



**VICTIM RESTRICTIONS: INCONSISTENCY IN RAPE VICTIM
ABORTION ACCESS**

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ABSTRACT

Sexual violence is as uncomfortable a topic as it is a prevalent occurrence. Our society treats individuals who become pregnant because of their victimization with a unique pity reserved for only the truly innocent. However, a victim’s right to relief from such a crime and their right to reproductive health are now at odds in the post-Dobbs political atmosphere. Beginning in the 1970s, bipartisan support swelled to protect crime victims in what scholars call the Victims’ Rights Movement. At the same time, the Supreme Court was developing its view of abortion access as a privacy right. While the Victims’ Rights Movement may have left the political zeitgeist, the right to abortion has swirled from a protected privacy right to a moral debate of innocence. This view of guilt and innocence becomes even more complicated when states seemingly abandon the widely popular rape and incest exception for abortion access. Separated by decades of legislation, some states now face a conflict between their professed commitment to the rights of crime victims and the rights of the unborn. In addition to drawing attention to these inconsistencies, this commentary posits that how we choose to address these conflicting rights expands far beyond social injustices furthered by abortion bans.

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I. INTRODUCTION

On Monday, March 17, 2025, Texas Attorney General Ken Paxton announced the arrest of Maria Margarita Rojas for “providing illegal abortions and illegally operating a network of clinics” in Houston, Texas.¹ In the press release, Paxton avowed to “do everything in [his] power to protect the unborn, defend [Texas’s] pro-life laws, and work to ensure that unlicensed individuals endangering the lives of women by performing illegal abortions are fully prosecuted.”² The arrest is ostensibly the first in Texas where a health care provider has been criminally charged in violation of Texas’s abortion laws following the overturning of *Roe v. Wade*³ in 2022,⁴ and perhaps among the first in the nation.⁵ The Texas arrest follows Louisiana’s issuance of an arrest warrant for Dr. Margaret Carpenter in January 2025 for allegedly prescribing abortion medication online to a pregnant Louisiana minor.⁶

1. See Press Release, Att’y Gen. Tex., Attorney General Ken Paxton Announces Arrest of Houston-Area Abortionist and Crackdown on Clinics Providing Illegal Abortions (Mar. 17, 2025), <https://www.oag.state.tx.us/news/releases/attorney-general-ken-paxton-announces-arrest-houston-area-abortionist-and-crackdown-clinics> [<https://perma.cc/AR5P-BFWC>].

2. *Id.*; cf. Catherine Marfin, *Abortion Case May Be Just the Start for Empowered Paxton*, LAW360 (Mar. 19, 2025, at 21:08 ET), <https://www.law360.com/articles/2312267/abortion-case-may-be-just-the-start-for-empowered-paxton> (on file with the Rutgers University Law Review) (“Two bills before the legislature would essentially strip local prosecutors of discretion and require the attorney general’s office to prosecute abortion offenses and other crimes, a jurisdictional expansion that lawmakers have attempted before but which seems more likely to pass in the current political landscape.”).

3. 410 U.S. 113 (1973), *overruled by*, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

4. See Aria Bendix & Tim Stelloh, *Texas Midwife Arrested and Charged with Performing Illegal Abortions*, NBC NEWS (Mar. 17, 2025, at 21:06 ET), <https://www.nbcnews.com/news/us-news/texas-midwife-arrested-charged-performing-illegal-abortions-rcna196810> [<https://perma.cc/WZX7-ZW5J>].

5. See Mary Zeigler, *We’re a Country That Prosecutes Abortion Providers Again. Here’s What’s Different This Time*, SLATE, (Mar. 18, 2025, at 15:11 ET), <https://slate.com/news-and-politics/2025/03/texas-midwife-first-abortion-prosecution-maria-rojas.html> (on file with the Rutgers University Law Review).

6. See Sara Cline & Geoff Mulvihill, *Arrest Warrant Issued for New York Doctor Indicted in Louisiana for Prescribing Abortion Pill*, AP NEWS (Jan. 31, 2025, at 20:57 ET),

Despite international organizations recognizing abortion access as essential health care fundamental to human rights,⁷ the topic has remained controversial for decades.⁸ Accordingly, abortion access in the United States varies from state to state, with the limitations to and exceptions for obtaining an abortion consequently in variance.⁹ In some cases, exceptions—or rather the lack thereof—are inconsistent with other statutory provisions.¹⁰ Following the *Dobbs* decision, states that provide no abortion exception in cases of rape or incest have inadvertently contradicted existing Victim Bill of Rights statutes.¹¹ If jurisdictions wish to preserve the values of respect, dignity, and fairness afforded to victims of crime, they must reckon with the fact that denying rape victims access to abortion is inconsistent with these values.

II. BACKGROUND

A. *Roe*, *Dobbs*, and *Abortion Restrictions*

In March 1970, Jane Roe¹² sought a declaratory judgment that Texas's criminal abortion statutes were unconstitutional on their face.¹³ Being an unmarried pregnant person, Roe could not obtain a legal abortion in Texas unless the pregnancy threatened her life, nor could she afford to travel to a different jurisdiction to secure a legal abortion.¹⁴ The Texas statute was not unique, however, and the Supreme Court recognized that by the 1950s, most states “banned abortion, however and whenever performed, unless done to save or preserve the life of the mother.”¹⁵ While the Court was not satisfied with Texas's assertions of a

<https://apnews.com/article/abortion-indictment-louisiana-new-york-doctor-63ff4d9da8a9b592a7ca4ec7ba538ed3> [<https://perma.cc/2RZ9-UPJB>].

7. See *Abortion*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/our-issues/abortion/> [<https://perma.cc/X9CB-TV4M>] (last visited Aug. 11, 2025).

8. See *After Roe Fell: Abortion Laws by State*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/abortion-laws-by-state/> [<https://perma.cc/QA3GWNDX>] (last visited Sep. 7, 2025).

9. See *id.*

10. See *infra* Parts III, IV.

11. See *infra* Part IV.

12. “Jane Roe” was a pseudonym for this action. See JOSHUA PRAGER, *THE FAMILY ROE: AN AMERICAN STORY* 3 (2021). The petitioner’s real identity was Norma McCorvey. *Id.*

13. *Roe v. Wade*, 410 U.S. 113, 120 (1973), *overruled by*, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

14. See *id.*

15. *Id.* at 139. *But cf. id.* at 140 (“[A]t the time of the adoption of our Constitution . . . abortion was viewed with less disfavor than under most American statutes currently in effect. Phrasing it another way, a woman enjoyed a substantially broader right to terminate a pregnancy than she does in most States today.”).

state interest in protecting women from “an inherently hazardous procedure,” it nonetheless recognized “important state interests in the areas of health and medical standards.”¹⁶ Adding to the State’s interest in protecting “the woman’s own health and safety when an abortion is proposed at a late stage of pregnancy,” the Court agreed that “[t]he State’s interest and general obligation to protect life then extends . . . to prenatal life.”¹⁷

In light of the State’s interests, the Court began to evaluate a right to privacy.¹⁸ Despite no such right being explicit in the Constitution, the Court has inferred a right to privacy in varying contexts; notably, “in the concept of liberty guaranteed by the first section of the Fourteenth Amendment.”¹⁹ The framework the Court used to construct the legal right to abortion in *Roe v. Wade* was grounded in the Fourteenth Amendment’s Due Process guarantee.²⁰ Although the Court qualified that “only personal rights that can be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty,’ are included in this guarantee of personal privacy,” it nonetheless asserted that such a right was “broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”²¹

Less than a decade before its *Roe* decision, the Court had used this Fourteenth Amendment framework to justify sex equality and sexual freedom in the 1965 decision *Griswold v. Connecticut*.²² The *Roe* litigants developed arguments emphasizing that taking control over women’s bodies also meant taking control over “women’s lives in matters of sex, health, family relations, education, work, and politics” to illustrate inequalities violative of the Fourteenth Amendment.²³ Still, this justification was not all-encompassing of women’s autonomy. Professors Cary Franklin and Reva Siegel explain that:

Roe simply took for granted that the state has a benign interest in protecting potential life that becomes compelling over the

16. *Id.* at 149.

17. *Id.* at 150.

18. *See id.* at 152–53.

19. *Id.* at 152.

20. *See* Cary Franklin & Reva Siegel, *Equality Emerges as a Ground for Abortion Rights in and After Dobbs*, in *ROE V. DOBBS: THE PAST, PRESENT, AND FUTURE OF A CONSTITUTIONAL RIGHT TO ABORTION* 22, 23 (Lee C. Bollinger & Geoffrey R. Stone eds., 2024); *see also Roe*, 410 U.S. at 153 (reasoning that the right to abortion as part of the right to personal privacy could be found in the Fourteenth Amendment).

21. *Roe*, 410 U.S. at 152–53 (citation omitted) (quoting *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)).

22. *See* 381 U.S. 479, 495 (1965); Franklin & Siegel, *supra* note 20, at 26.

