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Including Disabled People in the Battle to Protect Abortion Rights: A Call-to-Action

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ABSTRACT

The battle to protect abortion rights in the United States has not been this fierce in fifty years. From the U.S. Supreme Court's recent *Dobbs v. Jackson Women's Health Organization* decision to a precipitously growing number of states passing draconian laws that drastically limit—and in some states, entirely ban—access to safe and legal abortion services, reproductive freedom is under siege at every turn. The current assault on reproductive freedom has had devastating consequences for all people, but most acutely for historically marginalized communities, including people with disabilities. Critically, this attack most adversely affects people who live at the intersection of disability and other marginalized identities or statuses. Nonetheless, when disability is invoked in discourse concerning abortion, it is typically done to either support or oppose abortions based on fetal disability diagnoses. By framing disability and abortion only in the context of disability-selective abortions, activists, scholars, legal professionals, and policymakers fail to recognize that it is actual disabled people—not hypothetical fetuses with disability diagnoses—who are harmed by abortion restrictions. Indeed, disabled people disproportionately experience pervasive and persistent disadvantages that increase their need for abortion services. They also experience considerable structural, legal, and institutional barriers that already put access to safe and legal abortion out of reach for many.

In response, the Article proposes a blueprint to help activists, scholars, legal professionals, and policymakers as they imagine the next steps in the battle to protect abortion rights in a way that fully includes people with disabilities. First, the Article situates the current battle to protect abortion rights within the social and institutional contexts that propagate reproductive oppression of people with disabilities by examining how reproduction has been weaponized over time to subjugate disabled people as well as presenting contemporary examples of such injustices. Thereafter, it explores disabled people's unique needs for abortion services and the myriad ways they are disproportionately and adversely affected by restrictions on abortion rights. Next, the Article presents disability reproductive justice, a jurisprudential and legislative framework, and its application to the fight for abortion rights. Finally, drawing from disability reproductive justice, the Article suggests normative and transformative legal and policy solutions for challenging the current assault on abortion rights and its impact on disabled people.

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TABLE OF CONTENTS

INTRODUCTION

"The right to decide what happens to our bodies is a fundamental principle in the disability community, and with good reason." [1]

Two decades ago, Aimee, a woman with a psychiatric disability, found herself in a difficult situation.[2] She was pregnant and had been experiencing manic and depressive cycles for many years but had not yet been diagnosed with bipolar disorder.[3] Aware that it would be difficult to raise a child while her psychiatric disability was untreated, Aimee chose to have an abortion.[4] Subsequently, Aimee sought mental health care and tried different medications until she found one that worked for her symptoms.[5] While the process of finding an effective regimen was "long" and "arduous," having an abortion enabled her to get the care she needed.[6] Eventually, Aimee graduated college, found a career she loves, married, and now has two children.[7] Yet, Aimee understands that without her abortion, none of this would have been possible.[8]

Last year, Samantha had a similarly unintended and dangerous pregnancy.[9] The excruciating menstrual cramps brought on by her disability, fibromyalgia, caused her intrauterine device (IUD) to be displaced.[10] By the time Samantha found out she was pregnant, she was about five weeks along, and her IUD was embedded in her uterus.[11] Unfortunately, the IUD's displacement made a medication abortion impossible, and many abortion providers could not treat her because of these medical complications.[12] Ultimately, Samantha visited three

1. Rebecca Cokley, *The Anti-Abortion Bill You Aren't Hearing About*, REWIRE NEWS GROUP (May 20, 2019), https://rewirenewsgroup.com/article/2019/05/20/the-anti-abortion-bill-you-arent-hearing-about [https://perma.cc/FH8A-JFD8].
2. *I Had Undiagnosed Bipolar Disorder When I Got Pregnant—My Abortion Saved My Life*, PEOPLE (Mar. 4, 2020), https://people.com/health/my-abortion-story-bipolar-disorder [https://perma.cc/3Q4T-TZRM].
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. Samantha Chavarria, *SB 8 Is a Reminder that Abortion Is a Disability Issue*, BITCH MEDIA (Sept. 17, 2021), https://www.bitchmedia.org/article/SB-8/abortion-is-a-disability-issue [https://perma.cc/RRT2-FZ3U].
10. *Id.*
11. *Id.*
12. *Id.*

providers before finding one equipped to perform an abortion on her, costing her $800.[13] The difficulty of finding an abortion provider who could treat her—coupled with barriers related to costs, time, and her disability—meant it was an entire month before she could have an abortion.[14] While Samantha eventually had the crucial procedure, Texas's new six-week abortion ban, Senate Bill 8 (S.B. 8), almost prevented her from doing so.[15] Had it taken three weeks longer to find a provider equipped to perform the procedure, she would not have been able to go through with the abortion. By that time, the U.S. Supreme Court declined to rule on S.B. 8, thereby allowing it to go into effect.[16]

As Aimee and Samantha's experiences illustrate, access to abortion services is crucial for many disabled people.[17] Yet when disability is invoked in discourse concerning abortion, it is typically done to either support or oppose abortions based on fetal disability diagnoses.[18] As Professors Sujatha Jesudason and Julia

13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. Importantly, while abortion services are typically framed as being central to women's lives, transgender, nonbinary, and gender non-conforming people also need comprehensive reproductive health services and information, including abortion services. *See* Reprod. Health Servs. v. Strange, 3 F.4th 1240, 1246 n.2 (11th Cir. 2021) ("[N]ot all persons who may become pregnant identify as female."); *see also* Heidi Moseson et al., *Abortion Experiences and Preferences of Transgender, Nonbinary, and Gender-Expansive People in the United States*, AM. J. OBSTETRICS & GYNECOLOGY 1.e1, 1.e3–1.e6 (2021) (reporting findings from a study examining the abortion experiences and preferences of transgender, nonbinary, and gender-expansive people in the United States); THE AMERICAN COLLEGE OF OBSTETRICIANS & GYNECOLOGISTS, COMMITTEE OPINION NUMBER 815: INCREASING ACCESS TO ABORTION (2020), https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2020/12/increasing-access-to-abortion.pdf [https://perma.cc/GKJ7-T2ZA] ("[P]eople of all genders have sexual and reproductive health needs, including women, transgender people, nonbinary people, and those who are otherwise gender-diverse."). Accordingly, the Article uses gender-neutral language whenever possible; the Article, however, uses the terms "woman" or "women" in some instances, where that terminology is specific to the research or cited source.
18. Samuel R. Bagenstos, *Disability and Reproductive Justice*, 14 HARV. L. & POL'Y REV. 273 (2020); Michelle Jarman, *Relations of Abortion: Crip Approaches to Reproductive Justice*, 27 FEMINIST FORMATIONS 46, 47 (2015); *see also* Robyn Powell, *Ohio's Dangerous Abortion Ban Pits Disability Rights Against Reproductive Rights*, REWIRE NEWS GROUP (Feb. 8, 2018), https://rewirenewsgroup.com/article/2018/02/08/ohios-dangerous-abortion-ban-pits-disability-rights-reproductive-rights [https://perma.cc/VNU5-SSKD]; s.e. smith, *Are Abortion Bans on the Basis of Disability Really in the Interest of Disability Rights?*, ROOTED IN RIGHTS (Jan. 18, 2018), https://rootedinrights.org/are-abortion-bans-basis-disability-in-interest-of-disability-rights [https://perma.cc/WF59-TMKE]; Sarah McCammon, *Down Syndrome Families Divided Over Abortion Ban*, NPR (Dec. 13, 2017), https://www.npr.org/2017/12/13/570173685/down-syndrome-families-divided-over-abortion-ban [https://perma.cc/KBT6-5SNM].

Epstein explain, the abortion rights movement often "portray[s] disability as a tragic state that justifies abortion—even for wanted pregnancies."[19] Conversely, the antiabortion movement routinely invokes the country's ugly history of eugenics to "proclaim [its] value for all life, including individuals with and without disabilities."[20] These longstanding tensions reached the Supreme Court in 2019 in Justice Clarence Thomas's concurring opinion in *Box v. Planned Parenthood of Indiana and Kentucky, Inc.*[21] Specifically, Justice Thomas—mirroring the antiabortion movement's messaging about eugenics laws that prohibit abortions based on a fetus's race, sex, or disability diagnosis—professed that trait-selective abortion bans advance the state's "compelling interest in preventing abortion from becoming a tool of modern-day eugenics."[22] Critically, by framing disability and abortion only in the context of trait-selective abortions, activists, scholars, legal professionals, and policymakers fail to recognize that it is actual disabled people[23]—not hypothetical fetuses with disability diagnoses—who are harmed by abortion restrictions.

The future of reproductive rights in the United States has not been this bleak in nearly half a century. First, the Supreme Court's recent *Dobbs v. Jackson Women's Health Organization*[24] decision, which overturned *Roe v. Wade*[25] and the nearly fifty years of legal precedent that the watershed decision established,[26] was

19. Sujatha Jesudason & Julia Epstein, *The Paradox of Disability in Abortion Debates: Bringing the Pro-Choice and Disability Rights Communities Together*, 84 CONTRACEPTION 541, 541 (2011).
20. *Id.*
21. 139 S. Ct. 1782 (2019) (Thomas, J., concurring).
22. *Id.* at 1783.
23. Opinions within the disability community vary about whether person-first ("person with a disability") or identity-first ("disabled person") language is more empowering and respectful. *See generally* Erin E. Andrews, Robyn M. Powell, & Kara Ayers, *The Evolution of Disability Language: Choosing Terms to Describe Disability*, 15 DISABILITY & HEALTH J. 1 (2022) (exploring the evolving language preferences among people with disabilities). In this Article, I use both interchangeably.
24. 142 S. Ct. 2228 (2022).
25. 410 U.S. 113 (1973).
26. *See e.g.*, *Wade*, 410 U.S. 113 (establishing a constitutional right to abortion based on the right to privacy found in the Fourteenth Amendment's liberty clause); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992) (upholding the right to abortion, while rejecting the trimester framework set forth in *Roe* and instead adopting the "undue burden" standard); Whole Woman's Health v. Hellerstedt, 579 U.S. 582 (2016) (finding that Texas' law that required abortion providers to have admitting privileges at a hospital within thirty miles and abortion facilities to meet the same standards as surgical-centers created an undue burden for people seeking abortion services); June Med. Servs. L.L.C. v. Russo, 140 S. Ct. 2103 (2020) (holding that Louisiana's law that required abortion providers to have admitting privileges at a hospital within thirty miles of the clinic imposed an undue burden on people seeking abortion services).

a devastating blow to reproductive freedom. Second, a precipitously growing number of states are enacting draconian laws that significantly limit—and in some states, prohibit—access to safe and legal abortion services.[27] In 2021 alone, nineteen states enacted 108 abortion restrictions, far exceeding the earlier post-*Roe* record of eighty-nine, set in 2011.[28] Moreover, state legislators introduced a staggering 541 abortion restrictions in 2022.[29] The current assault on reproductive freedom will have devastating consequences for all people, but most acutely for historically marginalized communities, including people with disabilities. Hence, there is an urgent need to protect abortion rights.

Critically, because of the *Dobbs* decision, abortion is expected to become illegal in twenty-six states, meaning that abortion services will be entirely unavailable for many disabled people.[30] This is particularly alarming because people with disabilities—a group that comprises about 61 million people or 26 percent of people in the United States[31]—uniquely need access to abortion services and already experience considerable structural, legal, and institutional barriers that often put access to safe and legal abortion services out of reach.[32]

Disabled people, especially people who live at the intersection of disability and other marginalized identities or statuses, disproportionately experience pervasive and persistent disadvantages that increase their need for abortion

27. *See Interactive Map: US Abortion Policies and Access After Roe*, GUTTMACHER INST. (last updated Aug. 23, 2023), https://states.guttmacher.org/policies [https://perma.cc/PG52-RNUF] (illustrating abortion restrictions across the United States since the U.S. Supreme Court overturned *Roe v. Wade*).

28. Elizabeth Nash, *State Policy Trends 2021: The Worst Year for Abortion Rights in Almost Half a Century*, GUTTMACHER INST. (Jan. 5, 2022), https://www.guttmacher.org/article/2021/12/state-policy-trends-2021-worst-year-abortion-rights-almost-half-century [https://perma.cc/8BTP-D7KE].

29. Elizabeth Nash, Lauren Cross & Joerg Dreweke, *2022 State Legislative Sessions: Abortion Bans and Restrictions on Medication Abortion Dominate*, GUTTMACHER INST. (May 26, 2022), https://www.guttmacher.org/article/2022/03/2022-state-legislative-sessions-abortion-bans-and-restrictions-medication-abortion [https://perma.cc-/Z8QE-KEUJ]. Forty-two restrictions have been enacted and thirty-eight restrictions have passed at least one chamber. *Id.*

30. *Tracking Abortion Bans Across the Country*, N.Y. TIMES, (updated Aug. 23, 2023) https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html [https://perma.cc/8PDC-W4BP]. As of June 16, 2023, most abortions are banned in at least fourteen states, and an additional state bans abortions at six weeks. *Id.* In many states, courts are currently considering whether new or existing bans can take effect. *Id.*

31. Catherine A. Okoro, NaTasha D. Hollis, Alissa C. Cyrus & Shannon Griffin-Blake, *Prevalence of Disabilities and Health Care Access by Disability Status and Type Among Adults—United States, 2016*, 67 CDC: MORBIDITY & MORTALITY WKLY. REP. 882, 882 (2018).

32. *See infra* Part II (exploring people with disabilities' unique needs for abortion services and the impediments they already face to accessing it).

services. They have high rates of maternal morbidity and mortality.[33] They also experience significantly higher poverty rates than people without disabilities, which limits their reproductive freedom.[34] Disabled people receive inadequate reproductive health care services, and many people with disabilities do not have access to information about reproductive health.[35] These circumstances make access to and use of effective contraception very difficult.[36] Consequently, disabled people have unintended pregnancies at rates higher than nondisabled people.[37] They are also more likely to experience sexual assault, intimate partner violence, and reproductive coercion than nondisabled people.[38] In addition, disabled people are often denied reproductive decision-making control, and abortion restrictions further impede people with disabilities from exercising their fundamental rights to bodily autonomy and self-determination.[39] The pervasive inequities disabled people experience are the legacy and continuation of a history in which reproduction has been weaponized to subjugate people with disabilities.[40] Thus, the past is still deeply present in U.S. reproductive policies.

Accordingly, disability justice activists and scholars have long understood the "catastrophic" effects caused by barriers to abortion services, and they have recognized the critical significance of abortion access for people with disabilities, especially people who live at the intersection of disability and other historically marginalized identities.[41] The ability to access abortion services is a means of ensuring disabled people retain their bodily autonomy and self-determination.[42]

33. *See infra* Subpart II.A (explaining the ways that abortion restrictions endanger the health and wellbeing of people with disabilities).
34. *See infra* Subpart II.B (showing that abortion restrictions exacerbate economic hardships among disabled people).
35. *See infra* Subpart II.C (demonstrating that disabled people experience access barriers to reproductive health services and information, increasing their need for abortion services).
36. *See infra* Subpart II.C.
37. *See infra* Subpart II.C.
38. *See infra* Subpart II.D (analyzing the high rates of violence experienced by disabled people, underscoring the importance of abortion rights).
39. *See infra* Subpart II.E (asserting that abortion restrictions curtail people with disabilities' bodily autonomy and self-determination).
40. *See infra* Subpart I.A (limning the country's history of oppressing disabled people's reproductive freedom).
41. SINS INVALID, SKIN, TOOTH, AND BONE – THE BASIS OF MOVEMENT IS OUR PEOPLE: A DISABILITY JUSTICE PRIMER 62–63 (2nd ed. 2019) [hereinafter SINS INVALID, SKIN, TOOTH, AND BONE].
42. *Id.* at 63 ("[A]bortion bans may try to control our bodies, but women, non-binary, trans, and disabled people are not objects to be contained or manipulated. We are human beings that deserve care and choices, and we will not allow our autonomy to be denied. As such, we fully support reproductive choices that best suit each individual's context and needs. This is reproductive justice. We all deserve body autonomy, and to make the best choice for ourselves and our future.").

It is also a means of controlling one's own life amid a past and present permeated with threats to one's health and well-being.[43] Moreover, restrictions on abortion rights operate contrary to the aims of disability justice by unnecessarily and dangerously banning abortion services pre-viability.[44] In doing so, they coerce disabled people into pregnancy and parenthood. They also subject disabled people to a wide-range of health risks associated with pregnancy and childbirth—risks that are higher for disabled people than nondisabled people.[45] Thus, while conversations bringing together the perspectives of disability justice and reproductive justice about disability-selective abortion restrictions are needed—especially because these bans are becoming increasingly common[46]—the discourse concerning disability and abortion must be broadened to recognize that abortion rights are of critical importance to disabled people.

As activists, scholars, legal professionals, and policymakers envisage the next steps in the battle to protect abortion rights, they must do so in a way that confronts the disproportionate effects of abortion restrictions on historically marginalized communities, including disabled people, who have been largely excluded from the discourse and who have the most to lose from increased restrictions on abortion access. Accordingly, this Article calls for wide-ranging and robust legal and policy responses that challenge the besiegement of abortion rights in the United States and its effects on disabled people. To that end, I contend that the fight for reproductive freedom must center on disability reproductive justice, a jurisprudential and legislative framework for achieving and delivering reproductive justice for people with disabilities.[47] Briefly, disability reproductive justice draws from the tenets of both disability justice and reproductive justice to propose a framework for transforming our society into one that respects and supports reproductive freedom for disabled people by dismantling systems that

43. *See infra* Subpart II.A (demonstrating how abortion restrictions endanger the health and wellbeing of disabled people).
44. *See infra* Subpart II.A.
45. *See infra* Subpart II.A.
46. Today, six states prohibit abortions based on a fetal genetic anomaly. *Abortion Bans in Cases of Sex or Race Selection or Genetic Anomaly*, GUTTMACHER INST. (July 1, 2023), https://www.guttmacher.org/state-policy/explore/abortion-bans-cases-sex-or-race-selection-or-genetic-anomaly [https://perma.cc/K5DJ-QP7C]. An additional five states have disability abortion bans that have been temporarily or permanently enjoined, and one state's law will take effect should the U.S. Supreme Court uphold a similar state statute. *Id.* Moreover, seventeen similar bills in eleven states have been introduced so far this year. *State Legislation Tracker: Major Developments in Sexual & Reproductive Health*, GUTTMACHER INST. (Aug. 15, 2023), https://www.guttmacher.org/state-policy [https://perma.cc/VQU8-EYBB].
47. *See infra* Subpart III.A (describing disability reproductive justice).

oppress disabled people and creating a culture in which all people are afforded their fundamental right to decide "whether to bear or beget a child."[48]

This Article proceeds as follows. Part I situates the current battle to protect abortion rights within the social context and institutions that propagate reproductive oppression of people with disabilities. Specifically, it examines how reproduction has been weaponized over time to subjugate disabled people in the United States. It also offers contemporary examples of such injustices. Thereafter, Part II explores disabled people's unique needs for abortion services and the myriad ways restrictions on abortion rights disproportionately and adversely affect those needs. It examines how restrictions endanger their health and well-being, exacerbate the social inequities they experience, further curtail their access to reproductive health services and information, disregard their unique vulnerabilities related to violence, and impede their bodily autonomy and self-determination. In doing so, this Part considers the disproportionate oppression faced by people at the intersection of disability and other marginalized identities or statuses. Part III presents disability reproductive justice and its application to the fight for abortion rights. Finally, drawing from disability reproductive justice, Part IV suggests normative and transformative legal and policy solutions for challenging the current assault on abortion rights and its impact on disabled people. Considering the current threats to abortion rights from hostile states and a Supreme Court willing to sanction such restrictions, this is a pivotal moment that calls for a bold and inclusive vision, addressing the needs, experiences, and perspectives of historically marginalized communities, including people with disabilities. This Article presents a way forward for accomplishing this task.

I. PERSISTENT WEAPONIZATION OF REPRODUCTION

The current assault on abortion rights reflects the legacy and continuation of a history in which reproduction has been weaponized to subjugate historically marginalized communities, including people with disabilities. Indeed, throughout history, disabled people have withstood a complex web of reproductive oppression that connects history to contemporary treatment in culture, medicine, and law. Therefore, an examination of how current attacks on reproductive freedom disproportionately affect disabled people must be rooted in understanding the unique history and cultural stereotypes that have shaped their experiences. This Part lays the foundation for this understanding. First, it reviews the United States's

48. Eisenstadt v. Baird, 405 U.S. 438, 453 (1972).

history of controlling disabled people's intimate lives, focusing on eugenics laws, policies, and practices that restricted reproduction of disabled people and other historically marginalized communities. Thereafter, it explores contemporary examples of state-sanctioned reproductive control of people with disabilities. As this Part demonstrates, the United States continues to weaponize reproduction to subjugate disabled people today.

A. Oppressive Origins

The United States has a shameful history of implementing laws, policies, and practices to prevent disabled people from living the lives they want. Before the late nineteenth and early twentieth centuries, the majority of people with disabilities lived at home, where their families were responsible for their care.[49] At that time, disabled people were discouraged from marrying and having children and instead "were often hidden from the public eye and kept in social isolation, fostering and reflecting a common understanding of disabled people as dependent and incapable of filling adult roles of intimacy, sexuality and parenthood."[50] Although the reproductive oppression of disabled people was not yet codified into law, societal views of people with disabilities—coupled with the circumstances in which they lived—resulted in restrictions on their reproductive autonomy.

