

# Abortion Rights and the Child Welfare System: How *Dobbs* Exacerbates Existing Racial Inequities and Further Traumatizes Black Families

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**Abstract:** This article explores how abortion bans in states with large Black populations will exacerbate existing racial inequities in those states' child welfare systems.

## Introduction

In *Dobbs v. Jackson Women's Health Organization*,<sup>1</sup> the Supreme Court returned to the states the power to regulate abortion. The Court's majority dismissed data presented by advocates that overturning *Roe v. Wade* would have grave consequences for the health and well-being of women and children.<sup>2</sup> Post-*Dobbs*, the majority of states that have imposed bans are in the southern United States, home to more than half of the country's Black population.<sup>3</sup> Seven of these southern states that have imposed bans — Alabama, Georgia, Louisiana, Mississippi, South Carolina, Tennessee, and Texas — have large Black populations, as well as high rates of female-headed households and of Black child poverty (Table 1). The abortion bans in these states are likely to have profound consequences for the health and well-being of Black women and children for years to come. One impact that has been entirely ignored by antiabortion lawmakers and courts is how post-*Dobbs* bans, particularly in the South, will exacerbate the already existing racial disparities in state child welfare systems.<sup>4</sup>

Birth rates are already beginning to rise in southern states with abortion bans.<sup>5</sup> While some women from these states are able to travel to other states to obtain abortions, this is often not an option for low-income women, including many Black women. This essay considers how the post-*Dobbs* increase in births in these seven southern states will exacerbate existing injustices in the child welfare system. It seeks to address this question by first briefly describing the history of reproductive exploitation and injustice experienced by Black women. Second, it presents the research detailing the relationship between abortion access, child well-being, and disparities in Child Protective Services (CPS) involvement. Third, it tracks the substantial overrepresentation of Black families

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in state child welfare systems, the studies demonstrating the role that racial and class bias play in the system, and the trauma inflicted on these families by CPS involvement. Fourth, it analyzes the likely exacerbation of CPS intervention in Black families in these seven states that have enacted abortion bans. Finally, it offers recommendations from a reproductive justice perspective to advocates seeking to mitigate the negative effects of abortion bans on Black families through legal advocacy, holding policymakers accountable, and elevating the voices of Black mothers.

### **Pre-*Dobbs* Reproductive Exploitation and Injustice Experienced by Black Women**

Reproductive justice advocates have long pointed out that access to reproductive health care for Black people is grounded in the history of racism and reproductive

that have decreased economic and social supports for families have disproportionately harmed Black mothers. States in the South constitute the majority of states that refused to expand Medicaid after the Supreme Court made it optional in 2012 in *National Federation of Independent Business v. Sebelius*.<sup>11</sup> Since nearly half of all Black women live in the South, they are therefore overrepresented in the “coverage gap” — people who are ineligible for either Medicaid or for ACA subsidized commercial insurance coverage.<sup>12</sup>

Prior to *Dobbs*, Black women disproportionately used abortion services, particularly in the South.<sup>13</sup> This has been erroneously interpreted by some politicians and some Supreme Court justices as evidence of a concerted effort by abortion rights proponents to reduce the Black birth rate.<sup>14</sup> This theory disregards the barriers that low-income Black women face in

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coercion. While this history is beyond the scope of this essay and has been documented and analyzed extensively elsewhere,<sup>6</sup> a few points are important to this discussion. First, the history of state control, oppression, and dehumanization of Black people shadows any discussion of whether and when to have children. Second, the long history of state supported eugenic sterilization of Black mothers that was sanctioned well into the 1970s<sup>7</sup> and efforts of policymakers in the 1980s and 1990s to coerce Black welfare recipients into using long acting implanted contraceptives, such as Norplant, demonstrate that the devaluation of Black women’s reproductive rights and of their children is far from ancient history.<sup>8</sup> Third, policymakers’ scapegoating of Black mothers receiving government assistance as an issue of personal responsibility, rather than the result of structural racialized poverty, undergirds decades of policy failures in meeting the needs of Black families.

