

DISABILITY REPRODUCTIVE JUSTICE DURING COVID-19 AND BEYOND

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The United States is experiencing the convergence of two crises threatening the reproductive freedom of people with disabilities and other historically marginalized groups: the COVID-19 pandemic and a rising assault on reproductive rights, including the U.S. Supreme Court's recent Dobbs v. Jackson Women's Health Organization decision. This convergence has created a perfect storm, revealing the depth of existing reproductive injustices endured by disabled people and forcing a reckoning with the consequences of permitting such inequities to persist. As such, urgent attention by activists, scholars, legal professionals, and policymakers is necessary.

This Article proposes a vision for addressing the deeply entrenched reproductive injustices experienced by people with disabilities during and beyond the COVID-19 pandemic. First, it examines the persistent reproductive oppression of disabled people, including reproductive health and healthcare inequities, barriers to information, contraception, and abortion, risks to self-determination and autonomy, and parenting challenges and threats. Next, it presents disability reproductive justice and explains the significance of this jurisprudential and legislative framework for achieving reproductive freedom for people with disabilities during and after the COVID-19 pandemic. Finally, drawing from the disability reproductive justice framework, this Article concludes by suggesting legal and policy solutions to address disabled people's immediate reproductive needs during the COVID-19 pandemic, as well as a path forward for dismantling the roots of the longstanding reproductive inequities they experience. It also considers issues requiring further attention and inquiry.

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INTRODUCTION

The United States is experiencing the convergence of two crises threatening the reproductive freedom of historically marginalized groups: the COVID-19 pandemic and a rising assault on reproductive rights, including the U.S. Supreme Court’s recent *Dobbs v. Jackson Women’s Health Organization*¹ decision, which overturned *Roe v. Wade*² and the nearly fifty years of legal precedent that the landmark decision established.³ Both crises are widespread, deeply intertwined, and disproportionately harm oppressed groups. For people with

1. See 142 S. Ct. 2228, 2243 (2022) (holding that *Roe v. Wade* was “egregiously wrong from the start” and that the choice to provide abortion services is a choice best left to individual state legislatures).

2. 410 U.S. 113 (1973).

3. See, e.g., *id.* at 153 (finding that the U.S. Constitution protects the right to privacy, which “is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy”); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 874–79 (1992) (affirming *Roe*’s holding that the U.S. Constitution protects the right to terminate a pregnancy, and establishing the “undue burden” framework to determine when that right could be regulated); *Whole Woman’s Health v. Hellerstedt*, 579 U.S. 582, 590–91 (2016) (finding that a surgical-center requirement and an admitting-privileges requirement in Texas law constituted an “undue burden” on the constitutional right to have an abortion).

disabilities,⁴ this convergence is creating a perfect storm, tragically revealing the depth of existing inequities and forcing a reckoning with the consequences of permitting such inequities to persist.

People with disabilities and other historically marginalized groups carry a disproportionate burden during the COVID-19 pandemic. Across the continuum of infection, hospitalization, inadequate testing and treatment, and death, disabled people experience higher risks and worse outcomes than nondisabled people.⁵ They also experience harmful social and economic effects.⁶ These injustices did not happen

4. Critically, although reproductive health and rights are typically framed as only relevant to women, transgender, nonbinary, and gender non-conforming people also need comprehensive reproductive health services and information. *See* *Reprod. Health Servs. v. Strange*, 3 F.4th 1240, 1246 n.2 (11th Cir. 2021) (“[N]ot all persons who may become pregnant identify as female.”); *see also* Heidi Moseson, Laura Fix, Sachiko Ragosta, Hannah Forsberg, Jen Hastings, & Ari Stoeffler et al., *Abortion Experiences and Preferences of Transgender, Nonbinary, and Gender-Expansive People in the United States*, 224 AM. J. OBSTETRICS & GYNECOL. 376.e1, 376.e3–376.e6 (2021) (reporting findings from a study examining the abortion experiences and preferences of transgender, nonbinary, and gender-expansive people in the United States); THE AM. COLL. OF OBSTETRICIANS & GYNECOL., COMMITTEE OPINION NUMBER 815: INCREASING ACCESS TO ABORTION (2020), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2020/12/increasing-access-to-abortion.pdf> [https://perma.cc/B3HG-E74K] (recognizing “[p]eople of all genders have sexual and reproductive health needs, including women, transgender people, nonbinary people, and those who are otherwise gender-diverse.”). Including women, non-binary, trans, and gender non-conforming disabled people in approaches to reproductive health is critical given that many individuals in those groups endure significant reproductive oppression, which has been exacerbated throughout the COVID-19 pandemic. *See generally* WOMEN ENABLED INT’L, COVID-19 AT THE INTERSECTION OF GENDER AND DISABILITY: FINDINGS OF A GLOBAL HUMAN RIGHTS SURVEY, MARCH TO APRIL 1, 4 (2020), <https://womenenabled.org/wp-content/uploads/Women%20Enabled%20International%20COVID-19%20at%20the%20Intersection%20of%20Gender%20and%20Disability%20May%202020%20Final.pdf> [https://perma.cc/QGC2-LKP7] (finding that women, non-binary, and trans people with disabilities experienced widespread injustices during the COVID-19 pandemic). While using gender-neutral language is preferred whenever possible, this Article uses the terms “woman” or “women” in some instances, where that terminology is specific to the research or cited source.

5. Robyn M. Powell, *Applying the Health Justice Framework to Address Health and Health Care Inequities Experienced by People with Disabilities During and After COVID-19*, 96 WASH. L. REV. 93, 108–14 (2021) (describing health and healthcare disparities experienced by disabled people throughout the COVID-19 pandemic).

6. *Id.* at 113–14 (exploring the socioeconomic effects of the COVID-19 pandemic on people with disabilities, including barriers to accessing higher education and jobs).

in a vacuum but tragically lay bare the depth of inequities that have lingered for too long.

Critically, emerging scholarship indicates that historically marginalized groups—primarily Black and Brown women, queer women, and economically disadvantaged women—face growing threats to their reproductive freedom during the COVID-19 pandemic.⁷ However, scholars have not systematically considered how people with disabilities experience these threats.⁸ Understanding and responding to reproductive oppression—and how such oppression is amplified during the COVID-19 pandemic—through the lens of disability is critical, as disability offers a “prism through which one can gain a broader understanding of society and human experience.”⁹ Hence, elucidating and confronting the experiences of disabled people will help to improve others’ reproductive experiences.

This Article builds on, incorporates, and extends the existing scholarship concerning the COVID-19 pandemic and reproductive oppression by including the experiences and perspectives of people with disabilities. Part I provides an overview of the reproductive oppression experienced by disabled people, both before and during the COVID-19 pandemic, demonstrating that the current inequities

7. See Brittany L. Raposa, *Adding a Layer of Injustice: Amplified Racial Disparities in Reproductive Health Care in the Wake of COVID-19*, 98 U. DET. MERCY L. REV. 351, 361–66 (2021) (explaining how existing reproductive injustices were amplified for Black and Brown women during the COVID-19 pandemic); see also LAURA D. LINDBERG, ALICIA VANDEVUSSE, JENNIFER MUELLER & MARIELLE KIRSTEIN, EARLY IMPACTS OF THE COVID-19 PANDEMIC: FINDINGS FROM THE 2020 GUTTMACHER SURVEY OF REPRODUCTIVE HEALTH EXPERIENCES, GUTTMACHER INST. 8–9 (2020), https://www.guttmacher.org/sites/default/files/report_pdf/earlyimpacts-covid-19-pandemic-findings-2020-guttmacher-survey-reproductive-health.pdf [<https://perma.cc/QR8X-BDQP>] (examining results from a national survey about how the COVID-19 pandemic has affected access to sexual and reproductive healthcare and highlighting the disproportionate impacts on Black and Brown women, queer women, and economically disadvantaged women); Trena I. Mukherjee, Angubeen G. Khan, Anindita Dasgupta, & Goleen Samari, *Reproductive Justice in the Time of COVID-19: A Systematic Review of the Indirect Impacts of COVID-19 on Sexual and Reproductive Health*, 18 REPRODUCTIVE HEALTH 1, 22–24 (2021) (describing research about sexual and reproductive healthcare service provision during the COVID-19 pandemic and the disparities experienced by marginalized groups).

8. In a forthcoming book chapter, I begin to explore the reproductive injustices experienced by people with disabilities during the COVID-19 pandemic. See Robyn M. Powell, *The Intersection of Disability, Gender, and COVID-19*, in ROUTLEDGE GENDER COMPANION TO GENDER AND COVID-19 (Aziza Ahmed & Linda McClain, eds., forthcoming 2023). This Article builds on, incorporates, and extends this analysis.

9. SIMI LINTON, CLAIMING DISABILITY: KNOWLEDGE AND IDENTITY 117 (1998).

are a continuation of long-lasting and deeply entrenched problems.¹⁰ Specifically, it examines reproductive health and healthcare inequities, barriers to information, contraception, and abortion, risks to self-determination and autonomy, and parenting challenges and threats.¹¹ Thereafter, Part II presents disability reproductive justice and explains the significance of this jurisprudential and legislative framework for achieving reproductive freedom for people with disabilities during the COVID-19 pandemic and beyond.¹² Finally, applying the disability reproductive justice framework, Part III concludes by suggesting legal and policy solutions to address people with disabilities' immediate reproductive needs and a path forward for dismantling the roots of longstanding reproductive inequities that disabled people experience.¹³ It also considers issues requiring further attention and inquiry.¹⁴ Considering the converging threats to reproductive freedom the United States faces, a transformative and inclusive vision that finally achieves and delivers reproductive freedom for disabled people is essential. This Article presents a way forward for accomplishing this undertaking.

I. REPRODUCTIVE OPPRESSION OF DISABLED PEOPLE BEFORE AND DURING COVID-19

Nearly 100 years after the shameful *Buck v. Bell*¹⁵ decision, where the U.S. Supreme Court authorized the forced sterilization of people with disabilities and others considered unfit to procreate, people with disabilities continue to endure pervasive reproductive oppression.¹⁶

10. *Infra* Part I.

11. *Infra* Section I.A–B.

12. *Infra* Part II.

13. *Infra* Section III.A.

14. *Infra* Section III.B.

15. 274 U.S. 200 (1927).

16. *Id.* at 207. For an in-depth explanation of the history of reproductive oppression against disabled people, see generally Robyn M. Powell, *From Carrie Buck to Britney Spears: Strategies for Disrupting the Ongoing Reproductive Oppression of Disabled People*, 107 VA. L. REV. ONLINE 246, 249 (2021) (detailing the various ways disabled people are subjected to reproductive oppression today); Robyn M. Powell, *Confronting Eugenics Means Finally Confronting Its Ableist Roots*, 27 WM. & MARY J. RACE, GENDER, & SOC. JUST. 607, 610–11 (2021) (finding that disabled people, like other marginalized members of society, have been subjected to government policies limiting their ability to create and maintain families); Robyn M. Powell & Michael Ashley Stein, *Persons with Disabilities and Their Sexual, Reproductive, and Parenting Rights: An International and Comparative Analysis*, 11 FRONTIERS L. CHINA 53, 53 (2016) (noting several negative stereotypes of

Indeed, today, notwithstanding the substantial—and increasing—size of the disability community, “the sexual and reproductive health needs of this population largely have been ignored.”¹⁷ Further, attitudes and presumptions about people with disabilities’ sexuality and reproduction have been “reified in laws, social policies, and public spaces that deny the fact that people with disabilities are sexual beings.”¹⁸ And, as this Article explains below, these inequities are exacerbated throughout the COVID-19 pandemic.

To fully appreciate and respond to the reproductive injustices that people with disabilities experience during the COVID-19 pandemic, it is crucial to have a foundational understanding of their reproductive experiences before the COVID-19 pandemic. To that end, this Part examines the reproductive oppression experienced by disabled people, both before and during the COVID-19 pandemic, revealing how the current injustices are a continuation of long-lasting and deeply entrenched problems. Specifically, this Part elucidates four prominent areas where disabled people experience reproductive oppression and how this oppression is worsening throughout the COVID-19 pandemic: (1) reproductive health and health care disparities; (2) barriers to information, contraception, and abortion; (3) risks to self-determination and autonomy; and (4) parenting challenges and threats. Understanding the reproductive injustices that people with disabilities experience and how the COVID-19 pandemic exacerbates these injustices helps illustrate the urgent need to achieve reproductive justice for people with disabilities finally.

A. *Reproductive Health and Healthcare Disparities*

Even before the COVID-19 pandemic, people with disabilities experienced a range of health and healthcare disparities.¹⁹ In

people with disabilities that have precipitated and contributed to the development of oppressive reproductive policies towards disabled people).

17. Caroline Signore, Maurice Davis, Candace M. Tingen & Alison N. Cernich, *The Intersection of Disability and Pregnancy: Risks for Maternal Morbidity and Mortality*, 30 J. WOMEN’S HEALTH 147, 148 (2021).

18. Margaret Campbell, *Disabilities and Sexual Expression: A Review of the Literature*, SOCIO. COMPASS, July 2017, at 1, 8.

19. See Gloria L. Krahn, Deborah Kelin Walker & Rosaly Correa-De-Araujo, *Persons with Disabilities as an Unrecognized Health Disparity Population*, 105 AM. J. PUB. HEALTH S198, S201 (2015) (documenting differences in performance across various health indicators between disabled and nondisabled people). Research consistently shows that people with disabilities experience barriers to accessing health care and have adverse health outcomes. See *id.* (showing population differences in health care access, health behaviors, and various health outcomes).

particular, disabled people encounter attitudinal, communication, physical, policy, programmatic, social, and transportation barriers that hinder their access to healthcare services and information and lead to adverse health outcomes.²⁰ In fact, despite legal protections, including Section 504 of the Rehabilitation Act of 1973 (“Section 504”),²¹ the Americans with Disabilities Act of 1990 (ADA),²² and the Patient Protection and Affordable Care Act (ACA),²³ disabled people often face “persistent inequalities” accessing healthcare.²⁴ Unsurprisingly, these inequalities include reproductive health services. According to the World Health Organization and the World Bank, disabled people experience many unmet reproductive health needs, including inadequate access to sex education and contraception, insufficient reproductive health screening, and scarce healthcare provider knowledge about the intersection of disability, sexuality, and reproduction.²⁵ Consequently, “many women with disabilities express particular difficulties accessing comprehensive, high-quality reproductive health care.”²⁶ Moreover, reproductive health and healthcare inequities are more prevalent among disabled people of color and LGBTQ+ disabled people.²⁷

20. See Powell, *supra* note 5, at 104–07 (describing the current state of health and health care inequities for people with disabilities).

21. Rehabilitation Act of 1973, 29 U.S.C. §§ 701–796.

22. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–12213.

23. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010); Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (amending certain provisions of the Patient Protection and Affordable Care Act).

24. Nancy R. Mudrick & Michael A. Schwartz, *Health Care Under the ADA: A Vision or a Mirage?*, 3 DISABILITY & HEALTH J. 233, 233 (2010).

25. See WORLD HEALTH ORG., WORLD DISABILITY REPORT 60–61, 79 (2011), <https://apps.who.int/iris/handle/10665/44575> [<https://perma.cc/49GG-EFY6>] (detailing the various ways in which people with disabilities experience inequities in healthcare access and services).

26. Caroline Signore, *Reproductive and Sexual Health for Women with Disabilities*, in ELIMINATING INEQUITIES FOR WOMEN WITH DISABILITIES: AN AGENDA FOR HEALTH AND WELLNESS 93 (Shari E. Miles-Cohen & Caroline Signore eds., 2016).

