

No. 19-1392

In the Supreme Court of the United States

THOMAS E. DOBBS, ET AL., *Petitioners*

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.

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

**BRIEF FOR WOMEN LEGISLATORS
AND THE SUSAN B. ANTHONY LIST
AS *AMICI CURIAE*
SUPPORTING PETITIONERS**

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QUESTION PRESENTED

Whether all pre-viability prohibitions on elective abortions are unconstitutional.

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INTRODUCTION AND INTERESTS OF *AMICI*¹

In 1970, then-Professor Ruth Bader Ginsburg emphasized how, despite women having the franchise for 50 years, “[e]lected or appointed office” remained, “with sparse exceptions, a male preserve.” Br. for Appellant at 59 n.56, *Reed v. Reed*, 404 U.S. 71 (1971) (No. 70-430). She then noted the “levity with which even the judiciary” treated women’s lack of representation, even citing a decision bemoaning the “ever-increasing feminine encroachment upon” the “manly arts and privileges” of drafting and voting on legislation. *Ibid.* (quoting *State v. Hunter*, 300 P.2d 455, 457-458 (Or. 1956)). And Ginsburg’s summary was painfully accurate—the “legacy of [women’s] disenfranchisement” remained apparent long after it ended. *Ibid.* Indeed, when this Court decided *Roe v. Wade* only three years later, women made up only 5.9 percent of legislatures nationwide. 410 U.S. 113 (1973).

Fifty years later—and now a century after ratification of the Nineteenth Amendment—women are serving as appointed or elected officials more than ever before. More than 30 percent of the nation’s state legislators are women, as are nearly 27 percent of the Members of Congress, including many in leadership positions. Women are also well represented in the other branches, as illustrated by the three women

¹ All parties have consented to the filing of this brief. No counsel for a party authored it in whole or in part, nor did any person or entity, other than *Amici* and their counsel, make a monetary contribution to its preparation or submission. No *Amicus* is publicly traded or has any parent corporations. No publicly traded corporation owns 10% or more of any *amicus*.

serving on this Court, and Kamala Harris's service as our first woman Vice President.

As women's presence in government has increased, so too has their ability to shape legislation. This is true both with issues unique to women and for issues, like abortion, that concern everyone. Indeed, abortion is one issue on which the influence of women is profound. Women today are regular sponsors and supporters of bills both regulating abortion, see, Texas Heartbeat Act, Tex. S.B. 8, 87th Leg., R.S. (2021) (introduced by Texas State Rep. Shelby Slawson), and deregulating it, see Repeal Act, H.B. 2491, Va. Gen. Assemb. (2019) (introduced by Virginia Delegate Kathy Tran and ultimately tabled). The Gestational Age Act at issue here is a prime example—women legislators drafted and sponsored the bill, and women legislators (voting along party lines) helped ensure its ultimate passage.

This case thus comes before this Court at a unique time. Women have never been better represented in state legislatures than they are now, and their representation will likely only increase with time. *Amicus* The Susan B. Anthony List exists, in part, to help further this trend and to expand the many gains women have seen in state legislatures over the last 50 years. The List is joined by 79 women (listed in Appendix A) serving in 45 state legislatures, and who are just a fraction of the hundreds of pro-life women legislators across the country.

Amici offer the straightforward point that, because women can now advance their own policy preferences in legislatures throughout the Nation, the Court can and should give greater deference to state legislators' judgments about how to regulate abortion within their

states' borders—certainly greater deference than the majority displayed in *Roe v. Wade* and *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

STATEMENT

In 2018, Mississippi Representative Becky Currie introduced the Gestational Age Act. The bill, as eventually enacted, forbids abortions performed after 15 weeks' gestation. It included findings about fetal development and how the risk of complications from abortions increases as a pregnancy advances.

The act was immediately challenged in federal court. The district court limited discovery to the issue of “whether the 15-week mark is before or after viability.” Pet. App. 60a. Despite this, the State attempted to introduce testimony from Dr. Maureen Condic, an expert in neurobiology, anatomy, and embryology, about whether fetuses, before 15 weeks, were capable of feeling pain. She testified they likely were. *Id.* at 75a-79a. The district court ruled that testimony irrelevant to the question of viability, and therefore inadmissible. *Id.* at 56a-57a.

Refusing to even consider the fact that fetuses at 15 weeks' gestation might feel pain, the district court held the act unconstitutional, claiming that Mississippi was doing nothing more than following its “history of disregarding the constitutional rights of its citizens.” *Id.* at 50a n.50. The Fifth Circuit affirmed, finding that this Court's precedents do not allow bans on pre-viability abortions. *Id.* at 13a. After this Court agreed to hear the case, Representative Currie said

that this case implicated the Mississippi legislatures' "right to decide what's best" for Mississippi.²

SUMMARY OF ARGUMENT

I. Studies show that women are effective at securing change even when they constitute only a small percentage (even 15 percent or less) of a legislative body. Consistent with that finding, and although women have not yet achieved parity in most governmental bodies, the significant gains they have seen in the last 50 years have corresponded with an increase in legislation introduced by women. Moreover, even with highly contentious issues such as abortion that affect everyone, the increased presence of women in legislatures nationwide has improved the way those issues are debated by legislatures around the country.

