UCLA School of Law Center on Reproductive Health, Law, and Policy

The Implications of *Dobbs* on Reproductive Health Care Access for LGBTQ People Who Can Get Pregnant

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QUICK FACTS

- LBQ cisgender women are statistically as likely to have had abortions in their lifetime as straight cisgender women (22.8% vs 17.3%).[1]
- Nearly half of LBQ cisgender women who have been pregnant became pregnant in their teen years.[2]
- For bisexually identified women ages 15-44, the odds of an unwanted pregnancy are 1.75 times greater than their heterosexual peers.[3]
- Sexually active, self-identified bisexual girls are 1.72 times more likely to become pregnant than their sexually active straight high school-aged peers.[4]
- LBQ cisgender women, as well as transgender people whose sex assigned at birth is female, are less likely than their straight cisgender peers to have had cancer screenings, such as Pap smears or mammograms.[5]

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[1] Bianca D.M. Wilson et al., *Health and Socioeconomic Well-Being of LBQ Women in the US*, Williams Inst. 64 (Mar. 2021), https://williamsinstitute.law.ucla.edu/publications/lbq-women-in-us/ (hereinafter "LBQ Women Report").

[2] *Id.*

[3] Bethany G. Everett, Katharine F. McCabe, & Tonda L. Hughes, *Sexual Orientation Disparities in Mistimed and Unwanted Pregnancy Among Adult Women*, 49 Perspect Sex Reprod Health 157 (Sept. 2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5819992/ (hereinafter "Everett, McCabe, & Hughes).

[4] Bethany G. Everett et al., *Sexual Orientation Disparities in Pregnancy Risk Behaviors and Pregnancy Among Sexually Active Teenage Girls: Updates from the Youth Risk Behavior Survey*, 6 LGBT Health 341 (Oct. 2019), https://pubmed.ncbi.nlm.nih.gov/31618165/ (hereinafter "Everett et al.").

[5] LBQ Women Report, supra note 1, at 58; Madina Agénor et al., *Mapping the Scientific Literature on Reproductive Health Among Transgender and Gender Diverse People: A Scoping Review*, 29 Sexual and Reproductive health Matters 8, n. 18 (Feb. 2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8011687/ (citing Sarah M. Peitzmeier et al., *Pap Test Use is Lower Among Female-to-Male*

On June 24, 2022, the United States Supreme Court struck down *Roe v. Wade* and *Planned Parenthood v. Casey* by issuing the *Dobbs v. Jackson Women's Health Organization* decision, which found that there is no right to abortion protected by the federal Constitution. As a result, abortion access is currently determined by individual states, and 26 states have already or are likely to ban or severely restrict abortion.[6] Policies that restrict abortion care are often accompanied by decreased access to other reproductive health services, including contraception, and worsened health outcomes for both women and children.[7]

Most conversations and media attention about the impact of *Dobbs* have focused on harms to the health and well-being of cisgender heterosexual women. However, restricting abortion access will also impact members of the LGBTQ community. It is essential to consider the unique and significant impacts on LGBTQ people who can get pregnant (including LBQ cisgender women and transgender people who can become pregnant) in discussions about the harm caused by the rollback of abortion and sexual and reproductive health care access across the country.

ACCESS TO GENERAL HEALTH CARE

LBQ cisgender women are more likely to lack health insurance coverage compared to straight women; 14.3% (nearly 1 in 6) reported having no health insurance compared with 10.1% of straight women.[8] Slightly more LBQ cisgender women relied on Medicaid for health insurance coverage than their straight counterparts (13.3% vs 10.7%).[9] In addition, LBQ cisgender women were more likely than straight women to report not having a regular health care provider (29.3% versus 15.7%).[10] Within this group, bisexual women were significantly more likely to report not having a regular health care

Patients Than Non-Transgender Women, 47 Am. J. of Preventative Med. 808 (Dec. 2014); Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, Nat'l Ctr. for Transgender Equality (2016), https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf.

