

“The Financial Burden of Forced Pregnancies”

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The Financial Burden of Forced Pregnancies

I. Introduction

Pregnancies can be an occasion to celebrate or to dread. Several people in my life have made the choice to be pregnant and have a child, while there are few that made the choice to not fulfill their pregnancies. My first introduction to the “morning after pill” was during college, a roommate asked me to accompany her to the local Planned Parenthood for moral support. We were twenty-one at the time, Indiana did not yet have a law prohibiting the sale of abortion medication. I went with her to make sure she felt supported in her decision. I then watched over her for the next two days after she took the pill. She described the pain as the worst period she ever had.

Several years later, a close friend confided in me that she had received an abortion. This friend was financially stable and established in her career, but she did not know the man who impregnated her was married. When she informed him of the matter, he wanted nothing to do with her or the fetus. The friend had planned to get the abortion regardless of what the man said, but there was absolutely no attempt to help her with the cost. When she went to Planned Parenthood, the kind nurse informed her that, in her state, the man was required to pay for half of the \$1,000 procedure. Had she decided to continue with the pregnancy, she would have been financially alone raising the child.

It was not long after that conversation that I noticed a friend seemed distracted. When I asked if she was okay, she confided in me that she had missed a couple days of her birth control and she just found out that she was pregnant by her long-term partner. The distraction came from her worrying about their financial abilities and where they were in their lives. They were not yet prepared, mentally or financially, to grow their family. It did not take my friend long to decide

what she was going to do, but the decision weighed on her for a long time after she went through with the treatment.

Of these three women, one is a mother of two now. She chose to grow her family when she was ready and had the support, she needed to effectively fulfill her responsibilities. The other two women are building their lives and establishing themselves in their careers so that if they choose to become mothers, they do so by creating the best environment they can for their child.

This writing will argue that the decision made in *Dobbs v. Jackson Women's Health* is effectively codifying discrimination against people based on their ability to get pregnant. I will establish that this decision of motherhood is not just a burden in the United States, but also a decision that women struggle with globally. It is an ongoing problem in several countries that women earn less than their male counterparts and many point to motherhood as a major factor in this gendered wage gap. Even before the Supreme Court's decision in *Dobbs*, conservative actors have attempted to keep women as second-class citizens by weaponizing women's autonomy. By taking away the choice of when and whether to become pregnant, the Court has effectively determined that women are unfit to make the determination for themselves all while not ensuring financial security for the future of the woman and her child.

Part II of this paper critically examines the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* by outlining the ominous impact of the reasoning established by the opinion. Part III analyzes the traditional gendered roles within society and the disparate impact of expected unpaid labor. Part IV examines the attempts of the Federal Government to provide a comprehensive plan for leave and resources available for those in both Congress and the State Legislatures to author a more inclusive strategy to ensure the labor done during this leave is compensated accordingly.

II. Dobbs – what the Court abolished

A. Historical Review

In May of 2022, the majority opinion for *Dobbs v. Jackson Women's Health* was leaked and published by Politico. Around this time, opinions surrounding this decision were made clear – those identifying as conservative celebrating the decision's nod to state sovereignty while those identifying as progressive mourned the loss of important unenumerated rights as guaranteed by the Fifth, Ninth, and Fourteenth Amendments. The holding addresses many arguments as to why the majority believed that the fifty years of precedent set by *Roe* should be overturned, but Justice Alito focuses on whether the unenumerated fundamental rights at issue are “deeply rooted in our history and tradition and whether it is essential to our Nation's scheme of ordered liberty.”¹

The opinion outlines that *Roe* was not grounded in common law as abortion was considered a crime after the mother first felt the fetus move, the quickening.² He then goes on to cite multiple historical legal authorities which establish that any type of abortion, pre- and post-quickening, was considered a homicide. Justice Alito takes care to outline the multiple different common law cases of people who were historically charged with murder for performing an abortion.

In this in-depth historical analysis, Alito cited two treatises by Sir Matthew Hale's *Pleas of the Crown* and *History of the Pleas of the Crown*, originally published in 1678³ and 1736⁴ respectively. This choice is notable because Hale is known as the judge of two women who were burned for being accused of witchcraft and he advocated for the punishment of those aged fourteen

¹ *Dobbs v. Jackson Women's Health Org.*, 142 U.S. 2228, 2246 (2022) (internal quotation marks omitted).

² *Id.* at 2249.

³ *Pleas of the Crown*, Wythepedia: The George Wythe Encyclopedia https://lawlibrary.wm.edu/wythepedia/index.php/Pleas_of_the_Crown.

⁴ *Historia Placitorum Coron: The History of the Pleas of the Crown*, Wythepedia: The George Wythe Encyclopedia https://lawlibrary.wm.edu/wythepedia/index.php/History_of_the_Pleas_of_the_Crown (last visited 11/25/2022).

and older convicted of witchcraft by capital punishment in his first publication.⁵ Further, in his second publication, *History of the Pleas of the Crown*, Hale contends that “the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract: the wife hath given up herself in this kind unto her husband, which she cannot retract.”⁶

Interestingly, these are the types of men whose morals society chooses to look to when it comes to what the Court considers “deeply rooted in history and tradition” and “essential to our Nation’s scheme of ordered liberty.”⁷ Justice Alito continued to build his argument that *Roe v. Wade* had no historical backing and, therefore, could not be deeply rooted in history and tradition. The issue with believing these historical legal ideals are an integral part of the history and tradition that make up the United States is that they cannot reflect the values the country holds in the modern era. In the middle of the twentieth century, women and people of color could finally vote and allow their voices to be part of the history and tradition of the country they helped build. There was not a single reference to this important factor of legal history and tradition addressed in this opinion.

B. What is “deeply rooted” if you are not a white, landowning male?

The first woman ever elected to the United States Congress was in 1917⁸ while the first woman of color was not elected until 1965.⁹ A total of five (5) women of color have served as Senators¹⁰ while six (6) women have been Supreme Court Justices.¹¹ Today, the majority of State

⁵ Sir Matthew Hale, *Pleas of the Crown* 23 (1716). See also *Id.* at 6.

⁶ Sir Matthew Hale, *History of the Pleas of the Crown* 6 - 629 (1680).

⁷ *Dobbs*, 142 U.S. at 2246.

⁸ “Jeannette Rankin, first woman elected to U.S. Congress, assumes office,” article by History, <https://www.history.com/this-day-in-history/jeannette-rankin-assumes-office> (last visited 11/25/2022).

⁹ “History of Women of Color in U.S. Politics,” article by Rutgers Eagleton Institute of Politics, <https://cawp.rutgers.edu/history-women-color-us-politics> (last visited 11/25/2022).

