Nos. 23-726, 23-727

In The Supreme Court of the United States

MIKE MOYLE, SPEAKER OF THE IDAHO HOUSE OF REPRESENTATIVES, ET AL.,

Petitioners,

v.

UNITED STATES,

Respondent.

IDAHO,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF *AMICI CURIAE* PROFESSOR DAVID S. COHEN, PROFESSOR GREER DONLEY, AND DEAN RACHEL REBOUCHÉ IN SUPPORT OF UNITED STATES

SUSAN FRIETSCHE
Counsel of Record
WOMEN'S LAW PROJECT
239 Fourth Avenue, Suite 2108
Pittsburgh, PA 15222
412-281-2892
sfrietsche@womenslawproject.org

CHRISTINE K. CASTRO
SUJAYA S. RAJGURU
WOMEN'S LAW PROJECT
125 South Ninth Street, Suite 300
Philadelphia, PA 19107
215-928-9801
ccastro@womenslawproject.org
srajguru@womenslawproject.org

DAVID S. COHEN
Professor of Law
THOMAS R. KLINE
SCHOOL OF LAW
DREXEL UNIVERSITY
3320 Market Street
Philadelphia, PA 19104
215-571-4714
dsc39@drexel.edu

Attorneys for Amici Curiae

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page

STATEMENT OF INTEREST OF THE *AMICI CURIAE*

Amici curiae[1] are three law professors who have taught, practiced, and written extensively about abortion law and the post-*Dobbs* legal landscape. They are coauthors of *New Abortion Battleground*, 123 Colum. L. Rev. 1 (2023), which was cited by the dissenting opinion in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 394 (2022) (Breyer, Sotomayor, and Kagan, JJ., dissenting), and *Abortion Pills*, 76 Stan. L. Rev. 317 (2024).

Professor David S. Cohen teaches constitutional law at Drexel University's Kline School of Law. He teaches reproductive rights and justice and sex discrimination and the law. Professor Greer Donley is the Associate Dean for Research and Faculty Development at the University of Pittsburgh School of Law and the John E. Murray Faculty Scholar. She is a leading scholar of abortion law and food and drug law. Dean Rachel Rebouché is the dean of Temple University Beasley School of Law and the Peter J. Liacouras Professor of Law. She is a leading scholar in reproductive health law and family law.

Amici support both Respondents' argument that the Emergency Medical Treatment and Labor Act (EMTALA), 42 U.S.C. § 1395dd, requires Medicare-funded

---

[1] No counsel for a party authored this brief in whole or in part. No party or party's counsel financially supported this brief, and no one other than *amici* and their counsel financially contributed to this brief.

hospitals to offer necessary stabilizing treatment, including pregnancy termination, regardless of state laws restricting or banning abortion. *Amici* submit this brief to explain that this case, and the impending circuit split surrounding it, is a symptom of a larger workability problem with the *Dobbs v. Jackson Women's Health Organization* framework. *Dobbs* is already proving, in its brief existence, to be unworkable, and must be overturned.

INTRODUCTION AND SUMMARY OF ARGUMENT

Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022), should be overruled. This case presents the Court with an appropriate vehicle to correct its unworkable and calamitous ruling from two years ago.

This case addresses whether the Emergency Medical Treatment and Labor Act (EMTALA), 42 U.S.C. § 1395dd, preempts Idaho Code § 18-622's prohibition of abortion when abortion is necessary to stabilize a pregnant patient in crisis at an EMTALA-covered hospital. Only a handful of states, including Idaho, lack a health exception in their abortion bans, prohibiting emergency care that federal law demands certain hospitals provide. This failure to assure minimal protections to pregnant women's health has devastated reproductive health care in states with abortion bans and demonstrates a race to the bottom that is sowing enormous chaos and discord.

This conflict between federal and state legal authority arose as a direct consequence of *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), which reinterpreted the Due Process Clause of the Fourteenth Amendment to permit states to ban abortion care throughout pregnancy. In broadly permitting criminal and civil penalties for "abortion," as that term is variously defined by statutes and case law,[2] the *Dobbs* framework has encouraged and abetted state restrictions affecting a wide swath of reproductive health services, including emergency care. These restrictions are—unsurprisingly, given the endless complexity of pregnancy—vague and dangerous in their application to actual pregnancies. And courts are—unsurprisingly, given the deliberate pace of the justice system and the time-sensitivity of pregnancy emergencies—ill-suited to meaningfully address the disputes that arise under these restrictions. Prior to *Dobbs*, people facing pre-viability emergencies during pregnancy had a constitutional right to seek care.[3] But *Dobbs* has

---

[2] *See* Greer Donley & Caroline M. Kelly, *Abortion Disorientation*, 74 Duke L.J. at 11 (forthcoming 2025) (noting that 47 states and the federal government have enacted statutory abortion definitions and that each state's definition is different), https://ssrn.com/abstract=4729217.

[3] *Amici* acknowledge that *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), never fully protected individuals' reproductive liberty, in that they permitted states to impose conditions that made abortion hard to access or out of reach for many. *See, e.g.*, *Casey*, 505 U.S. at 899 (upholding mandatory 24-hour delay, scripted counseling, physician-only requirement, and parental consent requirement for minors seeking abortion); *Harris v. McRae*, 448 U.S. 297 (1980) (holding that states participating in Medicaid are not required to cover

injected instability, unpredictability, and arbitrariness into the law governing reproductive health care. In the words of one of the *amici*, *Dobbs* has created "a patchwork of abortion laws that are functionally unworkable, inherently standardless, and incoherent." Greer Donley & Caroline M. Kelly, *Abortion Disorientation*, 74 Duke L.J. at 57 (forthcoming 2025), https://ssrn.com/abstract=4729217.

In short order, the *Dobbs* ruling has ushered in an era of unprecedented legal and doctrinal chaos, precipitating a fury of disorienting legal battles across the country. The *Dobbs* framework has created destabilizing conflicts between federal and state authorities, as in the current case, and between and among states. These conflicts are proliferating because of the Pandora's box of constitutional questions *Dobbs* opened, implicating travel, federalism, extraterritorial jurisdiction, preemption, and federal executive power.

Less than two years after it was decided, it is evident that *Dobbs* has proven unworkable and should be overruled.

---

medically necessary abortion care for which federal financial participation is not available); *see also* David S. Cohen & Carole Joffe, *Obstacle Course: The Everyday Struggle to Get an Abortion in America* (2020).

