

# NOTES

## CONFRONTING STATE-SANCTIONED REPRODUCTIVE ABUSE: THE PROMISE OF STATE CONSTITUTIONAL RIGHTS TO SAFETY POST-*DOBBS*

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*Since the Supreme Court’s 2022 decision in Dobbs v. Jackson Women’s Health Organization, the landscape of abortion access in the United States has been plagued by uncertainty and growing inequality across geographic, racial, and socioeconomic lines. As many states have passed new laws drastically restricting abortion access, reproductive rights litigators have increasingly turned to state courts and constitutions as vehicles for legal redress. The stories of individual patients who have suffered under these laws have been front and center in this new wave of advocacy, but the experiences of domestic violence survivors have been largely absent from the legal narrative. This Note makes the case for understanding domestic abuse as a reproductive justice issue that is exacerbated by post-Dobbs abortion restrictions. It argues that existing state constitutional law arguments rooted in privacy, equality, and autonomy fail to encapsulate the full scope of the harms suffered by survivors living under abortion restrictions and proposes bringing actions under state constitutional rights to safety to better address those harms. Using early gestational restrictions and parental involvement laws as case studies, this Note lays out a path for bringing such actions.*

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## INTRODUCTION

When Evie found out she was pregnant, she was twenty-one and living out of her car in Florida after escaping a physically abusive relationship.<sup>1</sup> With help from an abortion fund, she drove twelve hours to Illinois for an abortion, where she discovered that she was twenty-four weeks pregnant, too far along for that clinic to perform the procedure.<sup>2</sup> Shocked, she returned to Florida, only to later fly back to Illinois for an abortion at a different clinic.<sup>3</sup>

Gabriella Gonzalez travelled from Texas to Colorado for an abortion in May 2023.<sup>4</sup> The morning after she returned, her ex-boyfriend shot her in the head, allegedly because he disagreed with her decision to

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1. Opinion, *This Is Post-Roe America*, N.Y. Times (Oct. 17, 2024), <https://www.nytimes.com/interactive/2024/10/17/opinion/dobbs-roe-abortion-stories.html> [<https://perma.cc/5KKX-NAMG>].

2. *Id.* Evie's problem was not that abortion was illegal in Illinois at that gestational age, but rather that the clinic lacked the equipment and other resources necessary to perform an abortion that late in her pregnancy. *Id.*

3. *Id.*

4. Emily Olson, *A Texas Woman Was Killed by Her Boyfriend After Getting an Abortion, Police Say*, NPR (May 13, 2023), <https://www.npr.org/2023/05/13/1176007305> [<https://perma.cc/S9YZ-B4GP>].

terminate her pregnancy.<sup>5</sup> At the time of Gabriella's murder, her ex-boyfriend was wanted by police for beating and strangling her two months earlier.<sup>6</sup>

Evie's and Gabriella's stories are just two of many from the years following the Supreme Court's 2022 decision in *Dobbs v. Jackson Women's Health Organization* that exemplify the myriad geographic, economic, and logistical struggles the decision has created for people who need an abortion.<sup>7</sup> Since *Dobbs*, thirteen states have completely banned abortion,<sup>8</sup> criminal prosecutions of pregnancy-related charges have reached an all-time high,<sup>9</sup> and abortion medication has come under attack.<sup>10</sup>

All these policies pose unique risks to domestic violence survivors. But threats to medication abortion, which accounted for 63% of all abortions in the United States in 2023, are especially destabilizing.<sup>11</sup> Abortion medication—typically a regimen of two drugs, mifepristone and misoprostol<sup>12</sup>—is now the primary way that people living in states with total abortion bans access abortion.<sup>13</sup> Adolescents in states with parental

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5. *Id.*

6. *Id.*

7. See, e.g., New Abortion Laws Changed Their Lives. 8 Very Personal Stories, NPR (June 23, 2023), <https://www.npr.org/sections/health-shots/2023/06/23/1183878942> [<https://perma.cc/A4LY-FWKV>] (detailing how *Dobbs* has affected women across the country, including one Louisiana woman who had to wait weeks to fly to a Northern state for an abortion).

8. After *Roe* Fell: U.S. Abortion Laws by State, Ctr. Reprod. Rts., <https://reproductiverights.org/maps/abortion-laws-by-state/> [<https://perma.cc/3WU6-QFV3>] (last updated Mar. 2026) [hereinafter Abortion Laws by State].

9. See Wendy A. Bach & Madalyn K. Wasilczuk, Pregnancy Just., Pregnancy as a Crime: A Preliminary Report on the First Year After *Dobbs* 2 (2024), <https://www.pregnancyjusticeus.org/wp-content/uploads/2024/09/Pregnancy-as-a-Crime.pdf> [<https://perma.cc/AU89-KQB2>] (finding that “[i]n the first year after *Dobbs*, at least 210 pregnant people faced criminal charges for conduct associated with pregnancy, pregnancy loss, or birth,” the highest number in a single year since data has been collected on this subset of cases).

10. See Julie Rovner, Why Medication Abortion Is the Top Target for Anti-Abortion Groups in 2026, KFF Health News: HealthBent (Jan. 23, 2026), <https://kffhealthnews.org/news/article/mifepristone-medication-abortion-pill-trump-fda/> [<https://perma.cc/D72A-W9NE>] (describing ongoing agitation against the FDA, which anti-abortion activists allege “is dragging its feet on a promised review of the abortion pill and the Biden administration’s loosened requirements around its availability”).

11. Press Release, Guttmacher Inst., Medication Abortions Accounted for 63% of All US Abortions in 2023, an Increase From 53% in 2020 (Mar. 19, 2024), <https://www.guttmacher.org/news-release/2024/medication-abortions-accounted-63-all-us-abortions-2023-increase-53-2020> [<https://perma.cc/7PQZ-9TTJ>].

12. Medical Abortion, Clev. Clinic, <https://my.clevelandclinic.org/health/treatments/21899-medical-abortion> [<https://perma.cc/47L8-VUK4>] (last updated Jan. 16, 2024).

13. See Isaac Maddow-Zimet & Kimya Forouzan, Full-Year 2025 Estimates Show Overall Stability in Abortion Incidence, Decreased Travel and Increased Telehealth Provision, Guttmacher Inst. (Mar. 2026), <https://www.guttmacher.org/report/full-year->

involvement laws and other abortion restrictions have accounted for the biggest increase in demand post-*Dobbs*.<sup>14</sup> Anti-abortion activists—and some conservative Supreme Court Justices—therefore view medication abortion as a way of circumventing abortion bans.<sup>15</sup>

After the Supreme Court held that an organization of anti-abortion physicians did not have standing to challenge the FDA's mifepristone regulations,<sup>16</sup> the attorneys general of Missouri, Kansas, and Idaho filed an amended complaint in the Northern District of Texas alleging that the regulations violate the FDA's "legal obligations to protect the health, safety, and welfare of women and girls."<sup>17</sup> As of May 2026, the litigation has been transferred to the U.S. District Court for the Eastern District of Missouri, and the DOJ has moved to stay or, alternatively, dismiss the proceedings while it conducts its own review of the mifepristone guidelines.<sup>18</sup> A similar lawsuit filed by Louisiana was fast-tracked to the Supreme Court after the Fifth Circuit issued a nationwide injunction against the FDA's telehealth regulations for mifepristone.<sup>19</sup> As of the time

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estimates-show-overall-stability-abortion-incidence-decreased-travel-increased-telehealth-provision [<https://perma.cc/6CY6-DLFM>] (noting that the "decline in travel out of state for care coincided with a large increase in telehealth provision . . . provided by clinicians residing in states with telehealth shield laws").

14. Dana M. Johnson, Jennifer E. Starling, Rebecca Gomperts, Adolescent and Young Adult Requests for Medication Abortion Through Online Telemedicine, *JAMA Health F.*, Feb. 2026, at 1, 4.

15. See *Danco Laby's, LLC v. Louisiana*, 146 S. Ct. 1192, 1193 (2026) (mem.) (Thomas, J., dissenting) (arguing that the manufacturers of mifepristone "are not entitled to a stay of an adverse court order based on lost profits from their criminal enterprise"); *id.* (Alito, J., dissenting) (describing the telehealth provision of mifepristone as "a scheme to undermine [the Court's] decision in *Dobbs*"); Holly Honderich, Supreme Court Rejects Challenge to Abortion Drug Mifepristone, *BBC* (June 13, 2024), <https://www.bbc.com/news/articles/c2qq1wqw3w2o> [<https://perma.cc/UJ8J-XU4A>] (stating that anti-abortion physicians brought a lawsuit challenging the telemedicine provision of mifepristone because it has "acted as an effective workaround to the bans, with thousands of pills flowing into restrictive states through the mail").

16. See *Food & Drug Admin. v. All. for Hippocratic Med.*, 144 S. Ct. 1540, 1565 (2024) (concluding that the plaintiffs could not "demonstrate that FDA's relaxed regulatory requirements likely would cause them to suffer an injury in fact").

17. Amended Complaint ¶ 50, *Missouri v. U.S. Food & Drug Admin.*, No. 2:22-cv-00223-Z (N.D. Tex. filed Oct. 11, 2024) (on file with the *Columbia Law Review*).

18. See *Missouri v. U.S. Food & Drug Admin.*, No. 4:25-cv-01580-CMS (E.D. Mo. docketed Oct. 23, 2025); see also Federal Defendants' Motion to Stay or, Alternatively, Dismiss, *Missouri*, No. 4:25-cv-01580-CMS (E.D. Mo. filed Mar. 6, 2026), [https://litigationtracker.law.georgetown.edu/wp-content/uploads/2025/10/State-of-Missouri-et-al.-v.-Food-and-Drug-Administration-et-al\\_2026\\_3\\_6\\_DEFENDANTS-MOTION-TO-STAY.pdf](https://litigationtracker.law.georgetown.edu/wp-content/uploads/2025/10/State-of-Missouri-et-al.-v.-Food-and-Drug-Administration-et-al_2026_3_6_DEFENDANTS-MOTION-TO-STAY.pdf) [<https://perma.cc/46HD-DAJE>].

19. Ann E. Marimow, Supreme Court Allows Abortion Pill Access by Mail to Continue, *N.Y. Times* (May 14, 2026), <https://www.nytimes.com/2026/05/07/us/politics/supreme-court-abortion-pills-louisiana.html> (on file with the *Columbia Law Review*) (last updated May 15, 2026).

of publication, the regulations were still in place under a stay the Court issued pending further litigation.<sup>20</sup>

States have also used legislation to target abortion pills, with Louisiana being the first state to classify mifepristone and misoprostol as “controlled dangerous substances,” making possession of them without a valid prescription punishable by up to five years in jail and a fine of up to five thousand dollars.<sup>21</sup> Louisiana has since indicted two doctors, one from New York and one from California, for mailing abortion pills to patients in Louisiana.<sup>22</sup>

While there are few studies on the rate at which domestic violence survivors utilize medication abortion,<sup>23</sup> the dynamics of coercive control suggests that they have a particularly strong interest in the pills remaining easily accessible. Abortion pills give survivors a way to manage their abortion privately at a time and place of their choosing<sup>24</sup> and can be mailed to all fifty states.<sup>25</sup> Medication abortion is a cost-effective alternative<sup>26</sup> for survivors who might otherwise struggle to surmount the

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20. *Id.*

21. Sara Cline & Laura Ungar, Abortion Pills Will Be Controlled Substances in Louisiana Soon. Doctors Have Concerns, AP News, <https://apnews.com/article/abortion-pill-louisiana-misoprostol-pregnancy-mifepristone-69a52fcd711a833ae14edf6f56afc0c> [<https://perma.cc/G75D-3JNH>] (last updated Sep. 30, 2024) (internal quotation marks omitted). Classifying abortion pills as controlled substances will further fuel abortion criminalization. See Bach & Wasilczuk, *supra* note 9, at 18 (describing how possession of abortion medication has already been used as evidence in four prosecutions, including three homicide charges).

22. Emily Cochrane & Pam Belluck, Louisiana Indicts Another Out-of-State Doctor Over Abortion Pills, N.Y. Times (Jan. 13, 2026), <https://www.nytimes.com/2026/01/13/us/louisiana-abortion-pills-california-indictment.html> (on file with the *Columbia Law Review*).

23. One 2011 study found that 23% of patients seeking a medication abortion had experienced domestic violence. Lauren Roth, Jeanelle Sheeder & Stephanie B. Teal, Predictors of Intimate Partner Violence in Women Seeking Medication Abortion, 84 *Contraception* 76, 77 (2011). But this figure is likely outdated since medication abortion has become much more popular in the last fifteen years. See *supra* note 11 and accompanying text.

24. See Ushma D. Upadhyay, Leah R. Koenig, Karen Meckstroth, Jennifer Ko, Ena Suseth Valladares & M. Antonia Biggs, Effectiveness and Safety of Telehealth Medication Abortion in the USA, 30 *Nature Med.* 1191, 1196 (2024) (finding that telemedicine provision of abortion medication gives patients more privacy and circumvents other logistical barriers to accessing care while being as safe and effective as in-clinic care).

25. Abortion Pills by Mail in Every State, Plan C, <https://www.plancpills.org/> [<https://perma.cc/4MDM-4SWE>].

26. The average cost of a first trimester procedural abortion at Planned Parenthood is six hundred dollars. Attia, How Much Does an Abortion Cost?, Planned Parenthood (Apr. 13, 2025), <https://www.plannedparenthood.org/blog/how-much-does-an-abortion-cost> (on file with the *Columbia Law Review*). Abortion pills are available online for as little as five dollars. E.g., Abortion Pill Providers in New York, Plan C, <https://www.plancpills.org/abortion-pill/new-york#pharmacies> [<https://perma.cc/A2BE-9WS4>] (last visited Feb. 3, 2026). Financial assistance from abortion funds can help defray the costs of either procedural or medication abortion. Fast Facts About Abortion Funds,

financial and logistical hurdles necessary to travel for an in-clinic abortion.<sup>27</sup>

Survivors are also likely to bear the brunt of criminal enforcement efforts, which have reached a new intensity since *Dobbs*.<sup>28</sup> In 26% of prosecutions for self-managed abortions, the case was brought to law enforcement by a partner, family member, or friend, revealing the potential for trusted loved ones to initiate investigations.<sup>29</sup> As discussed in section I.B.4, manipulating the legal system to harm or control a partner, including by making or threatening to make false reports to the police or child protective services,<sup>30</sup> is a form of domestic violence. Over half of criminal prosecutions for pregnancy-related conduct also involve investigations by child protective services, which provide information that is then used to initiate or support the criminal case.<sup>31</sup> Abortion criminalization is therefore particularly dangerous for domestic violence survivors. The more avenues states create for investigating pregnancy outcomes, the more opportunities abusive partners or family members will have to use the legal system as a tool of reproductive coercion. Early evidence suggests that abusers are already “weaponiz[ing] the possible criminality of accessing abortion, or wrongfully tell[ing] a victim that if they do access abortion, they themselves could go to jail, or they’ll report them to the police.”<sup>32</sup> In one 2023 survey, 5% of domestic violence survivors indicated that their abuser had threatened to report them to law enforcement for “considering or having an abortion.”<sup>33</sup>

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Nat’l Network Abortion Funds, <https://abortionfunds.org/abortion-funds-fast-facts/> [<https://perma.cc/3UM3-EJ6C>] (last visited Mar. 1, 2026).

27. See *infra* section III.A.1.

28. See Bach & Wasilczuk, *supra* note 9, at 2 (“[T]he 210 prosecutions initiated in this one-year period represent . . . the largest single-year number since researchers began tracking these cases.”).

