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ARTICLE

A Critical Analysis of *Dobbs v. Jackson Women's Health Organization* and the Consequences of Fetal Personhood

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Abstract

In this paper, I will examine the Supreme Court of the United States' (SCOTUS) arguments in the majority decision in *Dobbs v. Jackson Women's Health Organization,* and I will show how some of those arguments are flawed. Primarily, I will show that the right to bodily autonomy is a well-established right, both in the courts and in societal practices, and that the right to an abortion should be understood as an example of the right to bodily autonomy or bodily integrity. Second, I will examine the justices' arguments that viability is not a reasonable place to restrict abortion access, in contrast to both *Roe v. Wade* and *Planned Parenthood v. Casey*, and will offer arguments that defend viability as a valid point to limit abortion access. Third, I will highlight some politicians' goals to enact a federal ban on abortion, and show how the attempt to pass Personhood Amendments is a pathway for doing so. The upshot of this essay to is show how the SCOTUS decision is flawed, and how granting personhood to "potential life" has consequences that extend beyond abortion access.

Keywords: philosophy; ethics; biomedical ethics; abortion; personhood

Introduction

On June 24, 2022, the Supreme Court of the United States (SCOTUS) decided the case *Dobbs v. Jackson Women's Health Organization*, which called into question Mississippi's Gestational Age Act. This new law outlaws abortion, except to save the life of the pregnant woman or in the case of severe fetal abnormality, after 15-weeks' gestation. Six of the nine justices voted to allow Mississippi's ban to move forward, thereby overturning the 1973 Supreme Court case *Roe v. Wade* and the 1992 Supreme Court case *Planned Parenthood v. Casey*. In effect, the *Dobbs* decision eradicated the federal protections of women's rights to abortion, relegating the decision back to the individual states. Many states have implemented laws that restrict abortion to varying degrees. Some states, however, may surprise us. On August 2, 2022, the typically conservative state of Kansas voted 58.8% to 41.2%, to reject a proposed amendment that would have removed protections for abortion rights in the state.[1]

In this paper, I will examine the SCOTUS' arguments in the majority decision to revoke the constitutional right to an abortion, and I will show how some of those arguments are flawed. Primarily, I will show that the right to bodily autonomy is a well-established right, both in the courts and in societal practices, and that the right to an abortion should be understood as an example of the right to bodily autonomy or bodily integrity. Second, I will examine the justices' arguments that viability is not a reasonable place to restrict abortion access, in contrast to both *Roe* and *Casey,* and will offer arguments that defend viability as a valid point to limit abortion access. Third, I will highlight some politicians' goals to enact a federal ban on abortion, and show how the attempt to pass Personhood Amendments (which would denote embryos and fetuses as person from conception) is a pathway for doing so. While passing

Personhood Amendments should have limited impact on abortion rights, it can impact other things, for example, severely limiting access to in vitro fertilization (IVF), making it so women potentially face investigation after miscarriages or stillbirths, and even impacting the safety of women seeking abortions and the doctors who provide them. The upshot of this essay is to show how the SCOTUS decision is flawed, and how granting personhood to "potential life" has consequences that extend beyond abortion access.

Abortion Access and Bodily Autonomy

The six justices who decided to overturn *Roe* rightly stated that the United States Constitution does not explicitly mention the right to an abortion. Rather, the right to an abortion was derived as part of "the right to privacy that springs from the First, Fourth, Fifth, Ninth, and Fourteenth Amendments."[2] The justices argued that the right to privacy is controversial because such a right is not explicitly mentioned in the Constitution. Indeed, justice Clarence Thomas wrote, in his concurring remarks, that other Supreme Court decisions based on the right to privacy (*Obergefell V. Hodges*, which legalized same sex marriage throughout the 50 states, *Griswold v. Connecticut*, which legalized contraception for married couples, *Eisenstadt v. Baird*, which legalized contraception for unmarried couples, and *Lawrence v. Texas*, where the courts invalidated anti-sodomy laws throughout the country) should be "reconsidered… we have a duty to 'correct the error' established in those precedents."[3] Justice Samuel Alito argued that the court cases used to defend *Roe* and *Casey* are not successful because "abortion is different because it destroys what *Roe* termed 'potential life'… none of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion."[4]

