

# Pro-Life vs. Pro-Child: Refuting Post-*Dobbs* Abortion Bans Through a Best Interest of the Child Framework

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*“A law with the potential effect of depriving a loving husband and five small children of the presence of a young wife and mother is a disgrace in a compassionate society.”*<sup>1</sup>

## I. INTRODUCTION

Following the United States Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, abortion regulation has been relegated to the states.<sup>2</sup> Thus, there are currently thirteen states with total or near-total abortion bans.<sup>3</sup> These states claim virtuous motives: the promotion of maternal health and the preservation of life.<sup>4</sup> Instead, state abortion bans tend to have a directly adverse effect on maternal and infant life, as well as child welfare—both on an individual and societal level.<sup>5</sup>

Mere weeks after the Supreme Court decided *Dobbs*, a ten-year-old girl in Ohio sought an abortion.<sup>6</sup> She had been raped by a twenty-

1. Brief for the Amici Curiae Women Who Have Had Abortions & Friends of Amici Curiae in Support of Appellees at C30, *Webster v. Reprod. Health Servs.*, 492 U.S. 490 (1989) (No. 88-605) [hereinafter Brief for the Amici Curiae Women].

2. 597 U.S. 215, 302 (2022).

3. *After Roe Fell: U.S. Abortion Laws by State*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/abortion-laws-by-state/> (last visited Dec. 20, 2025) [hereinafter *After Roe Fell*]. The *Dobbs* decision and subsequent state bans made abortion illegal in thirteen states. *Id.* This number does not include those states that have less hostile bans on abortion access, although such bans still place an undue burden on women seeking abortions in those states. As of December 2025, abortion is illegal in Idaho, North Dakota, South Dakota, Texas, Oklahoma, Arkansas, Mississippi, Louisiana, Alabama, Tennessee, Kentucky, Indiana, and West Virginia. *Id.*

4. See, e.g., IDAHO CODE ANN. § 18-602, *invalidated by*, Planned Parenthood of Idaho, Inc. v. Wasden, 376 F.3d 908 (9th Cir. 2004) (providing that Idaho’s abortion ban was created because “children have a special place in society that the law should reflect” and “the medical, emotional and psychological consequences of abortion and childbirth are serious and can be lasting”).

5. *Infra* Part III.

6. Tom Davies, *Indiana Doctor Defends Actions in 10-Year-Old Rape Victim’s Abortion*, PBS NEWS (Nov. 21, 2022, at 16:51 ET), <https://www.pbs.org/news-hour/politics/indiana-doctor-defends-actions-in-10-year-old-rape-victims-abortion>.

seven-year-old man.<sup>7</sup> Ohio’s “fetal heartbeat” law, a trigger ban,<sup>8</sup> prohibited any physician from performing her abortion.<sup>9</sup> At just ten years old, the child was “raped, six weeks pregnant, already traumatized, [and] was forced to travel to another state.”<sup>10</sup> After the girl arrived in Indiana, Dr. Caitlin Bernard provided her with a medical abortion.<sup>11</sup> Despite the victimization of a young child and the legality of her subsequent abortion, Indiana Attorney General Todd Rokita focused on the possible violation of state reporting laws.<sup>12</sup> Both Ohio’s and Indiana’s governments failed to consider whether the child would be physically capable of carrying a pregnancy to full term, let alone become a parent.<sup>13</sup> If they had done so, they would have found that continuing

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7. *Id.* Cf. *Teenagers & Sexual Violence*, NAT’L SEXUAL VIOLENCE RES. CTR., [https://www.nsvrc.org/wp-content/uploads/2019/02/Teenagers\\_508.pdf](https://www.nsvrc.org/wp-content/uploads/2019/02/Teenagers_508.pdf) (last visited Dec. 20, 2025) (illustrating how teenage girls are more likely to be victimized by a peer or someone they know). Additionally, 43.6% of girls were victimized by an acquaintance, while 27.7% of girls were victimized by a family member. *Id.*

8. A “trigger ban” is a law that has been passed by the legislative body but does not go into effect until a certain event triggers it into law. *See Does Texas Have Trigger Laws Related to Abortion?*, TEX. STATE L. LIBR. (June 3, 2025), <https://guides.sll.texas.gov/abortion-laws/trigger-laws>. Following *Dobbs*, the “trigger” took immediate effect, altering abortion access across the U.S. *After Roe Fell*, *supra* note 3.

9. OHIO REV. CODE ANN. § 2919.195 (LexisNexis 2019). On Oct. 24, 2024, this ban was permanently struck down via a permanent injunction. *See* Decision and Entry Granting Plaintiffs’ Motion for Judgment on the Pleadings at 45–46, *Preterm-Cleveland v. Yost*, No. A2203203 (Oct. 24, 2024), [https://www.acluohio.org/sites/default/files/file\\_3594.pdf](https://www.acluohio.org/sites/default/files/file_3594.pdf) (finding that Ohio’s “Heartbeat Act” violates the state’s constitution).

10. Scott Wong, *Republicans Are Shocked a 10-Year-Old Can Get Pregnant After the Ohio Rape Victim Abortion Story Proves True*, NBC NEWS (July 14, 2022, at 16:40 CT), <https://www.nbcnews.com/politics/republicans-express-shock-10-year-old-can-get-pregnant-doubting-ohio-r-rcna38284> (quoting President Joe Biden).

11. Davies, *supra* note 6.

12. *Id.*

13. *See generally* Stephanie Nolen, *What Pregnancy and Childbirth Do to the Bodies of Young Girls*, N.Y. TIMES (July 18, 2022), <https://www.nytimes.com/2022/07/18/health/young-girls-pregnancy-childbirth.html> (noting that pro-life supporters suggested the child should have carried the pregnancy to term, then informing on the physical and social ramifications of pregnancy on a child); *see also* Solcyré Burga, *How a 10-Year-Old Rape Victim Who Traveled for an Abortion Became Part of a Political Firestorm*, TIME (July 15, 2022, at 18:29 CT), <https://time.com/6198062/rape-victim-10-abortion-indiana-ohio/> (explaining that

the pregnancy would not only be distressing and unjust, but threatening to the child's health.<sup>14</sup> Following anti-abortion criticism surrounding the young girl,<sup>15</sup> *The New York Times* cited a 2014 study reporting that “[y]oung maternal age is associated with an increased risk of maternal anemia, infections, eclampsia and pre-eclampsia, emergency cesarean delivery and postpartum depression.”<sup>16</sup> Under the guise of protecting an unborn fetus, the state abortion bans and concurrent related rhetoric neglected two heartbeats: that of a pregnant ten-year-old girl and her unborn fetus. In doing so, the states prioritized their own agendas, disregarding the “best interests of the child.”<sup>17</sup>

This Note will demonstrate how state abortion bans fail to achieve the “pro-life” agenda they claim to support and instead, frequently harm children. Part II of this Note discusses both the history of abortion regulation in the United States and the “best interests of the child” framework. Part III argues that state abortion bans do not serve the best interests of the child and are thus not “pro-life.” Part IV proposes a legislative “social safety net” solution, designed to provide both mothers and children with support. Part V concludes this Note with a legislative call to action.

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Indiana Attorney General Todd Rokita focused his efforts on investigating the doctor, not the child's rapist).

14. Nolen, *supra* note 13.

15. Burga, *supra* note 13 (discussing how “abortion opponents have doubled down”). The general counsel for the National Right to Life believes the ten-year-old child should have given birth, stating, “as many *women* who have had babies [from] rape, we would hope that she would understand the reason and ultimately the benefit of having the child . . . . We don't think, as heart-wrenching as those circumstances are, . . . we should devalue the life of the baby because of the sins of the father.” *Id.* (emphasis added). Yet the ten-year-old is a child, not a woman.

16. Nolen, *supra* note 13.

17. *Infra* Section II.D.

## II. TO REGULATE OR NOT TO REGULATE: THE HISTORY OF ABORTION IN THE UNITED STATES

At common law, early America allowed for many pre-viability abortions.<sup>18</sup> But the late nineteenth century brought an advent of anti-abortion rhetoric and subsequent restrictions on access.<sup>19</sup> Still, many began to advocate for abortion rights, and in 1973, the Court recognized abortion as a fundamental right inherent in our nation's Constitution.<sup>20</sup> For almost fifty years, national protection for abortion existed under *Roe v. Wade*.<sup>21</sup> *Dobbs* changed that trajectory, returning the right to regulate and prohibit abortion to the states.<sup>22</sup> The effects of total or near-total abortion restrictions on children are vast and ultimately show that such regulations often do not act within the “best interests of the child.”<sup>23</sup>

### A. Early Abortion Restrictions & the Advent of Abortion as a Fundamental Right

Prior to the 1850s, abortion was generally legal before “quickening.”<sup>24</sup> By 1860, every governor had received a letter as part of the American Medical Association's campaign lobbying state legislators to ban abortion.<sup>25</sup> Congress enacted the Comstock Act in 1873, which made it illegal to sell or mail contraceptives or abortion-inducing

18. See Aaron Tang, *After Dobbs: History, Tradition, and the Uncertain Future of a Nationwide Abortion Ban*, 75 STAN. L. REV. 1091, 1097 (2023) (explaining how abortions prior to “quickening”—“the fetus's first discernible movement (often at sixteen to eighteen weeks in pregnancy)” —were not illegal (citing *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 243 (2022))).

19. *Infra* Section II.A.

20. *Roe v. Wade*, 410 U.S. 113, 164–65 (1973).

21. Before 2022, the United States Supreme Court had continuously upheld protections for pre-viability abortions. See, e.g., *id.*; *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992); *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582 (2016); *June Med. Servs., LLC v. Russo*, 591 U.S. 299 (2020).

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

23. *Infra* Part III.

24. See Tang, *supra* note 18 (citing *Dobbs*, 597 U.S. at 243).

25. Ramtin Arablouei & Rund Abdelfatah, *Abortion Was Once Common Practice in America. A Small Group of Doctors Changed That*, NPR (June 6, 2022, at 16:29 ET), <https://www.npr.org/2022/06/06/1103372543/abortion-was-once-common-practice-in-america-a-small-group-of-doctors-changed-th>.

drugs.<sup>26</sup> Animus towards abortion grew quickly, and abortion restriction laws were enacted in every state.<sup>27</sup> As a result, women turned to unsanctioned abortion facilities and doctors throughout the 1930s and 1940s, often subjecting themselves to increased health risks.<sup>28</sup>

As public awareness of the dangers of illegal abortions grew, many people began to support abortion reform.<sup>29</sup> Individuals ranging from health care providers to clergy members began advocating in court for exceptions to their states' abortion laws.<sup>30</sup> Still, a socioeconomic divide between women and their ability to access abortion remained.<sup>31</sup> Subsequently, Planned Parenthood hosted a national conference on abortion, and many of the physicians who attended called for abortion reform.<sup>32</sup> These doctors acknowledged the disproportionate lack of access for many women who could not afford to travel or

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26. 18 U.S.C. § 1461. The Comstock Act is not a distant memory. Anti-abortion activists, especially those emboldened by President Trump's 2024 election campaign, have called for Comstock's use as a "dormant national abortion ban already on the books." Andrew Beck, *Anti-Abortion Extremists Want to Use the 150-Year-Old Comstock Act to Ban Abortion Nationwide*, ACLU (May 30, 2024), <https://www.aclu.org/news/reproductive-freedom/anti-abortion-extremists-want-to-use-the-150-year-old-comstock-act-to-ban-abortion-nationwide>. Banning the shipment of abortion medications and medical instruments used in abortions will not only disrupt abortion care, but it will also create considerable barriers for reproductive health care access beyond the abortion context. For example, the shipment of speculums and ultrasound machines used in abortion procedures could be halted, restricting access to routine reproductive health care such as pap smears and fetal ultrasounds.

27. *Abortion Is Central to the History of Reproductive Health Care in America*, PLANNED PARENTHOOD, <https://www.plannedparenthoodaction.org/issues/abortion/abortion-central-history-reproductive-health-care-america> (last visited Sep. 23, 2025).

28. Rachel Benson Gold, *Lessons from Before Roe: Will Past Be Prologue?*, GUTTMACHER POL'Y REV. (Mar. 1, 2003), <https://www.guttmacher.org/gpr/2003/03/lessons-roe-will-past-be-prologue> (explaining how illegal abortions made up "nearly one-fifth (18%) of maternal deaths recorded" in 1930).

29. *Historical Abortion Law Timeline: 1850 to Today*, PLANNED PARENTHOOD, <https://www.plannedparenthoodaction.org/issues/abortion/abortion-central-history-reproductive-health-care-america/historical-abortion-law-timeline-1850-today> (last visited Sept. 23, 2025).

30. *Id.*

31. Gold, *supra* note 28 ("[T]he mortality rate due to illegal abortion for nonwhite women was 12 times that for white women.").

32. PLANNED PARENTHOOD, *supra* note 29.

engage in a secret abortion.<sup>33</sup> Reform activists created a second group, the Association for the Study of Abortion (“ASA”), in 1964.<sup>34</sup> Strategically, this group advocated only for medically necessary abortions.<sup>35</sup>

Under increasing pressure, states began to amend their laws.<sup>36</sup> For example, California amended its law to allow hospitals to approve physicians’ requests for abortions.<sup>37</sup> The state was spurred to action after the trial of the “San Francisco Nine.”<sup>38</sup> In 1966, nine doctors were sued for performing abortions on women who had been exposed to rubella, a known cause of birth defects.<sup>39</sup> California recognized the need for flexibility regarding the sensitive and nuanced situations women face when considering abortions and began exploring exceptions to its otherwise restrictive regulations.<sup>40</sup> In 1969, physicians and activists created the National Association for the Repeal of Abortion Laws (“NARAL”) to campaign for abortion reform legislation.<sup>41</sup> As a result, state legislatures experienced an influx of lobbying, culminating in the

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33. *Id.*

34. *Id.*

35. ASA was led by doctors and other medical professionals and, thus, focused its efforts on medically necessary abortions. *Id.* Still, ASA’s advocacy helped pave the way for *Roe v. Wade* and greater abortion access. See also *U.S. Groups Campaign to Legalize Abortion, 1969-1973*, GLOB. NONVIOLENT ACTION DATABASE, <https://nvdatabase.swarthmore.edu/content/us-groups-campaign-legalize-abortion-1969-1973> (last visited Sep. 23, 2025).

