

**Testimony of Fatima Goss Graves
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**House Committee on Oversight and Reform
The Impact of the Supreme Court’s *Dobbs* Decision on Abortion Rights and
Access Across the United States
July 13, 2022**

Dear Chairwoman Maloney and Ranking Member Comer,

Thank you, members of the Oversight and Reform Committee, for inviting me to testify. My name is Fatima Goss Graves, and I am the President and CEO of the National Women’s Law Center, which is dedicated to the advancement and protection of women’s legal rights and opportunities.

We fight for gender justice – in the courts, in public policy, and in our society – working across the issues that are central to the lives of women and girls, including child care and early learning, education, reproductive rights and health, income security, and workplace justice. We also house the TIME’S UP Legal Defense Fund, which connects those who experience sexual harassment or assault in the workplace with legal assistance, and the Legal Network for Gender Equity, which connects individuals facing sex discrimination at work, at school, and in the health care system with legal help.

At the Law Center, we know that access to reproductive health care – including abortion – is vital to gender justice. Access to abortion is a key part of a person’s liberty, equality, and economic security. Everyone, no matter where they live or their financial means, should have access to abortion when they need it in their communities without stigma, shame, or barriers.

But on June 24, 2022, the Supreme Court took away from millions their constitutional right to abortion. And while much of the public was rightly surprised the Court was willing to go to such an extreme result, we at the National Women’s Law Center were not. Those working to support abortion access have been sounding the alarm about the increasingly extreme anti-abortion laws in states around the country – laws that conflicted with *Roe v. Wade* directly and that criminalized providers and put care out of reach. We took very seriously President Trump’s 2016 commitment to appoint justices who would overturn *Roe* “automatically.”ⁱ As the powerful dissent points out, the decision in *Dobbs v. Jackson Women’s Health Organization* was reached “for one reason and one reason only: because the composition of this Court has changed.”ⁱⁱ So in a single day, millions lost a right that has been fundamental to our health,

lives, futures, and society for nearly 50 years. It is a day that future history books will remember for the Court's clear abandonment of the rule of law and for its raw exercise of power.

The decision in *Dobbs* is nothing short of devastating. The opinion cavalierly overturns *Roe v. Wade* and *Planned Parenthood v. Casey* – which represent nearly 50 years of precedent that has been relied upon and reaffirmed time and time again, not only for abortion but for other fundamental rights. And indeed, the dangerous legal reasoning in the majority decision could signal a rollback of other fundamental rights, including the rights to contraception, same-sex marriage, and consensual sexual relations, among others.ⁱⁱⁱ

But more immediately, the anti-abortion justices wholly disregarded the devastating impact that dismantling abortion access will have on the health and lives of women and anyone who can become pregnant. This impact is already being felt: in the days since the decision was released, multiple states have enacted total bans on abortion,^{iv} while anti-abortion extremist state legislators have proposed laws to criminalize those who provide abortions, those who seek them, and anyone who helps another person obtain one.^v The decision has wreaked legal and public health chaos, even as the full extent of the harm has yet to be realized.

The Court has unleashed chaos for those providing and seeking abortion.

For close to 50 years – until *Dobbs* – the Supreme Court repeatedly reaffirmed that the legal right to abortion is firmly grounded in the Constitution as an aspect of the “liberty” protected by the Due Process Clause of the Fourteenth Amendment.^{vi} The majority opinion jettisons this half century of case law based on an unprecedented narrowing of the right to liberty. Under an outrageously cramped understanding of the rights protected by the Fourteenth Amendment, the majority opinion then uses a cherry-picked discussion of history to conclude that there is no constitutional right to abortion. This lawless decision has sparked massive legal and health care confusion across our country.

I cannot overstate how much legal uncertainty the Supreme Court has created with its unsound opinion. The right to abortion is woven through the fabric of our society. Our laws, our systems, and our expectations have been built on a legal right to abortion.^{vii} But now, without that bedrock, we face a minefield of vague, evolving, and conflicting state laws. As the dissent clearly lays out, “the majority’s ruling invites a host of questions,” with women’s lives hanging in the balance.^{viii} That the majority knew the chaos it was unleashing and still moved forward with its decision is all the more disturbing.

