JUSTICE FOR NONE: THE POTENTIAL RISE OF U.S. MATERNAL MORTALITY RATES AND DISPARITIES AS FUELED BY *DOBBS V. JACKSON*

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I. Introduction

Maternal mortality—the death of a person while pregnant or within forty-two days of the termination of pregnancy—is one of the United States' most serious and devastating issues, especially when put in the global context, as the US has the highest maternal mortality rate among developed countries.[1] In recent years, maternal mortality has also been on the rise—in 2021, the overall maternal mortality rate was 32.9 per 100,000 live births in comparison with 23.8 in 2020 and 20.1 in 2019.[2] There are also significant racial and socioeconomic disparities within these rates, with non-Hispanic Black women being more than three times more likely to have a maternal death than White women.[3] The *Dobbs v. Jackson* decision, which reversed *Roe v. Wade* in America and subsequently removed the right of pregnant people to terminate a pregnancy in the first two trimesters of gestation, is concerning for the outlook of the United States' future maternal mortality rate. This Paper argues that, in a post-*Dobbs v. Jackson* world, 1) both the number and risk of pregnancies in the United States will increase, and 2) disparities in maternal mortality based on racial and socioeconomic class lines will also likely increase. While the recentness of the decision and the subsequent difficulty synthesizing data on this topic makes quantitative analysis difficult,[4] this Paper provides qualitative analysis and an exploration of past and potential future trends supporting this thesis. To mitigate these issues, this Paper argues that Congress should codify *Roe v. Wade* or state legislatures should codify greater specificity into their abortion ban restrictions and exceptions, tax breaks and greater funds should be allocated to healthcare organizations with robust prenatal and reproductive care programs in underprivileged areas, and postpartum care should be strengthened to achieve more equitable outcomes.

Despite our position as the wealthiest country in the world,[5] and being the nation that spends the most on healthcare,[6] the maternal mortality rate in the United States of America is the

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[1] *See Maternal Mortality and Maternity Care in the U.S. Compared to 10 Countries*, THE COMMONWEALTH FUND, https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/maternal-mortality-maternity-care-us-compared-10-countries (last visited Dec. 3, 2023).

[2] *"Maternal Mortality on the Rise,"* YALE MEDICINE, https://www.yalemedicine.org/news/maternal-mortality-on-the-rise (last visited Dec. 3, 2023).

[3] *See e.g.* "*US Ranks Worst in Maternal Care, Mortality Compared With 10 Other Developed Nations,"* THE AMERICAN JOURNAL OF MANAGED CARE, https://www.ajmc.com/view/us-ranks-worst-in-maternal-care-mortality-compared-with-10-other-developed-nations (last visited Dec. 7, 2023).

[4] *See* Kavitha Surana, *"Maternal Deaths Are Expected to Rise Under Abortion Bans, but the Increase May Be Hard to Measure,"* PROPUBLICA, https://www.propublica.org/article/tracking-maternal-deaths-under-abortion-bans (last visited Dec. 13, 2023).

[5] "Richest Countries in the World," GLOBAL CITIZEN SOLUTIONS, https://www.globalcitizensolutions.com/richest-countries-in-the-world/ (last visited Dec. 7, 2023)

[6] "Per Capita Health Expenditure by Country," STATISTA, https://www.statista.com/statistics/236541/per-capita-health-expenditure-by-country/#:~:text=health%20care%20services.- (last visited Dec. 7, 2023).

worst out of all developed countries.[7] This is in large part because "among 11 developed countries, the United States has the highest maternal mortality rate, a relative undersupply of maternity care providers, and is the only country not to guarantee access to provider home visits or paid parental leave in the postpartum period."[8] The number of pregnancy-related deaths have also been increasing since 2000, and two-thirds of these deaths were considered to be preventable.[9] From a country that prioritizes healthcare, based on its spending, these outcomes are both concerning and confusing. This Paper will explore why and how the *Dobbs v. Jackson* decision will compound these effects, and what the United States' government should do to mitigate the ruling's negative impact on its citizens. The *Dobbs v. Jackson* decision will have detrimental effects on the autonomy of people who can become pregnant, eliminating the Constitutional right to control their bodies, as noted by the dissent:

> The majority tries to hide the geographically expansive effects of its holding. Today's decision, the majority says, permits "each State" to address abortion as it pleases. That is cold comfort, of course, for the poor woman who cannot get the money to fly to a distant State for a procedure. Above all others, women lacking financial resources will suffer from today's decision. In any event, interstate restrictions will also soon be in the offing. After this decision, some States may block women from traveling out of State to obtain abortions, or even from receiving abortion medications from out of State. Some may criminalize efforts, including the provision of information or funding, to help women gain access to other States' abortion services. Most threatening of all, no language in today's decision stops the Federal Government from prohibiting abortions nationwide, once again from the moment of conception and without exceptions for rape or incest.[10]

The second part of this Paper will explain why the maternal mortality rate will increase generally in light of the *Dobbs v. Jackson* decision. By permitting states to remove access to abortion, absent improved sex education or contraception, it is likely that more births will happen as a result. The third part of this Paper will demonstrate the likelihood of its disparate impact on of people of color, specifically the impact of systemic and institutional racism on maternal mortality rates. The fourth part of this Paper will explore the relationship between socioeconomic status and maternal mortality rates and the financial impact of the *Dobbs v. Jackson* decision regarding healthcare costs and access. The fifth part will emphasize the probable reactions of healthcare organizations to the *Dobb v. Jackson* decision, specifically their avoidance of performing maternal-related care because of the potential civil and criminal legal implications of violating the Supreme Court's decision. The sixth part will then present potential policy solutions to mitigating the impact of the *Dobbs v. Jackson* decision, including codifying *Roe v. Wade* nationally or encouraging states to codify greater specificity into their abortion ban restrictions and exceptions, creating tax breaks or increasing funding to healthcare institutions with safe and robust prenatal and reproductive care programs, targeting underprivileged areas to reduce the

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[7] "*US Ranks Worst in Maternal Care, Mortality Compared With 10 Other Developed Nations,"* THE AMERICAN JOURNAL OF MANAGED CARE, https://www.ajmc.com/view/us-ranks-worst-in-maternal-care-mortality-compared-with-10-other-developed-nations (last visited Dec. 7, 2023).
[8] *Id.*
[9] *Id.*
[10] *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

health inequities that are found based on race and socioeconomic status, and expanding postpartum care.