27. See Willi Horner Johnson, *Disability, Intersectionality, and Inequity: Life at the Margins*, in PUBLIC HEALTH PERSPECTIVES ON DISABILITIES, 91, 97 (Donald J. Lollar, Willi Horner-Johnson, & Katherine Froehlich-Grobe, eds., 2d ed. 2021) (citing studies finding racial and ethnic disparities in access to healthcare among people with disabilities); Lesley A. Tarasoff, “We Exist”: *The Health and Well-Being of Sexual Minority Women and Trans People with Disabilities*, in ELIMINATING INEQUITIES FOR WOMEN WITH DISABILITIES: AN AGENDA FOR HEALTH AND WELLNESS 179, 184–85 (Shari E. Miles-Cohen & Caroline Signore eds., 2016) (detailing issues that sexual minority women with

Critically, disabled people are less likely than nondisabled people to receive adequate preventive reproductive health services. For example, women with disabilities are less likely to receive regular Pap tests, sometimes because caregivers or health care providers believe they are unnecessary.²⁸ Further, disabled women are more likely than others to become infected with sexually transmitted infections, underscoring the importance of preventive sexual and reproductive health services.²⁹ Women with disabilities are also less likely than others to be screened for breast or cervical cancer.³⁰

Inaccessible or inadequate perinatal care is another serious issue facing many people with disabilities. Although women with and without disabilities have comparable pregnancy rates,³¹ women with

disabilities face in receiving sexual and reproductive healthcare); Megan Buckles & Mia Ives-Rublee, *Improving Health Outcomes for Black Women and Girls with Disabilities*, CTR. AM. PROGRESS (Feb. 15, 2022), <https://www.americanprogress.org/article/improving-health-outcomes-for-black-women-and-girls-with-disabilities> [<https://perma.cc/6225-5WUF>] (citing to studies showing that women and girls of color with disabilities are at heightened risk of having poorer health because of their status); Emily DiMatteo, Osub Ahmed, Vilissa Thompson, & Mia Ives-Rublee, *Reproductive Justice for Disabled Women: Ending Systemic Discrimination*, CTR. AM. PROGRESS (Apr. 13, 2022), <https://www.americanprogress.org/article/reproductive-justice-for-disabled-women-ending-systemic-discrimination> [<https://perma.cc/T32Q-WB9T>] (noting how disabled people of color have suffered from racism in addition to the oppressive reproductive policies inflicted on disabled people).

28. See Robyn M. Powell, Susan L. Parish, Monika Mitra, & Eliana Rosenthal, *Role of Family Caregivers Regarding Sexual and Reproductive Health for Women and Girls with Intellectual Disability: A Scoping Review*, 64 J. INTELL. DISABILITY RSCH. 131, 149–50 (2020) (citing studies which indicate that people with intellectual disabilities who live at home with family caregivers are less likely to receive Pap tests); Elena M. Andresen, Jana J. Peterson-Besse, Gloria L. Krahn, Emily S. Walsh, Willi Horner-Johnson & Lisa I. Iezzoni, *Pap, Mammography, and Clinical Breast Examination Screening Among Women with Disabilities: A Systemic Review*, 23 WOMEN'S HEALTH ISSUES e205, e208–11 (2013) (reviewing research about Pap testing among women with disabilities).

29. Lucy Emma Craig, Zhong Eric Chen & Joanne Barrie, *Disability, Sexual and Reproductive Health: A Scoping Review of Healthcare Professionals' Views on their Confidence and Competence in Care Provision*, 48 BMJ SEXUAL REPROD. HEALTH 7, 7–8 (2021) (citing studies about sexually transmitted infections among disabled people).

30. See Powell et al., *supra* note 28, at 131–32 (synthesizing findings from research about reduced breast cancer and cervical cancer screening among women with intellectual disabilities); Andresen et al., *supra* note 28, at e211 (reviewing research about mammography among women with disabilities).

31. Lesley A. Tarasoff, Fahmeeda Murtaza, Adele Carty, Dinara Salaeva, Angela D. Hamilton & Hilary K Brown, *Health of Newborns and Infants Born to Women with Disabilities: A Meta-Analysis*, 146 PEDIATRICS, Dec. 2020, at 1, 2 (citing studies on pregnancy rates among women with disabilities).

disabilities have higher maternal mortality and morbidity rates than women without disabilities.³² Specifically, in addition to increased maternal mortality rates, disabled women are at higher risk than nondisabled women for pregnancy, delivery, and postpartum complications, such as gestational diabetes, preeclampsia, cesarean delivery, preterm birth, low-birth-weight infants, and stillbirth.³³ Further, disabled women are significantly more likely than nondisabled women to have a miscarriage.³⁴ In addition, disabled people of color experience even higher maternal mortality and

32. See *id.*; Jessica L. Gleason, Jagtshwar Grewal, Zhen Chen, Alison N. Cernich & Katherine L. Grantz, *Risk of Adverse Maternal Outcomes in Pregnant Women with Disabilities*, JAMA NETWORK OPEN, Dec. 2021, at 1, 1–2 (finding that women with disabilities have a higher risk of pregnancy complications, including death); Hilary K. Brown, Joel G. Ray, Simon Chen, Astrid Guttman, Susan M. Haverkamp & Susan Parish et al., *Association of Preexisting Disability with Severe Maternal Morbidity or Mortality in Ontario, Canada*, 4 JAMA NETWORK OPEN, Feb. 2021, at 1, 1–5 (finding a higher risk for maternal mortality or morbidity for women with disabilities in Ontario, Canada); Monika Mitra, Linda M. Long-Bellil, Suzanne C. Smeltzer & Lisa I. Iezzoni, *A Perinatal Health Framework for Women with Physical Disabilities*, 8 DISABILITY & HEALTH J. 499, 499 (2015) (describing research about pregnancy complications among women with disabilities).

33. See, e.g., Lesley A. Tarasoff, Saranyah Ravindran, Hannan Malik, Dinara Salaeva & Hilary K. Brown, *Maternal Disability and Risk for Pregnancy, Delivery, and Postpartum Complications*, 222 AM. J. OBSTETRICS & GYNECOL. 27, 29–33 (2020) (synthesizing studies on perinatal outcomes among women with disabilities); Ilhom Akobirshoev, Susan L. Parish, Monika Mitra & Eliana Rosenthal, *Birth Outcomes Among US Women with Intellectual and Developmental Disabilities*, 10 DISABILITY & HEALTH J. 406, 409–10 (2017) (documenting adverse maternal and child health outcomes among women with intellectual and developmental disabilities); Hilary K. Brown & Monika Mitra, *Improved Obstetric Care for People with Disabilities: An Urgent Call for Accessibility and Inclusion*, 31 J. WOMEN'S HEALTH 4, 4 (citing studies showing increased risk of adverse pregnancy outcomes among women with disabilities); Monika Mitra, Michael M. McKee, Ilhom Akobirshoev, Anne Valentine, Grant Ritter, Jianying Zhang, Kimberly McKee & Lisa I. Iezzoni, *Pregnancy, Birth, and Infant Outcomes Among Women Who Are Deaf or Hard of Hearing*, 58 AM. J. PREVENTATIVE MED. 418, 420 (2020) (finding adverse maternal and child health outcomes among women who are Deaf and hard of hearing).

34. Mekhala V. Dissanayake, Blair G. Darney, Aaron B. Caughney & Will Horner-Johnson, *Miscarriage Occurrence and Prevention Efforts by Disability Status and Type in the United States*, 29 J. WOMEN'S HEALTH 345, 350 (2020); Will Horner-Johnson, Sheetal Kulkarni-Rajasekhara, Blair G. Darney, Mekhala Dissanayake & Aaron B. Caughney, *Live Birth, Miscarriage, and Abortion Among U.S. Women with and Without Disabilities*, 10 DISABILITY & HEALTH J. 382, 384 (2017).

morbidity rates, likely due to disparities stemming from the multiplicative effects of ableism and racism.³⁵

People with disabilities additionally face physical and communicative barriers in accessing comprehensive reproductive healthcare. For example, a study found that forty-four percent of gynecology practices were inaccessible to disabled women.³⁶ Relatedly, many disabled women report physical access barriers within reproductive healthcare providers' offices, such as a shortage of height-adjustable examination tables and accessible weight scales.³⁷ Furthermore, after giving birth, women with disabilities are often placed in hospital rooms lacking accessibility features, including accessible beds, restrooms, bassinets, and changing tables.³⁸ In addition, Deaf and hard of hearing people often face communication barriers, such as reproductive health care providers failing to provide sign language interpreters during appointments.³⁹

Significantly, disabled women often encounter reproductive healthcare providers who are unknowledgeable about treating

35. See, e.g., Ilhom Akobirshoev, Monika Mitra, Susan L. Parish, Anne Valentine & Tiffany A. Moore Simas, *Racial and Ethnic Disparities in Birth Outcomes and Labor and Delivery Charges Among Massachusetts Women with Intellectual and Developmental Disabilities*, 58 INTELL. & DEVELOPMENTAL DISABILITIES 126, 132 (2020) (finding that Black women with intellectual and developmental disabilities are more likely to give birth to preterm infants than white women with intellectual and developmental disabilities); see also NIKITA MHATRE, ACCESS, AUTONOMY, & DIGNITY: ABORTION CARE FOR PEOPLE WITH DISABILITIES, NAT'L P'SHIP FOR WOMEN & FAMILIES & AUTISTIC SELF ADVOC. NETWORK 6 (2021), <https://www.nationalpartnership.org/our-work/resources/repro/repro-disability-abortion.pdf> [<https://perma.cc/6EZY-6XE8>] (reviewing studies about maternal mortality and morbidity among disabled people and noting that adverse outcomes are amplified among disabled people of color).

36. Tara Lagu, Nicholas S. Hannon, Michael B. Rothberg, Annalee S. Wells, K. Laurie Green & McAllister O. Windom et al., *Access to Subspecialty Care for Patients with Mobility Impairment: A Survey*, 158 ANNALS INTERNAL MED. 441, 444 (2013).

37. Mitra et al., *supra* note 32, at 499 (describing the physical barriers that disabled women face in clinical offices).

38. See Monika Mitra, Linda M. Long-Bellil, Lisa I. Iezzoni, Suzanne C. Smeltzer & Lauren D. Smith, *Pregnancy Among Women with Physical Disabilities: Unmet Needs and Recommendations on Navigating Pregnancy*, 9 DISABILITY & HEALTH J. 457, 459 (2016) (reporting findings from interviews with women with disabilities revealing that disabled women often encounter accessibility barriers in hospitals after giving birth).

39. Robyn M. Powell, Erin E. Andrews & Kara B. Ayers, *Becoming a Disabled Parent: Eliminating Access Barriers to Healthcare Before, During, and After Pregnancy*, 96 TULANE L. REV. 369, 398 (2022).

disabled people and are unsupportive of their desires.⁴⁰ Some researchers have found that interactions with healthcare providers, especially negative encounters, can influence pregnancy decisions among disabled women.⁴¹ Tellingly, interviews with fourteen obstetric clinicians who treat women with physical disabilities reported that they had not received any education or training about treating pregnant women with disabilities.⁴² Likewise, a study of 1,000 obstetrician-gynecologists revealed significant problems related to practice accessibility, training, attitudes, and perspectives about treating disabled women.⁴³ For example, only seventeen percent of respondents had received information or training on providing healthcare to disabled women.⁴⁴ Moreover, only nineteen percent of respondents felt “definitely” adequately prepared to care for pregnant disabled women.⁴⁵ In addition, more than half of the respondents reported difficulty communicating with women with sensory or intellectual disabilities.⁴⁶ Furthermore, women with disabilities often encounter healthcare providers who explicitly and implicitly question “their ability to become pregnant, carry the baby to term, deliver safely, and/or care for the newborn.”⁴⁷ Critically, “[t]his negativity can have

40. See Denise Lawler, Joan Lalor & Cecily Begley, *Access to Maternity Services for Women with a Physical Disability: A Systematic Review of the Literature*, 3 INT’L J. CHILDBIRTH 203, 212–13 (2013) (summarizing several studies about perinatal care for women with physical disabilities that suffered from their healthcare providers’ lack of specified knowledge).

41. See Tracey A. LaPierre, Mary K. Zimmerman & Jean P. Hall, “*Paying the Price to Get There*”: *Motherhood and the Dynamics of Pregnancy Deliberations Among Women with Disabilities*, 10 DISABILITY & HEALTH J. 419, 422 (2017) (“Healthcare providers significantly influenced the pregnancy decisions of these women by shaping perceptions of feasibility (and risk) related to their current and future health Participants reported conversations with medical professionals who they perceived as judgmental or unsupportive.”).

42. Suzanne C. Smeltzer, Monika Mitra, Linda Long-Bellil, Lisa I. Iezzoni & Lauren D. Smith, *Obstetric Clinicians’ Experiences and Educational Preparation for Caring for Pregnant Women with Physical Disabilities: A Qualitative Study*, 11 DISABILITY & HEALTH J. 8, 10 (2018) (“None of the 14 clinicians received training about caring for women with disabilities when they were students, residents, or fellows.”).

43. See Laura H. Taouk, Michael F. Fialkow & Jay A. Schulkin, *Provision of Reproductive Healthcare to Women with Disabilities: A Survey of Obstetrician-Gynecologists’ Training, Practices, and Perceived Barriers*, 2.1 HEALTH EQUITY 207, 207–08 (2018) (studying obstetrician-gynecologists experience treating disabled people).

44. *Id.* at 209.

45. *Id.* at 212.

46. *Id.* at 210.

47. Signore et al., *supra* note 17, at 148 (citing studies about perinatal care for disabled women).

wide-ranging effects, including increased stress (with the associated pregnancy health risk) and a hesitancy to seek care.⁴⁸ In fact, many women with disabilities delay or forgo perinatal care because of healthcare providers' negative attitudes.⁴⁹

The COVID-19 pandemic further compounds reproductive health and healthcare inequities among people with disabilities. For example, disabled people experience increased barriers to accessing reproductive healthcare, such as routine checkups, breast cancer screenings, perinatal care, menopause care, and abortions throughout the COVID-19 pandemic.⁵⁰ Meanwhile, transgender people with disabilities face increased difficulty accessing hormone treatments.⁵¹ In addition, screening for sexually transmitted infections, including HIV, has declined throughout the COVID-19 pandemic,⁵² which is especially troublesome for people with disabilities who already had less access to screening and higher infection rates than people without disabilities.⁵³ Furthermore, growing financial concerns, job instability, and loss of health insurance throughout the COVID-19 pandemic affect people's access to reproductive healthcare.⁵⁴ These problems impact disabled people even more since they experience significant economic disadvantages through the COVID-19 pandemic⁵⁵ and already had decreased access to reproductive healthcare before the pandemic.⁵⁶

48. *Id.*

49. *Id.*

50. WOMEN ENABLED INT'L, *supra* note 4, at 6.

51. *Id.*

52. Mukherjee et al., *supra* note 7, at 19.

53. Craig et al., *supra* note 29, at 7–8; Nora Ellen Groce, Poul Rohleder, Arne Henning Eide, Malcolm MacLachlan, Sumaya Mall & Leslie Swartz, *HIV Issues and People with Disabilities: A Review and Agenda for Research*, 77 SOC. SCI. & MED. 31, 36 (2013); WORLD HEALTH ORG. & UNITED NATIONS POP. FUND, PROMOTING SEXUAL AND REPRODUCTIVE HEALTH FOR PEOPLE WITH DISABILITIES: WHO/UNFPA GUIDANCE NOTE 3, 13 (2009), https://apps.who.int/iris/bitstream/handle/10665/44207/9789241598682_eng.pdf;jsessionid=F9886A3F44A3DB4F994423D6297208AE?sequence=1 [<https://perma.cc/83XF-D6XP>].

54. Megan McCool-Myers, Debra Kozlowski, Valerie Jean, Sarah Cordes, Heather Gold & Peggy Goedken, *The COVID-19 Pandemic's Impact on Sexual and Reproductive Health in Georgia, USA: An Exploration of Behaviors, Contraceptive Care, and Partner Abuse*, 113 CONTRACEPTION 30, 33–34 (2022); Raposa, *supra* note 7, at 363; LINDBERG ET AL., *supra* note 7, at 6.

