

AFTER
HOW THE SUPREME COURT
***DOBB*S**

ENDED *ROE* BUT NOT ABORTION

DAVID S. COHEN AND CAROLE JOFFE

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*To those fighting
for reproductive freedom*

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INTRODUCTION

OHIO

Sometime in May 2022, a ten-year-old girl was raped in Ohio. And then, sometime after that, the girl found out she was pregnant.¹

Given her age, the circumstances, and her wishes, she and her family decided she would have an abortion. Had they made the decision just days earlier, they would have encountered hurdles for getting an abortion in Ohio, but they could have been overcome. For instance, Ohio had required minors to obtain the written consent of a parent before getting an abortion, but this requirement wouldn't have posed a problem for the minor. Her parent supported her care, so she would have been able to obtain the consent and then care at one of the clinics or hospitals in Ohio that performed abortions. She would have done so, presumably, without the rest of the world finding out about her story. However, because she sought her abortion on June 29, 2022, rather than a week earlier, events took an entirely different turn.

Instead, this girl's story became one of the first known tragedies of the Supreme Court's decision to overrule *Roe v. Wade*. On June 24, just days before the ten-year-old sought an abortion, the Court decided *Dobbs v. Jackson Women's Health Organization*.² And that changed everything.

On that Friday morning, the Court announced its decision the same way it had been announcing all of its decisions in the Covid era—by releasing them not in person but rather on the Court website. With several opinions still left to be released for the term and the blockbuster Second Amendment case *New York State Rifle and Pistol Association v. Bruen*³ having been released the day before, there were many people, including both of us, who thought the Supreme Court was going to wait to release *Dobbs* until the next week, possibly even the last day of its term. Issuing too many ground-shifting

decisions that tracked the conservative agenda in rapid succession might not be the look the Court wanted.

We were all wrong. After issuing a decision at 10:01 a.m. eastern time about Medicare reimbursement that featured two of the Court's conservatives joining the Court's three liberals, as had become its custom, the Court let ten minutes pass before posting its next decision on its website. At 10:11 a.m. *Dobbs* appeared on the Court's list of decided cases, and the moment antiabortion activists had been waiting nearly half a century for had arrived. Clicking on the link revealed what we had all suspected—the Court, voting on ideological lines, had overturned *Roe v. Wade*.

For the ten-year-old girl's purposes, this decision on Friday morning could not have come at a worse time and she could not have lived in a worse state. Whereas many other states took days or even weeks to sort out the consequences of the decision, Ohio took less than an hour. Just forty-five minutes after the Supreme Court released its opinion, Ohio attorney general Dave Yost filed a motion in Ohio federal court asking it to allow Ohio to enforce its ban on abortions after six weeks of pregnancy. That ban, passed in 2019, had been put on hold by an Ohio federal judge because it violated the right to abortion from *Roe* and its follow-up case, *Planned Parenthood of Southeastern Pennsylvania v. Casey*.⁴ In his motion filed that morning, Yost asked the court to immediately overturn its previous decision that had put the 2019 ban on hold. "The ruling in *Dobbs*," Yost wrote, "represents a substantial change in the law."

Later that day, the court agreed with Yost. Ruling just after 6 p.m. that evening, the federal judge lifted the injunction that had stopped the 2019 law from taking effect. Reflecting the gravity of the moment, the judge wrote that the Supreme Court's overruling of *Roe* meant the judge needed to take "immediate action."⁵ As a result of this decision, by Friday evening, barely eight hours after *Dobbs* was released, Ohio became the first state in the country to have an abortion ban restored. Five days later, several Ohio abortion clinics asked the state supreme court to stop the ban, but the court did not act on that request.

This legal wrangling taking place in Ohio's state and federal courts probably went unnoticed by the ten-year-old and her family. However, these decisions had an almost immediate impact on their lives. The abortion ban now in place had no exception for rape and prohibited abortions after the detection of what the law called a "fetal heartbeat," even though there is nothing medical professionals would ordinarily call a heartbeat early in

pregnancy. It explained further that an abortion provider must determine if there is “cardiac activity,” which occurs at around six weeks of pregnancy.

But six weeks of pregnancy is not what most people typically think it is. Pregnancy is dated from the start of the last menstrual period, so a pregnancy that is six weeks along is often, if the person has a regular menstrual cycle, only four weeks after conception and two weeks after missing a period. In other words, with the Ohio law now in place, people* in the state had a very short time to navigate the obstacle course of finding out they were pregnant: making a decision to get an abortion, finding a clinic, getting an appointment, complying with all of the state requirements for an abortion, and then having the abortion.⁶

For this ten-year-old girl, it was now too late. She went to see a doctor in Ohio on the Monday following the Supreme Court decision. But because *Dobbs* had been decided three days prior to that visit rather than, say, three days after it, the doctor couldn’t help her get an abortion in her home state: according to media reports, she was just a few days past her state’s now-in-effect six-week limit.

So the ten-year old, with parental help, did what many people had to do after *Dobbs*: she traveled to another state where abortion remained legal. For this girl, that meant going to Indiana. There, she had her abortion and was able to move on to dealing with the trauma of being raped, but without also dealing with being pregnant and eventually giving birth at such a young age.

Ordinarily, that would have been the end of the story about her abortion, and nothing about it would have been publicly known. However, on July 1, one week after *Dobbs* was decided, the *Indianapolis Star* published an article about abortion patients traveling to Indiana for abortion care now that states near Indiana, like Ohio, had criminalized abortion.⁷ The article started with a brief anecdote told by Dr. Caitlin Bernard, an

*Throughout this book we use both “woman” and “person” to describe who receives an abortion, recognizing the reality that some people who do not identify as women receive abortions, including transgender men and gender-nonconforming individuals. We believe this accomplishes the twin goals of being inclusive but also reflecting the reality that cisgender women receive most abortions. See Loretta J. Ross and Rickie Solinger, *Reproductive Justice: An Introduction* (Oakland: University of California Press, 2017), 6–8; see also Rachel K. Jones and Elizabeth Witwer, “Transgender Abortion Patients and the Provision of Transgender-Specific Care at Non-Hospital Facilities That Provide Abortions,” Guttmacher Institute, Jan. 2020.

obstetrician-gynecologist who practices in Indianapolis. Dr. Bernard relayed the story of taking the call from the ten-year-old's Ohio doctor and then the girl coming to Indianapolis, where Dr. Bernard performed her abortion. There were no other details.

