

ROE V. WORLD: HOW NONCOMPLIANCE WITH INTERNATIONAL LAW ERODES AMERICAN ABORTION ACCESS

I. INTRODUCTION

The United States has signed and ratified several significant international conventions which affirm women's rights to life and equality, and through those rights, to reproductive healthcare, including abortion access.¹ These affirmed rights are now in jeopardy in the United States.² One notable contrivance in antiabortion

1. See *Treaty Ratification*, AM. C.L. UNION, <https://www.aclu.org/issues/human-rights/treaty-ratification> (last visited Sept. 15, 2021) (outlining conventions signed and ratified by United States). Ratified conventions which address abortion as a reproductive healthcare right include: the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. *Id.* See also Hannah A. Saona, *The Protection of Reproductive Rights under International Law: The Bush Administration's Policy Shift and China's Family Planning Practices*, 13 PAC. RIM L. & POL'Y J. 229, 245 (2004) (alluding to multiple international conferences and laws relevant to abortion). Since the 1990s, the importance of abortion as healthcare has been internationally acknowledged. *Id.* This acknowledgement began at a series of United Nations conferences discussing human rights. *Id.* The discussion of human rights included targeted discussion highlighting women's rights as human rights, and in particular, the importance of reproductive rights. *Id.* These conferences produced a series of documents outlining international goals, priorities, and policies. *Id.* at 248. One such notable conference was the International Conference on Population and Development in 1994. *Id.* at 245. The work product document of this conference, the Cairo Programme, stated that "an individual's reproductive rights include the right of access to: 'safe, affordable and effective methods of family planning of their choice . . .'" *Id.* at 246. The U.N. General Assembly later adopted several key points of the Cairo Programme recommendations as a binding set of obligations, known as the Cairo +5 Key Actions Document. *Id.* Among these obligations was the directive that "[S]tates must take steps to increase access to obstetric care and, where abortion is legal, to ensure that healthcare providers are adequately trained and equipped to provide safe abortions." *Id.* at 247.

2. See generally *Roe v. Wade*, 410 U.S. 113 (1973) (affirming right to abortion); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) (establishing viability standard); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022) (overturning abortion precedent). Cf. Caroline Kitchener, *The next frontier for the antiabortion movement: A nationwide ban*, WASH. POST. (May 2, 2022, 10:54 PM), <https://www.washingtonpost.com/nation/2022/05/02/abortion-ban-roe-supreme-court-mississippi/> (foreshadowing possible next steps in eroding abortion access). Even before *Dobbs v. Jackson Women's Health Organization (Dobbs)* was handed down, pro-choice activists feared that legislators would seek to take abortion access out of states' hands. *Id.* Accord Burgess Everett, Marianne Levine & Sarah Ferris, *Graham's abortion ban stuns Senate GOP*, POLITICO (Sept. 13, 2022, 3:30 PM), <https://www.politico.com/news/2022/09/13/grahams-abortion-ban-senate-gop-00056423> (discussing reaction

efforts was the passage of Texas Senate Bill No. 8 (the Texas Act) in May 2021, a bill that bans abortions as early as six weeks into gestation, and deputizes private citizens to bring civil suits related to abortion.³ More significantly, the Supreme Court's

of Senate GOP to proposed nationwide abortion ban). Republican leaders touting *Dobbs* typically maintain that abortion access should be left up to the individual states to decide. *Id.* Republican Senator Lindsay Graham, however, confirming the fears of pro-choice activists, has been floating the idea of a nationwide federal abortion ban. *Id.* Additionally, Senator Graham appears to be capitalizing on the momentum created by *Dobbs*. *Id.*

3. See Sara Burnett, Sarah Rankin, & Lisa Mascaro, *Seeing danger, some in GOP leery of Texas abortion law*, AP NEWS (Sept. 3, 2021, 12:05 AM), <https://apnews.com/article/abortion-health-texas-laws-election-2020-7f78f6ca27a40bb68b99947a4e63e76a> (discussing reactions to Texas Act). At the time “[t]he new Texas law represent[ed] the most significant threat yet . . .” to the 1973 *Roe v. Wade* (*Roe*) decision. *Id.* The Texas Act is particularly dangerous to abortion access in the United States because of how the law is structured. *Id.* This law is designed to insulate itself from being enjoined by courts. *Id.* See also Paige Alexandria, *Cruel and Violating: How Texas’ Abortion Law Assaults Our Fundamental Rights*, AM. C.L. UNION (Sept. 23, 2021), <https://www.aclu.org/news/reproductive-freedom/cruel-and-violating-how-texas-abortion-law-assaults-our-fundamental-rights/> (discussing harm of Texas Act). The Texas Act prohibits abortions after six weeks of gestation, which is well before the majority of people know they are pregnant. *Id.* This prohibition is further complicated by the current scarcity of abortion clinics and limited clinic access in Texas, which was devastated by Texas House Bill 2 in 2013. *Id.* Many pregnant people seeking abortions must wait over a month to schedule an appointment, which forces them outside the safe window of legal abortion access in Texas. *Id.* Finally, because of the clinic shutdowns after the 2013 bill, many patients must travel hundreds of miles to access abortion, which is often difficult or impossible. *Id.* Not only is the Texas Act the most restrictive as to when abortions are allowed, it also disproportionately affects poor, nonwhite, and LGBTQ people. *Id.* See also Sarah McCammon, *What the Texas abortion ban does – and what it means for other states*, NPR (Sept. 1, 2021, 8:48 AM), <https://www.npr.org/2021/09/01/1033202132/texas-abortion-ban-what-happens-next> (explaining Texas Act and its implications). At the time it was passed, the Texas Act was one of the strictest abortions bans in the country, both in its time limits and in its additional provisions. *Id.* The law is also unique in that it cannot be enjoined by traditional legal means since government personnel are explicitly prohibited from enforcing it. *Id.* See also Pete Williams, *Supreme Court appears skeptical of Texas abortion law*, NBC NEWS (Nov. 1, 2021, 3:03 PM), <https://www.nbcnews.com/politics/supreme-court/supreme-court-hears-arguments-restrictive-texas-abortion-law-n1282745> (examining Supreme Court opinions and statements about Texas Act). Any private citizen, even non Texans, can bring a civil suit against anyone who provides an abortion or assists in obtaining one. *Id.* Even if a provider or other private citizen prevails against the civil suit and can obtain an injunction, an injunction from enforcing the law would only run against the plaintiff who brought the suit in the first place. *Id.* Essentially, success for one defendant against one plaintiff would create no protection for other defendants against other plaintiffs seeking to sue abortion providers or recipients. *Id.* This law also sets a dangerous precedent for other laws which seek to circumvent the judicial branch. *Id.* This framework of private enforcement could be applied to any other issue, which raises concerns for the Supreme Court. *Id.* See also Robert Barnes, *Supreme Court order on Texas abortion ban shows threat to Roe v. Wade*, WASH. POST (Sept. 2, 2021, 5:30 PM), <https://www.washingtonpost.com/politics/>

2022 decision in *Dobbs vs. Jackson Women's Health Organization (Dobbs)*, a review of the constitutionality of a 2018 Mississippi state law, overturned *Roe v. Wade (Roe)* and *Planned Parenthood of Southeastern Pennsylvania v. Casey (Casey)*.⁴ Laws predating

courts_law/supreme-court-roe-texas/2021/09/02/ad8c4d58-0bf4-11ec-a6dd-296ba7f-b2dce_story.html (discussing Supreme Court decision regarding injunction of Texas abortion law). The recent Texas Act is only one example of the increasingly manipulative methods being used to block abortion access and continue nontreaty compliant behavior. *Id.* The Texas Act's unique construction will stand until a new challenge is able to strike it down in its entirety. *Id.* See also Joe Hernandez, *Oklahoma's vote to ban abortions comes at a key moment for reproductive rights*, WAMU (Apr. 6, 2022), <https://wamu.org/story/22/04/06/oklahomas-vote-to-ban-most-abortions-comes-at-a-key-moment-for-reproductive-rights/> (reviewing harsh new Oklahoma law). The law recently passed by the Oklahoma legislature is a prime example of the impact of the Texas Act. *Id.* The Texas Act restricted abortion access so severely that over half of the abortion patients in Oklahoma are now Texas residents, seeking abortions they could not otherwise attain. *Id.* See also Claire Cain Miller & Margot Sanger-Katz, *On Abortion Law, the U.S. is Unusual. Without Roe, It Would Be, Too.*, N.Y. TIMES (May 4, 2022), <https://www.nytimes.com/2022/01/22/upshot/abortion-us-roe-global.html> (comparing states' abortion laws to global counterparts). Owing to the United States' federalist approach to abortion access, California has some of the least restrictive laws in the world, while Texas has some of "the most restrictive in the world," despite being in the same country. *Id.* Abortion access is also endangered by other executive and judicial branch actions, such as the lack of federal funding and insurance coverage. *Id.* The precarious stance of abortion access is unusual in the global political climate. *Id.* The trajectory towards overturning *Roe* and decreasing abortion access was "very much the minority trend." *Id.* With the overturning of *Roe*, the United States is only the fourth country since 1994 to tighten abortion laws. *Id.* Conversely, fifty-nine countries expanded abortion access in that same timeframe. *Id.*

4. See *Dobbs*, 142 S. Ct. at 2242 (establishing new abortion standard). *Dobbs* declared Mississippi's Gestational Age Act, which banned abortions after fifteen weeks, in violation of the viability standard set in *Planned Parenthood of Southeastern Pennsylvania v. Casey (Casey)*. *Id.* The Court went further and explicitly overruled both *Roe* and *Casey*. *Id.* See also Robin Levinson-King, Chloe Kim, & Paul Sargent, *Abortion: What does overturn of Roe v Wade mean?*, BBC NEWS (June 29, 2022), <https://www.bbc.com/news/world-us-canada-61804777> (speculating on state-by-state impact of *Dobbs* decision). Following *Dobbs*, abortion access will drastically decrease for forty million women. *Id.* Following the Supreme Court's decision, "trigger laws" came into effect in thirteen states, banning abortion in those states. *Id.* Twenty other states are attempting to ban abortion in the wake of *Dobbs*, some going to the extreme of banning abortion from the moment of conception, or without exceptions for rape or to save the life of the pregnant person. *Id.* See also Elizabeth Nash & Lauren Cross, *26 States Are Certain or Likely to Ban Abortion Without Roe: Here's Which Ones and Why*, GUTTMACHER INST. (Oct. 28, 2021), <https://www.guttmacher.org/article/2021/10/26-states-are-certain-or-likely-ban-abortion-without-roe-heres-which-ones-and-why> (highlighting precariousness of *Roe* pre-*Dobbs*). Importantly, *Roe* did not need to be outright overturned to allow these latent bans to take place as even a weakening of *Roe* would have been sufficient for these states to revoke abortion access. *Id.* Further complicating the situation is the fact that some of the states trying to ban abortions have multiple types of bans on the books. *Id.* See also Eleanor Klibanoff, *Texans who perform abortions now face up to life in prison, \$100,000 fine*, TEXAS TRIB. (Aug. 25, 2022, 5:00 AM), <https://www.texastribune.org/2022/08/25/abortion-bans-texas/>

Dobbs and the Texas Act, but more acutely, the laws passed in the wake of these recent developments, are collectively a flagrant violation of the abortion-confirming conventions to which the United States is a party.⁵ Should these laws and future challenges to abortion access be allowed to stand, the United States could be the subject of additional international condemnation.⁶

www.texastribune.org/2022/08/25/texas-trigger-law-abortion (laying out progression of Texas abortion laws). Texas is a prime example of how *Dobbs* empowered antiabortion state legislatures as Texas quickly passed a near-total abortion ban in the wake of the decision. *Id.* This ban stacked on pre-existing state laws, creating multiple avenues for attacks on abortion providers. *Id.* Cumulatively, these laws ensure that abortion providers and recipients can be targeted using civil law even in counties or jurisdictions where the executive branch is not prosecuting abortion providers. *Id.*

5. See Saona, *supra* note 1, at 231 (noting U.S. violations of treaty obligations). The United States' failure to uphold its treaty obligations is at minimum a violation of "the spirit of these treaties," even though it is not a direct violation of the letter of the treaties. *Id.* See also Meryl Kornfield, Caroline Anders, & Audra Heinrichs, *Texas created a blueprint for abortion restrictions. Republican-controlled states may follow suit.*, WASH. POST. (Sept. 3, 2021, 8:08 PM), <https://www.washingtonpost.com/nation/2021/09/03/texas-abortion-ban-states/> (reviewing possible Texas Act copycat bills). The Texas Act will likely result in a series of duplicate laws across the states. *Id.* See also Quoc Trung Bui, Claire Cain Miller, & Margot Sanger-Katz, *Where Abortion Access Would Decline if Roe v. Wade Were Overturned*, N.Y. TIMES (May 18, 2021), <https://www.nytimes.com/interactive/2021/05/18/upshot/abortion-laws-roe-wade-states.html> (discussing impact on legal abortion in American South and Midwest). See also *Public Opinion on Abortion*, PEW RSCH. CTR. (May 17, 2022), <https://www.pewforum.org/fact-sheet/public-opinion-on-abortion/> (compiling public opinion statistics). The threat to *Roe* and safe abortion access is occurring despite most Americans being in favor of legal abortion in "all or most cases." *Id.* See also Richard H. Fallon Jr., *If Roe Were Overruled: Abortion and the Constitution in a Post-Roe World*, 51 ST. LOUIS L.J. 611, 612 (2007) (theorizing consequences of overturning *Roe*). If the Supreme Court overturned *Roe*, the legal landscape of abortion rights would not suddenly be swept bare. *Id.* On the contrary, countless archaic, potentially conflicting laws would take effect, leading to considerable confusion and negative consequences. *Id.* at 612, 615.

6. See Saona, *supra* note 1, at 230 (discussing United States withdrawal of funding from United Nations Population Fund). The Bush administration faced heavy criticism when the United States withdrew 34 million in funds from the United Nations Population Fund. *Id.* The Bush administration cited concerns that the funding was being used for abortions in other countries, such as The People's Republic of China. *Id.* International officials and the United Nations Population Fund expressed concern that in withdrawing funds as an objection to abortion, the United States jeopardized the health and safety of millions of women. *Id.* See also *USA: UN experts denounce Supreme Court decision to strike down Roe v. Wade, urge action to mitigate consequences*, OFF. OF THE HIGH COMM'R ON HUM. RTS. (June 24, 2022), <https://www.ohchr.org/en/press-releases/2022/06/usa-un-experts-denounce-supreme-court-decision-strike-down-roe-v-wade-urge> [hereinafter *UN denounces Dobbs, OHCHR*] (detailing human rights expert opinion on *Dobbs*). The United Nations denounced the *Dobbs* ruling as jeopardizing the lives and health of childbearing people across the United States. *Id.* See also *Bachelet on US Ruling on Dobbs v. Jackson Women's Health Organization*, OFF. OF THE HIGH COMM'R ON HUM. RTS. (June 24, 2022), <https://www.ohchr.org/en/statements/2022/06/bachelet-us-ruling-dobbs-v-jackson-womens-health-organization>

This Note will examine the influence international law has on the right to abortion in the United States.⁷ Special attention will be given to the mechanism of the ratification of human rights treaties and conventions which address reproductive healthcare.⁸

[hereinafter *Bachelet on Dobbs, OHCHR*] (giving official statements). Michelle Bachelet, the United Nations (U.N.) High Commissioner for Human Rights, clearly conveyed the international opprobrium for the *Dobbs* decision. *Id.* Bachelet stated that:

[a]ccess to safe, legal and effective abortion is firmly rooted in international human right law and is at the core of women and girls' autonomy and ability to make their own choices about their bodies and lives, free of discrimination, violence and coercion. This decision strips such autonomy from millions of women in the US, in particular those with low incomes and those belonging to racial and ethnic minorities, to the detriment of their fundamental rights.

Id. See also PRIVACY INT'L., *PRIVACY AND THE BODY: PRIVACY INTERNATIONAL'S RESPONSE TO THE U.S. SUPREME COURT'S ATTACK ON REPRODUCTIVE RIGHTS* 1, 9 available at https://privacyinternational.org/sites/default/files/2022-07/Privacy%20and%20the%20Body_Website.pdf (summarizing international response to *Dobbs*). Privacy International notes that "UN human rights experts have argued that the Court, 'completely disregarded the United States' binding legal obligations under international human rights law.'" *Id.* U.N. experts agree that the *Dobbs* decision violates the United States' obligations under the ICCPR. *Id.* at 8–9.

7. See Sarah H. Cleveland, *Article: Our International Constitution*, 31 *YALE J. INT'L L.* 1, 84 (2006) (noting influence of international law on *Roe*). The Supreme Court surveyed international and historical abortion rights, as well as other human rights arenas such as sodomy laws, when deciding in *Roe*. *Id.* See also MARY ZIEGLER, *ABORTION AND THE LAW IN AMERICA: ROE V. WADE TO THE PRESENT*, 79 (John Berger et al. eds., 1st ed. 2020) (explaining impact of Mexico City policy on domestic abortion providers). United States abortion policy is influenced not only by international treaties, but also by the efforts of humanitarian organizations performing abortions, such as Planned Parenthood, demonstrating the deeply interconnected nature of the international abortion debate. *Id.*

8. See U.S. CONST. art. I, § 2 (creating power to make treaties). See also *Treaty Ratification*, *supra* note 1 (listing relevant conventions). The United States is a party to several key treaties which either implicitly or explicitly affirm the right to abortion. *Id.* See also *About Treaties*, U.S. SENATE, [https://www.senate.gov/about/powers-procedures/treaties.htm#:~:text=The%20United%20States%20Constitution%20provides,Article%20II%2C%20section%202\).&text=The%20Senate%20does%20not%20ratify%20treaties](https://www.senate.gov/about/powers-procedures/treaties.htm#:~:text=The%20United%20States%20Constitution%20provides,Article%20II%2C%20section%202).&text=The%20Senate%20does%20not%20ratify%20treaties). (last visited Jan. 30, 2022) (overviewing United States Treaty Power).

The United States Constitution provides that the president "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur" (Article II, section 2). Treaties are binding agreements between nations and become part of international law. Treaties to which the United States is a party also have the force of federal legislation, forming part of what the Constitution calls "the supreme Law of the Land."

Id. See also David Golove, *Human Rights Treaties and the U.S. Constitution*, 52 *DEPAUL L. REV.* 579, 623 (2002) (reviewing influence of constitutional law on United States treaty-making practices). It is not uncommon for treaties to be drafted to address human rights issues. *Id.* Given the extremely wide range of topics covered by human

Part II will outline the history of U.S. abortion law, international conventions on abortion law, and the material noncompliance of the United States with said conventions.⁹ Part III will address the

rights treaties, “the United States can almost always constitutionally enter into treaties at least in part to import global human rights standards.” *Id.* See also STEPHEN P. MULLIGAN, CONG. RSCH. SERV., RL32528, INTERNATIONAL LAW AND AGREEMENTS: THEIR EFFECTS UPON U.S. LAW 15 (2018), available at <https://crsreports.congress.gov/product/pdf/RL/RL32528/21> (explaining various international agreement mechanisms). The United States has the power to enter into both self-executing and not self-executing agreements. *Id.* Self-executing agreements do not require additional legislation to implement, while not self-executing agreements do. *Id.* Treaties are also often adopted with reservations, understandings, and declarations (RUDs) which qualify and modify the impact of the treaty. *Id.* at 5. Often, the RUDs are so extensive that they render a treaty essentially meaningless. *Id.* Although there is some debate, many agree that even not self-executing treaties can be invoked as judicially enforceable during litigation. *Id.* at 16. The controlling principle in treaty-making is that they create binding law and impose rights and obligations upon the signatory sovereign countries. *Id.* at 18. Historically, human rights issues have been resolved through treaty-making. *Id.* at 11. Once a treaty has been entered, it is the responsibility of Congress to create the appropriate legislation to enforce the treaty and appropriate the necessary funds. *Id.* at 17. This authority derives from the Necessary and Proper Clause. *Id.* at 18. Practically speaking, a ratified self-executing treaty has the same force as federal law. *Id.* at 20. See generally *Missouri v. Holland*, 252 U.S. 416 (1920) (holding treaties supersede state law).