[6] Elizabeth Nash & Lauren Cross, *26 States Are Certain or Likely to Ban Abortion Without Roe: Here's Which Ones and Why*, Guttmacher Inst. (April 19, 2022), https://www.guttmacher.org/article/2021/10/26-states-are-certain-or-likely-ban-abortion-without-roe-heres-which-ones-and-why.

[7] *See, e.g.*, Monica Potts, *How Limiting Access to Abortion Limits Access to Birth Control*, FiveThirtyEight (July 13, 2022), https://fivethirtyeight.com/features/how-limiting-access-to-abortion-limits-access-to-birth-control/; Terri-Ann Thompson & Jane Seymour, *Evaluating Priorities: Measuring Women's and Children's Health and Well-being against Abortion Restrictions in the States*, Ctr. for Reproductive Rights & Ibis Health (2017), https://www.reproductiverights.org/sites/default/files/documents/USPA-Ibis-Evaluating-Priorities-v2.pdf (comparing state-level abortion restrictions with policies supportive of women's and children's well-being and finding an inverse association between abortion restrictions and state performance on indicators of women's health, children's health, and social determinants of health, whereas states with fewer anti-abortion policies have been more successful in enacting policies supportive of women, their pregnancies, and their children.); Anusha Ravi, *Limiting Abortion Access Contributes to Poor Maternal Health Outcomes*, Ctr. for Am. Progress (June 13, 2018), https://www.americanprogress.org/article/limiting-abortion-access-contributes-poor-maternal-health-outcomes/.

[8] LBQ Women Report, *supra* note 1, at 51, n. 108 (citing Ctrs. for Disease Control and Prevention, *Behavioral Risk Factor Surveillance System Survey Data*).

[9] *Id.* at 51.

[10] *Id.*

provider compared to lesbian women (31% versus 25%).[11]

In general, transgender people experience discrimination, mistreatment, or denials of care when seeking health care and often have difficulty finding providers who are knowledgeable and able to provide trans-competent health care.[12] In particular, transgender men and nonbinary people who can get pregnant can face difficulties finding inclusive and affirming reproductive health care, including providers who use gendered language or incorrectly assume that all of their patients identify as female.[13] However, more research is needed on the specific reproductive health care experiences of transgender people.

CANCER SCREENING

Research indicates that LGBTQ people assigned female at birth are less likely to receive cancer screenings such as Pap tests and mammograms. An analysis of the Centers for Disease Control and Prevention's Behavioral Risk Factor Surveillance System (BRFSS) found that LBQ women are less likely to have received a Pap test in the last five years; 69% of LBQ women had received this screening, compared to 80% of straight women.[14] LBQ women overall were less likely to have received a mammogram: only 42.8% of LBQ women had ever had a mammogram, compared with 70.8% of straight women.[15] Transgender men are less likely to obtain regular Pap tests compared to cisgender women, and the 2015 U.S. Transgender Survey found that 13% of transgender respondents had been denied coverage by a health insurance company for supposedly gender-specific services such as Pap smears and mammograms.[16]

PREGNANCY

Unplanned pregnancies are more common among cisgender bisexual girls and women than their heterosexual peers.[17] Sexually active, self-identified bisexual girls are 1.72 times more likely to become

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[11] *Id.* at 52.

[12] *See* Ilan H. Meyer, Bianca D.M. Wilson, & Kathryn O'Neill, *LGBTQ People in the US: Select Findings from the Generations and TransPop Studies*, Williams Inst. 27-28 (June 2021), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Generations-TransPop-Toplines-Jun-2021.pdf (an analysis of the Generations Study and TransPop study data found that 8% of transgender people were uninsured and almost 20% did not have a usual place to go when they were sick or needed advice about their health. However, the study did not disaggregate rates for transgender men and transgender women.); Nat'l Pub. Radio, Robert Wood John Found., & Harvard T.H. Chan School of Pub. Health, *Discrimination in America: Experiences and Views of LGBTQ Americans* (Nov. 2017), https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2017/11/NPR-RWJF-HSPH-Discrimination-LGBTQ-Final-Report.pdf; Shabab Ahmed Mirza & Caitlin Rooney, *Discrimination Prevents LGBTQ People From Accessing Health Care*, Ctr. for Am. Progress (Jan. 18, 2018), https://www.americanprogress.org/article/discrimination-prevents-lgbtq-people-accessing-health-care/.

