

# The Impact of Abortion on the Black Community





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*A Policy Briefing Presented by the  
Center for Urban Renewal and Education*

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## Introduction: Understanding Abortion

According to the Oxford English Dictionary, an abortion is the deliberate termination of a human pregnancy, most often performed during the first 28 weeks of pregnancy.<sup>1</sup>

Other definitions of abortion intentionally obfuscate the meaning of the word to include miscarriages that occur naturally to conflate the purposeful act of ending a pregnancy with natural fetal death. This is akin to conflating dying of cancer with being murdered; it makes no sense to do such. We understand the difference between dying of natural causes and being intentionally killed for all post-birth humans; there is no logical reason to reject such reasoning when considering unborn human life.<sup>2</sup>

Furthermore, we reject the conflation of abortion with miscarriages due to the insensitive nature of lumping women who desperately wanted to follow through with the pregnancy and raise a child with women who didn't seek such an outcome. So, as you read this report, the term abortion does not apply to miscarriages or any other non-intentional acts that result in a lost pregnancy.<sup>3</sup>

Considering the aforementioned, we must also consider what human pregnancy is. Although there is disagreement on when pregnancy starts, be it during ovulation, conception, after fertilization, or after implantation, there is no disagreement with the basic fact that male sperm must fertilize a female's eggs to create a new human life. The sperm alone will never create human life, nor would an egg. Likewise, this means that the first physical manifestation of any human comes into being at conception. At this point, the journey from zygote (the state of a fertilized egg) to birth is a process of human growth and development that continues well past birth.<sup>4</sup>

Understanding the facts above, the unborn are indisputably human, genetically distinct from the pregnant woman the unborn child resides within, and innocent of any culpability of a crime. Thus, we contend that abortion represents the purposeful ending of innocent human life.

Some may reject our reasoning, but they must defy logic to do so. If the unborn are not human, then what exactly are they? What would a deoxyribonucleic acid (DNA) test<sup>5</sup> of the unborn show? Likewise, if the unborn are not alive then what exactly does abortion do? There is no need to stop the growth and development of inanimate objects. Similarly, we reject the valuation of human life based on stages of development. Sane people would never argue the life of a 5-year-old child is worth less than that of a 30-year-old human adult. We recognize the inherent potential of allowing the 5-year-old to grow. There is no logical reason to not apply the same reasoning and understanding to all stages of human growth and development.

Even the most rudimentary understanding of embryology makes it clear that the abortion debate is not a question of when human life begins. It is a debate about when human life warrants legal protection. Pro-life advocates contend that innocent human life has inherent value in all stages of development and is not disposable at whim, but the abortion lobby rejects or ignores this assertion.

## Our Position & Values

The Center for Urban Renewal and Education (CURE) is a pro-life Christian organization. Our faith guides us on contentious issues. We believe any basic understanding of what abortion truly is should lead most people to reject abortion in most circumstances regardless of gender, race, ethnicity, or religious creed. We will not hide from our faith; we lean into it! As Christians, the Bible commands us to speak up and defend the weak and vulnerable.

“Keep far from a false charge, and do not kill the innocent and righteous, for I will not acquit the wicked.”  
– Exodus 23:7<sup>6</sup>

The Bible makes it clear that the unborn are the products of our Creator and deserving of the same respect and protection as all humans.

“For you formed my inward parts; you knitted me together in my mother’s womb. I praise you, for I am fearfully and wonderfully made. Wonderful are your works; my soul knows it very well. My frame was not hidden from you, when I was being made in secret, intricately woven in the depths of the earth. Your eyes saw my unformed substance; in your book were written, every one of them, the days that were formed for me, when as yet there was none of them.” – Psalm 139:13-16<sup>7</sup>

We call on Christians of all denominations to honor our sacred text and join us in the defense of life. We further urge non-Christians and people of no religious faith to follow science and value human life at every stage of development.

## **Abortion & Black America**

*“I became a physician in order to help save lives. I am at once a physician, a citizen, and a woman, and I am not willing to stand aside and allow the concept of expendable human lives to turn this great land of ours into just another exclusive reservation where only the perfect, the privileged, and the planned have the right to live.” – Mildred Jefferson, M.D. The first black woman to graduate from Harvard Medical School.<sup>8</sup>*

The 1973 *Roe v Wade*<sup>9</sup> Supreme Court decision to declare a non-existent right to abortion has led to more than 63 million unborn babies being killed in America over the last 50 years.<sup>10</sup>

This gross injustice perpetrated against the innocent was thrust on America by a Court well out of its depth. However, there has been a positive development. On June 24, 2022, The United States Supreme Court corrected the decades-long error that was *Roe* and relegated that decision to its rightful place in the ash heap of history with their *Dobbs v. Jackson Women's Health Organization* decision.<sup>11</sup> Now that *Dobbs* is the law of the land, abortion falls squarely within the purview of elected officials. This means protections for the unborn can be enacted by legislatures, but such an outcome is far from guaranteed and may not even be likely in some parts of America.

Although she is no longer with us, Dr. Mildred Jefferson's message and contributions to the pro-life movement warrant memorialization. We find it fitting to remember those who dedicated their lives to the advocacy of life and protecting the innocent. Although she did not live to see the reversal of *Roe v. Wade*,<sup>12</sup> there can be no doubt that she would have welcomed this development.

Abortion has had a personal, practical, and political effect on communities and citizens. Every town, city, ethnicity, and age group has suffered from the tragic effects of this often surgical and increasingly chemical procedure. The true toll of abortion may remain unknown and immeasurable because the data is imperfect. The so-called "right to privacy" that allowed abortion on demand was a legal fiction created by the Supreme Court 50 years ago and had been extended to abortionists as well. This shroud of privacy enabled abortionists to kill unborn babies late in pregnancy and to avoid accountability for the harm caused. With *Dobbs*, this era of darkness may be ending.

This report seeks to examine this issue in the hope that Congress and state legislatures investigate the physical, legal, cultural, and economic harm abortion has caused to our nation – including

the black community. We also urge Congress and the states to take the initiative to protect unborn children of all races to the maximum extent possible.

## **The Racist and Eugenic Roots of the Abortion Movement**

It is no accident that abortion has become so deeply entrenched within the black community. Margaret Sanger, a founder of the American birth control movement and the organization that is now known as the Planned Parenthood Federation of America (PPFA), was a leading spokesperson and activist in the promotion of controlling the birth rate among blacks and others she considered undesirable.

In 1926, Sanger made a speech on birth control to a women's auxiliary branch of the Ku Klux Klan in Silver Lake, New Jersey.<sup>13</sup> She endorsed the 1927 *Buck v. Bell* Supreme Court decision, in which the Court ruled that states could forcibly sterilize people deemed "unfit" without their consent and sometimes without their knowledge.<sup>14</sup> In 1939, Sanger co-authored a report, "Birth Control and the Negro," which stated that "[N]egroes present the great problem of the South," and advocated for a birth control program geared toward a population characterized as largely illiterate and that "still breed carelessly and disastrously."<sup>15</sup>

A supporter of eugenics, Sanger became a formidable force when pushing her "Negro Project" designed to employ black leaders to promote birth control and limit the black population. Sanger recruited black pastors to persuade minority women to use contraceptive birth control. "We do not want word to go out that we want to exterminate the Negro population and the minister is the man who can straighten out that idea if it ever occurs to any of their more rebellious members," she said.<sup>16</sup>

She favored the Malthusian view of birth control and said it “aims to introduce into the creation of the next generation of American citizens the sound and scientific principles observed by the gardener and the agriculturists.”<sup>17</sup> In an article entitled *High Lights in the History of Birth Control*, Sanger wrote:

*“Birth control does not mean contraception indiscriminately practiced. It means the release and cultivation of the better elements in our society, and the gradual suppression, elimination, and eventual extinction, of defective stocks – those human weeds which threaten the blooming and the finest flowers of American civilization.”<sup>18</sup>*

Heavily relying on members of the black elite to help craft her message, “The Negro Project,” influenced respected black leaders, enticing them to Sanger’s cause. Although leaders such as Marcus Garvey strongly denounced birth control and abortion as detrimental to the survival of the black race, other black leaders and organizations supported Sanger. They included W.E.B. DuBois, the first black American to earn a Ph.D. from Harvard University and a founding member of the NAACP; Adam Clayton Powell Jr., pastor of the Abyssinian Baptist Church in Harlem; and Mary McLeod Bethune, founder of the National Council of Negro Women.<sup>19</sup>