II. Although there is still significant work to be done to achieve gender parity in state governments, things are better now than ever before. At the 19th Amendment's ratification, only 1.9% of state legislators were women. By the time this Court decided *Roe v. Wade*, only 5.9% of state legislators were women. In short, women legislators at the time were, as Justice Ginsburg made abundantly clear, "sparse exceptions" to a pervasively male system.

In the early 1970s, things changed. Various efforts to ensure equal rights for women were advanced, which helped increase the speed with which women

² Kobee Vance, *Mississippi prepares to send first brief to Supreme Court for abortion rights case*, MPBonline.org (June 30, 2021), <https://tinyurl.com/DobbsArticle>.

were elected to office. These years of debate led to a marked increase in support for women's rights. As support for women increased throughout society, women began to win elective offices more regularly. So much so that today, more than 30 percent of the nation's state legislators are women.

III. Because of the substantial changes that even a minority of women bring to a legislative body, there is no longer a need—if there ever was—for this Court to assume that women cannot adequately protect their own interests through state political processes. Even in those states where women are least represented, women play a significant role in the creation and passage of bills related to abortion. Women's influence and political involvement, moreover, is apparent in all aspects of legislation, from electing like-minded candidates to non-profit advocacy.

Because of women's increased role in the legislative process, this Court can safely defer to the judgments of state legislators on abortion and other issues disproportionately affecting women, to the same extent that it would defer to legislative judgments on other health and safety issues.

ARGUMENT

I. Studies Show That Women Have Significant Impact On Legislation Well Before Reaching Gender Parity.

In a 1991 survey, a majority of legislators, women and men alike, expressed the belief that an “increased presence of women in public office” made a “difference in public policy.”³ That belief was shared “[r]egardless of party affiliation, region, race, length of service, age, ideology, feminist identification, professionalism of the legislature, the proportion of women serving in the chamber or whether they were in the upper or the lower house.”⁴

That survey, taken at a time when women made up a much smaller percentage of legislators than they do now, see Part II.B., reflects a simple truth: Women legislators are effective at accomplishing change. And since then, a wealth of research has buttressed what was once only a belief: “[E]ven when they make up a very small minority” of a legislative body, women play an outsized role in everything from that body’s policymaking to its collegiality.⁵

1. A 2005 study by Professor Kathleen Bratton, for example, found that, “even in extremely skewed legislatures” where women make up “less than 15% of

³ Debra L. Dodson & Susan J. Carroll, *Reshaping the Agenda: Women in State Legislatures* 11 (1991).

⁴ *Ibid.*

⁵ Kathleen A. Bratton, *Critical Mass Theory Revisited: The Behavior and Success of Token Women in State Legislatures*, 1 *Pol. & Gender* 97, 121 (2005).

the membership”—a group that today includes only one state—women are “more active than men in sponsoring legislation that focuses on women’s interests,”⁶ which the study defined as “bills that directly address and seek to improve women’s economic, political, and social status.”⁷ That is unsurprising. But the same study found that women are “generally as successful as men in *passing* legislation” and, “in very homogeneous settings,” sometimes more successful than their male counterparts.⁸

The increased focus on women’s issues that has accompanied greater female representation has had practical effects on the law: “As the number of women in each legislature increased, the number of women’s interest bills *passed* generally increased.”⁹ And the “overall trend in passage” was due to the “activity of both men and women.”¹⁰ In California and Maryland, for example, an increased number of women led to an increase in the number of women’s interest bills introduced by *men*.¹¹ A relatively modest “critical mass” of women serving in a legislature thus brings

⁶ *Id.* at 97.

⁷ *Id.* at 107.

⁸ *Id.* at 97 (emphasis added).

⁹ *Id.* at 120 (emphasis added).

¹⁰ *Ibid.*

¹¹ *Ibid.*

about real change even before women reach anything close to gender parity.¹²

2. The influence of women legislators goes beyond just passing legislation. One study found that “the way female legislators talk about abortion has influenced the substance and style of their male colleagues’ floor speeches.”¹³ That study “analyzed the debate on the Hyde Amendment,” which banned the use of federal funding in most instances, for each of the eight times over 24 years “that it was debated on the House floor.”¹⁴ The study then coded each sentence based on whether it addressed concern for the woman’s health, concern for the fetus, the appropriateness of publicly funding abortions, an objection to abortion as a method of birth control, a constitutional right to privacy, equal access to abortion, the costs of raising children, and whether Congress could legislate about abortion. From there, each sentence was further coded as either “pro-life or pro-choice based on the member’s stated position.”¹⁵

¹² *Id.* at 97 (concluding that “a ‘critical mass’ is not necessary for substantive representation on the part of individual female state legislators, but that increased diversity may indeed bring about changes in policy outputs that reflect the interests of women”).

¹³ *Women and Elective Office: Past, Present and Future* 164 (Sue Thomas & Clyde Wilcox eds., 3d ed. 2014) (citing Dena Levy, Charles Tien, and Rachelle Aved, *Do Differences Matter? Women Members of Congress and the Hyde Amendment*, 23 *Women & Pol.* 105 (2001)).

¹⁴ Levy, *supra* note 13, at 111.

