, UNIV. CAL. S.F., https://carepostroe.ucsf.edu/?utm_source=substack&utm_medium=email [<https://perma.cc/T8FG-748P>]; Sofia Resnick, *Doctors Recount ‘Heart-Wrenching’ Stories in New Study on Medical Care Post-Roe*, LA. ILLUMINATOR (Feb. 23, 2023, 2:23 PM), <https://lailluminator.com/2023/02/23/doctors-recount-heart-wrenching-stories-in-new-study-on-medical-care-post-roe> [<https://perma.cc/RK4Z-XTLX>]; Margaret E. Samuels-Kalow et al., *Post Roe Emergency Medicine: Policy, Clinical, Training, and Individual Implications for Emergency Clinicians*, 29 ACAD. EMERGENCY MED. 1414, 1417 (2022).

71. See Greer Donley & Jill Wieber Lens, *The Devastating Implications of Overturning Roe Will Go Far Beyond Abortion Patients*, TIME (June 24, 2022, 12:24 PM), <https://time.com/6190782/roe-overturned-pregnancy-complications-miscarriage> [<https://perma.cc/695E-DF2N>].

72. See Selena Simmons-Duffin, *For Doctors, Abortion Restrictions Create an ‘Impossible Choice’ When Providing Care*, NPR (June 24, 2022, 4:26 PM), <https://www.npr.org/sections/health-shots/2022/06/24/1107316711/doctors-ethical-bind-abortion> [<https://perma.cc/YN2K-NV9L>]; Ariana Eunjung Cha, *Physicians Face Confusion and Fear in Post-*

alleviate some of the health care impacts of abortion bans. In Texas, five women and two physicians filed a lawsuit pursuing claims under the Texas state constitution. The women allege that they were denied necessary obstetric care due to Texas's anti-abortion laws, including care for miscarriages, pregnancy-induced health complications, and severe fetal abnormalities. The complaint in the case details the five women's stories and collects similar stories from around the country published in various media outlets.⁷³

In order to address growing concerns about access to health and life-saving abortion care, the Biden Administration issued new guidance on the Emergency Medical Treatment and Active Labor Act (EMTALA).⁷⁴ EMTALA requires hospitals with emergency departments that receive federal funding to provide emergency stabilizing care, which may include abortion care if necessary to stabilize a pregnant patient's health.⁷⁵ The 2022 guidance provides that EMTALA may preempt a state's abortion ban to some extent, and that hospital emergency departments may be required to perform abortion procedures under certain circumstances pursuant to EMTALA's protections.⁷⁶ Two federal district courts in Idaho and Texas issued conflicting decisions on whether EMTALA preempts state abortion bans that have a chilling effect on medical care.⁷⁷ This leaves physicians even more uncertain about how to provide medical care for their patients.⁷⁸

In addition to evidence that abortion bans lead to substandard care for pregnancy-related complications, physicians are also concerned about the *Dobbs* decision's impact on pregnant patients with cancer.⁷⁹ Typically, drugs used to treat cancer are harmful or potentially fatal to a fetus.⁸⁰ For aggressive cancers such as leukemia, treatment cannot be delayed until

Roe World, WASH. POST (June 28, 2022, 11:06 AM), <https://www.washingtonpost.com/health/2022/06/28/abortion-ban-roe-doctors-confusion> [<https://perma.cc/97YY-KXR9>].

73. See *Zurawski v. Texas*, 0-1-GN-23-000968 (Dist. Ct. of Travis Cnty. 2023).

74. See CTRS. FOR MEDICARE & MEDICAID SERVS., U.S. DEP'T OF HEALTH & HUM. SERVS., QSO-22-22-HOSPITALS, REINFORCEMENT OF EMTALA OBLIGATIONS SPECIFIC TO PATIENTS WHO ARE PREGNANT OR ARE EXPERIENCING PREGNANCY LOSS (2022), <https://www.cms.gov/files/document/qso-22-22-hospitals.pdf> [<https://perma.cc/6J88-43C6>].

75. See *id.*; see also Greer Donley & Kimberly Chernoby, *How to Save Women's Lives After Roe*, ATLANTIC (June 13, 2022), <https://www.theatlantic.com/ideas/archive/2022/06/roe-v-wade-overturn-medically-necessary-abortion/661255> [<https://perma.cc/VQ74-KWS6>].

76. See CTRS. FOR MEDICARE & MEDICAID SERVS., *supra* note 75.

77. See *United States v. Idaho*, No. 1:22-cv-00329-BLW, 2022 WL 3692618, at *2 (D. Idaho Aug. 24, 2022); *Texas v. Becerra*, No. 5:22-CV-185-H, 2022 WL 3639525, at *1 (N.D. Tex. Aug. 23, 2022).

78. In the Idaho case, a physician testified that OB/GYNs in the state are "bracing for the impact of this law, as if it is a large meteor headed towards Idaho." *Idaho*, 2022 WL at *9.

79. See Jane Lowe Meisel, Amy Harrington, Natalie Whaley, Wendy Vitek & Ruth M. O'Regan, *When the Personal Becomes Political: The Impact of the Dobbs Decision on Women with Cancer*, 129 *CANCER* 171, 171–72 (2023).

80. See Gina Kolata, *After Roe, Pregnant Women with Cancer Diagnoses May Face Wrenching Choices*, N.Y. TIMES (July 25, 2022), <https://www.nytimes.com/2022/07/23/health/pregnant-woman-cancer-abortion.html> [<https://perma.cc/K355-JABZ>].

the completion of pregnancy.⁸¹ In such circumstances, doctors almost always advise termination of the pregnancy, but termination may no longer be an option in states with abortion bans.⁸² Even though some anti-abortion laws have exceptions for the life of the woman, doctors may be uncertain whether a patient's cancer fits within those exceptions.⁸³ An article by two physicians published in *JAMA Oncology* noted that, as the maternal childbearing age increases, "the incidence of pregnancy-associated cancer . . . is projected to rise."⁸⁴ Moreover, the estimated twenty-six states that are expected to ban abortions account for approximately 41% of births in the United States.⁸⁵ Accordingly, physicians fear *Dobbs* will have far-reaching consequences, ultimately hindering oncologists' ability to deliver optimal cancer care to a significant number of pregnant patients.⁸⁶ Public health researchers will need to gather data from oncologists on the ways in which abortion bans might be reshaping cancer treatment and the impact of *Dobbs* on the mortality rates of pregnant people with cancer.