Because Black mothers are twice as likely as white women to live in poverty,<sup>10</sup> federal and state policies

accessing to reproductive health care, including contraception<sup>15</sup> and turns on its head the fact that it was government actors who favored eugenics through *involuntary* sterilization of Black women to reduce the Black population, not those advocating legalization of *voluntary* abortions.<sup>16</sup> It is a narrative wholly divorced from any consideration of the lived experiences of Black women, their health, their reproductive choices and the conditions in which they parent their children. Yet, Justice Alito embraced this erroneous theory in a footnote in *Dobbs*.<sup>17</sup>

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times as likely to die from pregnancy related causes,<sup>20</sup> have twice the rate of low birthweight babies and more than twice the rate of having an infant die as white mothers.<sup>21</sup>

### Abortion Access and Child Welfare System Involvement of Black Families

Post-*Roe* studies of the relationship between abortion access and child well-being have found that access to legal abortion is associated with reduced child poverty and welfare receipt, fewer children living in single parent homes, and lower rates of infant mortality.<sup>22</sup> Public funding for abortion is correlated with improved birth outcomes.<sup>23</sup> Abortion legalization is also associated with lower rates of reported incidents of child maltreatment.<sup>24</sup> On the other hand, restrictions on abortion are positively correlated with reports of child maltreatment. For example, one study found that restricted Medicaid funding for abortion is associated with higher rates of reporting of maltreatment, suggesting that in states that limit access to abortion for low-income women, there is a greater likelihood that they will experience CPS involvement.<sup>25</sup> Specifically, access to abortion has been found to reduce the incidence of child neglect,<sup>26</sup> which as described below, is the leading reason that families are reported to CPS.

In *Torn Apart: How the Child Welfare System Destroys Black Families — and How Abolition Can Build a Safer World*, legal scholar Dorothy Roberts cites this astonishing statistic: During their childhoods, more than half of Black children will be subjected to a CPS investigation, twice the rate of white children.<sup>27</sup> The extent of “the color” of the child welfare system goes well beyond CPS investigations. Black children are disproportionately placed in foster care. They make up 23% of the foster care population, while they represent 14% of the general population.<sup>28</sup> White children are underrepresented in foster care based on proportion of the population<sup>29</sup> and Latinx children’s disproportionality in foster care is dependent upon the state in which they live.<sup>30</sup> Broad state law definitions of neglect compounded by racial bias in reporting and CPS discretionary decision-making lead to the disproportionate removal of Black children from their homes.

The majority of reports to CPS are for neglect (61%, compared to 10% for physical abuse and 7.2% for sexual abuse).<sup>31</sup> The Children’s Bureau of the Office of the Administration of Children and Families reports that common state law definitions of neglect include: “the failure of a parent or other person with responsibility for the child to provide needed food, clothing, shelter, medical care, or supervision to the degree that

the child’s health, safety, and well-being are threatened with harm.”<sup>32</sup> Defining neglect as the failure to provide for a child’s basic needs essentially equates parenting while living in poverty with neglect. Indeed, doing so allows CPS to blame poor parents for their own lack of resources, again defining parental poverty as a lack of personal responsibility. Overall, living in a neighborhood with concentrated poverty is associated with higher rates of CPS surveillance, reporting and investigation of abuse and neglect.<sup>33</sup> One study found that low-income Black children are more likely to be removed from their parents, despite being assessed lower risk scores than low-income white children. The study concluded that parents were blamed for the lack of available resources in Black communities.<sup>34</sup> While the premise of the child welfare system is to protect children from harm and promote their well-being, it has been structured to penalize parents for being poor.<sup>35</sup>

Medical professionals are the most common mandatory reporters to contact CPS. Studies of child abuse and neglect reports show that Black children are more likely to be reported for childhood injuries than white children. Indeed, when injured, Black children tend to be overreported, while white children tend to be underreported.<sup>36</sup> Black newborns are at least four times more likely than white newborns to be reported to CPS based on screening for substance exposure, even though Black and white women use substances at equivalent rates.<sup>37</sup> Poor Black mothers are also more likely to be separated from their baby upon discharge from the hospital.<sup>38</sup> Over-reporting based on race and socioeconomic status and the threat of child removal have the effect of discouraging parents from seeking medical care and asking for help.