¹⁵ *Ibid.*

The study found that women legislators had a marked effect on the way issues are debated. As the number of women in Congress increased, their male colleagues spoke differently and raised different arguments than they did before. This was true even with those Members who vocally *supported* the Hyde amendment.¹⁶ Whereas in the 1970s, only 21.4 percent of such men mentioned women's health, by the 1990s, 60.9 percent did. Similar changes were seen among men opposing the Hyde Amendment.¹⁷ This study, like the Bratton study, highlights how a relatively modest percentage of women in a legislative body affects the quality of debate by male and female legislators alike.

3. Though not all theories suggest—as did the Bratton study—that women serving in legislatures can effectively influence policy even with a relatively small representation, many other studies suggest that, at a certain point, “long before they reach the 50 (or maybe 60) percent of the seats,” a minority will reach “critical mass” and effect a “fundamental change.”¹⁸ Indeed, critical-mass theory has been used to explain “why the entrance of women into politics” did not make more of a difference at the start than the presence of women—though still a minority—does now. The theory suggests that a “qualitative shift” occurs when women “exceed a proportion of about 30

¹⁶ *Id.* at 120.

¹⁷ *Id.* at 121.

¹⁸ Drude Dahlerup, *From a Small to a Large Minority: Women in Scandinavian Politics*, 2 *Scandinavian Pol. Stud.* 275, 275 (1988).

percent,”¹⁹ which they now have in most states and are fast approaching in several others. See Appendix B.

Though the evidence supporting that theory is “somewhat mixed,”²⁰ it has served a practical purpose: Many “political women” believe “critical mass” theory and “spend considerable time and effort recruiting and training women candidates, fundraising to increase their chances of success, and mentoring women who win office.”²¹ As a result, the theory has “proven extremely useful in making concrete gains in the ‘real world.’”²²

That is true not only in state legislatures, but in Congress as well. Even though women today make up less than 30 percent of Congress, a 2011 study found that, even at that level, Congress had become significantly “more likely to place women’s interests on the agenda.”²³

In sum, long before women elected to state legislatures reach gender parity, they make a “distinctive impact on public policy and political

¹⁹ *Id.* at 276.

²⁰ *Women and Elective Office*, *supra* note 13, at 17.

²¹ *Ibid.*

²² Sarah Childs & Mona Lena Krook, *Should Feminists Give Up on Critical Mass? A Contingent Yes*, 2 *Pol. & Gender* 522, 528-529 (2006).

²³ Jason A. MacDonald & Erin E. O’Brien, *Quasi-Experimental Design, Constituency, and Advancing Women’s Interests: Reexamining the Influence of Gender on Substantive Representation*, 64 *Pol. Res. Q.* 472, 482 (2011).

representation.”²⁴ Though they are not monolithic in their views, and have a range of opinions on how issues should be addressed, see Part III, women legislators today strongly influence everything from “agenda creation and definition through policy modification to policy outcomes.”²⁵

II. Women Have Significantly Higher Representation Today Than When *Roe* Was Decided.

Since *Roe v. Wade*, moreover, and even since *Casey*, there has been a marked increase in the number of women elected to state legislatures. Indeed, in virtually every state legislature, women are better represented than ever before, and their representation continues to increase in most states.²⁶

A. Very few women served in state legislatures and Congress in the 1970s.

When this court decided *Roe v. Wade*, only 15 women were serving in Congress.²⁷ And things were no better in the states: Of the 7,563 state legislators

²⁴ *Women and Elective Office*, *supra* note 13, at 14-15.

²⁵ *Ibid.*

²⁶ Following the 2020 election, for example, 29 states saw an “increase in women state representatives,” and 20 states saw an “increase in women state senators.” Kelly Dittmar & Chelsea Hill, *A Record Number of Women will Serve in State Legislatures in 2021*, Rutgers St. Univ. of N.J., Ctr. for Am. Women and Pol. (Dec. 4, 2020, updated Feb. 17, 2021), <https://tinyurl.com/WomenLeg>.

²⁷ Rutgers St. Univ. of N.J., Ctr. for Am. Women and Pol. (CAWP), *History of Women in the U.S. Congress*, <https://tinyurl.com/RutgersCongresswomen>.

at the time *Roe* was decided, only 444, or 5.9 percent, were women.²⁸

Things were even starker in individual states—and even individual chambers. Four states (Arkansas, Florida, Hawaii, and New Jersey), for example, did not elect any women to the state senate until the decade before this Court decided *Roe*. Three states (California, Missouri, and Wisconsin) elected their first women state senators in the 1970s. And two states (Alabama and Virginia) elected their first women to the state senate in 1983 and 1980, respectively.²⁹

Even those states that had elected women before the 1960s did not elect them in substantial numbers until much later. Illinois, for example, elected its first women to the Illinois House in 1923 and the Illinois Senate in 1925. But it was not until the 1970s that women in Illinois reached even five percent of the legislature.

Other states saw similar delays in representation. In 1975, only 4.4 percent of the Texas legislature, the enactor of the criminal prohibition this Court invalidated in *Roe*, were women. And Alabama—which, as mentioned above, did not elect its first woman state senator until 1983—had periods

²⁸ Elizabeth M. Cox, *Women, State, and Territorial Legislators, 1895–1995*, at 328 (1996).