In sum, there is growing anecdotal and empirical evidence indicating that abortion bans are causing delays and denials of medical care in situations where abortion is the standard of care for treating pregnancy-related complications. Abortion bans are creating unnecessary life-threatening medical emergencies. As Greer Donley and Jill Wieber Lens emphasize, "this is how some pregnant people will die in a post-*Roe* America. Hospitals will delay care too long and not be able to save the person's life; or her life will be saved, but her uterus will be sacrificed, along with her future fertility."⁸⁷ Deaths due to delayed care flowing from legal restrictions on abortion have already occurred in Poland and Ireland.⁸⁸ In Ireland, the death of Savita Halappanavar helped instigate changes to Ireland's strict abortion laws.⁸⁹

81. *See id.*

82. *See id.*; see also Jamie Abrams, *What Moving from Kentucky to Virginia After I Was Diagnosed with Cancer Reveals About Roe*, NBC NEWS: THINK (July 7, 2022, 8:32 PM), <https://www.nbcnews.com/think/opinion/end-of-roe-kentucky-virginia-divergent-health-care-systems-for-women-rcna37215> [https://perma.cc/GKS577W9].

83. MaryAlice Parks, *For Pregnant Women with Cancer, Doctors Fear Abortion Bans 'Could Be a Death Sentence'*, ABC NEWS (July 19, 2022, 6:03 AM), <https://abcnews.go.com/Health/pregnant-women-cancer-doctors-fear-abortion-bans-death/story?id=85948248> [https://perma.cc/34CY-Z8D8].

84. Jordyn Silverstein & Katherine Van Loon, *The Implications of the Supreme Court Decision to Overturn Roe v Wade for Women with Pregnancy-Associated Cancers*, 8 JAMA ONCOLOGY 1394, 1394 (2022).

85. *Id.* at 1395.

86. *See id.*

87. Donley & Lens, *supra* note 59, at 1713.

88. *Id.*; see Katrin Bennhold & Monika Pronczuk, *Poland Shows the Risk for Women When Abortion Is Banned*, N.Y. TIMES (June 26, 2022), <https://www.nytimes.com/2022/06/12/world/europe/poland-abortion-ban.html> [https://perma.cc/5JKR-F5ZJ]; Patrick Smith, *This Woman Died Because of an Abortion Ban. Americans Fear They Could Be Next*, NBC NEWS (July 4, 2022, 6:33 AM), <https://www.nbcnews.com/news/world/woman-died-ireland-abortion-ban-warning-americans-roe-v-wade-rcna35431> [https://perma.cc/BSY4-9NF4].

89. *See* Smith, *supra* note 88; Megan Specia, *How Savita Halappanavar's Death Spurred Ireland's Abortion Rights Campaign*, N.Y. TIMES (May 27, 2018), <https://>

Public health researchers need to continue studying *Dobbs*'s effects on health care for miscarriages, ectopic pregnancies, and other pregnancy-related complications. Since the public tends to have more sympathy for medically indicated abortion care, linking these less stigmatized abortions to abortion bans could help reshape voters' conceptions of abortion bans as government interference with health care decisions.

D. PRENATAL CARE

Dobbs could have wide-ranging consequences for prenatal care in the long term. Some side effects of the *Dobbs* decision on prenatal care include potential changes to standard prenatal care practices regarding disclosure of fetal abnormalities and genetic information, deterrence from even seeking care due to increased criminalization of pregnant patients, decreased access to prenatal care due to increased shortages of maternity care providers, and changes to medical education in obstetrics.

States with strict abortion bans may decide to control the information made available about pregnancy, as Oklahoma did even prior to *Dobbs*.⁹⁰ Oklahoma law empowers physicians to conceal wanted information by protecting physicians from liability for failing to disclose fetal anomalies to prenatal patients.⁹¹ Furthermore, physicians are not required to inform patients of the liability shield law, so they can intentionally conceal information from a pregnant patient that they would otherwise have a duty to disclose.⁹² Proponents of this law claim it is merely an anti-abortion measure, preventing women and pregnant people from seeking abortions due to fetal anomalies.⁹³ In reality, these laws extend well beyond the issue of abortion, withholding material information from patients who wish to be informed about their pregnancies and plan for their families.⁹⁴ In addition to fetal anomaly screening, prenatal genetic testing is generally offered to all pregnant patients early in the pregnancy, but states might restrict such information in the future.⁹⁵ More research will be needed into whether and how prenatal genetic counseling practices and informa-

www.nytimes.com/2018/05/27/world/europe/savita-halappanavar-ireland-abortion.html [https://perma.cc/BA2G-EFJX].

90. See James C. McKinley Jr., *Strict Abortion Measures Enacted in Oklahoma*, N.Y. TIMES (Apr. 27, 2010), <https://www.nytimes.com/2010/04/28/us/28abortion.html> [https://perma.cc/PCR7-AZKU].

91. Manian, *supra* note 48, at 104 (revealing that Oklahoma passed these laws on the very same day); see 2010 Okla. Sess. Law Serv. ch. 173 (West); 2010 Okla. Sess. Law Serv. ch. 171 (West).

92. Manian, *supra* note 48, at 104; see OKLA. STAT. ANN. tit. 63, § 1-741.12 (2010).

93. Manian, *supra* note 48, at 104–05; see Sherry F. Colb, *An Oklahoma Abortion Law Raises New and Different Rights Questions*, FINDLAW (July 21, 2010), <https://supreme.findlaw.com/legal-commentary/an-oklahoma-abortion-law-raises-new-and-different-rights-questions.html> [https://perma.cc/W47Y-AYBH] (analyzing liability preclusion law); Mary Alice Carr, 'Oklahoma What Have You Done?,' CNN (Apr. 29, 2010, 9:15 AM), <http://www.cnn.com/2010/OPINION/04/28/carr.abortion.oklahoma> [https://perma.cc/4BDJ-W4U5].