36. See, e.g., CAL. HEALTH & SAFETY CODE §§ 25950–54 (repealed 1996) (California’s Therapeutic Abortion Act); *It’s Been 50 Years Since Colorado Passed This Groundbreaking Abortion Law*, TIME (Apr. 25, 2017, at 08:44 ET), <https://time.com/4753918/colorado-abortion-law-50-year-anniversary/>.

37. CAL. HEALTH & SAFETY CODE §§ 25950–54.

38. Bryan A. Small, *Is Casey Viable?*, 36 WOMEN’S RTS. L. REP. 472, 478–79 (2015). See *Shively v. Stewart*, 421 P.2d 65, 67 (Cal. 1966) (noting that the Executive Secretary of the State Board of Medical Examiners in California accused licensed physicians of aiding, abetting, offering, and performing criminal abortions).

39. Small, *supra* note 38; *Shively*, 421 P.2d at 67 (one case of the San Francisco Nine).

40. Brian Pendleton, *The California Therapeutic Abortion Act: An Analysis*, 19 HASTINGS L.J. 242, 242–43 (1967).

41. PLANNED PARENTHOOD, *supra* note 29. Today, NARAL is called Reproductive Freedom For All. *History*, REPROD. FREEDOM FOR ALL, <https://reproductive-freedomforall.org/about/history/> (last visited Dec. 22, 2025).

expansion of abortion rights in seventeen states.<sup>42</sup> While four states—Alaska, Hawaii, New York, and Washington—repealed the entirety of their bans during this time, only New York outright legalized abortion in 1970.<sup>43</sup>

In the midst of nationwide abortion reform, the Court heard *Griswold v. Connecticut*.<sup>44</sup> Holding that married couples had a fundamental right to access contraceptives, the Court reasoned that a right to privacy is inherent in the Constitution.<sup>45</sup> Specifically, the Court concluded that, although the Constitution does not explicitly include a right to privacy, the Bill of Rights creates “penumbras of privacy,” inherent in the concept of ordered liberty.<sup>46</sup> Importantly, Justice Harlan argued that “[t]he Due Process Clause of the Fourteenth Amendment stands . . . on its own bottom” and therefore, “the proper constitutional inquiry . . . is whether [the statute] infringes the Due Process Clause of the Fourteenth Amendment because the enactment violates basic values ‘implicit in the concept of ordered liberty.’”<sup>47</sup> Two years later, in *Loving v. Virginia*, the Court buttressed its approach by finding that, like access to contraception, the freedom to marry was also implicit in the concept of ordered liberty.<sup>48</sup>

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42. Four states—Alaska, Hawaii, New York, and Washington—removed all abortion bans, while thirteen states expanded exceptions to their abortion laws. PLANNED PARENTHOOD, *supra* note 29.

43. Julia Jacobs, *Remembering an Era Before Roe, When New York Had the “Most Liberal” Abortion Law*, N.Y. TIMES (July 19, 2018), <https://www.nytimes.com/2018/07/19/us/politics/new-york-abortion-roe-wade-nyt.html>.

44. 381 U.S. 479 (1965). *Griswold* was expanded to include the right to contraceptives for all people, not just married individuals, in *Eisenstadt v. Baird*. See 405 U.S. 438, 453 (1972) (“If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.” (citing *Stanley v. Georgia*, 394 U.S. 557 (1969))).

45. *Griswold*, 381 U.S. at 485–86; see also *id.* at 494 (Goldberg, J., concurring) (“[T]he right of privacy is a fundamental personal right, emanating ‘from the totality of the constitutional scheme under which we live.’” (citation omitted)).

46. *Id.* at 484 (majority opinion) (“[S]pecific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance.”).

47. *Id.* at 500 (Harlan, J., concurring) (citation omitted).

48. 388 U.S. 1, 12 (1967) (describing the freedom to marry as “one of the vital personal rights essential to the orderly pursuit of happiness by free men”).

In 1973, the Court recognized a general protection for women seeking an abortion.<sup>49</sup> The *Roe v. Wade* Court reinforced its decisions in *Griswold* and *Loving*, confirming the fundamental right to privacy inherent in the Due Process Clause of the Fourteenth Amendment.<sup>50</sup> In *Roe*, the Court held that the right to privacy “is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”<sup>51</sup> As a result, the Court established national protection for abortion and subsequently implemented the trimester framework.<sup>52</sup> Under this standard, the pregnant woman has the fundamental right to consult her physician and make the deeply personal but medically informed decision to terminate her pregnancy during the first trimester.<sup>53</sup> After the first trimester but before fetal viability, the state may regulate abortion in ways “reasonably related to maternal health.”<sup>54</sup> After the fetus reaches viability, abortion may be regulated “to promote [the state’s] interests in the potentiality of human life,” so long as the state reserves exceptions for the “preservation of the life or health of the mother.”<sup>55</sup>

Soon after *Roe*’s triumph, Congress enacted the Hyde Amendment.<sup>56</sup> This law prohibits the use of federal dollars from government insurance programs, such as Medicaid, for abortions.<sup>57</sup> Despite limited

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49. See *Roe v. Wade*, 410 U.S. 113, 164–65 (1973). Before *Roe*, the Court heard *Doe v. Bolton*, 410 U.S. 179, 191–92 (1973) (holding that “[t]he vagueness argument is set at rest” because a physician’s decision to perform an abortion must be made “in the light of all factors—physical, emotional, psychological, familial, and the woman’s age . . . . allow[ing] the attending physician the room he needs to make his best medical judgment”).

50. *Roe*, 410 U.S. at 152–53; U.S. CONST. amend. XIV, § 1; see also *Roe*, 410 U.S. at 170 (Stewart, J., concurring) (interpreting the right to privacy under the Fourteenth Amendment to include “the right of a woman to decide whether or not to terminate her pregnancy”); *Griswold*, 381 U.S. at 494 (Goldberg, J., concurring) (“[T]he right of privacy is a fundamental personal right, emanating ‘from the totality of the constitutional scheme under which we live.’” (citation omitted)).

51. *Roe*, 410 U.S. at 153 (majority opinion).

52. *Id.* at 163–65.

53. *Id.*

54. *Id.* at 164.

55. *Id.* at 164–65.

56. Aliza Shatzman, *Abortion Delayed Is Abortion Denied: Why the Hyde Amendment’s Rescission of Federal Funding for Medically Necessary Abortions Harms Low-Income Women*, 27 CARDOZO J. EQUAL RTS. & SOC. JUST. 503, 504 (2021); Pub. L. No. 94-439, 90 Stat. 1418 (1977).

57. Shatzman, *supra* note 56.

exceptions for incest, rape, or life-threatening risks to the pregnant woman,<sup>58</sup> it has had a socioeconomically discriminatory impact on many women.<sup>59</sup> In *Maier v. Roe*<sup>60</sup> and *Harris v. McRae*,<sup>61</sup> the Court heard challenges regarding the Amendment, and in each case, the Court effectively allowed restrictions on access to remain, so long as such restrictions were not state-created or enabled. That is, states could not place new barriers to abortion but could allow existing barriers to remain.<sup>62</sup>

The Court revisited the issue of abortion regulation when it heard *Planned Parenthood of Southeastern Pennsylvania v. Casey* in 1992.<sup>63</sup> While still reaffirming the constitutional right to abortion, the Court held that four provisions of Pennsylvania's abortion law were valid.<sup>64</sup> The Court abandoned the trimester framework and its strict

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58. *Id.* (noting that the Hyde Amendment did not have an exception for “medically necessary” abortions when the pregnancy threatened the woman’s health but was not necessarily “life-saving”).

59. Jill E. Adams & Jessica Arons, *A Travesty of Justice: Revisiting Harris v. McRae*, 21 WM. & MARY J. WOMEN & L. 5, 48 (2014) (“[T]he ‘avowed purpose and practical effect’ of the Hyde Amendment are to ‘impose a disadvantage, a separate status, and so a stigma’ on all pregnant women enrolled in Medicaid who choose to end rather than continue their pregnancy. . . . [T]he Hyde Amendment is intended as a deterrent for low-income women who would consider abortion and operates as a punishment for those who ultimately choose abortion.”).

60. 432 U.S. 464, 479 (1977) (holding that it is *not* an equal protection violation for a state to deny paying expenses incident to non-therapeutic abortions for indigent women).

61. 448 U.S. 297, 326–27 (1980) (holding that states may not place barriers in the way of women obtaining an abortion but do not need to remove existing barriers, even those of the states’ creation).

62. *Id.*

63. 505 U.S. 833 (1992), *overruled by*, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022). Before *Casey*, the Court heard multiple other cases regarding abortion access. *See e.g.*, *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 69 (1976) (holding that states may not constitutionally require a spouse’s consent as a condition for abortion during the first 12 weeks of one’s pregnancy); *Maier*, 432 U.S. at 465–66 (finding no equal protection violation); *Harris*, 448 U.S. at 326–27 (allowing existing barriers to abortion to remain); *Webster v. Reprod. Health Servs.*, 492 U.S. 490, 499 (1989) (holding that a Missouri law that prohibited the use of public funds, facilities, and employees for abortion was constitutional); *Hodgson v. Minnesota*, 497 U.S. 417, 423 (1989) (holding that a parental notice requirement before a pregnant minor could obtain an abortion was unconstitutional as it did not reasonably relate to legitimate state interests).

64. *Casey*, 505 U.S. at 833.

scrutiny analysis, tailoring abortion protections through the “undue burden standard.”<sup>65</sup> Under *Casey*, a law is unconstitutional if it “has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.”<sup>66</sup> Under the Court’s reasoning, Pennsylvania’s requirements of: (1) informed consent,<sup>67</sup> (2) a twenty-four-hour waiting period,<sup>68</sup> (3) parental consent for minors, with a judicial bypass procedure,<sup>69</sup> and (4) reporting requirements for abortion facilities<sup>70</sup> did not create an undue burden.<sup>71</sup> *Casey* thus opened the door to many state legislatures enacting laws that restricted abortion access but that, under the Court’s reasoning, did not impose an undue burden.<sup>72</sup>

B. *Attacks on Planned Parenthood of Southeastern Pennsylvania v.*

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65. *Id.* at 846 (“Before viability, the State’s interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman’s effective right to elect the procedure.”). The Court rejected the “trimester framework, which [it did] not consider to be a part of the essential holding in *Roe*.” *Id.* at 873.

66. *Id.* at 877.

67. 18 PA. CONS. STAT. § 3205 (1990) (requiring a pregnant woman to give her informed consent prior to the abortion).

68. *Id.* (requiring the pregnant woman to wait at least twenty-four hours between the receipt of information regarding the abortion and the actual procedure).

69. *Id.* § 3206 (requiring the informed consent of a parent for a minor to receive an abortion). The Act does include a judicial bypass exception if the minor is unable to obtain parental consent. *Id.*

70. *Id.* § 3207 (creating reporting requirements for facilities providing abortions).

71. *Casey*, 505 U.S. at 871 (balancing the privacy interests of a pregnant woman with the state’s legitimate interests); *see also id.* at 888–95 (finding the spousal consent requirement of Pennsylvania’s statute invalid as it creates an undue burden on women seeking pre-viability abortions, specifically in the context of sexual assault and domestic violence).

72. J. Benshoof, *Beyond Roe, After Casey: The Present and Future of a “Fundamental” Right*, PUBMED (last visited Sep. 24, 2025), <https://pubmed.ncbi.nlm.nih.gov/8274872/> [[https://dx.doi.org/10.1016/s1049-3867\(05\)80251-8](https://dx.doi.org/10.1016/s1049-3867(05)80251-8)].

## Casey

Following *Roe* and *Casey*, the Court heard multiple challenges regarding the constitutionality of abortion laws.<sup>73</sup> In *Gonzales v. Carhart*, the Court upheld the “Partial-Birth Abortion Ban Act of 2003,”<sup>74</sup> which allowed Congress to ban some second-trimester abortions.<sup>75</sup> Failing to protect the legitimate interest of preserving the mother’s health—as outlined in *Roe*—the Court found the federal law valid.<sup>76</sup> The Court later analyzed the constitutionality of two Texas abortion restrictions in *Whole Woman’s Health v. Hellerstedt*.<sup>77</sup> The Court held that these laws were invalid because they effectively shut down abortion providers in the state, creating an undue burden on access.<sup>78</sup> In a strikingly similar decision, *June Medical Services, LLC v. Russo*, the Court struck down a Louisiana prohibition that would have also

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73. See, e.g., *Gonzales v. Carhart*, 550 U.S. 124 (2007); *Whole Woman’s Health v. Hellerstedt*, 579 U.S. 582 (2016); *June Med. Servs., LLC v. Russo*, 591 U.S. 299 (2020).

74. *Carhart*, 550 U.S. at 168; see 18 U.S.C. § 1531 (defining a “partial-birth abortion” as “deliberately and intentionally vaginally deliver[ing] a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus”).

75. *Carhart*, 550 U.S. at 167.

76. *Id.* at 168. (“[T]he statute here applies to all instances in which the doctor proposes to use the prohibited procedure, not merely those in which the woman suffers from medical complications. It is neither our obligation nor within our traditional institutional role to resolve questions of constitutionality with respect to each potential situation that might develop.”). The Court seemingly failed to analyze the state’s legitimate interests in preserving maternal health—as outlined in *Roe*—by prioritizing only the life of the fetus, instead of using the balancing approach outlined in *Casey*. Seven years prior, the Court struck down a partial-birth abortion ban that the Court considered to be vaguer. See also *Stenberg v. Carhart*, 530 U.S. 914, 946 (2000) (striking down a state law criminalizing the performance of partial-birth abortions).