¹⁰ *Id.*

¹¹ “U.S. Supreme Court,” article by Rutgers Eagleton Institute of Politics, <https://cawp.rutgers.edu/facts/levels-office/us-supreme-court> (last visited 11/25/2022).

Supreme Court seats are held by men and only eighteen percent of seats are held by people of color.¹² Still, the makeup of this system is more diverse than that of the judiciary which Alito decides is “essential to our Nation’s scheme of ordered liberty.”

Up until 1900 white women were not guaranteed the right to keep wages and property in her own name.¹³ Yet, there is no acknowledgement of owning property or any other rights women forced to fight for within the majority opinion. Using the standard Alito outlined in *Dobbs*, it seems impossible to find historical grounding for women to make autonomous choices. In fact, in his concurrence, Justice Thomas makes it clear that he will uphold this standard of scrutiny when all other substantive due process issues come before the court.¹⁴ This puts decisions like *Griswold v. Connecticut* (the right for married couples to use birth control) and *Einstadt v. Baird* (the right for single people to obtain contraceptives) at risk simply because, in the eyes of these men, the intent of the white, male legislature was not to provide any type of “liberty,” especially the liberty of bodily integrity for women.¹⁵

The Dissent, which was coauthored by Justice Breyer, Justice Sotomayor, and Justice Kagan, admonishes the majority opinion as it completely fails to acknowledge the understanding that society has changed and people who were unable to vote or hold legislative office in 1868 were not considered full people as encompassed by the phrase “We the People.”¹⁶ Yet, over 150 years later, we are expected to read and gain our rights from a perspective of those who were able

¹² “State Supreme Court Diversity May 2022 Update,” article by Amanda Powers for Brennan Center for Justice <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity-may-2022-update> (last visited 11/25/2022).

¹³ “Stepping Through History: A timeline of women’s rights from 1769 to the 2017 Women’s March on Washington” article by Susan Milligan for U.S. News & World Report, <https://www.usnews.com/news/the-report/articles/2017-01-20/timeline-the-womens-rights-movement-in-the-us> (last visited 11/26/2022).

¹⁴ *Dobbs*, 142 U.S. at 2301 (Thomas, J concurring).

¹⁵ *Id.* at 2325.

¹⁶ *Id.*

to vote and hold legislative office during the time of ratification. To derive the intended rights from that time gives us no separate legal identity apart from our male relatives or husband and “consigns women to second-class citizenship”.¹⁷

As of April 2023, the Federal Courts are willing to put the precedence set by the *Dobbs* decision. On April 7, Federal Judge Kacsmaryk out of Texas published a 67-page ruling in which he held that the Food and Drug Administration (FDA) erred in their judgment, twenty years prior, in approving mifepristone.¹⁸ In this decision, Judge Kacsmaryk claimed to be serving the public interest by issuing a preliminary injunction on the drug’s approval as the FDA was only intended to approve those drugs which treat “life threatening diseases” or provide patients with a “meaningful therapeutic benefit.”¹⁹ Meanwhile, Judge Thomas Rice ruled in favor of the seventeen states which filed a lawsuit to protect and expand access to mifepristone in their state.²⁰ These contradictory and preliminary rulings will require the judiciary to elevate the issue to the Supreme Court.

C. Dangers of Morality

Throughout the majority opinion, Justice Alito uses an extremely prominent argument against abortion, and by anti-choice rhetoric talking heads, the morality of the decision. The “critical moral question posed by abortion”²¹ is how Justice Alito made the distinction between the rights Justice Thomas believes lack basis in the Constitution.²² Morality is simply one factor which people take into consideration when making this lifechanging choice. The dissent

¹⁷ *Id.*

¹⁸ “Dual court rulings throw confusion into abortion drug debate: Judge Matthew Kacsmaryk ruled that the FDA ‘exceeded its authority’ in approving mifepristone 23 years ago” article by Sandhya Raman for Roll Call, <https://rollcall.com/2023/04/07/federal-judge-in-texas-blocks-use-of-abortion-drug/> (last visited 4/17/2023).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 2258

²² *Id.* at 2301

acknowledges the negative use of this argument by acknowledging the state's ability to "impose its moral choice on a woman and coerce her to give birth to a child."²³ They continue by warning that this moral imposition can, and most likely will, lead to the criminalization of providing abortions and the regulation of the conduct of pregnant people through criminalization and incarceration for even attempting to seek an abortion. As Texas' SB8 bill showed, the state will enlist their citizens to assist in the enforcement of these morally driven statutes.²⁴

Terrifyingly, in September 2022, CNN reported on demonstrations in Iran against the Gasht-e-Ershad, the country's morality police. After the gruesome death of 22-year-old Mahsa Amini at the hands of the morality police, thousands of women took to the streets to protest the role of this branch of law enforcement.²⁵ This movement called for an end to the violence and discrimination against women, especially calling out the compulsory veiling the morality police are known to enforce. According to Human Rights Watch and other human rights groups, more than 430 peaceful protesters, including 60 children, have been killed as of November 2022.²⁶ U.N. human rights experts condemned the "arbitrary arrests and detentions, gender-based and sexual violence, excessive use of force, torture, and enforced disappearances" while also commenting on the "frightening" reports of "physical and sexual violence against women and girls during protests and in public spaces."²⁷

²³ *Id.* at 2318

²⁴ 2021 Texas Senate Bill No. 8, Texas Eighty-Seventh Legislature.

²⁵ "Iran's morality police have terrorized women for decades. Who are they?," article for CNN, <https://www.cnn.com/2022/09/21/middleeast/iran-morality-police-mime-intl/index.html> (last visited 11/25/2022).

²⁶ "How Iran Underestimated The Outrage Over The Killing Of Mahsa Amini," article by Forbes, <https://www.forbes.com/sites/ewelinaochab/2022/11/24/how-iran-underestimated-the-outrage-over-the-killing-of-mahsa-amini/?sh=5bb26dbf98e7> (last visited 11/26/2022).

