

TESTIMONY BEFORE THE HOUSE OVERSIGHT
AND REFORM COMMITTEE

ON

IMPACT OF THE SUPREME COURT'S *DOBBS*
DECISION ON ABORTION RIGHTS AND ACCESS
ACROSS THE UNITED STATES

BY

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JULY 13, 2022

Dear Chairman Maloney, Ranking Member Comer, and Members of the Committee:

Fifty years ago, in 1973, a young woman with an unexpected pregnancy faced a challenging road ahead. She might get fired by her employer for being pregnant, leaving her with no financial resources to cover the medical expense of childbirth. Access to accurate medical information about her pregnancy was still in its infancy, and care for difficult pregnancies was virtually non-existent. She could end up alone, on the streets, with no job, and no support. That year, in *Roe v. Wade*, the Supreme Court posited that the baby within her was merely “potential life.”

But today, in a post-*Roe* America, that same young woman has access to support, care, and resources that were unimaginable at the time of *Roe*. Health issues that may have been fatal to the mother fifty-years ago can now quickly be diagnosed and treated, with public and private resources to cover the costs if needed. Federal and state laws protect her from losing her job or facing other discrimination,¹ promote greater fairness in and enforcement of child support, and foster more pro-family childcare and workplace policies. Countless organizations—from pregnancy care centers to maternity homes—are ready to provide the young woman and her newborn with access not only to necessities like counseling, shelter, and baby items, but to insurance, job training, and educational opportunities that empower women. And fifty years of scientific development reveal the beauty, value, and worth of her baby, allowing her to hear her child’s heartbeat as early as six weeks and to access real-time, 3D images of her child’s fingers, toes, and nose.

Fifteen-week ultrasounds from circa 1973 vs. today²



¹ These protections, largely enacted post-*Roe*, ensure equal opportunity for women by prohibiting sex and pregnancy discrimination in employment (e.g., 42 U.S.C. § 2000e(k)), guaranteeing employment leave for pregnancy and birth (e.g., 29 U.S.C. § 2612), and offsetting the costs of childcare for working mothers (e.g., 26 U.S.C. § 21).

² Brief for American College of Pediatricians and the Association of American Physicians & Surgeons as *Amicus Curiae* in Support of Petitioners at 3, *Dobbs v. Jackson Women’s Health Org.*, No. 19-1392 (July 29, 2021).

A post-*Roe* America is one in which we can celebrate the unprecedented access that expecting mothers of all backgrounds and socio-economic status have to medical care, social services, and community support. These praiseworthy advances—ignored by the Abortion Industry that seeks to keep women in the dark—will only accelerate with the overruling of *Roe* as States and their citizens are finally permitted to not only affirm life as a human right, but also to create a culture of life that promotes the flourishing of the mother and her child. *Dobbs* is not only a legal victory for life; it is a rallying cry to States and pro-life individuals to provide even greater support to mothers as we walk alongside them. *Dobbs* allows our society to focus resources where they are most needed.

A Post-*Roe* America Began When a Grievous Wrong Was Rectified

We have turned the page on *Roe* and started a new chapter in America’s journey to better protect women and their unborn children. The judicially manufactured “right” to abortion—“a gruesome symptom of our collective failure to take care of one another”³—has been interred, opening the door for a new birth of public and private efforts to celebrate and value mothers and the precious lives they carry. *Dobbs* is the product of decades of tireless work as people all over the country labored, prayed, and marched for life to demonstrate that our Nation believes in the inherent dignity of women, their children, and life itself.

As the Supreme Court explained in *Dobbs*, there simply is no right to an abortion in the Constitution’s text or our Nation’s history. *Roe v. Wade* was wrong the day it was decided in January 1973. Fifty years of cultural and scientific progress prove the irreparable harm abortion causes and have only made that decision more intolerable over time.

Legal scholars across the ideological spectrum have long criticized *Roe*’s reasoning and conclusion. Law professor John Hart Ely noted that *Roe* was “not constitutional law” at all and barely gave any “sense of an obligation to try to be.”⁴ Harvard Law Professor Laurence Tribe noted, “behind [*Roe*’s] own verbal smokescreen, the substantive judgment on which it rests is nowhere to be found.”⁵ Edward Lazarus, former law clerk to *Roe* author Justice Harry Blackmun, called it “one of the most intellectually suspect constitutional decisions of the modern era,” one rooted in “logic that is, at best,

³ O. Carter Snead & Mary Ann Glendon, *The Pro-Life Movement Can’t Stop at the Unborn*, WASHINGTON POST (Jun. 29, 2022), <https://www.washingtonpost.com/opinions/2022/06/29/dobbs-pro-life-women-children/>.

⁴ John Hart Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 YALE L.J. 920, 947 (1973).

