

## NOW Foundation Board Report

**To: NOW Foundation Board Members**

**From: Jan Erickson, NOW Foundation Director of Programs\***

**Date: February 28, 2022**

### Important Updates

#### History made at the Supreme Court – Judge Ketanji Brown Jackson Nominated

True to his campaign promise, President Joe Biden nominated a Black woman to the U.S. Supreme Court -- and a very distinguished nominee at that.

Judge Ketanji Brown Jackson is a judge on the influential U.S. Court of Appeals for the District of Columbia and recently took that position just last summer. A native of District of Columbia, Judge Jackson has worked extensively in the federal court arena holding positions ranging from a district court judgeship to serving as a public defender. Judge Jackson's history representing indigent criminal defendants and her subsequent rulings in cases revolving civil rights and disparities in sentencing signal her interest in racial justice. (But she does say that she doesn't let race influence her decisions.) Very few justices on the Supreme court have ever had this experience in their repertoire and if appointed, she would be the first Supreme Court justice since Thurgood Marshall to have worked with indigent clientele. In addition, she also openly supports reproductive rights. She played a pivotal role protecting federal funding for the Teen Pregnancy Prevention Programing and backed the creation of a floating "buffer zone" that would protect pedestrians and cars approaching abortion clinics.

The Washington Post reports on Judge Jackson's background in [What to Know about Ketanji Brown Jackson, Biden's pick for the Supreme Court](#), [What to know about Ketanji Brown Jackson, Biden's Supreme Court pick - The Washington Post](#) . Highlights are that she was a high school debate champion, a Harvard law graduate where she edited the Harvard Law Review, and serve as a federal judge for nine years, plus serving on the important U.S. Court of Appeals for the D.C. Circuit. Judge Jackson also served as a clerk to the Supreme Court justice that, hopefully, she will be replacing on the Court. Judge Jackson, age 51, is married to Dr. Patrick G. Jackson, a gastroenterologist, and the couple has two daughters. Her husband is related by marriage to former House speaker, Paul Ryan (R-WI) who has praised Judge Jackson's intellect, her character and her integrity. Three Republican senators, Sens. Lindsey Graham (SC), Susan Collins (ME) and Lisa Murkowski (AK) voted confirm her for the appeals court seat she now occupies. However, many political observers believe that the Republicans will still make it tough for the Democrats to gain confirmation for Judge Jackson. Why? It's an election year.

\*With the assistance of NOW Foundation President's Office Intern Christiny Charnee Reeves and Public Policy Intern Nora Weiss.

Alliance for Justice reports in-depth on Judge Ketanji Brown Jackson’s career and concludes that the nominee “is an eminently qualified judge and who has shown an unwavering commitment to equal justice,” [Ketanji Brown Jackson Fact Sheet — AFJ](#)

## **Litigation Reports**

### ***Steve Snyder-Hill, et al v. The Ohio State University***

#### ***Amicus Brief in Support of the Plaintiff***

**US Court of Appeals, Sixth Circuit**

**Issue(s): Education discrimination, Title IX, sexual abuse**

**Docket Nos.: 21-3981, 21-3991**

The National Women’s Law Center and Weil, Gotshal & Manges LLP, with the support from organizations such as the NOW Foundation, is submitting an amicus brief to the Sixth Circuit in support of the plaintiffs in *Steve Snyder-Hill, et al v. The Ohio State University*. Between the years of 1978 and 1998, an Ohio State University employee, Dr. Richard Strauss, sexually abused his male students on a continual basis. A district court in Ohio recently dismissed the athletes’ Title IX claims as untimely, ruling they should have brought this lawsuit within two years of when they were abused or when they graduated from or dropped out of OSU. The court rejected the athletes’ arguments that they did not understand that they had been sexually abused and that OSU had been deliberately indifferent to their abuse until 2018-2019, when allegations of OSU’s coverup surfaced in the press and independent investigators determined that Strauss’s procedures were medically inappropriate and unnecessary. In 2020, OSU released federally mandated data that revealed that between 2018 and 2019, the institution had received over 2,200 reports of fondling and 127 reports of rape attributed to Dr. Strauss.

