United States House of Representatives
Committee on the Judiciary
What's Next: The Threat to Individual Freedoms in a Post-*Roe* World
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Thank you for the opportunity to submit testimony to the Committee on the Judiciary regarding the threat to individual freedoms in a post-*Roe* world. My name is Sarah Warbelow, and I am the legal director at the Human Rights Campaign, America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ+) equality. It is both an honor and a privilege to submit this testimony on behalf of our over 3 million members and supporters nationwide regarding the potential impact of the *Dobbs* decision on LGBTQ+ rights. I was born in a post-*Roe* world to a mother who fought for her five daughters' reproductive rights and loved us all the more for being able to choose us. I am shaken to my core by the end of *Roe*.

Dobbs v. Jackson was primed from the start to result in the overturning of *Roe v. Wade* and *Planned Parenthood v. Casey* while throwing into tumult substantive due process jurisprudence more generally. This decision is a radical rejection of fifty years of precedent, upending a settled body of case law upon which millions of Americans rely. Losing *Dobbs* is a tremendous loss for the LGBTQ+ community, who need abortions and equal access to safe and compassionate healthcare. It is also an alarming development with potential consequences for other cases establishing constitutional protections for LGBTQ+ people. *Dobbs* represents one of the most significant blows to civil rights in a generation.

Immediate Impact of Dobbs on the LGBTQ+ Community

Loss of abortion access is devastating to women, including lesbian and bisexual women, transgender men, and nonbinary people. Contrary to popular belief, many members of the LGBTQ+ community need access to abortion care.[1] Data derived from the National Survey of Family Growth shows that LGBTQ+ women who have been pregnant are more likely to have had unwanted or mistimed pregnancies than heterosexual women and are more likely to need abortion services as well. Lesbian (22.8%) and bisexual (27.2%) women who have been pregnant are more likely than heterosexual women (15.4%) who have been pregnant to have had an abortion.[2] Furthermore, their pregnancies are more likely to be the result of violence. Reproductive rights are LGBTQ+ rights. LGBTQ+ people need and deserve access to the full

[1] Human Rights Campaign, *LGBTQ+ People & Roe v Wade* (2022), https://hrc-prod-requests.s3-us-west-2.amazonaws.com/FACT-SHEET_-LGBTQ-PEOPLE-ROE-V-WADE.pdf.
[2] *Id.*

range of family planning and reproductive health services – including access to abortion, contraception, and fertility services – so they can decide if they wish to become parents and when to do so. All told, it will take years to fight through, untangle, and unwind the damage that this decision is causing across numerous states.

Dobbs Majority Opinion Implications for Lawrence and Obergefell

The majority in *Dobbs* emphasized that it did not view the decision to overturn *Roe* as impacting the rationale or result in other substantive due process cases. In the leaked draft, Alito wrote that

> "to ensure that our decision is not misunderstood or mischaracterized, we emphasize that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion."[3]

The final opinion builds upon that language by declaring

> "we have stated unequivocally that '[n]othing in this opinion should be understood to cast doubt on precedents that do not concern abortion.'. . . It is hard to see how we could be clearer. Moreover, even putting aside that these cases are distinguishable, there is a further point that the dissent ignores: Each precedent is subject to its own stare decisis analysis. . . ."[4]

The majority responds to the concerns voiced by the dissent and presumably the American public. However, it is important to note that while the majority criticizes the dissent for a perceived failure to distinguish the state interest in *Roe* from the state interest in other cases, the majority itself fails to engage in a meaningful analysis of what now distinguishes *Dobbs* from other substantive due process cases except to point to 'fetal life.'[5]

Frustratingly, the *Dobbs* opinion obliquely references *Lawrence v. Texas* and *Obergefell v. Hodges* as examples of the Court correctly rejecting *stare decisis* to overturn prior precedent.[6] While it is true that *Lawrence* overturned *Bowers v. Hardwick*[7] and *Obergefell* overturned *Baker v. Nelson*,[8] those decisions are not meaningfully comparable to the Court's action in *Dobbs*. Both

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[3] Politico, *Leaked Draft of Dobbs v. Jackson Women's Health Org.* at 62 (May 5, 2022), https://www.politico.com/news/2022/05/02/read-justice-alito-initial-abortion-opinion-overturn-roe-v-wade-pdf-00029504.
[4] *Dobbs v. Jackson Women's Health Org.*, 579 U.S. ___ , 71 (2022).
[5] *Dobbs*, 597 U.S. at 37.
[6] *Dobbs*, 597 U.S. at 41.
[7] *Lawrence v. Texas*, 539 U.S. 558, 578 (2003).
[8] *Obergefell v. Hodges*, 576 U.S. 644, 675 (2015).