II. *Dobbs v. Jackson* Will Likely Increase Birth Rates Generally, Increasing the Raw Number of Maternal Deaths.

Based on the sheer increase in actual births that *Dobbs v. Jackson* will bring about due to the lack of abortions as birth control, maternal mortality rates will likely increase as a result. This is in large part because it reduces people's access to abortion if their state does not permit it, and even more so if states adjacent to the citizen's home state also do not permit it. This is exemplified from research by the Society of Family Planning, which estimates that over the first nine months after the *Dobbs v. Jackson* decision, more than eighty-thousand people who sought abortions in states where they are banned fully or after six weeks faced obstacles.[11] As a result of increased obstacles, it is less likely that those who are seeking an abortion will be able to obtain one. This is confirmed through data which determined that near total bans on abortion resulted in thirty-thousand additional births on an annual basis.[12] Giving birth is fourteen-times more likely to result in death than getting an abortion, increasing the risk of death of many more people.[13]

Those working in the field have also recognized the connection between abortion barriers and mortality rates, as sixty-four percent of OB-GYNs surveyed believe that overturning *Roe v. Wade* already worsened pregnancy-related mortality.[14] Their beliefs are also backed by statistical analysis by the Commonwealth Fund, which has found maternal deaths in 2020 were sixty-two percent higher in states that ban or restrict abortion than in states where the procedure is still accessible.[15] These striking numbers paint a grim vision of America's future, but observing who is actually affected by these statistics makes it even more harrowing.

III. After *Dobbs v. Jackson,* Institutional Racism and Healthcare Inequities will Likely Cause an Increase in Maternal Mortality Rates for People of Color.

The increase in a lack of healthcare access, and the subsequent increase in maternal mortality rates as caused by the inherent danger of giving birth in comparison to getting an abortion,[16] will not fall equally across US citizens. Caitlin Myers, a professor at Middlebury College with a research focus on reproductive policy, has found that the people who carry pregnancies to full term that they would otherwise have terminated are often the "the poorest,

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[11] *See* "What Happens If Roe v. Wade Is Overturned? Abortion Access in All 50 States," NBC NEWS, https://www.nbcnews.com/data-graphics/dobbs-abortion-access-data-roe-v-wade-overturned-rcna88947 (last visited Dec. 7, 2023).
[12] *"After the Dobbs Decision, Birth Rates Are Up in States With Abortion Ban States*," NPR, https://www.npr.org/2023/11/24/1215152734/after-the-dobbs-decision-birth-rates-are-up-in-states-with-abortion-ban states#:~:text=Our%20research%20shows%20that%20near,states%20weren't%20enforcing%20bans (last visited Dec. 7, 2023).
[13] *Id.*
[14] *"OB/GYNs Say Dobbs Ruling Worsened Pregnancy-Related Mortality,"* THE HILL, https://thehill.com/policy/healthcare/4060274-obgyns-say-dobbs-ruling-worsened-pregnancy-related-mortality/ (last visited Dec. 7, 2023).
[15] *"Maternal deaths rise as Dobbs imperils abortions,"* AXIOS, https://www.axios.com/2022/12/14/maternal-deaths-dobbs-abortions-us-health (last visited Dec. 7, 2023).
[16] *Id.*

most vulnerable of an already poor and vulnerable population."[17] In Mississippi, where abortion is now banned, there was a far greater percentage of Non-Hispanic Black women (seventy-seven percent) getting abortions than Non-Hispanic White women (seventeen percent), despite Non-Hispanic Black Americans being a minority racial group in the state.[18] Mississippi has also refused to expand Medicaid coverage, which has prevented more Black women in those states from having better health outcomes—because of issues such as generational poverty resulting from hundreds of years of racial oppression, Black women are less likely to able to afford insurance and therefore have less access to preventative health measures like contraception.[19] Systemic barriers expand beyond just generational poverty however:

> More recent studies have shown that social factors such as historical exposure to racial trauma, discrimination, and marginalization; systemic barriers such as systematic racism and implicit bias within the healthcare system; the possibility of being uninsured; reduced access to reproductive healthcare services; and socioeconomic factors also contribute to pregnancy complications for Black women and have to be given consideration…these social determinants of health show that poor maternal outcomes for Black individuals are caused by factors of racism that are embedded in healthcare and affect marginalized groups of individuals disproportionately. Based on socioeconomic status, race, age, and other identifying factors, the health disparities amongst individuals in communities that lack resources and education is exacerbated and continues to expand the gap in access to equitable health…the history of racism within healthcare must be understood to dismantle institutionalized racism in healthcare systems and to create policies that protect Black women.[20]

The systemic oppression of Black Americans throughout our history has made it so Black women are far more likely to live in areas with low access to healthcare and sex education, putting them at greater risk of pregnancy.[21] In addition to higher rates of pregnancies, medical racism and healthcare deserts make it even more difficult for women of color to receive proper care. Studies have shown that poor quality of care is associated with "Black women being offered fewer or mistimed treatments and interventions," and that there is "an association between racial discrimination and Black women's dissatisfaction with care, mistrust in providers,

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[17] "What Happens If Roe v. Wade Is Overturned? Abortion Access in All 50 States," NBC NEWS, https://www.nbcnews.com/data-graphics/dobbs-abortion-access-data-roe-v-wade-overturned-rcna88947 (last visited Dec. 7, 2023).