The amicus brief explains that sexual assault is pervasive, especially on college campuses, and that failure to recognize sexual abuse is also a pervasive and insidious problem. College athletes are often especially vulnerable to being subjected to sexual abuse and failing to recognize it as such because of the intense love and trust they hold for their institutions; their dependence on their institutions for scholarships and other support; the power and authority wielded by team coaches and doctors; and the culture of “toughness” that encourages minimization and normalization of discomfort and harassment.

### ***Adams v. The School Board of St. Johns County, Florida***

#### ***En Banc Amicus Brief in Support of the Plaintiff-Appellee***

**US Court of Appeals, 11<sup>th</sup> Circuit**

**Issue(s): Transgender rights, LGBTQ+ discrimination**

**Docket No: 18-13592**

The National Women’s Law Center, joined by NOW Foundation and other organizations, are submitting an amicus appeal before the 11<sup>th</sup> Circuit in support of Andrew Adams, a transgender

male student who was denied access to the boys' restroom at his middle school in Florida. In 2019, the National Women's Law Center submitted an amicus brief in this case and received a great decision in the student's favor, which held that the board's policy of prohibiting trans students from using restrooms corresponding to their gender identity violates the Equal Protection Clause and Title IX. One year later, in July 2021, the 11th Circuit vacated its decision and issued a revised opinion that watered down the Equal Protection and Title IX holdings, but still concluded that Andrew's rights were violated. The court has now decided to re-hear the case *en banc*, meaning that it has again vacated its prior decision and will allow all of the judges on the 11th Circuit to decide the case anew. This case could have serious, long-term, and wide-ranging consequences for transgender students.

Amici will support Andrew Adams, who is being represented by Lambda Legal, in his challenge to the school's policy of prohibiting trans students from using the restroom in line with their gender identity. The brief plans to challenge the 11th Circuit's framing of the question presented, emphasizing that the issue is *not* whether sex-separated facilities are ever permissible, but whether schools violate the law when they exclude trans students from the sex-separated facility corresponding to their gender identity. The brief will emphasize that the 11th Circuit's first opinion in this case got it correct when it found that the school's policy violates both the Equal Protection Clause and Title IX because it constitutes discrimination based on sex and transgender status.

***Evangeline J. Parker v. Reema Consulting Services, Inc.***  
***Amicus Curiae Brief in Support of the Plaintiff-Appellant and in Favor of Reversal***  
**US Court of Appeals, Fourth Circuit**  
**Issue(s): Workplace harassment, wrongful termination**  
**Docket No.: 18-1206**

In May of 2018, the National Women's Law Center, alongside 43 other organizations and now Foundation signing on, moved to file an amicus brief in support of Ms. Evangeline Parker, who was subjected to sexist rumors at her workplace and was unlawfully fired after reporting the instances of sexual harassment. In December of 2021, Ms. Parker won her jury trial and was awarded an incredible \$725,000, including \$340,000 in compensatory damages and \$385,000 in punitive damages for the sex discrimination and retaliation she experienced.

In this case, Evangeline Parker sought justice for having experienced a sexist, hostile work environment, as well as wrongful termination. Ms. Parker endured sexually explicit rumors that attributed her successful career and recent promotion to having sexual relations with colleagues. Upon reporting these instances of sexual harassment to the human resources department, she was fired. Judge Titus, of the federal district court in Maryland, dismissed the case, arguing that Ms. Parker was not terminated because of her gender, but because of her "alleged conduct." Further, Court misinterpreted retaliation law and ruled that Ms. Parker could not pursue any actionable retaliation claim.

The amicus brief included the following key points: It is crucial that the law recognize that the conduct at issue here is sex discrimination, as evidenced through legal precedent and social science. The brief highlighted how such rumors about women “sleeping their way to the top” are based on and reinforce gender stereotypes, and particularly harm women who are advancing in their careers. It also made note that if the same conduct happened to a male employee, it could still constitute sexual harassment based on gender. Further, the brief argued that the standard for retaliation was met, and that the Court made inappropriate factual determinations in dismissing the case at the motion to dismiss stage.