23. *See* Franklin & Siegel, *supra* note 20, at 26.

course of pregnancy. The Court did not recognize that what *Roe* terms “the state interest in potential life” was at one and the same time a state interest in *regulating women’s decisions about motherhood, the role determining women’s civic status*.²⁴

By the time of the *Roe* decision, “the Court had not yet held that sex-based state action is subject to heightened scrutiny, and it was not ready to integrate pregnancy . . . into the logic of its nascent sex discrimination jurisprudence.”²⁵ In *Geduldig v. Aiello*,²⁶ the Court rationalized pregnancy’s exclusion from sex-based scrutiny as not a sex classification, but rather as a “distinct physical condition, affecting some subset of women,” not the gender as a whole.²⁷

Decades later, in *Dobbs v. Jackson Women’s Health Organization*²⁸, *Geduldig* was invoked once more in dismissing equal protection as grounds for a right to abortion.²⁹ In writing for the *Dobbs* majority, Alito opines that the “regulation of a medical procedure that only one sex can undergo does not trigger heightened constitutional scrutiny unless the regulation is a ‘mere pretext[t] designed to effect an invidious discrimination against members of one sex or the other.’”³⁰ Alito further distances the Court’s holding from sex-based scrutiny by asserting in *Dobbs* that “laws regulating or prohibiting abortion are not subject to heightened scrutiny. Rather, they are governed by the same standard of review as other health and safety measures.”³¹

Scholars point out that two decades after *Geduldig*, when the Court “imagined women as equal to men only to the extent they were like men,”³² the Court in *United States v. Virginia* found that the two sexes were entitled to equal protection regardless of their differences.³³ As Franklin and Siegel explain, this reasoning placed pregnancy at the center of the Court’s equal protection analysis:

24. *Id.* at 27 (alteration in original).

25. *Id.*

26. 417 U.S. 484 (1974).

27. Franklin & Siegel, *supra* note 20, at 27–28; *see also Geduldig*, 417 U.S. at 494–97 (holding that pregnancy-related exclusions from disability insurance did not constitute sex discrimination because pregnancy affects only some women rather than the entire gender).

28. 597 U.S. 215 (2022).

29. *See* Franklin & Siegel, *supra* note 20, at 28.

30. *Dobbs*, 597 U.S. at 236 (alteration in original) (quoting *Geduldig*, 417 U.S. at 496 n.20).

31. *Id.* at 237.

32. Franklin & Siegel, *supra* note 20, at 28.

33. 518 U.S. 515, 533–34 (1996) (“Inherent differences’ between men and women, we have come to appreciate, remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual’s opportunity.”).

To make clear that pregnancy is the primary object of this analysis—the main “inherent difference” to which [*Virginia*] refers—the Court points to a state law governing pregnancy (a maternity leave benefit, upheld under the [Pregnancy Discrimination Act of 1978] in *California Federal Savings and Loan Association v. Guerra*) as a paradigmatic example of law classifying on the basis of sex that is constitutional *because it advances women’s equality*. The Court explains . . . that equal protection does not require the state to ignore the physical reality of pregnancy, but that *regulation of pregnancy must be designed to promote equal opportunity* and may not perpetuate women’s subordination.”³⁴

Less than a decade after *Virginia*, the Court emphasized in *Nevada Department of Human Resources v. Hibbs*,³⁵ the Court emphasized not only that “laws regulating pregnant women may constitute sex discrimination but that redress of such discrimination is a core concern of sex-based equal protection law.”³⁶ Despite the superseding reasoning of *Virginia* and *Hibbs*, the *Dobbs* Court nonetheless reaches for the outdated equal protection rhetoric in *Geduldig*.³⁷ Franklin and Siegel fiercely criticize this stretch by Justice Alito, asserting that “Alito’s fidelity to pregnancy discrimination precedent from a half-century ago, before the rise of sex discrimination law, was a fitting prelude to a decision that overturned a half-century of substantive due process law.”³⁸

Other scholars emphasize the criminality lens, rather than that of privacy, as a centralized theme in the Court’s decision in *Dobbs*.³⁹ As early as the 1840s, eight states had passed statutes establishing criminal penalties for abortion.⁴⁰ Anti-abortion arguments recognizable by today’s standards emerged in the 1850s–60s, when Dr. Horatio Storer argued that “abortion was wrong because it involved the taking of fetal life” in his campaign to criminalize the practice.⁴¹ This rhetoric reemerged in the 1960s in response to states reforming their abortion laws.⁴² Advocates

34. Franklin & Siegel, *supra* note 20, at 28 (emphasis added).

35. 538 U.S. 721 (2003).

36. Franklin & Siegel, *supra* note 20, at 29; *see also* *Hibbs*, 538 U.S. at 728–29 (2003) (explaining that although the Family and Medical Leave Act protects against gender-based workplace discrimination, heightened scrutiny applies to gender classifications).

37. *See* Franklin & Siegel, *supra* note 20, at 30.

38. *Id.*

39. *See* Mary Ziegler, *The Anti-Abortion Movement and the Punishment Prerogative*, in *ROE V. DOBBS*, *supra* note 20, at 227, 227.

40. *Id.* at 228.

41. *Id.*

42. *See id.* at 229.

against abortion would argue “that a fetus qualified as a ‘person’ under the Fourteenth Amendment,” and thus was protected under the Constitution.⁴³

B. Victims’ Rights Movement

The Victims’ Rights Movement (VRM) has been a dominating bipartisan victor in the United States for several decades.⁴⁴ From law-and-order conservatives to feminist groups, diverse action groups have found unity under the banner of VRM.⁴⁵ The director of the National Crime Victim Law Institute, Douglas E. Beloof, identifies the movement as manifesting in three waves: The first created statutory rights for victims; the second resulted in state-constitutional victims’ rights amendments in a majority of states; and the ongoing third wave seeks to turn victims’ “illusory rights into real rights.”⁴⁶ Despite the wide support for the movement, Professor Michael Vitiello explains that “the criminal justice system did little to help crime victims and often left them feeling ignored or worse.”⁴⁷ In particular, he notes that “[r]ape victims often felt demeaned by police officers who seemed to accuse them of being complicit in their victimization.”⁴⁸

The federal Crime Victims’ Rights Act stipulates the rights of victims in defining who is a victim and who is not.⁴⁹ A “crime victim” as identified by the statute is “a person directly and proximately harmed as a result of a commission of a [f]ederal offense or an offense in the District of Columbia.”⁵⁰ Conversely, a “victim’s estate, family members, or any other persons appointed as suitable by the court” may be an eligible representative if the victim is “under [eighteen] years of age, incompetent, incapacitated, or deceased.”⁵¹ Aside from the federal definition, most state constitutions vest their legislatures with the power to define what victims (or victims’ lawful representatives) may be protected by their provisions, while others simply include defining

43. *Id.* at 230.

44. *See* MICHAEL VITIELLO, *THE VICTIMS’ RIGHTS MOVEMENT: WHAT IT GETS RIGHT, WHAT IT GETS WRONG* 1 (2023).

45. *See id.*

46. *See* Douglas E. Beloof, *The Third Wave of Crime Victims’ Rights: Standing, Remedy, and Review*, 2005 BYU L. REV. 255, 257–58.

47. VITIELLO, *supra* note 44, at 2.

48. *Id.*

49. *See* PEGGY M. TOBOLOWSKY ET AL., *CRIME VICTIM RIGHTS AND REMEDIES* 17 (3d ed. 2016).

50. 18 U.S.C. § 3771(e)(2).

51. *Id.*

provisions in their constitutions themselves.⁵² Statutory language alone does not define victimhood, however.⁵³ State appellate courts have been known to construe statutory language to alter victim participatory rights.⁵⁴

The importance of such definitions is that they indicate how an actor may participate in a criminal proceeding. Relative definitions of who qualifies as a victim translate into who may make a victim impact statement or who may be eligible for victim compensation funds.⁵⁵ Moreover, Vitiello points out that a typical additional qualifier for victimhood is whether one cooperates with law enforcement.⁵⁶ This ostensibly reasonable requirement “masks practical impacts” when one considers, as Vitiello explains, that members of low-income or minority communities may be apprehensive to cooperate with police for a myriad of reasons.⁵⁷ As will be discussed later, this implication becomes critical as legislatures further criminalize abortion access.

Today, victims’ rights are a concept supported by many state constitutions. Beloof reported the following: “Nineteen state constitutions provide for ‘fairness’ and/or ‘due process’ to victims. One or more of the rights to ‘respect,’ ‘dignity,’ and ‘freedom from abuse’ appear in twenty-one state constitutions. Six constitutions include the express right to victim ‘privacy.’ Eight constitutions provide for a victim’s right to ‘reasonable protection.’”⁵⁸ The Federal Crime Victims’ Rights Act

52. See TOBOLOWSKY ET AL., *supra* note 49, at 17–18. In particular, scholars recognize California’s constitutional provision as the most broad and detailed definition of victim status:

[A] “victim” is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term “victim” also includes the person’s spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term “victim” does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.

Id. at 18 (quoting CAL. CONST., art. I § 28).

53. See *id.* at 18.

54. See *id.* Tobolowsky et al. highlight an Idaho Supreme Court case wherein the court decided there must be a showing “of both direct and proximate causation” for harm caused to a crime victim “as a result of the defendant’s crime.” *Id.* Accordingly, this meant “there was sufficient causation between the harm experienced by the police and probation officer victims and the defendant’s crime of harboring and protecting a felon.” *Id.* (citing *State v. Lampien*, 223 P.3d 750 (Idaho 2009)). *But see* *State v. Stauffer*, 58 P.3d 33, 37–38 (Ariz. Ct. App. 2002) (holding that the absence of criminal charges for a particular incident meant an absence of victimhood for specific individuals).

