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Journal

UCLA Journal of Gender and Law, 32(1)

Author

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Publication Date

2025-12-06

DOI

10.5070/L3.63848

Peer reviewed

STATE-SPONSORED COERCION AND CONTROL:

The Need for Federal Abortion Protections to Safeguard the Autonomy of Survivors of Intimate Partner Violence

Kira Eidson Phillips

ABSTRACT

This Note makes the case for federal abortion protections by illustrating the heightened danger of intimate partner violence during pregnancy and highlighting the ways that abusers may use the law and legal systems as tools of abuse against their pregnant partners. To do so, this Note explains how the United States Supreme Court recognized the heightened risk of intimate partner violence during pregnancy in *Planned Parenthood v. Casey* and used concern for the safety of survivors of intimate partner violence to strike down abortion restrictions. It next discusses how *Dobbs v. Jackson Women's Health Organization* toppled critical protections for survivors of intimate partner violence when it ended federal constitutional protections for abortion. The Note explains the ways that bounty-style laws like Texas's S.B. 8, wrongful death suits, spousal consent laws, and pregnancy criminalization laws can be used to further trap survivors in abusive relationships in a post-*Dobbs* era. Finally, it concludes that federal abortion protections are critical to keeping survivors of intimate partner violence safe and advocates that the Women's Health Protection Act be passed with viability ban language removed, for prohibiting notice and consent requirements, and for repealing the Hyde Amendment.

ABOUT THE AUTHOR

J.D., 2024, Georgetown University Law Center. I am especially grateful to Dr. Michele Goodwin for her guidance and feedback in developing this Article and to the editors of the *UCLA Journal of Gender & Law* for their thoughtful edits.

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I. INTRODUCTION

The 2022 United States Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, which ended federal protections for abortion, has had far-reaching consequences beyond reproductive autonomy and choice. It has significantly affected the safety and autonomy of survivors of intimate partner violence, particularly pregnant individuals. This Note will highlight the ways that abusers can exploit legal systems post-*Dobbs* to exert control over their pregnant partners, making a compelling case for restoring federal abortion protections.

This Note proceeds in three Parts. Part I details empirical study on intimate partner violence during pregnancy, highlighting how pregnancy increases both the risk and severity of such violence. It explains how the Supreme Court, in *Planned Parenthood v. Casey*, recognized that heightened risk and used it to reaffirm a federal right to abortion. It concludes by explaining how *Dobbs*, by overturning *Roe* and *Casey*, topples critical protections for survivors at heightened risk for violence. Part II predicts how an end to federal abortion protection may further trap survivors in abusive relationships. It details how *Dobbs* enables abusers to isolate, coerce, and control their partners through civil lawsuits against support systems, father's consent requirements for abortion care, and through the threat of criminalization for a pregnant person's conduct during their pregnancy. Part III concludes by building the case for why federal protections for abortion care are urgently needed to ensure that state-imposed restrictive abortion laws do not further trap survivors of intimate partner violence in abusive relationships. It recommends adopting and expanding the protections within the Women's Health Protection Act of 2023 to protect abortion access post-viability and prohibit spousal notice and consent requirements, and further calls for repeal of the Hyde Amendment. This action would ensure abusers are not endowed with state-sponsored control over their partners' bodies.

II. INTIMATE PARTNER VIOLENCE AGAINST PREGNANT PEOPLE AND THE SUPREME COURT

The risk and severity of intimate partner violence increases during pregnancy, and the United States Supreme Court recognized that heightened risk in its 1992 decision, *Planned Parenthood v. Casey*. Nevertheless, the 2022 Supreme Court decision in *Dobbs* overruled *Casey* and its predecessor *Roe v. Wade* without any mention of domestic or intimate partner violence. Consequently, people abused by their intimate partners who are pregnant or capable of

pregnancy are left vulnerable to reproductive abuse and coercion against which federal abortion protections once safeguarded. This section lays out the landscape within which this Note's argument is situated. It provides data on the heightened risk of intimate partner violence during pregnancy, lays out how the Supreme Court recognized this heightened danger in *Casey* and then ignored it in *Dobbs*, opening the door for state abortion restrictions that abusers can use to further trap their partners in unsafe relationships.

A. *Intimate Partner Violence Against Pregnant People in the United States*

Every sixty seconds, an average of twenty-four people in the United States are raped, physically assaulted, or stalked by an intimate partner.¹ The Centers for Disease Control and Prevention (CDC) defines "Intimate Partner Violence"² as including "physical violence, sexual violence, stalking and psychological aggression (including coercive tactics) by a current or former intimate partner (i.e., spouse, boyfriend/girlfriend, dating partner, or ongoing sexual partner)."³ Approximately one in four women experience intimate

1. E.g., *Domestic Violence Statistics*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/stakeholders/domestic-violence-statistics> [<https://perma.cc/LRK5-K6LW>] [hereinafter *Domestic Violence Statistics*] (last visited May 13, 2024) (reporting that an average of twenty-four people per minute suffer intimate partner violence in the United States).

2. Intimate partner violence is often used interchangeably with the term "domestic violence." I use the term "intimate partner violence" in this Note because the term refers only to violence committed by romantic or sexual partners, regardless of whether they share a household with the victim survivor. Domestic violence is too broad for this Note because the term encompasses violence committed by someone in the victim's household, who may or may not be the victim-survivor's intimate-partner. See Olivia Moorer, *Intimate Partner Violence vs. Domestic Violence*, YWCA SPOKANE, (Jan. 5, 2021), <https://ywcaspokane.org/what-is-intimate-partner-domestic-violence/> [<https://perma.cc/X6YK-TN5T>].

3. E.g., MATTHEW J. BREIDING ET AL., NAT'L CTR. FOR INJURY PREV. & CONTROL, *INTIMATE PARTNER VIOLENCE SURVEILLANCE: UNIFORM DEFINITIONS AND RECOMMENDED DATA ELEMENTS*, VERSION 2.0 AT 11 (2015), <https://stacks.cdc.gov/view/cdc/31292>. See also *About Intimate Partner Violence*, CTRS. FOR DISEASE CONTROL & PREV. (May. 16, 2024), <https://www.cdc.gov/intimate-partner-violence/about/index.html> [<https://perma.cc/YL6K-KL2S>] [hereinafter *About Intimate Partner Violence*].

partner violence during their lifetime,⁴ with women ages eighteen to thirty-four experiencing the highest rates of such violence.⁵

The age range in which women experience the highest rates of intimate partner violence aligns with the age range in which women primarily give birth.⁶ In 2021, the birth rate for women aged eighteen and nineteen was 26.6 births per 1,000, while it was 61.5 births per 1,000 for women aged twenty to twenty-four.⁷ The birth rate was 93 and 97.6 births per 1,000 women ages twenty-five to twenty-nine and thirty to thirty-four, respectively.⁸ The age ranges for intimate partner victimization and childbirth do not overlap by happenstance. Pregnancy can often be a catalyst for intimate partner violence,⁹ with almost one-third of survivors of intimate partner violence reporting that the first incident of violence happened while they were pregnant.¹⁰ Many women who reported experiencing

4. MATTHEW J. BREIDING ET AL., CTRS. FOR DISEASE CONTROL & PREV., INTIMATE PARTNER VIOLENCE IN THE UNITED STATES—2010, (2014). One in four women and one in seven men report experiencing severe intimate partner violence in their lifetime, while twenty-nine percent of women report experiencing rape, physical violence, and/or stalking by an intimate partner that impacted their ability to function. *Id.* See also *About Intimate Partner Violence*, *supra* note 3 (reporting that approximately forty-one percent of women experienced sexual violence, physical violence, or stalking by an intimate partner).

5. *Domestic Violence Statistics*, *supra* note 1.

6. The birth rates for women eighteen to thirty-four are significantly higher than girls younger than eighteen and women older than thirty-four. See Michelle J.K. Osterman et al., *Births: Final Data for 2021*, 72 NAT'L VITAL STATS. REPS. 1, 3 (2023), <https://www.cdc.gov/nchs/data/nvsr/nvsr72/nvsr72-01.pdf> [<https://perma.cc/999G-XXV5>]. The birth rate for girls fifteen to seventeen was 5.6 per 1,000 girls. *Id.* It was 53.7 for women thirty-five to thirty-nine, 12.0 for women forty to forty-four, and 0.9 for women over forty-five. *Id.*

7. *Id.*

8. *Id.*

9. See *Domestic Abuse in Pregnancy*, NAT'L HEALTH SERV. (Apr. 20, 2021), <https://www.nhs.uk/pregnancy/support/domestic-abuse-in-pregnancy/> [<https://perma.cc/F93A-TUSH>]. But see Jeanne L. Alhusen et al., *Intimate Partner Violence During Pregnancy: Maternal and Neonatal Outcomes*, 24 J. WOMEN'S HEALTH 100, 100 (2015) ("Both early clinic studies, and large-scale population-based studies using Pregnancy Risk Assessment Monitoring System (PRAMS) data found that the prevalence of IPV during pregnancy was lower than the year prior to pregnancy. An in-depth qualitative study examining abuse patterns during pregnancy suggested that for approximately one-third of battered women, pregnancy was a protective period, while for another group (approximately 15% of those abused during pregnancy), abuse started or worsened during pregnancy, often due to partners doubting the baby was theirs. However, abuse patterns remained consistent for the largest proportion of women abused during pregnancy.").

10. See N.J. TASK FORCE ON CHILD ABUSE & NEGLECT, N.J. DEP'T OF CHILD. & FAMS., NEW JERSEY CHILD ABUSE & NEGLECT PREVENTION PLAN: A ROADMAP

violence prior to pregnancy report that the violence intensified during their pregnancy.¹¹ The statistics are even more alarming for women whose pregnancies were unintended or unplanned, considering “[w]omen with unintended pregnancies are two to four times more likely to experience physical violence than women with planned pregnancies.”¹²

It is estimated that 324,000 pregnant people in the United States experience intimate partner violence every year, though conclusions regarding the rate of intimate partner violence against pregnant people vary.¹³ This variation stems from differing definitions of what constitutes abuse, as well as actual divergence in rates across the world and the willingness of participants to disclose their abuse.¹⁴ Reported prevalence rates vary from 5.4–27.7 percent, globally.¹⁵ When researchers ask participants more than once “during detailed in-person interviews” about experiencing violence, or ask about it at a more advanced state of the pregnancy, they find

TO CHILD AND FAMILY WELL-BEING 23 (Jan. 2010); A. Rachel Camp, *Coercing Pregnancy*, 21 WM. & MARY J. WOMEN & L. 275, 291 (2015); SHAINA GOODMAN, NAT’L P’SHP FOR WOMEN FAMS., MOMS & BABIES SERIES: INTIMATE PARTNER VIOLENCE ENDANGERS PREGNANT PEOPLE AND THEIR INFANTS 1 (Jorge Morales ed., 2021), <https://nationalpartnership.org/wp-content/uploads/2023/02/intimate-partner-violence-endangers-pregnant-people-and-their-infants.pdf> [<https://perma.cc/22E6-9HYV>].