ARGUMENT

I. THE UNWORKABILITY OF A RULE IS A CONSIDERATION IN WHETHER TO OVERRULE PRIOR PRECEDENT.

It is well settled that the doctrine of *stare decisis* "promotes the even-handed, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991) (quoting *Vasquez v. Hillery*, 474 U.S. 254, 265-66 (1986)). Not every precedent promotes these values, however, and *stare decisis* is not an "inexorable command." *Id.* at 828. Precedents that are unworkable can undermine predictability and consistency and confer too much discretion on courts to rule arbitrarily. This Court has never felt obligated to abide by precedent when governing decisions are unworkable or badly reasoned. *Id.* at 827; *see Smith v. Allwright*, 321 U.S. 649, 665 (1944). As the *Payne* Court recognized, "[t]his is particularly true in constitutional cases, because in such cases 'correction through legislative action is practically impossible.' " *Payne*, 501 U.S. at 828 (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 407 (1932) (Brandeis, J., dissenting)). Indeed, this Court has seen fit to overturn its own prior decisions on substantive matters of constitutional law at least 141 times between 1851 and 2018, and that number has risen since. *See* Brandon J. Murrill, *The Supreme Court's Overruling of Constitutional Precedent*, Congressional Research Service (Sept. 24, 2018); *see also* Constitution Annotated, *Table of Supreme*

Court Decisions Overruled by Subsequent Decisions (last visited Mar. 26, 2023), https://constitution.congress.gov/resources/decisions-overruled/.

Whether a rule is unworkable factors into the determination of whether to overrule a precedent or permit it to stand. This Court has deemed precedents unworkable when they are inherently vague, confusing or standardless. *See, e.g.*, *Johnson v. U.S.*, 576 U.S. 591 (2015) (holding residual clause of Armed Career Criminal Act void for vagueness and overruling contrary holdings of *James v. U.S.*, 550 U.S. 192 (2007), and *Sykes v. U.S.*, 564 U.S. 1 (2011)). Courts have found a precedent to be unworkable when it is incoherent, that is, illogical, internally inconsistent, or manifesting a disconnect between the rule and the goal it supposedly serves. *See Hudson v. U.S.*, 522 U.S. 93 (1997) (overruling double jeopardy rule of *United States v. Halper*, 490 U.S. 435, 448 (1990)); *see generally* Mary Ziegler, *Taming Unworkability Doctrine: Rethinking* Stare Decisis, 50 Ariz. L.J. 1215, 1255 (2019). Finally, courts, including the *Dobbs* Court, have deemed precedents unworkable when the court detects that they yield inconsistent results, generating uncertainty and unpredictability. *See Dobbs*, 597 U.S. at 281 (determining workability by assessing whether a rule can be "understood and applied in a consistent and predictable manner"). The *Dobbs* Court overruled *Roe* and *Casey* because it concluded that the standard those cases applied to abortion regulation produced results too inconsistent and unpredictable to be workable. Already, only two years after *Dobbs*, it is plain that the standard

Dobbs adopted instead is creating far more confusion, injustice, and chaos than *Roe* or *Casey* ever did.

As set forth below, the rule established by *Dobbs*, as it is playing out in the states and through the federal court system, is unworkable. It has already resulted in "a major distortion in the Court's constitutional jurisprudence," *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 785 (1994) (Scalia, J., concurring) (internal citations omitted), and is wreaking "significant damage to the stability of the society governed by it." *Planned Parenthood v. Casey*, 505 U.S. 833, 855 (1992), *overruled by Dobbs*, 597 U.S. 215. Before it does more damage, *Dobbs* should be overruled.

II. THE VAGUENESS AND INHERENT STANDARDLESSNESS OF THE *DOBBS* FRAMEWORK HAVE LED TO TRAGIC CONSEQUENCES FOR PEOPLE NEEDING REPRODUCTIVE HEALTH CARE.

Dobbs purported to return the authority to set abortion policy "to the people and their elected representatives," subject to the relatively modest hurdle of rational basis review. *Dobbs*, 597 U.S. at 259. Though this holding, read narrowly, only applies to so-called "elective" abortions, as distinct from "therapeutic" abortions, these terms are never defined.[4] As the joint

[4] The question presented in *Dobbs* was whether "all pre-viability prohibitions on elective abortions are unconstitutional." *Dobbs*, 597 U.S. at 234. The Court held that they were not, finding a legitimate state interest in prohibiting nontherapeutic or elective abortions sufficient to justify the state's 15-week ban, which

dissenting opinion delineates, the majority ruling in *Dobbs* provides little guidance as to how this massive policy change should play out:

> Must a state law allow abortions when necessary to protect a woman's life and health? And if so, exactly when? How much risk to a woman's life can a State force her to incur, before the Fourteenth Amendment's protection of life kicks in? Suppose a patient with pulmonary hypertension has a 30-to-50 percent risk of dying with ongoing pregnancy; is that enough? And short of death, how much illness or injury can the State require her to accept, consistent with the Amendment's protection of liberty and equality?

Dobbs, 597 U.S. at 393 (Breyer, Sotomayor, and Kagan, JJ., dissenting). These questions are no longer hypothetical. Leaving abortion regulation to the states has subjected people in need of reproductive health care to immense suffering and grave danger. As the instant EMTALA cases illustrate, *Dobbs* has created doubt about how much risk a person must be forced to endure before they may receive emergency abortion care. The

---

contained exceptions for medical emergencies and severe fetal anomaly. *Id.* at 302. Justice Kavanaugh's concurring opinion suggests that "an exception to a State's restriction on abortion would be constitutionally required when an abortion is necessary to save" the pregnant person's life. *See Dobbs*, 597 U.S. at 339 n.4 (Kavanaugh, J., concurring) (citing *Roe v. Wade*, 410 U.S. 113, 173 (1973) (Rehnquist, J., dissenting) ("If the Texas statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective.")).

failure of the *Dobbs* framework to set clear parameters for necessary abortion care in emergency circumstances presently threatens the health and lives of pregnant patients.

A. *Dobbs* Has Wreaked Havoc on Reproductive Health Care and Worsened Maternal Health Outcomes.

Over the past two years, scores of women have bravely told their post-*Dobbs* horror stories to the media, underscoring the consequences of *Dobbs* on extensive segments of reproductive health care, from miscarriage care, to treatment for pregnancy-related complications, to fertility treatment.[5] Here are just a few of their stories:

1. Patients denied emergent obstetrical care.

In Texas, twenty women are plaintiffs in a lawsuit filed after they were denied necessary and potentially life-saving obstetrical care because medical professionals feared liability under Texas's abortion bans.[6] Lead

---

[5] *See* Frances Stead Sellers & Fenit Nirappil, *Confusion Post-Roe Spurs Delays, Denials for Some Lifesaving Pregnancy Care*, Wash. Post (July 16, 2022, 9:09 AM), https://www.washingtonpost.com/health/2022/07/16/abortion-miscarriage-ectopic-pregnancy-care.