18 *"Distribution of Reported Legal Abortions in Mississippi by Ethnicity,"* STATISTA, https://www.statista.com/statistics/240515/distribution-of-reported-legal-abortions-in-mississippi-by-ethnicity/ (last visited Dec. 7, 2023).

19 *See "Black Women Face the Highest Barriers to Abortion Access Since Roe v. Wade,"* VOX, https://www.vox.com/2022/6/29/23187002/black-women-abortion-access-roe (last visited Dec. 7, 2023).

[20] Anuli Njoku et al., *"Listen to the Whispers before They Become Screams: Addressing Black Maternal Morbidity and Mortality in the United States,"* HEALTHCARE, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9914526/ (last visited Dec. 7, 2023).

[21] Fabiola Cineas, *"Black Women Will Suffer the Most Without Roe,"* VOX, https://www.vox.com/2022/6/29/23187002/black-women-abortion-access-roe (last visited Dec. 7, 2023).

non-adherence to medical regimes, and ineffective patient-provider communication."[22] Moreover, since the *Dobbs v. Jackson* decision, the share of Black women who are located farther than an hour's drive from an abortion facility rose from fifteen percent to forty percent, and for Hispanic women the share increased from eight percent to thirty percent.[23] All of these factors, created largely through systemic and institutionalized racism weighing the cards against people of color, contribute to the pipeline of birthing people of color having greater a likelihood of pregnancy in addition to a greater likelihood of receiving improper medical care to the point of it being fatal. Although some argue that this relates exclusively to socioeconomic status, while the impact of race on socioeconomic status is significant, through processes such as generational wealth, race itself is just as impactful. As explained by Michelle Long:

> Pregnancy complications are the sixth leading cause of death among Black women ages 20 to 44, while pregnancy complications do not rank in the top 10 causes of death for any group of white women. Black women of all education and income backgrounds face the threat of dying in pregnancy and childbirth. A 2016 report found that Black college-educated moms were more likely to suffer severe complications in pregnancy and childbirth than white women who never graduated from high school.[24]

As indicated by Long, racial biases prevent Black individuals from receiving the same level of trust and care by their healthcare providers, and these statistics indicate financial security does not mitigate the negative impact of racism on Black Americans' safety during and after pregnancy.

Another structural aggravator of Black women's high maternal mortality rate relates to the mass incarceration of Black Americans, and the *Dobbs v. Jackson* decision will likely work to compound this already present issue. As explained by Human Rights Watch, "rates of sexual violence against individuals in marginalized communities are also significantly higher than for the rest of the population. Since many state laws prevent pregnant persons from obtaining an abortion even in circumstances of rape or incest, these groups face an increased risk of being forced to continue a pregnancy that is the result of sexual violence."[25] Women of color are already the demographic most vulnerable to sexual assault, and this issue is amplified when incarcerated: Black, Hispanic, and multiracial prisoners who experienced staff sexual misconduct were up to 2.4 times greater than the proportion of non-Hispanic White prisoners who had been

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[22] Brittany D. Chambers et al., *"Clinicians' Perspectives on Racism and Black Women's Maternal Health,"* WOMENS HEALTH REP (New Rochelle), vol. 3, no. 1, pp. 476–482, May 2022, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9148644/ (last visited Dec. 7, 2023), doi: 10.1089/whr.2021.0148.

[23] Jasmine Cui, Chloe Atkins, and Sarah Kaufman, *"One Year Without Roe: Data Shows How Abortion Access Has Changed in America,"* NBC NEWS (June 22, 2023) https://www.nbcnews.com/data-graphics/dobbs-abortion-access-data-roe-v-wade-overturned-rcna88947.

[24] Michelle Long, Laurie Sobel, Alina Salganicoff, and Kaye Pestaina, *"Employer Coverage of Travel Costs for Out-of-State Abortion,"* KAISER FAMILY FOUNDATION, https://www.kff.org/policy-watch/employer-coverage-travel-costs-out-of-state-abortion/ (last visited Dec. 7, 2023).

[25] *See "Human Rights Crisis: Abortion in the United States After Dobbs,"* HUMAN RIGHTS WATCH, https://www.hrw.org/news/2023/04/18/human-rights-crisis-abortion-united-states-after-dobbs (last visited Dec. 7, 2023).

Victimized.[26] This increased rate of sexual violence causes concerns regarding female prisoners' ability to access care. The *Dobbs v. Jackson* decision has allowed states to put up murky rules regarding when abortions are acceptable in cases of sexual violence, and in our current criminal justice system it is already extremely difficult to prove instances of rape and incest.[27] Evidently, obtaining an abortion as a prisoner under a sexual violence exception places extremely rigorous barriers to access care, likely making birth more probable than in cases of white individuals who are not incarcerated. Because the risk of death by delivering a child is approximately fourteen times higher than having an abortion, there are severe implications regarding the impact of race on the likelihood of facing maternal mortality.[28]

Across the board, whether through medical racism, lack of access to resources, or rates of sexual violence, people of color—especially Black women—face health inequities that have resulted in their maternal mortality rate being significantly higher than that of White Americans. When *Roe v. Wade* was the law, these disparities still occurred. However, since *Dobbs v. Jackson* overturned this precedent, Americans of color are facing even more significant barriers to care and will likely suffer as a result, likely increasing the disparate impact of race on maternal mortality rates.

IV. *Dobbs v. Jackson* Will Likely Increase Maternal Mortality Rates for Those in Lower Socioeconomic Classes—Obtaining Necessary Reproductive Care Will Likely Become More Expensive and Less Accessible.