Sanger’s organization continues in this vein, persuading those whom blacks trust that Planned Parenthood is for the benefit of the black race. Today, the growing list of advocates for abortion includes Jesse Jackson,<sup>20</sup> Al Sharpton,<sup>21</sup> the entire Congressional Black Caucus,<sup>22</sup> 2018 Georgia gubernatorial candidate Stacey Abrams,<sup>23</sup> former President Barack Obama<sup>24</sup> – who vigorously resisted any regulation of the most unregulated industry in the nation – and Vice President Kamala Harris, who as a candidate for president, called for every state or local abortion limitation or regulation to be submitted to the U.S. Justice Department for review.<sup>25</sup> As a senator, Kamala Harris co-sponsored the Women’s

Health Protection Act. This legislation would eliminate any basic requirement prior to the performance of an abortion, such as parental notification or a waiting period. It also would eliminate the protections for nurses and doctors who do not want to participate in abortion procedures.<sup>26</sup>

Ironically, Jesse Jackson had previously been strongly pro-life. In a 1977 essay in *National Right to Life News*, Jackson said:

*“Politicians argue for abortion largely because they do not want to spend the necessary money to feed, clothe and educate more people. Here arguments for inconvenience and economic savings take precedence over arguments for human value and human life ... Psychiatrists, social workers and doctors often argue for abortion on the basis that the child will grow up mentally and emotionally scarred. But who of us is complete? If incompleteness were the criteri(on) for taking life, we would all be dead. If you can justify abortion on the basis of emotional incompleteness, then your logic could also lead you to killing for other forms of incompleteness — blindness, crippleness, old age.”<sup>27</sup>*

Louisiana State Senator Katrina Jackson, a black Democrat and member of Louisiana’s Legislative Women’s Caucus and Legislative Black Caucus, does not conform to the profile Planned Parenthood and other abortion advocates seek to project for black leaders. Senator Jackson aligns with liberal Democrat colleagues on many issues but has sponsored pro-life legislation because she believes abortion is “a modern-day genocide.”<sup>28</sup>

In their 2018 endorsement of Stacey Abrams, Planned Parenthood called her an “unwavering champion for reproductive health and rights.” Abrams responded by saying she would not “whisper” her ‘pro-choice’ position, stating instead that her support for abortion would be a “proud and central facet” of her campaign.<sup>29</sup>

Planned Parenthood and other abortion advocates also utilize cultural icons to sell their message to the black community. In August 2019, Planned Parenthood published a letter signed by some of the most prominent black artists of the day including Nicki Minaj, Lizzo, and John Legend.<sup>30</sup> They backed a national campaign with the slogan #BansOffMyBody, protesting the anti-abortion policies enacted by the Trump administration.

Planned Parenthood and other abortion supporters have fanned their advocates across the black community, promoting a message that abortion is a necessary form of healthcare. Then and now, Sanger's organization has used trusted leaders to convince the black community that abortion as a form of birth control is not only acceptable but also beneficial to black culture.

Margaret Sanger is not the only Planned Parenthood official with a history of supporting the eugenics movement. In 1962, Alan Guttmacher, formerly Vice President of the American Eugenics Society,<sup>31</sup> became President of PPFA and held that position for more than 10 years. Planned Parenthood subsequently named its Center for Family Planning Program Development, which was originally within the corporate structure of PPFA, the Guttmacher Institute.<sup>32</sup>

For many years, Planned Parenthood denied its racist roots. However, in a June 18, 2020 open letter written by then-current and former staffers of Planned Parenthood of Greater New York, signatories said, "Planned Parenthood was founded by a racist white woman. That is part of history that cannot be changed."<sup>33</sup>

In an April 2021 backgrounder entitled, "Opposition Claims About Margaret Sanger," PPFA acknowledged that Margaret Sanger "chose to align herself with ideologies and organizations that were explicitly ableist and white supremacist." In doing so, Sanger "caused irreparable damage to the health and lives of

generations of Black people, Latino people, Indigenous people, immigrants, people with disabilities, people with low incomes, and many others,” PPFA said.<sup>34</sup>

In an opinion article published in *The New York Times* on April 17, 2021, PPFA Director Alexis McGill Johnson acknowledged Planned Parenthood’s racist roots and eugenic mission. “It’s a question that we’ve tried to avoid, but we no longer can,” Johnson said. She admitted that Planned Parenthood had excused Sanger’s “association with white supremacist groups and eugenics . . . always being sure to name her work alongside that of W.E.B. Dubois and other Black freedom fighters.”<sup>35</sup>

Johnson acknowledged that Sanger cultivated connections with the Ku Klux Klan and endorsed a Supreme Court decision that “allowed states to sterilize people deemed ‘unfit’ without their consent and sometimes without their knowledge – a ruling that led to the sterilization of tens of thousands of people in the 20th century.”<sup>36</sup>

The question must be asked, how has this affected the black community and where has this led our political leaders?

## The Abortion Consumer

Disproportionately, the leading consumer of abortion services is the black female. According to the United States Census Bureau and the Centers for Disease Control and Prevention’s (CDC) Abortion Surveillance Report, black women made up 14 percent of the childbearing population in 2020 yet obtained 39.2 percent of reported abortions. Black women have the highest abortion ratio in the country, with 442 abortions per 1,000 live births. According to CDC, states that report abortion by ethnicity show black women disproportionately lead in the numbers. In 2020, black women accounted for 77 percent of abortions in Mississippi; in Washington, D.C., 55 percent; in Michigan,

54.4 percent; in Alabama, 66 percent. In many states, similar numbers are found, with black women often aborting at two or more times their presence in the population.<sup>37</sup>

The prevalence of abortion facilities within and near minority communities serves as a major contributor to the rate at which black women obtain abortions. Accordingly, black women are almost 4 times more likely to have an abortion than white women.

In 2017, Life Issues Institute analyzed Planned Parenthood's placement of 25 new abortion mega centers and concluded that all of the facilities were within walking distance of minority neighborhoods. The Institute further stated that "80 percent target black communities."<sup>38</sup> The findings of these studies arguably coincide with historical revelations that eugenicists - dating to the mid-1900s - believed that one of the most effective ways they could advance their agenda would be to concentrate population control facilities within targeted communities.

The advocacy for continued funding of organizations like Planned Parenthood demeans and undermines the concept of natural rights and denies the right to life to the most vulnerable of all, the unborn child. Establishing abortion as such a cultural norm undermines the natural rights of the elderly and the infirm. If the powerful can determine that the unborn child does not have a natural, self-evident right to live, then it is possible that they can and will determine that certain other humans no longer possess those rights.

## **The Population Control Nexus**

Abortion has been used as part of the population control agenda. Former Supreme Court Justice Ruth Bader Ginsburg reminded the nation of this in her 2009 *New York Times Magazine* interview when she said, "Frankly I had thought

that at the time Roe was decided, there was concern about population growth and particularly growth in populations that we don't want to have too many of,"<sup>39</sup> and she was historically accurate. President Richard Nixon declared birth control for low-income women to be a "national goal" in 1969 before signing the first federal birth control program into law in 1970.<sup>40</sup> Nixon also cited concerns about controlling the black population in conversations with White House staff that were recorded during his presidency. Some examples follow:

"A majority of people in Colorado voted for abortion. I think a majority of people in Michigan are for abortion. I think in both cases, well, certainly in Michigan they will vote for it because they think that what's going to be aborted generally are the little black bastards<sup>41</sup>. . . As I told you - we talked about it earlier - that a hell of a lot of people want to control the Negro bastards<sup>42</sup>. . . People who don't control their families are people - the people that shouldn't have kids."<sup>43</sup>

These are sentiments Nixon expressed during his presidency that may provide context about his thinking when he announced the conclusions and recommendations of the 1969 Population Control Commission, headed by John D. Rockefeller.<sup>44</sup>

Likewise, today, abortion activists frequently cite preserving abortion access for black women as a top consideration for keeping the practice legal. A 2022 article in the *Texas Tribune* argues that abortion is safer than childbirth for black women.<sup>45</sup> This is not an uncommon appeal, as major publications like VOX, the *New Yorker*, the *Washington Post*, Reuters, and many more have published and promoted similar appeals with one simple message: it is too dangerous for black women to birth black babies.<sup>46 47 48 49</sup> This condescending argument is often promoted under the guise of racial justice.

