

**Written Questions for the Record from the Senate Committee on the Judiciary for the  
Hearing: “Texas’s Unconstitutional Abortion Ban and the Role of the Shadow Docket”  
September 29, 2021**

**Fatima Goss Graves**

*Senator Durbin Question:*

1. You noted in your testimony and in your responses to questions that state legislatures continue to pass severe restrictions on abortion. As we have seen in Texas with S.B. 8, one of the most restrictive laws in the country, the effects on women’s rights and access to reproductive care have been devastating.

**Why is having access to quality reproductive care important for women to participate fully in our economy and our society?**

The Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* has been devastating for abortion access across the country. Multiple states have enacted or are enforcing total bans on abortion affecting millions across the country.<sup>1</sup> The decision has wreaked legal and public health chaos, even as the full extent of the harm has yet to be realized. As studies and people’s real-life experiences have demonstrated, being forced to continue a pregnancy jeopardizes people’s health and results in substantial economic, educational, and professional burdens. Such consequences are particularly detrimental to those who work in low-paid jobs or live in poverty, who are disproportionately people of color.

Access to abortion has enabled people to invest more in their human capital and careers, enabling women to complete high school and higher levels of education, improve their labor force participation, and secure their economic independence.<sup>2</sup> After legalization of abortion permitted greater access to the care in the 1970s, women—particularly Black women—experienced significant increases in school graduation and employment rates.<sup>3</sup> Research shows that when women are able to obtain an abortion, they are less likely to experience economic hardship and insecurity than those who are denied an abortion.<sup>4</sup> Compared to women who obtained abortion care, those who were denied such care and subsequently gave birth were nearly four times more likely to live below the federal poverty line<sup>5</sup> and the majority reported that five years later, they

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<sup>1</sup> NPWF, STATE ABORTION BANS COULD HARM NEARLY 15 MILLION WOMEN OF COLOR (July 2022), [https://www.nationalpartnership.org/our-work/economic-justice/reports/state-abortion-bans-harm-woc.html?utm\\_source=other&utm\\_medium=other&utm\\_campaign=hj\\_dobbs](https://www.nationalpartnership.org/our-work/economic-justice/reports/state-abortion-bans-harm-woc.html?utm_source=other&utm_medium=other&utm_campaign=hj_dobbs); CENTER FOR REPRODUCTIVE RIGHTS, WHAT IF ROE FELL? <https://reproductiverights.org/maps/what-if-roe-fell/>.

<sup>2</sup> Anna Bernstein & Kelly M. Jones, Ctr. on The Econ. of Reprod. Health, The Economic Effects of Abortion Access: A Review of the Evidence (2019), [https://iwpr.org/wp-content/uploads/2020/07/B379\\_Abortion-Access\\_rfina.pdf](https://iwpr.org/wp-content/uploads/2020/07/B379_Abortion-Access_rfina.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> Diana Greene Foster et al., Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States, 108 AM. J. PUB. HEALTH 407, 412 (2018).

<sup>5</sup> Kate Gibson, *Women Denied Abortions Live in Financial Distress Years Later, Study Finds*, CBS NEWS, (Jan. 20, 2020, 8:35 AM), <https://www.cbsnews.com/news/women-denied-abortions-in-financial-distress-years-later-study-finds/>.

were still not able to pay for basic expenses like housing, transportation, and food.<sup>6</sup> Women living in states with greater access to reproductive health services such as Medicaid coverage of abortion have been found to have higher median wages, more likely to be managers, and less likely to work part-time jobs.<sup>7</sup>

In short, abortion restrictions limit women’s future educational and employment opportunities and thereby deny their ability “to participate equally” in society, reinforcing sex stereotypes about the role of women in society.<sup>8</sup>

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*Senator Kennedy Questions:*

1. You were a witness in front of the House Committee on Oversight and Reform on November 14, 2019. The Hearing was entitled “Examining State Efforts to Undermine Access to Reproductive Health Care.” You said in your written testimony the following statement: “[L]egislators passing restrictions on abortion want to control the lives and futures of women, denying them equality.”
  - Do you still believe this statement that legislators passing restrictions on abortion want to control the lives and futures of women, denying them equality, is true?

