

# DISABLED AND DISENFRANCHISED: THE FIGHT FOR REPRODUCTIVE FREEDOM AND DEMOCRACY POST-*DOBBS*

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*The Supreme Court has thrust abortion onto ballots nationwide, transforming fundamental rights into political battlegrounds. In the aftermath of Dobbs v. Jackson Women’s Health Organization, people with disabilities face a perfect storm of eroded reproductive freedoms and persistent barriers to democratic participation. This Article exposes the hollow promise of the Court’s purported deference to “the people’s elected representatives,” revealing instead a landscape where those most affected by abortion restrictions struggle to have their voices heard. The Court’s invocation of democracy is arguably disingenuous, serving more as a rhetorical device than a genuine commitment to democratic principles. Nevertheless, engaging with this framing is crucial, as it now shapes the terrain on which reproductive freedom must be defended and advanced. The Dobbs decision not only dismantles reproductive rights but also lays bare the deep inequities in our democratic processes. For disabled people, this opinion amplifies existing challenges, subjecting them to heightened health risks, diminished healthcare access, increased economic insecurity, and further assaults on their bodily autonomy—all while their ability to influence relevant policies remains constrained.*

*This Article contributes to the post-Dobbs discourse by proposing a radical reimagining of reproductive justice and disability rights advocacy within the imposed democratic framework. It introduces a dual strategy that combines tactical engagement with existing democratic systems and bold efforts to transform entrenched injustices. This Article outlines concrete pathways for empowering people with disabilities in the reproductive justice movement, including methods to shape public opinion, leverage lobbying, mobilize voting power, and increase disabled representation in political office. This innovative framework aims to achieve true reproductive freedom—grounded in bodily autonomy, self-determination, and dignity for all. Ultimately, it argues that confronting the*

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*democratic deficits facing the disability community is not just crucial for safeguarding reproductive freedom but essential for exposing and dismantling the Court's flawed reasoning in Dobbs. With abortion rights now subject to the vicissitudes of electoral politics, this Article charts a course toward a more inclusive democracy—one that amplifies marginalized voices and reimagines reproductive justice in the complex post-Dobbs era.*

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## INTRODUCTION

The Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*<sup>1</sup> has dramatically reshaped the legal status of abortion across the United States, thrusting this fundamental right from the courtroom to the ballot box. By revoking the constitutional protections for abortion established under *Roe v. Wade*<sup>2</sup> and *Planned Parenthood of Southeastern Pennsylvania v. Casey*<sup>3</sup> after nearly five decades, the Court has transformed deeply personal healthcare decisions into political battlegrounds. This seismic shift has placed the power to shape the landscape of reproductive autonomy directly in the hands of voters, a change that carries profound implications for democratic engagement and representation.<sup>4</sup> The *Dobbs* decision, far from settling the abortion debate, has instead ignited a new era of contentious political struggle, where state legislatures and ballot initiatives have become the primary arenas for determining the fate of reproductive freedom.<sup>5</sup> This reconfiguration of the legal and political landscape surrounding abortion has created both new challenges and opportunities for advocates of reproductive justice, particularly for marginalized communities whose voices have often been sidelined in these debates.<sup>6</sup>

The impact of this shift is already evident in the flurry of ballot initiatives and legislative contests centered on abortion rights since the *Dobbs* decision. Voters in six states—California, Kansas, Kentucky, Michigan, Ohio, and Vermont—have weighed in on abortion-related amendments, consistently choosing to protect reproductive freedom.<sup>7</sup> These outcomes challenge the narrative that *Dobbs* represents the final say on abortion access and demonstrate the potential power of direct democracy in safeguarding reproductive freedoms. In 2024, abortion was on the ballot in numerous states, including Arizona, Colorado, Florida, Maryland, Missouri, Montana, Nebraska, Nevada, New York, and South Dakota.<sup>8</sup> These developments underscore a new reality: abortion rights are quite literally up for a vote, transforming the political landscape and

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<sup>1</sup> 597 U.S. 215 (2022).

<sup>2</sup> 410 U.S. 113 (1973).

<sup>3</sup> 505 U.S. 833 (1992).

<sup>4</sup> Mabel Felix, Laurie Sobel & Alina Salganicoff, *Addressing Abortion Access Through State Ballot Initiatives*, KFF (Feb. 9, 2024), <https://www.kff.org/womens-health-policy/issue-brief/addressing-abortion-access-through-state-ballot-initiatives> [https://perma.cc/Q38N-DF5Y].

<sup>5</sup> *Id.*

<sup>6</sup> See *supra* Part II.

<sup>7</sup> Felix et al., *supra* note 4.

<sup>8</sup> *Id.*

mobilizing unprecedented levels of civic engagement around this issue.<sup>9</sup> The success of these ballot measures also highlights the disconnect between public opinion and the actions of some state legislatures, many of which have moved to restrict abortion access in the wake of *Dobbs*.<sup>10</sup> This surge in direct democracy initiatives represents a significant shift in the strategy for protecting reproductive freedom, moving from courtroom battles to grassroots political mobilization.

The Court, in an apparent nod to democratic principles, has cloaked this rollback of rights in the mantle of popular sovereignty. Justice Samuel Alito's majority opinion asserted that issues concerning abortion rights should be returned to "legislative bodies," allowing "women on both sides" to "affect the legislative process by influencing public opinion, lobbying legislators, voting, and running for office."<sup>11</sup> This framing presents the *Dobbs* decision as a triumph of democracy, ostensibly empowering citizens to directly shape abortion policy through their elected representatives. However, legal scholars have rightly criticized this purported embrace of democracy as blatantly duplicitous, pointing out the glaring contradictions in the Court's jurisprudence.<sup>12</sup> The same conservative majority that decided *Dobbs* has systematically undermined democratic norms and voting rights essential for actual political participation, particularly for marginalized communities. This context is crucial for understanding the full implications of the Court's decision to relegate abortion rights to the political arena.<sup>13</sup>

Decisions like *Shelby County v. Holder* gutted critical protections of the Voting Rights Act, opening the floodgates to rampant voter suppression tactics like strict ID requirements that disproportionately disenfranchise people of color, low-income individuals, people with

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<sup>9</sup> Isabel Guarnieri & Krystal Leaphart, *Abortion Rights Ballot Measures Win in 7 Out of 10 States*, GUTTMACHER (Nov. 2024), <https://www.guttmacher.org/2024/11/abortion-rights-state-ballot-measures-2024> [https://perma.cc/X9S9-MG9U].

<sup>10</sup> Allison McCann & Amy Schoenfeld Walker, *Tracking Abortion Bans Across the Country*, N.Y. TIMES (Mar. 6, 2025, 5:48 PM), <https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html> [https://web.archive.org/web/20250308011121/https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html].

<sup>11</sup> *Dobbs*, 597 U.S. at 289.

<sup>12</sup> See, e.g., Melissa Murray & Katherine Shaw, *Dobbs and Democracy*, 137 HARV. L. REV. 728 (2024); David Landau & Rosalind Dixon, *Dobbs, Democracy, and Dysfunction*, 2023 WIS. L. REV. 1569; Nelson Tebbe, *Does Dobbs Reinforce Democracy?*, 108 IOWA L. REV. 2363 (2023).

<sup>13</sup> See Murray & Shaw, *supra* note 12, at 778–85.



disabilities,<sup>14</sup> and other marginalized communities.<sup>15</sup> Then, in *Rucho v. Common Cause*, the Court brazenly sanctioned partisan gerrymandering, insulating lawmakers from meaningful electoral accountability and allowing for the creation of uncompetitive districts that distort the will of the electorate.<sup>16</sup> These decisions, among others, have actively subverted pathways for the popular will to be freely expressed through unrigged elections and unfettered ballot access. The cumulative effect of these rulings is a democracy that is less responsive to the will of the people, particularly on contentious issues like abortion rights. The hypocrisy of championing legislative processes on abortion while simultaneously eroding democratic safeguards lays bare the hollowness of *Dobbs*' democratic rhetoric.

Nevertheless, despite the flaws in this reasoning, the reality is that robust engagement in the imperfect democratic arena has become a strategic necessity in the fight to safeguard and expand reproductive justice nationwide. Flawed as it is, the political process offers vital avenues that reproductive rights and justice advocates must leverage—even as parallel efforts push to reform the systemic impediments disenfranchising marginalized voices.<sup>17</sup> Indeed, the Court's ruling has opened new pathways for advocacy movements seeking to influence public opinion, shape legislative outcomes at every level of government, and build sustained electoral power around the abortion issue. Direct democracy initiatives have proven a potent avenue for voters to enshrine abortion rights protections.<sup>18</sup> Such successes at the ballot box challenge the narrative that *Dobbs* represents the final say on abortion rights and access. These movements aim to translate this momentum into durable

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<sup>14</sup> Language plays an important role in shaping our understanding and perception of disability. In addition, ableism can be embedded in language, potentially reinforcing and perpetuating oppression of disabled people. See Lydia X.Z. Brown, *Ableism/Language*, AUTISTIC HOYA (Sept. 14, 2022), <https://www.autistichoya.com/p/ableist-words-and-terms-to-avoid.html> [<https://perma.cc/Q97C-Y5ZR>]. Given the diverse language preferences within the disability community, this Article uses both person-first (e.g., "people with disabilities") and identity-first language (e.g., "disabled people") interchangeably. See generally Erin E. Andrews, Robyn M. Powell & Kara Ayers, *The Evolution of Disability Language: Choosing Terms to Describe Disability*, 15 DISABILITY & HEALTH J., no. 3, 2022, at 1, 1–4 (exploring the evolving language preferences among people with disabilities).

<sup>15</sup> 570 U.S. 529, 535–39 (2013).

<sup>16</sup> 588 U.S. 684, 720–21 (2019).

<sup>17</sup> Sheri Arnold, *Backsliding Democracies and Women's Rights in the U.S. and Around the Globe*, MS. MAG. (May 2, 2024), <https://msmagazine.com/2024/05/02/democracy-womens-rights-authoritarian-men> [<https://perma.cc/EF7X-4JJG>].

<sup>18</sup> Jessica Winter, *Can Direct Democracy Save Abortion Rights?*, NEW YORKER (Nov. 7, 2024), <https://www.newyorker.com/news/the-lede/can-direct-democracy-save-abortion-rights> [<https://web.archive.org/web/20250115063745/https://www.newyorker.com/news/the-lede/can-direct-democracy-save-abortion-rights>].

changes in law and policy through continued civic engagement and electoral politics.

At the same time, however, the *Dobbs* decision raises grave concerns about whether marginalized groups already facing systemic barriers can genuinely have their voices heard in the new legal landscape. Building on my previous work analyzing the opinion's impacts on people with disabilities, this Article examines how the disability community's vital need for reproductive autonomy is imperiled.<sup>19</sup> This population has long encountered barriers to accessing comprehensive reproductive healthcare, including a lack of accessible facilities, discriminatory provider attitudes, and disproportionately high rates of poverty and social isolation.<sup>20</sup> *Dobbs* exacerbates these existing barriers by allowing states to restrict or ban abortion access.<sup>21</sup> People with disabilities now risk having their reproductive freedoms curtailed and being forced into pregnancies against their will, which can be especially dangerous for some who are at a higher risk of pregnancy-related complications.<sup>22</sup> The prospect of forced pregnancies due to abortion restrictions draws disturbing parallels to the historical oppression this community endured through state-sanctioned forced sterilization programs aimed at controlling their reproductive capabilities.<sup>23</sup> Concerningly, the Court's emphasis on deferring to the "democratic process"<sup>24</sup> emboldens the anti-abortion movement, which may attempt to revive such dehumanizing subjugation by capitalizing on the ruling.

This threat of renewed oppression is compounded by the unique obstacles disabled people already face in making their voices heard through those very democratic processes that will now govern reproductive autonomy nationwide.<sup>25</sup> Persistent barriers like inaccessible polling sites, voter ID requirements, lack of accommodations, transportation hurdles, and outright discrimination continue to depress electoral participation and representation of this community.<sup>26</sup> They

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<sup>19</sup> See, e.g., Robyn M. Powell, *Disabling Abortion Bans*, 58 U.C. DAVIS L. REV. 1091 (2024) [hereinafter Powell, *Disabling Abortion Bans*]; Robyn M. Powell, *Including Disabled People in the Battle to Protect Abortion Rights: A Call-to-Action*, 70 UCLA L. REV. 774 (2023) [hereinafter Powell, *Including Disabled People*]; Robyn M. Powell, *Forced to Bear, Denied to Rear: The Cruelty of Dobbs for Disabled People*, 112 GEO. L.J. 1095 (2024) [hereinafter Powell, *Forced to Bear*].

<sup>20</sup> See *infra* Part I.

<sup>21</sup> See *infra* Part I.

<sup>22</sup> See *infra* Part I.

<sup>23</sup> See generally Robyn M. Powell, *Confronting Eugenics Means Finally Confronting Its Ableist Roots*, 27 WM. & MARY J. RACE GENDER & SOC. JUST. 607 (2021) [hereinafter Powell, *Confronting Eugenics*] (detailing the history of restricting disabled people's reproductive rights).

<sup>24</sup> *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 269 (2022).

<sup>25</sup> See *infra* Part I.

<sup>26</sup> See *infra* Part II.

remain vastly underrepresented in elected office at all levels, systematically excluded from crucial policy decisions impacting their lives.<sup>27</sup> And their perspectives are still too often marginalized from public discourse on reproductive rights and justice.<sup>28</sup> Without purposeful efforts to enfranchise this community, the *Dobbs* decision risks further alienating disabled people from the legislative arena newly empowered to dictate their reproductive freedoms. The intersection of these challenges with the broader assault on voting rights and democratic norms underscores the urgent need for a comprehensive approach to reproductive justice that centers disability rights and accessibility.

Consequently, a multifaceted approach centering disability rights, firsthand perspectives, and grassroots leadership is imperative for the reproductive justice movement. While pragmatically engaging available democratic avenues, activists must concurrently work to dismantle systemic barriers obstructing disabled people's equitable political power and representation—a dual strategy of operating within flawed systems while striving to reform and transform those unjust structures. This approach recognizes that the fight for reproductive justice is inextricably linked with the broader struggle for disability rights and true democratic representation. It calls for a reimagining of both our political processes and our conceptualization of reproductive freedom, one that fully incorporates the diverse needs and experiences of people with disabilities. By addressing these intertwined challenges, the movement can work toward a more inclusive and equitable democracy that genuinely protects the reproductive autonomy of all people.

To lay the groundwork for this comprehensive strategy, this Article begins by examining the disproportionate harm *Dobbs* inflicts upon people with disabilities.<sup>29</sup> It analyzes the harmful health risks, worsening access to comprehensive reproductive healthcare, escalating economic burdens, and erosion of bodily autonomy faced by disabled people in the wake of this ruling. This Article then turns its focus to the myriad undemocratic hurdles this community must confront, including entrenched biases and social perceptions, information barriers and communication gaps, systemic and legal obstacles to voting, and underrepresentation in political spheres.<sup>30</sup> This thorough examination of the challenges serves as a foundation for understanding the complex landscape that disability rights and reproductive justice advocates must navigate in the post-*Dobbs* era.

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<sup>27</sup> See *infra* Part II.

<sup>28</sup> See *infra* Part II.

<sup>29</sup> See *infra* Part I.

<sup>30</sup> See *infra* Part II.

With this context established, this Article maps out key strategic pathways for empowering people with disabilities in alignment with the Court's purported deference to legislative processes as the legitimate forum for negotiating reproductive freedoms.<sup>31</sup> It examines avenues for shaping public opinion to challenge stereotypes, narratives, and societal assumptions around reproduction and disability. This Article provides a blueprint for leveraging lobbying efforts, mobilizing disabled constituents into a powerful voting bloc, increasing representation by ensuring fully accessible voting processes, and actively recruiting and training disabled candidates to run for office.<sup>32</sup> These strategies are designed not only to address the immediate threats to reproductive autonomy posed by *Dobbs* but also to build long-term political power and influence for the disability community.

Ultimately, this Article posits that centering disability rights and grassroots leadership is necessary for the reproductive justice movement's full transformative potential in this fraught post-*Dobbs* era. By foregrounding disabled people's lived experiences and activist vision, a holistic concept of reproductive freedom—grounded in bodily autonomy, self-determination, and dignity for all—can finally take shape. As fundamental rights face an unprecedented assault, this Article serves as a roadmap for pragmatically navigating flawed realities while rectifying injustice through bold structural reforms. The conclusion emphasizes the need for broader systemic change beyond democratic engagement to forge a future where every person's reproductive freedoms are truly realized and upheld. In doing so, it calls for a reimagining of our political and legal systems that places the rights and needs of marginalized communities, particularly people with disabilities, at the center of the fight for reproductive justice and democratic equality.

#### I. DANGEROUS CONSEQUENCES: HOW *DOBBS* DISPROPORTIONATELY HARMS DISABLED PEOPLE

The *Dobbs* decision has precipitated a seismic shift in reproductive rights across the United States, with particularly profound and far-reaching consequences for people with disabilities. This Part examines the disproportionate impact of this ruling on the disability community, focusing on four critical areas of concern. The repercussions for disabled people extend far beyond the immediate issue of abortion access, touching on (1) fundamental aspects of health, (2) healthcare

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<sup>31</sup> See *infra* Part III.

<sup>32</sup> See *infra* Part III.

accessibility, (3) economic stability, and (4) personal autonomy. These effects are not isolated but intricately interconnected, often compounding to create a complex web of challenges for disabled people navigating the post-*Dobbs* landscape.

By exploring heightened health risks, diminishing access to reproductive healthcare, mounting economic burdens, and the erosion of bodily autonomy, this Part reveals the intricate and often hidden ways in which the *Dobbs* ruling exacerbates existing challenges and erects new barriers for disabled people striving to maintain control over their reproductive health and choices. This analysis illuminates the unique and often overlooked ways in which people with disabilities are disproportionately affected by sweeping legal and policy changes, underscoring the urgent need for a nuanced understanding of how judicial decisions can have profoundly unequal impacts on specific communities. In doing so, it lays a critical foundation for considering the vital role of inclusive democratic processes in protecting the rights and addressing the needs of all members of society, particularly in the context of fundamental rights such as reproductive freedom.

### A. *Harmful Health Risks*

The *Dobbs* decision has intensified health risks for certain disabled people, particularly those with high-risk pregnancies. While many disabled people experience safe pregnancies and successful births, for some, continuing a pregnancy can lead to life-threatening complications or significant worsening of existing conditions.<sup>33</sup> By eliminating access to abortions, the ruling has left some people with disabilities without recourse in potentially dangerous situations. This Section examines how abortion restrictions following *Dobbs* have created scenarios where some disabled people must endure heightened health risks, effectively putting their lives on the line due to legal constraints rather than medical considerations.

Pregnant people with disabilities face substantially elevated health risks compared to their nondisabled peers. Research reveals a stark disparity, with disabled women<sup>34</sup> experiencing over eleven times the

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<sup>33</sup> See *infra* notes 34–36 and accompanying text.

<sup>34</sup> Critically, while abortion services are often framed as being primarily important for women, transgender, nonbinary, and gender nonconforming people also require comprehensive reproductive health services and information, including access to abortion. See Comm. on Health Care for Underserved Women, *Increasing Access to Abortion*, 136 OBSTETRICS & GYNECOLOGY 107, 108 (2020) (“People of all genders have sexual and reproductive health needs, including

maternal mortality rate and significantly higher odds of adverse maternal outcomes across the board.<sup>35</sup> These heightened risks span the entire perinatal period—from pregnancy through childbirth and into the postpartum stage—manifesting in increased rates of gestational diabetes, preeclampsia, depression, cesarean delivery, preterm birth, low birth weight, stillbirth, and miscarriage.<sup>36</sup>

The nature and severity of these risks vary across disability types. For example, women with physical and sensory disabilities encounter alarmingly high rates of pregnancy-related complications, including urinary tract infections, blood clots, premature membrane rupture, cesarean delivery, postpartum depression, and post-delivery injuries.<sup>37</sup>

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women, transgender people, nonbinary people, and those who are otherwise gender-diverse.”). Accordingly, this Article strives to use gender-neutral language whenever possible; however, in some instances, the terms “woman” or “women” are used when they are specific to the statutes, research, or cited sources.

<sup>35</sup> See Jessica L. Gleason, Jagteshwar Grewal, Zhen Chen, Alison N. Cernich & Katherine L. Grantz, *Risk of Adverse Maternal Outcomes in Pregnant Women with Disabilities*, JAMA, Dec. 15, 2021, at 1, 4–6.

<sup>36</sup> See, e.g., Lesley A. Tarasoff, Saranyah Ravindran, Hannan Malik, Dinara Salaeva & Hilary K. Brown, *Maternal Disability and Risk for Pregnancy, Delivery, and Postpartum Complications: A Systematic Review and Meta-Analysis*, 222 AM. J. OBSTETRICS & GYNECOLOGY 27, 29–34 (2020) (describing studies on perinatal outcomes among women with disabilities); Ilhom Akobirshoev, Susan L. Parish, Monika Mitra & Eliana Rosenthal, *Birth Outcomes Among US Women with Intellectual and Developmental Disabilities*, 10 DISABILITY & HEALTH J. 406, 408–09 (2017) (finding adverse maternal and child outcomes among women with intellectual and developmental disabilities); Hilary K. Brown & Monika Mitra, *Improved Obstetric Care for People with Disabilities: An Urgent Call for Accessibility and Inclusion*, 31 J. WOMEN’S HEALTH 4, 4 (2022) (citing studies showing increased risk of adverse pregnancy outcomes among disabled women); Monika Mitra et al., *Pregnancy, Birth, and Infant Outcomes Among Women Who Are Deaf or Hard of Hearing*, 58 AM. J. PREVENTIVE MED. 418, 420 (2020) (documenting that Deaf and hard-of-hearing women had an increased risk of adverse pregnancy complications); Mekhala V. Dissanayake, Blair G. Darney, Aaron B. Caughey & Willi Horner-Johnson, *Miscarriage Occurrence and Prevention Efforts by Disability Status and Type in the United States*, 29 J. WOMEN’S HEALTH 345, 350 (2020) (finding that women with disabilities had higher odds of having a miscarriage than women without disabilities); Willi Horner-Johnson, Sheetal Kulkarni-Rajasekhara, Blair G. Darney, Mekhala Dissanayake & Aaron B. Caughey, *Live Birth, Miscarriage, and Abortion Among U.S. Women With and Without Disabilities*, 10 DISABILITY & HEALTH J. 382, 384 (2017) (finding that women with complex activity limitations had higher odds of miscarriage); Jeanne L. Alhusen, Rosemary B. Hughes, Genevieve Lyons & Kathryn Laughon, *Depressive Symptoms During the Perinatal Period by Disability Status: Findings from the United States Pregnancy Risk Assessment Monitoring System*, 79 J. ADVANCED NURSING 223, 229 (2023) (finding that women with disabilities are over twice as likely to experience depressive symptoms during pregnancy and postpartum than women without disabilities).

<sup>37</sup> See, e.g., Deborah A. Crane, David R. Doody, Melissa A. Schiff & Beth A. Mueller, *Pregnancy Outcomes in Women with Spinal Cord Injuries: A Population-Based Study*, 11 PM&R 795, 798–801 (2019) (finding adverse pregnancy outcomes among women with spinal cord injuries); Monika Mitra, Ilhom Akobirshoev, Michael M. McKee & Lisa I. Iezzoni, *Birth Outcomes Among U.S. Women with Hearing Loss*, 51 AM. J. PREVENTIVE MED. 865, 867–70 (2016) (revealing pregnancy

Those with intellectual and developmental disabilities face more than double the maternal mortality rate, along with elevated risks of preterm birth, underweight infants, and stillbirth—with non-white women experiencing even more pronounced disparities.<sup>38</sup> Moreover, mental health disabilities, such as bipolar disorder and schizophrenia, are associated with an increased incidence of gestational diabetes, preeclampsia, hypertension, and preterm birth.<sup>39</sup>

Pregnancy poses significant health risks for people with various other disabilities and chronic conditions as well. For instance, those with epilepsy, diabetes, and other chronic illnesses face elevated risks of complications such as preeclampsia, preterm delivery, ruptured membranes, fetal anomalies, and various neonatal issues, including macrosomia, hypoglycemia, and hyperbilirubinemia.<sup>40</sup> The risks escalate

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and birth complications among Deaf and hard-of-hearing women); Mitra et al., *supra* note 36, at 420 (finding poor maternal and child outcomes among Deaf and hard-of-hearing women); Melissa A. Schiff, David R. Doody, Deborah A. Crane & Beth A. Mueller, *Pregnancy Outcomes Among Visually Impaired Women in Washington State, 1987–2014*, 14 *DISABILITY & HEALTH J.*, July 2021, at 1, 1–5 (analyzing the higher rates of poor pregnancy outcomes among women who were blind or had low vision).