## Political Ramifications of Abortion on the Black Community & the Nation

After several years of litigation, the Scotts finally appealed their subjugation as slaves to the U.S. Supreme Court. The Court's 1857 decision stated that the Scotts were to remain slaves regardless of their place of residence. However, Chief Justice Taney did not stop there. He further stated that since Dred Scott was not a citizen of the U.S., he could not bring suit in federal courts regardless of the issue. Furthermore, Taney made it clear that slaves were no more than personal property, and, subsequently, had no ability to lay claim on freedom.<sup>50</sup>

By 1860, the overall slave population was close to four million. Within the seven states of the Confederacy, slaves constituted 47 percent of their overall population.<sup>51</sup> In South Carolina, the state with the largest percentage of slaves per capita, slaves constituted 57 percent of the state population.<sup>52</sup>

When slavery ended, whites began instituting laws that required blacks to be able to read and write to be eligible to vote and to curtail the possibility of a sudden influx of blacks running for political office. Since almost the entire former slave population had neither skill, blacks were effectively shut out of the political process, preventing them from passing laws more equitable to all races.

A legal wall of separation between blacks and whites deemed blacks as inferior, not worthy of even occupying the same space as whites unless it was in the role of a servant. This dichotomy in the culture continued until the enactment of the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

Eugenicists, however, did not help heal the racial divide in America. Their objective, as we infer from Nixon's comments, was to remove obstacles to abortion, particularly in communities "we don't want too many of," as Justice Ginsburg said.<sup>53</sup>

Such a high frequency of abortion within the black community inevitably creates far-reaching consequences, not only on the women who have obtained abortions, but also on the entire population. Census results reveal one such consequence, stating that blacks have been surpassed by Hispanics as the largest minority group in the U.S.<sup>54</sup>

Michael Novak, the former George F. Jewett scholar at the American Enterprise Institute, had the following to say in 2002 regarding the political and social ramifications of abortion on black society: “Since the number of current living blacks (in the U.S.) is 36 million, the missing 16 million represents an enormous loss, for without abortion, America’s black community would now number 52 million persons. It would be 36 percent larger than it is. Abortion has swept through the black community like a scythe, cutting down every fourth member.”<sup>55</sup>

Consider this: if those 16 million children had not been aborted, the black population at that point would have been 17 percent nationally rather than 13 percent.<sup>56</sup> Blacks who yearn for political change must recognize that the majority of their civic leaders support policies that destroy their future constituency. It is not beyond reason to conclude that today there could be more black senators and representatives in the halls of Congress had it not been for the abortion platform supported by so many liberal black and white leaders. Today, as a result of abortion, blacks have been prevented from gaining greater political power.

### Natural Rights vs. Court Decisions

Since the 17th-century emergence of critical thinker John Locke, the debate about natural rights has raged, and questions abound on the government’s involvement in protecting life, liberty, and property. To avoid the question of government protection for life in the womb, the Supreme Court accepted arguments that the child in utero is not life until it reaches the level of viability,





which they said happens after the second trimester. Like slavery, tension was created in the public square concerning who “qualifies” for natural rights and the protection it affords. In the 1850s, it was the black slave who sought freedom and equal protection under the law. Today it is the unborn child.

If the baby in utero is not a human being in the fullest sense of that term, then he or she has no natural right to life. However, if the opposite is true, then the unborn child is entitled to the right to life. Given the advent of ultrasound and other medical devices that make it abundantly clear that the baby in utero is life and indeed human, the natural rights of the baby has been an ongoing topic of discussion in the corridors of Congress and the halls of federal courts.

William Saunders, formerly of the Family Research Council, commenting on Professor Hadley Arkes’ *Natural Rights and the Right to Choose*, had this to say about the parallels between abortion and slavery:

“In asserting a ‘right to choose,’ abortion proponents undermine the concept of natural right, for they deny a nature that transcends the preferences of others. Law is thus reduced to power: it secures the ‘right’ of the powerful to define who has rights, even to define who is ‘human.’ It can no more be ‘contained’ than could a ‘right to own slaves.’ It will seep into areas of care of the elderly, the infirm, and the handicapped. It has already poisoned the policy discussion where the status of the embryo (prior to implantation especially) is at stake. By reducing rights to a mere reflection of the preferences of the powerful, a ‘right to choose’ puts all rights, even those claimed by abortion proponents, at risk, because such rights are always subject to redefinition when power shifts.”<sup>57</sup>

It is ironic that while the Fifteenth Amendment (1870) to the U.S. Constitution abolished discrimination based on race, a more

‘civilized’ 1973 U.S. Supreme Court discriminated against the life of the unborn child, handing down a decision that stripped the most vulnerable among us of rights, once again allowing the powerful to determine exactly who had the right to life.

Attitudes in society and government have certainly evolved since the time of our nation’s inception when a Judeo-Christian belief system was the premise for government and law. By 1973, a liberal U.S. Supreme Court wielded its power and forced all states to abolish any restrictions they might have against abortion in the same way the Supreme Court allowed the owners of Dred Scott to retain their “property” in 1857. Cultural changes in opinion often influence the federal court system over time, leaving expediency and pragmatism as the order of the day rather than honor and a genuine concern for life.

This evolution also included a movement in the religious community toward a doctrine of moral relativism. The Religious Coalition for Reproductive Choice (RCRC) is but one example. Founded by members of old-line/mainline Protestant denominations, such as Episcopalians and Presbyterians, the RCRC has targeted blacks in its outreach.<sup>58</sup>

As Martin Luther King, Jr. stated in *Strength to Love*, “The church must be reminded that it is not the master or the servant of the state, but rather the conscience of the state. It must be the guide and the critic of the state, and never its tool. If the church does not recapture its prophetic zeal, it will become an irrelevant social club without moral or spiritual authority.”<sup>59</sup>

In a 2021 *Amici Curiae* (“friend of the court”) brief that defends the State of Pennsylvania’s limitations on Medicaid funding of abortion,<sup>60</sup> nationally recognized leaders in the black community – including CURE Founder and President Star Parker – argued that black women have been subjected to “the predatory objectives and actions of the abortion industry, especially

Planned Parenthood. From its inception, the abortion industry has sought to control and hinder the growth of the black population, a core objective of the movement's founders."

Star Parker and fellow leaders refuted appellants' argument that racism and systemic discrimination are justification for publicly funded abortions, arguing that such a policy "means hurting the black women and communities that they claim to serve . . . If our goal is to improve access to beneficial healthcare for black communities, abortion is not the way."<sup>61</sup>

### Supreme Court Hears Arguments on State Abortion Laws

On November 1, 2021, the U.S. Supreme Court heard oral arguments on the "Texas Heartbeat Act." The law protects unborn children at six weeks of pregnancy, the point at which a child's heart begins to beat. Enforcement of the law rests on the actions of private citizens, rather than the government. While the woman seeking the abortion can't be sued, the law authorizes private citizens to file lawsuits against anyone who performs or facilitates the abortion. Plaintiffs bringing a lawsuit can receive a \$10,000 payment if they prevail.<sup>62</sup>

Opponents of the law accused the State of Texas of denying a woman the right to an abortion and deputizing 'bounty hunters' to enforce the law. On December 10, 2021, the U.S. Supreme Court allowed the heartbeat law to remain in effect and remanded the case to the District Court of Texas for further consideration of the plaintiffs' arguments.<sup>63</sup> In responding to a state law question from the U.S. Fifth Circuit Court of Appeals, the Texas Supreme Court on March 11, 2022 held that Texas law does not authorize state officials to directly or indirectly enforce the "Texas Heartbeat Act." Texas Attorney General Ken Paxton declared the ruling to be a win for the pro-life cause as

the law will continue to be enforced by private parties bringing civil enforcement actions, just as the Texas legislature intended in passing the bill.<sup>64</sup>

Meanwhile, on December 1, 2021, the Supreme Court heard oral arguments on a Mississippi law, the “Gestational Age Act,” which restricts abortions after 15 weeks of pregnancy when an unborn child can feel pain. In deciding to consider *Dobbs v. Jackson Women’s Health Organization*, the Supreme Court said it would consider one question: “Whether all pre-viability prohibitions on elective abortions are unconstitutional.”<sup>65</sup>

Pro-life advocates correctly believed that *Dobbs* posed the best opportunity in decades to revisit some of the Court’s most contentious precedents on U.S. abortion law.<sup>66</sup> The Court’s 1973 decisions in *Roe v. Wade* and *Doe v. Bolton*<sup>68</sup> effectively allowed abortion up until birth, allowing even third-trimester abortions for reasons of “maternal health” and defining that term so broadly that it encompasses virtually any medical or social circumstance.

