

No. 19-1392

In the
Supreme Court of the United States

THOMAS E. DOBBS, STATE HEALTH OFFICER OF
THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL.,

Petitioners

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, et al.,

Respondents

*On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit*

**BRIEF OF 240 WOMEN SCHOLARS AND
PROFESSIONALS, AND PROLIFE FEMINIST
ORGANIZATIONS
IN SUPPORT OF PETITIONERS**

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<i>Planned Parenthood of S.E. Penn. v. Casey</i> , 744 F. Supp. 1323 (E.D. Pa. 1990), <i>aff'd in part, rev'd in part</i> , 947 F.2d 682 (3d Cir. 1991), <i>aff'd in part, rev'd in part</i> , 505 U.S. 833 (1992).....	10
<i>Roe v. Wade</i> , 410 U.S. 113 (1973).....	<i>passim</i>
<i>Roe v. Wade</i> , 314 F. Supp. 1217 (N.D. Tex. 1970), <i>aff'd in part, rev'd in part</i> , 410 U. S. 113 (1973).....	6
<i>Tagatz v. Marquette Univ.</i> , 861 F.2d 1040 (7th Cir. 1988).....	7
<i>United States v. Virginia</i> , 518 U.S. 515 (1995).....	7

Statutes and Rules

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Equal Employment Act of 1972, Pub. L. No. 92-261, 86 Stat. 103.....	15
Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56 (codified as amended at 29 U.S.C. § 206(d)(1)).....	14
Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000e <i>et seq.</i>).....	14
Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. § 3604).....	14
Fair Labor Standards Act of 1938, 29 U.S.C. § 206(d) (2012).....	14
Federal Aid Highway Act of 1973, Pub. L. No. 93-87, 87 Stat. 250 (1973) (codified as amended at 23 U.S.C. § 324).....	15
Fed. R. Evid. 201(b).....	10

Public Works and Economic Development Act of
1971, Pub. L. No. 92-65, 85 Stat. 166 (codified
as amended at 42 U.S.C. § 3123).....14

U.S. SUP. CT. R. 37.2(a), 37.6.....1

Other Authorities

*A Half-Century of Change in the Lives of American
Women*, 2 RUSSELL SAGE FOUND. J. SOC. SCI.
(2016).....18

ABA Profile of the Legal Profession 2020 1 (2020),
<https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>
.....35

George A. Akerlof, Janet L. Yellen & Michael L.
Katz, *An Analysis of Out-of-Wedlock
Childbearing in the United States*, 111 Q. J.
ECON. 277 (1996).....38

Helen Alvaré, *Abortion, Sexual Markets and the
Law in PERSONS, MORAL WORTH AND
EMBRYOS*, 261 (Steven Napier ed., 2011)...38

American Express OPEN, *The 2017 State of Women-
Owned Businesses Report*, VENTURENEER
(2017), <https://ventureneer.com/wp->

content/uploads/2017/11/2017-AMEX-SWOB-FINAL.pdf.....	33
Joshua Angrist & William Evans, <i>Schooling and Labor Market Consequences of the 1970 State Abortion Reforms</i> 27-28 (NBER, Working Paper No. 5406, 1996), http://www.nber.org/papers/w5406.pdf	20
Peter Arcidiacono et al., <i>Terms of Endearment: An Equilibrium Model of Sex and Matching</i> , 7 QUANTITATIVE ECON. 117 (2016).....	36
Assoc. Am. Med. Coll., <i>Diversity in Medical Education: Facts & Figures 2016</i> , FACTS & FIGURES SERIES (2016), https://www.aamcdiversityfactsandfigures2016.org/report-section/section-3/#figure-1	31
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- Martha J. Bailey & Thomas A. DiPrete, *Five Decades of Remarkable but Slowing Change in Women's Economic and Social Status and Political Participation*, 2 RUSSELL SAGE FOUND. J. SOC. SCI. 1 (2016).....19, 20, 39
- Stephanie Bornstein, Joan Williams & Genevieve Painter, *Discrimination against Mothers Is the Strongest Form of Workplace Gender Discrimination: Lessons from U.S. Caregiver Discrimination Law*, 28 INT'L J. COMPAR. LAB. L. INDUS. REL. 45 (2012).....40
- William S. Consovoy, *The Rehnquist Court and the End of Constitutional Stare Decisis: Casey, Dickerson and the Consequences of Pragmatic Adjudication*, 2002 UTAH L. REV. 53 (2002).....9, 10
- First Year and Total J.D. Enrollment by Gender 1947 – 2011*, AM. BAR ASSOC., https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf.....31
- DIANA GREENE FOSTER, *THE TURNAWAY STUDY: TEN YEARS, A THOUSAND WOMEN, AND THE*

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Diane G. Foster, <i>Socioeconomic Outcomes of Women who Receive and Women who are Denied Wanted Abortions</i> , 108 AMER. J. PUB. HEALTH 407 (2018).....	23
H.R. COMMITTEE ON SMALL BUSINESS, 100TH CONG., NEW ECONOMIC REALITIES: THE RISE OF WOMEN ENTREPRENEURS (1988).....	30
<i>Introduction to the Turnaway Study</i> , ADVANCING NEW STANDARDS REPROD. HEALTH (2020), https://www.ansirh.org/sites/default/files/publications/files/turnawaystudyannotatedbibliography.pdf	28
Jenna Jerman et al., <i>Characteristics of U.S. Abortion Patients in 2014 Since 2008</i> , Guttmacher Institute Report.....	34
Natalie Kitroeff & Jessica Silver-Greenberg, <i>Pregnancy Discrimination Is Rampant Inside America’s Biggest Companies</i> , N.Y. TIMES (February 8, 2019), https://www.nytimes.com/interactive/2018/06/15/business/pregnancy-discrimination.html	40

Randy J. Kozel, <i>Stare Decisis as Judicial Doctrine</i> , 67 WASH. & LEE L. REV. 411 (2010).....	8, 10
Phillip Levine, SEX AND CONSEQUENCES: ABORTION, PUBLIC POLICY, AND THE ECONOMICS OF FERTILITY (2007).....	35
Paul B. Linton, <i>State Equal Rights Amendments: Making a Difference or Making a Statement</i> , 70 TEMP. L. REV. 907 (1997).....	15
Sigrid Luhr, <i>Signaling Parenthood: Managing the Motherhood Penalty and Fatherhood Premium in the U.S. Service Sector</i> , 259 GENDER SOC'Y (2020).....	40
Sarah Miller et. al., <i>What happens after an abortion denial? A Review of Results from the Turnaway Study</i> , 110 AEA PAPERS PROC. 1 (2020).....	23
Sarah Miller et al., <i>The Economic Consequences of Being Denied an Abortion</i> (NBER Working Paper, Paper No. 26662, 2020) https://www.nber.org/system/files/working_papers/w26662/w26662.pdf	<i>passim</i>
ROSALIND P. PETCHESKY, ABORTION AND WOMAN'S CHOICE, (rev. ed. 1990).....	5, 11

- Richard Posner, *SEX AND REASON* (1994).....36
- David C. Reardon, *The Embrace of the Proabortion Turnaway Study: Wishful Thinking? Or Willful Deceptions?*, 85 *LINACRE Q.* 204 (2018).....22, 28
- Corinne H. Rocca et al., *Women's Emotions One Week After Receiving or Being Denied An Abortion In The United States*, 45 *PERSP. ON SEXUAL & REPROD. HEALTH* 122 (2013).....22
- Isabel Sawhill. *Non-marital Births and Child Poverty in the United States*, *BROOKINGS* (June 29, 1999), <https://www.brookings.edu/testimonies/non-marita-births-and-child-poverty-in-the-united-states/>.....38
- Betsey Stevenson & Justin Wolfers, *The Paradox of Declining Female Happiness*, 1 *AM. ECON. J.: ECON. POL'Y* 190 (2009).....37
- Lyman Stone, *American Women Are Having Fewer Children Than They'd Like*, *N.Y. TIMES* (Feb. 13, 2018), <https://www.nytimes.com/2018/02/13/upshot/american-fertility-is-falling-short-of-what-women-want.html?smid=em-share/>.....37

<i>The National Organization for Women's 1966 Statement of Purpose</i> , NOW (1966), https://now.org/about/history/statement-of-purpose/	15
LISA WADE, AMERICAN HOOK UP (2017).....	36
Vivek Wadha et. al., <i>The Anatomy of an Entrepreneur: Family Background and Motivation</i> , EWING MARION KAUFMANN FOUND. 1 (2009).....	34
JOAN WILLIAMS, UNBENDING GENDER, WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT (2000).....	17
<i>Women Business Owner Statistics</i> , NAT'L ASS'N WOMEN BUS. OWNERS, https://www.nawbo.org/resources/women-business-owner-statistics (last visited July 23, 2021).....	33
Jonathan Zandberg, <i>Family Comes First: Reproductive Health and the Gender Gap in Entrepreneurship</i> , 140 J. FIN. ECON. 838 (2021).....	33

INTEREST OF *AMICI*¹

Amici, Women Scholars and Professionals, are a group of 240 women who have achieved academic and professional success and who reject the argument that the “ability of women to participate equally in the economic and social life of the Nation” requires the availability of abortion. The individual names, doctoral degrees, and degree-granting institutions of *amici* are set forth in Appendix A.

Feminists Choosing Life of New York (FCLNY) is a human rights coalition that embraces and promotes pro-life feminism and the consistent life ethic. FCLNY's public advocacy draws connections between the root causes of violence, inequality, and the social forces that dehumanize. FCLNY believes that there is no causal connection between women's equality and the “right to abortion” set forth in *Roe vs. Wade*, and that the judicially-created right to abortion has oppressed rather than empowered women.

