Reproductive Rights and Felony Disenfranchisement: The New Frontier of an Old Voter Suppression Tactic

Jessie Rubini

Follow this and additional works at: https://scholarlycommons.law.northwestern.edu/njlsp

Part of the Law Commons

Recommended Citation
https://scholarlycommons.law.northwestern.edu/njlsp/vol19/iss2/6
Reproductive Rights and Felony Disenfranchisement: The New Frontier of an Old Voter Suppression Tactic

Jessie Rubini*

ABSTRACT

Voter suppression and anti-abortion, anti-reproductive care efforts are mutually reinforcing, working together to diminish political participation, especially for women of color. I argue that politicians could use the Dobbs decision to further suppress Black voters, specifically Black women voters, by prosecuting abortions as felonies. The effect would be disenfranchisement of thousands of people. This Comment covers the connected histories of voting rights and abortion rights in America. The first section of this Comment will briefly cover the history of voting rights in America with a focus on racial discrimination. The second section will cover one voter suppression, felony disenfranchisement. Finally, in the third section I argue that Dobbs gives politicians and lawmakers a new way to increase felony disenfranchisement and decrease Black women’s voting power, and that without further advocacy against felony disenfranchisement, more women will lose the right to vote.

Keywords: abortion, abortion ban, felony, felony disenfranchisement, fetal personhood, nation-wide abortion ban, reproductive rights, pregnancy criminalization, pregnancy, voting, voting rights

* Jessie Rubini is from Atlanta, Georgia, and is a J.D. Candidate at Northwestern University Pritzker School of Law, Class of 2024. She attended Tulane University on a full tuition scholarship and received a bachelor’s dual degree in Political Science and Communications. She is interested in voting rights, reproductive rights, and the intersection of law and policy.

** For the purpose of this paper, when I discuss people who get abortions, I am mostly referencing cisgender women. However, I recognize that nonbinary people and trans men also receive abortions and should be included in the conversation surrounding abortion criminalization. Assuming that cisgender women and trans men face the exact same issues is incorrect, and both issues should be given our individual, devoted time.
Since 2016, politicians have passed hundreds of voter suppression laws, including proof of citizenship requirements, voter list purges, ballot drop-box limitations and a plethora of others. In the first two months of 2023 alone, state legislatures introduced 150 restrictive voting bills and twenty-seven election interference bills. At the same time, a wave of anti-abortion restrictions passed in many states after the Supreme Court decided Dobbs v. Jackson Women’s Health Organization decision. The decision overturned constitutional protections for bodily autonomy set forth by Roe v. Wade. Many states with restrictive voting laws, like Arizona, Georgia, and Texas, also have enacted anti-abortion

---

2 See generally Voter Purges, BRENNAinan CTR. FOR JUST., https://www.brennancenter.org/issues/ensure-every-american-can-vote/vote-suppression/voter-purges [https://perma.cc/FV77-EHMN] (last visited Mar. 5, 2024) (discussing how voter list purges remove non-active voters from voter-registration lists, meaning removed voters must re-register to vote; many voters removed from lists do not realize their registration has been ended, and might not re-register to vote in time for upcoming elections).
6 Id. at 231.
policies. The efforts to suppress voter participation and to restrict abortion access are linked. Both efforts are championed by influential, conservative voices and both serve to control and suppress marginalized communities, particularly Black communities.

In Dobbs, the Supreme Court asserts that women need not fear the Court’s decision to rescind a long standing right to reproductive autonomy. If women disagree with anti-abortion laws, the Court contends they should seek recourse through the political process by voting for pro-choice politicians:

It is time to heed the Constitution and return the issue of abortion to the people’s elected representatives. Our decision returns the issue of abortion to those legislative bodies, and it allows women on both sides of the abortion issue to seek to affect the legislative process by influencing public opinion, lobbying legislators, voting, and running for office. Women are not without electoral or political power.

But the Dobbs majority conveniently ignores the Court’s own rulings curtailing voting rights, which make it more difficult for affected citizens to impact the state lawmaking process. Members of this Court recently supported partisan gerrymandering as well as reduced the impact of campaign finance laws. The Supreme Court issued rulings in 2013 and 2021 that limited the efficacy of the Voting Rights Act in Shelby County v. Holder and Brnovich v. Democratic National Committee. These decisions led to resurgence in restrictive voting laws, which disproportionately diminish the voting power of minority and Black communities. For example, Georgia law S.B. 202 restricted the use of ballot drop boxes, which “substantially increased travel times” for voters in the 2022 primary, particularly in “communities of color and areas with low vehicle ownership, which tend to have a majority Black population.” A recent study concluded that new restrictive laws in Florida and Texas which prohibit voters from receiving help while registering to vote or casting their vote disproportionately reduced turnout in counties with low literacy rates, which are more likely to be low-income, Latino, or Black.

When voters’ power is diminished, legislatures can pass laws which do not reflect actual constituent desires. For example, 61% of Texans believe abortion should be legal in

---

7 Caroline Kitchener, Kevin Schaul, N. Kirkpatrick, Daniela Santamariña, & Lauren Tierney, States Where Abortion is Legal, Banned or Under Threat, WASH. POST (Sept. 18, 2023), https://www.washingtonpost.com/politics/2022/06/24/abortion-state-laws-criminalization-roe/
8 See Dobbs, 597 U.S. at 231–32.
9 Id. at 232.
10 See Rucho v. Common Cause, 139 S. Ct. 2484, 2506–07 (2019) (holding that partisan gerrymandering claims are nonjusticiable political questions).
all or most situations, but Texas still passed some of the most restrictive abortion laws in the nation. In Texas, performing an abortion is categorized as a criminal offense; depending on whether the abortion lead to the death of the fetus, violators can be charged with a first or second-degree felony. Each infraction carries a minimum civil penalty of $100,000. The state legislature was able to pass this law in part thanks to Texas’s highly gerrymandered districts. Texas Republicans “aggressively redrew legislative maps” during 2022’s redistricting efforts “to transform a once competitive state legislature into a safely Republican one.” Before the redistricting, Democrats only needed to win slightly more than half the vote for control of the Texas House. After partisan map redrawing, Democrats now need more than 56.2% of the vote to win “even a bare majority,” in the state legislature, while Republicans only need 43.9% to win a majority. And state legislatures that do not reflect constituent desires are not just a Southern problem: voter suppression efforts are happening across the country. Iowa, Montana, Arizona, and Wyoming all passed restrictive voting laws in 2021. Even though voting is an important tenant of American democracy, it is not always treated as such.

Communities of color are disproportionately harmed by both voting and abortion restrictions. Thus, I will analyze the impact of voting and abortion restrictions through an intersectional lens. While discrimination often “condition[s] us to think about subordination as disadvantage occurring along a single categorical axis,” intersectional theories account for ways in which systems of inequality based on gender, race, ethnicity, sexual orientation, disability, class, and other forms of discrimination “intersect” to create unique challenges. Kimberlee Crenshaw, a leading critical race theorist who coined the term, notes that “[b]ecause the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which [women of color] are subordinated.”