²⁹ Nat'l Conf. of St. Legislators, *First Women to Serve in State and Territorial Legislatures* (Mar. 6, 2019), <https://tinyurl.com/FirstWomenLegislators>.

spanning decades where no women were serving in the state house even after the first woman was elected in 1923.

Illinois, Texas, and Alabama were far from outliers. As shown in Appendix B, in 1975, in the immediate aftermath of *Roe*, women represented less than 10 percent of state legislators in 36 states. In 14 of those states, women accounted for less than five percent of the legislature. That year, only New Hampshire had a legislature in which women were more than 20 percent of the body.

In short, the first 50 years following the passage of the Nineteenth Amendment saw little change in the numbers of women serving in state legislative bodies. And that was still true when this Court decided *Roe*.

B. Record numbers of women are serving in state legislatures and Congress today.

Today, by contrast, and women are serving in state legislatures and Congress at higher rates than ever before. Indeed, “[s]ince 1971, the number of women serving in state legislatures has more than quintupled.”³⁰ Moreover, many of those gains happened in just the last 15 years, which suggests that female representation in state legislatures is destined to continue growing for the foreseeable future.

1. Beginning in the 1970s, debates over the status of women “propelled” women into the “state legislative political arena.”³¹ As those debates occurred in

³⁰ Rutgers St. Univ. of N.J., Ctr. for Am. Women and Pol., *Women in State Legislatures 2021*, <https://tinyurl.com/Legi2021>.

³¹ Cox, *supra* note 28, at 25-26.

“legislatures of every state,” support for expanding women’s roles increased in kind.³² In the early 1970s, for example, only 40 percent of women and 44 percent of men responded favorably to polls asking about the efforts to “strengthen and change women’s status.”³³ But by 1985, those numbers had increased significantly: When asked the same question, 73 percent of women and 69 percent of men said they favored those efforts.³⁴

With the increased support came increased representation, and between 1975 and 1985 “women in elected office more than doubled their numbers.”³⁵ But even by 1993, when in *Casey* this Court reaffirmed the “validity of *Roe*’s central holding,” 505 U.S. at 860, women constituted only 20.6% of state legislators nationwide.³⁶

2. The number of women elected to state legislative bodies has increased substantially in the years since *Casey*. Indeed, for the first time, women now make up more than 30 percent of state legislators overall.³⁷ And the historically high number of women serving today

³² Leslie W. Gladstone, *The Long Road to Equality: What Women Won from the ERA Ratification Effort*, Libr. of Cong. (2001), <https://tinyurl.com/RdtoEquality>.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Wendy S. Strimling, *Elected Women Organize: Statewide Associations* 1 (1986).

³⁶ Cox, *supra* note 28, at 328.

³⁷ Nat’l Conf. of St. Legislators, *Women in State Legislators for 2021* (Feb. 12, 2021), <https://tinyurl.com/ElectedWomen2021>.

reflects a message that is “increasingly clear: If women run, they win.”³⁸

In the last 15 years alone, women in all but four states have seen an increase in representation. As a result, in every state, women now make up at least 10 percent of the legislatures. And in every state but West Virginia, women are more than 15 percent.

The findings of the Bratton study discussed above suggest that, at these numbers, women are already having a significant impact on the legislative bodies in every state where they serve. But even if one believes a higher threshold of 30 percent is more appropriate, Appendix B shows that, in most states, women have now reached 30 percent representation. Still others (such as Indiana, Kansas, and Missouri) are approaching that point, and likely to reach it in the next few years. As one prominent commentator has noted, “as candidates,” women “were—and now are—in the driver’s seat as never before.”³⁹

3. These gains are most stark when compared to the number of women serving in the aftermath of *Roe*. Alabama, ranked 50th in women’s representation in 1975, has roughly 22 times the number of women serving in its legislature today as it did then. Other states have seen similar advances:

³⁸ *Women and Elective Office*, *supra* note 13, at 6.

³⁹ Gerald F. Seib, *The Year of the Woman Really, Finally Did Arrive in 2020*, *The Wall Street Journal* (Nov. 16, 2020, 10:20 AM), <https://tinyurl.com/SeibArticle>.

- Arkansas has 10.8 times the number of women serving now compared to the number serving in 1975;
- Louisiana has 13.4 times the number of women;
- Nebraska has 13.3 times the number of women;
- Pennsylvania has 8.2 times the number of women; and
- Texas has six times the number of women.

And the list goes on. As shown in Appendix B, in every state in the nation, women are significantly better represented today than they were in *Roe's* aftermath. And in all but two states (West Virginia and Wyoming), the number of women serving has continued to grow since *Casey*. Since those decisions, a state legislature boasting a substantial percentage of women has become the rule rather than the exception.

III. These Changes Warrant Greater Deference To Legislative Judgments About Abortion-Related Matters.

The vast statistical differences between women serving in state legislatures in the 1970s and now show how far the Nation has come in recognizing women’s valuable contributions to lawmaking. Those differences also highlight why this Court—no longer composed entirely of men—can and should show greater deference to the outcomes of state legislative processes on the issue of abortion: Women are better represented now than at any time in our country’s history. And, although abortion is far from being solely a women’s issue, the increase in women’s voices and perspectives guarantees that, as legislatures across the country debate the issue, women’s concerns will not be ignored or minimized like they might have been when *Roe* was decided.