⁵ Laurence H. Tribe, *Foreword: Toward A Model of Roles in the Due Process of Life and Law*, 87 HARV. L. REV. 1, 7 (1973).

questionable, and at worst, disingenuous and results-oriented.”⁶ Even the late-Justice Ruth Bader Ginsburg criticized *Roe* for its heavy-handed judicial intervention that interrupted democratic debate.⁷

Each of these individuals staunchly favored abortion. And yet, they all recognized that *Roe* was an indefensible exercise of raw judicial power. It took from the American people their right to protect the dignity of women and all human life and caused the loss of over sixty million unique and valuable unborn lives.

Roe overruled the life-affirming laws of nearly every single State. In the decades preceding *Roe*, forty-six States prohibited abortion in most circumstances.⁸ This was apiece with our nation’s long history of protecting life at all stages. From the common law on, abortion has been unlawful.⁹ And when the Fourteenth Amendment was adopted, three-quarters of the States criminalized abortion.¹⁰ As Justice Alito noted in the *Dobbs* majority opinion, *Roe* was “simply wrong” about the common law and “fail[ed] even to note the overwhelming consensus of state laws in effect in 1868.”¹¹

Roe rooted its fabricated “right” to an abortion in a “right to privacy” that supposedly emanated from the penumbras of multiple constitutional amendments.¹² The Court’s extrapolation from the text of the Constitution violated separation of powers principles. No textual provision even remotely provides a right to an abortion nor can one be inferred from that text or our Nation’s history—a history in which States have long *protected* life.

As the *Dobbs* majority explained, “[w]hen *Casey* revisited *Roe* almost 20 years later, very little of *Roe*’s reasoning was defended or preserved.”¹³ The *Casey* plurality did not even answer whether or not “the Constitution, properly understood, confers a right to obtain an abortion.”¹⁴ Instead, the *Casey* plurality stuck with *Roe* (despite the fact that some of its three authors expressed skepticism about

⁶ Edward Lazarus, *The Lingering Problems with Roe v. Wade, and Why the Recent Senate Hearings on Michael McConnell’s Nomination Only Underlined Them*, FINDLAW (Oct. 3, 2002), <https://supreme.findlaw.com/legal-commentary/the-lingering-problems-with-roe-v-wade-and-why-the-recent-senate-hearings-on-michael-mcconnells-nomination-only-underlined-them.html>.

⁷ Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. REV. 375, 385 (1985).

⁸ *Dobbs v. Jackson Women’s Health Org.*, No. 19-1392, 2022 WL 2276808, at *22.

⁹ *Id.* at *12-14.

¹⁰ *Id.* at *16.

¹¹ *Id.* at *28.

¹² *Roe v. Wade*, 410 U.S. 113, 152-53 (1973).

¹³ *Dobbs*, 2022 WL 2276808, at *31.

¹⁴ *Id.* at *9.

whether the case was correct),¹⁵ tasking itself with resolving the national debate over abortion. *Casey* overruled *Roe* in part by discarding the “rigid” trimester test and substituting a “viability” rule and “undue burden” test in its stead.¹⁶ Under that standard, a state law protecting unborn life or maternal health would be invalid if it “has the purpose or effect of placing a substantial obstacle in the path of a woman seeking abortion” prior to viability.¹⁷

In a now infamous passage, the *Casey* plurality also “abandoned any reliance on a privacy right and instead discovered the abortion right hiding in the Fourteenth Amendment’s Due Process Clause.”¹⁸ From the liberty interest protected by that Amendment, the plurality contrived the notion that “[a]t the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”¹⁹ This expansive conception of liberty, the Court suggested, might support a right to an abortion.

The *Casey* Court upheld *Roe* based on the legal doctrine of *stare decisis*—the idea that it is better that a law be decided than that it be decided correctly. But as *Dobbs* explained, conventional *stare decisis* factors “weigh strongly in favor of overruling *Roe* and *Casey*.”²⁰ The decision and its progeny were not just wrong but “egregiously wrong and deeply damaging.”²¹

Specifically, “*Roe* was on a collision course with the Constitution from the day it was decided, *Casey* perpetuated its errors, and those errors do not concern some arcane corner of the law of little importance to the American people.... [T]he Court usurped the power to address a question of profound moral and social importance that the Constitution unequivocally leaves for the people.”²²

Roe and *Casey* also caused significant negative real-world and jurisprudential consequences. They placed abortion in the hands of an unelected judiciary, thwarting the ability of States to create comprehensive social safety nets and life-affirming options for mothers and their children both during and after pregnancy. The Supreme Court’s abortion jurisprudence also proved hopelessly unworkable, leaving lower courts to grapple with what “undue burden” even meant.

¹⁵ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 858 (1992).

¹⁶ *Id.* at 870, 873, 874.

¹⁷ *Id.* at 877.

¹⁸ *Dobbs*, 2022 WL 2276808, at *31.

¹⁹ *Casey*, 505 U.S. at 851.

²⁰ *Dobbs*, 2022 WL 2276808, at *26.

