



MEMORANDUM

July 15, 2022

To: Subcommittee on Oversight and Investigations Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “Roe Reversal: The Impacts of Taking Away the Constitutional Right to an Abortion”

On Tuesday, July 19, 2022, at 10:30 a.m. (EDT), in the John D. Dingell Room, 2123 of the Rayburn House Office Building, and via Cisco WebEx online video conferencing, the Subcommittee on Oversight and Investigations will hold a hearing entitled, “Roe Reversal: The Impacts of Taking Away the Constitutional Right to an Abortion.” The hearing will examine the impact of the Supreme Court’s recent decision overturning the right to abortion and the implications for health care access for all Americans.

I. BACKGROUND

On June 24, 2022, in *Dobbs v. Jackson Women’s Health Organization*, the Supreme Court overturned the constitutional right to abortion, holding the Constitution does not confer the right to abortion and the authority to regulate abortion is returned to the people and their elected representatives.¹ Before its reversal in *Dobbs*, the Court previously ruled in 1973 in *Roe v. Wade* that the Constitution guaranteed the right to abortion, under the fundamental right to privacy stemming from the Due Process Clause of the 14th Amendment.² The Court further reaffirmed this precedent in *Planned Parenthood of Southeastern Pennsylvania v. Casey* in 1992, in *Whole Women’s Health v. Hellerstedt* in 2016, and again in *June Medical Services v. Russo* in 2020.³ In the wake of the Court’s reversal of the right to abortion in *Dobbs*, many states have already begun to ban abortion and restrict women’s access to health care.⁴

II. ABORTION CARE

Leading national public health organizations and medical societies, such as the American Public Health Association and the American College of Obstetricians and Gynecologists (ACOG), as well as global entities, including the World Health Organization and the United

¹ *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, slip op. at 1 (U.S. June 24, 2022).

² *Roe v. Wade*, 410 U.S. 113 (1973).

³ *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 503 U.S. 833 (1992); *Whole Women’s Health v. Hellerstedt* 579 U.S. 582 (2016); *June Medical Services v. Russo*, No. 18-1323 (U.S. June 29, 2020).

⁴ *Abortion is Now Banned in These States. See Where Laws Have Changed.*, Washington Post (July 1, 2022).

Nations, recognize abortion as health care—specifically a key component of reproductive health services.⁵ One in four American women will have an abortion by age 45.⁶ A 2018 National Academies of Sciences, Engineering, and Medicine study found that all four major abortion methods—medication, aspiration, dilation and evacuation, and induction—are safe and that complications are rare, though “abortion-specific regulations in many states create barriers to safe and effective care.”⁷ The reasons individuals seek abortions vary.⁸ Abortion may be, in some instances, the only measure to preserve a person’s health in the event of a pregnancy complication such as preeclampsia or placental abruption.⁹ Dissenting in *Dobbs*, Justices Breyer, Sotomayer, and Kagan note that regardless of the array of circumstances, “a State will be able to impose its moral choice on a woman and coerce her to give birth to a child.”¹⁰ They further note that with the reversal of *Roe*, a state may “impose criminal penalties on abortion providers, including lengthy prison sentences” and “criminalize the woman’s conduct too, incarcerating or fining her for daring to seek or obtain an abortion.”¹¹

III. HEALTH IMPACTS OF ABORTION RESTRICTIONS

A. Known Impacts of Restricting Abortion Care

In the decades since the Court’s decision in *Roe* and before the *Dobbs* decision, states’ restrictions on and requirements for obtaining abortion care and economic barriers resulted in access inequities among low-income communities, people living in rural areas, and people of color.¹² Restricting access to abortion care has been linked to higher maternal mortality and other adverse maternal and child health outcomes, including infant mortality, negative mental health outcomes among women who were denied abortion, and adverse birth outcomes.¹³ For example, a September 2021 study found that states with more restrictive access to abortion services had a higher percentage of total maternal mortality than states with less restrictive policies.¹⁴ Restrictive abortion policies compound existing disparities among maternal mortality

⁵ Dovile Vilda et al., *State Abortion Policies and Maternal Death in the United States, 2015–2018*, American Journal of Public Health (Sept. 22, 2021).

⁶ Rachel K. Jones and Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, American Journal of Public Health (Nov. 8, 2017).

⁷ National Academies of Sciences, Engineering, and Medicine, *The Safety and Quality of Abortion Care in the United States* (2018). *Landmark Report Concludes Abortion in U.S. Is Safe*, NPR (Mar. 16, 2018).