¹ As required by Rule 37.2(a), counsel of record for each party has consented to the filing of this amici brief. Pursuant to Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, and no person other than the *amici* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

Feminists for Nonviolent Choices is a consistent life organization that seeks to open minds to its philosophy of pro-life feminism and the belief that all persons, by virtue of their human dignity, have the right to live without violence from conception to natural death. Its goal is to educate and encourage society to find and promote alternatives to the violence inherent in war, capital punishment, assisted suicide and abortion. Pro-life feminism promotes solid education, fair housing, excellent working conditions and comprehensive health care for women—not the means to take the lives of their unborn children.

New Wave Feminists (NWF) is a consistent life organization that focuses on promoting non-violence from womb to tomb. NWF does this by promoting systemic change in areas including but not limited to immigration, racial justice, and human trafficking, while providing pre-natal and postnatal resources for women. NWF seeks to end the dehumanization and insufficient support that leads to the coercion or exploitation of marginalized and vulnerable groups.

Pro-Life San Francisco (PLSF) is a Progressive-led grassroots activist organization operating in arguably the most pro-choice culture in America. PLSF works to vigorously educate the community on the violence of abortion and connect pregnant people

from all walks of life with resources and support networks. Pregnancy discrimination is real and is aided by widespread legal abortion in America. Corporate greed is driving the expansion of this grave human rights injustice despite the practice's known pervasive negative effect on pregnant people. PLSF stands with the signers of this brief in vehemently opposing this unjust form of patriarchal oppression.

Secular Pro-Life (SPL) is a coalition of people of any faith or no faith who advance secular arguments against abortion. SPL is led exclusively by atheist women. It recognizes that widely available elective abortion has dramatically increased the pressure for women to abort their children in any pregnancies conceived in less-than-ideal circumstances. This standard has greatly stigmatized women who wish to have both children and a career, and increased the stigma surrounding mothers and children struggling with poverty, disability, abusive relationships, and other challenges. It is grotesque to suggest that abortion is a prerequisite to equality. Abortion prioritizes the wombless male body over other forms of embodiment. It rejects a societal standard which says women's path to equality is violence against their own children.

Siena Symposium is an academic community dedicated to a deeper understanding of the

complementarity that characterizes the relationship of men and women. It achieves its mission through studying and promoting a true understanding of authentic womanhood and authentic masculinity.

Women Affirming Life (WAL) was formed more than 30 years ago as a pro-life and pro-woman organization to promote the dignity and worth of human life at all of its stages. Among WAL's goals is to assure that the voices of all women, including marginalized women, are heard in the public square, with the message that women's empowerment is not achieved by the ability to obtain an abortion. The members of WAL understand that *Roe v. Wade* has done nothing to help women achieve social equality and has, in fact, demeaned and dehumanized women. Relying on the core value of the dignity of all members of the human race, WAL has sought to improve women's lives by working with women to bring the message of truly authentic human development to the public conversation in a way that recognizes that true feminism is inclusive of all and excludes no member of the human family.

SUMMARY OF THE ARGUMENT

In *Roe v. Wade*, this Court held that the right of privacy included a woman's right to obtain an abortion based on the following conclusory explanation: "The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent." 410 U.S. 113, 153 (1973). In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), a plurality of this Court affirmed *Roe*'s holding—not because the justices thought the 1973 decision was correct as a matter of constitutional law, but rather on the faulty premise that women had "reliance interests" in the judicially-created right to abortion that ensured their capacity "to participate equally in the economic and social life of the nation." *Id.* at 856. In support of this premise, Justices O'Connor, Souter, and Kennedy referenced the work of a single political scientist, who herself did not claim any causal link between abortion and women's changing economic and social status. *Id.* (citing ROSALIND P. PETCHESKY, ABORTION AND WOMAN'S CHOICE 109, 133, n. 7 (rev. ed. 1990)).

The plurality's lack of support for its statement did not go unnoticed. Chief Justice Rehnquist characterized the plurality's factual claim as "undeveloped and totally conclusory." *Id.* at 956 (Rehnquist, J., *dissenting*). "Surely it is dubious to suggest that women have reached their 'places in

society' in reliance upon *Roe*, rather than as a result of their determination to obtain higher education and compete with men in the job market, and of society's increasing recognition of their ability to fill positions that were previously thought to be reserved only for men." *Id.* at 956-57. Indeed, even a cursory review of history reveals that the expansion of opportunities for women—as well as their increased participation in political, social, and economic spheres—predated *Roe*.

It is the purpose of this brief to summarize the empirical evidence relating to women's economic and social achievements as well as their changing participation in American society for the fifty-one years since the district court ruled in *Roe v. Wade*, 314 F. Supp. 1217 (N.D. Tex. 1970), *aff'd in part, rev'd in part*, 410 U. S. 113 (1973), and to show that such evidence demonstrates that the factual premise of the plurality in *Casey* is false. There simply is no causal link between the availability of abortion and the "capacity of women to act in society." *Compare Casey*, 505 U.S. at 860.

Data regarding women's participation in the labor market and entrepreneurial activities, as well as their educational accomplishments, professional engagement, and political participation, reveals virtually no consistent correlation with abortion rates or ratios. And, certainly, in the absence of

correlation, there can be no causation. *See Tagatz v. Marquette Univ.*, 861 F.2d 1040, 1044 (7th Cir. 1988).

Instead, the data suggest some correlation between abortion, the feminization of poverty, and women's declining levels of happiness, including fewer and less satisfying long-term committed relationships with partners and the birth of fewer children than women desire by the end of their reproductive lives. There is also some evidence that the *Casey* plurality's imprimatur on a male normative experience of reproduction as the model for economic and social participation has retarded meaningful accommodation of pregnancy and motherhood in the workplace and other spheres of society. The *Casey* plurality failed to recognize the possible damage that the unrestricted availability of abortion could visit upon authentic progress toward sexual equality in light of "inherent difference[s] between men and women." *Cf. United States v. Virginia*, 518 U.S. 515, 533 (1995).

Based on the lack of evidence for the central tenet of both the *Roe* decision and *Casey's stare decisis* holding, viz., that abortion advances women's social and economic success, this Court should overrule both of these decisions.

ARGUMENT

I. The *Casey* Court’s refusal to overrule *Roe* was predicated upon a societal reliance interest on abortion that was and is unproven.

In *Planned Parenthood v. Casey*, Justices O’Connor, Kennedy, and Souter opined that institutional integrity and *stare decisis* required the Court to reaffirm its prior decisions finding abortion to be constitutionally protected. 505 U.S. at 845-46. In determining the “respective costs of reaffirming and overruling a prior case,” the Court asked whether the prior decisions were “subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation.” *Id.* at 854. Described in this manner, and consistent with prior judicial use, reliance interests are primarily concerned with economic or commercial activities that involve long-term planning or agreements, such as those found in cases involving contract or property law.² *See*

² Professor Randy J. Kozel identifies four types of reliance interests considered in judicial opinions: reliance by specific individuals, groups, and organizations; reliance by governments; reliance by courts; and reliance by society at large. Randy J. Kozel, *Stare Decisis as Judicial Doctrine*, 67 WASH. & LEE L. REV. 411, 452 (2010).

Kimble v Marvel Entertainment, LLC, 576 US 446, 457 (2015).

The plurality acknowledged that this common understanding of reliance would seem to have no applicability in the case of abortion. “Abortion is customarily chosen as an unplanned response to the consequence of unplanned activity or to the failure of conventional birth control . . . [and] such behavior may appear to justify no reliance claim.” *Casey*, 505 U.S. at 856.

In place of individual reliance, the plurality introduced the more elastic and controversial concept of societal reliance.³ “[F]or two decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail.” *Id.* at 856. The plurality effectively (and

³ William S. Consovoy, *The Rehnquist Court and the End of Constitutional Stare Decisis: Casey, Dickerson and the Consequences of Pragmatic Adjudication*, 2002 UTAH L. REV. 53, 77 (2002) (“[I]n *Casey*, as will be discussed, the joint opinion authored by Justice O’Connor expanded the reliance inquiry into a consideration of not only specific reliance, but a generalized societal reliance as well.”).

erroneously) took judicial notice of this social “fact” as if it were “not subject to reasonable dispute” or were “capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.”⁴ Compare Fed. R. Evid. 201(b). It compounded its error when it used this “fact” as the foundation of its argument that women rely⁵ upon abortion for their success, opining that “[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives” through access to abortion.

⁴ The *Casey* district court ruling contains no finding of fact supporting the plurality’s statements of societal reliance or relationship to women’s advancement. Neither does the district court opinion suggest that any evidence on this point was presented. The words “rely” or “reliance” only appear three times in the opinion: twice in the context of counseling provided by physicians, and once in reference to reliance on a judicial opinion. See *Planned Parenthood of S.E. Penn. v. Casey*, 744 F. Supp. 1323 at 1346, 1355, 1387 (E.D. Pa. 1990), *aff’d in part, rev’d in part*, 947 F.2d 682 (3d Cir. 1991), *aff’d in part, rev’d in part*, 505 U.S. 833 (1992).

⁵ See e.g. Consovoy, *supra* note 3, at 77 (observing that inquiry into a generalized societal reliance “was at the heart of the dispute in *Casey*”), and Kozel, *supra* note 2, at 462-63 (2010) (describing claims of societal reliance in *Casey* as “widely debated” and critiquing the plurality opinion because the “perceived legitimacy of the Court’s actions should be understood as an *effect*, not an *objective*”) (emphasis added).

Casey, 505 U.S. at 856. In support of this simplistic historical and empirical assumption, the justices provided only a single citation. *Id.* (citing PETCHESKY, *supra*, 109, 133, n. 7).

