

No. 19-1392

IN THE
Supreme Court of the United States

THOMAS E. DOBBS, M.D., M.P.H., IN HIS OFFICIAL
CAPACITY AS STATE HEALTH OFFICER OF THE
MISSISSIPPI DEPARTMENT OF HEALTH, *et al.*,
Petitioners,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION,
ON BEHALF OF ITSELF AND ITS PATIENTS, *et al.*,
Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

**BRIEF OF *AMICI CURIAE* ECONOMISTS
IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

Amici curiae are 154 distinguished economists and researchers with extensive experience in the field of causal inference. They occupy prominent positions at preeminent universities and institutions and include officers and distinguished fellows of the American Economic Association, affiliates of the National Bureau of Economic Research, and members of the National Academies of Sciences. *Amici* submit this brief to assist this Court in understanding the developments in causal-inference methodologies over the last three decades. Specifically, *amici* seek to highlight for the Court how causal-inference tools have been used to isolate and measure the impacts of abortion legalization in the United States and to model what would happen if *Roe v. Wade* were overturned or limited.

Amici also have an interest in correcting the information before the Court, as the State of Mississippi, along with its *amici curiae* 240 Women Scholars and Professionals, and Pro-Life Feminist Organizations (hereafter “240 Women”) have erroneously suggested that it is impossible to measure the impacts of abortion legalization and that abortion access is no longer relevant to women or their families. In fact, there is a substantial body of well-developed and credible research that shows that abortion legalization and access in the United States has

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. The parties have filed blanket consents to the filing of *amicus curiae* briefs in accordance with Supreme Court Rule 37.3.

had—and continues to have—a significant effect on birth rates as well as broad downstream social and economic effects, including on women’s educational attainment and job opportunities.

A full list of *amici* is attached as an appendix to this brief.

SUMMARY OF ARGUMENT

In *Roe v. Wade*, 410 U.S. 113 (1973), this Court held that a woman has the constitutional right to make decisions about her reproductive life, including whether to continue or end her pregnancy before viability. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), this Court re-affirmed that core holding of *Roe*. 505 U.S. at 871 (“The woman’s right to terminate her pregnancy before viability is the most central principle of *Roe v. Wade*. It is a rule of law and a component of liberty we cannot renounce.”). Among other reasons to re-affirm, this Court noted that in the two decades following *Roe*, people had “organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion.” *Id.* at 856. Indeed, this Court observed then that an “entire generation” had “come of age free to assume *Roe*’s concept of liberty in defining the capacity of women to act in society, and to make reproductive decisions” such that people had important reliance interests in the access to abortion guaranteed by *Roe*. *Id.* at 860. That observation remains even truer today—nearly thirty years since *Casey*.

Mississippi and its *amici* insist, however, that at the time of *Casey*, there was “no good reason to believe” that women had in fact relied on *Roe* or that access to legal abortion had any impact on the role of women in

society. Pet’rs’ Br. at 35. Further still, they argue, there remains no way to know *Roe*’s impact, such that the Court should not consider reliance on *Roe*, or on abortion access more broadly, in deciding this case. *Id.* at 34. Not so. This argument ignores universally accepted advances in the field of “causal inference” that have allowed economists to credibly and rigorously measure the causal impact of a wide range of policies, including the impact of abortion access on women’s lives. Using causal-inference methodologies, economists have isolated and measured the effects of abortion access (both in the past and present) on birth rates as well as marriage, educational attainment, occupations, earnings, and financial stability.

For example, recent studies show that the expansion of abortion access ushered in by *Roe* reduced teen motherhood by 34% and teen marriage by 20%. Studies also demonstrate that for women experiencing unintended pregnancies, access to abortion has increased the probability that they attend college and enter professional occupations. Mississippi and its *amici* have entirely ignored this robust body of work—studies that can provide the Court with scientifically rigorous evidence of the impact of *Roe* over the last 50 years.

Similarly, economists can demonstrate that social, cultural, and legal shifts in the thirty years since *Casey* have not erased the need for abortion access in our society. Abortion remains a critical component of women’s reproductive healthcare and decision-making. Contrary to Mississippi’s assertion, for significant segments of the population, reliable and affordable contraception remains out of reach. And for many women, affordable childcare is as illusory as employment policies that accommodate working parents.

The purpose of this brief is to summarize for the Court the causal-inference literature measuring the impacts of abortion legalization and access. As *amici* will demonstrate, ample evidence indicates that *Roe* is causally connected to women’s advancements in social and economic life. This brief will also present research that demonstrates that abortion policy still matters for women’s progress and that if *Roe* and *Casey* were overturned, or significantly curtailed, it would have a significant and negative impact on women’s lives.

ARGUMENT

I. Since *Casey*, advances in statistical methodologies have led to the development of powerful and credible tools to measure the causal effects of policy changes.

At the time of *Casey*, statistical tools to empirically measure the causal impacts of public policies were in their nascency and were just beginning to be utilized to understand the effects of abortion policy. Since the early 1990s, the development of new statistical methods, advances in computing technology, and expansions in data availability have fueled a “credibility revolution” in economics, marked by new and improved ways to isolate and measure the causal effects of public policies.²

While many know the familiar mantra that “correlation does not necessarily equal causation,” the field

² Joshua D. Angrist & Jörn-Steffen Pischke, *The Credibility Revolution in Empirical Economics: How Better Research Design Is Taking the Con out of Econometrics*, 24 *J. of Econ. Persp.* 3, 4 (2010); Janet Currie et al., *Technology and Big Data are Changing Economics*, 110 *AEA Papers & Proc.* 42, 42 (2020).

of causal inference focuses precisely on figuring out when correlation *does* equal causation. Causal inference generally utilizes multiple regression analysis³ but also extends well beyond that. The gold standard in the causal-inference toolbox is—to borrow from the language of medical research—a well-executed randomized controlled trial.⁴ But in many real-world situations, randomization cannot be feasibly or ethically achieved. For example, as relevant here, economists cannot rewind history and analyze women’s labor market outcomes with and without various abortion policies in place. In these situations, causal inference allows us to assess previously implemented policies using existing observational data. Causal inference thus allows us to exploit “natural experiments”—where, for example, a policy is enacted in one state but not another—such that researchers can think about the natural assignment of subjects to groups as being “akin to randomization.”⁵

One of the most common methodologies economists apply to analyze causal effects is the “difference-in-differences” method. This methodology analyzes the effect of an “intervention” (*e.g.*, a policy change) by measuring changes in outcomes (or “differences”) for a “treatment group” that experiences the intervention as compared to changes in outcomes for a “control group” that does not receive the intervention (or undergo that policy change). By comparing changes for the treatment group to those for the control group, the difference-in-differences methodology inherently

³ Nat’l Research Council, *Reference Manual on Scientific Evidence: Third Edition* 298 (2011).