55. See VITIELLO, *supra* note 44, at 38–39.

56. See *id.* at 39.

57. *Id.*

58. Beloof, *supra* note 46, at 262–63

maintains similar provisions, declaring that in crimes involving victims, “court[s] shall make every effort to permit the fullest attendance possible by the victim . . . [in] criminal proceeding[s].”⁵⁹ In particular, crime victims have “[t]he right to be reasonably protected from the accused” as well as “[t]he right to full and timely restitution as provided in law.”⁶⁰ For victims of sexual assault in particular, any government agency investigating a sexual assault is typically obligated to compensate or reimburse a victim for the cost of physical examinations, as well as cover the cost of up to two STD tests.⁶¹

In 1982, the *Final Report* of the President’s Task Force on Victims of Crime urged prosecutors to improve their response to victims of crime.⁶² Recommendations included “[b]ring[ing] to the attention of the court the views of victims of violent crime on bail decisions, continuances, plea bargains, dismissals, sentencing, and restitution,” and “[g]iv[ing] special consideration to both adult and child victims of sexual assault and establish[ing] victim-witness assistance programs.”⁶³ At that time, thirty-seven states had established crime victim compensation programs.⁶⁴ Although varied, these state programs “were generally structured so that the government was the ‘payer of last resort’” when victims could not be recompensed through other means.⁶⁵ An explanation for the variation of such programs prior to the mid-1980s was the different philosophical views of their function: “[S]ome programs treated crime victim compensation as a social welfare program for disadvantaged victims, others as an entitlement due to innocent victims, and others as a means to increase victim cooperation with the criminal justice system.”⁶⁶

Two years after the publication of the *Final Report*, Congress heeded the Task Force’s recommendations through the Victims of Crime Act of

59. 18 U.S.C. § 3771(b)(1).

60. § 3771(a).

61. See 34 U.S.C. § 20141(c)(7) (“The Attorney General or head of another [investigating] department . . . shall pay . . . the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes.”).

62. See OFF. FOR VICTIMS OF CRIME, U.S. DEP’T OF JUST., NEW DIRECTIONS FROM THE FIELD: VICTIMS’ RIGHTS AND SERVICES FOR THE 21ST CENTURY, at 73 (1998) https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/OVC_Archives/directions/pdftxt/direct.pdf [<https://perma.cc/RX9A-ZCQQ>].

63. *Id.* at 73–74.

64. See Blair Ames, *A Brief History of the Victims of Crime Act*, U.S. DEP’T OF JUST.: OFF. OF JUST. PROGRAMS (Oct. 11, 2024), <https://www.ojp.gov/safe-communities/from-the-vault/a-brief-history-of-the-victims-of-crime-act> [<https://perma.cc/R858-ZK9H>].

65. TOBOLOWSKY ET AL., *supra* note 49, at 197.

66. *Id.*

1984 (VOCA).⁶⁷ The Act created, in part, the federal Crime Victims Fund, providing a more stable source of funding for the irregular state victim assistance programs.⁶⁸ Today, all compensation programs in all fifty states meet the eligibility requirements under VOCA to serve victims of federal and state crimes committed in their respective jurisdictions.⁶⁹ By 1998, “more than \$2.5 billion ha[d] been distributed to local victim assistance programs and state compensation programs.”⁷⁰ As of May 2025, the Crime Victims Fund’s balance was over \$5.1 billion.⁷¹ The Office for Victims of Crime manages the fund, which is paid through fines and penalties levied against federal criminal offenders.⁷²

Despite federal and state adoption of crime victim compensation initiatives, research indicates that “much work remains to be done to maximize the potential” of crime victim remedies.⁷³ In 2012, sexual assault victims represented just nine percent of victim compensation recipients, compared to assault victims representing forty-nine percent of recipients.⁷⁴ A survey of state compensation program administrators attributed low sexual assault victim compensation application rates due to “a lack of knowledge about compensation,” “embarrassment,” “fear of retaliation by the offender,” and “crime reporting requirements.”⁷⁵ The Office for Victims of Crime recognizes this, commenting that “[p]rivacy remains a critical concern of victims of sexual assault, and a primary factor in non-reporting. Several states have enacted privacy protection

67. *Id.* at 200.

68. *See id.*; OFF. FOR VICTIMS OF CRIME, U.S. DEP’T OF JUST., *supra* note 62, at 151.

69. *See* TOBOLOWSKY ET AL., *supra* note 49, at 201.

70. OFF. FOR VICTIMS OF CRIME, U.S. DEP’T OF JUST., *supra* note 62, at 151.

71. *Crime Victims Fund*, OFF. OF JUST. PROGRAMS: OFF. FOR VICTIMS OF CRIME, <https://ovc.ojp.gov/about/crime-victims-fund> [<https://perma.cc/6AW8-SCKG>] (last visited Aug. 22, 2025).

72. OFF. FOR VICTIMS OF CRIME, U.S. DEP’T OF JUST., *supra* note 62, at 152; *see also* 34 U.S.C. § 20101 (establishing the Crime Victims Fund and outlining sources of funding).

73. TOBOLOWSKY ET AL., *supra* note 49, at 206.

74. *See 2012 Victims of Crime Act Compensation Nationwide Performance Report*, OFF. OF JUST. PROGRAMS: OFF. FOR VICTIMS OF CRIME (June 4, 2013), <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/2012-voca-compensation-nationwide-performance-report.pdf> [<https://perma.cc/CKF6-SSZF>].

75. LISA NEWMARK ET AL., *THE NATIONAL EVALUATION OF STATE VICTIMS OF CRIME ACT ASSISTANCE AND COMPENSATION PROGRAMS: TRENDS AND STRATEGIES FOR THE FUTURE* 33 (2003), <https://www.urban.org/sites/default/files/publication/59536/410924-The-National-Evaluation-of-State-Victims-of-Crime-Act-Assistance-and-Compensation-Programs-Trends-and-Strategies-for-the-Future-Full-Report-.PDF> [<https://perma.cc/8P95-HPR2>]. A 1999 national survey revealed that of the fifty-two state compensation program administrators, the vast majority of them recognized that “there are certain categories of victims who apply for compensation less frequently than expected based on victimization rates.” *See id.* at 22, 33. Of the surveyed administrators, 60% identified adult sexual assault victims as one of these underserved populations. *See id.* at 33.

laws to prevent the name, address, or other identifying information about rape victims to be made public.”⁷⁶

Another aspect of underreporting could be procedural barriers for victims seeking compensation.⁷⁷ In accordance with the government’s position as “payor of last resort,” every state’s victim compensation program imposes filing and reporting requirements on claimants seeking restitution.⁷⁸ These restrictions, while ostensibly geared toward efficiency, create a greater burden on victims. For instance, most programs impose two deadlines: “[A] short period within which the crime must be reported to the police (‘reporting requirement’) and a longer time limit for filing (‘filing requirement’) an application for compensation.”⁷⁹ However, program administrators hold no consensus as to the reasonableness of such deadlines. Only “[fifty-three] percent of administrators believed that eligible crime victims were discouraged because of reporting requirements,” while others soundly maintained that the compensation alone was incentive enough to cooperate with the criminal justice system.⁸⁰ Nonetheless, the Office for Victims of Crime recognizes potential limitations and encourages program administrators to exhibit leniency on “cooperation and reporting requirements in cases where they may present special barriers for the victim.”⁸¹

It is not difficult to imagine that victims of rape or incest, given the social stigma around such crimes, could miss deadlines for reasons other than simple tardiness.⁸² Indeed, of the surveyed program administrators, several said that exceptions for filing requirements could be “liberally construed’ for minors and victims of sexual assault and domestic violence.”⁸³ While a liberal attitude may be exercised by states for compensation of sexual violence victims, the same cannot be said for the statutes that directly impact pregnant victims.

76. OFF. FOR VICTIMS OF CRIME, U.S. DEP’T OF JUST., *supra* note 62, at 165.

77. *See* NEWMARK ET AL., *supra* note 75, at 69.

78. *See id.* (“All [state compensation programs] have policies that limit the classes of victims eligible for compensation as well as the types of benefits available. . . . [V]ictims must first access other collateral sources of payment such as medical or auto insurance, employee benefits programs, Social Security and Medicaid.”).

79. *Id.*

80. *Id.* at 70–71 (“[A]s judicially imposed criminal fines and penalties are a primary funding stream for compensation, support for the compensation program in the criminal justice community is critical. The reporting and cooperation requirements are key to maintaining this support.”).

81. *Id.* at 71.

82. *See* Angie C. Kennedy & Kristen A. Prock, “I Still Feel Like I Am Not Normal”: A Review of the Role of Stigma and Stigmatization Among Female Survivors of Child Sexual Abuse, Sexual Assault, and Intimate Partner Violence, 19 TRAUMA, VIOLENCE, & ABUSE 1, 2 (2018); OFF. FOR VICTIMS OF CRIME, U.S. DEP’T OF JUST., *supra* note 57, at 343.

83. NEWMARK ET AL., *supra* note 75, at 71.

III. ABORTION ACCESS AND VICTIM RIGHTS

A. *Abortion Exceptions Generally*

As states continue to implement increasingly strict abortion laws, the consideration for exceptions in cases of rape and incest has seemingly been minimized.⁸⁴ Following the November 2024 election—the first federal election since the *Dobbs* decision—twelve states have what the Guttmacher Institute considers to be “total bans on abortion.”⁸⁵ KFF⁸⁶—the leading health policy organization in the United States—observes that eight states provide *no exception* for rape or incest:⁸⁷ Alabama, Arkansas, Kentucky, Louisiana, Oklahoma, South Dakota, Tennessee, and Texas. KFF also counts ten states that provide abortion exceptions for pregnancies resulting from acts of rape or incest, where it is otherwise restricted.⁸⁸ Georgia, Idaho, Mississippi, and West Virginia require the person seeking an abortion to have filed an official police report stating that they were a victim of an act of rape or incest.⁸⁹

Iowa joins the reporting consensus, but further adds that such crime reports must be filed within certain time limits for abortions to qualify

84. See Mary Ziegler, *Abortion and the Law of Innocence*, 2021 U. ILL. L. REV. 865, 866.

85. See *Interactive Map: US Abortion Policies and Access After Roe*, GUTTMACHER INST. (Oct. 22, 2025), <https://states.guttmacher.org/policies> [<https://perma.cc/9P5B-T58B>]; ALA. CODE § 26-23H-4 (2025); ARK. CODE ANN. § 5-61-304 (2025); IDAHO CODE § 18-622 (2025); IND. CODE § 16-34-2-1 (2025); KY. REV. STAT. ANN. § 311.772 (West 2025); LA. STAT. ANN. § 14:87.7 (2025); MISS. CODE ANN. § 41-41-45 (2025); OKLA. STAT. ANN. tit. 21, § 861 (West 2025); S.D. CODIFIED LAWS § 22-17-5.1 (2025); TENN. CODE ANN. § 39-15-213 (2025); TEX. HEALTH & SAFETY CODE ANN. § 170A.002 (West 2025); W. VA. CODE § 16-2R-3 (2025).