55. Powell, *supra* note 5, at 95–96.

56. Robyn M. Powell, *Disability Reproductive Justice*, 170 U. PA. L. REV. 1851, 1856, 1859–60 (2022).

Perinatal care—already inaccessible for many pregnant people with disabilities—is particularly affected by the COVID-19 pandemic. Indeed, “the COVID-19 pandemic has resulted in further endangerment of maternal health.”⁵⁷ For example, due to shortages in healthcare providers and medical supplies, especially at the beginning of the COVID-19 pandemic, routine appointments, including perinatal care, were put on hold or canceled,⁵⁸ which can be dangerous for disabled women who already have an increased risk of pregnancy, delivery, and postpartum complications.⁵⁹

Though in-person perinatal appointments have often been replaced with virtual visits,⁶⁰ adequate perinatal care is critically important considering the poor maternal and child health outcomes many people with disabilities experience. Critically, although telehealth has rapidly increased throughout the COVID-19 pandemic,⁶¹ including among some disabled people,⁶² it remains unavailable to many. For example, some people with disabilities’ access to telehealth is impacted by the “digital divide”—that is, they lack the technical devices (e.g., smartphones) or broadband internet access needed for telehealth.⁶³ Further, some disabled people cannot access telehealth because of

57. Bernetta D. Welch, *Black Women’s Reproductive Health, Justice, and COVID-19 Complications in the United States*, in RACIALIZED HEALTH, COVID-19, AND RELIGIOUS RESPONSES 208, 211 (R. Drew Smith, Stephanie C. Boddie & Bertis D. English eds., 2022).

58. Raposa, *supra* note 7, at 363.

59. Gleason et al., *supra* note 32, at 4; Tarasoff et al., *supra* note 31, at 2.

60. Ian Hill & Emmy Burtoughs, MATERNAL TELEHEALTH HAS EXPANDED DRAMATICALLY DURING THE COVID-19 PANDEMIC: EQUITY CONCERNS AND PROMISING APPROACHES, URBAN INST. 1–2 (Oct. 2020), https://www.urban.org/sites/default/files/publication/103126/maternal-telehealth-has-expanded-dramatically-during-the-covid-19-pandemic_5.pdf [https://perma.cc/Z786-NJR7].

61. Phil Galewitz, *Telemedicine Surges, Fueled by Coronavirus Fears and Shift in Payment Rules*, KAISER HEALTH NEWS (Mar. 27, 2020), <https://khn.org/news/telemedicine-surges-fueled-by-coronavirus-fears-and-shift-in-payment-rules> [https://perma.cc/87B2-5DXH].

62. Carli Friedman & Laura VanPuymbrouck, *Telehealth Use by Persons with Disabilities During the COVID-19 Pandemic*, 13 INT’L J. TELEREHABILITATION 1, 4 (2021).

63. Andrew Perrin & Sara Atske, *Americans with Disabilities Less Likely than Those Without to Own Some Digital Devices*, PEW RSCH. CTR. (Sept. 10, 2021), <https://www.pewresearch.org/fact-tank/2021/09/10/americans-with-disabilities-less-likely-than-those-without-to-own-some-digital-devices> [https://perma.cc/E6YG-WFFP].

barriers like inaccessible platforms and lack of captioning.⁶⁴ Additionally, a lack of privacy for people who live with others or have caregivers or support professionals in their homes can create a barrier to accessing telehealth.⁶⁵ Lastly, “[s]ometimes, during telephone conferences, physicians or other caregivers do not pay as close attention to what [] pregnant women say as the caregivers would during traditional in-person, or face-to-face, consultations.”⁶⁶ Consequently, perinatal care is becoming even less accessible for some disabled people, likely leading to worse outcomes.

Significantly, pregnant women with COVID-19 are at greater risk than others for severe illness, including increased risk of hospitalization, intensive care unit admission, and mechanical ventilation.⁶⁷ In addition, pregnant women with disabilities with underlying health conditions are more likely to have severe COVID-19 symptoms because of their pregnancy status and disabilities.⁶⁸ Notably, early in the COVID-19 pandemic, states and hospitals were concerned about potential shortages of medical equipment (e.g., ventilators) and care, and some implemented rationing plans that deprioritized people with disabilities.⁶⁹ In other words, several of these plans placed disabled people at an automatic disadvantage, often guided by the belief that they had a lower quality of life and, therefore, a decreased need to save that life.⁷⁰ Accordingly, throughout the COVID-19 pandemic,

64. Daniel Young & Elizabeth Edwards, *Telehealth and Disability: Challenges and Opportunities for Care*, NAT'L HEALTH L. PROGRAM (May 6, 2020), <https://healthlaw.org/telehealth-and-disability-challenges-and-opportunities-for-care> [<https://perma.cc/BF45-PB69>].

65. Lori A. Rolleri Insignares, Tanya M. Bass & Bill Taverner, *Sex Ed Lessons from COVID-19*, 16 AM. J. SEX. ED. 435, 448–49 (2021).

66. Welch, *supra* note 57, at 211.

67. Sascha Ellington, Penelope Strid, Van T. Tong, Kate Woodworth, Romeo R. Galang et al., *Characteristics of Women of Reproductive Age with Laboratory-Confirmed SARS-CoV-2 Infection by Pregnancy Status—United States, January 22–June 7, 2020*, 69 MORBIDITY & MORTALITY WKLY. REP. 769, 770, 774 (2020).

68. Courtney E. Harris, Varina R. Clark, Narjust Duma, Amiko M. Uchida & Alicia Kowalski, *Re: “The Intersection of Disability and Pregnancy: Risks for Maternal Morbidity and Mortality” by Signore et al.*, 30 J. WOMEN'S HEALTH 1362, 1362–63 (2021).

69. Powell, *supra* note 5, at 110–11.

70. See Powell, *supra* note 16, at 621–22 (connecting ableism, a system of prejudice and discrimination that devalues and excludes people with disabilities, to the notion that the ideal able-bodied state must avoid disability at all cost); *Reproductive Justice Is Disability Justice*, SINS INVALID (Jun. 29, 2022), <https://www.sinsinvalid.org/news-1/2022/6/29/reproductive-justice-is-disability-justicela-justicia-reproductiva-es-justicia-de-discapacidad> [<https://perma.cc/JF62-3LWM>].

pregnant disabled women face an increased risk of illness and an increased risk of being denied lifesaving care.

Pregnant disabled people are being disadvantaged by other COVID-19 policies as well. For example, early in the COVID-19 pandemic, hospitals implemented policies prohibiting others, including partners, from accompanying a pregnant person during labor, delivery, and the postpartum period.⁷¹ Even when pregnant people were allowed to bring someone with them, the policies were very restrictive.⁷² In some instances, when hospitals permitted one person to accompany the pregnant person, it was done so on the condition that they would not be allowed to leave and subsequently return.⁷³ In other instances, some hospitals required the support person to depart immediately following the birth, leaving the new parent alone to recover while caring for a newborn alone.⁷⁴ Nevertheless, these policies rarely included exceptions for pregnant people with disabilities, disproportionately affecting those who rely on the assistance of others for activities of daily living or communicating with healthcare providers.⁷⁵ Notably, in response to these policies, pregnant people are increasingly pursuing out-of-hospital births, such as homebirths.⁷⁶ However, some disabled people are likely denied opportunities to choose out-of-hospital births, considering that healthcare providers often make decisions about labor and delivery without their input.⁷⁷ Further, out-of-hospital births are not universally available to people who receive Medicaid,⁷⁸

71. Jennifer C. Nash, *Home Is Where the Birth Is: Race, Risk, and Labor During COVID-19*, 32 YALE J.L. & FEMINISM 103, 109 (2021); see also Irin Carmon, *More Hospitals Are Banning Partners from Delivery Rooms*, THE CUT (Mar. 23, 2020), <https://www.thecut.com/2020/03/delivery-room-visitor-bans-are-confusing-patients.html> [<https://perma.cc/ZM8K-7PCP>]; Elizabeth Kukura, *Seeking Safety While Giving Birth During the Pandemic*, 14 ST. LOUIS U. J. HEALTH L. & POL'Y 279, 279, 292 (2021); Nofar Yakovi Gan-Or, *Going Solo: The Law and Ethics of Childbirth During the COVID-19 Pandemic*, J.L. & BIOSCIENCES, Jan.–June 2020, at 1, 2.

72. Elizabeth Kukura, *Birthing Alone*, 79 WASH. & LEE L. REV. 1463, 1466–67 (2022).

73. *Id.* at 1466.

74. *Id.* at 1467.

75. WOMEN ENABLED INT'L, *supra* note 4, at 4–5.

76. Nash, *supra* note 71, at 104.

77. Juliene G. Lipson & Judith G. Rogers, *Pregnancy, Birth, and Disability: Women's Health Care Experiences*, 21 HEALTH CARE FOR WOMEN INT'L 11, 16–17 (2000); Suzanne C. Smeltzer, *Pregnancy in Women with Physical Disabilities*, 36 J. OBSTETRIC, GYNECOLOGIC, & NEONATAL NURSING 88, 94 (2007).

78. Kathy Gifford, Jenna Walls, Usha Ranji, Alina Salganicoff & Ivette Gomez, *Medicaid Coverage of Pregnancy and Perinatal Benefits: Results from a State Survey*, WOMEN'S HEALTH POL'Y Apr. 27, 2017, at 11, <https://www.kff.org/womens-health->

including the four-in-ten disabled women who are Medicaid beneficiaries.⁷⁹ Thus, COVID-19 policies prohibiting others from accompanying pregnant people make perinatal care even less accessible for disabled people.

B. Barriers to Information, Contraception, and Abortion

People with disabilities encounter pervasive and persistent barriers to reproductive health information, contraception, and abortion care. For example, even before the COVID-19 pandemic, disabled people were often denied reproductive health information, including sex education.⁸⁰ Strikingly, some students with disabilities are entirely left out of sex education classes, and others report feeling “excluded by the omission of relevant disability-related sex information.”⁸¹ In addition, most sex education curricula intended for disabled students, especially students with intellectual or developmental disabilities, are not evidence-based, suggesting that they may not be effective.⁸² Critically, only three states explicitly include students with disabilities in their sex education requirements, and only six states and the District of Columbia offer optional resources for an accessible sex education curriculum for students with disabilities.⁸³ Further, LGBTQ+ disabled people often do not receive sex education that includes the needs and experiences of sexual and gender minorities, thereby hindering their

policy/report/medicaid-coverage-of-pregnancy-and-perinatal-benefits-results-from-a-state-survey [https://perma.cc/4MA3-A639].

79. Ivette Gomez, Usha Ranji, Alina Salganicoff & Brittnei Frederiksen, *Medicaid Coverage for Women*, WOMEN’S HEALTH POL’Y Feb. 17, 2022, https://www.kff.org/womens-health-policy/issue-brief/medicaid-coverage-for-women [https://perma.cc/8LBP-F6AB].

80. Barbara Waxman Fiduccia, *Current Issues in Sexuality and the Disability Movement*, 18 SEXUALITY & DISABILITY 167, 171–72 (2000); H.J. Graff, R.E. Moyher, J. Bair, C. Foster, M.E. Gorden & J. Clem, *Relationships and Sexuality: How Is a Young Adult with an Intellectual Disability Supposed to Navigate?*, 36 SEXUALITY & DISABILITY 175, 176 (2018); Amy Swango-Wilson, *Meaningful Sex Education Programs for Individuals with Intellectual/Developmental Disabilities*, 29 SEXUALITY & DISABILITY 113, 114, 116 (2011).

81. Fiduccia, *supra* note 80, at 171–72.

82. See Graff et al., *supra* note 80, at 176–77 (calling attention to the lack of research on the efficacy of sex education curricula for people with disabilities).

83. Laura Graham Holmes & SIECUS, *Comprehensive Sex Education for Youth with Disabilities: A Call to Action*, SIECUS 1, 17 (2021), https://siecus.org/wp-content/uploads/2021/03/SIECUS-2021-Youth-with-Disabilities-CTA-1.pdf [https://perma.cc/ZJ6S-UVRQ].

reproductive autonomy.⁸⁴ Importantly, the adverse effects of not receiving reproductive health information extend far beyond the classroom. For example, women with cognitive disabilities are less likely than others to receive information on a range of crucial reproductive health topics (e.g., how to say no to sex, methods of birth control, where to get birth control, how to use a condom, sexually transmitted infections, and preventing HIV/AIDS).⁸⁵

Likewise, even before the COVID-19 pandemic, disabled people encountered several barriers to contraception. On the one hand, disabled women often have less contraception knowledge and lower contraception use than nondisabled women,⁸⁶ and their “contraceptive needs are frequently overlooked.”⁸⁷ Further, compared to nondisabled women, disabled women are less likely to receive family planning services, including contraception counseling, and are less likely to use contraception.⁸⁸ Critically, these disparities are most pronounced in women who are unemployed, economically disadvantaged, or have lower educational attainment.⁸⁹ In addition, women with disabilities are less likely than women without disabilities to use highly or moderately effective forms of non-permanent contraception, suggesting inequities in access to appropriate

84. See Nathan J. Wilson, Alexandra M. Bright, Jemima Macdonald, Patsie Frawley, Brenda Hayman & Giselle Gallego, *A Narrative Review of the Literature About People with Intellectual Disability Who Identify as Lesbian, Gay, Bisexual, Transgender, Intersex or Questioning*, 22 J. INTELL. DISABILITIES 171, 190–91 (2018) (highlighting research that advocated for “targeted sex education” to reduce marginalization of LGBTQ+ individuals and that found a lack of LGBTQ+ representation in sex education curricula).

85. Eun Ha Namkung, Anne Valentine, Lee Warner & Monika Mitra, *Contraceptive Use at First Sexual Intercourse Among Adolescent and Young Adult Women with Disabilities: The Role of Formal Sex Education*, 103 CONTRACEPTION 178, 180 (2021).

86. See Powell et al., *supra* note 28, at 132 (reviewing studies that found that contraception knowledge and use among women with intellectual disabilities is lower than knowledge and use among women without disabilities).

87. Signore, *supra* note 26, at 100.

88. Willi Horner-Johnson, Mekhala Dissanayake, Justine P. Wu, Aaron B. Caughey & Blair G. Darney, *Pregnancy Intendedness by Maternal Disability Status and Type in the United States*, 52 PERSPS. ON SEXUAL & REPROD. HEALTH 31, 31, 33 (2020) (finding that women with disabilities are less likely to receive timely prenatal care or adequate sex education and more likely to have unintended pregnancies); see also Jeanne L. Alhusen, Tina Bloom, Kathryn Laughon, Lillian Behan, & Rosemary B. Hughes, *Perceptions of Barriers to Effective Family Planning Services Among Women with Disabilities*, 14 DISABILITY & HEALTH J. 101055, 1, 3–4 (2021) (finding that women with disabilities faced barriers to contraception and family planning services, such as physical barriers, financial barriers, and unresponsive healthcare staff).

89. Alhusen et al., *supra* note 88, at 2.

contraception.⁹⁰ Disabled women also experience numerous barriers to contraceptive decision-making.⁹¹ Consequently, women with disabilities have higher rates of unintended pregnancies than women without disabilities, underscoring the importance of contraception for disabled people.⁹² On the other hand, like Britney Spears, some disabled women are forced by guardians to use contraception out of fear that they will become pregnant.⁹³ Here, people with disabilities, most often people with intellectual disabilities, are effectively sterilized because they are restricted from reproducing due to forced contraception.

Similarly, even before the COVID-19 pandemic, disabled people encountered significant barriers to abortion care.⁹⁴ People with disabilities experience high poverty rates, making abortions financially

90. See Justine Wu, Jianying Zhang, Monika Mitra, Susan L. Parish & Geeth Kavya Minama Reddy, *Provision of Moderately and Highly Effective Reversible Contraception to Insured Women with Intellectual and Developmental Disabilities*, 132 *OBSTETRICS & GYNECOL.* 565, 568 (2018) (finding that women with intellectual and developmental disabilities were less likely to be prescribed either long-acting reversible contraception or other moderately effective forms of contraception); Justine P. Wu, Kimberly S. McKee, Michael M. McKee, Michelle A. Meade, Melissa A. Plegue & Ananda Sen, *Use of Reversible Contraceptive Methods Among U.S. Women with Physical or Sensory Disabilities*, 49 *PERSPS. ON SEXUAL & REPROD. HEALTH* 141, 141 (2017) (finding that the presence of a physical or sensory disability was associated with decreased odds of a woman using highly or moderately effective methods of contraception).