⁴ *Id.* at 555.

⁵ *Id.* at 290.

controls for any differences that were present between the two groups, even without the policy change, while simultaneously controlling for other events occurring around the time of the policy change that potentially impacted outcomes for both groups. This is a powerful statistical approach to measuring causal effects because it controls for potentially confounding factors (other factors that could also be affecting the outcome) even if they cannot be directly observed.⁶

In the years since *Casey*, economists have applied the methods of causal inference—including difference-in-differences designs and other tools in the causal-inference toolbox such as “event studies,” “regression discontinuity design,” and “instrumental variables estimation”⁷—to understand the causal effects of many policies and legal changes. Examples include the effects of the minimum legal drinking age on mortality, the effects of air pollution on worker productivity, the effects of the Earned Income Tax Credit on employment and earnings, and relevant here: the effects of abortion legalization and access on birth rates as well as women’s educational attainment and labor market outcomes.

II. Causal-inference research confirms that *Roe* changed the arc of women’s lives.

The long arc of American history has bent more steeply towards gender equality in the past few decades.⁸ To be sure, various factors contributed to

⁶ Joshua D. Angrist & Jörn-Steffen Pischke, *Mostly Harmless Econometrics: An Empiricist’s Companion* 221-47 (2009).

⁷ See *id.* at *passim* for a detailed discussion of these methods.

⁸ See generally Claudia Dale Goldin, *Understanding the Gender Gap: An Economic History of American Women* (1990); Francine D.

women’s progress during this time, including technological change, the rise of white-collar work, shifting social and cultural norms, increased access to the birth control pill, and the enactment of anti-discrimination policies.⁹ But even in the presence of these significant changes, state-by-state differences have offered natural experiments that economists have taken advantage of to isolate and measure the causal effects of abortion legalization on women’s lives.

A. Abortion legalization impacted birth rates, separate and apart from the impact of contraception and other developments.

Applying the tools of causal inference, economists have shown that abortion legalization, independent of other factors such as contraception, has had a direct and significant impact on birth rates.

The first study to examine this question (“Levine et al.” published in 1999) exploited two natural experiments: (1) the repeal of abortion bans in certain states in 1970, and (2) the *Roe* decision in 1973.¹⁰ The first natural experiment occurred in 1970, when bans on elective abortions were repealed or invalidated in five states—Alaska, California, Hawaii, New York, and Washington—commonly referred to as the “repeal states.” In this experiment, these repeal states were regarded as a treatment group experiencing a policy

Blau & Lawrence M. Kahn, *The Gender Wage Gap: Extent, Trends, and Explanations*, 55 *J. of Econ. Literature* 789 (2017).

⁹ Goldin, *supra* note 8; Blau & Kahn, *supra* note 8.

¹⁰ Phillip B. Levine et al., *Roe v Wade and American Fertility*, 89 *Am. J. of Pub. Health* 199 (1999).

change, while the rest of the country formed a control group. The second natural experiment occurred in 1973 when *Roe* had the effect of legalizing abortion in the rest of the country. In this experiment, the repeal states where abortion had already been legalized were the control group, while the rest of the country (now experiencing a policy change) was the treatment group.

Levine et al.'s analytic framework is represented in **Figure 1** below. The authors demonstrated that differences in birth rates between repeal states and the rest of the country were stable in the 1960s, when abortion was largely illegal everywhere. Then in 1970, when abortion was legalized in the repeal states, birth rates dropped by about 5% in the repeal states relative to the rest of the country. In 1973, with *Roe* legalizing abortion nationwide, the rest of the country caught up with the repeal states. Using a multiple regression model, controlling for the possibility of other potentially confounding factors, the authors estimated that legalization of abortion alone—independent of other factors such as contraception—reduced birth rates by 4 to 11%.¹¹

¹¹ A conservative estimate is that legalization reduced birth rates by 4%. However, some of the decline in births in even the non-repeal states between 1969 and 1971 might in fact have been due to increased abortion access via proximity to repeal states. Levine et al. recognized this possibility and conducted additional analyses for states that were closer and states that were more distant from repeal states. Those analyses suggest that legalization reduced birth rates by up to 11%. *Id.* at 200-01.

Figure 1: Trends in birth rates in repeal states relative to the rest of the country



Source: Levine et al. (1999) Figure 1.¹²

Levine et al.'s work was the foundation for subsequent studies that explored the effects of abortion legalization in the early 1970s. Subsequent work introduced new data sets, new designs, and additional controls, allowing researchers to control more precisely for confounding factors such as state laws governing workplace discrimination, no-fault divorce, and new controls for contraceptive access. Notwithstanding these changes, this later work confirmed Levine et al.'s substantive finding that abortion legalization has had a large and direct effect on births.¹³

¹² Percent differences normalized to equal zero in 1970.

¹³ See, e.g., Joshua D. Angrist & William N. Evans, *Schooling and Labor Market Consequences of the 1970 State Abortion Reforms* (Nat'l Bureau of Econ. Research, Working Paper No.

B. Abortion legalization particularly impacted young women and Black women.

The birth-rate reduction caused by abortion legalization has not been uniform across all groups of women. Studies reveal that two groups—young women and Black women—experienced the greatest impact.

For young women, the estimated reduction in birth rates due to abortion legalization was three times as much as that of all women.¹⁴ Legalization of abortion, together with policies specifically granting young women the ability to obtain an abortion without parental consent, reduced teen motherhood by 34% and reduced teen marriage by 20%.¹⁵

Another group disproportionately affected by abortion legalization was Black women. For Black women, the estimated reduction in birth rate was two to three times greater than the reduction for white

5406, 1996), https://www.nber.org/system/files/working_papers/w5406/w5406.pdf; Jonathan Gruber et al., *Abortion Legalization and Child Living Circumstances: Who Is the ‘Marginal Child’?*, 114 Q. J. of Econ. 263 (1999); Elizabeth Oltmans Ananat et al., *Abortion and Selection*, 91 Rev. of Econ. & Stat. 124 (2009); Melanie Guldi, *Fertility Effects of Abortion and Birth Control Pill Access for Minors*, 45 Demography 817 (2008); Caitlin Knowles Myers, *The Power of Abortion Policy: Reexamining the Effects of Young Women’s Access to Reproductive Control*, 125 J. of Pol. Econ. 2178 (2017); Ali Abboud, *The Impact of Early Fertility Shocks on Women’s Fertility and Labor Market Outcomes* (Nov. 22, 2019), <https://ssrn.com/abstract=3512913>; Kelly Jones, *At a Crossroads: The Impact of Abortion Access on Future Economic Outcomes* (American Univ. Working Paper, 2021), <https://doi.org/10.17606/0Q51-0R11>.

