

Opinions expressed herein are those of the Women in Law Section and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

**STATEMENT OF THE NEW YORK STATE BAR ASSOCIATION'S
WOMEN IN LAW SECTION ON THE DRAFT SUPREME COURT
DECISION TO OVERTURN ROE V. WADE**

The New York State Bar Association's Women in Law Section, whose members include persons of all genders, is deeply alarmed by the U.S. Supreme Court's draft majority opinion in *Dobbs v. Jackson Women's Health Organization*. The draft opinion reveals that the Court is poised to overturn *Roe v. Wade*, the landmark case decided nearly 50 years ago recognizing a woman's constitutional right to abortion throughout the country.

The draft decision would take away the rights of women and all child-bearing persons to make decisions about their own bodies, reproductive freedom, and healthcare. It undermines the Court's trusted stature, the precedential foundation of well-established laws, and the guaranteed freedoms under the U.S. Constitution. It subverts women's status as equal citizens in our society and the right to privacy under the 14th Amendment.

First and foremost, the draft decision is an attack on the constitutional rights and lives of women and all child-bearing persons. It betrays them by intentionally disregarding the importance of autonomy over their lives, physical selves, and well-being.

No woman or child-bearing person should be deprived of their right to decide whether to bear a child or their right to access safe reproductive care. No one should be forced to continue a pregnancy when their own life is at stake. No victim of a crime should be forced to continue a pregnancy resulting from rape or incest. No one should be subject to arrest or criminal prosecution based on the choices they make regarding their own healthcare or pregnancy. No one should be subject to arrest or criminal prosecution in the case of a miscarriage.

Forced pregnancies increase maternal mortality rates, which already are exceptionally high for women of color in the United States. Forced pregnancies resulting from child rape are likely to result in an increase in forced marriages, poverty, and ongoing abuse, effectively ending those girls' childhoods and futures. Forced pregnancies adversely impact not only women and girls, but their family members, partners, children, and communities.

Make no mistake: without body autonomy, there is no equality. Yet the draft decision would allow states to ban abortion, even without exceptions to protect the life and well-being of the mother including in cases of rape or incest. An alarming number of states

are poised to do just that and make abortion an illegal act, even though a majority of Americans support a woman's right to choose.¹

Second, the draft decision is an assault on the Court's own doctrine of stare decisis and undermines its standing as a non-political branch of government. The Court is prepared to overturn a super-precedent despite nothing having changed factually, socially, or medically, except the composition of the Court. The decision would become the first time that the U.S. Supreme Court has overturned precedent to limit rather than expand civil rights.

The purported bases for the decision have no place in modern-day American jurisprudence. Among the rationale cited by the Court are a 17th century jurist who supported marital rape and had women executed for witchcraft, and 19th century statutes that criminalized abortion at a time when women were disenfranchised and had no say in choosing elected representatives or jurists, and when, in many states and territories of the United States, Black women were enslaved.²

Further, the majority in *Dobbs* fails to acknowledge that some religions recognize and permit women to access abortions. Thus, the decision would deprive persons of religious freedom by preventing them from making decisions about their health and families based on their religious beliefs and tenets.

We are also deeply troubled by the potential of the draft decision, if finalized, to have far-reaching and disastrous consequences for our country by altering other rights guaranteed under the U.S. Constitution. As drafted, the decision imperils the privacy and freedoms we have earned and cherish, including rights regarding contraception, sex, and marriage.

The New York State Bar Association's Women in Law Section urges the Supreme Court to reevaluate its draft opinion before inflicting irreparable harm on the lives of girls, women, and all persons in the United States and – equally at stake – the rule of law. We urge members of Congress from all parties to pass federal legislation protecting freedom of choice and the rights of women, and to block any federal abortion ban. We also continue our strong support for proposed equal rights amendments to the U.S. and New York State constitutions.

¹ According to Washington Post–ABC News poll, 54% of Americans say *Roe v. Wade* should be upheld rather than overturned. See <https://www.washingtonpost.com/politics/2022/05/03/most-americans-say-supreme-court-should-uphold-roe-post-abc-poll-finds/>, published on May 3, 2022, visited on May 10, 2022. The same results were found in Texas, which enacted a law to ban abortion after six weeks without exceptions for rape and incest. See <https://www.houstonpublicmedia.org/articles/news/health-science/2022/05/04/424672/poll-shows-majority-of-texas-voters-would-oppose-overturning-roe-v-wade/>, published on May 4, 2022, visited on May 10, 2022.

² Appendix A and B of the draft *Dobbs* decision cites laws of states and territories dating from 1825-1919. Women were not permitted to vote in 49 of the 50 states and territories when those laws were enacted and, in many of those states and territories, slavery was still in full force at the time.