

Forced to Bear, Denied to Rear: The Cruelty of *Dobbs* for Disabled People

ROBYN M. POWELL*

The history of the United States is marred by a shameful record of using reproduction to oppress disabled people through state-sanctioned legislation, policies, and programs that deprive them of their bodily autonomy and self-determination. Disabled people face structural, legal, and institutional barriers to accessing reproductive health services and information, including contraception and abortion care. They also experience high rates of violence and reproductive coercion, as well as stigma and discrimination from health providers. Consequently, people with disabilities are more likely to experience maternal morbidity and mortality, rendering pregnancy particularly dangerous for some.

*The *Dobbs v. Jackson Women’s Health Organization* decision exacerbates this complex and challenging situation. Mounting abortion restrictions, coupled with the myriad barriers and challenges that people with disabilities already face, will result in some being forced to carry pregnancies to term even if they pose serious health risks or go against their wishes. Subsequently, should they choose to raise their children after childbirth, they will likely encounter ongoing threats to their parental rights because of laws, policies, and practices that assume incompetence among disabled parents. Thus, the ruling creates a paradox for disabled people where they may be forced to bear children but subsequently denied the opportunity to rear them, perpetuating a historical pattern of exploitation and subjugation.*

*In response, this Article presents a nuanced and novel analysis of the *Dobbs* decision and its implications for people with disabilities. To do so, first, the Article examines the profound impact of forced pregnancy on disabled people, delving into the underlying reasons for high rates of unintended pregnancies among this group, including inaccessible reproductive health services and information, socioeconomic inequities, and violence and reproductive coercion. It also highlights the dangers and violations of bodily autonomy and self-determination that forced*

* Associate Professor of Law at the University of Oklahoma College of Law, Ph.D., J.D. © 2024, Robyn M. Powell. This Article benefited from presentations at the University of Pennsylvania Law Review Symposium (February 2022), Mississippi State University (March 2022), the American Constitution Society at Stetson University College of Law (April 2022), the American Bar Association’s webinar, “Reproductive Health and Assisted Technology Access” (June 2022), Yale Program for the Study of Reproductive Justice (October 2022), Harvard Law School (March 2023), the Southeastern Association of Law Schools Annual Conference (July 2023), the Association of American Law Schools (January 2024), Georgia State University College of Law (February 2024), and Georgetown University Law School (April 2024).

pregnancy entails for disabled people. Next, the Article's focus shifts to the denial of parental rights for people with disabilities, even after being compelled to bear children, exploring the societal, legal, and institutional obstacles that hinder their ability to parent, such as assumptions of incompetence, inadequate family support, constant surveillance and scrutiny, and ableism within the family policing system (also known as the child welfare system). Thereafter, it introduces the concept of disability reproductive justice and its relevance to these complex issues, providing a framework based on the principles of disability justice and reproductive justice to transform society into one that respects and supports disabled people's reproductive freedom. Finally, the Article proposes legal and policy solutions guided by the principles of disability reproductive justice to address the reproductive needs of disabled people and dismantle the systemic causes of reproductive oppression, emphasizing the necessity of a comprehensive approach considering the rising threat to reproductive freedom.

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INTRODUCTION

There is no such thing as a single-issue struggle because we do not live single-issue lives.
 —Audre Lorde¹

*Dobbs v. Jackson Women’s Health Organization*² marks the end of “reproductive freedom as understood for the past fifty years”³ in the United States and a considerable shift in Supreme Court jurisprudence. Since the recognition of abortion rights in 1973,⁴ the antiabortion movement has continuously attacked the constitutional right to abortion.⁵ Nonetheless, the Court has consistently upheld that abortion before viability is protected by the Constitution.⁶ This changed, however, on June 24, 2022, when a 6–3 majority held that the Constitution does

1. AUDRE LORDE, *SISTER OUTSIDER* 138 (1984).
 2. 597 U.S. 215 (2022).
 3. Michele Goodwin, *Ending the Debate Whether State-Mandated Pregnancies Are Matters of Bioethics Concern*, *AM. J. BIOETHICS*, Aug. 2022, at 31, 31.
 4. *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs*, 597 U.S. 215.
 5. Morning Edition, *The Movement Against Abortion Rights Is Nearing Its Apex. But It Began Way Before Roe*, *NPR* (May 4, 2022, 5:00 AM), <https://www.npr.org/2022/05/04/1096154028/the-movement-against-abortion-rights-is-nearing-its-apex-but-it-began-way-before> [<https://perma.cc/Z22N-LMUT>].
 6. *See, e.g., Roe*, 410 U.S. at 153 (establishing a constitutional right to abortion based on the right to privacy found in the Fourteenth Amendment’s Due Process Clause); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 876 (1992) (upholding the right to abortion while rejecting the trimester framework set forth in *Roe* and instead adopting the “undue burden” standard), *abrogated by Dobbs*, 597 U.S. 215; *Whole Woman’s Health v. Hellerstedt*, 579 U.S. 582, 609–10, 624 (2016) (holding that Texas’s law that required abortion providers to have admitting privileges at a hospital within thirty miles and abortion facilities to meet the same standards as surgical centers created an undue burden for people seeking abortion services); *June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2112–13 (2020) (holding that Louisiana’s law requiring abortion providers to have admitting privileges at a hospital within thirty miles of the clinic imposed an undue burden on people seeking abortion services), *abrogated by Dobbs*, 597 U.S. 215.

not confer a right to abortion.⁷ As Professor Joanna Grossman writes, “The *Dobbs* opinion is a man-made earthquake, the reverberations of which will be felt deeply and broadly.”⁸ Not only will the impact of *Dobbs* be devastating for people⁹ seeking abortions, but its consequences will also be felt across numerous domains and will particularly harm marginalized communities, such as people with disabilities.¹⁰

Before delving into the *Dobbs* decision’s catastrophic effects, the long-standing issue of unequal reproductive freedom in certain communities must be acknowledged. Despite *Roe v. Wade*, marginalized communities, particularly Black women, have continually faced systemic barriers—such as poverty, racism, and restrictive laws—obstructing their access to reproductive healthcare and autonomy.¹¹ Unfortunately, the reproductive rights movement largely ignored these issues, even as they disproportionately affected marginalized communities.¹² This disregard led to the development of the reproductive justice movement, which recognizes the exclusion of Black women and other marginalized communities from the mainstream abortion rights movement, emphasizing the

7. *Dobbs*, 597 U.S. at 231, 292.

8. Joanna L. Grossman, *The End of Roe v. Wade*, JUSTIA: VERDICT (June 29, 2022), <https://verdict.justia.com/2022/06/29/the-end-of-roe-v-wade> [<https://perma.cc/KU9N-DZDJ>].

9. While reproductive rights and health are typically framed as central to women’s lives, transgender, nonbinary, and gender nonconforming people also need comprehensive reproductive health services and information. See Katie Watson, *The Ethics of Access: Reframing the Need for Abortion Care as a Health Disparity*, AM J. BIOETHICS, Aug. 2022, at 22, 22 n.1 (“[N]ot everyone capable of pregnancy identifies as a woman, and all people capable of pregnancy, including male-identifying and non-binary patients, need access to abortion care.”); COMM. ON HEALTH CARE FOR UNDERSERVED WOMEN, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, ACOG COMMITTEE OPINION: INCREASING ACCESS TO ABORTION, at e108 (2020), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2020/12/increasing-access-to-abortion.pdf> [<https://perma.cc/JC8W-JX94>] (“People of all genders have sexual and reproductive health needs, including women, transgender people, nonbinary people, and those who are otherwise gender-diverse.”). Accordingly, this Article uses gender-neutral language whenever possible; however, this Article uses the terms “woman” or “women” in some instances where that terminology is specific to the research or cited source.

10. See generally Robyn M. Powell, *Including Disabled People in the Battle to Protect Abortion Rights: A Call-to-Action*, 70 UCLA L. REV. 774 (2023) (describing the harms that will be exacted on disabled people because of *Dobbs*).

This Article acknowledges the significance of language in influencing our perceptions of disability and the potential for ableism to permeate language usage and reflect and sustain disability-based oppression, aligning with the principles of disability rights and disability justice movements. See Lydia X. Z. Brown, *Ableism/Language*, AUTISTIC HOYA (Sept. 14, 2022), <https://www.autistichoya.com/p/ableist-words-and-terms-to-avoid.html> [<https://perma.cc/GT8Q-EMAL>]. Accordingly, this Article uses person-first and identity-first language interchangeably (for example, “people with disabilities” and “disabled people”) in recognition of the disability community’s diverse language preferences. See generally Erin E. Andrews, Robyn M. Powell & Kara Ayers, *The Evolution of Disability Language: Choosing Terms to Describe Disability*, DISABILITY & HEALTH J., July 2022, at 1 (exploring the evolving language preferences among people with disabilities).

11. See Goodwin, *supra* note 3, at 31–32; Watson, *supra* note 9, at 23–27.

12. See Loretta Ross, *What is Reproductive Justice?*, in REPRODUCTIVE JUSTICE BRIEFING BOOK: A PRIMER ON REPRODUCTIVE JUSTICE AND SOCIAL CHANGE 4, 4 (2017), <https://www.law.berkeley.edu/php-programs/courses/fileDL.php?fID=4051> [<https://perma.cc/5HM3-N6NQJ>].

need for an intersectional approach to reproductive freedom.¹³ Thus, as Professor Michele Goodwin notes, the right to abortion was, in practice, “more illusory than real” for marginalized communities who have never been afforded complete reproductive freedom.¹⁴

Similarly, amid continuous and widespread reproductive oppression, people with disabilities have been systematically marginalized and excluded from conversations about reproductive freedom in both academic and public domains.¹⁵ Despite the pervasive reproductive injustices experienced by disabled people, discussions surrounding their access to abortion, and reproductive freedom more broadly, have been notably absent.¹⁶ Instead, the discourse surrounding disability and abortion is often confined to debates concerning fetal disability diagnoses, with the abortion rights movement emphasizing disability as a tragedy to stress the importance of abortion access and the antiabortion movement claiming that disability-selective abortions discriminate against and devalue disabled people.¹⁷ The limited framing of abortion restrictions overlooks the broader impacts on disabled people, reflecting a pattern of marginalization and exclusion of disabled voices in discussions of reproductive freedom.

Disabled people have historically faced reproductive oppression in societal, medical, and legal realms.¹⁸ State-endorsed actions like forced sterilization,

13. See *infra* Section III.A (describing reproductive justice and how Black women and other people from marginalized communities were excluded from the reproductive rights movement).

14. See Goodwin, *supra* note 3, at 32.

15. See Robyn M. Powell, *From Carrie Buck to Britney Spears: Strategies for Disrupting the Ongoing Reproductive Oppression of Disabled People*, 107 VA. L. REV. ONLINE 246, 256–57 (2021), <https://virginialawreview.org/articles/from-carrie-buck-to-britney-spears-strategies-for-disrupting-the-ongoing-reproductive-oppression-of-disabled-people/> [<https://perma.cc/3XQP-HPPW>].

16. Robyn Powell, *Achieving Disability Justice After Dobbs*, OXFORD HUM. RTS. HUB (Aug. 3, 2022), <https://ohrh.law.ox.ac.uk/achieving-disability-justice-after-dobbs/> [<https://perma.cc/R8SQ-7CJW>]; see also Michelle Jarman, *Relations of Abortion: Crip Approaches to Reproductive Justice*, FEMINIST FORMATIONS, Spring 2015, at 46, 47–48 (calling for a “more complex discussion of abortion” that recognizes “disability, economic, and racial disparities”).

17. See, e.g., Robyn Powell, *Ohio’s Dangerous Abortion Ban Pits Disability Rights Against Reproductive Rights*, REWIRE NEWS GRP. (Feb. 8, 2018, 12:10 PM), <https://rewirenewsgroup.com/2018/02/08/ohios-dangerous-abortion-ban-pits-disability-rights-reproductive-rights/> [<https://perma.cc/94KW-TRQM>]; s.e. smith, *Are Abortion Bans on the Basis of Disability Really in the Interest of Disability Rights?*, ROOTED IN RTS., (Jan. 18, 2018), <https://rootedinrights.org/are-abortion-bans-basis-disability-interest-of-disability-rights/> [<https://perma.cc/53CA-8JXV>]; Morning Edition, *Down Syndrome Families Divided over Abortion Ban*, NPR (Dec. 13, 2017, 5:03 AM), <https://www.npr.org/2017/12/13/570173685/down-syndrome-families-divided-over-abortion-ban> [<https://perma.cc/P2V7-7BPW>]. See generally Sujatha Jesudason & Julia Epstein, *The Paradox of Disability in Abortion Debates: Bringing the Pro-Choice and Disability Rights Communities Together*, 84 CONTRACEPTION 541 (2011) (examining how both the abortion rights and antiabortion rights movements have invoked disabilities in their efforts and the importance of disabled people being involved in the discourse).

18. See Powell, *supra* note 15, at 249 (discussing the entrenchment of reproductive oppression of disabled people in “our laws, . . . policies, and . . . collective conscience”); see also Robyn M. Powell, *Confronting Eugenics Means Finally Confronting Its Ableist Roots*, 27 WM. & MARY J. RACE GENDER & SOC. JUST. 607, 607 (2021) (explaining how eugenics has continued to target people with disabilities, and emphasizing that advocacy concerning eugenics that does not center disabled people is inadequate); Robyn M. Powell & Michael Ashley Stein, *Persons with Disabilities and Their Sexual, Reproductive, and Parenting Rights: An International and Comparative Analysis*, 11 FRONTIERS L. CHINA 53, 55–57

institutionalization, and marriage restrictions were employed during the eugenics era to control and oppress their reproduction.¹⁹ Today, they face disparities in sexual and reproductive health, limited access to care, and barriers to contraception and abortion, resulting in high rates of unintended pregnancies.²⁰ The *Dobbs* decision further complicates matters, as mounting abortion restrictions coupled with existing barriers could force disabled people to carry pregnancies against their wishes, risking serious health consequences.²¹ Thus, they face greater risks of unintended pregnancies due to structural, legal, and institutional barriers and experience significant health risks, including death, if forced to carry a pregnancy to term and give birth.

Although the dissent in *Dobbs* acknowledged the profound physical, emotional, and social harm associated with forced pregnancy,²² the majority remained silent on this issue. Notably, during the oral argument, Justice Amy Coney Barrett, the only Justice in the majority who has experienced pregnancy personally, asserts, “[pregnancy] is, without question, an infringement on bodily autonomy, you know, which we have in other contexts, like vaccines.”²³ Hence, for Justice Barrett, compelling a nine-month pregnancy is analogous to mandating vaccines. She also suggests that the burden women face during reproduction stems from the obligations of motherhood, rather than pregnancy itself.²⁴ According to Justice Barrett, however, because safe-haven laws allow parents to surrender a baby shortly after giving birth, they might “take care of th[e] problem.”²⁵ Consequently, from her perspective, parenting is the burden in need of relief rather than pregnancy. Indeed, the antiabortion movement has long ignored the harms associated with forced pregnancy, arguing that adoption is a viable alternative for people who are denied access to abortion, and Justice Samuel Alito, writing for the majority in *Dobbs*, reiterated this stance.²⁶

In reality, most people forced to carry a pregnancy to term and give birth choose to raise the child once they are born because placing a child for adoption

(2016) (discussing multiple challenges confronting disabled people, including the prevalence of involuntary sterilization and reduced access to reproductive health services).

19. See Robyn M. Powell, *Disability Reproductive Justice*, 170 U. PA. L. REV. 1851, 1856–59 (2022).

20. See *id.* at 1860–75.

21. See *infra* Section I.D.

22. See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 360 (2022) (Breyer, Sotomayor, and Kagan, JJ., dissenting) (“A State can force [a woman] to bring a pregnancy to term, even at the steepest personal and familial costs.”).

23. Transcript of Oral Argument at 56–57, *Dobbs*, 597 U.S. 215 (No. 19-1392).

24. See *id.* at 56–58 (describing “the consequences of parenting and the obligations of motherhood that flow from pregnancy” and questioning whether the potential right “is grounded primarily in the bearing of the child, in the carrying of pregnancy” or primarily in “the consequences on professional opportunities and work life and economic burdens”).

25. See *id.* at 56.

26. *Dobbs*, 597 U.S. at 258–59 (“States have increasingly adopted ‘safe haven’ laws, which generally allow women to drop off babies anonymously; and . . . a woman who puts her newborn up for adoption today has little reason to fear that the baby will not find a suitable home.” (footnote omitted)).

is incredibly difficult.²⁷ This illustrates another cruel reality for disabled people stemming from the *Dobbs* decision: if they survive a forced pregnancy and choose to raise their children after childbirth, they are likely to encounter ongoing threats to their parental rights.²⁸ This is especially true given pervasive assumptions of incompetence, inadequate family support, constant surveillance and scrutiny, and ableist laws, policies, and practices that leave disabled parents and their children vulnerable to involvement with the family policing system (often referred to as the “child welfare system”).²⁹ Strikingly, of the twenty-four states that have banned or are likely to ban abortion, twenty-one allow for the termination of parental rights based on a parent’s disability.³⁰ Therefore, because of the *Dobbs* decision, disabled people may be compelled to carry a pregnancy to term and give birth only to be denied the chance to raise their child.

This Article analyzes the *Dobbs* ruling’s paradoxical impact on people with disabilities and calls for wide-ranging and robust legal and policy responses that challenge all threats to disabled people’s reproductive freedom. Part I examines the profound impact of forced pregnancy on disabled people. It delves into the underlying reasons for their high rates of unintended pregnancies, including limited access to reproductive health services and information, socioeconomic factors, and violence and reproductive coercion. Furthermore, it highlights the profound harms of forced pregnancy, including its danger and the violation of disabled people’s bodily autonomy and self-determination. Part II focuses on the denial of their parental rights, even after being compelled to bear children. It explores the various societal, legal, and institutional obstacles that hinder

27. See Gretchen Sisson, Lauren Ralph, Heather Gould & Diana Greene Foster, *Adoption Decision Making Among Women Seeking Abortion*, 27 WOMEN’S HEALTH ISSUES 136, 137–42 (2017) (discussing a longitudinal study of nearly 1,000 women seeking an abortion, which found that of the 17% who were unable to have an abortion because of gestational limits and gave birth, only 9% (15 out of the 1,000 women) chose to place their child for adoption); see also Ann Fessler, *The Heartbreaking Story of One Woman Who Was Forced to Surrender a Baby Before Roe*, SLATE (June 27, 2022, 5:45 AM), <https://slate.com/human-interest/2022/06/dobbs-decision-surrendering-babies-adoption-before-ro-ann-fessler.html> [<https://perma.cc/2FT3-KEXX>] (describing “the psychological experience of relinquishment”).

28. See Powell, *supra* note 19, at 1878–81.

29. *Id.* This Article recognizes the importance of language by using the phrase “family policing system” when referring to the multiagency system historically referred to as the “child welfare” or “child protection” system. See Dorothy Roberts, *Abolish Family Policing, Too*, DISSENT MAG. (Summer 2021), <https://www.dissentmagazine.org/article/abolish-family-policing-too> [<https://perma.cc/A4Z2-WNC4>]. Accordingly, this Article utilizes the term “family policing system” except when directly quoting others.

30. Compare Elizabeth Nash & Isabel Guarnieri, *Six Months Post-Roe, 24 US States Have Banned Abortion or Are Likely to Do So: A Roundup*, GUTTMACHER INST. (Sept. 1, 2023), <https://www.guttmacher.org/2023/01/six-months-post-ro-24-us-states-have-banned-abortion-or-are-likely-to-do-so-roundup> [<https://perma.cc/3D7L-SYMF>] (outlining twenty-four states that have banned abortion or are likely to do so), with Robyn M. Powell, *Legal Ableism: A Systematic Review of State Termination of Parental Rights Laws*, 101 WASH. U. L. REV. 423, 455 (2023) (“[A]s of October 1, 2022, forty-two states and the District of Columbia include parental disability as grounds for termination of parental rights in their laws.”). The three states that have banned or are trying to ban abortion but that do not allow for the termination of parental rights based on a parent’s disability are Idaho, Indiana, and Wyoming. See Nash & Guarnieri, *supra*; Powell, *supra*, at 456 & n.229.

disabled people's ability to parent, such as assumptions of incompetence, inadequate family support, constant surveillance and scrutiny, and ableism within the family policing system. Part III introduces disability reproductive justice and its relevance to these complex issues. Drawing on the principles of disability justice and reproductive justice, it provides a framework for transforming society into one that respects and supports reproductive freedom for disabled people. Finally, guided by the principles of disability reproductive justice, Part IV proposes legal and policy solutions to holistically address disabled people's reproductive needs and dismantle the systemic causes of reproductive oppression. With the rising threat to reproductive freedom, a bold and comprehensive approach that includes disabled people is necessary. This Article proposes a path forward in pursuit of this critical goal.

I. FORCED TO BEAR: CAUSES AND CONSEQUENCES

As the dissent in *Dobbs* poignantly observes, "There are few greater incursions on a body than forcing a woman to complete a pregnancy and give birth."³¹ The gravity of this infringement cannot be overstated. While forced pregnancy negatively affects all people capable of becoming pregnant, its adverse impact is compounded for marginalized communities who experience systemic oppression and discrimination, including disabled people. This Part explores the devastating consequences of forced pregnancy on disabled people. First, it examines the intricate factors contributing to high rates of unintended pregnancies among this population, such as limited access to comprehensive reproductive health services and information, socioeconomic challenges, and the prevalence of violence and reproductive coercion. This foundation is essential to understanding matters concerning forced pregnancy because most people who have abortions do so to terminate an unintended pregnancy.³² Second, it illuminates the detrimental effects of forcing disabled people to carry a pregnancy to term, including subjecting them to physical risks and infringing upon their rights to bodily autonomy and self-determination.

A. INEQUITABLE ACCESS TO REPRODUCTIVE HEALTH SERVICES AND INFORMATION

Equitable access to reproductive health services and information is crucial for addressing forced pregnancies among disabled people. Broadly, disabled people encounter impediments to accessing health services and information, spanning "attitudinal, communication, physical, policy, programmatic, social, and transportation barriers."³³ Indeed, even with legal protections in place, such as Section

31. *Dobbs*, 597 U.S. at 379 (Breyer, Sotomayor, and Kagan, JJ., dissenting).

32. Lawrence B. Finer, Lori F. Frohworth, Lindsay A. Dauphinee, Susheela Singh & Ann M. Moore, *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 PERSPS. ON SEXUAL & REPROD. HEALTH 110, 110 (2005).

33. Robyn M. Powell, *Applying the Health Justice Framework to Address Health and Health Care Inequities Experienced by People with Disabilities During and After COVID-19*, 96 WASH. L. REV. 93, 104–07 (2021) (describing the current state of health and healthcare inequities for people with disabilities).

504 of the Rehabilitation Act of 1973 (Section 504),³⁴ the Americans with Disabilities Act of 1990 (ADA),³⁵ and the Patient Protection and Affordable Care Act (ACA),³⁶ disabled people often face “persistent inequalities” accessing healthcare and experience adverse health outcomes.³⁷ Health inequities are even more pronounced for Black disabled people and LGBTQ+ disabled people, compared to other disabled people.³⁸

Reproductive health disparities for disabled people are especially stark. According to the World Health Organization and the World Bank, disabled people have many unmet reproductive health needs, including insufficient access to sexual education and contraception, inadequate reproductive health screening, and limited provider knowledge on disability, sexuality, and reproduction.³⁹ Consequently, disabled women are 40% more likely to experience unintended pregnancies, underscoring their heightened vulnerability to forced pregnancies.⁴⁰

34. Pub. L. No. 93-112, § 504, 87 Stat. 355, 394 (codified as amended at 29 U.S.C. § 794) (prohibiting discrimination against disabled people under federally funded programs).

35. Pub. L. No. 101-336, 104 Stat. 327 (codified at 42 U.S.C. §§ 12101–12113).

36. Pub. L. No. 111-148, 124 Stat. 119 (2010); *see also* Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029.

37. Nancy R. Mudrick & Michael A. Schwartz, *Health Care Under the ADA: A Vision or a Mirage?*, 3 DISABILITY & HEALTH J. 233, 233 (2010) (“The national surveys used to assess the health status of the U.S. population find that people with disabilities, like other minority population groups, experience disparities in the form of higher rates of the health problems and lower rates of the preventive care procedures used as benchmark health indicators.”); *see also* Richard Besser, *Disability Inclusion: Shedding Light on an Urgent Health Equity Issue*, ROBERT WOOD JOHNSON FOUND.: CULTURE HEALTH BLOG (Dec. 2, 2019), <https://www.rwjf.org/en/blog/2019/12/disability-inclusion-shedding-light-on-an-urgent-health-equity-issue.html> [<https://perma.cc/VPT9-96JL>] (“As a group, people with disabilities fare far worse than their nondisabled counterparts across a broad range of health indicators and social determinants of health.”).

38. *See, e.g.*, Megan Buckles & Mia Ives-Rublee, *Improving Health Outcomes for Black Women and Girls with Disabilities*, CTR. FOR AM. PROGRESS (Feb. 15, 2022), <https://www.americanprogress.org/article/improving-health-outcomes-for-black-women-and-girls-with-disabilities/> [<https://perma.cc/H8KQ-RZLR>]; Lesley A. Tarasoff, “*We Exist*”: *The Health and Well-Being of Sexual Minority Women and Trans People with Disabilities*, in ELIMINATING INEQUITIES FOR WOMEN WITH DISABILITIES: AN AGENDA FOR HEALTH AND WELLNESS 179, 187 (Shari E. Miles-Cohen & Caroline Signore eds., 2016); Monika Mitra, Linda Long-Bellil & Robyn Powell, *Persons with Disabilities and Public Health Ethics*, in THE OXFORD HANDBOOK OF PUBLIC HEALTH ETHICS 219, 225 (Anna C. Mastroianni et al. eds., 2019); Willi Horner-Johnson, *Disability, Intersectionality, and Inequity: Life at the Margins*, in PUBLIC HEALTH PERSPECTIVES ON DISABILITY: SCIENCE, SOCIAL JUSTICE, ETHICS, AND BEYOND 91, 97 (Donald J. Lollar et al. eds., 2d ed. 2021); Emily DiMatteo, Osub Ahmed, Vilissa Thompson & Mia Ives-Rublee, *Reproductive Justice for Disabled Women: Ending Systemic Discrimination*, CTR. FOR AM. PROGRESS (Apr. 13, 2022), <https://www.americanprogress.org/article/reproductive-justice-for-disabled-women-ending-systemic-discrimination/> [<https://perma.cc/6N5M-THCW>].