94. Manian, *supra* note 48, at 105.

95. See Suter, *supra* note 9; Megan A. Allyse & Marsha Michie, Commentary, *Prenatal Genetics in a Post-Roe United States*, CELL REPS. MED., July 19, 2022, at 1–2.

tion sharing might be changing in states with abortion bans post-*Dobbs*.⁹⁶

Criminalizing pregnancy deters individuals from seeking prenatal care for fear of being criminally prosecuted, which is especially true for people of color and people of lower socioeconomic status.⁹⁷ Shortly after *Dobbs* was decided, a woman in Texas was charged with homicide for an alleged self-managed abortion after a doctor in the hospital where she sought medical care reported her to the police (the charges were later dropped).⁹⁸ Between 1973 and 2020, one study reported over 1,700 prosecutions of pregnant women, including for miscarriages.⁹⁹ Research on the criminalization of pregnant people demonstrates that the criminal justice system disproportionately targets women of color and women in lower income brackets.¹⁰⁰ This is especially problematic given that surveillance, and thus criminalization, of pregnant people is expected to increase rapidly in the post-*Roe* world.¹⁰¹

Even if the majority of pregnant people continue to seek prenatal care, such care may become less available as obstetricians flee jurisdictions that are criminalizing abortion care. While it is too soon after the *Dobbs* decision to know whether there have been significant shifts in the availability of obstetric care in states hostile to abortion, serious concerns about an exodus of providers from anti-abortion states have already begun to surface.¹⁰² In Louisiana, for example, doctors filed written affidavits describing how Louisiana's abortion law was forcing them to choose between their patient's life and their own imprisonment, and health care providers

96. See Laura Hercher, *Genetic Counselors Scramble Post-Roe to Provide Routine Pregnancy Services Without Being Accused of a Crime*, SCI. AM. (Aug. 3, 2022), <https://www.scientificamerican.com/article/genetic-counselors-scramble-post-roe-to-provide-routine-pregnancy-services-without-being-accused-of-a-crime> [https://perma.cc/9ZJL-Q28Q]; Sonia M. Suter & Laura Hercher, *Dobbs Decision Is a Huge Setback for Genetic Counseling and the People Who Need It*, STAT (Aug. 25, 2022), <https://www.statnews.com/2022/08/25/dobbs-decision-roadblocks-genetic-counseling> [https://perma.cc/L63C-2LQP].

97. See Rebecca Stone, *Pregnant Women and Substance Use: Fear, Stigma, and Barriers to Care*, HEALTH & JUST., Feb. 12, 2015, at 3, 7–8, 13; Meghan Boone & Benjamin J. McMichael, *State-Created Fetal Harm*, 109 GEO. L.J. 475, 497, 514, 522 (2021).

98. See Tina Vásquez, *How Misinformation About Medical Reporting Fueled Lizelle Herrera's Criminalization for Abortion*, DAILY KOS (Apr. 22, 2022, 9:15 AM), <https://www.dailykos.com/stories/2022/4/22/2093374/-How-misinformation-about-medical-reporting-fueled-Lizelle-Herrera-s-criminalization-for-abortion> [https://perma.cc/2NXY-RSQZ].

99. See *Arrests and Prosecutions of Pregnant People, 1973–2020*, PREGNANCY JUST. (Sept. 18, 2021), <https://www.pregnancyjusticeus.org/arrests-and-prosecutions-of-pregnant-women-1973-2020> [https://perma.cc/Z95G-8SQ7]; Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health*, 38 J. HEALTH POL. POL'Y & L. 299, 321 (2013).

100. See Stone, *supra* note 97, at 1; Boone & McMichael, *supra* note 97, at 489; Yvonne Lindgren, *When Patients Are Their Own Doctors: Roe v. Wade in an Era of Self-Managed Care*, 107 CORNELL L. REV. 151, 224–26 (2021).

101. Katrina Kimport, *Abortion After Dobbs: Defendants, Denials, and Delays*, SCI. ADVANCES, Sept. 9, 2022, at 1; see Anya E.R. Prince, *Reproductive Health Surveillance*, B.C. L. REV. (forthcoming) (manuscript at 5, 15), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4176557 [https://perma.cc/8Q8Q-D7B6].

102. See Christopher Rowland, *A Challenge for Antiabortion States: Doctors Reluctant to Work There*, WASH. POST (Aug. 6, 2022, 12:05 PM), <https://www.washingtonpost.com/business/2022/08/06/abortion-maternity-health-obgyn> [https://perma.cc/Z3N5-BV8J].

expressed concern that doctors who want to avoid this ethical dilemma will choose to relocate and thereby further exacerbate Louisiana's health care provider shortage.¹⁰³ In states with abortion bans, more pregnant people will be forced to give birth; if those additional births occur in jurisdictions with serious shortages of maternity care providers, that will result in riskier childbirth.¹⁰⁴ A shortage of obstetricians in anti-abortion states not only limits access to prenatal care for many patients; it also causes a significant increase in maternal morbidity and mortality rates,¹⁰⁵ as discussed further below.

Medical education may also be altered in ways that negatively impact prenatal care due to fewer ob-gyn trainees in anti-abortion states and a lack of comprehensive reproductive health care training for clinicians in those states.¹⁰⁶ One study examining *Dobbs's* potential impact on medical education estimated that, of the approximately 6,000 ob-gyn trainees in accredited U.S. obstetrics and gynecology residency programs, 43.9% train in states that are certain or likely to ban abortion once *Roe* is overturned.¹⁰⁷ The study stressed:

Abortion training has . . . been shown to improve general skills and confidence in uterine evacuation and miscarriage management. Furthermore, though some residents choose not to participate fully in abortion training on religious or moral grounds, partial participators in programs that offer routine abortion training benefit from improved procedural, ultrasonography, and pregnancy-counseling skills. Thus, the ramifications of this chasm in training will extend beyond induced abortion care.¹⁰⁸

In addition, the study noted that “[a]bortion restrictions disproportionately harm communities of color,” and that further studies would be necessary to “assess whether abortion restrictions . . . would disproportionately affect training for obstetrics and gynecology residents identifying with racial and ethnic groups underrepresented in medicine,

103. See Lorena O’Neil, *Louisiana Doctors: We’re Choosing Between Saving a Life or Going to Jail*, JEZEBEL (July 6, 2022), https://jezebel.com/louisiana-doctors-we-re-choosing-between-saving-a-life-1849150116?utm_medium=sharefromsite&utm_source=twitter [<https://perma.cc/YG2S-TUMF>]; Greg Sargent, Opinion, *In Louisiana, A Dark Turn in the Post-Roe Wars Signals Danger Ahead*, WASH. POST (July 5, 2022, 11:29 AM), <https://www.washingtonpost.com/opinions/2022/07/05/louisiana-abortion-trigger-ban-supreme-court-roe-v-wade> [<https://perma.cc/B55C-KPM3>].

