

ILLUSTRATIONS OF THE POST-*DOBBS* JUDICIARY WORLD

Dominique Kendus, Internal Managing Editor, Vol. 31¹

I. INTRODUCTION

In 2022, the Supreme Court upended half a century of precedent with its decision to overturn *Roe v. Wade* in the landmark case *Dobbs v. Jackson Women’s Health Org.*² The *Dobbs* opinion concluded that the right to abortion does not exist under the Constitution, so individual states may prohibit abortions as they see fit.³ Though the Supreme Court and pro-life factions peddled the notion that states were free to regulate abortions for “legitimate reasons,” the judgment poses legitimate threats to women across the country for a variety of reasons. Such a lauded return to “states’ rights” is a return to a “draconian” age, where women are routinely denied necessary medical care.⁴

The decision to overturn *Roe* was released just one month before the Eleventh Circuit Court of Appeals was set to rule on the Georgia heartbeat ban, which was once categorically void under the controlling *Roe* precedent.⁵ As a direct consequence of the *Dobbs* decision, the “Georgia Heartbeat Ban” took effect. The Georgia Heartbeat Ban⁶ is just one of many illustrations of a post-*Dobbs* judiciary world.

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² 597 U.S. 215 (2022).

³ *Id.*

⁴ *Id.* at 2318 (Breyer, J., dissenting).

⁵ *State of Ga. v. SisterSong Women of Color Reproductive Justice Collective*, 894 S.E.2d 1 (2023) (holding that the Georgia LIFE Act was not violative of the Constitution because *Roe v. Wade* was overruled and therefore, cannot render a law void).

⁶ Sudhin Thanawala, *Georgia Supreme Court Sends abortion Law Challenge Back to Lower Court, Leaving Access Unchanged*, AP News (Oct. 24, 2023) <https://apnews.com/article/abortion-ban-georgia-six-weeks-5faf4cc7d311cafc56b735825d515760> (the Georgia Heartbeat Ban prevents most abortions once a “detectable human heartbeat” is present, usually occurring within six weeks of pregnancy).

While some states have preserved the right to abortion in their state constitutions, others have implemented “trigger laws,” which effectively banned abortions immediately after the overturning of *Roe*⁷. Such an unnavigable judiciary landscape has created “inter-jurisdictional abortion wars” of magnitudes yet to be seen in this country.⁸ Near-constant news coverage has provided a venue for unfiltered criticisms of both sides of the abortion debate⁹. As the divide between the pro-life and pro-choice factions grows deeper, so do disturbances of access to contraceptives, sexual health information, and more.¹⁰ This article aims to discuss the many implications of a post-*Dobbs* world, including its immediate legal impacts, such as the Georgia Heartbeat Ban and trigger laws, as well as disruptions of medical care in anti-abortion states, which have been widely ignored by pro-life lawmakers.

II. THE GEORGIA HEARTBEAT BAN AND OTHER TRIGGER LAWS

The Georgia Heartbeat Ban, or the “LIFE Act,” generally prohibits abortions after “cardiac activity” is detected in an embryo.¹¹ Georgia Governor Brian Kemp signed the LIFE Act in 2019, but the bill was struck down in 2020, prompting an appeals court to grant an injunction until the *Dobbs v. Jackson Women’s Health Organization* decision was released.¹² After the Supreme Court

⁷ *Roe v. Wade*, 410 U.S. 113 (1973).

⁸ David S. Cohen et. al, *The New Abortion Battleground*, 123 COLUM. L. REV. 1, 3 (2023) (analyzing conflicting perspectives on abortion in various states post-*Dobbs* decision, and how such views and subsequent laws create tension throughout the country).

⁹ Jessie Blaeser, *How Abortion Coverage Changed in The Media, According to The Data*, POLITICO (Dec. 27, 2023) <https://www.politico.com/news/2023/12/27/politics-rules-abortion-coverage-00131080> (studies demonstrate a bipartisan increase in political media coverage of abortion and a decline in healthcare media coverage of abortion).

¹⁰ *Human Rights Crisis: Abortion in the United States After Dobbs*, HUMAN RIGHTS WATCH (Apr. 18, 2023) <https://www.hrw.org/news/2023/04/18/human-rights-crisis-abortion-united-states-after-dobbs> (detailing various interviews with medical professionals who describe decreased access to contraceptives, withholding health information for fear of violating anti-abortion laws, reduced access to non-reproductive healthcare, increased psychological damage to women, and more).

¹¹ *SisterSong Women of Color Reprod. Justice Collective v. Kemp*, 410 F. Supp. 3d 1327, 1337 (N.D. Ga. 2019).