91. See Willi Horner-Johnson, Krystal A. Klein, Jan Campbell & Jeanne-Marie Guise, “It Would Have Been Nice to Have a Choice”: *Barriers to Contraceptive Decision-making Among Women with Disabilities*, 32 *WOMEN’S HEALTH ISSUES* 261, 263–65 (2022) (finding five main barriers to women with disabilities’ contraceptive decision-making: inaccessible information formats, incomplete information about contraceptive side-effects, lack of clinician knowledge and research to guide care for women who are not “typical,” taboos around discussing sexual activity, and limited-opportunities for shared contraceptive decision-making).

92. See Horner-Johnson et al., *supra* note 88, at 33 (2020) (finding a higher proportion of unintended pregnancies among women with disabilities as compared to women without disabilities).

93. See Powell et al., *supra* note 28, at 151 (reviewing existing research about family caregivers forcing women and girls with disabilities to use contraception); Powell, *supra* note 16, at 247.

94. See Robyn M. Powell, *Including Disabled People in the Battle to Protect Abortion Rights: A Call-to-Action* 70 *UCLA L. REV.* (forthcoming 2023) (manuscript 34–36) (explaining how disabled people have reduced access to abortion care due to financial difficulties and information deficiencies in the context of a history of lacking autonomy).

impossible for some.⁹⁵ Because many people with disabilities are Medicaid beneficiaries, the Hyde Amendment’s prohibition on using federal Medicaid funds for most abortions further compounds these financial barriers.⁹⁶ Moreover, some disabled people cannot travel to an abortion provider, especially in areas with limited to no providers.⁹⁷ The cost and transportation barriers often experienced by people with disabilities are especially significant because abortion providers are becoming increasingly limited as states impose laws restricting abortion rights.⁹⁸ Critically, access to abortion care will become even more difficult as states increasingly move to limit or ban abortions following the *Dobbs* decision.⁹⁹ Moreover, healthcare facilities that do not have accessibility features, such as ramps and height-adjustable examination tables, further hinder disabled people’s access to abortion care.¹⁰⁰

Significantly, the COVID-19 pandemic is likely increasing the effects of existing barriers to information, contraception, and abortion care for people with disabilities. For example, access to sex education is being considerably impacted by the COVID-19 pandemic. Although education has generally been prioritized throughout the COVID-19

95. See MHATRE, *supra* note 35, at 8, 9–10 (noting that people with disabilities are twice as likely to live in poverty, which impedes access to abortion care because of its costs and because the Medicaid and Medicare funds received by 65% of disabled people are prohibited by the Hyde Amendment from paying for abortions); WOMEN ENABLED INT’L, *supra* note 4, at 9 (“[W]omen with disabilities . . . frequently cannot afford to travel abroad for abortion.”).

96. Powell, *supra* note 94, at 66–67.

97. See MHATRE, *supra* note 35, at 9–10 (identifying “abortion deserts” combined with transportation costs and the lack of transportation availability as creating immense barriers to abortion care for disabled people).

98. See Alice F. Cartwright, Mihiri Karunaratne, Jill Barr-Walker, Nicole E. Johns, & Ushma D. Upadhyay, *Identifying National Availability of Abortion Care and Distance from Major US Cities: Systematic Online Search*, 20 J. MED. INTERNET RSCH. 1, 9 (2018) (finding twenty-seven cities in the United States are “abortion deserts”—cities in which people must travel at least one-hundred miles to reach an abortion provider); K.K. Rebecca Lai & Jugal K. Patel, *For Millions of American Women, Abortion Access Is out of Reach*, N.Y. TIMES (May 31, 2019), <https://www.nytimes.com/interactive/2019/05/31/us/abortion-clinics-map.html> (last visited May 17, 2023) (finding that over eleven million women of reproductive age nationwide live more than a one hour drive from an abortion provider).

99. See *Tracking the States Where Abortion Is Now Banned*, N.Y. TIMES, <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html> (last updated May 10, 2023) (monitoring abortion criminalization across the United States).

100. See MHATRE, *supra* note 35, at 10 (describing common barriers to abortion care for people with disabilities, including physical inaccessibility).

pandemic, some schools have “suspended sexuality education classes and programs because of competing priorities, challenges with remote learning methods, and less available staff.”¹⁰¹ Even more, notwithstanding the Individuals with Disabilities Education Act (IDEA),¹⁰² which mandates that disabled students receive free appropriate public education,¹⁰³ students with disabilities experience a range of barriers to education during the COVID-19 pandemic, including inaccessible online platforms, a lack of technology, and insufficient services to address social-emotional needs and goals.¹⁰⁴ It stands to reason that sex education is likely significantly lacking for students with disabilities. Moreover, sex educators face difficulties modifying curricula to ensure that it is accessible for students with disabilities in a remote setting.¹⁰⁵

Existing barriers to contraception and abortion care for disabled people are also likely exacerbated during the COVID-19 pandemic. Indeed, historically marginalized groups, including women of color,

101. Roller Insignares et al., *supra* note 65, at 439.

102. Pub. L. No. 101-476, 104 Stat. 1103 (1990) (codified at 20 U.S.C. §§ 1400 et seq.).

103. 20 U.S.C. § 1401(3)(B)(9); 34 C.F.R. § 300.101 (2021).

104. See Jasmine E. Harris, *The Frailty of Disability Rights*, 169 U. PA. L. REV. ONLINE 29, 38–45 (2020) (describing schools’ failure to provide free and appropriate public education because of remote learning during the COVID-19 pandemic). Empirical data collected from a national survey of school leaders revealed that approximately three out of four school districts determined that the most onerous “service to provide during COVID-19 was equitable education and related services for students with disabilities.” NAT’L SCH. BDS. ASS’N, SCH. SUPERINTENDENTS ASS’N, & ASS’N OF EDUC. SERV. AGENCIES, *SCHOOL LEADER VOICES: CONCERNS AND CHALLENGES TO PROVIDING MEANINGFUL IDEA-RELATED SERVICES DURING COVID-19* 9 (2020); see also Elizabeth A. Steed, Ngoc Phan, Nancy Leech & Renee Charlifue-Smith, *Remote Delivery of Services for Young Children with Disabilities During the Early Stages of the COVID-19 Pandemic in the United States*, 44 J. EARLY INTERVENTION 110, 111 (2022) (summarizing the challenges in providing remote special education services during the COVID-19 pandemic, such as lack of training, access to the Internet, and online platforms that are compatible with assistive technology); Sarah Hurwitz, Blaine Garman-McClaine & Kane Carlock, *Special Education for Students with Autism During the COVID-19 Pandemic: “Each Day Brings New Challenges”*, 26 AUTISM 889, 890, 893 (2022) (explaining how special education professionals were obligated to continue providing free and appropriate public education to children with disabilities during the COVID-19 pandemic, and finding that the ability of special education providers to work on students’ IEP goals, track student progress, help students achieve academically, help students interact socially, and address challenging behavior worsened during the COVID-19 pandemic).

105. See Roller Insignares et al., *supra* note 65, at 438 (recognizing the “compounding challenges” of making sex education remote for students with disabilities).

women who are LGBTQ+, and economically disadvantaged women, face significant COVID-19 pandemic-related delays or cancellations of contraceptive and other reproductive healthcare.¹⁰⁶ Many are also unable to afford or obtain contraception and other reproductive healthcare.¹⁰⁷ Given the economic disadvantages people with disabilities experience,¹⁰⁸ they presumably also experience significant barriers to contraception and other reproductive healthcare. Moreover, they are likely to encounter physical and communication barriers that further impede their access. For example, the COVID-19 pandemic affects Deaf and hard-of-hearing people's access to contraceptive counseling because providers wear face masks, making lip-reading impossible.¹⁰⁹

Furthermore, early in the COVID-19 pandemic, a dozen states suspended abortions, claiming they were “non-essential” or “elective” health services.¹¹⁰ Although several courts ultimately struck down such policies, two appellate courts permitted the suspensions to go into effect, ruling, in part, that a court may not question a state's regulatory response to a public health emergency.¹¹¹ Yet, these suspensions

106. See Lindberg et al., *supra* note 7, at 4–7 (finding that delays in obtaining sexual and reproductive healthcare due to restricted in-person appointments, concern about contracting COVID-19, and financial difficulties were reported more among Black, Hispanic, and LGBTQ+ women than among white and straight women).

107. See *id.*

108. See Robyn M. Powell, *Beyond Disability Rights: A Way Forward After the 2020 Election*, 15 ST. LOUIS U. J. HEALTH L. & POL'Y 391, 412–16 (2022) (reviewing the pervasive economic insecurities experienced by disabled people, such as difficulties finding employment, subminimum wages, and insufficient social safety net programs).

109. *Ways for Providers to Improve Contraceptive Access for People with Disabilities*, 42 CONTRACEPTIVE TECH. UPDATE (2021).

110. See Aziza Ahmed, *How the COVID-19 Response is Altering the Legal and Regulatory Landscape on Abortion*, 7 J.L. & BIOSCIENCES 1, 2–3 (2020) (discussing states that deemed abortion to be “non-essential,” the penalties for violating the temporary abortion bans, and the response of the American College of Obstetricians and Gynecologists and the American Medical Association); Laurie Sobel, Amrutha Ramaswamy, Brittni Frederiksen & Alina Salganicoff, *State Action to Limit Abortion Access During the COVID-19 Pandemic*, KAISER FAM. FOUND. (Aug. 10, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/state-action-to-limit-abortion-access-during-the-covid-19-pandemic> [<https://perma.cc/UJB5-DEZ4>] (explaining the status of the policies in Alabama, Alaska, Arkansas, Iowa, Kentucky, Louisiana, Mississippi, Ohio, Oklahoma, Tennessee, Texas, and West Virginia to temporarily ban abortion during the COVID-19 pandemic).

111. See Sobel et al., *supra* note 110 (discussing how although courts struck down pandemic abortion bans in Alabama, Ohio, Oklahoma, and Tennessee, the 8th Circuit Court of Appeals overturned the temporary restraining order on Arkansas's COVID-

restricted many people's access to abortion care, forcing some to travel to other states or continue unwanted pregnancies.¹¹² These restrictions are particularly devastating for people with disabilities as they face greater economic insecurity and reduced access to transportation through the COVID-19 pandemic.¹¹³

At the same time, there is a rising need for access to contraception and abortion care throughout the COVID-19 pandemic. Many people seek to delay childbearing or have fewer children because of pandemic-related economic concerns.¹¹⁴ Yet, because of the previously mentioned barriers, the COVID-19 pandemic is expected to significantly increase unintended pregnancies, especially among economically disadvantaged people, disproportionately including people with disabilities. Moreover, research from the early days of the COVID-19 pandemic indicated that disabled people experienced rising rates of intimate partner violence, and because of social distancing and stay-at-home orders, they faced increased barriers to reporting or escaping such violence.¹¹⁵ The mounting risks of violence, and the resulting increased potential for unintended pregnancies, underscore the importance of having access to contraception and abortion care for people with disabilities.

19 abortion ban and the 5th Circuit Court of Appeals permitted Texas to suspend some abortion services during the COVID-19 pandemic).

112. Jonathan Bearak, Rachel K. Jones, Elizabeth Nash & Megan K. Donovan, *COVID-19 Abortion Bans Would Greatly Increase Driving Distances for Those Seeking Care*, GUTTMACHER INST. (Apr. 23, 2020), <https://www.guttmacher.org/article/2020/04/covid-19-abortion-bans-would-greatly-increase-driving-distances-those-seeking-care> [<https://perma.cc/9YZ4-H4VD>].

113. See WOMEN ENABLED INT'L, *supra* note 4, at 5 ("Women with disabilities may be particularly affected by such restrictions and complications, because, due to societal discrimination, they are more likely to have lower levels of education and less access to employment resulting in lower incomes, and so frequently cannot afford to travel far from their homes for abortion, while women with mobility-related disabilities face additional barriers to travel, as the means of travel are often inaccessible.").

114. See Lindberg et al., *supra* note 7, at 4 (finding that thirty-four percent of women surveyed wanted to have children later or have fewer children because of the COVID-19 pandemic).

115. See Emily M. Lund, *Interpersonal Violence Against People with Disabilities: Additional Concerns and Considerations in the COVID-19 Pandemic*, 65 REHAB. PSYCH. 199, 199 (2020) ("The COVID-19 pandemic and its consequences enhance the already increased risk for abuse among people with disabilities."); WOMEN ENABLED INT'L, *supra* note 4, at 11, 16 (describing how disabled people are vulnerable to abuse by partners or family members, being two to three times more likely than nondisabled people to experience such violence, and how isolation has reduced the ability to escape or receive external support).

C. Risks to Self-Determination and Autonomy

Even before the COVID-19 pandemic, people with disabilities faced substantial threats to their autonomy and self-determination due to a long history of being denied these rights, including practices such as forced sterilization and contraception.¹¹⁶ Indeed, people without disabilities often exert control over disabled people, telling them “how to live, whether they can or should have children, whether they can or should have sex, what interventions they ‘need’ for their bodies or minds, among other intrusions.”¹¹⁷

Guardianship—also known as conservatorship in some states—is the most used legal tool for controlling people with disabilities’ autonomy and self-determination. Succinctly, guardianship is a “fiduciary relationship between a guardian and a ward or other incapacitated person, whereby the guardian assumes the power to make decisions about the ward’s person or property.”¹¹⁸ Commonly, guardianship is involuntary and forced on people with intellectual or psychiatric disabilities and older adults with dementia.¹¹⁹ The National Council on Disability, an independent federal agency that advises the President and Congress on matters related to disabled people, estimates that at least 1.3 million people with disabilities are under guardianship.¹²⁰ According to disability justice advocates:

116. See Powell, *supra* note 16, at 611–15 (tracing the history of reproductive oppression of disabled people).

117. See MHATRE, *supra* note 35, at 4.

118. *Guardianship*, BLACK’S LAW DICTIONARY (11th ed. 2019).

119. See Jennifer Moye, *Guardianship and Conservatorship*, in *EVALUATING COMPETENCIES: FORENSIC ASSESSMENTS & INSTRUMENTS* 309, 309 (2d ed. 2003) (explaining how guardian and conservatorship is imposed via petition by relatives, or even by a person who has acted as a guardian for many others); see also Sara Luterman, *Free Comrade Britney!*, NATION (Mar. 31, 2020), <https://www.thenation.com/article/society/britney-spears-conservatorship> [<https://perma.cc/R9G3-73F6>] (describing the notable conservatorship example of Britney Spears, who was subject to the control of her conservator father or a judge to make many life decisions); Sara Luterman, *The Darker Story Just Outside the Lens of Framing Britney Spears*, NEW REPUBLIC (Feb. 12, 2021), <https://newrepublic.com/article/161344/framing-britney-spears-review-disability-legal> [<https://perma.cc/2VLQ-Y3T6>] (highlighting that, outside of the famous example of Britney Spears, conservatorship is regularly imposed upon disabled people in a process with few checks).

120. NAT’L COUNCIL ON DISABILITY, *BEYOND GUARDIANSHIP: TOWARD ALTERNATIVES THAT PROMOTE GREATER SELF-DETERMINATION* 17 (2018), https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf [<https://perma.cc/PV34-LPZP>].

