

NOTE

Letters to Soleil: Reproductive Reparations as Black Maternal Justice

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INTRODUCTION

*I see inequity wherever it exists, call it by name, and work to eliminate it.*¹

Dr. Shalon MauRene Irving—the proud author of this Twitter bio—championed medical equity.² The thirty-six-year-old epidemiologist dedicated herself to “understanding how structural racism, intersectionality, trauma, and violence influence health disparities over a lifetime.”³ Shalon was an esteemed scholar, advocate, and friend.⁴ In mid-2016, Shalon learned that she would become a mother.⁵

As Shalon’s extensive “village” prepared for her baby’s arrival, Shalon navigated the stressors of daily life.⁶ Shalon’s relationship ended, and she braced for single motherhood.⁷ She grieved two brothers, both of whom passed years earlier.⁸ Shalon struggled with career-related anxiety, weight management, and blood

1. Shalon Irving (@shalonirvingphd), X, <https://twitter.com/shalonirvingphd> [<https://perma.cc/JCW9-WQAF>] (last visited May 24, 2024).

2. See Nina Martin & Renee Montagne, *Black Mothers Keep Dying After Giving Birth. Shalon Irving’s Story Explains Why*, NPR (Dec. 7, 2017, 7:51 PM), <https://www.npr.org/2017/12/07/568948782/black-mothers-keep-dying-after-giving-birth-shalon-irvings-story-explains-why> [<https://perma.cc/VEA5-HJ3C>].

3. Tanjala S. Purnell, Wanda Irving, Soleil Irving, Lauren Underwood, Raegan McDonald-Mosley, Chidinma Ibe, Debra Hickman & Janice Bowie, *Honoring Dr. Shalon Irving, A Champion for Health Equity*, 41 HEALTH AFFS. 304, 304 (2022); *accord Shalon M. Irving Health Equity Award*, CTNS. FOR DISEASE CONTROL & PREVENTION (May 8, 2023), <https://www.cdc.gov/eis/conference/awards/shalon-irving.html> [<https://perma.cc/DT7F-ASKZ>]; Martin & Montagne, *supra* note 2.

4. Purnell et al., *supra* note 3, at 304–05.

5. Martin & Montagne, *supra* note 2.

6. *Id.*

7. *Id.* (“There was the painful end to Shalon’s romance with her baby’s father and her dashed hopes of raising their child together. There were worries about money and panic attacks about the difficulties of being a black single mother in the South in the era of Trayvon Martin and Tamir Rice. Shalon told everyone she was hoping for a girl.”).

8. *Id.* (“Her brother Sam III sardonically joked that the family had a ‘death gene,’ but Shalon didn’t think that was funny.”). Shalon considered Sam her “sunshine” and nicknamed her future child “Sunny” in honor of her brother. *Id.*

clots.⁹ Shalon's conditions and previous fibroid removal surgery eliminated her vaginal birthing options, and she scheduled a cesarean section (C-section).¹⁰ Still, Shalon glowed with pride throughout her pregnancy,¹¹ delivering a healthy baby girl in January 2017.¹² Shalon named her daughter Soleil, for the sun.¹³

Shalon needed postpartum care within a week of delivery. Shalon's blood pressure skyrocketed, and she developed a hematoma.¹⁴ On swollen limbs, Shalon sought emergency medical assistance "at least nine or 10 times in those two weeks."¹⁵ After ruling out blood clots, Shalon's doctors prescribed hypertension medication and patience.¹⁶ Shalon sought help almost every day, and she was sent home every time.¹⁷

Three weeks after welcoming Soleil, Shalon collapsed in her home.¹⁸ Four days later, Shalon's family withdrew life support.¹⁹

* * *

Black motherhood in the United States remains the ultimate survival exercise. Since slavery's inception, the state has denied Black mothers the necessary resources to survive pregnancy, delivery, and life postpartum. Chattel slavery relied on systematic forced birthing practices.²⁰ In the modern day, state reproductive violence²¹ against Black mothers takes place through everyday resource

9. *Id.* ("In reality, Shalon's many risk factors — including her clotting disorder, her fibroid surgery, the 36 years of wear and tear on her telomeres, her weight — boded a challenging nine months. . . . 'If I was the doctor taking care of her, I'd be like, 'Oh, this is going to be a tough one,'" her OB/GYN friend McDonald-Mosley said.")

10. *Id.*

11. Purnell et al., *supra* note 3, at 304.

12. Katie Kindelan, *Woman Works to End Black Maternal Health Crisis After Daughter Dies After Giving Birth*, ABC NEWS (Apr. 14, 2022, 4:09 AM), <https://abcnews.go.com/GMA/Wellness/woman-works-end-black-maternal-health-crisis-daughter/story?id=84024414> [<https://perma.cc/6ESX-6ZU8>].

13. Martin & Montagne, *supra* note 2.

14. *Id.*

15. Kindelan, *supra* note 12.

16. Martin & Montagne, *supra* note 2. In one instance, Shalon's doctors declined to diagnose her with postpartum preeclampsia, "very high blood pressure that can occur 48 hours to 6 weeks after giving birth, because she did not meet all the diagnostic criteria." Kindelan, *supra* note 12.

17. Kindelan, *supra* note 12.

18. *See id.*

19. *Id.*

20. Cf. Colleen Campbell, *Medical Violence, Obstetric Racism, and the Limits of Informed Consent for Black Women*, 26 MICH. J. RACE & L. 47, 70 (2021) ("Black women's overmedicalization is an extension of biomedical racialization that began with enslaved women.")

21. Reproductive violence is the violation of an individual's reproductive agency. Ciara Laverty & Dienneke de Vos, *Reproductive Violence as a Category of Analysis: Disentangling the Relationship Between 'the Sexual' and 'the Reproductive' in Transitional Justice*, 15 INT'L J. TRANSITIONAL JUST. 616, 616 (2021); Rosemary Grey, *The ICC's First 'Forced Pregnancy' Case in Historical Perspective*, 15 J. INT'L CRIM. JUST. 905, 906 (2017). Acts of reproductive violence are often linked to sexual violence, but reproductive oppression or restriction also qualifies as reproductive violence. Laverty & de Vos, *supra*, at 616–17. Examples of reproductive violence include forced pregnancies and sterilizations, forced abortions and contraception, and systemic attempts to control the reproductive choices of marginalized groups. *Id.* at 617, 625; Rachelle Chadwick & Jabulile Mary-Jane Jace Mavuso, *On Reproductive Violence: Framing Notes*, AGENDA, 2021, at 1, 1.

deprivation and discrimination. Maternal care restrictions, the overmedicalization of childbirth, and medical negligence endanger Black mothers, regardless of socio-economic status.²² Continuing its legacy of reproductive violence, the United States suppresses baseline Black maternal rights to reproductive self-determination. Reproductive violence sustained slave society, and the United States must eradicate its successors.

This Note applies a reproductive justice framework to centuries of state anti-Black reproductive violence. First, this Note outlines the contemporary state of Black maternity, examining hardships in the first one thousand days. Second, this Note defines misogynoir and its slavery-era stereotypes, linking discriminatory tropes to their modern representations. Third, this Note identifies key institutional perpetrators of reproductive violence, highlighting systemic failures to protect Black maternal well-being. Next, systemic and institutional misogynoir are linked to their physiologically deteriorating impacts, exacerbated by historical epigenetic trauma. Finally, this Note presents the Black maternal health crisis as a “badge” of slavery—a gross human rights violation requiring reproductive reparations under the Thirteenth Amendment and international reparations theory.

I. STATE OF BLACK MATERNAL MORTALITY

“Every [B]lack woman who makes it and has a full term baby—it’s just like, ‘You made it!’”²³

Three hundred sixty-two Black mothers died in 2021.²⁴ Black mothers died at two to three times the rate of white women from pregnancy-related complications.²⁵ The majority of these deaths were preventable.²⁶ These deaths are directly

22. See NAT’L P’SHIP FOR WOMEN & FAMS., *BLACK WOMEN’S MATERNAL HEALTH: A MULTIFACETED APPROACH TO ADDRESSING PERSISTENT AND DIRE HEALTH DISPARITIES 2* (2018), <https://nationalpartnership.org/wp-content/uploads/black-womens-maternal-health-2018.pdf> [<https://perma.cc/ZYG5-ZPND>] (“Many Black women have a difficult time accessing the reproductive health care that meets their needs.”); Campbell, *supra* note 20, at 50 (“In obstetrics particularly, Black women are simultaneously overmedicalized *and* medically neglected . . .”).

23. Sophia Myszkowski & Brianna Pressey, *Why Are So Many Women Dying From Pregnancy in D.C.?*, ATLANTIC (Mar. 26, 2018), <https://www.theatlantic.com/video/index/556499/maternal-health-desert-dc/>.

24. DONNA L. HOYERT, NAT’L CTR. FOR HEALTH STAT., *MATERNAL MORTALITY RATES IN THE UNITED STATES, 2021*, at 3 (2023), <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2021/maternal-mortality-rates-2021.pdf> [<https://perma.cc/T76D-BYPA>].

25. Annalies Winny & Rachel Bervell, *How Can We Solve the Black Maternal Health Crisis?*, JOHNS HOPKINS BLOOMBERG SCH. PUB. HEALTH (May 12, 2023), <https://publichealth.jhu.edu/2023/solving-the-black-maternal-health-crisis/> [<https://perma.cc/ZG3G-YXC5>].

26. See Gabrielle T. Wynn, *The Impact of Racism on Maternal Health Outcomes for Black Women*, 10 U. MIA. RACE & SOC. JUST. L. REV. 85, 86 (2019) (“[R]oughly 63.2% of maternal deaths are preventable.”); Andis Robeznieks, *Examining the Black U.S. Maternal Mortality Rate and How to Cut It*, AM. MED. ASS’N (May 24, 2021), <https://www.ama-assn.org/delivering-care/population-care/examining-black-us-maternal-mortality-rate-and-how-cut-it> [<https://perma.cc/4BUT-XMA4>] (estimating that nearly sixty percent of maternal deaths are preventable); see also SUSANNA TROST, JENNIFER BEAUREGARD, GYAN CHANDRA, FANNY NJIE, JASMINE BERRY, ALYSSA HARVEY & DAVID A. GOODMAN, CTRS. FOR DISEASE CONTROL & PREVENTION, *PREGNANCY-RELATED DEATHS: DATA FROM MATERNAL MORTALITY REVIEW COMMITTEES IN 36 US STATES, 2017–2019*, at tbl.6 (2022), <https://www.cdc.gov/maternal-mortality/php/>

traceable to the indignities Black mothers experience in life, and these indignities require redress.

The Black perinatal period is one of resource deprivation, inadequate treatment of complications, and sociopolitical discrimination.²⁷ These stressors exacerbate mortality rates, endangering Black mothers at all stages. This discussion previews the current state of Black maternity during pregnancy, childbirth, and postpartum. The summary concludes with a Black maternal mortality overview during the first one thousand days.²⁸

A. STATE OF BLACK PREGNANCY

Resource deprivation starts during pregnancy. Maternity care “deserts,” areas completely lacking maternity health care, represent thirty-six percent of U.S. counties.²⁹ Maternity care deserts limit necessary family planning resources by restricting access to hospitals, birthing centers, and obstetric providers.³⁰ Insufficient services exacerbate rates of unplanned pregnancies and deprive Black mothers of

data-research/mmrc-2017-2019.html [https://perma.cc/M7VS-PA4A] (finding in thirty-six states between 2017 and 2019, over eighty percent of pregnancy-related deaths up to a year postpartum were preventable).

27. This discussion focuses on the experiences of Black cisgender birthing women. Because of the connection with misogyny, the analysis does not encompass the full experience of all Black people giving birth. For more on the experiences of all Black birthing people, see Angelica Marie, *Black Birthing Bill of Rights*, NAT'L ASS'N TO ADVANCE BLACK BIRTH (2020), <https://thenaabb.org/wp-content/uploads/2020/04/NAABB-BOR-OneSheet-3-2.pdf> [https://perma.cc/Y5GB-A4V2]; Niaja J.E. Nolan, Krystal Leaphart & Terri Wright, *Black Women, Birthing People, and Maternal Mental Health*, MATERNAL MENTAL HEALTH LEADERSHIP ALL. (July 2023), <https://www.mmhla.org/articles/black-women-birthing-people-mothers-and-maternal-mental-health-fact-sheet> [https://perma.cc/2A5T-8ET7]; and *Advancing Black Health Equity: Birth Equity*, CAL. HEALTH CARE FOUND., <https://www.chcf.org/program/healthequity/advancing-black-health-equity/birth-equity/> [https://perma.cc/6FES-Q23M] (last visited May 26, 2024).

The definition of Black includes descendants of Africa from the entire African diaspora. Although the piece centers on the experiences of descendants of slaves, all Black people in the United States experience racism as a direct result of slavery. The birthing outcomes for Black mothers immigrating to the United States are slightly better than those of Black mothers born in the United States; however, these differences disappear by the second generation. For more information, see *Discrimination, Inequality May Erase 'Birthweight Advantage' of Black U.S. Immigrants in One Generation*, PRINCETON SCH. PUB. & INT'L AFFS. (June 2, 2020), <https://spia.princeton.edu/news/discrimination-inequality-may-erase-birthweight-advantage-black-us-immigrants-one-generation> [https://perma.cc/WF4C-NPSC]; Theresa Andrasfay & Noreen Goldman, *Intergenerational Change in Birthweight: Effects of Foreign-Born Status and Racial Ethnicity*, 31 EPIDEMIOLOGY 649, 649 (2020).

28. The first thousand days refers to the time period between conception to a child's second birthday. During this period, environmental influences and maternal well-being determine a child's well-being. See Sarah Cusick & Michael K. Georgieff, *The First 1,000 Days of Life: The Brain's Window of Opportunity*, UNICEF (Apr. 12, 2013) [https://perma.cc/WG3S-36LV]; *Why 1,000 Days*, 1,000 DAYS, <https://thousanddays.org/why-1000-days/> [https://perma.cc/5UGG-RNR8] (last visited May 26, 2024).

29. MARCH OF DIMES, NOWHERE TO GO: MATERNITY CARE DESERTS ACROSS THE U.S. 2, 5 (2022), https://www.marchofdimes.org/sites/default/files/2022-10/2022_Maternity_Care_Report.pdf [https://perma.cc/8RTS-2SRD]; Rachel Treisman, *Millions of Americans Are Losing Access to Maternal Care. Here's What Can Be Done*, NPR (Oct. 12, 2022, 9:37 AM), <https://www.npr.org/2022/10/12/1128335563/maternity-care-deserts-march-of-dimes-report> [https://perma.cc/LHK3-T8X8].

30. See *Maternity Care Desert*, MARCH OF DIMES (Dec. 2023), <https://www.marchofdimes.org/peristats/data?top=23> [https://perma.cc/H93W-KMHW].

necessary family planning information.³¹ Black mothers seeking prenatal services face disparities in punctuality and frequency of care; stated otherwise, the mere ability to access scarce resources does not result in comprehensive, ongoing care.³² This trend is most evident in southern states and highly racially segregated geographies.³³ In Georgia, over seventy percent of white mothers access prenatal care in the first trimester; under sixty percent of Black mothers are able to do so.³⁴ In 2017, closures of two D.C. hospitals forced one mother to travel across town every two weeks; the journey took “over an hour on public transportation. . . . [L]ong wait times and frequent rescheduling have cost her a waitressing job.”³⁵

Conditions requiring ongoing management—namely hypertension, obesity, and diabetes—complicate Black maternity.³⁶ Black women are three times more likely to develop fibroids, which are benign uterine tumors causing reproductive complications.³⁷ By age twenty-five, twenty-five percent of Black women develop fibroids—this figure increases to eighty percent by menopause.³⁸ These can change size during pregnancy, interfering with fetal development and causing intrauterine discomfort.³⁹ Comorbidities exaggerate the risk of preeclampsia, a

31. Pregnant women of all races are more likely to delay prenatal care when the pregnancy is unplanned or unwanted. See LISA PAISLEY-CLEVELAND, *BLACK MIDDLE-CLASS WOMEN AND PREGNANCY LOSS: A QUALITATIVE INQUIRY* 15 (2013). Even when the pregnancy is wanted, the delay in knowledge negatively impacts maternal outcomes. See *id.*

32. See Pedro Henrique Alcântara da Silva, Kezauyn Miranda Aiquoc, Aryelly Dayane da Silva Nunes, Wilton Rodrigues Medeiros, Talita Araujo de Souza, Javier Jerez-Roig & Isabelle Ribeiro Barbosa, *Prevalence of Access to Prenatal Care in the First Trimester of Pregnancy Among Black Women Compared to Other Races/Ethnicities: A Systematic Review and Meta-Analysis*, *PUB. HEALTH REVS.*, July 2022, at 1, 7–8 tbl.2.

33. *Id.* at 7.

34. *Id.* at 6 tbl.2.

35. Myszkowski & Pressey, *supra* note 23.

36. See Sajid Shahul, Avery Tung, Mohammed Minhaj, Junaid Nizamuddin, Julia Wenger, Eitezaz Mahmood, Ariel Mueller, Shahzad Shaefi, Barbara Scavone, Robb D. Kociol, Daniel Talmor & Sarosh Rana, *Racial Disparities in Comorbidities, Complications, and Maternal and Fetal Outcomes in Women with Preeclampsia/Eclampsia*, 34 *HYPERTENSION PREGNANCY* 506, 510 (2015) (“When compared to white women, [African American] women with preeclampsia had a higher rate of hypertension, diabetes, obesity, and acute renal failure.”).

37. Claretta Bellamy, *Black Women Start to Talk About Uterine Fibroids, a Condition Many Get but Few Speak About*, *NBC NEWS* (Mar. 21, 2022, 4:32 AM), <https://www.nbcnews.com/news/nbcblk/black-women-start-talk-uterine-fibroids-condition-many-get-speak-rcna20478> [<https://perma.cc/7GGG-SHAW>]; Heba M. Eltoukhi, Monica N. Modi, Meredith Weston, Alicia Y. Armstrong & Elizabeth A. Stewart, *The Health Disparities of Uterine Fibroid Tumors for African American Women: A Public Health Issue*, 210 *AM. J. OBSTETRICS & GYNECOLOGY* 194, 196 (2014).

38. Hope Lane-Gavin, *Fertility and Fibroids: The Other Side of Black Reproductive Health*, *CTR. FOR CMTY. SOLS.* (Feb. 8, 2021), <https://www.communitysolutions.com/fertility-fibroids-side-black-reproductive-health/> [<https://perma.cc/2JRL-JWJ6>].