Abortion bans following *Dobbs v. Jackson* will likely significantly impact communities of lower socioeconomic statuses. Because *Dobbs v. Jackson* allowed states to decide whether its citizens have a right to abortion, access to this essential reproductive care is extremely based on where in the United States an individual is located and whether that state permits abortion.[29] As a result, traveling far distances to obtain abortion access when an individual is living in a state with minimal to no abortion access will become a necessity to receive proper care. However, doing so requires significant resources—time, money, finding childcare, insurance coverage that varies based on state, and more—which those in lower socioeconomic statuses are less likely to have.[30]

Myers explains that "people who get trapped are often poor women who aren't employed who are shift workers who don't have benefits."[31] The abortion procedure itself costs approximately six-hundred dollars without insurance, making even the most basic element of the process inaccessible for uninsured people.[32] The Federal Reserve Board found over thirty-five

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[26] Gina Fedock, PhD, LMSW, et al., *"Incarcerated Women's Experiences of Staff-Perpetrated Rape: Racial Disparities and Justice Gaps in Institutional Responses,"* Journal of Interpersonal Violence, vol. 36, no. 17-18, https://doi.org/10.1177/0886260519850531 (last visited Dec. 7, 2023).
[27] *Id.*
[28] *See* Elizabeth G. Raymond and David A. Grimes, *"The Comparative Safety of Legal Induced Abortion and Childbirth in the United States,"* Obstetrics and Gynecology, vol. 119, no. 2 Pt 1, pp. 215-219, Feb. 2012, doi: 10.1097/AOG.0b013e31823fe923.
[29] *See id.*
[30] *See id.*
[31] Fabiola Cineas, *"Black Women Will Suffer the Most Without Roe,"* VOX (June 29, 2022) https://www.vox.com/2022/6/29/23187002/black-women-abortion-access-roe.
[32] "How Much Does an Abortion Cost?" PLANNED PARENTHOOD BLOG, https://www.plannedparenthood.org/blog/how-much-does-an-abortion-cost (last visited Dec. 7, 2023).t

percent of U.S. adults do not have enough in savings or cash equivalent to pay for a four-hundred dollar emergency expense.[33] This does not even take into account the costs for traveling, childcare, or the risk of losing one's job if they do not come in for a shift. While before, low-income individuals had to face the high cost of an abortion itself, the elimination of abortion rights on a state-by-state basis now requires many affected individuals to consider these additional expenses, increasing the financial barrier and likely increasing disparities based on socioeconomic level.[34]

Because the cost of obtaining an abortion is so expensive by any measure–time spent, days of work lost, cost of the procedure, or cost of travel—preventative care will likely be extremely important in mitigating unwanted pregnancies in lower income areas. However, growing up and living in poverty increases the risk of becoming pregnant because of the lack of access to thorough sex education and contraception.[35] The Guttmacher Institute found that "between 1994 and 2001, the rate of unintended pregnancy increased by 29% among U.S. women whose income was below the poverty line, while it decreased 20% among women with incomes at least twice the federal poverty level."[36] Poorer women have a much higher risk of becoming pregnant, more than double the national average, in large part because of their lack of access to consistent contraception.[37] Taking into account the financial burden that comes with preventing unwanted pregnancies—paying for birth control is an additional expense that becomes even more unattainable for uninsured individuals—disparities in pregnancy rates based on socioeconomic status already exist. Because pregnancies are fourteen times more dangerous than abortions, this puts more impoverished individuals at risk of dying as a result of becoming pregnant.[38]

The *Dobbs v. Jackson* decision has made access to abortion even more difficult because of the new traveling requirements for people in abortion-banned states, and as a result, it is likely to increase these disparities. This disparate impact is further compounded because the states and territories in which abortion is banned—largely in the South—are some of the poorest in the US. Mississippi, Louisiana, New Mexico, Arkansas, West Virginia, Alabama, Kentucky, the District of Columbia, South Carolina, and Oklahoma are the poorest of the U.S. states and territories, and of these ten, seven states (Mississippi, Louisiana, Arkansas, West Virginia, Alabama, Kentucky,

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[33] Michelle Long, Laurie Sobel, Alina Salganicoff, and Kaye Pestaina*, "Employer Coverage of Travel Costs for Out-of-State Abortion,"* KAISER FAMILY FOUNDATION, https://www.kff.org/policy-watch/employer-coverage-travel-costs-out-of-state-abortion/ (last visited Dec. 7, 2023).

[34] *See* Elizabeth G. Raymond and David A. Grimes, *"The Comparative Safety of Legal Induced Abortion and Childbirth in the United States,"* Obstetrics and Gynecology, vol. 119, no. 2 Pt 1, pp. 215-219, Feb. 2012, doi: 10.1097/AOG.0b013e31823fe923.

[35] *See id.*

[36] Rebecca Wind, *"Poorest U.S. Women Increasingly Likely to Face Unintended Pregnancies*," GUTTMACHER INSTITUTE, https://www.guttmacher.org/news-release/2006/poorest-us-women-increasingly-likely-face-unintended-pregnancies (last visited Dec. 7, 2023).

[37] *See id.*

[38] NPR, *"After the Dobbs Decision, Birth Rates Are Up in States With Abortion Ban States,"* https://www.npr.org/2023/11/24/1215152734/after-the-dobbs-decision-birth-rates-are-up-in-states-with-abortion-ban states#:~:text=Our%20research%20shows%20that%20near,states%20weren't%20enforcing%20bans (last visited Dec. 7, 2023).

and Oklahoma) have near-total bans on abortion.[39] Because states with the poorest citizens are often the ones that have enacted severe abortion bans, and because most of them are adjacent to one another in the South (making the physical distance needed to travel to get an abortion further for many people), this will likely further the disparate impact of the *Dobbs v. Jackson* decision. Unsurprisingly, these states also have higher rates of maternal mortality than more progressive states in terms of reproductive rights—California has one of the lowest rates of maternal mortality, and it's one of the more liberal states in terms of reproductive rights and access.[40] States which have made abortion illegal have also taken fewer actions to respond to the maternal mortality crisis than the states where there is expanded access to abortion.[41]

Because of all the aforementioned factors, it is far more likely for poor individuals to become pregnant when a child is not wanted. Individuals who are raised in poverty are more likely to get pregnant because of the lack of comprehensive sex education in schools with lower funding; as a result they are less likely to be able to afford or even have access to contraception, they are less likely to have savings to even pay for an abortion, let alone travel for one or take time off of their job to obtain one, and the bans that take place are in some of the poorest states, making the impact of these economic constraints even more difficult for individuals to work around. In totality, poorer individuals living in the South are faced with tremendous burdens to overcome to have control over their reproductive system; this sheer increase in unwanted pregnancies means more people face giving birth, which is more dangerous than obtaining an abortion, in turn increases the number of impoverished people that are forced to give birth and are thus at an increased risk of dying.