Additionally, the justices also argued that "the right to abortion is not deeply rooted in the Nation's history and tradition."[5] Indeed, "until the latter part of the twentieth century, there was no support in American law for a constitutional right to obtain an abortion. No state constitutional provision had recognized such a right."[6] They cite several prohibitions against the abortion of "quickened" fetuses in American law (when a woman first feels the fetus move) and also noted that "in this country during the nineteenth century, the vast majority of the States enacted statutes criminalizing abortion at all stages of pregnancy."[7]

While I am not sufficiently familiar with abortion laws prior to *Roe*, I do think that the justices were looking at the wrong place for evidence that abortion laws cannot be found within the history of our nation's laws. If the right to an abortion is considered to be a subset of the broader right to bodily autonomy, we find more support for such laws in our nation's legal history. The justices stated that there were not "any scholarly treatise of which we are aware" that argued in favor of abortion rights prior to *Roe*, but this is mistaken. In 1971, philosopher Judith Jarvis Thomson put forth a now-famous argument that abortions are morally permissible even if the fetus were considered a full person.

Thomson concedes for the sake of argument that fetuses are persons from conception onward, but she questions what exactly follows from that concession. She asks us to imagine that the reader wakes up one morning to find herself "plugged into" an ailing famous violinist because you alone have the right blood type to extract poisons from his kidney. If you unplug yourself from the violinist, he would surely die, but your commitment to staying plugged in only lasts 9 months. Are you morally required to stay plugged into the violinist? Surely it would be a "great kindness" on your part if you do so, but are you *morally required*, and can you be *compelled* to do so? Thomson argues in the negative—while undoubtedly the violinist is a person with a right to life, his right to life does not supersede the reader's right to bodily autonomy, "if anything in the world is true, it is that you do not commit murder, you do not do what is impermissible, if you reach around your back and unplug yourself from the violinist."[8] It is important to stress that Thomson here is not denying that the violinist, or the fetus (for the sake of argument), has a right to life, only that "having a right to life does not guarantee having either a right to be given the use of or a right to be allowed continued use of another person's body—even if one needs it for life itself."[9] Therefore, conceding that an embryo or fetus has a right to life does not get pro-life advocates as far as they think it does; if Thomson is right, it does not entail the moral impermissibility of abortion.

If the right to an abortion is understood this way, then we can find various examples in many practices and judicial decisions that support the right to bodily autonomy. The Fourth Amendment to the United States Constitution states "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated." The right to "security of person" is also mentioned in both Article 5 of the European Convention on Human Rights document and Article 3 of the Universal Declaration of Human Rights, which emphasizes that "everyone has the right to life, liberty and security of person."[10] "Security of person" can best be understood as the right of the individual to live in safety; to not have to constantly worry about such things as murder, rape, or assault. Violating another's person, then, means violating the individual herself. Because of the intimate relationship between the person and her body, preservation of bodily autonomy is a key aspect of respecting the "security of person." The 1988 Canadian Supreme Court case, *R. v. Morgentaler*, which decriminalized abortion in Canada, made the connection between forced gestation and a violation of security of person explicit: "forcing a woman, by threat of criminal sanction, to carry a fetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body and thus an infringement of security of the person."[11] A violation of bodily autonomy is not a property violation; it is much more profound than that. As sociologist Leslie Cannold puts it, humans "don't *own* their bodies… they *are* their bodies."[12] A violation of the body is a violation of the self.

The right to bodily autonomy and security of persons does indeed have a prevalent history in our laws. For example, there is the 1891 Supreme Court case *Union Pacific Railway Company v. Botsford.* Clara Botsford sued the Pacific Railway Company for negligence after an upper berth in a sleeping car fell on her head in the railroad car she was riding in, causing damages to the membranes of her brain and spinal cord. The lawyers for Union Pacific Railway argued that they had a right, against Botsford's consent, to have her submit to an examination by their own lawyers in order to assess the extent of her injuries. The United States Supreme Court disagreed, ruling that:

> No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.[13]

In 1914, the New York Court of Appeals ruled that a physician could not operate on a patient, even if the operation proved to be beneficial for the patient's health, without the patient's consent. Judge Benjamin Cardozo, who issued the ruling, wrote that "every human being of adult years and sound mind has a right to determine what shall be done with his own body."[14] In the 1996 case *Stamford Hospital v. Vega*, the Supreme Court of Connecticut ruled that a patient, in this case a Jehovah's Witness, has a right to refuse a blood transfusion, even if necessary to save his own life, and that a hospital's interest in preserving the lives of its patients was not sufficient to override the patient's right to bodily integrity.[15]