¹⁴ Levine et al., *supra* note 10, at 201.

¹⁵ Myers, *supra* note 13, at 2178-2224.

women.¹⁶ Black women also experienced a 28 to 40% decline in maternal mortality due to legalization.¹⁷ This greater impact for Black women aligns with historical narratives that, pre-legalization, white women were more often able to access clandestine abortions through trusted physicians or travel to repeal states. Accordingly, the practical importance of legalization was greater for Black women than white women.¹⁸

C. Abortion legalization has had downstream impacts on women’s social and economic lives.

Economists have also used the tools of causal inference to measure the effect of abortion legalization on women’s social and economic outcomes more broadly. Although Mississippi and its *amici* suggest that abortion has had no meaningful impact on women’s lives, *see, e.g.*, Br. of 240 Women at 6, a substantial body of research supports the opposite conclusion. Studies show that in addition to impacting births, abortion legalization has had a significant impact on women’s wages and educational attainment, with impacts most strongly felt by Black women.

The 240 Women cherry-pick and critique one early study and ignore the large body of evidence developed since. They focus on a 1996 working paper by Joshua Angrist and William Evans (“Angrist and Evans”), which was the first study that attempted to isolate the

¹⁶ Levine et al., *supra* note 10, at 201.

¹⁷ Sherajum Monira Farin et al., *The Impact of Legal Abortion on Maternal Health: Looking to the Past to Inform the Present* 3 (Sept. 2021), <https://ssrn.com/abstract=3913899>.

¹⁸ *Id.*

effects of abortion legalization on education and labor market outcomes.¹⁹ Angrist and Evans focused specifically on teenage women and concluded that abortion legalization improved these women’s education and labor-market outcomes.²⁰ The 240 Women, however, suggest that the paper is statistically weak. Br. of 240 Women at 20. But the “weakness” of the paper, if anything, is that it *underestimated* the effect of abortion legalization because it treated abortion reforms in the 1960s—which made abortions available under very limited circumstances—as equivalent to the repeal of abortion bans in the 1970s.²¹ Those early reforms involved rather modest expansions of access and accordingly had much more modest effects.²²

And even despite the underestimation caused by conflating reforms and repeals, Angrist and Evans still found large effects for Black teenage women. Specifically, they found a 22 to 24 percentage point increase in the probability that Black teenage women graduated high school and a 23 to 27 percentage point increase in their probability of attending college.²³ Thus, despite any alleged “weaknesses” in the paper, its conclusions remain significant.

In any event, subsequent authors have revised Angrist and Evans’s research by (1) disaggregating modest abortion reforms from abortion legalization, (2) looking at women beyond just their teenage years, and (3) adopting new research designs to address some

¹⁹ Angrist & Evans, *supra* note 13.

²⁰ *Id.* at 2.

²¹ *Id.* at 4-5.

²² Myers, *supra* note 13, at 2200.

²³ Angrist & Evans, *supra* note 13, at 28.

of the methodological challenges of measuring education and labor market effects. The subsequent research indicates that although abortion *reforms* had at most modest effects,²⁴ abortion *legalization* had large effects on women's education,²⁵ labor force participation,²⁶ occupations,²⁷ and earnings.²⁸ These effects were particularly strong among Black women.²⁹

For instance, one such study showed that young women who utilized legal abortion to delay an unplanned start to motherhood by just one year realized an 11% increase in hourly wages later in their careers.³⁰ Another found that, for young women who experienced an unintended pregnancy, access to abortion increased the probability they finished college by nearly 20 percentage points, and the probability that they entered a professional occupation by nearly 40 percentage points. Again, these effects tended to be greater among Black women.³¹

²⁴ David E. Kalist, *Abortion and Female Labor Force Participation: Evidence Prior to Roe v. Wade*, 25 *J. of Lab. Research* 503, 510 (2004).

²⁵ Jones, *supra* note 13, at 14-15.

²⁶ Jones, *supra* note 13, at 15; Kalist, *supra* note 24, at 512.

²⁷ Jones, *supra* note 13, at 15-16.

²⁸ Jones, *supra* note 13, at 16; Abboud, *supra* note 13, at 4; Jason M. Lindo et al., *Legal Access to Reproductive Control Technology, Women's Education, and Earnings Approaching Retirement*, 110 *AEA Papers & Proc.* 231, 234 (2020).

²⁹ Kalist, *supra* note 24, at 503; Jones, *supra* note 13, at 14-17; Lindo et al., *supra* note 28, at 233-234.

³⁰ Abboud, *supra* note 13, at 4.

³¹ Jones, *supra* note 13, at 14-15.

Moreover, abortion legalization has shaped families and the circumstances into which children are born. One study showed that legalization in repeal states reduced the number of children who lived in single-parent households, who lived in poverty, and who received social services.³² Another found that abortion legalization reduced cases of child neglect and abuse.³³ Yet other studies have explored long-run downstream effects as the children of the *Roe* era grew into adulthood. One such study showed that as these children became adults, they had higher rates of college graduation, lower rates of single parenthood, and lower rates of welfare receipt.³⁴ Another showed that abortion legalization in the 1970s continued to reduce births to unwed teen women in the early 1990s.³⁵

In addition to criticizing the Angrist and Evans study (while ignoring the robust body of work post-dating it), the 240 Women also falsely suggest that it is “so very difficult to untangle” the effects of abortion legalization from other factors potentially contributing to women’s progress. Br. of 240 Women at 19. Their argument purports to rely on an article by

³² Gruber et al., *supra* note 13, at 280-81.

³³ Marianne Bitler & Madeline Zavodny, *Child Abuse and Abortion Availability*, 92 *Amer. Econ. Rev.* 363, 365 (2002); Marianne P. Bitler & Madeline Zavodny, *Child Maltreatment, Abortion Availability, and Economic Conditions*, 2 *Rev. of Econ. of the Household* 119, 135 (2004).

³⁴ Oltmans, *supra* note 13, at 124-36.

³⁵ John J. Donohue III et al., *The Impact of Legalized Abortion on Teen Childbearing*, 11 *Am. L. & Econ. Rev.* 24, 26 (2009); Serkan Ozbeklik, *The Effect of Abortion Legalization on Childbearing by Unwed Teenagers in Future Cohorts*, 52 *Econ. Inquiry* 100, 100 (2014).