While the law varies from state to state, guardianship orders routinely authorize third parties to make decisions about the most personal and important decisions in an individual's life—choices that impact the person's own body and reproductive health; how and where they receive medical, psychiatric, and psychological treatment; how the money and resources they work to earn are spent; and even with whom they associate.¹²¹

Guardianship is a unique and common way that many people with disabilities are deprived of their autonomy and self-determination in the context of reproduction. As attorney Marissa Ditekowsky writes, “[t]his issue of autonomy bleeds into reproductive justice, sexual freedom, and parental rights for disabled women.”¹²² For example, several people with disabilities who are subjected to guardianship, such as Britney Spears, are forced to use contraception to prevent pregnancy.¹²³ Additionally, guardians may compel people with disabilities to continue an unintended pregnancy or require them to have an unwanted abortion.¹²⁴ Further, guardians sometimes seek to suppress the sexual desires of their disabled teenage and adult children through medication.¹²⁵

Although compulsory sterilization has declined since its height of popularity during the Eugenics-era, it has never entirely ceased. In fact, most states still permit the sterilization of disabled people with prior

121. *Statement from Disability Justice and Supported Decision-Making Advocates: Britney Spears Spotlights the Need for Change Now*, CTR. FOR PUB. REPRESENTATION (June 25, 2021), <https://supporteddecisions.org/2021/06/25/britney-spears> [<https://perma.cc/QR6N-N5W3>].

122. Marissa Ditekowsky, *Disability Justice is Gender Justice: Acknowledging Disabled Women this Women's History Month*, AM. CONST. SOC'Y, EXPERT F. (Mar. 8, 2021), <https://www.acslaw.org/expertforum/disability-justice-is-gender-justice-acknowledging-disabled-women-this-womens-history-month> [<https://perma.cc/577H-UNUF>].

123. An Nguyen, *Challenges for Women with Disabilities Accessing Reproductive Health Care Around the World: A Scoping Review*, 38 SEXUALITY & DISABILITY 371, 378 (2020) (citing several studies in which participants reported that they were not provided with the right to make a decision on using contraception, with health care providers or family members instead making the decision for them); see also Sarah Luteran, *For Women Under Conservatorship, Forced Birth Control Is Routine*, NATION (Jul. 15, 2021), <https://www.thenation.com/article/society/conservatorship-iud-britney-spears> [<https://perma.cc/P9VM-JNGX>].

124. MHATRE, *supra* note 35, at 12–13.

125. Loyal Coshway, Julia Broussard, Kruti Acharya, Karen Fried, Michael E. Msall et al., *Medical Therapy for Inappropriate Sexual Behaviors in a Teen with Autism Spectrum Disorder*, 137 PEDIATRICS 137 (2016).

judicial authorization.¹²⁶ Moreover, courts and guardians often depict compulsory sterilization or contraception as a protective measure in the “best interest” of people with disabilities or necessary for their safety.¹²⁷ To that end, sterilization of people with disabilities is primarily “driven by parents, guardians, and social service providers who are uneasy . . . [that] they will incur the additional burden of caring for the offspring.”¹²⁸ Consequently, women with disabilities, especially those with intellectual disabilities, are significantly more likely than women without disabilities to be sterilized and at younger ages.¹²⁹

Tragically, the COVID-19 pandemic likely exacerbates existing risks to self-determination and autonomy for people with disabilities, meaning that many people with disabilities experience even less reproductive freedom than before the COVID-19 pandemic. Public health laws throughout the COVID-19 pandemic have “enabled coercive interventions in the general population,” such as stay-at-home orders and lockdowns.¹³⁰ At the same time, scholars posit that some

126. Vanessa Volz, *A Matter of Choice: Women with Disabilities, Sterilization, and Reproductive Autonomy in the Twenty-First Century*, 27 WOMEN’S RTS. L. REP. 203, 208 (2006); see also NAT’L WOMEN’S L. CTR., FORCED STERILIZATION OF DISABLED PEOPLE IN THE UNITED STATES 5 (2022), https://nwlc.org/wp-content/uploads/2022/01/f.NWLC_SterilizationReport_2021.pdf [<https://perma.cc/8H6T-V247>] (finding that thirty-one states still have sterilization laws on their books).

127. Powell & Stein, *supra* note 16, at 62–66 (examining court decisions that have authorized sterilization based on the “best interest” standard); see also Justine Wu, Yael Braunschweig, Lisa H. Harris, Willi Horner-Johnson, Susan D. Ernst & Bethany Stevens, *Looking Back While Moving Forward: A Justice-Based, Intersectional Approach to Research on Contraception and Disability*, 99 CONTRACEPTION 267, 269 (2019) (citing studies indicating that guardians often request sterilization to protect disabled women “from pregnancy in the event of sexual assault”).

128. Beverly Horsburg, *Schrödinger’s Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing an Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color*, 17 CARDOZO L. REV. 531, 572 (1996).

129. Justine P. Wu, Michael M. McKee, Kimberly S. McKee, Michelle A. Meade, Melissa Plegue & Ananda Sen, *Female Sterilization Is More Common Among Women with Physical and/or Sensory Disabilities than Women Without Disabilities in the United States*, 10 DISABILITY & HEALTH J. 400, 403 (2017); William Mosher, Rosemary B. Hughes, Tina Bloom, Leah Horton, Ramin Mojtabai & Jeanne L. Alhusen, *Contraceptive Use by Disability Status: New National Estimates from the National Survey of Family Growth*, 97 CONTRACEPTION 552, 556–57 (2018); Henan Li, Monika Mitra, Justine P. Wu, Susan L. Parish, Anne Valentine & Robert S. Dembo, *Female Sterilization and Cognitive Disability in the United States, 2011–2015*, 132 OBSTETRICS & GYNECOL. 559, 561 (2018).

130. See Claire Spivakovsky & Linda Roslyn Steele, *Disability Law in a Pandemic: The Temporal Folds of Medico-Legal Violence*, 31 SOC. & LEGAL STUD. 175, 175 (2022)

people with disabilities experience additional constraints to their self-determination and autonomy.¹³¹ Indeed,

For many people, these public health laws represent their first encounter with the coercive functions of law. For others, contending with law's coercive functions is familiar. For centuries, disabled people—most notably those living with psychosocial disability, intellectual disabilities and other cognitive impairments—have experienced significant restrictions on their freedom of movement, liberty, and association.¹³²

Although the scholarship about the effects of the COVID-19 pandemic on disabled people's autonomy and self-determination is still limited, emergent research indicates some increased risks, primarily related to guardianship.¹³³ According to the National Center on Elder Abuse, the effects of the COVID-19 pandemic, especially remote hearings, facility lockdowns, soaring infection rates, and unexpected deaths, significantly changed the world of adult guardianship for all stakeholders.¹³⁴ In many jurisdictions, remote guardianship proceedings are becoming more common, which can be inaccessible for some people with disabilities and raises significant privacy concerns. Furthermore, some jurisdictions are postponing hearings and changing certain procedures to streamline processes, which may result in some disabled people being unnecessarily subjected to guardianship.¹³⁵ Additionally, throughout the COVID-19 pandemic, guardians ad litem and court visitors—both court-

(discussing how public health laws worldwide during the pandemic placed limitations on people's ability to leave their homes, how many visitors they could have in their homes, where they could travel, and for how long they could leave their homes); see also Muhammad Rahman, Rabab Ahmed, Modhurima Moitra, Laura Damschroder, Ross Brownson & Bruce Chorpita et al., *Mental Distress and Human Rights Violations During COVID-19: A Rapid Review of the Evidence Informing Rights, Mental Health Needs, and Public Policy Around Vulnerable Populations*, 11 FRONTIERS PSYCHIATRY 12–14 (2021) (finding that the state-mandated mobility restrictions in response to COVID-19 disproportionately affected certain vulnerable populations already at risk for mental distress).

131. *Id.*

132. Spivakovsky & Steele, *supra* note 130, at 176.

133. *Id.* at 176–78.

134. NAT'L CTR. ON ELDER ABUSE, ADULT GUARDIANSHIP AND THE COVID-19 PANDEMIC: LESSONS LEARNED 1 (2021), https://ncea.acl.gov/NCEA/media/Publication/NCEA_CovidGuardianshipBrief.pdf [<https://perma.cc/8V54-WTSV>].

135. Kay Wilson, *The COVID-19 Pandemic and the Human Rights of Persons with Mental and Cognitive Impairments Subject to Coercive Powers in Australia*, 73 INT'L J. L. & PSYCHIATRY 1, 5 (2020); NAT'L CTR. ON ELDER ABUSE, *supra* note 134, at 4–5.

appointed to make impartial inquiries and observations about people under guardianship and those being considered for guardianship—have been unable to make in-person visits, likely impacting the information they obtain.¹³⁶ Related, assessments to determine a person’s decision-making capacity before subjecting someone to guardianship are often conducted remotely during the COVID-19 pandemic, raising questions about efficacy and reliability as disabled people often lack broadband internet access and routinely encounter inaccessible online platforms.¹³⁷ The COVID-19 pandemic is also hindering some people’s communication with their guardians, which means guardians may be making decisions without any direct input from the person under guardianship.¹³⁸ Finally, some scholars have noted an increase in disabled people being subjected to guardianship during the COVID-19 pandemic under the auspices that such restrictions were necessary for disabled people’s safety and well-being throughout a public health crisis,¹³⁹ which is particularly troublesome as it is quite challenging to terminate a guardianship once it is in place.¹⁴⁰

D. Parenting Challenges and Threats

Finally, although the Supreme Court has continually upheld that the right to raise a family is a fundamental right protected by the Fourteenth Amendment of the Constitution,¹⁴¹ even before the

136. NAT’L CTR. ON ELDER ABUSE, *supra* note 134, at 4–5.

137. *Id.* at 5–6.

138. *Id.* at 8.

139. Spivakovsky & Steele, *supra* note 130, at 185, 189–91.

140. Jenica Cassidy, *Restoration of Rights in the Termination of Adult Guardianship*, 23 ELDER L.J. 83, 85 (2015) (stating that “[o]nce a guardianship is in place, it can be difficult to modify or terminate, even when such guardianship is no longer necessary”).

141. *See, e.g.*, *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (holding that a state statute authorizing the court to grant visitation rights to third parties over parental objections violated the parent’s due process rights, even when the visitation may serve in the child’s best interest); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (holding that due process requires states to support allegations of neglect with “clear and convincing” evidence before terminating parental rights); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (holding that a stepfather’s adoption of a child did not violate the natural father’s due process rights because he never had actual or legal custody of the child); *Smith v. Org. of Foster Fams. For Equal. & Reform*, 431 U.S. 816, 842 (1977) (finding that a New York statute granting foster parents notice and hearing procedures before removing foster children provided the parents with sufficient due process protections); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (holding that a parent is entitled under due process to a fitness hearing before their custody rights can be taken

COVID-19 pandemic, parents with disabilities experienced significant challenges and threats to the right to raise their children.¹⁴² For example, biases about the competencies of parents with disabilities—reflecting those raised during the Eugenics-era—have resulted in discriminatory child welfare laws, policies, and practices that assume parental unfitness.¹⁴³ In particular, the child welfare system—more accurately termed the family policing system¹⁴⁴—pathologizes, controls, and punishes disabled parents and their children.¹⁴⁵ Disabled parents are more likely than nondisabled parents to be referred to the

from them); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (holding that states do have an interest in a child’s welfare and therefore can prohibit child labor in public places even if this practice is a parental decision based on a religious practice); *Pierce v. Soc’y of Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925) (holding that states cannot mandate public education because parents have the liberty to direct their child’s education under the 14th Amendment); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (holding that a state cannot prohibit schools from teaching classes in languages other than English because parents have the right to control the education of their children as they see fit under the 14th Amendment).

142. Dave Shade, *Empowerment for the Pursuit of Happiness: Parents with Disabilities and the Americans with Disabilities Act*, 16 L. & INEQ. 153, 153–54 (1998) (“Although persons with disabilities have made significant gains in recent years in overcoming the invidious discrimination with which they have long been burdened, the legal rights of parents with disabilities remain in question.”).

143. See generally NAT’L COUNCIL ON DISABILITY, *ROCKING THE CRADLE: ENSURING THE RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN* 15 (2012), https://www.ncd.gov/sites/default/files/Documents/NCD_Parenting_508_0.pdf [<https://perma.cc/9L9X-L5BR>] (“The report provides a comprehensive review of the barriers and facilitators people with diverse disabilities—including intellectual and developmental, psychiatric, sensory, and physical disabilities—experience when exercising their fundamental right to create and maintain families, as well as persistent, systemic, and pervasive discrimination against parents with disabilities. The report analyzes how U.S. disability law and policy apply to parents with disabilities in the child welfare and family law systems, and the disparate treatment of parents with disabilities and their children.”).

144. This Article recognizes the importance of language through the use of the phrase “family policing system” when referring to the multi-agency system historically referred to as the “child welfare” or “child protection” system. See Dorothy Roberts, *Abolish Family Policing, Too*, DISSENT MAG., <https://www.dissentmagazine.org/article/abolish-family-policing-too> [<https://perma.cc/FR5K-JU3M>]. Accordingly, this Article utilizes the term “family policing system,” except when directly quoting others. *Id.*

145. Robyn M. Powell, *Achieving Justice for Disabled Parents and Their Children: An Abolitionist Approach*, 33 YALE J.L. & FEMINISM 43 (2022) (arguing that the family policing system harms disabled parents and their children).

family policing system.¹⁴⁶ Moreover, parents with disabilities, especially parents with intellectual or psychiatric disabilities, suffer disproportionately high rates of termination of parental rights.¹⁴⁷ In addition, children of parents with intellectual or psychiatric disabilities are more likely than other children to be removed from their homes and placed in foster care.¹⁴⁸

Once involved with the family policing system, disabled parents and their children experience a range of injustices. For example, they are less likely than other parents to receive family preservation or reunification services, and when they do receive services,¹⁴⁹ the services are often not tailored to meet their disability-related individual needs.¹⁵⁰ They also encounter pervasive biases and misconceptions that they cannot care for their children, which can result in the family policing system and courts assuming that disabled parents will not be able to benefit from services, and that separation is in the child's best interest.¹⁵¹ Critically, disabled parents of color are at heightened risk of discrimination by the family policing system.¹⁵²

Importantly, the challenges and threats to parenting experienced by disabled people are not limited to the family policing system. For example, disabled parents often experience prejudice within the family law system, including denial of custody or visitation with their children.¹⁵³ Prospective parents with disabilities, meanwhile, are

146. Sasha M. Albert & Robyn M. Powell, *Supporting Disabled Parents and Their Families: Perspectives and Recommendations from Parents, Attorneys, and Child Welfare Professionals*, 15 J. PUB. CHILD WELFARE 530, 530 (2021).

147. *Id.* at 531.

148. *Id.*

149. Int'l Ass'n for the Sci. Stud. of Intell. Disabilities Special Int. Rsch. Grp. on Parents & Parenting with Intell. Disabilities, *Parents Labelled with Intellectual Disability: Position of the IASSID SIRG on Parents and Parenting with Intellectual Disabilities*, 21 J. APPLIED RSCH. INTELL. DISABILITIES 296 (2008) (explaining the experiences of parents with intellectual disabilities); Robyn M. Powell & Joanne Nicholson, *Disparities in Child Protective Services: Commentary on Kaplan et al. (2019)*, 70 PSYCHIATRIC SERVS. 209, 209 (2019) (reviewing disparities experienced by parents with psychiatric disabilities when involved with the child welfare system); NAT'L COUNCIL ON DISABILITY, *supra* note 143, at 71–107 (describing the experiences of parents with disabilities as related to the child welfare system).

150. Phillip A. Swain & Nadine Cameron, 'Good Enough Parenting;' *Parental Disability and Child Protection*, 18 DISABILITY & SOC'Y 165, 170 (2003).

