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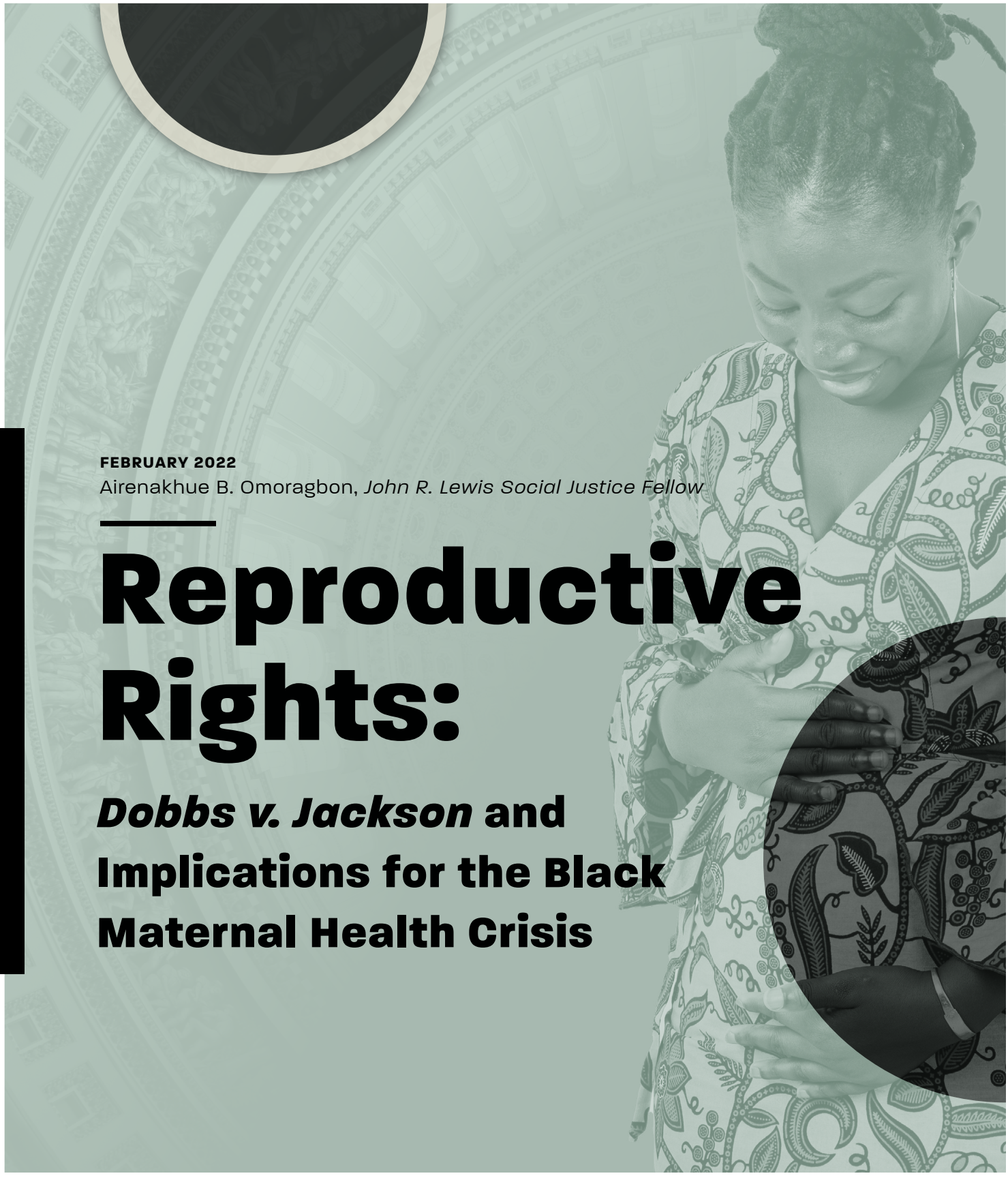

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Reproductive Rights:

Dobbs v. Jackson and Implications for the Black Maternal Health Crisis

Introduction

Civil rights attorneys and reproductive health advocates have joined forces in the U.S. Supreme Court once more to defend the right to abortion. Under the case name, *Dobbs v. Jackson* Women's Health Organization (hereinafter *Dobbs v. Jackson*), Mississippi's State Department of Health is suing the only abortion provider in the region for the right to ban pre-viability abortions.[1] Although the right to pre-viability abortions was recognized 49 years ago in the landmark *Roe v. Wade* decision,[2] Mississippi now argues that it should be able to infringe upon this constitutional right as long as "it doesn't burden a substantial number of women."[3]

There are currently 21 states, including Mississippi, that are positioned to ban or severely restrict access to abortion care if a *Dobbs v. Jackson* ruling overturns or weakens *Roe v. Wade*.[4] While this would violate the protections over the sexual and reproductive health rights of many Americans, the burden of an anti-abortion ruling would rest most heavily on the shoulders of Black pregnant people who are living with low incomes in states that already offer severely limited abortion services.

This issue is especially concerning given Black birthing people[5] shoulder the weight of the U.S. maternal and pregnancy-related health crisis.

- In general, pregnancy-related mortality in the United States occurs at an average rate of 17.2 deaths per 100,000 live births. However, for non-Hispanic Black women, the pregnancy-related mortality rate is approximately 43.5 deaths per 100,000 live births.[6]

- Black people people die from pregnancy-related complications at three times the rate for non-Hispanic white people and three and a half times the rate for Hispanic people.[7]
- Seventy-five percent of Black people give birth at hospitals that serve predominantly Black populations,[8] and these hospitals have higher rates of pregnancy-related complications than other hospitals.[9]

[M]ultiple studies suggest that pregnancy can be a matter of life or death for people living in places that make sexual and reproductive health care challenging to obtain.

While there are a series of factors that contribute to racial inequities in birthing outcomes, such as structural racism, implicit bias, and high degrees of exposure to negative social determinants of health, multiple studies suggest that pregnancy can be a matter of life or death for people living in places that make sexual and reproductive health care challenging to obtain.[10] As we wait for the Supreme Court to reach a decision in *Dobbs v. Jackson*, policymakers and policy practitioners must understand the implications of overturning or weakening *Roe v. Wade*, the impact of an anti-abortion ruling on Black pregnant people, and how such a ruling could threaten extant efforts to address the Black maternal and pregnancy-related mortality crisis.

Mississippi TRAP Laws, House Bill 1510, and *Dobbs v. Jackson*

For decades, Mississippi state leaders have proposed targeted restrictions on abortion providers (TRAP laws) as part of their effort to make Mississippi "the safest place in the country for unborn babies."[11] These laws impose costly, severe, and often medically unnecessary requirements on abortion providers and women's health centers, in hopes that they would force them to close or make it more difficult for people to access abortions.[12]

In 1991, Mississippi enacted its first TRAP law requiring pregnant people to wait 24 hours between a consultation and an abortion.[13] In 1996, the state enacted a law requiring abortion providers to distribute written medical risks to patients seeking abortion services.[14] Providers have since been required to state that abortion is linked to an increased risk of breast cancer, despite a wealth of evidence and multiple statements