In the Supreme Court’s 1992 *Planned Parenthood v. Casey* decision, the Court affirmed a woman’s right to have an abortion before fetal viability but acknowledged that “the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child.” Four dissenting justices, including then Chief Justice William Rehnquist and the late Justice Antonin Scalia, concluded that a woman’s decision to abort her unborn child is not a constitutionally protected “liberty” because “(1) the Constitution says absolutely nothing about it, and (2) the long-standing traditions of American society have permitted it to be legally proscribed.”<sup>69</sup>

Several deaths and retirements since the *Planned Parenthood v. Casey* decision changed the makeup of the Court that heard

arguments in Mississippi's *Dobbs* case. "A decision finding the Mississippi law constitutional will fundamentally change the abortion regime in our country," Star Parker correctly predicted.<sup>70</sup>

## A New Era

*Dobbs v. Jackson Women's Health Organization* started as a challenge to Mississippi's 2018 Gestational Age Act, which prohibited abortions after 15 weeks except for medical emergencies or severe fetal abnormalities. The Mississippi law also outlined penalties such as license suspension for abortion providers. As a result, Jackson Women's Health Organization (the state's largest abortion clinic) sued the state in a federal court and challenged the constitutionality of the Gestational Age Act. Thomas Dobbs, the Mississippi State Health officer, subsequently asked the Supreme Court to review a lower court decision on whether all pre-viability prohibitions on elective abortions are unconstitutional.<sup>71</sup> The Supreme Court agreed to set the stage for what would become the greatest pro-life legal victory in decades.

The State of Mississippi, through Dobbs, contended that the Constitution does not provide a right to abortion. Mississippi leaned on the state's rights text of the Tenth Amendment and the fact that the Constitution makes no mention of abortion and does not directly deny the states the authority to restrict or ban abortion. Furthermore, Mississippi argued that "liberty" as written in the Fourteenth Amendment is only applicable to rights "deeply rooted in U.S history and tradition." Mississippi also argued that abortion is not a fundamental right since many states had a historic tradition of restricting abortions before the 14th Amendment and *Roe* existed. Likewise, Mississippi argued that "viability" was too arbitrary for the Court to enforce.<sup>72</sup>

The Biden administration's Office of the Solicitor General, an agency of the U.S. Department of Justice tasked with litigating

the interests of the U.S. government before the Supreme Court and in all federal appellate courts, sought the Supreme Court's approval to participate in the oral argument for the *Dobbs* case, and the Court granted their request. "In light of the substantial federal interest in the proper interpretation of the Fourteenth Amendment and principles of stare decisis [a legal doctrine that obligates courts to follow legal precedents when ruling on a similar case], the United States' participation at oral argument would materially assist the Court in its consideration of this case," the Solicitor General argued.<sup>73</sup>

Solicitor General Elizabeth Prelogar faced tough questioning from Justices Brett Kavanaugh and Samuel Alito in defending the Biden administration's stare decisis argument for striking down the Mississippi law and reaffirming the Supreme Court's *Roe* and *Casey* precedents.

"If you think about some of the most important cases, the most consequential cases in the Court's history, there's a string of them where the cases overruled precedent," Justice Kavanaugh said. He cited the 1954 *Brown v. Board of Education* decision, in which the Court overruled the 'separate but equal' doctrine enunciated in *Plessy v. Ferguson* 58 years earlier. Kavanaugh went on to cite precedent-defying decisions on one person/one vote, states' authority to regulate business, requiring police officers to inform people being arrested about their right to remain silent, the right to counsel in criminal cases, and others.<sup>74</sup>

Justice Alito pressed Solicitor General Prelogar further on *Plessy v. Ferguson*. He ultimately got Prelogar to acknowledge that *Plessy* should have been overruled - even if it was reconsidered as soon as one year later and no facts had changed - because "the factual premise was wrong in the moment it was decided."<sup>75</sup> Mississippi Attorney General Lynn Fitch urged the Court to reverse *Roe* and return the issue to state legislatures. In a USA

Today opinion article, Fitch said, “The Supreme Court thought it was settling the abortion debate in 1973 with *Roe v. Wade*. But abortion policy has been unsettled ever since.”<sup>76</sup>

Fitch said, “A lot has changed in five decades, but the court has kept states from evaluating those changes. In 1973, viability was thought to be at 28 weeks. Today, many mothers breathe a sigh of relief when they pass 22 weeks in their pregnancies.” She went on to highlight the case of a baby boy who was born at 21 weeks and two days, and had just celebrated his first birthday. She called ‘viability’ an “arbitrary line that produces arbitrary results. Science and medicine will only continue marching forward, making that line an increasingly unreliable standard. Abortion policy should not remain tethered to it,” she said.<sup>77</sup>

Attorney General Fitch went on to say, “Equal opportunity laws, largely passed in a post-*Roe* world, prohibit pregnancy employment discrimination.” She noted that the gig economy “has opened up options for freelance, part-time work and independent contracting . . . Women don’t have to choose between a child and a career. As a single, working mother who raised three children and became Mississippi’s first female attorney general, I can attest to that,” Fitch continued.

Fitch called on the Supreme Court “to release states from outdated legal precedents. We are asking the court to affirm Mississippi’s right to act on legitimate interests of life and women’s health. The court credits states with important interests, but the stale legal precedents of *Roe v. Wade* and *Planned Parenthood v. Casey* do not allow them to advance those interests,” she argued.<sup>78</sup>

Mississippi’s Attorney General called on the Supreme Court to follow “the straightforward path laid out by the Constitution and 200 years of its own legal reasoning” and “return decision-making about abortion policy to the people. In doing so, we

can have a future where interests of mothers and babies are no longer pitted against one another, a future that recognizes generations of progress for women in society. A favorable ruling will allow the people to empower women and promote life,” Fitch concluded.<sup>79</sup>

In contrast, the pro-abortion advocates pushed back on the arguments made by the State of Mississippi stating that abortion is grounded in the Fourteenth Amendment as an unenumerated (implied) right. The abortion advocates asserted that bodily autonomy and integrity are “essential elements of liberty protected by the Due Process Clause.” They noted case law concerning contraception to support their argument. Abortion advocates also argued that abortion or the right of a person to possess their own body is important in the common law tradition. They further argued that federal courts have uniformly applied the viability line (although conceding the line is arbitrary under intense questioning).<sup>80</sup>

Justice Alito, writing for the conservative majority, explained that the central question at stake was whether the Constitution confers a right to obtain an abortion or not. The majority noted that the Constitution makes no mention of abortion. Additionally, the majority noted that state regulation of abortion is not a sex-based classification and, therefore, is not subject to heightened scrutiny.

Building from that reasoning, the majority ruled that abortion access is not based on the nation’s history and traditions. The majority noted that abortion in the U.S. was either a crime or heavily restricted by three-quarters of the states when *Roe* was adopted. The majority articulated that the Constitution’s Due Process Clause only protects rights granted by the first eight Amendments, and rights that are declared fundamental by the Court.<sup>81</sup>

The Court also said that people of varying states may decide to balance the interests of pregnant women and the unborn differently and should be able to do so. Likewise, The Court noted that linking abortion to a right to autonomy could also create a fundamental right to “drug use and prostitution.”

The central holdings of *Dobbs* affirm the constitutional interpretation argued by the State of Mississippi leading the Court to reject abortion as a fundamental right and made a rational-basis review the criteria for assessing if a state abortion regulation is constitutional.<sup>82</sup> This means that in the future when abortion laws are challenged in Federal Court, the regulations and restrictions are presumed to be valid unless competing evidence shows otherwise. This effectively reversed pro-abortion court decisions as the standing legal precedent, but it did not settle all issues related to abortion.

### **The Impact of *Dobbs***

The *Dobbs* majority emphasized that its ruling would “return the issue of abortion to the people’s elected representatives,” and that those elected officials—not the courts—would “decid[e] how abortion should be regulated.” Although there are existing federal laws that prohibit certain abortion procedures and criminalize intimidation at abortion clinics, abortion-related matters have mostly been regulated at the state level. Understandably, *Dobbs* has generated heightened interest in state and federal abortion legislation on both sides of the issue.

