To: Interested Parties

From: Joshua Perry, Solicitor General

Date: October 11, 2022

Re: **Abortion Rights in Connecticut After *Dobbs***

On June 24, the U.S. Supreme Court abandoned its own long-established precedent and held that the federal Constitution does not guarantee the right to an abortion. That devastating decision, *Dobbs v. Jackson Women's Health Organization*, opens the door for states to ban abortion entirely. Even in Connecticut, which explicitly protects the right to abortion by statute, *Dobbs* has fomented fear and uncertainty. Patients and providers may be unsure of their rights, concerned about efforts to punish abortions across state lines, and afraid for the future of abortion and other core privacy rights.

We should respond to that uncertainty with clarity, and to the threats posed by *Dobbs* with creativity and resolve. This preliminary memorandum, which is not intended to be exhaustive, attempts to provide that clarity wherever possible; to diagnose and analyze challenges that the future may hold; and to chart a path forward by suggesting steps Connecticut can take to protect and expand the right to abortion and other reproductive healthcare rights.

1. Abortion Remains Legal and Protected in Connecticut

Abortion rights in Connecticut are unchanged by *Dobbs*. Patients, providers, and the public should know that:

- Abortion is legal in Connecticut. Connecticut law protects a pregnant person's right to choose abortion until viability. After that, a pregnant person has the right to an abortion to protect their life or health.[1]

- A person need not be a Connecticut resident to receive reproductive healthcare services, including abortion care, here.

- Connecticut law protects the right to abortion for youth as well as adults. Our law does not require parental consent or notification when a youth seeks an abortion.[2]

---

[1] *See* Conn. Gen. Stat. § 19a-602, as amended by Public Acts 22-19 § 7 and 22-118 § 489 ("(a) The decision to terminate a pregnancy prior to the viability of the fetus shall be solely that of the patient in consultation with the patient's physician or . . . the patient's advanced practice registered nurse, nurse-midwife or physician assistant. (b) No abortion may be performed upon a patient after viability of the fetus except when necessary to preserve the life or health of the patient.").

[2] Conn. Gen. Stat. § 19a-601 mandates that a person younger than 16 receive pregnancy information and counseling from a physician or counselor before obtaining an abortion, unless a medical emergency requires an immediate abortion. The law requires neither parental consent nor parental notification.

- In addition to protecting abortion rights, Connecticut law protects the right to make other key decisions around reproductive healthcare – including the right to choose whether to use birth control.

It is important for residents and nonresidents alike to have access to accurate information about their rights and prerogatives around abortion and other reproductive healthcare in Connecticut.[3] Attached to this memorandum are sample Know Your Rights language and answers to a set of frequently asked questions. These materials are aimed at providing clear, straightforward guidance for anyone who may be concerned about abortion rights and access in Connecticut. The Office of the Attorney General is committed to disseminating this information widely – wherever possible, in partnership with government, advocates, and providers.

There is a strong argument that Connecticut statutes, which provide a high level of protection for abortion rights, rest on a constitutional foundation – that the Connecticut Constitution can and should be read to protect the right to choose an abortion. Connecticut's appellate courts have never addressed this question. But, at least as applied to abortion rights, a compelling case can be made that the Connecticut Constitution's due process, privacy, and equal protection guarantees are stronger than their federal equivalents. That case is rooted in an application of the six factors that the Connecticut Supreme Court considers when analyzing state constitutional provisions.[4] Among other things:

- Connecticut's Equal Rights Amendment goes beyond the federal Constitution by explicitly forbidding discrimination based on "sex." That language could be read to protect the right to choose, since forbidding abortions limits the autonomy and opportunities of pregnant people to "participate as… full partners in the nation's social, political, and economic life."[5]

- The Connecticut Supreme Court has held that our state constitutional privacy protections extend more broadly than equivalent protections in the U.S. Constitution.[6] In the only Connecticut case on point, a Superior Court judge enjoined funding restrictions on therapeutic abortions: "Surely, the state constitutional right to privacy includes a woman's guaranty of freedom of procreative choice."[7]

- A pregnant person's right to autonomy in their most intimate and personal decisions, and in setting their own life course, lies at the nexus of privacy, equal protection, and due process

---

[3] The Office of the Governor has launched a web portal and a toll-free hotline to educate the public about abortion in Connecticut. Those can be accessed at 1-866-CTCHOICE (1-866-282-4642) and portal.ct.gov/reproductiverights.