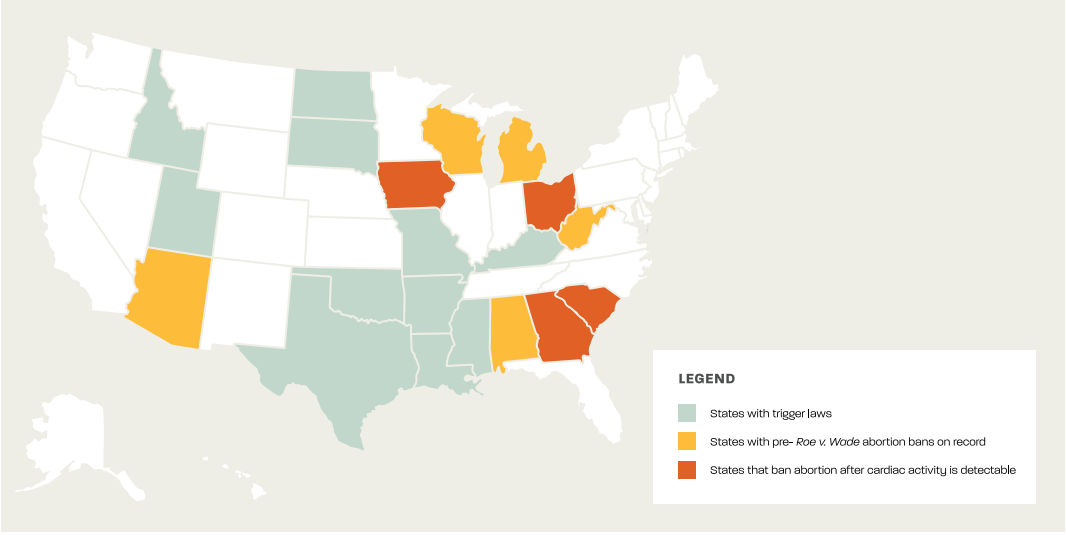
from the American College of Obstetricians and Gynecologists (ACOG) stating otherwise.[15] In 2007, the Mississippi Legislature passed a bill requiring minors to have parental consent to receive abortion services in the state.[16] An amendment to this bill also included a mandatory ultrasound requirement compelling patients seeking abortion services to hear the fetal heartbeat and view sonogram images.[17]

Most recently, in 2018, the Mississippi Legislature passed House Bill 1510, the Gestational Age Act, banning all abortions after 15 weeks of pregnancy except for medical emergencies and in cases of severe fetal abnormality. Reproductive rights advocates took issue with this law asserting that it made no exceptions for victims of rape and/or incest. However, before H.B. 1510 could be enacted on March 19, 2018, it was challenged by Jackson Women's Health Organization, Mississippi's only abortion provider, in the U.S. District Court for the Southern District of Mississippi and the 5th Circuit Court of Appeals, where it was struck down as unconstitutional.[18] Today, Mississippi has brought forth the first Supreme Court case in which a state is directly asking the Court to overturn the constitutional right to an abortion.[19]

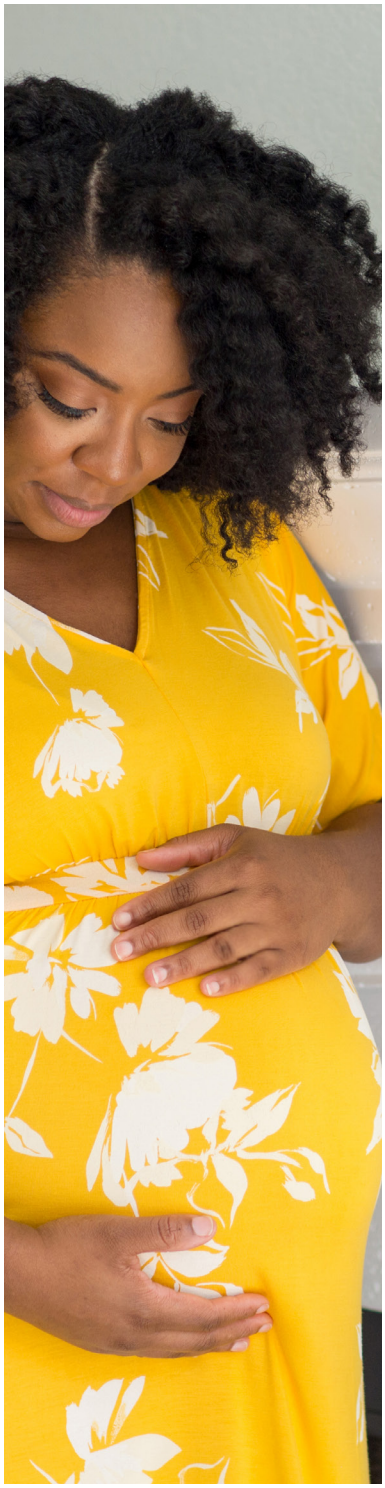
How Weakening or Overturning *Roe v. Wade* Could Impact the Reproductive Healthcare Landscape

Legal analysts argue that *Dobbs v. Jackson* could result in one of three outcomes: *Roe v. Wade* could be upheld, weakened, or overturned.[20] Each of these outcomes would have an impact on policy debate surrounding abortion access, but the latter two, analysts hypothesize, could dramatically alter the reproductive healthcare landscape as we know it.