29. Laura Huss, Farah Diaz-Tello & Goleen Samari, *If/When/How, Self-Care, Criminalized: The Criminalization of Self-Managed Abortion From 2000 to 2020*, at 30 (2023), <https://ifwhenhow.org/wp-content/uploads/2023/10/Self-Care-Criminalized-2023-Report.pdf> [<https://perma.cc/9LLU-UCX7>].

30. See Heather Douglas & Emma Fell, *Malicious Reports of Child Maltreatment as Coercive Control: Mothers and Domestic and Family Violence*, 35 *J. Fam. Violence* 827, 832 (2020) (discussing how anonymous child abuse reporting enables abusive former partners to make false allegations against survivors).

31. See *Pregnancy Just., Pregnancy as a Crime: An Interim Update on the First Two Years After Dobbs* 5 (2025), <https://www.pregnancyjusticeus.org/wp-content/uploads/2025/09/Pregnancy-as-a-Crime-An-Interim-Update-on-the-First-Two-Years-After-Dobbs.pdf> [<https://perma.cc/SY36-VHX7>].

32. Kylie Cheung, *Domestic Violence Hotline Reports 99% Increase in Calls Post-Roe*, *Jezebel* (July 14, 2023), <https://www.jezebel.com/domestic-violence-hotline-reports-99-increase-in-calls-1850641660> [<https://perma.cc/D2WJ-J9HV>].

33. Nat’l Domestic Violence Hotline with *If/When/How, Reproductive Coercion and Abuse Report* 14 (2024), <https://www.thehotline.org/wp-content/uploads/media/2024/06/reproductive-coercion-and-abuse-report-final.pdf> [<https://perma.cc/V89Z-7A2L>].

For all the havoc it has wrought, *Dobbs* has also ushered in a new era of the reproductive justice legal movement that is more focused on putting a human face on the painful consequences of abortion restrictions, with patients who have been denied care like Amanda Zurawski<sup>34</sup> and Kate Cox<sup>35</sup> becoming household names. But domestic violence survivors' experiences living under abortion restrictions have largely been missing from this discourse, even as evidence that restrictive abortion laws enable abusive behavior mounts.<sup>36</sup> While abortion restrictions have had devastating consequences for people of all life backgrounds, crafting a legal argument that centers survivors' experiences exposes how these laws enable both state and interpersonal violence against pregnant people.

This Note argues that abortion restrictions' disproportionate effects on survivors can be used to mount new legal challenges to abortion bans under state constitutions' right-to-safety provisions. Part I lays the foundation for this argument by developing the empirical connection between domestic violence and reproductive justice. Part II summarizes state courts' existing approaches to assessing challenges to abortion restrictions and explains why these theories alone do not adequately protect survivors' reproductive rights. Finally, Part III develops right-to-safety arguments grounded in survivors' experiences with two different kinds of abortion restrictions: early gestational limits with unworkable exceptions and parental involvement laws.

### I. DOMESTIC VIOLENCE AS A REPRODUCTIVE JUSTICE ISSUE

This Part lays out how reproductive injustice and domestic violence have become increasingly intertwined since *Dobbs*. While the Court's

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34. Zurawski, who was denied an abortion in Texas after experiencing a preterm, prelabor rupture of membranes, was the lead plaintiff in a lawsuit that sought to clarify the scope of Texas's "medical emergency" exception. *The Plaintiffs and Their Stories: Zurawski v. State of Texas*, Ctr. Reprod. Rts. (Nov. 14, 2023), <https://reproductiverights.org/zurawski-v-texas-plaintiffs-stories-remarks/> [https://perma.cc/MN27-ED45]; *Seeking Clarity on Emergency Exceptions to Texas's Abortion Bans*, Ctr. Reprod. Rts., <https://reproductiverights.org/cases/zurawski-v-state-texas/> [https://perma.cc/738P-ZZGB] (last visited Feb. 24, 2026) (internal quotation marks omitted).

35. Cox, also a Texas resident, sought a court order that would allow her to terminate a nonviable pregnancy. Eleanor Klibanoff, *Kate Cox's Case Reveals How Far Texas Intends to Go to Enforce Abortion Laws*, *Tex. Trib.* (Dec. 13, 2023), <https://www.texastribune.org/2023/12/13/texas-abortion-lawsuit/> [https://perma.cc/P527-QE9M]. A Texas district court granted the order, but Cox still had to travel out of state for an abortion after the state attorney general appealed. *Id.*

36. See, e.g., Cheung, *supra* note 32 (noting that calls to the National Domestic Violence Hotline about reproductive coercion and abuse nearly doubled in the year after *Dobbs*).

abortion jurisprudence has long affected domestic violence survivors,<sup>37</sup> the proliferation of gestational age bans and other restrictions after *Dobbs* has decimated access to abortion across the country. Abortion is completely banned, with attendant civil or criminal penalties, in thirteen states, with four more banning all abortions after six weeks from a person's last menstrual period<sup>38</sup> and two others enforcing a twelve-week ban.<sup>39</sup>

Section A draws the connection between reproductive justice and domestic violence in a post-*Dobbs* world by describing reproductive abuse and coercion as integral parts of domestic violence. Section B relies on public health studies of domestic violence's effects on pregnancy outcomes and how reproductive choices influence patterns of abuse to argue that survivors are disproportionately harmed by abortion restrictions and have a unique safety need for unencumbered access to abortion.

#### A. *Domestic Violence and Reproductive Coercion*

Domestic violence “is a pattern of behaviors used to gain or maintain power and control” in a relationship.<sup>40</sup> While many people associate domestic violence with physical abuse, it also encompasses emotional, financial, and digital abuse; sexual and reproductive coercion; and stalking.<sup>41</sup> Reproductive coercion, which the National Domestic Violence Hotline defines as “threats or acts of violence against a partner’s reproductive health or reproductive decision-making,” can include tampering with birth control, removing a condom during intercourse without permission, forcing a partner to get an abortion or

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37. See *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 893 (1992) (invalidating Pennsylvania’s spousal notification requirement because “[m]any may fear devastating forms of psychological abuse from their husbands, including verbal harassment, threats of future violence, the destruction of possessions, physical confinement to the home, the withdrawal of financial support, or the disclosure of the abortion to family and friends”).

38. “Last menstrual period” (LMP), the most common measure of pregnancy duration, refers to the date of the pregnant person’s most recent period. Jennifer Weiss-Wolf, *When ‘Six Weeks’ Is Actually Two: Understanding Periods Is Essential to Fighting Abortion Bans*, Brennan Ctr. Just. (Nov. 9, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/when-six-weeks-actually-two-understanding-periods-essential-fighting> [<https://perma.cc/77SF-ET6V>]. When using LMP, a pregnancy is often calculated as beginning before conception has occurred, meaning that LMP-based bans start the clock well before someone could find out they are pregnant. *Id.* Someone with a standard twenty-eight-day menstrual cycle will be considered four weeks pregnant on the first day of their missed period, giving people living in states with a six-week ban only two weeks to detect a pregnancy and get an abortion. *Id.*

39. *Abortion Laws by State*, *supra* note 8.

40. *Types of Abuse*, Nat’l Domestic Violence Hotline, <https://www.thehotline.org/resources/types-of-abuse/> [<https://perma.cc/9BAJ-DU9H>] (last visited Feb. 3, 2026) (emphasis omitted).

41. *Id.*

continue a pregnancy, and threatening to expose someone's abortion to law enforcement, family, friends, or employers.<sup>42</sup> While some have tried to justify abortion restrictions by claiming that "forced abortions" are a common form of domestic violence,<sup>43</sup> these claims are not backed up by data, and the studies most commonly relied on to support them have been retracted.<sup>44</sup> Claims that forced abortion is widespread also conflict with results from the Turnaway Study, a five-year longitudinal study that compared the life outcomes of women who received or were denied an abortion in the United States, which found that 95% of women who had an abortion felt it was the right decision throughout the entire study period.<sup>45</sup>

The strength of the relationship between reproductive coercion and abortion access is on much stronger empirical footing. In one study, 53.4% of patients at five California family planning clinics were domestic violence survivors, with 35% of those patients experiencing pregnancy coercion (12.6%), birth control sabotage (8.3%), or both (13.8%).<sup>46</sup> Just 15% of patients who had never experienced other types of domestic violence experienced reproductive coercion.<sup>47</sup> A similar study found that 34% of survivors had a partner who "limited their ability to decide whether or not to have children."<sup>48</sup>

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42. Reproductive Coercion, Nat'l Domestic Violence Hotline, <https://www.thehotline.org/resources/reproductive-coercion/> [https://perma.cc/8CLV-5XSP] (last visited Feb. 3, 2026).

43. See, e.g., Julianne McShane, *Anti-Abortion Activists Are Peddling Another Lie About Abortion Pills—And We Debunked It*, Mother Jones (Mar. 20, 2024), <https://www.motherjones.com/politics/2024/03/abortion-mifepristone-supreme-court-domestic-violence-abuse/> [https://perma.cc/A9XX-CEG7].

44. See, e.g., Retraction Notice, Health Servs. Rsch. & Managerial Epidemiology, Feb. 2024, at 1, 2 ("Two subject matter experts undertook an independent post-publication peer review . . . [B]oth experts identified fundamental problems with the study design and methodology, unjustified or incorrect factual assumptions, material errors in the authors' analysis of the data, and misleading presentations of the data that . . . render the authors' conclusion unreliable.").

45. See Corinne H. Rocca, Goleen Samari, Diana G. Foster, Heather Gould & Katrina Kimport, *Emotions and Decision Rightness Over Five Years Following an Abortion: An Examination of Decision Difficulty and Abortion Stigma*, Soc. Sci. & Med., Mar. 2020, at 1, 6 ("Over time, the odds of women saying the abortion was right for them increased gradually and insignificantly each year among those who had no difficulty [choosing abortion] . . . only the trajectory of those reporting the decision was very difficult increased significantly over time . . .").

46. Elizabeth Miller, Michele R. Decker, Heather L. McCauley, Daniel J. Tancredi, Rebecca R. Levenson, Jeffrey Waldman, Phyllis Schoenwald & Jay G. Silverman, *Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy*, 81 *Contraception* 316, 319 fig. 1 (2010).

47. *Id.*

48. Joanna Cook & Susan Bewley, *Acknowledging a Persistent Truth: Domestic Violence in Pregnancy*, 101 *J. Royal Soc'y Med.* 358, 360 (2008) (citing Jeanne E. Hathaway, Georgianna Willis, Bonnie Zimmer & Jay G. Silverman, *Impact of Partner Abuse on Women's Reproductive Lives*, 60 *J. Am. Med. Women's Ass'n* 42, 42 (2005)).

Domestic violence survivors are also much more likely to become pregnant unintentionally than people who are not abused. In the California study, pregnancy coercion and birth control sabotage in abusive relationships increased the risk of unintended pregnancy nearly two-fold compared to the risk level of patients who were not abused.<sup>49</sup> Another study found that physically abused women had a 1.6 times higher risk of unintended pregnancy, and women who had been both sexually and physically abused had a 3.3 times higher risk.<sup>50</sup> Data from the Pregnancy Risk Assessment Monitoring System (PRAMS) similarly found that nearly 70% of pregnancies among women who were being physically abused were unwanted or mistimed.<sup>51</sup> PRAMS also showed that the correlation between domestic violence and unintended pregnancy works both ways: Patients with an unwanted pregnancy were 4.1 times more likely to be physically abused than those whose pregnancy was intended.<sup>52</sup>

The public health literature therefore robustly supports the conclusions that domestic violence survivors are significantly more likely to become pregnant unintentionally and that those with unintended pregnancies are more likely to be victims of abuse. Since 95% of abortions involve mistimed or unwanted pregnancies,<sup>53</sup> it should come as no surprise that approximately one-in-five abortion patients are domestic violence survivors.<sup>54</sup>

B. *The Importance of Abortion Access for Domestic Violence Survivors*

Domestic violence against pregnant people is an epidemic in the United States, with approximately 324,000 pregnant women suffering

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49. Miller et al., *supra* note 46, at 319.

50. Swee May Cripe, Sixto E. Sanchez, Maria Teresa Perales, Nally Lam, Pedro Garcia & Michelle A. Williams, Association of Intimate Partner Physical and Sexual Violence With Unintended Pregnancy Among Pregnant Women in Peru, 100 *Int'l J. Gynecology & Obstetrics* 104, 106 (2008).

51. Julie A. Gazmararian, Melissa M. Adams, Linda E. Saltzman, Christopher H. Johnson, F. Carol Bruce, James S. Marks, S. Christine Zahniser & the PRAMS Working Group, The Relationship Between Pregnancy Intendedness and Physical Violence in Mothers of Newborns, 85 *Obstetrics & Gynecology* 1031, 1034 (1995).

52. *Id.* at 1035.

53. Kathryn Kost, Isaac Maddow-Zimet & Ashley C. Little, Pregnancies and Pregnancy Desires at the State Level: Estimates for 2017 and Trends Since 2012, Guttmacher Inst. (2021), <https://www.guttmacher.org/report/pregnancy-desires-and-pregnancies-state-level-estimates-2017> [<https://perma.cc/A8RW-LKKA>].

54. See Lauren Sobel, Madison Bernstein, Namita Arunkumar, Jennifer Fortin, Isabel Fulcher, Youri Hwang & Alisa B. Goldberg, The Impact of Lifetime Intimate Partner Violence on Abortion Method Choice, *Contraception*, Mar. 2025, at 1, 3 (finding that, of abortion patients in Massachusetts, 21% had experienced domestic violence in their lives and 8% had experienced domestic violence in the last year).

abuse each year.<sup>55</sup> Although domestic violence is more common among pregnant people than preeclampsia or gestational diabetes—two widely known risks to maternal health<sup>56</sup>—the connection between domestic violence and pregnancy remains undertheorized. This section discusses how, beyond the simple convergence of domestic violence and unwanted pregnancy, the escalation of abuse during pregnancy, delays in accessing prenatal care, severe injuries and gynecological problems, and desire to cut ties with an abusive partner all make survivors disproportionately likely to seek abortion care.

1. *Pregnancy Often Intensifies Domestic Violence.* — The epidemic of domestic violence against pregnant people has predictable, tragic results. Pregnant women in the United States are more than twice as likely to die from homicide than from any other cause, including maternal hypertensive disorders, hemorrhage, and infection.<sup>57</sup> Pregnancy-related homicide, defined as a homicide during or within one year after pregnancy, disproportionately affects Black women and women under the age of twenty-five.<sup>58</sup> While mortality data is not detailed enough for researchers to track whether murdered pregnant people had previously experienced domestic violence, two-thirds of pregnancy-associated homicides occur in the home, suggesting that many of these deaths are

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55. Comm. on Health Care for Underserved Women, Am. Coll. of Obstetricians & Gynecologists, Committee Opinion: Intimate Partner Violence, 119 *Obstetrics & Gynecology* 412, 413 (2012).