Yet, a review of Professor Petchesky's text reveals a much more complex relationship between women's participation in "economic and social life" and the availability of abortion. Professor Petchesky's thesis, which she states multiple times throughout the book, is that "abortion in the 1970s and 1980s *is the consequence, not cause*, of complex and mostly positive changes in young women's lives since 1960." Petchesky, *supra*, at xvii (emphasis added). *See also id.* at 102 ("[S]hifts in state policies regarding abortion or fertility have usually been responses to, rather than determinants of, changes in the economic and social conditions that structure women's work and marital patterns and birth control practices."). While *amici* dispute Petchesky's conclusion that abortion is a consequence of positive changes in women's lives, they agree that abortion is neither the cause nor the determinant of women's greater participation in society.

Legal scholar Erika Bachiochi describes the plurality's argument for societal reliance this way:

To summarize: in grounding its reaffirmation of a decision it suspects was

wrongly decided as an original matter, the *Casey* court relies upon a generalization unsupported by the very reference it cites. That is, even if lower fertility rates do lead to higher rates of education and employment (or vice versa), the Court does not offer any evidence that abortion (rather than fertility regulation of various kinds) is specifically correlated with higher rates of education and employment.

Erika Bachiochi, *A Putative Right in Search of a Constitutional Justification: Understanding Planned Parenthood v. Casey's Equality Rationale and How it Undermines Women's Equality*, 35 QUINNIPIAC L. REV. 593, 631 (2017) (footnotes omitted).

Amici have gathered the empirical evidence available after half a century of constitutional protection for a virtually unfettered right to abortion, and that evidence does not support the plurality's claim that abortion has played a necessary and causal role facilitating women's participation in the economic and social life of the country. Instead, it shows that there are innumerable other factors that contributed to women's social and economic equality, as well as evidence that abortion has actively harmed women and their progress. Absent adequate evidence

supporting *Casey's* erroneous assumption, *stare decisis* poses no barrier to full judicial review and overruling the unfounded judgment in *Roe v. Wade* that the Constitution protects a woman's right to end the life of her unborn child.

II. Expanding opportunities for women and the redefinition of their roles in society predate the judicial creation of a right to abortion in *Roe* by at least half a century.

The *Casey* plurality claimed that the ability of women to participate in the economic and social life of the nation depended on their access to abortion. Yet historical review of the half-century preceding *Roe* demonstrates a steady expansion of social, economic, and political opportunities for women—all without legal access to abortion.

The election of the first woman in Congress, Jeanette Rankin, a Republican from Montana, predated even the passage of the Nineteenth Amendment. And in the years following its ratification, a number of women entered political office at the highest levels. Their ranks included U.S. Senators, Congresswomen, and governors.

Women's political accomplishments were not limited to their elections to public office. In 1938,

Congress enacted the Fair Labor Standards Act of 1938, 29 U.S.C. § 206(d) (2012) establishing a minimum wage without regard to sex, due in part to the lobbying efforts of women. In *Fay v. New York*, 332 U.S. 261 (1947), the Supreme Court recognized that women are equally qualified with men to serve on juries. The pace of such changes accelerated in the 1960s, well before *Roe v. Wade*, with the passage of federal legislation such as:

- the Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56 (codified as amended at 29 U.S.C. § 206(d)(1)) (banning sex-based wage discrimination);
- the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000e *et seq.*) (banning sex discrimination in employment, education, or public accommodations);
- the Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. § 3604) (banning sex-based housing discrimination);
- the Public Works and Economic Development Act of 1971, Pub. L. No. 92-65, 85 Stat. 166 (codified as amended at 42 U.S.C. § 3123)

(banning sex discrimination in any federally funded program or activity);

- the Equal Employment Act of 1972, Pub. L. No. 92-261, 86 Stat. 103 (requiring equal access to jobs for persons with similar qualifications); and
- the Federal Aid Highway Act of 1973, Pub. L. No. 93-87, 87 Stat. 250 (1973) (codified as amended at 23 U.S.C. § 324) (banning sex discrimination respecting federal highway funding).

Numerous state constitutional provisions, statutes, and cases prohibiting discrimination against women were also adopted during this time. *See generally* Paul B. Linton, *State Equal Rights Amendments: Making a Difference or Making a Statement*, 70 TEMP. L. REV. 907 (1997). Even the original statement of the National Organization for Women in 1966 articulated a vision of women's equality without ever mentioning abortion. “The National Organization for Women’s 1966 Statement of Purpose,” adopted by the National Organization of Women, October 29, 1966, <https://now.org/about/history/statement-of-purpose/> Together, these laws, cases, and cultural campaigns advanced women’s opportunities, *inter alia*, in the spheres of education, employment, marital property,

government contracting, home-ownership, access to credit, control over property, and managing and affording parenthood and a work-home balance. *Id.* Women in vast numbers – with and without children – took advantage of these opportunities.

Not one of these pre-*Roe* laws or cases was predicated on women's access to abortion, yet they laid the foundation for subsequent legal developments that continue to contribute to sexual equality. For example, after *Roe*, this Court decided *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974) (overturning a requirement that female teachers leave their jobs later in pregnancy), and Congress passed the Equal Credit Opportunity Act of 1974, Pub. L. No. 93–495, 88 Stat. 1521 (codified as amended at 15 U.S.C.A. § 1691(a)(1)) (banning sex or marital-status discrimination in access to credit). Additional legislation and cases evidencing women's progress independent of *Roe* are contained in Appendix B of this brief.

It may be possible to claim anecdotally that a particular woman's abortion seemed to preserve her opportunity to pursue a particular job or degree. But it is impossible to claim that abortion access is specially responsible for the progress that American women have made in any of the above arenas, as compared with the massive array of statutes and cases described above and women's vigorous pursuit

of the opportunities they provide. Indeed, there is no study design that could credibly tease out such a causal link.

III. There is no adequate credible evidence that women, as a group, have enjoyed greater economic and social opportunities because of the availability of abortion.

When advocates for a constitutional right of legal abortion continually assert that abortion is an important causal factor in women achieving equality, they are undoubtedly relying on an assumption that a person free of the time and expense of childcare (the ideal-male-worker)⁶ is more likely to attain better education, employment, and income and that abortion assures this freedom.

Yet an assumption is not evidence. There is evidence that widely available abortion has disadvantaged women. And scholarship and studies promoted as supporting a causal link between abortion and women's advancement have all been fatally flawed for three primary reasons. First, most commonly, these studies ignore a wide-variety of

⁶ See generally JOAN WILLIAMS, UNBENDING GENDER, WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT (2000).

confounding variables, including and perhaps most importantly, the vast number of cases and laws powerfully fostering women's social equality. See *infra* Section II. Second, the research, conducted almost exclusively by abortion proponents, is riddled with scientific flaws. Finally, the studies ignore evidence that recent decades' precipitous *declines* in abortion rates (abortions per 1000 women of childbearing age) and ratios (abortions per pregnancies, excluding miscarriages and stillbirths) have accompanied dramatic *rises* in women's educational, economic and other societal gains.

A. Women's advances in the past half-century resulted from a complex mix of multiple factors.

Claiming women have "relied" upon abortion for their advancement ignores the simultaneity of legal, cultural, technological, and other events affecting women over at least the last five decades. A special issue of a leading social sciences journal devoted to the question of women's social and economic progress illustrates the large number and complexity of factors involved in women's progress in the 50 years from 1966 to 2016. *A Half-Century of Change in the Lives of American Women*, 2 RUSSELL SAGE FOUND. J. SOC. SCI. (2016). The authors note

the difficulty of assigning a degree of causality to any one factor. Among the factors that can impact women's progress, the issue discusses personal and familial factors including educational and occupational choices as well as ability and effort in school; cultural and psychological forces; changes in childbearing, marriage, and family structure; technology (including in manufacturing, domestic technology, contraception, and abortion) and myriad laws and policies. Martha J. Bailey & Thomas A. DiPrete, *Five Decades of Remarkable but Slowing Change in Women's Economic and Social Status and Political Participation*, 2 RUSSELL SAGE FOUND. J. SOC. SCI. 1, 3 (2016). The introductory article in the series also highlights statistical reasons rendering causation so very difficult to untangle, including: conflicting studies, researchers' use of different methodologies, the widely varying statistical significance of results, and efforts to gauge the potential importance of selection effects using assumptions it declares "*almost impossible to test.*" *Id.* at 6 (emphasis added).

The authors acknowledge the effects of pre-*Roe* cultural changes elevating women's social position, writing that it is "likely that more recent developments are the continuation of an evolution that extends back in time to the first wave of feminism of the late nineteenth and early twentieth centuries, as well as women's empowerment during

World War II.” *Id.* at 20. Likewise, the simultaneity of cultural and technological changes highly complicates attempts to measure the effects of abortion. *Id.* at 15. Respecting abortion and women’s labor force participation they write: “[e]vidence is more limited, however, that changes in abortion access translated into changes in women’s labor-force outcomes.” *Id.* at 14-15. In particular, the authors point to one study showing that legal reforms to abortion access may have impacted education and labor-market outcomes among Black women, but importantly, note that “the statistical strength of these results tempers their conclusions.” *Id.* (citing Joshua Angrist & William Evans, *Schooling and Labor Market Consequences of the 1970 State Abortion Reforms* 27-28 (NBER, Working Paper No. 5406, 1996), <http://www.nber.org/papers/w5406.pdf>).

In the end, attempts to both aggregate and untangle women’s personal stories – reflecting individual values, familial, health, and educational histories, economic and cultural resources, access to opportunities, and the impact of a changing legal and social environment – in order to isolate any effect that access to abortion may have had on women’s participation in the economic and social life of their communities, appear doomed from the start.

B. Abortion activists rely on deeply flawed studies to support claims of advantages from abortion.

The impossibility of isolating abortion as a cause of women's increased economic and social participation has not stopped abortion advocates from claiming certainty about abortion's role in women's advancement, often relying upon a series of studies collectively called the "Turnaway Studies." These studies claim to compare the fates of women denied late-term abortions (because of clinic gestational limits) to women who received abortions earlier in their pregnancies. DIANA GREENE FOSTER, *THE TURNAWAY STUDY: TEN YEARS, A THOUSAND WOMEN, AND THE CONSEQUENCES OF HAVING – OR BEING DENIED – AN ABORTION* (2021). These conclude that the latter group fares better economically and educationally. But these studies are fatally flawed.