[6] *See Zurawski v. State of Texas*, No. D-1-GN-23-000968 (Tex. Dist. Ct. Travis Cnty. Aug. 4, 2023). The lawsuit seeks to clarify the medical emergency exceptions in Texas's criminal and civil abortion bans. *See* Tex. Health & Safety Code §§ 170A.001-002; Tex. Health & Safety Code §§ 171.002(3), 171.203-205.

plaintiff Amanda Zurawski was eighteen weeks pregnant in August 2022 when she suffered preterm premature rupture of membranes. Doctors told her that it was not possible to save her daughter and she was therefore having a miscarriage, but that they could not end her pregnancy until either the fetal heart stopped or Zurawski's health deteriorated to the point that her life was endangered. Although the Zurawski plaintiffs won a temporary restraining order, Texas appealed to the Texas Supreme Court, staying the temporary order. Because of Texas's abortion ban, Zurawski received the care she needed only after she developed an infection in her uterus that threatened her life and future fertility—Zurawski nearly died from septic shock.[7]

Also in Texas, Kate Cox needed urgent abortion care in early December 2023 due to a lethal fetal diagnosis and threats to her health and fertility from continuing the pregnancy.[8] She sought a clarification that Texas's abortion ban did not extend to the care she needed, and a trial court granted her temporary relief permitting her emergency abortion care. That same day, the Texas Attorney General threatened legal action against any hospital that provided her with abortion care and appealed the trial court's order to the Texas Supreme Court, which placed the urgent case on hold for three days and then reversed the trial court. *See In re State*, 682 S.W.3d 890, 892-93 (Tex. 2023)

---

[7] *See Zurawski v. State of Texas*, No. D-1-GN-23-000968 (Tex. Dist. Ct. Travis Cnty. Aug. 4, 2023).

[8] *Cox v. Texas*, No. D-1-GN-23-08611 (Tex. Dist. Ct. Travis Cnty. Dec. 7, 2023), https://reproductiverights.org/wp-content/uploads/2023/12/TRO-in-Cox-v-TX-signed-12-7-23.pdf.

(denying order and concluding Ms. Cox's condition was not encompassed in the exception). The Texas Supreme Court opinion noted, "[s]ome difficulties in pregnancy, . . . even serious ones, do not pose the heightened risks to the mother the exception encompasses." *Id.* She received medically necessary care only because she was able to travel to another state.[9]

In Ohio, Brittany Watts started to miscarry in September 2023 when she was 21 weeks pregnant. She had visited the emergency room twice for treatment for preterm premature rupture of membranes. Doctors recommended inducing labor to end the pre-viable pregnancy because she was "at significant risk of maternal death, sepsis, or 'complete placental abruption with catastrophic bleeding.'"[10] But because fetal cardiac activity was still present, she was denied the abortion care she needed to stabilize her condition. Ultimately, she had a stillbirth at home on the toilet, where she flushed part of the fetal remains. When she sought treatment afterward, she was reported to the police who brought a felony charge against her for abuse of a corpse. A grand jury declined to indict her.

---

[9] *Kate Cox on Her Legal Fight for an Abortion in Texas*, CBS News (Jan. 14, 2024), https://www.cbsnews.com/video/kate-cox-on-her-legal-fight-for-an-abortion-in-texas/.

[10] *See* Remy Tumin, *Ohio Woman Who Miscarried Faces Charge That She Abused a Corpse*, NY Times (Jan. 3, 2024, updated Jan. 11, 2024), https://www.nytimes.com/2024/01/03/us/brittany-watts-ohio-miscarriage-abortion.html.

2. Patients denied treatment of ectopic or molar pregnancies.

In Oklahoma, Jaci Statton was denied necessary stabilizing abortion care to treat a life-threatening nonviable molar pregnancy in March 2023. Providers at the hospital told her that "they could not provide an abortion until she was actively crashing in front of them or on the verge of a heart attack."[11] Instead, the hospital offered to let Jaci sit in the parking lot so she would be close to the hospital when her condition deteriorated.[12] In the end, Jaci was forced to flee the state, driving three hours during a medical emergency, to access the lifesaving care she needed.[13]

In February 2024, Kelsie Norris-De La Cruz was turned away from emergency abortion care for her ectopic pregnancy after doctors at a Texas hospital refused to treat her, fearing the treatment might be regarded as an abortion.[14] They told her to go home and

---

[11] Administrative Complaint of Jaci Statton, *filed with* U.S. Department of Health and Human Services Office of Regional Health Operations Region 6, 1, 10 (Sept. 13, 2023), https://reproductiverights.org/wp-content/uploads/2023/09/Jaci-Statton-Emtala-Complaint-FINAL-SUBMITTED.pdf.

[12] *Id.* at 11-12.

[13] *Id*. at 12.

[14] Notably, Texas amended its abortion ban in September 2023 to create an affirmative defense in civil actions against providers who end ectopic pregnancies or pregnancies complicated by premature rupture of membranes. *See* Tex. Penal Code Ann. § 9.35. This narrow affirmative defense to civil liability was wholly inadequate to protect Kelsie in a moment of dire necessity. *See* ACOG, *Understanding and Navigating Medical Emergency Exceptions in Abortion Bans and Restrictions* (Aug. 15, 2022),

wait. In Kelsie's own words: "I was scared I was going to . . . lose my entire reproductive system if they waited too long." By the time she found a doctor willing to treat her at a different hospital 24 hours later, her ectopic pregnancy had already started to rupture. Further delay would have placed her "in extreme danger of losing her life."[15]

In Tennessee, Mayron Michelle Hollis was diagnosed with an ectopic pregnancy, which had implanted in her cesarean scar. Though it could rupture at any moment, immediately putting her life in jeopardy, she was forced to carry the pregnancy for months because, though extremely risky, the threat to her life was not imminent enough to clearly qualify for the life threat exception. In December 2022, at 26 weeks of pregnancy, she woke up bleeding profusely and was rushed to the hospital for an emergency c-section; her uterus had to be removed to save her life.[16]

---

https://www.acog.org/news/news-articles/2022/08/understanding-medical-emergency-exceptions-in-abortion-bans-restrictions.

[15] *See* Caroline Kitchener, *An Ectopic Pregnancy Put Her Life at Risk. A Texas Hospital Refused to Treat Her*, Wash. Post (Feb. 23, 2024), https://www.washingtonpost.com/politics/2024/02/23/texas-woman-ectopic-pregnancy-abortion/.