As the eugenics movement gained popularity throughout the late nineteenth and early twentieth centuries, the reproductive oppression of people with disabilities became increasingly codified into laws, policies, and practices. Eugenics—derived from the Greek root meaning "good in stock"[51]—was initially conceived by Sir Francis Galton, cousin of Charles Darwin and a founder of the English Eugenics Education Society.[52] It gained traction in the United States in the early twentieth century, with the enactment of the first state law preventing "the procreation of confirmed criminals, idiots, imbeciles, and rapists" in Indiana in 1907.[53] Specifically, eugenicists promoted policies that encouraged procreation

49. David L. Braddock & Susan L. Parish, *An Institutional History of Disability*, *in* HANDBOOK OF DISABILITY STUDIES 11, 23 (Gary L. Albrecht, Katherine Seelman & Michael Bury eds., 2001) (describing the role of families and communities in caring for disabled people).
50. Claudia Malacrida, *Mothering and Disability: From Eugenics to Newgenics*, *in* ROUTLEDGE HANDBOOK OF DISABILITY STUDIES 467, 467 (Nick Watson & Simo Vehmas eds., 2d ed. 2019).
51. FRANCIS GALTON, INQUIRIES INTO HUMAN FACULTY AND ITS DEVELOPMENT 24 n.1 (1883).
52. Ruth Hubbard, *Abortion and Disability: Who Should and Who Should Not Inherit the World?*, *in* THE DISABILITY STUDIES READER 74, 75 (Lennard J. Davis ed., 4th ed. 2013).
53. Act of Mar. 9, 1907, ch. 215, 1907 Ind. Acts 377–78. The Indiana Supreme Court overturned the statute in the 1921 case of Williams v. Smith, finding it unconstitutional under the Fourteenth Amendment for lack of procedural safeguards. Williams v. Smith, 190 Ind. 526,

among favored groups of people while restricting procreation—through compulsory sterilization, segregation of institutionalized individuals by sex, and prohibition of marriage—of those deemed to have "hereditary defects."[54] Eugenicists were primarily focused on preventing people whom society considered unfit for parenthood from reproducing,[55] undergirded by the belief that their offspring would be dangerous and burdensome to society.[56] To that end, eugenicists targeted in their own words, "the mentally defective, the mentally diseased, [and] the physically defective, such as the blind, the deaf, the crippled and those ailing from heart disease, kidney disease, tuberculosis and cancer."[57] Notably, as eugenics was gaining support in the United States, family and community support systems for disabled people were deteriorating, and disabled people were increasingly forced into institutions,[58] which functioned as apparatuses of "social control and coercion."[59] In particular, compulsory

527 (1921). Subsequently, Indiana passed another compulsory sterilization law in 1927, which included necessary procedural safeguards. Ind. Acts 1927, ch. 241.

54. *See* ADAM COHEN, IMBECILES: THE SUPREME COURT, AMERICAN EUGENICS, AND THE STERILIZATION OF CARRIE BUCK 5 (2016); *see also* Bd. of Trs. of the Univ. of Ala. v. Garrett, 531 U.S. 356, 369 n.6 (2001) ("The record does show that some States, adopting the tenets of the eugenics movement of the early part of this century, required extreme measures such as sterilization of persons suffering from hereditary mental disease.").

55. *See* Eric M. Jaegers, *Modern Judicial Treatment of Procreative Rights of Developmentally Disabled Persons: Equal Rights to Procreation and Sterilization*, 31 U. LOUISVILLE J. FAM. L. 947, 948 (1992) (explaining that the purpose of eugenics was to prevent "reproduction by those deemed socially or mentally inferior").

56. *See generally* Robyn M. Powell, *Confronting Eugenics Means Finally Confronting Its Ableist Roots*, 27 WM. & MARY J. RACE, GENDER, & SOC. JUST. 607 (2021) [hereinafter *Confronting Eugenics*] (examining the country's history of eugenics). *See also* Robyn M. Powell, *From Carrie Buck to Britney Spears: Strategies for Disrupting the Ongoing Reproductive Oppression of Disabled People*, 107 VA. L. REV. ONLINE 246, 250–52 (2021); Michael G. Silver, Note, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History*, 72 GEO. WASH. L. REV. 862, 865 (2004); Paul A. Lombardo, *Medicine, Eugenics, and the Supreme Court: From Coercive Sterilization to Reproductive Freedom*, 13 J. CONTEMP. HEALTH L. & POL'Y 1, 1–2 (1996).

57. Jacob Henry Landman, *The Human Sterilization Movement*, 24 AM. INST. CRIM. L. & CRIMINOLOGY 400, 401 (1933); *see also* COHEN, *supra* note 54, at 6 (noting eugenicists' "greatest target was the 'feebleminded,' a loose designation that included people who were mentally [disabled], women considered to be excessively interested in sex, and various other categories of individuals who offended the middle-class sensibilities of judges and social workers").

58. RICHARD K. SCOTCH, FROM GOOD WILL TO CIVIL RIGHTS: TRANSFORMING FEDERAL DISABILITY POLICY 15 (1984) ("[A]s family and community support systems broke down, physically and mentally disabled persons were relegated to custodial institutions.").

59. Braddock & Parish, *supra* note 49, at 34.

sterilization was rampant in state institutions, where many people were committed because of perceived or actual disabilities.[60]

Eugenics laws, policies, and practices gained the approval of the Supreme Court in the 1927 *Buck v. Bell*[61] decision. At seventeen-years-old, Carrie Buck, who was considered "feebleminded," became pregnant after her foster parents' relative sexually assaulted her.[62] To conceal the pregnancy that resulted from sexual violence, Carrie Buck was committed to the Virginia State Colony for Epileptics and Feebleminded, where her mother was also institutionalized.[63] After giving birth, Carrie Buck's daughter, Vivian, was adopted by her foster family. Carrie Buck never had the opportunity to see her daughter again.[64] Subsequently, the institution sought to sterilize Carrie Buck per the State's involuntary sterilization statute. Following a series of appeals, the Supreme Court upheld Virginia's law permitting institutions to condition release upon sterilization as constitutional.[65] Justice Oliver Wendell Holmes, Jr., writing for the majority, contended that the forced sterilization would be carried out without harm to Carrie Buck and that her sterilization would advance her welfare and that of society.[66] In furtherance of his view that compulsory sterilization was in the best interest of society, Justice Holmes postulated that disabled people would have offspring who would ultimately put a strain on public resources:

> We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.[67]

He then proclaimed, "[t]hree generations of imbeciles are enough."[68] As Justice Holmes's unsettling words expose, the right to bodily autonomy and self-determination is not protected for those considered unfit to reproduce. Although

60. Michael G. Silver, *supra* note 56, at 863.
61. 274 U.S. 200 (1927).
62. *See* Stephen Jay Gould, *Carrie Buck's Daughter*, 2 CONST. COMMENT. 331, 336 (1985).
63. *Id.*
64. *Id.* at 338.
65. *Buck*, 274 U.S. at 206–08.
66. *Id.* at 207.
67. *Id.*
68. *See id.*

Buck has been broadly condemned as part of the anticanon of Supreme Court decisions, it has never been overturned.[69] Instead, it exemplifies the goals of the eugenics movement in the United States, a movement that looked to rid society of people considered undesirable. Notably, more than thirty states passed involuntary sterilization laws like Virginia's throughout the twentieth century.[70]

Significantly, in addition to people with disabilities, eugenicists also targeted immigrants,[71] Black people,[72] Indigenous people,[73] LGBTQ+ people,[74] and incarcerated people.[75] In fact, Black women were three times more likely to be sterilized than white women and twelve times more likely to be sterilized than white men.[76] Disabled women of color were especially subjected to forced sterilization.[77] For example, in 1964, the North Carolina Eugenics Board authorized sterilizing a twenty-year-old Black single mother with an intellectual disability, contending that it was in her best interests because she was "feebleminded" and deemed unable to "assume responsibility for herself" or her

69. Jamal Greene, *The Anticanon*, 125 HARV. L. REV. 379, 388–89 (2011). Fifteen years after *Buck* was decided, the Supreme Court struck down an Oklahoma law requiring that people with two or more convictions for felonious offenses be sterilized. Skinner v. Oklahoma, 316 U.S. 535, 535–36 (1942). Although both *Skinner* and *Buck* concern involuntary sterilization statutes, *Skinner's* analysis took a narrower focus, relating only to the punitive sterilization of criminals, thereby avoiding addressing the forced sterilization of people with disabilities. *Id.*

70. Lombardo, *supra* note 56, at 12.

71. Terry Gross, *Eugenics, Anti-Immigration Laws of the Past Still Resonate Today, Journalist Says*, NPR (May 8, 2019), https://www.npr.org/2019/05/08/721371176/eugenics-anti-immigration-laws-of-the-past-still-resonate-today-journalist-says [https://perma.cc/8B7T-VUL7].

72. Melissa Murray, *Race-ing* Roe*: Reproductive Justice, Racial Justice, and the Battle for* Roe v. Wade, 134 HARV. L. REV. 2025, 2036–37 (2021).

73. Brianna Theobald, Opinion, *A 1970 Law Led to the Mass Sterilization of Native American Women. That History Still Matters*, TIME (Nov. 28, 2019), https://time.com/5737080/native-american-sterilization-history [https://perma.cc/9A39-5LKU].

74. *See* Mark A. Largent, *"The Greatest Curse of the Race": Eugenic Sterilization in Oregon, 1909–1983*, 103 OR. HIST. Q. 188, 190, 205 (2002); A. J. Lowik, *Reproducing Eugenics, Reproducing While Trans: The State Sterilization of Trans People*, 14 J. GLBT FAM. STUD. 425, 428–30 (2018).

75. David M. Perry, *Our Long, Troubling History of Sterilizing the Incarcerated*, THE MARSHALL PROJECT (July 26, 2017), https://www.themarshallproject.org/2017/07/26/our-long-troubling-history-of-sterilizing-the-incarcerated [https://perma.cc/W2RN-SHUE].

76. Alexandra Minna Stern, *Forced Sterilization Policies in the US Targeted Minorities and Those With Disabilities – and Lasted Into the 21st Century*, THE CONVERSATION (Aug. 26, 2020), https://theconversation.com/forced-sterilization-policies-in-the-us-targeted-minorities-and-those-with-disabilities-and-lasted-into-the-21st-century-143144 [https://perma.cc/2BVB-F5G9].

77. Linda Villarosa, *The Long Shadow of Eugenics in America*, N.Y. TIMES MAG. (June 8, 2022), https://www.nytimes.com/2022/06/08/magazine/eugenics-movement-america.html [https://perma.cc/6U4W-GWTV].

child.[78] By 1970, nearly 70,000 Americans were involuntarily sterilized, most of whom were disabled, poor, or people of color.[79]

In addition, beginning in the late nineteenth century, as part of the eugenics era, states enacted laws that prohibited marriage if one or both individuals were disabled.[80] These laws intended to forbid specific populations from reproducing or to prevent "the spread of disease through marriage."[81] Accordingly, the statutes either outright barred marriage by disabled people or authorized marriages only after the age of forty-five, seemingly to correspond with their presumed fertility.[82] A Connecticut statute, for example, proscribed "epileptics, imbeciles, and feebleminded persons" from marrying or engaging in extramarital sexual relations before the age of forty-five.[83] In 1905, the Connecticut Supreme Court determined that this statute could be upheld when one or both individuals had epilepsy because it was a "conviction of modern society that disease is largely preventable by proper precautions," and certain liberties may be restricted to prevent the spread of disease.[84] By the mid-1930s, forty-one states had eugenics marriage laws,[85] and a 1978 study found that these laws still existed in nearly forty states.[86]

In short, people with disabilities and other historically marginalized communities have endured long-lasting reproductive oppression in the United States. Throughout the eugenics era, states regulated the reproduction of people with disabilities through the implementation of laws, policies, and practices that served three overarching goals: "the potential children must be protected; people with [disabilities] themselves must be protected; and society at large must be protected."[87] As described in the following Subpart, the same eugenics-based ideologies that once led to institutionalization, forced sterilization, and marriage

78. *Id.*
79. *The Supreme Court Ruling that Led to 70,000 Forced Sterilizations*, NPR: FRESH AIR (Mar. 7, 2016), https://www.npr.org/sections/health-shots/2016/03/07/469478098/the-supreme-court-ruling-that-led-to-70–000-forced-sterilizations [https://perma.cc/96AT-VWML].
80. Gabriella Garbero, *Rights Not Fundamental: Disability and the Right to Marry*, 14 ST. LOUIS U. J. HEALTH L. & POL'Y 587, 600 (2021).
81. J.P. Chamberlain, *Eugenics and Limitations of Marriage*, 5 J. COMPAR. LEGIS. & INT'L L. 253–54 (1923).
82. Braddock & Parish, *supra* note 49, at 35; Brooke Pietrzak, Note, *Marriage Laws and People with Mental Retardation: A Continuing History of Second-Class Treatment*, 17 DEV. MENTAL HEALTH L. 1, 35, 38 (1997).
83. Robert J. Cynkar, Buck v. Bell*: "Felt Necessities" v. Fundamental Values?*, 81 COLUM. L. REV. 1418, 1432 (1981).
84. Gould v. Gould, 78 Conn. 242, 243 (1905).
85. Braddock & Parish, *supra* note 49, at 30.
86. Pietrzak, *supra* note 82, at 1–2.
87. *Id.* at 35.

restriction laws are reflected in current laws, policies, and practices that continue to weaponize reproduction to subjugate disabled people.

B. Continued Weaponization

Although people with disabilities have achieved numerous successes in their pursuit of justice, many continue to endure state- sanctioned reproductive oppression. For example, while support for eugenics faded over time, sterilization of people with disabilities has not wholly ceased. Indeed, some lawyers, doctors, and family members continue to claim that sterilization is in the "best interests" of certain people with disabilities.[88] According to a new report by the National Women's Law Center, thirty-one states and the District of Columbia still have involuntary sterilization laws.[89] Moreover, most states still permit compulsory sterilization of disabled people with prior judicial authorization.[90] Even with apparent judicial protections, people with disabilities often have their reproductive freedom threatened.[91] Strikingly, in 2001, the Eighth Circuit, citing *Buck*, held that the forced sterilization of people with disabilities could be constitutional if appropriate procedural protections were provided.[92] On remand, the court upheld a decision finding no constitutional violation when a woman

88. Robyn M. Powell & Michael Ashley Stein, *Persons with Disabilities and Their Sexual, Reproductive, and Parenting Rights: An International and Comparative Analysis*, 11 FRONTIERS L. CHINA 53, 62–66 (2016) (examining court decisions that have authorized sterilization based on the "best interest" standard); *see also* Justine Wu, Yael Braunschweig, Lisa H. Harris, Willi Horner-Johnson, Susan D. Ernst & Bethany Stevens, *Looking Back While Moving Forward: A Justice-Based, Intersectional Approach to Research on Contraception and Disability*, 99 CONTRACEPTION 267, 269 (2019) (citing studies indicating that guardians often request sterilization to protect disabled women "from pregnancy in the event of sexual assault").

89. NAT'L WOMEN'S L. CTR., FORCED STERILIZATION OF DISABLED PEOPLE IN THE UNITED STATES 5 (2022), https://nwlc.org/wp-content/uploads/2022/01/*f*.NWLC_SterilizationReport_2021.pdf [https://perma.cc/ENP4-AZMN].

90. *See* Vanessa Volz, Note, *A Matter of Choice: Women with Disabilities, Sterilization, and Reproductive Autonomy in the Twenty-First Centur*y, 27 WOMEN'S RTS. L. REP. 203, 208 (2006).

91. *See e.g.*, Stump v. Sparkman, 435 U.S. 349, 360, 364 (1978) (finding a judge immune from liability despite authorizing the sterilization of a woman with an intellectual disability without notice to the woman, without appointing a guardian ad litem, and without giving the petition a docket number or placing it on file in the clerk's office, as required by statute).

92. Vaughn v. Ruoff, 253 F.3d 1124, 1129 (8th Cir. 2001). Nonetheless, the court did not specify what procedural protections would be necessary or sufficient. *See id.* at 1129 n.3 ("Because no procedural protections were given, we need not decide what minimum procedures are required by the Due Process Clause.").

with an intellectual disability acquiesced to being sterilized so that the child welfare system would allow her children to be returned to her home.[93]

More recently, the parents of Mary Moe,[94] a thirty-two-year-old pregnant woman with a psychiatric disability, petitioned a Massachusetts court for guardianship over Mary to force her to obtain an abortion.[95] Although Mary Moe vehemently opposed abortion, the trial court appointed her parents as co-guardians and authorized that she be "coaxed, bribed, or even enticed . . . by ruse" into a hospital for an abortion.[96] Further, the judge ordered sua sponte, and without notice, that Mary Moe be sterilized "to avoid this painful situation from recurring in the future."[97] Eventually, the decision was reversed on appeal, with the appellate court noting in regard to the sterilization order, "[n]o party requested this measure, none of the attendant procedural requirements has been met, and the judge appears to have simply produced the requirement out of thin air."[98] Although Mary Moe's case ultimately had a positive outcome consistent with her articulated desires, her case demonstrates how disabled people experience threats to their reproductive freedom even with supposed judicial protections.

Critically, forced sterilization of disabled people is not limited to adults, as demonstrated by the "Ashley X" case.[99] Ashley has intellectual and physical disabilities.[100] In 2004, at age six, with Ashley's parents' permission, a Washington hospital performed several procedures, including growth attenuation via hormone therapy, a hysterectomy, and bilateral breast bud removal.[101] Her physicians and family contended that the permanent alteration of her body ensured "the best possible quality of life," by enabling her to be more easily cared for by her family, while also allowing her to "retain more dignity in a body that is healthier, more of a comfort to her, and more suited to her state of development."[102] With respect to the hysterectomy, Ashley's parents argued, "Ashley has no need for her uterus

93. Vaughn v. Ruoff, 304 F.3d 793, 796 (8th Cir. 2002).
94. Mary Moe is a pseudonym; Massachusetts General Law requires that informed consent proceedings for an abortion be kept confidential. MASS. GEN. LAWS ANN. ch. 112, § 12S (2022).
95. *In re* Guardianship of Mary Moe, 81 Mass. App. Ct. 136, 138–39 (2012).
96. *Id.* at 353.
97. *Id.*
98. *Id.* at 355.
99. Daniel F. Gunther & Douglas S. Diekema, *Attenuating Growth in Children With Profound Developmental Disability: A New Approach to an Old Dilemma*, 160 ARCHIVES PEDIATRICS & ADOLESCENT MED. 1013, 1013–17 (2006).
100. *Id.* (describing Ashley as "non-ambulatory" with "severe, combined developmental and cognitive disabilities").
101. *Id.*
102. *Id.*

since she will not be bearing children."[103] Additionally, Ashley's physicians stated that the hysterectomy benefited both Ashley and her family because it "eliminate[d] the complications of menses."[104] Consequently, Ashley's "best interest was equated with her parents' ability to maintain her at home and being easily able to carry and move her."[105] Notably, Ashley's parents sanctioned these procedures with just the authorization of an internal ethics board and not through adjudication.[106] As Samuel Bagenstsos writes, "[i]f the parents and doctors are all on board, these sorts of sterilization decisions can easily fly under the radar and evade mechanisms of legal accountability."[107]

Sterilization is still a standard procedure for many people with disabilities. Extensive research shows that women with disabilities are significantly more likely than women without disabilities to be sterilized, and at younger ages.[108] Moreover, research suggests that Black disabled women are more likely than white disabled women to be sterilized.[109] Today, sterilization of people with disabilities is primarily "driven by parents, guardians, and social service providers who are uneasy . . . [that] they will incur the additional burden of caring for the offspring."[110] Tellingly, in petitions to courts for approval to sterilize people with disabilities or terminate their pregnancies, caregivers often cite cost as a prevailing

103. *See* Ashley's Mom and Dad, *The "Ashley Treatment:" Towards a Better Quality of Life for "Pillow Angels,"* (Mar. 17, 2012) http://pillowangel.org/Ashley%20Treatment.pdf [https://perma.cc/2NZY-47YN].
104. Gunther & Diekema, *supra* note 99, at 1015.
105. Marcia H. Rioux & Lora Patton, *Beyond Legal Smoke Screens: Applying a Human Rights Analysis to Sterilization Jurisprudence*, in EMORY CRITICAL PERSPECTIVES ON HUMAN RIGHTS & DISABILITY LAW 243, 244–54 (Marcia H. Rioux, Lee Ann Basser & Melinda Jones eds., 2011).
106. *Id.*
107. Bagenstos, *supra* note 18, at 289 (internal footnotes omitted).
108. Justine P. Wu, Michael M. McKee, Kimberly S. Mckee, Michelle A. Meade, Melissa Plegue & Ananda Sen, *Female Sterilization is More Common Among Women With Physical and/or Sensory Disabilities Than Women Without Disabilities in the United States*, 10 DISABILITY & HEALTH J. 400, 403 (2017); William Mosher, Rosemary B. Hughes, Tina Bloom, Leah Horton, Ramin Mojtabai & Jeanne L. Alhusen, *Contraceptive Use by Disability Status: New National Estimates From the National Survey of Family Growth*, 97 CONTRACEPTION 552, 557 (2018); Henan Li, Monika Mitra, Justin P. Wu, Susan L. Parish, Anne Valentine & Robert S. Dembo, *Female Sterilization and Cognitive Disability in the United States, 2011–2015*, 132 OBSTETRICS & GYNECOLOGY 559, 561 (2018); Julia A. Rivera Drew, *Hysterectomy and Disability Among U.S. Women*, 45 PERSPS. SEXUAL REPROD. HEALTH (2013).
109. NAT'L WOMEN'S L. CTR., *supra* note 89 (citing studies).
110. Beverly Horsburgh, *Schrödinger's Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing an Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color*, 17 CARDOZO L. REV. 531, 572 (1996).

factor.[111] Indeed, in authorizing the sterilization of disabled people, courts often raise similar presumptions to those put forward in *Buck*, such as that people with disabilities are "incapable of adequate parenting" and their children will "inevitably be a financial burden on the state."[112] Other reasons cited by family members, guardians, healthcare providers, and congregate care providers include intent to protect women from pregnancy in the event of sexual assault,[113] provider and caregiver beliefs that hysterectomies are an appropriate option for menstrual management, and institutional policies.[114] Therefore, decisions about sterilizing disabled women may not reflect an impartial assessment of their best interests or safeguard their reproductive rights.[115] These decisions may also not be consistent with their wishes.[116] Although sterilization should certainly be an option for permanent contraception for people who choose it, given the country's history, it is not hard to imagine that many of these sterilizations may be forced.