1. **The Turnaway Studies do not establish a causal link between abortion and women's social and economic progress.**

The Turnaway Studies were funded by advocates for legal abortion⁷ at a research center advocating for legal abortion: the Bixby Center for Global Reproductive Health at the University of California, San Francisco. The studies suffer from high dropout rates resulting in tiny cohorts and low statistical power, the lack of a control group, undefined cohorts, and the researchers' refusal to share data with independent researchers, contrary to scientific practices. See David C. Reardon, *The Embrace of the Proabortion Turnaway Study: Wishful Thinking? Or Willful Deceptions?*, 85 LINACRE Q. 204, 210 (2018).

Researchers initially recruited women at 30 abortion clinics and attempted to interview them for 5 years. Corinne H. Rocca et al., *Women's Emotions One Week After Receiving or Being Denied An Abortion In The United States*, 45 PERSP. ON SEXUAL & REPROD. HEALTH 122, 123 (2013). Their goal was to compare the fates of women obtaining abortions

⁷ The David and Lucille Packard Foundation, the William and Flora Hewlett Foundation, and the Wallace Alexander Gerbode Foundation.

to women turned away from abortion clinics because their pregnancies exceeded clinics' gestational limits. The authors concluded that being denied a wanted abortion results in economic insecurity and higher chances of falling below the poverty line.⁸

A total of 292 women up to 3 weeks past the clinics' cut-off eventually agreed to participate as "turnaways," but 61 dropped out before the initial survey and 14 more after that. Sixty-nine of the remaining 217 (32%) got abortions elsewhere or suffered a miscarriage,⁹ leaving 148 women who gave birth, although the researchers are not even sure of these numbers and wrote about the "turnaways": "for some [unspecified number of]

⁸ Diane G. Foster, *Socioeconomic Outcomes of Women who Receive and Women who are Denied Wanted Abortions*, 108 AMER. J. PUB. HEALTH 407 (2018); Sarah Miller et. al., *What happens after an abortion denial? A Review of Results from the Turnaway Study*, 110 AEA PAPERS PROC. 1 (2020); See Sarah Miller et al., *The Economic Consequences of Being Denied an Abortion* (NBER Working Paper, Paper No. 26662, 2020), https://www.nber.org/system/files/working_papers/w26662/w26662.pdf.

⁹ Sarah Miller et. al., *The Economic Consequences*, *supra* note 8, at 11.

women, no such follow-up information is available.”¹⁰

For purposes of measuring women’s economic fates, the authors attempted to assess women’s pre- and post-turnaway situations, but could obtain financial information only for 76.3% of the turned-away women. Sarah Miller et al., *The Economic Consequences of Being Denied an Abortion* 1, 12 (NBER Working Paper, Paper No. 26662, 2020), https://www.nber.org/system/files/working_papers/w26662/w26662.pdf. This means that of the 217 women whom the authors continued to call “turnaways” (including those who miscarried or obtained abortions elsewhere), they obtained financial information for only about 165 of them. But the authors do not specify in their writing how many of these 165 are among the 32% who had later abortions or miscarriages versus the 68% who gave birth. In other words, the study’s usual takeaway – that obtaining an abortion and presumably being *without that child* economically advantages a woman as compared to being denied an abortion and *bearing that child* – is based on an evaluation of as few as 112 women. The other 53 women may be

¹⁰ *Id.* at 2, n. 3.

among the 32% who obtained abortions elsewhere or had miscarriages. We simply do not know.

There are two obvious and serious problems with this cohort. First, it is too tiny a group on which to base conclusions about the allegedly contrasting economic fates of all women in the United States who obtain or do not obtain an abortion. Second, as noted above, the “turned-away” cohort is not actually comprised of women who did not obtain an abortion, in two senses: 32% of them experienced a *later* abortion or miscarriage; *and* the authors acknowledge that they have no knowledge of this group’s *prior* abortion history. *Id.* at 4. The study of women’s economic outcomes is therefore actually comparing women who obtained an abortion with four sub-groups of “turnaways”: 1) women *with* a prior abortion who were turned away and *had* a later abortion; 2) women *without* a prior abortion who were turned away and *had* a later abortion; 3) women *with* a prior abortion, who were turned away and *did not have* a later abortion; and 4) women *without* a prior abortion, who were turned away and *did not have* a later abortion.

Even the authors’ claim that they are comparing “women who obtained an abortion” with these latter four groups is complicated, because many of the women who obtained an abortion went on to have another baby relatively quickly after their abortion,

and were raising these children during periods of time while members of the turnaway cohort were *also* raising the children they had not aborted. In fact, 25% of the women who obtained abortions gave birth within 5 years, most within 1-3 years after their abortion. Miller et al., *supra*, at 27. Consequently, the authors' hugely muddled comparison groups – intended to gratify the intuition that rearing a child sets a woman back, while aborting a child advances her – do nothing of the sort. During the 5-year period of the Turnaway Studies' data collection, many of the “turned-away” women were *not* rearing a young child while many of the post-aborted women *were* rearing a young child.

It is simply impossible to rely on studies using such flawed cohorts in order to generalize about different outcomes between women obtaining an abortion and women denied an abortion. Nevertheless, the Turnaway authors claim that their studies can opine about “the financial and economic impact of being denied an abortion on pregnant women who seek one” and the effects of “restrictions on abortion access.” *Id.* at Abstract, 1.

Not only did the authors fail actually to compare women who obtained an abortion to women who had not, but they also failed to note that the women who were “turned away” were in many respects quite

different from the women who obtained abortions even just a few weeks earlier than clinics' cutoff dates. It is reasonable to surmise that women seeking abortions past 24 or even 28 weeks gestational limits have very difficult and even chaotic lives and circumstances. *Id.* at 33, Figure 1. Histogram of Gestational Age of Pregnancy at Time of Abortion Receipt or Denial. And indeed the authors' profile of the women confirms this. These women were younger, more likely to be single (83%) and unemployed (almost half), already suffering past due bills and collections, and in receipt of government benefits. *Id.* at 35, Table 1. Initial Survey Measures Across Matches/Un-Matched (Survey Respondents Only). Forty-three percent stated that they had insufficient money for basic necessities "most of the time." *Id.* at 24. They also enjoyed much less partner and family support than those who obtained abortions prior to the cutoff. *Id.* at 4. Given these circumstances, it seems highly likely that their post-turnaway fates were strongly impacted by their pre-existing difficulties.

Even after overlooking flaws conducing to a result that would favor easier access to abortion, the Turnaway authors' conclusions about economic and educational results are quite modest at best. For example, they acknowledge that "women who are denied abortions are neither more nor less likely to graduate or drop out of school than women who

receive abortions,” though they note that women presenting for later-term abortions beyond a clinic’s cut-off point are “seeking lower level degrees” to begin with and therefore less often achieve an advanced, post-graduate degree. *Introduction to the Turnaway Study*, ADVANCING NEW STANDARDS REPROD. HEALTH 1, 4 (2020), <https://www.ansirh.org/sites/default/files//publications/files/turnawaystudyannotatedbibliography.pdf>. This is likely explained by the pre-existing, difficult life-circumstances of this group of women. Regarding economic outcomes, the authors report very small differences in financial distress or access to credit between the post-aborted and the “turnaway” women, many of which are not statistically significant, and many which disappear after several years. Miller et al., *supra*, at 17-19.

Finally, the authors of the Turnaway Studies refused requests to publish their complete questionnaires or to make their data available for re-analysis – the usual scientific standard – even though the studies could be published and shared in a manner compromising no one’s identity. Reardon, *supra*, at 210. In sum, studies claiming that abortion plays a crucial role in advancing women’s progress suffer from numerous flaws. They are regularly conducted by deeply biased researchers who fail to account for confounding variables, fail to facilitate independent verification of their results, employ

tiny sample sizes, and/or overgeneralize their results. They also ignore important, contrary explanations and evidence as the next section will illustrate.

2. Women's rising participation in the economic and political life in the country is independent of the ratios and rates of abortion.

Any conclusion that the right to abortion causes some measurable social or economic outcome for women cannot be based merely on some correlation of the two for some limited period of time. The reality is that while women made visible social progress in the years immediately after *Roe* – when abortion rates and ratios were climbing – it is also true, as we demonstrated in Section II, that such progress was already underway in the decades before *Roe*, and as we show here, that this progress continued when abortion rates and ratios were falling at a dramatic pace.

Appendices C-1 and C-6 show that from 1974 to 1989, rates of abortion per 1000 women of childbearing age moved from 242 to 346, a 43% rise; and ratios of abortions per 100 pregnancies moved from 17 to 24, a 41% increase. During that time, there was a rise in the percentage of women in the total civilian workforce, from 39.4% to 45.2%, a

14.7% increase. There was also an increase in the workforce presence of women with a college degree or more, from 14.6% to 24.3%, a 66% rise.

Looking at the percentage of men's average income earned by women, there do not exist reliable measures between 1974 and 1978. But Bureau of Labor Statistics beginning in 1979 show that from 1979 to 1989 abortion ratios remained steady – 24/100 pregnancies – while abortion rates declined – from 358/1000 to 346/1000 – a 3% decline. Yet there was a 12.5% increase in women's earnings as a percentage of men's. Women moved from earning 62.3 cents on men's dollar, to 70.1 cents.

During the period between the early 1970s and about 1988, the growth in women's entrepreneurial activity was characterized by a U.S. House of Representatives committee as "exponential." H.R. COMMITTEE ON SMALL BUSINESS, 100TH CONG., NEW ECONOMIC REALITIES: THE RISE OF WOMEN ENTREPRENEURS 1, 2 (1988). Committee Chair John J. LaFalce's transmittal letter noted: "From owning less than five percent of the Nation's businesses prior to the 1970s, women have now [1988] come to own approximately thirty percent of American businesses." *Id.* at iii. "According to the most recent IRS figures available, from 1977 to 1985 women-owned sole proprietorships nearly doubled from 1.9 million to 3.7 million." *Id.* at 6.