56. Martin R. Huecker, Kevin C. King, Gary A. Jordan & William Smock, Domestic Violence, *Nat'l Libr. Med.*, <https://www.ncbi.nlm.nih.gov/books/NBK499891/> [<https://perma.cc/6P7N-VDPD>] (last updated Apr. 9, 2023). Domestic violence is also a key risk factor for developing preeclampsia and gestational diabetes. See Carmen Pheiffer, Stephanie Dias & Sumaiya Adam, Intimate Partner Violence: A Risk Factor for Gestational Diabetes, 17 *Int'l J. Env't Rsch. & Pub. Health*, no. 21, 2020, at 1, 2 (noting that domestic violence survivors are at a greater risk of developing gestational diabetes because of their high stress levels); Sixto E. Sanchez, Chunfang Qiu, Maria T. Perales, Nelly Lam, Pedro Garcia & Michelle A. Williams, Intimate Partner Violence (IPV) and Preeclampsia Among Peruvian Women, 137 *Eur. J. Obstetrics & Gynecology & Reprod. Biology* 50, 52 (2008) (“Women who reported to have ever experienced IPV during pregnancy had a 2.4-fold increased risk of preeclampsia when compared with women who reported never being abused during pregnancy . . .”).

57. See Maeve Wallace, Veronica Gillispie-Bell, Kiara Cruz, Kelly Davis & Dovile Vilda, Homicide During Pregnancy and the Postpartum Period in the United States, 2018–2019, 138 *Obstetrics & Gynecology* 762, 765 (2021) (finding that the pregnancy-associated homicide mortality ratio, defined as deaths during pregnancy and within one year postpartum, is 3.62 deaths per 100,000 live births).

58. *Id.* Black women and women under thirty are also more likely to seek abortion care than women of other racial or age groups. See Stephanie Ramer, Antoinette T. Nguyen, Lisa M. Hollier, Jessica Rodenhizer, Lee Warner & Maura K. Whiteman, Abortion Surveillance—United States, 2022, *Surveillance Summaries*, Nov. 2024, at 1, 5–6 (finding that women in their twenties accounted for 56.5% of all abortions and Black women for 39.5%).

caused by a partner or family member.<sup>59</sup> The data also does not indicate pregnancy outcomes, meaning that the murders of those who had a miscarriage or abortion within the year preceding their death may not be tagged as pregnancy related.<sup>60</sup>

Pregnancy can also escalate abuse by destabilizing the relationship's existing power dynamics. Financial stress is associated with increased rates of domestic violence,<sup>61</sup> and impending parenthood is a massive financial commitment that may stretch a couple's budget and place more responsibilities on the abuser.<sup>62</sup> Pregnancy, and especially an unwanted or unplanned pregnancy, may spark negative emotions in an abuser, including "jealous[y] that the attention is shifting from them to the pregnancy," "frustrat[ion.] at the increased responsibilities[,] or ang[er] that their partner's body is changing."<sup>63</sup>

All of these factors can lead to violence escalating during pregnancy<sup>64</sup> or to changes in the types of violence perpetrated against the pregnant person.<sup>65</sup> For example, in one study of two prenatal clinics, 34% of patients reported that their partner had tried to strangle them and described strangulation as "a favorite during pregnancy," as it

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59. See Wallace et al., *supra* note 57, at 766 (finding that the prevalence of pregnant women being murdered in their homes "implicat[es] the likelihood of involvement by persons known to the victim"). A different study found that, of pregnant women who reported abuse during screenings at a prenatal clinic, 22% had scores on a standard mortality risk assessment that "indicated an increased risk for homicide." Linda Bullock, Tina Bloom, Jan Davis, Erin Kilburn & Mary Ann Curry, *Abuse Disclosure in Privately and Medicaid-Funded Pregnant Women*, 51 *J. Midwifery & Women's Health* 361, 367 (2006).

60. Wallace et al., *supra* note 57, at 767.

61. See Carol B. Cunradi, Raul Caetano & John Schafer, *Socioeconomic Predictors of Intimate Partner Violence Among White, Black, and Hispanic Couples in the United States*, 17 *J. Fam. Violence* 377, 385–86 (2002) (noting that low socioeconomic status is linked to higher rates of domestic violence for all races); Daniel Schneider, Kristen Harknett & Sara McLanahan, *Intimate Partner Violence in the Great Recession*, 53 *Demography* 471, 494 (2016) (explaining that economic stress is linked to domestic violence because "a loss of control in one domain (the economy) leads men to assert greater control in another domain (their intimate relationships)").

62. See Mark Lino, Kevin Kuczynski, Nestor Rodriguez & TusaRebecca Schap, *USDA, Expenditures on Children by Families, 2015*, at ii (2017), <https://fns-prod.azureedge.us/sites/default/files/resource-files/crc2015-march2017.pdf> [<https://perma.cc/MAV7-CVAW>] (estimating that the average expense to raise a child from birth through age seventeen is \$233,610).

63. *Pregnancy and Abuse: How to Stay Safe for Your 9 Months*, Nat'l Domestic Violence Hotline, <https://www.thehotline.org/resources/pregnancy-and-abuse-how-to-stay-safe-for-your-9-months/> [<https://perma.cc/6YCV-GJUH>] (last visited Feb. 2, 2026).

64. See Fiona Buchanan & Cathy Humphreys, *Coercive Control During Pregnancy, Birthing and Postpartum: Women's Experiences and Perspectives on Health Practitioners' Responses*, 36 *J. Fam. Violence* 325, 326 (2021) ("[T]he frequency and severity of domestic violence during pregnancy was twice as high as when women were not pregnant.").

65. See Paula J. Adams Hillard, *Physical Abuse in Pregnancy*, 66 *Obstetrics & Gynecology* 185, 187 (1985) (noting that 40% of pregnant victims "reported multiple sites of injury, including face, arms, abdomen, breasts, and back").

doesn't leave cuts and avoids striking the fetus."<sup>66</sup> This is particularly troubling as strangulation can cause death even days after the incident from "strokes, blood clots, or aspiration" and can cause traumatic brain injuries, which have long-lasting effects like "vision and hearing problems, seizures, ringing ears, memory loss, headaches, and blacking out."<sup>67</sup> Nonlethal strangulation is also one of the most powerful predictors of future homicide, with women who have previously been strangled by a partner being 7.48 times more likely to be killed.<sup>68</sup> Abusers may also use violence or threats to try to control pregnancy outcomes. In a 2023 study, 13% of domestic violence survivors reported that their abuser had used or threatened violence during their pregnancy with the intention of ending the pregnancy, and 9% said that violence or threats of violence were used to try to prevent them from having an abortion.<sup>69</sup>

Domestic violence survivors face unique risks during pregnancy that give them a particularly strong safety interest in having access to a full slate of reproductive healthcare, including abortion. Given the associations between pregnancy, escalating violence, and homicide, ending a pregnancy can be a way of hedging against the substantial risk of suffering more severe physical abuse while pregnant, allowing survivors to better protect themselves. Restrictive abortion laws are exacerbating this crisis: Anti-abortion states have a 75% higher peripartum homicide rate than states that are neutral toward or protective of abortion rights.<sup>70</sup> While it is too soon to have reliable data on how *Dobbs* has affected pregnancy-related homicide rates,<sup>71</sup> it is

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66. Bullock et al., *supra* note 59, at 367. While the Bullock study uses the term choking, which refers to an internal blockage of the windpipe, this Note uses the term strangulation, which is when outside pressure is applied to the neck, for the sake of accuracy. See Strangulation & Risk Factors, Resilience: Advoc. for Ending Violence (Dec. 13, 2022), <https://resiliencemi.org/cye22/> [<https://perma.cc/5YZ4-8X4V>].

67. Rachel Louise Snyder, No Visible Bruises: Domestic Violence and Traumatic Brain Injury, *New Yorker* (Dec. 30, 2015), <https://www.newyorker.com/news/news-desk/the-unseen-victims-of-traumatic-brain-injury-from-domestic-violence> (on file with the *Columbia Law Review*).

68. Nancy Glass, Kathryn Laughon, Jacquelyn Campbell, Carolyn Rebecca Block, Ginger Hanson, Phyllis W. Sharps & Ellen Taliaferro, Non-Fatal Strangulation Is an Important Risk Factor for Homicide of Women, 35 *J. Emergency Med.* 329, 333 *tbl. 2* (2008).

69. Nat'l Domestic Violence Hotline with If/When/How, *supra* note 33, at 13.

70. Grace Keegan et al., State-Level Analysis of Intimate Partner Violence, Abortion Access, and Peripartum Homicide: Call for Screening and Violence Interventions for Pregnant Patients, 238 *J. Am. Coll. Surgeons* 880, 883 (2024). States were classified as restrictive, neutral, or protective based on the Guttmacher Institute's database of state abortion policies. *Id.* at 882.

71. The most recent public data from the National Violent Death Reporting System—the CDC's comprehensive, nationwide database of violent deaths—is from 2022, the year *Dobbs* was decided. Kaitlin Forsberg, Kameron J. Sheats, Janet M. Blair, Brenda L. Nguyen, Esther Amoakohene, Carter J. Betz & Bridget H. Lyons, Surveillance for Violent Deaths—National Violent Death Reporting System, 50 States, the District of Columbia, and Puerto Rico, 2022, Surveillance Summaries, June 2025, at 1, 2.

reasonable to expect the discrepancy between restrictive and nonrestrictive states to have grown even more since *Dobbs* because many restrictive states have since banned abortion at earlier gestational stages than was previously permitted, as discussed in section III.A. And early data does suggest that *Dobbs* is exacerbating reproductive abuse: In the year after *Dobbs* was decided, the National Domestic Violence Hotline received nearly twice as many calls about reproductive coercion and abuse as it did in the year before the decision.<sup>72</sup>

2. *Survivors Are More Likely to Seek Prenatal Care Later in Pregnancy.*—Survivors are also disproportionately harmed by abortion bans because they are more likely than other pregnant people to either delay prenatal care until the second trimester or later or to receive no prenatal care at all.<sup>73</sup> Delaying prenatal care until the second trimester will make it difficult for those living in one of the nineteen states that ban abortion in the first trimester to access abortion care.<sup>74</sup> These difficulties will be even more acute for people who do not seek any medical care until the third trimester. They are highly unlikely to be able to get an abortion since only ten U.S. jurisdictions allow third-trimester abortions,<sup>75</sup> and just four have clinics that can perform abortions that late in pregnancy.<sup>76</sup>

Even when survivors seek prenatal care, they are more than twice as likely as patients who are not being abused to frequently miss prenatal appointments.<sup>77</sup> Restricting access to reproductive healthcare is also a common form of reproductive abuse, with 22% of survivors of reproductive coercion reporting that their abuser tried to or did

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72. Cheung, *supra* note 32.

73. See Mary M. Goodwin, Julie A. Gazmararian, Christopher H. Johnson, Brenda Colley Gillbert, Linda E. Saltzman & the PRAMS Working Group, *Pregnancy Intendedness and Physical Abuse Around the Time of Pregnancy: Findings From the Pregnancy Risk Assessment Monitoring System, 1996–1997*, 4 *Maternal & Child Health J.* 85, 88–89, 88 tbl. II (2000).

74. *Abortion Laws by State*, *supra* note 8.

75. See Allison McCann & Amy Schoenfeld Walker, *Tracking Abortion Laws Across the Country*, *N.Y. Times*, <https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html> (on file with the *Columbia Law Review*) (last updated Mar. 9, 2026) (listing Alaska, Colorado, Maryland, Michigan, Minnesota, New Jersey, New Mexico, Oregon, Vermont, and Washington, D.C., as the jurisdictions with no gestational limit).

76. See *Later Abortion Initiative*, Ibis Reprod. Health, *Referrals for Abortion Care After 24 Weeks* (2024), [https://laterabortion.org/sites/default/files/documents/lai\\_referrals\\_sheet\\_10.3.2024.pdf](https://laterabortion.org/sites/default/files/documents/lai_referrals_sheet_10.3.2024.pdf) [<https://perma.cc/EAL2-ET9X>] (listing clinics in Colorado, Illinois, Maryland, and Washington, D.C.). The third trimester starts at twenty-eight weeks. *Third Trimester*, Clev. Clinic, <https://my.clevelandclinic.org/health/articles/third-trimester> [<https://perma.cc/9LRF-UXNL>] (last updated Mar. 15, 2024).

77. See Susan Cha & Saba W. Masho, *Intimate Partner Violence and Utilization of Prenatal Care in the United States*, 29 *J. Interpersonal Violence* 911, 918 (2014) (finding that pregnant survivors are more than twice as likely as patients who were not abused to miss more than half their prenatal appointments or to begin prenatal care after the fourth month of pregnancy).

accompany them to OB/GYN appointments and 12% reporting that their abuser forced them to cancel or change their appointments.<sup>78</sup> People who miss appointments or are unable to speak openly with their doctor due to an abuser's presence are similarly unable to find out about their reproductive healthcare options and will also likely forgo crucial domestic violence screenings.<sup>79</sup>

3. *Survivors Have More Health Problems During Pregnancy.* — Pregnant survivors are also over 25% more likely than those who have not been abused to experience injuries or pregnancy complications that require hospitalization or a visit to the emergency room.<sup>80</sup> This includes both pregnancy-related morbidities such as “preterm labor, vaginal bleeding, severe nausea,” and urinary tract infections and complications that can affect the viability of continuing a pregnancy, including “high blood pressure, placental problems, diabetes, [and] premature rupture of membranes.”<sup>81</sup> Pregnant people who are hospitalized for assault have significantly higher risks of placental abruption and hemorrhage.<sup>82</sup>

When these medical emergencies arise, abortion is a common form of stabilizing treatment.<sup>83</sup> Even when it is possible to continue a pregnancy under intensive medical supervision, doing so has been found to increase the risk of postpartum hemorrhage, sepsis, unplanned hysterectomy, pulmonary embolism, and other severe complications.<sup>84</sup> Given that pregnant survivors are more likely to need a medically stabilizing abortion, they have a particularly strong safety interest in abortion being easily available.

4. *Carrying a Pregnancy to Term Prolongs Abusive Relationships.* — Finally, pregnancy outcomes are highly correlated with a pregnant person's ability to leave their abuser. The Turnaway Study found that,

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78. Nat'l Domestic Violence Hotline with If/When/How, *supra* note 33, at 17.

79. Physicians are less likely to be able to offer resources when survivors miss appointments because many “women do not disclose abuse the first time they are asked.” Comm. on Health Care for Underserved Women, *supra* note 55, at 414.

80. Jay G. Silverman, Michele R. Decker, Elizabeth Reed & Anita Raj, Intimate Partner Violence Victimization Prior to and During Pregnancy Among Women Residing in 26 U.S. States: Associations With Maternal and Neonatal Health, 195 *Am. J. Obstetrics & Gynecology* 140, 144 tbl. II (2006).

81. *Id.* at 144–45.

82. Dina El Kady, William M. Gilbert, Guibo Xing & Lloyd H. Smith, Maternal and Neonatal Outcomes of Assaults During Pregnancy, 105 *Obstetrics & Gynecology* 357, 361 tbl. 3 (2005).

83. See Ariel Sklar, Jeanelle Sheeder, Anne R. Davis, Carrie Wilson & Stephanie B. Teal, Maternal Morbidity After Preterm Premature Rupture of Membranes at <24 Weeks' Gestation, 226 *Am. J. Obstetrics & Gynecology* 558.e1, 558.e3 (2022) (finding that 48.1% of pregnant people who developed premature rupture of membranes chose abortion and that 26.9% of those who initially chose to continue the pregnancy ultimately had an abortion).

84. See *id.* at 558.e4, 558.e7 (“[T]he rate of severe maternal morbidity was twice as high in the expectant management group . . .”).

among pregnant women who wanted one, “having an abortion was associated with a reduction over time in physical violence from the [man involved in the pregnancy],” while “having a baby from an unwanted pregnancy appears to result in sustained physical violence over time.”<sup>85</sup> Pregnant women who are denied an abortion also take longer to end an abusive relationship than women who had an abortion.<sup>86</sup> This discrepancy is unsurprising since the financial, psychological, and lifestyle changes that accompany the birth of a child—coupled with the fact that leaving an abusive relationship heightens the risk of violence<sup>87</sup>—make fleeing with a new baby a daunting prospect.