1. Even short of overturning *Roe*—and *amici* agree with Petitioner that the Court should do that here—showing greater deference to state legislatures would be consistent with the basic presumption that duly enacted state laws are constitutional. That presumption arose because the Constitution is not intended to authorize an attitude of “paternalism” toward state legislatures. *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting). Yet a fair reading of *Roe* suggests that it was in fact driven by that very kind of paternalism. See, e.g., *Roe*, 410 U.S. at 162 (“[W]e do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman[.]”).

Rather than helping women, what the Court actually did in *Roe* was to strip everyone, including future women legislators like *Amici*, of the right to do what legislators have always done on issues of significant importance: try to “persuade one another” and then vote on the issue. *Casey*, 505 U.S. at 979 (Scalia, J., concurring in the judgment and dissenting in part). Women can, and do, have different views on abortion. They can, and do, reach different conclusions on how abortion should be regulated. And now, as at no other point in our nation’s history, they can, and do, have the political power to address these issues the proper way—through their own legislatures, not through the federal judiciary.

2. Indeed, even in the states where women are least represented, women are leading the way with abortion legislation. For example, West Virginia’s Born-Alive Abortion Survivors Protection Act, which unanimously passed the West Virginia Senate and overwhelmingly passed its House in 2020, was introduced by Delegate Ruth Rowan.⁴⁰ Similarly, Louisiana’s Act 620, which this Court invalidated last year in *June Medical Services v. Russo*, 140 S. Ct. 2103 (2020) (plurality opinion), was introduced by Representative Katrina Jackson and other women in Louisiana.⁴¹ The same is true here—Mississippi’s Gestational Age Act was introduced by a group of women, including Representative Becky Currie,

⁴⁰ Press Release, Gov. Jim Justice, *Gov. Justice signs Born-Alive Abortion Survivors Protection Act* (Mar. 2, 2020), <https://tinyurl.com/GovJusticeArticle>.

⁴¹ Act 620 (H.B. 388), La. Leg., Reg. Sess. (2014), <https://tinyurl.com/Act620>.

Representative Stacey Wilkes, and the late Representative Ashley Henley.⁴²

With each of these three bills, when it came time to vote, women voted both for and against the bill.⁴³ Any assumption, therefore, that abortion is an issue on which women will vote in lockstep is belied by the evidence.

3. Women also influence legislation in myriad ways beside serving in state legislatures. In “every presidential election since 1980,” for example, women “have registered and voted at higher rates than men.”⁴⁴ Those higher rates have substantial effects when converted to raw numbers: In each of the recent

⁴² Gestational Age Act, H.B. 1510, Miss. Leg., Reg. Sess. (2018), <https://tinyurl.com/HB1510>.

⁴³ W.V. S., 84th Leg., 2nd Reg. Sess., *Vote & Passage of H.B. 4007, Born-Alive Abortion Survivors Prot. Act* (Feb. 19, 2020), <https://tinyurl.com/HB4007Senate>; W.V. H.D., 84th Leg., 2nd Reg. Sess., *Vote & Passage-S. Amend. H.B. 4007, Born-Alive Abortion Survivors Prot. Act* (Feb. 18, 2020), <https://tinyurl.com/HB4007House>; La. H.R., 2014 Reg. Sess., *Vote on H.B. 388 Am. by S. to be Concurred in S. Amends.* (May 21, 2014), <https://tinyurl.com/Act620House>; La. S., 2014 Reg. Sess., *H.B. 388 3rd Reading & Final Passage* (May 14, 2014), <https://tinyurl.com/Act620Senate>; Miss. S., 2018 Reg. Sess., *Vote & Passage as Amended of H.B. 1510, Gestational Age Act*, <https://tinyurl.com/HB1510Senate>; Miss. H.R., 2018 Reg. Sess., *Concurred in S. Amend. of H.B. 1510, Gestational Age Act*, <https://tinyurl.com/HB1510House>.

⁴⁴ Rutgers St. Univ. of N.J., Ctr. for Am. Women and Pol., *Gender Differences in Voter Turnout*, <https://tinyurl.com/m2u44n7c>.

national elections, women have “cast almost 10 million more votes than men.”⁴⁵

The influence of women, however, extends beyond the ballot box. Women-led advocacy groups, including *Amicus* The Susan B. Anthony List, regularly raise money and contact voters through “door-to-door canvassing, voter mail, texting, and digital communications.”⁴⁶ Other women-led groups spanning the political spectrum similarly influence legislation through their advocacy.⁴⁷

In short, women are involved at every step of the political process, not just in introducing and voting on legislation.

4. Given that women are actively involved in elections, advocacy, and the drafting and passing of

⁴⁵ *Ibid.*

⁴⁶ Susan B. Anthony List, *Marjorie Dannenfelser: President*, <https://www.sba-list.org/marjorie-dannenfelser>.