[16] *See* Kavitha Surana, *Doctors Warned Her Pregnancy Could Kill Her. Then Tennessee Outlawed Abortion*, ProPublica (Mar. 14, 2023), https://www.propublica.org/article/tennessee-abortion-ban-doctors-ectopic-pregnancy.

3. Patients denied fertility treatment.

The consequences of *Dobbs* are reverberating in reproductive health contexts far outside of abortion and miscarriage management. As predicted by the *Dobbs* dissenters, some states are extending their abortion bans to unrelated types of reproductive health care:

> [T]he Court may face questions about the application of abortion regulations to medical care most people view as quite different from abortion. What about the morning-after pill? IUDs? In vitro fertilization?

Id. at 393 (Breyer, Sotomayor, and Kagan, JJ., dissenting) (citing L. Harris, Navigating Loss of Abortion Services—A Large Academic Medical Center Prepares for the Overturn of *Roe v. Wade*, 386 NEJM 2061 (2022)). The dissenters' questions were prescient. The sweeping harm of *Dobbs* is evident in the Alabama Supreme Court's recent ruling that cryogenically frozen embryos are "extrauterine children" under Alabama's Wrongful Death of a Minor statute.[17] The court relied on longstanding Alabama precedent defining a fetus as a person, but pushed further to include frozen embryos

---

[17] *LePage v. Center for Reproductive Medicine*, No. SC-2022-0515, 2024 WL 656591 at *3, *7 (Ala. Feb. 16, 2024) (wrongful death statute applies to "all unborn children, without limitations," including frozen embryos). The three plaintiff couples sued a provider of fertility services under Alabama's Wrongful Death of a Minor Act, Ala. Code 1975, § 6-5-391, after another patient dropped their frozen embryos on the floor. *Id.* at **4-5.

partly on the basis of *Dobbs*.[18] Within a week of the ruling, two fertility clinics in Alabama paused IVF treatments, including the largest clinic at the University of Alabama at Birmingham Health System, disrupting care for many people.[19] As one legal scholar has observed, if every embryo is considered a "person" with the full legal protections extended to children, as the Alabama Supreme Court believes *Dobbs* allows a state to hold, the IVF process could dramatically change, requiring implantation of every embryo and leading to lower rates of success in an already difficult and expensive process.[20] The sweeping ruling has hindered fertility treatment for couples who desperately want to become pregnant and have children.[21]

---

[18] *Id.* at *14 n.6 (citing *Dobbs*, 597 U.S. at 246-47).

[19] Anna Betts, *After Ruling, University of Alabama at Birmingham Health System Pauses I.V.F. Procedures*, N.Y. Times (Feb. 21, 2024), https://www.nytimes.com/2024/02/21/us/university-alabama-birmingham-ivf-embryo-ruling.html.

[20] *See* Mary Ziegler, *Opinion: The Twisted Irony in Alabama's Court Decision on Embryos*, CNN (Feb. 21, 2024), https://cnn.com/2024/02/21/opinions/alabama-supreme-court-fetal-embryo-personhood-abortion-ziegler/index.html?utm_source=substack&utm_medium=email.

[21] The Alabama legislature scrambled to pass a bill to protect IVF providers from liability following the ruling in *LePage. See* Edward Helmore, *Alabama Legislature Passes Bill Aiming to Protect IVF After Embryo Ruling*, The Guardian (Feb. 29, 2024, 4:20 PM), https://www.theguardian.com/us-news/2024/feb/29/alabama-house-senate-ivf-protection-bill.

4. Patients denied standard obstetrical and gynecological care.

Beyond abortion care and miscarriage management, news articles and research reports chronicle that *Dobbs* is disrupting the provision of a broad swath of obstetrical and gynecological care in states that have criminalized abortion. For instance, while pregnancy-related care is already extremely difficult to find in Louisiana, the state's abortion ban is making maternity care scarcer and more dangerous.[22] Pregnant patients are being forced to go without prenatal care through their first trimester of pregnancy because providers are avoiding scheduling patients during the early months of pregnancy to minimize their risk of having to provide miscarriage care that may be misconstrued as facilitating an illegal abortion.[23] Obviously, this harms both pregnant patients and their potential children. Some doctors providing emergency procedures are choosing more invasive procedures such as hysterotomy and cesarean section, which

---

[22] *See* Rosemary Westwood, Standard Pregnancy Care Is Now Dangerously Disrupted in Louisiana, Report Reveals, NPR (Mar. 19, 2024) (reporting that, as a result of Louisiana's abortion ban, OB-GYNs conduct unnecessary cesarean sections and delay routine prenatal care due to fear of criminal prosecution), https://www.npr.org/sections/health-shots/2024/03/19/1239376395/louisiana-abortion-ban-dangerously-disrupting-pregnancy-miscarriage-care.

[23] Lift Louisiana et al., *Criminalized Care: How Louisiana's Abortion Bans Endanger Patients and Clinicians*, Lift Louisiana 1, 5 (Mar. 2024), https://static1.squarespace.com/static/64b951a07cb4e21d8a4f0322/t/65f5ad322c31fd00ca010e56/1710599477106/Criminalized+Care+Report+FINAL.pdf.

require an abdominal incision, instead of the more commonly used, generally safer dilation and evacuation (D&E),[24] to avoid the appearance of a criminal abortion.[25]

Maternity care generally is also suffering from the hostile environment the *Dobbs* framework created,[26] with severe consequences for historically underserved communities already afflicted with disproportionately high rates of preventable maternal deaths. In the words of Jerome Adams, surgeon general in the Trump administration and now Executive Director of Purdue's Health Equity Initiatives, the result of restricting access to abortion "could end up being that you actually make pregnancy less safe for everyone, and increase infant and maternal mortality."[27] According to one poll, the heightened risk surrounding pregnancy is influencing some young women's reproductive decisions: "34% of women 18-39 'have or know someone who decided not to get pregnant' due to concerns about

---

[24] *Id.* at 23; *see* Am. Coll. of Obstetricians & Gynecologists, *ACOG Statement Regarding Abortion Procedure Bans* (Oct. 9, 2015), https://www.acog.org/news/news-releases/2015/10/acog-statement-regarding-abortion-procedure-bans.

[25] Lift Louisiana et al., *supra* note 23, at 35.

[26] Anjali Nambiar et al., *Maternal Morbidity and Fetal Outcomes Among Pregnant Women at 22 Weeks' Gestation or Less With Complications in 2 Texas Hospitals After Legislation on Abortion*, 227 Am. J. Obstetrics & Gynecology 648, 649 (2022).