151. Albert & Powell, *supra* note 146, at 531 (2021) (citing studies).

152. See MHATRE, *supra* note 35, at 11–12.

153. Robyn M. Powell, *Family Law, Parents with Disabilities, and the Americans with Disabilities Act*, 57 FAM. CT. REV. 37, 40–41 (2019) (describing the experiences of parents with disabilities involved with the family law system).

routinely discriminated against by adoption and foster care agencies.¹⁵⁴ Moreover, poverty is a persistent issue for disabled parents, adversely impacting access to housing, food, and other necessities.¹⁵⁵ In addition, parents with disabilities often encounter challenges because of pervasive inaccessibility in the community, such as schools, doctor's offices, and public transportation.¹⁵⁶

The COVID-19 pandemic presents significant challenges for parents with disabilities, worsening the many existing inequities they experience.¹⁵⁷ For example, the COVID-19 pandemic considerably impacts how the family policing system operates. In the United States, federal law requires the family policing system to make reasonable efforts to reunify children with their families if removed because of allegations of abuse or neglect.¹⁵⁸ Nevertheless, throughout the COVID-19 pandemic, particularly at the beginning, agencies suspended or considerably altered face-to-face visits between children and their parents as well as other reunification services, with many implementing virtual visits.¹⁵⁹ In addition, some courts closed, causing significant delays in dependency proceedings, while others shifted to virtual hearings.¹⁶⁰

Emerging scholarship, although limited, suggests COVID-19 pandemic-related changes to the family policing system impacted disabled parents and their children in significant ways.¹⁶¹ Critically, before the COVID-19 pandemic, experts opined that disabled parents

154. NAT'L COUNCIL ON DISABILITY, *supra* note 143, at 149–66 (explaining the experiences of prospective parents with disabilities as related to adoption and foster care agencies).

155. *Id.* at 202 (“[T]he most significant difference between parents with disabilities and parents without disabilities is economic . . .”).

156. *Id.* at 60–63. Parents with disabilities and their families continue to experience significant accessibility barriers, even with the requirements of the Rehabilitation Act and the ADA. *Id.* These barriers affect the entire family and impede the abilities of these parents to fulfill their parenting responsibilities. *Id.*

157. NAT'L RSCH. CTR. FOR PARENTS WITH DISABILITIES, PARENTING WITH A DISABILITY DURING COVID-19: INSIGHTS FROM THE #COVIDDISPARENTING TWITTER CHAT, <https://heller.brandeis.edu/parents-with-disabilities/support/parenting-tips-strategies/parenting-covid.html> [<https://perma.cc/LR2T-CEQ8>].

158. 42 U.S.C. § 671(a)(15).

159. Kristen Pisani-Jacques, *A Crisis for a System in Crisis: Forecasting from the Short- and Long-Term Impacts of COVID-19 on the Child Welfare System*, 58 FAM. CT. REV. 955, 956–57 (2020).

160. *Id.* at 958.

161. Munaza Tahir & Virginie Cobigo, *Accessibility of Child Protection Investigations During Pandemic: A Qualitative Analysis of Court Proceedings*, 36 J. APPLIED RSCH. INTELL. DISABILITIES 344 (2022).

and their children must have frequent in-person visitations in the families' homes to accommodate their disability-related needs and ensure opportunities for improving parenting skills.¹⁶² Consequently, changes to family policing system services and visitation likely adversely impact disabled parents and their children, furthering the substantial barriers to reunification they already experienced.¹⁶³ In addition, parents with disabilities already contended with considerable inaccessibility and barriers to effective legal representation during family policing system proceedings,¹⁶⁴ and deviations in how proceedings are carried out during the COVID-19 pandemic further marginalize these families.¹⁶⁵ Significantly, the shift to virtual services, visits, and proceedings requires parents to have a smartphone, computer, or tablet as well as broadband internet services, which many economically disadvantaged people, including disabled people, do not have.¹⁶⁶

Moreover, like parents without disabilities, parents with disabilities have mixed experiences assisting with their children's remote schooling. At the same time, they face more barriers than nondisabled parents.¹⁶⁷ Access barriers, digital illiteracy, and schools denying reasonable accommodations can prevent parents with disabilities from assisting their children with remote instruction.¹⁶⁸ For example, Deaf and hard-of-hearing parents encounter communication barriers,¹⁶⁹ while blind or low-vision parents struggle with inaccessible online education platforms.¹⁷⁰ Moreover, parents with intellectual disabilities

162. NAT'L COUNCIL ON DISABILITY, *supra* note 143, at 139–47.

163. *See* Tahir & Cobigo, *supra* note 161, at 344.

164. *See* NAT'L COUNCIL ON DISABILITY, *supra* note 143, at 125–27.

165. *See* Tahir & Cobigo, *supra* note 161, at 344.

166. Perrin & Atske, *supra* note 63; Tahir & Cobigo, *supra* note 161, at 344.

167. Kristin Gourlay, *Parents with Disabilities Face Extra Hurdles with Kids' Remote Schooling*, NPR (Jan. 23, 2021), <https://www.npr.org/2021/01/23/959613351/parents-with-disabilities-face-extra-hurdles-with-kids-remote-schooling> [<https://perma.cc/7SZ4-PU8W>].

168. *Id.*; Elizabeth A. Steed & Nancy Leech, *Shifting to Remote Learning During COVID-19: Differences for Early Childhood and Early Childhood Special Education Teachers*, 49 EARLY CHILD. EDUC. J. 789, 797 (2021); Aleska Owen, Carli Friedman & Randall Owen, *Parents with Disabilities' Household Access to Educational Devices and Internet During the COVID-19 Pandemic*, 9 J. ONLINE LEARNING RSCH. 101, 110–12 (2023).

169. Gourlay, *supra* note 167.

170. L. Penny Rosenblum, Paola Chanes-Mora, C. Rett McBride, Joshua Flewellen, Niranjani Nagarajan et al., *Impact of COVID-19 on Adults Who Are Blind or Have Low Vision in the United States*, AM. FOUND. BLIND 81 (Sept. 2020), https://afb.org/sites/default/files/2022-03/AFB_Flatten_Inaccessibility_

experience increased stress because of difficulties supporting their children with remote schooling, especially because they also face reductions in formal supports.¹⁷¹

In addition, parents face barriers to meeting their families' basic needs throughout the COVID-19 pandemic. As a whole, people with disabilities are more likely than people without disabilities to experience high levels of stressors, such as food insecurity, housing instability, and unmet health needs,¹⁷² likely exacerbating challenges parents with disabilities encountered before the COVID-19 pandemic. For example, a recent study found that households with disabled members experience increased challenges accessing basic needs, such as food, housing, adequate income, and transportation.¹⁷³ Further, some disabled parents, especially single disabled parents, are concerned about their safety and that of their children because they are stuck at home without outside support, and some worry their parenting abilities are being impacted by their lack of access to healthcare services and other supports.¹⁷⁴ Moreover, parents with intellectual disabilities experience reductions in formal supports, adding significant stress for some families.¹⁷⁵ In addition, some parents with disabilities feel unable to fulfill their parenting obligations because they fear that bringing a personal care assistant into the home will increase the risk of someone in the home contracting COVID-19.¹⁷⁶

Report_Revised-march-2022.pdf?_ga=2.2138613.414693431.1662656510-230111505.1662656510 [https://perma.cc/ED9R-LBAU].

171. Tommie Forslund, Stina Fernqvist & Helena Tegler, *Parents with Intellectual Disability Reporting on Factors Affecting Their Caregiving in the Wake of the COVID-19 Pandemic: A Qualitative Study*, 35 J. APPLIED RSCH. INTELL. DISABILITIES 1380, 1385–86 (2022).

172. Lama Assi, Jennifer Deal, Laura Samuel, Nicholas Reed, Joshua Ehrlich & Bonnielin K. Swenor, *Access to Food and Health Care During the COVID-19 Pandemic by Disability Status in the United States*, 15 DISABILITY & HEALTH J. 101271 (2022); Catherine A. Okoro, Tara W. Strine, Lela McKnight-Eily, Jorge Verlenden & NaTasha D. Hollis, *Indicators of Poor Mental Health and Stressors During the COVID-19 Pandemic, by Disability Status: A Cross-Sectional Analysis*, 14 DISABILITY & HEALTH J. 101110 (2021).

173. Samatha Streuli, Richard S. Garfein, Tommi Gaines & Rebecca Fielding-Miller, *COVID-19 Disproportionately Impacts Access to Basic Needs Among Households with Disabled Members*, DISABILITY & HEALTH J. 101443.

174. Kathryn Wagn, Summer Melody Pennell, Meike Eilert & Stacey R. Lim, *Academic Mothers with Disabilities: Navigating Academia and Parenthood During COVID-19*, 29 GENDER WORK ORG. 342, 346–49 (2021).

175. Forslund et al., *supra* note 172, at 1384–85.

176. Izz Scott Lamagdeleine, *For Physically Disabled Parents, Covid's Trials Are Amplified*, UNDARK (Apr. 26, 2021), <https://undark.org/2021/04/26/physically-disabled-parents-navigating-covid-19> [https://perma.cc/9XQM-V39A].

However, many disabled parents are forced to live in inaccessible homes and cannot afford home modifications that could allow them to be more independent and less reliant on others.¹⁷⁷ Lastly, some parents with disabilities who did not have full custody of their children have suspended their visits because they are immunocompromised and cannot risk getting COVID-19.¹⁷⁸

II. DISABILITY REPRODUCTIVE JUSTICE

The COVID-19 pandemic, along with the increasing assault on reproductive freedom in the United States, is shining a bright light on existing biases, discrimination, and inequities at the intersection of disability and reproduction. Indeed, people with disabilities have endured a long history of threats to their reproductive autonomy, which is worsening throughout the COVID-19 pandemic. Disability reproductive justice provides an ideal foundation for elucidating and confronting these complex and often ignored inequities. Specifically, guided by the tenets of both disability justice and reproductive justice, disability reproductive justice is an emergent jurisprudential and legislative framework that proposes a vision to help activists, scholars, legal professionals, and policymakers respond to the COVID-19 pandemic-related inequities as well as dismantle their structural causes.¹⁷⁹ This Part begins by explaining the disability reproductive justice framework.¹⁸⁰ Thereafter, it makes a case for using a disability reproductive justice approach to confront the reproductive oppression experienced by disabled people throughout the COVID-19 pandemic and beyond.¹⁸¹ As this Part demonstrates, disability reproductive justice is essential for dismantling the deeply rooted reproductive inequities experienced by people with disabilities through law and policy.

A. *Overview of Disability Reproductive Justice*

Disability reproductive justice is an emerging jurisprudential and legislative framework to understand and challenge the reproductive oppression of people with disabilities through law and policy.¹⁸² It

177. NAT'L COUNCIL ON DISABILITY, *supra* note 143, at 196–99.

178. Lamagdeleine, *supra* note 176.

179. I first proposed the disability reproductive justice framework in an Essay published in the Virginia Law Review Online. Powell, *supra* note 16. I have further developed the framework in two Articles, *see* Powell, *supra* note 56, and Powell, *supra* note 94.

180. *See infra* Section II.A.

181. *See infra* Part III.

182. Powell, *supra* note 16, at 261–71; Powell, *supra* note 56; Powell, *supra* note 94.

complements prevailing considerations of reproductive rights and reproductive justice by demonstrating the importance of identifying and confronting the ways that the reproductive oppression of people with disabilities is distinctively engrained in our laws, policies, and collective conscience. Disability reproductive justice is informed by two complementary intersectional social movements, theories, and praxes: disability justice and reproductive justice.

Succinctly, disability justice was initially envisaged in 2005 by a group of queer, trans, and racialized people with disabilities, including Patty Berne, Mia Mingus, Stacey Milbern, Leroy Moore, Eli Clare, and Sebastian Margaret.¹⁸³ As a movement, theory, and praxis, disability justice is based on ten fundamental principles needed to achieve an inclusive and just society for people with disabilities:

intersectionality . . . leadership of those most impacted . . . anti-capitalist politics . . . cross-movement solidarity . . . recognizing wholeness . . . sustainability . . . commitment to cross-disability solidarity . . . interdependence . . . collective access . . . [and] collective liberation.¹⁸⁴

Scholars and activists have coined disability justice as the “second wave” of the disability rights movement.¹⁸⁵ Rooted in intersectionality,¹⁸⁶ it was developed as a “movement-building framework that would center the lives, needs, and organizing strategies of disabled queer and trans and/or Black and Brown people marginalized from mainstream disability rights organizing’s white-

183. LEAH LAKSHMI PIEPZNA-SAMARASINHA, CARE WORK: DREAMING DISABILITY JUSTICE 11 (2018).

184. SINS INVALID, SKIN, TOOTH, AND BONE—THE BASIS OF MOVEMENT IS OUR PEOPLE: A DISABILITY JUSTICE PRIMER 22–26 (2d ed., 2019).

185. Doron Dorfman, *Afterword: The ADA’s Imagined Future*, 71 SYRACUSE L. REV. 933, 935 (2021); see also Patty Berne, *Disability Justice—A Working Draft by Patty Berne*, SINS INVALID (June 9, 2015), <https://www.sinsinvalid.org/blog/disability-justice-a-working-draft-by-patty-berne> [<https://perma.cc/UE22-GXNS>] (explaining that disabled activists of color coalesced to consider a “second wave” of disability rights and ultimately created disability justice).

186. In 1989, Kimberlé Crenshaw coined the term “intersectionality” to help explain the oppression of African-American women. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1 U. CHI. LEGAL F. 139, 140 (1989). Since then, intersectionality has been used to examine how people with multiple marginalized identities or statuses, including multiply marginalized people with disabilities, experience subordination. See, e.g., Beth Ribet, *Surfacing Disability Through a Critical Race Theoretical Paradigm*, 2 GEO. J. L. & MOD. CRIT. RACE PERSP. 209, 211–22 (2010).

dominated, single-issue focus.”¹⁸⁷ Disability justice emerged in response to the disability rights movement and stresses the significance of challenging the needs, experiences, and perspectives of people whom the disability rights movement has largely overlooked (e.g., disabled people of color, people with intellectual disabilities, and people with psychiatric disabilities).¹⁸⁸ Furthermore, “[w]here disability rights seeks to change social conditions for some disabled people via law and policy, disability justice moves beyond law and policy.”¹⁸⁹ As Professor Natalie Chin explains, by centering ableism as the root of disability oppression, disability justice recognizes “the layers of an intricate and purposeful system fueled by a centuries-long history rooted in white supremacy that sanctioned the enslavement, institutionalization, criminalization, and sterilization of Black people for profit, dominance, and control.”¹⁹⁰ Consequently, disability justice “seeks to radically transform social conditions and norms in order to affirm and support all people’s inherent right to live and thrive.”¹⁹¹

Notably, disability justice activists and scholars have long recognized the host of ways that reproduction has been—and continues to be—weaponized to control and subjugate people with disabilities, including through laws and policies that prevent them from deciding if and when to have children.¹⁹² In addition, disability justice activists and scholars recognize that people who live at the intersection of disability and other marginalized identities or statuses face amplified levels of reproductive oppression.¹⁹³ Accordingly, the founders of disability justice realize the inextricable relationship between ableism, racism, and reproductive oppression.¹⁹⁴ For example, in response to the *Dobbs* decision, Sins Invalid, a disability justice performance project, explains,

Ableism’s isolating impact means disabled people are already less likely to find safe options to terminate pregnancies. This context,

187. PIEPZNA-SAMARASINHA, *supra* note 183183, at 15.

188. *Id.*; SINS INVALID, *supra* note 184, at 13; *see also* Powell, *supra* note 108, at 437–38.

189. Talila “TL” Lewis, *Disability Justice Is an Essential Part of Abolishing Police and Prisons*, LEVEL (Oct. 7, 2020), <https://level.medium.com/disability-justice-is-an-essential-part-of-abolishing-police-and-prisons-2b4a019b5730> [<https://perma.cc/MF5C-DY63>].