Lawrence and *Obergefell* expanded the realm of individual rights and recognized that prior decisions reflected animus to and exclusion of LGBTQ+ people. By contrast, the Court in *Dobbs* stripped away the rights of women and LGBTQ+ people to have control over when and whether to bear a child by overturning *Roe*.

Moreover, *Obergefell* is situated within a different vein of substantive due process. It most closely ties back to *Loving v. Virginia* and its progeny including *Zablocki v. Redhail*[9] and *Turner v. Safley*.[10] In *Loving*, the Court determined that restricting the ability of interracial couples to marry violated both the equal protection clause and the due process clause of the Fourteenth Amendment.[11] Notably, Chief Justice Warren wrote in *Loving* that "[u]nder our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State."[12] Nearly fifty years after *Loving*, the Supreme Court in *Obergefell* held that state statutes that prohibited same-sex couples from marrying and denied recognition of the legal marriages of same-sex couples from another jurisdiction violated the Fourteenth Amendment's equal protection and due process clauses.[13] Similarly, the Court in *Lawrence* relied upon both the equal protection and due process clauses of the Fourteenth Amendment in finding that laws criminalizing same-sex sexual intimacy are unconstitutional.[14]

In each of these cases, the Court advanced individual liberty by rejecting the barriers that prevented people from living a life with dignity and autonomy.

By comparison, the cursory treatment of these decisions by the *Dobbs* majority provides cold comfort that the Court might not reconsider the outcomes of *Obergefell*, *Lawrence*, and potentially even *Loving* if presented with the opportunity down the line. Indeed the dissent in *Dobbs* warns that "no one should be confident that this majority is done with its work."[15] However, even if the Court were someday to revisit cases like *Loving*, *Lawrence*, or *Obergefell*, these precedents have deep, double-stranded constitutional roots in not only substantive due process, but also equal protection case law.[16] Moreover, same-sex couples and intimate partners

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[9] *Zablocki v. Redhail*, 434 U.S. 374 (1978) (finding that a state statute that prohibited individuals that owed child support from marrying violated the Fourteenth Amendment and reaffirming that marriage is a fundamental right).
[10] *Turner v. Safley*, 482 U.S. 78 (1987) (finding that a state regulation limiting incarcerated people's ability to marry violated their Fourteenth Amendment fundamental right to marriage).
[11] *Loving v. Virginia*, 388 U.S. 1 (1967).
[12] *Loving*, 388 U.S. at 12.
[13] *Obergefell*, 576 U.S. at 675.
[14] *Lawrence*,539 U.S. at 565.
[15] *Dobbs*, 597 U.S. at 72.
[16] *See e.g.,* Georgia Crimes and Offenses, 16 Ga. St. sec. 6-2(a); Kansas Crimes and Punishments, 21 Ka.St. sec. 5504(a); Kentucky Penal Code, L Ky.St. sec. 510.100; Massachusetts Punishments and Proceedings in Criminal Cases, 272 Ma.St. sec. 34; Michigan Penal Code, 750 Mi.St. sec. 338; Minnesota Crimes, Expungement, Victims, 609 Mn.St. 293; Mississippi Crimes, 97 Ms.St. 29-59; North Carolina General Statutes, Criminal Law, 14 NCSt. 177; Oklahoma Statutes Crimes and Punishments, 21 Ok.St. 886; South Carolina Code of Laws Crimes and Offenses, 16 SCSt. 15-120; 21 Tx. Penal, sec. 06.

have robust reliance interests in *Obergefell* and *Lawrence*. They have made enduring decisions that impact their relationship to the government, and that carry financial, familial, and other obligations, and they have outed themselves to the public. During the *Dobbs* oral arguments, the Mississippi Solicitor General conceded a reliance interest on this point.[17] Indeed, to consider going back to a scenario where these rights could no longer be relied upon is horrific to even imagine. To put it squarely, were *Lawrence* to be overturned, a marriage certificate could be evidence of a crime. Today, nearly a dozen states retain laws criminalizing sexual relationships between same-sex partners [18] and thirty-five states still have laws or constitutional amendments on the books that bar same-sex couples from marrying.[19]