39. *See* WORLD HEALTH ORG. & THE WORLD BANK, WORLD REPORT ON DISABILITY 60–61, 79 (2011), <https://apps.who.int/iris/handle/10665/44575> [<https://perma.cc/XZ2F-534F>].

40. *See* Willi Horner-Johnson, Mekhala Dissanayake, Justine P. Wu, Aaron B. Caughey & Blair G. Darney, *Pregnancy Intendedness by Maternal Disability Status and Type in the United States*, 52 PERSPS. ON SEXUAL & REPROD. HEALTH 31, 33 (2020) (finding a higher proportion of pregnancies were unintended among women with disabilities than among women without disabilities); *see also* Jeanne L. Alhusen, Tina Bloom, Kathryn Laughon, Lillian Behan & Rosemary B. Hughes, *Perceptions of Barriers to Effective Family Planning Services Among Women with Disabilities*, DISABILITY & HEALTH J., July 2021, at 1, 1–2 (citing studies showing higher unintended pregnancy rates among disabled women).

Disabled people have similar sexual activity to nondisabled people, yet their needs are often neglected.⁴¹ For example, many studies have documented access barriers to reproductive health services and information, including within the built environment (such as lack of ramps) and medical diagnostic equipment (such as inaccessible exam tables or beds).⁴² Further, health providers often hold negative perceptions and attitudes towards disabled people,⁴³ including ignorance, hostility, and doubts about their parenting abilities.⁴⁴ Moreover, reproductive health providers often lack the training to effectively treat people with disabilities, highlighting a gap in their knowledge and preparedness regarding this population.⁴⁵ As a result, people with disabilities are often erroneously perceived as less sexually active, leading health providers to “make inaccurate assumptions about their reproductive healthcare needs.”⁴⁶ Additionally, some reproductive health providers arbitrarily tell disabled people that pregnancy would be dangerous or “high-risk” for them, ostensibly to avoid treating them or discourage them from having children.⁴⁷

People with disabilities encounter a range of barriers to contraception. First, studies show disabled people have less knowledge about contraception options and are less likely to use contraception than nondisabled people.⁴⁸ Their contraceptive needs are frequently overlooked, resulting in decreased access to family

41. Annie-Laurie McRee, Abigail A. Haydon & Carolyn Tucker Halpern, *Reproductive Health of Young Adults with Physical Disabilities in the U.S.*, 51 PREVENTATIVE MED. 502, 502 (2010); see Nechama W. Greenwood & Joanne Wilkinson, *Sexual and Reproductive Health Care for Women with Intellectual Disabilities: A Primary Care Perspective*, INT’L J. FAM. MED., Dec. 2013, at 1, 2.

42. An Nguyen, *Challenges for Women with Disabilities Accessing Reproductive Health Care Around the World: A Scoping Review*, 38 SEXUALITY & DISABILITY 371, 374–76 (2020) (reviewing studies documenting access barriers).

43. See *id.* at 383 (reviewing studies documenting negative attitudes among reproductive health providers).

44. *Id.*

45. See Laura H. Taouk, Michael F. Fialkow & Jay A. Schulkin, *Provision of Reproductive Healthcare to Women with Disabilities: A Survey of Obstetrician–Gynecologists’ Training, Practices, and Perceived Barriers*, 2 HEALTH EQUITY 207, 212–13 (2018).

46. *Id.* at 208.

47. See NAT’L COUNCIL ON DISABILITY, ROCKING THE CRADLE: ENSURING THE RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN 204, 206 (2012), <https://www.ncd.gov/assets/uploads/reports/2012/ncd-rocking-the-cradle.pdf> [<https://perma.cc/M486-FLPT>]; ORA PRILLELTENSKY, MOTHERHOOD AND DISABILITY: CHILDREN AND CHOICES 134–35 (2004).

48. See Robyn M. Powell, Susan L. Parish, Monika Mitra & Eliana Rosenthal, *Role of Family Caregivers Regarding Sexual and Reproductive Health for Women and Girls with Intellectual Disability: A Scoping Review*, 64 J. INTELL. DISABILITY RSCH. 131, 132 (2020) (reviewing studies that found that contraception knowledge and use among women with intellectual disabilities is lower than knowledge and use among women without disabilities); Alhusen et al., *supra* note 40, at 2 (citing studies that found that for “women ages 25–44, those living with disabilities were significantly less likely to have received a method of birth control, or birth control counseling in the previous twelve months as compared to those without a disability”); Justine P. Wu, Kimberly S. McKee, Michael M. McKee, Michelle A. Meade, Melissa A. Plegue & Ananda Sen, *Use of Reversible Contraceptive Methods Among U.S. Women with Physical or Sensory Disabilities*, 49 PERSPS. ON SEXUAL & REPROD. HEALTH 141, 141 (2017) (finding that the presence of a physical or sensory disability was associated with decreased odds of a woman using highly or moderately effective methods of contraception).

planning services and contraception methods.⁴⁹ Additionally, people with disabilities receive contraception counseling at significantly lower rates than people without disabilities.⁵⁰ Notably, women with cognitive disabilities are 93% more likely not to use any contraceptive method, while women with physical disabilities are 45% less likely to use oral contraception compared to their nondisabled counterparts.⁵¹ Consequently, disabled people are more likely to have unintended pregnancies than nondisabled people.⁵² On the other hand, some guardians or caregivers coerce disabled people, especially those with intellectual disabilities, to use contraception, effectively resulting in sterilization through forced contraception.⁵³ Thus, people with disabilities encounter barriers on both ends—insufficient access to contraception options they need, as well as forced contraception that strips them of reproductive autonomy.

Furthermore, disabled people are often denied access to reproductive health information, including sex education.⁵⁴ Some students with disabilities are entirely excluded from sex education classes, and even those included often feel marginalized due to the lack of pertinent disability-related sex information.⁵⁵ Moreover, sex education curricula for disabled students lack evidence-based content, especially for those with intellectual or developmental disabilities.⁵⁶ Only three states mandate sex education for disabled students, and six states and the District of Columbia provide optional accessible resources.⁵⁷ Additionally, sex education often disregards the needs and experiences of LGBTQ+ disabled people, further diminishing their reproductive autonomy.⁵⁸ This shortage of reproductive health information disproportionately

49. Caroline Signore, *Reproductive and Sexual Health for Women with Disabilities*, in ELIMINATING INEQUITIES FOR WOMEN WITH DISABILITIES: AN AGENDA FOR HEALTH AND WELLNESS, *supra* note 38, at 93, 100 (noting that contraceptive needs of disabled people are “frequently overlooked”). See generally Alhusen et al., *supra* note 40 (documenting barriers to family planning services for disabled people).

50. See Alhusen et al., *supra* note 40, at 2.

51. See William Mosher, Rosemary B. Hughes, Tina Bloom, Leah Horton, Ramin Mojtabai & Jeanne L. Alhusen, *Contraceptive Use by Disability Status: New National Estimates from the National Survey of Family Growth*, 97 *CONTRACEPTION* 552, 557 tbl.4 (2018).

52. Horner-Johnson et al., *supra* note 40, at 33.

53. See Powell et al., *supra* note 48, at 151 (reviewing existing research about family caregivers forcing women and girls with intellectual disabilities to use contraception).

54. Barbara Waxman Fiduccia, *Current Issues in Sexuality and the Disability Movement*, 18 *SEXUALITY & DISABILITY* 167, 171–72 (2000); H. J. Graff, R. E. Moyher, J. Bair, C. Foster, M. E. Gorden & J. Clem, *Relationships and Sexuality: How Is a Young Adult with an Intellectual Disability Supposed to Navigate?*, 36 *SEXUALITY & DISABILITY* 175, 176 (2018). See generally Amy Swango-Wilson, *Meaningful Sex Education Programs for Individuals with Intellectual/Developmental Disabilities*, 29 *SEXUALITY & DISABILITY* 113 (2011) (noting that the lack of sex education for individuals with intellectual and developmental disabilities has potentially increased the risk of sexual abuse and trauma for these individuals).

55. Fiduccia, *supra* note 54, at 171.

56. Graff et al., *supra* note 54, at 176; Greenwood & Wilkinson, *supra* note 41, at 2.

57. LAURA GRAHAM HOLMES, SIECUS, *COMPREHENSIVE SEX EDUCATION FOR YOUTH WITH DISABILITIES: A CALL TO ACTION 17* (2021), <https://siecus.org/wp-content/uploads/2021/03/SIECUS-2021-Youth-with-Disabilities-CTA-1.pdf> [<https://perma.cc/BH5G-U6QB>].

58. See Nathan J Wilson, Alexandra M Bright, Jemima Macdonald, Patsie Frawley, Brenda Hayman & Gisselle Gallego, *A Narrative Review of the Literature About People with Intellectual Disability Who Identify as Lesbian, Gay, Bisexual, Transgender, Intersex or Questioning*, 22 *J. INTELL. DISABILITIES* 171, 190 (2018).

affects disabled people, particularly women with cognitive disabilities, who are less likely to obtain information on critical reproductive health issues, such as contraception.⁵⁹

Finally, disabled people face significant obstacles in accessing abortion services.⁶⁰ Many live in poverty, unable to afford abortion services.⁶¹ Furthermore, the Hyde Amendment prohibits using federal Medicaid funds for most abortions, and many disabled people are Medicaid recipients.⁶² Limited transportation and abortion providers in areas with restrictive laws exacerbate financial barriers.⁶³ Accessibility features, such as ramps and height-adjustable examination tables, are often lacking in facilities, further limiting access to abortion services for disabled people.⁶⁴ Moreover, approximately 52% of women of reproductive age with disabilities live in states that have already banned or are likely to ban abortion.⁶⁵ Critically, the availability of abortion services plays a crucial role for people facing unintended pregnancies as it empowers them to make informed

59. See Eun Ha Namkung, Anne Valentine, Lee Warner & Monika Mitra, *Contraceptive Use at First Sexual Intercourse Among Adolescent and Young Adult Women with Disabilities: The Role of Formal Sex Education*, 103 *CONTRACEPTION* 178, 180 (2021).

60. See Powell, *supra* note 10, at 779 (recognizing that people with disabilities “experience considerable structural, legal, and institutional barriers that often put access to safe and legal abortion services out of reach”).

61. See NAT’L P’SHP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOC. NETWORK, *ACCESS, AUTONOMY, AND DIGNITY: ABORTION CARE FOR PEOPLE WITH DISABILITIES* 9–10 (2021), <https://nationalpartnership.org/wp-content/uploads/2023/02/repro-disability-abortion.pdf> [<https://perma.cc/VUK3-A5BR>]; WOMEN ENABLED INT’L, *ABORTION AND DISABILITY: TOWARDS AN INTERSECTIONAL HUMAN RIGHTS-BASED APPROACH* 9 (2020), <https://womenenabled.org/wp-content/uploads/Women%20Enabled%20International%20Abortion%20and%20Disability%20-%20Towards%20an%20Intersectional%20Human%20Rights-Based%20Approach%20January%202020.pdf> [<https://perma.cc/R9BD-UMLM>] (“[W]omen with disabilities, due to societal discrimination, are more likely to have lower levels of education and less access to employment resulting in lower incomes, and so frequently cannot afford to travel abroad for [an] abortion.”).

62. Powell, *supra* note 10, at 831–32.

63. See NAT’L P’SHP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOC. NETWORK, *supra* note 61, at 9–10; Alice F Cartwright, Mihiri Karunaratne, Jill Barr-Walker, Nicole E Johns & Ushma D Upadhyay, *Identifying National Availability of Abortion Care and Distance from Major US Cities: Systematic Online Search*, *J. MED. INTERNET RSCH.*, May 2018, at 1, 7, 9 (finding twenty-seven cities in the United States are “abortion deserts”—cities in which people must travel at least one-hundred miles to reach an abortion provider); K.K. Rebecca Lai & Jugal K. Patel, *For Millions of American Women, Abortion Access Is Out of Reach*, *N.Y. TIMES* (May 31, 2019), <https://www.nytimes.com/interactive/2019/05/31/us/abortion-clinics-map.html> (finding that over eleven million women of reproductive age nationwide live more than a one hour drive from an abortion provider); see also *Tracking the States Where Abortion Is Now Banned*, *N.Y. TIMES* (Jan. 8, 2024, 9:30 AM), <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>.

64. See NAT’L P’SHP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOC. NETWORK, *supra* note 61, at 10 (describing common barriers to abortion care for people with disabilities, including physical inaccessibility).

65. KATHERINE GALLAGHER ROBBINS, SHAINA GOODMAN & JOSIA KLEIN, NAT’L P’SHP FOR WOMEN & FAMS., *STATE ABORTION BANS HARM MORE THAN 15 MILLION WOMEN OF COLOR* 2 (2023), <https://nationalpartnership.org/wp-content/uploads/2023/02/state-abortion-bans-harm-woc.pdf> [<https://perma.cc/R8WP-8J3J>].

decisions about their bodies and futures while exercising their reproductive rights.⁶⁶

Thus, at the core of this issue lies a significant disparity in the availability of comprehensive reproductive health services and accessible information for disabled people. Barriers to accessing reproductive health services and information increase unintended pregnancies, making them vulnerable to forced pregnancy after the *Dobbs* decision. Forcing them to carry unintended pregnancies to term is cruel, particularly given the challenges they already face in accessing comprehensive reproductive health services and information.

B. SOCIOECONOMIC CONSIDERATIONS

As the *Dobbs* dissent observes, people without adequate financial resources will bear the brunt of the Court's decision.⁶⁷ The ruling significantly impacts economically disadvantaged communities, including disabled people. Forced pregnancy further exacerbates their existing injustices. In fact, there is a complex interplay between poverty and forced pregnancy, as poverty often hinders access to reproductive health services and information, leading to unintended pregnancies. Consequently, the *Dobbs* decision perpetuates this cycle of poverty and forced pregnancy, further marginalizing those already oppressed, including disabled people.

Strikingly, people with disabilities are more than twice as likely to live in poverty than people without disabilities.⁶⁸ They face substantial barriers to employment, with only a 21% employment rate in 2022 compared to 65% for nondisabled people.⁶⁹ Moreover, they experience a significant income gap. For example, people with disabilities in the Boston metropolitan area earn only sixty-three cents for every dollar their nondisabled counterparts earn.⁷⁰ Unsurprisingly,

66. See Jonathan Bearak, Anna Popinchalk, Bela Ganatra, Ann-Beth Moller, Özge Tunçalp, Cynthia Beavin, Lorraine Kwok & Leontine Alkema, *Unintended Pregnancy and Abortion by Income, Region, and the Legal Status of Abortion: Estimates from a Comprehensive Model for 1990–2019*, 8 LANCET GLOB. HEALTH e1152, e1152 (2020).

67. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 361 (2022) (Breyer, Sotomayor, and Kagan, JJ., dissenting) ("Above all others, women lacking financial resources will suffer from today's decision.").

68. Press Release, Nat'l Council on Disability, *Highlighting Disability/Poverty Connection, NCD Urges Congress to Alter Federal Policies that Disadvantage People with Disabilities* (Oct. 26, 2017), <https://www.ncd.gov/2017/10/26/highlighting-disability-poverty-connection-ncd-urges-congress-to-alter-federal-policies-that-disadvantage-people-with-disabilities/> [<https://perma.cc/THM7-QEDF>].

69. Press Release, Bureau of Lab. Stat., U.S. Dep't of Lab., *Persons with a Disability: Labor Force Characteristics — 2022* (Feb. 23, 2023), <https://www.bls.gov/news.release/pdf/disabl.pdf> [<https://perma.cc/SU5T-ZEXC>].

70. MICHELLE YIN, DAHLIA SHAEWITZ & MAHLET MEGRA, AM. INSTS. FOR RSCH., *LEADING THE WAY, OR FALLING BEHIND? WHAT THE DATA TELL US ABOUT DISABILITY PAY EQUITY AND OPPORTUNITY IN BOSTON AND OTHER TOP METROPOLITAN AREAS 1* (2020), <https://www.air.org/sites/default/files/Leading-the-Way-or-Falling-Behind-Disabilities-Ruderman-July-2020-508.pdf> [<https://perma.cc/F597-GA38>].

economic hardship also extends to housing insecurity, with nearly one-quarter of all unhoused people in the United States being disabled.⁷¹

People who live at the intersection of disability and other marginalized identities experience amplified inequities. For example, disabled people of color face even more significant economic inequities than white disabled people because of the compounding effects of structural racism and ableism.⁷² According to a recent study, 25% of Black adults with disabilities were living below the poverty line in 2020, compared to just over 14% of white adults with disabilities.⁷³ Another study found that Black disabled people are almost 55% more likely to live in poverty than their white counterparts.⁷⁴ In 2023, Black and Latinx or Hispanic people with disabilities experienced higher unemployment rates, at 10.2% and 9.2%, respectively, compared to white disabled people at 6.7%.⁷⁵ Recent research also shows that LGBTQ+ people with disabilities also face substantial economic hardship. For example, a 2020 study found that 46% of LGBTQ+ disabled adults reported annual household incomes under \$30,000 compared to only 29% of non-disabled LGBTQ+ adults.⁷⁶ Transgender disabled adults encounter even starker inequities, with 76% earning less than \$30,000 per year while only 35% of non-disabled cisgender straight people had such low incomes.⁷⁷ These findings reveal the financial barriers and marginalization compounded at the intersection of race, LGBTQ+, and disability identities.

At the same time, being disabled is expensive.⁷⁸ In addition to the everyday expenses incurred by all people, those with disabilities often have substantial

71. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *HOMELESSNESS IN AMERICA: FOCUS ON CHRONIC HOMELESSNESS AMONG PEOPLE WITH DISABILITIES 1* (2018), https://www.usich.gov/resources/uploads/asset_library/Homelessness-in-America-Focus-on-chronic.pdf [<https://perma.cc/P7UR-TFZX>].

72. Rebecca Vallas, Kimberly Knackstedt & Vilissa Thompson, *7 Facts About the Economic Crisis Facing People with Disabilities in the United States*, CENTURY FOUND. (Apr. 21, 2022), <https://tcf.org/content/commentary/7-facts-about-the-economic-crisis-facing-people-with-disabilities-in-the-united-states/> [<https://perma.cc/TL94-YWEL>].

73. *See id.*

74. *See* NANETTE GOODMAN, MICHAEL MORRIS & KELVIN BOSTON, NAT'L DISABILITY INST., *FINANCIAL INEQUALITY: DISABILITY, RACE AND POVERTY IN AMERICA 12 & fig.6* (2019), <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/02/> [<https://perma.cc/QT4R-U2XL>].

75. *See Table 1. Employment Status of the Civilian Noninstitutional Population by Disability Status and Selected Characteristics, 2023 Annual Averages*, BUREAU LAB. STAT. (Feb. 22, 2024), <https://www.bls.gov/news.release/disabl.t01.htm> [<https://perma.cc/TUJ2-LWSX>].

76. Caroline Medina, Lindsay Mahowald, Thee Santos & Mia Ives-Rublee, *The United States Must Advance Economic Security for Disabled LGBTQI+ Workers*, CTR. FOR AM. PROGRESS (Nov. 3, 2021), <https://www.americanprogress.org/article/united-states-must-advance-economic-security-disabled-lgbtqi-workers/> [<https://perma.cc/BAJ3-FL3G>].

77. *Id.*

78. *See, e.g.*, Sophie Mitra, Daniel Mont, Hoolda Kim, Michael Palmer & Nora Groce, *The Hidden Extra Costs of Living with a Disability*, CONVERSATION (July 25, 2017, 9:45 PM), <https://theconversation.com/the-hidden-extra-costs-of-living-with-a-disability-78001> [<https://perma.cc/2K4F-UXS5>]; Imani Barbarin, *The Cost of Being Disabled*, DESIGN SPONGE, <https://web.archive.org/web/20200814092052/https://www.designsponge.com/2019/05/the-cost-of-being-disabled-imani-barbarin.html> (last visited Mar. 23, 2024) (discussing the difficulties disabled people encounter in finding work). *See generally* Elizabeth F. Emens, *Disability Admin: The Invisible Costs of Being Disabled*, 105 MINN. L. REV. 2329 (2021) (describing the “admin costs” associated with being disabled).

disability-related expenses, such as adaptive equipment, medication, and personal assistant services.⁷⁹ For example, a 2020 National Disability Institute report found that a household that includes an adult with a disability needs 28% more income to achieve a similar standard of living as a household without a disabled person.⁸⁰ Hence, disabled people earn less and incur higher expenses than nondisabled people.

The association between poverty and unintended pregnancy is substantial. Women living below the federal poverty line are five times more likely to experience unintended pregnancies than higher-income women.⁸¹ This connection is further evidenced by the significant role that health insurance plays in this context. The passage of the ACA, which required insurance providers to cover contraception, led to a noteworthy decrease in unintended pregnancies from 45% to 38%.⁸² Poverty compounds the challenges that people with disabilities face in accessing quality reproductive health services and information.⁸³

Numerous studies have documented a relationship between abortion access and economic outcomes.⁸⁴ Approximately 75% of people who undergo abortions in the United States live in poverty,⁸⁵ and a significant number of them cite a financial inability to raise a child as the primary reason for having an abortion.⁸⁶ Following the *Dobbs* decision, experts predicted approximately 75,000 people unable to obtain abortions will give birth within the first year of the ruling, with a significant proportion of these people living in poverty.⁸⁷ Denying a person access

79. See NANETTE GOODMAN, MICHAEL MORRIS, ZACHARY MORRIS & STEPHEN MCGARITY, NAT'L DISABILITY INST., THE EXTRA COSTS OF LIVING WITH A DISABILITY IN THE U.S. — RESETTING THE POLICY TABLE 2 (2020), <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2020/10/extra-costs-living-with-disability-brief.pdf> [<https://perma.cc/2EB8-9VDP>].

80. *Id.* at 1.

81. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 407 (2022) (Breyer, Sotomayor, and Kagan, JJ., dissenting).

82. See Michelle Oberman, *What Will and Won't Happen When Abortion Is Banned*, J.L. & BIOSCIENCES, Jan.–June 2022, at 1, 6.

83. See Michelle Jarman, *supra* note 16, at 48, 52 (noting minority communities have had to fight for reproductive choices and information “that most economically resourced, nondisabled white women have never been denied—especially to have and keep their children”).

84. See generally, e.g., ANNA BERNSTEIN & KELLY M. JONES, CTR. ON ECON REPROD. HEALTH, INST. FOR WOMEN'S POL'Y RSCH., THE ECONOMIC EFFECTS OF ABORTION ACCESS: A REVIEW OF THE EVIDENCE (2020), https://iwpr.org/wp-content/uploads/2020/07/B379_Abortion-Access_rfinal.pdf [<https://perma.cc/2QCS-8TBB>] (synthesizing research on the relationship between abortion access and economic outcomes, like educational attainment and labor force participation).

85. See JENNA JERMAN, RACHEL K. JONES & TSUYOSHI ONDA, GUTTMACHER INST., CHARACTERISTICS OF U.S. ABORTION PATIENTS IN 2014 AND CHANGES SINCE 2008, at 11 (2016), https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf [<https://perma.cc/26TE-FZS8>].

86. See Sophia Chae, Sheila Desai, Marjorie Crowell & Gilda Sedgh, *Reasons Why Women Have Induced Abortions: A Synthesis of Findings from 14 Countries*, 96 CONTRACEPTION 233, 236, 238 tbl.3 (2017) (finding that in the United States from 2008–2010, 40% of people who sought an abortion were motivated to do so because they were not able to afford the costs associated with raising a child).

87. Dylan Scott, *The End of Roe Will Mean More Children Living in Poverty*, VOX (June 24, 2022, 10:53 AM), <https://www.vox.com/policy-and-politics/23057032/supreme-court-abortion-rights-roe-v-wade-state-aid> [<https://perma.cc/N5RG-Y2RT>].

to abortion care creates substantial and long-lasting economic hardships. People denied abortions are at a significantly higher risk of experiencing poverty in the years following the pregnancy compared to those with access to abortion services.⁸⁸ The landmark Turnaway Study revealed that women denied abortions were nearly four times more likely than those who received an abortion to live below the federal poverty level six months after the denial, with this difference persisting for four years.⁸⁹ Conversely, young women who had abortions to postpone motherhood by a single year experienced an 11% rise in their hourly wages later in their professional lives.⁹⁰

By eliminating the constitutional right to abortion, the *Dobbs* ruling imposes greater economic and social burdens on marginalized groups, such as disabled people, who already face structural barriers to access. Forcing unwanted pregnancy exacerbates economic hardship, erecting additional obstacles for communities seeking abortion due to systemic inequities. Moreover, as described in Part II of this Article, forced pregnancies will likely result in a rise in the number of families unable to provide for their children, which is a primary factor leading to the family policing system removing children from their families.⁹¹ Ultimately, the decision will have far-reaching consequences on the economic stability and well-being of people and families, especially those already facing major financial challenges, including many disabled people who disproportionately experience significant financial hardship.

C. VIOLENCE AND REPRODUCTIVE COERCION

Violence and reproductive coercion can lead to unintended pregnancies, which restrictions on abortion access further compound.⁹² Consequently, the *Dobbs* decision disproportionately affects people who have experienced violence or reproductive coercion, forcing them to carry a pregnancy to term against their will.⁹³ The ramifications of this decision are severe, as survivors may be required to interact with their abuser, be incapable of caring for a child conceived through sexual violence or reproductive coercion, or experience financial hardship due to being unable to terminate an unwanted pregnancy.⁹⁴ Further, intimate partner

88. See Diana Greene Foster, M. Antonia Biggs, Lauren Ralph, Caitlin Gerdtz, Sarah Roberts & M. Maria Glymour, *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 112 AM. J. PUB. HEALTH 1290, 1290, 1295 (2022).

89. *Id.* at 1293–94.

90. See Ali Abboud, *The Impact of Early Fertility Shocks on Women's Fertility and Labor Market Outcomes* 4 (July 26, 2023) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3512913 [<https://perma.cc/7EAD-HSA9>].

91. See, e.g., Laura Rena Murray, *The Consequences of Forced Birth*, WOMEN'S MEDIA CTR. (Apr. 5, 2023), <https://womensmediacenter.com/news-features/the-consequences-of-forced-birth> [<https://perma.cc/4D8E-KY7E>].

92. See Kinsey Hasstedt & Andrea Rowan, *Understanding Intimate Partner Violence as a Sexual and Reproductive Health and Rights Issue in the United States*, 19 GUTTMACHER POL'Y REV. 37, 38 (2016); Elizabeth Tobin-Tyler, *A Grim New Reality — Intimate-Partner Violence After Dobbs and Bruen*, 387 NEW ENG. J. MED. 1247, 1248 (2022).

