Dobbs: Exploring its Impact in Education and Promoting Institutional Support and Multi-Systemic Change for People Who Can Carry Pregnancies

*Raquel Muñiz**

Abstract

Dobbs *transformed the reproductive justice landscape. In this Article, I argue that a post-*Dobbs *law and policy landscape necessitates an institutional and multi-systemic approach. Focusing on education as a case in point, I explore the impact of* Dobbs *for people who can carry pregnancies. After introducing the decades-long efforts to expand reproductive justice in Part II, I turn to the significance of reproductive justice for people who can carry pregnancies in Part III. In this Part, I focus on the evidence demonstrating that promoting and protecting reproductive justice has positive individual effects on people who can carry pregnancies, including their education, and larger societal benefits. I then turn to the impact of the restrictive policy environment that* Dobbs *fostered. I analyze this impact in (1) comprehensive sex education in K-12 institutions and (2) Title IX protections in higher education. Based on this analysis, I turn to Part V, where I discuss how an institutional and multi-systemic approach is necessary to advance educational access for people who can carry pregnancies. This approach highlights the importance of collaboration and shared action that must occur across institutions and systems to limit the damage* Dobbs *caused and further reproductive justice.*

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* Raquel Muñiz, J.D., Ph.D., is an Associate Professor at Boston College. She studies (a) how law and policy shape educational equity and (b) how the diffusion of knowledge in law and policy, including the diffusion of research, shapes educational equity. I extend my gratitude to Melissa Woolsey and Nate Hutcherson for their research assistance and thoughtful conversations. I also thank the *Harvard Law & Policy Review* editors whose feedback was incisive and thoughtful. The argument is significantly improved.

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Introduction

In 2022, the U.S. Supreme Court held in *Dobbs*:

> Abortion presents a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.[1]

With this ruling, the Court ended the decades-long federal floor protecting the constitutional right to an abortion, as established in *Roe*, and left that governing authority within state purview.[2] More specifically, adopting a state-rights approach, the *Dobbs* Court held that a right to an abortion is not a fundamental right under the Fourteenth Amendment.[3] As detailed below, by removing the federal constitutional right to an abortion, the *Dobbs* ruling fomented and facilitated an anti-reproductive justice[4] state-level policy environment nationwide.[5] This policy environment includes state legislators introducing and adopting a slew of laws to restrict reproductive rights.[6] These restrictive laws make it more challenging for students who can carry pregnancies[7] to access their education and for educational institutions to support students whom these restrictive laws impact.[8]

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[1] Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 302 (2022) (overruling *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992)).

[2] *Id.*

[3] *Id.* at 300.

[4] *Visioning New Futures for Reproductive Justice Declaration 2023*, Sister Song, https://www.sistersong.net/visioningnewfuturesforrj [https://perma.cc/N5FX-K8LG] (last visited Nov. 8, 2023). In framing this essay, I adopt the SisterSong Women of Color Reproductive Collective definition of reproductive justice, defining it as the "right to own our bodies and control our future," "to have children," "to not have children," and "to parent the children we have in safe and sustainable communities." I also employ "reproductive autonomy," which I define as the ability to make choices about one's own reproductive system, and "bodily autonomy," which I define as the ability to make choices about one's body. I do not use these terms interchangeably.

[5] *See infra* Part IV.

[6] *See infra* Parts III and IV.

[7] In this essay, the term "people who can carry pregnancies" encompasses any person who can carry a pregnancy, including women, transgender people, and non-binary people.

[8] *See infra* Parts III and IV.

In this Article, I explore these individual and institutional challenges, which I refer to as *burdens* (i.e., greater logistical, resource, and emotional demands).[9] To expose these educational burdens, I draw a throughline between the evolving restrictive state policy landscape *Dobbs* facilitated, on the one hand, and relevant research and trends, on the other.[10] In response to these burdens, I propose both an institutional approach to mitigate the negative effects of the post-*Dobbs* policy environment and a multi-systemic approach to transform the structures that limit reproductive justice post-*Dobbs*.[11]

I begin this argument in Part II with a brief discussion of state and federal pre-*Dobbs* laws and rulings that together advanced reproductive justice by expanding reproductive rights, bodily autonomy, and educational rights for people who can carry pregnancies.[12] This expansion, in turn, collectively expanded educational opportunities for people who can carry pregnancies, and I discuss this dynamic in Part III.[13] Conversely, restricting reproductive rights has a negative effect on educational opportunities. To exemplify this, in Part III, I also explore the individual burdens of *Dobbs* and its effects on state policy vis-à-vis people who can carry pregnancies, discussing research and trends post-*Dobbs*.[14] Taken together, Part II and III underscore the educational significance of protecting and advancing reproductive justice for people who can carry pregnancies.[15] Next, in Part IV, I turn to the burdens K-12 and higher education institutions face in trying to support students who can carry pregnancies post-*Dobbs*.[16] I show that *Dobbs*' states-rights paradigm is problematic, because *Dobbs* facilitated state laws and policies that restrict what educational institutions can do to support people who can carry pregnancies.[17] To anchor the conversation, enabling me to explore the institutional burdens more concretely, I delve into two cases in point: 1) comprehensive sex education in K-12[18] and 2) the implementation of Title IX in higher education.[19] By outlining two specific case studies across issues and educational contexts,

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[9] *See infra* Parts IV; *see generally* Reva Siegel, *Reproductive Rights and Dobbs*, Yale L. Sch. (Jan. 23, 2023), https://law.yale.edu/yls-today/news/reproductive-rights-and-dobbs [https://perma.cc/7UAD-GACE]; *College Leaders Express Concern about the Impact of Supreme Court Ruling Overturning Abortion Rights*, Am. Council on Ed. (Aug. 9, 2022), https://www.acenet.edu/News-Room/Pages/College-Leaders-WH-Meeting-Dobbs-Ruling.aspx [https://perma.cc/GRZ4-AJF6].

[10] *See infra* Part IV; *see also* Elizabeth Nolan Brown, *Dobbs Is Reshaping American Politics*, Reason (Dec. 2023), https://reason.com/2023/11/05/afterdobbs/ [https://perma.cc/GV2Q-E6ZL]; Linda J. Beckman, *Abortion in the United States: The Continuing Controversy*, 27 Feminism & Psych., 1, 101–13 (2016), https://doi.org/10.1177/0959353516685345 [https://perma.cc/2QG3-YRQ6]; Heather D. Boonstra & Elizabeth Nash, *A Surge of State Abortion Restrictions Put Providers – and the Women They Serve – in the Crosshairs*, 17 Guttmacher Pol'y Rev. 1, 9–14, 28 (2014), https://www.guttmacher.org/gpr/2014/03/surge-state-abortion-restrictions-puts-providers-and-women-they-serve-crosshairs [https://perma.cc/US8E-LGP5].

[11] *See infra* Part V.

[12] *See infra* Part II.

[13] *See infra* Part III.

[14] *Id.*

[15] *See infra* Parts II and III.

[16] *See infra* Part IV.

[17] *Id.*

[18] *See infra* Section IV.A.

[19] *See infra* Section IV.B.

I offer concrete evidence of the wide-ranging negative impact of *Dobbs* in education. These two cases in point are emblematic of other reproductive justice issues in education, which the *Dobbs*' states-rights paradigm similarly impacts. I conclude in Part V arguing for an institutional and multi-systemic approach to mitigate the burdens I surface in the preceding Parts and to transform, reimagine, and recreate lasting systemic structures to support people who can carry pregnancies post-*Dobbs*.[20] I offer recommendations to educational institutions and other policy actors, while acknowledging the obstacles to adopting action and how these may be overcome. The discussion in Part V aims to achieve two goals: (1) speak to educational institutional leaders about how they can support people who can carry pregnancies within post-*Dobbs* legal constraints and (2) speak to policy actors who can create systemic change to the status quo *Dobbs* has created.[21]

I. Pre-*Dobbs* Law and Policy Efforts to Expand Reproductive Justice

Pre-*Dobbs*, people who can carry pregnancies experienced an increase in educational access in the last decades, with particular gains during the civil rights movement and decades that followed.[22] The expansion of educational access in K-12 and higher education was facilitated, in part, by key state and federal laws and rulings that collectively expanded reproductive justice.[23] I highlight some of these monumental laws and rulings next.

A major focus in reproductive justice in K-12 has long involved efforts to adopt comprehensive sex education nationwide, which would enable students who can carry pregnancies to learn about their reproductive rights, bodily autonomy, and healthy relationships.[24] The advocacy of numerous community leaders and groups over decades led to the eventual adoption of state laws by the 1990s that encouraged or mandated sex education in schools.[25] Still, pre-*Dobbs*, most states did not offer comprehensive sex education and states varied in their commitment to comprehensive sex education.[26] However, it

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[20] *See infra* Part V.

[21] *See infra* Part V.

[22] *E.g.*, *Fast Facts*, Nat'l. Ctr. EduForc. Stat. (July 28, 2022) (showing that by 2020 women comprised more than half of the student population in higher education) https://nces.ed.gov/fastfacts/display.asp?id=98 [https://perma.cc/RP27-RZR6]; Thomas A. Diprete & Claudia Buchmann, The Rise of Women: The Growing Gender Gap in Education and What it Means for American Schools, 68, 54, 229 (2013).

[23] *E.g.*, Title IX, Education Amendments Act of 1972, 20 U.S.C §§ 1681–88.

[24] For a recent review of the history of sex education in the United States, *see generally History of Sex Education,* Sexuality Info. & Educ. Council U. S. (2021), https://siecus.org/wp-content/uploads/2021/03/2021-SIECUS-History-of-Sex-Ed_Final.pdf [https://perma.cc/8KRV-8DEL]. For additional perspectives that add to the SIECUS report, *see generally* Tanya Bass & Janel Coleman (2022): *A Review of History of Sex Education by SIECUS,* Am. J. of Sexuality Educ., https://doi.org/10.1080/15546128.2022.2060888 [https://perma.cc/83GF-9BRK].

[25] *See History of Sex Education, supra* note 24, at 38.

[26] *See Adolescent Sexual and Reproductive Health in the United States,* Guttmacher Inst. (Sept. 2019), https://www.guttmacher.org/fact-sheet/american-teens-sexual-and-reproductive-health [https://perma.cc/992J-DPQZ]; *History of Sex Education, supra* note 24, at 38–41.

is important to recognize that organizations and advocates made significant strides in this arena by, for example, drafting standards for states and school districts to adopt in their curricula.[27] Moreover, the *Making Proud Choices* and *Making a Difference* curricula, an evidence-based curricula was "adapted and expanded by educators nationally to be inclusive and culturally relevant for a range of audiences."[28]

At the federal level, *Roe* and its progeny established a federal constitutional floor for reproductive rights.[29] In 1973, the U.S. Supreme Court found in *Roe* that the Fourteenth Amendment guaranteed a fundamental right to privacy that gives people the right to decide whether to have an abortion.[30] The right was not unfettered; in the first trimester, the choice was left to people and their primary care providers.[31] A state's ability to regulate that right increased, up to banning abortion altogether in the third trimester.[32] *Roe* expanded reproductive rights, building on *Griswold*, a landmark case that in 1965 recognized married couples' right to use contraceptives under a constitutional right to privacy.[33] *Roe* subsequently recognized a right to abortion under a women's right to privacy.[34] States varied in their laws and policies regarding access to abortion and reproductive care more broadly prior to *Roe*.[35] The ruling created a basic federal legal standard to which states had to adhere.[36]

In the decades following *Roe*, litigation and state policy proliferated, and ultimately the right upheld in *Roe* was watered-down and hollowed in significant ways.[37] Still, *Roe* played a critical role in maintaining a nationwide floor that expanded access to reproductive care.[38] For instance, states could not outright ban abortion, and individuals had legal recourse if the state violated their constitutional right.[39] This right was consequential; for example, being denied an abortion can negatively impact people's socioeconomic outcomes years after.[40]

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[27] *History of Sex Education, supra* note 24, at 40; Bass & Coleman, *supra* note 24, at 553.

[28] Bass & Coleman, *supra* note 24, at 553.

[29] Roe v. Wade, 410 U.S. 113 (1973); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992).

[30] *Roe*, 410 U.S. at 120.

[31] *Id.*

[32] *Id.*

[33] Griswold v. Connecticut, 381 U.S. 479 (1965) (recognizing a right to privacy that allowed people access to contraceptives).

[34] *Roe,* 410 U.S. at 153.

[35] Rachel K. Jones, Marielle Kirstein, & Jesse Philbin, *Abortion Incidence and Service Availability in the United States, 2020*, Guttmacher Inst. (2022), https://www.guttmacher.org/article/2022/11/abortion-incidence-and-service-availability-united-states-2020 [https://perma.cc/3BXG-7QE6].

[36] *Roe,* 410 U.S. at 153.

[37] Craig LeMoult & Daniel Medwed, *A Legal History of Abortion in the US, Before and After* Roe v. Wade, GBH News (Aug. 7, 2023), https://www.wgbh.org/news/national-news/2022/05/24/a-legal-history-of-abortion-in-the-us-before-and-after-roe-v-wade [https://perma.cc/3AQX-CVPT].

[38] *Roe v. Wade*, Ctr. for Reprod. Rts., https://reproductiverights.org/roe-v-wade/ [https://perma.cc/F47A-LB3B] (last visited Sept. 3, 2024).

[39] *Id.*

[40] *Introduction to the Turnaway Study*, Advancing New Standards in Reprod. Health (Dec. 2022), https://www.ansirh.org/sites/default/files/2022-07/turnawaystudyannotatedbibliography063022.pdf [https://perma.cc/S4ZG-V7SF].

A major federal education policy expanding educational access for people who can carry pregnancies was also adopted in the 1970s at the time of *Roe*: Title IX.[41] The development of Title IX (1972) was aimed to address gender inequity, an issue acutely affecting women at the time.[42] To this day, Title IX provides legal protections for students and employees against discrimination on the basis of sex within federally-financed educational institutions.[43] In succession, the changes described above had a collective considerable impact on educational access for people who can carry pregnancies.[44]

II. The Educational Significance of Expanded Reproductive Justice for People Who Can Carry Pregnancies

Researchers across disciplines have found that strengthening reproductive justice leads to improvements in the emotional, social, and economic wellbeing of students who can carry pregnancies and pregnant/parenting students.[45] For instance, prior to *Roe*, teen mothers graduated from high school at lower rates than their childless, female peers given the lack of systemic support and, subsequently, due to lack of structural support for working parents, were at a greater disadvantage in the workforce.[46] However, in light of *Roe*, *Griswold*, and Title IX, women's high school graduation rates increased throughout the 1970s, especially among Black teenage mothers.[47] These and other educational gains, predicated on access to reproductive healthcare and the ability to decide whether and when to bear children, have in turn benefitted

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[41] Title IX, Education Amendments Act of 1972, 20 U.S.C §§ 1681–88.

[42] Iram Valentin, *Title IX: A Brief History*, 2 Holy Cross J.L. & Pub. Pol'y 123, 127 (1997); *see also* Laura Pappano, *Title IX and* Roe v. Wade *Never Guaranteed Gender Equality*, Wellesley Ctr for Women (June 14, 2022), https://www.wcwonline.org/WCW-Blog-Women-Change-Worlds/entry/Title-ix-and-roe-v-wade-never-guaranteed-gender-equality [https://perma.cc/47PY-27L5] (discussing some of the initial goals of Title IX in relation to *Roe*).

[43] *Title IX and Sex Discrimination*, U.S. Dep't of Educ., https://www.ed.gov/laws-and-policy/civil-rights-laws/sex-discrimination/Title-IX-and-Sex-Discrimination (last visited Sept. 23, 2024). [Over the course of publishing this Article, the U.S. Department of Education scrubbed several civil rights–related subjects from its website. This footnote and several subsequent footnotes were affected. In response, we have elected to retain the originally cited sources and their hyperlinks, omit permanent links, and include this note to draw attention to the removal of these subjects. – Eds.]

[44] *See* Mary Ann Mason & Jaclyn Younger, *Title IX and Pregnancy Discrimination in Higher Education: The New Frontier*. 38 NYU Rev. L. & Soc. Change 269, 294 (2014).

[45] *E.g.*, Charles E. Basch, *Teen Pregnancy and the Achievement Gap Among Urban Minority Youth*, 81 J. Sch. Health, 614–618 (2011), https://doi.org/10.1111/j.1746-1561.2011.00635.x [https://perma.cc/L82Y-7RPQ]; Beckman, *supra* note 10, at 101–13; Anna Bernstein & Kelly M. Jones, *The Economic Effects of Abortion Access: A Review of the Evidence*, Inst. for Women's Pol.y Rsch., 19-23 (2019), https://www.jstor.org/stable/resrep34541.11 [https://perma.cc/XR2Y-7EY5]; Barbara Gault, Jessica Milli, & Lindsey Reichlin Cruse, *Investing in Single Mothers' Higher Education: Costs and Benefits to Individuals, Families, and Society*, Inst. for Women's Poly. Rsch, https://files.eric.ed.gov/fulltext/ED612662.pdf [https://perma.cc/E2Q8-VH74].

[46] *See* Kevin Lang & Russell Weinstein, *The Consequences of Teenage Childbearing before* Roe v. Wade, 7 Am. Econ. J.: Applied Econ. 169, 182 (2015).

[47] *See* Melanie Guldi, *Title IX and the Education of Teen Mothers*, 55 Econ. Educ. Pol'y 103, 104 (2016) (analyzing trends in educational attainment among people who can carry pregnancies).

women's socioeconomic standing.[48] Despite research showing the importance of expanding reproductive rights, people who can carry pregnancies have historically experienced a lack of structural support pre- and post-partum.[49] Moreover, those who hold multiple marginalized identities (e.g., transgender people who can carry pregnancies, people of color who can carry pregnancies) experience compounded disadvantages.[50]

Taken together, these empirical findings suggest the need to strengthen protections for all people who can carry pregnancies.[51] Unfortunately, rather than strengthening reproductive justice rights, post-*Dobbs*, states are regressing the reproductive rights that were created in past decades and instead are adopting additional restrictive policies.[52] The state policy landscape, which *Dobbs* facilitated, directly burdens individuals' educational decisions and trajectories.[53] This is especially the case for traditional college-aged students, whom data show make up 57.2% of people receiving abortions.[54] Educational goals are often cited as a main contributor (40%) to these reproductive decisions, as

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[48] Amanda Stevenson, Katie Genadek, Sara Yeatman, Stefanie Mollborn, & Jane Menken, *The Impact of Contraceptive Access on High School Graduation*, 7 Sci. Advances 1, 1, 3 (2021).