<sup>38</sup> Numerous studies have found that women with intellectual and developmental disabilities experience complications during pregnancy and delivery. See, e.g., Monika Mitra, Ilhom Akobirshoev, Anne Valentine, Hilary K. Brown & Tiffany A. Moore Simas, *Severe Maternal Morbidity and Maternal Mortality in Women with Intellectual and Developmental Disabilities*, 61 *AM. J. PREVENTIVE MED.* 872, 875–77 (2021); Akobirshoev et al., *supra* note 36, at 408–10; Ilhom Akobirshoev et al., *Racial and Ethnic Disparities in Birth Outcomes and Labour and Delivery-Related Charges Among Women with Intellectual and Developmental Disabilities*, 63 *J. INTELL. DISABILITY RSCH.* 313, 318–19 (2019); Monika Mitra, Susan L. Parish, Karen M. Clements, Xiaohui Cui & Hafsatu Diop, *Pregnancy Outcomes Among Women with Intellectual and Developmental Disabilities*, 48 *AM. J. PREVENTIVE MED.* 300, 306 (2015); Beth A. Mueller, Deborah Crane, David R. Doody, Sally N. Stuart & Melissa A. Schiff, *Pregnancy Course, Infant Outcomes, Rehospitalization, and Mortality Among Women with Intellectual Disability*, 12 *DISABILITY & HEALTH J.* 452, 454 (2019); Eric Rubenstein et al., *Pregnancy Complications and Maternal Birth Outcomes in Women with Intellectual and Developmental Disabilities in Wisconsin Medicaid*, 15 *PLOS ONE*, Oct. 27, 2020, at 1; Eric Rubenstein et al., *Birth Outcomes Affecting Infants of Mothers with Intellectual and Developmental Disabilities*, 35 *PAEDIATRIC & PERINATAL EPIDEMIOLOGY* 706, 709 (2021).

<sup>39</sup> See, e.g., Malak A. Mohamed, Abdulrahman Elhelbawy, Maria Khalid, Latifa A. AbdAllatif & Hagar E. Lialy, *Effects of Bipolar Disorder on Maternal and Fetal Health During Pregnancy: A Systematic Review*, 23 *BMC PREGNANCY CHILDBIRTH*, Aug. 28, 2023, at 1 (reviewing studies that found pregnancy complications among women with bipolar disorder); Thanh N. Nguyen et al., *Obstetric and Neonatal Outcomes of Pregnant Women with Severe Mental Illness at a Specialist Antenatal Clinic*, 199 *MED. J. AUSTL.* 26 (2013) (finding that women with severe mental illness experience poor maternal and child outcomes).

<sup>40</sup> See, e.g., Ajleeta Sangtani et al., *The Impact of New and Renewed Restrictive State Abortion Laws on Pregnancy-Capable People with Diabetes*, 23 *CURRENT DIABETES REPS.* 175, 176–77 (2023) (describing pregnancy risks associated with diabetes and how the *Dobbs* decision exacerbates these risks); Am. Diabetes Ass’n, *Management of Diabetes in Pregnancy: Standards of Medical Care in*

dramatically for those managing multiple chronic conditions, who experience significantly higher rates of preterm birth, cesarean delivery, and severe maternal morbidity and mortality—facing a staggering 276% greater risk of serious complications or death.<sup>41</sup> Particularly concerning are pregnancies in some people with autoimmune disorders, blood disorders, heart disease, and kidney disease.<sup>42</sup> Despite close medical monitoring, these conditions substantially increase the danger of significant complications or death during pregnancy.<sup>43</sup> Consequently, some healthcare providers advise against pregnancy for people with these conditions and may recommend termination to mitigate severe health threats.<sup>44</sup>

Furthermore, pregnancy can significantly exacerbate certain disabilities and chronic conditions, imposing substantial physiological changes that may severely compromise health beyond the already elevated risks of maternal mortality and morbidity.<sup>45</sup> The impact on various conditions can be profound and potentially life-threatening. For example, people with multiple sclerosis who discontinue treatment with Natalizumab, a well-known and efficacious treatment for multiple sclerosis, before or during pregnancy often experience disease relapses.<sup>46</sup> For those with preexisting heart conditions, the increased cardiovascular

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*Diabetes*, 41 DIABETES CARE S137 (2018) (describing pregnancy care for people with diabetes); Sima I. Patel & Page B. Pennell, *Management of Epilepsy During Pregnancy: An Update*, 9 THERAPEUTIC ADVANCES NEUROLOGICAL DISORDERS 118, 123–24 (2016); *Chronic Health Conditions and Pregnancy*, MARCH DIMES (Mar. 2019), <https://www.marchofdimes.org/find-support/topics/planning-baby/chronic-health-conditions-and-pregnancy> [<https://perma.cc/E667-BHQY>] (describing pregnancy outcomes and potential complications among people with chronic conditions).

<sup>41</sup> Lindsay K. Admon, Tyler N.A. Winkelman, Michele Heisler & Vanessa K. Dalton, *Obstetric Outcomes and Delivery-Related Health Care Utilization and Costs Among Pregnant Women with Multiple Chronic Conditions*, PREVENTING CHRONIC DISEASE, Feb. 2018, at 1 (finding high rates of pregnancy complications among women with chronic conditions).

<sup>42</sup> See *Pre-Existing Maternal Medical Conditions*, U. ROCHESTER MED. CTR., <https://www.urmc.rochester.edu/ob-gyn/maternal-fetal-care/maternal-care/maternal-conditions-we-treat.aspx> [<https://perma.cc/S9DW-HY4N>] (describing pregnancy complications among people with chronic conditions).

<sup>43</sup> See *id.*; Lynda A. Tyer-Viola & Ruth Palan Lopez, *Pregnancy with Chronic Illness*, 43 JOGNN 25 (2014) (finding greater risk of adverse outcomes among women with chronic conditions).

<sup>44</sup> See Tyer-Viola & Lopez, *supra* note 43, at 25 (discussing pregnancy risks among women with chronic conditions).

<sup>45</sup> *Abortion Can Be Medically Necessary*, AM. COLL. OBSTETRICIANS & GYNECOLOGISTS (Sept. 25, 2019), <https://www.acog.org/news/news-releases/2019/09/abortion-can-be-medically-necessary> [<https://perma.cc/VJ3P-CKSW>] (“Pregnancy imposes significant physiological changes on a person’s body. These changes can exacerbate underlying or preexisting conditions, like renal or cardiac disease, and can severely compromise health . . .”).

<sup>46</sup> Kerstin Hellwig et al., *Multiple Sclerosis Disease Activity and Disability Following Discontinuation of Natalizumab for Pregnancy*, 5 JAMA NETWORK OPEN, Jan. 2022, at 1, 2, 9–10.



stress of pregnancy can dangerously intensify their disability.<sup>47</sup> Lupus, an autoimmune disorder, may suddenly worsen during pregnancy, potentially leading to life-threatening blood clots.<sup>48</sup> Pregnancy can unmask or aggravate previously asymptomatic valvular heart defects, while kidney disorders like Alport syndrome frequently deteriorate due to pregnancy-induced fluid shifts and volume changes.<sup>49</sup> People with pulmonary hypertension face the risk of dangerously increased pressure in their lung blood vessels, and preexisting diabetes often severely decompensates under pregnancy's metabolic demands, potentially leading to extreme complications.<sup>50</sup> These examples illustrate how pregnancy can dramatically alter the course of various disabilities and chronic conditions, often necessitating careful medical management and, in some cases, the consideration of pregnancy termination to preserve the individual's health and life.

Indeed, pregnancy presents unique challenges for people with chronic health conditions, potentially becoming an additional disabling event.<sup>51</sup> This reality underscores the crucial role of abortion in maintaining well-being, particularly when medications contraindicated during pregnancy are essential for managing disabilities.<sup>52</sup> Critically,

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<sup>47</sup> *Heart Conditions and Pregnancy: Know the Risks*, MAYO CLINIC (Aug. 10, 2023), <https://www.mayoclinic.org/healthy-lifestyle/pregnancy-week-by-week/in-depth/pregnancy/art-20045977> [<https://perma.cc/379D-EJNK>].

<sup>48</sup> J. Cortés-Hernández et al., *Clinical Predictors of Fetal and Maternal Outcome in Systemic Lupus Erythematosus: A Prospective Study of 103 Pregnancies*, 41 RHEUMATOLOGY 643, 646–647 (2002) (finding adverse outcomes among women with lupus during the perinatal period); Robert Silver et al., *Society for Maternal-Fetal Medicine Consult Series #64: Systemic Lupus Erythematosus in Pregnancy*, 228 AM. J. OBSTETRICS & GYNECOLOGY B41, B42–44 (2023) (explaining potential risks associated with lupus and pregnancy).

<sup>49</sup> Karen K. Stout & Catherine M. Otto, *Pregnancy in Women with Valvular Heart Disease*, 93 HEART J. 552, 552–53 (2006) (showing that pregnancy can worsen cardiac conditions); Koji Matsuo, Erika L. Tudor & Ahmet A. Baschat, *Alport Syndrome and Pregnancy*, 109 OBSTETRICS & GYNECOLOGY 531, 531–32 (2007) (showing the potential of deterioration of symptoms because of pregnancy).

<sup>50</sup> David G. Kiely, Robin Condliffe, Vicki J. Wilson, Suarabh V. Gandhi & Charlie A. Elliot, *Pregnancy and Pulmonary Hypertension: A Practical Approach to Management*, 6 OBSTETRIC MED. 144, 145–46 (2013) (documenting risks associated with pregnancy); Comm. on Prac. Bulls., Am. Coll. of Obstetricians & Gynecologists, *ACOG Practice Bulletin No. 190: Gestational Diabetes Mellitus*, 131 OBSTETRICS & GYNECOLOGY e49, e49 (2018) (describing how diabetes symptoms can worsen during pregnancy).

<sup>51</sup> Asha Hassan, Lindsey Yates, Anna K. Hing, Alanna E. Hirz & Rachel Hardeman, *Dobbs and Disability: Implications of Abortion Restrictions for People with Chronic Health Conditions*, 58 HEALTH SERVS. RSCH. 197, 198 (2023).

<sup>52</sup> Lori M. Gawron et al., *Multi-Morbidity and Highly Effective Contraception in Reproductive-Age Women in the US Intermountain West: A Retrospective Cohort Study*, 35 J. GEN. INTERNAL MED. 637, 637, 640–41 (2019) (discussing how certain medications can contraindicate pregnancy); see also *An Overlooked Perspective: The Implications of Roe v. Wade Being Overturned for People*

abruptly discontinuing psychiatric medications can lead to severe withdrawal effects and increased suicide risk, while stopping epilepsy medications can trigger life-threatening seizures.<sup>53</sup> Consequently, some people with disabilities may seek an abortion because of these, and other, health-related concerns rather than risk stopping vital treatments.<sup>54</sup>

In sum, the post-*Dobbs* legal landscape surrounding abortion access poses a significant threat to the health, autonomy, and well-being of people with disabilities. By failing to adequately account for the complex needs of this population, abortion bans create a discriminatory healthcare environment that disproportionately endangers disabled people. These restrictions disregard both the right to reproductive autonomy and the medical realities faced by those with chronic conditions and disabilities. The current legal framework effectively denies disabled people the agency to make crucial healthcare decisions in consultation with their doctors, forcing some to continue high-risk pregnancies that may exacerbate their conditions to life-threatening levels. This situation places an already vulnerable population at unacceptable and avoidable risk, undermining the principles of equality and healthcare access. The heightened health risks for disabled people during pregnancy, combined with diminished access to abortion care, create a perfect storm of potential health crises.

### B. *Worsening Access to Reproductive Healthcare*

The *Dobbs* decision has exacerbated existing barriers to reproductive healthcare access for people with disabilities, compounding the challenges faced by an already marginalized community within the healthcare system. Notwithstanding legal protections such as Section 504 of the Rehabilitation Act (Section 504),<sup>55</sup> the Americans with Disabilities Act (ADA),<sup>56</sup> and the Affordable Care Act (ACA),<sup>57</sup> disabled people encounter significant and pervasive obstacles when seeking healthcare

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with Disabilities, ABLE S.C., <https://www.able-sc.org/resource-library/position/an-overlooked-perspective-the-implications-of-roe-v-wade-being-overturned-for-people-with-disabilities> [https://perma.cc/7W5U-UQWT] (explaining how the *Dobbs* decision impacts disabled people who may take medication that is harmful during pregnancy).

<sup>53</sup> *An Overlooked Perspective: The Implications of Roe v. Wade Being Overturned for People with Disabilities*, *supra* note 52.

<sup>54</sup> Powell, *Disabling Abortion Bans*, *supra* note 19, at 1133, 1136, 1138.

<sup>55</sup> Rehabilitation Act of 1973, Pub. L. No. 93-112, § 504, 87 Stat. 355 (1973) (codified as amended at 29 U.S.C. § 794).

<sup>56</sup> Americans with Disabilities Act (ADA) of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213).

<sup>57</sup> Patient Protection and Affordable Care Act (ACA) of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010); Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, 1066 (2010).

services, including reproductive care. Such barriers span the entire spectrum of healthcare and include attitudinal barriers, physical inaccessibility, communication challenges, and financial constraints.<sup>58</sup> Strikingly, some healthcare providers openly admit to discharging patients with disabilities over accommodation requests, while many remain reluctant to accept disabled patients requiring communication aids or extra time.<sup>59</sup>

Physical barriers in healthcare settings prevent many people with disabilities from receiving adequate care, as essential equipment like scales, exam tables, and imaging machines often lack basic accessibility features—limiting treatment options and compromising health outcomes.<sup>60</sup> Surveys reveal that only a small percentage of facilities provide accessible weight scales and height-adjustable examination tables suitable for people with physical disabilities.<sup>61</sup> These physical barriers, combined with communication challenges and financial limitations, contribute to poorer health outcomes for people with disabilities.<sup>62</sup> In fact, disabled people are four times more likely to report fair or poor health compared to nondisabled peers (40.3% versus 9.9%)<sup>63</sup> and less likely to receive essential preventive care such as dental check-ups, mammograms, and vaccinations.<sup>64</sup>

In the realm of reproductive health, the disparities are particularly stark for people with disabilities. Disabled people experience a 40% higher likelihood of unintended pregnancies and face numerous unmet reproductive health needs, including inadequate access to sexual

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<sup>58</sup> Robyn M. Powell, *Applying the Health Justice Framework to Address Health and Health Care Inequities Experienced by People with Disabilities During and After COVID-19*, 96 WASH. L. REV. 93, 104–07 (2021) (describing the current state of health and healthcare inequities for people with disabilities); see also *Common Barriers to Participation Experienced by People with Disabilities*, CDC (May 2, 2024), <https://www.cdc.gov/ncbddd/disabilityandhealth/disability-barriers.html> [<https://perma.cc/K9AS-9BG8>].

<sup>59</sup> Tara Lagu et al., ‘I Am Not the Doctor for You’: Physicians’ Attitudes About Caring for People with Disabilities, 41 HEALTH AFFS. 1387, 1392–93 (2022).

<sup>60</sup> Elizabeth Pendo, *Reducing Disparities Through Health Care Reform: Disability and Accessible Medical Equipment*, 4 UTAH L. REV. 1057, 1059–65 (2010).

<sup>61</sup> Nancy R. Mudrick, Mary Lou Breslin, Mengke Liang & Silvia Yee, *Physical Accessibility in Primary Health Care Settings: Results from California On-Site Reviews*, 5 DISABILITY & HEALTH J. 159, 159, 165 (2012) (finding that among over 2,000 primary care offices in California accepting Medicaid patients, less than 4% provided accessible weight scales suitable for wheelchair users and people with physical disabilities, and less than 9% had height-adjustable examination tables).

<sup>62</sup> NAT’L COUNCIL ON DISABILITY, *THE CURRENT STATE OF HEALTH CARE FOR PEOPLE WITH DISABILITIES* 23, 34–35, 50 (2009).

<sup>63</sup> Gloria Krahn, Deborah Klein Walker & Rosaly Correa-De-Araujo, *Persons with Disabilities as an Unrecognized Health Disparity Population*, 105 AM. J. PUB. HEALTH S198, S201 (2015).

<sup>64</sup> Heather F. de Vries McClintock, et al., *Health Care Experiences and Perceptions Among People with and Without Disabilities*, 9 DISABILITY & HEALTH J. 74, 74–75 (2016) (describing the finding of studies about disabled people’s access to preventive healthcare).

education, contraception, and reproductive health screenings.<sup>65</sup> A recent study found that 50% of women with disabilities have experienced logistical barriers to accessing reproductive healthcare.<sup>66</sup> These barriers, coupled with ableist attitudes among some reproductive health providers and a lack of disability-specific training, create significant obstacles for people with disabilities seeking reproductive healthcare.<sup>67</sup> Many providers make incorrect assumptions about disabled people's sexual activity and reproductive health needs, further impeding access to appropriate care.<sup>68</sup>

The *Dobbs* decision has further restricted reproductive healthcare, including abortion care, disproportionately affecting disabled people. With 52% of disabled women living in states with abortion restrictions, the scarcity of accessible facilities creates pronounced hurdles to accessing care.<sup>69</sup> This lack of access is especially burdensome given the higher risks many people with disabilities face during pregnancy.<sup>70</sup> For pregnant people with disabilities, the consequences of these barriers are severe. They encounter widespread ableism and obstacles when accessing essential perinatal care, including physically inaccessible facilities and equipment, gaps in provider disability awareness and training, and

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<sup>65</sup> See Willi Horner-Johnson, Mekhala Dissanayake, Justine P. Wu, Aaron B. Caughey & Blair G. Darney, *Pregnancy Intendedness by Maternal Disability Status and Type in the United States*, 52 PERSPS. SEXUAL & REPROD. HEALTH 31, 33 (2020) (finding a higher proportion of pregnancies were unintended among disabled women compared to nondisabled women); see also Jeanne L. Alhusen, Tina Bloom, Kathryn Laughon, Lillian Behan & Rosemary B. Hughes, *Perceptions of Barriers to Effective Family Planning Services Among Women with Disabilities*, 14 DISABILITY & HEALTH J., July 2021, at 1, 1–2 (reviewing studies showing higher unintended pregnancy rates among women with disabilities compared to women without disabilities); WORLD HEALTH ORG. & WORLD BANK, WORLD REPORT ON DISABILITY 60–61, 79 (2011), <https://iris.who.int/handle/10665/44575> [<https://perma.cc/DZ4W-NBH9>] (documenting disparities in reproductive healthcare for people with disabilities).

<sup>66</sup> M. Antonia Biggs, *Access to Reproductive Health Services Among People with Disabilities*, JAMA, Nov. 29, 2023, at 1, 1.

<sup>67</sup> An Nguyen, *Challenges for Women with Disabilities Accessing Reproductive Health Care Around the World: A Scoping Review*, 38 SEXUALITY & DISABILITY 371, 374–76, 383 (2020); Laura H. Taouk, Michael F. Fialkow & Jay A. Schulkin, *Provision of Reproductive Healthcare to Women with Disabilities: A Survey of Obstetrician–Gynecologists' Training, Practices, and Perceived Barriers*, 2 HEALTH EQUITY 207, 208, 212–13 (2018).

<sup>68</sup> Nguyen, *supra* note 67, at 374–76, 383; Taouk et al., *supra* note 67, at 208, 212–13.

<sup>69</sup> KATHERINE GALLAGHER ROBBINS, SHAINA GOODMAN & JOSIA KLEIN, NAT'L P'SHIP FOR WOMEN & FAMS., STATE ABORTION BANS HARM MORE THAN 15 MILLION WOMEN OF COLOR 2 (2023), <https://nationalpartnership.org/wp-content/uploads/2023/02/state-abortion-bans-harm-woc.pdf> [<https://perma.cc/4FU6-BXJW>].

<sup>70</sup> See *supra* Section I.A.

financial obstacles related to care costs and insurance limitations.<sup>71</sup> The post-*Dobbs* landscape has intensified these already significant challenges, potentially leading to poorer health outcomes and increased risks for an already marginalized population.

### C. Escalating Economic Burdens

The economic consequences of restricted abortion access following *Dobbs* are particularly severe for people with disabilities, exacerbating the already high rates of poverty and financial instability within this community. Research consistently shows that disabled people are significantly more likely to live in poverty compared to their nondisabled counterparts.<sup>72</sup> This disparity persists across all age groups and types of disabilities, creating a pervasive economic disadvantage. The intersection of disability with other marginalized identities often compounds this economic hardship, highlighting the complex interplay of various systemic barriers.<sup>73</sup>

According to data from the U.S. Census Bureau, in 2022, 24% of people with disabilities lived below the federal poverty level, compared to 9.5% of people without disabilities.<sup>74</sup> This stark difference underscores the economic challenges faced by the disability community. The situation is even more dire for certain subgroups within the disabled population. For instance, 37% of Black disabled people live in poverty, illustrating the compounded effects of systemic racism and ableism.<sup>75</sup> These statistics reveal not only the widespread nature of economic hardship among

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<sup>71</sup> Monika Mitra, Linda M. Long-Bellil, Suzanne C. Smeltzer & Lisa I. Iezzoni, *A Perinatal Health Framework for Women with Physical Disabilities*, 8 *DISABILITY & HEALTH J.* 499, 502–04 (2015); Heather A. Swadley & Maeve Keeley-Mehrad, “Deeply Rooted”: *Abortion Federalism, Divided Citizenship, and Disability Reproductive (In)justice*, 45 *J. WOMEN, POL. & POL’Y* 59, 69 (2024).

<sup>72</sup> *Highlighting Disability/Poverty Connection, NCD Urges Congress to Alter Federal Policies that Disadvantage People with Disabilities*, NAT’L COUNCIL ON DISABILITY (Oct. 26, 2017), <https://www.ncd.gov/2017/10/26/highlighting-disability-poverty-connection-ncd-urges-congress-to-alter-federal-policies-that-disadvantage-people-with-disabilities> [<https://perma.cc/X8XX-JLCT>] (describing the pervasive financial inequities experienced by people with disabilities).

<sup>73</sup> See NANETTE GOODMAN, MICHAEL MORRIS & KELVIN BOSTON, NAT’L DISABILITY INST., *FINANCIAL INEQUALITY: DISABILITY, RACE AND POVERTY IN AMERICA* 12–14 (2019), <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/02/disability-race-poverty-in-america.pdf> [<https://perma.cc/53T3-HY8B>] (finding that disabled people of color experience significant economic disparities).

<sup>74</sup> EMILY A. SHRIDER & JOHN CREAMER, U.S. CENSUS BUREAU, *CURRENT POPULATION REPORTS, P60-280, POVERTY IN THE UNITED STATES: 2022*, at 21 (2023), <https://www.census.gov/content/dam/Census/library/publications/2023/demo/p60-280.pdf> [<https://perma.cc/RC78-32HT>].

<sup>75</sup> Goodman et al., *supra* note 73, at 12.

disabled people but also the intersectional factors that can exacerbate financial struggles.

The Turnaway Study, a landmark longitudinal study comparing women who received abortions to those denied them due to gestational limits, offers compelling evidence of the economic ramifications of restricted abortion access.<sup>76</sup> The study found that women denied abortions experienced significantly worse economic outcomes compared to those who received them.<sup>77</sup> Women denied abortions were more likely to live in poverty four years later, less likely to be employed full-time, and reported more difficulty covering basic living expenses like food, housing, and transportation.<sup>78</sup> These findings suggest that the economic impact of denied abortion care is not short-lived but can have long-lasting effects on an individual's financial stability and overall well-being.

For people with disabilities—who already face significant economic challenges—these effects are likely to be even more pronounced. The employment gap between disabled and nondisabled people is glaring, with only 22.5% of disabled people employed compared to 65.8% of those without disabilities as of 2023.<sup>79</sup> This disparity in employment translates to lower incomes and reduced financial stability, creating a precarious economic foundation even before considering the costs of forced parenthood. The combination of limited employment opportunities and the potential for forced parenthood due to restricted abortion access can create a perfect storm of economic hardship for people with disabilities.<sup>80</sup>

Moreover, disabled people often face higher everyday living costs related to their disabilities. According to research from the National Disability Institute, a family that includes an adult with a disability needs approximately \$17,690 more in annual income—a 28% increase—to achieve the same living standard as a similar household where no member has a disability.<sup>81</sup> These additional costs can include expenses for medical care, assistive devices, personal assistance services, and accessible housing

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<sup>76</sup> DIANA GREENE FOSTER, *THE TURNAWAY STUDY: TEN YEARS, A THOUSAND WOMEN, AND THE CONSEQUENCES OF HAVING—OR BEING DENIED—AN ABORTION* (2021).

<sup>77</sup> *Id.*; Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 112 AM. J. PUB. HEALTH 1290, 1292–94 (2022).

<sup>78</sup> Foster et al., *supra* note 77, at 1293–94.

<sup>79</sup> U.S. BUREAU OF LAB. STATS., *PERSONS WITH A DISABILITY: LABOR FORCE CHARACTERISTICS SUMMARY* (Feb. 22, 2024), <https://www.bls.gov/news.release/disabl.nr0.htm> [<https://perma.cc/C7VU-ACSH>].

<sup>80</sup> See Powell, *Forced to Bear*, *supra* note 19.

<sup>81</sup> NANETTE GOODMAN, MICHAEL MORRIS, ZACHARY MORRIS & STEPHEN MCGARITY, *THE EXTRA COSTS OF LIVING WITH A DISABILITY IN THE U.S.—RESETTING THE POLICY TABLE 7* (2020), <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2020/10/extra-costs-living-with-disability-brief.pdf> [<https://perma.cc/W6L2-F7YB>].

or transportation.<sup>82</sup> The introduction of childrearing costs into this already strained financial landscape can be devastating, potentially pushing many disabled people further into poverty or financial instability.<sup>83</sup>

The economic burden of denied abortion care, as explored in recent research, is particularly relevant for disabled people. Women denied abortions experience significant increases in financial distress in the years following the denial.<sup>84</sup> For example, a study found that unpaid debts thirty or more days past due more than doubled, increasing by \$1,750 on average, representing a 78% increase relative to their pre-birth mean.<sup>85</sup> Additionally, the number of negative public records, including bankruptcies, evictions, and tax liens, increased by about 0.07, an 81% increase.<sup>86</sup> For disabled people, who may already face significant ongoing medical expenses,<sup>87</sup> the added costs of unintended parenthood can lead to severe economic distress. This financial strain can have ripple effects, impacting not only the individual's economic situation but also their physical and mental health, social relationships, and overall quality of life.<sup>88</sup>

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<sup>82</sup> *Id.* at 2–3, 11.