[4] The six factors articulated in *State v. Geisler*, 222 Conn. 672, 684-86 (1992) are (1) the text of the constitutional provision; (2) Connecticut precedent; (3) federal precedent; (4) sister states' decisions; (5) constitutional history; and (6) economic and sociological considerations.

[55] Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to* Roe v. Wade, 63 N.C. L. Rev. 375, 375 (1985).

[6] *See, e.g.*, *State v. Buie*, 312 Conn. 574, 583-84 (2014) (collecting cases); *State v. Davis*, 283 Conn. 280, 320 (2007) ("[T]his court has been willing to recognize a broader right to privacy under the state constitution" than the federal courts have recognized under the U.S. Constitution).

[7] *Doe v. Maher*, 40 Conn. Supp. 394, 426 (1986).

guarantees. The Connecticut Supreme Court has already signaled that the state constitution protects that space to a greater extent than its federal counterpart. In *Kerrigan v. Commissioner of Public Health*, the Court held that the Connecticut Constitution separately protects marriage equality – seven years before the U.S. Supreme Court acknowledged the same right under the U.S. Constitution.[8]

- The Connecticut Supreme Court, unlike the U.S. Supreme Court in *Dobbs*, explicitly considers the economic and sociological implications of constitutional interpretation, and understands that antiquated social norms "must yield to a more contemporary appreciation of the rights entitled to constitutional protection."[9]

2. Even in Connecticut, *Dobbs* May Pose Significant Challenges for Abortion and Other Fundamental Rights

Roe v. Wade represented a promise that "[t]he government could not control a woman's body or the course of a woman's life: It could not determine what the woman's future would be."[10] In rejecting *Roe*, *Dobbs* imposed a new regime where a pregnant person's rights will depend in significant part on where they live or receive medical care.

Connecticut continues to protect abortion rights – but many states do not. And even Connecticut residents may have concerns about their rights after *Dobbs*, especially given the decision's sweeping logic, which could be read to imperil other federal constitutional rights that are fundamental to sexual liberty, bodily integrity, and autonomous choice.

A brief discussion of the context and content of the *Dobbs* decision may help to explain the law today and the new threats that may arise going forward.

Forty-nine years ago, in deciding *Roe*, the U.S. Supreme Court recognized that the federal Constitution protects a pregnant person's "fundamental" right to choose an abortion.[11] *Roe* was rooted in the Due Process guarantee of a right to "personal privacy" – a right that also protects a range of other intimate and deeply personal choices, like the choice of whom to marry or have sex with, and whether to use contraception.[12]

The Court held that a state's "important and legitimate" interest in maternal health and in "potential life" justified some regulation of abortion. So *Roe* established a trimester-based framework, commanding states to leave the "the abortion decision" to a pregnant person, in consultation with their medical provider, until the end of the first trimester; allowing states, during the second trimester, to regulate abortion "in ways that are reasonably related to maternal health"; and, post-viability – a period roughly coinciding, at least in 1973, with the third trimester – clearing the way for states to "regulate, and even proscribe, abortion" except when necessary to

---

[8] 289 Conn. 135 (2008).

[9] *Id.* at 262.

[10] *Dobbs v. Jackson Women's Health Org.,* 142 S. Ct. 2228, 2317 (2022) (Breyer, J., dissenting).

[11] 410 U.S. 113, 152 (1973).