Abortion rights and voting rights both give women agency, and the consequences of gutting those rights are troublingly connected. Without the right to vote, women cannot vote for or against anti-abortion politicians; without abortion protections, women cannot choose the path of their personal lives. As the Supreme Court once recognized, abortion is

---

17 TEXAS HEALTH & SAFETY CODE ANN. § 170A.004 (West 2022).
18 Id. § 170A.001.
21 Id.
22 Id.
25 Id.
essential to “the ability of women to participate equally in the economic and social life of the Nation.”

Data supports this. One study found that “ensuring women can have a wanted abortion enables them to maintain a positive future outlook and achieve their aspirational life plans.” Multiple research teams have found that “abortion legalization increased women’s education, labor force participation, occupational prestige, and earnings . . . all these effects were particularly large for Black women.” In 2017, a different study found that access to legal abortion “reduced the number of women who become teen mothers by 34% and . . . again observed effects that were even larger for Black teens.”

Despite the data on how abortion restrictions harm women, and the popular support for abortion access, politicians quickly moved to criminalize abortion after Dobbs. Even though 64% of voters believe the decision to have an abortion should not be regulated by law, nearly half of the states moved to enact restrictive bans—Oklahoma, North Dakota, South Dakota, Texas, Louisiana, Alabama, Utah, and Missouri have classified performing an abortion as a felony, with prison sentences for medical providers ranging from fifteen years to life. In most states, felons can only vote once their sentences are over, and once released, many formerly incarcerated people do not know they can legally vote, either because they are unaware of newly passed laws, are not informed about the voter registration process, or have been told that they cannot vote. (In some cases, even

---

29 Myers & Welch, supra note 28.
32 Sean Murphy, Oklahoma Governor Signs Bill to Make Abortion Illegal, ASSOCIATED PRESS (Apr. 12, 2022, 3:23 PM), https://apnews.com/article/abortion-oklahoma-law-87880e9f3c7bde2ae64cb2f02839e6e [https://perma.cc/T9ZC-9Q36].

---
judges themselves do not realize ex-felons can vote.\(^{35}\) Criminalizing abortion provides a potential new way for prosecutors to press felony charges, meaning more women are at greater risk of incarceration and disenfranchisement.

Voter suppression and anti-abortion efforts are mutually reinforcing, working together to diminish political participation, especially for women of color. I argue that Dobbs, and the permissible criminalization of abortion that comes with it, could further suppress female voters, specifically Black female voters, by allowing politicians and attorneys to prosecute abortions and pregnancy complications as felonies. The effect would be the disenfranchisement of thousands of people. This Comment reviews the connected histories of voting rights and abortion rights in America. Part I will briefly review the history of voting rights in America with a focus on racial discrimination. Part II will specifically focus on one type of voter suppression—felony disenfranchisement. Finally, Part III argues that Dobbs gives politicians and lawmakers a new way to increase felony disenfranchisement and decrease Black women’s voting power, and without further advocacy against felony disenfranchisement, the two laws will work together to slowly suppress voting rights of women. Even if it is not politicians’ intent to suppress minority votes, or to harm women, the data indicates that the criminalization of abortion and reproductive-related decisions, combined with felony disenfranchisement laws, could negatively impact women’s voting power. This intersection might not be obvious, but it is one that should not go overlooked.

I. HISTORY OF VOTING RIGHTS

For decades, anti-democratic voting laws and the anti-abortion movement have worked in tandem to control women.\(^{36}\) Around the same time that women began fighting for their right to vote, states began to ban abortion and contraception through federal and state laws.\(^{37}\) Pro-choice and pro-voting activists should be aware of the mirrored history of voting and reproductive rights. As I will discuss, a new batch of anti-abortion and anti-voting laws are popping up again in familiar ways. Activists should look to the past to see how politicians may use the same playbook again, whether wittingly or not. Historical knowledge of voting rights and abortion laws provides context for current issues and helps activists understand how and why certain laws and policies were implemented. This understanding enables them to frame their arguments effectively and advocate for change.

A. Voting Rights History

In 1869, the Fifteenth Amendment granted Black men the right to vote.\(^{38}\) During the Reconstruction era that followed, Black men freely voted, ran for office, and gained


\(^{36}\) See generally Carol Mason, KILLING FOR LIFE: THE APOCALYPTIC NARRATIVE OF PRO-LIFE POLITICS (2002).


\(^{38}\) U.S. Const. amend. XV, § 1.
political power. Black men’s increased political participation angered white politicians and terrorist groups like the KKK, who used violence to suppress Black voter turnout, and claimed fraud to undo the effect of lawfully cast votes.\textsuperscript{39} In reaction, Congress enacted a series of Enforcement Acts in 1870 and 1871, commonly referred to as the Force Acts. These laws aimed to quell the violence, eliminate discrimination in voter registration based on race, and authorize the president to deploy military force to safeguard Black voters.\textsuperscript{40} Once the Force Acts went into effect, and racial barriers to voting were repealed, over one thousand Black men won public office in state and local governments across the South.\textsuperscript{41}

While the Force Acts temporarily helped Black male voter participation, the end of formal Reconstruction in 1877 ushered in largescale disenfranchisement of Black voters.\textsuperscript{42} White politicians used voter-suppression tactics such as poll taxes and literacy tests to side step the Fifteenth Amendment’s ban on racial voting discrimination.\textsuperscript{43} In the 1890s, states began to amend their constitutions, inputting a series of laws intended to re-establish white political supremacy.\textsuperscript{44} The laws ranged from literacy and interpretation tests, to poll taxes,\textsuperscript{45} to vouchers of “good character,” and voting disqualification for “crimes of moral turpitude.”\textsuperscript{46} (It was not until 1985 that the Supreme Court invalidated a provision of the Alabama constitution disenfranchising misdemeanor offenders for “moral turpitude,” in \textit{Hunter v. Underwood}. The Court concluded that the provision's aim was to obstruct Black individuals from voting.\textsuperscript{47}) In many states, primary elections were limited to white voters, meaning Black communities were effectively shut out of the candidate selection process.\textsuperscript{48} As a result of these efforts, nearly all Black citizens in the South were disenfranchised and most Black elected officials were removed from office by 1910.\textsuperscript{49}

While Black men faced great obstacles to their ability to vote after the Fifteenth Amendment, it was not until a full decade later that women of any race could cast a ballot in many states. The 1848 Seneca Falls convention—a foundational event in the movement for women’s suffrage—was followed by numerous state campaigns, court battles, and petitions to Congress in support of women’s right to vote.\textsuperscript{50} The efforts resulted in the Nineteenth Amendment which was ratified in 1920.\textsuperscript{51} But even after the Nineteenth Amendment, Black women faced an uphill battle to vote due to voter suppression tactics.