After *Dobbs*, CURE supported Senator Lindsey Graham’s (R-SC) introduction of the Protecting Pain-Capable Unborn Children from Late-Term Abortions Act. If adopted the Graham bill, and a companion bill introduced in the House of Representatives by Rep. Christopher Smith (R-NJ), would limit abortion after 15 weeks with exceptions for rape, incest, and risks to the life of

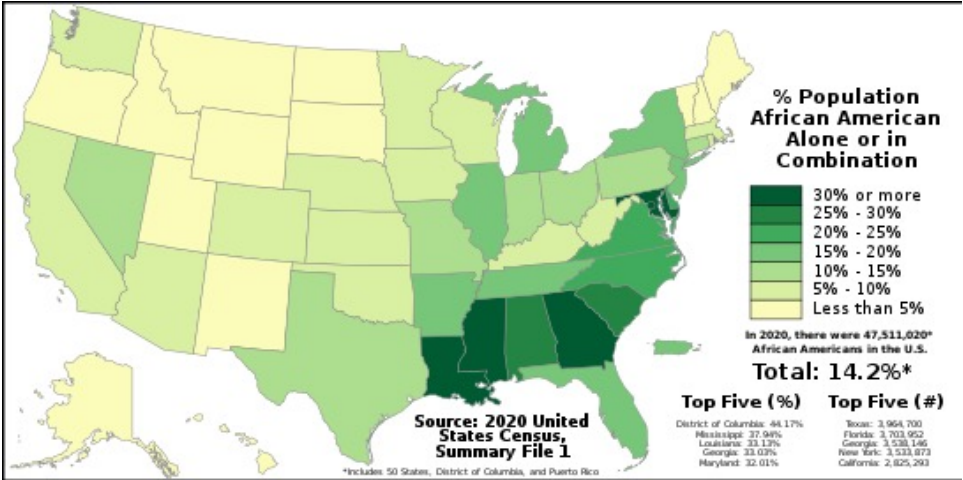
the mother. The bill allows states to enact stronger protections for unborn children.<sup>83</sup> Pro-abortion advocates have pushed the Women's Health Protection Act, which would not allow any limitations on abortion anywhere in America.<sup>84</sup> Neither of these dueling legislative attempts gained enough support to pass in both houses during the 117th Congress, but the Women's Health Protection Act did receive majority support in the House of Representatives in 2021 and 2022.

Some legal scholars have questioned the ability of Congress to broadly regulate abortion, citing the Constitution's Commerce Clause, the Spending Clause, and Section 5 of the Fourteenth Amendment.<sup>85 86 87</sup> However, some other scholars believe unborn children are already entitled to protection under the Fourteenth Amendment's Equal Protection Clause.<sup>88 89 90</sup> Others have argued that Congress and the states can and should legislate to protect the unborn.<sup>91 92 93</sup> Meanwhile, pro-abortion advocates are seeking to override all state and federal protections for the unborn through federal legislation.<sup>94</sup> There are jurisdictional questions about these various approaches that may ultimately be addressed by the federal courts.

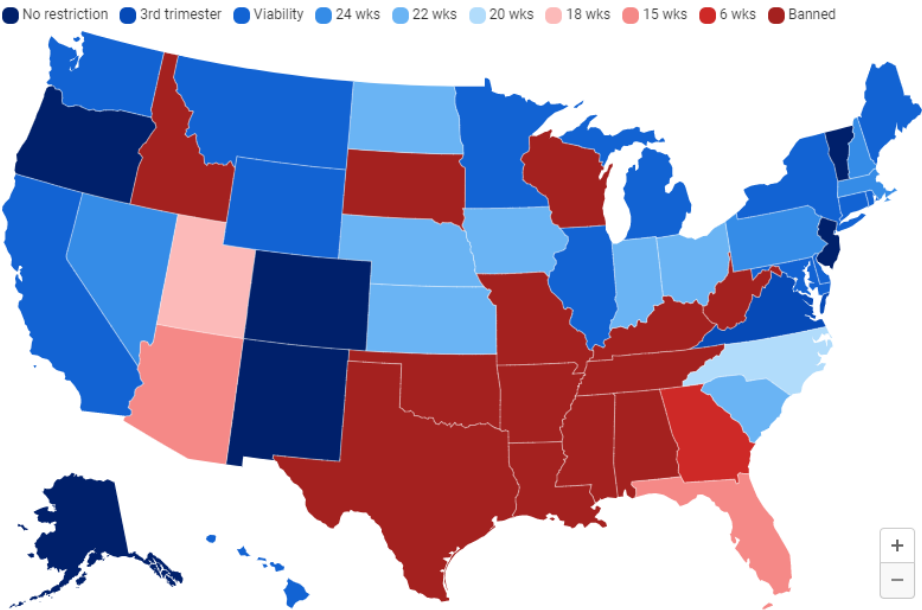
## Protecting Life

Post-Roe, several states have sought to enforce pre-Roe abortion restrictions already on the books, triggering laws that could only be enforced after overturning Roe. The majority of states that have enacted meaningful abortion limitations are in the South. Likewise, the states with the largest percentage of black people are predominantly southern states.

According to an analysis of abortions performed in July and August 2022, after *Dobbs* was decided, about 11,000 fewer women had abortions, a decrease nationally from 14 per 1,000 women to 13 per 1,000 women in August.<sup>95</sup> For context, abortion



Current Timeline for Abortion Access by State



Policies as of November 27, 2022.  
Map: U.S. News & World Report • Source: Guttmacher Institute



had been increasing since 2017 until *Dobbs* halted the deadly trend. As discussed in previous sections of this report, black women disproportionately account for abortions performed. Before *Dobbs*, this was particularly acute in the southern states.

It's reasonable to assume that laws protecting the unborn will predominantly save black babies.<sup>97</sup> Similarly, an analysis of the first six months of 2023 found that about 32,000 lives were saved by state life protection laws.<sup>98</sup>

## Post-Roe Ballot Initiatives

In the aftermath of the Supreme Court's decision overturning *Roe v. Wade*, ballot initiatives concerning abortion have sprung up around the country. Unfortunately, all seven states that put abortion policy up for popular vote in 2022 and 2023 failed to affirm a fundamental right to life and in most cases enshrined broad access to abortion into their state constitutions.

The idea of using ballot initiatives to deny an entire group of human beings (unborn children) fundamental protection raises serious ethical and constitutional concerns. Voting away a fundamental human right is antithetical to the entire concept of a constitutional republic.<sup>99</sup> We believe that unborn "persons" are entitled to the 14th Amendment protections found in the United States Constitution.<sup>100</sup>

Despite our concerns about the legitimacy of voting to enshrine a so-called "right" to abortion, the votes on these ballot initiatives cannot be ignored.

In 2022, a substantial majority of voters supported pro-abortion initiatives in California, Michigan, and Vermont. In Kentucky and Montana, voters rejected pro-life constitutional amendments that would have protected unborn children.

Montana voters rejected LR-131, which proposed to penalize medical personnel who did not act to preserve the life of infants born during an abortion. The measure would have treated an "infant born alive" during an abortion as a legal person entitled to

medical treatment. Critics argued that this policy could adversely impact families facing complications during labor and delivery, such as cases in which the unborn child's life was endangered due to serious abnormalities.<sup>101</sup>

Kentucky voters rejected a constitutional amendment ("Amendment 2") that aimed to declare that the state constitution does not secure or protect a right to abortion or the funding of abortion. Amendment 2 was designed to prevent any misinterpretation of the state's constitution and to reinforce the state's "trigger law" temporarily allowing abortion limitations at all stages of pregnancy.<sup>102</sup>

Michigan voters approved Proposal 3, amending the state constitution to establish "an individual right to reproductive freedom, including the right to make decisions about pregnancy". This was a response to a 1931 law that strictly limited abortion in the state, but that the courts had blocked the state from enforcing. The amendment purports to allow the state to regulate abortion after fetal viability, and bars prosecution of individuals seeking abortions or those assisting pregnant women seeking an abortion.<sup>103</sup>

California voters passed Proposition 1, amending the state constitution to guarantee broad availability of abortion. This measure, proposed by Democrat leaders in response to the Supreme Court's draft *Dobbs* opinion overturning *Roe v. Wade*, ensures state constitutional protection for abortion.<sup>104</sup>

Vermont voters approved a constitutional amendment ("Article 22") affirming an individual's right to "personal reproductive autonomy". Article 22 emphasizes that this "right" should not be denied or infringed unless justified by a compelling state interest and achieved by the least restrictive means.

In November 2023, Ohio was the only state to vote on an abortion-related ballot initiative. Misleading language was

approved as a constitutional amendment, ensuring access to abortion and other forms of undefined reproductive health care.<sup>105</sup> The proposed amendment passed by a margin of 56.6% to 43.4%.<sup>106</sup> This made Ohio the seventh state where voters decided post-*Dobbs* to guarantee the broad availability of abortion.