39. See Eltoukhi et al., *supra* note 37, at 194, 196; Tressie McMillan Cottom, *I Was Pregnant and in Crisis. All the Doctors and Nurses Saw Was an Incompetent Black Woman*, *TIME* (Jan. 8, 2019, 7:57 AM), <https://time.com/5494404/tressie-mcmillan-cottom-thick-pregnancy-competent/> [<https://perma.cc/8QWU-6D59>] (“I went to the hospital. They asked again about my back, implied I had eaten something ‘bad’ for me and begrudgingly, finally decided to do an ultrasound. The image showed three babies, only I was pregnant with one. The other two were tumors, larger than the baby. The doctor turned to me and said, ‘If you make it through the night without going into preterm labor, I’d be

potentially fatal hypertension disorder during pregnancy,⁴⁰ which develops more frequently and severely for Black mothers.⁴¹ Black women with preeclampsia also more frequently experience pregnancy-related congestive heart failure and stroke.⁴² Early medical intervention, primarily treatment of underlying risk factors, may abate these pregnancy complications.⁴³ Without treatment, these threats to a Black woman's pregnancy multiply.

Black mothers also exhibit heightened stress levels during pregnancy, aggravating preexisting physiological and psychological conditions.⁴⁴ Environmental stressors, particularly societal discrimination and poverty, inflame comorbidities.⁴⁵ Chronic stress dysregulates cortisol levels, which are responsible for effective inflammation suppression.⁴⁶ Black women experience earlier onset of hypertension and cardiovascular diseases, which are stress-related comorbidities sensitive to inflammation.⁴⁷ Perinatal mood disorders further weaken inflammation responses. Over twenty-five percent of Black women report depressive symptoms during pregnancy, but few receive psychological treatment.⁴⁸ Without culturally competent psychological care, Black mothers are left to self-manage their mental health conditions.⁴⁹

surprised.' With that, he walked out and I was checked into the maternity ward. Eventually a night nurse mentioned that I had been in labor for three days. 'You should have said something,' she scolded me.'").

40. Shahul et al., *supra* note 36, at 510.

41. *Id.* at 509–10.

42. *Id.* at 510 tbl.2.

43. *See id.* at 512.

44. *See* Carmen Giurgescu, Karen Kavanaugh, Kathleen F. Norr, Barbara L. Dancy, Naomi Twigg, Barbara L. McFarlin, Christopher G. Engeland, Mary Dawn Hennessy & Rosemary C. White-Traut, *Stressors, Resources, and Stress Responses in Pregnant African American Women: A Mixed Methods Pilot Study*, 27 J. PERINATAL & NEONATAL NURSING 81, 82 (2013). Stress levels are higher for mothers with unexpected pregnancies. *See* PAISLEY-CLEVELAND, *supra* note 31, at 15. Black mothers, lacking necessary contraceptive and family planning services, more often fall into this category. Michele Troutman, Saima Rafique & Torie Comeaux Plowden, *Are Higher Unintended Pregnancy Rates Among Minorities a Result of Disparate Access to Contraception?*, CONTRACEPTION & REPROD. MED., Oct. 1, 2020, at 1, 2.

45. *See* Giurgescu et al., *supra* note 44, at 82, 83, 91–92.

46. *Id.* at 91–92.

47. Lisa M. Christian, Ronald Glaser, Kyle Porter & Jay D. Iams, *Stress-Induced Inflammatory Responses in Women: Effects of Race and Pregnancy*, 75 PSYCHOSOMATIC MED. 658, 665 (2013); Lisa O'Mary, *Young Black Women Have Increased High Blood Pressure Risk*, WEBMD (Mar. 3, 2023) [<https://perma.cc/ML4Z-ZYJ4>].

48. Beata Mostafavi, *Stress, Depression May Be Linked to Harmful Inflammation in Black Pregnant Women*, MICH. MED. (June 1, 2022, 5:00 AM), <https://www.michiganmedicine.org/health-lab/stress-depression-may-be-linked-harmful-inflammation-black-pregnant-women> [<https://perma.cc/W4EU-CBDT>]; Nadia Saadat, Liying Zhang, Suzanne Hyer, Vasantha Padmanabhan, Jennifer Woo, Christopher G. Engeland, Dawn P. Misra & Carmen Giurgescu, *Psychosocial and Behavioral Factors Affecting Inflammation Among Pregnant African American Women*, BRAIN BEHAV. & IMMUNITY – HEALTH, 2022, at 1, 5–6.

49. *See* Nia Hamm, *High Rates of Depression Among African-American Women, Low Rates of Treatment*, HUFFPOST (Nov. 25, 2014), https://www.huffpost.com/entry/depression-african-american-women_b_5836320 [<https://perma.cc/7KNU-CR7N>].

B. STATE OF BLACK CHILDBIRTH

Childbirth presents new challenges for Black mothers. Maternity care deserts leave communities without accessible obstetric resources, forcing mothers in active labor to travel to the hospital.⁵⁰ Hospital closures, overcrowding, and understaffing extend wait times.⁵¹ As of 2018, seventy-five percent of Black mothers gave birth in “Black-serving” hospitals—facilities in Black neighborhoods providing lower-quality care.⁵² In 2019, hospitals offering maternal care in Chicago’s South Side “dropped from seven to three,” constricting birthing resources for the predominantly Black population.⁵³ Black mothers may also be subjected to longer emergency room wait times; according to a 2022 study, Black mothers waited twelve minutes longer for emergency obstetrical care than their white counterparts.⁵⁴

Upon admission, hospitals often challenge Black mothers about their medical needs, specifically regarding pain management. Eighty-three percent of all birthing mothers in the United States receive pain medication during delivery; sixty-two percent of those delivering vaginally receive an epidural.⁵⁵ Epidural and analgesic use is associated with a decreased risk of severe maternal morbidity.⁵⁶ Despite the widespread prescription of painkillers for pregnancy-related ailments, physicians disregard Black mothers’ choices regarding their own pain

50. Margo Snipe, *Black Women Are Losing Access to Maternity Care. This Law Is Partly to Blame.*, CAP. B NEWS (Mar. 9, 2023), <https://capitalnews.org/dangerous-deliveries-maternal-care-deserts> [<https://perma.cc/Q3F8-ZAHB>]; cf. Myszkowski & Pressey, *supra* note 23 (detailing how one mother had to travel across town for hospital visits after two local hospitals closed). Rural areas also face maternal resource gaps, often requiring extended travel to urban areas. See Theresa Gaffney, *Maternity Care ‘Deserts’ on the Rise Across the U.S., Report Finds*, STAT (Oct. 11, 2022), <https://www.statnews.com/2022/10/11/maternity-care-deserts-on-the-rise-across-the-u-s-report-finds/> [<https://perma.cc/RK8Z-NKUN>]; Andrea Sonenberg & Diana J. Mason, *Maternity Care Deserts in the US*, JAMA HEALTH F., Jan. 12, 2023, at 1.

51. See Gaffney, *supra* note 50; Richard Fowler, *Maternity Deserts and Short Staffing Put American Births in Danger*, FORBES (Sept. 5, 2023, 10:00 AM), <https://www.forbes.com/sites/richardfowler/2023/09/05/maternity-deserts-and-short-staffing-put-american-births-in-danger>; Amy Roeder, *Maternity Ward Closures Exacerbating Health Disparities*, HARV. T.H. CHAN SCH. PUB. HEALTH (Dec. 13, 2023), <https://www.hsph.harvard.edu/news/features/maternity-obstetric-closure-health-disparities> [<https://perma.cc/AV33-DZZR>].

52. See NAT’L P’SHIP FOR WOMEN & FAMS., *supra* note 22, at 2.

53. Curtis Black, *South Side’s Maternal Health Desert Poses Added Risks for Black Women During Pandemic*, CHI. REP. (July 29, 2020), <https://www.chicagoreporter.com/south-sides-maternal-health-desert-poses-added-risks-for-black-women-during-pandemic/> [<https://perma.cc/5NAL-7833>].

54. Megan E. Deichen Hansen, Samantha S. Goldfarb, Ariadna Mercouffer, Tyra Dark, Hanna Lateef & Jeffrey S. Harman, *Racial Inequities in Emergency Department Wait Times for Pregnancy-Related Concerns*, WOMEN’S HEALTH, 2022, at 1, 3.

55. Theresa Morris & Mia Schulman, *Race Inequality in Epidural Use and Regional Anesthesia Failure in Labor and Birth: An Examination of Women’s Experience*, 5 SEXUAL & REPROD. HEALTHCARE 188, 188 (2014).

56. Ruth Landau, Alexander Friedman, Stanford Chihuri & Jamie Daw, *Use of Epidural in Childbirth Linked to Decreased Severe Maternal Morbidity*, COLUM. UNIV. MAILMAN SCH. PUB. HEALTH (Feb. 22, 2022), <https://www.publichealth.columbia.edu/public-health-now/news/use-epidural-childbirth-linked-decreased-severe-maternal-morbidity> [<https://perma.cc/J5QG-HT2N>].

management.⁵⁷ Black mothers requesting epidurals are ignored, even told to “shut up” when they express pain.⁵⁸ Black mothers struggle to convince their doctors their pain is legitimate, only to receive contempt in response.⁵⁹ Professor Tressie McMillan Cottom relates her birthing experience:

At one point I awoke and screamed, “[redacted expletive].” The nurse told me to watch my language. I begged for an epidural. After three eternities an anesthesiologist arrived. He glared at me and said that if I wasn’t quiet he would leave and I would not get any pain relief. Just as a contraction crested, the needle pierced my spine and I tried desperately to be still and quiet so he would not leave me there that way.⁶⁰

Black mothers also report experiencing “pressure” and coercion during childbirth more often than their white counterparts.⁶¹ Horror stories about epidural complications, although rare, scare Black mothers; complications from anesthesia are one of the primary causes of maternal death during labor.⁶² Sha-Asia Washington was one of these women. During a two-day hospitalization for hypertension—during which no medication was provided—Sha-Asia hesitantly consented to epidural administration.⁶³ She went into cardiac arrest immediately.⁶⁴

Black mothers are also pressured by their medical teams to consent to unnecessary C-section procedures, against their birth plans.⁶⁵ C-sections are now the most frequently performed medical procedure in the United States; despite its ubiquity, the procedure is disproportionately responsible for maternal

57. See Morris & Schulman, *supra* note 55, at 189.

58. Leah Campbell, *Why Is Giving Birth in the U.S. So Dangerous for Women of Color?*, HEALTHLINE (Sept. 14, 2018), [https://www.healthline.com/healthy/giving-birth-in-us-dangerous-for-women-of-color? \[https://perma.cc/LQ44-TH2H\]](https://www.healthline.com/healthy/giving-birth-in-us-dangerous-for-women-of-color? [https://perma.cc/LQ44-TH2H]) (“After the epidural wore off, I was in the most horrific pain of my life. I was screaming, having trouble breathing, and panicking. A nurse came in the room and told me to ‘shut up’ because I was scaring other patients. By the time I was ready to deliver, I’d been laboring med-free for about an hour and a half.”); see McMillan Cottom, *supra* note 39.

59. An anesthesiologist told a young mother “she’d have to prove she was in enough pain first.” Campbell, *supra* note 58; see McMillan Cottom, *supra* note 39.

60. McMillan Cottom, *supra* note 39.

61. Morris & Schulman, *supra* note 55, at 188.

62. See EJ Dickson, *Death of Sha-Asia Washington, Pregnant 26-Year-Old Black Woman, Highlights Devastating Trend*, ROLLING STONE (July 9, 2020), [https://www.rollingstone.com/culture/culture-features/shaasia-washington-death-woodhull-hospital-black-maternal-mortality-rate-1026069/ \[https://perma.cc/7EN5-FZYF\]](https://www.rollingstone.com/culture/culture-features/shaasia-washington-death-woodhull-hospital-black-maternal-mortality-rate-1026069/ [https://perma.cc/7EN5-FZYF]).

63. *Id.*

64. See *id.*

65. See Claire Cain Miller & Sarah Kliff, *Unwanted Epidurals, Untreated Pain: Black Women Tell Their Birth Stories*, N.Y. TIMES (May 12, 2023), <https://www.nytimes.com/2023/05/06/upshot/black-births-maternal-mortality.html>; Campbell, *supra* note 58 (“When an epidural was finally approved, Salazar was surprised it wasn’t the anesthesiologist who gave it to her, but a student he passed the task off to instead. Salazar says the student missed three times, ultimately stabbing her in the spine a total of four times before the medication was delivered. She then only set the epidural for 40 minutes, saying she wanted it to wear off before Salazar went into labor.”). See also Campbell, *supra* note 20, at 62–63, 68–69 (discussing coercive practices of obstetric racism).

complications.⁶⁶ Hospitals surgically intervene five times more than they did in 1970—nearly one-third of all births are C-sections.⁶⁷ Increased utilization has not improved maternal outcomes; instead, mortality rates skyrocketed in kind.⁶⁸ According to the World Health Organization, “[t]here is no justification for any region to have a rate higher than 10–15%.”⁶⁹ For Black mothers in the United States, the cesarean rate is thirty-six percent.⁷⁰

C. STATE OF BLACK POSTPARTUM

Postpartum, Black mothers are vulnerable to potentially fatal complications. Childbirth, particularly via C-section, risks a host of complications: postpartum cardiomyopathy (heart failure), blood pressure disorders including preeclampsia, embolism (blood vessel blockage), ectopic pregnancy complications, transfusions, breastfeeding complications, and hemorrhage.⁷¹ Cardiovascular conditions pose disproportionate risk to Black mothers, who have higher rates of cardiovascular conditions preceding pregnancy.⁷² As the most common C-section recipients, Black mothers disproportionately experience infection complications.⁷³ Black mothers are twice as likely to develop severe maternal sepsis, one of the core causes of maternal mortality.⁷⁴ C-section infections occur in up to fifteen percent of all patients,⁷⁵ a rate that worsens for Black mothers receiving delayed medical attention.⁷⁶

66. See Campbell, *supra* note 20, at 61–62.

67. See Joni Hess, *Why Do Black Women in the US Have More C-Sections than White Women?*, OPENDEMOCRACY (July 13, 2021, 7:00 AM), <https://www.opendemocracy.net/en/why-do-black-women-us-have-more-c-sections-white-women/> [<https://perma.cc/Z2BZ-8FQY>]; AFTERSHOCK (Paula Eiselt & Tonya Lewis Lee 2022).

68. See Hess, *supra* note 67; HOYERT, *supra* note 24, at 1.

69. Campbell, *supra* note 20, at 61 (alteration in original) (quoting World Health Org., *Appropriate Technology for Birth*, 326 LANCET 436, 437 (1985)).

70. See Hess, *supra* note 67.

71. See Lisa Marshall & Charlie Plain, *Black Women Over Three Times More Likely to Die in Pregnancy, Postpartum Than White Women, New Research Finds*, POPULATION REFERENCE BUREAU (Dec. 6, 2021), <https://www.prb.org/resources/black-women-over-three-times-more-likely-to-die-in-pregnancy-postpartum-than-white-women-new-research-finds/> [<https://perma.cc/W4WQ-6YHW>]; Fran Kirtz, *A New Campaign to Reduce C-Sections Is Especially Critical for African-American Mothers and Babies*, CAL. HEALTH REP. (Aug. 10, 2018), <https://www.calhealthreport.org/2018/08/10/new-campaign-reduce-c-sections-especially-critical-african-american-mothers-babies/> [<https://perma.cc/UTD3-EQRC>].

72. See Rolanda Lister, Scott Baldwin & Cornelia Graves, *Black Box Warning: Cardiovascular Complications Make Motherhood Unsafe for African American Women*, WORLD J. GYNECOLOGY & WOMEN'S HEALTH, May 2020, at 1, 1–2.

73. See Kat Stafford, *Why Do So Many Black Women Die in Pregnancy? One Reason: Doctors Don't Take Them Seriously*, AP (May 23, 2023), <https://projects.apnews.com/features/2023/from-birth-to-death/black-women-maternal-mortality-rate.html> [<https://perma.cc/AVX8-GU6V>].

74. *Id.*

75. Valinda Riggins Nwadike & Jennifer Huizen, *What Causes Post-Cesarean Wound Infections?*, MED. NEWS TODAY (Feb. 20, 2019), <https://www.medicalnewstoday.com/articles/324505> [<https://perma.cc/N72L-T2L9>].

76. See Stafford, *supra* note 73.

As seen during delivery, hospitals routinely deny Black mothers pain relief postpartum.⁷⁷ Compared to white women, Black women report significantly higher pain levels, but hospitals prescribe opioid medication less often.⁷⁸ Despite disparities in reported pain scores, physicians conduct pain evaluations less frequently for Black mothers, compounding the undertreatment of Black postpartum pain.⁷⁹ These resource gaps persist regardless of insurance method—privately insured Black women receive less anesthesia than uninsured white women.⁸⁰ Physicians systematically refuse to recognize Black maternal pain.

Postpartum resource droughts mirror those of pregnancy.⁸¹ Hospital closures in predominantly-Black communities prolong wait times for postpartum check-ins, and limited healthcare provider choices force Black mothers to navigate culturally-incompetent care.⁸² While Medicaid provides postpartum coverage initially, mothers lose benefits after just sixty days.⁸³ The Affordable Care Act's Medicaid expansion offers little relief for Black mothers, most of whom live in states refusing to implement the expansion.⁸⁴ Medical inaccessibility, combined with other societal inequities, magnifies rates of Black maternal anxiety and postpartum depression.⁸⁵ Almost forty percent of Black mothers experience maternal

77. Nevert Badreldin, William A. Grobman & Lynn M. Lee, *Racial Disparities in Postpartum Pain Management*, 134 OBSTETRICS & GYNECOLOGY 1147, 1149, 1151 (2019); Jasmine D. Johnson, Ifeyinwa V. Asiodu, Christine P. McKenzie, Christine Tucker, Kristin P. Tully, Katherine Bryant, Sarah Verbiest & Alison M. Stuebe, *Racial and Ethnic Inequities in Postpartum Pain Evaluation and Management*, 134 OBSTETRICS & GYNECOLOGY 1155, 1155 (2019).

78. Johnson et al., *supra* note 77, at 1155. In contrast, physicians prescribe opioids more often for white mothers reporting low pain levels. Badreldin et al., *supra* note 77, at 1151; *see also* Johnson et al., *supra* note 77, at 1155 (noting that Black women “received less narcotic medication at 0–24 hours postpartum”).

79. *See* Johnson et al., *supra* note 77, at 1158.

80. *Id.* at 1159–60.

81. *See* Latoya Hill, Samantha Artiga & Usha Ranji, *Racial Disparities in Maternal and Infant Health: Current Status and Efforts to Address Them*, KFF (Nov. 1, 2022), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/racial-disparities-in-maternal-and-infant-health-current-status-and-efforts-to-address-them/> [<https://perma.cc/3ETL-XAR4>]; Michele A. Rountree, *Achieving Health Equity: Improving the Maternal Postpartum Access and Outcomes of Black/African American Women in Travis County (2020)*, UNIV. TEX. AUSTIN: STEVE HICKS SCH. SOC. WORK, <https://socialwork.utexas.edu/projects/achieving-health-equity-improving-the-maternal-postpartum-access-and-outcomes-of-black-african-american-women-in-travis-county/> [<https://perma.cc/W5Y7-7EGE>] (last visited May 27, 2024).