Nonetheless, the story went viral. Scores of news outlets around the United States and the world ran with it, no doubt partly because it is a tragically sad story but also because it drove home the harm of *Dobbs* with about as sympathetic a victim as possible. President Joe Biden even weighed in while talking about the Supreme Court and the future of abortion. He said, with increasing emphasis and passion as he spoke, "Just last week it was reported that a ten-year-old girl was a rape victim in Ohio. Ten years old! And she was forced to . . . travel out of the state to Indiana to seek to terminate the pregnancy and maybe save her life—that last part is my judgment, ten years old. Ten years old!—raped, six weeks pregnant, already traumatized, was forced to travel to another state. Imagine being that little girl. Just, I'm serious, just imagine being that little girl. Ten years old!"

Because of this story's power, it immediately drew backlash. Anti-abortion politicians and news outlets asked whether the story was true or merely made up out of whole cloth by someone they accused of being merely an abortion rights activist. They insisted that if these events had actually taken place, certainly a parent or a doctor would have reported the horrific crime and there would be a record of an arrest or an investigation. These critics looked foolish later in July when Ohio authorities arrested the alleged rapist and confirmed that the girl had an abortion on June 30, the day before the initial report was published. In July 2023, after pleading guilty, the man was sentenced to life in prison.

Other attacks from the antiabortion movement were lobbed at the doctor who initially spoke to the press about the case. She was accused of violating the patient's privacy and failing to report the rape. Todd Rokita, the vehemently antiabortion Indiana attorney general, spoke out publicly against her, calling for her to be investigated. However, her employer released a statement that she had complied with patient privacy laws, and state health officials released a document showing that she had properly reported the abortion and the abuse.

That didn't stop the harassment, though. Nor the legal action. In November, Rokita filed a complaint with the state medical licensing board against Dr. Bernard alleging that she had violated state privacy law and failed to immediately report child abuse. Dr. Bernard disputed both

claims, but in June 2023, the board found that, although she had properly reported the child abuse, she had not followed state privacy law. As a result, the board reprimanded her and fined her \$3,000. Later in 2023, the Indiana Supreme Court publicly reprimanded Rokita for his statements about Dr. Bernard.⁸

ARIZONA

Ellie was married with a one-year-old when she found out that she was pregnant again.⁹ She had been using an IUD to avoid getting pregnant, but her husband didn't want her using any form of birth control. This was part of a larger pattern of abuse by her husband that included physical abuse and almost strangling Ellie to death at one point. Ellie had secretly obtained an IUD, but when her husband realized she had it, he was furious. Concerned about his anger turning into abuse, she had it removed.

Without birth control, Ellie got pregnant. After feeling unusually nauseated, Ellie snuck to the store to get a pregnancy test, and the result was positive. When she told her husband that she was pregnant but didn't want to have another child, he demanded she not have an abortion. The physical abuse increased.

Nonetheless, Ellie knew she had to have an abortion. Because of the abuse, her marriage was not, in her words, "salvageable." But she knew that if she had another child with her husband, it would be harder for her to leave. "I feel like I'd still be trapped," she said. The best evidence we have about this phenomenon supports Ellie's intuition: women who are not able to access a wanted abortion are more likely to be tethered to their abusive partners.¹⁰ Ellie didn't want this to happen to her, so she needed to find a place to get an abortion.

Ellie lived in Arizona, where prior to *Dobbs* there were eight abortion clinics. After *Dobbs*, though, there was immediate confusion over whether abortion was legal. An 1864 law, updated and codified in 1901, from before Arizona was a state, criminalized abortion, but that had been put on hold while *Roe v. Wade* was good law. Once *Roe* was overruled, all but one of the Arizona clinics decided to close or suspend services out of fear that the state would enforce the old law. A few clinics began offering abortion later in the summer, when a federal judge put a different Arizona law on hold that granted "personhood" status to fetuses. However, not all clinics did this, and at the end of the summer, a state court ruled that this old law could take effect, banning abortion in the entire state. That ruling was

overturned in October, when an appeals court ruled that a more recently passed ban on abortion at fifteen weeks superseded the old law, meaning abortion would now be legal in Arizona up to fifteen weeks.¹¹

Ellie was looking to have an abortion at the precise time when the clinics were closed in Arizona. With the back-and-forth over the legal status of abortion in her home state and clinics suspending services—some of them reopening and then all being forced to stop abortion until October—the safest route for Ellie to get an abortion, both legally and for her own physical safety, was to leave the state. If she stayed in Arizona, Ellie was considering how she could have an abortion on her own, but she worried that she would hurt herself. Ellie’s husband controlled their finances, so she had no access to money of her own. She was able to get financial help from her sympathetic brother-in-law and bought one-way plane tickets for herself and her son to go to Colorado, where her parents live. Ellie has been in Colorado ever since.

Once there, Ellie was able to get an appointment with a doctor who helped her. The doctor worked with his colleague to find funding for Ellie’s abortion, and she had a medication abortion at seven weeks along in her pregnancy. Ellie said it was “something I had to do.” And in Colorado it remained legal for her to do so, even post-*Dobbs*.

TEXAS

In the spring of 2022, Amanda Zurawski and her husband celebrated that Amanda was finally pregnant.¹² The couple, who had known each other since preschool and had been married for three years, had been through eighteen months of fertility treatments after Amanda learned that she was not ovulating. After exploratory procedures, many medications, and intrauterine insemination, the two were, according to Amanda, “beyond thrilled” that the “grueling” fertility treatment had worked.

In August 2022, barely two months after *Roe* was overturned and about four months into the pregnancy, everything had been going fine. They found out they were having a girl and named her Willow. Amanda was just finishing some preparation for the baby shower her sister was going to throw for her when she began experiencing strange symptoms. She told her doctor, who asked her to come in immediately. A quick examination revealed terrible news—Amanda had an “incompetent cervix” that had dilated early, at seventeen weeks and six days of pregnancy. There was no way she was going to be able to stay pregnant long enough to reach fetal

viability, the point at which a fetus could likely survive outside the womb, so the doctors told Amanda that her baby was not going to survive.