[49] Emily Badger, Margot Sanger-Katz, & Claire Cain Miller, *States with Abortion Bans Are Among Least Supportive for Mothers and Children: They Tend to Have the Weakest Social Services and the Worst Results in Several Categories of Health and Well-Being*, N.Y. Times (July 28, 2022), https://www.nytimes.com/2022/07/28/upshot/abortion-bans-states-social-services.html [https://perma.cc/5B5F-TQFG].; Rachel Treisman, *States With the Toughest Abortion Laws Have the Weakest Maternal Supports, Data Shows*, NPR (Aug. 18, 2022), tinyurl.com/4rntj576 [https://perma.cc/X267-6K82].; Wanda S. Pillow, Unfit Subjects: Educational Policy and the Teen Mother, 97-104 (2004).

[50] Transgender individuals who can carry pregnancies face additional barriers to accessing their education. One national survey found transgender students were three times more likely to miss school than their peers. *See generally* Joseph G. Kosciw, Emily A. Greytak, Noreen M. Giga, Christian Villenas, & David J. Danischewski, *The 2015 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools*, GLSEN, 82 (2016). Changes to transgender protections over the years have also inhibited transgender people from experiencing improved access to education. *See* Amy Farley & Bethy Leonardi, *Beyond Bathroom Bills and the Gender Identity Debate: Complicating the Policy Conversation About Supporting Trans Students in Schools*, 35(2) Ed. Pol'y. 274, 276 (2021). For a discussion of how people of color who can carry pregnancies are multiply disadvantaged, see Basch, *supra* note 45 at 614; Bernstein & Jones, *supra* note 45 at 294-95; Megan K. Donovan, *In Real Life: Federal Restrictions on Abortion Coverage and the Women They Impact*, 20 Guttmacher Pol'y Rev. 1, 2-3 (2017); Judith A. Lothian, *The Continued Mistreatment of Women During Pregnancy and Childbirth*, 28 J. Perinatal Educ. 183, 183–85 (2019); Jamila K. Taylor, *Structural Racism and Maternal Health Among Black Women*, 48 J. L. Med. & Ethics 506, 506–17 (2021).

[51] *See The Constitutional Right to Reproductive Autonomy: Realizing the Promise of the 14th Amendment*, Ctr. for Reprod. Rts. (discussing the importance of protections for people who can carry pregnancies), https://reproductiverights.org/constitutional-right-reproductive-autonomy-14th-amendment [https://perma.cc/5CKR-TAUW] (last visited Sept. 3, 2024).

[52] Allison McCann & Amy Schoenfeld Walker, *Tracking Abortion Bans Across the Country*, N.Y. Times (Aug. 23, 2024), https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html [https://perma.cc/57FW-57UK]; *see infra* Part IV.

[53] Kelly Baden & Jennifer Driver, *The State Abortion Policy Landscape One Year Post Roe*, Guttmacher Inst. (June 16, 2023), https://www.guttmacher.org/2023/06/state-abortion-policy-landscape-one-year-post-roe [https://perma.cc/YDC3-BTTV]*; see infra* Part IV.

[54] Katherine Kortsmit, Antoinette T. Nguyen, Michelle G. Mandel, Elizabeth Clark, Lisa M. Hollier, Jessica Rodenhizer, & Maura K. Whiteman, *Abortion Surveillance—United States*, 71 Surveillance Summaries 1, 1–27 (Nov. 25, 2022).

many pregnant people elect to receive an abortion to complete their schooling and better position themselves financially before parenting.[55]

Reports post-*Dobbs* have found that "almost two-thirds of current college students say they desire to live and work in a state where access to abortion is legal," and "just under half of prospective students (47%) said the Court's recent ruling will impact the state they choose to live post-graduation."[56] Moreover, research about a year after *Dobbs* shows that restrictive state policies are influencing students' college enrollment choices.[57] Seventy-three percent (73%) of unenrolled 18-24 year olds and 57% of unenrolled adults aged 25-59 report that reproductive care laws are at least somewhat important in their decision to enroll in a college.[58] Similarly, among those enrolled, 73% of those 18-24 and 70% of those 25-59 say state reproductive care laws are at least somewhat important in deciding whether to stay enrolled at their current institution.[59] The general trend holds across age and political ideology.[60] Journalistic interviews with prospective students reflect these trends where students are making educational decisions based on a state health care policy, sometimes diverting their ability to attend their college of choice.[61]

Racially marginalized students from low-income backgrounds face additional burdens beyond school choice in a post-*Dobbs* era.[62] Black women account for the highest percentage of all people getting abortions (37%),[63] and the majority of women who access abortions are either below poverty level (51%) or do not have enough money to cover living expenses (76%).[64] Although there are indicators that prospective students may desire to pursue their education in states where they can access abortion post-*Dobbs*, it is unlikely that low-income students, or other marginalized students, will have the

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[55] Jenna Jerman, Rachel K. Jones, & Tsuyoshi Onda, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008,* Guttmacher Inst. (May 2016), https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014 [https://perma.cc/65PW-AWDA].

[56] Michael T. Nietzel, *Most College Students Want to Live in States with Legal Access to Abortion, New Survey Suggests,* Forbes (Aug. 11, 2022, 12:35 PM), https://www.forbes.com/sites/michaeltnietzel/2022/08/11/most-college-students-want-to-live-in-states-with-legal-access-to-abortion-according-to-recent-survey/?sh=248e337d7d8a [https://perma.cc/X2G4-YQUE].

[57] Shelly Lundberg & Dick Startz, *The End of* Roe *Creates New Challenges in Higher Education,* Brookings (Aug. 9, 2022), https://www.brookings.edu/blog/brown-center-chalkboard/2022/08/09/the-end-of-roe-creates-new-challenges-in-higher-education/ [https://perma.cc/7B9X-PFXH].

[58] Stephanie Marken, & Zach Hrynowski, *Reproductive Health Laws Factor into Many College Decisions*, Gallup (Apr. 20, 2023), https://news.gallup.com/poll/474365/reproductive-health-laws-factor-college-decisions.aspx [https://perma.cc/7KPW-3ZJE].

[59] *Id.*

[60] *Id.*

[61] Currie Engel, *Abortion Bans are Causing Students to Radically Rethink their College Plan*s, Women's Health, https://www.womenshealthmag.com/life/a44202684/abortion-bans-impact-students-college-decision/ (June 22, 2023) [https://perma.cc/AF8Y-KPQS].

[62] Latoya Hill, Samantha Artiga, Usha Ranji, Ivette Gomez & Nambi Ndugga, *What Are the Implications of the Dobbs Ruling for Racial Disparities?*, KFF (Apr. 24, 2024), https://www.kff.org/womens-health-policy/issue-brief/what-are-the-implications-of-the-dobbs-ruling-for-racial-disparities/ [https://perma.cc/7JZS-QLU2].

[63] Susan A. Cohen, *Abortion and Women of Color: The Bigger Picture*, 11 Guttmacher Pol'y R. 2, 2-3 (2008).

[64] Diana G. Foster, M. Antonia Biggs, Lauren Ralph, Caitlin Gerdts, Sarah Roberts, & M. Maria Glymour, *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions*, 108 Am. J. Pub. Health 407, 407 (2018).

privilege to center this factor as a consideration in their decision-making.[65] Rather, costs will remain a critical factor in determining if and where they can pursue an education.[66] This can result in low-income students being less likely to pursue education out of state where they may have greater access to abortion and other reproductive health care.[67] Further, once faced with an unintended pregnancy, these students will encounter additional barriers to abortion access, such as limited financial means to both travel to and pay for the procedure, as well as facing parenting burdens with limited structural support and social safety nets.[68]

The state restrictions to reproductive care access also place a cognitive and economic burden on people who can carry pregnancies to be able to complete their education and improve their socioeconomic standing.[69] Studies have shown that students denied an abortion were much less likely to complete a postsecondary degree (27%) when compared with those who were able to receive an abortion (71%)[70] and that state abortion restrictions for women under 18 "reduced college enrollment and completion for Black women by one to three percentage points."[71] Additionally, after being denied abortion, people are three times more likely to be unemployed and four times more likely to be below the poverty level than those who are able to receive an abortion, given the lack of structural support for parents in educational institutions specifically and the United States more broadly.[72] On the contrary, abortion legalization has had a significant positive impact on women's wages and educational attainment, with the strongest gains for Black women.[73]

Reproductive justice advocates call for educational institutions to consider these barriers and provide resources for students to reproductive health care on and off campus.[74] Post-*Dobbs*, it is critical that institutions consider the disproportionate impact of a lack of reproductive health care on students who are historically marginalized, as their academic and life trajectories are significantly impacted by this lack of access.[75] Educational institutions,

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[65] *Factors that Influence Student College Choice,* Nat'l Ctr. Educ. Stat. (Nov. 2018), https://nces.ed.gov/pubs2019/2019119.pdf [https://perma.cc/PP7A-LYJB].

[66] *Id.*

[67] Cynthia D. Rohrer & Sepideh Modrek, *Decreasing Reproductive and Abortion Care Barriers: Findings on the Student Health Center's Role from a Student Survey*, BMC Women's Health 1, 7 (2023), https://doi.org/10.1186%2Fs12905-023-02230-5 [https://perma.cc/RXC2-L6QU].

[68] Rohrer & Modrek, *supra* note 67, at 7; Hill et al., *supra* note 62, at para 4.

[69] Rogers N. Ssebunya, Mafusi Boopa, Diane Nguyen & Lee Ligon, *Disparities in Accessing Sexual and Reproductive Health Services and Rights Among Adolescents and Young People During COVID-19 Pandemic: Culture, Economic, and Gender Perspectives*, 9 Current Tropical Med. Rep. 234, 234–242 (2022), https://doi.org/10.1007%2Fs40475-022-00274-5 [https://perma.cc/AT7J-2GMD].

[70] Lauren J. Ralph, Jane Mauldon, M. Antonia Biggs & Diana G. Foster, *A Prospective Cohort Study of the Effect of Receiving Versus Being Denied an Abortion on Educational Attainment,* 29 Women's Health 455, 455–464 (2019).

[71] Lundberg & Startz, *supra* note 57, at para 4.

[72] Guldi, *supra* note 47, at 103.

[73] *Id.*

[74] Rebecca Kelliher, *Abortion Access and College Students,* Diverse Issues Higher Educ. (Sept. 23, 2021), https://www.diverseeducation.com/students/article/15114980/abortion-access-and-college-students [https://perma.cc/P2VH-TW6W].

[75] Rohrer & Modrek, *supra* note 67, at 7.

however, are limited in how they can support people who can carry pregnancies in a post-*Dobbs* era because of the restrictive state laws enacted post-*Dobbs*.[76]

III. The Impact of a Restrictive Policy Environment Post-*Dobbs* on Educational Institutions' Ability to Support Students Who Can Carry Pregnancies: Two Cases in Point

In this Part, I present two cases in point to expose the institutional burdens a post-*Dobbs* restrictive policy context creates. First, I focus my analysis on the institutional burdens K-12 schools face when trying to advance comprehensive sex education, given the restricted discretion they have as a result of the interaction between state laws post-*Dobbs*.[77] Second, I focus my analysis on the burdens higher education institutions face in navigating the tensions between state and federal law when implementing Title IX protections post-*Dobbs*.[78] Together, these educational burdens threaten to exacerbate educational inequity.[79]

Educational institutions' ability to support people who can carry pregnancies is restricted by state law post-*Dobbs*.[80] State law trends in a post-*Dobbs* era have continued to emerge.[81] National trackers show that reproductive rights are not protected or are in peril in about half the states.[82] Most restrictions are concentrated in the South, including full bans on abortion without exceptions for rape or incest.[83] Some states have also begun to criminalize abortions, allowing prosecutors to prosecute individuals who aid abortions,[84]

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[76] *See, e.g.*, the discussion of reproductive health services policies that higher education institutions will need to consider to appropriately support people who can carry pregnancies while students. *The Impact of Dobbs on Campus Health Clinics Operated by Colleges and Universities*, Shipman & Goodwin LLP (October 25, 2022), https://www.shipmangoodwin.com/insights/the-impact-of-dobbs-on-campus-health-clinics-operated-by-colleges-and-universities.html [https://perma.cc/Q3PP-Q8FD].

[77] *See supra* Section IV.A.

[78] *See supra* Section IV.B.

[79] For a previous example of the negative impact on educational equity that results when restrictive state policy takes hold, see Sara K. Redd, Whitney S. Rice, Monica S. Aswani, Sarah Blake, Zoë Julian, Bisakha Sen, Martha Wingate, & Kelli Stidham Hall, *Racial/Ethnic and Educational Inequities in Restrictive Abortion Policy Variation and Adverse Birth Outcomes in the United States*, 21 BMC Health Serv. Rsch. 1139 (2021), https://link.springer.com/article/10.1186/s12913-021-07165-x [https://perma.cc/8LJJ-E9N4].

[80] Kelliher, *supra* note 74, at para 4.

[81] Becca Damante & Kierra B. Jones, *A Year After the Supreme Court Overturned* Roe v. Wade, *Trends in State Abortion Laws Have Emerged*, Ctr. for Am. Progress (June 15, 2023).

[82] *After* Roe *Fell: Abortion Laws by State*, Ctr. Reprod. Rts., https://reproductiverights.org/maps/abortion-laws-by-state/ [https://perma.cc/HS88-JPEM] (last visited Nov. 10, 2023); *State Legislation Tracker: Major Developments in Sexual Reproductive Health*, Guttmacher Inst. (Sept. 15, 2023), https://www.guttmacher.org/state-policy [https://perma.cc/BRU3-HZ4P] [hereinafter *State Legislation Tracker*]; *Tracking the States Where Abortion is Now Banned*, N.Y. Times https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html [https://perma.cc/6D2Q-5775] (last visited Nov. 7, 2023).

[83] *State Legislation Tracker, supra* note 82; *Tracking the States Where Abortion is Now Banned*, *supra* note 82.

[84] *Alabama's Attorney General Says the State Can Prosecute Those Who Help Women Travel for Abortions,* Associated Press (2023), https://apnews.com/article/alabama-abortion-steve-marshall-2157a7d0bfad02aad1ca41e61fe4de33 [https://perma.cc/KA23-TD6L].

while others go further to ban sex education, including discussions of gender identity and sexuality in the K-12 curriculum.[85] Moreover, federal members of Congress have proposed legislation that would functionally ban abortion access nationwide.[86] Notably, the proponents of the federal legislation were some of the same advocates who argued for the overturning of *Roe* predicated on the idea that reproductive rights are state, not federal, issues.[87] Absent a federal constitutional floor and in the face of an emerging shifting policy landscape, educational institutions carry a greater burden to ensure people who can carry pregnancies are well positioned to engage in their education.[88] I turn to these burdens next.

A. K-12 Institutions: Comprehensive Sex Education

Defined as "a rights-based, medically accurate, inclusive, evidence-informed formal process of learning . . . [that] includes the physical, psychological, social and emotional aspects of sexuality and relationships," comprehensive sex education in K-12 plays a critical role within the panoply of reproductive justice rights.[89] For instance, research on adolescent pregnancy shows an overall decline in unintended teen pregnancy as sex education and education about contraceptives have become more prevalent.[90] The decline enabled students to complete their education in places that do not have structural support for parenting students.[91] Researchers studying the effects of the lack of comprehensive sex education have found that it has negative effects on youth, disproportionately and negatively affecting educational access and workforce outcomes for youth and low-income people of color.[92] Moreover, for some people who can carry pregnancies, K-12 educational institutions are the only source of sexual and reproductive health information,[93] and removing it leaves these students without sexual and reproductive health education.

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[85] *2023 State of Sex Education Legislative Look-Ahead*, Siecus (Jan. 2023), https://siecus.org/wp-content/uploads/2023/01/2023-State-of-Sex-Education-Legislative-Look-Ahead.pdf [https://perma.cc/C9A2-HR9M].

[86] . Daniel Payne & Krista Mahr, *Federal Abortion Ban Bill is Here—And It Has Some Republicans Stunned*, Politico (Sept. 4, 2022), https://www.politico.com/newsletters/politico-pulse/2022/09/14/the-federal-abortion-ban-bill-is-here-and-it-has-some-republicans-stunned-00056510 [https://perma.cc/73EF-9BXW].

[87] *Id.*

[88] *E.g.*, *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972*, U.S. Dep't of Educ., Off. for C.R. (June 2013), https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.html.

[89] Lisa D. Lieberman & Eva S. Goldfarb, *Sex Ed in the Post-*Roe *World: Implications for Public Health Education*, 49 Health Educ. & Behav. 919, 919 (2022).

[90] Basch, *supra* note 45, at 614–18.

[91] *Id.*

[92] Whitney S. Rice, Subrasi Narasimhan, Anna Newton-Levinson, Johanna Pringle, Sara K. Redd, & Dabney P. Evans, *'Post-*Roe*' Abortion Policy Context Heightens the Imperative for Multilevel, Comprehensive, Integrated Health Education*, 49 Health Educ. & Behav. 913, 914 (2022).

[93] Heather D. Boonstra, *Meeting the Sexual and Reproductive Health Needs of Adolescents in School-Based Health Centers*, Guttmacher Inst. (Apr. 17, 2015), https://www.guttmacher.org/gpr/2015/04/meeting-sexual-and-reproductive-health-needs-adolescents-school-based-health-centers [https://perma.cc/NA2Z-UUUM].

Dobbs fomented and facilitated a state-level policy environment that is hostile to comprehensive sex education and its adoption.[94] In fact, the gap regarding access to sex education has only widened post-*Dobbs*.[95] The Sexuality Information and Education Council of the United States (SIECUS) documented an increase in anti-sex education state legislation introduced in 2022 and expected this trend to increase in 2023.[96] In 2024, state legislators introduced a significant number of anti-sex education bills.[97] Most of the enacted state laws restrict school curriculum; school districts cannot offer comprehensive sex education.[98] Other states permit sex education but require parents to opt-in their children to participate in sex education, under the guise of 'parental rights.'[99] By requiring the parents to opt-in to, as opposed to opt-out of, sex education, these bills functionally shift the initial burden to parents.[100] While parents should be engaged in their children's education, shifting the burden to parents simply adds additional unnecessary requirements.[101] These requirements may be cumbersome for some families, including low-income families who must work significant hours and have restricted schedules.[102] Other states that allow sex education require that schools promote or emphasize abstinence alongside other reproductive care options.[103] Lastly, a different set of laws target schools' ability to create health centers or to otherwise offer reproductive care, such as dispensing condoms, discussing other birth control options, or counseling students on reproductive care choices.[104]

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[94] Annette Choi, *State Lawmakers Have Targeted Restricting Sex Education since the Dobbs Ruling, Especially in States Banning Abortion*, CNN (May 16, 2024), https://www.cnn.com/2024/05/16/politics/sex-education-bills-united-states-dg/index.html [https://perma.cc/W9LM-TQ34].