Even when people who carry an unwanted pregnancy to term end an abusive relationship, they are “more likely to have sustained contact with” the abuser over time, in some cases prolonging the abuse for years after the relationship has ended.<sup>88</sup> While one might optimistically believe that it would be easy for a survivor to get full custody, courts are often hesitant to believe abuse allegations. Courts credit under half of mothers’ claims of domestic abuse against fathers, and mothers lose custody in 23% of cases in which they allege domestic abuse.<sup>89</sup> Abusers often wield the family court system as a tool of legal abuse by filing frequent, harassing custody motions and making false reports to child protective agencies.<sup>90</sup> Since children and family legal processes are used to control survivors even after an abusive relationship ends, survivors have a long-term safety interest in being able to choose abortion to avoid the potential of lifelong abuse.

## II. SHORTCOMINGS OF EXISTING LEGAL THEORIES

This Part outlines three of the most prevalent legal theories that have been used to challenge state abortion restrictions—rights to privacy,

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85. Sarah C.M. Roberts, M. Antonia Biggs, Karuna S. Chibber, Heather Gould, Corinne H. Rocca & Diana Greene Foster, *Risk of Violence From the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, *BMC Med.*, Sep. 29, 2014, at 1, 5.

86. *Id.*

87. See Walter S. DeKeseredy & Martin D. Schwartz, *Dangerous Exits: Escaping Abusive Relationships in Rural America* 16 (2009) (“23 percent [of women killed by a domestic partner] were leaving or trying to leave their partner during or just prior to their death . . . . Women who exit or try to leave relationships in the United States are also at high risk of being the targets of [nonlethal] violence . . .”).

88. Roberts et al., *supra* note 85, at 5; see also Kathryn J. Spearman, Viola Vaughan-Eden, Jennifer L. Hardesty & Jacquelyn Campbell, *Post-Separation Abuse: A Literature Review Connecting Tactics to Harm*, 21 *J. Fam. Trauma Child Custody & Child Dev.* 145, 151–52 (2024) (discussing how abusers often “use children to coerce or control” their former partners after a relationship has ended).

89. Joan S. Meier, *U.S. Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations: What Do the Data Show?*, 42 *J. Soc. Welfare & Fam. L.* 92, 96 (2020).

90. See Vivienne Elizabeth, *Custody Stalking: A Mechanism of Coercively Controlling Mothers Following Separation*, 25 *Feminist Legal Stud.* 185, 189 (2017).

equality, and autonomy—and argues that, while they have been successful in different contexts, none of them adequately addresses the unique harms suffered by domestic violence survivors. While these claims are by no means exclusive, with advocates often bringing several arguments at once,<sup>91</sup> for the purposes of this Part cases have been sorted based on which type of reasoning predominates in the court’s analysis. These established theories will and should continue to play an important role in the post-*Dobbs* legal landscape, but, as this Part explains, the right to safety can complement them by emphasizing the existential threat abortion bans pose to pregnant survivors and opening the possibility of an affirmative right to abortion as a means of obtaining safety.

#### A. *Privacy Arguments*

*Roe v. Wade* grounded the right to an abortion in the right to privacy,<sup>92</sup> leaving the right on uneasy footing from the outset since the federal Constitution does not explicitly protect the right to privacy.<sup>93</sup> But eleven states explicitly protect privacy in their constitutions,<sup>94</sup> putting privacy arguments on much stronger footing.

Montana has developed one of the strongest reproductive and sexual privacy rights in the country, dating back to the 1990s. In assessing gay Montanans’ privacy challenge to the state’s criminalization of same-sex intimacy in *Gryczan v. State*, the Montana Supreme Court interpreted the state’s privacy right as broader than the federal one.<sup>95</sup> The *Gryczan* court struck down the ban, holding that “while society may not approve of the sexual practices of homosexuals,” gay Montanans could still “fully and properly expect that their consensual sexual activities will not be subject to the prying eyes of others or to governmental snooping or regulation.”<sup>96</sup>

Two years later, the court extended this line of reasoning to reproductive rights in *Armstrong v. State*, a challenge to the requirement that only physicians could perform abortions.<sup>97</sup> Limiting its discussion of

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91. See, e.g., *Wrigley v. Romanick*, 988 N.W.2d 231, 238 (N.D. 2023) (summarizing the plaintiffs’ claims under the North Dakota Constitution’s Liberty and Due Process Clauses).

92. See 410 U.S. 113, 153 (1973) (“This right of privacy . . . is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”).

93. See, e.g., John Hart Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 Yale L.J. 920, 949 (1973) (critiquing the Court’s privacy reasoning in *Roe* because “it is not a constitutional principle and the Court has no business imposing it”).

94. See Jessica Bulman-Pozen & Miriam Seifter, *State Constitutional Rights and Democratic Proportionality*, 123 Colum. L. Rev. 1855, 1866 n.53 (2023) (listing Alaska, Arizona, California, Florida, Hawaii, Illinois, Louisiana, Montana, New Hampshire, South Carolina, and Washington as the states with constitutional privacy protections).

95. 942 P.2d 112, 121 (Mont. 1997).

96. *Id.* at 122.

97. 989 P.2d 364, 367–68 (Mont. 1999).

the privacy right to the right to choose a pre-viability abortion,<sup>98</sup> the court held that the rights to make medical decisions in consultation with a healthcare provider and to procreative autonomy are protected by the right to privacy.<sup>99</sup> Rather than following the federal undue burden standard, the state would have to show a compelling interest to justify infringing on someone's reproductive autonomy.<sup>100</sup> There, the state could not meet that standard because it "has no more compelling interest or constitutional justification for interfering with the exercise of this right [to a pre-viability abortion] than it would if [the pregnant woman] chose to carry the fetus to term."<sup>101</sup>

Montana's reproductive privacy jurisprudence has also been used to increase minors' access to abortion. In August 2024, the Montana Supreme Court struck down the state's parental consent law, which required minors to obtain their parents' permission before having an abortion but did not mandate parental involvement in other kinds of pregnancy-related healthcare.<sup>102</sup> The court recognized that minors enjoy the same reproductive privacy rights as adults and subjected the law to a strict scrutiny analysis, ultimately rejecting the state's arguments that the law was necessary to protect minors' health, prevent sexual abuse, promote parental rights, and guard against immature decisionmaking.<sup>103</sup>

State privacy arguments, exemplified by Montana's procreative privacy jurisprudence, have gone further in protecting reproductive rights than the *Roe* framework, though they have not avoided all of *Roe*'s weaknesses. First, many privacy cases reproduce *Roe*'s trimester framework in recognizing a right to only a pre-viability abortion.<sup>104</sup> This

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98. See *id.* at 368 ("[T]he statutory amendments at issue prevent a woman from obtaining a lawful medical procedure—a pre-viability abortion—from a health care provider of her choosing." (footnote omitted)).

99. See *id.* at 376 ("Nor is there any reason to conclude . . . that a woman's right to obtain a pre-viability abortion . . . would not be encompassed within the protection of Montana's constitutional right of individual privacy.").

100. See *id.* at 375 ("[The Montana Constitution] requires more than that the State simply not impose an undue burden . . . . Rather, . . . the government must demonstrate a 'compelling state interest' for infringing this right." (quoting *Gryczan*, 942 P.2d at 122)).

101. *Id.* at 377.

102. *Planned Parenthood of Mont. v. State*, 554 P.3d 153, 158 (Mont. 2024), cert. denied, 145 S. Ct. 2627 (2025) (mem.). Montana still has a parental notification law, which is currently being challenged in a separate lawsuit. Blair Miller, *Montana Supreme Court Strikes Down Abortion Parental Consent Law*, *Daily Montanan* (Aug. 14, 2024), <https://dailymontanan.com/2024/08/14/montana-supreme-court-strikes-down-abortion-parental-consent-law/> [<https://perma.cc/9QND-H4HX>].

103. See *Planned Parenthood of Mont.*, 554 P.3d at 165, 168–72 (acknowledging that protecting minors from sexual abuse is a compelling state interest but finding that the parental consent law does not further that interest because "[a]ll [it] does is permit the parent to refuse consent to a pregnancy that has already occurred").

104. See, e.g., *Planned Parenthood of Mont. v. State*, 557 P.3d 440, 456–58, 461 (Mont. 2024) (upholding a preliminary injunction against several restrictions on public funding for abortion because they infringe on a person's right to a pre-viability abortion);

limitation will disproportionately affect survivors because they are more likely to postpone prenatal care until later in pregnancy<sup>105</sup> and are at greater risk of developing the types of severe medical conditions that require an abortion later in pregnancy.<sup>106</sup> Second, there is a natural tension in basing a claim for survivors' reproductive rights in a privacy framework, given that privacy "reinforces the patriarchal idea that there is a rational and implicitly gendered legal distinction between public and private"<sup>107</sup> and has historically shielded domestic violence from public concern "as part of the private sphere of family life."<sup>108</sup> When it comes to considering the reproductive oppression survivors face, privacy can only address half of the problem: While survivors undeniably have a privacy right to make reproductive decisions independent of an abuser, a negative privacy right falls short of holding the state accountable for the ways that its policies enable reproductive coercion in individual relationships and directly lead to negative health outcomes for survivors.

### B. *Equality Arguments*

State courts have also relied on equality analyses to evaluate abortion rights claims. Though these arguments never took hold at the federal level,<sup>109</sup> they have had much greater success in the states, due in no small part to the fact that twenty-nine states explicitly ensure sex equality in their constitutions through state Equal Rights Amendments (ERAs).<sup>110</sup>

Dating back to the 1980s, states have struck down abortion restrictions on equal protection grounds. In 1986, the Connecticut Superior Court held that the state must offer Medicaid funding for medically necessary abortions because excluding them while covering all other medically necessary procedures is a form of sex discrimination.<sup>111</sup>

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*Armstrong*, 989 P.2d at 384 (holding that the right to privacy "protects a woman's right . . . to obtain a specific lawful medical procedure, a pre-viability abortion").

105. See *supra* section I.B.2.

106. See *supra* section I.B.3.

107. Grace Kavinsky, Comment, An Opportunity for Feminist Constitutionalism: Abortion Under State Equal Rights Amendments, 75 *Stan. L. Rev.* 1209, 1215 (2023).

108. See Elizabeth M. Schneider, *The Violence of Privacy*, 23 *Conn. L. Rev.* 973, 974, 998 (1991) ("The rationale of privacy legitimates and supports violence against women; woman-abuse reveals the violence of privacy. Privacy justifies the refusal of the state to intervene . . .").

109. The Supreme Court struck a major blow to federal equality arguments in *Geduldig v. Aiello* by holding that excluding coverage for pregnancy-related conditions from disability insurance did not violate the Equal Protection Clause because "[t]here is no risk from which men are protected and women are not." 417 U.S. 484, 496–97 (1974).

110. Ting Ting Cheng & Naomi Young, Putting State Equal Rights Amendments to Work, *St. Ct. Rep.* (Dec. 5, 2024), <https://statecourtreport.org/our-work/analysis-opinion/putting-state-equal-rights-amendments-work> [<https://perma.cc/UZ5A-V3EX>].

111. *Doe v. Maher*, 515 A.2d 134, 159 (Conn. Super. Ct. 1986) (citing *Fischer v. Dep't of Pub. Welfare*, 502 A.2d 114 (Pa. 1985), overruled by *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 309 A.3d 808 (Pa. 2024)).

Other states' courts have similarly relied on state ERAs in finding that limits on public funding for medically necessary abortions discriminate on the basis of sex.<sup>112</sup> One issue with these early state decisions is that relief was generally limited to "medically necessary" abortions, creating confusion over what abortions are medically necessary<sup>113</sup> and excluding the vast majority of people who have abortions because a pregnancy is unwanted.<sup>114</sup>

Equality arguments have also been used to strike down abortion bans or expand protections for reproductive rights since *Dobbs*. In August 2024, the Utah Supreme Court upheld a preliminary injunction against the state's total abortion ban because the law contradicted the "plain language" of the state's ERA, which proclaims that men and women "shall enjoy equally all civil, political and religious rights and privileges."<sup>115</sup> State courts have also continued to apply ERAs to public funding restrictions. In 2024, the Pennsylvania Supreme Court reversed its previous, restrictive interpretation of the state's ERA in *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*, holding that any law "that differentiate[s] between the sexes for any reason" violates the ERA.<sup>116</sup> On remand, the lower court applied the new ERA and equal protection analyses and invalidated the Medicaid coverage ban because the state had no compelling interest to justify this burden on the fundamental right to reproductive autonomy.<sup>117</sup>

As it stands now, state ERA jurisprudence has two main weaknesses when it comes to fully addressing the reproductive rights of domestic violence survivors. First, existing ERA cases oftentimes preserve the distinction between medically necessary and elective abortions, leading to line-drawing problems that will disproportionately affect survivors, who are more likely to experience both unintended pregnancy and severe pregnancy complications.<sup>118</sup> Second, state ERAs have failed to protect minors' reproductive rights because courts have interpreted

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112. See, e.g., *State v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 911 (Alaska 2001) (striking down a ban on funding for medically necessary abortions because "DHSS provides necessary medical care to all Medicaid-eligible Alaskans except women who medically require abortions"); *N.M. Right to Choose/NARAL v. Johnson*, 975 P.2d 841, 856 (N.M. 1998) (holding that excluding medically necessary abortions from public funding is presumptively unconstitutional because it "employs a gender-based classification that operates to the disadvantage of women").

113. For further discussion of the problems created by abortion ban exceptions, see *infra* section III.A.1.

114. See *Kost et al.*, *supra* note 53 (noting that 95% of abortions "involve pregnancies that individuals wanted either later or not at all").

115. *Planned Parenthood Ass'n of Utah v. State*, 554 P.3d 998, 1038 (Utah 2024) (internal quotation marks omitted) (quoting Utah Const. art. IV, § 1).

116. 309 A.3d at 885–86.

117. *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 2026 WL 1053998, at \*17 (Pa. Commw. Ct. Apr. 20, 2026).

118. See *supra* sections IA, I.B.3.

these provisions as allowing abortion restrictions that are based on characteristics other than sex, which especially harms young survivors of sexual abuse and reproductive coercion.<sup>119</sup> In *Hope Clinic for Women, Ltd. v. Flores*, the Illinois Supreme Court upheld a parental notification law against an ERA challenge, stating that it did not “create[] a sex-based classification or . . . discriminat[e] against pregnant minors who choose an abortion [based on] their gender” because the law differentiated between minors and adults of the same sex.<sup>120</sup> The right to safety must supplement equality arguments to ensure that the rights of minors and those with unwanted, rather than medically emergent, pregnancies are protected.

### C. *Liberty and Autonomy Arguments*

Yet other states have relied on their constitutions’ liberty or autonomy provisions when considering state abortion laws. Thirty-three state constitutions have natural or inalienable rights clauses that provide more explicit protections for residents’ liberties than the U.S. Constitution, giving liberty-based arguments for reproductive rights a stronger textual basis.<sup>121</sup>

In 2023, the North Dakota Supreme Court upheld a preliminary injunction against the first iteration of the state’s abortion ban, which made it a “class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion” but created an affirmative defense for abortions that, in a physician’s professional judgment, are necessary to save the pregnant person’s life.<sup>122</sup> Red River Women’s Clinic, the state’s last abortion clinic, argued that the North Dakota Constitution’s statement that “[a]ll individuals are by nature equally free and independent and have certain inalienable rights, among which are . . . enjoying and defending life and liberty” protected

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119. See *infra* section III.B.1.