11. Camp, *supra* note 10, at 291; GOODMAN, *supra* note 10, at 1.

12. NAT’L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE AND PREGNANCY FACT SHEET 1 (2004), https://vawnet.org/sites/default/files/assets/files/2016-09/DV_Pregnancy.pdf [<https://perma.cc/MS3A-8M49>]; WORLD HEALTH ORG., INFORMATION SHEET: INTIMATE PARTNER VIOLENCE DURING PREGNANCY 3 (2011), <https://iris.who.int/bitstream/handle/10665/70764/jsessionid=7D-610646FE57C21A67C839BCB8740C57?sequence=1> [<https://perma.cc/9B-JQ-XHZS>] (“A US population-based survey also showed that women who had mistimed or unwanted pregnancies reported significantly higher levels of abuse during pregnancy compared with those with intended pregnancies (15% versus 5%) . . .”).

13. GOODMAN, *supra* note 10, at 1. Rates of intimate partner violence during pregnancy differ based on demographics. Black, Indigenous, American Indian, and Alaska Native people in the United States experience the highest rates of intimate partner violence, and rural Americans experience higher rates than those living in urban areas. See Katy Backes Kozhimannil et al., *Rural/Urban Differences In Rates and Predictors of Intimate Partner Violence and Abuse Screening Among Pregnant and Postpartum United States Residents*, 59 HEALTH SERVS. RSCH. 1, 2, 5 (2024).

14. Joanna Cook & Susan Bewley, *Acknowledging a Persistent Truth: Domestic Violence in Pregnancy*, 101 J. ROYAL SOC. MED. 358, 358 (2008).

15. *Id.* A multi-country study conducted by the WHO found rates of intimate partner violence against pregnant people to range from one to twenty-eight percent, with the majority of studied sites’ rates falling between four and twelve percent. WORLD HEALTH ORG., *supra* note 12, at 1.

the prevalence of intimate partner violence during pregnancy to be higher.¹⁶ This suggests pregnant people may be more willing to disclose the violence they have experienced after developing trust with the interviewer and that pregnancy may be the catalyst for new or intensified violence.¹⁷ The World Health Organization found that the reported rate of physical violence against pregnant people ranged from one to twenty-eight percent across fifteen countries, and that between twenty-five and fifty percent of the women who reported violence “experienced direct trauma to the abdomen during pregnancy.”¹⁸ The biological father of the fetus was the perpetrator of such violence in more than ninety percent of the cases.¹⁹

Pregnant women are more likely to suffer intimate partner violence than they are gestational diabetes or preeclampsia.²⁰ Though, the violence perpetrated against pregnant people makes them more likely to suffer from conditions that threaten their health and the health of their pregnancy. “Pregnant women who experience domestic violence have been found to have a 37% higher risk of obstetric complications that warrant antenatal admission” and “were at [a] higher risk of hypertension, oedema, vaginal bleeding, vomiting and dehydration, urinary tract infections and pre-term delivery.”²¹ The health of the fetus is also affected by the violence that the pregnant person endures. The fetuses of abused pregnant people are more likely to be small for their gestational age, and when babies are born, they are more likely to have a low birth weight or be delivered prematurely.²² The risk of perinatal and neonatal mortality for the fetuses and infants born to abused pregnant people is approximately two and a half times higher than that of infants born to non-abused pregnant people.²³

16. Cook & Bewley, *supra* note 14, at 359.

17. *Id.*

18. *Id.*

19. *Id.*

20. GOODMAN, *supra* note 10, at 1 (“[E]ven though domestic violence is more common among pregnant women than are other conditions for which they are routinely screened—such as gestational diabetes or preeclampsia—few providers screen pregnant patients for abuse.”); Kozhimannil et al., *supra* note 13, at 2 (“Violence during pregnancy is one of the most common health problems experienced by pregnant people, affecting a similar number of individuals each year as gestational diabetes.”).

21. Cook & Bewley, *supra* note 14, at 359; see WORLD HEALTH ORG., *supra* note 12, at 2–3 (discussing multiple negative consequences that intimate partner violence during pregnancy has on reproductive health).

22. Cook & Bewley, *supra* note 14, at 360; see Alhusen et al., *supra* note 9, at 101–02.

23. Cook & Bewley, *supra* note 14, at 360 (“Births among women who have experienced domestic violence during their pregnancy had relative risks

Mortality is also a concern for the pregnant person, themselves. Maternal mortality rates in the United States continue to rise,²⁴ and a leading cause of death for pregnant women in the United States is homicide, primarily perpetrated by the pregnant person's romantic partner.²⁵ In 2020, women who were pregnant or postpartum had thirty-five percent higher risk of being a victim of homicide than did non-pregnant or postpartum women of the same age.²⁶ Homicides make up thirty-one percent of maternal injury deaths,²⁷ and studies have shown that 45.3 percent of pregnancy-related homicides were

for perinatal and neonatal mortality 2.6 and 2.4 times higher than women who had not been beaten, after controlling for sociodemographic and maternal health behaviour risk factors.”). When women report to the hospital after an assault and deliver during the same stay, their risk of fetal death is eight times higher, and risk of neonatal death six times higher than that of women not abused during pregnancy. Alhusen et al., *supra* note 9, at 102.

24. See Donna Hoyert, *Maternal Mortality Rates in the United States*, 2021, at 4 (Mar. 2023), <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2021/maternal-mortality-rates-2021.pdf> [<https://perma.cc/YD7S-TBM5>] (reporting that the nationwide maternal mortality rate per 100,000 live births in the United States jumped from 23.8 in 2020 to 32.9 in 2021).

25. See Cara Murez, *Homicide a Leading Cause of Death for Pregnant U.S. Women*, HEALTHDAY (Oct. 20, 2020), <https://www.healthday.com/health-news/public-health/homicide-a-leading-cause-of-death-for-pregnant-u-s-women-2658473602.html> [<https://perma.cc/E853-VGFB>]. Most pregnancy-related homicides committed by intimate partners are committed using a firearm. See Gemma Donofrio, *Dobbs, Bruen, and Domestic Violence: Fewer Abortions, More Guns, and the Effects of Both on Survivors of Intimate Partner Violence*, 102 N.C. L. REV. 699, 713 (2024) [<https://perma.cc/54F9-NNT5>] [hereinafter *Donofrio*]. Consequently, in states where gun ownership is restricted and regulated, homicide rates are lower. *Id.* at 714. However, gun restrictions that protect survivors of intimate partner violence could be at risk. In 2022, during the same Supreme Court term as *Dobbs v. Jackson Women's Health Org.* was decided, the Court decided *New York State Rifle & Pistol Ass'n v. Bruen*. *Bruen* held that gun restrictions are unconstitutional unless there is a historical analog for the restriction. See *id.* This case “never engag[ed] with the potential consequences of freer firearms possession for intimate partner violence or the fact that this violence was largely ignored during the founding.” *Id.* at 702. The Supreme Court decided *United States v. Rahimi* in the summer of 2024, holding 18 U.S.C. § 922(g)(8) (which prohibits the possession of firearms by persons subject to domestic violence restraining orders) is within the government's regulatory authority and does not violate the Second Amendment.” 602 U.S. 680 (2024). The gun restrictions were upheld. *Id.* Without prohibitions on gun possession by persons subject to domestic violence restraining orders, more people experiencing intimate partner violence are killed. See Donofrio, *supra*, at 715. For more discussion on gun violence, reproductive rights, and intimate partner violence see generally *id.*

26. Maeve E. Wallace, *Trends in Pregnancy-Associated Homicide, United States*, 2020, 112 AM. J. PUB. HEALTH 1333, 1334 (2022).

27. GOODMAN, *supra* note 10, at 2.

connected to intimate partner violence.²⁸ Considering the pervasiveness of intimate partner violence against pregnant women and the potential for lethality, the ability to control one's pregnancy status may be an important piece of a survivor's²⁹ safety plan.³⁰

B. *The Supreme Court Recognized the Heightened Danger of Intimate Partner Violence During Pregnancy in Planned Parenthood v. Casey*

The Supreme Court recognized that the risk of experiencing intimate partner violence is heightened during pregnancy in its decision in *Planned Parenthood v. Casey*. In *Casey*, the Court reviewed the constitutionality of five provisions of the Pennsylvania Abortion Control Act.³¹ The Court affirmed the right of a person to choose to have an abortion before a fetus becomes viable, as announced in *Roe v. Wade*, and introduced a new test to determine whether an abortion restriction violated a person's liberty rights under the Due Process Clause.³² The new "undue burden" test held that "[o]nly where state regulation imposes an undue burden on a woman's ability to make this decision [about whether to have an abortion] does the power of the State reach into the heart of the liberty protected by the Due Process Clause."³³ Of the five challenged provisions of the Pennsylvania Abortion Control Act, only § 3209, which required spousal notice before a married woman was able to receive an

28. Alhusen et al., *supra* note 9, at 101. Further, pregnancy-associated suicide is often attributable, in part, to intimate partner violence, with more than fifty percent of pregnancy-associated suicides involving "intimate partner conflict attributable to the suicide." *Id.*

29. This Note will use both "survivor" and "victim" as terms to describe people who have experienced intimate partner violence. "Survivor" has been adopted as a term by advocacy organizations to promote a sense of empowerment and hope for those experiencing violence, but "victim" is traditionally used within law enforcement and court settings. See *The Language We Use*, WOMEN AGAINST ABUSE, <https://www.womenagainstabuse.org/education-resources/the-language-we-use> (last visited May 13, 2024) (explaining the use of "victim" and "survivor" as terms within the anti-gender-based violence movement) [<https://perma.cc/69X3-RUT4>].

30. See Wallace, *supra* note 26, at 1334 (Acknowledging that "to the extent that the ability to control pregnancy status may have implications for one's risk of homicide, passage and implementations of an unprecedented number of abortion restriction policies in recent years (both prior to and related to the 2020 COVID-19 pandemic) may also be contributing factors" to higher rates of maternal homicide).

31. *Planned Parenthood Se. Pa. v. Casey*, 505 U.S. 833, 844 (1992), *overruled by* *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

32. *Id.* at 846 ("[T]he essential holding of *Roe v. Wade* should be retained and once again reaffirmed.").

33. *Id.*

abortion,³⁴ and the coinciding reporting requirement in § 3214,³⁵ were found to unduly burden a woman's right to choose.³⁶

The Court's reasoning for striking down the spousal notice requirements included a recognition that intimate partner violence is heightened during pregnancy. Expert witnesses at the District Court level testified that family violence is a frequent occurrence, but likely underreported, and that married women who suffered intimate partner violence have been killed. They further testified that "[m]ere notification of pregnancy is frequently a flashpoint for battering and violence within the family. The number of battering incidents is high during the pregnancy and often the worst abuse can be associated with pregnancy."³⁷ The Court noted this testimony and conducted its own review of literature and findings on domestic violence. It cited the American Medical Association's summary on domestic violence, finding that four million women are estimated to be seriously assaulted each year,³⁸ but also acknowledged the prevalence and severity of psychological abuse through social and economic isolation.³⁹

The Court then reasoned that if abused women became pregnant, they may reasonably fear physical abuse from their husbands, but also "devastating forms of psychological abuse from their husbands, including verbal harassment, threats of future violence, the destruction of possessions, physical confinement to the home, the withdrawal of financial support, or the disclosure of the abortion to family and friends."⁴⁰ Women fearing these things may have valid reasons for not wishing to notify their husbands, and therefore requiring spousal notice would substantially and unduly burden their ability to exercise their choice to receive abortion care.⁴¹ Consequently, § 3209 could not stand.⁴² The requirement that abortion providers report why a married woman failed to provide notice to her husband was also struck down because, as a

34. *See generally* 18 PA. CONS. STAT. § 3209 (2024).