The justices who overturned *Roe* would likely respond that none of these cases provide precedent for an abortion right because they do not involve the termination of a potential life. They write that "abortion destroys… 'potential life' and what the law at issue in this case regards as the life of an unborn human being."[16] However, there are cases and practices in the United States where the right to bodily autonomy supersedes the right to life (as Thomson argues). As abovementioned, in *Stamford Hospital v. Vega,* a hospital cannot violate a person's bodily integrity—not even to save his life. In 1978, the Common Pleas Court of Allegheny County, Pennsylvania decided the case *McFall v. Shimp.* Robert McFall was suffering from aplastic anemia and needed a bone marrow transplant to survive. His cousin, David Shimp, was a genetic match, but refused to undergo the extraction procedure. McFall took Shimp to court with the hopes that the judges could compel Shimp to donate. Although the judges had sympathy for McFall's position, they ruled that they could not force Shimp to donate, even if this meant McFall's certain death. The judges argued:

> The common law has consistently held to a rule which provides that one human being is under no legal compulsion to give aid or to take action to save another human being or to rescue. A great deal

> has been written regarding this rule which, on the surface, appears to be revolting in a moral sense. Introspection, however, will demonstrate that the rule is founded upon the very essence of our free society… Our society, contrary to many others, has as its first principle, the respect for the individual, and that society and government exist to protect the individual from being invaded and hurt by another… In this case, the chancellor is being asked to force one member of society to undergo a medical procedure which would provide that part of that individual's body would be removed from him and given to another so that the other could live… For our law to *compel* defendant to submit to an intrusion of his body would change every concept and principle upon which our society is founded. To do so would defeat the sanctity of the individual, and would impose a rule which would know no limits, and one could not imagine where the line would be drawn.[17]

McFall died 2 weeks after the decision. Here, we have a clear, real-life, analogy to Thomson's violinist example. Both cases involve a sick person who needs the body of another to survive. But, like the violinist example, Shimp's right to bodily autonomy superseded McFall's right to life; that is, McFall's right to life did not entail the right to use someone else's body for survival.

It is deeply entrenched in our societal practices that we do not put the right to life of one person over the right to bodily autonomy of another. Blood or bone marrow cannot be forcibly extracted, even to save lives. Organs cannot be harvested from a corpse without expressed permission from either the person while she was alive or her next of kin, even though approximately 17 people die per day awaiting an organ transplant.[18] Our country does not require people to save the lives of other people—we are not required to be what Donald Regan calls Good Samaritans, even in cases where a life can be saved. To force a woman to gestate is to force her to be a Good Samaritan. Regan writes:

> it is a deeply rooted principle of American law that an individual is ordinarily not required to volunteer aid to another individual who is in danger or in need of assistance. In brief, our law does not require people to be Good Samaritans… if we require a pregnant woman to carry the fetus to term and deliver it—if we forbid abortion, in other words—we are compelling her to be a Good Samaritan… the equal protection clause forbids imposition of these burdens on pregnant women.[19]

The concurring justices of Supreme Court may be right that the explicit right to an abortion is not found in the Constitution, nor explicitly found in laws pre-*Roe*. But we can derive the right to an abortion via the laws and practices that the individual has a right to security of her person, which includes the right to control her body. If we view pregnancies as Thomson and Regan view them, to force a woman to gestate forces her into a state of bodily intrusion that we have never required of any nonpregnant person.

In Defense of Viability

The justices who decided *Roe*, and later *Casey*, maintained that a woman has a right to an abortion before the fetus is viable (i.e., when it has the ability to survive outside the womb, even with artificial aid), but that after viability the state has a right to restrict abortion access. When *Roe* was decided, viability often took place within the third trimester. Yet, technology has advanced and fetuses are now deemed viable earlier—within the late second trimester. The justices who decided *Casey* affirmed that states had a right to impose abortion restrictions whenever in pregnancy viability occurs. Our current Supreme Court justices argue that the viability cutoff point cannot be defended for various reasons. They maintain that the viability line is arbitrary:

> Why is this the point at which the State's interest becomes compelling? If, as *Roe* held, a State's interest in protecting prenatal life is compelling "after viability"… why isn't that interest "equally compelling before viability"?… *Roe* did not say, and no explanation is apparent.[20]