¹² *Id.*

overturned *Roe v. Wade*, the LIFE Act took effect and went back to court. The trial court found the ban to be invalid because it was first enacted when *Roe* was still controlling precedent. However, the Supreme Court of Georgia enjoined that decision and reinstated the LIFE Act, writing that “the United States Supreme Court clearly ruled in *Dobbs* that *Roe* and its progeny no longer control.”¹³

At least thirteen states have enacted “trigger laws,” abortion bans that took effect upon the release of the *Dobbs* decision and the overturning of *Roe*.¹⁴ Notably, many of these trigger laws do not provide exceptions for cases of rape or incest, and in states like Tennessee, there are also no exceptions for “fetal anomalies.”¹⁵ In Idaho, healthcare providers may only provide abortions where the life of the mother is at risk.¹⁶ Even in emergencies, where the mother’s overall health is at stake, abortions are prohibited.¹⁷ Such restrictive abortion bans are directly linked to the Supreme Court’s opinion in *Dobbs*, where the majority wrote that “the Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision,” effectively leaving abortion rights to state legislatures.¹⁸

¹³ *SisterSong*, 894 S.E.2d at 13.

¹⁴ Elizabeth Wolfe, *13 States Have Passed So-Called ‘Trigger Laws,’ Bans Designed to Go Into Effect if Roe v. Wade is Overturned*, CNN NEWS (May 3, 2022), <https://www.cnn.com/2022/05/03/us/state-abortion-trigger-laws-ro-v-wade-overturned/index.html> (Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Wyoming each have their own ‘trigger law’).

¹⁵ Mary Kekatos, *A State-by-State Breakdown of Abortion Laws 2 Years After Roe Was Overturned*, ABC NEWS (June 22, 2024) <https://abcnews.go.com/US/state-state-breakdown-abortion-laws-2-years-after/story?id=111312220> (describing the various exceptions to state abortion laws, noting that Tennessee’s only abortion exception is triggered when needed to save the life of a woman; Tennessee has no fetal anomaly or rape/incest exceptions. South Dakota and Oklahoma have similar, narrow exceptions).

¹⁶ Tierney Sneed, *Takeaways from the Supreme Court’s Oral Arguments Over Emergency Abortions*, CNN POLITICS (Apr. 24, 2024), <https://www.cnn.com/2024/04/24/politics/takeaways-supreme-court-abortion-idaho/index.html>.

¹⁷ *Id.*

¹⁸ *Dobbs*, 597 U.S. at 231.

III. MEDICAL CARE DISTURBANCES IN A POST-*DOBBS* WORLD

Once the Supreme Court toppled the protections afforded by *Roe v. Wade* and many state legislatures attacked existing abortion laws, abortion healthcare providers started pulling out of those states¹⁹. Studies suggest that healthcare providers began moving out of “pro-life” jurisdictions, and medical students requested to work in those states at lesser rates than in previous years.²⁰ In Idaho, which now has one of the strictest abortion trigger laws in the country, more than fifty obstetricians have left their practice since August 2022.²¹ Similarly, two hospital obstetrics programs have shut down and another is on the verge of collapse.²² Only half of all Idaho counties now have an obstetrician in their jurisdiction,²³ severely limiting the quality and efficiency of care for women throughout the state. Idaho’s rapidly declining obstetrician and reproductive health care providers are just some of many cautionary tales stemming from the *Dobbs* decision.

To fully understand the burdens imposed by overturning *Roe*, it is necessary to view the decision within the context of the COVID-19 pandemic and the overwhelming pressure put on healthcare providers in every state. With obstetricians facing extreme burnout, “[a]s more labor and delivery units close, or more OB-GYNS are forced to leave their communities or the field altogether, those who remain see an increased demand for their services. Keeping up with that

¹⁹ Sheryl Gay Stolberg, As Abortion Laws Drive Obstetricians From Red States, Maternity Care Suffers, NY Times (Sept. 6, 2023), <https://www.nytimes.com/2023/09/06/us/politics/abortion-obstetricians-maternity-care.html> (“across the country, in red states like Texas, Oklahoma and Tennessee, obstetricians — including highly skilled doctors who specialize in handling complex and risky pregnancies — are leaving their practices”).

²⁰ Stacy Weiner, *The Fallout of Dobbs on the Field of OB-GYN*, AAMC NEWS (Aug. 23, 2023) <https://www.aamc.org/news/fallout-dobbs-field-ob-gyn> (highlighting the negative effects that abortion bans and expanded liability have on OB-GYNs in those states and the profession as a whole).