[27] Julie Rovner, *Abortion bans drive off doctors and close clinics, putting other health care at risk*, NPR (May 23, 2023), https://www.npr.org/sections/health-shots/2023/05/23/1177542605/abortion-bans-drive-off-doctors-and-put-other-health-care-at-risk.

managing pregnancy-related medical emergencies." *See* Priya Elangovan, *New AIT Polling on Abortion and Voter Enthusiasm*, All In Together (Sept. 13, 2023), https://aitogether.org/republican-motivation-2024/. Thus, these devastating effects on reproductive health care cannot even be justified by a state's interest in fetal life.

The fear of prosecution resulting from the *Dobbs* framework is draining states with abortion restrictions of capable, trained physicians and is making maternity care even scarcer.[28] Doctors practicing in states that restrict abortion are less likely than those in states that allow abortion to have been trained to perform the same early abortion procedures that are used for women experiencing miscarriages early in pregnancy.[29] According to a survey[30] of more than 2,000 current and future physicians, 76% of respondents would "no longer even consider working or training" in states

---

[28] *See* Gloria Oladipo, *Idaho Hospital to stop delivering babies as doctors flee over abortion ban*, The Guardian (Mar. 20, 2023), https://www.theguardian.com/us-news/2023/mar/20/idaho-bonner-hospital-baby-delivery-abortion-ban (describing March 2023 decision to close the labor and delivery unit at the only hospital in Sandpoint, Idaho partly in response to "Idaho's legal and political climate" affecting reproductive health care).

[29] *See* Elana Tal et al., *Comparison of Early Pregnancy Loss Management Between States with Restrictive and Supportive Abortion Policies*, Women's Health Issues (Nov. 12, 2022), https://doi.org/10.1016/j.whi.2022.10.001 (Nov. 12, 2022).

[30] Simone A. Bernstein et al., *Practice Location Preferences in Response to State Abortion Restrictions Among Physicians and Trainees on Social Media*, 38 J. Gen. Intern. Med. 2419 (2023).

with abortion bans.[31] Compared to states without abortion bans, states with complete abortion bans saw a decrease twice as large in 2023 applications for OB-GYN residency.[32]

B. The Harm Flowing from *Dobbs* Is Inevitable Because Its Framework Is Functionally and Inherently Unworkable.

These harms are a direct result of the *Dobbs* framework, which shifted the complex experience of pregnancy from the medical to the legal domain. *Dobbs* assumed that states would be willing and able to protect routine pregnancy care but provided no guardrails on how to do so. It incorrectly presumed that there is a clear line between "elective" and "therapeutic" abortions, but "[p]regnancy does not create black and white realities. There is no clear line between miscarriage and abortion, therapeutic and elective abortion, and lifesaving and not lifesaving abortion." Donley & Kelly, *Abortion Disorientation*, at 59. Thus, the states' attempts to draw the line between necessary, acceptable

---

[31] Rovner, *supra* note 27; *see also* Sarah McNeilly et al., *How Overturning Roe v. Wade Changed Match Day 2023*, Med Page Today (Mar. 20, 2023), https://www.medpagetoday.com/opinion/second-opinions/103545.

[32] Kendal Orgera et al., *Training Location Preferences of U.S. Medical School Graduates Post Dobbs v. Jackson Women's Health*, American Association of Medical Colleges (AAMC) Research and Action Institute (Apr. 13, 2023), https://www.aamcresearchinstitute.org/our-work/data-snapshot/training-location-preferences-us-medical-school-graduates-post-dobbs-v-jackson-women-s-health (citing a decrease of 10.5% in states with abortion bans as opposed to 5.2% in states without abortion bans).

abortions and criminal ones "are either illogical and arbitrary or 'impossible to draw with precision' and inherently standardless." *Id*. at 58-59. Inevitably,

> [a]ttempts to categorize in this context will suffer from one fatal flaw or another—clear but arbitrary lines that treat similarly situated people differently, or vague standards that are inherently standardless. Neither option is workable and, in both situations, providers will respond with overcaution, significantly harming pregnant people's health. Indeed, state attempts to carve out "therapeutic" abortions have already sowed deep confusion and generated inconsistent results—key indicators of unworkability.

Id. at 59-61. Indeed, as illustrated by the patient stories above, the state carve-outs that *Dobbs* assumed would protect pregnant patients have failed them.

A telling manifestation of the unworkability of the *Dobbs* framework is the failure of statutory exceptions to abortion bans to avoid or mitigate even the most conscience-shocking denials of care. Invariably, statutes that criminalize abortion sweep in some gynecological and obstetric care that even proponents of abortion bans may not regard as criminal.[33] States

---

[33] To this point, Stephanie Lloyd, mother of Kelsie Norris-De La Cruz who was denied care for an ectopic pregnancy, had initially supported the Texas abortion ban, believing it would only reach people who "didn't want to be pregnant." Today, Lloyd views abortion bans differently: "I didn't realize how far it had gone. . . . But it has happened to my life now, with my daughter. Her life

are accordingly resorting to increasingly fine line-drawing to carve out exceptions for a variety of gynecological and obstetric care unintentionally encompassed by vague statutory abortion bans. *See, e.g.*, *supra*, note 21 (Alabama's IVF corrective amendment); *supra*, note 14 (Texas's affirmative defense for abortions for ectopic pregnancies and premature rupture of membranes).

For instance, exceptions for miscarriage care typically only exclude the "removal of a dead fetus."[34] This language fails to account for the reality that diagnosing fetal death early in pregnancy is complex and time-consuming, and waiting for inevitable fetal death later in pregnancy is cruel and medically unnecessary. Health exceptions to abortion bans are narrow and ambiguous, often not triggered until a pregnant patient has become very sick: "these statutes make it seem as if medical emergencies operate like a light switch and are either present or absent. However, medical emergencies during pregnancy are not so simple.

---

has been in danger and affected by someone who was too afraid to help." Caroline Kitchener, *An Ectopic Pregnancy Put Her Life at Risk. A Texas Hospital Refused to Treat Her*, Wash. Post (Feb. 23, 2024), https://www.washingtonpost.com/politics/2024/02/23/texas-woman-ectopic-pregnancy-abortion/.

[34] Mabel Felix et al., *A Review of Exceptions in State Abortion Bans: Implications for the Provision of Abortion Services*, KFF (2023), https://www.kff.org/womens-health-policy/issue-brief/a-review-of-exceptions-in-state-abortions-bans-implications-for-the-provision-of-abortion-services/.

They can occur slowly, then all at once." Donley & Kelly, *Abortion Disorientation* at 64-65.