Women can’t be truly equal if they don’t have control over their own bodies and reproductive lives, including the decision about whether to have an abortion. The right to control one’s body, and by extension, one’s destiny, is central to the principles of equality guaranteed by the Constitution. This is a fact demonstrated by decades of evidence and people’s own lived experiences, and it is something that the general public understands. According to a recent poll, of the six in 10 voters who want abortion legal in all or most cases, overwhelming majorities said the Supreme Court’s *Dobbs* decision raised a host of concerns, including the loss of women’s rights (86%) and men wanting to control women (77%).

- What objective evidence, other than any subjective inferences, did and do you have that it is the desire of such legislators to control the lives of women?

In the decade before *Roe v. Wade* was overturned, lawmakers passed more than 500 abortion restrictions. The impact of those restrictions was evident – extensive research and the real-life experiences of pregnant people and families make clear that abortion restrictions and bans hurt

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<sup>6</sup> *Id.*

<sup>7</sup> Kate Bahn et al., Ctr. For Am. Progress, Linking Reproductive Health Care Access to Labor Market Opportunities For Women 13-17, 18 (2017), [https://cdn.Americanprogress.org/content/uploads/2017/11/16060404/110817\\_ReproRightsEconOpportunity-report1.pdf?\\_ga=2.84593433.1649302871.1631567668-707221933.1627661740](https://cdn.Americanprogress.org/content/uploads/2017/11/16060404/110817_ReproRightsEconOpportunity-report1.pdf?_ga=2.84593433.1649302871.1631567668-707221933.1627661740).

<sup>8</sup> *Planned Parenthood v. Casey*, 505 U.S. 833, 856 (1992).

women.<sup>9</sup> Legislators know about these impacts, but they are moving forward with abortion bans, resting on and perpetuating outmoded assumptions about the proper role of women in society. Abortion bans and restrictions limit women’s autonomy and dignity as a class by retreating to the now-proscribed notion that “the female [is] destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas.”<sup>10</sup>

Stereotypes relegating women to the role of “mothers or mothers-to-be” but “presuming a lack of domestic responsibilities for men” are “mutually reinforcing” and “create[ ] a self-fulfilling cycle of discrimination that force[s] women to continue to assume the role of primary family caregiver.”<sup>11</sup> Just recently, on the same day that the West Virginia legislature passed a near-total ban on abortion, the West Virginia House of Representatives passed an accompanying resolution that included a specific discussion about women’s role in society. The Resolution extolled motherhood as the “most profound and important vocation.”<sup>12</sup> It described the impact of abortion rights as a ploy “to devalue motherhood into a mere option, without privilege or special importance.”<sup>13</sup> Inherent in this resolution, and the abortion ban, is stereotyping of women and overbroad generalizations about the sexes, along with a distrust of women’s ability to control their lives and make decisions about their bodies. The resolution reflects the legislators’ desire to decide for women that their most valuable role in society is to be mothers, unlike men who can decide for themselves what role or roles they will play.

- What objective evidence, other than any subjective inferences, did and do you have that it is the desire of such legislators to deny women equality?

The research on the impact of abortion bans and restrictions is clear – women’s ability to participate equally in society is directly tied to their ability to control their reproductive lives. The right to control one’s body, to determine when and whether you are pregnant, is central to the principles of equality guaranteed by the Constitution. As early as 1891, the Supreme Court held that “[n]o right is held more sacred, or is more carefully guarded by the common law, than