Looking at women enrolled in college programs from 1974 to 1989, when abortion rates increased 43% and ratios increased by 41%, women's college enrollment moved from 45% of college students to 54.3%, an increase of nearly 21%. Women's participation in professional education similarly expanded. Before the 1970s, law schools were almost exclusively male domains. In the academic year of 1973-1974, 84% of all law students were men, and only 16% women. But by the 1989-1990 academic year, men occupied only 57.3% of law school seats, and women the remaining 42.7%. *First Year and Total J.D. Enrollment by Gender 1947 – 2011*, AM. BAR ASSOC., https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf. The increase in women enrolled in medical school, while smaller, was still impressive. In 1974, women comprised 20.4% of students enrolled in medical school. By 1989, that percentage had increased to 38.4%. Assoc. Am. Med. Coll., *Diversity in Medical Education: Facts & Figures 2016*, FACTS & FIGURES SERIES (2016), <https://www.aamcdiversityfactsandfigures2016.org/report-section/section-3/#figure-1>.

During this same time, when abortion rates and ratios were rising precipitously, women were ascending to judicial benches and winning elected

state and federal offices regularly. Between 1974 and 1989, women's representation in state governments (not including elected judges) increased from 495 to 1316, a 166% rise. Women's representation in federal offices moved from 16 to 29, a rise of 81%. And women obtained seats on the federal bench beginning from a low of 7 in 1974, to 71 in 1989, a 914% increase due to the incredibly low base.

But as Appendix C-5 shows, women's progress in each of these areas *continued* as abortion rates and ratios started a precipitous decline beginning in 1990 and continuing to very recent years for which we have data. From 1990 to 2016, abortion rates declined 46% from 345 to 186, and abortion ratios fell 52% from 24 to 11.6. During this same period, however, the percentage of women in the workforce with a college degree or more rose from 24.5% to 41.6%. This is a 70% increase. Women also continued to earn an increasing percentage of men's income, rising from 70.9 to 81.9 or a 15.5% increase.

The number of businesses owned by women have also increased substantially in the last three decades while U.S. abortion rates and ratios have been declining. According to the U.S. Census Bureau's economic census (conducted every five years during years ending in 2 and 7), in 1997 the number of women-owned businesses was 5.4 million

(i.e., 26% of all U.S. businesses). By 2017, those numbers increased to 11.1 million businesses comprising 39% of all privatelyheld firms. *Women Business Owner Statistics*, NAT'L ASS'N WOMEN BUS. OWNERS, <https://www.nawbo.org/resources/women-business-owner-statistics> (last visited July 23, 2021). “Between 1997 and 2017, the number of women-owned businesses increased by 114%, compared to a 44% increase among all businesses — a growth rate more than 2.5 times the national average.” American Express OPEN, *The 2017 State of Women-Owned Businesses Report*, VENTURENEER (2017), <https://ventureneer.com/wp-content/uploads/2017/11/2017-AMEX-SWOB-FINAL.pdf>. The increase in businesses owned by women of color was even more spectacular. In the 20 years of declining abortion rates, businesses owned by women of color grew at a rate of 467%. *Id.*

One particular study claims to prove that women’s aborting a higher percentage of their pregnancies facilitates their entrepreneurial success. Jonathan Zandberg, *Family Comes First: Reproductive Health and the Gender Gap in Entrepreneurship*, 140 J. FIN. ECON. 838 (2021). But this study failed to control for many circumstances and traits linked to women’s professional success (e.g., health, family support, education, quality of colleagues and mentors, access to credit and

regulatory environments, to name just a few), and ignored the dramatic mismatch between the women who obtain the lion's share of abortions and the women who found and maintain successful businesses. The former are disproportionately poor and less educationally privileged. See Jenna Jerman *et al.*, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2009*, Guttmacher Institute Report, 6, Table 1. Percentage distribution of U.S. women obtaining abortions in nonhospital settings an of all U.S. women age 15-44, and abortion index, by selected characteristics, 2014 and 2018. The latter disproportionately come from better-off families and possess a college degree or more. Vivek Wadha *et. al.*, *The Anatomy of an Entrepreneur: Family Background and Motivation*, EWING MARION KAUFMANN FOUND. 1, 5 (2009).

Women's college enrollment also continued to climb during this period of sharply declining abortion rates and ratios, from 54.5 to 56.5, a nearly 4% rise. Women's enrollment in law schools grew from 47.4% in 1990 to 52% in 2016, the first year the number of women exceeded the number of men enrolled in ABA-accredited law schools. The number of women enrolled in medical schools grew even more dramatically during this period, increasing from 39.2% in 1990 to 49.8% in 2016. Today enrollment of women exceeds that of men both in law schools and medical schools. *ABA Profile*

of the Legal Profession 2020, 1, 58 (2020), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>.

Women's representation in state and federal government, including on the bench, also continued to rise, notwithstanding declines in abortion rates and ratios. In state government, women's numbers increased from 1324 to 1877, a 41% rise. At the federal level, women increased their representation from 31 to 108, a 248% increase. And women on the federal bench moved from 74 to 355, for a 380% improvement.

B. There is evidence that the judicially-created right of abortion disadvantaged women.

Robust evidence suggests that relatively easy access to abortion has changed society in several ways disadvantageous to women. First, by acting as a kind of secondary insurance against child-bearing to the primary (but fallible) insurance of contraception, easy access to abortion tends to change sexual behavior in favor of greater sexual risk-taking, which disincentivizes contraceptive use and leads to more uncommitted sexual relations.¹¹

¹¹ Phillip Levine, SEX AND CONSEQUENCES: ABORTION, PUBLIC POLICY, AND THE ECONOMICS OF FERTILITY

Over time, increases in risk-taking, coupled with contraceptive failure, misuse, or nonuse leads to more nonmarital pregnancies, single parenthood and abortion, all of which disproportionately impact women.¹² The availability of abortion does this by severing sex from any idea of a joint future – from children, kin, marriage – and thereby establishing nonmarital sex as the price of a romantic relationship, even as women continue to report that this new sex ethic is undesirable to them,¹³ and that

3-4 (2007) ("[I]f this form of insurance [abortion] is available at a very low cost, it may lead to changes in behavior that increase the likelihood of its being needed [altering] decisions regarding sexual activity and contraception that would affect the likelihood of becoming pregnant Since using contraception or abstaining from sexual activity may be viewed as costly, women/couples may choose to do so less frequently, in essence substituting abortion for contraception, as abortion becomes even more accessible.")

¹² Richard Posner, *SEX AND REASON* 143 (1994) ("[I]f abortion is cheap, [] intercourse will be more frequent and . . . may generate more unwanted pregnancies, not all of which will be aborted. This should help us to understand the combination of cheap contraceptives, frequent abortions, and yet a high rate of unwanted births in our society.").

¹³ LISA WADE, *AMERICAN HOOK UP* (2017); Peter Arcidiacono et al., *Terms of Endearment: An Equilibrium Model of Sex and Matching*, 7 *QUANTITATIVE ECON.* 117 (2016) (finding that, when compared to women, high school

many are having fewer children than they would like.¹⁴ Perhaps it's no surprise that women's reported happiness has declined in recent decades, despite the enormous gains outlined above. Betsey Stevenson & Justin Wolfers, *The Paradox of Declining Female Happiness*, 1 AM. ECON. J.: ECON. POL'Y 190 (2009).

According to now-Treasury Secretary Janet Yellen and her co-authors, Nobel laureate George Akerlof, and David Katz, legal abortion also drives out “shotgun marriage.” Since nonmarital births have become more common and more socially accepted, the father, along with the wider society, can now reason that the availability of abortion means that single parenthood is always the woman's

men have a much stronger preference for relationships with sex).

¹⁴ Lyman Stone, *American Women Are Having Fewer Children Than They'd Like*, N.Y. TIMES (Feb. 13, 2018), <https://www.nytimes.com/2018/02/13/upshot/american-fertility-is-falling-short-of-what-women-want.html?smid=em-share>

(“[T]he gap between the number of children that women say they want to have (2.7) and the number of children they will probably actually have (1.8) has risen to the highest level in 40 years.”).

“free choice.”¹⁵ While sex and potential motherhood remain unshakably connected a half-century after *Roe*, the connection between sex and potential fatherhood – that connection irresponsible men have always sought to avoid – has grown far more tenuous, contributing to the feminization of poverty we see today. Single motherhood, after all, accounts for “virtually all the increase in child poverty since the 1970s,” according to Brookings Institution scholar Isabel Sawhill. *Non-marital Births and Child Poverty in the United States*, BROOKINGS (June 29, 1999), <https://www.brookings.edu/testimonies/non-marital-births-and-child-poverty-in-the-united-states/>.