77. 579 U.S. 582, 590–91; TEX. HEALTH & SAFETY CODE ANN. § 171.0031(A) (West 2013) (requiring any physician performing an abortion to have admitting privileges at a hospital within thirty miles of the abortion procedure location); TEX. HEALTH & SAFETY CODE ANN. § 245.010(a) (requiring any facility where abortions are provided to meet Texas’ standards for ambulatory surgical centers).

78. *Hellerstedt*, 579 U.S. at 591 (“We conclude that neither of these provisions confers medical benefits sufficient to justify the burdens upon access that each imposes.”); see *id.* at 620 (“[T]he requirement would further reduce the number of abortion facilities available to seven or eight facilities . . .”).

effectively shut down abortion access.<sup>79</sup> Texas' enactment of S.B. 8, a law banning abortion after six weeks, was a pivotal precursor to the Court's decision in *Dobbs v. Jackson Women's Health Organization*.<sup>80</sup> Despite widespread condemnation from the AMA, the Court allowed the law to take effect.<sup>81</sup>

### C. *Dobbs v. Jackson Women's Health Organization*

In a stark departure from nearly fifty years of precedent, the Court returned the right of abortion regulation to the states in 2022.<sup>82</sup> In *Dobbs v. Jackson Women's Health Organization*, the Court employed a *stare decisis* analysis, reasoning that abortion rights are not deeply rooted in our nation's history and tradition.<sup>83</sup> Justice Alito

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79. 591 U.S. 299, 307–08, 314 (“Act 620 would increase the risk of harm to women’s health by dramatically reducing the availability of safe abortion in Louisiana.” (quoting *June Med. Servs. LLC v. Kliebert*, 250 F. Supp. 3d 27, 87 (M.D. La. 2017))); *see id.* at 314 (“[T]here is no legally significant distinction between this case and [*Hellerstedt*]: Act 620 was modeled after the Texas admitting privileges requirement . . . imposing significant obstacles to abortion access with no countervailing benefits.” (quoting *Kliebert*, 250 F. Supp. at 88)); *see also* LA. STAT. ANN. § 40:1061.10(A)(2)(a) (2020) (requiring physicians who perform abortions to have admitting privileges at a hospital no more than thirty miles from the location where the abortion is performed).

80. S.B. 8, 87th Leg., Reg. Sess. (Tex. 2021). Texas’ “Heartbeat Act” prohibits abortion after detection of a fetal heartbeat, generally around six weeks of gestation. *Id.* The Act also creates a private civil enforcement mechanism. *Id.*; *see also infra* Section II.C (discussing the *Dobbs* decision).

81. *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 35 (2021); *see also Texas Abortion Ban Case at the U.S. Supreme Court*, CTR. FOR REPROD. RTS. (Oct. 15, 2025), <https://reproductiverights.org/cases/texas-abortion-ban-us-supreme-court/ruling/>. The Court “failed to block Texas’s unconstitutional abortion ban and vigilante scheme that has denied Texans their constitutional right to abortion and ended most abortion access in the state.” *Id.* A similar situation occurred in Idaho, where the Court dismissed a similar challenge for lack of justiciability, leaving the district court’s preliminary injunction in effect but failing to define necessary exceptions for the health of the pregnant mother. *See Moyle v. United States*, 603 U.S. 324, 327–28 (2024) (Kagan, J., concurring).

82. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 232 (2022).

83. *Id.* at 231–32 (employing the *Washington v. Glucksberg* test). Justice Alito turned to the nineteenth-century “quickening rule” and subsequent anti-abortion laws to make his case. *See id.* at 242–50, 268 (employing a *stare decisis* analysis which analyzed: (1) the nature of the Court’s error, (2) the quality of its reasoning, (3) the

posited that the Court's decision in *Roe* was "egregiously wrong," conveying "raw judicial power" on a "question of profound moral and social importance that the Constitution unequivocally leaves for the people."<sup>84</sup> The majority determined that the Court had incorrectly found a right to abortion in the Constitution despite no explicit support.<sup>85</sup> Further, the Court held that *Casey*'s "undue burden" standard was unworkable, reasoning that it lacked a clear definition and that viability is often difficult to determine.<sup>86</sup> It also reasoned that the recognition of an abortion right had unintended and adverse consequences on other areas of law.<sup>87</sup> Justice Alito opined that there are no concrete reliance interests in abortion as a fundamental right.<sup>88</sup> Ultimately, the Court held that the states alone have the authority to regulate, or even prohibit, abortion.<sup>89</sup>

In response to the majority's deprivation of the fundamental right to abortion, Justice Breyer—joined by Justice Sotomayor and Justice Kagan—dissented.<sup>90</sup> Their dissent details four major issues with the majority's holding: (1) many state abortion laws are created with no exception for rape or incest,<sup>91</sup> (2) it is difficult to determine when

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workability of the current test, (4) the effect on other areas of law, and (5) reliance interests).

84. *Id.* at 268–69.

85. *Id.* at 271 (explaining how the *Roe* Court's opinion "failed to show that history, precedent, or any other cited source supported its scheme"); *see also id.* at 330–31 (Thomas, J., concurring) (arguing that "'substantive due process' is an oxymoron that 'lack[s] any basis in the Constitution'" (quoting *Johnson v. United States*, 576 U.S. 591, 607–08 (2015) (Thomas, J., concurring))).

86. *Id.* at 280 (majority opinion). Justice Alito was concerned that both the "undue burden" and "viability" standards were not clearly defined and, thus, opened the Court to confusion. *Id.* at 282–83. On the contrary, Justice Breyer argued that the "undue burden" standard was not unreasonable, equating it to similar general standards in other areas of law. *See id.* at 391 (Breyer, J., dissenting).

87. *Id.* at 286–87 (majority opinion) (noting the impact of the *Roe* and *Casey* decisions on facial constitutional standards, third-party standing, res judicata principles, First Amendment doctrines, and severability of unconstitutional provisions).

88. *Id.* at 287–88 (reasoning that "traditional reliance interests were not implicated because getting an abortion is generally 'unplanned activity,' and 'reproductive planning could take virtually immediate account of any sudden restoration of any state authority to ban abortions'" (citing *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 856 (1992))).

89. *Id.* at 302.

90. *Id.* at 359 (Breyer, J., dissenting).

91. *Id.* at 360–61 ("Under those laws, a woman will have to bear her rapist's child or a young girl her father's—no matter if doing so will destroy her life.").

the pregnant woman's life is at risk,<sup>92</sup> (3) state abortion bans have geographically expansive effects,<sup>93</sup> and (4) the majority's reliance on history to justify the deprivation of a fundamental right undermines the very principle of *stare decisis*.<sup>94</sup> This section contemplates each of the dissenter's concerns in turn.

The dissent detailed the impact of restrictive abortion bans, specifically on women forced to carry a pregnancy resulting from rape or incest.<sup>95</sup> It focused on the lasting impacts of these legislative failures which leave no options or autonomy for women and young girls placed in such reprehensible situations.<sup>96</sup> Second, the dissent considered the practical difficulties of determining when a pregnant woman's life is at risk.<sup>97</sup> This distinction is important because many state bans carve out

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92. *Id.* at 361 (“States may even argue that a prohibition on abortion need make no provision for protecting a woman from risk of death or physical harm.”). In 2020, maternal death rates—deaths during pregnancy, at birth, or within forty-two days of birth—were sixty-two percent higher in abortion-restriction states than in abortion-access states. *See also* Eugene Declercq et al., *The U.S. Maternal Health Divide: The Limited Maternal Health Services and Worse Outcomes of States Proposing New Abortion Restrictions*, COMMONWEALTH FUND (Dec. 14, 2022), <https://www.commonwealthfund.org/publications/issue-briefs/2022/dec/us-maternal-health-divide-limited-services-worse-outcomes> [<https://doi.org/10.26099/z7dz-8211>].

93. *Dobbs*, 597 U.S. at 361 (Breyer, J., dissenting) (discussing how leaving abortion regulation to the states will create “interstate restrictions” and “block women from traveling out of State to obtain abortions, or even from receiving abortion medications from out of State”).

94. *Id.* at 363–64 (arguing that the Court has abandoned its *stare decisis* obligations and instead, for the first time in its history, used the doctrine to strip away rights). The dissenters argued that a history of anti-abortion laws did not demonstrate the majority's position but instead, merely showed that such laws were created at a time when women were excluded from the political process, seen as less than “full-fledged member[s] of the community.” *Id.* at 380.

95. *Id.* at 360–61.

96. *See id.*

97. *Id.* at 361. For example, Texas purports to have exceptions to preserve the health of the pregnant woman, but these exceptions are vague and often lead to physician hesitation. *See* Brief for Amanda Zurawski and Sixteen Other Women Who Were Denied or Delayed in Receiving Lifesaving or Health-Preserving Abortion Care at 6, as Amici Curiae in Support of Respondent, *Moyle v. United States*, 603 U.S. 324 (2024) (Nos. 23-726, 23-727), 2024 U.S. S. Ct. Briefs LEXIS 1250, at \*14 [hereinafter Brief for Amanda Zurawski] (“Concerns about physicians’ medical judgment being second-guessed played out exactly as feared in Texas.”). As a result, many women face the denial or delay of health-preserving abortion care. These exceptions also only apply in a small subset of cases, such as ectopic pregnancies, and thus, do not

exceptions only for the mother's *life*, disregarding her health and fertility.<sup>98</sup> As a result, physicians are forced to make life-or-death decisions while under the looming threat of both civil and criminal penalties.<sup>99</sup> Next, the Justices outlined the “geographically expansive effects” of the *Dobbs* decision.<sup>100</sup> Although the Court's decision may leave “‘each State’ to address abortion as it pleases,”<sup>101</sup> many states have established bans that restrict interstate travel for purposes of obtaining an abortion.<sup>102</sup> Lastly, the dissenters contended that the Court's failure to uphold *stare decisis* principles because “abortion is not ‘deeply rooted in history’” was unfounded.<sup>103</sup> Criticizing the majority's misuse of *stare decisis* to strip away fundamental rights, the dissent reasoned that a history of anti-abortion laws does not support the majority's position, but instead merely demonstrates a legacy of restrictions imposed by men in legislative power.<sup>104</sup> Unfortunately, many of the *Dobbs* dissenters' concerns have become a painful reality for women and children across our country.<sup>105</sup>

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provide an adequate solution for the multitude of life- or health-threatening medical conditions associated with pregnancy.

98. *Dobbs*, 597 U.S. at 361 (Breyer, J., dissenting) (“States may even argue that a prohibition on abortion need make no provision for protecting a woman from risk of death or physical harm.”); *see also* Declercq et al., *supra* note 92 (explaining that maternal death rates were sixty-two percent higher in abortion restriction-states in 2020).

99. For example, IDAHO CODE ANN. § 18-605 (West 2007) subjects any health care provider who performs or attempts to perform an abortion to professional discipline, a civil penalty of not less than one thousand dollars, suspension of their license, and both felony and misdemeanor charges.

100. *Dobbs*, 597 U.S. at 361 (Breyer, J., dissenting) (explaining the geographical impact of “interstate restrictions” on abortion).

101. *Id.*

102. Olivia Aldridge, *Interstate Travel Becomes a Target for the Anti-Abortion Movement with Texas Filing*, NPR (May 17, 2024, at 17:59 ET), <https://www.npr.org/2024/05/17/1252218618/interstate-travel-becomes-a-target-for-the-anti-abortion-movement-with-texas-fil>.

103. *Dobbs*, 597 U.S. at 363–64 (Breyer, J., dissenting) (explaining that the Court used *stare decisis* to strip away rights).

104. *Id.* at 364, 372–73.

105. *See infra* Part III; *see also After Roe Fell*, *supra* note 3 and accompanying text; Sonya C. Garza, *Dobbs v. Jackson Women's Health and Its Aftermath: Two Years into the Modern-Day Fight for Reproductive Rights*, 29 U.C. DAVIS SOC. JUST. L. REV. 1, 3–7 (2025) (providing structural guidance on a background discussion of reproductive rights throughout American history).

#### D. Best Interest of the Child Framework

Although the Court has decided that a right to abortion is not deeply rooted in our nation's history and tradition,<sup>106</sup> the protection and welfare of children is.<sup>107</sup> The best interests of the child analysis is a widely used tool for purposes of determining child custody arrangements.<sup>108</sup> Notably, this analysis has been present in American jurisprudence since the founding of the American colonies.<sup>109</sup> Our nation has long prioritized its children.<sup>110</sup> But the Court's decision in *Dobbs* has drawn the country away from its superior motives, placing millions of children at the will of states unwilling or unable to act in their best interests.<sup>111</sup> While these states claim a "pro-life" agenda, their laws are only pro-life insofar as the child is still in utero.

State courts consider many factors when determining the best interests of the child.<sup>112</sup> This Note addresses three main categories of

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106. *Dobbs*, 597 U.S. at 250 (employing the *Washington v. Glucksberg* test and reasoning that "a right to abortion is not deeply rooted in the Nation's history and traditions").

107. Lynne Marie Kohm, *Tracing the Foundation of the Best Interests of the Child Standard in American Jurisprudence*, 10 J.L. & FAM. STUD. 337, 339 (2008) [<https://dx.doi.org/10.2139/ssrn.1957143>]; *see, e.g.*, *United States v. Darby*, 312 U.S. 100, 115–16 (1941) (regulating child employment conditions); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (holding that "rights of parenthood are [not] beyond limitation"); *In re Gault*, 387 U.S. 1, 13 (1967) (affirming that due process rights belong to juvenile criminal defendants); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (protecting youth's First Amendment free speech rights in schools); *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (finding the death penalty unconstitutional when applied to juvenile defendants).

108. *See, e.g.*, *Troxel v. Granville*, 530 U.S. 57, 61 (2000).

109. Kohm, *supra* note 107 (explaining how the best interests of the child doctrine has been part of American jurisprudence since colonial era case law). The best interests of the child analysis was created to assist in child custody determinations but is being borrowed in a different context throughout this Note.

110. *See* cases cited *supra* note 107.