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<sup>9</sup> See, e.g., Diana Greene Foster et al., *The Turnaway Study*, <https://www.ansirh.org/research/ongoing/turnaway-study>; Anna Bernstein & Kelly M. Jones, Ctr. On The Econ. Of Reprod. Health, *The Economic Effects of Abortion Access: A Review of the Evidence* (2019), [https://iwpr.org/wp-content/uploads/2020/07/B379\\_Abortion-Access\\_rfina.pdf](https://iwpr.org/wp-content/uploads/2020/07/B379_Abortion-Access_rfina.pdf); Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 AM. J. PUB. HEALTH 407 (2018); Kate Bahn et al., Ctr. For Am. Progress, *Linking Reproductive Health Care Access To Labor Market Opportunities For Women* 13. (2017), [https://cdn.americanprogress.org/content/uploads/2017/11/16060404/110817\\_ReproRightsEconOpportunity-report1.pdf?\\_ga=2.84593433.1649302871.1631567668-707221933.1627661740](https://cdn.americanprogress.org/content/uploads/2017/11/16060404/110817_ReproRightsEconOpportunity-report1.pdf?_ga=2.84593433.1649302871.1631567668-707221933.1627661740); Adam Sonfield et al., GUTTMACHER INST., *The Social And Economic Benefits Of Women’s Ability To Determine Whether And When To Have Children* 24 (2013), [https://www.guttmacher.org/sites/default/files/report\\_pdf/socioeconomic-benefits.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/socioeconomic-benefits.pdf).

<sup>10</sup> *Stanton v. Stanton*, 421 U.S. 7, 14–15 (1975).

<sup>11</sup> *Nevada Dep’t of Human Res. v. Hibbs*, 538 U.S. 721, 736 (2003).

<sup>12</sup> H.R. Res. 302, 85th Leg., 2nd Sess. (W.V. 2022)

[http://www.wvlegislature.gov/Bill\\_Status/bills\\_text.cfm?billdoc=HR302+intr.htm&yr=2022&sesstype=3X&i=302&houseorig=h&billtype=r&fbclid=IwAR2QZJpE8SqzfSdyWZJZ1jkd6n98UEdT7xbp6wyyz4OELjLWBEotUGeiXU0](http://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=HR302+intr.htm&yr=2022&sesstype=3X&i=302&houseorig=h&billtype=r&fbclid=IwAR2QZJpE8SqzfSdyWZJZ1jkd6n98UEdT7xbp6wyyz4OELjLWBEotUGeiXU0).

<sup>13</sup>*Id.*

the right of every individual to the possession and control of his own person, free from all restraint or interference of others”<sup>14</sup> And for over seventy years, the Supreme Court recognized that people’s decisions about their bodies, including whether and when to have children, are among “the most intimate and personal choices a person may make in a lifetime,” and thus central to the concepts of autonomy, liberty, and equality.<sup>15</sup>

As mentioned above, pregnant women who are able to get the abortion care they seek are less likely to experience economic hardship and insecurity than those women who are denied abortion care.<sup>16</sup> Forty percent of women cite financial concerns as a reason for an abortion, and nearly 30% cite the need to focus on parenting existing children.<sup>17</sup> Childbirth expenses alone can reach tens of thousands of dollars,<sup>18</sup> and pregnant people without health insurance (disproportionately women of color)<sup>19</sup> may bear these costs in their entirety. The total costs of raising a child are substantial, accounting for on average 27% of low-income families’ gross income.<sup>20</sup> For a pregnant person who already has children, raising additional children means fewer resources for each child’s needs.<sup>21</sup>

Pregnant workers also face workplace discrimination based on their pregnancy and based on gender stereotypes, such as the stereotype that mothers are less competent and committed to their jobs.<sup>22</sup> Over 26,600 pregnancy discrimination charges were filed with the Equal Employment Opportunity Commission and state-level agencies between 2012 and 2016.<sup>23</sup> Pregnant workers often have requests for reasonable accommodation denied and are then fired, forced to quit, or

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<sup>14</sup> *Union Pacific R. Co. v. Botsford*, 141 U. S. 250, 251 (1891).