82. *See* Hill et al., *supra* note 81; Myszkowski & Pressey, *supra* note 23.

83. *See* Hill et al., *supra* note 81.

84. *See id.*

85. *See* Ashley Kilgoe, *Addressing the Increased Risk of Postpartum Depression for Black Women*, NAT'L ALL. ON MENTAL ILLNESS (July 26, 2021), <https://www.nami.org/Blogs/NAMI-Blog/July-2021/Addressing-the-Increased-Risk-of-Postpartum-Depression-for-Black-Women> [<https://perma.cc/P4KE-TSHS>]; A. Rochaun Meadows-Fernandez, *Battling Postpartum Depression Feels Different When You're Black*, HEALTHYWOMEN (May 1, 2020), <https://www.healthywomen.org/your-health/pregnancy-postpartum/battling-postpartum-depression-feels-different-when-youre-black> [<https://perma.cc/67QK-ZBTX>] (“Black women experience PPD at a higher rate than white women and are less likely to receive treatment.”); Adeiyewunmi Osinubi, *For Black Parents with Postpartum Depression, Help Can Be Difficult to Find*, WASH. POST (Feb. 26, 2022, 9:00 AM), <https://www.washingtonpost.com/health/2022/02/26/black-mothers-postpartum/> (“Systemic racism, lack of access to mental health providers and financial challenges are factors that may make the postpartum experiences of Black

mental health conditions during the perinatal period, twice the amount experienced by their white counterparts.⁸⁶ Black mothers are half as likely to receive treatment;⁸⁷ in a 2011 study, just four percent of Black mothers accessed postpartum mental health services.⁸⁸ Even after initiating treatment, Black women were less likely to receive follow-up treatment or medication refills.⁸⁹ Gaps in postpartum mental health treatment endanger the lives of Black mothers, further harming their health outcomes during the first thousand days.

II. MATERNITY AND MISOGYNOIR

“It is racism, not race, that is killing America’s Black mothers and babies.”⁹⁰

Misogynoir—discrimination experienced solely by Black women—encapsulates historical and contemporary justifications of reproductive subjugation.⁹¹ Modern caricatures of Black motherhood mirror those present in slave society, deeming Black mothers unworthy of parenthood, reproductive autonomy, and respect. Misogynoir endangers maternal health, exacting systemic and institutional reproductive violence. This Note defines misogynoir, identifies enduring discriminatory tropes throughout history, and highlights the use of these stereotypes to justify historical anti-Black reproductive violence.

A. OTHERING THE BLACK MOTHER

Intersectionality, a term coined by Kimberlé Williams Crenshaw, “is a lens through which [one] can see where power comes and collides, where it interlocks and intersects.”⁹² Describing the concept as a multiplying marginalization effect, Crenshaw highlights the embedded erasure of Black women’s experiences in

women all the more challenging”); Nina Feldman & Aneri Pattani, *Black Mothers Get Less Treatment for Their Postpartum Depression*, NPR (Nov. 29, 2019, 5:00 AM), <https://www.npr.org/sections/health-shots/2019/11/29/760231688/black-mothers-get-less-treatment-for-their-postpartum-depression> [<https://perma.cc/PQH3-8ATY>]; see also Juana Summers, Michael Levitt & Sarah Handel, *Postpartum Care Falls Short for Black Women. One Mother Is Trying to Fix That*, NPR (Aug. 16, 2022, 4:50 PM), <https://www.npr.org/2022/08/16/1117762246/postpartum-care-falls-short-for-black-women-one-mother-is-trying-to-fix-that> [<https://perma.cc/C4QW-XLS9>] (describing one mother’s efforts to help Black mothers with postpartum depression).

86. *Why Black Women Are Dying at 2-3 Times the Rate of White Women*, MATERNAL MENTAL HEALTH LEADERSHIP ALL. (May 26, 2022), <https://www.mmhla.org/articles/why-black-women-are-dying/> [<https://perma.cc/QRW5-TEYT>].

87. *Id.*

88. Katy Backes Kozhimannil, Connie Mah Trinacty, Alisa B. Busch, Haiden A. Huskamp & Alyce S. Adams, *Racial and Ethnic Disparities in Postpartum Depression Care Among Low-Income Women*, 62 PSYCHIATRIC SERVS. 619, 621 (2011).

89. *Id.* at 621–22.

90. Tina Suliman, *Black Maternal Mortality: ‘It Is Racism, Not Race,’* JOHNS HOPKINS CTR. FOR COMMUN PROGRAMS (May 17, 2021), <https://ccp.jhu.edu/2021/05/17/maternal-mortality-black-mamas-race-momnibus/> [<https://perma.cc/B94A-UEMG>].

91. See MOYA BAILEY, MISOGYNOIR TRANSFORMED: BLACK WOMEN’S DIGITAL RESISTANCE 1 (2021).

92. Kimberlé Crenshaw on Intersectionality, *More than Two Decades Later*, COLUM. L. SCH. (June 8, 2017), <https://www.law.columbia.edu/pt-br/news/2017/06/kimberle-crenshaw-intersectionality> [<https://perma.cc/EX23-QZ8R>].

both Black- and women-centric spaces.⁹³ Simply put, intersectionality is the multiplying effect experienced by people with multiple marginalized identities.⁹⁴ While someone with one marginalized identity experiences societal discrimination from one angle, multiple marginalized identities compound to create a unique oppressive combination.⁹⁵

Misogynoir is the point “where racism and sexism meet,” multiplying the oppressive consequences of anti-Blackness and misogyny.⁹⁶ Coined by intersectionality scholar Moya Bailey,⁹⁷ misogynoir represents “the specific hatred, dislike, distrust, and prejudice directed toward Black women.”⁹⁸ At the intersection of race, gender, and often class, Black women⁹⁹ “occupy positions both physically and culturally marginalized within dominant society.”¹⁰⁰ Their Blackness is marginalized within the societal racial hierarchy, and their womanhood is marginalized from a patriarchal lens. Within Black spaces, Black women experience sexism, just as they experience anti-Black racism in women’s spaces.¹⁰¹ Even within groups specifically designed to uplift Black people and women, Black women are routinely sidelined. Black women assume the stereotypes and disadvantages of Black men and white women in all spaces:

93. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1251 (1991) (“[M]inority women suffer from the effects of multiple subordination, coupled with institutional expectations based on inappropriate nonintersectional contexts, [which] shapes and ultimately limits the opportunities for meaningful intervention on their behalf.”).

94. See *id.* at 1244.

95. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140.

96. Eliza Anyangwe, *Misogynoir: Where Racism and Sexism Meet*, GUARDIAN (Oct. 5, 2015, 2:00 PM), <https://www.theguardian.com/lifeandstyle/2015/oct/05/what-is-misogynoir> [<https://perma.cc/PM2N-86QQ>]; Rebecca Ruiz, *Why You Need to Know What ‘Misogynoir’ Means Right Now*, MASHABLE (Apr. 7, 2020), <https://mashable.com/article/misogynoir-black-women-sexism-racism> [<https://perma.cc/H8XV-L2LD>] (“If you can’t replace the person being targeted with a woman of another race or someone of another gender, you know misogynoir is in play.”).

97. BAILEY, *supra* note 91, at 1; Ruiz, *supra* note 96 (“Moya Bailey . . . coined the term misogynoir in 2008 . . .”). Ironically, the inventors of the very term “misogynoir” have regularly had their term usurped without credit. Their names are Moya Bailey and Trudy. Moya Bailey & Trudy, *On Misogynoir: Citation, Erasure, and Plagiarism*, 18 FEMINIST MEDIA STUD. 762, 762 (2018); see also Janice Gassam Asare, *Misogynoir: The Unique Discrimination That Black Women Face*, FORBES (Sept. 22, 2020, 6:19 PM), <https://www.forbes.com/sites/janicegassam/2020/09/22/misogynoir-the-unique-discrimination-that-black-women-face/>.

98. *Misogynoir*, DICTIONARY.COM, <https://www.dictionary.com/browse/misogynoir> [<https://perma.cc/CF7Q-9HHC>] (last visited May 27, 2024).

99. This example, for the scope of this Note, assumes that this Black woman is cisgender, straight, able-bodied, and socioeconomically privileged. Although this is certainly not representative of the collective Black female experience, this perspective is intended to illustrate the compounding effects of intersectional marginalization, even when all other privileges are present.

100. Crenshaw, *supra* note 93, at 1250.

101. See *id.* at 1251–52 (“For example, racism as experienced by people of color who are of a particular gender—male—tends to determine the parameters of antiracist strategies, just as sexism as experienced by women who are of a particular race—white—tends to ground the women’s movement.”).

white patriarchal society, Black spaces, women’s spaces, and even Black women’s spaces.¹⁰²

B. LABELING THE BLACK MOTHER

Misogynoir fuels enduring archetypes of Black womanhood, justifying systemic deprivation of their reproductive agency. Traditional tropes—namely the Jezebel and the Sapphire—perpetuate the dehumanization of Black women, appealing to discriminatory fears of sexual domination and violence.¹⁰³ Societal contempt toward Black mothers shows itself in new-age misogynoir archetypes: the domineering Strong Black Mother (the Sapphire);¹⁰⁴ the greedy “Baby Mama” (the Jezebel);¹⁰⁵ and the “Welfare Queen” (a combination of the two).¹⁰⁶

The Jezebel exemplifies Black feminine hypersexuality, characterizing Black women as lascivious, sexually insatiable, innately promiscuous, and even predatory.¹⁰⁷ This characterization paints Black women as “originator[s] of sexual sin . . . the embodiment of female evil and sexual lust,”¹⁰⁸ comparing them to uncontrollable animals to be bred.¹⁰⁹ Jezebels did not simply acquiesce to reproductive violence; they enjoyed it.¹¹⁰ Plainly stated:

102. See generally Elizabeth S. Cook, *Creation of the Internalized Misogynoir Measure: A Qualitative Approach to Designing an Intersectional Tool for Use with Black Women* (Mar. 2020) (Ph. D. dissertation, Northeastern University) (ProQuest) (exploring internalized misogynoir and its impact on Black women’s mental health, self-esteem, and interpersonal relationships).

103. See Nnennaya Amuchie, “*The Forgotten Victims*” *How Racialized Gender Stereotypes Lead to Police Violence Against Black Women and Girls: Incorporating an Analysis of Police Violence into Feminist Jurisprudence and Community Activism*, 14 SEATTLE J. FOR SOC. JUST. 617, 638–40, 643–45 (2016) (describing each trope and the slave state’s concurrent sexualization and dehumanization of Black women to justify sexual and reproductive violence).

104. See Sinikka Elliott & Megan Reid, *The Superstrong Black Mother*, CONTEXTS, Winter 2016, at 48, 50 (outlining “[t]he long-held superstrong Black mother image . . . now dictat[ing] the terms of good mothering for Black women: be strong and be solely responsible”).

105. See Lana Lopesi, *Baby Mama Drama: What You Need to Know About the Term ‘Baby Mama,’* SPINOFF (Jan. 30, 2018), <https://thespinoff.co.nz/parenting/30-01-2018/baby-mama-drama-what-you-need-to-know-about-the-term-baby-mama> [<https://perma.cc/4DZS-2E53>] (detailing the origins of the derogatory “baby mama” stereotype); Christina M. Grange, *Evolving the “Single Black Mother” Narrative*, MEDIUM (Feb. 13, 2020), <https://medium.com/national-center-for-institutional-diversity/evolving-the-single-black-mother-narrative-eaee03cce251> [<https://perma.cc/BHS7-NXKC>] (pushing back on the limiting “Single Black mother” narrative); TERRION L. WILLIAMSON, SCANDALIZE MY NAME: BLACK FEMINIST PRACTICE AND THE MAKING OF BLACK SOCIAL LIFE 87–112 (2017) (providing a thorough explanation of the baby mama trope).

106. See Dawn Marie Dow, *Negotiating “The Welfare Queen” and “The Strong Black Woman”:* *African American Middle-Class Mothers’ Work and Family Perspectives*, 58 SOCIO. PERSPS. 36, 37 (2015); see also Melissa Harris-Perry, *Bad Black Mothers*, NATION (Nov. 25, 2009), <https://www.thenation.com/article/archive/bad-black-mothers/> (discussing negative depictions of Black motherhood in films like *Precious*); Nicole Rousseau, *Social Rhetoric and the Construction of Black Motherhood*, 44 J. BLACK STUD. 451, 459 (2013) (linking media depictions of Black mothers throughout history to sociopolitical incentives to “restrict, regulate, and control Black reproduction”). See generally ANGE-MARIE HANCOCK, *THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN* (2004) (describing the public identity of the Welfare Queen).

107. See Amuchie, *supra* note 103, at 639–40.

108. BELL HOOKS, *AIN’T I A WOMAN: BLACK WOMEN AND FEMINISM* 33 (2015).

109. *Id.* at 39.

110. See *id.* at 59.

“If Black slave women could be portrayed as having excessive sexual appetites, then increased fertility should be the expected outcome.” The Jezebel stereotype played a unique role in maintaining the slave economy by providing a strong justification for sexual and physical violence against Black women.¹¹¹

The Jezebel stereotype escalated Black women’s dehumanization, characterizing them as insatiable “sexual temptresses . . . accused of leading white men away from spiritual purity into sin.”¹¹² Black women were considered more analogous to chattel than to humans, much less women.¹¹³ This dehumanization, to the point of direct comparison to livestock to be bred and worked, deprived Black women of the requisite free will to be victims of assault.¹¹⁴

The Sapphire, now known as the “Angry Black Woman,” is a dominating, aggressive, and emasculating force.¹¹⁵ This trope characterizes Black women “as strong, masculinized workhorses who labored with Black men in the fields or as aggressive women who drove their children and partners away with their overbearing natures.”¹¹⁶ As “beast[s] of burden” incomparable to white women with “delicate constitutions,” Black women shouldered similar physical responsibilities and degradations as enslaved Black men.¹¹⁷ In post-Emancipation news stories, Black women accused of crimes were described as “unflinching in their fiendishness, brutal in their attacks,” and as “dangerous urban aggressor[s]”; they “stripped [w]hite men of life and property.”¹¹⁸ When compared to their white counterparts, Black women’s crimes exemplified “bloody rage . . . symptomatic

111. Amuchie, *supra* note 103, at 639–40 (footnote omitted) (quoting PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 81 (2000)); *see also* April L. Cherry, *Nurturing in the Service of White Culture: Racial Subordination, Gestational Surrogacy, and the Ideology of Motherhood*, 10 *TEX. J. WOMEN & L.* 83, 109–10 (2001) (“And, as Angela Davis has noted, the myth of Black male sexual violence towards White women, the myth of the Black rapist, has always been complemented by ‘its inseparable companion: the image of the Black woman as chronically promiscuous. For once the notion is accepted that Black men harbor irresistible and animal-like sexual urges, the entire race is invested with bestiality. If Black men have their eyes on white women as sexual objects, then Black women must certainly welcome the sexual attentions of white men.’” (quoting ANGELA Y. DAVIS, *WOMEN, RACE & CLASS* 182 (1981))).

112. HOOKS, *supra* note 108, at 33; *see also* Jeffrey J. Pokorak, *Rape as a Badge of Slavery: The Legal History of, and Remedies for, Prosecutorial Race-of-Victim Charging Disparities*, 7 *NEV. L.J.* 1, 9 (2006) (“For slavery to be countenanced as anything other than cruel and unChristian subjugation and oppression, slavery supporters had to develop and maintain a theory of race purity supported by the legal system.”).

113. *See* Amuchie, *supra* note 103, at 639.

114. *See* Pokorak, *supra* note 112, at 9 (“Slavery is commonly understood as the control of all aspects of a slave’s social interactions. For a slave woman, that control extended to all aspects of her sexuality and biology.”).

115. Amuchie, *supra* note 103, at 643–44.

116. *Id.* at 643 (quoting Carolyn M. West, *Mammy, Jezebel, Sapphire, and Their Homegirls: Developing an “Oppositional Gaze” Toward the Images of Black Women*, in *LECTURES ON THE PSYCHOLOGY OF WOMEN* 288, 295 (2008)).

117. Michelle S. Jacobs, *The Violent State: Black Women’s Invisible Struggle Against Police Violence*, 24 *WM. & MARY J. WOMEN & LAW* 39, 50 (2017).

118. *Id.* at 51 (quoting KALI N. GROSS, *COLORED AMAZONS: CRIME, VIOLENCE, AND BLACK WOMEN IN THE CITY OF BROTHERLY LOVE, 1880–1910*, at 105 (2006)).

of [B]lack female depravity.”¹¹⁹ Depictions of a fearless, domineering aggressor delegitimize Black women’s victimhood.

These two slavery-era caricatures of Black womanhood collide in the Welfare Queen. The Welfare Queen myth emerged during the twentieth century, capitalizing on stereotypes about Black women’s laziness and promiscuity.¹²⁰ Former President Ronald Reagan sensationalized the Welfare Queen stereotype, relating a story of a Black mother who had “80 names, 30 addresses, 12 Social Security cards and is collecting veteran’s benefits on four non-existing deceased husbands.”¹²¹ Poor Black mothers are portrayed as malevolent manipulators of the welfare system, “content to sit around and collect welfare, shunning work and passing on [their] bad values to [their] offspring.”¹²² This narrative script blamed poor Black mothers for their own poverty, marginalization, and singleness.¹²³ Combining promiscuity and criminality, the Welfare Queen ensured that Black mothers would be blamed for their own misfortunes, rationalizing reproductive discrimination as a Black mother’s personal failing.¹²⁴

Historical notions of Black motherhood endure, citing a Black mother’s moral inability to effectively parent.¹²⁵ Sexually deviant, violent, lazy Black mothers could never be examples for their children, meaning that Black mothers required supervision.¹²⁶ As feminist scholar Professor Ann Ferguson states,

Motherhood for [black women] was not, like that for “full” (white) humans, a chosen career, but a natural, involuntary process as it is for all beasts of burden. The image is created of black people mating like dogs. Under this stereotype, black women could not be expected to be moral authorities like white mothers.¹²⁷

States police Black motherhood with a range of measures, from fundamental resource barriers to the criminalization of poverty.¹²⁸ Black mothers are punished

119. *Id.* (alteration in original) (quoting GROSS, *supra* note 118, at 117).

120. See Franklin D. Gilliam, Jr., *The ‘Welfare Queen’ Experiment: How Viewers React to Images of African-American Mothers on Welfare*, NIEMAN REPS., Summer 1999, at 49, 50.

121. *Id.*; see also Gene Demby, *The Truth Behind the Lies of the Original ‘Welfare Queen,’* NPR (Dec. 20, 2013, 5:03 PM), <https://www.npr.org/sections/codeswitch/2013/12/20/255819681/the-truth-behind-the-lies-of-the-original-welfare-queen> [<https://perma.cc/UBT8-9N4J>] (recounting the true details of the life of Linda Taylor, the woman Reagan used for his Welfare Queen caricature); Bryce Covert, *The Myth of the Welfare Queen*, NEW REPUBLIC (July 2, 2019), <https://newrepublic.com/article/154404/myth-welfare-queen> [<https://perma.cc/HCT3-JTV2>] (same).