Furthermore, even when people with disabilities conceive and bear children, they encounter state-sanctioned threats to their parenting rights. Indeed, bias and speculation about the capabilities of parents with disabilities—mirroring those raised during the height of the eugenics movement—have led to discriminatory child welfare laws, policies, and practices that assume parental unfitness.[117] Specifically, the child welfare system—more accurately termed the

111. Roberta Cepko, *Involuntary Sterilization of Mentally Disabled Women*, 8 BERKELEY WOMEN'S L.J. 122, 126 (1993).
112. *Id.*
113. *See infra* Part II.D for a discussion about the high rates of sexual violence against disabled people.
114. Justine P. Wu et al., *supra* note 88, at 268 (citing studies).
115. *See* Robyn M. Powell, Erin E. Andrews & Kara Ayers, *RE: Menstrual Management for Adolescents with Disabilities*, 138 PEDIATRICS 3112A (2016).
116. NAT'L WOMEN'S L. CTR., *supra* note 89.
117. *See generally* NAT'L COUNCIL ON DISABILITY, ROCKING THE CRADLE: ENSURING THE RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN 15 (2012), https://www.ncd.gov/sites/default/files/Documents/NCD_Parenting_508_0.pdf [https://perma.cc/DV8V-FUPU] [hereinafter ROCKING THE CRADLE]. The National Council on Disability's report:

> provides a comprehensive review of the barriers and facilitators people with diverse disabilities—including intellectual and developmental, psychiatric, sensory, and physical disabilities—experience when exercising their fundamental right to create and maintain families, as well as persistent, systemic, and pervasive discrimination against parents with disabilities. The report analyzes how U.S. disability law and policy apply to parents with disabilities in the child welfare and family law systems, and the disparate treatment of parents with disabilities and their children.

Id.

family policing system[118]—pathologizes, controls, and punishes historically marginalized communities, including disabled parents and their children.[119] Parents with disabilities are more likely than parents without disabilities to be referred to the child welfare system.[120] Moreover, an estimated two-thirds of state laws explicitly include parental disability, typically intellectual or psychiatric disabilities, as grounds for termination of parental rights.[121] Consequently, disabled parents, especially parents with intellectual or psychiatric disabilities, also endure strikingly high rates of termination of parental rights.[122] Parents with disabilities who are also people of color are likely to face even more compounded discrimination.[123] Black mothers are "especially likely to be monitored, regulated, and punished by the child welfare system[,]" and lose custody of their children—often permanently—at disproportionately high rates.[124] Indigenous parents are also especially vulnerable to being separated from their children by the state.[125]

Nearly a century after the eugenics movement, people with disabilities continue to be denied the right to marry because of draconian laws, policies, and practices. An investigation of marriage restriction laws was conducted in 1997 and found that thirty-three states still had laws limiting people with intellectual or psychiatric disabilities from marrying.[126] Although no known recent empirical

118. *See* Dorothy Roberts, *Abolish Family Policing, Too*, DISSENT MAG. (Summer 2021), https://www.dissentmagazine.org/article/abolish-family-policing-too [https://perma.cc/53E5-MLJ9].

119. *See generally* Robyn M. Powell, *Achieving Justice for Disabled Parents and Their Children: An Abolitionist Approach*, 33 YALE J.L. & FEMINISM 37 (2022) (arguing that the family policing system harms disabled parents and their children).

120. Sasha M. Albert & Robyn M. Powell, *Supporting Disabled Parents and Their Families: Perspectives and Recommendations From Parents, Attorneys, and Child Welfare Professionals*, 15 J. PUB. CHILD WELFARE 530, 530 (2021) (citing studies).

121. NAT'L COUNCIL ON DISABILITY, *supra* note 117 at 16.

122. *Id.* at 531 (citing studies revealing high rates of termination of parental rights among disabled parents); *see also* Elizabeth Lightfoot & Sharyn DeZelar, *The Experiences and Outcomes of Children in Foster Care Who Were Removed Because of a Parental Disability*, 62 CHILD. & YOUTH SERVS. REV. 22, 26 (2016) (finding that disabled parents had 22 percent higher odds of termination of parental rights than nondisabled parents); Robyn M. Powell, Susan L. Parish, Monika Mitra, Michael Waterstone & Stephen Fournier, *Terminating the Parental Rights of Mothers with Disabilities: An Empirical Legal Analysis*, 85 MO. L. REV. 1069, 1094 (2020) (analyzing 2064 appellate cases involving disabled mothers and finding that 93 percent of the cases resulted in the termination of parental rights).

123. NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOCACY NETWORK, ACCESS, AUTONOMY, & DIGNITY: PEOPLE WITH DISABILITIES AND THE RIGHT TO PARENT 11 (Sept. 2021), https://www.nationalpartnership.org/our-work/resources/repro/repro-disability-parenting.pdf [https://perma.cc/LH93-9JZM].

124. *Id.* at 12 (citing studies).

125. *Id.*

126. Pietrzak, *supra* note 82, at 1–2.

studies have systematically examined marriage laws as they apply to people with disabilities, these statutes continue to exist in some states.[127] For example, in Tennessee, "no marriage license shall be issued when it appears that the applicants or either of them is at the time drunk, insane or an imbecile."[128] Likewise, Massachusetts law allows for a marriage to be "void by reason of . . . insanity or idiocy of either party . . . ."[129]

Moreover, people with disabilities are often prohibited from marrying because they risk losing necessary benefits, such as Supplemental Security Income (SSI) and Medicaid, because of stringent income and asset rules.[130] For example, Medicaid—the only health insurance that pays for services that enable disabled people to live in their communities, such as personal assistant services[131]—has strict income and asset rules that consider a spouse's earnings when determining eligibility in most states.[132] SSI similarly considers a spouse's earnings to ensure that the beneficiary is within the income and asset limits.[133] In both programs, a disabled person is not eligible if their income (and that of their partner) exceeds the specified income and asset restrictions, making marriage nearly impossible for most. In other words, "SSI and Medicaid rules are set up to make marriage and having necessary healthcare benefits incompatible."[134] Although marriage is not needed to form families, it should be available to all people, including disabled people. Therefore, until the restrictive rules that govern benefits programs are changed, marriage equality for people with disabilities will not be achieved.[135]

127. *See* Michael Waterstone, *Disability Constitutional Law*, 63 EMORY L.J. 527, 548–49 (2014) (describing state laws that restrict people with disabilities from marrying); *see e.g.*, MISS. CODE ANN. § 93-1-5(1)(e)(ii) (declaring that a marriage license may not be issued when the applicants are "[s]uffering from a mental illness or an intellectual disability to the extent that the clerk believes that the person does not understand the nature and consequences of the application for a marriage license."); R.I. GEN. LAWS § 15-1-5(2) (2022) ("Any marriage entered in violation of this prohibition and any marriage where either of the parties is mentally incompetent at the time of the marriage, shall be absolutely void.").
128. TENN. CODE ANN. § 36-3-109 (2022).
129. MASS. GEN. LAWS ANN. ch. 207, § 16 (2022).
130. *See e.g.*, Robert E. Rains, *Disability and Family Relationships: Marriage Penalties and Support Anomalies*, 22 GA. ST. U. L. REV. 561, 567 (2006) (describing how people with who marry could lose Supplemental Security Income (SSI) benefits).
131. Garbero, *supra* note 80, at 590–93.
132. *Id.*
133. *Id.*
134. Eryn Star, *Marriage Equality Is Still Not a Reality: Disabled People and the Right to Marry*, THE ADVOC. MONITOR (Nov. 14, 2019), https://advocacymonitor.com/marriage-equality-is-still-not-a-reality-disabled-people-and-the-right-to-marry [https://perma.cc/YEQ8-3T3N].
135. Andrew Pulrang, *What's Next in 'Marriage Equality' for People With Disabilities?*', FORBES (Mar. 31, 2022), https://www.forbes.com/sites/andrewpulrang/2022/03/31/whats-next-in-marriage-equality-for-people-with-disabilities/?sh=50897186eb70 [https://perma.cc/YEQ8-3T3N].

Thus, nearly one hundred years since the Court decided *Buck*, people with disabilities continue to endure reproductive oppression, including forced sterilization or abortion, denial of parental rights once their children are born, and laws prohibiting them from marrying. Tragically, these examples of state-sanctioned reproductive oppression are only part of how laws, policies, and practices continue to weaponize reproduction to subjugate disabled people. As described in the next Part, restrictions on abortion rights disproportionately harm people with disabilities and are yet another way for states to deny disabled people bodily autonomy and self-determination.

II. THE IMPORTANCE OF ABORTION RIGHTS

Notwithstanding enduring a lengthy history of reproductive oppression, people with disabilities have traditionally been ignored in public and scholarly discourse about reproductive rights. This exclusion is especially problematic because the current assault on reproductive freedom will have devastating consequences for disabled people, who often need abortion services because they are extremely disadvantaged by structural inequities. Accordingly, this Part describes disabled people's unique needs for abortion services and the myriad ways disabled people are disproportionately and adversely affected by restrictions on abortion rights. First, it demonstrates why abortion services are necessary for the health and well-being of people with disabilities. Next, it explores the relationship between disabled people's economic disadvantages and abortion. Thereafter, it shows why abortion services are needed because disabled people lack access to adequate reproductive health services and information. Then, it explains why abortion services are important for people with disabilities because of the unique vulnerabilities related to violence that they experience. Finally, it argues that access to abortion services is critical to maintaining disabled people's bodily autonomy and self-determination. Ultimately, as activists, legal professionals, scholars, and policymakers respond to the increasing threats to abortion rights in the United States, this Part makes a case for why their advocacy and analysis must fully include disabled people.

A. Pervasive Health Inequities

Access to comprehensive reproductive health services, including abortion care, is vital for people with disabilities because they are at greater risk of health disparities. Longstanding research indicates that people with disabilities experience

a wide range of health and healthcare inequities.[136] This is largely because of pervasive attitudinal, communicative, physical, policy, programmatic, social, and transportation barriers, which impact their ability to access appropriate and affordable healthcare.[137] In fact, one-in-three adults with disabilities report unmet healthcare needs.[138] Further, disabled people are often un- or under-insured, with an estimated 10 percent lacking health insurance coverage.[139] Consequently, "[a]s a group, people with disabilities fare far worse than their nondisabled counterparts across a broad range of health indicators and social determinants of health."[140]

136. Gloria L. Krahn, Deborah Klein Walker & Rosaly Correa-De-Araujo, *Persons With Disabilities as an Unrecognized Health Disparity Population*, 105 AM. J. PUB. HEALTH S198, S201 (2015). Research consistently shows that people with disabilities experience barriers to accessing healthcare and have adverse health outcomes. *Id.* (reviewing studies).

137. *Common Barriers to Participation Experienced by People With Disabilities*, CTRS. DISEASE CONTROL & PREVENTION (Sept. 16, 2020), https://www.cdc.gov/ncbddd/disabilityandhealth/disability-barriers.html [https://perma.cc/7AWT-DWPJ].

138. *Disability Impacts All of Us*, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 28, 2022), https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html [https://perma.cc/KH2C-9BTZ].

139. WILLIAM A. ERICKSON, CAMILLE G. LEE & SARAH VON SCHRADER, 2018 DISABILITY STATUS REPORT: U.S. (2018), https://www.disabilitystatistics.org/StatusReports/2018-PDF/2018-StatusReport_US.pdf [https://perma.cc/F4YU-39JY]; *see also* NAT'L COUNCIL ON DISABILITY, THE CURRENT STATE OF HEALTH CARE FOR PEOPLE WITH DISABILITIES 1 (2009), https://www.ncd.gov/publications/2009/Sept302009 [https://perma.cc/GH3A-9NYA] (finding that "[p]eople with disabilities frequently lack either health insurance or coverage for necessary services, such as specialty care, long-term services, prescription medications, durable medical equipment, and assistive technologies"); *see id.* at 11–12. The National Council on Disability notes in its report that:

> [t]he health care system in the United States is complex, highly fragmented, and sometimes overly restrictive in terms of program eligibility . . . leav[ing] some people with disabilities with no health care coverage and others with cost-sharing obligations and limits on benefits that prevent them from obtaining health-preserving prescription medications, medical equipment, specialty care, dental and vision care, long-term care, and care coordination.

Id.

140. Richard Besser, *Disability Inclusion: Shedding Light on an Urgent Health Equity Issue*, ROBERT WOOD JOHNSON FOUND. CULTURE OF HEALTH BLOG (Dec. 2, 2019, 11:00 AM), https://www.rwjf.org/en/blog/2019/12/disability-inclusion-shedding-light-on-an-urgent-health-equity-issue.html [https://perma.cc/7A3T-QZP4] (internal citation omitted); *see also* Nancy R. Mudrick & Michael A. Schwartz, *Health Care Under the ADA: A Vision or a Mirage?*, 3 DISABILITY & HEALTH J. 233, 233 (2010) (observing that "[t]he national surveys used to assess the health status of the U.S. population find that people with disabilities, like other minority population groups, experience disparities in the form of higher rates of the health problems and lower rates of the preventive care procedures used as benchmark health indicators").

Critically, health inequities are even more significant for Black disabled people and LGBTQ+ disabled people, compared to other disabled people.[141]

The consequences of being required to carry a pregnancy to term may be much more severe for people with disabilities, who, in addition to lacking adequate access to healthcare, may also be at a higher risk of pregnancy or childbirth complications.[142] It is well-established that pregnancy and childbirth take a tremendous toll on the human body, both physically and psychologically. In some instances, pregnancy and childbirth can impose a real risk of death—a risk the Supreme Court has accepted to be far greater than any risks associated with abortion services.[143] Undeniably, abortions are a safe and necessary component of healthcare,[144] and being denied abortion services can detrimentally affect people's health and well-being.[145] Strikingly, the United States has the highest rate of maternal deaths among developed countries and the rate has increased in recent

141. *See, e.g.*, Megan Buckles & Mia Ives-Rublee, *Improving Health Outcomes for Black Women and Girls with Disabilities*, CTR. AM. PROG. (Feb. 15, 2022), https://www.americanprogress.org/article/improving-health-outcomes-for-black-women-and-girls-with-disabilities [https://perma.cc/7DYE-VNK7]; Lesley A. Tarasoff, *"We Exist": The Health and Well-Being of Sexual Minority Women and Trans People with Disabilities*, *in* ELIMINATING INEQUITIES FOR WOMEN WITH DISABILITIES: AN AGENDA FOR HEALTH AND WELLNESS 179, 187 (Shari E. Miles-Cohen & Caroline Signore eds., 2016); Monika Mitra, Linda Long Bellil & Robyn Powell, *Persons with Disabilities and Public Health Ethics*, *in* THE OXFORD HANDBOOK OF PUBLIC HEALTH ETHICS 220, 225 (Anna C. Mastroianni et al., eds. 2019).

142. *See* Willi Horner-Johnson, Blair G. Darney, Sheetal Kulkarni-Rajasekhara, Brian Quigley & Aaron B. Caughey, *Pregnancy Among US Women: Differences by Presence, Type, and Complexity of Disability*, 214 AM. J. OBSTETRICS & GYNECOLOGY 529e.1, 529e.8 (2016) (describing evidence that women with disabilities face increased risks of health problems during pregnancy and poorer pregnancy outcomes).

143. *See* Roe v. Wade, 410 U.S. 113, 153, 163 (1973) (noting pregnancy can cause "[s]pecific and direct harm medically diagnosable" and that "until the end of the first trimester mortality in abortion may be less than mortality in normal childbirth"); *see also* Whole Woman's Health v. Hellerstedt, 579 U.S. 582, 605 (2016) ("Nationwide, childbirth is 14 times more likely than abortion to result in death . . . .").

144. *See Increasing Access to Abortion, ACOG Committee Opinion Number 815*, 136 AM. J. OBSTETRICS & GYNECOLOGY e107, e108 (2020).

145. *See* Corrine H. Rocca, Katrina Kimport, Sarah C. M. Roberts, Heather Gould, John Neuhaus & Diana G. Foster, *Decision Rightness and Emotional Responses to Abortion in the United States: A Longitudinal Study*, 10 PLOS ONE 1, 1 (2015) (finding that having an abortion resulted in better mental health outcomes); *see also* Laura J. Ralph, Eleanor Bimla Schwarz, Daniel Grossman & Diana Greene Foster, *Self-reported Physical Health of Women Who Did and Did Not Terminate Pregnancy After Seeking Abortion Services: A Cohort Study*, 171 ANNALS INTERNAL MED. 238, 238 (2019) (finding better health outcomes among women who terminated pregnancies than those who carried pregnancies to term). *See also* Vignetta E. Charles, Chelsea B. Polis, Srinivas K. Sridhara & Robert W. Blum, *Abortion and Long-Term Mental Health Outcomes: A Systematic Review of the Evidence*, 78 CONTRACEPTION 436, 436 (2008) (synthesizing relevant research and finding that abortion was not associated with deleterious mental health outcomes).

years.[146] In 2019, over 750 women died from pregnancy-related causes.[147] Another 50,000 women each year experience severe harm to their health because of pregnancy and childbirth.[148] The risks of maternal mortality and morbidity are even higher for historically marginalized communities; for example, Black women are three times more likely than white women to die from a pregnancy-related cause.[149]

Similarly, women with disabilities have higher maternal mortality and morbidity rates than women without disabilities.[150] In addition to increased maternal mortality rates, disabled women have a higher risk of maternal morbidities than nondisabled women,[151] including preterm birth, preeclampsia,

146. Nina Martin & Renee Montagne, *U.S. Has the Worst Rate of Maternal Deaths in the Developed World*, NPR (May 12, 2017, 10:28 AM), https://www.npr.org/2017/ 05/12/528098789/u-s-has-the-worst-rate-of-maternal-deaths-in-the-developed-world [https://perma.cc/EP9Y-QFZ7]; Roosa Tikkanen, Munira Z. Gunja, Molly FitzGerald & Laurie Zephyrin, *Maternal Mortality and Maternity Care in the United States Compared to 10 Other Developed Countries*, THE COMMONWEALTH FUND (Nov. 18, 2020), https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/maternal-mortality-maternity-care-us-compared-10-countries [https://perma.cc/5KDK-75M3].

147. DONNA L. HOYERT, MATERNAL MORTALITY RATES IN THE UNITED STATES, 2019 at 3, NAT'L CTR. FOR HEALTH STAT.: HEALTH E-STATS (Apr. 2021).

148. *Severe Maternal Morbidity in the United States*, CTRS. FOR DISEASE CONTROL & PREVENTION (last updated July 3, 2023), https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severematernalmorbidity.html [https://perma.cc/P4MD-YGB7].

149. *Working Together to Reduce Black Maternal Mortality*, CTRS. FOR DISEASE CONTROL & PREVENTION (last updated Apr. 3, 2023), https://www.cdc.gov/healthequity/features/maternal-mortality/index.html [https://perma.cc/R5DP-7YBD]. *See generally* Khiara M. Bridges, *Racial Disparities in Maternal Mortality*, 95 N.Y.U. L. REV. 1229 (2020) (examining maternal mortality among women of color and calling for reforms). *See generally* Jamila K. Taylor, *Structural Racism and Maternal Health Among Black Women*, 48 J. LAW MED. ETHICS 506 (2020) (describing the ways in which structural racism perpetuates maternal health inequities).

150. Jessica L. Gleason, Jagteshwar Grewal, Zhen Chen, Alison N. Cernich & Katherine L. Grantz, *Risk of Adverse Maternal Outcomes in Pregnant Women with Disabilities*, 4 JAMA NETWORK OPEN 1, 1 (2021); Hilary K. Brown, et al., *Association of Preexisting Disability with Severe Maternal Morbidity or Mortality in Ontario, Canada*, 4 JAMA NETWORK OPEN 1, 1 (2021).

151. *See* Monika Mitra, Linda M. Long-Bellil, Suzanne C. Smeltzer, Lisa I. Iezzoni, *A Perinatal Health Framework for Women with Physical Disabilities*, 8 DISABILITY & HEALTH J. 499, 499 (2015) (citing studies showing worse maternal and child health outcomes among women with physical disabilities); *see also* Lesley A. Tarasoff, Saranyah Ravindran, Hannan Malik, Dinara Saleva, Hilary K. Brown, *Maternal Disability and Risk for Pregnancy, Delivery, and Postpartum Complications*, 222 AM. J. OBSTETRICS & GYNECOLOGY 27, 29–33 (2020) (synthesizing studies on perinatal outcomes among women with disabilities); *see also* Ilhom Akobirshoev, Susan L. Parish, Monika Mitra, Eliana Rosenthal, *Birth Outcomes Among US Women with Intellectual and Developmental Disabilities*, 10 DISABILITY & HEALTH J. 406, 407 (2017) (reporting adverse maternal and child health outcomes among women with intellectual and developmental disabilities).

gestational diabetes, cesarean delivery, and low-birthweight infants.[152] Women with disabilities are significantly more likely to have a miscarriage than women without disabilities.[153] In addition, disabled people of color experience even higher maternal mortality and morbidity rates.[154]

People with specific disabilities are at an even greater danger of adverse pregnancy outcomes. For example, people with diabetes face increased risks of "spontaneous abortion, fetal anomalies, preeclampsia, fetal demise, macrosomia, neonatal hypoglycemia, and neonatal hyperbilirubinemia, among others."[155] People with epilepsy, likewise, may experience an increased risk of death, preeclampsia, premature delivery or rupture of membrane, and chorioamnionitis.[156] Notably, many of these risks arise after the first trimester, meaning that some disabled people will be even more harmed by laws that restrict access to abortion services pre-viability.[157]

Furthermore, some disabled people take medications that are contraindicated during pregnancy. Although people with psychiatric disabilities are often advised or required to avoid or discontinue psychiatric medication for the duration of pregnancy because of the risk of complications, many of these medications cannot be stopped immediately without risking severe and sometimes life-threatening withdrawal side-effects.[158] Thus, without abortion services, people with psychiatric

152. Gleason et al., *supra* note 150, at 1.

153. Mekhala V. Dissanayake, Blair G. Darney, Aaron B. Caughey & Willi Horner-Johnson, *Miscarriage Occurrence and Prevention Efforts by Disability Status and Type in the United States*, 29 J. WOMEN'S HEALTH 345, 350 (2020); Willi Horner-Johnson, Sheetal Kulkarni-Rajasekhara, Blair G. Darney, Mekhala Dissanayake & Aaron B. Caughey, *Live Birth, Miscarriage, and Abortion Among U.S. Women With and Without Disabilities*, 10 DISABILITY & HEALTH J. 382, 384 (2017).

154. NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOCACY NETWORK, ACCESS, AUTONOMY, & DIGNITY: ABORTION CARE FOR PEOPLE WITH DISABILITIES 1, 6 (Sept. 2021), https://www.nationalpartnership.org/our-work/resources/repro/repro-disability-abortion.pdf [https://perma.cc/A2Z5-BEJ2].

155. Am. Diabetes Ass'n, *Standards of Medical Care in Diabetes—2018*, 41 DIABETES CARE S137, S137 (2018).

156. Sima I. Patel & Page B. Pennell, *Management of Epilepsy During Pregnancy: An Update*, 9 THERAPEUTIC ADVANCES IN NEUROLOGICAL DISORDERS 118, 124 (2016).

157. *See e.g.,* Tex. SB 8 (Tex. 2021) (banning abortion after a fetal heartbeat has been detected, which is typically around six weeks gestation); MISS. CODE ANN. § 41–41–191 (2022) (banning abortion after fifteen weeks gestation).

158. *See* Jonathan Brett & Bridin Murnion, *Mgmt. of Benzodiazepine Misuse & Dependence*, 38 AUSTL. PRESCRIBER 152, 154 (2015) (noting abrupt cessation of benzodiazepines, commonly used to treat severe anxiety, as causing "life-threatening" symptoms); *see also* Jennifer Pruskowski, Drew A. Rosielle, Lucetta Pontiff & Eva Reitschuler-Cross, *Deprescribing & Tapering Benzodiazepines #355*, 21 J. PALLIATIVE MED. 1040, 1040 (2018) (discussing recommendations to taper benzodiazepines over eight to twelve weeks).

disabilities who have unintended pregnancies will be put in an impossible situation: abruptly end needed medication and risk dangerous side-effects or continue medication that could harm them and their children.

People with other disabilities may also need access to abortion services to prevent medical problems. For example, a recent study found that nearly two-thirds of pregnancies among women with Down syndrome end in abortion, often because of medical complications.[159] People with dwarfism also have unique circumstances that may lead to some needing abortion services. For example, when two people with dwarfism reproduce together, there is a chance that each partner may contribute one dwarfism gene to the fetus, resulting in "double dominance" for their offspring, which can cause significant medical complications and early death.[160] Thus, while people with dwarfism would generally welcome a child with dwarfism, they may elect to terminate a pregnancy if "double dominance" is found.[161]

Ultimately, restricting access to abortion services forces pregnant people with disabilities to accept risks associated with pregnancy irrespective of their opinions, placing some in harm's way. It is both cruel and dangerous. It endangers the health and well-being of people with disabilities, a population that often has greater medical needs and more significant access barriers. Moreover, it does nothing to address the pervasive health inequities they face. As the National Partnership for Women & Families and the Autistic Self Advocacy Network poignantly writes:

> Solving this maternal health crisis is imperative, so that people who so choose can have healthy pregnancies; this includes ensuring that abortion care is an accessible option for people for whom pregnancy may be dangerous.[162]

In other words, rather than impede access to abortion services, policymakers should address the pervasive health inequities that disabled people experience.

159. Dagmar Orthmann Bless & Verena Hofmann, *Abortion in Women with Down Syndrome*, 64 J. INTELL. DISABILITY RSCH. 690, 693–95 (2020).

160. Marsha Saxton, *Disability Rights and Selective Abortion*, in THE DISABILITY STUDIES READER 87, 91 (Lennard J. Davis ed., 3rd ed. 2010).

161. *Id.*; *see also* NAT'L COUNCIL ON DISABILITY, GENETIC TESTING AND THE RUSH TO PERFECTION: PART OF THE BIOETHICS AND DISABILITY SERIES 35 (2019), https://ncd.gov/sites/default/files/NCD_Genetic_Testing_Report_508.pdf [https://perma.cc/8ADP-KTBT].

162. NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOCACY NETWORK, *supra* note 154, at 6.

B. Extreme Economic Disadvantages

Abortion services are critically important for people with disabilities because they experience severe economic disadvantages. According to the National Council on Disability, "[p]eople with disabilities live in poverty at more than twice the rate of people without disabilities."[163] They also have low employment rates.[164] For example, in 2020, only 18 percent of people with disabilities were employed, compared to 64 percent of people without disabilities.[165] Moreover, disabled people encounter barriers to education, leading to lower educational attainment and decreased economic security.[166] The income gap between people with and without disabilities is especially staggering. For example, a recent analysis found that people with disabilities earn sixty-three cents to the dollar in the Boston metropolitan area compared to people without disabilities.[167] These inequities are further amplified for people who live at the intersection of disability and other historically marginalized identities. For example, almost 40 percent of Black people with disabilities live in poverty, compared with 24 percent of white people with disabilities.[168] Black and Latinx people with disabilities also have unemployment rates that are roughly 50 percent higher than white people with disabilities.[169] LGBTQ+ disabled people also experience significant economic

163. *Highlighting Disability/Poverty Connection, NCD Urges Congress to Alter Federal Policies that Disadvantage People with Disabilities*, NAT'L COUNCIL ON DISABILITY (Oct. 26, 2017), https://ncd.gov/newsroom/2017/disability-poverty-connection-2017-progress-report-release [https://perma.cc/9LPB-7F4L].

164. *See Selected Economic Characteristics for the Civilian Noninstitutionalized Population by Disability Status*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?t=Disability&tid=ACSST1Y2019.S1811&hidePreview=true&vintage=2018 [https://perma.cc/DVA7-RN39].

165. *See* U.S. DEP'T OF LAB., BUREAU OF LAB. STAT, ECON. PRESS RELEASE, PERSONS WITH A DISABILITY: LABOR FORCE CHARACTERISTICS—2020, at 1 (2021).

166. *See* Board of Educ. of Hendrick Hudson Central School Dist. v. Rowley, 458 U.S. 176, 179 (1982) (internal quotation marks omitted) (*quoting* H.R. Rep. No. 94–332, p. 2 (1975) (H.R. Rep.)) (noting that most children with disabilities "were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to drop out" before enactment of the Education for All Handicapped Children Act in 1975). *See supra* note 165, at 2 ("Persons with a disability are less likely to have completed a bachelor's degree or higher than those with no disability.").

167. Michelle Yin, Dahlia Shaewitz & Mahlet Megra, *Leading the Way, or Falling Behind? What the Data Tell Us About Disability Pay Equity and Opportunity in Boston and Other Top Metropolitan Areas*, AM. INSTS. FOR RSCH. 1, 2 (2020).

168. *See* Nanette Goodman, Michael Morris, & Kelvin Boston, *Financial Inequality: Disability, Race and Poverty in America*, NAT'L DISABILITY INST. 1, 12 (2019).

169. *See Table 1. Employment Status of the Civilian Noninstitutional Population by Disability Status and Selected Characteristics, 2021 Annual Averages*, U.S. DEP'T OF LAB., BUREAU OF LAB.

disadvantages.[170] Indeed, a recent study found that 46 percent of LGBTQ+ disabled people have annual incomes below $30,000, compared to 29 percent of LGBTQ+ nondisabled people.[171] The circumstances are even more dire for transgender people with disabilities: 76 percent of transgender disabled people have annual incomes below $30,000, compared to 35 percent of straight, cisgender nondisabled people.[172]

At the same time, having a disability is costly.[173] In addition to the everyday expenses incurred by all people, disabled people often have high disability-related expenses, such as adaptive equipment, medication, and personal assistant services.[174] A 2020 report by the National Disability Institute found that a household that includes a disabled adult would need 28 percent more income to achieve a similar standard of living as a household without a disabled person.[175] In other words, disabled people typically have lower incomes and higher expenses than nondisabled people.

STAT. (last updated Feb. 24, 2022), https://www.bls.gov/news.release/disabl.t01.htm [https://perma.cc/7HDB-KQFU].

170. *See* Michele J. Eliason, Marty Martinson & Rebecca M. Carabez, *Disability Among Sexual Minority Women: Descriptive Data From an Invisible Population*, 2 LGBT HEALTH 113, 115 (2015) (describing the socioeconomic status of LGBTQ+ people with disabilities).

171. *See* Caroline Medina, Lindsay Mahowald, Thee Santos & Mia Ives-Rublee, *The United States Must Advance Economic Security for Disabled LGBTQI+ Workers*, CTR. AM. PROG. (Nov. 3, 2021), https://www.americanprogress.org/article/united-states-must-advance-economic-security-disabled-lgbtqi-workers [https://perma.cc/754C-EELF].

172. *See id.*

173. *See* Sophie Mitra, Daniel Mont, Hoolda Kim, Michael Palmer & Nora Groce, *The Hidden Costs of Living With a Disability*, THE CONVERSATION (July 25, 2017), https://theconversation.com/the-hidden-extra-costs-of-living-with-a-disability-78001 [https://perma.cc/Q3VW-3DL9] (describing the extra expenses disabled people incur, such as medical expenses, assistive devices, specialized transportation, and home modifications); *see also* Imani Barbarin, *The Cost of Being Disabled*, DESIGN SPONGE, https://www.designsponge.com/2019/05/the-cost-of-being-disabled-imani-barbarin.html [https://perma.cc/FK49-H5HQ] (describing the expenses people with disabilities have); Elizabeth F. Emens, *Disability Admin: The Invisible Costs of Being Disabled*, 105 U. MINN. L. REV. 2329 (2021) (describing the "admin costs" associated with being disabled).

174. Rebecca Vallas, *Disability is a Cause and Consequence of Poverty*, TALK POVERTY (Sept. 19, 2014), https://talkpoverty.org/2014/09/19/disability-cause-consequence-poverty/index.html [https://perma.cc/BYA5-8NYR] (exploring the costs associated with having a disability).

175. Nanette Goodman, Michael Morris, Zachary Morris & Stephen McGarity, *The Extra Costs of Living With a Disability in the U.S.—Resetting the Policy Table* 1, 7 (2020), https://www.nationaldisabilityinstitute.org/wp-content/uploads/2020/10/extra-costs-living-with-disability-brief.pdf [https://perma.cc/P656-L65L].

Although data on the rates of abortion among people with disabilities is scarce,[176] it is clear that they experience severe economic disadvantages and reducing access to abortion services only worsens the situation. Three-quarters of people who have abortions live at or below 200 percent of the federal poverty level,[177] and many of those individuals report that their principal reason for terminating a pregnancy is the inability to afford the costs associated with childrearing.[178] Additionally, many people who have abortions are people of color, reflecting socioeconomic disparities resulting from institutional and structural racism.[179] Similarly, it is reasonable to assume that people with disabilities have a considerable need for abortion services because the disproportionate poverty they endure makes them unable to afford the costs associated with pregnancy and childrearing. Simply put, parenthood is expensive and out of reach for many. In addition, experts opine that denial of abortion services can result in even grimmer economic outcomes for people, propagating persistent disadvantage and subordination.[180]

Moreover, decreasing access to abortion services further highlights the effects of the "abortion privilege" on historically marginalized communities, including people with disabilities.[181] For example, now that the Court has

176. *See* Willi Horner-Johnson, Sheetal Kulkrani-Rajasekhara, Blair G Darney, Mekhala Dissanayake & Aaron B. Caughey, *Live Birth, Miscarriage, and Abortion among U.S. Women with and Without Disabilities*, 10 DISABILITY & HEALTH J. 382, 382–83 (2017) (noting that "little is known about the relationship between maternal disability and miscarriage or abortion").

177. *See* JENNA JERMAN, RACHEL K. JONES & TSUYOSHI ONDA, GUTTMACHER INST., CHARACTERISTICS OF U.S. ABORTION PATIENTS IN 2014 AND CHANGES SINCE 2008 at 5–7 (2016), https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf [https://perma.cc/3DVV-RXTU] (finding that nearly half of abortion patients in 2014 lived below the federal poverty level and an additional 26 percent lived at between 100–199 percent of the federal poverty level); *see also* FDA v. Am. Coll. Obstetricians & Gynecologists, 141 S. Ct. 578, 582 (2021) (Sotomayor, J., dissenting) ("[T]hree-quarters of abortion patients have low incomes.").

178. *See* Sophia Chae, Sheila Desai, Marjorie Crowell & Gilda Sedgh, *Reasons Why Women Have Induced Abortions: A Synthesis of Findings From 14 Countries*, 96 CONTRACEPTION 233, 236–37 (2017) (finding that in the United States between 2008 and 2010, 40 percent of people who seek an abortion report not being able to afford the costs associated with raising a child).

179. *See* Ruqaiijah Yearby, *Breaking the Cycle of "Unequal Treatment" with Health Care Reform: Acknowledging and Addressing the Continuation of Racial Bias*, 44 CONN. L. REV. 1281, 1305–06 (2012) ("[S]tructural bias measures how non-race-based factors, such as economic inequalities, indirectly affect racial minorities . . . . Those without privilege, such as minorities, who are disproportionately poor, have limited access to health care because they do not have health insurance and cannot afford to pay for it.").

180. *See* DAVID S. COHEN & CAROLE JOFFE, OBSTACLE COURSE: THE EVERYDAY STRUGGLE TO GET AN ABORTION IN AMERICA 17 (2020) (noting that research shows women denied abortions are more likely to be poor and receive public benefits compared to women who get an abortion).

181. *See* Ederlina Co, *Abortion Privilege*, 74 RUTGERS L. REV. 1, 22 (2021) noting that:

overturned *Roe*, the right to abortion will fall to the states.[182] Abortion services will remain legal in states that have codified the right to abortion into their laws. Conversely, abortion is expected to become illegal in twenty-six states, most of which are in the South or Midwest,[183] which also have the highest proportions of people with disabilities.[184] Thus, people who live in restrictive states, including many who are disabled, will be forced to travel for abortions, undergo illegal abortions, or continue unintended pregnancies. In other words, abortion services will be even more out of reach for people with disabilities who face several economic and systemic barriers that make traveling to another state insurmountable.

Even before the *Dobbs* decision, abortion was inaccessible to many disabled people because of the severe economic disadvantages they experience. In the United States, the typical expense associated with an abortion is approximately $500 during the first trimester, while the cost rises to $2000 or higher during the second trimester.[185] Furthermore, slightly more than half of the people who have an abortion must pay for the procedure out-of-pocket.[186] In addition to the considerable costs of abortion services, which many disabled people cannot afford, some are unable to travel to an abortion provider, especially in areas with limited to no providers.[187] The cost and transportation barriers are especially notable

> [T]he abortion privilege can be more or less accessible and its benefits enhanced or diminished by the availability of private insurance or public funding, the number of abortion facilities in a woman's county, the number of restrictions on abortion in a state, sociodemographic and situational variables that affect whether a woman feels stigmatized or supported in her decision, a woman's race, and whether a healthy pregnancy and childbirth are a readily available alternative to abortion.

Id.

182. Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).

183. *See* Elizabeth Nash & Lauren Cross, *26 States are Certain or Likely to Ban Abortion without Roe: Here's Which Ones and Why*, GUTTMACHER INST. (Apr. 19, 2022), https://www.guttmacher.org/article/2021/10/26-states-are-certain-or-likely-ban-abortion-without-roe-heres-which-ones-and-why [https://perma.cc/74JN-NLAJ].

184. *See* Guixiang Zhao, Catherine A. Okoro, Jason Hsia, William S. Garvin & Machell Town, *Prevalence of Disability and Disability Types by Urban–Rural County Classification—U.S., 2016*, 57 AM. J. PREVENTATIVE MED. 749, 755 (2019).

185. Allison McCann, *What It Costs to Get an Abortion Now*, N.Y. TIMES (Sept. 28, 2022), https://www.nytimes.com/interactive/2022/09/28/us/abortion-costs-funds.html.

186. *See* Jenna Jerman, Rachel K. Jones, & Tsuyoshi Onda, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, GUTTMACHER INST. (May 2016), https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf [https://perma.cc/3DVV-RXTU].

187. NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOCACY NETWORK, *supra* note 154, at 9–10; WOMEN ENABLED INTERNATIONAL, ABORTION AND DISABILITY: TOWARDS AN INTERSECTIONAL HUMAN RIGHTS-BASED APPROACH 9 (Jan. 2020), https://womenenabled.org/wp-content/uploads/Women%20Enabled%20International%20Abortion%20and%20

because abortion providers are becoming increasingly scarce as states continue to impose laws significantly restricting abortion rights. For example, a 2018 study revealed that twenty-seven cities in the United States are "abortion deserts"—cities where people must travel at least one hundred miles to reach an abortion provider.[188] According to the *New York Times*, over eleven million women of reproductive age nationwide live more than an hour's drive from an abortion provider.[189] Further, the Guttmacher Institute found that as of 2017, 89 percent of counties in the United States have no known abortion providers.[190] Hence, accessing abortion services is already complex—and sometimes impossible—for many people, especially disabled people and other historically marginalized communities.

In sum, abortion services are essential for disabled people to achieve even a modicum of economic security. Indeed, many people with disabilities who access abortion services likely do so because of their severe economic disadvantage, and increased abortion restrictions only worsen these inequities. Ultimately, as abortion rights become even further constrained, some people with disabilities will be compelled to continue pregnancies and have children against their wishes and economic means or seek unsafe methods of abortion.[191]

C. Inadequate Access to Reproductive Health Services and Information

The scarcity of accessible and affordable reproductive health services and information for people with disabilities also underscores the necessity of abortion

Disability%20-%20Towards%20an%20Intersectional%20Human%20Rights-Based%20Approach%20January%202020.pdf [https://perma.cc/8RT5-5RDV]; *see also* Lisa R. Pruitt, *Toward a Feminist Theory of the Rural*, 2 UTAH L. REV. 421, 470–73 (2007). Notably, the dearth of transportation can be insurmountable for people seeking abortions in states that impose "waiting periods." *Id.* at 463–67. In these states, people must go to the abortion provider on multiple days, requiring transportation more than one time. *Id.*

188. Alice F. Cartwright, Mihiri Karunaratne, Jill Barr-Walker, Nicole E. Johns & Ushma D. Upadhyay, *Identifying National Availability of Abortion Care and Distance from Major US Cities: Systematic Online Search*, 20 J. MED. INTERNET RSCH. e186 (2018).

189. K.K. Rebecca Lai & Jugal K. Patel, *For Millions of American Women, Abortion Access Is Out of Reach*, N.Y. TIMES (May 31, 2019), https://www.nytimes.com/interactive/2019/05/31/us/abortion-clinics-map.html [https://perma.cc/BL8E-PGUL].

190. *Data Center: Percentage of Counties Without a Clinic*, GUTTMACHER INST., https://data.guttmacher.org/states/table?state=US&topics=58&dataset=data [https://perma.cc/79YD-KW8M].

191. SINS INVALID, *supra* note 41, at 63 ("Abortions will occur regardless if they are legal or not, but these laws are an act of violence particularly against poor and working-class individuals who will be unable to negotiate around the legislation and instead will be forced into unsafe practices to terminate their pregnancies.").

rights. For example, most people seeking abortion services do so to terminate an unintended pregnancy.[192] At the same time, research shows that disabled women have higher rates of unintended pregnancies than nondisabled women.[193] Critically, scholars posit that the high rates of unintended pregnancies among historically marginalized communities "reflect specific difficulties in accessing high-quality contraception or problems using methods consistently or effectively—issues directly tied to healthcare affordability and availability, reproductive education, and access to reliable birth control."[194] In fact, increased access to contraception is statistically associated with a reduction in rates of abortion utilization.[195]

Despite the importance of contraception, research consistently shows that women with disabilities' contraceptive needs are routinely ignored.[196] Disabled women are less likely to receive family planning services than nondisabled women.[197] These disparities are most pronounced in disabled women who have lower incomes, lower educational attainment, or are unemployed.[198] Decreased access to family planning services is likely a consequence of barriers commonly encountered by disabled people, including physical inaccessibility, financial limitations, and healthcare providers' attitudes.[199] Further, women with disabilities are significantly less likely to receive contraception or contraception counseling

192. Lawrence B. Finer, Lori F. Frohwirth, Lindsay A. Dauphinee, Susheela Singh & Ann M. Moore, *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 PERSP. ON SEXUAL & REPROD. HEALTH 110, 110 (2005).

193. Willi Horner-Johnson, Mekhala Dissanayake, Justine P. Wu, Aaron B. Caughey & Blair G. Darney, *Pregnancy Intendedness by Maternal Disability Status and Type in the United States*, 52 PERSP. ON SEXUAL & REPROD. HEALTH 31, 33 (2020) (finding a higher proportion of pregnancies were unintended among women with disabilities than among women without disabilities (53 percent vs. 36 percent)); *see also* Jeanne L. Alhusen, Tina Bloom, Kathryn Laughon, Lillian Behan & Rosemary B. Hughes, *Perceptions of Barriers to Effective Family Planning Services Among Women With Disabilities*, DISABILITY & HEALTH J. (2022) (citing studies).

194. Jarman, *supra* note 18, at 59.

195. *See* Jeffrey F. Peipert, Tessa Madden, Jenifer E. Allsworth & Gina M. Secura, *Preventing Unintended Pregnancies by Providing No-Cost Contraception*, 120 OBSTETRICS & GYNECOLOGY 1291, 1291 (2012).