[13] *See, e.g.,* Claire E. Lunde et al., *Beyond the Binary: Sexual and Reproductive Health Considerations for Transgender and Gender Expansive Adolescents*, 3 Frontiers in Repro Health (Oct. 2021), https://www.frontiersin.org/articles/10.3389/frph.2021.670919/full.

[14] LBQ Women's Report, *supra* note 1, at 58.

[15] *Id.*

[16] Agénor et al., *supra* note 5, at n. 18 (citing Sarah M. Peitzmeier et al., *supra* note 5; James et al., *supra* note 5).

[17] *See* Kerith Conron et al., *Reproductive Health Care and LBT Adults*, Williams Inst. (July 2020), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LBT-Reproduction-Jul-2020.pdf (citing Everett et al., *supra* note 4; Lisa L. Lindley & Katrina M. Walsemann, *Sexual Orientation and Risk of Pregnancy Among New York City High-School Students*, 105 Am J Public Health 1379 (July 2015), https://pubmed.ncbi.nlm.nih.gov/25973807/; Everett, McCabe, & Hughes, *supra* note 3).

pregnant than their sexually active straight high school-aged peers.[18] For bisexually identified women ages 15-44, the odds of an unwanted pregnancy are 1.75 times greater than their heterosexual peers.[19] In fact, a significant number of LBQ women—nearly half of those who have been pregnant—become pregnant in their teen years.[20]

In addition, LBQ cisgender women are statistically similarly likely to have had abortions in their lifetime compared to straight cisgender women (22.8% vs 17.3%).[21] It is possible that the Hyde Amendment's prohibition on payment for abortion care through federal Medicaid funds has limited access to abortion for LBQ cisgender women; 13.3% of LBQ cisgender women are insured through Medicaid (compared to 10.7% of straight cisgender women).[22] Although 16 states currently use state funds to pay for abortions in their state Medicaid programs,[23] LBQ women enrolled in Medicaid in the majority of states cannot rely on their insurance and instead must pay out-of-pocket for abortion care.

Contraceptive use, abortion, and birth rates for transgender people are understudied.[24] However, transgender people assigned female at birth do experience pregnancy and may face difficulties obtaining contraception and other reproductive health services.[25]

FAMILY FORMATION

LBQ cisgender women are less likely to have a doctor ask about their interest in getting pregnant than their straight cisgender counterparts, despite considerable interest in expanding and starting families.[26] An analysis of the National Survey of Family Growth shows that 24.9% of LBQ cisgender women have had

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[18] Everett et al., *supra* note 4.

[19] Everett, McCabe, & Hughes, *supra* note 3.

[20] LBQ Women Report, *supra* note 1, at 64.

[21] *Id*. at 57.

[22] LBQ Women Report, *supra* note 1, at 51.

[23] Alaska, California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, New York, Oregon, Vermont, and Washington fund all or most medically necessary abortions, exceeding federal requirements. The remaining states follow the federal standing, funding only cases involving life endangerment, rape, or incest. *See* KFF, *State Funding of Abortions Under Medicaid* (May 1, 2022), https://www.kff.org/medicaid/state-indicator/abortion-under-medicaid/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.

[24] Agénor et al., *supra* note 5; *but see* Rachel K. Jones, Elizabeth Witwer, and Jenna Jerman, *Transgender Abortion Patients and the Provision of Transgender-Specific Care at Non-Hospital Facilities that Provide Abortions*, 2 Contraception: X (2020), https://www.sciencedirect.com/science/article/pii/S2590151620300022 (estimating that 462 to 530 transgender and gender non-binary individuals obtained abortions in 2017, and that 23% of clinics provide transgender-specific care).