Another reason, the justices argued, that viability is a flawed place to restrict abortion access is that "viability is heavily dependent on factors that have nothing to do with the characteristics of a fetus."[21] As abovementioned, the time a fetus is viable is dependent on the state of technology at the time; a fetus existing in the nineteenth century was not viable until 32 or 33 weeks of pregnancy, whereas now fetuses as young as 25 weeks can survive. Viability also depends on the quality of medical treatment available to women: "A 24-week-old fetus may be viable if a woman gives birth in a city with hospitals that provide advance care for very premature babies, but if the woman travels to a remote area far from any such hospital, the fetus may no longer be viable."[22] Finally, they argue, "Viability is not a really hard-and-fast line." There are a "number of variables" that determine whether a fetus is viable, and therefore the best a doctor can do is predict, given these many variables, whether a fetus is sufficiently viable: "Is a fetus viable with a 10 percent chance of survival? 25 percent? 50 percent? Can such a judgment be made by a state? And can a state specify a gestational age limit that applies in all cases?"[23]

These are legitimate concerns about the viability cutoff point, but they are concerns to which we can successfully respond. Once again, appealing to Thomson's argument can help. Toward the end of her article, Thomson offers this caveat to her argument:

> …while I am arguing for the permissibility of abortion in some cases, I am not arguing for the right to secure the death of the unborn child. It is easy to confuse these two things in that up to a certain point in the life of the fetus it is not able to survive outside the mother's body; hence removing it from her body guarantees its death. But they are importantly different. I have argued that you are not morally required to spend nine months in bed, sustaining the life of that violinist, but to say this is by no means to say that if, when you unplug yourself, there is a miracle and he survives, you then have a right to turn round and slit his throat. You may detach yourself even if this costs him his life; you have no right to be guaranteed his death, by some other means, if unplugging yourself does not kill him… I agree that the desire for the child's death is not one which anybody may gratify, should it turn out to be possible to detach the child alive.[24]

The right to an abortion stems from the right to bodily autonomy. You can deny the use of your body even if someone's life is at stake, but if that person manages to survive without your body, you do not have the additional right to kill that person or demand that person's death. If the person is no longer in need of your body, then there is no longer a conflict between your rights and his (or hers).

Before the fetus is viable, "unplugging" the pregnant woman from the fetus necessarily entails its death. Because of this, and because fetuses cannot feel pain early in pregnancy, the method for "unplugging" the fetus from the woman should be the one that poses the least danger to her and her health. There are two early abortion options: The woman can take a pill with Mifepristone and Misoprostol (up to 9-week gestation), and the pregnancy terminates at home, or the woman can have an in-clinic abortion with vacuum aspiration, which empties the uterus of all its contents. After the fetus is viable, however, it is possible to separate the life of the fetus and the woman's bodily autonomy. If a woman wishes to end a pregnancy after viability, she can no longer demand that the fetus be killed, since she can retain her bodily autonomy without entailing the fetus's termination.

It is important, however, to remember that later-abortions, or post-viability abortions, are rare, constituting only 1.3% of all abortions.[25] Most of the time when a woman seeks a late abortion, it is due to fetal abnormalities or conditions that are incompatible with life outside the womb. Take, for example, the case of Erika Christensen, who in 2016 obtained an abortion at 32 weeks gestation after it was discovered that her fetus was suffering from an affliction that resulted in an inability to swallow in the womb, and, consequently, an inability to breathe once born. The condition was deemed "incompatible with life"; the baby would either die during birth, or "would live for only a short time before choking to death" (Christensen also suffered from a medical condition that made delivering a baby dangerous). Christensen and her husband opted for termination, "knowing immediately it was the most humane possible conclusion to this pregnancy."[26] For this reason, any restriction on abortions post-viability should have exceptions for cases of fetal abnormalities. If a fetus is going to die once it is born, especially in a way that entails suffering, ending the fetus's life in the womb is the most humane option.