The widespread availability of abortion and “abortion as equality” arguments also confirm public and private actors’ inclinations to avoid expensive accommodations for women with children in

¹⁵ George A. Akerlof, Janet L. Yellen & Michael L. Katz, *An Analysis of Out-of-Wedlock Childbearing in the United States*, 111 Q. J. ECON. 277, 281 (1996) (“By making the birth of the child the physical choice of the mother, the sexual revolution has made marriage and child support a social choice of the father.”); see also Helen Alvaré, *Abortion, Sexual Markets and the Law in PERSONS, MORAL WORTH AND EMBRYOS* 261 (Steven Napier ed., 2011).

educational and work settings. Ironically, under the guise of women's rights, equality arguments for abortion suggest that females are intrinsically blighted by their reproductive capacity to bear children. These arguments tend, unwittingly perhaps, to promote the male childless norm in educational and employment settings. See Erika Bachiochi, *Embodied Equality: Debunking Equal Protection Arguments for Abortion Rights*, 34 HARV. J.L. PUB. POL'Y, 889 (2011). It is therefore no surprise that an elite social sciences journal surveying "Five Decades of Remarkable but Slowing Change in U.S. Women's Economic and Social Status and Political Participation," would observe that "[i]ndeed, the United States lags behind all other advanced countries in providing basic workplace accommodations for parenthood and paid leave." Bailey & DiPrete, *supra*, at 2. Given *Roe's* unscientific description of the dependent human being nurtured by a woman in pregnancy as "potential life," and *Roe's* creation of a license to dispense with that life should she so choose, it is also unsurprising that complaints of "rampant"

pregnancy and caregiver discrimination persist.¹⁶ While explicit sex discrimination is increasingly a thing of the past thanks to the cultural and legal advances described herein, discrimination against mothers perdures. See Sigrid Luhr, *Signaling Parenthood: Managing the Motherhood Penalty and Fatherhood Premium in the U.S. Service Sector*, 259, 263-264, *Gender And Society* (Apr. 2020) After all, with *Roe* in place, it's a woman's "choice" to take on such caregiving.

The claims by the *Casey* plurality and abortion advocates that unrestricted access to abortion is a necessary condition and a major contributor to women's economic and social advances simply cannot be demonstrated. As fifty years of data shows, there is not even a consistent correlation between abortion rates and ratios and

¹⁶ Stephanie Bornstein, Joan Williams & Genevieve Painter, *Discrimination against Mothers Is the Strongest Form of Workplace Gender Discrimination: Lessons from U.S. Caregiver Discrimination Law*, 28 INT'L J. COMPAR. LAB. L. INDUS. REL. 45 (2012); Natalie Kitroeff & Jessica Silver-Greenberg, *Pregnancy Discrimination Is Rampant Inside America's Biggest Companies*, N.Y. TIMES (February 8, 2019), <https://www.nytimes.com/interactive/2018/06/15/business/pregnancy-discrimination.html> (reporting that many of the nation's largest companies sideline pregnant woman as a matter of course, and sometimes even recommend abortion).

women's participation in the economic and social life of the nation. Women surged forward as they resorted less and less to abortion. In the absence of such correlation, and given the wide array of other possible factors fostering women's success, it is impossible to show that abortion is the cause of women's economic and social success. It is more likely, in fact, that widely available abortion harmed women in the realms of personal relationships as well as in the development of law and policy accommodating women's childbearing and parenting.

CONCLUSION

For the reasons set forth above, we urge this Court to overrule *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) and *Roe v. Wade*, 410 U. S. 113 (1973).

Respectfully submitted,

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Governor of South Dakota

Adeline A. Allen, J.D.

Regent University School of Law

Debora C. Arangno, Ph.D.

Utah State University

Pamela L.J. Arangno-Trimmer, J.D.

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Margaret M. Barrett, J.D.

William Mitchell College of Law

Jennifer Lee Barrow, J.D.

Harvard School of Law

Pamela Bell, J.D.

Stetson University College of Law

Kathleen Berchermann, M.D.

Jefferson Medical College

Judith V. Boettcher, Ph.D.

University of Minnesota

Taryn Q. Boik, M.D.

University of Nebraska College of Medicine

Dorinda Chiapetta Bordlee, J.D.

Loyola University, New Orleans

Alexandra Katherine Boutelle, J.D.

Pepperdine Caruso School of Law

Sherry Lynn Boyce, J.D.

University of Oklahoma College of Law

Elizabeth Brunner, Ph.D.

Rice University

S. Dresden Brunner, J.D.

University of Dayton Law School

Marcella Burke, J.D.

University of Houston Law Center

Sister Sara Butler, MSBT, Ph.D.

Fordham University

Mary Lee Scott Call, Ph.D.

University of California, Los Angeles

Nathalie Calvo, J.D.

Boston College Law School

Marjorie Murphy Campbell, J.D. University of Virginia Law; L.I.M, Georgetown Law; J.C.L., The Catholic University of America School of Canon Law

Meredith S. Campbell, J.D.

University of Connecticut School of Law

Renee K. Carlson, J.D.

University of St. Thomas School of Law

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Yvonne Chapman, J.D.

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Alisia Grace Chase, Ph.D.

University of Minnesota

Allison R. Church, J.D.

Georgetown University Law Center

Margot J. Cleveland, J.D.

University of Notre Dame Law School

Melissa Coleman, J.D.

Hamline University School of Law

Lecia M. Collier, J.D.

St. John's University School of Law

Holly L. Collins, J.D.

University of Florida Levin College of Law

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**SELECTED STATUTES AND CASES
ADVANCING WOMEN'S ECONOMIC AND
SOCIAL EQUALITY**

1938

- Fair Labor Standards Act of 1938, 29 U.S.C. § 206(d) (2012).

1947

- *Fay v. New York*, 332 U.S. 261 (1947).

1948

- Women's Armed Services Integration Act of 1948, ch. 449, 62 Stat. 356.

1963

- Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56 (codified as amended at 29 U.S.C. § 206(d)(1)).

1964

- Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000e et seq.).

1968

- Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. § 3604).

1971

- *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971).
- Public Works and Economic Development Act Amendments of 1971, Pub. L. No. 92-65, 85 Stat. 166 (codified as amended at 42 U.S.C. § 3123).
- *Reed v. Reed*, 404 U.S. 71 (1971).

1972

- Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103.
- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

1973

- Federal-Aid Highway Act, Pub. L. No. 93-87, 87 Stat. 250 (1973) (codified as amended at 23 U.S.C. § 324).
- *Frontiero v. Richardson*, 411 U.S. 677 (1973).

1974

- *Clev. Bd. of Educ. v. Le Fleur*, 414 U.S. 632 (1974).
- Equal Credit Opportunity Act of 1974, Pub. L. No. 93-495, 88 Stat. 1521 (codified as amended at 15 U.S.C. § 1691(a)(1)).
- *Kahn v. Shevin*, 416 U.S. 351 (1974).
- *Corning Glass Works v. Brennan*, 417 U.S. 188 (1974).

1975

- Home Mortgage Disclosure Act of 1975, Pub. L. No. 94-200, 89 Stat. 1125 (codified as amended at 12 U.S.C. § 2801).
- *Stanton v. Stanton*, 421 U.S. 7 (1975).
- *Taylor v. Louisiana*, 419 U.S. 522 (1975).
- *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975).

1976

- Federal Unemployment Tax Act, Pub. L. No. 94-566, 90 Stat. 2671 (1976) (codified as amended at 26 U.S.C. § 3304(a)(12)).

1978

- Pregnancy Discrimination Act, Pub. L. No. 95-555, 92 Stat. 2076 (1978) (codified as amended at 42 U.S.C. § 2000e -(k)).

1981

- Kirchberg v. Feenstra, 450 U.S. 455 (1981).

1984

- *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984).

1988

- Women's Business Ownership Act of 1988, Pub. L. No. 100-533, 102 Stat. 2689 (codified as amended at 15 U.S.C. § 631).

1990

- Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. § 12101).

1993

- Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (codified as amended at 29 U.S.C. § 2601 et seq.).

1994

- Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. No. 103-353, 108 Stat. 3175 (codified as amended at 38 U.S.C. §§ 4301- 4334).
- *J.E.B. v. Ala. ex rel T.B.*, 511 U.S. 127 (1994).

1996

- *United States v. Virginia*, 518 U.S. 515 (1996).

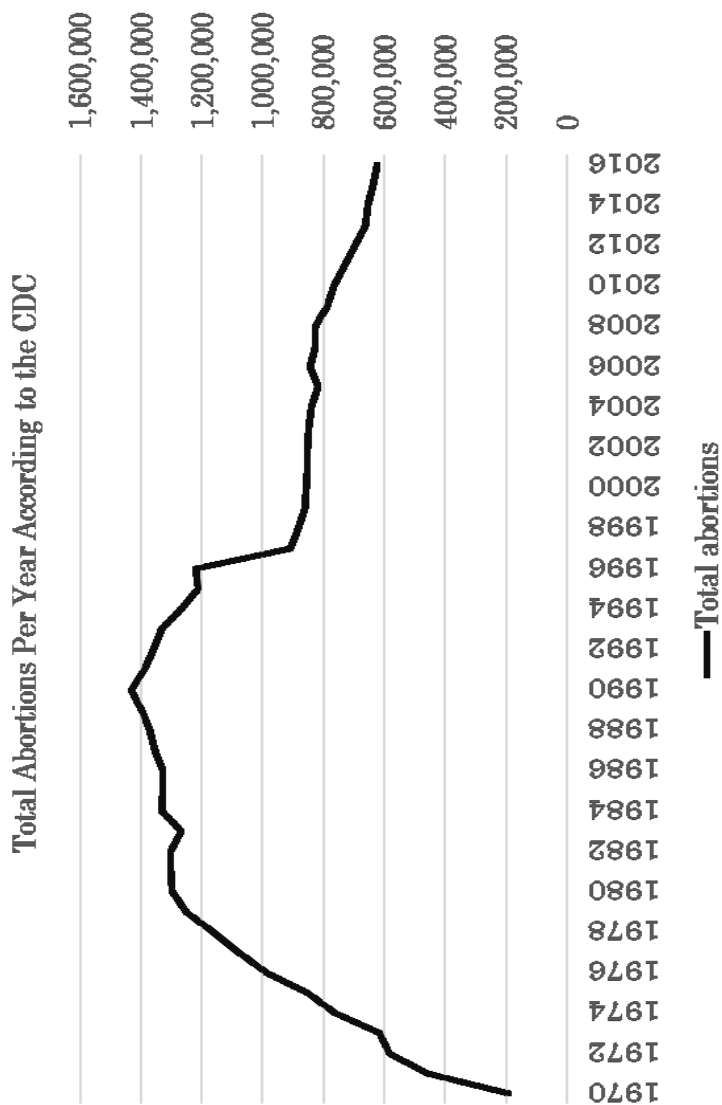
2009

- Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5 (amending the Civil Rights Act of 1964, 42 U.S.C. § 1981 et seq.
- Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et seq.).