<sup>83</sup> See Powell, *Forced to Bear*, *supra* note 19, at 1124.

<sup>84</sup> Kate Gibson, *Women Denied Abortions Live in Financial Distress Years Later, Study Finds*, CBS NEWS (Jan. 20, 2020, 8:35 AM), <https://www.cbsnews.com/news/women-denied-abortions-in-financial-distress-years-later-study-finds> [https://perma.cc/2N89-7A8H].

<sup>85</sup> Sarah Miller, Laura R. Wherry & Diana Greene Foster, *The Economic Consequences of Being Denied an Abortion* 4 (Nat'l Bureau Econ. Rsch., Working Paper No. 26662, 2022), [https://www.nber.org/system/files/working\\_papers/w26662/w26662.pdf](https://www.nber.org/system/files/working_papers/w26662/w26662.pdf) [https://perma.cc/CD7C-JLBU].

<sup>86</sup> *Id.*

<sup>87</sup> See A. Andrews, *The Cost of Living with a Disability in America*, ESQUIRE (Aug. 23, 2023), <https://www.esquire.com/lifestyle/a44817643/cost-of-living-with-disability-american-healthcare-system> [https://perma.cc/9BRE-AHEN].

<sup>88</sup> See, e.g., Juliana Kaplan, *Millennials Moms Want More Kids—They Just Can't Afford Them*, BUS. INSIDER (Mar. 6, 2025, 4:33 AM), <https://www.businessinsider.com/millennials-kids-birth-rates-rising-costs-student-loan-debt-2025-3> [https://web.archive.org/web/20250306180137/https://www.businessinsider.com/millennials-kids-birth-rates-rising-costs-student-loan-debt-2025-3] (discussing the financial burdens, such as childcare costs and student loan debt, that prevent millennial parents from expanding their families); Alice Park, *Parenting Is More Stressful Than Ever. Here's How to Cope*, TIME (Aug. 28, 2024, 3:48 PM), <https://time.com/7015322/parental-mental-health-stress-surgeon-general> [https://perma.cc/KU4F-5X7X] (exploring the increasing stress levels among parents in the United States and their impact on both parental and child well-being); Vanessa Wong & Jeffry Bartash, *Most Americans Can't Afford Life Anymore—And They Just Don't Matter to the Economy Like They Once Did*, MARKETWATCH (Mar. 7, 2025, 2:18 PM), <https://www.marketwatch.com/story/most-americans-cant-afford-life-anymore-and-they-just-dont-matter-to-the-economy-like-they-used-to-5c5aaca5> [https://web.archive.org/web/20250308100414/https://www.marketwatch.com/story/most-americans-cant-afford-life-anymore-and-they-just-dont-matter-to-the-economy-like-they-used-to-5c5aaca5] (highlighting the economic

Research has also shown that access to abortion has significant long-term economic benefits. A study by the Institute for Women's Policy Research found that abortion legalization in the 1970s increased women's educational attainment, labor force participation, and earnings.<sup>89</sup> These gains have been crucial in advancing economic equality and opportunities for women over the past several decades. The reversal of these gains due to *Dobbs* is likely to disproportionately affect disabled people, who already face barriers to education and employment. For disabled people, who often struggle to access educational and employment opportunities,<sup>90</sup> the potential loss of reproductive choice could further limit their ability to pursue economic advancement and stability.

Furthermore, the economic impact of forced parenthood extends beyond immediate child-rearing costs. It can derail educational pursuits, hinder career advancement, and necessitate reduced work hours or exit from the workforce entirely.<sup>91</sup> For disabled people who rely on means-tested government assistance programs, the additional income needed to support a child may push them over eligibility thresholds, resulting in a loss of critical benefits that far outweigh the marginal increase in income.<sup>92</sup> This phenomenon, known as the "benefits cliff," has been well-documented in disability policy research.<sup>93</sup> The benefits cliff can create a perverse incentive structure where disabled parents may be forced to choose between adequately providing for their children and maintaining

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struggles faced by low- and middle-income families in the United States, including rising inflation and financial instability); Jessica Dicker, *Women Experience a 'Motherhood Penalty.' For Dads, There's a Wage 'Bonus,'* CNBC (Mar. 26, 2024, 11:22 AM), <https://www.cnbc.com/2024/03/26/women-experience-a-motherhood-penalty-for-dads-theres-a-pay-bump.html> [<https://perma.cc/T796-TEST>] (describing how motherhood leads to reduced earnings and career advancement, whereas fatherhood results in a wage premium); cf. Stephanie Land, *MAID: HARD WORK, LOW PAY, AND A MOTHER'S WILL TO SURVIVE* 87–92 (2019) (describing firsthand how economic insecurity from single parenthood led to housing instability, deteriorating health, and social isolation).

<sup>89</sup> ANNA BERNSTEIN & KELLY M. JONES, INST. FOR WOMEN'S POL'Y RSCH., *THE ECONOMIC EFFECTS OF ABORTION ACCESS: A REVIEW OF THE EVIDENCE* 7–9 (2019) (analyzing the long-term economic impacts of abortion legalization), [https://iwpr.org/wp-content/uploads/2020/07/B379\\_Abortion-Access\\_rfinal.pdf](https://iwpr.org/wp-content/uploads/2020/07/B379_Abortion-Access_rfinal.pdf) [<https://perma.cc/9BXU-YQQ2>].

<sup>90</sup> Press Release, Bureau of Lab. Stat., U.S Dep't of Lab., *Persons with a Disability: Labor Force Characteristics—2023* (Feb. 22, 2024), <https://www.bls.gov/news.release/pdf/disabl.pdf> [<https://web.archive.org/web/20250115025200/https://www.bls.gov/news.release/pdf/disabl.pdf>].

<sup>91</sup> INST. FOR WOMEN'S POL'Y RSCH., *THE ECONOMIC EFFECTS OF ABORTION ACCESS: A REVIEW OF EVIDENCE* (2019), [https://iwpr.org/wp-content/uploads/2020/07/B377\\_Abortion-Access-Fact-Sheet\\_final.pdf](https://iwpr.org/wp-content/uploads/2020/07/B377_Abortion-Access-Fact-Sheet_final.pdf) [<https://perma.cc/RBA8-T9A8>].

<sup>92</sup> See Powell, *Forced to Bear*, *supra* note 19, at 1151.

<sup>93</sup> See David C. Stapleton, Bonnie L. O'Day, Gina A. Livermore & Andrew J. Imparato, *Dismantling the Poverty Trap: Disability Policy for the Twenty-First Century*, 84 *MILBANK Q.* 701, 703–08 (2006).



the support systems they rely on to manage their own health and basic needs.<sup>94</sup>

The compounded economic hardship resulting from forced parenthood can have long-lasting effects on the financial stability and overall well-being of disabled people and their families. Research has consistently shown that adults with disabilities often face higher rates of material hardship, including food insecurity and difficulty paying bills.<sup>95</sup> These economic stressors can, in turn, exacerbate health conditions and further limit opportunities for economic advancement, creating a cycle of poverty that can be exceedingly difficult to break.<sup>96</sup> For disabled parents, the challenge of managing their own needs while caring for a child can be particularly overwhelming, potentially leading to deteriorating health and an increasing reliance on support systems that may already be strained.<sup>97</sup>

In light of these economic realities and research findings, the restriction of reproductive freedom following *Dobbs* significantly escalates the already disproportionate financial burden on people with disabilities. The ruling forces many to confront the prospect of parenthood without the economic resources necessary to provide adequately for themselves and a child, potentially exacerbating and perpetuating cycles of poverty and disadvantage within the disability community.<sup>98</sup> By removing a crucial option for family planning, *Dobbs* compounds existing financial pressures, making it even more challenging for people with disabilities to achieve economic stability. The economic impact of restricted abortion access is not just a matter of individual financial hardship, but a broader issue of social and economic justice, with *Dobbs* catalyzing increased economic strain on a community already experiencing significant economic inequities.

#### D. *Eroding Bodily Autonomy*

Lastly, the *Dobbs* decision and subsequent restrictions on reproductive rights have reignited profound concerns about bodily autonomy for people with disabilities, a group that has historically faced

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<sup>94</sup> See Powell, *Forced to Bear*, *supra* note 19, at 1124–25, 1151.

<sup>95</sup> See, e.g., Peiyun She & Gina A. Livermore, *Material Hardship, Poverty, and Disability Among Working-Age Adults*, 88 SOC. SCI. Q. 970, 981–84 (2007); Julia A. Rivera Drew, *Disability, Poverty, and Material Hardship Since the Passage of the ADA*, 35 DISABILITY STUD. Q., July 2015, at 1.

<sup>96</sup> See Powell, *Forced to Bear*, *supra* note 19, at 1107–10.

<sup>97</sup> *Id.*

<sup>98</sup> See *supra* notes 95–97.

significant violations of their reproductive freedoms.<sup>99</sup> This latest curtailment of reproductive choice resonates deeply within the disability community, echoing a long and troubling history of forced sterilizations, institutionalized reproductive control, and societal attitudes that have often deemed disabled people unfit for parenthood.<sup>100</sup> The erosion of reproductive rights represents not just a medical or legal issue, but a fundamental challenge to the hard-won recognition of disabled people as fully autonomous human beings capable of making their own decisions about their bodies and lives.<sup>101</sup>

Throughout much of the twentieth century, eugenics policies in many countries, including the United States, led to the forced sterilization of tens of thousands of disabled people.<sup>102</sup> These policies, often justified under the guise of public health or social welfare, reflected deeply entrenched ableist attitudes that viewed disability as a defect to be eliminated from the gene pool.<sup>103</sup> The infamous *Buck v. Bell* decision in 1927, which upheld the constitutionality of Virginia's eugenic sterilization law, epitomized this mindset, with Justice Oliver Wendell Holmes, Jr. infamously declaring, "Three generations of imbeciles are enough."<sup>104</sup> While such explicit eugenic practices have largely been abandoned, their legacy persists in more subtle forms of reproductive coercion and in societal attitudes that continue to question the reproductive rights of people with disabilities.<sup>105</sup>

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<sup>99</sup> See Powell, *Including Disabled People*, *supra* note 19, at 812–14 (explaining how *Dobbs* deeply impacts disabled people's bodily autonomy and self-determination).

<sup>100</sup> See generally PAUL A. LOMBARDO, *THREE GENERATIONS, NO IMBECILES: EUGENICS, THE SUPREME COURT, AND BUCK V. BELL* (2008) (exploring the denial of reproductive freedom for people with disabilities through the lens of the *Buck v. Bell*, 274 U.S. 200 (1927), decision).

<sup>101</sup> See generally Robyn M. Powell, *From Carrie Buck to Britney Spears: Strategies for Disrupting the Ongoing Reproductive Oppression of Disabled People*, 107 VA. L. REV. ONLINE 246 (2021) (describing the significance of reproductive freedom for disabled people); Zoe Brennan-Krohn & Rebecca McCray, *Britney Spears' Reproductive Freedom Is a Disability Rights Issue*, ACLU (June 25, 2021), <https://www.aclu.org/news/civil-liberties/britney-spears-reproductive-freedom-is-a-disability-rights-issue> [<https://perma.cc/34XR-BCHN>] (exploring reproductive freedom for people with disabilities).

<sup>102</sup> *The Supreme Court Ruling That Led to 70,000 Forced Sterilizations*, NPR (Mar. 7, 2016, 1:22 PM), <https://www.npr.org/sections/health-shots/2016/03/07/469478098/the-supreme-court-ruling-that-led-to-70-000-forced-sterilizations> [<https://perma.cc/V9V6-W6UC>] (finding that by 1970, nearly 70,000 Americans were involuntarily sterilized, most of whom were disabled, poor, people of color, or a combination thereof).

<sup>103</sup> See ADAM COHEN, *IMBECILES: THE SUPREME COURT, AMERICAN EUGENICS, AND THE STERILIZATION OF CARRIE BUCK* 1–6 (2016) (describing the underpinnings of the eugenics movement); Powell, *Confronting Eugenics*, *supra* note 23, at 621–24 (explaining the intersection of eugenics and ableism).

<sup>104</sup> 274 U.S. 200, 207 (1927).

<sup>105</sup> See Powell, *Confronting Eugenics*, *supra* note 23, at 611–21.

The *Dobbs* decision and subsequent abortion restrictions risk reinforcing these discriminatory attitudes by limiting the reproductive choices available to disabled people and implicitly suggesting that the state, rather than the individual, should have ultimate control over their reproductive futures. This shift in the legal landscape threatens to undermine decades of progress in disability rights and reproductive justice movements, which have long emphasized the importance of self-determination and bodily autonomy.<sup>106</sup>

For many disabled people, the right to make decisions about their bodies is particularly significant given the frequent medical interventions and loss of privacy they may experience.<sup>107</sup> Medical paternalism, which has historically been especially pronounced in the treatment of disabled people, often results in healthcare providers making decisions for, rather than with, disabled people.<sup>108</sup> This paternalistic approach can be particularly harmful in the context of reproductive healthcare, where it may manifest as pressure to avoid pregnancy altogether, to terminate wanted pregnancies due to perceived risks, or to continue pregnancies against the individual's wishes.<sup>109</sup>

The legal restrictions on abortion following *Dobbs* exacerbate this problem by further limiting the options available and potentially emboldening healthcare providers to impose their own judgments on disabled patients' reproductive choices.<sup>110</sup> This erosion of reproductive autonomy is particularly concerning given the complex intersections between disability, gender, race, and socioeconomic status, which can create compounded barriers to accessing comprehensive reproductive healthcare.<sup>111</sup>

The concept of informed consent, a cornerstone of medical ethics and patient autonomy, becomes particularly complex and crucial in the context of disability and reproductive rights.<sup>112</sup> Disabled people often face

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<sup>106</sup> See Powell, *Including Disabled People*, *supra* note 19, at 812–14 (2023) (describing the importance of bodily autonomy and self-determination for disabled people and how *Dobbs* threatens these principles).

<sup>107</sup> See Powell, *Disabling Abortion Bans*, *supra* note 19.

<sup>108</sup> See Tom Shakespeare, Lisa I. Iezzoni & Nora E. Groce, *The Art of Medicine: Disability and the Training of Health Professionals*, 374 LANCET 1815 (2009) (discussing the impact of medical paternalism on disabled people's access to healthcare).

<sup>109</sup> Erin E. Andrews, Kara B. Ayers, Joseph A. Stramondo & Robyn M. Powell, *Rethinking Systemic Ableism: A Response to Zagouras, Ellick, and Aulisio*, 18 CLINICAL ETHICS 7, 7–8 (2023) (discussing the pressures disabled women face concerning reproductive freedom).

<sup>110</sup> See Powell, *Disabling Abortion Bans*, *supra* note 19.

<sup>111</sup> See *id.*; DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* 56–57 (2d ed. 2017).

<sup>112</sup> See TOM L. BEAUCHAMP & JAMES F. CHILDRESS, *PRINCIPLES OF BIOMEDICAL ETHICS* 121–22 (7th ed. 2013) (describing informed consent); Powell, *Disabling Abortion Bans*, *supra* note 19 (explaining how *Dobbs* threatens disabled people's informed decision-making rights).

barriers to accessing comprehensive information about their reproductive options, whether due to communication challenges, lack of accessible materials, or healthcare providers' assumptions about their ability to understand or make decisions.<sup>113</sup> When abortion access is restricted, the opportunity for truly informed consent is further diminished, as individuals may not have complete information about all possible options or may be unable to access the options that best align with their personal circumstances and wishes.<sup>114</sup>

Moreover, the autonomy concerns raised by reproductive restrictions intersect with broader issues of self-determination and independent living that are central to disability rights advocacy.<sup>115</sup> The disability rights movement has long fought for the recognition that people with disabilities have the right to make their own choices about where and how they live, work, and participate in society.<sup>116</sup> This push for self-determination is exemplified by the independent living movement and the fight for deinstitutionalization, which sought to empower disabled people to live in their communities rather than in segregated institutional settings.<sup>117</sup>

Reproductive autonomy is a crucial component of this broader right to self-determination.<sup>118</sup> Forcing people with disabilities to carry pregnancies to term against their will not only violates their bodily autonomy but can also have far-reaching consequences for their ability to live independently, pursue education or employment, and make choices about their own care and support needs.<sup>119</sup> This is particularly true for people with complex medical needs or limited financial resources, for whom an unplanned or unwanted pregnancy could significantly impact their ability to manage their health and maintain their independence.<sup>120</sup>

In addition, the restriction of reproductive rights for disabled people raises critical questions about the intersection of disability justice and reproductive justice movements. Both movements emphasize the importance of bodily autonomy, self-determination, and the right to

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<sup>113</sup> See Powell, *Disabling Abortion Bans*, *supra* note 19.

<sup>114</sup> See *id.*

<sup>115</sup> See JAMES I. CHARLTON, *NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT* 3 (1998).

<sup>116</sup> See *id.*

<sup>117</sup> See *id.* at 130–31.

<sup>118</sup> See Powell, *Including Disabled People*, *supra* note 19, at 812–14; Robyn M. Powell, *Disability Reproductive Justice*, 170 U. PA. L. REV. 1851, 1891–94 (2022) [hereinafter Powell, *Disability Reproductive Justice*].

<sup>119</sup> See Powell, *Including Disabled People*, *supra* note 19, at 796, 804.

<sup>120</sup> See *supra* Section I.C.

make decisions about one's own life and family.<sup>121</sup> However, the specific needs and experiences of disabled people have not always been fully incorporated into mainstream reproductive rights advocacy.<sup>122</sup> The current threats to reproductive autonomy highlight the need for a more inclusive and intersectional approach that recognizes the unique challenges faced by people with disabilities in accessing reproductive healthcare and exercising their reproductive rights.<sup>123</sup>

Undeniably, the erosion of reproductive rights following the *Dobbs* decision poses significant challenges to the bodily autonomy and self-determination of people with disabilities. This latest restriction echoes a troubling history of reproductive coercion and discrimination against the disability community.<sup>124</sup> As society grapples with the implications of these legal changes, the voices and experiences of disabled people remain central to the ongoing discourse about reproductive rights and healthcare access. The complex interplay between disability rights and reproductive autonomy continues to raise profound questions about bodily integrity, medical ethics, and social justice.<sup>125</sup> These issues underscore the enduring tensions between state interests and individual freedoms, particularly for marginalized communities. Moreover, the debates surrounding reproductive rights for disabled people reflect broader concerns about the nature of democratic participation and representation. As we move forward, the intersection of disability rights, reproductive freedom, and democratic processes promises to be a critical area of discussion, shaping not only healthcare policies but also our understanding of civic engagement and equal participation in democratic society.

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<sup>121</sup> See Powell, *Disability Reproductive Justice*, *supra* note 118, at 1881–87 (describing the intersection of disability justice and reproductive justice).

<sup>122</sup> See Sujatha Jesudason & Julia Epstein, *The Paradox of Disability in Abortion Debates: Bringing the Pro-Choice and Disability Rights Communities Together*, 84 *CONTRACEPTION* 541 (2011); Marsha Saxton, *Disability Rights and Selective Abortion*, in *THE DISABILITY STUDIES READER* 87, 88, 91, 96–98 (Lennard J. Davis ed., 4th ed. 2013).

<sup>123</sup> Such an approach is consistent with disability reproductive justice. See Powell, *supra* note 101, at 261–71; Powell, *Disability Reproductive Justice*, *supra* note 118, 1887–903 (2022); Powell, *Including Disabled People*, *supra* note 19, at 814–19; Robyn M. Powell, *Disability Reproductive Justice During COVID-19 and Beyond*, 72 *AM. U. L. REV.* 1821, 1853–58 (2023); Powell, *Forced to Bear*, *supra* note 19, at 1137–40.

<sup>124</sup> See Powell, *Confronting Eugenics*, *supra* note 23, at 611–21.

<sup>125</sup> Andrews et al., *supra* note 109.

## II. BARRIERS TO DEMOCRACY: THE REALITY OF POLITICAL EXCLUSION FOR DISABLED PEOPLE

In *Dobbs*, the Court disingenuously claimed to “return the issue of abortion to the people and their elected representatives.”<sup>126</sup> This rhetoric of democratic decision-making rings hollow for people with disabilities, who face disproportionate harm from the ruling while being systematically excluded from the very democratic processes the Court invokes. Indeed, “[d]isabled people experience democracy as fragmented, inaccessible, and ableist.”<sup>127</sup> The compounded injustice is stark: not only does *Dobbs* disproportionately impact disabled people’s reproductive autonomy and healthcare access, but it does so while perpetuating their exclusion from shaping the policies that profoundly affect their lives. This Part examines four deeply entrenched, interconnected barriers that have long impeded the full political participation of people with disabilities: (1) pervasive societal attitudes that discount their agency, (2) widespread information and communication barriers, (3) legal obstacles and inaccessible voting processes, and (4) a resulting lack of political representation. These barriers form a self-reinforcing cycle, collectively silencing those most affected by the *Dobbs* decision. By exploring these obstacles, this Part reveals how the Court’s purported “return . . . to the people”<sup>128</sup> further marginalizes a community already facing persistent threats to their reproductive rights and overall autonomy, challenging the superficial invocation of democracy in *Dobbs* and exposing the hollow nature of democratic rhetoric in the face of systemic exclusion.

### A. *Entrenched Biases and Social Perceptions*

Public opinion plays a crucial role in shaping democratic processes and outcomes, but for people with disabilities, it often acts as a significant barrier to full participation in democracy.<sup>129</sup> Despite notable progress in

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<sup>126</sup> *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 292 (2022).

<sup>127</sup> SANDY HO, SUSAN EATON & MONICA MITRA, CIVIC ENGAGEMENT AND PEOPLE WITH DISABILITIES: A WAY FORWARD THROUGH CROSS-MOVEMENT BUILDING 21 (2020), <https://heller.brandeis.edu/lurie/pdfs/civic-engagement-report.pdf> [<https://perma.cc/8B3P-CCF8>].

<sup>128</sup> *Dobbs*, 597 U.S. at 292.

<sup>129</sup> See Michael Waterstone, *Disability Constitutional Law*, 63 EMORY L.J. 527, 529, 555–79 (2014) (examining the constitutional dimensions of disability rights and the influence of public opinion on legal developments); see also Samuel R. Bagenstos, *Disability Rights and the Discourse of Justice*, 73 SMU L. REV. F. 26, 28–30 (2020) (analyzing recent legal and policy trends and their implications for disability rights in democratic processes); Jasmine E. Harris, *The Frailty of*

the pursuit of disability rights, societal attitudes and misconceptions continue to hinder the realization of true democratic inclusion for this population.<sup>130</sup> These negative attitudes can lead to discrimination in various aspects of civic life, including employment, education, and political participation.<sup>131</sup> As a result, people with disabilities face reduced opportunities to engage in the democratic process, from voting to running for office.<sup>132</sup> The persistence of these barriers highlights the gap between legal protections and social realities for disabled people.<sup>133</sup>

Historically, people with disabilities have faced discrimination and mistreatment due to societal misconceptions and negative perceptions.<sup>134</sup>

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*Disability Rights*, 169 U. PA. L. REV. ONLINE 29, 31–33 (2020) (discussing the impact of public perception on disability rights enforcement); Richard K. Scotch & Kay Schriener, *Disability as Human Variation: Implications for Policy*, 549 ANNALS AM. ACAD. POL. & SOC. SCI. 148, 150–52 (1997) (analyzing how public perceptions of disability influence policy).

<sup>130</sup> See Samuel R. Bagenstos, *The Future of Disability Law*, 114 YALE L.J. 1, 3–4, 4 n.6 (2004) (discussing the evolution of disability rights legislation and persistent societal barriers); RICHARD K. SCOTCH, FROM GOOD WILL TO CIVIL RIGHTS: TRANSFORMING FEDERAL DISABILITY POLICY 169–88 (2d ed. 2001) (tracing the evolution of disability rights and public attitudes); Carli Friedman & Laura VanPuymbrouck, *Support for the Americans with Disabilities Act Among Nondisabled People*, 34 J. DISABILITY POL'Y STUD. 199, 200 (2023) (examining public attitudes toward disability rights laws).

<sup>131</sup> See KESSLER FOUND. & NAT'L ORG. ON DISABILITY, THE ADA, 20 YEARS LATER (2010), <https://www.advancingstates.org/sites/nasud/files/hcbs/files/195/9739/surveyresults.pdf> [<https://perma.cc/LQL8-GFVK>] (documenting persistent disparities in employment, education, and civic participation for people with disabilities); see also Mark Deal, *Aversive Disablism: Subtle Prejudice Toward Disabled People*, 22 DISABILITY & SOC'Y 93, 93, 95–96, 98–101 (2007) (analyzing subtle forms of discrimination faced by people with disabilities); Elizabeth Pendo, *Disability, Equipment Barriers, and Women's Health: Using the ADA to Provide Meaningful Access*, 2 ST. LOUIS U. J. HEALTH L. & POL'Y 15, 43–47 (2008) (discussing barriers to healthcare access for disabled women).

<sup>132</sup> See LISA SCHUR, MEERA ADYA & DOUGLAS KRUSE, DISABILITY, VOTER TURNOUT, AND VOTING DIFFICULTIES IN THE 2012 ELECTIONS, RESEARCH ALLIANCE FOR ACCESSIBLE VOTING 1, 3–6 (2013), <https://smlr.rutgers.edu/faculty-research-engagement/program-disability-research/voter-turnout-and-voting-accessibility> [<https://perma.cc/QEX7-7LER>] (analyzing barriers to voting for people with disabilities); SARAH PARKER HARRIS, ROB GOULD & COURTNEY MULLIN, ADA RESEARCH BRIEF: EXPERIENCES OF DISCRIMINATION AND THE ADA (2019), [https://adata.org/research\\_brief/experience-discrimination-and-ada](https://adata.org/research_brief/experience-discrimination-and-ada) [<https://perma.cc/QV92-HJ9R>] (discussing discrimination faced by people with disabilities in various aspects of life, including civic participation); see also HOET AL., *supra* note 127 (analyzing barriers to civic engagement for people with disabilities).