9. See ZIEGLER, *supra* note 7, at 1 (overviewing history of abortion and access debates). The abortion access debate began as a conflict over the granting or denying of the right to abortion as a whole. *Id.* Over time, however, the conflict has evolved to where antichoice organizers are seeking to whittle down abortion access until it is functionally eliminated, while pro-choice advocates seek to uphold the right. *Id.* Early abortion laws were spearheaded by doctors performing abortions, as they sought to protect their patients. *Id.* at 11. Prior to the recent rise in restrictions, abortions were so common as to be “commercialized.” *Id.* See also *Roe v. Wade*, 410 U.S. 113, 129 (1973) (noting recent influx of abortion restrictions). Laws restricting abortion did not become common until “the latter half of the 19th century.” *Id.* Many early abortion restrictions were designed only to regulate the procedure, which, prior to several key medical developments, was dangerous. *Id.* at 148–50. See also Christina Zampas et al., *Abortion as a Human Right – International and Regional Standards*, 8 HUM. RTS. L. REV. 249, § 2 (2008) (describing compliance mechanisms of international agreements). The primary international human rights treaties are overseen by a committee created specifically for the purpose of ensuring compliance. *Id.* at n.18. The function of these committees is to issue clarifying guidance, receive progress reports, and publish reports on countries’ progress. *Id.* at n.19. While not binding, these reports and recommendations have “enormous potential to influence national laws and policies.” *Id.* See also THE CTR. FOR REPROD. RTS., *Submission to the United Nations Universal Periodic Review of the United States of America: Reproductive Health, Rights, and Justice* (May 2020) available at <https://reproductiverights.org/sites/default/files/2020-01/3rd%20US%20UPR%20-%20repro%20rights%20and%20justice%20stakeholder%20report.pdf> [hereinafter *Reproductive Rights Submission*] (detailing United States’ noncompliance with international treaties). The global organization Center for Reproductive Rights characterizes the United States’ reproductive rights laws as noncompliant and extremely damaging. *Id.* at 1. Many international groups have been vocal about their concerns over reproductive rights in the United States. *Id.* at 2–3.

current status of abortion law in the United States and in international conventions, as well as the implications of the current status.¹⁰ Part IV will explain why and how the United States should seek to become fully compliant with all relevant international conventions it has ratified to maintain its international standing, and to protect the rights of childbearing people.¹¹ Finally, Part V

10. See Michele Goodwin, Book Note, *Abortion and the Law in America: Roe v. Wade to the Present*, U.C. IRVINE SCH. L. LEGAL STUD. RSCH. PAPER SERIES 2021–41 (2021) (discussing history of abortion in United States and recent developments). Since *Roe* and *Casey*, and even before *Dobbs*, hundreds of laws limiting or attempting to ban abortion have been enacted. *Id.* These laws have led to painful and fatal healthcare outcomes for countless childbearing people and are often particularly dangerous across racial and socioeconomic lines. *Id.* at 2. See also Joseph W. Dellapenna, *Abortion Across State Lines*, 2008 BYU L. REV. 1651, 1657 (2008) (reviewing development of abortion law in United States). Unlike many countries, the United States has allowed its abortion policy to develop via judicial decision, leading to a highly contentious struggle over the constitutionality of the right. *Id.* See also Michael Gentithes, Symposium, *Concrete Reliance on Stare Decisis in a Post-Dobbs World*, 14 CONLAWNOW 1, 5 (2022) (discussing impact of *Dobbs* on stare decisis doctrine). This struggle resolved itself in the dramatic withdrawal from stare decisis that is *Dobbs*. *Id.* The *Dobbs* majority's version of stare decisis, which they used to overturn *Roe* and *Casey* "significantly undermines" doctrinal stability, judicial legitimacy, and legal consistency. *Id.* at 5–6. The majority's erosion of reliance interests "significantly weaken[s] precedents that protect individual rights." *Id.* at 7. See also ERIC A. POSNER & ALAN O. SYKES, ECONOMIC FOUNDATIONS OF INTERNATIONAL LAW 17 (1st ed., 2013) (presenting theory of international externalities). While many international externalities are nonpecuniary, pecuniary externalities also exist. *Id.* at 18. These pecuniary externalities' "effect is felt on other because of a change in prices . . . [e]conomic theory suggests that international cooperation can be valuable in the presence of international externalities." *Id.* Economic reasoning teaches that "in the absence of cooperation, states will do too little to abate harmful international externalities (like those associated with pollution, high tariffs, or *human rights violations*)." *Id.* at 19 (emphasis added).

11. See Andrea Stevens, *Pushing a Right to Abortion through the Back Door: The Need for Integrity in the U.N. Treaty Monitoring System, and Perhaps a Treaty Amendment*, 6 PENN ST. J. L. & INT'L AFF. 70, 72–74 (2018) (reviewing censures of Ireland and Peru). Both Ireland and Peru have been censured by U.N. bodies for their abortion laws in the context of their International Covenant on Civil and Political Rights and United Nations Human Rights Committee obligations. *Id.* See also *Benefits of being a Member of the United Nations Organization*, HOSBEG, <https://hosbeg.com/benefits-of-being-a-member-of-the-united-nations-organization/#> (last visited Jan. 28, 2022) (listing benefits of United Nations membership). The United Nations offer a variety of benefits to its members, including aid and assistance in the event of disasters, financial support, economic development aid, aid in developing healthcare infrastructure, and aid in strengthening human rights frameworks. *Id.* See also *How the U.N. Advances United States Economic Interests*, BETTER WORLD CAMPAIGN, <https://betterworldcampaign.org/us-un-partnership/economic-benefits-of-the-un/> (last visited Jan. 30, 2022) (describing benefits of United Nations membership). See also Paul B. Stephan, *One Voice in Foreign Relations and Federal Common Law*, 60 VA. J. INT'L L. 1, 3–5 (2019) (discussing drawbacks of different branches implementing treaties). Treaty compliance can be implemented by the federal legislature, by the judicial branch, or, in a limited way, by state legislatures. *Id.* Each of these methods has drawbacks which must be

will summarize how new antiabortion laws being passed in the United States are noncompliant with ratified international conventions, and the crucial steps that must be taken to solve the issue.¹²

II. HISTORY

A. *Pre-Roe v. Wade*

Prior to the late 1800s, abortion was not criminalized in the United States.¹³ Beginning around the dawn of the 20th

accounted for when determining which method is best for accomplishing a given goal. *Id.* Supreme Court jurisprudence strongly implies that the Constitution vests the power for all foreign relations in the federal government. *Id.* at 7. This vestige ensures that the United States is speaking with one voice, rather than fifty dissonant voices, when legislating on issues touching international law. *Id.* The core issue here, noncompliance with duly ratified international treaties, is clearly foreign policy related. *Id.* Individual States have never possessed the power to make international law; this principle dates all the way back to preindependence United States under English rule. *Id.* See also Ganesh Sitaraman & Ingrid Wuerth, *The Normalization of Foreign Relations Law*, 128 HARV. L. REV. 1897, 1929–31 (2015) (explaining Presidential involvement in treaty enforcement). The President has the authority to negotiate and sign treaties, while Congress has the authority to implement non-self-executing treaties. *Id.* at 1931–32. See also *Medellin v. Texas*, 552 U.S. 491, 526 (2008) (delineating treaty implementation powers of Executive and Legislative branches). See generally *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936); *United States v. Belmont*, 301 U.S. 324 (1937); *Zschernig v. Miller*, 389 U.S. 429 (1968) (holding in favor of federal supremacy over all foreign relations issues).

12. See Saona, *supra* note 1, at 243–55 (explaining why United States should comply). Each international convention serves a specific purpose and is designed to reap certain benefits. *Id.* Noncompliance with these treaties flouts these purposes and deprives the American people and citizens of other countries of those crucial benefits. *Id.* See also Heath Pickering, *Why Do States Mostly Obey International Law?*, E-INT'L RELS. (Feb. 4, 2014), <https://www.e-ir.info/2014/02/04/why-do-states-mostly-obey-international-law/> (discussing general international compliance with treaties). Compliance is now the international norm, as open war and conflict become increasingly stigmatized. *Id.* Now, “[a]lmost all nations observe almost all principles of international law and almost all of their obligations almost all the time.” *Id.* See also R. RANDALL RAINEY & GERARD MAGILL, *ABORTION AND PUBLIC POLICY: AN INTERDISCIPLINARY INVESTIGATION WITHIN THE CATHOLIC TRADITION* 75 (2nd ed. 1996) (outlining government options regarding abortions). Even abortion opponents acknowledge that there are several kinds of action the United States government is capable of and entitled to take regarding abortion. *Id.* The government could decline to criminalize abortion/abortifacient medications, or otherwise legislate to regulate the accessibility and criminality of abortion. *Id.* at 76. Congress could do this based on “the needs and exigencies of the common good.” *Id.* Finally, the federal government could conclude that “the citizen is the bearer of a fundamental right to abortion.” *Id.* at 78. This action was taken in *Roe* and later validated by *Casey*. *Id.* at 80.

13. See ZIEGLER, *supra* note 7, at 11 (detailing early history of abortion in United States). Prior to a campaign to criminalize abortion, procedures before “quickenings”

century, a concerted effort to criminalize abortion led to a procession of laws, which eliminated access to the procedure across the United States.¹⁴ Leading up to *Roe v. Wade*, the 1960s

were common and unremarkable. *Id.* at 12. Medication abortions were advertised in newspapers and often only prohibited under general poison control regulations. *Id.* See also *Roe*, 410 U.S. at 129 (discussing history of abortion policy in United States). The *Roe* court noted that abortion restrictions are of “relatively recent vintage.” *Id.* See also Reva Siegel & Stacie Taranto, *What antiabortion advocates get wrong about the women who secured the right to vote*, WASH. POST (Jan. 22, 2020, 6:00 AM), <https://www.washingtonpost.com/outlook/2020/01/22/what-antiabortion-advocates-get-wrong-about-women-who-secured-right-vote/> (debunking antiabortion advocates’ version of feminist history). The 1850s saw the rise of the “voluntary motherhood” cause, championed by suffragette Elizabeth Cady Stanton, as well as a corresponding backlash from antiabortion and antiwomen’s suffrage advocates. *Id.* Suffragists believed that women should have the right to control their bodies, their sexual autonomy, and the timing of children without the interference of their husbands. *Id.* Stanton “even ranked voluntary motherhood . . . as more important than the vote.” *Id.* The women’s rights movement embraced reproductive freedom, while those opposing women’s rights actively worked to criminalize abortion. *Id.* This opposition was not only based on racist ethnic purity rationales, but also on the desire to keep women fixed to their assigned roles as wives and mothers. *Id.* Accordingly, abortion was perceived as a way for a woman to exercise impermissible independence. *Id.* See also Madison M. Weber, *The Ways in Which Women’s Suffrage Affected Healthcare*, THE REV.: A J. OF UNDERGRADUATE STUDENT RSCH., 1, 2 (2021) (discussing link between women’s suffrage and women’s healthcare). The first wave of feminism, beginning in the 1850s and ending in the 1920s, championed both the woman’s right to the vote, and the woman’s right to voluntary motherhood. *Id.* Without the vote, women could not make their voices heard on topics they cared about, such as reproductive rights. *Id.*

14. See ZIEGLER, *supra* note 7, at 13–15 (outlining development of arguments on both sides of abortion issue). Beginning in the 1840s and culminating in the 1970s, antiabortion laws became increasingly common. *Id.* at 13. These laws used a variety of justifications ranging from faith-based arguments to xenophobic fears that antiabortion laws were needed to prevent the country from being “swamped by inferior genetic stock.” *Id.* These fears developed as immigration increased while middle-class white women continued to get abortions. *Id.* These laws were passed despite opposition from the medical community and nonprofit organizations. *Id.* at 14. Concerns over maternal mortality or fetal abnormality were ignored by antiabortion activists. *Id.* This included fetal abnormalities caused by tragic extrinsic influences such as rubella and toxic thalidomide. *Id.* at 15. Both of those complications led to thousands of cases of severe birth defects and deaths. *Id.* Additionally, pro-choice activists noted that antiabortion laws disproportionately burdened poor and nonwhite childbearing people. *Id.* See also MATTHEW CONNELLY, *FATAL MISCONCEPTION: THE STRUGGLE TO CONTROL WORLD POPULATION* 49 (1st ed., 2008) (explaining “race suicide” theory). Many antiabortion activists felt that allowing abortions would lead to a “race suicide” of white people and the subsequent downfall of the West. *Id.* at 49. This concern was a response to growing populations of Asians, Africans, and “Amerindians.” *Id.* Some of the most prominent antiabortion advocacy came from Catholic groups promulgating faith-based arguments against abortion. *Id.* at 48. The American Catholic antiabortion groups were so successful that Vatican officials looked to the United States as a leader in the global antiabortion movement. *Id.* Drawing inspiration from these groups, the Italian government banned all abortions and abortion information in the 1920s. *Id.* The ban

saw the rise of constitutional arguments both for and against abortion.¹⁵ Both sides of the debate utilized constitutional

was supported by the Vatican as it sought to curb the “plague” of contraception and fascist leader Mussolini fought a “demographic battle” to increase the population. *Id.* at 66–67. Noted abortion activist Margaret Sanger once framed this conflict as “Church Control or Birth Control.” *Id.* at 54. *See also* Melissa Murray, *Race-ing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade*, 134 HARV. L. REV. 2025, 2038–40 (2021) (summarizing role of race and eugenics in birth control movement). Margaret Sanger, seeing that grounding her birth control advocacy in feminist theories was not effective, linked birth control access to eugenics in an attempt to appeal to a wider audience. *Id.* at 2038. This strategy linked birth control to two credible authorities: “reputable scientific authority” and “national welfare.” *Id.* at 2039.

15. *See* ZIEGLER, *supra* note 7, at 15 (discussing rise in constitutional arguments about abortion). It was not until the 1960s that antiabortion activists began to use the constitutional right-to-life argument as the foundation of their proposed laws. *Id.* at 15. The right-to-life argument was typically couched in the Fourteenth Amendment. *Id.* Later, Supreme Court cases expanding the Fourteenth Amendment on other issues were used as part of the foundation of this argument, including *Griswold* and *Eisenstadt*. *Id.* at 20. *See also* Mary Ziegler, *Originalism Talk: A Legal History*, 2014 BYU L. REV. 869, 883 (2014) [hereinafter *Originalism*] (discussing early constitutional abortion arguments). Antiabortion advocates embraced constitutional originalism as one vehicle for their arguments. *Id.* at 883. This served an important function: to legitimize their argument in the eyes of “legal elites.” *Id.* Constitutional originalists were an “influential coalition” that defended a variety of interrelated viewpoints based on the Declaration of Independence and Constitutional texts. *Id.* at 871, 883, 920. This embrace of originalism was “a process of constitutional coalition-building . . .” *Id.* at 881. Antiabortion originalists derived the “right to life” as applied to fetuses from the Declaration of Independence. *Id.* at 886. For example, American Citizens Concerned for Life and Americans United for Life, two prominent antiabortion groups, cited the Declaration of Independence in internal documents. *Id.* at 887. From there, the antiabortion groups argued that the right to life was a Due Process violation under the Fourteenth Amendment. *Id.* at 888. These groups also attempted to apply equal protection frameworks built for disadvantaged minorities, such as racial groups, to fetuses. *Id.* at 888–89. These groups attempted to further attenuate these frameworks and apply them to the alleged personhood of fetuses. *Id.* at 889. This argument was countered by the pro-choice constitutional argument that even when assuming a fetus does have a constitutional interest, that the fetus’ interest is superseded by that of the pregnant person. *Id.* at 894–95. In other instances, the fetal personhood argument was rejected entirely by the courts. *Id.* The most recognizable embodiment of this outright denial was *Roe* itself, which “made clear that biological evidence of fetal personhood would not establish the constitutional protection [antiabortion] movement members desired.” *Id.* at 899. *See also* Mary Ziegler, *The Price of Privacy, 1973 to the Present*, 37 HARV. J. L. & GENDER 285, 286 (2014) [hereinafter *Price of Privacy*] (presenting analysis of constitutional arguments for abortion). When *Roe* was decided, the Court “presented the abortion right as a freedom from state interference—a right that allowed women to make a crucial life decision without government meddling.” *Id.* at 287. The right to privacy outlined by the Supreme Court in *Roe* and its progenitors, however, is not the only framework used to protect abortion access; due process was also used. *Id.* at 295. In *Abele v. Markle*, the Court struck down a Connecticut abortion restriction, holding “the essential requirement of due process is that the woman be given the power to determine within an appropriate period after conception whether or not she wishes to bear a child.” *Id.* at 294. *See also* James R. Bowers & Ummuhan Turgut, *Classical Liberalism*,

arguments, and it became clear that the legality of abortion would turn on how the Supreme Court interpreted the constitutional right to life.¹⁶ This debate was encapsulated in the Supreme Court's 1973 decision in *Roe v. Wade*, which struck down highly restrictive abortion laws in Texas and Georgia.¹⁷

The Constitution, and Abortion Policy: Can Government Be Both Pro-Choice and Anti-Abortion?, 17 DAYTON L. REV. 1, 3 (1991) (referencing *Roe* concurrence). Justice Stewart utilized the Due Process framework in his concurrence in *Roe* itself. *Id.* See also ZIEGLER, *supra* note 7, at 93 (referencing equal protection abortion argument). Alongside Due Process, the Equal Protection Clause of the Fourteenth Amendment was often invoked in abortion debates in the context of equality between the sexes. *Id.* at 93. Because a pregnancy can disrupt a woman's plans and cause physical and emotion distress, lack of abortion access disadvantages women in a way that is inapplicable to men. *Id.* at 94. Pro-choice movement members advocated for the close relationship between abortion access and sex discrimination on Equal Protection grounds. *Id.* at 110. See generally *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (expanding applicability of Fourteenth Amendment rights); *Abele v. Markle*, 452 F.2d 1121 (2d Cir. 1971).

16. See ZIEGLER, *supra* note 7, at 16–19 (examining both sides of constitutional abortion arguments). Antiabortion activists saw the constitutional argument as a way to protect their cause from seeming too sectarian to the public. *Id.* at 17. Even Catholic antiabortion activists began to use the right-to-life argument and abandoned the faith-based arguments that they had previously espoused. *Id.* In contrast, pro-choice advocates used the Fourteenth Amendment as a safeguard for the life and safety of the childbearing people. *Id.* Abortion rights activists viewed access to abortion as a positive legal right guaranteed by the Constitution. *Id.* at 18. While several states' judiciaries interpreted abortion as a constitutional right, antiabortion activists won in other states. *Id.* at 19. Following *Roe*, antiabortion groups marshalled around their desire for a constitutional amendment which would emphasize the rights of a fetus and either undermine or overturn *Roe*. *Id.* This idea was eventually overtaken by a movement to gradually undermine and erode *Roe* using other arguments and mechanisms. *Id.* Many of these mechanisms involved putting up practical roadblocks and hurdles that pregnant people had to overcome, such as informed consent requirements. *Id.* One major roadblock was the Hyde Amendments' ban on federal funding for abortions. *Id.* at 27. Like antiabortion laws before *Roe*, these laws disproportionately affected poor, non-white childbearing people. *Id.* at 29–33. See also *Access Denied: Origins Of The Hyde Amendment and Other Restrictions on Public Funding for Abortion*, AM. C.L. UNION (Dec. 1, 1994), <https://www.aclu.org/other/access-denied-origins-hyde-amendment-and-other-restrictions-public-funding-abortion> (summarizing disproportionate effect of Hyde Amendment on low-income people of color).