⁸ The American College of Obstetricians and Gynecologists, *Facts are Important: Abortion is Healthcare* (www.acog.org/advocacy/facts-are-important/abortion-is-healthcare) (accessed July 8, 2022).

⁹ *Id.*

¹⁰ *See* note 1.

¹¹ *Id.*

¹² Sara K. Redd et al., *Racial/Ethnic and Educational Inequities in Restrictive Abortion Policy Variation and Adverse Birth Outcomes in the United States*, BMC Health Services Research (Oct. 22, 2021); Jonathan M. Bearak et al., *Disparities and Change over Time in Distance Women Would Need to Travel to Have an Abortion in the USA: A Spatial Analysis*, The Lancet (Oct. 3, 2017).

¹³ *See* note 5.

¹⁴ *Id.*

rates in the United States, with Black women three times more likely than White women to die from pregnancy-related causes.¹⁵

In addition, the University of California San Francisco’s landmark Turnaway Study, a longitudinal study that followed the outcomes of women who were denied abortion care, showed that “women experience harm from being denied a wanted abortion,” such as more serious health complications during birth, higher likelihood of economic hardship and insecurity, and being more likely to stay in contact with a violent partner.¹⁶ Moreover, restrictive abortion bans resulting in the denial of abortion care have been shown to perpetuate disparities in health outcomes, particularly among people of color, LGBTQ+ people, young people, disabled people, and those living on low-incomes.¹⁷

B. Impacts of Roe’s Reversal

The Court’s decision in *Dobbs* has had immediate impacts on the provision of abortion care in the United States—even in states where bans on abortion are not in place or have yet to take effect. Reports of clinics calling patients in the hours that followed the decision to cancel scheduled appointments occurred across the nation, including Ohio, Texas, and Arizona.¹⁸ Other clinics and providers are temporarily suspending abortion services as legal proceedings continue, and still others are making plans to move to states with protective abortion laws.¹⁹ As a result, women and girls are being forced to travel to states where abortion remains lawful and accessible.²⁰ According to estimates, people living in states that have banned or are expected to ban abortion may need to travel an average of nearly 280 miles each way to access abortion care where it remains legal.²¹ Further, an analysis found that state abortion bans could harm nearly

¹⁵ Centers for Disease Control and Prevention, *Maternal Mortality Rates in the United States, 2020* (www.cdc.gov/nchs/data/hestat/maternal-mortality/2020/maternal-mortality-rates-2020.htm) (accessed July 14, 2022).

¹⁶ University of California San Francisco Advancing New Standards in Reproductive Health, *The Harms of Denying a Woman a Wanted Abortion Findings from the Turnaway Study* (www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf) (accessed July 14, 2022).

¹⁷ Center for Reproductive Rights, *The Disproportionate Harm of Abortion Bans: Spotlight on Dobbs v. Jackson Women’s Health* (Nov. 29, 2021).

¹⁸ *Fearing Criminal Charges, Clinics Across Arizona Have Stopped Providing Abortions*, Arizona Republic (June 24, 2022); *Arizona Providers, Regulators Can’t Agree on Abortion Law After Dobbs*, Cronkite News (June 27, 2022); *‘We’re Done’: Chaos and Tears as an Abortion Clinic Abruptly Shuts Down*, Washington Post (June 24, 2022); *Canceled Appointments, Out-of-State Referrals: 6-Week Ban Uproots Ohio Abortion Access*, Milwaukee Journal Sentinel (June 27, 2022).

¹⁹ *Planned Parenthood of Wisconsin Suspends Abortion Services After Roe Ruling*, WBAY (June 24, 2022); *North Dakota’s Only Abortion Clinic is Preparing to Move Across State Lines to Minnesota*, CNN Newsource (June 25, 2022).

²⁰ *As Ohio Restricts Abortions, 10-Year-Old Girl Travels to Indiana for Procedure*, Columbus Dispatch (July 7, 2022).

²¹ *Americans in 26 States Will Have to Travel 552 Miles for Abortions*, Bloomberg (June 24, 2022).