If abortion had still been legal before viability, as it was under *Roe v. Wade*, Amanda would have had an abortion. However, because Texas now had a ban on abortion at all stages of pregnancy, she couldn't get the care she sought. Amanda's doctors told her she wasn't yet sick enough to qualify under the state's exception for when a pregnancy threatens the life of the person who is pregnant. She was sent home to wait, knowing that she was being forced to continue a nonviable pregnancy. That night Amanda's water broke, so she returned to the hospital, where she was diagnosed with preterm premature rupture of the membranes. The proper treatment was, once again, for her to have an abortion, but because Willow still had a heartbeat and Amanda was not experiencing any major illness, there was still nothing her doctors could do for her.

Amanda considered traveling to another state, but she realized that was impossible, given her situation. She lived in the middle of Texas, so it would be more than an eight-hour drive to get to a state where abortion was legal. That long a drive posed a problem because Amanda's doctors had told her that having lost all her amniotic fluid because her membranes had ruptured, she could develop a severe life-threatening infection at any moment. If that happened while she was driving through the desert of West Texas or sitting in a plane flying to another state, it could be a death sentence.

So Amanda did the only thing she could—wait until she naturally went into labor or until she got so sick her doctors would perform the only medically indicated procedure to treat her condition—an abortion. Three days later, and the day after another Texas abortion ban went into effect, the infection hit Amanda, hard. She developed chills, her temperature spiked, and her blood pressure crashed. When her husband tried talking to her, she wasn't responsive. Amanda's husband rushed her to the hospital, where she was admitted to the labor and delivery unit. At this point, finally, the hospital determined that Amanda's life was enough at risk that they could treat her with the care they should have provided for her days before. They stabilized her enough so that they were able to induce labor without, they now believed, violating Texas's abortion laws. As everyone knew would happen, Willow passed away at delivery.

Amanda's ordeal wasn't over, though. Her initial infection had cleared, but she developed a secondary infection that required three days of treatment in the hospital's intensive-care unit. During this time Amanda was

so sick that her family flew in from across the country because they feared it was going to be their last opportunity to see her alive. Thankfully, the treatment of the second infection was successful and Amanda was discharged from the hospital.

However, as a result of this ordeal, Amanda developed such severe scarring from the infection that one of her fallopian tubes is now permanently closed. If Amanda wants to get pregnant again, she has been advised that she will require in vitro fertilization. Moreover, Amanda has described the depression and post-traumatic stress disorder that she suffered for months after this experience as “paralyzing.”

In April 2023, Amanda summoned the courage to testify before the United States Senate Judiciary Committee about her experience. Her opening statement concluded,

What I needed was an abortion, a standard medical procedure. An abortion would have prevented the unnecessary harm and suffering that I endured. Not only the psychological trauma that came with three days of waiting, but the physical harm my body suffered, the extent of which is still being determined. I needed an abortion to protect my life, and to protect the lives of my future babies that I hope and dream I can still have one day. . . . I may have been one of the first who was affected by the overturning of *Roe* in Texas, but I’m certainly not the last. . . . You owe it to me and to Willow and to every other person who may become pregnant in this country to protect our right to safe and accessible healthcare. . . . Being pregnant is difficult and complicated enough. We do not need you to make it even more terrifying and, frankly, downright dangerous to create life in this country. This has gone on long enough.

Along with testifying before the Senate, Amanda joined with other women who were also denied life-saving obstetrical care because of Texas’s abortion ban to sue the state of Texas over its law. That suit, filed in early March 2023, was ultimately rejected by the Texas Supreme Court in May 2024,^{*} but the court did acknowledge Amanda’s ordeal, saying that it was not what “the law commands.”¹³

^{*}This is a rapidly changing field. Other than the election update in the epilogue, the material in this book is current through June 2024.

THE NATIONAL LANDSCAPE

As compelling and instructive as these three stories are—of what a child rape victim, a domestic violence survivor, and a woman suffering from a life-threatening condition had to go through to get an abortion after *Dobbs*—they shouldn't eclipse the reality that every abortion seeker's story is unique and that most of them do not involve dire circumstances. Rather, they often involve people who are pregnant who simply no longer want to be—whether the reasons are related to finances, life stage, caring for other children or family members, health complications, maintenance of mental health, wrong partner to raise a child with, or anything else that would lead someone to decide to end their pregnancy.

Ever since *Roe* was overturned, the National Abortion Federation (NAF), the leading professional association of abortion providers, has posted short vignettes on its website, abortionafterroe.com, collected from its abortion hotline. The stories—from people who contacted the hotline either on their own or with the help of a clinic—show the difficulty people had navigating this new environment, even when they receive help from an organization the size of NAF:

- Casey flew from Texas to Colorado to get an abortion once it was illegal in Texas. She made the arrangements for an abortion on her own and paid for her own flight, but when she got to the airport in Colorado, she didn't have any money left in her bank account to pay for the ride to the clinic.
- Maria already had two children when she found out that she was pregnant again. She lived in Louisiana, where abortion became illegal after *Dobbs*, so she drove herself and her two kids to Georgia. Once there, the clinic determined she was further along in her pregnancy than allowable under Georgia law. The best place she could find with an available appointment was in Illinois, so she drove there with her kids to get the care she sought. The extra travel required meals and hotel stays that Maria could not afford on her own.
- Mei lived in Texas and decided to have an abortion when she was six weeks pregnant. Before *Dobbs*, Texas had an abortion ban that limited abortion to before the sixth week of pregnancy, so Mei might have been able to get an abortion in her home state. However, after *Dobbs*, Mei had to travel to New Mexico. As a result, she needed

help paying for her abortion, childcare while she was gone, flights back and forth, a hotel while in New Mexico, rides to and from the airport and clinic, and meals.

All this for quick, simple, safe, and routine medical care.

Each of these stories ends with the person who wanted an abortion being able to get one, albeit through difficult travel and life disruptions that wouldn't have been necessary pre-*Dobbs*. These are the success stories. We also know, though, that there are people who are now unable to get an abortion that they want. Angelica's is one of these stories. She lives in Texas, where she is an undocumented immigrant. Because of *Dobbs*, she couldn't get an abortion in her home state, so she tried finding another option. However, all of the travel possibilities presented to her were too risky. Angelica feared that Texas's internal immigration checkpoints could catch her if she drove to a clinic in another state and that flying would require her to share her identification papers with too many officials. Ultimately, concerned about being deported, Angelica thought it was too risky to travel so she didn't get the abortion she wanted. And the reason she didn't is because of the Supreme Court's decision in *Dobbs*.