<sup>133</sup> See Michael Ashley Stein, *Disability Human Rights*, 95 CALIF. L. REV. 75, 76, 85–87 (2007) (examining the gap between disability rights law and societal attitudes); Jasmine E. Harris, *Taking Disability Public*, 169 U. PA. L. REV. 1681, 1685 (2021) (discussing the gap between public understanding and the complex realities of disability); see also Doron Dorfman, *Fear of the Disability Con: Perceptions of Fraud and Special Rights Discourse*, 53 LAW & SOC. REV. 1051, 1060–61 (2019) (examining public perceptions of disability rights as “special rights”).

<sup>134</sup> See David L. Braddock & Susan L. Parish, *An Institutional History of Disability*, in HANDBOOK OF DISABILITY STUDIES 11 (Gary L. Albrecht, Katherine Seelman & Michael Bury eds.,

This treatment has manifested in various forms of exclusion, isolation, and even violence.<sup>135</sup> Throughout much of the twentieth century, the prevalent medical model of disability framed disability as an individual problem requiring medical intervention or cure rather than a social issue requiring societal change.<sup>136</sup> This perspective shaped public policy and attitudes, often leading to the institutionalization and segregation of people with disabilities.<sup>137</sup>

The passage of the ADA in 1990 marked a significant shift in disability rights legislation and public policy.<sup>138</sup> However, public opinion and societal attitudes have influenced the ADA's implementation and impact. While the ADA aimed to provide comprehensive civil rights protections, its effectiveness has been limited by narrow judicial interpretations and inconsistent enforcement, often reflecting broader societal attitudes toward disability.<sup>139</sup> Public opinion polls conducted after the passage of the ADA showed that 95% of those surveyed supported a general prohibition on disability discrimination.<sup>140</sup> Yet,

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2001) (providing a comprehensive overview of the historical treatment of people with disabilities); PAUL K. LONGMORE & LAURI UMANSKY, *THE NEW DISABILITY HISTORY: AMERICAN PERSPECTIVES* 1–29 (2001) (examining the historical evolution of disability rights and societal attitudes in the United States).

<sup>135</sup> LONGMORE & UMANSKY, *supra* note 134.

<sup>136</sup> See Tom Shakespeare, *The Social Model of Disability*, in *THE DISABILITY STUDIES READER* 197 (Lennard J. Davis ed., 2d ed. 2006) (explaining the development and implications of the social model of disability); MICHAEL OLIVER, *THE POLITICS OF DISABLEMENT: A SOCIOLOGICAL APPROACH* 22–24 (1990) (critiquing the medical model of disability and its societal implications).

<sup>137</sup> See JAMES W. TRENT JR., *INVENTING THE FEEBLE MIND: A HISTORY OF MENTAL RETARDATION IN THE UNITED STATES* 225–41 (1994); David Pfeiffer, *Overview of the Disability Movement: History, Legislative Record, and Political Implications*, 21 *POL'Y STUD. J.* 724 (1993) (providing an overview of the disability rights movement and its historical context).

<sup>138</sup> Americans with Disabilities Act (ADA) of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213); see Robert L. Burgdorf Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 *HARV. C.R.-C.L. L. REV.* 413, 415–26 (1991) (analyzing the ADA's significance as a civil rights statute); Arlene S. Kanter, *The Americans with Disabilities Act at 25 Years: Lessons to Learn from the Convention on the Rights of People with Disabilities*, 63 *DRAKE L. REV.* 819 (2015) (reflecting on the ADA's impact twenty-five years after its passage).

<sup>139</sup> See Ruth Colker, *The Americans with Disabilities Act: A Windfall for Defendants*, 34 *HARV. C.R.-C.L. L. REV.* 99 (1999) (critiquing the narrow judicial interpretations of the ADA); Michael Ashley Stein & Michael E. Waterstone, *Disability, Disparate Impact, and Class Actions*, 56 *DUKE L.J.* 861, 879–84 (2006) (examining the limitations of ADA enforcement and its relationship to broader societal attitudes).

<sup>140</sup> Michael Selmi, *Interpreting the Americans with Disabilities Act: Why the Supreme Court Rewrote the Statute, and Why Congress Did Not Care*, 76 *GEO. WASH. L. REV.* 522, 526 n.15 (2008) (citing Humphrey Taylor, *Overwhelming Majority of Americans Continue to Support the Americans with Disabilities Act*, HARRIS POLL (May 12, 1999), [https://web.archive.org/web/20090510051035/http://www.harrisinteractive.com/harris\\_poll/index.asp?PID=63](https://web.archive.org/web/20090510051035/http://www.harrisinteractive.com/harris_poll/index.asp?PID=63)); Laura



implementation and enforcement of the law have fallen short of its promise.<sup>141</sup>

The media's portrayal of disability issues significantly influences public opinion, often reinforcing harmful stereotypes or neglecting to represent the diverse experiences of people with disabilities.<sup>142</sup> This lack of accurate representation can lead to a public that is uninformed about the challenges faced by people with disabilities in accessing everyday life, including democratic processes.<sup>143</sup> Consequently, even when progressive laws like the ADA are in place, societal attitudes can affect how these laws are enforced and whether they are given the necessary resources to be effective.<sup>144</sup> The media's role in shaping public perception extends beyond general awareness to impact policymaking and resource allocation, further marginalizing people with disabilities in the democratic sphere.<sup>145</sup>

Public opinion shapes policy priorities, which can disadvantage people with disabilities when their needs are not seen as pressing or

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Rothstein, *Strategic Advocacy in Fulfilling the Goals of Disability Policy: Is the Only Question How Full the Glass Is?*, 13 TEX. J. C.L. & C.R. 403 (2008) (examining the gap between the ADA's goals and its practical implementation).

<sup>141</sup> See Selmi, *supra* note 140; Rothstein, *supra* note 140.

<sup>142</sup> See BETH A. HALLER, REPRESENTING DISABILITY IN AN ABLEIST WORLD: ESSAYS ON MASS MEDIA 15–20 (2010) (examining media portrayal of disability and its impact on public perception); Beth Haller, Bruce Dorries & Jassica Rahn, *Media Labeling Versus the US Disability Community Identity: A Study of Shifting Cultural Language*, 21 DISABILITY & SOC'Y 61 (2006) (analyzing the evolution of disability representation in media); COLIN BARNES, DISABLING IMAGERY AND THE MEDIA: AN EXPLORATION OF THE PRINCIPLES FOR MEDIA REPRESENTATIONS OF DISABLED PEOPLE 3 (1992), <https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/Barnes-disabling-imagery.pdf> [<https://perma.cc/2NAY-87JY>] (analyzing the role of media in shaping public perceptions of disability).

<sup>143</sup> See Tessa E.S. Charlesworth & Mahzarin R. Banaji, *Patterns of Implicit and Explicit Attitudes: I. Long-Term Change and Stability from 2007 to 2016*, 30 PSYCH. SCI. 174 (2019) (examining changes in implicit and explicit attitudes toward various groups, including people with disabilities); Luke Staniland, *Public Perceptions of Disabled People: Evidence from the British Social Attitudes Survey 2009*, OFF. FOR DISABILITY ISSUES (2009), <https://assets.publishing.service.gov.uk/media/5a7ed23be5274a2e87db21ea/ppdp.pdf> [<https://perma.cc/72AS-3A2X>] (examining the impact of public attitudes on disabled people's self-perception and engagement); Roy McConkey, Paul Slater, Ashlyn Smith, Lindsay Dubois & Amy Shellard, *Perceptions of the Rights and Capabilities of People with Intellectual Disability in the United States*, 34 J. APPLIED RSCH. INTELL. DISABILITIES 537, 543 (2021) (examining public perceptions of the rights of people with intellectual disabilities).

<sup>144</sup> See Michael E. Waterstone, *The Costs of Easy Victory*, 57 WM. & MARY L. REV. 587, 610–13 (2015) (examining the consequences of low public awareness on disability rights advocacy); Friedman & VanPuymbrouck, *supra* note 130, at 200 (analyzing public support for disability rights legislation and its implications for implementation).

<sup>145</sup> See SARAH MARUSEK, POLITICS OF PARKING: RIGHTS, IDENTITY, AND PROPERTY 139 (2012) (discussing the influence of public opinion on disability-related policy decisions); Harris, *supra* note 133, at 1685 (examining the relationship between public perception and disability rights implementation).

essential by the general population.<sup>146</sup> This influence on policy can result in inadequate funding for accessibility measures, assistive technologies, and support services necessary for full democratic participation.<sup>147</sup> When the public does not prioritize these issues, elected officials may be less likely to champion them, creating a cyclical barrier to democratic inclusion.<sup>148</sup> The lack of public understanding and support for disability rights has led to what legal scholar Jasmine Harris describes as a view of these rights as “nice to do” rather than “must do.”<sup>149</sup> This perception undermines the urgency and importance of disability rights in the public consciousness and political agenda.<sup>150</sup>

The internalization of negative public opinions by people with disabilities themselves can lead to decreased political efficacy and engagement.<sup>151</sup> When people with disabilities perceive that their voices are not valued or that their participation is unwelcome, they may be less

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<sup>146</sup> See Rebekah Barber, *How Disabled People Are Building Political Power*, NONPROFIT Q. (Dec. 4, 2023), <https://nonprofitquarterly.org/how-disabled-people-are-building-political-power> [<https://perma.cc/C63C-Y4S7>] (“[A]ttempts to shut disabled people out of the policymaking process dilute the entire process because often policy decisions are made about disabled people with no disabled people in the room.”); Waterstone, *supra* note 144, at 629–31 (discussing the impact of low public engagement on disability rights policy); Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L.J. 251, 254–64 (2010) (analyzing how societal attitudes influence policy priorities for populations considered “vulnerable”); JACQUELINE VAUGHN SWITZER, *DISABLED RIGHTS: AMERICAN DISABILITY POLICY AND THE FIGHT FOR EQUALITY* 68–72 (2003) (discussing the relationship between public opinion and political support for disability rights).

<sup>147</sup> See Bagenstos, *supra* note 130, at 54–56 (analyzing the relationship between public opinion and funding for disability-related services); Harris, *supra* note 129, at 34–38 (discussing the limitations of ADA implementation in practice); KESSLER FOUND./NOD, *SURVEY OF EMPLOYMENT OF AMERICANS WITH DISABILITIES* (2010) (documenting persistent disparities in employment, education, and civic participation for people with disabilities).

<sup>148</sup> See Waterstone, *supra* note 129, at 610–13 (examining the consequences of low public awareness on disability rights advocacy); JACQUELINE VAUGHN SWITZER, *DISABLED RIGHTS: AMERICAN DISABILITY POLICY AND THE FIGHT FOR EQUALITY* 68–72 (2003) (discussing the relationship between public opinion and political support for disability rights); Sarah Parker Harris, Rob Gould & Courtney Mullin, *Experiences of Discrimination and the ADA*, ADA NAT’L NETWORK (2019), [https://adata.org/research\\_brief/experience-discrimination-and-ada](https://adata.org/research_brief/experience-discrimination-and-ada) [<https://perma.cc/434X-PJ59>] (discussing discrimination faced by people with disabilities in various aspects of life, including civic participation).

<sup>149</sup> Harris, *supra* note 129, at 30.

<sup>150</sup> See Bagenstos, *supra* note 130, at 3–4 (discussing the evolution of disability rights legislation and persistent societal barriers); Harris, *supra* note 133, 1685 (discussing the gap between public understanding and the complex realities of disability); Waterstone, *supra* note 144, at 591–92 (discussing the relationship between social debates and legal developments).

<sup>151</sup> See HO ET AL., *supra* note 127, at 24 (describing the impact of internalized ableism on democracy); Dorfman, *supra* note 133, at 1078 (discussing the internalization of negative stereotypes by people with disabilities).

likely to exercise their democratic rights.<sup>152</sup> This self-exclusion from political processes further diminishes the representation of disability perspectives in public discourse and policymaking.<sup>153</sup> The impact of this internalized negativity is compounded by the fact that people with disabilities already face significant barriers to full democratic participation, including inaccessible voting sites, lack of accessible information about candidates and issues, and restrictions on voting rights for some people with intellectual or psychiatric disabilities.<sup>154</sup>

The intersection of disability with other marginalized identities further complicates the impact of public opinion on democratic participation.<sup>155</sup> For instance, disabled people of color or those from low-income backgrounds may face compounded barriers due to intersecting prejudices and stereotypes held by the public.<sup>156</sup> The complex interplay of these factors underscores the importance of addressing disability rights through a multifaceted lens that acknowledges and responds to the varied lived experiences and requirements across different segments of the disability community.<sup>157</sup> Public opinion often fails to grasp these complexities, leading to oversimplified solutions that may not address the full spectrum of challenges faced by people with disabilities in accessing democratic processes.<sup>158</sup>

Public opinions regarding the sexuality and reproductive rights of people with disabilities are particularly fraught with misconceptions and stereotypes, significantly impacting their lives and rights.<sup>159</sup> These range from beliefs that disabled people lack sexual desire or ability to assumptions that those with intellectual or psychiatric disabilities are

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<sup>152</sup> See SCHUR ET AL., *supra* note 132, at 1, 3–5 (examining the impact of perceived barriers on voting behavior among people with disabilities).

<sup>153</sup> See *id.* (analyzing barriers to political participation for people with disabilities); see also Bagenstos, *supra* note 130, at 54–56 (discussing the importance of disability advocacy in shaping public opinion and policy).

<sup>154</sup> See *supra* Section II.A.

<sup>155</sup> See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242–43 (1991) (introducing the concept of intersectionality and its impact on marginalized groups).

<sup>156</sup> See HO ET AL., *supra* note 127, at 24.

<sup>157</sup> See Robyn M. Powell, *Beyond Disability Rights: A Way Forward After the 2020 Election*, 15 ST. LOUIS U. J. HEALTH L. & POL'Y 391, 440–48 (2022) (advocating for a more nuanced approach to disability rights that incorporates intersectionality and disability justice).

<sup>158</sup> See *id.*; Harris, *supra* note 129, at 32–33 (discussing the lack of public understanding and its impact on the implementation of disability rights laws).

<sup>159</sup> See Powell, *Disability Reproductive Justice*, *supra* note 118, at 1876 (discussing misconceptions about the sexuality of people with disabilities).

hypersexual or incapable of appropriate relationships and parenting.<sup>160</sup> Such damaging stereotypes stem from biased notions of sexuality and contribute to the marginalization of disabled people in matters of sexual and reproductive rights.<sup>161</sup> These attitudes not only affect personal interactions but also influence broader societal structures and policies, creating barriers to the full realization of sexual and reproductive rights for people with disabilities.<sup>162</sup>

The impact of these attitudes extends beyond personal life to significantly influence policymaking, particularly in light of the *Dobbs* decision.<sup>163</sup> This ruling emphasizes the role of public opinion in shaping policies, which, in turn, will directly affect the lives and bodily autonomy of people with disabilities. As legal scholar Michael Waterstone notes, “[i]t is axiomatic that social and political debates influence law,” operating through a “continuous feedback loop between social movements, legislatures (both state and federal), and courts.”<sup>164</sup> The *Dobbs* decision’s emphasis on returning abortion decisions “to the people”<sup>165</sup> highlights the critical role of public opinion in shaping policies that directly affect the lives and bodily autonomy of people with disabilities, potentially exacerbating existing challenges and inequalities.

Indeed, in a democratic system where public opinion plays a significant role in shaping policy, these misconceptions and stereotypes can lead to the marginalization of disabled people’s voices in crucial debates about bodily autonomy and reproductive rights. This intersection of public opinion, democracy, and reproductive rights for people with disabilities is complex and challenging, with far-reaching implications.<sup>166</sup> Persistent ableist assumptions can translate into policies that limit reproductive choices or fail to provide support for people with disabilities.<sup>167</sup> Moreover, the co-opting of disability narratives by the anti-

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<sup>160</sup> See *id.*; see also Angus Lam, Matthew Kwai-sang Yau, Richard Franklin & Peter A. Leggat, *Public Opinion on the Sexuality of People with Intellectual Disabilities: A Review of the Literature*, 39 *SEXUALITY & DISABILITY* 395, 400–14 (2021) (reviewing studies about negative public attitudes about sexuality of people with intellectual disabilities).

<sup>161</sup> See Margaret Campbell, *Disabilities and Sexual Expression: A Review of the Literature*, *SOCIO. COMPASS*, July 2017, at 8 (observing how attitudes about sexuality among people with disabilities are “reified in laws, social policies, and public spaces”).

<sup>162</sup> See Pendo, *supra* note 131, at 43 (discussing negative attitudes of healthcare providers toward people with disabilities).

<sup>163</sup> See Harris, *supra* note 129, at 32, 34–38 (2020) (discussing the impact of public opinion on disability rights in various aspects of life).

<sup>164</sup> Waterstone, *supra* note 129, at 591–92 (discussing the influence of social movements on legal developments).

<sup>165</sup> *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 292 (2022).

<sup>166</sup> See Powell, *Disability Reproductive Justice*, *supra* note 118, at 1861–65.

<sup>167</sup> See *id.* at 1875–81 (examining ableist assumptions in reproductive rights contexts).

abortion movement can influence public opinion in ways that further restrict the reproductive freedoms of people with disabilities.<sup>168</sup>

Given the pervasive negative public perceptions of disabled people's reproductive capabilities,<sup>169</sup> there is a real risk that democratic processes could lead to policies that further restrict these rights. This is especially troubling in light of the historical and ongoing marginalization of disabled people, which exacerbates their vulnerability in political and legal arenas.<sup>170</sup> The complex interplay between public opinion, policymaking, and the lived experiences of people with disabilities underscores the need for a more nuanced and inclusive approach to disability rights, particularly in the realm of sexual and reproductive rights.

Ultimately, public opinion continues to act as a significant barrier to full democratic participation for people with disabilities. Misconceptions, stereotypes, and lack of awareness shape policies, influence resource allocation, and affect societal attitudes, all of which can limit the ability of disabled people to engage fully in democratic processes. These barriers are not just physical or legal but deeply rooted in societal perceptions and biases. Until public opinion shifts toward a more inclusive and accurate understanding of disability, the promise of full democratic participation for people with disabilities remains unfulfilled. This situation underscores the critical need for ongoing education, advocacy, and representation to challenge and change public perceptions, ensuring that democracy is truly realized for all members of society, including those with disabilities.

### B. *Information Barriers and Communication Gaps*

People with disabilities also face significant information barriers and communication gaps that hinder their full participation in the democratic process.<sup>171</sup> These obstacles contribute to consistently lower voter turnout

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<sup>168</sup> See Powell, *Including Disabled People*, *supra* note 19, at 778 (“[B]y framing disability and abortion only in the context of trait-selective abortions, activists, scholars, legal professionals, and policymakers fail to recognize that it is actual disabled people—not hypothetical fetuses with disability diagnoses—who are harmed by abortion restrictions.” (footnote omitted) (citing Andrews et al., *supra* note 14)); see also Jesudason & Epstein, *supra* note 122, at 541 (discussing the use of disability narratives in abortion debates).

<sup>169</sup> See *supra* notes 159–161 and accompanying text.

<sup>170</sup> See *infra* Section II.B.

<sup>171</sup> See Robynn Kuhlmann & Daniel C. Lewis, *Making the Vote (In)Accessible: Election Administration Laws and Turnout Among People with Disabilities*, 12 POL. GRPS. & IDENTITIES 107, 109–12 (2024) (discussing various barriers to political participation for disabled voters); SCHURET AL., *supra* note 132, at 6.

rates among disabled people compared to their nondisabled counterparts despite representing a substantial voting bloc.<sup>172</sup> The barriers are multifaceted, encompassing digital divides, inaccessible information sources, complex voting procedures, and social isolation.<sup>173</sup> These challenges create a cyclical pattern of political disengagement, further marginalizing the disability community in the democratic sphere.

One of the primary information barriers is the “digital divide” that disproportionately affects people with disabilities.<sup>174</sup> Adults with disabilities are less likely than the general population to have home access to broadband internet, computers, smartphones, or tablets.<sup>175</sup> This technological gap significantly impedes their ability to access crucial online voting information, register to vote electronically, and utilize digital tools for political engagement.<sup>176</sup> As elections and civic participation increasingly rely on digital platforms, this disparity further marginalizes voters with disabilities, potentially excluding them from full participation in the democratic process.<sup>177</sup> The digital divide among people with disabilities is complex, varying not only by the type and severity of disability but also by factors such as digital skills, access to assistive technologies, socioeconomic status, and age.<sup>178</sup>

The accessibility of online political resources presents another substantial communication barrier. Campaign websites, which serve as

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<sup>172</sup> See Kuhlmann & Lewis, *supra* note 171, at 107, 109–113; LISA SCHUR, DOUGLAS KRUSE, MASON AMERI & MEERA ADYA, *DISABILITY AND VOTING ACCESSIBILITY IN THE 2022 ELECTIONS* 11 (2023), [https://www.eac.gov/sites/default/files/2023-07/EAC\\_2023\\_Rutgers\\_Report\\_FINAL.pdf](https://www.eac.gov/sites/default/files/2023-07/EAC_2023_Rutgers_Report_FINAL.pdf) [<https://perma.cc/LG84-ENZ6>] (noting that some disabled people did not receive adequate and accessible information about voting during the 2020 election).

<sup>173</sup> Danielle Root & Mia Ives-Rublee, *Enhancing Accessibility in U.S. Elections*, CTR. FOR AM. PROGRESS (July 8, 2021), <https://www.americanprogress.org/article/enhancing-accessibility-u-s-elections> [<https://web.archive.org/web/20241009143650/https://www.americanprogress.org/article/enhancing-accessibility-u-s-elections>].

<sup>174</sup> Frédéric Bastien et al., *The Role of Online Technologies and Digital Skills in the Political Participation of Citizens with Disabilities*, 17 J. INFO. TECH. & POL. 218, 223–24 (2020) (discussing various factors contributing to the digital divide among people with disabilities).

<sup>175</sup> Andrew Perrin & Sara Atske, *Americans with Disabilities Less Likely Than Those Without to Own Some Digital Devices*, PEW RSCH. CTR. (Sept. 10, 2021), <https://www.pewresearch.org/fact-tank/2021/09/10/americans-with-disabilities-less-likely-than-those-without-to-own-some-digital-devices> [<https://perma.cc/82W4-XLL9>] (finding that people with disabilities are 19% less likely to have access to a laptop/desktop computer and 16% less likely to have access to smartphones compared to nondisabled people, while the access gap is smaller for tablets (7%) and home broadband (6%)).

<sup>176</sup> See *infra* notes 179–186.

<sup>177</sup> See Ihaab Syed, Michelle Bishop, Sarah Brannon, Erika Hudson & Kristen Lee, *Designing Accessible Elections: Recommendations from Disability Voting Rights Advocates*, 21 ELECTION L. J. 60, 68–69 (2022) (outlining recommendations for improving digital accessibility in elections).

<sup>178</sup> See Bastien et al., *supra* note 174, at 223–24 (discussing various factors contributing to the digital divide among people with disabilities).

primary sources of information about candidates and their policy positions, often fail to meet basic accessibility standards.<sup>179</sup> Studies conducted during recent election cycles have consistently found that campaign websites, including those of major party candidates, are not fully compliant with the ADA.<sup>180</sup> This lack of accessibility extends to online voter registration systems and election information websites, with research revealing widespread ADA violations across multiple states.<sup>181</sup> The recurring nature of these accessibility problems across election cycles suggests a systemic failure to prioritize digital accessibility in political communication.<sup>182</sup>

Common accessibility issues plaguing these digital resources include incompatibility with screen readers and magnification tools, reliance on mouse navigation, lack of explanatory graphics, and use of complex language.<sup>183</sup> These barriers not only impede access to candidate information but also hinder disabled voters' ability to obtain crucial details about registration deadlines, polling locations, and required documentation.<sup>184</sup> The complexity of these issues often requires disabled voters to spend significantly more time and effort to access the same information readily available to nondisabled voters.<sup>185</sup> This disparity in information access can lead to reduced political engagement and a sense of exclusion from the democratic process.<sup>186</sup>

Beyond digital barriers, disabled voters face significant challenges in accessing and processing political information through traditional

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<sup>179</sup> See Abigail Abrams, *None of These Major Midterm Campaign Websites Are Fully Accessible to Disabled Voters*, TIME (Sept. 27, 2022, 7:00 AM), <https://time.com/6216100/midterm-candidate-websites-disabled-access> [<https://perma.cc/UB78-KCNG>] (reporting on studies from 2020 and 2022 showing widespread inaccessibility of campaign websites).

<sup>180</sup> See *id.*

<sup>181</sup> See S.E. Smith, *Not One 2020 Candidate Has a Website That Is Accessible to the Blind*, VOX (June 26, 2019, 12:00 PM), <https://www.vox.com/first-person/2019/6/26/18759522/2020-candidates-disability-issues-blind-accessible> [<https://perma.cc/A3XJ-NUKK>] (discussing Miami Lighthouse's 2020 primary season review finding no fully accessible campaign websites); MIA. LIGHTHOUSE FOR THE BLIND AND VISUALLY IMPAIRED, *THE 2020 ADA COMPLIANCE METER REPORT: SWING STATE BOARD OF ELECTIONS WEBSITES* (2020), <https://www.miamilighthouse.org/ADAComplianceMeterReport.asp> [<https://perma.cc/GES7-HPNL>] (detailing ADA compliance issues in election websites across twelve battleground states); SUSAN MIZNER & ERIC SMITH, *ACCESS DENIED: BARRIERS TO ONLINE REGISTRATION FOR CITIZENS WITH DISABILITIES 4* (2015), [https://www.aclu.org/sites/default/files/field\\_document/021915-aclu-voterregonline\\_0.pdf](https://www.aclu.org/sites/default/files/field_document/021915-aclu-voterregonline_0.pdf) [<https://perma.cc/7C6R-WAZM>] (finding California as the only state with a fully accessible online voter registration system as of 2015).