[95] Rice et al., *supra* note 92, at 913.

[96] *2023 State of Sex Education Legislative Look-Ahead*, *supra* note 85, at 4.

[97] Kimya Forouzan & Rosann Mariappuram, *Midyear 2024 State Policy Trends: Many US States Attack Reproductive Health Care, as Other States Fight Back*, Guttmacher Inst. (June 18, 2024), https://www.guttmacher.org/2024/06/midyear-2024-state-policy-trends-many-us-states-attack-reproductive-health-care-other [https://perma.cc/N9PQ-4ENN].

[98] *Id.*

[99] Choi, *supra* note 94, at para 10.

[100] Evie Blad, *Is Parental Consent for Sex Education Classes An Unnecessary Hurdle?*, Educ. Week (Feb. 19, 2015), https://www.edweek.org/teaching-learning/is-parental-consent-for-sex-education-classes-an-unnecessary-hurdle/2015/02 [https://perma.cc/38FN-QFZN]; *see also* Choi, *supra* note 94, at para 7; Forouzan & Mariappuram, *supra* note 97, at para 11–12.

[101] Blad, *supra* note 100.

[102] For example, an evaluation of the Texas opt-in policy finds that "the majority of our sample of Texas school representatives perceived the opt-in policy related to sexual health and abuse prevention as a barrier to the delivery of education related to these topics. Our sample expressed concerns related to the additional burden and time that obtaining parental permission would take, especially in the context of their already busy schedules." Melissa F. Peskin, Belinda Hernandez, Marie Brault, Victoria Kwentua, Laura Thormaeuhlen, Chelsey Kanipe, Elysia Chandler, Robert C. Addy, Paula Cuccaro, Ross Shegog, Christine M. Markham, Jennifer Biundo, & Jessica Chester, *Evaluation of the Opt-In Sexual Health and Abuse Prevention Education Policy in Texas,* The U. of Tex. Health Sci. Ctr. at Houston & Healthy Futures of Tex. 1, 4 (2023), hftx.org/wp-content/uploads/2023/05/Opt_in_Eval_Report_FINAL-compressed.pdf [https://perma.cc/9ZB5-X9C3].

[103] *The Importance of Access to Comprehensive Sex Education*, Am. Acad. of Pediatrics (Feb. 15, 2024), https://www.aap.org/en/patient-care/adolescent-sexual-health/equitable-access-to-sexual-and-reproductive-health-care-for-all-youth/the-importance-of-access-to-comprehensive-sex-education [https://perma.cc/UCE4-YU5H].

[104] Mabel Felix, Laurie Sobel, & Alina Salganicoff, *The Right to Contraception: State and Federal Actions, Misinformation, and the Courts*, KFF (May 23, 2024), https://www.kff.org/

These legislative changes build on an already uneven policy terrain. As of this writing, only 38 states and the District of Columbia mandated sex education and/or HIV education and only 17 of those states required that the information be medically accurate.[105] Additionally, legislators have adopted laws that prohibit the discussion of LGBTQ+ issues in the curriculum, which further restricts the discussions that teachers can have in the classroom, including about sexuality and healthy relationships.[106] Most of the bills that directly restrict comprehensive sex education have not been adopted, but bills that indirectly restrict sex education, such as anti-LGBTQ+ bills, are on the rise and have been adopted at a higher rate.[107]

What is most remarkable about the post-*Dobbs* policy landscape restricting K-12 schools' ability to advance comprehensive sex education is that it is, with few exceptions, largely unremarkable vis-à-vis legal issues. Though disparate, this tapestry of state laws does not raise many legal issues. There are few, if any, legal arguments to be successfully brought forth against laws that restrict comprehensive sex education directly, because education governance, including the curriculum, is largely a function of state government.[108]

While there are potential legal issues regarding laws that restrict sex education indirectly, such as anti-LGBTQ+ education laws,[109] these cases are likely weak. In these instances, plaintiffs can challenge these laws under anti-discrimination law (e.g., Fourteenth Amendment and First Amendment rights).[110] They may argue that such state laws discriminate against LGBTQ+ students under the Fourteenth Amendment or that the students' First Amendment right to receive information is infringed upon by these laws that single out particular viewpoints.[111]

Courts scrutinize Fourteenth Amendment equal protection clause claims based on sexual orientation under rational basis, the lowest standard of scrutiny,

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womens-health-policy/issue-brief/the-right-to-contraception-state-and-federal-actions-misinformation-and-the-courts [https://perma.cc/TZ3Z-Q528].

[105] *Sex and HIV Education,* Guttmacher Inst. (Sept. 1, 2023), https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education [https://perma.cc/G69F-B96R].

[106] *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures,* ACLU, https://www.aclu.org/legislative-attacks-on-lgbtq-rights (May 25, 2025) [https://perma.cc/B6PA-VRCQ]; Cullen Peele, *Roundup of Anti-LGBTQ+ Legislation Advancing in States Across the Country*, Hum. Rts. Campaign (May 23, 2023), https://www.hrc.org/press-releases/roundup-of-anti-lgbtq-legislation-advancing-in-states-across-the-country [https://perma.cc/NWT9-GD6B].

[107] Jennifer T. Tran, Nele Loecher, Kristin A. Kosyluk, & José A. Bauermeister, *Anti-LGBTQ+ Sex Education Laws: The Effects on Students and Implications for Schools and School Practitioners*, 60 Psych. Sch. 12, 5062–75 (2023).

[108] *Sex Education Laws and State Attacks*, Planned Parenthood, https://www.plannedparenthoodaction.org/issues/sex-education/sex-education-laws-and-state-attacks [https://perma.cc/U9CP-HJMB] (last visited Sept. 4, 2024).

[109] *Equality Maps: LGBTQ Curricular Laws*, Movement Advancement Project, https://www.lgbtmap.org/equality_maps/curricular_laws [https://perma.cc/8KXA-4YRQ] (last visited Sept. 4, 2024).

[110] *E.g.*, Caroline Lester, *Say Gay: Why H.B. 1557 is an Unconstitutional Infringement on Minors' First Amendment Right to Receive Information*, 25 Geo. J. Gender & L., 141–73 (2023), https://www.law.georgetown.edu/gender-journal/wp-content/uploads/sites/20/2024/02/Say-Gay-Why-HB-1557-is-an-Unconstitutional-Infringement.pdf [https://perma.cc/TQ5K-Q6RE]; Sharita Gruberg, *Beyond Bostock: The Future of LGBTQ Civil Rights*, Ctr. Am. Progress (Aug. 26, 2020), https://www.americanprogress.org/article/beyond-bostock-future-lgbtq-civil-rights/ [https://perma.cc/56UE-NQ53].

[111] *Id.*

because sexual orientation is not a suspect classification.[112] States are likely to succeed on those claims because the rational basis standard simply requires that the government have a rational basis for adopting such laws.[113] Courts analyze claims based on gender discrimination under intermediate scrutiny, as gender is a semi-suspect classification.[114] Nonetheless, as noted below, courts have remained largely deferential to curricular policy decisions, and it is likely that courts may categorize these anti-LGBTQ+ education laws as policy decisions within the discretion of state governance.

First Amendment claims against anti-LGBTQ+ education laws are stronger on the merits, since free speech rights are fundamental rights and no student sheds their first amendment rights at the 'schoolhouse gate.'[115] Courts analyze fundamental right claims under the First Amendment under the highest standard of scrutiny, strict scrutiny, or related doctrines (e.g., viewpoint discrimination) that similarly protect First Amendment rights.[116] Reflecting the importance of protecting fundamental rights and against discrimination, by 2024, Florida had reached a settlement to limit the potential discriminatory impact of its anti-LGBTQ+ education law.[117] However, courts have yet to weigh in on the merits of the legality of these anti-LGBTQ+ education state laws.

Lastly, state laws that are framed around "parental rights" are also likely to face few successful legal challenges. This is because the right to raise a child as a parent sees fit is a fundamental right under the Fourteenth Amendment.[118] It is possible for parents who want to counter these restrictive state laws to argue that access to comprehensive sex education is a violation of their children's right to an education as guaranteed by their state constitutional clauses. This would be a novel argument, however, and is likely weak. Courts have established a high standard in recognizing what a right to an education means in practice.[119] They have also historically been resistant to interfere with edu-

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[112] Jennifer R. Covais, *Baby, We Were Born This Way: The Case for Making Sexual Orientation a Suspect Classification Under the Equal Protection Clause of the Fourteenth Amendment*, 38 Touro L. R. 1, 283–321 (2022), https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=3383&context=lawreview [https://perma.cc/UQH9-ZWUL].

[113] Gruberg, *supra* note 110; *see also* Covais, *supra* note 112.

[114] United States v. Virginia, 518 U.S. 515 (1996) (a watershed case examining gender discrimination claims in education under intermediate scrutiny).

[115] Tinker v. DeMoines, 393 U.S. 503 (1969); *see also* Lester, *supra* note 110; *see generally* Justin Driver, The School House Gate: Public Education, the Supreme Court, and the Battle for the American Mind (2018).

[116] David L. Hudson, *Strict Scrutiny*, Free Speech Ctr. (July 2, 2024), https://firstamendment.mtsu.edu/article/strict-scrutiny/ [https://perma.cc/5N88-6J7Z].

[117] Patricia Mazzei, *Legal Settlement Clarifies Reach of Florida's 'Don't Say Gay' Law*, N.Y. Times (Mar. 11, 2024), https://www.nytimes.com/2024/03/11/us/florida-dont-say-gay-law-settlement.html [https://perma.cc/HX7E-ZAPF].

[118] Wisconsin v. Yoder, 406 U.S. 205 (1972); *see also* Caitlynn Peetz, *How Districts Can Navigate Tricky Questions Raised by Parents' Rights Laws*, Educ. Week, para 5 (Jan. 9, 2024), https://www.edweek.org/policy-politics/how-districts-can-navigate-tricky-questions-raised-by-parents-rights-laws/2024/01 [https://perma.cc/V4NU-L5BY].

[119] Peetz, *supra* note 118, at para 14. One of the most foundational cases in K-12 right to education history is *San Antonio v. Rodriguez*, 411 U.S. 1 (1973), which found that a right to education is not a fundamental right under the federal constitution, and therefore claims to an infringement to a right to education are often scrutinized under rational basis. Some states employ higher standards of scrutiny when assessing violations to the quality of education, but courts

cational policy decisions, and states have historically refrained from adopting comprehensive sex education.[120] Courts tend to leave educational policy choices to state and local policymakers, unless they deem the choices interfere with other fundamental rights.[121]

Against this backdrop, the most pressing issue regarding access to comprehensive sex education post-*Dobbs* is whether school districts have any avenues left to promote access to comprehensive sex education, including reproductive education.[122] To be clear, post-*Dobbs*, discretion is significantly curtailed because of the restrictive state-level policies, but discretion still exists and varies by state law context.[123] The Table below shows how the interaction of restrictive reproductive state laws and laws regarding sex education post-*Dobbs* shapes discretion for schools.[124] I expand on this Table below, explaining the interaction between state laws and noting any legal issues that surface when state laws are in conflict and discretion is curtailed.

Table 1: School Discretion to Support Sex Education, Including Reproductive Education, Post-*Dobbs*

State Law Context	**Institutional Discretion**
(Most Expansive) Expansive laws regarding reproductive rights and expansive laws regarding sex education	Significant discretion to support comprehensive sex education
Expansive laws regarding reproductive rights but restrictive laws regarding sex education	Restricted discretion but can support students access to sex education through non-curricular policies and practices
Restrictive laws regarding reproductive rights but expansive laws regarding sex education	Restricted discretion but can support students through sex education curriculum so long as it does not violate state reproductive rights laws
(Most Restrictive) Restrictive laws regarding reproductive rights and restrictive laws regarding sex education	Severely restricted discretion to support sex education and must find creative avenues, e.g., offering space for local groups

are still generally hesitant to thread into what many see as education policy, not legal issues. *See, e.g.*, Integrated NYC v. New York, 152743/2021 (Sup. Ct. N.Y. Cty. 2022), https://defendinged.org/wp-content/uploads/2022/05/189_Order.pdf [https://perma.cc/7BPB-6WCM], (discussing the limited role courts play in what they deem educational policy issues).

[120] Neal Dittersdorf, *Public School Sex Education: Does it Violate Parents Rights*?, 12 N.Y.U R. L. & Soc. Change 3, 591, 592 (1983), https://heinonline.org/HOL/P?h=hein.journals/nyuls12&i=601 [https://perma.cc/EU3B-K9ZM].

[121] *See* Scott R. Bauries, *A Common Law Constitutionalism for the Right to Education*, 48 Ga. L. Rev. 949, 955 (2014) (tracing state constitutional education clauses over time).

[122] Peetz, *supra* note 118.

[123] *See* Milan Markovic, *Charging Abortion*, 92 Fordham L. R. 1519, 1551–54 (2024) (discussing varied discretion in enacting abortion laws across state and local contexts).

[124] *See, e.g.*, *2023 State of Sex Education Legislative Look-Ahead*, *supra* note 85; Markovic, *supra* note 123, at 1526–31; Lester, *supra* note 110.

In states where reproductive rights are protected and where states mandate or allow comprehensive sex education, school districts have the greatest discretion.[125] In these states, schools must or may employ medically-accurate comprehensive sex education.[126] Aligned with its definition, this includes curricular and extra-curricular options, including adopting medically-accurate curriculum, hosting guest speakers to discuss reproductive rights with students, creating health centers that offer reproductive care, and creating on-campus organizations that promote reproductive justice.[127]

In states where reproductive rights are protected but comprehensive sex education is restricted, schools can exercise their discretion by adopting non-curricular related policies and practices to support their students with sex education.[128] Such options may include hosting guest speakers, offering institutional space to meet for students interested in learning about sex education, and maintaining resources, such as curated lists of reproductive care providers for students to find care outside the school context.[129]

In states where there are state laws restricting or criminalizing reproductive care access but sex education is still permitted, schools can exercise their discretion to the fullest regarding sex education curricula but must be aware of the state restrictive laws that may prohibit them from 'advising' students on reproductive care options or that may classify them as 'aiding and abetting' students to access abortions when providing resources or counseling students.[130] Here, if the reproductive laws are in tension with laws regarding sex education, schools may argue that they are following education laws that govern the educational context specifically.[131] Whether this argument is meritorious depends on the whether the state law has any exemptions or whether even if no relevant exemptions are in place, a court is willing to accept this argument. Courts have found schools to be a *sui generis* context with unique goals that merit distinct treatment.[132] Therefore, the argument may persuade some courts.

In the most restrictive states—states with restrictive reproductive rights laws and restrictive laws regarding sex education, which often align[133]—

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[125] Elizabeth Nash & Megan K. Donovan, *Ensuring Access to Abortion at the State Level: Selected Examples and Lessons*, 22 Guttmacher Pol'y R. 1, 3 (2019), https://www.guttmacher.org/gpr/2019/01/ensuring-access-abortion-state-level-selected-examples-and-lessons [https://perma.cc/29UW-HHC7].

[126] *See Sex Education Laws and State Attacks*, *supra* note 108.

[127] *See Sex and HIV Education, supra* note 105.

[128] *Id.*

[129] For examples in the higher education context, see Melissa A. Habel, Alexandra Coor, Oscar Beltran, Jeffrey Becasen, William S. Pearson, & Patricia Dittus, *The State of Sexual Health Services at U.S. Colleges and Universities*, 66 J. Am. Coll. Health 259, 265-67 (2018).

[130] *See Sex Education Laws and State Attacks*, *supra* note 108.

[131] Peetz, *supra* note 118.

[132] San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 29–30, 35–36 (1973); Fisher v. University of Texas at Austin, 579 U.S. 365, 8 (2016); *see also* Raquel Muñiz, *You Are Now Entering the School Zone, Proceed with Caution: Educators, Arbitration, & Children's Rights*, 9 Arb. L. Rev. 197, 218–20 (2017) (discussing primary and secondary education as a *sui generis* sphere).

[133] Fionna M. D. Samuels, *Graphic: Many States That Restrict or Ban Abortion Don't Teach Kids About Sex and Pregnancy,* Sci. Am. (July 26, 2022), https://www.scientificamerican.com/

schools have little discretion but still can find creative avenues to support students' access to sex education.[134] For instance, in states such as Texas, where reproductive rights are significantly curtailed and sex education is not required but rather parents must opt-in,[135] schools can adopt policies and practices that increase participation. These might include promoting student registration via periodic newsletters, parent-school nights, and home visits.[136] Schools can also offer school space for community organizations that support reproductive rights to host events, so long as they extend the same opportunity to other organizations with different viewpoints. Community-organized programming enables students to participate alongside other community members. Schools can also offer student activists interested in reproductive justice a space to meet, so long the same space is offered to other groups as well. Making space available to groups with different views is important to avoid engaging in viewpoint discrimination.[137]

In sum, *Dobbs* fostered a tiered disparate state policy terrain that burdens educational institutions by curtailing their discretion to support access to comprehensive sex education, including reproductive education.[138] However, schools still have discretion to harness in this context and must find creative avenues to do so as their discretion dwindles.[139]

B. Higher Education Institutions: Title IX Protections

Higher education institutions face implementation, logistical, and resource burdens in attempting to uphold Title IX federal protections post-*Dobbs*, given the restrictive state-level policy context. Title IX has long required institutions to treat pregnancy, childbirth, parental status, and abortion as other temporary disabilities[140] and make necessary accommodations for students, such as excused absences, reasonable flexibility in grading and attendance, access to services, and an ability to regain their student status after a leave.[141] The U.S. Department of Education released new Title IX regu-

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article/graphic-many-states-that-restrict-or-ban-abortion-dont-teach-kids-about-sex-and-pregnancy/ [https://perma.cc/A5WL-YKMG].

[134] Choi, *supra* note 94.

[135] Joanna Gamez, *Parent Opt-in Requirements for Sex Education & Abuse Prevention*, Tex. is Ready (May 12, 2022), https://www.texasisready.org/post/parent-opt-in-requirements-for-sex-education-abuse-prevention [https://perma.cc/M33X-PRZG].

[136] *Best Practices for Family Engagement in Sex Education Implementation*, Working to Institutionalize Sex Educ., https://www.wisetoolkit.org/sites/default/files/Best%20Practices%20for%20Family%20Engagement_formatted.pdf [https://perma.cc/4XQ7-GXUA] (last visited Sept. 11, 2024).