15 million women of color.²² Women who are disabled, veterans, or economically insecure are disproportionately likely to live in these states and likewise will be especially harmed by *Dobbs*.²³

In addition, hospitals, health systems, and doctors face uncertainty as they seek to understand the effect of the *Dobbs* decision and changing state laws on their provision of health care services to patients.²⁴ Health care providers report fear of criminal consequences for providing life-saving health care services, and patients' lives are already being put at risk as they face delayed or denied care.²⁵ On July 7, 2022, 75 health care organizations, including ACOG and the American Medical Association, issued a joint statement opposing political interference in the patient-client relationship.²⁶ The medical groups caution that “[t]he wave of abortion bans going into effect in states across the country will harm patients, impair the integrity of the medical profession, and have a devastating and unquantifiable impact on the patients and clinicians it affects.”²⁷

IV. STATE ABORTION POLICY ACTION AFTER *DOBBS*

As many as 26 states are certain or likely to seek to ban abortion in the wake of *Roe*'s reversal.²⁸ In the weeks following the *Dobbs* decision, at least nine states have banned abortion, and this number is expected to continue to grow.²⁹ Thirteen states had trigger bans—laws restricting abortion that were intended to automatically go into effect should *Roe* be overturned—in place.³⁰ However, the legality of several of these trigger bans has been challenged following the ruling in *Dobbs*.³¹ Beyond these states, state legislators and governors have announced intentions to pass additional laws either prohibiting or protecting abortion. State officials in Indiana, South Carolina, South Dakota, and West Virginia, for instance, have

²² National Partnership for Women & Families, *State Abortion Bans Could Harm Nearly 15 Million Women of Color* (July 2022) (www.nationalpartnership.org/our-work/resources/economic-justice/state-abortion-bans-harm-woc.pdf).

²³ *Id.*

²⁴ *Doctors Need Answers on Dobbs. Lawyers Don't Have Them Yet*, Bloomberg Law (June 29, 2022).

²⁵ *Physicians Face Confusion and Fear in Post-Roe World*, Washington Post (June 28, 2022); *Doctors' Worst Fears About the Texas Abortion Law Are Coming True*, NPR (Mar. 1, 2022).

²⁶ The American College of Obstetricians and Gynecologists, *More Than 75 Health Care Organizations Release Joint Statement in Opposition to Legislative Interference* (July 7, 2022) (press release).

²⁷ *Id.*

²⁸ Guttmacher Institute, *26 States Are Certain or Likely to Ban Abortion Without Roe: Here's Which Ones and Why* (Apr. 2022) (<https://www.guttmacher.org/article/2021/10/26-states-are-certain-or-likely-ban-abortion-without-roe-heres-which-ones-and-why>).

²⁹ *Tracking the States Where Abortion is Now Banned*, New York Times (July 12, 2022).

³⁰ Guttmacher Institute, *13 States Have Abortion Trigger Bans: Here's What Happens When Roe is Overturned* (June 2022) (<https://www.guttmacher.org/article/2021/10/26-states-are-certain-or-likely-ban-abortion-without-roe-heres-which-ones-and-why>).

³¹ *The Dobbs Decision Has Unleashed Legal Chaos for Doctors and Patients*, New Yorker (July 2, 2022); *Where State Abortion Bans Stand Amid Legal Challenges*, CNN Politics (July 6, 2022).

announced intentions to convene special sessions to pass new laws limiting abortion access.³² Conversely, state leaders such as Illinois’s governor have called for a special legislative session to pass legislation protecting abortion access.³³

V. FEDERAL ACTION

A. Congressional Action

In September 2021, the House of Representatives passed H.R. 3755, the “Women’s Health Protection Act of 2021,” (WHPA) introduced by Rep. Chu (D-CA). WHPA establishes a federal statutory right to abortion and for health care providers to perform abortion services without medically unnecessary restrictions that impede access to care. The Senate, needing 60 votes to proceed to vote on versions of WHPA, failed twice to invoke cloture on the motion by votes of 48 nays to 46 yeas in February 2022 and by 51 nays to 49 yeas in May 2022.³⁴ On July 15, 2022, the House once again passed WHPA, after voting on an updated version of the legislation to acknowledge the decision in *Dobbs*.³⁵ In addition, the House also passed H.R. 8297, the “Ensuring Women’s Right to Reproductive Freedom Act of 2022,” introduced by Rep. Fletcher (D-TX), which reaffirms the constitutional right to travel for the purposes of obtaining an abortion and establishes a private right of action that ensures any person acting under the color of state law cannot restrict, impede, or retaliate against Americans traveling across state lines for the purposes of obtaining a lawful abortion in another state.³⁶

B. Administration Action

Immediately following the Court’s *Dobbs* decision, President Biden announced that the Department of Justice would continue to protect the right of health care providers and individuals seeking reproductive health services in states where those services remain legal under the Freedom of Access to Clinic Entrances Act.³⁷ The Administration further committed that the Department of Health and Human Services (HHS) would protect women’s access to medication abortion, identifying ways to ensure that mifepristone—a drug approved by the Food and Drug Administration (FDA) that can be used together with misoprostol to end an early pregnancy—is

³² *The Push for Abortion Lawmaking After ‘Dobbs’ Is Unique, Legal and Political Experts Say*, Kaiser Health Network (July 8, 2022); *Justice Ready to Call Special Session on Abortion Rights*, The Register-Herald (July 5, 2022).