DOBBS V. JACKSON WOMEN'S HEALTH ORGANIZATION

When Mississippi's governor Phil Bryant signed a fifteen-week abortion ban on March 19, 2018, everyone knew that the lower federal courts would find it unconstitutional. Some aspects of *Roe v. Wade* and *Planned Parenthood v. Casey* were vague and unclear, but one thing was certain from those opinions: states could not ban abortion before viability of the fetus. Fifteen weeks was roughly two months before viability, so the lower courts, who are bound by Supreme Court precedent, had no choice.

But Governor Bryant didn't sign the law with the intention of winning cases before lower courts; his goal was to make "Mississippi the safest place in America for an unborn child."¹⁵ And in order to do that, he had to take this law to the Supreme Court and convince the justices to change the entirety of United States abortion law.

At the time he signed the bill, achieving that goal looked like an uphill battle. The most recent Supreme Court case on abortion had been *Whole Woman's Health v. Hellerstedt*, the June 2016 case in which a 5–3 majority struck down two Texas abortion restrictions.¹⁶ The justices in the majority applied the precedents of *Roe* and *Casey* without showing any interest in

overturning the cases. Almost two years later, when Bryant signed the Mississippi bill, all five of the justices from the majority in *Whole Woman's Health* were still on the Court. President Donald Trump had filled the seat that had been vacant during *Whole Woman's Health* with a conservative, Neil Gorsuch, but Justice Gorsuch replaced another archconservative who had died just before oral argument in the case, Antonin Scalia, and consequently didn't change the balance on the Court with respect to abortion.

But the tide changed on June 27, 2018. That day, just a few hours after the Supreme Court released its last signed opinions of the term, Justice Anthony Kennedy announced his retirement. His retirement letter expressed his appreciation for having had the opportunity to “know, interpret, and defend the Constitution,” which, as he saw that duty, included upholding a right to abortion before viability.¹⁷ However, the timing of his retirement called into question his commitment to this particular interpretation of the Constitution: he retired while Donald Trump was president, and Trump had promised during his campaign to nominate people to the Supreme Court who would “automatically” overturn *Roe v. Wade*.

And that's exactly what President Trump did with this opportunity to change the Court's composition. He nominated Brett Kavanaugh, a Federalist Society-backed judge on the federal appeals court for the District of Columbia who had a limited, but clear, history on abortion. He had given a speech in 2017 praising Chief Justice William Rehnquist's jurisprudence, including his dissent in *Roe v. Wade* and his approach to curtailing rights not specified in the Constitution. And later that same year, in his role as a federal appeals judge, Kavanaugh had voted to deny an abortion for an unaccompanied minor who was being held in an immigration detention facility in Texas. Much attention was paid to this issue during Kavanaugh's confirmation hearing, but a long talk with Senator Susan Collins, a pro-choice Republican, convinced her that he would not vote to overturn *Roe*; Collins's vote gave him the votes he needed in the Senate to become a justice and replace Kennedy.

We all know now that Kavanaugh voted to overturn *Roe*, but his appointment alone didn't give the Court the majority it needed to do so. In the 2020 case of *June Medical v. Russo*,¹⁸ Chief Justice John Roberts joined the four liberals on the Court at the time to strike down a Louisiana law that would have shuttered all but one of the state's abortion clinics. Chief Justice Roberts, who had previously been an abortion rights foe, provided the fifth vote in that case based on his sense that he needed to follow

precedent, and to him the Louisiana case was almost identical to the 2016 Texas case. This decision meant that as recently as the summer of 2020, there still did not appear to be five votes to overturn *Roe*. President Trump had appointed two conservatives to the Court, both of whom appeared to be reliable votes against the abortion right, but that wasn't enough. And with the presidential election just months away, *Roe* had a fighting chance of surviving the Court's changes.

But *Roe* didn't make it. After surviving many serious health scares over the past two decades, on September 18, 2020, Justice Ruth Bader Ginsburg, a fierce abortion rights defender and one of the necessary votes on the Court to uphold *Roe*, passed away. With only forty-six days to go before the election, President Trump rushed to nominate Amy Coney Barrett, a federal appeals court judge, to replace Justice Ginsburg. Unlike Justice Kavanaugh's record, which some had argued was not enough to know how he truly felt about *Roe*, Barrett's record was undeniable: she was passionately against abortion, had in the past publicly come out in favor of overturning *Roe*, and had consistently voted against abortion rights as a federal judge. After a contentious and rushed process, Barrett was confirmed to the Court just thirty days after her nomination and eight days before the election.

With his third justice confirmed, President Trump had remade the Supreme Court. And Mississippi's fifteen-week ban was perfectly positioned so that Trump's campaign promise about automatically overturning *Roe* could become a reality. Soon after the governor signed the bill, two lower federal courts struck the law down as unconstitutional, as required by *Roe* and *Casey*.¹⁹ At the beginning of the summer of 2020, Mississippi requested that the Supreme Court take the case, and the Court was initially scheduled to consider that request at its private weekly conference on September 29, 2020. With the vacancy created by Justice Ginsburg's death and then Justice Barrett's newly joining the Court, its private discussion of whether to take the case was rescheduled twenty-one times, an unusually high number. Finally, on May 17, 2021, the Court agreed to hear the case.

Mississippi now jumped at the opportunity to ask the Court to overturn *Roe*. In its initial request that the Court take the case, which had occurred when Justice Ginsburg was still alive, Mississippi had *not* asked the Court to overturn *Roe*. Instead, it had sought a ruling that would read *Roe* and *Casey* to allow for pre-viability abortion bans. However, once Justice Ginsburg died and was replaced with Justice Barrett, Mississippi knew

how to count to five and went for the gold. In its merits brief in 2021, Mississippi was clear as day: “This Court should overrule *Roe* and *Casey*.”