35. *See generally* 18 PA. CONS. STAT. § 3214(a)(12) (2024).

36. *See Casey*, 505 U.S. at 879.

37. *Id.* at 888–89.

38. *Id.* at 891.

39. *Id.*

40. *Id.* at 893. The spousal notice requirement at issue in *Casey* had a "bodily injury" exception, but the Court acknowledged that such an exception would not sufficiently protect pregnant survivors of intimate partner violence because it would not exempt pregnant survivors from these additional forms of abuse that did not result in actual physical injury. *See Donofrio, supra* note 25, at 723.

41. *Casey*, 505 U.S. 833, 893–94 (1992).

42. *Id.*

prerequisite to receiving abortion care, it would require women to disclose information that, due to fear or concerns for her own safety, she would rather not reveal.⁴³

The *Casey* Court stated that a “husband’s interest in the life of the child his wife is carrying does not permit the State to empower him with this troubling degree of authority over his wife.”⁴⁴ It proceeded to list a “parade of horrors,” which are hypothetical scenarios illustrating the consequences if a husband’s interest in the potential life of the child were deemed stronger than the woman’s liberty interest. This was used to emphasize that the husband’s interest should *not* outweigh the woman’s right to make autonomous decisions.⁴⁵ The hypotheticals posited by the Court suggested that women could be required to notify their husband prior to using a form of Plan-B, engaging in behaviors that could pose a risk to the fetus, consuming alcohol, smoking, using contraceptives, or undergoing surgeries that might affect their fertility.⁴⁶ Unfortunately, *Planned Parenthood v. Casey* was overruled by *Dobbs*.⁴⁷ *Dobbs* has opened the door for abusive partners to exercise a “troubling degree of authority over”⁴⁸ their pregnant partners. The parade of horrors listed in *Casey* do not feel like possibilities in a distant dystopia, but rather like the tip of the iceberg of what may be to come in the United States since the Supreme Court handed down *Dobbs* and ended federal protection for a person’s right to choose.

C. *Dobbs v. Jackson Women’s Health Organization Toppled Critical Protections for Survivors of Intimate Partner Violence*

On June 24, 2022, the Supreme Court handed down *Dobbs v. Jackson Women’s Health Organization*. The decision explicitly held that “*Roe* and *Casey* must be overruled and the authority to regulate abortion must be returned to the people and their elected representatives,” ending the era of a federally protected right to abortion.⁴⁹ The opinion does not mention domestic violence or intimate partner violence.⁵⁰ The decision provides no guidance

43. *See id.* at 901.

44. *Id.* at 898.

45. *Id.*

46. *Id.* at 898.

47. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 302 (2022).

48. *Casey*, 505 U.S. at 898.

49. *Dobbs*, 597 U.S. at 292.

50. *See* Donofrio, *supra* note 25, at 732 (“*Dobbs* does not mention intimate partner violence at all. Despite *Casey*’s deep examination of spousal abuse, *Dobbs* does not engage with that reasoning (or the underlying realities of intimate partner violence) when overruling *Casey*. Though the majority opinion in *Dobbs* mentions a wide range of topics from “safe haven” laws to

about how to protect the millions of women abused by partners every year, that *Casey* acknowledged, from control, coercion, and violence that may begin or be exacerbated by pregnancy. It provides no statement affirming that a woman's right to liberty still outweighs her husband or partner's interest in the potential life that she carries during pregnancy. Consequently, it paves the way for abusers to engage in state-sponsored control over their pregnant partners' bodies.

Abortion is now illegal in twelve states.⁵¹ In eleven other states, abortion remains legal to an extent, but it is not protected, and the state may take action to criminalize abortion.⁵² The changed landscape of abortion access is significant to survivors of intimate partner violence because abortion access can reduce intimate partner violence.⁵³ When women share children with their abusers, their shared parental rights tie them long-term to their abuser, intensifying any economic dependence on their partner, and complicating their ability to escape the relationship.⁵⁴ Abortion is one means of preventing survivors from being tied to their abusers in these ways.

In a pre-*Dobbs* study, researchers found that nearly one in four women having abortions after their first trimester of pregnancy were either in conflict with their partner or experiencing domestic violence.⁵⁵ Another study determined that one in twenty women who sought abortions "reported that the man involved in the pregnancy physically hurt them within the past six months."⁵⁶ When

adoption, nowhere does it acknowledge intimate partner violence, a problem facing more than one in three women.")

51. *After Roe Fell: Abortion Laws by State*, CTR. FOR REPROD. RTS. <https://reproductiverights.org/maps/abortion-laws-by-state/> (last visited May 19, 2025) [hereinafter *After Roe Fell: Abortion Laws by State*]. These states are Alabama, Arkansas, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Oklahoma, South Dakota, Tennessee, Texas, and West Virginia. *Id.*

52. *Id.* The Center for Reproductive Rights characterizes these states as "hostile" to abortion. This "means that these states and territories have expressed a desire to prohibit abortion entirely. These states and territories are extremely vulnerable to the revival of old abortion bans or the enactment of new ones, and none of them has legal protections for abortion." The states characterized as "hostile" are Florida, Georgia, Iowa, Nebraska, North Carolina, North Dakota, Pennsylvania, South Carolina, Utah, Wisconsin, and Wyoming. *Id.*

53. Elizabeth Tobin-Tyler, *A Grim New Reality—Intimate-Partner Violence after Dobbs and Bruen*, 387 NEW ENG. J. MED. 1247, 1247 (2022) [hereinafter *Tobin-Tyler*]; Donofrio, *supra* note 25, at 733.

54. See Tobin-Tyler, *supra* note 53, at 1248; Donofrio, *supra* note 25, at 733.

55. Donofrio, *supra* note 25, at 733.

56. *Id.*

women were denied an abortion, two and a half years after that denial those women were more likely to still be suffering violence from the man involved in the pregnancy than the women who did receive abortion care.⁵⁷

In the year after the Court overturned *Roe* and *Casey*, the National Domestic Violence Hotline experienced a near 100 percent uptick in the amount of calls it received.⁵⁸ The Repro Legal Helpline, operated by If/When/How has also experienced an increase in calls from survivors of intimate partner violence.⁵⁹ A senior helpline counsel noted that “the threats from abusers [have] become more specific” and that abusers are taking advantage of the changed law surrounding abortion and using it to threaten their victims with criminalization.⁶⁰ Often, they follow through on those threats to use criminal and family policing systems to control and abuse their partners.⁶¹

A study published in May 2024 by Health Affairs determined that Targeted Regulation of Abortion Providers (“TRAP”) laws contributed to increased rates of homicide related to intimate partner violence.⁶² “[E]nforcing just one TRAP law on one clinic led to a 3.4% increase in the rate of domestic violence homicides”⁶³ The researchers estimated that twenty-four women and girls were

57. *Id.*

58. Amna Nawaz & Shoshana Dubnow, *The Link Between a Lack of Reproductive Rights and Domestic Violence*, PBS NEWS HOUR (Jul. 14, 2023), <https://www.pbs.org/newshour/show/the-link-between-a-lack-of-reproductive-rights-and-domestic-violence>. “The hotline reported that in the year before the Dobbs decision—from late June 2021 to the end of May 2022—1,230 of the people who contacted the hotline said they experienced reproductive coercion or mentioned abuse. The number of people saying so nearly doubled—to 2,442—for the same period a year later.” Jennifer Gerson, *Domestic Violence Calls About ‘Reproductive Coercion’ Doubled After the Overturn of Roe*, THE 19TH (Oct. 18, 2023), <https://19thnews.org/2023/10/domestic-violence-calls-reproductive-coercion-dobbs-decision/> [<https://perma.cc/WQH9-FTMR>].

59. Melissa Gira Grant, *Dobbs Was a Gift to Domestic Abusers*, THE NEW REPUBLIC (May 9, 2024), <https://newrepublic.com/article/181412/domestic-violence-abortion-ban-dobbs-abusers> [<https://perma.cc/HX32-NMVB>] [hereinafter *Grant*].

60. *Id.* The senior helpline counsel quoted is Elizabeth Ling. *Id.*

61. *Id.*

62. Kylie Cheung, *Anti-Abortion Laws Cause More Domestic Violence Deaths, According to New Study*, JEZEBEL (May 8, 2024 3:14PM), <https://www.jezebel.com/anti-abortion-laws-cause-more-domestic-violence-deaths-according-to-new-study> [<https://perma.cc/QAC6-YB48>] [hereinafter *Cheung*] (discussing Maeve E. Wallace et al., *States’ Abortion Laws Associated with Intimate Partner Violence-Related Homicide of Women and Girls in the U.S., 2014–20*, 43 HEALTH AFFS. 682 (2024)).

63. Cheung, *supra* note 62.

killed by intimate partners in a homicide related to TRAP laws between 2014 and 2020.⁶⁴ Since this data was collected, *Dobbs* was decided, meaning that countless other abortion restrictions and TRAP laws have been—and continue to be—passed, further contributing to an increasingly dangerous and lethal legal landscape for people experiencing intimate partner violence who are, or may become, pregnant.

Without a federal standard affirming that a woman's right to liberty still does outweigh her partner's interest in the potential life of a fetus, women are vulnerable to state-permitted coercion and control by her partner over her body during her pregnancy. This control threatens to further trap women in abusive relationships.

III. POST-DOBBS, PREGNANT SURVIVORS OF INTIMATE PARTNER VIOLENCE ARE MORE VULNERABLE TO BECOMING FURTHER TRAPPED IN ABUSIVE RELATIONSHIPS THROUGH LEGAL COERCION AND CONTROL

Part II of this Note discusses how state laws restricting the right to abortion and creating civil and criminal penalties for pregnant people and their support system are used by abusers as state-sponsored tools for coercion and control. It predicts how post-*Dobbs*, these legal mechanisms will be used to exert more harm and control against pregnant people. This section includes examples of abusers weaponizing S.B.8 bounty-style laws and wrongful death suits to isolate their partners, states which have proposed new spousal consent laws, and instances of pregnancy criminalization that demonstrate the dangers pregnant survivors face. These examples illustrate why federal protection for abortion is such a critical safeguard against people becoming further trapped in abusive relationships.