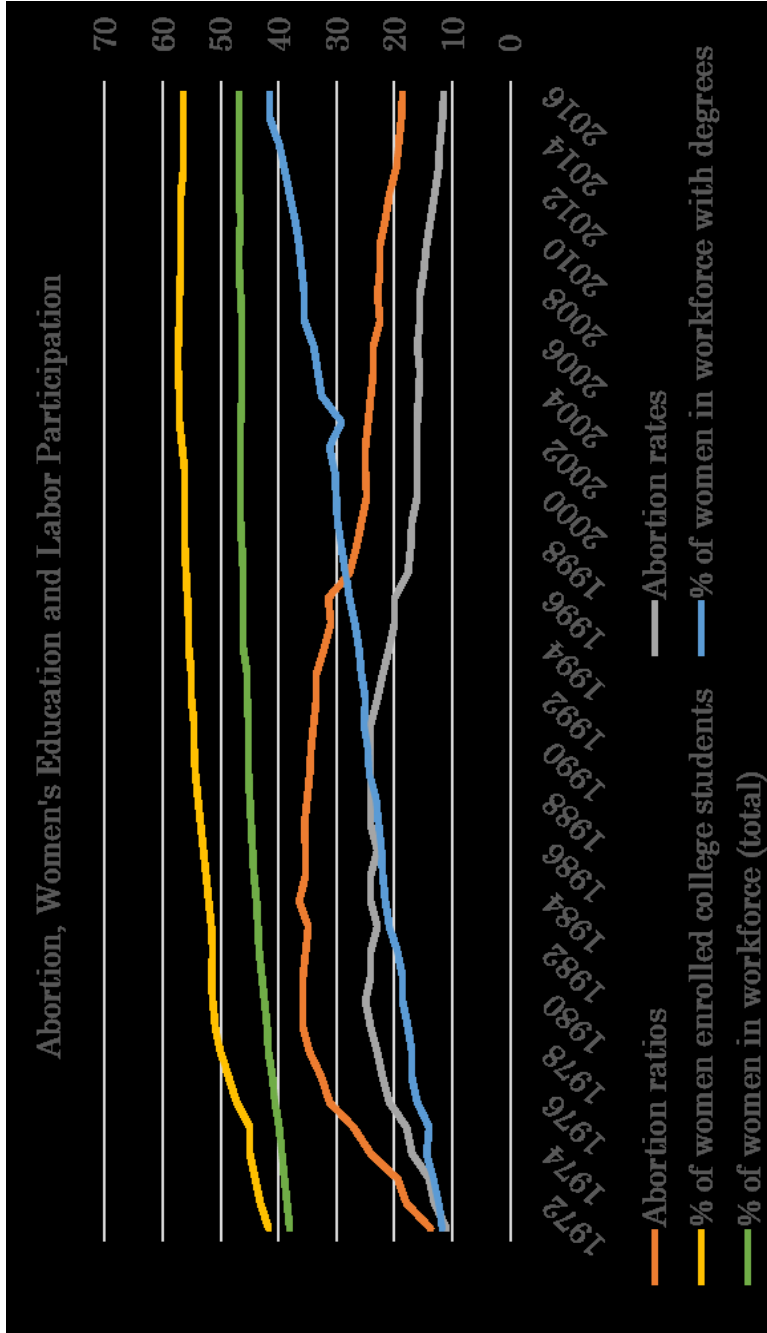
2017

- Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

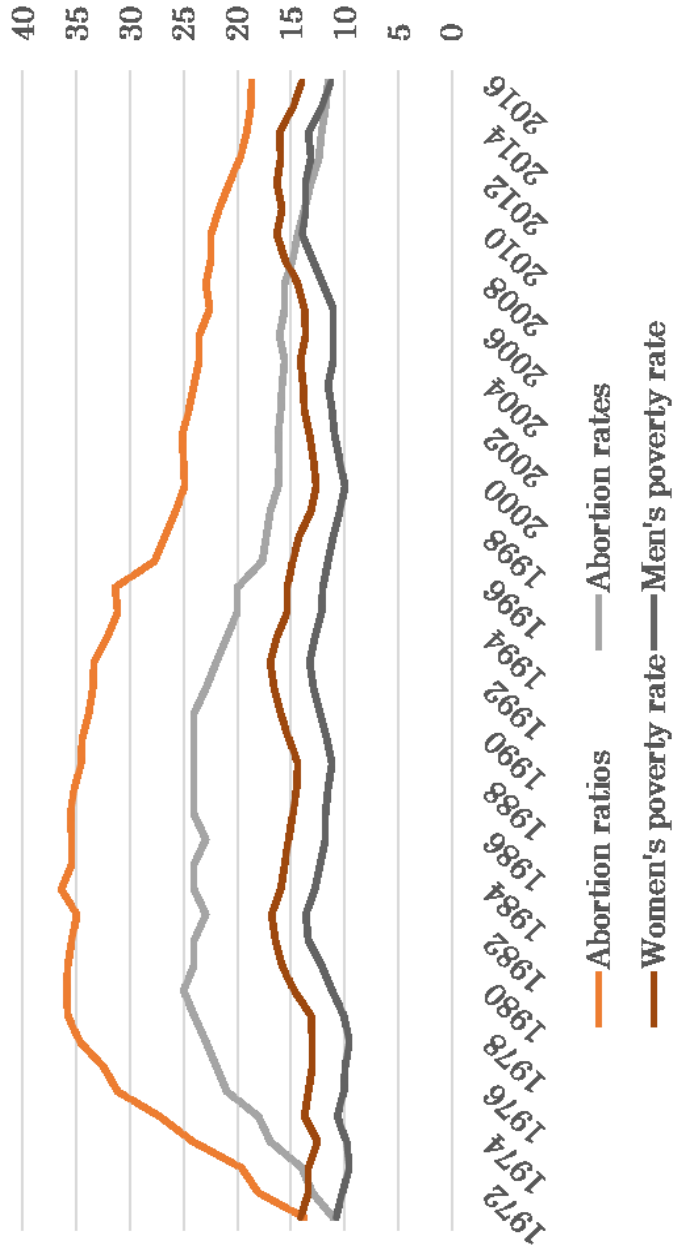
**GRAPHIC AND TABULAR DISPLAY OF
DATA RELIED UPON BY AMICI¹**