Concurrence of Justice Thomas

In his freestanding concurrence, Justice Thomas refers to substantive due process as an "oxymoron", arguing that "the Due Process Clause at most guarantees *process*. It does not, as the Court's substantive due process cases suppose, 'forbi[d] the government to infringe certain "fundamental" liberty interests at all, no matter what process is provided.'"[20] He communicates that substantive due process cannot stand. By declaring that the Court should reevaluate all cases that rely upon a substantive due process rationale, Justice Thomas invites legal challenges from every corner. A domino effect could occur imperiling numerous rights that Americans take for granted if a majority of the Court were to be swayed by his analysis. It is no conjecture to suggest that *Dobbs* will be used to argue for reversing well-established fundamental rights beyond abortion; it is already happening. A recent filing in federal court argues that *Dobbs* limits the century old right to parental autonomy.[21]

The dissent found Justice Thomas's rationale to be extraordinary and alarming. In response to the majority opinion in *Dobbs* regarding the decision's impact on other substantive due process precedents, the dissent opined that "the Court's precedents about bodily autonomy, sexual and familial relations, and procreation are all interwoven—all part of the fabric of our constitutional

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[17] Transcript of Oral Argument at 25, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. ___ (2022) (No. 19-1392).
[18] *See e/g.,* Kansas Crimes and Punishments, 21 Ka.St. sec. 5504(a); Kentucky Penal Code, L Ky.St. sec. 510.100; Massachusetts Punishments and Proceedings in Criminal Cases, 272 Ma.St. sec. 34; Michigan Penal Code, 750 Mi.St. sec. 338; 21 Tx. Penal, sec. 06.
[19] Elaine S. Povich, *Without Obergefell, Most States Would Have Same-Sex Marriage Bans*, Pew Stateline (July 7, 2022), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/07/07/without-obergefell-most-states-would-have-same-sex-marriage-bans.
[20] *Dobbs*, 597 U.S. at 2 (6-3 decision) (Thomas, J. concurring) ("the Due Process Clause at most guarantees *process*. It does not, as the Court's substantive due process cases suppose, 'forbi[d] the government to infringe certain "fundamental" liberty interests at all, no matter what process is provided'").
[21] *Eknes-Tucker v. Attorney General of Alabama*, 2:22-cv-184-LCB (M.D. Ala. 2022), *appeal docketed*, No. 22-11707 (11th Cir. May 18, 2022).

law, and because that is so, of our lives."[22] The comment most certainly also comes in response to Justice Thomas's concurrence. By challenging the constitutional existence of substantive due process, Justice Thomas issued a clarion call to the disaffected.

This is not the first time that Justice Thomas has called to overturn the Court's decisions protecting LGBTQ+ people. In 2020, both Justice Alito and Justice Thomas critiqued the *Obergefell* decision in their dissent to the denial of certiorari in *Davis v. Ermold*,[23] a case about the ability of clerks to refuse to issue marriage licenses to same-sex couples. And in 2019, Justice Thomas challenged the doctrine of stare decisis in *Gamble v. United States* citing *Obergefell* as an example of "applying demonstrably erroneous precedent instead of the relevant law's text."[24] However, his most recent rhetoric in *Dobbs* represents a turning point, particularly when coupled with the Court's decision to strip away a basic and longstanding constitutional right.

State Legislatures and Rogue Actors

In light of *Dobbs*, we are already witnessing many state legislatures enact abortion bans that are both emboldening increasingly extreme restrictions (e.g., upon the constitutional rights to interstate travel or to speech) and also having chilling effects on medicines and procedures that are not even used to conduct an abortion.

In tandem, we have experienced several waves of ominous state legislation against the LGBTQ+ community and corresponding high water marks in hate crimes and violence. The fight for equality has come at a deadly cost as anti-LGBTQ+ violence and rhetoric have reached record highs. Hate crimes targeting the LGBTQ+ community have occurred with alarming frequency over the last several years, with nearly 1 in 5 of any type of hate crime now being motivated by anti-LGBTQ+ bias.[25] Additionally, 2021 shattered the record for fatal violence against transgender and gender non-conforming people.[26] These already-troubling statistics are likely even worse than they appear, due to incomplete data collection and underreporting.