196. Caroline Signore, *Reproductive and Sexual Health for Women With Disabilities, in* ELIMINATING INEQUITIES FOR WOMEN WITH DISABILITIES: AN AGENDA FOR HEALTH AND WELLNESS 93, 100 (Shari E. Miles-Cohen & Caroline Signore eds., 2016).

197. Alhusen et al., *supra* note 193 (citing studies on family planning services and contraception use among disabled women).

198. *Id.*

199. *Id.*

than nondisabled women.[200] In addition, disabled women are less likely than nondisabled women to use highly or moderately effective forms of non-permanent contraception, suggesting inequities in access to appropriate contraception.[201] Disabled women also report numerous barriers to contraceptive decision-making.[202] Therefore, decreased access to contraception likely increases the possibility of unintended pregnancies among disabled people and the consequent need for abortion care.

The higher rate of unintended pregnancies among people with disabilities may also be a consequence of the inadequate reproductive healthcare available to them. Extensive research has documented the pervasive barriers disabled women encounter when accessing reproductive healthcare.[203] For example, disabled

200. *Id.*; *see also* R. M. Powell, S. L. Parish, M. Mitra & E. Rosenthal, *Role of Family Caregivers Regarding Sexual and Reproductive Health for Women and Girls With Intellectual Disability: A Scoping Review*, 64 J. INTELL. DISABILITY RSCH. 131, 132 (2020) (synthesizing research on contraception use among women with intellectual disabilities).

201. *See* Justine Wu, Jianying Zhang, Monika Mitra, Susan L. Parish & Geeth Kavya Minama Reddy, *Provision of Moderately and Highly Effective Reversible Contraception to Insured Women with Intellectual and Developmental Disabilities*, 132 OBSTETRICS & GYNECOLOGY 565, 568 (2018) (finding that women with intellectual and developmental disabilities were less likely to be prescribed either long-acting reversible contraception or other moderately effective forms of contraception); *see also* Justine P. Wu, Kimberly S. McKee, Michale M. McKee, Michelle A. Meade, Melissa A. Plegue & Ananda Sen, *Use of Reversible Contraceptive Methods Among U.S. Women With Physical or Sensory Disabilities*, 49 PERSP. SEXUAL & REPROD. HEALTH 141, 141 (2017) (finding that the presence of a physical or sensory disability was associated with decreased odds of a woman using highly or moderately effective methods of contraception).

202. Willi Horner-Johnson, Krystal A. Klein, Jan Campbell & Jeanne-Maire Guise, *"It Would Have Been Nice to Have a Choice": Barriers to Contraceptive Decision-Making Among Women with Disabilities*, 32 WOMEN'S HEALTH ISSUES 261, 263–65 (2022).

203. *See generally* An Nguyen, *Challenges for Women with Disabilities Accessing Reproductive Health Care Around the World: A Scoping Review*, 38 SEXUALITY & DISABILITY 371 (2020) (reviewing research and finding barriers to reproductive health care for disabled women include social barriers, physical, and geographical barriers, and income and education barriers); *see also* Robyn M. Powell, *Disability Reproductive Justice*, 170 U. PA. L. REV. 1851 (2022) (exploring the reproductive experiences of people with disabilities) [hereinafter *Disability Reproductive Justice*]; Lesley A. Tarasoff, Fahmeeda Murtaza, Adele Carty, Dinara Salaeva, Angela D. Hamilton & Hilary K. Brown, *Health of Newborns and Infants Born to Women with Disabilities: A Meta-Analysis*, 146 PEDIATRICS e20201635 (2020) (describing research on barriers to perinatal health care experienced by disabled women); Nechama W. Greenwood & Joanne Wilkinson, *Sexual and Reproductive Health Care for Women With Intellectual Disabilities: A Primary Care Perspective*, 2013 INT'L J. FAM. MED. (2013) (synthesizing studies about common barriers to reproductive health care for women with intellectual disabilities); Caroline Signore, *Reproductive and Sexual Health for Women With Disabilities*, *in* ELIMINATING INEQUITIES FOR WOMEN WITH DISABILITIES: AN AGENDA FOR HEALTH AND WELLNESS 93, 93 (Shari E. Miles-Cohen & Caroline Signore eds., 2016).

women are less likely than nondisabled women to receive regular Pap tests or breast or cervical cancer screenings.[204] Subsequently, people with disabilities are more likely than people without disabilities to become infected with sexually transmitted infections.[205] Further, reproductive healthcare providers are often physically inaccessible to people with disabilities, making it difficult for them to find providers who can care for them.[206] In fact, "[n]umerous studies indicate that women with disabilities encounter barriers accessing and navigating perinatal care[.]"[207] For example, a study found that 44 percent of gynecology practices are inaccessible to women with disabilities.[208] Indeed, many disabled women report encountering physical access barriers within reproductive healthcare provider offices, such as a lack of height-adjustable examination tables and accessible weight scales.[209] Moreover, inaccessible healthcare facilities also hinder disabled people's access to abortion care.[210] Hence, without adequate reproductive healthcare, disabled people are at greater risk of unintended pregnancies as well as other health disparities.

The high rates of unintended pregnancies among disabled people may also result from scant access to information about reproduction. Many people with disabilities do not receive reproductive health information, including sexual education.[211] Some are entirely left out of sexual education classes, and others feel

204. *See* Powell et al., *supra* note 200, at 132, 149–50 (synthesizing findings from research).
205. Lucy Emma Craig, Zhong Eric Chen & Joanne Barrie, *Disability, Sexual and Reproductive Health: A Scoping Review of Healthcare Professionals' Views on Their Confidence and Competence in Care Provision*, 48 BMG SEXUAL REPROD. HEALTH 7 (2021) (citing studies about sexually transmitted infections among people with disabilities); Tarang Parekh, Gilbert Gimm & Panagiota Kitsantas, *Sexually Transmitted Infections in Women of Reproductive Age by Disability Type*, AM. J. PREVENTATIVE MED. (forthcoming) (finding women of reproductive age with disabilities have a higher prevalence of sexually transmitted infections than their nondisabled peers).
206. Tara Lagu et al., *Access to Subspecialty Care for Patients With Mobility Impairment: A Survey*, 158 ANNALS INTERNAL MED. 441, 444 (2013) (finding that 44 percent of gynecology practices were inaccessible to women with disabilities).
207. Tarasoff et al., *supra* note 203 (reviewing studies about barriers to perinatal care experienced by disabled people).
208. Lagu et al., *supra* note 206.
209. Monika Mitra et al., *supra* note 151, at 499.
210. NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOCACY NETWORK, *supra* note 154, at 10.
211. *See* Barbara Waxman Fiduccia, *Current Issues in Sexuality and the Disability Movement*, 18 SEXUALITY & DISABILITY 167, 171–72 (2000); *see also* H.J. Graff, R.E. Moyher, J. Bair, C. Foster, M.E. Gorden & J. Clem, *Relationships and Sexuality: How is a Young Adult with an Intellectual Disability Supposed to Navigate?*, 36 SEXUALITY & DISABILITY 175, 176 (2018); *see also* Amy Swango-Wilson, *Meaningful Sex Education Programs for Individuals With Intellectual/Developmental Disabilities*, 29 SEXUALITY & DISABILITY 113, 113–18 (2011).

"excluded by the omission of relevant disability-related sex information."[212] In addition, most sexual education curricula intended for students with disabilities, especially students with intellectual and developmental disabilities, are not evidence-based, suggesting that they may not be effective.[213] Notably, only three states explicitly include disabled students in their sexual education requirements, and only six states and the District of Columbia provide optional resources for an accessible sexual education curriculum for students with disabilities.[214] Further, LGBTQ+ people with disabilities are often denied appropriate sexual education that is inclusive of different gender identities and sexual orientations.[215] The consequent risks associated with a lack of information about reproduction extend beyond the classroom. A recent study found that compared to nondisabled women, women with cognitive disabilities are less likely to learn about several formal sex-education topics, such as, how to say no to sex, methods of birth control, where to get birth control, how to use a condom, sexually transmitted infections, and preventing HIV, AIDS, or both.[216] In other words, disabled people receive insufficient—and sometimes no—information about reproduction, including contraception and pregnancy prevention.

Hence, the pervasive and persistent barriers that disabled people encounter when attempting to access reproductive health services and information—coupled with the numerous inequities they experience—reinforce the necessity of abortion rights for disabled people. A disability justice performance group, Sins Invalid, explains, "because of the isolation of ableism . . . [and] the struggle of disabled people to obtain comprehensive sex education and healthcare, . . . abortion bans will be catastrophic for disabled folks."[217] Irrespective of abortion restrictions, disabled people encounter a range of impediments to reproductive

212. Waxman Fiduccia, *supra* note 211.
213. Graff et al., *supra* note 211.
214. LAURA GRAHAM HOLMES, SEX EDUC. FOR SOC. CHANGE, COMPREHENSIVE SEX EDUCATION FOR YOUTH WITH DISABILITIES: A CALL TO ACTION 17 (2021), https://siecus.org/wp-content/uploads/2021/03/SIECUS-2021-Youth-with-Disabilities-CTA-1.pdf [https://perma.cc/N889-VHKB].
215. Nathan J. Wilson, Jenima Macdonald, Brenda Hyman, Alexandra M. Bright, Patsie Frawley & Gisselle Gallego, *A Narrative Review of the Literature About People With Intellectual Disability Who Identify as Lesbian, Gay, Bisexual, Transgender, Intersex or Questioning*, 22 J. INTELL. DISABILITIES 171, 190 (2018).
216. *See* Eun Ha Namkung et al., *Contraceptive Use at First Sexual Intercourse Among Adolescent and Young Adult Women With Disabilities: The Role of Formal Sex Education*, 103 CONTRACEPTION 178, 180 (2021).
217. SINS INVALID, *supra* note 41.

healthcare and reproductive freedom.[218] Rather than further marginalizing disabled people by restricting access to abortion services even more, efforts should focus on expanding access to reproductive health services and information for people with disabilities.

D. High Rates of Violence

Access to safe and legal abortion services is especially significant for people with disabilities because they are uniquely vulnerable to sexual assault, intimate partner violence, and reproductive oppression.[219] Disabled people are at least three-and-a-half times more likely than nondisabled people to experience sexual violence.[220] Even worse, people with intellectual disabilities are seven times more likely than others to be victimized.[221] Moreover, sexual assaults experienced by disabled people often go unreported, meaning that the violence they experience is likely even more prevalent than estimates report.[222] Indeed, disabled people experience a range of barriers that can impede their ability to report abuse. Some prosecutors or police do not believe people with disabilities, especially if they have an intellectual disability.[223] Moreover, some prosecutors are hesitant to pursue action against perpetrators because they consider people with intellectual disabilities unreliable witnesses.[224] Furthermore, perpetrators are nearly always a caregiver or someone the disabled person knows, meaning that they may not have exposure to someone they can report the abuse to.[225] Notably, when a disabled

218. *See* Powell, *supra* note 56, at 252–56 (describing barriers to reproductive health care and freedom encountered by disabled people); *see also Disability Reproductive Justice*, *supra* note 203 (exploring the reproductive experiences of people with disabilities).
219. Amylee Mailhot Amborski, Eve-Line Brussières, Marie-Pier Vaillancourt-Morel & Christian C. Joyal, *Sexual Violence Against Persons With Disabilities: A Meta-Analysis*, TRAUMA, VIOLENCE, & ABUSE 1330, 1333 (2022) ("The results of this meta-analysis show that individuals with disabilities are at significantly higher risk of being sexually victimized in their lifetime than people without disabilities."); *see also In re* Guardianship of J.D.S., 864 So. 2d 534, 536 (Fla. Dist. Ct. App. 2004); Deborah W. Denno, *Sexuality, Rape and Mental Retardation*, UNIV. ILL. L. REV. 315, 316 (1997).
220. *See* Joseph Shapiro, *The Sexual Assault Epidemic No One Talks About*, NPR (Jan. 8, 2018), https://www.npr.org/2018/01/08/570224090/the-sexual-assault-epidemic-no-one-talks-about [https://perma.cc/RX6M-L6JX].
221. *Id.*
222. *See Sexual Abuse of People With Disabilities*, RAPE, ABUSE & INCEST NAT'L NETWORK, https://www.rainn.org/articles/sexual-abuse-people-disabilities [https://perma.cc/S6VR-ZJCL].
223. Shapiro, *supra* note 220.
224. *Id.*
225. *Id.*

person becomes pregnant because their guardian sexually assaulted them, the guardian may have complete control over that person's abortion decision-making, meaning they can force the disabled person to have an abortion or deny the disabled person the opportunity to have an abortion.[226] Considering the staggering rates of sexual violence experienced by disabled people—coupled with the barriers to justice that many encounter—access to abortion services is imperative and must be readily available for all.

In addition, the high rates of intimate partner violence experienced by disabled people underscore the importance of abortion services. Women with disabilities are at heightened risk of various types of intimate partner violence, including physical violence, sexual assault, stalking, psychological violence, and control of the individual's reproductive autonomy.[227] They are also vulnerable to other types of intimate partner violence related to their disabilities, such as perpetrators damaging assistive devices necessary for independence (e.g., wheelchairs, hearing aids), refusing to assist with personal care (e.g., bathing, feeding), manipulating medication, and isolating women (e.g., denying transportation, leaving them in bed).[228] Consequently, several studies have shown that people with disabilities are at a significantly higher risk of intimate partner violence than people without disabilities.[229] Moreover, specific populations of people with disabilities are at even greater risk of intimate partner violence.

226. For example, in some states, disabled people under guardianship are not able to have an abortion without their guardian's consent. *See e.g.*, VA. CODE § 18.2-76 (mandating that "a person who has been legally adjudicated to be 'incapacitated' cannot access abortion without the consent of 'parent, guardian, committee, or other person standing in loco parentis to the woman"). Moreover, in several states, guardians may seek abortion care for the disabled person, irrespective of that person's known wishes. *See, e.g.*, *In re* Guardianship of Mary Moe, 81 Mass. App. Ct. 136 (2012) (applying the "substituted judgment" standard to decide whether a disabled woman could be subjected to an abortion despite her objection).

227. Matthew J. Breiding & Brian S. Armour, *The Association Between Disability and Intimate Partner Violence in the United States*, 25 ANNALS EPIDEMIOLOGY 455, 457 (2015).

228. Margaret A. Nosek, Carol A. Howland & Rosemary B. Hughes, *The Investigation of Abuse and Women With Disabilities: Going Beyond Assumptions*, 7 VIOLENCE AGAINST WOMEN 477, 484 (2001).

229. *See e.g.*, Mónica Miriam García-Cuéllar, Guadalupe Pastor-Moreno, Isabel Ruiz-Pérez & Jesús Henares-Montiel, *The Prevalence of Intimate Partner Violence Against Women with Disabilities: A Systematic Review of the Literature*, DISABILITY & REHAB. (2022); Breiding et al., *supra* note 227; Diane L. Smith, *Disability, Gender and Intimate Partner Violence: Relationships from the Behavioral Risk Factor Surveillance System*, 26 SEXUALITY & DISABILITY 15, 22–26 (2008); Ann L. Coker et al., *Intimate Partner Violence and Disabilities Among Women Attending Family Practice Clinics*, 14 J. WOMEN'S HEALTH 829, 834–36 (2005); Kirsten A. Barrett, Bonnie O'Day, Allison Roche & Barbara Lepidus Carlson, *Intimate Partner Violence, Health Status, and Health Care Access Among Women with Disabilities*, 19 WOMEN'S HEALTH ISSUES 94, 94–99 (2009).

Women with disabilities are three to four times more likely than women without disabilities to experience intimate partner violence before or during pregnancy.[230] LGBTQ+ people with disabilities are also at increased risk of intimate partner violence.[231] Likewise, disabled people of color experience intimate partner violence at high rates.[232]

Reproductive coercion—defined as interfering with contraception use, pressuring someone to become pregnant against their wishes, or threatening or otherwise coercing someone to continue a pregnancy or terminate a pregnancy irrespective of what the pregnant person wants[233]—is another type of intimate partner violence that results in unintended pregnancies among disabled women.[234] Additionally, some disabled people are forced to remain in abusive relationships because they do not have access to abortion services.[235]

The shockingly high rates of sexual assault, intimate partner violence, and reproductive coercion experienced by people with disabilities—coupled with their lack of access to reproductive health services and information, including safe and effective contraception—contributes to higher rates of unintended pregnancies, and consequently an increased need for abortion services. As such, denial of abortion rights continues the nation's ugly history of imposing state-sanctioned violence on disabled people, including weaponizing their reproduction to subjugate them.

230. Monika Mitra, Susan E. Manning & Emily Lu, *Physical Abuse Around the Time of Pregnancy Among Women with Disabilities*, 16 MATERNAL & CHILD HEALTH J. 802, 803 (2012).

231. Jennifer Hillman, *Intimate Partner Violence Among LGBT Adults: Unique Risk Factors, Issues in Reporting and Treatment, and Recommendations for Research, Policy, and Practice, in* INTIMATE PARTNER VIOLENCE AND THE LGBT+ COMMUNITY: UNDERSTANDING POWER DYNAMICS 237, 240 (Brenda Russell, ed. 2020).

232. Elizabeth P. Cramer & Sara-Beth Plummer, *People of Color With Disabilities: Intersectionality as a Framework for Analyzing Intimate Partner Violence in Social, Historical, and Political Contexts*, 18 J. AGGRESSION, MALTREATMENT & TRAUMA 162, 172–77 (2009).

233. Cara Nikolajski et al., *Race and Reproductive Coercion: A Qualitative Assessment*, 25 WOMEN'S HEALTH ISSUES 216, 217 (2015).

234. Jeanne L. Alhusen, Tina Bloom, Jacqueline Anderson & Rosemary B. Hughes, *Intimate Partner Violence, Reproductive Coercion, and Unintended Pregnancy in Women With Disabilities*, 13 DISABILITY & HEALTH J. 1, 2 (2020). This finding is especially significant because "unintended pregnancies are two-to three-times more likely to be associated with violence than planned pregnancies . . . ." *Id.* (citing studies).

235. *See* NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOCACY NETWORK, *supra* note 154, at 14; *see also* ADVANCING NEW STANDARDS IN REPROD. HEALTH, U.C. SAN FRANCISCO, THE HARMS OF DENYING A WOMAN A WANTED ABORTION: FINDINGS FROM THE TURNAWAY STUDY (2021), https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4–16–2020.pdf [https://perma.cc/VG4G-YBSC] (noting that people denied an abortion are more likely to stay in contact with a violent partner, exacerbating the risk of further violence).

E. Challenges to Bodily Autonomy and Self-Determination

The bodily autonomy and self-determination that disabled people fought hard for is being undermined by the current assault on reproductive rights. Traditionally, the constitutional doctrine concerning abortion rights was entrenched in the principles of bodily autonomy and self-determination.[236] Constitutional protections of abortion rights were rooted in the guarantee of "liberty" in the Due Process Clause of the Fourteenth Amendment.[237] Accordingly, before the *Dobbs* decision, the Supreme Court ruled that the liberty protected by the U.S. Constitution comprises freedom to make "the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy . . . "[238] Similarly, bodily autonomy and self-determination are hallmarks of the disability rights and justice movements.[239] Indeed, a

236. *See* Pamela S. Karlan & Daniel R. Ortiz, *In a Diffident Voice: Relational Feminism, Abortion Rights, and the Feminist Legal Agenda*, 87 NW. U. L. REV. 858, 876 (1993) ("The language of autonomy has provided the central rationale for protecting individual women's control over the abortion decision."); *see* Barbara Hayler, *Abortion*, 5 SIGNS 307, 321 (1979) ("The right to choose abortion—as part of a claim to reproductive self-determination—is central to the feminist movement"); *see also* Gonzales v. Carhart, 550 U.S. 124, 172 (2007) (Ginsburg, J., dissenting) ("[L]egal challenges to undue restrictions on abortion procedures . . . center on a woman's autonomy to determine her life course . . . "); *see also* Dobbs v. Jackson Women's Health Org., 597 U.S. slip op. at 20 (2022) (Breyer, Sotomayor, and Kagan, JJ., dissenting) ("The Court's precedents about bodily autonomy, sexual and familial relations, and procreation are all interwoven—all part of the fabric of our constitutional law, and because that is so, of our lives. Especially women's lives, where they safeguard a right to self-determination."); *but see* Dobbs, 597 U.S. slip op. at 71 (2022) (majority opinion) ("[A] right to abortion cannot be justified by a purported analogy to the rights recognized in those other cases or by 'appeals to a broader right to autonomy.'" (quoting *id.* at 32)).

237. *See* Planned Parenthood of Se. Pennsylvania v. Casey, 505 U.S. 833, 844 (1992) ("Liberty finds no refuge in a jurisprudence of doubt. Yet 19 years after our holding that the [U.S.] Constitution protects a woman's right to terminate her pregnancy in its early stages, *Roe v. Wade* (1973), that definition of liberty is still questioned. Joining the respondents as *amicus curiae*, the United States, as it has done in five other cases in the last decade, again asks us to overrule *Roe*." (citation omitted)).

238. *Id.* at 851.