²¹ *Id.*

²² *Id.*

Legal and factual developments further eroded *Roe*. Penumbras and emanations are no longer sufficient to create a constitutional right. Ubiquitous safe-haven adoption laws,²³ coupled with a vast partnership of public and private programs that provide mothers and fathers with resources to flourish, mean that pregnancy no longer condemns a mother to “a distressful life and future” as the *Roe* Court claimed.²⁴ Contraception has been widely available with both a median cost and failure rate approaching zero.²⁵ We also know more about unborn life. By fifteen weeks (the time frame at issue in *Dobbs*), a baby can move, stretch, yawn, hiccup, and likely feel pain.²⁶ We know beyond a shadow of a scientific doubt that life begins at conception. *Stare decisis* is no barrier to a decision as poorly reasoned, scientifically wrong, and demonstrably harmful to women as *Roe*.

Tragically, the system imposed by *Roe* and *Casey* prevented States from protecting life until viability—around twenty-two weeks of gestation—and was more extreme than the abortion laws in all but a few other countries around the world, including China and North Korea.²⁷ It also required States to permit on-demand abortions at a gestational age forbidden by all but about a dozen nations.²⁸

Dobbs is a tremendous win for motherhood and for life. It is a judicially modest decision and returns to the people, through their elected representatives, the ability to protect life. It firmly establishes that a “law regulating abortion, like other health and welfare laws, is entitled to a ‘strong presumption of validity’” and “must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests.”²⁹ Under this deferential standard, States may—as they long had before *Roe*—protect unborn life and promote equality for women through their laws and throughout pregnancy.

²³ See Brief for Reason for Life as *Amicus Curiae* in Support of Petitioners at 4–6, *Dobbs v. Jackson Women’s Health Org.*, No. 19-1392 (July 29, 2021) (explaining that under what many call “safe haven” or “baby Moses” laws, mothers can safely leave their children at certain safe locations shortly after birth).

²⁴ *Roe*, 410 U.S. at 153.

²⁵ Guttmacher Institute, *Contraceptive Effectiveness in the United States* (Apr. 2020), <https://www.guttmacher.org/fact-sheet/contraceptive-effectiveness-united-states>.

²⁶ Charlotte Lozier Institute, *CLI Experts Urge SCOTUS to Catch Up to Science in Mississippi Abortion Case* (May 19, 2021), <https://lozierinstitute.org/cli-experts-urge-scotus-to-catch-up-to-science-in-mississippi-abortion-case/> (quoting Dr. Tara Sander Lee, who describes how “[u]nborn babies at 15 weeks ... can taste and make facial expressions, yawn, hiccup, swallow, and suck their thumbs...[And] by 15 weeks, brain structures are mature enough to process pain”).

²⁷ Charlotte Lozier Institute, *Gestational Limits on Abortion in the United States Compared to International Norms* (Feb. 1, 2014), <https://lozierinstitute.org/internationalabortionnorms/>.

²⁸ *Id.*

²⁹ *Dobbs*, 2022 WL 2276808, at *42 (quoting *Heller v. Doe*, 509 U.S. 312, 319 (1993)).

In a Post-*Roe* America, States Can Protect Women and Their Children

The *Dobbs* decision “return[s] the issue of abortion to the people’s elected representatives.”³⁰ Long before *Roe*, policy makers at the local, state, and federal level debated how best to promote the flourishing of mothers and their children. With *Dobbs*, those efforts can now continue unhindered by the shackles *Roe* placed on a State’s ability to protect life up until viability—a point in time at which only a dozen nations allow elective abortion.

Under *Dobbs*, some States will tirelessly work to ensure that women and their unborn children are protected. Some will experiment with new funding and programs that increase support for pregnant women in challenging circumstances. Tragically, however, some States will choose to continue abortion policies that harm women and permit abortion up until the moment of birth for any reason—policies that make them global outliers.

State Interests in Protecting Unborn Life

The *Dobbs* majority opinion identified several legitimate state interests for limiting or regulating abortion, including “respect for and preservation of prenatal life at *all* stages of development,” “the protection of maternal health and safety,” and “the preservation of the integrity of the medical profession.”³¹ For example, the Mississippi Gestational Age Act, which protects unborn children at fifteen weeks gestation, included detailed legislative findings on prenatal development:

- “Between five (5) and six (6) weeks’ gestation, an unborn human being’s heart begins beating.”
- “An unborn human being begins to move about in the womb at approximately eight (8) weeks’ gestation.”
- “At nine (9) weeks’ gestation, all basic physiological functions are present. Teeth and eyes are present, as well as external genitalia.”
- “An unborn human being’s vital organs begin to function at ten (10) weeks’ gestation. Hair, fingernails, and toenails also begin to form.”
- “At eleven (11) weeks’ gestation, an unborn human being’s diaphragm is developing, and he or she may even hiccup. He or she is beginning to move about freely in the womb.”
- “At twelve (12) weeks’ gestation, an unborn human being can open and close his or her fingers,

³⁰ *Id.* at *7.