[137] Kevin F. O'Neill, *Viewpoint Discrimination*, Free Speech Ctr. (July 9, 2024), https://firstamendment.mtsu.edu/article/viewpoint-discrimination/ [https://perma.cc/4F9L-Q9F6].

[138] *See* Samuels, *supra* note 133, at para 5.

[139] *See* Table 1; *see also* Markovic, *supra* note 123, at 1546.

[140] Grace Panetta & Errin Haines, *Education Department Reinforces Title IX Protections for Abortion and Pregnancy,* The 19th (Oct. 4, 2022), https://19thnews.org/2022/10/education-department-title-ix-abortion/ [https://perma.cc/5KWQ-RHGS].

[141] *Know Your Rights: Pregnant or Parenting? Title IX Protects You from Discrimination at School,* Off. C.R., U.S. Dep't. of Educ. (Jan. 10, 2020), https://www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201306-title-ix.html [https://perma.cc/R7AG-J6FK].

lations on April 19, 2024.[142] The regulations, which were scheduled to take effect August 2024, give detailed meaning to the "sex-based discrimination" language in Title IX, and carry the binding weight of the law.[143] While Title IX regulations apply nationwide to institutions that receive federal funding, two federal courts initially issued preliminary injunctions (*Louisiana v. United States Department of Education*;[144] *Tennessee v. Cardona*[145]), enjoining the 2024 Title IX regulations, with the *Cardona* court ultimately vacating the 2024 regulations.[146] The preliminary injunctions, which challenged the rulemaking process and substance of the 2024 regulations, prevented institutions from applying the regulations in their totality in 10 states (Idaho, Indiana, Kentucky, Louisiana, Missouri, Montana, Ohio, Tennessee, Virginia, and West Virginia), while the vacatur made them inapplicable nationwide.[147] These changes emphasize the evolving nature of Title IX. As such, the discussion that follows illustrates the tension that arises when federal and state mandates conflict with one another like with Title IX, an area that has become increasingly politicized. It is important to explore this type of analysis, given that the pendulum often swings back and forth on politicized issues, and such analysis can offer insights into how to navigate these ongoing tensions in the future.

The 2024 Title IX regulations are more expansive in their coverage and scope than the 2020 regulations but remain modest in their requirements regarding reproductive rights.[148] Namely, they continue to leave significant discretion for institutions regarding how they comply with Title IX.[149] While Title IX demands that institutions offer accommodations for people who are pregnant or experience related conditions (e.g., termination of pregnancy or abortion),[150] the regulations do not mandate that institutions offer or promote

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[142] Press Office, *U.S. Department of Education Releases Final Title IX Regulations, Providing Vital Protections Against Sex Discrimination*, U.S. Dep't. of Educ. (Apr. 19, 2024), https://www.ed.gov/news/press-releases/us-department-education-releases-final-title-ix-regulations-providing-vital-protections-against-sex-discrimination [https://perma.cc/7XBY-QTGK].

[143] *Id.*

[144] Louisiana v. United States Dep't of Educ., 737 F. Supp. 3d 377, 410 (W. D. La. June 13, 2024) (order granting preliminary injunction).

[145] Tennessee v. Cardona, 737 F. Supp. 3d 510, 572 (E.D. Ky. 2024) (order granting preliminary injunction).

[146] Tennessee v. Cardona, No. 2:24-072-DCR, 2025 U.S. Dist. LEXIS 6197, at *24 (E.D. Ky. Jan. 9, 2025). For further discussion of the injunctions, see *Schools Face Conflicting Federal and State Pressures Under Final Title IX Rule*, O'Melveny & Myers LLP (June 26, 2024), https://www.omm.com/insights/alerts-publications/schools-face-conflicting-federal-and-state-pressures-under-final-title-ix-rule/ [https://perma.cc/L84X-G8N8].

[147] *Id.* However, in states like Indiana, Montana, Virginia, and West Virginia, students will still enjoy Title IX-like protections through case law at the Fourth, Seventh, and Ninth Circuits or through Title IX-like state law protections.

[148] *See* The Pregnant Scholar, *Summary of Key Changes to the Title IX Regulations on Pregnancy and Parental Status*, https://thepregnantscholar.org/wp-content/uploads/Title-IX-2024-and-2020-Rule-comparison-with-best-practice-summary.pdf [https://perma.cc/538C-Y6AM]; *Title IX Regulations: 2024*, Nat'l. Assoc. of Indep. Coll. and U. (May 2024), https://www.naicu.edu/policy-advocacy/title-ix-regulations-2024/ [https://perma.cc/VR5X-UCDZ].

[149] Jessica E. Visser, Ashleigh E. Draft, and Francesca L. Parnham, *New Title IX Rule Offers Schools Flexibility and Discretion in Compliance*, Varnum (May 8, 2024), https://www.varnumlaw.com/insights/new-title-ix-rule-offers-schools-flexibility-and-discretion-in-compliance/ [https://perma.cc/DL8E-5HV5].

[150] *Know Your Rights: Pregnant or Parenting?, supra* note 141.

reproductive health care on campus (e.g., through health centers).[151] In fact, the regulations point institutions to a long-standing exemption on which institutions can rely to not provide these services on campus ('neutrality clause').[152] Under this exemption, institutions are exposed to minimal risk of liability by not offering on-campus services. The 2024 regulations also take a proactive approach to countering the effects of restrictive state laws. The regulations prohibit institutions from requiring documentation from students seeking reasonable accommodations for pregnancy related conditions, e.g., abortion counseling,[153] thereby avoiding detailed record-keeping of people who seek their services for reproductive care. In theory, this eliminates a record that restrictive states can use to discipline or punish people who can carry pregnancies for seeking reproductive care.[154] Grounded on religious freedom rights, private faith-based institutions may also decline to provide certain accommodations that go against their religious principles and beliefs.[155] Nonetheless, Title IX protections are critical after *Dobbs*, because they offer additional protection for people who can carry pregnancies.[156]

Post-*Dobbs*, the 2024 Title IX regulations come in tension with state law in restrictive states.[157] The main legal tension with which educational institutions will have to contend regarding accommodations is whether and how to provide accommodations for students who travel out of state to access reproductive care, in state contexts where Title IX requires accommodations but state law in effect prohibits or criminalizes them. Prior to *Dobbs*, 15% of pregnant people in states with hostile policies on abortion already traveled out of state to receive abortion access, and this number is only increasing.[158] Emerging reports and studies examining reproductive care post-*Dobbs* find that travel from states with hostile policies to states that provide care has increased since *Dobbs*, as states have adopted hostile policies, exacerbating the burdens on higher education institutions (e.g., accommodating extended

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[151] Theresa Anderson, Kimberly Salazar, & Jessica Lee, *The New Title IX Regulations Will Help More Than 180,000 Pregnant Students Every Semester and Millions of Parenting Students Long Term*, Urban Inst. (April 19, 2024), https://www.urban.org/urban-wire/new-title-ix-regulations-will-help-more-180000-pregnant-students-every-semester [https://perma.cc/4XHJ-NDS5] (offering an overview of what is included in the 2024 Title IX regulations and how it would support pregnant students and parenting students).

[152] 20 U.S.C. § 1688; *see also Education Department Finalizes New Title IX Regulations: Sexual Orientation and Gender Identity*, Congress. Rsch. Serv. (June 5, 2024), https://crsreports.congress.gov/product/pdf/LSB/LSB11175 [https://perma.cc/QU3Q-QR5L].

[153] 34 C.F.R. 106.40(b)(3)(vi).

[154] *See* Elyssa Spitzer, *Some States are Ready to Punish Abortion in a Post-Roe World*, Ctr. for Am. Progress (June 24, 2022), https://www.americanprogress.org/article/some-states-are-ready-to-punish-abortion-in-a-post-roe-world/ [https://perma.cc/KBL9-S7VE].

[155] *Education Department Finalizes New Title IX Regulations, supra* note 152.

[156] Anderson et al., *supra* note 151, at para 1–2.

[157] Katherine Knott, *Political Standoff Over Title IX Puts Red State Colleges in No-Win Situation*, Inside Higher Ed (May 14, 2024), https://www.insidehighered.com/news/government/2024/05/14/red-states-say-they-wont-comply-new-title-ix-rule [https://perma.cc/FK8B-V8DR].

[158] Isaac Maddow-Zimet & Kathryn Kost, *Even Before* Roe *Was Overturned, Nearly One in 10 People Obtaining an Abortion Traveled Across State Lines for Care,* Guttmacher Inst. (July 21, 2022), https://www.guttmacher.org/article/2022/07/even-roe-was-overturned-nearly-one-10-people-obtaining-abortion-traveled-across [https://perma.cc/EJU8-L3VA].

leaves from college).[159] The National Abortion Federation—an organization that provides information and financial assistance to cover the cost of abortion care and travel—reported that from July 2022-May 2023 they paid for 1,090 hotel rooms compared to 369 in the prior year; 982 plane, train, or bus trips, compared to 293; and 674 share rides compared to 134.[160] A study on the use of abortion care in Massachusetts also found that post-*Dobbs*, there was a 37.5% increase above expected in out-of-state residents accessing abortion care, including patients from states with restrictive laws.[161] A report from the Guttmacher Institute finds a similar trend nationwide: abortions post-*Dobbs* rose in every state where abortion remains protected, most pronounced in states bordering states with total abortion bans.[162] The numbers are expected to rise as new abortion bans go into effect.[163] These statistics show that people who can carry pregnancies are increasingly traveling across state lines to access reproductive care post-*Dobbs*.[164]

In restrictive states where abortion is prohibited and students have less access to abortions, Title IX accommodation requests could look different post-*Dobbs*, because students may experience longer absences from schooling when they travel out of state or access abortion care.[165] Institutions that decide to provide accommodations, such as generous leaves, transportation to reproductive health care centers, or funding to travel across state lines, would be in compliance with the 2024 Title IX regulations but could simultaneously be found, in violation of state law, to be 'aiding and abetting' students to engage in abortion. Restrictive criminal state laws enable prosecutors to prosecute such people who 'aid and abet,' presumably including administrators who advise students to travel or seek reproductive care outside of the state, while civil laws enable private actors to report people who violate abortion bans.[166] Institutions in these restrictive states that choose to comply with Title

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[159] *E.g.*, Claire Connolly, *A Year After Dobbs, More People Than Ever Are Traveling for Abortion Care*, Nat'l Abortion Fed'n (June 7, 2023), https://prochoice.org/a-year-after-dobbs-more-people-than-ever-are-traveling-for-abortion-care/ [https://perma.cc/9MHK-TW5U].

[160] *Id.*

[161] Brianna Keefe-Oates, Isabel Fulcher, Jennifer Fortin, Alisa B. Goldberg, Jarvis T. Chen, Barbara Gottlieb, & Elizabeth Janiak, *Use of Abortion Services in Massachusetts After the* Dobbs *Decision Among In-State vs Out-of-State Residents*, 6 JAMA Network Open 1, 1–2 (2023).

[162] *Monthly Abortion Provision Study*, Guttmacher Inst., https://www.guttmacher.org/monthly-abortion-provision-study [https://perma.cc/NP62-H7CB] (last visited Nov. 11, 2023).

[163] Amy Schoenfeld Walker, & Allison McCann, *Abortion Rose in Most States this Year, New Data Shows*, N.Y. Times (Sept. 7, 2023), https://www.nytimes.com/interactive/2023/09/07/us/abortion-data-bans-laws.html [https://perma.cc/QLY4-5RZ4].

[164] Kimya Forouzan, Amy Friedrich-Karnik, & Isaac Maddow-Zimet, *The High Toll of US Abortion Bans: Nearly One in Five Patients Now Traveling Out of State for Abortion Care*, Guttmacher Inst. (Dec. 2023), https://www.guttmacher.org/2023/12/high-toll-us-abortion-bans-nearly-one-five-patients-now-traveling-out-state-abortion-care [https://perma.cc/3A9V-YQ83].

[165] *See* Benjamin Rader, Ushman D. Upadhyay, Neil K. R. Sehgal, Ben Y. Reis, John S. Brownstein, & Yulin Hswen, *Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the* Dobbs v. Jackson Women's Health *Decision*, 328 JAMA 2041, 2041 (2022) (documenting longer travel times for people to access abortion facilities post-*Dobbs*).

[166] *See, e.g.*, Karen B. Harper, *Texas Abortion Foes Use Legal Threats and Propose More Laws to Increase Pressure on Providers and Their Allies*, Tex. Trib. (July 18, 2022), https://www.texastribune.org/2022/07/18/texas-abortion-laws-pressure-campaign/ [https://perma.cc/RF72-MH6U].

IX, while potentially failing to comply with restrictive state laws, could argue that under the Supremacy Clause,[167] they are bound to follow Title IX regulations. However, this is novel terrain, and courts must decide whether such arguments hold weight. Similar to the discussion above, institutions can also argue that institutions are a *sui generis* space that merit an exemption from these restrictive state laws.[168]

This legal tension regarding Title IX accommodations in restrictive states gives rise to other legal claims by different stakeholders. For instance, university professors in Texas are suing the federal government for adopting the 2024 Title IX regulations.[169] They argue that the regulations force them to provide accommodations for people who access abortions across state lines, and thus violate Texas state laws, which prohibit and criminalize abortions.[170] The federal government's strongest argument, in this case, is that no institution is required to follow the regulations; rather, the federal government is providing funding and has a right to request that it not be funneled towards discriminatory practices at any institution.[171] Here too, these claims would be novel, though historically courts have upheld agencies' discretion, e.g., their ability to set strict requirements in exchange for funding, so long as the requirements do not violate other fundamental rights.[172]

Lastly, students may also file claims in a distinct scenario. If institutions choose to comply with restrictive state law and not provide Title IX accommodations for students, students may file complaints with the U.S. Department of Education, Office of Civil Rights (OCR) based on lack of proper accommodations they deem sex-based discrimination under Title IX.[173] The 2024 regulations acknowledge this tension in their discussion of Title IX neutrality regarding reproductive rights, including abortion support, noting that though institutions have significant discretion in how they decide to support students, the federal government can still find that an institution has adopted policies and practices that qualify as sex-based discrimination.[174] If a federal investigation finds that an institution is engaging in sex-based discrimination by, for example, failing to provide the necessary accommodations for students to access their education, the institution could face remedial measures to ameliorate violations or lose funding.

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[167] U.S. Const. art. VI, cl. 2.

[168] *See* Muñiz, *supra* note 132, at 199.

[169] Josh Moody, *Texas Professors Sue to Further Limit Student Access to Abortion*, Inside Higher Ed (June 3, 2024), https://www.insidehighered.com/news/quick-takes/2024/06/03/texas-professors-sue-further-limit-student-abortion-access [https://perma.cc/P2T3-WQ33].

[170] *Id.*

[171] 20 U.S.C. § 1681–88.

[172] *See, e.g.*, Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), (giving administrative agencies significant discretion in their day-to-day operations). However, it is important to acknowledge that the U.S. Supreme Court overruled *Chevron*'s deference in 2024 in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The ruling significantly diminishes administrative agencies' discretion.

[173] *Title IX and Sex Discrimination*, U.S. Dep't Educ. Off. C.R. (Aug. 20, 2021), https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html.

[174] *Title IX, Final Rule*, U.S. Dep't Educ. Off. C.R. 1, 1041–46 (April 19, 2024), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/t9-unofficial-final-rule-2024.pdf; *see also* 20 U.S.C. § 1688 (outlining the "Abortion Neutrality Provision" in the 2024 regulations).

It is important to recognize that the resolution of this tension for higher education institutions is not straightforward. In deciding whether to offer certain Title IX accommodations for students, institutional leaders must engage in risk assessment, and interested stakeholders involved in the discussions should at a minimum include general counsel, Title IX compliance officers, and other institutional actors tasked with offering the accommodations (e.g., professors). This type of assessment is highly contextual and fact-dependent. The institutional decision depends on the state law at issue (e.g., aiding and abetting laws) and a candid conversation with parties who are at risk of violating state law about whether they are willing to risk violation of state law and face potential sanctions. Institutional actors must decide who is at risk of liability for violating state law, such as Title IX officers or professors, if the institution decides to offer the accommodations. Institutions may decide that taking on the risk of violating restrictive state laws is untenable. Thus, they may decide to comply with restrictive state law, while violating Title IX regulations and facing the possible loss of federal funding. It is also important to note that repercussions for violation of restrictive state law or Title IX regulations also implicates additional considerations—individuals would need resources (e.g., monetary funds) to file a federal investigation based on Title IX violations or to challenge state law violations. Institutions must engage in risk assessment that takes into account these considerations, before making a decision that will impact their exposure to federal or state liability and could lead to specific consequences.

Though this section focuses on Title IX as a case in point, it is important to briefly acknowledge other critical legal issues for higher education institutions post-*Dobbs*. Legal tensions exist horizontally when state laws conflict with one another.[175] For instance, for institutions situated within permissive, progressive states that provide reproductive care through, for example, health care centers, providing support for out-of-state people who can carry pregnancies can lead to legal issues post-*Dobbs*. Prosecutors and individuals in restrictive states may bring forth claims arguing that institutions providing the services for out-of-state visitors are 'aiding and abetting' those who live in restrictive states and who are seeking reproductive care at educational institutions in progressive states, in violation of state law.[176] Prosecutors in restrictive states would have to seek the extradition of those providing reproductive care at educational institutions in progressive states, though there is a movement to counter extraditions to restrictive states.[177]

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[175] 28 U.S.C. §1738 (requiring each state to be attentive to the statutes, public records, and court decisions of other states with "the same full faith and credit")*; see also* Alaska Packers Assn. v. Industrial Accident Comm'n, 294 U.S. 532 (1935) (discussing the difficult resolution of conflict between individual state laws).

[176] *Cf.* Sam McCann, *The Prosecutors Refusing to Criminalize Abortion*, Vera (Sept. 19, 2022), https://www.vera.org/news/the-prosecutors-refusing-to-criminalize-abortion [https://perma.cc/335Q-2RVN] (showing prosecutorial discretion within restrictive state environments to bring claims against those seeking or providing reproductive care).

[177] Jennifer McDermott, Geoff Mulvihill, and Hannah Schoenbaum, *States Move to Protect Abortion from Prosecutions Elsewhere*, Associated Press (July 6, 2022), https://apnews.com/article/abortion-us-supreme-court-health-maine-north-carolina-9406a561971aa57640123034

Vertical legal tensions may also exist when institutional policies and practices come in tension with restrictive state laws.[178] Institutions that currently offer reproductive care (e.g., through health centers) in restrictive states may be in clear violation of state law, even though they are in line with Title IX regulations' spirit to support people who can carry pregnancies. Institutions in this position can remove their health centers, and while this will not violate Title IX, it will significantly reduce support for reproductive justice. Alternatively, such institutions may maintain the health centers and other support in restrictive states and run afoul of state law but remain aligned with the 'spirit' of Title IX. This position could potentially lead to legal issues. It is unclear whether prosecutors would prosecute people who work at the institutional centers or if private individuals would file civil actions against those supporting reproductive care on campus or the students who access reproductive care.[179] Here too, institutional leaders, including doctors and other health care providers, would need to decide the level of risk they are willing to tolerate.