<sup>15</sup> *Casey*, 505 U.S. at 851; *see also Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

<sup>16</sup> Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 AM. J. PUB. HEALTH 407, 412 (2018).

<sup>17</sup> M. Antonia Biggs et al., *Understanding Why Women Seek Abortions in the US*, BMC Women’s Health, July 2013, at 5-6.

<sup>18</sup> *See* Truven Health Analytics, *The Cost of Having a Baby In The United States* 6 (2013), <https://www.Nationalpartnership.org/our-work/resources/health-care/maternity/archive/the-cost-of-having-a-baby-in-the-us.pdf>.

<sup>19</sup> Nat’l P’ship For Women & Fams., *Despite Significant Gains, Women of Color Have Lower Rates Of Health Insurance Than White Women* 1-2 (2019), <https://www.nationalpartnership.org/our-work/resources/health-care/womenof-color-have-lower-rates-of-health-insurance-than-whitewomen.pdf>.

<sup>20</sup> Mark Lino et al., U.S. Dep’t of Agric., *Expenditures on Children By Families, 2015*, at 15 (2017), [https://fnsprod.azureedge.net/sites/default/files/crc2015\\_March2017\\_0.pdf](https://fnsprod.azureedge.net/sites/default/files/crc2015_March2017_0.pdf).

<sup>21</sup> *See, e.g.*, Adam Sonfield et al., Guttmacher Inst., *The Social And Economic Benefits Of Women’s Ability To Determine Whether And When To Have Children* 24 (2013), [https://www.guttmacher.org/sites/default/files/report\\_pdf/socialeconomic-benefits.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/socialeconomic-benefits.pdf).

<sup>22</sup> *See* U.S. Equal Emp. Opportunity Comm’n, *EEOC-CVG-2015- 1, Enforcement Guidance on Pregnancy Discrimination And Related Issues* (2015), <https://www.Eeoc.gov/laws/guidance/enforcement-guidance-pregnancydiscrimination-and-related-issues>; Stephen Benard et al., *Cognitive Bias and the Motherhood Penalty*, 59 HASTINGS L.J. 1359, 1369-72 (2008).

<sup>23</sup> Carly Mccann & Donald Tomaskovic-Devey, Ctr. For Emp. Equity, Univ. Of Mass. Amherst, *Pregnancy Discrimination at Work: An Analysis of Pregnancy Discrimination Charges Filed With The U.S. Equal Employment Opportunity Commission* 2 (2021), <https://www.umass.edu/employment/equity/sites/default/files/Pregnancy%20Discrimination%20at%20Work.pdf>.

pushed into unpaid leave.<sup>24</sup> Women of color and immigrant women, particularly Black and Latin women, are at greater risk given their overrepresentation in jobs where pregnancy accommodations are often denied, such as retail, food services, and health care jobs.<sup>25</sup> Black and Latinx pregnant workers are also more likely to have physically demanding jobs, which carry an increased risk of preterm delivery and low birth weight, both of which can be associated with life-long health conditions for the child.<sup>26</sup> Pregnant women have lower employment rates than nonpregnant women,<sup>27</sup> and may also face disparate terms and conditions of employment, unequal access to benefits, interference with promotions, or harassment.<sup>28</sup> Additionally, having a child often then further limits an individual's ability to continue working and advance professionally. Mothers and pregnant people can face a “maternal wall” of bias and discrimination in the workplace.<sup>29</sup> They are less likely to be hired, promoted, or trained for management positions and may be viewed as less competent and committed to their work.<sup>30</sup>

Finally, our country is in a brutal – and preventable – maternal mortality crisis, disproportionately impacting Black and Native women. Implicit bias, poverty, and lack of access to health care all contribute to this crisis.<sup>31</sup> A recent study found that more than 80% of maternal deaths in the United States were preventable.<sup>32</sup> Individuals should have the power to control their body and destiny, particularly given the life-long, and potentially life-ending, ramifications of a

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<sup>24</sup> See Nat'l Women's L. Ctr. (NWLC), *The Pregnant Workers Fairness Act: Making Room for Pregnancy on The Job 1* (2021), <https://nwlc.org/wpcontent/uploads/2021/02/PWFA-Making-Room-for-Pregnancyv4.2-2021.pdf>.