³¹ *Id.* at *42.

starts to make sucking motions, and senses stimulation from the world outside the womb. Importantly, he or she has taken on ‘the human form’ in all relevant aspects.”³²

Further, a 2020 review of the scientific literature on neural development, the psychology of pain sensation, and fetal pain determined that an unborn child may experience pain at 12 weeks.³³

State Interests in Protecting Maternal Health and Safety

States also have long-recognized interests in “the protection of maternal health”³⁴ as the “medical, emotional, and psychological consequences of an abortion are serious and can be lasting.”³⁵ Current medical evidence dispels the myth that abortion is generally safe.

“Abortion places women at increased risk of physical injury,” including heightened risk of infection, hemorrhage, deep vein thrombosis, pulmonary or amniotic fluid embolism, internal injury to reproductive organs, failure to remove parts of the baby or placenta, possible hysterectomy, allergic reactions to medicines, mis-diagnosis of an intrauterine pregnancy, and even death of the woman and risk of a living, injured baby.³⁶ It also takes a heavy emotional toll on women, including but not limited to “depression, guilt, relief, [and] anxiety.”³⁷

It is undisputed that abortion has a higher medical risk when the procedure is performed later in pregnancy. Compared to abortion at eight weeks gestation, the relative risk of mortality increases by 38% for each additional week at higher gestations.³⁸

In particular, the mental and “emotional consequence[s]” of abortion³⁹ are frequent and serious. Tragically, the risk of suicide is three times greater for women who aborted compared to those who carried their pregnancies to term.⁴⁰ Women having an induced abortion experienced significantly

³² Miss. Code Ann. § 41-41-191 (quoting *Gonzales v. Carhart*, 550 U.S. 124, 160 (2007)).

³³ Stuart Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain*, 46 J. MED. ETHICS 3-6 (2020).

³⁴ *Dobbs*, 2022 WL 2276808, at *42; *accord Casey*, 505 U.S. at 846 (holding that States have “legitimate interests from the outset of the pregnancy in protecting the health of [women]”).

³⁵ *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).

³⁶ Brief for Former Abortion Providers; the National Association of Pro-Life Nurses; the National Association of Catholic Nurses, U.S.A.; and the National Catholic Bioethics Center as *Amicus Curiae* in Support of Respondent at 5-6, *June Medical Services, LLC v. Russo*, No. 18-1323 (U.S. Jan. 2, 2020) (citing Report of the South Dakota Task Force to Study Abortion (Dec. 2005)).

³⁷ *Id.*

³⁸ Linda Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 OBSTET. GYNECOL. 729 (2004).

³⁹ *Gonzales*, 550 U.S. at 159.

⁴⁰ *See, e.g.*, D.M. Fergusson et al., *Abortion in Young Women and Subsequent Mental Health*, 47 J. CHILD PSYCH. & PSYCHIATRY 16 (2006).

higher anxiety, depression, guilt, shame, and avoidance than the general population.⁴¹ Further, women whose first pregnancies ended in abortion were 65% more likely to score in the “high risk” range for clinical depression than those who gave birth, even after controlling for age, race, marital status, divorce history, education, income, and pre-pregnancy psychological state.⁴²

States’ Police Power to Regulate the Medical Profession

For more than a decade, the Supreme Court has also recognized that a State “may use its regulatory power to bar certain [abortion] procedures” to further its “legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn.”⁴³ The Supreme Court has also held that a State may regulate abortion to protect the integrity of the medical profession.⁴⁴

As Congress found in the Partial Birth Abortion Act, an abortion procedure, especially a late-term abortion procedure, “confuses the medical, legal, and ethical duties of physicians to preserve and promote life, as the physician acts directly against the physical life of a child” and “undermines the public’s perception of the appropriate role of a physician.”⁴⁵ These gruesome procedures, which Congress found to have a “disturbing similarity to the killing of a newborn infant,” “implicate[] additional ethical and moral concerns.”⁴⁶ States may protect nurses, doctors, and other medical workers from performing abortions.

In a Post-*Roe* America, States Will Empower Women

American women will thrive in a world without *Roe*. Nearly 50 years of abortion-on-demand has incalculably harmed women, families, and society. And now we have an opportunity to right the wrongs that *Roe* wrought. The *Dobbs* decision gives America the opportunity to reaffirm motherhood, and in doing so, truly empower women.

⁴¹ Anne N. Broen et al., *The Course of Mental Health After Miscarriage and Induced Abortion: A Longitudinal, Five-Year Follow-up Study*. 3 BMC MED. 18 (2005).

⁴² J.R. Cogle et al., *Depression Associated with Abortion and Childbirth: A Long-Term Analysis of the NLSY Cohort*, 9 MED. SCI. MONITOR 157 (2003).

⁴³ *Gonzales*, 550 U.S. at 158.

⁴⁴ *Id.* at 157.

⁴⁵ See, e.g., Partial Birth Abortion Ban Act of 2003, S.3, 108th Cong. §§ 2(14)(J) and 2(14)(K).