17. See *Roe v. Wade*, 410 U.S. 113, 116 (1973) (establishing constitutional right to abortion and striking down Texas law). The Supreme Court held that the right to privacy granted by the constitution included a person's right to choose to terminate a pregnancy. *Id.* at 116. Critically, however, the Court limited this right and allowed for government regulation to protect the interests of fetuses. *Id.* at 130–39. Additionally, in this decision, the Court outlined its trimester-based standards for levels of permissible government regulation based on compelling state interests. *Id.* at 152. Another important aspect of the *Roe* opinion was its acknowledgement that “population growth, pollution, poverty, and racial overtones tend to complicate and not to simplify the problem.” *Id.* at 116. The Court went to great lengths to note that restrictive, criminalized abortion laws were uncommon, even dating back to ancient times, until very recently in

Roe was a decisive victory for pro-abortion advocates, but was by no means a comprehensive guarantee of safe abortion access.¹⁸

American history. *Id.* at 130–39. Recognizing the State’s role in protecting a pregnant person’s Due Process rights, the Court then emphasizes that safe abortion access and the accompanying agency over one’s body and life were “fundamental” and “implicit in the concept of ordered liberty.” *Id.* at 152. *See also* Linda L. Schlueter, *40th Anniversary of Roe v. Wade: Reflections Past, Present, and Future*, 40 OHIO N. U. L. REV. 105, 117–26 (2013) (highlighting evolution of constitutional abortion arguments). Pro-choice constitutional arguments are not based in a right expressly found in the Constitution, but rather from rights that have been inferred. *Id.* This inference is made by the Court when they determine that a right is “fundamental” by virtue of being “deeply rooted in this Nation’s history and tradition.” *Id.* at 117. These rights are often bound to the states via the Fourteenth Amendment. *Id.* Beginning with *Meyer v. Nebraska* (1923), the Court began to enumerate a series of rights under the umbrella of the fundamental right of “liberty.” *Id.* at 119. These “liberty” interests include the right to marry, the right to custody of one’s children, the right for a family to live together, and the right to control the upbringing of one’s children. *Id.* Following that line of decisions, the Court created a fundamental right to privacy which was implied in the Constitution under the First, Third, Fourth, and Fifth Amendments. *Id.* at 120. The subsequent line of decisions regarding sale of contraceptives reinforced the Court’s view that decisions regarding procreation are a constitutionally protected fundamental right. *Id.* at 121. It was in this right to privacy that the Court found the right to abortion because an unwanted pregnancy could affect a person in multiple ways, and because it was an extension of the bodily autonomy and familial context that created the right to privacy. *Id.* at 126.

18. *See* LESLIE J. REAGAN, *WHEN ABORTION WAS A CRIME* 244 (Univ. of Cal. Press et al. eds., 1st ed. 1997) (discussing *Roe* decision and aftermath). The *Roe* decision “put women and doctors together at the center of abortion” and acknowledged the personal and medical implications of abortion denial. *Id.* Although significant, the Court’s decisions were less than what feminists had wanted, because they left abortion in the hands of physicians, because women’s rights were “balanced” against the rights of the state and limited by a technologically determined “viability” of the fetus, and because the inequities of class were ignored. *Id.* Despite these drawbacks:

the acknowledgment of women’s rights to make decisions about their own bodies and reproduction independently of men was a significant advance. Winning legal abortion was a victory—as important as winning suffrage or equal pay for equal work. *Roe v. Wade* and *Doe v. Bolton* ended an era of illegal abortion. These decisions, with all of their limitations, represented a transformation in the status of women in American society.

Id. at 245. Over time, as government funding expanded abortion access, the racial and class disparities in abortion access began to shrink. *Id.* at 246. *Roe* was a victory on many fronts: women’s rights, patient’s rights, public health, and civil liberties. *Id.* at 246–47. It was not a total victory, however, because it provoked a backlash which resulted in legislation, such as the Hyde Amendment, aimed at degrading the newly minted abortion right. *Id.* at 247. *See also* Katherine A. Shaw & Alex Stein, *Abortion, Informed Consent, and Regulatory Spillover*, 92 IND. L. J. 1, 5 (2016) (noting incomplete nature of *Roe* decision). While the *Roe* decision invalidated the Texas law, it failed to expressly condemn the antiabortion rhetoric driving the law. *Id.* This rhetoric has fueled the hundreds of antiabortion laws passed since *Roe*, such as the dangerous informed consent laws enacted in South Dakota. *Id.* This animus has removed citizen’s

B. *Post-Roe*

Roe was followed by *Planned Parenthood of Southeastern Pennsylvania v. Casey* in 1992, which upheld *Roe* but altered the standards for government regulation of abortion.¹⁹ Since *Casey*, the modern landscape of antiabortion laws is restrictive, but also piecemeal, unpredictable, and ever-changing, as captured in the shocking *Dobbs* decision.²⁰ Many states made abortions

power over their own reproductive health, because “[r]esidents who favor unrestricted abortion rights have no real voice in South Dakota. Under conventional theories of federalism, their only remedy is exit: all they can do is move to a state whose abortion laws are less restrictive.” *Id.*

19. See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, at 870–78 (1992) (reaffirming *Roe* but modifying analysis of rights). *Casey* eliminated the trimester-based calculation of government regulation and instead drew the line at “viability,” holding that “before that time the woman has a right to choose to terminate her pregnancy.” *Id.* at 870. *Casey* also introduced the undue burden standard, making any law where the “purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability” unconstitutional. *Id.* at 878. See also ZIEGLER, *supra* note 7, at 90, 119 (explaining holding and ramifications of *Casey*). *Casey* acknowledged that abortion was “matter of autonomy for women” but also an issue of equal protection. *Id.* at 119. The new undue burden standard, however, was amorphous, allowing antichoice organizers room to test out restrictions based on the effects of abortion. *Id.* Ultimately, after *Casey*, abortion rights were tied to constitutional law and debates over varying costs and benefits. *Id.* at 90. See also Jennifer L. Holland, *Abolishing Abortion: The History of the Pro-Life Movement in America*, ORG. OF AM. HIST., <https://www.oah.org/tah/issues/2016/november/abolishing-abortion-the-history-of-the-pro-life-movement-in-america/> (last visited Oct. 13, 2021) (describing antiabortion debate in America). In some ways, *Casey* was a victory for the antiabortion movement, since it allows for restrictions which are legally not considered an “undue burden,” but which still create barriers for pregnant people, particularly in low income and rural areas where abortion services are difficult to obtain. *Id.*

20. See Reva Siegel, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 STAN. L. REV. 261, 349 (1992) (examining post-*Roe* developments in abortion decisions). It was not until *Thornburgh* in 1986 that the Court acknowledged that state regulation of abortion threatened equality for women, by framing abortion restrictions as a “coercive exercise of power against women.” *Id.* See generally *Thornburgh v. Am. Coll. of Obstetricians and Gynecologists*, 476 U.S. 747 (1986) (holding women’s right to abortion private). In *Thornburgh*, the Court stated that “[f]ew decisions are more personal and intimate, more properly private, or more basic to individual dignity and autonomy, than a woman’s decision—with the guidance of her physician and within the limits specified in *Roe*—whether to end her pregnancy.” *Id.* at 772. See also ZIEGLER, *supra* note 7, at 197 (noting number of abortion restrictions recently passed). Since 2010, over 288 abortion restrictions have been passed, making up more than a quarter of all abortion restrictions passed since *Roe*. *Id.* Many of these regulations are directed at clinics and abortion providers, requiring them to meet complex and costly standards, shutting down clinics that fail to do so. *Id.* at 198. Beginning around 2003, “heartbeat” bills became a favored strategy among antiabortion activists. *Id.* These laws ban abortions after fetal heart activity is detectable, typically around the sixth week of pregnancy. *Id.* at 204. Alternatively, since 2019, over a dozen

functionally impossible to attain, having outright banned all or most abortions, while only a few states have legislatively guaranteed the right to abortion.²¹ Planned Parenthood has been on the forefront of the battle over abortion access in the United States.²²

states have passed bills which broadly protect the right to abortion. *Id.* The abortion debate in the United States is deeply linked to many political theories and personal values held by Americans, making the debate particularly contentious. *Id.* at 210–12. The contentiousness of the topic, along with the unpredictable course of American politics means that the right to abortion is neither entirely safe nor entirely endangered at any given time. *Id.* See generally *State Legislation Tracker: Major Developments in Sexual & Reproductive Health*, GUTTMACHER INST., <https://www.guttmacher.org/state-policy> (last visited Jan. 15, 2022) (collecting and updating abortion laws by state). See also Shaw et al., *supra* note 18, at 9 (discussing “spillover” of antiabortion laws). The complexity of abortion rights across the United States is further complicated because the laws of one state often have impacts on those of other states. *Id.* See also Gentithes, *supra* note 10, at 5 (discussing impact of *Dobbs* on *stare decisis* doctrine). *Id.* The majority in *Dobbs* utilized a version of *stare decisis* to overturn *Roe* and *Casey*, and in doing so “significantly undermine[d]” doctrinal stability, judicial legitimacy, and legal consistency. *Id.* at 5–6. The majority’s erosion of reliance interests “significantly weaken[s] precedents that protect individual rights.” *Id.* at 7. The “concreteness” requirement invented by the *Dobbs* majority was novel in how much it will limit reliance interests in the future, “potentially precluding a growing number of litigants from the courthouse.” *Id.* at 9. The Court’s interpretation of reliance interests here is not content neutral, although proponents may attempt to cast it as such. *Id.* This new doctrine created to destroy the 50 year old right to abortion “will both prioritize economic interests over social, interpersonal, and even familial interests, suggesting that the latter are not worthy of judicial protection simply because they are more difficult to quantify.” *Id.*

21. See *Abortion Laws by State*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/abortion-laws-by-state> (last visited Oct. 13, 2021) (listing abortion laws by state). Almost half of the States have either banned abortions or seriously restricted abortion access. *Id.* Restrictions are based on a wide array of factors including who is undergoing the procedure, who is performing the procedure, where it is taking place, where the funding is coming from, whether there are medical complications at issue, and whether the pregnancy is the result of rape or incest. *Id.* See also Elizabeth Nash, *The Danger Ahead: Early Indicators Show States Will Be the Main Abortion Battleground in 2021*, GUTTMACHER INST. (Mar. 2, 2021) <https://www.guttmacher.org/article/2021/03/danger-ahead-early-indicators-show-states-will-be-main-abortion-battleground-2021#> (introducing antiabortion bills filed in 2021). 2021 was an anomalous year in the number and variety of antiabortion legislation introduced. *Id.* In the first two months alone over 300 bills were introduced. *Id.* See also REAGAN, *supra* note 18, at 251 (explaining increasing politicization of abortion policy). The increasingly vitriolic debate over abortion policy might have caused safe abortion access to be functionally illegal for all people except wealthy people or people whose lives are endangered by a pregnancy. *Id.* Despite growing support for abortion on request, access to abortion in rural and low-income communities is increasingly difficult. *Id.* at 253. See Burnett et al., *supra* note 3, (discussing reactions to midnight decision on Texas Act). In the last year, “69% of voters in last year’s elections said *Roe v. Wade* should be left as is, compared with just 29% saying it should be overturned.” *Id.*

22. See *Planned Parenthood Historical Timeline*, PLANNED PARENTHOOD OF WIS., <https://www.plannedparenthood.org/planned-parenthood-wisconsin/about-us/80yearsppwi/planned-parenthood-historical-timeline> (last visited Nov. 12, 2021)

The conflict is largely divided along party and spiritual lines, with the Republican party and some evangelical Christians taking an antichoice stance, and the Democrat party and various faith groups taking a pro-choice stance.²³

(laying out history of Planned Parenthood). Margaret Sanger founded the American Birth Control League and the Birth Control Clinical Research Bureau, which would later become the Planned Parenthood Federation of America. *Id.* In 1984, Planned Parenthood refused to comply with President Reagan's Global Gag Rule, which denied family planning funds to any organization that offered abortion counseling or referrals. *Id.* Because of Planned Parenthood's refusal, they are denied funding by the United States government. *Id.* The "Year of Pain and Fear" launched by antiabortion groups leads to fire bombings, vandalizations, assaults, and death threats towards abortion providers and clinics. *Id.* Planned Parenthood celebrated their 100-year anniversary in 2016. *See also Our History*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/about-us/who-we-are/our-history> (last visited Feb. 8, 2022) [hereinafter *Planned Parenthood History*] (reviewing history and development of Planned Parenthood). The eugenics ideology of Margaret Sanger has since been vehemently disavowed by Planned Parenthood. *Id.* *See also Casey*, 505 U.S. at 870 (holding abortion clinic providers could provide abortions before viability). *Casey* followed *Roe* in affirming and refining the right to abortion in the United States. *Id.* *See also Murray*, *supra* note 14, at 2043–44 (discussing Justice Thomas' concurrence in *Box v. Planned Parenthood of Indiana and Kentucky, Inc.*). Planned Parenthood was intimately linked to the civil rights movement, to the extent that Martin Luther King, Jr. served on a committee for a contraception study for Planned Parenthood and later received the organization's Margaret Sanger award in Human Rights in 1966. *Id.*

23. *See James J. Zumpano, Jr., Abortion in the United States: A Cry for Human Dignity*, 15 INTERCULTURAL HUM. RTS. L. REV. 285, 339 (2020) (setting Christian abortion perspective).

A fundamental Christian moral view regarding this issue is that God made the world, his creation is good, and human beings are part of that creation, including their reproductive system. To defy that or try and change that would be going against God's design by interfering with the natural and good order of things. Under this reasoning, abortion is wrong. More specifically, most evangelicals of the Christian community do not support abortion legalization under any circumstances and adhere to Biblical principles from Scripture to justify their viewpoint that human life is sacred at all stages.

Id. at 339. Additionally, the Orthodox and Catholic churches maintain an antichoice stance based on textual arguments such as the "tenets of Jeremiah 1:5 . . . [that] . . . 'Human life must be respected and protected absolutely from the moment of conception.'" *Id.* In contrast, some Protestant Christian sects take a liberal, pro-choice view of abortion. *Id.* at 341–43. The Episcopal Church General Conference of 2018 "called for women's 'reproductive health procedures to be treated as all other medical procedures' since they are an 'integral part of a woman's struggle to assert her dignity and worth as a human being.'" *Id.* at 341. Since 1970, the Presbyterian Church of the United States has held that "the artificial or induced termination of a pregnancy is a matter of careful ethical decision of the patient . . . and therefore should not be restricted by law." *Id.* at 342–43. *See also* JENNA JERMAN ET AL., CHARACTERISTICS OF U.S. ABORTION PATIENTS IN 2014 AND CHANGES SINCE 2008, 7 (John Thomas, ed., The Guttmacher Institute 2016) (highlighting demographics of people who have abortions). A further illustration of the religious divide in abortion politics is seen in the abortion recipients themselves.

C. Without *Roe*

The abortion access conflict was utterly restructured by the *Dobbs* decision, which decisively abandoned settled precedent and overturned *Roe*.²⁴ This overturn was spurred by the Trump

Id. at 7. At 38% of abortion patients studied, abortion patients with no religious affiliation made up the single largest group. *Id.* This percentage made patients with no religious affiliation overrepresented among patients and had substantially increased” between 2008 and 2016. *Id.* at 11. See also *Originalism*, *supra* note 15, at 874 (linking antiabortion constitutional originalism to right-wing politics.) Originalism, the long-favored constitutional basis of antiabortion arguments, has a long history with right-wing politics and the Republican party. *Id.* Conservative politics and originalism have historically gravitated together, united by similar legal and social objectives. *Id.* at 881. See also *The Women’s Treaty: CEDAW*, FEMINIST MAJORITY FOUND., <https://feminist.org/our-work/global-womens-rights/cedaw/> (last visited Nov. 11, 2021) (outlining timeline of CEDAW actions in United States). It was a coalition of Republican senators that blocked the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1994, despite the treaty having passed through the Senate Foreign Relations Committee. *Id.* A Republican senator made a speech in 1999 expressing disapproval of CEDAW and speaking against ratification. *Id.* See also Saona, *supra* note 1, at 233 (describing political back-and-forth of U.S. international abortion policy). Republican President Bush made his stance on abortion clear when he reinstated the global gag rule on his first day in office. *Id.* See also Pew Research Center, *supra* note 5 (reviewing abortion views by religious affiliation). Roughly 74% of White evangelical Protestants believe abortion should be illegal in all or most cases while over 80% of religiously unaffiliated Americans and 66% of Black nonevangelical Protestants think abortion should be legal in all or most cases. *Id.* The numbers remain relatively consistent when overlaid onto political affiliation. *Id.* While 60% of Republicans believe abortion should be illegal in all or most cases, 80% of Democrats believe the opposite. *Id.* Even the majority of self-identified “conservative and moderate Democrats” and “liberal Republicans” believe that abortion should be legal, at 72% and 60%, respectively. *Id.* Based on these numbers, it appears that antiabortion beliefs are largely concentrated in self-identified “conservative Republicans,” with 72% believing abortion should be illegal. *Id.*

24. See Gentithes, *supra* note 10, at 10 (discussing *Dobbs*’ abdication of precedent). The Court’s shift away from honoring *stare decisis* creates a barrier for individual rights. *Id.* This new framework of analysis could prove to be “catastrophic.” *Id.* See also Kenneth Berman, *Stare Decisis and the Supreme Court’s Undoing Project*, 49 LITIG. 56, 56 (2022) (noting *Dobbs* concurrence takes aim at other previously inviolable precedent). Justice Thomas’s concurrence raises concerns that the rights imparted by landmark cases such as *Griswold* and *Obergefell* are also in danger of being overturned. *Id.* See generally *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Obergefell v. Hodges*, 576 U.S. 1118 (2015). See also Yvonne Lindgren, *Dobbs v. Jackson Women’s Health and the Post-Roe Landscape*, 35 J. AM. ACAD. MATRIMONIAL L. 235, 240 (2022) (reviewing *Dobbs* majority and impact). The *Dobbs* majority called *Roe* “egregiously wrong” when overturning the case that had formed the basis of abortion law for the last fifty years. *Id.* at 236. The result will be a “patchwork” of state laws where a minority of states choose to protect the right to abortion. *Id.* at 237. See also Larissa Jimenez, *60 Days After Dobbs: State Legal Developments on Abortion*, BRENNAN CTR. FOR JUST. (Aug. 24, 2022), <https://www.brennancenter.org/our-work/research-reports/60-days-after-dobbs-state-legal-developments-abortion> (examining impact of *Dobbs* on nationwide abortion law

administration's successful appointment of three Supreme Court Justices, creating a conservative majority on the court.²⁵ These appointments and the court's shifting stance on abortion policy have had a considerable impact on recent American elections, further polarizing the opposing sides and overall decreasing abortion access.²⁶

landscape). *Dobbs* "immediately produced discordant policy" in all three branches of government across the country. *Id.* The patchwork prediction has been fulfilled in the post-*Dobbs* era of abortion law. *Id.*

25. See Joan Biskupic, *Conservative justices seized the moment and delivered the opinion they'd long promised*, CNN (June 25, 2022, 5:48 AM), <https://www.cnn.com/2022/06/24/politics/conservative-supreme-court-analysis-roe-dobbs/index.html> (analyzing judicial history and makeup of *Dobbs* court). The three youngest justices, all Trump-appointed, were in the majority of the *Dobbs* decision. *Id.* This is particularly significant given the evolution of the court since *Roe* was decided in 1973. *Id.* Since that time, fifteen justices have joined the Supreme Court. *Id.* Of the fifteen justices, all except six voted to protect *Roe* in some way. *Id.* Five of those six were in the *Dobbs* majority. *Id.* In short, former President Trump appointed half of the justices who voted to overturn *Roe*, despite fifty years of judicial support and bolstering for the landmark case. *Id.* Justice Gorsuch, one of those three, was only appointed after President Obama was blocked from appointing a justice to fill the seat vacated by the late Justice Scalia. *Id.*