\textsuperscript{39} \textit{Id.}
\textsuperscript{40} Enforcement Act of 1870, 16 Stat. 140 (1870); \textit{see also} \textit{Cong. Globe, 41st Cong., 2d Sess. 3561–62} (1870) (reprinting text of Senate bill in full).
\textsuperscript{42} \textit{Id.}
\textsuperscript{43} \textit{Id.}
\textsuperscript{44} \textit{Id.}
\textsuperscript{46} \textit{Smithsonian Nat’l Museum Afr. Am. Culture and Art, supra} note 41.
\textsuperscript{48} \textit{Smithsonian Nat’l Museum Afr. Am. Culture and Art, supra} note 41.
\textsuperscript{49} \textit{Id.}
\textsuperscript{50} \textit{Anne Firor Scott & Andrew MacKay Scott, One Half the People: The Fight for Woman Suffrage} 14, 75, 81 (1982).
Other minorities faced similar obstacles. Native Americans were not granted citizenship until the Snyder Act of 1924, and even then, they did not gain the right to vote in all states until 1957.\(^{52}\) Chinese Americans could not vote until the repeal of the Chinese Exclusion Act in 1943.\(^{53}\) Other Asian American immigrants were denied the right to vote until 1952 when the Immigration and Nationality Act allowed them to become citizens.\(^{54}\)

After decades of voter suppression, intimidation, and violence at the polls, civil rights groups organized protests. On March 7, 1965, Alabama state troopers attacked peaceful voting rights protestors marching from Selma to Montgomery.\(^{55}\) Following the incident, President Johnson called for comprehensive legislation to protect voting rights. He signed the Voting Rights Act into law in 1965, banning racially discriminatory practices in voting. Section 2 and Section 5 of the Voting Rights Act were instrumental in protecting the right to vote for all people, until recently.\(^{56}\) Understanding the Voting Rights Act and its ultimate dismantling is important in understanding how racial discrimination in voting still exists today, and why it is so difficult to overcome.

Section 2 of the Voting Rights Act bans racially discriminatory voting practices, and prohibits states from imposing any “qualification or prerequisite to voting or standard, practice, or procedure . . . in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color[.]”\(^{57}\)

Section 5 of the Voting Rights Act required state and local governments with a history of disenfranchising voters (jurisdictions” covered by section 4(b) of the VRA) to obtain approval from the U.S. Department of Justice (DOJ) or the U.S. District Court in D.C. before changing voting practices to ensure the procedures were not discriminatory.\(^{58}\) Research shows that the Voting Rights Act’s preclearance requirement led to greater representation of Black interests in politics.\(^{59}\) A 2019 study found that preclearance regulations substantially increased turnout among minorities, even as late as 2012.\(^{60}\) The study estimates that preclearance led to a 17% increase in minority turnout.\(^{61}\)

Despite evidence that the Voting Rights Act protected people of color, the Supreme Court decided in 2013 that the racial issues the Voting Rights Act sought to address were no longer relevant.\(^{62}\) In \textit{Shelby County v. Holder},\(^{63}\) Shelby County, Alabama, a previously covered jurisdiction under § 4(b), argued that the preclearance regime exceeded Congress’s power to enforce the Fourteenth and Fifteenth Amendments, and violated the Tenth Amendment.

\(^{56}\) \textit{Id.} at 1427.
\(^{58}\) \textit{Id.} at 5.
\(^{61}\) \textit{Id.}
\(^{63}\) \textit{Id.}
Amendment and Article IV of the Constitution by exceeding congressional power and encroaching on state power. Attorney General Holder argued that these restrictions are necessary to prevent regression among states with a history of voting rights abuses, and that preclearance remains a valid exercise of congressional power. Shelby County responded that current conditions in the United States no longer justify preclearance at all. The Supreme Court agreed with Shelby County, and held that the “coverage formula” in Section 4(b), which set forth a method for determining which state jurisdictions were subject to preclearance requirement of the Voting Rights Act, was unconstitutional.

Since the decision effectively rendered the Section 5 preclearance requirements inoperable, local governments can pass voting laws without first seeking permission from the federal courts or the DOJ. After the Shelby ruling, nine states—Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia—were no longer covered by the preclearance coverage formula. Within a day of the Shelby decision, Texas announced a new photo ID law. “The overall effect [of Shelby] …has been to shift from preemptive checks on election laws to after-the-fact challenges—cases that are harder to win and also see the legal burden shift to those affected by the laws.”

In 2021, the Supreme Court again weakened the Voting Rights Act in Brnovich v. Democratic National Convention, limiting the claims individuals could make under Section 2 of the Voting Right Act and making it much harder for advocates to challenge restrictive voting measures. The case arose after Arizona enacted two laws, which they were able to apply due to the lack of preclearance requirements post Shelby. The first law required election officials to discard out-of-precinct ballots, even for elections in which the voter could have cast a ballot anywhere in Arizona. The second law prevented anyone but a voter’s family member or caregiver from returning early ballots for another person, subject to criminal punishment. The Democratic National Committee challenged the laws on the basis that they “had an adverse and disparate effect on the State’s American Indian, Hispanic and African-American citizens in violation of § 2 of the VRA.” The Ninth Circuit held for the Democratic National Committee, holding that both policies violated Section 2 because they resulted in discrimination against minority voters, and that the ballot collection ban was passed by Arizona’s legislature with discriminatory intent, in violation of both the Voting Rights Act and the Fifteenth Amendment. The Supreme Court reversed the Ninth Circuit’s decision, upholding both Arizona policies, and making it

64 Id. at 529.
65 Id.
66 Id.
68 Id.
71 Id.
72 Democratic Nat’l Comm. v. Hobbs, 948 F.3d 989, 999 (9th Cir. 2020).
73 Brnovich, 141 S. Ct. at 2330.
much harder for individuals to challenge restrictive voting laws under a claim of discriminatory effect.\textsuperscript{74}

Many states enacted restrictive voting laws in the aftermath of the Brnovich decision. Politicians introduced at least 150 bills across ten states to restrict voting; “[i]n the first weeks of 2023, at least 27 election interference bills have been pre-filed or introduced in 10 states.”\textsuperscript{75} Without the protection of the preclearance requirement, states enacted laws making it harder to vote, particularly states which had previously been regulated under the preclearance requirement or which were largely Republican-led.\textsuperscript{76} A 2020 study found that, after the Shelby decision, previously covered jurisdictions substantially increased the rate of voter registration purges.\textsuperscript{77} According to the Brennan Center for Justice, the states enacting voting restrictions were also states with the highest Black voter turnout in the 2008 election.\textsuperscript{78} By 2016, there were 868 fewer precincts in § 5 jurisdictions.\textsuperscript{79}

The post-Shelby voting law landscape suggests a concerted effort by politicians to suppress the vote of racial minority groups. The discriminatory impact of these laws is clear. Although restrictive voting laws are purported to be race-neutral and enacted to protect the electoral process, these laws negatively impact communities of color. Even assuming that politicians had no insidious intent while enacting restrictive laws, the data, as explained in the next section, paints a stark picture of racial and gender discrimination. Studies show that women of color, who vote predominately Democratic, are those most negatively impacted by these laws.\textsuperscript{80} To understand what is at stake for voting rights post-Dobbs, it is important to understand how restrictive voting laws already impact women, particularly Black women.

\textbf{B. Women, Party Affiliation, and Voting Restrictions}

While proponents argue that strict voting laws prevent rigged elections, there is no evidence of widespread voter fraud. A study conducted by the Associated Press found fewer than 475 potential instances of voter fraud out of more than 25 million votes cast in


\textsuperscript{79} \textbf{CAROL ANDERSON, ONE PERSON, NO VOTE: HOW VOTER SUPPRESSION IS DESTROYING OUR DEMOCRACY} (2018).

the 2020 election.\textsuperscript{81} However, there is clear evidence which shows that strict voting laws harm minority voters. Women, on the whole, lean Democratic, suggesting that Republicans have a political interest in suppressing votes of women.