In sum, despite operating in a post-*Dobbs* era, institutions receiving federal funding are still bound to support students who access abortion care under the strict requirements of Title IX. The 2024 regulations leave significant discretion for institutions to craft policies in support of people who can carry pregnancies, but still have specific requirements that come in tension with restrictive state laws. Institutions can make Supremacy Clause claims to comply with Title IX mandates when these are in tension with restrictive state laws.[180] However, the merit of such argument is yet to be tested. The choice for institutions caught in the crosshairs of the tension is not straightforward, and deciding how to proceed requires a risk assessment. Importantly, beyond Title IX, institutions are faced with additional legal challenges.

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As both cases in point above demonstrate, the impact of a restrictive state-level policy context post-*Dobbs* is multi-faceted, wide-ranging, and far-reaching. Thus, countering some of the negative effects and creating systemic change require an institutional and multi-systemic approach.

155b50df [https://perma.cc/76GZ-AXMU]. For an analysis of these "shield laws," see David S. Cohen, Greer Donley, & Rachel Rebouché, *Abortion Shield Laws*, 2(4) Evid. 1, 1–4 (2023); *see also* Zack Wavrusa, *5 Questions You've Been Meaning to ask about Interstate Extraditions*, Tex. Dist. & Cnty. Att'ys. Ass'n. (Jan. 2022), https://www.tdcaa.com/journal/5-questions-youve-been-meaning-to-ask-about-interstate-extraditions/ [https://perma.cc/E2KN-7MXS].

[178] Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938) (holding that U.S. federal courts must apply state law in suits brought between diverse parties and that do not involve federal questions). In *Erie*, the Supreme Court established the "vertical" choice of law jurisprudence that courts should apply when dealing with conflicts of law between institutions operating at two different levels (i.e., institutional policies versus state laws).

[179] McCann, *supra* note 176, at para 2–4.

[180] U.S. Const. art. VI, cl. 2.

IV. An Institutional and Multi-Systemic Approach to Advance Educational Access for People Who Can Carry Pregnancies in a Post-*Dobbs* Era

In this Part, I offer a non-exhaustive discussion of practical recommendations educational institutions and other policy actors can adopt to address the individual and institutional burdens I analyze in the preceding Parts. Because, as the preceding Parts show, the impact of the post-*Dobbs* restrictive policy context is multi-faceted, wide-ranging, and far-reaching, the response must be multi-fold. To that end, here, I focus on two types of responses. First, in Section V.A., I discuss actions to mitigate the deleterious effects of a restrictive post-*Dobbs* policy context. I tailor the discussion to actions educational institutions can adopt. Second, in Section V.B., I discuss actions to advance reproductive justice rights by structurally changing the restrictive post-*Dobbs* law and policy context. Here, I tailor the discussion to systemic actions state and federal policy actors can take. In both Sections V.A. and V.B., I also discuss the challenges to adopting these actions and how these may be overcome. Taken together, the interaction of concerted institutional and systemic efforts can mitigate the deleterious effects of *Dobbs* and transform and recreate lasting systemic structures to support people who can carry pregnancies post-*Dobbs* in the educational context.

A. Institutional Support for Students Within the Constraints of a Post-Dobbs Era

1. Advancing Comprehensive Sex Education

Working within the current constraints in a post-*Dobbs* era, K-12 educational institutions can still promote access to comprehensive sex education. Institutions should do so to the greatest extent possible, as permitted by law. To advance this goal, I offer the following suggestions.

(1) School districts should adopt policies and practices that promote access to medically accurate comprehensive sex education curriculum and non-curricular programming.

Teaching students medically accurate sex education has always been critical to support youth in learning about bodily autonomy, reproductive rights, sexuality, and healthy relationships.[181] But the post-*Dobbs* era creates an urgency for improved comprehensive sex education as a countervailing force to regressive state policies, mitigating further regression of historical gains in sex education. As such, in states where sex education is not only allowed but

[181] *The Importance of Access to Comprehensive Sex Education*, Am. Acad. Pediatrics (Feb. 15, 2024), https://www.aap.org/en/patient-care/adolescent-sexual-health/equitable-access-to-sexual-and-reproductive-health-care-for-all-youth/the-importance-of-access-to-comprehensive-sex-education [https://perma.cc/S5TL-GGJN].

required,[182] school districts must adopt comprehensive sex education that is grounded in medically accurate research.[183]

States where sex education is prohibited or may be left to the discretion of the districts (only 17 states require that sex education be medically accurate, as shown in Table 1, Rows 2–4)[184] create a grey area for school districts. In states where comprehensive sex education is prohibited or severely curtailed,[185] local districts can mitigate the harms of such legislation through district policy that counters the potential negative repercussions of such legislation.[186] This involves school district boards exercising their governing powers to purchase and adopt research-based curriculum, campaigns to increase parental opt-in participation, or, where these actions are prohibited, avoiding and refusing to adopt inaccurate curricula that presents students with erroneous information regarding bodily autonomy and reproductive rights.[187] School districts can go beyond this floor and create programming that engages families in conversations regarding sex education.[188] These efforts should involve afterschool or weekend events where experts present on the reproductive rights issues and families have an opportunity to ask questions.[189] This venue is less costly and involves building relationships with families and engaging them in school programming.[190]

The adoption and sustainability of these policies and practices is dependent on multiple factors, including legal and sociopolitical considerations. From a legal standpoint, courts mandate that schools balance parental rights with their role to educate the next generation of citizens in all K-12 decisions.[191] Districts can protect parental rights by adopting parental opt-out options to all curricular and extra-curricular programming.[192] In a similar vein, protecting religious rights under the First Amendment is critical, and schools can similarly include religious exemptions that enable families to opt-out of such programming.[193] Failing to do so could open school districts to lawsuits for violation of parental rights or religious freedom. Given the long-standing recognition by courts, these exemptions are standard in educational policies. The legal frameworks that courts have adopted over time give substantial deference

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[182] *See supra* Table 1, Section IV.A; *see also State Profiles: Oregon State Profile, Oregon's State of Sex Ed*, SIECUS, https://siecus.org/stateprofiles/oregon-state-profile-23/ [https://perma.cc/FZ8S-S3HC] (last visited Nov. 20, 2024) (detailing state legislation and metrics on required comprehensive sex education).

[183] *Sex and HIV Education, supra* note 105, at para 1.

[184] *Id.*

[185] *2023 State of Sex Education Legislative Look-Ahead, supra* note 85, at 10.

[186] Peetz, *supra* note 118, at para 20–24.

[187] *Id.*

[188] *Best Practices for Family Engagement in Sex Education Implementation, supra* note 136, at 1.

[189] *Id.*

[190] *Id.*

[191] Meyer v. Nebraska 262 US 390 (1923); *see also* Todd A. DeMitchell & Joseph J. Onosko, *A Parent's Child and the State's Future Citizen, Judicial and Legislative Responses to the Tension over the Right to Direct an Education*, 22 S. Cal. Interdisciplinary L. J. 591 (2013).

[192] *Opting Out*, Parents Defending Educ., https://defendinged.org/resources/opting-out/ [https://perma.cc/2CDA-QK2J] (last visited Sept. 16, 2024).

[193] Kyle Zinth, *Sex Education Laws in the States*, Educ. Comm'n. States (February 2007), https://www.ecs.org/clearinghouse/73/09/7309.pdf [https://perma.cc/E5WF-DAY5].

to state policymakers and local school districts to govern educational curriculum and non-curricular programming.[194]

Non-legal considerations are equally important in the feasibility of expanding access to comprehensive sex education post-*Dobbs* and involve questions of resources and capacity. School districts would need to allocate monetary resources, time, and space for faculty and staff training to enact comprehensive sex education as outlined above.[195] Unfortunately, school districts find themselves underfunded across the United States.[196] This is a major challenge to implementing any changes, because even if willing, school districts would be unable to adopt the policies and practices without funding. A deep analysis of school funding is beyond the scope of this article. However, it is important to note that since *San Antonio v. Rodriguez*[197]—which found education is not a fundamental right under the Fourteenth Amendment and consequently stalled additional funding for schools—legal challenges based on state constitutional clauses have proliferated and have had some success in the last five years.[198] Suffice it to say that a change in funding would enable school districts to use some of the resources towards improving access to comprehensive sex education.[199]

A third consideration is the sociopolitical context within which schools are located post-*Dobbs*. School politics are localized, and curricular and extracurricular changes often must go through the local school boards.[200] The practical reality in adopting the proposed action must account for the local political context.[201] Post-*Dobbs*, advocacy groups funded by right-wing groups have proliferated and, under the court-recognized principle of protecting parental rights, have pushed back against the expansion of reproductive rights in the K-12 context.[202] Some advocacy groups, such as Moms for Liberty (a right-wing conservative group with chapters nationwide), may push back against these changes. However, grounded on their state constitutional mandate to

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[194] Julie Underwood, *Under the Law: The Legal Balancing Act Over Public School Curriculum*, 100 Phi Delta Kappan 6, 74 (2019), https://kappanonline.org/legal-balancing-act-public-school-curriculum-underwood/ [https://perma.cc/22U7-D9N2].

[195] *Community Action Toolkit: A Guide to Advancing Sex Education in Your Community*, SIECUS, https://siecus.org/wp-content/uploads/2023/12/2021-Community-Action-Toolkit.pdf [https://perma.cc/ZG84-REWV] (last visited Sept. 16, 2024).

[196] Raymond Pierce, *Looming Education Funding Crisis Will Impact U.S. Students, Economy,* Forbes (Oct. 27, 2023), https://www.forbes.com/sites/raymondpierce/2023/10/27/looming-education-funding-crisis-will-impact-us-students-economy/ [https://perma.cc/H9JX-B87E].

[197] San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973); *see generally* Michael Milov-Cordoba, *School Funding Case Shows Challenges of Upholding Certain Rights in Court*, St. Ct. Rep. (June 13, 2023).

[198] *See e.g.*, *Historic Victory in Fight for Fair Funding!,* Educ. L. Ctr., https://www.elc-pa.org/historic-victory-in-the-fight-for-fair-funding [https://perma.cc/74NH-D844].

[199] *Federally Funded Sex Education: Strengthening and Expanding Evidence-Based Programs*, Guttmacher Inst. (June 2021), https://www.guttmacher.org/fact-sheet/sex-education [https://perma.cc/T76R-3YKJ].

[200] *Divisive Politics are Harming Schools, District Leaders Say*, Educ. Week (Jan. 26, 2023), https://www.edweek.org/leadership/divisive-politics-are-harming-schools-district-leaders-say/2023/01 [https://perma.cc/L9VP-8VUZ].

[201] *Id.*

[202] Cassie Miller & Rachel Fugardi, *Executive Summary: The Anti-Abortion Movement's Extremist Playbook*. S. Poverty L. Ctr. (June 13, 2024), https://www.splcenter.org/anti-abortion-movement/executive-summary [https://perma.cc/3BJA-5GEU].

educate students, schools should support families who are in support of comprehensive sex education to similarly engage in the school district policymaking process, by for example, actively demystifying the process and reminding families of the events.[203] Fostering family and community engagement leads to greater parental buy-in of school policies and changes.[204]

(2) School districts should create health centers or other dedicated spaces where students can access reproductive health care or education.

More structurally, where permitted by state law, school districts should create health centers or dedicated spaces where students can seek reproductive care, including access to information regarding reproductive rights, birth control choices, and a list of reproductive care providers outside of school.[205] Health care centers on K-12 campuses are not common[206] but do exist and research shows that they can offer youth reproductive health advise and others services, including access to sexually transmitted infections (STI) testing or contraceptives.[207] As such, they can play a pivotal role in countering the hostile sociopolitical context surrounding reproductive rights post-*Dobbs* and promote access to reproductive education at a time where such education is becoming restricted by state law.

Health centers compared to curricular or non-curricular programming have additional regulatory considerations that make their adoption more challenging.[208] School boards would need to decide the scope of support and

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[203] *Community Action Toolkit*, *supra* note 195, at 23.

[204] *Id*.

[205] Boonstra, *supra* note 93, at 22. For examples of school-based health centers, see *San Lorenza High School-Based Health Center*, La Clínica, https://laclinica.org/location/san-lorenzo-high-school-based-health-center/ [https://perma.cc/JBD5-XM6E] (last visited Nov. 20, 2024); *Health Center*, Evanston Township High School, https://www.eths.k12.il.us/domain/203 [https://perma.cc/4MF9-GBZK] (last visited Nov. 20, 2024); *Commonwealth of Massachusetts School-Based Health Center Program 2021-2022 Annual Report*, Commw. of Mass. Dept. of Pub. Health (2022), https://www.mass.gov/doc/annual-report-1/download [https://perma.cc/HD65-RLFL].

[206] Madeline Will, *For Condoms and Contraceptives for Teens, Most Schools Are Not a Source*, Educ. Week (June 23, 2023), https://www.edweek.org/leadership/for-condoms-and-contraceptives-for-teens-most-schools-are-not-a-source/2023/06 [https://perma.cc/8MLC-R6K4] (discussing the availability of school health care services).

[207] Amanda J. Mason-Jones, Carolyn Crisp, Mariette Momberg, Joy Koech, Petra De Koker, & Cathy Mathews, *A Systematic Review of the Role of School-Based Healthcare in Adolescent Sexual, Reproductive, and Mental Health*, 1 Syst. Rev. 1, 2 (2012), https://doi.org/10.1186/2046-4053-1-49 [https://perma.cc/CMG3-66HE]; Joy Sotolongo, L. Duane House, Sally Swanson, & Sarah E. H. Davis, *Integrated Community Strategies for Linking Youth to Adolescent Reproductive Health Services: A Case Study*, 60 J. Adolescent Health S45 (2017), https://doi.org/10.1016/j.jadohealth.2016.11.026 [https://perma.cc/W6F3-RLWC]. Sang Leng Trieu, Divya Shenoy, Camillia K. Lui, & Catherine Hayes, *Increasing Reproductive Health Services Through Family PACT Participation Among California Community College Student Health Centers*, 71 J. Am. Coll. Health 2766 (2023), https://doi.org/10.1080/07448481.2021.1996370 [https://perma.cc/VM2Z-PRP7]; Christopher M. Fisher, Michael Reece, Eric Wright, Brian Dodge, Catherine Sherwood-Laughlin, & Kathleen Baldwin, *The Role of Community-Based Organizations in Adolescent Sexual Health Promotion*, 13 Health Promotion Prac., 544 (2012); *Meeting the Sexual and Reproductive Health Needs of Adolescents in School-Based Health Centers*, Guttmacher Inst., (2015), https://www.guttmacher.org/gpr/2015/04/meeting-sexual-and-reproductive-health-needs-adolescents-school-based-health-centers [https://perma.cc/UAB8-EZZ7].

[208] Boonstra, *supra* note 93, at 23.

services regarding reproductive rights to offer students. For instance, employing medical staff involves navigating potential patient privacy matters and, because K-12 students are typically minors, parental rights.[209] This intersection of support for students and parental rights has recently led to legal challenges grounded on parental rights claims.[210] For instance, most recently, a Texas court ruled that teens may not receive contraceptives (as previously allowed through Title X) without parental consent.[211] Schools in Texas will be unable to provide access to contraceptives. Schools in other states with similar state laws can continue to offer contraceptives but should be aware that their practices could be similarly challenged as people challenged them in Texas courts.

Given the complexity of establishing these centers and their sustainability, this proposal to create centers or dedicated spaces is more costly than the preceding proposal. Thus, school funding is a greater challenge for school districts interested in establishing centers. Given the constraints set by the current funding litigation landscape as described in the preceding proposal,[212] a better approach for interested school districts who do not have additional funding can involve school districts reallocating resources to fund these efforts. As all school funding matters often are, reallocating resources would likely be highly politicized but within the purview of school district governance. Placing this topic on the school board meeting agenda and discussing it as a community is important, and having families present is important for a meaningful discussion to take place.[213] Again, the localized nature of school governance will dictate whether these proposals would advance and if the community would be on board with identifying additional funding or reallocating funds.[214] Schools should consider active campaigns to increase awareness of school board meetings when these discussions take place to maximize attendance.

(3) Schools should actively partner with community health care providers.

Educational institutions that do not have on-site health centers can still support students by referring students to reproductive health care providers in the community.[215] Research shows that these types of partnerships between

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[209] *Id.*

[210] *See generally* Vivian E. Hamilton, *The Conflict over Parents' Rights*, Nat'l. Educ. Pol'y. Ctr. (Jan. 2024) (discussing recent developments in case law surrounding parental rights in education-related cases).

[211] Eleanor Klibanoff & Sneha Dey, *Texas Family Planning Clinics Require Parental Consent for Birth Control Following Court Ruling*, Tex. Trib. (Jan. 3, 2023), https://www.texastribune.org/2023/01/03/title-x-federal-court-ruling-birth-control/ [https://perma.cc/8FYR-UQLN].

[212] *See, e.g.*, Raymond Pierce, *Looming Education Funding Crisis Will Impact U.S. Students, Economy,* Forbes (Oct. 27, 2023), https://www.forbes.com/sites/raymondpierce/2023/10/27/looming-education-funding-crisis-will-impact-us-students-economy/ [https://perma.cc/SMJ4-CE4W].

[213] *Community Action Toolkit*, *supra* note 195, at 21-26.

[214] *See, e.g.*, Vladimir Kogan, Stéphane Lavertu, & Zachary Peskowitz, *Who Governs Our Public Schools?*, Brookings (Feb. 17, 2021), https://www.brookings.edu/articles/who-governs-our-public-schools/ [https://perma.cc/4V39-JAKL] (offering an example of the disparate impact of localized governance on funding for students).

[215] *What Works in Schools: Sexual Health Services*, Ctrs. Disease Control (Apr. 11, 2023); *see*, *e.g.*, *Independent Contract Agreement: Planned Parenthood Mar Monte*, Hayward Unified Sch. Dist., https://simbli.eboardsolutions.com/Meetings/Attachment.aspx?S=36030212&

educational institutions and community health care providers can have a positive impact on students.[216] Moreover, the Centers for Disease Control (CDC) recommend that schools have on-site sexual health services or develop strong relationships with community organizations and centers to build a referral list.[217] By building strong relationships with community health care providers, educational institutions can develop a list of partners whose information they can readily share with students who can carry pregnancies. Institutional-community trust building can facilitate these services for students.