120. 991 N.E.2d 745, 771 (Ill. 2013). The law was repealed in 2022. Parental Notice of Abortion Act (PNA) and the Judicial Bypass Coordination Project, ACLU Ill., <https://www.aclu-il.org/en/pna> [<https://perma.cc/U554-V7RP>] (last updated May 31, 2022).

121. Inalienable rights clauses use similar language, with a typical clause protecting “certain inalienable rights . . . [including] liberty.” Ala. Const. art. I, § 1. For other inalienable rights clauses, see, e.g., Alaska Const. art. I, § 1; Ark. Const. art. II, § 2; Cal. Const. art. I, § 1; Colo. Const. art. II, § 3; Fla. Const. art. I, § 2; Idaho Const. art. I, § 1; Ill. Const. art. I, § 1; Ind. Const. art. I, § 1; Iowa Const. art. I, § 1; Kan. Bill of Rights § 1; Ky. Const. § 1; Me. Const. art. I, § 1; Mass. Const. pt. I, art. 1; Mo. Const. art. I, § 2; Mont. Const. art. II, § 3; Neb. Const. art. I, § 1; Nev. Const. art. I, § 1; N.H. Const. pt. I, art. 2; N.J. Const. art. I, § 1; N.M. Const. art. II, § 4; N.C. Const. art. I, § 1; N.D. Const. art. I, § 1; Ohio Const. art. I, § 1; Okla. Const. art. II, § 2; Pa. Const. art. I, § 1; S.D. Const. art. VI, § 1; Utah Const. art. I, § 1; Vt. Const. ch. I, art. 1; Va. Const. Art. I, § 1; W. Va. Const. art. III, § 1; Wis. Const. art. I, § 1; Wyo. Const. art. I, § 2.

122. See *Wrigley v. Romanick*, 988 N.W.2d 231, 234–35 (N.D. 2023) (quoting N.D. Cent. Code § 12.1-31-12 (repealed 2023)).

a fundamental right to abortion.<sup>123</sup> Looking to North Dakota's history, the court found that the clinic was likely to succeed on the merits because "the right of a woman to receive an abortion to preserve her life or health was implicit in North Dakota's concept of ordered liberty before, during, and at the time of statehood" and sustained the preliminary injunction without reaching the substantive constitutional argument.<sup>124</sup>

After that decision, the North Dakota legislature amended the ban to slightly expand the rape, incest, and medical emergency exceptions.<sup>125</sup> Red River Women's Clinic challenged the ban again, requesting that it be struck down for vagueness and for violating North Dakotans' fundamental constitutional rights.<sup>126</sup> In response to the state's history and tradition argument, the trial court noted that the constitution's inalienable rights clause did not apply to women until 1984 and that, given this exclusionary history, "the sentiments of the past, alone, need not rule the present for all time."<sup>127</sup> Relying on the state constitution's guarantee of a broad liberty right, the court held that "implicit in the right to personal autonomy . . . is a woman's right and responsibility to decide what her pregnancy demands of her in the context of her life and in the context of her health."<sup>128</sup> Since the state had not expressed a sufficiently strong or narrowly tailored interest to overcome the woman's liberty interest in choosing a pre-viability abortion, the court struck down North Dakota's ban as unconstitutional.<sup>129</sup> The ban was reinstated in late 2025 on procedural grounds: The North Dakota Constitution requires that a supermajority of four-out-of-five state supreme court justices agree

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123. *Id.* at 238 (quoting N.D. Const. art. I, § 1).

124. *See id.* at 240–42, 245.

125. *See* Trisha Ahmed & Geoff Mulvihill, North Dakota's Latest Try at Abortion Ban Could Face Lawsuit, AP News (Apr. 25, 2023), <https://apnews.com/article/abortion-north-dakota-ban-exceptions-da5a7b70eb8757cb563529881f3c4b40> [<https://perma.cc/2GRL-ELB9>] ("Abortion is legal in pregnancies caused by rape or incest, but only in the first six weeks of pregnancy. Abortion is allowed later in pregnancy only in specific medical emergencies.").

126. *See* Access Indep. Health Servs., Inc. v. Wrigley, No. 08-2022-cv-01608, 2024 WL 6935253, at \*1 (N.D. Dist. Ct. Sep. 12, 2024), *rev'd*, 28 N.W.3d 850 (N.D. 2025) (*per curiam*).

127. *See id.* at \*7 ("[The framers of the North Dakota Constitution] would not have recognized the interests at issue in this case because, at that time, women were not treated as full and equal citizens. The reality is that 'individuals' did not draft and enact the North Dakota Constitution. Men did.").

128. *Id.* at \*9; *see also id.* ("Prior to viability, a woman must retain the ultimate control over her own destiny, her own body, and ultimately the path of her life. A woman's choice of whether . . . to carry a pregnancy to term shapes the very nature and future course of her life, on nearly every possible level.").

129. *See id.* at \*10–12 ("It is also unclear . . . why the Legislature chose six weeks or less as the cutoff . . . . Unborn human life is no different at six weeks gestational age or less as the result of sexual abuse . . . than [when it is] the result of consensual sexual activity.").

to find a law unconstitutional, and just three justices voted to strike down the ban.<sup>130</sup>

While reproductive choice is key to survivors reclaiming freedom from abuse,<sup>131</sup> the liberty argument—which hinges on the *state* not limiting reproductive choices—cannot fully account for the fact that survivors’ ability to choose freely is not just constrained by government policy but by the dynamics of coercive control. Survivors have a liberty interest in being able to access healthcare without interference, and making their own reproductive decisions without gaslighting or threats of violence, and avoiding being forcibly impregnated through birth control sabotage, but these all lie in the realm of private action. The liberty argument’s focus on the intrusive nature of state action will not disrupt the interpersonal dynamics that restrain survivors’ choices. Any theory that is to properly address survivors’ reproductive rights must be able to integrate these dual burdens. Given the analytical gaps in rights to privacy, equality, and autonomy when it comes to fully protecting survivors’ reproductive rights, the right to safety has an important role to play in the post-*Dobbs* legal landscape.

### III. THE RIGHT TO SAFETY CAN ADVANCE SURVIVORS’ REPRODUCTIVE RIGHTS

Sixteen state constitutions enshrine a right to “pursue” or “obtain” safety.<sup>132</sup> States as politically and geographically diverse as California, Iowa, New Mexico, North Dakota, Ohio, and Vermont protect the “inalienable right[]” of “pursuing and obtaining safety.”<sup>133</sup> Similarly, Montana’s constitution protects citizens’ right to “seek[] their safety, health and happiness in all lawful ways.”<sup>134</sup> Crucial for the reproductive rights of domestic violence survivors, the right to safety requires considering “an individual’s relationship to others,”<sup>135</sup> facilitating an analysis of how a policy makes citizens vulnerable to both state power and interpersonal violence.

While courts have largely held that happiness and safety clauses do not foreclose state regulation of activities individuals might find bring

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130. *Access Indep. Health Servs.*, 28 N.W.3d at 850–51; see also N.D. Const. art. VI, §§ 2, 4.

131. See *supra* section I.B.4.

132. See Cal. Const. art. I, § 1; Colo. Const. art. II, § 3; Idaho Const. art. I, § 1; Iowa Const. art. I, § 1; Ky. Const. § 1; Me. Const. art. I, § 1; Mass. Const. pt. I, art. 1; Mont. Const. art. II, § 3; Nev. Const. art. I, § 1; N.J. Const. art. I, § 1; N.M. Const. art. II, § 4; N.D. Const. art. I, § 1; Ohio Const. art. I, § 1; Vt. Const. ch. I, art. 1; Va. Const. art. I, § 1; W. Va. Const. art. III, § 1.

133. See Joseph R. Grodin, *Rediscovering the State Constitutional Right to Happiness and Safety*, 25 *Hastings Const. L.Q.* 1, 3 (1997) (listing Colorado, Nevada, and New Jersey as other states whose constitutions contain the same language).

134. See Mont. Const. art. II, § 3.

135. Grodin, *supra* note 133, at 28.

them pleasure or a sense of security,<sup>136</sup> the right has gotten some limited play in abortion cases. In invalidating North Dakota's abortion ban, the district court invoked the state's right to safety but did not take its analysis any further than the conclusory statement that the ban "deprives [women] of the right to pursue and obtain safety and happiness."<sup>137</sup> Similarly, in *Women's Health Center of West Virginia, Inc. v. Panepinto*, the Supreme Court of Appeals of West Virginia relied in part on the state's right to "pursu[e] and obtain[] happiness and safety"<sup>138</sup> to strike down a ban on public funding for medically necessary abortions based on the prevalence of severe pregnancy complications among low-income patients.<sup>139</sup> But the crux of the court's decision rested on a different state constitutional provision that requires the state to "preserve its neutrality when it provides a vehicle' for the exercise of constitutional rights," which the court characterized as an equal protection argument.<sup>140</sup> In other cases, plaintiffs have raised a right-to-safety argument in their briefs,<sup>141</sup> only for the court to ignore that line of reasoning entirely.<sup>142</sup>

Right-to-safety arguments will be most influential in states that have both the right and restrictive abortion laws, whether they take the form of early gestational bans, parental involvement requirements, or waiting

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136. See *id.* at 23–24 (discussing cases that failed to invalidate laws related to drug use, liquor sales, marijuana criminalization, and income taxes).

137. See *Access Indep. Health Servs., Inc. v. Wrigley*, No. 08-2022-cv-01608, 2024 WL 6935253, at \*10 (N.D. Dist. Ct. Sep. 12, 2024), *rev'd*, 28 N.W.3d 850 (N.D. 2025) (*per curiam*).

138. W. Va. Const. art. III, § 1.

139. See 446 S.E.2d 658, 665 (W. Va. 1993) (concluding that "the denial of funding for abortions that are determined to be medically necessary both can and most likely will affect the health and safety of indigent women"), superseded by constitutional amendment, W.V. Const. art. VI, § 57.

140. See *id.* at 666 (quoting *United Mine Workers of Am. Int'l Union v. Parsons*, 305 S.E.2d 343, 354 (W. Va. 1983)).

141. See, e.g., Brief in Support of Motion for Preliminary Injunction at 8–9, *Planned Parenthood of Mont. v. State*, No. DV21-00999 (Mont. Dist. Ct. Oct. 7, 2021), 2021 WL 9056126 (arguing that criminalizing abortion at or after twenty weeks' gestation violates the state's right to safety).

142. See, e.g., *Planned Parenthood of Mont.*, 2021 WL 9038524, at \*9–11 (addressing the plaintiffs' privacy, equal protection, and due process claims, but not their right-to-safety claim). In other cases, right-to-safety arguments have been relegated to concurring or dissenting opinions. See, e.g., *Planned Parenthood Great Nw. v. State*, 522 P.3d 1132, 1229 (Idaho 2023) (Stegner, J., dissenting) ("It is clear to me that the constitutional rights of life, liberty, safety, and happiness, taken together, demonstrate that the right to terminate a pregnancy 'is implicit in Idaho's concept of ordered liberty.'" (quoting *Reclaim Idaho v. Denney*, 497 P.3d 160, 181 (Idaho 2021))); *Cameron v. EMW Women's Surgical Ctr.*, 664 S.W.3d 633, 676 (Ky. 2023) (Keller, J., concurring in part and dissenting in part) ("[T]he [anti-abortion] statutes arguably strip a pregnant patient of her rights to self-determination and pursuit of safety, and in so doing, are not narrowly tailored to the interest of protecting human life.").

periods.<sup>143</sup> But some states that fit this profile have interpreted their right to safety as a negative right, potentially limiting the right's ability to expand abortion access. In the context of welfare assistance, the Ohio Court of Appeals has held that its constitution protects "an inalienable right to *seek* and obtain happiness and safety without undue state interference" but stops short of placing an "obligation upon the state to *provide* that happiness and safety."<sup>144</sup> Even this more limited reading, which views the right to safety as a "restriction on the exercise of governmental powers,"<sup>145</sup> can still be used to further survivors' reproductive rights. Plaintiffs could argue that restrictive abortion laws infringe on their ability to independently protect their safety by prohibiting them from accessing abortion altogether, restricting access to certain types of abortion procedures (like medication abortion), or forcing them to involve an abusive parent in their reproductive decisions. In states that have recognized a government responsibility for ensuring citizens' safety (or have not expressly ruled it out), plaintiffs could take the argument even further by asserting that the state must take affirmative steps to protect survivors from reproductive coercion and other risks associated with pregnancy, for example by expanding public funding for abortions or increasing supportive resources related to reproductive coercion.

This Part argues that, while the right to safety has been underutilized in reproductive rights cases to date, it is uniquely well positioned to advance the needs of domestic violence survivors living under abortion restrictions and address the shortcomings of other, more common legal theories. The right to safety resolves the tension inherent in relying on privacy by recognizing the life-and-death stakes of survivors' reproductive rights.<sup>146</sup> Safety rights also avoid the pitfalls of state ERA arguments by allowing for factors other than sex to be considered, especially age. Finally, the right to safety sidesteps liberty arguments'

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143. A few of the states with abortion restrictions despite having a right to safety include Idaho, Kentucky, and West Virginia, which have completely banned abortion; Iowa, which bans abortion after six weeks; North Dakota, which requires that both parents consent to a minor's abortion; and Ohio, which imposes a twenty-four-hour waiting period. See *Abortion Laws by State*, supra note 8; see also Idaho Const. art. I, § 1; Iowa Const. art. I, § 1; Ky. Const. § 1; N.D. Const. art. I, § 1; Ohio Const. art. I, § 1; W. Va. Const. art. III, § 1.

144. *Daugherty v. Wallace*, 621 N.E.2d 1374, 1379 (Ohio Ct. App. 1993).

145. *Id.*

146. Many forms of reproductive coercion also implicate survivors' privacy rights, creating opportunities for advocates to bring claims rooted in both privacy and safety. For example, an abuser may open a shipment of abortion pills without permission, find out their partner was searching for abortion clinics online through checking their browser history, or discover they visited a clinic by tracking their car. See, e.g., Kashmir Hill, *Your Car Is Tracking You. Abusive Partners May Be, Too.*, N.Y. Times (Dec. 31, 2023), <https://www.nytimes.com/2023/12/31/technology/car-trackers-gps-abuse.html> (on file with the *Columbia Law Review*) (describing how abusers are using cars' remote tracking features to stalk their partners).

shortcomings by recognizing the interplay of state and interpersonal violence in survivors' experiences of abortion restrictions. This Part uplifts survivors' experiences with these policies by developing right-to-safety challenges against two of the most problematic kinds of abortion restrictions: early gestational limits with vague exceptions and parental involvement laws.

A. *Extreme Gestational Bans With Unworkable Exceptions*

The starkest policy shift post-*Dobbs* has been the number of states that have either completely banned abortion or passed early gestational limits. When *Dobbs* was decided, abortion automatically became illegal in thirteen states that had enacted “trigger laws,”<sup>147</sup> while many other states adopted bans that would have been illegal under *Roe*'s viability standard.<sup>148</sup> As the legal landscape constantly shifts, realities on the ground can solidify abortion deserts, leaving care out of reach even when an abortion ban is later invalidated. For example, a North Dakota judge's decision to strike down the state's abortion ban in September 2024 had little practical effect—even before the ban was eventually reinstated on procedural grounds<sup>149</sup>—because there were no abortion clinics left in the state.<sup>150</sup>

The proliferation of bans post-*Dobbs* caused the proportion of patients having to travel out of state for abortion care to skyrocket: In 2023, 20% of abortion patients had to travel to another state, compared with just 10% in 2020.<sup>151</sup> The prevalence of interstate travel not only

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147. See Jesus Jiménez, What Is a Trigger Law? And Which States Have Them?, *N.Y. Times* (May 4, 2022), <https://www.nytimes.com/2022/05/04/us/abortion-trigger-laws.html> (on file with the *Columbia Law Review*) (describing trigger laws in Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Wyoming).