[12] *Loving v. Virginia*, 388 U.S. 1 (1967); *Obergefell v. Hodges*, 576 U.S. 644 (2015); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Griswold v. Connecticut*, 381 U.S. 479 (1965).

preserve life or health.[13] Some subsequent cases, applying *Roe*, upheld only abortion regulations that were narrowly drawn to further a compelling state interest. In other words: *Roe* was understood to require "strict scrutiny," the Court's most demanding standard of review, for abortion regulations.

In 1992's *Planned Parenthood of Southeastern Pennsylvania v. Casey,* the Court reaffirmed *Roe*'s "essential holding" while also allowing a wider range of abortion restrictions.[14] *Casey* embraced *Roe*'s constitutional premise: "It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter."[15] But *Casey* modified *Roe*'s trimester framework, and the regime of strict scrutiny for abortion regulations, with an "undue burden" test. Before viability, *Casey* held*,* a state could not unduly burden the right to abortion by enacting laws or regulations that had "the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion."[16]

Dobbs wrote the right to choose out of the Constitution: "The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision."[17] *Dobbs* acknowledged that the Due Process Clause "guarantee[s] some rights that are not mentioned in the Constitution," but held that abortion is not among those rights, since it is assertedly not "deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty."[18]

Dobbs' retrograde constitutional argument is based on both flawed logic and a tendentious reading of legal history. As the dissent lamented, *Dobbs* means that, as far as the federal Constitution is concerned, "from the very moment of fertilization, a woman has no rights to speak of. A State can force her to bring a pregnancy to term, even at the steepest personal and familial costs."[19] *Dobbs* failed to recognize that *Roe* and *Casey* were deeply rooted in jurisprudence that recognizes a right to privacy alongside the state's interest in public health, "giving individuals control over their bodies and their most personal and intimate associations."[20]

It is important to be clear about the limits of *Dobbs*' immediate, legal impact in Connecticut. But it is also important to be candid about the threats that *Dobbs* poses.

First: *Dobbs* rejects a federal constitutional right to abortion because the right is assertedly not "deeply rooted" in history. Despite *Dobbs'* assurance that the opinion should not be understood "to cast doubt on precedents that do not concern abortion," there is no guarantee that this

---

[13] *Roe*, 410 U.S. at 164-65.

[14] 505 U.S. 833.

[15] *Id.* at 847.

[16] *Id.* at 877.

[17] *Dobbs*, 142 S. Ct. at 2242.

[18] *Id.*

[19] *Id.* at 2317 (Breyer, J., dissenting).

[20] *Id.* at 2320.

Supreme Court would not roll back other rights with the same argument.[21] The majority draws no compelling distinction between those rights and the right guaranteed by *Roe*. And, in his concurrence, Justice Thomas explicitly calls for the Court to reconsider federal constitutional protection for same-sex marriage, for sexual autonomy, and for birth control.[22] Connecticut already separately guarantees key rights that might now be threatened, including the right to marriage equality, through statutes and the state constitution. But we should remain vigilant, at the legislature and in our advocacy efforts through the courts and in Congress, to protect and expand the rights that are so vital to equality and liberty.

Second: Dobbs did not permanently and unalterably leave abortion to the states. Absent a federal constitutional backstop, a federal government controlled by anti-choice politicians might seek to criminalize some or all abortions nationwide. Federal anti-choice legislation – if it survived the inevitable court challenges that Connecticut and others would likely pursue – might override, in whole or in part, state law and constitutional provisions protecting abortion rights. Of course, that threat is also an opportunity. A pro-choice Congress and President could encode the right to abortion in federal law.