V. ***Dobbs v. Jackson*** **Will Likely Increase Maternal Mortality Rates Through Adverse Reactions by Healthcare Institutions.**

The *Dobbs v. Jackson* decision's destruction of precedent has opened the door for slew of litigation surrounding the limits and permissible behavior of providing reproductive care, or even life-saving general care, to pregnant individuals. In Nebraska, a mother who was accused of helping her seventeen-year-old daughter have an abortion was sentenced to two years in prison, and her daughter was sentenced to ninety days in jail—both are now convicted felons.[42] This opens a variety of questions regarding complicity in assisting abortions—in Indiana, a doctor is

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[39] *See* The Friends Committee on National Legislation, "Top 10 Poorest States in the US," Updates (Oct. 2022) https://www.fcnl.org/updates/2022-10/top-10-poorest-states-us; Elizabeth Nash and Isabel Guarnieri, "Six Months Post-Roe, 24 US States Have Banned Abortion or Are Likely to Do So: A Roundup," Guttmacher Institute, https://www.guttmacher.org/2023/01/six-months-post-roe-24-us-states-have-banned-abortion-or-are-likely-do-so-roundup (last visited Dec. 7, 2023).

[40] *See id.*

[41] *See* Kira Eidson, "Addressing the Black Mortality Crisis in the Wake of Dobbs: A Reproductive Justice Policy Framework," Georgetown Journal of Gender and the Law, vol. 24, no. 3, 929+, 2023, https://link-gale-com.proxy.library.georgetown.edu/apps/doc/A754990171/AONE?u=wash43584&sid=bookmark-AONE&xid=637d112b (last visited Dec. 7, 2023).

[42] Mitchell McCluskey, "A Nebraska Mother Who Provided an Illegal Abortion for Her Daughter and Helped Dispose of the Fetus Gets 2 Years in Prison, Report Says," CNN, (9:30 AM EDT, Sat September 23, 2023) https://www.cnn.com/2023/09/23/us/nebraska-abortion-pill-jessica-burgess/index.html#:~:text=A%20Nebraska%20mother%20who%20was,the%20Norfolk%20Daily%20News%20reported.

being investigated for providing abortion services for a ten year old rape victim.[43] Hesitations surrounding legal compliance with this new precedent will likely grow as more cases of healthcare providers being prosecuted emerge. Pregnant people's ability to access reproductive care—whether fertility care, miscarriage management, or pregnancy complications generally—will likely be affected by *Dobbs*.[44] This hesitation to provide medical care can be extremely dangerous:

> Absent a federal constitutional right to abortion, obstetricians, gynecologists, emergency room doctors, and any other types of prenatal care practitioners may face legal consequences for providing abortion services and those services that may be considered abortion services (standard of care for spontaneous miscarriages, prescribing certain drugs, performing certain services provided adjacent to infertility services, possibly offering genetic counseling services, and others). These consequences include criminal prosecution in certain states for "aiding and abetting" an abortion; it is unclear what that means under state law and who might be implicated – could it include nurses, pediatricians, obstetricians… Even a physician working squarely within the bounds of a seemingly clear law may be hesitant to perform treatments that have abortive elements such as the dilation and curettage (D&C) procedure, typically performed after a patient has suffered a miscarriage. Physicians must take steps to ensure that they preserve evidence of a permissible exception to combat potential covert abortion accusations. This requirement of proof requires physicians to be more meticulous about their documentation and to preserve proof of an exception for an abortion if faced with an accusation. Practitioners in the most restrictive abortion states could face revocation of their medical licenses, civil penalties, and criminal penalties that may include being charged as a felon and being sentenced to a term of imprisonment. In turn, these actions may lead to a domino effect for these physicians' credentialing, including exclusion from participation in Medicare, Medicaid, and private insurance plans; disciplinary action by medical staff of hospitals and other facilities, including termination; and loss of specialty certifications.[45]

Following *Dobbs*, thirteen states have enacted statutes that criminalize healthcare providers if they perform abortions, ranging from penalties of life in prison—as in Texas—to fines up to $100,000.[46]

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[43] Sarah Boxer, Andi Babineau, and Rob Frehse, "Indiana Attorney General Is Investigating the Doctor Who Provided Abortion Services for a 10-Year-Old Ohio Rape Victim, Doctor's Lawyer Says," CNN, Updated 7:44 AM EDT (Wed July 27, 2022) https://www.cnn.com/2022/07/27/us/indiana-doctor-child-rape-abortion-ag-investigation/index.html.

[44] *See* Risa Kaufman et al., "Global Impacts of Dobbs v. Jackson Women's Health Organization and Abortion Regression in the United States," Sexual and Reproductive Health Matters, vol. 30, no. 1, pp. 2135574, Nov 16, 2022, doi: 10.1080/26410397.2022.2135574.

[45] *Id.*

[46] *See* "Human Rights Crisis: Abortion in the United States After Dobbs," HUMAN RIGHTS WATCH, https://www.hrw.org/news/2023/04/18/human-rights-crisis-abortion-united-states-after-dobbs (last visited Dec. 7, 2023).