Statewide ballot initiatives demonstrate that pro-life advocacy has a long way to go with messaging. Greater financial resources are needed to combat contrived arguments advanced by pro-abortion advocates. Politicians who claim to be pro-life need to garner the courage to speak up in defense of life and to do so in a manner that helps their constituents understand important facts and the real consequences if the initiative being considered is enacted into law and enshrined in their state's constitution.

Election results do not change the fundamental truths about elective abortion, the arbitrary killing of an innocent human being. It's also notable that some ballot initiatives have been challenged successfully in court.<sup>107</sup> Pro-life advocates successfully deployed a multi-decade legal strategy to overturn the egregious error of *Roe* and now must display a similar commitment, coupled with humility and wisdom, to affirm the sacred right to life of every human being and end the scourge of abortion on demand.

### Finding a Winning Message

Political messaging and marketing play a crucial role in shaping public opinion and influencing voter behavior. In today's digital age, political campaigns rely heavily on strategic communication techniques<sup>108</sup> to craft messages that resonate with voters and promote their agenda. Political messaging is the art of conveying information in a persuasive manner to capture the attention of the target audience. It aims to create a favorable impression and influence attitudes towards a particular candidate, party, or issue. Effective messaging utilizes emotional appeals, personal anecdotes, and catchy slogans to connect with voters on

a personal level. By tapping into specific fears, hopes, and values, political messages seek to resonate with individuals and convince them that a particular candidate, party, or issue is the best choice to address their concerns. In order to persuade the people who need to hear these messages, there needs to be a commitment by candidates and political parties to devote the resources necessary to deliver those messages effectively.

Too many, at least nominally pro-life candidates have failed to achieve the aims of political messaging. They need to come to terms with this reality. As the abortion industry and the Democrat Party move in lockstep, the pro-life movement has found itself misaligned from leading Republicans.<sup>109</sup> This is expected with poor polling and electoral performance. Politicians are very weary of bad polling and electoral outcomes. However, polling also shows that Republicans cannot win without the pro-life vote. Gallup polling showed that as of 2023, 76% of Republicans identify as pro-life. This represents an increase since the release of *Dobbs*.<sup>110</sup> Furthermore, most vocal pro-life candidates won handily in the first election post-*Dobbs*.<sup>111</sup> In short, Republicans seeking to ignore their bases are doomed to lose.

However, this makes identifying a winning message a fundamental issue of political viability.<sup>112</sup> To achieve this, we need to look no further than the success the abortion industry has had on this very issue. Abortion advocates are unified in their response when asked about abortion “It’s a woman’s choice”, or “Her body, her choice.” This simple concise message cannot be underestimated. It’s easy to understand across educational levels, it tactfully doesn’t try to remedy all the various ethical pitfalls and complexities of the debate. It’s simple and straight to the point.

In contrast, pro-life candidates on the right too often get caught up in the minutiae of policy debates on viability, weeks

of gestation, and exceptions – if they’re willing to talk about abortion at all. The pro-life movement and the Republican Party have not found an effective way to communicate with young voters on the issue of abortion. The spike in pro-abortion polling has been overwhelmingly driven by young voters.<sup>113</sup> Outreach campaigns that do not include young women are fundamentally missing the boat. Likewise, pro-life messaging should focus on our shared humanity. When asked about abortion, people with pro-life sympathies should respond:

“It’s an innocent human life.”

or

“I don’t believe innocent human life is disposable.”

This type of response, regardless of the specificity of the question, frames the discussion in a way that’s advantageous to our cause<sup>114</sup> and forces any detractors to argue against decades of scientific consensus or to suggest that innocent human life is disposable. It’s concise, humanizing, and conveys the seriousness of the act of abortion. It is the pro-life equivalent to the “her body, her choice,” mantra utilized by pro-abortion advocates.

The core facts are simple, we are correct to defend innocent human life. Yet, we are failing to persuade voters. Republican leadership needs to remember they are not slaves to polling, but voices that can shape public opinion. We also need the voices of pro-life leaders to be unified, concise, and strategic.

When a winning message is identified and adopted, candidates and political parties need to devote the resources necessary to combat the onslaught of the pro-abortion coalition and to make sure their messages get through to the voters who need to hear them. In the 2022 and 2023 post-*Dobbs* elections, pro-abortion spending massively outnumbered pro-life spending by pro-life candidates and the Republican Party.





## Biden's Extreme Abortion Agenda

As a candidate for president in 2019, Joe Biden abandoned his 43-year record of supporting the Hyde Amendment.<sup>115</sup> Hyde prevents taxpayer funds from being used to pay for abortions in most circumstances and it was followed by amendments to protect the conscience rights of medical personnel who refuse to participate in the performance of abortions.

Upon being elected president in 2020, Biden appointed strong abortion advocates to lead the Department of Health and Human Services (HHS), the Department of Justice (DOJ) and other federal agencies.<sup>116</sup> They reversed virtually all of President Trump's previous pro-life executive actions and embarked on an effort to embed support for abortion in a wide range of federal programs, including by promoting abortion internationally.

Biden's allies in Congress have been seeking to strip the Hyde Amendment and all other pro-life provisions out of the appropriations bills that fund a broad range of federal health and human services programs. The largest of these programs – Medicaid – provides support for low-income Americans. Repeal of the Hyde Amendment would have a disproportionate impact on black and other minority unborn babies.

In March of 2021 the Biden administration got their COVID rescue plan through Congress, which included \$50 million for Title X family planning providers.<sup>117</sup> On November 8, 2021, Biden reversed Trump's ban on federal funding to Title X providers that refer patients for abortions. During his first month in office, President Biden signed an executive order that stated he would, "reverse my predecessor's attack on women's health access" and "undo the damage that Trump has done."<sup>118</sup> In reality, the Biden administration is pushing one of the most extreme abortion policies in history. He also reversed the Trump administration's

Mexico City Policy, once again allowing U.S. foreign aid to fund international abortions.<sup>119</sup>

In May of 2022, a Supreme Court draft of the *Dobbs* opinion was leaked a month in advance of its intended release.<sup>120</sup> This sparked an immediate backlash and intimidation campaign. More than 100 pro-life churches and pregnancy centers were attacked.<sup>121</sup> Protesters gathered outside the homes of Supreme Court justices to intimidate them; a gross violation of federal law that went mostly unprosecuted. Even worse, a man showed up at the home of Justice Brett Kavanaugh intending to assassinate him. The Biden administration's response to these events was lackluster with only the would-be assassin receiving any punishment.<sup>122</sup> These attacks on pro-lifers were a part of a nationwide campaign of violence. Biden, while claiming to be devoutly religious, did not personally condemn any of the nefarious behavior of pro-abortion radicals.

Unfortunately, the story of post-Roe hostilities isn't simply a story of violent advocates and presidential indifference. Biden took it upon himself to use the Office of President and taxpayer dollars to bolster access to abortion pills, funnel millions of dollars to abortion clinics and finance out-of-state travel for abortion services.<sup>123 124</sup> Similarly, Congressional Democrats and some Republicans immediately sought to use their post-*Dobbs* legislative powers to force liberal abortion policies on every state. These attempts fell short of passage in the Senate, but pro-abortion advocates are seeking to revive them in subsequent sessions of Congress.

### Abortion Pills Shift the Battle over Protecting Unborn Life

For years, Planned Parenthood and other abortion providers focused on building mega-clinics that could perform thousands

of abortions per year. They have also promoted the availability of abortion on college campuses and in high schools, where many school officials have provided them access to students.

Increasingly, abortion proponents have shifted their focus to making abortion pills more widely available. “It’s very clear with everything that’s been happening in the past few years within the abortion industry, that they’re trying to change the model,” says Students for Life of America President Kristan Hawkins. “Especially when you’re distributing these drugs on college campuses or via webcam, you don’t have to operate a facility that’s going to have people praying in front of it.”<sup>125</sup>

In 2000, the U.S. Food and Drug Administration (FDA) approved the abortion pill mifepristone for distribution in the United States. The French company Roussel-Uclaf developed mifepristone – commonly known as RU-486 – in 1980. Great Britain approved mifepristone for abortion in 1991 and Sweden approved it in 1992.<sup>126</sup>

Due to opposition from pro-life groups in the United States, the Population Council sought to find a large drug company willing to develop mifepristone for the U.S. market. In 1995, the Population Council gave the rights to distribute mifepristone to Danco Laboratories, a small company formed specifically for this purpose. Danco then sought FDA approval of the drug for distribution in the United States<sup>127</sup> and ultimately received that approval near the end of the Clinton Administration in 2000.