Third: States with anti-choice legislatures and executives may try to enforce abortion restrictions across state lines. For instance, they may attempt to restrict travel for abortion, or purport to impose criminal or civil liability on patients or providers for abortions occurring in other states. The Attorney General's Office will be a legal firewall against that kind of overreach.[23] And the Governor has already signed legislation providing some protection against efforts to enforce anti-choice laws in Connecticut.[24]

Fourth, and finally: *Dobbs* poses not just legal threats but also logistical and financial challenges. Connecticut providers expect increased demand for abortion care, as nonresidents come here to vindicate their right to choose. Existing provider capacity, which is already under strain, may be further tested. And in this atmosphere of threat and restriction, providers may feel physically unsafe. The State should be prepared to promote equitable access to abortion and other critical reproductive services for both residents and nonresidents.

3. Protecting and Promoting Access to Abortion in Connecticut

Responding to the threats posed by *Dobbs* – and, more broadly, by a federal jurisprudential movement hostile to fundamental rights that Connecticut cherishes – will require focused effort by government in partnership with nonprofits, providers, and directly-impacted people.[25] The discussion below is intended to be illustrative, not exhaustive.

---

[21] *Id.* at 2319 ("Either the mass of the majority's opinion is hypocrisy, or additional constitutional rights are under threat. It is one or the other.").

[22] *Id.* at 2301 (Thomas, J., concurring).

[23] In his *Dobbs* concurrence, Justice Kavanaugh suggests that states cannot bar residents from traveling to other states for abortions, since there is a constitutional right to interstate travel. *Id.* at 2309. He is right on the law, but there is no guarantee that the Court will follow this dictum going forward.

[24] *See* Public Act 22-19.

[25] The Attorney's General's Office is grateful to advocates and providers who offered input that contributed to this memo, including those who participated in our listening session on abortion rights in the aftermath of *Dobbs*. We hope for ongoing communication and partnership.

a. Promoting Affordable, Feasible, and Safe Abortion Care

Vindicating the right to an abortion depends on access to care. Access, in turn, has several key components. Care, of course, must be lawful, as it is in Connecticut. It must also, among other things, be *affordable*, *feasible*, and *safe*.

Affordable. In Connecticut, Medicaid – called "HUSKY" – covers abortions for its enrollees. So do many private insurance plans, including some plans purchased on Access Health CT, the state's insurance exchange. Even without insurance, financial assistance may be available for some patients through private sources, including the REACH Fund, a Connecticut-based nonprofit abortion fund.[26]

But more can be done to ensure that abortion care and other reproductive healthcare services are financially within reach. Policymakers may want to consider whether to increase state funding for abortion care, including by providing funds to defray the costs of care for nonresidents. And expanding health insurance coverage to undocumented youth past age 12 would ensure that more people in our state have access to abortion and other health services.

Feasible. Patients must be able to visit with providers virtually or in person to receive the care they need. Those visits must be timely, since abortion can become more medically complex – and may become legally fraught – as pregnancy progresses.

Geographic proximity can be critically important here. Pregnant people may have trouble obtaining abortion care – especially procedural abortions, and especially in emergencies – if they cannot get to a qualified medical facility. The Attorney General's Office continues to express deep concern about efforts to terminate or limit obstetrics and gynecology services at some Connecticut hospitals.

Readily available medication abortion is also important. The federal Food and Drug Administration no longer requires the abortion medication mifepristone to be dispensed in a health care setting, clearing the way for direct to patient telemedicine abortion where allowed by state law.[27] Connecticut law can be read to do the same. To avoid any doubt, Connecticut could clarify that a patient seeking a medication abortion does not need an in-person clinic visit, but may receive and fill prescriptions remotely.

Finally, state government could join with advocates and providers to consider how to build out an access infrastructure to accommodate nonresidents seeking abortion care in Connecticut. This may mean anything from providing funds for travel subsidies to linking visitors with hosts.

Safe. Inflamed politics in the aftermath of *Dobbs* have intensified the imperative to ensure that abortion patients and providers in Connecticut are both unimpeded and safe. Here, state and local

---

[26] Information on funding is available through Connecticut's abortion helpline, 1-866-CTCHOICE (1-866-282-4642); through the state's abortion web portal, portal.ct.gov/reproductiverights; and on https://abortionfunds.org/need-abortion/.