Martha Bailey and Thomas DiPrete, which they claim highlights the statistical difficulties of untangling causation, including because of “conflicting studies,” “different methodologies,” “widely varying statistical significance of the results,” and “the potential importance of selection effects using assumptions it declares ‘almost impossible to test.’” *Id.* But the article in fact makes no such arguments or claims. Nowhere does it state that the causal effects of abortion policy cannot be determined due to these factors. In fact, Bailey and DiPrete acknowledge in the article that causal-inference research designs have succeeded in studying the causal effects of abortion policy, observing that “a growing literature in economics suggests many of the longer-term changes in family formation and childbearing—as well as the previously described changes in women’s education and labor-force outcomes—are related to the introduction of modern contraception and abortion.”³⁶ The 240 Women could not be more misleading in their characterization of Bailey and DiPrete’s article.

Ultimately, advancements in causal-inference methodologies support what even early studies revealed: that abortion legalization has had profound effects on birth rates and other downstream consequences. These effects have been felt most prominently by young and Black women and have extended beyond women to families more broadly.

³⁶ Martha J. Bailey & Thomas A. DiPrete, *Five Decades of Remarkable but Slowing Change in U.S. Women’s Economic and Social Status and Political Participation*, 2(4) Russell Sage Found. J. of the Soc. Sci. 1, 14 (2016).

III. Women continue to rely on abortion access to plan their reproductive, economic, and social lives.

Causal inference tells us that abortion legalization has caused profound changes in women's lives. But those changes are neither sufficient nor permanent: abortion access is still relevant and necessary to women's equal and full participation in society. Mississippi and its *amici* have argued that the availability of contraception and the existence of employment policies intended to support working women have erased the need for abortion access. Pet'rs' Br. at 35. But the facts—and a substantial body of research—show the opposite. Today, nearly half of all pregnancies are unintended, and nearly half of these unintended pregnancies end in abortion.³⁷ In 2017, approximately one-fifth of all pregnancies ended in abortion, with 1.4% of women of reproductive age having an abortion in that year.³⁸ These statistics alone lead to the inevitable (and obvious) conclusion that contraception and existing policies are not perfect substitutes for abortion access. On closer examination, it is easy to see the reasons why contraception and existing employment policies fall short.

³⁷ See Lawrence B. Finer & Mia R. Zolna, *Declines in Unintended Pregnancy in the United States, 2008–2011*, 374 *New Eng. J. Med.* 843, 845–47 (2016).

³⁸ Rachel K. Jones et al., *Abortion Incidence and Service Availability in the United States, 2017*, Guttmacher Inst., 7 (Sept. 18, 2019), https://www.guttmacher.org/sites/default/files/report_pdf/abortion-incidence-service-availability-us-2017.pdf.

A. Contraception has neither eliminated unintended pregnancies nor obviated the demand for abortion.

Mississippi argues that expanded access to contraception and improvements in contraceptive technology have obviated the need for abortion. But this glaringly overstates the current state of both contraceptive access and technology.

Turning first to accessibility, Mississippi quotes from a policy brief to suggest that “[b]y 2013, most women had no out-of-pocket costs for their contraception.” Pet’rs’ Br. at 29. But Mississippi fails to acknowledge that the universe of women considered for that proposition were a select group of women who were *both* covered by private insurance *and* using a prescription contraception method. Of that group, 59 to 67% had no out-of-pocket contraception costs.³⁹ This is a much narrower group than “most women” as Mississippi misleadingly suggests, and the distinction is meaningful. Statistics based on privately insured women fail to capture the very different healthcare costs for the uninsured. For example, the average annual cost for birth control pills for the uninsured is \$268, plus \$87 in related doctors’ visits.⁴⁰ Implantable devices (IUDs) cost approximately \$1,000 up front for the uninsured, in addition to charges for doctors’

³⁹ See Laurie Sobel et al., *The Future of Contraceptive Coverage*, Kaiser Family Found., 4 (Jan. 2017), <https://perma.cc/T7TY-FVTT>, citing Adam Sonfield et al., *Impact of the Federal Contraceptive Coverage Guarantee on Out-of-Pocket Payments for Contraceptives: 2014 Update*, 91 *Contraception* 44, 45-46 (2015).

⁴⁰ Sasha Guttentag, *The Annual Cost of Birth Control*, GoodRx (Apr. 6, 2021), <https://www.goodrx.com/conditions/birth-control/annual-cost-of-birth-control>.

visits.⁴¹ Given that nationally, 15.6% of young adults aged 19-34 lack health insurance,⁴²—and in Mississippi, 25% of young adults lack health insurance⁴³—large numbers of women (particularly young and poor women) encounter steep barriers to contraceptive affordability and accessibility. Thus, Mississippi’s suggestion that the United States has universal no-cost access to contraception is just wrong.

Even where contraceptives are accessible, the technology is nowhere near as advanced as Mississippi argues. No contraceptive method is 100% effective; in fact, the birth control pill is estimated to fail for about 7% of women in the first year of use.⁴⁴ Much of this is caused by user error—mistakes as simple as failing to take the pills at the exact same time each day. Based on survey evidence, even with widespread contraceptive use of all forms, about 6% of all women aged 15-34 in the United States are likely to experience an unintended pregnancy *each year*.⁴⁵

⁴¹ *Id.*

⁴² Douglas Conway, *Uninsured Rates Highest For Young Adults Aged 19 to 34*, U.S. Census Bureau (Aug. 18, 2021), <https://www.census.gov/library/stories/2020/10/uninsured-rates-highest-for-young-adults-aged-19-to-34.html>.

⁴³ *Id.*

⁴⁴ Aparna Sundaram et al., *Contraceptive Failure in the United States: Estimates from the 2006–2010 National Survey of Family Growth*, 49 *Persp. on Sexual & Reprod. Health* 7, 11 (2017).

⁴⁵ Lawrence B. Finer et al., *A Prospective Measure of Unintended Pregnancy in the United States*, 98 *Contraception* 522, 525 (2018).

B. Employment policies are woefully inadequate; women continue to face real obstacles to balancing motherhood and careers.