⁴⁶ *Gonzales*, 550 U.S. at 158.

Abortion proponents repeatedly and wrongly imply that women are not strong enough or capable enough to manage motherhood and a job, school, or other responsibilities and interests. But Americans never fully bought into this lie. In a 2018 Knights of Columbus/Marist poll, 52% of respondents acknowledged that abortion “does more harm than good,” while only 29% believed that it improves a woman’s life.⁴⁷

And though the abortion industry still claims that abortions are necessary for women to succeed, the ongoing decline of abortions performed each year has correlated with unprecedented educational and professional advancement for women. The numbers used by pro-abortion groups to normalize abortion actually show why women do not need it to live full, meaningful, and successful lives.⁴⁸

Roe was wrong on both the Constitution and motherhood. The Court’s majority believed that motherhood “force[d]” upon women “[p]sychological harm” that taxed women’s “mental and physical health.”⁴⁹ *Casey* did nothing to improve the Court’s view of womanhood, explaining that abortion was necessary for women to achieve social and economic equality: “The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.”⁵⁰ Even the *Dobbs* dissent described unwanted motherhood as a potential “nightmare.”⁵¹

Not only is this a false view of womanhood, but it is also undermined by the very source relied on in *Casey* to make this claim. Women’s “growing labor force participation and college attendance” began “long before abortion became legal,” explains Dr. Petchesky in her *Casey*-cited work, and the “relationship between lowered fertility among women and their higher labor force participation rates” is “complex and variable” and “not subject to generalization.”⁵²

The claim that abortion is necessary for women to succeed economically “simply cannot be demonstrated.” Motherhood and success in life are not mutually exclusive.⁵³ Research spanning the

⁴⁷ Knights of Columbus and Marist College Institute for Public Opinion, *Americans’ Opinions on Abortion* (Jan. 2018), <https://www.kofc.org/un/en/resources/communications/abortion-limits-favored.pdf>.

⁴⁸ Anna Reynolds, ‘1 in 3’ is Now ‘1 in 4’: *Abortion Decline Shows Women Don’t Need Abortion*, LIVE ACTION (Jul. 12, 2018), <https://www.liveaction.org/news/abortion-decline-dont-need-abortion/>.

⁴⁹ *Roe*, 410 U.S. at 153.

⁵⁰ *Casey*, 505 U.S. at 856.

⁵¹ *Dobbs*, 2022 WL 2276808, at *72 (Breyer, J., dissenting).

⁵² Rosalind Pollack Petchesky, ABORTION AND WOMAN’S CHOICE 109, 133 n.7 (rev. ed. 1990).

⁵³ Brief for 240 Women Scholars and Professionals and ProLife Feminist Organizations as *Amicus Curiae* in Support of Petitioners at 40-41, *Jackson Women’s Health Org. v. Dobbs*, No. 19-1392 (July 29, 2021).

last fifty years shows “there is not even a consistent correlation between abortion rates and ratios and women’s participation in the economic and social life of the nation.”⁵⁴ As “[w]omen surged forward as they resorted less and less to abortion,” it proved impossible for abortion advocates “to show that abortion is the cause of women’s economic and social success.”⁵⁵ Instead, society saw mounting evidence that abortion “harmed women in the realms of personal relationships as well as in the development of law and policy accommodating women’s childbearing and parenting.”⁵⁶

Rather than abortion, American women need laws that protect them and their families. They need more social and financial support, better access to life-affirming care, and support from their family, friends, and community as they say “yes” to life.⁵⁷

Long before the *Dobbs* decision, the people’s elected representatives were taking meaningful action to provide compassionate care and life-affirming solutions to women facing unexpected pregnancies. This is especially true given that women are now better represented than ever in the political process. More than 30% of state legislators are women, compared to 5.9% when *Roe* was decided.⁵⁸ “[E]ven with highly contentious issues such as abortion that affect everyone, the increased presence of women in legislatures nationwide has improved the way those issues are debated by legislatures around the country.”⁵⁹ With strong, successful women (many of whom are mothers themselves) leading the way, today’s state legislatures are even better equipped to craft and enact laws and policies that reflect compassion for women and children on life, health, and safety issues.⁶⁰

Roe was not the pro-woman opinion that some imagine. In a patriarchal passage that abortion advocates would rather forget, *Roe* gave to a woman’s doctor the authority to choose abortion. It stated that “the attending physician, in consultation with his patient, is free to determine, without regulation by the state, that, in his medical judgment, the patient’s pregnancy should be terminated.”⁶¹

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Denise Burke, *Women Will Thrive in a World Without Roe*, THEHILL.COM (June 25, 2022), <https://thehill.com/opinion/civil-rights/3536371-women-will-thrive-in-a-post-roe-world/>.

⁵⁸ See Brief for Women Legislators and the Susan B. Anthony List as *Amicus Curiae* in Support of Petitioners at 4–6, *Dobbs v. Jackson Women’s Health Org.*, No. 19-1392 (July 29, 2021).