A. *Isolation—Legal Penalties for Support Systems*

Laws that make survivor-support systems subject to liability for supporting pregnant survivors of intimate partner violence threaten to further isolate and trap pregnant survivors. If support systems like doctors, advocates, and friends face civil or criminal liability for assisting pregnant survivors seeking abortions, they may be less likely to offer such support. On the other hand, if survivors worry that their doctors, advocates, and loved ones will report them to the police for seeking or considering abortion care, pregnant

64. *Id.*

survivors may avoid seeking community support and become further isolated from support systems.

1. S.B. 8 Bounty-Style Laws

“It’s a disgusting gift by the state to abusers.”⁶⁵ This is how Elizabeth Ling, a senior helpline counsel for the Repro Legal Helpline with If/When/How characterized laws like Texas’s S.B. 8,⁶⁶ which allows individuals to bring civil lawsuits against abortion providers and anyone who “aids and abets” an abortion.⁶⁷

S.B. 8 does not have a definition included for “aids or abets.”⁶⁸ Consequently, while the law prohibits suits against the person who receives an abortion, “aiding and abetting” may encompass the actions of a survivor-advocate who directs a survivor to resources about self-managed abortion, a mother who helps her pregnant child pay for an abortion, or friends who send texts supporting a pregnant person’s decision to seek an abortion. S.B. 8 has recently been used to sue the latter.

In May 2022, Brittni Silva discovered she was pregnant and texted two of her friends about it.⁶⁹ Brittni’s⁷⁰ friends helped her determine that she was still in the early weeks of her pregnancy and assisted her in obtaining mifepristone.⁷¹ Afterward, and without her consent, Brittni’s husband Marcus⁷² searched her phone, found the text messages, and screenshotted them.⁷³ He next searched Brittni’s purse and found the medication.⁷⁴ After Brittni took the

65. Grant, *supra* note 59.

66. *Id.*

67. *What Does Senate Bill 8 Say About Abortions?* TEX. STATE L. LIBR. (Mar. 8, 2024), <https://www.sll.texas.gov/faqs/abortion-senate-bill-8> [<https://perma.cc/WE74-55QP>].

68. *Id.*

69. Carrie N. Baker & Lisa Aronson Fontes, *Texas Case Shows How Abortion Bans Facilitate Domestic Abuse*, MS. MAG. (May 10, 2023), <https://msmagazine.com/2023/05/10/texas-man-sue-wife-abortion-pills-coercive-control-domestic-abuse/> [<https://perma.cc/FZW9-UNUJ>].

70. I refer to Brittni by her first name for clarity since the last name “Silva” is shared by both Brittni and Marcus.

71. Baker & Fontes, *supra* note 69. Her friends sent her information about Aid Access, an organization that provides abortion care medication by mail. They allegedly ultimately obtained pills in Houston, and a third friend delivered the pills to Brittni. Eleanor Klibanoff, *Three Texas Women are Sued for Wrongful Death After Allegedly Helping Friend Obtain Abortion Medication*, TEX. TRIB. (Mar. 10, 2023), <https://www.texastribune.org/2023/03/10/texas-abortion-lawsuit/> [<https://perma.cc/E6AT-36VZ>].

72. I refer to Marcus by his first name for clarity since the last name “Silva” is shared by both Brittni and Marcus.

73. Baker & Fontes, *supra* note 69.

74. *Id.*

medication, Marcus threatened to report her to the police.⁷⁵ She again texted her friends, telling them “he’s saying if I don’t give him my ‘mind body and soul’ until the end of the divorce, which he’s going to drag out, he’s going to make sure I go to jail for [having an abortion].”⁷⁶

In March 2023, under Texas’s S.B. 8 law, Marcus sued Brittini’s three friends, each for one-million dollars, for conspiracy to commit wrongful death.⁷⁷ The lawsuit is part of Marcus’s larger scheme to continue to control Brittini after their divorce. In October 2023, a filing was made with the court where Brittini alleged that Marcus promised to drop the lawsuit if she had sex with him.⁷⁸ Attached to that filing was a transcript of a recorded conversation between Marcus and Brittini which documents a conversation where Marcus “threatened to post intimate videos of [Brittini] online—and to send them to her workplace, her family members, their workplaces—unless she did his laundry.”⁷⁹ He threatened he would destroy her life until she became suicidal.⁸⁰ In October 2024, the parties settled, agreeing to drop all claims and counterclaims and pay their own attorney’s fees.⁸¹ While Brittini’s friends were not held liable, Marcus Silva was able to use his lawsuit, made possible by Texas anti-abortion laws, as a mechanism to scare, coerce, and isolate Brittini for over a year and a half.

Another case pending in Texas state trial court, filed on behalf of plaintiff Collin Davis, by Jonathan Mitchell—the chief architect of S.B. 8 and Marcus Silva’s lawyer—threatens to control a woman who experienced a “toxic and harmful” relationship.⁸² After Mr.

75. *Id.* Brittini’s abortion was legal in Texas at the time she took the mifepristone. *Id.*

76. *Id.*

77. *Id.*

78. Tessa Stuart, *Texan Suing Ex’s BFFs Over Abortion Allegedly Promised to Drop Lawsuit for Sex*, ROLLING STONE (Oct. 4, 2023), <https://www.rollingstone.com/politics/politics-news/texan-suing-abortion-promised-drop-lawsuit-sex-1234839569/> [<https://perma.cc/49E5-H4VL>].

79. *Id.*

80. *Id.*

81. Bayliss Wagner, *Texas Man Drops Lawsuit Against Women He Accused of Aiding Ex-Wife’s Abortion by Pills*, AUSTIN-AMERICAN STATESMAN (Oct. 11, 2024), <https://www.statesman.com/story/news/politics/state/2024/10/11/texas-man-drops-lawsuit-against-women-aided-ex-wife-abortion-pill-jonathan-mitchell-marcus-silva/75626123007/> [<https://perma.cc/95WQ-8JB2>].

82. Caroline Kitchener, *Texas Man Files Legal Action to Probe Ex-Partner’s Out-of-State Abortion*, WASH. POST (May 3, 2024), <https://www.washingtonpost.com/investigations/2024/05/03/texas-abortion-investigations/> [<https://perma.cc/7ES8-JVG7>] (quoting Molly Duane, a senior staff attorney with the Center for Reproductive Rights who is assisting in the representation

Davis learned that his ex-partner intended to go to Colorado to obtain an abortion, he threatened, through his attorney Mr. Mitchell, to “pursue wrongful-death claims against anyone involved in the killing of his unborn child.”⁸³ Davis filed an action with Texas state district court under a provision that permits the investigation of suspected illegal actions prior to commencing a formal lawsuit.⁸⁴ He requested the authority to investigate his ex-partner’s abortion, expressing his intention and desire to depose his ex-partner to determine who was involved in her abortion, how it was financed, and to obtain all relevant documentation about the procedure.⁸⁵ Such an investigation would require the woman to divulge private information, open up her support system to liability, and be subject to surveillance and oversight by her ex-partner.

The two cases filed by Mr. Mitchell demonstrate what a “disgusting gift” S.B. 8 is for abusers who seek to continue to control their partners. Such bounty-style laws provide a state-sanctioned mechanism for isolating abused people from their support systems by making it punishable for a friend, family member, or advocate to help their loved one obtain reproductive healthcare. Pregnant people’s support systems may fear legal liability and distance themselves from pregnant loved ones reaching out for help. On the other hand, it may also discourage the pregnant person from seeking help from their support systems altogether, for fear that they could be responsible for leading their loved one into a legal battle brought by their abuser.

Who is going to want to help a friend find an abortion if there is some chance that their text messages are going to end up in the news? And maybe they’re going to get sued, and maybe they’re going to get arrested, and it’s going to get dropped eventually, but in the meantime, they will have been terrified.⁸⁶

This terror is a tool for abusers. Bounty-style laws like S.B. 8, combined with a patchwork of abortion legality across the country create uncertainty and a culture of fear that abusers can leverage to control their partners and isolate them from critical support systems.

of Davis’s ex-partner, whose name has been kept confidential) [hereinafter *Kitchener*].

83. *Id.* (quoting the letter written by Attorney Mitchell).

84. Tex. R. Civ. P. 202.

85. *Kitchener*, *supra* note 82.

86. Klibanoff, *supra* note 71 (quoting Joanna Grossman, a law professor at SMU Dedman School of Law).

2. Wrongful Death Suits

In 2017, a sixteen-year-old girl became pregnant.⁸⁷ She had a “long discussion” with her parents and they agreed that they “would support her either way,” that “it was her right to make that decision [about whether to get an abortion].”⁸⁸ Meanwhile, the girl’s then-boyfriend, nineteen at the time, “repeatedly pleaded” with her to continue her pregnancy.⁸⁹ The girl went to a clinic, received mifepristone, and ended her pregnancy.⁹⁰ In 2019, the now ex-boyfriend sued the abortion clinic and medication manufacturer for the wrongful death of the fetus.⁹¹ He named the fetus, “Baby Roe,” as a co-plaintiff; the judge unequivocally decreed that “Baby Roe” was a person.⁹² This case was filed before *Dobbs* was decided, but the case was allowed to go forward under a recently-passed amendment to Alabama’s constitution that recognized the personhood of fetuses.⁹³ Ultimately, in September 2019, a Circuit Judge dismissed the case, writing in his opinion that the then-boyfriend’s claims were “precluded by existing state and federal laws pertaining to the conduct in question.”⁹⁴

The law that precluded the claims was *Roe v. Wade*. After *Dobbs*, no such preclusive law exists, leaving cases such as this one fair game for the courtroom. This is a concern for survivors of intimate partner violence because it opens up their support systems to liability for helping them access abortion care. Intimate partner violence is about power and control. Permitting abusers to have the power to file wrongful death, or other civil suits, against their victim’s support systems gives them control over those support systems that are critical resources to a survivor. This limits a pregnant person’s autonomy and takes away not only her reproductive choice, but also her choice of who to seek assistance from. Support systems who fear civil liability may be less likely to aid a survivor, and

87. See Ariana Eunjung Cha & Emily Wax-Thibodeaux, *Alabama Judge Allows Man to Sue Clinic on Behalf of Aborted Fetus*, WASH. POST (Mar. 6, 2019, 5:54 PM), <https://www.washingtonpost.com/health/2019/03/06/alabama-judge-allows-man-sue-clinic-behalf-aborted-fetus/> [<https://perma.cc/CU9J-T7E7>].

88. *Id.* (quoting the teenager’s father, who remained anonymous).

89. *Id.*

90. *See id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. Kim Chandler, *Judge Dismisses Wrongful Death Lawsuit Over Abortion*, WOWK (Sept. 3, 2019, 10:47 PM), <https://www.wowktv.com/news/u-s-world/judge-dismisses-wrongful-death-lawsuit-over-abortion/> [<https://perma.cc/VL3L-F9LR>] [hereinafter *Chandler*].

survivors without support systems are less able to safely escape an abusive relationship.