122. Gilliam, Jr., *supra* note 120, at 50 (quoting COLLINS, *supra* note 111, at 79).

123. See Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J.L. & SOC. JUST. 233, 245–46 (2014).

124. See *id.* at 237.

125. See Cherry, *supra* note 111, at 111.

126. See *id.* at 110.

127. ANN FERGUSON, *SEXUAL DEMOCRACY: WOMEN, OPPRESSION, AND REVOLUTION* 85 (1991).

128. For a detailed timeline of sexual and reproductive violence experienced by Black women, see Cynthia Prather, Taleria R. Fuller, William L. Jeffries, IV, Khiya J. Marshall, A. Vyann Howell, Angela Belyue-Umole & Winifred King, *Racism, African American Women, and Their Sexual and Reproductive Health: A Review of Historical and Contemporary Evidence and Implications for Health Equity*, 2 HEALTH EQUITY 249, 251 tbl.1 (2018).

financially,¹²⁹ carceraly,¹³⁰ and spiritually.¹³¹ Black mothers face employment discrimination¹³² and sabotage.¹³³ Black mothers experience housing

129. CLAIRE EWING-NELSON, NAT'L WOMEN'S L. CTR., EVEN BEFORE THIS DISASTROUS YEAR FOR MOTHERS, THEY WERE STILL ONLY PAID 75 CENTS FOR EVERY DOLLAR PAID TO FATHERS 2–3 (2021), <https://nwlc.org/wp-content/uploads/2021/04/EDPFS.pdf> [<https://perma.cc/7QX3-W48X>] (noting that Black women receive just fifty-two percent of wages earned by white non-Hispanic men, losing approximately \$33,600 annually).

130. See Andrea Ritchie, *The Violent Policing of Black Motherhood: How and Why Cops Target Mothers of Color*, SALON (Aug. 1, 2017, 6:58 PM), <https://www.salon.com/2017/08/01/the-violent-policing-of-black-motherhood-how-and-why-cops-target-mothers-of-color/> [<https://perma.cc/K98G-MD7C>] (“[P]olice enact and enforce deep devaluation of Black motherhood.”); Raquel Nelson, *Jezebels, Welfare Queens—and Now Criminally Bad Black Moms*, COLORLINES (Aug. 8, 2011), <https://colorlines.com/article/jezebels-welfare-queens-and-now-criminally-bad-black-moms/> [<https://perma.cc/J8T6-CYHS>] (discussing how Black women are criminalized for their vulnerabilities); Sinikka Elliott & Megan Reid, *Low-Income Black Mothers Parenting Adolescents in the Mass Incarceration Era: The Long Reach of Criminalization*, 84 AM. SOCIO. REV. 197, 198 (2019) (describing Black mothers’ “fears that they themselves will be criminalized as bad mothers and even risk losing their parental rights”); Noah Remnick, *Opinion: Debra Harrell and the Mythology of Bad Black Mothers*, L.A. TIMES (July 18, 2014, 1:47 PM), <https://www.latimes.com/opinion/opinion-la/la-ol-debra-harrell-mythology-black-mothers-20140718-story.html> (explaining that a Black mother faced felony charges for sending her daughter to the park alone); Sarah Jaffe, *GOP’s “Bad Black Mother” Myth: Meet the Modern-Day “Welfare Queens,”* SALON (Aug. 6, 2014, 11:44 AM), https://www.salon.com/2014/08/06/gops_bad_black_mother_myth_meet_the_modern_day_welfare_queens/ [<https://perma.cc/AS8V-KT6L>] (describing how “a black mother is always a suspect, where taking her children away is the first response from authorities”). See generally Dorothy E. Roberts, *Unshackling Black Motherhood*, 95 MICH. L. REV. 938 (1997) (discussing the hostility Black mothers face and the policies that penalize their childbearing); Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474 (2012) (discussing how prison and foster care systems intersect to punish Black mothers).

131. Attacks on Black mothers often attack their very spirit. See Remnick, *supra* note 130; Jaffe, *supra* note 130; see also *Bad Black Mothers and ‘Precious,’* ESSENCE (Oct. 29, 2020), <https://www.essence.com/celebrity/bad-black-mothers-and-precious/> [<https://perma.cc/6H7L-DJK4>] (“[I]n the media and on the big screen Black mothers are depicted as ‘monstrous’ and abusive”); Tope Fadiran Charlton, *The Impossibility of the Good Black Mother*, TIME (Jan. 21, 2014, 2:45 AM), <https://time.com/1311/the-impossibility-of-the-good-black-mother/> [<https://perma.cc/256N-XXNX>] (“The myth of the Good Mother is built on the back of scorn for [Black mothers].”); ANDREA FREEMAN, *The Bad Black Mother*, in SKIMMED: BREASTFEEDING, RACE, AND INJUSTICE 87, 87 (2020) (“Since slavery, they have dehumanized Black women, casting them as sexually accessible and as unfit mothers.”).

132. See Alexia Elejalde-Ruiz, *Moms, Particularly Black Moms, Are Bearing the Brunt of Job Losses During the Pandemic, Setting Back Efforts to Climb the Economic Ladder*, CHI. TRIB. (Feb. 5, 2021, 11:49 AM), <https://www.chicagotribune.com/business/ct-biz-women-unemployment-pandemic-20210205-jbqxtxyqmffxrgny7popi32yy-story.html> (noting that Black mothers were the hardest hit by pandemic-related unemployment); Alison Wellford, *How Antidiscrimination Law Fails Black Mothers*, NATION (Apr. 13, 2021), <https://www.thenation.com/article/society/sexual-harassment-reporting-title-vii/>; NAT'L PARTNERSHIP FOR WOMEN & FAMS., BLACK WOMEN AND THE WAGE GAP 4 (2022), <https://nationalpartnership.org/wp-content/uploads/2023/02/african-american-women-wage-gap.pdf> [<https://perma.cc/KZX4-V6BL>]; cf. Mathilde Roux, *5 Facts About Black Women in the Labor Force*, U.S. DEP'T LAB. BLOG (Aug. 3, 2021), <https://blog.dol.gov/2021/08/03/5-facts-about-black-women-in-the-labor-force> [<https://perma.cc/5BJ3-8GFU>] (“Black women are an integral part of the American labor force, but have long faced a pay gap”); JOCELYN FRYE, CTR. FOR AM. PROGRESS, THE MISSING CONVERSATION ABOUT WORK AND FAMILY: UNIQUE CHALLENGES FACING WOMEN OF COLOR 6–7 (2016), <https://www.americanprogress.org/wp-content/uploads/sites/2/2016/09/WorkAndFamily-WomenOfColor-Oct.pdf> [<https://perma.cc/GX29-RPMM>] (“African American women . . . encounter difficulty finding employment and experience higher rates of unemployment when compared to their white counterparts.”).

133. Black women in the corporate world experience the “glass cliff” phenomenon, in which they are promoted to positions to fix crumbling organizations. In essence, they are set up to fail. Nicquel Terry Ellis, *‘Very Rarely Is It as Good as It Seems’: Black Women in Leadership Are Finding Themselves on*

discrimination,¹³⁴ exclusion from social assistance programs,¹³⁵ and institutional injustices.¹³⁶ Discriminatory conceptions of Black motherhood restrict their reproductive agency from conception to childrearing, justifying their maltreatment during the first thousand days and beyond.

C. COMMODIFYING THE BLACK MOTHER

Reproductive subjugation grounded the chattel slavery business model.¹³⁷ Slave society justified sexual violence against Black women using religion and law, equating systematic rape to breeding cattle.¹³⁸ After the 1808 prohibition of

the 'Glass Cliff,' CNN (Dec. 17, 2022, 7:08 AM), <https://www.cnn.com/2022/12/17/us/black-women-glass-cliff-reaj/index.html> [<https://perma.cc/6CPE-PPF3>]; L'Oreal Thompson Payton, *Black Women and the Glass Cliff: 'I Was Supposed to Bring Some Kind of Black Girl Magic.'* YAHOO!FINANCE (Nov. 6, 2022), <https://finance.yahoo.com/news/black-women-glass-cliff-supposed-130000665.html?> [<https://perma.cc/P2DZ-DMBR>]; Kate Slater, *The 'Glass Cliff': How Women and People of Color Are Set Up to Fail in the Workplace*, TODAY (Aug. 28, 2020, 2:33 PM), <https://www.today.com/tmrw/glass-cliff-why-women-people-color-are-often-set-fail-t189060> [<https://perma.cc/3NTW-VPUU>].

Despite having the highest labor force participation rate of all working mothers, Black mothers are most likely to live in chronic poverty. See Ashley Ziegler, *The Economic Power & Impact of Black Women & Moms*, MOM PROJECT (Mar. 8, 2022), <https://community.themomproject.com/the-study/the-economic-power-impact-of-black-women-moms> [<https://perma.cc/5SZZ-2VGT>]; *Poverty Rate of Black Families with a Single Mother in the United States 1990 to 2022*, STATISTA (Nov. 3, 2023), <https://www.statista.com/statistics/205114/percentage-of-poor-black-families-with-a-female-householder-in-the-us/> [<https://perma.cc/T8PZ-VPM3>]; see also Camille Wilson Cooper & Shuntay Z. McCoy, *Poverty and African American Mothers: Countering Biased Ideologies, Representations and the Politics of Containment*, 11 J. ASS'N FOR RSCH. ON MOTHERING 45, 47 (2009) ("Half of Black children are born into poverty.").

134. See MATTHEW DESMOND, MACARTHUR FOUND., POOR BLACK WOMEN ARE EVICTED AT ALARMING RATES, SETTING OFF A CHAIN OF HARDSHIP 1 (2014), https://www.macfound.org/media/files/hhm_research_brief_-_poor_black_women_are_evicted_at_alarming_rates.pdf [<https://perma.cc/NAA8-FPM6>]; Jacob William Faber & Marie-Dumesle Mercier, *Multidimensional Discrimination in the Online Rental Housing Market: Implications for Families with Young Children*, HOUS. POL'Y DEBATE, Jan. 24, 2022, at 1, 3.

135. See Ife Floyd, Ladonna Pavetti, Laura Meyer, Ali Safawi, Liz Schott, Evelyn Bellew & Abigail Magnus, *TANF Policies Reflect Racist Legacy of Cash Assistance*, CTR. ON BUDGET & POL'Y PRIORITIES (Aug. 4, 2021), <https://www.cbpp.org/research/income-security/tanf-policies-reflect-racist-legacy-of-cash-assistance> [<https://perma.cc/QBS8-HBLN>]; Gene Demby, *The Mothers Who Fought to Radically Reimagine Welfare*, NPR (June 9, 2019, 9:49 AM), <https://www.npr.org/sections/codeswitch/2019/06/09/730684320/the-mothers-who-fought-to-radically-reimagine-welfare> [<https://perma.cc/XBG8-ASEH>]; Ariana Figueroa, *New and Damning Report: Black Women with Children Excluded from Federal Cash Assistance Program*, NC NEWSLINE (Aug. 5, 2021, 6:00 AM), <https://ncnewsline.com/2021/08/05/new-and-damning-report-black-women-with-children-excluded-from-federal-cash-assistance-program/> [<https://perma.cc/N637-ATDD>].

136. See Jamila K. Taylor, *Structural Racism and Maternal Health Among Black Women*, 48 J.L. MED. & ETHICS 506, 506 (2020); Benard P. Dreyer, *The Toll of Racism on African American Mothers and Their Infants*, JAMA NETWORK OPEN (Dec. 8, 2021), <https://jamanetwork.com/journals/jamanetworkopen/article-abstract/2786943> [<https://perma.cc/6QLC-5GXZ>]; *The Impact of Institutional Racism on Maternal and Child Health*, NAT'L INST. FOR CHILD'S HEALTH QUALITY, <https://nichq.org/insight/impact-institutional-racism-maternal-and-child-health> [<https://perma.cc/N9TJ-QF5T>] (last visited May 31, 2024).

137. See Pokorak, *supra* note 112, at 9 ("Slavery is commonly understood as the control of all aspects of a slave's social interactions. For a slave woman, that control extended to all aspects of her sexuality and biology.").

138. *Id.* ("For slavery to be countenanced as anything other than cruel and unChristian subjugation and oppression, slavery supporters had to develop and maintain a theory of race purity supported by the

international slave trading, “the steady inflation in their price made enslaved women’s childbearing even more valuable.”¹³⁹ Between 1807 and 1860, the Black population increased by nearly three million.¹⁴⁰ Forced pregnancy, child-birth, family separations, and termination prevention ensured slavers’ economic interests.¹⁴¹ Without “legal entitlement to family integrity,” Black women were stripped of their reproductive and familial agency.¹⁴² In the “sexual political economy” of the forced reproduction system of chattel slavery, productivity justified violating Black women’s sexual and reproductive rights.¹⁴³

Obstetric violence soon joined these reproductive violations. Aspiring surgeons with negligible experience forcibly experimented on Black women without anesthesia; these men are now lauded as “father[s]” of their respective fields.¹⁴⁴ In 1817, Dr. Ephraim McDowell began forcible ovariectomies on enslaved Black women.¹⁴⁵ Dr. François Marie Prevost followed in 1822, debuting the first

legal system.”); *see also id.* (describing the justification of sexual violence against Black women with comparisons to animals to be bred, also known as chattel slavery); Campbell, *supra* note 20, at 51–52 (“Enslaved women were thus ‘bred’ no differently from domesticated animals. For example, some masters employed ‘special breeding techniques’ to produce lighter-skinned women who were more valued as sexual partners.” (footnote omitted)). *See generally* Lisa Cardyn, *Sexualized Racism/Gendered Violence: Outraging the Body Politic in the Reconstruction South*, 100 MICH. L. REV. 675 (2002) (discussing the history of sexual violence against enslaved Black women and its use by mobs during Reconstruction as a tool of racial control).

139. Melissa Murray, *Race-ing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade*, 134 HARV. L. REV. 2025, 2034 (2021) (quoting DOROTHY ROBERTS, *KILLING THE BLACK BODY* 24 (Vintage Books 2d ed. 2017)).

140. Stephanie R. M. Bray & Monica R. McLemore, *Demolishing the Myth of the Default Human that Is Killing Black Mothers*, FRONTIERS PUB. HEALTH, May 24, 2021, at 1, 2.

141. Campbell, *supra* note 20, at 52–53 (“Because Black women’s sexual exploitation satisfied America’s economic needs and preserved its racial hierarchy, [t]heir femaleness made them sexually vulnerable to racist domination, while their Blackness effectively denied them any protection.” (alteration in original) (footnote omitted) (quoting Crenshaw, *supra* note 95, at 158–59)); *see also* Reema Sood, *Biases Behind Sexual Assault: A Thirteenth Amendment Solution to Under-Enforcement of the Rape of Black Women*, 18 U. MD. L.J. RACE RELIGION GENDER & CLASS 405, 408 (2018) (quoting an enslaved woman: “He told me I was his property, that I must be subject to his will in all things . . . No matter whether the slave girl be as black as ebony or as fair as her mistress, in either case there is no shadow of law to protect her from insult, violence, or even death.” (quoting ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* 28 (2017))).

142. Murray, *supra* note 139, at 2034 & n.46 (“[E]nslaved women could reduce the likelihood of being sold and separated from their families by having more children.”).

143. Adrienne D. Davis, *Corrective Justice and Reparations for Black Slavery*, 34 CAN. J.L. & JURIS. 329, 334 (defining this economy as a “sexual political economy”). *See generally* Adrienne D. Davis, “Don’t Let Nobody Bother Yo’ Principle”: *The Sexual Economy of American Slavery*, in *BLACK SEXUAL ECONOMIES* 15 (Adrienne D. Davis & BSE Collective eds., 2019) (examining two cases where enslaved women’s sexualities were converted into political economy).

144. Ellen Goldbaum, “Hard Conversations” at “Beyond the Knife” Lecture, U. BUFF. (Feb. 18, 2022), https://medicine.buffalo.edu/news_and_events/news/2022/02/beyond-the-knife-14120.html [<https://perma.cc/Q7ZB-PBWE>].

145. Kat Eschner, *This American Doctor Pioneered Abdominal Surgery by Operating on Enslaved Women*, SMITHSONIAN MAG. (Dec. 19, 2017), <https://www.smithsonianmag.com/history/father-abdominal-surgery-practiced-enslaved-women-180967589/> [<https://perma.cc/2RY3-EE42>]. Wikipedia pages for the procedure and for McDowell himself make no mention of his experiments on slaves, referring to him only as the “father of ovariectomy.” *See Oophorectomy*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Oophorectomy> [<https://perma.cc/HUL3-552X>] (last visited May 31, 2024); *Ephraim*

C-section surgeries on enslaved women in Haiti before continuing his practice in New Orleans.¹⁴⁶ The most notable of these men was James Marion Sims, the “father of modern gynecology,” who began forcibly operating on Black women in 1845.¹⁴⁷ Sims was “a lackluster student who showed little ambition after receiving his medical degree”; despite his mediocrity, his surgical abuse earned Sims fame and popularity.¹⁴⁸

Sims developed his experience by trial and error, confessing he “had no more idea of what to do than if [he] had never studied medicine.”¹⁴⁹ Physicians gathered in the surgical theater for the spectacle, watching Sims experiment on his victims.¹⁵⁰ Sims’ vesico-vaginal fistula reparation procedure—developed by possibly botching an experimental procedure on Anarcha Westcott—solidified his international reputation.¹⁵¹ In these trials, Sims advanced two racist beliefs. First, Sims proclaimed the victims of his experiments submitted “not only cheerfully but with thanks.”¹⁵² Second, he claimed victims did not feel pain the way white women would, demonstrated by his refusal to use available anesthesia.¹⁵³ Sims perfected his procedure on Black women, then operated on white patients under anesthesia.¹⁵⁴

Post-Emancipation, forced birth policies were reversed. Black reproduction was to be suppressed at all costs.¹⁵⁵ Eugenics activists characterized Black women as drains on public resources, inherently bad mothers, and hyperfertile.¹⁵⁶ The eugenics movement of the early twentieth century forcibly sterilized women

McDowell, WIKIPEDIA, https://en.wikipedia.org/wiki/Ephraim_McDowell [<https://perma.cc/V3VQ-U52L>] (last visited May 31, 2024).

146. See Goldbaum, *supra* note 144.

147. Campbell, *supra* note 20, at 54–55; Durrenda Ojanuga, *The Medical Ethics of the ‘Father of Gynaecology’, Dr J Marion Sims*, 19 J. MED. ETHICS 28, 29 (1993).

148. Barron H. Lerner, *Scholars Argue Over Legacy of Surgeon Who Was Lionized, Then Vilified*, N.Y. TIMES (Oct. 28, 2003), <https://www.nytimes.com/2003/10/28/health/scholars-argue-over-legacy-of-surgeon-who-was-lionized-then-vilified.html>.