[25] Agénor et al., *supra* note 5, at n. 15-17; *see* Ruth Dawson & Tracy Leong, *Not Up for Debate: LGBTQ People Need and Deserve Tailored Sexual and Reproductive Health Care*, Guttmacher Inst. (Nov. 16, 2020), https://www.guttmacher.org/article/2020/11/not-debate-lgbtq-people-need-and-deserve-tailored-sexual-and-reproductive-health.

[26] LBQ Women Report, *supra* note 1, at 55-58; *see also* Ed Harris & Amanda Winn, *LGBTQ Family Building Survey*, Family Equality (2019), https://www.familyequality.org/resources/lgbtq-family-building-survey/ (finding that 35% of all LGBTQ adults are parents, but that 77% of LGBTQ millennials are either already parents or are considering having children, a 44% increase over their elders. 63% of LGBTQ individuals aged 18-35 said they were considering expanding their families in the coming years.).

a doctor ask them if they wanted to get pregnant, compared to 32.8% of straight cisgender women.[27] Some (14.6%) LBQ cisgender women have used insemination services intended to achieve pregnancy (compared to 19.1% of straight cisgender women).[28] In general, more LGB cisgender women than straight women reported wanting but not being able to have children (15.3% vs 8%, respectively).[29]

Transgender people who can get pregnant also face difficulties with services related to pregnancy, childbearing, and parenting, including limited access to fertility preservation and assisted reproductive services.[30]

POLICY IMPLICATIONS

While the overturning of *Roe v. Wade* will allow states to restrict access to abortion and other sexual and reproductive health care, some states are using the *Dobbs* decision as an opportunity to preserve and expand access to care.[31] Given existing barriers to sexual and reproductive health care access for LGBTQ people, these efforts in promoting health equity should include all LGBTQ people who can get pregnant. Providers should follow the CDC's Sexual Health Assessment recommendations to identify patient needs and provide appropriate services and information about contraception, abortion, safer sex counseling, STI screening and treatment, and resources to facilitate family formation such as assisted reproductive technologies.[32] Health service organizations that focus on the provision of reproductive health care, as well as those that specialize in the care of LGBTQ communities, should offer a range of LGBTQ-competent reproductive and sexual health care services. Efforts to track the effects of the *Dobbs* decision on women in the general population should include tracking the unique impact on LGBTQ people who can get pregnant. Better data collection and research into LGBTQ access to sexual and reproductive care generally is also needed, particularly for transgender people.

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[27] LBQ Women Report, *supra* note 1, at 57.

[28] *Id.*

[29] *Id.* at 56.

[30] Agénor et al., *supra* note 5, at nn. 21-25.

[31] From January 1 to May 25, 2022, 11 states (California, Colorado, Connecticut, Delaware, Maine, Maryland, New Hampshire, New Jersey, New York, Oregon, and Washington) have introduced 19 protective abortion measures. *See* Elizabeth Nash, Lauren Cross, & Joerg Dreweke, *2022 State Legislative Sessions: Abortion Bans and Restrictions on Medication Abortion Dominate*, Guttmacher Inst. (May 26, 2022), https://www.guttmacher.org/article/2022/03/2022-state-legislative-sessions-abortion-bans-and-restrictions-medication-abortion; *see also* David S. Cohen, Greer Donley, and Rachel Rebouché, *States Want to Ban Abortions Beyond Their Borders. Here's What Pro-Choice States Can Do*, N.Y. Times (Mar. 13, 2022), https://www.nytimes.com/2022/03/13/opinion/missouri-abortion-roe-v-wade.html.

[32] *See* CDC, *Discussing Sexual Health with Your Patients* (Oct. 21, 2019), https://www.cdc.gov/hiv/clinicians/screening/discussing-sexual-health.html.

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