111. *See Dobbs*, 597 U.S. at 256 (returning the right to regulate—and even prohibit—abortion to the states); *see also infra* Part III (explaining how the *Dobbs* decision and subsequent enactment of total or near-total abortion bans have had an adverse effect on children in the United States).

112. Wex Definitions Team, *Best Interests (of the Child)*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/best\\_interests\\_\(of\\_the\\_child\)](https://www.law.cornell.edu/wex/best_interests_(of_the_child)) (last visited Dec. 29, 2025) (explaining how a "court examines all of [the] factors, not just one or two, in order to make the best determination for the child").

factors: the child's needs,<sup>113</sup> the parent's ability to care for the child,<sup>114</sup> and community factors.<sup>115</sup> Factors concerning a child's needs include their health and safety,<sup>116</sup> education,<sup>117</sup> and emotional well-being.<sup>118</sup> The parental capacity analysis considers whether a parent is capable and willing to care for a child.<sup>119</sup> Relevant factors include the physical

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113. *See, e.g.*, IOWA CODE ANN. § 598.41(3)(b) (West 2025) (noting the psychological and emotional needs of the child as factors); LA. CIV. CODE ANN. art. 134(A)(3) (2025) (providing the education of the child as a factor); FLA. STAT. ANN. § 39.01375(2) (West 2025) (listing the physical, mental, and emotional needs of the child as factors).

114. *See, e.g.*, NEV. REV. STAT. ANN. § 125C.0035(4)(f) (LexisNexis 2025) (noting the parents' mental and physical health); ALASKA STAT. ANN. § 25.24.150(c)(8) (West 2025) (noting parental substance abuse that affects the emotional or physical well-being of the child); ARIZ. REV. STAT. ANN. § 25-403(A)(8) (2025) (examining the existence of domestic violence or child abuse); GA. CODE ANN. § 15-11-26(6) (West 2025) ("The capacity and disposition of each parent . . . to give [the child] love, affection, and guidance and to continue the education and rearing of such child."); GA. CODE ANN. § 15-11-26(2) (examining "[t]he love, affection, bonding, and emotional ties existing between such child and each parent").

115. *See, e.g.*, FLA. STAT. ANN. § 39.810(6) (West 2025) (noting "[t]he likelihood of an older child remaining in long-term foster care"); ARK. CODE ANN. § 9-28-105 (West 2025) (providing for the potential of placing a child with a relative caregiver).

116. *See, e.g.*, IOWA CODE ANN. § 598.41(3)(i) (West 2025); CAL. FAM. CODE § 3011(a)(1) (Deering 2025); KY. REV. STAT. ANN. § 403.270(2)(f) (LexisNexis 2025); NEB. REV. STAT. ANN. § 43-2923(6)(c) (LexisNexis 2025) (listing factors relevant to health and safety of the child).

117. *See, e.g.*, GA. CODE ANN. § 15-11-26(6) (West 2025); ALASKA STAT. ANN. § 25.20.090(4) (West 2025); HAW. REV. STAT. ANN. § 571-46(b)(9) (LexisNexis 2025); LA. CIV. CODE ANN. art. 134(A)(3) (2025); MD. CODE ANN. FAM. LAW § 5-525(f)(1)(v) (LexisNexis 2025); MICH. COMP. LAWS ANN. § 722.23(b) (West 2025); TENN. CODE ANN. § 36-6-106(a)(4) (West 2025); WIS. STAT. ANN. § 767.41(5)(am)(9) (West 2025) (providing factors related to the education of the child).

118. *See, e.g.*, D.C. CODE ANN. § 16-914(a)(3)(E) (West 2025); FLA. STAT. ANN. § 39.810(4) (West 2025); LA. CIV. CODE ANN. art. 134(A)(2) (2025) (providing factors related to the emotional well-being of the child).

119. *See, e.g.*, GA. CODE ANN. § 15-11-26(1), (6) (West 2025); LA. CIV. CODE ANN. art. 134(A)(3)–(4) (2025); MICH. COMP. LAWS ANN. § 722.23(b) (West 2025); N.H. REV. STAT. ANN. § 461-A:6(I)(b) (West 2025); N.D. CENT. CODE § 14-09-06.2(b) (2025); TENN. CODE ANN. § 36-6-106(a)(4) (West 2025); VT. STAT. ANN. tit. 33, § 5114(a)(4) (West 2025) (listing factors relating to the capacity and disposition of a parent to adequately care for a child).

and mental health,<sup>120</sup> financial stability,<sup>121</sup> and parental desire<sup>122</sup> of the parent. Community factors relevant to the best interests of the child determination include the availability of welfare support<sup>123</sup> and the effects of foster care placements.<sup>124</sup>

First and foremost, courts consider the health and safety of a child.<sup>125</sup> Physical health concerns include access to preventative health care,<sup>126</sup> overall health,<sup>127</sup> and any safety concerns in the home—such as domestic violence or sexual abuse.<sup>128</sup> Beyond physical health, courts

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120. See, e.g., HAW. REV. STAT. ANN. § 571-46(b)(14) (LexisNexis 2025); KY. REV. STAT. ANN. § 403.270(2)(f) (LexisNexis 2025); GA. CODE ANN. § 15-11-26(9) (West 2025); N.D. CENT. CODE § 14-09-06.2(g) (2025) (providing factors that consider the physical and mental health of the parent).

121. See, e.g., LA. CIV. CODE ANN. art. 134(A)(4) (2025); MICH. COMP. LAWS ANN. § 722.23(b) (West 2025); TENN. CODE ANN. § 36-6-106(a)(4) (West 2025) (providing factors that consider a parent’s capacity and disposition to provide their child with basic needs).

122. See, e.g., ALASKA STAT. ANN. § 25.24.150(c)(2) (West 2025) (noting the parents’ desire to meet the child’s needs); KAN. STAT. ANN. § 23-3203(a)(2) (West 2025) (providing the desires of the parents as a factor); OR. REV. STAT. ANN. § 107.137(1)(c) (West 2025) (noting the “desirability of continuing an existing relationship” by a parent).

123. See Zoë Neuberger, *SNAP and WIC Help Young Children Now and in the Future*, CT. ON BUDGET & POL’Y PRIORITIES, (Feb. 27, 2017, at 14:00 ET), <https://www.cbpp.org/blog/snap-and-wic-help-young-children-now-and-in-the-future> (noting that parents and children who receive SNAP or WIC experience less food insecurity, improved birth outcomes, better health, and stronger educational and economic prospects).

124. For a list of various factors concerning the best interests of the child and the effects of foster care placement, see *supra* note 115.

125. For a list of statutes concerning the health and safety of the child, see *supra* note 116.

126. See, e.g., N.H. REV. STAT. ANN. § 461-A:6(I)(b) (West 2025); N.D. CENT. CODE § 14-09-06.2(b) (2025); TENN. CODE ANN. § 36-6-106(a)(4) (West 2025) (providing a factor on the parent’s capacity and disposition to provide the child with medical care).

127. See, e.g., MD. CODE ANN. FAM. LAW § 5-525(f)(1)(i) (LexisNexis 2025); IOWA CODE ANN. § 600C.1(4)(f) (West 2025); CAL. FAM. CODE § 3011(a)(1) (Deering 2025); KY. REV. STAT. ANN. § 403.270(2)(f) (LexisNexis 2025); NEB. REV. STAT. ANN. § 43-2923(6)(c) (LexisNexis 2025); LA. CIV. CODE ANN. art. 134(A)(4) (2025); GA. CODE ANN. § 15-11-26(1) (West 2025) (considering the child’s health).

128. See, e.g., ALASKA STAT. ANN. § 25.24.150(c)(7) (West 2025); ARIZ. REV. STAT. ANN. § 25-403(A)(8) (2025); COLO. REV. STAT. § 14-10-129(2)(d) (2025);

also analyze factors regarding a child's mental health and emotional well-being.<sup>129</sup> Together, the physical and mental health analyses incorporate factors regarding child abuse or neglect.<sup>130</sup> Finally, this analysis also considers a child's access to adequate education.<sup>131</sup>

A parent's ability and desire to care for their child has a direct result on that child.<sup>132</sup> When a parent is unable or unwilling to properly care for a minor, they cannot act in their best interest. A parent's overall health, including both physical and mental health, may make the parent incapable of properly caring for a child.<sup>133</sup> Health considerations also include factors such as a parent's substance abuse or the presence of domestic violence in the home.<sup>134</sup> When a parent perpetrates or experiences such abuse, the child is more prone to become a victim of violence or neglect.<sup>135</sup> Finally, courts look to the parent's capacity and

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CONN. GEN. STAT. ANN. § 46b-56(c)(15)–(16) (West 2025) (providing factors that consider domestic violence, sexual abuse, or child abuse and neglect).

129. For a list of varying factors involving the child's mental health and emotional well-being, see *supra* note 118.

130. See *infra* notes 134–36 and accompanying text.

131. For a list of statutes that include the child's education as a best interest of the child factor, see *supra* note 117. See also *Brown v. Bd. of Educ.*, 347 U.S. 483, 494–96 (1954) (noting the importance of access to adequate education in American society).

132. See, e.g., GA. CODE ANN. § 15-11-26(1), (6) (West 2025); LA. CIV. CODE ANN. art. 134(A)(4) (2025); MICH. COMP. LAWS ANN. § 722.23(b) (West 2025); TENN. CODE ANN. § 36-6-106(a)(4) (West 2025); VT. STAT. ANN. tit. 33, § 5114(a)(4) (West 2025) (providing factors that consider a parent's capacity and disposition to provide the child with basic needs).

133. For sources on parent health and ability to care for their child, see *supra* notes 119 and 120 and accompanying text.

134. See, e.g., NEV. REV. STAT. ANN. § 125C.0035(4)(f) (LexisNexis 2025) (providing the mental and physical health of the parents as one factor); ALASKA STAT. ANN. § 25.24.150(c)(7)–(8) (West 2025) (noting domestic violence, child abuse, and substance abuse); ARIZ. REV. STAT. ANN. § 25-403(A)(8) (2025) (providing the existence of domestic violence or child abuse as a factor); see also D. KELLY WEISBERG & COURTNEY G. JOSLIN, *MODERN FAMILY LAW CASES AND MATERIALS* 365 (8th ed. 2024).

135. See AM. SAM. CODE ANN. § 47.0301 (2025) (noting that domestic violence raises a “rebuttable presumption that it is . . . detrimental to the child and not in the best interest of the child to be placed . . . with the perpetrator of family violence”); see also WEISBERG & JOSLIN, *supra* note 134 (“[T]he child protection system continues to serve as another source of victimization for the adult victims of domestic violence and their children.”); Vered Ben-David et al., *The Association Between Childhood Maltreatment Experiences and the Onset of Maltreatment Perpetration in Young*

disposition to provide their child with food, clothing, medical care, and other daily needs.<sup>136</sup>

Courts considering the best interests of the child also look to the child's community and the support that it provides.<sup>137</sup> For example, courts consider factors regarding the potential for a long-term foster care placement<sup>138</sup> and the ability for a relative caregiver to assume custody.<sup>139</sup> Together, courts look at the overall atmosphere surrounding a child's care to determine what is in the child's best interest.

### III. PRO-CHILD?: RESTRICTIVE ABORTION BANS ACT AGAINST CHILDREN'S BEST INTEREST

In *Dobbs*, the Court reasoned that states' legitimate interests in protecting fetal life were of utmost importance, suggesting an intention to protect children.<sup>140</sup> Further, every state with a total or near-total abortion ban has adopted some version of the best interests of the child factor analysis.<sup>141</sup> The resulting abortion bans that the *Dobbs* decision allows, however, have had an opposite effect on millions of children.<sup>142</sup> This section will address the impacts of total or near-total abortion bans on child welfare, illustrating how such bans often act against the best interests of the child. Instead, as the *Casey* Court warned, "the inability

*Adulthood Controlling for Proximal and Distal Risk Factors*, 46 CHILD ABUSE & NEGLECT 132, 139 (2015).

136. See, e.g., GA. CODE ANN. § 15-11-26(1), (6) (West 2025) (examining the capacity and disposition of the parent to provide the child with food, clothing, medical care, and day-to-day needs).

137. See, e.g., FLA. STAT. ANN. § 39.01375(10) (West 2025); GA. CODE ANN. § 15-11-26(11)–(12) (West 2025); LA. CIV. CODE ANN. art. 134(A)(10) (2025) (discussing the child's adjustment to their community and the support it provides).

138. FLA. STAT. ANN. § 39.810(6) (West 2025).

139. See, e.g., ARK. CODE ANN. § 9-28-105 (West 2025) (discussing preference of placing the child with a relative caregiver).

140. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 301 (2022).

141. See IDAHO CODE ANN. § 32-717 (West 2025); S.D. CODIFIED LAWS § 25-4-45 (2025); TEX. FAM. CODE ANN. § 263.307 (West 2025); OKLA. STAT. ANN. tit. 43, § 112 (West 2025); ARK. CODE ANN. § 9-13-101 (West 2025); MISS. CODE ANN. § 93-5-24 (West 2025); LA. CIV. CODE ANN. art. 134 (2025); ALA. CODE § 30-3-152 (2025); TENN. CODE ANN. § 36-6-106 (West 2025); KY. REV. STAT. ANN. § 403.270 (LexisNexis 2025); IND. CODE ANN. § 31-17-2-8 (West 2025); W. VA. CODE ANN. § 48-9-102 (West 2025) (listing each state with a total or near-total abortion ban that has a current statute identifying the "best interests of the child" factors).

142. *Infra* Sections III.A and III.B.

to provide for the nurture and care of the [child] is a cruelty to the child and an anguish to the parent.”<sup>143</sup>

### A. Child's Needs

As a result of *Dobbs* and the abortion bans it enabled, many children's needs are not being met.<sup>144</sup> In determining the best interests of the child, states look to whether a child's needs are being met.<sup>145</sup> This part of the analysis focuses on a child's physical health and safety,<sup>146</sup> mental health and emotional well-being,<sup>147</sup> and access to education.<sup>148</sup> Following the *Dobbs* decision, each of these factors has been obstructed, leading to detrimental consequences for our nation's children.<sup>149</sup>

#### 1. Physical Health & Safety

State abortion bans conflict with efforts to promote the health and safety of children, contradicting the best interests of the child analysis, which emphasizes child health.<sup>150</sup> As a result of state abortion

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143. Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 853 (1992).