Since 1984, women have turned out to vote at slightly higher rates than men in presidential elections,\textsuperscript{82} and there is a clear gender gap in party affiliation.\textsuperscript{83} Both President Obama\textsuperscript{84} and President Biden won with high margins among women.\textsuperscript{85} In 2018 and 2019, 56\% of female registered voters identified as Democrats or leaned toward the Democratic Party while 50\% of men identified as Republicans.\textsuperscript{86} The difference holds across racial and ethnic groups. White women are more likely than white men to identify as Democrats.\textsuperscript{87} A majority of all Hispanic voters identify as Democrats, and this is especially true among Hispanic women—67\% of Hispanic women identified as Democrats compared to 58\% of Hispanic men in 2019. And 87\% of Black women identified as Democrats—a rate 10\% higher than Black men.\textsuperscript{88}

Whether or not it is a concerted effort to suppress a largely left-leaning demographic is up for debate, but the data paints a clear picture of who is impacted by voter suppression laws. ID requirements, for example, inhibit women from voting at a higher rate than men because women are more likely to change their names after marriage. If a woman changes her name after marriage and fails to update the name associated with her voter registration, this could cause issues at the ballot box. According to the Brennan Center for Justice, only 48\% of voting-age women with access to their birth certificates have one with their current legal name, and only 66\% of voting-age women with access to any proof of citizenship have a document with their current legal name.\textsuperscript{89} An estimated 34\% of women could be turned away from the polls unless they have precisely the right documents.\textsuperscript{90} In North Carolina alone, women represent 54\% of voters but comprise 64\% of the voters who are unable to vote under ID laws, totaling about 200,000 disenfranchised voters.\textsuperscript{91} “For women

\begin{itemize}
  \item \textsuperscript{82} Igielnik, supra note 80.
  \item \textsuperscript{83} Id.
  \item \textsuperscript{86} Totenberg, supra note 74.
  \item \textsuperscript{87} Id.
  \item \textsuperscript{88} Id.
  \item \textsuperscript{89} BRENAN CTR. FOR JUST., CITIZENS WITHOUT PROOF: A SURVEY OF AMERICAN’S POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION 2 (2006), https://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf [https://perma.cc/GEE3-U7HA].
\end{itemize}
in the low-wage workforce—approximately two-thirds of whom are women of color—the time and cost of acquiring a photo ID are real barriers.  

The impact of these laws is compounded by race. Historically, minority women have been marginalized and disenfranchised, and the trend continues today. In North Carolina in 2012, Black women represented less than 24% of all women registered to vote but made up a third of women voters who could not vote due to photo ID voting requirements. Restrictive voter ID bills disproportionately impact Black voters. For example, Georgia’s above-referenced law, S.B. 202, creates new ID rules for voters, who must either present a driver’s license number, state ID number, or voter ID when applying for an absentee ballot. Black voters made up a disproportionately high percentage of the 3.5% of registered voters in Georgia who lacked a qualifying state ID number or driver’s license.  

Suppressing minority votes could, in the aggregate, create real political implications for party control. Black women’s voting power is increasingly growing. In 2023, at least 15 million Black women were of voting age—approximately 3.5 million more than in 2000. In Georgia, Mississippi, and Alabama (all states that have enacted strict voting laws), Black women make up roughly 30% of that state’s voting age population. “In 2018, turnout among women of color grew more than 15% compared with the 2014 midterm elections.” Black women also play a central role in engaging with and mobilizing others to participate, whether through voter registration efforts, line warming, or campaign work. Looking at that data, Republicans have a clear incentive to limit the impact of a rapidly growing, historically Democratic coalition. As such, many Republican states have actively sought to pass voter suppression laws, which disproportionately block Black voters from the polls. Politicians who lead these states may view minority women as a threat to their dominance if they mobilize and organize around issues that challenge the established order. By limiting their ability to vote, politicians can hinder women’s collective voice and influence in shaping policies that directly affect their communities—like abortion laws.  

As described, suppression tactics range from voter ID laws to ballot drop-off restrictions to gerrymandering. A less explored form of voter suppression is felony disenfranchisement. Felony disenfranchisement is one avenue through which people lose their right to vote, but it is not widely recognized as a concerted voter suppression tactic. With the rise of criminalization of abortion, pro-choice advocates should be aware of the impact felony disenfranchisement laws will have on women charged with abortion or pregnancy related crimes.

92 Id.
97 Id.
98 Id.
II. FELONY DISENFRANCHISEMENT

This Part delves into felony disenfranchisement as a voter suppression tactic. While all restrictive voting laws work to decrease women’s voting participation because they make voting more difficult for everyone, felony disenfranchisement laws raise specific concerns surrounding the future of voting rights for women, especially Black women.

State laws restricting abortion and criminalizing pregnancy are dangerous to women’s health. Combined with confusing felony disenfranchisement laws and an increase in incarceration, women’s right to vote seems ever more precarious. And, as I will describe in Part III, criminalizing abortion nation-wide could deprive more people of the right to vote due to felony convictions.

A. Regaining the Right to Vote: A Harsh Reality

Two million people are incarcerated each year, and a huge portion of this population is de facto disenfranchised.100 While most states restore voting rights to felons after the completion of their sentence, the reality of regaining access to the ballot box is not simple. There is evidence to suggest that administrative practices transform temporary voting bans into lifelong disenfranchisement.101 In Nebraska, voting advocates claim that even ten years after ex-felon voting rights were restored by law, “only half of all counties provided correct and accurate information.”102 Bureaucratic obstacles, confusing laws, and financial issues prevent people from regaining the right to vote. For example, individuals who have finished their sentences and re-register to vote are often rebuffed by election boards who demand documents to prove their eligibility.103 These documents are burdensome to obtain, and in many cases, “are entirely fictional, unavailable by law, or available only as a matter of pure official discretion.”104 And while some states automatically restore voting rights to people who complete their sentences, about thirty states require individuals to pay legal debts before regaining their ability to vote. Those who are unable to pay these debts are automatically disenfranchised.105

In 2018, Floridians voted in favor of Amendment 4, which amended Florida’s constitution to automatically restore voting rights to felons who have served their sentences.106 Lifetime bans continued to apply for those convicted of murder or sexual offenses.107 An estimated 1.4 million people with felony convictions were eligible to vote.

101 Id.; see also Solomon & Maxwell, supra note 96.
107 Id.
register to vote after the Amendment took effect in 2019.\textsuperscript{108} In July 2019, the Republican state legislature passed Senate Bill 7066,\textsuperscript{109} which required felons to pay outstanding fines and restitutions before they could regain their right to vote.\textsuperscript{110} A federal district judge ruled that it was unconstitutional to require felons to first pay off their financial obligations before registering to vote, holding that S.B. 7066 was unconstitutional for those unable to pay.\textsuperscript{111} However, later in September 2020, the Eleventh Circuit overturned the lower court’s decision, saying that the requirement for felons to pay fines did not violate the equal protection clause of the Fourteenth Amendment, re-disenfranchising over 750,000 people.\textsuperscript{112}

As the Campaign Legal Center notes, “[j]ail-based disenfranchisement is not the result of one bad law; instead, it is caused by a complicated, convoluted net of practical barriers that deprive eligible, incarcerated voters of their constitutional right to vote.”\textsuperscript{113} Felony disenfranchisement laws weaken the voting power of minority groups.