<sup>25</sup> See Nat'l Latina Inst. for Reprod. Health & NWLC, *Accommodating Pregnancy on The Job: The Stakes For Women Of Color And Immigrant Women 1* (2014), [http://nwlc.org/sites/default/files/pdfs/the\\_stakes\\_for\\_woc\\_final.pdf](http://nwlc.org/sites/default/files/pdfs/the_stakes_for_woc_final.pdf).

<sup>26</sup> Jasmine Tucker, Sarah Javaid, Sarah David Heydemann, Nat'l Women's L. Ctr., *Pregnant Workers Need Accommodations for Safe and Healthy Workplaces 1* (Oct. 2021), <https://nwlc.org/wp-content/uploads/2021/11/Pregnant-Workers-by-the-Numbers-2021-v4.pdf>.

<sup>27</sup> Jennifer Bennett Shinall, *The Pregnancy Penalty*, 103 MINN. L. REV. 749, 752 (2018). Bennett Shinall clarifies that “[a]fter all other underlying differences between pregnant and nonpregnant women are taken into account, pregnant women are 4.2 percentage points less likely to be employed than nonpregnant women. This gap in employment outcomes—a gap that cannot be explained by voluntary choice, demographics, or educational characteristics—is the pregnancy penalty.” See *id.*

<sup>28</sup> See Mccann & Tomaskovic-Devey, *supra* note 25, at 15-17; EEOC, *supra* note 24; Dina Bakst et al., *A Better Balance, Long Overdue: It Is Time For The Federal Pregnant Workers Fairness Act 13-16* (2019), <https://www.abetterbalance.org/wp-content/uploads/2019/05/LongOverdue.pdf>; April J. Anderson, Cong. Rsch. Serv., R46821, *Pregnancy And Labor: An Overview Of Federal Laws Protecting Pregnant Workers 12-15* (2021), <https://crsreports.congress.gov/product/pdf/R/R46821>.

<sup>29</sup> See, e.g., Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job*, 26 HARV. WOMEN'S L.J. 77, 77- 78, 90-101 (2003).

<sup>30</sup> See, e.g., Shelley J. Correll et al., *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOCIO. 1297, 1316, 1330 (2007).

<sup>31</sup> Michael Ollove, *A Shocking Number of U.S. Women still Die of Childbirth. California is Doing Something About That.*, WASH. POST (Nov. 4, 2018, 12:00 PM), [https://www.washingtonpost.com/national/health-science/a-shocking-number-of-us-women-still-die-from-childbirth-california-is-doing-something-about-that/2018/11/02/11042036-d7af-11e8-a10f-b51546b10756\\_story.html](https://www.washingtonpost.com/national/health-science/a-shocking-number-of-us-women-still-die-from-childbirth-california-is-doing-something-about-that/2018/11/02/11042036-d7af-11e8-a10f-b51546b10756_story.html); Bani Saluja & Zenobia Bryant, *How Implicit Bias Contributes to Racial Disparities in Maternal Morbidity and Mortality in the United States*, J. WOMEN'S HEALTH 270 (2021), <https://doi.org/10.1089/jwh.2020.8874>.

<sup>32</sup> Press Release, Center for Disease Control and Prevention, *Four in 5 Pregnancy-Related Deaths in the U.S. are Preventable*, (Sept. 19, 2022) <https://www.cdc.gov/media/releases/2022/p0919-pregnancy-related-deaths.html>.

pregnancy. The decision to remain pregnant belongs to no one other than the person carrying that pregnancy.