93. See Tobin-Tyler, *supra* note 92, at 1247.

94. See *id.* at 1249; see also Sarah CM Roberts, M Antonia Biggs, Karuna S Chibber, Heather Gould, Corinne H Rocca & Diana Greene Foster, *Risk of Violence from the Man Involved in the Pregnancy*

violence is associated with unintended pregnancy, and survivors of intimate partner violence may be more likely to seek abortion services than those who have not experienced intimate partner violence.⁹⁵ The *Dobbs* decision, thus, represents a significant setback for those seeking to address the interconnecting harms of violence, reproductive coercion, and lack of access to abortion services.

Access to abortion services is crucial for disabled people due to their heightened vulnerability to sexual assault, intimate partner violence, and reproductive coercion.⁹⁶ Shockingly, between 2017 and 2019, people with disabilities accounted for 27% of sexual assault victimizations.⁹⁷ Other research reveals that they are at least three-and-a-half times more likely to experience sexual violence than nondisabled people.⁹⁸ The situation is particularly dire for people with intellectual disabilities, who face a sevenfold higher risk of victimization.⁹⁹ Moreover, unreported sexual assaults on disabled people suggest a higher prevalence of violence than reported estimates.¹⁰⁰ For example, between 2017 and 2019, only 19% of reported rapes or sexual assaults against disabled people were reported to the police, while the number was 36% for people without disabilities.¹⁰¹

In addition, disabled people are at heightened risk of various types of intimate partner violence, including physical violence, sexual assault, stalking, psychological violence, and control of the person's reproductive autonomy.¹⁰² People with disabilities are also vulnerable to other types of intimate partner violence related to their disabilities, such as perpetrators damaging assistive devices necessary for independence (for example, wheelchairs or hearing aids), refusing to help with personal care (such as bathing or feeding), manipulating medication, and isolating them (for

After Receiving or Being Denied an Abortion, BMC MED., Dec. 2014, at 1, 5 (explaining that findings from the Turnaway Study indicate “that having a baby with an abusive man, compared to terminating the unwanted pregnancy, makes it harder to leave the abusive relationship”).

95. Hasstedt & Rowan, *supra* note 92, at 38–39.

96. See Amylee Mailhot Amborski, Eve-Line Bussi eres, Marie-Pier Vaillancourt-Morel & Christian C. Joyal, *Sexual Violence Against Persons with Disabilities: A Meta-Analysis*, 23 TRAUMA VIOLENCE & ABUSE 1330, 1333 (2022) (“The results of this meta-analysis show that individuals with disabilities are at significantly higher risk of being sexually victimized in their lifetime than people without disabilities.”); see also *In re Guardianship of J.D.S.*, 864 So. 2d 534, 536 (Fla. Dist. Ct. App. 2004) (describing the case of a disabled woman who “was pregnant as a result of a sexual battery”); Deborah W. Denno, *Sexuality, Rape, and Mental Retardation*, 1997 U. ILL. L. REV. 315, 357 (estimating that, at the time the article was written, women with intellectual disabilities were sexually victimized at “four-to-ten times the rate of the [nondisabled]”).

97. ERIKA HARRELL, BUREAU OF JUST. STAT., U.S. DOJ, NCJ 301367, CRIME AGAINST PERSONS WITH DISABILITIES, 2009–2019 – STATISTICAL TABLES 4 tbl.2 (2021), <https://bjs.ojp.gov/content/pub/pdf/capd0919st.pdf> [<https://perma.cc/R9QH-VKUH>].

98. NAT’L P’SHP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOC. NETWORK, *supra* note 61, at 14.

99. All Things Considered, *The Sexual Assault Epidemic No One Talks About*, NPR (Jan. 8, 2018, 5:00 AM), <https://www.npr.org/2018/01/08/570224090/the-sexual-assault-epidemic-no-one-talks-about> [<https://perma.cc/L98H-3BR7>].

100. See *Sexual Abuse of People with Disabilities*, RAINN, <https://www.rainn.org/articles/sexual-abuse-people-disabilities> [<https://perma.cc/75JA-J9BL>] (last visited Mar. 23, 2024).

101. HARRELL, *supra* note 97, at 7 tbl.8.

102. Matthew J. Breiding & Brian S. Armour, *The Association Between Disability and Intimate Partner Violence in the United States*, 25 ANNALS EPIDEMIOLOGY 455, 457 tbl.2 (2015).

example, denying transportation or leaving them in bed).¹⁰³ Consequently, they face a significantly higher risk of intimate partner violence than nondisabled people, and specific subgroups are at even greater risk.¹⁰⁴ For instance, disabled women are “three to four times more likely to experience abuse before/during pregnancy.”¹⁰⁵ LGBTQ+ and disabled people of color face unique intimate partner violence risks and barriers shaped by the intersectionality of gender identity, sexual orientation, race, and disability status, underscoring the need for solutions centered on understanding and empowering those in marginalized communities.¹⁰⁶

Reproductive coercion inflicts devastating consequences on disabled people, serving as a complex and insidious form of intimate partner violence. It involves using various tactics to control and manipulate a partner’s reproductive choices, including interfering with their use of contraception, pressuring them to become pregnant against their wishes, or coercing them into continuing or terminating a pregnancy regardless of their desires.¹⁰⁷ Disabled people are particularly vulnerable to this form of abuse, as they already face significant barriers to accessing reproductive health services and information and often rely on their partners for

103. See, e.g., Margaret A. Nosek, Carol A. Howland & Rosemary B. Hughes, *The Investigation of Abuse and Women with Disabilities: Going Beyond Assumptions*, 7 VIOLENCE AGAINST WOMEN 477, 484 (2001).

104. See, e.g., Breiding & Armour, *supra* note 102, at 457 (“Our findings show that having a disability may place women with a disability at greater risk for all . . . measured forms of [intimate partner violence].”); Diane L. Smith, *Disability, Gender and Intimate Partner Violence: Relationships from the Behavioral Risk Factor Surveillance System*, 26 SEXUALITY & DISABILITY 15, 22 (2008) (noting that disabled women ages 18–49 and unemployed women are more likely to experience violence); Ann L. Coker, Paige H. Smith & Mary K. Fadden, *Intimate Partner Violence and Disabilities Among Women Attending Family Practice Clinics*, 14 J. WOMEN’S HEALTH 829, 834–36 (2005) (finding that intimate partner violence was associated with disabilities from chronic pain, mental illness, or depression); Kirsten A. Barrett, Bonnie O’Day, Allison Roche & Barbara Lepidus Carlson, *Intimate Partner Violence, Health Status, and Health Care Access Among Women with Disabilities*, 19 WOMEN’S HEALTH ISSUES 94, 95–97 (2009) (finding that women with disabilities were more likely to experience intimate partner violence than women with disabilities). See generally Mónica Miriam García-Cuéllar, Guadalupe Pastor-Moreno, Isabel Ruiz-Pérez & Jesús Henares-Montiel, *The Prevalence of Intimate Partner Violence Against Women with Disabilities: A Systematic Review of the Literature*, 45 DISABILITY & REHAB. 1 (2023) (reviewing the prevalence of intimate partner violence for women with disabilities).

105. Monika Mitra, Susan E. Manning & Emily Lu, *Physical Abuse Around the Time of Pregnancy Among Women with Disabilities*, 16 MATERNAL & CHILD HEALTH J. 802, 803 (2012).

106. See Jennifer Hillman, *Intimate Partner Violence Among Older LGBT Adults: Unique Risk Factors, Issues in Reporting and Treatment, and Recommendations for Research, Practice, and Policy*, in INTIMATE PARTNER VIOLENCE AND THE LGBTQ+ COMMUNITY: UNDERSTANDING POWER DYNAMICS 237, 240 (Brenda Russell ed., 2020); Elizabeth P. Cramer & Sara-Beth Plummer, *People of Color with Disabilities: Intersectionality as a Framework for Analyzing Intimate Partner Violence in Social, Historical, and Political Contexts*, 18 J. AGGRESSION MALTREATMENT & TRAUMA 162, 172–74 (2009) (explaining that disabled people of color experiencing intimate partner violence may be less likely to call police or domestic violence hotlines for help due to the intersectionality of their experience).

107. Cara Nikolajski, Elizabeth Miller, Heather L. McCauley, Aletha Akers, Eleanor Bimla Schwarz, Lori Freedman, Julia Steinberg, Said Ibrahim & Sonya Borrero, *Race and Reproductive Coercion: A Qualitative Assessment*, 25 WOMEN’S HEALTH ISSUES 216, 217 (2015).

assistance with daily living activities.¹⁰⁸ Furthermore, disabled people face additional challenges due to the lack of safe houses or shelters that can adequately accommodate their specific needs.¹⁰⁹ These legal, social, and economic obstacles make it difficult for them to resist their partners' attempts to control their reproductive choices, leading to unintended pregnancies and increased risk of harm.¹¹⁰

Critically, obtaining justice and accountability in these instances is often insurmountable. For example, inaccessibility within the judicial system, such as a lack of physical access for wheelchair users or sign language interpreters for Deaf people, is a significant deterrent for disabled people seeking justice.¹¹¹ Additionally, biases against their credibility as witnesses and assumptions about their sexuality, such as stereotypes that portray people with intellectual disabilities as childlike and nonsexual, can prevent accountability for perpetrators of abuse.¹¹² In fact, there is evidence that law enforcement, prosecutors, and experts sometimes discredit or dismiss assault allegations from people with disabilities, especially those with intellectual disabilities, due to discriminatory perceptions that they are incompetent or untrustworthy as victims and witnesses.¹¹³ As a consequence, some disabled people hesitate to take action against offenders, as they are often seen as unreliable witnesses.

Furthermore, perpetrators are nearly always a caregiver or someone the disabled person knows, meaning they may not have exposure to someone they can report the abuse to.¹¹⁴ Notably, when a disabled person becomes pregnant due to sexual assault by their guardian, the guardian has complete control over that person's abortion decisionmaking.¹¹⁵ This means they can force the disabled person

108. See CTR. FOR REPROD. RTS., SHIFTING THE FRAME ON DISABILITY RIGHTS FOR THE U.S. REPRODUCTIVE RIGHTS MOVEMENT 25 (2017), <https://reproductiverights.org/wp-content/uploads/2020/12/Disability-Briefing-Paper-FINAL.pdf> [<https://perma.cc/Y2PF-ZTJM>]; NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOC. NETWORK, *supra* note 61, at 10, 14; see also ADVANCING NEW STANDARDS IN REPROD. HEALTH, THE HARMS OF DENYING A WOMAN A WANTED ABORTION: FINDINGS FROM THE TURNAWAY STUDY 1 (2021), https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf [<https://perma.cc/3M6W-SAMG>] (noting that people denied an abortion are "more likely to stay in contact with a violent partner," exacerbating the risk of further violence).

109. CTR. FOR REPROD. RTS., *supra* note 108, at 25.

110. See Jeanne L. Alhusen, Tina Bloom, Jacqueline Anderson & Rosemary B. Hughes, *Intimate Partner Violence, Reproductive Coercion, and Unintended Pregnancy in Women with Disabilities*, DISABILITY & HEALTH J., April 2020, at 1, 4. This finding is especially significant because "unintended pregnancies are two- to three-times more likely to be associated with violence than planned pregnancies." *Id.* at 1.

111. See Melissa L. Anderson, Irene W. Leigh & Vincent J. Samar, *Intimate Partner Violence Against Deaf Women: A Review*, 16 AGGRESSION & VIOLENT BEHAV. 200, 204–05 (2011); CTR. FOR REPROD. RTS., *supra* note 108, at 26.

112. See Nancy M. Fitzsimons, *Justice for Crimes Victims with Disabilities in the Criminal Justice System: An Examination of Barriers and Impetus for Change*, 13 U. ST. THOMAS L.J. 33, 78–79, 83 (2016); CTR. FOR REPROD. RTS., *supra* note 108, at 26.

113. See Fitzsimons, *supra* note 112, 79–84; All Things Considered, *supra* note 99.

114. See All Things Considered, *supra* note 99.

115. See Emily DiMatteo, Vilissa Thompson, Osob Ahmed, Mia Ives-Ruble & Ma'ayan Anafi, *Rethinking Guardianship to Protect Disabled People's Reproductive Rights*, CTR. FOR AM. PROGRESS (Aug. 11, 2022), <https://www.americanprogress.org/article/rethinking-guardianship-to-protect-disabled-peoples-reproductive-rights/> [<https://perma.cc/N5HL-BW5H>] (noting that courts most often impose full

to have an abortion or deny them the opportunity to have an abortion.¹¹⁶ Thus, disabled people are frequently denied the chance to obtain justice and accountability for the heinous acts of violence and reproductive coercion perpetrated against them.

The high rates of violence and reproductive coercion against disabled people and the systemic barriers to justice they face underscore the need to ensure comprehensive reproductive health services and information. These essential resources must be made readily available to all, without discrimination or limitation, to ensure that disabled people can exercise full autonomy over their reproductive choices and protect themselves from harm. Forcing people with disabilities to carry pregnancies that resulted from violence or coercion to term is cruel. Such a callous act can inflict lasting emotional and physical trauma and violates the fundamental human right to bodily autonomy and self-determination.

D. THE DANGERS OF FORCED PREGNANCY

Pregnancy and childbirth have profound physical and psychological impacts on the human body. In fact, pregnancy carries genuine risks of maternal mortality and morbidity,¹¹⁷ risks that the Supreme Court has previously acknowledged as surpassing those associated with abortion.¹¹⁸ Abortion restrictions force pregnant people to assume these risks, regardless of their wishes. In his landmark separate

guardianships, which allow the guardian to make all decisions for a person in their care, including health care decisions).

116. For example, in some states, disabled people under guardianship are not able to have an abortion without their guardian's consent. *See, e.g.*, VA. CODE ANN. § 18.2-76 (mandating that a woman who has been legally adjudicated to be incapacitated cannot access abortion without the written consent of a "parent, guardian, committee, or other person standing in loco parentis to the woman"). Moreover, in several states, guardians may seek abortion care for the disabled person, irrespective of that person's known wishes. *See, e.g.*, *In re Guardianship of Moe*, 960 N.E.2d 350, 352–54 (Mass. App. Ct. 2012) (determining that the "substituted judgment" standard should be applied to decide whether a disabled woman could be subjected to an abortion despite her objection).

117. *See* Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *OBSTETRICS & GYNECOLOGY* 215, 216 (2012) (showing that legal abortion is significantly safer than childbirth and that nationally, the risk of death associated with childbirth is fourteen times greater than that with abortion); Caitlin Gerds, Loren Dobkin, Diana Greene Foster & Eleanor Bimla Schwarz, *Side Effects, Physical Health Consequences, and Mortality Associated with Abortion and Birth After an Unwanted Pregnancy*, 26 *WOMEN'S HEALTH ISSUES* 55, 57–59 (2016) (finding that women who were denied an abortion and gave birth reported more life-threatening complications, such as eclampsia and postpartum hemorrhage, than those who received abortions); Lauren J. Ralph, Eleanor Bimla Schwarz, Daniel Grossman & Diana Greene Foster, *Self-Reported Physical Health of Women Who Did and Did Not Terminate Pregnancy After Seeking Abortion Services: A Cohort Study*, 171 *ANNALS INTERNAL MED.* 238, 245 (2019) (explaining that two women in the Turnaway Study died due to maternal or pregnancy-related causes after being denied an abortion and giving birth, whereas no women died after having an abortion); *see also* Amirhossein Moaddab, Gary A. Dildy, Haywood L. Brown, Zhoobin H. Bateni, Michael A. Belfort, Haleh Sangi-Haghpeykar & Steven L. Clark, *Health Care Disparity and Pregnancy-Related Mortality in the United States, 2005–2014*, 131 *OBSTETRICS & GYNECOLOGY* 707, 710–11 (2018) (finding that women with unintended pregnancies are at a higher risk of maternal mortality than those with planned pregnancies).

118. *See* *Roe v. Wade*, 410 U.S. 113, 153 (1973) (noting that pregnancy can cause "[s]pecific and direct harm" that is "medically diagnosable"); *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 618 (2016) ("Nationwide, childbirth is 14 times more likely than abortion to result in death. . .").

opinion in *Planned Parenthood of Southeast Pennsylvania v. Casey*, Justice Harry Blackmun recognized that “[b]y restricting the right to terminate pregnancies, the State conscripts women’s bodies into its service” and “assumes that they owe this duty as a matter of course.”¹¹⁹ Strikingly, a study predicted a federal abortion ban would increase pregnancy-related deaths by 21% overall and 33% among Black people.¹²⁰ Although *Dobbs* is not a federal abortion ban, this study’s findings serve as a valuable illustration of the potential negative consequences such a ban could have, particularly for marginalized communities. Indeed, the dangers of forced pregnancies are compounded for people with disabilities, who already face heightened risks from pregnancy and childbirth.¹²¹

The *Dobbs* ruling has severe implications, especially considering that the United States has the highest maternal mortality rate among high-income nations, which has been rising in recent years.¹²² Shockingly, in 2021, over 1,200 women died in the United States from maternal causes,¹²³ and as many as 60,000 women annually experience severe maternal morbidity, resulting in adverse outcomes during pregnancy or childbirth that have significant short- or long-term health consequences.¹²⁴ Moreover, the risks of maternal mortality and morbidity are compounded for marginalized communities, particularly Black women, who face a significantly higher risk than white women. In fact, “Black women are three times more likely to die from a pregnancy-related cause” than their white counterparts, highlighting a significant disparity in maternal healthcare in the United States.¹²⁵ Thus, carrying a pregnancy to term and giving birth are risky propositions in this country.

119. 505 U.S. 833, 928 (1992) (Blackmun, J., concurring in part, concurring in judgment in part, and dissenting in part).

120. Amanda Jean Stevenson, *The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant*, 58 DEMOGRAPHY 2019, 2023 (2021).

121. See Jessica L. Gleason, Jagteshwar Grewal, Zhen Chen, Alison N. Cernich & Katherine L. Grantz, *Risk of Adverse Maternal Outcomes in Pregnant Women with Disabilities*, JAMA NETWORK OPEN, Dec. 2021, at 1, 4; Hilary K. Brown, Joel G. Ray, Simon Chen, Astrid Guttmann, Susan M. Havercamp, Susan Parish, Simone N. Vigod, Lesley A. Tarasoff & Yona Lunskey, *Association of Preexisting Disability with Severe Maternal Morbidity or Mortality in Ontario, Canada*, JAMA NETWORK OPEN, Feb. 2021, at 1, 5.

122. See Julia Belluz, *We Finally Have a New US Maternal Mortality Estimate. It’s Still Terrible.*, VOX (Jan. 30, 2020, 10:40 AM), <https://www.vox.com/2020/1/30/21113782/pregnancy-deaths-us-maternal-mortality-rate>.

123. Donna L. Hoyert, *Maternal Mortality Rates in the United States, 2021*, CTNS. FOR DISEASE CONTROL & PREVENTION: NAT’L CTR. FOR HEALTH STAT. (Mar. 16, 2023), <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2021/maternal-mortality-rates-2021.htm> [<https://perma.cc/D8RU-QS77>].

124. Eugene Declercq & Laurie C. Zephyrin, *Severe Maternal Morbidity in the United States: A Primer*, COMMONWEALTH FUND (Oct. 28, 2021), <https://www.commonwealthfund.org/publications/issue-briefs/2021/oct/severe-maternal-morbidity-united-states-primer> [<https://perma.cc/C2YP-A964>].

125. *Working Together to Reduce Black Maternal Mortality*, CTNS. FOR DISEASE CONTROL & PREVENTION: HEALTH EQUITY (Jan. 8, 2024), [<https://perma.cc/K8P6-JRCD>]. See generally Khiara M. Bridges, *Racial Disparities in Maternal Mortality*, 95 N.Y.U. L. REV. 1229 (2020) (examining maternal mortality among women of color, and calling for reforms); Jamila K. Taylor, *Structural Racism and Maternal Health Among Black Women*, 48 J.L. MED. & ETHICS 506 (2020) (describing the ways in which structural racism perpetuates maternal health inequities).

The maternal health crisis currently unfolding in the United States has particularly severe consequences for disabled people who experience pervasive structural barriers to accessing reproductive health services.¹²⁶ Despite having comparable pregnancy rates to women without disabilities, women with disabilities experience higher maternal mortality and morbidity rates.¹²⁷ They are at an increased risk for complications during pregnancy, childbirth, and postpartum, such as gestational diabetes, preeclampsia, cesarean delivery, preterm birth, low-birth-weight infants, and stillbirth.¹²⁸ Furthermore, women with specific disabilities, such as diabetes, epilepsy, and Ehlers-Danlos syndrome, are at increased risk of pregnancy-related complications.¹²⁹ Disabled women also have higher miscarriage rates.¹³⁰ Maternal mortality and morbidity rates are even higher for disabled people of color, indicating the compounded effects of ableism and racism.¹³¹ Thus, while many disabled people can safely carry a pregnancy to term, for some, pregnancy poses significant risks, even jeopardizing their lives.

126. See *supra* Section I.A.

127. See Gleason et al., *supra* note 121, at 4–5; Brown et al., *supra* note 121, at 5; Monika Mitra, Linda M. Long-Bellil, Suzanne C. Smeltzer & Lisa I. Iezzoni, *A Perinatal Health Framework for Women with Physical Disabilities*, 8 *DISABILITY & HEALTH J.* 499, 499 (2015).

128. See, e.g., Lesley A. Tarasoff, Saranyah Ravindran, Hannan Malik, Dinara Salaeva & Hilary K. Brown, *Maternal Disability and Risk for Pregnancy, Delivery, and Postpartum Complications: A Systematic Review and Meta-Analysis*, 222 *AM. J. OBSTETRICS & GYNECOLOGY* 27, 29–33 (2020) (synthesizing studies on perinatal outcomes among women with disabilities); Ilhom Akobirshoev, Susan L. Parish, Monika Mitra & Eliana Rosenthal, *Birth Outcomes Among US Women with Intellectual and Developmental Disabilities*, 10 *DISABILITY & HEALTH J.* 406, 409 tbl.3 (2017) (documenting adverse maternal and child health outcomes among women with intellectual and developmental disabilities); Hilary K. Brown & Monika Mitra, *Improved Obstetric Care for People with Disabilities: An Urgent Call for Accessibility and Inclusion*, 31 *J. WOMEN'S HEALTH* 4, 4 (2022) (citing studies showing increased risk of adverse pregnancy outcomes among women with disabilities); Monika Mitra, Michael M. McKee, Ilhom Akobirshoev, Anne Valentine, Grant Ritter, Jianying Zhang, Kimberly McKee & Lisa I. Iezzoni, *Pregnancy, Birth, and Infant Outcomes Among Women Who Are Deaf or Hard of Hearing*, 58 *AM. J. PREVENTIVE MED.* 418, 420 (2020) (finding that women who are Deaf and hard of hearing had an increased risk of adverse pregnancy complications).

129. See, e.g., Am. Diabetes Ass'n, *Management of Diabetes in Pregnancy*, 41 *DIABETES CARE (SUPPLEMENT)* S137, S137 (2018); Sima I. Patel & Page B. Pennell, *Management of Epilepsy During Pregnancy: An Update*, 9 *THERAPEUTIC ADVANCES NEUROLOGICAL DISORDERS* 118, 124 (2016); Akilandeswari Karthikeyan & Narayanaswamy Venkat-Raman, *Hypermobile Ehlers–Danlos Syndrome and Pregnancy*, 11 *OBSTETRIC MED.* 104, 105–07 (2018).

130. See, e.g., Mekhala V. Dissanayake, Blair G. Darney, Aaron B. Caughey & Willi Horner-Johnson, *Miscarriage Occurrence and Prevention Efforts by Disability Status and Type in the United States*, 29 *J. WOMEN'S HEALTH* 345, 350 fig.3 (2020) (finding that women with disabilities have 67% higher odds of having a miscarriage than women without disabilities); Willi Horner-Johnson, Sheetal Kulkarni-Rajasekhara, Blair G. Darney, Mekhala Dissanayake & Aaron B. Caughey, *Live Birth, Miscarriage, and Abortion Among U.S. Women with and Without Disabilities*, 10 *DISABILITY & HEALTH J.* 382, 384 (2017) (showing that women with complex activity limitations had marginally higher odds of miscarriage).

131. See, e.g., Ilhom Akobirshoev, Monika Mitra, Susan L. Parish, Anne Valentine & Tiffany A. Moore Simas, *Racial and Ethnic Disparities in Birth Outcomes and Labor and Delivery Charges Among Massachusetts Women with Intellectual and Developmental Disabilities*, 58 *INTELL. & DEVELOPMENTAL DISABILITIES* 126, 132 (2020) (finding that Black women with intellectual and developmental disabilities are more likely to give birth to preterm infants than white women with intellectual and developmental disabilities); see also NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOC. NETWORK, *supra*

Relatedly, abortion may be vital to some disabled people's well-being.¹³² For example, some take medications that are contraindicated during pregnancy, such as certain psychiatric medications that must be discontinued during pregnancy.¹³³ However, many psychiatric medications cannot be immediately halted without risking severe withdrawal side effects, including an increased risk of suicide.¹³⁴ As a result, people with psychiatric disabilities confronting unexpected pregnancies face an unfair choice between endangering their own health by stopping medication or potentially causing fetal harm by continuing treatment.¹³⁵ Notably, analysis of national data found a significant association between poor or fair health status and abortion among women with disabilities, but not among those without disabilities.¹³⁶ Another study revealed that almost two-thirds of pregnancies in women with Down syndrome result in abortion, often due to medical complications.¹³⁷ In addition, people with dwarfism also face unique circumstances that can necessitate abortion services. Specifically, if two people with dwarfism have a child together, there is a possibility that each partner will pass on one dwarfism gene to the fetus, leading to "double dominance" in their offspring, resulting in significant medical complications and early death.¹³⁸ Therefore, some people with dwarfism terminate a pregnancy if "double dominance" is detected.¹³⁹ Hence, disabled people may need to terminate their pregnancies due to health-related concerns. Yet, because of *Dobbs*, states can deny them access to abortion despite these risks.

It could be argued that even post-*Dobbs*, some states with abortion bans have exceptions for the life and health of the pregnant person or fetus. However, these exceptions are often narrowly defined in ways that do not encompass many disabled people's situations, especially mental health needs that are less visible or immediately life-threatening.¹⁴⁰ Therefore, while such exceptions may appear

note 61, at 6 (noting that adverse outcomes are amplified among disabled people of color, specifically Black and American Indian/Alaska Native women with disabilities).