149. Campbell, *supra* note 20, at 55–56 (quoting HARRIET A. WASHINGTON, *MEDICAL APARTHEID: THE DARK HISTORY OF MEDICAL EXPERIMENTATION ON BLACK AMERICANS FROM COLONIAL TIMES TO THE PRESENT* 61 (2006)).

150. Lucy, the unwilling subject of one of Sims’ experiments, was positioned on all fours while twelve doctors watched her agonizing surgery without anesthesia, despite its broad availability at the time. Campbell, *supra* note 20, at 55.

151. Sims might actually have caused Anarcha’s fistula. Anarcha was an older mother experiencing malnutrition. After a thirty-six-hour labor, Sims insisted on delivering Anarcha’s baby with forceps despite his lack of instrumental delivery training. Sims caused other complications on his subjects, killing two women in the process. *Id.* at 55–56.

152. *Id.* at 56 (quoting J. Marion Sims, *Two Cases of Vesico-Vaginal Fistula Cured*, 5 N.Y. MED. GAZETTE & J. HEALTH 1, 1 (1854)); see also Wynn, *supra* note 26, at 96 (citing an 1817 report in the *London Medical and Chirurgical Review*, asserting that “[n]egresses . . . will bear cutting with nearly, if not quite, as much impunity as dogs and rabbits” (omission in original) (quoting S. Plous & Tyrone Williams, *Racial Stereotypes from the Days of American Slavery: A Continuing Legacy*, 25 J. APPLIED PSYCHOL. 795, 796 (1995))).

153. Campbell, *supra* note 20, at 56.

154. Wynn, *supra* note 26, at 96–97.

155. See Campbell, *supra* note 20, at 57.

156. *Id.*

of color.¹⁵⁷ Decades later, authorities threatened to withhold state benefits from poor Black women who refused sterilization.¹⁵⁸ The state advanced the notion that Black women were “inherently bad mothers whose children constituted ‘an embryonic ‘criminal class.’”¹⁵⁹ In medical settings—where Black women often lack meaningful choice—the stigmatizing nature of misogyny “often precluded poor Black women from fully exercising their reproductive agency . . . and legitimized their dehumanization.”¹⁶⁰

III. MODERN INSTITUTIONAL MISOGYNOIR

“Every day Black women die because the system denies our humanity.”¹⁶¹

A. REGULATING BLACK MOTHERS

Between 2020 and 2022, maternity care deserts increased by two percent, “accounting for some 15,933 women living in more than 1,000 counties.”¹⁶² While these deserts predominantly impact rural areas, medical divestment disproportionately impacts Black communities, regardless of population density.¹⁶³ Mothers in D.C. die at a rate nearly twice the national average—Black mothers account for nearly all of these deaths.¹⁶⁴ Between 2014 and 2018, Black mothers made up ninety percent of the District’s birth-related deaths.¹⁶⁵ In contrast, white women in D.C. have high chances for safe birthing experiences.¹⁶⁶ East of the

157. *Id.*

158. *Id.* at 58–59. In Mississippi, involuntary sterilizations were so common that they earned the name “Mississippi Appendectomies.” Jessica Pearce, *Mississippi Appendectomies: Reliving Our Pro-Eugenics Past*, MS. (Oct. 28, 2020), <https://msmagazine.com/2020/10/28/ice-immigration-mississippi-appendectomies-usa-eugenics-forced-coerced-sterilization/> [<https://perma.cc/8QAZ-XXSQ>]. Fannie Lou Hamer, the famed civil rights activist, received a hysterectomy during surgery to remove a uterine tumor in 1961. Rosalind Early, *The Sweat and Blood of Fannie Lou Hamer: How a Would-Be Voter Became a Civil Rights Legend*, HUMANS., Winter 2021, at 8, 8–9.

159. Campbell, *supra* note 20, at 57 (quoting Khiara M. Bridges, *Quasi-Colonial Bodies: An Analysis of the Reproductive Lives of Poor Black and Racially Subjugated Women*, 18 COLUM. J. GENDER & L. 609, 610 (2009)); *see also* Wynn, *supra* note 26, at 98 (noting that some doctors in the 1970s refused to deliver Black babies or provide abortions for low-income Black women until they agreed to sterilization).

160. Campbell, *supra* note 20, at 60.

161. *Birthing While Black: Examining America’s Black Maternal Health Crisis: Hearing Before the H. Comm. on Oversight & Reform*, 117th Cong. 10 (2021) (statement of Rep. Cori Bush, Member, H. Comm. on Oversight & Reform).

162. Treisman, *supra* note 29.

163. *See* Snipe, *supra* note 50; Sarah Maddox, *Miles from Treatment and Pregnant: How Women in Maternity Care Deserts Are Coping as Health Care Options Dwindle*, CBS NEWS (Nov. 27, 2023, 8:10 AM), <https://www.cbsnews.com/news/maternity-care-deserts-pregnancy-hospital-closures-provider-shortages/> [<https://perma.cc/FXP7-3FVD>]; Noelene K. Jeffers, *Confronting the Issue of Maternity Care Deserts*, JOHNS HOPKINS NURSING (Aug. 28, 2023, 9:00 AM), <https://magazine.nursing.jhu.edu/2023/08/confronting-the-issue-of-maternity-care-deserts/> [<https://perma.cc/YKM7-VHB8>].

164. Colleen Grablick, *Black People Accounted for 90% of Pregnancy-Related Deaths in D.C., Study Finds*, DCIST (Apr. 28, 2022, 11:15 AM), <https://dcist.com/story/22/04/28/dc-maternal-mortality-study-2022/> [<https://perma.cc/984B-LE2W>].

165. *Id.*

166. *See id.*

Anacostia River, a historically Black section of southeast Washington, D.C., there are no professional maternal physicians, hospitals providing obstetric care, birth centers, or certified nurse midwives.¹⁶⁷ As legislative hostility mounts, so do maternal deaths. Between 2019 and 2021, Chicago's South Side lost four of seven hospitals offering maternal resources.¹⁶⁸ Prior to the pandemic, Black mothers in Illinois were six times more likely to die from perinatal complications than white women, double the national average.¹⁶⁹ As seen on the national level, these deaths were largely preventable.¹⁷⁰

State policies stripping reproductive health support increased mortality rates for all Black mothers and all women of reproductive age.¹⁷¹ State restrictions of reproductive autonomy compound existing racial maternal mortality crises.¹⁷² Post-*Dobbs* abortion restrictions have exacerbated access inequities, shuttering already scarce maternal care centers.¹⁷³ In Mississippi, home to the highest proportion of Black residents, over fifty percent of the population lives in a maternity care desert.¹⁷⁴ Almost half of Mississippi pregnancies are unplanned, coinciding with the lowest state rates of contraceptive access and use in the country.¹⁷⁵ As of 2020, Mississippi infants died at the highest rates nationwide;¹⁷⁶ additional healthcare restrictions will only exacerbate these harms. Researchers at the University of Colorado Boulder project that a national abortion ban would increase national maternal deaths by twenty-four percent; Black maternal deaths

167. See Kayla Randall & Kaarin Vembar, *Women in D.C. Face Obstacles at Every Step of Pregnancy and Childbirth*, WASH. CITY PAPER (Aug. 30, 2018), <https://washingtoncitypaper.com/article/184340/women-in-dc-face-obstacles-at-every-step-of-pregnancy-and-childbirth/> [<https://perma.cc/NND5-847S>].

168. Black, *supra* note 53.

169. *Id.*

170. *Id.*

171. Nicole Mueksch, *Abortion Bans to Increase Maternal Mortality Even More, Study Shows*, CU BOULDER TODAY (June 30, 2022), <https://www.colorado.edu/today/2022/06/30/abortion-bans-increase-maternal-mortality-even-more-study-shows> [<https://perma.cc/7KFC-MZBV>].

172. See Rachel Treisman, *States with the Toughest Abortion Laws Have the Weakest Maternal Supports, Data Shows*, NPR (Aug. 18, 2022, 6:00 AM), <https://www.npr.org/2022/08/18/1111344810/abortion-ban-states-social-safety-net-health-outcomes> [<https://perma.cc/9TA6-7Q3J>] (“All told, eight out of the 10 states with the most people living in maternity care deserts have abortion bans: Mississippi, South Dakota, Arkansas, Missouri, Oklahoma, Alabama, Kentucky and Louisiana. Within the top 15, two other states – Idaho and North Dakota – have abortion bans pending – and another two – Iowa and West Virginia – have bans on hold.”).

173. *See id.*

174. See JAZMIN FONTENOT, RIPLEY LUCAS, ASHLEY STONEBURNER, CHRISTINA BRIGANCE, ERIN JONES, KELLY HUBBARD & KATHRYN MISHKIN, MARCH OF DIMES, *WHERE YOU LIVE MATTERS: MATERNITY CARE DESERTS AND THE CRISIS OF ACCESS AND EQUITY IN MISSISSIPPI* (2023), <https://www.marchofdimes.org/peristats/reports/mississippi/maternal-care-deserts> [<https://perma.cc/S932-5JW6>].

175. Erica Hensley, *Here's What Mississippi Won't Tell the Supreme Court About Women's Well-Being in the State*, REWIRE NEWS GRP. (Dec. 1, 2021, 8:45 AM), <https://rewirenewsgroup.com/2021/12/01/heres-what-mississippi-wont-tell-the-supreme-court-about-womens-well-being-in-the-state/> [<https://perma.cc/6WAX-22E4>].

176. *Infant Mortality Rates by State*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 12, 2023), https://www.cdc.gov/nchs/pressroom/sosmap/infant_mortality_rates/infant_mortality.htm [<https://perma.cc/K2WM-8BWW>].

would increase by thirty-nine percent.¹⁷⁷ These calculations exclude morbidity estimates, which can only increase in kind.¹⁷⁸

States violating reproductive autonomy principles do not serve as “physical guardians of women”; instead, states prospectively restrict maternal support systems.¹⁷⁹ Twelve states, predominantly those with significant Black populations, refuse needed Medicaid expansions.¹⁸⁰ Over 800,000 women of reproductive age fall in the Medicaid “coverage gap,” stripping mothers of affordable healthcare coverage.¹⁸¹ Medicaid covers sixty-five percent of Black births nationally.¹⁸² These restrictions effectively bar many Black mothers from healthcare, entrenching these disparate maternal mortality patterns.

Emergency need does not guarantee admission. In the post-*Dobbs* world,¹⁸³ Black women in many places are denied access to abortions. Abortion restrictions, concentrated in states with high Black populations, prevent doctors from providing necessary obstetric care.¹⁸⁴ In response, numerous hospitals have

177. Elyssa Spitzer, Tracy Weitz & Maggie Jo Buchanan, *Abortion Bans Will Result in More Women Dying*, CTR. FOR AM. PROGRESS (Nov. 2, 2022), <https://www.americanprogress.org/article/abortion-bans-will-result-in-more-women-dying/> [<https://perma.cc/CR6F-DGKW>]; see also *Federal and State Bans and Restrictions on Abortion*, PLANNED PARENTHOOD, <https://www.plannedparenthoodaction.org/issues/abortion/federal-and-state-bans-and-restrictions-abortion> [<https://perma.cc/8PKR-6LTG>] (last visited May 31, 2024) (“Laws that restrict access to abortion hurt people’s health and endanger their safety.”). See generally Maggie Jo Buchanan, *What You Need to Know About the Bill to Ban Abortion Nationwide*, CTR. FOR AM. PROGRESS (Sept. 16, 2022), <https://www.americanprogress.org/article/what-you-need-to-know-about-the-bill-to-ban-abortion-nationwide/> [<https://perma.cc/QJ9C-54JS>] (criticizing abortion bans for forcing mothers to go through painful, harmful deliveries).

178. See Spitzer et al., *supra* note 177.

179. Neelam Patel, *The Insidious Origins of the “Moral” Argument Against Abortion Rights*, 22 GEO. J. GENDER & L. ONLINE 1, 3 (2021) (quoting Horatio Storer, *Report on Criminal Abortion*, 12 TRANSACTIONS AM. MED. ASS’N 75, 76 (1859)), https://www.law.georgetown.edu/gender-journal/wp-content/uploads/sites/20/2021/01/Final_Origins-of-the-Moral-Argument-Against-Abortion_Neelam-P_Issue-2.pdf [<https://perma.cc/92J9-DAJ5>] (quoting Horatio Storer, a physician who popularized the moralization of abortion).

180. See Judith Solomon, *Closing the Coverage Gap Would Improve Black Maternal Health*, CTR. ON BUDGET & POL’Y PRIORITIES (July 26, 2021), <https://www.cbpp.org/research/health/closing-the-coverage-gap-would-improve-black-maternal-health> [<https://perma.cc/ULU9-6AAE>].

181. *Id.*

182. *Id.*

183. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022). *Dobbs* held that abortion was not a constitutionally guaranteed right, overruling *Roe* and *Casey*. *Id.* at 231 (overruling *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)). The decision granted individual states abortion regulation authority. See *id.* at 256. As of May 2024, fourteen states have enacted total or near-total bans on abortion, with seven others enacting gestational limits. Annette Choi & Devan Cole, *See Where Abortions Are Banned and Legal — and Where It’s Still in Limbo*, CNN US (May 2, 2024, 5:23 PM), <https://www.cnn.com/us/abortion-access-restrictions-bans-us-dg/index.html> [<https://perma.cc/ERJ2-TZT5>].

184. See Bethany Dawson, *Texas Hospitals Are Refusing to See People with Serious Pregnancy Issues for Fear of Violating Post-Roe Abortion Ban*, Medical Group Says, BUS. INSIDER (July 16, 2022, 5:47 AM) [<https://perma.cc/P3P3-57HX>]; cf. Christopher Rowland, *Groups That Aid Abortion Patients Pull Back, Fearing Legal Liability*, WASH. POST (July 15, 2022, 6:00 AM), <https://www.washingtonpost.com/business/2022/07/15/abortion-aid-drying-up/> (“Sources of assistance are drying up just as economically disadvantaged women and other pregnant people in states that have moved to ban abortion need money more than ever.”).

already refused to treat patients during active labor, fearing state prosecution.¹⁸⁵ Several Texas hospitals have turned away women with serious pregnancy complications; in one case, a woman with an ectopic pregnancy was refused treatment, ensuring the eventual rupture of her fallopian tube with no chance of viability.¹⁸⁶

B. DISSECTING BLACK MOTHERS

In 1903, a doctor proclaimed that the Black race's "mass of imperfections" caused their negative health outcomes.¹⁸⁷ Discussion of the medical profession—and the treatment of Black mothers within it—must examine the institution's default health baseline. For centuries, value-neutral scientific terminology camouflaged racialized baselines of wellness and pathology.¹⁸⁸ Obstetric biomedicine, assuming "a true biological difference in the ability of the fetus to tolerate labor," justifies the overmedicalization of Black motherhood.¹⁸⁹ Proximity to whiteness represents wellness, pathologizing Black womanhood *itself*.¹⁹⁰ Summarized,

It represents a common mode of framing Black women's bodies as biologically predisposed to complication. Applying this logic then justifies subjecting Black women to increased risk management practices; simultaneously, it elides how physician and institutional racism construct and frame risk to overmedicalize women generally and Black women especially.¹⁹¹

Physicians, "possess[ing] a monopoly on expertise," establish tools to undermine informed consent.¹⁹² As recently as 2007, obstetricians implemented a racial calculator to determine the likely success of vaginal birth after C-section (VBAC).¹⁹³ Solely identifying a patient as Black significantly decreases the calculated success likelihood.¹⁹⁴ Studies demonstrate that physicians utilize VBAC calculations as determinants rather than counseling tools, then present C-sections as the only safe option.¹⁹⁵

185. See Dawson, *supra* note 184.

186. *Id.*

187. Martin & Montagne, *supra* note 2.

188. Cf. Nicholas Rubashkin, *Why Equitable Access to Vaginal Birth Requires Abolition of Race-Based Medicine*, 24 *AMA J. ETHICS* 233, 234 (2022).

189. *Id.* (quoting Sierra Washington, Aaron B. Caughey, Yvonne W. Cheng & Allison S. Bryant, *Racial and Ethnic Differences in Indication for Primary Cesarean Delivery at Term: Experience at One U.S. Institution*, 39 *BIRTH* 128, 128–34 (2012)). For example, Blackness *itself* is listed as a risk factor for preeclampsia, conflating race with its social determinants. Campbell, *supra* note 20, at 64.

190. Campbell, *supra* note 20, at 63–64.

191. *Id.*

192. See *id.* at 69.

193. Rubashkin, *supra* note 188, at 233.

194. *Id.* at 234.

195. See *id.*; see also Campbell, *supra* note 20, at 62–63 ("In other words, perfectly healthy Black women who do not need a C-section are also receiving this major surgery, thereby increasing their risk of negative health outcomes.").

The overmedicalization of Black motherhood mirrors slavery-era experimentation, financially incentivizing the surgical violation of Black mothers.¹⁹⁶ Physicians perform C-sections on Black women regardless of medical need or request, evidenced by heightened rates for low-risk mothers.¹⁹⁷ Compared to vaginal deliveries, C-sections multiply risks of severe morbidity and mortality.¹⁹⁸ However, financial incentives override patient safety. The average vaginal delivery takes ten hours; in contrast, the average C-section takes forty-five minutes and is twice as profitable.¹⁹⁹ Hospitals maximize economies of scale by combining traditional delivery rooms with surgical theaters.²⁰⁰ Dr. Neel Shah summarizes, “Labor and delivery units in the modern era resemble cardiac ICUs. The only difference is that our operating rooms are attached. We take 99% of people giving birth in America, we put them in ICUs, and we surround them by surgeons. So we see a lot of surgery.”²⁰¹ Within the technocratic birthing model, Black maternal health is sacrificed for financial gain.²⁰²

Black mothers fight for knowledge in a paternalistic asymmetrical relationship.²⁰³ Simply put, “providers approach clinical encounters with ‘preconceived notions of risk of adverse maternal or neonatal outcomes for women of different races and ethnicities’—risks they then attempt to mitigate through increased interventions.”²⁰⁴ Providers report enhancing this power imbalance by controlling the flow of information, consequently depriving mothers of adequate decisionmaking agency.²⁰⁵ Inquisitive Black mothers are labeled “needy,” “difficult,” and “demanding”; as a result, Black mothers are silenced as they experience unwanted and often unnecessary procedures.²⁰⁶ Medical professionals decide what is best for Black mothers, even if it requires force.²⁰⁷ One mother relates, “I asked [the doctor] months before if we could do a VBAC. But she shut me down and terrified me and my husband, saying there’s a high chance my baby and I wouldn’t make it. So we agreed to do a repeat C-section.”²⁰⁸

196. Hess, *supra* note 67.

197. See Campbell, *supra* note 20, at 61–62.

198. AFTERSHOCK, *supra* note 67.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. See Wynn, *supra* note 26, at 93–95.