(4) Schools should actively support student groups advancing reproductive justice.

School student groups and organizations are an undervalued resource in advancing reproductive justice.[218] These groups, led by students interested in reproductive justice, can be a key lever post-*Dobbs*, offering students a community of peers with whom to discuss reproductive issues, actively promoting education on reproductive justice, and hosting expert guest speakers on reproductive justice matters. Affinity groups, such as these, often have school oversight. While affinity groups are prevalent across educational institutions nationwide, some have challenged their legality. For example, in higher education, some have argued that the existence of LGBTQ+ affinity groups in faith-based institutions is unlawful because such groups run counter to the religious principles of the institutions.[219] Other student groups in higher education have faced backlash not because of the identities that bind them together, but because of their activities, e.g., inviting controversial speakers on campus. Groups inviting controversial speakers on campus raise First Amendment questions, including whether universities have a right to ban certain speakers on campus when student groups invite them.[220]

In the K-12 context, we have seen fewer legal challenges to these student groups. For instance, some have argued that affinity groups based on race are discriminatory.[221] However, the Biden Administration issued guidance that clarified that opening up these student groups to everyone is an important

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AID=477611&MID=20012 [https://perma.cc/343S-83UF] (Apr. 26, 2023); *Clinic Services Agreement*, Los Angeles Unified Sch. Dist. (June 19, 2019), https://defendinged.org/wp-content/uploads/2024/02/Planned-Parenthood-LAUSD-CA-2019.pdf [https://perma.cc/DDN9-JW5M].

[216] Habel et al., *supra* note 129, at 267.

[217] *What Works in Schools*, *supra* note 215.

[218] Caitlin Panarella, *A Thank-You to Reproductive Justice Student Groups*, Nat'l. Women's L. Ctr. (June 29, 2018), https://nwlc.org/a-thank-you-to-reproductive-justice-student-groups/ [https://perma.cc/4SRE-KKJB].

[219] Shannon P. Minter, *LGBTQ Students at Religious Educational Institutions*, Amer. Bar Assoc. (July 5, 2022), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/intersection-of-lgbtq-rights-and-religious-freedom/lgbtq-students-at-religious-educational-institutions/ [https://perma.cc/YGN3-LQGL].

[220] *Speech on Campus*, ACLU (Dec. 18, 2023), https://www.aclu.org/documents/speech-campus [https://perma.cc/B256-XL2U].

[221] *Affinity Groups*, Parents Defending Educ. https://defendinged.org/resources/affinity-groups/ [https://perma.cc/N7CD-5DKN] (last visited Sept. 23, 2024).

key aspect that makes them legally-permissible.[222] Thus, in advising students interested in creating student groups or organizations focused on reproductive rights, schools should ensure that the groups are open to all students who want to join regardless of sex, gender, or sexual orientation. K-12 schools have faced fewer challenges regarding controversial speakers. This may be due to the significant school oversight over the operations of K-12 student groups. However, the local sociopolitical context remains relevant and may lead to certain controversial speakers facing backlash. Oftentimes, guest speakers are successfully challenged not based on legal principles, but instead on the basis of politics and public opinion.[223] This is a minefield that K-12 student groups inviting speakers presenting on reproductive justice must navigate.

A novel consideration in states with restrictive 'aiding and abetting' laws is the possibility that people may allege that schools are 'aiding and abetting' students when allowing them to create these student groups that focus on reproductive justice. However, by opening student groups to everyone and allowing students to lead and explore reproductive justice topics with an open mind, schools have a strong argument that they are not 'aiding and abetting' students to engage in abortion or other prohibited behavior. Rather, schools are acting according to their purpose: engaging students in critical thinking and furthering their education.

2. Expanding Reproductive Rights Amidst Tensions Between Title IX and State Law

As discussed above, the 2024 Title IX regulations offer institutions significant discretion in compliance.[224] Courts have also historically afforded institutions significant discretion to make decisions about institutional policies and practices that align with their missions and values.[225] This context offers higher education institutions an opportunity to creatively support people who can carry pregnancies when Title IX is in tension with state law. Institutions should leverage their discretion to push back against the regression of

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[222] Catherine E. Lhamon, *Dear Colleague Letter: Race and School Programming*, U.S. Dep't Educ. Off. C.R. (Aug. 24, 2023), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-20230824.pdf ("This guidance clarifies that a school-sponsored or recognized group or program with a special emphasis on race, such as student club or mentorship opportunity, that is open to all students, typically would not violate Title VI simply because of its race-related theme."); *see also* Libby Stanford, *Race-Based Affinity Groups Should Be Open to All Students, Biden Admin. Tells Schools*, Educ. Week (Aug. 29, 2023), https://www.edweek.org/leadership/race-based-affinity-groups-should-be-open-to-all-students-biden-admin-tells-schools/2023/08 [https://perma.cc/WLX9-SVFV].

[223] *Speech on Campus*, *supra* note 220.

[224] *See supra* Section III.B.

[225] Bd. of Curators, Univ. of Mo. v. Horowitz, 435 U.S. 78 (1978); Regents of the Univ. of Mich. v. Ewing, 474 U.S. 214 (1985; *see also* Barbara A. Lee, *Judicial Deference to Academic Decisions: Evolution of a Controversial Doctrine*, 47 J. of Col. & Univ. L. 93, 143 (2022); Raquel Muñiz & Nate Hutcherson, *The Power of Research Evidence Use in Times of Crisis: How the Klaassen v. Indiana University Court Used Extra-Legal Sources to Ground Litigants in Social Realities*, 399 Educ. L. Rep. 435 (2022).

reproductive rights post-*Dobbs*. Aligned with this goal, I offer institutions the following suggestions.

(1) Higher education institutions should engage in values-centric risk assessment.

The most critical first step for institutions deciding how to address Title IX and state law tensions is to engage in a values-centric risk assessment to identify solutions that align with their values. Higher education institutions are grounded in the belief that they advance knowledge, learning, and societal progress.[226] They also often share a commitment to diversity, equity, inclusion, and justice, all relevant goals to reproductive justice.[227] I argue that these values committed to advancing diversity, equity, inclusion, and justice should underlie every risk assessment.

A risk assessment should involve institutional actors who are impacted by the tensions between Title IX and state law. The general counsel is a key institutional actor in these discussions, given their role in informing leaders and the legal implications of institutional leaders' decisions.[228] Institutional actors who implement the policies and practices should also be part of the conversation. These include the Title IX coordinator and other Title IX office staff. The involvement of the Title IX institutional actors is critical, because they make decisions on a case-by-case basis regarding what accommodations to offer students.[229] However, they also set general institutional policy governing the adjudication of Title IX cases.[230] Lastly, institutional actors, such as professors who must implement accommodations (such as leaves from class) and administrators (such as student affairs officers who must consider absences or leaves from a program) must be part of the conversation. Moreover, for institutions who have health centers, reproductive care providers should be a part of these discussions as well, given their potential exposure to liability.

Values-centric risk assessments should involve a candid discussion of the potential for liability. For instance, institutional actors who offer generous accommodations to students in a state where state law prohibits 'aiding and

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[226] *In Defense of Knowledge and Higher Education*, Am. Assoc. U. Professors (January 2020), https://www.aaup.org/report/defense-knowledge-and-higher-education [https://perma.cc/DLY5-KBNT].

[227] Tori Tinsely, *A Breakdown of DEI and Academic Freedom: Challenges and Opportunities*, Bipartisan Pol'y Ctr. (Oct. 6, 2022), https://bipartisanpolicy.org/blog/breakdown-dei-academic-freedom/ [https://perma.cc/255E-HGSZ].

[228] Maria Lewis and Raquel Muñiz, *A Call for Research on the Role of Legal Counsel in Promoting (In)Equitable Educational Policies in a Hostile Sociopolitical Climate*, Educ. Researcher 526, 526, 528 (2024); *see also* David Jesse, *Your College's Top Lawyer Have Never Been More Powerful: The General Counsel's Office Wields Tremendous Influence. Is That a Good Thing?*, The Chron. of Higher Educ. (Feb. 26, 2024), https://www.chronicle.com/article/your-colleges-top-lawyer-has-never-been-more-powerful [https://perma.cc/M5LV-GA4L].

[229] *Title IX, Final Rule*, U.S. Dep't of Educ. Off. C.R. 1, 250–55 (Apr. 19, 2024), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/t9-unofficial-final-rule-2024.pdf (detailing the role of coordinators).

[230] *Id.*

abetting' students in accessing abortions face a risk of liability.[231] Under these same broad laws, individuals in hostile, restrictive states can allege that institutional actors in progressive states 'aid and abet' students from hostile states who cross state lines to access reproductive care at, for example, institutional health centers.[232] As such, rather than mandating institutional policies in a top-down approach, a more democratically-aligned process would involve risk assessment with these institutional actors.

To be clear, the law remains unsettled in this area and any decision institutional actors take when Title IX conflicts with state law can carry a risk of liability. Ultimately, it is unlikely that a values-centric risk-assessment will yield desired outcomes for everyone involved. However, this process is important, because it promotes the agency of institutional actors, offering them the opportunity to decide their tolerance to liability exposure while focusing on advancing diversity, equity, inclusion and justice in furthering of reproductive justice.

(2) Higher education institutions should offer generous accommodations to students who can carry pregnancies.

Higher education institutions in states where Title IX/state law tensions exist should offer students who can carry pregnancies Title IX accommodations that truly support their needs. Flexibility with attendance, program modifications (e.g., time to graduation), liaison or dedicated personnel to reintegrate and mentor parenting scholars upon their return to school are some policies and practices to accommodate students.[233]

Institutions have a strong argument under the supremacy clause to offer these accommodations under Title IX, even when doing so conflicts with restrictive state law. Generally, the Supremacy Clause of the U.S. Constitution

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[231] *E.g.*, Tex. Health & Safety Code Ann. § 171.208(2) (West 2024). The 'aiding and abetting' language in this Texas law is vague and open to broad interpretation. In the context of higher education, professors suing the Biden administration over the Title IX regulations briefly mention the Texas 'aiding and abetting' prohibitions, pointing to the possibility that individuals may face legal challenges under such laws. *See* State of Texas, et al. v. The United States et al., No. 2:24-cv-00086-Z, 1, 43 (May 13, 2024), https://media.aflegal.org/wp-content/uploads/2024/05/14184442/AmendedComplaint-1.pdf [https://perma.cc/GVQ4-28ZU].

[232] For instance, consider the relevant broad language of Tex. Health & Safety Code Ann. § 171.208(2) (West 2024): "Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who: . . . (2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, . . . regardless of whether the person knew or should have known that the abortion would be performed or included in violation of this subchapter." *Id.*

[233] For K-12 examples of how institutional actors can adopt comprehensive policies and practices, see *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972*, U.S. Dep't Educ. Off. C.R. (June 2013), https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.html. For higher education examples, see *Pregnant and Parenting Student and Employee Accommodation Policy*, U. of Houston (Nov. 19, 2024), https://www.uh.edu/equal-opportunity/title-ix-sexual-misconduct/pregnant-parenting-accommodation/ [https://perma.cc/N6Z9-QKZV].; *Pregnancy Accommodations and Resources*, Ctr. Accessible Educ., https://cae.ucla.edu/students/pregnancy-accommodations-and-resources [https://perma.cc/2FTE-PVXP] (last visited Nov. 20, 2024); *see also Model Campus Policy*, The Pregnant Scholar, https://thepregnantscholar.org/model-campus-policy/ [https://thepregnantscholar.org/model-campus-policy/] (last visited Nov. 20, 2024).

notes that federal law "shall be the supreme Law of the Land."[234] Legal scholarship in this area and courts have debated when it is appropriate for state law to give way to federal law.[235] These debates are not uncommon in the antidiscrimination law context.[236] In a recent abortion care case involving conflicts between federal and state law, the court noted that "[a]t its core, the Supremacy Clause says state law must yield to federal law when it's impossible to comply with both."[237] Thus, while these preemption debates are new in the context of Title IX/state law conflicts, higher education institutions in these policy contexts are justified in claiming that they are entitled offer generous accommodations, because the supremacy clause supports their adherence to Title IX regulations.

(3) Higher education institutions should continue to operate health care centers that offer reproductive care.

Higher education institutions that operate health centers that offer reproductive care should continue to operate them. Higher education institutions are more likely to have policies and, at times, centers to support the sexual health of students.[238] This includes offering testing for STIs, as well as access to health care providers who can support people who can carry pregnancies in making informed decisions about their bodies, including abortions or contraception.[239] Post-*Dobbs*, the services that these centers offer are critical for students and in- and out-of-state visitors who can carry pregnancies.

Given the ongoing efforts of restrictive states to push back against intra- and interstate support for reproductive care[240] and the broad criminal and civil laws prohibiting people from "aiding and abetting" or otherwise offering abortion care,[241] higher education institutions that continue to operate health care centers can expect scrutiny. Prosecutors and other civilians in hostile, restrictive states might argue that the continued operation of on campus health care centers is a form of 'aiding and abetting' people who can carry pregnancies

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[234] U.S. Const. art. VI, cl. 2.

[235] For a detailed legal primer on these issues, see Jay B. Sykes & Nicole Vanatko, *Federal Preemption: A Legal Primer*, Cong. Res. Serv. (2019), https://www.everycrsreport.com/files/20190723_R45825_1014114d2e3a8ebe3f6c0dc26eef33d335dada7e.pdf [https://perma.cc/39Z3-WSNM].

[236] *E.g.*, Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 97–99 (1983).

[237] United States v. Idaho, 623 F. Supp 3d 1096, 1102 (2022).

[238] Habel et al., *supra* note 129, at 259; *see, e.g.*, Melody Gutierrez, *California Senate Bill 24 Requires Public Universities Across the State to Provide Students Access to Abortion Pills through On-Campus Health Centers*, L.A. Times (Oct. 11, 2019), https://www.latimes.com/california/story/2019-10-11/abortion-medication-california-college-health-centers-legislation [https://perma.cc/5Z5Y-BQYE].

[239] *Id.*

[240] *E.g.*, Hailey Valerio, *Crossing State Lines: Texas's Abortion Bounty-Hunter Law Implicates Those Who Assist Individuals to Get an Abortion Out-of-State, Including Employers*, Villanova L. Rev. (Nov. 10, 2023), https://www.villanovalawreview.com/post/2229-crossing-state-lines-texas-s-abortion-bounty-hunter-law-implicates-those-who-assist-individuals-to-get-an-abortion-out-of-state-including-employers [https://perma.cc/X55T-Z9JG].

[241] Tex. Health & Safety Code Ann. § 171.208(2) (West 2024) (detailing the civil liability for aiding and abetting people who seek abortion care); *id.* §§ 170A.002, 170A.004, 170A.005 (detailing criminal liability).

to abortion care. Similarly, they may also argue that institutions that operate health care centers in progressive states are either 'aiding and abetting' visitors or are infringing on their restrictive states' ability to implement their own laws by offering a safe haven to out-of-state visitors. Though their continued operation may lead to legal challenges, as of this writing, I am unaware of any lawsuit that has succeeded on these merits.

This is an open area with little guidance from the courts, as of now. Once courts dictate constraints and boundaries, institutions should follow court mandates. For now, it is important to recognize the nuance involved in these arguments. In restrictive states, institutions can argue that health care centers play a pivotal role in their university communities[242] and that institutions should merit an exemption to restrictive state laws because of their *sui generis* nature. In more permissive states, higher education institutions have an even stronger argument. These institutions and progressive states have a right to offer reproductive care under *Dobbs*,[243] and restrictive states should not infringe upon their right to do so.

(4) Higher education institutions should adopt institutional policies and practices that facilitate off-campus care.

Higher education institutions in restrictive and progressive states should adopt policies and practices that facilitate off-campus reproductive care. Facilitating off-campus care might look like providing students who can carry pregnancies transportation to nearby clinics, including for abortion care.[244] Offering off-site transportation is unlikely to face pushback within progressive states, given progressive states' continued commitment to protect and advance reproductive rights post-*Dobbs*.[245] However, similar to the challenges discussed in the preceding section, it is possible for restrictive states to challenge these practices even when adopted in progressive states,[246] e.g., if these institutions extend transportation services to out-of-state individuals who reside in restrictive states. However, institutions should not capitulate to hostile, restrictive laws. Doing so in essence imposes these states' anti-reproductive rights paradigms in progressive states and thereby undermines support for

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[242] David Skorton & Glenn Altschuler, *How College Health Centers Help Students Succeed*, Forbes (Sep. 23, 2013), https://www.forbes.com/sites/collegeprose/2013/09/23/how-college-health-centers-help-students-succeed/ [https://perma.cc/GW5R-F4GR].

[243] *See* Dobbs v. Jackson Women's Health Org., 142 S.Ct. 2228, 2240 (2022) (holding that the issue of abortion is a question for states).

[244] *See, e.g.*, *Reproductive Healthcare Access*, Williams: Student Health and Wellness Services. https://health.williams.edu/reproductive-healthcare-access/ [https://perma.cc/VMS6-8EZ6] (last visited Sept. 24, 2024); *Sexual Health Services*, Hamilton Coll., https://www.hamilton.edu/offices/healthcenter/sexual-health-services [https://perma.cc/DR5V-8V2N] (last visited Sept. 24, 2024).

[245] *See* Mollie Fairbanks, *How Governors Used Executive Orders to Protect Abortion Access in a Post-Roe United States*, Guttmacher Inst. (July 2023), https://www.guttmacher.org/2023/07/governors-eo-analysis-appendix-table [https://perma.cc/V86V-ZLPJ].

[246] *See supra* Section IV.A.1.

reproductive rights in progressive states. This indirectly undermines states' autonomy to adopt their own policies and practices.[247]

In hostile, restrictive states, facilitating off-campus reproductive care can garner legal challenges within their states, because doing so could be in direct contradiction with restrictive state laws that, for example, prohibit 'aiding and abetting' abortion care. In these instances, institutions should determine whether there are relevant state law exemptions that allow them to facilitate off-campus reproductive care. If there are no such exemptions,[248] institutions can argue that the distinct features of higher education merit an exemption to restrictive state laws. This is a plausible argument, but its viability will depend on the type of state law and whether it includes any other exemptions under within which this argument could fall. Additionally, the political context of the state and judicial ideology of the pertinent court matters. Courts are increasingly aligning with prevalent political party ideologies in their regions, leading to "red courts" and "blue courts" nationwide.[249]

A second way to facilitate off-campus care is to offer grants that fund student travel, which students can use to access reproductive care.[250] These types of grants can and should be provided under a "no questions asked" policy, to promote participation by students, preserve their privacy and confidentiality, and reduce stigma. Here, again, in states where abortion is prohibited or criminalized, funding student travel might face challenges related to, for example, 'aiding and abetting' abortion care. As such, it is key for institutions to offer these grants broadly to students who may need support for transportation across state laws. For instance, the application requirements can emphasize that the grant is a travel grant for enrolled students who need financial support to travel. This broad opportunity, similar to standard policies at higher education institutions, can be grounded on the values of the university to support equity and access for students. These types of policies offered to all students advance equity for all students who may have a financial need when traveling. It indirectly supports students' educational trajectories by removing financial barriers to accessing their education.