A vast literature on the outcomes of children who have been placed in foster care shows they are more likely to experience homelessness, have poorer adult physical and mental health, have higher rates of teenage pregnancy and experience criminal justice involvement.<sup>39</sup> Removal of children from their parents leads to emotional and psychological harms, but foster care itself can also cause harm — including abuse and neglect at the hands of foster parents and/or experiencing the instability of multiple foster care placements.<sup>40</sup>

For low-income Black children who already experience a wide range of hardships related to a lack of educational and employment opportunities, health disparities, and interactions with the criminal justice system, the trauma of foster care adds to “compound disadvantage.”<sup>41</sup> Given that one in ten Black children will be removed from the home and placed in foster

Table 1

### Child Poverty and Female-headed Households in States with Abortion Bans and Largest Black Populations

State	Type of abortion ban <sup>62</sup>	# of Black people <sup>63</sup>	% of population—Black <sup>64</sup>	% of Black child poverty <sup>65</sup>	% of female-headed households in poverty <sup>66</sup>
AL	Full ban	1.3 million	27	40*	45**
GA	Ban after six weeks	3.5 million	32	30	36
LA	Full ban	1.6 million	33	45*	47**
MS	Full ban	1.1 million	39	45*	46**
SC	Full ban	1.4 million	27	35	41**
TN	Full ban	1.2 million	17	32	41**
TX	Full ban	3.8 million	13	28	38
US	14 states with bans	47.8 million	13	31	34

\*Among the five states for highest rates of Black child poverty

\*\*Among the nine states for the highest rates of female-headed households in poverty

Table 2

### Black Families with Housing Cost Burden and Food Insecurity Compared with Safety Net Program Benefits in States with Abortion Bans and Largest Black Populations

State	% Black children in families with high housing cost burden <sup>67</sup>	% Black children without enough to eat due to cost <sup>68</sup>	TANF maximum monthly benefit <sup>69</sup>	TANF-to-poverty ratio <sup>**70</sup>
Alabama	35	51	\$215	7
Georgia	40	48	\$280	5
Louisiana	43	54	\$240	4
Mississippi	36	48	\$170	4
South Carolina	41	36	\$286	9
Tennessee	40	51	\$185	15
Texas	44	46	\$290	4
US	43	10	\$474	21

\*TANF maximum monthly benefit is calculated for a three person family.

\*\* The TANF-to-poverty ratio is the ratio of families receiving TANF assistance to the number of families with children living in poverty. For example, a TANF-to-poverty ratio of 20 means that for every 100 families with children in poverty, 20 are on TANF.

Table 3

### State Rankings of Maternal/Child Health Outcomes

State	Health of women & children ranking <sup>71</sup>	Early prenatal care ranking <sup>72</sup>	Maternal mortality ranking <sup>73</sup>	Infant mortality ranking <sup>74</sup>	Children with 2+ ACEs ranking <sup>75</sup>
AL	46	47	46	47	29
GA	36	38	50	42	39
LA	50	39	51	48	44
MS	48	21	31	49	41
SC	43	45	43	40	36
TN	40	40	41	44	27
TX	34	51	44	18	22

care during their childhood,<sup>42</sup> the continued trauma experienced by not just individual Black families but the entire Black community is a form of structural racism that reinforces and exacerbates lifelong health inequities, poverty, and social inequality.

### How Will State Abortion Bans and Restrictions Affect Child Welfare Outcomes?

Abortion bans in the South will have a disproportionate and profound effect on Black women. As Table 1 illustrates, the seven states with the largest Black populations have higher than average percentages of female-headed households living in poverty and Black child poverty rates.

Single motherhood is highly correlated with maternal and child poverty. Given the high rates of uninsurance, poor access to reproductive care, including contraception,<sup>43</sup> and higher than average rates of births to teens in southern states,<sup>44</sup> maternal and child poverty will undoubtedly increase without policy intervention. As it stands now, the 7 southern states highlighted in this article that have enacted abortion bans also have some of the least generous safety nets in the country. For example, in 2019, Mississippi had the lowest maximum benefit under the Temporary Assistance for Needy Families (TANF) program in the country (\$170 per month), compared to \$1066 per month in New Hampshire.<sup>45</sup> These southern states also have among the highest rates in the U.S. of Black children experiencing food insecurity and living in unstable housing (Table 2).