If *Roe v. Wade* were overturned or weakened, there are 18 states with laws that are intended to immediately ban abortion and 12 states that have expressed the intent to limit abortion to the maximum extent permitted by federal law.[21] For people living in "trigger law" states, or states with laws that "express a legislative intent to ban all or most abortions as soon as it's legally and constitutionally possible to do so,"[22] access to this type of sexual and reproductive healthcare will be severely limited. Here is a snapshot of the reproductive healthcare landscape as it pertains to abortion access:



- Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Texas, and Utah have trigger laws.[23]
- Alabama, Arizona, Michigan, West Virginia, Wisconsin, and 4 states with trigger laws have pre- *Roe v. Wade* abortion bans on record.[24]
- Georgia, Iowa, Ohio, and South Carolina ban abortion after cardiac activity is detectable.[25]



Under these circumstances, it is safe to anticipate that abortion could soon be illegal or virtually impossible to access in 21 states that have a combined population of more than 135 million people.[26] Today, all 50 states have at least one operating abortion clinic. However, if *Roe v. Wade* were overturned, abortions would remain legal in 15 states, mostly in the West and Northeast where state laws explicitly permit abortion, forcing people living in many states across the South and Midwest to travel to receive care.[27]

Impact on Black People's Reproductive and Sexual Health

Black pregnant people are uniquely positioned to bear the burden of a ruling that overturns or weakens *Roe v. Wade*. Despite making up approximately 13% of the United States female population, Black people account for 28% of all abortions.[28] The abortion rate amongst this population is high in comparison to other races and ethnicities due to their vulnerability to several negative social determinants of health, which are defined by the Centers for Disease Control as "the conditions in the environments where people are born, live, learn, work, play, worship, and age."[29] These include, but are not limited to higher rates of poverty, homelessness, housing insecurity, food insecurity, unreliable transportation, and loss of wages due to racial inequities in pay.[30] This section outlines some of these social determinants of health and the vulnerabilities that Black people experience because of them.

INCOME

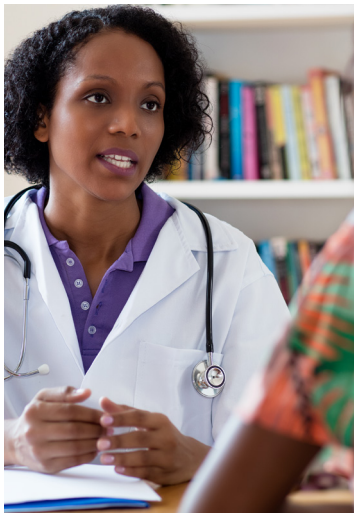
Income is strongly associated with an individual's ability to access reproductive and sexual health care. It determines the extent to which they can access contraceptives and comprehensive health insurance, safely carry a pregnancy to term, and/or explore various reproductive and sexual health care options. Black people, however, are left vulnerable in these aspects because they experience a loss of wages due to racial inequities in pay.

- Black women are paid 61 cents for every dollar paid to non-Hispanic white men.[31]
- The median wage for Black women is $36,735 per year, which is approximately $24,000 less than the median wage for white, non-Hispanic men.[32]
- People earning low incomes are more likely to rely on publicly funded health insurance, which often restricts access to abortion care.
- Thirty-one percent of Black women of reproductive age get their insurance through Medicaid.[33]
- Fourteen percent of Black women are uninsured compared to only 8% of their white counterparts.[34]

Official statistics, such as those collected by the U.S. Census Bureau do not inquire about gender identity and often conflate biological sex (male or female) with gender (man, woman, transgender, nonbinary etc.). While the statistics listed above, on income, insurance, and racial inequities in pay are presented using gender binary terms, it is important to acknowledge that for Black people who are transgender and gender non-binary, the inequity is even greater. Transgender employees make 32% less than cisgender employees, even when they have similar or higher levels of education.[35]