Under the terms of the FDA approval, retail pharmacists were prohibited from stocking and distributing mifepristone. Instead, the FDA required that mifepristone be dispensed in a doctor’s office, clinic, or hospital registered with the drug manufacturer.<sup>128</sup>

In 2016, during the final days of the Obama administration, the FDA loosened restrictions on mifepristone and approved a research study on telemedicine abortion.<sup>129</sup> The Guttmacher Institute reports that in 2020, medication abortion accounted for 53 percent of all abortions up from 39 percent in 2017. The Charlotte Lozier Institute analyzed Medicaid claims data from 2002 through 2015 and found that the rate of abortion pill-related emergency room visits increased by over 500%.<sup>130</sup> These numbers are likely higher because they don't include self-managed abortions (SMA), many of which involve abortion pills administered at home or in other non-medical settings. According to a study reported by the Journal of the American Medical Association (JAMA), the prevalence of SMAs among black women is nearly three times greater than among non-Hispanic white women.<sup>131</sup>

Abortion advocates have been pushing for the widespread availability of medication abortions through pharmacies and by mail, and to allow a wide range of medical personnel to oversee their use via telemedicine rather than in person. However, in 2021, 33 states only allowed physicians to provide medication abortion and 19 states required abortions to be provided in person.<sup>132</sup>

The COVID-19 pandemic created an opportunity for advocates to argue that in-person abortion requirements increase transmission risk. On July 13, 2020, a district court suspended the FDA's in-person dispensing requirement on mifepristone for the duration of the pandemic.

Undeterred by the district court's action, 23 pro-life leaders sent a letter to FDA Commissioner Stephen Hahn on July 28, 2020, urging him to exercise his statutory authority to remove the abortion pill (mifepristone) from the U.S. market by declaring it an "imminent hazard to the public health" that poses a

“significant threat of danger.” They further argued that abortion industry advocates were “using the coronavirus pandemic as a ruse” to challenge the FDA’s abortion pill safety protocols in federal court.

Signers of the letter included several prominent black leaders: Ryan Bomberger, Co-Founder of the Radiance Foundation; Dean Nelson, Executive Director of Human Coalition Action; Alveda King, then Executive Director of Civil Rights for the Unborn at Priests for Life; Roland Warren, President of Care Net; and Catherine Davis, President of the Restoration Project.

Citing the FDA’s event reporting system, the pro-life leaders said, “the abortion pill has resulted in over 4,000 reported adverse events since 2000, including 24 maternal deaths.” They further stated that adverse events “are notoriously underreported to the FDA . . . Manufacturers gather this information from the prescribers, such as Planned Parenthood facilities. Yet, women who experience side effects like heavy bleeding, abdominal pain, or severe infections are likely to seek care at emergency rooms, not the abortion facilities where they received the pills. Since emergency rooms are not required to report abortion pill adverse events to the FDA, the true number of adverse events is impossible to assess.”<sup>133</sup>

On January 12, 2021, the U.S. Supreme Court approved a Trump administration application for a stay of the District Court opinion. Citing previous decisions of the Supreme Court concerning government responses to the pandemic, Chief Justice John Roberts said that “courts owe significant deference to the politically accountable entities with the ‘background, competence, and expertise to access public health.’ In light of those considerations, I do not see a sufficient basis here for the District Court to compel the FDA to alter the regimen for medical abortion,” Chief Justice Roberts concluded.<sup>134</sup>

Shortly after the Biden administration assumed office, they reversed the Trump administration policy that had been upheld by the Supreme Court. In an April 12, 2021 letter, Acting FDA Commissioner Janet Woodcock informed the American College of Obstetricians and Gynecologists (ACOG) that her agency was allowing patients to receive abortion pills via telemedicine and through the mail to keep people safe from contracting the coronavirus.<sup>135</sup>

ACOG, along with the American Medical Association and other groups, welcomed the COVID-related action by the FDA and continued to push for the federal rules on dispensing abortion pills to be loosened permanently.<sup>136</sup> Destiny Lopez, co-president of All\* Above All, made a racial argument in pressing the Biden administration to loosen federal rules for abortion pills. “Medication abortion is part of that fight for abortion justice,” she said, “because we know that the barriers that folks face are rooted in systemic racism and reflect ongoing inequities in our healthcare system.”<sup>137</sup>

On December 16, 2021, the FDA eliminated the longstanding federal regulations against mail-order abortion drugs. The FDA’s action also means abortion pills can be prescribed through telehealth consultations.<sup>138</sup>

The U.S. Supreme Court’s 2022 *Dobbs* decision has added new fuel to a years-long contentious debate surrounding the federal and state regulation of chemical abortion, an abortion method that utilizes prescription drugs (as opposed to surgical abortion). Below we will review the evolving landscape around chemical abortion pill access, exploring the federal and state regulations, ongoing litigation, and potential considerations for Congress.

**Recent Changes and State Restrictions:** In January 2023, the FDA updated the Risk Evaluation and Mitigation Strategies

(REMS) for mifepristone (the chemical abortion pill), allowing patients to obtain the drug without an in-person visit. However, several states have placed limitations on who can prescribe the drug and under what conditions. Some states only permit licensed physicians to prescribe, while others require in-person consultations that limit telehealth access for this purpose. Some states have stricter conditions, limiting access to chemical abortion pills only in specific circumstances, such as after rape or incest. This conflict between federal and state health regulatory authorities is slowly playing out in federal courts and is likely headed for the Supreme Court.<sup>139</sup>

Chemical abortion, constituting more than half of all U.S. abortions, primarily involves the use of mifepristone, an FDA-approved drug, followed by misoprostol. The FDA evaluates and approves these drugs based on the Federal Food, Drug, and Cosmetic Act (FD&C Act) requirements, ensuring safety and efficacy. The approval comes with a risk evaluation and mitigation strategy (REMS) imposing distribution controls. States, utilizing their police powers, have enacted measures to regulate chemical abortion pills, leading to a complex interaction between federal and state regulations.<sup>140</sup>

**Litigation Overview:** Several lawsuits have focused on both federal and state regulation of chemical abortion pills. In *Alliance for Hippocratic Medicine v. FDA*, medical organizations contested the FDA's approval of mifepristone, alleging violations of the Administrative Procedure Act (APA). The Texas District Court initially sided with the plaintiffs, leading to a suspension of the FDA's approval. On appeal, the U.S. Fifth Circuit Court of Appeals reinstated the FDA's approval but maintained challenges to the 2016 REMS amendments. The Biden Justice Department announced it would appeal the decision to the Supreme Court for review. In the meantime, the Fifth Circuit's decision is stayed as the litigation proceeds, and mifepristone remains available.<sup>141</sup>

In *State of Washington v. FDA*, 17 states challenged the 2023 REMS changes, arguing that they unduly restricted access to abortion pills. The U.S. District Court for the Eastern District of Washington issued a preliminary injunction against altering the status quo in the plaintiff states, highlighting concerns about the FDA's consideration of the drug's safety.<sup>142</sup>

**Challenges to State Law Limitations:** In late January 2023, plaintiffs filed lawsuits in North Carolina and West Virginia questioning state limitations on chemical abortion pills, claiming federal preemption. In *Bryant v. Stein*, a physician argues that North Carolina's limitations conflict with FDA's regulatory controls asserting that federal law preempts the state's chemical abortion controls, including an in-person counseling requirement and a 72-hour waiting period. The State Attorney General, a Democrat, refused to defend the state law in Court. This led to the state legislature taking on the responsibility of defending the law. State legislators countered by arguing state limitations on chemical abortion pills are permissible as a way to promote and protect public health and that nothing in the REMS negates state law. The Court has yet to issue an opinion in *Bryant v. Stein*.<sup>143</sup>

In *GenBioPro v. Sorsaia*, a pharmaceutical company challenged West Virginia's limitation on chemical abortion pills, asserting federal law supremacy, claiming that federal law supersedes West Virginia's requirements because they conflict with the FDA's regulatory authority granted by Congress. On August 24, 2023, the U.S. District Court for the Southern District of West Virginia ruled that despite the FDA's actions to regulate mifepristone, the prohibition withstood federal preemption but the limitations on telehealth abortions that described how prescription drugs can be prescribed were overturned. This partial pro-life victory is far from final because it will likely be appealed.<sup>144</sup>

**Considerations for Congress:** The legal landscape's transformation may influence chemical abortion accessibility. While mifepristone remains on the market, Congress faces decisions on potential legislation. Proposed bills like the Protecting Life from Chemical Abortions Act (H.R. 384),<sup>145</sup> and the Protecting Access to Medication Abortion Act offer distinct approaches, with one reinstating in-person dispensing requirements and the other endorsing telehealth access. Congress may also clarify federal preemption concerning state regulations. The Protecting Reproductive Freedom Act (H.R. 8976)<sup>147</sup> seeks to limit states' ability to place limits on chemical abortion pills. Conversely, the Protecting Pain-Capable Unborn Children from Late-Term Abortions Act aims to preserve states' regulatory authority (117th Congress, S. 4840).<sup>148</sup>

The ongoing litigation and legislative proposals underscore the complex interplay between federal and state regulations on chemical abortion pills. As the legal landscape evolves, Congress must carefully consider potential legislation that may shape the future of chemical abortion pills and regulation in the United States. Republicans who continue to proclaim abortion is not a federal issue may find themselves taking difficult votes regardless of their attempts to avoid such a situation.<sup>149</sup> The reality is that multiple bills and existing federal laws on abortion make deferring to the states increasingly untenable.