Medical staff will likely find it extremely difficult to navigate the decision-making process in terms of providing care because of the new policies stemming from the *Dobbs v. Jackson* decision. Exactly which procedures would count as under the scope of an illegal abortion is still very much up in the air; for example, a Utah law provides an exception to the abortion ban if, among other events, the mother's life is at risk, but the level of risk to the mother required remains unknown.[47] Concerns about being punished for acting improperly will likely lead doctors to err on the side of caution, putting more pregnant people at risk of receiving improper care or longer waiting periods that can end fatally. As explained by Ackerman LLP, "many physicians are apprehensive of taking appropriate life-sustaining measures for pregnant women because those actions could be seen as unlawfully terminating a woman's pregnancy, exposing them to legal risk," and as a result, "the *Dobbs v. Jackson* case is likely to have a chilling effect on the standard of care provided by practitioners in the areas of obstetrics and gynecology—two of the most challenging specialties of medicine because of high-pressure decision-making and high-risk surgeries."[48] This is demonstrated from a recent incident:

> In July 2022, a woman had to travel hundreds of miles to a different state for a lifesaving abortion. Though she was experiencing an ectopic pregnancy (one of the leading causes of maternal mortality in the first 12 weeks of pregnancy) … her doctor would not end the pregnancy because he was "worried that the presence of a fetal heartbeat meant treating her might run afoul of new restrictions on abortion."[49]

Furthermore, in addition to providers reacting negatively to the *Dobbs v. Jackson* decision, it is likely that healthcare institutions themselves will do poorly with the new legislation. New state policies, TRAP laws, and regulatory provisions that clinics will have to abide by will change the established procedures and architecture of the clinics, costing money many clinics situated in impoverished communities do not have to spare.[50] Clinics that could once provide reproductive services to those most impacted by the *Dobbs v. Jackson* decision—BIPOC individuals and those in lower socioeconomic statuses—are more likely to close because of an inability to comply with the rapidly evolving policy surrounding abortion and reproductive care in the United States.[51] In turn, this would further limit the ability for those most oppressed to receive proper care, widening the range of the already-present healthcare deserts.

In totality, the reaction of healthcare providers and institutions to the *Dobbs v. Jackson* decision creates a perilous scenario for pregnant individuals seeking medical help, especially when their life is potentially at risk. The high-risk and high-pressure decision making that is

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[47] *See generally* Jeremy Burnette, Martin R. Dix, Noam B. Fischman, and Elizabeth F. Hodge, "Providing Healthcare in a Post-Dobbs America Presents Evolving Challenges," AKERMAN PERSPECTIVES (August 18, 2022) https://www.akerman.com/en/perspectives/providing-healthcare-in-a-post-dobbs-america-presents-evolving-challenges_.html.

[48] *Id.*

[49] "Human Rights Crisis: Abortion in the United States After Dobbs," HUMAN RIGHTS WATCH, https://www.hrw.org/news/2023/04/18/human-rights-crisis-abortion-united-states-after-dobbs (last visited Dec. 7, 2023).

[50] *Id.*

[51] *See* Matthew Yglesias, "American Democracy's Senate Problem, Explained," VOX, https://www.vox.com/policy-and-politics/2019/12/17/21011079/senate-bias-2020-data-for-progress (last visited Dec. 7, 2023).

often required in the reproductive medical field only builds upon these dangers by making the stakes much higher and any delays in care much deadlier.

VI. Policy Proposal

Combating the implementation of *Dobbs v. Jackson* and its subsequent state-wide abortion bans will be extremely difficult because of the divisive political climate we are currently in. Ideally, codifying *Roe v. Wade* would reinstate federal abortion protections for abortion. However, this would likely face difficulty in the Senate because of the filibuster, and it is possible that the new law would be contested in the Supreme Court and struck down for being unconstitutional.[52] In lieu of codifying *Roe v. Wade* to combat the incoming rise in maternal mortality rates, part A of this Paper argues states should add specificity to their current abortion restrictions to mitigate hesitancy in the healthcare sector. Part B argues that 1) tax breaks should be given to hospitals with robust prenatal and reproductive care programs in underprivileged areas to achieve more equitable outcomes or 2) funding to healthcare institutions that provide reproductive care in impoverished communities should increase, and Part C argues postpartum care should be strengthened across the country.

A. Codifying Roe v. Wade *or Adding Specificity to State Legislatures' Current Abortion Restrictions.*

Codifying *Roe v. Wade* could mitigate the effect on maternal mortality rate expected from the *Dobbs* decision. In 1972, the year before *Roe v. Wade* sanctioned abortion, the maternal mortality rate was 18.71 per 1,000 live births.[53] In 2020, this had dropped to 8.6 per 1,000 live births in 2020, indicating that abortion access has an impactful relationship to our maternal mortality rate.[54] Although other factors, such as an increase in healthcare accessibility or better postnatal care, may also be impacting this drop in maternal mortality rate, data from other countries indicate that having abortion rights is generally associated with lower maternal mortality rates.[55] In countries where abortion is legal, the mortality rate is under 1/100,000 procedures; this is likely in part because around a quarter to a third of maternal deaths are attributable to complications of illegal abortions.[56] Furthermore, a study from researchers at Tulane University showed that the higher a state scored on a ranking of abortion restrictiveness from 2015 to 2018, the higher the number of individuals who died from their pregnancy.[57]

By passing legislation that codifies reproductive rights in the United States, maternal mortality rates would likely not see the increase that is predicted from *Dobbs*. It would also likely mitigate the disparities that may increase via *Dobbs*. Requiring all states to provide

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[52] *See generally id.*
[53] Doha Madani, "States with More Abortion Restrictions Have Higher Maternal and Infant Mortality, Report Finds," NBC NEWS (Dec. 14, 2022, 12:01 AM EST) https://www.nbcnews.com/health/health-news/abortion-restrictions-higher-maternal-infant-mortality-rcna61585; Jessica J Byron et al., "Health Equity in a Post 'Roe Versus Wade' America," CUREUS, vol. 14, no. 12, e32100, Dec. 1, 2022, doi: 10.7759/cureus.32100.
[54] *See id.*
[55] *See* E Ketting, "Global Overview of Abortion, PUBMED, https://pubmed.ncbi.nlm.nih.gov/12345322/ (last visited Dec. 7, 2023).
[56] *Id.*
[57] *Id.*

abortion could also reduce the reproductive care deserts that are found in poorer and more southern states where abortion is currently banned. Socioeconomic disparities that disallow people with shift-jobs or a lack of savings to travel to obtain and abortion would no longer be as impactful as in-state abortion would become available. Furthermore, while codifying *Roe v. Wade* would not directly impact issues such as medical racism on the proper care of pregnant people of color, it would likely impact the socioeconomic disparities that people of color deal with more often because of issues such systemic racism and generational wealth.