None of these 7 states with abortion bans has raised the minimum wage above the federally required \$7.25 per hour<sup>46</sup> and none, with the exception of Louisiana, has expanded Medicaid to low-income adults.<sup>47</sup> Texas is ranked first in the country for the number of uninsured women of childbearing age in the state and has such a low income eligibility threshold — earned income of less than \$400 a month — to qualify for Medicaid, that few single mothers qualify.<sup>48</sup> While all of these states have now expanded or are planning to expand pregnancy-related Medicaid coverage to 12 months,<sup>49</sup> maternal health is shaped by factors across the life course making it unlikely that this expansion alone will significantly reduce the high rates of Black maternal morbidity and mortality in these states.<sup>50</sup> The lack of value placed on Black maternal and child health in southern states that have implemented abortion bans is evidenced by poor health outcomes, including high rates of maternal mortality and infant mortality (Table 3).

Although there are entrenched racial disparities in state child welfare systems across the country, nearly all of these southern states exhibit disproportionality in the percentage of Black children in foster care and all have a larger percentage of children who experience more than 4 foster care placements than the national average (Table 4).

### What will Abortion Bans Mean for Child Welfare System Involvement in the Future?

It is estimated that post-*Dobbs*, one in three American women have lost or will lose access to abortion,<sup>51</sup> but

Table 4

#### Racial Disparities and CPS Reported Reasons for Placement in Foster Care in States with Abortion Bans and Largest Black Populations

State	% of the child population — Black <sup>76</sup>	% of children in foster care — Black <sup>77</sup>	% of child removal — neglect <sup>78</sup>	% child removal — inadequate housing <sup>79</sup>	% child removal — parental SUD <sup>80</sup>	% of children in >4 foster care placements <sup>81</sup>
AL	29	33	26	13	37	27
GA	34	40	47	21	43	23
LA	36	40	84	1*	1*	26
MS	42	38	71	22	44	23
SC	29	35	74	4	16	30
TN	19	23	65	12	38	29
TX	12	23	93	10	67	23
US	14	23	65	10	39	22

\*Since data reporting varies by state, there is inconsistency across states in CPS reporting of the reason for child removal and there may be overlap in categories reported such as neglect and inadequate housing and substance use. Louisiana appears to report neglect but does not specify when there is inadequate housing or substance use. This inconsistency makes comparison across states difficult.

\*\*Substance Use Disorder

this will disproportionately affect women in the South. Testifying before the Mississippi State Senate in October 2022, state health officer Dr. Daniel Edney estimated that at least 5,000 additional births will occur each year because abortion has been banned in the state.<sup>52</sup> In response to fears that the state is not prepared for these additional births, Mississippi Speaker of the House Philip Gunn replied that “the *Dobbs* ruling presents Mississippi with the opportunity and responsibility to work with one another on building and supporting the families of unplanned pregnancies and the families once the child is born.”<sup>53</sup> But he also announced that “[e]xpanding state government is not the best way to meet all these challenges. Where government already plays a role — such as in child support enforcement and foster care — we must make sure it is fulfilling its role.”<sup>54</sup> Expansion of safety net programs is clearly not on the agenda. Nor is addressing decades of racial injustice that has perpetuated the state’s horrendous maternal and child health disparities.

The choice to remove children from their homes — at great cost to the state — rather than provide support to low-income families demonstrates a stark policy choice. Paying foster parents to care for children while refusing to increase TANF, expand Medicaid or provide paid leave is not only costlier to the state, it further entrenches racial and economic injustice. State policymakers who suggest that the only option to address increasing birth rates is to place children from low-income families in foster care echo the *Dobbs* court’s suggestion that adoption will remedy the problem of unwanted pregnancy. Both responses are blind to the realities of women’s and children’s lives. Indeed, research shows that 91% of women who would have chosen abortion but are forced to give birth keep their babies.<sup>55</sup>

The evidence is clear that federal and state investments in poor families pay off in multiple ways. The National Academies of Sciences, Engineering, and Medicine concluded in a 2019 report that income supports are connected with a range of improved health outcomes, including lower maternal stress, healthier birth weights, better childhood nutrition, higher reading and math test scores as well as high school graduation rates, and lower rates of drug and alcohol use.<sup>56</sup> It is also estimated that the federal Child Tax Credit that was part of the American Rescue Plan Act of 2021 cut the child poverty rate in half from 2020 to 2021.<sup>57</sup> Yet, Congress has been unwilling to sustain it.