²⁷ *Id.*

In just two months of protests, more than 2,000 people have been charged and subjected to torture, sexual harassment, and brutal beatings. The number of these reports continue to develop.²⁸ In 1979, Iran's Khomeini implemented a decree that women should observe an Islamic dress code. Since then, women have found ways to defy this code by wearing tight-fitting clothes or wearing their headscarf as an accessory.²⁹ In September of 2022, Mahsa Amini was arrested for wearing clothing the morality deemed inappropriate. While in police custody, Amini went into a coma and died in the hospital three days later. According to reporters, the outfit Mahsa Amini was wearing is widely considered conventional by Iranian standards.³⁰

For some, this comparison of police in the United States with the morality police in Iran will strike as extreme. Others will recognize that policing in the United States is one criminal statute away from attempting to enforce laws grounded in morality in similar methods to those demonstrated by the morality police force in Iran. The dissenting opinion in *Dobbs* acknowledges that women of means will continue to be unaffected by these decisions, but others who may not have access to childcare or the ability to take time off work will not be as fortunate.³¹ These women, typically women of color and those living below the poverty line, are already experiencing heightened scrutiny by the police with these individuals historically being overrepresented in prison populations. Since the early 1990's, the rate at which women are being incarcerated has risen by 700% as of 2019. This rise has also been noted in the rate of juvenile detention centers with girls of color being more likely to be committed to the facilities than white girls.³²

²⁸ *Id.*

²⁹ "Who are Iran's 'morality police'?" article by DW, <https://www.dw.com/en/irans-morality-police-what-do-they-enforce/a-63200711> (last visited 11/26/2022).

³⁰ *Id.*

³¹ *Dobbs*, 142 U.S. at 2318-19

³² "Incarcerated women: Poverty, trauma and unmet need," article by Dr. Beryl Ann Cowan, JD, PhD for American Psychological Association, <https://www.apa.org/pi/ses/resources/indicator/2019/04/incarcerated-women> (last visited 11/26/2022).

It is not difficult to envisage a future in which criminalization of abortion based in morality leads to the escalating arrest and detention rates of young women of color and impoverished women for “feticide” anytime they experience a miscarriage. Women and their fetuses have already died after being court ordered to undergo procedures, despite being critically ill. These judges knew the procedures may be fatal, but decided the fate of the woman based on the judge’s own belief that there was an obligation to give the fetus a chance for life. Women are being charged with “attempted fetal homicide” for falling down a flight of stairs and arrested on charges of “fetal homicide” for giving birth to a stillborn baby which healthcare providers believed was due to the woman delaying her decision to undergo a cesarean.³³ Even more distressing stories come from women in Florida who were forced into an unwanted cesarean procedure in the midst of enduring a miscarriage. When one woman challenged this issue in court, the judge held that “the woman’s personal rights clearly did not outweigh the interests of the State of Florida in preserving the life of the unborn child.”³⁴ These are only a few of the 793 arrests and charges women endured between 1973 and 2014 simply because the viability of their pregnancy was threatened.³⁵

It is staggeringly clear that those in power making morality calls like these do not have a full understanding of female anatomy or what pregnancy truly entails. It is impossible to expect lawmakers to fully understand these processes as doctors and science do not have all the answers. Newly expectant mothers talk about the vast amount of pregnancy books available on the market today, but later reveal that the books only made them feel judged or isolated.³⁶ Throughout the process of pregnancy, the mother’s morality is continuously questioned by the reinforcement that

³³ “Pregnant, and No Civil Rights,” article by Lynn Paltrow & Jeanne Lavin for New York Times, <http://www.nytimes.com/2014/11/08/opinion/pregnant-and-no-civil-rights.html>. (last visited 11/26/2022).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Angela Garbes, *Like a Mother: A Feminist Journey through the Science and Culture of Pregnancy*, 4 (2018).

there is a “right” and “wrong” way of caring for and experiencing the pregnancy. For instance, even though science has informed the general population that alcohol, in moderation, is completely safe for the fetus, many women report being openly judged in restaurants for enjoying a glass of wine with dinner.³⁷ Yet, the morals of Sir Matthew Hale, an actual witch burner who believed a woman belonged to her husband and, therefore, could not be a victim of rape, are held in high esteem and codified through this majority opinion, written by a conservative Supreme Court justice. Justice Alito’s opinion has shown women in the United States that these are the morals being selected for women. These are the morals which are informing legislation regarding matters in which even the best doctors are unable to consistently provide specific and completely accurate answers for each of their pregnant patients.

D. State’s Interest

As Angela Garbes points out in her book *Like a Mother: A Feminist Journey through the Science and Culture of Pregnancy*, pregnant people are at the mercy of “a culture in which men hold nearly all the legal and economic power; a society in which whiteness is considered the norm and superior to other races and cultures; and an economic system that relies on, but does not adequately value domestic work.”³⁸ Under this system, simply having a uterus was considered by the insurance companies to be a pre-existing condition until the passage of the Affordable Care Act in 2010, even for policies which did not include maternity care. Further, women who had previously undergone caesarean procedures or had been victims of domestic violence could legally be denied health insurance.³⁹ Yet, pregnant people are expected to trust that a system based in morality and is “deeply rooted in our history and traditions” is going to treat them as equal and

³⁷ *Id.* at 36

³⁸ *Id.* at 28

³⁹ “Overhaul Will Lower the Costs of Being a Woman,” article by Denise Grady for New York Times, <https://www.nytimes.com/2010/03/30/health/30women.html?ref=health> (last visited 11/26/2022).

recognize that they are able to make important, life changing decisions. Because history and tradition has clearly taught women and people of color that their interests are of the utmost importance.

The majority opinion focuses primarily on the fetus and the potential life. Justice Alito quotes an amicus brief submitted by pro-life activists which cite reasons as to why pregnancy and childbirth are, theoretically, not as detrimental as they were when *Roe* was decided in 1973. Modern developments believed to alleviate the burdens of pregnancy include the ban of discrimination on the basis of pregnancy, leave for pregnancy and childbirth, costs of medical care associated with pregnancy are covered, and the increase of “safe haven” laws and newborn adoptions.⁴⁰ Despite the documented impacts of pregnancy and childbirth, Justice Alito dismisses those arguments by stating “[t]his Court has neither the authority nor the expertise to adjudicate those disputes. . . .”⁴¹ He continues by admonishing the *Casey* court’s “departure from the original constitutional proposition” by balancing the “relative importance of the fetus and mother” as he considers this the Justices substituting their social and economic beliefs for the intent of the legislatures, reiterating that women should participate in the legislative process to codify rights to make decisions regarding reproductive autonomy.⁴²

However, as the dissent, coauthored by Justice Breyer, Justice Sotomayor, and Justice Kagan points out, this does not take into consideration the impact the physical implications or the need of women during a pregnancy. Just like no two people are alike, no two pregnancies are alike. Every person has a different experience in even getting pregnant. By applying the lowest level of scrutiny and holding that the abortion restrictions rationally relate to the state’s interest of

⁴⁰ *Dobbs*, 142 U.S. at 2258–59.