None of these points of data, reflections of lived experience, and impact of bans is secret. Legislators know about the impacts of being denied bodily autonomy with such profound life-long consequences. Legislators know of the emotional toll abortion bans are having on individuals across the country as they are forced to contend with a gutting of health care access that is central to their future, dignity, and equality. Moreover, when legislating these abortion restrictions, lawmakers know they fall disproportionately on women. It is women who bear the brunt of the fear and real harm these laws inflict. It is women who lawmakers seek to control the roles they should play in society. These laws target women. The intent of lawmakers to make women less under the eyes of the law could not be clearer.

- This congress I introduced S. 86, the “Prenatal Nondiscriminatory Act” or “PRENDA.” The bill would make it a crime to abort a child based on his or her gender. Generally, do you support legislation banning an abortion if it is sought because of the gender of the child?

I trust individuals to make the right health care decision for themselves and their families. Throughout a pregnancy, a person’s health must drive important medical decisions. Patients must be able to trust their doctors to keep their personal and private information confidential. These laws would interfere with open, honest communication between doctors and patients by forcing doctors to report a patient’s motivations for seeking care to authorities. Moreover, such policies may force providers to rely on stereotypes and bias in scrutinizing certain patients for their reasons for seeking medical care. Politicians’ involvement will not improve these relationships and should not be policing patients’ health care decisions – or requiring providers to police their patients’ decision making. Abortion restrictions of all kinds prevent people from controlling their own lives and living with dignity.

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*Senator Leahy Question:*

1. The Women’s Health Protection Act is one way that Congress can act to ensure an individual’s constitutional rights are protected. I am a proud cosponsor of this bill. I simply cannot comprehend the notion that legislators would know best when it comes to a personal health decision between a woman and her doctor.
  - a. **Why is the Texas abortion ban such a severe intrusion on a woman’s right to make her own healthcare decisions? Does it chill a woman’s ability to seek information and action to address her health care needs?**

Texas SB 8 created a vigilante bounty hunter scheme. The Supreme Court endorsed this scheme even though the law conflicted with foundational constitutional principles. Over the past year, Texans have lived a nightmare as abortion access shut down across the state for the vast majority

of those seeking abortion care. Abortion bans, like the one in Texas, chill the ability of patients to seek information to address their health care needs because of the fear that their family, friends, religious leaders, trusted teachers, and abortion provider and staff could face costly lawsuits for helping them seek care or provide that care.

**b. Why is it important to create a federal statutory right for health care providers to provide abortion care?**

Within two weeks of the *Dobbs* decision, 11 states had abortion bans in effect, and in three additional states, clinics stopped providing abortion due to legal uncertainty. In other words, within just 14 days, 14 states were without abortion care, meaning 24.5 million women could no longer get this essential health care in their state.<sup>33</sup> About 11 million of these people are women of color and 1.9 are women with disabilities. All told, nearly half of states are expected to ban abortion. The *Dobbs* decision has created a patchwork system of abortion care and whether one can receive an abortion will depend directly on what state you live in. The only way to comprehensively respond to the crisis is for a clear federal right to abortion that ensures your right to abortion care no matter your zip code.

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*Senator Blackburn's Questions:*

1. When you testified before the House in 2019, you stated that “the legislators passing restrictions on abortion want to control the lives and futures of women, denying them equality.” What weight do you give to the rights of unborn girls, who are disproportionately targeted for abortion?

Every day I fight for the rights of girls and women across the country – in the schools, at work, and in society. That includes their right to make decisions for themselves, including when, whether or how to start a family. Lawmakers have no place interfering in someone else’s pregnancy decisions.

2. I support protecting life. In light of your statement to the House, do you believe that I—and the other members who support the right to life—are trying to deny women equality?