132. See Shruti Rajkumar, *With Roe v. Wade Overturned, Disabled People Reflect on How It Will Impact Them*, NPR (June 25, 2022, 7:00 AM), <https://www.npr.org/2022/06/25/1107151162/abortion-roe-v-wade-overturned-disabled-people-reflect-how-it-will-impact-them> [https://perma.cc/3GX9-CLNU].

133. *An Overlooked Perspective: The Implications of Roe v. Wade Being Overturned for People with Disabilities*, ABLE S.C., <https://www.able-sc.org/resource-library/position/an-overlooked-perspective-the-implications-of-roe-v-wade-being-overturned-for-people-with-disabilities/> [https://perma.cc/C6L3-2KBY] (last visited Mar. 24, 2024).

134. *Id.*

135. *Id.*

136. See Willi Horner-Johnson et al., *supra* note 130, at 385.

137. See D. Orthmann Bless & V. Hofmann, *Abortion in Women with Down Syndrome*, 64 J. INTELL. DISABILITY RSCH. 690, 690 (2020).

138. Marsha Saxton, *Disability Rights and Selective Abortion*, in THE DISABILITY STUDIES READER 87, 91 (Lennard J. Davis ed., 4th ed. 2013).

139. See *id.*; Darshak M. Sanghavi, *Wanting Babies Like Themselves, Some Parents Chose Genetic Defects*, N.Y. TIMES (Dec. 5, 2006), <https://www.nytimes.com/2006/12/05/health/05essa.html> (recognizing many people "consider abortion if the test is positive" for double dominant mutations).

140. See Mabel Felix, Laurie Sobel & Alina Salganicoff, *A Review of Exceptions in State Abortions Bans: Implications for the Provision of Abortion Services*, KFF (May 18, 2023), <https://www.kff.org/womens-health-policy/issue-brief/a-review-of-exceptions-in-state-abortions-bans-implications-for-the->

reasonable in theory, they are insufficient in practice to protect disabled people's reproductive autonomy and well-being.

Ultimately, forced pregnancies are particularly harmful to disabled people, who are disproportionately impacted by the pervasive societal ableism that creates barriers to accessing essential reproductive healthcare services and information. Consequently, this population faces more significant risks of complications during pregnancy and childbirth, which can have devastating and long-lasting consequences. Forced pregnancies, therefore, will only make these matters worse.

E. DEPRIVATION OF BODILY AUTONOMY AND SELF-DETERMINATION

Forced pregnancy, exacerbated by *Dobbs*, is a direct affront to the bodily autonomy and self-determination that disabled people have fought for and continue to advocate for. Throughout the disability rights movement, activists have challenged the pervasive paternalism that historically denied them agency and autonomy over their lives.¹⁴¹ By compelling disabled people to carry a pregnancy to term against their will, this systemic ableism and lack of respect for bodily autonomy and self-determination not only violates their fundamental human rights but also disregards the progress toward disability rights and justice.

Disabled people value bodily autonomy and self-determination because society has frequently denied them these rights in both reproductive and nonreproductive contexts. Perhaps most notoriously, nearly 70,000 Americans were involuntarily sterilized in state-sanctioned programs to prevent those deemed socially undesirable—namely disabled people, poor people, and people of color—from reproducing.¹⁴² These programs disproportionately targeted disabled people of color.¹⁴³ In *Buck v. Bell*, the Supreme Court upheld the constitutionality of these programs over a due process challenge as necessary “to prevent our being swamped with incompetence.”¹⁴⁴ The Court declared it “better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their

provision-of-abortion-services/ [https://perma.cc/M759-JJMG] (“Mental health exceptions [to abortion bans] are rare despite the fact that 20% of pregnancy-related deaths are attributable to mental health conditions.”); *Abortion: What It Is and Why It Matters to People with Disabilities*, AUTISTIC SELF ADVOC. NETWORK, <https://autisticadvocacy.org/actioncenter/issues/repro/abortion/> [https://perma.cc/E9UP-XDF3] (last visited Mar. 24, 2024).

141. See JAMES I. CHARLTON, *NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT* 3 (1998).

142. Fresh Air, *The Supreme Court Ruling That Led to 70,000 Forced Sterilizations*, NPR (Mar. 17, 2016, 1:22 PM), <https://www.npr.org/sections/health-shots/2016/03/07/469478098/the-supreme-court-ruling-that-led-to-70-000-forced-sterilizations> [https://perma.cc/EJW3-FPGW].

143. See Alexandra Minna Stern, *Forced Sterilization Policies in the US Targeted Minorities and Those with Disabilities – and Lasted into the 21st Century*, CONVERSATION (Aug. 26, 2020, 8:20 AM), <https://theconversation.com/forced-sterilization-policies-in-the-us-targeted-minorities-and-those-with-disabilities-and-lived-into-the-21st-century-143144> [https://perma.cc/2WX6-ML26].

144. 274 U.S. 200, 207 (1927).

imbecility, society can prevent those who are manifestly unfit from continuing their kind.”¹⁴⁵

Activists and scholars recognize disabled people governing their own reproduction as crucial for disability justice, given the history of controlling their reproduction as a means of ableism and oppression.¹⁴⁶ As Professor Dorothy Roberts writes, both restrictions on abortion and eugenics-era forced sterilization laws “seek to control reproductive decision making for repressive political ends.”¹⁴⁷ Indeed, a significant correlation exists between the long and deeply problematic history of state intervention against disabled people and restrictions on abortion. In both instances, the government has targeted a particular group of people—either those with disabilities or those who are pregnant—to deny them the fundamental right to govern their bodies in the name of supposed greater societal objectives.¹⁴⁸

In the context of the current landscape, the *Dobbs* decision represents yet another attack on disabled people’s bodily autonomy and self-determination. For this population, access to abortion services is crucial in addressing a range of issues, including maternal health risks, poverty, inadequate reproductive health and information, and violence. Limiting access to abortion services and forcing pregnancy robs disabled people of a crucial tool for exercising their bodily autonomy and self-determination—something they have fought for and deserve to have respected. Forced pregnancies reinforce the systemic ableism that underlies much of the opposition to reproductive rights and justice and threatens to exacerbate the harm that already marginalized people face in accessing reproductive health services and information and asserting their fundamental human rights.

II. DENIED TO REAR: VULNERABILITIES AND IMPLICATIONS

Justice Alito, writing for the *Dobbs* majority, notes that antiabortion advocates point to increased flexibility in modern adoption laws and the limited “domestic supply of infants” available for adoption as a morally favorable argument for eliminating the constitutional right to abortion.¹⁴⁹ However, he neglects to directly acknowledge the implications of this increased “supply.” Forced pregnancies resulting from the *Dobbs* ruling are likely to contribute to a rise in the number of children available for adoption through the family policing system, particularly for families already vulnerable to intervention.¹⁵⁰ A complex

145. *Id.*

146. See SINS INVALID, SKIN, TOOTH, AND BONE: THE BASIS OF MOVEMENT IS OUR PEOPLE 59–63 (2d ed. 2019) (describing “the complexities of reproductive justice in the context of ableism”).

147. Dorothy Roberts Argues That Justice Clarence Thomas’s *Box v. Planned Parenthood Concurrence Distorts History*, PENN CAREY L., U. PA. (June 6, 2019), <https://www.law.upenn.edu/live/news/9138-dorothy-roberts-argues-that-justice-clarence> [https://perma.cc/MJ7J-SE86].

148. See Paul A. Lombardo, *Three Generations, No Imbeciles: New Light on Buck v. Bell*, 60 N.Y.U. L. REV. 30, 33 (1985) (“*Buck* is a landmark in the endorsement of intrusive medical procedures as tools to be used for state ends.”).

149. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 259 & n.46 (2022).

150. See Thalia Charles, *Post-’Roe,’ Abortion Bans Will Increase the Separation of Black and Brown Families*, REWIRE NEWS GRP. (Sept. 29, 2022, 9:00 AM), <https://rewirenewsgroup.com/2022/09/29/post-roe-abortion-bans-will-increase-the-separation-of-black-and-brown-families/> [https://perma.cc/

interplay of contextual-, institutional-, and individual-level factors plague the family policing system and lead to injustices for disabled parents and their children.¹⁵¹ This is especially apparent in cases where their parental rights are arbitrarily terminated.

Because of the ableist nature of the family policing system and systemic inequalities, coupled with the increase in forced pregnancies, more disabled parents will likely be exposed to this system and be vulnerable to threats to their parental rights. Consequently, this Part shifts the focus to the denial of parental rights for disabled people, even after being compelled to bear children. Specifically, it delves into the various societal, legal, and institutional obstacles that impede the ability of disabled people to parent, including presumptions of unfitness, unsupported families, constant surveillance and scrutiny, and ableism within the family policing system. As this Part reveals, even after being forced to rear children, some people will be denied the opportunity to raise their children.

A. PRESUMPTIONS OF UNFITNESS

The profoundly ingrained presumption that disabled parents are unfit to rear their children is one of the most significant barriers they face in exercising their parental rights. This societal belief is deeply entrenched in the collective conscience and leads to continuous threats to disabled parents' rights. By perpetuating discriminatory attitudes and behaviors, this presumption undermines the ability of disabled parents to provide a safe and nurturing environment for their children and can lead to harmful outcomes, such as the removal of their children by the family policing system. As Professor Ora Prilleltensky observes, "As a group, women with disabilities have been traditionally discouraged or even denied the opportunity to bear and rear children."¹⁵² In the wake of the *Dobbs* decision, these presumptions will threaten the parental rights of those who are forced to carry pregnancies to term and choose to become parents.

The notion that some people, including disabled people, should be prevented from rearing children can be traced to the twentieth century eugenics movement.¹⁵³ Eugenics proponents believed that certain people were unfit for parenthood¹⁵⁴ and that "their offspring would be dangerous and burdensome to

3UPT-H67E] (noting that "[i]n this post-*Roe* world, abortion bans will force more people into the family policing system," which is already "rife with racial bias").

151. For an in-depth visual depiction of the interplay between these three types of factors, see Robyn M. Powell, Susan L. Parish, Monika Mitra, Michael Waterstone & Stephen Fournier, *Child Welfare System Inequities Experienced by Disabled Parents: Towards a Conceptual Framework*, 39 DISABILITY & SOC'Y, 291, 295 fig.1 (2024).

152. Ora Prilleltensky, *A Ramp to Motherhood: The Experiences of Mothers with Physical Disabilities*, 21 SEXUALITY & DISABILITY 21, 22 (2003).

153. See ADAM COHEN, IMBECILES: THE SUPREME COURT, AMERICAN EUGENICS, AND THE STERILIZATION OF CARRIE BUCK 4–5 (2016); see also *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 369 n.6 (2001) ("The record does show that some States, adopting the tenets of the eugenics movement of the early part of this century, required extreme measures such as sterilization of persons suffering from hereditary mental disease.").

154. See Eric M. Jaegers, *Modern Judicial Treatment of Procreative Rights of Developmentally Disabled Persons: Equal Rights to Procreation and Sterilization*, 31 U. LOUISVILLE J. FAM. L. 947, 948

society.”¹⁵⁵ People with disabilities were among the groups targeted by eugenicists.¹⁵⁶ In the infamous 1927 *Buck v. Bell* decision, the Supreme Court endorsed eugenics laws, policies, and practices by upholding Virginia’s statute allowing for involuntary sterilization.¹⁵⁷ The case centered on Carrie Buck, a seventeen-year-old who was institutionalized in the Virginia State Colony for Epileptics and Feeble-Minded after becoming pregnant because of sexual assault by a relative of her foster parents.¹⁵⁸ After giving birth, Carrie’s daughter, Vivian, was adopted by her foster family.¹⁵⁹ The institution sought to sterilize Carrie under the state’s involuntary sterilization law, and the Court ultimately upheld the statute’s constitutionality, enabling states to forcibly sterilize disabled people and others considered “unfit.”¹⁶⁰ This decision served as a dark moment in American history, as it legitimized the harmful practice of forced sterilization and exemplified the devastating impact of eugenic beliefs and policies on people’s lives.

Despite the passage of almost a century, deep-rooted beliefs that disabled people are unfit to fulfill parenting responsibilities persist. Thus, as the late Barbara Faye Waxman argues, “the belief that disabled women’s reproductive capacity is a biological, moral, and economic danger” endures.¹⁶¹ Consequently, “parenthood remains inaccessible to many people with disabilities owing to antiquated and discriminatory beliefs about disabled people that reflect eugenic ideologies.”¹⁶²

Disabled people encounter presumptions that they are unable to rear children even before becoming parents. For example, disabled people continue to be pressured by

(1992) (explaining that the purpose of eugenics was to prevent “reproduction by those deemed socially or mentally inferior”).

155. Powell, *supra* note 18, at 613; *see also* Powell, *supra* note 15, at 250 (“[T]he eugenics movement . . . postulat[ed] that people with disabilities . . . were socially inadequate and should be prevented from procreating.”); Michael G. Silver, Note, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History*, 72 GEO. WASH. L. REV. 862, 865 (2004) (noting a leading eugenicist’s view that reproduction of the “socially inadequate” posed “a significant threat to society”); Paul A. Lombardo, *Medicine, Eugenics, and the Supreme Court: From Coercive Sterilization to Reproductive Freedom*, 13 J. CONTEMP. HEALTH L. & POL’Y 1, 1–2 (1996) (noting how eugenicist physicians characterized procreation of the “socially inadequate” as an epidemic).

156. COHEN, *supra* note 153, at 6 (“Their greatest target was the ‘feeble-minded,’ a loose designation that included people who were mentally [disabled], women considered to be excessively interested in sex, and various other categories of individuals who offended the middle-class sensibilities of judges and social workers.”); J. H. Landman, *The Human Sterilization Movement*, 24 AM. INST. CRIM. L. & CRIMINOLOGY 400, 402 (1933) (eugenicists targeted “the mentally defective, the mentally diseased, the physically defective, such as the blind, the deaf, the crippled and those ailing from heart disease, kidney disease, tuberculosis and cancer”).

157. 274 U.S. 200, 207 (1927).

158. Stephen Jay Gould, *Carrie Buck’s Daughter*, 2 CONST. COMMENT. 331, 336 (1985); COHEN, *supra* note 153, at 7.

159. *See* Gould, *supra* note 158, at 338.

160. *Buck*, 274 U.S. at 206–07.

161. Barbara Faye Waxman, *Up Against Eugenics: Disabled Women’s Challenge to Receive Reproductive Health Services*, 12 SEXUALITY & DISABILITY 155, 155 (1994).

162. Powell, *supra* note 18, at 621.

others to consider sterilization to avoid pregnancy and motherhood.¹⁶³ As Professor Claudia Malacrida observes, “[H]elping professionals and family members often discourage women with disabilities from becoming pregnant, expressing concerns that they will not be competent mothers and reflecting eugenic concerns that their disabilities will be passed on to their children.”¹⁶⁴ Moreover, reproductive health providers often hold unfavorable attitudes towards disabled people reproducing and raising children, and some continue to endorse outdated beliefs from earlier times when the forced sterilization of disabled people was a widely accepted and unquestioned practice.¹⁶⁵ Indeed, disabled people often report being discouraged from having children by family members, health providers, and sometimes strangers.¹⁶⁶ Consequently, as a mother with a physical disability explains, “The most difficult preparations were those to mentally ready ourselves for the likely probability that there would be—and will always be—people who doubted our abilities and worth as parents.”¹⁶⁷

Unsurprisingly, these attitudes persist even after childbirth, with disabled parents often questioned about their parenting abilities.¹⁶⁸ For example, parents with intellectual disabilities are presumed to be incapable of caring for their children or learning parenting skills despite empirical evidence demonstrating such assumptions are unfounded.¹⁶⁹ Likewise, parents with psychiatric disabilities are often stereotyped as being a threat to their children, even though research shows no greater potential for violence or abuse compared to parents without disabilities.¹⁷⁰ Similarly, Deaf parents are often faced with the belief that their children’s language development will be hindered despite evidence that Deaf parents effectively facilitate language acquisition.¹⁷¹ Meanwhile, blind parents and those with physical disabilities are often assumed to be unable to care for their children

163. See Claudia Malacrida, *Mothering and Disability: From Eugenics to Newgenics*, in ROUTLEDGE HANDBOOK OF DISABILITY STUDIES 467, 468 (Nick Watson & Simo Vehmas eds., 2d ed. 2019).

164. Claudia Malacrida, *Performing Motherhood in a Disablist World: Dilemmas of Motherhood, Femininity and Disability*, 22 INT’L J. QUAL. STUD. EDUC. 99, 102 (2009).

165. Nicole Agaronnik, Elizabeth Pendo, Tara Lagu, Christene DeJong, Aixa Perez-Caraballo & Lisa I. Iezzoni, *Ensuring the Reproductive Rights of Women with Intellectual Disability*, 45 J. INTELL. & DEVELOPMENTAL DISABILITY 365, 369 (2020).

166. See NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 41–42.

167. *Id.* at 42.

168. See *id.* at 41–42.

169. See Robyn M. Powell, *Safeguarding the Rights of Parents with Intellectual Disabilities in Child Welfare Cases: The Convergence of Social Science and Law*, 20 CUNY L. REV. 127, 142–44 (2016).

170. See Theresa Glennon, *Walking with Them: Advocating for Parents with Mental Illnesses in the Child Welfare System*, 12 TEMP. POL. & C.R.L. REV. 273, 291–93 (2003) (“Most damaging to parents involved in the child welfare system is the deeply embedded belief that individuals with mental illnesses are unpredictable and dangerous.”).

171. See Jenny L. Singleton & Matthew D. Tittle, *Deaf Parents and Their Hearing Children*, 5 J. DEAF STUD. & DEAF EDUC. 221, 225–26 (2000) (summarizing research about the outcomes of hearing children of Deaf parents that found that these children often do develop speech and language typically if they have exposure to hearing people); see also Michael Ashley Stein, *Mommy Has a Blue Wheelchair: Recognizing the Parental Rights of Individuals with Disabilities*, 60 BROOK. L. REV. 1069, 1083 (1994) (reviewing JAY MATHEWS, *A MOTHER’S TOUCH: THE TIFFANY CALLO STORY* (1992)) (describing concerns about language development among hearing children of Deaf parents).

safely despite adapting parenting techniques to accommodate their disabilities.¹⁷² Strikingly, in a survey of more than 1,200 parents with disabilities, 40% reported encountering attitudinal obstacles, and 33% reported experiencing discrimination.¹⁷³

Moreover, parents with disabilities often report living in constant fear that they will be reported to the family policing system by a stranger because of bias and speculation.¹⁷⁴ Thus, as Professor Michael Ashley Stein observes, “[e]ven with the accomplishment of parental tasks through different techniques, mothers with disabilities fear that mainstream society will remove their children because of prevailing misconceptions. The result is the diminishment of parental joy for otherwise able and loving parents.”¹⁷⁵

Societal attitudes toward disabled parents contribute to inequities within the family policing system.¹⁷⁶ These negative attitudes, including assumptions that disabled parents are incapable of raising children, lead to referrals to the family policing system by healthcare providers, teachers, disability service providers, family members, and strangers, even when there is no evidence of maltreatment.¹⁷⁷ In turn, these referrals often lead to the unjustified termination of disabled parents’ rights simply because of ableism rather than any finding of unfitness or mistreatment.¹⁷⁸ Moreover, as further explored later in this Part, hostile attitudes concerning disabled parents permeate the entire family policing system.¹⁷⁹ Thus, “the stereotypes and societal attitudes concerning parents with disabilities are pervasive and powerful”¹⁸⁰ and substantially contribute to them being denied the right to rear their children.

B. FAILURE TO SUPPORT FAMILIES

Despite forcing people to carry pregnancies to term and give birth, states with abortion restrictions have failed to implement meaningful measures to assist families through enhanced support and resources.¹⁸¹ In other words, the antiabortion

172. See Adam Cureton, *Parents with Disabilities*, in *THE OXFORD HANDBOOK OF REPRODUCTIVE ETHICS* 407, 420 (Leslie Francis ed., 2017) (discussing adaptive parenting strategies used by blind and physically disabled parents).

173. Megan Kirshbaum, *A Disability Culture Perspective on Early Intervention with Parents with Physical or Cognitive Disabilities and Their Infants*, *INFANTS & YOUNG CHILD.*, Oct. 2000, at 9, 10 (discussing adaptive techniques of parents with physical disabilities).

174. NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 82–83.

175. Stein, *supra* note 171, at 1095–96.

176. Powell et al., *supra* note 151, at 297.

177. *Id.*

178. Ella Callow, Kelly Buckland & Shannon Jones, *Parents with Disabilities in the United States: Prevalence, Perspectives, and a Proposal for Legislative Change to Protect the Right to Family in the Disability Community*, 17 *TEX. J. ON C.L. & C.R.* 9, 17 (2011) (“Attitudinal bias leads to speculation by neighbors, family members, and medical personnel that a parent with a disability cannot be a safe parent. These are the individuals most likely to report a parent with a disability to a child welfare agency for no reason other than the disability, thus starting the family’s dependency proceedings and often leading to termination of parental rights.”).

179. See *infra* Section II.D.

180. Dave Shade, *Empowerment for the Pursuit of Happiness: Parents with Disabilities and the Americans with Disabilities Act*, 16 *LAW & INEQ.* 153, 189 (1998).

181. Murray, *supra* note 91.

movement's rhetoric prioritizing pregnant people and children's well-being is essentially performative. The situation is particularly problematic for disabled parents and their children, who have considerable unmet needs that, coupled with an absence of support, dramatically heighten their risk of being separated by the family policing system. Moreover, despite Section 504 and the ADA, which require the family policing system to provide accessible family reunification services to disabled parents if a family is separated, the system seldom complies.¹⁸² Thus, states' failure to adequately support families directly threatens disabled parents' right to rear their children. Importantly, supports for disabled parents is crucial to affording people with disabilities genuine reproductive autonomy. Indeed, through interviews and focus groups with disabled women, Professor Ora Prilleltensky reveals that the scarcity of available parenting supports profoundly impacts some disabled women's reproductive decisionmaking.¹⁸³ That is, because disabled women know that supports are lacking, some do not even allow themselves to consider motherhood a possibility.¹⁸⁴

Economic disadvantage is pervasive among disabled parents and their children. As explained above, disabled people are more likely to experience poverty than people without disabilities.¹⁸⁵ Poverty's impact is profound for parents with disabilities and their children, directly affecting their ability to access basic necessities, such as housing and food.¹⁸⁶ In addition to the typical costs of raising children, parents with disabilities often incur additional expenses related to their disability—such as personal assistant services, adaptive parenting equipment, and childcare—adding to the financial strain they experience.¹⁸⁷ Meanwhile, they earn significantly less than parents without disabilities, and most live in poverty.¹⁸⁸ Thus, parents with disabilities frequently earn lower incomes than those without disabilities and tend to incur more substantial expenses. Unsurprisingly, a study on low-income mothers with disabilities found that poverty, rather than their disabilities, was the primary cause of the hardships they experienced.¹⁸⁹

Even existing benefits, such as Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), provide inadequate assistance to families.¹⁹⁰ For example, benefit amounts do not increase when a person with a disability has

182. See NAT'L COUNCIL ON DISABILITY, *supra* note 47, at 74–76, 88–90.

183. See PRILLELTENSKY, *supra* note 47, at 151 (“The importance of attitudinal changes notwithstanding, they cannot replace the need for more equitable policies and increased resources that would truly enhance choice and self-determination.”).

184. See *id.*

185. See *supra* Section I.B.

186. NAT'L COUNCIL ON DISABILITY, *supra* note 47, at 202 (“[T]he most significant difference between parents with disabilities and parents without disabilities is economic. . .”).

187. See *id.*

188. See *id.*; *supra* notes 68–71 and accompanying text.

189. Susan L. Parish, Sandra Magaña & Shawn A. Cassiman, *It's Just That Much Harder: Multilayered Hardship Experiences of Low-Income Mothers with Disabilities*, 23 *AFFILIA* 51, 63 (2008).

190. See *id.* at 52; NAT'L COUNCIL ON DISABILITY, *supra* note 47, at 202–03; Powell et al., *supra* note 151, at 306.

children.¹⁹¹ This means that as of early 2024, a disabled parent receiving SSI must support themselves and their children with a meager \$943 per month.¹⁹² Similarly, a disabled parent receiving SSDI earns an average of \$1,537 per month, which is still insufficient to raise a family on.¹⁹³ Moreover, some government benefits programs, such as SSI and Medicaid, financially punish disabled people who choose to marry.¹⁹⁴ For example, if two recipients of SSI benefits get married, their combined monthly payment is reduced by 25% from what they had been receiving as individuals,¹⁹⁵ which can make it difficult for disabled couples to afford basic needs. Medicaid also has provisions that make married people ineligible if their combined income or assets rise above stringent thresholds.¹⁹⁶ These antiquated restrictions often force them to choose between forming families and receiving necessary income assistance.¹⁹⁷ Additionally, even with benefits, families with disabled parents continue to experience financial hardships.¹⁹⁸ Thus, laws and policies relating to government-funded programs are designed to intentionally keep disabled people, including those who are parents, in a perpetual state of poverty and are harming families.

In the aftermath of the *Dobbs* decision, experts believe there will be an increase in the number of children in foster care.¹⁹⁹ Economic disadvantages can make it difficult for people to afford children, even if they are desired. Approximately 75% of people who have abortions live below 200% of the federal poverty level,²⁰⁰ and many of those people cite their inability to afford the expenses

191. NAT'L COUNCIL ON DISABILITY, *supra* note 47, at 203.

192. SSI *Federal Payment Amounts for 2024*, SOC. SEC., <https://www.ssa.gov/oact/cola/SSI.html> [<https://perma.cc/BH4V-VKUX>] (last visited Mar. 25, 2024).

193. *Selected Data from Social Security's Disability Program*, SOC. SEC., <https://www.ssa.gov/oact/STATS/dibGraphs.html> [<https://perma.cc/VNJ9-U2FZ>] (last visited Mar. 25, 2024).

194. See Robyn M. Powell, *Beyond Disability Rights: A Way Forward After the 2020 Election*, 15 ST. LOUIS U. J. HEALTH L. & POL'Y 391, 416 (2022).

195. Sara Luterman, *Marriage Could Mean Losing Life-Saving Benefits for People with Disabilities. So They're Protesting.*, 19TH (Sept. 13, 2023, 11:08 AM), <https://19thnews.org/2023/09/disability-advocates-marriage-equality-commitment-ceremony/> [<https://perma.cc/N8JJ-HPMB>].