While the past 50 years have seen remarkable social and economic progress for women in the United States, significant hurdles remain—particularly for working mothers. Studies show that up to the point of parenthood, men’s and women’s earnings evolve similarly. But as parents, their earnings diverge sharply: mothers experience an immediate and persistent *one-third* drop in expected earnings while fathers’ earnings remain largely unaffected.⁴⁶

Despite the volume of clear evidence of the “motherhood penalty” women face at work, Mississippi claims that numerous federal policies ensure that women can readily “reach the highest echelons of economic and social life,” while simultaneously balancing motherhood. Pet’rs’ Br. at 35. Specifically, Mississippi touts the successes of federal policies around parental leave, childcare support, and pregnancy discrimination. *Id.* But Mississippi’s claim that “[s]weeping policy advances now promote women’s full pursuit of both career and family” is premature and false. Pet’rs’ Br. at 5. In any event, those policy “successes” occurred while *Roe* has been firmly in place for women to determine whether or not they wanted to continue their pregnancies.

Mississippi’s celebration of parental leave policies is particularly bizarre, as the United States is one of only two countries *without* a national paid maternity

⁴⁶ Henrik Kleven et al., *Child Penalties Across Countries: Evidence and Explanations*, 109 AEA Papers & Proc. 122, 123 (2019).

leave policy.⁴⁷ While scores of countries, including Bulgaria and Latvia offer more than a year of paid leave to new mothers,⁴⁸ the United States provides for only twelve weeks of *unpaid* leave under the Family and Medical Leave Act of 1993 (“FMLA”).⁴⁹ Making matters worse, half of all working women are not covered by the FMLA due to various exemptions.⁵⁰ Applying the tools of causal inference, economists have concluded that the FMLA has had *no* significant effect on women’s employment or wages.⁵¹ While a handful of states have enacted paid leave policies since the FMLA, and some employers voluntarily offer paid parental leave, evidence from large national surveys indicates that 81% of workers lack formal paid leave.⁵²

⁴⁷ The other is Papua New Guinea. See Maya Rossin-Slater, *Maternity and Family Leave Policy* 1 (Nat’l Bureau of Econ. Research, Working Paper No. 23069, 2017), https://www.nber.org/system/files/working_papers/w23069/w23069.pdf.

⁴⁸ Gretchen Livingston & Deja Thomas, *Among 41 Countries, Only U.S. Lacks Paid Parental Leave*, Pew Research Center (Aug. 17, 2021), <https://www.pewresearch.org/fact-tank/2019/12/16/u-s-lacks-mandated-paid-parental-leave/>.

⁴⁹ See Katherine Guyot et al., *A Primer on Access to and Use of Paid Family Leave*, Brookings Inst. (Dec. 5, 2019), <https://www.brookings.edu/research/a-primer-on-access-to-and-use-of-paid-family-leave/>; see also Rossin-Slater, *supra* note 47, at 7-8.

⁵⁰ Scott Brown et al., *Employee and Worksite Perspectives of the Family and Medical Leave Act: Results from the 2018 Surveys* iii (July 2020), https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018SurveyResults_FinalReport_Aug2020.pdf.

⁵¹ Christopher J. Ruhm, *Policy Watch: The Family and Medical Leave Act*, 11 J. of Econ. Persp. 175, 184-85 (1997); Jane Waldfogel, *The Impact of the Family and Medical Leave Act*, 18 J. of Pol’y Analysis & Mgmt. 281, 281 (1999).

⁵² Guyot et al., *supra* note 49, Table 3.

Mississippi’s claims about childcare fare no better. The real (inflation-adjusted) price of childcare has increased by nearly 50% since 1993,⁵³ to a median price of \$10,400/year for infants and \$6,500/year for four-year-olds.⁵⁴ Thus, a hypothetical mother working full-time and making \$15 per hour—which is more than double the federal minimum wage—faces infant childcare costs that total one-third of her gross pay. The U.S. Department of Health and Human Services defines “affordable childcare” as less than 7% of family income,⁵⁵ but there is only one state in the country, Louisiana, where daycare costs qualify as “affordable” under that rubric.⁵⁶ Further, federal childcare subsidy programs are underfunded and reach only about 1 in 6 eligible children.⁵⁷

⁵³ Sam Khater et al., *Family Budget Burdens Squeezing Housing: Child Care Costs*, Freddie Mac Economic & Housing Research Group (Dec. 2019), <http://www.freddiemac.com/fmac-resources/research/pdf/201911-Insight-12.pdf>.

⁵⁴ Grover J. “Russ” Whitehurst, *What Is the Market Price of Daycare and Preschool?*, Econ. Stud. at Brookings, 1 (Apr. 19, 2018), <https://www.brookings.edu/wp-content/uploads/2018/04/report.pdf>.

⁵⁵ Child Care and Development Fund Program, 81 Fed. Reg. 67440 (2016).

⁵⁶ Grover J. “Russ” Whitehurst, *Why The Federal Government Should Subsidize Childcare and How to Pay For It*, Econ. Stud. at Brookings, 2 (Mar. 9, 2017), https://www.brookings.edu/wp-content/uploads/2017/03/es_20170309_whitehurst_evidence_speaks3.pdf.

⁵⁷ Nina Chien, *Factsheet: Estimates of Child Care Eligibility & Receipt for Fiscal Year 2018*, U.S. Dep’t of Health and Human Servs., 1-2 (Aug. 2021), <https://aspe.hhs.gov/sites/default/files/2021-08/cy-2018-child-care-subsidy-eligibility.pdf>; Sophia Quinton, *Child Care Subsidies, Vital for Many Workers, Are Dwindling*, Pew Stateline Blog (Dec. 9, 2016), <http://pew.org/2gpl8zi>.

Affordability is not the only barrier to childcare access. Working mothers also deal with schedules that are erratic or misaligned with daycare hours. For instance, a recent survey of workers in the food service and retail sectors—which together employ nearly 1 in 5 American workers—indicates that 80% have little to no input in their work schedules, 66% receive less than two weeks’ notice of their schedules, 69% are required to keep their schedules “open and available,” and 70% report being asked to make at least one change to their schedules in the past month.⁵⁸ These unstable and unpredictable work schedules create significant barriers to securing reliable childcare.⁵⁹

Mississippi is also mistaken when it suggests that the Pregnancy Discrimination Act of 1978 (PDA) has served to protect pregnant women. Despite the protections the PDA appears to confer on paper, a new study estimates that about 250,000 pregnant women are denied accommodations related to their pregnancies each year.⁶⁰ Moreover, research suggests that the PDA has actually reduced women’s wages and employment

⁵⁸ Daniel Schneider & Kristen Harknett, *It’s About Time: How Work Schedule Instability Matters for Workers, Families, and Racial Inequality*, SHIFT Project Research Brief, 1-2 (Oct. 16, 2019), <https://shift.hks.harvard.edu/files/2019/10/Its-About-Time-How-Work-Schedule-Instability-Matters-for-Workers-Families-and-Racial-Inequality.pdf>.