144. See, e.g., *infra* notes 148–49.

145. See, e.g., IOWA CODE ANN. § 600C.1(4)(f) (West 2025) (listing the child's health and safety as factors); LA. CIV. CODE ANN. art. 134(A)(3) (2025) (providing as a factor, the child's education); FLA. STAT. ANN. § 39.810(4) (West 2025) (providing the child's emotional needs as a factor).

146. For a list of statutes that list the child's physical health and safety as a factor, see *supra* note 116.

147. For sources that provide for an analysis of the mental health and emotional well-being of the child, see *supra* note 118.

148. See, e.g., Ellis v. Curcci, 161 P.3d 239, 244 (Nev. 2007).

149. Lois A. Weithorn, Dobbs, *State Policies, and Minors' Interests in an Open Future*, 36 U.C. L. S.F. GENDER & JUST. L.J. 99, 125–27 (2025).

150. Many states with the highest rates of low birth weight are also those with the most restrictive abortion bans. Rachel Treisman, *States with the Toughest Abortion Laws Have the Weakest Maternal Supports, Data Shows*, NPR (Aug. 18, 2022, at 06:00 ET), <https://www.npr.org/2022/08/18/1111344810/abortion-ban-states-social-safety-net-health-outcomes>. Low birth weight is associated with serious health problems, including “brain bleeding or breathing problems” as well as “conditions [which] could present later in life, such as diabetes and intellectual or developmental disabilities.” *Id.*

bans and restrictions, fetal and infant health outcomes have suffered.<sup>151</sup> Five out of the six states with the highest rates of low birth weight also have some of the most restrictive abortion bans.<sup>152</sup> Simultaneously, six out of the ten states with the highest infant mortality rates currently enforce abortion bans.<sup>153</sup> States with abortion restrictions exhibit higher infant mortality rates in both the neonatal period and within one year of birth.<sup>154</sup> Further, abortion bans like those present in Texas have created a precarious situation in which women are forced to carry non-viable pregnancies to term—despite an undeniable reality that the child will live only mere minutes or hours, often in pain.<sup>155</sup> This is because many fetal anomalies cannot be detected earlier than eighteen to twenty weeks of pregnancy, beyond the window to have an abortion in many states.<sup>156</sup> Incompatible with a government that claims to prioritize its children, increased infant mortality does not have to be this country's reality. Instead, studies show that perinatal deaths—fetal or infant

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151. *Id.* (discussing low birth weight in children); see generally Nicole T. Christian & Virginia F. Borges, *What Dobbs Means for Patients with Breast Cancer*, 387 N. ENGL. J. MED. 765 (2022), <https://www.nejm.org/doi/pdf/10.1056/NEJMp2209249> [<https://doi.org/10.1056/NEJMp2209249>] (analyzing the impact of abortion bans on fetal and infant health).

152. Treisman, *supra* note 150 (listing Mississippi, Alabama, Georgia, South Carolina, and Louisiana).

153. *Id.* (listing Mississippi, Louisiana, Arkansas, Alabama, South Dakota, and Ohio).

154. Alison Gemmill et al., *US Abortion Bans and Infant Mortality*, NIH (Feb. 13, 2025), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11826430/> [<https://doi.org/10.1001/jama.2024.28517>]. The neonatal period includes the first twenty-eight days of an infant's life. *Newborn Health*, WORLD HEALTH ORG., [https://www.who.int/westernpacific/health-topics/newborn-health#tab=tab\\_1](https://www.who.int/westernpacific/health-topics/newborn-health#tab=tab_1) (last visited Feb. 25, 2026).

155. Kylie Beaton, a Texan, received devastating news at her twenty-week ultrasound: her fetus had alobar holoprosencephaly and would not live long after birth. Despite knowing that her child would be unable to survive, Kylie was forced to carry him to full term because of Texas' near-total abortion ban. Following an extensive stay in the hospital, Kylie and her husband brought their son home to die. Nadine El-Bawab et al., *In Post-Roe America, Women Detail Agony of Being Forced to Carry Nonviable Pregnancies to Term*, ABC NEWS (Dec. 14, 2023, at 05:06 CT), <https://abcnews.go.com/US/post-roe-america-women-detail-agony-forced-carry/story?id=105563349>.

156. *Id.* (Texas' abortion ban does not make exceptions for cases of fatal fetal anomalies).

deaths within the first week of life—are fifteen percent less likely in states that allow abortions.<sup>157</sup>

The impacts of state abortion bans play a role in a child’s overall health throughout their life, not just as an infant. For example, Mississippi, the state at the center of *Dobbs*, ranked last in the Commonwealth Fund’s 2020 composite score for “overall preventable mortality” and “children without appropriate preventive care.”<sup>158</sup> Restricted or non-existent access to abortion often leaves children subjected to violence and neglect.<sup>159</sup> When analyzing a child’s best interest, courts place great weight on whether a home has a history or potential for domestic violence, sexual abuse, or child abuse and neglect.<sup>160</sup> When women are denied the option of abortion, they often end up bringing children into these homes.<sup>161</sup> Under the *Dobbs* Court and twelve states’ views, this is the answer to its “fundamental moral question”: abortion.<sup>162</sup>

Forcing teenagers to carry a pregnancy is often not in their best interest. Children’s bodies are not equipped to endure pregnancy and childbirth.<sup>163</sup> As evidence, the global leading cause of death among

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157. Declercq et al., *supra* note 92.

158. Treisman, *supra* note 150.

159. Marianne Bitler & Madeline Zavodny, *Child Abuse and Abortion Availability*, 92 AM. ECON. REV. 363, 366 (2002), [https://www.economics.uci.edu/files/docs/faculty\\_review/bitler-zavodny-aer-pap-2002.pdf](https://www.economics.uci.edu/files/docs/faculty_review/bitler-zavodny-aer-pap-2002.pdf).

160. *See, e.g.*, ALASKA STAT. ANN. § 25.24.150(c)(7) (West 2025); ARIZ. REV. STAT. ANN. § 25-403(A)(8) (2025); COLO. REV. STAT. ANN. § 14-10-124(1.5)(a)(VI) (West 2025); CONN. GEN. STAT. ANN. § 46b-56(c)(15)–(16) (West 2025) (considering the impact of domestic violence, sexual abuse, or child abuse/neglect as a factor); *see also* WEISBERG & JOSLIN, *supra* note 134.

161. *See* Sarah Roberts et al., *Risk of Violence From the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, BMC MED., Sep. 2014, at 1, 1 [<https://doi.org/10.1186/s12916-014-0144-z>] (finding that “[p]olicies restricting abortion provision may result in more women being unable to terminate unwanted pregnancies, potentially keeping them in contact with violent partners, and putting women and their children at risk”).

162. *Compare* *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 258 (2022), with Part III of this Note (discussing the adverse impacts of abortion restrictions that act against the child’s best interest, seemingly not answering this “moral question”).

163. *See* Sarah Bousquet & AJ Ortiz, *Impacts of the Dobbs Decision on Children: Teen/Child Pregnancy*, CHILD USA (Aug. 10, 2022), <https://childusa.org/impacts-of-the-dobbs-decision-on-children-teen-child-pregnancy/> (discussing the dangerous effects of a minor carrying a pregnancy to term, especially when they are under the age of fifteen).

girls aged fifteen to nineteen is pregnancy and childbirth complications.<sup>164</sup> Serious and life-threatening pregnancy complications are more likely to occur for pregnant minors in this age group.<sup>165</sup> These risks not only affect the pregnant minor but also subject the fetus to increased risks, including congenital birth defects, a lower Apgar score,<sup>166</sup> and suspected neonatal sepsis.<sup>167</sup> Pregnant minors are also more likely to become depressed, have substance abuse disorders, and face social isolation and abuse.<sup>168</sup> These bans create circumstances that adversely affect the physical and mental health of children: both the pregnant minor and her unborn child. Instead of supporting young pregnant minors

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164. *Id.*; Anna P. Staniczenko et al., *Deliveries Among Patients Aged 11–19 Years and Risk for Adverse Pregnancy Outcomes*, 139 *OBSTETRICS & GYNECOLOGY* 989, 989–1001 (2022), <https://pubmed.ncbi.nlm.nih.gov/35675595/> [<https://doi.org/10.1097/AOG.0000000000004807>]; see also Sarah Varney, *Why Childbirth Is So Dangerous for Many Young Teens*, NPR (Oct. 7, 2022, at 05:00 ET), <https://www.npr.org/sections/health-shots/2022/10/07/1127095622/why-abortion-laws-increase-teen-childbirth-dangers>. Further, one study found that “teenagers who carried pregnancies to term were more than twice as likely to suffer premature death later in life.” Roni C. Rabin, *Teen Pregnancy Linked to Premature Death, Study Finds*, N.Y. TIMES (Mar. 14, 2024), <https://www.nytimes.com/2024/03/14/health/teen-pregnancy-early-death.html>.

165. See Bousquet & Ortiz, *supra* note 163 (discussing increased risk of conditions such as hypertensive disorders, eclampsia, heavy bleeding after birth, chlamydial and gonorrheal infections, and premature birth).

166. Yael Eliner et al., *Maternal and Neonatal Complications in Teen Pregnancies: A Comprehensive Study of 661,062 Patients*, 70 *J. ADOLESCENT HEALTH* 922, 922 (2022), <https://linkinghub.elsevier.com/retrieve/pii/S1054139X21006844> [<https://doi.org/10.1016/j.jadohealth.2021.12.014>]. “The Apgar score is a standardized assessment of a neonate’s status immediately after birth and the response to resuscitation efforts and remains the gold standard for evaluating neonates.” Leslie V. Simon, Manan Shah & Bradley N. Bragg, *APGAR Score*, NAT’L LIBR. MED. (Mar. 19, 2024), <https://www.ncbi.nlm.nih.gov/books/NBK470569/>.

167. Eliner et al., *supra* note 166.

168. See generally Sigita Lesinskienė, Justina Andruškevič & Agnė Butvilaitė, *Adolescent Pregnancies and Perinatal Mental Health—Needs and Complex Support Options: A Literature Review*, 14 *J. CLINICAL MED.* 1 (2025) [<https://doi.org/10.3390/jcm14072334>] (discussing mental health impacts of teen pregnancy, including depression, anxiety, low self-esteem, substance use disorders, and suicide). This is in direct opposition to many states’ best interests of the child factors, which consider the mental health of the parent when determining custody. See, e.g., HAW. REV. STAT. ANN. § 571-46(b)(14) (LexisNexis 2025); KY. REV. STAT. ANN. § 403.270(2)(f) (LexisNexis 2025) (discussing parental mental health).

when they need it most, state abortion restrictions only harm them further, often under the guise of protection.

Pregnant minors are often victims of sexual abuse, and such abuse is rarely reported to parents or law enforcement.<sup>169</sup> Nearly half of all female rape victims report being first victimized as a minor,<sup>170</sup> and yet, many states do not create an exception for children who become pregnant due to rape.<sup>171</sup> In contrast to these laws, the best interests of the child analysis carves out special considerations for situations in which the child would be subjected to abuse, undeniably against their best interest.<sup>172</sup> This issue is only further perpetuated by the fact that most child sexual abuse perpetrators are family members or acquaintances.<sup>173</sup> Therefore, statutes that require parental consent for a minor to receive an abortion, like Idaho's, do not accomplish legislatures' purported goals.<sup>174</sup> Instead, these laws tend to delay necessary healthcare, endangering the child and acting contrary to her best interest.<sup>175</sup> In

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169. ANDREW ORTIZ, DELAYED DISCLOSURE: CHILD USA 2024 FACTSHEET 1, <https://childusa.org/wp-content/uploads/2025/11/Delayed-Disclosure-2024.pdf> (“Over 70% of victims do not disclose within five years of their experience of abuse. Most victims are only able to acknowledge and describe the abuse in adulthood. Approximately 1 in 5 victims of [childhood sexual assault] never disclose their experiences of abuse.”).

170. KATHLEEN C. BASILE ET AL., THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON SEXUAL VIOLENCE 11 (2022), <https://www.cdc.gov/nisvs/documentation/nisvsReportonSexualViolence.pdf>.

171. *Policy Tracker: Exceptions to State Abortion Bans and Early Gestational Limits*, KFF (Nov. 24, 2025), <https://www.kff.org/womens-health-policy/exceptions-in-state-abortion-bans-and-early-gestational-limits/> (listing Texas, Oklahoma, Arkansas, Louisiana, South Dakota, Alabama, Tennessee, and Kentucky).

172. *See, e.g.*, COLO. REV. STAT. ANN. § 14-10-124(1.5)(a)(VI) (West 2025) (considering any evidence of assault or abuse in the best interests of the child determination).

173. ORTIZ, *supra* note 169, at 2 (citation omitted).

174. Paula K. Braverman et al., *The Adolescent's Right to Confidential Care When Considering Abortion*, 139 PEDIATRICS, Feb. 2021, at 1, [<https://doi.org/10.1542/peds.2016-3861>]; *see, e.g.*, IDAHO CODE ANN. § 18-623(2) (West 2025).

175. *Compare* Braverman, *supra* note 174, at 5 (discussing how abortion care is denied), *with supra* note 127 (providing various state factors to be considered in determining a child's health and safety interests).

doing so, these laws have a destructive impact on both the minors' physical and mental health.<sup>176</sup>

## 2. Mental Health & Emotional Well-Being

To act in the best interests of the child, states must ensure that children are not facing avoidable mental and emotional challenges. Studies show that children born as a result of unintended pregnancies are more likely to experience psychological and behavioral problems, which is incompatible with their best interest.<sup>177</sup> To illustrate, a “[I]ack of sufficient interaction between mother and child may result in insecure attachment and delay of cognitive, motor[,] and emotional development” during early childhood.<sup>178</sup> The impacts persist through ages seven to nine; studies show that children are more likely than their peers born of planned pregnancies to “experience conduct and attention problems.”<sup>179</sup> In adolescents, these children are also reported as having an increased risk of behavioral and psychological issues.<sup>180</sup> Additionally, the presence of domestic violence in the home is causally related to behavioral, social, and cognitive problems in children raised in such homes.<sup>181</sup> By stripping away access to abortion, state bans only increase these risks.