[27] *See generally* Rachel K. Jones et al., *Medication Abortion Now Accounts for More Than Half of All US Abortions*, Guttmacher Inst. (Feb. 24, 2022), https://tinyurl.com/2tpe9ue9 (giving overview of medication abortion policies nationally).

government should work closely with, and take guidance from, providers themselves, who are well-positioned to develop safety-enhancing strategies that will not deter patients from seeking care. One possible strategy is designating state funds, including bonding money, to harden clinics against potential threats.

b. Protecting Patients and Providers Against Prosecution, Civil Suits, and Professional Sanctions

Connecticut may now play an expanded role in providing care to people from states that ban or severely restrict abortion. States with anti-choice policies may seek to impose liability across state lines – authorizing lawsuits or even prosecutions against patients or providers who obtain or perform abortions in Connecticut. Providers and advocates are concerned about the possibility of facing unwarranted professional consequences for performing and assisting in procedures that are legal in Connecticut.

Protecting Against Legal Consequences. This spring, the legislature passed and Governor Lamont signed Public Act 22-19,[28] which provides key protections for abortion access in Connecticut. In broad terms, and with some exceptions, the Act, which took effect July 1, 2022:

- Prohibits the governor from extraditing an accused person to another state for committing an act in Connecticut, or in a third state, that would not be punishable by Connecticut law. (§ 5)

- Prohibits government employees from using public resources to assist in imposing civil or criminal liability on anyone who provides reproductive healthcare services that are legal in Connecticut. (§ 6)

- Prohibits state officials from enforcing process in certain civil or criminal cases targeting patients or providers of reproductive health services that are legal in Connecticut. (§§ 3-4)

- Prohibits, with some exceptions, providers from sharing information about reproductive health services absent a patient's written consent. (§ 2)

- Allows licensed advanced practice registered nurses, nurse-midwives and physician assistants to perform medication and aspiration abortions. (§ 7)

- Creates a new cause of action. Some other states may allow civil suits against people who provide, receive, or assist in reproductive healthcare services that are legal in Connecticut. Public Act 22-19 allows targets of those harassing lawsuits to bring their own cases in Connecticut to recover costs and damages. (§ 1)

As important and pathbreaking as these provisions are, they do not categorically prevent other states from trying to impose liability on Connecticut providers or on nonresidents who seek abortion care in Connecticut. Legislators and litigators should continue to be creative in developing and deploying strategies to protect abortion rights against out-of-state interference.

[28] Public Act 22-118 (§§ 195, 484-489) clarified and modified Public Act 22-19 by expanding the protections described here to gender-affirming healthcare services. Seekers and providers of gender-affirming services have been subject to legal and legislative attacks in other states in recent years.

One step the State can take is ensuring that residents and nonresidents know their rights. This memorandum is part of that effort, but there is no substitute for individualized advice from a qualified attorney. To that end, the Attorney General's Office has arranged for Connecticut patients and providers to access free legal guidance and resources from trained, volunteer attorneys through the legal hotline established by New York Attorney General Letitia James. The legal hotline number is 212-899-5567.

Promoting Data Privacy. Protecting patients and providers means ensuring that information about pregnancy status and care remains private. The Attorney General's Office has a robust data privacy practice. We are consulting with other branches of government and with non-governmental partners to ensure that Connecticut offers the best available protections against disclosure of sensitive personal information.

Protecting Against Adverse Professional Consequences. Medical providers and advocates should not face adverse professional consequences for performing and assisting in obtaining abortions that are legal in Connecticut. For instance: Doctors should not face discipline, or the prospect of higher malpractice insurance rates, for properly performing legal abortions. Attorneys should not face discipline for competently assisting clients in obtaining or providing legal abortions. Legislators, regulators, and the judiciary may wish to be attentive to steps that can protect professionals who competently help patients vindicate their rights.

c. Deceptive Advertising and Messaging Around Reproductive Rights

The State of Connecticut has a profound interest in ensuring that pregnant people have timely access to accurate information and a full range of healthcare options – including options for abortion. Misleading pregnant people about medical services has the potential to delay critically needed care.