⁵⁹ Kristen Harknett et al., *Who Cares If Parents Have Unpredictable Work Schedules?: Just-in-Time Work Schedules and Child Care Arrangements*, Soc. Problems 2 (2020), <https://doi.org/10.1093/socpro/spaa020>.

⁶⁰ Carly McCann & Donald Tomaskovic-Devey, *Pregnancy Discrimination at Work: An Analysis of Pregnancy Discrimination Charges Filed with the U.S. Equal Employment Opportunity Commission*, Ctr. for Emp’t Equity, 8-9 (2021).

overall because it has made employers reluctant to hire women.⁶¹

Thus, Mississippi’s suggestion that employment policies and childcare access have solved the challenges for working mothers is completely unsupported. And its broader claim that such policies, combined with improvements in contraception, have eliminated the need for abortion access is just wrong.

C. Abortion access continues to measurably impact women’s lives.

Although women experience unintended pregnancies and seek abortions at varying stages of life, one common thread is that many of these women already face difficult financial circumstances. Approximately 49% of women who seek abortions are poor, 75% are low income,⁶² 59% already have children, and 55% report a recent disruptive life event such as the death of a close friend or family member, job loss, the termination of a relationship with a partner, or

⁶¹ Brenden Timpe, *The Labor Market Impacts of America’s First Paid Maternity Leave Policy* 1-4 (Working Paper, Mar. 12, 2021), <https://www.brendentimpe.com/home/research>.

⁶² Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 *Am. J. of Pub. Health* 1904, 1906 (2017); Rachel K. Jones & Jenna Jerman, *Characteristics and Circumstances of U.S. Women Who Obtain Very Early and Second-Trimester Abortions*, 12 *PLoS ONE* e0169969 (2017). “Poor” is defined as family income below the federal poverty level, which in 2020 was \$17,839. “Low-income” is defined as incomes below 200% of the federal poverty level. See *Poverty Thresholds*, U.S. Census Bureau (Sept. 14, 2021), <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html>.

overdue rent or mortgage obligations.⁶³ As explained above, these women also overwhelmingly lack access to paid maternity leave or to affordable childcare.

Given these circumstances, questions abound as to what happens to women who cannot obtain an abortion they wanted to have. The Turnaway Study is a longitudinal study that focuses on financial outcomes for women in this situation.⁶⁴ It compares women who arrived at abortion facilities just prior to a gestational age cut-off and were able to obtain an abortion—the “near-limit group”—to women who arrived just past this cut-off and were turned away—the “turnaway group.” Researchers linked study participants to their annual Experian credit report data, providing an objective measurement of what happened next in the financial lives of these women. The study identified 536 women in the near-limit group and 292 women in the turnaway group. Researchers were able to match credit information and analyze financial outcomes for women over 20 years old and therefore more likely to have credit reports—thus, the study ultimately focused on 383 near-limit women and 180 turnaways. The authors demonstrated that, up until the point that they sought abortions, financial outcomes were trending very similarly for the near-limit and turnaway groups. Then, exactly at the point in their lives where one group obtained an abortion and the other group was turned away, the turnaway group began to experience substantial financial distress relative to the near-limit group, such that over the subsequent

⁶³ Jones & Jerman, *Characteristics and Circumstances*, *supra* note 62, at 6, Table 1.

⁶⁴ Sarah Miller et al., *The Economic Consequences of Being Denied an Abortion* (Nat'l Bureau of Econ. Research, Working Paper No. 26662, 2020), <https://www.nber.org/papers/w26662>.

five years, the average woman in the turnaway group experienced a 78% increase in past-due debt and an 81% increase in public records related to bankruptcies, evictions, and court judgments.⁶⁵ The financial effects of being denied an abortion are thus as large or larger than those of being evicted, losing health insurance, being hospitalized, or being exposed to flooding due to a hurricane.⁶⁶

The 240 Women try to dismiss the Turnaway Study for having a small sample size. *See* Br. of 240 Women at 25. But while the sample is smaller than those obtained from large national surveys, the authors used standard measures of statistical precision and thresholds for statistical significance. Accordingly, the sample is sufficiently large for a causal-inference analysis. Moreover, whereas national surveys necessarily include *all* women (including those unaffected by unintended pregnancies), the Turnaway Study's power is in being able to home in on a group of women who were seeking abortions and who were unable to obtain them from a provider they initially approached. The 240 Women also take issue with the fact that some of the turned-away women had other children. *Id.* at 26. But that does not detract from the study's findings about the impact of being denied access to abortion. Again, the Turnaway Study attempts to answer questions about what happens when one obtains a *particular* abortion or not, not about whether one has *any* children at all. And on that question, the Turnaway Study's conclusions are clear: being

⁶⁵ *Id.* at 29. These estimates are likely conservative because the most disadvantaged women were disproportionately excluded from the analysis because they could not be matched to credit reports.

⁶⁶ *Id.*

denied an abortion has significant deleterious financial consequences.

IV. Overturning or limiting *Roe* and *Casey* would cause direct harm to women seeking abortions.

Given the importance of abortion access to women's reproductive health and decision-making, it follows that eliminating legal protections for abortion would significantly harm women. Studies indicate that if *Roe* and *Casey* were overturned or limited, hundreds of thousands of women would be forced to carry an unwanted pregnancy to term for lack of access to an abortion provider.

If *Roe* and *Casey* were overturned or limited, many states are predicted to ban abortion entirely. For women in or near those states, the travel distance to the nearest abortion provider is expected to increase significantly. As travel distances increase, fewer women are likely to be able to get to abortion providers. Indeed, studies show that requiring women to travel as few as 50 miles prevents substantial numbers of women from reaching providers.⁶⁷ Based on these findings, below we forecast the immediate aftermath of a decision overturning or substantially weakening *Roe* and *Casey* by modelling likely changes in travel distances to predict the number of women who will be unable to reach abortion providers.⁶⁸

⁶⁷ Jason Lindo et al., *How Far Is Too Far? New Evidence on Abortion Clinic Closures, Access, and Abortions*, 55 J. of Hum. Resources 1137, 1217 (2020).

⁶⁸ Caitlin Myers et al., *Predicted Changes in Abortion Access and Incidence in a Post-Roe World*, 100 Contraception 367 (2019).

A. If *Roe* and *Casey* were overturned (even in part), travel distances to abortion providers would drastically increase, impeding women’s access to clinical abortions.