86. The organization was formerly known as the Kaiser Family Foundation. *About Us*, KFF, <https://www.kff.org/about-us/> [<https://perma.cc/M5TY-XJCQ>] (last visited Sep. 21, 2025).

87. See *Policy Tracker: Exceptions to State Abortion Bans and Early Gestational Limits*, KFF (Aug. 26, 2025), <https://www.kff.org/womens-health-policy/dashboard/exceptions-in-state-abortion-bans-and-early-gestational-limits/> [<https://perma.cc/7UC4-YL69>].

88. See *id.* (identifying Florida, Georgia, Idaho, Indiana, Iowa, Mississippi, Nebraska, North Carolina, South Carolina, and West Virginia).

89. See GA. CODE ANN. § 16-12-141 (2025) (“No abortion is authorized or shall be performed if . . . the unborn child is [twenty] weeks or less and the pregnancy is the result of rape or incest in which an official police report has been filed alleging the offense of rape or incest.”); IDAHO CODE § 18-622 (2025) (“[P]rior to the performance of the abortion, the woman has reported to a law enforcement agency that she is the victim of an act of rape or incest and provided a copy of such report to the physician who is to perform the abortion.”); MISS. CODE ANN. § 41-41-45 (2025) (“[R]ape shall be an exception to the prohibition for an abortion only if a formal charge of rape has been filed with an appropriate law enforcement official.”); W. VA. CODE § 16-2R-3 (2025) (“[A]t least [forty-eight] hours prior to the abortion the patient has reported the sexual assault or incest to a law enforcement agency having jurisdiction to investigate the compliant and provided the report to the licensed medical professional performing the abortion.”).

under the exception.⁹⁰ Florida also requires the victim to provide documentation to qualify for the rape or incest exception, but it is not exclusive to police reports.⁹¹ Although South Carolina does not require the victim to report, the physician who performs the abortion is obligated to make a report to law enforcement and notify the patient that such a report will be made.⁹² Similarly, Indiana has no crime reporting requirement, but nonetheless imposes upon attending physicians to certify in writing that the pregnancy is the result of rape or incest.⁹³ Although their exceptions still apply only to reported rape or incest, neither Nebraska nor North Carolina requires explicit reporting to law enforcement.⁹⁴ Beyond this, all states providing rape and incest exceptions also include overall abortion restrictions on when these exceptions may be exercised relative to the fetus's gestational age, ranging from bans at detection of a fetal heartbeat to bans after ten weeks post-fertilization.⁹⁵ Uniquely enough, Florida, Georgia, and South Carolina specify an extended gestational age period in which rape victims are permitted to obtain an abortion.⁹⁶

Despite jurisdictional bans, rape and incest exceptions for abortion access are publicly popular, with about eight in ten Americans

90. See IOWA CODE § 146E.1 (2025) (stating that a pregnancy that is the result of rape must be reported to law enforcement within forty-five days of the act, while those resulting from incest must be reported within 145 days).

91. See FLA. STAT. ANN. § 390.0111 (2025) (“[T]o obtain an abortion . . . she [must] present[] to the physician a copy of a restraining order, police report, medical record, or other court order or documentation evidencing that she is . . . a victim of rape, incest, domestic violence, or human trafficking.”).

92. See S.C. CODE ANN. § 44-41-650 (2025).

93. See IND. CODE § 16-34-2-1 (2025).

94. See NEB. REV. STAT. § 71-6915 (2023); N.C. GEN. STAT. § 90-21.81B (2025).

95. See § 390.0111 (fetus gestational age of more than six weeks); GA. CODE ANN. § 16-12-141 (2025) (fetus gestational age of more than twenty weeks); IDAHO CODE § 18-622 (2025) (first trimester); § 16-34-2-1 (ten weeks post-fertilization); § 146E.1 (detectable fetal heartbeat); § 71-6915 (fetus gestational age of twelve weeks or more); § 90-21.81B (fetus gestational age of more than twelve weeks); § 44-41-650 (fetus gestational age of more than twelve weeks); W. VA. CODE § 16-2R-3 (2025) (fetus gestational age of more than eight weeks).

96. See § 390.0111 (“A physician may not knowingly perform or induce a termination of pregnancy if . . . the gestational age of the fetus is more than [six] weeks unless . . . the pregnancy is the result of rape . . . and the gestational age of the fetus is not more than [fifteen] weeks.”); § 16-12-141 (“No abortion is authorized or shall be performed if an unborn child has been determined . . . to have a detectable human heartbeat except when: . . . [t]he probable gestational age of the unborn child is [twenty] weeks or less and the pregnancy is the result of rape or incest.”); § 44-41-650 (“A physician may perform . . . an abortion on a pregnant woman after the fetal heartbeat has been detected . . . [if] the pregnancy is the result of rape, and the probable gestational age of the unborn child is not more than twelve weeks.”).

supporting legal access for such exceptions.⁹⁷ This is only slightly above the seven in ten Americans who, when asked whether abortion should generally be legal, felt the practice should be legal “in all or most cases.”⁹⁸ A study published by the American Medical Association suggests that since the *Dobbs* decision, there have been an estimated 64,565 rape-related pregnancies.⁹⁹ This study further explains that of these rape-related pregnancies, “an estimated 5,586 rape-related pregnancies (9%) occurred in states with rape exceptions, and 58[,979 (91%) in states with no exception.”¹⁰⁰ The authors of the study “suggest[] that rape exceptions fail to provide reasonable access to abortion for survivors,” leading to survivors in states without exceptions to “seek a self-managed abortion or try to travel . . . to a state where abortion is legal.”¹⁰¹ Even if states do offer exceptions for instances of rape or incest, some providers may be fearful of prosecution regardless.¹⁰² Moreover, even if a victim does qualify under an exception, state laws that otherwise prohibit abortion leave an absence of abortion providers for legal procedures.¹⁰³

Despite estimations, the actual number of performed abortions for rape-related pregnancies is unknowable.¹⁰⁴ Advocates and medical professionals suggest that many survivors of sexual assault “just want it

97. Mabel Felix, Laurie Sobel & Alina Salganicoff, *A Closer Look at Rape and Incest Exceptions in States with Abortion Bans and Early Gestational Restrictions*, KFF (Aug. 7, 2024), <https://www.kff.org/policy-watch/rape-incest-exceptions-abortion-bans-restrictions> [https://perma.cc/2BPX-NDDE].

98. Christine Fernando & Amelia Thomson-Deveaux, *Support for Legal Abortion Has Risen Since Supreme Court Eliminated Protections*, AP-NORC Poll Finds, AP NEWS (July 9, 2024, at 10:21 ET), <https://apnews.com/article/abortion-trump-biden-election-2024-dobbs-498d14f6e2bbfe1f313f006ad089de4e> [https://perma.cc/GXM2-R3B7].

99. Samuel L. Dickman et al., *Rape-Related Pregnancies in the 14 US States with Total Abortion Bans*, 184 JAMA INTERNAL MED. 330, 331 (2024).

100. *Id.*

101. *See id.*; see also John Yang & Sam Weber, *Study Estimates 64,000 Pregnancies from Rape in States That Enacted Abortion Bans Post-Roe*, PBS (Jan. 25, 2024, at 18:30 ET), <https://www.pbs.org/newshour/show/study-counts-64000-pregnancies-from-rape-in-states-that-enacted-abortion-bans-post-roe> [https://perma.cc/EKS5-QJ3M] (explaining the Dickman et al. study and the challenges rape survivors face in seeking abortions).

102. *See* Megan Messerly, *In States That Allow Abortion for Rape and Incest, Finding a Doctor May Prove Impossible*, POLITICO (June 27, 2022, at 11:15 ET), <https://www.politico.com/news/2022/06/27/abortion-exceptions-doctor-shortage-00042373> [https://perma.cc/228X-3LCH].

103. *See* Lauren Mascarenhas, *Experts Explain How Abortion Ban Exceptions for Rape and Incest Are Inaccessible in Practice*, CNN (Oct. 19, 2024, at 12:24 ET), <https://www.cnn.com/2024/10/19/us/abortion-ban-states-rape-exception/index.html> [https://perma.cc/J94N-YEA5].