A year later, Mississippi’s long game paid off. On June 24, 2022, a five-justice majority of the Supreme Court heeded the state’s revised legal plea and overturned *Roe* and *Casey*. Each of the three newly appointed Trump justices voted to overturn the cases, along with the longtime antiabortion stalwarts Justices Clarence Thomas and Samuel Alito. Chief Justice John Roberts also voted to uphold the Mississippi law but, arguing that the Court should only take the drastic step of overturning precedent when it was absolutely required, did not think the Court needed to overturn *Roe* and *Casey* in order to approve the fifteen-week ban.²⁰ Justices Stephen Breyer, Sonia Sotomayor, and Elena Kagan wrote a joint dissent.

We will save for chapter 1 an in-depth look at the reasoning behind *Dobbs v. Jackson Women’s Health Organization*. Important here is what came next. Some states, such as Ohio, had old laws on the books that banned abortion. Because of *Roe*, those laws were not enforceable, but once *Roe* was overruled, these states were free to apply those laws again. Other states had what were called “trigger laws.” These laws banned abortion but, because they were passed while *Roe* was still good law, could not immediately take effect. Instead, the laws specifically stated that they would take effect only after *Roe* was overruled. Now that this “trigger” had occurred, these laws took effect. And yet other states passed new laws following the fall of *Roe* now that there was no constitutional impediment to their doing so.

All told, by the end of 2022, six months after *Roe* was overturned, twelve states had bans on abortion at all gestational stages, subject only to very limited and difficult-to-obtain exceptions.²¹ These states were Alabama, Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, South Dakota, Tennessee, Texas, and West Virginia. Abortion was de facto unavailable in two other states: North Dakota, whose only clinic moved to Minnesota (discussed in more detail in chapter 3), and Wisconsin, where the legal uncertainty about the possibility of enforcement of a nineteenth-century abortion ban ended abortion’s availability.

In four other states—Georgia, Florida, Arizona, and Utah—there were now limits on abortion that would not have been constitutional under the *Roe* and *Casey* regime. Georgia banned abortion after six weeks of pregnancy, Florida and Arizona after fifteen weeks, and Utah after eighteen weeks. All of these laws were unconstitutional before *Dobbs* because they

banned abortion before viability; after *Dobbs*, the laws could be enforced. Thus, in the immediate aftermath of *Dobbs*, the United States had fourteen states where abortion was completely unavailable and four states where it was time-limited. All because of *Dobbs*.

Notably, however, *Dobbs*'s impact in the second half of 2022 was not monolithically antiabortion. Many states that support abortion rights used *Dobbs* as an impetus to change their law and policy on abortion to increase access. They did this in various ways. Some states took the opportunity to evaluate their abortion laws and remove restrictions that previously limited access. For instance, Illinois and Connecticut expanded the type of medical professionals who can provide abortions for patients. Other states appropriated money to increase access, with Maryland earmarking millions for training abortion providers and New York, Oregon, and California spending tens of millions to improve the state's abortion infrastructure in preparation for an expected increase in people traveling to obtain care. Several states passed a new kind of pro-choice law, an abortion shield law. These laws, pioneered in Connecticut and then expanded upon in Massachusetts and Delaware, protect in-state abortion providers and helpers from being subject to legal action for treating people who travel to those states for abortion care. It is reasonable to observe that none of these changes would have taken place without the looming threat and then ultimate reversal of *Roe*.

The same can be said of *Dobbs*'s impact on the ballot box. Less than six weeks after *Roe* fell, Kansans voted on a ballot initiative that would have ended protection for abortion in the state constitution. Despite the question being on the ballot in a summer primary election when Democrats in the state usually show up in very small numbers, the initiative was defeated by double digits. Three months later, on election day in November, five other states had ballot initiatives related to abortion, and the pro-choice option won in all five. That Vermont and California were among those five states should surprise nobody. Even Michigan might not be that shocking. But the other two states were Montana and Kentucky, showing that, when viewed alongside the Kansas results in August, pro-choice voters can win, even in some of the most conservative states in the country.

Overturning *Roe* also changed the course of the general elections in 2022. Historically, the party that holds the White House suffers major losses in midterm elections. However, almost halfway through Biden's

term, Democrats picked up a seat in the Senate and faced minimal losses in the House. Most pundits attributed these historically successful mid-term results for the Democrats to the country's views on abortion and the Supreme Court.

HOW *ROE* ENDED, BUT ABORTION DIDN'T

But what changed with abortion provision on the ground is a much more complex story than just recounting the nationwide political trends. Before *Dobbs*, there were over 900,000 abortions in the United States each year.²² According to the #WeCount study, one of two ongoing studies by public health researchers looking at the impact of *Dobbs* on abortion numbers, in the nine months after *Roe* was overturned over 25,000 people who wanted an abortion were unable to obtain one in the formal medical-care system.²³ That's roughly 3 percent of the number of abortions per year before *Dobbs*.

That there were 25,000 fewer abortions in the formal medical-care system doesn't mean there were 25,000 fewer abortions. An unknown percentage of these people were ultimately able to obtain an abortion thanks to the availability of abortion pills through online pharmacies or informal networks, as well as other forms of self-managed abortion. We don't yet have data to know what that percentage is, and it could be years, if ever, before we do. Until then, we are left knowing that a substantial number of people were unable to get abortions from a clinician in the immediate wake of *Dobbs*, but not knowing what that number is.

However, one of the central questions since *Roe* was overturned is why that number is not higher—in fact, why it isn't much higher. Before *Dobbs*, estimates of the number of people who would not be able to obtain a wanted abortion once states began banning abortion was much higher—ranging from 75,000 to 200,000 per year. By any account, with the data we have so far, *Dobbs* has not had the devastating impact on overall national abortion numbers that many predicted. And, expanding the timeline beyond the immediate months after *Dobbs*, based on data through the beginning of 2024, #WeCount and a separate study from the Guttmacher Institute have both found that, over a year and a half after the decision, *more* abortions are taking place in the United States than before. Indeed, the Guttmacher report found that there were more than one million abortions in the formal health sector in 2023, the highest number in a decade.²⁴ To put it bluntly, given the dire predictions pre-*Dobbs*, this is shocking.

How exactly people are still getting abortions, even more than before *Dobbs*, is one of the major throughlines of this book. With the overturning of *Roe*, yes, some people lost the ability to obtain an abortion, but so far nowhere near as many as was predicted. That's where this book steps in. In telling the multifaceted stories of what happened in abortion provision the year *Roe* was overturned, we unearth the real story of what happened after *Dobbs*: how *Roe* ended but abortion did not.