⁵⁹ *Id.* at 4.

⁶⁰ *Id.* at 5.

⁶¹ *Roe*, 410 U.S. at 163.

As the late-Justice Ruth Bader Ginsburg noted, *Roe* was “physician centered,” focusing on “a doctor’s freedom to practice his profession as he thinks best.”⁶² “[T]he picture that I got from [*Roe*],” Justice Ginsburg continued, “was tall doctor and little woman needing ... his advice and care.”⁶³

The *Dobbs* decision allows women, and the growing number of them serving in elected positions at all levels, to lead the charge in enacting laws and policies that uplift and empower women while also preserving the dignity of life in the womb. It presents an opportunity for America to return to a culture that values families, women, and motherhood.

In a Post-*Roe* America, Many States Will Adopt Life-Affirming Laws and Policies

States can rely on any of the multiple legitimate state interests affirmed in *Dobbs* to enact pro-life legislation. These laws can and will take a variety of forms, as the people explore the best means to further our Nation’s moral and ethical duty to respect the inherent worth of every life. Many States will likely adopt constitutional provisions protecting life and preventing state court judges from declaring there is a “right” to abortion under the State’s constitution.⁶⁴ They may also enact laws that protect unborn children with a heartbeat, prevent discrimination based on race, sex, or disability, regulate particularly dangerous and gruesome methods of abortion, and include conscience protections for healthcare professionals with moral, religious, or other objections to abortion.

Commonsense abortion regulations, including health and safety standards for abortion clinics, admitting privileges requirements, ultrasound viewing mandates, and anti-coercion provisions have also been enacted or are under consideration in several States. The state interests identified by the *Dobbs* Court clearly justify the enactment and enforcement of these and similar laws.

Roe and *Casey* kept States from protecting life prior to viability, no matter how strong their interests in protecting life. As a result, many States’ life- and motherhood- affirming protections were enjoined under *Roe* and *Casey*. States are seeking to have those injunctions lifted so that their laws can protect unborn life, maternal health and safety, and the medical profession as intended.

⁶² Justice Ruth Bader Ginsburg and Geoffrey Stone, “*Roe at 40*”, UNIV. OF CHICAGO LAW SCHOOL (May 11, 2013), <https://www.law.uchicago.edu/recordings/justice-ruth-bader-ginsburg-and-geoffrey-stone-roe-40>.

⁶³ *Id.*

⁶⁴ Four States have already added pro-life constitutional amendments (Alabama, Louisiana, Tennessee, and West Virginia). Voters in two additional States will consider similar amendments in 2022 (Kansas and Kentucky).

In a Post-*Roe* America, States Will Cultivate Greater Access to Care for Women and Their Children

In the five decades since *Roe* stripped States of their ability to meaningfully protect unborn life, America has experienced an unprecedented growth of comprehensive and innovative resources that any woman—regardless of age, race, religion, or economic status—can access to support her during pregnancy and in the months and years that follow. The *Roe* Court’s concerns about “the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it”⁶⁵ are alleviated today by a multitude of growing care options for new and expectant moms.

Resources for Women with Healthcare, Financial, or Other Needs

States often provide expectant mothers with access to information about the many benefits offered to them by both public and private organizations—including medical assistance, pre- and post-natal care, and educational services. Arizona, Indiana, Louisiana, Michigan, Mississippi, North Carolina, and Ohio are just a few of the States that provide women with, for example, “a list of public and private agencies and services available to assist a woman through pregnancy, on childbirth and while her child is dependent.”⁶⁶

Over a dozen States—from southern ones like Florida and Louisiana to northern States like Wisconsin and Pennsylvania—award grants and funding to pregnancy care centers and other private organizations that provide healthcare, material support, counseling, and other resources that women need as they care for the precious new lives they carry.⁶⁷ Minnesota awarded over \$3.3 million in 2021, while Missouri designated over \$8.6 million to these organizations.⁶⁸ Texas committed over \$100 million to private providers of social services for expectant mothers, families, and adoptive/foster parents beginning in 2022.⁶⁹

We can fully expect that both the public and private sector will continue to expand the resources available to pregnant women—something we witnessed even in the few months between

⁶⁵ *Roe*, 410 U.S. at 153.

⁶⁶ Ariz. Rev. Stat. Ann. § 36-2153.01(A)(1); *see also* Ind. Code Ann. § 16-34-2-1.1; La. Stat. Ann. § 40:1061.17; Mich. Comp. Laws Ann. § 333.17015; Miss. Code. Ann. § 41-41-33; N.C. Gen. Stat. Ann. § 90-21.82; Ohio Rev. Code Ann. § 2317.56.

⁶⁷ Jeanneane Maxon, *Fact Sheet: State Alternatives to Abortion Funding*, CHARLOTTE LOZIER INSTITUTE (June 28, 2022), <https://lozierinstitute.org/fact-sheet-state-alternatives-to-abortion-funding/>.