We know that access to reproductive health care – including abortion – is vital to gender justice and equality. Access to abortion is a key part of a person’s liberty, equality, and economic

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<sup>33</sup> Calculations based off of: NPWF, STATE ABORTION BANS COULD HARM NEARLY 15 MILLION WOMEN OF COLOR (July 2022) (providing state-by-state data for women of reproductive age, including states where abortion is now banned), [https://www.nationalpartnership.org/our-work/economic-justice/reports/state-abortion-bans-harm-woc.html?utm\\_source=other&utm\\_medium=other&utm\\_campaign=hj\\_dobbs](https://www.nationalpartnership.org/our-work/economic-justice/reports/state-abortion-bans-harm-woc.html?utm_source=other&utm_medium=other&utm_campaign=hj_dobbs).

security. Everyone, no matter where they live or their financial means, should have access to abortion when they need it in their communities without stigma, shame, or barriers. To achieve equality, individuals need to have control over their bodies and the freedom to make decisions about their bodies, lives, and futures. The *Dobbs* decision and subsequent abortion bans deny that to women.

Lives have been put into jeopardy by these bans. As discussed above, our country is facing a maternal mortality crisis that has a disproportionate impact on Black and Native women. Women can also face health complications for long periods, sometimes even a lifetime, following a pregnancy. Given that pregnancy carries inherent risk,<sup>34</sup> forcing people to carry pregnancies to term against their will threatens their health and lives in ways they do not agree to and would have done differently if they had been provided the ability to decide. Take, for example, the story of a woman in Texas who was pregnant with twins when she miscarried one of them.<sup>35</sup> Because of concerns she could face a life-threatening infection while pregnant with the remaining fetus, she sought an abortion. However, because of the ban on abortion, she had to wait weeks and was not given the care until she was experiencing sepsis and an acute kidney injury. Compounding these health- and life-threatening harm is the indignity of being denied the ability to decide something so consequential in their lives.

3. In direct response to pro-life policy victories like the Texas Heartbeat Act, the House passed the Women’s Health Protection Act, a radical piece of legislation that goes far beyond merely codifying *Roe v. Wade*. In your written testimony, you urged the Senate to pass this legislation. One of the most reprehensible provisions in this legislation is the ban on informed consent requirements and requirements that women be given the opportunity to view an image of their unborn child or listen to their child’s heartbeat. As the sponsor of the Women’s Right to Know Act, I am stunned that a bill that purports to protect women’s health would have such a prohibition. Doesn’t a woman have the right to know about the medical risks associated with an abortion procedure?

Abortion is one of the safest medical procedures. Lawmakers opposed to abortion care should not be interfering in the decisions people are making or in the care being provided. As the National Academies of Sciences, Engineering and Medicine has said, it is medically unnecessary abortion restrictions – like forcing providers to recite a mandated script that includes lies or forcing people to undergo medically unnecessary ultrasounds – that have a negative impact on the quality-of-care patients receive.<sup>36</sup>

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<sup>34</sup> *Pregnancy Complications*, CENTERS FOR DISEASE CONTROL AND PREVENTION (April 4, 2022), <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-complications.html>.

<sup>35</sup> Monica Hesse, *One Month in, Abortion Bans are Hell on Earth*, WASH. POST. (July 22, 2022, 7:00 AM), <https://www.washingtonpost.com/lifestyle/2022/07/22/abortion-ban-effects/>.

<sup>36</sup> Committee on Reproductive Health Services, *The Safety and Quality of Abortion Care in the United States*, THE NAT’L ACADS. OF SCIS. ENG’R MED., 1, 77, 163 (2018), <https://doi.org/10.17226/24950>.

4. Doesn't a woman have a right to know the probable gestational age of her child before making the decision to have an abortion?

Health care providers already must provide patients with accurate information about treatment options and their risks and benefits as part of the informed consent process. Moreover, pregnant women seeking abortion know what is best for them and have thought through their abortion procedure when they seek the care. A woman should be able to make personal medical decisions throughout pregnancy without political interference. And doctors should be able to practice care according to evidence-based standards without political interference. Throughout a pregnancy, the patient's health – not lawmakers' views – should drive important medical decisions.

5. Doesn't a woman have the right to know whether her child has a heartbeat, or that her child has the ability to feel pain?