These statutory exceptions also ultimately do not safeguard other areas of reproductive health. For example, in the aftermath of the ruling in *LePage*, the Alabama legislature hurriedly passed a carveout to provide immunity retroactively to IVF providers.[35] It remains to be seen whether this statutory carveout is constitutional given the Alabama Supreme Court's extraordinary holding that frozen embryos have the same legal status as children.

Dobbs is unworkable because the rule it adopted has led to incoherent and tragic results grotesquely at odds with its stated goal of protecting life or promoting maternal health. And the few cases concerning medical exceptions are already demonstrating confusion in application.[36] As these concrete examples illustrate, the real-world consequences *Dobbs* has had on the lives of pregnant people is proof that *Dobbs* is "manifestly absurd and unjust," and merits overruling. *Ramos v. Louisiana*, 140 S. Ct. 1390, 1415 (2020) (Kavanaugh, J.,

---

[35] *See* Edward Helmore, *Alabama Legislature Passes Bill Aiming to Protect IVF After Embryo Ruling*, The Guardian (Feb. 29, 2024), https://www.theguardian.com/us-news/2024/feb/29/alabama-house-senate-ivf-protection-bill.

[36] In addition to the EMTALA federal circuit split, Texas courts have also displayed this confusion. At least twice, lower courts have found that medically necessary abortions should be permitted, only to have the ruling reversed or stayed by the Texas Supreme Court. *See In re State*, 682 S.W.3d 890, 892-93 (Tex. 2023); *Zurawski v. Texas*, No. D-1-GN-23-000968 (Tex. Dist. Ct. Travis Cnty. Aug. 4, 2023).

concurring in judgment) (stating that this Court may "scrutinize the precedent's real-world effects on the citizenry, not just its effects on the law and the legal system" when determining whether to overrule a prior decision).

III. THE *DOBBS* FRAMEWORK IS SPAWNING DESTABILIZING INTERJURISDICTIONAL CONFLICTS WITH UNPREDICTABLE OUTCOMES.

The *Dobbs* majority opinion itself defined workability as "whether [a precedent] can be understood and applied in a consistent and predictable manner." 597 U.S. at 281. There is nothing consistent or predictable about the interjurisdictional conflicts arising in *Dobbs*'s wake.

While the EMTALA preemption question in the instant cases is pending, other EMTALA challenges are also awaiting resolution of their conflicting results. In addition to the Idaho cases currently before the Court, Texas along with organizations of physicians who oppose abortion sued the Secretary of the Department of Health and Human Services in 2022 seeking to enjoin enforcement of an administrative guidance[37] clarifying that EMTALA requires Medicare-funded hospitals to provide abortion care when necessary to

[37] Centers for Medicare and Medicaid Services, *Reinforcement of EMTALA Obligations Specific to Patients who are Pregnant or are Experiencing Pregnancy Loss*, Centers for Medicare & Medicaid Services (updated July 2022), https://www.cms.gov/files/document/qso-22-22-hospitals.pdf.

stabilize the patient. *See Texas v. Becerra*, 623 F. Supp. 3d 696 (N.D. Tex. 2022), *prelim. inj. granted*, No. 5:22-CV-185-H, 2023 WL 2467217 (N.D. Tex. Jan. 13, 2023), *aff'd*, 89 F.4th 529 (5th Cir. 2024). The plaintiffs argued that EMTALA "unlawfully requires abortions in situations where Texas outlaws them, thus infringing on Texas's rights to legislate and enforce its abortion laws." *See id.* at 708. These EMTALA preemption cases have yielded inconsistent results culminating in a circuit split and whiplash-inducing interim rulings that interfere with emergency, time-sensitive medical care. *See Texas v. Becerra*, 89 F.4th 529, 545 (5th Cir. 2024) (affirming district court injunction preventing enforcement of DHHS guidance letter); *United States v. Moyle/Idaho*, 82 F.4th 1296 (9th Cir. 2023) (en banc panel reversing three-judge panel staying federal district court ruling and temporarily enjoining Idaho abortion ban), stayed by order granting certiorari, *Idaho v. United States*, *cert. granted*, No. 23-727 (Jan. 5, 2024).

The Court is simultaneously considering a separate federal case involving abortion in *FDA v. Alliance for Hippocratic Medicine* and *Danco Laboratories, LLC v. Alliance for Hippocratic Medicine*, Nos. 23-235 & 23-236. This case, too, illustrates how unsettled, unpredictable, and volatile abortion law has become in the *Dobbs* era. Here, the conditions under which the most common abortion method[38]—mifepristone followed by

---

[38] *See* Rachel K. Jones, Guttmacher Institute, *Medication Abortion Accounted for 63% of All U.S. Abortions in 2023—An Increase from 53% in 2020*, Guttmacher Institute (Mar. 19, 2020),

misoprostol—may be offered are cast in doubt, as the respondents are calling into question the FDA's authority to regulate commonly-used drugs. The unpredictability and confusion attending this litigation reached a crisis point when, just one hour after a federal district court in Texas stayed the FDA's approval of mifepristone nationwide, another federal district court in Washington state preliminarily enjoined the FDA from altering the regulatory status of mifepristone in roughly a third of the country. *See Washington v. FDA*, No. 1:23-CV-3026 (E.D. Wash. Apr. 7, 2023).

At least two other preemption challenges to state abortion laws that are more restrictive than the federal mifepristone REMs are pending in federal courts: *GenBioPro, Inc. v. Sorsaia*, No. CV 3:23-0058, 2023 WL 5490179 (S.D.W. Va. Aug. 24, 2023), *appealed filed*, No. 23-2194 (4th Cir. Nov. 15, 2024) (challenging on federal preemption grounds West Virginia's abortion ban as applied to mifepristone), and *Bryant v. Stein*, No. 23-cv-00077 (M.D.N.C. Jan. 25, 2023) (challenging on federal preemption grounds North Carolina's restrictions on mifepristone that exceed FDA REMS from January 2023). The *GenBioPro* case demonstrates that the *Dobbs* framework is yielding inconsistent and unpredictable outcomes even in cases involving the same set of facts. The *GenBioPro* court relied upon *Dobbs* in holding that West Virginia's abortion ban was not expressly preempted by federal regulations. *GenBioPro,*

---

https://www.guttmacher.org/2024/03/medication-abortion-accounted-63-all-us-abortions-2023-increase-53-2020.