190. Natalie M. Chin, *Centering Disability Justice*, 71 SYRACUSE L. REV. 683, 696–97 (2021).

191. *Id.*

192. SINS INVALID, *supra* note 184, at 59–63.

193. *Id.*

194. *Id.*

along with the struggle of disabled people to obtain comprehensive sex education and healthcare, means that the overturning of *Roe v. Wade*, like the abortion bans that came before it, will be catastrophic for disabled folks.¹⁹⁵

Sins Invalid further states, “[a]ttempts to ban abortion inevitably lead to non-consensual conversations about women, intersex, trans, and non-binary people’s bodies. In these discussions, we must remember how disability justice values an intersectional analysis which requires us to consider the complexities of reproductive justice in the context of ableism.”¹⁹⁶

Likewise, activists and scholars are increasingly emphasizing the importance of developing responses to the COVID-19 pandemic that are inclusive of disabled people and based on the tenets of disability justice.¹⁹⁷ For example, consistent with disability justice, Professor Natalie Chin explains the importance of incorporating disabled people in developing appropriate policy solutions: “Elevating the voices and leadership of those most impacted by systems of oppression foregrounds the disability narrative and experience. It incorporates into disability rights strategy the lived experience of multiply marginalized people with disabilities, prioritizing the need to ‘engag[e] frontline communities in shaping policy and selecting priorities.’”¹⁹⁸ Further, disability justice focuses on reciprocal or collaborative approaches to care, which have been critical during the COVID-19 pandemic. As Stacey Milbern explained early in the COVID-19 pandemic: “Really, what it takes to flatten the curve is collective action and collective commitment. Interdependence is going to be what saves us, and COVID-19 is the extreme example of this.”¹⁹⁹

195. *Reproductive Justice Is Disability Justice*, *supra* note 70.

196. *Id.*

197. Jennifer C. H. Sebring, Gabriela Capurro, Christine Kelly, Cynthia G. Jardin, Jordan Tustin & S. Michelle Driedger, “None of It Was Especially Easy”: *Improving COVID-19 Vaccine Equity for People with Disabilities*, 113 *CAN. J. PUB. HEALTH* 887, 892–93 (2022); Laura Guidry-Grimes, Katie Savin, Joseph A. Stramondo, Joel Michael Reynolds & Marina Tsaplina et al., *Disability Rights as a Necessary Framework for Crisis Standards of Care and the Future of Health Care*, 50 *HASTINGS CTR. REP.* 28, 28 (2020).

198. Chin, *supra* note 190, at 741 (quoting Angela P. Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 67 *UCLA L. REV.* 758, 810–11 (2020)).

199. Matthew Green, *Coronavirus: How These Disabled Activists Are Taking Matters into Their Own (Sanitized) Hands*, *KQED* (Mar. 17, 2020), <https://www.kqed.org/news/11806414/coronavirus-how-these-disabled-activists-are-taking-matters-into-their-own-sanitized-hands> [https://perma.cc/B36L-56Q4].

Reproductive justice is complementary to disability justice and offers a similarly essential lens for responding to the current threats to reproductive freedom for disabled people during the COVID-19 pandemic, as well as the broader reproductive oppression that disabled people have endured for centuries. Reproductive justice is guided by the international human rights framework and draws from reproductive rights and social justice. It was “conceived in 1994 by feminists of color to conceptualize reproductive rights struggles embedded in social justice organizing that simultaneously challenged racism and classism, among other oppressions.”²⁰⁰ Similar to disability justice, reproductive justice is rooted in intersectionality and an “understanding that the impacts of race, class, gender, and sexual identity oppressions are not additive but integrative.”²⁰¹

Reproductive justice, like disability justice, deviates from individualist approaches to equity. Specifically, reproductive justice emerged as a movement because the reproductive rights movement traditionally excluded women of color and members of other historically marginalized groups, whereas disability justice was created in response to the disability rights movement and its limitations.²⁰² Consequently, reproductive justice transcends our traditional understanding of reproductive rights in two meaningful ways. First, it stresses the importance of choice while simultaneously understanding the broader social, legal, and institutional structures that influence people’s reproductive decision-making.²⁰³ Second, it concerns all areas

Tragically, Stacey Milbern passed away shortly after this interview. Neil Genzlinger, *Stacey Milbern, a Warrior for Disability Justice, Dies at 33*, N.Y. TIMES (Jun. 6, 2020), <https://www.nytimes.com/2020/06/06/us/stacey-milbern-dead.html> (last visited May 17, 2023).

200. Zakiya Luna & Kristin Luker, *Reproductive Justice*, 9 ANN. REV. L. & SOC. SCI. 327, 328 (2013).

201. LORETTA J. ROSS & RICKIE SOLINGER, REPRODUCTIVE JUSTICE: AN INTRODUCTION 73–74 (2017).

202. *Id.* at 75.

203. Loretta Ross, *What Is Reproductive Justice?*, in REPRODUCTIVE JUSTICE BRIEFING BOOK: A PRIMER ON REPRODUCTIVE JUSTICE AND SOCIAL CHANGE 4 (2007), <https://www.law.berkeley.edu/php-programs/courses/fileDL.php?fid=4051> [<https://perma.cc/N8YZ-E67A>] (“Moving beyond a demand for privacy and respect for individual decision making to include the social supports necessary for our individual decisions to be optimally realized, this framework also includes obligations from our government for protecting women’s human rights. Our options for making choices have to be safe, affordable and accessible, three minimal cornerstones of government support for all individual life decisions.”).

of reproductive freedom rather than just abortion rights.²⁰⁴ Thus, reproductive justice “includes not only a woman’s right not to have a child, but also the right to have children and to raise them with dignity in safe, healthy, and supportive environments.”²⁰⁵ Like disability justice, reproductive justice also moves beyond a rights-based approach and calls for “an integrated approach that draws on constitutional protections and movement-based policy strategies.”²⁰⁶

Consequently, disability reproductive justice, guided by both disability justice and reproductive justice, demands legal and policy solutions to finally confront the reproductive oppression of disabled people that has endured throughout history. Notably, because the weaponization of disabled people’s reproduction is deeply rooted in our laws, policies, and collective conscience, disability reproductive justice incorporates a multifaceted approach to challenging these injustices. Specifically, it acknowledges that an interdisciplinary and interprofessional response that engages all fields of expertise, including law, medicine, public health, social work, and organizing, among others, is fundamental. But, more importantly, disability reproductive justice stresses the necessity of directly engaging people with disabilities in all legal and policy responses.

B. The Significance of Disability Reproductive Justice

Although they have endured pervasive and persistent reproductive oppression, people with disabilities are traditionally excluded from public and scholarly discourse about reproductive freedom.²⁰⁷ Yet, as this Article demonstrates, the reproductive injustices that people with disabilities experience through the COVID-19 pandemic are the consequences of long-lasting and deeply rooted biases and inequities engrained in our laws, policies, and collective conscience. Disability reproductive justice provides an ideal foundation for elucidating and

204. *Id.* (“Instead of focusing on the means—a divisive debate on abortion and birth control that neglects the real-life experiences of women and girls—the Reproductive Justice analysis focuses on the ends: better lives for women, healthier families, and sustainable communities.”).

205. Dorothy Roberts, *Reproductive Justice, Not Just Rights*, DISSENT (2015), <https://www.dissentmagazine.org/article/reproductive-justice-not-just-rights> [<https://perma.cc/B3MG-SHRP>]; see also Luna & Luker, *supra* note 200200, at 343 (explaining that “reproductive justice is equally about the right to not have children, the right to have children, the right to parent with dignity, and the means to achieve these rights.”).

206. Priscilla A. Ocen, *Incapacitating Motherhood*, 51 U.C. DAVIS L. REV. 2191, 2240 (2018).

207. Powell, *supra* note 16, at 256–57.

confronting these complex and often ignored challenges. To do so, it offers a vision to help activists, scholars, legal professionals, and policymakers conceive of and articulate a paradigm shift that supports the coalescence of the disability justice and reproductive justice and rights movements.

Critically, disability reproductive justice encompasses five principles that activists, scholars, legal professionals, and policymakers must incorporate to address people with disabilities' immediate reproductive needs throughout the COVID-19 pandemic, as well as a path forward for dismantling the roots of longstanding reproductive inequities that disabled people experience. First, legal and policy responses must be targeted at challenging the intersecting oppressions experienced by people who live at the intersection of disability and other historically marginalized identities or statuses.²⁰⁸ Second, activists, scholars, legal professionals, and policymakers must intentionally include disabled people in advocacy and analysis concerning reproductive freedom.²⁰⁹ Third, legal and policy responses must be developed and implemented to protect people with disabilities' rights to autonomy and self-determination.²¹⁰ Fourth, sexual and reproductive health services and information must be accessible and inclusive for all disabled people.²¹¹ Finally, people with disabilities must be guaranteed rights, justice, and wellness for themselves and their families.²¹² Based on these principles, in the next Part, I suggest legal and policy solutions that respond to the reproductive inequities experienced by people with disabilities throughout the COVID-19 pandemic and a way forward for challenging and dismantling the roots of longstanding reproductive inequities that disabled people have endured. I also identify issues requiring further attention and inquiry. Considering the converging threats to reproductive freedom the United States faces, a transformative and inclusive vision that finally achieves and delivers reproductive freedom for disabled people is crucial.

III. APPLYING DISABILITY REPRODUCTIVE JUSTICE TO ACHIEVE

208. Powell, *supra* note 56, at 1887.

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

REPRODUCTIVE FREEDOM DURING COVID-19 AND BEYOND

As demonstrated throughout this Article, people with disabilities—a group comprising approximately sixty-one million people, or twenty-six percent of people in the United States²¹³—are disproportionately and devastatingly harmed by the COVID-19 pandemic, including in the context of reproductive freedom. At the same time, these inequities continue long-lasting and deeply entrenched problems in our laws, policies, and collective conscience. As such, a multifaceted legal and policy response addressing disabled people’s immediate reproductive needs during the COVID-19 pandemic and the deeply rooted structures that have caused such inequities is imperative. Therefore, applying disability reproductive justice, this Part considers legal and policy solutions to respond to the reproductive inequities experienced by people with disabilities throughout the COVID-19 pandemic, as well as a way forward for challenging and dismantling the roots of longstanding reproductive injustices that disabled people have endured for far too long. This Part also identifies areas warranting further attention and inquiry. Although a complete agenda is beyond this Article’s scope, this Part offers general principles that activists, scholars, legal professionals, and policymakers must recognize and describes several critical solutions worthy of consideration.

A. Legal and Policy Considerations

During the COVID-19 pandemic, disabled people endure significant reproductive oppression rooted in ableist social, legal, and policy structures. Consequently, legal and policy responses are needed to address both disabled people’s immediate needs and to confront the roots of the reproductive oppression they have endured over time. First, attention to the widespread reproductive health and healthcare inequities that people with disabilities face during the COVID-19 pandemic is crucial. For example, activists, scholars, legal professionals, and policymakers should address the increasing economic insecurity experienced during the COVID-19 pandemic—which is affecting disabled people’s access to reproductive healthcare. Moreover, this includes preventive care—vis-à-vis the expansion of financial assistance, increased health insurance benefits, and greater

213. Catherine A. Okoro, NaTasha D. Hollis, Alissa C. Cyprus, & Shannon Griffin-Blake, *Prevalence of Disabilities and Health Care Access by Disability Status and Type Among Adults—United States, 2016*, 67 CDC: MORBIDITY & MORTALITY WKLY. REP. 882, 882 (2018).

employment opportunities. Increased access to transportation is also needed to ensure access to reproductive healthcare.

Consideration must also be given to how changes in the delivery of reproductive healthcare, especially pregnancy care, affect disabled people, who are already at increased risk of pregnancy, delivery, and postpartum complications. For example, activists, scholars, legal professionals, and policymakers must ensure that reproductive healthcare, including telehealth, is fully accessible and compliant with federal disability rights laws. To that end, the U.S. Departments of Justice (DOJ) and Health and Human Services Office for Civil Rights (“OCR”) should issue guidance reminding reproductive healthcare providers about their legal mandates, even during the COVID-19 pandemic, under Section 504,²¹⁴ the ADA,²¹⁵ Section 1557 of the ACA.²¹⁶ Such guidance must address how healthcare and resource allocation policies, hospital visitor policies, and other policies pertain to reproductive healthcare for disabled people. Moreover, the OCR and DOJ must increase their investigation and enforcement efforts to ensure that reproductive healthcare providers comply with their legal mandates concerning disabled people during the COVID-19 pandemic. States should also implement policies prohibiting discrimination against people with disabilities, including prohibiting rationing healthcare and resources during an emergency and allowing visitors. Further, activists, scholars, legal professionals, and policymakers must ensure that out-of-hospital births (e.g., homebirths) are available to disabled people, including amending Medicaid policies.

Though responding to the reproductive health and healthcare inequities during the COVID-19 pandemic must be prioritized, laws and policies should also respond to the structures that caused these longstanding injustices. Reproductive health and healthcare inequities are deeply rooted in ableist structures and are based on a history of mistreatment and oppression by the healthcare system. Notwithstanding federal disability rights, discrimination by reproductive healthcare providers remains a significant barrier to accessing care. Accordingly, legal and policy responses should address the attitudinal, communication, physical, policy, programmatic, social, and transportation barriers impacting disabled people’s access to

214. Rehabilitation Act of 1973, 29 U.S.C. §§ 701-796.

215. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–12213.

216. Patient Protection and Affordable Care Act, 42 U.S.C. § 18116(a); 45 C.F.R. §§ 92.102–105.

reproductive healthcare. The DOJ and the OCR must prioritize investigating and enforcing complaints of violations of federal disability rights laws by reproductive healthcare providers. The federal agencies should also issue updated guidance on reproductive healthcare providers' legal responsibilities, including how the ADA, Section 504, and Section 1557 of the ACA intersect. In addition, the federal government must finally enact regulations concerning medical diagnostic equipment (e.g., examination tables, examination chairs, weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes).²¹⁷ Reproductive telehealth should also be expanded and made accessible for disabled people, and such efforts should include expanding access to broadband internet.²¹⁸ Congress should also allocate additional Medicaid funding for telehealth sexual and reproductive health services.²¹⁹ Comprehensive health insurance is also essential to

217. Elizabeth Pendo, *The Costs of Uncertainty: The DOJ's Stalled Progress on Accessible Medical Equipment Under the Americans with Disabilities Act*, 12 ST. LOUIS U. J. HEALTH L. & POL'Y 351, 355–59 (2019) (reviewing regulatory and legislative attempts to issue standards for accessible medical diagnostic equipment).

218. Gabriela Weigel, Brittni Frederiksen, Usha Ranji & Alina Salganicoff, *Telemedicine in Sexual and Reproductive Health*, KAISER FAM. FOUND. (Nov. 22, 2019), <https://www.kff.org/womens-health-policy/issue-brief/telemedicine-in-sexual-and-reproductive-health> [<https://perma.cc/7A29-9LU7>] (describing the ways that reproductive telehealth services can help address unmet reproductive health needs, especially for rural populations); NAT'L P'SHIP FOR WOMEN & FAMILIES, *DELIVERING ON THE PROMISE OF TELEHEALTH: HOW TO ADVANCE HEALTH CARE ACCESS AND EQUITY FOR WOMEN* 14 (Mar. 2021), <https://www.nationalpartnership.org/our-work/resources/health-care/delivering-promise-telehealth.pdf> [<https://perma.cc/NRS2-76CG>] (recommending “[b]uild[ing] equity, accessibility, and flexibility into telehealth systems so that patients get the care they need, when they need it[,]” including people who are Deaf or blind and have access needs); see also Kathryn Wagner, *Healthcare Justice for Women with Disabilities: The Need for Integrative Primary Care Services and Education for Medical Providers*, 77 SEX ROLES 430, 431 (2017) (noting that integration of telehealth and online education about sexual health will increase access to healthcare for women with disabilities living in rural areas); George M. Powers, Lex Frieden & Vinh Nguyen, *Telemedicine: Access to Health Care for People with Disabilities*, 17 HOUS. J. HEALTH L. & POL'Y 7, 12–13 (2017) (explaining that telemedicine's dependence on broadband internet technology is a barrier to telemedicine's adoption, especially for people living in rural areas and people with disabilities).