148. See Abortion Laws by State, *supra* note 8 (showing that, in addition to the thirteen states with total bans, four states ban abortion after six weeks, two states after twelve weeks, three states after fifteen weeks, and one state after eighteen weeks).

149. *Access Indep. Health Servs., Inc. v. Wrigley*, 28 N.W.3d 850, 850–51 (N.D. 2025) (per curiam).

150. See Carter Sherman, Judge Strikes Down North Dakota's Ban on Abortion, *The Guardian* (Sep. 12, 2024), <https://www.theguardian.com/us-news/2024/sep/12/north-dakota-abortion-ban-judge-strikes-down> [<https://perma.cc/8FUQ-WTVQ>] (noting that Red River Women's Clinic, which was the only clinic remaining in North Dakota when the lawsuit was filed in 2022, had relocated to Minnesota before the injunction was issued). But the decision had the potential to help patients who needed life- or health-saving abortions get care in hospitals. See *id.* (“Although the North Dakota ban technically allowed abortions in some emergencies, its wording was so sweeping that doctors in the state frequently felt like they could not help patients unless they got dangerously sick . . .”).

151. Kimya Forouzan, Amy Friedrich-Karnik & Isaac Maddow-Zimet, The High Toll of US Abortion Bans: Nearly One in Five Patients Now Traveling Out of State for Abortion Care, *Guttmacher Inst.* (Dec. 7, 2023), <https://www.guttmacher.org/2023/12/high-toll-us-abortion-bans-nearly-one-five-patients-now-traveling-out-state-abortion-care>

burdens patients who must leave their home state<sup>152</sup> but also causes delays for residents of the states to which people travel.<sup>153</sup> Clinics in key regional access states are under strain as the number of clinics declines or holds steady even as the number of abortions performed in the state rises rapidly. In the year after *Dobbs*, Illinois abortion clinics saw a 191% increase in out-of-state patients.<sup>154</sup> In North Carolina, one clinic closed between 2020 and 2023, despite the number of abortions in the state spiking by 44%.<sup>155</sup> Even in states where abortion remains legal, the average distance to a clinic increased from twenty-five miles before *Dobbs* to eighty-six miles in April 2023.<sup>156</sup>

While early gestational limits have made it more difficult to access abortion across the board, limiting abortion to early pregnancy especially disadvantages domestic violence survivors, who, before *Dobbs*, made up a quarter of those having abortions just before their state's gestational

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[<https://perma.cc/8FXH-4RQR>]. Despite the COVID-19 pandemic, the 2020 figures are nearly identical to those from 2019, leading researchers to conclude that the “surge in travel has largely been driven by post-*Roe v. Wade* abortion bans and restrictions.” Id.

152. See Benjamin Rader, Ushma D. Upadhyay, Neil K.R. Sehgal, Ben Y. Reis, John S. Brownstein & Yulin Hswen, Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the *Dobbs v Jackson Women's Health* Decision, 328 JAMA 2041, 2044–45 (2022) (finding that after *Dobbs*, 33.3% of reproductive-aged females lived more than sixty minutes from an abortion facility, compared to just 14.6% pre-*Dobbs*, and that the average travel time to an abortion facility increased by 247.2 minutes in states with total or six-week bans).

153. See Caitlin Gilbert, Caroline Kitchener & Janice Kai Chen, How Florida's Abortion Law Is Affecting East Coast Abortion Clinics, Wash. Post (May 24, 2024), <https://www.washingtonpost.com/nation/2024/05/24/abortion-clinics-wait-time-florida-law/> (on file with the *Columbia Law Review*) (finding that “[w]ait times for abortion appointments have increased at approximately 30 percent of clinics across North Carolina, Virginia, Maryland and Washington, D.C., the areas closest to Florida where abortion remains legal after six weeks of pregnancy,” compared to before Florida enacted its six-week ban); Laura Ungar, It's Taking Longer to Get an Abortion in the US. Doctors Fear Riskier, More Complex Procedures, AP News, <https://apnews.com/article/abortion-care-wait-times-us-roe-dobbs-7b0a328bb34b0acb3d37e359a63712fc> [<https://perma.cc/HT39-DTDB>] (last updated Dec. 9, 2023) (reporting that, as of September 2023, “11 states had median appointment wait times of more than five business days and four states had waits of at least eight business days, not counting weekends or holidays”).

154. Mikaela H. Smith, Danielle Young, Hanz Dismer, Valla Diskin, Lee Hasselbacher, Katherine Rivlin, Danielle Bessett & Alison H. Norris, Clinic Adaptations and Changes in Abortion Use After *Dobbs* in Illinois, July 2021–June 2023, 116 Am. J. Pub. Health 359, 362 (2026).

155. Rachel K. Jones, Candace Gibson & Jesse Philbin, The Number of Brick-and-Mortar Abortion Clinics Drops, as US Abortion Rate Rises: New Data Underscore the Need for Policies that Support Providers, Guttmacher Inst. (June 2024), <https://www.guttmacher.org/report/abortion-clinics-united-states-2020-2024> [<https://perma.cc/9JYV-L7R2>].

156. Selena Simmons-Duffin & Shelly Cheng, How Many Miles Do You Have to Travel to Get Abortion Care? One Professor Maps It, NPR (June 21, 2023), <https://www.npr.org/sections/health-shots/2023/06/21/1183248911> [<https://perma.cc/9W3U-LQ8R>].

limit.<sup>157</sup> This section begins by discussing how survivors are disproportionately affected by gestational bans, and particularly by the absence of workable exceptions, before explaining how the right to safety could be used to challenge these bans outright.

1. *Disproportionate Harms to Survivors.* — Early gestational bans disproportionately burden survivors’ reproductive autonomy and safety. Survivors are hit especially hard by clinic closures because they are less likely to have the financial and personal autonomy necessary to travel. According to the National Domestic Violence Hotline, financial abuse—which includes restricting a partner’s access to bank accounts or income, monitoring spending, impeding their ability to work, and opening credit lines in their name without permission<sup>158</sup>—“has grown by an average of 13% annually” since 2016.<sup>159</sup> This lack of financial independence can leave survivors without the means to pay for childcare, transportation, and lodging, let alone the abortion procedure itself. Survivors who have access to a debit or credit card may struggle to keep an abortion private from a partner who is tracking their spending. Even absent financial abuse, there is a toxic feedback loop between domestic violence and poverty: Survivors are more likely to live in poverty,<sup>160</sup> but abuse also fuels economic precarity, including after a survivor has left the abusive relationship.<sup>161</sup> Survivors are therefore less likely than other pregnant people to have reliable, independent access to the economic resources necessary to travel to obtain an abortion.

*Dobbs’s* fallout has also revealed that most exceptions to abortion bans are effectively inoperative. While, in theory, even states with total abortion bans at least have an exception to prevent the death of the

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157. Diana Greene Foster, *The Turnaway Study* 78–79 (2020).

158. What Is Economic Abuse?, *Surviving Econ. Abuse*, <https://survivingeconomicabuse.org/what-is-economic-abuse> [<https://perma.cc/234Q-6PCQ>] (last visited Feb. 4, 2026).

159. Nat’l Domestic Violence Hotline, *COVID-19 Year in Review* (2021), <https://www.thehotline.org/wp-content/uploads/media/2021/12/One-Year-COVID19-Report.pdf> [<https://perma.cc/Z5MB-9F2F>].

160. See Amy E. Bonomi, Britton Trabert, Melissa L. Anderson, Mary A. Kernic & Victoria L. Holt, *Intimate Partner Violence and Neighborhood Income: A Longitudinal Analysis*, 20 *Violence Against Women* 42, 52 (2014) (discovering that “intimate partner violence rates were highest in the poorest neighborhoods”); Michelle N. Harris & Rebecca H. Konkel, *Safer or Endangered at Home?: An Examination of Neighborhood Effects on Family Violence Before, During, and After the COVID-19 Safer-at-Home Order*, 49 *Am. J. Crim. Just.* 842, 853 (2024) (“[E]ach one unit increase in the level of concentrated poverty within a given block group was associated with . . . 18 times more family violence incidents.”).

161. Eldin Fahmy, Emma Williamson & Christina Pantazis, *Joseph Rowntree Found., Evidence and Policy Review: Domestic Violence and Poverty* 11 (2016), [https://research-information.bris.ac.uk/ws/portalfiles/portal/80376377/JRF\\_DV\\_POVERTY\\_REPORT\\_FINAL\\_COPY\\_.pdf](https://research-information.bris.ac.uk/ws/portalfiles/portal/80376377/JRF_DV_POVERTY_REPORT_FINAL_COPY_.pdf) [<https://perma.cc/WP9L-Y8VM>] (“[E]conomic insecurity . . . can also trap people in abusive relationships[] and levy a significant financial penalty on those escaping partner violence and abuse.”).

pregnant person, and many others have exceptions to preserve the pregnant person's health,<sup>162</sup> in practice, pregnant people experiencing medical emergencies are unable to access care in these states. In Idaho, where the total abortion ban contains an exception to save the pregnant person's life, people with life-threatening conditions are "transferred out of state unless they are at imminent risk of death," delaying care with disastrous results for those "who are not stable enough to transfer" but are not yet sick enough to receive an abortion in Idaho "because it is not yet needed to prevent the patient's death."<sup>163</sup> Across the country, from Texas, to Tennessee, to Oklahoma, to Florida, to Iowa, patients experiencing medical emergencies are unable to access care despite the presence of a health or life exception because of vague statutory language and doctors' fears of professional or criminal consequences.<sup>164</sup>

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162. See Mabel Felix, Laurie Sobel & Alina Salganicoff, A Review of Exceptions in State Abortion Bans: Implications for the Provision of Abortion Services, KFF, <https://www.kff.org/womens-health-policy/issue-brief/a-review-of-exceptions-in-state-abortion-bans-implications-for-the-provision-of-abortion-services/> [https://perma.cc/KQ4L-WRNC] (last updated June 6, 2024) (listing twenty states with a life exception to their abortion bans, of which six do not have a health exception). While Texas's abortion ban technically includes a health exception, the Texas Supreme Court's decision in *State v. Zurawski* conflates the life and health exceptions by applying the health exception to only "life-threatening physical condition[s]." See 690 S.W.3d 644, 664 (Tex. 2024) ("The statute requires that the mother have a 'life-threatening physical condition.' 'Life-threatening' means 'capable of causing death [or] potentially fatal.'" (alteration in original) (first quoting Tex. Health & Safety Code Ann. § 170A.002(b)(2) (2025); then quoting Life-Threatening, Merriam-Webster, <https://www.merriam-webster.com/dictionary/life-threatening> [https://perma.cc/9FHG-CMLR] (last visited Feb. 4, 2026))).

163. Brief of St. Luke's Health System as Amicus Curiae in Support of Respondent at 14–15, *Moyle v. United States*, 144 S. Ct. 2015 (2024) (per curiam) (Nos. 23-726, 23-727), 2024 WL 1190875.

164. See, e.g., Melissa Chan, Tennessee Court Weighs Challenge to Abortion Ban's Narrow Medical Exception, NBC News (Apr. 4, 2024), <https://www.nbcnews.com/news/us-news/tennessee-court-weighs-challenge-abortion-bans-narrow-medical-exception-rcna146416> [https://perma.cc/RAT5-VCBD] (reporting that doctors in Tennessee are hesitant to provide abortion care even in medical emergencies because "ambiguous and nonmedical [statutory] terminology leaves doctors uncertain about when they can render care without being prosecuted"); Jen Christensen, Amid Contradictory Laws, Hospitals in One State Were Unable to Explain Policies on Emergency Abortion Care, Study Finds, CNN (Apr. 25, 2023), <https://www.cnn.com/2023/04/25/health/emergency-abortion-confusion-oklahoma> (on file with the *Columbia Law Review*) ("65%—22 of the 34 hospitals—were unable to provide information about policies, procedures or the support provided to doctors when it is clinically necessary to terminate a pregnancy to save the life of a pregnant patient."); Lauren Mascarenhas, Texas Abortion Law's Wording Is Causing Dangerous Confusion Over Emergency Medical Exceptions, Critics Say, CNN, <https://www.cnn.com/2023/12/15/us/texas-abortion-ban-emergency-medical-exception> (on file with the *Columbia Law Review*) (last updated Dec. 15, 2023) ("The fact that all of the 34 abortions recorded in Texas . . . were performed in hospitals, as opposed to less than 1% in previous years, suggests that exceptions are being made only in the most dire cases, when a pregnant person is dying or in imminent risk of death . . ."); Regan McCarthy, Why Providers Say Abortion Ban Exceptions Continue to Cause Confusion, NPR (June 14, 2024), <https://www.npr.org/2024/06/06/nx-s1-4995739>

Survivors bear the brunt of these unworkable exceptions because they are more likely to experience the sorts of medical emergencies that may necessitate a health- or life-saving abortion.<sup>165</sup>

Survivors are also disproportionately harmed by the inconsistent application of rape and incest exceptions, which anti-abortion activists have fought against since *Dobbs*.<sup>166</sup> Nearly three million American women have experienced rape-related pregnancy, and women who are raped by a current or former intimate partner are five times more likely to become pregnant from rape compared to people who are raped by a stranger or an acquaintance.<sup>167</sup> Over half of rape-related pregnancies also involve at least one form of reproductive coercion.<sup>168</sup> The availability of rape and incest exceptions is one of the most variable aspects of the post-*Dobbs* landscape: Of the twenty-one states with total bans or early gestational limits, only eleven have rape and incest exceptions.<sup>169</sup> Just five of the fourteen states with total abortion bans have rape and incest exceptions,

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[<https://perma.cc/KNS7-XLDW>] (describing how Florida physicians are struggling to decide when it is appropriate to provide abortion in medical emergencies beyond the three conditions enumerated in the state's regulations); Erin Murphy, Doctors Warn Exceptions to Iowa's New Abortion Law Impractical, *The Gazette* (July 21, 2024), <https://www.thegazette.com/state-government/doctors-warn-exceptions-to-iowas-new-abortion-law-impractical/> [<https://perma.cc/CM3Y-7FP4>] (conveying doctors' concerns that the health and life exceptions in Iowa's new abortion ban "will be difficult, if not impossible, to apply in real-life medical emergencies").

165. See *supra* section I.B.3.

166. See Kavitha Surana, Some Republicans Were Willing to Compromise on Abortion Ban Exceptions. Activists Made Sure They Didn't., *ProPublica* (Nov. 27, 2023), <https://www.propublica.org/article/abortion-ban-exceptions-trigger-laws-health-risks> [<https://perma.cc/D2RT-5HKE>] (discussing how anti-abortion groups have lobbied against adding rape and incest exceptions to abortion bans, including defeating an amendment to North Dakota's ban that would have allowed child rape victims to have abortions).