⁴¹ *Id.* at 2277

⁴² *Id.* quoting *Ferguson v. Skrupa*, 372 U.S. 726, 729–730 (1963) (internal quotations omitted).

protecting fetal life, it fails to acknowledge the state's interest in allowing their citizens to make the best decisions for themselves and their families. Justice Alito cites *Casey's* reliance on the comparison of this right to make private choices surrounding a person's interest of the family with the parent's interest in making decisions about their child's education, decided in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), *Meyer v. Nebraska*, 262 U.S. 390 (1923); and the right to not undergo involuntary surgery, be forcibly administered drugs, or undergo other similar procedures, decided in *Winston v. Lee*, 470 U.S. 753 (1985), *Washington v. Harper*, 494 U.S. 210 (1990), *Rochin v. California*, 342 U.S. 165 (1952)⁴³ and dismisses these arguments as “too much.”⁴⁴

Pregnant people have a substantial interest in making choices surrounding their pregnancy. I thought this understanding went without saying, but here we are. No person outside of the pregnant person and whom they choose to invite into their circle of support has an interest. Through the lack of a guaranteed paid maternity leave that is easy to access for everyone, funding to and proper development of the educational system, regulation of care and frontline worker wages, and the lack of universal and comprehensive healthcare, the federal and state governments have made it clear that their interest begins and ends with the protection of the fetus' potential life. This interest does not expand to the wellbeing of the child past birth nor to the wellbeing of the pregnant person outside their ability to grow the potential life.

This lack of the state's interest in the pregnant person's wellbeing was recently made overtly evident in Indiana when the attorney general began publicly questioning the credibility of OBGYN Doctor Caitlin Bernard because she performed an abortion on a 10-year-old girl who found herself pregnant due to rape. Although this medical procedure was (1) necessary for this girl

⁴³ *Dobbs*, 142 U.S. at 2257–58

⁴⁴ *Id.*

to have any hope of leading a healthy life and (2) lead to the arrest and conviction of the young girl's rapist, the attorney general continued to defame and slander the doctor and even pursue a case against Dr. Bernard for allegedly failing to follow reporting protocol for abortions.⁴⁵

This legal battle is all taking place in a state that ranked third nationally in highest maternal mortality rates from 2011 through 2015.⁴⁶ Notably, this number increased by more than 40% from 2019 to 2020.⁴⁷ So, the question becomes, what is the state's interest really? From here, it seems as though this interest is to keep the status quo, to keep women in their perceived place.

Of those people who get abortions, 66% are already parents.⁴⁸ They go into the procedure already knowing the physical, financial, and mental costs of having children. When States adopt “. . . one theory of life [and] override all rights of a pregnant [person]”⁴⁹ by forcing them to maintain their pregnancy, the State is undermining the ability of the pregnant person and their support system to make the best decisions for themselves and their families. The holding made by the majority in *Dobbs v. Jackson Women's Health*, the Court has all but codified the ability for states to disparately discriminate against people based on their ability to get pregnant and bear a child.

⁴⁵ “Indiana doctor says she has been harassed for giving an abortion to a 10-year-old,” article by Becky Sullivan for NPR, <https://www.npr.org/2022/07/26/1113577718/indiana-doctor-abortion-ohio-10-year-old> (last visited 11/24/2022).

⁴⁶ “States With the Highest Maternal Mortality Rates,” article by Casey Leins for US News, <https://www.usnews.com/news/best-states/articles/2019-06-12/these-states-have-the-highest-maternal-mortality-rates> (last visited 11/24/2022).

⁴⁷ “New report: More Hoosier women died during pregnancy or within a year of giving birth,” article by Karen Campbell for WTHR, <https://www.wthr.com/article/news/local/new-report-more-hoosier-women-died-during-pregnancy-or-within-a-year-of-giving-birth/531-74fd024f-c609-4d2e-b5d3-eca21cc6ebce> (last visited 11/24/2022).

⁴⁸ Terry Gross interviewing Angela Garbes, *Raising kids is 'Essential Labor.' It's also lonely, exhausting and expensive*, (June 21, 2022). <https://www.npr.org/sections/health-shots/2022/06/21/1105849291/essential-labor-angela-garbes-child-care-pandemic-mothering>.

⁴⁹ *Dobbs*, 142 U.S. at 2320.

III. Problems With The Gendered Function of Caring

A. The Child Penalty

The twentieth century saw a major influx of legally required equality between the sexes. From the first women to be voted into a federal office⁵⁰ to the federally recognized expectation of economic equality through Title VII of the Civil Rights Act of 1964 and the Equal Credit Opportunity Act of 1974, codified equality provided women with a path of independence and theoretical equity. However, even with the ratification of anti-discrimination legislation, the expectation surrounding division of labor between the sexes remained the same.

Regardless of employment status outside of the home or the education levels of the partners, societal expectations are that the male partner be the main financial earner outside the home while the female partner would be the caretaker within the home, ensuring children were cared for and the elderly family members looked after. Due to this division of labor, rooted in our nation's history and traditions, women continue to earn less than men.

As of June 2021, white women are earning 82% of what their white, male counterparts are earning. These numbers are much lower for women of color. Black women earn just 63%, Indigenous and Native American women earn just 60%, and Latina women are earning just 55% of a white man's earnings.⁵¹ Maternity has been recognized historically to be a key factor in this disparity while industry and occupation is another.

Even in the most egalitarian of societies, like Denmark and Iceland, women still feel an economic penalty for birthing a child. In one study, the research showed that mothers who adopt

⁵⁰ "First Woman Elected To U.S. Congress, Assumes Office," article by Jeannette Rankin for History.com, <https://www.history.com/this-day-in-history/jeannette-rankin-assumes-office> (last visited 11/ 27/2022).

⁵¹ *The Gender Wage Gap: Breaking Through Stalled Progress: Hearing before the Joint Economic Committee*, 117th Cong. (2021).

or birth a child earn less than those biological or adoptive fathers.⁵² Even then, the economic impact of women who gave birth to a child compared to those who adopted is considerably higher. This is attributed to the biological abilities of biological mothers.⁵³

Breastfeeding is a time intensive task that many mothers are told is imperative to the health and well-being of their child. Organizations like the United Nations International Children's Emergency Fund (UNICEF), the World Health Organization (WHO), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP) each recommend a minimum of six months for babies to be exclusively breast fed. They advise parents to continue breastfeeding even through the introduction of new foods for at least one to two years or more.⁵⁴

The time cost of breastfeeding is invisible to most people, unless they have experienced the job themselves. Working mothers must make the time to leave their professional work to tend to their child's needs, even when the mother is back at work. Feedings often occur about five times daily.⁵⁵ This schedule is rigorous for new mothers as the milk production must be sustained. Most mothers report needing to wake up in the middle of the night to ensure they have a supply for the next day. Some economists estimate the monetary value of breastfeeding during the first six months of the child's life adds up to about \$14,250.⁵⁶

Despite the necessity of breastfeeding, rights surrounding the act were not laid out until the passage of the Affordable Care Act (ACA) in 2010. The rights as outlined by the ACA include a breast pump, a reasonable break time to pump for at least a year postnatal, and a place to pump

⁵² Philip Rosenbaum, *Pregnancy or Motherhood Cost?: A Comparison of the Child Penalty of Adopting and Biological Parents*, 4 (2020).