26. See Zumpano, *supra* note 23, at 383 (discussing impact of abortion politics on Supreme Court makeup). The changing, increasingly conservative composition of the Supreme Court has endangered abortion rights in the United States. *Id.* Conservative Justice Amy Coney Barrett was appointed to the Court pursuant to former President Donald Trump's campaign promise to appoint justices who would work to overturn *Roe*. *Id.* at 384. The fluctuation of abortion politics has continued into the current Presidential administration. *Id.* at 385–86. President Biden has pledged to reinstate federal funding for foreign organizations that provide funding, to reinstate the Affordable Care Act covering abortion expenses, and to appoint federal judges who would strive to uphold *Roe*. *Id.* See also Burnett, *supra* note 3 (giving statistics on voter's rationales). In the 2020 election, "18% of voters called Supreme Court nominations the single most important factor" in their presidential votes. *Id.* Those voters "leaned toward Biden by a relatively narrow margin, 53% to 46%." *Id.* See also Rachel Roubein, *A quick guide to Ketanji Brown Jackson's health-related rulings*, WASH. POST (Feb. 28, 2022, 8:13 AM), <https://www.washingtonpost.com/politics/2022/02/28/quick-guide-ketanji-brown-jackson-health-related-rulings/> (comparing reactions from pro and antiabortion groups to Supreme Court nomination). Abortion rights groups such as Reproductive Freedom for All lauded the appointment of Judge Jackson, while antiabortion groups such as the Susan B. Anthony List decried the decision. *Id.* Judge Jackson's past indicates that she will work to uphold *Roe* and abortion rights. *Id.* In the past, she "co-authored a 2001 amicus brief in support of a Massachusetts law creating a 'buffer zone' around people as they approach abortion clinics." *Id.* Further, "as a district court judge, Jackson ruled in 2018 against the Trump administration's early termination of some federal grants under the Teen Pregnancy Prevention Program." *Id.* See also Mallory Carroll, *SBA List Statement on Biden's Nomination of Ketanji Brown Jackson for SCOTUS*, SUSAN B. ANTHONY PRO-LIFE AM. (Feb. 25, 2022), <https://www.sba-list.org/newsroom/press-releases/sba-list-statement-nomination-ketanji-brown-jackson-scotus> (criticizing nomination of Judge Jackson). The conservative Susan B. Anthony List stated that "[they] have no doubt she will work with the most pro-abortion administration in history to enshrine abortion

D. Reproductive Healthcare and Abortion in International Conventions

The international community did not effectively begin its discussion of reproductive healthcare until the early twentieth century.²⁷ The right to abortion was not affirmed until late in the 20th century, when attendees of the International Conference on Population and Development (ICPD) signed a program of action which committed to the prevention of unsafe abortion.²⁸ Until then, access to safe abortion was not recognized as an indispensable part of reproductive healthcare.²⁹ Since that time, several

on demand nationwide in the law.” *Id.* This prediction is a major windfall for abortion rights activists and policymakers. *Id.*

27. See CONNELLY, *supra* note 14, at 77 (highlighting international birth control conferences). In 1931, the World League for Sex Reform conference took place in Vienna. *Id.* There, attendees discussed birth control among other issues. *Id.* One week prior to this, Sanger attended a conference which divided over whether abortion qualified as birth control. *Id.* See also Rachel B. Vogelstein & Rebecca Turkington, *Abortion Law: Global Comparisons*, COUNCIL ON FOREIGN REL. (June 24, 2022, 4:00 PM), <https://www.cfr.org/article/abortion-law-global-comparisons> (comparing abortion policies worldwide). In 1967, the World Health Organization (WHO) recognized unsafe abortion as a public health concern. *Id.* See also YOUNGINDRA KHUSHALANI, DIGNITY AND HONOUR OF WOMEN AS BASIC AND FUNDAMENTAL HUM. RTS. 3 (1st ed. 1982) (identifying early instances of protections for women). Women and children were recognized as requiring special protections generally as early as 1785, in a treaty between the United States and Prussia. *Id.* This concept grew into a search for an international “universal standard of minimal human conduct to uphold human dignity” and was crafted through various treaties. *Id.* at 13.

28. See Vogelstein et al., *supra* note 27 (noting International Conference on Population and Development (ICPD) Program of Action). The ICPD was signed by 179 governments, including the United States, committing them to the pursuit of safe abortion access. *Id.* See also Int’l Conf. on Population and Dev., *Programme of Action of the International Conference on Population Development*, 275 (5–13 Sept., 1994), available at https://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf (outlining reproductive healthcare commitments). The United States made only nominal general remarks at the conference, noting the important work being done regarding maternal mortality and family planning. *Id.* at 276.

29. See Int’l Conf. on Population and Dev., *supra* note 28, at 61 (highlighting international abortion). Under the ICPD commitments, abortion is an integral part of necessary reproductive healthcare. *Id.* See also Johanna B. Fine, Katherine Mayall, & Lilian Sepúlveda, *The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally*, HEALTH AND HUM. RTS. J. (June 2, 2017), <https://www.hhrjournal.org/2017/06/the-role-of-international-human-rights-norms-in-the-liberalization-of-abortion-laws-globally/> (discussing international agreements on abortion). All aspects of abortion healthcare are encompassed by international body oversight, including pre and post abortion counseling, research, open access, and overall decriminalization. *Id.* Critically, international bodies have come together to recognize that “[a] range of human rights violations [] stem from restrictive abortion laws and lack of access to safe abortion services.” *Id.* Since the signing of the program of action, over

international conventions have reaffirmed this right in a variety of contexts.³⁰

35 countries have increased abortion access in recognition of these international opinions. *Id.*

30. See SWED. ASS'N FOR SEXUALITY EDUC., *BREAKING THROUGH: A GUIDE TO SEXUAL AND REPRODUCTIVE HEALTH AND RTS.* 48 (Ylva Bergman ed., Feb., 2004), https://reproductiverights.org/wp-content/uploads/2020/12/pdf_BreakingThrough_04.pdf [hereinafter *BREAKING THROUGH*] (listing relevant conventions). The International Covenant on Civil and Political Rights (ICCPR) “articles on the right to life and non-discrimination give rise to a governmental duty to ensure the full range of reproductive health services, including the means for preventing unwanted pregnancy . . . [t]he Committee has also concluded that some countries’ restrictive abortion laws violate women’s right to life.” *Id.* at 51. The CEDAW sets out the strongest protections for women’s reproductive health and provides that:

[S]tates should ‘[e]nsure the removal of all barriers to women’s access to health services, education and information, including in the area of sexual and reproductive health’ . . . [and] [the] Committee *could* consider holding countries responsible for any failure to ensure safe and legal abortion services to women facing an unwanted pregnancy in circumstances where abortion is illegal but has not to date done so.

Id. at 53. The Convention on the Rights of the Child (Children’s Rights Convention (CRC)) “provides strong protection for young peoples’ sexual and reproductive health and rights and explicitly requires governments to ‘develop family planning and education services.’” *Id.* The International Covenant on Economic, Social and Cultural Rights (Economic, Social and Cultural Rights Covenant (CESCR)) “emphasized governmental responsibility to ensure that all women have access to affordable and comprehensive reproductive healthcare, especially contraception and family planning services and information.” *Id.* at 50. The International Convention on the Elimination of All Forms of Racial Discrimination (Convention for the Elimination of Racial Discrimination (CERD)) provides that “women’s inability to access reproductive healthcare services, because of women’s race, ethnicity or national origin, are violations of the treaty.” *Id.* at 49–50. There are also several conference documents which affirm the right to reproductive healthcare and abortion. *Id.* at 54. The Programme of Action of the International Conference on Population and Development (PoA) explicitly affirmed the concept of reproductive rights. *Id.* at 55. The Beijing Declaration and Platform for Action recommends that governments review their laws which punish people who have undergone illegal abortions. *Id.* at 55–56. The Key Actions for the Further Implementation of the ICPD Programme of Action (ICPD+5), which builds on the ICPD, requires that governments train and equip healthcare providers to ensure that legal abortion is safe and accessible. *Id.* at 56. The Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action reaffirms the Beijing Platform and recognizes that the measures agreed upon in that Platform have not been fully implemented. *Id.* at 57–58. See also U.N. Hum. Rts. Comm., List of issues prior to submission of the fifth periodic report of the United States of America, CCPR/C/USA/QPR/5, ¶¶ 2–3 (2019) (listing ICCPR areas of concern). According to the most recent review, the United States must provide information on its actions regarding maternal mortality, termination of pregnancy, and reproductive rights. *Id.* These significant factors are currently areas of concern for the ICCPR oversight body. *Id.* See also *The Womxn’s Treaty: CEDAW, supra* note 23 (explaining United States’ lack of action regarding CEDAW). Currently, the United States is one of only seven countries that has not ratified CEDAW, the other six being countries with largely ineffective or oppressive human rights records: Iran,

E. United States Noncompliance with Ratified International Conventions

The United States has ratified several international conventions which guarantee reproductive healthcare as a right, correspondingly granting access to safe abortions.³¹ The actions

Sudan, South Sudan, Somalia, Palau and Tonga. *Id.* See also Team NOW, *Countries that Violate Human Rights*, NOW TRANSFORMING TRAVEL (Aug. 2022), <https://www.itmustbenow.com/feature/our-big-questions/countries-violate-human-rights/> (describing human rights violations in various countries). As of 2019, South Sudan and Iran have some of the highest rates of modern-day slavery. *Id.* See also U.S. DEP'T OF STATE - BUREAU OF DEMOCRACY, HUM. RTS., AND LAB., TONGA 2020 HUMAN RIGHTS REPORT (2020) (reviewing human rights violations in Tonga). Despite having the same CEDAW status, the United States has criticized Tonga for its human rights abuses, including rising violence and discriminatory laws against women. *Id.* See also Victoria Barnes & Michael Okkonen, THE HUM. DIGNITY TR., REFORM OF DISCRIMINATORY SEXUAL OFFENCES LAW IN THE COMMONWEALTH AND OTHER JURISDICTIONS | CASE STUDY OF THE REPUBLIC OF PALAU 10, 96, 97 (2019) (describing evolution of human rights protections for minorities in Palau). Until Palau began instituting reforms in 2012, Palau's laws generally afforded very little protection for women and other minorities. *Id.* at 10. This was largely due to the mix of laws left over from several successive colonizations, including by the United States. *Id.* Although Palau has now implemented numerous reforms, like the United States, it has not yet ratified CEDAW. The President of Palau, however, urged the legislative body to ratify CEDAW in 2013. *Id.* at 97. Additionally, the Palauan government, unlike the United States, is actively convening with intergovernmental organizations about the decriminalization of abortion. *Id.* at 96.

31. See ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 242 (3rd ed. 2006) (overviewing Constitutional grant of treaty power). The power to make treaties comes from Article I of the Constitution. *Id.* Subsection eight of this article specifically grants the power of “[c]ommerce with foreign nations.” *Id.* Though there has been some debate, state sovereignty and the tenth Amendment do not limit the scope of this treaty making power, which is inherent in the federal government. *Id.* at 282. Treaties made under this authority are “the law of the land and prevail over all conflicting state laws.” *Id.* This power is broad, as noted in *United States v. Curtiss-Wright Corp.* *Id.* at 366. In *Curtiss-Wright Corp.*, the Court found that this power even allowed the Executive and Legislative branches to dictate the operations of private munitions manufacturers. *Id.* at 367. See also *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 317 (1936) (emphasizing role of federal government in international relations). This treaty-making power is not only Constitutionally allocated to the federal government, but also inherent in the federal government, as part of its responsibility to the population of the country. *Id.* As the Court noted, “[a] political society cannot endure without a supreme will somewhere. Sovereignty is never held in suspense.” *Id.* at 316–17. See also *Where the United States Stands on 10 International Human Rights Treaties*, THE LEADERSHIP CONF. EDUC. FUND (Dec. 10, 2013), <https://civilrights.org/edfund/resource/where-the-united-states-stands-on-10-international-human-rights-treaties/> (delineating ratified and signed treaties). Pursuant to its sole possession of external authority, the United States has ratified the ICCPR and the CERD. *Id.* The United States has signed, but not ratified the CEDAW, the CRC, and the CESC. *Id.* See also Marie Wilken, *U.S. Aversion to International Human Rights Treaties*, GLOB. JUST. CTR. (June 22, 2017), <https://globaljusticecenter.net/blog/773-u-s-aversion-to-international-human-rights-treaties> (summarizing history of United States treaty behavior). The

of the United States, however, have not aligned with the intentions expressed via ratification.³² Since ratification of the International Conference on Population and Development Programme of Action (ICPD Programme) and the International Convention on Elimination of All Forms of Racial Discrimination (CERD), the United States has passed hundreds of laws which restrict abortion access contrary to the mandates of those conventions, among other contradictory actions, culminating in *Dobbs* recent overturn of *Roe*.³³ The actions of the United States in relation to

United States stands alone among Western “industrialized” countries in its reluctance to make, and then uphold, human rights treaties. *Id.*

32. See Khushalani, *supra* note 28, at 83 (lamenting abandonment of treaty principles). While the Universal Declaration of Human Rights and other human rights treaties are theoretically binding, because of noncompliance like that of the United States, universal protection of human rights has “become a dream rather than a reality.” *Id.* See also BREAKING THROUGH, *supra* note 30, at 18 (describing changes in United States policy). Initially, the United States was a voice for progressive reproductive healthcare and abortion access. *Id.* Beginning in 2001, however, the United States became a powerful voice for antiabortion politics, domestically and abroad. *Id.* This stance went as far as the “global gag rule,” which prohibits the United States from financially supporting nongovernmental organizations (NGOs) which promote safe and legal abortion access. *Id.* The global gag rule comes at the expense of human lives, as unsafe abortions claim thousands of lives every year. *Id.* at 30–31. See also David Kaye, *State Execution of the International Covenant on Civil and Political Rights*, 3 UC IRVINE. L. REV. 94, 96 (2013) (describing effect of international conventions on U.S. law). Because the ICCPR is ratified, under the Constitution, the commitments in the ICCPR qualify as “the supreme law of the land.” *Id.* Despite this high status, the commitments of the ICCPR have not been respected by the United States. *Id.* Neither the states nor the federal government have incorporated ICCPR commitments into law. *Id.* See also Roberta Cohen, *Integrating Human Rights in U.S. Foreign Policy: The History, The Challenges, and the Criteria For An Effective Policy*, THE BROOKINGS INST. – UNIV. OF BERN PROJECT ON INTERNAL DISPLACEMENT 2 (2008) (highlighting United States participation in international human rights discourse following WWII). Immediately following the humanitarian crisis of World War Two, the United States was seen as a leader in shaping human rights norms. *Id.* at 2. Over time, however, economic, and nonhumanitarian political interests overtook older, nobler policy directives. *Id.* at 7.

33. See REAGAN, *supra* note 18, at 253 (explaining decreasing abortion access during 1980s and 1990s). Post-*Roe*, states acted to limit abortion access, despite the landmark ruling. *Id.* See also Vogelstein et al., *supra* note 28 (outlining abortion access during twenty-first century). Currently, there are several states with only a single abortion provider. *Id.* See also Holland, *supra* note 19 (describing development of abortion law in United States). The conversation about abortion laws and the types of laws being passed has changed in the past couple of decades since *Casey*. *Id.* See also Nash, *supra* note 21 (introducing antiabortion bills filed in 2021). In just the first two months of 2021, over 300 bills were introduced. *Id.* See also Bui et al., *supra* note 5 (describing precarious position of abortion). Experts predicted that, due to a collection of trigger laws and other antiabortion legislation, twenty-two states would immediately lose abortion access if *Roe* were overturned. *Id.* See also ZIEGLER, *supra* note 7, at 197 (noting amount of antiabortion legislation being passed). Since 2010, over 288 antiabortion laws have been passed, adding to the hundreds more previously passed since *Roe*. *Id.*

its obligations under these conventions may amount to material noncompliance.³⁴ This noncompliance affects not only American people, but potentially the lives of childbearing people around the world.³⁵

See also Abortion Laws by State, supra note 21 (noting states where trigger laws were enacted). Since *Dobbs*, many of the existing trigger laws were fully implemented, limiting or banning abortions in almost half of the States. *Id.*

34. *See* Kaye, *supra* note 32, at 107 (describing impotency of ICCPR in United States). The ICCPR largely uses broad language, leading to a lack of consequences and corresponding lack of implementation of requirements in the United States. *Id.* The primary mechanism of enforcement has only been a passing reference to the ICCPR in judicial decisions. *Id.* *See also* Saona, *supra* note 1, at 231 (noting United States' non-compliance with international treaty obligations). Not only has the United States failed to comply, but many laws passed since the ratification of these treaties run directly contrary to those same obligations. *Id.* The United States' current "policies violate both the spirit of these treaties and international policy." *See also Memorandum on Protecting Women's Health at Home and Abroad*, THE WHITE HOUSE (Jan. 28, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/memorandum-on-protecting-womens-health-at-home-and-abroad/> (stating President Biden's intentions on reproductive healthcare). Although the United States' policy has recently been held out as pro-reproductive rights and pro-abortion, this public sentiment has not been matched in practice. *Id.* *See also* Juliet S. Sorensen & Xiao Wang, *Dobbs, glass houses and international law*, AL JAZEERA (July 12, 2022), <https://www.aljazeera.com/opinions/2022/7/12/dobbs-glass-houses-and-international-law> (explaining how United States abortion decision violates binding obligations). The *Dobbs* court makes no mention of the binding international law that their decision plainly contradicts. *Id.* The OHCHR stated that, consistent with the right to life embodied in the ICCPR, "countries (1) 'should not introduce new barriers' to abortion and (2) 'should remove existing barriers that deny effective access by women and girls to safe and legal abortion.'" *Id.* *See also* Zoe Christen Jones, *World leaders react to the U.S. Supreme Court's decision to overturn Roe v. Wade*, CBS NEWS, (June 24, 2022, 7:13 PM), <https://www.cbsnews.com/news/supreme-court-ro-v-wade-abortion-rights-international-response/> (collecting world leader's statements on *Dobbs*). Aside from international bodies such as the OHCHR, individual countries' leaders have reacted with scorn and anger to the *Dobbs* decision. *Id.*

35. *See* CONNELLY, *supra* note 14, at 11 (noting United States abortion policy often leads international trends). The United States has had a significant impact on the global abortion access debate. *Id.* When the United States began liberalizing abortion policy, the Catholic Church worried those policies would spread to other countries. *Id.* at 48. The United States itself has viewed birth control as a foreign policy issue for decades. *Id.* at 138. Contrary to its expressed policy, the United States globally influenced abortion law as it attempted to promote abortion access abroad while it was still illegal domestically. *Id.* at 244. *See also* Saona, *supra* note 1 (explaining effect of United States funding on international abortion access). When the United States reversed its previously progressive stance on abortion access and removed funding from the United Nations Population Fund, thousands of people all over the world lost access to safe abortion. *Id.* at 231. In refusing to comply with its treaty obligations, the United States is jeopardizing the health and lives of women all over the world, in the face of several key treaties. *Id.* at 243–55. *See also* Jeff Grabmeier, *The power of one country to influence treaty ratification*, OHIO STATE NEWS (Mar. 7, 2019), <https://news.osu.edu/the-power-of-one-country-to-influence-treaty-ratification/> (explaining cooperative