⁴⁷ See also Network of Enlightened Women, *About*, <https://enlightenedwomen.org/about/#Mission> (helping women “confidently advocate for pro-liberty ideas in their schools, workplaces, homes, and communities”); League of Women Voters, *About Us, 100 Years of LWV*, <https://www.lwv.org/about-us/history> (The League of Women Voters is a “nonpartisan, activist, grassroots organization that believes voters should play a critical role in democracy.”); Moms Demand Action, *About, Our Story*, <https://momsdemandaction.org/about/> (Moms Demand Action, which “has established a volunteer chapter in every state” works to “pass stronger gun laws.”); Eagle Forum, *About Us, The Future of Eagle Forum* (Jan. 4, 2021), <https://eagleforum.org/about/what-is-eagle-forum.html> (summarizing a “proven track record” of “advancing conservative causes at each and every level of government across the United States”).

abortion legislation, this Court should take the opportunity that this case presents to clarify that federal courts should regularly defer to state legislatures and the women that, with increasing regularity, make up their ranks. For reasons well explained by Petitioner (Br. at 11-36), the Court could, and should, do this by overturning *Roe* and *Casey*, thereby returning the entire issue to the Nation's legislatures.

But even if the Court does not overrule those decisions, it should make clear that duly enacted abortion regulations, like other state health-and-safety regulations, carry with them a presumption of constitutionality, not a presumption of invalidity. And on that basis the Court should recognize and respect the state interests advanced by Mississippi and hold that the law at issue here is not unconstitutional simply because it bans abortion before viability. See, e.g., Pet. Br. 36-37.

Moreover, by more regularly deferring to state legislatures on abortion-related issues, the Court could recover from some of the harms caused by what Justice Scalia called its "self-awarded sovereignty over" abortion. *Webster v. Reprod. Health Servs.*, 492 U.S. 490, 532 (1989) (Scalia, J., concurring in part and in the judgment). And just as the debates over the rights of women in the 1970s propelled women to the polls and to elected office, debates about abortion will likely do the same if this Court affords greater leeway to state legislatures.

In sum, because women are much better situated today to protect their own interests through

legislation, the Court should give them the opportunity to do so.

CONCLUSION

Even though they have not yet reached gender parity in most legislatures, women today are far better represented than at any point in the country's history. As their numbers have grown, so too has their ability to effect substantive change. For this reason, the Court should give more deference to legislatures, the bodies principally tasked under our Constitution with responsibility for protecting the people's health and welfare, in the context of abortion regulation.

Respectfully submitted,

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July 29, 2021

APPENDIX

APPENDIX A – LIST OF *AMICI* LEGISLATORS

Legislator	State
Rep. Terri Collins	AL
Rep. Karilyn Brown	AR
Sen. Nancy Barto	AZ
Rep. Shawwna Bolick	AZ
Rep. Janice Rich	CO
Rep. Tonya Van Beber	CO
Rep. Irene Haines	CT
Rep. Ruth Briggs King	DE
Sen. Kelli Stargel	FL
Rep. Ginny Ehrhart	GA
Rep. Sheri Gilligan	GA
Rep. Leesa Hagan	GA
Rep. Jodi Lott	GA
Sen. Annette Sweeney	IA
Sen. Christy Zito	ID
Rep. Judy Boyle	ID
Rep. Barbara Ehardt	ID
Rep. Linda Wright Hartgen	ID
Rep. Julie Yamamoto	ID
Rep. Amy Grant	IL
Sen. Elizabeth Brown	IN
Sen. Caryn Tyson	KS
Rep. Regina Huff	KY
Rep. Melinda Gibbons Prunty	KY

Legislator	State
Rep. Nancy Tate	KY
Rep. Kathy Edmonston	LA
Rep. Sheila Harrington	MA
Del. Susan Krebs	MD
Sen. Stacey Guerin	ME
Rep. Abigail Griffin	ME
Rep. Heidi Sampson	ME
Rep. Peggy Scott	MN
Rep. Mary Elizabeth Coleman	MO
Sen. Jenifer Branning	MS
Rep. Lola Sheldon-Galloway	MT
Rep. Patricia McElraft	NC
Rep. Karen Rohr	ND
Sen. Joni Albrecht	NE
Sen. Suzanne Geist	NE
Rep. Beth Folsom	NH
Rep. Linda Gould	NH
Rep. Susan Homola	NH
Rep. Jeanine Notter	NH
Rep. Katherine Prudhomme O'Brien	NH
Assemb. BettyLou Decroce	NJ
Rep. Cathryn Brown	NM
Assemb. Alexis Hansen	NV
Sen. Pamela Helming	NY
Sen. Kristina Roegner	OH

Legislator	State
Rep. Sarah Fowler Arthur	OH
Rep. Jennifer Gross	OH
Rep. Jena Powell	OH
Rep. Jean Schmidt	OH
Sen. Julie Daniels	OK
Rep. Denise Crosswhite Hader	OK
Rep. Tammy Townley	OK
Sen. Kim Thatcher	OR
Rep. Vikki Breese Iverson	OR
Rep. Bobby Levy	OR
Rep. Lily Morgan	OR
Rep. Ann Flood	PA
Rep. Milou Mackenzie	PA
Rep. Tracy Pennycuick	PA
Rep. Kathy Rapp	PA
Rep. Sherry Roberts	RI
Rep. Lin Bennett	SC
Rep. Shannon Erickson	SC
Rep. Melissa Oremus	SC
Sen. Maggie Sutton	SD
Rep. Robin Smith	TN
Rep. Valoree Swanson	TX
Rep. Karianne Lisonbee	UT
Del. Amanda Batten	VA
Rep. Vicki Strong	VT