239. Samuel R. Bagenstos & Margo Schlanger, *Hedonic Damages, Hedonic Adaptation, and Disability*, 60 VAND. L. REV. 745, 795 (2007) ("[P]aternalism has historically been one of the most significant contributors to the disadvantaged people with disabilities experience. Non-disabled parents, teachers, doctors, rehabilitation counselors, employers, and others have arrogated to themselves the prerogative to decide what is best for people with disabilities. In so doing, they have deprived people with disabilities of opportunities to work and participate in the community. They have denied people with disabilities the autonomy that consists in making one's own choices. And they have denied people with disabilities the 'dignity of risk' – 'the opportunity to develop their skills, test them in the world, and succeed or fail according to their talents.'") (footnotes omitted) (quoting Samuel R. Bagenstos, *The Americans With Disabilities Act as Welfare Reform*, 44 WM. & MARY L. REV. 921, 997 (2003)).

fundamental aspect of the disability rights movement involved challenging paternalism and the belief that people with disabilities should rely on others, such as family members and professionals, to make decisions on their behalf.[240]

Constitutional protections for bodily autonomy and self-determination are significant to people with disabilities because they have often been denied these protections in reproductive and non-reproductive contexts. Efforts to restrict abortion rights—which disproportionately impact historically marginalized communities like people with disabilities—propagate the ideologies that informed our country's ugly past. As Professor Dorothy Roberts writes, both restrictions on abortion care and eugenic forced sterilization laws "seek to control reproductive decision making for repressive political ends."[241] Similar to the statutes that allowed involuntary sterilization to control reproduction among disabled people and others considered "socially inadequate," abortion restrictions oppress disabled people by denying them reproductive freedom. Overcoming our history of eugenics necessitates permitting all people, including those with disabilities, to have complete control of their bodies and lives.

Disability scholars and activists have long recognized the significance of disabled people enjoying complete reproductive freedom, including deciding whether to become parents.[242] At the same time, they understand that there are forces that coerce disabled people to continue unintended pregnancies.[243] Similarly, they recognize that there are forces that seek to prevent parenthood among disabled people—including the forces that involuntarily sterilized tens of thousands of people with disabilities during the eugenics era, as well as the ones that continue to prevent parenthood among disabled people through coerced sterilization or abortion or loss of parental rights.[244] Understanding that controlling

240. JAMES I. CHARLTON, NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT 3 (1998).

241. Dorothy Roberts, *Dorothy Roberts Argues That Justice Clarence Thomas's Box v. Planned Parenthood Concurrence Distorts History*, U. PA. L. REV. (June 6, 2019), https://www.law.upenn.edu/live/news/9138-dorothy-roberts-argues-that-justice-clarence [https://perma.cc/Y3RB-9WTQ].

242. *See generally* Powell, *From Carrie Buck to Britney Spears*, *supra* note 46(describing the significance of reproductive freedom for disabled people); *see also* Zoe Brennan-Krohn & Rebecca McCray, *Britney Spears' Reproductive Freedom Is a Disability Rights Issue*, ACLU (June 25, 2021), https://www.aclu.org/news/civil-liberties/britney-spears-reproductive-freedom-is-a-disability-rights-issue [https://perma.cc/A2Z5-BEJ2] (exploring reproductive freedom for people with disabilities).

243. NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOCACY NETWORK, *supra* note 154, at 12–4.

244. ROCKING THE CRADLE, *supra* note 117, at 15–16 (explaining that "[w]omen with disabilities still contend with coercive tactics designed to encourage sterilization or abortion because they are

disabled people's reproduction has been a tool of ableism and oppression, activists and scholars view people with disabilities' ability to control their reproduction as a tool for disability justice.[245] Because the ability to terminate a pregnancy gives disabled people control over their reproduction, activists and scholars consider abortion access essential to disability justice.[246]

Access to abortion services unequivocally offers disabled people the bodily autonomy and self-determination necessary to respond to the severe disadvantages they endure. As explained previously, people with disabilities have inadequate access to reproductive health services and information, including contraception and sexuality education, leading to maternal mortality and morbidity as well as unintended pregnancies.[247] In addition, they are often poor and have significant material hardships.[248] They are likely to experience violence and reproductive coercion.[249] These inequities, and others, are further compounded for people who live at the intersection of disability and other marginalized identities or statuses.[250] Therefore, for people with disabilities, abortion provides a critical mechanism for navigating insufficient reproductive healthcare, poverty, and violence.[251] In other words, it gives disabled people much-needed bodily autonomy and self-determination, something that they have fought for that must be respected.

III. DISABILITY REPRODUCTIVE JUSTICE

The increasing attacks on abortion rights in the United States undoubtedly have devastating consequences for disabled people. At the same time, reckoning

not deemed fit for motherhood[]" and that "parents [with disabilities] are the only distinct community of Americans who must struggle to retain custody of their children").

245. SINS INVALID, *supra* note 41, at 59–63 (describing "the complexities of reproductive justice in the context of ableism").

246. *Id.* at 63.

247. *See supra* Part II.A. and Part II.C. (describing the pervasive health inequities experienced by disabled people and the barriers to reproductive health services and information they encounter).

248. *See supra* Part II.B. (explaining the economic hardships that people with disabilities experience).

249. *See supra* Part II.D. (reporting the high rates of violence that disabled people face).

250. *See supra* Part II.A. (citing research showing health disparities).

251. Professor Melissa Murray has made similar arguments with respect to the vulnerabilities experienced by women of color and the consequent importance of abortion. *See* Murray, *supra* note 72, at 2090–91 ("[F]or many people of color, the decision to terminate a pregnancy is shot through with concerns about economic and financial insecurity, limited employment options, diminution of educational opportunities and lack of access to health care and affordable quality childcare.").

with the current siege on abortion rights requires recognizing that these latest assaults are part of our country's shameful history of weaponizing reproduction as a mechanism for subjugating people with disabilities and other historically marginalized communities. Disability reproductive justice provides a foundation for confronting these complex and often ignored matters. Informed by the tenets of both disability justice and reproductive justice, disability reproductive justice is an emergent jurisprudential and legislative framework that proposes a vision to help activists, scholars, legal professionals, and policymakers as they imagine the next steps in the battle to protect abortion rights in a way that fully includes people with disabilities.[252] This Part, therefore, begins by describing the disability reproductive justice framework. Thereafter, it makes a case for using the disability reproductive justice framework to challenge the ongoing fight for abortion rights as well as the enduring reproductive oppression that disabled people experience beyond abortion.

A. Overview of Disability Reproductive Justice

Disability reproductive justice is a jurisprudential and legislative framework to confront reproductive oppression of people with disabilities through law and policy.[253] It supplements existing understandings of reproductive rights and reproductive justice by elucidating the ways that the reproductive oppression of disabled people is uniquely entrenched in our laws, policies, and collective conscience. Disability reproductive justice draws from two complementary intersectional social movements, theories, and praxes: disability justice and reproductive justice.

Disability justice is a framework conceived in 2005 by a group of queer, trans, and racialized people with disabilities.[254] Disability justice is rooted in intersectionality[255] and was established as a "movement-building framework that

252. I first proposed the disability reproductive justice framework in an essay published in the Virginia Law Review Online. Robyn M. Powell, *From Carrie Buck to Britney Spears: Strategies for Disrupting the Ongoing Reproductive Oppression of Disabled People*, 107 VA. L. REV. ONLINE 246 (2021). I further developed the framework in a recently published article in the University of Pennsylvania Law Review. *Disability Reproductive Justice*, *supra* note 203.

253. *See* Powell, *From Carrie Buck to Britney Spears*, *supra* note 46, at 261–71; *see also Disability Reproductive Justice*, *supra* note 203.

254. *See* LEAH LAKSHMI PIEPZNA-SAMARASINHA, CARE WORK: DREAMING DISABILITY JUSTICE 15 (2018).

255. In 1989, Professor Kimberlé Crenshaw coined the term "intersectionality" to help explain the oppression of African-American women. *See* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine,*

would center the lives, needs, and organizing strategies of disabled queer and trans and/or Black and brown people marginalized from mainstream disability rights organizing's white-dominated, single-issue focus."[256] Disability justice was established in response to the disability rights movement and emphasizes the needs, experiences, and perspectives of people largely ignored by the disability rights movement (e.g., disabled people of color, people with intellectual disabilities, people with psychiatric disabilities).[257] Moreover, "[w]here disability rights seeks to change social conditions for some disabled people via law and policy, disability justice moves beyond law and policy[.]"[258] Accordingly, disability justice "seeks to radically transform social conditions and norms in order to affirm and support all people's inherent right to live and thrive."[259]

Disability justice activists and scholars have long recognized the host of ways that reproduction has been—and continues to be—weaponized to control disabled people, including through laws and policies that prevent them from having children and force them to birth children.[260] Moreover, disability justice activists and scholars understand that people who live at the intersection of disability and other historically marginalized identities experience heightened levels of reproductive oppression.[261] Indeed, the founders of disability justice understood the inseparable relationship between ableism, racism, and reproductive oppression.[262] Disability justice is therefore crucial for challenging abortion restrictions and dismantling the reproductive oppression of historically marginalized communities, including people with disabilities.

Reproductive justice is complementary to disability justice and provides an equally important lens for confronting the current attacks on abortion rights as well as the broader reproductive oppression that disabled people have endured for centuries. Reproductive justice is based on the international human rights

Feminist Theory and Antiracist Politics, U. CHI. LEGAL F. 139, 140 (1989). Since then, intersectionality has been used to examine how people with multiple marginalized identities or statuses, including multiply marginalized people with disabilities, experience subordination. *See, e.g.*, Beth Ribet, *Surfacing Disability Through a Critical Race Theoretical Paradigm*, 2 GEO. J.L. & MOD. CRIT. RACE PERSP. 209, 211–22 (2011).

256. PIEPZNA-SAMARASINHA, *supra* note 254.

257. *See* SINS INVALID, *supra* note 41, at 13; *see also* PIEPZNA-SAMARASINHA, *supra* note 254.

258. Talila "TL" Lewis, *Disability Justice is an Essential Part of Abolishing Police and Prisons*, MEDIUM (Oct. 6, 2020), https://level.medium.com/disability-justice-is-an-essential-part-of-abolishing-police-and-prisons-2b4a019b5730 [https://perma.cc/KV98-EVBD].

259. *Id.*

260. SINS INVALID, *supra* note 41, at 59–63.

261. *Id.*

262. *Id.*

framework and draws from reproductive rights and social justice. Reproductive justice was initially conceived in 1994 by feminists of color to conceptualize reproductive rights struggles entrenched in social justice organizing that concurrently confronted racism, classism, and other oppressions.[263] Like disability justice, reproductive justice is rooted in intersectionality and an "understanding that the impacts of race, class, gender, and sexual identity oppressions are not additive but integrative." [264]

Like disability justice, reproductive justice challenges individualist approaches to equity. Thus, while disability justice was created in response to the disability rights movement and its limitations, reproductive justice emerged as a movement because the reproductive rights movement traditionally excluded women of color and members of other historically marginalized communities.[265] Reproductive justice, accordingly, extends beyond our traditional understanding of reproductive rights in two significant ways. First, reproductive justice emphasizes the importance of choice while also recognizing the broader social, legal, and institutional structures that influence people's reproductive decision-making.[266] Second, reproductive justice applies to all facets of reproductive freedom rather than just abortion rights.[267] Therefore, reproductive justice "includes not only a woman's right not to have a child, but also the right to have children and to raise them with dignity in safe, healthy, and supportive environments."[268] Moreover, similar to disability justice, reproductive justice moves beyond a rights-based approach and demands "an integrated approach that draws on constitutional protections and movement-based policy strategies."[269]

263. Zakiya Luna & Kristin Luker, *Reproductive Justice*, 9 ANN. REV. L. & SOC. SCI. 327, 328 (2013).
264. LORETTA J. ROSS & RICKIE SOLINGER, REPRODUCTIVE JUSTICE: AN INTRODUCTION 73–74 (2017).
265. *Id.* at 75.
266. Loretta Ross, *What is Reproductive Justice?*, *in* REPRODUCTIVE JUSTICE BRIEFING BOOK: A PRIMER ON REPRODUCTIVE JUSTICE AND SOCIAL CHANGE 4, 4 (2007) https://www.law.berkeley.edu/php-programs/courses/fileDL.php?fID=4051 [https://perma.cc/T4US-79Y5] ("Moving beyond a demand for privacy and respect for individual decision making to include the social supports necessary for our individual decisions to be optimally realized, this framework also includes obligations from our government for protecting women's human rights. Our options for making choices have to be safe, affordable and accessible, three minimal cornerstones of government support for all individual life decisions.").
267. *Id.* ("Instead of focusing on the means—a divisive debate on abortion and birth control that neglects the real-life experiences of women and girls—the Reproductive Justice analysis focuses on the ends: better lives for women, healthier families, and sustainable communities.").
268. Dorothy Roberts, *Reproductive Justice, Not Just Rights*, DISSENT (Fall 2015), https://www.dissentmagazine.org/article/reproductive-justice-not-just-rights [https://perma.cc/7GDE-9HXH]; *see also* Luna & Luker, *supra* note 263, at 343 (2013) (explaining that "reproductive justice is equally about the right to not have children, the right to have children, the right to parent with dignity, and the means to achieve these rights").
269. Priscilla A. Ocen, *Incapacitating Motherhood*, 51 U.C. DAVIS L. REV. 2191, 2240 (2018).

Disability reproductive justice, therefore, draws from both disability justice and reproductive justice to consider legal and policy solutions that allow us to finally confront the reproductive oppression of disabled people that has festered for centuries. Because the weaponization of disabled people's reproduction is entrenched in our laws, policies, and collective conscience, disability reproductive justice integrates a multifaceted approach to confronting these injustices. It recognizes that an interdisciplinary and interprofessional response that engages all fields of expertise, including law, medicine, public health, social work, and organizing, among others, is essential. More importantly, disability reproductive justice emphasizes the importance of directly engaging people with disabilities in all legal and policy responses.

B. The Importance of Disability Reproductive Justice for Abortion Rights

Amid the fraught debates surrounding abortion rights, people with disabilities have largely been excluded from the public and scholarly discourse or only included in the context of disability-selective abortion bans. Yet, as demonstrated in this Article, the current attack on abortion rights disproportionately harms disabled people, who have endured a long history of reproductive oppression, including in the context of access to abortion services. Therefore, the disability reproductive justice framework offers an ideal foundation for addressing the omission of people with disabilities from efforts to protect abortion rights. It proposes a vision to help activists, scholars, legal professionals, and policymakers conceive of and articulate a paradigm shift that supports the coalescence of the disability justice and reproductive justice and rights movements in the battle for abortion rights. Adopting a disability reproductive justice approach to protecting abortion rights guarantees that activists, scholars, legal professionals, and policymakers wholly consider the needs, experiences, and perspectives of people with disabilities.

Disability reproductive justice encompasses five principles that activists, scholars, legal professionals, and policymakers must incorporate in the battle to protect abortion rights. First, legal and policy responses must be aimed at confronting the oppressions experienced by people who live at the intersection of disability and other historically marginalized identities.[270] Second, activists, scholars, legal professionals, and policymakers must vigorously engage disabled people in advocacy and analysis concerning reproductive freedom.[271] Third, legal

270. *Disability Reproductive Justice*, *supra* note 203 at, 1889–89.
271. *Id.*

and policy responses must be developed and implemented to safeguard disabled people's rights to autonomy and self-determination.[272] Fourth, sexual and reproductive health services and information must be accessible and available for disabled people.[273] Finally, people with disabilities must be ensured rights, justice, and wellness for themselves and their families.[274] Based on these principles, I propose legal and policy solutions for confronting the increasing attacks on abortion rights in a way that includes disabled people in the next Part. Considering the recent demise of *Roe*, and the dire consequences that it will have on people with disabilities, the need for such an approach could not be more timely or clear.

IV. A WAY FORWARD

"The right to have a child, the right to not have a child and the right to raise your children. Everyone should have that. It's not that hard to explain—it's just hard as hell to achieve."[275]

As demonstrated throughout this Article, people with disabilities are disproportionately and devastatingly harmed by the increasing attacks on abortion rights. Efforts to protect abortion rights must therefore directly include the needs, experiences, and perspectives of people with disabilities. Moreover, these efforts must recognize how abortion restrictions are part of our nation's ugly history of weaponizing reproduction to subjugate disabled people—a history that remains deeply present. Thus, any reckoning with the current siege on abortion rights must be inclusive and all-encompassing. In other words, it must acknowledge the ways that the abortion rights movement has excluded disabled people and other historically marginalized communities, as well as the ways that these communities are broadly denied reproductive freedom, including, but not limited to, access to abortion services. To do so, an approach that adopts disability reproductive justice is necessary. To facilitate this crucial work, I offer legal and policy solutions based on the principles of disability reproductive justice, which include normative and transformative proposals. Given the threats we now face from hostile states and a Supreme Court willing to sanction draconian laws,

272. *Id.* at 1891–94.
273. *Id.* at 1894–98.
274. *Id.* at 1898–1903.
275. Emma Swislow, *Activist Loretta Ross Gives Talk on Reproductive Justice*, AMHERST STUDENT (Oct. 31, 2017), https://amherststudent.amherst.edu/article/2017/10/31/activist-loretta-ross-gives-talk-reproductive-justice.html [https://perma.cc/H6RL-6KYD] (quoting from a talk that reproductive justice activist and co-founder of SisterSong Loretta Ross gave at Amherst College on October 24, 2017).

there has never been a more critical moment for a bold and inclusive vision that addresses the needs, experiences, and perspectives of disabled people.

A. Confront Intersecting Oppressions

Even before the *Dobbs* decision, many people from historically marginalized communities were denied actual reproductive autonomy because of structural, legal, and institutional barriers that impeded their access to reproductive healthcare and rights.[276] Yet the abortion rights movement has traditionally ignored these issues.[277] In fact, the abortion rights movement's exclusion of Black women and other historically marginalized communities was the catalyst for reproductive justice, which is rooted in intersectionality and an understanding that intersecting factors, such as race and disability, impact people's reproductive freedom.[278] Disability justice is similarly based on intersectionality and recognition that the disability rights movement has largely ignored people who live at the intersection of disability and other historically marginalized identities. Although people with disabilities are often perceived as monolithic (that is, white and cisgender), the disability community is incredibly diverse,[279] which means that many disabled people experience multiple oppressions relating to their reproduction. Therefore, drawing from both disability justice and reproductive justice, disability reproductive justice calls for legal and policy responses to the battle to protect abortion rights that intentionally integrates the needs, experiences, and perspectives of multiply marginalized disabled people. A disability reproductive justice approach understands that true reproductive freedom can only be achieved by interrogating and responding to the ways that oppression and privilege overlap and fortify one another. Hence, disability reproductive justice demands attention to confronting intersecting oppressions.

Though all people with disabilities endure a wide range of structural, legal, and institutional barriers to reproductive freedom, including abortion rights, these injustices are compounded for multiply marginalized disabled people. For

276. *See supra* Part III.A. (describing reproductive justice and the ways Black women and other people from historically marginalized communities are denied reproductive rights).
277. *See supra* Part III.A.
278. *See supra* Part III.A.
279. *See generally* Carrie Elizabeth Mulderink, *The Emergence, Importance of #DisabilityTooWhite Hashtag*, 40 DISABILITY STUD. Q. (2020); *see also* Sarah Blahovec, *Confronting the Whitewashing of Disability: Interview with #DisabilityTooWhite Creator Vilissa Thompson*, HUFFPOST (Dec. 6, 2017), https://www.huffpost.com/entry/confronting-the-whitewash_b_10574994 [https://perma.cc/Z57C-DUHP].

example, during the eugenics era, Black disabled women and LGBTQ+ people were particularly subjected to forced sterilization.[280] Reflecting this shameful history, Black disabled women continue to be denied control over their reproductive destinies, including experiencing higher sterilization rates than white disabled women.[281] Further, multiply marginalized people with disabilities experience heightened barriers to reproductive health services and information. For instance, Black women with disabilities experience reproductive health disparities, including high maternal mortality and morbidity rates.[282] Similarly, LGBTQ+ people with disabilities encounter significant barriers to accessing reproductive health services and information, often leading to deleterious outcomes.[283] Thus, disabled people of color and LGBTQ+ disabled people are likely at increased risk of unintended pregnancies because of inadequate reproductive health services and information as well as higher rates of reproductive health disparities, including maternal mortality and morbidity. Moreover, people of color with disabilities and LGBTQ+ people with disabilities experience extreme economic disadvantages, making access to abortion services all the more critical.[284] Disabled people of color and LGBTQ+ disabled people also have significant abortion needs because they are at a heightened risk of sexual assault, intimate partner violence, and reproductive coercion.[285] Hence, people who live at the intersection of disability and other historically marginalized identities experience both an increased need for abortion services and decreased access.

Therefore, a disability reproductive justice approach to protecting abortion rights prioritizes legal and policy solutions that confront the intersecting oppressions experienced by multiply marginalized people with disabilities. It requires interrogating and challenging the structural, legal, and institutional barriers that impede their reproductive freedom through law and policy.[286] As explored in the next Subpart, it also necessitates cross-movement solidarity between disability rights and justice activists and reproductive rights and justice activists, such as, racial justice activists, LGBTQ+ rights activists, and others. Finally, a disability reproductive justice approach to scholarship that aims to

280. *See supra* Part I.A.
281. *See supra* Part I.B.
282. *See supra* Part II.A.
283. *See supra* Part II.A.
284. *See supra* Part II.B.
285. *See supra* Part II.D.
286. The remainder of this Part identifies specific legal and policy responses that must be included in the fight for abortion rights. Confronting intersecting oppressions will be essential to their effectiveness.

confront intersecting oppressions can help to address the scarcity of legal scholarship examining the intersection of race and disability.[287]

B. Center Disabled People as Leaders in the Fight for Abortion

A fundamental element of justice-based approaches to social justice movements involves "listening to, engaging, and developing affected communities."[288] As such, intentionally engaging historically marginalized communities as leaders in developing and implementing laws and policies that impact them is central to both disability justice and reproductive justice. Sins Invalid explains, "[b]y centering the leadership of those most impacted, we keep ourselves grounded in real-world problems and find creative strategies for resistance."[289] Moreover, prioritizing disabled people as leaders in legal and policy responses aligns with the disability community's ethos, "nothing about us, without us."[290] A disability reproductive justice approach to protecting abortion rights, therefore, recognizes that when the voices of historically marginalized communities, including people with disabilities, are centered, solutions that benefit all members of society are conceived.