Unfortunately, while codifying *Roe v. Wade* would be extremely efficient and direct in counteracting the effects of *Dobbs v. Jackson* on America's maternal mortality rate, it is not very likely to happen soon. Currently, the House has a Republican majority, and Republicans are far more likely to be against abortion than Democrats.[58] Further contributing to this problem is the filibuster in the Senate, which requires sixty votes in the senate to pass legislation; it can quickly become gridlocked when it comes to controversial issues such as reproductive rights.[59] An attempt to do this occurred in 2021 through the introduction of the Women's Health Protection Act, which passed in the House, but is blocked in the Senate.[60] Even when the Senate has a Democratic majority, the filibuster makes it extremely hard to pass legislation like the Women's Health Protection Act. Furthermore, even if abortion rights were codified by legislation, it is possible that the Supreme Court would strike it down as unconstitutional. Although it would be a different constitutional issue than in *Roe v. Wade, "*arguably, Congress is unable to pass a national abortion protection pursuant to its authority to enforce the 14th Amendment's grant of equal protection and due process, because the court denies that such grants extend to the right to choose."[61]

In lieu of codifying *Roe v. Wade*, it should also be noted that states with reduced abortion protections may mitigate maternal mortality rates if their intended restrictions or exceptions are codified with more specificity. In states where abortion is restricted but not fully illegal, the law as it stands is too vague to effectively provide any kind of gynecological care.[62] Doctors' hesitancy to act is in large part because of their concern with whether they are complying with the law,[63] and because the law is not properly spelled out, this is likely contributing to the potential adverse effects of the *Dobbs v. Jackson* decision on patients. It would be beneficial to add more specificity to statutes, especially regarding any exceptions to the rule, with a greater level of technical precision to allow hospitals and doctors to work more comfortably within the restrictions. Hospitals could also then use the legislation to create new procedures and processes that comply with the laws rather than seek to eliminate reproductive care department in their entirety. Ideally, this could make healthcare providers and institutions less concerned about

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[58] "United States Congress," BALLOTPEDIA, https://ballotpedia.org/United_States_Congress (last visited Dec. 7, 2023).
[59] *See id.*
[60] Linda C. McClain, "What Would It Mean to Codify Roe Into Law?" SOLUTIONS JOURNALISM, https://www.yesmagazine.org/democracy/2022/07/01/codify-roe-v-wade-law (last visited Dec. 7, 2023).
[61] Elie Mystal, "Democrats Should Use This Moment to Codify Roe v. Wade," THE NATION, https://www.thenation.com/article/politics/codifying-roe-wade-challenges/ (last visited Dec. 7, 2023).
[62] *See* Risa Kaufman et al., "Global Impacts of Dobbs v. Jackson Women's Health Organization and Abortion Regression in the United States," Sexual and Reproductive Health Matters, vol. 30, no. 1, pp. 2135574, Nov 16, 2022, doi: 10.1080/26410397.2022.2135574.
[63] *See e.g. id.*

receiving criminal charges, and it would also hopefully reduce the amount of litigation after *Dobbs*.[64]

In totality, codifying *Roe v. Wade* on a federal level would likely positively impact the negative effects that *Dobbs v. Jackson* appears to be contributing to. Because this would be difficult to accomplish in the current political climate, an alternative suggestion is to codify greater specificity into the state legislation that currently stands in near-total abortion states so that doctors' hesitancy to act in risky or life-threatening situations is minimized.

B. Tax Breaks or Increased Funding to Healthcare Institutions Offering Robust Reproductive Care

As Part V of this paper discusses, concerns and hesitations of healthcare institutions surrounding legal liability for taking actions that go against states' abortion bans may result in a reduction of reproductive centers and create healthcare deserts in underprivileged areas. To counteract this, this Paper argues that funding increases or tax breaks should be given to healthcare centers with robust pre and postnatal care systems.

Litigation is expensive, and while creating a financial incentive to perform reproductive care may not resolve doctors' personal concerns about being held criminally liable for performing a potentially illegal operation, it would incentivize hospitals to continue hosting a reproductive care center despite the potential civil liability or litigation risk:

> Abortion bans also reduce the quality and availability of other forms of necessary reproductive healthcare, such as contraception, pre- and postnatal care, and preventative annual exams. One reason for this is that the reproductive healthcare clinics that provide this treatment are often financially unable to stay open when abortion services become illegal. Some communities are facing reductions in care because their obstetricians have moved or are considering moving to states where abortion is still legal.[65]

Thus, providing financial support to these healthcare institutions could counteract these adverse effects of the *Dobbs v. Jackson* decision and reduce deserts in care in those states which have banned abortion procedures.

Furthermore, many non-governmental organizations have already made progress in reducing inequities in reproductive justice: Arnold Ventures' Contraceptive Choice and Access program, which enhances birth control accessibility across various healthcare channels, and the Packard Foundation's support for state-level initiatives in reproductive health, especially in the South, have innovated mechanisms to provide broader access to abortion and contraceptive

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[64] *See* Sarah Boxer, Andi Babineau, and Rob Frehse, "Indiana Attorney General Is Investigating the Doctor Who Provided Abortion Services for a 10-Year-Old Ohio Rape Victim, Doctor's Lawyer Says," CNN, (Updated 7:44 AM EDT, Wed July 27, 202), https://www.cnn.com/2022/07/27/us/indiana-doctor-child-rape-abortion-ag-investigation/index.html.