<sup>182</sup> See Abrams, *supra* note 179.

<sup>183</sup> See Root & Ives-Rublee, *supra* note 173 (outlining common accessibility issues in election websites and online registration systems).

<sup>184</sup> Abrams, *supra* note 179.

<sup>185</sup> *Id.*

<sup>186</sup> See *id.*

means. Presidential debates, for instance, have historically lacked accessibility features such as sign language interpreters in primary broadcasts and have experienced captioning problems.<sup>187</sup> Moreover, these debates often neglect to incorporate disability-related topics in questions asked to candidates, further marginalizing the concerns of the disabled community in political discourse.<sup>188</sup> The absence of disability representation in mainstream political discussions contributes to a lack of awareness and understanding of disability issues among the general public and policymakers.

The complex nature of ballot language and voting procedures creates additional information barriers.<sup>189</sup> Voters with disabilities often face significantly higher costs associated with understanding and navigating the voting process.<sup>190</sup> This includes challenges in comprehending complex ballot initiatives, arranging accessible transportation to polling places, and finding appropriate assistance.<sup>191</sup> The cumulative effect of these barriers can be overwhelming, leading some disabled voters to opt out of the voting process entirely.<sup>192</sup>

Social isolation, which is more prevalent among disabled people,<sup>193</sup> further exacerbates these information and communication gaps. Social connections and group memberships are crucial in lowering informational barriers to voting, providing social benefits for civic participation, and instilling a sense of electoral duty by exposing people to politically engaged peers and networks.<sup>194</sup> However, people with disabilities often experience reduced social interaction, limiting their exposure to such networks and, consequently, their access to informal political information and engagement opportunities.<sup>195</sup> This isolation can

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<sup>187</sup> See *Dear CNN Debate Team, Disabled Voters Are Ready for an Accessible Debate*, AM. ASS'N PEOPLE WITH DISABILITIES (June 17, 2024), <https://www.aapd.com/dear-cnn-debate-team-disabled-voters-are-ready-for-an-accessible-debate> [<https://perma.cc/N5XA-Z6C2>] (highlighting accessibility issues in presidential debates, including lack of ASL interpreters and disability-related topics); Sara Luterman, *90 Disability Organizations Call on CNN to Make the Presidential Debate More Accessible*, 19TH (June 27, 2024, 9:57 AM), <https://19thnews.org/2024/06/presidential-debate-disability-organizations-letter-cnn-accessibility> [<https://perma.cc/L36W-2627>] (describing the importance of accessible information, especially during debates).

<sup>188</sup> See Luterman, *supra* note 187.

<sup>189</sup> Root & Ives-Ruble, *supra* note 173.

<sup>190</sup> See Kuhlmann & Lewis, *supra* note 171, at 109–12.

<sup>191</sup> Root & Ives-Ruble, *supra* note 173.

<sup>192</sup> See Kuhlmann & Lewis, *supra* note 171, at 109–10.

<sup>193</sup> Beni Gómez-Zúñiga, Modesta Pousada & Manual Armayones, *Loneliness and Disability: A Systematic Review of Loneliness Conceptualization and Intervention Strategies*, 25 FRONTIERS PSYCH., Jan. 2023, at 1.

<sup>194</sup> See Kuhlmann & Lewis, *supra* note 171, at 109–10.

<sup>195</sup> Root & Ives-Ruble, *supra* note 173.



lead to a lack of peer support in navigating the voting process and reduced exposure to diverse political perspectives.<sup>196</sup>

The lack of targeted mobilization efforts by political campaigns compounds these issues. Political outreach often focuses on habitual voters, potentially overlooking the disabled population.<sup>197</sup> This oversight not only reduces direct communication with disabled voters but also perpetuates a cycle of political disengagement.<sup>198</sup> The absence of tailored campaign materials and outreach strategies that address the specific concerns of disabled voters can lead to a sense of political alienation.<sup>199</sup> Furthermore, the lack of representation of disabled candidates in political races can reinforce the perception that disability issues are not a priority in the political agenda.<sup>200</sup>

Thus, the information barriers and communication gaps faced by disabled voters are systemic and multifaceted, significantly impacting their ability to participate in the democratic process fully. From the digital divide and inaccessible online resources to complex voting procedures and social isolation, these challenges create a formidable obstacle course for disabled people seeking to engage in civic life. The persistent nature of these issues across multiple election cycles underscores a broader failure to prioritize accessibility and inclusion in our political systems.<sup>201</sup> As a result, the voices and concerns of a substantial portion of the electorate remain underrepresented in political discourse and decision-making. Addressing these barriers is not just a matter of fairness or legal compliance but a fundamental requirement for a truly representative democracy.<sup>202</sup> Only by recognizing and actively working to dismantle these information and communication barriers can we hope to create a more inclusive political landscape that values and empowers all citizens, including people with disabilities. The path to full democratic participation for disabled voters is necessary if we are to uphold the principles of equality and representation that are the bedrock of our democratic society.

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<sup>196</sup> See Kuhlmann & Lewis, *supra* note 171, at 109–10.

<sup>197</sup> See *id.*

<sup>198</sup> Root & Ives-Rublee, *supra* note 173.

<sup>199</sup> See Kuhlmann & Lewis, *supra* note 171, at 109–10.

<sup>200</sup> See Matthew Cortland, *Disabled Voters Do Not Believe Politicians Care About Disabled Americans*, DATA FOR PROGRESS (Oct. 3, 2023), <https://www.dataforprogress.org/blog/2023/10/3/disabled-voters-do-not-believe-politicians-care-about-disabled-americans> [<https://perma.cc/2FP3-N5Y9>] (discussing a new survey uncovering a widespread belief that public officials and politicians are indifferent to the concerns of people with disabilities).

<sup>201</sup> Root & Ives-Rublee, *supra* note 173.

<sup>202</sup> MICHAEL J. PRINCE, *ABSENT CITIZENS: DISABILITY POLITICS AND POLICY IN CANADA* 134 (2009)

### C. Systemic and Legal Obstacles to Voting

Voting is a cornerstone of American democracy,<sup>203</sup> yet millions of Americans with disabilities face significant challenges in exercising this fundamental right.<sup>204</sup> Despite comprising approximately one-sixth of the eligible electorate, voters with disabilities consistently experience lower turnout rates and encounter numerous obstacles when attempting to cast their ballots.<sup>205</sup> These barriers are not only physical but also legal, attitudinal, and socioeconomic, creating a complex web of challenges that disproportionately affect this community.<sup>206</sup> Consequently, the right to vote, recognized by the Supreme Court as being “of the most fundamental significance under our constitutional structure,”<sup>207</sup> remains elusive for many disabled Americans due to persistent and multifaceted barriers.<sup>208</sup>

Several federal laws address voting accessibility for people with disabilities. The Voting Rights Act (VRA) of 1965,<sup>209</sup> as amended, mandates that voters with disabilities be permitted to receive assistance from a person of their choice during the voting process.<sup>210</sup> The Voting Accessibility for the Elderly and Handicapped Act (VAEHA) of 1984<sup>211</sup> requires accessible polling places for federal elections.<sup>212</sup> The National

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<sup>203</sup> See *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964) (“Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.”).

<sup>204</sup> Root & Ives-Rublee, *supra* note 173.

<sup>205</sup> SCHUR ET AL., *supra* note 132 (reporting on the significant proportion of eligible voters with disabilities and their lower turnout rates); see also Thomas Hicks, *Accessible and Secure: Improving Voter Confidence by Protecting the Right to Vote*, in *THE FUTURE OF ELECTION ADMINISTRATION* 49 (Mitchell Brown et al. eds., 2020).

<sup>206</sup> SCHUR ET AL., *supra* note 132 (discussing various barriers faced by voters with disabilities); see also Michael Waterstone, *Constitutional and Statutory Voting Rights for People with Disabilities*, 14 STAN. L. & POL’Y REV. 353, 357–60 (2003) (analyzing legal and attitudinal barriers to voting for people with disabilities); NAT’L COUNCIL ON DISABILITY, *EXPERIENCE OF VOTERS WITH DISABILITIES IN THE 2012 ELECTION CYCLE* 68 (2013), <https://www.ncd.gov/report/experience-of-voters-with-disabilities-in-the-2012-election-cycle> [<https://perma.cc/8B57-VCW8>] (highlighting socioeconomic challenges faced by voters with disabilities).

<sup>207</sup> *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979).

<sup>208</sup> Root & Ives-Rublee, *supra* note 173.

<sup>209</sup> Voting Rights Act (VRA) of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended in scattered sections of 52 U.S.C.).

<sup>210</sup> 52 U.S.C. § 10508 (“Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice . . .”).

<sup>211</sup> Voting Accessibility for the Elderly and Handicapped Act (VAEHA) of 1984, Pub. L. No. 98-435, 98 Stat. 1678 (1984) (codified as amended at 52 U.S.C. §§ 20101–20107).

<sup>212</sup> 52 U.S.C. § 20102(a).

Voter Registration Act (NVRA) of 1993<sup>213</sup> mandates voter registration materials be available in state offices serving people with disabilities,<sup>214</sup> while the Help America Vote Act (HAVA) of 2002<sup>215</sup> requires at least one accessible voting system per polling place.<sup>216</sup> Additionally, the ADA and Section 504 prohibit discrimination based on disability in public services and federally funded programs.<sup>217</sup> However, as legal scholar Rabia Belt observes, “The hodgepodge of [voting] statutes, and their lack of enforcement, makes it difficult to address problems of voting with a disability.”<sup>218</sup> Thus, these laws often lack comprehensive federal standards, have limited enforcement mechanisms, and fail to address the complex barriers faced by voters with disabilities fully.<sup>219</sup>

The challenges for voters with disabilities begin well before they attempt to cast a ballot, with voter registration processes presenting significant hurdles that often intersect with other systemic barriers. While the NVRA aimed to streamline registration by allowing people to register at Department of Motor Vehicles agencies, this method disadvantages people with disabilities who are less likely to drive.<sup>220</sup> This disparity in access to registration opportunities likely contributes to lower voter registration rates and participation among disabled voters.<sup>221</sup> Furthermore, people with disabilities are more likely to experience poverty and lower levels of education, factors known to correlate with reduced political participation.<sup>222</sup> These socioeconomic challenges, combined with registration barriers, create a cumulative effect that

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<sup>213</sup> National Voter Registration Act (NVRA) of 1993, Pub. L. No. 103-31, 107 Stat. 77 (codified as amended at 52 U.S.C. §§ 20501–20511).

<sup>214</sup> 52 U.S.C. § 20506(a)(2)(A), (a)(4)(A).

<sup>215</sup> Help America Vote Act (HAVA) of 2002, Pub. L. No. 107-252, 116 Stat. 1666 (codified as amended at 52 U.S.C. §§ 20901–21145).

<sup>216</sup> 52 U.S.C. § 21081(a)(3).

<sup>217</sup> 29 U.S.C. § 794; 42 U.S.C. § 12132; see also U.S. DEP’T OF JUST., C.R. DIV., DISABILITY RTS. SECTION, THE AMERICANS WITH DISABILITIES ACT AND OTHER FEDERAL LAWS PROTECTING THE RIGHTS OF VOTERS WITH DISABILITIES 1 (2014), [https://www.ada.gov/ada\\_voting/ada\\_voting\\_ta.pdf](https://www.ada.gov/ada_voting/ada_voting_ta.pdf) [<https://perma.cc/VVK2-TQLL>] (“The ADA’s provisions apply to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process.”).

<sup>218</sup> Rabia Belt, *Contemporary Voting Rights Controversies Through the Lens of Disability*, 68 STAN. L. REV. 1491, 1499 (2016).

<sup>219</sup> See *id.* at 1497–98.

<sup>220</sup> See April A. Johnson & Sierra Powell, *Disability and Election Administration in the United States: Barriers and Improvements*, 41 POL’Y STUD. 249, 253 (2020).

<sup>221</sup> See *id.*

<sup>222</sup> See Kuhlmann & Lewis, *supra* note 171, at 109–12; NAT’L COUNCIL ON DISABILITY, *supra* note 206, at 26 (highlighting the socioeconomic challenges faced by voters with disabilities and their impact on political participation).

further disenfranchises disabled voters, particularly those from marginalized communities.

Physical accessibility issues remain prevalent, creating significant obstacles for voters with disabilities. A 2016 Government Accountability Office survey found that 65% of polling places had at least one impediment to voters with disabilities.<sup>223</sup> These barriers include inaccessible parking, narrow doorways, inadequate signage, and malfunctioning or inaccessible voting machines.<sup>224</sup> Such obstacles not only make voting difficult but also send an implicit message about the expected political participation of people with disabilities, potentially influencing their perceptions of the political system and discouraging future engagement.<sup>225</sup> The persistence of these physical barriers underscores the inadequacy of current legal protections and enforcement mechanisms.

Strikingly, recent years have seen a proliferation of voter ID laws, with at least thirty-six states now requesting or requiring identification for in-person voting.<sup>226</sup> These laws pose particular challenges for people with disabilities, who often face more significant difficulties in obtaining government-issued identification.<sup>227</sup> For instance, only 33% of autistic adolescents obtain a driver's license, compared to 83.5% of their neurotypical peers.<sup>228</sup> As these laws become more prevalent, the potential for disenfranchisement among disabled voters increases despite the lack of evidence for the type of voter fraud these laws aim to prevent.<sup>229</sup> The impact of these laws is often compounded for disabled voters who are also

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<sup>223</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-4, *VOTERS WITH DISABILITIES: OBSERVATIONS ON POLLING PLACE ACCESSIBILITY AND RELATED FEDERAL GUIDANCE* 19 (2017).

<sup>224</sup> *Id.* at 46–51.

<sup>225</sup> See Lisa Schur, Mason Ameri & Meera Adya, *Disability, Voter Turnout, and Polling Place Accessibility*, 98 SOC. SCI. Q. 1374, 1375, 1387 (2017).

<sup>226</sup> Emmy Maluf, *Voting While Trans: How Voter ID Laws Unconstitutionally Compel the Speech of Trans Voters*, 122 MICH. L. REV. 927, 929 (2024) (citing data on states with voter ID laws).

<sup>227</sup> See Johnson & Powell, *supra* note 220, at 254.

<sup>228</sup> Allison E. Curry, Benjamin E. Yerys, Patty Huang & Kristi B. Metzger, *Longitudinal Study of Driver Licensing Rates Among Adolescents and Young Adults with Autism Spectrum Disorder*, 22 AUTISM 479 (2018).

<sup>229</sup> See Maluf, *supra* note 226, at 957–58 (2024); Michael D. Gilbert, *The Problem of Voter Fraud*, 115 COLUM. L. REV. 739, 741, 743–46 (2015); JUSTIN LEVITT, BRENNAN CTR. FOR JUST., *THE TRUTH ABOUT VOTER FRAUD* 4 (2007), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Truth-About-Voter-Fraud.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Truth-About-Voter-Fraud.pdf) [<https://perma.cc/H9XX-GYRR>]. See generally *Frank v. Walker*, 773 F.3d 783, 788, 796 (7th Cir. 2014) (Posner, J., dissenting). Judge Posner stated that photo ID requirements are “ineffectual” against other forms of voter fraud. *Id.* at 788. He cataloged those other forms and concluded that “[t]here is only one motivation for imposing burdens on voting that are ostensibly designed to discourage voter-impersonation fraud, if there is no actual danger of such fraud, and that is to discourage voting by persons likely to vote against the party responsible for imposing the burdens.” *Id.* at 796.

members of racial or ethnic minority groups, as these communities are disproportionately affected by voter ID requirements.<sup>230</sup>

Moreover, legal barriers extend beyond voter ID laws, affecting various subgroups within the disability community. Some states maintain laws that allow courts to revoke voting rights when imposing guardianships, particularly for people with intellectual or psychiatric disabilities.<sup>231</sup> These practices, stemming from outdated notions about decision-making abilities, raise significant concerns about disenfranchisement and infringement of civil rights.<sup>232</sup> Additionally, the incarceration of people with disabilities, who are overrepresented in the criminal justice system, further complicates their voting rights.<sup>233</sup> Many states disenfranchise people with felony convictions, a practice that disproportionately affects people with disabilities due to their higher rates of involvement with the criminal justice system.<sup>234</sup>

Attitudinal barriers further hinder voting among people with disabilities, especially those with intellectual and developmental disabilities, creating additional layers of exclusion. Low expectations from others and misconceptions about the ability of people with these disabilities to make informed voting decisions can discourage participation and reinforce a sense of political alienation.<sup>235</sup> These

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<sup>230</sup> See Zoltan Hajnal, Nazita Lajevardi & Lindsay Nielson, *Voter Identification Laws and the Suppression of Minority Votes*, 79 J. POL. 363, 363–64 (2017).

<sup>231</sup> Sally Balch Hurme & Paul S. Appelbaum, *Defining and Assessing Capacity to Vote: The Effect of Mental Impairment on the Rights of Voters*, 38 MCGEORGE L. REV. 931, 932 (2007) (discussing state laws allowing courts to revoke voting rights in guardianship proceedings); see also 52 U.S.C. § 20507(a)(3)(B) (allowing states to disenfranchise people due to “criminal conviction or mental incapacity”).

<sup>232</sup> See Hurme & Appelbaum, *supra* note 231, at 960–62; see also Michelle Bishop, *Disability Is No Reason to Strip a Person’s Voting Rights*, HUFFPOST (May 12, 2018, 8:00 AM), [https://www.huffpost.com/entry/opinion-bishop-disability-voters\\_n\\_5af5b085e4b0e57cd9f9042f](https://www.huffpost.com/entry/opinion-bishop-disability-voters_n_5af5b085e4b0e57cd9f9042f) [<https://perma.cc/VX9V-54D7>] (arguing against the disenfranchisement of people with disabilities under guardianship).

<sup>233</sup> See Syed et al., *supra* note 177, at 62.

<sup>234</sup> See *id.*; LAURA M. MARUSCHAK & JENNIFER BRONSON, U.S. DEP’T OF JUST., SURVEY OF PRISON INMATES, 2016: DISABILITIES REPORTED BY PRISONERS 1 (2021), <https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf> [<https://perma.cc/NN74-JPWF>] (finding that nearly two in five state prisoners and three in ten federal prisoners are disabled); *Felon Voting Rights*, NAT’L CONF. OF STATE LEGISLATURES (Oct. 18, 2024), <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights> [<https://web.archive.org/web/20250112142451/https://www.ncsl.org/elections-and-campaigns/felon-voting-rights>]; see also Christopher Uggen, Ryan Larson, Sarah Shannon & Arleth Pulido-Nava, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, SENTENCING PROJECT (Oct. 30, 2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction> [<https://perma.cc/VK4M-AUC9>] (providing data on disenfranchisement of people with felony convictions).

<sup>235</sup> See Carli Friedman & Mary C. Rizzolo, *Correlates of Voting Participation of People with Intellectual and Developmental Disabilities*, 16 J. SOC. WORK DISABILITY & REHAB. 347, 349 (2017).

attitudes are often internalized by people with disabilities themselves, leading to decreased political efficacy and engagement.<sup>236</sup> Moreover, the intersection of disability with other marginalized identities can exacerbate these attitudinal barriers, as stereotypes and prejudices compound to create multiple layers of exclusion from the political process.<sup>237</sup>

Recent data highlights the persistent nature of these challenges and their disproportionate impact on certain communities.<sup>238</sup> In the 2022 election cycle, approximately one in seven voters with disabilities encountered difficulties at the polls, an increase from 2020.<sup>239</sup> The disparity between voters with and without disabilities was particularly stark for in-person voting, where 20% of people with disabilities reported problems compared to only 6% of those without disabilities.<sup>240</sup> These difficulties were even more pronounced for disabled voters from racial and ethnic minority groups, highlighting the intersectional nature of voting barriers.<sup>241</sup>

While progress has been made in recent years, significant disparities in voter turnout persist. The gap in turnout between people with and without disabilities narrowed from 16.8% in 2000 to 11.3% in 2020, yet this improvement still leaves a substantial disparity.<sup>242</sup> The challenges faced by disabled voters are not just individual inconveniences but systemic issues that threaten the fundamental principles of representative democracy.<sup>243</sup> As the population ages and the proportion of voters requiring accommodations grows, addressing these barriers becomes increasingly urgent to ensure a truly inclusive democratic process.<sup>244</sup>

Ultimately, the barriers to voting for people with disabilities are multifaceted and deeply entrenched in our electoral system. Addressing these challenges requires a comprehensive approach that recognizes the intersectional nature of these barriers and works to dismantle systemic

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<sup>236</sup> See SCHUR ET AL., *supra* note 132, at 3–5 (examining the impact of perceived barriers on voting behavior among people with disabilities).

<sup>237</sup> See HO ET AL., *supra* note 127, at 12–13, 24 (describing how intersecting oppressions impact civic engagement).

<sup>238</sup> See SCHUR ET AL., *supra* note 172, at 5.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.* at 12.

<sup>242</sup> LISA SCHUR ET AL., VOTING EXPERIENCES SINCE HAVA: PERSPECTIVES OF PEOPLE WITH DISABILITIES 4 (2024), [https://www.eac.gov/sites/default/files/2024-04/EAC\\_2024\\_Rutgers\\_Report\\_PDF.pdf](https://www.eac.gov/sites/default/files/2024-04/EAC_2024_Rutgers_Report_PDF.pdf) [<https://perma.cc/T2ST-EPW4>].

<sup>243</sup> PRINCE, *supra* note 202.

<sup>244</sup> See Belt, *supra* note 218, at 1493 (describing people with disabilities as “the ticking time bomb of the electorate” and noting that “[a]n estimated thirty to thirty-five percent of all voters in the next twenty-five years will need some form of accommodation”).

inequalities. Only through such efforts can we ensure that the right to vote is truly accessible to all citizens, regardless of disability status or other intersecting identities.

#### D. *Underrepresentation in Political Spheres*

The limited presence of certain groups in political spheres, particularly people with disabilities, is a critical issue for democracy, as it undermines the principles of equal representation and participation when the proportion of elected officials from these groups falls significantly short of their presence in the general population.<sup>245</sup> This persistent exclusion of disabled people in politics not only reflects broader societal barriers but also undermines the fundamental democratic ideal that all citizens should have equal opportunities to shape political decision-making.<sup>246</sup> The *Dobbs* decision, which significantly impacts reproductive rights and healthcare access for people with disabilities, starkly illustrates the consequences of this underrepresentation. This systematic exclusion extends beyond mere voting rights to encompass the ability to run for and hold elected office.<sup>247</sup> The disability rights movement has long emphasized the crucial need for the direct involvement of disabled people in political processes affecting their lives, encapsulated in the slogan “Nothing About Us Without Us.”<sup>248</sup> Addressing this underrepresentation is essential for ensuring a robust representative democracy that reflects all its citizens’ diverse experiences

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<sup>245</sup> See David Barker, *Don’t Forget the Most Under-Represented Group in Our Democracy—Disabled People*, NEW STATESMAN (Nov. 8, 2016), <https://www.newstatesman.com/politics/2016/08/dont-forget-most-under-represented-group-our-democracy-disabled-people> [<https://perma.cc/5N7V-HYHJ>] (referring to people with disabilities as “the most under-represented group in our democracy”); see also MICHELLE R. NARIO-REDMOND, *ABLEISM: THE CAUSES AND CONSEQUENCES OF DISABILITY PREJUDICE* 3–5 (2020) (explaining the underrepresentation of disabled people); ANNE PHILLIPS, *THE POLITICS OF PRESENCE* 1–30 (1995) (examining the importance of representation that mirrors people’s backgrounds); G. BINGHAM POWELL JR., *ELECTIONS AS INSTRUMENTS OF DEMOCRACY: MAJORITARIAN AND PROPORTIONAL VISIONS* 47–115 (2000) (arguing for the necessity of increased political participation); *DEMOCRACY, ACCOUNTABILITY, AND REPRESENTATION* 29–54, 297–326 (Adam Przeworski, Susan C. Stokes & Bernard Manin eds., 1999) (asserting that increased political engagement is essential for a robust representative democracy).

<sup>246</sup> See Jane Mansbridge, *Should Blacks Represent Blacks and Women Represent Women? A Contingent “Yes,”* 61 J. POL. 628, 633–37 (1999).

<sup>247</sup> See Michelle Maroto & David Pettinicchio, *The Limitations of Disability Antidiscrimination Legislation: Policymaking and the Economic Well-Being of People with Disabilities*, 36 LAW & POL’Y 370, 376 (2014).

<sup>248</sup> CHARLTON, *supra* note 115, at 3.

and needs,<sup>249</sup> particularly in light of decisions like *Dobbs* that have far-reaching implications for the disability community.