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176. See Braverman et al., *supra* note 174, at 5–6 (discussing adverse health and psychological effects on women and minors); UNIF. MARRIAGE & DIVORCE ACT § 402(3), (5) (discussing the best interests of the child factors).

177. Compare Valeryia Pratasava, *Unwanted Pregnancies: Outcomes for Children*, DREXEL U. COLL. OF MED. (Feb. 18, 2022), <https://drexel.edu/medicine/academics/womens-health-and-leadership/womens-health-education-program/whep-blog/unwanted-pregnancies-outcomes-for-children/> (discussing the adverse effects of unplanned pregnancies on children’s emotional and psychological well-being), with *supra* note 118 (providing various states’ factors concerning the emotional well-being of the child).

178. Pratasava, *supra* note 177 (citation omitted).

179. *Id.* (citation omitted).

180. *Id.* (citation omitted).

181. Children who are exposed to domestic violence “are more likely to experience conduct and attention problems” as well as “insecure attachment and delay of cognitive, motor and emotional development.” *See id.*

### 3. Education

When determining the best interests of the child, courts also look to the child's access to adequate education.<sup>182</sup> This Note's analysis of this factor takes two forms: (1) access to accurate sexual education and (2) education-related impacts of abortion laws. As of January 2025, only seventeen states require medically accurate sexual education.<sup>183</sup> Many states, including both Idaho and Tennessee, have laws in place that actively incorporate anti-abortion rhetoric into their sex education curriculum.<sup>184</sup> Idaho's law forbids abortion providers from providing sexual education materials to schools.<sup>185</sup> Similarly, Tennessee's law requires schools to present "Meet Baby Olivia," a "stigmatizing and scientifically inaccurate fetal ultrasound video" which has been subsequently mirrored by eleven other states throughout the country.<sup>186</sup> Many states with total abortion bans fail to properly educate children regarding the consequences of sex and pregnancy, yet still strip them of access to an abortion.<sup>187</sup>

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182. For statutes that include the child's access to education, see *supra* note 117.

183. See Lauren Holt, Sarah Janek & Gavin Yamey, *Barriers and Facilitators to Implementing Comprehensive Sex Education in Texas Public Schools: A Qualitative Study*, NLM (Jan 2, 2025), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11695008/> [<https://doi.org/10.1371/journal.pone.0316329>] (stating that Texas is "one of 33 states that do not require the provided sex education to be medically accurate").

184. *Id.* at 12; H.B. 666, 67th Leg., 2d Reg. Sess. (Idaho 2024); H.B. 2435, 113th Gen. Assemb., 2d Reg. Sess. (Tenn. 2024). Further, forty-three states and the District of Columbia currently allow parents to opt their child out of sex education programs. Mollie Fairbanks, *Sex Education and HIV Education*, GUTTMACHER (Sep. 16, 2025), <https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education>.

185. SIECUS, *SEX ED LEGISLATIVE MID-YEAR REPORT 2024*, at 12 (2023), <https://siecus.org/wp-content/uploads/2024/08/Mid-Year-Report-2024-5.pdf>; H.B. 666, 67th Leg., 2d Reg. Sess. (Idaho 2024).

186. SIECUS, *supra* note 185; see also TENN. CODE ANN. § 49-6-1304. Tennessee's General Assembly describes the law as requiring "a family life curriculum that . . . addresses human growth, human development, or human sexuality to include the presentation of a high-quality, computer-generated animation or high-definition ultrasound of at least three minutes in duration that shows the development of the brain, heart, and other vital organs in early fetal development."

187. See Jillian McKoy, *Only 37% of US States Require Sexual Education in Schools to Be Medically Accurate*, BU SCH. OF PUB. HEALTH (Aug. 21, 2025), <https://www.bu.edu/sph/news/articles/2025/only-37-of-us-states-require-sexual-education-in-schools-to-be-medically-accurate/> (discussing the "patchwork of inconsistent, inequitable, and often inaccurate instruction that could leave students ill-

Pregnant minors are also less likely to graduate from high school or attend college.<sup>188</sup> “Only about 50% of teen mothers receive a high school diploma by the age of 22.”<sup>189</sup> Studies show that their children are also less likely to graduate high school, but more likely to be incarcerated as a juvenile or become pregnant teenagers themselves.<sup>190</sup> Ultimately, state abortion bans, coupled with anti-abortion rhetoric and sex education laws, undermine the best interests of children by promoting inadequate education when it is needed the most.

### B. Caring for the Child

Parents must be able and willing to care for their children.<sup>191</sup> The best interests of the child analysis includes factors regarding a parent’s ability to provide their child with basic needs and healthcare.<sup>192</sup> States also consider whether the parent desires to “attend to the daily physical, emotional, developmental, educational and special needs of the child”

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equipped to make informed decisions about their sexual health, relationships, and well-being”); *see also State Policies on Sex Education in Schools*, NAT’L CONF. OF STATE LEGISLATURES (Oct. 1, 2020), <https://www.ncsl.org/health/state-policies-on-sex-education-in-schools> (“[T]he United States still has the highest teen birth rate in the industrialized world.”).

188. Julie Maslowsky, Haley Stritzel & Elizabeth T. Gershoff, *Post-Pregnancy Factors Predicting Teen Mothers’ Educational Attainment by Age 30 in Two National Cohorts*, NIH (July 7, 2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10723653/> [<https://doi.org/10.1177/0044118x211026941>].

189. *Id.*

190. *Id.*

191. *See, e.g.*, GA. CODE ANN. § 15-11-26(1), (6) (West 2025) (noting factors such as capacity and disposition of parent to provide the child with food, clothing, medical care, and day-to-day needs); *id.* § 15-11-26(2) (noting “[t]he love, affection, bonding, and emotional ties existing between such child and each parent”).

192. *See, e.g.*, GA. CODE ANN. § 15-11-26(1), (6) (West 2025) (listing “[t]he physical safety and welfare of such child, including food, shelter, health, and clothing” and “[t]he capacity and disposition of each parent or person available to care for such child to give him or her love, affection, and guidance and to continue the education and rearing of such child”); LA. CIV. CODE ANN. Art. 134(A)(4) (2024) (noting factors such as “[t]he physical safety and welfare of such child, including food, shelter, health, and clothing”); MICH. COMP. LAWS ANN. § 722.23(c) (West 2025); TENN. CODE ANN. § 36-6-106(a)(4) (West 2025) (noting “[t]he disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care”); VT. STAT. ANN. tit. 33, § 5114(a)(4) (West 2025) (noting factors considering parent’s capacity and disposition to provide the child with basic needs).

and “to maintain a loving, stable, consistent and nurturing relationship with the child.”<sup>193</sup> When parents are unable or unwilling to care for a child, they cannot act in that child’s best interest.

To act in their child’s best interest, parents must have the physical and financial capabilities to do so.<sup>194</sup> With the influx of total abortion bans, many women are left physically or mentally unable to care for their children.<sup>195</sup> Poverty and weak social support systems compound this issue, leaving many children to face ongoing inequality and lifelong disadvantages.<sup>196</sup>

An ill or deceased mother cannot act in her child’s best interest. State abortion bans have had a drastic effect on maternal mortality rates.<sup>197</sup> Frankly, “the risk of death associated with childbirth is approximately [fourteen] times higher than that of abortion.”<sup>198</sup> In 2020, maternal death rates—deaths during pregnancy, at birth, or within forty-two days of birth—were sixty-two percent higher in abortion-restriction states than in abortion-access states.<sup>199</sup> State abortion bans, especially those that have unclear or missing exceptions for the health of the mother, lead physicians to delay or deny life-saving care:

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193. See, e.g., GA. CODE ANN. § 15-11-26(2) (West 2025) (observing “[t]he love, affection, bonding, and emotional ties [that exist] between such child and each parent”).

194. See, e.g., NEV. REV. STAT. ANN. § 125C.0035(4)(f) (LexisNexis 2025) (noting factors such as “[t]he mental and physical health of the parents”); ALASKA STAT. ANN. § 25.24.150(c)(8) (West 2025) (noting factors such as substance abuse affecting the emotional or physical well-being of the child); GA. CODE ANN. § 15-11-26(1), (6) (West 2025) (noting the capacity and disposition of the parent to provide the child with food, clothing, medical care, and day-to-day needs).

195. See Jacqueline Mitchell, *Abortion Restrictions May Be Linked to Rise in Children Entering Foster Care*, HARV. MED. SCH. (Nov. 16, 2023), <https://hms.harvard.edu/news/abortion-restrictions-may-be-linked-rise-children-entering-foster-care> (explaining how “restricted access to abortion care may be associated with more children subsequently entering an already overburdened U.S. foster care system”).

196. Hope Sheils, *Overturing Roe Is a Poverty Issue*, GEO. J. ON POVERTY L. & POL’Y (Oct. 14, 2022), <https://www.law.georgetown.edu/poverty-journal/blog/overturing-roe-is-a-poverty-issue/>.

197. See Christian & Borges, *supra* note 151, at 765.

198. *Risk of Maternal Death During Pregnancy Greatly Underestimated, Study Finds*, BROWN UNIV. (Jan. 28, 2026), <https://www.brown.edu/news/2026-01-28/maternal-mortality-abortion>.

199. Jacqueline Howard, *Maternal and Infant Death Rates Are Higher in States That Ban or Restrict Abortion, Report Says*, CNN (Dec. 16, 2022, at 08:29 ET), <https://www.cnn.com/2022/12/14/health/maternal-infant-death-abortion-access>.

abortions.<sup>200</sup> As a result, women die and leave their existing children motherless, contrary to the children's best interest.<sup>201</sup> Despite these tragedies, the Court refused to decide whether the Emergency Medical Treatment and Labor Act ("EMTALA")<sup>202</sup> preempted Idaho's abortion ban in *Moyle v. United States*<sup>203</sup> and failed to clarify the "health of the mother" exception in *State v. Zurawski*.<sup>204</sup>

Rather than resolving the issue, the Court in *Moyle* declined to determine whether EMTALA's life-saving provisions preempted

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200. Brief for Amanda Zurawski, *supra* note 97, at \*8–9 ("Amici's unrefuted testimony demonstrates that many pregnant patients are not receiving timely, necessary abortion care despite clear risks to their lives, health, and fertility.>").

201. See, e.g., Jericka Duncan & Deanna Fry, *Family of Georgia Mother Who Died After Delayed Abortion Care Says Amber Thurman Should Still Be Alive: "It Was Preventable,"* CBS (Nov. 1, 2024, at 16:16 ET), <https://www.cbsnews.com/news/amber-thurman-delayed-abortion-georgia/> (detailing the story of Amber Thurman). Amber Thurman, the mother of six-year-old Messiah, died of septic shock after a Georgia hospital denied her a necessary abortion. Her mother, Shanette Williams, is quoted as saying, "Amber was loved . . . She had ambitions. She had goals. She had dreams. Everything she did, she did it for her son to make a better life for him." *Id.* Georgia's six-week abortion ban prevented Amber from acting in the best interests of her child.

202. 42 U.S.C. § 1395dd (2025). EMTALA was enacted in 1986 as part of the Social Security Act. The federal law requires that any hospital receiving Medicaid funding and providing emergency services provide "stabilizing treatment" to any individual who presents themselves there, regardless of their ability to pay. It has also been at the heart of controversy surrounding maternal health and access post-*Dobbs*.

203. See 603 U.S. 324, 325 (2024). The Court dismissed for lack of justiciability, leaving the preliminary injunction in effect and thus failing to determine whether the state's abortion ban was preempted.

204. See *State v. Zurawski*, 690 S.W.3d 644, 653 (Tex. 2024). In 2023, the Center for Reproductive Rights brought a challenge against Texas's abortion ban, asking the state to "clarify the scope of the 'medical emergency' exceptions under its abortion bans." *Seeking Clarity on Emergency Exceptions to Texas's Abortion Bans*, CTR. FOR REPRODUCTIVE RTS. (Feb. 11, 2026), <https://reproductiverights.org/cases/zurawski-v-state-texas/>. In May of 2024, the Texas Supreme Court refused to clarify the exceptions and ruled against the petitioners. Multiple other states (Idaho, Arkansas, and Louisiana) have also pushed back on requests to define their "health of the mother exceptions." See *Moyle*, 603 U.S. at 327–28 (Kagan, J., concurring); Sam Watson, *Why "Life of the Mother" Abortion Exceptions Aren't Enough*, ARK. ADVOC. (Dec. 11, 2023, at 05:00 CT), <https://arkansasadvocate.com/2023/12/11/why-life-of-the-mother-abortion-exceptions-arent-enough/>; Anisha Kohli, *Doctors Are Still Confused by Abortion Exceptions in Louisiana. It's Limiting Essential Care*, TIME (May 24, 2023, at 14:11 CT), <https://time.com/6282288/louisiana-abortion-exceptions-confusion-doctors/>.

Idaho's abortion ban.<sup>205</sup> At issue was EMTALA's requirement that hospitals provide pregnant women with "necessary stabilizing care" during emergencies.<sup>206</sup> This provision conflicted with Idaho's abortion ban that criminalized abortions, even when an abortion would be considered the necessary stabilizing treatment.<sup>207</sup> Instead of addressing the issue, the Court dismissed for lack of justiciability and failed to answer the fundamental question of emergency care in the form of abortion.<sup>208</sup>

The Texas Supreme Court emulated the high court's reasoning when it failed to clarify the "health of the mother" exception in *Zurawski*.<sup>209</sup> Many states' abortion bans have a carve-out provision that allows for abortions when the health of the mother is at grave risk.<sup>210</sup> But these bans also fail to clarify what constitutes such a risk.<sup>211</sup> As a result, physicians often err on the side of caution and thus fail to provide the necessary care for their pregnant patients in a timely manner, often fearing both civil and criminal retribution.<sup>212</sup> Together, courts' failures to protect pregnant women from grave physical health risks and death harm their ability to care for their existing children.