To understand the implications of overturning *Roe* and *Casey*, one must first understand that abortion access is already extremely limited in some areas. The data shows that the average woman of childbearing age currently resides 25 miles from the nearest abortion provider.⁶⁹ But there is enormous variation across states. For instance, the average Florida woman faces a travel distance of 15 miles compared to 47 miles for the average Louisiana woman and 62 miles for the average Missouri woman.⁷⁰ **Figure 2a** below depicts the current landscape of abortion providers and average travel distance to a provider at the county level. Gray dots indicate the locations of abortion providers, and travel distance is shown in blue shading.

If *Roe* were overturned or substantially limited, at least 23 states are considered highly likely to ban abortion.⁷¹ Twelve states—Arkansas, Idaho, Kentucky, Louisiana, Missouri, Mississippi, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and Utah—have enacted “trigger bans,” which are abortion bans designed to become effective if *Roe* is overturned or weakened. Eleven more states—Alabama, Arizona, Georgia, Indiana, Michigan, North Carolina,

⁶⁹ Myers et al., *supra* note 68, at Table 1 (updated by author).

⁷⁰ *Id.*

⁷¹ Center for Reproductive Rights, *What If Roe Fell*, <https://maps.reproductiverights.org/what-if-roe-fell> (last visited Aug. 20, 2021).

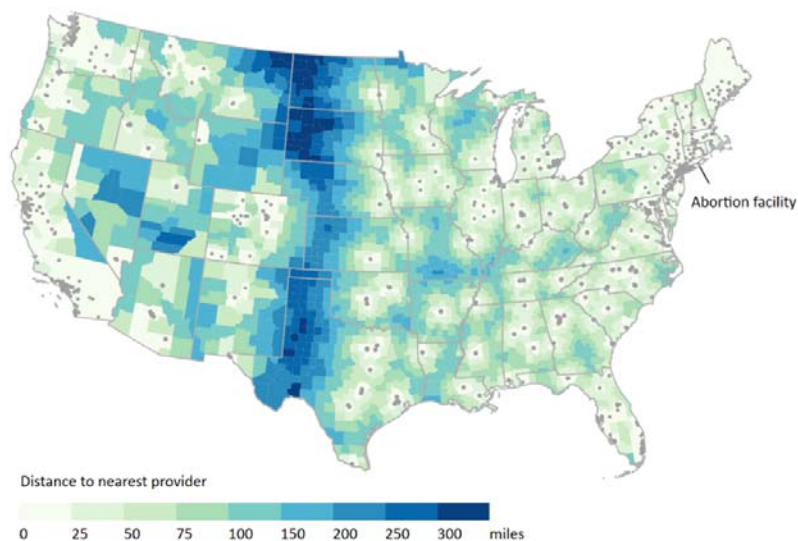
Nebraska, Ohio, South Carolina, Wisconsin, and West Virginia—are likely to either resume enforcement of pre-*Roe* bans that were never repealed or quickly implement new bans.

Figure 2b illustrates travel distances to abortion providers in such a scenario. The 23 states are shown with a darkened red state border. Providers that are predicted to remain open are indicated by gray dots, those that are predicted to close are indicated by pink dots, and travel distances to the nearest abortion provider are reflected in blue shading. With bans in effect in those 23 states, travel distances to the nearest abortion provider would increase for 26 million women of childbearing age. The increases are drastic: in counties where travel distances are predicted to change, the average travel distance would increase from 35 miles to 279 miles. Seventy percent of women in these counties would be more than 200 miles from their nearest provider.

As shown in **Figure 2b**, entire swaths of the South and Midwest would likely be without access to clinic-based abortion. Those with the means to travel may nevertheless be required to cross multiple state lines to get to an abortion clinic. For example, the average Mississippi woman would be 250 miles from the nearest clinic and would have to travel at least two states away to reach one.

Figure 2a: Current locations of abortion facilities⁷² and county-level travel distances to the nearest facility⁷³

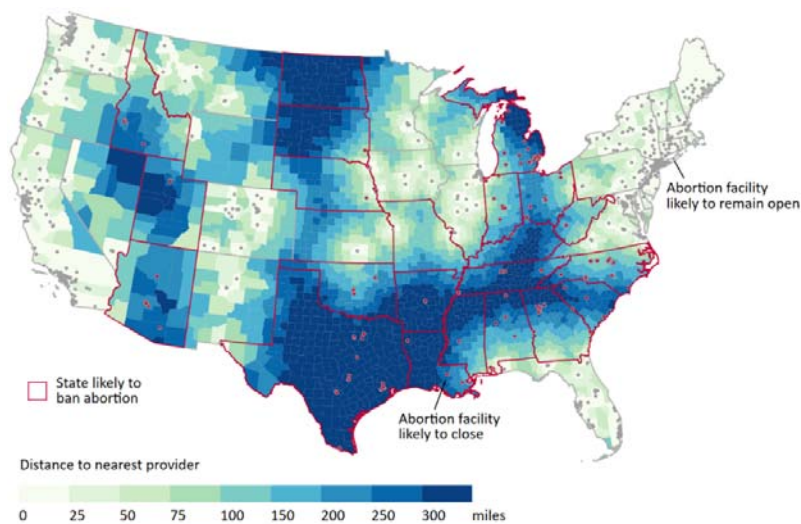
June 2021



⁷² Caitlin Myers, *Myers Abortion Facility Database* (July 29, 2021), <https://doi.org/10.17605/OSF.IO/8DG7R>.

⁷³ Travel distances are calculated between the population centroid of each county to the nearest operating abortion facility as of June 15, 2021 using the Stata georoute module. See Sylvain Weber & Martin Péclat, *A Simple Command to Calculate Travel Distance and Travel Time*, 17 *Stata J.* 962 (2017).

Figure 2b: Locations of abortion facilities and county-level travel distances to the nearest facility if *Roe* and *Casey* were overturned or limited



Multiple teams of authors have studied the effects of travel distances and have found that increases in travel distances keep women from obtaining abortions. For example, several studies focused on Texas’s 2013 HB-2 law, which shuttered Texas abortion clinics and thereby increased distances to abortion providers for women in that state.⁷⁴ Other studies have measured the effects of travel distance by focusing on

⁷⁴ Troy Quast et al., *Abortion Facility Closings and Abortion Rates in Texas*, 54 *Inquiry: J. of Health Care Org., Provision, & Financing* 1 (2017); Stefanie Fischer et al., *The Impacts of Reduced Access to Abortion and Family Planning Services on Abortions, Births, and Contraceptive Purchases*, 167 *J. of Pub. Econ.* 43 (2018); Lindo et al., *supra* note 67.

clinic closures in Wisconsin⁷⁵ or on changes in clinic operations across the entire country.⁷⁶ These studies have generally found that travel distances impact abortions. For instance, increases in travel distances by as few as 25 miles decreased abortion rates by 10%, and increases by 50 miles decreased abortion rates by 18%.⁷⁷ Other studies measured the causal effects of policies requiring women to receive counseling 24 hours prior to an abortion—so called “mandatory waiting periods.”⁷⁸ These studies found that such policies reduce abortion rates, especially where such counseling must be provided in-person, thus necessitating two separate trips to a provider. Two-trip mandatory wait policies decreased abortion rates by 8.9%.⁷⁹ Together, these studies confirm that travel

⁷⁵ Joanna Venator & Jason Fletcher, *Undue Burden Beyond Texas: An Analysis of Abortion Clinic Closures, Births, and Abortions in Wisconsin*, 40 J. Pol’y Analysis & Mgmt. 774 (2021).