### CURE Fights for the Innocent

CURE and our allies have continued to press for pro-life initiatives at the federal and state level. We pressed for and worked with elected leadership to protect life:

- In January 2018, the Trump administration rescinded Obama administration guidance that sought to prevent states from defunding Planned Parenthood and other abortion providers

of Medicaid dollars. The new Trump guidance allowed states to direct Medicaid dollars as they deemed appropriate, including by withholding them from abortion providers like Planned Parenthood.

- In May 2019, the Trump administration's HHS issued regulations to strengthen the enforcement of federal laws protecting the conscience rights of healthcare workers who refuse to participate in abortion procedures. The regulations clarified the legal rights of victims of conscience discrimination and described the penalties the HHS Office for Civil Rights could enforce for such violations.<sup>150</sup>
- In June 2019, HHS and the National Institutes of Health announced they would not renew a previously approved contract with the University of California, San Francisco to fund research using the body parts of aborted babies.<sup>151</sup>
- The Trump administration provided private employers and educational institutions relief from an Affordable Care Act ("Obamacare") mandate that forced moral and religious objectors, such as Little Sisters of the Poor, to provide health insurance coverage for contraceptives or abortifacient drugs.<sup>152</sup>
- President Donald Trump signed an executive order to ensure that newborns, regardless of the circumstances of their birth, receive the care they deserve. The order required that if a child is born alive during an abortion, it must be given the same level of medical care as would be afforded any other child born alive at the same age.
- Protecting life in global health policy was another area in which President Trump took strong action. He restored and expanded the Mexico City Policy, which prevents U.S.

taxpayer dollars from going to foreign non-governmental organizations that perform or promote abortion as a method of family planning.<sup>153</sup>

- President Trump also followed through on commitments to appoint pro-life judges to the federal courts, including the U.S. Supreme Court.<sup>154</sup> As pro-life governors and legislatures in Texas, Mississippi, and other states across the country passed laws to protect life at certain stages of development, the issue again made its way to the highest levels of the federal judiciary, including the U.S. Supreme Court.<sup>155</sup>
- In September 2022, CURE Founder and President Star Parker convened with U.S. Senator Lindsey Graham (R-S.C.), Susan B. Anthony Pro-Life America President Marjorie Dannenfelser, and other pro-life women leaders to announce the introduction of the Protecting Pain-Capable Unborn Children from Late-Term Abortions Act, federal legislation to limit abortion after 15 weeks.
- In 2023, CURE's Star Parker and Raheem Williams published pro-life articles in local and national media outlets to continue expressing CURE's commitment to pro-life advocacy. Similarly, Star Parker's CURE America TV program regularly disseminates pro-life news and advocacy to millions of American homes.

## Conclusion: A Call to Action

Every day children of every race - but disproportionately black - are being killed by abortion in the most horrible ways imaginable. Pro-abortion advocates and their allies in the media seek to block exposure of this grisly reality. Too many governors, state attorneys general, and pro-abortion agency officials have no interest in investigating or regulating the abortion industry.

Planned Parenthood is America's largest abortion provider. They make frequent presentations to high school students across the nation and have a very active public relations operation, as well as an aggressive political arm. Pro-life advocates must redouble our efforts to persuade officials at all levels of government to investigate the abortion industry and redirect funds away from Planned Parenthood and other abortion providers.

We must use all available media and social media outlets to inform the public about the humanity of unborn children and the reality of abortion. This includes the increasing use of abortion pills to kill unborn children. As Pro-Life Action League's Eric Scheidler said, "The unborn child, even at the embryonic stage, is not a tumor . . . it's a fellow human brother or sister."<sup>156</sup>

*Dobbs* did not end the debate on abortion. Elected officials now have more responsibility than ever to address the widescale killing of the unborn. Pro-Life advocates have to wage a 50-state strategy to affirm and protect life. This may prove harder than reversing *Roe* in some places, but we cannot rest until life is protected everywhere. Our advocacy will only grow stronger in statehouses and Congress.

An impressive pro-life pregnancy center network already exists but we must do more to expand and strengthen it. Churches and faith-based organizations are crucial to this effort, so they should be encouraged and assisted to do more in this important area.

After nearly five decades of imposing abortion on our nation and blocking numerous efforts to protect the sanctity of human life, policymakers at all levels of government need to do everything in their power to protect human life, inside and outside the womb.

CURE and our many allies are determined to increase public awareness about abortion, especially in inner-city and minority

communities. Along with outreach through our clergy network, we are working to block pro-abortion legislation and build support for pro-life initiatives at the state and federal levels. We also recognize the need for strong marriages, families, and communities – and spiritual renewal throughout our nation. Abortion undermines the values of the traditional family, and traditional family values provide the off-ramp from the cycle of poverty. With God's grace and the support of like-minded allies, CURE's team will carry these messages to those most in need of hearing them and will help those in need of special care to navigate difficult circumstances.



About the

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## Star Parker

Founder & President

Star Parker is the Founder and President of the Center for Urban Renewal and Education (CURE), a non-profit policy institute based in Washington, DC that fights poverty to restore dignity through messages of faith, freedom, and personal responsibility. The vision

of CURE is to preserve, promote and protect Christianity, capitalism, and our constitution to improve culture, reduce government dependency, and build race relations. CURE works in public policy, the public square, and in poor communities by communicating its principles directly to policy leaders in Washington, DC, through the media, and through its clergy program of more than 500 pastors nationwide, many in distressed communities.



Star is a nationally syndicated columnist and hosts a weekly television news show, “CURE America with Star Parker,” that is broadcast on the National Religious Broadcasters Network, the TCT Network, and streaming services. Guests include Members of Congress, Administration officials, and public opinion leaders in Washington, DC and around the country for in-depth policy discussions on the news of the day.

Star has received numerous awards and serves on the Board of Directors for the National Religious Broadcasters and the Leadership Institute. She has spoken at more than 225 college campuses and brings her message to the American people as a regular commentator on FOX News, BBC, NPR, and other outlets.

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Marty is Vice President for Government Relations and Coalitions, guiding CURE's policy promotion with Members of Congress, the Executive Branch, and State leaders. He also works with coalition partners to advance CURE's policy objectives – particularly as they relate to culture, race, and poverty – and shares CURE's ideas on free markets, religious freedom, personal responsibility, and other policy matters.



Dannenfelser previously served as the presidentially appointed Staff Director of the U.S. Commission on Civil Rights, and as a Senior Policy Advisor at the White House Office of Public Liaison. He has served in senior policy, government relations, and external relations positions with the Department of Health and Human Services and the Department of Energy. Dannenfelser has also served as Senior Policy Advisor and Coalitions Director for the House Committee on Energy and Commerce, and as Legislative Director for Rep. Christopher Smith (R-NJ).

## Raheem Williams

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Raheem Williams is a former Senior Policy Analyst for CURE. He has worked for several liberty-based academic research centers and think tanks. Raheem taught Intro to Microeconomics at North Dakota State University before joining the Reason Foundation's Pension

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Raheem is a member of the Louisiana Advisory Board for the U.S. Commission on Civil Rights and a member of the New Orleans Federalist Society. Raheem also served as a Koch Fellow in 2014, the inaugural Policy Director for the North Dakota Young Republicans in 2018, a Republican Leadership Initiative Fellow in 2018, and a 2019 America's Future Foundation Writing Fellow.

Raheem Williams received his B.A. in Economics from Florida International University and his M.A. in Financial Economics from the University of Detroit Mercy.



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