Insofar as the concern the justices expressed that viability depends on the quality of medical treatment available to women, rendering some fetuses nonviable in certain times and places where they would be viable in other times and places, such an objection can be met. Consider the following example. As of now, a patient who is brain dead because of anoxia (lack of oxygen to the brain) no longer has a right to life insofar that, if they are connected to machines keeping them alive, it is permissible to cease the connection and let the patient die. This is because nothing can be done to such a patient to bring him back to conscious life, and so there is no reason to continue treatment. But suppose that, sometime in the future, technology improves and we can regrow brain cells that may have been affected by anoxia, bringing the afflicted person back to conscious life. In such a time and place, the person *would* have a right to life; it would be morally (and perhaps even legally) objectionable to allow him to die because we can easily bring him back to conscious life. Before the invention of dialysis, individuals with acute and chronic kidney failure often died. Now, dialysis is viewed as a routine treatment for kidney failure, and it can be argued that people needing dialysis have a moral right to such treatment—a right that did not exist before dialysis was commonplace. This shows that some of our rights—whether it be a right to life or a right to medical treatment—can indeed depend on the existing state of technology at the time. This can also apply to the viability criterion—a fetus's right to life can indeed depend on the status of medical technology at the time.

Finally, insofar as the last concern the justices expressed, that of determining what percentage of survival must be the case in order to determine whether a fetus is viable, such questions are a part of everyday medicine all the time; the concern is not limited to fetal viability. If a person is in a coma, and his next of kin has to decide whether to keep that person alive on machines, often those decisions get made depending on the odds of recovery. If a doctor tells the family that their loved one only had a 5% or 10% chance of surviving, those numbers may not be sufficient for keeping the patient connected to machines. However, a patient who is given a 50% chance of surviving may have more of a moral claim to artificial life support than a patient with a 5%–10% chance of survival. For a fetus, perhaps a 50% chance of survival may be sufficient to deem it viable, whereas a 10% chance may not be. The upshot here is that life or death situations are often made in medicine given percentages ascertaining chances for survival. Determining viability would face all the same complications as such decisions, but that does not mean that decisions cannot, in fact, be made.

Personhood Amendments and Their Consequences Beyond Abortion

In response to the overturning of *Roe*, former vice president Mike Pence voiced his dissatisfaction with returning the issue of abortion back to the states. This is because the decision does not go far enough; Pence stated that "we must not rest and must not relent until the sanctity of life is restored to the center of American law in every state in the land."[27] In September 2022, Republican senator Lindsey Graham proposed a federal ban on abortion after 15-weeks' gestation. Pro-life groups such as Heritage Action for America, Susan B. Anthony Pro-Life America, and CatholicVote have called for a national abortion ban, stating that "only federal law can protect unborn babies from states that will continue to allow and even subsidize abortion on demand up until birth."[28] One possible way to achieve a nationwide ban is for a state to pass a Personhood Amendment, which would confer personhood onto an embryo or feus from conception onward. If a state does pass such a law (and many states have tried), and the case is challenged and ultimately adjudicated at the SCOTUS level, given the current conservative majority, it is not far-fetched that the justices may rule to grant embryos and fetuses personhood with all the same rights of born persons. Another way is to pass a federal Personhood Amendment, via a Constitutional amendment, which has garnered support by some conservatives.[29]

Although passing a Personhood Amendment is meant to pave the way for a federal abortion ban, if we agree with Thomson's argument, then this goal would not be attained. Granting fetuses the same rights as born persons does not mean that they would have a right to a woman's body for continued survival; *no* person, born or not, has such a right. In effect, pro-life advocates are not saying that fetuses have the *same* rights as born persons, but, rather, that they be given *more* rights than born persons currently possess.

However, there are other consequences that passing Personhood Amendments may have beyond an attempt to restrict abortion access.

Many people who experience infertility turn to IVF for help in procreating. In IVF, some of a woman's eggs are removed from her body and joined with a male's sperm to create embryos outside of the woman's body. The embryos are then implanted back in a woman in the hopes that they attach and grow into an infant. But often there are embryos in excess from the procedure—embryos that are deemed nonviable or extra embryos leftover from a successful procedure that the woman no longer wishes to implant. What should become of those embryos? Currently, many of them are discarded, but if embryos are considered persons, such an act can be deemed as murder. For example, consider Arkansas' abortion ban, which defines "unborn children" as beginning at fertilization. Dean Moutos, who runs the Arkansas Fertility & Gynecology, notes the impact such a designation has on IVF procedures:

> Could his patients' frozen embryos be defined as unborn children under the law? Could discarding those embryos be considered an abortion? "I don't know whether the people who wrote this law fully understood the downstream effects of it," he said. "But everybody across the country, including us in Arkansas, is very concerned about the potential… what happens to IVF pre-implantation embryos in the freezers?"[30]