104. See Jessica Glenza, *Pregnant Women Face Increasingly Dangerous Risks as Doctors Flee Punitive US States*, GUARDIAN (July 8, 2022), <https://www.theguardian.com/us-news/2022/jul/08/abortion-roe-v-wade-maternal-care-deserts-louisiana> [<https://perma.cc/9RF5-LARG>].

105. See Oriana Gonzalez, *Report: Mothers in States with Abortion Bans Nearly 3 Times More Likely to Die*, AXIOS (Jan. 19, 2023), <https://www.axios.com/2023/01/19/mothers-anti-abortion-bans-states-die> [<https://perma.cc/5TQC-WTA7>].

106. See Rachel Rabkin Peachman, *Dobbs Decision Threatens Full Breadth of Ob-Gyn Training*, 328 JAMA 1668, 1668 (2022).

107. Kavita Vinekar et al., *Projected Implications of Overturning Roe v Wade on Abortion Training in U.S. Obstetrics and Gynecology Residency Programs*, 140 OBSTETRICS & GYNECOLOGY 146, 146 (2022).

108. *Id.* at 148.

because they are more likely to provide care to underserved populations.”¹⁰⁹

Lisa Harris, an ob-gyn and abortion provider in Michigan, argues that major medical centers must prepare for the broader impacts of the *Dobbs* decision on health care delivery and medical education.¹¹⁰ In particular, she emphasizes that medical centers will need to determine how to interpret vague legal rules on “lifesaving” exceptions to abortion bans, as well as how to train the next generation of physicians in providing lifesaving abortion care and miscarriage management in states where abortion is banned.¹¹¹ Harris argues that medical centers must consider out-of-state abortion training for medical residents; otherwise, routine care for miscarriages may become less available since abortion training as a resident is “one of the best predictors” that a physician will provide patients with “the full range of miscarriage-management.”¹¹²

As the availability of maternity and medical education on obstetrics shifts in the post-*Roe* era, researchers should compare access to medical care in jurisdictions with policy environments hostile to abortion and abortion-haven jurisdictions. More research will also be needed on *Dobbs*’s downstream consequences on prenatal care with regard to transmitting information about genetic conditions and fetal anomalies. Furthermore, researchers will need to continue tracking data on the criminalization of pregnant people and any correlations between criminalization and willingness to seek medical care, particularly among marginalized populations disproportionately targeted by the criminal justice system. Public awareness of these broader impacts on prenatal care—especially a reduction in access to maternity care for all patients—could make flat bans on abortion less appealing, even in states where voters generally favor the demise of abortion rights.

109. *Id.*

110. See Lisa H. Harris, *Navigating Loss of Abortion Services—A Large Academic Medical Center Prepares for the Overturn of Roe v. Wade*, 386 *NEW ENG. J. MED.* 2061, 2061–62 (2022).

111. See *id.* at 2061–63. Because abortion care and miscarriage management involve the same medical procedures, abortion training also provides training for miscarriage treatment. See Gabriela Weigel, Laurie Sobel & Alina Salganicoff, *Understanding Pregnancy Loss in the Context of Abortion Restrictions and Fetal Harm Laws*, KAISER FAM. FOUND. (Dec. 4, 2019), <https://www.kff.org/womens-health-policy/issue-brief/understanding-pregnancy-loss-in-the-context-of-abortion-restrictions-and-fetal-harm-laws> [<https://perma.cc/UYD8-5ZKA>].

112. Harris, *supra* note 110, at 2063; see also Sneha Dey & Karen Brooks Harper, *Abortion Restrictions Threaten Care for Pregnant Patients, Providers Say*, *TEX. TRIB.* (May 24, 2022, 12:00 PM), <https://www.texastribune.org/2022/05/24/texas-abortion-law-pregnancy-care> [<https://perma.cc/HS2G-K5S2>]; Nick Anderson, *The Fall of Roe Scrambles Abortion Training for University Hospitals*, *WASH. POST* (June 30, 2022, 10:32 AM), <https://www.washingtonpost.com/education/2022/06/30/abortion-training-upheaval-dobbs> [<https://perma.cc/VF3G-WPBW>].

E. MATERNAL MORBIDITY AND MORTALITY

Dobbs will likely have ripple effects on maternal morbidity and mortality rates, due to maternity care provider shortages and the increased risk of carrying a pregnancy to term as compared to abortion.¹¹³ Experts predict more pregnant people will die due to the inability to access a wanted abortion in the post-*Roe* world.¹¹⁴ Furthermore, due to the effects of systemic racism, increases in maternal mortality and morbidity will disproportionately impact women of color.¹¹⁵

Women are currently more likely to die during or after pregnancy in the United States than anywhere else in the developed world.¹¹⁶ As has been increasingly reported in recent years, the United States is facing a maternal mortality crisis, and data shows that this crisis is borne disproportionately by Black women.¹¹⁷ The nation's maternal mortality crisis may very well worsen as abortion access is further curtailed; studies show that legal restrictions on abortion correlate with maternal mortality rates.¹¹⁸ Many women will be forced to give birth in unsafe conditions—especially in states that already face maternity care deserts and that also criminalize abortion.¹¹⁹ After *Dobbs*, “[t]he six states with the highest maternal mortality rates in the nation each quickly banned abortion.”¹²⁰ And a study from the University of Colorado predicts that the country's maternal death rate could increase by 24% if there were a nationwide abortion ban.¹²¹

Forced childbirth may also lead to higher rates of maternal morbidity, particularly among marginalized populations. Low-income women have higher rates of miscarriage and stillbirth than women of higher socioeco-

113. See Harris, *supra* note 110, at 2063.

114. See *id.*

115. See *id.*

116. See Nina Martin & Renee Montagne, *U.S. Has the Worst Rate of Maternal Deaths in the Developed World*, NPR (May 12, 2017, 10:28 AM), <https://www.npr.org/2017/05/12/528098789/u-s-has-the-worst-rate-of-maternal-deaths-in-the-developed-world> [https://perma.cc/MH88-YHJY].