⁵³ *Id.*

⁵⁴ Garbes, *Like a Mother*, at 144

⁵⁵ *Id.* at 147-48

⁵⁶ *Id.* at 147

that is shielded from view and intrusion that is not a bathroom.⁵⁷ Even with these provisions, mothers across the United States are finding it difficult to work outside the home and meet their goals of exclusive breastfeeding.⁵⁸

There is simply not enough societal support for women to maintain professional careers and meet the breastfeeding guidelines as set out by the medical organizations. The time off work to attend prenatal doctor's visits and the complexity of pregnancy factor into the child penalty women face. This time cannot account for those women who are ordered by their doctor to go on bedrest for the safety of themselves and their child. Further, it is difficult to predict how many new mothers will be impacted by their ability to breastfeed until after they have given birth to at least one child. Until a woman attempts to become pregnant or is pregnant, there are many mysteries surrounding the pregnancy and childrearing process.

For those women who are unable to breastfeed, baby formula is the only method of feeding their child. In 2022, a single manufacturing plant closed due to a defect in their powdered formula. The closing of this one manufacturer created a 43% formula shortage.⁵⁹ This shortage impacted Black mothers more as they are 2.5 times less likely to breastfeed than white mothers.⁶⁰ Meanwhile, families on WIC Supplemental Nutrition Program are required to purchase a specific brand of formula, so for those families who were able to even locate formula, some were unable

⁵⁷ *Id.* at 156

⁵⁸ *Id.*

⁵⁹ "The formula shortage: Economic impact and policy responses," article by Alexandra E. Bello for Baker Institute Blog, <https://blog.bakerinstitute.org/2022/06/23/the-formula-shortage-economic-impact-and-policy-responses/> (last visited 11/27/2022).

⁶⁰ "Baby formula shortage hits lower-income homes and families of color," article by Jenna Carlesso for WSHU, <https://www.wshu.org/connecticut-news/2022-05-31/baby-formula-shortage-hits-lower-income-homes-and-families-of-color> (last visited 11/27/2022).

to purchase that brand.⁶¹ And this does not account for those families who require a specific type of formula because of their child's dietary needs.

Yet, in the midst of all the challenges and anxieties faced by new mothers nationwide, the Supreme Court decided on whether women could choose the best path to parenthood for themselves. The child penalty is one felt mostly by mothers who try to care for their child. Whether through the time they spend ensuring the viability of the fetus at the doctor's office or during their child's life, mothers are always finding ways to care for their child and being penalized for their efforts.

B. Caregiving As An Unappreciated Gendered Profession

The role of caregiver is important but is among some of the lowest paid work in the modern economy of the United States. The estimated median pay of home health and personal aides is just above the poverty level for a family of four. The Bureau of Labor Statistics estimates that these care workers bring home around \$27,080 annually. This disproportionally effects women of color as Black women make up around 28% of health care workers even though they make up just 13% of the workforce in the United States.⁶²

Caregiving has historically fallen to women to care for the domestic aspect of life. One of the oldest professions in which women have regularly been allowed to work has been midwifery. Sometimes called "wise women" by those they would treat, these lay healers often served the peasant population in which they lived.⁶³ With the rise of the medical profession in Europe beginning in the thirteenth century, there was a slow, but steady, decline of these women healers. Some historians assert that the witch trials of the time were a part of the systematic eradication of

⁶¹ *Id.*

⁶² *Rosenbaum* at 2

⁶³ Barbara Ehrenreich & Deirdre English, *Witches, Midwives, and Nurses* 25 (2nd ed. 2010). *See also Id.* at 31

these healers so as to give credence to the rising upper-class male dominated profession while discrediting the women healers.⁶⁴

This systematic persecution of women allowed the medical profession to eliminate female healers by simply excluding women from the medical universities, often using doctrine required to be approved by the Catholic Church.⁶⁵ The work of women who dared to threaten the work coming to the newly educated doctors was met with higher scrutiny and the women were ultimately punished for their ability to heal their patients more consistently than the “qualified” doctors. One such woman, Jacoba Felicie, was charged for illegal practice. Even though she had not attended medical school, six patients testified at her trial that Feliece cured their ailments even after numerous “qualified” doctors had given up.⁶⁶

These trials, as well as those for witchcraft, left many women healers in the lower-classes branded as “superstitious and possibly malevolent.”⁶⁷ Through this branding and system of suppression, the rise of the male dominated medical field continued to exclude women and midwives. By the early 1800’s the medical profession in Europe had already been established and the continent saw an increase in midwives, but the rise of the medical professional in the United States had just begun. During the Popular Health Movement of the 1830’s and 1840’s, a growing number of states required that any person practicing medicine be licensed with the state in which they chose to practice.⁶⁸ Throughout the end of the nineteenth century and into the early twentieth century, working class immigrant and black women were delivering almost half of the babies born in the United States.⁶⁹

⁶⁴ *Id.* at 39

⁶⁵ *Id.* at 50

⁶⁶ *Id.* at 55

⁶⁷ *Id.* at 57

⁶⁸ *Id.* at 68

⁶⁹ Garbes, *Like a Mother*, at 23

By 1910, medical schools which enrolled black and female students were being forced to close due to the lack of resources and funding as they were less able to compete with institutions, like Harvard, being funded by charitable foundations sourced by the wealthy industrial families, such as the Carnegies and Rockefellers.⁷⁰ As the Nightingale method of nursing continued to be practiced and taught in medical institutions, the role of nurses was less of a healer and more to be the patient, obedient helper of the doctor but someone who is expected to perform the most menial tasks.⁷¹ Because of these clearly defined roles of curing and caring, the professions became more divided on the basis of gender. In 1973, women made up the overall majority of health care workers, with 70% of the profession being female, but men made up 93% of doctors in the United States.⁷²

As anti-discrimination legislation continued to pass, the number of women working in traditionally male career fields, like medicine and law, grew. Through the evolution of technology and societal expectations, the labor market continued the trend of female employment. Today, white men make up 62% of the doctors and lawyers in the United States while half of all women worldwide are employed within the labor market and the growth continues.⁷³

Women are expected to be thankful for this development of the labor market. In a profession once developed and led by women healers, women continue to make up the majority of the labor workforce but are valued at a much lower proportion. If there is any doubt about this, look at the average salary for medical professionals. Nationally, a registered nurse who works at a hospital makes around \$83,440 per year⁷⁴ while the average hospital physician makes \$246,519

⁷⁰ *Id.* at 22

⁷¹ Ehreinreich & English at 96

⁷² *Id.* at 26

⁷³ Minouche Shafik, *What We Owe Each Other: A New Social Contract For a Better Society* 18 - 19 (2021).