Cross-movement organizing is an essential component of centering disabled people as leaders and it is imperative to the battle for abortion rights. To be sure, cross-movement organizing requires the disability rights and reproductive rights movements to confront the tensions—particularly concerning issues of eugenics, prenatal genetic testing for disability, and abortions based on fetal disability diagnoses—that have festered between the groups over time and left disabled people feeling alienated from the abortion rights movement.[291] For example, Margaret Sanger, co-founder of Planned Parenthood, along with other leaders in the birth control movement, embraced eugenics ideologies and

287. Jasmine E. Harris, *Reckoning With Race and Disability*, 130 YALE L.J.F. 916, 926–27 (June 20, 2021) (observing that "discussions of race and disability do not use a critical-intersectional lens to interrogate inequities or a central subject of legal inquiry").

288. Emily Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 AM. U.L. REV. 275, 338 (2015) (describing the importance of actively engaging socially marginalized communities in order to address inequities).

289. SINS INVALID, *supra* note 41, at 23.

290. CHARLTON, *supra* note 240, at 3–4.

291. *See* Bagenstos, *supra* note 18, at 280–81; Saxton, *supra* note 160, at 89; Erik Parens & Adrienne Asch, *The Disability Rights Critique of Prenatal Genetic Testing: Reflections and Recommendations, in* PRENATAL TESTING AND DISABILITY RIGHTS, 3, 3–4, 13 (2000); Adrienne Asch, *Disability Equality and Prenatal Testing: Contradictory or Compatible?*, 30 FLA. ST. U.L. REV. 315, 333–34 (2003).

demonstrated disdain for reproduction among people with disabilities and other historically marginalized communities.[292] Importantly, Planned Parenthood recently repudiated Sanger's role in restricting reproductive freedom among historically marginalized communities throughout the eugenics era, which was a significant step forward.[293] But tensions between the disability community and the abortion rights movement are not limited to the eugenics era. For example, during the height of the Zika crisis, the abortion rights movement invoked the risk of microcephaly and other fetal disabilities that can result from the Zika virus, to advocate for the right to abortion services after twenty-weeks.[294] In doing so, the movement failed to engage people with disabilities and relied on messaging that some disabled people viewed as ableist.[295] Unfortunately, these are two of many examples in which disability rights advocates—who are typically aligned with progressive politics—were harmed by the abortion rights movement's exclusion and poor treatment of disabled people.[296] To confront ongoing tensions between the groups, the abortion rights movement must commit to "being inclusive and intersectional, responsive to critiques from allies in the disability justice movement, and ready to be thoughtful partners in ensuring meaningful reproductive autonomy and justice for all people."[297]

292. Saxton, *supra* note 160, at 87, 89; *see also* Margaret Sanger, *The Eugenic Value of Birth Control Propaganda*, BIRTH CONTROL REV. 1, 5 (Oct. 1921), *reprinted in* THE SELECTED PAPERS OF MARGARET SANGER, VOLUME 1: THE WOMAN REBEL, 1900–1928, at 321 (Esther Katz ed., 2003) (Sanger infamously stated, "the most urgent problem today is how to limit and discourage the over-fertility of the mentally and physically defective.").

293. *See* Alexis McGill Johnson, *I'm the Head of Planned Parenthood. We're Done Making Excuses for Our Founder*, N.Y. TIMES (Apr. 17, 2021), https://www.nytimes.com/2021/04/17/opinion/planned-parenthood-margaret-sanger.html [https://perma.cc/XC6U-TEWW] (noting "Sanger remains an influential part of our history and will not be erased, but as we tell the history of Planned Parenthood's founding, we must fully take responsibility for the harm that Sanger caused to generations of people with disabilities and Black, Latinx, Asian-American, and Indigenous people").

294. *See generally* Seema Mohapatra, *Law in the Time of Zika: Disability Rights and Reproductive Justice Collide*, 84 BROOK. L. REV. 325 (2019) (exploring the tensions between disability and abortion rights groups during the Zika crisis); *see also,* s.e. smith, *When It Comes to Zika and Abortion, Disabled People Are Too Often Used as a Rhetorical Device*, REWIRE NEWS GROUP (Aug. 18, 2016), https://rewirenewsgroup.com/article/2016/08/18/comes-zika-abortion-disabled-people-often-used-rhetorical-device [https://perma.cc/TJA7-73CH]; Chloe Angyal, *Zika Virus Threat Puts Abortion Rights and Disability Rights on Collision Course*, HUFFPOST (Feb. 5, 2016), https://www.huffpost.com/entry/zika-virus-us-abortion-disability_n_56b2601be4b04f9b57d83192 [https://perma.cc/WWW8-9EDV].

295. *See* Angyal, *supra* note 294.

296. Jesudason & Epstein, *supra* note 19.

297. NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOC. NETWORK, *supra* note 154, at 16.

Importantly, recent examples of collaboration between the reproductive rights and disability rights movements show promise. For example, to begin bridging the gap between the movements, the Center for Reproductive Rights purposely established partnerships with disability rights advocates.[298] More recently, the National Partnership for Women & Families and the Autistic Self Advocacy Network jointly published four issue briefs exploring topics on reproductive health, rights, and justice for people with disabilities.[299] The Planned Parenthood League of Massachusetts also recently launched a center that will research barriers to abortion for disabled people and other historically marginalized communities.[300] It is also important to note that reproductive justice groups, such as SisterSong and Generations Ahead, have made significant strides over the years in promoting cross-movement solidarity between them and disability rights and justice groups.[301] These efforts are crucial reminders that the movements must work collectively to confront the attack on reproductive freedom, and that deliberately incorporating the needs, experiences, and perspectives of people with disabilities is essential to developing and implementing legal and policy responses. Erin Matson, co-founder and co-director of Reproaction, writes, "[u]ntil reproductive rights and justice leaders make disability rights an integral issue for the movement, anti-choice advocates will continue to dictate—and skew—the conversation in order to restrict abortion."[302]

Likewise, disability rights activists and scholars must become more engaged in the fight to protect abortion rights. Despite the significance of disability to the

298. CTR. FOR REPROD. RTS., SHIFTING THE FRAME ON DISABILITY RIGHTS FOR THE U.S. REPRODUCTIVE RIGHTS MOVEMENT 1–2 (2017), https://reproductiverights.org/wp-content/uploads/2020/12/Disability-Briefing-Paper-FINAL.pdf [https://perma.cc/Q53R-UAB2].

299. *See* NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOCACY NETWORK, ACCESS, AUTONOMY, & DIGNITY: A SERIES ON REPRODUCTIVE RIGHTS AND DISABILITY JUSTICE, https://www.nationalpartnership.org/our-work/repro/reports/access-autonomy-dignity.html [https://perma.cc/T648-GPBV] (linking to reports on access to abortion, access to contraception, healthy sexuality and sex education, and the right to parent).

300. Meghan Smith, *New Planned Parenthood League of Massachusetts Center Will Research Barriers to Abortion for People of Color, Disabled Community*, WGBH NEWS (Aug. 7, 2023), https://www.wgbh.org/news/local-news/2022/06/08/new-planned-parenthood-league-of-massachusetts-center-will-research-barriers-to-abortion-for-people-of-color-disabled-community [https://perma.cc/PEP5-3PGR].

301. *See* Jarman, *supra* note 18, at 53.

302. Erin Matson, *Reproductive Justice Activists Must Combat Anti-Choicers' False Push for Disability Rights*, REWIRE NEWS GROUP (Sept. 24, 2014, 2:41 PM), https://rewirenewsgroup.com/article/2014/09/24/reproductive-justice-activists-must-combat-anti-choicers-false-push-disability-rights [https://perma.cc/4FSG-XYJ2].

discourse concerning abortion rights, disability rights activists and scholars have traditionally shied away from engaging in abortion rights activism.[303] Significantly, however, disability rights organizations, primarily the Autistic Self Advocacy Network and Disability Rights Education and Defense Fund, along with disability rights advocates and scholars, have increasingly been involved in abortion rights advocacy, including filing amicus briefs in important cases.[304] The American Association of People with Disabilities recently issued a statement decrying the attack on abortion rights and emphasizing the ways that disabled people are disproportionately impacted, and over sixty disability rights activists and organizations drafted a letter calling on the U.S. Congress to codify the right to abortion into law.[305] Ultimately, the disability rights movement must align with disability justice activists and scholars who have always understood that "reproductive justice is disability justice"[306] by prioritizing advocacy relating to abortion rights.

Accordingly, a disability reproductive justice approach to protecting abortion rights requires activists, scholars, legal professionals, and policymakers to purposefully engage people with disabilities in leading legal and policy responses to disrupt reproductive oppression. Such efforts necessitate an understanding of and respect for people with disabilities sharing their lived experiences and must involve cultivating leadership among people with disabilities, especially multiply marginalized people with disabilities, and elevating them to leadership positions within the abortion rights movement. Furthermore, recognizing that people with disabilities are the experts of their lives leads to legal and policy responses that are disability-competent and adequately confront the harms being increasingly exacted on people with disabilities by the antiabortion movement. In the end, legal

303. JOSEPH P. SHAPIRO, NO PITY: PEOPLE WITH DISABILITIES FORGING A NEW CIVIL RIGHTS MOVEMENT 278–80 (1993).

304. *See e.g.*, Brief of the Autistic Self Advocacy Network and the Disability Rights Education and Defense Fund as Amici Curiae in Support of Respondents in Dobbs v. Jackson Women's Health Org., 141 S. Ct. 2619 (2021) (No. 19-1392), 2021 WL 4311855; Brief of Disability Rights Advocates as Amici Curiae in Support of Plaintiffs-Appellees, Isaacson v. Brnovich, 2021 U.S. App. LEXIS 35096 (9th Cir. Nov. 26, 2021) (Nos. 21–16645, 21–16711); Amici Curiae Brief of Disability Rights Organizations, Advocates and Academics on Rehearing En Banc, Preterm-Cleveland v. McCloud, 994 F.3d 512 (6th Cir. 2021) (No. 18-3329).

305. *AAPD Statement on Leaked Supreme Court Draft Decision and Threat to Roe v. Wade*, AM. ASS'N PEOPLE WITH DISABILITIES (May 10, 2022), https://www.aapd.com/press-releases/aapd-statement-scotus-threat-to-roe [https://perma.cc/XF74-ST5H]; *Disabled and Pro-Choice Coalition Letter to Congress*, #DISABLEDANDPROCHOICE COALITION, https://docs.google.com/document/d/e/2PACX-1vT1RQTsL7W0lGdw-lw2Ob3Iu0A3rghgEjO3eVc7iqsetiWu3bTiyhHYK_g1sP2iFMNJhwCNpCvtLHlz/pub [https://perma.cc/Z3SE-CKJY].

306. *See* SINS INVALID, *supra* note 41, at 59.

and policy responses that address the needs, experiences, and perspectives of disabled people lead to holistic and sustainable progress that benefits everybody.

C. Defend Bodily Autonomy and Self-Determination

As explained previously, the disability rights and justice movements and the reproductive rights movement share two common principles: bodily autonomy and self-determination.[307] Disability rights activist Anne Finger expounds, "[b]ecause both the reproductive rights movement and the disability rights movement are rooted in our rights to control our bodies and our lives, there are strong links between the two."[308] People with disabilities have long fought for the right to control their destinies.[309] Similarly, bodily autonomy and self-determination are profoundly enmeshed in the fabric of the Due Process Clause of the Constitution and encompass a person's right to decide when and how to bear children.[310] Accordingly, disability reproductive justice requires a commitment to defending people with disabilities' bodily autonomy and self-determination.

307. *See supra* Subpart II.E (explaining how disabled people have fought for bodily autonomy and self-determination).

308. Anne Finger, *Claiming All of Our Bodies: Reproductive Rights and Disability, in* TEST-TUBE WOMEN: WHAT FUTURE FOR MOTHERHOOD? 294–95 (Rita Arditti, Renate Duelli Klein & Shelley Minden eds., 1984).

309. CHARLTON, *supra* note 240, at 3 ("Control has universal appeal for [disability rights movement] activists because the needs of people with disabilities and the potential for meeting these needs are everywhere conditioned by a dependency born of powerlessness, poverty, degradation, and institutionalization. This dependency, saturated with paternalism, begins with the onset of disability and continues until death.").

310. *See* Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 851 (1992) (holding that the liberty protected by the Constitution comprises freedom in making decisions "involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."); *see also* April L. Cherry, *Roe's Legacy: The Nonconsensual Medical Treatment of Pregnant Women and Implications for Female Citizenship*, 6 U. PA. J. CONST. L. 723, 726 (2004) ("Roe v. Wade is perhaps the most important case decided by the United States Supreme Court furthering women's autonomy, equality, and hence citizenship, in the twentieth century."); Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to* Roe v. Wade, 63 N.C. L. REV. 375, 380–81 (1985) (observing that the Supreme Court has anchored the right to abort a pregnancy to "a concept of personal autonomy derived from the due process guarantee."); Sylvia A. Law, *Rethinking Sex and the Constitution*, 132 U. PA. L. REV. 955, 1017 (1984) ("Restricting access to abortion dramatically impairs the woman's capacity for individual self-determination.").

Disabled people have endured a long and persistent history of being denied their bodily autonomy and self-determination, including forced sterilization.[311] Tragically, the past remains deeply present. Today, nondisabled people routinely try to exert control over disabled people, telling them "how to live, whether they can or should have children, whether they can or should have sex, what interventions they 'need' for their bodies or minds, among other intrusions."[312] Thus, the fight for complete bodily autonomy and self-determination persists for many people with disabilities.

Guardianship, also known as conservatorship in some states, is the most common legal mechanism for controlling people with disabilities' bodily autonomy and self-determination. Guardianship is a "fiduciary relationship between a guardian and a ward or other incapacitated person, whereby the guardian assumes the power to make decisions about the ward's person or property."[313] Guardianship is generally involuntary and forced on people with intellectual or psychiatric disabilities and older adults with dementia.[314] The National Council on Disability estimates that at least 1.3 million people with disabilities presently are under guardianship.[315] According to disability justice advocates:

> While the law varies from state to state, guardianship orders routinely authorize third parties to make decisions about the most personal and important decisions in an individual's life—choices that impact the person's own body and reproductive health; how and where they receive medical, psychiatric, and psychological treatment; how the money and resources they work to earn are spent; and even with whom they associate.[316]

311. *See supra* Subpart I.A. (describing how disabled people are forcibly sterilized).
312. NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOC. NETWORK, *supra* note 154, at 4.
313. *Guardianship*, BLACK'S LAW DICTIONARY (11th ed. 2019).
314. *See* Jennifer Moye, *Guardianship and Conservatorship*, *in* EVALUATING COMPETENCIES: FORENSIC ASSESSMENTS & INSTRUMENTS 309, 309 (2d ed. 2005); *see also* Sara Luterman, *Free Comrade Britney!*, THE NATION (Mar. 31, 2020), https://www.thenation.com/article/society/britney-spears-conservatorship [https://perma.cc/4UKC-23NY]; Sara Luterman, *The Darker Story Just Outside the Lens of Framing Britney Spears*, THE NEW REPUBLIC (Feb. 12, 2021), https://newrepublic.com/article/161344/framing-britney-spears-review-disability-legal [https://perma.cc/XGN5-RT9Y].
315. NAT'L COUNCIL ON DISABILITY, BEYOND GUARDIANSHIP: TOWARD ALTERNATIVES THAT PROMOTE GREATER SELF-DETERMINATION 17 (2018), https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf [https://perma.cc/EYW2-E9UN].
316. *Statement from Disability Justice and Supported Decision-Making Advocates: Britney Spears Spotlights the Need for Change Now*, CTR. FOR PUB. REPRESENTATION (June 25, 2021), https://supporteddecisions.org/2021/06/25/britney-spears [https://perma.cc/F4T2-AA8Y].

Guardianship is a unique way that many people with disabilities are deprived of their bodily autonomy and self-determination in the context of reproduction. As attorney Marissa Ditkowsky writes, "[t]his issue of autonomy bleeds into reproductive justice, sexual freedom, and parental rights for disabled women."[317] Many disabled people who have guardians, such as Britney Spears, are forced to use contraception to prevent pregnancy.[318] Moreover, guardians can force people with disabilities to continue an unintended pregnancy or compel them to have an unwanted abortion.[319] In some states, court approval is required for disabled people under guardianship to have abortions.[320] As the National Partnership for Women & Families and the Autistic Self Advocacy Network explain, "[a]pplying court approval requirements without respect to whether the abortion is actively sought by the pregnant person diminishes the autonomy of people with disabilities, further delegitimizing their competence to decide what care is appropriate for their own bodies and lives."[321]

Therefore, a disability reproductive justice approach recognizes that legal and policy responses to the battle to protect abortion rights must center on defending and extending people with disabilities' rights to bodily autonomy and self-determination. Activists, scholars, legal professionals, and policymakers must work to abolish guardianship. In fact, legislative efforts are presently underway to confront the injustice imposed on disabled people by guardianship. For example, disability rights advocates across the country are urging state legislatures to implement supported decision-making as a least restrictive alternative to guardianship.[322] Supported decision-making allows people with disabilities greater autonomy in their choices while receiving help with decision-

317. Marissa Ditkowsky, *Disability Justice Is Gender Justice: Acknowledging Disabled Women This Women's History Month*, AM. CONST. SOC'Y (Mar. 8, 2021), https://www.acslaw.org/expertforum/disability-justice-is-gender-justice-acknowledging-disabled-women-this-womens-history-month [https://perma.cc/KPP8-3PM2].

318. Sarah Luterman, *For Women Under Conservatorship, Forced Birth Control Is Routine*, THE NATION (July 15, 2021), https://www.thenation.com/article/society/conservatorship-iud-britney-spears [https://perma.cc/T3A2-ZBXZ].

319. NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOCACY NETWORK, *supra* note 123123, at 12–13.

320. *See* Elizabeth Ann McCaman, *Limitations on Choice: Abortion for Women with Diminished Capacity*, 24 HASTINGS WOMEN'S L.J. 155, 161–72 (2013).

321. NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOC. NETWORK, *supra* note 154, at 13.

322. *See U.S. Supported Decision-Making Laws*, CTR. FOR PUB. REP., https://supporteddecisions.org/resources-on-sdm/state-supported-decision-making-laws-and-court-decisions [https://perma.cc/V5Z5-ASS2] (listing states that have implemented supported decision-making, including Alaska, Colorado, Delaware, the District of Columbia, Indiana, Louisiana, Nevada, North Dakota, Rhode Island, Texas, Washington, and Wisconsin).

making from people whom they prefer and trust.[323] As an alternative to guardianship, with supported decision-making, the disabled person is provided with the necessary support and accommodations to understand the relevant information, consider the available options, and make decisions based on their own preferences and values.[324] Such support can take various forms, depending on the person's needs, and may include assistance in understanding complex information, clarifying choices, exploring consequences, and communicating decisions.[325] Supported decision-making "does not require court involvement and can be coupled with other legal tools, such as powers of attorney and advance health care directives, that promote self-determination and autonomy."[326] Ultimately, supported decision-making enables people with disabilities to make decisions for themselves while receiving support and guidance from people whom they trust, additionally, a bipartisan group in Congress has expressed interest in addressing guardianship abuse.[327] Federal and state legislative responses to guardianship are urgently needed and should be part of the fight to protect abortion rights. Likewise, legal and policy solutions must prevent coerced abortions while also opposing discriminatory barriers that put abortion out of reach for disabled people who have guardians.

In the end, a disability reproductive justice approach must acknowledge that restrictions on abortion "land[] heavily on disabled people's body autonomy."[328] For people with disabilities, abortion rights are critical to their bodily autonomy and self-determination:

> Deciding whether or when to have a child is fundamentally about asserting autonomy over our own bodies. Access to abortion helps to make this right a reality by giving people control over their own reproductive futures. Abortion access is also intrinsically tied to dignity because it allows us to maintain a level of respect for our own bodies and our own decisions about whether and how to

323. *About Supported Decision-Making*, CTR. FOR PUB. REP., https://supporteddecisions.org/ about-supported-decision-making [https://perma.cc/FWE3-FMC5].
324. *Id.*
325. *Id.*
326. *Statement: Britney Spears Spotlights the Need for Change Now*, CTR. FOR PUB. REPRESENTATION (June 25, 2021), https://supporteddecisions.org/2021/06/25/britney-spears [perma.cc/F4T2-AA8Y].
327. Veronica Stracqualursi, *Lawmakers Unveil Bipartisan Bill to 'Free Britney,' Targeting Conservatorships' Abuse*, CNN (July 20, 2021), https://www.cnn.com/2021/07/20/politics/free-act-conservatorships-britney-spears/index.html [https://perma.cc/YS2Q-UCPL] (describing efforts by the U.S. Congress to address guardianship abuse).
328. SINS INVALID, *supra* note 41, at 59.

> expand our families—and encourages society to respect our decisions as well.[329]

As such, the bodily autonomy and self-determination that disabled people fought so hard for has been undermined by the *Dobbs* decision. Ultimately, "[w]e all deserve body autonomy, and to make the best choice for ourselves and our future."[330]

D. Ensure Accessible Reproductive Health Services and Information

People with disabilities encounter numerous barriers that impede their access to reproductive health services and information, including abortion services.[331] Although federal disability rights laws, including the Americans with Disabilities Act,[332] Section 504 of the Rehabilitation Act (Section 504),[333] and Section 1557 of the Affordable Care Act,[334] require healthcare providers to be accessible and prohibit disability-based discrimination, as implemented these laws have failed to remove the substantial barriers to reproductive health services and information experienced by people with disabilities.[335] Moreover, disabled people often lack the economic means and accessible transportation necessary to obtain reproductive healthcare.[336] They are also often denied comprehensive and accessible reproductive health information, such as sexual education.[337] As such, laws and policies must confront the barriers experienced by disabled people, recognizing that they result in a greater need for abortion services as well as decreased access.

329. NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOCACY NETWORK, *supra* note 154, at 4.
330. SINS INVALID, *supra* note 41, at 63.
331. *See supra* Subpart II.C (explaining barriers commonly encountered by people with disabilities).
332. Americans with Disabilities Act of 1990, 42 U.S.C. § § 12101–12213.
333. Rehabilitation Act of 1973, 29 U.S.C. § § 701–796.
334. Patient Protection and Affordable Care Act, 42 U.S.C. § 18116(a); 45 C.F.R § § 92.102–105 (2020).
335. *See* Powell, *Confronting Eugenics*, *supra* note 56, at 625–27 (2021) (describing federal disability laws' application to matters concerning reproductive justice).
336. *See supra* Subpart II.B (exploring how economic hardships affect access to health care); *see also* Rebecca J. Mitchell, Tayhla Ryder, Katia Matar, Reidar P. Lystad, Robyn Clay-Williams & Jeffrey Braithwaite, *An Overview of Systematic Reviews to Determine the Impact of Socio-Environmental Factors on Health Outcomes of People with Disabilities*, 30 HEALTH. SOC. CARE CMTY. 1254 (2022) (citing studies about transportation barriers).
337. *See supra* Subpart II.C (describing the consequences of inadequate sexuality education for disabled people).

Critically, many people with disabilities are unable to access abortion services because of the Hyde Amendment, which Congress originally passed in 1976 to restrict the use of federal funds for abortion services, except in instances of rape, incest, or life endangerment.[338] Symbolically, the law was significant as it aligned with those in the antiabortion movement who did not want their tax dollars to be spent on abortion. But the law also provided policymakers an opportunity to move the balance away from abortion access, as illustrated by Congressman Henry Hyde's explanation of the Amendment's goals: "I certainly would like to prevent, if I could legally, anybody having an abortion: a rich woman, a middle-class woman or a poor woman. Unfortunately, the only vehicle available is the . . . Medicaid bill."[339]

Initially, the Hyde Amendment only restricted Medicaid funding for abortion services.[340] But because Congress reauthorizes it annually as part of the U.S. Department of Health and Human Services's appropriation bill, its scope has been extended over time.[341] Today, the Hyde Amendment bars the use of Medicaid, Medicare, the Children's Health Insurance Program, and other federal health programs for abortion services.[342] Although Democrats initially excluded these funding restrictions from the 2022 budget, the Amendment was eventually included after opposition by Republican senators.[343]

Significantly, although the Hyde Amendment prohibits federal funds from being used for abortion services, states may elect to cover abortion services for Medicaid beneficiaries with their own funds. [344] Accordingly, Medicaid coverage of abortion services depends on where you live. Today, thirty-four states and the District of Columbia follow the federal standard and only cover abortion services

338. *See* Hyde Amendment, Pub. L. No.94-439, 90 Stat. 1418 (1976). For information on the Hyde Amendment, *see* Alina Salganicoff, Laurie Sobel & Amrutha Ramaswamy, *The Hyde Amendment and Coverage for Abortion Services*, KAISER FAM. FOUND. (Mar. 5, 2021), https://www.kff.org/womens-health-policy/issue-brief/the-hyde-amendment-and-coverage-for-abortion-services [https://perma.cc/3BAV-JSD8].

339. Heather D. Boonstra, *The Heart of the Matter: Public Funding of Abortion for Poor Women in the United States*, 10 GUTTMACHER POL'Y REV. 12, 12 (2007).

340. Salganicroff et al., *supra* note 228.

341. *Id.*

342. *Id.* Other federally-funded health programs include the military's TRICARE program, federal prisons, the Peace Corps, and the Federal Employees Health Benefits Program.

343. Aris Folley, *Democrats Lose Fight to Strip Abortion Funding Restrictions from Spending Package*, THE HILL (Mar. 9, 2022), https://thehill.com/policy/finance/597469-democrats-lose-fight-to-strip-abortion-funding-restrictions-from-spending [https://perma.cc/67JV-3F9S].

344. Salganicroff et al., *supra* note 228.

in their Medicaid program in instances of rape, incest, or life endangerment.[345] Notably, in violation of federal law, South Carolina limits Medicaid coverage of abortion services only to cases of life endangerment.[346] The remaining sixteen states' Medicaid programs use state funds to cover most or all medically necessary abortions.[347]

Importantly, disabled people are disproportionately affected by the Hyde Amendment's restrictions because the majority have Medicaid or Medicare: in 2016, 38 percent of people with disabilities were covered by Medicaid, and 27 percent were covered by Medicare.[348] These inequities are heightened for Black disabled people and LGBTQ+ disabled people because they have even higher rates of Medicaid coverage.[349] Thus, many people with disabilities, especially Black people with disabilities and LGBTQ+ people with disabilities, are blocked from using their health insurance to pay for abortion services.

In response to the substantial barriers that disabled people experience, a disability reproductive justice approach necessitates legal and policy solutions aimed at ensuring that reproductive health services and information are entirely accessible. For example, activists, scholars, legal professionals, and policymakers must advocate for increased compliance with, and enforcement of, existing legal protections to ensure reproductive freedom for people with disabilities. Specifically, they should urge the U.S. Departments of Justice and Health and Human Services's Office for Civil Rights to prioritize access to reproductive health services and information, including investigating alleged violations of disability-based discrimination by healthcare providers and enforcing federal disability rights laws as needed. Activists, scholars, legal professionals, and policymakers

345. *Medicaid Coverage of Abortion*, GUTTMACHER INST. (Feb. 12, 2021), https://www.guttmacher.org/print/evidence-you-can-use/medicaid-coverage-abortion [https://perma.cc/6GRM-8B9D].

346. *Id.*

347. *Id.*

348. Jae Kennedy, Elizabeth Geneva Wood & Lex Frieden, *Disparities in Insurance Coverage, Health Services Use, and Access Following Implementation of the Affordable Care Act: A Comparison of Disabled and Nondisabled Working-Age Adults*, 54 INQUIRY 1, 4 (2017).

349. *Distribution of the Nonelderly With Medicaid by Race/Ethnicity*, KAISER FAM. FOUND. (2019), https://www.kff.org/medicaid/state-indicator/medicaid-distribution-nonelderly-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D [https://perma.cc/EE2Q-ZSRE]; NAT'L P'SHIP FOR WOMEN & FAMS. & AUTISTIC SELF ADVOCACY NETWORK, *supra* note 154, at 10; Caroline Medina, Lindsay Mahowald & Thee Santos, *The United States Must Advance Economic Security for Disabled LGBTQI+ Workers*, CTR. FOR AM. PROG. (Nov. 3, 2021), https://www.americanprogress.org/article/united-states-must-advance-economic-security-disabled-lgbtqi-workers [https://perma.cc/754C-EELF].

must implement legal and policy responses that guarantee access to abortion services for disabled people, including ensuring that abortion providers are accessible as well as knowledgeable about treating disabled people.

Furthermore, reproductive health services and information must be expanded. Congress must mandate that all health insurers cover abortion care, including Medicaid and Medicare. To that end, Congress should swiftly pass the Equal Access to Abortion Coverage in Health Insurance (EACH) Act, which would end the Hyde Amendment and related abortion funding restrictions in government health insurance plans.[350] Further, states must allocate funding for abortion services for people with disabilities who receive Medicaid or Medicare.

Legal and policy solutions must also aim to expand telehealth in a way that provides disabled people meaningful access to abortion services.[351] Given that many people with disabilities live in rural areas without access to transportation, the integration of telehealth services can increase opportunities for disabled people to access reproductive health services.[352] Recently, clinics offering remote medication abortion through telehealth have begun to operate in more significant numbers, and brick-and-mortar clinics have expanded their practice into virtual care as well.[353] Early abortion care has, as a result, become more accessible in the thirty-one states that permit telehealth for abortion.[354] As states continue to curtail abortion rights, remote medication abortion is becoming even more important

350. *EACH Act Would Remove Major Economic Barriers to Abortion Access in the U.S.*, CTR. FOR REPRODUCTIVE RTS. (Mar. 25, 2021), https://reproductiverights.org/each-act-would-remove-major-economic-barriers-to-abortion-access-in-the-u-s [https://perma.cc/FK7X-GUWG].

351. *See* SHAINA GOODMAN & ERIN MACKAY, NAT'L P'SHIP FOR WOMEN & FAMS., DELIVERING ON THE PROMISE OF TELEHEALTH: HOW TO ADVANCE HEALTH CARE ACCESS AND EQUITY FOR WOMEN 14 (2021), https://www.nationalpartnership.org/our-work/resources/health-care/delivering-promise-telehealth.pdf [https://perma.cc/JLE5-2W6R] (recommending "[b]uild[ing] equity, accessibility, and flexibility into telehealth systems so that patients get the care they need, when they need it," including people who are deaf or blind and have access needs).

352. Kathryn Wagner, *Healthcare Justice for Women With Disabilities: The Need for Integrative Primary Care Services and Education for Medical Providers*, 77 SEX ROLES 430, 431 (2017); *see also* George M. Powers, Lex Frieden, Vinh Nguyen & Southwest ADA Center, *Telemedicine: Access to Health Care for People with Disabilities*, 17 HOUS. J. HEALTH L. & POL'Y 7 (2017).

353. David S. Chen, Greer Donley & Rachel Rebouché, *The New Abortion Battleground*, 123 COLUM. L. REV. 1, 5–6 (2023).

354. *Medication Abortion*, GUTTMACHER INST. (Nov. 1, 2022), https://www.guttmacher.org/state-policy/explore/medication-abortion [https://perma.cc/2PKF-YY8Y].

to protect.[355] Legal and policy efforts should be made to the healthcare delivery system to allow for greater access to reproductive telehealth services.[356]

Additionally, a disability reproductive justice approach ensures that people with disabilities have access to comprehensive and accessible information about reproduction. Although both the Individuals with Disabilities Education Act and Section 504 require that "students with disabilities have the benefit of receiving access to the general curriculum, including comprehensive sex education when offered by schools,"[357] people with disabilities are continuously denied access to comprehensive and accessible sexual education, which lead to increased rates of unintended pregnancy and other deleterious outcomes.[358] In response, activists, scholars, legal professionals, and policymakers should advocate for the U.S. Department of Education to establish standards for sexual education for disabled students. Moreover, healthcare providers and disability services providers must ensure that people with disabilities receive ongoing and comprehensive information about reproduction. Importantly, sexual education must encompass diverse sexual orientations and gender identities.

E. Guarantee Rights, Justice, and Wellness

Finally, it is impossible to effectively respond to the attack on abortion rights without considering the significant role of law and policy in undermining reproductive justice. People with disabilities and their families encounter numerous laws and policies that portend threats to their rights, justice, and wellness. These threats are pervasive and require considerable attention. These threats are further compounded for people of color with disabilities and LGBTQ+ people with disabilities. Consequently, the final principle of disability reproductive justice that must be incorporated into the battle to protect

355. *See* Rachel Rebouché & Ushma Upadhyay, *Online Clinics Show Abortion Access Can Survive State Restrictions and Roe v. Wade Threat*, USA TODAY (Apr. 12, 2021), https://www.usatoday.com/story/opinion/2021/04/12/medication-abortion-rights-protected-online-clinics-column/7106777002 [https://perma.cc/FC7W-N4BZ].

356. Gabriela Weigel, Brittni Frederiksen, Usha Ranji & Alina Salganicoff, *Telemedicine in Sexual and Reproductive Health*, KAISER FAM. FOUND. (Nov. 22, 2019), https://www.kff.org/womens-health-policy/issue-brief/telemedicine-in-sexual-and-reproductive-health [https://perma.cc/HWX7-HWL9] (describing the ways that reproductive telehealth services can help address unmet reproductive health needs, especially for rural populations).

357. James Sinclair, Laurie G. Kahn, Dawn A. Rowe, Valerie L. Mazzotti, Kara A. Hirano & Christen Knowles, *Collaborating to Plan and Implement a Sex Education Curriculum for Individuals With Disabilities*, 40 CAREER DEV. & TRANSITION FOR EXCEPTIONAL INDIVIDUALS 123, 123 (2017).

358. *See supra* Subpart II.C. (explaining that disabled people are routinely denied sexual education).

abortion rights involves ensuring that disabled people and their families are guaranteed rights, justice, and wellness.

Considering the demise of *Roe* and the dire consequences that it will have on people with disabilities, activists, scholars, legal professionals, and policymakers must consider ways to codify the right to abortion into law. State-level advocacy is a crucial aspect. For example, in 2021, Massachusetts passed the ROE Act, which confers a state right to abortion before twenty-four weeks of pregnancy, and for life, health, or lethal fetal anomaly after twenty-four weeks.[359] Meanwhile, in 2021, Virginia repealed its ban on abortion coverage in private health care plans offered through the state's health insurance exchange.[360] But, of course, Massachusetts and Virginia are not the only states to enact legislation protecting abortion rights. Sixteen states and the District of Columbia have statutes ensuring the right to abortion, either throughout pregnancy or before viability (and then after when necessary to protect the life or health of the pregnant person).[361] It is essential that other states similarly enact abortion protections. Further, on the federal level, the Biden-Harris Administration has communicated a "commit[ment] to codifying *Roe v. Wade*."[362] The proposed Women's Health Protection Act (WHPA)[363] provides one possibility. Although WHPA passed the U.S. House of Representatives in September 2021, the U.S. Senate voted against the bill in February 2022.[364] If enacted, WHPA would protect abortion providers' right to offer services and patients' right to receive care while

359. ROE Act, MASS. GEN. LAWS ch. 112, § § 12F, K–U (2021); *id.* ch. 118E, § 10E.
360. VA. CODE ANN. § 38.2–3451 (2021).
361. *Abortion Policy in the Absence of Roe*, GUTTMACHER INST. (Nov. 1, 2022) https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe [https://perma.cc/5U7Z-JE3U].
362. *See Statement from President Biden and Vice President Harris on the 48th Anniversary of Roe v. Wade* (Jan. 22, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/22/statement-from-president-biden-and-vice-president-harris-on-the-48th-anniversary-of-roe-v-wade [https://perma.cc/9LMP-6U4L] (stating that "[w]e are deeply committed to making sure everyone has access to . . . reproductive healthcare—regardless of income, race, zip code, health insurance status, or immigration status."); Kate Smith, *Biden Pledged to Make Roe v. Wade "The Law of the Land*," CBS NEWS (Oct. 6, 2020), https://www.cbsnews.com/news/biden-roe-v-wade-law-land-supreme-court-supporters [https://perma.cc/4585-L7UU] (noting that, during the presidential campaign, then-candidate Joseph Biden pledged to codify *Roe v. Wade* if the Supreme Court overturned the right to abortion care).
363. Women's Health Protection Act of 2019, H.R. 2975, 116th Cong. (2019).
364. Shawna Mizelle, Ali Zaslav & Ted Barrett, *Senate Republicans Block Bill That Would Preserve the Right to Abortion*, CNN (Feb. 28, 2022), https://www.cnn.com/2022/02/28/politics/senate-vote-womens-health-protection-act-abortion/index.html [https://perma.cc/WDC2-KKQC].

limiting restrictions that states can pass.[365] Activists, scholars, legal professionals, and policymakers must continue to urge legislators to enact laws that protect abortion rights, and these laws must be responsive to the needs of disabled people and other historically marginalized communities.

Moreover, a disability reproductive justice approach understands that reproductive justice extends beyond abortion also to include the right to have children and the right to parent those children safely with dignity and support.[366] Thus, legal and policy solutions must comprehensively respond to all matters that affect disabled people's reproductive freedom. For example, people with disabilities experience severe economic disadvantages, which impact all aspects of their reproduction.[367] Because of stringent income and asset rules associated with many government benefits programs, disabled people are often forced to live in poverty.[368] Some people with disabilities are compelled to terminate pregnancies because they cannot afford parenthood.[369] Severe economic disadvantages also impact disabled people's access to reproductive health services and information, including contraception.[370]

As such, legal and policy responses must consider ways to improve economic security for disabled people, especially multiply marginalized disabled people who are even more impoverished. One such approach would be to provide a universal basic income for all people, so that disabled people are not forced to comply with government benefits programs' draconian rules. Increasing benefit amounts and repealing antiquated program rules that inflict stringent asset and income limitations could also improve disabled people's economic well-being. Although universal basic income would eliminate the need for such programs, implementing it could take time, and changes to program rules would help address disabled people's needs in the short-term. Further, legal and policy responses must ensure that people with disabilities receive livable wages, increased employment and education opportunities, accessible and affordable housing, and universal health insurance. Ultimately, reproductive freedom should not be contingent on where

365. H.R. 2975, § 4(a)–(b) 116th Congress (2019) (preempting state restrictions on abortion telemedicine, unless the restriction is generally applicable, as well as in-person requirements unless the in-person visit is medically necessary).
366. *See supra* Subpart III.A. (describing reproductive justice).
367. *See supra* Subpart II.B (detailing the economic disadvantages experienced by disabled people and their impact on their reproductive freedom).
368. *See supra* Subpart I.B (explaining Medicaid and SSI rules and how they affect reproduction).
369. *See supra* Subpart II.B. (explaining the economic disadvantages experienced by people with disabilities).
370. *See supra* Subpart II.B.

people live, how much money they have, or who they are. And yet, these factors infringe on people with disabilities' reproductive autonomy all too often. Legal and policy solutions can confront these realities and help to ensure that disabled people are afforded genuine reproductive choice.

Finally, threats to disabled people's right to parenthood are a significant barrier to reproductive freedom.[371] Parents with disabilities contend with pervasive ableism by the child welfare system, resulting in higher rates of referrals to the child welfare system than parents without disabilities.[372] They are also more likely to have their children placed in the foster care system and to have their parental rights terminated.[373]

Parents with disabilities also face discriminatory laws that presume they are unfit to care for their children. An estimated two-thirds of state child welfare system laws explicitly include parental disability—usually intellectual or psychiatric disabilities—as grounds for termination of parental rights.[374] Consequently, in several states, disabled people are lawfully denied their right to raise children.[375] Moreover, although the Adoption and Safe Families Act,[376] the federal law governing the child welfare system, does not reference parents with disabilities, the statute contains ableist provisions that negatively impact disabled parents and their children. For example, disabled parents often have difficulty complying with the law's stringent timelines because the time needed to obtain adequate services and supports frequently exceeds what the law allows.[377]

Disability reproductive justice recognizes that disabled parents and their children must be able to live free from fear of unnecessary separation. To that

371. *See supra* Subpart I.B (examining ways that disabled people are denied parenthood).
372. *See supra* Subpart I.B.
373. *See supra* Subpart I.B.
374. *See generally* ROCKING THE CRADLE, *supra* note 117, at 16.
375. *Id.*
376. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.).
377. *See* Ella Callow, Kelly Buckland & Shannon Jones, *Parents with Disabilities in the United States: Prevalence, Perspectives, and a Proposal for Legislative Change to Protect the Right to Family in the Disability Community*, 17 TEX. J. ON C.L. & C.R. 9, 22 (2011); Christina Risley-Curtiss, Layne K. Stromwall, Debra Truett Hunt & Jennifer Teska, *Identifying and Reducing Barriers to Reunification for Seriously Mentally Ill Parents Involved in Child Welfare Cases*, 85 FAMS. SOC'Y 107, 112 (2004); Colby Brunt & Leigh Goodmark, *Parenting in the Face of Prejudice: The Need for Representation for Parents with Mental Illness*, 36 CLEARINGHOUSE REV. 295, 299 (2002); Leslie Francis, *Maintaining the Legal Status of People With Intellectual Disabilities as Parents: The ADA and the CRPD*, 57 FAM. CT. REV. 21, 25 (2019); *see generally* ROCKING THE CRADLE, *supra* note 117, at 16 (detailing the difficulties parents with disabilities experience related to complying with the Adoption and Safe Families Act's timelines).

end, it acknowledges that the very possibility of threats to their parenthood by the child welfare system affects disabled people in their decision-making about whether or when to become parents. Therefore, as I have argued elsewhere, the child welfare system needs to be entirely dismantled.[378] In pursuit of abolishing the child welfare system, we must reimagine a world that provides families with sufficient and nonpunitive support and resources. Only by providing a world where people with disabilities are free from threats to their parenthood will they indeed be able to make the best reproductive decisions for themselves and their families.

In sum, legal and policy responses to the fight for abortion rights must be based on a commitment to ensuring that people with disabilities are guaranteed rights, justice, and wellness for themselves and their families. An in-depth analysis of existing laws and policies that affect people with disabilities and reproductive freedom is critical. Such examination must include laws and policies that are seemingly facially neutral but are applied in ways that reflect societal biases and prejudices and ultimately operate in a way that oppresses disabled people, such as child welfare system laws and policies. Activists, scholars, legal professionals, and policymakers must also confront the ways that current laws and policies fail to protect disabled people, such as the high rates of violence they endure despite ostensible safeguards. Although a complete analysis is beyond the scope of this Article, the issues identified herein are some areas that warrant attention. Above all, legal and policy solutions based on disability reproductive justice must be comprehensive and transformative.

CONCLUSION

Despite enduring a lengthy history of reproductive oppression, people with disabilities have traditionally been ignored in public and scholarly discourse about abortion rights. This exclusion is especially problematic because the recent *Dobbs* decision will have devastating consequences for disabled people, who have unique needs related to abortion services and already experience considerable structural, legal, and institutional barriers that often put access to safe and legal abortion out of reach. Accordingly, as activists, scholars, legal professionals, and policymakers envision the next steps in the battle to protect abortion rights, they must do so in a way that directly reflects the needs, experiences, and perspectives of people with disabilities. Specifically, these efforts must acknowledge how

378. *See Achieving Justice for Disabled Parents and Their Children: An Abolitionist Approach*, 33 YALE J.L. & FEMINISM 37 (2022) (proposing a legal and policy agenda for child welfare system abolition).

abortion restrictions are part of our nation's ugly history of weaponizing reproduction to subjugate disabled people—a history that remains deeply present. They must also recognize the ways that the abortion rights movement has excluded disabled people. This Article responds to these needs by proposing normative and transformative legal and policy solutions that center disability reproductive justice. Given the threats we now face from the Supreme Court and hostile states, there has never been a more critical moment for a bold and inclusive vision that deliberately includes disabled people.