117. See Sema Sgaier & Jordan Downey, Opinion, *What We See in the Shameful Trends on U.S. Maternal Health*, N.Y. TIMES (Nov. 17, 2021), <https://www.nytimes.com/interactive/2021/11/17/opinion/maternal-pregnancy-health.html> [https://perma.cc/Z97U-EUWC].

118. See Dovile Vilda et al., *State Abortion Policies and Maternal Death in the United States, 2015–2018*, 111 AM. J. PUB. HEALTH 1696, 1701 (2021); Amanda Jean Stevenson, Leslie Root & Jane Menken, *The Maternal Mortality Consequences of Losing Abortion Access 6–7* (June 29, 2022) (unpublished manuscript) (SocArXiv); Linda Brubaker & Kirsten Bibbins-Domingo, *Health Care Access and Reproductive Rights*, 328 JAMA 1707, 1707 (2022).

119. See Harris, *supra* note 110, at 2062–63; see also Reva B. Siegel, *ProChoiceLife: Asking Who Protects Life and How—And Why It Matters in Law and Politics*, 93 IND. L.J. 207, 216–17 (2018); Reva Siegel, Serena Mayeri & Melissa Murray, *Equal Protection in Dobbs and Beyond: How States Protect Life Inside and Outside of the Abortion Context*, 43 COLUM. J. GENDER & L. 67, 85–86, 90 (2023).

120. Oriana Gonzalez, *Health Experts See Rise in Maternal Mortality Post-Roe*, AXIOS (July 5, 2022), <https://www.axios.com/2022/07/05/maternal-mortality-death-abortion-ban-ro> [https://perma.cc/8RYA-MNKA].

121. See Stevenson, Root & Menken, *supra* note 118, at 6.

conomic status.¹²² Women of color, especially Black women, also face higher rates of miscarriage and stillbirth.¹²³ Studies show that stillbirth has a higher rate of life-threatening maternal complications than live birth.¹²⁴

Public health research links abortion, contraception, and maternal mortality, establishing that racial and socioeconomic disparities persist across a wide range of reproductive health issues.¹²⁵ Researchers believe the correlation between poverty and unintended pregnancy is likely a result of lack of access to the most effective—and more expensive—forms of contraception.¹²⁶ Given the extensive health disparities embedded in reproductive health issues, public health researchers should continue to focus on the links between abortion policy and rates of maternal morbidity and mortality. Growing public concern about high maternal mortality rates in the United States can be leveraged to fight post-*Dobbs* abortion restrictions.¹²⁷

F. NON-PREGNANCY RELATED MEDICAL CARE

In addition to the many public health implications of *Dobbs* on pregnancy-related health care, abortion bans are also impeding access to medical care even when the condition has nothing to do with pregnancy. Concerns about teratogens—drugs that can harm a fetus through exposure in utero—have resulted in female patients being denied access to medications needed for non-pregnancy-related medical issues.¹²⁸ In states with abortion bans, patients may now face greater obstacles to accessing standard medical care, “including access to medications such as methotrexate (widely used to treat rheumatoid arthritis), isotretinoin (used to treat nodular acne), and valproate (used to treat seizures).”¹²⁹

122. Donley & Lens, *supra* note 59, at 1663.

123. *Id.*; Jill Wieber Lens, *Miscarriage, Stillbirth, & Reproductive Justice*, 98 WASH. U. L. REV. 1059, 1059, 1062 (2021).

124. Lens, *supra* note 123, at 1074; see Elizabeth Wall-Wieler et al., *Severe Maternal Morbidity Among Stillbirth and Live Birth Deliveries in California*, 134 OBSTETRICS & GYNECOLOGY 310 (2019) (“the risk of severe maternal morbidity was more than fourfold higher among stillbirth compared with live birth deliveries”).

125. See Donley & Lens, *supra* note 59, at 1663–65 (summarizing data on health disparities by race and class in the contexts of abortion, miscarriage, stillbirth, maternal mortality, and criminalization of pregnancy).

126. See Jennifer Hickey, *Insuring Contraceptive Equity*, 17 NW. J.L. & SOC. POL’Y 61, 68 (2022); e.g., *Unintended Pregnancy in the United States*, GUTTMACHER INST. (Jan. 2019), https://www.guttmacher.org/sites/default/files/factsheet/fb-unintended-pregnancy-us_0_4.pdf [<https://perma.cc/WYM4-JALZ>]; *Paying for Contraception in the United States*, GUTTMACHER INST. (Apr. 2020), <https://www.guttmacher.org/sites/default/files/factsheet/paying-contraception-united-states.pdf> [<https://perma.cc/UGN3-SMW8>].

127. See Khiara M. Bridges, *Racial Disparities in Maternal Mortality*, 95 N.Y.U. L. REV. 1229, 1231–33 (2020).

128. See Suzanne Leigh, *Abortion Ban May Mean Denial of Effective Drugs for Women with MS, Migraine, Epilepsy*, UCSF (July 13, 2022), <https://www.ucsf.edu/news/2022/07/423296/abortion-ban-may-mean-denial-effective-drugs-women-ms-migraine-epilepsy> [<https://perma.cc/XR5N-RZ9Q>].

129. Brubaker & Bibbins-Domingo, *supra* note 118, at 1707.

After *Dobbs*, reports quickly surfaced of patients with autoimmune diseases and rheumatological conditions facing hurdles to access their medications.¹³⁰ For example, Becky Schwarz, who lives with lupus, was notified by her rheumatologist that they would stop all refills of methotrexate because it is considered an abortifacient.¹³¹ Although methotrexate can be used to induce an abortion, in much lower doses, methotrexate is used to treat many autoimmune diseases.¹³² Because she lost access to methotrexate, Becky had to suddenly change her medication, a shift which can cause flare-ups and impede normal functioning.¹³³ Arthritis patients have also had trouble accessing their medications because the drugs are associated with pregnancy termination.¹³⁴

A 2022 article in the *Annals of Internal Medicine* conveys rheumatologists' concerns about *Dobbs*'s unintended consequences on the delivery of medical care to patients with rheumatic disease.¹³⁵ The physician-authors expressed fears around three medical issues impacted by abortion restrictions:

First is a concern about access to medically indicated abortion that has been indicated because of teratogen exposure or active rheumatic disease. Second is a worry about access to necessary medications that are teratogenic. Third is a concern about laws that interfere with patient-clinician discussions about reproductive issues.¹³⁶

As the article notes, unplanned pregnancies while “taking a teratogen are surprisingly common.”¹³⁷ Not only will rheumatology patients have difficulty accessing abortion or other appropriate care for a dangerous pregnancy, but these patients will also face increased challenges to accessing new and potentially better medications:

Similarly, new medications are approved by the U.S. Food and Drug Administration to treat rheumatic disease every year, typically with limited to no information about their impact on pregnancy. As these may carry yet-unknown teratogenic risks, some providers and women may choose to forgo state-of-the-art care. Without legal protections or access to abortion, prescriptions of potentially teratogenic

130. See Linda Rath, *New Barrier to Methotrexate for Arthritis Patients*, ARTHRITIS FOUND. (June 30, 2022), <https://www.arthritis.org/about-us/news-and-updates/new-barrier-to-methotrexate-for-arthritis-patients> [<https://perma.cc/W3L6-64FD>].

131. Rebecca Flood, *Anger as Woman Denied 'Abortifacient' Medication After Roe v. Wade Ruling*, NEWSWEEK (July 4, 2022, 11:13 AM), <https://www.newsweek.com/anger-woman-denied-abortifacient-medication-roe-v-wade-abortion-1721428> [<https://perma.cc/83X6-XLKF>].

132. *Id.*

133. *See id.*

134. *See* Rath, *supra* note 130 (“methotrexate may be used after a miscarriage or to end an ectopic pregnancy”).

135. *See* Megan E.B. Clowse & Kenneth G. Saag, *Unintended Consequences of SCOTUS Abortion Decision for Patients with Rheumatic Diseases*, 175 ANNALS INTERNAL MED. 1328, 1328 (2022).

136. *Id.*

137. *Id.* The article reported on a study that found ten out of thirty-one women “taking methotrexate before pregnancy only stopped it after conception.” *Id.*

medications may decline for females of reproductive age. This will result in challenges in controlling arthritis and active systemic rheumatic disease, including lupus nephritis, ultimately creating disparities by sex in medication access, quality of life, and disability.¹³⁸

The article emphasizes that second-line therapies other than teratogens are often much more expensive than drugs like methotrexate and, for some patients, may be less effective and “may lead to loss of disease control.”¹³⁹ Furthermore, even if physicians are willing to prescribe teratogens to female patients in states with abortion bans, other providers in the health care system may deny care:

Anecdotes are surfacing of pharmacists asking physicians to list an indication for drugs like methotrexate. Although this would seem like a simple solution, without a systematic approach this strategy can create delays and inefficiencies in care. Without greater clarity and testing of new state laws, it is quite possible that the problem of pharmacists and health systems blocking these prescriptions could get worse.¹⁴⁰

Finally, the downstream consequences of *Dobbs* on rheumatology include potential shifts in related care like contraceptive counseling and in the doctor–patient dialogue itself:

To protect themselves and their patients, rheumatologists may require that patients receive long-acting contraception before they prescribe teratogens, limiting contraceptive options and creating new side effects. Patients may be hesitant about reporting pregnancy losses to the physician, limiting the physician’s ability to diagnose antiphospholipid syndrome and preventing improved rheumatic care for future pregnancies. Taken together, the threat of criminal and civil litigation will have a chilling effect on honest and accurate clinical conversations about pregnancy.¹⁴¹

Although patients have been sharing their stories with the media, there is limited empirical data on how abortion bans are reshaping medical care for female patients with conditions requiring treatment with teratogenic medications. Going forward, public health researchers should focus on rheumatologists and their patients in order to further understand the broader health care consequences of *Dobbs*. If a wider swath of the public fears that abortion bans could threaten access to their needed medical treatments, it could generate more antipathy to government overreach into health care decision-making around abortion.

G. LGBTQ+ HEALTH CARE

Many constitutional law scholars have asserted that *Dobbs*, by undermining the foundations of the Supreme Court’s key decisions on gay

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* at 1329.

rights,¹⁴² threatens the constitutional right to privacy of same-sex couples.¹⁴³ In addition, the *Dobbs* decision has also been relied upon to threaten access to gender-affirming care for transgender youth. For example, the Alabama Attorney General argued that *Dobbs* provides the foundation for the state's ban on transgender youths' access to gender-affirming medical treatment.¹⁴⁴ Bans on gender affirming care for youth and even for adults are sweeping across the states, often in the same state legislatures that are banning access to abortion care.¹⁴⁵ The full impact of *Dobbs* on access to gender affirming care remains to be seen as challenges to these bans play out in the courts.¹⁴⁶

III. FRAMING ABORTION AS HEALTH CARE

When most people think about legal restrictions on abortion, they likely do not think about stories like those described above. The public generally believes abortion laws affect only women actively seeking abortion care, not people seeking treatment for miscarriages or pregnancy-related complications or rheumatology medications. Yet, laws curtailing access to abortion are reshaping these patients' medical care—or lack of appropriate medical care. Public support for abortion bans often rests on the faulty belief that anti-abortion legislation impacts only people actively seeking abortion care—a group of people who are highly stigmatized and who are disproportionately people of color and people who are low income.¹⁴⁷

This belief in the supposedly narrowly targeted impact of anti-abortion laws rests on the false assumption that abortion can be isolated from other aspects of health care.¹⁴⁸ However, it cannot be isolated from the continuum of women and pregnant people's health care. Degraded health care across the board is the side effect of overturning *Roe*, and it is affecting patients across the country. Linking abortion to less stigmatized forms of health care could help voters recognize that abortion care is integral to and deeply integrated with a range of health care needs.

142. *Lawrence v. Texas*, 539 U.S. 558 (2003); *Obergefell v. Hodges*, 576 U.S. 644 (2015).

143. See Kimberly Strawbridge Robinson & Jordan S. Rubin, *Abortion Draft Raises Alarm Over Privacy, LGBTQ Rights (1)*, BLOOMBERG L. (May 3, 2022, 11:01 AM), <https://news.bloomberglaw.com/us-law-week/abortion-draft-raises-alarm-over-future-of-privacy-lgbt-rights> [<https://perma.cc/4ZLD-MZCG>].