Inc. at *5, *6-7 ("The Supreme Court has made it clear that regulating abortion is a matter of health and safety upon which states may appropriately exercise their power.") (citing *Dobbs*, 145 S. Ct. at 2279). However, in light of the extensive record demonstrating the safety of mifepristone, the court also held that West Virginia's ban on prescribing mifepristone through telemedicine "is unambiguously preempted by the 2023 REMS." *GenBioPro*, at *10. This holding is the mirror image of that emerging from the lower courts in the Texas mifepristone cases. As *amicus* Rachel Rebouché has asked: "How can courts review the same evidence and come to contrary conclusions about mifepristone's safety?"[39]

A common theme in these cases is the conflict between federal and state authorities over who controls abortion policy. New federal-state conflicts are likely to arise with the publication of a final rule amending the Veterans Administration's regulations to remove the exclusion on abortion counseling and permit abortions at VA hospitals for veterans when necessary to preserve their life or health, and in cases of rape or incest, even in hospitals located in states that have criminalized this care. *See* 38 C.F.R. § 17 (2024) (effective Apr. 3, 2024).

---

[39] Rachel Rebouché, *Facts On Trial: Alliance for Hippocratic Medicine v. FDA and the Battle over Mailed Medication Abortion*, 2 U. Colo. Rev. 95, 121 (Mar. 19, 2024), https://lawreview.colorado.edu/wp-content/uploads/2024/03/Rebouche.pdf.

Indeed, the dissenters in *Dobbs* predicted a cascade of far-reaching consequences that could destabilize relations between and among the states as well:

> [I]nterstate restrictions will also soon be in the offing. After this decision, some States may block women from traveling out of State to obtain abortions, or even from receiving abortion medications from out of State. Some may criminalize efforts, including the provision of information or funding, to help women gain access to other States' abortion services.

Id. at 361 (Breyer, Sotomayor, and Kagan, JJ., dissenting). Noting that "the majority's ruling . . . invites a host of questions about interstate conflicts," the dissenters asked:

> Can a State bar women from traveling to another State to obtain an abortion? Can a State prohibit advertising out-of-state abortions or helping women get to out-of-state providers? Can a State interfere with the mailing of drugs used for medication abortions? The Constitution protects travel and speech and interstate commerce, so today's ruling will give rise to a host of new constitutional questions.

Id. at 394 (Breyer, Sotomayor, and Kagan, JJ., dissenting) (citing Cohen, Donley, & Rebouché, *The New Abortion Battleground*). Since *Dobbs*, numerous states and municipalities have attempted to apply their abortion bans beyond their own borders, through statutes creating novel private rights of action, through

prohibitions on referrals to out-of-state providers and private funding for out-of-state care, and through highway restrictions and interstate travel bans for abortion seekers and helpers.

As soon as the demise of *Roe* was in sight, Texas adopted S.B. 8, creating civil liability for anyone who performs or aids an abortion after roughly six weeks of pregnancy and authorizing third-party lawsuits against Texas-licensed clinicians. Tex. Health & Safety Code Ann. §§ 171.201-212, 171.201(4), 171.203(b), 171.208 (West 2022). S.B. 8's broad reach has already spurred interjurisdictional conflicts as Texas plaintiffs are trying to control lawful abortions in other states. In one such lawsuit, the petitioner, a resident of Galveston County, Texas, sued an abortion provider licensed in Texas and residing in El Paso County, but operating an abortion clinic legally in New Mexico, just one mile from the Texas-New Mexico border.[40] In another, a resident of Hood County sued a respondent whose non-profit organization allegedly aided and abetted abortions by raising funds for and transporting women from Texas to other states to obtain abortion medication legally.[41]

More recent S.B. 8-style statutes do not appear to require the plaintiff to have any connection to the forum state. For instance, the Oklahoma copycat law

---

[40] *See In re Charles Byrn*, Cause No. 51499-A, Taylor Cnty. 42nd Dist. Ct. (2022).

[41] *See In re Zach Maxwell*, Cause No. C2022388, Hood Cnty. 355th Judicial Dist. (2022).

creates civil liability for any abortion of a pregnancy from conception onward without any explicit connection to Oklahoma required by the text. *See* Okla. Stat. tit. 63, §§ 1-745.51, 1-745.55 (2022)) (defining "abortion" without reference to whether it is performed by an Oklahoman doctor or for an Oklahoman patient and providing for private civil suits against abortion providers).

A similarly-styled Missouri statute prohibits any person from intentionally assisting a minor to obtain an abortion without parental consent or informed consent, even if the abortion occurs lawfully in another state. *See* Petition for Declaratory Judgment and Injunctive Relief at 1, 2-3, 14, *Missouri v. Planned Parenthood Great Plains* (Cir. Ct. Boone Cnty. 13th Judicial Circuit, MO) (citing § 188.250, RSMo). The Missouri Attorney General is actively enforcing this statute, seeking injunctive relief against a reproductive health clinic for allegedly assisting minors in receiving abortion care in another state in which the abortion *is legal*. *Id.* at 2-3, 16-17. A federal court in Idaho issued a preliminary injunction in a challenge to a similar Idaho law prohibiting transporting minors across state lines for abortion care. *See Matsumoto v. Labrador*, No. 1:23-CV-00323-DKG, 2023 WL 7386998 (D. Idaho Nov. 8, 2023) (preliminarily enjoining Idaho "abortion trafficking" statute), *appeal docketed*, No. 23-3787 (9th Cir. Nov. 29, 2023). The fears expressed by the *Dobbs* dissenters about interstate conflict have materialized.

Several Texas municipalities have enacted "sanctuary cities for the unborn" ordinances to prohibit city residents from obtaining abortion care "regardless of where the abortion is or will be performed."[42] Some towns have even banned travel on roads leading to abortion-access states by anyone helping a person leave the state to obtain an abortion.[43] Like S.B. 8, these ordinances, which have passed in Lubbock County, Odessa, and at least four other localities near the border with New Mexico, rely on private enforcement. These prohibitions on interstate travel fly in the face of well-settled constitutional principles invoked by Justice Kavanaugh in his *Dobbs* concurring opinion*:* "[M]ay a State bar a resident of that State from traveling to another State to obtain an abortion? . . . [T]he answer is no based on the constitutional right to interstate travel." 597 U.S. at 346 (Kavanaugh, J., concurring in judgment). Despite the clarity and correctness of this observation, there can be little doubt that "the

---

[42] *See, e.g.*, Sanctuary Cities for the Unborn, Tex. Right to Life, https://texasrighttolife.com/sanctuary-cities-for-the-unborn/; Shannon Najmabadi, *Lubbock votes to become the state's largest "sanctuary city for the unborn,"* The Texas Tribune (May 1, 2021), https://www.texastribune.org/2021/05/01/lubbock-abortion-vote-sanctuary-unborn/; Jayme Lozano Carver, *Lubbock County becomes latest to approve "abortion travel ban" while Amarillo City Council balks*, The Texas Tribune (Oct. 23, 2023), https://www.texastribune.org/2023/10/23/abortion-travel-ban-lubbock-county/?utm_campaign=trib-social-buttons&utm_source=copy&utm_medium=social.