196. Powell, *supra* note 194, at 416.

197. *See id.*

198. NAT'L COUNCIL ON DISABILITY, *supra* note 47, at 201–03; *see also* Subharati Ghosh & Susan Parish, *Prevalence and Economic Well-Being of Families Raising Multiple Children with Disabilities*, 35 CHILD. & YOUTH SERVS. REV. 1431, 1438 (2013); Rajan Sonik, Susan L. Parish, Subharati Ghosh & Leah Igdalsky, *Food Insecurity in U.S. Households that Include Children with Disabilities*, 83 EXCEPTIONAL CHILD. 42, 49–51 (2016).

199. See Russell Contreras, *End of Roe v. Wade May Overwhelm Foster Care Systems*, AXIOS (July 5, 2022), <https://www.axios.com/2022/07/05/roe-wade-abortion-foster-care-children> [<https://perma.cc/ZHD8-HSWZ>].

200. JERMAN ET AL., *supra* note 85, at 7 (finding that nearly half of abortion patients in 2014 lived below the federal poverty level and an additional 26% lived between 100–199% of the federal poverty level); *see also* FDA v. Am. Coll. of Obstetricians & Gynecologists, 141 S. Ct. 578, 582 (2021) (Sotomayor, J., dissenting from grant of application for stay) (“[T]hree-quarters of abortion patients have low incomes. . .”).

associated with raising a child as their primary reason for terminating a pregnancy.²⁰¹ Furthermore, many people who have abortions come from communities of color,²⁰² reflecting the socioeconomic disparities stemming from institutional and structural racism.²⁰³ Paradoxically, the states with the most stringent abortion laws also tend to be some of the most challenging places for people, particularly those who are economically disadvantaged, to have and raise children, largely due to weak social programs and inadequate public assistance.²⁰⁴ Indeed, poverty often leads to family policing system involvement, especially for disabled parents.²⁰⁵ Consequently, as the majority of people who choose to have abortions do so because of financial constraints, the factors contributing to foster care placement will likely only intensify. In other words, banning and imposing restrictions on abortion will contribute to rising poverty, ultimately leading to the state-sanctioned separation of marginalized families.²⁰⁶

Allegations of “neglect,” often tied to poverty, are the top reason families become involved with the family policing system.²⁰⁷ That is, in most cases,

201. Chae et al., *supra* note 86, 236, 237 fig.3 (finding that in the United States, 40% of people who seek an abortion report they are motivated to do so because they are financially unable to afford the costs associated with raising a child).

202. See Liza Fuentes, *Inequity in US Abortion Rights and Access: The End of Roe Is Deepening Existing Divides*, GUTTMACHER INST. (Jan. 17, 2023), <https://www.guttmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-roe-deepening-existing-divides> [<https://perma.cc/A7EH-QMYL>] (noting that together, Black, Latina, and Asian and Pacific Islander women represent approximately 60% of abortion patients in the United States); Kiara Alfonseca, *Why Abortion Restrictions Disproportionately Impact People of Color*, ABC NEWS (June 24, 2022, 10:43 AM), <https://abcnews.go.com/Health/abortion-restrictions-disproportionately-impact-people-color/story?id=84467809> [<https://perma.cc/VKU9-2ZMB>] (noting that, according to the CDC, “Black and Hispanic women have the highest abortion rates”).

203. See Ruqaiyah Yearby, *Breaking the Cycle of “Unequal Treatment” with Health Care Reform: Acknowledging and Addressing the Continuation of Racial Bias*, 44 CONN. L. REV. 1281, 1305–06 (2012) (“[S]tructural bias measures how non-race based factors, such as economic inequalities, indirectly affect racial minorities. . . . Those without privilege, such as minorities, who are disproportionately poor, have limited access to health care because they do not have health insurance and cannot afford to pay for it.”).

204. See Lindsay Whitehurst, Camille Fassett & Jasen Lo, *Social Programs Weak in Many States with Tough Abortion Laws*, AP (Apr. 7, 2022, 10:57 AM), <https://apnews.com/article/abortion-laws-raising-children-e620ca2a871bfd9ce5b6d6c76e092c31> [<https://perma.cc/SYL7-VQ3L>].

205. See Sarah H. Ramsey, *Children in Poverty: Reconciling Children’s Interests with Child Protective and Welfare Policies*, 61 MD. L. REV. 437, 438 (2002) (“The majority of families involved with child protective services (CPS) are low-income families.”); see also NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 80 (“Poverty plays a significant role in bringing parents with disabilities into contact with service providers who end up being the source of a CPS referral, and poverty itself is the most consistent characteristic in families in which child neglect is found.”).

206. See Charles, *supra* note 150.

207. Murray, *supra* note 91; see Kelley Fong, *Child Welfare Involvement and Contexts of Poverty: The Role of Parental Adversities, Social Networks, and Social Services*, CHILD. & YOUTH SERVS. REV., Jan. 2017, at 5, 5–6 (“As legal definitions of neglect typically include inadequate shelter, food, and clothing, financial constraints may preclude poor parents from providing adequately for their children.”); Jerry Milner & David Kelly, *It’s Time to Stop Confusing Poverty with Neglect*, IMPRINT (Jan. 17, 2020, 5:12 AM), <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222> [<https://perma.cc/C3E5-MM5M>] (“Poverty is a risk factor for neglect. . . .”).

parents are accused, investigated, and then have their children removed because of neglect, essentially referring to their inability to fulfill their children's basic material needs.²⁰⁸ Strikingly, in 2021, 63% of cases involving the removal of a child by the family policing system were due to allegations of neglect.²⁰⁹ Certainly, neglect can be serious when it involves parents intentionally depriving children of necessities. Nevertheless, neglect is often “a description of what it means to be poor,” rather than a cause of harm to children.²¹⁰ As Professor Dorothy Roberts explains in her groundbreaking book, *Shattered Bonds: The Color of Child Welfare*, neglect is more accurately “defined by poverty rather than . . . caused by poverty.”²¹¹ Consequently, when parents are deemed neglectful, “it usually has to do with [them] being poor.”²¹² Thus, the family policing system disproportionately “detect[s] and punish[es] neglect on the part of poor parents.”²¹³ While poverty itself does not usually lead to child maltreatment, families living in poverty are more likely to be involved with the family policing system.²¹⁴ By prohibiting abortion and forcing more families into poverty, more families will likely experience family policing system intervention based on parents' perceived failure to provide for their children's needs.²¹⁵

Unsurprisingly, there is a strong relationship between the persistent poverty imposed on disabled parents and threats to their parental rights. That is, disabled parents' involvement with the family policing system is far more likely to be based on allegations of neglect than abuse.²¹⁶ They are also more likely to be economically disadvantaged.²¹⁷ A recent study, for example, found that 75% of termination of parental rights cases involving disabled mothers concerned only allegations of child neglect.²¹⁸ Furthermore, frequent interactions with mandatory reporters providing financial aid and disability services raise the risk of family policing system involvement for parents with disabilities who are economically disadvantaged.²¹⁹ Consequently, “[f]or disabled parents, who are significantly more likely than others to be poor, the framing of poverty as neglect has led to many

208. Murray, *supra* note 91.

209. CHILD'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., THE AFCARS REPORT 2 (2022), <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf> [<https://perma.cc/46GZ-NJAQ>].

210. KHIARA M. BRIDGES, THE POVERTY OF PRIVACY RIGHTS 116 (2017).

211. DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 33 (2002).

212. *Id.* at 34.

213. *Id.* at 33.

214. See Powell et al., *supra* note 151, at 292.

215. See Murray, *supra* note 91.

216. NAT'L COUNCIL ON DISABILITY, *supra* note 47, at 84 (“Parents with disabilities who are involved with the child protection system are more likely to be facing allegations of neglect than of abuse or risk of abuse.”).

217. See generally Powell et al., *supra* note 151 (exploring the role of poverty in family policing system inequities affecting disabled parents).

218. Robyn M. Powell, Susan L. Parish, Monika Mitra, Michael Waterstone & Stephen Fournier, *Terminating the Parental Rights of Mothers with Disabilities: An Empirical Legal Analysis*, 85 MO. L. REV. 1069, 1094, 1095 tbl.2 (2020) (analyzing a national sample of 2,064 appellate cases that were decided between 2006 and 2016).

219. Minhae Cho & Elizabeth Lightfoot, *Recurrence of Substantiated Maltreatment Reports Between Low-Income Parents with Disabilities and Their Propensity-Score Matched Sample Without Disabilities*, 28 CHILD MALTREATMENT 318, 326 (2023).

families being unnecessarily subjected to the family policing system.”²²⁰ In turn, disabled parents who are forced to continue unintended pregnancies will be at markedly higher risk of being denied the opportunity to raise their children because of the poverty imposed on them.

Moreover, disabled parents’ rights are often in peril because the laws governing the family policing system include discriminatory provisions that hinder their access to adequate family preservation or reunification services. In 1980, Congress passed the Adoption Assistance and Child Welfare Act (AACWA), governing states’ administration of the family policing system.²²¹ Among its provisions, AACWA compels states to make “reasonable efforts” to prevent child removal, as well as “reasonable efforts” to reunify children separated from their parents.²²² Nevertheless, despite this mandate, the statute lacked a definition of “reasonable efforts.”²²³ Nearly two decades later, in 1997, Congress passed the Adoption and Safe Families Act (ASFA),²²⁴ reaffirming the family policing system’s goal of permanency, but also declaring that the adoption of children in foster care would best achieve permanence rather than family preservation or reunification.²²⁵

Accordingly, ASFA mandates states to initiate proceedings to terminate parental rights for children who have been in foster care for fifteen of the most recent twenty-two months.²²⁶ For disabled parents, meeting this strict and arbitrary timeline is often unattainable because supports and services for parents with disabilities are scarce and require significant time.²²⁷ For example, a parent with an intellectual disability may require additional time to complete parenting classes designed for their learning needs. Thus, the ASFA timeline disproportionately harms disabled parents and increases their risk of losing parental rights.

In addition, ASFA allows states to bypass reasonable efforts for family reunification and expedite adoption if the child has experienced “aggravated circumstances.”²²⁸ However, ASFA’s vague definition of “aggravated circumstances” leads to inconsistent interpretations among states, resulting in instances where a parent’s disability itself is deemed a sufficient reason to expedite termination of parental rights, alongside severe criminal acts.²²⁹ In other words, some states

220. Robyn M. Powell, *Achieving Justice for Disabled Parents and Their Children: An Abolitionist Approach*, 33 YALE J.L. & FEMINISM 37, 53 (2022).

221. Pub. L. No. 96-272, 94 Stat. 500 (codified as amended in scattered sections of 42 U.S.C.).

222. *Id.* at sec. 101(a)(1), § 471(a)(15), 94 Stat. at 503.

223. See Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State’s Burden Under Federal Child Protection Legislation*, 12 B.U. PUB. INT. L.J. 259, 260 (2003).

224. Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.).

225. See 42 U.S.C. § 671(a)(15)(F) (providing that “reasonable efforts to place a child for adoption or with a legal guardian . . . may be made concurrently with reasonable efforts” to preserve and reunify families); Ashley Albert & Amy Mulzer, *Adoption Cannot Be Reformed*, 12 COLUM. J. RACE & L. 557, 579–80 (2022) (“ASFA provided . . . adoption as the ultimate form of ‘permanency’ for children in foster care.”); Paul Anthony Wilhelm, *Permanency at What Cost? Five Years of Imprudence Under the Adoption and Safe Families Act of 1997*, 16 NOTRE DAME J.L. ETHICS & PUB. POL’Y 617, 636, 640 (2002).

226. See 42 U.S.C. § 675(5)(E).

227. NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 87–88.

228. 42 U.S.C. § 671(a)(15)(D)(i).

229. See *id.*; NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 90–92.

legally deny reunification services to disabled parents, ultimately leading to the loss of parental rights.

Additionally, the family policing system's purported provision of "reasonable efforts" for disabled parents and their children often falls short of being truly reasonable and is less frequently extended to these families.²³⁰ Further, even when disabled parents receive family preservation or reunification services, they are often provided with a "one-size-fits-all" approach that fails to consider their unique disabilities and needs.²³¹ As the National Council on Disability observes, "Reunification efforts are not reasonable if they do not take into account a parent's disability—failure to do so means that the services will have little chance of success."²³² Yet, "[n]either ASFA nor most state child welfare statutes specifically require that the reasonable efforts be designed to meet the needs of parents with disabilities, despite the fact that the ADA requires child welfare agencies to provide reasonable modifications for parents with disabilities."²³³ In addition, perceived noncompliance with inaccessible services, in turn, increases disabled parents' likelihood of being permanently separated from their families.²³⁴ Hence, the family policing system, through its provision of inadequate services, creates circumstances that make it highly challenging for disabled parents to maintain their parental rights, effectively setting them up for failure.

Furthermore, existing community-based services and supports for disabled people generally lack specific programs to assist them with parenting, leaving many with limited options for help.²³⁵ These services tend to focus on individual needs like education, employment, and social interaction rather than addressing their needs as parents.²³⁶ This is concerning because disability service providers are well-equipped to support parents with disabilities, given their expertise in assisting disabled people. For instance, personal assistance services are vital in

230. See IASSID Special Int. Rsch. Grp. on Parents & Parenting with Intell. Disabilities, *Parents Labeled with Intellectual Disability: Position of the IASSID SIRG on Parents and Parenting with Intellectual Disabilities*, 21 J. APPLIED RSCH. INTELL. DISABILITIES 296, 300–01 (2008) (explaining the family policing system's failure to provide services to parents with intellectual disabilities); Robyn M. Powell & Joanne Nicholson, Commentary, *Disparities in Child Protective Services: Commentary on Kaplan et al. (2019)*, 70 PSYCHIATRIC SERVS. 209, 209 (2019) (discussing disparities experienced by parents with psychiatric disabilities relating to ASFA compliance). See generally NAT'L COUNCIL ON DISABILITY, *supra* note 47, at 71–107 (examining the experiences of parents with disabilities involved with the family policing system and the system's lack of services).

231. Powell, *supra* note 169, at 146.

232. NAT'L COUNCIL ON DISABILITY, *supra* note 47, at 89.

233. *Id.*

234. Jude T. Pannell, *Unaccommodated: Parents with Mental Disabilities in Iowa's Child Welfare System and the Americans with Disabilities Act*, 59 DRAKE L. REV. 1165, 1173–75 (2011).

235. See Elizabeth Lightfoot, Traci Laliberte & Minhae Cho, *A Case Record Review of Termination of Parental Rights Cases Involving Parents with a Disability*, CHILD. & YOUTH SERVS. REV., Aug. 2017, at 399, 400; Sharyn DeZelar & Elizabeth Lightfoot, *Enhancing Supports for Parents with Disabilities: A Qualitative Inquiry into Parent Centered Planning*, 24 J. FAM. SOC. WORK 263, 276–77 (2021).

236. Sharyn DeZelar & Elizabeth Lightfoot, *Parents with Disabilities: A Case Study Exploration of Support Needs and the Potential of a Supportive Intervention*, 100 FAMS. SOC'Y 293, 294 (2019).

supporting millions of disabled people in the United States.²³⁷ These services help with activities of daily living such as bathing, dressing, and toileting, as well as instrumental activities of daily living like grocery shopping, cooking, and housecleaning.²³⁸ However, current government regulations restrict personal assistants from helping parents with disabilities in fulfilling parenting tasks.²³⁹

Ultimately, as Professors Sharyn DeZelar and Elizabeth Lightfoot observe, “[t]here is a dearth of available supports and services aimed specifically at parents with disabilities,” which is particularly troublesome because robust support networks for disabled parents not only enhance child outcomes but also reduce their involvement with the family policing system.²⁴⁰ Consequently, in the wake of the *Dobbs* ruling, disabled people may be compelled to carry pregnancies to term and give birth, and then experience significant unmet needs and lack of support. And because disabled parents and their children are unsupported, they face a considerable risk of having their legal parent–child relationship permanently severed.

C. SURVEILLANCE AND SCRUTINY

The systematic surveillance and scrutiny of disabled parents constitute yet another intricate layer in the web of mechanisms that facilitate the denial of their parental rights. As Professor Ora Prilleltensky astutely observes, parents with disabilities are often made to feel as though they are living under the constant scrutiny of “a societal magnifying glass.”²⁴¹ As this Section reveals, this societal magnifying glass is created, in part, by mandatory reporting requirements that compel certain professionals to report any suspected child maltreatment to the family policing system. Parents with disabilities often have more frequent and more intimate contact with mandatory reporters, such as healthcare providers, who scrutinize their parenting. Constant scrutiny driven by mandatory reporting adds to disabled parents’ challenges in asserting their rights.

The implementation of mandatory reporting laws under the Child Abuse Prevention and Treatment Act of 1974²⁴² significantly impacted surveillance and scrutiny by the family policing system. Allegations of child abuse or neglect often come to light through reports made by mandatory reporters, including professionals like teachers, childcare providers, healthcare professionals, and social service providers, who are legally obligated to report suspected incidents of child maltreatment.²⁴³ In some states, anyone, regardless of profession, is required to

237. NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 194.

238. *Id.*

239. *Id.* at 195; *see also* ROBYN POWELL, CMTY. LIVING POL’Y CTR., USING MEDICAID TO SUPPORT PARENTS WITH DISABILITIES 2 (2020), <https://heller.brandeis.edu/community-living-policy/docs/powell-itss-medicaid-parents.pdf> [<https://perma.cc/Z5WB-V5D8>] (“[M]ost states’ Medicaid programs do not include [personal care attendant] assistance for childrearing or fund adaptive parenting equipment.”).

240. DeZelar & Lightfoot, *supra* note 235, at 263–64.

241. Prilleltensky, *supra* note 152, at 23.

242. Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101–5106).

243. CHILD WELFARE INFO. GATEWAY, U.S. DEP’T OF HEALTH & HUM. SERVS., MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT 2 (2023), <https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/manda.pdf> [<https://perma.cc/53DC-45JQ>].

report any suspicions of child abuse or neglect.²⁴⁴ This reliance on mandatory reporting created a system heavily reliant on surveillance. Professors Lisa Goodman and Jennifer Fauci explain that “[s]urveillance—broadly defined as oversight, monitoring, or tracking by an authoritative body—has long been a feature of health and social service systems, particularly those designed for the poor.”²⁴⁵ Experts attribute marginalized families’ overrepresentation in the family policing system to the pervasive surveillance practices that they are subject to, primarily due to societal biases and prejudices.²⁴⁶ Consequently, the family policing system is more likely to report these families, subjecting them to further investigation and intervention, thereby perpetuating their overrepresentation in the system.

Parents with disabilities and their children are particularly vulnerable to intensified surveillance and scrutiny because of their regular contact with mandated reporters, such as disability service providers.²⁴⁷ For instance, disabled parents who require in-home assistance for activities of daily living are at an increased risk of being scrutinized due to the frequent presence of service providers in their homes.²⁴⁸ This constant surveillance creates discomfort and a loss of privacy, further exacerbating the challenges faced by disabled parents and their families. As Professor Claudia Malacrida describes,

The insertion of public institutions into women’s private lives through the avenue of home care services permits professionals to observe, judge and act upon individuals who are deemed to be “lacking” or “problematic”. For mothers with disabilities, these public–private intersections are both frequent and ambivalent. Mothers with disabilities depend on the services and programmes that professionals provide, but they are also likely to be prone to negative judgements by service providers because they fall short of ideal mothering standards.²⁴⁹

Thus, Professor Malacrida argues that disabled parents’ paid caregivers “operate as agents of discipline and surveillance,”²⁵⁰ a notion that is supported by recent national data analysis demonstrating the increased likelihood of disabled

244. *Id.* at 4 & n.26 (states with universal mandatory reporting laws include Delaware, Idaho, Indiana, Kentucky, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Utah, and Wyoming).

245. Lisa A. Goodman & Jennifer E. Fauci, *The Long Shadow of Family Separation: A Structural and Historical Introduction to Mandated Reporting in the Domestic Violence Context*, 35 J. FAM. VIOLENCE 217, 219 (2020) (citations omitted).

246. See Dorothy Roberts, Keynote, *How I Became a Family Policing Abolitionist*, 11 COLUM. J. RACE & L. 455, 459–60 (2021).

247. See NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 80–81 (explaining that parents with disabilities interact with social services providers, who are mandatory reporters, more often than nondisabled parents do).

248. Claudia Malacrida, *Gendered Ironies in Home Care: Surveillance, Gender Struggles and Infantilisation*, 13 INT’L J. INCLUSIVE EDUC. 741, 746–47 (2009).

249. *Id.* at 747.

250. *Id.*

parents' involvement with the family policing system because of their interactions with mandated reporters.²⁵¹ Specifically, service providers are more likely to refer parents with disabilities, particularly those with intellectual disabilities, to the family policing system, and these cases are more likely to be substantiated,²⁵² exacerbating disparate outcomes for parents with disabilities and their children. Consequently, disabled parents are at risk of being targeted by the family policing system due to their dependence on support and services for their disabilities.

Critically, the surveillance and scrutiny exercised by the family policing system and its agents (such as mandated reporters) often have adverse effects, as some parents are deterred from seeking assistance for fear of being reported to the authorities.²⁵³ For example, parents with disabilities often fear that asking for help invites the family policing system to question their capacity to rear their children or to label their children as "at risk."²⁵⁴ Further, disabled parents often feel like they must continuously prove their ability to parent independently, thus, preventing them from asking for others' assistance even if they need it.²⁵⁵ As Jean Jacob and colleagues note, "[t]heir concerns about the negative consequences of asking for assistance are not completely unfounded," citing a case involving two disabled parents who requested assistance and instead found themselves fighting for their right to rear their daughter.²⁵⁶ Indeed, healthcare providers, teachers, neighbors, disability service providers, and family members commonly report parents to the family policing system due to prejudiced attitudes and unfounded assumptions about parents with disabilities rather than actual child maltreatment.²⁵⁷ Thus, the family policing system's pervasive surveillance and scrutiny have hindered families rather than helped them.

In the aftermath of the *Dobbs* decision, disabled people forced to carry pregnancies to term and who choose to become parents will be subjected to intensified surveillance and scrutiny within the family policing system. Heightened scrutiny increases disabled parents' risks of losing rights, further compounding the obstacles they already encounter. The discriminatory nature of this surveillance stems from societal biases and assumptions that cast doubt on the parenting capabilities of disabled people, perpetuating stereotypes and marginalizing their role

251. See Sharyn DeZelar & Elizabeth Lightfoot, *Who Refers Parents with Intellectual Disabilities to the Child Welfare System? An Analysis of Referral Sources and Substantiation*, CHILD. & YOUTH SERVS. REV., Dec. 2020, at 1, 5.

252. *Id.*

253. Roberts, *supra* note 246, at 459–60.

254. Julia A. Rivera Drew, *Disability and the Self-Reliant Family: Revisiting the Literature on Parents with Disabilities*, 45 MARRIAGE & FAM. REV. 431, 439 (2009).

255. See Ora Prilleltensky, *My Child Is Not My Carer: Mothers with Physical Disabilities and the Well-Being of Children*, 19 DISABILITY & SOC'Y 209, 216 (2004).

256. Jean Jacob, Megan Kirshbaum & Paul Preston, *Mothers with Physical Disabilities Caring for Young Children*, 16 J. SOC. WORK DISABILITY & REHAB. 95, 96 (2017).

257. Powell et al., *supra* note 151, at 297.

as parents. Consequently, disabled parents face an unjust system that undermines their fundamental right to parenthood.

D. ABLEISM WITHIN THE FAMILY POLICING SYSTEM

The intricate interplay of societal norms, legal frameworks, and institutional practices creates a daunting array of challenges for disabled people seeking to parent effectively. These obstacles include deeply ingrained prejudices regarding their ability to parent, insufficient support, and the constant surveillance and scrutiny that disabled parents must endure. Tragically, these challenges all too often result in disabled parents becoming entangled in the family policing system, a profoundly ableist institution that routinely strips disabled parents of their parental rights. In other words, for disabled parents, the greatest threat to their ability to care for their children arises from the ableism entrenched within the family policing system. Following *Dobbs*, disabled people may be forced to bear children and then denied the right to raise them.

Ableism pervades every facet of a family's interaction with the family policing system, beginning with the system's definition of parental competence.²⁵⁸ The family policing system perceives interdependence as a deficiency and, thus, expects parents with disabilities to care for their children without assistance.²⁵⁹ Indeed, parents with disabilities are often evaluated based on their ability to independently provide all aspects of care for their children, even though most nondisabled parents rely on both formal and informal support for caregiving.²⁶⁰ Relatedly, the family policing system holds parents with disabilities "to a different and higher standard of parental competence than parents without disabilities," reflecting deeply ingrained ableist views.²⁶¹ Disabled mothers, in particular, are often held to a "super-mom" standard, requiring them to "invest more resources in raising their children" to ensure they become successful adults.²⁶² This heightened standard has led some parents to avoid disclosing their needs to the family policing system for fear of being questioned about their competence.²⁶³ Ultimately, parents with disabilities are often presumed incapable by professionals and laypeople alike unless the parents prove otherwise.²⁶⁴ This assumption

258. Powell, *supra* note 220, at 74–75.

259. *Id.*

260. Elizabeth Lightfoot & Traci LaLiberte, *Parental Supports for Parents with Intellectual and Developmental Disabilities*, 49 *INTELL. & DEVELOPMENTAL DISABILITIES* 388, 390 (2011) ("Parents have often been assessed based on whether they can independently be responsible for all aspects of caring for their child or children, even though most [nondisabled] parents rely on various formal and informal supports for caregiving.").

261. Drew, *supra* note 254, at 436.

262. Carmit-Noa Shpigelman, *How to Support the Needs of Mothers with Physical Disabilities?*, 37 *DISABILITY & REHAB.* 928, 931 (2015).

263. See, e.g., Patricia Tomasi, *Parents with Disabilities: These Moms Live in Fear of Losing Their Kids*, *HUFFPOST* (May 11, 2015), https://www.huffpost.com/archive/ca/entry/parents-with-disabilities-these-moms-live-in-fear-of-losing-the_n_7251484 [<https://perma.cc/3YL9-2U7P>].

264. Carol Thomas, *The Baby and the Bath Water: Disabled Women and Motherhood in Social Context*, 19 *SOCIO. HEALTH & ILLNESS* 622, 636 (1997).

reflects a guilty-until-proven-innocent approach that further marginalizes disabled parents within the family policing system.²⁶⁵ Consequently, disabled parents must conform to the ableist and often impractical expectations of the family policing system to prove their competence or face the possibility of losing their children forever.