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[247] *See* Henry M. Hart, *The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489–542 (1954) (offering both a detailed and powerful overview of state autonomy and contrasting it to federal power).

[248] For example, neither Tex. Health & Safety Code Ann. § 171.208(2) (West 2024) nor Tex. Health & Safety Code Ann. §§ 170A.002, 170A.004, 170A.005 (West 2024) describe exemptions applicable to higher education.

[249] *See generally* Mark A. Lemley, *Red Courts, Blue Courts,* 93 Miss. L. J. 143 (2023), https://mississippilawjournal.org/journal-content/red-courts-blue-courts/ [https://perma.cc/64KG-8HAR]; *see also* Aaron Mendelson, *How Republicans Flipped America's State Supreme Courts,* Ctr. Pub. Integrity (July 24, 2023), https://publicintegrity.org/politics/high-courts-high-stakes/how-republicans-flipped-americas-state-supreme-courts/ [https://perma.cc/QE92-BL6D.

[250] For an example of an institution supporting students with funding, see Sarah Bolton, *Wooster's Commitment to Students and Reproductive Health Care*, Coll. Wooster, (June 27, 2022), https://wooster.edu/2022/06/27/woosters-commitment-to-students-and-reproductive-health-care/ [https://perma.cc/3LL4-2JRD].

(5) Higher education institutions should support student advocacy on campus.

Higher education institutions have a history of both supporting and restricting student advocacy on campus vis-à-vis controversial political topics.[251] Post *Dobbs*, there is an opportunity for higher education institutions to actively support student advocacy in support of reproductive justice. Material ways to support student advocacy can include offering space for student advocacy groups to meet and adopting policies and practices that facilitate their advocacy.[252] For instance, post-*Dobbs*, students have organized and placed contraceptive dispensing machines on campuses.[253] These are student-led efforts that institutions can support directly, by, for example, facilitating the placement of machines or funding the efforts. Other forms of supporting student advocacy for reproductive rights involves adopting policies that enable student to rally and protest on campus.[254] To be sure, in the current sociopolitical context, higher education institutions are generally adopting policies that restrict, not expand, student on-campus protests.[255] Thus, the reality remains that students are facing challenges in rallying and protesting. Moreover, faith-based institutions are within their rights to opt not to offer any support that contravenes their religious rights; for example, religiously affiliated institutions may prohibit the dispensing of contraceptives or advising students to receive an abortion.[256]

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[251] *See* Chris Linder, Stephen John Quaye, Alex C. Lange, Meg E. Evans, & Terah J. Stewart, Identity-Based Student Activism (2019); Katherine I. E. Wheatle & Felecia Comodore, *Reaching Back to Move Forward: The Historic and Contemporary Role of Student Activism in the Development and Implementation of Higher Education Policy*, 42 The Rev. of Higher Educ., 5, 35 (2019); Stephen John Quaye, Chris Linder, Terah J. Stewart & Erin M. Satterwhite, *A Review of Scholarship on College Student Activism from 2000 to 2020*, Higher Educ.: Handbook of Theory and Rsch. (2022). For a review of recent waves of student advocacy, see Jerusha O. Conner, The New Student Activists: The Rise of Neoactivism on College Campuses (2020); Michelle Limpe, *The History of Student Activism at Hopkins and Nationwide*, The Student Advocacy Mag. (Apr. 27, 2023), https://www.jhunewsletter.com/projects/the-student-advocacy-magazine/overview/the-history-of-student-activism-at-hopkins-and-nationwide [https://perma.cc/88BN-2RQH].

[252] *See, e.g.*, Teri L. Hinds, *Engage! Options for Advocacy for Student Affairs Professionals*, NASPA (Oct. 26, 2017) https://web.archive.org/web/20250113034212/https://www.naspa.org/blog/engage-options-for-advocacy-for-student-affairs-professionals [https://perma.cc/M5E7-LC5G] (offering examples for supporting student advocacy); *Reproductive Health, Rights and Justice Student Groups,* Five Coll. Consortium, https://www.fivecolleges.edu/reproductive-health-rights-and-justice-student-groups [https://perma.cc/2W6Z-L658] (last visited Nov. 20, 2024).

[253] *Student Activists Are Pushing Their Colleges to Offer More Reproductive Health Care*, GBH (2022), https://www.wgbh.org/culture/2022-09-13/student-activists-are-pushing-their-colleges-to-offer-more-reproductive-health-care [https://perma.cc/ZV6K-6SQ6] [hereinafter *Student Activists*].

[254] *E.g.*, Emily Khym, *Students, Faculty Advocate for Reproductive Care Post*-Dobbs, Yale Daily News (May 19, 2024), https://yaledailynews.com/blog/2024/05/19/students-faculty-advocate-for-reproductive-care-post-dobbs/ [https://perma.cc/JPW9-GTW9].

[255] Lisa Tolin, *In Preparing for Protests, Are Campuses Going Too Far?*, PEN Am. (August 28, 2024), https://pen.org/in-preparing-for-protests-are-campuses-going-too-far/ [https://perma.cc/5LA9-J9RK].

[256] *See Student Activists, supra* note 253 (discussing the actions student activists are taking at religiously affiliated institutions to support people who can carry pregnancies when school policies do not allow for the provision of contraceptives).

Nonetheless, supporting student advocacy in an era when reproductive rights are being actively rolled back is a signifier that critical social institutions are actively supporting students who can carry pregnancies in the current hostile sociopolitical context. These institutional efforts do not require substantial costs. Rather, they require the crafting of institutional policies that remove administrative and bureaucratic burdens for students to be able to request space to, for example, place dispensing machines or protest. Ultimately, they require a commitment to support students who can carry pregnancies.

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The discussion above shows that there is no one particular policy or practice that addresses the issues facing students who can carry pregnancies post-*Dobbs*. There are a myriad of legal challenges and sociopolitical issues to consider when choosing to adopt any one policy or practice. The constraints post-*Dobbs* are significant. A compilation of policies and practices are critical to mitigate the oppressive effects a restrictive post-*Dobbs* policy context. However, this moment in time also calls for a reshaping of the current structural status quo regarding reproductive rights.

B. Advancing Multi-Systemic Change in a Post-Dobbs Era

Beyond efforts to mitigate the deleterious effects of a restrictive post-*Dobbs* policy context, it is important to briefly underscore efforts to create lasting, systemic change that impacts both K-12 and higher educational contexts. Thus, in reimagining a more just society, in this section, I argue that state and federal policy actors have a role to play in advancing multi-systemic change.[257] Their efforts should be informed by research, including educational research, given its scope and focus.[258] I propose the following actions as a way to transform the system in support of reproductive justice. These are non-exhaustive but offer a starting point of inquiry.

(1) State legislatures should codify comprehensive sex education and the right to reproductive autonomy.

State legislature should codify medically accurate comprehensive sex education in K-12. The call to adopt such legislation is decades-long.[259] But, the post-*Dobbs* era underscores the urgency to adopt such legislation as a way to directly mitigate the negative effects of the restrictive post-*Dobbs* policy

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[257] *See* Nancy F. Berglas, Nicole E. Johns, Caroline Rosenzweig, Lauren A. Hunter, Sarah C. M. Roberts, *State and Local Health Department Activities Related to Abortion: A Web Site Content Analysis*, 24 J. Public Health Manag. Pract. 255, 261-62 (2018) (offering general research underscoring the need for multi-systemic approaches and an understanding of specific systemic approaches related to abortion activities at the local and state levels).

[258] Raquel Muñiz, *The Need for Educational Research Engagement with Courts, Public Policy, and Practice in a Post-*Dobbs *Era*, Educ. Researcher 59, 61-62 (2024).

[259] *See 2022 Sex Ed State Legislative Mid-Year Report*, SIECUS (July 2022), https://siecus.org/wp-content/uploads/2023/12/2022-Mid-Year-Report-1.pdf [https://perma.cc/5YVP-98JP].

context. Adopting such legislation would expand the knowledge of students regarding their bodies, sexuality, and reproductive justice matters at a time where this type of knowledge is restricted.[260] Codifying comprehensive sex education is important in both restrictive and more expansive states. Including this issue in the legislative agenda, moving it through relevant committees, and passing it into law should be a priority for education committees in state legislatures.

State legislatures are also well-positioned to create long-lasting change by codifying reproductive rights, including a right to an abortion.[261] These laws should recognize that people who can carry pregnancies have a right to abortion access, outline whether and how the right is limited as the gestational period progresses, and explicitly enumerate any exceptions to these rules.[262] This legislative action is a possibility in progressive states, and some states have already mobilized to make these changes. These states, including California, Michigan, and Vermont, offer various models that other states may adapt and adopt.[263]

On the other hand, codifying reproductive rights is a near impossibility in restrictive states, because the politics surrounding reproductive rights in these states are the very politics that have led to the hostile, restrictive laws at issue. One chief viable manner to change this would be to elect representatives that are pro-reproductive rights through the democratic election process, leading to different legislative majorities. However, disenfranchisement through gerrymandering is so common in restrictive states[264] such that even popular views, including support for reproductive rights, fail to yield meaningful policies in response.[265] The Supreme Court facilitated disenfranchisement through their gutting of the Voting Rights Act in 2013[266] and most recently further enabled racial gerrymandering by sanctioning political gerrymandering in *Alexander*.[267] Nonetheless, the political pressure of people should not

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[260] *Sex Education Laws and State Attacks, supra* note 108.

[261] *See, e.g.*, Cal. Const. Art. I, §§ 1, 1.7, & 7; Mich. Const., Article I, Section 28; Vt. Const., Chapter I, Article 22, Title 18 V.S.A Chapter 223, §§ 9493–94, 9496–98.

[262] *See State Bans on Abortion Throughout Pregnancy*, Guttmacher Inst. (July 29, 2024) (showing the landscape of abortion access and where state abortion policies differ by gestational duration), https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans [https://perma.cc/3FSM-CH4V].

[263] *Id.*

[264] *See* Brandi Blessett, *Disenfranchisement: Historical Underpinnings and Contemporary Manifestations,* Pub. Admin. Q. 39(1), 3–50 (2015); Shannon Portillo, Domonic Bearfield, & Norma M. Riccucci, *The Disenfranchisement of Voters of Color: Redux,* Pub. Integrity 23, 111–28 (2021); Paru Shah & Robert S. Smith, *Legacies of Segregation and Disenfranchisement: The Road from* Plessy *to* Frank *and Voter ID Laws in the United States,* 7(1) Russell Sage Found. J. Soc. Sci., 7(1) 134 (2021).

[265] Alyssa L. Basmajian, *Reproductive Gerrymandering, Bureaucratic Violence, and the Erosion of Abortion Access in the United States,* 38(2) Medical Anthropology Q. 179 (2024). For other examples of how disenfranchisement leads to non-representative legislatures, see Alex Tausanovitch, Chelsea Parsons, & Rukmani Bhatia, *How Partisan Gerrymandering Prevents Legislative Action on Gun Violence*, Ctr. Am. Progress (2019), https://www.americanprogress.org/article/partisan-gerrymandering-prevents-legislative-action-gun-violence/ [https://perma.cc/AD86-3688].

[266] Shelby County v. Holder, 570 U.S. 529 (2013).

[267] Alexander v. S.C. State Conf. of the NAACP, 602 US 1 (2024).

be underestimated and can place sufficient pressure to adopt changes that recognize reproductive autonomy.[268] This pressure may involve individuals organizing to canvas and call political office representatives to voice their policy preferences.[269]

(2) State legislatures should recognize educational exemptions to restrictive reproductive laws.

State legislators should recognize educational exemptions to restrictive reproductive laws. Grounded on educational institutions' duty to educate children, in K-12 these legislative exemptions could explicitly enable K-12 schools to adopt comprehensive sex education when it is in tension with restrictive laws. In higher education, state legislators should advance exemptions that enable institutions on campus to provide accommodations aligned with Title IX, as well as the continual operation of health care centers that offer reproductive care for in-state and out-of-state individuals.

Legal debates surrounding emergency reproductive care in hostile, restrictive states under the Emergency Medical Treatment and Active Labor Act (EMTALA) offer guidance as to how to establish possible exemptions.[270] This federal law requires hospitals that receive federal aid to offer emergency care, including abortion care.[271] Given this federal mandate, EMTALA creates an exemption to restrictive state abortion bans such that people who can carry pregnancies in hostile states can still access emergency health care, including abortion care. This tension between restrictive state laws and EMTALA led to a legal battle when the federal government sought to explicitly carve out an exemption to an Idaho anti-abortion, restrictive law. The U.S. Supreme Court declined to weigh on the merits of this case during its 2024 term, ruling that the parties who brought the claim lacked standing.[272] However, the Court did leave an injunction in place, enabling people who can carry pregnancies to continue to access emergency care, including abortion, in Idaho.[273] To be sure, it is possible that new plaintiffs whom the Court deems to have proper standing will emerge and that the Court ultimately finds that no such exemptions exist. However, such a case would have to make its way through the federal court system. As of this writing, an argument for this type of exemption to restrictive state laws has merit. The Title IX context is analogous inasmuch as the federal law mandates that federal funding may not be used for what it deems discriminatory policies and practices, including those arguably mandated by restrictive state laws.

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[268] For a review of the influence of social movements on political processes, see Edwin Amenta, Neal Caren, Elizabeth Chiarello, & Yang Su, *The Political Consequences of Social Movements*, Ann. Rev. Socio., 36, 287–307 (2010).

[269] *E.g.*, *Take Action with Yes on 4 Florida,* Yes on 4, https://www.mobilize.us/yes4florida/ [https://www.mobilize.us/yes4florida/] (last visited Oct. 1, 2024).

[270] 42 U.S.C. § 1395dd.

[271] *Id.*

[272] Moyle v. United States, 603 U.S. 324 (2024).

[273] *Id.*

(3) State supreme courts should recognize a fundamental right to abortion in their state constitutions.

State supreme courts hold the greatest autonomy in interpreting their respective state constitutions.[274] It is within their purview to interpret their state constitutions to protect an unenumerated right to reproductive bodily autonomy, including a right to an abortion.[275] This approach is similar to the U.S. Supreme Court's approach in *Roe*, prior to *Dobbs*.[276] State arguments can similarly be grounded on right to privacy that protects individuals' ability to make decisions about their reproductive systems. To further safeguard reproductive rights, state legislatures can introduce and adopt constitutional amendments to enumerate reproductive rights.[277] Enumerating the right explicitly offers state courts concrete language regarding the protection of bodily autonomy and removes room for more conservative courts to not recognize reproductive rights, because they are not enumerated in their state constitution.

Enumerating the reproductive rights to protect them from further dilution is a possibility even in hostile, restrictive states. For instance, Floridians organized to amend their state constitution to include a clause that protects the constitutional right to bodily autonomy.[278] The grassroots organization in this restrictive state highlights the power that collective advocacy can have.[279] Given its germane role to interpret the law, the Florida Supreme Court played a pivotal role in shaping the movement. The state's highest court allowed the measure to move forward after the measure was challenged.[280] The measure appeared on the next election ballot, and the people voted on whether to adopt

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[274] *See* G. Alan Tarr, Understanding State Constitutions (1998); Paul Brace & Brent D. Boyea, *State Supreme Courts, State Constitutions and Civil Litigation*, 73 Alb. L. Rev. 1441 (2010); Jerry Dickinson, *The U.S. Supreme Court's History of Adopting State Supreme Court Guidan*ce, St. Ct. Rep., para 1 (Feb. 12, 2024), https://statecourtreport.org/our-work/analysis-opinion/us-supreme-courts-history-adopting-state-supreme-court-guidance [https://perma.cc/Q33K-U94M].

[275] *E.g.*, Hodes & Nauser v. Schmidt, 440 P.3d 461 (Kan. 2019); Gainesville Woman Care LLC v. State, 210 So.3d 1243, 1251 (Fla. 2017); Planned Parenthood League of Massachusetts, Inc. v. Att'y Gen., 677 N.E.2d 101 (Mass. 1997). For a list of abortion rights organized by state, see *State Constitutions and Abortion Rights*, Ctr. Reprod. Rts. (July 2022), https://reproductiverights.org/wp-content/uploads/2022/07/State-Constitutions-Report-July-2022.pdf [https://perma.cc/6JNQ-TPRN].

[276] Roe v. Wade, 410 U.S. 113 (1973) (recognizing a right to abortion under a right to privacy).

[277] Elizabeth Nash & Isabel Guarnieri, *Eight Ways State Policymakers Can Protect and Expand Abortion Rights and Access in 2023*, Guttmacher Inst. (Jan. 12, 2023), https://www.guttmacher.org/2023/01/eight-ways-state-policymakers-can-protect-and-expand-abortion-rights-and-access-2023 [https://perma.cc/XS5N-YF6Y].

[278] Adam Edelman, *Florida Abortion Rights Groups Collect Enough Signatures to Advance 2024 Ballot Measure*, NBC News (Jan. 5, 2024), https://www.nbcnews.com/politics/florida-abortion-ballot-measure-2024-constitution-rcna129771 [https://perma.cc/WEW8-8EC3].

[279] *Id.*

[280] Adam Edelman, *Florida Supreme Court Allows 6-Week Abortion Ban to Take Effect, but Voters Will Have the Final Say*, NBC News (Apr. 1, 2024), https://www.nbcnews.com/politics/florida-supreme-court-abortion-rights-ballot-measure-rcna142568 [https://perma.cc/CT9Z-9YAY].

or reject the constitutional amendment. [281] Advocacy groups behind the measure include civil rights advocates such as the American Civil Liberties Union (ACLU).[282] Though the state constitutional amendment received about 57% support, the state did not adopt it, because the amendment required 60% of the vote to pass.[283] Still, the movement underscores the power of political organization and the possibility to adopt reproductive rights even in hostile states.

(4) Prosecutors should exercise favorable prosecutorial discretion in states where reproductive rights are criminalized.