[43] Taylor Goldenstein, *Texas Counties Ban Travel for Abortions Despite Questions of Legality*, Houston Chronicle (Jan. 11, 2024), https://www.houstonchronicle.com/politics/texas/article/texas-travel-abortion-ban-18568144.php.

post-*Roe* judiciary will soon be mired in interjurisdictional complexities that will make the workability of the previous era look simple in comparison." *See* Cohen, Donley, & Rebouché, *New Abortion Battleground*, 123 Colum. L. Rev. at 42.

Concern that states may take extreme measures to impose their abortion bans on other states is well-grounded. Shortly after the *Dobbs* ruling, the Texas Freedom Caucus, a group of antiabortion state legislators, issued cease and desist letters announcing the group's intention to target anyone who helps pay for an abortion "regardless of where the abortion occurs."[44] The Alabama Attorney General has stated that he is looking into conspiracy and accomplice liability theories to prosecute health care providers and funds that assist people in accessing out-of-state legal abortions.[45] Similarly, the Idaho Attorney General has issued an

---

[44] *See, e.g.*, Letter from Mayes Middleton, Rep., Tex. H.R., to Yvette Ostolaza, Chair of the Mgmt. Comm., Sidley Austin LLP 1-3 (July 7, 2022), https://www.freedomortexas.com/uploads/blog/3b118c262155759454e423f6600e2196709787a8.pdf [https://perma.cc/Y2KS-XJ27] (describing proposed legislation including this language and threatening managers of law firm Sidley Austin with criminal prosecution for providing financial assistance to employees who seek abortions out of state).

[45] *See* Complaint for Declaratory & Injunctive Relief, *Yellowhammer Fund v. Marshall*, No. 2:23-cv-00450-MHT (M.D. Ala. July 31, 2023), https://litigationtracker.law.georgetown.edu/wp-content/uploads/2024/02/Yellowhammer_2023.07.31_COMPLAINT.pdf; *see also* Complaint at ¶ 4, *West Alabama Women's Center v. Marshall*, No. 2:23-cv-0451-MHT (M.D. Ala. July 31, 2023).

opinion concluding that legal restrictions on "assisting" an abortion prohibit out-of-state referrals.[46]

In response, states that are supportive of abortion access are attempting to shield their citizens from abortion-ban states' overreach. States seeking to protect the provision of legal reproductive health care have enacted a variety of "shield laws" and executive orders requiring state and local officials to decline to cooperate with other states' attempts to pursue prosecutions or civil actions against abortion providers or helpers operating legally in the abortion-supportive state.[47] *See generally* David S. Cohen, Greer Donley, Rachel Rebouché, *Abortion Shield Laws* (Mar. 28, 2023), Temple Univ. Legal Studies Research Paper No. 2023-14, NEJM Evidence (2023), Volume 2, Number 4, U. Pittsburgh Legal Studies Research Paper No. 2023-21, https://ssrn.com/abstract=4404203 (citing states that have enacted interstate shield laws or issued executive orders to thwart anti-abortion states' efforts to give extraterritorial effect to their abortion restrictions). State shield laws commonly contain several features:

---

[46] *See* Idaho Att'y Gen. Op. No. (Mar. 27, 2023), https://www.courthousenews.com/wp-content/uploads/2023/04/labrador-idaho-opinion-letter.pdf; *see also* Complaint at ¶ 3, *Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky v. Labrador*, No. 1:23-cv-142 (D. Idaho Apr. 5, 2023).

[47] *See, e.g.*, Mass. Gen. Laws ch. 12, §§ 1, 11½; Cal. Health & Safety Code § 123469; N.Y. Civ. Rights Law § 70-b; Conn. Gen. Stat. §§ 54-571m, 54-571n; Del. Code Ann. tit. 10, § 3929; 725 Ill. Comp. Stat. 126/29-15; *see generally* David S. Cohen, Greer Donley, Rachel Rebouché, Isabelle Aubrun, *Understanding Shield Laws*, 51 J. Law, Med. & Ethics 584, 588 (2023).

prohibiting nonfugitive extradition, providing for interstate witness protection, prohibiting use of state resources to aid another state's investigation, limiting adverse effects on abortion providers' licenses, medical malpractice protections, prohibiting the disclosure of patients' confidential information, protecting providers from out-of-state judgments, and protecting providers for caring for patients across state borders. *Id*. at 2-3. These statutes are novel and as yet untested; litigation proceeding from them will likely introduce further complexity, unpredictability, and destabilizing interstate conflicts into an already fraught post-*Dobbs* legal environment.

In the two years since it was handed down, *Dobbs* has done nothing to settle disputes over abortion or produce a principled, consistent, and orderly rule of law. To the contrary, it has created a welter of unprecedented instability and interjurisdictional conflict. It has brought with it an onslaught of litigation yielding conflicting and unpredictable results. It has already produced conflicts among the circuits and contradictory caselaw flowing from the lower federal and state courts. It has fanned antagonism and distrust among states and threatens to "distort[ ] many important but unrelated legal doctrines."[48] It has inflicted brutal injustice and pointless misery on the people who are subject to its rule. These are the hallmarks of a precedent that is unworkable, far more unworkable than the *Casey* rule it replaced. As these chaotic results from

[48] *See Dobbs*, 597 U.S. at 286 (citing *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020)) (Kavanaugh, J., concurring in judgment).

federal courts and from the several states illustrate, the *Dobbs* decision is "its own loaded weapon," *Dobbs*, 597 U.S. at 413 (Breyer, Sotomayor, Kagan, JJ., dissenting), and should be overruled.

CONCLUSION

For the foregoing reasons, this Court should overrule *Dobbs v. Jackson Women's Health Organization* and affirm the judgment of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

SUSAN FRIETSCHE
Counsel of Record
WOMEN'S LAW PROJECT
239 Fourth Avenue, Suite 2108
Pittsburgh, PA 15222
412-281-2892
sfrietsche@womenslawproject.org

CHRISTINE K. CASTRO
SUJAYA S. RAJGURU
WOMEN'S LAW PROJECT
125 South Ninth Street, Suite 300
Philadelphia, PA 19107
215-928-9801
ccastro@womenslawproject.org
srajguru@womenslawproject.org

DAVID S. COHEN
Professor of Law
THOMAS R. KLINE
SCHOOL OF LAW
DREXEL UNIVERSITY
3320 Market Street
Philadelphia, PA 19104
215-571-4714
dsc39@drexel.edu

Attorneys for Amici Curiae