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205. *See Moyle*, 603 U.S. at 325 (dismissing the writs of certiorari prior to judgment as improvidently granted).

206. *See id.* at 334 (Kagan, J., concurring) ("The parties dispute whether EMTALA requires hospitals to provide abortions—or any other treatment forbidden by state law—as necessary stabilizing care.").

207. *See id.* at 338 (Jackson, J., dissenting) ("Sometimes, an abortion is the only way to stabilize a patient and, therefore, comply with EMTALA. But Idaho law prohibits abortions unless the treating physician believes that the abortion is 'necessary to prevent the [patient's] death.'" (quoting IDAHO CODE ANN. § 18-622(2)(a)(i))).

208. *Id.* at 325 (majority opinion).

209. *See Zurawski*, 690 S.W.3d at 653–54.

210. *See id.* at 653 ("Texas law permits a life-saving abortion. A physician cannot be fined or disciplined for performing an abortion when the physician, exercising reasonable medical judgment, concludes that (1) a pregnant woman has a life-threatening physical condition, and (2) that condition poses a risk of death or serious physical impairment unless an abortion is performed.").

211. *See id.* at 677 (Busby, J., concurring) ("[D]oes the reference to a condition that 'poses a serious risk of substantial impairment of a major bodily function' do any independent work in defining when an abortion is permitted, or is it merely surplusage given the requirement that the condition be 'life-threatening'?" (quoting TEX. HEALTH & SAFETY CODE § 170A.002(b)(2))).

212. *Id.* at 656 (majority opinion) ("Dr. Karsan testified that Texas's abortion laws 'amplified the fear and reluctance to offer a patient an abortion, even if [she] thought it might pass the exceptions within the law.'").

The best interests analysis also considers the mental health of parents.<sup>213</sup> When a mother suffers from mental illness, it may render her unable to care for the needs of her child.<sup>214</sup> Beyond physical health concerns, the impact of abortion bans has contributed to mental health issues among women.<sup>215</sup> For example, there is a demonstrated connection between abortion restrictions and suicide among women of reproductive age.<sup>216</sup> Additionally, many women with substance abuse disorders are adversely impacted by abortion bans.<sup>217</sup> Abortion restrictions undoubtedly increase the number of children born with drug dependencies, an obviously detrimental effect on child health.<sup>218</sup> These bans

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213. See, e.g., N.D. CENT. CODE § 14-09-06.2(g) (2025) (considering “[t]he mental and physical health of the parents, as that health impacts the child”); HAW. REV. STAT. ANN. § 571-46(b)(14) (LexisNexis 2025) (considering “[t]he mental health of each parent”); KY. REV. STAT. ANN. § 403.270(2)(f) (LexisNexis 2025) (considering a parent’s mental health and the subsequent impact on the best interests of the child); GA. CODE ANN. § 15-11-26(9) (West 2025) (considering “[t]he mental and physical health of all individuals involved”); NEV. REV. STAT. ANN. § 125C.0035(4)(f) (LexisNexis 2025) (considering a parent’s mental health).

214. See KY. REV. STAT. ANN. § 403.270(2)(f) (LexisNexis 2025) (analyzing parental mental health concerns and the ability to care for a child).

215. See Jonathan Zandberg et al., *Association Between State-Level Access to Reproductive Care and Suicide Rates Among Women of Reproductive Age in the United States*, JAMA PSYCHIATRY (2022), [https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2799597#google\\_vignette](https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2799597#google_vignette) [<https://doi.org/10.1001/jamapsychiatry.2022.4394>] (finding a 5.81% higher annual rate of suicide for women ages twenty to thirty-four in states where Targeted Regulation of Abortion Providers laws were enforced). Chloe Partridge’s story illustrates how denial of necessary abortions often causes a mother’s mental health to deteriorate, and in Chloe’s case, daily anxiety and a constant fight-or-flight sensation. El-Bawab et al., *supra* note 155 (“My milk came in the day after she passed, and I had no baby to feed, the most painful reminder that my baby was gone.”).

216. See Zandberg et al., *supra* note 215.

217. See generally Melissa N. Slavin et al., *Women with Substance Use Disorders Are Highly Impacted by the Overturning of Roe v. Wade: Advocacy Steps Are Urgently Needed*, 150 J. SUBST. USE & ADDICT. TREAT., Apr. 25, 2023, [https://www.jsatjournal.com/article/S2949-8759\(23\)00102-9/abstract](https://www.jsatjournal.com/article/S2949-8759(23)00102-9/abstract) [<https://doi.org/10.1016/j.josat.2023.209052>] (describing how the United States Supreme Court’s ruling to overturn *Roe v. Wade* amplifies barriers to sexual and reproductive health for women with substance use disorders).

218. Compare Laura J. Faherty et al., *Association of Punitive and Reporting State Policies Related to Substance Use in Pregnancy with Rates of Neonatal Abstinence Syndrome*, PUBMED (last visited Sep. 24, 2025), <https://pubmed.ncbi.nlm.nih.gov/31722022/>

also lead to increases in family separation because courts consider when a parent is unable to care for their child due to a substance abuse disorder<sup>219</sup> or criminal drug conviction.<sup>220</sup>

Women's stories of both mental and physical anguish demonstrate an undeniable conclusion. Total and near-total state abortion bans create a situation involving worsened physical and mental health for many mothers, often affecting their ability to adequately care for their existing children. As a result, such bans act contrary to the best interests of the child: having a parent who can care for their needs.<sup>221</sup> Simply put, a "law with the potential effect of depriving a loving husband and five small children of the presence of a young wife and mother is a disgrace in a compassionate society."<sup>222</sup>

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[<https://doi.org/10.1001/jamanetworkopen.2019.14078>] (explaining how rates of infant drug withdrawal are higher in states with more punitive policies), *with e.g.*, IOWA CODE ANN. § 598.41(3)(i) (West 2025) (considering "[w]hether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation"); CAL. FAM. CODE § 3011(a)(1) (Deering 2025) (considering "[t]he health, safety, and welfare of the child"); KY. REV. STAT. ANN. § 403.270(2)(f) (LexisNexis 2025) (considering "[t]he mental and physical health of all individuals involved"); NEB. REV. STAT. ANN. § 43-2923(6)(c) (LexisNexis 2025) (considering "[t]he general health, welfare, and social behavior of the minor child").

219. *See, e.g.*, ALASKA STAT. Ann. § 25.24.150(c)(8) (West 2025) (considering "evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical well-being of the child"); CAL. FAM. CODE § 3011(4) (Deering 2025) (considering "[t]he habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent"); GA. CODE ANN. § 15-11-26(18) (West 2025) (considering "[a]ny evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse in any current, past, or considered home for such child"); LA CIV. CODE ANN. art. 134(A)(8) (2025) (considering "[t]he history of substance abuse, violence, or criminal activity of any party"); TEX. FAM. CODE ANN. § 263.307(b)(8) (West 2025) (considering "whether there is a history of substance abuse by the child's family or others who have access to the child's home").

220. *See, e.g.*, CAL. FAM. CODE § 3041.5 (West 2025) (considering a parent's "conviction within the last five years for the illegal use or possession of a controlled substance"); N.H. REV. STAT. ANN. § 461-A:6(I)(k) (West 2025) (considering a parent's incarceration when determining the best interests of the child).

221. *See* KY. REV. STAT. ANN. § 403.270(2)(f) (LexisNexis 2025) (considering parental mental health and the best interests of the child).

222. Brief for the Amici Curiae Women, *supra* note 1.

Abortion bans not only adversely affect children's early years but are also associated with long-lasting inequities across their lives. In making their best interests of the child determination, courts consider whether the parent is capable of providing their child with necessities, including food, clothing, medical care, and other daily needs.<sup>223</sup> But children born to women who seek and are denied abortions often experience poorer financial well-being.<sup>224</sup> For example, nine out of the ten states with the highest rates of child poverty have banned abortion.<sup>225</sup> In context, this means that one in five children live in families with incomes below the federal poverty level.<sup>226</sup> Poverty typically yields food insecurity—a direct correlation exists between states with abortion bans and high levels of food insecurity among children.<sup>227</sup> In Texas, the state at the heart of *State v. Zurawski*, twenty-four percent of children live in households facing food insecurity.<sup>228</sup> By banning abortion, states force women to birth children into an environment where they often cannot provide for them, plainly acting against their best interest.<sup>229</sup> Thus, abortion bans, without concurrent social support systems, do not further life or promote a pro-life agenda. Rather, these bans create an influx of at-risk children in an already overburdened system.

Many legislatures and the Court have ignored or dismissed<sup>230</sup> the simple fact that not all women want to be pregnant or become

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223. GA. CODE ANN. § 15-11-26(1), (6) (West 2025).

224. See THE HARMS OF DENYING A WOMAN A WANTED ABORTION: FINDINGS FROM THE TURNAWAY STUDY, ADVANCING NEW STANDARDS IN REPROD. HEALTH, U.C.S.F. 2 (2025) [https://www.ansirh.org/sites/default/files/publications/files/the\\_harms\\_of\\_denying\\_a\\_woman\\_a\\_wanted\\_abortion\\_4-16-2020.pdf](https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf).

225. Linda Jacobsen, *States with Abortion Bans Continue to Rank Among Worst for Child Well-Being*, PRB (Nov. 4, 2024), <https://www.prb.org/articles/states-with-abortion-bans-continue-to-rank-among-worst-for-child-well-being/>.

226. *Id.*

227. See *id.* (“[Eleven] of the 15 states with the highest levels of food insecurity among children ban abortion, according to data from the Census Bureau’s Current Population Survey Food Security Supplement for 2021-2023 (Table 1).”).

228. *Id.*; *State v. Zurawski*, 690 S.W.3d 644, 653 (Tex. 2024); see also *What Is Food Insecurity?*, FEEDING TEX., <https://www.feedingtexas.org/learn-about-hunger/what-is-food-insecurity/> (defining food insecurity as “the lack of access to enough food for a healthy lifestyle”).

229. See GA. CODE ANN. § 15-11-26(1), (6) (2025).

230. See Transcript of Oral Argument at 109–10, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19–1392) (detailing a line of questioning from

mothers.<sup>231</sup> Still, the best interests of the child analysis looks to the quality of the bond between parents and their child, including how actively the parent participates in the child's life and caregiving,<sup>232</sup> and any instances of child abuse or neglect.<sup>233</sup> Unintended pregnancies raise the risk of child maltreatment.<sup>234</sup> Specifically, these mothers are more likely to display psychological aggression and neglect towards their children.<sup>235</sup> Conversely, studies show that abortion legalization may actually lower rates of child abuse and neglect.<sup>236</sup>

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Justice Barrett). Justice Barrett showed a reliance on safe-haven laws, “overlooking the consequences of forcing a woman upon her the choice of having to decide whether to give up a child for adoption.”

231. Elizabeth Yuko, *Not All Women Want to Be Mothers. Finally, Our Culture Is Recognizing That*, WASH. POST (June 20, 2016), <https://www.washingtonpost.com/news/soloish/wp/2016/06/20/not-all-women-want-to-be-mothers-finally-our-culture-is-recognizing-that/>; see also James Trussell, *Understanding Contraceptive Failure*, NAT'L LIBR. MED. (Apr. 29, 2013), <https://pmc.ncbi.nlm.nih.gov/articles/PMC3638203/> [<https://doi.org/10.1016/j.bpobgyn.2008.11.008>] (explaining how “contraceptive failure is a major source of unintended pregnancy”).

232. See, e.g., MORGAN LEWIS & BOCKIUS LLP, BEST INTERESTS OF THE CHILD—FACTORS IN STATE LAW 47 (Dec. 29, 2017), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Appendix-Q1-Best-Interests-of-the-Child-All-Factors.pdf> (explaining that North Carolina courts look to the “bond between child and parent” in making their best interests of the child determination).

233. See, e.g., ALASKA STAT. ANN. § 25.24.150(c)(7) (West 2025); ALA. CODE § 30-3-152(a)(4) (2025); CAL. FAM. CODE § 3011(2) (Deering 2025); COLO. REV. STAT. ANN. § 14-10-124(1.5)(a)(VI) (2025); CONN. GEN. STAT. ANN. § 46b-56(c)(15)–(16) (West 2025) (requiring an examination of the presence or potential for child abuse and neglect).

234. Kai Guterman, *Unintended Pregnancy as a Predictor of Child Maltreatment*, 48 CHILD ABUSE & NEGLECT 160, 160 (2015), <https://www.sciencedirect.com/science/article/abs/pii/S0145213415001945?via%3Dihub> [<https://doi.org/10.1016/j.chiabu.2015.05.014>] (“Mothers’ reports of unintended pregnancy are associated with psychological aggression, and neglect.”).

235. *Id.*

236. Bitler & Zavodny, *supra* note 159, at 363; see also Erkmen G. Aslim, Wei Fu & Erdal Tekin, *Abortion Access and Child Maltreatment*, NAT'L BUREAU OF ECON. RSCH. 2, 4 (Working Paper No. 32771, 2025), [https://www.nber.org/system/files/working\\_papers/w32771/w32771.pdf](https://www.nber.org/system/files/working_papers/w32771/w32771.pdf) (describing a “significant positive relationship between increased barriers to reproductive health services and child maltreatment rates . . .”). Primary concerns include direct effects on infants born of unplanned or unwanted pregnancies and “spillover” effects on older children within the household.