To quantify the extent of this underrepresentation and its implications for democratic processes, it is instructive to examine recent empirical data on the presence of people with disabilities in various levels of government. A quantitative study by Rutgers University researchers reveals that approximately 10.3% of elected officials serving in federal, state, and local government have disabilities.<sup>250</sup> However, this underrepresentation is particularly pronounced at higher levels of government.<sup>251</sup> While 12% of elected officials in local government have a disability, this percentage drops to 6.9% at the state level and further decreases to 6.3% at the federal level.<sup>252</sup> This declining trend suggests that barriers to political participation and advancement may increase as the office becomes more prominent. The study also highlights demographic disparities among disabled politicians, with the vast majority being white, non-Hispanic men, indicating a lack of diversity within this already underrepresented group.<sup>253</sup> The scarcity of candidates with disabilities significantly contributes to this lack of representation, with only thirteen candidates identifying as disabled running for Congress in 2022, twenty-four seeking state-level offices, and a mere four pursuing local positions.<sup>254</sup> Societal stigma and doubts about the capabilities of people with disabilities have historically compounded their underrepresentation in politics, even leading prominent figures like President Franklin D. Roosevelt to conceal their disabilities from the public.<sup>255</sup>

These stark numbers reflect the numerous barriers people with disabilities face when seeking elected office, obstacles that span the entire political recruitment process.<sup>256</sup> Accessibility issues are paramount, with inaccessible buildings and meeting spaces preventing participation for those with mobility disabilities, while the lack of sign language

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<sup>249</sup> See PRINCE, *supra* note 202, at 134 (stating that if marginalized communities like people with disabilities “do not participate in elections on a regular and visible basis, then needs central to their lives remain at the margins of our politics and policy making”).

<sup>250</sup> *Report: 1 in 10 Politicians Has a Disability. That’s a Gap in Representation*, RUTGERS SCH. MGMT. & LAB. RELS. (Oct. 3, 2019), <https://smlr.rutgers.edu/news-events/news/report-1-10-politicians-has-disability-thats-gap-representation> [<https://perma.cc/UA9B-UJ9T>].

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Candidates with Disabilities Running for Elected Office in 2022*, NAT’L COUNCIL ON INDEP. LIVING (Sept. 15, 2022), <https://ncil.org/wp-content/uploads/2022/09/9-15-2022-Candidates-with-Disabilities-Database.xlsx> [<https://perma.cc/WJL3-WGCY>].

<sup>255</sup> *Report: 1 in 10 Politicians Has a Disability. That’s a Gap in Representation*, *supra* note 250.

<sup>256</sup> See Elizabeth Evans & Stefanie Reher, *Disability and Political Representation: Analysing the Obstacles to Elected Office in the UK*, 43 INT’L POL. SCI. REV. 697, 698 (2022).



interpreters or captioning hinders Deaf or hard-of-hearing people.<sup>257</sup> Financial constraints pose another significant obstacle, as disabled people typically have lower incomes and face additional campaign-related costs, often leading to reliance on personal finances or informal support networks.<sup>258</sup> Ableism and stigma further compound these challenges, with disabled candidates frequently encountering skepticism about their abilities and facing negative perceptions when using accommodations.<sup>259</sup> The physical and emotional toll of campaigning can be particularly challenging for disabled candidates, sometimes resulting in health deterioration.<sup>260</sup> Structural barriers, such as the risk of losing disability benefits if elected and inflexible political processes, further discourage participation.<sup>261</sup> These multifaceted obstacles not only limit the number of disabled candidates, but also tend to favor those with more financial resources or less complex support needs, further narrowing the pool of representation.<sup>262</sup>

While all disabled people face challenges in political participation, disabled women encounter additional, compounded barriers.<sup>263</sup> Research identifies three primary challenges: first, disabled women are often perceived as incompetent or “not up to the job” of being politicians; second, they experience “othering” during recruitment processes, which marginalizes them from mainstream political discourse; and third, some disabled women face hypervisibility, a double-edged phenomenon that can both highlight their unique perspectives and subject them to increased scrutiny.<sup>264</sup> The experiences of disabled female politicians differ significantly from both nondisabled women and disabled male politicians, reflecting the broader societal marginalization of disabled women.<sup>265</sup> Notably, disabled women are often overlooked in discussions about increasing diversity in political representation, with one

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<sup>257</sup> See *id.* at 703–04 (discussing various accessibility issues disabled candidates face).

<sup>258</sup> See *id.* at 705–06; John Loepky & Alex Green, *Politicians with Disabilities Are Rare Because of Structural Barriers, Discrimination*, TEEN VOGUE (Sept. 26, 2022), <https://www.teenvogue.com/story/why-so-few-disabled-politicians> [<https://perma.cc/7SNH-NBJF>].

<sup>259</sup> See Evans & Reher, *supra* note 256, at 706–07; Colby Itkowitz, Lenny Bernstein & Amanda Morris, *John Fetterman’s Health Sparks Contentious Debate in Final Stretch*, WASH. POST (Oct. 16, 2022), <https://www.washingtonpost.com/elections/2022/10/16/fetterman-health-pennsylvania-senate> (describing the ridicule Senator John Fetterman received when using closed captioning to accommodate his disability).

<sup>260</sup> See Evans & Reher, *supra* note 256, at 706–07.

<sup>261</sup> See *id.* at 705; Loepky & Green, *supra* note 258.

<sup>262</sup> See Loepky & Green, *supra* note 258.

<sup>263</sup> See Elizabeth Evans & Stefanie Reher, *Gender, Disability and Political Representation: Understanding the Experiences of Disabled Women*, EUR. J. POL. & GENDER, Mar. 2023, at 1, 2.

<sup>264</sup> *Id.* at 7–12 (discussing the three primary challenges disabled women face in politics).

<sup>265</sup> See *id.* at 2–3, 12 (discussing how disabled women face disadvantages in various areas of social life and how their experiences differ from other groups).

interviewee stating, “At the moment, the focus is still very much just on women and ethnic minorities, and it’s only because I’m disabled that I’ve been able to push the disability side and for disabled women.”<sup>266</sup> This intersectional disadvantage underscores the need for targeted efforts to increase the representation of disabled women in politics, addressing both gender and disability-related barriers simultaneously.

Understanding these barriers is crucial, as increased representation of disabled people in politics has significant implications for democratic theory and practical outcomes. Political science literature distinguishes between descriptive representation (the similarity between representatives and constituents in terms of characteristics and backgrounds) and substantive representation (the reflection of citizens’ interests and opinions in policymakers’ preferences and legislative outcomes).<sup>267</sup> Scholars posit a connection between these two forms of representation, suggesting that representatives from particular groups may be more likely to share that group’s preferences due to everyday experiences and a motivation to advocate for their interests.<sup>268</sup> Consequently, political bodies that include more representatives from groups such as women, racial and ethnic minorities, or disabled people may be better positioned to promote and implement policies that address these groups’ needs and viewpoints.<sup>269</sup>

A recent study has provided empirical evidence supporting these theories in the context of disability representation.<sup>270</sup> The study found that disabled people generally express greater confidence in the representational quality of disabled officials, both in terms of identity alignment and policy advocacy effectiveness.<sup>271</sup> Interestingly, the same study also revealed that nondisabled people feel better represented by nondisabled officials.<sup>272</sup> These findings highlight a broader tendency for people to connect with representatives who share their lived experiences.<sup>273</sup> This research underscores the importance of diverse

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<sup>266</sup> *Id.* at 10.

<sup>267</sup> HANNA FENICHEL PITKIN, *THE CONCEPT OF REPRESENTATION* (1967); PHILLIPS, *supra* note 245.

<sup>268</sup> See, e.g., Mansbridge, *supra* note 246; Matthew Hayes & Matthew V. Hibbing, *The Symbolic Benefits of Descriptive and Substantive Representation*, 39 *POL. BEHAV.* 31 (2017).

<sup>269</sup> See PHILLIPS, *supra* note 245; Maroto & Pettinicchio, *supra* note 247; see also PRINCE, *supra* note 249 (writing that if marginalized communities like people with disabilities “do not participate in elections on a regular and visible basis, then needs central to their lives remain at the margins of our politics and policy making”).

<sup>270</sup> Stefanie Reher & Elizabeth Evans, *Someone Like Me? Disability Identity and Representation Perceptions*, *POL. BEHAV.* (Aug. 2024).

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> See *id.*

representation in ensuring that all perspectives, including those of disabled people, are adequately represented in the political process.

Furthermore, the presence of diverse political representatives can serve as role models, potentially increasing political interest and participation among underrepresented groups.<sup>274</sup> This is particularly relevant for disabled people, who often exhibit lower rates of electoral participation and less trust in politicians and the political system.<sup>275</sup> The concept of diverse political representation aligns with the goals of the disability rights movement, which emphasizes the importance of self-representation and participation in decision-making for the disability community.<sup>276</sup>

The gap between the theoretical importance of representation and the current reality is evident in polling. In fact, a recent survey reveals a widespread belief that public officials and politicians are indifferent to the concerns of people with disabilities, a sentiment shared across party lines.<sup>277</sup> Notably, 61% of disabled voters themselves hold this opinion, underscoring a significant disconnect between the disability community and their political representatives.<sup>278</sup> This perception of indifference may contribute to the historically low civic participation rates among disabled people, resulting in policies often being crafted about them rather than with their direct involvement.<sup>279</sup> The exclusion of disabled voices from lobbying efforts and policymaking means that crucial firsthand insights and diverse perspectives are missing from the conversation.<sup>280</sup> Consequently, even well-intentioned advocacy can lead to misguided policies that fail to address the actual needs and concerns of the disability community.<sup>281</sup> This underscores the importance of involving disabled people in the lobbying and decision-making processes that impact their

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<sup>274</sup> See Lawrence Bobo & Franklin D. Gilliam, Jr., *Race, Sociopolitical Participation, and Black Empowerment*, 84 AM. POL. SCI. REV. 377 (1990).

<sup>275</sup> See, e.g., Stefanie Reher, *Mind This Gap, Too: Political Orientations of People with Disabilities in Europe*, 42 POL. BEHAV. 791 (2020).

<sup>276</sup> See Maroto & Pettinicchio, *supra* note 247, at 376; Yahya Muhammed Bah, *Democracy and the Participation of Persons with Disabilities in Politics and Elections: Challenges and Lessons for Human Rights Advocates*, 5 INT'L J. LATEST RSCH. HUMANS. & SOCIAL SCI. 66 (2022).

<sup>277</sup> Cortland, *supra* note 200 (reporting that 58% of Democrats, 56% of Independents, and 52% of Republicans believe public officials are indifferent to disability concerns).

<sup>278</sup> *Id.*

<sup>279</sup> See Sasha M. Albert, Robyn M. Powell & Jack Rubinstein, *Barriers and Solutions to Passing State Legislation to Protect the Rights of Parents with Disabilities: Lessons from Interviews with Advocates, Attorneys, and Legislators*, 33 J. DISABILITY POL'Y STUD. 15, 22 (2022) ("[P]eople with disabilities have historically experienced barriers to civic engagement, including legislative advocacy, leading to policies being developed for people with disabilities rather than with people with disabilities.").

<sup>280</sup> See Barber, *supra* note 146.

<sup>281</sup> See *id.*

lives, not only to improve policy outcomes but also to rebuild trust and engagement between the disability community and the political system.<sup>282</sup>

In light of these challenges, perceptions, and the critical importance of representation, it is clear that the underrepresentation of people with disabilities in political spheres remains a critical issue that undermines the principles of equal representation and participation in democracy.<sup>283</sup> This disparity not only reflects broader societal barriers but also perpetuates a cycle of exclusion, where policies affecting the disability community are often crafted without their direct input.<sup>284</sup> The *Dobbs* decision serves as a stark reminder of the consequences of this underrepresentation, highlighting how crucial legislative and judicial decisions can be made without adequate consideration of their impact on people with disabilities. The importance of addressing this underrepresentation cannot be overstated, as it directly impacts the quality of policymaking and the trust between the disability community and the political system.<sup>285</sup> As the disability rights movement has long asserted, the direct involvement of disabled people in political decision-making processes affecting their lives is not just beneficial but essential for a truly inclusive and representative democracy.<sup>286</sup> Ultimately, increasing the representation of disabled people in politics is crucial for realizing the democratic ideal of a government that truly reflects and serves all its citizens, especially in the face of decisions like *Dobbs*, which have far-reaching implications for people with disabilities.

### III. THE DUAL IMPERATIVE: ACCESSIBLE DEMOCRACY AND REPRODUCTIVE FREEDOM

The *Dobbs* decision, while undermining reproductive freedom, outlined four key areas of democratic engagement as purported avenues for addressing abortion rights: “influencing public opinion, lobbying legislators, voting, and running for office.”<sup>287</sup> Despite skepticism about the Court’s genuine commitment to democracy,<sup>288</sup> these areas provide a framework for examining the intersection of disability rights and reproductive justice in the post-*Dobbs* landscape. Achieving reproductive freedom requires disability rights and reproductive justice

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<sup>282</sup> See *id.*

<sup>283</sup> Barker, *supra* note 245.

<sup>284</sup> Albert et al., *supra* note 279, at 22.

<sup>285</sup> See *infra* note 288–293.

<sup>286</sup> See CHARLTON, *supra* note 115, at 3.

<sup>287</sup> *Dobbs*, 597 U.S. at 289.

<sup>288</sup> Murray & Shaw, *supra* note 12.

groups to coalesce around a critical realization: promoting abortion rights fundamentally depends on ensuring that democracy itself is accessible to all. Examining these four strategies through a disability rights lens uncovers a dual imperative: to advance reproductive freedom by engaging in these democratic processes and to simultaneously work toward making these very processes more accessible and inclusive.

Centering disability rights within these areas not only strengthens the fight for reproductive freedom but also builds a more robust and inclusive democracy. This strategy acknowledges that the struggle for accessible democratic processes is intrinsically linked to the battle for reproductive rights.<sup>289</sup> An integrated approach can create a more powerful coalition capable of countering the impact of *Dobbs*, advancing reproductive freedom, and fostering a democracy that truly represents and serves all citizens, including those with disabilities. Moreover, this approach recognizes the profound intersection between disability justice and reproductive justice, understanding that the barriers faced by disabled people in accessing democratic processes mirror and amplify the barriers they face in exercising their reproductive autonomy.<sup>290</sup> Addressing these interconnected challenges simultaneously works toward a more comprehensive and inclusive vision of both democracy and reproductive freedom, one that embodies the principle of equal political participation for all citizens. However, it remains crucial to critically examine the limitations of these strategies in the face of a judiciary and many state governments that do not prioritize genuine democratic participation.

### A. *Shaping Public Opinion*

In the post-*Dobbs* era, shaping public opinion has become paramount for advancing reproductive rights through democratic processes, particularly for the disability community.<sup>291</sup> As societal attitudes continue to pose barriers to full democratic participation for disabled people, a concerted effort to influence public opinion can serve as a powerful tool for ensuring both accessible democracy and

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<sup>289</sup> See *supra* Section II.D.

<sup>290</sup> Powell, *Disability Reproductive Justice*, *supra* note 118.

<sup>291</sup> See John Dinan, *The Constitutional Politics of Abortion Policy After Dobbs: State Courts, Constitutions, and Lawmaking*, 84 MONT. L. REV. 27, 72–73 (2023) (describing the shifting of state abortion policy after *Dobbs* and its reflection of public opinion); Steven Shepard, *The Supreme Court Dramatically Changed Public Opinion on Abortion*, POLITICO (June 24, 2023, 7:00 AM), <https://www.politico.com/news/2023/06/24/supreme-court-public-opinion-abortion-00103493> [<https://perma.cc/P7UK-DWUP>] (noting that public opinion in favor of abortion rights has increased since the *Dobbs* decision, which is impacting elections).

reproductive freedom.<sup>292</sup> This endeavor requires highlighting specific issues and forging robust coalitions to ensure that public discourse—and subsequent policy decisions—genuinely reflect the needs and experiences of people with disabilities in matters of reproductive justice.

While shaping public opinion is crucial for advancing reproductive rights and disability justice, it is essential to acknowledge that, historically, public opinion has often been detrimental to democracy for disabled people.<sup>293</sup> Societal attitudes and misconceptions have led to discriminatory laws, policies, and practices that have marginalized and excluded people with disabilities from full participation in democratic processes.<sup>294</sup> From the institutionalization and forced sterilization policies of the early twentieth century to more recent barriers in voting access and healthcare decision-making, public opinion has often reinforced ableist structures rather than challenging them.<sup>295</sup> This complex history underscores the need for a nuanced approach to public opinion advocacy—one that not only seeks to influence public attitudes but also critically examines and counteracts deeply ingrained biases against disabled people.

To effectively shape public opinion, disability rights advocates must collaborate with reproductive justice organizations, civil rights groups, and healthcare professionals to create compelling and accessible media campaigns. These campaigns should vividly portray the diverse challenges faced by disabled people in exercising their reproductive rights, including but not limited to health risks during pregnancy. For instance, campaigns could illustrate how narrowly-defined health exceptions in abortion bans often fail to encompass the complex considerations of people with disabilities, potentially violating their constitutional rights to equal protection and bodily autonomy.<sup>296</sup> Public forums featuring firsthand accounts from disabled people can personalize these abstract policy discussions, lending them urgency and emotional resonance. Moreover, these efforts must address the broader spectrum of reproductive justice issues, including access to contraception, fertility

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<sup>292</sup> See Lisa Schur & Meera Adya, *Sidelined or Mainstreamed? Political Participation and Attitudes of People with Disabilities in the United States*, 94 SOC. SCI. Q. 811, 811–12 (2013) (noting that people with disabilities remain unequal participants in the U.S. political system).

<sup>293</sup> See *supra* Section II.A.

<sup>294</sup> See *supra* Section II.A.

<sup>295</sup> See *supra* Section II.A.

<sup>296</sup> See Powell, *Disabling Abortion Bans*, *supra* note 19 (describing ways that people with disabilities can collaborate with reproductive justice groups and healthcare professionals to educate the public on the narrowness of health exceptions and their threats to disabled people).

treatments, and parental rights—areas where disabled people often face unique legal and societal barriers.<sup>297</sup>

Challenging pervasive stigma and misinformation about disability and reproduction requires a multifaceted approach rooted in legal and social frameworks. Advocates should launch nuanced media campaigns that showcase the diverse experiences of people with disabilities in family planning, parenting, and navigating the reproductive healthcare system. These campaigns can serve to educate the public on the legal rights of disabled people in reproductive matters, potentially influencing judicial interpretation and legislative action. Enlisting respected public figures, particularly disabled celebrities and politicians, to speak out on reproductive rights lends credibility to the cause and helps challenge ableist assumptions that often underpin discriminatory laws and policies.<sup>298</sup>

An intersectional approach to reproductive justice must underpin all public opinion efforts, recognizing the compounded challenges faced by people with disabilities who also belong to other marginalized groups.<sup>299</sup> This means creating awareness campaigns that illuminate how reproductive restrictions disproportionately impact disabled people of color or low-income people with disabilities, potentially violating multiple constitutional protections. By convening joint press conferences with leaders from disability rights, reproductive justice, and civil rights organizations, advocates can present a united front, demonstrating the interconnected nature of these struggles and the need for comprehensive legal reform.<sup>300</sup>

A recent survey reveals significant public support for reproductive rights and disability rights, providing a solid foundation for advocacy efforts. With 55% of likely voters with disabilities supporting legal access to abortion in most cases, and 74% of all likely voters opposing the

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<sup>297</sup> See generally Powell, *Disability Reproductive Justice*, *supra* note 118 (explaining the myriad ways disabled people's reproductive freedom is denied).

<sup>298</sup> For example, Senator Tammy Duckworth, a disabled veteran, has been outspoken about issues concerning disability rights and reproductive justice. See Adrienne Gaffney, *Senator Tammy Duckworth Is Demanding Rights for Disabled People*, ELLE (Mar. 27, 2024, 8:00 AM), <https://www.elle.com/culture/a60166743/senator-tammy-duckworth-women-of-impact-interview-2024> [<https://perma.cc/X7JS-8K98>].

<sup>299</sup> See Heather Watkins, *Two Years on, the Harm of the Dobbs Ruling Is Particularly Felt by Marginalized People*, WOMEN'S MEDIA CTR. (June 20, 2024), <https://womensmediacenter.com/news-features/two-years-on-the-harm-of-the-dobbs-ruling-is-particularly-felt-by-marginalized-people> [<https://perma.cc/U7TT-37SL>] (explaining the ways disabled people of color are especially harmed by *Dobbs*).

<sup>300</sup> See Sara Luterman, *Today, 'Disability Justice Is Reproductive Justice'—But that Hasn't Always Been the Case*, 19TH (May 23, 2024, 2:00 PM), <https://19thnews.org/2024/05/house-resolution-disability-reproductive-justice> [<https://perma.cc/YX4B-ZQC6>] (illustrating an example of these groups working together to fight for reproductive justice for people with disabilities).

termination of parental rights based solely on disability status, there is clear public backing for more inclusive policies.<sup>301</sup> Advocates should leverage this support to pressure policymakers and challenge the narrow conception of democracy presented in *Dobbs*, which focused primarily on state legislatures while overlooking other crucial democratic institutions and processes.<sup>302</sup> This myopic view disregards the roles of state judiciaries, executive officials, and direct democracy mechanisms in shaping abortion policy.

Ensuring accessibility in democratic participation must go hand-in-hand with shaping public opinion. This encompasses advocating for fully accessible town halls, complete with sign language interpretation, real-time captioning, and physically accessible venues—measures that not only facilitate participation but also uphold the legal rights of disabled people under the ADA.<sup>303</sup> Media outlets must be urged to include diverse perspectives from disabled people in their coverage of reproductive rights issues, promoting a more inclusive public discourse that can inform legal and policy decisions.<sup>304</sup> Developing accessible voter education materials about candidates' stances on reproductive rights and disability issues is crucial for fostering informed participation in the democratic process, ultimately strengthening the legal and political advocacy for reproductive justice.

Crucially, public opinion campaigns must address the full spectrum of reproductive rights issues affecting disabled people—a topic often overlooked in mainstream discourse.<sup>305</sup> This requires fostering a deeper

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<sup>301</sup> Jasmine Razeghi, *New CAP Poll Shows Major Support for Reproductive Equity*, CTR. FOR AM. PROG. (May 24, 2024), <https://www.americanprogress.org/press/release-new-cap-poll-shows-major-support-for-reproductive-equity> [<https://perma.cc/725D-6M43>].

<sup>302</sup> See Murray & Shaw, *supra* note 12, at 763–66 (critiquing the narrow conception of democracy presented in *Dobbs*).

<sup>303</sup> *State and Local Governments*, ADA.GOV, <https://www.ada.gov/topics/title-ii> [<https://perma.cc/FY9P-T396>].

<sup>304</sup> See Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821, 829 (2021) (emphasizing the importance of disrupting ideas and telling new stories to initiate social movements).

<sup>305</sup> See, e.g., Jordan Fletcher, Halina Yee, Bonnie Ong & Rosemary Claire Roden, *Centering Disability Visibility in Reproductive Health Care: Dismantling Barriers to Achieve Reproductive Equity*, 19 WOMEN'S HEALTH, Sept. 7, 2023, at 1, 7–8 (noting that “[d]espite a long-standing history of reproductive oppression and lack of bodily autonomy imposed by the medico-legal establishment, disability has largely been overlooked or excluded in discussions about abortion rights”); Mia Ives-Rublee, *It's Past Time to Redress Reproductive Equity for Disabled People*, CTR. FOR AM. PROGRESS (May 23, 2024), <https://www.americanprogress.org/article/its-past-time-to-address-reproductive-equity-for-disabled-people> [<https://web.archive.org/web/20241206125409/https://www.americanprogress.org/article/its-past-time-to-address-reproductive-equity-for-disabled-people>] (discussing that the “first-of-its-kind poll completed in May 2022 by Data for Progress (DFP) revealed a majority of likely voters, both with and without disabilities, support



understanding of disabled people's needs and lived experiences across various aspects of reproductive justice, from access to sex education and contraception to assisted reproductive technologies and parental rights. Such understanding can only be achieved by ensuring people with disabilities occupy leadership roles in reproductive rights organizations and advocacy efforts. Their presence at decision-making tables is not merely beneficial, but essential for crafting truly inclusive policies and messaging that can withstand legal scrutiny and effectively advocate for the rights of disabled people in reproductive matters.

By embracing these strategies and centering the voices of people with disabilities, the movement for reproductive justice can shape a public opinion that truly recognizes the complexity and urgency of reproductive rights for the disability community. This approach not only addresses the immediate concerns highlighted by the *Dobbs* decision but also works to rectify the historical harm that public opinion has often inflicted on democracy for disabled people. Throughout much of American history, prevailing public attitudes have led to exclusionary policies and practices that marginalize disabled people in democratic processes and reproductive rights.<sup>306</sup> Now, as the legal landscape continues to evolve in the wake of *Dobbs*, with approximately 63% of U.S. adults supporting legal abortion in all or most cases, according to a 2024 *Pew Research* survey,<sup>307</sup> advocates have a unique opportunity to reframe public discourse. By consciously working to counter long-standing biases and stereotypes, the movement can strengthen democratic engagement, ensuring that the perspectives and needs of disabled people are central to the ongoing public debate on reproductive rights. This moment calls for building diverse coalitions, challenging discriminatory laws, and advancing an inclusive vision of reproductive justice that not only incorporates the rights and needs of people with disabilities, but also actively works to dismantle the ableist structures that public opinion has historically reinforced.

### B. *Leveraging Lobbying*

Lobbying efforts are crucial in advancing disability rights and reproductive justice, particularly in the post-*Dobbs* era, where state-level

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access to abortion, refuting anti-abortion claims that disabled people do not support abortion access").

<sup>306</sup> See *supra* Section II.A.