If states criminalize abortion, that increases the ways one can be charged with a felony, and potentially lose the right to vote. In the next subpart, I explain how felony disenfranchisement disproportionately impacts minority communities, who, above in subpart I. A are already negatively impacted by restrictive voting laws.

\textbf{B. Race and Felony Disenfranchisement}

In 1974, the Supreme Court held that the U.S. Constitution did not prevent the exclusion of felons from voting, even after they had served their sentences.\textsuperscript{114} The decision has had a significant impact on America’s politics; according to a 2013 study, multiple Senate races and presidential elections would likely have had different outcomes if felons had been able to vote.\textsuperscript{115} Around 3.9 million U.S. citizens who have felony convictions are disenfranchised, including over one million who have already completed their sentences.\textsuperscript{116} Felony disenfranchisement laws have a disproportionate impact on Black and Brown

\begin{flushleft}

\textsuperscript{109} S.B. 7066, 2019 Sess. (Fla. 2019).


\textsuperscript{111} Jones v. DeSantis, 410 F. Supp. 3d 1284, 1301, 1304 (N.D. Fla. 2019).

\textsuperscript{112} Jones v. Governor of Fla., 975 F.3d 1016, 1025 (11th Cir. 2020).


\textsuperscript{114} Richardson v. Ramirez, 418 U.S. 24, 26 (1974).


\end{flushleft}
individuals,\textsuperscript{117} who frequently receive harsher penalties compared to white individuals for identical offenses.\textsuperscript{118} “[Black] adults are 5.9 times as likely to be incarcerated than whites and Hispanics are 3.1 times as likely.”\textsuperscript{119} Nearly half of the 206,000 people serving life and “virtual life” prison sentences are Black, and another 15% are Hispanic or Latino.\textsuperscript{120} Black people are more likely than white people to be arrested,\textsuperscript{121} and more likely to face longer prison sentences.\textsuperscript{122}

Following the trend, Black people are more likely to lose their voting rights than the rest of eligible voters.\textsuperscript{123} “One in 19 African Americans of voting age is disenfranchised, a rate 3.5 times that of non-African Americans.”\textsuperscript{124} In seven states – Alabama, Florida, Kentucky, Tennessee, South Dakota, Virginia, and Wyoming – more than one in ten African Americans is disenfranchised, twice the national average for African Americans.\textsuperscript{125}

Felony disenfranchisement is not a new voter suppression tactic. Following the Civil War and the passing of the Fifteenth Amendment, felony disenfranchisement laws acted as part of a larger strategy to disenfranchise Black voters.\textsuperscript{126} Felony disenfranchisement was expanded in conjunction with the Black Codes, which established harsh penalties for petty crimes and were designed to target Black citizens.\textsuperscript{127} Lawmakers in South Carolina, Mississippi, and others changed their criminal codes to target what they deemed “black crimes” and called for disenfranchisement for offenses such as “thievery, adultery, arson,


\textsuperscript{119} Id.


\textsuperscript{124} Id. at 2.

\textsuperscript{125} Id.


wife beating, housebreaking, and attempted rape.” The author of Alabama’s disenfranchisement provision even “estimated the crime of wife-beating alone would disqualify sixty percent of the Negroes.”

To this day, states have been accused of tailoring felon voting bans to target Black people. Whether intentional or not, the disproportionate impact on Black voters is clear. In states where conviction triggers lifelong disenfranchisement, “large portions of the African American community are barred from voting—for example, 19% in Florida, 20% in Virginia, and 24% in Kentucky. As a result, criminal disenfranchisement can have significant antidemocratic effects.” For instance, registered voters booked into county jails for the full duration of 2020 voting days “were on average 46% less likely to vote in 2020, relative to registered voters booked into the same jails within 7 – 42 days after Election Day.”

Mississippi stands out as one of the worst states for disenfranchisement. Until 2023, Mississippi enforced extreme felony disenfranchisement laws which permanently banned from voting felons convicted with certain offenses; these offenses included crimes like writing a bad check or stealing wood. In 2020, over 10% of adults in the state had felony convictions, which meant that more than 130,000 Black Mississippi voters, or 16% of the adult Black population, could not vote in the 2020 election.

The facts were too glaring to ignore. In August 2023, the Fifth Circuit ruled that Mississippi’s lifetime voting ban violates the Eighth Amendment’s prohibition against cruel and unusual punishment. While the state does plan to appeal, the Court’s decision marks a step forward for voting rights advocates. Other states can look to this case as a winning example of voter advocacy. The ruling also signals an openness to a new legal theory challenging felony disenfranchisement law; although the Supreme Court decided that felony disenfranchisement laws do not violate the Fourteenth Amendment’s Equal Protection Clause, the Supreme Court has not yet ruled on the argument that felony disenfranchisement laws constitute a violation of the Eighth Amendment. Considering the Fifth Circuit was open to the argument, the Supreme Court might be as well, though that is far from certain.

129 Id.
132 UGGEN, LARSON, SHANNON, & PULIDO-NAVA, supra note 123.
There is a clear history of felony disenfranchisement disadvantaging Black communities, especially Black men, who are more likely to be incarcerated than women. However, as explained below, women’s incarceration rates are on the rise, presenting a troubling new aspect for the intersection of voting and abortion rights.

C. Women and Felony Disenfranchisement

An increase in women’s imprisonment rates is bad news for voting rights. Recent trends in prison populations reveal a “disturbing” gender disparity. If the rate of imprisonment continues to grow, disenfranchisement laws will play an increasingly significant role in women’s political participation in the coming years. Nationwide, “women’s state prison populations grew 834% over nearly forty years—more than double the pace of the growth among men.” Between 2000 to 2015, the number of women in jail surged by 40%, and the number of women in state prisons grew 22%. Over the same period, the total jail population grew only 17%, and the total state prison population grew just 7%. Over a fifth of the total disenfranchised population—one million people—are women.

Criminalizing abortion puts women at a higher risk of disenfranchisement. An increase in abortion-related felony charges might mean a decrease in Black women’s ability to vote, since, as this Comment discusses, both abortion criminalization and felony disenfranchisement disproportionately impact Black women. If more women are charged with abortion or pregnancy related felonies, that means more women will be disenfranchised and unable to vote. Unfortunately, the Dobbs decision invited a new era of not just abortion criminalization, but policing pregnancy at large. The next section will discuss how the risk of voter suppression is increased in a post-Dobbs world.

III. Dobbs and Felony Disenfranchisement: How Abortion Restrictions Intertwine with Voting Rights

In 1973, Roe v. Wade solidified a right to abortion under the Fourteenth Amendment’s right to privacy. This protection provided substantive and procedural rights at state and federal levels through the due process clause of the Fourteenth Amendment. Roe analyzed abortion as a fundamental personal right rooted in our “concept of ordered liberty.” In Planned Parenthood v. Casey, the Court reaffirmed the constitutional right to abortion, but replaced the strict scrutiny standard of review required by Roe with the ‘undue burden’ standard, under which state abortion restrictions would be

138 SENTRY PROJECT, supra note 136.
139 Id.
140 Id.
141 Id.
142 Id.
144 Id. at 152.
constitutional so long as they were not enacted for “the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.”