GEOGRAPHICAL LOCATION

Along with the effects of income, geographical location can present significant barriers for Black pregnant people who are trying to access abortion services. For example, 56% of the Black population currently lives in the South.[36] Most of the states that have yet to expand Medicaid under the Affordable Care Act, for people living up to 138% of the poverty line, are concentrated in the South.[37] This failure to expand Medicaid leaves large shares of Black people uninsured, widens the health insurance coverage gap, and increases barriers to comprehensive healthcare for Black Americans.



Further, many of the trigger laws and stringent abortion bans poised to go into effect if *Roe v. Wade* is overturned or weakened are in southern state legislatures. Black people living in these areas have limited access to the healthcare required for them to carry out healthy pregnancies and live in states that are not favorable towards their need for abortion care.

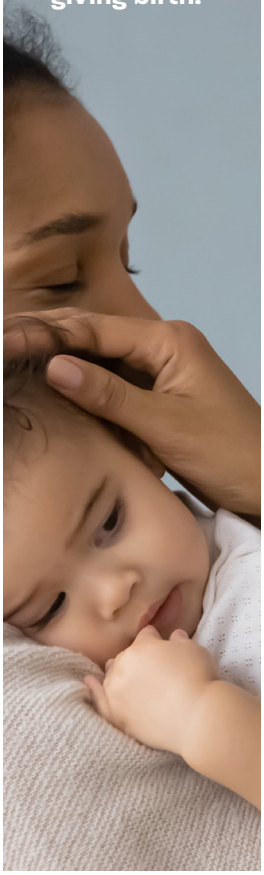
IMPACT ON MATERNAL HEALTH

Black maternal health is an indicator of, and severely impacted by, broader challenges facing the healthcare system. These include, but are not limited to elevated costs, gaps in insurance coverage, limited access to quality and community-based care, and discrimination that results in black pregnant people not having their voices integrated into decisions around care delivery and payment.[38] While research on the relationship between abortion access and the maternal and pregnancy-related mortality crisis is still in development, studies show the following:

- Many state governments and health care facilities attempt to restrict abortion access by requiring patients to wait long periods of time to access abortion care, requiring mandatory ultrasounds, enforcing parental consent requirements, cutting family planning services, and defunding organizations that provide health care and referrals for patients that may not otherwise have a regular provider.[39] These restrictions and the barriers people face in pursuit of abortion services can cause stress and delay critical prenatal care.[40]
- Pregnant people who are denied abortion care are more likely to experience eclampsia, death, and other serious medical complications during the end of pregnancy.[41]
- For people who experience illnesses or conditions during pregnancy where abortion would be recommended, but where state law has made abortion inaccessible or unavailable, being forced to carry a pregnancy to term can exacerbate existing health conditions and put them at higher risk for serious complications or death.[42]

Inadequate access to abortion services is intricately linked to poor maternal health outcomes, pregnancy-related complications, and death. For Black people who are vulnerable to racism, sexism, poverty, and living in states governed by strong anti-abortion legislation, ensuring that their sexual and reproductive health rights and maternal health needs are honored will require a strategy that takes this unique positionality into consideration.

While this initiative is poised to be effective in addressing maternal morbidities [...] it does not address the implications of limiting access to abortion care for people who are giving birth.



Federal Efforts, Extant Legislation, and Policy Recommendations

Over the years, federal agencies and national policymakers have made great strides in trying to address the Black maternal and pregnancy-related health crisis and increase access to abortion care. This section outlines some of these extant efforts and presents recommendations for making this vision of comprehensive reproductive and sexual healthcare for Black people a reality.