Within two weeks of the decision, 11 states had abortion bans in effect, and in three additional states, clinics stopped providing abortion due to legal uncertainty. In other words, within just 14

days, 14 states were without abortion care, meaning 24.5 million women could no longer get this essential health care in their state.^{ix} About 11 million of these people are women of color and 1.9 are women with disabilities. All told, nearly half of states are expected to ban abortion. Even more, Senate Minority Leader McConnell^x and House Minority Leader McCarthy^{xi} have stated that they would either consider or support a nationwide ban if they were back in power, and there have been reports of “multiple meetings” where Senators have discussed imposing nationwide abortion bans.^{xii} Just like President’s Trump’s threats to appoint justices who would overturn *Roe*, we take these statements very seriously.

In the last two weeks, clinics and health care professionals have experienced cataclysmic whiplash as they have rushed to the courts to fight the bans. They are trying to make sense of shifting laws and court decisions, while simultaneously trying to help patients seeking care, answering their panicked calls, and attempting to find them the care they need. They are calling patients to cancel appointments and rescheduling them in the brief windows that the bans are not in effect. But for many clinics, there will not be a reprieve, and they have or will be forced to shut their doors permanently.^{xiii}

Patients are scared and confused about their rights and are being forced to navigate a legal minefield. Some patients have the means to travel for abortion, even though it might mean going into serious debt or being unable to pay for other critical necessities. They will be forced to take leave from their jobs, and workers without paid leave will lose income while traveling for their care.^{xiv} They may not be able to tell their colleagues or bosses why and where they are going for fear of prosecution and/or harassment when they return home. The majority of women who need abortions are already parents.^{xv} They may have to leave their children at home with family, friends, or other child care sources, or if they have none, will be forced to bring them on the days-long travel. Some people have never traveled outside of their state, traveled on a plane, left their family, or been forced to lie and keep secrets from their communities. For undocumented people, particularly in border communities, the threat of being detained and deported by immigration authorities during travel can make it virtually impossible to access essential health care in another state. All of these people are being denied their dignity and forced into the shadows, fearing whether they or their loved ones or compassionate providers will be jailed for routine, pregnancy-related care.

And those with means to travel are also being targeted specifically. State lawmakers in Missouri are already considering a bounty-hunter law to target those who travel out of state for abortion care.^{xvi} Before the Court’s lawless decision in *Dobbs* and its greenlighting of Texas SB 8’s vigilante bounty hunter scheme in late 2021, such legislation would have been laughed out of court. But there is no telling what this Court would allow, given how extremely out of step it is with our foundational constitutional principles.

Many women and others who are pregnant will not be able to travel. While we are now able to safely manage abortion care in our own homes with the availability of medication abortion, doing so can come with legal risks.^{xvii} Those who cannot travel, including those who are incarcerated, and are unable to manage their abortion care at home will be forced to carry their pregnancies to term. There will be lifelong consequences for them and for their families. Denying a pregnant person an abortion creates economic hardship and insecurity which lasts for years. The groundbreaking Turnaway Study provides us a thorough picture of what happens when women are denied abortion care. The longitudinal study found that:

- “women who were turned away when seeking an abortion and went on to give birth experienced an increase in household poverty lasting at least four years relative to those who received an abortion;
- years after an abortion denial, women were more likely to not have enough money to cover basic living expenses like food, housing and transportation;
- the children women already have at the time they seek abortions show worse child development when their mother is denied an abortion compared to the children of women who receive one and they are more likely to live below the federal poverty level than children born from a subsequent pregnancy to women who received the abortion.”^{xviii}

This is the new post-*Roe* world – forcing people into unimaginable and untenable situations because extremist justices put their personal opinions on abortion before our longstanding rule of law, people’s needs, and science.

The Court has unleashed chaos for those who want to help people seek abortion care.

Beyond this heightened nightmare of criminalization, clinic closures, and patients being denied care or having to travel thousands of miles for care that should be available in their communities, extremist politicians are ratcheting up their attacks in additional ways to target abortion care. And this new campaign of terror from the anti-abortion movement is not just creating a legal quagmire and personal nightmare of those who need abortion care. The anti-abortion movement is also making it clear that they are threatening anyone and everyone who plays any role in abortion access, creating legal uncertainty and fear for loved ones, health care professionals, employers, universities and schools, businesses, and city governments, among others.

Just last week, the Texas Freedom Caucus sent a letter to the entire law firm of Sidley Austin in response to its decision to reimburse the cost of travel for Texas employees who must leave the state to have an abortion.^{xix} The Caucus announced it was “putting them [the law firm] and others on notice of the illegality and consequences of their actions.” The letter said they are violating an existing pre-*Roe* law that subjects them to criminal penalties, outlined a litany of

legislative action they will seek to pass in Texas to target any employer, any abortion fund, and indeed anyone at all who supports those seeking abortion care and said there is a lawsuit against them under Texas's extreme bounty hunter SB 8 law. The breadth of their threat is fundamentally dangerous to our democracy and betrays the decency and respect for rights that we deserve and expect of our lawmakers.