The Dobbs decision overturned Roe v. Wade, abandoning nearly fifty years of precedent and taking away the fundamental right to abortion. In the decision, the Court repudiates the idea that there are unenumerated rights not laid out in the Constitution. Justice Alito writes that the Supreme Court may only protect these rights if they are “deeply rooted” in history. Abortion is not “deeply rooted” in the Constitution.

After Dobbs took effect, states quickly instated various restrictive abortion laws. As of January 2024, abortion is fully banned in Idaho, North Dakota, South Dakota, Indiana, Texas, Oklahoma, Arkansas, Louisiana, Missouri, Tennessee, Mississippi, Alabama, Kentucky, and West Virginia. Georgia and South Carolina banned abortion starting at 6 weeks; North Carolina and Nebraska at 12 weeks; Arizona, Florida, and Utah at 15 to 18 weeks. Of those states, only eight—Idaho, Georgia, West Virginia, Indiana, Iowa, North Dakota, Wyoming, and Utah—have exceptions for rape or incest.

However, even in states with exceptions, they are rarely granted. Women face many obstacles while proving they fall into the “exception.” For instance, in Mississippi, people must file a police report before obtaining an abortion to show the assault occurred, despite data showing that nearly two-thirds of women choose not to file police reports after rape. Many doctors are also reluctant to perform abortions even for those who fall into an exception out of fear of legal retaliation.

While all people who seek abortions are in danger now that Roe is overturned, Black and Hispanic women are at greater risk of incurring physical, social, and criminal harms from seeking abortion care. Given the intertwined history of voting rights and abortion in America as well as the use of felony disenfranchisement as part of a larger attempt to disenfranchise minority, often Democrat voters, politicians might use Dobbs as a voter suppression tool. Intentionally or not, Dobbs gives politicians and lawmakers a new way to increase felony disenfranchisement and decrease Black women’s voting power by classifying abortion and miscarriages as homicide.

In the next subparts, I will discuss how the criminalization of abortion, a rise in fetal personhood laws, and a potential nationwide abortion ban could lead to widescale voter suppression.

148 Id.
152 Walker, supra note 150.
A. The Criminalization of Abortion and Rise of Fetal Personhood Laws

In previous years, politicians have shied away from criminalizing people who seek abortions. Even now, most state laws criminalizing abortion focus on providers and those who aid others in obtaining abortions, and not the patients themselves.153 For instance, in Texas, performing an abortion is now a felony punishable by up to life in prison, though patients seeking abortions are protected from criminal liability.154 However, a growing number of Republicans support punishing people who get abortions. For example, in South Carolina, a person who ends their pregnancy faces up to two years in prison and a fine of up to $1,000.155

On a national scale, during the 2016 presidential campaign, then-candidate Donald Trump stated that “women who seek abortions should be subject to ‘some form of punishment’ if the procedure is banned.” Even before Roe was overturned, there were over 1,700 arrests, prosecutions, and other civil or criminal enforcement actions between 1973 and 2020 in which pregnant people were targeted for some action that law enforcement claimed caused harm to the fetus such as “falling down stairs; giving birth at home; exposing a fetus to dangerous ‘fumes;’ having HIV; not resting enough during the pregnancy; not getting to a hospital fast enough while in labor; being the victim of a shooting; and self-inducing an abortion.”157 After Dobbs, Republican lawmakers across several states introduced legislation proposing homicide and other criminal charges for abortion. For instance, in Alabama, individuals who provide abortion services may be charged with a Class A felony, on the same level as homicide, but exempts women seeking abortions from being held criminally or civilly liable.158 However, Republican representative Ernie Yarbrough announced a bill that would repeal this section of Alabama’s abortion ban and allow the state to prosecute anyone who gets an abortion with murder.159 Under the most extreme interpretation, prosecutors could potentially weaponize the amended law against women who suffer miscarriages.160

---


154 TEX. HEALTH & SAFETY CODE § 170A.004 (West 2022).


157 Sam Levin, She Was Jailed for Losing a Pregnancy. Her Nightmare Could Become More Common, GUARDIAN (June 4 2022, 1:00 AM), https://www.theguardian.com/us-news/2022/jun/03/california-stillborn-prosecution-roevwad [https://perma.cc/QNY4-JKA8].


160 Id.
A slew of states introduced “fetal personhood” laws, which purportedly promote fetal health. These laws may criminalize underlying health issues of pregnant women, like substance abuse, as well as miscarriages or stillbirths, and may create a way for prosecutors to charge people who choose abortion or otherwise lose their pregnancy with homicide. These statutes attempt to define life as beginning at conception, defining these embryos as “legal persons.” Many fetal personhood statutes include provisions for fetal homicide or assault laws; criminal and civil child abuse or endangerment laws; and civil commitment statutes. At least 38 states authorize homicide charges for causing pregnancy loss. Though most fetal homicide laws prohibit criminal charges against a pregnant woman in relation to their own pregnancy, fetal personhood laws increase the risk of prosecutors abusing the vague laws to charge women with a crime for loss of their pregnancy; 7 states have statutes declaring fetuses to be an existing person. In 2024 alone, politicians in state legislatures across 14 states introduced fetal personhood bills.

Most recently, in February of 2024, the Alabama Supreme Court held that held that life starts at fertilization, and thus Alabama's Wrongful Death of a Minor Act “allows a [civil] action to be brought for the wrongful death of any unborn child.” Shortly after the ruling, 125 House Republicans sponsored the Life at Conception Act, which advocates for equal protection under the 14th Amendment for “each born and preborn human person.” Interestingly enough, the Act does not make an exception for IVF, despite Republicans insistence that IVF should be protected in the wake of the recent Alabama ruling.

The introduction of fetal personhood laws does not bode well for the future of abortion rights. Again, efforts to categorize pregnancy complications and abortions as felonies carries with it a hidden, perhaps unwitting attempt to suppress women voters through disenfranchisement. If a fetus is legally categorized as a person, that means prosecutors can charge women who suffer from substance abuse or from miscarriages with homicide, a felony crime which leads to disenfranchisement. Although fetal personhood statutes purport to protect life, they are in fact endangering women’s livelihoods and autonomy. If fetuses count as people, then their rights can compete with those of pregnant women themselves. Pregnancy Justice President Lourdes Rivera may explain it best:

---

162 Id.
163 Id.
165 For example, California attorneys prosecuted two women for stillbirths, even though the California statute authorizing murder charges for the unlawful killing of a fetus has an exception for acts “solicited, aided or abetted, or consented to by the mother of the fetus.” Cal. Penal Code § 187(b)(3); Murder Charge Against Chelsea Becker for Experiencing a Stillbirth Is Dismissed, Pregnancy Just. (May 20, 2021), https://www.pregnancyjusticeus.org/murder-charge-against-chelsea-becker-for-experiencing-a-stillbirth-is-dismissed/ [https://perma.cc/3WNX-NCGK].
166 Pregnancy Just., supra note 164, at 4.
169 Id. at *1.
“Pregnant people are, simply by virtue of being pregnant, vulnerable to criminal charges: child abuse or endangerment if they are accused of exposing their fetus to some perceived or actual risk of harm; or murder, feticide, or manslaughter if they experience a pregnancy loss.”