144. Erin Davis, *Ala. AG Uses Dobbs Decision in Transgender Youth Treatment Argument*, WRBC NEWS (July 4, 2022, 7:21 PM), <https://www.wbrc.com/2022/07/05/ala-ag-uses-dobbs-decision-transgender-youth-treatment-argument> [<https://perma.cc/5G5Z-NLFR>].

145. Francesca Paris, *Bans on Transition Care for Young People Spread Across the U.S.*, N.Y. TIMES (Apr. 15, 2023) <https://www.nytimes.com/2023/04/15/upshot/bans-transgender-teenagers.html> [<https://perma.cc/Q84X-Y4HM>].

146. ELANA REDFIELD, KERITH J. CONRON, WILL TENTINDO & ERICA BROWNING, UCLA WILLIAMS INST., *PROHIBITING GENDER-AFFIRMING MEDICAL CARE FOR YOUTH* (2023), <https://williamsinstitute.law.ucla.edu/publications/bans-trans-youth-health-care> [<https://perma.cc/P7LA-P38U>].

147. There is extensive literature on abortion stigma. See generally Jenny O'Donnell, Tracy A. Weitz & Lori R. Freedman, *Resistance and Vulnerability to Stigmatization in Abortion Work*, 73 SOC. SCI. & MED. 1357 (2011).

148. Manian, *Commentary*, *supra* note 51, at 343.

A New York University study found that, as compared to their pro-choice counterparts, individuals with anti-abortion beliefs are more likely to have heard about a friend's miscarriage than a friend's abortion, even though miscarriage is less common than abortion.¹⁴⁹ In other words, individuals' pre-existing views determine which stories they are told. This selection bias enables abortion opponents to maintain the "self-fulfilling illusion" that the one in three women who have an abortion in America do not represent them or anyone they know, thereby contributing to "a stasis in public opinion."¹⁵⁰ Yet, even those unsympathetic to abortion rights—who often think they have no personal connections to "that kind" of woman¹⁵¹—are likely to know someone who has experienced other types of pregnancy loss.¹⁵²

Public health research analyzing the ripple effects of abortion bans on medical care could clarify that anti-abortion laws touch the lives of even those individuals who may falsely believe that no one in their social circle has a need for abortion care. Creating a more nuanced picture of how abortion laws impact women's health care beyond the (very significant) harms of denying abortion care itself would help the public develop a fuller understanding of the health care implications of losing abortion rights. This framing of abortion as, at its core, an issue of health equity could be used to encourage voters to protect women and pregnant people's health by rejecting government interference with reproductive health care, including abortion care, especially given the public health research showing that denying wanted abortion care also harms the health and wellbeing of women and their families.

A number of legal scholars and advocates have argued for reconnecting abortion with women's health and framing abortion care as an aspect of health care.¹⁵³ For a variety of complex reasons, abortion has been siloed from mainstream medicine and isolated into specialized clinics that

149. See Sarah K. Cowan, *Secrets and Misperceptions: The Creation of Self-Fulfilling Illusions*, 1 SOCIO. SCI. 466, 477–81 (2014).

150. See *id.* at 472, 483, 485.

151. See *id.* at 467 (providing that abortion "is subject to much higher levels of social disapproval and stigma than . . . miscarriage," in part because "having had an abortion is understood to speak to the character of the woman more than having had a miscarriage"); *id.* at 473 (discussing how abortion, unlike miscarriage, may "be seen as a sign of the woman's promiscuousness, irresponsibility, and immoral character").

152. See *id.* at 475–77.

153. See, e.g., B. Jessie Hill, *Reproductive Rights as Health Care Rights*, 18 COLUM. J. GENDER & L. 501, 501–05 (2009); Lisa C. Ikemoto, *Abortion, Contraception and the ACA: The Realignment of Women's Health*, 55 HOW. L.J. 731, 732–33 (2012); Yvonne Lindgren, *The Rhetoric of Choice: Restoring Healthcare to the Abortion Right*, 64 HASTINGS L.J. 385, 387–91 (2013) [hereinafter Lindgren, *Rhetoric of Choice*]; Manian, *supra* note 48, at 76, 115–20 (urging a resurrection of the health care framing of abortion rights and citing other scholars arguing for reconnection between abortion and medical care); Yvonne Lindgren, *From Rights to Dignity: Drawing Lessons from Aid in Dying and Reproductive Rights*, 5 UTAH L. REV. 779, 782–85, 822–26 (2016) [hereinafter Lindgren, *From Rights to Dignity*] (arguing that situating the constitutional right to abortion in a health care framing that takes into account social, political, and economic inequality would better protect equitable access to care).

provide the vast majority of abortion care in the United States.¹⁵⁴ Laws and health care policies in the United States reflect what scholars have termed “abortion exceptionalism,” which refers to the ways in which “abortion is treated uniquely compared to other medical procedures that are comparable to abortion in complexity and safety.”¹⁵⁵ Legal scholars argue that reviving health care framings of abortion could bolster efforts to resist legal restrictions on abortion and ensure more equitable access to abortion care.¹⁵⁶ The health care framing of abortion may be less politically inflammatory than one overtly emphasizing women’s sexual liberty.¹⁵⁷

Without constitutional protection for abortion rights, educating the public about how abortion access is an essential aspect of health care for a wide swath of patients offers a potentially useful framework for fighting abortion bans at the state and local level. Reframing abortion bans as government mandates that interfere with the physician–patient relationship and harm women’s health has proven to be a successful strategy for combatting abortion bans even in conservative states, when the issue was put to voters through ballot initiatives.¹⁵⁸

Other examples of legal battles surrounding abortion suggest that focusing on the wider health-related harms of abortion restrictions could persuade members of the public to oppose further legal limits. For example, I have argued that the movement in the early 2000s to establish fertilized eggs as legal persons (the movement for “personhood” legislation)

154. See Carole Joffe, *Failing to Embed Abortion Care in Mainstream Medicine Made It Politically Vulnerable*, WASH. POST (Jan. 11, 2022, 6:00 AM), <https://www.washingtonpost.com/outlook/2022/01/11/failing-embed-abortion-care-mainstream-medicine-made-it-politically-vulnerable> [<https://perma.cc/6TRP-TX4K>]; Lori Freedman, Uta Landy, Philip Darney & Jody Steinauer, *Obstacles to the Integration of Abortion into Obstetrics and Gynecology Practice*, 42 PERSPS. ON SEXUAL & REPROD. HEALTH 146, 146 (2010).