[65] "Human Rights Crisis: Abortion in the United States After Dobbs," HUMAN RIGHTS WATCH, https://www.hrw.org/news/2023/04/18/human-rights-crisis-abortion-united-states-after-dobbs (last visited Dec. 7, 2023).

services.[66] These positive impacts could increase exponentially with the support of the government, and it would be to the benefit of many Americans: Americans have also worked to support the cause, as giving for reproductive health saw a ninety-five percent increase between 2012 and 2020.[67]

As recommended by the Blueprint for Sexual and Reproductive Health, Rights and Justice, providing increased funding to organizations like the Teen Pregnancy Prevention Program, the Administration for Children and Families' Personal Responsibility Education Program, and the Title V Maternal and Child Health Services Block Grant would likely result in positive outcomes in the face of the *Dobbs v. Jackson* decision, putting money where it is needed most: in the hands of organizations supporting BIPOC individuals and those in lower socioeconomic statuses to mitigate maternal mortality.[68]

C. Strengthening Postpartum Care

To counteract the potentially negative impacts on the total maternal mortality cases in the United States, greater efforts should be directed to strengthening and protecting postpartum care. In both developing countries and the United States, greater than 60% of maternal deaths occurred in the postpartum period: 45% of postpartum deaths occurred within 1 day of delivery, greater than 65% within 1 week, and greater than 80% within 2 weeks, while in developing countries, 80% of postpartum deaths caused by obstetric factors occurred within 1 week.[69] "Access to high-quality care during the postpartum period, including enhanced frequency and quality of postpartum assessments during the first 42 days after birth, is essential to improving maternal outcomes and to continue reducing maternal mortality and morbidity worldwide."[70]

This is a result not only because of the medical danger of the postnatal period, but because of the mental health struggles that can come with birthing a child. As explained by Human Rights Watch:

> Abortion bans can also increase the risk of suicide. Medical exceptions to abortion bans in the US do not provide for psychological risks to life or health. This limitation prevents physicians from providing abortion care even if they have a well-founded fear that their patient will attempt suicide if forced to continue their pregnancy. Federal guidance regarding the provision of emergency medical care does not explicitly mention mental health under emergency medical conditions that may require abortion…suicide risk is especially pronounced in

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[66] Lauren Brathwaite and Kyoko Uchida, "Reproductive Health Equity: Evolving Funding Needs Post-Dobbs," PHILANTHROPY NEWS DIGEST (October 31, 2023) https://philanthropynewsdigest.org/news/exclusives/reproductive-health-equity-evolving-funding-needs-post-dobbs.
[67] *Id.*
[68] *See* Zara Ahmed, "The Next Federal Budget Matters a Lot for Sexual and Reproductive Health and Rights—Here's What to Look Out for," GUTTMACHER INSTITUTE (March 30, 2021) https://www.guttmacher.org/article/2021/03/next-federal-budget-.
[69] X F Li, J A Fortney, M Kotelchuck, L H Glover, "The Postpartum Period: The Key to Maternal Mortality," PubMed, PMID: 8842811, DOI: 10.1016/0020-7292(96)02667-7.
[70] Justine Dol et al., "Timing of Maternal Mortality and Severe Morbidity During the Postpartum Period: A Systematic Review," PUBMED CENTRAL, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9594153/ (last visited Dec. 7, 2023).

> some of her teenage patients who develop "post-traumatic stress disorder or suicidal ideation as a result of their pregnancies and make plans to commit suicide if they cannot obtain an abortion." For individuals who have become pregnant as a result of rape, this risk can also be heightened.[71]

Providing mental health services for pregnant people after they have given birth would likely mitigating the effects of postpartum depression and the trauma that many individuals have faced—ranging from sexual violence to traumatic births—and it should be included more significantly in postpartum care. Postpartum depression alone is estimated to effect around ten to twenty percent of mothers.[72] Even small efforts, like engaging providers, nursing staff, and social workers in a screening program to capture the mental health conditions of post-partum individuals, could be a highly beneficial tool to support parents and prevent deaths by suicide.[73]

VII. Conclusion

In a post-*Dobbs v. Jackson* world, maternal mortality itself as well as disparities in maternal mortality based on racial and socioeconomic class lines will likely increase. The number of births will likely grow generally, as abortion access will be limited, but the people who give these births and suffer fatal consequences are likely to be the underrepresented and underprivileged groups of people because of the financial strain and racial biases that come with the implementation of the *Dobbs* decision. Counteracting the increase in maternal mortality rates caused by the *Dobbs v. Jackson* decision, as well as its disproportionate effect on BIPOC individuals and those in lower socioeconomic statuses, is crucial. Because of adverse reactions by health care institutions and the financial restraints that come with obtaining an abortion under these new circumstances, health care institutions should also be targeted. To mitigate these issues, *Roe v. Wade* should be codified nationally (or state legislatures should codify greater specificity into their abortion ban exceptions and restrictions), greater funds or tax cuts should be allocated to hospitals with robust prenatal and reproductive care programs in underprivileged areas, and postnatal care should be strengthened to achieve more equitable outcomes.

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[71] "Human Rights Crisis: Abortion in the United States After Dobbs," HUMAN RIGHTS WATCH, https://www.hrw.org/news/2023/04/18/human-rights-crisis-abortion-united-states-after-dobbs (last visited Dec. 7, 2023).

[72] *See* Rishika Saharoy et al., "Postpartum Depression and Maternal Care: Exploring the Complex Effects on Mothers and Infants," PUBMED CENTRAL, Monitoring Editor: Alexander Muacevic and John R Adler, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10400812/ (last visited Dec. 7, 2023).

[73] *See also* Priya Bathija and Aisha Syeda, "Making Maternal Mental Health a Priority," AMERICAN HOSPITAL ASSOCIATION (Apr 07, 2022) https://www.aha.org/news/blog/2022-04-07-making-maternal-mental-health-priority.