Between *Roe* in 1973 and *Dobbs* in 2022, more than 1,800 people were criminalized for their pregnancies. Unsurprisingly, Black and Hispanic women bear the brunt of the fetal personhood statutes and related pregnancy criminalization efforts. A report analyzing 413 arrests of pregnant women from 1973 until 2005 showed a clear disparity for arrests of poor and minority pregnant women: 71% of the women arrested were low-income, 59% were women of color, and 52% were Black women. And this was when abortion was legal. “Black people represented 18.2% of arrests due to pregnancy criminalization from January 2006 to June 2022, despite Black women making up only 13.0% of the U.S. population.”

The criminalization of pregnancy and abortions will likely become more extreme after the *Dobbs* decision. If ectopic pregnancies, miscarriages, and abortions are subject to state surveillance, people who are already at a higher risk of police surveillance (i.e., Black people) will likely see the highest rates of arrest. It follows that those who most often seek abortions will also see higher rates of abortion-related charges. 39% of all women who had abortions in 2020 were non-Hispanic Black, while 33% were non-Hispanic white, 21% were Hispanic, and 7% were of other races or ethnicities. Because minority women are more likely to seek abortion, they are at higher risk of being charged for an abortion-related crime.

While arresting women for miscarriages may seem too extreme to imagine, these horrible instances are already playing out. For instance, in the past two years alone, 14 women have been charged with “homicide by child abuse or unlawful neglect of a child” after they lost pregnancies. Recently in Ohio, a Black woman who suffered a miscarriage in her home bathroom faced a fifth-degree felony punishable by up to a year in prison and a $2,500 fine for “abuse of a corpse.” After being told her fetus was non-viable at 21 weeks, the woman was denied proper care by the hospital, who delayed inducing the fetus out of

172 Id.
174 Id. at 311.
176 PRYO, BARKOW, BLYBER, BREVES, BOLITHO, & SMOOT, supra note 122.
fear of legal ramifications; Ohio’s abortion laws banned abortion at 22 weeks. The hospital alerted the police about the woman’s at-home miscarriage and “the need to locate the fetus,” which police found in her toilet.  

While a grand jury decided to drop the charges in January 2024, it is necessary to think about the implications of this scenario had they not. If the State had moved forward with charging this woman with “abuse of a corpse” after a miscarriage, she could have potentially faced a felony charge. In Ohio, convicted felons lose their right to vote while in prison. Had this woman ultimately been charged, and had been imprisoned in, say, summer 2024, she would be unable to vote in the 2024 presidential election. While one woman’s vote might not swing an election, if these types of abortion or miscarriage charges are carried out on a larger scale, women’s disenfranchisement could have a real impact.

This story also highlights the importance of prosecutorial discretion. Prosecutorial discretion is a crucial tool that empowers prosecutors to decide which cases to pursue, considering factors like the severity of the offense, available evidence, and public interest. Prosecutorial discretion becomes especially significant in the context of abortion bans and fetal personhood laws. It acts as a safeguard, preventing unjust or overly aggressive enforcement of laws that could disproportionately harm marginalized communities and restrict access to reproductive healthcare. The fact that most state prosecutors are elected also highlights the importance of voting rights and a robust voting electorate.

Women who miscarry, or are in accidents, or eat the wrong thing during pregnancy, or are otherwise deemed to have “endangered their fetuses” are at risk of being charged with felonies in states which criminalize pregnancy related issues, like Ohio. Even though abortion itself might not be subject to felony charges, prosecutors can use lesser-known laws and child-abuse claims to regulate pregnancy and put women in jail.

B. Federal Abortion Ban

The anti-abortion movement is not content with stopping at the overturning of Roe v. Wade. Anti-abortion activists and politicians, mostly led by conservative politicians and Christian religious organizations, are now setting their sights on a national ban. In September 2022, Senator Lindsey Graham introduced a law which would prohibit abortion after fifteen weeks nationwide, with only very narrow exceptions—and states would still

---


182 Wayte v. United States, 470 U.S. 598, 600 (explaining prosecutors hold extensive discretion in determining whom to prosecute, justified by factors such as case strength, deterrence value, enforcement priorities, and overall enforcement strategy).

be able to ban abortion even more strictly.\textsuperscript{184} The movement has support from numerous Republican politicians, including new speaker of the House Mike Johnson,\textsuperscript{185} Senator Tim Scott,\textsuperscript{186} and former vice president and failed presidential candidate, Mike Pence.\textsuperscript{187} Though Graham’s bill failed to pass the senate, Pence recently called for a nationwide ban on abortion pills; on the day \textit{Roe} fell, Pence argued “we must not rest” until abortion is banned across the United States.\textsuperscript{188} Without the protection from \textit{Roe}, a national abortion ban could become reality. Alarmingly, that reality might not be far off; it has been reported that former president Trump has expressed support for a nationwide 16-week abortion ban if he is re-elected.\textsuperscript{189} As of 2024, “125 members in the House, including Speaker Mike Johnson, support the Life at Conception Act, a federal personhood bill that would extend all inalienable rights afforded to Americans by the Constitution to apply at all stages of life, including to fetuses and embryos.”\textsuperscript{190}

Abortion restrictions and a general tightening of reproductive laws is not a new phenomenon. Politicians have been attempting to restrict abortion and reproductive access for centuries, and modern lawmakers are learning from the past. The 1873 Comstock Act\textsuperscript{191} banned the mailing of "obscene" material as well as abortion drugs and contraception. While the law has been cut down over the years, the abortion provision remained but was not used while \textit{Roe v. Wade} was in place.\textsuperscript{192} The Heritage Foundation, which has proposed detailed policies using the Comstock Laws as a blueprint for a potential GOP administration, argues that Comstock “unambiguously prohibits mailing abortion drugs” and says the next administration should “enforce federal law against providers and distributors of [abortion] pills.”\textsuperscript{193} While the Biden administration disagrees with this interpretation, a Republican administration could embrace the policy. Trump’s stance on a 16-week national abortion ban might suggest that his administration would align with the Heritage Foundation’s interpretation. And this is if abortion pills are still legal; the Supreme


\textsuperscript{187} Id.


\textsuperscript{192} Id.

\textsuperscript{193} Id.

Right now, efforts to criminalize abortion and fetal endangerment vary from state to state. But already, people have been denied treatment for miscarriage and ectopic pregnancy, both life-threatening conditions.\footnote{Joshua Sharfstein, \textit{Jailed and Pregnant: What the Roe Repeal Means for Incarcerated People}, JOHNS HOPKINS BLOOMBERG SCH. PUB. HEALTH (Sept. 21, 2022), https://publichealth.jhu.edu/2022/abortion-care-for-incarcerated-people-after-dobbs [https://perma.cc/D6KG-9BGB].} A nationwide ban would not only put women and other people seeking abortion at risk and curtail bodily autonomy rights but would also open the door for lawmakers and prosecutors to further criminalize and prosecute abortions. This means that more people, especially Black women, would be at risk of felony charges and a loss of their voting rights. Losing voting rights would prevent women from participating politically and being able to play a part in choosing their elected representatives, the same ones who decide which laws are implemented. Although weaponizing abortion restrictions as a way to limit voting might seem far-fetched, so did overturning of \textit{Roe v. Wade}.