⁷⁴ “Registered Nurse (RN) Salary,” for Salary.com, <https://www.salary.com/research/salary/general/registered-nurse-rn-salary> (last visited 11/23/2022).

per year.⁷⁵ Yet, nurses are the ones tending to their patients by cleaning their wounds, starting IV lines, changing bandages, and bathing their patients.⁷⁶ Physicians are not doing the dirty work, but they are being compensated at a much higher rate than those who are giving direct, critical care. This is the type of systematic wage gap that is important to address when courts decide rights which will effect the ability for people to make choices regarding whether or not they earn enough to support their families.

C. The Second Shift And Unpaid Essential Labor

The Covid-19 pandemic made the gendered wage gap even more evident, especially those women of color who were disproportionally affected both financially and physically. The pandemic revealed that those “front line workers” were those in precarious work situations and often lacked access to health care.⁷⁷ As childcare centers, salons, and restaurants shut down women of color suffered the most due to unemployment. As of February 2020, the hospitality and leisure, education and health services, and retail trade sectors accounted for 47% of jobs held by women.⁷⁸ Meanwhile, women of color represent 40% of all childcare professionals despite only making up 20% of the population.⁷⁹

It showed just how much the economy depended on these workers to survive and for our society to function, yet these positions were, and continue to be, largely the lowest paid positions within the organization.⁸⁰ “Childcare professionals, many of them mothers, are three times as

⁷⁵ “Do you know what you're worth?,” for Salary.com, <https://www.salary.com/tools/salary-calculator/physician-hospitalist> (last visited 11/23/2022).

⁷⁶ Angela Garbes, *Essential Labor: Mothering as a Social Change* 39 (2022).

⁷⁷ *Id.* pg xii

⁷⁸ Emmalyn Krantz, *Paid Family Leave: How A Global Pandemic Exacerbates the Need for A Comprehensive National Paid Leave Policy*, 2022 U. Ill. L. Rev. 1293, 1311 (2022).

⁷⁹ Garbes, *Essential Labor*, at 38

⁸⁰ *Id.*

likely to live in poverty as workers in other professions.”⁸¹ As of May 2022, there are “two million less women in the professional workforce today than there were at the start of the 2020”⁸² and nearly five million jobs were lost by women significantly due to the lack of childcare.⁸³ September 2020 saw 865,000 more women leave because they were being asked to balance being a teacher, mother, and professional worker as schools remained closed.⁸⁴

Often times called “the second shift” women are still expected to bear the burden of the unpaid work in the home. Globally, the average woman performs two more hours of unpaid work per day than men.⁸⁵ In the United States, women complete 60% more unpaid work than men.⁸⁶ These numbers vary across countries with different income levels. In countries with more income, the household chores are done by machines and the shopping is hired out by apps. However, caregiving still takes up the same amount of time across all countries.⁸⁷

Child and elder care are time and labor intensive. Caring for family members has long been assumed to be the role of the woman. Some social scientists believe that this is based on the division of earnings between the married couple. This belief coupled the driving assumption that mothers are more biologically inclined to have a competitive advantage in childrearing validates the findings surrounding the gendered division of unpaid labor.

Until their child is six (6), parents are on their own in trying to figure out how to care for them.⁸⁸ When lower income adults require assistance to live, it is often informal carers.⁸⁹ This

⁸¹ *Id.*

⁸² Terry Gross interviewing Angela Garbes, *Raising Kids*

⁸³ Garbes, *Essential Labor*, at 39.

⁸⁴ *Id.*

⁸⁵ Shafik at 32

⁸⁶ *Id.* at 33

⁸⁷ *Id.* at 32

⁸⁸ Terry Gross interviewing Angela Garbes, *Raising Kids*

⁸⁹ Shafik at 136-137

work often falls to the women and mothers of the family. As is often said, “America doesn’t have a social safety net, America has mothers.”⁹⁰

Women are often forced to choose between their careers and their ability to care for their children. Because of this, more women drop out of the more rigid workforce and elect to pursue more flexible, often lower paid, work.⁹¹ Other times, if they are able, women drop out of the workforce completely and do not return due to the lack of development during their long periods of unemployment making finding future employment more difficult.⁹² However, black mothers are the breadwinners in 74% of households and mothers overall make up 40% of the primary earners.⁹³ This leads some caregivers into impossible financial traps with no viable escape route.

As women are forced to take more flexible positions, which are often part-time and low wage, they suffer in their old age under the current retirement and pension plans. This inability to save and invest enough money for their future elder care consistently leaves women disproportionately at a disadvantage. Society is living longer and the majority of the informal care work is performed by women. When governments do not invest in elder care, informal caregiving creates a vicious financial cycle for women.⁹⁴ By perpetually putting the informal caregivers in a position in which they are unable to make an income, or enough of an income to put money aside, because they have to care for their elder family members, the caregiver is putting the future of their own female family members at risk because she is then unable to save for their own end of life care due to the expectation of caregiving that is transferred to the next generation. Unsurprisingly, those countries which have invested in informal caregivers in the form of pension credits, respite

⁹⁰ Terry Gross interviewing Angela Garbes, *Raising Kids*

⁹¹ Shafik at 34-35; *See also Id.* at 101

⁹² *Id.* at 35

⁹³ Garbes, *Like a Mother*, at 184

⁹⁴ Shafik at 137.

care, and cash benefits also have the lowest gender inequality and the highest rates of female employment.⁹⁵

Without social safety nets and cultural shifts, the inability to make choices surrounding themselves and their family can trap pregnant people in a perpetuated cycle of poverty and caregiving. The lack of acknowledgement of this in any conversation surrounding a person's choice to maintain their pregnancy does nothing to advance the conversation. Mothers working outside the home rely on outside help and governmental institutions, like schools, to be able to earn a living wage. Without help during those first six years, a person forced to maintain their pregnancy is going to struggle. Ending the state's interest with the potential future of the fetus is a mistake economically. By investing in comprehensive childcare and caregiver policies and work that has historically been considered domestic, the gender wage gap will decrease and productivity across all genders participating in the workforce will increase due to the unfulfilled skillsets being lost by the child penalty, thus potentially increasing the GDP by up to thirty-five percent.⁹⁶