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Legislator	State
Sen. Judy Warnick	WA
Rep. Carolyn Eslick	WA
Sen. Patricia Rucker	WV
Del. Kayla Kessinger	WV
Rep. Sue Wilson	WY

APPENDIX B
Percentage of Women in State Legislatures By Year

State	1975	1992	2005	2021	% Increase
Alabama	0.7%	5.7%	10.7%	15.7%	2242.9%
Alaska	15%	23.3%	18.3%	30%	200.0%
Arizona	20%	34.4%	33.3%	43.3%	216.5%
Arkansas	2.2%	7.4%	16.3%	23.7%	1077.3%
California	2.5%	18.3%	30.8%	31.7%	1268.0%
Colorado	16%	31.0%	33.0%	46.0%	287.5%
Connecticut	13.9%	23.0%	29.4%	34.2%	246.0%
Delaware	16.1%	12.9%	33.9%	30.6%	190.1%
Florida	8.1%	18.8%	24.4%	34.4%	424.7%
Georgia	4.2%	14.4%	18.2%	33.1%	788.1%
Hawaii	13.2%	27.6%	30.3%	32.9%	249.2%
Idaho	9.5%	28.6%	27.6%	31.4%	330.5%
Illinois	5.9%	18.6%	27.7%	40.1%	679.7%
Indiana	6.0%	17.3%	17.3%	24.7%	411.7%
Iowa	9.3%	14.7%	20.0%	28.7%	308.6%

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State	1975	1992	2005	2021	% Increase
Kansas	5.5%	27.3%	32.7%	28.5%	518.2%
Kentucky	3.6%	5.8%	12.3%	26.8%	744.4%
Louisiana	1.4%	6.9%	17.4%	18.8%	1342.9%
Maine	13%	32.3%	23.1%	43.5%	334.6%
Maryland	10.1%	23.4%	35.6%	41.0%	405.9%
Massachusetts	5.7%	18.5%	25.0%	31.0%	543.9%
Michigan	6.1%	14.9%	20.3%	35.8%	586.9%
Minnesota	4.0%	20.9%	29.9%	35.8%	895.0%
Mississippi	3.4%	6.9%	12.6%	15.5%	455.9%
Missouri	6.1%	15.7%	20.8%	26.4%	432.8%
Montana	9.3%	20.7%	24.7%	32.7%	351.6%
Nebraska	2.0%	18.4%	24.5%	26.5%	1325.0%
Nevada	11.7%	19.0%	33.3%	60.3%	515.4%
New Hampshire	24.6%	33.3%	30.4%	36.1%	146.8%
New Jersey	7.5%	12.5%	15.8%	30.8%	410.7%
New Mexico	4.5%	14.3%	31.3%	43.8%	973.3%
New York	4.3%	12.8%	22.2%	34.3%	797.7%

State	1975	1992	2005	2021	% Increase
N. Carolina	8.8%	14.7%	22.9%	26.5%	301.1%
N. Dakota	10.5%	14.5%	16.3%	22.0%	209.5%
Ohio	6.1%	15.2%	19.7%	30.3%	496.7%
Oklahoma	4.0%	8.7%	14.8%	20.8%	520.0%
Oregon	12.2%	24.4%	27.8%	44.4%	363.9%
Pennsylvania	3.6%	9.5%	13.4%	29.6%	822.2%
Rhode Island	6.0%	16.7%	16.8%	45.1%	751.7%
S. Carolina	4.1%	12.9%	8.2%	17.6%	429.3%
S. Dakota	10.6%	24.8%	16.2%	28.6%	269.8%
Tennessee	3.8%	11.4%	17.4%	17.4%	457.9%
Texas	4.4%	12.7%	19.3%	26.5%	602.3%
Utah	7.7%	11.5%	20.2%	23.1%	300.0%
Vermont	14.7%	31.1%	33.3%	42.2%	287.1%
Virginia	4.3%	12.1%	15.0%	30.0%	697.7%
Washington	12.2%	32.7%	33.3%	41.5%	340.2%
W. Virginia	6.7%	20.9%	15.7%	11.9%	177.6%
Wisconsin	7.6%	24.2%	25.8%	31.1%	409.2%