104. *See* Katia Riddle & Julie Luchetta, *Many State Abortion Bans Include Exceptions for Rape: How Often Are They Granted?* NPR (Oct. 26, 2024, at 07:00 ET), <https://www.npr.org/2024/10/25/g-s1-28955/abortion-rape-pregnancy-exception-doctor-police-report> [https://perma.cc/6HMZ-RLTW].

to be over,” with most survivors choosing not to follow through on the documentation and forensic interviews that reporting their assault to law enforcement would require.¹⁰⁵ Moreover, many survivors cite fear of retaliation as a motivator in not reporting their victimization.¹⁰⁶ However, the reservations that lead to underreporting have seemingly lessened. In 2022, the Department of Justice reported that only 21.4% of rapes and sexual assaults were reported to police.¹⁰⁷ By the end of 2023, this figure skyrocketed to forty-six percent.¹⁰⁸

Rape and incest as exceptions to the otherwise prohibited procurement of abortions is a concept younger than abortion’s criminality.¹⁰⁹ In 1955, “Planned Parenthood hosted a secret conference on the potential reform of abortion laws.”¹¹⁰ Conference attendees agreed that abortion “should be legal not only in ‘therapeutic’ but also in ‘humanitarian’ cases.”¹¹¹ Beyond this recognition, the covert attendees could not define when an abortion procedure would count as “humanitarian.”¹¹² When Professor Louis B. Schwartz brought up the topic of “humanitarian abortions” to the American Law Institute (ALI), he argued that “the law should be brought into conformity with actual medical practice,” insisting that it was already common practice for medical professionals to perform abortions in cases of rape and incest.¹¹³ The arguments in favor of incest exceptions were even stronger, with Schwartz suggesting that “incest often would not be consensual and may overlap with rape.”¹¹⁴ However, Professor Mary Ziegler stipulates: “Acceptance of the exception within the broader ALI also rested heavily on ideas of guilt and innocence.”¹¹⁵ Some ALI members objected to proposals of exceptions for unmarried women, as such women were seen

105. *See id.*

106. *See* MICHAEL PLANTY ET AL., FEMALE VICTIMS OF SEXUAL VIOLENCE, 1994-2010, at 7 (2013) (“Among rape or sexual assault victimizations that went unreported, the most common reason victims gave for not reporting the crime during 2005–10 was fear of reprisal (20%).”).

107. *See* ALEXANDRA THOMPSON & SUSANNAH N. TAPP, BUREAU OF JUST. STAT., CRIMINAL VICTIMIZATION, 2022, at 6 (2023), <https://bjs.ojp.gov/document/cv22.pdf> [<https://perma.cc/BRC2-9FA3>].

108. SUSANNAH N. TAPP & EMILIE J. COEN, BUREAU OF JUST. STAT., CRIMINAL VICTIMIZATION, 2023, at 6 (2024), <https://bjs.ojp.gov/document/cv23.pdf> [<https://perma.cc/AQP4-28UP>].

109. *See* Ziegler, *supra* note 84, at 871.

110. *Id.*

111. *Id.*

112. *See id.*

113. *Id.*

114. *Id.* at 872.

115. *Id.*

“as far less innocent than the rape victims that Schwartz had already described.”¹¹⁶

Still, in the consideration of guilt and innocence, children may be an ignored demographic. Professor Michele Goodwin asserts that abortion bans have obscured adolescent sexuality.¹¹⁷ “That is, basic health, and social realities—adolescent menstruation, teen sex, childhood rape, incest, and pregnancy—are eclipsed or buried in the dismantling of *Roe*. Moreover, states that deny exceptions for girls that have experienced rape and incest, on some level, imply that such legal protections are not needed.”¹¹⁸

The November 2024 election saw a record-setting number of constitutional questions that would potentially enshrine abortion in a number of state constitutions.¹¹⁹ Of these states, only two, Arizona and Missouri, passed an amendment that recognizes a fundamental right to abortion.¹²⁰ Before the passage of Proposition 139, Arizona had a challenging statutory landscape regarding abortion legality.¹²¹ In April 2024, Arizona’s Supreme Court held that an 1864 law banning all abortions was not superseded by a 2022 law that would allow abortions through fifteen weeks of pregnancy.¹²² Missouri’s Amendment 3 also represents a shift, as state law had previously prohibited abortions with

116. *Id.*

117. Michele Goodwin, *She’s So Exceptional: Rape and Incest Exceptions Post-Dobbs*, 91 U. CHI. L. REV. 593, 610 (2024).

118. *Id.* at 610–611. “Not once in the *Dobbs* oral arguments were childhood rape, incest, or trauma associated with sexual abuse mentioned by the Justices, nor the majority in the final opinion, despite the harsh realities that would immediately affect girls with the Court’s overturn of *Roe* and subsequent opinions that relied on its holding.” *Id.* at 611.

119. See Jake Maher, *Post-Dobbs Ballot Questions May Spell Litigation with No End*, LAW360 (Oct. 21, 2024, at 16:44 ET), <https://www.law360.com/articles/1891724> (on file with the Rutgers University Law Review) (“[V]oters in 10 states—Arizona, Colorado, Florida, Maryland, Missouri, Montana, Nebraska, Nevada, New York and South Dakota—will choose whether to amend their state constitutions to include some form of reproductive rights.”).

120. See Erin Sutton & Kyla Portnoy, *Takeaways from State Votes on Abortion in the 2024 Election*, LAW360 (Nov. 12, 2024, at 18:00 ET), <https://www.law360.com/articles/2258959/takeaways-from-state-votes-on-abortion-in-the-2024-election> (on file with the Rutgers University Law Review).

121. See *id.*

122. See Theresa Schliep, *Ariz. High Court Restores Civil War-Era Abortion Ban*, LAW360 (Apr. 9, 2024, at 14:56 ET), <https://www.law360.com/articles/1823223/ariz-high-court-restores-civil-war-era-abortion-ban> (on file with the Rutgers University Law Review); see also Dan McKay, *Bill to Repeal ‘Zombie’ 1864 Abortion Ban Clears Ariz. House*, LAW360 (Apr. 24, 2024, at 17:35 ET), <https://www.law360.com/articles/1829193/bill-to-repeal-zombie-1864-abortion-ban-clears-ariz-house> (on file with the Rutgers University Law Review) (reporting on Arizona House passage of a bill to repeal the 1864 near-total abortion ban after the state supreme court’s ruling that the ban was not displaced by a 2022 fifteen-week law).

limited exceptions.¹²³ Now, Missouri lawmakers may only “enact laws that regulate abortions after fetal viability *so long as* medical providers can decide the best treatment for the fetus and pregnant person.”¹²⁴ Florida, Nebraska, and South Dakota, however, maintained their status quo on abortion restrictions.¹²⁵ Notably, South Dakota failed to pass Amendment G, which sought a *constitutional right* to abortion within the first trimester.¹²⁶ Without this change, South Dakota maintains its complete ban on abortions.¹²⁷

B. Victim Rights Without Access

Unsurprisingly, different states imagine different rights for victims of crime. California is among the most protective, providing in its constitution that victims of crime are “[t]o be treated with fairness and respect for [their] *privacy* and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.”¹²⁸ The state’s notion of privacy is upheld in its legislative findings, “declar[ing] that every individual possesses a fundamental right of *privacy* with respect to personal reproductive decisions, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.”¹²⁹ Moreover, the Supreme Court of California asserts the novel position that “[p]regnancy *resulting from rape* is a great bodily injury,” stating that “[p]regnancy cannot be termed a trivial, insignificant matter’ and is ‘all the more devastating when imposed on a woman by forcible rape.”¹³⁰ Similarly, the Seventh Circuit Court of Appeals held in *United States v. Shannon* that “[p]regnancy resulting from rape is *routinely considered* a form of *grave bodily injury*.”¹³¹ In addition to rape victims in California possessing rights to

123. See Sutton & Portnoy, *supra* note 120.

124. *Id.* (emphasis added).

125. See *id.*

126. See *id.*

127. See S.D. CODIFIED LAWS § 22-17-5.1 (2025) (criminalizing the act of performing an abortion, except in cases where it is necessary to preserve the pregnant person’s life).

128. CAL. CONST. art. I, § 28 (emphasis added).

129. CAL. HEALTH & SAFETY CODE § 123462 (West 2025) (emphasis added).

130. *People v. Cross*, 190 P.3d 706, 711 (Cal. 2008) (alteration in original) (quoting *People v. Sargent*, 150 Cal. Rptr. 113, 115–16 (Cal. Ct. App. 1978)).

131. *United States v. Shannon*, 110 F.3d 382, 388 (7th Cir. 1997) (emphasis added) (“Apart from the nontrivial discomfort of being pregnant . . . giving birth is intensely painful; and when the pregnancy is involuntary and undesired, the discomfort and pain have no redemptive features and so stand forth as a form of genuine and serious physical injury, just as in the case of an undesired surgical procedure.”).

privacy for reproductive decisions, the state makes clear that they suffer a cognizable injury in being forced to make such decisions at the outset.

Oregon and Washington also provide in their constitutions that crime victims are entitled to dignity and respect to ensure that said victims play a meaningful role in the criminal justice system.¹³² Oregon further recognizes “[e]very individual has a fundamental right to make decisions about the individual’s reproductive health, including the right to make decisions about the individual’s reproductive health care, to use or refuse contraception, to continue the individual’s pregnancy and give birth or to terminate the individual’s pregnancy.”¹³³ In protecting abortion access, Oregon’s legislation recognizes a right in and of itself for an individual to make decisions about health care.¹³⁴ Considering the state’s declared respect for victims of crime, as well as its fundamental view on abortion access, one can naturally conclude that victims of rape are implicitly given respect as victims should they choose to terminate a pregnancy resulting from the crime.¹³⁵ Washington uses similar language to declare that “[t]he state may not deny or interfere with a pregnant individual’s *right* to choose to have an abortion prior to viability of the fetus, or to protect the pregnant individual’s life or health.”¹³⁶ In these three states, there is consistency between victims’ rights to privacy or respect for victims of crime, and the right to make private reproductive decisions. Indeed, part of the justifications for permitting abortion under *Roe* was based on the right of privacy inferred from the Fourteenth Amendment.¹³⁷

Such consistency is not universal, particularly among states that provide no rape exceptions in their abortion bans. For instance, Louisiana’s state constitution provides language nearly identical to that of Oregon and Washington, declaring that “[a]ny person who is a victim of crime shall be treated with fairness, dignity, and respect.”¹³⁸ The state’s constitution also permits a crime victim “the right to refuse to be

132. See OR. CONST. art. I, § 42 (“To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role in the criminal and juvenile justice systems, to accord crime victims *due dignity and respect* . . . the following rights are hereby granted to victims.” (emphasis added)); WASH. CONST. art. I, § 35 (“To ensure victims a meaningful role in the criminal justice system and to accord them *due dignity and respect*, victims of crime are hereby granted the following basic and fundamental rights.” (emphasis added)).