204. Campbell, *supra* note 20, at 64 (quoting Allison S. Bryant, Sierra Washington, Miriam Kuppermann, Yvonne W. Cheng & Aaron B. Caughey, *Quality and Equality in Obstetric Care: Racial and Ethnic Differences in Caesarean Section Delivery Rates*, 23 PAEDIATRIC & PERINATAL EPIDEMIOLOGY 454, 460 (2009)).

205. See *id.* at 63, 69.

206. Lynn Freedman, Shanon McNab, Sang Hee Wong, Anna Abelson & Amy Manning, *Disrespect and Abuse of Women of Color During Pregnancy and Childbirth* 5 (Sept. 2020) (unpublished manuscript), <https://www.publichealth.columbia.edu/file/7307/download?token=YUV1bGfA> [<https://perma.cc/BX6D-7MM2>].

207. See Brietta R. Clark, *Centering Black Pregnancy: A Response to Medical Paternalism, Stillbirth, & Blindsided Mothers*, 106 IOWA L. REV. ONLINE 85, 94, 101 (2021).

208. Hess, *supra* note 67 (alteration in original).

C. SILENCING BLACK MOTHERS

Obstetric violence is rooted in anti-Black medical paternalism.²⁰⁹ Medical professionals view Black mothers as “potential threats to their fetuses and . . . culpable for pregnancy loss,” justifying suppression of their reproductive agency.²¹⁰ Dr. Colene Arnold explains, “With Black women there is an assumption that they don’t know their bodies, that they don’t understand, that they’re not educated about their bodies.”²¹¹

Attitudes about Black maternal competence validate dismissal of patient concerns, facial disrespect, habitual neglect, and procedural coercion.²¹² Black mothers experience “humiliating or undignified” treatment, including facially racist verbal abuse and neglect.²¹³ Physicians admit to chastising mothers in active labor, threatening patients into deviations from their birth plans, and blaming mothers for their complications or their pregnancy entirely.²¹⁴ At times, rushed staff handle Black mothers aggressively, subjecting them to treatments without proper warning or care.²¹⁵ Providers treat partners and advocates with similar contempt, particularly when advocating for the birthing mother.²¹⁶

Obstetric neglect is often covert. Black mothers experience longer wait times for intake, routine check-ins, and requests for assistance.²¹⁷ Post-admission, physicians report avoiding “difficult” patients, including Black mothers “who complained too

209. See Campbell, *supra* note 20, at 68–69.

210. Clark, *supra* note 207, at 90. For more information about Black “mother blame” narratives, see Karen A. Scott, Laura Britton & Monica R. McLemore, *The Ethics of Perinatal Care for Black Women: Dismantling the Structural Racism in “Mother Blame” Narratives*, 33 J. PERINATAL & NEONATAL NURSING 108, 109 (2019) (highlighting the “stigmatization, scapegoating, heightened surveillance, and criminalization, all of which disregard the bodily autonomy of pregnant women”).

211. Vidya Rao, ‘You Are Not Listening to Me’: Black Women on Pain and Implicit Bias in Medicine, TODAY (July 27, 2020, 12:44 PM), <https://www.today.com/health/implicit-bias-medicine-how-it-hurts-black-women-t187866> [<https://perma.cc/HMG6-FXLE>].

212. See *id.*

213. Freedman et al., *supra* note 206, at 3. One obstetric resident stated,

Haitian Creole women have a reputation for being a little loud during their labor, . . . seemingly theatrical almost. I wonder if we assume that they’re just pretending they’re in so much pain and having so much difficulty, and then maybe we don’t care for them with the same diligence as someone who can more easily communicate to us.

Id. at 4 (omission in original). During childbirth, one patient “asked to squat during labor and was told by the provider, ‘Oh we don’t do that here . . . you think we’re in the jungle in Africa?’” *Id.* at 5.

214. See *id.* at 5, 7. Mothers report being told that they or their babies would die if they did not comply with medical directives, shifting the blame entirely to the birthing mother. *Id.* at 5. Some reported contempt for patient birth plans they considered illogical. Black mothers report being chastised by medical staff for “their age, weight, or decisions they had made during pregnancy; blamed for coming in too early or too late during labor, or for getting pregnant in the first place.” *Id.* They were also judged for their marital status, the number of children they already had, how well they were managing the pain of childbirth, and their insured status. *Id.*

215. *Id.* at 6.

216. In 2020, Amber Rose Isaac died of extreme medical negligence. AFTERSHOCK, *supra* note 67. When her partner Bruce McIntyre asked about her condition, hospital staff jokingly dismissed his concerns while calling him “Mr. Baby Daddy.” *Id.*

217. Freedman et al., *supra* note 206, at 6.

much, were convinced they were further along in labor than they were, kept asking when it would be over, or asked why it was so painful.”²¹⁸ In one study, women reported that medical staff avoided eye contact, failed to acknowledge or address mothers by name, and did not look at birthing mothers while speaking to them during check-ins.²¹⁹ Nearly every mother in the study described their treatment as “less than human,” leaving them feeling neglected and abandoned during childbirth.²²⁰

Anti-Black understandings of pain tolerance are endemic to the medical field, providing a salient example of provider misogynoir. As recently as 2016, a study found nearly *half* of first- and second-year medical students surveyed believed that Black people have thicker skin and experience less pain than white people.²²¹ Despite reporting high pain scores nearly three times as frequently as their white counterparts, Black mothers receive significantly less pain medication in both quantity and strength.²²² The subjectivity of pain—and its expression—renders a prime area for obstetric misogynoir.²²³ As summarized by Professor Tressie McMillan Cottom,

Pain, like pregnancy, is inconvenient for bureaucratic efficiency and has little use in a capitalist regime. When the medical profession systematically denies the existence of black women’s pain, underdiagnoses our pain, refuses to alleviate or treat our pain, healthcare marks us as incompetent bureaucratic subjects. Then it serves us accordingly.²²⁴

Medical providers dismiss Black maternal expressions of pain, regardless of tone.²²⁵ The screams of Black mothers become exaggerations, while temperate expressions contradict any evidence of pain.²²⁶ In turn, physicians respond to

218. *Id.*

219. *Id.* at 5.

220. *Id.* While physicians acknowledged that mothers likely felt neglected or abandoned, they defended themselves by saying that mothers were never truly alone because they were watched via monitors. *Id.* at 6.

221. Kelly M. Hoffman, Sophie Trawalter, Jordan R. Axt & M. Norman Oliver, *Racial Bias in Pain Assessment and Treatment Recommendations, and False Beliefs About Biological Differences Between Blacks and Whites*, 113 PROC. NAT’L ACAD. SCI. U.S. 4296, 4298–300 (2016).

222. Lisa Rapaport, *Black, Hispanic Mothers Report More Pain After Delivery but Get Less Pain Medication*, REUTERS (Nov. 12, 2019, 4:49 PM), <https://www.reuters.com/article/us-health-postpartum-pain/black-hispanic-mothers-report-more-pain-after-delivery-but-get-less-pain-medication-idUSKBN1XM2R4/>.

223. After waiting ten hours during a pain crisis, Amy Mason-Cooley collapsed in the hospital. Rao, *supra* note 212. She awoke to a nurse informing her, “This isn’t a pain clinic.” *Id.* Mason-Cooley recounts the experience, stating, “I have straight up told doctors and nurses, ‘If I wanted it to get high, I could do it on the streets for cheaper, with less judgment. I’m here because I’m sick.’” *Id.* Professor Janice Sabin explains, “Pain is an area ripe for implicit bias having an impact because it’s an extremely subjective area If a person is bleeding, you can figure out how much blood is lost. But someone who has lower back pain, for example, it’s a very subjective measure.” *Id.*

224. McMillan Cottom, *supra* note 39.

225. See Rao, *supra* note 212.

226. *Id.* “There’s so much judgment. If you’re too calm, then they say, ‘Oh, you’re not sick. You don’t look sick.’ And then if you’re crying and moaning, they say you’re exaggerating. I don’t really

these conflicts by performing fewer pain assessments, providing less pain medication, and challenging birthing mothers directly.²²⁷ The medical institution, leading Black mothers through their most vulnerable life moments, still fails to see their humanity.

IV. WEATHERING THE BLACK MOTHER

“There is something about growing up as a Black-American female in the United States that is not good for her childbearing health.”²²⁸

Misogynoir taints every facet of a Black woman’s life, eroding her health over a lifetime. A lifetime of discrimination accelerates aging, degrading Black maternal outcomes in a hostile society. First, this Part lists real-life indignities experienced by Black mothers that accumulate into the weathering phenomenon. Next, this Part further explores the physical impact of ongoing misogynoir. Finally, this Part links the weathering phenomenon to historical reproductive trauma, the physical deterioration Black women inherit from their ancestors.

A. I AM 27, GOING ON 35²²⁹

Societal discrimination is ruthless in its ubiquity—Black women cannot hide from misogynoir. In every setting, baseline dignity and respect elude Black women, regardless of socioeconomic status.²³⁰ In the workplace, Black women fight for economic advancement, thwarted by discriminatory employment practices and limiting behavioral stereotypes.²³¹ Interpersonally, Black women disproportionately experience adverse childhood experiences, sexual and gender-based violence, and intergenerational trauma.²³² Despite these pressures, the magnification

know what they want from us.” *Id.* See generally Rapaport, *supra* note 223 (noting that Black mothers report more pain postpartum but receive less medication).

227. Rapaport, *supra* note 223; Rao, *supra* note 212.

228. PAISLEY-CLEVELAND, *supra* note 31, at 1 (quoting Dr. R. David, neonatal specialist and researcher).

229. See Dave Davies, *How Poverty and Racism ‘Weather’ the Body, Accelerating Aging and Disease*, NPR (Mar. 28, 2023, 2:00 PM), <https://www.wbur.org/npr/1166404485/weathering-arline-geronimus-poverty-racism-stress-health> [<https://perma.cc/64BB-U8DA>] (“[M]arginalized people suffer nearly constant stress from living with poverty and discrimination, which damages their bodies at the cellular level and leads to increasingly serious health problems over time.”).

230. See, e.g., Lara Witt, *White Women: This Is Why Your Critiques Of Beyoncé Are Racist*, MEDIUM (Feb. 3, 2017), <https://medium.com/the-establishment/white-women-this-is-why-your-critiques-of-beyonc%C3%A9-are-racist-a431e7e1f672> (discussing the racist backlash to Beyoncé’s pregnancy announcements); Rob Haskell, *Serena Williams on Motherhood, Marriage, and Making Her Comeback*, VOGUE (Jan. 10, 2018), <https://www.vogue.com/article/serena-williams-vogue-cover-interview-february-2018> [<https://perma.cc/PM98-JV2D>] (discussing the life-threatening medical racism Williams experienced during delivery); *Harry & Meghan: Episode 4* (Netflix limited series released Dec. 15, 2022) (discussing the racist reactions Meghan Markle faced during the perinatal period).

231. See *supra* notes 132–33 and accompanying text.

232. Joya N. Hampton-Anderson, Sierra Carter, Negar Fani, Charles F. Gillespie, Tracey L. Henry, Ecclesia Holmes, Dorian A. Lamis, Devon LoParo, Jessica L. Maples-Keller, Abigail Powers, Stan Sonu & Nadine J. Kaslow, *Adverse Childhood Experiences in African Americans: Framework, Practice, and Policy*, 76 AM. PSYCH. 314, 315 (2021); Africa Jackson, *What Does Intergenerational Trauma and Healing Look Like for Black Women?*, HELLOGIGGLES (June 4, 2020), <https://hellogiggles.com/intergenerational-trauma-black-women/> [<https://perma.cc/Y9JV-JDP3>]; see *Gender-Based Violence*

of anti-Black exclusion, and misogynistic degradation, Black women disproportionately serve as sole household earners, single parents, and primary caregivers.²³³ Black womanhood is a daily Sisyphean exercise.

Unrelenting adversity erodes Black women, spiritually and physically. For Black mothers, systemic discrimination exacts significant physiological harm. Chronic exposure to societal inequity heightens chemical stress responses, accelerating physiological aging.²³⁴ This stress-induced deterioration, known as the allostatic load, likely results from universal marginalization.²³⁵ Increased allostatic loads negatively impact reproductive health.²³⁶ Dysregulation of stress hormones interferes with nervous system functionality, immune response efficacy, and broader hormonal regulation.²³⁷ Effectively, “the passage of one year for white women is not the same as the passage of one year for Black women. That is, the aging of bodies can vary systematically due to structural inequalities, namely gendered racism.”²³⁸ Misogynoir adds years to Black maternal age, simultaneously suppressing Black mothers’ immune responses.²³⁹ This acceleration of the life cycle—depriving Black mothers of healthy futures—is known as the weathering hypothesis.²⁴⁰

B. GROUNDING THE WEATHERING HYPOTHESIS

Formulated by public health scholar Dr. Arline Geronimus, the weathering hypothesis links societal discrimination to its deleterious health impacts.²⁴¹ In a 1992 study, Geronimus detected substantial disparities between white and Black

Against Black Women, U. ILL. CHI., <https://wlr.c.uic.edu/black-women/> [<https://perma.cc/ZVW3-HTML>] (last visited May 31, 2024).

233. JULIE ANDERSON, INST. FOR WOMEN’S POL’Y RSCH., BREADWINNER MOTHERS BY RACE/ETHNICITY AND STATE I (2016), <https://iwpr.org/wp-content/uploads/2020/08/Q054.pdf> [<https://perma.cc/67EW-45GG>].

234. Juanita J. Chinn, Iman K. Martin & Nicole Redmond, *Health Equity Among Black Women in the United States*, 30 J. WOMEN’S HEALTH 212, 213–14 (2021).

235. See Ana Sandoiu, ‘Weathering’: What Are the Health Effects of Stress and Discrimination?, MED. NEWS TODAY (Feb. 26, 2021), <https://www.medicalnewstoday.com/articles/weathering-what-are-the-health-effects-of-stress-and-discrimination> [<https://perma.cc/7XDM-8CW9>]; Chinn et al., *supra* note 235, at 215.

236. See Chinn et al., *supra* note 235, at 213.

237. See Sandoiu, *supra* note 236.

238. Evelyn J. Patterson, Andréa Becker & Darwin A. Baluran, *Gendered Racism on the Body: An Intersectional Approach to Maternal Mortality in the United States*, 41 POPULATION RSCH. & POL’Y REV. 1261, 1266 (2022).

239. See Olusola Ajilore & April D. Thames, *The Fire This Time: The Stress of Racism, Inflammation and COVID-19*, 88 BRAIN BEHAV. & IMMUNITY 66, 66–67 (2020); Chinn et al., *supra* note 235, at 213–14; cf. Amy Roeder, *America Is Failing Its Black Mothers*, HARV. PUB. HEALTH (2019), https://www.hsph.harvard.edu/magazine/magazine_article/america-is-failing-its-black-mothers/ [<https://perma.cc/2Y3R-H95C>] (explaining that “the older the [Black] mother, the greater the risk of maternal and newborn health complications and death”).

240. Arline T. Geronimus, *The Weathering Hypothesis and the Health of African-American Women and Infants: Evidence and Speculations*, 2 ETHNICITY & DISEASE 207, 210 (1992) [hereinafter Geronimus, *The Weathering Hypothesis*]; Arline T. Geronimus, *Black/White Differences in the Relationship of Maternal Age to Birthweight: A Population-Based Test of the Weathering Hypothesis*, 42 SOC. SCI. & MED. 589, 590 (1996).

241. Geronimus, *The Weathering Hypothesis*, *supra* note 241, at 210.

neonatal outcomes.²⁴² White mothers could expect a demonstrable reduction in the risk of neonatal death in their twenties or early thirties as compared to their teens.²⁴³ The opposite was true for Black women. Neonatal health declined for Black mothers in their twenties, deteriorating exponentially by their early thirties.²⁴⁴ Using neonatal health as a reliable proxy for maternal health, her research demonstrated that Black motherhood at twenty-five was more dangerous than teenage pregnancy.²⁴⁵ Outcomes exponentially worsened with each passing year, starkly deviating from those of white mothers.²⁴⁶ Geronimus hypothesized that chronic hardship accelerated Black maternal aging, multiplying their complication risks with each passing year.²⁴⁷

The study was controversial at the time, but subsequent studies vindicate Geronimus's rationales. Syndemics theory links societal inequities to its deleterious health outcomes, accounting for intersectionality as a multiplier.²⁴⁸ Unlike studies accounting for either race or gender, the syndemics lens permits a "historically informed assessment of the presence of systemic racism and lack of liberty towards Black women's bodies rendered by American law and policy, even in death."²⁴⁹ In the context of intersectionality, syndemics studies proffer that systemic inequities exacerbate rates of preexisting conditions, diminished local support for reproductive health resources, C-section prevalence, and age as a consequence of weathering.²⁵⁰ Studies controlling for the same pregnancy complications echoed Geronimus's conclusions—Black mothers were still two to three times more likely to die than their white counterparts.²⁵¹

C. COMPOUNDING HISTORICAL REPRODUCTIVE TRAUMA

Historical trauma experienced by descendants of Black enslaved people roots a cultural group in shared suffering.²⁵² For hundreds of years, Black populations enslaved in the United States experienced such extensive "trauma and dehumanization" that it precipitated a "legacy of trauma."²⁵³ Bondage stripped distinct

242. *Id.* at 209.

243. *Id.*

244. *Id.*

245. *See id.*

246. *See id.* at 213.

247. *Id.* at 213–15.

248. *See* Merrill Singer, Nicola Bulled, Bayla Ostrach & Emily Mendenhall, *Syndemics and the Biosocial Conception of Health*, 389 LANCET 941, 941 (2017).

249. *See* Patterson et al., *supra* note 239, at 1284.

250. *See id.* at 1264, 1286–88.

251. *Id.* at 1285.

252. Michael J. Halloran, *The Curse of Slavery Has Left an Intergenerational Legacy of Trauma and Poor Health for African Americans*, LONDON SCH. ECON. & POL. SCI. (Mar. 8, 2019), <https://blogs.lse.ac.uk/usappblog/2019/03/08/the-curse-of-slavery-has-left-an-intergenerational-legacy-of-trauma-and-poor-health-for-african-americans/> [<https://perma.cc/A848-PHMP>].

253. JOY DEGRUY, *POST TRAUMATIC SLAVE SYNDROME: AMERICA'S LEGACY OF ENDURING INJURY & HEALING* 52, 101–02 (Joy DeGruy Publ'ns Inc. 2017) (2005) (discussing the transgenerational trauma Black Americans have endured).

ethnic groups of their bodily autonomy and self-determination.²⁵⁴ Communal loss, fear, and hope constructed Black Americana. Trauma bonded the Black American identity, and its impacts transcend generational divides.²⁵⁵

Unlike individualized or familial trauma, historical trauma is transmitted to subsequent generations through learned behaviors, stress hormones before birth, or stress-induced epigenetic modifications.²⁵⁶ Generations inherit compounded genetic deterioration, resulting in “legacies of disability for contemporary descendants.”²⁵⁷ Concurrently, Black Americans experience modern manifestations of historical trauma as a collective, compounding centuries of existing trauma.²⁵⁸ Modern manifestations of the slave state, seen in the criminal justice system and allocation of necessities, exacerbate historical state harms. Black Americans are subject to accumulated pain, ancestral and contemporary.