State	1975	1992	2005	2021	% Increase
Wyoming	7.6%	24.5%	14.4%	17.8%	234.2%

The data in this table can be found at the following sources. Center for American Women and Politics, *State Fact Sheet – Alabama*, <https://tinyurl.com/ALCAWP>; Center for American Women and Politics, *State Fact Sheet – Alaska*, <https://tinyurl.com/AKCAWP>; Center for American Women and Politics, *State Fact Sheet – Arizona*, <https://tinyurl.com/AZCAWP>; Center for American Women and Politics, *State Fact Sheet – Arkansas*, <https://tinyurl.com/ARCAWP1>; Center for American Women and Politics, *State Fact Sheet – California*, <https://tinyurl.com/CAWPCAL>; Center for American Women and Politics, *State Fact Sheet – Colorado*, <https://tinyurl.com/COLORCAWP>; Center for American Women and Politics, *State Fact Sheet – Connecticut*, <https://tinyurl.com/CTCAWP1>; Center for American Women and Politics, *State Fact Sheet – Delaware*, <https://tinyurl.com/DECAWP>; Center for American Women and Politics, *State Fact Sheet – Florida*, <https://tinyurl.com/FLCAWP>; Center for American Women and Politics, *State Fact Sheet – Georgia*, <https://tinyurl.com/GACAWP>; Center for American Women and Politics, *State Fact Sheet – Hawaii*, <https://tinyurl.com/HICAWP>; Center for American Women and Politics, *State Fact Sheet – Idaho*, <https://tinyurl.com/IDAHOCAWP>; Center for American Women and Politics, *State Fact Sheet – Illinois*, <https://tinyurl.com/ILLCAWP>; Center for American Women and Politics, *State Fact Sheet – Indiana*, <https://tinyurl.com/INDYCAWP>; Center for American Women and Politics, *State Fact Sheet – Iowa*, <https://tinyurl.com/IOWACAWP>; Center for American Women and Politics, *State Fact Sheet – Kansas*, <https://tinyurl.com/KANSASCAWP>; Center

for American Women and Politics, *State Fact Sheet – Kentucky*, <https://tinyurl.com/KYCAWP>; Center for American Women and Politics, *State Fact Sheet – Louisiana*, <https://tinyurl.com/1LA-CAWP>; Center for American Women and Politics, *State Fact Sheet – Maine*, <https://tinyurl.com/MaineCAWP>; Center for American Women and Politics, *State Fact Sheet – Maryland*, <https://tinyurl.com/1MD-CAWP>; Center for American Women and Politics, *State Fact Sheet – Massachusetts*, <https://tinyurl.com/MASSCAWP>; Center for American Women and Politics, *State Fact Sheet – Michigan*, <https://tinyurl.com/MichCAWP>; Center for American Women and Politics, *State Fact Sheet – Minnesota*, <https://tinyurl.com/MinnCAWP>; Center for American Women and Politics, *State Fact Sheet – Mississippi*, <https://tinyurl.com/MissCAWP>; Center for American Women and Politics, *State Fact Sheet – Missouri*, <https://tinyurl.com/MissouriCAWP>; Center for American Women and Politics, *State Fact Sheet – Montana*, <https://tinyurl.com/MontanaCAWP>; Center for American Women and Politics, *State Fact Sheet – Nebraska*, <https://tinyurl.com/NEBCAWP>; Center for American Women and Politics, *State Fact Sheet – Nevada*, <https://tinyurl.com/NEVCAWP>; Center for American Women and Politics, *State Fact Sheet – New Hampshire*, <https://tinyurl.com/NHCAWP>; Center for American Women and Politics, *State Fact Sheet – New Jersey*, <https://tinyurl.com/NewJerseyCAWP>; Center for American Women and Politics, *State Fact Sheet – New Mexico*, <https://tinyurl.com/NMCAWP>; Center for American Women and Politics, *State Fact Sheet – New York*, <https://tinyurl.com/NewYorkCAWP>; Center for American Women and Politics, *State Fact Sheet –*

North Carolina, <https://tinyurl.com/NCarolinaCAWP>; Center for American Women and Politics, *State Fact Sheet* – *North Dakota*, <https://tinyurl.com/NDakotaCAWP>; Center for American Women and Politics, *State Fact Sheet* – *Ohio*, <https://tinyurl.com/OHIOCAWP>; Center for American Women and Politics, *State Fact Sheet* – *Oklahoma*, <https://tinyurl.com/OKCAWP>; Center for American Women and Politics, *State Fact Sheet* – *Oregon*, <https://tinyurl.com/ORCAWP>; Center for American Women and Politics, *State Fact Sheet* – *Pennsylvania*, <https://tinyurl.com/PACAWP>; Center for American Women and Politics, *State Fact Sheet* – *Rhode Island*, <https://tinyurl.com/RICAWP>; Center for American Women and Politics, *State Fact Sheet* – *South Carolina*, <https://tinyurl.com/SCCAWP>; Center for American Women and Politics, *State Fact Sheet* – *South Dakota*, <https://tinyurl.com/SDCAWP>; Center for American Women and Politics, *State Fact Sheet* – *Tennessee*, <https://tinyurl.com/TNCAWP>; Center for American Women and Politics, *State Fact Sheet* – *Texas*, <https://tinyurl.com/TXCAWP>; Center for American Women and Politics, *State Fact Sheet* – *Utah*, <https://tinyurl.com/UTCARP>; Center for American Women and Politics, *State Fact Sheet* – *Vermont*, <https://tinyurl.com/VTCARP>; Center for American Women and Politics, *State Fact Sheet* – *Virginia*, <https://tinyurl.com/VACAWP>; Center for American Women and Politics, *State Fact Sheet* – *Washington*, <https://tinyurl.com/WACAWP>; Center for American Women and Politics, *State Fact Sheet* – *West Virginia*, <https://tinyurl.com/WVCAWP>; Center for American Women and Politics, *State Fact Sheet* – *Wisconsin*, <https://tinyurl.com/WICAWP>; Center for

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American Women and Politics, *State Fact Sheet – Wyoming*, <https://tinyurl.com/WYCAWP>.