²¹ *Dozens of Idaho Obstetricians Have Stopped Practicing There Since Abortions Were Banned, Study Says*, AP NEWS (Feb. 21, 2024), <https://apnews.com/article/idaho-abortion-ban-doctors-leaving-f34e901599f5eabed56ae96599c0e5c2> [hereinafter *Idaho Obstericans*] (analyzing data from studies conducted by the Idaho Physician Well-Being Action Collaborative).

²² *Id.*

²³ *Id.*

demand can become overwhelming We are seeing more of this now that the *Dobbs* decision has forced some OB-GYNS out of restrictive states.”²⁴

In Georgia, after implementing the post-*Dobbs* heartbeat ban, more than half of its counties are without an OB-GYN.²⁵ A recent study found that states with restrictive abortion bans, like Georgia and Idaho, are seeing the largest drops in OB-GYN applicants, with declines at around 10.5%.²⁶ Relatedly, Georgia has one of the highest maternal mortality rates in the country.²⁷

IV. MENTAL HEALTH CONTROVERSY

The leading anti-abortion group in the United States, March for Life, hosted a pro-life rally in January 2024.²⁸ House Speaker Mike Johnson paraded the message “We can truly build a culture that cherishes and protects life” and advocated for anti-abortion policies.²⁹ However, pro-choice activists disagree with Johnson’s message, noting that women are experiencing lesser quality of life, bodily autonomy, and access to healthcare because of the decision to overturn *Roe*.

Without *Roe* protections, Georgia, Idaho, and other conservative states pose serious threats to the overall health and safety of women everywhere. Maternal mortality rates will continue to rise, and with it, so will tensions in the “inter-jurisdictional abortion wars.”³⁰ While the Supreme Court considers whether Idaho’s abortion ban overrules the Emergency Medical Treatment and Labor Act (EMTALA), which requires that abortive care be taken in cases of emergencies,³¹

²⁴ Weiner, *supra* note 20.

²⁵ Jess Mador, *Report finds states with abortion bans see fewer OB-GYN residency applications*, WABE (May 1, 2023) <https://www.wabe.org/report-finds-states-with-abortion-bans-see-fewer-ob-gyn-residency-applications/>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Ashraf Kalil, *In Snowy DC, the March for Life Rallies Against Abortion with an Eye Toward the November Elections*, AP NEWS (Jan. 19, 2024), <https://apnews.com/article/march-for-life-abortion-f76359375980d9e3bfaf61262c5bf46a> (describing pro-life protests in Washington, DC and their objections for the 2024 elections).

²⁹ *Id.*

³⁰ Cohen, *supra* note 8.

³¹ Sneed, *supra* note 16.

women around the country are at increased risk of dying from pregnancy complications every day³². Similarly, women under the restrictive abortion bans are experiencing depression and anxiety at a distressing rate.³³

The Supreme Court's decision in *Dobbs* did not expand states' rights; it instead impeded the bodily autonomy of women everywhere and placed their health – and lives – in the hands of conservative state legislatures. In a post-*Dobbs* world, women are categorically less safe than they were just two years ago, and the decision to overturn *Roe* will haunt this country for years to come. Benjamin Thornburg, leader of a study that found increased rates of anxiety and depression in women living in anti-abortion states, noted that “[it] makes clear how individuals who aren't actively seeking an abortion may be concerned by the risks of living in a state where they—or someone they know—couldn't get one should they need one. Those risks can impact a person's overarching sense of security. To have abortion rights—once protected by the federal government—evaporate in a day, is a troubling feeling.”³⁴

The *Dobbs* decision, corresponding Georgia heartbeat ban, trigger laws, and subsequent dismantling of OB-GYN residencies and public access have harmed women physically and psychologically. With maternal mortality rates increasing, and quality of life and mental health decreasing, only a return to *Roe* protections will guarantee security.

³² Human Rights Crisis, *supra* note 9 (“medical professionals report that the restrictive legal landscape means that they are generally unsure whether and when medically necessary, and even lifesaving, abortions are legal... such uncertainty causes both healthcare providers and institutions to delay or deny abortion and other reproductive healthcare”).

³³ See generally Annalies Winny, *How Abortion Trigger Laws Impact Mental Health*, JOHNS HOPKINS BLOOMBERG SCHOOL OF PUBLIC HEALTH (Feb. 6, 2024), <https://publichealth.jhu.edu/2024/abortion-bans-impact-on-mental-health> (describing recent study which found increase in self-reported depression and anxiety in states that banned abortion, post-*Dobbs* ruling).

³⁴ *Id.*