167. See Kathleen C. Basile, Sharon G. Smith, Yang Liu, Marcie-jo Kresnow, Amy M. Fasula, Leah Gilbert & Jieru Chen, Rape-Related Pregnancy and Association With Reproductive Coercion in the U.S., 55 *Am. J. Preventive Med.* 770, 772–73 (2018) ("Among rape victims who reported [rape-related pregnancy], more than three quarters (77.3%) reported that the perpetrator was a current or former [intimate partner].").

168. See *id.* at 773 (finding that 38.9% of survivors experiencing rape-related pregnancy had a partner who had "tried to get them pregnant when they did not want to" or "stop them from using birth control," compared to 12.4% of survivors who did not become pregnant); see also *id.* (reporting that 44% of survivors experiencing rape-related pregnancy had a partner who "refused to use a condom," compared to 16.1% of those who weren't impregnated).

169. Mabel Felix, Laurie Sobel & Alina Salganicoff, A Closer Look at Rape and Incest Exceptions in States With Abortion Bans and Early Gestational Restrictions, *KFF* (Aug. 7, 2024), <https://www.kff.org/policy-watch/rape-incest-exceptions-abortion-bans-restrictions/> [<https://perma.cc/F82Z-UM24>] [hereinafter Felix et al., Rape and Incest Exceptions].

all of which are limited to early in the first trimester.<sup>170</sup> Five of these states mandate that a sexual assault is reported to law enforcement, and three also require that the survivor give a copy of the police report to their physician.<sup>171</sup> Requiring law enforcement involvement significantly impairs survivors' ability to avail themselves of a rape or incest exception, as it is estimated that just under 24% of sexual assaults are reported to the police each year.<sup>172</sup>

The failure of rape and incest exceptions is borne out by the numbers. Only nine abortions were performed under Indiana's rape and incest exception in 2024, the first full year its total ban was in effect.<sup>173</sup> And while West Virginia reported twenty-three abortions between January 2023 and June 2024, none were provided under its rape and incest exception.<sup>174</sup> These exceptions' impracticality also leaves domestic violence survivors—who are significantly more likely to experience rape-related pregnancy than those who are not abused<sup>175</sup>—in the lurch. The dynamics of abusive relationships further impede survivors' ability to overcome the logistical hurdles created by early gestational limits, and the disproportionate likelihood that survivors would need to avail themselves of a practically unavailable health, life, or rape exception gives them a unique position from which to challenge these policies under the right to safety.

2. *Right-to-Safety Challenges.* — Up until now, many challenges to abortion ban exceptions have been aimed at broadening or clarifying the exceptions' scope, rather than arguing that the ban should be invalidated because the exceptions are meaningless.<sup>176</sup> While not all

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170. See *id.* (noting that Idaho's rape and incest exception only extends until fourteen weeks LMP, Indiana's to twelve weeks LMP, Mississippi's and North Dakota's to six weeks LMP, and West Virginia's to eight weeks LMP, or fourteen weeks LMP for minors).

171. *Id.*

172. Susannah N. Tapp & Emilie J. Coen, DOJ, Criminal Victimization, 2024, at 7 tbl. 4 (2025), <https://bjs.ojp.gov/document/cv24.pdf> [<https://perma.cc/9FY8-XHUP>]. Survivors often hesitate to report to the police out of fear of retaliation from the perpetrator (20%), not being believed by police (13%), or as a psychological coping mechanism to downplay the rape as "not important enough to report" (8%). Statistics: The Criminal Justice System, RAINN, <https://rainn.org/statistics/criminal-justice-system> (on file with the *Columbia Law Review*) (last updated Aug. 28, 2025).

173. Madelyn Hanes, First Full Year Under Indiana's Ban Reveals 146 Abortions Occurred in 2024, *Ind. Cap. Chron.* (May 14, 2025), <https://indianacapitalchronicle.com/briefs/first-full-year-under-indianas-ban-reveals-146-abortions-occurred-in-2024/> (on file with the *Columbia Law Review*).

174. Felix et al., Rape and Incest Exceptions, *supra* note 169.

175. See *supra* notes 167–168 and accompanying text.

176. See, e.g., Complaint for Declaratory Judgment and Injunctive Relief at 7, *Adkins v. State*, No. CV01-23-14744 (Idaho Dist. Ct. filed Sep. 11, 2023) (requesting a "declaratory judgment clarifying the scope of Idaho's Medical Exceptions"); Plaintiffs' Motion for Temporary Injunction at 1, *Blackmon v. State*, No. 23-1196-I (Tenn. Ch. Ct. filed Jan. 8, 2024) ("A declaratory judgment is necessary to give physicians the clarity they need to provide medically necessary abortion care to their patients without fear of imprisonment

states with extreme gestational limits have rights to safety, several do,<sup>177</sup> and the right could be used to mount a compelling challenge in those states.

First, advocates could argue that inoperable health and life exceptions endanger the safety of all people who can become pregnant, though, as discussed above, survivors shoulder a particularly high risk. A person is unsafe when they cannot promptly access emergency medical treatment due to the bureaucratic red tape and institutional risk aversion that vague exceptions fuel.<sup>178</sup> These risks are intensified when, as in Idaho, essential care is further delayed by the need to airlift patients out of state to avoid potential liability.<sup>179</sup> While domestic violence is a risk factor for suffering severe injuries or developing serious complications that may require a medically stabilizing abortion,<sup>180</sup> pregnancy is, across the board, a significantly greater risk to someone's safety than abortion.<sup>181</sup> The primary injury suffered when someone is denied a health- or life-saving abortion is not one to their decisional privacy interests or autonomy, but that their safety has been imperiled by the state—and, in the case of domestic violence survivors, by their abuser.

The right to safety can also be used to challenge abortion bans on the basis that unworkable rape or incest exceptions endanger survivors. When a domestic violence survivor is pregnant as the result of rape, abortion is a crucial tool they can use to restore their safety by mitigating existing harms and defending against further reproductive and sexual abuse. Over half of people who become pregnant because of rape are victims of reproductive abuse, and most states with rape or incest exceptions require that a survivor make a police report.<sup>182</sup> While rape survivors are generally hesitant to report to the police,<sup>183</sup> the dynamics of coercive control suggest that domestic violence survivors will struggle

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and loss of their medical licenses.”); Plaintiffs’ Original Petition for Declaratory Judgment and Application for Permanent Injunction ¶ 5, *Zurawski v. State*, 690 S.W.3d 644 (Tex. 2024) (No. D-1-GN-23-000968), 2023 WL 2403722 (asking that the court grant “a declaratory judgment clarifying the scope of Texas’s Emergent Medical Condition Exception to its abortion bans”).

177. See *supra* note 143 and accompanying text.

178. See *supra* note 164 and accompanying text.

179. See Julie Luchetta, *Idaho’s Biggest Hospital Says Emergency Flights for Pregnant Patients Up Sharply*, NPR (Apr. 26, 2024), <https://www.npr.org/2024/04/25/1246990306/more-emergency-flights-for-pregnant-patients-in-idaho> [<https://perma.cc/D5JG-ZAUS>] (noting that St. Luke’s Health System had to airlift six patients out of state for emergency abortions in the first three months after the U.S. Supreme Court lifted an injunction on Idaho’s ban on emergency abortions).

180. See *supra* sections I.B.1, I.B.3.

181. See Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics & Gynecology* 215, 216 (2012) (finding that the risk of death associated with carrying a pregnancy to term is fourteen times higher than the risk of abortion-related death).

182. See *supra* notes 167–171 and accompanying text.

183. See *supra* note 172 and accompanying text.

even more to meet the reporting requirement. Apologizing or promising to change are tactics that abusers use to manipulate survivors and keep them in a relationship,<sup>184</sup> and a survivor may not want to risk getting the perpetrator in trouble or disrupting family dynamics if they believe the abuse might stop.<sup>185</sup> Furthermore, reporting requirements may expose survivors to further violence, as abuse often escalates after law enforcement involvement.<sup>186</sup> Even if one abides by a negative-right conception of the right to safety, complete abortion bans or gestational limits with no workable exceptions deprive survivors of the ability to independently obtain a medical treatment that can be key to ensuring their short- and long-term safety.

### B. *Parental Involvement Laws*

While minors' access to abortion will suffer sharply under any kind of abortion restriction due to their lack of access to the money and independence needed to travel for an abortion,<sup>187</sup> even before *Dobbs* most states had already passed laws specifically targeting minors. Known as parental involvement laws, these laws require a minor to either provide notice to or get consent from one or both parents (or another legal guardian) before they can have an abortion.<sup>188</sup> As of April 2026, thirty-nine states or territories have parental involvement laws in effect,<sup>189</sup> with

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184. See Hannah Craig & Amanda Kippert, What Is the Cycle of Abuse?, Domestic Shelters, <https://www.domesticshelters.org/articles/identifying-abuse/what-is-the-cycle-of-abuse> [<https://perma.cc/72BY-KHNG>] (last updated Sep. 21, 2022) (describing how an abuser will often “apologize for their behavior, try to excuse it[,] . . . or blame it on the victim”).

185. Cf. Michael Planty, Lynn Langton, Christopher Krebs, Marcus Berzofsky & Hope Smiley-McDonald, DOJ, Female Victims of Sexual Violence, 1994–2010, at 7 (2016), <https://bjs.ojp.gov/content/pub/pdf/fvsv9410.pdf> [<https://perma.cc/TY7V-MQ4C>] (finding that 7% of victims didn't report their rape because they didn't want to get the perpetrator in trouble, while 20% didn't report because they feared reprisals from the perpetrator).

186. See Leigh Goodmark, Nat'l Domestic Violence Hotline, Law Enforcement Experience Report 8 (2022), [https://www.thehotline.org/wp-content/uploads/media/2022/09/2209-Hotline-LES\\_FINAL.pdf](https://www.thehotline.org/wp-content/uploads/media/2022/09/2209-Hotline-LES_FINAL.pdf) [<https://perma.cc/2RKJ-8J9D>] (reporting that 39% of survivors felt less safe after calling the police).

187. When Texas passed its six-week abortion ban in 2021, the state's abortion rate decreased by 45%, but abortions among adolescents declined by 66%. Lauren Ralph & Lee Hasselbacher, Adolescents and Abortion Restrictions: Disproportionate Burdens and Critical Warnings, 73 J. Adolescent Health 221, 221 (2023); see also Dana Goldstein & Ava Sasani, What New Abortion Bans Mean for the Youngest Patients, N.Y. Times (July 16, 2022), <https://www.nytimes.com/2022/07/16/us/abortion-bans-children.html> (on file with the *Columbia Law Review*) (last updated July 25, 2022) (sharing the story of an eleven-year-old girl who took her first flight from Texas to Colorado to receive an abortion).

188. Kimya Forouzan, Minors' Access to Abortion Care, Guttmacher Inst., <https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortion> [<https://perma.cc/C7LW-ZSN9>] (last updated Jan. 30, 2026).

189. Abortion Laws by State, *supra* note 8 (toggling the map to “In Effect” and “Parental Involvement”). Four additional states—Alaska, Minnesota, Montana, and New

ten having a notification requirement,<sup>190</sup> twenty requiring parental consent,<sup>191</sup> and nine mandating both notice and consent.<sup>192</sup> While the Supreme Court has held that parental involvement cannot be used to give a parent “an absolute, and possibly arbitrary, veto over”<sup>193</sup> a minor’s abortion decision, these laws are constitutional so long as the minor can circumvent parental involvement through an alternative procedure known as judicial bypass.<sup>194</sup>

Parental involvement laws also compound the effects of other kinds of abortion restrictions, including gestational limits, for young survivors. Before Illinois repealed its parental involvement law, young people pursuing judicial bypass waited an average of six days for their court hearing and another six days between their hearing and abortion appointment.<sup>195</sup> This wait can put people over the limit for when abortion medication is effective<sup>196</sup> and has increased the proportion of second trimester abortions among minors.<sup>197</sup> Given that 36% of pregnant

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Jersey—have parental notification laws that are currently enjoined. Id. (toggling the map to “Enjoined Laws” and “Parental Involvement”).

190. These include Colorado, Delaware, Iowa, Maryland, Nevada, New Hampshire, South Dakota, the U.S. Virgin Islands, West Virginia, and Wyoming. Id. (toggling to “Parental Notification Requirement” and subtracting the number of states that require both notice and consent).

191. These include Alabama, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Louisiana, Maine, Massachusetts, Michigan, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, and Wisconsin. See id. (toggling to “Parental Consent Requirement” and subtracting the number of states that require both notice and consent).

192. These include Florida, Guam, Kentucky, Mississippi, Missouri, Oklahoma, Tennessee, Utah, and Virginia. See id. (toggling to “Parental Notification and Consent Requirement” and then adding states whose notice and consent mandates appear on the map separately).

193. *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976).

194. *Bellotti v. Baird*, 443 U.S. 622, 643 (1979) (plurality opinion). Judicial bypass requires that the minor convince a judge that they are either “mature enough and well enough informed to make [their] abortion decision, in consultation with [their] physician, independently of [their] parents’ wishes” or that “even if [they are] not able to make the decision independently, the desired abortion would be in [their] best interests.” Id. at 643–44.

195. Lauren J. Ralph, Lorie Chaiten, Emily Werth, Sara Daniel, Claire D. Brindis & M. Antonia Biggs, *Reasons for and Logistical Burdens of Judicial Bypass for Abortion in Illinois*, 68 *J. Adolescent Health* 71, 74 (2021) [hereinafter Ralph et al., *Reasons for and Logistical Burdens of Judicial Bypass*]. The wait is even longer for those traveling from out of state. Id. (finding that out-of-state minors waited 10.6 days on average for their court hearing).

196. Margaret Wurth & Emily Werth, Hum. Rts. Watch & ACLU Ill., “The Only People It Really Affects Are the People It Hurts”: The Human Rights Consequences of Parental Notice of Abortion in Illinois 5 (2021), [https://www.hrw.org/sites/default/files/media\\_2021/03/us0321\\_web.pdf](https://www.hrw.org/sites/default/files/media_2021/03/us0321_web.pdf) [https://perma.cc/DCP8-TSD7].

197. Lauren J. Ralph, Erin King, Elise Belusa, Diana Greene Foster, Claire D. Brindis & M. Antonia Biggs, *The Impact of a Parental Notification Requirement on Illinois Minors’ Access to and Decision-Making Around Abortion*, 62 *J. Adolescent Health* 281,

minors do not discover their pregnancy until after six weeks' gestation,<sup>198</sup> further delays caused by judicial bypass can restrict what abortion methods are available, increase the cost of care, require further travel, and, in states with early gestational limits, bar a minor from legally accessing abortion in their state altogether.<sup>199</sup>

After *Dobbs*, two states—Idaho and Tennessee—passed laws criminalizing helping a minor travel to get an abortion out of state without parental consent, and a similar bill was introduced in Congress in January 2026.<sup>200</sup> While these so-called “abortion trafficking” laws portend troubling new consequences for young survivors, this section focuses on parental involvement laws, even though they predate *Dobbs*, for a few reasons. First, while the passage of abortion trafficking laws has made headlines, as of April 2026 there are no reported cases of people being prosecuted under these laws,<sup>201</sup> so there is little empirical data on how they are affecting minors' access to abortion. Second, only two states currently have abortion trafficking laws, but thirty-nine states or territories have a parental involvement law,<sup>202</sup> making it one of the most common kinds of abortion restrictions. Even many states that are generally considered supportive of abortion rights, including Colorado and Massachusetts, have parental involvement laws,<sup>203</sup> and 42% of female adolescents live in states that have parental involvement laws but lack total abortion bans.<sup>204</sup> And third, when combined with the fact that

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285 (2018) [hereinafter Ralph et al., *The Impact of a Parental Notification Requirement*] (finding that, after Illinois enacted a parental notification requirement, the proportion of second trimester abortions among minors increased by 3%).