133. OR. REV. STAT. § 435.210 (2023).

134. See *id.*

135. See *id.*; OR. CONST. art. I, § 42

136. WASH. REV. CODE § 9.02.110 (2025) (emphasis added).

137. See *Roe v. Wade*, 410 U.S. 113, 153 (1973), *overruled by*, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

138. LA. CONST. art. I, § 25.

interviewed by the accused or a representative of the accused; . . . the right to seek restitution; and the right to a reasonably prompt conclusion of the case.”¹³⁹ Louisiana also adds in a separate statute that proper law enforcement agencies are to “ensure that crime victims . . . receive emergency, social, and medical services as soon as possible.”¹⁴⁰ Furthermore, Louisiana provides additional protections under the “Sexual Assault Survivor Bill of Rights,” wherein the legislature finds “transparency” to be “a core principle” of its justice system.¹⁴¹ Among the rights enumerated in this statute are the rights to “receive[] a forensic medical exam,” “to receive, at no cost, a copy of any records or investigative reports from law enforcement,” and “to have privileged communications with a representative or employee of a sexual assault center.”¹⁴² The state’s commitment to “transparency” to victims is ostensibly apparent.¹⁴³

Notwithstanding these constitutional and statutory provisions, the legislature of Louisiana declares “that every unborn child is a human being from the moment of conception and is, therefore, a legal person for purposes under the laws of this state and the Constitution of Louisiana.”¹⁴⁴ Thus, Louisiana creates a disjuncture where it commits itself to transparency for sexual assault victims—who are entitled to medical services, forensic exams, and communications with sexual assault centers—while simultaneously constricting the rights of said victims in favor of an unborn fetus.¹⁴⁵ It is difficult to imagine how the state may uphold its commitment to transparency without also encountering an uncomfortable conversation with a rape victim. Without a rape exception for abortion access, a Louisiana crime victim who becomes pregnant as a result of a rape cannot access any medical service that might unburden them from that resulting injury.¹⁴⁶ Although Louisiana differs from California, Oregon, and Washington with respect to its views on abortion, it is not alone in those views.

Oklahoma’s constitution also provides that crime victims are to be treated with fairness, respect, dignity, and *privacy*.¹⁴⁷ Similarly to Louisiana, Oklahoma also provides separate legislation that specifically outlines the rights of sexual assault victims to receive forensic medical

139. *Id.*

140. LA. STAT. ANN. § 46:1844 (2025).

141. LA. STAT. ANN. § 46:1845 (2025).

142. *Id.*

143. *See id.*

144. LA. STAT. ANN. § 40:1061.1 (2025).

145. *See id.*; § 46:1845

146. *See* § 40:1061.1.

147. *See* OKLA. CONST. art. II, § 34.

exams, to receive the results of forensic evidence analysis, to be informed of available financial and social services, and to speak with a sexual assault victims' advocate.¹⁴⁸ Furthermore, Oklahoma affords rape survivors relief under the "Protection from Domestic Abuse Act,"¹⁴⁹ which allows certain crime victims to file petitions for protective orders.¹⁵⁰ However, the Oklahoma Supreme Court has also held that under the state's constitution, a woman has the right to terminate her pregnancy only in order to preserve her life.¹⁵¹ Oklahoma evidently extends *some* right of fairness and privacy to pregnant women seeking abortions, but only in the direst of circumstances.¹⁵² These rights are not conferred to rape survivors—unless, of course, such a survivor's pregnancy is a life-threatening one.¹⁵³

Kentucky shares Oklahoma's sentiment, guaranteeing that victims of crime are granted "the right to fairness and due consideration of [their] safety, dignity, and *privacy*."¹⁵⁴ Kentucky maintains victims' privacy by forbidding police officers from requiring victims of sexual assault to submit to a polygraph examination.¹⁵⁵ Moreover, Kentucky requires hospitals to offer emergency services to keep a medical professional on call to examine sexual assault victims.¹⁵⁶ Its legislation also includes specific provisions for administering a "sexual assault victim assistance fund."¹⁵⁷ Like Oklahoma, Kentucky maintains some degree of commitment to the rights guaranteed to its crime victims.¹⁵⁸ Yet Kentucky encounters the same privacy argument considered with Louisiana and Oklahoma.¹⁵⁹

148. See OKLA. STAT. ANN. tit. 21, § 142A-3 (West 2025).

149. OKLA. STAT. ANN. tit. 21, § 142A-4 (West 2025).

150. See OKLA. STAT. ANN. tit. 22, § 60.2 (West 2025).

151. See Okla. Call for Reprod. Just. v. Drummond, 526 P.3d 1123, 1130 (Okla. 2023) ("Our history and tradition have therefore recognized a right to an abortion when it was necessary to preserve the life of the pregnant woman.").

152. See *id.*

153. See OKLA. STAT. ANN. tit. 21, § 861 (West 2025).

154. KY. CONST. § 26A (emphasis added).

155. See KY. REV. STAT. ANN. § 16.062 (West 2025).

156. See KY. REV. STAT. ANN. § 216B.400 (West 2025).

157. KY. REV. STAT. ANN. § 49.490 (West 2025).

158. See KY. CONST. § 26A.

159. Compare *id.* (providing victims' rights to "fairness and due consideration of the crime victim's safety, dignity, and privacy"), with Hannah Albarazai, *Ky. Abortion Ban Carveouts Stir Concerns Over Clarity*, LAW360 (Mar. 18, 2025, at 20:29 ET), <https://www.law360.com/healthcare-authority/articles/2312100> (on file with the Rutgers University Law Review) (describing Kentucky's abortion ban as lacking incest and rape exceptions); compare LA. CONST. art. I, § 25 (establishing comprehensive victims' rights, including "fairness, dignity, and respect" and protecting them through criminal proceedings), with LA. STAT. ANN. § 40:1061.1 (2025) (declaring "every unborn child is a human being from the moment of conception" and restricting abortion to the fullest extent

South Dakota's constitution also provides that victims have "[t]he right to due process and to be treated with *fairness* and *respect* for [their] *dignity*."¹⁶⁰ However, the state has not passed any additional legislation that confers a right to privacy or reproductive decision-making.¹⁶¹ South Dakota's abortion ban also appears to lack any sort of legislative intent akin to Louisiana's declared interest in protecting unborn children.¹⁶² Tennessee's constitution and statutes confer no right of privacy, fairness, or respect upon crime victims,¹⁶³ as the aforementioned jurisdictions do.¹⁶⁴ Tennessee asserts that victims of "sexually-oriented crime" have the right to be informed of the results of a forensic evidence analysis.¹⁶⁵ However, such a right bears only a tangential similarity to the rights provided by other states.¹⁶⁶ Shockingly, South Dakota and Tennessee do not join other states without rape exceptions in creating a manifest conflict between crime victims' rights and abortion rights.¹⁶⁷

permitted by the United States Supreme Court); *compare* OKLA. CONST. art. II, § 34 (guaranteeing victims' rights "to be treated with fairness and respect for the victim's safety, dignity and privacy"), *with* OKLA. STAT. ANN. tit. 21, § 861 (West 2025) (criminalizing abortion procedures unless required to preserve the life of the pregnant person).

160. S.D. CONST. art. VI, § 29 (emphasis added).

161. *See* S.D. Codified Laws § 22-17-5.1 (2025).

162. *See id.*

163. *See* TENN. CONST. art. I, § 35; TENN. CODE ANN. § 40-38-103 (2025); TENN. CODE ANN. § 40-38-119 (2025).

164. *Compare* LA. CONST. art. I, § 25 (guaranteeing that "[a]ny person who is a victim of crime" shall be treated with dignity and accorded specified rights), *with* LA. STAT. ANN. § 40:1061.1 (2025) (declaring "every unborn child is a human being from the moment of conception and is, therefore, a legal person"); *compare* OKLA. CONST. art. II, § 34 (establishing comprehensive rights for crime victims, including the right "to be treated with fairness and respect for the victim's safety, dignity and privacy), *with* Okla. Call for Reprod. Just. v. Drummond, 526 P.3d 1123, 1130 (Okla. 2023) (holding "that the Oklahoma Constitution creates an inherent right of a pregnant woman to terminate a pregnancy when necessary to preserve her life."); *compare* KY. CONST. § 26A (guaranteeing crime victims "the right to fairness and due consideration of the crime victim's safety, dignity, and privacy"), *with* Albarazai, *supra* note 159 (noting that Kentucky's abortion law provides no guidance "on what constitutes a high enough risk" for an emergency abortion); *compare* S.D. CONST. art. VI, § 29 (guaranteeing crime victims "[t]he right to due process and to be treated with fairness and respect for the victim's dignity"), *with* § 22-17-5.1 (criminalizing abortion "unless there is appropriate and reasonable medical judgment that performance of an abortion is necessary to preserve the life of the pregnant female").