B. *Control and Spousal Consent*

Though a provision of law requiring spousal notice as a condition of receiving an abortion was struck down as unconstitutional in *Planned Parenthood v. Casey*,⁹⁵ even before *Dobbs* was decided, states were proposing laws that would require the fetus's father's written consent prior to performing an abortion, or permit the father to petition for an injunction against a woman's abortion.⁹⁶ During the 2022 Legislative Session, New Hampshire introduced a bill allowing "the biological father of an unborn child to seek a court injunction to stop the biological mother from having an abortion."⁹⁷ In 2021, Tennessee proposed a similar bill providing for a putative father of a fetus to prevent a woman from receiving an abortion by petitioning for an injunction.⁹⁸ Legislators in Missouri proposed a bill in 2014 that would have required a woman to receive written, notarized consent from the father of the fetus prior to any abortion being performed.⁹⁹ In 2017, Oklahoma proposed a similar law that would have gone a step further, requiring a woman to identify, in writing, the fetus's father to the physician intended to perform the abortion.¹⁰⁰ These proposed laws are broader than the *spousal notice* requirement in the Pennsylvania Abortion Control Act at issue in *Casey*. While the Act provision struck down in *Casey* only applied to spouses, these proposed laws would give veto-power over a woman's abortion to the father of a fetus regardless of the relationship to the woman. Further, these bills would go beyond

95. *Planned Parenthood Se. Pa. v. Casey*, 505 U.S. 833, 893–94 (1992), *overruled by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

96. See Yvonne Lindgren, *Antiabortion Civil Remedies and Unwed Fatherhood as Genetic Entitlement*, 99 WASH. U. L. REV. 2015, 2022 n. 26 (2022) (https://irlaw.umkc.edu/cgi/viewcontent.cgi?article=1723&context=faculty_works) [<https://perma.cc/DQ8L-56BJ>] (listing bills introduced in New Hampshire, Missouri, Oklahoma, and Tennessee that would either require written consent from the biological father before a woman could receive an abortion, or permitting the father of the fetus to petition the court to enjoin the mother from receiving an abortion).

97. H.B. 1181, 2022 Leg., Reg. Sess. (N.H. 2022).

98. S.B. 494, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021).

99. H.B. 2206, 97th Gen. Assemb., 2nd Reg. Sess. (Mo. 2014). The bill had an exception for medical emergencies, rape, and incest. *Id.* If the father of the fetus had died, then the bill would have required the woman to sign a notarized affidavit asserting that fact. *Id.*

100. H.B. 1441, 56th Leg., 1st Sess. (Okla. 2017). This bill also had exceptions for medical emergencies, rape, and incest, and required a woman to provide an affidavit asserting that the father had died, if that were the case. *Id.*

requiring notice by allowing the father to entirely bar a woman from receiving an abortion, prioritizing his interest in the fetus's potential life over a woman's liberty.¹⁰¹

What is shocking about these proposed bills is that, even without *Casey*, Supreme Court precedent exists that holds that spousal consent is unconstitutional. *Planned Parenthood v. Danforth* held that a provision of Missouri law requiring a woman to receive written consent from her spouse prior to having an abortion during the first twelve weeks of her pregnancy was invalid.¹⁰² The Court reasoned that “the state cannot ‘delegate to a spouse a veto power which the state itself is absolutely and totally prohibited from exercising during the first trimester of pregnancy.’”¹⁰³ The *Danforth* holding rested heavily on the holding in *Roe v. Wade*,¹⁰⁴ so while *Dobbs* did not explicitly overrule *Danforth*, the remaining strength of its holding is an open question. The *Dobbs* Court assured that “[n]othing in [the *Dobbs*] opinion should be understood to cast doubt on precedents that do not concern abortion.”¹⁰⁵ But *Danforth* concerns abortion, so *Dobbs* may effectively be understood to cast doubt upon it as precedent.

Nevertheless, the four bills proposed by New Hampshire, Missouri, Oklahoma, and Tennessee were proposed while *Roe* and *Casey* were intact, and therefore proposed when nothing had been decided that would cast doubt upon *Danforth*. This shows that state legislators were willing to propose blatantly unconstitutional abortion restrictions during a time when abortion had federal protection; luckily, with federal protections, those bills had no legs. In a post-*Dobbs* America, they very well may. If they do, then the parade of horrors that the *Casey* court warned about—requiring women to notify their husbands prior to contraceptive use, risky conduct, smoking, drinking alcohol, or having surgery—may well be the next set of proposed bills.

Permitting spousal consent, or any spousal permission scheme, to restrict pregnant people from exercising independent bodily autonomy is dangerous for survivors of intimate partner violence.

101. See *Planned Parenthood Se. Pa. v. Casey*, 505 U.S. 833, 898 (1992), overruled by *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (concluding that a husband's interest in potential life did not outweigh a woman's interest in liberty during pregnancy).

102. *Planned Parenthood of Cent. Miss. v. Danforth*, 428 U.S. 52, 69 (1976).

103. *Id.*

104. *Id.* at 71 (“We conclude that § 3(3) of the Missouri Act is inconsistent with the standards enunciated in *Roe v. Wade*, 410 U.S., at 164–165, and is unconstitutional.”).

105. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 290 (2022).

Just as the court in *Casey* recognized, pregnant people may have good reasons not to inform their partners about their plans to seek an abortion or about plans to engage in any other behavior that has an effect, however large or small, on their reproductive capacity. When the State requires that a pregnant person receive their partner's consent prior to receiving abortion care, they add a tool to an abuser's toolbox that the abuser can use to further control their partners. But in these instances, the control would be *legally permitted* control. This deepens the power divide between an abusive partner and the pregnant partner being abused. If an abusive partner engages in birth control sabotage,¹⁰⁶ or sexually assaults their partner, making them pregnant, then refuses to give consent to an abortion procedure, or petitions to enjoin a pending abortion procedure, a pregnant person will be forced to carry a pregnancy she neither intended nor wanted.

C. *Coercion and Criminalization*

Beyond civil liability for support systems, Dobbs exposes pregnant victims of intimate partner violence to criminal liability that abusers can use to threaten and coerce their pregnant partners. Even before *Dobbs*, women were being prosecuted for their pregnancy outcomes.¹⁰⁷ In a post-*Dobbs* landscape where the number of states adopting or proposing fetal personhood legislation is growing,¹⁰⁸ the threat of prosecution for pregnancy outcomes is very real, and very dangerous for survivors of intimate partner violence. This section uses past examples of women prosecuted for their pregnancy outcomes to project how pregnant survivors of intimate partner violence may be at heightened risk of facing criminal punishment for the abuse they experience during pregnancy.

106. Birth control sabotage is a kind of reproductive abuse that encompasses behaviors like tampering with, hiding, or destroying a partner's birth control pills, poking holes in condoms, removing birth control devices from a partner's body, removing a condom without consent, and refusing to withdraw during sex. *Reproductive Abuse and Coercion*, WOMENSLAW.ORG, <https://www.womenslaw.org/about-abuse/forms-abuse/reproductive-abuse-and-coercion> [<https://perma.cc/3HHX-Z3JD>] (last updated Jan. 13, 2020).

107. See Lynn M. Paltrow, *Roe v. Wade and the New Jane Crow: Reproductive Rights in the Age of Mass Incarceration*, 103 AM. J. PUB. HEALTH 17, 19 (2013), <https://pmc.ncbi.nlm.nih.gov/articles/PMC3518325/> [<https://perma.cc/XA6N-BNH4>].

108. Rachel Hatzipanagos, *A 'Divinely Created' Being: States Try to Define Fetal Personhood*, WASH. POST (Mar. 29, 2024), <https://www.washingtonpost.com/nation/2024/03/29/fetal-personhood-laws-states-abortion/> [<https://perma.cc/6KE5-9WE4>].

1. Arrested for Falling Down the Stairs

During the summer of 2009, Christine Taylor became pregnant with her third child, and her husband left her.¹⁰⁹ While on the phone with her in January 2010, Ms. Taylor's estranged husband reportedly told her "some very hurtful things."¹¹⁰ She became upset, realizing she "was alone, pregnant with two young kids, with no family around or support."¹¹¹ The realization nearly caused her to black out and she tripped and fell down the stairs of her home.¹¹² Ms. Taylor went to the hospital after the fall where she confided in the nurse that she was uncertain whether she wanted to continue her pregnancy and that she had considered both adoption and abortion.¹¹³ While still at the hospital, police arrived to interrogate her; when she got home, police arrested her for attempted feticide.¹¹⁴ The medical personnel at the hospital believed that Ms. Taylor had fallen down the stairs purposefully, intending to end her pregnancy.¹¹⁵ Ms. Taylor sat in jail for two days.¹¹⁶ The charges against her were ultimately dismissed,¹¹⁷ but not because Iowa prosecutors believed Ms. Taylor's assertion that she "never said [she] didn't want [her] baby" and that she tripped by accident.¹¹⁸ The charges were dropped "based on information from Taylor's doctor who said Taylor had not reached her third trimester of pregnancy."¹¹⁹ The Iowa feticide law only applied to third trimester pregnancies.¹²⁰

Ms. Taylor's story is particularly concerning due to what it may foreshadow for intimate partner violence survivors living in a post-*Dobbs* America. Consider a woman who *is* in her third trimester

109. *Iowa Police Almost Prosecute Woman for Her Accidental Fall During Pregnancy . . . Seriously.*, ACLU MAINE (Feb. 11, 2010, 5:04 PM), <https://www.aclumaine.org/en/news/iowa-police-almost-prosecute-woman-her-accidental-fall-during-pregnancyseriously> [<https://perma.cc/2E2H-5HW3>] [hereinafter ACLU MAINE].

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. See Kevin Hayes, *Did Christine Taylor Take Abortion into Her Own Hands?* CBS NEWS (March 2, 2010, 6:55 AM), <https://www.cbsnews.com/news/did-christine-taylor-take-abortion-into-her-own-hands> [<https://perma.cc/W356-4AKX>].

116. ACLU MAINE, *supra* note 109.

117. Brian Nichols, *Burlington Woman Will Not Be Charged With Feticide*, RADIO IOWA (Feb. 10, 2010), <https://www.radioiowa.com/2010/02/10/burlington-woman-will-not-be-charged-with-feticide/> [<https://perma.cc/YY9B-EGSP>].

118. See ACLU MAINE, *supra* note 109.

119. Nichols, *supra* note 117.

120. Hayes, *supra* note 115.

of pregnancy. Her abusive partner has threatened to kill her, or harm her children, pet, or family members if she tells anyone about the abuse. He pushes her down the stairs. She goes to the hospital to have her injuries examined and tells the doctor that she fell down the stairs, fearing what her partner would do if she told the doctor the truth. The doctor asks about her pregnancy, and, just like Christine Taylor, the woman expresses that she had considered both adoption and abortion. If the police come and interrogate this woman about feticide, she could be arrested, as Christine Taylor was. However, her charges would not be dismissed because, unlike Ms. Taylor, she had reached her third trimester. To explain what *really* happened and prove her fall was not an intentional attempt to end her pregnancy, this woman would have to disclose her abuse. If she does so, she may rightfully fear that her abusive partner may retaliate. If she does not, her abusive partner may retaliate because he *believes* she disclosed her abuse. If she says nothing, she could be prosecuted simply for being pregnant and a victim of intimate partner violence.