198. Lauren J. Ralph, Diana Greene Foster, Rana Barar & Corinne H. Rocca, *Home Pregnancy Test Use and Timing of Pregnancy Confirmation Among People Seeking Health Care*, *Contraception*, Mar. 2022, at 10, 15 tbl. 4.

199. See Ralph et al., *The Impact of a Parental Notification Requirement*, supra note 197, at 286.

200. Ashley Suter, *New Bill Would Make Transporting Minor Across State Line for Abortion a Federal Offense*, News Channel 8 (Jan. 21, 2026), <https://www.wfla.com/news/florida/new-bill-would-make-transporting-minor-across-state-lines-for-abortion-a-federal-offense> (on file with the *Columbia Law Review*); Anna Claire Vollers, *Helping a Minor Travel for an Abortion? Some States Have Made It a Crime.*, *Stateline* (Aug. 23, 2024), <https://stateline.org/2024/08/23/helping-a-minor-travel-for-an-abortion-some-states-have-made-it-a-crime/> (on file with the *Columbia Law Review*) (explaining how similar bills have been introduced, but failed to pass, in Alabama, Mississippi, and Oklahoma).

201. An Idaho mother and her eighteen-year-old son were charged with transporting the son's fifteen-year-old girlfriend to Oregon to have an abortion, but prosecutors charged them with second-degree kidnapping, not with abortion trafficking. Carter Sherman, *Idaho Mother and Son Charged With Kidnapping Over Out-of-State Abortion*, *The Guardian* (Nov. 1, 2023), <https://www.theguardian.com/us-news/2023/nov/01/idaho-mother-son-kidnap-charges-abortion> [https://perma.cc/4L6L-NS39].

202. See supra notes 187–192 and accompanying text.

203. See supra notes 190–191.

204. Laura D. Lindberg, Julie Maslowsky & Paz Baum, *Implications of Abortion Restrictions for Adolescents*, 179 *JAMA Pediatrics* 675, 675 (2025).

minors are more likely to discover pregnancy later, the delays associated with judicial bypass and states' failures to adopt exceptions tailored to young survivors<sup>205</sup> mean that parental involvement laws result in a de facto abortion ban for minors who do not want to—or cannot—involve their parents.

1. *Disproportionate Harms to Survivors.* — Pregnant adolescents are disproportionately affected by the intersection of domestic violence and reproductive rights, as they could experience abuse or reproductive coercion in a romantic or family relationship, or both. Teens in abusive romantic relationships are four to six times more likely to get pregnant than their peers.<sup>206</sup> Adolescents are also more likely than adults to become pregnant as a result of birth control sabotage or rape.<sup>207</sup> Birth control sabotage is especially prevalent among adolescents who experience some other form of domestic violence from their partner.<sup>208</sup> Since adolescents in abusive relationships are more likely to get pregnant and experience reproductive coercion, they bear the brunt of parental involvement laws' onerous requirements.

Parental involvement laws also disproportionately harm young survivors of family violence. Before Illinois enacted its parental notification law, 85% of minors were already involving a parent in their abortion decision,<sup>209</sup> with younger adolescents being the most likely to do so.<sup>210</sup> These high rates of voluntary parental involvement suggest that youth who wish to make their decision independently have good reasons for doing so. Laws that force parental involvement leave young survivors who fear the initiation or recurrence of physical, emotional, or reproductive abuse to navigate the judicial bypass process. Half of those in judicial bypass proceedings were afraid that their parents would force

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205. See Surana, *supra* note 166 (discussing multiple states' failures to enact exceptions for child rape survivors).

206. Ambra Born, *Relationship Violence and Teenage Parents*, 11 *J. Infant Child & Adolescent Psychotherapy* 368, 368 (2012).

207. See Ctr. for Impact Rsch., *Domestic Violence and Birth Control Sabotage: A Report From the Teen Parent Project 18* (2000), <https://www.issuelab.org/resources/363/363.pdf> [<https://perma.cc/7V3U-U66S>] (describing how over half of adolescent mothers reported birth control sabotage); Melissa M. Holmes, Heidi S. Resnick, Dean G. Kilpatrick & Connie L. Best, *Rape-Related Pregnancy: Estimates and Descriptive Characteristics From a National Sample of Women*, 175 *Am. J. Obstetrics & Gynecology* 320, 322 (1996) (reporting that 21% of rape-related pregnancies occurred among youths twelve to fifteen years old, and 27% among sixteen and seventeen year olds).

208. See Ctr. for Impact Rsch., *supra* note 207, at 19 (“[O]f those young women reporting domestic violence at the hands of their boyfriends, 66% experience some form of birth control sabotage from them as well.”).

209. Wurth & Werth, *supra* note 196, at 1.

210. See Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 *Fam. Planning Persps.* 196, 200 *tbl. 3* (1992) (finding that 90% of minors aged fourteen or younger involved at least one parent in their abortion decision, compared with 74% of fifteen-year-olds, 59% of sixteen-year-olds, and 51% of seventeen-year-olds).

them to continue the pregnancy, 41% feared they would be kicked out of their family home or cut off financially, and 13% anticipated physical or emotional abuse.<sup>211</sup> These fears have been borne out by experience: The parents of one girl who wanted an abortion forced her to continue her pregnancy by taking away her car keys, blockading her from leaving the home, and threatening to report her to the police as a runaway if she left to have an abortion.<sup>212</sup> Forcing someone to continue an unwanted pregnancy is a paradigmatic form of reproductive coercion,<sup>213</sup> but in this case it is being perpetrated by the minor's parents rather than a romantic partner.

Finally, parental involvement laws place a heavy burden on survivors of childhood sexual abuse (CSA). Nearly half of CSA survivors do not disclose their abuse until adulthood, and 45% experience intrafamilial CSA in which the perpetrator is a parent, step-parent, sibling, or extended family member living with the survivor.<sup>214</sup> A child notifying their parent that they want an abortion would, understandably, spark questions about how the child became pregnant, and CSA survivors may wish to avoid exposing the abuse by seeking an abortion independently.<sup>215</sup> But the judicial bypass process would also require the child to answer prying questions about their health, why they do not want to parent, or why they are not choosing adoption, the answers to which could also reveal the abuse they are facing.<sup>216</sup> CSA survivors have no good options under parental involvement laws.

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211. Ralph et al., *Reasons for and Logistical Burdens of Judicial Bypass*, supra note 195, at 74; see also Wurth & Werth, supra note 196, at 26 (“One social worker who regularly counsels pregnant young people . . . said the reason most young people she encountered chose judicial bypass was because ‘their parents are religious and would never accept them getting an abortion.’” (quoting a social worker)); Kate Coleman-Minahan, Amanda Jean Stevenson, Emily Obront & Susan Hays, *Young Women’s Experiences Obtaining Judicial Bypass for Abortion in Texas*, 64 *J. Adolescent Health* 20, 21–22 (2019) (finding that the risk of physical or emotional abuse was also a primary motivator for teens pursuing judicial bypass in Texas).

212. Wurth & Werth, supra note 196, at 41–42.

213. See supra notes 40–42 and accompanying text.

214. Delphine Collin-Vézina, Mireille De La Sablonnière-Griffin, Andrea M. Palmer & Lisa Milne, *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse*, *Child Abuse & Neglect*, May 2015, at 123, 127–28.

215. See Noémie Allard-Gaudreau, Sebastien Poirier & Mireille Cyr, *Factors Associated With Delayed Disclosure of Child Sexual Abuse: A Focus on the Victim’s Having Been Led to Perform Sexual Acts on the Perpetrator*, *Child Abuse & Neglect*, Jan. 2024, at 1, 2 (finding that children who have been sexually abused by a family member do not come forward because of threats, a sense of loyalty toward or desire to protect the perpetrator, or a fear that doing so would negatively affect family dynamics). This dynamic is compounded when there is another form of abuse in the home—like domestic violence by one parent against the other—because it creates a sense of constant danger and tension. See Collin-Vézina et al., supra note 214, at 129.

216. See Wurth & Werth, supra note 196, at 50–51 (describing the invasive questioning in judicial bypass hearings); Coleman-Minahan et al., supra note 211, at 23

2. *Right-to-Safety Challenges.* — The plethora of challenges young survivors face under parental involvement laws presents opportunities for arguments utilizing both positive and negative conceptions of the right to safety. These challenges cannot be solved with existing privacy, equality, or liberty provisions because minors' rights to privacy and autonomy are more limited than those of adults<sup>217</sup> and state ERAs are focused on gender, whereas parental involvement laws target people based on age.<sup>218</sup> Pregnant adolescents are more likely to experience severe pregnancy complications, including hypertensive disorders and eclampsia, than pregnant adults,<sup>219</sup> with younger adolescents being the most likely to face adverse health consequences.<sup>220</sup> The conclusive evidence on the negative health effects of teen pregnancy is bolstered by the American Academy of Pediatrics' conclusion that "most minors 14 to 17 years of age are as competent as adults to provide consent to abortion, are able to understand the risks and benefits of the options, and are able to make voluntary, rational, and independent decisions."<sup>221</sup> When denied an abortion, adolescents may attempt to induce an abortion through dangerous physical methods like physical force, ingesting large amounts of household cleaners, or starvation,<sup>222</sup> making the safety risks of cutting

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(relaying the stigmatizing comments Texas teens faced from guardians ad litem and judges in the judicial bypass system).

217. See, e.g., *Hope Clinic for Women, Ltd. v. Flores*, 991 N.E.2d 745, 761–62 (Ill. 2013) (holding that Illinois's parental notification law did not unreasonably intrude on minors' privacy because they "often lack the maturity and experience to make important decisions on their own").

218. See, e.g., *id.* at 771 ("[W]e fail to see how the Act creates a sex-based classification . . . . The discrimination which is alleged is between different classes of persons of the same gender.").

219. Yael Eliner, Moti Gulersen, Amita Kasar, Erez Lenchner, Amos Grünebaum, Frank A. Chervenak & Eran Bornstein, *Maternal and Neonatal Complications in Teen Pregnancies: A Comprehensive Study of 661,062 Patients*, 70 *J. Adolescent Health* 922, 924–25 (2022).

220. See Beth L. Pineles, Anthony D. Harris & Katherine E. Goodman, *Adverse Maternal and Delivery Outcomes in Children and Very Young (Age ≤13 Years) US Adolescents Compared With Older Adolescents and Adults*, 328 *JAMA* 1766, 1767 (2022) (finding that 18.5% of pregnant ten- to thirteen-year-olds had preeclampsia compared to 16.2% of fourteen- to seventeen-year-olds and 15.7% of eighteen- and nineteen-year-olds); see also 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> (on file with the *Columbia Law Review*) ("The critical issue is that the pelvis of a child is too small to allow passage of even a small fetus . . . [resulting in] 'long labor[] [or] obstructed labor;' . . . sometimes causing pelvic inflammatory disease and the rupture of tissue between the vagina and the bladder and rectum . . . ." (quoting Ashok Dyalchand, Dir., Inst. of Health Mgmt. Pachod)).

221. *Comm. on Adolescence*, *Am. Acad. of Pediatrics, The Adolescent's Right to Confidential Care When Considering Abortion*, *Pediatrics*, Feb. 2017, at 1, 3.

222. Lauren Ralph, M. Antonia Biggs & Katherine Ehrenreich, *A Qualitative Analysis of Young People's Experiences With Self-Managed Abortion*, 74 *J. Adolescent Health* S14, S14 (Supp. 2024) (reporting that adolescents turn to physically dangerous methods of self-

off access to abortion especially acute. While advocates of parental involvement laws claim that these laws protect young people,<sup>223</sup> all they do is needlessly risk the health and safety of young survivors who are more than capable of deciding for themselves.

Parental involvement laws also limit minors' ability to reclaim their safety by countering reproductive coercion and other forms of abuse. Fear of being forced to continue an unwanted pregnancy is the most common reason minors do not involve their parents in their abortion decision, and having to explain a pregnancy to parents is particularly daunting to CSA survivors.<sup>224</sup> Given the high proportion of teenage pregnancies that result from sexual coercion or assault, advocates can also argue that, for adolescents in abusive romantic relationships, the ability to independently choose an abortion is closely tied to the longevity of that relationship, with those who carry to term being more likely to remain with the abuser in the long-run, a devastating prospect for young people at such a pivotal point in their lives.<sup>225</sup>

Advocates can use these negative outcomes to mount arguments that reflect negative- and positive-right applications of the right to safety. Utilizing a negative rights framework, advocates could argue that parental involvement laws limit pregnant adolescents' ability to independently preserve their safety by avoiding reproductive coercion and other kinds of abuse, contrary to the medical consensus about minors' decisionmaking capacity.<sup>226</sup> To take things a step further, litigators can advance a positive vision of the right to safety and argue not only that parental involvement laws should be invalidated but that the state must affirmatively support young survivors of reproductive coercion, whether that be through increased public funding, better sex education that discusses reproductive coercion and abuse, or expanding teens' ability to independently petition for protective orders.

#### CONCLUSION

As America's abortion landscape continues to evolve, survivors of reproductive coercion face an uncertain future. While many states are enacting new abortion restrictions, others are enshrining new protections for reproductive rights in their state constitutions, though

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managed abortion when unable to access abortion in a medical setting, while young adults do not attempt such methods).

223. Rachel Rebouché, *Parental Involvement Laws and New Governance*, 34 *Harv. J.L. & Gender* 175, 176 (2011) ("The stated objectives of parental involvement laws are to protect the health and well-being of minors and to encourage dialogue between parents and adolescents about pregnancy options.").

224. See *supra* notes 211, 214–215 and accompanying text.

225. See *supra* section I.B.4.

226. See *supra* note 221 and accompanying text.

those measures do not always immediately expand access.<sup>227</sup> In these unprecedented times, survivors of reproductive coercion like Evie and Gabriella are depending on advocates to develop bold new approaches to advance their reproductive rights.

This Note demonstrates that, in a post-*Dobbs* America, advocates must confront reproductive abuse head on. Survivors' unique experiences of abortion restrictions not only underscore the life-and-death stakes of these laws but also demonstrate how restrictions enable domestic abuse, increasing both the immediate and long-term threats to survivors' safety. Using the right to safety to challenge abortion restrictions will uplift survivors' stories, giving a human face to the devastation wrought by abortion bans while emphasizing the connection between public and private violence.

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227. For example, Missouri voters passed an abortion rights amendment in the November 2024 election, but Planned Parenthood still needed to sue to overturn the state's existing abortion ban. Sarah Fentem, *Abortions Still Aren't Available in Missouri, Even Though Voters Legalized It. What Happens Now?*, KCUR (Jan. 3, 2025), <https://www.kcur.org/health/2025-01-03/abortion-clinics-missouri-access-amendment-3> [<https://perma.cc/Z2M7-XGC8>]. The ban was lifted, but the judge left several onerous regulations of abortion facilities in place, meaning that clinics are still practically unable to provide abortions. *Id.* In January 2026, the trial in Planned Parenthood's constitutional challenge to the state's abortion restrictions finally concluded, and Missourians await the judge's decision. Anna Spoerre, Kelcie Moseley-Morris & Kevin Hardy, *From Waiting Periods to Insurance Mandates: Missouri Abortion Laws Under Review*, Mo. Indep. (Jan. 28, 2026), <https://missouriindependent.com/2026/01/28/missouri-abortion-judge-weighs-constitutionality-trap-laws-trial-amendment/> (on file with the *Columbia Law Review*).