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[22] *Dobbs*, 597 U.S. at 20 (6-3 decision) (Breyer, Sotomayor, and Kagan JJ., dissenting) ("The Court's precedents about bodily autonomy, sexual and familial relations, and procreation are all interwoven—all part of the fabric of our constitutional law, and because that is so, of our lives.").
[23] *Davis v. Ermold*, *et al.*, 936 F.3d 429 (6th Cir. 2019), *cert. denied*, 141 S. Ct. 3 (Mem) (U.S. Oct. 5, 2020) (No. 19-926)
[24] *Gamble v. United States*, 587 U.S ___, 2 (2019) (Thomas, J., concurring).
[25] Federal Bureau of Investigation Criminal Justice Information Services Division, *2020 Crime Data - Hate Crime*, Crime Data Explorer (Aug. 30, 2021), https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/hate-crime.
[26] Laurel Powell, *2021 Becomes Deadliest Year on Record for Transgender and Non-Binary People*, Human Rights Campaign (Nov. 9, 2021), https://www.hrc.org/press-releases/2021-becomes-deadliest-year-on-record-for-transgender-and-non-binary-people.

An increasingly hostile climate has deeply affected the most vulnerable members of the LGBTQ+ community, and especially LGBTQ+ youth, transgender women, and LGBTQ+ people of color. The data is clear. Public opinions and attitudes about LGBTQ+ people still have a direct effect on rates of violence against members of the community.[27] The consequences of cultural marginalization and stigmatization persist, even as we make continued progress toward equality.

Unsurprisingly, more than half of all LGBTQ+ people are battling mental health challenges, largely due to the discrimination and stigma they face at home and in their communities.[28] The rising tide of anti-LGBTQ+ legislation across the country has also had a serious impact on the well-being of LGBTQ+ people and notably in young people, who are losing access to key support systems in schools. A startling 85% of surveyed transgender and gender non-conforming youth have stated that their mental health has been negatively affected by the ongoing legislative attacks against the LGBTQ+ community.[29]

State legislatures have been particularly hostile to LGBTQ+ people in recent years, as the increasing polarization of politics and heavily gerrymandered state districts have put state legislatures further and further out of step with the views of their constituents. Since 2015, about 1,200 anti-LGBTQ+ bills have been filed in state legislatures, and 2022 saw more anti-LGBTQ+ legislation filed in state legislatures than ever before, with 38 states filing approximately 350 anti-LGBTQ+ bills this year alone.[30] Nearly all of these bills would have a negative impact on transgender people, but about 440 bills filed since 2015 would perpetrate particular harm upon transgender people. Some locales are even more prolific than others, for example 32 states in 2022 that introduced a historic 140 pieces of anti-transgender legislation. Many of these bills are directed specifically to limit the rights of transgender children.

Should the constitutional imperatives reflected in *Lawrence* or *Obergefell* be abandoned or undercut by the Supreme Court, state legislatures will be sure to redouble their anti-LGBTQ+ attacks to include efforts to recriminalize intimacy between consenting adults and undermine or undo marriages of same-sex couple. Additionally, laws that were abrogated by these decisions could, if these precedents were overruled, be enforced anew.

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[27] Human Rights Campaign Foundation, *Dismantling a Culture of Violence- Understanding Anti-Transgender Violence and Ending the Violence* (Dec. 2020), https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/Dismantling-a-Culture-of-Violence-010721.pdf.

[28] Human Rights Campaign Foundation, *The State of Mental Health in LGBTQ Communities*, https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/documents/LGBTQ-MentalHealth-brief-022221.pdf.

[29] Morning Consult & The Trevor Project, *Issues Impacting LGBTQ Youth-Polling Analysis* (Jan. 2022), https://www.thetrevorproject.org/wp-content/uploads/2022/01/TrevorProject_Public1.pdf.

[30] The Human Rights Campaign Foundation publishes an annual report, *The State Equality Index*, which tracks the LGBTQ-related legislation introduced and passed each year. The most recent report was released in January and it, as well as previous editions, are available at www.hrc.org/sei. (Finalized 2022 data will be released in the upcoming 2023 State Equality Index. 2022 data provided in this testimony are HRC's working numbers based on our tracking at this time.)