III. FACTS

A. *United States Noncompliance*

The United States is bound by international agreements to several responsibilities including decriminalizing abortion, increasing safe abortion access, and increasing abortion support services.³⁶ The United States has failed to meet all these obligations.³⁷ While some of these failures are incidental to other

and coercive effects of treaty ratification). When the United States has ratified a treaty, other countries often follow suit. *Id.* This is true even when the country to be influenced is another global superpower, such as Russia. *Id.* Accordingly, the United States holds the power to encourage other countries to respect and codify reproductive rights which have previously neglected to do so. *Id.* Given this power, and the numerous effects that inadequate reproductive rights and abortion access can have, the United States could save an untold number of lives through its actions. *Id.* See also Sarah Repucci & Amy Slipowitz, *Freedom in the World 2021: Democracy under Siege*, FREEDOM HOUSE (2021), <https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege> (highlighting decline of United States' influence on global politics). The influence of the United States is seen beyond treaty ratification, and “[e]veryone benefits when the United States serves as a positive model . . . [s]uch a world generates more trade and fairer markets for US goods and services, as well as more reliable allies for collective defense. A global environment where freedom flourishes is more friendly, stable, and secure.” *Id.* See also DAVID P. FORSYTHE, *HUMAN RIGHTS AND COMPARATIVE FOREIGN POLICY: FOUNDATIONS OF PEACE* 19 (United Nations University Press, ed., 2000) (questioning United States self-proclaimed role in human rights policy). While the United States has long held a “self-image of leadership for human rights, it is by no means clear that the United States is easily given to moral crusades for personal freedom abroad in actual policy.” *Id.*

36. See U.N. Hum. Rts. Comm., *supra* note 30 (listing areas of concern in United States compliance with ICCPR). ICCPR obligations fall into each of these three broad categories. *Id.* Points 12(a) and (b) of the ICCPR list of concerns pertain to increasing abortion access. *Id.* Point 12 (a) concerns “conscience-based objections” to reproductive care access under the Affordable Care Act and point 12(b) concerns state laws which restrict safe abortion access. *Id.* Point 12(c) on the list of concerns pertains to decriminalization of abortion, specifically the decriminalization of women using drugs while pregnant. *Id.* Point 12(d) pertains to increasing abortion support services and to increasing abortion access, because it references the “Global Gag Rule” which prohibits any federal funding from going to organizations which provide abortion services. *Id.* The United States must provide information and take actions regarding maternal mortality, termination of pregnancy, and reproductive rights. *Id.* See also BREAKING THROUGH, *supra* note 30, at 52–53 (explaining CEDAW). CEDAW sets out the strongest protections for women’s reproductive health and provides that “[S]tates should [e]nsure the removal of all barriers to women’s access to health services, education and information, including in the area of sexual and reproductive health.” *Id.*

37. See AMNESTY INT’L, *AMNESTY INTERNATIONAL REPORT 2021/22: THE STATE OF THE WORLD’S HUMAN RIGHTS* 388 (2021) (summarizing United States’ performance in promoting reproductive rights). See also *USA: State Department’s flawed ‘unalienable rights’ report undermines international law*, AMNESTY INT’L (July 16, 2020), <https://www.amnesty.org/en/latest/news/2020/07/usa-state-department-report-undermines-international-law> (criticizing State Department report). In 2020 the United States

policies, other failures are the result of deliberate actions by American politicians and private citizens.³⁸

curtailed and removed people's access to reproductive rights, both domestically and internationally. *Id.* Further, in July of 2020, the United States published the "Commission on Unalienable Rights" which appears to reject the definitions of rights agreed upon by international bodies and instead replaces those definitions with frameworks that decrease human rights and protections for women as a whole. *Id.* See also LOUIS HENKIN, *HOW NATIONS BEHAVE* 47 (2d ed. 1979) (highlighting typical treaty compliance behavior). The United States' pattern of noncompliance, either deliberate or accidental, is at odds with the maxim that "almost all nations observe almost all principles of international law and almost all of their obligations all the time." *Id.* See also *Reproductive Rights Submission*, *supra* note 9, at 1 (emphasizing seriousness of danger to abortion access). The global organization Center for Reproductive Rights summarizes the United States' reproductive rights as "under alarming and relentless attack." *Id.* Concern over the desperate state of reproductive rights in the United States has been voiced by the 2016 UN Working Group on Discrimination Against Women in Law and Practice, the UN Working Group of Experts on People of African Descent, UN Working Group on Arbitrary Detention, the UN Special Rapporteur on Extreme Poverty. *Id.* at 2-3.

38. See *Reproductive Rights Submission*, *supra* note 9, at 1 (describing United States legal framework). The federalist government in the United States has contributed to the adversarial and fragmented nature of abortion policy. *Id.* One example of an incidental policy consequence is how the attacks on the Affordable Care Act have collaterally affected healthcare access through defunding and direction of consumers to private plans with do not have comprehensive reproductive healthcare coverage. *Id.* at 4. Another collateral consequence is how changes to United States immigration policy have further degraded reproductive healthcare access for immigrant people. *Id.* at 5. One of the more direct attacks on abortion and reproductive healthcare access is the "religious or moral objections" exception that allows employers and healthcare institutions to deny reproductive healthcare coverage in insurance policies, or abortion and reproductive care itself in healthcare facilities. *Id.* at 6. Since 1973, this religious exemption has been steadily widened, creating serious effects on abortion services. *Id.* The most concerning legislative attack has been the multi-front assault from forty-six states, all of which have enacted laws restricting abortion access. *Id.* at 7. These access restrictions are compounded by additional laws which impose arduous requirements on clinics for them to remain open. *Id.* As a result of these varied and destructive laws, there are now six states with only one abortion provider, forcing many people to travel long distances, take time off work, and pay out-of-pocket for expenses incurred. *Id.* As is the case with other abortion access complications, this disproportionately affects marginalized groups. *Id.* See also Oona A. Hathaway, *Why Do Countries Commit to Human Rights Treaties?*, 51 J. CONFLICT RESOL. 588, 593 (2007) (tracing connection between compliance and domestic favorability). Both kinds of failures are dangerous as the more domestic support and action toward compliance shown generally translates to an overall compliance on a global level. *Id.* See also Swapna Reddy, Mary Saxon, Yeonsoo Sara Lee, & Nina Patel, *Reproductive Rights and Justice: A Critical Opportunity For The Biden Administration To Protect Hard-Fought Gains*, HEALTH AFFS. (Mar. 31, 2021), <https://www.healthaffairs.org/doi/10.1377/forefront.20210326.802027/full/> (discussing Title X issues). Another critical area of collateral consequences to abortion laws are the "unethical and dangerous" changes made to Title X laws under President Trump. *Id.* These changes jeopardized reproductive healthcare for 1.6 million people across the country. *Id.*

Deliberate action targeting abortion has manifested into state laws affecting both *de jure* access, abortion being legally available, and *de facto* access, abortion being practically available.³⁹ This twofold lack of access disproportionately, financially, emotionally, and medically impacts people who are low-income, non-white, LGBTQIA+, or of intersecting minorities.⁴⁰ Through its

39. See Gary Peller, *A Subversive Strand of the Warren Court*, 59 WASH. & LEE L. REV. 1141, 1142 (2002) (explaining difference between *de jure* and *de facto* access). The *de jure* aspect of abortion access refers to whether there are jurisprudential or legislative barriers to abortion access. *Id.* The *de facto* aspect refers to whether there are practical obstacles preventing a person from exercising their abortion right. *Id.* These two aspects are closely related: *de jure* factors can create *de facto* obstacles, such as financial constraints created by defunding clinics. *Id.* See also Elyssa Spitzer & Nora Ellmann, *State Abortion Legislation in 2021: A Review of Positive and Negative Actions*, CTR. FOR AM. PROGRESS (Sept. 21, 2021), <https://www.americanprogress.org/article/state-abortion-legislation-2021> (explaining abortion access trajectory and developments in 2021). In 2021 alone, 561 abortion laws were introduced as of June, and ninety-seven of those restrictions became law as of August. *Id.* Many of those restrictions used tactics were designed to make abortion inaccessible, rather than making it illegal. *Id.* These *de facto* tactics include insurance coverage restrictions, gestational limits, waiting periods, counseling requirements, method bans, parental involvement laws for minors, reason bans, born-alive laws, and targeted restriction of abortion provider laws. *Id.* The Texas Act, and the numerous copycat laws based on it are examples of a *de jure* tactic, as it provides an entirely judicial mechanism for decreasing safe abortion access. *Id.* The outcome of these many tactics is several states having near-total abortion bans. *Id.* See also *Abortion Laws by State*, *supra* note 21 (highlighting states with *de jure* lack of access). One *de jure* tactic for making abortion outright illegal are so-called “trigger laws,” which, if utilized can make abortion illegal immediately now that *Roe* has been overturned. *Id.* See generally *Is Abortion Still Accessible in My State Now That Roe v. Wade Was Overturned?*, PLANNED PARENTHOOD, <https://www.plannedparenthoodaction.org/abortion-access-tool/US> (last visited Nov. 12, 2021) (giving detailed analysis of abortion access for each state compared to others). See also Miller, *supra* note 3 (discussing gestational limits as barriers). Another important *de jure* barrier is gestational limits. *Id.* Even where abortion access is apparently liberal, when *de jure* gestational limits exist, it can create a *de facto* barrier for people seeking an abortion. *Id.* This is because people must arrange for travel, accommodations, childcare, and time off work to go get the procedure, even where it is legal. *Id.* This barrier is exacerbated in the United States because abortions can only be performed at specific clinics, rather than at a medical clinic or regular hospital. *Id.* See also REAGAN, *supra* note 18, at 251 (stressing importance of *de facto* access). Notably, “[i]f legal abortion is so restricted that it is available only to rich women or to women whose lives are endangered by pregnancy or to women pregnant as a result of rape, then abortion should be declared, in truth, illegal.” *Id.*

40. See *Reproductive Rights Submission*, *supra* note 9, at 1 (summarizing dire state of United States reproductive rights). The increasingly dangerous trajectory of reproductive rights in the United States especially targets “people experiencing multiple and intersecting forms of discrimination, including immigrants, people living in poverty, women of color, people living in rural areas, LGBTQIA+ people, and people with disabilities.” *Id.* See also Anusha Ravi, *Limiting Abortion Access Contributes to Poor Maternal Health Outcomes*, CTR. FOR AM. PROGRESS (June 13, 2018), <https://www.americanprogress.org/article/limiting-abortion-access-contributes-poor-maternal-health-outcomes/>

restrictive action, and corresponding continued noncompliance, the United States has triggered increasing domestic discord.⁴¹

(describing disproportionate impact of abortion restrictions on people of color). Not only do abortion restrictions impact people of color more than white people, but the issue is also further exacerbated by the treatment of people of color by healthcare providers. *Id.* Healthcare workers “have been known to ignore the pain of women of color, which contributes toward preventable death, maternal mortality, and distrust of health care providers” and higher rates of stress and discrimination, which further contribute to increased maternal mortality and decreased health outcomes. *Id.* See also Margot Sanger-Katz, Claire Cain Miller, & Quoc Trung Bui, *Who Gets Abortions in America?*, NY TIMES (Dec. 14, 2021), <https://www.nytimes.com/interactive/2021/12/14/upshot/who-gets-abortions-in-america.html> (narrating typical abortion story in United States). The typical abortion patient “[has] children, is poor; is unmarried and in her late 20s; has some college education; and is very early in pregnancy.” *Id.* Over half the people who have abortions are below the federal poverty line, with another quarter of those people “very close to poverty.” *Id.*

41. See Chris Boyette, *New Year's Eve fire at Planned Parenthood facility in Tennessee was arson, officials say*, CNN (Jan. 6, 2022, 11:08 PM), <https://www.cnn.com/2022/01/06/us/tennessee-fire-planned-parenthood-new-years-eve/index.html> (reporting on violence at Planned Parenthood clinic). Violence against abortion providers is not a thing of the past as it is still occurring in 2022. *Id.* See also Christine Ramelb, *Public Health Care Funding: The Battle Over Planned Parenthood*, 47 VAL. UNIV. L. REV. 499, 509 (2013) (explaining controversy over public funding of clinics providing abortion). As states like Indiana began to challenge the public funding of healthcare clinics that provided reproductive and abortion services, Planned Parenthood, the largest medical provider of abortions, became involved in many legal challenges. *Id.* See also Sarah Primrose, *The Attack on Planned Parenthood: A Historical Analysis*, 19 UCLA WOMEN'S L. J. 165, 167 (2012) (describing dissonance in descriptions of Planned Parenthood's activities). The attacks on Planned Parenthood continued to occur as opponents framed the organization solely as an abortion provider. *Id.* Abortion services make up less than 3% of Planned Parenthood's services with the other 97% being “family planning, pap smears, immunizations, cancer screening, sexually transmitted disease testing, and other forms of preventative care.” *Id.* See also HENKIN, *supra* note 37, at 317 (discussing evolution of internal forces supporting international law). The damaging effects of the abortion debate on American society may also be contributing to a society that is less likely to comply in the future. *Id.* It is notable that “internal forces in support of [international] law observance also depend on more healthy, open, stable domestic societies with freer institutions.” *Id.* As the abortion policy debate becomes more divisive, society becomes unstable and unhealthy, making it less likely to support international law. *Id.* One way to counter this effect is to make a “deliberate effort to raise the status of international law in individual countries.” *Id.* See also Kate Zernike & Madeleine Ngo, *Anti-Abortion Marchers Gather With an Eye on the Supreme Court*, NY TIMES (Jan. 21, 2022), <https://www.nytimes.com/2022/01/21/us/march-for-life-rally.html> (examining evolution of opinions on *Roe*). The overall percentages of people who support and oppose abortion have remained relatively stable since *Roe*, with a slight increase in people supporting abortion. *Id.* While the percentages have remained stable, the “partisan divide has become wider” as Democrats and Republicans retreat deeper into their own parties' doctrine. *Id.*

B. The Consequences of Noncompliance and Lack of Access

The cost to human lives and dignity is a strong measure of inadequate abortion access.⁴² Countries with liberal abortion laws

42. See Chloe Atkins, 'Lifelong Consequences': What happens to people who can't get abortions, NBC NEWS (Sept. 12, 2021, 4:30AM), <https://www.nbcnews.com/politics/politics-news/lifelong-consequences-what-happens-people-who-can-t-get-abortions-n1278838> (discussing various effects of unwanted pregnancies). One of the most insidious consequences of abortion denials is economic hardship. *Id.* People who are already indigent are more likely to seek abortions for a variety of intersecting reasons. *Id.* This means that the lack of abortion access often exacerbates an already dire situation. *Id.* One study found that "people who were denied an abortion had almost four times greater odds of being below the federal poverty level" and those people "are more likely to struggle to afford basic living expenses like food, housing and transportation." *Id.* Increases in debt, bankruptcy, eviction, tax liens, and unemployment are also observed when people must carry an unwanted pregnancy. *Id.* Beyond these tangible economic consequences, there are also mental and physical consequences for people denied abortions. *Id.* People who cannot access abortion report increased rates of poor health and chronic pain, as well as domestic violence and single parenthood. *Id.* Additionally, pregnancy itself exposes people to increased health risks: the mortality rate for pregnancy and childbirth is approximately 20.1 deaths per 100,000 people, as compared with just 1 out of 100,000 people for abortion. *Id.* Further, unwanted pregnancies carry higher rates of dangerous and burdensome conditions such as depression, gestational diabetes, excessive bleeding at childbirth, and hypertension. *Id.* See also Zumpano, *supra* note 23, at 325 (examining impacts of abortion on mental health). There is evidence that women who were denied abortions experienced higher rates of adverse psychological outcomes when compared to those who had abortions. *Id.* These adverse outcomes are also multi-generational. *Id.* at 328. Children born of unwanted pregnancies are more likely to experience negative effects on social, cognitive, and emotional processing, as well as increased likelihood of engaging in criminal behavior and having unstable relationships. *Id.* See also ANNA BERNSTEIN & KELLY JONES, THE ECONOMIC EFFECTS OF ABORTION ACCESS: A REVIEW OF THE EVIDENCE (July 18, 2019), https://iwpr.org/wp-content/uploads/2020/07/B379_Abortion-Access_rfinal.pdf. (reviewing relationship between abortion restrictions and outcomes for children). Children of people with abortion access are more likely to go to college, less likely to experience poverty, and less likely to receive public assistance. *Id.* Quality abortion access allows people to participate more in the workforce, reduced costs, and invest more in education or job training, leading to better paying jobs and increased economic security. *Id.* Abortion access also increases people's autonomy over their households, relationships, and general self-determination. *Id.* See also Ravi, *supra* note 40 (discussing relationship between abortion and various metrics of success and health). Research shows that more abortion restrictions mean worse health outcomes for women and children, including higher rates of infant mortality. *Id.* People who have unintended pregnancies and are forced to carry to term often delay crucial prenatal care, leading to higher rates of maternity-related healthcare issues. *Id.* Approximately 60% of people who seek abortions are already parents, meaning that parents' existing children are now being parented by people who could be suffering serious adverse outcomes from being denied an abortion. *Id.* On top of all these other complications, inadequate access to safe, legal abortion increases the rates of illegal, unsafe abortions. *Id.* The need for abortion has not been eliminated by restrictive abortion laws, only the access to safe abortions. *Id.* Some people attempt unsafe self-abortion methods, such as blunt force trauma. *Id.* After the legalization of abortion in the United States in 1973, the rate of

have statistically lower dangerous healthcare and social metrics such as maternal mortality.⁴³ Conversely, countries with restrictive abortion laws rate highly in those same metrics.⁴⁴ The United

abortion related deaths dropped in just three years from forty deaths per million live births to only eight deaths per million live births. *Id.* Another metric indicative of the lifesaving power of legal abortion is the decrease from three abortion related deaths per 100,000 in 1975 to just a single death per 100,000 in 1976. *Id.* See also BREAKING THROUGH, *supra* note 30, at 30 (listing reasons and statistics for maternal mortality). According to the WHO, over 78,000 women die globally from unsafe abortion. *Id.*

43. See BERNSTEIN et al., *supra* note 42 (examining international evidence of abortion access impacts). Internationally, abortion access increases educational attainment for childbearing people and improves many outcomes for children. *Id.* Conversely, abortion restrictions decrease childbearing people's labor market participation, leading to various adverse outcomes. *Id.* When the Mexico City region of Mexico increased abortion access, women reported higher rates of being involved in important household decisions and improved economic outcomes, when compared to the laws in more restrictive regions of Mexico. *Id.* See also Ruby Mellen, Youjin Shin, Daniela Santamariña, & Sammy Westfall, *How abortion laws in the U.S. compare to those in other countries*, WASH. POST (Sept. 27, 2021), <https://www.washingtonpost.com/world/interactive/2021/us-abortion-laws-worldwide/> (examining global abortion policy trends). Fortunately, the general global trend is towards abortion legalization. *Id.* Between 1994 and 2022, fifty-six countries have made "significant changes to their national abortion laws," but only three of these countries significantly increased restrictions. *Id.* In countries with liberal abortion laws, there are often lower rates of abortion, likely because those countries also have liberal contraception laws. *Id.* See also *Abortion: Key facts*, WORLD HEALTH ORG. (Nov. 25, 2021), <https://www.who.int/news-room/fact-sheets/detail/abortion> (providing overview of global abortion policies gathered by World Health Organization). Additionally, there are practical costs to the countries themselves. *Id.* Countries with more restrictive abortions laws, and consequently higher rates of unsafe abortion, spend on average \$553 million in healthcare costs related to treating complications from unsafe abortions, and \$922 million in lost income because of complications from unsafe abortions. *Id.*

44. See BERNSTEIN et al., *supra* note 42 (reviewing statistics on maternal mortality). People die when they cannot access abortion, and these deaths occur in much higher numbers in countries with more restrictive abortion laws. *Id.* See also *Countries Where Abortion is Illegal 2023*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/countries-where-abortion-is-illegal> (last visited Nov. 13, 2021) (reviewing international abortion laws). Currently, there are twenty-four countries where abortion is entirely illegal. *Id.* In a further thirty-seven countries, abortion is illegal except where it will save the mother's life. *Id.* Despite the draconian nature of these laws, research from the World Health Organization indicates that the strictness of laws has no effect on how many abortions occur each year except to increase the number of unsafe abortions. *Id.* See also *Reproductive Rights Submission* *supra* note 9, at 3 (discussing report of UN Special Rapporteur on Extreme Poverty). Among developed, wealthy countries, the United States has one of the highest maternal mortality rates. *Id.* Of this rate, it is particularly concerning that Black childbearing people have a three-to-four-times higher maternal mortality rate. *Id.* Low-income people are also especially susceptible to a lack of abortion services, often entrenching them deeper into the cycle of poverty. *Id.* The United States is one of few countries where maternal mortality rates are on the rise, with many of those deaths being preventable. *Id.* at 8. See also BERNSTEIN et al., *supra* note 42, at 13 (reviewing international consequences of

States, with its restrictive and internationally noncompliant laws, ranks towards the bottom of these key metrics among developed countries, directly translating to lives lost and damaged.⁴⁵ The

abortion restrictions). One glaring example of the serious negative consequences of criminalizing abortion is Romania. *Id.* Romania had legal abortion until 1966 when it was abruptly outlawed. *Id.* This abrupt abortion ban led to worse schooling and labor market outcomes for the children born following the ban. *Id.* See also CONNELLY *supra* note 14, at 310 (noting impact of Romanian abortion ban). This drastic policy shift led to an “epidemic of botched abortions [which] [] caused maternal mortality to soar.” *Id.* See also GABOR HAJDU & TAMAS HAJDU, THE LONG-TERM IMPACT OF RESTRICTED ACCESS TO ABORTION ON CHILDREN’S SOCIOECONOMIC OUTCOMES 1, 4 (Mette Gørtz eds., 2021) (examining empirical evidence of abortion outcomes in Hungary). When abortion was criminalized in Hungary, children’s educational achievements decreased, young mothers’ educational achievements decreased, and the labor market experienced negative downturns. *Id.* The children of people denied abortions were more likely to experience unemployment. *Id.* Further, those same people and their children are less likely to own a home. *Id.* See also Su Mon Latt et al., *Abortion laws reform may reduce maternal mortality: An ecological study in 162 countries*, 19 BMC WOMEN’S HEALTH, 1 (2019) (conducting extensive study on correlation between abortion access and maternal mortality). When a country has more flexible abortion laws, the rate of maternal mortality decreases. *Id.* at 5.