There are, currently, thousands of IVF-created embryos in frozen storage. What should be done with them? It is possible to place them for "adoption," but the genetic parents must give permission. Would the embryos be placed for adoption regardless of the genetic parents' desires? Will lawmakers push for forcible implantation of such embryos? What about the embryos that were found to have a genetic affliction and would be discarded? Would that be akin to murder? If so, would it be required that such embryos be implanted, once again, regardless of the genetic parents' desires and regardless of the pain and suffering the resulting infants may experience, depending on the nature of their affliction? These are but just a few concerns facing IVF doctors and patients if embryos are granted personhood.

In 2018, Teodora del Carmen Vásquez was released from prison in El Salvador after serving 10 years of a 30-year sentence after she was found guilty of murder due to the stillbirth of her 9-month-old fetus. El Salvador has one of the most restrictive abortion laws in the world, with fetuses granted Constitutional personhood from conception onward. Once she got to a hospital after suffering from heavy bleeding, Vásquez

> was arrested on suspicion of violating El Salvador's abortion law… Fearing she could die, authorities eventually rushed her to a hospital, where she was chained by her left foot to a gurney. She was prosecuted, convicted and given 30 years in prison for aggravated homicide.[31]

Some are worried that such consequences can happen in the United States in the states that will have an almost near-total abortion ban, where some "obstetric emergencies could be mistaken for intentional abortions."[32]

Some lawmakers in the United States have pushed for laws that would subject women who obtain abortions to possible murder charges. In 2022, Louisiana representative Danny McCormick was one of those people, arguing that

> this is a thorny political question, but we all know that it is actually very simple. Abortion is murder… a woman who has an abortion should be in the same legal position as a woman who takes the life of a child after birth. When I give equal protection to the unborn, that's the possibility.[33]

Women who experience miscarriages or stillbirth would be subject to investigation; since we investigate the death of infants and children, the death of an embryo or fetus would be equally investigated. This means that women already going through a difficult and heartbreaking experience would be subjected to an additional difficult and terrifying experience.

Moreover, how would a woman be treated if she is deemed causally responsible for the miscarriage or stillbirth? In 2021, Brittney Poolsaw was sentenced to 4 years in prison for losing her pregnancy at 4 months' gestation. Poolsaw admitted to drug use, and her fetus was found to have methamphetamine in his brain and liver; however, the cause of death could not be ascertained: "he examiner did not determine a cause of death for the fetus, noting genetic anomaly, placenta abruption or maternal methamphetamine use could have been contributing factors."[34] Suppose a woman is diagnosed with gestational diabetes, and she suffers a late-term miscarriage. Would her diet and exercise regimen be investigated, and would she be found guilty of the fetus' death, if it were determined that her uncontrolled gestational diabetes is what caused it? Would a woman be considered responsible for her fetus's death if preeclampsia were to blame because it was deemed, again after an investigation, that she did not take adequate steps to control her blood pressure? What if a woman has a job that requires physically demanding activity? Would she be forced to quit her job in order to ensure the fetus's safety? This may seem extreme, but these are all situations women would have to contend with if embryos and fetuses were granted the moral and legal status of persons.

On May 21, 2009, Dr. George Tiller, infamous for performing later-term abortions, was murdered by antiabortion activist Scott Roeder, who defended his actions by saying that he was protecting the lives of unborn babies. Although many pro-life organizations distanced themselves from Roeder and condemned him, his actions are exactly what we should expect if embryos or fetuses were granted the status of persons. It is permissible to use lethal force to protect either your own life or the life of an innocent person. Suppose a man broke into my house and was holding a hatchet above my child's head with the full intention of killing her. No one would blame me, and I would not be prosecuted, if I shot and killed the man, thereby saving my child. If these actions are permissible to save a child, then Roeder's actions would be permissible in order to save embryos and fetuses from being aborted, where the embryo and fetus granted the same rights and moral status as born infants or children.