So it is important for pregnant people to understand that so-called "Crisis Pregnancy Centers" and "Pregnancy Resource Centers" – and, other, similarly-named organizations, which Connecticut law calls "limited service pregnancy centers" – do not offer abortion care, abortion referrals, or emergency contraception. Those limited service pregnancy centers also may not be subject to the same privacy laws as licensed medical providers.

In Connecticut, limited services pregnancy centers are prohibited by law from using false, misleading, or deceptive advertising about the services they provide. The Attorney General's Office, together with state's Department of Consumer Protection, is charged with protecting the public against deceptive advertising that could impede pregnant people from understanding the full range of available reproductive healthcare.

APPENDIX:

KNOW YOUR RIGHTS LANGUAGE
and
FREQUENTLY ASKED QUESTIONS

ATTORNEY GENERAL ADVISORY:
ABORTION IS LEGAL IN CONNECTICUT

- Connecticut law protects your right to an abortion. The Supreme Court's decision overturning *Roe v. Wade* does not change that.

- You have the right to an abortion before viability. You do not need to give a reason for seeking an abortion before viability.

- You have the right to an abortion after viability to protect your life or your health.

- You have the right to confidentiality. Generally, your spouse will not be notified about your abortion.

- If you are a minor, you have the right to an abortion without your parent's consent. Ordinarily, your parents or guardians will not be notified about your abortion by a medical provider.

This advisory is intended to explain your legal rights. For free legal guidance and resources, call 212-899-5567.

You should talk to a healthcare provider with any questions about your reproductive health, including whether and when you can obtain an abortion.

Frequently Asked Questions

Question: I heard that the U.S. Supreme Court overturned Roe v. Wade. *Does that mean abortions are illegal in Connecticut?*

Answer: No. Abortion is legal in Connecticut. On June 24, 2022, the Supreme Court said that the U.S. Constitution does not include a right to abortion. But Connecticut law separately protects the right to abortion.

Q: What about other reproductive healthcare? Can I still get contraception in Connecticut?

A: Yes. Connecticut law protects your right to make decisions about your reproductive care. That includes the right to choose whether or not to use birth control.

Q: What does "viability" mean?

A: Viability is the ability of a fetus to live outside the uterus. In some situations, a provider could determine that a fetus is viable around 24-28 weeks into pregnancy. Even if your pregnancy has reached viability, you may be able to have an abortion to protect your health. You should talk to your provider about your options.

Q: I'm under 18. Can I get an abortion in Connecticut?

A: Yes. People under 18 can get an abortion in Connecticut without permission from their parents or guardians. And, ordinarily, your parents or guardians will not be notified by a medical provider that you had an abortion.

Q: Can I afford an abortion?

A: Connecticut's Medicaid plans – called "HUSKY" – covers abortions for people who are enrolled. So do many private insurance plans, including some plans purchased on Access Health CT. Even without insurance, financial assistance may be available. You should talk to your provider or visit Connecticut's abortion information website to learn more: https://portal.ct.gov/reproductiverights.

Q: I live in another state. Can I get an abortion in Connecticut?

A: Yes. You do not have to live in Connecticut to receive abortion care, or other reproductive healthcare, here.

Q: Can I get abortion care at a Crisis Pregnancy Center or a Pregnancy Resource Center?

A: No. Crisis Pregnancy Centers and Pregnancy Resource Centers do not provide abortion care, abortion referrals, or emergency contraception. If you are pregnant and looking to understand all your options, you should consult with a licensed reproductive healthcare provider who offers a full range of reproductive healthcare services.

Q: I believe that my right to an abortion was violated. What should I do?

A: If you believe that any of your rights were violated, please immediately file a complaint with the Office of the Attorney General: https://www.dir.ct.gov/ag/complaint.