Institutional and systemic ableism also profoundly impact their experiences, leading to adverse outcomes, including permanent separation, that often result from deeply ingrained biases and discriminatory practices within the family policing system.²⁶⁶ These biases can manifest in a variety of ways, from inaccessible and inappropriate parenting assessments to termination of parental rights cases that are decided based on unfounded assumptions and speculation rather than objective evidence.²⁶⁷ Moreover, disabled parents are subject to discriminatory laws and policies that disproportionately affect them and their children. For example, as of 2022, “forty-two states and the District of Columbia include parental disability as grounds for termination of parental rights,” despite such statutes being counter to the antidiscrimination principles outlined in the ADA.²⁶⁸ Even when these laws require a nexus between the parent’s disability and actual harm to the child, they are often subject to broad interpretations that allow for assumptions about the abilities of disabled parents to influence case outcomes.²⁶⁹ As a result, parents with disabilities face significant challenges when trying to protect their parental rights and ensure that they and their children are treated fairly and equitably within the family policing system.

Disabled parents face injustices in the family policing system, including disproportionate referrals, often leading to termination of parental rights.²⁷⁰ In fact, national data analysis revealed that 19% of children placed in foster care were removed, at least partially, due to parental disability.²⁷¹ Parents with intellectual or psychiatric disabilities are particularly vulnerable to family policing system involvement.²⁷² For instance, a national survey found that parents with

265. *Id.*

266. *See* Powell, *supra* note 220, at 76–77.

267. *Id.*

268. Powell, *supra* note 30, at 455, 464.

269. *See id.* at 464–65.

270. *See* NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 18, 106 (“Parents with disabilities face multiple layers of discrimination from the moment they enter the child welfare system.”).

271. Elizabeth Lightfoot & Sharyn DeZelar, *The Experiences and Outcomes of Children in Foster Care Who Were Removed Because of a Parental Disability*, CHILD. & YOUTH SERVS. REV., Mar. 2016, at 22, 26.

272. *See, e.g.*, Tim Booth & Wendy Booth, *Findings from a Court Study of Care Proceedings Involving Parents with Intellectual Disabilities*, 1 J. POL’Y & PRAC. INTELL. DISABILITIES 179, 180 (2004); Tim Booth, Wendy Booth & David McConnell, *Care Proceedings and Parents with Learning Difficulties: Comparative Prevalence and Outcomes in an English and Australian Court Sample*, 10 CHILD & FAM. SOC. WORK 353, 353, 355 & tbl.1 (2005); Maurice A. Feldman, *Parents with Intellectual Disabilities: Implications and Interventions*, in HANDBOOK OF CHILD ABUSE RESEARCH AND TREATMENT 401, 401 (John R. Lutzker ed., 1998); Maurice Feldman, Bruce Sparks & Laurie Case, *Effectiveness of Home-Based Early Intervention on the Language Development of Children of Mothers with Mental Retardation*, 14 RSCH. DEVELOPMENTAL DISABILITIES 387, 404 (1993); Gwynnyth

psychiatric disabilities were nearly eight times more likely to have contact with the family policing system than parents without such disabilities.²⁷³ Similarly, analysis of Washington state administrative data found that mothers with intellectual or developmental disabilities were the subject of a report to the family policing system within one year of birth in 22% of cases, and in 36% of cases within four years.²⁷⁴ In contrast, only 6% of mothers without intellectual disabilities were reported within one year of birth, and only 10% within four years.²⁷⁵ These findings highlight the shockingly high rates of family policing system involvement among disabled parents and their children and the grave injustices they face as a result of these interactions.

Parents with disabilities are also much more likely to have their children taken away by the family policing system than parents without disabilities. For instance, the study in Washington state found that infants born to mothers with intellectual or developmental disabilities had much higher removal rates than infants born to mothers without such disabilities.²⁷⁶ Similarly, parents with psychiatric disabilities were found to have significantly higher child removal rates than other parents in a national survey.²⁷⁷ In fact, removal rates are as high as 80% in cases involving parents with intellectual or psychiatric disabilities.²⁷⁸

Disabled parents and their children face an increased risk of having their parental rights terminated, a process often referred to as the “death penalty” of civil cases²⁷⁹ due to its severe, grave, irretrievably destructive, and irreversible

Llewellyn, David McConnell & Luisa Ferronato, *Prevalence and Outcomes for Parents with Disabilities and Their Children in an Australian Court Sample*, 27 CHILD ABUSE & NEGLECT 235, 239 (2003); David McConnell, Maurice Feldman, Marjorie Aunos & Narasimha Prasad, *Parental Cognitive Impairment and Child Maltreatment in Canada*, 35 CHILD ABUSE & NEGLECT 621, 627 (2011); Jill G. Joseph, Shashank V. Joshi, Amy B. Lewin & Madeleine Abrams, *Characteristics and Perceived Needs of Mothers with Serious Mental Illness*, 50 PSYCHIATRIC SERVS. 1357, 1358 (1999); Carol T. Mowbray, Daphna Oyserman, Judith K. Zemencuk & Scott R. Ross, *Motherhood for Women with Serious Mental Illness: Pregnancy, Childbirth, and the Postpartum Period*, 65 AM. J. ORTHOPSYCHIATRY 21, 33 (1995); Roberta G. Sands, Nancy Koppelman & Phyllis Solomon, *Maternal Custody Status and Living Arrangements of Children of Women with Severe Mental Illness*, 29 HEALTH & SOC. WORK 317, 320 (2004); Jung Min Park, Phyllis Solomon & David S. Mandell, *Involvement in the Child Welfare System Among Mothers with Serious Mental Illness*, 57 PSYCHIATRIC SERVS. 493, 494 (2006).

273. Katy Kaplan, Eugene Brusilovskiy, Amber M. O’Shea & Mark S. Salzer, *Child Protective Service Disparities and Serious Mental Illnesses: Results from a National Survey*, 70 PSYCHIATRIC SERVS. 202, 204 (2019).

274. Rebecca Rebbe, Sharan E. Brown, Rebecca A. Matter & Joseph A. Mienko, *Prevalence of Births and Interactions with Child Protective Services of Children Born to Mothers Diagnosed with an Intellectual and/or Developmental Disability*, 25 MATERNAL & CHILD HEALTH J. 626, 629 (2021).

275. *Id.*

276. *Id.*

277. See Kaplan et al., *supra* note 273, at 204.

278. NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 16 (“Removal rates where parents have a psychiatric disability have been found to be as high as 70 percent to 80 percent; where the parent has an intellectual disability, 40 percent to 80 percent.”).

279. *E.g.*, *In re K.A.W.*, 133 S.W.3d 1, 12 (Mo. 2004) (en banc) (“The termination of parental rights has been characterized as tantamount to a ‘civil death penalty.’” (quoting *In re N.R.C.*, 94 S.W.3d 799, 811 (Tex. App. 2002))).

nature.²⁸⁰ The process forces biological parents to sever their legal ties to their children under the guise that doing so is in their child's "best interest."²⁸¹ Accordingly, the Supreme Court recognizes it as one of the most egregious and devastating forms of state action.²⁸² Parents with disabilities face an alarming risk of having their parental rights terminated.²⁸³ This is evidenced by a national study showing that when children were removed from homes due to parental disability there was a 22% higher chance of both parents having their rights terminated, compared to removals unrelated to disability.²⁸⁴ This issue's gravity is further highlighted by an analysis of 2,064 appellate cases involving mothers with disabilities, which found that a staggering 93% resulted in the termination of their parental rights.²⁸⁵ Thus, parents with disabilities and their children are disproportionately more likely to suffer the devastating consequences of permanent separation.

Ultimately, the family policing system is imbued with ableism that perpetuates irreparable harm toward disabled parents and their children, often leading to the termination of their parental rights.²⁸⁶ Indeed, a disability label is often weaponized to deprive parents of their rights and credibility.²⁸⁷ The impact of this labeling is far-reaching, as it directly shapes the treatment that disabled parents receive and affects their likelihood of being reunited with their children.²⁸⁸ Thus, the entrenched ableism within the family policing system perpetuates systemic barriers that not only deprive disabled parents of the chance to raise their children but also exacerbate their marginalization and discrimination. These injustices become even more alarming with the prospect of forced pregnancies following the *Dobbs* decision.

III. DISABILITY REPRODUCTIVE JUSTICE

The assault on reproductive freedom in the United States highlights the continued discrimination and inequities faced by people with disabilities, with the recent *Dobbs* decision exacerbating these issues. As this Article elucidates, disabled people are at an elevated risk of being forced to carry a pregnancy to term and subsequently having their parental rights unjustly revoked. Disability

280. *M.L.B. v. S.L.J.*, 519 U.S. 102, 118–21 (1996) (holding that the state may not deny right to appeal a termination of parental rights based on the appellee's inability to pay).

281. Charisa Smith, *Finding Solutions to the Termination of Parental Rights in Parents with Mental Challenges*, 39 *LAW & PSYCH. REV.* 207, 208 (2015).

282. See *Santosky v. Kramer*, 455 U.S. 745, 759 (1982) ("Few forms of state action are both so severe and so irreversible.").

283. See NAT'L COUNCIL ON DISABILITY, *supra* note 47, at 77–78 (reporting studies finding high rates of termination of parental rights among disabled parents).

284. Lightfoot & DeZelar, *supra* note 271, at 26.

285. Powell et al., *supra* note 218, at 1093–94, 1095 tbl.2.

286. See Powell, *supra* note 220, at 73–79 (describing the pervasiveness of ableism in the family policing system).

287. L. Frunel & Sarah H. Lorr, *Lived Experience and Disability Justice in the Family Regulation System*, 12 *COLUM. J. RACE & L.* 477, 478 (2022) (pointing out that "the label of disability is used to strip parents of rights and credibility").

288. See *id.*

reproductive justice provides a crucial framework for understanding and addressing these complex, interconnected, and often overlooked issues. By drawing on disability justice and reproductive justice principles, this emerging framework offers a vision for activists, scholars, legal professionals, and policymakers to confront and dismantle the structural causes of these systemic inequities.

This Part introduces the concept of disability reproductive justice and argues for its adoption as a means for challenging the reproductive oppression of disabled people, particularly pertaining to forced pregnancy and threats to parenthood. Disability reproductive justice is crucial for dismantling the deeply ingrained and systemic reproductive inequities faced by people with disabilities. In particular, it requires developing and implementing legal and policy interventions that prioritize and safeguard their reproductive autonomy.

A. OVERVIEW AND GUIDING PRINCIPLES

Disability reproductive justice is a developing jurisprudential and legislative framework that seeks to elucidate and challenge the unique reproductive oppression exacted on people with disabilities through laws and policies.²⁸⁹ It is a complementary approach to existing understandings of reproductive health, rights, and justice, emphasizing the importance of recognizing and addressing the specific ways in which reproductive oppression is deeply entrenched in our legal frameworks, policies, and societal values. It is grounded in the principles and practices of two intersecting social movements and theoretical frameworks: disability justice and reproductive justice. By drawing on the strengths and insights of both movements, disability reproductive justice aims to create a comprehensive and nuanced understanding of disabled people's reproductive experiences and needs and to develop effective strategies for dismantling the systemic barriers they face in accessing reproductive autonomy and justice.

Disability justice, referred to as the “second wave” of the disability rights movement,²⁹⁰ was developed in 2005 by a collective of queer, trans, and racially marginalized disabled people, including Patty Berne, Mia Mingus, Stacey Milbern, Leroy Moore, Eli Clare, and Sebastian Margaret.²⁹¹ It is a movement, theory, and praxis founded on ten core principles aimed at creating a just and inclusive society for people with disabilities: intersectionality, leadership of the most impacted, anti-capitalist politics, cross-movement solidarity, recognizing

289. See Powell, *supra* note 15, at 261–71 (proposing “guiding principles . . . for a jurisprudential and legislative approach to achieving reproductive justice for people with disabilities”); Powell, *supra* note 19, at 1887–903; Powell, *supra* note 10, at 819–38; Robyn M. Powell, *Disability Reproductive Justice During COVID-19 and Beyond*, 72 AM. U. L. REV. 1821, 1853–58 (2023).

290. Patty Berne, *Disability Justice—A Working Draft by Patty Berne*, SINS INVALID (June 10, 2015), <https://www.sinsinvalid.org/blog/disability-justice-a-working-draft-by-patty-berne> [https://perma.cc/C3LY-7EYN] (explaining that disabled activists of color coalesced to consider a “second wave” of disability rights and ultimately created disability justice); Doron Dorfman, *Afterword: The ADA’s Imagined Future*, 71 SYRACUSE L. REV. 933, 935 (2021).

291. Berne, *supra* note 290; LEAH LAKSHMI PIEPZNA-SAMARASINHA, CARE WORK: DREAMING DISABILITY JUSTICE 15–16 (Lisa Factora-Borchers ed., 2018).

wholeness, sustainability, commitment to cross-disability solidarity, interdependence, collective access, and collective liberation.²⁹²

Disability justice demands an intersectional lens, recognizing that “we are many things, and they all impact us.”²⁹³ It requires us to “gratefully embrace the nuance that [intersectionality] brings to our lived experiences,” while also understanding that intersectional identities shape both how we perceive and how we are perceived.²⁹⁴ Disability justice was founded as a framework for building a movement that prioritizes the lives, needs, and organizing strategies of disabled people who identify as queer, trans, and/or Black and brown who have been marginalized and excluded from the predominantly white, single-issue approach of the mainstream disability rights movement.²⁹⁵ It emerged as a response to the disability rights movement’s inadequacies and stresses the significance of addressing the needs, experiences, and perspectives of marginalized people, such as those with intellectual disabilities, psychiatric disabilities, and disabilities within communities of color, that have historically been overlooked.²⁹⁶

Disability justice recognizes that individualistic approaches to addressing inequities are fundamentally insufficient and limiting. While disability rights focus primarily on individual rights, disability justice seeks to address systemic oppression and dismantle ableism and other forms of discrimination to achieve collective access and liberation for people with disabilities.²⁹⁷ Disability justice goes beyond law and policy, the primary concern of disability rights, by centering ableism as the root of disability oppression.²⁹⁸ As Sins Invalid explains, “Rights-based strategies often address the symptoms of inequity but not the root.”²⁹⁹ Disability justice also recognizes the layers of a complex and intentional system that has been fueled by centuries of “white supremacy that sanctioned the enslavement, institutionalization, criminalization, and sterilization of Black people for profit, dominance, and control.”³⁰⁰ With this in mind, disability justice aims to “radically transform social conditions and norms in order to affirm and support all people’s inherent right to live and thrive.”³⁰¹

Disability justice activists and scholars acknowledge that reproduction has historically been and still is used to control and subjugate people with disabilities.³⁰² Policies and laws that restrict the reproductive freedom of disabled people,

292. SINS INVALID, *supra* note 146, at 22–26.

293. *Id.* at 23.

294. *Id.*

295. PIEPZNA-SAMARASINHA, *supra* note 291, at 15.

296. *See* SINS INVALID, *supra* note 146, at 13; PIEPZNA-SAMARASINHA, *supra* note 291, at 15; Powell, *supra* note 194, at 437–38.

297. *See* SINS INVALID, *supra* note 146, at 22–26.

298. Talila “TL” Lewis, *Disability Justice Is an Essential Part of Abolishing Police and Prisons*, MEDIUM: LEVEL (Oct. 7, 2020), <https://level.medium.com/disability-justice-is-an-essential-part-of-abolishing-police-and-prisons-2b4a019b5730> [<https://perma.cc/Y3E9-SU3Q>].

299. SINS INVALID, *supra* note 146, at 15.

300. Natalie M. Chin, *Centering Disability Justice*, 71 SYRACUSE L. REV. 683, 696–97 (2021).

301. *Id.* at 716 (quoting Lewis, *supra* note 298).

302. *See* SINS INVALID, *supra* note 146, at 59–63.

including their right to choose if and when to have children, are clear examples of this.³⁰³ Moreover, disability justice activists and scholars recognize that those who experience the intersection of disability with other marginalized identities or statuses encounter increased reproductive oppression.³⁰⁴ As a result, disability justice recognizes the interconnectedness between ableism, racism, and reproductive oppression.³⁰⁵ Accordingly, for example, in response to the *Dobbs* decision, Sins Invalid explains that

[a]bleism's isolating impact means disabled people are already less likely to find safe options to terminate pregnancies. This context, along with the struggle of disabled people to obtain comprehensive sex education and healthcare, means that the overturning of *Roe v. Wade*, like the abortion bans that came before it, will be catastrophic for disabled folks.³⁰⁶

An intersectional approach is crucial for confronting reproductive oppression because it acknowledges that people have multiple identities and experiences that interact and overlap, creating unique forms of oppression and discrimination. By considering how different forms of oppression intersect, such as racism, ableism, sexism, homophobia, transphobia, classism, and more, an intersectional approach helps to address the complex and interconnected ways in which people are marginalized and oppressed. Without an intersectional approach, certain disabled people's needs and experiences are overlooked, and efforts to confront reproductive oppression will not be effective for all people with disabilities. For example, "[p]eople who exist at the intersection of race and disability experience a multi-dimensional form of discrimination that is continually at risk of being flattened to a single dimension—*either race or disability*—due to the limitations of our collective understanding of intersectionality."³⁰⁷ Therefore, an intersectional approach is necessary for addressing the systemic and structural barriers perpetuating reproductive injustices faced by people with disabilities.

Accordingly, a disability justice approach is crucial when responding to the *Dobbs* decision, as it considers the unique experiences and challenges faced by disabled people, particularly those who experience the intersection of disability with other marginalized identities or statuses. By centering their voices and needs, disability justice offers a more comprehensive and inclusive approach to reproductive justice that recognizes the interconnectedness of ableism, racism, classism, sexism, and reproductive oppression. In this way, a disability justice

303. *See id.*

304. *See id.*

305. *See id.*

306. *Reproductive Justice Is Disability Justice*, SINS INVALID (June 29, 2022), <https://www.sinsinvalid.org/news-1/2022/6/29/reproductive-justice-is-disability-justicela-justicia-reproductiva-es-justicia-de-discapacidad> [<https://perma.cc/CU6F-53FW>].

307. Alice Abrokwa, "When They Enter, We All Enter": Opening the Door to Intersectional Discrimination Claims Based on Race and Disability, 24 MICH. J. RACE & L. 15, 20–21 (2018).

approach ensures that their reproductive rights and freedoms are protected and upheld, regardless of any legal or policy changes that occur.

Reproductive justice is complementary to disability justice and offers another critical lens for confronting the persistent reproductive oppression faced by disabled people, especially considering the *Dobbs* ruling. The human rights framework guides reproductive justice and incorporates reproductive rights and social justice principles.³⁰⁸ It originated in 1994 when feminists of color sought to address reproductive rights issues within the context of broader social justice movements, particularly those confronting racism and classism.³⁰⁹ Reproductive justice is focused on access, while reproductive rights is centered on rights. In developing reproductive justice, the founders “shifted the conversation about bodily autonomy away from the reductionist, privileged, and somewhat fictitious rhetoric of choice and toward one that recognized that choice is not always an option and is always made within a particular social context.”³¹⁰ Thus, “[r]eproductive justice reframes the conversation from ‘choice’ to ‘access,’ because a legal right to abortion is meaningless if people cannot realistically access this care.”³¹¹

Reproductive justice, like disability justice, departs from individualistic approaches to equity. Disability justice emerged to address the disability rights movement’s shortcomings, while reproductive justice was created due to the reproductive rights movement’s exclusion of people of color and other marginalized groups.³¹² Thus, the reproductive justice movement addresses “the necessary enabling conditions to realize” the right not just to abortion, but to all decisions concerning reproductive health and bodily autonomy.³¹³ Consequently, reproductive justice expands on traditional understandings of reproductive rights in significant ways. First, it recognizes the broader social, legal, and institutional structures that impact people’s reproductive decisionmaking, placing a strong emphasis on expanding choice and access.³¹⁴ Second, it encompasses all aspects of reproductive freedom, including the right to have children and raise them in safe and supportive environments with dignity.³¹⁵ Furthermore, similar to

308. See Zakiya Luna & Kristin Luker, *Reproductive Justice*, 9 ANN. REV. L. & SOC. SCI. 327, 328, 329 n.4 (2013).

309. *Id.* at 328.

310. Rachael Strickler & Monica Simpson, *A Brief Herstory of SisterSong*, in RADICAL REPRODUCTIVE JUSTICE: FOUNDATIONS, THEORY, PRACTICE, CRITIQUE 50, 51 (Loretta J. Ross et al. eds., 2017).

311. NAT’L P’SHP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOC. NETWORK, *supra* note 61, at 3.

312. See Powell, *supra* note 19, at 1884–85.

313. Ross, *supra* note 12, at 4.

314. See *id.* (“Moving beyond a demand for privacy and respect for individual decision making to include the social supports necessary for our individual decisions to be optimally realized, this framework also includes obligations from our government for protecting women’s human rights. Our options for making choices have to be safe, affordable and accessible, three minimal cornerstones of government support for all individual life decisions.”).

315. See *id.* (“Instead of focusing on the means—a divisive debate on abortion and birth control that neglects the real-life experiences of women and girls—the Reproductive Justice analysis focuses on the ends: better lives for women, healthier families, and sustainable communities.”).

disability justice, reproductive justice advocates for “an integrated approach that [combines] constitutional protections and movement-based policy strategies.”³¹⁶

Finally, like disability justice, reproductive justice has an “explicitly intersectional” focus, “centering the experiences of women of color, the poor, queer communities, and the disabled.”³¹⁷ That is, it aims to confront how social status and identity factors—such as age, race, ethnicity, socioeconomic status, sexual orientation, gender identity, religion, and disability—intersect and influence people’s reproductive experiences.³¹⁸ This approach acknowledges that different forms of oppression are interconnected and that it is essential to consider all aspects of a person’s identity to develop effective solutions.

Thus, disability reproductive justice is a framework that draws upon the tenets of disability justice and reproductive justice to grapple with the long-standing reproductive oppression that disabled people face. This oppressive system is deeply entrenched within our laws, policies, and societal norms, and thus demands a multifaceted approach that involves multiple fields of expertise, including law, medicine, public health, social work, and organizing. In particular, disability reproductive justice emphasizes the importance of a multidisciplinary response that recognizes the complex interplay between disability, race, gender, and other identities. It also underscores the need for people with disabilities to be active participants and leaders in all legal and policy decisions that affect them. This approach recognizes that traditional decisionmaking processes have often excluded disabled people and reinforces the need for inclusion and participation. Overall, disability reproductive justice demands an integrated, holistic approach to confronting reproductive oppression that centers disabled people’s experiences and perspectives while recognizing the broader societal structures that shape their lives.

B. THE SIGNIFICANCE OF DISABILITY REPRODUCTIVE JUSTICE POST-*DOBBS*

The reproductive oppression of people with disabilities is a pervasive and widespread issue often overlooked by public and academic discourse.³¹⁹ This oppressive reality is mainly attributable to deeply ingrained biases and inequities within our laws, policies, and societal attitudes.³²⁰ As this Article reveals, the *Dobbs* decision will exacerbate these injustices, resulting in forced pregnancies and subsequent threats to parenthood. In response, disability reproductive justice

316. Priscilla A. Ocen, *Incapacitating Motherhood*, 51 U.C. DAVIS L. REV. 2191, 2240 (2018).

317. Melissa Murray, *Race-ing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade*, 134 HARV. L. REV. 2025, 2053 (2021).

318. Joan C. Chrisler, *Introduction: A Global Approach to Reproductive Justice—Psychosocial and Legal Aspects and Implications*, 20 WM. & MARY J. WOMEN & L. 1, 4 (2013) (noting that reproductive justice’s intersectional approach was influenced by transnational feminism).

319. See Powell, *supra* note 15, at 256–57 (documenting the need for “activists, legal professionals, scholars, and policymakers” to work to expand reproductive freedom for people with disabilities).

320. See Powell, *supra* note 19, at 1888–903 (advocating for “centering disabled people as leaders” to develop legal and policy responses that seek to preserve disabled people’s reproductive rights and bodily autonomy).

offers a critical framework for addressing these complex and often overlooked challenges. By prioritizing access and choice for disabled people concerning their reproduction, disability reproductive justice provides a comprehensive approach that integrates both disability and reproductive justice movements. This framework offers a vision for activists, scholars, legal professionals, and policymakers seeking to effectuate a paradigm shift toward reproductive freedom for disabled people.

Disability reproductive justice is founded on five essential principles that collectively challenge and dismantle long-standing reproductive inequities experienced by disabled people: targeting legal and policy responses to confront intersecting oppressions, including disabled voices in decisionmaking processes, protecting bodily autonomy and self-determination, removing barriers to health services and justice, and guaranteeing rights, justice, and wellness for disabled people and their families.³²¹ These principles work in cohesion to provide a comprehensive and intersectional approach to address the unique challenges they face in matters of reproduction. Disability reproductive justice promotes a holistic framework to challenge oppression and create an equitable reproductive landscape for disabled people.

IV. CONFRONTING THE CRUELTY OF *DOBBS*

As this Article reveals, the *Dobbs* decision's impact on people with disabilities is particularly severe, giving rise to a troubling paradox whereby they may be compelled to give birth, yet denied the opportunity to care for their children. This perpetuates a longstanding pattern of exploitation and subjugation, which continues to endure despite progress in other areas. Compounding this issue are the ongoing reproductive inequities exacted on disabled people, which are deeply embedded in our laws, policies, and societal norms. Thus, a comprehensive response is urgently needed to address these injustices and dismantle the systemic structures that enable them.

Drawing on disability reproductive justice principles, this Part outlines legal and policy solutions to address inequities and dismantle reproductive oppression faced by disabled people. Success will depend on centering disabled people as leaders and embracing intersectionality. Furthermore, a deep understanding of the complex challenges they face is necessary for meaningful change. Finally, we can only create a more equitable and just society for disabled people through a concerted, sustained, and multifaceted approach.

A. PROTECTING AND EXPANDING ABORTION RIGHTS AND ACCESS

To challenge the *Dobbs* decision's devastating outcomes, disability reproductive justice demands protecting and expanding abortion rights despite increasing restrictions. Even before the ruling, federal and state funding restrictions created substantial barriers to accessing abortion services for disabled people.

321. *Id.*

For example, the Hyde Amendment poses a significant obstacle for people with disabilities seeking abortion care. Enacted by Congress in 1976, this Amendment restricts federal funding for abortion, with exceptions for cases of life endangerment and eventually for cases of rape or incest.³²² People with disabilities, who often rely on federally funded health insurance programs like Medicaid or Medicare, are disproportionately affected by the Hyde Amendment.³²³ Currently, the Hyde Amendment prohibits federal funds from being used for abortion services, but states have the option to cover these services with their own funds.³²⁴ Most states align with federal guidelines.³²⁵ However, several states use state funds to provide broader coverage for medically necessary abortions.³²⁶ The result is a disparity in access to abortion care across different states, depending on their Medicaid coverage and abortion restrictions. To address this issue, Congress should permanently repeal the Hyde Amendment, such as through the proposed Equal Access to Abortion Coverage in Health Insurance (EACH) Act of 2023, which would end funding restrictions for Medicaid and government health insurance plans.³²⁷ Additionally, the Biden Administration should exclude the Hyde Amendment in annual budgets,³²⁸ while states supportive of abortion rights should allocate funding for abortion services for Medicaid or Medicare beneficiaries.