And while everyone is seeking answers about their risks and potential liability, in such an unprecedented situation, there are no easy answers.

The Court unleashed chaos for other kinds of health care.

The Court's decision and the abortion bans responding to it are undermining patient health care and trust, forcing uncertainty into the lives of all health care providers and making them withhold necessary care for fear of criminalization. Just last week, more than seventy-five health care organizations released a joint statement after the *Dobbs* decision declaring absolute opposition to legislative interference in the patient-clinician relationship.^{xx} In their letter, these health care organizations explain that: "Clinicians who practice in good faith in these states will be subject to a similarly untenable decision: risk criminal prosecution or other civil sanctions by providing appropriate, evidence-based care in accordance with their patients' needs and wishes or withhold safe and effective reproductive health care from patients in need." In other words, state bans and restrictions on abortion have nothing to do with science, what patients need, or how health care professionals should be providing care.

Since the Court's decision in *Dobbs*, reports have surfaced of people suffering miscarriage and ectopic pregnancies facing denials of care because of abortion bans.^{xxi} We have seen reports of women being denied critical medicine, such as methotrexate, and life-saving cancer treatments because of provider concerns of violating a state ban.^{xxii} Access to birth control will also likely be affected, given the purposeful, misleading conflation of abortion and birth control.^{xxiii}

Make no mistake, our democratic institutions are under significant pressure. Free and fair elections, interstate travel, freedom to express oneself, safety in public places, the right to protest and to privacy—these are all fundamental principles of our democracy that are under significant threat.

The public understands this dark moment. They feel democracy slipping from our fingertips. A strong majority opposes the Supreme Court's decision, thinks the decision was politically motivated, and that other rights are now at risk.^{xxiv} One poll found that 62% of Americans say that they support a nationwide law protecting a woman's right to have an abortion; this includes

57% of independents and 40% of Republicans.^{xxv} The same poll found that nearly 8 in 10 believe that the decision to have an abortion should be left to women and their health care providers, not politicians and the government, including 86% of Asian Americans & Pacific Islanders, 80% of Black Americans, and 74% of Hispanic Americans. All of these numbers tell us just how deeply un-democratic the conservative Supreme Court Justices were in taking away a fundamental constitutional right. Their decision was not rooted in law, is contrary to the ways of our American life, and is antithetical to the fundamental beliefs of this country's residents.

Before closing, I want to focus on who will bear the brunt of this grave act by the Supreme Court majority. Their lives are vastly different than these Justices. They are more likely to be low-income and women of color.^{xxvi} They already face challenges in accessing health care, including basic health care such as contraceptive care. They often lack job security and paid leave. They may be just going to college or getting out of an abusive relationship. They could have been assaulted. Whatever their situation, they understand why they need abortion care and pursue that decision rooted in their experience and what they know is right for them.

The same cannot be said of the Justices who just made that fundamental decision, whether and when to carry a pregnancy to term, for all of us.

Thank you.

ⁱ Dan Mangan, *Trump: I'll appoint Supreme Court justices to overturn Roe v. Wade abortion case*, CNBC (Oct. 19, 2016), <https://www.cnbc.com/2016/10/19/trump-ill-appoint-supreme-court-justices-to-overturn-roe-v-wade-abortion-case.html>.

ⁱⁱ *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, slip op. at 6 (U.S. June 24, 2022) (Breyer, Sotomayor, and Kagan, J., dissenting) (hereafter "*Dobbs Dissent*").

ⁱⁱⁱ NWLC, NOTHING IS SAFE: THREATS TO OTHER FUNDAMENTAL RIGHTS IN THE WAKE OF ROE V. WADE BEING OVERTURNED (2022), <https://nwlc.org/resource/even-more-than-abortion-the-constitutional-importance-of-roe-v-wade/>.

^{iv} NPWF, STATE ABORTION BANS COULD HARM NEARLY 15 MILLION WOMEN OF COLOR (July 2022), https://www.nationalpartnership.org/our-work/economic-justice/reports/state-abortion-bans-harm-woc.html?utm_source=other&utm_medium=other&utm_campaign=hj_dobbs.