219. See generally Fabiola Carrión, Catherine McKee & Liz McCaman, *Medicaid Coverage of Family Planning Services Delivered via Telehealth*, NAT'L HEALTH L. PROGRAM (Dec. 16, 2020), <https://healthlaw.org/wp-content/uploads/2020/12/20-12-15.-Medicaid-coverage-of-telehealth-services-in-family-planning.pdf> [<https://perma.cc/H8JE-9XB�>] (recommending increased coverage of telehealth family planning services for Medicaid beneficiaries).

improving reproductive health and healthcare outcomes for people with disabilities. Finally, Congress should swiftly pass the Reproductive Health Care Accessibility Act, which aims to reduce barriers to reproductive healthcare for people with disabilities by funding training programs for healthcare providers, expanding the reproductive healthcare workforce to include more people with disabilities, expanding education programs about the reproductive healthcare needs of people with disabilities, establishing a technical assistance center on reproductive healthcare for people with disabilities, and mandating a study about reproductive healthcare for people with disabilities.²²⁰

Second, activists, scholars, legal professionals, and policymakers must focus on improving access to information, contraception, and abortion care through the COVID-19 pandemic and beyond. For example, schools must ensure that students with disabilities receive inclusive and accessible sex education throughout the COVID-19 pandemic, including students who are being educated remotely. Additionally, the U.S. Department of Education should develop standards for sex education for students with disabilities. Further, healthcare providers and disability services providers must guarantee that people with disabilities receive continuing and comprehensive information about sexuality and reproduction.

Moreover, medication abortion, which is becoming increasingly popular, must be made widely available and affordable.²²¹ At the same time, its fate is now in the hands of the Supreme Court, following conflicting rulings by federal judges concerning Mifepristone, the first of two medications used in terminating pregnancies, which has been approved by the U.S. Food & Drug Administration (FDA) since 2000.²²² Nonetheless, legal scholars posit that all is not lost. For example, they suggest that the FDA could exercise its enforcement discretion, which would allow the agency to “provide safe harbor for technical violations

220. Reproductive Health Care Accessibility Act, S. 4746, 117th Cong. (2020–21).

221. Rachel Rebouché & Ushma Upadhyay, *Online Clinics Show Abortion Access Can Survive State Restrictions and Roe v. Wade Threat*, USA TODAY (Apr. 12, 2021, 5:01 AM), <https://www.usatoday.com/story/opinion/2021/04/12/medication-abortion-rights-protected-online-clinics-column/7106777002> [<https://perma.cc/9L2M-J3WT>]; see also *Medication Abortion*, GUTTMACHER INST. (last updated Feb. 6, 2023), <https://www.guttmacher.org/state-policy/explore/medication-abortion> [<https://perma.cc/MF2H-USCD>] (noting that medication abortion accounted for more than half of all abortions in the United States in 2020).

222. Adam Liptak, *Supreme Court Briefly Preserves Broad Availability of Abortion Pill*, N.Y. TIMES (Apr. 14, 2023), <https://www.nytimes.com/2023/04/14/us/politics/supreme-court-abortion-pill.html> (last visited May 17, 2023).

of the law.”²²³ That is, the agency could announce that it would not pursue action against the entities that market or dispense the medication. Thus, it is imperative that access to medication be prioritized for disabled people during and beyond the COVID-19 pandemic.

In addition, as previously mentioned, reproductive healthcare providers, including abortion providers, must ensure their services are fully accessible for disabled people. Telehealth, including telehealth abortion care, must be covered by health insurers, including Medicaid, and be fully accessible to people with disabilities. Financial and transportation barriers must also be addressed. Further, Congress must pass legislation to ensure abortion is a legal right in the United States and repeal the Hyde Amendment, which prohibits Medicaid from being used for abortion.²²⁴ To that end, Congress should swiftly pass the Equal Access to Abortion Coverage in Health Insurance (“EACH”) Act, which would end the Hyde Amendment and related abortion funding restrictions in Medicaid and other government health insurance plans.²²⁵ Further, states must allocate funding for abortion services for people with disabilities who receive Medicaid or Medicare. Additionally, states must ensure that efforts to expand access to contraception and abortion address the needs of disabled people. Likewise, abortion funds and other organizations that support people seeking abortions must ensure that their efforts are accessible for people with disabilities, such as offering accessible transportation or

223. David S. Cohen, Greer Donley & Rachel Rebouché, *To Protect Abortion Access, the FDA Should Decline to Enforce a Mifepristone Ban*, *GUARDIAN* (Apr. 12, 2023), <https://www.theguardian.com/commentisfree/2023/apr/12/to-protect-abortion-access-the-fda-should-decline-to-enforce-a-mifepristone-ban> [https://perma.cc/9WGY-GXP2].

224. See Hyde Amendment, 94 Pub. L. No. 439, 90 Stat. 1418 (1976). For information on the Hyde Amendment, see generally Alina Salganicoff, Laurie Sobel & Amrutha Ramaswamy, *The Hyde Amendment and Coverage for Abortion Services*, *KAISER FAM. FOUND.* (Mar. 5, 2021), <https://www.kff.org/womens-health-policy/issue-brief/the-hyde-amendment-and-coverage-for-abortion-services> [https://perma.cc/5BBM-Z5ST].

225. Equal Access to Abortion Coverage in Health Insurance Act of 2021, H.R. 2234, 117th Cong. (2021–22); see also *EACH Act Would Remove Major Economic Barriers to Abortion Access in the U.S.*, *CTR. FOR REPRODUCTIVE RTS.* (Mar. 25, 2021), <https://reproductiverights.org/each-act-would-remove-major-economic-barriers-to-abortion-access-in-the-us> [https://perma.cc/6DJJ-TFXE] (noting that the EACH Act would reverse the Hyde Amendment and allow abortion to be covered under federal health insurance programs like Medicaid).

sign language interpreters.²²⁶ Notably, on the federal level, the Biden-Harris Administration has communicated a “commit[ment] to codifying *Roe v. Wade*.”²²⁷ The proposed Women’s Health Protection Act (“WHPA”)²²⁸ provides one opportunity. Although WHPA passed the House of Representatives in September 2021, the Senate voted against the bill in February 2022.²²⁹ If enacted, WHPA would protect abortion providers’ right to offer services and patients’ right to receive care while limiting restrictions that states can pass.²³⁰

Third, activists, scholars, legal professionals, and policymakers must guarantee that people with disabilities are afforded autonomy and self-determination throughout the COVID-19 pandemic and beyond. For example, during the COVID-19 pandemic, increased oversight and consideration must be given to ensuring that disabled people’s autonomy and self-determination are not being threatened by changes relating to guardianship. Long-term activists, scholars, legal professionals, and policymakers must advocate for abolishing guardianship. Significantly, legislative efforts are underway to confront the injustice imposed on disabled people because of guardianship. For example, disability rights advocates are pushing state legislatures to implement supported decision-making as a less restrictive alternative

226. See, e.g., *Reproductive Justice & Disability Justice Are One and the Same*, WNYC (Aug. 23, 2022), <https://www.wnycstudios.org/podcasts/takeaway/segments/reproductive-and-disability-justice> [<https://perma.cc/A8TU-X8WX>] (interviewing disability and reproductive justice activists who describe ways that abortion funds can include people with disabilities).

227. See Press Release, The White House, Statement from President Biden and Vice President Harris on the 48th Anniversary of *Roe v. Wade* (Jan. 22, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/22/statement-from-president-biden-and-vice-president-harris-on-the-48th-anniversary-of-roe-v-wade> [<https://perma.cc/R3G2-EP7F>] (“We are deeply committed to making sure everyone has access to . . . reproductive healthcare—regardless of income, race, zip code, health insurance status, or immigration status.”); Kate Smith, *Biden Pledged to Make Roe v. Wade “The Law of the Land,”* CBS NEWS (Oct. 6, 2020), <https://www.cbsnews.com/news/biden-roe-v-wade-law-land-supreme-court-supporters> [<https://perma.cc/XBU8-5NMQ>] (noting that, during the Presidential campaign, then-candidate Biden pledged to codify *Roe v. Wade* if the Supreme Court overturned the right to abortion care).

228. Women’s Health Protection Act of 2022, H.R. 8296, 117th Cong. (2021–22).

229. Shawna Mizelle, Ali Zaslav & Ted Barrett, *Senate Republicans Block Bill that Would Preserve the Right to Abortion*, CNN (Feb. 28, 2022), <https://www.cnn.com/2022/02/28/politics/senate-vote-womens-health-protection-act-abortion/index.html> [<https://perma.cc/29RL-NW5T>].

230. H.R. 8296, § 4(a)–(b). Specifically, the Act preempts state restrictions on abortion telemedicine, unless the restriction is generally applicable, as well as in-person requirements unless the in-person visit is medically necessary. *Id.*

to guardianship.²³¹ Concisely, supported decision-making allows people with disabilities greater autonomy and self-determination in their choices while receiving help with decision making from people they prefer and trust.²³² Supported decision making “does not require court involvement and can be coupled with other legal tools, such as powers of attorney and advance health care directives, that promote self-determination and autonomy.”²³³ Notably, a bipartisan group in Congress has expressed interest in addressing guardianship abuse.²³⁴

Moreover, legal and policy responses are necessary to dismantle the “school-to-guardianship pipeline.”²³⁵ Specifically, although guardianship results in a significant deprivation of autonomy and self-determination, “it is often imposed as a matter of course.”²³⁶ For example, schools and healthcare providers often push parents to seek appointments as guardians upon their children turning eighteen-years-old.²³⁷ Hence, although guardianship was intended to be a last resort, it is ostensibly often the first resort, which can have devastating and long-lasting effects. Indeed, courts often “approve guardianship petitions without asking many questions. And once a guardianship is created, it can be almost impossible to undo.”²³⁸ Consequently, safeguarding autonomy and self-determination requires activists,

231. *U.S. Supported Decision-Making Laws*, CTR. FOR PUB. REP., <https://supporteddecisions.org/resources-on-sdm/state-supported-decision-making-laws-and-court-decisions> [<https://perma.cc/2SJ7-RVQR>] (listing states that have implemented supported decision-making).

232. *About Supported Decision-Making*, CTR. FOR PUB. REP., <https://supporteddecisions.org/about-supported-decision-making> [<https://perma.cc/E4MV-USTW>].

233. *Statement from Disability Justice and Supported Decision-Making Advocates: Britney Spears Spotlights the Need for Change Now*, CTR. FOR PUB. REP. (Jun. 25, 2021), <https://supporteddecisions.org/2021/06/25/britney-spears> [<https://perma.cc/5ZTA-6QM8>].

234. Veronica Stracqualursi, *Lawmakers Unveil Bipartisan Bill to ‘Free Britney,’ Targeting Conservatorships’ Abuse*, CNN (Jul. 20, 2021), <https://www.cnn.com/2021/07/20/politics/free-act-conservatorships-britney-spears/index.html> [<https://perma.cc/7R8Y-7JEB>] (describing efforts by Congress to address guardianship abuse).

235. *Turning Rights into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*, NAT’L COUNCIL ON DISABILITY, 35 (2019), https://ncd.gov/sites/default/files/NCD_Turning-Rights-into-Reality_508_0.pdf (last visited May 17, 2023).

236. *Supported Decision Making & the Problems of Guardianship*, ACLU, <https://www.aclu.org/issues/disability-rights/integration-and-autonomy-people-disabilities/supported-decision-making> [<https://perma.cc/7EB8-P2VW>].

237. *Id.*

238. *Id.*

scholars, legal professionals, and policymakers to challenge the school-to-guardianship pipeline.

Finally, attention to the threats and challenges experienced by disabled parents during the COVID-19 pandemic and beyond warrants immediate attention. Activists, scholars, legal professionals, and policymakers must finally confront the significant discrimination they face from the family policing system. Short-term, this requires ensuring that families receive appropriate and accessible reunification services during the COVID-19 pandemic that comply with federal disability rights laws. Long-term, Congress should pass the Equality for Families with Disabilities Act, which aims to eliminate discrimination by the family policing system against disabled parents and their children.²³⁹

Attention must also be given to addressing the causes of these inequities, including supporting families so that they can avoid family policing system involvement. In addition, as the COVID-19 pandemic highlights, schools are often inaccessible to parents with disabilities, impacting their abilities to participate in their children's education. This must be addressed by greater enforcement of federal disability rights laws. Finally, activists, scholars, legal professionals, and policymakers must confront and address the pervasive economic insecurities experienced by disabled parents and their children, including expanding financial assistance and other benefits.

B. Areas for Future Inquiry

The COVID-19 pandemic is laying bare existing reproductive inequities and is forcing a reckoning with the consequences of allowing such inequities to endure. At the same, information remains limited, and many questions persist for activists, scholars, legal professionals, and policymakers. First, research, especially empirical research, is urgently needed to understand how the COVID-19 pandemic impacts access to reproductive healthcare and outcomes for disabled people. Information about the effects of COVID-19 policies on disabled people's reproductive healthcare is necessary. For example, has the shift to telehealth affected disabled people's access to reproductive healthcare? Also, research on pregnancy, delivery, and postpartum experiences of people with disabilities throughout the COVID-19 pandemic is important. Further, researchers should study the reproductive health experiences of people who live at the intersection of disability and other marginalized statuses or identities throughout the COVID-19 pandemic. In addition, research about

239. Equality for Families with Disabilities Act, H.R. 8335, 117th Cong. (2021–22).

reproductive healthcare providers' compliance with federal disability rights laws during the COVID-19 pandemic, including implementation and enforcement barriers.

Second, research about people with disabilities' access to information, contraception, and abortion care throughout the COVID-19 pandemic is necessary. For example, researchers should study how sex education for students with disabilities is delivered during the COVID-19 pandemic. Are there differences in access and outcomes? How are sex educators accommodating disabled students? Further, information is needed on how the COVID-19 pandemic affects disabled people's access to contraception and abortion care. For example, what barriers to contraception and abortion are disabled people encountering, and how are federal disability rights laws and policies affecting these barriers? How, if at all, are these barriers different from before the COVID-19 pandemic? What are the effects? Is the *Dobbs* decision further impacting disabled people, and if so, how?

Third, information about how the COVID-19 pandemic affects disabled people's autonomy and self-determination is needed. For example, researchers should study how, if at all, guardianship procedures are being altered because of the COVID-19 pandemic and what the effect is on disabled people. Is there an increase in the appointment of guardians? How are courts conducting oversight of guardians? How are remote guardianship proceedings affecting people with disabilities, and how are their disability-related access needs accommodated?

Finally, research concerning the COVID-19 pandemic and threats and challenges for disabled parents is crucial. For example, what are the long-term outcomes of the COVID-19 pandemic on disabled parents and their children? How, if at all, is the family policing system accommodating the needs of disabled parents and their children, including compliance with federal disability rights laws? Have family policing system outcomes for parents with disabilities and their children changed during the COVID-19 pandemic? What are disabled parents' experiences assisting their children with remote schooling? What issues are disabled parents facing during the COVID-19 pandemic, and how are they different from before? Are federal disability rights laws effectively protecting the rights of disabled parents throughout the COVID-19 pandemic?

Ultimately, research about what lessons are being learned during the COVID-19 pandemic that can be used to ensure reproductive freedom for people with disabilities in the future is essential. These are only a few of many areas needing further inquiry. Critically, consistent with

disability reproductive justice, research about these issues must involve the voices of disabled people, who are the experts on their lives. Finally, activists, scholars, legal professionals, and policymakers must always include the needs and experiences of people with disabilities in their research and advocacy concerning COVID-19 and reproductive freedom.

CONCLUSION

COVID-19 is devastating the lives of millions of people, both in the United States and across the globe. The pandemic has been particularly shattering for people with disabilities and other historically marginalized groups, exposing longstanding and pervasive social and health inequities. In particular, the COVID-19 pandemic is shining a bright light on the depth of existing biases, discrimination, and inequities that has caused the widespread reproductive oppression of people with disabilities. As such, activists, scholars, legal professionals, and policymakers must finally confront the reproductive oppression of disabled people that has endured throughout history and which is being exacerbated during the COVID-19 pandemic. This Article offers legal and policy solutions that can respond to disabled people's immediate reproductive needs during the COVID-19 pandemic, as well as a path forward for dismantling the roots of the longstanding reproductive inequities they have endured for far too long.