The legacy of reproductive violence mars Black maternal outcomes. Reproductive violence defined the lives of Black enslaved women, and their descendants experience its new-age replacements.²⁵⁹ The state deliberately restricts family planning resources, continuing its Black Code era harms.²⁶⁰ The state replicates forced birthing models, increasing Black morbidity and mortality.²⁶¹ The state systematically deprives Black women of fundamental reproductive autonomy, barely shifting the paradigm. And the state unjustly threatens Black maternal lives, which requires immediate and substantial reparations.

V. REPRODUCTIVE REPARATIONS REQUIRED

“A national act of procrastination does not eliminate the debt.”²⁶²

Francisca, a Black woman enslaved in colonial St. Augustine, delivered the first Black child on modern United States soil.²⁶³ This was in 1606²⁶⁴—centuries later, state-sanctioned reproductive oppression continues slavery-era harms.

254. See Halloran, *supra* note 253; François Furstenberg, *Beyond Freedom and Slavery: Autonomy, Virtue, and Resistance in Early American Political Discourse*, 89 J. AM. HIST. 1295, 1310 (2003).

255. Halloran, *supra* note 253.

256. *See id.*

257. Joseph P. Gone, *Colonial Genocide and Historical Trauma in Native North America: Complicating Contemporary Attributions*, in COLONIAL GENOCIDE IN INDIGENOUS NORTH AMERICA 273, 274 (Andrew Woolford et al. eds., 2014).

258. See Halloran, *supra* note 253.

259. See *infra* Section V.A (defining reproductive injustice and describing how foundational it was to the institution of slavery).

260. See *supra* Section I.A (outlining how inadequate family planning resources limit Black women’s access to contraception and physicians, resulting in higher rates of unplanned pregnancies).

261. See *supra* Section III.B (discussing how physicians frequently perform unnecessary C-sections on Black women, despite the increased risk of morbidity and mortality, because the average C-section is more profitable).

262. WILLIAM A. DARITY JR. & A. KIRSTEN MULLEN, FROM HERE TO EQUALITY: REPARATIONS FOR BLACK AMERICANS IN THE TWENTY-FIRST CENTURY 243 (2020).

263. *Civil Rights in Colonial St. Augustine*, NAT’L PARK SERV., <https://www.nps.gov/articles/staugustinecivilrights.htm> [<https://perma.cc/75C7-UJJZ>] (last visited May 31, 2024).

264. *Id.*

In this Part, this Note endorses reproductive reparations for anti-Black reproductive violence. First, this Note defines the Black maternal mortality crisis as a badge of slavery, requiring congressional remediation under the Thirteenth Amendment's Enforcement Clause. Next, this Note analyzes the workability of reproductive reparations through reproductive justice theory. Finally, this Note recommends policy measures to prevent disproportionate Black maternal deaths.

A. DEFINING THE BLACK MATERNAL HEALTH CRISIS AS A "BADGE OF SLAVERY"

The Thirteenth Amendment's Enforcement Clause²⁶⁵ prohibits "badges and incidents of slavery,"²⁶⁶ charging "Congress . . . to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States."²⁶⁷ Congress' responsibility extends beyond the prohibition of slavery, commanding the body "to give full effect to this bestowment of liberty on these millions of people."²⁶⁸ No uniform definition of "badges" exists, mainly due to the provision's nebulous language.²⁶⁹ Mid-nineteenth century dictionaries defined "badges of slavery" as "indicators, physical or otherwise, of African Americans' slave or subordinate status,"²⁷⁰ expanding beyond direct replications of slavery institutions. Distilled, these "badges" represent post-Emancipation "evidence of political subjugation"²⁷¹ and lingering conditions that impede the full realization of civil rights.²⁷²

Reproductive injustice is defined as the "regulation and exploitation of individuals' bodies, sexuality, labor, and procreative capacities as a strategy to control individuals and entire communities."²⁷³ Black mothers disproportionately experience reproductive oppression, which is directly attributable to societal

265. U.S. CONST. amend. XIII, § 2 ("Congress shall have power to enforce this article by appropriate legislation.").

266. The Civil Rights Cases, 109 U.S. 3, 20 (1883).

267. *Id.*; see U.S. CONST. amend. XIII, § 1 ("Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.").

268. Katesha Long, Note, *Debunking the Broken Windows Theory in Policing: An Incident and Badge of Slavery*, 4 HOW. HUM. & C.R.L. REV. 77, 84 (2020) (quoting *Hodges v. United States*, 203 U.S. 1, 29 (1906) (Harlan, J., dissenting opinion)).

269. See Jennifer Mason McAward, *Defining the Badges and Incidents of Slavery*, 14 U. PA. J. CONST. L. 561, 604, 606 (2012) (defining "badges and incidents of slavery" as "public or widespread private conduct . . . that poses a substantial risk that the members of the targeted population will be returned to de facto slavery or otherwise denied the ability to participate in the basic transactions of civil society").

270. *Id.* at 575.

271. *Id.* at 576 (quoting George Rutherglen, *The Badges and Incidents of Slavery and the Power of Congress to Enforce the Thirteenth Amendment*, in THE PROMISES OF LIBERTY: THE HISTORY AND CONTEMPORARY RELEVANCE OF THE THIRTEENTH AMENDMENT 163, 166 & n.23 (Alexander Tsesis ed., 2010)).

272. See *id.* at 576 (discussing how the phrase "badge of slavery" often referred to "legal restrictions that applied to slaves, like the bar on testimony in any case involving a white person" which also "applied to free blacks because they . . . wore the badge of slavery").

273. *Reproductive Oppression Against Black Women*, U. ILL. CHI., <https://wlruc.uic.edu/reproductive-oppression-against-black-women/> [https://perma.cc/CD89-SNGZ] (last visited May 31, 2024).

discrimination. The United States is the most dangerous place in the industrialized world to give birth, particularly for Black mothers.²⁷⁴ Before *Dobbs*, Mississippi had just one abortion clinic; between 2013 and 2016, Black mothers accounted for “nearly 80 percent of pregnancy-related cardiac deaths” in the state.²⁷⁵ At the individual level, reproductive oppression presents a human rights emergency. Systemic reproductive oppression presents a human rights catastrophe.²⁷⁶

Reproductive control upheld slave society, and its continuation establishes its successors as badges of slavery.²⁷⁷ The Black maternal mortality crisis uniquely disadvantages Black mothers, constituting a badge of slavery. As outlined by reproductive justice theorist Jill Morrison, “[t]he discourse about Black women’s reproductive and sexual capacities is still influenced by the notion developed during enslavement that Black women’s reproductive labors are for the benefit of others; that they are the property of others, be it individual masters or the State acting as master.”²⁷⁸ In 1860, the *New York Times* criticized the institution of slavery as a “moral outlaw,” stating that the system treated Black people “as a chattel, breed[ing] from him with as little regard for marriage ties as if he were an animal.”²⁷⁹ Reproductive injustice perpetuates power imbalances “foundational to slavery. If cotton was euphemistically king, Black women’s wealth-maximizing forced reproduction was queen.”²⁸⁰ Stripping Black mothers of reproductive self-determination, these invasions violate fundamental bodily autonomy rights: the choice to use their bodies as desired, and the exclusion of the state from these reproductive decisions.²⁸¹

B. OUTLINING REPRODUCTIVE JUSTICE REPARATIONS

Reproductive justice, the antithesis of reproductive oppression, restores baseline reproductive autonomy. Coined by Black Chicago feminists in 1994, reproductive justice theory centers the experiences of historically marginalized women and birthing people.²⁸² Unlike the reproductive rights movement, reproductive

274. See Michele Goodwin, *No, Justice Alito, Reproductive Justice Is in the Constitution*, N.Y. TIMES (June 26, 2022), <https://www.nytimes.com/2022/06/26/opinion/justice-alito-reproductive-justice-constitution-abortion.html>. The United States is currently the fifty-fifth most dangerous place to give birth in the world. *Id.*

275. *Id.*

276. Cf. G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966) (asserting that “no one shall be subjected without [her] free consent to medical or scientific experimentation”).

277. See Goodwin, *supra* note 276 (“The horrors inflicted on Black women during slavery, especially sexual violations and forced pregnancies, have been all but wiped from cultural and legal memory. Ultimately, this failure disserves all women.”).

278. Jill C. Morrison, *Resuscitating the Black Body: Reproductive Justice as Resistance to the State’s Property Interest in Black Women’s Reproductive Capacity*, 31 YALE J.L. & FEMINISM 35, 56 (2019).

279. Goodwin, *supra* note 276.

280. *Id.*

281. See *id.*

282. See *Reproductive Justice*, SISTERSONG, <https://www.sistersong.net/reproductive-justice> [<https://perma.cc/7UDV-J77W>] (last visited May 31, 2024).

justice highlights the realistic societal inequities undermining reproductive choice.²⁸³ Dissolving access barriers effectuates universal reproductive agency, remedying historical exclusion.²⁸⁴ Reproductive justice theory challenges structural reproductive oppression, establishing reproductive autonomy as a universal human right.²⁸⁵ Loretta Ross, a foundational reproductive justice advocate, explains, “By shifting the focus to *reproductive oppression*—the control and exploitation of women, girls and individuals through our bodies, sexuality, labor and reproduction—rather than a narrow focus on protecting the legal right to abortion, we are developing a more inclusive vision of how to build a new movement.”²⁸⁶

Reproductive autonomy is a fundamental human right.²⁸⁷ Reproductive justice is the universal vindicator of this right.²⁸⁸ Beyond the right to choose, Black mothers deserve to raise their children in resourced, safe, and supportive communities.²⁸⁹ Values central to the human experience—self-determination, dignity, and family development—can only be realized through the elimination of reproductive oppression. Reproductive reparations seek to restore Black reproductive agency.

Since the Revolutionary War, abolitionists have advocated for pecuniary and distributive restitution for slavery’s harms.²⁹⁰ In 1865, General William Tecumseh Sherman issued the famous “forty acres and a mule” promise.²⁹¹ This plan intended restitution for freed slaves, addressing mass displacement following Emancipation and to “assure the harmony of action in the area of operations” (the Reconstruction South).²⁹² These gains were short-lived. Following President Lincoln’s assassination, President Johnson reversed the order, displacing

283. *See id.*

284. *See* Loretta Ross, *Understanding Reproductive Justice: Transforming the Pro-Choice Movement*, OFF OUR BACKS, 2006, at 14, 14.

285. *See id.*

286. *Id.*

287. *See id.* at 19.

288. *See id.*

289. *See id.* at 15.

290. GARY B. NASH, WARNER MIFFLIN: UNFLINCHING QUAKER ABOLITIONIST 93 (2017) (describing Quaker Warner Mifflin, who advocated for abolitionism during the Revolutionary Era, as the “father of American reparationism”). Belinda Sutton is one of the earliest known recipients of compensation for enslavement, successfully petitioning for a pension in 1783. Margot Minardi, *Why Was Belinda’s Petition Approved*, ROYALL HOUSE & SLAVE QUARTERS, [https://royallhouse.org/why-was-belindas-petition-approved/\[https://perma.cc/2L75-FPDC\]](https://royallhouse.org/why-was-belindas-petition-approved/[https://perma.cc/2L75-FPDC]) (last visited May 31, 2024); Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.

291. *Reparations*, NAACP (2019), <https://naacp.org/resources/reparations> [<https://perma.cc/7EKR-7UW6>]; *see also* F. Michael Higginbotham, *A Dream Revived: The Rise of the Black Reparations Movement*, 58 N.Y.U. ANN. SURV. AM. L. 447, 450 (2003).

292. Alfred C. Channels, Jr., “*Harmony of Action*” – *Sherman as an Army Group Commander* 24 (U.S. Army War Coll. Stud. Program Paper, 1992), <https://apps.dtic.mil/sti/tr/pdf/ADA252324.pdf> [<https://perma.cc/RZ9U-93DZ>].

resettled Black families.²⁹³ Jim Crow took hold, enforcing a new era of institutional terror and discrimination.²⁹⁴

Despite suppression, the reparations conversation never died. Civil rights advocates and Black-nationalist organizations championed reparations, mainly citing the need for economic restitution.²⁹⁵ In 2001, the United Nations officially proclaimed “slavery and the transatlantic slave trade . . . crime[s] against humanity.”²⁹⁶ The racial reckoning of 2020 brought reparations to the forefront of American discourse, prompting multiple 2020 political candidates to voice support for reparations.²⁹⁷

The movement, however, remains unpopular. In 2019, just sixteen percent of white Americans supported reparations, despite its support from nearly seventy-five percent of Black Americans.²⁹⁸ The most salient critiques condemn Black Americans for their “reverse racism,” emphasize the absence of personal fault for slavery’s harms, and criticize reparations’ economic and structural workability.²⁹⁹ This resistance is ahistorical and avoidant. The United States has historically found restitution for racial harm workable, actionable, and necessary in the following instances: formal apologies and restitution for survivors of Japanese American Internment;³⁰⁰ land and oil-revenue redistribution for native Alaskans;³⁰¹ payment for seized First Nations lands;³⁰² compensation funds for Virginia victims of involuntary sterilization;³⁰³ reparations for victims of the Tuskegee Experiment;³⁰⁴ and compensation for individual acts of

293. See NAACP, *supra* note 293.

294. See *id.*

295. See *id.*

296. Martha Biondi, *The Rise of the Reparations Movement*, RADICAL HIST. REV., Fall 2003, at 5, 5.

297. Lauren Gambino, *Calls for Reparations Are Growing Louder. How Is the US Responding?*, GUARDIAN (June 20, 2020, 5:00 AM), <https://www.theguardian.com/world/2020/jun/20/joe-biden-reparations-slavery-george-floyd-protests> [<https://perma.cc/5P2R-VUHP>].

298. *Id.*

299. Charles Lane, *Would Reparations For Slavery Be Constitutional?*, WASH. POST (Aug. 12, 2019, 6:25 PM), https://www.washingtonpost.com/opinions/would-reparations-for-slavery-be-constitutional/2019/08/12/76677182-ba10-11e9-b3b4-2bb69e8c4e39_story.html; Jennifer Ludden, *Cities May Be Debating Reparations, but Here’s Why Most Americans Oppose the Idea*, NPR (Mar. 27, 2023, 5:00 AM), <https://www.npr.org/2023/03/27/1164869576/cities-reparations-white-black-slavery-oppose> [<https://perma.cc/G93N-PD6B>]; see *The Idea of Reparations for Slavery Is Morally Appealing but Flawed*, ECONOMIST (June 29, 2019), <https://www.economist.com/united-states/2019/06/29/the-idea-of-reparations-for-slavery-is-morally-appealing-but-flawed> (critiquing the economic workability of reparations).

300. Erin Blakemore, *The Thorny History of Reparations in the United States*, HISTORY (Sept. 14, 2023), <https://www.history.com/news/reparations-slavery-native-americans-japanese-internment> [<https://perma.cc/L4G5-3VM9>].

301. TANA FITZPATRICK, CONG. RSCH. SERV., R46997, ALASKA NATIVE LANDS AND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA): OVERVIEW AND SELECTED ISSUES FOR CONGRESS 5 (2021), <https://crsreports.congress.gov/product/pdf/R/R46997/3> [<https://perma.cc/25FM-6XPU>].

302. Blakemore, *supra* note 302.

303. *Virginia Eugenics Victims Compensated for Sterilisation*, BBC (Feb. 27, 2015), <https://www.bbc.com/news/world-us-canada-31654546> [<https://perma.cc/8LNF-N7VB>].

304. Blakemore, *supra* note 302.

police brutality and massacres.³⁰⁵ Black descendants of slavery deserve *some* form of reparations, even if centuries-old Black wounds appear too deep to remedy.

C. ENACTING REPRODUCTIVE REPARATIONS

Universal basic resources—non-taxable benefits provided regardless of income—establish a baseline for community well-being. This Note presents universal basic resources that would improve Black maternal health outcomes and provide forward-looking reproductive social supports: universal basic child allowance, universal parental paid leave, and universal healthcare. In the short term, reparative universal basic resources may seem unlikely. However, this plan provides a brief and hopeful look at workable domestic reproductive justice policy.

1. Universal Basic Income

Universal basic income provides “a periodic cash payment unconditionally delivered to all on an individual basis, without [a] means-test or work requirement.”³⁰⁶ When administered to families, universal basic income programs improve a family’s financial stability, employment rates, and mental and physical health.³⁰⁷ Guaranteed income allows parents to cover baseline necessities,

305. Alexis Karteron, *Reparations for Police Violence*, N.Y.U. REV. L. & SOC. CHANGE 405, 408, 410 & n.18 (2021).

306. Michael W. Howard, *The U.S. Could Help Solve Its Poverty Problem with a Universal Basic Income*, SCI. AM. (Jan. 6, 2023) (quoting *About Basic Income*, BASIC INCOME EARTH NETWORK, <https://basicincome.org/about-basic-income/> [<https://perma.cc/D9HL-SKZJ>] (last visited May 31, 2024)), <https://www.scientificamerican.com/article/the-u-s-could-help-solve-its-poverty-problem-with-a-universal-basic-income/> [<https://perma.cc/B7P7-QT58>].