^v CENTER FOR REPRODUCTIVE RIGHTS, WHAT IF ROE FELL? <https://reproductiverights.org/maps/what-if-roe-fell/>

^{vi} See, e.g., *Roe v. Wade*, 410 U.S. 113, 129 (1973); *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 874 (1992); *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2309 (2016); *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103, 2132 (2020).

^{vii} NWLC, NOTHING IS SAFE: THREATS TO OTHER FUNDAMENTAL RIGHTS IN THE WAKE OF ROE V. WADE BEING OVERTURNED (2022), <https://nwlc.org/resource/even-more-than-abortion-the-constitutional-importance-of-roe-v-wade/>.

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- ^x Charlotte Klein, *Mitch McConnell Acknowledges a National Abortion Ban is “Possible” if Roe is Overturned*, VANITY FAIR (May 8, 2022), <https://www.vanityfair.com/news/2022/05/mitch-mcconnell-acknowledges-a-national-abortion-ban-is-possible-if-roe-is-overturned>.
- ^{xi} Justin Tasolides, *‘Our work is far from done’: McCarthy suggests GOP will propose anti-abortion legislation if they retake House*, NY1 NEWS (Jun. 24, 2022), <https://www.ny1.com/nyc/all-boroughs/news/2022/06/24/republican-mccarthy-congress-abortion-roe-v-wade>.
- ^{xii} Caroline Kitchener, *The next frontier for the antiabortion movement: A nationwide ban*, WASH. POST (May 2, 2022), <https://www.washingtonpost.com/nation/2022/05/02/abortion-ban-roe-supreme-court-mississippi/>.
- ^{xiii} Caroline Vandergriff, *Women’s health clinics cancel appointments after ruling overturns Roe v. Wade*, CBS NEWS (June 24, 2022), <https://www.cbsnews.com/dfw/news/womens-health-clinics-cancel-appointments-after-ruling-overturns-roe-v-wade/>.
- ^{xiv} Brief of Amici Curiae National Women’s Law Center and 47 Additional Organizations in Support of Petitioners at 18, *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) (No. 15-274), https://nwlc.org/wp-content/uploads/2016/01/RRH_Whole-Womens-Health-Amicus-Brief_1.4.16.pdf.
- ^{xv} GUTTMACHER INSTITUTE, UNITED STATES ABORTION DEMOGRAPHICS, <https://www.guttmacher.org/united-states/abortion/demographics>.
- ^{xvi} H.B. 1677, 101st Gen. Assemb., 2nd Reg. Sess. (Mo. 2022); H.B. 1987, 101st Gen. Assemb., 2nd Reg. Sess. (Mo. 2022).
- ^{xvii} See WORLD HEALTH ORGANIZATION, WHO RECOMMENDATIONS ON SELF-CARE INTERVENTIONS: SELF-MANAGEMENT OF MEDICAL ABORTION (2020), <https://apps.who.int/iris/bitstream/handle/10665/332334/WHO-SRH-20.11-eng.pdf>; see MEGAN K. DONOVAN, GUTTMACHER, SELF-MANAGED MEDICATION ABORTION: EXPANDING THE AVAILABLE OPTIONS FOR U.S. ABORTION CARE (2018), <https://www.guttmacher.org/gpr/2018/10/self-managed-medication-abortion-expanding-available-options-us-abortion-care>; see SELF-MANAGED ABORTION: SAFE & SUPPORTED, HOW TO USE ABORTION PILLS, <https://abortionpillinfo.org/en/using-abortion-pills-for-safe-abortion-usa>; see IFWHENHOW: LAWYERING FOR REPRODUCTIVE JUSTICE, REPRO LEGAL HELPLINE, <https://www.reprolegalhelpline.org/>.
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^{xxiv} Domenico Montanaro, *Poll: Majorities Oppose Supreme Court's Abortion Ruling and Worry About Other Rights*, NPR (June 27, 2022, 5:00 AM),

<https://www.npr.org/2022/06/27/1107733632/poll-majorities-oppose-supreme-courts-abortion-ruling-and-worry-about-other-righ>.

^{xxv} Navigator Research (@NavigatorSurvey), TWITTER

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<https://twitter.com/NavigatorSurvey/status/1542499443546660864?s=20&t=OHVvOhwweiu-iusQOWhpYw>.

^{xxvi} Anne Branigin & Samantha Chery, *Women of Color Will Be Most Impacted by the End of Roe, Experts Say*, WASH. POST (June 24, 2022, 8:04 PM), <https://www.washingtonpost.com/nation/2022/06/24/women-of-color-end-of-roe/>.