In 2015, as *Obergefell* was pending in the United States Supreme Court, a backlash against LGBTQ+ people was unfolding in state legislatures across the country. While a super majority of the American public supported marriage equality,[31] state legislatures applied themselves to finding ways to limit, undermine, and prevent marriage for same-sex couples in their states. In 2015, 36 such bills were introduced in fifteen states, and to date nearly 100 such bills have been introduced. Some proposed to eliminate marriage entirely while others defied *Obergefell* explicitly or implicitly, or claimed the decision is null. Still others attempted to peel away rights attendant to marriage, including benefits and parentage. These bills are unconstitutional, but the legislative efforts demonstrate that, given the opportunity, state legislatures will continue to attempt to roll back marriage rights. Many state legislators may be inspired by Justice Thomas's concurrence to prioritize and double down on their efforts to pass a law in conflict with existing Supreme Court precedent in the hopes that it will result in those precedents being overturned.

Recent legislative efforts also demonstrate that states are willing to permit government actors to discriminate. Mississippi's HB 1523, which became law in 2016, allows government actors to invoke disapproval of LGBTQ+ people as a justification to refuse to provide taxpayer-funded services.[32] Other states considered but ultimately did not pass similar legislation.[33] Additionally, several states considered legislation that would allow government employees, such as clerks, to refuse to issue a marriage license to a same-sex couple or refuse to solemnize the marriages of same-sex couples.[34]

Even without legislative permission, state governments may find themselves facing litigation as a result of a government actor who is emboldened by the *Dobbs* decision, particularly Justice Thomas's concurrence, to engage in behavior for the purpose of setting up a test case. A local police officer might take it upon themself to engage in a raid on a gay bar in an attempt to enforce the state's sodomy ban (that is still on the books). A state administrator might refuse a claim for spousal benefits because the spouse is married to someone of the same sex. A county clerk might deny a same-sex couple a marriage license. These rogue government actors may have the opportunity to create the legal challenges to *Lawrence* and *Obergefell* which potentially would rise to the Supreme Court. While the Court may ultimately decline certiorari in such cases or reaffirm precedent, real people will be hurt by having their rights infringed upon and denied and by experiencing material fears that their lives will be upended.

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[31] Justin McCarthy, *Same-Sex Marriage Support Inches Up to New High of 71%*, Politics (June 1, 2022), https://news.gallup.com/poll/393197/same-sex-marriage-support-inches-new-high.aspx.

[32] H.B. 1523, 2016 Leg., Reg. Sess. (Miss. 2016).

[33] States that have considered such bills include Texas, Iowa, Oklahoma, Tennessee, Virginia, Missouri, Colorado, Georgia, Hawaii, Kentucky, Massachusetts, Mississippi, Wyoming, Arkansas, Illinois, and Washington. See footnote 30 regarding HRC's tracking of state legislation.

[34] States that have considered such bills include Kentucky, Missouri, Texas, Mississippi, and Virginia. See footnote 30 regarding HRC's tracking of state legislation.

Congressional Action

No single action can repair the constitutional crisis inflicted by *Dobbs*' radical rejection of fifty years of precedent, but in addition to the Women's Health Protection Act there are important steps Congress can take to stymie the damage. Several of those actions have already been introduced as legislation. This list is not exhaustive but rather a starting point.

Respect for Marriage Act

Section 3 of the Defense of Marriage Act (DOMA) was struck down by the United States Supreme Court in 2013 in *Windsor v. United States*, which found that provision of the statute to be a violation of both the Fifth Amendment's guarantee of equal protection under federal law. Section 3 essentially excluded legally married same-sex couples from federal statutes, regulations, and rulings applicable to all other married people. Section 2, which was not addressed by the *Windsor* case, purported to allow states to refuse the valid legal marriages of same-sex couples entered into in other states.

The Respect for Marriage Act (RMA) would fully remove DOMA from the books by repealing both sections 2 and 3, and goes further, establishing a clear rule for the federal government that all married same-sex couples have access to equal rights, benefits, and obligations under federal law. It would ensure that every legally married couple has the certainty that every federal benefit and protection will flow from a marriage that was valid where it was originally performed.