⁷⁶ Benjamin P. Brown et al., *Distance to an Abortion Provider and Its Association with the Abortion Rate: A Multistate Longitudinal Analysis*, 52 Persp. On Sexual & Reprod. Health 227 (2020); Caitlin Myers, *Measuring the Burden: The Effect of Travel Distance on Abortions and Births* (IZA Inst. of Lab. Econ., Discussion Paper Series No. 14556, 2021), <https://ftp.iza.org/dp14556.pdf>.

⁷⁷ Lindo et al., *supra* note 67, at 18, Appendix C.

⁷⁸ See, e.g., Theodore Joyce et al., *The Impact of Mississippi’s Mandatory Delay Law on Abortions and Births*, 278 JAMA 653 (1997); Jason M. Lindo & Mayra Pineda-Torres, *New Evidence on the Effects of Mandatory Waiting Periods for Abortion* (Nat’l Bureau of Econ. Research, Working Paper No. 26228, 2019); Caitlin Myers, *Cooling off or Burdened? The Effects of Mandatory Waiting Periods on Abortions and Births* (IZA Inst. of Lab. Econ., Discussion Paper Series No. 14434, 2021), <https://ftp.iza.org/dp14434.pdf>.

⁷⁹ Myers, *supra* note 78, at 2.

distance is highly consequential to women seeking abortions.

Building upon this literature, economists have predicted how many women seeking abortions would likely be prevented from reaching a provider because of the increase in distances if *Roe* and *Casey* were overturned or limited.⁸⁰ **Figure 3** below illustrates where and by how much abortion rates would likely change.

Under this scenario, nationwide clinic-based abortion rates are predicted to fall by 14% in the year following any change, equating to approximately 120,000 women who want to obtain an abortion but are unable to reach a provider in just that first year alone.⁸¹ As shown in **Figure 3**, the greatest effects of *Roe* and *Casey* being overturned or curtailed are predicted to occur in urban areas in the 23 states most likely to ban abortions. For example, travel distances in cities like Atlanta, Houston, and Detroit are predicted to increase from currently low levels to more than 100 miles. In Georgia, 36% of women seeking abortions are predicted to be unable to reach a provider due to the increased travel distance under a ban. The corresponding predictions are 40% in Michigan and 37% in Texas.⁸² Impacts in rural

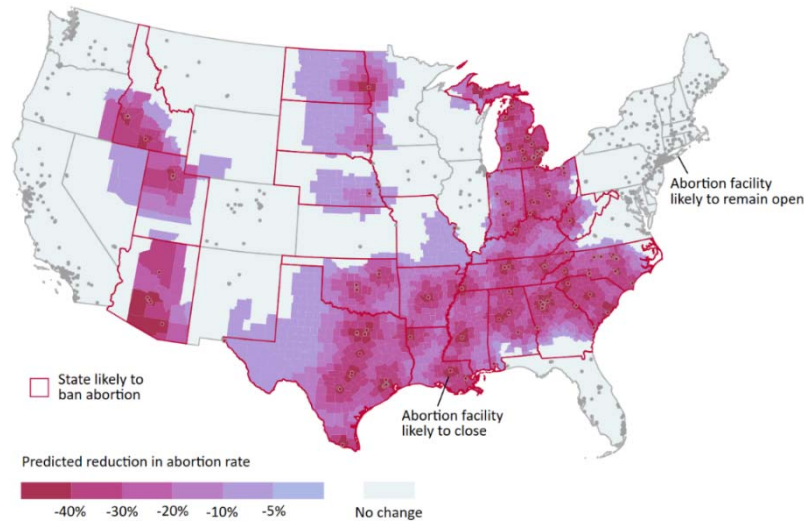
⁸⁰ Lindo et al., *supra* note 67; Myers et al., *supra* note 68.

⁸¹ This prediction is based on 862,320 abortions performed nationally in 2017, the most recent year for which a national count is available. See Jones et al., *supra* note 38, at 1.

⁸² These estimates of the short-run effects of overturning *Roe* are likely to be conservative. First, they model increases in travel distance beyond 300 miles as having no additional effect on abortion rates. However, increases in such already “high-distance” areas have yet to be observed in recent U.S. history, such that further effects are possible. Second, the models do not

counties are predicted to be fairly modest, but only due to pre-existing high travel distances.

Figure 3: Predicted decline in abortion rates if *Roe* and *Casey* were overturned or limited



In a scenario where *Roe* and *Casey* are overturned or limited, women seeking abortions who are unable to reach a provider due to travel distance have limited options: (1) they may become more likely to attempt to perform an abortion on their own outside the view of health authorities; or (2) they may carry their pregnancies to term and have more unintended births. While we cannot precisely determine how many women may choose the former, recent studies show that the majority of women who are prevented

account for the congestion that is likely to arise as thousands of women travel to states where abortion remains legal. If remaining abortion providers cannot fully absorb this influx, the estimated reductions in abortions would be even greater.

from reaching an abortion provider due to travel distance give birth as a result.⁸³

Research also shows that women of every demographic group are affected—but reduced abortion access would have the greatest effect on young women and women of color. For instance, an increase in travel distance from 0 to 100 miles increases births for women aged 20-24 by 3.4% versus by 1.4% for women aged 25-29, and it increases births for Black women by 3.3% versus by 2.1% for white women.⁸⁴

In summary, if *Roe* and *Casey* were overturned, in the first year alone, over 100,000 women seeking abortions—women from entire states and regions—will likely be unable to reach an abortion provider.

⁸³ Myers et al., *supra* note 68, at 11.

⁸⁴ Myers, *supra* note 76, at 11-12.

CONCLUSION

For the reasons set forth above, this Court should affirm the decision of the court of appeal.

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