45. See Summer Sherburne Hawkins, *Maternal mortality is worse in Washington D.C. than Syria. Abortion access is one reason why*, NBC NEWS (Feb. 18, 2020, 12:05 PM), <https://www.nbcnews.com/think/opinion/maternal-mortality-worse-washington-d-c-syria-abortion-access-one-ncna1136446> (revealing state of abortion access and maternal healthcare in Washington D.C.). Washington, D.C., has a maternal mortality rate of 33 deaths per 100,000 live births. *Id.* This rate is higher than in Syria, which is 31 deaths per 100,000 live births. *Id.* Black women living in Washington D.C. makeup 59.7% of this rate, which is higher than the rate in Panama and Ecuador. *Id.* Experts attribute this disparity to restricted abortion access. *Id.* The nation’s restrictive abortion laws contribute to a black woman in D.C. “ha[ving] a better chance of surviving pregnancy in a war zone than in walking distance of the White House.” *Id.* See also Jennifer Welsh, *A Verywell Report: Abortion Access Ranked By State*, VERYWELL HEALTH (Sept. 27, 2021), <https://www.verywellhealth.com/abortion-access-ranking-states-5202659> (explaining abortion access disparities across states). The appalling maternal mortality rate in D.C. is made more sobering given that D.C. is one of the safest and freest areas for abortion access in the United States. *Id.* See also Ravi, *supra* note 40 (examining abortion access outcomes on state level). States with more abortion restrictions have worse outcomes for both the parents’ and the children’s health outcomes when compared to states with better abortion access. *Id.* As laws in Texas have grown increasingly restrictive over the last decade, the number of abortion-related deaths has risen. *Id.* See also *Developed Countries List 2023*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/developed-countries> (last visited Feb. 9, 2022) (ranking development of countries). The United States, despite its large economy and reputation, is only twenty-first in development according to the Human Development Index. *Id.* This index accounts for factors other than economic growth, such as education, health, life expectancy, social welfare, infrastructure, and freedoms granted to citizens. *Id.* See also *The World’s Abortion Laws*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/worlds-abortion-laws/> (last visited Oct. 13, 2021) (categorizing abortion laws around world). Of the sixteen countries that are more developed than the United States, all but two, Hong Kong and Finland, are categorized as having some of the most liberal

international agreements the United States has ratified or signed do not impose binding action requirements on the United States.⁴⁶ Rather, ratified agreements take on the qualities of federal legislation through the power of the Supremacy Clause.⁴⁷ Regardless

abortion laws in the world. *Id.* See also Miller, *supra* note 3 (comparing abortion laws among states). While the United States is more liberal than certain less developed countries, the actual legality of abortion access varies drastically from state to state, meaning that a nationwide generalization is not reflective of reality. *Id.* See also U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2020: THE NEXT FRONTIER, HUMAN DEVELOPMENT AND THE ANTHROPOCENE 361 (2020) (reviewing metrics of development). The United States ranks seventeenth in global Human Development Index. *Id.* Of the sixteen countries rated higher than or comparably to the United States, the United States ranks at the bottom of several key metrics. *Id.* This low rank translates to higher numbers of maternal deaths. *Id.* The United States ranks forty-sixth in global gender equality, a full thirteen spots behind the next lowest ranked developed nation. *Id.*

46. See BREAKING THROUGH, *supra* note 30, at 46 (explaining levels of commitment of treaties). While UN General Assembly resolutions treaties are not often considered binding, the exception to the rule is the Universal Declaration of Human Rights. *Id.* The Universal Declaration of Human Rights protects the rights to life, liberty, equality, privacy, health and well-being, and includes a “special protection for [m]otherhood and childhood.” *Id.* at 46–47. Other treaties such as CESCPR, ICCPR, CEDAW, and CRC emphasize various rights and recommend actions for countries to take. *Id.* at 47–54. These recommendations are often accompanied by oversight from specifically established committees and periodic reports and conclusions. *Id.* See also Kaye, *supra* note 32 (discussing noncompliance with ICCPR despite ratification). As a treaty that has been both signed and ratified under the Constitution, the ICCPR should be treated as “the supreme law of the land.” *Id.* This treatment has not been carried out in practice, however, as courts only reference, not apply, the ICCPR, and states have not codified its provisions. *Id.* Aspects of the ICCPR have been referenced in various areas of litigation, such as the treatment of prisoners, but it has largely been in “a twilight status.” *Id.* at 97. The ICCPR essentially provides a “floor” for human rights, which the United States has, contrary to its obligations and laws, sunk below in reproductive healthcare. *Id.* at 104. Under the committee review process, states are “influenced by one another.” *Id.* When the ICCPR was ratified, the idea was that it would allow the United States to “play a more aggressive role in the process of enforcing compliance with the Covenant” and “greater effectiveness in the process of shaping international norms and behavior in the area of human rights.” *Id.* See also Lisa Schlein, *Country Violations Top UN Human Rights Council Agenda*, VOA NEWS, (Sept. 13, 2020, 9:23 AM), https://www.voanews.com/a/europe_country-violations-top-un-human-rights-council-agenda/6195827.html (reporting on UN meeting priorities and concerns). Unfortunately, the United States’ status in the United Nations has made recrimination for failure to meet binding obligations difficult for concerned parties. *Id.*

47. See *UN Denounces Dobbs*, OHCHR, *supra* note 6 (giving UN expert opinion on *Dobbs*). Experts stated that the *Dobbs* court “completely disregarded the United States’ binding legal obligations under international law, including those stemming from its ratification of the International Covenant on Civil and Political Rights . . .” *Id.* The UN experts noted how the *Dobbs* decision is antithetical to U.S. legislative practices, saying:

[Dobbs is a] profound setback for the rule of law and for gender equality. The excessive use of the legislative process, executive power, and judicial authority over the years to restrict and criminalize abortion

of where the authority of the agreements on U.S. law comes from, noncompliance creates considerable consequences for the United States on the global stage.⁴⁸

rather than to expand it and ensure equitable access to safe abortion services, signals a deeply troubling erosion of democratic values and process.

Id. See also Sorensen, *supra* note 34 (discussing binding conventions agreed by United States). Both the ICCPR and CERD have been signed and ratified by the United States. *Id.* These conventions, which proscribe and promote the right to life and privacy, should have the force of binding federal law. *Id.* See also Golove, *supra* note 8, at 622 (explaining types of treaties United States has entered). It is not uncommon for the United States to enter into a treaty concerning human rights and privacy issues. *Id.* See also MULLIGAN, *supra* note 8, at 18 (reviewing force of treaties). Once entered, even when non-self-executing, treaties have the binding force of federal law and impose obligations upon signatories. *Id.* Congress has the responsibility and authority to enforce these treaties through the Necessary and Proper Clause of the Constitution. *Id.* at 17–18. See also *Missouri v. Holland*, 252 U.S. 416, 433 (1920) (holding binding force of treaty). The *Holland* court held that “Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States.” *Id.* The court specifically noted that there is “[n]o doubt the great body of private relations usually fall within the control of the State, but a treaty may override its power.” *Id.* at 434. See generally *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304 (1936); *United States v. Belmont*, 301 U.S. 324 (1937); *Zschernig v. Miller*, 389 U.S. 429 (1968) (holding in favor of federal supremacy over all foreign relations issues).

48. See also Kaye, *supra* note 32, at 109 (discussing European Union’s actions toward foreign governments). There is a legacy of international organizations levying human rights standards and violations against other countries. *Id.* After the Cold War, the European Union leveraged economic power against other countries to promote certain human rights behavior. *Id.* Currently, the United States “has a limited ability to add to the interpretation of human rights norms because of their limited use at the federal and state levels.” *Id.* at 110. Rather, other bodies such as international courts shape international norms under the ICCPR. *Id.* at 109. See also Louise Smith, *When a Country Breaches International Human Rights Law*, ABOUT HUM. RTS. (July 1, 2023), <http://www.abouthumanrights.co.uk/when-country-breaches-international-human-rights-law.html> (outlining United Nations’ reprisal procedures). While the United Nations does have the power to deploy peacekeeping forces, this is reserved for utterly dire situations. *Id.* The typical route of enforcement involves the issuance of recommendations and investigation with the consent of the country in question. *Id.* The motivation for countries to allow an investigation within its borders stems from those countries’ desires to maintain their reputation on the international stage. *Id.* See also Kenneth Roth & Eric Posner, *Room for Debate: Have Human Rights Treaties Failed?*, N.Y. TIMES (Dec. 28, 2014) <https://www.nytimes.com/roomfordebate/2014/12/28/have-human-rights-treaties-failed> (debating futility or efficacy of human rights treaties). Although some argue human rights treaties are toothless, others contend that they are effective. *Id.* For example, China, a dictatorship with one of the largest economies in the world, has made human rights reform efforts. *Id.* China has “curbed the death penalty, abolished re-education through labor, liberalized the one-child policy and started efforts to limit the use of torture for confessions.” *Id.* Further examples include how:

Kenya cited the women’s rights treaty to grant women equal access to inheritances. Europe’s human rights treaty led Britain to end corporal

punishment in schools, Ireland to decriminalize homosexual acts, and France to grant detained people access to lawyers. A new labor treaty spurred an increased minimum wage, social security protections, and days off for domestic workers in parts of Asia and Africa. The South African Constitutional Court ruled that the right to health requires that people with HIV be granted access to antiretroviral drugs, saving hundreds of thousands of lives.

Id. See also Repucci, *supra* note 35 (examining recent decline in democracy and subsequent global effects). The influence of the United States and other democracies has been described as “fading and inconsistent,” an effect that has cost human lives. *Id.* See also USA: State Department’s flawed ‘unalienable rights’ report undermines international law, *supra* note 37 (critiquing “Commission on Unalienable Rights” report). The State Department drew strong criticism from notable international human rights watchdogs. *Id.* In the eyes of the international community, the new definitions of human rights issued by the United States in 2020 “could damage human rights protections globally” and are “a dangerous political stunt that could spark a race to the bottom by human rights-abusing governments around the world.” *Id.* See also United States Events of 2019, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2020/country-chapters/united-states#> (last visited Mar. 12, 2022) (criticizing United States human rights policy). In the recent past the United States continued to erode women’s rights and the right to adequate healthcare, which has led to “diminishing leverage” on the global stage as it was seen to “partner[] with abusive governments.” *Id.* See also AMNESTY INT’L, AMNESTY INTERNATIONAL REPORT 2020/21 THE STATE OF THE WORLDS HUMAN RIGHTS 382 (2021) (reviewing inaction and negative actions by United States). According to influential international actors, the United States has “a broadly dismal human rights record.” *Id.* See also *More than a Dozen Countries Call for U.S. to Advance Sexual and Reproductive Health and Rights as Part of U.N. Review*, PLANNED PARENTHOOD (Nov. 9, 2020), <https://www.plannedparenthood.org/about-us/newsroom/press-releases/more-than-a-dozen-countries-call-for-u-s-to-advance-sexual-and-reproductive-health-and-rights-as-part-of-u-n-review> (describing international outcry directed at United States). In November 2020, “more than a dozen countries condemned U.S. restrictions on sexual and reproductive health and rights.” *Id.* United States reproductive rights are seen as “unjust” in their restriction of abortion access and other critical forms of healthcare. *Id.* See Sophia Sadinsky, Zara Ahmed, & Lauren Cross, *Here’s Why Sexual and Reproductive Rights Must Be the Linchpin of Feminist Foreign Policy*, GUTTMACHER INST. (June 2, 2021), <https://www.guttmacher.org/article/2021/06/heres-why-sexual-and-reproductive-rights-must-be-linchpin-feminist-foreign-policy> (describing history of feminist foreign policy and United States’ involvement). Reproductive health and abortion access are key parts of feminist foreign policy. *Id.* Despite the United States’ loud presence in international politics, it was far from the first to embrace feminist foreign policy, and it was only under the Biden administration that the country began to vocally support such policy. *Id.* See also *UN Member States Make Recommendations to U.S. to Protect Sexual and Reproductive Health and Rights*, CTR. FOR REPROD. RTS., (Nov. 10, 2020), <https://reproductiverights.org/un-member-states-make-recommendations-to-u-s-to-protect-sexual-and-reproductive-health-and-rights/> (summarizing U.N. recommendations to United States). The United Nations described United States reproductive healthcare as having caused “extraordinary harm.” *Id.*

IV. ANALYSIS

A. *International Repercussions for the United States Reputation and Standing*1. *Economic Consequences*

Possible economic consequences of the United States' non-compliance include decreased foreign investment, less favorable negotiation terms, and other nations' refusal to negotiate treaties and trade agreements.⁴⁹ While a general loss of credibility may appear to be a nonissue, it can have very real consequences.⁵⁰

49. See Hathaway, *supra* note 38, at 596–97 (examining forms of consequences for noncompliance). Consequences of noncompliance are not necessarily derived from the treaties themselves and can include “reactions that fall outside the legal framework of the treaty.” *Id.* These collateral consequences may manifest in the linking of “foreign aid, trade, or other transnational relationships to the state’s decision to ratify an international agreement.” *Id.* The United States’ lack of action in ratifying treaties like CEDAW and its failure to expand reproductive rights and abortion access may reduce the likelihood of obtaining any loan from the World Bank. *Id.* Foreign investors may choose not to invest in the United States based on their failure and lack of action to ratify and noncompliance. *Id.* Relatedly, trade with other countries could be reduced because of similar concerns. *Id.* at 597. See also *How the U.N. Advances United States Economic Interests*, *supra* note 11 (explaining economic benefit of U.N. membership). The tangible economic benefit of the United States’ continuing relationship with the United Nations is clear considering that “American companies were awarded more than \$1.93 billion USD in procurement contracts with the UN in 2020.” *Id.* See also Kaye, *supra* note 32, at 109 (discussing European Union human rights development strategies). Over the past few decades, the European Union frequently exercised its “substantial economic power to condition relationships and EU membership on human rights behavior of other governments.” *Id.* See also HENKIN, *supra* note 37, at 49–51 (explaining why countries obey international laws). While imposing sanctions is a divisive issue, they are not the sole or even primary response to international law violations. *Id.* Instead, violative nations primary motivation for compliance with treaty obligations is a simple cost-benefit analysis. *Id.* at 51. See also POSNER, *supra* note 10, at 26–30 (discussing enforcement and dispute resolution). When international agreements are made, “strong coercive measures are possible,” *Id.* at 26. Examples of these coercive measures are the “various episodes of UN sanctions that have affected the economic viability of rogue states.” *Id.* Thus, both nonpecuniary and pecuniary consequences are possible. *Id.* at 27. Nonpecuniary consequences are possible because “governments, especially democratic government[’s], are constrained by public opinion . . . about compliance with certain international obligations or agreements.” *Id.* Pecuniary consequences are possible when “[a] party that violates its human rights commitments, for example, might become subject to trade sanctions.” *Id.* at 30.

50. See PICKERING, *supra* note 12, at 2–5 (noting increasing global disdain for war). While open conflict might seem like a looming threat, a reliable trend in modern politics is a growing shift away from open conflict. *Id.* at 3. The United States’ noncompliance with signed and ratified treaties is somewhat anomalous, given that “[a]lmost all nations observe almost all principles of international law and almost all of their obligations almost all the time?” *Id.* at 4. This is particularly true because compliance is positively correlated with democratic governments. *Id.* at 2. See also Smith, *supra* note 48

Contrary to what many Americans think about the nation and its global status, there is much at stake in losing the favor of international organizations and other countries.⁵¹

(detailing United Nations peacekeeping deployments). Generally, the United Nations does not resort to deploying forces into noncompliant countries unless the situation has escalated into a true crisis. *Id.* See also Cohen *supra* note 32, at 4–9 (describing United States’ failures in human rights conflicts). In the past, the United States has recognized the importance of credibility, notably when it decided not to intervene in the Rwandan genocide to avoid further tarnishing its record after its failure in Somalia under President Reagan. *Id.* at 8. If the United States wants to have a credible international voice in shaping reproductive rights, abortion access policy, and other human rights norms, it must first establish adequate norms and ensure these rights domestically. *Id.* at 9. See also HENKIN, *supra* note 37, at 26, 52–53 (highlighting United States’ actions in Cuban missile crisis). During the Cuban missile crisis, the United States, influenced by its international treaty obligations and international perception, chose not to pursue unilateral force against Cuba. *Id.* The United States’ choice was likely an acknowledgement that “every nation’s foreign policy depends substantially on its ‘credit’ – on maintaining the expectation that it will live up to international mores and obligations. Considerations of ‘honor,’ ‘prestige,’ ‘leadership,’ ‘influence,’ ‘reputation,’ which figure prominently in governmental decisions, often weigh in favor or observing law.” *Id.* at 52.