In February 2019, the Fourth Circuit had reversed the lower court ruling in its decision by an unanimous three-judge panel, holding that rumors that a female employee slept with her male boss to obtain promotions can give rise to her employer’s liability under Title VII for sex discrimination. The Fourth Circuit revived the claims of sex discrimination in this case agreeing that “the traditional negative stereotypes regarding the relationship between the advancement of women in the workplace and their sexual behavior” are still at play and allowing harassment based on such stereotypes can violate federal law. Finally, in May of 2018, Ms. Parker received justice with the award in her favor in December 2021.

***B.R. v. F.C.S.B.***

***Amici Curiae in Support of Appellee***

**US Court of Appeals for the Fourth Circuit**

**Issue(s): Sexual harassment, Title IX**

**Docket no.: 21-1005**

The National Women’s Law Center filed an amicus brief in the Fourth Circuit in *B.R. v. F.C.S.B.* in support of a student survivor against her school. NOW Foundation and other amici joined the brief. B.R. was 12 years old when she was repeatedly sexually harassed, including raped, tortured, and threatened with death by her classmates. Although she repeatedly requested protection, school officials ignored her and blamed her for her own mistreatment. When B.R. was 20, she filed a lawsuit against her school and former classmates alleging Title IX and other violations under the pseudonym “Jane Doe.”

The district court ruled in favor of B.R. and denied defendants’ motion to dismiss, holding that (i) B.R.’s failure to obtain permission from the court before filing under a pseudonym was *not* a jurisdictional defect and (ii) her amended complaint related back to the date of her original complaint for purposes of statute of limitations. Defendants appealed on both of these issues and have also asserted that B.R. is subject to Virginia’s general statute of limitations for personal injury (2 years) rather than its specific statute of limitations for child sexual abuse (20 years).

If the Fourth Circuit rules in favor of the defendants, then B.R.’s case would be dismissed on a procedural technicality, and this harmful precedent could bar future survivors from seeking justice in the courts.

*Soule et al v. Connecticut Association of Schools, Inc., et al*

***Amici Curiae in Support of the Appellees and Affirmance***

**US Court of Appeals, Second Circuit**

**Issue(s): Transgender rights**

**Docket No.: 21-1365**

The National Women’s Law Center, along with their law firm partner Hogan Lovells, are submitting an amicus brief to the Second Circuit in support of the ACLU in *Soule v. CIAC*, from groups committed to women's rights. NOW Foundation joined their amicus brief.

The amicus brief will support Connecticut’s Interscholastic Athletic Conference policy that allows K-12 athletes to participate in sports consistent with their gender identity. The Alliance Defending Freedom (ADF), a far-right conservative Christian group, challenged the policy on behalf of three cisgender female athletes. They argue that the policy violates Title IX (which prohibits sex discrimination in education programs or activities), because it allows women and girls who are transgender to participate in female sports. ACLU intervened as a defendant on behalf of two transgender women athletes. Thankfully, the District Court dismissed the claims on jurisdictional grounds, but now the case is on appeal to the Second Circuit.

NWLC's brief will focus on how excluding transgender women and girls from participation violates Title IX in line with *Bostock v. Clayton County, Georgia*, a 2020 Supreme Court decision, and other circuit court decisions. It will also highlight the harms to transgender women and girls that flows from exclusion from athletic participation consistent with gender identity. Further, it will explain that while gender-based disparities between male and female sports certainly exist, including access to sponsorships, scholarships, and adequate facilities, these are not because of the inclusion of trans women and girls, contrary to what ADF argues.

The brief will also focus on how outdated stereotypes regarding athleticism and gender are being directed at transgender girls—especially girls of color who are also targeted because of their race—who are frequently told outright that they are not girls. This policing of gender has been used to justify subjecting transgender students to numerous additional barriers to participating in sports, ranging from onerous medical requirements to outright bans on participation. The benefits of athletic participation have been well documented, and transgender women and girls, who already are vulnerable to discrimination in education, should have opportunities to reap the benefits of sports as do other women and girls.