This type of question is a misrepresentation of abortion care and only reinforces that a woman should be able to make personal medical decisions throughout pregnancy without political interference. And doctors should be able to practice care according to evidence-based standards without political interference. Throughout a pregnancy, the patient's health – not lawmakers' views – should drive important medical decisions.

6. The Supreme Court recently declined to stop the Texas Heartbeat Act from going into effect because, it explained, courts may only issue injunctions against individuals enforcing laws, not the laws themselves. If you disagree with that decision, could you identify for the Committee an example of when an American court has enjoined a statute rather than an individual?

The Supreme Court failed to preserve the rule of law in *Whole Woman's Health v. Jackson*. I am unable to think of an example in recent history where a state so brazenly sought to flout the Constitution and federal law. That the Court failed to intervene and protect the rule of law and instead greenlighted such a nefarious enforcement mechanism will only further embolden states to flout the Constitution where they disagreed with the protections. There was and is no principled end to that approach and has ultimately destabilized our understanding of the rule of law and federalism. Even before the Supreme Court's devastating *Dobbs* decision, SB 8 effectively ended abortion access for most Texans, and has been particularly damaging to people of color, especially Black women, people with low incomes, those living in rural areas, and immigrants.

7. Justices Breyer and Kagan agreed with the Chief Justice that the questions concerning whether the law could be enjoined were "particularly difficult" and that defendants "may

be correct.” Do you disagree with Justices Breyer and Kagan? If so, please explain why they are wrong.

When the Supreme Court refused to stop SB8 from taking effect, the Justices in the majority refused to uphold the rule of law and our Constitution. In a dissenting opinion that Justices Kagan and Breyer joined, Justice Sotomayor made clear how wrong the majority was to greenlight SB8:

The Court should have put an end to this madness months ago, before S. B. 8 first went into effect. It failed to do so then, and it fails again today. I concur in the Court’s judgment that the petitioners’ suit may proceed against certain executive licensing officials who retain enforcement authority under Texas law, and I trust the District Court will act expeditiously to enter much-needed relief. I dissent, however, from the Court’s dangerous departure from its precedents, which establish that federal courts can and should issue relief when a State enacts a law that chills the exercise of a constitutional right and aims to evade judicial review.<sup>37</sup>

The dissenters could not have been clearer that the Court was gravely wrong in endorsing the SB8 scheme in contravention of the Constitution and federal law. As a result of the Court’s action, millions of Texans lost a right that was fundamental to our health, lives, futures, and society for nearly 50 years, just as everyone across the country did in June when the Supreme Court issued its devastating decision in *Dobbs v. Jackson Women’s Health Organization*. These decisions will be remembered for the Court’s clear abandonment of the rule of law and for its raw exercise of power. For further discussion of how SB8 undermined the rule of law, see additional discussion in the case briefing as well as an amicus brief that the NAACP Legal Defense Fund filed, which the National Women’s Law Center joined.<sup>38</sup>

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<sup>37</sup> *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2317-2318 (2022) (Breyer, Sotomayor, and Kagan, JJ., dissenting).

<sup>38</sup> Legal Defense Fund, *LDF Submits Amicus Brief Highlighting Unconstitutionality of Texas’ S.B. 8*, (Oct.29, 2021), <https://www.naacpldf.org/press-release/ldf-submits-amicus-brief-highlighting-unconstitutionality-of-texas-s-b-8/>; Center for Reproductive Rights, *Reproductive Justice Organizations Amicus Brief in Dobbs v. Jackson Women’s Health*, (Sept. 21, 2021), <https://reproductiverights.org/reproductive-justice-organizations-amicus-brief-in-dobbs-v-jackson-womens-health/#:~:text=Reproductive%20Justice%20Organizations%20Amicus%20Brief%20in%20Dobbs%20v.,the%20Center%27s%20challenge%20to%20Mississippi%27s%20pre-viability%20abortion%20ban.>