The concerns about survivors of intimate partner violence being criminalized for the abuse that they suffer do not end with concern that medical professionals, like those in Ms. Taylor's story, will report their suspicions that a woman intentionally acted to terminate her pregnancy in contravention of an abortion prohibition. Rather, there is serious room for concern that the threat of criminalizing pregnancy-related accidents, or abuse can become a tool for abusers to control their partners. Consider a pregnant woman who, like Christine Taylor, becomes upset and overwhelmed with emotion after her partner says hurtful things to her. She accidentally trips and falls down the stairs. Her abusive partner could report to the police that she fell intentionally and open her up to criminal liability. *Dobbs* creates a sword that abusers can wield to control their partners by transforming everyday accidents, or *potentially* dangerous conduct into evidence of potential criminal conduct against the fetus she carries.

2. Prosecuted for Being Shot

In 2019, Marshae Jones was indicted for manslaughter by an Alabama grand jury.¹²¹ The charge came after she was shot in the stomach and the fetus she was pregnant with died.¹²² Ms. Jones was

121. Farah Stockman, *Alabamians Defend Arrest of Woman Whose Fetus Died in Shooting*, N.Y. TIMES (July 1, 2019) at A1, <https://www.nytimes.com/2019/06/30/us/alabama-woman-marshae-jones.html> [https://perma.cc/B8ES-24E6].

122. *Id.*

five months pregnant when she got into a fight with a coworker, Ebony Jemison, in a parking lot.¹²³ According to law enforcement officers, Ms. Jones started the fight and had Ms. Jemison pinned in her car, dealing her multiple blows.¹²⁴ Ms. Jemison then fired a gun straight into Ms. Jones' stomach; the bullet struck her fetus, killing it.¹²⁵ Ms. Jemison was not indicted for firing the shot because the grand jury determined she had acted in self-defense.¹²⁶ However, Ms. Jones was indicted for manslaughter because she "'initiat[ed] a fight knowing she was five months pregnant.'"¹²⁷ The charges against Ms. Jones were eventually dropped by Jefferson County district attorney Lynneice Washington.¹²⁸ However, dropping the charges did not erase the harm that the indictment caused Ms. Jones. She was taken into custody and spent the night until she was able to post bail the next day with contributions from her family and the Yellowhammer Fund, an abortion rights organization.¹²⁹ She spent a week steeped in uncertainty while the charges were pending.¹³⁰ In that week she also began mourning the loss of the fetus that she wanted and had named Marlaysia.¹³¹ She worried about what would happen to her six-year old daughter if she went to prison.¹³² She lost her job, and on top of all of that, she lost her house when it burned down in an unrelated fire.¹³³

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* (quoting Marshaë Jones' indictment).

128. See Darran Simon & Susan Scutti, *DA Drops All Charges Against a Pregnant Woman Indicted in Her Baby's Death After Shooting in Alabama*, CNN (July 3, 2019, 4:16 PM), <https://www.cnn.com/2019/07/03/us/pregnant-alabama-woman-manslaughter-indictment/index.html> [<https://perma.cc/T5X4-C8KB>] (reporting that charges against Marshaë Jones were dropped). Attorney Washington was the first African American woman to be elected District Attorney in both Jefferson County and Alabama. Lynneice O. Washington, *Jefferson County District Attorney – Bessemer Cutoff Division*, HOOVER SUN (Dec. 20, 2019, 2:59 PM), <https://hooversun.com/sponsored-content/women-in-business/lynneice-o-washington-jefferson-county-district-attorney-bessemer-cutoff-division/> [<https://perma.cc/Q5Y3-TPPB>].

129. See Stockman, *supra* note 121.

130. See *id.* (stating that Ms. Jones was arrested on the Wednesday before the article's publication—June 26, 2019); See also Josiah Bates, *Alabama Prosecutors Drop Charges Against Woman Whose Fetus Died in Shooting*, TIME (July 3, 2019, 3:54 PM), <https://time.com/5620130/alabama-charges-dropped-marshaë-jones/> [<https://perma.cc/FZ5X-H48K>] (reporting that the charges against Ms. Jones were dropped on July 3, 2019).

131. Stockman, *supra* note 121.

132. *Id.*

133. *Id.*

Marshaë Jones' story is significant when considering the consequences of *Dobbs* for survivors of intimate partner violence because victims of intimate partner violence sometimes use violence against their abusive partners.¹³⁴ Such violence may be responsive to violence against them or used to protect themselves or others.¹³⁵ "Victims' survival strategies, which may include using force, may not be recognized as such, as they may not fit within the traditional picture of self-defense actions that are based on imminent threat in an isolated incident."¹³⁶

Where a pregnant survivor uses responsive or protective violence that does not fit the mold of "traditional" self-defense that happens in response to an imminent threat, that pregnant survivor's actions may look more like "starting a fight" when the woman knew she was pregnant—like Marshaë Jones was accused of—and less like self-defense. That pregnant survivor could be criminalized for responding to abuse if, afterward, she experiences a negative pregnancy outcome.

But the threat to pregnant survivors does not end if a survivor never engages in responsive violence or violence in self-defense. Some abusers will falsely accuse their victims of using violence against them and being the primary aggressor in a physical altercation, sometimes going so far as self-inflicting wounds to support their allegations.¹³⁷ Abusers have historically abused mandatory-arrest policies for intimate partner violence to control their partners with the threat of criminalization.¹³⁸ One study determined that ten of nineteen women who had been arrested for the assault of their intimate partner reported that their abusive male partner had used the criminal justice system and his knowledge of mandatory arrest laws to cause her to be arrested and charged.¹³⁹ When pregnancy loss is criminalized, abusive partners can use the threat of such criminalization to control their partners, even where the survivor has not engaged in any criminal conduct.

Survivors are even more vulnerable to this kind of control, as those who endure physical or sexual intimate partner violence are more likely to experience miscarriage than their pregnant

134. Melissa E. Dichter, "*They Arrested Me—And I Was the Victim*": *Women's Experiences With Getting Arrested in the Context of Domestic Violence*, 23 WOMEN & CRIM. JUST. 81, 82 (2013).

135. *Id.*

136. *Id.* at 83.

137. *Id.*

138. *Id.*

139. *Id.*

counterparts who do not suffer such violence.¹⁴⁰ If a survivor miscarries, an abuser could fabricate claims that the survivor's conduct caused the miscarriage and bring intense scrutiny upon the survivor. Regardless of the prosecution's outcome, survivors are harmed by the fear that accompanies an investigation of a pregnancy outcome. Survivors are more vulnerable to this fear and pregnancy criminalization because of their increased risk of miscarriage.

3. Prosecuted for Substance Use

Findings by Pregnancy Justice revealed that between January 2006 and June 2022, there were nearly 1,400 arrests of people for conduct during their pregnancies.¹⁴¹ More than ninety percent of these were arrests for substance abuse during pregnancy.¹⁴² However, one-quarter of the total arrests for of pregnancy criminalization involved allegations that the pregnant person used *legal* substances during their pregnancy, including nicotine, alcohol and prescription opiates.¹⁴³ Pregnant people are even arrested when their child is born healthy.¹⁴⁴ The criminalization of pregnant people for using substances during their pregnancies is concerning for survivors of intimate partner violence in a post-*Dobbs* world because abusers may use substances to coercively control their victims, making their victims more vulnerable to criminalization.

Research regarding “chemical control,”—abuse by tampering with, withholding, over-administering, or otherwise misusing another person's medication or other substances to exercise coercive control over them—is under-studied within the context of intimate partner violence.¹⁴⁵ However, in one qualitative study, an abused women reported that her partner had mixed sleeping pills into her food and drinks.¹⁴⁶ Another reported that her abusive partner gave

140. Mira Johri et al., *Increased Risk of Miscarriage Among Women Experiencing Physical or Sexual Intimate Partner Violence During Pregnancy in Guatemala City, Guatemala: Cross-Sectional Study*, 11 BMC PREGNANCY & CHILDBIRTH 1, 6 (2011).

141. PURVAJA S. KAVATTUR ET AL., THE RISE OF PREGNANCY CRIMINALIZATION: A PREGNANCY JUSTICE REPORT 4 (2023). See also Cara Angelotta & Paul S. Appelbaum, *Criminal Charges for Child Harm from Substance Use in Pregnancy*, 45 J. AM. ACAD. PSYCHIATRY L. 193, 195–98 (2017), for a table of twenty-four different criminal cases against twenty-nine women for pregnancy outcomes from 1977–2015.

142. KAVATTUR ET AL., *supra* note 141, at 4.

143. *Id.*

144. *Id.*

145. See Sarah-Jane Walker et al., *The Use of Chemical Control Within Coercive Controlling Intimate Partner Violence and Abuse*, 29 VIOLENCE AGAINST WOMEN 2730, 2734 (2023).

146. *Id.* at 2738.

her opioid painkillers, leading to addiction and subsequent drug treatment.¹⁴⁷ “Over half (55%) the participants said that a partner or ex-partner had used, or tried to use, other substances apart from prescribed medication, including illegal drugs and/or alcohol, in order to make them do something they did not want to do.”¹⁴⁸

“The danger of criminalization for anyone who is or can get pregnant is bound to intensify after *Dobbs*.”¹⁴⁹ Consequently, chemical control is a particularly dangerous form of intimate partner abuse in a post-*Dobbs* America. If an abuser adds a substance to their pregnant partner’s food or controls their partner’s medications and over-administers them, that substance could provide the basis for a prosecution against the pregnant person. What is even more dangerous is if the abuser *knows* this and reports the pregnant person to law enforcement, themselves. While feticide laws may punish the abuser if the fetus dies and the abuser is proven responsible, a living infant and a positive substance test could expose the pregnant person to criminal prosecution, regardless of intent or coercion. Even if the pregnant person proves they did not ingest a substance willingly, if the charges are dropped, or if the pregnant person is only threatened with being reported to law enforcement by their partner, the pregnant person will still experience fear and trauma. Federal protections for abortion access provided a form of defense against this fear because it served as a bar to many states adopting fetal personhood laws that result in an expanded array of maternal conduct being criminalized, regardless of the birth outcome.¹⁵⁰

IV. FEDERAL ABORTION PROTECTION IS CRITICAL TO THE SAFETY OF SURVIVORS OF INTIMATE PARTNER VIOLENCE

Federal protections for abortion are critical to ensuring that survivors have bodily autonomy and can escape abusive relationships regardless of their zip code. In the same way that federal action was necessary to end the Jim Crow era, federal action is necessary to ensure that women and people who can become pregnant are not relegated to second-class citizens without rights to their own bodies. Congress should pass federal laws that expand not only the right to abortion, but *access* to abortion to ensure that abortion care

147. *Id.*

148. *Id.* at 2741.

149. Morgan Carmen, *When Any Birth Outcome Can Be a Criminal One*, Ms. MAG, (Oct. 13, 2023), <https://msmagazine.com/2023/10/13/pregnancy-laws-drugs-poor-women-prosecutors-abortion/> [<https://perma.cc/HS69-VTR3>].