***Nicole Chase v. Town of Canton***

***Amici Curiae Supporting Plaintiff-Appellee Nicole Chase***

**US Court of Appeals, Second Circuit**

**Issue(s): Sexual harassment in the workplace, sexual assault, police corruption**

**Docket No.: 20-3234-cv**

The National Women’s Law Center sent an amicus brief to the Second Circuit in support of Nicole Chase, the plaintiff in the case *Chase v. Town of Canton*. NOW Foundation joined in the brief. In October of 2021, the Second Circuit dismissed the Defendants’ appeal for lack of jurisdiction, allowing Ms. Chase’s remaining claims to move forwards at the trial level. Nicole Chase, a single mother and restaurant worker, was sexually assaulted by the restaurant owner in 2017. In addition to forcing Chase into sexual acts, the owner had sexually harassed Chase on a continual basis, both verbally and physically. Chase reported the incidents to the police but excluded the part where she engaged – under pressure – in nonconsensual oral sex.

Throughout the investigation, the police were remarkably friendly with the owner—one detective chatted repeatedly about golf outings with his attorney and suggested that he might “get out” of the situation if he instead described it as consensual sex. The police even told the owner that they could say Chase was lying and build a case against her, as they had done to other survivors in the past. And when Chase reported the nonconsensual oral sex aspect of the assault, rather than bring charges against the restaurant owner, the police arrested Chase for having made a “false statement.”

Chase brought a lawsuit against the officers involved and the defendants moved for summary judgment. The district court denied the motion in part, and the defendants appealed the denial to the Second Circuit. The amicus brief urged the Second Circuit to affirm the district court's decision.

***Dr. Rachel Tudor v. Southeastern Oklahoma State University***  
***Amici Curiae in Support of the Plaintiff***  
**US Court of Appeals, Tenth Circuit**  
**Issue(s) Presented: Transgender rights, wrongful termination**  
**Docket Nos.: 18-6102, 18-6165**

NOW Foundation joined with other organizations in a brief submitted by the National Women’s Law Center in support of Dr. Rachel Tudor. Dr. Tudor worked as a professor of English at Southeastern Oklahoma State University starting in 2004. Three years later, Dr. Tudor informed the University that she was transgender and was transitioning to be a woman. The University denied Tudor tenure and subsequently terminated her employment. Finally, there is a victory for Dr. Tudor.

On September 13, 2021, after fighting for justice for years, the Tenth Circuit ordered the district court to reinstate her to a tenure position at Southeastern Oklahoma State University and correctly recalculate her front pay damages award. As NWLC's amicus brief argued, the Tenth Circuit found that the district court improperly concluded reinstatement would not be possible due to alleged hostility between Dr. Tudor and Southeastern. Instead, because of the legal presumption in favor of reinstatement and the particularly low risk of extreme hostility between the parties here, the court reversed and ordered that Dr. Tudor be reinstated at the university with tenure. The Tenth Circuit also agreed with NWLC's amicus brief on the issue of

Dr. Tudor's front pay determination, finding that the amount the district court used to calculate her compensation rate was "verifiably incorrect" and ordering the court to recalculate. On remand, the lower court will be required to award Dr. Tudor monetary damages using the correct annual compensation figures calculated from the time that she would have been granted tenure when she first applied in 2009-10 until the time of her reinstatement. While Dr. Tudor also challenged the district court's application of Title VII's damages cap, which reduced her jury award, the Tenth Circuit disagreed on that point, and affirmed the jury award for backpay and compensatory damages.

The Tenth Circuit also rejected Southeastern's cross-appeal in its entirety, heavily citing the Supreme Court's decision in *Bostock v. Clayton County*, which overruled previous 10th Circuit precedent and held that discrimination against transgender employees is sex discrimination under Title VII. In sum, the Tenth Circuit granted the relief that NWLC and the group of amici requested in the brief, ensuring that Dr. Tudor will be reinstated to her job with tenure and compensated to be made whole and, this should also help deter employers from future discriminatory conduct, including against LGBTQ employees.