IV. What The Government Can Do For Women's Equality

Family leave continues to be touted to be extremely important for the development of a child. Women are told time and again that being with their newborn and taking the time to bond with them during the child's first few months is crucial to the child's physical and mental development. Recent studies have also confirmed that spending time with the father is highly beneficial to the child's emotional and behavioral development.⁹⁷ When parents are forced to return to work relatively soon after the child is born, the child is more likely to perform better

⁹⁵ *Id.*

⁹⁶ *Id.* at 35

⁹⁷ *Id.* at 44

academically.⁹⁸ When paid maternity leave was introduced to some new parents in the United States, statistics showed a decrease in infant mortality, a lower number of premature births, and an overall improvement in children's birth weight. One study out of Europe correlated this finding by discovering that countries with longer maternity leave also had lower infant mortality and child death rates.⁹⁹

Studies have also shown those societies which invest in their social policies are impacted by a smaller child penalty than those that do not. This evidenced by the 21-26% gap experienced by women in Sweden and Denmark compared to the 51-61% experienced by women in the United States.¹⁰⁰ The United States is an outlier of developed countries. Here, there are no federally mandated requirements for employers to provide a paid family leave option to help alleviate this financial burden. The Family and Medical Leave Act (FMLA) of 1993 is often cited as the solution to this issue.

A. United States' Family Medical Leave Act

The Family and Medical Leave Act was signed into law under the Clinton Administration. Before this, there was no guarantee for family leave on the federal level. FMLA was purported to be for those eligible employees to take time off to care for themselves, their children, spouse, or parents for a prolonged medical illness or the birth or adoption of a baby.¹⁰¹ To be eligible, an employee must have worked for the company for at least one calendar year and clocked at least 1,250 hours of work during that year.¹⁰² But, if the employer employs less than fifty (50)

⁹⁸ *Id.* at 42

⁹⁹ *Id.* at 43

¹⁰⁰ *Id.* at 41

¹⁰¹ Deborah J. Anthony, *The Hidden Harms of the Family and Medical Leave Act: Gender-Neutral Versus Gender-Equal*, 16 Am. U. J. Gender Soc. Pol'y & L. 459, 474 (2008).

¹⁰² 29 U.S.C.A. § 2611

employees within a seventy-five (75) mile radius of the office or worksite, the employer is exempt from having to provide any benefits under FMLA.¹⁰³

The employee is allotted a total of twelve (12) workweeks of unpaid leave during a twelve (12) month period. This leave must be taken all at one time, unless employee and employer agree otherwise or the reason for the leave is to care for an active-duty military personnel. An employer may offer a paid leave, but that leave is taken concurrently with the guaranteed FMLA time off. Additionally, employers may force the employee to substitute any paid vacation, personal, or family leave as part of their twelve-week FMLA leave.¹⁰⁴ If a married couple are employed by the same employer, the cumulative total of leave guaranteed may be limited to twelve specifically for the birth or adoption of a child and / or to care for a sick parent.¹⁰⁵

B. Problems with FMLA

When Congress adopted the Pregnancy Discrimination Act in 1978, this act simply made women's employment more stable by blocking policies made by employers that refused to treat issues resulting from the woman's pregnancy.¹⁰⁶ In a slew of cases, the Supreme Court held discrimination based on pregnancy was not protected through Title VII of the Civil Rights Act of 1964, as the discrimination was based on pregnant people and nonpregnant people, these requirements could not be legally enforced.¹⁰⁷ When the Pregnancy Discrimination Act was passed as an amendment to the Civil Rights Act of 1964, the amendment guaranteed that women experiencing an inability to work were expected to have access to the otherwise permitted to disabled employees, but did not require the companies to provide these benefits. So, if the

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Emmalyn Krantz, *Paid Family Leave: How A Global Pandemic Exacerbates the Need for A Comprehensive National Paid Leave Policy*, 2022 U. Ill. L. Rev. 1293, 1311 (2022).

¹⁰⁷ *Id.*

organization did not traditionally have a policy of providing the benefits, nothing was made available to pregnant women.¹⁰⁸

In the debates surrounding the Family and Medical Leave Act, key issues quickly arose and strong opposition was voiced by the business community. During early debates, a paid policy was proposed. When the U.S. Chamber of Commerce released a study which estimated the cost of a paid family leave could range between two and sixteen billion dollars, the idea of a paid leave was deemed too controversial and quickly dropped. After the release of this estimate of the financial burden for businesses, the General Accounting Office conducted their own study and found that the Chamber of Commerce had greatly inflated their numbers as their estimate ranged from \$188 to \$236 million.¹⁰⁹

Proponents of the law perpetuated that women were secondary in this bill as the legislators continuously emphasized the benefit to men and children. Congressional Republicans even introduced the idea that women would probably be less likely to get an abortion because pregnant people would not have to lose their jobs to have babies.¹¹⁰

When the act was finally passed by President Bill Clinton in 1993, the text was facially neutral. This allowed both parents to take leave, should they choose. However, the society of the United States is not gender neutral and has deeply engrained gender roles surrounding childcare.¹¹¹ Providing public support is just the beginning of creating equality with policy. Male attitudes must change to bring about any type of economic difference for women. FMLA was created for both parents to be empowered to take a leave of absence but, as of 2012, 56% of the leave takers were

¹⁰⁸ Deborah J. Anthony at 467-68.

¹⁰⁹ *Id.* 470

¹¹⁰ *Id.*

¹¹¹ *Id.* at 473

women.¹¹² When men do take FMLA leave, it is about 58% more likely to be for themselves compared to when women take FMLA leave. This leave when taken by a female employee is twice as likely to be able to care for their parents or children and four times as likely to care for another relative's health.¹¹³

Due to the restrictive covenants, not every employee is guaranteed a leave of absence. This is especially true for women, minorities, and impoverished persons.¹¹⁴ Studies have indicated that FMLA only impacts 6% of work entities which employ around 60% of all American workers. This number decreases to 46% when considering the 1,250-hour work requirement. These workers which are not entitled to leave under FMLA are typically more financially insecure and employed in more part-time positions. Women are more likely to be employed in part-time, low-wage positions due to the flexibility of the work and are more likely to transition careers due to caregiving requirements. There are more barriers to women actually gaining these perceived benefits through FMLA. For many women, not being paid during this time is an additional burden that they are unable to justify.

In a study conducted in 1995, those surveyed who said they needed leave but did not take it cited finances as the driving reason. This same study has been conducted by Abt Associates for the Department of Labor in 1995, 2000, 2012, and 2018. These regular studies conducted since 1995 have indicated that the issue of the unpaid nature of the leave continues to be a problem for an increasing number of people.¹¹⁵ In the 2018 study, the report found that only 10% of worksites are covered by FMLA¹¹⁶ and only 56% of employees in the United States are eligible for

¹¹² Emmalyn Krantz at 1303.