⁶⁸ *Id.*

⁶⁹ Jennifer Sanders, *Texas’ Alternatives to Abortion Program Impact*, KXAN (June 28, 2022), <https://www.kxan.com/news/texas-abortion/texas-alternatives-to-abortion-program-impact/>.

when *Dobbs* was argued and when the decision was handed down in June. For instance, Arkansas enacted a law this spring providing up to \$1 million in new funding for pregnancy care centers, maternity homes, adoption agencies, and other social service organizations that “provide material support and other assistance to individuals facing an unintended pregnancy.”⁷⁰

And Mississippi joined Arizona⁷¹ and Missouri⁷² to begin offering tax credits for donations to pregnancy care centers, adoption providers, and other organizations providing social services for mothers and infants. The Pregnancy Resource Act will result in up to \$3.5 million in new funding from Mississippi residents and businesses to pregnancy care centers and other qualified organizations serving women in the State.⁷³

States are also increasing resources and support for women carrying children with Down Syndrome or other disabilities or genetic abnormalities. Kansas, Idaho, Louisiana, and Utah, for instance, equip parents with information about funding, grants, and other programs to serve families with a child with Down Syndrome or similar condition.⁷⁴ Arizona provides perinatal hospice support.⁷⁵

But it is not just state governments that are expanding access to resources for women with unintended pregnancies. Private organizations—including the nearly 3,000 pregnancy care centers spread throughout the country⁷⁶—have grown year after year, multiplying the services they give to the over 1.8 million people they help each year.⁷⁷ In 2019 alone, these organizations provided nearly \$266 million in support to mothers and families through free or low-cost services they offer.⁷⁸ This included free medical services like over 730,000 pregnancy tests and 486,000 ultrasounds.⁷⁹ They also gave away

⁷⁰ 2022 Ark. Laws Act 187 (S.B. 102), <https://www.arkleg.state.ar.us/Acts/FTPDocument?path=%2FACTS%2F2022F%2FPublic%2F&file=187.pdf&ddBiumSession=2021%2F2022F>.

⁷¹ Arizona Department of Revenue, *Contributions to QCOs and QFCOs*, <https://azdor.gov/tax-credits/contributions-qcos-and-qfcos> (last visited July 8, 2022).

⁷² Missouri Department of Social Services, *Pregnancy Resource Center Tax Credit*, <https://dss.mo.gov/dfas/taxcredit/pregnancy.htm> (last visited July 7, 2022).

⁷³ HB 1685 (Miss. 2022) <http://billstatus.ls.state.ms.us/documents/2022/pdf/HB/1600-1699/HB1685SG.pdf>.

⁷⁴ Kan. Stat. Ann. § 65-1,259; Idaho Code Ann. § 39-9704; La. Stat. Ann. § 40:1109.2; Utah Code Ann. § 26-10-14.

⁷⁵ Ariz. Rev. Stat. Ann. § 36-2158.7.

⁷⁶ Moira Gaul, *Fact Sheet: Pregnancy Centers – Serving Women and Saving Lives (2020 Study)*, CHARLOTTE LOZIER INSTITUTE (July 19, 2021), <https://lozierinstitute.org/fact-sheet-pregnancy-centers-serving-women-and-saving-lives-2020/>.

⁷⁷ Charlotte Lozier Institute, *A Legacy of Life and Love: Pregnancy Centers Stand the Test of Time* at 24 (2020), https://lozierinstitute.org/wp-content/uploads/2020/10/Pregnancy-Center-Report-2020_FINAL.pdf.

⁷⁸ Charlotte Lozier Institute, *Fact Sheet: What are Pregnancy Help Organizations? (PHOs)* (May 18, 2021), <https://lozierinstitute.org/fact-sheet-what-are-pregnancy-help-organizations-phos/> (“PHO Fact Sheet”); see *A Legacy of Life and Love*, *supra* n.77, at 9, 34.

⁷⁹ PHO Fact Sheet, *supra* n.78.

more than 2 million baby outfits, 1.2 million packs of diapers, 19,000 strollers, and 30,000 car seats.⁸⁰

Joining pregnancy care centers are many other secular and religious charitable organizations furnishing food, clothing, education, job training, and even long-term housing⁸¹ to mothers, infants, and their families in their communities. More than ever, women have greater access to the resources they need and deserve to care for a new life and find personal and professional fulfillment.

Moreover, since *Roe*, the expanded availability of low-cost and even free birth control has helped women who are not yet ready to conceive a child. The Affordable Care Act includes free birth control and contraceptive counseling in all fifty States.⁸² *Dobbs* was clear that nothing in that decision affects access to contraceptives.⁸³

Further, every State has passed adoption “Safe Haven Laws.”⁸⁴ Some sources estimate that there are about two million U.S. couples ready and willing to welcome a child into their homes—which works out to thirty-six families for every one child available to adopt.⁸⁵ Many of the over 3,000 adoption providers offer pregnancy counseling, housing for expectant mothers, post-adoption support and training for adoptive parents, and even food, clothing, and educational assistance to help adoptive parents with the extra costs associated with adding a new member to their family.⁸⁶ In a post-*Roe* America, mothers can access safe, compassionate alternatives offering a caring environment for the newborn.