51. See Golove, *supra* note 8, at 622 (describing benefits of treaty-making). The United States has many “foreign policy reasons for concluding human rights treaties. These include traditional foreign policy reasons arising from the military, economic, and political interests of the United States in its relations with other nations.” *Id.* See also Hathaway, *supra* note 38, at 592 (reviewing soft law pressures to comply with treaties). While treaties are not always enforced through formal legal mechanisms, noncompliance and violation can have “soft law” consequences. *Id.* at 592. This is typically done through the “linking of foreign aid, trade, or other transnational relationships to the state’s decision” regarding the treaty. *Id.* at 596. A further consequence of noncompliance or failure to ratify is the publicization of failure by NGOs monitoring country compliance. *Id.* This can affect investor’s decisions to withdraw, or foreign country’s decisions to withdraw aid. *Id.* Overall, collateral consequences that arise from soft law applied by countries and organizations “can prove to be just as important as, if not more important than, the formal legal enforcement . . .” *Id.* at 595. See also HENKIN, *supra* note 37, at 26 (outlining mechanisms of enforcement). The phenomenon of state-to-state informal control is also known as “horizontal enforcement.” *Id.* at 26. “Even the rich and mighty, however, cannot commonly obtain what they want by force or dictation” and must align themselves with other countries and international organizations. *Id.* at 31. “Nations [like the United States] that believe they have a particular stake in [the] world order will themselves attend to the law, and their compliance will establish a comfortable position from which to insist that others do the same.” *Id.* at 53. When choosing whether to observe international law, countries conduct a cost-benefit analysis. *Id.* at 88. The United States is making an error in its cost-benefit calculation in choosing not to comply with the international organizations it is a member of, and the treaties to which it is a party, because “observance is usually the rational policy.” *Id.* at 68. In violating treaties, the United States risks “[its] ‘most favored nation’ treatment [and] terms as regards tariffs or other matters.” *Id.* at 201.

2. *Decreased International Cooperation*

Much of the United States' international prestige comes from its status as a developed country.⁵² As global human rights continue to improve, the United States will likely be gradually left behind, losing its status as a developed country and as the world's "police."⁵³ Prominent international voices strongly reacted to the

52. See Schlein, *supra* note 46 (reporting on UN concerns). The UN has tacitly acknowledged a group of so-called "untouchable countries," including Russia and China, which are too powerful to be called to account. *Id.* This status has served to insulate these countries from significant reprisals thus far. *Id.* Despite their "untouchable" status, these countries have not escaped sharp criticism. *Id.* See also Smith, *supra* note 48 (discussing United Nations enforcement strategies). The desire of individual countries to save face and maintain status is one of the primary mechanisms allowing the United States to function. *Id.* See also Roth, *supra* note 48 (discussing merits and drawbacks of international treaties). Countries change their human rights policies when "[l]ocal rights groups, working with their international partners like Human Rights Watch, are able to generate pressure to respect these treaties by contrasting a government's treaty commitments with any practices that fall short. The shame generated can be a powerful inducement to change." *Id.* In the past, the United States itself has bowed to international pressure on human rights issues. *Id.* In one instance, the Pentagon ceased deployment of seventeen-year-olds because of an existing treaty banning child soldiers. *Id.* Additionally, "[t]he Supreme Court cited the relevant treaty when it stopped the death penalty for youth offenders." *Id.* See also Kaye, *supra* note 32, at 109 (discussing international actions regarding foreign governments). Despite its significant economy and military, the United States only has a small voice in the international conversation about strengthening and shaping human rights norms. *Id.* See also Miller, *supra* note 3 (highlighting United States' abortion policy versus other countries' policies). The United States diminished voice in the global abortion debate may partially be because its abortion policy "is in contrast to many countries, including in Western Europe, that provide access to subsidized, fully funded abortion services, universal health care, contraception and broader social supports." *Id.* See also HENKIN, *supra* note 37, at 62 (discussing impact of United States history on foreign policy). The United States' ongoing, systematic noncompliance with international reproductive healthcare law is not only anomalous in the global crowd, but also when compared to the history of the United States itself. *Id.* The United States' founding principles include a "moral, perhaps moralistic, attitude[] towards their relations with other nations, and respect for international law has been included in that morality." *Id.* Continuous rejection of its obligations under ratified treaties is a major violation of international law which has, until now, been "rare" and risk[s] significant "social opprobrium and other extra-legal 'costs' of violation." *Id.* at 93. See also POSNER, *supra* note 10, at 72–73 (identifying patterns of compliance with human rights treaties). One trend in human rights treaty law is that "[a]uthoritarian states avoid ratifying human rights treaties or do so reluctantly." *Id.* at 73.

53. See *The Womxn's Treaty: CEDAW*, *supra* note 23 (noting United States failure to ratify CEDAW). The United States is already one of very few countries to not sign and comply with key reproductive rights treaties. *Id.* See also Cohen, *supra* note 32 (describing changes in United States' role in human rights debate). When the "US became one of the world's superpowers after World War II, [] our government was expected to define what it stood for on the international stage." *Id.* at 2. The United States went as far as issuing the "Human Rights in the World Community: A Call for US

Dobbs decision.⁵⁴ Decreased bargaining power and influence on international trends and policies follows from this lack of credibility as international organizations such as the United Nations,

Leadership” message in 1974. *Id.* As time progressed, economic and political concerns eclipsed the drive to expand human rights around the world. *Id.* at 7. *See also* Repucci, *supra* note 36 (examining effect of inconsistent democracy on global matters). The shift in policy priority is problematic because “[t]he exposure of US democracy’s vulnerabilities has grave implications for the cause of global freedom. Rulers and propagandists in authoritarian states have always pointed to America’s domestic flaws to deflect attention from their own abuses.” *Id.* Regaining credibility is difficult, but not impossible, and:

despite many mistakes, the United States has aspired to a foreign policy based on democratic principles and support for human rights. When adhered to, these guiding lights have enabled the United States to act as a leader on the global stage, pressuring offenders to reform, encouraging activists to continue their fight, and rallying partners to act in concert. After four years of neglect, contradiction, or outright abandonment under Trump, President Biden has indicated that his administration will return to that tradition. But to rebuild credibility in such an endeavor . . . the United States needs to improve its own democracy . . . and uphold the rights and freedoms of all people

Id. *See also* FORSYTHE, *supra* note 36, at 27 (summarizing United Nations interactions with United States). Over time, as the United States has demonstrated inconsistent action on human rights issues, “a strong undercurrent of reserve about US human rights policy has surfaced.” *Id.* *See also* Wilken, *supra* note 32 (theorizing why United States eschews human rights treaties). The United States’ opinion of itself in international treaty-making is quite high. *Id.* Notably,

Human Rights Watch Executive Director Kenneth Roth describes the American attitude towards international human rights law as “fear and arrogance—fear that international standards might constrain the unfettered latitude of the global superpower, and arrogance in the conviction that the United States, with its long and proud history of domestic rights protections, has nothing to learn on this subject from the rest of the world.” Scholars suggest that this isolationist attitude—partly driven by fears that international treaties would erode federalism—leads to acceptance of international human rights law only when it merely affirms existing domestic law.

Id. This attitude of superiority, however, only weakens the United States in the world’s perception. *Id.*

54. *See* Jones, *supra* note 34 (listing world leaders who condemned *Dobbs*). The leaders of the United Nations, United Kingdom, Scotland, Canada, Spain, Norway, France, and Belgium, all issued statements criticizing the *Dobbs* decision and the trajectory of American abortion policy. *Id.* Criticisms included the belief that such policies are dangerous, deadly, a step backwards, and a violation of a fundamental human right, as well as a concern over global implications to the *Dobbs* decision and attendant policies. *Id.* World leaders did not shy away from strong language in their responses to *Dobbs*. *Id.* Descriptions of the decision and its consequences included the words “appalling,” “a major setback,” “horrific,” and “one of the darkest days for women’s rights.” *Id.*

necessarily give less weight to the voices of untrustworthy and obstructionist countries.⁵⁵

B. Domestic Repercussions

The abortion access debate in the United States is one of the most contentious political issues currently dominating election cycles and day-to-day discourse.⁵⁶ Almost without exception, federal and state elections in the last decade have required candidates to announce and defend their standing on abortion.⁵⁷

55. See Kaye, *supra* note 32, at 118 (highlighting United States' interactions with other countries). The United States has utilized nonconfrontational tactics to influence other countries into adopting their policies. *Id.* These methods include "domestic sanctions against serious human rights violators, visa denial programs, economic and military aid conditionality requirements." *Id.* The United States' "capacity to influence law and doctrine is weak because of its failure to engage human rights law *qua* human rights law." *Id.* The ICCPR provides a committee review process where states are "influenced by one another." *Id.* at 104. Cooperation with the committee's recommendations can allow the United States to "play a more aggressive role in the process of enforcing compliance with the Covenant" and reestablish "greater effectiveness in the process of shaping international norms and behavior in the area of human rights." *Id.* at 109. See *The Women's Treaty: CEDAW*, *supra* note 23 (discussing consequences of United States not ratifying CEDAW). As one of only a handful of countries that has not ratified the CEDAW, the United States is losing credibility as a global human rights advocate. *Id.* See also AMNESTY INT'L, *supra* note 37, at 190, 322, 330, 340 (listing human rights violations of countries). This is especially glaring given that the other countries which have not ratified the CEDAW are often criticized for numerous and ongoing human rights violations, often including violations of women's rights specifically. *Id.* See also HENKIN, *supra* note 37, at 167 (emphasizing role of international condemnation). Lack of credibility creates a "deterrent influence . . . [e]ven if a proceeding produced nothing more than condemnatory addresses and resolutions and hostile headlines in the world press." *Id.*

56. See Burnett et al., *supra* note 3 (examining voter demographics and motivations). While only a small number of people identified abortion as their key voting issue, those that did overwhelmingly favored the Republican candidate in the 2020 election. *Id.* This sentiment will likely not change in the future, providing reliable Republican votes. *Id.* The appointment of Supreme Court Justices played a significant role in the 2020 election with "18% of voters call[ing] Supreme Court nominations 'the single most important factor' in their presidential votes. Those voters leaned toward President Biden by a relatively narrow margin, 53% to 46%." *Id.*

57. See Zumpano, *supra* note 23, at 383 (discussing impact of abortion on politics). During his campaign, former President Donald Trump vowed to appoint justices who would overturn *Roe*, succeeding in this goal with his appointment of Justice Amy Coney Barrett. *Id.* at 384. During his campaign, President Biden pledged undo the damage done during the Trump administration by reinstating federal funding for abortion and other reproductive healthcare providers, to reform the Affordable Care Act to cover abortion expenses, and to appoint federal judges who would uphold *Roe*. *Id.* See generally *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), (overturning *Roe* and *Casey*). The *Dobbs* majority opinion was signed by Justices Alito, Thomas, Barrett, Gorsuch, and Kavanaugh. *Id.* See Burnett et al., *supra* note 3 (reviewing

An additional and important consideration is the potential for escalating social conflict, especially because abortion clinics and providers have been the target of violence and vitriol in the past.⁵⁸

C. Continued Loss of Human Life

One of the most devastating and visible consequences of the United States' continuing noncompliance is the continued loss and destruction of human lives.⁵⁹ Noncompliance ensures childbearing people will continue to die in unsafe abortions,

reactions to decision on Texas Act). Both the Democratic and Republican parties will use abortion access as a rallying point for voters in upcoming elections. *Id.* Abortion policy is influencing other debates, such as ending the Senate filibuster, as doing so could allow the Senate to pass pro-choice legislation. *Id.* See also *Memorandum on Protecting Women's Health at Home and Abroad*, *supra* note 34 (reviewing President Biden's stated reproductive healthcare policy objections). The Republican and Democrat split over abortion is well represented by each party's stance on the "Mexico City Policy" instituted by President Reagan. *Id.* Since then, "[t]hese restrictions were rescinded by President Clinton in 1993, reinstated by President George W. Bush in 2001, and rescinded by President Obama in 2009. President Trump substantially expanded these restrictions," and President Biden appears to be rescinding them once again. *Id.*

58. See *Planned Parenthood Historical Timeline*, *supra* note 22 (relaying history of Planned Parenthood). For over 100 years, including the infamous "Year of Pain and Fear," antiabortion groups have firebombed, vandalized, assaulted, and hurled death threats at abortion providers and clinics. *Id.* See also Primrose, *supra* note 41 (describing misinformation surrounding Planned Parenthood). Violence directed at reproductive health providers is based on a fundamental misunderstanding of the services clinics such as Planned Parenthood provide. *Id.* See also ZIEGLER, *supra* note 7, at 73, 163 (describing series of violent attacks). Following *Roe*, bombings by antiabortion groups spiked. *Id.* at 73. After President Obama was elected, this spike accelerated, as crystalized with the murder of Dr. George Tiller, an abortion provider. *Id.* at 183. Prior to his murder, Dr. Tiller had already been the victim of attempted murder by antiabortion extremists. *Id.* at 136. See also Boyette, *supra* note 41 (reporting on repeat attack on clinic). One Planned Parenthood clinic, previously the subject of violence, was burned down early in 2022. *Id.* See also Holland, *supra* note 19 (reviewing history of violence against abortion providers). From the 1980s to the 2000s, there were "153 assaults, 383 death threats, 3 kidnappings, 18 attempted murders, and 9 murders related to abortion providers." *Id.* See also Reddy et al., *supra* note 38 (reviewing state-level antiabortion actions). One Arizona bill would have made abortion providers and recipients imputable for murder, and therefore punishable by the death penalty. *Id.*

59. See Hawkins, *supra* note 45 (reviewing abortion access and maternal healthcare in Washington D.C.); Welsh, *supra* note 45 (examining abortion access disparities across states). See also Ravi, *supra* note 40 (identifying high death rates because of unsafe abortions). In 2010, Texas had 72 deaths per 100,000 live births, and that number more than doubled in just two years to 148 deaths per 100,000 live births in 2012. *Id.* This sharp increase was correlated with state laws restricting abortion and (financial) cuts to reproductive health funding. *Id.*

dangerous childbirth, and pregnancy complications.⁶⁰ Aside from the ultimate consequence of death, people who are forced to carry unwanted pregnancies to term will continue to suffer adverse social, emotional, and economic consequences, as will their families and children.⁶¹ These effects will continue to be experienced throughout the world as the United States continues to be the blueprint for abortion policy.⁶²

60. See Atkins, *supra* note 43 (discussing serious consequences of unwanted pregnancies). People forced to carry an unwanted and/or dangerous pregnancy to term often experience considerable mental and physical consequences. *Id.* This includes increased rates of domestic violence and single parenthood. *Id.* Health outcomes are directly impacted as pregnant people are more likely to suffer depression, chronic pain, gestational diabetes, excessive bleeding at childbirth, and hypertension. *Id.* Further, the mortality rate for pregnancy and childbirth is approximately 20.1 deaths per 100,000 people, over twenty times higher than the death rate for abortions. *Id.* See also Zumpano, *supra* note 23, at 325 (examining impacts of abortion denial on mental health outcomes). People denied abortions suffer from higher rates of adverse psychological outcomes when compared to people who had abortions when they were desired. *Id.* This mental health toll is passed down, as children born from unwanted pregnancies are more likely to experience negative effects on their social, cognitive, and emotional processing. *Id.* at 328.

61. See also BERNSTEIN et al., *supra* note 42, at 10 (reviewing correlation between abortion laws and outcomes for children). Children of people with abortion access are more likely to go to college, less likely to experience poverty, and less likely to receive public assistance. *Id.* See also Atkins, *supra* note 43 (reviewing myriad impacts of abortion denial). People forced to carry an unwanted and/or dangerous pregnancy to term often experience increased economic hardship. *Id.* This is especially true for people who are already indigent or low-income, and therefore statistically more likely to seek abortions. *Id.* People who are denied abortions are significantly more likely to struggle below the federal poverty level and “are more likely to struggle to afford basic living expenses like food, housing and transportation.” *Id.* Further, people denied abortions see increases in rates of debt, bankruptcy, eviction, tax liens, and unemployment. *Id.* Denial of abortion access negatively impacts people’s health, social relationships, familial relationships, education, economic prospects, and even whether they live or die. *Id.* See also Ravi, *supra* note 40 (discussing relationship between abortion and various metrics of success and health). Research has demonstrated when there are more abortion restrictions there are worse health outcomes for women and children, including higher rates of infant mortality. *Id.* See also Zumpano, *supra* note 23, at 224–332 (noting effects of abortion denial on families). These life-or-death consequences affect not only the pregnant people, but also their children. *Id.* When a person is unable to access an abortion, the adverse outcomes they suffer trickle down multi-generationally. *Id.* See also *Reproductive Rights Submission*, *supra* note 9 (highlighting disproportionate impact of inadequate abortion access). As is the case with many human rights violations, these serious consequences impact low-income, nonwhite, and LGBTQ+ people, and in particular, people of intersecting minorities. *Id.*

62. See Grabmeier, *supra* note 35 (discussing reciprocal effects of international treaty ratification). When one superpower or bloc signs and complies with a convention, it has a strong chance of leading other countries to do so. *Id.* See also Ravi, *supra* note 40 (examining effect of abortion access on health outcomes at state level). States with more restrictive abortion laws have worse outcomes for both health outcomes

D. How the United States Can Become Compliant

1. Judicial Decision

The first option is for the United States to continue to allow the Supreme Court and the judicial system generally to determine abortion policy.⁶³ *Dobbs* demonstrates why this approach is unacceptable, as abortion access was dramatically overturned in one decision, contrary to precedent and all reasonable expectations.⁶⁴ Given the current Supreme Court's conservative makeup,

when compared to states with less restrictive abortion laws. *Id.* One notable example of this pattern is South Carolina, which has fourteen abortion restrictions and some of the worst women's health outcomes in the United States. *Id.*

63. See McCammon, *supra* note 3 (discussing Supreme Court impression of Texas Act). The Supreme Court must run with the skepticism it appeared to initially express regarding the Texas Act. *Id.* The Court should rule decisively against the Texas Act and strike it down. *Id.* See generally *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) (establishing viability standard). See also Kornfield et al., *supra* note 5 (addressing possible Texas Act copycat bills). The Supreme Court must rule against all Texas Act copycat laws as they will also violate international law. *Id.* See also Stephan, *supra* note 11, at 13–27 (discussing Supreme Court discourse on foreign relations). The Supreme Court has historically and relatively consistently been reluctant to expand its own federal lawmaking discretion, making it a poor venue for implementing laws required to execute the relevant treaties. *Id.* at 26–27. The Supreme Court, however, would be the proper venue for litigation regarding disputes over the application of federal treaty law to the states. *Id.* at 13–14. Some legal scholars have suggested that the foreign relations implications of these cases would be sufficient to satisfy the federal question requirement needed for federal court jurisdiction. *Id.* at 17.