165. § 40-38-119 ("A victim of a sexually-oriented crime has the right, upon request, to . . . [b]e informed of whether a DNA sample was obtained from the analysis and whether the analysis resulted in a match to a DNA profile in state or federal databases.").

166. *See* LA. CONST. art. I, § 25; OKLA. CONST. art. II, § 34; KY. CONST. § 26A; S.D. CONST. art. VI, § 29.

167. *Compare* S.D. CONST. art. VI, § 29 (establishing comprehensive victims' rights, including protection from intimidation, participation in proceedings, and timely restitution), *with* § 22-17-5.1 (prohibiting abortion except when necessary to preserve the pregnant woman's life); *compare* TENN. CONST. art. I, § 35 (guaranteeing victims' rights to

The victims' rights as provided by the Alabama Constitution are largely procedural.¹⁶⁸ However, the state joins Tennessee in providing sexual assault survivors with rights related to forensic medical examinations.¹⁶⁹ Arkansas deviates from the trend of constitutionally protected victims' rights, providing only statutory procedural rights for crime victims and their families.¹⁷⁰ However, the state's constitution avows its policy "to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution."¹⁷¹ For Alabama and Arkansas, there appears to be no conflict between the rights they afforded to victims and their exceptionless abortion bans.¹⁷² Without a specific right to privacy for victims, the justifications given in *Roe* for an abortion are absent.¹⁷³

Lastly, Texas's constitution grants crime victims the familiar right to "be treated with fairness and with respect for [their] dignity and *privacy* throughout the criminal justice process."¹⁷⁴ The state also includes specialized rights for victims of sexual assault that include—like Oklahoma's—an entitlement to file for a protective order.¹⁷⁵ Yet Texas's

confer with prosecution, be free from intimidation, and receive restitution); *with* § 40-38-119 (providing additional protections specifically for victims of sexually-oriented crimes, including access to victim advocates and notification rights regarding evidence).

168. See ALA. CONST. art. I, § 6.01.

169. Compare ALA. CODE § 15-23-121 (2025) (providing sexual assault survivors with rights to receive medical forensic examinations without charge, have evidence preserved for extended periods, receive test results and police information upon request, and be notified before evidence destruction), *with* § 40-38-119 (providing sexual assault survivors with rights to have support persons present during forensic medical examinations and interviews, be notified of DNA analysis results and evidence retention policies, and request additional evidence preservation periods).

170. See ARK. CODE ANN. § 16-90-1107 (2025).

171. ARK. CONST. amend. LXVIII, § 2.

172. Compare § 15-23-121 (granting sexual assault survivors rights to medical forensic examinations, evidence preservation, and notification of test results and destruction) *with* ALA. CODE. § 26-23H-4 (2025) (prohibiting abortion except when necessary to prevent a serious health risk to the pregnant individual); *compare* § 16-90-1107 (requiring law enforcement to inform victims of their rights and availability of medical, counseling, financial, and legal assistance, along with suspect and case information), *with* ARK. CONST. amend. LXVIII, § 2 (declaring state policy to protect unborn life from conception to birth to the extent permitted by the Federal Constitution).

173. See *Roe v. Wade*, 410 U.S. 113, 153 (1973), *overruled by*, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

174. TEX. CONST. art. I, § 30 (emphasis added).

175. Compare TEX. CODE CRIM. PROC. ANN art. 56A.052 (West 2025) (providing sexual assault victims with rights to be informed about protective order applications, request that the state's attorney file protective order applications on their behalf, and receive notification when such applications are filed), *with* OKLA. STAT. ANN. tit. 22, § 60.2 (West 2025) (allowing victims of domestic abuse, stalking, harassment, and rape to seek relief by

guarantee of “privacy” is the only ground on which an argument for abortion access for rape survivors can be made.¹⁷⁶ Without further development of health care decisions as an aspect of individual rights, abortion activists are relegated to the narrow path initially taken in *Roe*, of constructing an abortion right from a Fourteenth Amendment privacy right.¹⁷⁷

Perhaps the jurisdictions that do create conflicting rights to fairness, dignity, or privacy would agree with Justice Blackmun’s stipulation in *Roe* that the right to privacy, however constructed, “is not absolute and is subject to some limitations; and that at some point the state interests as to protection of health, medical standards, and prenatal life, become dominant.”¹⁷⁸ Unfortunately for abortion advocates, with a disjunction between the rights of sexual assault victims and their exceptionless abortion bans seemingly have no motivation to remedy what the Seventh Circuit in *Shannon* described as a “grave bodily injury.”¹⁷⁹ Without pre-existing victims’ rights that guarantee privacy and freedom from abusers, there are no grounds to mandate any exceptions to abortion bans.

IV. INCONSISTENCY AND INEFFECTIVENESS

Notwithstanding previous discussion of the popularity of rape exceptions to abortion bans, it appears that popular opinion is all that constrains the legislative decisions of most states without rape or incest exceptions. Louisiana,¹⁸⁰ in its dual commitment to the rights of crime victims and protecting the lives of unborn children, creates an issue for itself, where it must both provide medical examinations and limit what examinations may be conducted.¹⁸¹ One can imagine arguments as to

filing a petition for a protective order with the district court, with specific procedural requirements for filing and jurisdiction).

176. See TEX. CONST. art. I, § 30.

177. See *Roe*, 410 U.S. at 153.

178. *Id.* at 155.

179. See Felix, Sobel & Salganicoff, *supra* note 97; *United States v. Shannon*, 110 F.3d 382, 388 (7th Cir. 1997).

180. Efforts have been made to amend the Louisiana statute to provide abortion exceptions for rape and incest. See Sara Cline, *Rape, Incest Exceptions to Louisiana Abortion Ban Rejected by GOP Lawmakers*, AP NEWS (May 10, 2023, at 20:02 ET), <https://apnews.com/article/louisiana-abortion-rape-incest-banned103502c56a48b96e66a3d8a7a0379c> [https://perma.cc/BWL3-294Z]. The Governor of Louisiana, John Bel Edwards, has stated, “rape and incest exceptions protect crime victims.” *Id.*

181. Compare LA. STAT. ANN. § 46:1845 (2025) (guaranteeing sexual assault survivors the right to receive medical examinations without charge), with LA. STAT. ANN. § 40:1061.1 (2025) (declaring the state’s intent to “regulate, prohibit, or restrict abortion to the fullest

whether an abortion is a medical examination required to be conducted on a rape victim. Yet what matters most is the problematic nature of Louisiana's "transparency" language.¹⁸² Oklahoma is no better, as the state's highest court boxes itself into extending a right to abortion only in life-threatening cases.¹⁸³ In doing so, Oklahoma creates a framework wherein if a pregnant rape survivor—a victim of a violent crime—desires an abortion, they must wait until their well-being is *again* put at risk.¹⁸⁴ This scenario represents, at best, a diminished credibility for Oklahoma's legislative decisions, and at worst, an inconsistent commitment to crime victims' privacy and dignity. Notwithstanding the clarity with which these policies are written, Oklahoma's conflicting provisions regarding the life-threatening exception—one of which has been deemed unconstitutional—underscore the uncertainty of the state's legislative framework.¹⁸⁵

All these potentially conflicting rights also exist in tension with certain rights to restitution. Every jurisdiction without a rape or incest exception guarantees—in some capacity—that crime victims may seek restitution.¹⁸⁶ However, the problems with comparing financial value to the pressures and injury created by a pregnancy resulting from rape are far more philosophical and specialized than the scope of this article.

Despite the tensions between the rights of rape survivors, abortion exceptions, and legislative commitment to unborn life, recent scholarship addresses the problematic nature of rape and incest exceptions, as well as the framework in which they exist. Kaley McDowell observes the burdensome and traumatic nature of rape and incest exceptions, as "[t]he

extent permitted" and establishing that "every unborn child is a human being from the moment of conception").

182. See § 46:1845.

183. Okla. Call for Reprod. Just. v. Drummond, 526 P.3d 1123, 1130 (Okla. 2023) ("Our history and tradition have therefore recognized a right to an abortion when it was necessary to preserve the life of the pregnant woman.").

184. See *id.*

185. Compare OKLA. STAT. ANN. tit. 63, § 1-745.52 (West 2025), *invalidated by*, Okla. Call for Reprod. Just. v. State, 531 P.3d 117 (Okla. 2023) (prohibiting abortion except in cases of medical emergency when the pregnancy resulted from rape or incest reported to law enforcement), *with* OKLA. STAT. ANN. tit. 21, § 861 (West 2025) (criminalizing abortion except when necessary to preserve the mother's life).