***Peltier et al v. Charter Day School***  
***Amicus brief in support of the plaintiffs***  
**US Court of Appeals, Fourth Circuit**  
**Issue(s) Presented: Title IX, gender equality**  
**Docket Nos.: 20-1001**

The National Women's Law Center and Debevoise & Plimpton LLP, with the support of organizations such as NOW Foundation, submitted an amicus brief to the United States Court of Appeals for the Fourth Circuit in support of three students who are plaintiffs in *Peltier, et al v. Charter Day School, Inc., et al.*, No. 20-1001 (4th Cir.). In August of 2021, the 4<sup>th</sup> Circuit published an opinion on the case, deciding that dress codes are not categorically excluded from Title IX's scope.

The students in this case were represented by the ACLU Women's Rights Project. Plaintiffs challenged whether the defendant's school dress code policy, which required all girls to wear skirts, "skorts," or "jumpers" to school, violated the Equal Protection Clause of the U.S. Constitution, the North Carolina state constitution, Title IX of the Education Amendments Act of 1972, and North Carolina state law.

The brief supported Plaintiffs' Title IX challenge, specifically arguing that the legislative and regulatory enforcement history of Title IX establishes that its prohibition on sex discrimination encompasses the dress code policy at issue in this case. The brief also argued that, as a policy matter, Defendants' dress code policy promotes harmful policies that violate Title IX, including the false notions that girls should be passive, and conform to specific sex stereotypes.

***Corbitt v. Taylor***

**US Court of Appeals, Eleventh Circuit**

**Issue(s) Presented: Transgender rights**

**Docket Nos.: 21-10486**

NOW Foundation signed on to an amicus brief being drafted by the National Women’s Law Center for case before the U.S. Court of Appeals for the Eleventh Circuit in support of the transgender women plaintiffs in *Corbitt v. Taylor*, following a positive decision from the District Court for the Middle District of Alabama. The ACLU is representing the women plaintiffs.

The appeal involves a constitutional challenge to an Alabama policy that deprives transgender people of driver licenses that accurately reflect their gender. Alabama’s policy only allows people to change the gender marker on their driver licenses if they undergo surgical procedures and submit proof to the state, meaning that transgender people who do not want, cannot afford, or are medically unable to have the required surgeries are prevented from having a license that accurately reflects their gender. The policy puts transgender Alabamans at risk of discrimination and attack, and violates the privacy, due process, free speech, and equal protection rights of the plaintiffs.

The amicus brief will urge the Eleventh Circuit to affirm the district court's decision, which held that Alabama’s policy violates the Equal Protection Clause because it discriminates based on sex. The brief will highlight the harms at stake here, particularly for Black and brown trans women in Alabama and how not having an ID that matches one's gender identity creates a multitude of harms in real peoples' lives. In its appeal, the state is also conflating the issues present in this case with classifications related to affirmative action and implying that unless Alabama is permitted to require surgery for trans folks before they are allowed licenses that match their gender identity, then this calls into question the entire basis for race-based affirmative action. As such, the amicus brief will also distinguish between discriminatory classifications like Alabama’s, which serve no important governmental purpose, and classifications tied to remedial programs, like affirmative action, which serve the vital governmental interest of addressing historical discrimination and oppression.

***Morgan et al. v. USSF Federation, Inc***

***Amici Curiae in Support of the Plaintiff-Appellee***

**US Court of Appeals, Ninth Circuit**

**Issue(s) Presented: Equal pay, sex discrimination**

**Docket No.: 21-55356**

The National Women’s Law Center and the Women's Sports Foundation, together with their law firm partner Selendy & Gay PLLC, are leading an equal pay amicus brief in support of professional soccer players on the United States Women’s National Team (“USWNT”). The USWNT players, represented by Mayer Brown, are appealing to the United States Court of



Appeals for the Ninth Circuit after a California federal district court dismissed their equal pay claims, and following a negotiated settlement regarding their other claims.