Dispelling Myths About the Impact of *Dobbs* on Mothers’ Health

There have been reports suggesting that women who experience ectopic pregnancies,

⁸⁰ *A Legacy of Life and Love*, *supra* n.77, at 16.

⁸¹ *PHO Fact Sheet*, *supra* n.78.

⁸² *FACT SHEET: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services*, THE WHITE HOUSE (July 8, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/08/fact-sheet-president-biden-to-sign-executive-order-protecting-access-to-reproductive-health-care-services/>.

⁸³ *Dobbs*, 2022 WL 2276808, at *23, 39 (chiding the dissent for “stok[ing an] unfounded fear that our decision will imperil” the right to access contraceptives and emphasizing that “rights regarding contraception . . . are inherently different from the right to abortion because the latter (as we have stressed) uniquely involves what *Roe* and *Casey* termed ‘potential life’”); *64 (Kavanaugh, J., concurring) (“I emphasize what the Court today states: Overruling *Roe* does *not* mean the overruling of those precedents [governing contraceptives], and does *not* threaten or cast doubt on those precedents.”) (emphasis in original).

⁸⁴ Hannah Howard, *Safe Haven Laws: An Invitation to Life*, CHARLOTTE LOZIER INSTITUTE (Dec. 1, 2021), <https://lozierinstitute.org/safe-haven-laws-an-invitation-to-life/>.

⁸⁵ *How Many Couples Are Waiting to Adopt a Baby?*, AMERICAN ADOPTIONS, https://www.americanadoptions.com/pregnant/waiting_adoptive_families (last visited July 11, 2022).

⁸⁶ *PHO Fact Sheet*, *supra* n.78.

miscarriages, or other pregnancy complications will be unable to receive the medical services they need to treat these conditions because of *Dobbs*. These reports are false. Every State has a medical emergency exception to abortion laws when the life of the mother is in jeopardy.

Ectopic Pregnancies: An ectopic pregnancy is the condition where an embryo implants outside the uterus. In this circumstance, it is impossible for the child to survive. Ectopic pregnancies create a life-threatening, medical emergency for the mother. Treatment for an ectopic pregnancy is not an abortion under any existing or proposed state law.⁸⁷

Miscarriages: Neither a miscarriage itself, nor any medical procedure to treat a miscarriage, is an abortion under any State’s laws. A miscarriage occurs when the unborn child dies in the womb from natural causes, resulting in the termination of the pregnancy. While the treatment of a miscarriage may involve use of the drug misoprostol or a surgical procedure like one used in some first-trimester abortions,⁸⁸ removal of a child who died of natural causes in the uterus after miscarriage cannot satisfy any medical or legal definition of abortion.⁸⁹

Pregnancy Complications: Even in the event of unexpected, rare complications during a pregnancy, medical interventions intended to preserve the mother’s life are not abortions because they are not done with an intent to kill the child. Instead, medical personnel work to save both the mother and child, usually by delivering the baby via caesarian-section and rendering appropriate treatment to them both.

Conclusion

Roe v. Wade and *Planned Parenthood v. Casey* were egregiously wrong and have done incalculable damage to American women and their families, to unborn children, to the medical profession, and to our system of constitutional law. Those decisions shackled States to a view of life and of women decades out of date. *Dobbs* is the first step in rectifying the wrongs of *Roe* and *Casey*.

⁸⁷ Even Planned Parenthood agrees that “[t]reating an ectopic pregnancy isn’t the same thing as getting an abortion. . . . The medical procedures for abortions are not the same as the medical procedures for an ectopic pregnancy.” *Ectopic Pregnancy*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/pregnancy/ectopic-pregnancy> (last visited July 7, 2022).

⁸⁸ *Dilation and curettage (D&C)*, MAYO CLINIC, <https://www.mayoclinic.org/tests-procedures/dilation-an-d-curettage/about/pac-20384910> (last visited July 7, 2022).

⁸⁹ Again, Planned Parenthood recognizes the clear difference between abortion and miscarriage because “[m]iscarriage is when an embryo or fetus dies. . . .” *What is a Miscarriage?*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/pregnancy/miscarriage> (last visited July 7, 2022).

Relying on the interests identified by the *Dobbs* majority that support life, empower women, and protect integrity in healthcare, the people through their elected representatives will now—as they did before *Roe*—pass legislation that protects mothers and their unborn children. Together, we must work to promote good policies that strengthen families, make childcare affordable, expand accountability in child support, encourage fathers to more actively parent, provide maternity/paternity leave, and streamline foster and adoption. Regardless of political views, we can work side by side to materially, financially, and otherwise support women. *Dobbs* has given America a unique opportunity to show the world what it means to respect life and to build a culture of life where women, their children, and their communities thrive.

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