Given the uncertainty that many face around the future of marriage equality, passing the Respect for Marriage Act would have two important impacts: First it would ensure that people will not be subjected to losing federal recognition of their marriage, regardless of what might otherwise happen in their particular state. Second, it would repeal the provision of federal law that purports to allow states to refuse to recognize valid marriages entered into in other states. While the legality of that provision is and always has been suspect, removing it from the books is a necessary precaution and signal, particularly in light of recent developments.

Voting Rights

Access to the ballot has served as an indicator of the health of our democracy for generations. In the last decade, a tide of restrictive voting laws have disproportionately affected traditionally marginalized communities, including communities of color, those who are economically disadvantaged, and LGBTQ+ people. In the aftermath of *Shelby County v. Holder*, which invalidated a key provision of the Voting Rights Act, states have brazenly enacted discriminatory voting measures to make it more difficult to vote, including by instituting more onerous voter identification laws and imposing obstacles to voting by mail.

The road to fairer access to the ballot will require a federal solution that includes the passage of the John Lewis Voting Rights Advancement Act (VRAA) and the key provisions of the Freedom to Vote Act. The VRAA would restore the protections of the Voting Rights Act with modern provisions that would expand and strengthen the government's ability to respond to voting discrimination.

With abortion rights and potentially other rights imperiled and subject to increasing restrictions and novel legislation, it is vital that all Americans are afforded the ability to fully and equally participate in democracy and have their voice heard on the issues that affect them most.

Equality Act

In this time of tremendous uncertainty and significant concern about the future of equality, LGBTQ+ Americans continue to experience a patchwork of state-level non-discrimination laws and a lack of express, permanent, comprehensive federal civil rights protections. The Supreme Court's June 2020 decision in *Bostock v. Clayton County* held that Title VII of the Civil Rights Act prohibits employment discrimination on the basis of sexual orientation and gender identity because they are types of sex discrimination. This was a huge step forward, but the fate of *Roe* only underscores the need for these protections to be explicitly codified in federal law. The Equality Act would provide consistent and explicit non-discrimination protections for LGBTQ+ people across key areas of life, including employment, housing, credit, education, public spaces and services, federally funded programs, and jury service. Further, the Equality Act would amend the Civil Rights Act of 1964 to include important new protections on the basis of sex, and would update the scope of current law to include retail stores, services such as banks and legal services, and transportation services - strengthening existing protections for everyone. In these uncertain times, every American should know that discrimination is intolerable. The Equality Act would afford needed security to many Americans.

Conclusion

There is little doubt that the *Dobbs* decision constitutes one of the most significant reversals of a civil rights in a generation. It will do immense and concrete harm to women, the LGBTQ+ community, to individual rights, and the ability to engage in sensible family planning and to make private medical decisions. But the road to overturning *Roe* was not an accident or a sudden surprise. It was part of a long-term concerted strategy to focus on the judiciary as a means of achieving results that the vast majority of American people reject. Warning signs were there

along the way, sometimes all too plain to see.[35] Today, questions remain about what precisely *Dobbs* will mean for other substantive due process precedents and foundational rights that are deeply important to the LGBTQ+ community and beyond. But there is no question that stemming the effects of *Dobbs* will require careful and concerted action at the federal, state, and Congressional levels -- and the Human Rights Campaign stands ready to work closely with our allies in the reproductive justice movement to do so. Moreover, there is no question that organizations like the Human Rights Campaign will vigorously defend precedents that protect the right to marriage (*Obergefell*), to federal equality (*Windsor, Bostock*), and to loving who you love, without fear or punishment or criminalization (*Lawrence*). Ultimately, as the *Dobbs* dissent stressed, the new majority of the Supreme Court may not be "done with its work" -- but neither are we.

[35] HRC, *Brett M. Kavanaugh: Wrong For LQBTQ People. Wrong For The Supreme Court* at 5 (2018), https://assets2.hrc.org/files/assets/resources/KavaughReport-080318.pdf (detailing then-Judge Kavanaugh's views on *Roe* and "unenumerated rights"); *see also* HRC, *Amy Coney Barrett and the Reprise of Justice Scalia's Philosophy* at 7 (2020), https://hrc-prod-requests.s3-us-west-2.amazonaws.com/AmyConeyBarret-Report-100920.pdf?mtime=20201009143457&focal=none.