Moreover, efforts to protect and expand abortion rights and access must prioritize medication abortion, particularly as it accounts for more than half of all

322. Hyde Amendment, Pub. L. No. 94-439, § 209, 90 Stat. 1418, 1434 (1976) (codified as amended at 42 U.S.C. § 2000d); Pub. L. No. 102-112, § 509, 107 Stat. 1082, 1113 (1993) (adding the exception for cases of rape and incest). For more information on the Hyde Amendment, see generally Alina Salganicoff, Laurie Sobel, Ivette Gomez & Amrutha Ramaswamy, *The Hyde Amendment and Coverage for Abortion Services Under Medicaid in the Post-Roe Era*, KFF (Mar. 14, 2024), <https://www.kff.org/womens-health-policy/issue-brief/the-hyde-amendment-and-coverage-for-abortion-services/> [<https://perma.cc/M38P-Y63U>].

323. See Jae Kennedy, Elizabeth Geneva Wood & Lex Frieden, *Disparities in Insurance Coverage, Health Services Use, and Access Following Implementation of the Affordable Care Act: A Comparison of Disabled and Nondisabled Working-Age Adults*, 54 INQUIRY 1, 4 (2017) (finding that in 2016, approximately 38% of people with disabilities were covered by Medicaid compared to 10% of people without disabilities and 27% of people with disabilities were covered by Medicare compared to 0.5% of people without disabilities).

324. See Hyde Amendment, § 209, 90 Stat. at 1434; *Medicaid Coverage of Abortion*, GUTTMACHER INST. (Feb. 12, 2021), <https://www.guttmacher.org/node/27915/printable/print> [<https://perma.cc/R3F5-RZXW>].

325. See *id.*

326. See *id.* (“17 states have a policy to use their own Medicaid funds to pay for medically necessary abortion care beyond what the Hyde Amendment requires; 16 appear to be doing so in practice.”).

327. H.R. 561, 118th Cong. § 4 (2023); see also *EACH Act Would Remove Major Economic Barriers to Abortion Access in the U.S.*, CTR. FOR REPROD. RTS. (Mar. 25, 2021), <https://reproductiverights.org/each-act-would-remove-major-economic-barriers-to-abortion-access-in-the-u-s/> [<https://perma.cc/K6AR-9ZQQ>] (stating that the EACH Act would repeal the Hyde Amendment and “related abortion coverage bans”).

328. Bethany Van Kampen Saravia, *Biden’s Budget Is an Opportunity to Promote and Protect Abortion Access*, MS. MAG. (Jan. 9, 2023), <https://msmagazine.com/2023/01/09/biden-budget-2024-abortion-hyde-weldon-amendment/> [<https://perma.cc/3AZ4-Y4DD>].

abortions in the United States.³²⁹ It is often more affordable and easier to access than surgical abortion, making it especially important for disabled people facing financial constraints, travel limitations, or other barriers to care.³³⁰ However, medication abortion now faces escalating legal threats that could severely restrict or outright eliminate access nationwide. Antiabortion groups have filed lawsuits aiming to overturn the U.S. Food and Drug Administration's approval for mifepristone, one drug in the two-drug regimen used for medication abortions.³³¹ The Supreme Court heard oral argument in the case in March 2024.³³² Some have predicted that the Court appears likely to reject the legal challenges,³³³ but if they are successful, these challenges could make mifepristone unavailable across the United States, effectively ending access to medication abortion care. In addition, fifteen states have imposed restrictions on medication abortion access, including limiting provision to physicians only, requiring in-person visits, setting gestational age limits, and prohibiting mailing of the pills.³³⁴ Wyoming became the first state to ban both drugs used in medication abortions in March 2023, though that law has been temporarily blocked while litigation proceeds.³³⁵ These restrictions dramatically limit access to medication abortion.

329. Rachel K. Jones, Elizabeth Nash, Lauren Cross, Jesse Philbin & Marielle Kirstein, *Medication Abortion Now Accounts for More than Half of All US Abortions*, GUTTMACHER INST. (Dec. 1, 2022), <https://www.guttmacher.org/article/2022/02/medication-abortion-now-accounts-more-half-all-us-abortions> [<https://perma.cc/6K4Y-8WDZ>].

330. See Elyssa Spitzer & Maggie Jo Buchanan, *5 Key Facts About Medication Abortion*, CTR. FOR AM. PROGRESS (May 13, 2022), <https://www.americanprogress.org/article/5-key-facts-about-medication-abortion/> [<https://perma.cc/BC9F-HJYQ>].

331. Nina Totenberg, *Supreme Court Blocks Lower Court Decision in Case on FDA Approval of Abortion Pill*, NPR (Apr. 21, 2023, 6:59 PM), <https://www.npr.org/2023/04/21/1170742958/u-s-supreme-court-blocks-lower-court-decision-in-fda-approval-of-abortion-pill-c> [<https://perma.cc/WA3J-HQM8>]; Jasmine Cui & Danica Jefferies, *Map: Where Medication Abortion Is and Isn't Legal*, NBC NEWS (Aug. 16, 2023, 3:43 PM), <https://www.nbcnews.com/health/womens-health/map-pills-medication-abortions-are-legal-rcna70490> [<https://perma.cc/4PN2-8BAE>].

332. *Food and Drug Administration v. Alliance for Hippocratic Medicine*, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/food-and-drug-administration-v-alliance-for-hippocratic-medicine-2/> [<https://perma.cc/8DJL-PWYY>] (last visited Apr. 1, 2024); Melissa Quinn, *The Legal Battle over the Abortion Pill Has Reached the Supreme Court. Here's What to Know.*, CBS NEWS (Mar. 26, 2024, 11:25 PM), <https://www.cbsnews.com/news/abortion-pill-supreme-court-mifepristone-case-what-to-know/> [<https://perma.cc/96DP-BTYC>].

333. See, e.g., Melissa Quinn, *Supreme Court Seems Poised to Reject Abortion Pill Challenge After Arguments over FDA Actions*, CNS NEWS (Mar. 26, 2024, 8:06 PM), <https://www.cbsnews.com/news/supreme-court-abortion-pill-arguments-mifepristone/> [<https://perma.cc/Y8NT-KMSW>]; Mark Sherman, *Supreme Court Seems Likely to Preserve Access to the Abortion Medication Mifepristone*, AP (Mar. 26, 2024, 6:57 PM), <https://apnews.com/article/supreme-court-abortion-mifepristone-telemedicine-4406d53e8af90f6a523264f535f5adf8> [<https://perma.cc/NC4T-RXWT>].

334. *Medication Abortion*, GUTTMACHER INST. (Oct. 31, 2023), <https://www.guttmacher.org/state-policy/explore/medication-abortion> [<https://perma.cc/ZC2A-MQ48>].

335. David W. Chen & Pam Belluck, *Wyoming Becomes First State to Outlaw the Use of Pills for Abortion*, N.Y. TIMES (Mar. 17, 2023), <https://www.nytimes.com/2023/03/17/us/wyoming-abortion-pills-ban.html>; Mead Gruver, *Judge Blocks Wyoming's 1st-in-the-Nation Abortion Pill Ban While Court Decides Lawsuit*, AP (June 22, 2023, 2:02 AM), <https://apnews.com/article/wyoming-abortion-pill-ban-lawsuit-429266bcea6bf5ded1b9c9892ee5578b#> [<https://perma.cc/M759-JJMG>].

Given the threats, deliberate efforts to include disabled people and their unique needs in advocacy are vital to protecting medication abortion access for all. Advocacy must also tackle affordability barriers and work to expand telehealth and mail-order access, which remains limited even where legal.³³⁶ With medication abortion access under attack nationwide, disability-inclusive efforts focused on equity of access remain essential.

Relatedly, legal and policy efforts to expand telehealth services through legal and policy solutions are critical.³³⁷ Telehealth refers to the remote delivery of healthcare services through technology like videoconferencing and smartphones.³³⁸ Integrating telehealth enhances accessibility, especially for disabled people in transportation-limited rural areas.³³⁹ Clinics offering remote medication abortion consultations and care through telehealth, and those incorporating virtual care options into traditional in-person clinics have improved access to early abortion services.³⁴⁰ This is especially true in states where telehealth for abortion is permitted.³⁴¹ Accordingly, Congress should pass the Women's Health Protection Act (WHPA), which, among other provisions, would prevent states from imposing limitations on the use of telehealth services for medication abortion.³⁴² This would curb state restrictions and help improve access to abortion care via telehealth for people with disabilities.

More broadly, legal and policy responses focused on ensuring abortion care is accessible to people with disabilities are necessary. For example, increased enforcement and strengthened oversight mechanisms are needed to ensure abortion providers comply with existing federal disability rights laws, including the ADA,³⁴³

336. See Osub Ahmed, *States Must Expand Telehealth to Improve Access to Sexual and Reproductive Health Care*, CTR. FOR AM. PROGRESS (May 21, 2020), <https://www.americanprogress.org/article/states-must-expand-telehealth-improve-access-sexual-reproductive-health-care/> [https://perma.cc/M759-JJMG].

337. See SHAINA GOODMAN & ERIN MACKAY, NAT'L P'SHIP FOR WOMEN & FAMS., *DELIVERING ON THE PROMISE OF TELEHEALTH: HOW TO ADVANCE HEALTH CARE ACCESS AND EQUITY FOR WOMEN 14* (2021), <https://www.nationalpartnership.org/our-work/resources/health-care/delivering-promise-telehealth.pdf> [https://perma.cc/BU8D-L6JB] (recommending "[b]uild[ing] equity, accessibility, and flexibility into telehealth systems so that patients get the care they need, when they need it," including people who are deaf or blind and have access needs).

338. *What Is Telehealth?*, NEJM CATALYST (Feb. 1, 2018), <https://catalyst.nejm.org/doi/full/10.1056/CAT.18.0268> [https://perma.cc/NPY9-HQH3].

339. See Kathryn Wagner, *Healthcare Justice for Women with Disabilities: The Need for Integrative Primary Care Services and Education for Medical Providers*, 77 SEX ROLES 430, 431 (2017); George M. Powers, Lex Frieden & Vinh Nguyen, *Telemedicine: Access to Health Care for People with Disabilities*, 17 HOUS. J. HEALTH L. & POL'Y 7, 11 (2017).

340. See generally Fekede Asefa Kumsa, Rameshwari Prasad & Arash Shaban-Nejad, *Medication Abortion Via Digital Health in the United States: A Systematic Scoping Review*, NPJ DIGIT. MED., July 12, 2023, at 1.

341. See *id.* at 5.

342. Women's Health Protection Act of 2023, S. 701, 118th Cong. § 4(a)(1)(B)–(C) (2023); see also *Women's Health Protection Act (WHPA)*, CTR. FOR REPROD. RTS. (June 23, 2023), <https://reproductiverights.org/the-womens-health-protection-act-federal-legislation-to-protect-the-right-to-access-abortion-care/> [https://perma.cc/84VQ-ETEK] (explaining the provisions of the WHPA).

343. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101–121213).

Section 504,³⁴⁴ and ACA Section 1557 (Section 1557),³⁴⁵ by providing accommodations, accessible facilities and information, and nondiscriminatory care. Additionally, abortion funds and other organizations supporting people seeking abortions must expand disability inclusion efforts, such as by bolstering services like sign language interpreters and financial assistance tailored to disability needs.³⁴⁶ Further, policymakers must address transportation barriers, as even distances as short as fifty miles can prevent access to abortion care for people with limited transportation options.³⁴⁷ Increased funding and programs to provide accessible and affordable transportation are essential. Through a multifaceted approach focused on disability inclusion and access, barriers to abortion care for disabled people must be eliminated.

All federal- and state-level efforts must be pursued to establish a right to abortion, and they must include disabled people. On the federal level, for example, the WHPA would establish a nationwide statutory right to access abortion care without unnecessary barriers or restrictions.³⁴⁸ The WHPA would also prohibit states from enacting medically unnecessary restrictions on abortion, such as mandatory waiting periods, mandatory ultrasounds, and mandatory counseling.³⁴⁹ Likewise, the Reproductive Freedom for All Act would codify the essential holdings of *Roe v. Wade* and related cases protecting rights to access abortion and contraception.³⁵⁰ Meanwhile, the Biden Administration must pursue executive and regulatory actions related to the right to abortion.

Similarly, state-level advocacy is imperative, as evidenced by recent developments. Following *Dobbs*, the Supreme Court has returned the power to regulate abortion to the states.³⁵¹ Subsequently, voters have used their authority to safeguard abortion rights, with all seven states that held ballots on abortion measures voting in favor of access, including states traditionally considered to be conservative. In the months after the decision, California, Michigan, and Vermont

344. Rehabilitation Act of 1973, Pub. L. No. 93-112, §504, 87 Stat. 355, 394 (codified at 29 U.S.C. § 794).

345. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1557, 124 Stat. 119, 260 (2010) (codified at 42 U.S.C. § 18116); 45 C.F.R §§ 92.102–.105 (2024).

346. See, e.g., The Takeaway, *Reproductive Justice & Disability Justice Are One and the Same*, WNYC STUDIOS (Aug. 23, 2022), <https://www.wnycstudios.org/podcasts/takeaway/segments/reproductive-and-disability-justice> [<https://perma.cc/C4G6-XEX4>] (interviewing disability and reproductive justice activists who describe ways that abortion funds can include people with disabilities).

347. See Jason M. Lindo, Caitlin Knowles Myers, Andrea Schlosser & Scott Cunningham, *How Far Is Too Far? New Evidence on Abortion Clinic Closures, Access, and Abortions*, 55 J. HUM. RES. 1137, 1152 (2020) (noting that abortions are reduced by 16% when the abortion clinic is 50–100 miles away from the patient).

348. Women’s Health Protection Act of 2023, S. 701, 118th Cong. § 2(1); see CTR. FOR REPROD. RTS. *supra* note 342.

349. See S. 701 § 4(a)(1)(E), (H), (2)(C); CTR. REPROD. RTS. *supra* note 342.

350. See Reproductive Freedom for All Act, S. 317, 118th Cong. § 2 (2023).

351. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 292 (2022) (holding that “*Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives”).

confirmed abortion rights, while antiabortion measures were defeated in Kansas, Kentucky, Montana, and Ohio.³⁵² While these developments are promising, more action is necessary to ensure equitable abortion access, such as addressing laws in states that support abortion but restrict the use of public funds for abortion and establishing rights. This is especially crucial in a post-*Dobbs* America. An alternative is to prevent state legislatures from enacting restrictions that would reverse prior abortion laws or criminalize people seeking or providing abortions. In addition to the aforementioned tactics, legal professionals should challenge state trigger laws that became operative once *Roe* was overturned under federal law and the Supremacy Clause, as is currently taking place in Idaho.³⁵³

The abortion rights movement should continue to urge state legislators to expand existing access. Indeed, state responses to *Dobbs* have been robust so far. Oregon and New York, for example, allocated significant funds to support people seeking abortion services, including those traveling from out of state because their home state banned the procedure.³⁵⁴ In addition, five states (Connecticut, New York, Delaware, New Jersey, and Massachusetts) passed laws protecting, to various extents, abortion providers who care for people from out of state.³⁵⁵ Notably, Massachusetts overhauled its telehealth rules to permit abortion

352. Amy B. Wang & Leigh Ann Caldwell, *12 States Where the Fate of Abortion Rights Could Be on 2024 Ballots*, WASH. POST (Mar. 20, 2024, 10:25 AM), <https://www.washingtonpost.com/politics/2023/12/20/abortion-rights-2024-ballot-measures/>.

353. See Hannah Rabinowitz & Veronica Stracqualursi, *Biden Justice Department Sues Idaho over State's Abortion Restrictions in First Post-Dobbs Lawsuit*, CNN (Aug. 2, 2022, 4:45 PM), <https://www.cnn.com/2022/08/02/politics/justice-department-abortion-idaho/index.html> [https://perma.cc/M97G-9LQH]. The Supreme Court announced that it would take up the issue presented in the case: whether the Emergency Medical Treatment and Active Labor Act—which would require “hospitals in states that ban abortion to perform the procedure on pregnant patients whose lives are at risk”—preempts Idaho’s law restricting access to abortion. Melissa Quinn, *Supreme Court Lets Idaho Enforce Abortion Ban for Now and Agrees to Hear Case*, CBS NEWS (Jan. 5, 2024, 5:23 PM), <https://www.cbsnews.com/news/supreme-court-idaho-abortion-ban/> [https://perma.cc/CDB7-GV6R].

354. See Casey Parks, *States Pour Millions into Abortion Access*, WASH. POST (May 13, 2022, 12:22 PM), <https://www.washingtonpost.com/dc-md-va/2022/05/13/oregon-new-york-funding-abortion/>.

355. See Veronica Stracqualursi & Paul LeBlanc, *Connecticut Governor Signs Law Protecting Abortion Seekers and Providers from Out-of-State Lawsuits*, CNN POL. (May 5, 2022, 6:01 PM), <https://www.cnn.com/2022/05/05/politics/connecticut-abortion-protection-law-out-of-state-lawsuits/index.html> [https://perma.cc/F6LN-HSA3]; Veronica Stracqualursi, *New York Governor Signs Legislative Package Aimed at Protecting Patients and Abortion Providers from Out-of-State Legal Action*, CNN POL. (June 13, 2022, 7:54 PM), <https://www.cnn.com/2022/06/13/politics/kathy-hochul-abortion-new-york/index.html> [https://perma.cc/R6AN-TMZL]; Amy Simonson, *Delaware Governor Signs Bill Expanding Abortion Access and Provider Protection*, CNN POL. (June 29, 2022, 9:02 PM), <https://www.cnn.com/2022/06/29/politics/delaware-governor-signs-abortion-access-law/index.html> [https://perma.cc/R6AN-TMZL]; Kiely Westhoff, Samantha Beech & Shawna Mizelle, *New Jersey Governor Signs Bills Protecting Out-of-State Abortion Seekers and Reproductive Health Care Providers*, CNN POL. (July 1, 2022, 6:48 PM), <https://www.cnn.com/2022/07/01/politics/new-jersey-abortion-reproductive-rights-laws/index.html> [https://perma.cc/7JT5-KXHU]; Steve LeBlanc, *Gov. Baker Signs Bill Protecting Abortion Access*, WBUR (July 29, 2022), <https://www.wbur.org/news/2022/07/29/gov-baker-signs-bill-protecting-abortion-access> [https://perma.cc/ZWX4-2XPT] (describing a “bill designed to protect access to [abortion] in Massachusetts”).

providers to care for people in other states by telehealth,³⁵⁶ which could significantly benefit disabled people.

Finally, even in abortion-hostile states, opportunities for advocacy exist that could protect disabled people's rights. For example, several states with abortion restrictions or bans have exceptions for rape, incest, or life endangerment.³⁵⁷ However, in practice, few exceptions are provided.³⁵⁸ As described above, pregnancy can be life-threatening for people with disabilities.³⁵⁹ Nonetheless, state statutes' narrow and ambiguous definitions of "endangerment" or "medical emergency" often fail to adequately account for the health and well-being of disabled people, frequently excluding them from receiving needed care.³⁶⁰ These limited definitions and exceptions are often "stringently defined," making physicians more hesitant to provide abortions even when legally permitted, and thereby denying disabled people essential health services.³⁶¹ Notably, the Oklahoma Supreme Court recently ruled that two laws banning abortions were unconstitutional because of narrow definitions of "medical emergency," suggesting state constitutional challenges may be fruitful even in states hostile to abortion rights.³⁶² Therefore, activists, scholars, legal professionals, and policymakers should explore how these laws could expand disabled people's abortion rights.

B. ENSURING ACCESS TO REPRODUCTIVE HEALTH SERVICES AND INFORMATION

In the context of the *Dobbs* ruling, ensuring access to reproductive health services and information is crucial to effectively confront the issue of forced pregnancies, tackle their underlying causes, and mitigate the harms experienced by people with disabilities. A disability reproductive justice approach prioritizes equitable access to reproductive health services and information for disabled people, considering their specific barriers and needs.³⁶³ By recognizing these distinctive needs, targeted solutions can be developed to address and challenge these obstacles.

The healthcare system's ableist structures and mistreatment of disabled people have historically led to discrimination and significant barriers to accessing reproductive

356. Act of July 29, 2022, ch. 127, §§ 1, 4, 6, 2022 Mass. Acts 740, 742, 744–45.

357. Amy Schoenfeld Walker, *Most Abortion Bans Include Exceptions. In Practice, Few Are Granted.*, N.Y. TIMES (Jan. 21, 2023), <https://www.nytimes.com/interactive/2023/01/21/us/abortion-ban-exceptions.html>.

358. *Id.*

359. *See supra* Section I.D.

360. *See, e.g.*, OKLA. STAT. tit. 63, § 1-745.52 (banning abortions except when "necessary to save the life of a pregnant woman in a medical emergency," but not defining medical emergency); *see also* Meena Venkataramanan, *Their Medications Cause Pregnancy Issues. Post-Roe, That Could Be Dangerous*, WASH. POST (July 25, 2022, 11:39 AM), [https://www.washingtonpost.com/health/2022/07/25/disabled-people-abortion-restrictions/\(describing how ambiguous and narrow exceptions exclude people with disabilities\)](https://www.washingtonpost.com/health/2022/07/25/disabled-people-abortion-restrictions/(describing%20how%20ambiguous%20and%20narrow%20exceptions%20exclude%20people%20with%20disabilities)).

361. Venkataramanan, *supra* note 360.

362. Okla. Call for Reprod. Just. v. State, 531 P.3d 117, 122 (Okla. 2023) (per curiam); *see also* Jacey Fortin, *Oklahoma Supreme Court Rules New Abortion Bans Unconstitutional*, N.Y. TIMES (May 31, 2023), <https://www.nytimes.com/2023/05/31/us/oklahoma-supreme-court-abortion-bans.html>.

363. *See supra* Section I.A.

health services and information.³⁶⁴ In response, legal and policy solutions should target obstacles hindering access to reproductive health services and information, including attitudinal, communication, physical, policy, programmatic, social, and transportation barriers. To do so, the U.S. Department of Justice (DOJ) and the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) should prioritize investigating and enforcing complaints related to violations of federal disability rights laws by reproductive health services and information providers. They should also issue updated guidance on reproductive health providers' legal responsibilities under Section 504, the ADA, and Section 1557. Further, the Biden Administration must enact regulations for medical diagnostic equipment (such as examination tables, examination chairs, weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes).³⁶⁵ In particular, HHS should adopt the U.S. Access Board's 2017 standards for accessible medical diagnostic equipment by incorporating them into Section 504 of the Rehabilitation Act, as recently proposed in OCR's 2023 Advanced Notice of Proposed Rulemaking.³⁶⁶ Alternatively, the DOJ should finally issue ADA regulations concerning medical diagnostic equipment.³⁶⁷ Moreover, reproductive health providers must receive ongoing training about disability, accessibility, effective communication, informed consent, supported decisionmaking, and federal disability rights. This training will enable them to provide inclusive and appropriate care for disabled people.³⁶⁸

In addition, Congress should prioritize the Reproductive Health Care Accessibility Act.³⁶⁹ This legislation allocates funding for healthcare provider training programs and expands the reproductive healthcare nursing workforce to include more disabled people.³⁷⁰ It also increases education programs that focus on disabled people's unique reproductive health needs, establishes a technical assistance center for reproductive healthcare for this population, and mandates a study on reproductive healthcare for disabled people.³⁷¹

Another important consideration is ensuring that transportation to and from reproductive health services and information providers is accessible to and

364. See Alicia Ouellette, *Patients to Peers: Barriers and Opportunities for Doctors with Disabilities*, 13 NEV. L.J. 645, 661–63 (2013) (discussing “discriminatory attitudes that permeate medical culture”).

365. See Elizabeth Pendo, *The Costs of Uncertainty: The DOJ's Stalled Progress on Accessible Medical Equipment Under the Americans with Disabilities Act*, 12 ST. LOUIS U. J. HEALTH L. & POL'Y 351, 355–59 (2019) (reviewing regulatory and legislative attempts to issue standards for accessible medical diagnostic equipment).

366. Discrimination on the Basis of Disability in Health and Human Service Programs or Activities, 88 Fed. Reg. 63392, 63449–50 (proposed Sept. 14, 2023) (to be codified at 45 C.F.R. pt. 84).

367. The Advanced Notice of Proposed Rulemaking was withdrawn by the Trump Administration in 2017. See Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions, 82 Fed. Reg. 60932, 60932 (Dec. 26, 2017).

368. See Taouk et al., *supra* note 45, at 209 (finding that only 17% of obstetrician–gynecologists included in a study had any formal training about disabled women).

369. S. 4764, 117th Cong. (2022).

370. *Id.* §§ 3, 5.

371. *Id.* §§ 6–8.

affordable for disabled people. This must include providing accessible and affordable transportation options and addressing physical barriers (for example, uneven sidewalks or inaccessible entrances) that may prevent them from accessing facilities. Activists, scholars, legal professionals, and policymakers should pursue federal and state efforts to expand accessible and affordable transportation options.

Furthermore, comprehensive and accessible information about sexuality and reproduction for disabled people is needed.³⁷² Despite legal requirements, including the Individuals with Disabilities Education Act and Section 504, which mandate access to comprehensive sex education for disabled students, many people with disabilities still do not receive this education.³⁷³ This lack of access can lead to increased rates of unintended pregnancy and other adverse outcomes.³⁷⁴ Comprehensive sex education is vital in preventing sexual violence among disabled people by imparting knowledge about consent, boundaries, healthy relationships, and recognizing abuse.³⁷⁵ Additionally, it supports their bodily autonomy and self-determination by equipping them with the information needed to make informed decisions. Accordingly, activists, scholars, legal professionals, and policymakers should push for the U.S. Department of Education to establish specific sexual education standards for disabled students. Health and disability service providers must also ensure that disabled people receive ongoing and comprehensive information about reproduction, including information that includes diverse sexual orientations and gender identities.