155. DAVID S. COHEN & CAROLE JOFFE, OBSTACLE COURSE: THE EVERYDAY STRUGGLE TO GET AN ABORTION IN AMERICA 8 (2020).

156. See B. Jessie Hill, *Abortion as Health Care*, 10 AM. J. BIOETHICS 48, 48–49 (2010). Professor Jessie Hill has argued that “the health care framework may assist in garnering a broader base of support for abortion rights, since health care is a non-gender-specific need, and one that affects nearly everyone at some point.” *Id.* Furthermore, Hill contends that “the health care framework sufficiently conveys the weightiness of the abortion decision,” while still protecting autonomous decision-making, similar to other weighty health care decisions such as organ donations. *Id.* at 49. Like the abortion decision, other serious medical decisions “may be morally fraught; they are not always undertaken for ‘therapeutic’ reasons in a strict sense; and they may have profound effects on other people in the immediate and long term.” *Id.*

157. See Susan Reid, *Sex, Drugs, and American Jurisprudence: The Medicalization of Pleasure*, 37 VT. L. REV. 47, 49–51, 61–66, 74 (2012) (arguing that medicalization of individual interests in contraception, abortion, and “obscene devices” cases helped to facilitate decriminalization by shifting focus away from pleasure); see generally, LINDA GREENHOUSE & REVA B. SIEGEL, *BEFORE ROE V. WADE: VOICES THAT SHAPED THE ABORTION DEBATE BEFORE THE SUPREME COURT’S RULING* (2012) (documenting debates before *Roe v. Wade*).

158. Rachel Rebouché & Mary Ziegler, *Why Direct Democracy Is Proving So Powerful for Protecting Abortion Rights*, ATLANTIC (Nov. 11, 2022), <https://www.theatlantic.com/ideas/archive/2022/11/abortion-rights-midterm-election-ballot-initiatives/672071> [<https://perma.cc/H7YN-VQQ8>].

failed to succeed, even in states extremely hostile to abortion, because opponents of personhood legislation successfully framed the issue as a threat to women's health more broadly.¹⁵⁹ Abortion rights advocates fought personhood laws by successfully reconnecting abortion to pregnancy care, contraception, fertility, and women's health in general.¹⁶⁰ Recently, during the COVID-19 pandemic, a number of states sought to use executive orders to ban abortion under the guise of serving public health goals by limiting nonessential health care.¹⁶¹ Jessie Hill suggests that "abortion restrictions adopted during the pandemic contain[] useful lessons about the rhetorical framing of abortion even during non-pandemic times."¹⁶² Hill argues for a "robust understanding of abortion as medically necessary" and a "rhetorical integration of abortion into health care" in order to "draw on the political power of the broader health care community," especially in a post-*Roe* world.¹⁶³ Yvonne Lindgren also argues for recognizing "healthcare as an integral aspect of the abortion right."¹⁶⁴ Lindgren explains how identifying abortion exclusively as a right of "choice," uncoupled from health care access, has resulted in the segregation of abortion from other health care laws and policies and has diminished access to abortion care, especially for marginalized populations.¹⁶⁵

Generating a more nuanced understanding of the broader effects of abortion restrictions could help the public better see and understand the links between abortion and women and pregnant people's health care. Although some segments of the public have supported legislation restricting abortion, their support might wane if they understood the full impact of these laws on health care access and health equity.

159. See Manian, *supra* note 48, at 115.

160. *Id.* at 77.

161. See B. Jessie Hill, *Essentially Elective: The Law and Ideology of Restricting Abortion During the COVID-19 Pandemic*, 106 V.A. L. REV. ONLINE 99, 100–02 (2020); Rachel Rebouché, *Abortion Opportunism*, J.L. & BIOSCIENCES, Jan.–June 2020, at 1, 1–2; Greer Donley, Beatrice A. Chen & Sonya Borrero, *The Legal and Medical Necessity of Abortion Care Amid the COVID-19 Pandemic*, J.L. & BIOSCIENCES, Jan.–June 2020, at 1, 2–5.

162. Hill, *supra* note 161, at 111.

163. *Id.* at 122. (describing state limits on abortion care during the pandemic based on the claim that abortion is not essential health care and arguing "for long-term protection of abortion rights"); see also Katie Watson, *Why We Should Stop Using the Term "Elective Abortion"*, 20 AMA J. ETHICS 1175, 1776–78 (2018); B. Jessie Hill, *What Is the Meaning of Health? Constitutional Implications of Defining 'Medical Necessity' and 'Essential Health Benefits' Under the Affordable Care Act*, 38 AM. J.L. & MED. 445 (2012) (discussing the political and legal disputes surrounding how to define what counts as health care and ambiguity in terms such as health, essential health care, and medical necessity).

164. Lindgren, *Rhetoric of Choice*, *supra* note 153, at 415. "Abortion must be reconstituted as a right that includes both the choice of the pregnant woman and healthcare. The challenge is to bring together these two strands, healthcare and decisional autonomy, in a way that keeps women as medical consumers central to the court's analysis." *Id.* at 420.

165. See *id.* at 385, 389–90, 397–98, 419; see also Lindgren, *From Rights to Dignity*, *supra* note 153, at 806–10, 828.

IV. CONCLUSION

In a post-*Roe* legal landscape, more cross-state comparative public health research is needed to understand how abortion bans impede access to health care beyond wanted abortion care—particularly for disadvantaged populations. In Supreme Court opinions, federal health care legislation, and the popular imagination, abortion has long been perceived as primarily an issue of the politics of “choice” rather than as an essential part of health care. Uncovering the links between wanted abortion and other, less stigmatized forms of health care could help reframe abortion as a health care issue that impacts even those patients not actively seeking abortion care. Without constitutional protection for abortion rights, reframing abortion as a matter of health care access and health equity for a wide swath of people offers a strategy to persuade voters that access to the full spectrum of reproductive health care benefits everyone.