Post-*Dobbs*, the states highlighted in this article are likely to see demands on their child welfare systems expand dramatically. Given these states’ history of racial discrimination, existing policy failures and poor

maternal/child health outcomes, the ban on abortion will exacerbate harms to Black families, including the disproportionate removal of Black children from their parents. Since repeal of abortion bans is unlikely in the foreseeable future, advocates will need to focus on assisting women, particularly low-income Black women, in these Southern states to obtain abortions in other states, advocate for state investments and policies that support poor single-parent households, and challenge CPS child removals based on poverty-related neglect allegations.

### Advocating for Black Families Post-*Dobbs*

Abortion rights organizations are now working to support women living in states with bans or restrictions to obtain abortions in states where abortion is still legal and to access self-managed medication abortion.<sup>58</sup> But many women will be unable to obtain an abortion when they want or need one. Given this fact, an advocacy agenda must be built around supporting mothers and children, defending them from unjust CPS intervention, and promoting access to reproductive healthcare. This agenda should be grounded in reproductive justice which accounts for and calls out racism and other forms of oppression that trample human rights and affirms that women not only have the right to decide if and when to have children, but also “to parent the children they have in safe and sustainable communities.”<sup>59</sup> This includes freedom from state removal of their children due to structural racism and poverty.

Now that anti-abortion policymakers have achieved their wish, they must be held accountable for the effects of abortion bans on women, children and communities.<sup>60</sup> Reproductive justice requires an intersectional approach to the myriad ways in which policy choices affect marginalized people. The voices of affected women who can speak to the reality of what abortion bans mean — including the impact of forced birth, parenting an unwanted child in poverty, experiencing CPS involvement and child removal — should be prioritized and promoted by advocates. Building coalitions with those seeking economic justice and child welfare system reform will broaden the constituency base and call attention to the ramifications of failing to enact policies that invest in families. Academic researchers and policy analysts should support community-based advocates by tracking the evidence linking abortion bans to increases in poverty and CPS caseloads.

Advocacy across sectors will be important in stemming the tide of injustices likely to befall Black mothers and children, particularly in the states high-

lighted above. Ultimately, reform will only be possible through acknowledgement of the structural racism inherent in multiple systems, most profoundly, the child welfare system. Dorothy Roberts, who has studied racial inequity in the child welfare system for more than two decades calls for an “abolitionist framework.” She argues that the child welfare system should not be replaced by “another reformed state system, but with a radically reimagined way of caring for families and keeping children safe.”<sup>61</sup> Post-*Dobbs*, the call to action to replace the current child welfare system with one framed by reproductive justice — which encompasses racial justice, gender justice, economic justice, and human rights — is more important than ever.

## Conclusion

The *Dobbs* decision has profound implications for women, children, families and communities in states that have banned or severely restricted access. In states with large Black populations that have banned abortion and a long legacy of racial injustice and parsimonious safety nets for low-income families, the consequences will be most dire. With abortion outlawed, state lawmakers and child welfare system agency administrators have to decide if they will act to support family health and well-being or continue punitive policies that tear families apart based on poverty and deprivation. So far, state policymakers seem to be either ignoring the post-*Dobbs* consequences for families altogether or proposing policy solutions that will only exacerbate existing injustices — such as expanding the foster care system as proposed by the Mississippi House Speaker. With the Supreme Court and federal and state policymakers undermining reproductive and racial justice, advocates will be more vital than ever in helping to mitigate the harms, particularly to Black families, that are coming.

## Note

The author has no conflicts to disclose.

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