Prosecutorial discretion is the exercise of discretion to prosecute or not prosecute a case and is germane to the work of prosecutors given the finite resources with which they must carry out their work.[284] In the post-*Dobbs* context, prosecutorial discretion is relevant when state laws authorize the criminalization of people who can carry pregnancies in accessing reproductive care.[285] People who can carry pregnancies and who are attending college are uniquely positioned for favorable prosecutorial discretion. To be clear, I do not imply that people who can carry pregnancies but are not students do not merit favorable prosecutorial discretion. However, for purposes of this article, I focus specifically on those who are attending educational institutions. Thus, I do not position them as meriting favorable prosecutorial discretion because they are distinct from other people who can carry pregnancies but rather as meriting favorable prosecutorial discretion given their unique circumstances.

People who can carry pregnancies in education often do not present an ongoing threat that requires immediate detention and prosecution. They often have ties to the communities, including communities they have created in their educational contexts, and are often seeking to complete their education to secure future socioeconomic advancement.[286] Conversely, detention and prosecution in such cases threatens to cause a significant disruption to the

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[281] *Florida Amendment 4, Right to Abortion Initiative (2024)*, Ballotpedia, https://ballotpedia.org/Florida_Amendment_4,_Right_to_Abortion_Initiative_(2024) [https://perma.cc/6344-UF4D] (last visited Sept. 18, 2024).

[282] *2024 Election Voter Guide: Florida's Constitutional Amendments*, ACLU, https://www.aclufl.org/en/2024-election-voter-guide-floridas-constitutional-amendments [https://perma.cc/ZP3G-ZAKP] (last visited Oct. 1, 2024).

[283] Florida Amendment 4, *supra* note 281.

[284] McCann, *supra* note 176, at para 2–4.

[285] *See Confronting Pregnancy Criminalization*, Pregnancy Just. (July 2022) (providing guidance to prosecutors on exercising their discretion to investigate and charge people who can carry pregnancies for abortion-related crimes), https://www.pregnancyjusticeus.org/wp-content/uploads/2023/09/1.Confronting-Pregnancy-Criminalization_6.22.23.pdf [https://perma.cc/8Z69-PC5M]. For general discussions regarding prosecutorial discretion in the context of post-*Dobbs*, see Alejandra Caraballo, Cynthia Conti-Cook, Yveka Pierre, Michelle McGrath, & Hillary Aarons, *Extraditions in Post-*Roe *America,* 26 CUNY L. Rev. 1 (2023); David A. Lord, *In Defense of the Juggernaut: The Ethical and Constitutional Argument for Prosecutorial Discretion,* 31 Am. U. J. Gender Soc. Pol'y & Law. 141 (2023); *see generally* Jolynn Dellinger & Stephanie Pell, *Bodies of Evidence: The Criminalization of Abortion and Surveillance of Women in a Post-*Dobbs *World*, 19 Duke J. Const. Law & Pub. Pol'y 1 (2024).

[286] *See supra* Part II.

lives of people who can carry pregnancies.[287] In sum, given limited resources, the lack of threat, and risk of significant life disruptions, prosecutors should not prioritize the criminalization of people who can carry pregnancies.

(5) Governors should set statewide agenda that recognizes reproductive autonomy and pressures state legislatures to codify bodily autonomy.

State governors are uniquely positioned to galvanize political will and interest around reproductive rights as a policy issue, one of differing values and competing interests.[288] They can bring this issue to the fore by discussing it as a top priority in their administration and explicitly naming reproductive rights as core to their agendas.[289] By explicitly calling attention to reproductive rights and the status of reproductive rights in their respective states, governors signal to their constituents that safeguarding reproductive rights is an important issue that deserves attention and state policy action.[290] Shining the spotlight on reproductive rights and the need to protect them ensures that the issue remains in the public discourse and can lead to additional pressures on state legislatures to pass laws that protect reproductive rights.[291]

This messaging can have the greatest effects in divided governments and can create pressure on the progressive legislatures that have not passed laws that directly protect reproductive rights. As of this writing, Arizona, Kansas, North Carolina, Kentucky, Wisconsin, and Pennsylvania all held divided government with a governor who was democratic and legislatures where at least one part of the legislature was republican.[292] Moreover, sixteen states had both a democratic governor and legislature.[293] This key messaging can be most impactful in these states.

(6) The federal government should advance reproductive justice through its limited, but important, role.

Because *Dobbs* created a states-rights scheme to abortion rights, the conversation regarding reproductive rights has largely focused on state-level

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[287] McCann, *supra* note 176.

[288] *See ICYMI: Governors Hold Inaugural Convening of the Reproductive Freedom Alliance, Vow to Continue to Strengthen and Expand Abortion Care*, NY St. (July 25, 2023), https://www.governor.ny.gov/news/icymi-governors-hold-inaugural-convening-reproductive-freedom-alliance-vow-continue-strengthen [https://perma.cc/4B7L-LXME] (highlighting a coalition of governors who have committed to protecting and expanding reproductive rights in their states).

[289] *See* Mollie Fairbanks, *How Governors Used Executive Orders to Protect Abortion Access in a Post-Roe United States*, Guttmacher Inst. (July 20, 2023) (describing actions state governors took to respond to *Dobbs* through executive action).

[290] *ICYMI: Governors Hold Inaugural Convening*, *supra* note 288.

[291] For discussions on the power governors can have on legislative matters, see Being Governor: The View from the Office (Thad L. Beyle & Lynn R. Muchmore eds., 1983.); Margaret Robertson Ferguson, *Chief Executive Success in the Legislative Arena*, 3 St. Pol. & Pol'y. Q. 158–182 (2003); Politics in the American States (Virginia Gray, Russell L. Hanson, & Thad Kousser eds., 2018.).

[292] *2024 State & Legislative Partisan Composition*, Nat'l. Conf. of St. Legs. (Aug. 2, 2024), https://documents.ncsl.org/wwwncsl/About-State-Legislatures/Legis-Control-2024-8-1-24.pdf [https://perma.cc/9GM6-G3H9].

[293] *Id.*

action. Also, tangible political barriers and limitations to creating federal-level change continue to exist. Reproductive rights have historically been politicized,[294] such that protecting reproductive rights remains a polarized issue with a lack of meaningful federal policies.[295] And most bills introduced in congress rarely pass in the modern legislative state.[296]

Nonetheless, consider the significant weight presidential administrations have in reshaping reproductive rights and protections through policy and court appointments. For instance, Title IX governance has evolved overtime as different administrations have come into power.[297] The Obama administration governed this area mainly through policy guidance.[298] The Trump administration rescinded Obama's policy guidance[299] and created more lasting, durable change by revising Title IX regulations.[300] And most recently, Biden reissued revised Title IX regulations.[301] Presidents also nominate and thereby play a key role in shaping the makeup of the U.S. Supreme Court. Trump appointed three extremely conservative Justices that have directly narrowed and reshaped reproductive rights ruling after ruling: overturning *Roe*,[302] ruling on the EMTALA case,[303] and overturning *Chevron* in *Loper*.[304] *Chevron* doctrine presented a two-step framework through which courts would (1) determine if a statute was ambiguous, and (2) if, and only if, it was ambiguous, they would defer to an agency's interpretation.[305] *Chevron*, in many ways, organized the current administrative state and general functioning of the federal

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[294] Rickie Solinger, *Politics of Reproductive Rights in 20th-Century America*, Oxford Rsch. Encyclopedias, Am. Hist. 1, 3–20 (2017).

[295] In fact, the opposite has taken place: "Since 2010, when the Tea Party claimed victory in Congressional elections, the number of abortion restrictions passed and enacted has increased substantially." Lisa C. Ikemoto, *Reproductive Rights and Justice: A Multiple Feminist Theories Account*, *in* Rsch. Handbook on Feminist Juris. 1–22, 14 (Robin West and Cynthia Bowman eds., 2019).; *see also* Marjorie J. Spruill, *Gender Roles, Women's Rights, and the Polarization of American Politics in the Late 20th Century,* Oxford Rsch. Encyclopedias, Am. Hist. 1 (2019) (mapping the increasing polarization of women's rights across decades).

[296] *Statistics and Historical Comparison*, GovTrack, https://www.govtrack.us/congress/bills/statistics [https://perma.cc/2EQH-GNVD] (last visited July 11, 2024).

[297] R. Shep Melnick, The Transformation of Title IX: Regulating Gender Equality in Education (2018).

[298] *Id.* at 4–5; *see also Dear Colleague Letter: Sexual Violence*, U.S. Dep't. Educ. Off. C.R. (April 4, 2011), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html; *Questions and Answers on Title IX and Sexual Violence*, U.S. Dep't. Educ. Off. C.R. (April 29, 2014), https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf; *Dear Colleague Letter on Transgender Students*, U.S. Dep't. Just. C.R. Division & U.S. Dep't. Educ. Off. C.R. (May 13, 2016), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf.

[299] *Dear Colleague Letter*, U.S. Dep't. Just. C.R. Division & U.S. Dep't. Educ. Off. C.R. (Feb. 22, 2017), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf; *Dear Colleague Letter*, U.S. Dep't Educ. Off. C.R., (Sept. 17, 2017), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf.

[300] *U.S. Department of Education Title IX Final Rule Overview, Guiding Principles*, U.S. Dep't. Educ. (May 2020), https://www2.ed.gov/about/offices/list/ocr/docs/titleix-overview.pdf.

[301] *Title IX Final Rule*, U.S. Dep't. Educ. (2024), https://www2.ed.gov/about/offices/list/ocr/docs/t9-unofficial-final-rule-2024.pdf.

[302] Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022).

[303] Moyle v. United States, 603 U.S. 324 (2024).

[304] Loper Bright Enters. v. Raimondo, 603 U.S. 369, (2024).

[305] *Id.* at 379–80.

government.[306] As it relates to Title IX, *Loper* will have implications for the application of Title IX, because the text of Title IX is concise, with much ambiguity, merely prohibiting discrimination based on sex. Administrations have come to give it life through regulations and policy,[307] but post-*Loper*, it is unclear how much judicial deference these regulations and policy will have. Nonetheless, the power of the role of the federal government should not be understated.

There are important actions the federal government can take to advance reproductive rights because of the sphere of influence federal policy actors occupy. The federal government has a role to play in legal cases when federal law is involved, including Title IX. When appropriate they can join as parties in contested legal issues where federal and state law conflict, furthering arguments that protect reproductive rights of people who can carry pregnancies. Additionally, they can join as *amici* in support of exceptions that protect people who can carry pregnancies in education when not a formal party to a case.

Federal administrative agencies can continue to demand that higher education institutions adhere to Title IX demands and can take a more proactive approach. This can include monitoring the application of Title IX demands in restrictive states. Advisory guidance is a critical step that the administration can take to outline how educational institutions should approach the Title IX regulations, especially when they are in conflict with state law.[308] The federal government can also codify a right to reproductive autonomy, including abortion. However, given the continued gridlock this pathway is significantly restricted. Nonetheless, pushing political representatives to advocate for this position can lead to a shift in the national political agenda, one that centers reproductive rights in the national public discourse.

(7) Civil rights advocates should secure reproductive rights through courts and public policy.

I conclude with a critical mechanism that has transformed and advanced justice throughout history: civil rights advocacy. Civil rights grassroots movements are critical policy actors in creating systemic change and reimagine a more just society. There is a rich history of grassroots civil rights advocacy in the

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[306] Speaking about the *Chevron* doctrine, Justice Kagan noted in her dissent in *Loper Bright* that "[t]hat rule has formed the backdrop against which Congress, courts, and agencies—as well as regulated parties and the public—all have operated for decades. It has been applied in thoughts of judicial decisions. It has become part of the warp and woof of modern government, supporting regulatory efforts of all kinds—to name a few, keeping air and water clean, food and drugs safe, and financial markets honest." *Id.* at 449 (Kagan, J., dissenting).

[307] *History of Title IX*, Women's Sports Found. (Aug. 13, 2019), https://www.womenssportsfoundation.org/advocacy/history-of-title-ix/ [https://perma.cc/RDJ2-TNT7].

[308] As an example of advisory guidance for educational institutions responding to changes in the law, the U.S. Department of Education released guidance for higher education institutions after *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll. and University of North Carolina,* 600 U.S. 181 (2023), in which the Supreme Court ruled the use of race in admissions was unconstitutional. *See Strategies for Increasing Diversity and Opportunity in Higher Education*, U.S. Dep't. of Educ. (Sept. 2023), https://sites.ed.gov/ous/files/2023/09/Diversity-and-Opportunity-in-Higher-Education.pdf.

United States that has secured legally recognized rights and just social change.[309] Issues of reproductive rights are no exception.[310] Post-*Dobbs*, advocates have mobilized to support people who can carry pregnancies, facilitating access to reproductive care, including abortion.[311] Advocacy at the structural level should include changes through the legal system and changes in public policy.

Legal advocacy requires advocacy in courts, strategically challenging laws that restrict reproductive autonomy.[312] Strategy in this arena requires that advocates have the financial resources, identify appropriate parties, and are selective with which issues to challenge in courts. This is because, bringing a lawsuit to a conservative court may backfire and lead to further restrictive legal doctrines. Thus, not all challenges may be worth pursuing. As in other areas of law, challenging issues one case at a time is an approach that can lead to incremental gains that do not overhaul the system, create short-term legal wins, and prioritize the interests of people in power.[313] Thus legal challenges may not lead to long-term protections of reproductive rights. Still, legal challenges in court are an important tool in the civil rights advocacy arsenal. Key legal challenges that advocates can most immediately lead involve seeking to create an exemption for educational institutions to continue to operate health care centers on campus in restrictive states and to offer Title IX accommodations across all state contexts.

Public policy changes vis-à-vis reproductive rights require changes at the legislative and executive levels. Advocates can create campaigns to drive voter registration so that people can have meaningful representation in state and federal elected representative offices.[314] They can also pressure political parties

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[309] *See generally* Bruce J. Dierenfield, The Civil Rights Movement: The Black Freedom Struggle in America (2d ed. 2021); Jack M. Bloom, Class Race, and the Civil Rights Movement (2d ed. 2019); Kenneth T. Andrews, Freedom is a Constant Struggle: The Mississippi Civil Rights Movement and its Legacy (2018).

[310] For a discussion of how contemporary grassroot movements build and reshape earlier reproductive rights movements, see Kimala Price, *What Is Reproductive Justice? How Women of Color Activists Are Redefining the Pro-Choice Paradigm*, 19 Meridians 340 (2020). Taking a more expansive approach, "the reproductive justice framework recognizes the importance of linking reproductive health and rights to other social justice issues such as poverty, economic injustice, welfare reform, housing, prisoners' rights, environmental justice, immigration policy, drug policies, and violence." *Id.* at 341. For a general discussion of the history of abortion rights, see Natalie E. Hull & Peter Charles Hoffer, Roe v. Wade: The Abortion Rights Controversy in American History (2021).

[311] *E.g.*, *Leading Reproductive Health, Rights, And Justice Organizations Launch 'Abortion Access Now' Campaign and $100 Million Investment*, ACLU (June 24, 2024), https://www.aclu.org/press-releases/leading-reproductive-health-rights-and-justice-organizations-launch-abortion-access-now-campaign-and-100-million-investment [https://perma.cc/P5GJ-WQ63].

[312] *E.g.*, *Six Ways You Can Join the Fight for Abortion Rights*, ACLU (May 12, 2022), https://www.aclu.org/news/reproductive-freedom/six-ways-join-fight-for-abortion-rights-roe-v-wade [https://perma.cc/R9NS-JB74] (discussing the organization's work to advocate for reproductive rights in courthouses and state legislatures across the country).

[313] *E.g.*, Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 Harv. L. Rev. 518, 527–33 (1980) (arguing, in relevant part, that *Brown* resulted in incremental change that left it precarious to future dismantling to the detriment of Black people).

[314] Reproductive Freedom for All is an example of an advocacy group seeking to effectuate change by engaging the political process and electing representatives who support reproductive justice issues. Reprod. Freedom for All, https://reproductivefreedomforall.org/ [https://perma.cc/VM6B-NUDT] (last visited Oct. 2, 2024).

through phone calls, emails, protests, and similar touchpoints of engagement to codify reproductive rights under state or federal law.[315] It is important to note that aligned with *Dobbs*' command to leave governance of reproductive rights to the people, a federal right would not substitute the rights at the state level but would rather provide additional support by creating a federal floor to which all states must adhere. In overturning *Roe*, the Court noted the need for elected representatives to adopt laws that govern the people who elect them.[316] By adopting a federal law recognizing reproductive rights, congress, an elected body, would create this floor.

Advocacy to create public policy changes at the executive level should involve targeted efforts to influence state-level and federal-level administrations. The most critical work for civil rights advocates in this regard must involve advocacy that bridges people with and across these branches, including by raising engagement in presidential elections.[317] Actions civil rights organizations can take include sponsoring watch events (e.g., presidential debates), dissemination of the federal and state executive branch's agenda in public forums so that the people are aware of the stakes and policy stances each administration offers, and Q&A sessions where people can ask and learn about Title IX issues and how they impact them and their communities.

Conclusion

Dobbs has reverberating effects that will continue to unfold across all educational sectors for years to come. In this article, I argued that the Supreme Court created individual and institutional burdens post *Dobbs*, because the ruling led to the creation of restrictive state-level policy contexts nationwide.[318] While the impact of the post-*Dobbs* restrictive policy context is wide-ranging, I focused on individual and institutional issues related to comprehensive sex education in K-12[319] and Title IX protections in higher education.[320] I offer an institutional and multi-systemic approach to mitigate the deleterious effects of the post-*Dobbs* restrictive policy context and advance reproductive justice.[321]

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[315] *See, e.g.*, *id.* Reflecting the power of people's grassroots movements, anti-choice groups are seeking to thwart these efforts that advance the protection of reproductive rights. Christine Fernando, *The Anti-Abortion Movement Is Making a Big Play to Thwart Citizen Initiatives on Reproductive Rights,* Associated Press (June 16, 2024), https://apnews.com/article/abortion-ballot-initiatives-voters-democracy-2024-7ac73939250441ddd015d3be741cfff2 [https://perma.cc/3GFD-BZ4V].

[316] Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 232 (2022).

[317] *E.g.*, Will Weissert, *Planned Parenthood to Spend $40 million ahead of November on Democrats supporting abortion rights*, PBS News (June 24, 2024) (offering an example of reproductive rights advocacy groups strategically allocating financial resources to call attention to reproductive rights in the 2024 presidential election), https://www.pbs.org/newshour/politics/planned-parenthood-to-spend-40-million-ahead-of-november-on-democrats-supporting-abortion-rights [https://perma.cc/AJ6M-NV9P].

[318] *See supra* Part III.

[319] *See supra* Section III.A.

[320] *See supra* Section III.B.

[321] *See supra* Part IV.