¹¹³ Deborah J. Anthony at 479-80.

¹¹⁴ *Id.* at 475

¹¹⁵ Emmalyn Krantz at 1303.

¹¹⁶ Abt Associates, *FMLA: Results From the 2018 Surveys*, 6 (2020).

benefits.¹¹⁷ In these workplaces not covered, only about 33% of employees have access to leave for the adoption or placement of a child while only about 51% of employees have access to leave for their own serious health condition.¹¹⁸ It is estimated that only 43% of single-parent households are ineligible for FMLA benefits with only a small percentage being effected by the size of their workplace.¹¹⁹

If this leave is offered, about 45% of employees are not paid and only about 16% are provided partial pay.¹²⁰ Those who are being paid are often times require employees to take their paid sick or vacation days to ensure payment for the FMLA leave of absence. About 73% of employees report that they have access to some type of paid leave, be that vacation, sick days, or a specific family and medical leave benefit.¹²¹ This benefit does not translate the same between low-wage and non-low-wage workers. Only about 52% of low-wage workers report having paid time off for their own illness and medical care compared to 80% of non-low-wage workers.¹²² Unsurprisingly, this number decreases for leave to care for the illness or medical condition of a family member with only 65% of non-low-wage workers and 39% of low-wage workers having access to this paid benefit.¹²³

Leave under FMLA only allows for time off due to a “serious health condition.” This is defined in the statute to mean any “illness, injury, impairment, or physical or mental condition that involves (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B)

¹¹⁷ *Id.* at 15

¹¹⁸ *Id.* at 16

¹¹⁹ *Id.* at 7

¹²⁰ *Id.* at 18

¹²¹ *Id.* at 21

¹²² *Id.*

¹²³ *Id.*

continuing treatment by a health care provider.”¹²⁴ This definition fails to take into consideration those instances in which a new parent is required to see a medical professional outside the allotted 12-week leave period.

If the parent’s employer forced them to use their sick and vacation day benefits, the parent is not guaranteed that they will be able to attend medical check-ups or immunization appointments without the help of an outside support. As these types of caregiving responsibilities often fall to the mother, it is she who loses a day of paid labor. For lower income parents, this can be detrimental to the financial stability of the household. Not only does the caregiver lose that day of earned wages, they also are forced to spend extra money on the doctor’s visits. And that is for a relatively healthy child. If parents are forced to give birth to children with serious illnesses that the parents know they are unable to afford to treat or take time off work to attend vital doctor’s appointments, they will continue to financially suffer as they watch their child not get the care they require.

C. Global Answers

Looking to the policies of other developed countries and the impact of their legislation, it is evident that the United States fails women by not enforcing a paid family leave. More egalitarian countries have addressed at least one factor of the child penalty by ensuring women are able to be more financially independent and economically stable during their parental leave by earning an income. Iceland takes it a step further by addressing the unbalanced division of unpaid labor between heterosexual couples. In their family leave, parents are given up to 9 months of paid parental leave. Each parent gets three months and the couple gets to determine how the final three

¹²⁴ 29 U.S.C.A. § 2611

months are shared between them. If either parent does not take their share of the leave, the time is lost.¹²⁵

Since the implementation of the policy in 2000, almost all Icelandic fathers take parental leave. Additionally, surveys suggest that the fathers who take advantage of paternity leave policies take a more active role in their children's lives¹²⁶ and help bridge the unpaid domestic labor gap. After extending their program to both parents in 2013, Germany found that there was a more egalitarian division of the work within the home as fathers seemingly prioritized their familial responsibilities over work responsibilities after taking advantage of the *Elterngeld* benefits.¹²⁷

Implementing a paid family leave is important to the financial wellbeing of the parents. By extending the leave option and reinforcing the leave time by addressing the social stigmas surrounding the paternal reluctance to take advantage of the policy, society becomes more egalitarian when it comes to domestic labor. As evidenced by multiple studies of more egalitarian societies, these policy reformations are not going to fix all the issues women face, but they will at least be a step in the right direction for women to lead a life that is less concentrated on the labor of caring for others while still being patronized in the choices surrounding our own autonomy.

V. Conclusion

This article has criticized the holding in *Dobbs* for its message to the world that it is acceptable for states to govern the lives of women throughout the country with no concern for the legislation's negative impact. In societies historically lead by men, women have been relied upon to become mothers and provide free labor in support of their family while decisions surrounding reproductive autonomy are deemed privileges granted by the morals of those men making the rules.

¹²⁵ Shafik at 42

¹²⁶ *Id.*

¹²⁷ Bundesministerium für Familie, Senioren, Frauen und Jugend, Bilanz 10 Jahre Elterngeld, 6 (2016).

As only some states are even considering setting up safety nets for women who are pregnant or parents, forcing a pregnancy on the person without regard for what comes after the birth and the cost of raising and caring for the child forces women to make decisions which are detrimental to their future. “Clearly, there is a need that is not being met, and women seem to feel the pressure of that need more strongly than men.”¹²⁸

It is abundantly clear that women are not considered of primary importance to the laws of the United States. Even when fighting for a necessary leave of absence, the interests came secondary or tertiary to those of men and children. The debates surrounding female autonomy are always steered toward the interests of others, whether that be a bunch of cells and their potential outside the human host or the interest of the male dominated economy. The dissent in *Dobbs v. Jackson Women’s Health* did the great work of pointing out this issue and there have been multiple congressional hearings surrounding it, but there is nothing being done to address these needs in a substantial and sustainable manner.

Policies like paid leave and adequately funded childcare are imperative to economic equality for women. The actual enforcement of the Equal Pay for Equal Work would be substantially helpful, especially given the current leave afforded for caregiving is unpaid. Research suggests that the enforcement of this expectation of equal pay would close around 68% of the gendered wage gap.¹²⁹ It is known that there is an unexplained 38% gap that is attributed to discrimination.¹³⁰

Regardless of the numerous conversations surrounding this unlawful discrimination, nothing is being done to mitigate those economic damages women are burdened with. Progress

¹²⁸ Deborah J. Anthony at 468-69.

¹²⁹ *The Gender Wage Gap: Breaking Through Stalled Progress: Hearing before the Joint Economic Committee*, 117th Cong. (2021).

¹³⁰ *Id.*

cannot be made toward narrowing the gender pay gap if the United States does not make it sustainable for women to remain in the workforce. Some policies like the Building an Economy for Families Act, the FAMILY Act, or the Child Care for Working Families Act, are expected to ensure workers are able to ensure their children are receiving quality care while the parent is working outside the home and employees would be able to take the time they need to provide care for their families.¹³¹

¹³¹ *Id.*

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