For years, the U.S. Soccer Federation paid players on the USWNT less than the male players on the U.S. Men's National Team, despite the USWNT being more successful and bringing in substantially more money than the men's soccer team. The district court made several errors in analyzing plaintiffs' claims under the Equal Pay Act—including leaving out a comparison of the rates at which the women's players were paid to the rates of pay for the men's team. In addition, the court weighed the evidence inappropriately on the summary judgment motion, when these issues should have been assessed by a jury. The U.S. Soccer Federation argues that it did not pay women players less when considering total compensation and focuses on the terms of the collective bargaining agreements. Amici argue that parties cannot negotiate terms that are discriminatory based on sex or any other protected basis, including through a collective bargaining agreement. NWLC's amicus brief discusses the importance of equal pay, both in this context and generally, and the importance of following the applicable legal standard for women's equal pay claims.

(The final outcome in this case and other late-breaking developments will be reported in an addendum to this board report.)

***Crisitello v. St. Theresa School***

***Amicus brief in support of the plaintiff***

**New Jersey Supreme Court**

**Issue(s) Presented: Civil rights protections, unlawful firing, sexism in the workplace**

**Docket No.: 085213**

The National Women's Law Center and their law firm partner Lowenstein Sandler are working together to submit an amicus brief to the New Jersey Supreme Court in *Crisitello v. St. Theresa School*. The case involves an elementary school teacher at a Catholic school who was fired after her employer learned that she was pregnant and not married.

Victoria Crisitello worked as a kindergarten teacher and an art teacher at a Catholic elementary school. Notably, she was not a religion teacher and did not teach religion as any part of her duties. When Ms. Crisitello told her employer that she was pregnant, she was told that she should resign, or she would be fired because her pregnancy violated the Catholic Church's views regarding premarital sex under their general employee ethics code. Ms. Crisitello filed a complaint against the school for violating her rights under the New Jersey Law Against Discrimination, claiming in part that the school discriminatorily singled her out for punishment under the employee handbook. The Appeals Court twice ruled in Ms. Crisitello's favor, finding that the school did not enforce their employee policies consistently and therefore firing Ms. Crisitello was discrimination based on sex and marital status.

This case is yet another troubling instance of employers attempting to use the ministerial

exception to deny their employees protection under workplace civil rights laws. The amicus brief will address the specific harms to women, people of color, LGBTQ individuals, and other groups at risk for further discrimination in the workplace through an unwarranted expansion of the ministerial exemption.

***Roe v. United States of America***

***Amici Curiae in Support of the Plaintiff-Appellee***

**US Court of Appeals, Fourth Circuit**

**Issue(s) Presented: Workplace harassment, sexist discrimination**

**Docket no.: 21-1346**

The National Women's Law Center and the Purple Campaign are filing an amicus brief in support of Jane Roe, the plaintiff of *Roe v. United States of America*. Amici intend to file an amicus brief to the Fourth Circuit Court of Appeals following a decision from the District Court for the Western District of North Carolina to support Roe's challenge to the Fourth Circuit's mandatory dispute resolution process. This process deprived Roe of her constitutionally required protections when she reported the sexual harassment and retaliation that she experienced while working at the Federal Defender's Office.

The appeal, *Roe v. U.S.*, No. 21-1346, involves the scope of protections for employees of the federal judiciary who report harassment and other discrimination. Jane Roe, a former assistant federal defender, was sexually harassed by her supervisor who took an obsessive interest in her by, among other things, insisting on "mentoring" her, offering to drive her home, leaving the office at the same time as her, pressuring her to meet him outside of the office, and berating her when she did not respond to his advances. When she attempted to use the internal mechanisms available to her to report the conduct, she was not taken seriously and repeatedly gaslit and stonewalled for requesting a safe workplace. Roe was required to use the Fourth Circuit's mandatory alternative dispute resolution process, which she says denied her basic due process and equal protection rights, including by conducting an inadequate investigation of her claims, failing to resolve conflicts of interest, denying her a prompt resolution or written decision, and declining to provide her with a copy of the investigation report. Throughout the process, Roe was subjected to an increasingly hostile work environment due to her claims, forcing her to eventually resign to escape the harassment. She then filed this lawsuit to challenge the Fourth Circuit's alternative dispute process, bringing due process and equal protection claims under the Fifth Amendment. In December 2020, the district court dismissed Roe's complaint and Roe is now appealing.