As two academics, one in law and the other in sociology, who have studied abortion for decades, we saw the writing on the wall about the end of *Roe*, like almost everyone else who was paying attention. Once the Supreme Court decided to take *Dobbs v. Jackson Women's Health Organization*, there was little doubt in our minds that the Court was very likely to overrule *Roe v. Wade*, and was on the cusp of radically changing abortion law in this country. We were not alone in having this insight, of course. As we talked with abortion providers in our network, we realized their stories were the perfect way to convey the impact of the Supreme Court's changing the fundamental law of abortion. Their stories are the stories of what happens when the Court upends an entire body of law underlying a medical treatment that, before *Dobbs*, nearly one million people had each year. And, as it turns out, their stories show just how abortion has remained a possibility for so many people throughout this country, even as almost a third of states now ban it.

To investigate what was going to happen with the overruling of *Roe*, we spent 2022 repeatedly interviewing people who are deeply involved in the abortion rights world. We chose twenty-four people who worked in different fields in abortion and provided their services in different states and political environments. We interviewed almost all of them three times over the course of 2022: first in early 2022 before *Dobbs* was decided, then again right after the decision was announced, and then a final time six months later, around the end of the year. By talking with each person three times in 2022, we were able to probe with them how clinics, providers, allies, activists, and other abortion rights movement players first anticipated and planned for the Supreme Court ruling, then how they immediately reacted to it, and then ultimately, for most of them, how they were able to continue to serve patients despite the ruling.

Talking to a variety of people at these different moments in 2022 allows us to chronicle what happened on the ground in this important year in abortion rights and to capture just how so many people were still able to

get abortions, even after *Roe* was overturned. And, given that we know that abortion numbers have continued to rise after 2022, we can extrapolate from the stories we gathered that year to learn about what has continued to happen through at least the middle of 2024, two years after *Dobbs*.

The different perspectives that explain this phenomenon form the basis of this book's structure. Chapter 1 provides the essential background for the changes the rest of the book covers. It begins with *Roe v. Wade* and then explores the way abortion jurisprudence shifted over the decades but maintained the basic principle that states cannot ban abortion. Under this regime, many states restricted abortion in ways that the Supreme Court allowed; despite some severe restrictions though, abortion remained legal in all fifty states.

What this meant on the ground for people trying to obtain abortions varied across the country. In many states, abortion was already extremely difficult to obtain, especially for people of color, poor people, and people living in rural areas far from an abortion provider. Nonetheless, despite significant variations in abortion availability and accessibility, at a minimum it was legal and available in every state. But abortion opponents pursued a multipronged approach that culminated in 2022's being such a momentous year. Chapter 1 concludes with the abortion battles in Texas and Mississippi, both of which reached the Supreme Court once Justice Barrett was confirmed, with the Mississippi battle providing the antiabortion movement its white whale, the end of *Roe*.

With the stage set, we start the heart of the book with chapter 2, which chronicles the worst of *Dobbs*'s impacts: the closure of abortion clinics or the cessation of the provision of abortion services because of state bans on abortion that would have been unconstitutional during the *Roe* era. This is probably the most predictable outcome of *Dobbs*, and here we introduce three people who struggled through 2022 to move forward in this new reality. Andrea Ferrigno is an abortion clinic administrator from Texas. Andrea began 2022 dealing with the fallout of Senate Bill 8 (SB8), the Texas antiabortion law that authorized bounty hunter lawsuits against any clinic that provided an abortion after the detection of a fetal heartbeat, usually around the sixth week of pregnancy.²⁵ Just when Andrea and her colleagues figured out a way to continue to provide top-notch care despite SB8, *Dobbs* came along, leaving them no choice but to close their clinics in the state.

This chapter also tells the story of Leah Torres, a doctor in Alabama whose abortion clinic had served a poor, mostly minority population who

had difficulty finding any healthcare, not just abortion care, elsewhere in their community. Because of *Dobbs*, Leah and her coworkers had to shut down the clinic's abortion practice. But instead of closing entirely, they pivoted to providing prenatal care and other reproductive health services other than deliveries. In a state that purports to value pregnancy and childbirth so much that it bans abortion, this new endeavor should have been much easier than it has proved to be. The chapter ends by describing the work of Jody Steinauer, a doctor who works to make sure that residents around the country can obtain abortion training. With clinic closures reducing the number of training sites for medical residents, this work is a much more challenging endeavor without the protective umbrella of *Roe*.

But 2022 wasn't all about clinic closures. For some providers, meeting the challenges brought about by *Dobbs* meant being creative in order to continue to see patients. Chapter 3 looks at three different people who, because of the state in which they provided care, were able to explore innovative new options for care even in the post-*Roe* legal setting. For decades, Tammi Kromenaker owned and operated the only abortion clinic in North Dakota. Knowing that her state would be eager to ban abortion once *Roe* was overturned, Tammi secretly purchased and planned the opening of a new clinic across the Red River, in Moorhead, Minnesota. Once the Supreme Court decided *Dobbs*, Tammi moved her clinic to this spot without any interruption in her patients' care.

Moving southwest, Julie Burkhart strategized her response to *Dobbs* by planning to open a new abortion clinic in Wyoming just a month before the Supreme Court was scheduled to rule. Julie's plans were derailed when an antiabortion extremist set fire to her clinic weeks before its planned opening. She wasn't deterred though, continuing her planning while suing the state to prevent implementation of its abortion ban by using a provision of the state constitution originally intended to limit the effects of Obamacare.

Curtis Boyd, a longtime abortion doctor and clinic owner in Texas and New Mexico, was dealing with the two-pronged problem of SB8 in Texas and the upcoming decision from the Supreme Court. To help his patients, he partnered with a pro-choice religious organization to arrange paid-for same-day flights between Texas and New Mexico so patients could get their abortions in New Mexico and return home later that day.

Chapter 4 takes us to three different states that battled legal changes and uncertainty but were ultimately able to keep medical facilities open to

serve their patients. In Georgia, Kwajelyn Jackson, the director of a non-profit clinic, struggled to adapt her services as the state went from being a major hub of care in the South to a state dealing with a new protracted legal battle in state court. This meant changing the care level the clinic provided several times over the course of the second half of 2022. Throughout the constant shifts in care and confusion, Kwajelyn and her colleagues had to care for patients while keeping their eyes on the long-term goal of striking down state restrictions in court and keeping the clinic financially sustainable during the battle.