A nationwide abortion ban and a federal fetal-personhood law could significantly increase the number of women charged with abortion and pregnancy-related crimes, forcing them into the criminal justice system for seeking reproductive healthcare. Such punitive measures would disproportionately impact marginalized communities, exacerbating existing disparities in the legal system. As a result, more women would face felony convictions, leading to a surge in felony disenfranchisement. This harmful cycle perpetuates systemic inequalities, further marginalizing individuals and depriving them of their fundamental right to participate in the democratic process. Recognizing the intricate link between reproductive rights and voting rights is essential to combatting this injustice and ensuring equitable access to civic engagement for all individuals.

**Conclusion**

Voting rights and abortion rights are intertwined. Without voting rights, women cannot participate politically; without political participation, women cannot choose pro-choice politicians. Voting restrictions suppress the voting power of disadvantageous groups, particularly Black women, and it is hard to imagine that Republican politicians are not aware of this fact. Black women are a huge force in our political climate. More than two-thirds of Black women voted in the 2020 presidential election\footnote{Marianne Schnall, \textit{New Report On The State Of Black Women In American Politics Highlights Both Progress and Untapped Potential}, FORBES (Nov. 3, 2021, 12:40 PM), https://www.forbes.com/sites/marianneschnall/2021/11/03/new-report-on-the-state-of-black-women-in-american-politics-highlights-both-progress-and-untapped-potential/?sh=230e1aaa6fd4 [https://perma.cc/7FWF-53E3].}—the third highest rate of any race-gender group. Therefore, Republicans have a political motivation to suppress their vote. As history shows, politicians are willing to use their power to silence these voters. While voting and abortion restrictions might be less overtly violent than the poll intimidation tactics of the past, they are still highly damaging.
Restrictive abortion laws increase the ways in which Black women can be criminalized and lose their right to vote. If Black women are incarcerated at higher rates for abortion and pregnancy loss related crimes, then they could face higher rates of incarceration and felony disenfranchisement. As voting rights laws already disproportionately impact Black women, further limits on their voting rights will only exacerbate the inequality Black voters face in choosing their elected officials. As history shows, there is a pattern of laws which target the right to vote, and abortion related restrictions could be part of the newest iteration.

To ensure that all people, especially Black women, have an equal opportunity to vote, we must get rid of felony disenfranchisement laws which disproportionately impact people of color. We must also protect women from criminalization efforts targeting abortion. Voting rights and abortion access are vital to women’s autonomy and ability to fully engage in society. Abortion restrictions and voting restrictions might seem disconnected, but they are part of a larger history of suppressing freedom.

Further advocacy for voting rights and abortion rights is vital. Congress can start by passing federal protection for cross-state abortion, like the Ensuring Women’s Right to Reproductive Freedom Act, which prohibits interference with the provision, access, or assistance of abortion across state lines. Congress must also pass the John Lewis Voting Rights Act, which restores the protections of the Voting Rights Act by modernizing the VRA’s formula determining which states and localities have a pattern of discrimination; Ensuring that last-minute voting changes do not adversely affect voters by requiring officials to publicly announce all voting changes at least 180 days before an election; and expanding the government’s authority to send federal observers to any jurisdiction where there may be a substantial risk of discrimination at the polls on Election Day or during an early voting period.

People concerned about reproductive and voting rights issues should exercise their own voting rights and encourage others to do the same. Supporting political candidates who advocate for reproductive rights and voting rights is also helpful, and people can call their current representatives urging them to support these Acts. In addition, people can vote for and support prosecutors who choose not to prosecute abortion or pregnancy related crimes. Prosecutors have wide discretion over the cases they bring, and supporting candidates who will not entertain abortion related charges will help combat the repercussions of restrictive abortion laws. At the state level, states can act to enshrine the right to abortion in their constitutions. In 2022, California, Michigan, and Vermont enshrined the right to abortion in their state constitutions. In 2023, Ohio voters followed

suit and voted to ratify an amendment to the state constitution to establish a constitutional right to abortion.\(^{200}\)

We must also advocate against felony disenfranchisement laws which heavily disfavor Black voters. Some advocates suggest establishing specialized polling places for incarcerated individuals.\(^{201}\) Data suggests that convenient polling places could help increase voter participation for people who have been detained but not yet charged. Other major cities, like Los Angeles, Washington, D.C., and Denver, have also implemented similar measures to allow felons to cast their vote, either in-person or at a jail. A representative of Speak Up and Vote in Illinois said that people detained in jail frequently “didn’t realize they’re eligible to vote, so they didn’t try.”\(^{202}\) At a basic level, simple awareness campaigns would boost voter-turnout within eligible prison populations, as many incarcerated people and formerly incarcerated people do not know when, or how, they are allowed to vote. The Prison Policy Initiative, a non-profit, non-partisan organization which researches the broader harms of mass criminalization, suggests that activists do more to raise awareness of the availability of the polling location and voting eligibility requirements by providing in-person voting at correctional facilities on Election Day and helping incarcerated individuals take advantage of same-day registration when available.\(^{203}\) These efforts will not only raise awareness, but help incarcerated people gain physical access to the polls. State and local governments can also work to rid their states of felony disenfranchisement laws. A movement is already underway towards this goal; thirty-two states, Washington D.C. and the federal government have initiated measures to restore voting rights to felons.\(^{204}\)

Lastly, it is important to raise awareness about the intersection of abortion and voting rights. Advocacy of any one issue in a silo, without recognizing how the issue interacts with other rights and communities, will only make the process for equality longer. Though the intersection of these rights might not be obvious, it is one which we need to pay attention to; oppression of women does not happen overnight, but instead occurs over years, as restrictive laws pile one by one on top of each other. As women’s rights are chipped away, we should pay attention to who is dismantling these rights and why. Recognizing the intersection of voting rights and reproductive rights is paramount in safeguarding fundamental liberties and ensuring equitable access to civic participation.

The threat of a national abortion ban looms large, with potential consequences extending far beyond reproductive autonomy. Such measures not only restrict individuals’ control over their bodies but also exacerbate systemic inequalities, particularly for


\(^{202}\) See id. One study found “roughly 25% of people detained at the [Cook County, Ill.] jail . . . cast their ballots [in the June 2022 primary]. This location was so successful that people at the jail actually voted at a higher rate than registered voters in Chicago (20%).” *Id.*

\(^{203}\) *Id.*

marginalized communities. Moreover, the risk of felony disenfranchisement compounds these challenges, further disenfranchising individuals and perpetuating cycles of oppression by shutting people out of the political process. By acknowledging and addressing this intersectionality, we can strive for inclusive policies that uphold both reproductive autonomy and voting rights, fostering a society where all individuals are empowered to participate fully in democratic processes.

Continuing to dismantle felony disenfranchisement and fighting for pro-choice, anti-criminalization laws will contribute to the protection of women’s voting power. Access to the vote and access to reproductive healthcare are deeply entwined, and an intersectional approach is essential to protecting and expanding both fundamental rights.