150. *See id.*

is available and accessible to all, especially survivors of intimate partner violence who rely on such care for their safety.

A. *Without Federal Protections for Abortion There Is No Equity for Vulnerable Survivors*

Without federal protection for abortion rights, there is no equity for survivors of intimate partner violence. This Note began with an explanation of how *Planned Parenthood v. Casey* recognized the importance of federal abortion protections because of the heightened risk for intimate partner violence that accompanied pregnancy. The facts have not changed since *Casey* was decided; pregnancy remains a risk factor for intensifying intimate partner violence. As such, there is still a need for abortion protections to protect survivors from becoming trapped in abusive relationships due to pregnancy.

The 2019 wrongful death suit from Alabama, in which “Baby Roe” was named a plaintiff, was dismissed because it was “precluded by existing state and federal laws pertaining to the conduct in question.”¹⁵¹ Those federal laws were *Roe* and *Casey*. Spousal notice of abortion was struck down by *Casey*. Fetal personhood laws, like the one that provided support for Marshaé Jones’ arrest, were at least limited in scope by the protections *Roe v. Wade* provided.¹⁵² These cases show that federal protections for abortion were holding a line that protected pregnant people and survivors from more extreme criminalization, coercion, and control by their abusive partners. After *Dobbs*, nothing remains in place to hold that line. States can “add fertilized eggs, embryos, and fetuses to the Constitution” and “create a basis for ensuring a permanent underclass for pregnant women, or . . . a new Jane Crow.”¹⁵³

Lynn Paltrow argues that the fetal personhood movement and attacks on *Roe v. Wade* tend to move the United States toward becoming a nation where women who have abortions are criminalized and lose their status as “full constitutional persons.”¹⁵⁴ She calls this “Jane Crow” as a callback and comparison to the Jim Crow era where Black Americans were relegated to second-class citizens under the law.¹⁵⁵ Much like Jim Crow laws, post-*Dobbs* anti-abortion

151. Chandler, *supra* note 94.

152. See Jacob Rosenberg, *The Marshaé Jones Case Is Just the Latest Battle Over Fetal Personhood*, MOTHER JONES (July 3, 2019), <https://www.motherjones.com/politics/2019/07/the-marshaé-jones-case-is-just-the-latest-battle-over-fetal-personhood/> [https://perma.cc/MHR8-CKW5].

153. Paltrow, *supra* note 107, at 19.

154. *Id.* at 17.

155. David Pilgrim, *What Was Jim Crow*, JIM CROW MUSEUM, <https://www.jimcrowmuseum.org/>

and fetal personhood laws operate in some, but not all, states.¹⁵⁶ Both Jim Crow laws, and anti-abortion laws that strip women of full constitutional protection, create a caste of second-class citizens. Jim Crow was enforced through violence and threats of violence.¹⁵⁷ For survivors of intimate partner violence, this post-*Dobbs* “Jane Crow” era can be enforced by the violence and threats of violence made by their abusive partners.

The Jim Crow era saw its end when the Supreme Court ruled in *Brown v. Board of Education* that schools could not remain segregated, and President Lyndon B. Johnson signed the Civil Rights Act into law in 1964.¹⁵⁸ The end of Jim Crow took federal action and federal protections from discrimination in schools,¹⁵⁹ voting,¹⁶⁰ housing,¹⁶¹ and more. This Civil Rights era laid the blueprint for how laws that entrench a class of people into a status as second-class citizens can be attacked. This kind of momentum and federal movement must be replicated for the reproductive rights movement not only to ensure that women and people who can become pregnant are not relegated as second-class citizens, but to prevent survivors of intimate partner violence from being further isolated, controlled, coerced, and trapped by their abusive partners through weaponized law.

B. *Federal Protection for Abortion Must Be Adopted to Prevent Survivors of Intimate Partner Violence from Becoming Further Trapped in Abusive Relationships*

Since *Dobbs* was decided, Democratic candidates for federal office have run on promises to restore the protections of *Roe v. Wade* to federal law.¹⁶² However, even if *Roe* were restored as the

jimcrowmuseum.ferris.edu/what.htm [https://perma.cc/AW2F-KQ32] (last updated 2012).

156. See *id.*; *After Roe Fell: Abortion Laws by State*, *supra* note 51. The following states have some form of fetal personhood law in effect: Alabama, Georgia, Missouri. As of Jan. 22, 2025, a fetal personhood law in Arizona is enjoined. *Id.*

157. Pilgrim, *supra* note 155.

158. See History.com Editors, *Jim Crow Laws*, HISTORY (Feb. 28, 2018), <https://www.history.com/topics/early-20th-century-us/jim-crow-laws> [https://perma.cc/H8BR-PB7B] (last updated Apr. 15, 2025).

159. See generally *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

160. See generally Voting Rights Act of 1965, Pub. L. No. 89–110, 79 Stat. 437 (1965).

161. See generally Fair Housing Act of 1968, Pub. L. No. 90–284, 82 Stat. 73 (1968) (codified at 42 U.S.C. §§ 3601–3619, 3631).

162. See *e.g.* Associated Press, *Biden Vows to Restore Roe v. Wade During State of the Union, YouTube* (Mar. 7, 2024), https://www.youtube.com/watch?v=t1-6_hw2CyM (showing President Joe Biden deliver the line, “If you

law of the land, its protections would still not go far enough in providing reproductive freedom and autonomy to people who are, or may become, pregnant, especially those experiencing intimate partner violence.

Roe provided a nationwide *right* to abortion, but it did not protect a person's *access* to abortion. A right is meaningless to those without access to the exercise of that right. During the Jim Crow era, the right to vote was not enough for Black people to *access* the ballot box.

It's like thinking about the 19th Amendment and voting rights—Fannie Lou Hamer and Black people being beaten up on a bridge saying we want the right to vote. If Black people will still have to be pummeled, people murdered to attain this voting right, then for some it's more illusory than real.¹⁶³

Similarly, in this “Jane Crow” era, if people still must travel hours to reach the nearest clinic, choose between paying for abortion or paying their rent, or risk subjecting their support systems to civil suits by private individuals by asking for support in obtaining an abortion, then the right is illusory to many. The United States must go beyond making *Roe v. Wade* the law of the land. Federal protections for abortion are critical, but in addition to protecting a person's right to reproductive freedom and autonomy, the federal government must ensure that people have actual and feasible access to reproductive care, including abortion.

1. The Women's Health Protection Act

In March 2023, United States Senators Tammy Baldwin and Richard Blumenthal introduced legislation in Congress called the *Women's Health Protection Act of 2023* (“WHPA”).¹⁶⁴ The proposed legislation would

the American people send me a Congress that supports the right to choose, I promise you: I will restore *Roe v. Wade* as the law of the land again.”); *see also* Mikal Mulugeta, *Harris Said She Wants to Bring Back Roe v. Wade. What Will it Take?* L.A. LOYOLAN (Sept. 16, 2024), https://www.laloyolan.com/e2024/harris-said-she-wants-to-bring-back-roe-v-wade-what-will-it-take/article_c61d1aec-74a5-11ef-beb9-3b23fea7fe00.html [<https://perma.cc/A5K5-3BCC>] (reporting that during the 2024 Presidential Debate between Kamala Harris and Donald Trump, Harris pledged that if Congress passed a bill restoring *Roe*'s protections, she would sign it if elected President).

163. Jennifer Weiss-Wolf, *Why Roe Was Never Enough—and What Comes Next*, MS. MAG., (May 3, 2022), <https://msmagazine.com/2022/05/03/roe-v-wade-abortion-democracy-voting-rights-history/> [<https://perma.cc/M7RY-SF4P>] (quoting Professor Michele Goodwin's remarks during an in-person discussion cohosted by Ms., the Brennan Center for Justice, and NYU Law's Birnbaum Women's Leadership Network).

164. Baldwin, Blumenthal Lead 47 Members in Introducing Legislation

permit people to seek and obtain abortion services, and [] permit health care providers to provide abortion services, without harmful or unwarranted limitations that . . . do not significantly advance reproductive health or the safety of abortion services, or make abortion services more difficult to access.¹⁶⁵

If passed, the WHPA would do more to protect a person's access to reproductive healthcare, including abortion, than codifying *Roe*. The bill would protect the right of a health care provider¹⁶⁶ to offer pre-viability abortion services to a patient, and the right of a patient to receive such services, without certain restrictions or limitations on care.¹⁶⁷ The WHPA would prohibit pre-viability method bans,¹⁶⁸ prevent limitations on prescribing and dispensing medication abortion,¹⁶⁹ ban residency-based restrictions,¹⁷⁰ and forbid requirements that medically inaccurate information be provided to a patient, or that specific tests and procedures not required for "medically comparable" procedures be performed.¹⁷¹ Further, it would eliminate unnecessary in-person visits to abortion providers,¹⁷² unnecessary and burdensome TRAP laws, waiting periods,¹⁷³ and requirements for patients to disclose their reasons for seeking

to Restore and Protect Americans' Right to an Abortion Nationwide, TAMMY BALDWIN: UNITED STATES SENATOR FOR WISCONSIN (Mar. 8, 2023), <https://www.baldwin.senate.gov/news/press-releases/baldwin-blumenthal-lead-47-members-in-introducing-legislation-to-restore-and-protect-americans-right-to-an-abortion-nationwide> [<https://perma.cc/NH35-T2VZ>].

165. Women's Health Protection Act of 2023, S. 701, 118th Cong. § 2(1) (2023).

166. The WHPA definition of "health care provider" includes hospitals, clinics, and physicians, but also physicians' assistants, certified nurse-midwives, nurse practitioners, pharmacists, and pharmacies. *See id.* § 3. Many states only permit physicians to perform abortions. *See* Elizabeth Fernandez, *Study: Abortions Are Safe When Performed By Nurse Practitioners, Physician Assistants, Certified Nurse Midwives*, UNIV. CAL. S.F. (Jan. 17, 2013), <https://www.ucsf.edu/news/2013/01/98759/study-abortion-are-safe-when-performed-nurse-practitioners-physician-assistants> [<https://perma.cc/TH5R-VWSP>]. Expanding the right to perform abortions to other qualified providers improves access to abortion by making safe abortion care more widely available to those who need it, and more affordable by making it more possible to receive an abortion early in a pregnancy, when the care is less costly. *See id.*

167. *See generally* Women's Health Protection Act of 2023, S. 701, 118th Cong. (2023).

168. *Id.* § 4(a)(1)(A).

169. *Id.* § 4(a)(1)(B)–(C). This section comes with the caveat that generally applicable limitations on the prescription or dispensation or distribution of such drugs still apply. *See id.*

170. *Id.* § 4(a)(1)(D).

171. *Id.* § 4(a)(1)(E)–(F).

172. *Id.* § 4(a)(1)(H).