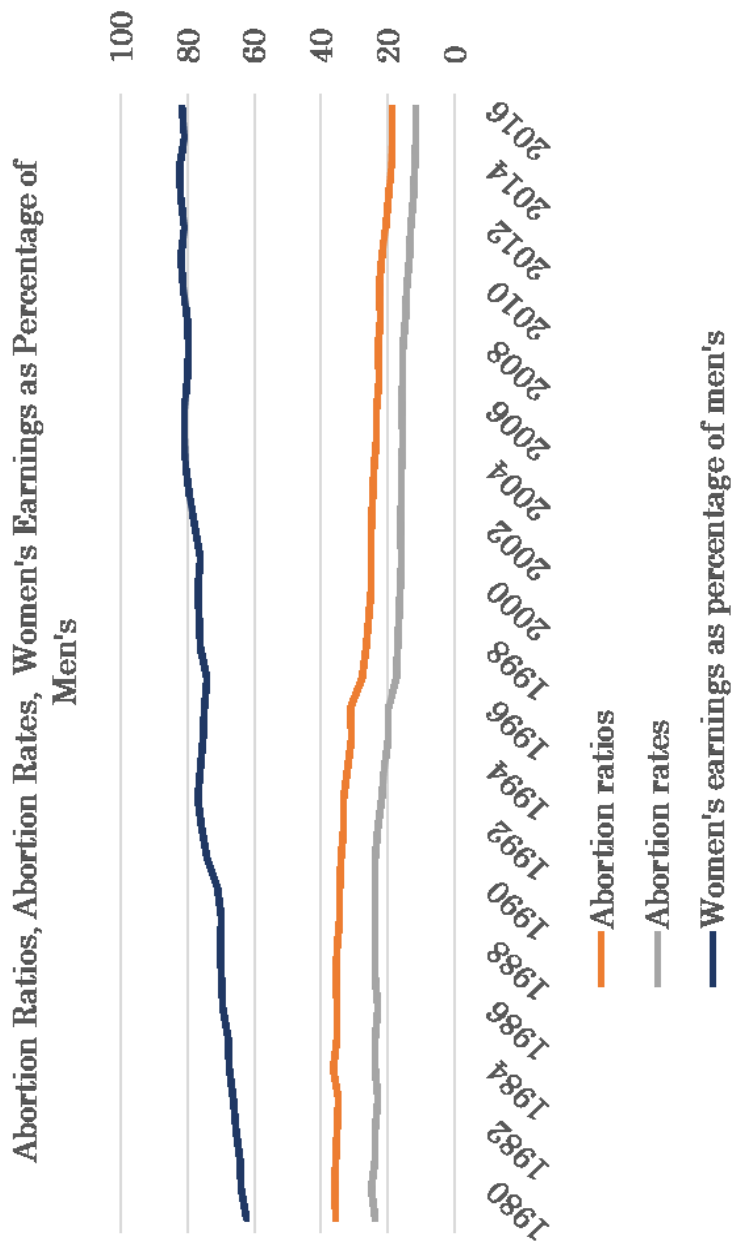


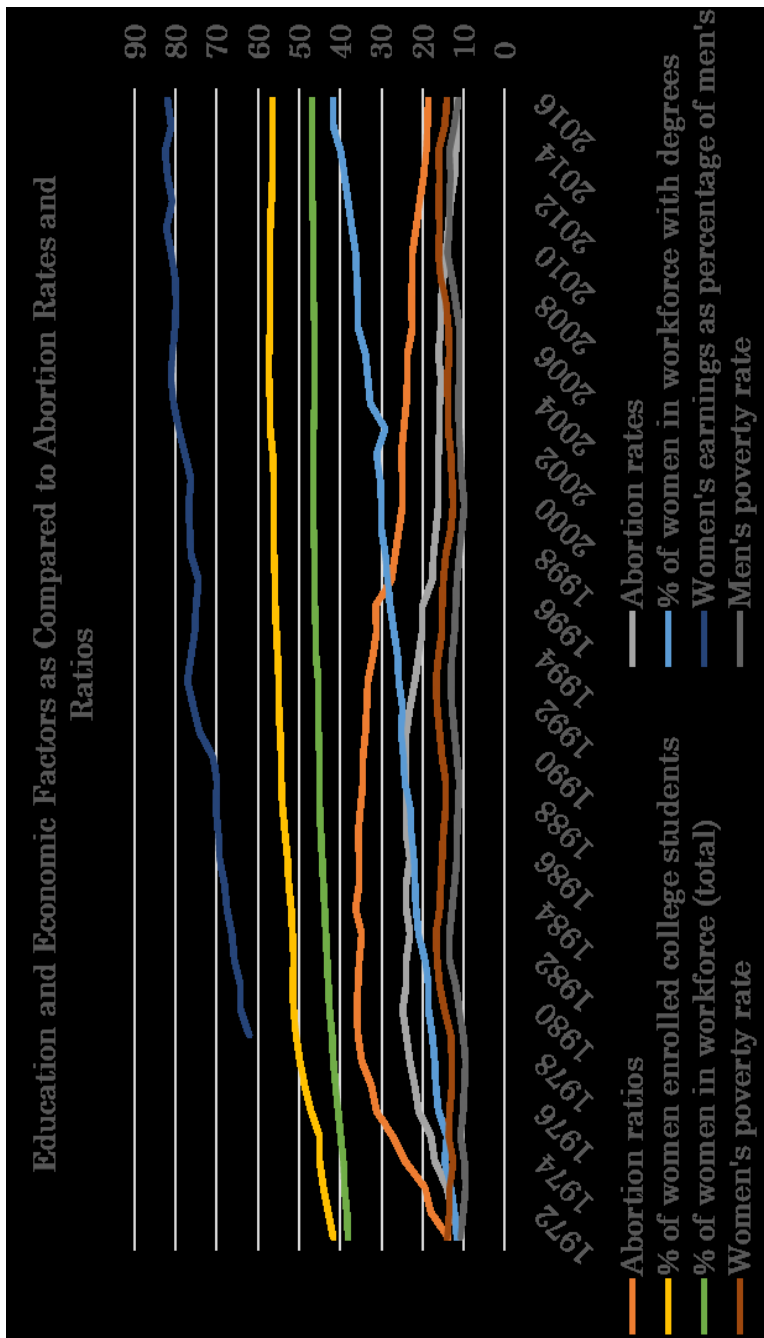
¹ See pp. 33a-34a for graph/table sources.



Abortion Ratios, Abortion Rates, Women and Men's Poverty Rates







Data informing for all preceding charts (p.1, years 2010-2016)									
Year	Abortion ratios	Abortion rates	% of women enrolled college students	% of women in workforce with degrees	% of women in workforce (total)	Women's earnings as % of men's	Women's poverty rate	Men's poverty rate	
2016	18.6	11.6	56.5	41.6	46.8	81.9	14	11.3	
2015	18.8	11.8	56.4	41.6	46.8	81.1	14.8	12.2	
2014	19.2	12.1	56.5	40	46.8	82.5	16.1	13.4	
2013	19.8	12.4	56.5	39	46.8	82.1	16	13.1	
2012	20.8	13.1	56.8	38.1	46.9	80.9	16.3	13.6	
2011	21.7	13.7	57	37.1	46.6	82.2	15.8	13.6	
2010	22.5	14.4	57	36.4	46.7	81.2	16.3	14	

Data informing for all preceding charts (p.2, years 2000-2009)								
Year	Abortion ratios	Abortion rates	% of women enrolled college students	% of women in workforce with degrees	% of women in workforce (total)	Women's earnings as % of men's	Women's poverty rate	Men's poverty rate
2009	22.4	14.9	57	36	46.7	80.2	15.6	13
2008	22.9	15.6	57.1	35.6	46.5	79.9	14.4	12
2007	22.6	15.6	57.2	35.6	46.4	80.2	13.8	11.1
2006	23.6	16.1	57.3	33.9	46.3	80.8	13.6	11
2005	23.6	15.6	57.4	33.3	46.4	81	14.1	11.1
2004	24.1	15.8	57.2	32.6	46.4	80.4	13.9	11.5
2003	24.5	16	57.1	29.2	46.6	79.4	13.7	11.2
2002	25.1	16.2	56.6	31.3	46.5	77.9	13.3	10.9
2001	25	16.1	56.3	30.4	46.5	76.4	12.9	10.4
2000	24.9	16.2	56.1	30.1	46.5	76.9	12.6	9.9

Data informing for all preceding charts (p.3, years 1990-1999)								
Year	Abortion ratios	Abortion rates	% of women enrolled college students	% of women in workforce with degrees	% of women in workforce (total)	Women's earnings as % of men's	Women's poverty rate	Men's poverty rate
1999	25.8	16.9	56.1	29.9	46.5	76.5	13.2	10.4
1998	26.7	17.3	56.1	29.2	46.3	76.3	14.3	11.1
1997	27.7	17.7	55.9	28.4	46.2	74.4	14.9	11.6
1996	31.4	20	55.8	27.8	46.2	75	15.4	12
1995	31.1	20	55.5	26.9	46.1	75.5	15.4	12.2
1994	32.1	21	55.4	26.2	46	76.4	16.3	12.8
1993	33.4	22	55.1	25.7	45.5	77.1	16.9	13.3
1992	33.5	23	55	25	45.4	75.8	16.6	12.9
1991	33.9	24	54.7	25.2	45.3	74.2	16	12.3
1990	34.5	24	54.5	24.5	45.2	70.9	15.2	11.7

Data informing for all preceding charts (p.4, years 1980-1989)									
Year	Abortion ratios	Abortion rates	% of women enrolled college students	% of women in workforce with degrees	% of women in workforce (total)	Women's earnings as % of men's	Women's poverty rate	Men's poverty rate	
1989	34.6	24	54.3	24.3	45.2	70.1	14.4	11.2	
1988	35.2	24	54	23.1	45	70.2	14.5	11.5	
1987	35.6	24	53.5	22.8	44.8	69.8	14.9	11.8	
1986	35.4	23	52.9	22.2	44.5	69.5	15.2	11.8	
1985	35.4	24	52.5	22	44.2	68.1	15.6	12.3	
1984	36.4	24	52.1	21.7	43.8	67.6	15.9	12.8	
1983	34.9	23	51.7	20.9	43.5	66.5	16.8	13.6	
1982	35.4	24	51.5	19.6	43.3	65.7	16.5	13.4	
1981	35.8	24	51.7	18.6	43	64.4	15.8	12.1	
1980	35.9	25	51.4	18.7	42.5	64.2	14.7	11.2	

Data informing for all preceding charts (p.5, years 1971-1979)								
Year	Abortion ratios	Abortion rates	% of women enrolled college students	% of women in workforce with degrees	% of women in workforce (total)	Women's earnings as % of men's	Women's poverty rate	Men's poverty rate
1979	35.8	24	50.9	17.8	42.1	62.3	13.2	10.1
1978	34.7	23	49.9	17	41.7		13	9.6
1977	32.5	22	48.7	16.9	41		13	10
1976	31.2	21	47.2	16.2	40.5		13.4	10.1
1975	27.2	18	45	14.1	40		13.8	10.7
1974	24.2	17	45	14.6	39.4		12.5	9.8
1973	19.6	14	44.1	13.3	38.9		13.4	9.6
1972	18	13	43.1	12.4	38.5		13.4	10.2
1971	13.7	11	41.8	11.8	38.2		14.1	10.8

Sources for all preceding graphs and tables:

For women's college enrollment see Nat'l Center for Educ. Stat., *Table 303.10, Total Fall Enrollment in Degree-Granting Postsecondary Institutions, by Attendance Status, Sex of Student, and Control of Institution: Selected Years, 1947 Through 2023*, in *Digest of Education Statistics 2013* (2015), https://nces.ed.gov/programs/digest/d13/tables/dt13_303.10.asp.

For women in the workforce and women with college degrees, see *Women's Bureau, Civilian Labor Force by Sex, Chart: 1948-2016 Annual Averages*, U.S. DEPT. LAB., <https://www.dol.gov/agencies/wb/data/facts-over-time/women-in-the-labor-force> (last visited July 22, 2021); U.S. Bureau Lab. Stat., *A Look at Women's Education and Earnings Since the 1970s*, Chart: Percent Distribution of Women in the Civilian Labor Force, 25 to 64 Years of Age, by Educational Attainment, *Econ. Daily* (Dec. 27, 2017), https://www.bls.gov/opub/ted/2017/a-look-at-womens-education-and-earnings-since-the-1970s.htm?view_full.

For women's earnings as a percentage of men's see U.S. Bureau Lab. Stat., *A Look at Women's Education and Earnings Since the 1970s*, Chart: Women's Earnings as a Percentage of Men's, Median Usual Weekly Earnings of Full-Time Wage and Salary Workers, *Econ. Daily* (Dec. 27, 2017), https://www.bls.gov/opub/ted/2017/a-look-at-womens-education-and-earnings-since-the-1970s.htm?view_full.

For women's and men's poverty rates see *Historical Poverty Tables: People and Families - 1959 to 2019*, Table 7. Poverty of People by Sex, U.S. Census Bureau, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-people.html> (last visited July 22, 2021).