186. See Felix, Sobel & Salganicoff, *supra* note 97 ("Of the [fourteen] states with total abortion bans, nine (Alabama, Arkansas, Kentucky, Louisiana, Missouri, Oklahoma, South Dakota, Tennessee, and Texas) lack a rape or incest exception."); ALA. CODE § 15-18-65 (2025); ARK. CODE ANN. § 5-4-205 (2025); KY. CONST. § 26A; LA. CONST. art. I, § 25; MO. REV. STAT. § 595.015 (2025); OKLA. CONST. art. II, § 34; S.D. CODIFIED LAWS § 23A-28C-1 (2025); TENN. CONST. art. I, § 35; TEX. CONST. art. I, § 30.

burden of proof for sexual assault is placed directly on the survivor.”¹⁸⁷ Requiring a survivor to be believed can mean requiring them to “overcom[e] perceived sexual and gender identity, race, religion, immigration status, socio-economic class, and homelessness.”¹⁸⁸

Alletta Brenner provides a feminist theory of sexual violence in criminal contexts, arguing in particular that a “victim/perpetrator framework” exists wherein laws operate according to the belief that “any true rape victim would resist to the utmost.”¹⁸⁹ This misconception has created the notion that “real” rapists are a rare anomaly, and most people have consequently “view[ed] rape victims with great skepticism.”¹⁹⁰ Professor Deborah Tuerkheimer points out the law’s historical hesitation to assign guilt and innocence in cases of rape, citing Lord Hale’s seventeenth-century cautionary jury instructions: Allegations of rape are “easily made and, once made, difficult to defend against, even if the person accused is innocent.”¹⁹¹ Trials of sex crimes have historically included “cautionary instruction,” which warned jurors “to evaluate an accuser’s testimony with extra suspicion.”¹⁹² Tuerkheimer asserts that even in the modern era, “[s]et against our stores of misconceptions about the workings of abuse, a victim’s behavior—and thus her allegations—seem strange and inexplicable.”¹⁹³

Arguments regarding guilt and innocence are integral to discussions of rape and incest as criminal matters. As McDowell asserts:

The guilt or innocence framework that supports rape and incest exemptions acts as a dichotomy; instead of viewing all of the multi-faceted ways someone interacts or is acted on by various forces such as socioeconomic status, education, ability, and sexual and gender identities, which together form a more comprehensive view of a person’s lived experience and decisions.¹⁹⁴

187. Kaley McDowell, Note, *The Fight for Accountability: Why Reproductive Justice Is the Next Step in Abortion Rights*, 44 WOMEN’S RTS. L. REP. 186, 191–92 (2023).

188. *Id.* at 192.

189. Alletta Brenner, Note, *Resisting Simple Dichotomies: Critiquing Narrative of Victims, Perpetrators, and Harm in Feminist Theories of Rape*, 36 HARV. J. L. & GENDER 503, 507–08 (2013).

190. *Id.* at 509.

191. Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U. PA. L. REV. 1, 23 (2017).

192. Deborah Tuerkheimer, *Victim, Reconstructed: Sex Crimes Experts and the New Rape Paradigm*, 2024 U. ILL. L. REV. 55, 83.

193. *Id.* at 84.

194. McDowell, *supra* note 187, at 191.

Ziegler notes that anti-abortion activists have made “the paramount innocence of fetal life central to political and constitutional arguments against the repeal of abortion restrictions.”¹⁹⁵ To this end, anti-abortion advocates may be more accepting of rape and incest exceptions due to the perceived “moral judgment inherent in proving legally that an unwanted pregnancy resulted from rape or incest.”¹⁹⁶ With innocence contested in such criminal matters, the weight of a victim’s role in rape or incest proceedings hinges on perceptions of the victim as a viable witness.¹⁹⁷ It is this intersection, where a victim is both an accuser and one who has suffered a wrong, which puts victims of sexual violence in a unique category.¹⁹⁸

Restrictions imposed by states—even those with rape and incest exceptions—may create delays in a victim’s access to abortion.¹⁹⁹ Particularly in cases of rape or incest, the World Health Organization (WHO) urges the provision of abortion services “on the basis of a [victim’s criminal] complaint rather than requiring forensic evidence or police examination.”²⁰⁰ To that end, WHO asserts that “[c]riminal laws, including on the provision of abortion-related information, and the stigmatization of abortion deter many women from requesting information from their regular health-care providers about legal services.”²⁰¹ Access to care may also be hindered in circumstances where a third party—such as a spouse, parent, or hospital authority—must authorize the procedure.²⁰²

As noted previously, even in states where rape exceptions are available, crime victims may struggle to find abortion services.²⁰³ The chilling effect of the *Dobbs* decision has impacted not only rape survivors but all pregnant individuals. From 2020 to 2023, encompassing a period

195. Ziegler, *supra* note 83, at 876–77.

196. McDowell, *supra* note 187, at 192–93.

197. See Tuerkheimer, *supra* note 191, at 3.

198. See *id.* at 38.

199. See McDowell, *supra* note 187, at 197.

200. WORLD HEALTH ORG., SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 92–93 (2d ed. 2012), <https://iris.who.int/server/api/core/bitstreams/3870ed8e-7e2d-4546-b894-d50763fe240c/content> [<https://perma.cc/K83X-92KD>].

201. *Id.* at 95.

202. See *id.*; see, e.g., LA. STAT. ANN. § 40:1061.14 (2025) (“No physician shall perform or induce an abortion upon any pregnant woman who is under the age of eighteen years . . . unless the physician . . . has received . . . [a] notarized statement signed by the mother, father, [or] legal guardian”); IDAHO CODE § 18-609A (2025) (“Except as otherwise provided in this section, a person shall not knowingly perform an abortion on a pregnant unemancipated minor unless the attending physician has secured the written consent from one (1) of the minor’s parents or the minor’s guardian or conservator.”).

203. See Messerly, *supra* note 102.

before and after the *Dobbs* decision, national abortions increased by eleven percent.²⁰⁴ Researchers contend that this is “evidence of unmet demand for abortions before *Dobbs*,” and that “telehealth and a surge in financial assistance have made it easier for women to get abortions, in both states with bans and where it remained legal.”²⁰⁵ A study conducted by the National Bureau of Economic Research (NBER) found that:

Between 2020 and 2023, resident abortions increased 20% in states that protected abortion rights and by 12% in states hostile to abortion but where it remained legal in many circumstances. In contrast, abortions provided to residents of states that banned abortion declined by 32%. . . . Even as abortions rose in states where it remained legal and telehealth services expanded, they fell dramatically for residents of ban states.²⁰⁶

This study, however, acknowledges that there is no control group of states, considering that all states were affected by the *Dobbs* decision.²⁰⁷ The authors of the study recognized that driving distance has historically been a significant barrier to abortion access,²⁰⁸ but provided that “[e]ven when travel distances remain unchanged, the average total abortion ban increases births by 1.0%.”²⁰⁹ This conclusion concurs with the results of another 2025 study, which found a 1.7% increase in births overall in 2023 compared to expected projections.²¹⁰ What is more concerning than the increase in births in abortion ban states is the unequal effects of those births. The NBER study concludes that bans have greater effects on Black and Hispanic women than White women, as well as greater effects on the unmarried and those without higher education.²¹¹

204. Caitlin K. Myers, Daniel L. Dench & Mayra Pineda-Torres, *The Road Not Taken: How Driving Distance and Appointment Availability Shape the Effects of Abortion Bans* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 33548, 2025).

205. Claire Cain Miller & Margot Sanger-Katz, *The Women Most Affected by Abortion Bans*, N.Y. TIMES: UPSHOT (Mar. 17, 2025), <https://www.nytimes.com/2025/03/17/upshot/abortion-bans-births-study.html> (on file with the Rutgers University Law Review); Myers, Dench & Pineda-Torres, *supra* note 204, at 1 (“Abortion bans . . . catalyzed offsetting measures and expansions of access in the rest of the country. Abortion funds . . . saw an 88% surge in donations, enabling them to distribute \$37 million to over 102,000 people—approximately 10% of all abortions.”).

206. Myers, Dench & Pineda-Torres, *supra* note 204, at 8.

207. *See id.* at 9.

208. *See id.* at 1.

209. *Id.* at 17.

210. Suzanne O. Bell et al., *US Abortion Bans and Fertility*, 333 JAMA 1324, 1327–28 (2025).

211. *See* Myers, Dench & Pineda-Torres, *supra* note 204, at 19.

V. CONCLUSION

The problem with rape and incest exceptions is two-fold. Firstly, there is great potential for inconsistency in states that provide victims' rights for sexual assault survivors, yet ban their abortion access.²¹² Secondly, the construction of rape and incest exceptions showcases systemic injustices that are worsened by abortion bans altogether.²¹³ Although it is a complicated issue, Brenner proposes a potential solution:

“Restorative justice” offers one possibility for the incorporation of an intersectional model of rape into legal and quasi-legal processes. . . . Broadly defined, restorative justice is “a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.” Rather than treating crime as a conflict between an offender and the state, restorative justice treats it as a break in the social fabric of the community and attempts to use a discursive, collaborative process to arrive at a just resolution.²¹⁴

This is an unmistakably massive undertaking, and one that cannot be solved solely by a change in victim rights statutes. This approach would also require societal adjustments to the prosecution of sexual assault as a whole.²¹⁵

Conversely, Goodwin argues that “[b]allot initiatives show promise and have become a powerful arsenal in the battle to overcome abortion bans and secure abortion rights in states’ constitutions.”²¹⁶ Following the *Dobbs* decision, individual states are now seemingly granted far more freedom to experiment with these approaches to crime victims’ rights and abortion access.²¹⁷ Despite bans, the vast majority of states providing—if nothing else—rape and incest exceptions for abortion access appear to demonstrate an aforementioned popular demand for what might be a “common-sense” approach to rape survivor rights. The success of this

212. See sources cited *supra* note 164.

213. See Myers, Dench & Pineda-Torres, *supra* note 204, at 19.

214. Brenner, *supra* note 189, at 561.

215. See generally Erin Sheley, *A Broken Windows Theory of Sexual Assault Enforcement*, 108 J. CRIM. L. & CRIMINOLOGY 455 (2018) (proposing that addressing sexual assault requires coordinated changes in prosecutorial practices, cultural norms, and enforcement priorities to resolve the expressive crisis in rape law).

216. Goodwin, *supra* note 117, at 631.

217. See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 302 (2022).

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populist notion remains to be seen—ballot initiatives, Supreme Court decisions, or federal legislation notwithstanding.