³³ *The Push for Abortion Lawmaking After ‘Dobbs’ Is Unique, Legal, and Political Experts Say*, Kaiser Health Network (July 8, 2022).

³⁴ U. S. Senate, Roll Call Vote on Cloture on the Motion to Proceed to H.R. 3755, the Women’s Health Protection Act of 2021 (Feb. 28, 2022) (46 yeas, 48 nays); U. S. Senate, Roll Call Vote on Cloture on the Motion to Proceed to S. 4132, the Women’s Health Protection Act of 2022 (May 11, 2022) (49 yeas, 51 nays).

³⁵ U.S. House of Representatives, Roll Call Vote on H.R. 8296, the Women’s Health Protection Act of 2022 (July 15, 2022) (219 yeas, 210 nays).

³⁶ U.S. House of Representatives, Roll Call Vote on H.R. 8297, the Ensuring Women’s Right to Reproductive Freedom Act of 2022 (July 15, 2022) (223 yeas, 205 nays).

³⁷ Department of Justice, *Attorney General Merrick B. Garland Statement on Supreme Court Ruling in Dobbs v. Jackson Women’s Health Organization* (June 24, 2022) (press release).

as widely accessible as possible, including when prescribed through telehealth and sent by mail.³⁸ In a statement the same day, Attorney General Garland further emphasized that states may not ban mifepristone based on disagreeing with FDA’s assessment of the drug’s safety and efficacy.³⁹ Additionally, on June 29, 2022, the HHS Office of Civil Rights issued guidance for providers and entities with access to personal health information related to patient privacy and issued separate guidance for individuals about how to protect their privacy and the security of their health information when using their personal cell phone or tablet.⁴⁰

On July 8, 2022, President Biden signed an Executive Order (EO) seeking to safeguard and reaffirm access to reproductive health care services; protect the privacy of patients and their access to accurate information; promote the safety and security of patients, providers, and clinics; and continue to coordinate the implementation of federal efforts to protect reproductive rights and access to health care.⁴¹ In response to the President’s EO, on July 11, HHS issued clarifying guidance on the Emergency Medical Treatment and Active Labor Act (EMTALA) reaffirming that federal law preempts state law restricting abortion care in emergencies and that health care providers are protected when offering legally mandated, life- or health-saving abortion services in emergency situations.⁴² HHS issued additional guidance following the EO on July 13, reminding pharmacies of their obligations to ensure access to comprehensive reproductive health care services.⁴³

VI. WITNESSES

The following witnesses have been invited to testify:

Renee Bracey Sherman, M.P.A.
Founder and Executive Director
We Testify

³⁸ Food and Drug Administration, *Mifeprex (mifepristone) Information* (www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information) (accessed July 14, 2022); The White House, *Fact Sheet: President Biden Announces Actions in Light of Today’s Supreme Court Decision on Dobbs v. Jackson Women’s Health Organization* (June 24, 2022) (press release).

³⁹ Department of Justice, *Attorney General Merrick B. Garland Statement on Supreme Court Ruling in Dobbs v. Jackson Women’s Health Organization* (June 24, 2022) (press release).

⁴⁰ Department of Health and Human Services, *HIPAA Privacy Rule and Disclosures of Information Relating to Reproductive Health Care* (www.hhs.gov/hipaa/for-professionals/privacy/guidance/phi-reproductive-health/index.html) (accessed July 8, 2022); Department of Health and Human Services, *Protecting the Privacy and Security of Your Health Information When Using Your Personal Cell Phone or Tablet* (www.hhs.gov/hipaa/for-professionals/privacy/guidance/cell-phone-hipaa/index.html) (accessed July 8, 2022).

⁴¹ The White House, *Fact Sheet: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services* (July 8, 2022) (press release).

⁴² Department of Health and Human Services, *Following President Biden’s Executive Order to Protect Access to Reproductive Health Care, HHS Announces Guidance to Clarify that Emergency Medical Care Includes Abortion Services* (July 11, 2022) (press release).

⁴³ Department of Health and Human Services, *HHS Issues Guidance to the Nation’s Retail Pharmacies Clarifying Their Obligations to Ensure Access to Comprehensive Reproductive Health Care Services* (July 13, 2022) (press release).

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