<sup>307</sup> *Public Opinion on Abortion*, PEW RSCH. CTR. (May 13, 2024), <https://www.pewresearch.org/religion/fact-sheet/public-opinion-on-abortion> [<https://perma.cc/FF2W-NA4S>].

advocacy has become increasingly important.<sup>308</sup> By coalescing disability rights and reproductive justice groups, advocates can more effectively push for legislative changes that ensure both accessible democracy and reproductive freedom for people with disabilities. This coalition building is essential in navigating the complex patchwork of state laws that emerged after *Dobbs*, requiring localized and targeted approaches to influence state lawmakers effectively. The shift in regulatory power to state legislatures has intensified the need for greater resources, coordination, and on-the-ground organizing, making the role of lobbying more critical than ever in protecting and advancing reproductive rights for the disability community.

One key strategy in this new landscape is to leverage the unique strengths of different organizations within these coalitions. Nonprofit disability rights organizations, while often limited in their direct lobbying activities due to tax-exempt status, can provide invaluable educational resources and expert testimony in legislative hearings.<sup>309</sup> These efforts can inform lawmakers about the intersectional challenges faced by people with disabilities in accessing reproductive healthcare without explicitly advocating for specific bills. For example, these organizations can conduct broad educational campaigns to inform both lawmakers and the public about the intersection of disability rights and reproductive justice, producing fact sheets, research reports, and informational videos that highlight the unique challenges faced by disabled people.<sup>310</sup> Furthermore, they can educate their members and supporters about pending legislation and its potential impacts, empowering them to engage in individual advocacy efforts. By forming coalitions with other organizations, including those that can engage in direct lobbying, nonprofits can ensure that disability perspectives are included in broader reproductive rights advocacy efforts.

Simultaneously, organizations able to engage in direct lobbying, such as political action committees, can employ data-driven approaches, presenting legislators with robust information on the specific impacts of restrictive policies on disabled people. This strategy can be particularly effective when combined with opportunities for disabled people to share their personal experiences with reproductive healthcare, humanizing the

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<sup>308</sup> See Shawna Mizelle, *2 Years After Dobbs, Democratic-Led States Move to Combat Abortion Bans*, CBS NEWS (June 24, 2024, 7:00 AM), <https://www.cbsnews.com/news/2-years-after-dobbs-democratic-led-states-combat-abortion-bans> [<https://perma.cc/4NZX-7A9W>] (describing the proliferation of state-level legislative efforts).

<sup>309</sup> See Albert et al., *supra* note 279 (explaining how nonprofit disability rights organizations can engage in legislative advocacy).

<sup>310</sup> Swadley & Keeley-Mehrad, *supra* note 71; AAPD, *Reproductive Rights and Disability Dialogue*, YOUTUBE (Apr. 11, 2024), <https://www.youtube.com/watch?v=VpC-n6kV-Zo> [<https://perma.cc/CTF3-HLNE>].

issues for legislators and combating stereotypes. For instance, lobbyists could present data on the disproportionate impact of abortion restrictions on people with disabilities alongside personal testimonies from disabled people who have faced barriers in accessing reproductive healthcare. These efforts can be further strengthened by forming cross-disability coalitions that present a united front to legislators, demonstrating the broad impact of reproductive policies on the disability community.<sup>311</sup> Collaborating with other marginalized groups can highlight how reproductive restrictions disproportionately affect disabled people from various backgrounds,<sup>312</sup> strengthening advocacy efforts and presenting a more comprehensive picture of the issues at stake.

Crucially, these coalitions should prioritize empowering people with disabilities to become lobbyists themselves. This can be achieved through mentorship programs, training in legislative processes and advocacy techniques, and actively working to place people with disabilities in lobbying roles. For example, organizations could establish fellowship programs that provide disabled people with hands-on experience in legislative advocacy, pairing them with experienced lobbyists for mentorship. These programs could include training on the intricacies of state legislative processes, effective communication strategies for engaging with lawmakers, and techniques for building and maintaining coalitions. By centering disabled voices in lobbying efforts, advocacy becomes more authentic, powerful, and directly representative of the community's needs and experiences. This approach not only enhances the effectiveness of current lobbying efforts but also contributes to building a pipeline of disabled leaders in political advocacy.

The rise of digital activism offers new possibilities for inclusion and participation, allowing a more diverse range of people with disabilities to engage in social movements. Initiatives like #CripTheVote have demonstrated the power of online platforms in expanding democratic participation by addressing barriers that often exclude disabled people from the political process.<sup>313</sup> For instance, #CripTheVote used Twitter to engage both voters and politicians in discussions about disability issues, aiming to give disability greater prominence in American politics.<sup>314</sup> This digital campaign expanded the definition of democratic engagement beyond traditional physical presence at polling places or protests, creating

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<sup>311</sup> Powell, *supra* note 157, at 443–44.

<sup>312</sup> Watkins, *supra* note 153.

<sup>313</sup> Benjamin W. Mann, *Rhetoric of Online Disability Activism: #CripTheVote and Civic Participation*, 11 COMMUN CULTURE & CRITIQUE 604, 605–06, 615–16 (2018) (discussing the emergence of digital activism and its potential for inclusion and describing how #CripTheVote aimed to expand democratic participation by addressing barriers).

<sup>314</sup> See *id.*

new avenues for participation.<sup>315</sup> These digital efforts can complement traditional lobbying strategies, creating a multifaceted approach to advocacy that combines online activism with in-person lobbying efforts.

Moreover, coalitions should capitalize on the tendency of people with disabilities, particularly women, to engage in nonvoting forms of political participation, such as contacting politicians and participating in demonstrations.<sup>316</sup> This heightened activism among disabled people, especially when confronted with perceived discrimination, can be channeled into effective lobbying campaigns. For example, when Congress attempted to repeal the ACA in 2017, which would have eliminated critical healthcare protections, disability rights activists organized widespread protests that combined physical demonstrations with coordinated social media campaigns on platforms like Twitter and Facebook.<sup>317</sup> These protests, aimed at protecting vital healthcare provisions for people with disabilities, demonstrated the power of combining traditional forms of protest with digital advocacy.<sup>318</sup> Lobbying coalitions can tap into this energy by creating structured pathways for grassroots activists to contribute to formal lobbying efforts, such as coordinating letter-writing campaigns or organizing virtual lobby days that allow disabled people to meet with legislators remotely.

To ensure long-term success, these coalitions should also advocate for more accessible legislative processes, including remote testimony options and materials in multiple formats. Such changes would not only facilitate current advocacy efforts but also promote long-term democratic inclusion for disabled people. For instance, lobbying efforts could push state legislatures to adopt policies that allow for remote testimony in committee hearings, provide legislative materials in accessible formats (including Braille, large print, and screen reader-compatible digital formats), and ensure that legislative websites and online tools are fully accessible. These accessibility measures would not only benefit disabled lobbyists and advocates but would also increase the overall participation of disabled citizens in the democratic process, creating a more inclusive and representative system of governance.

By employing these strategies and fostering strong coalitions between disability rights and reproductive justice groups, advocates can work toward ensuring that post-*Dobbs* legislative efforts truly reflect the

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<sup>315</sup> See *id.*

<sup>316</sup> See Mikko Mattila & Achillefs Papageorgiou, *Disability, Perceived Discrimination and Political Participation*, 38 INT'L POL. SCI. REV. 505, 514–15 (2017). Notably, people with disabilities have higher rates of contacting politicians and joining demonstrations. *Id.*

<sup>317</sup> See Mann, *supra* note 313, at 605 (discussing protests and their combination of physical presence with online activism).

<sup>318</sup> See *id.*

needs and rights of the disability community. This approach not only addresses immediate policy concerns but also fosters a more inclusive and representative democracy that recognizes reproductive rights as fundamental to the full citizenship and participation of disabled people. As disability is increasingly recognized as “a sociopolitical identity with increasing salience in contemporary political discourse and a growing voting bloc courted by political actors,” these lobbying efforts have the potential to significantly shape the political landscape and advance both disability rights and reproductive justice in the years to come.<sup>319</sup>

### C. Voting

The intersection of disability rights and reproductive justice has become increasingly salient in the post-*Dobbs* landscape, where abortion rights have been directly on the ballot in many states.<sup>320</sup> This convergence underscores the critical importance of voting as a mechanism for protecting and advancing the rights of people with disabilities, particularly in the realm of reproductive freedom. As such, it is imperative that disability rights and reproductive justice groups coalesce to address the myriad barriers that continue to suppress the disability vote and, by extension, threaten bodily autonomy for disabled people.

It is important to note that ensuring full voting access for people with disabilities is a complex, multifaceted issue that extends beyond the scope of this discussion. The challenges facing disabled voters are numerous and complex, ranging from physical accessibility issues at polling places to attitudinal barriers stemming from stigma and misconceptions.<sup>321</sup> While the following suggestions address key areas for improvement, they are part of a much broader agenda necessary to achieve truly equitable voting access. These recommendations should be considered starting points in an ongoing effort to create a more inclusive democratic process. The complexity of the issue is evident in the diverse voting patterns and legal barriers that persist. The 2022 election revealed distinct voting patterns between disabled and nondisabled voters, with 42% of disabled voters utilizing mail-in ballots compared to 35% of nondisabled voters.<sup>322</sup> This significant difference demonstrates why

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<sup>319</sup> Harris, *supra* note 129, at 1684.

<sup>320</sup> McCann & Walker, *supra* note 10; Mabel Felix, Laurie Sobel & Alina Salganicoff, *What's Next for State Abortion Ballot Initiatives?*, KFF (Dec. 18, 2024), <https://www.kff.org/policy-watch/whats-next-for-state-abortion-ballot-initiatives> [<https://perma.cc/ZD6E-5BJV>].

<sup>321</sup> See *supra* Section II.C (describing systemic and legal barriers to voting that people with disabilities face).

<sup>322</sup> SCHUR ET AL., *supra* note 172, at 8.

preserving and enhancing accessible mail voting options remains vital for electoral participation. Moreover, guardianship laws in many states continue to disenfranchise a significant portion of the disability community, stripping people of their voting rights based on broad determinations of mental capacity.<sup>323</sup> This issue becomes particularly acute when considering the direct impact of abortion-related ballot measures on the reproductive rights of those under guardianship.<sup>324</sup>

Litigation has become a powerful tool for ensuring voting access for people with disabilities. Disability rights organizations and individual plaintiffs have successfully brought lawsuits under various federal statutes, including the ADA, Section 504, and HAVA. For instance, in *National Federation of the Blind v. Lamone*, the U.S. Court of Appeals for the Fourth Circuit held that Maryland's absentee voting program violated the ADA by failing to provide an accessible alternative to paper ballots.<sup>325</sup> Similarly, in *Hernandez v. New York State Board of Elections*, the U.S. District Court for the Southern District of New York mandated that New York implement an accessible absentee voting system for voters with print disabilities.<sup>326</sup> Such litigation not only remedies specific violations but also sets important precedents that can drive systemic change, compelling election officials nationwide to proactively address accessibility concerns and ensure equal voting opportunities for all people.

Litigation has also been instrumental in challenging laws that automatically disenfranchise people under guardianship. In *Doe v. Rowe*, the U.S. District Court for the District of Maine struck down Maine's constitutional provision that prohibited voting by persons with mental illness under guardianship, recognizing the importance of individualized assessments of voting capacity.<sup>327</sup> This decision underscores the need for states to move away from blanket disenfranchisement based on guardianship status and toward more nuanced approaches that respect the autonomy and rights of people with disabilities.

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<sup>323</sup> See BAZELON CTR. FOR MENTAL HEALTH L., AUTISTIC SELF-ADVOCACY NETWORK, NAT'L DISABILITY RTS. NETWORK, SCHULTE, ROTH & ZABEL LLP & AKIN GUMP STRAUSS HAUSER & FELD LLP, VOTE. IT'S YOUR RIGHT: A GUIDE TO THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES 18–19 (2020), <https://www.bazelon.org/wp-content/uploads/2020/10/Bazelon-2020-Voter-Guide-Full.pdf> [<https://perma.cc/UH9E-T87H>] (discussing the impact of guardianship laws on voting rights).

<sup>324</sup> Powell, *Including Disabled People*, *supra* note 19, at 826–29 (describing the intersection of guardianship and abortion rights).

<sup>325</sup> 813 F.3d 494 (4th Cir. 2016).

<sup>326</sup> No. 20-cv-4003, 2022 WL 1025426, at \*2 (S.D.N.Y. Apr. 5, 2022).

<sup>327</sup> 156 F. Supp. 2d 35 (D. Me. 2001) (invalidating Maine's constitutional restriction that denied voting rights to persons under guardianship by reason of mental illness).

More recently, in July 2024, the U.S. District Court for the Northern District of Ohio invalidated provisions of an Ohio law that criminalized assistance to disabled voters for absentee voting, ruling that the statute violated Section 208 of the VRA.<sup>328</sup> The law, which took effect in April 2023, made it a felony for anyone other than specific family members, election officials, or mail carriers to possess or return an absentee ballot for a disabled voter.<sup>329</sup> The court's decision affirms that under the VRA, voters with disabilities have the right to choose any person they trust to assist them with voting, including returning absentee ballots.<sup>330</sup> This ruling significantly expands the support network available to disabled voters in Ohio, allowing them to receive help from caregivers, neighbors, or other trusted individuals beyond the narrow list of relatives specified in the law.<sup>331</sup>

The U.S. Department of Justice (DOJ) plays a crucial role in enforcing federal accessibility mandates. The DOJ has the authority to file lawsuits against states, counties, and local governments that fail to comply with the ADA and HAVA.<sup>332</sup> These enforcement actions can compel jurisdictions to implement necessary changes, from ensuring physical accessibility of polling places to providing accessible voting machines. Moreover, the DOJ can negotiate settlement agreements that often result in comprehensive reforms and ongoing monitoring to ensure compliance.<sup>333</sup> The DOJ can also significantly influence voting practices through the issuance of guidance documents and the deployment of election monitors.<sup>334</sup> These monitors gather evidence for potential enforcement actions<sup>335</sup> and may help discourage discriminatory practices through their presence.

To strengthen the implementation of HAVA and the VAEHA, Congress should adopt a broader and more inclusive definition of disability. Currently, the VAEHA narrowly defines “handicapped” as “having a temporary or permanent physical disability.”<sup>336</sup> Similarly, HAVA lacks a comprehensive description of disability, merely

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<sup>328</sup> League of Women Voters of Ohio v. LaRose, No. 23-cv-2414, 2024 WL 3495332 (N.D. Ohio July 22, 2024).

<sup>329</sup> *Id.* at \*2.

<sup>330</sup> *Id.* at \*9–11.

<sup>331</sup> *See id.*

<sup>332</sup> 42 U.S.C. § 12133; 52 U.S.C. § 21111 (granting DOJ enforcement authority).

<sup>333</sup> *See Disability Rights Cases*, U.S. DEP'T OF JUST., <https://www.justice.gov/crt/disability-rights-cases> [<https://perma.cc/5DCT-6YA6>] (describing recent DOJ enforcement efforts relating to voting access); *see also* U.S. DEP'T OF JUST., *supra* note 217 (outlining DOJ enforcement actions).

<sup>334</sup> U.S. DEP'T OF JUST., *supra* note 217 (discussing DOJ guidance documents); 52 U.S.C. § 10305.

<sup>335</sup> 52 U.S.C. § 10305 (authorizing deployment of federal observers under the VRA).

<sup>336</sup> *Id.* § 20107(4).

mentioning blind and visually impaired voters specifically.<sup>337</sup> This limited scope fails to address the diverse needs of the disability community adequately. Instead, these acts should incorporate the ADA's definition, which includes "a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment."<sup>338</sup> This broader definition would include a wide range of disabilities, including physical, sensory, cognitive, and mental health disabilities, ensuring comprehensive coverage and protection. For instance, it would clearly encompass people with conditions such as autism, chronic fatigue syndrome, and mental health disabilities, which may not consistently be recognized as disabilities under the current VAEHA and HAVA frameworks.<sup>339</sup> By adopting this more inclusive definition, federal voting rights law can better ensure that all disabled voters receive the protections and accommodations they need to fully participate in the electoral process.

In addition, the U.S. Election Assistance Commission should issue updated guidelines that specifically address emerging technologies and voting methods, such as electronic ballot marking devices and remotely accessible vote-by-mail systems.<sup>340</sup> These guidelines should set clear standards for the accessibility of such technologies and provide concrete benchmarks for states and localities to meet. For example, they could mandate that all electronic voting systems be compatible with assistive technologies like screen readers and that remotely accessible vote-by-mail systems allow for independent marking, verification, and submission of ballots by voters with various disabilities.

At the state level, reforms should focus on removing competence requirements and disability-based voting restrictions, particularly those related to guardianship.<sup>341</sup> A suitable benchmark for voting capacity, endorsed by the American Bar Association and adopted by at least five states, is the ability to communicate a desire to vote, with or without

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<sup>337</sup> See Christina J. Weis, Note, *Why the Help America Vote Act Fails to Help Disabled Americans Vote*, 8 N.Y.U. J. LEGIS. & PUB. POL'Y 421, 447–48 (2005) (discussing HAVA's limited definition of disabled voters).

<sup>338</sup> 42 U.S.C. § 12102(1).

<sup>339</sup> Weis, *supra* note 337, at 447–50.

<sup>340</sup> Electronic ballot marking devices are voting systems that allow voters to make their selections electronically but produce a paper ballot that records their votes. *Voting Equipment, VERIFIED VOTING*, <https://verifiedvoting.org/votingequipment> [<https://perma.cc/7TTT-XL5W>]. Remotely accessible vote-by-mail systems allow voters with disabilities to receive their ballots electronically, mark them privately using their own assistive technology, and return them by mail. *Remote Accessible Vote-by-Mail System FAQs*, CAL. SEC. OF STATE (Oct. 2024), <https://elections.cdn.sos.ca.gov/vote-by-mail/pdf/ravbm-faq.pdf> [<https://perma.cc/A3F6-VBAP>].

<sup>341</sup> See *supra* Section II.C.



accommodations.<sup>342</sup> This criterion focuses on the fundamental aspect of voting: expressing a choice. States should implement laws that presume voting capacity for all adults and require clear and convincing evidence in individualized court proceedings to remove that right, rather than relying on blanket exclusions based on guardianship status.<sup>343</sup>

Expanding and improving mail-in voting options while maintaining accessible in-person voting options is crucial for increasing participation among voters with disabilities. States should implement no-excuse absentee voting, permanent absentee voting, and vote-by-mail systems.<sup>344</sup> These convenience voting reforms could be particularly effective in increasing ballot access for disabled voters. For instance, implementing permanent absentee voting, which eliminates the need for voters to reapply for absentee ballots for each election, has been associated with a significant increase in turnout among disabled voters.<sup>345</sup> Moreover, for absentee voting systems, states should allow electronic submissions of ballot requests while maintaining paper-based options. This could be achieved by implementing secure online portals for requesting absentee ballots, as well as allowing requests via email or fax. Additionally, states should explore using accessible electronic ballots that can be marked independently by voters with disabilities and then printed and returned, similar to the system implemented in Maryland following the *Lamone* decision.<sup>346</sup>

However, it is essential for states to maintain accessible in-person voting options alongside expanded mail-in voting opportunities. A recent survey found that 47% of people with disabilities preferred voting in person at a polling place in future elections, compared to 56% of people without disabilities.<sup>347</sup> Maintaining accessible in-person voting includes ensuring that polling places are physically accessible, providing accessible voting machines at every location, and training poll workers on disability etiquette and the use of accessible voting equipment.

Voter registration processes must also be overhauled to ensure accessibility for disabled people. States should implement automatic voter registration systems, which have been shown to increase

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<sup>342</sup> BAZELON CTR. FOR MENTAL HEALTH L. ET AL., *supra* note 323, at 20.

<sup>343</sup> See *supra* Section III.C.

<sup>344</sup> See Peter Miller & Sierra Powell, *Overcoming Voting Obstacles: The Use of Convenience Voting by Voters with Disabilities*, 44 AM. POL. RES. 28, 34–35 (2016) (discussing various convenience voting reforms).

<sup>345</sup> See *id.* at 48 (finding that mail voting reforms are particularly effective for increasing ballot access for disabled voters).

<sup>346</sup> Nat'l Fed'n of the Blind v. Lamone, 813 F.3d 494, 499, 508 (4th Cir. 2016); *Accessible Voting*, MD. STATE BD. OF ELECTORS, <https://elections.maryland.gov/voting/accessibility.html> [<https://perma.cc/8RC6-KBKE>].

<sup>347</sup> SCHUR ET AL., *supra* note 172, at 17.

registration rates among underrepresented groups, including people with disabilities.<sup>348</sup> For states without automatic registration, same-day registration should be available, allowing people to register and vote on the same day.<sup>349</sup> Online voter registration systems must be fully accessible, compatible with assistive technologies, and designed with simple, clear interfaces.<sup>350</sup> Additionally, states should proactively contact disability service providers, healthcare facilities, and community organizations to conduct targeted voter registration drives.<sup>351</sup> These efforts should include providing registration materials in multiple accessible formats, such as large print, Braille, and audio versions, and offering in-person assistance for completing registration forms.<sup>352</sup> Removing barriers to registration ensures that more people with disabilities are empowered to participate in the electoral process and have their voices heard on critical issues, including reproductive rights.

To address the digital divide and ensure equal access to voting information and registration, election officials must prioritize comprehensive digital accessibility. All official election websites should be fully compliant with Web Content Accessibility Guidelines (WCAG 2.1),<sup>353</sup> using plain language, providing content in multiple formats (e.g., text, audio, and video), ensuring proper color contrast, and maintaining a consistent, navigable structure compatible with assistive technologies such as screen readers, speech recognition software, and alternative input devices.<sup>354</sup> Key voting information should be available in American Sign Language (ASL) videos and all documents should be appropriately tagged for screen reader accessibility.<sup>355</sup> States should implement online voter registration systems with accessible interfaces, including features such as keyboard navigation, properly labeled form fields, clear error messages, and the ability to save and resume the registration process.<sup>356</sup> Election

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<sup>348</sup> See Syed et al., *supra* note 177, at 70–71 (discussing the benefits of automatic voter registration for disabled voters).

<sup>349</sup> See Kuhlmann & Lewis, *supra* note 171, at 115–16 (noting the positive impact of same-day registration on voter turnout).

<sup>350</sup> See Syed et al., *supra* note 177, at 69 (recommending improvements to online voter registration accessibility).

<sup>351</sup> See *id.* at 69–70 (emphasizing the importance of collaboration with disability organizations for voter outreach and registration).

<sup>352</sup> See SCHUR ET AL., *supra* note 172, at 13–15 (discussing the need for accessible voter registration materials and assistance).

<sup>353</sup> *Web Content Accessibility Guidelines (WCAG) 2.1*, W3C RECOMMENDATION (Dec. 12, 2024), <https://www.w3.org/TR/WCAG21> [<https://perma.cc/C87Y-UBBZ>].

<sup>354</sup> See Syed et al., *supra* note 177, at 68 (recommending WCAG 2.1 Level AA compliance for election websites).

<sup>355</sup> See *id.* at 68–69 (discussing the importance of accessible PDFs and ASL videos).

<sup>356</sup> See *id.* (recommending improvements to online voter registration accessibility).

officials should provide alternative formats for voter information guides and sample ballots, including large print, Braille, audio, and electronically accessible versions, proactively offering and making these resources easily requestable through multiple channels.<sup>357</sup> Additionally, election offices should establish dedicated email addresses and phone lines for voters with disabilities to request assistance or accommodations related to digital access, with staff receiving specialized training on digital accessibility and available accommodations. By implementing these comprehensive digital accessibility measures, election officials can significantly reduce barriers to information and registration for voters with disabilities, thereby promoting more inclusive and participatory elections.

Passing comprehensive voting rights legislation at the federal level is crucial. The John R. Lewis Voting Rights Advancement Act would revitalize critical provisions of the VRA and strengthen federal oversight of discriminatory voting law changes at the state level.<sup>358</sup> Complementing these efforts, the Freedom to Vote Act would establish national standards for voter registration, early voting, and vote-by-mail options, while also addressing partisan gerrymandering and improving election security.<sup>359</sup> These bills would provide a robust federal framework for ensuring accessible voting practices nationwide and combating voter suppression tactics that disproportionately affect disabled voters.<sup>360</sup>

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<sup>357</sup> See, e.g., *Remote Accessible Voting-by-Mail (RAVBM)*, CAL. SEC. OF STATE SHIRLEY N. WEBER, PH.D., <https://www.sos.ca.gov/elections/voting-resources/remote-accessible-vote-mail> [<https://perma.cc/UP73-3B3M>]. Colorado's Secretary of State has implemented a comprehensive accessible ballot delivery system that allows voters with disabilities to receive and mark ballots electronically using their own assistive technology. *Accessible Voting*, COLO. SEC. OF STATE JENA GRISWOLD, <https://www.sos.state.co.us/pubs/elections/accessibleVoting.html> [<https://perma.cc/WDY2-3EJS>]. The state of Washington has pioneered this approach with their Disability Advisory Committee and dedicated accessibility coordinator position, which ensures that each county has trained staff available to assist voters with disabilities navigating digital voting resources. KIM WYMAN, WASH. SEC. OF STATE, WASHINGTON STATE VOTER INFORMATION PORTAL PROVIDING ACCESSIBLE AND USABLE INFORMATION (n.d.), [https://www.eac.gov/sites/default/files/eac\\_assets/1/6/Washington\\_Accessibility.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/6/Washington_Accessibility.pdf) [<https://perma.cc/FR3W-H5YQ>].

<sup>358</sup> John R. Lewis Voting Rights Advancement Act of 2021, H.R. 4, 117th Cong. (2021); see also *John Lewis Voting Rights Advancement Act*, HUM. RTS. CAMPAIGN (Apr. 7, 2024), <https://www.hrc.org/resources/voting-rights-advancement-act> [<https://perma.cc/WS4A-4S8B>]; Andrew Garber, *Debunking False Claims About the John Lewis Voting Rights Act*, BRENNAN CTR. FOR JUST. (Feb. 29, 2024), <https://www.brennancenter.org/our-work/research-reports/debunking-false-claims-about-john-lewis-voting-rights-act> [<https://perma.cc/XF2J-MAVB>] (explaining the key provisions of the Act).