The story for Karrie Galloway in Utah is similar, but it occurred over a much more concentrated period. Utah's abortion ban took effect almost immediately following *Dobbs*, forcing Karrie to cancel appointments of patients sitting in the waiting room. But then the state courts stepped in to block the state's ban, and Karrie and her colleagues had to quickly pivot to provide care to the people who had been blocked when the ban was in place. The court injunction remained in place for the rest of 2022, but Karrie had to deal with constant attacks in her politically conservative state.

Kelly Flynn dealt with her own uncertainty after *Dobbs*. She owns clinics in Florida and North Carolina, two states where abortion remained legal. However, in both states services changed because of new laws that lowered the state's gestational age limit—the time in pregnancy before which someone can obtain an abortion. So Kelly had to deal with the twin challenge of an influx of patients into both states because of bans in neighboring states while preparing for the possibility of even more restrictions at any moment.

Clinics in states where abortion remained legal and that bordered states where abortion became illegal saw a huge influx in patients and were able to increase their patient volume in response to the crisis of *Dobbs*. Chapter 5 recounts how providers in those states, who knew they were fortunate to remain open and able to care for patients, coped with the surge. The chapter covers the ways that Erin King, a doctor at a southern Illinois clinic that is on the border of Missouri, worked to expand her clinic's services while also assisting patients traveling from all over the South. Likewise, Adrienne Mansanares, the president and CEO of a Planned Parenthood affiliate that covers Colorado, New Mexico, Wyoming, and southern Nevada, saw a staggering increase in patients in each state. The affiliate anticipated this surge, so it strengthened its ability to serve traveling patients

by opening a new facility in southern New Mexico, expanding hours of operation, investing in telehealth, and experimenting with new models for delivering abortion care.

Not every state experienced the same surge of travelers as the states that bordered states with bans, but Janet Jacobson, the medical director of a Southern California Planned Parenthood affiliate, and Mercedes Sanchez, an administrator for a series of clinics in Washington State, still had to adapt their services for the new environment. The key for all of these providers was maintaining a high level of care while increasing services. Staffing was a common issue across clinics in the states where abortion remained legal. The chapter ends by considering this issue with additional input from Mary Frank, the director of a program within the National Abortion Federation that performs the crucial work of helping match abortion clinics with staff who can work there.

Perhaps one of the biggest changes in the post-*Roe* landscape, and one of the most significant reasons abortion procedures continue at unexpected levels, is the role of abortion pills. Chapter 6 explores the changed importance of medication abortion, both within the medical system and outside it. Medication abortion had already been the most common form of abortion in the United States for several years before *Dobbs*. The regimen usually involves the use of two drugs in sequence: first mifepristone and then one (and occasionally another) dose of misoprostol, with each misoprostol dose usually consisting of four pills. With abortion now illegal in fourteen states and seriously restricted in several others, abortion providers and advocates understood the power of pills to make abortion more accessible for people who live there, either by traveling to states where abortion remains legal or by using various means to get pills into the states with bans.

Jamie Phifer and Meg Sasse Stern approached this problem by trying to get more pills into people's hands by experimenting within the lawful medical-care delivery model. Jamie is a doctor who, a year before *Dobbs*, opened a telehealth abortion service, Abortion On Demand, that served states where telehealth abortion was legal. When *Dobbs* made abortion illegal in over a dozen states, Jamie had to adapt her service delivery model to try to make it as easy as legally possible for people to obtain pills. Meg works with an abortion provider, Just The Pill, that opened mobile abortion clinics that could be more easily reached by people traveling from states where abortion is banned.

Both Jamie and Meg operated within the framework of the medical establishment, but others were pushing the envelope further in response to the changed environment. Linda Prine, a family physician who also provides abortion care, worked to change the law to allow clinicians in states where abortion remains legal to send pills into states where abortion is banned. Information about her work and those like her is only available because others are getting the word out to the public. Francine Coeytaux is one of the founders of Plan C, a public health campaign that seeks to transform access to abortion in the United States through normalizing the use of abortion pills and increasing access to them. Plan C, which maintains a website to get as much information about abortion pills into the public discourse as possible, had to adapt the site to make sure that the information was helpful in this new legal landscape. It also began to provide information about informal (and legally questionable) means to obtain pills, such as community support networks and mail forwarding. Also recognizing the importance of making sure people know about abortion pills, Amelia Bonow led her organization's efforts to use brash attention-grabbing events and pop culture to inform the public about the option. She also coordinated underground efforts to make sure abortion pills were a known option everywhere in the country.

In this new environment, where abortion's legality and availability are often a function of location, the logistical challenges of moving patients around the country to obtain care and of funding their abortions became a central part of the abortion story. Chapter 7 looks at how abortion funders and travel coordinators, who already had an important job before *Roe* was overturned, tackled this new environment. Oriaku Njoku leads the National Network of Abortion Funds which works with local abortion funds to help fund abortion care and travel. She and her organization became a key part of making sure that patients could access abortion even if they had to travel to other states to do so. Rachel Lachenauer and Chloe Hanson Hebert ran the hotline for the National Abortion Federation. The hotline acted as funder, travel agent, and all-around problem solver for countless abortion seekers, pivoting to serve people in different states trying to surmount different barriers as the landscape quickly shifted after *Dobbs*.

Tackling the most difficult cases, Odile Schalit's organization, the Brigid Alliance, helps patients travel long distance to seek care later in pregnancy. The need for this assistance was already high before *Dobbs* because of the lack of providers who care for patients later in pregnancy. However,

after *Dobbs*, the demands on the organization increased drastically. More patients needed to travel long distance to receive care at all stages of pregnancy, and the need for later care also increased as patients were delayed in obtaining an abortion because of local bans. Without the work of the people and organizations highlighted in this chapter, there is no doubt that the number of abortions occurring post-*Dobbs* that the #WeCount and Guttmacher studies have discovered would be much lower.