#### IV. A “SOCIAL SAFETY NET” SOLUTION: ENCOURAGING STATES TO PUT THEIR MONEY WHERE THEIR MORALS ARE

With abortion regulation now in the hands of the states, their governments must establish and bolster existing state welfare support systems for both mother and child. Although public saving<sup>237</sup> has historically increased simultaneously with decreased teen birth rates, states must create a multifaceted social safety net solution to hinder any existing inequalities. Three fundamental approaches to achieve this goal are improving sex education,<sup>238</sup> supporting foster care and education systems,<sup>239</sup> and eradicating maternal care deserts.<sup>240</sup>

##### A. Sex Education

States that enact total or near-total abortion bans must also ensure that minors receive adequate sex education. State legislatures have a responsibility to implement sex education curricula that properly educate minors on sex, pregnancy, and parenthood—as opposed to inaccurate curricula<sup>241</sup> characterized by anti-abortion rhetoric.<sup>242</sup> For example, California’s Budget Act of 2024 mandates comprehensive sex education programs throughout K-12 education.<sup>243</sup> Further, California’s legislature has taken additional steps to ensure that its most vulnerable minors, those in the foster care system, receive sex education.<sup>244</sup> Colorado, the District of Columbia, Minnesota, and Virginia have all enacted bills to further access to comprehensive sex education.<sup>245</sup> At the heart of each state’s legislative action are initiatives

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237. See *Public Saving*, BARTLEBY, <https://www.bartleby.com/subject/business/economics/concepts/public-saving> (last visited Feb. 23, 2026) (defining “public saving” as “the amount which has been in excess after meeting all the obligatory expenses and investment of the government”).

238. *Infra* Section IV.A.

239. *Infra* Section IV.B.

240. *Infra* Section IV.C.

241. SIECUS, *supra* note 185, at 20.

242. *Id.*; H.B. 666, 67th Leg., 2d Reg. Sess. (Idaho 2024); H.B. 2435, 113th Gen. Assemb., 2d Reg. Sess. (Tenn. 2024).

243. SIECUS, *supra* note 185, at 13.

244. *Id.*

245. *Id.* at 13–14.

concerning abuse and assault prevention education,<sup>246</sup> mental health education,<sup>247</sup> protections for LGBTQIA+ youth,<sup>248</sup> and racially inclusive sex education curriculum.<sup>249</sup> Legislative action to achieve adequate sex education will assist states in achieving the best interests of their children.<sup>250</sup> This solution encourages states to align with the best interests of the child factors, specifically those regarding the child's education,<sup>251</sup> physical health and safety,<sup>252</sup> and emotional health and well-being.<sup>253</sup>

### *B. Foster Care & Education*

States with total or near-total abortion bans must allocate substantial funds to bolster their social welfare support systems. From 2000 to 2020, foster care placements in the United States increased by

246. *See id.* (discussing consent, communication, toxic relationships, identifying trusted adults, and other abuse and assault prevention methods); H.B. 5262, Gen. Assemb., Feb. Sess. (Conn. 2024); H.B. 215, Gen. Assemb., Reg. Sess. (Va. 2024).

247. *See, e.g.,* SIECUS, *supra* note 185, at 30 (a positive correlation between sex education and mental health outcomes has been shown, specifically for vulnerable members of the LGBTQIA+ youth community); H.B. 1263, 131st Legis., 2d Reg. Sess. (Me. 2024); H.B. 603, Gen. Assemb., Reg. Sess. (Va. 2024).

248. *See generally, e.g.,* SIECUS, *supra* note 185, at 22 (discussing LGBTQIA+ inclusive curriculum in sex education); 2024 Cal. A.B. 1955, Gen. Assemb., (Cal. 2024); H.B. 1039, Gen. Assemb., Reg. Sess. (Colo. 2024); 2019 Wash. S.B. 5395 (Wash. 2019) (showing that initiative to provide comprehensive sexual health education for all students regardless of “gender, race, disability, status, or sexual orientation” stricken from bill).

249. *See, e.g.,* SIECUS, *supra* note 185, at 23 (advocating for racially and culturally inclusive sex education curricula); H.B. 1386, Gen. Assemb., Reg. Sess. (Md. 2024); S.B. 5462, 64th Gen. Assemb., Reg. Sess. (Wash. 2024).

250. *See* Dunja Mijatović, *Comprehensive Sexuality Education Protects Children and Helps Build a Safer, Inclusive Society*, COUNCIL OF EUROPE (July 21, 2020), <https://www.coe.int/en/web/commissioner/-/comprehensive-sexuality-education-protects-children-and-helps-build-a-safer-inclusive-society>; Jeffrey L. Hurst et al., *Parents' Attitudes Towards the Content of Sex Education in the USA: Associations with Religiosity and Political Orientation*, NIH (Jan. 3, 2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10923385/> [<https://doi.org/10.1080/14681811.2022.2162871>] (discussing the positive impacts of adequate sexual education resources on minors).

251. *See supra* note 117.

252. *See supra* note 116.

253. *See supra* note 118.

eleven percent.<sup>254</sup> This statistic is the causal result of increased strain on low-income and marginalized communities.<sup>255</sup> The influx of children into the system is even more concerning due to a decline in available foster care homes.<sup>256</sup> Often, children may be placed in the foster care system not because of abuse or neglect but because of their families' inadequate housing.<sup>257</sup> Accordingly, states that adopt total or near-total abortion bans must also be willing to provide greater financial and social support to their foster care systems to accommodate an inevitable influx of children.

If a state forces a minor to have a child, the state should provide educational support to ensure that she has the best chance possible to graduate high school. Education is a paramount concern in the best interests analyses of many states.<sup>258</sup> But only half of teenage mothers receive their high school diploma, compared to ninety percent of their non-parent peers.<sup>259</sup> In an attempt to combat this issue, Lincoln Park School, located in Brownsville, Texas, has implemented a multi-tiered system of support for teen mothers.<sup>260</sup> The school offers online learning options and childcare for its in-person students.<sup>261</sup> The school also

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254. Savannah Adkins et al., *Association Between Restricted Abortion Access and Child Entries into the Foster Care System*, NIH (Nov. 6, 2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10628841/> [<https://doi.org/10.1001/jamapediatrics.2023.4738>] (finding that “first-trimester pregnancy in a state with a TRAP law in place is associated with an 11.4% increase in children entering the foster care system”).

255. Mitchell, *supra* note 195.

256. See Jen Christensen, *States with Restrictive Abortion Laws Place More Kids in Foster Care, Particularly Kids of Color*, CNN (Nov. 6, 2023, at 11:00 ET), <https://www.cnn.com/2023/11/06/health/abortion-restrictions-lead-to-foster-care/index.html> (explaining how the 11% increase results from pregnancies in states with abortion restrictions during the first trimester); see also Scott Simon, *There's a Nationwide Shortage of Foster Care Families*, NPR (July 15, 2023, at 08:05 ET), <https://www.npr.org/2023/07/15/1187929875/theres-a-nationwide-shortage-of-foster-care-families>. The COVID-19 pandemic led to a drastic drop in available foster care placements. For example, the rural region of Nevada saw a 50% decrease in available placements between 2019 and 2023.

257. Christensen, *supra* note 256.

258. See *supra* note 117.

259. Maslowsky, *supra* note 188.

260. Emily Kaplan, *Child Care, Car Seats, and Other Simple Ways to Keep Teen Moms in School*, HECHINGER REPORT (July 28, 2021), <https://hechingerreport.org/child-care-car-seats-and-other-simple-ways-to-keep-teen-moms-in-school/>.

261. *Id.*

offers pregnancy services, allowing both pregnant and parenting teens to continue their education.<sup>262</sup> Other municipalities and states should follow Lincoln Park's lead and provide adequate social and educational support for those upon whom teen motherhood is forced. Doing so helps to break a generational cycle of high school non-completion and subsequent poverty.<sup>263</sup>

*C. Physical and Mental Health Care: Eradicating Maternal Care Deserts*

To act in the best interests of children, states must prioritize their mothers. Without social support systems to assist mothers, they cannot provide for their children's best interests. As of 2022, over 2.3 million American women of reproductive age live in maternity care deserts, places without a single birthing facility or obstetrician-gynecologist.<sup>264</sup> This means that over thirty-five percent of counties in the United States are maternity care deserts.<sup>265</sup> Maternity care deserts are not a random phenomenon. They are the direct result of physicians delaying care and fleeing states with restrictive abortion bans.<sup>266</sup> Widespread lack of access to reproductive health care affects more than just those looking for an abortion; it increases maternal mortality rates outside the abortion context as well.<sup>267</sup>

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262. *Id.*

263. Studies show that these high school completion programs for pregnant and parenting teens are highly efficient and *do* increase high school diploma rates. See *High School Completion Programs for Pregnant and Parenting Teens*, CNTY. HEALTH RANKINGS & ROADMAPS (Apr. 23, 2024), [https://www.countyhealthrankings.org/strategies-and-solutions/what-works-for-health/strategies/high-school-completion-programs-for-pregnant-and-parenting-teens#footnote\\_1](https://www.countyhealthrankings.org/strategies-and-solutions/what-works-for-health/strategies/high-school-completion-programs-for-pregnant-and-parenting-teens#footnote_1) (“On average, such programs increase high school completion rates by 11 to 13 percentage points.”).

264. *Nowhere to Go: Maternity Care Deserts Across the US*, MARCH OF DIMES, <https://www.marchofdimes.org/maternity-care-deserts-report> (last visited Sep. 24, 2025).

265. *Id.*

266. See Mikaela Wells, Cross Conrad & Karson Taylor, *The Growing Crisis of Maternity Care Deserts*, REGUL. REV. (Aug. 3, 2024), <https://www.theregreview.org/2024/08/03/the-growing-crisis-of-maternity-care-deserts/> (physician hesitation is common due to the potential civil, criminal, and professional sanctions facing providers who supply abortion care in restricted states).

267. States with abortion restrictions traditionally have lower rates of maternal care resources, including providers. These “deserts” affect *all* women in the area who

The Journal of the American Medical Association (“JAMA”) proposes a notable solution for combatting the effects of maternity care deserts:<sup>268</sup> a “community-based” model of care involving a focus on midwives and doulas.<sup>269</sup> Combined with hospital partnerships for those facing pregnancy complications, this approach “is associated with shorter labor, fewer cesarean deliveries and vaginal interventions, newborns with a high Apgar score, and higher patient satisfaction.”<sup>270</sup> Ultimately, this approach prioritizes home births to accommodate those living in rural areas, often in maternity care deserts.<sup>271</sup> JAMA’s solution centers on rebuilding the maternity healthcare workforce, focusing on implementing care by doulas to fill the gap left by fleeing physicians.<sup>272</sup> Notably, the Biden Administration introduced potential policies to help lessen the effects of maternity care deserts.<sup>273</sup> From

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seek reproductive health care. Meghan E. Meredith, Lauren N. Steimle & Stephanie M. Radke, *The Implications of Using Maternity Care Deserts to Measure Progress in Access to Obstetric Care: A Mixed-Integer Optimization Analysis*, 24 BMC HEALTH SERVS. RSCH. 10 (2024), <https://link.springer.com/article/10.1186/s12913-024-11135-4> [<https://doi.org/10.1186/s12913-024-11135-4>] (noting that “maternity care deserts are associated with increased rates of maternal mortality” generally). For example, “these facilities often offer health services like cancer screening, testing and treatment of sexually transmitted infections (STIs), and gender-affirming care.” Lexi Rummel, *When Women Are Deserted: The Prevalence and Intersection of Abortion Care Deserts, Pregnancy Care Deserts, Broadband Internet Deserts, and Food Deserts in the United States*, NAT’L WOMEN’S L. CTR., <https://nwlc.org/wp-content/uploads/2025/04/Updated-Deserts-Report-1.pdf> (last visited Feb. 28, 2026).

268. Andrea Sonenberg & Diana J. Mason, *Maternity Care Deserts in the US*, JAMA HEALTH FORUM (Jan. 12, 2023), <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2800629> [doi:10.1001/jamahealthforum.2022.5541].

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. *See id.* (discussing how the Biden Administration published a “blueprint for addressing maternal health disparities” in June 2022). Relevant policies include paying CNMs, CMs, and doulas for perinatal care in all settings; covering eligible home births and births in freestanding CBCs; expanding and diversifying the perinatal workforce; and building community-based maternity services. *Id.* Although President Donald Trump has not explicitly commented on the Biden administration’s proposal during his election campaign or subsequent second term, Trump has not shied away from the conversation on abortion access post-*Dobbs*. *See Trump on Abortion: Threatening to Ban Abortion Nationwide and Take Away Our Reproductive Freedom*, ACLU, <https://www.aclu.org/trump-on-abortion> (last visited Sep. 24, 2025) (referring to himself as the “guy [who] ended *Roe v. Wade*”). Despite Trump’s inconsistent

increasing insurance coverage for home births to investing in the perinatal workforce and community-based maternity models, these policies are convincing but have gained little traction.<sup>274</sup> To help alleviate the impacts of maternity care deserts, specifically in abortion-restriction states, legislatures should prioritize funding for community-based models and invest in the reproductive health care workforce. By promoting the welfare of mothers, states can work to achieve the best interests of the child.

## V. CONCLUSION

States with total or near-total abortion bans claim to be pro-life.<sup>275</sup> In reality, these laws and the legislators who support them are pro-life in name only.<sup>276</sup> They fail to account for the societal pressures and necessities related to pregnancy and parenthood, as well as the cyclic nature of systemic poverty in the United States.<sup>277</sup> These laws frequently result in adverse effects on children, contrary to their best interests. Thus, it is imperative that states build the social support safety nets that are needed to achieve their demonstrated “pro-child” goals.<sup>278</sup> If they fail to do so, they fail our children.

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statements regarding his plans for abortion regulation during his second term, we cannot forget his “2016 assertion that ‘there has to be some form of punishment’ for women who obtain abortions after the care is outlawed.” Consequently, it is up to the states to protect both mother and child. The federal government, under Donald Trump’s command, will not protect the best interests of our children. This is because “[p]ower, not reason, is the new currency of this Court’s [and the federal government’s] decisionmaking.” *See Payne v. Tennessee*, 501 U.S. 808, 844 (1991) (Marshall, J., dissenting).

274. *See* Sonenberg & Mason, *supra* note 268 (explaining the White House’s 2022 policy blueprint and how it “could accelerate this movement”).

275. *See supra* Part II.

276. *See supra* Part III.

277. *Supra* Parts III and IV.

278. *Supra* Part IV.