Suppose the man succeeded in killing my child, then he would be sentenced to prison, and in some states even the death penalty. This same consequence would apply to abortion doctors, and even women seeking abortions. Already some Republican-controlled states have passed antiabortion laws that target physicians who perform abortions. In Florida, abortions are now banned after 15 weeks, and doctors who perform abortions after that time face a maximum of 5 years in prison. Oklahoma doctors who perform abortions can face fines up to $100,000 and up to 10 years in prison. In Texas, abortions are prohibited except to save the pregnant woman's life, and doctors who perform abortions face a minimum of 5 years in prison, or a maximum of life in prison. In Alabama, a doctor performing abortions faces a minimum of 10 years in prison, with a maximum of 99 years in prison.[35] Although many Republicans have said they do not wish to incarcerate women who procure abortions, as abovementioned women have already been sentenced to prison for miscarriages, the end of *Roe* will likely result in an upsurge of policing authority for women who are pregnant.

Conclusion

The criminalization of abortion in some states means that women with monetary means will travel to other states to procure an abortion. Prohibitions on abortion will disproportionately affect poorer women, and we may see an increase of self-induced abortions, as was the case in pre-*Roe* days. The World Health Organization estimates that

> 45% of all induced abortions are unsafe… developing countries [with strict anti-abortion laws] bear the burden of 97% of all unsafe abortions… each year, 4.7-13% of maternal deaths can be attributed to unsafe abortion… evidence shows that restricting access to abortion does not reduce the number of abortions.[36]

Pro-life advocates who are serious about curtailing abortions need to look at what the evidence shows about what actually reduces abortion rates: wide access to free and effective contraception, medically

accurate sex education, and social welfare programs designed to meet the needs of women and children who face financial insecurity.

A 2008 study from the University of Washington found that teenagers who received medically accurate sex education were approximately 60% less likely to get pregnant, compared with abstinence-only education.[37] According to the Colorado Department of Health and Public Services, between 2009 and 2013, the birth rate among teenagers fell by 40%, whereas abortion rates fell by 42%, after the state started providing teenagers and poor women free intrauterine devices.[38] Repeated studies on this issue illustrate similar conclusions: "The most direct way to reduce abortion rates is to prevent unintended pregnancies by increasing the practice of effective contraception."[39]

It is clear that socioeconomic reasons play a prominent role in a woman's decision to abort, and alleviating those obstacles can go a long way toward reducing abortion rates. Forty-two percent of women who procure abortions earn an income 100% below the federal poverty level. Seventy-five percentage of women cite responsibility for others as a reason for aborting, and the same number of women cite financial restrictions or fear of having to compromise work or education as reasons for aborting.[40] Single-parent households headed by women often face crippling poverty. A 2015 study illustrated that single mothers were at a far greater risk of living in poverty than single fathers, and that this was exacerbated with every additional child.[41] A 2012 study noted that among affluent democracies, the United States "has the highest rate of poverty among single mothers…."[42]

European countries with low abortion rates share some consistent commonalities: not only are abortions legal, residents have wide access to contraception and sex education. They also have robust social welfare programs that make the prospect of an unplanned pregnancy, especially among young individuals, less daunting. Consider, for example, the Netherlands, which legalized abortion in 1984, but has one of the lowest abortion rates in the world. Contraception is widely available free of charge, but in addition:

> The Dutch government provides a range of what sociologists call "social" and what reproductive health advocates call "human" rights: the right to housing, healthcare, and a minimum income… this might make the prospect of sex derailing a child's life less haunting.[43]

A vital factor in alleviating poverty for single mothers is adopting robust social welfare programs. As one studied showed, "generous, comprehensive, and universal welfare states substantially reduce the poverty of single mothers."[44] When a country guarantees the basic sustenance of its members, the rates of poverty decrease substantially. Alleviating the financial strain on women who are facing the prospect of unplanned parenthood will mitigate one of the leading reasons women choose abortion.

In 2021, the Children's Defense Fund Action Council produced a nonpartisan "report card" to highlight how Congresspersons voted on legislation aimed at improving the welfare of children. Many of lowest scores were attributed to Republicans who self-identified as pro-life.[45] Within the past few years, Republican politicians have proposed completely defunding Planned Parenthood, despite the fact that one of its primary functions is to provide reproductive health care and education, and access to contraception, for millions of disadvantaged women.[46] Moreover, they have also advocated withholding all federal funds from the Title X Family Funding program, whose main role is to provide contraception and reproductive care services to poor women.

Many politicians who claim to be pro-life simultaneously constantly vote against the very social programs that can actually help curb the incidence of abortion. Perhaps ironically, much of what has been shown to actually reduce abortion rates are programs that "liberals," who are typically pro-choice, adamantly champion.

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