The changes that *Dobbs* wrought in 2022, chronicled in this book, are just the beginning of the new story of abortion in the United States. So far, that beginning has meant that abortion has continued to be available for most people, although accessing it has often become more disruptive to people's lives. In chapter 8 we speculate on what the future holds: the challenges for people facing medical emergencies to get necessary abortions; the impact of *Dobbs* on general obstetric care; brewing legal battles that could impact ongoing abortion accessibility; and the possible game-changing role of the 2024 elections. Finally, we close by raising the issue that we feel is most central to the future of safe abortion—the sustainability of the extraordinary efforts by providers and allies that occurred in the immediate aftermath of the overthrow of *Roe*.

In explaining throughout this book how abortion has survived the overturning of *Roe*, in no way do we downplay the catastrophic consequences for individuals who have been unable to obtain an abortion because of *Dobbs*. Even with the increase in the number of abortions since *Dobbs*, we know from various sources that many people are still unable to access abortion. And we know, thanks to the landmark Turnaway Study in the 2010s, that people unable to get an abortion they sought are harmed in many ways.²⁶ Moreover, the lives of people who are now forced to travel and jump through even more hoops to get an abortion are disrupted in significant ways, including an increased risk of health and legal consequences. But perhaps most important, the work required to make abortion possible for all the people who have been disrupted by *Dobbs* is difficult and costly—in time, in money, and in emotion.

But what we have seen so far is that the predicted evisceration of abortion access has not materialized. In fact, because of the people profiled in this book—and many more like them throughout the country—we've seen quite the opposite. In the face of the major blow of overturning *Roe*, abortion has continued, maybe even stronger than before. How people are obtaining and providing abortions is changing and morphing as cir-

cumstances require, but people looking for an abortion are, once again, proving that they will always find a way to access it. And providers and supporters, like their predecessors, are proving once more that they will do everything they can to help women and other people capable of pregnancy control this central aspect of their lives.

The Supreme Court hasn't stopped that.

EPILOGUE

And then the 2024 election happened. We write this in the days immediately following the election and months after we finished the rest of this book. With Donald Trump winning the presidency for a second time, the political fears we detail in the last chapter of the book take a big step closer to becoming reality. By the time this book is published and you are reading these words, we will have a better sense of whether President Trump will be enforcing the Comstock Act, cutting back on or even eliminating FDA approval for mifepristone, and taking steps to limit abortion-related travel.

By the time this book is published, we will also know who controls Congress. As of now (mid-November 2024), we know that Republicans will have a clear majority in the Senate, but control of the House remains up in the air. If Republicans take control of both houses, the prospect of national legislation banning abortion will materialize. In order for that to happen, the Senate would have to eliminate the filibuster and President Trump would have to go back on his 2024 campaign statements that he would not sign a national ban, but both are entirely possible. However, if the Democrats manage to eke out a majority in the House, we can rest knowing that at least in the next two years there will be no national legislation banning abortion (though the possibility of Comstock enforcement resulting in a de facto national ban would remain).

In state elections, the right to abortion won majorities in eight of the ten states where it was on the ballot. Only in South Dakota and Nebraska did abortion rights fail to reach 50 percent. However, because of Florida's requirements for ballot initiatives, the constitutional amendment also failed there. In that state, a lopsided majority of voters approved the abortion referendum, but it fell three percentage points short of the 60 percent threshold for ballot initiatives. As a result, the right to abortion will be added to the constitution of seven states because of the election: Arizona,

Colorado, Maryland, Missouri, Montana, Nevada, and New York. Arizona and Missouri are the most significant on this list because the amendments expand access in both states—from fifteen weeks to viability in Arizona and from a complete ban to viability in Missouri. In the other states, the election solidifies what was already true on the ground: what was once a right protected by state statute is now a right protected by state constitutional amendment.

These are victories, but they are tempered by the national landscape. If there is a national ban on abortion—via a new federal law or enforcement of the Comstock Act—state constitutional amendments, like state statutes, will fall to the supremacy of federal law. And state constitutional protections would likewise be irrelevant if the FDA cuts back access to mifepristone. Thus, we are back where we started: waiting to see what the new Trump administration does to determine the future of abortion in this country.

Tragically, though, we do know now that, however things play out with national policy as a result of the election, people in states with abortion bans will continue to face forced births, injuries, and even deaths. Shortly after we completed our manuscript, investigative journalists with ProPublica reported on a number of deaths of pregnant women that were directly attributable to the circumstances created by *Dobbs*. The number of these horrific stories will surely grow.

Of course, as with any election, there will be resistance. Though it's looking like Trump won the popular vote, at the end of the day there will possibly be close to seventy-five million people who voted against him. Moreover, given the continued popularity of abortion, in both ballot initiatives and issue polls, a good chunk of the American populace will push back in various ways against any of the efforts we fear may be in the works. We have no idea what the results of this resistance will be, but we do know that the Trump administration's efforts to eviscerate legal abortion will face vigorous opposition.

What we also know is that, despite the results of the 2024 election, the people profiled in this book and others like them are going to do whatever they can to continue to serve the women and other pregnant people who need them. And, even more important, that people who are pregnant in this country and who no longer desire to be so—for whatever reason—will do what they can to get the care they want and need. History has shown this unshakeable determination again and again, as has the story of

people throughout the world currently living under abortion bans. Again, we can't know any of the specifics of what this will look like. Will providers switch to misoprostol-only abortions? Will providers and patients rely on foreign distribution of abortion pills? Will patients turn in greater numbers to informal clandestine networks? Will providers of conscience tempt fate and provide abortions that do not comply with new restrictive abortion laws? Only time will tell.

When we researched, wrote, and finalized the main text of this book, we were buoyed by the overarching story of providers, supporters, and patients confronting the new post-*Roe* reality and finding ways to continue on. Our excitement wasn't without caution, as we understood that there was no guarantee that this successful countereffort would last, given political, legal, and financial threats. However, what emerged from this project was, we hope, an inspiring tale of resilience and persistence in the face of injustice.

But the questions we leave you with now, after the 2024 election, are these: Is this book a story of the present *and* the future of abortion under *Dobbs*? Or will this book become a piece of history that captures a unique two-year moment of transition that ends abruptly with the onset of a new political regime? And if this new political regime is as repressive as some fear, can the stories of ingenuity and resistance contained in these pages inform the path forward?

Whatever the answer to these questions, we are confident of this: the deep commitment of the American people to reproductive freedom will certainly mean that the Trump administration's attacks, whatever they are, will not be the last chapter of the abortion story in the United States.

NOTES

INTRODUCTION

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