307. See Jeanne Kuang, *With a Guaranteed Income, You Can Buy Precious Time with Your Family. Say California Parents*, CALMATTERS (Feb. 14, 2023), <https://calmatters.org/california-divide/2023/02/guaranteed-income-california/> [<https://perma.cc/NLK4-Z7M2>]; Diana Orozco, *What We Can Learn from a Universal Basic Income for the Expanded Child Tax Credit*, CTR. FOR L. & SOC. POL’Y (Mar. 26, 2021), <https://www.clasp.org/blog/what-we-can-learn-universal-basic-income-expanded-child-tax-credit/> [<https://perma.cc/SEK2-HS56>]; Megan Greenwell, *Universal Basic Income Has Been Tested Repeatedly. It Works. Will America Ever Embrace It?*, WASH. POST MAG. (Oct. 24, 2022, 9:50 AM), <https://www.washingtonpost.com/magazine/2022/10/24/universal-basic-income/>; Jackie Mader, *‘I’m Not Stressed’: Guaranteed Income Programs Are Changing the Lives of American Parents*, GUARDIAN (Nov. 2, 2022, 6:00 AM), <https://www.theguardian.com/education/2022/nov/02/guaranteed-income-us> [<https://perma.cc/J97Y-P5ZE>]; Maribel Maria & Caroline Iosso, *Encouraging Brighter Futures: A Look at Guaranteed Income’s Potential to Support Expecting Parents and Their Families*, INST. FOR CHILD. POVERTY & HOMELESSNESS (Dec. 1, 2023) [<https://perma.cc/ZW8T-8NJB>]; Richard Sears, *New Study Shows Basic Income for Kids Leads to Them Having Better Health*, BASIC INCOME TODAY (Oct. 19, 2022), <https://basicincometoday.com/new-study-shows-basic-income-for-kids-leads-to-them-having-better-health/> [<https://perma.cc/B93F-62WC>]; Julian Glover, *Does Universal Basic Income Work? Here’s How It Changed This SF Family’s Life*, ABC NEWS (Dec. 23, 2022), <https://abc7news.com/ubi-universal-basic-income-california-sf-program/12607304/> [<https://perma.cc/T8GP-SBY9>]; Naomi Wilson & Shari McDaid, *The Mental Health Effects of a Universal Basic Income: A Synthesis of the Evidence from Previous Pilots*, SOC. SCI. & MED., Oct. 2021, at 1, 12–13.

stabilizing the family's emotional well-being.³⁰⁸ Scarcity-related stress has a trickle-down impact from parents to kids; in fact, income volatility is considered an adverse childhood experience, a traumatic experience that impacts the child's development and outcomes in adulthood.³⁰⁹ Cash payments, particularly to low-income families with young children, stabilize family structures and result in improved child development, academic performance, health outcomes, and future earnings.³¹⁰ Unrestricted cash benefits liberate parents, allowing them to improve their relationships with their children and lower household anxieties.³¹¹

Critics reject universal child allowance—and most other forms of universal basic resources—as disincentives for gainful employment.³¹² To counteract those disincentives, some propose balancing measures such as means tests or work requirements, which are required for most welfare benefits.³¹³ But unconditional payments account for race-related socioeconomic barriers to housing and employment, eliminating a barrier for resource qualification.³¹⁴ Piloted universal basic resource programs in all 50 states³¹⁵ demonstrate that universal basic income programs actually *increase* willingness to work and socioeconomic mobility, easing pressing financial and childcare-expense barriers.³¹⁶ Additionally, multiple-city studies demonstrate that parents spend guaranteed income on household essentials, such as rent, food, and utility bills.³¹⁷ Universal basic income provides a path out of poverty, a critical step for Black mothers and their children.

308. See Kuang, *supra* note 310. The first proposal for universal basic income was Richard Nixon in the 1969 Family Assistance Program, which would have provided cash (via a negative income tax) to families experiencing poverty. Greenwell, *supra* note 310. Former presidential candidate Andrew Yang also famously incorporated a universal basic income program into his platform. *Id.*

309. Mader, *supra* note 310; Kuang, *supra* note 310 (quoting Aly Bonde, the manager of a guaranteed income pilot program in Oakland: “There’s so much academic research that shows that stabilizing the home a child lives in gives a generational impact for 10, 20 years.”). See generally ANNIE LOWREY, GIVE PEOPLE MONEY: HOW A UNIVERSAL BASIC INCOME WOULD END POVERTY, REVOLUTIONIZE WORK, AND REMAKE THE WORLD (2018).

310. See Kuang, *supra* note 310; Wilson & McDaid, *supra* note 310, at 10; Maria & Iosso, *supra* note 310.

311. See Kuang, *supra* note 310; Orozco, *supra* note 310; Mader, *supra* note 310.

312. See Howard, *supra* note 309.

313. See *id.*

314. See Orozco, *supra* note 310.

315. Glover, *supra* note 310. For example, Alaska’s Permanent Fund Dividend provides an annual cash payment to every state resident, regardless of means or employment status. Howard, *supra* note 309.

316. Orozco, *supra* note 310 (“Contrary to concerns that cash payments deter employment or job searching, the SEED project showed that there was an increase in full time employment for those that did receive the monthly payment, compared to those who did not.”). Trials have proven successful in cities throughout the country, notably in Stockton and San Francisco, California. Greenwell, *supra* note 310; Glover, *supra* note 310.

317. Orozco, *supra* note 310 (“[P]articipants spent payments on food, home products, utilities and transportation – all everyday needs.”); Mader, *supra* note 310; Glover, *supra* note 310 (“[F]amilies surveyed from 20 guaranteed income programs primarily used the funds on necessities.”).

2. Universal Parental Paid Leave

Mothers require at least six months of parental leave, the time necessary to recover from childbirth mentally and physically.³¹⁸ Adequate maternity leave benefits breastfeeding and maternal bonding, helps reduce postpartum depression, alleviates anxiety, and significantly reduces the risk of rehospitalization.³¹⁹ Mothers who lack parental leave—particularly those returning to work within two months—experience more severe depressive symptoms, relationship challenges, and self-image issues.³²⁰ Improved outcomes in the perinatal period are linked to the mere availability of parental leave, which decreases stress for expecting mothers.³²¹ As explained by economist and social scientist Tiffany Green, “Even if it goes well, pregnancy and birth is a really serious event. It can be an assault on your body, and you need time to recover.”³²²

The United States is the only wealthy country without guaranteed universal paid family leave, disadvantaging new parents.³²³ Parents are not legally entitled to any paid parental leave; by comparison, new parents receive over one year of paid family leave in Japan, Austria, and Poland.³²⁴ The Family and Medical Leave Act (FMLA) ensures twelve weeks of unpaid family leave to just over half of all U.S. employees.³²⁵ However, the FMLA’s exclusion of large categories of workers limits access to unpaid parental leave, particularly for Black parents.³²⁶ As of 2023, forty-four percent of workers are not eligible for FMLA leave,³²⁷

318. Claire Hastwell, *How Competitive Is Your Company's Paid Parental Leave?*, GREAT PLACE TO WORK (Mar. 1, 2023), <https://www.greatplacetowork.com/resources/blog/how-competitive-is-your-companys-paid-parental-leave> [<https://perma.cc/G7KU-JP3J>]; see also Mary Beth Ferrante, *In the Fight for Paid Parental Leave, 6 Months Should Be the Minimum*, FORBES (Jan. 10, 2019, 8:00 AM), <https://www.forbes.com/sites/marybethferrante/2019/01/10/in-the-fight-for-paid-parental-leave-6-months-should-be-the-minimum/?sh=4b5af8372073> (“The postpartum period can be wrought with challenges that include but are not limited to: depression, lactation issues . . . fatigue, and general pain and illness.”); A *Pediatrician's View of Paid Parental Leave*, NPR (Oct. 10, 2016, 2:55 PM), <https://www.npr.org/sections/health-shots/2016/10/10/497052014/a-pediatricians-view-of-paid-parental-leave> [<https://perma.cc/SRG3-VHN5>] (suggesting six to nine months as the minimum for parental leave).

319. Hastwell, *supra* note 321; Zara Abrams, *The Urgent Necessity for Paid Parental Leave*, AM. PSYCH. ASS'N (Apr. 1, 2022), <https://www.apa.org/monitor/2022/04/feature-parental-leave/> [<https://perma.cc/F7SJ-JADK>].

320. Abrams, *supra* note 322.

321. *See id.*

322. *Id.*

323. See Galen Sherwin, *Why Fathers Should Join the Fight for Universal Paid Leave*, ACLU (June 19, 2022), <https://www.aclu.org/news/womens-rights/why-fathers-should-join-the-fight-for-universal-paid-leave> [<https://perma.cc/F7KG-WZNH>]; Kathleen Romig & Kathleen Bryant, *A National Paid Leave Program Would Help Workers, Families*, CTR. FOR BUDGET & POL'Y PRIORITIES (Apr. 27, 2021), <https://www.cbpp.org/research/economy/a-national-paid-leave-program-would-help-workers-families> [<https://perma.cc/9JZ5-GK6V>].

324. Sherwin, *supra* note 326.

325. *Id.*

326. NAT'L P'SHIP FOR WOMEN & FAMS., KEY FACTS: THE FAMILY AND MEDICAL LEAVE ACT 2 (2023), <https://nationalpartnership.org/wp-content/uploads/2023/02/key-facts-the-family-and-medical-leave-act.pdf> [<https://perma.cc/8QV3-4TCP>].

327. *Id.* “[T]he Bureau of Labor Statistics shows that only about 1 in 4 employees (24 percent) in the private sector workforce have access to paid family leave.” Molly Weston Williamson, *The State of Paid*

requiring parents to rely on limited short-term disability and vacation days.³²⁸ For most parents, however, the FMLA's unpaid leave guarantee is impractical.³²⁹ Few parents, particularly Black mothers, can accept a twelve-week income gap.³³⁰

Reproductive equity requires universal paid parental leave. Just twenty-four percent of private sector workers have access to paid family leave.³³¹ Most companies provide twenty-nine days of maternity leave and seventeen days of paternity leave.³³² As of January 2023, eleven states³³³ have enacted paid parental leave legislation, leaving the rest of the country without leave protections. To protect Black maternal health, the United States must provide paid family leave necessary for recovery and recuperation.

3. Universal Healthcare

The World Health Organization describes a universal healthcare system as one where “all people have access to the full range of quality health services they need, when and where they need them, without financial hardship.”³³⁴ These health services span the life continuum, providing everything from health promotion to palliative care.³³⁵ Universal healthcare coverage vindicates the fundamental human right to healthcare, allowing communities to achieve the “highest attainable level of health.”³³⁶

In practice, healthcare in the United States falls far short of this standard. The Affordable Care Act (ACA) and the Children's Health Insurance Program have significantly increased access to affordable healthcare for previously uninsured and low-income families.³³⁷ However, rollbacks of certain policy provisions have left over twenty-five million people uninsured, particularly in states declining to

Family and Medical Leave in the U.S. in 2023, CTR. FOR AM. PROGRESS (Jan. 5, 2023), <https://www.americanprogress.org/article/the-state-of-paid-family-and-medical-leave-in-the-u-s-in-2023/> [<https://perma.cc/75HW-Q34Y>].

328. See Williamson, *supra* note 330.

329. See Sherwin, *supra* note 326.

330. *Id.*

331. Williamson, *supra* note 330.

332. Hastwell, *supra* note 321.

333. These states are California, Colorado, Connecticut, Delaware, Massachusetts, Maryland, New Jersey, New York, Oregon, Rhode Island, and Washington state. Williamson, *supra* note 330. Washington, D.C. also has a paid family leave law. *Id.*

334. *Universal Health Coverage (UHC)*, WORLD HEALTH ORG. (Oct. 5, 2023), [https://www.who.int/news-room/fact-sheets/detail/universal-health-coverage-\(uhc\)](https://www.who.int/news-room/fact-sheets/detail/universal-health-coverage-(uhc)) [<https://perma.cc/VEE2-M6KE>].

335. *Id.*

336. *Id.*

337. See Nicole Rapfogel, Emily Gee & Maura Calsyn, *10 Ways the ACA Has Improved Health Care in the Past Decade*, CTR. FOR AM. PROGRESS (Mar. 23, 2020), <https://www.americanprogress.org/article/10-ways-aca-improved-health-care-past-decade/> [<https://perma.cc/67ZG-N6XN>]; *Health Care for All: A Framework for Moving to a Primary Care-Based Health Care System in the United States*, AM. ACAD. FAM. PHYSICIANS (2018), <https://www.aafp.org/about/policies/all/health-care-for-all.html> [<https://perma.cc/HVH2-RBQ3>].

expand Medicaid coverage.³³⁸ Ideally, providing universal health coverage would remedy coverage gaps and maternity care deserts, ameliorating key contributors to the Black maternal health crisis.

CONCLUSION

The day before her planned C-section, Shalon wrote to her daughter Soleil: “You will always be my most important accomplishment. . . . No words have been created to adequately capture the fear and love and excitement that I feel right now.”³³⁹

Black mothers deserve life beyond the perinatal period. Black mothers deserve access to culturally competent and quality perinatal care. Black mothers deserve to give birth and recover within supportive networks. Black mothers deserve respect, opportunity, and vitality. Black mothers deserve choice. Black mothers deserve life.

Every moment that the United States denies these rights, it exacts gross violations of bodily autonomy. Reproductive justice policies are necessary to comply with constitutional and international human rights mandates. The longer we wait, the more letters we write.

This is a letter to Shalon.³⁴⁰

To Shamony.³⁴¹

338. Jennifer Tolbert, Patrick Drake & Anthony Damico, *Key Facts About the Uninsured Population*, KFF (Dec. 18, 2023), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/> [<https://perma.cc/7WEM-8YKL>]; Sherry A. Glied & Mark A. Weiss, *Impact of the Medicaid Coverage Gap: Comparing States That Have and Have Not Expanded Eligibility*, COMMONWEALTH FUND (Sept. 11, 2023), <https://www.commonwealthfund.org/publications/issue-briefs/2023/sep/impact-medicaid-coverage-gap-comparing-states-have-and-have-not> [<https://perma.cc/6T5X-TCYM>].

339. Martin & Montagne, *supra* note 2.

340. See *supra* notes 1–19 and accompanying text.

341. Shamony Makeba Gibson was an artist, a singer, and the family comedian. Claudia Irizarry Aponte & Ese Olumhense, *For Grandparents Day, Women Honor Daughters Lost to Black Maternal Mortality Crisis*, CITY (Sept. 13, 2020, 8:02 PM), <https://www.thecity.nyc/2020/09/13/grandparents-day-women-black-maternal-mortality-crisis-brooklyn-new-york-city/> [<https://perma.cc/3BKQ-XAQQ>]. Her mother Shawnee Benton-Gibson, a Brooklyn-based reproductive justice activist and advocate, described Shamony as “very fiery like me. . . . She was my best friend.” *Id.* Shamony and her partner Omari were overjoyed to welcome their second child. In a home video, Shamony gushes, “[t]ime is flying, four months already. . . . Every day is a new process, you wake up like, ‘Oh my god, I’m that much closer to being a mom again.’” Adrian Horton, *‘You Are Not Being Heard’: The Devastating Black Maternal Mortality Crisis in the US*, GUARDIAN (July 21, 2022, 2:03 PM), <https://www.theguardian.com/film/2022/jul/20/you-are-not-being-heard-the-devastating-black-maternal-mortality-crisis-in-the-us> [<https://perma.cc/RRQ5-M43L>].

Shamony experienced fatigue and shortness of breath after her C-section, but she assured her concerned mother that the hospital had checked for pulmonary embolisms. Aponte & Olumhense, *supra*. Shamony collapsed at home, and doctors resuscitated her at the hospital. *Id.* Shalon’s blood clots had spread to her lungs and legs. *Id.* Doctors repeatedly asked Shamony’s mother and partner if she had taken illegal drugs; the answer was always no. Horton, *supra*.

Shamony died at Interfaith Medical Center of a pulmonary embolism—the same condition her mother Shawnee flagged. Shamony was thirty years old. Aponte & Olumhense, *supra*; AFTERSHOCK, *supra* note 67.

To Amber.³⁴²

To Kira.³⁴³

To Sha-Asia.³⁴⁴

To Black mothers.

342. Amber Rose Isaac, a proud plant parent and graduate student, was a “divine light.” Claudia Irizarry Aponte, *‘Every Day I Wake Up Fighting for Her:’ A Year After the Childbirth Death of Amber Rose Isaac, What’s Changed?*, CITY (Oct. 12, 2023, 7:55 AM), <https://www.thecity.nyc/2021/04/20/year-after-childbirth-death-of-amber-rose-isaac-whats-changed/> [<https://perma.cc/89NK-PCAU>]. Amber was a “leader amongst her peers. She just always had the best advice and she always, whenever you speak to her, she’s always attentive. . . . If she loves you, she makes it known that you’re loved.” *Id.* Amber hoped to develop an art therapy program for children in low-income communities. *Id.*

Amber’s medical team ignored her fatigue concerns for months, failing to notice her dangerously low blood platelet levels for four months. *Id.* When questioned, Amber’s medical team informed her that telehealth was sufficient. *Id.* Doula Nubia Earth Martin alerted Amber, and Amber’s physicians intervened to avoid malpractice liability. *Id.*; AFTERSHOCK, *supra* note 67.

Amber died during an emergency C-section at Montefiore Medical Center in The Bronx. Aponte, *supra*. Amber was twenty-six years old. *Id.*

343. Kira was adventurous, active, and curious. Kira spoke five languages, drove race cars, maintained a pilot’s license, and skydived. *Kira Johnson*, CONSUMER WATCHDOG, <https://www.consumerwatchdog.org/patient-safety/kira-johnson-cedars-sinai-los-angeles> [<https://perma.cc/N7BX-RCNK>] (last visited May 31, 2024). As a mother of one, Kira was overjoyed to learn she was expecting. Kira and her husband Charles hoped their sons would be best friends, saying that their closeness in age would be “everything we had really dreamed about.” Beth Galvin, *After Losing Wife to Delivery Complications, Georgia Man Urges Lawmakers to Do More to Protect Mothers*, FOX5 ATLANTA (Mar. 9, 2022), <https://www.fox5atlanta.com/news/after-losing-wife-to-delivery-complications-georgia-man-urges-lawmakers-to-do-more-to-protect-mothers> [<https://perma.cc/BF5Y-TU92>]. Kira had no known medical conditions. *See id.*

Kira Dixon Johnson received a scheduled C-section at Cedars-Sinai Medical Center in Los Angeles. *Id.* The C-section was performed in seventeen minutes. *Family of Black Woman Who Died After ‘Sloppy’ C-section Sues Hospital for Racism*, TODAY (May 9, 2022, 6:20 PM), <https://www.today.com/parents/parents/black-woman-died-c-section-racism-lawsuit-cedars-sinai-rcna28029> [<https://perma.cc/9CGB-THAV>]. Her attorney called it “butchery,” and deposed doctors were shocked to learn that the procedure was performed so quickly. *Id.* Kira exhibited signs of internal bleeding, but her husband’s pleas were ignored for twelve hours. *Id.* Kira died without being readmitted from significant internal bleeding. Kira was thirty-nine years old.

Her attorney stated, “Kira died because she’s Black. . . . Women of color don’t get the same treatment as white women. That’s a fact.” *Id.*

344. Sha-Asia Washington, a charter school paraprofessional in Brooklyn, excitedly celebrated her first child with her partner. *See* Claudia Irizarry Aponte, *Brooklyn Doctor Under Investigation in Sha-Asia Washington’s Death During Childbirth*, CITY (Apr. 29, 2021, 9:21 PM), <https://www.thecity.nyc/2021/04/29/brooklyn-doctor-investigation-sha-asia-washington-childbirth-death/> [<https://perma.cc/3K4H-RZNZ>]. Sha-Asia announced their new addition with a Christmas card containing a sonogram, addressed “to grandma.” Dickson, *supra* note 62. Sha-Asia knitted a blanket for her new daughter Khloe, hosted a virtual baby shower during the COVID-19 pandemic, and posed for countless maternity photos. *Id.*

Sha-Asia visited Woodhull Medical Center for a routine stress test. *Id.* After being induced, Sha-Asia hesitantly assented to an epidural. *Id.* Sha-Asia immediately went into cardiac arrest, and her baby’s heart rate dropped. *Id.* They performed an emergency C-section, saving Khloe. Sha-Asia died forty-five minutes later. She was twenty-six years old. *Id.*

A former Woodhull anesthesiologist was investigated for his “deviat[i]ons from medically acceptable standards” in his epidural administration to Washington and several others. Aponte, *supra*.