<sup>359</sup> Freedom to Vote Act, H.R. 11, 118th Cong. (2023); S. 1, 118th Cong. (2023); see also *Breaking Down the Freedom to Vote Act*, BRENNAN CTR. FOR JUST. (Nov. 9, 2023), <https://www.brennancenter.org/our-work/research-reports/breaking-down-freedom-vote-act> [<https://perma.cc/D6Q5-3J5X>] (detailing the provisions of the Act).

<sup>360</sup> See *supra* Section III.C.

Election officials should create comprehensive communication plans specifically designed to reach voters with disabilities, utilizing diverse methods such as mailings, press releases, emails, phone calls, text messages, videos, and social media outreach. These communications should be provided in multiple accessible formats, including large print, Braille, audio, and plain language versions. Collaboration with state and local cross-disability organizations, including protection and advocacy organizations, centers for independent living, regional ADA centers, and self-advocacy groups, is essential to disseminating information about accessible voting options and mobilizing the disability community to participate in elections.<sup>361</sup>

Although these reforms represent significant steps toward improving voting access for people with disabilities, they are by no means exhaustive. The complexity of disability experiences and the evolving nature of voting systems necessitate an ongoing, adaptive approach to accessibility. Future efforts must continue to address emerging challenges, incorporate new technologies, and respond to the diverse and changing needs of the disability community. A broader, more comprehensive agenda encompassing legal, technological, social, and political dimensions will be necessary to fully realize the goal of equitable voting access for all citizens. By implementing these comprehensive reforms and fostering collaboration between disability rights and reproductive justice advocates, we can work toward a more inclusive democracy that truly represents the interests of all citizens. As abortion rights increasingly appear on ballots nationwide, ensuring accessible voting for people with disabilities is not just a matter of civic participation—it is a crucial step in protecting their reproductive freedom and bodily autonomy. Through a combination of litigation, DOJ enforcement, legislative reform, expanded definitions in federal law, and practical administrative measures, we can break down the barriers that have historically suppressed the disability vote and ensure that the voices of disabled people are heard on critical issues of reproductive justice. This multifaceted approach, while ambitious, is essential for creating a truly equitable and inclusive democratic process that upholds the rights and autonomy of all citizens, including those with disabilities.

#### D. *Running for Office*

Running for office is another crucial tool for ensuring an accessible democracy and reproductive freedom for disabled people. Increasing the

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<sup>361</sup> See Syed et al., *supra* note 177, at 69–70 (emphasizing the importance of collaboration with disability organizations and diverse communication methods).

representation of disabled people in political spheres is essential for addressing the significant underrepresentation that currently exists and for securing policies that reflect the needs and experiences of the disability community.<sup>362</sup> This underrepresentation not only reflects broader societal barriers but also perpetuates a cycle of exclusion, where policies affecting the disability community are often crafted without their direct input.<sup>363</sup> The importance of addressing this underrepresentation cannot be overstated, as it directly impacts the quality of policymaking and the trust between the disability community and the political system. A genuinely democratic society requires that disabled people actively participate in shaping the policies that impact their lives. Their firsthand experiences and perspectives are fundamental, not merely helpful, in creating an equitable political system that truly represents all citizens.<sup>364</sup> The *Dobbs* decision underscores this need for representation, as it “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.”<sup>365</sup> This shift in the locus of decision-making on reproductive rights makes it even more critical for people with disabilities to be present and active in legislative bodies, ensuring that their unique perspectives and needs are considered in the formulation of abortion and reproductive health policies.

To address the barriers that disabled people face when seeking elected office, a multifaceted approach is necessary. Improving physical and communication accessibility is paramount. This includes ensuring that campaign venues, political party meetings, and government buildings are accessible for all disabilities.<sup>366</sup> Additionally, accommodations such as sign language interpreters, closed captioning, and materials in Braille can significantly enhance participation opportunities.<sup>367</sup> These accessibility improvements are not just about compliance with legal requirements; they are about creating an inclusive political environment that values and facilitates the participation of all citizens. By making these changes, we send a powerful message that the voices and perspectives of disabled people are not just welcome but essential to the democratic process.

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<sup>362</sup> See *supra* Section II.D (describing the underrepresentation of disabled people in public office).

<sup>363</sup> See *supra* Section II.D.

<sup>364</sup> See *supra* Section II.D.

<sup>365</sup> *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 289 (2022).

<sup>366</sup> See Evans & Reher, *supra* note 256, at 708 (discussing the importance of accessibility in political settings).

<sup>367</sup> See Cortland, *supra* note 200 (reporting strong voter support for various accommodations for disabled elected officials).

Financial support is another critical area for reform. The financial barriers to running for office are often particularly daunting for people with disabilities, who may face additional campaign-related costs and typically have lower incomes.<sup>368</sup> Establishing a permanent and reliable source of financial assistance for disabled candidates could help level the playing field.<sup>369</sup> This support should ideally come from government sources to ensure consistency and fairness.<sup>370</sup> Addressing the risk of losing disability benefits (e.g., Social Security or Medicaid) when running for or holding office is also crucial, as exemplified by Senator Bob Casey's proposed legislation to protect disability benefits for those campaigning for office.<sup>371</sup> These financial reforms are essential not only for enabling more disabled people to run for office but also for ensuring that those who do run can compete on an equal footing with nondisabled candidates.

In recent years, organizations have emerged to address the underrepresentation of disabled people in politics specifically. One such organization is Disability Victory, a 501(c)(4) organization established with the mission of "build[ing] the political power of disabled progressives through training, networking, and leadership development."<sup>372</sup> Disability Victory also plans to play a role in fundraising for candidates, addressing one of the key barriers to political participation for disabled people.<sup>373</sup> The emergence of organizations like Disability Victory represents a significant step forward in the effort to increase disabled representation in politics, providing targeted support and resources that can help overcome the unique challenges faced by disabled candidates.

Mentoring programs and targeted support for disabled candidates can play a vital role in increasing representation. Organizations like the National Council on Independent Living have taken steps in this direction by maintaining databases of candidates and elected officials with disabilities and offering training programs.<sup>374</sup> Expanding these

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<sup>368</sup> See Evans & Reher, *supra* note 256, at 709 (suggesting the need for permanent financial support for disabled candidates).

<sup>369</sup> See *id.*

<sup>370</sup> See *id.*

<sup>371</sup> See Loeppky & Green, *supra* note 258.

<sup>372</sup> *About Disability Victory*, DISABILITY VICTORY, <https://www.disabilityvictory.org/about> [<https://perma.cc/YJU8-CRYP>] (describing Disability Victory's mission and activities).

<sup>373</sup> Sara Luterman, *Disabled People Are Underrepresented in Politics. A New Organization Aims to Change That.*, 19TH (Nov. 6, 2023, 1:05 PM), <https://19thnews.org/2023/11/disability-victory-2024-election> [<https://perma.cc/WMW5-ZMZQ>] (discussing Disability Victory's role in fundraising for disabled candidates).

<sup>374</sup> See Report: 1 in 10 Politicians Has a Disability. That's a Gap in Representation, *supra* note 250 (describing efforts by organizations to support disabled candidates).

efforts and creating more formal mentoring schemes could help recruit and guide prospective disabled candidates through the political process.<sup>375</sup> These programs can provide invaluable insights into navigating the political landscape, dealing with ableism and stigma, and effectively advocating for disability rights within political institutions. By providing this support, we can help ensure that disabled candidates are not just running for office but are equipped to succeed and make meaningful impacts once elected.

Addressing ableism and stigma within the political culture is essential for creating a more inclusive environment. This includes challenging negative perceptions about the capabilities of people with disabilities and normalizing the use of accommodations in political settings.<sup>376</sup> The COVID-19 pandemic has inadvertently contributed to progress in this area by normalizing remote participation options, which can benefit some disabled politicians.<sup>377</sup> However, there is still much work to be done in combating deeply ingrained societal biases and misconceptions about disability. This requires ongoing education and awareness campaigns, not just within political circles but in society at large, to shift perceptions and create a culture that truly values and embraces the contributions of disabled people in all aspects of life, including politics.

To truly open the doors of political participation to all disabled people, comprehensive reform and continued advocacy are necessary. This includes exploring more radical solutions, such as alternative formats for debating and canvassing, including a greater role for online activities, and considering options like job sharing.<sup>378</sup> These creative approaches can help accommodate the diverse needs and capabilities within the disability community. It is essential to recognize that there is no one-size-fits-all solution; the diversity of disabilities means that a range of accommodations and innovations may be necessary to ensure true inclusivity in the political process. This may require rethinking traditional political structures and processes, but such changes are essential for creating a truly representative democracy.

The coalescence of disability rights and reproductive justice groups is crucial in this context. The *Dobbs* decision, which significantly impacts reproductive rights and healthcare access for people with disabilities,<sup>379</sup> starkly illustrates the consequences of underrepresentation in political

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<sup>375</sup> See Evans & Reher, *supra* note 256, at 708 (suggesting mentoring programs as a promising way to recruit and support disabled candidates).

<sup>376</sup> See *id.* at 706–07.

<sup>377</sup> See Loepky & Green, *supra* note 258.

<sup>378</sup> See *id.*

<sup>379</sup> See *supra* Part I.

decision-making. By joining forces, these groups can amplify their advocacy efforts, ensuring that the intersectional needs of disabled people are considered in reproductive rights legislation and policies. This collaboration is particularly important given the complex ways in which disability and reproductive rights intersect.<sup>380</sup> As described in detail above, disabled people often face unique challenges and discrimination in accessing reproductive healthcare, and their voices are essential in shaping policies that affect their bodily autonomy and reproductive choices.<sup>381</sup>

Increasing the representation of disabled people in politics is not just about achieving numerical parity; it is about ensuring that policies affecting the disability community are crafted with their direct input and lived experiences. This is particularly crucial in areas such as reproductive rights, where the complex interplay of disability and reproductive justice requires nuanced understanding and representation.<sup>382</sup> When people with disabilities are present in legislative bodies and other decision-making forums, they bring invaluable perspectives that can lead to more inclusive and effective policies. Their presence can also serve to educate their colleagues and the public about disability issues, helping to break down barriers of misunderstanding and prejudice.

In the end, facilitating the participation of people with disabilities in running for office is a critical step toward creating a more accessible democracy and securing reproductive freedom for the disability community. By addressing physical, financial, and cultural barriers, providing targeted support through organizations like Disability Victory, and fostering collaboration between disability rights and reproductive justice advocates, we can work toward a political landscape that truly represents and serves all citizens, including those with disabilities. This is not just a matter of fairness or representation; it is about enriching our democratic process with diverse perspectives and experiences that can lead to more comprehensive and effective policymaking for all members of society.

#### IV. BEYOND DEMOCRATIC ENGAGEMENT: THE NEED FOR BROADER SYSTEMIC CHANGE

Though democratic engagement is crucial for advancing reproductive rights and disability justice, recent developments reveal its limitations in ensuring comprehensive reproductive freedom. The *Dobbs*

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<sup>380</sup> See *supra* Section I.B.

<sup>381</sup> See *supra* Section I.B.

<sup>382</sup> See *supra* Part I.



decision has exposed significant flaws in our democratic processes, necessitating a broader approach that combines grassroots activism, intersectional coalition building, and systemic reform. The success of post-*Dobbs* state ballot initiatives supporting reproductive rights demonstrates the power of direct democracy, with voters in states like Kansas, California, Michigan, and Vermont affirming abortion protections through constitutional amendments.<sup>383</sup> However, these victories have occurred despite, rather than because of, the Supreme Court's approach to democratic processes. As legal scholars Melissa Murray and Katherine Shaw astutely observe, "*Dobbs* purported to 'return' the abortion question to the people at the precise moment when the Court's own actions have ensured that the extant system is unlikely either to produce genuine deliberation or to yield widely desired outcomes."<sup>384</sup>

The Court's jurisprudence has often constrained opportunities for popular participation, as evidenced by decisions weakening voting rights protections and upholding partisan gerrymandering.<sup>385</sup> Murray argues that "no actor has done more to distort the landscape of democratic deliberation—that is, to make it difficult for individuals to register their policy preferences at the ballot box—than the Court itself."<sup>386</sup> These rulings have collectively tilted the playing field against grassroots movements and popular initiatives, particularly those aimed at expanding civil liberties like reproductive rights. Moreover, state legislatures have attempted to restrict access to direct democracy mechanisms in response to pro-choice ballot outcomes, further undermining the efficacy of traditional democratic engagement. Examples include Ohio's unsuccessful attempt to raise the threshold for passing constitutional amendments via ballot initiatives and Mississippi's efforts to prohibit initiatives specifically related to reproductive rights.<sup>387</sup>

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<sup>383</sup> Mitch Smith & Katie Glueck, *Kansas Votes to Preserve Abortion Rights Protections in Its Constitution*, N.Y. TIMES (Aug. 2, 2022), <https://www.nytimes.com/2022/08/02/us/kansas-abortion-rights-vote.html>; Mitch Smith & Ava Sasani, *Michigan, California and Vermont Affirm Abortion Rights in Ballot Proposals*, N.Y. TIMES (Nov. 10, 2022), <https://www.nytimes.com/2022/11/09/us/abortion-rights-ballot-proposals.html>; Lindsay Whitehurst, *Voters Uphold Abortion Rights in Michigan, California, Vermont Ballot Measures*, PBS (Nov. 9, 2022, 9:26 AM), <https://www.pbs.org/newshour/politics/voters-uphold-abortion-rights-in-michigan-california-vermont-ballot-measures> [<https://perma.cc/EUB2-EBUT>].

<sup>384</sup> Murray & Shaw, *supra* note 12, at 806.

<sup>385</sup> See *supra* Introduction.

<sup>386</sup> Melissa Murray, *Children of Men: The Roberts Court's Jurisprudence of Masculinity*, 60 HOUS. L. REV. 799, 859 (2023).

<sup>387</sup> Julie Carr Smyth & Samantha Hendrickson, *Voters in Ohio Reject GOP-Backed Proposal that Would Have Made It Tougher to Protect Abortion Rights*, ASSOCIATED PRESS (Aug. 9, 2023,

These efforts highlight the fragility of relying solely on electoral processes to safeguard fundamental rights and underscore the need for a more comprehensive strategy.

The emerging coalition between disability rights advocates and reproductive justice groups offers a promising model for such an approach. The recent introduction of the Disability Reproductive Equity Act represents a significant step toward this broader, more inclusive advocacy strategy.<sup>388</sup> By bringing together disability and reproductive rights groups in shaping policy, this initiative demonstrates the potential for intersectional coalitions to influence legislative agendas and public discourse. As legal scholars Allison Whelan and Michele Goodwin note, “Such movements also have the potential to reshape political agendas and influence elections, simply by the scale of numbers. More individuals within a coalition may produce a greater number of voters to support the cause of a candidate committed to reproductive justice.”<sup>389</sup> This collaboration recognizes the intersectionality of these issues and the potential for amplified political impact through unified advocacy. It is crucial to acknowledge that the challenges faced by people with disabilities in accessing both reproductive healthcare and democratic processes are often compounded by other intersecting identities such as race, class, and gender identity.<sup>390</sup> This intersectional approach is essential for developing strategies that address the complex realities of marginalized communities.

The disability rights movement’s rich history of embodied protest and participation provides valuable lessons for this broader strategy. From campus efforts to high-profile demonstrations like the “Capitol Crawl” and Americans Disabled Attendant Programs Today (ADAPT) protests against the attempted repeal of the Affordable Care Act, disability activists have effectively combined physical presence with

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9:26 AM), <https://apnews.com/article/ohio-abortion-rights-constitutional-amendment-special-election-227cde039f8d51723612878525164f1a> [<https://perma.cc/5RJX-45XZ>]; Andrew DeMillo, *Arkansas Senate OKs New Requirement for Ballot Measures*, ASSOCIATED PRESS (Mar. 6, 2023, 8:23 PM), <https://apnews.com/article/arkansas-ballot-measures-marijuana-casinos-medicaid-1f44e394c57fb37909798169bee45b60> [<https://perma.cc/4SVU-ZNCM>]; Tori Otten, *Mississippi Republicans Want to Ban Ballot Initiatives on Abortion*, NEW REPUBLIC (Mar. 2, 2023, 5:50 PM), <https://newrepublic.com/post/170905/mississippi-republicans-want-ban-ballot-initiatives-abortion> [<https://perma.cc/HQ2J-BDDL>].

<sup>388</sup> See Luteran, *supra* note 187; Disability Reproductive Equity Act, H.R. Res. 1273, 118th Cong. (2024) (recognizing the reproductive injustices experienced by disabled people and calling for action to rectify).

<sup>389</sup> Allison M. Whelan & Michele Goodwin, *Abortion Rights and Disability Equality: A New Constitutional Battleground*, 79 WASH. & LEE L. REV. 965, 1004–05 (2022) (emphasizing the importance of inclusive advocacy in the fight for reproductive justice).

<sup>390</sup> See *supra* Section II.A.

online activism to achieve significant policy changes.<sup>391</sup> This multifaceted approach to advocacy could be particularly powerful in the fight for reproductive justice, especially given the heightened tendency of people with disabilities to engage in nonvoting forms of political participation when faced with perceived discrimination. Indeed, research suggests that while disability decreases voting, it increases other forms of political engagement, such as contacting politicians and participating in demonstrations.<sup>392</sup> This tendency is further amplified when people with disabilities perceive discrimination against their community, potentially galvanizing increased political engagement in the wake of decisions like *Dobbs* that disproportionately impact people with disabilities.<sup>393</sup>

Digital activism offers new possibilities for inclusion and participation, allowing a more diverse range of people with disabilities to engage in social movements.<sup>394</sup> Initiatives like the online Disability March, which expanded participation in the Women's March on Washington through virtual means, exemplify this evolution.<sup>395</sup> This shift in activism necessitates reconsidering what constitutes "normal" political participation, challenging conventional understandings of democratic engagement. As Benjamin Mann argues, the coexistence of barriers to traditional civic engagement and limitations on more confrontational forms of protest for people with disabilities requires us to reevaluate how we define and recognize social movements.<sup>396</sup> Moreover, emerging technologies offer additional avenues for enhancing democratic participation.<sup>397</sup> Assistive voting technologies, such as audio ballots or sip-and-puff systems, can make the voting process more accessible.<sup>398</sup> Blockchain technology holds promise for secure online voting systems that could overcome physical barriers to polling places.<sup>399</sup> However, it is crucial to recognize that, while these technological solutions can mitigate some barriers, they must be implemented alongside broader systemic changes to truly democratize political participation.

Legal strategies present another avenue for challenging and mitigating the impact of *Dobbs*, particularly those pursued by disability rights organizations. These could include constitutional challenges based

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<sup>391</sup> Mann, *supra* note 313, at 605.

<sup>392</sup> See Mattila & Papageorgiou, *supra* note 316, at 514–15.

<sup>393</sup> See *supra* Part I.

<sup>394</sup> Mann, *supra* note 313.

<sup>395</sup> See Mann, *supra* note 313, at 605.

<sup>396</sup> *Id.*

<sup>397</sup> *Voting Equipment*, *supra* note 340.

<sup>398</sup> See *id.* (describing examples of assistive voting technology).

<sup>399</sup> See Jacob Beckett, *Blockchain Voting: WY Not?*, 21 WYO. L. REV. 411, 425–33 (2021) (describing ways blockchain technology could improve voting).

on equal protection arguments, asserting that abortion bans disproportionately affect people with disabilities.<sup>400</sup> Disability rights groups could also leverage the ADA to argue that restricting abortion access constitutes discrimination against people with certain disabilities.<sup>401</sup> The economic implications of restricted reproductive freedom for people with disabilities further underscore the need for systemic change.<sup>402</sup> Forced pregnancies can exacerbate existing financial hardships, potentially leading to job loss, increased healthcare costs, and greater dependence on often inadequate social support systems.<sup>403</sup> This economic dimension adds urgency to the fight for reproductive justice and highlights the interconnectedness of reproductive rights with broader issues of economic justice and disability rights.

Ultimately, ensuring reproductive freedom and disability justice requires looking beyond traditional forms of democratic engagement. It calls for a comprehensive strategy that combines direct action, digital activism, coalition building, policy reform, and systemic overhaul. By adopting this multifaceted approach, advocates can more effectively counter the limitations of conventional democratic processes and work toward a more inclusive and just society for all. As Murray and Shaw pointedly assert, “*Dobbs* cannot be genuinely understood to rest on or to further democratic engagement, as the majority insists. Instead, the majority’s invocation of democracy is yet another discursive move that deploys the vernacular and values of democracy for other ends.”<sup>404</sup> To counter this disingenuous invocation of democratic ideals, we must chart a course that authentically upholds the fundamental tenets of justice, even when—and especially when—these principles challenge the will of the majority.

Forging ahead requires a fundamental reconceptualization of civic engagement and activism that transcends the boundaries of traditional democratic participation. It demands that we embrace the intersectionality of disability rights and reproductive justice, recognizing that the fight for bodily autonomy and self-determination is fundamentally interconnected and often at odds with majoritarian rule. This vision calls for a nuanced understanding of the systemic barriers

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<sup>400</sup> See Powell, *Disabling Abortion Bans*, *supra* note 19 (analyzing potential constitutional challenges to abortion bans and arguing that disability rights attorneys could assert that such bans discriminate against people with disabilities by disproportionately impacting their reproductive autonomy and health).

<sup>401</sup> See *id.* at 64–66 (discussing potential challenges to abortion bans under the ADA).

<sup>402</sup> See *supra* Section I.B.

<sup>403</sup> See *supra* Section I.C (describing the escalating economic challenges faced by disabled people because of *Dobbs*).

<sup>404</sup> Murray & Shaw, *supra* note 12, at 734.

faced by marginalized communities in accessing both reproductive healthcare and democratic processes, and for a commitment to dismantling these barriers through both institutional and grassroots efforts.

As we move beyond the limitations of traditional democratic engagement, we must envision and actively construct a truly inclusive society that fully supports reproductive justice and disability rights in practice. This long-term vision involves reimagining our political and social structures to center the needs and experiences of marginalized communities, creating a system where accessibility and equity are the norm rather than the exception. In this inclusive democracy, reproductive healthcare would be universally accessible, with providers trained in disability-competent care. Political campaigns and public discourse would routinely include disability perspectives, and assistive technologies would be standard in voting processes. Most importantly, this vision encompasses a society where the rights of marginalized groups are not subject to the whims of the majority vote but are instead protected through robust, multilayered safeguards that combine constitutional protections, proactive legislation, and grassroots advocacy.

Realizing this vision requires sustained effort, innovative thinking, and a commitment to transforming not just our laws, but our societal attitudes and structures. It necessitates a recognition that, while democratic engagement is vital, it is but one tool in a broader arsenal needed to achieve true justice and equity. As we work toward this goal, we pave the way for a more equitable, just, and truly representative society that upholds the dignity and autonomy of all people and recognizes that protecting fundamental rights often requires us to move beyond the limitations of pure democracy.

## CONCLUSION

The *Dobbs* decision has ushered in a new era of reproductive politics that disproportionately impacts people with disabilities while cynically invoking a hollow concept of democracy. This ruling exposes disabled people to profound challenges: heightened health risks, escalated economic burdens, and further erosion of bodily autonomy. The persistent barriers to democratic participation starkly contradict the Court's superficial deference to "the people's elected representatives,"<sup>405</sup> revealing the fundamental flaws in its democratic rationale. In response to this crisis, centering disability rights and grassroots leadership emerges

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<sup>405</sup> *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 232 (2022).

as a crucial strategy for advancing reproductive justice. This approach necessitates a dual focus: pragmatic engagement with existing democratic processes alongside relentless efforts to transform unjust systems. The pathways proposed in this Article—shaping public opinion, leveraging lobbying efforts, mobilizing voting power, and increasing disabled representation in political office—offer concrete steps toward empowering people with disabilities in the fight for reproductive freedom. These strategies not only counter the immediate threats posed by *Dobbs*, but they also catalyze the creation of a more inclusive and equitable democracy. However, it is critical to recognize that these measures, while necessary, are not sufficient. True reproductive justice demands broader systemic change that addresses the intersecting issues of disability rights, reproductive freedom, and authentic democratic participation.

The Court's disingenuous invocation of democracy in *Dobbs* presents a unique opportunity to critically examine and challenge the democratic deficits that have long marginalized disabled voices in political discourse and decision-making. As we navigate this fraught post-*Dobbs* landscape, centering disability rights transcends mere inclusivity—it is fundamental to realizing the full transformative potential of the reproductive justice movement. By foregrounding the lived experiences and activist visions of disabled people, we can advance a holistic concept of reproductive freedom grounded in bodily autonomy, self-determination, and dignity for all. This path forward serves as both a clarion call to action and a detailed roadmap for change, challenging us to confront and dismantle the hollow democracy offered by the Court. The fight for reproductive justice in the post-*Dobbs* era is inextricably linked with the struggle for disability rights and true democratic representation. By centering the voices and needs of disabled people, we not only protect their rights but also strengthen the very fabric of our democracy, creating a more inclusive and responsive political system that genuinely serves all members of society. As we move forward, let us embrace this intersectional vision of justice, recognizing that the liberation of the most marginalized among us is essential for the freedom of all. The challenges ahead are formidable, but so too is the power of collective action grounded in a commitment to equity, accessibility, and justice. In this critical moment, we have the opportunity, and the obligation, to reshape our democracy and our society into one that truly upholds the dignity and autonomy of every individual.