Lastly, ensuring access to contraception is crucial in preventing unintended pregnancies, especially for disabled people who encounter significant barriers to obtaining contraception.³⁷⁶ The *Dobbs* decision not only overturned the right to abortion but also raised concerns about the future of the right to contraception. While the majority opinion distinguished contraception from abortion,³⁷⁷ Justice Clarence Thomas's concurrence targeted the Court's broader jurisprudence on substantive due process, advocating to put the right to contraception at risk.³⁷⁸ Contraception is crucial for reproductive freedom, and efforts to protect it must be prioritized. Moreover, efforts should be made to advocate for the inclusion of explicit coverage of effective and reliable contraception and other pregnancy prevention methods in health insurance plans.

372. See *supra* Section I.A.

373. James Sinclair, Laurie G. Kahn, Dawn A. Rowe, Valerie L. Mazzotti, Kara A. Hirano & Christen Knowles, *Collaborating to Plan and Implement a Sex Education Curriculum for Individuals with Disabilities*, 40 CAREER DEV. & TRANSITION FOR EXCEPTIONAL INDIVIDUALS 123, 123 (2017) (noting that these laws mandate access to comprehensive sex education only when schools already offer it).

374. See *supra* Section I.A.

375. See Connie McGiloway, David Smith & Rose Galvin, *Barriers Faced by Adults with Intellectual Disabilities Who Experience Sexual Assault: A Systematic Review and Meta-Synthesis*, 33 J. APPLIED RSCH. INTELL. DISABILITIES 51, 61–63 (2020) (reviewing scientific literature about the importance of sex education for people with intellectual disabilities).

376. See *supra* Section I.A.

377. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 295 (2022).

378. See *id.* at 332–33 (Thomas, J., concurring).

C. CONFRONTING POVERTY

Addressing threats to the reproductive freedom of disabled people, including forced pregnancies and threats to parental rights, requires a comprehensive approach prioritizing legal and policy solutions to combat the systemic poverty they and their families often endure. Poverty negatively impacts their reproduction, limiting access to reproductive health services and increasing their risk of family policing system involvement.³⁷⁹ Therefore, disability reproductive justice demands confronting economic insecurity imposed on disabled people and their families, especially those who are multiply marginalized.

Implementing universal basic income (UBI) for families is a promising solution to address economic insecurity.³⁸⁰ At its core, UBI provides a regular, unconditional cash transfer to every person, helping them meet their basic needs.³⁸¹ This approach differs from traditional means-tested programs, which often come with complex eligibility criteria and bureaucratic hurdles.³⁸² Several countries, including Canada, Finland, and India, have experimented with UBI programs, and emergent research suggests that they can help to prevent child maltreatment.³⁸³ In addition, implementing a UBI in place of existing benefit programs could streamline the administration of benefits, reduce government spending, and provide people with the assistance they need without navigating complicated bureaucracies.³⁸⁴ Although UBI was historically viewed as impractical, the rapid disbursement of COVID-19 relief payments demonstrates the potential to implement such policies when there is political will.³⁸⁵ By embracing this bold and innovative approach, the United States can take a significant step toward addressing the root causes of poverty among disabled parents and their children.

A more immediate strategy for addressing the poverty exacted on disabled people and their children is expanding government assistance programs, such as SSI.³⁸⁶ This should involve increasing benefit amounts and eliminating restrictive program rules that impose strict asset and income limitations, ultimately improving the financial well-being of people with disabilities and their children. Implementing a UBI would eliminate the need for such programs in the long term, but it may take time to implement. Therefore, changes to program rules could provide much-needed relief to people with disabilities and their children immediately.

379. See *supra* Sections I.A, II.B.

380. See Anupama Jacob & Reiko Boyd, *Addressing Economic Vulnerability Among Low-Income Families in America: Is the Basic Income Approach a Viable Policy Option?*, 26 J. CHILD. & POVERTY 85, 86 (2020).

381. See *id.*

382. See *id.* at 92.

383. See *id.* at 88–91.

384. See *id.* at 92.

385. See generally Andrew F. Johnson & Katherine J. Roberto, *The COVID-19 Pandemic: Time for a Universal Basic Income?*, 40 PUB. ADMIN. & DEV. 232 (2020) (arguing that COVID-19 relief payments reinforce the importance and potential of UBI).

386. See *supra* Section II.B.

In addition to programmatic solutions, policymakers must address the broader societal issues contributing to poverty among disabled people and their children. This includes advocating for livable wages, as many are disproportionately impacted by poverty and economic insecurity.³⁸⁷ In addition, increasing education and employment opportunities can create pathways to financial stability and greater autonomy in decisionmaking regarding reproduction. Access to affordable and accessible housing is also critical, as people with disabilities are often excluded from the housing market due to discriminatory practices and limited accessibility.³⁸⁸ Universal health insurance is also essential, as reproductive healthcare is often prohibitively expensive and inaccessible to those with disabilities.³⁸⁹ Furthermore, efforts to implement affordable childcare would benefit disabled parents.

Confronting systemic poverty and ensuring equitable access to reproductive health services and information for all, regardless of financial status, location, or identity, is crucial to addressing the devastating consequences of the *Dobbs* decision. A comprehensive approach is necessary, recognizing the intersections of disability, race, class, gender, and other factors contributing to inequitable access. By tackling poverty and its impacts, we can enhance access to reproductive health services, reduce vulnerability to the family policing system, and provide essential support. Dismantling these systemic barriers is essential to achieving true reproductive freedom for disabled people.

D. DEFENDING BODILY AUTONOMY AND SELF-DETERMINATION

In the wake of the *Dobbs* decision, prioritizing legal and policy responses that uphold bodily autonomy and self-determination is imperative. This involves protecting against forced pregnancies, preserving parental rights, and ensuring disabled people can make informed decisions about their bodies and lives without coercion or discrimination. Defending bodily autonomy and self-determination necessitates providing accessible and comprehensive reproductive health services and information while ensuring disabled people have the necessary resources, support, and information to exercise their reproductive freedom.

Guardianship, also known as conservatorship in some states, is a widely utilized legal mechanism restricting people with disabilities' autonomy and self-determination. It establishes a fiduciary relationship between a guardian and a disabled person, granting the guardian the power to make decisions about the person's well-being and property.³⁹⁰ These decisions encompass deeply personal aspects of the disabled person's life, including reproductive health, medical and

387. See *supra* Section I.B.

388. See, e.g., Jaboa Lake, Valerie Novack & Mia Ives-Rublee, *Recognizing and Addressing Housing Insecurity for Disabled Renters*, CTR. FOR AM. PROGRESS (May 27, 2021), <https://www.americanprogress.org/article/recognizing-addressing-housing-insecurity-disabled-renters/> [<https://perma.cc/LW84-6GBZ>].

389. *Id.*

390. *Guardianship*, BLACK'S LAW DICTIONARY (11th ed. 2019).

psychiatric treatment, finances, and even social relationships.³⁹¹ State law primarily governs the establishment and execution of guardianships, where a judge or jury appoints a legal custodian for people considered in need of protection.³⁹² Unfortunately, this process leads to excessively strict or abusive guardianships for more than one million disabled people.³⁹³

An example of guardians exerting control over disabled people's reproductive freedom can be seen in the thirty-one states and the District of Columbia where involuntary sterilization laws still exist.³⁹⁴ These laws allow guardians appointed by the court to sterilize disabled people, regardless of their wishes.³⁹⁵ Additionally, guardians often have the authority to make contraception decisions, as highlighted in Britney Spears's case.³⁹⁶ Britney Spears was placed under a court-ordered conservatorship from 2008 to 2021, during which her conservator prevented her from making her own reproductive choices, like removing her intrauterine device (IUD).³⁹⁷ Thus, as the National Partnership for Women and Families and the Autistic Self Advocacy Network observes, people without disabilities often exert control over people with disabilities, imposing on them "how to live, whether they can or should have children, whether they can or should have sex, what interventions they 'need' for their bodies or minds, among other intrusions."³⁹⁸

To secure disabled people's fundamental rights and dignity, society must dismantle oppressive legal constructs like guardianship and enact new frameworks that empower disabled people to make their own choices about their bodies and lives. Advocates promote supported decisionmaking as a flexible alternative to guardianship, allowing people with disabilities to seek assistance from trusted individuals without court involvement.³⁹⁹ Supported decisionmaking represents a paradigm shift from the prevailing "substituted decision-making" model, which grants control to a

391. Press Release, Disability Just. & Supported Decision-Making Advocs., Britney Spears Spotlights the Need for Change Now (June 25, 2021), <https://supporteddecisions.org/2021/06/25/britney-spears> [<https://perma.cc/VKG3-GH35>].

392. See J. Matt Jameson, Tim Riesen, Shamby Polychronis, Barbara Trader, Susan Mizner, Jonathan Martinis & Dohn Hoyle, *Guardianship and the Potential of Supported Decision Making with Individuals with Disabilities*, 40 RSCH. & PRAC. FOR PERSONS WITH SEVERE DISABILITIES 36, 37 (2015).

393. See Heidi Blake & Katie J.M. Baker, *Beyond Britney: Abuse, Exploitation, and Death Inside America's Guardianship Industry*, BUZZFEED NEWS (Sept. 17, 2021, 1:02 PM), <https://www.buzzfeednews.com/article/heidiblake/conservatorship-investigation-free-britney-spears> [<https://perma.cc/339B-BXAN>]; DiMatteo et al., *supra* note 115.

394. NAT'L WOMEN'S L. CTR., FORCED STERILIZATION OF DISABLED PEOPLE IN THE UNITED STATES 5 (2022), [<https://perma.cc/748L-EN9N>].

395. See Powell, *supra* note 19, at 1868–71 (mentioning specific instances and cases where disabled people were sterilized against their wishes).

396. See *id.* at 1871.

397. *Id.* at 1853–54.

398. NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOC. NETWORK, *supra* note 61, at 4.

399. See DiMatteo et al., *supra* note 115; U.S. *Supported Decision-Making Agreement Laws*, CPR: SUPPORTED DECISION-MAKING, <https://supporteddecisions.org/resources-on-sdm/state-supported-decision-making-laws-and-court-decisions/> [<https://perma.cc/48UQ-62GC>] (last visited Apr. 1, 2024) (listing states that have implemented supported decisionmaking).

disabled person's legal guardian.⁴⁰⁰ Thus, as Professors Emily Largent and colleagues explain, "[t]he difference between guardianship, the traditional way to help those with such impairments, and supported decision-making is analogous to the difference between a dictatorship and self-rule."⁴⁰¹ Supported decisionmaking enables people with disabilities to maintain control over important decisions with the help of trusted allies, like family members or close friends. Thus, the disabled person remains in charge of crucial decisions, with supporters only offering assistance without taking away the person's autonomy.⁴⁰² In contrast, guardianship grants complete decisionmaking power to a single guardian, stripping the person of their right to make choices.⁴⁰³ The National Council on Disability and the United Nations Convention on the Rights of Persons with Disabilities thus endorse supported decisionmaking as a human rights-based alternative to guardianship's overreach.⁴⁰⁴

Supported decisionmaking enjoys widespread bipartisan support in the United States alongside disability rights advocates and other stakeholders.⁴⁰⁵ In 2015, Texas made history by officially becoming the first state to recognize supported decisionmaking.⁴⁰⁶ Recently, California joined at least fourteen other states and the District of Columbia in establishing legal frameworks for these arrangements.⁴⁰⁷ Legislation has been proposed in various states, including Massachusetts, Oregon, New Mexico, and West Virginia.⁴⁰⁸ Additionally, in several states, it is mandatory to consider supported decisionmaking agreements before appointing a guardian.⁴⁰⁹

Notably, interest in Congress is growing to address guardianship abuse.⁴¹⁰ For example, in March 2023, the Senate Special Committee on Aging held a bipartisan

400. CTR. FOR REPROD. RTS, *supra* note 108, at 22.

401. Emily Largent, Andrew Peterson & Jason Karlawish, *Britney Spears Didn't Feel Like She Could Live 'a Full Life.' There's Another Way*, N.Y. TIMES (Apr. 3, 2023), <https://www.nytimes.com/2023/04/03/opinion/guardianship-britney-spears-decision-making.html>.

402. *Id.*

403. *Id.*

404. See NAT'L COUNCIL ON DISABILITY, BEYOND GUARDIANSHIP: TOWARD ALTERNATIVES THAT PROMOTE GREATER SELF-DETERMINATION 121 (2018), <https://www.ncd.gov/assets/uploads/docs/ncd-guardianship-report-accessible.pdf> [<https://perma.cc/5GLB-MXTE>] (describing supported decisionmaking as "the most promising and comprehensive alternative to guardianship"); see Robert D. Dinerstein, *Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making*, HUM. RTS. BRIEF, Jan. 2012, at 8, 8–9 (explaining that the Convention on the Rights of Persons with Disabilities promotes supported decisionmaking).

405. See Largent et al., *supra* note 401 (noting that states as historically liberal as California and historically conservative as West Virginia and Texas have both implemented supported decisionmaking legislation).

406. *Id.*

407. *Id.*

408. *Id.*

409. *Id.*

410. See Veronica Stracqualursi, *Lawmakers Unveil Bipartisan Bill to 'Free Britney,' Targeting Conservatorships' Abuse*, CNN POL. (July 20, 2021, 12:40 PM), <https://www.cnn.com/2021/07/20/politics/free-act-conservatorships-britney-spears/index.html> [<https://perma.cc/PRR3-V2H4>] (describing efforts by Congress to address guardianship abuse).

hearing on supported decisionmaking and other less restrictive alternatives to guardianship.⁴¹¹ During the hearing, Senator Bob Casey proposed the Guardianship Bill of Rights Act, cosponsored by Senator John Fetterman.⁴¹² If enacted, this legislation would establish a national council that advocates for less restrictive alternatives for people living under court-ordered guardianships or those being considered for such arrangements.⁴¹³

Thus, safeguarding the reproductive freedom of people with disabilities, including challenging forced pregnancies and denial of parental rights, demands an unwavering commitment to developing legal and policy responses that uphold bodily autonomy and self-determination. Legislative bodies must prioritize abolishing guardianship and promoting supported decisionmaking alternatives that empower disabled people to direct their own lives. Attorneys should vigorously defend clients against guardianship petitions in court. The legal community, more broadly, must also push for guardianship reform like imposing strict oversight and mandating less restrictive options. These efforts to curb guardianship overreach, alongside promoting alternatives like supported decisionmaking, are crucial to protecting disabled people's reproductive freedom.

E. INVESTING IN FAMILIES AND ABOLISHING THE FAMILY POLICING SYSTEM

Finally, in the context of the *Dobbs* ruling, disability reproductive justice calls for specific legal and policy responses to dismantle the family policing system and prioritize investment in disabled parents and their children.⁴¹⁴ By abolishing the family policing system, we can remove the pervasive scrutiny and barriers that disabled parents often face.⁴¹⁵ Moreover, investing in disabled parents and their children will provide them with appropriate and accessible resources and support to overcome additional challenges, ensuring they have the opportunity to raise their families with dignity and autonomy.

Abolishing the family policing system involves diverting funds from the family policing system and investing in community-based programs, which are better equipped to meet families' needs.⁴¹⁶ Providing services and support for parents with disabilities is vital for preventing family policing system involvement and facilitating family reunification.⁴¹⁷ Supporting disabled parents and their children through family preservation services, instead of removing children and placing them in foster care, is both just and fiscally responsible.⁴¹⁸ Nonetheless,

411. See Holly Barker, *Senators Propose Guardianship 'Bill of Rights' to Limit Abuse (I)*, BLOOMBERG L. (Mar. 30, 2023, 7:12 PM), <https://news.bloomberglaw.com/us-law-week/senators-propose-guardianship-bill-of-rights-to-limit-abuses>.

412. *Id.*

413. *Id.*

414. For an in-depth examination of family policing system abolition and disabled parents, see generally Powell, *supra* note 220.

415. See *supra* Sections II.B–D.

416. See Powell, *supra* note 220, at 45, 97.

417. See Powell et al., *supra* note 151, at 296.

418. See Julie Odegard, *The Americans with Disabilities Act: Creating "Family Values" for Physically Disabled Parents*, 11 LAW & INEQ. 533, 550 (1993) (citing a Santa Clara County, California

appropriate support and services for parents with disabilities and their children are limited, and when they are provided, they are often inadequate.⁴¹⁹

Despite “limited funding and . . . national attention,” emerging programs and support services for parents with disabilities show promise for long-term impact and replication.⁴²⁰ For instance, the United Arc’s Positive Parenting program in Massachusetts offers various services such as peer education and support groups, parenting skills training, and transitional supported living to support parents with intellectual disabilities and their children.⁴²¹ However, such programs are small, underfunded, and not widely available.⁴²² With greater funding and support, similar community-based programs can expand nationwide to serve these families. Investing in such services is not only ethical but cost-effective—research shows that providing support to families saves substantially more than placing children in the foster care system, which costs states thousands per child annually.⁴²³ By helping disabled parents access needed support, we can keep families together and avoid unnecessary foster care placements. This prevents adverse outcomes for children separated from their parents and provides a more just, humane, and fiscally responsible approach.

Investing in organizations led by and for people with disabilities is also crucial to supporting disabled parents and their children. For example, Centers for Independent Living (CILs)⁴²⁴ can provide services such as advocacy regarding transportation, housing, financial assistance, assistive technology, and parent support groups.⁴²⁵ Likewise, mutual aid groups are growing in the disability justice movement and can provide critical support to families.⁴²⁶ Funding such organizations aligns with family policing system abolition, redirecting funds from

report that every dollar spent on individualized preventive services to parents in crises saved \$1.72 that would have been spent on foster care); NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 196 (same).

419. See *supra* Section II.B.

420. See NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 217–27 (describing existing supports and services available to disabled parents and their children).

421. See *Positive Parenting*, UNITED ARC, <https://theunitedarc.org/positive-parenting/> [<https://perma.cc/2DBN-DWQV>] (last visited Apr. 1, 2024).

422. See NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 217.

423. See Odegard, *supra* note 418, at 550; Elizabeth Brico, *The Government Spends 10 Times More on Foster Care and Adoption Than Reuniting Families*, TALK POVERTY (Aug. 23, 2019), <https://talkpoverty.org/2019/08/23/government-more-foster-adoption-reuniting/index.html> [<https://perma.cc/SUU3-P2PH>].

424. “Centers for Independent Living are community-based, cross-disability, non-profit organizations that are designed and operated by people with disabilities. CILs are unique in that they operate according to a strict philosophy of consumer control, wherein people with all types of disabilities directly govern and staff the organization.” *About Independent Living*, NAT’L COUNCIL ON INDEP. LIVING, <https://ncil.org/about/aboutil/> [<https://perma.cc/5RFD-KLK7>] (last visited Apr. 1, 2024). There are more than 400 Centers for Independent Living in the United States. *Id.*

425. NAT’L COUNCIL ON DISABILITY, *supra* note 47, at 32 (noting that CILs “have the potential to support parents with disabilities, especially to advocate regarding transportation, housing, financial advocacy, and assistive technology issues, and to offer parent support groups”).

426. See *generally* LEAH LAKSHMI PIEPZNA-SAMARASINHA, *THE FUTURE IS DISABLED: PROPHECIES, LOVE NOTES AND MOURNING SONGS* (2022) (describing the importance of mutual aid groups for people with disabilities).

agencies to community-based organizations. Additionally, these organizations are best equipped to provide tailored services that meet the unique needs of disabled parents and their children, which is critical for their success.⁴²⁷ Therefore, allocating substantial funding for organizations led by and for people with disabilities is needed to support parents with disabilities and their children.

Supporting disabled parents and their children also requires expanding existing services, such as government-funded personal assistance services that provide in-home support to disabled people. However, government regulations prevent personal assistants from helping parents with disabilities complete parenting tasks.⁴²⁸ Therefore, federal regulations must be amended to allow parents with disabilities to use their personal assistants to support their parenting responsibilities. This change could greatly impact the lives of disabled parents and their children.

Legal frameworks must also be radically transformed. In most states, disabled parents are subjected to discriminatory laws that presume their inability to care for their children.⁴²⁹ Additionally, while ASFA⁴³⁰ does not mention parents with disabilities, it contains ableist provisions that harm disabled parents and their children. For instance, disabled parents frequently struggle to meet the law's strict timelines because obtaining adequate services and support often takes longer than allowed under the law.⁴³¹ Thus, while total abolition must be the long-term gain, states and Congress should immediately confront the legalized ableism that permeates existing laws.

Moreover, supporting families and safeguarding parental rights necessitates prohibiting the surveillance of disabled parents and their children by repealing mandatory reporting laws. Indeed, the pervasive and persistent surveillance and scrutiny of disabled parents and their children profoundly affect these families, often leading to their permanent separation.⁴³² Although mandatory reporting laws have existed for over half a century,⁴³³ evidence indicates they are futile and often do more harm than good.⁴³⁴ Nonetheless, mandatory reporting laws have

427. Powell, *supra* note 220, at 97–99.

428. See NAT'L COUNCIL ON DISABILITY, *supra* note 47, at 194–97; POWELL, *supra* note 239, at 3.

429. See *supra* Section II.D.

430. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.).

431. See *supra* Section II.D; Callow et al., *supra* note 178, at 22; Christina Risley-Curtiss, Layne K. Stromwall, Debra Truett Hunt & Jennifer Teska, *Identifying and Reducing Barriers to Reunification for Seriously Mentally Ill Parents Involved in Child Welfare Cases*, 85 FAMS. SOC'Y 107, 112 (2004); Colby Brunt & Leigh Goodmark, *Parenting in the Face of Prejudice: The Need for Representation for Parents with Mental Illness*, 36 CLEARINGHOUSE REV. 295, 299 (2002); Leslie Francis, *Maintaining the Legal Status of People with Intellectual Disabilities as Parents: The ADA and the CRPD*, 57 FAM. CT. REV. 21, 25 (2019); NAT'L COUNCIL ON DISABILITY, *supra* note 47, at 87–88.

432. See *supra* Section II.C.

433. CHILD.'S BUREAU, U.S. DEP'T HEALTH & HUM. SERVS., THE CHILD ABUSE PREVENTION AND TREATMENT ACT: 40 YEARS OF SAFEGUARDING AMERICA'S CHILDREN 3–4 (2014), https://www.acf.hhs.gov/sites/default/files/documents/cb/capta_40yrs.pdf [<https://perma.cc/84TL-N9BW>] (noting that by 1967, all fifty states and the District of Columbia had adopted child abuse and neglect reporting laws).

434. See Gary B. Melton, *Mandatory Reporting: A Policy Without Reason*, 29 CHILD ABUSE & NEGLECT 9, 14–15 (2005) (arguing mandatory reporting does more harm than good because it

expanded significantly in the last fifty years. Accordingly, on the federal level, Congress must repeal the Child Abuse Prevention and Treatment Act, the federal law mandating states to have mandatory reporting laws. In turn, states should repeal their statutes.

In addition, Congress must pass the Equality for Families with Disabilities Act, which aims to eliminate discrimination against disabled parents and their children by the family regulation system.⁴³⁵ Specifically, the legislation would require state family policing system agencies to detail in their federally reviewed plans the procedural safeguards and supportive services offered to disabled parents, relatives, and foster or adoptive parents.⁴³⁶ These details must provide “fact-specific” information on parenting assessments that focus on an individual’s strengths and needs related to their disability.⁴³⁷ States must also demonstrate “meaningful efforts” to provide services that give disabled parents an equal opportunity.⁴³⁸ Furthermore, the bill expands the State Court Improvement Program, which distributes federal funds to improve child welfare legal processes, to include “ensuring equal opportunities for disabled parents.”⁴³⁹ Passing this critical bill is essential to preventing family separation and protecting the rights of disabled parents.

Furthermore, HHS should move forward with updating its Section 504 regulations for child welfare programs and activities, as outlined in the recent Advanced Notice of Proposed Rulemaking.⁴⁴⁰ These crucial updates will help clarify and strengthen nondiscrimination requirements, ensuring that children, parents, caregivers, foster parents, and prospective parents with disabilities can fully participate in and benefit from family policing system services.⁴⁴¹ The proposed updates will help prohibit misuse of disability or IQ scores as sole justifications for the removal of a child from their parents.⁴⁴² They will also help ensure disabled parents and nondisabled parents have an equal opportunity to participate in and serve as foster parents.⁴⁴³ Thus, HHS should act swiftly to enact these important regulatory reforms.

overburdens the child welfare system with unsubstantiated reports, distracts professionals and policymakers from preventative efforts, deters families from seeking help, disrupts existing treatment, diminishes public agencies’ provision of services, and potentially erodes community trust and norms of reciprocal help).

435. H.R. 4282, 118th Cong. (2023); *see also* John Kelly, *Bill to Protect Disabled Parents Involved with Child Welfare System Introduced*, IMPRINT (June 22, 2023, 4:42 PM), <https://imprintnews.org/youth-services-insider/bill-protect-disabled-parents-child-welfare-system-introduced/242452> [<https://perma.cc/X832-EPPK>].

436. Kelly, *supra* note 435.

437. *Id.*

438. *Id.*

439. *Id.*

440. Discrimination on the Basis of Disability in Health and Human Service Programs or Activities, 88 Fed. Reg. 63392, 63392 (Sept. 14 2023) (to be codified at 45 C.F.R pt. 84).

441. *See id.* at 63392, 63394.

442. *See id.* at 63505.

443. *See id.* at 63417.

Disabled parents and their families deserve the freedom to live without unnecessary separation. They should have access to supportive programs that are non-adversarial and nonpunitive, treating their disability status without stigma, blame, or penalties. The focus should be on addressing their unique needs and challenges and promoting justice. Investing in programs enabling disabled parents and their children to stay together is crucial. Transforming legal frameworks to eliminate ableism requires collaboration among activists, scholars, legal professionals, and policymakers to dismantle the family policing system and provide families with supportive resources, free from punitive measures. Given the *Dobbs* ruling, attention to these matters is critical.

CONCLUSION

The *Dobbs* decision sent shockwaves through the legal landscape governing abortion rights, dealing a significant blow to nearly five decades of established jurisprudence upholding the constitutional right to abortion. However, for people with disabilities, the implications of this ruling are particularly complex and challenging. Of utmost concern is the paradoxical situation that *Dobbs* creates, where people with disabilities may be compelled to carry a pregnancy to term only to be denied the opportunity to raise their child, perpetuating a long-standing pattern of exploitation and subjugation. In response, activists, legal professionals, policymakers, and scholars must center the needs and experiences of disabled people as they work to protect and expand reproductive freedom. This Article emphasizes the necessity of bold and comprehensive legal and policy solutions that not only tackle the immediate repercussions of *Dobbs* but also address the long-standing reproductive oppression of disabled people entrenched in our legal frameworks, policies, and societal norms.