64. See Dellapenna, *supra* note 10, at 1682–94 (reviewing judicial history of abortion law in United States). Thus far, the United States developed abortion laws via judicial decision, allowing for a tug-of-war over the constitutionality of the right. *Id.* at 1682. Under this strategy, new cases rise through the court system, periodically endangering abortion access. *Id.* at 1683. See also Holland, *supra* note 19 (highlighting impact of *Casey*). While *Casey* was a victory in that it upheld the right to abortion, it was also a blow to the solidity of the right, as it “validated the legality of [] laws” that threw up practical barriers to abortion access. *Id.* This left abortion access *de jure* legal but began the process of overturning it in the practical sense. *Id.* Note that now this is no longer true. See also ZIEGLER, *supra* note 7, at 45–119 (noting standard of review in abortion cases). The Supreme Court has implemented a rational basis standard of review in abortion cases. *Id.* at 45. This has been seen by antiabortion activists as a win because the Court's rationale in these cases has often echoed the antiabortion rationale. *Id.* at 45–46. Further, the Court is rarely unable to find a rational basis for a law. *Id.* at 45. Since the late 1970s, abortion rights groups have felt that “[i]t had been a mistake to expect the Supreme Court to come to the rescue.” *Id.* at 46. More practical and less evangelical antiabortion advocates have noted that laws limiting funding and other *de facto* aspects of abortion access, such as “family involvement laws” were more likely to withstand a constitutional challenge. *Id.* at 59, 98. One prominent Planned Parenthood lawyer described the field of abortion litigation as “whack-a-mole.” *Id.* at 104. This “whack-a-mole” is just as much a threat to *Roe* as an outright overturning, given that “pro-lifers eventually vowed to undo *Roe* instead . . . [t]o chip away at the decision . . . defend[ing] incremental restrictions . . .” *Id.* at 119. See also Miller et al.,

as well as the considerable number of conservative federal judges appointed by the Trump administration, it is unlikely that abortion access will be judicially reinstated in the next several decades.⁶⁵

2. *Legislative Guarantee on the Individual State Level*

The second option is for the federal government to continue to permit the states legislatively craft their own abortion policy.⁶⁶ The benefit of this approach is that it avoids the uncertainty of the judicial approach as it circumvents the quantity and longevity of the current judiciary.⁶⁷ The downside of this strategy is that it will

supra note 3 (discussing development of abortion laws globally). The current system of building abortion law through judicial decision may partially explain why the United States abortion laws are so unusual compared to other countries. *Id.* Notably, “[a] legal debate, built upon precedent, can be very different from a democratic debate or moral debate.” *Id.*

65. See Zumpano, *supra* note 23, at 383–86 (discussing impact of abortion politics on Supreme Court makeup). The fate of abortion access essentially rides with the election cycle, as the political divisions of the abortion debate have influenced elections, with candidates being all but required to announce their stance on the issue. *Id.* at 383–85. Presidential candidates have made abortion access a key platform issue, as they promise to appoint Supreme Court Justices who will either uphold or destroy abortion access, depending on the candidate’s party. *Id.* at 385–86. See also Bui et al., *supra* note 5 (reviewing trigger laws). Additionally, ten states have passed trigger laws and would automatically ban all abortions if *Roe* were to be overturned. *Id.*

66. See ZIEGLER, *supra* note 7, at 197–212 (noting number of abortion restrictions being passed). Since 2010, over 288 abortion restrictions have been passed while several states have passed laws protecting abortion. *Id.* at 198. Because the abortion debate in the United States is deeply linked to polarized political theories and personal values held by Americans, the likelihood of consistent legalization across all fifty states is low. *Id.* at 210–12. See also Kaye, *supra* note 32, at 116–17 (theorizing state-by-state adoption of ICCPR). One relatively simple way for states to comply with the key treaties is to implement legislation referencing and guaranteeing the rights governed by those treaties. *Id.* “[S]tates should implement the [ICCPR] themselves, incorporate its core substantive provisions into state law, and allow individuals the right to challenge state action under the Covenant.” *Id.* This state-by-state tactic “would be a form of treaty implementation in recognition of the fact that the ICCPR is otherwise unavailable in American courts.” *Id.* at 117. This process would involve the “adoption of legislation or amendment of state constitutions to provide individuals with the right in state courts to raise claims arising under the Covenant or to support state law claims with Covenant provisions.” *Id.* Furthermore, “[s]tate legislators should take up the role of treaty implementation,” which need not be limited to the ICCPR, CEDAW and its emphasis on abortion access and reproductive healthcare would be a perfect treaty for the fifty states to implement themselves. *Id.*

67. See also Kaye, *supra* note 32, at 118–19 (outlining benefits of state level treaty compliance). One notable benefit of state level implementation is that it would prevent “Americans see[ing] international human rights law as an irrelevant offshore body of law” and would give U.S. citizens a more personal stake in the treaty compliance process. *Id.* at 118. Further, state level legislation guaranteeing safe abortion access and

likely progress slowly, with many states unlikely to legislatively guarantee compliance with the critical abortion and reproductive healthcare treaties.⁶⁸ States with trigger laws have already used *Dobbs* to flaunt ratified conventions by degrading or eliminating abortion access.⁶⁹ Furthermore, necessary legislation may be difficult or impossible as specific reference to the treaties themselves or other required language may pose federalism conflicts.⁷⁰

quality reproductive healthcare would inform federal legislation, which would then in turn inform foreign policy. *Id.* at 119.

68. See Burnett et al., *supra* note 3 (discussing GOP reactions to Texas Act). The issue of abortion is so contested that many incumbents in antiabortion states may be disinclined to spearhead treaty-compliant legislature, for fear of losing their next election. *Id.* See also ZIEGLER, *supra* note 7, at 197–206 (highlighting number of abortion restrictions being passed). Progress on the state level seems to move more quickly away from abortion access as over 200 abortion restrictions have been implemented the last decade. *Id.* Not all momentum is backwards, however, as over a dozen states have passed bills which broadly protect the right to abortion since 2019. *Id.* at 204. See also Nash, *supra* note 21 (observing high number of recent abortion laws). The abortion debate momentum appears to be picking up, and in the first two months of 2021 alone over 300 bills were introduced. *Id.* See also Bui et al., *supra* note 5 (highlighting judicial strategy of antiabortion groups). Antiabortion groups favor federalist structuring of abortion laws. *Id.* One antiabortion leader noted, “[i]t would be a whole lot better for abortion policy if the states were allowed to have their regulations stood up and unchallenged . . . [y]ou would have the laws reflecting the folks in those states, and that’s what American federalism is supposed to be.” *Id.* See *Reproductive Rights Submission*, *supra* note 9, at 1–3 (describing United States legal framework). The federalist structure of the United States has contributed to the adversarial and fragmented nature of abortion policy. *Id.* at 1. State-by-state abortion access would continue to allow the “religious or moral objections” exception that allows denial of reproductive healthcare coverage in insurance policies, or abortion and reproductive care itself in healthcare facilities. *Id.* at 4. Currently, access restrictions are flourishing in forty-six states, helped by laws which impose grueling requirements on clinics. *Id.* at 7. This antiabortion campaign has been successful, and there are now six states with only one abortion provider. *Id.*

69. See Levinson-King et al., *supra* note 4 (discussing trigger laws). Immediately in the wake of *Dobbs*, thirteen states activated their trigger laws. *Id.* These laws had been nullified by *Roe* but are now free to attack abortion access. *Id.* Twenty other states have followed suit and began to legislate to destroy abortion access post-*Dobbs*. *Id.* See also *Abortion Laws by State*, *supra* note 21 (assessing landscape of abortion access in United States). Some trigger laws have severely eroded abortion access, making it *de facto* illegal. *Id.* Other laws have completely eliminated abortion access, making it *de jure* illegal. *Id.*

70. See Stephan, *supra* note 11, at 8 (highlighting basis for excluding states from foreign relations). The framers of the Constitution intended for the federal government to have exclusive jurisdiction over the creation, enforcement, and interpretation of foreign relations and associated laws. *Id.* Supreme Court precedent has reinforced the premise that it is not the purview of the states to manage foreign relations. *Id.* See also *United States v. Belmont*, 301 U.S. 324, 331 (1937) (holding that States cannot interfere with federal law on foreign relations). The Court specifically stated “that complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states.” *Id.* at 331.

3. *Legislative Guarantee on the Federal Level*

The final option is for the federal government to legislatively guarantee abortion-related treaty compliance.⁷¹ For this legislation to avoid being found unconstitutional on state sovereignty grounds, it must textually guarantee compliance with the treaties

The Court further stated, “[w]e may . . . assume that the United States, by treaty with a foreign government . . . could alter the policy which a state might otherwise adopt.” *Id.* at 336. *See also* *Zschemig v. Miller*, 389 U.S. 429, 435–36 (1968) (holding that state law must bow to federal law on treaty matters). The *Zschemig* court held that state law must yield to federal law when the state law is preempted by a treaty, even when it is only field or general preemption. *Id.* at 441. Where there is a directly adverse federal law supporting execution of the treaty, the state law must also always yield. *Id.*

71. *See* *Roe v. Wade*, 410 U.S. 113, 164 (1973) (establishing constitutional right to abortion access). *Roe* itself rested its decision on constitutional law, specifically in the right to privacy woven into the Constitution as a whole. *Id.* *See also* ZIEGLER, *supra* note 7, at 93 (highlighting equal protection abortion arguments). One federal legislation tactic, directly referencing guaranteeing abortion access, is also grounded in the federal constitutional grounds of some of the most long-standing pro-choice arguments: Due Process and Equal Protection. *Id.* The potential power of a constitutional amendment is also acknowledged by antiabortion groups, which have strongly considered an amendment, for the opposite purpose: to either undermine or overturn *Roe*. *Id.* *See also* Schlueter, *supra* note 17, at 153 (highlighting evolution of constitutional abortion arguments). An amendment would sew up the loophole arising from the current constitutional right to abortion, which is based in a right inferred in the Constitution, rather than explicitly stated. *Id.* This inference is made by the Court when they determine that a right is “fundamental” by virtue of being “deeply rooted in this Nation’s history and tradition.” *Id.* *See also* *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2284 (2022) (summarizing holdings). The *Dobbs* court ended its majority opinion by referring abortion legislation back to the states, saying “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.” *Id.* *See also* Kaye, *supra* note 33, at 106 (reviewing reasons for nonratification of ICCPR). A constitutional amendment would also eliminate federalism concerns, specifically that state implementation of international covenants would “call[] into question . . . even the Federal/State structure of our legal system.” *Id.* *See also* Weber, *supra* note 13 (describing connection between 19th Amendment and reproductive healthcare). A constitutional amendment advancing women’s rights is not a novel concept in American history. *Id.* First wave feminism led to the adoption of the nineteenth Amendment, which in turn paved the way for second wave feminism in the 1960s, allowing women to use their votes to influence important healthcare policy. *Id.* This decisive legislative action can easily serve as a model for the legislature of today. *Id.* *See also* CHEMERINSKY, *supra* note 31, at 6 (summarizing amendment process). A constitutional amendment guaranteeing abortion access would need to follow the Article V procedures. *Id.* Such an amendment would need to pass a two-thirds vote in both houses of Congress, and then be ratified by three-fourths of the states. *Id.* at 7. This process has only been successfully completed twenty-seven times in the nearly 250-year history of the country. *Id.* at 6. An abortion access amendment would have the benefit of falling into the largest category of successful constitutional amendments: those implemented to reflect changes in social attitudes. *Id.* at 13.

and conventions, rather than textually guarantee abortion access.⁷² Should the individual States object, the legislation would prevail under the federal government's Commerce Clause power.⁷³ This legislation would further be buttressed by the United States signing and ratifying all remaining relevant treaties.⁷⁴ Of course,

72. See Stephan, *supra* note 11, at 7 (discussing federal power over treaty execution). A second way for the federal government to legislatively guarantee abortion rights would be to implement legislation which executes the ratified non-self-executing treaties. *Id.* This tactic would prevent states from claiming that the federal government is violating the principle of federalism. *Id.* When the legislation specifically references execution of the treaty, and the guarantee of abortion rights only follows logically and practically from that legislation, the law is squarely within the zone reserved for federal lawmaking. *Id.* The new federal laws executing the treaty would be directly adverse to the existing state laws denying abortion access and would therefore supersede and eliminate them. *Id.* at 24. See also *Zschemig*, 389 U.S. at 434 (affirming field preemption). Even if the laws were not textually directly adverse, when “[the] operation and effect of the statute is inextricably enmeshed in international affairs and matters of foreign policy . . . [it] operates in fields exclusively for, and preempted by, the United States.” *Id.* So, if the new legislation were to directly reference implementing a given treaty, rather than directly reference guaranteeing abortion access, the states’ noncompliant laws would be field preempted and voided, as was the real estate law at issue in *Zschemig*. *Id.*

73. See Fallon, *supra* note 5, at 612 (addressing political implications of *Roe* being overturned). Antiabortion States may prefer to end the constant flux in abortion rights by overturning *Roe*, but that drastic action may not be the panacea they believe it to be. *Id.* Congress could “either forbid or protect abortion on a nation-wide basis” if they so choose. *Id.* While the connection between abortions and commerce may appear weak at first, they are actually “services sold in interstate commerce.” *Id.* at 622. Abortions are, ultimately, a medical procedure, and “if Congress can permissibly regulate the practice of medicine at all, then it can preempt state pro-life legislation . . .” *Id.* at 625. See also Shaw et al., *supra* note 18, at 49 (discussing interstate commerce aspects of abortion). Medical supplies, doctors, and insurance travel from state to state. *Id.* These goods are squarely within interstate commerce, the flow of which Congress is authorized to regulate. *Id.* at 9. See also Fallon, *supra* note 5, at 613 (examining hypothetical commerce clause violation by abortion restriction). The importance of Congressional intervention under the Commerce Clause becomes clear when one considers a hypothetical law which would forbid a citizen from traveling from one state to another to obtain an abortion. *Id.* See also Hernandez, *supra* note 3 (explaining impetus for Oklahoma law). Oklahoma recently passed an extremely restrictive abortion statute. *Id.* Proponents of this policy specified that the law was, in large part, a reaction to the large number of people crossing into Oklahoma, from Texas. *Id.* This is a clear example of the considerable impact that abortion policy has on interstate commerce. *Id.*

74. See *About Treaties*, *supra* note 8 (reviewing authority of treaties in United States). States must comply with ratified treaties, given that they “have the force of federal legislation.” *Id.* See also *Where the United States Stands on 10 International Human Rights Treaties*, *supra* note 31 (noting unratified and unsigned treaties). The key treaties the United States needs to sign include: the CEDAW, the CRC, and the CESC. *Id.* See also U.N. Hum. Rts. Comm., *supra* note 30 (listing areas of concern in United States compliance with ICCPR). ICCPR obligations lay out critical actions to be taken. *Id.* First, according to points 12(a) and (b) the country must increase abortion access. *Id.* Second, according to Point 12 (a), the United States should reform and minimize

passage alone is not enough, as the federal government must then ensure that abortion access is *de facto* and *de jure* available.⁷⁵ This process can be expedited and decomplicated by listening to the advice of abortion advocates, such as Planned Parenthood, and

“conscience-based objections” to reproductive care access under the Affordable Care Act. *Id.* Third, following Point 12(b) the United States should review state laws which restrict safe *de facto* abortion access. *Id.* Fourth, according to Point 12(c) abortion and pregnancy loss/complications need to be decriminalized, specifically the decriminalization of women using drugs while pregnant. *Id.* Finally, to be compliant with Point 12(d), the United States would need to eliminate the “Global Gag Rule” and allow federal funding from going to organizations which provide abortion services, both domestically and abroad. *Id.* See also USA: State Department’s flawed ‘unalienable rights’ report undermines international law, *supra* note 37 (arguing United States undermining international law). The United States should acknowledge the mistake made in July of 2020 and retract the “Commission on Unalienable Rights” and reinstate use of definitions of human rights and protections for women, as proscribed by international conventions. *Id.* See also Wilken, *supra* note 31 (discussing United States treaty habits). Crucially, ratification must occur without the usual “(RUDs)” it usually implements. *Id.* These RUDs tend to reduce ratified treaties to anemic statements of intent. *Id.* Further, the federal government must retroactively make the human rights treaties “self-executing” to make them enforceable in domestic courts. *Id.* See also Golove, *supra* note 8, at 607 (discussing RUDs). Not only do RUDs weaken the effect of the treaty on United States citizens, they also “go a long way toward undermining the traditional foreign policy benefits that the United States is likely to receive . . .” from the treaties that they do ratify. *Id.* See also Sitaraman & Wuerth, *supra* note 11, at 1929–31 (describing Presidential treaty authority). Going forward, treaties touching on reproductive rights and abortion access should be made by the Executive as self-executing treaties. *Id.* at 1931.

75. See Spitzer et al., *supra* note 39 (explaining *de jure* and *de facto* antiabortion tactics). The United States must evaluate and eliminate laws designed to make abortion inaccessible, rather than making it illegal. *Id.* Surreptitious mechanisms which must be removed include insurance coverage restrictions, gestational limits, waiting periods, counseling requirements, method bans, parental involvement laws for minors, reason bans, born-alive laws, and targeted restriction of abortion provider laws. *Id.* Additionally, this process would necessarily eliminate so-called “trigger laws.” *Id.* This phase of compliance is critical, given that the effect of these tactics is that several states have near-total abortion bans, even where abortion is legal on paper. *Id.* See also Stephan, *supra* note 11, at 7 (discussing effect of federal preemption over state laws). Compliance with treaties via legislation on the treaties, rather than abortion specifically, may help ensure *de facto* access as well as *de jure* access, because it would minimize the ability of the states to implement obstructionist laws, as they would be preempted from doing so. *Id.* See also RAINEY et al., *supra* note 12, at 175 (listing categories of obstructionist laws available to abortion opponents). *De facto* inaccessibility can take many shapes. *Id.* These include: “persuasion, contemplation, involvement, and information.” *Id.* These broad categories can result in laws that allow states to expose people seeking abortions to information about “alternatives” the people may not want. *Id.* States may also be allowed to force a person seeking an abortion to endure a waiting period between their initial consultation and their actual procedure. *Id.* These waiting periods would exist despite “harassment and hostility” outside abortion clinics on two separate occasions, as well as the financial burden of traveling to and from the clinic multiple times. *Id.* at 174. States can impose “involvement” requirements for parents of minors seeking abortion, or for the spouses of people seeking abortions. *Id.* at 176.

by implementing the recommendations made by international organizations who have reviewed the United States' compliance in the past.⁷⁶

V. CONCLUSION

The Supreme Court, federal government, and the individual states have taken diverse actions seriously limiting abortion access, and in doing so have failed to comply with obligations imposed by the treaties the federal government has ratified.⁷⁷ This failure has led to adverse effects on American politics, social conflict, people's lives, and the perception of the United States on the global stage.⁷⁸ To rectify the situation, the United States must first ratify the remaining treaties, which guarantee and support abortion access and reproductive healthcare, without the usual

76. See Hathaway, *supra* note 38, at 612 (describing domestic influence on decision to ratify and comply). If the United States legislatively guarantees reproductive health rights and abortion access, it may lead to the ratification of as yet unratified conventions. *Id.* This in turn can lead to other countries also ratifying these conventions, leading to improved outcomes for thousands of people around the world. *Id.* See also Saona, *supra* note 1 (listing international convention work products). The Cairo+5 Key Action Document and other ICPD documents can provide significant guidance. *Id.* See also BREAKING THROUGH, *supra* note 30, at 46 (discussing multiple committees issuing recommendations). The CESCR, ICCPR, CEDAW, and CRC all have oversight bodies which issue recommendations that can be used as legislative guidance. *Id.* at 47–54. See also Zampas et al., *supra* note 9 (referencing compliance committees overseeing international agreements). In the committee recommendations, the United States has a built-in framework to utilize when creating new legislature and ensuring *de facto* abortion access. *Id.* See also *Planned Parenthood Historical Timeline*, *supra* note 22 (outlining history of Planned Parenthood). Planned Parenthood is one of the oldest abortion advocacy groups in the country and has been holding conferences which issue recommendations and reports since its inception. *Id.* See also *State Legislation Tracker: Major Developments in Sexual & Reproductive Health*, *supra* note 20 (listing abortion restrictions by state). The Guttmacher Institute has collected and categorized abortion restrictions, giving legislators an effective reference guide for laws which must be changed or eliminated to become compliant. *Id.* See also Cleveland, *supra* note 7 (highlighting impact of international law on United States jurisprudence). These actions will honor the spirit of the *Roe* decision, and other fundamental Supreme Court decisions, which had their roots in historical and international law. *Id.*

77. See *supra* Part II. A-C. (discussing history of United States' abortion policy and wave of laws passed). See also *supra* Part III. A. (reviewing history of United States' noncompliance).

78. See *supra* Part III. B. (overviewing consequences of United States noncompliance). See also *supra* Part IV. A. 1. (describing economic consequences); Part IV.A.2. (highlighting international consequences); Part. IV. B. (outlining consequences on domestic politics and social discord); Part IV. C. (emphasizing toll on human lives). There are a wide variety of types and depths of consequences for noncompliance.

RUDs that functionally nullify the treaties.⁷⁹ Second, it must issue federal legislation which guarantees and requires compliance with all the relevant treaties; this legislation must not explicitly guarantee abortion access, but rather only reference compliance with treaties.⁸⁰ These steps will begin to renew the United States' international standing, heal social and political rifts, and save lives.⁸¹

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79. *See supra* Part IV. D. 3 (describing ratification without RUDs).

80. *See supra* Part IV. D. 3 (outlining federal legislative process).

81. *See supra* Part IV. (reviewing social and political ills that need healing). Each of the areas negatively impacted by the United States' noncompliance is an opportunity for progress that will ultimately save lives.