The amicus brief will encourage the Fourth Circuit to revive Roe's claims, emphasizing that the federal judiciary should be held to the same standards as other employers when responding to employee reports of harassment and discrimination. The federal judiciary currently enjoys an anomalous exemption from Title VII, which would typically provide protections to employees who have been harassed at work, making it extremely difficult for judicial employees to report misconduct and receive an adequate remedy. Judicial employees who are courageous enough to make a complaint are forced to instead use opaque and inadequate alternative dispute

resolution processes, denying them full constitutional protections and failing to meaningfully remedy harassment and discrimination. In effect, the judicial exemption has created a problem where a significant population of employees are left unprotected from misconduct that could be addressed in nearly any other workplace. The brief will call for the end of this judicial exceptionalism.

***Dobbs v. Jackson Women’s Health Organization***

***Amici Curiae in Support of Respondents***

**US Court of Appeals, Fifth Circuit**

**Issue(s) Presented: Reproductive justice, abortion access**

**Docket No.: 19-1392**

**Question(s) presented: Whether all pre-viability prohibitions on elective abortions are unconstitutional**

With the support of over 72 organizations, the National Women’s Law Center submitted an amicus brief to the U.S. Supreme Court in *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392. *Dobbs v. Jackson Women’s Health Organization* concerns a Mississippi law that instituted a law that bans abortions at 15 weeks of pregnancy, known as the “Gestational Age Act.” This ban directly attacks the protections afforded to people under *Roe v. Wade*. In this brief, the NWLC argues that the ban is unconstitutional and that the right to abortion is critical to guaranteeing citizens’ liberty and equality.

NOW Foundation did not sign on as an amicus party for this brief, but instead became a lead organization with the Feminist Majority Foundation on another brief as indicated below.

***Dobbs v. Jackson Women’s Health***

***Amici Curiae in Support of the Respondents***

**Supreme Court of the United States**

**Issue(s): Reproductive justice, abortion access, women’s rights**

**Docket No.: 19-1392**

**Question Presented: Is Mississippi’s law banning nearly all abortions after 15 weeks’ gestational age unconstitutional?**

The Feminist Majority Foundation, alongside several other advocacy organizations, including the National Organization for Women Foundation, submitted an amicus brief in support of the Respondents in *Dobbs v. Jackson Women’s Health*. In 2018, Mississippi passed the “Gestational Age Act,” which prohibits almost all abortions after 15 weeks of pregnancy. This law directly challenges the protections afforded by *Roe v. Wade*, which asserts that women have the right to choose to have an abortion before viability without government interference. Fetal viability occurs at around 24 weeks of pregnancy, long after the Mississippi law would prohibit abortion.

The only exceptions for legal abortions under the Gestational Age Act are in cases of severe medical emergencies and extreme fetal abnormalities. Further, the law calls for penalties – including license revocation – to be applied to abortion providers that do not comply. Less than an hour after the Mississippi governor signed the bill into law, Jackson Women’s Health Organization, the only licensed abortion clinic in the state, filed a lawsuit in U.S. federal district court. In addition to challenging the law as unconstitutional, the clinic requested an emergency temporary restraining order (TRO), which prevented the immediate enforcement of the Mississippi law. The district court eventually ruled against the law, as did the U.S. Court of Appeals for the Fifth Circuit. On December 1<sup>st</sup>, 2021, *Dobbs v. Jackson* was argued before the Supreme Court of the United States.

The Supreme Court’s decision will have long-lasting impacts for millions of women across the nation. The Supreme Court Justices remain deeply divided on whether to adhere to prior precedent or overrule *Roe v. Wade* and *Casey v. Planned Parenthood*. Justices Stephen Breyer, Elena Kagan, and Sonia Sotomayor have expressed the importance of *stare decisis* and the crucial need for the Supreme Court to maintain legitimacy. These three liberal justices have also stressed the need to abide by the precedents set forth by previous Supreme Court rulings. However, the majority of the justices on the Supreme Court appears to be willing to consider overturning *Roe* and *Casey*.