173. *Id.* § 4(a)(1)(G)–(I).

abortion care.¹⁷⁴ The bill would also prohibit limiting or infringing abortion rights in a way that singles out abortion care and “impedes access to abortion services.”¹⁷⁵ The law would encourage courts to consider whether an abortion limitation would directly or indirectly make obtaining abortion care more expensive, result in additional patient travel, or decrease the availability of abortion care when deciding whether a person’s access to abortion is impeded.¹⁷⁶

The WHPA should be passed to ensure that people have more than just the right to an abortion, but the ability to “access abortion care, free from medically unnecessary restrictions and bans on abortion.”¹⁷⁷ This legislation would be lifesaving for many victims of intimate partner violence because it would protect their right to receive abortion care without being required to travel hundreds of miles, worrying that their partner may track their location or ask questions about what they were doing so far away. It would prohibit medically unnecessary TRAP laws, enforcement of which is connected to higher rates of lethality for people suffering intimate partner violence.¹⁷⁸ Finally, it would likely quash laws like S.B. 8 which “expressly . . . single[] out . . . individuals . . . who provide assistance and support to those seeking abortion services, [and] health care providers who provide abortion services” and “impede[] access to abortion services” by isolating pregnant survivors of intimate partner violence from their support systems.¹⁷⁹ It is critical that the WHPA be passed so that laws regarding abortion can be removed from the toolbox of abusers, and returned to serving as an important piece of a survivor’s safety plan.

2. Removing Viability from the WHPA

While the WHPA is a welcome and necessary piece of advancing reproductive justice,¹⁸⁰ more protections are necessary to

174. *Id.* § 4(a)(1)(J).

175. *Id.* § 4(b).

176. *See id.* § 4(c). “Whether the limitation or requirement is reasonably likely to result in a decrease in the availability of abortion services in a given State or geographic region.” *Id.* § 4(c)(5).

177. *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/H5Q7-KVS6>].

178. Cheung, *supra* note 62.

179. *Women’s Health Protection Act of 2023*, S. 701, 118th Cong. § 4(b) (1)–(2) (2023).

180. “Reproductive Justice” is a term coined in 1994 by the organization “Women of African Descent for Reproductive Justice.” *See Reproductive Justice*, SISTERSONG, <https://www.sistersong.net/reproductive-justice> [<https://perma.cc/PRA2-XZ55>] (last visited May 12, 2024). SisterSong, “the largest national

ensure that a person's bodily autonomy is theirs, and not something that abusive partners can coerce and control. First, the language of the WHPA would restrict a pregnant person's ability to receive, and a provider's ability to provide, abortion care post-viability unless "in the good-faith medical judgment of the treating healthcare provider, it is necessary to protect the life or health of the patient."¹⁸¹ The law should not limit a person's bodily autonomy at the point of viability.

Federal protections for abortion should not engage in line-drawing at "viability"—the point at which a fetus may survive outside of the uterus, with or without medical support.¹⁸² After about twenty weeks of pregnancy, "viability often is not a definitive diagnosis at all; rather, a clinician's prediction about viability includes information that clinicians can share with patients so that patients and their families can be fully informed when they make shared decisions about their health care."¹⁸³ Clinicians cannot be certain about the viability of any individual pregnancy. Determining a fetus's chance of being viable outside of the uterus depends on many factors beyond gestational age, including "sex, genetics, weight, circumstances around delivery, and availability of a neonatal intensivist health care professional."¹⁸⁴ Fetuses that may be viable may nevertheless "experience significant morbidity and impairment."¹⁸⁵ Navigating the nuance of individual pregnancies and patient needs should be up to a pregnant person and their doctor. The American College for Obstetricians and Gynecologists counsels that "these compassionate conversations should take place without political interference."¹⁸⁶

multi-ethnic Reproductive Justice collective" "defines Reproductive Justice as the human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities." *Id.* Reproductive Justice encompasses more than just reproductive *rights*; it works to advance social justice through an intersectional framework to ensure that all people have "the complete economic, social, and political power and resources to make healthy decisions about our bodies, our families, and our communities in all areas of our lives." *Reproductive Justice, IN OUR OWN VOICE: NAT'L BLACK WOMEN'S REPROD. JUST. AGENDA*, <https://blackrj.org/our-causes/reproductive-justice/> [<https://perma.cc/L2QZ-J877>] (last visited May 12, 2024).

181. S. 701 § 4(a)(2)(A).

182. *See id.* § 3(7).

183. *Facts Are Important: Understanding and Navigating Viability*, AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, <https://www.acog.org/advocacy/facts-are-important/understanding-and-navigating-viability> [<https://perma.cc/X7VW-PEYZ>] (last visited May 12, 2024).

184. *Id.*

185. *Id.*

186. *Id.* Oregon, Minnesota, Washington DC, Maryland, New Jersey,

Further, only an approximate one percent of abortions take place after twenty-one weeks of pregnancy.¹⁸⁷ When these abortions do occur, it is usually the case that the fetus has developed an abnormality, or the pregnant person's life is endangered by continuing the pregnancy.¹⁸⁸ A pregnant person experiencing intimate partner violence and fears for their life should not have to convince their doctor that the abuse they suffer is bad enough to fit a legal exception to abortion restrictions just because they presented to the clinic at twenty weeks pregnant, instead of nineteen. Regardless of the point in pregnancy, a patient should be permitted to discuss resources and options with their provider and come to a decision about the kind of reproductive healthcare that is best for their individualized situation.

3. Prohibiting Notice or Consent Requirements

The WHPA does not include any prohibition of state laws requiring a pregnant person to notify or receive the consent of a partner or spouse prior to receiving an abortion. While it is likely that spousal or partner notice or consent requirements would be struck down if challenged under § 4(b) of the Act, as a requirement that impedes access to abortion services, an express prohibition of such notice or consent requirements would ensure that no pregnant survivor of intimate partner violence would have to challenge a partner consent or notice requirement in court prior to receiving the abortion care that she wants and needs. The challenge of such a law, itself, would “impede[] access to abortion services”¹⁸⁹ for that survivor because of the time that lawsuits take, and because of the danger that she could be subject to if and when her abusive partner, by way of her challenge to a public law, discovers the pregnancy she sought to terminate.

4. Repealing the Hyde Amendment

To ensure that pregnant survivors of intimate partner violence have full rights and access to reproductive healthcare, including abortion, and prevent them from becoming further trapped in

Vermont, Alaska, and Colorado protect the right to abortion and do not have gestational viability bans. See *After Roe Fell: Abortion Laws by State*, *supra* note 51.

187. Sahil Kapur et al., *Democrats Want to ‘Restore’ Rights in Roe v. Wade but Differ on What That Means*, NBC NEWS (Sept. 14, 2023, 11:31 AM), <https://www.nbcnews.com/politics/2024-election/democrats-want-restore-rights-roe-v-wade-differ-means-rcna104909> [<https://perma.cc/Q4RF-A4EF>].

188. *Id.*

189. Women's Health Protection Act of 2023, S. 701, 118th Cong. § 4(b)(2) (2023).

abusive relationships, Congress must repeal the Hyde Amendment. The Hyde Amendment prohibits federal Medicaid funds from being used to cover abortion services.¹⁹⁰ “Medicaid cannot cover abortion even when a patient’s health is at risk and their doctor recommends they get an abortion.”¹⁹¹ In one study on pregnant women and intimate partner violence, almost thirty percent of the participants who were Medicaid-insured disclosed that they had experienced abuse.¹⁹² If any of these pregnant women lived in a state that had not provided for its own funds to cover abortion care for Medicaid participants and sought an abortion, they would be forced to pay out of pocket.

At Planned Parenthood clinics, medication abortions cost an average of \$580.¹⁹³ In-clinic abortions during the first trimester of pregnancy cost an average of \$600, and costs for in-clinic abortions that occur later in the second trimester may rise to \$2,000.¹⁹⁴ But these costs are not the only cost that pregnant patients incur when seeking an abortion. They may also need to pay for incidentals like transportation, accommodations, or childcare to access the procedure. Consequently, paying nearly \$600 or more out of pocket just for an abortion *procedure* is a serious barrier to care for a survivor of intimate partner violence.

Many survivors of intimate partner violence experience economic abuse.¹⁹⁵ Economic abuse encompasses abusive partner behaviors that “intentionally destroy[] or deplete[] a survivor’s financial resources or credit.”¹⁹⁶ Additionally, it includes stealing from an intimate partner, withholding a survivor’s money or access to their bank accounts and other assets, and interfering with a survivor’s ability to earn income.¹⁹⁷ Approximately seventy-six to

190. *Hyde Amendment*, PLANNED PARENTHOOD ACTION FUND, <https://www.plannedparenthoodaction.org/issues/abortion/federal-and-state-bans-and-restrictions-abortion/hyde-amendment> [<https://perma.cc/85DR-7HNC>] (last visited May 12, 2024). While there are exceptions for abortions necessary to preserve the life of the mother, or pregnancies that result from rape or incest, those exceptions are extremely narrow. *See id.*

191. *Id.*

192. Linda Bullock et al., *Abuse Disclosure in Privately and Medicaid-Funded Pregnant Women*, 51 J. MIDWIFERY & WOMEN’S HEALTH 361, 367 (2006).

193. Attia @ Planned Parenthood, *How Much Does an Abortion Cost?* PLANNED PARENTHOOD (Apr. 13, 2025), <https://www.plannedparenthood.org/blog/how-much-does-an-abortion-cost> [<https://perma.cc/U7E3-7QZ5>].

194. *Id.*

195. *See* Laura Johnson et al., *Examining the Impact of Economic Abuse on Survivors of Intimate Partner Violence: A Scoping Review*, 22 BMC PUB. HEALTH 1, 1 (2022).

196. *Id.* at 2.

197. *See id.*

ninety-nine percent of survivors who seek victim services disclose having suffered some form of economic abuse.¹⁹⁸

Survivors who have experienced limited access to their bank accounts or credit cards, or an abusive partner monitoring their spending, stealing from them, or preventing them from working, are unlikely to have the funds to pay for an abortion out of pocket. For survivors insured by Medicaid, the Hyde Amendment prevents those survivors from overcoming economic abuse and financial barriers to reproductive healthcare by using insurance. Consequently, the Hyde Amendment further traps survivors of intimate partner violence in abusive relationships and must be repealed. Unless abortion is affordable, it cannot be accessible.

V. CONCLUSION

In a post-*Dobbs* America, survivors of intimate partner violence face increased threats to their autonomy and safety. Pregnancy can heighten the danger that a person experiencing intimate partner violence faces. Consequently, abortion care has served as a critical resource for survivors who sought to end their pregnancies as part of a safety plan. Without federal protection for reproductive freedom, survivors of intimate partner violence are required to navigate a minefield of state laws that permit their abusers to further isolate, coerce, and control them during pregnancy. Pregnant survivors of intimate partner violence deserve bodily autonomy and to be safe, regardless of which state they live in. To ensure survivors can achieve this for themselves, Congress must codify the protections for abortion included in the Women's Health Protection Act, but expand it to protect abortion access post-viability and prohibit partner notice and consent requirements. Congress must also repeal the Hyde Amendment so that abortion accessibility is not impeded by its unaffordability. Without federal protections for abortion access, abusers can engage in state-sponsored coercion and control over their partners; it must not continue.

198. *Id.*