FEDERAL EFFORTS: "HEALTHY WOMEN, HEALTHY PREGNANCIES, HEALTHY FUTURES" ACTION PLAN

Concurrent with broader efforts to improve health in the United States, in 2020 the Department of Health and Human Services announced its "Healthy Women, Healthy Pregnancies, Healthy Futures" Action Plan.[43] This initiative aims to make the United States one of the safest countries in the world to give birth. It outlines steps that can be taken both within and outside of the federal government to address the maternal health crisis in hopes that by 2025 the country will have met the following targets:

- **Target 1:** There will be a 50%t reduction in the maternal mortality rate.[44]
- **Target 2:** There will be a 25% reduction in the low-risk cesarean delivery rate.[45]
- **Target 3:** Blood pressure will be controlled in 80% of women of reproductive age with hypertension.[46]

The rationale behind the Department's decision to pursue these targets is that addressing the factors that contribute to maternal mortality will result in reductions in maternal morbidity.[47] While this initiative is poised to be effective in addressing maternal morbidities, such as uncontrolled hypertension, it does not address the implications of limiting access to abortion care for people who are giving birth.

LEGISLATION INTRODUCED DURING THE 117TH CONGRESS

In addition to ongoing federal efforts, there has been some promising legislation introduced at the federal level, which aim to address the Black maternal and pregnancy-related health crisis and increase access to abortion services. This list, though not exhaustive, provides a snapshot of necessary legislation to address reproductive and sexual healthcare issues that disproportionately impact the Black female population.

- **H.R. 3407- MOMMA's Act:** Sponsored by Representative Robin L. Kelly [D-IL-02], the Mothers and Offspring Mortality and Morbidity Awareness Act or the MOMMA's Act seeks to establish a series of programs and requirements aimed at reducing maternal mortality. If passed, the bill will standardize maternal mortality and morbidity collection across states, expand postpartum Medicaid coverage through one full year after giving birth, ensure access to culturally competent care training and workforce practices throughout the care delivery continuum, and authorize evidence-based national obstetric emergency protocol and best practices, among other things.[48]
- **H.R. 3755/ S.1975- Women's Health Protection Act of 2021:** Sponsored by Representative Judy Chu [D-CA-27] in the House and Senator Richard Blumenthal [D-CT] in the Senate, the Women's Health Protection Act (WHPA) aims to create a federal statutory right for health care providers to provide abortion care and a corresponding right for patients to receive that care, free from unnecessary restrictions.[49] It would prevent governments from limiting a provider's ability to provide drugs associated with medical abortions, offer abortion services via telemedicine, and provide abortion services when they believe a delay might risk the patient's health. It also makes it such that state governments cannot require providers to perform unnecessary procedures or provide medically inaccurate information.
- **H.R. 959/ S.346- Black Maternal Health Momnibus Act of 2021:** Sponsored by Representative Lauren Underwood [D-IL-14] in the House and Senator Cory Booker [D-NJ] in the Senate, the Black Maternal Heath Momnibus Act of 2021 consists of 12 individual bills sponsored by Black Maternal Health Caucus Members. It aims to provide funding to community-based organizations that are working to improve maternal health

outcomes, improve maternal health care for incarcerated birthing people, grow and diversify the perinatal workforce to ensure birthing people receive culturally congruent pregnancy-related care, and support people who are experiencing maternal mental health conditions and substance use disorders, among other provisions.[50]

Policy Recommendations

While the bills outlined above offer high degrees of promise in addressing the Black maternal and pregnancy-related health crisis and increasing access to abortion, it is important that current policymakers see these issues as occurring in tandem and deserving of complementary approaches. As such, it is imperative that policies aimed at addressing the maternal health crisis and abortion access do the following:

- Increase access to comprehensive health insurance coverage,[51]
- Ensure comprehensive health insurance coverage treats and categorizes abortion care as healthcare,
- Protect and strengthen the decision outlined in the 1973 Roe v. Wade ruling,
- Increase patients' access to culturally congruent care,
- Address cultural biases and discrimination in medical practice and education and hold providers and hospital systems accountable when they fail to provide unbiased care,[52] and
- Create additional opportunities and funding streams for Black students who are interested in providing sexual, reproductive, and obstetric health care.

ENDNOTES

1 Pre-viability abortions are abortions that occur before a fetus can survive outside of the uterus. Generally, fetal viability is considered to begin around 24 weeks (about 5 and a half months) of pregnancy.

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25 Id.

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