Mississippi Solicitor General Scott Stewart, arguing on behalf of the Petitioner, presented a hostile argument against abortion access. In his oral argument, Stewart condemned the decisions in *Roe* and *Casey*, saying that they “haunt our history” and “poison the law.” Stewart’s argument centers around the notion that there is no Constitutional basis for abortion. Similarly, Mississippi presented the argument that abortion laws should be devolved to states, and that this should be accomplished by reversing *Roe* and *Casey* altogether.

The Jackson Women’s Health Organization argued on the basis that reversal should be a very rare occurrence, as declared by the legal principle of *stare decisis*. Consequently, the precedents set forth by both *Roe* and *Casey* should be followed, which protect the federal right to abortion. Further, the Jackson Women Health Organization argues that women’s equality is contingent on the right to safe and legal abortion.

Chief Justice John Roberts questioned why women would require more than 15 weeks’ time to decide whether to terminate a pregnancy. He posed the question, “If it is really an issue about choice, why is 15 weeks not enough time?” Despite Roberts’ view, for many women, 15 weeks is an inadequate period of time to make a life-altering decision. For one, many women do not immediately realize they are pregnant. This is particularly true for women who are on birth

control, as they are not anticipating pregnancy and may be inclined to disregard early signs and symptoms. Moreover, from a medical perspective, many women are completely unaware of any fetal abnormalities at 15 weeks of pregnancy. Even if a woman is informed that she is pregnant and is seeking abortion before 15 weeks, it is often very difficult to secure an appointment, especially in states with existing restrictions.

The amicus brief submitted by the Feminist Majority Foundation and the National Organization for Women Foundation emphasizes the pervasive pattern of violence from anti-abortion extremists directed at reproductive healthcare clinics, abortion providers, and patients. The brief emphasizes that the overruling of *Roe v. Wade* would not only undermine the Supreme Court's legitimacy, but it would also symbolize a surrender to the violence that anti-abortion extremists have spurred. Further, the reversal of such a well-established precedent would legitimize the employment of deliberate violence as a means of altering the rule of law.

Historically, anti-abortion extremists have been successful in their utilization of fear-based and violence-based tactics. In fact, on a nationwide scale, there are now less clinics performing abortion-related procedures, as well as less physicians willing to perform abortions. The nation has seen anti-abortion extremists use blockades, death threats, kidnapping, arson, bombings, shootings, chemical attacks, and murder as methods of preventing citizens from accessing reproductive healthcare. To make matters worse, the employment of violence to prevent abortion has most negatively impacted marginalized populations, particularly low-income women and women of color.

In 1994, Congress enacted the Freedom of Access to Clinic Entrances Act in response to the escalation of violence from anti-abortion extremists. Nevertheless, the extent of clinic violence is still rising; anti-abortion extremists continue to use violence, harassment, and intimidation to disrupt abortion services. According to the National Abortion Federation, violent incidents directed at abortion clinics doubled from 2016 to 2017. Furthermore, in 2019, abortion clinics nationwide faced over 123,000 incidents of picketing and 1,724 documented acts of violence.

Anti-abortion extremists have been particularly successful in reducing abortion access in Mississippi, evidenced by the fact that the Respondent, Jackson Women's Health Organization, is the only clinic in the entire state that legally performs abortions. In the 1980s and 1990s, Mississippi anti-abortion extremists launched a particularly severe campaign of violence, harassment, and intimidation against abortion providers. Consequently, abortion access decreased significantly. In fact, many abortion clinics closed altogether, and the remaining ones faced extreme difficulty locating physicians who were brave enough to risk continuing to perform the procedures.

The amicus brief conveys the dangerous precedent that the overturning of *Roe v. Wade* or *Casey v. Planned Parenthood* would establish. The reversal of either court case sends the message that violence is a legitimate, justifiable, and reliable way to enact change. Rather than reward anti-abortion extremists for decades of violence, harassment, and intimidation, it is imperative that the court uphold previous legal precedents and safeguard women's constitutional rights.

For information on the Feminist Majority Foundation's Clinic Access Project:

<https://feminist.org/our-work/national-clinic-access-project/>